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# INSURANCE - AUTOMOBILE INSURANCE - "PASSENGERS FOR CONSIDERATION"

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INSURANCE — AUTOMOBILE INSURANCE — "PASSENGERS FOR CONSIDERATION" — In an action upon an automobile liability insurance policy, defendant sought to avoid liability by proof of voluntary payments made to the insured by the plaintiff subsequent to the beginning of the trip. It was held that since no agreement for payment was made prior to the trip the insured was not then carrying "passengers for consideration" within the meaning of the clause contained in the policy for the purpose of protecting the insurer against such use of the vehicle. *Reed v. Bloom*, (D. C. Okla. 1936) 15 F. Supp. 600.

The "passengers for consideration" type of provision has on many previous occasions come before the courts. It has always been upheld as a reasonable limitation of risk.[1] Although two cases have confined "passengers" to persons carried

[1] Rykill v. Franklin Fire Insurance Co., 80 Pa. Super. Ct. 492 (1923); Orcutt v. Erie Indemnity Co., 114 Pa. Super. Ct. 493, 174 A. 625 (1934); Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933).

by public conveyances,[2] the more widely accepted view is that it also includes those carried in private cars.[3] The definition of "consideration" has proved more complicated.[4] No distinction has been drawn between actual payment and a mere promise to pay,[5] not even in the case where the insured has been unable to collect the promised compensation.[6] No court has yet, however, recognized the ordinary practice of paying for rides in certain situations as a basis for implying a promise to pay. The principal case is the first to pass upon the time of compensation.[7] The source of the compensation has apparently not been limited to passengers then being carried.[8] The amount need not include remuneration for services.[9] Even reimbursement for all or part of the cash expendi-

[2] Marks v. Home Fire & Marine Insurance Co., (App. D. C. 1922) 285 F. 959; Arms v. Faszholz, (Mo. App. 1930) 32 S. W. (2d) 781.

[3] Reed v. Bloom, (D. C. Okla. 1936) 15 F. Supp. 600; Elder v. Federal Insurance Co., 213 Mass. 389, 100 N. E. 655 (1913); Sleeper v. Massachusetts Bonding & Insurance Co., 283 Mass. 511, 186 N. E. 778 (1933); Orcutt v. Erie Indemnity Co., 114 Pa. Super. Ct. 493, 174 A. 625 (1934); Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933).

[4] With reference to liability insurance policies, it can plausibly be argued that "consideration" ought to be defined in the same terms that are used in determining the nature of the duty of the operator to the passenger. Sleeper v. Massachusetts Bonding & Insurance Co., 283 Mass. 511, 186 N. E. 778 (1933). Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505 at 516 and 519, 169 S. E. 594 (1933): "The duty owed by the operator to a person being transported for hire is much higher than that owed to a person who is not being transported for hire; and the risk assumed by the insurer is much greater. . . . The provision under consideration was doubtless inserted to exclude such more hazardous risk." "Wherever the facts are such that the operator of a car has cast upon him the duties and high degree of care that a person carrying another for compensation owes to the person so carried, the risk of liability for injuries arising from the negligence of the operator is excepted from the coverage by the provisions here under consideration."

As to the meaning of "guest" in statutes regarding liability for injuries to guests, see 82 A. L. R. 1365 (1933) and 95 A. L. R. 1180 (1935).

[5] Reed v. Bloom, (D. C. Okla. 1936) 15 F. Supp. 600; Indemnity Insurance Co. v. Lee, 232 Ky. 556, 24 S. W. (2d) 278 (1930).

[6] Orcutt v. Erie Indemnity Co., 114 Pa. Super. Ct. 493, 174 A. 625 (1934); Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933).

[7] Dictum in Indemnity Insurance Co. v. Lee, 232 Ky. 556, 24 S. W. (2d) 278 (1930), to same effect, that at least a promise to pay must precede the trip.

[8] Neilson v. American Mutual Liability Insurance Co., 111 N. J. L. 345, 168 A. 436 (1933). De Pasquale v. Union Indemnity Co., 50 R. I. 509, 149 A. 795 (1930). The latter case appears to hold that the additional fact that the money was paid to someone other than the owner of the car takes the case out of the "passengers for consideration" clause.

