



Whose Duty (to Defend and Indemnify) is it, Anyway?

By Jeffrey D. Eberhard

North Pacific Ins. Co. v. American Manuf. Mut. Ins. Co., 200 Or. App. 473, 115 P.3d 970 (2005), concerns identifying the responsible insurer for damages for an automobile accident caused by a vehicle which had been improperly sold prior to the end of its lease agreement.

In 1999, Jerry Brown Company (“Brown”) leased a 1999 Chevrolet Suburban from Felco Auto Lease (“Felco”) for a three-year term. Defendant American Manufacturers insured Brown, and the Suburban was listed as a covered automobile under its policy. The title to the vehicle listed Felco as the lessor and Brown as the lessee.

In January 2001, Brown – in violation of its lease agreement with, and without notice to, Felco – sold the Suburban to Troy Likens. Likens was insured by North Pacific, and Likens added the Suburban to his policy. Accordingly, Brown requested that the automobile be removed from his policy, but no one told Felco of the sale. Likens made monthly payment to Brown, who then forwarded payment to Felco each month.

A few months later, Likens’ stepson was driving the Suburban and caused an accident with Robert Farrell. Farrell sued for his injuries, and North Pacific (Likens’ insurer) undertook the defense. North Pacific paid \$650,000 to settle the matter and then sued American, Brown’s insurer.

The court rejected North Pacific’s argument that because the Brown/Felco lease was still in effect at the time of the accident, Likens’ stepson was simply using the vehicle with Brown’s “permission” and was therefore covered under Brown’s policy with American. The Court held that there was no coverage because (1) Brown had conveyed to Likens whatever property interests it did have in the Suburban, and (2) American did not intend to insure against risks incurred by Brown as the result of its contractual dealings.

Claims Pointer: When evaluating which insurer bears responsibility for a leased vehicle “sold” by the insured, Oregon courts will examine whether the insured had the right to possess, use, or control the vehicle at the time of loss. ❖

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