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Private Law: Insurance

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required by the statute. One can only express wonder at Mrs. Scott's prodigious persistence.

Security Devices

Those furnishing labor, services, or supplies in connection with the drilling or operation of oil, gas, and water wells are granted a privilege on production, wells, leases, and equipment to secure their claims.[49] A prescriptive period of one year is specified but is interrupted if suit is brought.[50] It is further provided that a creditor whose claim is secured by the privilege "may" enforce it by writ of sequestration without bond.[51]

Plaintiff in *Frank's Casing Crew & Rental Tools v. Carthay Land Co.*[52] claimed that certain other lien holders had failed to protect their claims by filing suit within the prescriptive period as required by the statute. It appeared that the other claimants had proceeded by personal action against the debtor and had not utilized the writ of sequestration. Plaintiff urged that use of the writ was the only method by which a lienholder could proceed in accordance with the statute.

The court of appeal distinguished other cases in which it was held that the claimant could have only an *in rem* action because in those instances there was no personal jurisdiction over the debtor.[53] In this case, however, personal jurisdiction had been obtained, and the other claimants were not required to proceed by writ of sequestration to preserve their claims.

INSURANCE

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Problems concerning the interpretation and application of insurance policies and the laws relating thereto continue to claim a considerable amount of judicial attention. They usually present only factual issues calling for resolution under established rules. The following comments cover a limited number of cases meriting special notice.

49. LA. R.S. 9:4861-4867 (1950).
50. LA. R.S. 9:4865 (1950).
51. LA. R.S. 9:4866 (1950).
52. 212 So.2d 161 (La. App. 4th Cir. 1968).
53. Rhodes v. Chrysanthou, 191 La. 774, 186 So. 333 (1939); Blankenship v. Stovall, 159 So. 477 (La. App. 2d Cir. 1935); Young v. Reed, 157 So. 809 (La. App. 2d Cir. 1934).

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A decision both interesting and instructive was rendered by the Supreme Court in *Shaw v. New York Fire & Marine Underwriters, Inc.*[1] The case involved a direct action by an injured guest passenger against two automobile liability insurers. The resulting judgment gave rise to claims of contribution by the insurers against each other. The court of appeal had affirmed a judgment in favor of the injured plaintiff against Liberty Mutual, the liability insurer of one of the joint tortfeasors, for $10,000.00, the limit of its policy, and against New York Fire, the insurer of the other, for $5,000.00, its policy limit. A writ was granted for the sole purpose of considering the claim of Liberty Mutual that judgment should have been rendered against both insurers *in solido* in the amount of $5,000.00, the limit of liability under the New York Fire policy, plus an award of an additional amount of $5,000.00 against it, thus entitling it to contribution against New York Fire in the amount of $2,500.00, and the opposing claim of New York Fire that it was entitled to contribution against Liberty Mutual for one-half of the $5,000.00 judgment against it. These claims were rejected. It was pointed out that the policy limits of each insurer had to be taken into account to avoid fragmentizing the obligations of the insurers to the prejudice of the injured plaintiff. It is clear that if plaintiff's suit had been brought against the joint tortfeasors instead of their insurers, the $15,000.00 judgment would have been rendered against them *in solido* and each on paying the whole amount of the judgment would have been entitled to contribution from the other. However, because of the policy limits, the plaintiff under such a judgment could have collected $10,000.00 against Liberty Mutual, but only $5,000.00 against New York Fire. Of course, both would have been bound *in solido* to satisfy plaintiff's judgment but only subject to the policy limits. Neither insurer would have any claim against the other beyond these limits, nor could any claim in contribution be allowed to prejudice the plaintiff. It is true that because of the policy limits Liberty Mutual had to pay twice as much as New York Fire, but if Liberty Mutual should have any claim at all, it would have to be asserted properly against New York Fire's insured.

