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able property. Under the jurisprudence this does not result in a legal mortgage on the parents' property.

In administering a minor's property the father must proceed in the same manner and pursue the same forms as does a tutor in order to sell or mortgage property of the minor, or to compromise a claim of the minor. Furthermore, it is submitted that a literal interpretation of the statute requires the father to proceed as would a tutor in all other acts of administration affecting the minor's interest. Under the present law, if the father mismanages the minor's property there appears to be no one who has procedural capacity to bring an action to protect the minor's interest. A procedure should be available to allow someone to bring an action to protect the minor's estate against maladministration by a parent during paternal authority. It is further suggested that parents should be allowed to dispose of inexpensive movable property belonging to their children without court approval, and that the requirement for recordation of inventory should be retained as a suspensive condition to parents' right to enjoyment of their children's estates, but that the Civil Code should be amended so as to provide expressly that no legal mortgage on the parents' property results from this recordation.

Sydney B. Nelson

"Omnibus Clause"—Problems in Louisiana Jurisprudence

The so-called "omnibus clause" of the standard automobile liability insurance policy extends coverage to any person using the insured vehicle, provided the actual use thereof is with the permission of the named insured.¹ This clause is intended to

1. Prior to the 1930's, the omnibus clause of automobile insurance policies read substantially as follows: "The term 'named insured' shall mean only the insured as specified in Statement One, but the term 'insured' shall include the named insured and any person while riding in or legally operating such automobile, and any other person or organization legally responsible for its operation, provided, . . . (8) it is being used with the permission of the named insured." Rowe, *The Standard Policy*, 1 INS. COUNSEL J. 19 (1934).

Since the late 1930's, the clause has read substantially thus: "Definition of 'Insured'. The unqualified word 'insured' . . . includes not only the named insured, but also any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is business and pleasure, or commercial, as defined herein, and provided further, that the *actual*

extend liability coverage beyond the unduly technical law of principal and agent.² When the insured vehicle is involved in an accident and the driver is not the named insured, the question arises whether or not the facts establish that the driver is included within the language of the omnibus clause.³ Two areas⁴ have been selected for discussion where the Louisiana courts have considered this question. The first area is where the original borrower — the first permittee⁵ — is involved in an accident while using the vehicle for a purpose other than that contemplated by the named insured when he released the vehicle to the borrower's possession. The second area is where, at the time of the accident, the vehicle is being operated by one to

use is with the permission of the named insured." Sweitzer, *The Standard Policy*, 7 INS. COUNSEL J. 53 (1940).

The omnibus clause of the Family Automobile Policy reads: "Persons Insured: (1) the named insured and any resident of the same household, (2) any other person using such automobile, provided the actual use thereof is with the permission of the named insured. . . . '[N]amed insured' . . . includes the named insured's spouse, if a resident of the same household." Dimond, *The New Standard Automobile Policy*, 23 INS. COUNSEL J. 67 (1956).

2. Nyman v. Monteleone-Iberville Garage, Inc., 211 La. 375, 30 So.2d 123 (1947); Davies v. Consolidated Underwriters, 14 So.2d 494 (La. App. 2d Cir. 1943); Benton v. Griffith, 184 So. 371 (La. App. 1st Cir. 1938). See RESTATEMENT (SECOND), AGENCY §§ 234-236 (1958) and comments thereunder, as to the liability of the principal to a third party for the negligence of his agent. See also 13-14 HUDDY, AUTOMOBILE LAW 405 (9th ed. 1932); James & Thornton, *The Impact of Insurance on the Law of Torts*, 15 LAW & CONTEMP. PROB. 431 (1950); James, *Accident Liability Reconsidered: The Impact of Liability Insurance*, 57 YALE L.J. 549 (1948).

3. Determination of this issue may involve some or all of the following inquiries as to the specific terms of the policy: As the clause requires that the operator must have the permission of the named insured, it must be determined what "permission" means and whether it may be either express or implied. As the permission must have been granted by the named insured, it is important whether only the "named insured" may grant permission or whether he may delegate this authority to another person. As the "actual use" must be with the permission of the named insured, the question arises as to whether the use for which the vehicle was being employed at the time of the accident must have been consented to, or whether any deviation from that use will eliminate coverage.

