Subject: Water in fuel damages engine of insured’s auto

Q.: We are dealing with an unusual claim, and would appreciate your thoughts. Our insured’s 2-year old Lincoln MKZ suddenly quit running, so she had it towed to the dealer. The engine was damaged due to water in the fuel. The adjuster’s initial reaction (no written denial yet), was that this was excluded under “wear and tear, and/or mechanical breakdown.”

I don’t think those exclusions apply to the engine damage. I believe wear and tear, or mechanical breakdown, is limited to a failure of some internal part or function of the engine, where there is no other factor that caused or contributed to the loss, outside of the engine itself. On the other hand, the engine did “breakdown,” but I’m not convinced that this the correct decision in this case.

A.: I agree with you. In my view, the adjuster is totally misapplying the exclusions. For the discussion which follows, assume your insured is Jill, who has an ISO Personal Auto Policy (PAP). Note that proprietary forms may be different. Here are the pertinent PAP excerpts.

**PP 00 01 01 05**

*Personal Auto Policy*

*Part D – Coverage for Damage to Your Auto*

*Insuring Agreement*

B. Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or

*Exclusions*

2. Damage due and confined to:
   a. Wear and tear;
   c. Mechanical or electrical breakdown or failure;
Comments on wear and tear:
(1) In my view, the wear and tear exclusion clearly does not apply to this loss. The term “wear and tear” is not defined in the PAP. In such situations, courts generally look to dictionaries, as well as relevant case law and statutes. Black’s Law Dictionary (9th) defines wear and tear as “Deterioration caused by ordinary use.”
(2) Since it has been established that there is an outside element – water, which is a covered peril – that caused sudden damage to the engine, the damage was not caused by “ordinary use.”

Comments on mechanical or electrical breakdown or failure:
(1) I do not believe that these exclusions apply, either. Like wear and tear, I think the intent of these exclusions is to deny coverage where mechanical or electrical equipment fails or is damage by some internal flaw or defect (sometimes referred to in other insurance coverage forms as “latent defect”).
(2) Referring to the ten perils listed in the insuring agreement in the excerpt above, assume that a car caught fire, and as a result, the wiring and other electrical components of car were damaged. It would seem totally implausible that an argument could be made that fire (or related heat) damage to any electrical parts would be excluded under “electrical breakdown or failure.”
(3) Likewise, if a car rolled into a lake, or was inundated in a flood, the insurer should include damage to any mechanical or electrical equipment in the covered claim. If claims like this were routinely denied, there seems little value or purpose in having water as a named peril. About the only coverage the insured would have would be water damage to the interior fabrics, seats, and miscellaneous trim.

Comments on water damage to the engine:
(1) One of the most common ways water gets into the engine and related fuel system is through the introduction of water into the fuel tank. This is often the result of contaminated fuel at a gas station.
(2) However, personal disputes and pranks also result in water being poured directly into the fuel tank. I recently saw a news story about a bitter separation a husband and wife were going through, where the husband went to his wife’s workplace and poured a large amount of water into the tank of her BMW. This caused over $12,000 in damage to the engine.
(3) An auto being submerged in water, or simply driving on flooded streets, can introduce water into the engine through the air filter in the engine compartment. In addition, in certain situations, water can also backflow into the engine through the tail pipe of the exhaust system. Additionally, driving in high water can damage the catalytic converter.
(4) Water in the fuel tank does not always result in immediate damage. Since water is more dense than gasoline, and the two do not mix (“immiscible”), the water ends up at the bottom of the fuel tank. However, as the fuel level gets low in the tank, water can be sucked into the fuel line from the tank, and possibly move up to the fuel line filter in the engine compartment. The fuel tank filter, and the fuel line filter, will eventually become clogged with enough water to prevent fuel from reaching the cylinders. However, if water does make it into the cylinders, the engine will stop running, since water is not combustible.

(5) Far more serious damage to the engine can occur if the water enters through the air filter in the engine compartment, such as when a wall of water is pushed up by the car as it drives on a flooded street. This can put a significant amount of water directly into the cylinders. In normal operation, on the upstroke of the pistons, the fuel/air mix is compressed, until the spark plug fires. However, water cannot be compressed, and the resulting resistance against the piston (“hydrostatic lock” or “hydrolock”) can bend or break the piston connecting rod.

Comments on putting wrong type fuel (diesel vs. gasoline) into the tank:
(1) Since diesel fuel nozzles are purposely larger than the filler opening in a gasoline car, this mismatch is less common than the reverse. But both mistakes can cause damage to the engine. Another common scenario is when fuel from a small, portable fuel container is poured into the fuel tank. In most cases, the fuel container is unmarked, and might contain gasoline, kerosene, or diesel fuel.
(2) In my view, the damage should be covered in the PAP using the same logic as with water damage to engines. Both are sudden, accidental actions which damage the engine, which most experts feel are outside of the actual intent of “mechanical breakdown.”
(3) One potential issue that often arises with cross-fuel contamination is that while water is one of the 10 named perils in Other Than Collision, fuel contamination is not listed. That raises the argument as to whether Other Than Collision coverage is limited to the 10 named perils, or is “all-risk.” Most experts believe the latter, since the introductory language in the Other Than Collision coverage says, “Loss caused by the following is considered other than "collision."” Note it doesn’t say that only those 10 perils are considered other than collision.

Comments on “due and confined to”:
(1) In PAP exclusion 2., note the introductory language (my emphasis added):

   **Exclusions**
   2. *Damage due and confined to:*
      a. Wear and tear;
      c. Mechanical or electrical breakdown or failure;
(2) The “due and confined to” language is important in claims where wear and tear, or a mechanical or electrical problem, causes ensuing damage to the auto. For example, if a fuel line has a leak, and the car catches fire, the “due and confined to” language is meant to restrict the exclusion to only the fuel line itself, since fire is a covered peril. (3) On the other hand, if one mechanical breakdown (water pump) causes an ensuing mechanical breakdown of another part of the same piece of equipment (the engine), with no otherwise covered cause of loss being involved, then a plausible argument can be made for excluding the entire loss.

Industry literature:
While researching your question, I found a subscriber Q&A forum in a leading industry resource. These two questions were particularly relevant. Here is a summary.

(1) Subject: Water in fuel.
Q. The engine of our insured’s auto was damaged from water that somehow got into the fuel. The insurer is denying the claim as mechanical breakdown. What is your view? 
A. The cause of loss was water in the fuel, not mechanical breakdown. Note that water is included in the 10 named perils under Other Than Collision.

(2) Subject: Wrong fuel.
Q. Our insured’s husband accidently put gasoline into his wife’s new diesel car. There was significant damage to the engine. The insurer says that this is mechanical breakdown, which is excluded. Do you agree? 
A. No. This is not a mechanical breakdown loss, since there is a known cause for the damage outside of the engine itself. In fact, some cases of cross-fuel contamination can cause an engine fire, which of course is also covered. This is another example that illustrates that Other Than Collision is not limited to the 10 named perils.

Additional resources:
“Is Comprehensive Coverage ‘All Risk’ or Named Perils?”
“Mechanical Breakdown Exclusion”
“Mechanical Breakdown Exclusion – Revisited”
“Wear and Tear and the Personal Auto Policy”
“The Wear and Tear Exclusion”
“The Wear and Tear Exclusion – Revisited”

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