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Limitations on the Scope of Permissive Use: GEICO v. USAA

One of the most fundamental principles of insurance law is that the coverage provided only covers those who are "insured" under the policy. An insurer is not expected to cover the liability of the world at large and can limit the definition of who is entitled to coverage. The idea that an insurer can bargain for who is entitled to coverage is a fundamental principle of contract formation and contract law.

On the other hand, there is also an extremely powerful public policy interest to expand coverage to make sure parties injured in automobile accidents have coverage. This public policy interest was codified by the enactment of the Omnibus Clause under Virginia Code §38.2-2204. This statute requires that all insurance polices contain a provision insuring "the named insured, and any other person using or responsible for the use of the motor vehicle… with the expressed or implied consent of the named insured." It specifically broadens coverage to cover not only the named insured, but also those who have permission to drive the vehicle. However, the tension between the public interest in expanding coverage and the parties freedom to contract is evidenced by a number of cases dealing with disputes as to who is entitled to coverage under this provision.

It is well established that the issue of permission depends on the particular facts of each particular case. The difficulty arises in the application of the law to these varying facts. Fidelity and Casualty of New York v. Richard Harlow, 191 Va. 64, 68, 59 S.E.2d 872, 874 (1950). Historically, the Courts have approached the Omnibus Clause as a remedial statute, and therefore the provisions of the statute have been liberally interpreted to serve the clear public policy reflected in it, which is to broaden the coverage of automobile liability policies. Id.

The most recent Virginia Supreme Court case addressing the scope of permissive use is GEICO v. USAA, 2011 Va. LEXIS 95 (decided April 21, 2011). This case arose from an accident involving an automobile owned by Sharon Bass but primarily driven by her daughter, Krystal Bass. At the time of the accident, the vehicle was being driven by Krystal's acquaintance, Steven Parent. The vehicle was covered by an insurance policy with Sharon Bass as the named insured. In addition, Steven Parent's mother had a policy covering Steven as a resident relative. Both Sharon Bass's policy and Steven's mother's policy would have provided coverage to Steven as the driver of Sharon Bass's vehicle if Steven had been driving the vehicle "with permission."

During the trial, Sharon Bass testified that she and her husband had "expressly and repeatedly instructed their daughter, Krystal, not to allow anyone else to use the car." However, there was evidence admitted at trial that Krystal did in fact allow others to drive her vehicle, including to and from her work, to and from her boyfriend's house, and to and from neighboring homes. There was also evidence that Krystal had on occasion previously allowed Steven Parent to drive her vehicle. However, this was done with the express permission by Krystal and only for short distances to nearby locations within the neighborhood.

The evidence at trial established that at some time during the night, Steven Parent had left in Krystal's vehicle after he had an altercation or dispute with Krystal. After he failed to return within 35-45 minutes, Krystal then reported the vehicle stolen to her parents and to police. Later that night, Steven Parent was pulled over for going 90 mph near the boundary between the cities of Hampton and Poquoson. After being pulled over, the officer ascertained that the vehicle had been involved in a collision with another vehicle about a quarter mile inside the Hampton city limits.

In prior cases, the Court had resolved permissive use issues by determining whether the actions of a permittee (here, Krystal) who operated the vehicle were consistent with the scope of the actual or implied permission from the named insured. GEICO at 18, citing Liberty Mutual v. Tiller 189 Va. 544, 56 S.E.2d 814 (1940) and State Farm Mutual v. Cook 186 Va. 658, 43 S.E.2d 863. However, the Court had not previously addressed the circumstances in which a permittee vested with general use permission from the named insured may limit the scope of permission given to a second permittee thereby limiting the protection afforded under the Omnibus Clause.

The Virginia Supreme Court had previously held that although the owner of the vehicle and the named insured had expressly prohibited a permittee from authorizing others to drive the vehicle, if the vehicle had been turned over for her general use, then she was authorized to grant others permission. Liberty Mutual

v. Tiller 189 Va. 544, 56 S.E.2d 814, Ruby Robinson v. Fidelity and Casualty of New York 190 Va. 368, 57 S.E.2d 93. In other words, if the permittee had general use of the vehicle, then she stood in the shoes of the owner. Id.

The Virginia Supreme Court in GEICO v. USAA ultimately held that "just as the remedial purpose of the omnibus clause is not extended to provide coverage when the first permittee operates a vehicle beyond the scope of permission received, it should not be extended to circumstances in which the second permittee operates the vehicle beyond the scope of permission received from the first permittee. Therefore, the Court specifically held that a first permittee with general use of a vehicle was allowed to limit the scope of permissive use of the vehicle to a second permittee.

The Court explained that although Krystal Bass had previously allowed Steven Parent to drive the vehicle, it had always been limited to close, nearby destinations and had always been under her express terms and with her express permission. On this occasion, Steven took the car after his altercation with Krystal, without her express permission, had driven the vehicle outside the neighborhood and even outside the city limits of Hampton into surrounding localities, and did not return the vehicle within a short period of time. Under these circumstances the court held that Steven's excursion was "extraordinary and unexpected" and not within the scope of permission granted by Krystal. Therefore, Sharon Bass' policy did not provide liability coverage to Steven.

With regard to Steven's mother's policy, that policy covered Steven's use of the car only if the use was "with permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission." The Court held that there was simply no evidence adduced at trial to support the conclusion that Steven's use of the car at the time of the collision was within the scope of the permission he may reasonably have believed he had. Thus, Steven's mother's policy did not afford coverage to Steven either.

So although the Courts have traditionally construed the Omnibus Clause liberally to provide coverage, this certainly is not always the case. Each set of facts should be carefully analyzed to determine whether coverage can be legitimately denied.

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