

THOUGHT LEADERSHIP

News

## COURT CONCLUDES THAT LAMBORGHINI WAS BEING TEST-DRIVEN, NOT PLEASURE-DRIVEN, AT THE TIME OF LOSS; COURT GRANTS SUMMARY JUDGMENT BASED ON POLICY EXCLUSION FOR USE “OTHER THAN OCCASIONAL PLEASURE USE”

Newsbrief

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The United States District Court for the Southern District of Texas recently granted summary judgment in favor of insurer, after concluding that the insured’s Lamborghini was being test-driven, not driven for occasional pleasure, at the time of the collision. In *Aqrawi v American Modern Property and Casualty Co.*, Civil Action No. 4:20-CV-3161 (S.D. Tex. [Houston Division] August 18, 2021), Aqrawi purchased a 2019 Lamborghini Urus Lamborghini for the purpose of reselling it through his combination garage and dealership (“shop”). Four months later, Aqrawi’s shop allowed a potential buyer to test-drive the Lamborghini. During the test-drive, the Lamborghini ran out of gas on the highway and was rear-ended by another vehicle.

Aqrawi insured the Lamborghini through American Modern with a “Collector Vehicle Policy.” The policy defined “your covered auto” as “any vehicle shown on the Declarations which is a Collector Vehicle and is used solely for occasional pleasure use.” The policy excluded from coverage “loss or damage to your covered auto while it is being used for other than occasional pleasure use.”

Aqrawi made a demand on American Modern for the repair costs (\$134,225.70), but American Modern denied the claim. Aqrawi subsequently filed suit against American Modern, claiming breach of contract, extra-contractual claims, etc. In response, American Modern moved for summary judgment, making two main arguments: (1) Aqrawi’s intent to sell the Lamborghini when he bought it removed the Lamborghini from the definition of “your covered auto” such that there was no coverage for the vehicle at all, and (2) even if the Lamborghini did fall within the definition of “your covered auto,” the policy exclusion removed the loss from coverage.

The U.S. District Court granted summary judgment. The court began its analysis by casting doubt on American Modern’s first argument, stating: “Even assuming that there is no doubt that Aqrawi’s intent was to resell the [Lamborghini], it is unclear that mere intent would control over the terms of the policy itself and would have such sweeping consequences. American Modern’s interpretation of the policy would mean that Aqrawi’s intent when he purchased the [Lamborghini] vitiated any coverage for it, regardless of the actual circumstances leading to damage.”

**COURT CONCLUDES THAT LAMBORGHINI WAS BEING TEST-DRIVEN, NOT PLEASURE-DRIVEN, AT THE TIME OF LOSS; COURT GRANTS SUMMARY JUDGMENT BASED ON POLICY EXCLUSION FOR USE “OTHER THAN OCCASIONAL PLEASURE USE”**

The court found it unnecessary to determine whether American Modern’s intent-based argument was a correct interpretation of the policy, because the court concluded summary judgment was proper based on American Modern’s second argument.

The U.S. District Court concluded that the damage to the Lamborghini was sustained while it was “being used for other than occasional pleasure use,” and the loss fell into the policy’s exclusion. The court reasoned that “there can be no doubt that [the potential buyer’s] ‘drive’ of the [Lamborghini] was a ‘test drive’ to determine whether he wanted to purchase it. This does not constitute a ‘leisure/pleasure drive’ under the definition of ‘occasional pleasure use’ under the policy.”