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Insurance—Pickup Truck is not a Private Passenger Automobile

Craig R. McKay
West Virginia University College of Law

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CASE COMMENTS

statements raise the issue of whether the Court determined the question solely on procedural grounds or whether they based their decision on policy questions. If the former is true, the effect of Sniadach will be far-reaching; however, if the latter is true, then Sniadach will have a much more limited effect.

David Jeffrey Millstone

Insurance—Pickup Truck is not a Private Passager Automobile

Robert L. Laraway, the insured, was killed while riding as a passenger in a 1966 Chevrolet pickup truck. The vehicle was owned by a Pennsylvania construction corporation which employed him as a foreman. The accident took place while Laraway was going to work on Monday, September 11, 1967. Plaintiff, as beneficiary of an accident insurance policy, sought a recovery and the insurance company disavowed liability. The Circuit Court of Monongalia County, sitting in lieu of a jury, rendered a judgment of $12,000 in favor of plaintiff. Defendant appealed. Held, reversed and remanded. The pickup truck was not a private passenger automobile within the meaning of the clear and unambiguous words of the insurance policy's coverage. Laraway v. Heart of America Life Ins. Co., 167 S.E.2d 749 (W. Va. 1969).

The Laraway case introduced an issue which, had not previously been considered by the West Virginia court. The problem centered around the interpretation of the policy coverage as applied to the vehicle in which Laraway was riding, the 1966 Chevrolet pickup truck. On the face of the policy appeared the following language: "THIS IS A LIMITED POLICY READ IT CAREFULLY." The restrictive language in the policy said that the policy covered "bodily injuries to the insured resulting in his death while actually riding in or driving 'any private passenger automobile.'" The policy then defined "the word 'automobile' and the words 'a private


2Id.
passenger automobile' as follows: 'As used in this policy, automobile means a land vehicle of the type commonly and ordinarily known and referred to as automobile, and a private passenger automobile means a private automobile of the private passenger design designed primarily for transporting persons.'

The court, in excluding Laraway from coverage, relied chiefly on the principle that the provisions of the policy were clear and unambiguous and not subject to a more favorable construction for the insured. The nexus of the problem was the interpretation of the statement "a private passenger automobile means a private automobile of the private passenger design designed primarily for transporting persons." Essentially, the court ruled that these words on their face disqualified Laraway from coverage because the pickup truck was not such a vehicle.

Apparently only one other court has been faced with the same issue involving a pickup truck and identical policy language. In English v. Old American Ins. Co., the Missouri court reached a similar result by means of entirely different reasoning. After a thorough study of all the authorities the court in English said the policy definition of "private passenger automobile" did not dispel the ambiguity. The Missouri court made the further observation that it was a futile task to fix "an immutable classification upon such a versatile vehicle as a half ton pickup." The issue was ultimately resolved by holding that the phrase "designed primarily for transporting persons" should be interpreted from the standpoint of the manufacturer. It was the primary purpose for which the vehicle was manufactured that was controlling and not how the vehicle was used by the purchaser.

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The problem confronted by the West Virginia and Missouri courts was not a novel one. Other jurisdictions have had difficulty in determining the status of pickup trucks in relation to the varied language of accident insurance policies. Generally, the courts have been called upon to decide whether the policy is broad enough to include or narrow enough to exclude a plaintiff from coverage. It is in this area of limiting the scope of the policy that the vehicle plays a principal role. Specifically, the issue has been whether a pickup truck is a *private passenger automobile* under the language of the policy.

As an aid to interpretation, the courts have often relied upon various rules of construction. Perhaps the most prominent principle states that unambiguous policy language is to be given its plain and ordinary meaning. In its application neither party is to be favored and the expressed intent governs. Under this principle a 1950 Studebaker pickup truck was found not to be a *private passenger type automobile*. A Louisiana court used the same principle as a basis for excluding a plaintiff from coverage on the grounds that the pickup truck was not a *private automobile of the exclusively pleasure type*.

The Laraway decision then, can be characterized as an amplification of this well settled principle of law. However, this is not to say that this “settled principle” has been applied with uniform consistency. The plain and ordinary meaning of words in one jurisdiction may not be so clear in another.

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12La Fon v. Continental Gas. Co., 241 Mo. App. 802, 259 S.W.2d 425 (1953). The court said that in every case cited by the plaintiff a recovery was permitted because of ambiguity within the policy. However, the court found that there was no such ambiguity in the present policy. (emphasis added).
14Larway v. Heart of America Life Ins. Co., 167 S.E. 2d 749, 751 (W. Va. 1969). The court said, "That language of an insurance contract which is clear and unambiguous cannot be construed or interpreted but must be applied in accordance with the intent expressed therein."
In *Aetna Life Ins. Co. v. Bidwell*, the Tennessee court took judicial knowledge of the fact that in that state a pickup truck was commonly used and regarded by many as a *private passenger automobile of the pleasure car type*.

