Louisiana Law Review

Volume 33 | Number 2
The Work of the Louisiana Appellate Courts for the 1971-1972 Term: A Symposium
Winter 1973

Public Law: Insurance

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involved proof of sister-state laws. In *Sullivan* copies of the relevant sister-state laws and judgments had been provided the judge and no issue was raised. In *Jagers* the defendant introduced affidavit memoranda by Mississippi attorneys concluding that Mississippi law forbade parent to sue minor child. The majority ruled the authorities cited did not support the conclusion of the memoranda and then "presumed" Misssisippi law to be the same as that of Louisiana. It is submitted that a Louisiana judge is never at liberty to presume that a sister-state's law is the same as that of Louisiana. Article 1319 of the Code of Civil Procedure provides that Louisiana courts "shall" take judicial notice of sister-state "common law and statutes." The only liberty judges have under article 1319 is to ascertain the sister-state's laws by their own efforts or to call upon counsel to obtain the information for them. In the writer's opinion, admittedly contrary to long-standing practice, the full faith and credit clause of the United States Constitution properly construed itself, requires every state court to honor the valid and applicable law of every other state, and therefore to discover what it is in order to apply it. In this view article 1319 adds nothing to the constitutional requirement.

INSURANCE

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The Louisiana supreme court in *Graham v. American Casualty Co.*[1] and *Deane v. McGee*,[2] overruled numerous decisions from all four courts of appeal in order to permit "stacking" of the coverages under uninsured motorist policies, finding that the language of the "other insurance" clauses limiting liability was inconsistent with the statute requiring that each liability policy contain uninsured motorist coverage in a specified minimum amount. These important decisions are noted elsewhere in this Review.[3]

The application of the exclusion in automobile liability policies for persons employed in the automobile business has been

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1. 261 La. 85, 259 So.2d 22 (1972).
2. 261 La. 686, 260 So.2d 669 (1972).
3. 33 LA. L. REV. 145 (1972).

a continuing game of revision by insurers followed by restrictive interpretation from the courts. The obvious purpose of the exclusion is to deny coverage to persons who more properly should be insured by their employers under a garage liability policy.[4] The current standard policy language[5] was dealt a severe blow by the Second Circuit in *Dumas v. Hartford Accident & Indemnity Co.*,[6] in which the court held that the exclusion did not apply to a garage employee returning the auto to its owner after repairs were complete. However, in *Deville v. United States Fidelity & Guaranty Co.*,[7] the Third Circuit concluded that the Second Circuit was in error in *Dumas* and held that the exclusion did apply to a garage employee picking up an automobile to be serviced. The court refused to seize upon a factual distinction, recognizing that pick up and delivery were essentially the same. The court concluded that the exclusionary clause was clear and unambiguous, and that an employee of an automobile servicing firm whose duties consisted solely of picking up and delivering automobiles was unquestionably a person using the auto "while such person is employed or otherwise engaged in the automobile business." The court also found that the applicable coverage was provided by the garage liability policy of the driver's employer. The *Deville* decision appears to be the correct interpretation in keeping with the intent of the clause. The *Dumas* court seems to have fallen into error by equating the language "a person employed in the business of servicing automobiles" with "a person engaged in servicing automobiles" when it concluded that the effect of the exclusion ceased when service was complete.[8] As recognized in *Deville*, the proper inquiry is not what the driver is actually doing at the time of the accident but in what business he is employed.

In *Lusk v. Travelers Insurance Co.*,[9] a high school student

4. 27 LA. L. REV. 526 (1967).
5. "This policy does not apply:
. . .
(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business. . . ."
The automobile business is defined as "the business or occupation of selling, repairing, servicing, storing or parking automobiles."
6. 181 So.2d 841 (La. App. 2d Cir. 1965).
7. 258 So.2d 694 (La. App. 3d Cir. 1972).
8. 181 So.2d 841, 843.
9. 250 So.2d 197 (La. App. 1st Cir. 1971).

obtained permission to use her teacher's automobile upon the false representation that she was licensed to drive. The court was faced with the interesting issue whether the student had the permission to use the automobile within the meaning of the omnibus coverage of the policies issued to the owner and to the student's father. Distinguishing the initial permission cases,[10] the court held that fraud vitiated the consent to use the automobile, and therefore there was no coverage under either policy.

