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Business and Commercial Law: Insurance

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a similar business in another location, at least so long as he did not actively solicit his old customers.² This is in accord with an earlier case,³ and with the rule generally prevailing in other states,⁴ although there have been some intimations to the contrary.⁵ If competition on the part of the vendor of a business is sought to be avoided, the vendee can protect himself only by an express stipulation.⁶

INSURANCE

G. Frank Purvis, Jr.*

The work of the Louisiana Supreme Court with respect to insurance was limited almost entirely to the construction and interpretation of policy clauses.

Life Insurance

The important question of the proper construction of war clauses was considered by the court. In *Edwards v. Life and Casualty Insurance Company of Tennessee*¹ the insured held two policies containing war clauses. These clauses were very similar and read as follows:

“The insured may serve in the Navy or Army of the United States or in the National Guard in time of peace or for the purpose of maintaining order in the case of riot; in time of actual war, however, a written permit must be obtained from the Company for such service and an extra premium paid. Should the insured die while enrolled in such service in war time without such permit, the Company’s liability will be restricted to the net reserve of this policy.”

“The liability of the company shall be limited to the reserve on this policy, or to one-fifth of the amount, payable hereunder

2. But see *J. Alfred Mouton, Inc. v. Hebert*, 199 So. 172 (La. App. 1940) noted in (1941) 15 *Tulane L. Rev.* 627, where the buyer was held entitled to rescission of the sale if the seller engaged in competition with him and directly solicited business from his former customers. In the *Davis* case the court stated that since there was no evidence of solicitation, it was unnecessary to decide this issue.

3. *Bergamini v. Bastian*, 35 La. Ann. 60, 48 Am. St. Rep. 216 (1883).

4. See Note (1941) 15 *Tulane L. Rev.* 627. See also *Vonderbank v. Schmidt*, 44 La. Ann. 264, 10 So. 616 (1892); *Liquidators of Nicholson Publishing Co., Limited v. F. S. Upton Printing Co.*, 152 La. 270, 93 So. 91 (1922).

5. See *Meyer v. Labou*, 51 La. Ann. 1726, 26 So. 463 (1899).

6. For rulings that such a stipulation is not contrary to public policy, see *Wintz v. Vogt*, 3 La. Ann. 16 (1848); *Goldman v. Goldman*, 51 La. Ann. 761, 25 So. 555 (1899); *Eugene Dietzgen Co. v. Kokosky*, 118 La. 449, 37 So. 24, 66 L. R. A. 503 (1904). See also *Vonderbank v. Schmidt*, Note 4, *supra*.

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1. 210 La. 1024, 29 So. (2d) 50 (1946).

on the death of the Insured, whichever is the greater, if the Insured should die while enrolled in military, naval, or air service in time of war, whether declared or undeclared; or if the Insured should die as the direct or indirect result of such service, without securing a permit signed by an executive officer of the Company, and paying such extra premium as the Company may fix to cover the hazard.' ”²

The death of the insured occurred while he was an enlisted man in the naval forces of the United States during the last World War and while assigned to the United States Naval Training School (Radio) at the University of Colorado, Boulder, Colorado, as a result of pneumonia.

The supreme court recognizes the universal rule of law that policies of insurance are contracts between the parties thereto and that the courts have no authority to change or alter their terms under the guise of interpretation when they are couched in clear and unambiguous language.

In this case, however, the supreme court found that the policies involved were “ ‘not worded with that certainty and freedom from ambiguity which admits of only one construction,’ and that, therefore, it was ‘within the province of the court to proceed to construe and interpret the provisions in a manner consistent with established principles of construction.’ ”³

After reviewing a good many cases from the other states which construed similar language, the court concluded that from an analysis of the wording of the clauses in controversy and of the policies in which they appeared, there must be a causal connection between the death of the insured and his military service in order for the war clauses to be invoked to defeat a recovery under the terms of the policy. The insured’s military status as a member of the naval service was held not to be the determining factor, even though no written permit was obtained from the company, and no extra premium was paid. Since the death of the insured in this case did not in the court’s opinion have even a remote causal connection with his naval service, a recovery was allowed.

In *Siracusa v. Prudential Insurance Company of America*,⁴ the policy provisions for accidental death required that the insured’s

2. 210 La. 1024, 1026, 29 So. (2d) 50, 51.

3. 210 La. 1024, 1028, 29 So. (2d) 50, 51.

4. 211 La. 1066, 31 So. (2d) 213 (1947).

death be the "result of bodily injuries" evidenced by a "visible contusion or wound on the exterior of the body."

Here the body of the insured was found under such conditions that the only reasonable conclusion which could be drawn from the evidence was that the deceased met his death as a result of foul play. However, because of decomposure of the body, it was impossible to establish by direct proof that there was a visible contusion or wound on the exterior of the body.

