

Insurance law case update

Axa Insurance UK Ltd V EUI Ltd T/A
Elephant Insurance [2020] EWHC
1207

Rebecca Hirst
Cobden House Chambers, Manchester
Rebecca.Hirst@cobden.co.uk



The case was decided by the High Court on 14th May 2020

Axa Insurance commenced part 8 proceedings wanting a declaration that AXA insurers and Elephant Insurance were equally liable to indemnify a party “Mr. X” on a 50/50 basis.

The case not only sets out the approach the court felt it should take but also answered two questions which can arise in insurance law.

- 1) When is a journey for social, domestic and pleasure purposes and when it is a commute?
- 2) Was the vehicle being used a “private motor vehicle”?

Axa Insurance UK Ltd v EUI (T/A Elephant Insurance) [2020] EWHC 1207 (QB)

The Facts: Mr. X was driving a Vauxhall Astra and was in a collision with Mr. Y. Mr. Y sustained very severe injuries. The Vauxhall Astra was a courtesy car owned by DP Garage who were repairing Mr. X's car. Mr. X had his own insurance through Elephant which permitted use of another vehicle for which he would be insured on a third party basis. DP Garage had the courtesy car insured by AXA. It seemed to be accepted that AXA was liable to indemnify Mr. X. The case was a part 8 claim brought by AXA for a declaration that Elephant insurers were equally liable to indemnify Mr. X. The main claim had not been decided. These were declaration proceedings only.

The Argument: There was no question AXA was liable for the accident. The question was whether Elephant could be liable on a joint basis as third party insurers. For Elephant Insurance to be liable, Mr. X had to fall within the terms of their policy. The policy allowed him to drive other cars but only if he was driving a private motor car and it was for social, domestic and pleasure purposes. If the following two questions were answered "no" Elephant was not liable;

- a) Was Mr. X using the car for social, domestic and pleasure purposes?
- b) Could the Vauxhall Astra be described as a private vehicle?

The First Question – Social, Domestic and Pleasure?

Social, domestic and pleasure (SDP)– the night before he had been working as a security guard at a hotel in Birmingham. It was not his usual place of work. He was doing his boss a favour by working at that hotel. After his night shift he was going to divert to pick up a friend of his from the local coach station and given him a lift back to Wolverhampton where they both lived.

The Court considered a number of cases including these 3;

Seddon V Binions [1978] RTR 163

Keeley v Pashen [2005] 1 WLR 1226

AXN V Worboys [2013] 1 Lloyd's Law Rep 207

Seddon V Binions [1978] RTR 163

A father was taking his son's car from his son's business to his home for lunch. He had agreed to take an employee of his son with him to allow him to go to the dentist. The father was covered for SDP purposes and for the purposes of the father's own business but not his son's business. The trial Judge found dual elements to the trip; firstly, for a domestic purpose, namely going home for lunch. The second purpose was as a business user, namely taking an employee home early. The trial Judge held the business element prevailed therefore his father's insurers were not liable. The Court of Appeal reached the same conclusion but via a different route.

"Inevitably, where one has a phrase such as 'social domestic and pleasure purposes' used in a policy of insurance (and it is a very familiar phrase, often debated in the courts) there will be cases which will fall on one side of the line and cases which fall on the other side. For my part, however much claims managers might wish it otherwise, I do not believe it is possible to state any firm principle under which it can always be predicated which side of the line a particular case will fall. It must depend on the facts of the particular case; and the facts of particular cases will vary infinitely in their detail." Roskill LJ Pg 169.

Ultimately the Court of Appeal took a step back and considered that the father had been using the vehicle because he had been, and was, on business and the fact he was returning home for lunch did not alter that position.

Keeley v Pashen [2005] 1 WLR 1226

Mr. Pashen was a minicab driver. He had picked up his last fare of the evening, a group of 4 men. They were drunk and “messaging about” in the car. A dispute arose when they were asked to stop and Mr. Pashen said he was assaulted. They ultimately all got out of the vehicle and he drove off. He stopped at the end of the road, reversed and drove into the men killing one of them. 16 seconds had elapsed between the reversing and the man being knocked down at a speed of 15 mph.

The question before the court was whether he was driving for hire/reward at the time of the accident or whether it was SDP. In order to succeed with her claim the widow of Mr. Keeley needed to show that Mr. Pashen was driving for SDP purposes. The Court of Appeal concluded that Mr. Pashen was driving for SDP purposes and not either for business, hire or reward since he had finished his shift. The Court felt that there was no disruption to the purpose by the fact of his reversing and it could not be deemed a criminal enterprise at that point. The Court agreed that the essential character of the journey was to be judged at the time of the incident and concluded that the character of the journey at that time was to return home.

AXN V Worboys [2013] 1 Lloyd's Law Rep 207 –

Mr. Worboys had used his cab to perpetrate a number of sexual assaults. The victims had sought to use the cab in the normal way to undertake various journeys. During those journeys they had been sedated and assaulted.

The court concluded that the purpose of the journey was to be determined at the time when the incident occurred and not at the start of the journey. The character of the journey had changed. It was clear from the trial of Mr. Worboys that he derived pleasure from the acts and whilst the ride was a public hire vehicle when his victims got in, the purpose changed into a criminal enterprise. This meant that the essential character of the trip had changed and did not come within the terms of the insurance as either for public hire or for domestic and pleasure purposes

Conclusion –

Social, domestic and Pleasure – The Court concluded it has to look at the insured's purpose. The Court distinguished cases such as *Keeley v Pashen* [2005] 1 WLR 1226 and *AXN V Worboys* [2013] 1 Lloyd's Law Rep 207 and found that Mr. X had been commuting from work as opposed to driving the vehicle for SDP purposes.

Mrs. Justice Foster found that the "courtesy pick up of a friend on the way, albeit necessitating a detour, did not alter the fundamental character of the trip". *Keeley v Pashen* was distinguished on the basis that the bus station pick up did not mark the end of the purpose of the homeward commute in the same way as the drop off of the passenger marked the end of the cabbie's hire in *Keeley*.

The bus station fitted into the route back from work, the friend lived in the same town, no ultimate destination was chosen as to where to take the friend and it could not be said that the primary purpose of the journey had changed.

The Second Question – A Private Vehicle?

He had been provided with the car by the garage who told him he was insured to drive it. The repair of his own car had been delayed hence getting a hire car. The Elephant policy had also defined “private motor car” as;

“A privately owned motor car manufactured to carry up to eight passengers, which is designed solely for private use and has not been constructed or adapted to carry goods.” (para 15)

The Argument – AXA presented the argument as one of alternatives; the only alternative to a private vehicle is a public vehicle such as an ambulance or community support vehicle.

Conclusion – Mrs. Justice Foster took the view that the Elephant policy plainly excluded “a car which is operated or supplied in the course of or for the purposes of a business.” It was not a private car. In support of that conclusion she noted that the Vauxhall Astra was very much part of DP’s business and was an inducement to a customer to leave their car with the DP for repair. It was a marketing tool. AXA’s policy covers the courtesy car. Elephant’s policy restriction to privately owned motor cars was deliberate and excluded such commercial overlay. It caters for the ad hoc, family and friend’s car.

Since both questions were answered no the Court refused to make the declaration sought and AXA remained solely liable to indemnify Mr. X.