COURT OF APPEALS
DECISION
DATED AND FILED

July 10, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1575 **Cir. Ct. No. 01-CV-595**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DANIEL RAY SHARP, DIONNE SHARP, DEANNA KING, JOE MAYEUR AND ERIC KING,

PLAINTIFFS,

V.

ROBERT G. VICK AND KAREN L. VICK,

DEFENDANTS-APPELLANTS,

RURAL MUTUAL INSURANCE COMPANY,

INTERVENOR-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Reversed and cause remanded.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 ROGGENSACK, J. Robert and Karen Vick appeal summary judgment granted to Rural Mutual Insurance Company on its coverage defense. The Vicks were sued by Daniel Ray Sharp, Dionne Sharp, Deanna King and Joe Mayeur (hereinafter collectively, plaintiffs) based on injuries allegedly caused by the Vicks' improper maintenance of a water well shared by the plaintiffs. The circuit court concluded that an intentional acts exclusion in the Vicks' homeowners policy precluded coverage. On a motion to reconsider, the court additionally concluded that the homeowners and personal umbrella policies did not afford coverage because the Vicks' alleged negligent misrepresentation was not an "occurrence" as that term is defined by the policies.

¶2 We conclude that: (1) the complaint alleges a common law negligence claim in regard to cleaning the well; (2) the allegedly negligent cleaning of the water well is an "occurrence" as occurrence is defined in both policies; and (3) none of the policy exclusions cited by Rural Mutual bars coverage for at least one of plaintiffs' claims. Therefore, we conclude that there is potential coverage and a duty to defend under both policies. Accordingly, we reverse the circuit court's judgment and remand for further proceedings.

BACKGROUND[1]

¶3 In 1991, Robert and Karen Vick purchased two rental properties. The rental properties are served by a common water well. The Vicks had a homeowners and a personal umbrella policy issued by Rural Mutual. The policies

[1] All of the facts are taken from the complaint, which we assume to be true for purposes of this review. *See* ***Professional Office Bldgs., Inc. v. Royal Indem. Co.***, 145 Wis. 2d 573, 580, 427 N.W.2d 427, 429 (Ct. App. 1988).

were in effect from January 1999 until April 2000, during the time of the events at issue. In May 1999, the Vicks rented the Sunnyside Street residence to Deanna King, Joe Mayeur and Eric King, and in November 1998, they rented the Fairview Street residence to Daniel and Dionne Sharp.

¶4 In March 2001, plaintiffs sued the Vicks based on injuries allegedly caused by the Vicks' maintenance of the well and misrepresentations regarding the condition of the water from the well. The complaint alleges that shortly after the Vicks purchased the residences, they had the well inspected and were advised that the water was not safe for human consumption, and that run-off water, including debris and wild animal feces washed into the well water on rainy days or during times of snow melt. The Vicks, despite allegedly knowing the unsafe condition of the water, did not remedy the situation and rented the properties.

¶5 The complaint also alleges that the Vicks were again advised in June 1999 that the water was unsafe for drinking. The Vicks then performed a cleaning procedure on the well and told the plaintiffs that the water should not be used, but that as soon as the cleaning procedure was finished, the water would again be safe for all uses. In August, the plaintiffs became suspicious and obtained their own tests of the water. Those tests showed the water was contaminated with bacteria and not safe for human use or consumption. The well water, therefore, remained "unsafe after the 'cleaning procedure.'" As a result of the contaminates in the water, the plaintiffs allege they suffered adverse health problems, serious mental anguish, fear regarding short and long term health problems and loss of the full normal use of their rental property. The complaint does not allege that the Vicks knew that the cleaning procedure had not remedied the contaminated condition of the well.

¶6 The Vicks notified Rural Mutual of the claims filed against it and requested coverage and a defense under their insurance policies. After intervening in the lawsuit, Rural Mutual raised a coverage defense. The circuit court granted summary judgment to Rural Mutual, reasoning that the complaint alleged claims only for intentional acts, which claims were not covered due to the "intentional acts" exclusions contained in both policies. The Vicks moved for reconsideration. The circuit court denied the motion, explaining that even if the complaint alleged negligent acts, the negligence pled is not an "occurrence" as defined by the policies and therefore there was no coverage. Accordingly, Rural Mutual's duty to defend "would not have been triggered." The Vicks appeal.

DISCUSSION

Standard of Review.

