Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,913-CW
No. 56,914-CW
(Consolidated Cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

TONYA MCCLELLAN AND
DAVE MCCLELLAN — Plaintiffs-Respondents

versus

KELLEY'S CONSTRUCTION
AND DEMOLITION, LLC,
EVANSTON INSURANCE
COMPANY, TERRY D. KELLY
INDIVIDUALLY AND D/B/A
OUTLAW TREE SERVICE AND
CNS MILLWORKS AND
PROGRESSIVE PALO VERDE
INSURANCE COMPANY — Defendants-Applicants

* * * * *

On Application for Writs from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 2023-1209

Honorable Frederick Douglass Jones, Judge

* * * * *

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* * * * *

Before THOMPSON, ROBINSON, and ELLENDER, JJ.

ELLENDER, J.

Evanston Insurance Company seeks review of a ruling that denied its motion for summary judgment declaring the automobile exclusion in its commercial general liability policy excluded coverage for the claims of Tonya and Dave McClellan. In the companion case, Docket No. 56,914, the McClellans seek review of a concurrent ruling that denied their motion for summary judgment declaring the existence of coverage. For the reasons expressed, we find the policy provides coverage for the McClellans' claims. We therefore deny Evanston's writ, deny its motion for summary judgment, and remand the case for further proceedings.

By separate opinion in No. 56,914, we grant the McClellans' writ, grant their motion for summary judgment, and remand the case for further proceedings.

FACTUAL BACKGROUND

After dark on the evening of May 12, 2022, Ms. McClellan was driving her 2017 Buick LaCrosse in West Monroe, La. She turned off Good Hope Road and made a right onto T John Road, heading north. However, there was a large dump truck, a 2002 Chevy 3500, parked in the right lane of T John Road, unoccupied, with no lights, flashers, or anyone directing traffic around it. Ms. McClellan did not see the truck soon enough, and she rammed into its rear end. She alleged her car burst into flames and she was seriously injured.

The dump truck belonged to Terry Kelley, who was the principal of Kelley's Demolition & Construction ("Kelley's") and did business as Outlaw Tree Service. Kelley's was performing tree removal and trimming at a house on T John Road at the time, and Kelley had directed his employees to park the truck on the east side of the street, along with a bucket truck, a pickup truck,

and another dump truck. He had assigned two employees to flag traffic around the parked vehicles, one to the north and the other to the south; unfortunately, the man working the south had left his post to get some water. When this flagman was away, Ms. McClellan drove up from the south and ran into the back of the dump truck.

The McClellans sued Kelley's; Evanston Insurance Co. ("Evanston"), its commercial general liability ("CGL") carrier; Kelley, individually and doing business as Outlaw Tree Service; and Progressive Paloverde, Outlaw's insurer. (Progressive Paloverde is not involved in these writ applications.)

PROCEDURAL HISTORY

Evanston filed this motion for summary judgment. It asserted its CGL policy excluded the claim. It cited its policy, which covered bodily injury and property damage but, under Coverage A (1)(a.)(1), is "limited as described in Section III[.]" Coverage A also provided, "Exclusions / This insurance does not apply to: * * * (g) Aircraft, Auto Or Watercraft." An endorsement deleted paragraph (g) and replaced it with this (hereinafter, "the Auto Exclusion"):

> **g. Aircraft, Auto Or Watercraft**
>
> (1) "Bodily injury" or "property damage" arising out of any aircraft, "auto" or watercraft[.]
>
> This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, contracting, screening, training or monitoring of others by any insured."

Evanston agued the McClellans' claim "stem[s] from an automobile" and, thus, the Auto Exclusion should be applied as written. It contended courts enforce such exclusions, *Picou v. Ferrara*, 412 So. 2d 1297 (La. 1982); the risk associated with operating an auto is not intended to be covered by a CGL policy, *McQuirter v. Rotolo*, 11-0188 (La. App. 1 Cir. 9/14/11), 77 So.

