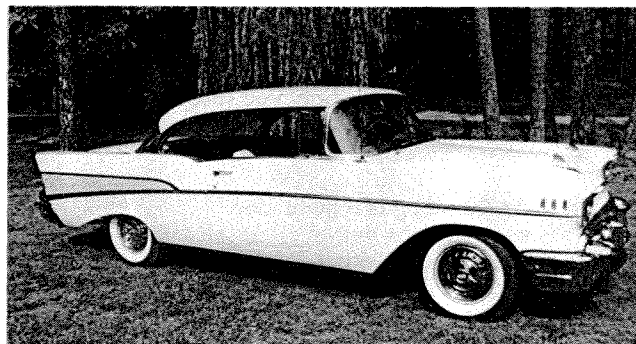


THE CAR THAT NOBODY OWNED

LAWRENCE SAVELL



It sounds like an episode from *The Twilight Zone*: “Submitted for your approval the following. A person is involved in an automobile accident. When he seeks to recover for his injuries and damages, he learns to his horror, that the car involved was owned... by no one!”

Impossible, you say? But it can – and did – happen.

The case concerned a 1957 Chevrolet. Jeff Moen (with paternal assistance) had bought it from Mark Wallace in 1988. Moen had given Wallace the purchase price and left with a blank title. At no time had a name been placed on the title or a new title obtained.

From the date of purchase, Moen kept the car exclusively in the family garage. He and his father, John, worked on restoring the car to make it operational. By July 31, 1988, the project had almost been completed. Moen and a friend, Daniel Holmes, took the car out for a drive. Unfortunately, they were involved in an accident. The police report stated that the vehicle had no license plate and no insurance.

At the time of the accident, Moen's father had a homeowner/auto insurance policy with the Cincinnati Insurance Company. The policy listed three vehicles on the declarations page. The 1957 Chevrolet was not one of them.

Cincinnati filed a declaratory action, asking a court to declare that the accident was not covered. Daniel Holmes' family then filed a complaint for damages against the Moens. Cincinnati moved for summary judgment.

The US District Court for the Northern District of Indiana, South

Bend Division, ruled on the motion on February 20, 1990. The Court noted that the determination of whether the policy provided liability coverage to the Moens for the accident depended on who was the owner of the Chevrolet.

The Court began its analysis by focusing on the language of the policy. None of the parties had argued that the policy was ambiguous. The policy provided that Cincinnati would “pay damages for bodily injury or property damage for which any *covered person* becomes legally responsible because of an auto accident.”

The Court considered whether Moen was a “covered person” under the policy. The policy defined such a person as, among other things, any family member using an automobile. As Moen had met that requirement when the accident occurred, he was a covered person.

The Court then examined whether any exclusion to the policy applied to negate coverage. Under the policy, Cincinnati excluded coverage for the use of a vehicle which was owned by a named insured or family member but which had not been identified in the declarations.

The Court thus turned to the question of who “owned” the Chevrolet. Indiana's Motor Vehicle Code defined an “owner” as, among other things, “a person who holds the legal title of a motor vehicle....” At the time of the accident, the legal title of the motor

vehicle was in no one's name, the title having been signed off in blank. Under similar circumstances, the North Carolina Supreme Court had ruled in a 1989 case that when no one has title to a car, the car does not have an owner. The Indiana court adopted that analysis. Thus, in the present case

as well, as the Court put it, “no one would be the owner of the car.” Clearly, since neither Jeff nor John held legal title to the Chevrolet, neither of them was the “owner.” Thus, the exclusion for any unidentified car owned by the named insured or a family member did not apply.

The Court also rejected Cincinnati's claim regarding the policy's additional exclusion of any vehicle “furnished or available for the regular use” of the named insured or a family member. The Court ruled that a car in the process of being restored was not a vehicle for regular use.

Since, under the policy, Moen was a covered person, there was coverage for the accident, and no exclusion applied, the Court denied Cincinnati's motion for summary judgment.

Fortunately for Moen, in this case his failure to put title to his vehicle properly in his name happened to work to his benefit. Ordinarily, however, the obvious advantages of formalizing one's ownership of valued possessions merit such efforts (and listing such property on one's insurance policy).



Lawrence Savell is a graduate of Cornell University and the University of Michigan Law School and practices with Chadbourne & Parke in New York City.

This column provides general information and is not intended as a substitute for consulting an attorney.