by Lawrence Savell

Worse Than Dead

Insure That Your Restoration Is Covered

You've got everything ready. You've cleaned out the garage, determining that it does, indeed, have a floor. You've (located and) organized all your tools. You've bought whatever additional materials you'll need (and probably a lot more). You've studied more books and articles—and with more enthusiasm—than you did for any exam in school. You're ready to start fixing up that old hulk of potential that's been hibernating in less than operating condition for longer than you care to recall.

But there's one more thing you need to do: check your insurance policy.

Why? Because while your homeowner's policy may have covered the moribund vehicle, as you bring it back to life you may also be pulling the plug on its coverage under that policy.

Consider the case of *David vs. Tanksley*, decided on July 28, 2000, by the United States Court of Appeals for the Eighth Circuit.

According to the Court, in 1986, Jerry and Kay Tanksley purchased a 1965 Chevrolet Impala for personal transportation. They so used the car until 1990, when they parked it in a storage shed on their property and allowed its license and registration to expire. They thereafter never drove the Impala either on their property or on public roads. They performed no maintenance on the vehicle during this time, other than twice charging its battery and once starting its engine.

On June 15, 1995, Jonathan David contacted the Tanksleys about purchasing the Impala. In preparation for Jonathan's visit, Jerry drove the Impala from its storage area to the driveway in front of the Tanksleys' house. Jonathan arrived with his then-fiancée Nikki and asked to hear the engine run. After several unsuccessful attempts to start the engine, Jerry asked Kay to engage the starter and pump the accelerator. As Kay was doing so, Jerry poured some gasoline from a can into the carburetor. The engine backfired, and as Jerry jerked back from the car he inadvertently threw the

remaining gasoline onto Nikki, where it was ignited by flames shooting from the carburetor, severely burning her.

Nikki sued the Tanksleys, claiming that they negligently caused the fire. The Tanksleys, in turn, sued United States Fidelity and Guaranty Company, contending that Nikki's injuries were covered by a homeowner's insurance policy the Tanksleys purchased from USF&G.

The district court ruled for USF&G. Nikki and the Tanksleys agreed to a court-approved judgment of $500,000 against the Tanksleys, and jointly appealed the district court's ruling.

The Court of Appeals affirmed the ruling for USF&G.

The Court noted that "[t]he Tanksleys' homeowner's policy excludes from coverage any 'bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of motor vehicles.' The policy also provides, however, that this exclusion does not apply to' "a vehicle...not subject to motor vehicle registration which is...in dead storage on an insured location.' The parties agree that the Tanksleys' Impala was not subject to Arkansas registration requirements because the car was not driven on public highways....Thus, the only issue before us is whether the Tanksleys' Impala was in 'dead storage' on June 15, 1995. If so, the motor vehicle exclusion does not apply and USF&G is liable under the homeowner's policy for the injuries suffered by [Nikki]. If not, the motor vehicle exclusion is effective and USF&G is not responsible for [Nikki]'s injuries."

Since the interpretation of an insurance policy is governed by state law, the Court looked to a prior ruling by the Arkansas Supreme Court interpreting a similar homeowner's policy. The Arkansas court determined that the terms "dead storage" and "maintenance" were mutually exclusive: "a motor vehicle in dead storage is one which is not undergoing maintenance, while a vehicle which is undergoing maintenance cannot be in dead storage."

Having determined that "maintenance" was inconsistent with "dead storage," the question was whether the Impala was being maintained at the time of the accident. The Court of Appeals, like the Arkansas court, concluded that "the Tanksleys' attempt to start the Impala by pouring gasoline into its carburetor constituted maintenance, and thus the Impala was not in dead storage within the meaning of the Tanksleys' homeowner's policy."

"In finding that the vehicle was not in dead storage, the [Arkansas] court did not consider the vehicle's past use or intended future use, but rather focused on how the vehicle was being used at the time of the accident at issue....Thus, even assuming that the Tanksleys' Impala was not intended for transportation use," the Court of Appeals ruled there was no coverage under the terms of the policy.

The Court noted that its decision was "in accord with the conclusions reached by most other courts that have construed the terms 'maintenance' and 'dead storage' within a homeowner's policy."

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