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INSURANCE

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RENEWAL OF AUTOMOBILE LIABILITY POLICY

In *Ray v. Associated Indemnity Corporation*,[1] the insurer contended in a motion for summary judgment that the company had mailed the insured a premium notice for the renewal of automobile liability insurance, but the insurer never received payment from the insured. Thus, the insurer asserted that its policy had expired without renewal. The insured denied receipt of the premium notice. Reversing the lower courts, the Louisiana Supreme Court held that Louisiana Revised Statutes 22:636.1(E)[2] requires "communication" by the insurer to the insured of the company's willingness to renew. The insured, upon his denying receipt of the premium notice, is entitled to an opportunity to disprove the insurer's *prima facie* evidence of such communication.[3] When premiums are due on the renewal date, the policy will be renewed automatically under Revised Statutes 22:636.1(E) whether or not the premium has been paid, unless the insurer timely gives prior notice to the insured either of an intent not to renew or of a willingness to renew.[4]

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1. 373 So. 2d 166 (La. 1979).

2. LA. R.S. 22:636.1(E) (Supp. 1968 & 1974) provides:

> No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least twenty days advance notice of its intention not to renew. This subsection shall not apply: (1) if the insurer has manifested its willingness to renew; or (2) in case of nonpayment of premium . . . .

3. Apparently, the court was willing to apply, by analogy, the provision of LA. R.S. 22:636.1(F), which states: "Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy, shall be sufficient proof of notice." However, the court has noted previously that this provision only establishes a rebuttable presumption of notice. Cuccia v. Allstate Ins. Co., 262 La. 545, 263 So. 2d 884 (1972).

4. The lower courts had found that LA. R.S. 22:636.1(E) did not require renewal because the insurer had manifested its willingness to renew the policy and because of the nonpayment of the premium. The supreme court found that, under the terms of the policy, the renewal premium was due "on or before" the renewal date. Therefore, the court concluded that the insurer was required to give notice of an intent not to renew or of a willingness to renew automatically under R.S. 22:636.1(E) prior to the time any premium was due. In addition, manifestation of intent to renew required communication of such intent to the insured. Perhaps the court believed this rather strained interpretation of LA. R.S. 22:636.1(E) was necessary to make certain that the insured was aware of the renewal date.

OBLIGATION TO DEFEND

Whether a liability insurer is obligated to defend an alleged insured is determined by the allegations of the petition. Under the leading case of *American Home Assurance Company v. Czarniecki*,[5] the insurer is obligated to defend if, assuming the allegations of the petition to be true, the policy would provide coverage for the alleged insured. The obligation to defend exists even though the insurer believes it can, and subsequently does, disprove the plaintiff's allegations.[6] Several recent decisions[7] emphasize, however, that the obligation is determined by the *factual* allegations of the petition and not by the legal conclusions drawn by the pleader.[8] Thus, even though a petition may contend that the liability of the defendant is covered under a certain policy, the alleged insurer is not obligated to defend if its policy provides no coverage for the cause of action described in the factual allegations of the petition.

For example, in *Michel v. Ryan*,[9] the petition alleged an accident which occurred after the expiration of the insurer's policy. Although the petition asserted that the insurer provided coverage for the accident, the court held that the insurer was not obligated to defend because certain alleged facts—the date and circumstances of the accident—clearly excluded the possibility of coverage under the policy. Similarly, the insurer in *Richards v. Farmers Export Company*[10] was allowed to escape any defense obligation by establishing, contrary to the conclusions drawn in the petition, that the alleged insured was not an executive officer within the definition of the policy.

Another decision, *Guidry v. Zeringue*,[11] appears inconsistent

5. 255 La. 251, 230 So. 2d 253 (1969).

6. Generally the insurer's obligation to defend suits against its insured is broader than its liability for damage claims. And the insurer's duty to defend suits brought against its insured is determined by the allegations of the injured plaintiff's petition, with the insurer being obligated to furnish a defense unless the petition unambiguously excludes coverage.

255 La. at 269, 230 So. 2d at 259.

7. Guidry v. Zeringue, 379 So. 2d 813 (La. App. 4th Cir. 1980); Richards v. Farmers Export Co., 377 So. 2d 859 (La. App. 4th Cir. 1979); Michel v. Ryan, 373 So. 2d 985 (La. App. 3d Cir.), *cert. denied* 376 So. 2d 319 (La. 1979). *Cf.* Applewhite v. City of Baton Rouge, 380 So. 2d 119 (La. App. 1st Cir. 1979) (factual allegations did not exclude possibility of coverage).

8. These holdings are consistent with the result reached by the Louisiana Supreme Court in *Jackson v. Lajaunie*, 264 La. 181, 270 So. 2d 859 (1972). *See also* Mut v. Newark Ins. Co., 289 So. 2d 237 (La. App. 1st Cir. 1973).

9. 373 So. 2d 985 (La. App. 3d Cir. 1979).

10. 377 So. 2d 859 (La. App. 4th Cir. 1979).

11. 379 So. 2d 813 (La. App. 4th Cir. 1980).

with the *Czarniecki* rule that the insurer must defend unless the petition "unambiguously" excludes coverage. In *Guidry* the insured purchased coverage for his 1972 Buick but not for his 1975 pickup. The petition alleged that the insurer provided liability coverage for the pickup as a "temporary substitute automobile" for the Buick. Although the contention that the pickup was a "temporary substitute automobile" was a conclusion, the factual allegations of the petition did not "unambiguously" exclude that possibility.[12] The *Guidry* court allowed the insurer to disprove this "conclusion" and thus to avoid the obligation to defend. Under *Czarniecki*, the insurer would be obligated to defend. On the other hand, *Guidry* illustrates the need for a more equitable rule that would not force the insurer to defend an action when coverage in fact does not exist merely because of the affirmative or ambiguous allegations of the plaintiff, a stranger to the contractual relationship created by issuance of the policy.[13]

12. *See* Employers Commercial Union Ins. Co. v. Bertrand, 306 So. 2d 426 (La. App. 3d Cir. 1975).

13. The burden of defending an alleged "insured" ultimately found to have no coverage is made particularly onerous by Opinion 342 of the Louisiana State Bar Association Committee on Professional Responsibility; that opinion requires the insurer to employ separate counsel for itself and the alleged insured if the insurer intends to, or reserves the right to, assert a coverage defense.