Michigan Law Review

Volume 65 | Issue 1

1966

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Michigan Law Review

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Recommended Citation

Michigan Law Review, *Insurance--Motor Vehicles--"Newly Acquired Automobile" Clause Extended to Cover Previously Owned Inoperable Vehicles*--National Indem. Co. v. Giampapa, 65 MICH. L. REV. 208 (1966).
Available at: https://repository.law.umich.edu/mlr/vol65/iss1/11

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INSURANCE—MOTOR VEHICLES—"Newly Acquired Automobile" Clause Extended To Cover Previously Owned Inoperable Vehicles—*National Indem. Co. v. Giampapa**

Plaintiff insurance company brought an action for a declaratory judgment that it be held not liable on a policy it had issued to the insured motorist. A party injured in an accident involving the insured had obtained a judgment against the insured in a suit which the insurer defended with a reservation of rights. Although a 1949 Cadillac was the "Described Automobile" in the insurance policy, the insured was driving a 1956 Ford at the time of the accident. The trial court found that during the term of the policy the Cadillac had become inoperable[1] and was replaced by the Ford which the insured had owned before the insurance policy was issued. Although the Ford had not previously been operable, it was put in working order when the Cadillac could no longer be used. The insured contended that when the 1956 Ford replaced the Cadillac, it became automatically covered under the policy's "Newly Acquired Automobile" clause,[2] since the insurance policy specifically stated that notice of a substitution need not be given to the insurer.[3] The action of the insurance company was dismissed. On appeal to the Supreme Court of Washington, *held*, affirmed, three judges dissenting. The 1956 Ford was covered by the "Newly Acquired Automobile" clause and the insurance company was liable on the policy.

The dissenters argued that an automobile is not "newly acquired" within the meaning of the insurance policy unless it is purchased subsequent to the issuance of the policy. The dissent

* 399 P.2d 81 (Wash. 1965) [hereinafter cited as principal case].

1. The term "operable" refers to whether an automobile is capable of being used on the road, *i.e.* in "working condition." Lynam v. Employers' Liab. Assur. Corp., 218 F. Supp. 383, 385 (D. Del. 1963), *aff'd*, 331 F.2d 757 (10th Cir. 1964); Brown v. State Farm Mut. Auto. Ins. Co., 306 S.W.2d 836 (Ky. Ct. App. 1957) (car without an engine held inoperable); Maryland Indem. & Fire Ins. Exch. v. Steers, 221 Md. 380, 388, 157 A.2d 803, 808 (Ct. App. 1960). Similarly, a car is inoperable while undergoing repairs. Royer v. Shawnee Mut. Ins. Co., 91 Ohio Ct. App. 356, 359, 106 N.E.2d 784, 786 (1950). Of course, while an automobile is used by someone, it is operable. Yenowine v. State Farm Mut. Auto. Ins. Co., 342 F.2d 957 (6th Cir. 1965) (used by insured's son).

2. The relevant parts of the clause are: "(4) Newly Acquired Automobile—an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household, if (i) it replaces an automobile owned by either and covered by his policy . . . ." Principal case at 83. The clause in the principal case, like all other such clauses extending automatic coverage, includes only damages resulting from the operation of the vehicle, and not those resulting from fire or theft. See note 3 *infra*.

3. The policy reads: "[B]ut such notice is not required under coverages A, B and division 1 of coverage C if the newly acquired automobile replaces an owned automobile covered by this policy . . . ." Principal case at 83. The above coverages were for property damage and bodily injury.

accords with the great weight of authority[4] which reasons that, since "newly" indicates "recently,"[5] the parties only contemplated purchases made after coverage ensued.[6] The majority of courts have held that no other reasonable interpretation of the clause is possible, and in the absence of an ambiguity a court is not authorized to add or detract from the plain language of such clauses.[7]

Despite an almost unbroken line of contrary decisions, it would appear that the approach of the principal case is in accord with public policy and with the true intent of the parties. The words "Newly Acquired," which the majority of courts have interpreted as precluding coverage of previously owned vehicles, appear only in the caption of clauses extending automatic coverage.[8] The clause merely requires that ownership be *acquired*—not acquired at a particular time—and that the vehicle replace the automobile described in the policy.[9] Captions are not indicative of the intentions of the parties to a contract,[10] since they are typically not a complete and accurate description of the contractual provisions they preface.

