

FILED

FEB 16, 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON
Cause No: 353940

WESTERN NATIONAL ASSURANCE COMPANY,

Respondent

v.

JOHN AND LINDA ROBEL, individually
and as husband and wife; and ROBEL'S
ORCHARD, a Washington Corporation
and/or sole proprietorship owned by John
and Linda Robel; and VICKI LYNN POSA, a single person,

Appellant

AMENDED BRIEF OF APPELLANT

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I. INTRODUCTION

This appeal concerns premises liability insurance coverage for personal injury on a family farm. A companion lawsuit was initially brought by Plaintiff Vicki Lynn Posa (“Ms. Posa”) against John and Linda Robel, and their business, Robel’s Orchard (hereinafter collectively, “the Robels”). Ms. Posa was seriously injured on the Robel’s property on July 20, 2010 when she was paying to pick cherries at the Robels’ orchard. Ms. Posa filed a lawsuit claiming negligence on the part of the Robels when they instructed her to climb up a ladder to pick cherries on their property. The Robels did not properly instruct Ms. Posa how to use the ladder, causing the ladder to tip and Ms. Posa to fall from the ladder. Ms. Posa suffered severe injuries when the ladder tipped. Western National Assurance Company (“Western National”) was the homeowner insurance carrier for the Robels. After the initiation of the companion personal injury case, Western National filed this Declaratory Judgment action against the Robels and Ms. Posa claiming there was no insurance coverage for the incident on July 20, 2010. Western National then filed a Motion for Summary Judgment arguing that the contract of insurance with the Robels did not cover the action by Ms. Posa against the Robels on their orchard because the contract did not cover “business pursuits.” Posa argues that coverage does apply to her suit because: 1) Western National knew when it entered into the insurance

contract with the Robels that the purpose of the premises was to run a family farm and to occasionally sell fruit for picking to the public; 2) There was no showing of material fact by Western National that the Robels' were selling fruit and allowing picking on a regular and continuous basis for profit and that it was their "livelihood" or "profession"; 3) The act of allowing a visitor to use a ladder and instruction of use of the ladder for a "pay to pick" is not an activity that an average person would "usually view as" and the "business of" orchard/ farming business, i.e. the Robels were not "in the business of" showing people how to set up ladders, strap on buckets, and climbing trees.

The trial court agreed with Western National and ruled there was no insurance coverage for the lawsuit with Ms. Posa.

II. ASSIGNMENT OF ERROR

Appellant submits assignment of error as follows: The trial Court erred in granting summary judgment to Western National, because;

A. The Court Erred when Finding Western National did not have Reason to Know when it Entered into the Insurance Contract with the Robels that the purpose of the premises was to run a family farm and to occasionally sell fruit for picking to the public;

B. The Court Erred in Finding that the “Pay to Pick” at Robels’ Orchard was a “Business Pursuit;”

C. The Court Erred when it Found the Act of Allowing a Visitor to Use a Ladder and Instruction on Use of the Ladder for a “Pay to Pick” is an Activity that an Average Person Would “usually view” as “Business in Nature” of a fruit farm

III. STATEMENT OF THE CASE

A. Facts Giving Rise to Ms. Posa's Companion Lawsuit and the Declaratory Judgment Action

On July 20, 2010, Ms. Posa went to Robel's Orchard in Colbert, Washington to pick cherries. CP 66. Ms. Posa arrived at the orchard with a friend, Ken Stockton. CP 70-73. The two spoke to a man named "John" (likely John Robel) who gave them buckets, strapped a bucket onto Ms. Posa, and advised them where to pick. CP 76-80. The man then directed Ms. Posa and Mr. Stockton into the trees, where they were told to find ladders to use to pick cherries. CP 80-81.

The ladders were taller than the ordinary household ladders and had three legs. CP 85-86. As she put cherries into the bucket, Ms. Posa developed excess weight on one side of her body, and the ladder used by Ms. Posa eventually tipped, causing Ms. Posa to fall to the ground. CP 94-97. She suffered extensive injuries to her left foot, which required several surgeries, as well as damage to her spine and shoulder.

