

THOUGHT LEADERSHIP

News

CAR BUYER HAD “INSURABLE INTEREST” IN VEHICLE SHE NEVER TOOK POSSESSION OF—FIFTH CIRCUIT UPHOLDS COVERAGE DENIAL BASED ON “STEP DOWN” PROVISION OF AUTO LIABILITY POLICY

Newsbrief

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Recently, the Fifth Circuit Court of Appeals upheld a declaratory judgment in the district court that Sentry Select Insurance Company (“Sentry”) did not owe a duty to defend or indemnify a claimant who Sentry argued was not an “insured” under its policy and, in any event, was already covered under an automobile liability policy pursuant to the “step down” provision of the policy. *Sentry Select Ins. Co. v. Home State Cty Mut. Ins. Co. v. Ortiz*, No 21-40371, 2022 WL 2800809 (5th Cir. July 18, 2022) arose out of a coverage dispute between Sentry and Home State County Mutual Insurance Company (“Home State”).

Zusuky Ortiz (“Ortiz”) entered a contract to buy a Kia from Knapp Honda (“Knapp”). Amongst other things, the contract required Ortiz to provide proof of insurance coverage for the Kia, assume any responsibility for damage to the vehicle resulting from the use, maintenance or operation of the vehicle, and to hold Knapp free from any loss, claim, or liability resulting from any damage to the vehicle or from the vehicle’s use, maintenance or operation”; however, the Kia was undergoing repairs, so Knapp, which was insured by Sentry, lent Ortiz a Hyundai to drive until the Kia was ready. Ortiz paid her initial premium for the policy issued by Home State covering the Kia, and the same day, returned to Knapp and provided proof of insurance. She then left the dealership in the loaner Hyundai.

Ortiz’s policy obligated Home stay to pay damages for bodily injury or property damage for which any covered person became legally responsible due to an auto accident, and a “covered person” included Ortiz and “any person using [Ortiz’s] covered auto.” A “covered auto” included the Kia and “any auto [Ortiz did] not own while used as a *temporary substitute* for the [Kia] which is out of normal use because of its repair, servicing, breakdown, loss, or destruction.”

The next day, Ortiz’s brother, Juan Antonio Ortiz Ramirez (“Ramirez”), was involved in a one car auto accident in the Hyundai, with Ortiz and their other brother as passengers. Ortiz and her other brother subsequently sued Knapp and Ramirez in state district court for personal injuries. Sentry, Knapp’s insurer, provided Ramirez a defense under a reservation of rights. The primary auto liability section of the Sentry policy included a “step down” provision that

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limited Sentry’s coverage to “the amount needed to comply with [Texas’s] minimum limits after . . . other insurance is exhausted.” So Sentry then filed suit in federal district court seeking a declaratory judgment that it had no duty to defend or indemnify Ramirez in the underlying state lawsuit, alleging that Ramirez was not an “insured” under the policy and that, even if he was, the policy’s “step down” provision precluded coverage because Ramirez was already insured by Ortiz’s Home State policy up to the minimum limits required by Texas law. Ramirez filed a counterclaim against Sentry seeking the opposite.

In its motion for summary judgment, Sentry asserted that Ramirez was covered under the Home State policy because the Hyundai was a “temporary substitute” for Ortiz’s Kia and the Kia was out of normal use due to breakdown, repair, servicing, etc. In response, the other parties argued that Ortiz failed to obtain an “insurable interest” in the Kia because she never took possession of it and did not complete the purchase process, so the Hyundai could not have served as a “temporary substitute.”

The district court found Ortiz’s assumption of liability for the Kia’s “use, maintenance or operation” of the Kia sufficient to establish an “insurable interest” in it, which kept Ramirez’s use of the Hyundai within coverage. As such, the trial court held that Ramirez was covered under the Home State policy, and the “step down” provision of the Sentry policy relieved Sentry of any duty to defend or indemnify Ramirez in the state court action.

The only issue the Ramirez brought up on appeal was the trial court’s finding that Ortiz obtained an “insurable interest” in the Kia. In upholding the district court’s decision, the Fifth Circuit emphasized that, unless the policy specifically provides otherwise, actual ownership is not necessary to establish an insurable interest in the subject vehicle under Texas law. Instead, the only interest necessary is that the insured may incur liability because of the operation, maintenance, or use of the automobile, which Ortiz had in this case based on the sales contract with Knapp. In turn, the Fifth Circuit held the Hyundai was a “covered auto,” Ramirez was a “covered person,” and the “step down” provision of Sentry’s policy precluded coverage as between Sentry and Ramirez—thereby affirming the district court.