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Volume 72  
Issue 1 *Issues 1 & 2*

Article 21

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February 1970

## Insurance–Pickup Truck is not a Private Passenger Automobile

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### Recommended Citation

Craig R. McKay, *Insurance–Pickup Truck is not a Private Passenger Automobile*, 72 W. Va. L. Rev. (1970).  
Available at: <https://researchrepository.wvu.edu/wvlr/vol72/iss1/21>

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statements raise the issue of whether the Court determined the question solely on procedural grounds or whether they based their decision on policy questions. If the former is true, the effect of *Sniadach* will be far-reaching; however, if the latter is true, then *Sniadach* will have a much more limited effect.

*David Jeffrey Millstone*

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### **Insurance—Pickup Truck is not a Private Passenger Automobile**

Robert L. Laraway, the insured, was killed while riding as a passenger in a 1966 Chevrolet pickup truck. The vehicle was owned by a Pennsylvania construction corporation which employed him as a foreman. The accident took place while Laraway was going to work on Monday, September 11, 1967. Plaintiff, as beneficiary of an accident insurance policy, sought a recovery and the insurance company disavowed liability. The Circuit Court of Monongalia County, sitting in lieu of a jury, rendered a judgment of \$12,000 in favor of plaintiff. Defendant appealed. *Held*, reversed and remanded. The pickup truck was not a *private passenger automobile* within the meaning of the clear and unambiguous words of the insurance policy's coverage. *Laraway v. Heart of America Life Ins. Co.*, 167 S.E. 2d 749 (W. Va. 1969).

The *Laraway* case introduced an issue which, had not previously been considered by the West Virginia court. The problem centered around the interpretation of the policy coverage as applied to the vehicle in which Laraway was riding, the 1966 Chevrolet pickup truck. On the face of the policy appeared the following language: "THIS IS A LIMITED POLICY READ IT CAREFULLY."<sup>1</sup> The restrictive language in the policy said that the policy covered "bodily injuries to the insured resulting in his death while actually riding in or driving 'any private passenger automobile.'"<sup>2</sup> The policy then defined "the word 'automobile' and the words 'a private

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<sup>1</sup>*Laraway v. Heart of America Life Ins. Co.*, 167 S.E.2d 749, 751 (W.Va. 1969).

<sup>2</sup>*Id.*

passenger automobile' as follows: 'As used in this policy, automobile means a land vehicle of the type commonly and ordinarily known and referred to as automobile, and a private passenger automobile means a *private automobile of the private passenger design designed primarily for transporting persons.*'"<sup>3</sup>

The court, in excluding Laraway from coverage, relied chiefly on the principle that the provisions of the policy were clear and unambiguous and not subject to a more favorable construction for the insured. The nexus of the problem was the interpretation of the statement "*a private passenger automobile means a private automobile of the private passenger design designed primarily for transporting persons.*"<sup>4</sup> Essentially, the court ruled that these words on their face disqualified Laraway from coverage because the pickup truck was not such a vehicle.

Apparently only one other court has been faced with the same issue involving a pickup truck and identical policy language. In *English v. Old American Ins. Co.*,<sup>5</sup> the Missouri court reached a similar result by means of entirely different reasoning. After a thorough study of all the authorities the court in *English* said the policy definition of "*private passenger automobile*" did not dispel the ambiguity. The Missouri court made the further observation that it was a futile task to fix "an immutable classification upon such a versatile vehicle as a half ton pickup."<sup>6</sup> The issue was ultimately resolved by holding that the phrase "*designed primarily for transporting persons*" should be interpreted from the standpoint of the manufacturer. It was the primary purpose for which the vehicle was manufactured that was controlling and not how the vehicle was used by the purchaser.<sup>7</sup>

<sup>3</sup>*Id.* (emphasis added)

<sup>4</sup>*Id.* (emphasis added)

<sup>5</sup>426 S.W. 2d 33 (Mo. 1968). (emphasis added)

<sup>6</sup>*Id.* at 38.

