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INSURANCE—SINGLE OR MULTIPLE ACCIDENTS

The plaintiff's truck collided with a train and derailed sixteen cars belonging to fourteen separate owners. The plaintiff was covered by an automobile property damage liability policy which provided for a maximum payment of \$5,000 for each accident. In a suit by the plaintiff against his insurer the issue was whether the collision and subsequent derailing of each of the sixteen cars were one accident or several. *Held*, the collision and the derailing of the cars were one accident, and, therefore, total recovery could not exceed \$5,000. *Saint Paul-Mercury Indemnity Co. v. Rutland*, 225 F.2d 689 (5th Cir. 1955).

Interpretations by the courts of the property damage clause in the conventional comprehensive automobile policy have displayed a lack of unanimity both in result and in understanding of the basic problem which has frequently been justified because of the paucity of decisions. However, sufficient cases involving this question have arisen to indicate that certain principles do exist. The instant case displays an awareness of these principles.

In one jurisdiction the time element was a deciding factor.¹ A building collapsed due to excavation under adjoining property and two days later the building on the other side of the excavated property collapsed, no new excavating having taken place in the interim. The insurer contended that the collapses were one accident since they were due to the same cause. The court held that there were two separate accidents and the insurer was liable for each of the accidents; the time element of two days being the controlling factor.

In another case² several panes of glass broke simultaneously from one cause. Total damage was \$425.00. The policy had a \$50.00 deductible provision for each "claim." The insurer contended that the breaking of each pane was a separate claim, and since no one pane was worth more than \$50.00, there was no liability. The court distinguished between "claim" and "each item that makes up a claim" and held that windows broken (from the same cause) were items of a claim. The court further held that the word "claim" in the policy was susceptible of two definitions and, therefore, ambiguous; the court then followed the general principle that ambiguities in an insurance policy are to be construed against the writer.³

1. *Kuhn's of Brownsville v. Bituminous Cas. Co.*, 270 S.W.2d 358 (Tenn. 1954).

2. *Haerens v. Commercial Cas. Ins. Co.*, 279 P.2d 211 (Calif. 1955).

3. *Western & Southern Indemnity Co. v. Industrial Commission*, 366 Ill. 240, 8 N.E.2d 644 (1937) (The phrase "elsewhere in Illinois" was held ambiguous and construed against the insurer); *Swanson v. Georgia Casualty Co.*, 315 Mo. 1007, 287 S.W. 455 (1926); *Udike Inv. Co. v. Employers Liability Assur. Corp., Ltd.*, of London, England, 131 Neb. 745, 750, 270 N.W. 107, 110 (1936) (The court stated: "The word 'accident' has many meanings and . . . , unless otherwise stipulated, it

Other jurisdictions proceed on the theory of proximate cause. It is generally agreed (with reference to proximate cause), that where there are successive causes, each of which is independently sufficient to produce the loss insured against, the cause last operating is the proximate one.⁴ Where there are two or more concurrent causes of loss, the predominating effective one, or the one which sets the others in motion and gives them the power to harm is the proximate cause.⁵ An unusual fact situation occurred in *Anchor Casualty Co. v. McCaleb*⁶ where an oil well (uncontrollable for over 50 hours) damaged the properties of several persons. The insurer attempted to limit overall liability to the policy maximum for one accident. However, the wind, every time it changed, was deemed to be a supervening force which was said to have caused a different accident. Judge Holmes termed this a "series of events resulting in numerous accidents."

In the principle case, the majority opinion differentiated the *Anchor* case⁷ as a series of events and not a single, sudden collision (as was the instant case). They considered the cause of the accident rather than the result and substantiated this by construing the phrasing of the policy ("caused" by accident). Further they considered the liability in relation to events rather than claimants, thus limiting the policy. They felt a

should be given the construction most favorable to the insured." Here it was held to include exposure to cold drafts of air.); *Carolina Veneer & Lumber Co. v. American Mut. Liability Ins. Co.*, 202 S.C. 103, 24 S.E.2d 153 (1943) (The term "legally employed" meant not if a contract of employment existed, but if a legal contract of employment could be made.); *Issacson Iron Works v. Ocean Accident & Guarantee Corp.*, 191 Wash. 221, 70 P.2d 1026 (1937).

4. See *Howard Fire Insurance Co. v. Norwich & N.Y. Trans. Co.*, 79 U.S. (12 Wall.) 194, 199 (1871) ("When one of several successive causes is sufficient to produce the effect . . . the law will never regard an antecedent cause of that cause, or the 'causa causans'." Where fire and collision had destroyed a ship, the court found the damages severable and did not have to apply this rule.); *Denham v. LaSalle-Madison Hotel Co.*, 168 F.2d 576 (7th Cir. 1948). (A hotel had a liability policy with \$10,000 limit for loss of guests' property in "one occurrence or catastrophe." Within a space of 17 hours, property was damaged by fire and the resultant smoke, water and theft. The fire was found to be the proximate cause of the various injuries, and therefore the injuries resulting from smoke, water and theft were not "subsequent losses."); *Princess Garment Co. v. Fireman's Fund Ins. Co.*, 115 F.2d 380 (6th Cir. 1940) (Plaintiffs removing property from the premises during a flood were stopped by authorities due to a fire. The rising waters subsequently damaged the property but the fire never reached the building. The court reasoned the fire was the proximate cause of the loss, since but for the fire, the loss would not have occurred).