4. The Employers' Automobile Liability policy, which contains an omnibus clause bearing the following restrictions, is not within the scope of this Comment: "The insurance with respect to another person or organization other than the named insured does not apply . . . (c) to any employee with respect to the injury . . . or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of an automobile in the business of such employer." This omnibus clause excludes from coverage liability for an employee's negligence causing injury to a co-employee during the course of their employment. See LA. R.S. 23:1021 *et seq.* (1950); Jagneaux v. American Auto Ins. Co., 136 So.2d 91 (La. App. 3d Cir. 1961); Davis v. Travelers Ins. Co., 295 F.2d 205 (5th Cir. 1961). *Of* Jackson v. American Auto Ins. Co., 103 So. 2d 304 (La. App. 1st Cir. 1958); Arceneaux v. London Guarantee & Accident Co., 87 So. 2d 343 (La. App. 1st Cir. 1956).

5. The term "first permittee" is employed in this Comment to refer to the original borrower to whom the named insured has turned over the possession of the insured vehicle.

whom the original borrower has turned over the possession of the vehicle — a third party operator.⁶

Deviation by First Permittee

Within the United States there exist at least three different approaches to the problem of deviation by the first permittee from the use for which the insured vehicle was given him by the named insured.⁷ A few states⁸ employ what is termed the "strict rule" or "conversion rule," which provides that the insurer will be liable only if permission was given for the particular use being made at the time of the accident and if the accident took place within the time limits and geographical area specified or contemplated by the parties at the time permission was given. Other jurisdictions⁹ follow an intermediate position termed the "minor deviation rule," which provides that minor deviations from any of the factors as to time, place, and purpose of the use being made of the vehicle at the time of the accident will not defeat coverage under the policy. Many other jurisdictions,¹⁰ including Louisiana,¹¹ have taken quite a liberal

6. The term "third party operator" is used in this Comment with reference to one who is given possession of the vehicle by the first permittee. It is to be noted that third party operators who are found to have the named insured's permission to use the vehicle are often referred to as "second permittees." As the main inquiry in this Comment is determination of when permission exists, the term "third party operator" will be used.

7. *Branch v. United States Fidelity & Guaranty Co.*, 198 F.2d 1007 (6th Cir. 1952). See 7 APPLEMAN, INSURANCE §§ 4366-4368 (1962); Miller, *The Omnibus Clause*, 15 TUL. L. REV. 422 (1943).

8. See, e.g., *Mycek v. Hartford Acc. & Indem. Co.*, 128 Conn. 140, 20 A.2d 735 (1941); *Ball v. Inland Mut. Ins. Co.*, 121 So.2d 470 (Fla. App. 3d Dist. 1960); *Hartford Acc. & Indem. Co. v. Peach*, 193 Va. 260, 68 S.E.2d 520 (1952). See 7 APPLEMAN, INSURANCE § 4367 (1962).

9. E.g., *Kansas*: *Fisher v. Fireman's Fund Indem. Co.*, 244 F.2d 194 (10th Cir. 1957); *Kentucky*: *Trinkle v. American Employer's Ins. Co.*, 180 F. Supp. 233 (W.D. Ky. 1959); *Missouri*: *Speidel v. Kellum*, 340 S.W.2d 200 (Mo. App. 1960). See 7 APPLEMAN, INSURANCE § 4368 (1962).

10. E.g., *Illinois*: *Jelson v. London Guarantee & Acc. Co.*, 293 Ill. App. 97, 11 N.E.2d 993 (1937); *New Jersey*: *Penza v. Century Indem. Co.*, 119 N.J. 446, 197 Atl. 29 (1938); *North Dakota*: *Persellin v. State Auto. Ins. Assoc.*, 32 N.W.2d 644 (1948); *Oregon*: *Denley v. Oregon Auto. Ins. Co.*, 151 Ore. 42, 47 P.2d 245 (1935); *Tennessee*: *Stovall v. New York Indem. Co.*, 157 Tenn. 301, 8 S.W.2d 473 (1928); *Wisconsin*: *Drewek v. Milwaukee Auto. Ins. Co.*, 207 Wis. 445, 240 N.W. 881 (1932). See 7 APPLEMAN, INSURANCE § 4366 (1962).