¶7 We review summary judgment decisions *de novo*, applying the same standards employed by the circuit court. ***Guenther v. City of Onalaska***, 223 Wis. 2d 206, 210, 588 N.W.2d 375, 376 (Ct. App. 1998). We first examine the complaint to determine whether it states a claim, and then we review the answer to determine whether it joins a material issue of fact or law. ***Smith v. Dodgeville Mut. Ins. Co.***, 212 Wis. 2d 226, 232, 568 N.W.2d 31, 34 (Ct. App. 1997). If we conclude that the complaint and answer are sufficient to join issue, we examine the moving party's affidavits to determine whether they establish a *prima facie* case for summary judgment. ***Id.*** at 232-33, 568 N.W.2d at 34. If they do, we look to the opposing party's affidavits to determine whether there are any material facts in dispute that entitle the opposing party to a trial. ***Id.***

¶8 The resolution of this case requires us to interpret an insurance policy to determine if potential coverage exists and whether the insurer is subject

to a duty to defend. Interpretation of a written insurance policy is a question of law, which we review without deference to the decision of the circuit court. ***Guenther***, 223 Wis. 2d at 210, 588 N.W.2d at 377.

Types of Claims Made.

¶9 An insurer's duty to defend its insured is predicated on allegations in the complaint that, if proven at trial, would require the insured to pay the resulting judgment. ***School Dist. of Shorewood v. Wausau Ins. Cos.***, 170 Wis. 2d 347, 364, 488 N.W.2d 82, 87 (1992). To determine whether a duty to defend exists, we apply the factual allegations contained within the four corners of the complaint to the disputed terms and conditions of the insurance policy. ***Id.*** at 364-65, 488 N.W.2d at 87-88. We liberally construe the allegations in the complaint and assume all reasonable inferences in favor of the insured. ***Doyle v. Engelke***, 219 Wis. 2d 277, 284, 580 NW.2d 245, 248 (1998). Additionally, although the complaint may contain some theories of liability not covered by the insurance policy, the insurer is obligated to defend the entire action if "just one theory of liability appears to fall within the coverage of the policies." ***School Dist. of Shorewood*,** 170 Wis. 2d at 366, 488 N.W.2d at 88.

¶10 As a threshold matter, we note that the parties dispute what types of claims are alleged in the complaint. The Vicks argue that the complaint contains negligence claims that are covered by the terms of the policy. In contrast, Rural Mutual asserts that the complaint contains allegations only of intentional acts and those are not covered due to the policies' intentional acts exclusions. Because the nature of the claims alleged against the insured affects our analysis, we must first determine whether the underlying complaint states a claim for negligence. *See* ***Smith v. Katz***, 226 Wis. 2d 798, 806, 595 N.W.2d 345, 350 (1999).

¶11 To maintain a cause of action for negligence, four elements must exist: (1) a duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage. ***Rockweit v. Senecal***, 197 Wis. 2d 409, 418, 541 N.W.2d 742, 747 (1995). The plaintiffs' complaint alleges the following: the plaintiffs were tenants of residential property owned and rented by the Vicks. The Vicks were advised in June of 1999 that the water was unsafe for drinking, and they failed to inform the plaintiffs about the hazard posed by the well water. The Vicks performed a cleaning procedure on the well that did not correct the harmful bacteria present in the water. As a result, the plaintiffs suffered adverse health problems and loss of the full normal use of their rental property.

¶12 In sum, the complaint alleges that the Vicks undertook a duty to maintain the residential premises, including the well that serves the properties. *See* ***Pagelsdorf v. Safeco Ins. Co. of Am.,*** 91 Wis. 2d 734, 745, 284 N.W.2d 55, 61 (1979) ("[A] landlord owes his tenant or anyone on the premises with the tenant's consent a duty to exercise ordinary care."); WIS. STAT. § 704.07 (2001-02). The Vicks breached this duty by failing to correct the contamination in the water, and as a result, the plaintiffs suffered personal injuries and loss of the full normal use of the properties. In regard to cleaning the well, the complaint pleads all of the essential elements of a common law negligence claim. Because, for the purpose of determining coverage, we assume that all facts alleged in the complaint and the reasonable inferences therefrom are true, we conclude that the complaint states a claim for ordinary negligence in the attempted decontamination of the well.

