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Private Law: Corporations

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of the "inconveniences" involved in the relationship of neighborhood among those utilizing the oil and gas beneath the land.

It is significant that even without special articles corresponding to those in the Louisiana Civil Code, the French recognize the relationship of neighborhood.[73] It would be a pity if Louisiana, by a narrow, restrictive interpretation of article 667 and its companion provisions took from its law a flexible, useful tool by refusing to recognize the underlying general principle. Certainly, if the *Reymond* decision stands, the court must be aware and bear carefully in mind that it has impact on a large number of areas of law. The danger of upsetting the jurisprudence cited by Justice Sanders is that it leaves the way open for enterprising advocates to argue that in cases similar to those formerly treated by use of article 667 the *Reymond* case means that defendants can no longer be made responsible for their actions. If the court is to embark on a course of distinguishing ordinary risks of land use from ultra-hazardous ones and fixing responsibility accordingly without use of article 667, it should do so with full awareness and extreme care.

CORPORATIONS

*Milton M. Harrison**

The Supreme Court of Louisiana in 1933 in *Fudickar v. Inabnet*[1] held that when there are outstanding claims against a dissolved corporation, which claims were disregarded by the liquidator, persons possessing the claims have a right of action against former stockholders who have become distributees of the assets. Following the *Fudickar* case, in which the claim had arisen from contract, the court in *Ortego v. Nehi Bottling Works*[2] applied the same reasoning to a tort claim. Both of these decisions recognized the absence of specific authority in the Business Corporation Act[3] for such a procedure and based the rulings on Louisiana Civil Code article 21. In *Collins v. Richland Aviation Service, Inc.*[4] the Second Circuit Court of Appeal referred to the revision in 1968 of our corporation statutes but followed

73. *See* Stone, *Tort Doctrine in Louisiana: The Obligations of Neighborhood*, 40 TUL. L. REV. 701 (1966).

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1. 176 La. 777, 146 So. 745 (1933).
2. 182 So. 365 (La. App. 2d Cir. 1938); Note, 13 TUL. L. REV. 308 (1939).
3. La. Acts 1928, No. 250.
4. 225 So.2d 241 (La. App. 2d Cir. 1969).

the *Fudickar* and *Ortego* cases because "the principles laid down in these cases continue to be applicable today."[5]

In allowing claimant to pursue claims against the "distributees of the assets at least to the amount received from the distribution,"[6] the court doubtless intended to limit individual liability *at most* to the value of the assets of the corporation each received.

INSURANCE

*J. Denson Smith**

Courts elsewhere have generally followed the rule that an automobile liability insurer faced by several claimants may settle with some of them although this may exhaust the insurance fund or so deplete it that a subsequent judgment creditor may be unable to collect the judgment in full. The rule requires that the settlement be reasonable and made in good faith. The supreme court followed this rule in *Richard v. Southern Farm Bureau Casualty Insurance Co.*[1] It rejected the plausible argument that upon the occurrence of the accident and injury the insurer became bound to the plaintiff by virtue of the so-called direct action statute[2] for a proportionate amount of the insurance proceeds. In support of its position, the court reminded that settlements are favored by the law. It was not persuaded that an alternate procedure, such as interpleader or concursus, was available to the insurer. It may well be that a solution to this problem, which is troublesome for both claimants and insurers, will have to be provided by legislation.

In *Tyler v. Touro Infirmary*[3] the supreme court, following an earlier court of appeal case, held that the failure of a nurse assisting in an abdominal operation to count correctly the sponges being removed from the patient was a simple administrative act not amounting to the rendition of a professional service within the meaning of an exclusionary clause in a policy issued to Touro Infirmary. This interpretation of the clause drew dissents from Justices Barham and Summers. While the position of the dissenters seems more compatible with the language of the

5. *Id* at 243.
6. *Id.*

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1. 254 La. 429, 223 So.2d 858 (1969).
2. LA. R.S. 22:655 (1962).
3. 254 La. 204, 223 So.2d 148 (1969).