

THE CASE OF THE PORTABLE POLICY

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As we all know, life is a risky business. Everyone faces risks of illness or death, and damage or loss of property. Over the years, the concept of *insurance* has developed to help reduce the effects of those risks, by sharing the financial impact of adverse events among a large population so the cost to each person is manageable.

Responding to the myriad of potential risks, various types of insurance have evolved to provide coverage for particular potential losses. Indeed, some carriers offer policies specifically designed to cover risks involved in the ownership of collector cars. Sometimes, however, disputes arise over the exact scope of coverage that such policies provide.

The recent case of *St. Paul Mercury Insurance Company v. Zastrow* involved such a situation.

Louis Zastrow owned 29 antique and collector vehicles. Zastrow had purchased an Antique Automobile Insurance Policy from St. Paul. The policy covered, and limited its liability coverage to users of, those specified vehicles.

On April 2, 1989, an uninsured motorist tragically struck and killed Zastrow's wife and son as the two walked along a road near the family's home. The walk did not relate to the use of any vehicle owned by Zastrow or the decedents.

Zastrow sought payment from St. Paul under the uninsured motorist coverage ("UMC") provisions of the policy.

St. Paul disagreed, claiming that the policy provided different (*i.e.*, narrower) coverage for the antique and collector vehicles than a standard comprehensive automobile insurance policy — for a substantially lower premium than that charged for a standard policy. Unlike a standard policy, Zastrow's policy limited UMC to persons who *occupied* an insured antique or collector vehicle at the time of their injury.

St. Paul filed an action asking a court to declare that the deaths were not covered by the policy's UMC. The Circuit Court for Marathon County ruled for the insurer. Zastrow appealed.

On February 13, 1992, the Wisconsin Supreme Court (which had granted St. Paul's request to bypass the intermediate appeals court) reversed the lower court's decision and ruled for Zastrow.

The Supreme Court observed that, under Wisconsin law, every insurance policy issued in the state must include UMC. However, the court conceded that the law did not expressly prohibit an insurance company from limiting UMC to occupants of the vehicle for which the policy was written.

The court examined the reasons why the Wisconsin lawmakers had required UMC provisions. "The legislature mandates uninsured motorist coverage to ensure a source of payment to persons injured by negligent, financially irresponsible motorists. The purpose of uninsured motorist coverage is, simply put, to assure that the injured person will be in the same position in the event of injury attributable to the negligence of the uninsured motorist as the insured would be if he or she were injured through the negligence of a motorist carrying liability insurance." Given this purpose, courts often interpret UMCs as "portable" and "person oriented" rather than "vehicle oriented," and thus generally do not permit limitations or exclusions in such coverage.

The court acknowledged that the type of policy involved here was unique in that it was confined to vehicles which only occasionally took to the highway and which were used primarily for show, not transportation. Moreover, such policies were designed to solve the problem that if car collectors were forced to insure their cars under standard automobile insurance policies, they

would have to pay substantial premiums for vehicles they rarely drove. On the other hand, if they had no insurance on these vehicles, they could face the possibility of enormous losses if such a vehicle were involved in an accident.

Considering the arguments on both sides, the court decided in Zastrow's favor. It ruled that the St. Paul policy's limitation of UMC only to persons who occupied an insured antique or collector vehicle at the time of their injury violated the UMC protection mandated by Wisconsin law. It concluded that declaring the limitations valid would contravene the important purposes underlying the UMC statute. The court advised that "If limited uninsured motorist coverage is to be permissible for antique or collector cars or any other special or limited use vehicles, the legislature must provide it."

In a strong dissent, three judges disagreed with the ruling, arguing that special insurance policies designed for antique and collector automobiles are indeed different from standard policies and should therefore be treated differently.

As always, it should be remembered that other courts interpreting the laws of other states might come to conclusions different from those of the majority of the Wisconsin Supreme Court in the *Zastrow* case. Nevertheless, the case does illustrate a universal point: The scope of coverage of an insurance policy, as ultimately determined by a court of law, may not necessarily be what you (or your insurer) thought it was.

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