Moreover, the majority found that the language was subject to more than one reasonable interpretation. The term "newly," when read in light of the whole clause, may have referred to the *use* of the vehicle replacing the "Described Automobile," rather than the acquisition of *ownership*, and to "acquire" may have meant to bring into use a *means of transportation* not previously available. Under this approach, when one obtains title to an inoperable vehicle he would not be acquiring an automobile within the meaning of the policy, since the policy is only concerned with automobiles that can be driven. Finding that the clause is thus subject to these conflicting interpretations, the majority, applying the general rule of construing documents against the drafters, ruled in the insured's favor.[11]

4. *E.g.*, Yenowine v. State Farm Mut. Auto. Ins. Co., 342 F.2d 957 (6th Cir. 1965); Lyman v. Employers' Liab. Assur. Corp., 218 F. Supp. 383 (D. Del. 1963), *aff'd*, 331 F.2d 757 (10th Cir. 1964); State Farm Mut. Auto. Ins. Co. v. Shaffer, 250 N.C. 45, 108 S.E.2d 49 (1959); Providence Wash. Ins. Co. v. Hawkins, 340 S.W.2d 874 (Tex. Civ. App. 1960); see 7 APPLEMAN, INSURANCE LAW & PRACTICE § 4293 (1962); 12 COUCH, INSURANCE 2D § 45:193 (1964). See also Terbell, *Developments in Standard Automobile Liability Coverage*, 35 NEB. L. REV. 363, 370 (1956).

5. Howe v. Cromley, Jones & Cromley Co., 44 Ohio L. Abs. 115, 119, 57 N.E.2d 415, 418 (Ct. App. 1944).

6. Brown v. State Farm Mut. Auto. Ins. Co., 306 S.W.2d 836, 837 (Ky. Ct. App. 1957).

7. Fullilove v. United States Cas. Co. of N.Y., 240 La. 859, 125 So. 2d 389 (1960). One court, however, found the same language to be ambiguous and construed it to cover an automobile acquired in the interim between the filing of an application for insurance and the date upon which the policy became effective. Boston Ins. Co. v. Smith, 149 So. 2d 68 (Fla. Dist. Ct. App. 1963).

8. See note 2 *supra*.

9. See note 2 *supra*.

10. *E.g.*, Continental Cas. Co. v. Trenner, 35 F. Supp. 643 (E.D. Pa. 1939); Dodson v. Newark Ins. Co., 143 S.E.2d 445 (Ga. Ct. App. 1965).

11. *E.g.*, Conn v. Walling, 186 Kan. 242, 349 P.2d 925 (1960). This rule is particu-

However, even absent an ambiguity, the decision in *Gaunt v. John Hancock Mut. Life Ins. Co.*,[12] indicates that the inequity resulting from a literal reading of the terms of an insurance contract might justify a court's ignoring those terms and construing the provisions in a manner consistent with the understanding of the insured. The *Gaunt* court, while admitting that it might be doing violence to the language of the life insurance policy before it, felt compelled to interpret the policy as a layman would, in order to protect the insured. A concurring opinion, urging the court to take an additional step, stated that the court should not even attempt to interpret the language of the provision in dispute, for interpretation in a given case would only perpetuate uncertainty in insurance contracts.[13] It further suggested that the court's decision should be based *solely* on the inequity which would result if the insured were not protected in his interpretation of the language of the disputed provision. Thus, in the principal case, if it were reasonable for the insured to consider the replacement automobile included under the automatic coverage clause, the court, on the basis of the above authority, would have been justified in reaching its decision regardless of whether an ambiguity existed.

Public policy would also appear to favor the approach taken in the principal case. As mentioned above, an insured party might interpret the clause extending automatic coverage as including a previously owned but inoperable vehicle that replaced a "Described Automobile." He would, therefore, begin operating the replacement car without notifying the insurer of the substitution. In the event of an accident, if the clause were construed against the insured, not only would he be deprived of protection because he was misled by the clause, but, in addition, an injured person might be denied adequate compensation. Rather than subjecting these two parties, neither of whom was in a position to alter the terms of the insurance contract, to such consequences, public policy would seemingly favor holding the insurance company liable.

Extending insurance coverage as quickly as possible would appear to be in the best interest of the insurer, the insured, and the public.[14] From the standpoint of the insurer, the automatic exten-

larly appropriate in the case of insurance policies where the insured has little or no power to alter the terms of the policy.

