What's the use of motor insurance? The Court of Appeal explains...

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In a ruling handed down today (Wednesday 12 April 2017) in the case of UK Insurance v Holden & Phoenix, the Court of Appeal has provided helpful guidance to the market on what constitutes "use" of a vehicle, which goes some way to clarifying the extent of cover actually provided to policyholders in motor insurance. DAC Beachcroft acted for the successful party.

The Facts

Thomas Holden was a mechanical fitter employed by R&S Pilling t/a Phoenix Engineering ("Phoenix"). In order to enable his car to pass its MOT test (which it had failed the day before) Mr Holden undertook some repairs to it in Phoenix's workshop. The work involved the use of welding equipment. During this work, sparks from the welding equipment ignited flammable material inside the car including the seat covers and nearby rubber mats. The fire took hold very quickly and soon spread from the workshop into adjoining premises causing substantial damage. As a result of the fire, Phoenix's Property and Public Liability insurers, AXA, paid out sums in excess of £2million.

UK Insurance Limited ("UKI") were Mr Holden's motor insurers. Phoenix approached UKI on the basis that the motor policy covered the losses suffered by Phoenix as a result of the fire and sought a full recovery of all payments made. UKI disagreed and commenced proceedings against their own policyholder seeking a declaration from the Court that its policy did not cover such losses. Phoenix were joined as a second defendant and, in turn, they brought a claim against Mr Holden for an indemnity in respect of the sums paid out by their insurers. Before doing so, Phoenix agreed with Mr Holden that he would not be personally at risk as they would only enforce any judgment insofar as the liability was covered by his motor policy. As such, this was a dispute between insurers. The matter went to trial in the London Mercantile Court in January 2016.

The decision at first instance

The Court found that, whilst the motor policy covered the location of the incident, i.e. Phoenix's workshop, as there was no express geographical limit in the policy, the fire had not been caused by or arisen out of the "use" of Mr Holden's car. The repairs being undertaken did not constitute "use" of a vehicle on the basis that the car was not being operated in any way. As such, the motor policy did not cover any liability Mr Holden might have in respect of Phoenix's losses.

The Appeal

Phoenix appealed the decision, the hearing taking place on 29 March 2017. The Master of the Rolls delivered the leading judgment finding in Phoenix's favour on all counts. In particular:

1. The express wording of the UKI policy and the cover provided by it should not be restricted (as done by the Court at first instance) by reference to the provisions of the Road Traffic Act requiring compulsory insurance. On its face, the UKI policy provided cover for Mr Holden in respect of his liability to Phoenix for their losses arising from the fire.

2. Applying the reasoning in Vnuk v Triglav that "use of the vehicle" in section 145(3) of the Road Traffic Act must include any use of the vehicle consistent with its normal function; the repair of the car by Mr Holden in these circumstances was "use" of a vehicle and so the policy should respond.

In arriving at their conclusions, the Court noted that their decision was entirely consistent with the objective of the Sixth Combined Motor Insurance Directive 2009/103/EC ("the Directive"), namely to protect victims of accidents caused by motor vehicles.

"It reflects the reality that a car can pose a danger for others in its vicinity whether or not it is being driven; for example, from a fire or explosion due to petrol, oil or lubricants or if its brakes fail while parked".

The decision is also consistent with English authorities such as Elliott v Grey, Pumbien v Vines and Dunthorne v Bentley that there may be "use" of a car within sections 143 and 145 of the Road Traffic Act even if the car is parked or indeed immobilised.

The Court of Appeal provided some helpful guidance as to the meaning of "use of the vehicle" taking into consideration the

Directive, European and English case law:

1. "Use" is not confined to the actual operation of the car in the sense of being driven.

2. There may be "use" of a car when it is parked or even immobilised and incapable of being driven in the immediate future.

3. "Use" of a vehicle includes anything which is consistent with the normal function of the vehicle.

4. Damage or injury may "arise out of" the use of the car if it is consequential rather than immediate or proximate, provided that it is in a relevant causal sense, a contributing factor.

Conclusion

The purpose of compulsory motor insurance is to protect the safety and property of the wider public from accidents involving vehicles. Here, the Court of Appeal have simply provided some much needed clarification and given effect to long lines of authority both domestic and European. Tom Watkinson, Partner at DAC Beachcroft, which acted for Phoenix/AXA said: *"from a market perspective, it is essential that the purchaser of motor insurance understands what they are buying and how far cover extends should the worst happen. The clarity provided by this decision will ultimately benefit both insurers and their customers."*

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