The court found, however, that where, as here, the evidence produced led to an inescapable conclusion that the manner in which the death occurred produced visible wounds and contusions about the body of the insured, although the evidence of such wounds and contusions had been obliterated by the natural processes of decomposition of the body, that the plaintiff upon the production of such evidence had established such proof as was necessary to allow a recovery.

In *Easterling v. Succession of Lamkin*,⁵ the court was called upon to decide what disposition should be made of disability income which was due the insured but unpaid at his death in the absence of the usual policy stipulations making such disability income payable by contract to the beneficiary named in the policy. Since these payments for disability had become due and payable during the existence of community between the insured and his wife, although the policy was issued prior to the marriage of the insured, the court found that the amount in question was a community asset and that the widow was entitled to one-half as a surviving party in community. Since the insured died intestate and was survived by neither parents nor descendants, the widow was entitled to the other one-half under Article 915 of the Civil Code. The same disposition is made of the annual premiums which were refunded since these premiums were paid during the existence of the community when they should have been waived under the terms of the policy.

Casualty Insurance

In the field of casualty insurance, the supreme court was called upon to determine the questions of proper notice, limitations of comprehensive coverage, and limitations of coverage granted by the omnibus clause in automobile policies.

Notice of an accident given by the insured eighty-two days after its occurrence is sufficient compliance with the requirement of the

5. 211 La. 1089, 31 So. (2d) 220 (1947).

policy contract of public liability insurance providing that "upon the occurrence of an accident, written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practical" according to the decision of the supreme court in *Jackson v. State Farm Mutual Automobile Insurance Company*.⁶ The basis of the decision was a finding that the insured had reasonable grounds to believe that no claims would be made until he was informed to the contrary some eighty-two days after the accident happened, because there was no substantial prejudice to the defendant, and no element of fraud, collusion or bad faith shown.

A suit involving the construction and interpretation of an insuring clause giving comprehensive coverage for loss of or damage to an automobile was presented in *Hemel v. State Farm Mutual Automobile Insurance Company*.⁷ Although coverage was granted on the face of the policy in these terms, "Coverage C—Comprehensive—to pay for loss of or damage to the automobile due to any cause except collision or upset," it was later limited by an exclusion in the policy worded as follows: "This policy does not apply . . . Under Coverage C . . . to any mechanical or electrical breakdown."

Mechanical breakdown was a risk clearly and specifically excluded from the coverage. "The interpretation of an insurance contract is covered by the rules established for the construction of written instruments and effect must be given to every part of the agreement."⁸ Holding Article 1955 of the Civil Code applicable to insurance contracts, the court stated, "In arriving at the intent of the parties all the clauses of agreements are interpreted one by the other, giving to each the sense that results from the entire act."⁹

In considering whether the exclusion was a trap to the unwary and therefore to be construed against the insurer, the court found such an argument untenable on the basis that in the very preamble of the insurance contract the insured's attention was called to the fact that the coverage included in the insurance agreements are subject to the limits of liability, exclusions, conditions and other terms of the policy. In addition, the exclusions were found to have been given the same uniform prominence as the coverage clauses in the contract.

6. 211 La. 19, 29 So. (2d) 177 (1946).

7. 211 La. 95, 29 So. (2d) 483 (1947).

8. 211 La. 95, 101, 29 So. (2d) 483, 485.

9. 211 La. 95, 101, 29 So. (2d) 483, 485.

Construing the language of another clause in a public liability policy in *Nyman v. Monteleone-Iberville Garage, Incorporated*,¹⁰ the court found that an exclusion in the following language: "The insurance with respect to any person or organization other than the named insured does not apply . . . to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station or public parking place, with respect to any accident arising out of the operation thereof,"¹¹ to the omnibus clause clearly excluded liability of the insurer in a case where an employee of the defendant garage was driving the insured's automobile from the Monteleone Hotel to the garage, the court finding that the limitation is applicable to accidents arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place when the automobile is being used by the operators of such businesses or their employees with the permission of the named insured.

Miscellaneous

Another case considered by the supreme court involved a decision of what was considered a proper disposition of an architect's fee.

The payment made by an insurance company under a clause providing that insurance covers the fees of architects necessary to be incurred in the repair or reconstruction of a building, belonging to the architect, selected by the mortgagee under a loss payable clause and approved by the named insured. The fact that the amount of this fee is included in the check issued by the insurance company covering the amount due to both the named insured, who is owner of the property, and the mortgagee in the loss payable clause, did not give the named insured any right to this fee. The architect who had performed the services is the only one of the three persons who had a right to receive and retain the architect's fee notwithstanding the fact that his name was not included in the check as one of the payees. This conclusion was reached by the supreme court in the *Dixie Homestead Association v. Redden*.¹²

10. 211 La. 875, 30 So. (2d) 123 (1947).

11. 211 La. 875, 379, 30 So. (2d) 123, 125.

12. 210 La. 789, 28 So. (2d) 271 (1946).