American Educational Institute, Inc.

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS COMPENSATION, FRAUD INVESTIGATION AND AUTOMOBILE

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AEI CLAIMS LAW QUIZ

Does The Death Of A Child Left In a Hot Car Arise Out Of The Use Of An Auto?

[Law of Automobile Liability Insurance, Para 2.04, Law of Automobile Insurance: UM and UIM, Para. 1.04]

FACTS: On a warm spring day in South Carolina the father of a one-year-old girl (S.G.) placed his daughter in her car seat in the back seat of his truck, intending to take her to day care. The father, however, forgot to stop at the day care center. Instead, he went to work and left the child in his parked truck, with the windows closed, for nearly eight hours. When he returned to his truck after work, he found the child unresponsive. She died from complications of hyperthermia shortly thereafter.

The child's mother made wrongful death claims under the liability and underinsured motorist (UIM) coverages of four State Farm policies issued to the child's father, mother, and grandmother. The policies provided coverage for bodily injury caused by an accident arising out of the "ownership, maintenance or use" of an auto. State Farm filed for declaratory relief, arguing that the child's death did not arise out of the "use" of an auto and, therefore, the policies did not provide coverage. The trial court agreed and held that the policies did not provide coverage because the requisite causal connection between the child's death and the use of an auto was lacking. The child's mother and grandmother appealed.

QUESTION: If a child's hyperthermia and resulting death are caused by negligent abandonment in a hot car, does the death arise out of the "use" of the vehicle?

ANSWER: No, according to the Court of Appeals of South Carolina in *State Farm Mutual Auto Ins. Co. v. Goyeneche*, 837 SE 2d 910 (S.C. App. 2019).

The appellants argued that the trial court failed to properly apply the test of *State Farm Fire & Casualty Co. v. Aytes*, 503 SE 2d 744 (S.C. 1998). In *Aytes*, the Supreme Court of South Carolina applied a three-pronged test to determine whether an injury arose from the use of an auto. The test requires that the party seeking coverage prove the following elements:

- A causal connection between the vehicle and the injury.
- No act of independent significance breaking the causal link.

- The vehicle was being used for transportation at the time of the injury.

The first prong of the test – a causal connection – is satisfied if the vehicle's use was an "active accessory" to the injury and the injury was "foreseeably identifiable with the normal use of the vehicle." According to *Aytes*, the required causal connection is not satisfied if the only connection between the insured vehicle's use and the injury is the fact that the victim was occupying the vehicle when the injury occurred.

The second prong of the test recognizes that while there may be a sufficient causal connection between the vehicle's use and the injury, the connection can be broken if an act of independent significance is found to be the cause of the injury.

Importantly, the third prong requires proof that the vehicle was serving a transportation purpose at the time of the injury.

State Farm argued that the hyperthermia was caused by hot weather and the insured vehicle was merely the site of the child's injury. The appellants countered that the excessive heat concentrated inside the vehicle caused the hyperthermia and resulting death. The court of appeals agreed with appellants and found that the trial court erred when it concluded there was no evidence that the father's truck was an active accessory in causing the injury and death. The court of appeals said:

> It is undisputed that Father placed S.G. in his truck to transport her to day care and that she was ultimately harmed because Father forgot she was in her car seat and left her in the vehicle for over seven hours. Because the physical makeup of automobiles and trucks causes them to trap heat – and the excessive temperature caused S.G.'s death – we find Father's truck not only contributed to but played an essential and integral part in her death.
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> Additionally, the fatal injury was foreseeably identifiable with the normal use of a vehicle. Many vehicles in South Carolina are used to transport children; transporting children to and from day care is neither an abnormal nor an unanticipated use. Significantly, our Legislature has recognized that the intentional or unintentional act of leaving a child inside a locked vehicle is foreseeably identifiable with the normal use of a vehicle. See S.C. Code Ann. § 15-3-700 (2016) ("A person is immune from civil liability for property damage resulting from his forcible entry into a motor vehicle for the purpose of removing a minor or vulnerable adult from the vehicle if the person has a reasonable good faith belief that forcible entry into the vehicle is necessary because the minor or vulnerable adult is in imminent danger of suffering harm."). Accordingly, we find appellants established the necessary causal connection between Father's truck and S.G.'s death.

With respect to the second prong of the test, however, the court of appeals found that even if there was the required causal connection between the truck and the injury, the father's conduct in leaving the child in the truck for more than seven hours was an act of independent significance that severed the causal connection. The court of appeals also found that the third prong was not met because the truck was not being used for transportation at the time of the child's injury. The appeals court, therefore, held that none of the auto policies at issue provided coverage.

OTHER STATES: The policy language at issue in *Goyeneche* – injury "arising out of the ownership, maintenance or use of an auto" – is included in auto insurance policies to define the risks intended to be covered under an auto insurance policy. The same or similar language is found as an

exclusion in commercial general liability insurance and other non-auto insurance forms to exclude auto-related risks. For instance, the appellants in *Goyeneche* cited two out-of-state cases in support of their contention that there was coverage for S.G.'s death under their auto policies. Both cases involved an insurance policy with an exclusion for bodily injury arising out of the use of an auto.