[9] Sleeper v. Massachusetts Bonding & Insurance Co., 238 Mass. 511, 186 N. E. 778 (1933). Suggestions to the contrary are to be found in Gross v. Kubel, 315 Pa. 396, 172 A. 649, 95 A. L. R. 146 (1934); Askowith v. Massell, 260 Mass. 202, 156 N. E. 875 (1927), and Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933).

tures is ordinarily sufficient to invoke the clause.[10] Since it is ordinarily set forth in terms of "while" the vehicle is so being used, breach of it denies recovery to every person involved in the accident, regardless of whether he was in the same or another car,[11] or whether carried gratuitiously [12] or for compensation. The carrying of passengers for consideration at the time of the accident is the usual definition of a breach of this provision.[13] Engaging in this activity over a period of time is not required.[14] Such activity prior to the accident is generally given only the effect of temporarily suspending the policy.[15] That the owner has taken steps to prevent such use of the car is irrelevant.[16]

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[10] Reed v. Bloom, (D. C. Okla. 1936) 15 F. Supp. 600; Indemnity Insurance Co. v. Lee, 232 Ky. 556, 24 S. W. (2d) 278 (1930); Dziadosc v. American Casualty Co., 12 N. J. Misc. 205, 171 A. 137 (1934); Beatty v. Employers' Liability Assurance Corp., 106 Vt. 25, 168 A. 919 (1933).

[11] Neilson v. American Mutual Liability Insurance Co., 111 N. J. L. 345, 168 A. 436 (1933).

[12] Raymond v. Great American Indemnity Co., 86 N. H. 93, 163 A. 713 (1932); Gross v. Kubel, 315 Pa. 396, 172 A. 649, 95 A. L. R. 146 (1934).

[13] Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933).

[14] Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Sleeper v. Massachusetts Bonding & Insurance Co., 283 Mass. 511, 186 N. E. 778 (1933); Rykill v. Franklin Fire Insurance Co., 80 Pa. Super. Ct. 492 (1923); Cartos v. Hartford Accident & Indemnity Co., 160 Va. 505, 169 S. E. 594 (1933); Orcutt v. Erie Indemnity Co., 114 Pa. Super. Ct. 493, 174 A. 625 (1934); Beatty v. Employers' Liability Assurance Corp., 106 Vt. 25, 168 A. 919 (1933); Elder v. Federal Insurance Co., 213 Mass. 389, 100 N. E. 655 (1913); Neilson v. American Mutual Liability Insurance Co., 111 N. J. L. 345, 168 A. 436 (1933).

Contra: Crowell v. Maryland Motor Car Insurance Co., 169 N. C. 35, 85 S. E. 37 (1915); Commercial Union Assurance Co. v. Hill, (Tex. Civ. App. 1914) 167 S. W. 1095; Wood v. American Automobile Insurance Co., 109 Kan. 801, 202 P. 82 (1921).

[15] Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926); Berryman v. Maryland Motor Car Insurance Co., 199 Mo. App. 503, 204 S. W. 738 (1918); SUNDERLIN, AUTOMOBILE INSURANCE 111 (1929); VANCE, INSURANCE 389 (1930).

Contra: Neilson v. American Mutual Liability Insurance Co., 111 N. J. L. 345, 168 A. 436 (1933); Orient Insurance Co. v. Van Zant-Bruce Drug Co., 50 Okla. 558, 151 P. 323 (1915).

[16] Mittet v. Home Insurance Co., 49 S. D. 319, 207 N. W. 49 (1926). A fortiori, the mere fact that the owner did not know of such use of his car by another is no protection. Commercial Union Assurance Co. v. Hill, (Tex. Civ. App. 1914) 167 S. W. 1095 (1914); Wood v. American Automobile Insurance Co., 109 Kan. 801, 202 P. 82 (1921); Crowell v. Maryland Motor Car Insurance Co., 169 N. C. 35, 85 S. E. 37 (1915).