27 March 2019

PRESS SUMMARY

R & S Pilling t/a Phoenix Engineering (Respondent) v UK Insurance Ltd (Appellant)
[2019] UKSC 16
On appeal from [2017] EWCA Civ 259

JUSTICES: Lady Hale (President), Lord Wilson, Lord Hodge, Lady Arden, Lord Kitchin

BACKGROUND TO THE APPEAL

Mr Holden accidentally set fire to his car while repairing it at the premises of his employer, Phoenix Engineering. The fire caused £2 million of damage to Phoenix and its neighbour's premises. Phoenix's insurer ('Axa') paid out and has agreed not to pursue Mr Holden personally for the money, but only his car insurance provider ('Churchill'). Axa says that Mr Holden is covered by his car insurance policy's third party liability cover but Churchill says he is not.

Clause 1a of the policy says *"we will cover you for your legal responsibility if you have an accident in your vehicle and: you kill or injure someone; [or] you damage their property … ."* As required by law, the policy also includes a certificate that it satisfies the requirements of relevant legislation, which includes the Road Traffic Act 1988 ('RTA'). Under the RTA, car insurance policies must provide cover *"in respect of any liability… incurred… in respect of… damage to property caused by, or arising out of, the use of the vehicle on a road or other public place."*

The High Court held that the policy did not cover Mr Holden's accident because it had arisen out of the negligent way in which it was being repaired and not out of the use of the car. The Court of Appeal ('CA') allowed his appeal. It held that the wording of clause 1a was inadequate and had to be read with the certificate that the policy provided the cover required by law. As the policy had no geographical limitations, no such limitations were to be imposed in extending its cover to meet the statutory requirements. It accordingly construed the opening words of clause 1a to mean *"we will cover you for your legal responsibility if there is an accident involving your vehicle"*.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Hodge gives the only judgment.

REASONS FOR THE JUDGMENT

Having regard to the statutory requirements and the terms of the certificate, which disclose the insurer's intention, the policy must be construed so that the third party cover meets the requirements of the RTA **[24]**. As the certificate did not purport to provide any additional cover in itself, and because the relevant legislation treats a certificate of insurance as distinct from a policy, it is therefore necessary to read words into clause 1a. However, the CA went too far by doing so in such a way as to extend cover to any accident involving Mr Holden's vehicle **[25-31]**.

The first step is to ask what *"caused by, or arising out of, the use of the vehicle on a road or other public place"* means. In English case law, the statutory word *"use"* has been interpreted broadly to cover any situation where the owner has an element of control, management or operation of the vehicle on the road or in a public place. The reason is that even a parked car may be a hazard on a road or in such a place **[32-34]**. The words *"caused by, or arising out of the use of"* further extend the required cover, but there must be a reasonable limit to the causal chain **[42-45]**.

The concept of *"use"* in EU law goes further, and is not confined to a road or other public place. It extends to any use of a vehicle as a means of transport. To comply with EU law, Parliament may need to reconsider the wording of the RTA. But the RTA cannot be *"read down"* to comply by excising the words *"on a road or other public place"* because this would go against the grain and thrust of the legislation. It is therefore the cover required by the RTA, not EU law, that must be read into the policy **[35-41]**.

Where the context and background of a contract drives the courts to the conclusion that something has gone wrong with the language used, it may adopt a corrective construction where it is clear what a reasonable person would have understood the parties to have meant **[46-47]**.

Here, the necessary correction is to extend the cover beyond what was expressly provided to that which the RTA requires, and no more **[48-49]**.

The CA erred in not adopting this approach: the formulation *"involving your vehicle"* expanded the cover significantly beyond both the express terms of the clause and the requirements of the RTA, by removing the statutory causal link between use of the vehicle on a road or other public place and the accident **[50]**.

Nor does the statutory rule that the interpretation most favourable to the consumer must prevail apply to a situation such as this, where the court is correcting a mistake in the language used and there is no doubt about the parties' intended meaning **[51]**. The appropriate corrective construction is therefore to read the clause as if it said *"we will cover you for your legal responsibility if you have an accident in your vehicle or if there is an accident caused by or arising out of your use of your vehicle on a road or other public place and…"* **[52]**.

Mr Holden's accident does not fall within clause 1a as so interpreted. A vehicle being repaired on private property is not being *"used"* **[53]**.

Furthermore, although the attempted repairs may have arisen out of the use of the car, the property damage did not. It was Mr Holden's alleged negligence in carrying out the repairs, not the prior use of the car as a means of transport, that caused the relevant damage **[54-55]**.

References in square brackets are to paragraphs in the judgment

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html