Relying on a much criticized New York case,[11] a Louisiana citizen tried to obtain in rem jurisdiction over a New Jersey resident for liability allegedly arising out of an accident which occurred in New Jersey by attaching the defendant's insurance policy. The attachment was served in Louisiana on the insurer, a company doing business both in Louisiana and in New Jersey where the policy had been issued. In *Kirchman v. Mikula*,[12] the court found no jurisdiction, holding that under the Direct Action Statute[13] as interpreted in *Webb. v. Zurich Insurance Co.*[14] the legislature intended to confer jurisdiction and the right of direct action only where: (1) the accident occurred in Louisiana or (2) the policy was issued or delivered in Louisiana if the accident occurred elsewhere.[15]

Recently there has been a considerable amount of important litigation concerning the legal liability of one corporate employee to another employee of the same corporation.[16] These cases are often referred to as "executive officer suits" because the incentive behind many suits is the extension of coverage in

10. *E.g.*, Parks v. Hall, 189 La. 849, 181 So. 191 (1938). Actually, the initial permission rule probably has lost its efficacy in light of recent policy revisions which attacked the rule head-on by restricting coverage for the permissive user with the language, "provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission."

11. 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966).

12. 258 So.2d 701 (La. App. 3d Cir. 1972).

13. LA. R.S. 22:655 (1950).

14. 251 La. 558, 205 So.2d 398 (1967).

15. The same result was reached in a federal court action in the same accident. Kirchman v. Mikula, 443 F.2d 816 (5th Cir. 1971).

16. Cases reported during the last year include: Dulaney v. Fruge, 257 So.2d 827 (La. App. 3d Cir.), *writ refused*, 261 La. 482, 259 So.2d 921, and 261 La. 485, 259 So.2d 922 (1972); Maxey v. Aetna Cas. & Sur. Co., 255 So.2d 120 (La. App. 3d Cir.), *writ refused*, 260 La. 123, 255 So.2d 351 (1971); Spillers v. Northern Assur. Co. of America, 254 So.2d 125 (La. App. 3d Cir. 1971), *writ refused*, 260 La. 288, 255 So.2d 772 (1972).

comprehensive general liability policies.[17] However, some suits involve corporate employees at all levels either because the policy has been endorsed to provide broader coverage or because the corporation itself feels compelled to stand behind its employees. The jurisprudence is fraught with much uncertainty and confusion centering primarily on the determination of what legal duties are owed by one employee to another as distinguished from duties which such employee owes solely to his corporate employer or which only the corporation owes to the injured employee.[18] There are numerous important collateral issues including such questions as who is an executive officer[19] and what duties are imposed upon the injured employee in determining his contributory negligence and assumption of the risk.[20] Thus far, the supreme court has refused writs in numerous opportunities to consider the issues generated in this field of litigation. This type of action appears to be unique in Louisiana because by express language or by interpretation the workmen's compensation statutes of the federal government and most other states provide that compensation is the exclusive remedy of the employee against both the corporation and his fellow employees.[21] The myriad legal and policy considerations involved in this field of litigation are in crying need of comprehensive consideration by both the legislature and the Louisiana supreme court.

17. "Persons Insured: Each of the following is an insured under this insurance to the extent set forth below:

. . .

(c) if the named insured is designated in the declaration as other than an individual, partnership or joint venture, the organization so designated and *any executive officer, director or stockholder* thereof while acting within the scope of his duties as such; . . ." (Emphasis added.)

18. *See, e.g.*, cases cited in note 16. The door to executive officer liability as the escape from the exclusive remedy provisions of the workmen's compensation act was opened in *Adams v. Fidelity & Cas. Co.*, 107 So.2d 496 (La. App. 1st Cir. 1958), in which the court rejected a misfeasance-nonfeasance approach in favor of an inquiry into legal duties.

19. *See, e.g.*, Berry v. Aetna Cas. & Sur. Co., 240 So.2d 243 (La. App. 2d Cir. 1970), *writ refused*, 256 La. 914, 240 So.2d 374 (1970).

20. *See, e.g.*, Chaney v. Brupbacher, 242 So.2d 627 (La. App. 4th Cir. 1970).

21. *See, e.g.*, Longshoremen's & Harbor Worker's Compensation Act 33 U.S.C. §§ 901-50 (1970):

"933(i): The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: *Provided*, That this provision shall not affect the liability of a person other than an officer or employee of the employer."