

## Personal Business

### When Is A Pickup Truck An Automobile?

by Lawrence Savell

It is probably not blasphemous to say that, on occasion, an old car can break down. For those collectors who use their old cars as regular means of transportation, a vehicle on the disabled list requires that a substitution be made. Such a "call to the bench" may have implications, such as whether and to what extent the insurance coverage on the old car may extend to the "vehicle to be named later."

Such issues were involved in *Estate of Carey Leeman vs. Eagle Insurance Company*, decided on March 9, 1998 by the Superior Court of New Jersey.

According to the court, on June 3, 1994, Carey Leeman dropped off his personal car, a 1968 Chevrolet, at a repair shop. That same day, Leeman's employer, Eastern States Property Management Service (ESPMS), loaned him a Ford Ranger XLT pickup truck "because [Leeman's]...vehicle was broken down." ESPMS stated it was not common practice for it to loan vehicles to employees; however, an exception was made and the Ford was loaned to Leeman so he could get to and from work.

Four days later, on June 7, 1994, Leeman was involved in a single-vehicle accident while driving the pickup. Leeman suffered fatal injuries when, while on his way home, the Ford went out of control, left the roadway, and flipped over.

At the time of the accident, Leeman's Chevrolet was insured by Eagle Insurance Company. The policy included \$250,000 in Personal Injury Protection ("PIP") coverage, which Leeman's estate sought from Eagle. Eagle argued that PIP benefits were not payable because Leeman was injured while driving a commercial vehicle he did not own or regularly use.

Leeman's estate filed a Complaint for Declaratory Judgment, seeking an order "declaring [it]...entitled to PIP benefits together with any and all recoverable

attorney's fees, interest and costs of suit..." Eagle denied the allegations. Both sides moved for summary judgment, asking the court to dismiss the case without a trial. The trial judge ruled that the estate was entitled to PIP benefits. Eagle appealed. The Superior Court affirmed the order declaring PIP coverage for Leeman's estate. (It reversed the monetary portions of the order.)

The court focused on whether the Ford pickup qualified as a covered "automobile." "Under the language of decedent's insurance policy, the pickup driven by decedent at the time of his accident would fall under the definition of a private passenger automobile as long as it was not customarily used 'for business, occupational, or professional purposes; other than farming or ranching.' This is different language than the definition of 'automobile' under N.J.S.A. 39:6A-2(a)" (the New Jersey PIP statute).

"Under N.J.S.A. 39:6A-2, 'automobile' is defined as: 'a private passenger automobile or a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured [as we will see, the last three words are critical] other than farming or ranching.'"

"The policy language does not restrict the commercial vehicles exception to those used in the occupation, profession, or business of the insured [there they are again], as the statute limits it. All insurance policies must conform with statutory mandates, and additional exclusions or

eligibility requirements may not be imposed. The PIP statute controls when it conflicts with an insurance policy, even if the Insurance Commissioner approves the policy's language...The lower court properly found that policy language "has to be conformed or deemed to be conformed with the statute." Thus, the basic issue on appeal is whether the pickup truck, as used by decedent at the time of the accident, is an automobile as defined under N.J.S.A. 39:6A-2(a)."

"The plain language of N.J.S.A. 39:6A-2(a) provides that pickup trucks may be considered 'automobiles' unless they are customarily used in the occupation, profession, or business of the insured, other than for farming or ranching...The Ford Ranger is a 'pickup' truck and the only issue is whether the truck was customarily used in decedent's occupation, profession, or business. The decedent did not customarily use the Ranger as part of his daily work routine. The record shows that decedent's employer specifically allowed decedent to borrow the car "because his vehicle was broken down" and because decedent needed to get to and from work. Decedent used the vehicle for this purpose for four days. His use of the vehicle was no more associated with his occupation, profession, or business than if he had simply availed himself of public transportation...There is no evidence that decedent was using the vehicle in direct relation with his occupation, profession, or business...Thus, the pickup truck used by decedent at the time of his accident is an automobile as defined under N.J.S.A. 39:6A-2(a)."



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