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ILLINOIS LAW MANUAL

CHAPTER XII

EXCLUSIONS TO COVERAGE

D. BUSINESS PURSUITS EXCLUSION

Many homeowners policies exclude coverage for bodily injury or property damage arising out of the business pursuits of any insured. A typical policy states:

1. Liability and Medical Payments Coverages do not apply to:
 - b. Bodily injury or property damage arising out of business pursuits of any insured or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:
 - (1) to activities which are ordinarily incident to non-business pursuits;
 - (2) with respect to liability coverage to the occasional or part-time business pursuits of an insured under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours;
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an office, school, studio or private garage;
 - (4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part; or
 - (5) to farm land (without buildings) not in excess of 500 acres, rented or held for rental to others.

In State Farm Fire & Cas. Co. v. Wonnell, 178 Ill. App. 3d 823, 825-6 (1989), the Appellate Court held that the rental exclusion applied to deny liability coverage for a lessee's bodily injury. Even though the lessee lived on the premises for only seven months under an open-ended tenancy, the court refused to apply the exception to the exclusion for the "occasional" renting where the insured had moved away and intended to sell the premises. Some homeowners policies also contain a definition of the term, "business." In the "DEFINITIONS" section, the policy usually states:

Business means a trade, profession or occupation. This includes farming.

The intent of a homeowners policy is to provide coverage for the insured in his capacity as a homeowner, rather than in a business capacity. Therefore, the policy usually excludes coverage for "business pursuits." Renting investment property is a specifically excluded activity under the policy language, although it is not the only "business pursuit" excluded by the policy. For example, the delivery of a boat has been held to be a business pursuit within the exclusionary clause, thereby precluding coverage. Badger Mut. Ins. Co. v. Ostry, 264 Ill. App. 3d 303 (1994). The issue arises when the underlying complaint alleges activity which could arguably be a "business pursuit."

The leading case in Illinois regarding this exclusion is Ins. Co. of Illinois v. Markogiannakis, 188 Ill. App. 3d 643 (1989). In this case, the insured, a

professional musician, owned a condominium unit. Upon personally collecting a tenant's rent payment, the insured became embroiled in a dispute with another tenant regarding required condominium association fee payments. During this dispute, the second tenant suffered physical injuries, which the underlying trial judge determined were the result of the insured's negligent conduct.

In ruling for the insurer, the Illinois Appellate Court in Markogiannakis held that a business pursuit "is a continuous or regular activity, done for the purpose of earning a profit." Markogiannakis, 188 Ill. App. 3d at 655; State Farm Fire & Cas. Co. v. Moore, 103 Ill. App. 3d 250, 252 (1981); Auto-Owners Ins. Co. v. Corrie, 102 Ill. App. 3d 93, 95 (1981). A "business pursuit" includes part-time or supplemental income activities. Moore, 103 Ill. App. 3d at 252 (paid baby-sitting in one's home on a regular basis).

The exclusion has been most recently applied to bar homeowners liability coverage for a claim against an insured for the wrongful solicitation of former employees of a business. Standard Mutual Ins. Co. v. Mudron, 358 Ill. App. 3d 535 (2005).

The standard homeowners policy also provides exceptions to the business pursuits exclusion (subparagraphs (1) through (5), as set forth above). If one of these exceptions is applicable, then the exclusion does not apply. For example, in subparagraph (1), the exception to the exclusion is made for "activities which are ordinarily incident to non-business pursuits." To determine whether there is coverage in this circumstance, that is, that the exception applies, requires an investigation of the particular activity. An attorney throwing a lighted match into an office wastebasket came within this exception to the business pursuits exclusion, and coverage was triggered. Economy Fire & Cas. Co. v. Second National Bank, 91 Ill. App. 3d 406 (1980). Giving sleeping pills to an intoxicated employee on business premises also falls within the exception and, therefore, has been found to be covered under the policy. Reis v. Aetna Cas. & Surety Co., 69 Ill. App. 3d 777 (1978).