3d 76; and the Auto Exclusion's reference to "negligence or other wrongdoing" will exclude the McClellans' ancillary allegations, such as negligent hiring and supervision, *Calvin v. Janbar Enters. Inc.*, 03-0382 (La. App. 4 Cir. 9/24/03), 856 So. 2d 88, *writ denied*, 03-3102 (La. 1/30/04), 865 So. 2d 92, and *Mahlum v. Baker*, 25,876 (La. App. 2 Cir. 6/24/94), 639 So. 2d 820.

The McClellans opposed, arguing any exclusion must be strictly construed and rejected if ambiguous, *LeJeune v. Allstate Ins. Co.*, 365 So. 2d 471 (La. 1978). They framed the issue as whether the Auto Exclusion provision "'arising out of any auto' applies to the independent negligence of Kelley's flagman" and "whether the accident at issue 'arises from the use of an auto' so as to exclude coverage[.]" They also argued all the cases cited by Evanston were inapplicable.

Several months later, the McClellans filed their own motion for summary judgment asserting they were entitled to coverage as a matter of law. They reiterated the issue was whether the Auto Exclusion applied to "the independent negligence of Kelley's flagman abandoning his post" and whether the accident arose "from the use of an auto."

Evanston opposed the McClellans' motion, stressing its Auto Exclusion applied to any claim "arising out of any * * * auto," in any way, and not arising out of *the use of* any auto; hence, the fact that Kelley's was not using the auto at the time did not negate the Auto Exclusion. Evanston also argued the Auto Exclusion applied to any claim of "negligence or other wrongdoing," which would include the allegation of the flagman's negligence. Calling it an "Absolute Auto Exclusion," Evanston urged its

Auto Exclusion is "broader than the majority of cases examining the question" and, thus, most of the McClellans' argument was inapposite.

ACTION OF THE DISTRICT COURT

After a hearing limited to argument, the district court wrote an opinion quoting the Auto Exclusion and noting the McClellans' argument that the "negligent acts at issue were separate and independent from the use of the vehicle and thus not excluded." The court then found a genuine issue as to the "legal cause of the accident" and, thus, a question whether the injury arose out of the dump truck's "use or rather from a separate and independent failure to act." The court found this sufficient to deny both motions for summary judgment.

Both sides applied for supervisory review and, later, filed a motion to consolidate; this court granted writs on April 22, 2026, and consolidated the cases on July 31.

THE PARTIES' POSITIONS

Evanston frames the case as "aris[ing] from an automobile accident" or, precisely, "from the crashing of two 'autos[.]'" In light of this undisputed fact, it submits the McClellans failed to offer any disputed issue of material fact.

Quoting the Auto Exclusion, it urges the policy "unambiguously excludes claims * * * that stem from an automobile." The phrase "arising out of" is unambiguous and means "originating from, having its origin in, growing out of, flowing from, incident to, or having connection with," *Manning on behalf of Williams v. RH Windrun LLC*, 25-0384 (La. App. 4 Cir. 2/5/26), 430 So. 1235. Evanston argues this court recently found no

ambiguity in a CGL policy using the "arising out of" language, *Mallahan v. Guevara*, 55,167 (La. App. 2 Cir. 9/27/23), 413 So. 3d 480.

Evanston adds similar exclusionary provisions applied to a claim of negligent entrustment in *Picou v. Ferrara*, *supra*, and to negligent failure to post a flagman to warn of a hazard, in *Massey v. Century Ready Mix Corp.*, 552 So. 2d 565 (La. App. 2 Cir. 1989), *writ denied*, 556 So. 2d 41 (1990). Such exclusions also applied to claims resulting from auto accidents, as in *McQuirter v. Rotolo*, *supra*, *Calvin v. Janbar Enters.*, *supra*, and *Howell v. Ferry Transp. Inc.*, 04-2057 (La. App. 4 Cir. 3/29/06), 929 So. 2d 226.

