

Towns v. Northern Security Ins. Co., No. 233-4-00 Wncv (Teachout, J., Jan. 26, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

RICHARD TOWNS,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 233-4-00 Wncv
v.)	
)	
NORTHERN SECURITY INS. CO.,)	
Defendant.)	

DECISION

**Plaintiff's Motion for Partial Summary Judgment, filed November 9, 2006
Defendant's Cross Motion for Summary Judgment, filed December 11, 2006**

The parties have filed cross-motions for summary judgment addressing two coverage exclusions, the business pursuits exclusion and the owned property exclusion, and Defendant-Insurer's affirmative defense of late notice of the claim. The court concludes that the business pursuits exclusion bars coverage, and therefore does not address the parties' other arguments.

Insurer provided homeowner's insurance to Towns for a few of the many years in which he buried construction debris and other waste on his residential property in Johnson, eventually giving rise to an enforcement action by the Agency of Natural Resources. Towns seeks coverage under the homeowner's policy. Insurer argues that the business pursuits exclusion bars coverage in the circumstances of this case.

The policy does not provide coverage for bodily injury or property damage:

b. arising out of **business** pursuits of an **insured** or the rental or holding for rental of any part of any premises by an **insured**.

This exclusion does not apply to:

(1) activities which are ordinarily incident to non-**business** pursuits . . .

Policy, Section II—Exclusions, ¶ 1.

There is no dispute that Towns acquired the vast majority of the refuse deposited at the Johnson property in the ordinary course of his trash hauling business, which encompassed the

years that the homeowner's policy with Insurer was in effect (1983-1987). The refuse collected as part of that business had to be deposited somewhere. The underlying environmental enforcement action and the current coverage dispute relate to Towns' decision to deposit several thousand cubic yards of that refuse in his own backyard. Towns argues that he did so only for the private, non-business purpose of filling in part of the yard to make it more suitable for residential use. He argues that this was a "non-business" pursuit and, therefore, the exception to the business pursuits exclusion applies such that coverage is available.

At some point in the course of the underlying enforcement action, the Environmental Court made a finding to the effect that Towns' "primary purpose" for placement of the trash where it was put was to "expand the useable back yard." Towns now argues that this finding is binding in this litigation and, therefore, Insurer cannot contest the application of the non-business exception. Insurer argues that it is not bound to the Environmental Court's finding, as the issue of the applicability of insurance policy exclusions was not litigated in that case.

Analysis of the non-business pursuits exception to the business pursuits exclusion can be confusing. See *Luneau v. Peerless Ins. Co.*, 170 Vt. 442, 447 (2000); *Rufener v. State Farm Fire & Casualty Co.*, 585 N.W.2d 696, 699 (Wis. Ct. App. 1998) ("the exception is often awkwardly worded and its meaning is not obvious"). Generally, this policy language is intended to distinguish between the type of risks that ordinarily relate to a policyholder's personal life and the type of risks that ordinarily relate to the policyholder's business life. The non-business risks generally are covered because they are the anticipated subject of a homeowner's policy; business risks are not anticipated under a homeowner's policy. If they choose to, "[b]usiness persons can obtain business liability insurance." *Luneau*, 170 Vt. at 448.

Towns' personal interest in using the trash he collected in his business in his own backyard does not transform his business pursuit (trash hauling, including disposing of the hauled trash) into a non-business pursuit. While he may have had a personal purpose and may have obtained person benefit from using the trash he hauled, it does not change the fact that disposing of the trash, wherever he did so, was an inherent part of his business. The question is not whether he had a personal goal he was fulfilling simultaneously with carrying out his business. Rather, "the proper inquiry is whether the activity is ordinarily part of or related to the insured's business." *Rufener*, 585 N.W.2d at 700. Dumping the trash collected in Towns' trash hauling business was an ordinary part of that business. The risk of incurring liability for the disposal of large amounts of business trash is a business risk of a trash hauler, for which business insurance may be sought. It is not a risk "ordinarily incident" to home ownership.

The court concludes that the business pursuits exclusion applies to bar coverage in these circumstances.

ORDER

For the foregoing reasons,

- 1) Plaintiff's motion for summary judgment is *denied*;
- 2) Defendant's motion for summary judgment is *granted*;
- 3) Defendant shall prepare a form of judgment; and

4) The jury trial shall be cancelled.

Dated at Montpelier, Vermont this __ day of January 2007.

Mary Miles Teachout
Superior Court Judge