<sup>7</sup>*Id.* at 39. The vehicle involved was a 1962 Chevrolet pickup truck. The evidence supported the fact that apart from its occasional use in carrying groceries and in carrying a log, jack and chain in its bed, the vehicle was exclusively used for the transportation of persons. Nevertheless, the plaintiff accepted the court's guidelines and sought to prove that the principal purpose for which the vehicle was manufactured was that of transporting persons. The Regional Merchandising Manager of New Trucks for the Chevrolet Division of General Motors testified in behalf of the plaintiff. However, his testimony ultimately revealed the fact that the manufacturer classified and considered the vehicle's principal purpose as that of transporting merchandise and goods. The court then concluded that the plaintiff had failed to make a submissible case.

The problem confronted by the West Virginia and Missouri courts was not a novel one. Other jurisdictions have had difficulty in determining the status of pickup trucks in relation to the varied language of accident insurance policies. Generally, the courts have been called upon to decide whether the policy is broad enough to include or narrow enough to exclude a plaintiff from coverage. It is in this area of limiting the scope of the policy that the vehicle plays a principal role. Specifically, the issue has been whether a pickup truck is a *private passenger automobile* under the language of the policy.

As an aid to interpretation, the courts have often relied upon various rules of construction.<sup>8</sup> Perhaps the most prominent principle states that unambiguous policy language is to be given its plain and ordinary meaning.<sup>9</sup> In its application neither party is to be favored<sup>10</sup> and the expressed intent governs.<sup>11</sup> Under this principle a 1950 Studebaker pickup truck was found not to be a *private passenger type automobile*.<sup>12</sup> A Louisiana court used the same principle as a basis for excluding a plaintiff from coverage on the grounds that the pickup truck was not a *private automobile of the exclusively pleasure type*.<sup>13</sup> The *Laraway* decision then, can be characterized as an amplification of this well settled principle of law.<sup>14</sup> However, this is not to say that this "settled principle" has been applied with uniform consistency. The plain and ordinary meaning of words in one jurisdiction may not be so clear in another.

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<sup>8</sup>See generally Annot., 38 A.L.R. 2d 867 (1954).

See e.g., *Adkins v. American Cas. Co.*, 145 W. Va. 281, 114 S.E.2d 556 (1960).

<sup>10</sup>See e.g., *Christopher v. United States Life Ins. Co.*, 145 W. Va. 707, 116 S.E.2d 864 (1960).

<sup>11</sup>See e.g., *Lewis v. Dils Motor Co.*, 148 W.Va. 515, 135 S.E.2d 597 (1964).

<sup>12</sup>*La Fon v. Continental Gas. Co.*, 241 Mo. App. 802, 259 S.W.2d 425 (1953). The court said that in every case cited by the plaintiff a recovery was permitted because of ambiguity within the policy. However, the court found that there was no such ambiguity in the present policy. (emphasis added).

<sup>13</sup>*Gray v. North American Co. for Life, Accident & Health Ins.*, 128 So. 2d 223 (La. App. 1961); accord, *Marshall v. Washington Nat'l Ins. Co.*, 246 N.C. 447, 98 S.E.2d 345 (1957).

<sup>14</sup>*Larway v. Heart of America Life Ins. Co.*, 167 S.E.2d 749, 751 (W. Va. 1969). The court said, "[t]hat language of an insurance contract which is clear and unambiguous cannot be construed or interpreted but must be applied in accordance with the intent expressed therein."

In *Aetna Life Ins. Co. v. Bidwell*,<sup>15</sup> the Tennessee court took judicial knowledge of the fact that in that state a pickup truck was commonly used and regarded by many as a *private passenger automobile of the pleasure car type*.

Another axiom receiving extensive application is that pertaining to ambiguity. Briefly stated, a liberal construction of the policy in favor of the insured is warranted if the language is unclear or ambiguous.<sup>16</sup> In *Schilling v. Stockel*,<sup>17</sup> the Wisconsin court said that the words used to define *private passenger automobile* were neither clear nor readily understandable to the average person. Accordingly, a Studebaker pickup was held to be within the policy coverage.

