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# The Fifth Circuit, Applying Texas Law, Strikes Down Auto Exclusion

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*Penn-America Ins. Co. v. Tarango Trucking, LLC*, 30 F.4th 440 (5th Cir. 2022), involved a coverage dispute over Penn-America Insurance Company's ("Penn-America") duty to defend and indemnify third-party claims against Tarango Trucking, LLC ("Tarango") for a fatal accident on its property. At the time of the accident, Penn-America insured Tarango under a commercial general liability policy, which included an "Auto Exclusion" and "Parking Exception" provision. The Auto Exclusion stated the policy did not apply to bodily injury or property damage arising out of the use of any automobile, including the operation and loading or unloading. The Parking Exception stated the Auto Exclusion did not apply to parking an auto on Tarango's premises. The main issues on appeal were whether the Parking Exception restored coverage otherwise precluded by the Auto Exclusion, and whether the district court prematurely decided Penn-America's duty to indemnify. The appellate court answered yes to both.

On March 2, 2020, a truck driver employed by WS Excavation, LLC ("WS"), parked his tractor-trailer on Tarango's property and proceeded to inspect and off-load heavy equipment. While operating the hydraulic lift, the tractor's braking system disengaged. The tractor rolled back and struck the WS driver and his personal vehicle, resulting in his death and significant property damage. Notably, WS allegedly failed to properly maintain the tractor's electronic and braking systems, and Tarango allegedly failed to maintain a level parking and loading facility compliant with industry standards and guidelines.

Tarango tendered the underlying action to Penn-America and requested a defense. Penn-America defended Tarango but reserved the right to contest coverage. Penn-America then filed a declaratory judgment action in federal court where it sought to have its and Tarango's rights concerning the policy and the underlying action determined. Penn-America argued that the claims in the underlying action fell squarely within the Auto Exclusion of the policy, pointing to the "loading and unloading" language found therein, and maintained the accident did not occur until after the vehicle was parked. Conversely, Tarango read the language of the Parking Exception more broadly, stating that the exception covers all damages that "arise from" parking.

Whereas the district court adopted a narrow interpretation of the Parking Exception, the Fifth Circuit concluded that the policy could be reasonably interpreted as covering all bodily injuries "arising out of" parking. In coming to this conclusion, the Fifth Circuit noted that any doubts regarding the duty to defend are resolved in favor of the insured, and it will adopt the interpretation urged by the insured as long as it is not unreasonable and even if the insurer's interpretation "appears to be more reasonable or a more accurate reflection of the parties' intent." Thus, the Fifth Circuit sided with the insured concluding that Penn-America owed a duty to defend its insured. Because there was a duty to defend, the Fifth Circuit also determined the district court prematurely ruled on the insurer's duty to indemnify.