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Insurance - Automobile Liability Policy - Interpretation of Term "Each Accident"

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as forfeits may lead to results not envisaged by the parties. Although French courts apply earnest money to unexecuted sales and Louisiana has restricted its application to contracts to sell, the results reached under both systems are for all practical purposes identical. Under neither system would a deposit constitute earnest money after the sale has been executed by delivery. In France, earnest money is applicable to perfected sales of both movables and immovables, although a sale may be perfected before delivery has been made or the price paid.[19] In Louisiana, however, a sale of an immovable is not perfected until an act translative of title is executed,[20] at which time delivery takes place.[21] In France, delivery of an immovable is accomplished by delivery of the title papers.[22] Therefore, earnest money applies in France until delivery, although the sale may have been perfected before, and it applies in Louisiana until delivery although the sale will not be perfected before. The question of the application of earnest money to contracts involving movable property should not depend on whether the transaction constitutes a sale or a contract to sell, but on whether the contract has been executed by delivery. A forfeit is given as an alternative to performance, and when performance is rendered, the election is made. Therefore, when the transaction has been completed by delivery, there is no basis for the court to conclude that a payment was intended as a forfeit.

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INSURANCE—AUTOMOBILE LIABILITY POLICY—INTERPRETATION OF TERM "EACH ACCIDENT"

Defendant's negligently driven truck collided with a freight train and damaged sixteen boxcars belonging to fourteen separate owners. The railroad company, on its own behalf and presumably acting under assignments in its favor, brought suit against the defendant. Defendant's automobile liability insurance policy limited the insurer's liability for bodily injury to each person to $100,000, to $300,000 for each *occurrence*, and for prop-

19. See note 12 *supra*.
20. See note 5 *supra*.
21. Art. 2479, LA. CIVIL CODE of 1870; Succession of Curtis, 156 La. 243, 100 So. 412 (1924); Brown v. Brown, 30 La. Ann. 966 (1878); Laurans v. Garnier, 10 Rob. 425 (La. 1845); Lallande v. Lee, 9 Rob. 514 (La. 1845); Greco v. Millano, 13 Orl. App. 134 (La. App. 1916).
22. CODE CIVIL art. 1605.

erty damage in each *accident* to $5,000. In a settlement with the railroad company for a total amount of $30,000, the insurer contributed $5,000 and the insured, $25,000, without prejudice to his right against the insurer. Insured sued in the United States District Court for the Northern District of Georgia. The insured contended that damage to the property of each owner constituted a separate "accident" under the policy, while the insurer insisted that there had been but one accident and that its total liability was limited to $5,000. From a judgment for the insured of $25,000 in the district court, the insurer appealed. On appeal, *held*, affirmed. The property damage suffered by each owner must be deemed a separate "accident" under the present policy and the insurer is liable for $25,000. *Saint Paul-Mercury Indemnity* Co. *v. Rutland*, 217 F.2d 585 (5th Cir. 1954), *rehearing granted*, March 22, 1955.

The typical automobile liability insurance policy contains three types of limitations on the insurer's liability. First, his liability is limited to a certain amount for injury or death suffered by any one person; second, it is limited to a certain amount for the injury or death arising out of "each accident"; and third, it is limited to a certain amount for the damage to property arising out of "each accident."[1] Since these limitations are usually for different amounts, the meaning of the term "each accident" often becomes of paramount importance. Some indication of its meaning may be obtained from the policy itself. Thus, the term "each accident" employed in the second limitation cannot refer to the injury of each person as an "accident," since the insurer's liability for injury to each person is already provided in the first limitation. Instead the term must refer, as the courts have uniformly held, to the event out of which injury arises, regardless of the number of persons injured.[2] Since the identical term, "each accident," is employed in defining the limit of liability for property damage, it would seem difficult to avoid the conclusion that that limit refers only to the total property damage arising out of a given event, regardless of the number