11. *Parks v. Hall*, 189 La. 849, 181 So. 191 (1938) (initial permission activated omnibus clause notwithstanding deviation and unauthorized use by first permittee). In *Haeuser v. Aetna Cas. & Surety Co.*, 187 So. 684 (La. App. Orl. Cir. 1939), the court was confronted with the omnibus clause as quoted second in note 1 *supra*, which added the word "actual" before the word "use," and held that this change in the wording of the policy did not change the *Parks'* interpretation of the omnibus clause. In *Stanley v. Cryer Drilling Co.*, 213 La. 980, 36 So.2d 9 (1948) the Supreme Court agreed with the *Haeuser* interpretation.

position.¹² In these, coverage is extended under the omnibus clause so long as the first permittee had the named insured's permission to use the vehicle, regardless of whether its use at the time of the accident was within the contemplation of the named insured at the time permission was granted.¹³ Coverage has been affirmed even when the deviation is in violation of specific instructions of the named insured.¹⁴

The "conversion rule" may be justified by the fact that it furnishes a definite standard for deciding litigation and that it applies a literal meaning to the specific terms of the policy.¹⁵ It seems, however, that rigid adherence to this approach could lead to harsh results where slight deviations would preclude coverage.¹⁶ The "minor deviation rule" seems to be an attempt to avoid the possible injustice of the rigid conversion rule, but it is difficult to apply because of its necessarily flexible formula for determining what constitutes "minor" as distinguished from "major" deviations. Justification for the liberal rule is found in the reasoning that automobile liability insurance is as much for the protection of the public as for the contracting parties or the additional insureds.¹⁷

A necessary result of the liberal rule is that it extends coverage to the injured party beyond the law of principal and agent

12. Some "states have arbitrarily adopted a doctrine that if the vehicle was originally entrusted by the named insured, or one having proper authority to give permission, to the person operating it at the time of the accident, then despite hell or high water, such operation is considered to be within the scope of the permission granted, regardless of how gross the terms of the original bailment may have been violated." 7 APPLEMAN, INSURANCE 308, § 4366 (1962).

13. See the cases cited in notes 10 and 11 *supra*.

14. *Waits v. Indemnity Ins. Co.*, 215 La. 349, 40 So. 2d 746 (1949); *Stanley v. Cryer Drilling Co.*, 213 La. 980, 36 So. 2d 9 (1948); *Sun Underwriter's Ins. Co. v. Standard Accidents Ins. Co.*, 47 So. 2d 133 (La. App. Or. Cir. 1950).

15. The term "actual use," as employed in the present policy, was drafted to confine coverage to situations where the employment of the vehicle at the time of the accident was within the scope of the permission granted. See 7 APPLEMAN, INSURANCE § 4354 (1962).

16. A good example of the possible injustice of the conversion rule is found in *Sauriolle v. O'Gorman*, 86 N.H. 39, 163 A. 717 (1932), where coverage was denied when the first permittee who was sent on an errand to another city had an accident during a detour of about one-half mile from his prescribed route.

17. See *Rhodes v. New Orleans Public Service Co.*, 75 So. 2d 549 (La. App. Or. Cir. 1954); *Ball v. Inland Mut. Ins. Co.*, 121 So. 2d 470, 471 (Fla. App. 3d Dist. 1960) (dissenting opinion). See also 7 APPLEMAN, INSURANCE § 4366 (1962).

LA. R.S. 22:655 (1950), as amended and re-enacted, La. Acts 1958, No. 125, reads in part: "[A]ll liability policies are executed for the benefit of all injured persons . . . to whom the insured is liable; and it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insureds or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tortfeasor."

when there is negligence on the part of the agent.¹⁸ In order for the party injured by the negligence of the agent to recover from the principal, it must be determined that at the time of the accident the agent was acting within the scope of his authority.¹⁹ If this is not found, the injured party's only recourse is against the agent.²⁰ Under the liberal rule, it is only necessary to find that the agent had the named insured's permission initially to use the vehicle.

