TRAUB LIEBERMAN

FIRST PARTY COVERAGE BLOG

May 13, 2021

Federal District Court Addresses "Actual Cash Value"

BY: James M. Eastham

In *Shauna Connors v. Progressive Universal Insurance Company*, No. 20 CV 7342, 2021 WL 1722773 (N.D. Ill. Apr. 30, 2021), the United States District Court for the Northern District of Illinois addressed whether the term "actual cash value" is ambiguous. The claim involved the total loss of a covered vehicle under a policy Progressive issued to the Plaintiff. The "Limits of Liability" section limited payment to the lowest of the actual cash value of the car, the amount necessary to replace it, the amount necessary to repair it, or an alternative amount specified on the declarations page. Progressive opted to pay the actual cash value which, pursuant to the terms of the policy, was determined by the market value, age, and condition of the vehicle. In addition to paying the settlement value, Progressive also paid a reimbursement for title and transfer fees as well as sales tax.

The Plaintiff brought a putative class action against Progressive alleging, among other things, breach of contract. The Plaintiff asserted that Progressive underestimated her sales tax and title and transfer fees by calculating those amounts at the time of the collision rather than under the rates applicable when the Plaintiff replaced her vehicle. Progressive moved for judgment on the pleadings.

The Court initially disagreed with Plaintiff's argument that the Limit of Liability section obligated Progressive to pay the full cost of replacing the vehicle. The Court instead held that the "limit of liability" section doesn't promise to pay costs regardless of whether the insured incurs them but instead describes the most that is payable for a covered loss. The Court then turned its attention to the Plaintiff's alternative argument that the term "actual cash value" was ambiguous such that it should be construed against Progressive to encompass sales tax and transfer and title fees calculated as of the date of vehicle replacement. The District Court disagreed that the term "actual cash value" as defined in the policy was ambiguous. According to the Court, the market value, age, and condition of the wrecked car all speak to the worth of the car at the time of the collision and did not relate to the cost of taxes and fees for a new vehicle. After dispatching Plaintiff's remaining arguments the Court granted Progressive's motion for judgment on the pleadings.

© Traub Lieberman Straus & Shrewsberry LLP