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Vehicles Furnished for "Regular Use" Are Not Covered Under Non-Owner Policies

By Jennifer N. Pahre

In *American Freedom Insurance Co. vs. Uriostegu* (Fourth Division, July 13, 2006), the court affirmed that an insurance company is not obligated to indemnify or defend under a non-owner insurance policy when the driver is found to be a regular user of the vehicle.

On November 30, 2001, defendant John Uriostegui purchased a non-owner insurance policy from Yale Insurance Agency. At the time, Mr. Uriostegui did not own a vehicle, but needed the coverage in order to drive his grandmother's 1992 Ford Crown Victoria.

On January 27, 2002, Mr. Uriostegui struck four pedestrians, Jovana Brown, Eric Brown, Tatyanna Bennett and Tanisha Fairly outside of a cross walk on South Western Avenue and 55th Street in Chicago. Jovana Brown was killed, the rest were injured, and litigation was filed against Mr. Uriostegui. American Freedom Insurance Company filed an action for declaratory judgment on the grounds that Mr. Uriostegui was a regular user of the vehicle and was therefore not covered under a non-owners' policy.

During a tape-recorded telephonic interview, Bill Moran, a claims adjuster for American Freedom, questioned Mr. Uriostegui with respect to the insured vehicle. Mr. Uriostegui admitted that he possessed and used the vehicle approximately 3 times per week and it was his main form of transportation. John Uriostegui further admitted that in January 2002, he was the only person in possession of keys to the vehicle, that his grandmother had departed for Mexico leaving him with the use of her license plates, and that he was able to use the vehicle at any time. The court found the insurer had no duty to defend or indemnify Mr.

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In this case, the court found that a potentially ambiguous policy definition was to be interpreted in the insurer's favor to eliminate coverage for a regular vehicle user on a non-owner policy. The court did not waiver, even in the face of a deceased pedestrian, and potentially ambiguous language.

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Uriostegui as no evidence existed that he had only limited or temporary use.

On appeal, the injured parties argued that the court erred in its findings concerning the language of the policy. The policy states that a non-owned vehicle is "an automobile not owned by or furnished for the regular use of the named insured or a resident of the same household." Co-defendants argued the use of the disjunctive "or" in the policy is not interchangeable with the conjunctive "and;" therefore, if at least one criterion is met, coverage should be afforded.

The Cook County Court of Appeals found the language to be unambiguous and determined the policy states that, in order to be covered, one must not either own the vehicle or have the vehicle furnished for regular use.

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We welcome your questions and comments.

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