

Insurance - Family Combination Policy - Interpretation of Owned Automobile Clause

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Repository Citation

Wendell G. Linsay Jr., *Insurance - Family Combination Policy - Interpretation of Owned Automobile Clause*, 23 La. L. Rev. (1963)

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INSURANCE — FAMILY COMBINATION POLICY — INTERPRETATION
OF OWNED AUTOMOBILE CLAUSE

Plaintiff insurance company sought judicial declaration that liability coverage under its family combination automobile policy did not extend to an automobile not described in the policy. The automobile involved belonged to the insured's wife but was driven by the insured at the time of the accident.¹ The district court ruled against plaintiff but the court of appeal reversed, holding the wife's car was a "non-owned automobile," but not of a type afforded coverage by the policy.² The Supreme Court reversed and reinstated the district court's judgment. *Held*, since the policy's definition of "named insured" included both the insured and his spouse, and "owned automobile" was defined as an automobile owned by the named insured, the wife's automobile, although not named therein, was within the policy's coverage for liability arising out of the use of the owned automobile. *Indiana Lumbermen's Mut. Ins. Co. v. Russell*, 243 La. 189, 142 So. 2d 391 (1962).

The Family Combination Automobile Policy provides two basic types of coverage — for "owned" and "non-owned" automobiles. Under its "owned automobile" clause it undertakes to provide coverage for liability incurred while use is made of the owned automobile³ by the named insured, any resident of the

the promise of immunity made a part of the record showing approval by the court; but such approval should not be mandatory.

1. Although the policy was issued prior to the insured's marriage and his consequent access to his wife's car, it had subsequently been renewed; thus, it would seem the wife's automobile could not qualify as one newly acquired. The possibility of it being so was not discussed in the majority opinion in the instant case. For coverage of newly acquired automobiles see note 9 *infra*.

2. The "non-owned automobile" afforded coverage in the family policy is defined as "an automobile . . . not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile." See Hartford Form 8080.

3. The policy in this case is one of the earlier family policies which provided that an "owned automobile" is an "automobile . . . owned by the named insured . . ." The more recent forms define "owned automobile" as:

"(a) . . . [an] automobile described in this policy for which a specific premium charge indicates that coverage is afforded,

"(b) a trailer owned by the named insured,

"(c) . . . [an] automobile ownership of which is acquired by the named insured during the policy period, provided

"(1) it replaces an owned automobile as defined in (a) above, or

"(2) the company insures all . . . automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

"(d) a temporary substitute automobile."

same household, and any other person using such automobile with the permission of the named insured.⁴ Under the "non-owned automobile" clause it seeks to provide coverage for liability incurred by the named insured or any relative residing in the same household even while using a non-owned automobile.⁵ The policy's basic purpose is to provide insurance against liability, not only to operators of his owned automobile, but also to the insured and the members of his family, whether the automobile used is one owned by himself or another person.⁶ However, in order to keep the insurer's risk exposure commensurate with the premiums charged, owned automobile coverage is limited by a declaration that the total number of automobiles owned by the named insured on the effective date of the policy is not to exceed the number described therein.⁷ Furthermore, non-owned automobile coverage is limited by defining non-owned automobiles as those "not owned or furnished for the regular use of either the named insured or any relative."⁸ Without such limitations, a policy with premiums calculated to cover only one automobile might afford protection to all automobiles owned or regularly

4. One of the more recent Family Automobile Policy forms, which is only slightly changed from its predecessors, provides in part:

"The following are the insureds under Section I:

"(a) With respect to the owned automobile,

"(1) the named insured and any resident of the same household,

"(2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his actual use thereof is within the scope of such permission, and

"(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;

"(b) With respect to a non-owned automobile,

"(1) the named insured,

"(2) any relative [who also must be a resident of the same household], but only with respect to a private passenger automobile or trailer, provided his actual permission or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and . . ." See Hartford Form 8080.

5. See note 4 *supra*; the definition of a non-owned automobile is in note 2 *supra*.

6. See Parcher, *The New Family Automobile Policy*, 24 INS. COUNSEL J. 13 (1957).

7. See *Mallitz v. Bankers Fire & Marine Ins. Co.*, 204 F. Supp. 307 (E.D. La. 1962); *Preferred Risk Mut. Ins. Co. v. Continental Ins. Co.*, 172 Neb. 179, 109 N.W.2d 126 (1961).