B. The Robels Participation in the Litigation

The Robels chose not to participate in the Declaratory Judgment litigation. On their own behalf, they did not submit any testimony at all in regard to the litigation or the motion for summary judgment. There was no

evidence presented to the Court as to what their intentions were when they purchased homeowners insurance for Robel's Orchard, or whether it was their understanding if their activities on the orchard would be covered. All statements by the Robels presented by the Plaintiff Western National in this matter were self-serving, and were presented by an employee of Western National, Carrie Miller. The statements by the Robels were not made under oath.

C. The Insurance Contract

The Robles purchased premises liability insurance from Western National on April 5, 2010. CP 93. The relevant language in the Western National homeowners' insurance policy with Robels for the Orchard provided coverage for the Robel's Orchard premises and "related private structures and grounds at that location." CP 99. The policy specifically states:

"Insured Premises" means: (1) That "residence;" and (2) related private structures and grounds at that location. CP 99.

* * * * *

The policy thereafter sets forth the types of coverage for bodily injury on the premises:

"We" pay, up to "our" "limit", all sums for which an "insured" is liable by law because of "bodily injury" or

“property damage” caused by an “occurrence” to which this coverage applies. CP 111.

* * * * *

However, under the section regarding exclusions that apply to coverages, it states,

“This policy does not apply to: ... (g) “bodily injury” or “property damage” resulting from activities related to the “business” of an “insured”, except as provided by Incidental Business Coverage.” CP 115-116.

* * * * *

The following policy language defines what “business” means, located in in the policy definitions of business:

“Business” does not include: ...activities that are related to “business” but are usually not viewed as “business” in nature. CP 98.

* * * * *

IV. ARGUMENT

A. Standard of Review

On appeal of a summary judgment order, the proper standard of review is *de novo*, and thus, the appellate court performs the same inquiry as the trial court. *Lybbert v. Grant County, State of Wash.*, 141 Wash.2d 29, 34, 1 P.3d 1124 (2000). “A court may grant summary judgment if the pleadings, affidavit and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a

matter of law.” *Lybbert*, 141 Wash.2d at 34. An issue of whether there is insurance coverage is also reviewed by appellate courts under the *de novo* standard. *Stuart v. American States Ins. Co.*, 134 Wash.2d 814, 953 P.2d 462 (1998), *citing*, *Safeco Ins. Co. of Am. v. Butler*, 118 Wash.2d 383, 394, 823 P.2d 499 (1992). When ruling on a summary judgment motion, the court must construe all facts and reasonable inferences most favorably to the non-moving party. *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wash.2d 891, 897, 874 P.2d 142 (1997).

**B. The Language in Western National’s Policy Provided
Coverage for the Activities that Took Place on the Premises
on July 20, 2010**

- 1) Western National Likely Knew When it Entered into a Contract with the Robels that the Purpose of the Premises was to Run a Family Farm and to Occasionally Sell Fruit

Western National entered into a premises liability insurance contract with the Robels on April 5, 2010. CP 93. Western National argued to the Court below that the business exclusion in the insurance policy did not provide coverage for the “business” performed at the residence and its surrounding orchard. Its position was that the Robels were in the “business of” running an orchard and selling cherries and picking cherries, therefore the premises insurance policy did not provide coverage for that business.

A declaratory judgment action is always based upon a contract between the insurance company and the insured. The insurance company is necessarily in the position to argue that insurance does not apply. However, as the drafter of the contract, the insurance company bears the burden of having all ambiguities in the contract ruled in favor of the person opposing the declaratory judgment action. *Stoughton v. Mutual of Enumclaw*, 61 Wash.App. 365, 368, 810 P.2d 80, 82 (1991).

An insurance policy must have language that is meaningful to an average person. *Vadheim v. Continental Ins. Co.*, 107 Wash.2d 836, 840-41, 734 P.2d 17 (1987). However, the Washington courts generally do not favor exclusions in insurance policies. The Washington Court has stated:

In interpreting exclusions, we have held exclusions from coverage of insurance are contrary to the fundamental protective purpose of insurance and will not be extended beyond their clear and unequivocal meaning.

McDonald Indus., Inc. v. Rollins Leasing Corp., 95 Wash.2d 909, 915, 631 P.2d 947 (1981).

At oral argument on May 15, 2017, the lower Court raised the issue as to whether the insurance company knew when it wrote the policy of insurance that the Robels would likely be selling cherries from the property and would likely have occasional public cherry picking at the farm. Western National argued that Western National may not have known about

the activities on the orchard when it wrote the contract. Western National further argued that there was no showing that Western National knew that the Robels were going to solicit customers to their location when they sold the policy of insurance to the Robels. RP 6-7.

