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IN AN AUTO INSURANCE POLICY, “USE” OF A COMMERCIAL VEHICLE MIGHT INCLUDE MORE THAN DRIVING

The Fifth Circuit, in *Emplrs. Mut. Cas. Co. v. Bonilla*, 613 F.3d 512 (5th Cir. 2010), recently held that a Commercial Auto Liability Policy covered injury caused by a fire that resulted from efforts to clean the cooking area of a mobile catering truck.

The Court looked at three insurance policies, all of which potentially covered the accident, and ruled only on an auto policy. It sent the remaining issues back to the trial court for further proceeding.

In this case of first impression, the question posed is, “In an auto policy, does restriction of the coverage to ‘use’ of a commercial vehicle encompass special uses, not involving driving, for which the vehicle is intended?”

FACTS OF THE CASE

Juan Bonilla leased a mobile catering truck, from Jolly Chef Express, Inc., in Dallas. He also leased a space on Jolly Chef’s commissary and parking lot. Bonilla hired a driver and cook for each of his trucks on a daily basis. At the end of each day the driver and cook would return to the commissary to clean the truck and prepare for the next day.

One day Bonilla hired Fabricio Fernandez to drive and Isabel Molina to cook. When they completed their route and returned the truck to Jolly Chef’s lot, Fernandez poured something, probably gasoline, on the floor to loosen the grease. As Molina began washing the dishes, she heard an explosion and found herself suddenly in flames. A pilot light from the stove had ignited the gasoline.

Molina sued Bonilla and Jolly Chef in Texas state court. Bonilla did not have insurance but the truck was listed on Jolly Chef’s three insurance policies. Jolly Chef’s trucks were insured by Employers Mutual Casualty Company under a Commercial General Liability (“CGL”) Policy and a Commercial Umbrella Policy. Jolly Chef also had a Commercial Auto Liability Policy from Emcasco Insurance Company. The Auto Policy covered all of Jolly Chef’s trucks. Emcasco and Employers Mutual (collectively “EMC”) defended both Jolly Chef and Bonilla under a reservation of rights. At trial, Molina won a judgment against Bonilla for \$ 1,832,933.58, but took nothing against Jolly Chef.

EMC filed a declaratory judgment action in the United States District Court for the Northern District of Texas, denying any liability under any policy for the claims asserted in the state court suit.

The district court granted EMC's motion, finding no coverage under *any* of the policies. (1) There was no coverage under a CGL policy because neither Bonilla nor Molina was an “insured.” (2) There was no coverage under the Auto Policy because the fire did not arise out of the “use” of the vehicle as a vehicle. (3) There was no coverage under a related Umbrella Policy because the meaning of “use” in that policy was the same as under the Auto Policy.

The Fifth Circuit reversed the holding as to the Auto Policy and remanded the issue as to the Umbrella Policy for further consideration. No one appealed the ruling on the CGL policy.

THE FIFTH CIRCUIT’S DECISION

The Policies

The Umbrella Policy provided coverage in excess of the Auto Policy. The Auto Policy covered “bodily injury or property damage...resulting from the ownership, maintenance **or use** of a covered auto.”

The CGL Policy also covered bodily injury and property damage arising from “accidents,” but dovetailed with the Auto Policy by *excluding* coverage for bodily injury and property damage “arising out of the ownership, maintenance, use or entrustment [of any] ... auto ... owned or operated by or rented or loaned to any insured.”

The District Court held that the CGL did not apply because Bonilla was not an insured. Thought that decision was left unappealed, the Fifth Circuit examined the CGL anyway because the overlapping terms of the CGL and Auto Policy helped illuminate the Court’s determination of the intended meanings of the policies. But this intent is examined as far as is necessary, given the guiding principle of policy interpretation, “both the language of exclusion and of inclusion should be read to favor coverage.”

EMC argued that the accident *was* covered by the CGL, excluding coverage by the Auto Policy – presumably because only the Auto Policy triggers the Umbrella Policy and the CGL was no longer in play. This is because “[s]ome accidents would be covered by the auto policy, others by the CGL. A single accident could not be covered by both.” *Id.* at 516, citing *Travelers Indem. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761, 769 (5th Cir. 1999).

But, the Court explained, the interpretation of the policy language should not depend on who the insured or claimant is. It should not matter to the Court’s interpretation of the *Auto Policy*, as it applies to Bonilla, that the CGL does or does not provide coverage to Jolly Chef, the named insured.

The Auto Policy

The first page of the Auto Policy showed that Jolly Chef as the named insured and that its business is “mobile catering.” Thus the policy was not intended to apply to a motor vehicle used by individuals simply as transportation. The insureds are those “*using* with Jolly Chef’s permission a covered auto.” *Emplrs. Mut.*, 613 F.3d at 517. Since Bonilla leased the truck from Jolly Chef, there was coverage for Bonilla. The disagreement was whether there was coverage for *this accident*. The accident must have been one “resulting from the ownership, maintenance or use of a covered auto.”

This truck was a vehicle designed for a special use. It had kitchen facilities built into it. Necessary cleaning from the use of that equipment set the accident in motion.
that boys will be boys.

EMC argued that the first *Lindsey* prong was not met. The accident, it claimed, did not arise from the inherent nature of the automobile. The Court disagreed, holding that a business vehicle policy covers the *intended and identified uses* of that vehicle. The “injury-producing act” was cleaning the floor of the truck so that food could safely be prepared. The cleaning was a natural, expected, and necessary use of mobile catering Truck 219 and was covered by the Auto Policy.

The Court disposed of the other two prongs, reasoning that the natural territorial limits of Truck 219 included Jolly Chef’s lot and that, though it was the gasoline that caused the fire, not the truck *per se*, the known and expected uses of this vehicle included cooking and the consequent cleaning. In essence the third prong collapses into the first on the Fifth Circuit’s reasoning. It concedes as much by saying, “Most of the strength of EMC’s argument [that the truck merely provided the location for the gasoline to cause injury] is lost once we define ‘inherent nature’ in the way that we have.” So long as the injury arises from a natural, expected, and necessary use of the vehicle in question, it’s difficult to imagine a case where the third prong is not met.

The Fifth Circuit then remanded the case to the trial court to look at the Umbrella Policy, though, logically, if it was triggered by the Auto Policy, it likely also applies, barring other exclusions.

WHAT DOES THIS MEAN?

Where a specialized vehicle is involved in an accident, whether related to actual operation of the vehicle or not, before acting on a coverage question, an insurer will need to examine the intended function of the vehicle to determine whether injury arose from a natural, expected, and necessary use of the vehicle.

If the insurer denies coverage, though the injury appears to arise from a natural, expected, and necessary use, it ought to consider that latent third prong under *Lindsey*. Look for an argument that though this accident implicated an intended use of the vehicle, the injury itself resulted from something else.

The Fifth Circuit brushes the issue aside in this case. It may be that there was not much evidence about the suitability or *foreseeability* of use of gasoline as a solvent in a motor vehicle interior, let alone in one with a pilot light. But this would seem to have been the best way to attack the problem.



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