

In September 2007, Ronald Fluegel, cocounterdefendant, lost control of the farm implement that he was pulling with his pickup truck. After striking a guardrail, the farm implement crossed into the oncoming lane of traffic and collided with a school bus, causing injuries to the children on board.

Numerous court filings following the September 2007 incident culminated in Rockford Mutual Insurance Company (Rockford Mutual), defendant and counterplaintiff, filing a third-amended counterclaim for declaratory judgment. Rockford Mutual sought a declaration from the trial court that the terms of Fluegel's "Farm[-]Protector" insurance policy--which specifically excluded coverage for damages arising "directly or indirectly" from the use of a motorized vehicle--excluded coverage for injury or damage arising out of the negligent operation of the pickup truck. Rockford Mutual asserted, therefore, that it was not obligated to defend the claims against Fluegel.

In July 2010, the trial court disagreed, rejecting Rockford Mutual's third-amended counterclaim for declaratory judgment.

Rockford Mutual appeals, arguing that the trial court erred by denying its third-amended counterclaim for declaratory judgment. We agree and reverse.

I. BACKGROUND

A. The Incident

In September 2007, Fluegel lost control of the farm implement that he was pulling with his pickup truck. After striking the guardrail, the farm implement crossed into the oncoming lane of traffic and collided with a school bus, causing injuries to the children on board.

B. The Underlying Lawsuit in This Case

Shortly after the incident, plaintiffs and cocounterdefendants, Donath and Deb English, on behalf of Whitney English, filed a first-amended complaint, asserting that Fluegel negligently failed to "keep a lookout ahead" and "keep proper control over the farm implement," or comply with a number of provisions of the Illinois Vehicle Code (625 ILCS 5/1-100 through 20-402 (West 2008)), including the following: (1) failure to check the roadway in advance to ensure adequate clearance (625 ILCS 5/15-102(b)(2)(A) (West 2008)); (2) failure to display flags on the farm implement (625 ILCS 5/15-102(b)(2)(B) (West 2008)); (3) failure to display signs describing the "OVERSIZED LOAD" (625 ILCS 5/15-102(b)(2)(C) (West 2008)); (4) failure to have two escort vehicles (625 ILCS 5/15-102(b)(2)(D) (West 2008)); and (5) failure to assure that the farm implement could be moved safely outside of a single lane of traffic (625 ILCS 5/11-709(a) (West 2008)). (In August 2009, several other plaintiffs filed complaints, asserting virtually identical claims.)

C. Rockford Mutual's Third-Amended Counterclaim for Declaratory Judgment

In October 2009, Rockford Mutual filed a third-amended counterclaim for declaratory judgment, seeking a declaration from the trial court that the terms of Fluegel's farm-protector insurance policy--which specifically excluded coverage for damages arising "directly or indirectly" from the use of a motorized vehicle--excluded coverage for damages arising out of the negligent operation of the pickup truck/farm implement. Rockford Mutual asserted, therefore, that it was not obligated to defend the claims against Fluegel.

D. The Insurance Policy at Issue

The relevant portion of Fluegel's farm-protector insurance policy stated the following:

"PRINCIPAL PERSONAL LIABILITY COVERAGES

COVERAGE L-LIABILITY--We pay, up to our limit, all sums for which the insured is liable by law because of bodily injury or property damage caused by an occurrence to which this coverage applies. We will defend a suit seeking damages, if the suit resulted from bodily injury or property damage *not excluded under this coverage*.

* * *

EXCLUSIONS THAT APPLY TO COVERAGES L AND M

Farm Personal Liability Coverage does not apply to bodily injury or property damage which results directly or indirectly from:

* * *

[T]he *** operation [or] use *** of motorized vehicles *** owned or operated by *** an insured." (Emphasis added.)

Fluegel's insurance policy also defined a "motorized vehicle" as "a self-propelled land *** vehicle regardless of the method of surface contact."

E. The Trial Court's Ruling

In July 2010, the trial court denied Rockford Mutual's third-amended counter-claim for declaratory judgment, finding that the terms of Fluegel's insurance policy were

ambiguous as to whether Rockford Mutual had a duty to defend the lawsuit.

This appeal followed.

II. ANALYSIS

Rockford Mutual argues that the trial court erred by denying its third-amended counterclaim for declaratory judgment. Specifically, Rockford Mutual contends that the terms of Fluegel's insurance policy--which excluded coverage for damages arising from the use of a motorized vehicle--excluded coverage for damages arising out of the negligent operation of the pickup truck/farm implement, and therefore, it has no duty to defend Fluegel in this case. We agree.

