

## A Lack Of Interest

Obtaining a desired collector car is a tremendous thrill. To protect your investment and to avoid unnecessary heartache, you need to make sure that you have proper insurance coverage for your new possession before you drive it away. That unfortunately doesn't always happen, as this month's case, *Smith vs. Allstate Insurance Company*, decided June 23, 1998 by the Court of Appeals of Michigan, illustrates. (On February 25, 1999, the Michigan Supreme Court denied permission to appeal further.)

According to the Court, early on a June evening, Charles Hinton, Jr. sold his 1977 Buick LeSabre to Bruce Walsh. Hinton had insured the LeSabre through State Farm Mutual Automobile Insurance Company. Walsh paid for the car, and Hinton gave him a receipt. Hinton then signed the title over to Walsh, removed his license plate, registration, and certificate of insurance from the LeSabre, and gave Walsh possession of the car.

While driving the LeSabre a few hours later, Walsh rear-ended a vehicle driven by James Smith, in which Laura Smith was a passenger. Laura was injured. Although Walsh had affixed a license plate on the LeSabre when he bought it, he had not yet obtained insurance.

The Smiths initially sought uninsured motorist benefits from their own insurer, Allstate. However, Allstate denied coverage, contending that Walsh was covered by Hinton's policy with State Farm. The Smiths then sued Walsh for negligence and Hinton for negligent entrustment. Hinton filed a motion to dismiss, but agreed to hold off to permit the Smiths to seek a determination from the court regarding which insurer, Allstate or State Farm, was liable for their damages.

The trial court ruled for State Farm. Allstate appealed. The Court of Appeals affirmed the judgment for State Farm.

The appellate court noted that "[t]he only issue on appeal is whether Walsh was covered by Hinton's policy with State Farm at the time of the accident, despite the fact that Hinton no longer owned the vehicle...State Farm never argued that the language of the policy excluded Walsh as an insured...Instead, State Farm argued that, because Hinton had sold the vehicle in a bona fide sale, and because he had removed the license plate, registration, and proof of insurance from the vehicle, Hinton was no longer the owner or registrant of the vehicle, and there could be no coverage under the State Farm policy. We express no opinion regarding the extent of coverage under Hinton's policy."

The Court first examined whether there had to be an

"insurable interest" under the facts of the case. An "insurable interest" means some relation between a person and property such that the person would be affected by potential harm to or loss of the property. "[T]he 'insurable interest' doctrine seems to find its origin in public policy concerns. Among those concerns is a desire to prohibit the use of insurance as a form of wagering, and a desire to prevent the creation of socially undesirable interests, such as where a creditor buys insurance on the life of a debtor for an amount greatly exceeding the amount of the debt, such that the creditor 'might be [tempted] to bring the debtor's life to an unnatural end.'...These public policy concerns are not implicated in the case of liability insurance, because the holder of the insurance cannot collect cash on the policy."

"We also note that the no-fault automobile liability insurance required in Michigan is not simply for the benefit of the policy holder or other insured. Rather, it is intended 'to protect the members of the public at large from the ravages of automobile accidents.'...Thus, in the case of automobile liability insurance, the insurable interest appears to lie, at least to some degree, with an injured party rather than an insured."

"While we have failed to discover any underlying rationale for application of the insurable interest requirement to liability insurance, we recognize that many jurisdictions observe such a requirement...[W]e conclude that, under Michigan law, an insured must have an 'insurable interest' to support the existence of a valid automobile liability insurance policy."

The Court then considered whether the required insurable interest must belong to a particular "insured." It "conclude[d] that a 'named insured' must have an insurable interest for an automobile liability insurance policy to apply.

"The only remaining question is whether Hinton had an insurable interest sufficient to support a valid automobile liability insurance policy. We conclude...that he did not. Hinton...removed his license plate, registration, and certificate of insurance from the vehicle before giving Walsh possession. These actions, in conjunction with the bona fide sale of the vehicle, destroyed Hinton's status as owner and as registrant...Thus, at the time of the accident, Hinton had no remaining interest in the vehicle, he had no insurable interest, and the State Farm liability policy covering the LeSabre was simply void. Under these circumstances, the trial court properly granted summary disposition for State Farm."



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