FOURTH DIVISION
November 7, 2013

No. 1-13-0664

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ZURICH AMERICAN INSURANCE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CH 25269
	)	
ROBERT E. LUKACS,	)	Honorable
	)	Franklin U. Valderrama,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order granting summary judgment in favor of plaintiff is affirmed. Defendant was not occupying the insured vehicle for purposes of defendant's underinsured motorist claim where defendant had exited the vehicle and walked several feet away from the vehicle without maintaining any relationship to the vehicle when defendant was struck by an underinsured motorist.

¶ 2 Plaintiff Zurich American Insurance Company (Zurich) sought a declaratory judgment

that no coverage exists for defendant Robert E. Lukacs' underinsured motorist claim under plaintiff's insurance policy covering Lukacs' work vehicle. Defendant submitted a claim for an accident in which an underinsured motorist struck Lukacs after Lukacs exited the covered vehicle. The trial court granted summary judgment in favor of plaintiff. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Lukacs testified in a sworn statement that on January 4, 2007, Andre Brown was driving their delivery truck back to their place of employment. Brown was proceeding westbound and stopped for traffic at a red light. Brown intended to proceed west to return to their place of employment. Two or three cars were stopped in front of the delivery truck. Lukacs decided to exit the truck to purchase a cup of coffee from a convenience store on the southwest corner of the intersection. Lukacs exited the vehicle and walked to the front bumper. He stood 1-1/2 to 2 feet in front of the bumper and spoke to Brown through the open driver's window. In addition to the westbound traffic lane, there was also a left-turn late for westbound traffic. Lukacs testified he looked both ways before proceeding and crossed into the eastbound lane of traffic before he was hit by another car. Had he not been struck, Lukacs intended to reenter the vehicle after purchasing his coffee. He testified Brown was to turn left to pick him up on the southbound street.

¶ 5 The driver of the vehicle testified in a deposition that she approached the intersection traveling west and intended to turn left to proceed south. Westbound traffic has a dedicated left-turn lane to proceed south. There were no other vehicles in the left-turn lane as she approached.

The driver testified that her vehicle had entered the left turn lane up to her front tires when the accident occurred. She testified that her vehicle had not crossed the center line dividing eastbound traffic from westbound traffic. The driver who struck Lukacs testified she saw the delivery truck parked in a gas station at the northeast corner of the intersection after she struck Lukacs. She did not see any blinking hazard lights on the delivery truck. She testified that there were cars in front of her at the intersection. The vehicle immediately in front of her was a sport utility vehicle (SUV). She drove around the SUV to enter the left-turn lane, Lukacs emerged from in front of the SUV running southbound, and she hit him. Lukacs was approximately 15 feet from the truck, which she testified was parked in the gas station. After she struck Lukacs, no part of her vehicle was in the eastbound lane of traffic.

¶ 6 Brown also gave a sworn statement. Brown stated that he stopped the truck as vehicles in front of him stopped for the traffic light. The truck was to the east of a gas station on the northeast corner of the intersection. Lukacs asked if could go to the convenience store on the southwest corner for a cup of coffee. Brown said yes, and Lukacs said to meet him "on the other side of the traffic light." Lukacs exited, and Brown saw Lukacs cross in front of the truck toward the driver's side moving from right to left. Brown began to look through his paperwork and suddenly heard a large bump. Brown testified that after he heard the bump he saw Lukacs fly through the air and land on the ground. He drove the truck into the gas station and stopped. Brown opined that it was not possible for the vehicle that struck Lukacs to have been entirely in the left turn lane when it struck Lukacs.

¶ 7 Lukacs settled his claim against the driver who struck him for the limit of the driver's

automobile insurance. Thereafter, Lukacs submitted an underinsured motorist claim to Zurich under its insurance policy covering the delivery truck. Zurich filed a complaint for a declaratory judgment that no coverage exists for Lukacs' underinsured motorist claim under the policy because Lukacs does not satisfy the policy definition of an insured. The policy defines an insured, in pertinent part, as "Anyone occupying a covered auto ***." The policy defines "occupying" as follows: "Occupying means in, upon, getting in, out or off." The parties filed cross-motions for summary judgment. Following argument by the parties, the trial court granted Zurich's motion for summary judgment and denied Lukacs' cross-motion for summary judgment. The trial court found that Lukacs was not occupying the vehicle at the time of the accident.

¶ 8 This appeal followed.