Since the Robels did not participate in the litigation, no evidence was presented regarding the intention of the parties when they entered into the insurance contract. The burden is on the moving party in a summary judgment action to present evidence establishing an issue of fact. *Weyerhaeuser*, 123 Wash.2d at 897.

On the contrary, the evidence produced by the Appellees establishes that Western National knew that the Robels had an orchard that occasionally sold fruit to the public. Western National's witness, Carrie Miller, stated in her declaration,

the Robels reported that they have been selling fruit at 19405 N. Sands Road for approximately 12 years, although John Robel's family has been selling orchard crops since 1906. Linda Robel advised that the trees currently located on the Robel's land were planted 25 years ago. CP 17.

This evidence would indicate that Western National knew that the Robels occasionally sold fruit from their orchard.

There is no evidence in the record to show that Western National did not discuss these facts with the Robels when the contract of insurance was purchased when this evidence could have been deduced by the very

nature of the farm in question. It is likely from this evidence that Western National knew of these occasional pursuits in selling fruit by the Robels when they drafted the contract for insurance.

The inquiry of the trial court and court of appeals is limited to the facts submitted by the parties upon summary judgment. *Boes v. Bislar*, 122 Wash.App. 569, 94 P.3d 975 (Div. 3, 2004). Western National presented evidence that they knew, or it can be inferred that they knew, about the Robels selling fruit on the property when they entered into the contract for insurance liability. There was no evidence submitted to the contrary by either party.

2) The Court Erred in Finding that Robel’s Orchard was a “Business Pursuit”

In order to constitute “business pursuit” within an insurance policy exclusion, insureds must have “conducted the business on a regular and continuous basis for compensation.” *Stuart*, 134 Wash.2d at 820. The pursuit must also be profit motivated in order to earn a “livelihood” or be the insured “profession or occupation.” *Id.* at 822.

In *Stuart v. American States Ins. Co.*, the homeowners ran a foster care business in their home. A foster child was injured in their care. The insurance company homeowner’s policy had a business pursuit exclusion

which excluded coverage for any business being run out of the residence. The Supreme Court of Washington reversed the finding of the lower court that the coverage did not extend to injuries sustained by a foster child. The Court further found that the issue could not be decided on summary judgment, because there was a triable issue of fact as to whether the foster family had a primary motivation for profit in running their foster care home. *Stuart*, 134 Wash.2d at 823-824, 953 P.2d at 467.

This ruling overruled a previous Court decision in *Rocky Mountain Casualty Company v. St. Martin*, 60 Wash.App. 5, 802 P.2d 144 (1990) which held that babysitting is a “business pursuit” excluded from liability coverage under homeowner’s policy exclusion when conducted on a regular and continuous basis for compensation. The *Stuart* Court stated:

The Stoughton analysis represents the best approach. The Stoughton analysis is in accord with the plain, ordinary and popular meaning of “business pursuit,” the standard dictionary definition of “pursuit,” and the policy’s definition of “business” all contemplate that the insured activity be profit motivated in order to earn a “livelihood” or to be the insured’s “profession or occupation.” The *Rocky Mountain* analysis, which requires only compensation, is inconsistent with our holding that insurance exclusions be strictly construed against the insurer.

Stuart, 134 Wash.2d at 822, 953 P.2d at 466, citing, *David J. Marchitelli, Annotation, Construction and Application of “Business Pursuits” Exclusion Provision in General Liability Policy*, 35 A.L.R.5th 375, 411 (1996).

In addition, the Court in *Stuart* found that whether the “business” was conducted on a “regular basis” and “for profit” was not an issue for summary judgment, but rather an issue of fact for a jury determination.

Here, there was no evidence presented to the lower court that the Robels were running a “pay to pick” fruit on a “regular and continuous basis for compensation.” Western National presented testimony by an agent for Western National, Carrie Miller, who went to interview the Robels after Ms. Posa’s accident. That agent’s testimony established that the Robels sold cherries at the orchard, and occasionally allowed the public to “pay to pick”. CP 16-18. There was no evidence to suggest the Robels did so on a “regular and continuous basis” or that their primary motive was “for profit” and as the insured’s “livelihood” or “profession,” as set forth in the *Stuart* opinion.