1. COUGHLIN, YOU AND YOUR CAR INSURANCE 25 (1954); PATTERSON, CASES ON INSURANCE 801 (3d ed. 1955).

2. Gaines v. Standard Accident Ins. Co., 32 So.2d 633 (La. App. 1947); Annot., 150 A.L.R. 1154, 1158 (1944); *cf.* Motor Vehicle Safety Responsibility Act, GA. CODE ANN. § 92A-605(c) 4 (Supp. 1951), providing minimum of "not less than $10,000 because of bodily injury to or death of two or more persons in any one accident."

of property owners suffering loss.[3] Some insurance policies state these limits of liability in terms of "each occurrence" instead of "each accident." The purpose of doing so seems clear. The term "accident" in liability insurance policies has usually been interpreted as excluding events intentionally caused by the insured.[4] The term "occurrence," on the other hand, is broad enough to include intentionally caused events as well as strictly accidental happenings.[5] As a result, automobile insurance against liability arising from "accidents" would not cover liability arising from the intentional damaging of another vehicle,[6] whereas insurance against liability arising from "occurrences" would.[7] In other respects, however, there seems to be no difference between the terms "each accident" and "each occurrence" as used in the limitation clauses of liability insurance policies.

The policy in the present case, unlike most, contained the expression "each occurrence" in the clause limiting the insurer's liability for bodily injuries, and the term "each accident" in the clause limiting the insurer's liability for property damage. The question presented was whether the limits of the insurer's liability for property damage applied to the aggregate of property damage arising from the collision, regardless of the number of property owners suffering loss, or whether they applied to the property damage suffered by each separate owner. Had the term "each accident" been employed in both the bodily injury clause and the property damage clause, there seems to be

3. New Amsterdam Casualty Co. v. Hart, 153 Fla. 840, 16 So.2d 118 (1943). See Hyer v. Inter-Insurance Exchange, 77 Cal. App. 343, 246 Pac. 1055 (1926). Insured's automobile struck another causing the second car to damage a third. The court held: "There is, as a general rule, but one accident, even though there be several resultant injuries or losses." The court went on to say, "It would no more be correct to say of such a case that there were two accidents than it would be to predicate two or more accidents on a general freight train wreck, merely because two or more cars in the train might have been demolished in the same catastrophe." *Id.* at 350, 246 Pac. at 1057.

4. See, generally, 5 COUCH, CYCLOPEDIA OF INSURANCE LAW § 4136 *et seq.* (1954). See also Annot., 117 A.L.R. 1175 (1938) (accident as including negligence but excluding intentional injuries); Annots., 111 A.L.R. 1043 (1937), 173 A.L.R. 503 (1948) (wilful and wanton negligence included in accident); Annot., 33 A.L.R.2d 1027 (1954) (can assault be termed accident?); Annot., 24 A.L.R.2d 1454 (1952).

5. Chinn v. Butcher's Mut. Cas. Co., 190 Misc. 117, 71 N.Y.S.2d 70 (City Ct. N.Y. 1947); Ohio Casualty Ins. Co. v. Marr, 98 F.2d 973 (10th Cir. 1938); Springfield Township v. Indemnity Ins. Co., 361 Pa. 461, 64 A.2d 761 (1949).

6. Weis v. State Farm Mut. Auto Ins. Co., 64 N.W.2d 366 (Minn. 1954).

7. Some indication that the purpose of using the term "occurrence" is to broaden the type of events covered by the policy is the fact that some insurance companies advertise that they insure on an "occurrence" instead of an "accident" basis.

no doubt that the court would have limited the coverage of the policy to the liability arising from the collision, regardless of the number of claimants, to the extent of the insurer's liability for property damage arising from "each accident." But the use of the terms "each occurrence" and "each accident" in consecutive clauses was found confusing by the court. It applied the rule that ambiguities must be resolved in favor of the insured[8] and found additional support for deciding in favor of the insured in the old doctrine that accidents must be looked at from the eyes of the injured party.[9] The court therefore concluded that the train wreck was at least fourteen accidents under the clause in the policy that limited the insurer's liability to a certain amount for property damage arising out of "each accident."

