SEA TRIALS

Racing Can Be Hazardous To Your Insurance Coverage

by James E. Mercante, Esq.

When two power boaters traveling side-by-side at high speed collided, one was killed, the other seriously injured. End of story? Of course not.

Ted Collinsworth and Robert Crockford, good friends and companions, each purchased powerboats capable of speeds in excess of 100 miles per hour. The two took their boats out on Lake Tarpon in Florida, a waterway with no speed limit, to drive their boats. Traveling side-by-side at about 80 to 85 miles per hour, something caused the two boats to collide. Ted died as a result of the collision. Robert was seriously injured.

Then the race to the courthouse began. The personal representative of Ted's estate filed a wrongful death action against the Crockfords. That case was subsequently settled by the Crockfords' liability carrier. Not to be overtaken, the Crockfords filed suit against Ted's estate. Ted's estate turned to his marine insurer - Continental Insurance Company - to defend and pay any judgment.

Racing Exclusion

Ted's marine insurance policy contained a provision called a "Racing Exclusion" which states that the policy..."will not cover powerboats while engaged in any speed race or test. We do cover predicted log cruises or similar competitions and sailboat racing."

The Boating Accident Investigation Report prepared by the marine police concluded that Ted and Robert were racing at the time and five eyewitnesses also reported that they thought the boats were racing. Robert denied they were racing and testified that he and his friend were "simply enjoying driving fast across the water as our boats were designed to do."

Based on the evidence, the insurance carrier filed a declaratory judgment action asking the court to determine that the racing exclusion applied and, therefore, it had no obligation under the policy to defend or pay any judgment. The trial court found that the exclusion, particularly the term, "any speed race," was ambiguous and capable of being read two different ways – one favoring coverage and the other against coverage. Under a general rule of contract interpretation, when a policy term is ambiguous, it may be construed against the party who drafted the contract - here, the marine insurer. As a result, the trial court construed the policy in favor of coverage.

Undefined Term Does Not Mean it is Unclear

The insurer appealed, arguing that the exclusion applies to any racing activity whether sanctioned or unsanctioned, official or unofficial and that it must therefore preclude coverage for the spontaneous "race" between Ted and Robert. The appeal panel stated that it must be guided by the policy terms – it is not for the court to rewrite the exclusion and insert provi-

sions advanced by one of the parties to achieve a desired result. In addition, the court did not accept the argument that the term "any speed race" was ambiguous simply because the policy does not define it. According to the appeals court, the lack of a definition of a policy term does not render the term ambiguous and in need of interpretation by the courts. Rather, insurance contracts must be construed in accordance with the plain language of the policy. The court then took a careful look at the precise term "any speed race" to consider whether it was ambiguous as used in the racing exclusion clause. The court considered the common everyday understanding and dictionary definitions of the term as "a contest of speed" and "a competition of speed in running, skating, riding, etc."

As a result, the court determined that in order to have a "speed race," it is not necessary that it be officially sanctioned or even pre-arranged.

Interestingly, the court relied upon a 1932 land-based case involving two cars that so colorfully illustrates the point, it is worth repeating here:

Two automobiles met on a road headed into a certain town. One automobile, a Pierce Arrow, was driven by a fellow named Smoot and the other, a new Cadillac, was driven by a chauffeur named Workmond, by whom sat the owner. As they approached town, the car driven by Workmond was in the lead, traveling at a speed of approximately thirty-five miles per hour. Smoot honked to signal Workmond to move out of his way. Rather than yield to Smoot, Workmond pulled to the right and increased his speed. Smoot pulled to the left, presumably to pass, and the two drivers found themselves traveling side-by-side on the roadway. A race suddenly and unexpectedly ensued whereby, at a very high rate of speed, each sought to gain the advantage over the other in entering the town. A collision resulted in which a bystander was killed. In the ensuing wrongful death action, the owners of both vehicles were found jointly liable. Affirming that decision, the court observed, "[S]o this chauffeur, when signalled, should have yielded the road to the following car, but as a man of mettle it ill became him to be passed by a mere Pierce Arrow and a 1926 model at that. He turned on more gas and went hurtling down the road and into town at a speed increased and reckless . . . . That these two cars were racing is too plain for argument."

Accordingly, the appeals court found the term "any speed race" to be clear, unambiguous and all-encompassing – and meaning any race regardless of whether it is officially sanctioned or impromptu.

Reversal

The trial court's decision was reversed. The case was then returned to the lower court for a jury to determine whether Ted and Robert were actually racing at the time of the fatal accident.

As both these cases show, whether on land or at sea, it's better to yield than to try to "gain the advantage." Otherwise, the result can be catastrophic, both in human and contract terms.

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