Louisiana Law Review

Volume 6 | Number 4
The Work of the Louisiana Supreme Court for the 1944-1945 Term
May 1946

Insurance - Notification Clauses of Contracts

Wade H. Davis

INSURANCE—NOTIFICATION CLAUSES OF CONTRACTS—Plaintiff's seventeen-months-old child was killed through the alleged negligence of one Carl E. Toler, the child's great-uncle, who resided with the plaintiffs. The insurance contract carried by Toler required him to ntoify the insurer of any accident "as soon as practicable." After the death of the child, plaintiffs on two different occasions told Toler that they did not desire to bring suit for damages for the death of their child. Finally, they decided to sue and told Toler of their intention. Toler then notified the defendant, his insurance carrier, of the accident eight-two days after it had occurred. The trial court held that plaintiffs were barred because of this delay. The Court of Appeal of Louisiana, First Circuit, affirmed this decision. *Jackson v. State Farm Mutual Automobile Insurance Company,* 23 So. (2d) 765 (La. App. 1945).

The decision of this case was based upon an interpretation by the court of Act 243 of 1918 as amended by Act 55 of 1930.[1] In cases that involve a delay in giving notice, the Louisiana courts have been inconsistent with respect to the rights of the third party. In the case of *Jones v. Shehee-Ford Wagon and Harness Company, Incorporated,*[2] the insured gave the insurer notice of the accident twenty-six days after its occurrence. The supreme court held that this was a substantial compliance with the terms of the contract which required notice "as soon as practicable." However, it did not consider whether the injured party was subject to the notification provisions of the contract.[3] Previously the court had declared in *Edwards v. Royal Indemnity Company*[4] that "public liability not only protects the insured from loss caused by his negligence, but is also in favor of the party who sustains damages through the insured's fault."[5] And in *Davies v. Consolidated Underwriters,*[6] the court had said that "the enforcement of a policy provision requiring notice to be given by the insured automatically and without any action on his [the third party's] part deprives him of the right of action granted by law. It is not desirable that he should be divested

1. See Fordham and Pegues, Local Government Responsibility in Tort in Louisiana (1941) 3 LOUISIANA LAW REVIEW 720, 749; McClendon, Public Liability Insurance—The Injured Person's Right of Recovery When the Policyholder Fails To Give Immediate Notice to the Insurer (1935) 10 Tulane L. Rev. 455; Note (1942) 4 LOUISIANA LAW REVIEW 455.

2. 183 La. 293, 163 So. 129 (1935).

3. La. Act 55 of 1930 [Dart's Stats. (1939) § 4248].

4. 182 La. 171, 161 So. 191 (1935).

5. 182 La. 171, 181, 161 So. 191, 195.

6. 199 La. 459, 6 So. (2d) 351 (1942).

of such action. . . ."[7] These expressions indicate that as, between the insurer and the injured third party, the provisions of the policy with respect to the giving of notice will be liberally construed. Where the insured is the plaintiff, literal compliance with the terms of the policy has generally been required.[8]

On the other hand, the majority of decisions rendered by the courts of appeal have required strict compliance with the notification provisions of the contract by the injured third party as well as the insured. In *Howard v. Rowan*[9] the Court of Appeal for the Second Circuit held that a delay of forty-four days was not excusable where the policy required "immediate" notice. *Duncan v. Pedare*[10] presented a lapse of eight months before the insurer was given notice of the accident. However, twenty-six days after the third party was aware of his injury he notified the insured, who in turn informed his insurer two days later. The Court of Appeal for the First Circuit allowed the injured party to recover, but upon a rehearing[11] the decision was reversed, it appearing that the insured should have known of the possibility of injury and the resulting claim. In a 1939 case[12] the Orleans Court of Appeal held that a twenty-five day delay by the insured in giving notice where the policy required such notification to be "as soon as practicable" did not preclude the injured party from recovering. The decision was based on this being a substantial compliance with the terms of the contract.

The policy provision in the principal case requiring the notification of the accident "as soon as practicable" was held to be synonymous with "immediately" and "promptly." In deciding that the insured did not notify the defendants "as soon as practicable," the court made no distinction between the insured and a third party claimant with respect to the standard to be applied. It was held that the injured party was governed by the terms of the contract.

Policy provisions requiring prompt notification are designed to afford the insurance company an opportunity to get on the scene to secure the testimony of witnesses before they become dispersed or their recollection of the facts becomes vague. They are also for the purpose of giving the insurer an opportunity to

7. 199 La. 459, 477, 6 So. (2d) 351, 357.
8. Dennis Sheen Transfer v. Georgia Casualty Co., 163 La. 969, 113 So. 165 (1927); Wheeler v. London Guarantee & Accident Co., 180 La. 366, 156 So. 420 (1934).
9. 154 So. 382 (La. App. 1934).
10. 161 So. 221 (La. App. 1935).
11. 164 So. 498 (La. App. 1935).
12. Jones v. American Mut. Liability Ins. Co., 185 So. 509 (La. App. 1939).

make a quick settlement before there is any collusion between the parties. Another design of notification clauses is to provide a means of preventing unnecessary litigation by allowing the insurer to deal directly with the injured party before he feels the need of consulting counsel. This latter consideration is the only basis on which the defendants may have claimed prejudice in the instant case, as all of the witnesses were on hand and there appeared to be no evidence of collusion.

Liability insurance, besides being a benefit to the insured, is also for the benefit of society in that the loss is distributed and not borne by one individual. The State of Massachusetts has recognized this social problem and has attempted to solve it by requiring compulsory automobile liability insurance.[13] On the basis of the decisions of the Louisiana Supreme Court only substantial compliance with provisions requiring notice seems to be necessary. In determining this issue, an inquiry must be made as to whether the delay has been prejudicial to the insurer. The decisions appear to place the burden of proving substantial compliance on the plaintiff. To require the insurer to prove that it has been prejudiced by the delay in order to escape liability would probably effectuate the social objective of Act 55 of 1930.

WADE H. DAVIS

PRESCRIPTION OF MOVABLES—MEANING OF "STOLEN" IN ARTICLES 3506 AND 3507, LOUISIANA CIVIL CODE OF 1870—A Florida automobile dealer permitted a prospective customer to use one of its automobiles for a short trip within that state. The customer, however, drove the car to Louisiana and sold it. After the car had passed through several hands in Louisiana, the dealer sued the last purchaser, a possessor in good faith by just title, for its recovery. The supreme court gave judgment for plaintiff on two grounds: First, the sale from the prospective customer to a Louisiana purchaser and all other sales were nullities under Article 2452 of the Louisiana Civil Code. Second, the act of driving the car out of Florida *constituted larceny* under Florida law, and hence a good faith possessor under a just title in Louisiana could acquire ownership only by such possession for ten years. Articles 3506 and 3509 of the Civil Code were cited to sustain the latter position. *Packard Florida Motors Company v. Malone,* 24 So. (2d) 75 (La. 1945).

13. 5 Mass. Ann. Laws (1933) c. 175, § 112. See Blanchard, Compulsory Motor Vehicle Liability Insurance in Massachusetts (1936).