

A Matter Of Owner

Make Sure You Have All Your Ducks In A Row

by Lawrence Savell

Prior installments of this column have explored whether a particular insurance policy provided coverage for a specific accident. The recent case of *Liberty Mutual Insurance Company vs. Devlin*, decided on March 26, 1998 by the Superior Court of Delaware, focused on whether the old vehicle involved was owned by the insured at the time of the accident.

According to the court, on March 23, 1991, Shaun Bloxsom was driving a 1966 Ford F-100 pickup truck, with Barry Devlin as a passenger. While traveling southbound on Route 13 in Kent County,

Delaware, the F-100 overturned and struck a tree, tragically killing both.

Devlin's parents, Robert and Helen Devlin, sued Phyllis Spiering and Donald Bloxsom, alleging Spiering owned and that she had negligently entrusted the operation of the F-100 to Shaun.

Phyllis had purchased automobile insurance from Liberty. However, because Phyllis was not the registered owner of the vehicle at the time of the accident, Liberty sued to determine if Phyllis was entitled to coverage.

Liberty's policy provided coverage from March 20, 1990 to March 20, 1991,

and listed a 1990 Ford Probe as the sole vehicle. Liberty's renewal offer was accepted by a payment received on March 26, 1991. "Even though payment was received after the renewal date (and after the accident), the renewal was validly made and Phyllis Spiering suffered no lapse in coverage." The renewed policy ran from March 20, 1991 to March 20, 1992, and again listed the Probe as the sole vehicle.

At the time of the accident, registered title to the F-100 was in the name of Shaun's former girlfriend. When they broke up in January 1991, she signed

the title to him so that it could be registered and insured in his name. When Shaun began dating Phyllis' daughter, Sheri, he arranged to sell the F-100 to Phyllis for \$100. With Phyllis' authorization, Sheri signed Phyllis' name on the title as the "Buyer" on February 28, 1991.

Sheri notified Phyllis' insurance agent that the vehicle needed to be added to Phyllis' Liberty policy. The agent prepared a "Policy Change Request" form for submission to Liberty. It indicated that the change was made, and coverage for the vehicle provided, as of March 6, 1991, "subject to all terms and conditions of the policy and the rules of the Automobile Insurance Plan of this State." The request was submitted to Liberty on or about March 21, 1991. The agent issued an Insurance Identification Card indicating that coverage was provided for the vehicle by Liberty.

Shaun apparently delivered the vehicle to Sheri (Phyllis' authorized agent), but continued to work on and use it with Phyllis' permission. Payment of the \$100 purchase price did not occur before the accident.

Liberty denied coverage to Phyllis,

arguing that it does not insure a vehicle until the policyholder becomes the owner. Liberty argued that Phyllis had not obtained legal title to nor registered the vehicle in her name before the accident and therefore was not an owner as contemplated in the policy.

The court observed that the policy did not define the term "owner." It therefore had to look elsewhere, and considered the definition of that term in various related statutes.

It concluded: "When the Certificate of Title was endorsed by the seller and the buyer, either personally or through authorized agents, legal title to the car passed...[Shaun's ex-girlfriend], at least as of February 28, 1991, was no longer the legal title owner. Phyllis Spiering had assumed title subject to certain obligations to the State and to her insurer. On the facts of this case, no one else could validly assert a legal interest in the vehicle contrary to Phyllis Spiering and no one was holding title for her benefit. Phyllis Spiering as a 'transferee of a Delaware registered vehicle,' had a duty to 'make application for a new Certificate of Title immediately, but in no case more than 30

days after purchase of said vehicle.' In the terms of the policy, Phyllis Spiering had become owner during the policy period."

"Liberty Mutual had every right to insist on proof of re-titling within the 30 day legal limit. But the 30 days had not expired on the date of the accident. It would be pure sophistry to hold that coverage was retroactively voided because the appropriate procedures were not followed after this accident. The vehicle was destroyed in the accident. The court should not require Phyllis Spiering to perform a useless act on the pretext that the act has some artificial value for insurance purposes."

The court therefore denied Liberty's Motion for Summary Judgment, and granted the Devlins' Motion For Summary Judgment.



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