

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 4, 2016

Diane M. Fremgen
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. 2014AP2696

Cir. Ct. No. 2013CV316

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ERIC BLOMDAHL,

PLAINTIFF,

v.

RAQUEL C. PETERS AND MARK A. PETERS,

DEFENDANTS-APPELLANTS,

WEST BEND MUTUAL INSURANCE COMPANY,

INTERVENOR-RESPONDENT.

APPEAL from a judgment of the circuit court for Jefferson County:
WILLIAM F. HUE, Judge. *Affirmed.*

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Raquel and Mark Peters appeal a summary judgment dismissing their homeowners liability insurer, West Bend Mutual

Insurance Company, from this defamation action. The circuit court concluded that the insurance policy's business pursuits exclusion precludes coverage. The Peters argue that the exclusion does not apply because many of the allegedly defamatory statements were made after the parties stopped working for the business and because some of the statements were not necessarily associated with the business dispute. We reject these arguments and affirm the judgment.

BACKGROUND

¶2 Eric Blomdahl brought this defamation action, alleging that Raquel Peters made defamatory statements orally and in social media, suggesting he stole money from the Peters, that he stole the Peters' "downline," referring to people recruited into the organization, that he was trying to hide something from them, and that he threatened and harassed them. West Bend petitioned to intervene and requested a declaration of no coverage. By stipulation, the coverage issue was bifurcated from defamation lawsuit.

¶3 Blomdahl and the Peters were associated with a sales business called Together Everyone Achieves More (TEAM), a multi-level marketing organization. Raquel became involved with TEAM in 2003, and income from TEAM became the primary source of their family income, allowing Mark to give up his other employment in 2006. In 2007, Raquel earned approximately \$80,000 from her involvement with TEAM. She achieved the status of "director" with the TEAM management structure, which placed her directly in Blomdahl's "downline," meaning she paid him a percentage of her sales.

¶4 Raquel ceased her active promotion of TEAM in December 2008, alleging that beginning in late 2007, the TEAM upline management cut her income by as much as \$9000 per month despite the fact that the Peters "still had

[their] TEAMS intact” at that time. Raquel claimed several members of the TEAM management structure had “taken a bunch of money from us and done a whole bunch of things.” She claimed that she continued to purchase TEAM products in an effort to continue receiving the passive residual income “until they stole our second team and took our money” in June of 2009.

¶5 Blomdahl’s complaint alleged that the Peters “maliciously and with the intent to cause others to believe that Plaintiff is dishonest, untrustworthy and unsafe to work with or for” made various false and defamatory statements. According to the initial complaint,¹ the Peters’ allegations of dishonesty referred to Blomdahl “in his position at TEAM,” and they slandered him to their groups both upline and downline.

DISCUSSION

¶6 Construction of the insurance policy is a question of law that this court reviews de novo. *Klinger v. Prudential Prop. & Cas. Ins. Co.*, 2005 WI App 105, ¶7, 282 Wis. 2d 535, 700 N.W.2d 290. The liability policy in this case provided:

This insurance does not apply to:

‘Personal Injury’:

....

g. Arising out of or in connection with a ‘business’ ...
 whether or not the ‘business’ is owned or operated
 by an ‘insured’ or employs an ‘insured.’

¹ Blomdahl later amended his complaint, again alleging defamatory statements regarding TEAM before and after Raquel terminated her association with TEAM.

The policy defines the term “[b]usiness” as “[a] trade, profession or occupation engaged in on a full-time, part-time or occasional basis”

¶7 The plain language of the policy precludes coverage for the defamation alleged in this case. The broad exclusion for activities “arising out of or in connection with a business” unambiguously excludes coverage for the business-related disputes between Blomdahl and the Peters. The term “arising out of” is given an expansive and broad definition generally meaning “originating from, growing out of, or flowing from” a business. *Rufener v. State Farm Fire & Cas. Co.*, 221 Wis. 2d 500, 506-07, 585 N.W.2d 696 (Ct. App. 1998). The purpose of the business-pursuits exclusion was summarized in *Bertler v. Employers Ins. of Wausau*, 86 Wis. 2d 13, 20, 271 N.W.2d 603 (1978):

‘The comprehensive personal liability policy ... is designed to insure primarily within the personal sphere of the policyholder’s life and to exclude coverage for hazards associated with regular income-producing activities.... [T]he hazards of their respective income-producing activities are diverse and involve different legal duties and a greater risk of injury or property damage to third parties than personal pursuits. Business activities can be insured by other types of policies. Their exclusion from personal liability policies avoids areas requiring specialized underwriting, prevents unnecessary coverage overlaps, and helps keep premiums low.’ (Quoted source omitted.)

In *Bertler*, our supreme court created a two-pronged test for determining whether an insured’s conduct qualifies as a “business pursuit”: continuity and a profit motive. *Id.* at 21. The element of continuity simply requires a customary engagement or stated occupation. *Id.* Raquel’s business relationship with TEAM for at least five years satisfies that element. The Peters’ profit motive was established by uncontradicted evidence that involvement with TEAM became

Raquel's full-time income-producing activity and was sufficiently lucrative to allow Mark to leave his other job.²

¶8 Citing cases from other jurisdictions, the Peters argue that the business pursuits exclusion does not apply because the Peters were not actively engaged in the business at the time some of the allegedly defamatory statements were made. Wisconsin law does not require that the allegedly tortious conduct occur during the business relationship. Rather, coverage is defeated by the business-pursuits exclusion because the allegedly defamatory statements arose out of and were in connection with the business dispute.

¶9 The Peters argue that some of the allegedly defamatory statements were not necessarily business related, particularly calling Blomdahl a “poser,” and claiming he “harassed them.” Because the animosity between them arose out of and was in connection with their business dispute, and the record discloses no other nonbusiness basis for these statements, they fall within the business-pursuits exclusion. In addition, to be actionable, a statement of opinion must be blended with an expression of fact and must imply the assertion of undisclosed defamatory facts as a basis for the opinion. RESTATEMENT (SECOND) OF TORTS § 566. Indefinite, ambiguous, and vague designations that could not be assigned a precise meaning cannot support an action for defamation. *Bauer v. Murphy*, 191 Wis. 2d 517, 532 n.13, 530 N.W.2d 1 (Ct. App. 1995).

By the Court.—Judgment affirmed.

² Because we conclude that this portion of the policy excludes liability coverage, we need not consider whether other definitions of “business” in the policy or other exclusions defeat coverage.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2013-14).