The Louisiana courts in following the "liberal rule" require that two conditions be met before one not specifically designated in the policy as an insured will be covered as an omnibus insured. First, there must be initial permission to use the vehicle,²¹ and second, the permission to use the vehicle must not have terminated prior to the time of the accident.²² The permission may be either express or implied,²³ and it may be granted either for the performance of a specific mission,²⁴ or for giving the operator general possession and control of the vehicle.²⁵

18. See note 2 *supra*, and materials cited therein.

19. *Benoit v. Hunt Tool Co.*, 219 La. 380, 53 So.2d 137 (1951); *Muro v. Norman S. Corp.*, 85 So.2d 688 (La. App. Or. Cir. 1956); *Travelers Fire Ins. Co. v. Savoy*, 82 So.2d 68 (La. App. 1st Cir. 1955). See *RESTATEMENT (SECOND), AGENCY* § 219 (1958).

20. *Englert v. New Orleans Ry. & Light Co.*, 128 La. 473, 54 So. 963 (1911); *Thomas v. Buquet & LeBlanc, Inc.*, 119 So.2d 129 (La. App. 1st Cir. 1960). See *RESTATEMENT (SECOND), AGENCY* § 350 (1958).

21. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950); *Waits v. Indemnity Ins. Co.*, 215 La. 349, 40 So.2d 746 (1949); *Stanley v. Cryer Drilling Co.*, 213 La. 980, 36 So.2d 9 (1948); *Parks v. Hall*, 189 La. 849, 181 So. 191 (1938); *Gonzales v. Beaumont Cement Sales Co.*, 125 So.2d 785 (La. App. 4th Cir. 1961); *Sun Underwriters Ins. Co. v. Standard Accidents Ins. Co.*, 47 So.2d 133 (La. App. Or. Cir. 1950); *Thibodeaux v. Brown Oil Tools, Inc.*, 192 F. Supp. 495 (W.D. La. 1961). *Cf. Wilson v. Farnsworth*, 4 So.2d 247 (La. App. Or. Cir. 1941).

22. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950); *Waits v. Indemnity Co.*, 215 La. 349, 40 So.2d 746 (1949); *Sun Underwriters Ins. Co. v. Standard Accidents Ins. Co.*, 47 So.2d 133 (La. App. Or. Cir. 1950); *Farnet v. DeCuers*, 195 So. 797 (La. App. Or. Cir. 1940); *Waddell v. Langois*, 158 So. 665 (La. App. 1st Cir. 1935).

23. See the cases cited in note 21 *supra*.

24. *Parks v. Hall*, 189 La. 849, 181 So. 191 (1938); *Brooks v. Delta Fire & Cas. Co.*, 82 So.2d 55 (La. App. 1st Cir. 1955); *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So.2d 440 (La. App. 1st Cir. 1953); *Sun Underwriters Ins. Co. v. Standard Accidents Ins. Co.*, 47 So.2d 133 (La. App. Or. Cir. 1950); *Clemons v. Metropolitan Cas. Ins. Co.*, 18 So.2d 228 (La. App. 2d Cir. 1944); *Donovan v. Standard Oil Co.*, 197 So. 320 (La. App. 2d Cir. 1940); *Farnet v. DeCuers*, 195 So. 797 (La. App. Or. Cir. 1940); *Haeuser v. Aetna Cas. & Surety Co.*, 187 So. 684 (La. App. Or. Cir. 1939).

25. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950); *Waits v. Indemnity Ins. Co.*, 215 La. 349, 40 So.2d 746 (1949); *Stanley v. Cryer Drilling Co.*, 213 La. 980, 36 So.2d 9 (1948); *Garland v. Audubon Ins. Co.*, 119 So.2d 530 (La. App. 1st Cir. 1960); *Boudreaux v. Cagle Motors*, 70 So.2d 741 (La. App. 1st Cir. 1954); *Oliphant v. Town of Lake Providence*, 193 So. 516 (La. App. 2d Cir. 1939); *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir.

If the first permittee is found to have been given the possession of the vehicle by the named insured, and the first permittee was in possession of the vehicle at the time of the accident, the only remaining consideration is whether or not his permission to possess has terminated prior to the time of the accident. In earlier cases, the view prevailed in Louisiana that permission terminated upon the end of the use contemplated or authorized by the named insured.²⁶ If there was a deviation by the first permittee, there was coverage only if the deviation was a mere stepping aside from the authorized or contemplated purpose.²⁷ This view was perhaps due to the fact that the liability policy was construed strictly as a contract of indemnification between the insurer and the insured. However, under the liberal view currently holding sway in Louisiana, use after termination of the authorized purpose no longer automatically cancels permission.²⁸