¶ 9 ANALYSIS

¶ 10 The trial court decided this case on cross-motions for summary judgment.

> "When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record. [Citation.] However, the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment. [Citations.]
>
> Summary judgment motions are governed by section 2-1005 of the Code of Civil Procedure [citation]. Pursuant to that statute, summary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that

there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. [Citation.]

Where a case is decided through summary judgment, our review is *de novo*." *Pielet v. Pielet*, 2012 IL 112064, ¶¶28-30.

¶ 11 Further, "[t]he construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court which are appropriate subjects for disposition by way of summary judgment." *Alshwaiyat v. American Service Insurance Co.*, 2013 IL App (1st) 123222, ¶19. The court has established guidelines for the construction of insurance policies.

"Insurance policies are subject to the same rules of construction applicable to other types of contracts. [Citation.] A court's primary objective is to ascertain and give effect to the intention of the parties as expressed in the agreement. [Citation.] In performing that task, the court must construe the policy as a whole, taking into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract. [Citations.]

The words of a policy should be accorded their plain and ordinary meaning. [Citation.] Where the provisions of a policy are clear and unambiguous, they will be applied as written [citation] unless doing so would violate public policy [citation]. That a term

> is not defined by the policy does not render it ambiguous, nor is a policy term considered ambiguous merely because the parties can suggest creative possibilities for its meaning. Rather, ambiguity exists only if the term is susceptible to more than one reasonable interpretation. [Citation.]
>
> Because insurance contracts are issued under given circumstances, they are not to be interpreted in a factual vacuum. A policy term that appears unambiguous at first blush might not be such when viewed in the context of the particular factual setting in which the policy was issued. [Citation.] Governing legal authority must, of course, be taken into account as well, for a policy term may be considered unambiguous where it has acquired an established legal meaning. [Citation.] Where ambiguity does exist, the policy will be construed strictly against the insurer, who drafted the policy [citation], and liberally in favor of coverage for the insured [citation]." *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416-17 (2006).

¶ 12 Zurich does not dispute that the dispositive question in this case is whether Lukacs was "occupying" the insured vehicle at the time of his accident. This court has set forth a two-pronged test to determine whether a party is "occupying" a vehicle for purposes of determining whether coverage exists under insurance policy language similar to that at issue in this case:

"The necessary elements for imposition of liability upon the insurer are the existence of some nexus or relationship between the insured and the covered automobile and, in addition, either actual or virtual physical contact with the insured vehicle." *Cohs v. Western States Insurance Co.*, 329 Ill. App. 3d 930, 934 (2002) (citing *Greer v. Kenilworth Insurance Co.*, 60 Ill. App. 3d 22, 25 (1978); *Mathey v. Country Mutual Insurance Co.*, 321 Ill. App. 3d 805, 812 (2001)). The court has applied this test to insurance policies employing slight variations in the "in, upon, getting in, on, out or off" definition of "occupying." See *Mathey*, 321 Ill. App. 3d at 807 ("Occupying means in, upon, getting in, on, out, or off."); *Greer*, 60 Ill. App. 3d at 23 ("Occupying was defined as 'in or upon, entering into or alighting from' the automobile."). The parties agree that the test articulated by the *Greer* court is applicable to the policy at issue. The dispute lies in the result of applying that test to the facts of this case. Zurich argues that Lukacs' nexus with the delivery truck had ended, and he had no actual or virtual contact with the truck at the time of the accident.

¶ 13 In *Greer*, 60 Ill. App. 3d at 25, this court found the policy language "unambiguous." It noted that "[t]he problem which arises in the case before us is applying the clear meaning of the policy to the factual situation. *** The words themselves are simple, every-day words, but the variety of situations which they define is broad. [Citation.] It follows, therefore, that the only problem remaining is to determine, from a study of the policy language and of the facts, the effect of the language upon the factual situation before us." *Greer*, 60 Ill. App. 3d at 25. Our objective is to seek guidance from the court's previous decisions in applying the facts of this case

to the test articulated in Greer,[1] where the words in the policy, "in, upon, getting in, on, out or off," are ordinary and common, but "the variety of factual situations which they define is broad." *Mathey*, 321 Ill. App. 3d at 811-12 (citing *Greer*, 60 Ill. App. 3d at 26).

