

THE CASE OF THE MEANDERING MUSTANG

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Where could a vintage 1965 Ford Mustang lose to a Chevy Monte Carlo and an AMC Pacer? Only in a court of law.

On September 11, 1984, Dennis Shaw was driving a friend's Oldsmobile station wagon. Shaw was towing an inoperable 1965 Mustang which he had just purchased as a repair project for his son. Hiram Hall was in the Mustang and steering.

On a curve in rural McHenry County, Illinois, the Mustang, emulating its namesake, broke loose from its harness. Unrestrained, it bolted across the center line, where it was struck by an oncoming vehicle and destroyed.

Hall was injured in the accident and subsequently turned to the halls of justice, filing a declaratory judgment action, asking the court to declare who among Shaw and various insurance companies was responsible for paying his damages.

The trial court ruled that Shaw's Mustang was a "covered auto" under a policy issued to Shaw by Ansvar America Insurance Company. The court therefore required Ansvar to pay Hall for those damages attributable to the involvement of the Mustang in the accident. Ansvar appealed.

In its decision of October 24, 1990, the Appellate Court of Illinois, Second District, reversed the trial court's ruling on this point.

The Appellate Court began its analysis by noting that courts interpret insurance contracts just like they do other types of contracts. Thus, if the document is not ambiguous, the court must determine the intent of the parties solely from the language used in the document.

The Court found the terms of Shaw's policy with Ansvar to be clear and unambiguous.

The policy provided that any car "shown in the Declarations" was cov-

ered. Shaw had listed his 1972 Chevrolet Monte Carlo and 1976 AMC Pacer; he had not listed the Mustang.

However, the policy also allowed a vehicle to be "covered" if, during the policy period, Shaw had acquired it either as a "replacement" or as an "additional" vehicle.

Ansvar conceded that Shaw had acquired the Mustang during the policy period. The court thus focused on whether the Mustang qualified as a "replacement" or an "additional" vehicle.

Under the policy, if the Mustang was a "replacement," Shaw did not have to ask Ansvar to insure it, since a "replacement" vehicle automatically had the same coverage as the vehicle it replaced. If the Mustang was an "additional" vehicle, it would be covered only if Shaw asked Ansvar to insure it within 30 days after he became its owner.

With regard to "replacement," the court pointed out that the simple act of purchasing a vehicle during the policy period does not automatically make it a "replacement" vehicle generating automatic coverage. The vehicle must also have been acquired to replace a vehicle described in the policy, and that described vehicle must have been either disposed of or incapable of further service. The object of such requirements is to balance (1) the intentions of the parties at the time they agreed to the policy (to insure Shaw's two-named autos) and (2) the need for some sort of automatic continuous coverage of motor vehicles which are often bought and sold frequently. Neither the insured's intention in acquiring the vehicle, nor the operability of the named insured vehicle, although relevant, is solely determinative.

The court noted that Shaw had "disposed of" the Pacer by a prior transfer of title. However, in his deposition, Shaw admitted that he had not intended the Mustang to be a "replacement" vehicle

for the Pacer. Instead, he testified that he had purchased it for his son to restore as a learning project. The court additionally pointed to "undisputed evidence" that the Mustang itself had been inoperable before the accident, and had been acquired in trade for Shaw's son's uninsured "dirt bike."

Based on this evidence, the court concluded that the Mustang was not a "replacement" vehicle and thus not automatically covered under the Ansvar policy.

The court also concluded that the Mustang was not covered as an "additional" vehicle. The court noted that there was no evidence that Shaw had ever specifically asked Ansvar to insure the vehicle either before or after the accident.

As the Mustang was neither a "replacement" nor an "additional" vehicle under the policy, Ansvar was not required as a matter of law to provide coverage for damages caused by the Mustang.

All was not (yet) lost for Hall, however. The court did order the company that insured the Oldsmobile (which had been towing the meandering Mustang) to provide coverage for any damages caused by the involvement of the Oldsmobile.

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To some collectors the *Hall* case might be the only time that a Mustang was unable to replace a Monte Carlo or a Pacer.

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