¶13 Rural Mutual argues that the complaint alleges the Vicks "became aware that … the water from [the well] was not safe for human consumption,"

prior to renting the residences and that their alleged knowledge controverts any argument that they pled a negligence claim. While it may be true that the complaint states a claim for intentional tortuous conduct too, it is well settled that only a single covered claim need be alleged to trigger the duty to defend. ***School Dist. of Shorewood***, 170 Wis. 2d at 366, 488 N.W.2d at 88. "Even though the amended complaint in the underlying litigation may contain other theories of liability not covered by the insurance policies, the insurers are obligated to defend the entire action if just one theory of liability appears to fall within the coverage of the policies." ***Id.*** Here, the complaint does not allege that the Vicks knew that the cleaning procedure had not remedied the contaminated condition of the well. Accordingly, we conclude that the complaint comports with the requirements for an ordinary negligence claim for relief.[2] The question then becomes whether the negligent cleaning of the well is an occurrence as defined in the policies.[3]

Occurrence.

¶14 The interpretation of an insurance policy is governed by rules of construction that are similar to those applied to other contracts. ***Vogel v. Russo,*** 2000 WI 85, ¶14, 236 Wis. 2d 504, 613 N.W.2d 177. If words or phrases in a

[2] Rural Mutual argues that the Vicks waived consideration of whether the complaint states a claim for negligence by failing to raise the issue in their brief to the circuit court opposing summary judgment. Rural Mutual asserts that the Vicks raised the issue for the first time at oral argument on Rural Mutual's motion for summary judgment. Because we review the circuit court's grant of summary judgment *de novo*, and because we are charged with the duty to determine whether *any* allegations of unintentional misconduct were pled within the four corners of the complaint, *see* ***School District of Shorewood v. Wausau Insurance Cos.***, 170 Wis. 2d 347, 364-65, 488 N.W.2d 82, 87-88 (1992), we reject Rural Mutual's argument the Vicks waived consideration of the "negligence issue."

[3] Because of the effect that we conclude arises from the plaintiffs' negligent cleaning of the well, we do not address their argument that they also alleged a claim for negligent misrepresentation.

policy are susceptible to more than one reasonable construction, they are ambiguous, ***Smith v. Atlantic Mutual Insurance Co.***, 155 Wis. 2d 808, 811, 456 N.W.2d 597, 598-99 (1990), and we will construe the policy as it would be interpreted by a reasonable insured. ***Holsum Foods v. Home Ins. Co.***, 162 Wis. 2d 563, 568-69, 469 N.W.2d 918, 920 (Ct. App. 1991). However, if the policy is not ambiguous, we will not rewrite it by construction to impose liability for a risk the insurer did not contemplate and for which it has not been paid. ***Taylor v. Greatway Ins. Co.***, 2001 WI 93, ¶10, 245 Wis. 2d 134, 628 N.W.2d 916.

¶15 Both policies state they provide coverage for injuries caused by an "occurrence," and both define occurrence in a similar fashion. The homeowners policy provides:

> **Occurrence:** … Under the liability coverage it means an accident, including continued or repeated exposure to the same general conditions, originating during the policy period.

The umbrella policy provides in relevant part:

> **Occurrence:** an accident, including the continuous or repeated exposure to conditions which results in personal injury or property damage, during the policy term, neither expected nor intended from the standpoint of the insured.

¶16 As we explained above, the underlying complaint alleges that the Vicks' negligent cleaning of the well was an act that caused the plaintiffs' injuries. The Vicks argue this is an "occurrence" under the plain language of the policies. They rely on ***Doyle***, 219 Wis. 2d at 289-90, 580 N.W.2d at 250, for the proposition that a negligent act can serve as the "occurrence" or "accident" within the meaning of the policy. In ***Doyle***, the supreme court addressed whether the insured's negligent supervision of its employees constituted an "event" for coverage purposes, under a liability policy similar in effect to the umbrella policy

here. The policy defined "event" to mean "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." ***Id.*** The court reasoned as follows:

> [W]e discover that "accident" is defined as "an unexpected, undesirable event" or "an unforeseen incident" which is characterized by a "lack of intention." *The American Heritage Dictionary of the English Language* 11 (3rd ed. 1992). Similarly, "negligence" is defined as "failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party."
>
> It is significant that both definitions center on an unintentional occurrence leading to undesirable results. As we have recognized in the past, comprehensive general liability policies are "designed to protect an insured against liability for negligent acts resulting in damage to third-parties."

Id. (citations omitted). Accordingly, the court held that a reasonable insured would expect an insurance policy that defined "event" as the St. Paul policy did, to include negligent acts. ***Id.*** The same reasoning applies to the negligent cleaning of the well because the continued contamination of the water was an unexpected and undesirable result. Therefore, we conclude it forms the basis for an occurrence under the policy.