Where the first permittee is given custody of the vehicle to accomplish a specific mission and thereafter returns it to the custody of the named insured, initial permission terminates.²⁹ However, where the first permittee has been granted complete dominion and control of the vehicle, he does not lose initial permission because he parks it for a short while.³⁰ In this latter situation, the termination of initial permission has been stretched even further and practically any use is held to be with permission.³¹ If the first permittee is given general control, perhaps it is reasonable that the named insured should be held to foresee

1939). It is to be noted that the standard policy provides that the omnibus clause does not extend coverage to the employees of public garages, repair shops, and parking lots, even though they have received rightful custody of the vehicle from the named insured. This provision does not mean that the named insured is not protected if liability should be imposed upon him while the vehicle is being so used, but it prevents the insurer from becoming liable by reason of judgments recovered against such establishments. See *Nyman v. Monteleone-Iberville Garage*, 211 La. 375, 30 So.2d 123 (1947); *Clostio's Heirs v. Sinclair Refining Co.*, 36 So.2d 283 (La. App. 1st Cir. 1948); 7 APPLEMAN, INSURANCE § 4372 (1962).

26. *Farnet v. DeCuers*, 195 So. 797 (La. App. Or. Cir. 1940); *Waddell v. Langois*, 158 So. 665 (La. App. 1st Cir. 1935).

27. *Farnet v. DeCuers*, 195 So. 797 (La. App. Or. Cir. 1940).

28. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950); *Waits v. Indemnity Ins. Co.*, 215 La. 394, 40 So.2d 746 (1949); *Sun Underwriters Ins. Co. v. Standard Accident Ins. Co.*, 47 So.2d 133 (La. App. Or. Cir. 1950).

29. A subsequent taking and additional use is a new use for which a new consent must be given. In the absence of new permission, the operator is not an omnibus insured. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950).

30. *Dominguez v. American Cas. Co.*, 217 La. 487, 46 So.2d 744 (1950).

31. *Sun Underwriters Ins. Co. v. Standard Accident Ins. Co.*, 47 So.2d 133 (La. App. Or. Cir. 1950).

and anticipate deviations from whatever particular uses the permission was granted,³² but where permission is given only for a specific purpose it seems considerably less justifiable to draw the same conclusion. At any rate, it is clear that in the states following the liberal rule the restrictive policy provision that would make the first permittee an omnibus insured only when his "actual use" is with the permission of the named insured has been broadened to include any operation where the *actual possession* of the vehicle is with the permission of the named insured.

Two provisions of the Family Policy are of particular importance. Under the Family Policy any member of the named insured's household is automatically an insured.³³ Because of this added provision the residents of the named insured's household no longer need initial permission from the named insured to use the insured vehicle in order to be covered under the policy. Further, the Family Policy provides that for the purposes of the omnibus clause, the named insured's spouse, if she resides in the same household, may grant the permission to use the vehicle that will activate the policy.³⁴

Third Party Operator as an Omnibus Insured

It is usually stated that the first permittee cannot validly permit a third person to operate the insured vehicle so as to bring such third person within the omnibus clause.³⁵ In order for the third party operator given the possession of the vehicle by one other than the named insured to be classified as an

32. In *Hurdle v. State Farm Mut. Auto. Ins. Co.*, 135 So.2d 63 (La. App. 2d Cir. 1961) the court stated that the reason behind the rule announced in the *Parks* case was that the owner should reasonably foresee and anticipate deviations and that by placing the vehicle in control of the permittee he impliedly consented to its extended uses.

33. See note 1 *supra* for the text of the Family Policy. The determination of whether or not one who lives under the same roof as the named insured is a resident of the named insured's *household* may arise under this policy. *Letteff v. Maryland Cas. Co.*, 91 So.2d 123 (La. App. 1st Cir. 1956) contains a lengthy review of what several jurisdictions have found to be "households" and "residents" thereof. The requirement seems to be that the household of the named insured is that collection of persons which forms a single group with one member thereof as the head of authority, and which is formed on a more or less permanent basis. See also *Jackson v. State Farm Mut. Ins. Co.*, 32 So.2d 52 (La. App. 1st Cir. 1947).

34. See the Family Policy in note 1 *supra*; *Rogillio v. Cazedessus*, 241 La. 186, 127 So.2d 734 (1961). For an excellent discussion of the Family Policy, see *Parcher, The New Family Automobile Policy*, 24 INS. COUNSEL J. 13 (1957).

