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W. Shelby McKenzie

INSURANCE

*W. Shelby McKenzie**

In the insurance field, there were several interesting cases involving exclusions for intentional conduct in the liability coverage of homeowners' policies.[1] In *Kipp v. Hurdle*,[2] the court held that the insurer did not provide coverage for a wife who assaulted and injured her husband's dancing partner. The insured in *Nettles v. Evans*[3] committed an assault on a stranger in a shopping center parking lot while under the influence of drugs and alcohol. The court held that there was coverage, finding that the insurer had not carried its burden of proving the insured had the capacity to intend his acts. *McBride v. Lyles*[4] involved a fight at a basketball tournament in which several students injured the plaintiff. The court held there was coverage for the vicarious liability of the fathers of the minor students because the fathers had not engaged in any intentional misconduct.[5]

Tillman v. Canal Insurance Co.[6] involved an accident caused by gravel which earlier had spilled from the insured's truck. The court was presented with the interesting issue whether the negligence of the driver in leaving this unmarked hazard in the highway was covered under the comprehensive general liability or the automobile liability cover-

* Special Lecturer in Law, Louisiana State University; Member, Baton Rouge Bar.

1. The exclusion for intentional conduct may appear as a separate exclusion or may be included in the policy definition of an "occurrence" for which liability coverage is provided. Many policies define an "occurrence" as "an accident . . . which results, during the policy term, in bodily injury or property damage neither expected nor intended from the standpoint of the insured."

2. 307 So. 2d 125 (La. App. 1st Cir. 1975).

3. 303 So. 2d 306 (La. App. 1st Cir. 1974).

4. 303 So. 2d 795 (La. App. 3d Cir. 1974).

5. The court noted that public policy would prevent one from insuring against his own intentional acts, but public policy does not forbid one to insure against the intentional acts of another for which he is vicariously liable. *Id.* at 799. The court pointed out that the conduct must be intentional on the part of the particular insured claiming coverage. This holding is consistent with the prior jurisprudence. *See, e.g., Rivers v. Brown*, 168 So. 2d 400 (La. App. 3d Cir. 1964), in which the court found coverage for L.T. Brown Contractor, Inc. even though liability arose out of the intentional acts of L.T. Brown, its president and principal stockholder.

6. 305 So. 2d 602 (La. App. 1st Cir. 1974), *cert. denied*, 307 So. 2d 630 (La. 1975).

age of the insured's policy.[7] These separate coverages were mutually exclusive, with the automobile part covering and the general liability part excluding coverage for "use, including loading and unloading," of automobiles. Applying a "common sense" approach, the court concluded that the accident did not arise out of the "use" of the truck because there was no connexity between the vehicle from which the gravel was spilled and the intervening negligence of the driver in failing to protect the motoring public. The court wisely rejected the application of any artificial tests for "use," but reasonable men may differ as to whether common sense dictated the result reached by the court.[8]

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7. Apparently, the applicable limits of liability were greater under the comprehensive general liability coverage than under the automobile liability part.

8. The "common sense" approach was first suggested in *Speziale v. Kohnke*, 194 So. 2d 485 (La. App. 4th Cir. 1967) and adopted by the Louisiana Supreme Court in *Fertitta v. Palmer*, 252 La. 336, 211 So. 2d 282 (1968). Other "use" cases of interest include *Ramsey v. Continental Ins. Co.*, 286 So. 2d 371 (La. App. 1st Cir. 1973); *Cagle v. Playland Amusement, Inc.*, 202 So. 2d 396 (La. App. 4th Cir. 1967); *Baudin v. Traders & Gen. Ins. Co.*, 201 So. 2d 379 (La. App. 3d Cir. 1967); *Bolton v. North River Ins. Co.*, 102 So. 2d 544 (La. App. 1st Cir. 1958); *Spurlock v. Boyce-Harvey Machinery, Inc.*, 90 So. 2d 417 (La. App. 1st Cir. 1956).