

October 2022

SELLING OF COMMERCIAL VEHICLES TO CONSUMERS – WHEN DOES THE TITLE OF OWNERSHIP TRANSFER?

BACKGROUND

The Supreme Court of Kentucky recently issued an **opinion** that establishes when the statutory ownership of a vehicle transfers once that vehicle is sold by a commercial dealer to a consumer. Section **186A.220(1)** of the Kentucky Revised Statutes does not require a dealer to immediately apply for a transfer of title when it acquires a vehicle it intends to resell. However, the statute does require the dealer to notify the county clerk in the same county where the dealership is located about the acquisition of the vehicle within 15-days from the date it was acquired, but does permit the county clerk to delay the application for the official title from the state.

DETAILS

In *Zepeda v. Central Motors, Inc.*, ___ S.W.3d ___ (Ky. 2022), the plaintiff was seriously injured in an automobile crash while a passenger in a BMW owned by Juan Garcia that was being driven by his son, Darley Morales. Garcia had purchased the BMW from Central Motors on July 24, 2014, approximately three weeks prior to the crash. Central Motors had purchased the vehicle from a reclamation company in Tennessee on March 19, 2014, and the reclamation company executed the transfer of ownership portion on its certificate of title. Central Motors transported the BMW into the State of Kentucky on the date of purchase, but did not notify the local county clerk of its purchase of the vehicle.

Upon purchase of the vehicle, Garcia executed a retail installment contract and security agreement. Garcia also granted Central Motors a limited power of attorney for the purpose of delivering the assigned vehicle title and other documents needed to register the vehicle and transfer ownership to the appropriate government agencies. On August 11, 2014, Central Motors paid the necessary fees and submitted an application for a Kentucky certificate of title and registration to the county clerk in the county where Central Motors was located. Central Motors then filed a titling statement with the clerk of the county where Garcia resided along with a lien on the title.

The automobile collision occurred on August 14, 2014. Whereas the certificate of title was issued in Garcia's name on August 15, and the registration process was completed on August 17, 2014. Subsequently, Morales was killed in the crash and the plaintiff was seriously injured, and it was later determined that Morales was intoxicated and did not have a valid driver's license at the time of the accident.

The plaintiff who had survived the accident later brought suit against the Estate of Morales, her UIM carrier, and Central Motors as the statutory owner of the BMW. Central Motors and the plaintiff filed cross motions for summary judgment on the issue of whether Central Motors was the statutory owner of the BMW at the time the crash. The trial court granted Central Motors' motion on the basis that it substantially complied with KRS § 186A.220,

thus making Garcia the statutory owner of the vehicle at the time he took possession of the vehicle.

The plaintiff appealed, arguing the trial court erred in finding Central Motors was not the statutory owner of the vehicle on the basis it had not provided notice to the county clerk within the required time frame and it was the named owner on the title at the time of the crash. The **Kentucky Court of Appeals** affirmed the trial court's decision that Garcia was the statutory owner, and the plaintiff appealed the decision to the **Supreme Court of Kentucky**. The Supreme Court of Kentucky affirmed the decision of the Court of Appeals and agreed Central Motors was not the statutory owner at the time the crash because it had substantially complied with the statute and the possession of the vehicle had been transferred after a bona fide sale of the BWM to Garcia.

In its opinion, the Court noted that Kentucky is generally a title state, meaning the holder of the certificate of title of a vehicle is considered the owner of that vehicle for the purposes of liability. However, the Court held KRS § 186A.220 was an exception to this rule. The Court pointed out that a dealer who delivers physical possession of the vehicle following a bona fide sale and otherwise complies with KRS § 186A.220 provisions for transferring title to the purchaser shall not be considered the statutory owner of the vehicle. The Court went on to state that upon physical delivery of the vehicle to the purchaser following such a sale, a transfer of ownership has been completed and the purchaser would be liable for a subsequent crash involving the vehicle.

SUMMARY

This Kentucky decision is significant for insurance carriers who issue auto dealer policies because it clarifies when liability transfers from the dealer to a purchaser in the event the dealer fails to strictly comply with the notice of acquisition provisions of KRS § 186A.220. The Supreme Court of Kentucky, in rendering this decision, has created a "stop gap" type of measure regarding liability between the time a vehicle is purchased and an official certificate of title is issued through the state.

Phil Fraley handles medical malpractice, insurance coverage and workers' compensation claims and has experience defending physical and sexual abuse claims. He has extensive experience defending products liability matters, auto and trucking liability, construction defect and premises claims. Phil counsels clients on contracts, bad faith and dram shop matters, and represents clients in asbestos cases pending throughout West Virginia, Kentucky, Ohio, Illinois, Texas and California. He also drafts appellate briefs on asbestos-related matters to all district and appellate court. Phil previously submitted two appellate briefs in opposition to writs of certiorari that were pending before the United State Supreme Court.

Litchfield Cavo operates out of 23 offices, serving clients in more than 35 states nationwide.

AZ – Phoenix | **CA** – Los Angeles area | **CT** – Hartford area | **FL** – Ft. Lauderdale | **FL** – Tampa
GA – Atlanta | **IL** – Chicago | **IN** – Highland | **LA** – New Orleans area | **MA** – Boston area
MO – Kansas City | **MO** – St. Louis | **NJ** – Cherry Hill | **NV** – Las Vegas | **NY** – New York
PA – Philadelphia | **PA** – Pittsburgh | **RI** – Providence | **TX** – Dallas-Ft. Worth | **TX** – Houston
UT – Salt Lake City | **WI** – Milwaukee | **WV** – Barboursville