The evidence presented was, to the contrary, that there was no sign or markings that there was anything for sale at the orchard, or that the orchard was conducting business of any kind. CP 23-25. Carrie Miller asked Linda Robel, in relation to the day of the injury, “Did you have any markings or signs out that would have said that you had items for sale?” CP 23. “I think the only thing we had up at the time was the arrow pointing down Sands Road that said ROBEL.” *Id.*

Linda Robel further stated as follows: Carrie Miller: “Were you conducting any business here then?” Linda Robel: “That day we were barbequing.” CP 24. They were then asked, Carrie Miller: “Did you, did you advertise for people to come in and pick cherries, or?” Linda Robel, “Not that I remember, no.” CP 25. Linda Robel stated: “Ok. And were there any ladders in the area where they were?” Linda Robel: “No, I, there wouldn’t have been a reason for them, there to be a ladder out there, we weren’t open.” CP 26.

Moreover, on July 20, 2010, the Robels represented that they were not selling any fruit. Carrie Miller asked the Robels, “at that time were you selling any products from that location?” To which Linda Robel responded, “no.” CP 24-25

In further support of the proposition that the Robels were not in the business of cherry picking on a regular basis and for a profit motive, the following colloquy ensued; Interviewer: “Um, how, how long ago would you say you started actually selling to the public?” Linda Robel: “Well, I think, um, that year *we wound up selling* but, um, but the day she (Ms. Posa) was here we were not selling, and we did not charge for the cherries.” (*Emphasis added.*) CP 25.

The language used by Mrs. Robel, “we wound up selling,” indicates that they did not regularly and continuously sell cherries for picking at that location for a primary motive of profit.

By further comparison, in *Nationwide v. Hayles*, the Court ruled that subleasing to a tenant is not a “continuous business.” In that case, it was ruled the business policy exclusion did not apply to actions of a person who was subleasing the property and flooded the land. The court stated in relevant part;

The “plain and ordinary and popular” meaning of “business pursuit” is a profit-motivated activity that is conducted on a regular and continuous basis for the insured’s livelihood. *Stuart*, 134 Wash 2d at 882, 953 P.2d 462. By all accounts, Hayles was not engaged in sub-leasing its fields on a continuous basis. Any sublease was for a one-year term and each sublease served as an integral part of the total agricultural enterprise by providing healthy crop rotation. Hayles engaged in farming, and subleased fields to promote farming. Accordingly, the exclusion for property damage arising from a nonfarm “business” of the insured does not apply.

Nationwide v. Hayles, 136 Wash.App. 531, 542-543, 150 P.3d 589, 595-596 (2007).

By contrast, in *Stoughton v. Mutual of Enumclaw*, Kays was insured by Mutual of Enumclaw under a homeowner’s insurance policy. He was

working part time at Rodgers' ranch helping him around the ranch, remodeling, cutting firewood, mending fences, and clearing brush. While doing so, he injured Susan Stoughton. In this case, the Court of Appeals found that his working away from his property on a part time basis was still a "business" for the purpose of making profit, and so the business exclusion in the policy applied to deny coverage. *Stoughton*, 61 Wash.App. 365, 810 P.2d 80 (1991).

While it may initially appear that *Stoughton* is applicable to Ms. Posa's situation, it is important to note that in *Stoughton*, Mutual of Enumclaw was Kays' homeowner's insurance, not the Rodgers. The analysis in that case included whether Kay's employment as a handyman outside of his own home was a "business pursuit." In other words, Kays injured another person, Sue Stoughton, during the course of his employment. The injury did not occur on the premises insured by Mutual of Enumclaw.

Moreover, pursuant to the *Stuart* ruling, whether the business pursuit is regular and continuous and for compensation is an issue of fact for the jury, not one for summary judgment

(3) The Act of Allowing a Visitor to use a Ladder and Instruction of Use of the Ladder for a "Pay to Pick" is not an Activity that an

Average Person would “Usually View” as “the Business of” an Orchard/ Farm Business

Ms. Posa asserts herein that strapping a bucket onto a unemployed guest at the orchard, and instructing or failing to instruct on the proper use of a tripod ladder, is not an activity that falls within that “usually viewed as” the business of running a fruit farm and selling cherries. It is not something an average person would “usually view” as the nature of the business of producing and selling fruit, as set forth in the policy stated above. Ms. Posa asserts that while the Robels were in the business of farming cherries and selling cherries, she fell to the ground because the Robels had negligently failed to instruct her on the use of a ladder and a bucket at a pay to pick.

