



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Insurance Division
500 James Robertson Parkway
Fourth Floor, Davy Crockett Tower
Nashville, Tennessee 37243
615-741-2176

June 28, 2006

Thomas A. Wooters, Esq.
Executive Vice-President and General Counsel
LoJack Corporation
200 Lowder Brook Drive
Westwood, Massachusetts 02090

Re: Interpretive Opinion No. 01-06
Vehicle Location Unit Warranty

Dear Mr. Wooters:

This letter is written in response to your letter dated May 12, 2006, to Commissioner Paula A. Flowers whereby you ask for guidance from this Department. Your letter is being treated as a request for an interpretive opinion from the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") pursuant to Tenn. Comp. R. & Reg. Tit. Dept. of Commerce and Ins., ch. 0780-1-77-.01(1).

The facts understood by the Division are as follows:

LoJack Corporation ("LoJack") is the manufacturer and distributor of the Lojack Stolen Vehicle Recovery System. Such system consists of the consumer Vehicle Location Unit ("VLU"), an activation unit and tracking units used by police to recover stolen vehicles. The VLU is a tool used to aid law enforcement agencies in recovering stolen vehicles. Activation and tracking of the VLU are entirely within the control of law enforcement. LoJack does not activate or track stolen vehicles after the sale. The consumer transaction is a simple outright sale of hardware.

LoJack warrants the VLU ("VLU warranty") against defects in materials and workmanship for a period of two years. Defective units will be repaired or replaced. The VLU warranty further provides that if the VLU does not function as intended, LoJack will refund the purchase price paid by the consumer, up to a stated maximum. Failure to function is defined as a failure of the VLU to perform such that the consumer's vehicle is not recovered within twenty-four hours of the report of the theft to a police agency within the coverage area.

Letter to Thomas A. Wooters, Esq.

RE: Vehicle Location Unit Warranty

June 28, 2006

Page 2 of 4

You opine that the LoJack VLU warranty should not be characterized as a contract of insurance and should not be subject to the laws regulating vehicle protection products because, in the event the product does not function as warranted, the warranty only provides for the replacement of the unit or a refund of the purchase price.

RESPONSE:

Tenn. Code Ann. § 56-7-101 provides the definition for a contract of insurance and reads as follows:

A contract of insurance to be an agreement by which one party, for consideration, promises to pay money or its equivalent, or to do some act of value to the assured, upon destruction or injury, loss or damage of something in which the other party has an insurable interest....

In addition to this statute, case law in Tennessee is vital in defining a contract of insurance. Under Tennessee case law, a contract of insurance is created if (1) a contract is contingent upon the property or interest or lives in this state; or (2) the principle object and purpose of the contract is the indemnification of risk. *See Citizens Ins. Co. v. Ayers*, 13 S.W. 1090, 1091 (Tenn. 1890) (“the sole object of insurance, so far as the assured is concerned, [is], indemnity.”); *see also State Ins. Co. of Nashville v. Hughes*, 78 Tenn. 461. (Tenn. 1882).

The definition in Tenn. Code Ann. § 56-7-101(a) is consistent with the general emphasis courts have placed on the indemnification element of contracts of insurance. In *American Surety Co. Of New York v. Folk*, 135 S.W. 778 (Tenn. 1911), the Court held that:

[t]he text-books upon the subject and the adjudged cases define insurance to be a contract by which one party, for an adequate consideration paid to him, undertakes to indemnify or guarantee the other against loss by certain specified risks—an agreement wherein one becomes surety to another that the latter shall not suffer loss or damage upon the happening of certain contingencies, upon specified terms (internal citations omitted).

The contingency upon property, interest, or life in this State has been found by courts to be a defining characteristic in determining whether a contract of insurance exists. *See Garrett v. Forest Lawn Memorial Gardens, Inc.*, 505 S.W.2d 705 (1974). Indemnification of risk has been found by the Attorney General to constitute an essential part of a contract for insurance. *See Tenn. Op. Atty. Gen. No. 84-299* (1984).

Further, the Attorney General, in opining on what are contracts of insurance in this state, has also drawn a distinction between contracts which provide for indemnification and those that provide for future services to be rendered. *See Tenn. Op. Atty. Gen. No. 85-038* (1986). Contracts that provide for indemnification have been construed by the Attorney General as contracts of insurance. *Id.*; *see also Tenn. Op. Atty. Gen. No. 84-299* (1984). Contracts that merely provide for future

services have not been interpreted by the Attorney General to be contracts of insurance. Tenn. Op. Atty. Gen. No. 85-038 (1986).

