

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 26, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP454**

**Cir. Ct. No. 2009CV308**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**TOWN OF LAFAYETTE,**

**PLAINTIFF,**

**V.**

**ALLEN BALSIGER,**

**DEFENDANT-APPELLANT,**

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY,**

**INTERVENING DEFENDANT-RESPONDENT.**

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APPEAL from a judgment<sup>1</sup> of the circuit court for Chippewa County: MICHAEL A. SCHUMACHER, Judge. *Affirmed.*

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<sup>1</sup> Although the circuit court's written decision and the notice of appeal referred to "an order," summary judgment is a judgment.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Allen Balsiger appeals a summary judgment determining his maintenance of the Town of Lafayette’s property record cards was not “property damage,” and therefore, no coverage existed under his American Family Mutual Insurance Company policy. Balsiger asserts the circuit court erred by granting summary judgment because there was “property damage,” the damage was an “occurrence,” and policy exclusions did not bar recovery. Because we determine Balsiger’s maintenance of the property record cards was not “property damage,” we affirm.

#### BACKGROUND

¶2 Balsiger was the Town of Lafayette’s assessor from 1979 to 2008. He was contracted “to perform all assessment related duties on behalf of the Town.” The contract required Balsiger to perform in accordance with the Wisconsin Statutes and the Wisconsin Property Assessment Manual.<sup>2</sup>

¶3 As part of his duties, Balsiger was required to maintain the Town’s property record cards. The cards delineate ownership, property characteristics, and improvement characteristics for each parcel of taxable property, and are used to “develop accurate and equitable assessments ....” Additionally, the cards provide the Town with a defense against claims of unlawful or excessive taxes.

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<sup>2</sup> The Wisconsin Department of Revenue publishes the Wisconsin Property Assessment Manual. WIS. STAT. § 73.03(2a). Assessors must use the guidelines outlined in the manual when valuing property. WIS. STAT. § 70.32(1).

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 In 2008, the Town retained Bowmar Appraisals as the new town assessor. James Toth, a Bowmar employee, testified that when Bowmar received the Town’s records, he discovered some properties—a couple dozen out of thousands—did not have a property record card. He characterized this as a “very small number.” Toth explained it was common for there to be missing property record cards, and he was not concerned to discover missing property cards.

¶5 When Toth began to conduct field work, he found the information contained on the cards was either insufficient or inaccurate. Toth advised the Town that Bowmar could not complete its assessment duties and responsibilities because the records were too inadequate. The Town opted to complete a revaluation of all the properties and entered into a new revaluation contract with Bowmar for approximately \$208,000.

¶6 The Town sued Balsiger because of the deficiencies in Balsiger’s maintenance of the property record cards. In its complaint, the Town alleged that when reviewing its records, it expected to find:

[P]roperty record cards *listing* current owners, names or county printed labels; land information pertaining to size, shape and topography of lots of record in the town; buildings found on properties in the town...; copies of relevant building permits; photographs taken by the assessor; history of last visit to individual lots; [and] reasons for any changes in valuations.

(Emphasis added.) Instead, the Town found “property record cards with outdated labels or no labels at all; ... no information regarding lot size; ... no building information; [and] ... inaccurate information.” The Town alleged the “incomplete, out of date or inaccurate records” exposed the Town to taxpayer litigation and caused the Town to have to undergo a revaluation.

¶7 Balsiger had a commercial general liability policy with American Family. The relevant portion of the policy covered Balsiger against “property damage” that was an “occurrence.” American Family intervened and moved for summary judgment, seeking a declaration of no coverage. The circuit court granted American Family’s summary judgment motion, reasoning coverage did not exist because Balsiger’s improper maintenance of the property record cards did not constitute “property damage.”

¶8 Additionally, the circuit court concluded that even if the damage constituted “property damage,” there was no coverage because there was no “occurrence.” The court went further to hold that even if there was an initial grant of coverage, the policy’s exclusions would have prevented coverage.

#### DISCUSSION

¶9 On appeal, Balsiger asserts the circuit court erred by granting summary judgment. He contends as a matter of law there was “property damage” to the Town’s property record cards, the damage was an “occurrence,” and the policy exclusions do not preclude coverage. Alternatively, Balsiger argues there is a genuine issue of material fact as to whether the missing records constitute property damage.

¶10 Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Although we independently review a grant of summary judgment, we benefit from the circuit court’s analysis. *Taylor v. Greatway Ins. Co.*, 2001 WI 93, ¶9, 245 Wis. 2d 134, 628 N.W.2d 916.

¶11 Insurance contract interpretation presents a question of law that is reviewed independently. *Folkman v. Quamme*, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857. Words in an insurance policy are given their common and ordinary meaning. *Id.*, ¶17. We will not interpret a policy “to provide coverage for risks that the insurer did not contemplate or underwrite and for which it has not received a premium.” *American Family Mut. Ins. Co. v. American Girl, Inc.*, 2004 WI 2, ¶23, 268 Wis. 2d 16, 673 N.W.2d 65.

¶12 When reviewing insurance contracts, we first “examine the facts of the insured’s claim to determine whether the policy’s insuring agreement makes an initial grant of coverage.” *Id.*, ¶24. If the policy does not cover the claim asserted, our analysis ends there. *Id.* However, “if the claim triggers the initial grant of coverage in the insuring agreement, we next examine the various exclusions to see whether any of them preclude coverage of the present claim.” *Id.*

¶13 Balsiger argues the circuit court erred when it determined the improperly maintained property record cards did not constitute “property damage.” Balsiger’s policy with American Family defines “property damage” as:

- a. Physical injury to tangible property, including all resulting loss of use of that property ...; or
- b. Loss of use of tangible property that is not physically injured ....

¶14 An identical “property damage” definition has already been reviewed and interpreted by our supreme court. In *Wisconsin Label Corp. v. Northbrook Property & Casualty Insurance Co.*, 2000 WI 26, ¶2, 233 Wis. 2d 314, 607 N.W.2d 276, a manufacturer failed to accurately label products, which resulted in the products being sold for half of their intended retail price. At issue

was whether the improper labeling constituted “property damage.” When reviewing the “property damage” definition, the court interpreted “physical injury” to mean physical damage to the property, *id.*, ¶31, and “loss of use” to mean the property was “rendered useless [because of] the insured’s actions,” *id.*, ¶50. The court determined there was nothing physically wrong with the products other than the improper label, and the products were not rendered useless. *Id.*, ¶¶31, 51. The court held that no coverage was available under the policy because “instead of ... property damage, the damages in this case resulted from Wisconsin Label’s failure to adequately perform its contract to label PPC’s products.” *Id.*, ¶58.

¶15 Similarly, in this case, there was no “physical injury” or “loss of use” to the property record cards themselves. Rather, the damage resulted from Balsiger’s failure to adequately perform his duties as assessor and maintain the property record cards or create new record cards as needed. We conclude there was “no property damage,” and consequently, coverage is not available.

¶16 Balsiger asserts *Wisconsin Label* does not apply to this case because he “is alleged to have lost and damaged Town records.” However, the complaint alleges Balsiger failed or refused to perform his duties because certain information was not “listed” in the property record cards. Although Toth testified that a few dozen out of thousands of property record cards were missing, he stated that this was common and caused no concern. Toth explained it was the inaccurate and missing information in the property record cards that caused the need for a revaluation.

¶17 Because we determine no “property damage” occurred, we need not determine whether there was an “occurrence” or if one of the policy exclusions applied. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (if

resolution of one issue disposes of the appeal, we need not address the other issues raised). Consequently, we affirm the circuit court's summary judgment.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