Another axiom receiving extensive application is that pertaining to ambiguity. Briefly stated, a liberal construction of the policy in favor of the insured is warranted if the language is unclear or ambiguous. In *Schilling v. Stockel*, the Wisconsin court said that the words used to define *private passenger automobile* were neither clear nor readily understandable to the average person. Accordingly, a Studebaker pickup was held to be within the policy coverage.

In addition to those already mentioned, other factors have been given weight in arriving at a final determination. Probably foremost among them has been the manner in which the pickup truck was used. *Aetna Life Ins. Co. v. Bidwell* represents an outstanding example of a court placing emphasis on this aspect of the inquiry. The court said that the policy examined was silent as to

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192 Tenn. 627, 629, 241 S.W.2d 595, 596 (1951). The insured was on a pleasure trip when she was accidentally killed while riding in a half-ton pickup truck. The court concluded that there was "affirmative evidence, if such evidence is competent, that pickup trucks are commonly used in this State as a passenger vehicle for pleasure purposes" and that "[t]his fact is so generally known that this Court takes judicial knowledge of it." *accord*, Detmer v. United Security Ins. Co., 309 S.W.2d 713, 715 (Mo. 1958). The court said "it is generally known that such half-ton pickups are adapted for and commonly used in part as passenger cars." *Green v. Farm Bureau Mut. Auto Ins. Co.*, 139 W. Va. 475, 80 S.E.2d 424 (1954).

226 Wis.2d 525, 537, 133 N.W.2d 335, 841 (1965). The court interpreted the policy as defining a private passenger automobile as being either a station wagon, a jeep type automobile or a private passenger automobile. The court reasoned that the definition was neither enlightening nor free from ambiguity because at least part of the definition left the court defining *private passenger automobile* as a private passenger automobile. The court then said that from "the evidence as to the size, construction, appearance, actual use and customary use in the community, and comparable premium rates . . . the jury could draw the reasonable and permissible inference that the Studebaker pickup was a passenger-type automobile." (emphasis added) *Contra*, Home Indem. Co. v. Northwestern Nat'l Ins. Co., 280 F. Supp. 446 (D. Mont. 1963).

*E.g., Fidelity & Cas. Co. v. Martin*, 66 F. 2d 438 (9th Cir. 1933) (Ford Roadster pickup, used for both pleasure and business, held to be a *private passenger automobile* (emphasis added); Pocino v. Sierra Nevada Life & Cas Co., 104 Cal. App. 671, 286 P. 729 (1930) (manner in which the vehicle was used in addition to its construction was relevant); Detmer v. United Security Inc. Co., 309 S.E. 2d 713 (Mo. Ct. App. 1958) (immediate and past use of the pickup truck plus fact that such a vehicle was commonly used as a passenger automobile entitled it to be called a *private passenger automobile*); Paetz v. London Guarantee & Accident Co., 226 Mo. App. 564, 71 S.W.2d 826 (1934) (Ford Runabout, used
meaning and therefore concluded that "in determining the type of an automobile within the meaning of an insurance policy the general and common use to which a given automobile is put is a fact that should be considered . . . ." Despite the fact that at least one court has denied the relevance of such an issue, the Aetna case seems to represent the predominant view.

Some courts have placed importance on the construction of vehicle, while others have held that the licensing classification is an overriding factor or at least a persuasive one. Finally, one
court in applying the expressis unius rule, has said that an exclusionary clause excepting certain vehicles from coverage necessarily allowed all others to be included.28

In conclusion, it should be mentioned that although the West Virginia court in Laraway said that the policy was clear and unambiguous, it still noted as pertinent the evidence relating to the pickup truck's use and construction. Will the court, if confronted with a future case involving similar policy language as applied to a pickup truck feel that such evidence is relevant? If the answer is yes then the prospect for recovery is better, because a review of the cases indicates that plaintiffs do stand a better chance of recovering when emphasis is placed on the private nature and use of the vehicle.

Craig R. McKay

Lotteries—Promotional Scheme Constituting a Lottery

Safeway Stores, Inc., operated ten retail grocery stores in Snohomish County, Washington. Each of the stores sponsored a "Bonus Bingo" contest as part of its advertising activity. Winners received cash awards. No purchase was necessary to obtain the prize slips used in the game, but in order to obtain a sufficient number of prize slips to complete a winning card it was necessary to visit the store. The contest was advertised extensively within the store and in the general advertising of Safeway in the local newspapers. Snohomish County sought a declaratory judgment on the legality of the contest, and an injunction against continuance by Safeway of the contest, alleging it constituted an illegal lottery. The

private passenger automobile of the pleasure car type); Paetz v. London Guarantee & Accident Co., 228 Mo. App. 564, 71 S.W.2d 826 (1934) (vehicle was licensed and registered as a Ford Runabout, but was used as a family car).

28 E.g., Mutual Benefit Health & Accident Assoc. v. Hudman, 385 S.W.2d 509, 513 (Tex. 1964). The Texas statute defined a passenger car as any motor vehicle, excluding a motor cycle or a bus, that was "designed or used primarily for the transportation of persons." The court did not consider the statute conclusive, because it was adopted in a different context, but its persuasive value was accepted.