5. *Accord, Lanasa Fruit S.S. and Importing Co. v. Universal Ins. Co.*, 302 U.S. 556, 562 (1938) ("The proximate cause is the efficient cause and not a merely incidental cause which may be nearer in time to the result."); *Aetna Fire Ins. Co. v. Boon*, 95 U.S. 117, 130 (1877) ("In case of the concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the predominating peril, whether it is or is not in activity at the consummation of the disaster."); *Howard Fire Ins. Co. v. Norwich & N.Y. Trans. Co.*, *supra* note 4 at 199 ("But when there is no order of succession in time, when there are two concurrent causes of a loss, the predominating efficient one must be regarded as the proximate, when the damage done by each cannot be distinguished."); *Hartford Steam Boiler Inspection and Ins. Co. v. Pabst Brewing Co.*, 201 Fed. 617 (7th Cir. 1912).

6. 178 F.2d 322 (5th Cir. 1949).

7. *Ibid.*

policy without limitation would destroy the intention of the parties and afford no basis for computation of premium rates, since the risk involved would be unknown.

The dissent felt that the principles of the *Anchor* case were applicable.⁸ Agreeing that a basic test is whether the accident is to be interpreted "from the standpoint of the cause or the result of the accident,"⁹ the minority thought the *result* controlled.

Generally, words in an insurance policy are construed with reference to the ordinary understanding, common usage and speech of people.¹⁰ It follows then that an assembled train takes on an identity separate and apart from the railroad cars of which it consists. Thus, a collision between a truck and a train would be one accident, although many might suffer damages.

The decision achieves a sound result, in that the scope of the liability is not extended to an area not contemplated by the insured and insurer at the time of making the original contract.¹¹

The case appears to be the first to recognize that in defining "one accident" only two points of view are possible, that of causation or that of result. Its choice of the former seems a most happy conclusion.

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8. But the court applies the rule of the *Anchor* case too far. They would hold the insurer liable for \$58,000 on a policy written on a premium rate based on \$5,000.

9. This reasoning has been used to interpret the word "accident" and would be applicable to substantiate the decisions of both factions. To the same effect see: *Hyer v. Inter-Insurance Exchange*, 77 Cal. App. 343, 246 Pac. 1055 (1926) (Insured's car struck another, breaking the steering gear. This caused it to run into a third car. The court held there was one negligent act with one sole proximate cause and, therefore, one accident with several resultant injuries.); *Lewis v. Commercial Cas. Inv. Co.*, 142 Md. 472, 121 Atl. 259 (1923); *Tuttle v. Pacific Mutual Life Ins. Co.*, 121 Mont. 58, 190 Pac. 993 (1920); *contra*, *Berger Bros. Electric Motors v. New Amsterdam Cas. Co.*, 46 N.Y.S.2d 64, 267 App. Div. 333, *aff'd*, 293 N.Y. 523, 58 N.E.2d 717 (1944) (Injuries are accidental or not, for the purpose of indemnity, according to the quality of the results rather than the quality of the causes).

10. *United States Mut. Acc. Ass'n v. Barry*, 131 U.S. 100 (1889); *Hyer v. Inter-Insurance Exchange*, *supra* note 9; *Aetna Life Ins. Co. v. Fitzgerald*, 165 Ind. 317, 75 N.E. 262 (1905); *Lickleider v. Iowa State Traveling Men's Ass'n*, 184 Iowa 423, 166 N.W. 363 (1918).

A definition of "accident" is given by Black as "an event which under the circumstances is unusual and unexpected by the person to whom it happens." BLACK, LAW DICTIONARY p. 30 (4th ed. 1951).

11. *Ohio Hardware Mut. Ins. Co. v. Sparks*, 57 Ga. App. 830, 196 S.E. 915 (1938) ("Collision" may include any impact of one body with another, but must be construed in accordance with what parties must reasonably have contemplated as to coverage).

11. An interesting analogy is found in *Hyer v. Inter-Insurance Exchange*, etc., *supra* note 9 at 1058 ("If it be proper to say that there is but one 'occurrence' where two persons are injured in an automobile collision, then it is a mistake to say of such a case that there are two 'accidents'; for in a general sense every automobile accident is an occurrence.").

See also, *Williams v. Standard Acc. Ins. Co.*, 188 F.2d 206, (5th Cir. 1951) (Under an automobile liability policy limiting liability for bodily injury to \$5,000 for "each person," the term "each person" referred to the person injured or killed and not to each person who might be damaged as a result of bodily injury inflicted upon or death suffered by one person).