While it may be sound to view accidents from the standpoint of the injured party when he is claiming as the insured under an accident insurance policy, the propriety of applying this principle to automobile liability insurance is questionable. Furthermore, there was probably no need for applying it in the instant case, since the ambiguity in the policy is completely dissipated when it is recognized that the term "each accident" is generally employed for the purpose of covering non-accidental events. The intriguing and regrettable facet of the decision is that the insurance company's intention of extending its liability to non-accidental injuries had the effect of completely removing, for all practical purposes, the limitation on its liability for accidental

8. VANCE, HANDBOOK ON THE LAW OF INSURANCE 809 (3d ed. 1951). *But see* Provident Life & Acc. Ins. Co. v. Anderson, 166 F.2d 492 (4th Cir. 1948) (favoring the insured should only serve to tip the scale when other aids to interpretation are in equipoise); Hemel v. State Farm Mut. Auto Ins. Co., 211 La. 95, 29 So.2d 483 (1947) (while ambiguous clauses in insurance policies should not be permitted to serve as traps for policyholders, policy provisions, clearly and definitely set forth in appropriate language and constituting bases for insurer's calculations, should be maintained unimpaired by loose and ill-considered interpretations).

9. The court relied on Anchor Casualty Co. v. McCaleb, 178 F.2d 322 (5th Cir. 1949) (for purposes of a policy limiting liability for aggregate damage and for "each accident," an oil well blowing out for 50 hours and damaging separate properties as the wind shifted, was held to be a series of accidents); Travelers' Ins. Co. v. Newsome, 147 Ga. 608, 95 S.E. 4 (1918) (where insured attacked another who then killed the insured, there was an accidental death for purposes of a life insurance policy); Travelers' Ins. Co. v. Wyness, 107 Ga. 584, 34 S.E. 113 (1899) (where the injury is not unforeseen by the injured party, it is accidental as to him although it was purposefully inflicted by the other party); New York Life Ins. Co. v. Jennings, 61 Ga. App. 557, 6 S.E.2d 431 (1939) (where insured attacked another who then killed the insured, there was an accidental death for purposes of a life insurance policy); South Staffordshire Tramways Co. v. Sickness and Accident Assurance Ass'n, [1891] 1 Q.B. 402 (trolley car overturned, injuring many passengers; for purposes of the particular policy each injury was considered a separate accident).

property damage. The decision indicates that it is inadvisable to use the terms "each occurrence" and "each accident" in the same policy without some thorough explanation of the meaning intended.

Harry R. Sachse

LOUISIANA PRACTICE—ANNULMENT DECREE—DEVOLUTIVE APPEAL AFTER DISMISSAL OF SUSPENSIVE APPEAL

Defendant was granted a suspensive appeal from a judgment by the district court annulling her marriage with plaintiff. The plaintiff later filed a motion in the district court to have the appeal dismissed on the ground that the order did not fix a bond for the appeal and that the defendant had not filed a bond within ten days after the judgment was signed. The district judge amended the suspensive appeal order and fixed the amount of the appeal bond, which was filed by the defendant. Plaintiff filed a motion before the Supreme Court to dismiss the suspensive appeal on the ground that the bond was not filed within ten days after the signing of the lower court judgment. *Held*, appeal dismissed as suspensive but maintained as devolutive. *Ramizest v. Ramizest*, 77 So.2d 733 (La. 1955).

Article 573 of the Code of Practice prohibits a devolutive appeal in cases where the judgment decrees a divorce. Since there is no statutory provision prohibiting a devolutive appeal from an annulment decree, the court in the instant case was left with no alternative to granting the appeal. However, by dismissing the suspensive appeal to the decree annulling the marriage, the court left the parties free to enter into new marriages with third parties. If they did so pending the final decision on appeal, and the court reversed the annulment decree, numerous questions could arise as to the status of all parties concerned and the status of their children, if any were conceived during that time. These problems were perhaps contemplated when it was provided in article 573 of the Code of Practice that no devolutive appeal is allowed from a divorce decree. An amendment to this article to include judgments decreeing the annulment of marriages would fill the *lacuna* that presently exists in the law.

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