In addition to those already mentioned, other factors have been given weight in arriving at a final determination. Probably foremost among them has been the manner in which the pickup truck was used.<sup>18</sup> *Aetna Life Ins. Co. v. Bidwell*<sup>19</sup> represents an outstanding example of a court placing emphasis on this aspect of the inquiry. The court said that the policy examined was silent as to

<sup>15</sup>192 Tenn. 627, 629, 241 S.W.2d 595, 596 (1951). The insured was on a pleasure trip when she was accidentally killed while riding in a half-ton pickup truck. The court concluded that there was "affirmative evidence, if such evidence is competent, that pickup trucks are commonly used in this State as a passenger vehicle for pleasure purposes" and that "[t]his fact is so generally known that this Court takes judicial knowledge of it."; accord, *Detmer v. United Security Ins. Co.*, 309 S.W.2d 713, 715 (Mo. 1958). The court said "[I]t is generally known that such half-ton pickups are adapted for and commonly used in part as passenger cars."

<sup>16</sup>*Green v. Farm Bureau Mut. Auto Ins. Co.*, 139 W. Va. 475 80 S.E.2d 424 (1954).

<sup>17</sup>26 Wis.2d 525, 537, 133 N.W.2d 335, 341 (1965). The court interpreted the policy as defining a private passenger automobile as being either a station wagon, a jeep type automobile or a private passenger automobile. The court reasoned that the definition was neither enlightening nor free from ambiguity because at least part of the definition left the court defining *private passenger automobile* as a private passenger automobile. The court then said that from "the evidence as to the size, construction, appearance, actual use and customary use in the community, and comparable premium rates, . . . the jury could draw the reasonable and permissible inference that the Studebaker pickup was a passenger-type automobile." (emphasis added) *Contra*, *Home Indem. Co. v. Northwestern Nat'l Ins. Co.*, 280 F. Supp. 446 (D. Mont. 1968).

<sup>18</sup>E.g., *Fidelity & Cas. Co. v. Martin*, 66 F.2d 438 (9th Cir. 1933) (Ford Roadster pickup, used for both pleasure and business, held to be a *private passenger automobile* (emphasis added); *Pocino v. Sierra Nevada Life & Cas Co.*, 104 Cal. App. 671, 286 P. 729 (1930) (manner in which the vehicle was used in addition to its construction was relevant); *Detmer v. United Security Inc. Co.*, 309 S.E.2d 713 (Mo. Ct. App. 1958) (immediate and past use of the pickup truck plus fact that such a vehicle was commonly used as a passenger automobile entitled it to be called a *private passenger automobile*); *Paetz v. London Guarantee & Accident Co.*, 228 Mo. App. 564, 71 S.W.2d 826 (1934) (Ford Runabout, used

meaning and therefore concluded that "in determining the type of an automobile within the meaning of an insurance policy the general and common use to which a given automobile is put is a fact that should be considered . . . ." <sup>20</sup> Despite the fact that at least one court has denied the relevance of such an issue, <sup>21</sup> the *Aetna* case <sup>22</sup> seems to represent the predominant view.

Some courts have placed importance on the construction of vehicle, <sup>23</sup> while others have held that the licensing classification is an overriding factor <sup>24</sup> or at least a persuasive one. <sup>25</sup> Finally, one

mainly as a family car, held to be an *automobile* and not a *truck*); (emphasis added; *Paltini v. Sentinel Life Ins. Co.*, 121 Neb. 447, 237 N.W. 392 (1931) (touring car converted into a tow car was not an *automobile truck*, emphasis added) construction and use of the vehicle were noted *Mutual Benefit Health and Accident Ass'n v. Hudman* 385 S.W.2d 509 (Tex. 1964) (pickup truck was designed and used for the dual purpose of transporting passengers and goods).

<sup>19</sup>192 Tenn. 627, 241 S.W.2d 595 (1951).

<sup>20</sup>*Id.* at 635, 241 S.W.2d at 599.

<sup>21</sup>*Spence v. Washington Nat'l Ins. Co.*, 320 Ill. App. 149, 50 N.E.2d 128 (1943). The plaintiff argued that the insured had used the Ford pickup truck for carrying persons whom he picked up on the highway and at church. He also stressed the fact that the insured used the vehicle for transportation to and from work and that benches were sometimes placed in the rear to accommodate persons. The evidence also showed that the insured hauled coal and other materials in the pickup, but only for family purposes. Therefore, it was the plaintiff's position that as to the insured, the pickup truck was a *private passenger type automobile of the exclusively pleasure type*. However, the court was of the opinion that this was not the proper yardstick. It was the court's contention that if the plaintiff's construction were adopted an insured might prove his case by calling a vehicle such as a tractor or tank a *private passenger automobile* as to him. This idea was considered unsound.

