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**Court of Appeals Confirms That
There is No Coverage Under a
Homeowner's Insurance Policy for an
Incident Involving a Forklift.**

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Summary:

Michigan Court of Appeals affirms trial court's grant of summary judgment in favor of insurance company where the insured's claim arose under one of the specified exclusions in the insured's homeowner's insurance policy.

In an unpublished opinion¹ released this month, a panel of the Michigan Court of Appeals held that an insurer did not owe a duty to defend or indemnify its insured in an underlying tort action arising out of a forklift accident occurring on the insured's

premises.

The plaintiff in the underlying action was severely injured while using a forklift to move materials for a new barn that was being constructed on the insured's property. Plaintiff sued the insured. The insurer under the insured's homeowner's policy refused to defend and indemnify the insured, relying on the "motorized land conveyances" exclusion in the policy at issue. A declaratory action followed.

The policy at issue contained an exclusionary clause that specifically excluded coverage for bodily injury or property damage arising out of "motorized land conveyances." Because the insurance contract did not specifically define the term "motorized land conveyance," the Court of Appeals examined the commonly understood

¹ *Brown v Farm Bureau Ins. Co.*, 2007 Mich App LEXIS 75.

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meaning of the words in the phrase. The Court noted that the *Webster's College Dictionary* defined a "conveyance" as "a means of transporting," the court opined that a "motorized land conveyance" could include any form of motorized transportation.

Because Michigan's appellate courts had not previously considered the specific issue of whether a forklift was a "motorized land conveyance," the Court also observed that several other jurisdictions had addressed the issue. The Court expressly adopted the reasoning of relevant opinions from New Jersey and South Dakota finding that a forklift is a motorized land conveyance. Thus, based upon the commonly understood meaning of the phrase "motorized land conveyance" and extrajurisdictional caselaw, the Court

concluded that a forklift was a "motorized land conveyance." Therefore, the insurer did not owe the insured a duty to defend or indemnify in the underlying tort action.

Cardelli, Lanfear & Buikema, P.C. is an A/V rated firm that specializes in litigation matters with emphasis on personal injury and commercial defense litigation. It is dedicated to providing clients with the highest quality, cost effective legal services. The firm's areas of concentration include product liability, general negligence, insurance defense, and toxic torts. Cardelli, Lanfear & Buikema, P.C. also handles wrongful discharge and employment discrimination matters and environmental hazard claims. In addition to this focus on litigation matters, the firm is involved in a substantial amount of appellate work.

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