Appeals Court Affirms Dismissal of Claims Against Insurer

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In *Marculetiu v. Safety Ins. Co.*, the Appeals Court recently affirmed the allowance of Safety Insurance Company's Motion to Dismiss all claims against it, holding that Safety had no duty to defend or indemnify its insured against claims for false imprisonment and sexual assault. In *Marculetiu*, the insured—a ballet instructor—was alleged to have assaulted and falsely imprisoned one of his adult students while on a trip to Romania to participate in a ballet competition. Because both the assault ("bodily injury") and false imprisonment ("personal injury") indisputably occurred in the context of a business-related trip, the Court held that both were excluded under the Homeowners policy's exclusion for injuries "arising out of or in connection with a business engaged in by an insured," and that Safety consequently had no obligation to defend or indemnify Marculetiu in the tort action brought against him.

In concluding that the student's alleged injuries arose out of Marculetiu's business and were thus excluded from coverage, the Court recognized that the terms "arising out of" and "in connection with" are read expansively under Massachusetts law, and that the purpose of homeowners insurance coverage is to protect against risks associated with the home. The Court specifically noted that its holding was consistent with the two-pronged test set out in *Preferred Mut. Ins. Co. v. Vermont Ins. Co.*, 87 Mass.App.Ct. 510 (Mass.App.Ct. 2015), evaluating whether the activity in question was both continuous and motivated by profit—it clarified, however, that the activity to be reviewed was not the actual misconduct, but the activity from which the misconduct arose.

As such, the Court concluded that "Because Marculetiu's alleged actions occurred in the context of a work-related relationship on a work-related trip far from home, this is not a close question."

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