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Personal Auto 'Business-Use' Exclusion Trumps Michigan's No-Fault Law

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The "business-use" exclusion found in personal auto policies is valid and enforceable under Michigan law, according to two recent court decisions.

Interpreting the business-use exclusion, a federal district court, applying Michigan law, and the Michigan Court of Appeals issued opinions favorable to personal auto carriers doing business in the state. In each case, the carriers argued the losses were excluded because they arose out of a commercial use.

In *Bristol West Insurance Company v. Tzortzinis*, the U.S. District Court for the Eastern District of Michigan held that an auto policy exclusion based on commercial use is explicitly authorized by the Michigan Essential Insurance Act (EIA). MCL §500.2101 et. seq.

The policyholder argued that Michigan's No-Fault Act required "residual liability coverage," which made the business-use exception void as against public policy. However, the Tzortzinis court applied the long-standing doctrine that a specific statute is regarded as an exception to a previously enacted general statute directed to the same issue. The Michigan EIA became effective in 1980 whereas the Michigan No-Fault Act became law in 1972. The EIA specifically permits insurers to limit auto coverage on the basis of business use.

Tzortzinis involved a pizza delivery driver insured by Bristol West Insurance Company through a personal auto policy. The driver was using his own vehicle while en route to a delivery when the accident occurred.

At the time the insured filled out his insurance application, he represented that his vehicle would not be "used for commercial purposes, including the delivery of pizza." This misrepresentation provided the basis for an alternative argument and the carrier asked the court to limit coverage to the statutory minimum of $20,000 instead of the policy limit of $100,000.

Nevertheless, the court found the analysis regarding the EIA and its specific reference to commercial use of a vehicle as dispositive. The result of the decision is that an insurer may legally limit coverage (i.e., avoid providing the required "residual liability" insurance) if an insured's vehicle is used for "commercial purposes."

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Because “pizza delivery” has been held by Michigan courts to constitute a business use, the business-use exception created by the state Legislature clearly applies. With that, Tzortzinis’ Bristol policy did not provide liability coverage for his accident. Of note, the pizza in question was never delivered to the intended recipient so no tip was received. However, the insured expected to be paid his hourly wage.

Three weeks later, the Michigan Court of Appeals used the same basis to deny coverage to a woman using her vehicle to deliver newspapers for pay. In *Bristol West Insurance Co. v. Butzbach*, the appellate court, quoting the Essential Insurance Act, dealt another blow to the argument that the No-Fault Act requires enforcement of the residual liability requirement in personal auto policies regardless of policy exclusions. The relevant provision of the EIA reads:

“…the underwriting rules that an insurer may establish for automobile insurance shall be based only on the following: … (f) Use of a vehicle insured or to be insured for transportation of passengers for hire, for rental purposes, or for commercial purposes.” MCL §500.2118(2).

The decision to deny coverage based on this exclusion further solidified the clear intent of the Legislature to make an exception to the public policy argument behind the residual liability requirement found in Michigan’s No-Fault Act. The Butzbach court also reasoned that to invalidate the business exclusion would subject the carrier to a risk for which it had not received compensation.

Business exclusions in personal auto policies are based on the concept that vehicles used for commercial purposes accumulate more mileage and are more likely to incur accidents. Coverage for commercial vehicles is typically more expensive based on this experience. These two decisions provide added weight behind a significant basis for excluding coverage in personal auto cases.

Plunkett Cooney represented Bristol West in *Bristol West Insurance Company v. Tzortzinis*, 2007 WL 3238913 (E.D. Mich 2007). Plunkett Cooney's Appellate Law Practice Group successfully argued on behalf of Bristol West the case of *Bristol West Insurance Company v. Butzbach*, unpublished, Michigan Court of Appeals decided Nov. 20, 2007 on Appeal from Van Buren County Circuit Court.

For a complete copy of the ruling in *Bristol West v. Tzortzinis*, click the Bristol West Insurance Company v.Tzortzinis.pdf link below. To obtain a copy of the Michigan Court of Appeals’ decision in *Bristol West Insurance Company v. Butzbach*, click here.

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