Very good discussions of the responsibility of a liability insurer with respect to settlement of claims are contained in the majority and dissenting opinions rendered in the case of *Trahan*

1. 252 La. 653, 212 So.2d 416 (1968).

v. Central Mut. Ins. Co.[2] On the advice of local counsel, the insurer had refused a settlement of all claims at a figure well within the policy limits. Questions of coverage and liability, neither of which was insubstantial, were involved. An adverse judgment, however, resulted in the insured's having to pay $25,000.00, for which amount he brought suit against his insurer. Although the majority opinion found no bad faith on the part of the insurer sufficient to support an award of attorneys' fees it did find that in refusing to settle, the insurer improperly placed its own interest above that of the insured. The delicacy of the insurer's position in this kind of situation is well reflected by the facts of the case. In view of the fact that conflicting statements made by the insured had a direct bearing on the position taken by the insurer, the former can be counted as fortunate.

A related problem considered by the court of appeal in *Richard v. Southern Farm Bureau Cas. Ins. Co.*[3] will be considered by the Supreme Court, but only with respect to assignment of error number 1. The question presented, which is *res nova* in this state, concerns the freedom of an insurer to make good faith settlements with some of multiple claimants even though the insurance proceeds are exhausted to the prejudice of the others. In holding in favor of the insurer, the court of appeal observed that any other view would force the insurer to institute concursus proceedings and thus compel litigation by all claimants in violation of the policy of the law to favor compromises. The opinion of the Supreme Court will be of interest.

In *Miller v. Marcantel*,[4] a delay of five months occurred in giving the insurer notice of the filing of suit against an omnibus insured and his employer, the named insured. Finding no prejudice to the insurer by the delay, the court held against it on a third party demand. Two cases from another circuit, on which the trial court relied, were distinguished. The court's conclusion was that the real test for determining whether the insurer is exonerated in such a case is whether the failure to give notice, either of the occurrence of the accident or of the filing of suit, is prejudicial. The holding was supported by reference to the opinion of the Supreme Court in *West v. Monroe Bakery, Inc.*,[5]

2. 219 So.2d 187 (La. App. 3d Cir. 1969).
3. 212 So.2d 471 (La. App. 3d Cir. 1968). For the affirming opinion of the supreme court, handed down subsequent to this comment, *see* Richard v. Southern Farm Bureau Cas. Ins. Co., 223 So.2d 858 (La. 1969).
4. 221 So.2d 557 (La. App. 3d Cir. 1969).
5. 217 La. 189, 46 So.2d 122 (1950).

which involved a failure to give notice of an accident, and *Howard v. Early Chevrolet-Pontiac-Cadillac, Inc.*,[6] which involved a like failure but also included a claim by the insured against his own insurer. The decision in *West* was that the rights of a claimant become fixed at the time of the accident. Left open was the question of whether an insurer cast in judgment in favor of a claimant notwithstanding a failure to give notice might have a claim over against its insured. The instant decision indicates that this issue must be resolved by determining whether the insured's conduct was prejudicial to the insurer. This resolution is consistent with the treatment generally accorded representations, warranties, and conditions by statute and court decision. The good faith insured is protected against non-prejudicial violations of policy provisions.

A decision which seems to be clearly in keeping with the spirit of the law was rendered in the case of *Gray & Co. v. Stiles.*[7] Therein it was held that a policy of automobile liability insurance issued by a surplus line company was legal evidence of financial responsibility within the meaning of the Motor Vehicle Safety Responsibility Law although some ambiguity was found to exist in the applicable provisions of the mentioned law and the provisions of the Insurance Code. A contrary decision would have imposed a hardship which the court felt the legislature could not have intended on a motorist compelled to procure surplus line coverage because of his inability to get protection from an authorized insurer.

PUBLIC LAW

ADMINISTRATIVE PROCEDURE

*Melvin G. Dakin**

CIVIL SERVICE COMMISSION

In *Guillory v. State Dep't of Institutions*,[1] the First Circuit had occasion to examine the rulemaking powers and procedures of the Louisiana State Penitentiary and the Civil Service Commission. Under the statute the superintendent of the penitentiary

6. 150 So.2d 309 (La. App. 2d Cir. 1963).
7. 221 So.2d 832 (La. App. 1st Cir. 1969).

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1. 219 So.2d 282 (La. App. 1st Cir. 1969).