

ORIGINAL

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FARMERS INSURANCE EXCHANGE,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

JOSE LUIS CERVANTES BAUTISTA
et al.,

Real Parties in Interest.

B248324

(Los Angeles County
Super. Ct. No. BC477720)

ORDER MODIFYING OPINION
AND DENYING REHEARING,
CERTIFYING OPINION FOR
PUBLICATION;
NO CHANGE IN JUDGMENT

COURT OF APPEAL - SECOND DIST.

FILED

OCT 28 2013

JOSEPH A. LANE

Clerk

Deputy Clerk

THE COURT:

It is ordered that the opinion filed herein on October 1, 2013, be modified as follows:

1. On page 10, line 6 of section C, the word "case" is changed to "cause" so the sentence reads:

The difficulty in resolving this issue arises in part from determining how independent a proximate cause has to be in order to avoid the motor vehicle exclusion in the homeowners policy, and in part from the elasticity of the concept of proximate cause.

2. On page 16, between lines 10 and 11, insert the following paragraphs:


Finally, the Bautistas argue that Sara's "negligence [arose] from non-auto related conduct and exists independently of her use of an insured automobile," and that the "exclusion clause does not offer any guidance because it is ambiguous whether the 'use' of a motor vehicle must relate to an insured or some other." The Bautistas appear to be arguing that the exclusion contains an ambiguity regarding who must be driving the motor vehicle, and that because of this ambiguity the exclusion applies only when the negligent supervision and the negligent use of the motor vehicle are by the "same insured."

The language of the motor vehicle exclusion, however, is not ambiguous. The court in *Belmonte v. Employers Ins. Co.* (2000) 83 Cal.App.4th 430 held that the language of this exclusion is unambiguous and is not "limited to use by the named insured." (*Id.* at p. 434; see Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2011) ¶ 7:330a, p. 7A-128.3 ["the exclusion bars coverage for claims arising out of the 'use' of an automobile even if the insured was not the party using it"].) Moreover, where an exclusion in an insurance policy "discloses no suggestion that it relates exclusively to [specific types of] claims" but "its language is broad and unqualified," courts will not interpret it to apply only to those specific types of claims. (*Total Call Internat., Inc. v. Peerless Ins. Co.* (2010) 181 Cal.App.4th 161, 173; see, e.g., *Sabella v. Wisler* (1963) 59 Cal.2d 21, 31 [exclusion for "settling," without use of qualifying adjectives such as 'normal' or 'usual'" "indicate[d] an intent to exclude any and all loss caused by settling"]; *Murray v. State Farm Fire & Casualty Co.* (1990) 219 Cal.App.3d 58, 62-64 [court would not read unqualified exclusion for wear and tear and deterioration to include only "normal" or "usual" deterioration].) The language of the motor vehicle exclusion here is broad and unqualified; it does not apply only to injury resulting from a particular insured's, or even any insured's, use of a motor vehicle. Finally, had the parties intended the exclusion to apply only to injuries resulting from an insured's or a particular insured's "ownership, maintenance, use, loading or unloading" of a motor vehicle, the policy would say so, as it does in other exclusions. For example, the policy excludes injury that "arises from or during the course of **business** pursuits of an **insured**" (exclusion 1), that is "caused intentionally by or at the direction of an **insured**" (exclusion 3a), or that "results from an **insured** transmitting a communicable (including sexually transmitted)

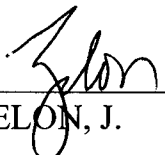
disease” (exclusion 5). Thus, the policy distinguishes between exclusions that apply to conduct by an insured and those that apply to conduct by anyone, and the motor vehicle exclusion applies to motor vehicle conduct by anyone, insured or non-insured. Application of the exclusion does not require that the negligent supervision and the negligent use of the motor vehicle be by the “same insured.”

There is no change in the judgment. Real parties in interest’s petition for rehearing is denied.


The opinion in the above-entitled matter filed on October 1, 2013, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.



PERLUSS, P. J.



ZELTON, J.



SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.