12. 160 F.2d 509 (2d Cir.), *cert. denied*, 331 U.S. 849 (1947). The case involved a suit by the beneficiary of a life insurance policy. The main issue was whether the policy was effective upon completion of the medical examination or upon acceptance of the policy by the company. The court held that although the language would seem to say that the policy must first be accepted by the insurance company, the insured should be protected in his reasonable reliance since the medical examination had been passed and a premium had been paid.

13. 160 F.2d at 603.

14. See Home Mut. Ins. Co. of Iowa v. Rose, 150 F.2d 201 (8th Cir. 1945); Maryland Cas. Co. v. Toney, 178 Va. 196, 16 S.E.2d 340 (1941).

sion of coverage eliminates the need for the insured to change the policy when replacing the "Described Automobile," and therefore removes an opportunity to change insurance companies.[15] The insured would be afforded immediate financial protection. Finally, a person injured in an accident involving the replacement automobile who had a valid claim for recovery would also be assured of compensation since the insurer would be liable from the moment that the vehicle comes into use. Recognizing this community of interests, the insurance companies have extended automatic coverage to cars purchased after issuance of a policy. The same factors that prompt an insurance company to extend such coverage to a newly *purchased* automobile, however, are equally applicable to the situation in the principal case. There is a similar need for the immediate protection of the insured and the public, and the risk of liability to the insurer is not increased,[16] for in both cases there would be only one vehicle in operation at any given time. In the principal case, for example, the previously owned automobile (Ford) was inoperable until it replaced the "Described Automobile" (Cadillac), and thereafter the "Described Automobile" was not used. The opportunity for fraud does not appear to be any greater in this situation than when the second vehicle has been purchased after the issuance of the policy. In both cases the burden would be upon the insured to show that two automobiles were not being used simultaneously, although the nature of the insured's proof would be different. When the insured owned both cars before the issuance of the policy, he would have to show that the vehicle which was not described in the policy was inoperable until it replaced the "Described Automobile," and that thereafter the "Described Automobile" was not used.[17] The condition of the replacement car is unimportant, because any car

15. This advantage to the insurance company was recognized in Quaderer v. Integrity Mut. Ins. Co., 263 Minn. 383, 388, 116 N.W.2d 605, 609 (1962).

16. Boston Ins. Co. v. Smith, 149 So. 2d 68, 71 (Fla. Dist. Ct. 1963).

17. There are other possibilities involving replacement which might arise. The first is where the previously owned automobile, not described in the policy, was in working order but not used until the described automobile became inoperable. Here it would seem that the previously owned automobile should not be covered for the possibilities of fraud on the insurance company would be too great. The insurance companies would be offered no protection against simultaneous operation of both cars and, in effect, both would be covered. However, a simple test to determine whether coverage should be extended would be licensing. That is, if the previously owned car were licensed before replacement, insurance should not be extended, while if the replacement automobile were not licensed, there would seem to be no reason for denying coverage. Second, there is the possibility that the insured might replace the described automobile with one he already owned, but which had been previously insured by another company. Should the insured choose to adopt this course of action and cancel the policy originally covering the substitute vehicle, there would seem to be no reason for not extending coverage to this car under the automatic renewal clause; only one car would be covered at any given time, and there would be scant opportunity for fraud, for the existence of previous insurance coverage of the replacement automobile could be easily determined.

purchased as a substitute after the issuance of the policy would unquestionably be covered.[18] Indeed, if the insured had sold his 1956 Ford, and, after obtaining the policy, repurchased the car as a substitute for the Cadillac, the Ford would have been covered.[19] If, however, insurance companies believe that the interpretation of the principal case provides too great an opportunity for fraud, they can apply to the insurance commissioner for permission either to eliminate the "Newly Acquired Automobile" clause, or to require notice of a substitution before coverage is extended.

In the interests of equity, the insured's reasonable interpretation of the terms of his insurance policy should be accepted, and in the interest of society, those injured in automobile accidents should be assured of adequate compensation. In the principal case, the court protected both interests without placing undue, or even increased, burdens upon the insurer.

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18. See, *e.g.*, Yenowine v. State Farm Mut. Auto. Ins. Co., 342 F.2d 957 (6th Cir. 1965).

19. See Hardt v. Travelers Fire Sur. Co., 8 Pa. D. & C.2d 109 (C.P. 1955).