

# HANNA & PLAUT LLP

ATTORNEYS AT LAW

## ***Classic Performance Cars, Inc. v. Acceptance Indem. Ins. Co., Garage Policy Does Not Cover Repossession Activities***

*Classic Performance Cars, Inc. v. Acceptance Indem. Ins. Co.*, 464 F.Supp.2d 652 (S.D. Tex. 2006), involved the claims by Classic Performance, a used car dealer sued in two state court suits for injuries that arose from repossession activities. In the first suit, the purchasers alleged that Classic failed to abide by an agreement extending their final payment, hired someone to repossess the vehicle, and caused bodily injury and damage to their property because the repossessors “failed to use ordinary care in the manner in which [it] handle repossession of [their] vehicle.” In the course of the repossession, one of the purchasers pursued the repossessors in a different vehicle and had an accident with another car, which caused bodily injury and property damage to the accident victims. Those victims also sued Classic and alleged that Classic’s negligence stemmed from “the manner in which [it] performed the repossession and breached the peace.” Classic tendered both lawsuits to Acceptance under its garage policy; Acceptance denied defense based on the repossession exclusion in the policy.

The federal district court granted Acceptance’s motion for summary judgment in the subsequent declaratory coverage action. The policy excludes coverage for “repossession operations,” and Classic argued that this exclusion applies only to Classic’s repossession through its own employees and not to conduct by third parties Classic hires. The court rejected both Classic’s interpretation and its ambiguity argument as “hopelessly strained.” While adding the phrase, “even if contracted to a third party,” might make the contract “perfect,” the court held that such a phrase was unnecessary because the exclusion was sufficiently clear and broad enough to include third-party conduct. Because the underlying petition allegations made it “quite clear that, regardless of the particular legal theory articulated by the claimants, all of these injuries relate to the attempt to repossess the [vehicle],” the court further rejected Classic’s contention that the allegations of “negligence” alone triggered the duty to defend since the factual basis of that conduct was excluded.

Finally, the court held that Classic’s claims of bad faith and statutory violations could not succeed without some independent basis. Because Acceptance had a reasonable basis to deny Classic’s claim and because Classic had no claims independent of the contract, Acceptance was entitled to summary judgment on each cause of action.