2/21/01 **SUPREME COURT OF LOUISIANA**

No. 00-CC-1693

HERMAN WILLIAMS AND EISIBE WILLIAMS

VERSUS

US AGENCIES CASUALTY INSURANCE COMPANY, INC. ET AL

VICTORY, Justice (concurring)

I concur in the result reached by the majority. La. R.S. 32:900B(2) provides that an **owner's** policy of liability insurance

> (2) **Shall insure** the person named therein . . . **for damages arising out of the ownership, maintenance**, or use of such motor vehicle . . . . [Emphasis added].

In this case, an endorsement was attached to the policy which provided in pertinent part:

> . . . [I]t is hereby agreed that insurance is not afforded by this policy while any vehicle is being used, driven, operated or manipulated by, or **under the care of:** William N Beaudoin [Emphasis added].

William Beaudoin was the owner of the vehicle involved in this accident and the owner of the insurance policy at issue.

Automobile liability policies protect the innocent motoring public against damages that arise as a result of negligent operation of vehicles. However, they also protect the motoring public from legal liability arising out of latent defects and negligent maintenance of a vehicle, with which an owner is chargeable as the custodian of a defective thing, even where there is no negligence in the operation of the vehicle.

We held in ***King v. Louviere***, 543 So. 2d 1327 (La. 1989) that the owner

of a vehicle, rather than a driver who has not been charged with maintenance of the vehicle, is liable for damages when an automobile accident arises out of a latent defect in a vehicle in his care or "garde." Thus, in a case where the driver of a vehicle is non-negligent and has not been charged with maintenance, the driver (and the driver's liability insurer) can properly defend against a liability claim, even though the defect in the vehicle he was driving caused the accident. Under our law, the responsibility for damages in such a case rests with the owner of the vehicle when it remains in his care.

Because the owner is the party liable for damages caused by his vehicle's defects, a policy provision that excludes him from coverage would leave the motoring public unprotected whenever such an exclusion has been attached to a policy and an accident occurs as a consequence of a latent defect in a vehicle that remains under the care and custody of its owner. For instance, if the owner of a vehicle with faulty brakes lends the vehicle to a friend who has an accident as a consequence of the brake failure, the injured party could sue the owner's insurer. That insurer would cover the friend as an omnibus insured. However, the insurer would have a good defense of the omnibus insured, who is not legally responsible for damages arising from unknown vehicle defects in the vehicle he is driving. If there is no coverage for the owner because of a policy exclusion, the innocent injured third party may have no effective recovery. This result would defeat the public policy manifested in the compulsory insurance law and La. R.S. 32:900B(2), which provides that an owner's policy shall insure against loss arising out of **ownership**, **maintenance**, or use.

Accordingly, I concur in the result reached by the majority as to the particular exclusion at issue in this case.

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