Further, the Auto Exclusion excludes all the McClellans' claims, both the direct claims stemming from the use of the auto and the negligence claims for failure to train or supervise its employees to warn the public. Evanston urges the case cited by the district court, *LeJeune v. Allstate Ins. Co.*, *supra*, has no precedential value, as it has been legislatively overruled, in *Lewis v. Safeway Ins. Co. of La.*, 20-0999 (La. App. 1 Cir. 4/16/21), 324 So. 3d 121, and virtually every case to cite *LeJeune* has distinguished it. Most cases on CGL policies involved exclusionary language "much different, and much narrower" than this Auto Exclusion, such as *LeJeune v. Allstate Ins. Co.*, *supra*; *Fleniken v. Entergy Corp.*, 99-3023 (La. App. 1 Cir. 2/16/01), 790 So. 2d 64, *writs denied*, 01-1269, -1295 (La. 6/15/01), 793 So. 2d 1250, 1252; *Frazier v. State Farm*, 347 So. 2d 1275 (La. App. 1 Cir.), *writ denied*, 351 So. 2d 165 (1977); *Terminix Servs. v. State Farm*, 01-720 (La. App. 5 Cir. 11/27/01), 803 So. 2d 198; and *Carter v. City Parish Gov't of E. Baton Rouge*, 423 So. 2d 1080 (La. 1982). The critical distinction, Evanston urges, is the Auto Exclusion does not require a showing of *use of* the insured

automobile, and it explicitly applies to acts of negligence independent from the use of the automobile.

Evanston concedes that Louisiana courts have "not had frequent occasion" to address an Absolute Auto Exclusion, but other jurisdictions have, finding it unambiguous and broader than the standard auto exclusion, and applying it literally. *Covington Spec. Ins. Co. v. Indian Lookout Country Club Inc.*, 62 F. 4th 748 (2 Cir. 2023) (applying New York law); *Maxum Indem. Co. v. Kaur*, 356 F. Supp. 3d 987 (E.D. Cal. 2018).

Finally, Evanston submits that, given the exclusion of coverage, it has no duty to defend Kelley's or any other party under the policy. It urges this court to make the writ peremptory, grant its motion for summary judgment, and dismiss all claims against Evanston.

The McClellans begin by arguing there is no genuine issue of material fact, contrary to the district court's finding: "the facts are undisputed by Applicants and Respondent." They assert any policy exclusion must be interpreted in the light most favorable to finding coverage; even though Evanston labels its exclusion "absolute," "no such language is used anywhere in the policy." The dump truck should not be considered as a factor in the case; rather, the case is about the operational negligence of the flagman, and this independent negligence circumvents the automobile exclusion, as outlined in *LeJeune v. Allstate Ins. Co.*, *supra*; *Fleniken v. Entergy*, *supra*; *Frazier v. State Farm*, *supra*; and *Lewis v. Jabbar*, 08-1051 (La. App. 1 Cir. 1/12/09), 5 So. 3d 250. They suggest the federal cases cited by Evanston are nonbinding and irrelevant, and the state cases are distinguishable, as they dwelt on "use" of the auto instead of the independent negligence of the insured.

The crux of the case, they contend, is that an automobile exclusion in a CGL policy "does not apply if the insured's negligence was independent of the vehicle." The policies in *Lewis v. Jabbar*, *supra*, and *Frazier v. State Farm*, *supra*, use the phrase "arising out of any auto," and yet those courts disallowed the exclusion because of independent negligence. They ask this court to make the writ peremptory, grant their motion for summary judgment, and render judgment declaring coverage under Evanston's policy.

APPLICABLE LAW

The interpretation of an insurance policy ordinarily involves a legal question that can be properly resolved on motion for summary judgment. *Bernard v. Ellis*, 11-2377 (La. 7/2/12), 111 So. 3d 995; *Simonton v. Shelter Mut. Ins. Co.*, 56,424 (La. App. 2 Cir. 8/27/25), 418 So. 3d 1150, *writ denied*, 25-01298 (La. 12/16/25), 422 So. 3d 787. Absent a conflict with statutory provisions or public policy, insurers, like other individuals, are entitled to limit their liability and to impose and enforce reasonable conditions on the policy obligations they contractually assume. *Bernard v. Ellis*, *supra*; *Safeway Ins. Co. of La. v. Nat'l Gen'l Ins. Co.*, 56,228 (La. App. 2 Cir. 5/21/25), 413 So. 3d 537, *writ denied*, 25-0095 (La. 11/5/25), 420 So. 3d 39. A court should grant the motion for summary judgment only when the facts are taken into account and it is clear the provisions of the insurance policy do not afford coverage. *Jones v. Estate of Santiago*, 03-1424 (La. 4/14/04), 870 So. 2d 1002; *Reynolds v. Select Props. Ltd.*, 93-1480 (La. 4/11/94), 634 So. 2d 1180; *Mallahan v. Guevara*, *supra*. The applicability of a policy exclusion may be resolved by summary judgment. *Bonin v. Westport Ins. Corp.*, 05-0886 (La. 5/17/06), 930 So. 2d 906; *Marzell v. Charlyn Enters. LLC*, 51,209 (La. App. 2 Cir. 2/15/17), 215 So. 3d 405.

