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Insurance -- Automobile Comprehensive Coverage

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For this reason, a full discussion of the issue by the Supreme Court, as it relates to political rights cases, will likely be necessary to avoid further conflicting opinions in the lower courts.

While it is not clearly known whether the attitude of the Court toward exercising equity jurisdiction in redistricting cases which arose in the federal courts would be equally hostile to such cases originating in the state courts, it is quite probable that both avenues to the Supreme Court were foreclosed by *South v. Peters*. Even though equity jurisdiction is denied in the redistricting cases, there remains a possible redress in an action for damages.[47] In addition, there is the possible use of the writ of mandamus in the state courts, as in *Smiley v. Holm*, by bringing into question the validity of a state law under the Federal Constitution, and thereupon gaining direct appeal to the United States Supreme Court if the highest state court sustains the validity of the state law.

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Insurance—Automobile Comprehensive Coverage

The development of the comprehensive automobile insurance policy has been rapid in recent years and the policy has become one of the major coverages in North Carolina. It is an extensive sort of policy including loss of or damage to an automobile from such older causes as fire and theft as well as losses from more novel causes such as missiles, falling objects, explosion, earthquake, windstorm, hail, water, flood, vandalism, and civil commotion. Generally, the clause provides that the coverage extends to any loss or damage except by collision or upset.[1]

The coverage of the comprehensive clause, however, is subject to a number of exclusions and exceptions. In North Carolina, the coverage does not apply (a) while the car is used as a public or livery conveyance, (b) while the car is subject to an undeclared encumbrance, (c) during war or revolution, (d) if the damage to the automobile is caused by mechanical breakdown unless such breakdown would otherwise be covered, (e) to wearing apparel or personal effects, (f) to tires unless they would otherwise be covered, or (g) to loss due to conversion or embezzlement or secretion by anyone lawfully entrusted with possession of the car.[2]

[47] This possibility may be inferred from language in Colegrove v. Green, 328 U. S. 549, 552 (1946). See note 34 *supra*.

[1] Often losses falling within what would commonly be covered under an ordinary collision policy are also included within the comprehensive clause. See Billings, *Present Periphery of Comprehensive Coverage*, 306 INS. L. J. 572 (1948).

[2] North Carolina Automobile Certificate of Insurance Specimen, December, 1947.

There have been very few cases in which this coverage has been construed by the courts, but an interesting case[3] was decided recently under the North Carolina comprehensive clause of the standard form.[4] The policyholder discovered in June, 1949, that beetles had bored into the wood portion of her station wagon and had eaten out and damaged the wooden frame. Insurance policies had been taken out on the 1946 vehicle in 1947, 1948, and 1949, and the last policy was cancelled by the company in September, 1949. The court, in holding that the plaintiff could not recover, rested its decision on the ground that the complaint did not allege that the entry and damage caused by the beetles occurred between the effective dates of the policy. The court further stated that the damage was not the result of "direct and accidental loss" as contemplated in the policy. Apparently relying on the construction adopted in accidental death cases in this state, the court distinguished between accidental "means" and "result."[5] Much respectable authority in other jurisdictions ignores this distinction.[6] It is believed that these cases are founded on sounder policy and that their view is more easily applied.

Even if the distinction is sound in the accidental death cases, however, it seems to have been misapplied in the instant case. In *Fletcher v. Security Life and Trust Co.*,[7] cited by the principal case, the court held that there could be no recovery for death caused by the injection of an anesthetic since the policies only covered "death by accidental means" and not "accidental deaths." In the principal case the policy

[3] Kirkley v. Merrimack Mut. Fire Ins. Co., 232 N. C. 292, 59 S. E. 2d 629 (1949).

[4] There are standard provisions set out in our automobile insurance specimen policy to protect the insured. The policy forms are subject to the approval of the Insurance Commissioner. N. C. GEN. STAT. §58-54 (1943). McNeal v. Life and Cas. Ins. Co. of Tenn., 192 N. C. 450, 135 S. E. 300 (1926).

