COVID-19 and Auto Coverage

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Drive-by Shooting - *Farmers Texas County Mut. Ins. Co. v. Griffin*, 955 S.W.2d 81, 83 (Tex. 1997).

- Royal drove as passengers fired shots and struck Griffin as he walked down the street.
- Argued coverage for damages for which the insured became legally responsible "because of an auto accident"
- Texas Supreme Court – situations where one or more vehicles are involved with another vehicle, object, or person

Griffin Continued

- Texas Supreme Court – “a drive-by-shooting” cannot be transformed into an “automobile accident”
- Court relied on appellate court case – *State Farm Mut. Ins. Co. v. Peck*, 900 S.W.2d 910, 913 (Tex. App.—Amarillo 1995, no writ)
  - An accident is not an “auto accident” just because it takes place in or near an automobile
  - The automobile must be involved in the accident
- No Coverage

Lindsey

- *Mid-Century Ins. Co. v. Lindsey*, 997 S.W.2d 153 (Tex. 1999)
  - Metzer Fishing Trip

Lindsey Continued

- UIM Coverage after settling with truck owner's carrier:
  - "We will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured [or underinsured] motor vehicle because of bodily injury sustained by a covered person, or property damage, caused by an accident.
  - The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured [or underinsured] motor vehicle."
- Mid-Century denied – no physical contact between the two vehicles

Lindsey Continued

- Discharge of shotgun was an accident – no intent by boy nor reasonably foreseeable (e.g., not playing with gun).
- Again, Court held that an "auto accident" does not require a collision.
- Rather, there must be a causal connection between the accident and use of the motor vehicle.

Lindsey Continued

- If a vehicle is only the locational setting for an injury, the injury does not arise out of any use of the vehicle

- “The mere fact that an automobile is the situs of the accident is not enough to establish the necessary nexus between use and the accident to warrant the conclusion that the accident resulted from such use.”

Lindsey Continued

- TEST:
  1) the accident must have arisen out of the inherent nature of the automobile as such
  2) the accident must have arisen within the natural territorial limits of an automobile, and the actual use must not have terminated,
  3) The automobile must not merely contribute to cause the condition which produces the injury, but must produce the injury.
- E.g., drive-by – shooting has nothing to do with the use of the vehicle as a vehicle

Lindsey Continued

Lindsey's injury arose out of the use of the Metzer truck.

- Son's purpose was to enter the truck, not fire the gun.
- Therefore, the truck "produced" the injury.
- If the discharge would have occurred regardless of the vehicle, there would be no coverage. Not the case here

Sturrock

Texas Farm Bureau Mut. Ins. Co. v. Sturrock, 146 S.W.3d 123 (Tex. 2004)

- Insured injured when foot became entangled in truck's raised door while exiting the vehicle.
- PIP coverage:

  "We will pay Personal Injury Protection benefits because of bodily injury:

  1. Resulting from a motor vehicle accidents; and
  2. Sustained by a covered person."

- Carrier argued no coverage – no motor vehicle accident

Sturrock Continued

- Insurer turned to *Griffin* and argued that "auto accident" requires a situation where one or more vehicles are involved with another vehicle, object, or person
- -not another vehicle, object or person

- *Lindsey* should not apply as it dealt with UM/UIM
  - Analysis of term "auto accident" is applicable

- *Lindsey* should not apply here as there was only one vehicle involved
  - So, single-vehicle accidents not covered? Passengers covered ,but not driver?

Sturrock Continued

- Motor vehicle accident occurs when:
  1. One or more vehicles are involved with another vehicle, an object, or a person
  2. The vehicle is being used, including exit or entry, as a motor vehicle
  3. Causal connection exists between vehicle's use and the injury producing event
- Here, Sturrock was injured when foot became entangled while exiting truck.
- Entering/exiting vehicle is integral to its use.
- Therefore, his injury resulted from a motor vehicle accident

Lincoln

Lincoln Gen. Ins. Co. v. Aisha's Learning Center, 468 F.3d 857 (5th Cir. 2006)

- Daycare van driver inadvertently left two-year old in van for seven hours
- CGL carrier filed DJ – injury did not arise out of use of the auto

Lincoln Continued

- Court turned to *Linsey's* test
  1) the accident must have arisen out of the inherent nature of the automobile as such
     - Van being used to transport children; although parked, purpose still ongoing
  2) the accident must have arisen within the natural territorial limits of an automobile, and the actual use must not have terminated,
     - Accident occurred within van

Lincoln Continued

3) The automobile must not merely contribute to cause the condition which produces the injury, but must produce the injury.

- Injury occurred in a hot, unventilated vehicle
  - Van was a producing caused, not a mere situs of the injury
    - "Where a vehicle is a mere situs of injury, fungible with any other situs, itis not being 'used.'"
  - Inherent danger in that automobiles trap heat; not found in parks or classrooms
  - Therefore, van was in "use"

Mere Situs

- *State Farm Mut. Ins. Co. v. Peck*, 900 S.W.2d 910, 913 (Tex. App.—Amarillo 1995, no writ) – dog bite
- *Farmers Ins. Co. v. Grelis*, 718 P.2d 812, 813 (Wash. App. 1986) – stabbing
- *Payne v. Twiggs Co. Sch. Dist.*, 496 S.E.2d 690, 692 (Ga. 1998) – assault on school bus

Garcia Holiday Tours

- *Lancer Ins. Co. v. Garcia Holiday Tours*, 345 S.W.3d 50 (Tex. 2011)
  - Field trip for high schoolers, school contracted with commercial bus company
  - Driver had an active case of tuberculosis
  - Several passengers tested positive for TB
  - Lawsuit –negligence – exposure to disease
  - Jury awarded over $5 million to infected passengers
  - Carrier denied coverage

Garcia Tours Continued

- Business auto policy covers damages "because of 'bodily injury' . . . caused by an 'accident' and resulting from . . . use of covered auto."

- Carrier argued that accident and injuries did not result from the use of the bus, i.e., no nexus.

- Carrier argued *Lindsey* did not apply – there used "arising out of" and here, "resulting from"
  - Court found no significant distinction

Garcia Tours Continued

- Application of *Lindsey* test:
  1) the accident must have arisen out of the inherent nature of the automobile
     - Bus being used as a bus
  2) the accident must have arisen within the natural territorial limits of an automobile and the actual use must not have terminated
     - Exposure occurred within bus

Garcia Tours Continued

3) The automobile must not merely contribute to cause the condition which produces the injury, but must produce the injury.

- P: Bus's closed environment required them to breathe the bacteria expelled by driver
- P: Bus's air-conditioner exposed them to bacteria by recirculating the contaminated air
- Carrier argued the driver was the cause; the bus or the air conditioner did not "produce" the injury

Garcia Tours Continued

- Unlike in *Lincoln*, bus was not instrumental in producing injuries
  - Bus did not generate the tuberculosis bacteria or make it more virulent
  - Bus was mere physical situs; exposure could have occurred in any enclosed, air-conditioned locations such as a classroom, theater, or restaurant
  - Instrumentality causing the disease is the infected person, not the infected person's surroundings or the act of using the covered vehicle

Implications for COVID-19?

- Is the vehicle the mere physical situs; exposure could have occurred in any enclosed, air-conditioned locations such as a classroom, theater, or restaurant?

- Given Court's holding in *Garcia Tours* as well as the analogous interpretation of prior cases, likely no coverage under a typical auto policy.

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