

“OPERATING A MOTOR VEHICLE” - APPEAL COURT INTERPRETS EXCLUSION CLAUSE AGAINST INSURER

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In a recent decision of *Lupsor v. Unum Life Insurance Company*, 2005 Carswell Ont 514, released on February 15, 2005, the Ontario Court of Appeal was called upon to interpret an exclusion clause for a group accident insurance policy which stated that the policy did not cover losses caused or resulting from “Operating a motor vehicle either under the influence of any intoxicant or if your blood alcohol concentration is in excess of 80 milligrams of alcohol per 100 millilitres of blood.” Justices, Goudge, Lang and Juriansz, relied on the principle that exclusion clauses should be “strictly and narrowly interpreted against the insurer” where their meaning is in question, to arrive at the conclusion that the loss was covered under the policy.

On the day of the accident, the Plaintiff’s husband had been working on restoring his son’s automobile in his garage with the car’s engine running while his alcohol content exceeded 80 milligrams of alcohol in 100 millilitres. He was later found dead. It was concluded that his death was a result of carbon monoxide poisoning.

The court of appeal agreed with the trial judge’s conclusion that despite the running motor, the deceased was not ‘operating’ his son’s vehicle but merely repairing it, even though the vehicle could have been put in motion at any time. The appeal court relied on the fact that the blood alcohol threshold is commonly associated with driving, in support of its decision that driving was meant to be the primary focus of this exclusion clause. It was also noted that many exclusion clauses combine the terms, “use or operation” of a vehicle, and that the term “use”, had been held by the Supreme Court of Canada, to capture a more broad range of acts than the term “operation”.

While overly broad, verbose, policy provisions may result in judicial interpretation which was not intended by the insurer, this case sends a clear message, that when it comes to exclusion clauses, less is not always more.