<sup>22</sup>*Aetna Life Ins. Co. v. Bidwell*, 192 Tenn. 627, 241 S.W.2d 595 (1943).

<sup>23</sup>*E.g.*, *Fidelity & Cas Co. v. Martin*, 66 F.2d 438 (9th Cir. 1933) (evidence showed that Ford Roadster pickup truck had the same motor, wheels and chassis as a sedan); *Gaumnitz v. Indemnity Ins. Co.*, 2 Cal. App. 2d 134, 37 P.2d 712 (1934) (court differentiated a truck from a pickup truck in that former was designed to carry heavy inanimate loads while latter was constructed to carry only light loads); *Pocino v. Sierra Nevada Life a Gas Co.*, 104 Cal. App. 671, 286 P. 729 (1930) (use and construction of the vehicle were important factors). (emphasis added); *Mattson v. Maryland Cas Co.*, 100 Cal. App. 96, 279 P. 1045 (1929) (Ford Model T was deemed an *automobile* and not an *automobile truck*). (emphasis added); *Mutual Benefit Health and Accident Ass'n v. Hudman*, 385 S.W. 2d 509 (Tex. 1964) (Chevrolet Fleetside pickup truck was from appearances, common knowledge, and the evidence a dual purpose automobile); *Johnson v. Maryland Cas Co.* § § Wash. 2d 305, 155 P.2d 306 (1945) (one and one-half ton pickup truck with express body, truck motor and generally heavier construction than passenger automobile was not a *private passenger automobile*).

<sup>24</sup>*E.g.*, *Spencer v. Washington Nat'l Ins. Co.*, 320 Ill. App. 149, 50 N.E.2d 128 (1943) (Illinois statute classified one type of vehicle as a passenger car and designated others as being designed for transporting more than seven passengers or for carrying freight); *Dirst v. Aetna Life Ins. Co.*, 232 Iowa 910, 5 N.W.2d 185 (1942) (Ford pickup truck registered as a Class A truck held not to be a

court in applying the *expressis unius* rule, has said that an exclusionary clause excepting certain vehicles from coverage necessarily allowed all others to be included.<sup>26</sup>

In conclusion, it should be mentioned that although the West Virginia court in *Laraway* said that the policy was clear and unambiguous, it still noted as pertinent the evidence relating to the pickup truck's use and construction. Will the court, if confronted with a future case involving similar policy language as applied to a pickup truck feel that such evidence is relevant? If the answer is yes then the prospect for recovery is better, because a review of the cases indicates that plaintiffs do stand a better chance of recovering when emphasis is placed on the private nature and use of the vehicle.

Craig R. McKay

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### Lotteries—Promotional Scheme Constituting a Lottery

Safeway Stores, Inc., operated ten retail grocery stores in Snohomish County, Washington. Each of the stores sponsored a "Bonus Bingo" contest as part of its advertising activity. Winners received cash awards. No purchase was necessary to obtain the prize slips used in the game, but in order to obtain a sufficient number of prize slips to complete a winning card it was necessary to visit the store. The contest was advertised extensively within the store and in the general advertising of Safeway in the local newspapers. Snohomish County sought a declaratory judgment on the legality of the contest, and an injunction against continuance by Safeway of the contest, alleging it constituted an illegal lottery. The

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*private passenger automobile of the pleasure car type*); Paetz v. London Guarantee & Accident Co., 228 Mo. App. 564, 71 S.W.2d 826 (1934) (vehicle was licensed and registered as a Ford Runabout, but was used as a family car.)

<sup>26</sup>E.g., Mutual Benefit Health & Accident Assoc. v. Hudman, 385 S.W.2d 509, 513 (Tex. 1964). The Texas statute defined a passenger car as any motor vehicle, excluding a motor cycle or a bus, that was "designed or used primarily for the transportation of persons." The court did not consider the statute conclusive, because it was adopted in a different context, but its persuasive value was accepted.

<sup>27</sup>Aetna Life Ins. Co. v. Bidwell, 192 Tenn. 627, 241 S.W.2d 595 (1943).