35. *Parker v. Great Am. Indem. Co.*, 81 So.2d 79 (La. App. Orl. Cir. 1955); *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So.2d 440 (La. App. 1st Cir. 1953); *Monroe v. Heard*, 168 So. 519 (La. App. 1st Cir. 1936).

omnibus insured, it must be shown that the third party had the express or implied permission of the named insured to use the vehicle.³⁶ These general rules seem to be applicable in most jurisdictions,³⁷ with only two jurisdictions³⁸ holding that initial permission to use the vehicle carries with it the authority to allow persons other than the first permittee to use it in the absence of instructions by the named insured to the contrary.

The test in the majority of jurisdictions seems to be whether the nature of the named insured's permission to the first permittee is such that it can be reasonably interpreted to include the authority for the first permittee to allow a third party to operate the insured vehicle.³⁹ To determine the scope of this permission the courts seem to look at such factors as the general or restricted nature of the use for which initial permission was given the first permittee;⁴⁰ the instructions by the named insured as to the persons who are to drive the vehicle;⁴¹ whether

36. *Rogillio v. Cazedessus*, 241 La. 186, 127 So. 2d 734 (1961); *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So. 2d 288 (La. App. 3d Cir. 1962); *Hurdle v. State Farm Mut. Auto. Ins. Co.*, 135 So. 2d 63 (La. App. 2d Cir. 1961); *Thomas v. Peerless Ins. Co.*, 121 So. 2d 593 (La. App. 2d Cir. 1960); *Garland v. Audubon Ins. Co.*, 119 So. 2d 530 (La. App. 1st Cir. 1960); *Brooks v. Delta Fire & Cas. Co.*, 82 So. 2d 55 (La. App. 1st Cir. 1955); *Talbot v. Allstate Ins. Co.*, 76 So. 2d 76 (La. App. 2d Cir. 1954); *Boudreaux v. Cagle Motors*, 70 So. 2d 741 (La. App. 1st Cir. 1954); *Donovan v. Standard Oil Co.*, 197 So. 320 (La. App. 2d Cir. 1940); *Oliphant v. Town of Lake Providence*, 193 So. 516 (La. App. 2d Cir. 1939); *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir. 1939); *Thibodeaux v. Brown Oil Tools, Inc.*, 192 F. Supp. 495 (W.D. La. 1961).

37. 7 APPELMAN, INSURANCE § 4361 (1962).

38. *Guzenfield v. Liberty Mut. Ins. Co.*, 286 Mass. 133, 190 N.E. 23 (1934); *Chavers v. St. Paul Fire & Marine Ins. Co.*, 188 F. Supp. 39 (N.D. Ohio 1960).

39. *Raymond v. Indiana Lumbermen's Mut. Ins. Co.*, 295 F.2d 188, 190 (5th Cir. 1961). See 7 APPELMAN, INSURANCE § 4361 (1962).

40. As to general control and discretion allowed the first permittee, see *Hurdle v. State Farm Mut. Auto. Ins. Co.*, 135 So. 2d 63 (La. App. 2d Cir. 1961); *Thomas v. Peerless Ins. Co.*, 121 So. 2d 593 (La. App. 2d Cir. 1960); *Boudreaux v. Cagle Motors*, 70 So. 2d 741 (La. App. 1st Cir. 1954); *Oliphant v. Town of Lake Providence*, 193 So. 516 (La. App. 2d Cir. 1939); *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir. 1939).

41. As to restricted use, see *Rogillio v. Cazedessus*, 241 La. 186, 127 So. 2d 734 (1961) (the named insured's son who had permission to use the car for a double date gave the keys to his friend's younger brother to move the car out of the friend's driveway where the son had left it); *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So. 2d 440 (La. App. 1st Cir. 1953) (the first permittee was given the insured vehicle to go to New Orleans to deliver a load of shrimp for the named insured, and after the accomplishment of this mission, the first permittee went to Oakdale and there permitted another party to use the vehicle for her pleasure); *Raymond v. Indiana Lumbermen's Ins. Co.*, 295 F.2d 188 (5th Cir. 1961) (the named insured loaned his car to his son for the purpose of taking a date to a college dance, and the son allowed a friend to use the vehicle to take the friend's date home from the dance in the car).