¶ 14 In *Cohs*, at issue was the underinsured motorist coverage under a policy covering the petitioner's employer's vehicle. *Cohs*, 329 Ill. App. 3d at 930. While working, the petitioner parked his employer's vehicle at a gas station to perform maintenance on the gas station pumps. After making multiple trips between the location where he was working and the vehicle to retrieve parts, another automobile struck the petitioner. The *Cohs* court found that a nexus existed between the insured and the covered vehicle. *Id.* at 934. The court based its finding of a nexus between the insured and the covered vehicle on the fact that the petitioner drove his van to the location in the course of his employment and constantly walked to and from the vehicle to obtain the parts, tools, and equipment needed to perform his job. *Id*.

¶ 15 Turning to the issue of whether the petitioner was in actual or virtual contact with the vehicle at the time of the accident, the court noted that the evidence varied as to the distance between the petitioner and the vehicle at the time of the accident, and the time that elapsed between the petitioner leaving the vehicle and being struck. *Cohs*, 329 Ill. App. 3d at 934. In an affidavit, the petitioner stated he was 15 feet away from the insured vehicle and that the motorist struck him within 2 minutes of his last trip to the vehicle. *Id*. at 936. In a deposition, the

[1] "[T]he decision constitutes the rule in subsequent cases containing material facts similar to or identical with those in the case. Precedent simply means that like cases should be treated alike." *People v. Trimarco*, 364 Ill. App. 3d 549, 556 (2006) (McLaren, J., dissenting.). See also *Nicor, Inc.*, 223 Ill. 2d at 416-17.

petitioner testified he was 12 feet away and that the accident occurred within one minute after leaving the vehicle. *Id*. Regardless, the court held, the petitioner "lacked the requisite contact with the insured vehicle to trigger coverage pursuant to the underinsured motorist endorsement." *Id*. The *Cohs* court compared the distances in *Greer* (10 to 15 feet) and *Allstate Insurance Co. v. Horn*, 24 Ill. App. 3d 583, 590 (1974) (24 feet), which were found to be too great to support a finding that the claimant in each of those cases was "occupying" an insured vehicle under similar policy language. *Cohs*, 329 Ill. App. 3d at 936. The petitioner in *Cohs* was between 12 and 15 feet away from the insured vehicle. *Cohs*, 329 Ill. App. 3d at 936. "We therefore conclude that Cohs lacked the actual or virtual contact with the insured vehicle required for invoking the underinsured motorist provision in the Western Policy." *Id*.

¶ 16 The *Cohs* court limited its analysis to the actual physical distance between the petitioner and the insured vehicle at the time of the accident. *Cohs*, 329 Ill. App. 3d at 936. Similarly, in *Horn*, upon which *Cohs* relied, the policy at issue "defined 'occupying' as 'in or upon, or entering into or alighting from' the insured vehicle." *Horn*, 24 Ill. App. 3d at 590. The *Horn* court did not base its decision on the question of whether the claimant was in actual or virtual contact with the insured vehicle, but on whether the claimant was entering the insured vehicle, based solely on the claimant's distance from the vehicle. The court held that "it is sufficient to state that one who is 24 feet from a vehicle is not 'entering into' it, and therefore not 'occupying' it, within the meaning of the policy." *Horn*, 24 Ill. App. 3d at 590.

¶ 17 In *Greer*, the other case on which *Cohs* relied, a passenger was seeking to recover under uninsured motorist coverage that insured any person "occupying" the insured's automobile.

Greer, 60 Ill. App. 3d at 23. "Occupying was defined as 'in or upon, entering into or alighting from' the automobile." *Id*. The court held the plaintiff was not in or upon, entering into or alighting from the insured vehicle at the time she was injured by the uninsured motorist. *Id*. at 26. The plaintiff was 10 to 15 feet away from the insured vehicle, after having inspected the vehicle for damage from an automobile collision, when she was struck by another vehicle. *Greer*, 60 Ill. App. 3d at 23. The court held that "the necessary elements for imposition of liability upon the insurer are the existence of some nexus or relationship between the insured and the covered automobile and, in addition, either actual or virtual physical contact with the insured vehicle." *Id*. at 25. The *Greer* court found in that case that "the relationship requirement is satisfied as plaintiff was a passenger in the insured automobile." *Id*. at 25. However, the court found that, as the plaintiff was 10 to 15 feet away, there was "a total absence of contact between the claimant and the insured vehicle." *Id*. at 26.