A. The Standard of Review and the Construction of the Terms of Insurance Policies Generally

This case comes to us on the trial court's denial of Rockford Mutual's third-amended counterclaim for declaratory judgment based upon the construction of the terms of an insurance policy. The court's ruling on a motion for judgment on the pleadings, like a motion for summary judgment, is limited to the pleadings. *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 157, 940 N.E.2d 1122, 1126 (2010). Thus, our review is *de novo*. *State Building Venture*, 239 Ill. 2d at 157, 940 N.E.2d at 1126. A court properly grants a judgment on the pleadings when "the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *State Building Venture*, 239 Ill. 2d at 157-58, 940 N.E.2d at 1126.

The supreme court in *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391, 620 N.E.2d 1073, 1077-78 (1993), explained the principles courts of review should apply when called to interpret an insurance policy:

"The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court ***. [Citations.] In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. [Citations.] To ascertain the intent of the parties and the meaning of the words used in the insurance policy, the court must construe the policy as a whole, taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the entire contract. [Citations.] If the words in the policy are plain and unambiguous, the court will afford them their plain, ordinary meaning and will apply them as written. [Citation.] The court will not search for ambiguity where there is none. [Citation.]"

B. An Insurer's Duty To Defend and
the Standard for Enforcing It

In *Farmers Automobile Insurance Ass'n v. Danner*, 394 Ill. App. 3d 403, 409-10, 924 N.E.2d 1053, 1058-59 (2009), this court explained when an insurer's duty to defend arises and what the standard is for enforcing it:

"An insurer's duty to defend arises if the 'facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage.' [Citation.] The duty to defend is much broader than the

duty to indemnify. [Citation.]

'[T]o determine whether the insurer has a duty to defend the insured, the court must initially look to the allegations in the underlying complaint and compare those allegations to the relevant provisions of the insurance policy.' [Citation.] However, a trial court 'may look beyond the allegations of the complaint in the underlying lawsuit in order to determine an insurance company's duty to defend its insured' so long as the ' "court does not determine an issue critical to the underlying action." ' [Citations.] 'As the threshold for pleading a duty to defend is low, any doubt with regard to such duty is to be resolved in favor of the insured.' [Citation.]"

C. The Insurance Policy in This Case

As previously outlined, the pertinent portion of Fluegel's farm-protector insurance policy stated that Rockford Mutual would defend a suit seeking injury and damage only if the suit resulted from injury or damage "not excluded" under the policy. One such exclusion was for injury or damage that resulted "directly or indirectly" from "the *** operation [or] use *** of motorized vehicles." Recently, in *Maxum Indemnity Co. v. Gillette*, 405 Ill. App. 3d 881, 940 N.E.2d 78 (3rd Dist. 2010), our sister district addressed an insurance policy with similar terms.

In *Maxum Indemnity Co.*, the complainant sued for injuries she sustained when she was thrown from a parade float that the defendants were pulling. The defendants' insurer refused to defend them under the terms of the defendants' commercial liability policy, asserting

that the policy excluded coverage "arising out of" the use of an "auto." *Maxum Indemnity Co.*, 405 Ill. App. 3d at 883-84, 940 N.E.2d at 80-81. The trial court found that the insurer had a duty to defend because the complaint involved injuries sustained from a float, not an "auto." *Maxum Indemnity Co.*, 405 Ill. App. 3d at 884, 940 N.E.2d at 81.

The appellate court reversed, (1) holding that the insurer had no duty to defend and (2) concluding, in relevant part, that the underlying claims arose from injuries sustained while the float was being pulled. *Maxum Indemnity Co.*, 405 Ill. App. 3d at 886-87, 940 N.E.2d at 83-84. Therefore, the court added, the alleged defective condition of the float "only created a risk to her when the float was in motion." *Maxum Indemnity Co.*, 405 Ill. App. 3d at 887, 940 N.E.2d at 84.

We find the analysis from *Maxum Indemnity Co.* persuasive. Here, construing Fluegel's insurance policy as a whole, taking into account the fact that it was a farm-protector policy and the risks the parties sought to mitigate, we conclude that the underlying injury and damage arose from Fluegel's negligent operation of a "motorized vehicle." Had Fluegel not been pulling the farm implement with his pickup truck, the accident would not have occurred.

Accordingly, we hold that plaintiffs' underlying claims in this case arose--at the very least "indirectly"--from Fluegel's alleged negligent operation of his pickup truck, a "motorized vehicle" under the terms of the insurance policy. Thus, we conclude that the "motorized vehicle" exclusion of Fluegel's farm-protector insurance policy applies. Because the facts alleged in the underlying complaint do not fall within, or potentially within, the policy's coverage, Rockford Mutual had no duty to defend Fluegel under the terms of his policy.

III. CONCLUSION

For the reasons stated, we reverse the trial court's judgment.

Reversed.