Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-137

SEPTEMBER TERM, 2004

Concord General Mutual Insurance Co.	}	APPEALED FROM:
v.	}	Rutland Superior Court
Harry Delong and Arnold Delong	}	DOCKET NO. 762-12-03 Rdcv
	}	Trial Judge: Richard W. Norton

In the above-entitled cause, the Clerk will enter:

In this declaratory judgment action, defendant Harry Delong appeals the superior court' s determination that Delong' s homeowner' s insurance policy issued by plaintiff Concord General Mutual Insurance Company did not cover an accident involving Delong' s operation of a lawn tractor. We affirm.

On January 10, 2003, Delong accidently injured his son while operating his son' s tractor to clear snow at his son' s residence. Delong sought coverage under his homeowner' s policy for the injuries to his son caused by his negligence. Concord General denied coverage and filed a declaratory judgment action to resolve the issue of whether coverage existed under the policy. The policy provided liability limits of $300,000 per occurrence, but excluded coverage for bodily injury arising out of the ownership, maintenance, or use of motorized vehicles. The policy also contained, however, an exception to the aforementioned exclusion that provided coverage, in relevant part, for injuries caused by " a motorized land conveyance designed for recreational use off public roads." The parties agreed that the determinative issue is whether the tractor operated by Delong is a motor vehicle designed for recreational use. The superior court granted summary judgment to Concord General, concluding that the tractor was designed for work, not recreation, and that use of the word " recreational" in Delong' s policy is not ambiguous as applied to the tractor.

On appeal, Delong argues that the superior court erred in granting summary judgment to Concord General because the term " designed for recreational use" is ambiguous as applied to the John Deere lawn and garden tractor in question, and therefore the policy provision must be construed in favor of the insured. City of Burlington v. Associated Elec. & Gas Ins. Servs, Ltd., 164 Vt. 218, 221 (1995) (" [W]here a disputed term in an insurance policy is susceptible to two or more reasonable interpretations, the ambiguity must be resolved in favor of the insured."). In support of its argument that ambiguity exists as to whether the tractor was designed for recreational use, Delong points to language in the owner' s manual billing the tractor as a " perfect choice for the yard care enthusiast," encouraging the owner to " Sit Back and Relax" in a comfortable, high-back seat made for an easy ride, and featuring the availability of an umbrella to allow the owner to ride in the shade. Noting that the policy language does not state that the tractor must be designed only for recreational use, Delong argues that although the tractor plainly could be used for work, the tractor was also designed, and can be used, for recreational purposes. According to Delong, many individuals may use a tractor like the one in question as a way to unwind after a hard day at the office.

We find no merits to these arguments. The John Deere lawn and garden tractor' s manual and physical characteristics unequivocally demonstrate that the tractor and its numerous attachments were designed, as one would assume, to accomplish a wide range of landscaping, plowing, gardening, and lawn work. The manual' s offer of comforts and conveniences " to make sure the tractor works hard so that you don' t have to" does not suggest that the tractor was designed for recreation. Nor does the fact that some owners may actually enjoy riding their tractor suggest that the

tractor was designed for recreation. Many people may enjoy work, but that does not transform the work into recreation, which is commonly understood to be a pastime or diversion that affords pleasure. See Random House Unabridged Dictionary 1613 (2d ed. 1993). We consider disputed policy language according to its " plain, ordinary and popular meaning." City of Burlington v. Nat' l Union Fire Ins. Co., 163 Vt. 124, 127-28 (1994). In this case, neither the phrase " designed for recreational use" nor the word " recreational" is ambiguous. Moreover, the John Deere Law and Garden tractor was plainly not designed for recreational purposes.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned