



At some point in the course of the underlying enforcement action, the Environmental Court made a finding to the effect that Towns' "primary purpose" for placement of the trash where it was put was to "expand the useable back yard." Towns now argues that this finding is binding in this litigation and, therefore, Insurer cannot contest the application of the non-business exception. Insurer argues that it is not bound to the Environmental Court's finding, as the issue of the applicability of insurance policy exclusions was not litigated in that case.

Analysis of the non-business pursuits exception to the business pursuits exclusion can be confusing. See *Luneau v. Peerless Ins. Co.*, 170 Vt. 442, 447 (2000); *Rufener v. State Farm Fire & Casualty Co.*, 585 N.W.2d 696, 699 (Wis. Ct. App. 1998) ("the exception is often awkwardly worded and its meaning is not obvious"). Generally, this policy language is intended to distinguish between the type of risks that ordinarily relate to a policyholder's personal life and the type of risks that ordinarily relate to the policyholder's business life. The non-business risks generally are covered because they are the anticipated subject of a homeowner's policy; business risks are not anticipated under a homeowner's policy. If they choose to, "[b]usiness persons can obtain business liability insurance." *Luneau*, 170 Vt. at 448.

Towns' personal interest in using the trash he collected in his business in his own backyard does not transform his business pursuit (trash hauling, including disposing of the hauled trash) into a non-business pursuit. While he may have had a personal purpose and may have obtained person benefit from using the trash he hauled, it does not change the fact that disposing of the trash, wherever he did so, was an inherent part of his business. The question is not whether he had a personal goal he was fulfilling simultaneously with carrying out his business. Rather, "the proper inquiry is whether the activity is ordinarily part of or related to the insured's business." *Rufener*, 585 N.W.2d at 700. Dumping the trash collected in Towns' trash hauling business was an ordinary part of that business. The risk of incurring liability for the disposal of large amounts of business trash is a business risk of a trash hauler, for which business insurance may be sought. It is not a risk "ordinarily incident" to home ownership.

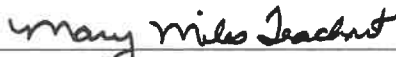
The court concludes that the business pursuits exclusion applies to bar coverage in these circumstances.

### ORDER

For the foregoing reasons,

- 1) Plaintiff's motion for summary judgment is *denied*;
- 2) Defendant's motion for summary judgment is *granted*;
- 3) Defendant shall prepare a form of judgment; and
- 4) The jury trial shall be cancelled.

Dated at Montpelier, Vermont this 26<sup>th</sup> day of January 2007.

  
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Mary Miles Teachout  
Superior Court Judge