The following policy language defines what “business” means, located in in the policy definitions of business:

“Business” does not include: ...activities that are related to “business” but are usually not viewed as “business” in nature. CP 98.

Assuming arguendo that the Robels were in the “business pursuit” of selling cherries to the public for profit, or of allowing casual visitors on the property to pick for a primary business motive, the Court must then determine if the activity which caused the injury is one that would usually

be seen as “related to the business” but are “usually not viewed as the business in nature.”

Ms. Posa argues that there is a genuine issue as to a material fact as to whether an average person would even picture a farmer allowing a non-employee visitor to climb a ladder on the property without proper instruction. Put another way, negligent instruction to a casual visitor on use of ladder is not an activity within the normal course of running a family farm that sometimes sells fruit. It is, however, an activity that was being done on the premises and the grounds at that location. Their “business in nature” did not and should not have included allowing visitors, especially cherry pickers, to climb dangerous tripod ladders.

In the case of the Robels, a farm may have an activity “related to farming” but usually the business of farming does not include of allowing visitors to come onto the premises to pick cherries. The activity of allowing visitors to pick cherries was not their primary motive in having a cherry farm. The Robels themselves stated they were not in the business of picking for profit. Carrie Miller advised that the Robels told her that “Robel’s Orchard is open seven days a week during harvest, and that if someone comes down the road, they will let them pay to pick.” CP 17. Carrie Miller asked the Robels, “did you, did you advertise for people to come in and pick cherries, or?” Linda Robel replied, “not that I remember, no.” CP 25.

Whether the “business pursuit” included instructing visitors to climb ladders and pick cherries, or if that was related to the business but the “usually viewed as” the business in nature, is an issue of fact for the jury. Under the contract for insurance, activities that are “related to” the “business” but are not usually viewed as the business in nature are not considered to be “the business” for purposes of the business exclusion under the policy. While opening the farm to the public for occasional cherry picking was related to the business, it was not the primary business in nature, which was farming and selling produce. Allowing someone to use a ladder was even more remote and attenuated as an activity from the primary business of farming. The facts should be construed against the Plaintiff on all issues in this case as the moving party on summary judgment as well as the drafter of the insurance policy.

Examples of “related to the business” but not “the business in nature” are, for example, a visitor to a farm purchasing fruit tripped on a board and fell – or a visitor to the farm cut his hand on a nail at the farm. Another comparison is a situation wherein a customer went to a hardware store, such as Home Depot, and the store instructed the person to use a ladder to climb up and obtain the goods himself, causing the person to fall and be injured. A hardware store is not in the business of instructing

customers how to use a ladder at the store, so it would not be an activity which is the “business in nature.”

(4) The Amended Complaint sets Forth Facts that would Provide Both the Duty to Defend and the Duty to Indemnify

The initial analysis of an insurance company on its duties to defend and to indemnify under the contract of insurance stems from the complaint in the underlying case. *Infra*. On summary judgment, Western National argued generally that the contract of insurance did not cover the business pursuits of the Robels on their property. Ms. Posa responded by alleging that the activities engaged in that day were not “the business in nature” of owning an orchard as set forth in the preclusion clause of the contract of insurance, among other arguments set forth above. In its Reply to Ms. Posa’s response on summary judgment, Western National raised the issue that Ms. Posa had alleged the Robels were in the business of public cherry picking in her Complaint in the underlying case. Ms. Posa responded by filing an Amended Complaint (*hereinafter referred to as “Amended Complaint”*) in the companion case to conform the allegations with the unsworn evidence submitted by Western National on summary judgment. *Amended Complaint attached to Commissioner Wasson’s ruling herein.* Said Amended Complaint was filed with the Court on the day of oral

argument Summary Judgment, and the Court considered it in its opinion.
RP 19-10, CP 233.