8. See the policy definition of a non-owned automobile in note 2 *supra*; *Lalos v. Tiekler*, 103 N.H. 292, 170 A.2d 843 (1961); *Carr v. Home Indem. Co.*, 404 Pa. 27, 170 A.2d 588 (1961). The same held true for the Standard Automobile Policy. See *Lumbermen's Mut. Cas. Co. v. Pulsifer*, 41 F. Supp. 249 (S.D. Me. 1941); *Rodenkirk v. State Farm Mut. Auto. Ins. Co.*, 325 Ill. 421, 60 N.E.2d 289 (1945); *Letteff v. Maryland Cas. Co.*, 91 So.2d 123 (La. App. 1st Cir. 1957), 18 LA. L. REV. 206; *Thornbury, Coverage v. Use of Other Automobiles of the Standard Automotive Combination Policies*, 17 INS. COUNSEL J. 383 (1950).

used by the named insured or members of his family.⁹

Inasmuch as an owned automobile was defined as one owned by the named insured, and the definition of named insured included the insured's spouse, the court in the instant case found the wife's car was intended to be an owned automobile covered by the policy. This intent was held not to be nullified by the declaration of the total number of owned automobiles. The court also cited with approval the case of *Lejeune v. State Farm Mut. Ins. Co.*,¹⁰ which held that policies were to be construed so as to be consistent with the rule of the Automobile Casualty Manual for Louisiana prescribing that if all owned automobiles were not to be insured an endorsement must be attached.¹¹ It noted that

9. See *Campbell v. Aetna Cas. & Sur. Co.*, 211 F.2d 732 (4th Cir. 1954); *Lumbermen's Mut. Cas. Co. v. Pulsifer*, 41 F. Supp. 249 (S.D. Me. 1941); *Home Ins. Co. v. Kennedy*, 52 Del. 42, 152 A.2d 115 (1959); *Thornbury, Coverage v. Use of Other Automobiles of the Standard Automotive Combination Policies*, 17 INS. COUNSEL J. 383 (1950); Annot., 86 A.L.R.2d 937 (1962).

Both temporary substitute automobiles and newly acquired automobiles are provided coverage under the owned automobile clause by including them within the definition of an "owned automobile." The policy form further defines a "temporary substitute automobile" as "any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction." See *Government Employees Ins. Co. v. Thomas*, 357 S.W.2d 548 (Ky. 1961); *Fullilove v. United States Cas. Co.*, 240 La. 859, 125 So.2d 389 (1961), 21 LA. L. REV. 835. For other policies to the same effect, see those involved in *Canal Ins. Co. v. Brooks*, 201 F. Supp. 124 (W.D. La. 1962); *McKee v. Exchange Ins. Ass'n*, 120 Ala. 690, 120 So.2d 690 (1960); *Little v. Safeguard Ins. Co.*, 137 So.2d 415 (La. App. 3d Cir. 1962); *Mid-Continent Cas. Co. v. West*, 351 P.2d 398 (Okla. 1960); *Harte v. Peerless Ins. Co.*, 183 A.2d 223 (Vt. 1962).

For coverage of newly acquired automobiles provided by the more recent family policy forms, see part (c) of the definition of an owned automobile in note 3 *supra*; *Quaderer v. Integrity Mut. Ins. Co.*, 116 N.W.2d 605 (Minn. 1962); *Mathews v. Glen Falls Ins. Co.*, 192 N.Y.S.2d 811 (1959). For other policies to the same effect, see *Commercial Standard Ins. Co. v. Universal Underwriters*, 282 F.2d 24 (10th Cir. 1960); *Canal Ins. Co. v. Brooks*, 201 F. Supp. 124 (W.D. La. 1962); *Mullen v. Farm Bureau of LaSalle County*, 21 Ill. App.2d 280, 157 N.E.2d 679 (1959); *Norris v. Allstate Ins. Co.*, 34 N.J. 437, 170 A.2d 33 (1961); *Clow v. National Indem. Co.*, 54 Wash.2d 198, 339 P.2d 82 (1959); *APPLEMAN, INSURANCE* § 4293 (1962).

10. 107 So.2d 509 (La. App. 1st Cir. 1959).

11. The policy involved in the *Lejeune* case was a standard policy outstanding on the effective date of the new Family Automobile Policy in Louisiana (October 1, 1956). Pursuant to a directive from the Casualty and Surety Division of the Louisiana Rating Commission, Bulletin 195, August 27, 1956, the insurer had agreed with the Division to interpret outstanding standard policies as affording the broader coverage of the family policy. The court in *Lejeune* blandly stated that a specific endorsement *must* be attached to the family policy in order to exclude any second automobile owned by the insured. 107 So.2d at 524. Although it was not specifically mentioned, the court evidently had reference to the exclusionary endorsement rule of the Automobile Casualty Manual (not to be confused with Bulletin 195 of the Division instructing that outstanding policies would be construed as providing the broader coverage of the new family policy). Reasoning that the policy now provided the coverage of the family policy and that the family policy required an endorsement to exclude an owned automobile, the court

here there was no such endorsement. The court further reasoned that if coverage only extended to the automobile described in the policy there would be no need for the provision requiring the insured to notify the insurer of his acquisition of another vehicle;¹² thus, the policy must have contemplated coverage of such described automobiles.

