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Coverage of Auto theft Policy

INSURANCE

COVERAGE OF AUTO THEFT POLICY

In two recent cases an automobile was taken without the consent of the owner by a person in temporary possession, but without the intent to keep it permanently. Each automobile was insured against theft. The Indiana Supreme Court denied recovery on the insurance policy for damages to the car, but a Federal Circuit Court of Appeals allowed recovery.[1]

The Indiana court followed the weight of authority and defined theft as synonymous with larceny, requiring the common law intent to appropriate another's property wholly and permanently.[2] The Federal court allowed recovery, holding that an appropriation inconsistent with the property right of the person from whom it was taken was sufficient.

The general rule in construing insurance contracts is that if the language is ambiguous or reasonably open to two constructions, the one most favorable to the insured will be adopted.[3] The application of the rule would include "taking without consent" cases within the coverage of theft policies.[4]

Where state statutes make vehicle taking a felony but do not require an intent to permanently deprive, courts generally consider such taking unprotected by theft policies.[5] These cases follow the

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[1] Home Insurance Co. v. Mathis, 32 N. E. (2d) 108 (Ind. App. 1941); Pennsylvania Indemnity Fire Corp. v. Aldridge, 117 F. (2d) 774 (App D. C. 1941).

[2] Hartford Ins. Co. v. Wimbish, 12 Ga. App. 712, 78 S. E. 265 (1913); Michigan Comm. Ins. Co. v. Wills, 57 Ind. App. 256, 106 N. E. 725 (1914); Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 303, 146 N. E. 432 (1923); note (1931) 89 A. L. R. 466.

[3] Mutual Life Ins. Co. v. Hurni Packing Co., 263 U. S. 167 (1923); Stroehman v. Mutual Ins. Co., 300 U. S. 435 (1937). The reason for such rule is that the insurer can remedy the ambiguity by inserting an exception in the policy. Allen v. Berkshire Mut. Fire Ins. Co., 105 Vt. 471, 168 Atl. 698 (1933).

[4] James v. Phoenix Ins. Co., 75 Colo. 209, 225 Pac. 213 (1924); Globe & Rutgers Fire Ins. Co. v. House, 163 Tenn. 585, 45 S. W. (2d) 55 (1932); Thomas Investment Co. v. Thompson, 32 S. W. (2d) 708 (Tex. Civ. App. 1930).

[5] Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 303, 146 N. E. 432 (1923); Repp v. American Farmer's Mutual Auto. Ins. Co., 179 Minn. 167, 228 N. W. 605 (1930); LaMotte v. Retail Hdw. Mut. Fire Ins. Co., 203 Wis. 41, 233 N. W. 566 (1930).

rule which defines theft under the insurance contract as "theft as common thought and common speech would now image and describe it."[6] A contrary result is reached by some courts on the ground that statutes have broadened the crime of larceny by expressly making certain acts larceny which did not contain all of the common law elements.[7]

The Indiana court defines felonious intent as the common law understood it. Taking an automobile temporarily without the consent of the owner, therefore, is not theft[8] even though a more severe punishment is meted out to the wrong-doer than in grand larceny.[9] The Federal court reconciles the statutes with the common law definition and holds, use inconsistent with the property interest of the owner is included within the theft clause.

A strict application of the common law seems to justify the Indiana decision. However, in view of the rule of interpretation favoring the insured as well as the statutory changes of intent in larceny, the more modern view of the Federal court is to be commended.

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LABOR LAW

LABOR INJUNCTION AND FREE SPEECH

Union coal miners peacefully picketed a coal mine in an effort to procure employment at the union wage scale. Meanwhile, non-union miners negotiated a lease contract under which they operated the mine, the owner receiving a flat price per ton. The trial court granted the non-union miners an interlocutory order enjoining the picketing. Held, reversed. An injunction against peaceful picketing violates the right of free speech guaranteed by the Federal Constitution. *Davis v. Yates*, 32 N.E. (2d) 86 (Ind. 1941).

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[6] Cardozo, J., in Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 303, 146 N. E. 432, 433 (1923). Cases, however, differ widely as to what "common speech" would mean as theft. Note (1931) 89 A. L. R. 466.

[7] Nugent v. Union Automobile Ins. Co., 140 Ore. 61, 13 P. (2d) 343 (1932) (larceny by trick); Brady v. Norwich Union Fire Ins. Soc., 47 R. I. 416, 133 Atl. 799 (1926) (false pretenses); Southern Casualty Co. v. Landry, 266 S. W. 804 (Tex. Civ. App. 1924) (larceny by bailee); N. Y. PENAL LAW (1939) § 1290; ANN. LAWS OF MASS. (1933) c. 266, § 30; 6 BERRY, LAW OF AUTOMOBILES (7th ed. 1935) § 6.586.

[8] *But see* Employers' Fire Ins. Co. v. Consolidated Garage, 85 Ind. App. 674, 155 N. E. 533 (1926). In suit by insurer of owner of car against garage for acts of employee in taking car and wrecking it, the lower court cites the Indiana statute on vehicle taking and states, "And a person who violates this statute and is thereafter convicted and punished in accordance with its provisions may very properly be said to be guilty of stealing an automobile, and in referring to his act, it would be proper to say he stole an automobile, or that, in so doing he committed a theft."

[9] IND STAT. ANN. (Burns, 1933) § 10-3001 (grand larceny—punishable by imprisonment from 1 to 10 years); *id.* § 10-3010 (vehicle taking —first offense punishable by imprisonment from 1 to 10 years and second offense from 3 to 10 years).