¶ 18 The court has found liability to exist where the parties seeking coverage were not in actual physical contact but were in close proximity to the covered vehicle. In *Mathey ex rel. Mathey v. Country Mutual Insurance Co.*, 321 Ill. App. 3d 303 (2001), this court affirmed the trial court's judgment finding that the plaintiffs in that case all occupied a school bus they had just exited when a vehicle drove onto the sidewalk and struck the plaintiffs. *Mathey*, 321 Ill. App. 3d at 806. The trial court found that "each plaintiff occupied the buses at the time of the accident by either 'getting *** out or off" the buses. *Id*. In *Mathey*, as in this case, "[t]he policy stated that 'occupying' means in, upon, getting in, on, out or off." *Id*.

¶ 19 The *Mathey* court rejected the defendant's argument that "a causal connection to the

vehicle as transportation is necessary for the injured party to be 'occupying' the vehicle under the terms of the policy." *Mathey*, 321 Ill. App. 3d at 812. The *Mathey* court found this interpretation contrary to the court's judgment in *Wolf v. American Casualty Co. of Reading, PA.*, 2 Ill. App. 2d 124 (1954), in which "[t]he court did not rely on the transportation aspect of the insured vehicle, but considered plaintiff's relationship to and physical contact with the vehicle." *Mathey*, 321 Ill. App. 3d at 812. The *Mathey* court found that it had to apply the factors articulated in *Greer* "as necessary elements for imposition of liability upon the insurer, namely, whether a relationship or nexus existed between plaintiffs and the buses and whether the plaintiffs were in actual or virtual contact with the buses." *Mathey*, 321 Ill. App. 3d at 812. The *Mathey* court did not expressly find the policy terms unambiguous, but did agree with the *Greer* court--which found similar language not ambiguous--that the language in the policy contains ordinary and common words that must be applied as written. *Id*. at 811-12.

¶ 20 The court easily found a nexus between the plaintiffs and the buses, given that the plaintiffs were passengers on the buses and exited within a matter of minutes before the accident, were lining up near or were right next to the buses, and had not yet moved away from the buses, which still had their doors open at the time of the accident. *Mathey*, 321 Ill. App. 3d at 812. "The more difficult issue, however, is whether the plaintiffs were in actual or virtual contact with the buses at the time of the accident." *Id*. at 813.

¶ 21 The *Mathey* court found that the element of contact had been met. *Mathey*, 321 Ill. App. 3d at 814. The court based that finding on the fact that during the accident, the plaintiffs were either "near or right next to the parked and flashing buses." *Id*. at 813. The court also relied on

the fact that the buses had their warning lights activated pursuant to statute as an indication that "children are either getting on or off the bus." *Id*. at 814 (citing 625 ILCS 5/11-1414(c) (West 1998)). The court specifically found that "[t]he activation of the warning lights informs drivers of other vehicles that the bus has assumed control over the children as passengers." *Mathey*, 321 Ill. App. 3d at 814.

¶ 22 The *Mathey* court found that the "necessary elements for imposition of liability" under the test articulated in *Greer* had been met based on a "totality of the circumstances." *Mathey*, 321 Ill. App. 3d at 814. On the specific issue of actual or virtual contact, the *Mathey* court cited with approval from the court's decision in *Lumbermen's Mutual Casualty Co. v. Norris*, 15 Ill. App. 3d 95 (1973). The issue in *Lumbermen's* was whether an injured party was occupying an insured automobile because she was upon or alighting from the automobile when she was injured. *Lumbermen's*, 15 Ill. App. 3d at 97. The *Lumbermen's* court stated that it was "materially aided by the case of [*Wolf*]." *Lumbermen's*, 15 Ill. App. 3d at 97.

¶ 23 However, the decision in *Lumbermen's* was not reached by applying the facts to the language of the policy. The *Lumbermen's* court found that the policy language was ambiguous with respect to the words "upon" and "alighting." *Lumbermen's*, 15 Ill. App. 3d at 97. The court then applied the rule that "ambiguous provisions or equivocal expressions whereby an insurer seeks to limit its liability will be construed most strongly against the insurer and liberally in favor of the insured." (Internal quotation marks omitted.) *Lumbermen's*, 15 Ill. App. 3d at 97 (quoting *Lenkutis v. New York Life Insurance Co.*, 374 Ill. 136 (1940)). The court concluded that "in light of the ambiguity, liability must be construed most strongly against the insurer and liberally in

favor of the insured. Under this rule, the defendant *** was 'alighting' from the vehicle *** and according to the definition of 'occupying' was occupying [the] automobile." *Id*. at 98.

