

ILLINOIS LAW MANUAL

CHAPTER XII

EXCLUSIONS TO COVERAGE

A. AUTOMOBILE/MOTOR VEHICLE

Both the homeowners and comprehensive general liability policies exclude bodily injury or property damage arising out of the ownership, maintenance, and use, loading or unloading of a motor vehicle owned or operated by or rented or loaned to any insured.

1. Exclusion Applies Even Though Motor Vehicle Inoperable

Some standard motor vehicle exclusions are somewhat different from the exclusion drafted by the Insurance Services Office. Some exclusions contain no exception for a vehicle which is not subject to motor vehicle registration and in “dead storage” on an insured location. This means that those exclusions should apply to any bodily injury or property damage arising out of the motor vehicle even though the motor vehicle is inoperable and stored on an insured location.

The “dead storage” exception was addressed in Standard Mutual Ins. Co. v. Marx, 367 Ill. App. 3d 512 (2006). The court found that the exception did not apply to a vehicle that the insured was trying to start, even though it had been in storage for a month. Many cases relying on the exclusion drafted by the Insurance Services Office can also be found in other jurisdictions which have applied a similar exclusion to “maintenance” done on an inoperable motor vehicle. See e.g., Holliman v. MFA Mut. Ins. Co., 711 S.W.2d 159 (1986) (vehicle undergoing maintenance in “dead storage” when insured’s brother was burned by pouring gasoline into carburetor); Lawson v. Allstate Ins. Co., 456 So. 2d 1235 (1984) (grandfather’s

homeowner’s policy did not apply where child was injured when grandfather threw a cup containing gasoline which ignited); Volkswagen Ins. Co. v. Dung Ba Nguyen, 405 S. 2d 190 (1981); Tipton v. Pike, 550 F. Supp. 191 (1982) (applying Oklahoma law) (homeowner’s policy did not apply to bodily injury as a result of explosion and flash fire from automobile on which insured’s son was working); Auto-Owners Ins. Co. v. Trans American Ins. Co., 357 N.W.2d 519 (1984) (homeowner’s insurer had no duty to defend insured against claim of negligence arising out of “maintenance” of go-cart when welding work was being performed in area); Hollis v. St. Paul Fire & Marine Ins. Co., 203 Ga. App. 252, 416 S.E. 2d 27 (1992) (homeowner’s policy did not apply to bodily injuries sustained when insured was attempting to start car by pouring gasoline in carburetor); Allstate Ins. Co. v. Watts, 811 S.W.2d 883 (1991) (homeowner’s insurer did not provide coverage for injuries sustained by insured’s friend while assisting insured in replacing brake pads on truck); Krempl v. Unigard Security Ins. Co., 69 Wash. App. 703, 850 P.2d 533 (1993) (policy did not provide coverage for burns suffered when insured threw gasoline into motorcycle gas tank); Prudential Property & Cas. Ins. Co. v. Allair, 25 Mass. App. Ct. 159, (1987) (insurer owed no coverage in connection with bodily injuries sustained while motor vehicle was receiving engine tune-up).

2. Exclusion Applies Even to Negligent Supervision Under Revised Homeowners Policy Form 3

The homeowner's policy further excludes from liability coverage any bodily injury or property damage arising out of the insured's "entrustment" of a motor vehicle or other motorized land conveyance to any person or the insured's supervision with regard to another's use of a motor vehicle.

This language represents the company's attempt to change prior case law under which the exclusion did not clearly apply to allegations of negligent supervision where the supervision was a concurrent cause of the bodily injury, which could be proved independently of the negligent operation of the excluded vehicle. See e.g., United States Fidelity & Guaranty Co. v. State Farm Mutual Automobile Ins. Co., 152 Ill. App. 3d 46, 48-9 (1987) (carrier which insured multi-peril policy owed duty to defend day care center charged with negligent supervision of child who fell out open passenger door of moving vehicle); West American Ins. Co. v. Hinze, 843 F.2d 263, 266-7 (1988) (applying Illinois law) (motor vehicle exclusion did not bar liability coverage for child's death which arose from negligent supervision when unattended vehicle rolled from pier into Lake Michigan); Tuell v. State Farm Fire & Cas. Co., 132 Ill. App. 3d 449, 452 (1985) (recognizing coverage in wrongful death action for negligent supervision where motor vehicle exclusion applied to allegation of negligent entrustment). If the reviewing courts apply the new policy language as written, the exclusion should apply not only to the

insured's "negligent entrustment," but also to "supervision" of a motor vehicle.

The motor vehicle exclusion has been applied even though there is an acknowledged "gap" in liability coverage between the homeowner's policy and an automobile policy which excludes the motor vehicle. State Farm Fire & Cas. Co. v. Mann, 172 Ill. App. 3d 86, 93 (1988) (public policy does not require coverage for accident involving dirt bike that did not qualify as fourwheel "car" under auto policy and excluded under homeowner's policy).

3. Exclusion May Not Apply to Negligent Supervision in Comprehensive General Liability Policy

The motor vehicle exclusion in the comprehensive general liability policy is not quite as broad. Although it applies to "entrustment" as well as to the ownership, maintenance, and use, including loading and unloading of a motor vehicle, unlike the homeowner's policy, it does not specifically apply to supervision. There may be liability coverage for negligent "supervision" even though there could be no liability coverage for negligent "entrustment" of the excluded vehicle. State Farm Fire & Cas. Co. v. McGlawn, 84 Ill. App. 3d 107 (1980); Louis Marsch, Inc. v. Pekin Ins. Co., 140 Ill. App. 3d 1079, 1086 (1985); Allstate Ins. Co. v. Panzica, 162 Ill. App. 3d 589 (1987).