

that purpose is at best questionable. At least one dictionary defines automobile as “[a] *four-wheeled* vehicle, [especially] a car for passengers, carrying its own propelling mechanism. . . .” NEW WEBSTER’S DICTIONARY OF THE ENGLISH LANGUAGE (College Edition 1975) (emphasis added). See also WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (unabridged 1961). At the very least, the use of the word “automobile” creates an ambiguity as to whether the term includes motorcycles, which are two-wheeled vehicles. Within the confines of the insurance policy itself, the following definition is given: “‘private passenger *automobile*’ means a *four-wheel* private passenger, station wagon or jeep type automobile.” While this definition does not apply to the word “automobile” alone, it only adds to the overall ambiguity.

■ In electing to use the word “automobile” in the exclusion in question, the insurer has created an exclusionary clause that is reasonably susceptible to different interpretations: (1) “automobile” is limited to four-wheel vehicles, and the plaintiff is insured; or (2) “automobile” includes motorcycles, and the plaintiff is not insured. In such situations we will adopt the interpretation that favors the insured. *Trombly v. Blue Cross/Blue Shield*, 120 N.H. 764, 771-72, 423 A.2d 980, 984-85 (1980). Accordingly, we hold that the defendant must provide the plaintiff with uninsured motorist coverage up to the applicable policy limits for his damages.

Reversed; judgment for the plaintiff.

All concurred.

Hillsborough
No. 80-410

SARAH HUBBARD & a.

v.

PAUL PANNETON

June 12, 1981

[REDACTED]

Holland & Aivalikles, of Nashua (*Francis G. Holland* on the brief and orally), for the plaintiffs.

Wiggin & Nourie, of Manchester (*Gregory H. Holmes* on the brief and orally), for the defendant.

MEMORANDUM OPINION

On April 18, 1975, plaintiff Raymond Hubbard was driving south on Route 3 in Bedford with his wife, Sarah, as a passenger. The defendant was operating his automobile in a northerly direction at the same location. As the defendant's automobile came into the plaintiffs' view, it crossed over onto their side of the road and struck their vehicle.

Sarah and Raymond Hubbard each brought suit, claiming that the defendant was negligent in failing to keep his vehicle under control, failing to stay in his own lane, operating at an unreasonable speed, and crossing over into their lane of travel. At trial, the defendant claimed that the accident was the result of an unexpected and unanticipated blackout which was beyond his control and amounted to an act of God. Consequently, he asserted, he was not negligent. A jury returned verdicts for the defendant in both cases. The Trial Court (*Souter, J.*) denied the plaintiffs' motion to set aside the verdicts and transferred the plaintiffs' exceptions.

The plaintiffs raise several issues on appeal, but the only question that we address relates to the discovery of the defendant's medical records.

On October 26, 1977, the plaintiffs filed a motion to compel the production of the defendant's medical records and medical authorizations. The plaintiffs did not receive the medical records until June 12, 1978, the morning of trial, and they never received the medical authorizations. The information contained in the medical records clearly was relevant to the issue of whether the defendant's alleged sudden loss of consciousness was unforeseen, especially in light of the fact that the defendant had suffered a blackout while driving a van approximately five months before the accident in question. By not providing the plaintiffs with information that bore directly on the defendant's only defense until the day of trial, the defendant prevented the plaintiffs from adequately preparing their case for trial. See *Kearsarge Computer, Inc. v. Acme Staple Co.*, 116 N.H. 705, 707, 366 A.2d 467, 469 (1976); *McDuffey v. Boston & Maine R.R.*, 102 N.H. 179, 181, 152 A.2d 606, 608 (1959). In

these circumstances, we conclude that the plaintiffs are entitled to a new trial. We leave it to the trial court to decide whether to impose costs, attorney's fees, witness fees, and other expenses on the defendant.

Reversed and remanded for new trial.

Hillsborough
No. 80-441

THE STATE OF NEW HAMPSHIRE

v.

RONALD CORMIER

June 12, 1981

Gregory H. Smith, attorney general (*Paul W. Hodes*, assistant attorney general, on the brief), by brief for the State.

James E. Duggan, of Concord, by brief for the defendant.

MEMORANDUM OPINION

The defendant, who had been convicted of burglary and released on probation from a criminal commitment to the New Hampshire Hospital, has appealed the revocation of his probation by *Goode, J.*, on the ground of abuse of discretion. There was evidence before the court that the defendant, after his release from the hospital, failed to report to his probation officer, was found in his hotel room with a bottle of whiskey, had made inquiries regarding the purchase of a gun, and did not notify his probation officer of a change in his address. This evidence provided a sufficient basis for the action of the court in revoking the defendant's probation, and we find no abuse of discretion.

Appeal dismissed; affirmed.