In *Lincoln General Insurance Co. v. Aisha's Learning Center*, 468 F3d 857 (5th Cir. 2006), a two-year-old child, Le'Yazmine McCann, was left unattended in a parked van for approximately seven hours. The van was owned and operated by Aisha's Learning Center (ALC). The driver was supposed to make sure that all of the children were taken off the van and accompanied into the center. The driver, however, failed to account for Le'Yazmine and she was left behind. The external temperature that day reached ninety-five degrees and the child suffered serious injuries. The child's mother brought an action against ALC to recover damages for the child's injuries. ALC was insured by two policies: a CGL policy with Lincoln General and a commercial auto policy with American International. Lincoln General sought a declaratory judgment in federal court to enforce a CGL policy exclusion for injuries arising from the use of ALC's van.

Applying Texas law, the Fifth Circuit concluded that the child's injuries did arise from the use of ALC's van. In reaching this conclusion the court said:

> First, the child's injuries occurred while the van was being used for one of its inherent purposes: transportation of children to ALC. Although the van was no longer in motion, its purpose – as to McCann – had not yet been fulfilled and was thus ongoing. Second, the accident occurred within the van's natural territorial limits before the actual use – the transportation of McCann to ALC – terminated. Third, the vehicle caused, rather than merely contributed to, the conditions that produced the injury. Le'Yazmine was injured because she was left in a hot, unventilated vehicle by the driver. The vehicle was not merely the situs of the injury, but a producing cause. Unfortunately, the danger of leaving children in locked vehicles during extreme weather conditions is well known; it is a danger inherent in the manner in which automobiles trap heat. The same dangers are not found in classrooms or parks. Thus, but for the use of the van to transport Le'Yazmine, she would not have been injured.

In *Prince v. United National Ins. Co.*, 142 Cal. App. 4th 233 (Cal. App. 2006), children were negligently left in a hot vehicle, but in this case the children died. The insurance policy at issue was a "Foster Parent Liability Policy" with an exclusion for bodily injury arising out of the use of an auto. The California court held that the exclusion applied because there was the requisite causal connection between the vehicle's use and the deaths, despite the fact that the vehicle was not moving or even running when the deaths occurred. The California court found no negligent act of independent significance that was unrelated to the use of the auto. In California and Texas, negligence has been found to be automobile related in a variety of situations that did not involve the actual operation of a vehicle.

Despite the holdings in these Texas and California cases, the South Carolina appeals court in *Goyeneche* said that it was bound by the precedent of the South Carolina Supreme Court. According to this precedent, the party seeking coverage must prove that there was no intervening cause and that the vehicle was being used for transportation at the time of the injury. The appellants in *Goyeneche* failed to meet this burden and, therefore, their claim for coverage under the auto policies was properly denied.

All forms of automobile insurance provide coverage for bodily injury and property damage caused by an accident that arises out of the "ownership, maintenance or use" of a vehicle. States, however, differ on the interpretation of this language. While Texas and California have interpreted

this policy language broadly to include coverage for injuries that have a causal connection with the use of an insured vehicle, other states like South Carolina have narrowly interpreted "use" to require the actual operation of a vehicle at the time of loss.

Another state whose courts, like South Carolina, have held that the death of a child left in a hot car did not arise out of the use of the car is:

Illinois	*Mount Vernon Fire Ins. Co. v. Heaven's Little Hands Day Care*, 795 NE2d 1034 (Ill. App. 2003) (death of infant child left unattended in van did not arise out of use of vehicle because leaving child in vehicle is not normal or reasonable consequence of vehicle use)

States whose courts, like Texas and California, have applied a broad interpretation of automobile use in cases involving the death of a child left in a hot car include:

Alabama	*St. Paul Mercury Ins. Co. v. Chilton-Shelby Mental Health Ctr.,* 595 So.2d 1375 (Ala. 1992) (death of 18-month-old left unattended in van arose out of use of auto)
Maryland	*Galleggos v. Allstate Ins. Co.,* 797 A2d 795 (Md. App. 2002) (death of two-year-old left unattended in van arose out of use of vehicle even though van was parked at time of child's death)

CONCLUSION: In cases that involve a child left in a hot car that results in the child's serious injury or death due to hyperthermia, the coverage issue is whether there was a causal connection between the vehicle's use and the resulting injury or death. The South Carolina court in *Goyeneche*, applied a three-pronged causation test that requires not only a connection between the vehicle and the injury or death, but also proof that there was no independent intervening cause, and that the vehicle was being used for transportation at the time. This is a narrow interpretation of the policy's "use" requirement.

While some states, like Illinois, have also applied a narrow interpretation of "use," other states, like Alabama, California, Maryland, and Texas, have applied a much broader interpretation and have found the necessary causal connection between the use of a vehicle and the resulting injury or death if there was anything more than the mere location of the incident to make the connection.