

NO BETTER LATE THAN NEVER

BY LAWRENCE SAVELL

We have all heard the expression, "He (or she) who hesitates is lost." The law has incorporated the related notion that one must promptly take certain steps to protect his or her rights. One example is statutes of limitation, which require that claims be commenced within a specific period after an injury or some other event.

Similar concepts have developed in the law and business of insurance. A person who seeks to recover under a policy for a loss may be required by the agreement to notify the insurer of the incident within a specified time. The effect of a delayed notification in the context of an old vehicle was recently discussed by the Supreme Court of Appeals of West Virginia in *Dairyland Insurance Company v. Voshel*.

Leanne Brookover Voshel had purchased an automobile insurance policy from Dairyland. The policy identified a 1979 Chevette which Voshel owned as the covered vehicle, and listed Allen Brookover as the driver (Voshel was not licensed). It specifically provided that it could cover all cars owned by the policy holder if the holder advised Dairyland of the replacement or addition of cars within 30 days of their acquisition. The policy further stated: "When you're involved in a car accident, you or someone on your behalf must notify us as soon as possible...If you fail to cooperate or fail to promptly send us such legal papers, we may have the right to refuse you any further protection for the accident or loss."

During the policy period, Brookover was killed while driving a 1967 Chevrolet pickup truck. Brookover had purchased the pickup for cash, although the date of purchase was unclear. At the

time of the accident, the Brookovers had neither registered the pickup in their name nor advised Dairyland that they had purchased an additional vehicle to be insured.

Dairyland apparently was not advised of the accident — and that a newly-acquired vehicle was involved — until approximately two years later.

Dairyland brought a lawsuit, asking the court to determine whether there was a duty to insure and defend Voshel against claims arising from the accident. Based on Voshel's failure to notify Dairyland, the trial court ruled for the insurer, finding no such duty. Roger Wingrove, an injured passenger in the pickup, who did not have independent insurance and who had sued Voshel, appealed.

On March 12, 1993, the Supreme Court of Appeals affirmed the lower court's decision. The court began its analysis by observing that the purpose of notice provisions in an insurance policy is to give the insurer an opportunity to make a timely and adequate investigation of the circumstances surrounding the accident in question.

The court stated that providing notice is particularly crucial and prejudice from delay more likely in cases like this one, where no other insurance company was involved which would have investigated the accident. It rejected the argument that the official police investigation should be sufficient for the insurer's investigative purposes, since there may be facts relevant to the policy that the police might have little or no interest in pursuing.

The court observed that several factors must be considered in determining whether a delay in notifying an insurer will bar a claim. These include the length,

and the reasonableness, of the delay. If the delay appears reasonable based on the insured's explanation, the burden shifts to the insurer to show that the delay prejudiced its investigation and defense of the claim. Only if the insurer demonstrates such prejudice will the policy holder be held to the letter of the policy and be barred from making a claim.

Turning to the facts of the case, the court noted that Voshel had provided no explanation which would make an almost two-year delay in notification appear reasonable. Furthermore, Dairyland had presented evidence that it had been prejudiced by the delay. One of the pickup's previous owners could not be found, making it difficult to establish the chain of title. This was critical to establish whether the truck was an insured vehicle under the policy, which required notice of newly-acquired vehicles within 30 days of acquisition, since it was unknown whether the truck had been purchased more than 30 days prior to the accident.

Thus, the court affirmed the lower court's ruling denying coverage based upon Voshel's failure to notify Dairyland "as soon as possible."

The *Voshel* case illustrates the importance of promptly notifying your insurer in the unfortunate event of an accident or loss. Familiarizing yourself with the notification deadlines in your policies may save you from a costly shock down the road.

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