Justice Hawthorne, dissenting, maintained there was no intent that the policy's coverage should extend to automobiles *owned* by the named insured on the *effective date* of the policy and not so declared by him, relying on the policy provision that unless otherwise stated the number of automobiles owned on the effective date of the policy did not exceed the number of those described therein; and that the premium in the instant case was based on the insured's ownership of one car, not two. The dissenting Justice further argued that the provision requiring notice of newly acquired automobiles had reference only to automobiles acquired during the policy period, thus indicating no intent to insure owned vehicles acquired before the effective date of the policy.¹³ As to the rules of the Automobile Casualty Manual, the Justice maintained they were not a part of the insurance contract and should not be decisive of its meaning.¹⁴

It may be arguable that due to its definition of an "owned automobile" the policy was ambiguous, and thereby sustain the majority's finding that it should be construed in favor of the insured.¹⁵ However, it is submitted that the view taken by the

held that since there was no endorsement issued, the policy on a 1955 automobile provided coverage for a 1947 automobile which was owned by the named insured at the time of the issuance of the policy and for which no premium was paid.

12. This provision, under the heading of "Premium," is inserted so that there might be a corresponding premium adjustment.

13. 142 So. 2d at 395.

14. *Id.* at 396. While it appears that the Commissioner of Insurance has authority to promulgate rules and regulations to establish reasonable minimum standard conditions for basic benefits in automobile liability insurance, see LA. R.S. 22:211, 620, 621, 622 (1950), it would seem that such authority does not include that to dictate the manner in which policies are to be construed. LA. R.S. 22:218 and 653 (1950) provide in essence that if a policy is issued not in compliance with the provisions of the Insurance Code it shall be construed in accordance with the provisions as would have applied had it been issued in compliance with the code. From reading the pertinent divisions of the Insurance Code, however, one gets the impression that the interpretation directed by these sections applies only to its statutory requirements and not to regulations issued by the commissioner.

15. The general rule is that ambiguities in insurance contracts are construed against the insurer as he has a better understanding of the subject and is the one who drafts the policy. *Toler v. All American Assur. Co.*, 237 La. 815, 112 So. 2d 623 (1959); *Oil Well Supply Co. v. New York Life Ins. Co.*, 214 La. 772, 38 So. 2d 777 (1949); *Stanley v. Cryer Drilling Co.*, 213 La. 980, 36 So. 2d 9

dissenting Justice is probably more in accord with the intent of the parties. The majority's theory would indicate that even if the insured owned several automobiles, he might take out a policy on just one and all would receive full coverage, at least in the absence of an intent to deceive.¹⁶

The particular problem presented in the instant case seems to be remedied by the use of the new policy forms which provide in substance that an owned automobile means an automobile *described in the policy*, or a newly acquired automobile which replaces a described automobile, or a newly acquired automobile in addition to the described automobile when notice is given of its acquisition within thirty days.¹⁷ Should similar problems arise in ascertaining the intention of parties to automobile liability policies, however, it is submitted that an obvious correlation between premium and risk should be among the factors carefully weighed; if premiums are based on the ownership of just one automobile, certainly neither party has reason to expect uncompensated coverage for any other owned vehicle.

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OBLIGATIONS — ERROR AS TO SUBJECT MATTER — AVOIDANCE OF INSURANCE RELEASES IN LOUISIANA

Plaintiff, injured in a collision between a train and the car driven by her husband, sought damages for personal injury from her husband's automobile insurer and the railroad. The defendant insurer pleaded *res judicata* on the basis of a purported written release obtained by the insurer from plaintiff and her husband. The defendant railroad filed an exception of no right of action based on the alleged release of the co-tortfeasor insurer.¹ Plaintiff sought to prove, by parol evidence,

(1948); *Hemel v. State Farm Mut. Auto. Ins. Co.*, 211 La. 95, 29 So.2d 483 (1947); *Muse v. Metropolitan Life Ins. Co.*, 193 La. 605, 192 So. 72 (1939).

16. LA. R.S. 22:619 (1950) provides in part that "no oral or written misrepresentation or warranty made in the negotiation of an insurance contract . . . shall be deemed material or defeat or avoid the contract or prevent it from attaching, unless the misrepresentation or warranty is made with the intent to deceive." Consequently, the presence of such intent would be necessary for the incorrect declaration to cause avoidance of the contract on a theory of warranty. See Comment, 22 LA. L. REV. 190 (1961).

17. See the definition of owned automobile in note 3 *supra*.

1. The release was granted only to the insurer of the automobile, but there was no express reservation of rights in the release to sue the railroad company.