

The Damaged Delahaye Figoni

Like everything else in life, having your beloved collector car repaired can present potential risks. Such risks include not getting the results you want, or worse, the chance of damage to or even loss of your vehicle through a fire, theft, or other adverse occurrence at the repair shop. Such an adverse occurrence (and the series of claims that resulted) was involved in *Federal Insurance Company v. Mariano Brothers, Inc., et al.*, decided on August 29, 2007 by the Superior Court of Connecticut.

According to the Court, a third party owned a 1936 Delahaye Figoni. The automobile was covered by a policy from Federal. Early in 2005, the Delahaye Figoni was at Red Line Restorations, LLC in Stamford, Conn., for repairs or other work.

In a separate case, the Connecticut Superior Court had issued an order against Red Line and one of its members for \$5.6 million. On January 7, 2005, Connecticut State Marshal James Sullivan, acting pursuant to that order, took possession of certain property at Red Line's garage, including the Delahaye. Mariano was engaged to lift, move or transport the property seized by Sullivan. During this process the Delahaye was damaged.

This led to a three-step series of claims:

First, the car's owner sought compensation from Federal under his insurance policy. Federal was obligated to pay the owner over \$350,000 for the damage to the Delahaye.

Second, Federal filed a "subrogation" lawsuit seeking reimbursement from Mariano and Red Line for the money Federal paid or was to pay to the car's owner. Federal alleged Mariano was negligent in handling or moving the Delahaye. Federal also alleged that Red Line negligently failed to warn the car's owner and give him an opportunity to remove his vehicle, failed to identify the Delahaye as the property of someone other than Red Line and thus not subject to the seizure, and failed to properly supervise the seizure.

Third, Red Line served an "apportionment" complaint against Sullivan, seeking to hold Sullivan responsible for a share of the liability. Red Line alleged that Sullivan knew in advance of the seizure that the Delahaye was not to be taken as it was not property of Red Line, but property of a customer. It further alleged that Sullivan, "acting completely outside his capacity as a state [marshal and] in his individual capacity . . . seized the 1936 Delahaye Figoni and removed it from the premises." Red Line alleged that, if it were found responsible to Federal, it was entitled to reimbursement from Sullivan for his share of negligence in failing to properly secure and store the Delahaye.

Sullivan moved to dismiss Red Line's complaint. He argued he was immune from suit pursuant to a statute providing that, for marshals "in the performance of execution or service of process functions[,] . . . no such person shall be personally liable for damage or injury, not wanton, reckless or malicious, caused by the discharge of such functions."

On this third claim, the Court ruled for Sullivan.

The Court noted that apportionment complaints are allowed against persons not a party to an action who may be liable for a proportionate share of the plaintiff's damages However, there is no apportionment of liability or damages between [1] parties who are liable for negligence and [2] parties liable on any basis other than negligence including [more-egregious] intentional, wanton or reckless conduct."

"[A] court . . . may not ignore blatant inconsistencies. In contrast to [Red Line's claim that in the seizure Sullivan acted outside his capacity as a marshal], the apportionment complaint also alleged that Sullivan appeared at Red Line's premises 'in his capacity as a state marshal.' . . . Therefore, the pleading must be construed [to mean] that some time between appearing at the Red Line premises and seizing the Delahaye, Sullivan lost his capacity as a state marshal. Since there is no allegation of retirement, resignation or discharge from that position the pleading can only be construed that Sullivan's actions were so far beyond the pale as to constitute a relinquishment of his status as a state marshal. Nevertheless, Red Line characterizes these actions as merely 'carelessness and negligence.'

"The apportionment complaint stretches too far in different directions in an effort to avoid a dilemma. . . . Sullivan is immune from suit for negligence in his capacity as a state marshal entering and executing court orders. However, apportionment complaints are only available for apportioning liability based on negligence. In order to satisfy the apportionment statutes Red Line has alleged Sullivan was negligent and to avoid Sullivan's immunity from negligence suit Red Line has alleged that Sullivan somehow lost his status as a marshal while performing actions that only marshals are authorized to perform. The court determines this effort must fail because any action Sullivan might have undertaken sufficient to strip him of his status as a marshal would ipso facto have to be beyond mere negligence and into the realm of wanton, reckless or intentional conduct."

Having decided that, in effect, Red Line could not have it (nor argue it) both ways, the Court granted Sullivan's motion to dismiss Red Line's apportionment complaint against him. The apportionment decision did not end the original claim and *Federal v Mariano Brothers* is an ongoing case. 