

[California Court Determines No Coverage Based on Unambiguous Motor Vehicle Exclusion](#)

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The [California Court of Appeal](#) recently held that an insurer properly denied coverage and had no duty to defend its insured where the policy unambiguously excluded coverage for claims arising from the operation of a motor vehicle by an insured.

In [Sprinkles v. Associated Indemnity Corporation](#) (published September 1, 2010), Plaintiffs were the heirs of a motorcyclist who died in an accident caused by an employee, Juan Bibinz (“Bibinz”), of Sinco Co., Inc. (“Sinco”). Plaintiffs sued Sinco and Bibinz (the “Sinco action”) alleging that Sinco negligently hired Bibinz, an uninsured and undocumented alien with a lengthy criminal record, who negligently drove his vehicle causing the death of Plaintiffs’ heir. Plaintiffs also alleged that Bibinz was an employee acting within the scope of his authority.

At the time of the accident, Sinco had a commercial automobile policy, an excess and umbrella policy, and a commercial general liability (“CGL”) policy, the latter issued by Fireman’s Fund Insurance Company. While the auto policy and excess policy paid their limits toward settlement of the claim, Fireman’s Fund denied coverage and a duty to defend under the CGL policy.

After an arbitrator awarded Plaintiffs more than \$27 million in the underlying action, Plaintiffs took an assignment from Sinco and brought claims against Fireman’s Fund for bad faith, wrongful refusal to settle, wrongful failure to defend, and breach of contract, as well as a direct judgment creditor claim under [Insurance Code section 11580](#).

On demurrer, Fireman’s Fund contended that no coverage existed for Sinco because Bibinz was an insured under the CGL policy, and therefore the exclusion in the policy for claims arising out of the use of an automobile applied.

Plaintiffs alleged that Bibinz was not an insured under the policy because, at the time of the accident, Bibinz was not performing duties related to the conduct of Sinco’s business and there was a potential for a finding that Bibinz was not acting in the scope of his employment with Sinco.

The trial court sustained the demurrer without leave to amend, holding that the CGL policy provided no coverage for the automobile accident that caused Plaintiffs’ damages.

The appellate court held that as an insured under the policy, Bibinz’s acts were not covered due to an exclusion for bodily injury or property damage “arising out of the . . . use . . . of any . . . acts by any insured.” The court deemed Bibinz’s use of the vehicle as “related to” the conduct of business, in that he was required to use his vehicle to reach various locations for maintenance work.

The court accordingly upheld the dismissal of all claims against the insurer.