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IN THE COURT OF APPEALS OF IOWA NOV 24 1981
CLERK SUPREME COURT

AID INSURANCE COMPANY (MUTUAL),)
Plaintiff-Appellant,) Filed November 24, 1981
vs.) 1-200 2-65466
LE MARS MUTUAL INSURANCE COMPANY OF IOWA)
Defendant-Appellee.)

Appeal from Linn District Court, William R. Eads, Judge.

Plaintiff appeals from a judgment for defendant in an action for contribution for a settlement made by plaintiff with a party injured by a dog owned by plaintiff's insured. *REVERSED AND REMANDED.*

John K. Von Lackum of Elderkin, Pirnie, Von Lackum & Elderkin, Cedar Rapids, for plaintiff-appellant.

James W. Crawford and William L. Thomas of Crawford, Sullivan & Read, Cedar Rapids, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff appeals from a judgment for defendant in an action for contribution for a settlement made by plaintiff with a party injured by a dog owned by plaintiff's insured. The parties have stipulated to the following facts. Plaintiff, AID Insurance Company, issued Dr. Troup, a veterinarian, a General-Automobile Liability Policy and defendant, Le Mars Mutual Insurance Company, issued Dr. Troup a Homeowner's Policy. Both policies were in full force at all relevant times. The present controversy arose out of an incident where a dog owned by Dr. Troup bit Jeremy Steenhoek, a young boy who had accompanied his mother to Dr. Troup's veterinary office. The dog was at the office only because Dr. Troup's son, and his son's friends, had stopped by the office with Dr. Troup's dog. Jeremy approached the dog, who was lying in the doctor's outer office, in order to pet him. The dog bit the boy, causing substantial injury to the left side of his face.

Jeremy's parents commenced an action against Dr. Troup to recover for his injuries and medical expenses. AID was tendered the defense. It conceded that its policy applied to the Steenhoeks' claim against Dr. Troup and negotiated a $17,000 settlement in discharge of the Steenhoeks' claims. In its representation of Dr. Troup in this litigation, AID incurred defense costs of $337. In the present action, AID is seeking contribution from LeMars Mutual Insurance Company asserting that a policy of insurance issued to Dr. Troup by LeMars Mutual also afforded him liability coverage against the claims of the Steenhoeks. The trial court found that the LeMars Mutual policy did not cover the claim and denied AID's claim for contribution.

I. AID's legal theory in seeking contribution is that both policies cover the insured's liability to the Steenhoeks and both policies provide that in the event of such overlapping coverage, there should be contribution in proportion to the respective policy limits. See, e.g., Truck Insurance Exchange v. Maryland Casualty Co., 167 N.W.2d 163, 164-65 (Iowa 1969).

There is no dispute in the present case that the AID policy affords liability coverage to Dr. Troup on the claims in question. The only issue then becomes whether the LeMars Mutual policy also affords liability coverage for this claim. While the trial court discusses several policy provisions which it deemed to be applicable, we find that only one coverage provision and one potential exclusion are involved in determining the issues before us.[1] The coverage provision for personal liability in the LeMars Mutual policy provides "This Company agrees to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of a bodily injury or

[1] Exclusions applicable to policy coverages other than liability coverage are of no significance in determining the scope of the liability coverage afforded by the policy.

property damage to which this insurance applies." In its argument on appeal, LeMars concedes that this policy provision provides general liability coverage except as it is limited by "precise exclusions" contained in the policy. (Brief of Appellee at 7.) The only exclusion pertaining to liability coverage under the LeMars policy which appears to be applicable to the present situation is exclusion 1(e) which provides that the LeMars policy does not apply:

> e. To bodily injury or property damage arising out of any premises other than the insured premises, owned, rented or controlled by any insured; that this exclusion does not apply to bodily injury to a residence employee arising out of and in the course of his employment by the insured.

This is the only exclusion argued by LeMars on appeal to sustain the trial court's judgment.

In determining the applicability of this exclusion, it appears without dispute that the premises upon which Jeremy's injuries occurred were premises controlled by the insured other than the insured premises.[2] The term "arising out of," when used in an insurance policy, is ordinarily understood to mean: "originating from, incident to, or connected with." Rouse v. Greyhound Rent-A-Car, 506 F.2d 410, 414 (5th Cir. 1975); Employers Mutual Casualty Co. v. Federated Mutual Ins. Co., 213 F.2d 421, 423 (8th Cir. 1954). As so viewed, the phrase "arising out of" suggests a causal relationship. We cannot conclude that any injury occurring on a particular premises is one "arising out of" that premises. In the present case, the dog which bit Jeremy bore no relationship to the premises where the injury occurred other than the fact that it was temporarily present there. If location of the injury were to be the basis for an exclusion under the policy, this could have been clearly stated.[3]

We hold that the LeMars Mutual policy did insure Dr. Troup against the liability in question. The parties are in agreement as to how to prorate the settlement given this determination. We therefore reverse the judgment of the trial court and remand the matter for an order prorating the settlement between the two insurance companies in the ratio which has been agreed upon. AID's costs of defense shall be prorated according to the same ratio. Interest on the total amount of contribution which is thus awarded to AID shall be payable at the legal rate from December 27, 1979.

REVERSED AND REMANDED.

All judges concur except Snell, J., and Donielson, J., who dissent.

[2] The insured premises under the LeMars Mutual policy includes only the personal residence of the insured.

[3] For an example of this type of exclusion, see Rowe v. United States Fidelity & Guaranty Co., 375 F.2d 215, 221 (4th Cir. 1967).

SNELL, J., (dissenting.)

I respectfully dissent. The policy exclusions exempt Le Mars Mutual from liability for this occurrence. The exclusion under coverage E, (1) provides that the policy does not apply "to bodily injury or property damage arising out of any premises, other than an insured premises, owned, rented or controlled by any insured." The injury caused by the dog biting the child arose out of premises other than the insured premises since the dog was owned by Dr. Troup who controlled the premises and was there only because it accompanied Dr. Troup's son who stopped to visit his father. This construction is fortified by the medical payment exclusion under Coverage F(3b(3)) which denies medical payments for bodily injury to "(3) any person while on the insured premises because a business is conducted or professional services are rendered thereon." This provision would clearly prevent medical payments to the child if Dr. Troup's veterinary office was at his home and the dog bite occurred there. Yet under the majority's construction of the policy, the insurer is liable for medical payments for the dog bite occurring on premises other than Dr. Troup's home, an anomalous result. I would affirm the trial court.

Donielson, J., joins this dissent.