

Submitted: November 30, 2000
Decided: March 1, 2001

Eric M. Doroshow, Esquire
Doroshow Pasquale Krawitz Siegel & Bhaya
1202 Kirkwood Highway
Wilmington, DE 19805

Sherry R. Fallon, Esquire
Tybout Redfearn & Pell
300 Delaware Avenue
11th Floor
P.O. Box 2092
Wilmington, DE 19899-2092

Julie M. Sebring, Esquire
Goldfein & Joseph
222 Delaware Avenue
P.O. Box 2206
Wilmington, DE 19899

***Re: Shirley Harris, v. Juan Vargas, Catemaf Auto Wholesale Exports,
Arturo Rodolfo Flores, Liberty Mutual Insurance Company v.
The Travelers Casualty and Surety Company,
C.A. No.: 98C-08-103-VAB (FSS)
Upon Defendant/Third-Party Plaintiff's Motion for Summary
Judgment—DENIED***

Dear Counsel:

As you know, Liberty Mutual filed the pending motion for summary judgment on June 8, 2000. The Court held oral argument on October 30, 2000

and the parties submitted post-argument letters on November 29 and 30, 2000. Despite the tentative ruling to the contrary at oral argument, the Court is denying Liberty Mutual's motion for summary judgment against Travelers.

First, let me briefly recap the bidding. Vargas collided with Harris. Vargas was driving a vehicle owned by his employer, Flores T/A Catemaf Auto Wholesale Exports. Substantial evidence supports the conclusion that Vargas was driving a 1982 GMC Sierra with the license plate C29896. Initially, Harris filed a personal injury complaint against Vargas, Catemaf, Flores and her uninsured motorist carrier, Liberty Mutual. Eventually, Liberty Mutual sued Travelers, claiming that the GMC Sierra was covered by Flores' and Catemaf's Travelers policy.

Liberty Mutual's motion is straightforward. It claims that it is beyond dispute that the Travelers' policy "covers newly acquired vehicles," and the GMC Sierra qualified for that coverage. Alternatively, Liberty Mutual argues that Travelers should be required to provide coverage as a matter of public policy. Travelers opposes summary judgment, offering alternative theories. While the Court toyed with several of those theories during oral argument, one of them is persuasive.

The Travelers policy unambiguously covers "only those 'autos' described in ITEM THREE of the [policy's] Declarations" ITEM THREE, the policy's schedule of coverage, includes only dealer plate 792920. The Court therefore concludes for present purposes, that the Travelers policy covers any automobile owned by Flores T/A Catemaf displaying dealer plate 792920. Most significantly, the Court further concludes that the policy does not cover any vehicle bearing any other license plate, such as C29896.

The Court recognizes Liberty Mutual's reliance on the Travelers

policy's after-acquired autos provision, which provides coverage for "an 'auto' you acquired . . . only if:

- a. We already cover all 'autos' that you own for that coverage or it replaces an 'auto' you previously owned that had that coverage; and
- b. You tell us within thirty days after you acquire it that you want us to cover it for that coverage.

Nonetheless, in order to obtain coverage under the Travelers policy for the GMC Sierra, Catemaf was obligated to put dealer plate 792920 on it or, alternatively, notify Travelers that it had acquired the GMC Sierra and it wanted Travelers to cover it. As mentioned already, the policy only covers the vehicle shown in the schedule of coverage, dealer plate 79290 or its replacement. The record does not establish conclusively that the GMC Sierra was a replacement.

Even if the Court took a more expansive view of the policy, as suggested during oral argument, and the Court held that the policy covered Catemaf's entire inventory, Liberty Mutual still has not establish coverage under the Travelers policy. Assuming that the policy covered every vehicle on Catemaf's lot, regardless of whether it was showing the dealer plate, Liberty Mutual has not proved that the GMC Sierra was part of Catemaf's inventory. Furthermore, the accident did not happen on the lot or during a test drive. It happened off the premises, while a Catemaf employee was at the wheel. The vehicle was tagged and titled in Catemaf's name. It appears to be another vehicle owned by Catemaf, which has nothing to do with dealer plate 79290. The GMC Sierra was not eligible to display the dealer plate. 21 *Del. C.* § 2124(c). The Court does not read the policy as automatically providing 30 days of coverage for

*Harris, v. Vargas, et al.,
v. The Travelers Casualty
and Surety Company,
C.A. No.: 98C-08-103-VAB (FSS)
March 1, 2001
Page 4*

every vehicle bought by Catemaf, regardless of how the vehicle was tagged, titled and used.

For the foregoing reasons, the Court cannot conclude, as a matter of law and undisputed fact, that the Travelers policy covered the vehicle driven by Vargas when he collided with Harris. Defendant/Third-Party Plaintiff's, Liberty Mutual's motion for summary judgment, filed on June 8, 2000, is DENIED.

IT IS SO ORDERED.

Very truly yours,

**FSS/lah
oc:**

Prothonotary

(Civil

Division)