[5] Courts advocating strict construction argue that "accidental" refers only to the event or occurrence which produces the result and not to the result itself. This view is clearly enunciated by the North Carolina court in Fletcher v. Security Life and Trust Co., 220 N. C. 148, 150, 16 S. E. 2d 687, 688 (1941), where it was stated: "The insurance is not against an accidental result. To create liability it must be made to appear that the unforeseen and unexpected result was produced by accidental means." Other North Carolina cases indorsing this view are: Scott v. Aetna Life Ins. Co., 208 N. C. 160, 179 S. E. 434 (1935); Mehaffey v. Provident Life and Acc. Ins. Co., 205 N. C. 701, 172 S. E. 331 (1934); Harris v. Jefferson Standard Life Ins. Co., 204 N. C. 385, 168 S. E. 208 (1933).

[6] Justice Cardozo aptly expressed this view in a dissenting opinion in Landress v. Phoenix Mut. Life Ins. Co., 291 U. S. 491, 501 (1934): "If there was no accident in the means, there was none in the result for the two are inseparable. No cause that reasonably can be styled an accident intervened between them. . . . There was accident throughout or there was no accident at all." Other cases supporting the above view are: Bukata v. Metropolitan Life Ins. Co., 145 Kan. 858, 67 P. 2d 607 (1937); Mansbacher v. Prudential Ins. Co. of America, 273 N. Y. 140, 7 N. E. 2d 18 (1937); Griswold v. Metropolitan Life Ins. Co., 107 Vt. 607, 180 A. 649 (1935); Ocean Acc. and Guaranty Corp. v. Glover, 165 Va. 283, 182 S. E. 221 (1935).

[7] 220 N. C. 148, 16 S. E. 2d 687 (1941). See also cases cited in note 5, *supra*.

provided for "accidental loss" and not for "loss by accidental means."

The North Carolina Supreme Court in the past has classified a number of events involving automobiles as "accidents." It has held that a person falling from an automobile forced off the road,[8] a tire going flat causing the car to overturn,[9] and lights going out causing a car to go over an embankment[10] are "accidental." A great variety of other situations involving Workmen's Compensation Insurance have also been held to be "accidental" by our court.[11]

The strict construction which the court placed upon the word "accidental" in the instant case defeats the underlying purposes of comprehensive coverage.[12] The words "any direct and accidental loss of or damage to the automobile" were seldom found in the standard policies of other states prior to 1948.[13] Usually in other jurisdictions the clause began with the phrase "any loss or damage to the automobile" rather than with the more restrictive phrase used in our state.[14] The construction adopted by our court in the principal case is not in line with the spirit of comprehensive coverage.[15]

[8] Higgins v. Life and Cas. Ins. Co. of Tenn., 220 N. C. 243, 17 S. E. 2d 5 (1941).

[9] Ingle v. Cassady, 208 N. C. 497, 181 S. E. 562 (1935).

[10] Littrell v. Hardin, 193 N. C. 266, 136 S. E. 726 (1927).

[11] Gabriel v. Town of Newton, 227 N. C. 314, 42 S. E. 2d 96 (1947) (heart attack from exertion); Edwards v. Piedmont Publishing Co., 227 N. C. 184, 41 S. E. 2d 592 (1947) (strain from lifting a plate); Brown v. Carolina Aluminum Co., 224 N. C. 766, 32 S. E. 2d 320 (1944) (push by fellow employee); Ashley v. F-W Chevrolet Co., 222 N. C. 25, 21 S. E. 2d 834 (1942) (assault); Robbins v. Bossong Hosiery Mill, Inc., 220 N. C. 246, 17 S. E. 2d 20 (1941) (fall when reaching for material); Love v. Town of Lumberton, 215 N. C. 28, 1 S. E. 2d 121 (1939) (lime in eye from pouring); Tscheiller v. National Weaving Co., 214 N. C. 449, 199 S. E. 623 (1938) (illness from eating defective food).

[12] 5 APPLEMAN, INSURANCE LAW AND PRACTICE §3222 (1941).

[13] The restrictive phrase used in North Carolina is also found in Tennessee. Lunn v. Indiana Lumbermens Mut. Ins. Co., 184 Tenn. 584, 201 S. W. 2d 978 (1947). In Alabama the only word used to preface the phrase is "direct." Lockwood v. State Farm Mut. Automobile Ins. Co., 28 Ala. App. 179, 181 So. 509 (1938).