Generally, the duties to defend and indemnify stem from the contract of insurance with the insured upon viewing the complaint in the light most favorable to the insured. *Woo, D.D.S. v. Fireman's Fund Insurance Company*, 161 Wash.2d 43, 52-53, 164 P.3d 454, 459 (2007). The duty to defend is broader than the duty to indemnify, however both arise from the allegations in the complaint. *Hayden v. Mutual of Enumclaw*, 141 Wash.2d 55, 1 P.3d 1167 (2000). There the Court explained:

It is well settled that the duty to defend under a CGL policy is separate from and broader than, the duty to indemnify. *See, e.g., Holland Am. Ins. Co. v. National Indem. Co.*, 75 Wash.2d 909, 912-13, 45 P.2d 383 (1969). The duty to indemnify hinges on the insured's actual liability to the claimant and actual coverage under the policy. The duty to defend, on the other hand, exists merely if the complaint contains any factual allegations which could render the insurer liable to the insured under the policy. *See, e.g. Holland America*, 75 Wash.2d at 912-13, 454 P.2d 383. Consequently, to determine whether the duty to defend exists, this court examines the policy's insuring provisions to see if the complaint's allegations are conceivably covered. If covered, this court must then determine whether an exclusion clearly and unambiguously applies to bar coverage. *See Diamaco, Inc. v. Aetna Cas. & Sur. Co.*, 97 Wash.App. 335, 338-44, 983 P.2d 707 (1999).

Id. at 64, 1171-1171.

A complaint in Washington is premised upon notice pleading alone. *Woo*, 161 Wash.2d at 53-54, 164 P.3d at 459. It can be modified at any time that is not prejudicial to the opposing party in order to conform to an ethically reasonable anticipation of the evidence to be presented at trial. CR 15(a); *Wilson v. Horsley*, 137 Wash.2d 500, 947 P.2d 316 (1999). Ms. Posa modified her underlying Complaint when she learned of additional facts through Western National's Motion for Summary Judgment that gave rise to insurance coverage.

The farm property in question is covered by premises liability insurance through Western National. The issue before the Court is not the duty to defend, but the duty to indemnify. The facts alleged in the Amended Complaint, when construed in the light most favorable to the Robels and Posa, would provide indemnification.

The Amended Complaint states that the Robels owned an orchard in Washington. It further asserts, in accordance with the statements of the Robels cited hereinabove, that John and Linda Robel, the owners, were not selling fruit to the public and were not in the regular business of allowing cherry picking. These allegations stemmed from the affidavits presented by Western National, *supra*. The Amended Complaint states, "On the day in question, Defendants were not conducting any business. They were not in the business of selling fruit to the public, and were not charging for cherry

picking.” *Amended Complaint* at 2. The Amended Complaint further alleges, “The Robels have stated that they were not selling produce from the farm and had not advertised to let people pick cherries.” *Amended Complaint* at 3.

The duty to indemnify arises from an interpretation of the insurance contract which construes all allegations in the Amended Complaint in the light most favorable to the insured. Because the contract for insurance is an adhesion contract, all inferences and possible theories of liability should favor indemnification by the insurance company. *Yakima County v. City of Yakima*, 122 Wash.2d 371, 393, 858 P.2d 245, 257 (1993), *citing*, *Blakely v. Housing Auth.*, 8 Wash.App. 204, 213, 505 P.2d 151, *review denied*, 82 Wash.2d 1003 (1973). The standard the trial court should have considered is whether the exclusion clearly and unambiguously applies to bar coverage.

On summary judgment, the trial court erroneously placed the burden on Ms. Posa to show that there is no genuine issue as to a material fact regarding the business in nature of the Robels. The burden should have been on Western National, and all facts presented should have been construed in a light most favorable to the Ms. Posa, as the nonmoving party. *Weyerhaeuser Co.*, 123 Wash.2d at 897, 874 P.2d at 145. Here, a reasonable jury could have found that the Robels’ “business” was not conducted on a “regular basis” and “for profit” as set forth in the Amended

Complaint and the activity that took place that day was not their “business in nature.” Said interpretation should easily give rise to coverage.

V. CONCLUSION

Pursuant to the contact of insurance between Western National and the Robels, the Court should not have found summary judgment in favor of Western National. There is a genuine issue as to a material fact regarding insurance coverage for the Robels and Ms. Posa regarding the activities that took place on the orchard that day.

DATED THIS 16 day of February, 2018.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 16 day of February, 2018, a true and correct copy of the foregoing Brief of Appellant was served upon the following parties and their counsel of record in the manner indicated below:

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