The purpose of liability insurance is to afford the insured protection from damage claims. *Elliot v. Continental Cas. Co.*, 06-1505 (La. 2/22/07), 949 So. 2d 1247; *Mallahan v. Guevara*, *supra*. Policies are therefore construed to effect, and not to deny, coverage. *Id*. A provision which seeks to narrow the insurer's obligation is strictly construed against the insurer, and, if the language of the exclusion is subject to two or more reasonable interpretations, the interpretation which favors coverage must be applied. *Elliott v. Continental Cas. Co.*, *supra*. The rule of strict construction does not authorize a perversion of language, or the exercise of inventive powers for the purpose of creating an ambiguity where none exists, or the fashioning of a new contract for the parties. *Id*. An insurer may limit the recovery of its own insured, but not the recovery of third persons who are not parties to the policy. *Troung v. Sanders*, 25-00169 (La. 12/18/25), 424 So. 3d 701.

Where the automobile use exclusion clause is sought to be applied so as to avoid coverage for injuries otherwise covered by a general liability policy, the exclusion clause does not apply where the insured's act is a result of negligence independent of, even though concurring with, the use of an automobile. *LeJeune v. Allstate Ins. Co.*, *supra*; *Mahlum v. Baker*, *supra*; *Massey v. Century Ready Mix*, *supra*.

DISCUSSION

On de novo review, we find no basis for the district court's reliance on a "genuine issue" as to the "legal cause of the accident" to justify denying the motions for summary judgment. Both parties have argued, and our review of the record confirms, no disputed material facts are present. Just because the precise cause of an accident is undetermined does not mean a genuine issue remains regarding insurance coverage. *Jones v. Estate of Schuford*, 56,521

(La. App. 2 Cir. 4/1/26), 432 So. 3d 345, *writ denied*, 26-00527 (La. 9/16/26), 436 So. 3d 1262, and citations therein.

Evanston correctly shows that, in the overwhelming majority of cases involving automobile exclusions, the exclusions apply to coverage arising from some *use* of the automobile, and the point of the litigation was to determine whether the particular conduct constituted *use*. Evanston further argues that, because this Auto Exclusion does not include the word *use*, the analysis is limited to whether an automobile was involved in the accident in any way. We observe, however, that the policy in *Lewis v. Jabbar*, *supra*, was phrased similarly to Evanston's:

> This exclusion applies to "bodily injury" or "property damage" arising out of any aircraft, "auto" or watercraft, whether or not owned, maintained, used, rented, leased, hired, loaned, borrowed or entrusted to others or provided to another by any insured[.]
>
> This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by an insured.

The court discussed the omission of *use* from the exclusion but found it did not override the general principle expressed in *LeJeune v. Allstate*, *supra*. The use of an automobile must be a "common and essential element" of the claim that the insured's failure to provide sufficient lighting contributed to the occurrence of the accident. The court easily found the "type of negligence alleged against [the insured] is independent of and in addition to any auto use or involvement," and, thus, not subject to the exclusion. We find the same here.