In that opinion, the Attorney General analyzed two different warranty agreements. The Attorney General determined that both of the warranty agreements referenced in the opinion were not contracts of insurance because they were providing a service to the purchasers by offering repair or replacement upon the occurrence of a covered loss. The Attorney General eventually concluded that the plans were not offering indemnification to its insured in the event of a loss, and, therefore, were not contracts of insurance.

General Cody's opinion focused on the *agreement* in question and whether the *agreement* provides for indemnification or for future services:

Whether or not either of the agreements in the instant question is a true warranty, indemnity is not a significant object of either agreement. Both are designed to provide service to the purchaser. Either plan provides that when a covered automobile part malfunctions, the purchaser can get it replaced or fixed at no charge except the deductible. If he does not get the part replaced or fixed, he does not receive a payment. This is the essence of service as opposed to indemnity. *Id.* at 3.

The central question General Cody's opinion focused on is whether the agreement in question assured a payment to cover a loss of property or guaranteed to have the property—here, the automobile—repaired free of charge, minus a deductible. In concluding that the agreements did not constitute a contract of insurance, General Cody found that because the holder of the warranty or service contract would not receive a payment for the loss—i.e., indemnification for the loss of property—but instead a service in the form of automobile repair, the two agreements were not contracts of insurance. *Id.*

Using the analysis used by the Attorney General, it is clear that the VLU warranty is not a contract of insurance. The principal object and purpose of the VLU warranty is not to provide indemnification to the warrantee, but to guarantee of services in the form of the repair or replacement of the VLU, or a refund of the purchase price. The VLU warranty limits the liability of the seller, in the event the device is defective, to the cost of repair or replacement. In the event a vehicle equipped with the VLU is stolen and not recovered within twenty-four (24) hours, the seller's liability is limited to an amount equal to the aggregate purchase price of the device, but not above a stated maximum amount listed in the warranty contract. Such provisions limiting the seller's liability to the cost of repair or replacement for the VLU make the VLU warranty virtually identical to those considered by the Attorney General. Therefore, the VLU warranty does not constitute a contract of insurance under Tennessee law.

The analysis next turns to whether the VLU warranty falls under the definition of a vehicle protection product warranty under Tenn. Code Ann. § 56-55-102(5). Tenn. Code Ann. § 56-55-102(5) defines a vehicle protection product warranty as a written agreement that provides for specified incidental costs if the vehicle protection product fails to protect the vehicle. Tenn. Code Ann. § 56-55-102(3) states, in pertinent part, that:

Letter to Thomas A. Wooters, Esq.

RE: Vehicle Location Unit Warranty

June 28, 2006

Page 4 of 4

Incidental costs are specified expenses related to the failure of the Vehicle Protection Product to perform as provided in the warranty, including insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

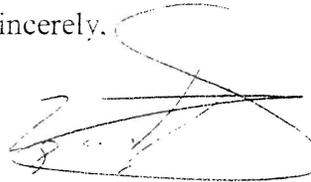
Not included within the definition of incidental cost is the repair and replacement of the vehicle protection product, itself.

The VLU warranty does not meet the definition of a vehicle protection product warranty because it does not attempt to cover any incidental costs associated with the failure of a vehicle protection product. The VLU warranty only provides for the repair, replacement or refund of the purchase price of the VLU. The VLU warranty does not cover any other costs such as insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Therefore, the VLU warranty is not a vehicle protection product warranty subject to the vehicle protection product laws under Tenn. Code Ann. §§ 56-55-101, *et seq.*

In conclusion, it is the opinion of the Insurance Division that the LoJack Vehicle Location Unit warranty does not constitute either a contract of insurance or a vehicle protection product warranty.

This response by the Insurance Division to a specific fact situation relating to the interpretation of the Tennessee Insurance Law should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance or any other official in the Department of Commerce and Insurance. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent. Any variation in the facts presented to the Insurance Division could result in a different conclusion as asserted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry C. Knight, Jr.", written over a horizontal line.

Larry C. Knight, Jr.
Assistant Commissioner for Insurance

LCK/tdg

cc: Paula A. Flowers, Commissioner
John F. Morris, Chief Counsel for Insurance
Kathy Fussell, Financial Analysis Director
Coit C. Holbrock, Director, Actuarial Services Section
Tony D. Greer, Staff Attorney