41. *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So. 2d 288 (La. App. 3d Cir. 1962); *Brooks v. Delta Fire & Cas. Co.*, 82 So. 2d 55 (La. App. 1st Cir. 1955); *Clemons v. Metropolitan Cas. Ins. Co.*, 18 So. 2d 228 (La. App. 2d Cir. 1944).

the third party's use was for the benefit of the named insured and the first permittee;⁴² and whether at the time of the accident the first permittee was present in the vehicle and had actual control of it.⁴³ Of course, if the authority of the first permittee to use the vehicle has terminated, this operates also to cancel any authority he may have had to constitute another as an omnibus insured.⁴⁴

As a general rule, where the first permittee has been granted more or less general discretion and control over the insured vehicle by the named insured, such general permission carries with it the implied consent for the first permittee to allow third persons to use the vehicle.⁴⁵ Under these circumstances, a third person using the vehicle with the permission of the first permittee is considered as having the indirect and implied permission of the named insured to use the vehicle and thus becomes an omnibus insured. On the other hand, where the first permittee has been given the possession of the vehicle for the accomplishment of a specific mission, this restricted permission is not ordinarily held to include the authority to allow its general use by others.⁴⁶ One Louisiana case has held that a third party

42. *Thomas v. Peerless Ins. Co.*, 121 So.2d 593 (La. App. 2d Cir. 1960) (employee of named insured—a used car salesman—allowed a third party to try out the vehicle in hopes of selling it); *Talbot v. Allstate Ins. Co.*, 76 So.2d 76 (La. App. 2d Cir. 1954) (while brother-in-law was visiting sister-in-law, she borrowed the vehicle which belonged to the named insured to go get her maid); *Boudreaux v. Cagle Motors*, 70 So.2d 741 (La. App. 1st Cir. 1954) (son of first permittee was returning named insured's vehicle to named insured for first permittee and was to pick up first permittee's car in return); *Oliphant v. Town of Lake Providence*, 193 So. 516 (La. App. 2d Cir. 1939) (son of first permittee was driving insured vehicle to the place where the named insured had designated it be kept overnight, upon instructions of first permittee). See *Brooks v. Delta Fire & Cas. Ins. Co.*, 82 So.2d 55 (La. App. 1st Cir. 1955), where the first permittee asked a friend to accompany her on a trip in the insured vehicle. She asked the friend to drive while she nursed her child, and while the friend was driving the accident occurred. See the Louisiana Supreme Court's discussion of this case in *Rogillio v. Cazedessus*, 241 La. 186, 197, 127 So.2d 734, 738 (1961).

43. *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So.2d 440 (La. App. 1st Cir. 1953); *Thibodeaux v. Brown Oil Tools, Inc.*, 192 F. Supp. 495 (W.D. La. 1961). See the Louisiana Supreme Court's discussion of *Brooks v. Delta Fire & Cas. Co.*, 82 So.2d 55 (La. App. 1st Cir. 1955) in *Rogillio v. Cazedessus*, 241 La. 186, 197, 127 So.2d 734, 738 (1961).

44. *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So.2d 440 (La. App. 1st Cir. 1953).

45. *Hurdle v. State Farm Mut. Auto. Ins. Co.*, 135 So.2d 63 (La. App. 2d Cir. 1961); *Thomas v. Peerless Ins. Co.*, 121 So.2d 593 (La. App. 2d Cir. 1960); *Garland v. Audubon Ins. Co.*, 119 So.2d 530 (La. App. 1st Cir. 1960); *Boudreaux v. Cagle Motors*, 70 So.2d 741 (La. App. 1st Cir. 1954); *Oliphant v. Town of Lake Providence*, 193 So. 516 (La. App. 2d Cir. 1939); *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir. 1939).