[14] Atlas Assurance Co., Ltd. v. Lies, 70 Ga. App. 162, 27 S. E. 2d 791 (1943); Teitelbaum v. St. Louis Fire and Marine Ins. Co., 296 Ill. App. 327, 15 N. E. 2d 1013 (1938); Hemel v. State Farm Mut. Automobile Ins. Co., 211 La. 95, 29 So. 2d 483 (1947); Wheeler v. Phoenix Indemnity Co., 65 A. 2d 10 (Me. 1949); Roberts v. State Farm Mut. Automobile Ins. Co., 203 S. W. 2d 508 (Mo. 1947); Rea v. Motors Ins. Corp., 48 N. M. 9, 144 P. 2d 676 (1944); Tonkin v. California Ins. Co. of San Francisco, Inc., 294 N. Y. 326, 62 N. E. 2d 215 (1945); Mathews v. Shelby Mut. Plate Glass and Cas. Co., 46 N. E. 2d 473 (Ohio 1939); Fireman's Ins. Co. of Newark, N. J. v. Weatherman, 193 S. W. 2d 247 (Tex. Civ. App. 1946). In 1947, the National Automobile Underwriters Association recommended that the phrase "any direct and accidental loss of or damage to the automobile" be included within the comprehensive clause itself rather than the less restrictive phrase "any loss or damage to the automobile." The words of the new clause had been on the face of the old form before the recommended change. The purpose of the more restrictive phrase was to exclude intentional and remote losses as distinguished from accidental and direct ones. There was no intention to narrow the construction placed on the word "accidental."

[15] A leading writer on insurance states: "Most companies have now adopted the policy of writing what is termed 'comprehensive' coverage, which is for the

It is advocated that North Carolina should place a broader interpretation on the word "accidental" so as to include any unexpected or unusual occurrence. The court's statements in regard to the "accidental" nature of the loss in the principal case may be regarded as dicta in future cases since the outcome of the case rested on other considerations. It is further believed that a preferable construction of the words "direct and accidental" to "direct *or* accidental" would broaden the coverage of the comprehensive clause so as to include losses covered by the same clause in other states.

GEORGE J. RABIL.

Labor Law—Employer Refusals to Bargain Collectively in the Southern Textile Industry

Since 1935, national labor policy has been to encourage the practice and procedures of collective bargaining. The Taft-Hartley Act,[1] though otherwise curtailing union activities and the bargaining process, ostensibly added to[2] the Wagner Act[3] in respect to this stated policy. Section 8(b)(3) creates a new unfair labor practice for unions refusing to bargain collectively. Section 8(a)(5) continues to make the employer's refusal to bargain collectively with the union selected by his employees, an unfair labor practice.[4]

Nevertheless it is still possible for a skillful employer to evade[5] the duty to bargain collectively, at least, temporarily. In *Tower Hosiery Mills*, the North Carolina company

> ". . . went through many of the motions of collective bargaining. It met on numerous occasions with the union, conferred at length regarding contract proposals, made concessions on minor issues, and discussed and adjusted several grievances."[6]

purpose of including all property damage to an automobile, other than mechanical breakdown, exclusive of collision losses. It includes all of the older coverages . . . and in addition many new losses never before contemplated by any coverage whatever. It is a simple and convenient form of insurance. . . . It is not a profitable coverage to the average insurer, as the hazards therein included bring the loss rates above the premium level, but it does possess excellent sales angles, and is simple of analysis and application." 5 APPLEMAN, INSURANCE LAW AND PRACTICE §3222 (1941).

[1] 61 STAT. 136, 29 U. S. C. §141 *et seq.* (Supp. 1947).

[2] §§171 and 174.

[3] 49 STAT. 449 (1935), 29 U. S. C. §151 *et seq.* (1946).

[4] The N.L.R.B. first determines whether the union in fact represents a majority of the employees in an appropriate bargaining unit.

[5] But outright refusals to bargain are not uncommon in Southern textiles. Itasca Cotton Mfg. Co., 79 N.L.R.B. 1442 (1948) *enforcement granted*, 179 F. 2d 504 (5th Cir. 1950); Postex Cotton Mills, 80 N.L.R.B. 1187 (1948), *rev'd on other grounds*, 181 F. 2d 919 (5th Cir. 1950); Highland Park Mfg. Co., 84 N.L.R.B. 744 (1949).

[6] 81 N.L.R.B. 658, 662 (1949), *enforcement granted*, 180 F. 2d 701 (4th Cir. 1950).