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## Commercial Law: Insurance

J. Denson Smith

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## Commercial Law

### INSURANCE

*J. Denson Smith\**

In a well-reasoned opinion in *Rogillio v. Cazedessus*<sup>1</sup> the court dealt at length with the problem of permittees and the coverage afforded with respect to non-owned automobiles under the standard family automobile policy. It was concluded (1) that a son is a "relative" who is made expressly an insured with reference to a non-owned automobile, and (2) that only the named insured as defined in the policy, that is, the person named in the policy as insured, and his spouse, have the authority to constitute another a permittee. In consequence of these findings, the insurers of the son's father were held bound to pay for a loss occasioned by the son's negligent use of an automobile belonging to a friend. At the same time, it was held that the insurer of the friend's automobile was not responsible inasmuch as the driver was not a permittee of the named insured, although a limited use of it may have been authorized by the friend's son. An earlier decision by the court of appeal was distinguished on the ground that since in that case the operator of the car was subject to the immediate direction and control of the authorized permittee, the car was, in effect, being operated by the latter. In a concurring opinion, Judge Sanders analogized the case to one involving a deviation by an omnibus insured and expressed the view that permission by the named insured to a second operator may be implied from the grant of permission to the first. He found no basis for such an implication in the instant case because the second operator had not been licensed to drive an automobile.

In *Fullilove v. United States Casualty Co.*<sup>2</sup> the court interpreted for the first time in this state the definition of a "temporary substitute automobile" in the family automobile policy. In a Note in a previous issue of this Law Review, the author suggests that the interpretation adopted by the court is too re-

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\*Professor of Law, Louisiana State University.

1. 241 La. 186, 127 So.2d 734 (1961).

2. 240 La. 859, 125 So.2d 389 (1961), 21 LOUISIANA LAW REVIEW 835 (1961).

strictive and has the effect of converting the policy term "normal use" to "use." It is there observed that the policy does not require a withdrawal from "use" but rather from "normal use," which presupposes some continuation in use of the automobile described in the policy on a limited basis.

In another interesting case, *Ducote, d/b/a Orleans Tile Works v. United States Fidelity & Guaranty Co.*,<sup>3</sup> the court was called upon to determine the meaning of "theft," "malicious mischief," and "vandalism" as used in a comprehensive coverage provision of an automobile policy. An employee wrongfully removed his employer's truck from a building in which it was kept over the weekend to use it for his own pleasure. Later he damaged the truck by running into a parked vehicle. When claim was made by the employer against the insured, the former contended that he was entitled to recover for the loss since the policy covered loss by theft, malicious mischief, and vandalism, although it did not cover loss by collision. The court found it improper to apply the Criminal Code definition of "theft" to the policy provision because there was no intent to deprive the employer permanently of the vehicle. It also rejected the contention that the loss resulted from "malicious mischief" on the ground that there was no wilful injury to the property motivated by ill will or resentment. It concluded, finally, that "vandalism" denotes "wilful, wanton, or ruthless acts intended to damage or destroy property." The court's construction of these terms seems to be clearly in accord with what the ordinary purchaser of such protection would understand by them, which the court has heretofore indicated is the ultimate test.

In *Grand v. American General Insurance Co.*<sup>4</sup> it was held that the domicile of a foreign insurer for purposes of suit under the Louisiana direct action provision of the Insurance Code is the Parish of East Baton Rouge, the domicile of the Secretary of State, its agent for service of process. "Domicile," as used in the statute, was treated as synonymous with "residence." This holding seems to be in complete harmony with the purpose of the legislation in question.

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3. 241 La. 677, 130 So.2d 649 (1961).

4. 241 La. 745, 131 So.2d 46 (1961).