

# MAINE STATE LEGISLATURE

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Liability Coverages under Maine Standard Insurance Policy Provisions for Pool Car Operations so-called.

**FACTS:**

All persons engaged in for-hire transportation by motor vehicle are required to obtain a certificate from the Commission prior to the performance of said service.

Through the course of regulation, it has come to the attention of the Public Utilities Commission that many individuals are engaged in "pool car" operations, so-called.

**QUESTION:**

Whether various individuals would be covered under the standard liability policy issued to the operator of a motor vehicle under the following factual situations?

1. Where a group of individuals, all having the same place of employment, agree to the alternate use of their vehicles while traveling from their homes to place of employment and return.

2. Where an individual charges a certain fee to others to transport members of the community from their residence to place of business and return. Passengers and operator are all employed at the same place of business.

**ANSWER:**

See Opinion.

**OPINION:**

The standard provisions of automobile combination policies issued in the State of Maine contains coverages under part I for "protection against liability, medical expenses, uninsured motorists and accidental death benefits." Part I of an automobile combination policy contains certain specified exclusions. If a factual situation should fall within one of the specified exclusions, the policy provisions giving coverages would not apply. The pertinent exclusionary language of part I of the standard policy which requires interpretation in the given factual situations reads as follows:

**\*Exclusions**

**"This policy does not apply:**

**\* . . . .**

**\* . . . .**

**"Under the liability coverage and, except with respect to bodily injury or death through being struck by a highway vehicle, under the Medical Expense and Accidental Death Benefit Coverages,**

**\*(f) to any automobile or trailer while used as a public or livery conveyance but this exclusion does not apply with respect to the occupancy of a non-owned automobile by the named insured or a relative, other than as an operator thereof;**

**. . . ."**

Thus, if under the given factual situation (1) or the given factual situation (2) the automobile in use is considered by Maine Courts to be a public livery conveyance, upon an accident occurring there would be no liability coverage, and there would be medical expenses and accidental death benefit coverages only to the limited extent permitted by the above-quoted language.

We have not found a reported case in the State of Maine on the scope of the above exclusionary provision. Therefore, we look to decisions of other jurisdictions.

A livery conveyance has been defined as "a vehicle used indiscriminately in conveying the public, without limitation to certain persons or particular occasions without being governed by special terms." Elliot v. Behnar, 150 Kan. 876, 96 P. 2d 852, 857. The word 'public' used as an adjective has been defined by Black's Law Dictionary, page 1393 (citing cases in Massachusetts, Vermont and Michigan) as follows:

"Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use. Morgan v. Cree, 46 Vt. 786, 14 Am. Rep. 640; Crane v. Waters, C. C. Mass., 10 F. 621. Belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community. People v. Powell, 280 Mich. 699, 274 N.W. 372, 373, 111 A.L.R. 721."

A State of Maine Court applying the above definitions to factual situation 1 or factual situation 2 would probably conclude that the automobile being used was neither a livery conveyance nor a public conveyance. Under both factual situations 1 and 2, a passenger in the vehicle could not be just any member of the public, he has to be an individual employed by the same employer. Under factual situation 1 there is a special condition that the passenger have a vehicle and that the vehicle of his own be used alternately in the same manner. Under factual situation 2 there is a special condition that the passenger pay a specified fee which other members of the public not in the same class would not pay.

In further support of the probable conclusion that the vehicles involved in factual situations 1 and 2 would not be considered a public conveyance or livery conveyance, we cite McDaniel v. Glenn Falls Indemnity Co. 78 N.E. 2d 111, 333 Ill. App. 596, in which case an automobile was not considered a public or livery conveyance within the meaning of an exclusion of an automobile liability policy when the insured in making a trip for her own pleasure and business, carried for compensation riders solicited by her from among persons presented by a travel agency. The Illinois Court in reaching its conclusion said "'public conveyance' means a vehicle used indiscriminately in conveying the public without limitation to certain persons or particular occasions or without being governed by special terms." 78 N.E. 2d, supra., at page 113.

A case more in point is Allor v. Dubay, 26 N.W. 2d 772, 317 Mich. 218 in which case an automobile was used pursuant to a share-the-ride arrangement under which the driver's fellow employees paid for the transportation to and from work. Held: the automobile was not a "public conveyance or livery conveyance" within the meaning of the provisions of an automobile liability policy excluding liability for damage inflicted when an automobile is used as a public conveyance.

For the reasons and the law cited we are of the opinion that an accident occurring under factual situations 1 and 2 would provide coverages under the liability portions of a standard liability policy in the State of Maine. In reaching our conclusion we assume that in both factual situations the insured driver and the passengers were fellow employees and there was not an employer-employee relationship. Also we have assumed that the reference to a vehicle in the factual situations is a reference to an 'automobile' as defined by the standard policy provision, i.e., 'a four wheel land motor vehicle designed for use principally upon public roads.'

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