The dump truck was a large object, unlighted and unflagged, placed on the travel lane of a public street and obstructing travel. As such, it could equally have been a large Dumpster, commercial waste bin, or piece of

construction equipment. Its classification as an auto was incidental and unrelated to the way this accident happened. We acknowledge our earlier holding in *Massey v. Century Ready Mix*, *supra*, which applied the exclusion on grounds the duty to provide a flagman was "not independent of the vehicle," but distinguish that case factually: the insured truck backed directly into the concrete column on which the plaintiff was standing. In light of that fact, a finding of "use of the automobile" was fully warranted. Applying the facts of the instant case to this Auto Exclusion, we find the exclusion does not apply.

Moreover, when automobiles covered under automobile liability policies are not being used for locomotion or transport purposes, but rather for purposes usually associated with the type of risks normally covered by a CGL policy, the CGL policy will provide coverage. *Calvin v. Janbar Enters*, *supra*; *Americas Ins. Co. v. Reliance Ins. Co.*, 98-1008 (La. App. 3 Cir. 2/3/99), 736 So. 2d 256. Here, the dump truck was being used to temporarily store branches, tree debris, and other material from a construction site. These are precisely the types of risks intended to be covered by a CGL. On these facts, the Auto Exclusion does not apply to the McClellans' claim.

We have also considered Evanston's claim that the Auto Exclusion applies because Ms. McClellan was in an auto when it collided into the dump truck. While this is a plain reading of the exclusion and would appear supported by dictum in *Massey v. Century Ready Mix*, *supra*, we are guided by the recent opinion of *Troung v. Sanders*, *supra*. There, the insurance policy contained a "betterment" provision that purported to limit recovery to the value of the property damaged; in effect, a claimant could not be "bettered" from the claim. The district court applied the provision as written,

limiting the plaintiff's recovery, but this court reversed and the Supreme Court affirmed that result. In a case of first impression, the Supreme Court reasoned that a policy may limit the recovery of its own insured, but it cannot limit the lawful recovery of a person who was not a party to the policy. The same rationale applies here: Evanston's Auto Exclusion was free to limit Kelly's recovery because the injury arose from an automobile, but not to limit the third party, Ms. McClellan's, recovery because it arose from *her automobile*. We would also observe, had Ms. McClellan come on the scene by bicycle, horse, or skateboard, the Auto Exclusion would not have purported to bar her recovery. The precise mode of transport should have no bearing on her claim. Evanston's claim to the contrary lacks merit.

Evanston also argues the Auto Exclusion specifically refers to claims of "negligence or other wrongdoing in the supervision, hiring, employment, contracting, screening, training or monitoring of others by any insured." The structure of the policy, however, makes clear that the exclusion of *any* negligence or other wrongdoing will apply only when the Auto Exclusion (specifically, "Aircraft, Auto Or Watercraft") is found to apply. For the reasons already discussed, we have found the Auto Exclusion does not apply. Bearing in mind the purpose of insurance is to afford the insured protection from damage claims, *Elliott v. Continental Cas. Co.*, *supra*, we cannot accept the suggestion that a policy excludes coverage for any and all acts of negligence or wrongdoing; the result would be a policy that affords no coverage whatsoever.

We recognize the federal cases that have addressed a provision called the "absolute auto exclusion" and applied it as written, *Covington Spec. Ins. Co. v. Indian Lookout Country Club Inc.*, *supra*, and *Maxum Indem. Co. v.*

Kaur, *supra*, but find them unpersuasive. On close examination, we see both these exclusions were premised on the use of an automobile. The policy in *Covington* referred to bodily injury "arising out of or resulting from the * * * *use* * * * of any aircraft, auto[,] or watercraft"; the policy in *Maxum* referred to bodily injury "arising out of the ownership, maintenance, operations, *use*, * * * of any aircraft, auto or watercraft[.]" The courts applied the standard analysis of whether the driver's claim constituted use of an auto and found it did not. Such is not the case here. The district court erred in not finding coverage under the Evanston policy.

CONCLUSION

For the reasons expressed, Evanston's writ application is denied, its motion for summary judgment is denied, and judgment is rendered herein declaring coverage under the Evanston policy. All costs are to be paid by Evanston Insurance Company.

WRIT DENIED, MOTION FOR SUMMARY JUDGMENT DENIED, AND JUDGMENT RENDERED DECLARING COVERAGE UNDER THE EVANSTON POLICY. CASE REMANDED.