Policy Exclusions.

1. Pollution Exclusion.

¶17 Rural Mutual contends that even if we assume *arguendo* that the complaint states a claim that comes within the definition of an occurrence, the pollution exclusions in both policies exclude injuries arising from the contaminates in the water. Exclusions from coverage are construed against the insurer, if they are ambiguous. ***Tempelis v. Aetna Cas. & Sur. Co.***, 169 Wis. 2d 1,

9, 485 N.W.2d 217, 220 (1992). Ambiguities in the language are resolved in favor of the insured. ***Id.***

¶18 Only the homeowners policy contains a pollution exclusion. It excludes coverage for bodily injury or property damages "arising out of":

> a. the discharge, dispersal, release or escape of smoke, vapors, odor, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; (This exclusion does not apply if that discharge, dispersal or escape is sudden and accidental.)

The phrase "arising out of" is very broad, general and comprehensive and commonly means originating from, growing out of or flowing from. ***Lawver v. Boling***, 71 Wis. 2d 408, 415, 238 N.W.2d 514, 518 (1976). The policy defines "pollutant" as:

> Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, oil, gasoline, petroleum product, lead or lead based products and waste. Waste includes, but is not limited to animal waste, manure, urine or general remains after death ….

The Vicks argue that "run off water" resulting from rain and snowmelt that contains "debris and wild animal feces" is not a waste material, contaminant or pollutant. The Vicks contend that the alleged "pollution" involves everyday, ubiquitous material. They rely on ***Donaldson v. Urban Land Interests, Inc.***, 211 Wis. 2d 224, 564 N.W.2d 728 (1997) to argue that the pollution exclusion does not apply because the alleged pollution is a universally present substance. We disagree.

¶19 In ***Donaldson***, the supreme court addressed whether the policy definition of "pollutant" unambiguously included exhaled carbon dioxide. ***Donaldson***, 211 Wis. 2d at 230, 564 N.W.2d at 731. The court reasoned that the reach of a pollution exclusion clause must be circumscribed by reasonableness. ***Id.*** at 233, 564 N.W.2d at 732. Accordingly, the court concluded that inadequately ventilated carbon dioxide from human respiration would not necessarily be understood by a reasonable insured to meet the policy definition of a "pollutant." The court noted that the plaintiff's injuries resulted from human respiration, an "everyday activit[y]," that had gone "slightly, but not surprisingly, awry." ***Id.*** at 233, 564 N.W.2d at 732 (citation omitted). Additionally, unlike the list of pollutants contained in the policy, carbon dioxide is universally present and generally harmless in all but the most unusual instances. Therefore, a reasonable insured would not necessarily view exhaled carbon dioxide as in the same class as "smoke, vapor, soot, fumes, acids, alkalis, chemical and waste."

¶20 The pollution definition here is similar to that in ***Donaldson***; however, the facts here are readily distinguishable. The underlying complaint alleges that plaintiffs' bodily injury and property damage arise from the consumption of water that contained harmful bacteria, as a result of debris and wild animal feces that washed into the well and were not properly removed. The alleged pollutant is therefore "debris and animal fecal matter" and not the innocuously termed "runoff water." Additionally, the policy definition of "pollutant" unambiguously includes the contaminants within "waste," which includes "animal waste, manure or urine." Furthermore, although fecal matter is not *always* a pollutant ("the most noxious of materials have their appropriate and non-polluting uses"), it is a pollutant in relation to drinking water. *See* ***United States Fire Ins. Co. v. Ace Baking Co.***, 164 Wis. 2d 499, 505, 476 N.W.2d 280,

283 (Ct. App. 1991). And unlike human respiration, the introduction of animal waste into drinking water is not an "everyday activit[y] gone slightly, but not surprisingly, awry." *See* ***Donaldson***, 211 Wis. 2d at 233, 564 N.W.2d at 732 (quoting ***Pipefitters Welfare Educ. Fund v. Westchester Fire Ins. Co.***, 976 F.2d 1037, 1043-44 (7th Cir. 1992)). Finally, ***Donaldson*** instructs that the reach of a pollution exclusion clause must be circumscribed by reasonableness. We conclude that a reasonable insured would understand that wild animal fecal matter meets the policy definition of a "pollutant" when it becomes part of the water used for drinking.

