

The Misfortunate Montego

Was There Insurance Coverage For A Car Being Transported?

by Lawrence Savell

As regular readers of this column know, many lawsuits regarding old cars involve insurance policies and questions about the scope of coverage provided. In such cases, courts examine the language of the agreement between, and may attempt to determine the true intention and understanding of, the parties.

The case of *Bishop vs. Mid-Century Insurance Company*, decided on May 29, 1997 by the United States Court of Appeals for the Tenth Circuit, provided a recent example.

According to the Court, on November 7, 1991, Michael Bishop died in an accident allegedly caused by the negligence of Roy Rouse, who was driving a 1973 Mercury Montego owned by Virginia White at the time of the accident. Rouse owned no interest in the Montego and it was not listed as an insured auto under his policy; at the time, the Montego was not covered by any liability policy and was an uninsured vehicle under Oklahoma law. Rouse was driving the car because he had repossessed it earlier that day for the owner of a car lot. Pursuant to an agreement between White and the lot owner, Rouse was returning the Montego to White when the accident occurred.

Bishop's widow, Nadine, sued Rouse and his insurer, Mid-Century, alleging that Rouse negligently caused her husband's death. Mid-Century obtained a coverage opinion regarding the claim from a law firm, which indicated that a reasonable and good faith basis existed for denying Rouse coverage due to the "automobile business" exclusion in the policy. That exclusion stated that coverage did not apply to "[b]odily injury or [p]roperty damage for any person while employed or otherwise engaged in the business or occupation of transporting...vehicles designed for use mainly on public highways, including road testing or delivery."

After further investigation, Mid-Century denied coverage for the claim.


The District Court of Cleveland County conducted a hearing and entered judgment for Bishop against Rouse for \$750,000. Rouse agreed to assign his rights under his automobile insurance policy to Bishop in exchange for her not executing against him personally.

Bishop then filed a bad faith breach of insurance contract action seeking to recover damages under the Mid-Century policy. Bishop contended that, under an exception to the exclusion, coverage existed. The exception provided that the "automobile business" "exclusion does not apply to the ownership, maintenance, or use of your insured car by you, any family member, or any partner, agent, or employee of you or any family member." The term "your insured car" was defined to "also include any other private passenger car, utility car, or utility trailer not owned by or furnished or available for the regular use of you or a family member. But no vehicle shall be considered as your insured car unless there is a sufficient reason to believe that the use is with permission of the owner and unless it is used by you or a family member."

The district court granted Mid-Century's motion for summary judgment, dismissing the claim. It ruled that coverage was properly excluded under the terms of the policy. It found that Bishop's claim that Rouse had a sufficient reason to believe that his delivery of the vehicle was with the owner's permission was in direct contradiction of the undisputed fact that Rouse was unsure who owned the vehicle. Further, the court found that even if the lot owner and White "agreed" that the car would be returned and that Rouse was aware of the agreement, the facts did not establish that Rouse was driving the Montego with the owner's permission. Finally, it held that Rouse was "employed

or otherwise engaged in the business of transporting" vehicles at the time of the accident. Bishop appealed.

The Court of Appeals affirmed the ruling for Mid-Century. It concluded that whether or not Rouse had a reasonable belief that he drove the car with the owner's permission, Mid-Century properly denied coverage under the automobile business exclusion. "It is undisputed that Rouse was engaged in the business of transporting automobiles at the time of the accident and that the policy excludes from coverage 'bodily injury or property damage' for any person while employed or otherwise engaged in the business or occupation of transporting...vehicles designed for use mainly on public highways, including road testing or delivery. The policy's permissive use clause does not override the plain language of the automobile business exception. Assuming arguendo that Rouse had a reasonable belief that his use of the vehicle was with the permission of the owner, interpreting such a belief to obviate the 'automobile business' exclusion would render that exclusion meaningless."

The Court also affirmed the lower court's granting of summary judgment to Mid-Century on the bad faith issue. "Mid-Century had a reasonable and legitimate position for denying coverage. Mid-Century conducted an investigation, determined that Rouse was delivering the automobile at the time of the accident and obtained the advice of outside counsel before denying coverage." 

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at www.carcollector.com.