Carrying People or Property for a Fee: Where Does Coverage Stop?

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September 01, 2011

Your neighbor's teenage son uses his car to deliver pizzas at a summer job. He is involved in an automobile accident. Does he have insurance coverage?

In *Prudential Property and Casualty Ins. Co. v. Sartno*, the Pennsylvania Supreme Court addressed this exact scenario. The court found that the pizza delivery driver had coverage for the accident even though it had occurred as part of his employment. The driver's policy, like most personal auto policies, excluded coverage for bodily injury or property damage occurring when an automobile is used to carry people or property for a fee. Although the driver received wages for making deliveries and performing other job responsibilities, the court held that the exclusion did not apply because in that case, there was no delivery charge. The ruling was consistent with other jurisdictions which have refused to deny coverage to pizza delivery drivers based on the "hired auto" exclusion.

In extending coverage, the court focused on whether the policy intended the term "fee" to encompass any payment made to the insured or only instances in which a fee is paid for use of the vehicle itself. Referencing an Ohio Supreme Court decision addressing a similar insurance provision, the court held in *Sartno* that because either interpretation was valid, the ambiguity is resolved in favor of the insured. The decision, while ending favorably for *Sartno*, appears to prime the ambiguity for resolution by insurers without prohibiting an explicit definition which creates the broader exclusion the court considered. Immediately after recognizing that the insurer was "free to define 'fee'" in a broad way, the court proceeded to list the absurd results of such a construction, including "employees driving co-workers to seminars," and "teachers carrying exams home to grade."

After *Sartno*, the existence of coverage under these types of provisions may turn on what the customer, and not the insured, is paying for. Courts have explicitly rejected attempts to focus on the benefit received by the insured, opting to focus on the existence of a delivery fee. In *Nationwide Mutual Insurance Company v. Brophy*, a court held that a mail carrier returning to the post office in an employer-issued truck could not recover under an insurance policy which included the "hired auto" exclusion.

In *Brophy*, because it was clear that the customer was paying for the delivery itself, the court held that the language of the policy was not ambiguous as applied to the mail carrier. Thus, policyholders with vehicle uses traditionally associated with a transportation service such as taxi drivers have been denied coverage under policies with "hired auto" exclusions. It appears then that when the customer is clearly paying for the delivery or transit of goods, a court would hold that the "hired auto" exclusion applies and an insurer would not be liable. Where, however, what exactly is being purchased is unclear, a court would be more likely to hold the terms ambiguous as to the situation and therefore hold for the insured under contra *proferentem*.

When seeking coverage, a policyholder may be best served by collecting any fees associated with the business for services other than the transportation itself. Such action may be particularly important where, like in *Sartno*, an injured party brings suit against the business as well as the individual driver. Policyholders, however, may not be successful if the insurer has drafted an agreement which creates a broader exclusion. Under the law as it stands, insurers are also not prevented from further defining the "hired auto" exclusion and resolving the ambiguity. Policyholders should therefore pay particular attention to what their policy considers transportation for a fee in order to determine what, if any, activities involved in their business may be excluded from coverage.

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