¶21 The Vicks also assert that the pollution exclusion does not apply because "that discharge, dispersal or escape [was] sudden and accidental," thereby bringing the pollution within those occurrences caused by pollutants that are covered by the policy. The Vicks rely on ***Just v. Land Reclamation Ltd.***, 155 Wis. 2d 737, 456 N.W.2d 570 (1990), to argue that the "sudden and accidental" language in the exception to the pollution exclusion means "unexpected and unintended." Accordingly, the Vicks argue that because the contaminates in the well were unexpected and unintended, the policy expressly provides coverage for the plaintiffs' alleged damages. We agree that ***Just*** controls our decision in this regard.

¶22 The supreme court in ***Just*** construed a pollution exclusion clause that is on all fours with Rural Mutual's in that there was an exception to the pollution exclusion if the occurrence of the pollution was "sudden and accidental." The supreme court opined that "sudden and accidental" was ambiguous. ***Just***, 155 Wis. 2d at 741, 456 N.W.2d at 571. In resolving this ambiguity, the court quoted ***Jackson Tp. Municipal Utilities Authority v. Hartford Accident & Indemnity Co.***, 186 N.J. Super. 156, 451 A.2d 990 (1982), that explained:

> If the inquiry is, as it should be, whether the pleadings charged the insured with an act resulting in unintended or unexpected damage, then the act or acts are sudden and accidental regardless of how many deposits or dispersals may have occurred ….

Just, 155 Wis. 2d at 754-55, 456 N.W.2d at 576 (quoting ***Jackson***, 451 A.2d at 994). The supreme court adopted ***Jackson's*** reasoning and concluded that sudden and accidental injuries equated with unexpected and unintended acts. ***Just***, 155 Wis. 2d at 746, 456 N.W.2d at 573.

¶23 In analyzing the allegations, and all reasonable inferences therefrom, in accord with the method prescribed in ***Just***, we begin with the question of whether the complaint can reasonably be read to allege that the Vicks did not intend or expect plaintiffs to be injured by drinking the well water after Robert Vick performed the cleaning procedure on it. While there is no specific allegation in this regard, the complaint alleged that

> The Defendant, Mr. Vick, performed a cleaning procedure on the well at this time, told the Plaintiffs that he was going to do that, and told the Plaintiffs that they should not use the water while he was doing that procedure. In addition, he told them that as soon as the cleaning procedure was finished, the well water would again be safe and good for all uses.

We conclude that the reasonable inference from the complaint is that the Vicks did not expect or intend that the plaintiffs would drink water containing contaminates because they believed the cleaning procedure would remedy the problem. It follows then, from the supreme court's analysis in ***Just***, that the pollution that remained or continued to accumulate in the well subsequent to the cleaning procedure was sudden and accidental, as those terms are used in the exception to

the pollution exclusion.[4] Accordingly, plaintiffs' alleged injuries resulting from the pollution of the well water are not excluded from coverage under the homeowners policy.

2. Neglect.

¶24 Rural Mutual contends that the neglect exclusion in the homeowners policy also applies. The policy provision setting forth this exclusion states:

> **Neglect:** This means an insured does not use all reasonable means to protect insured property at and after the time of a loss. This includes any time when property is threatened by a peril we insure against.

Again, our examination of this potential exclusion is confined to the four corners of the complaint. ***Doyle***, 219 Wis. 2d at 284 n.3, 580 N.W.2d at 248 n.3. Rural Mutual argues that because the cleaning procedure was not effective that is conclusive evidence of neglect.[5] This assertion is not well-founded. First, we note that neglect as defined in the policy is not conclusively established when one finds a problem, tries to correct it, and is unsuccessful. Rather, one is required only to use "all reasonable means to protect insured property." What is "reasonable" under the individual circumstances surrounding each individual activity must be narrowly construed in favor of the insured. *See* ***Cardinal v. Leader Nat'l Ins. Co.***, 166 Wis. 2d 375, 382, 480 N.W.2d 1, 3 (1992). Second, we cannot say, based

[4] We note that Rural Mutual does not attempt to distinguish ***Just v. Land Reclamation, Ltd.***, 155 Wis. 2d 737, 456 N.W.2d 570 (1990). We may take this as concession by Rural Mutual that ***Just*** does control the resolution of this question, as asserted by the Vicks. *See* ***State ex rel. Sahagian v. Young***, 141 Wis. 2d 495, 500, 415 N.W.2d 568, 570 (Ct. App. 1987).

[5] Rural Mutual asserts the Vicks concede that any damages arising after the unsuccessful cleaning procedure are due to neglect and are therefore excluded from coverage. We do not agree with Rural Mutual's characterization of the Vicks' discussion of this issue in both their brief in chief and brief in reply.

solely on the four corners of the complaint, that the cleaning procedure that Robert Vick performed was not a reasonable response. Resolution of this question is better left for a full development of the facts as the case progresses.