¶ 24 The court did note, however, that "[u]nder the circumstances, we cannot say that the alighting had been completed." *Lumbermen's*, 15 Ill. App. 3d at 98. The circumstances of that case were than the injured party had been sitting on the right front fender of the insured automobile when another car approached at a high rate of speed. *Id*. at 96. The injured party attempted to get out of the way, holding on to the rearview mirror and proceeding toward the front of the car. *Id*. She did not make it to the front of the car before being struck, but was close enough to have her hand on the car and was trying to stay as close as she could to the car. *Id*.

¶ 25 In *Wolf*, the question was whether the plaintiff's injury was caused by an accident which occurred while "in or upon, entering or alighting from" the insured automobile. There, the plaintiff was standing 2 to 3 feet in front of his car, reaching for a pencil to write down his license number after a rear-end collision. A third car struck the back of the plaintiff's car, pushing the car into the plaintiff. *Wolf*, 2 Ill. App. 2d at 125. The court reviewed cases from other jurisdictions which either focused on the "entering or alighting" language or, alternatively, the "in or upon" language. *Id*. at 126.

¶ 26 The *Wolf* court found that "[a]s related to the instant case, it is the use of the word 'upon' which creates an ambiguity." *Wolf*, 2 Ill. App. 2d at 130. The court noted that in the cases that placed an emphasis on the word " 'upon,' it is the contact with [the] car at the time of injury which appears to have persuaded the court ***." *Id*. at 130. But the *Wolf* court found that the word "upon" created an ambiguity and "cannot mean that the insured, to be within the meaning

of the clause, had to be couched on the roof of the car or on the running board or sitting on the hood. It must connote some physical relationship between himself and the car that enlarged the area defined by the words 'entering or alighting' and the word 'in.' " *Id*. The court quoted from another jurisdiction which had found as follows:

> "It seems to us that it was the intent of the insurer, by the language used, to provide for coverage in every case in which the owner was using the automobile and in such a position in relation thereto as to be injured in its use. In reaching a conclusion on this subject, not only the act in which the insured was engaged at the time, but also his purpose and intent must be considered. So construed, the entire paragraph creates a field of coverage broader than a narrow construction of the words considered separately and independent of one another would indicate." (Internal quotation marks omitted.) *Wolf*, 2 Ill. App. 2d at 131 (quoting *Madden v. Farm Bureau Mutual Automobile Insurance Co.*, 82 Ohio App. 111 (1948)).

¶ 27 Applying these principles to this case, we first find that the policy language is not ambiguous because the definition of "occupying" in the policy employs simple, everyday words that merely require application to unique factual situations. See *Greer*, 60 Ill. App. 3d at 25. Therefore, we will not construe the language strictly against Zurich. *Molnar v. Conseco Medical Insurance Co.*, 358 Ill. App. 3d 418, 422 (2005) ("If the words of a policy are clear and

unambiguous, they must be afforded their plain, ordinary and popular meaning."). We find that a nexus did exist between Lukacs and the insured vehicle. Lukacs had recently been a passenger in the vehicle for purposes of his employment prior to being injured. See *Cohs*, 329 Ill. App. 3d at 934. From the evidence Lukacs had not ceased being a passenger for a sufficient amount of time to break his nexus to the vehicle. See *Greer*, 60 Ill. App. 3d at 25; *Mathey*, 321 Ill. App. 3d at 812. The evidence is undisputed that Lukacs was not in actual physical contact with the insured vehicle when he was injured. Therefore, Lukacs was not "in or upon" the insured vehicle. See *Wolf*, 2 Ill. App. 2d at 128-29 (and cases cited therein "in the 'in or upon' category"). Accordingly, this case will turn on the question of virtual physical contact. We must make that determination under the totality of the circumstances. *Mathey*, 321 Ill. App. 3d at 814.

¶ 28 We find that Lukacs was not occupying the delivery truck at the time of the accident because he was not in virtual physical contact with the vehicle. Therefore, we hold that Lukacs was not "getting in, out or off" the insured vehicle at the time he was struck. Lukacs testified that the was 1 to 2 feet west of the front bumper of the delivery truck when he began to cross the street. He also testified that he had crossed the solid yellow lines such that he was actually in the eastbound lane of traffic when he was struck. There is no genuine dispute of a material fact. Lukacs' precise distance from the vehicle is not dispositive. *Mathey*, 321 Ill. App. 3d at 814. The evidence establishes that Lukacs was at minimum several feet away from the insured vehicle when the accident occurred. Therefore, under the plain and ordinary meaning of the language of the policy, Lukacs was already "out or off" the insured vehicle when he was struck. Compare *Lumbermen's*, 15 Ill. App. 3d at 98 ("[u]nder the circumstances, we cannot say that the alighting

had been completed.").