3. Business Exclusion.

¶25 Rural Mutual also argues that the alleged damages are excluded by a business exclusion providing that the umbrella policy does not cover liability arising from a "business pursuit or business property of an insured unless covered by primary insurance described on the Declaration Page or by endorsement." Rural Mutual contends that the Fairview Street and Sunnyside Street properties are not covered by the homeowners policy that is the primary insurance described on the declaration page. We disagree.

¶26 Returning to the homeowners policy, the supplemental liability coverage provides that Rural Mutual will pay for bodily injury or property damage resulting from "the rental of any portion of the insured premises for residential purposes." The policy defines the "insured premises" to include "other premises listed on the Declaration Page." The declarations page expressly lists the Fairview Street and Sunnyside Street properties as "additional residences rented to others." Additionally, the policy includes a separate endorsement that states: "For the additional premium paid, we agree to insure certain additional residential premises. They are described on the Declarations Page for Form RM-70. Those premises described are included in the definition of insured premises." Accordingly, we conclude that the properties are "business propert[ies] of an insured … covered by primary insurance described on the Declaration Page …." Consequently, the umbrella policy's business exclusion does not apply.

4. Wear and Tear.

¶27 Rural Mutual also maintains that any liability the Vicks may incur due to the contaminated water is not covered due to the "hidden defect" provision of the wear and tear exclusion. However, Rural Mutual offers no case from any jurisdiction that equates the contamination of drinking water with fecal matter as normal wear and tear of the insured property, nor does it develop any legal argument in support of this contention. We will not consider arguments insufficiently developed. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 369, 560 N.W.2d 315, 319 (Ct. App. 1997).

Property Damage Definition.

¶28 Rural Mutual also contends that the policies do not cover loss of full and normal use of the property. The homeowners policy defines property damage as:

> **Property Damage:** injury to or destruction of tangible property. This includes the loss of its use.

The umbrella policy defines property damage as:

> **Property Damage:** physical injury to or destruction of tangible property. This includes los (sic) of use of that property.

The Vicks concede, at page 33 of their brief in chief, that there is no coverage under the umbrella policy for any damages arising from the plaintiffs' "loss of full normal use" of the properties, but they assert there is coverage under the homeowners policy. In regard to coverage under the homeowners policy, the Vicks argue that ***Wisconsin Label Corp. v. Northbrook Property & Casualty Insurance Co.***, 2000 WI 26, ¶31, 233 Wis. 2d 314, 607 N.W.2d 276, provides

support for coverage of the plaintiffs' claim that they could not fully utilize the rental premises because they should not have been drinking the contaminated water. They contend that because the property damage definition in the homeowners policy is not qualified with the word, "physical," loss of use is a covered loss under the homeowners policy, as explained in ***Wisconsin Label***.

¶29 In ***Wisconsin Label***, a mislabeling of certain products caused them to be sold at less than their intended retail price. The distributor was forced to pay the retailer for the resulting losses and it sued its insurer for reimbursement of the payments it made. Northbrook Property & Casualty Insurance denied coverage because it concluded there was no physical damage to property. The supreme court agreed that the mislabeling had caused economic loss, but not physical injury to, nor loss of use of, the products that had been mislabeled. ***Id.***, ¶¶ 32, 48.

¶30 We conclude that ***Wisconsin Label*** is not applicable to the homeowners policy. ***Wisconsin Label*** turns on the court's conclusion that the definition of property damage required "physical" damage. However, no such requirement is set forth in the Vicks' homeowners policy, although it is set out in the umbrella policy. Furthermore, a reasonable insured would expect that his tenants would drink the water in the residential units he was renting and that not being able to do so may result in a loss of the tenants' full use of the properties. Accordingly, we conclude that the property damage loss alleged is not excluded from coverage by the definition set forth in the homeowners policy.

CONCLUSION

¶31 We conclude that: (1) the complaint alleges a common law negligence claim in regard to cleaning the well; (2) the allegedly negligent cleaning of the water well is an "occurrence" as occurrence is defined in both

policies; and (3) none of the policy exclusions cited by Rural Mutual bars coverage for at least one of plaintiffs' claims. Therefore, we conclude that there is potential coverage and a duty to defend under both policies. Accordingly, we reverse the circuit court's judgment and remand for further proceedings.

By the Court.—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.