¶ 29 However, Lukacs' physical distance from the insured vehicle is not the only fact we must consider. We must also consider Lukacs' relationship to the insured vehicle to determine whether he maintained a relationship to the vehicle which "enlarged the area defined by the words" of the policy. See *Wolf,* 2 Ill. App. 2d at 130. In examining that relationship, we must consider whether Lukacs, by his acts and his intent and purpose, was using the insured vehicle and was injured in a position in relation to his use of the insured vehicle. See *Wolf*, 2 Ill. App. 2d at 130. Under this analysis, *Mathey*, which found coverage to exist where the plaintiffs were only several feet away from the insured vehicle, is distinguishable. The plaintiffs in *Mathey* did have a relationship with the insured vehicle at the time of the accident. The *Mathey* court found that the plaintiffs were "getting out or off" the insured vehicle because the insured vehicle was a school bus, and "they were doing what school children do when they are in the process of 'getting *** out or off' a bus during a school event, lining up next to the buses to confirm that each student completed the bus ride from the last point of travel." *Mathey*, 321 Ill. App. 3d at 813. Moreover, the activation of the school buses' flashing lights was an indication that children were in the process of either getting on or off the bus. *Id*. at 814. The plaintiffs in *Mathey* were "using" the insured vehicle in the sense the vehicle's flashing lights indicated to other motorists that the plaintiffs were in the process of getting on or off. The activation of the flashing lights indicating children were getting off the bus and the act of lining up after exiting the bus were sufficient to create a relationship between the *Mathey* plaintiffs and the insured vehicles.

¶ 30 The fact that Lukacs used the insured vehicle in his employment and may have been

acting within the scope of his employment when he was injured is irrelevant. See *Cohs*, 329 Ill. App. 3d at 936. We find that Lukacs did not use and had no relationship to the vehicle as to enlarge the area defined by "in, upon, getting in, out or off" to trigger coverage in this case. See *Wolf*, 2 Ill. App. 2d at 131. Lukacs' purpose and intent was to leave the shelter of the vehicle to enter a convenience store. We reject Lukacs' argument that he was in virtual contact with the vehicle because he was still in the process of making his exit from the delivery truck and had not conducted "any post-exit activity." The activity in which Lukacs was engaged was crossing the street to enter the convenience store. Lukacs had begun that activity and achieved his purpose to leave the vehicle to cross the street to enter the convenience store, and placed several feet between himself and the insured vehicle, when he was injured. Regardless, while the fact that Lukacs had recently exited the vehicle and was on the way to his "post-exit activity" might be sufficient to establish a nexus with the insured vehicle (*Cohs*, 329 Ill. App. 3d at 934), it is not sufficient to establish the requisite level of contact with the insured vehicle to trigger coverage (*Cohs*, 329 Ill. App. 3d at 936).

¶ 31 Lukacs did not use the vehicle for shelter (see *Lumbermen's*, 15 Ill. App. 3d at 96) or to alert others to either his presence or his exit (see *Mathey*, 321 Ill. App. 3d at 814; *DeSaga v. West Bend Mutual Insurance Co.,* 391 Ill. App. 3d 1062, 1071 (2009) (finding virtual physical contact with vehicle where the decedent had parked the vehicle and activated flashing emergency lights to remove debris from the road that had fallen from vehicle)). Given Lukacs' intent to leave the insured vehicle and his lack of a relationship to the vehicle at the time he was injured, under *Wolf* and *Mathey*, we find that Lukacs was not occupying the insured vehicle when he was injured. In

the absence of physical contact, and given the Lukacs' distance from the vehicle, we would also find that under *Horn*, *Greer*, and *Cohs* Lukacs was not occupying the vehicle when he was injured. Because Lukacs was not occupying the vehicle, he was not an insured under the policy. Accordingly, we affirm the trial court's judgment.

¶ 32 CONCLUSION

¶ 33 For all of the foregoing reasons, the trial court's judgment is affirmed.

¶ 34 Affirmed.