46. *Rogillio v. Cazedessus*, 241 La. 186, 127 So.2d 734 (1961); *Longwell v. Massachusetts Bonding & Ins. Co.*, 63 So.2d 440 (La. App. 1st Cir. 1953); *Raymond v. Indiana Lumbermen's Ins. Co.*, 295 F.2d 188 (5th Cir. 1961).

operator who used the vehicle solely for the performance of the first permittee's mission was an omnibus insured on the ground that the omnibus clause related only to the use of the vehicle and not to the identity of the person driving it for that use.⁴⁷ It is submitted that the result of that case is sound but that the reasoning is not in line with the established jurisprudence. An interpretation which seems more in line with Louisiana jurisprudence is that the first permittee had been given general discretion and continuous control over the vehicle and thus had the implied authority to allow its use by others.⁴⁸ At any rate, it seems well settled that the first permittee with restricted permission has no implied authority to allow its use by others for other purposes.⁴⁹

It has been held that the permission of the named insured for a third party to use the automobile may be implied even though the named insured had specifically *verbally* prohibited the first permittee from allowing someone else to drive it.⁵⁰ It seems that this ruling is applicable only to situations where the named insured has knowledge of the fact that the first permittee has allowed others to use the vehicle in spite of his prohibition, and makes no protest or takes no action to prevent him from continuing to do so.⁵¹ However, the general rule applicable to situations in which the named insured has expressly prohibited the first permittee from lending his automobile to another is that the permission granted the first permittee does not carry with it the implied consent for others to drive it.⁵² In a recent Louisiana case, this rule was applied where the first permittee had been granted more or less general use of and continuous control over the vehicle by the named insured, but with specific restrictions prohibiting him from allowing others to drive it.⁵³

47. *Donovan v. Standard Oil Co.*, 197 So. 320 (La. App. 2d Cir. 1940). In this case the insured vehicle was loaned to the person in charge of a service station for the delivery of a set of tires to one of the station's customers. The person in charge of the station allowed a Negro youth who worked at the station to deliver the tires in the borrowed vehicle, and while the youth was delivering the tires the accident occurred.

48. *Ibid.* In this case the named insured had given its foreman general discretion and control of the vehicle. It could be said that the foreman loaned the vehicle to the *service station* to make a specific delivery of the set of tires it had sold, and while an *employee* of the service station was delivering the tires the accident occurred.

49. See note 46 *supra*.

50. *Thomas v. Peerless Ins. Co.*, 121 So. 2d 593 (La. App. 2d Cir. 1960).

51. *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So. 2d 288 (La. App. 3d Cir. 1962).

52. 7 *APPLEMAN, INSURANCE* § 4361 (1962).

53. *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So. 2d 288 (La. App. 3d

The court relied on an earlier Louisiana decision where no implied permission was found because there were *written* instructions by the named insured prohibiting the first permittee from loaning the car to others, even though in that case there was no general discretion over the vehicle given the first permittee.⁵⁴ It seems logical to say that no implied permission to loan the automobile can be found where the named insured prohibited the first permittee from allowing such, but it may be argued that this is not in line with the liberal rule applied to deviations by the first permittee from the use for which the custody of the car was given him in violation of the instructions as to the use to which it was to be applied.

Authority for the first permittee to allow a third party to operate the vehicle will, as a general rule, be implied when the use at the time of the accident was for the benefit of the named insured and the first permittee.⁵⁵ However, this seems to apply only where the named insured has not prohibited the first permittee from allowing others to use the vehicle and where the first permittee has been granted general discretion and control over the vehicle.⁵⁶

The mere presence of the first permittee in the insured vehicle at the time of the accident is not interpreted to extend coverage of the omnibus clause to an accident where a third party is driving the vehicle.⁵⁷ However, where the first permittee retains the direction and control of the vehicle while merely turning its operation over to a third party, there is coverage under the omnibus clause based on the reasoning that the first permittee was *using* the vehicle at the time of the accident, and not upon a finding that the third party operator was an omnibus insured.⁵⁸

Cir. 1962). The named insured allowed his sons to use any of the four family vehicles, although it was customary for each member of the family to use the vehicle assigned to him. The named insured had repeatedly instructed his sons that they were not to permit any third persons to drive any of his vehicles. One of the sons used one of the insured vehicles to go to school one morning, and then allowed a friend of his to go to another town to pick up the son's girl friend. On the return from the trip to get the girl, the third operator had an accident.

54. *Clemons v. Metropolitan Cas. Ins. Co.*, 18 So.2d 228 (La. App. 2d Cir. 1944).

55. See note 45 *supra*.

56. *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So.2d 288 (La. App. 3d Cir. 1962).

57. *Monroe v. Heard*, 168 So. 519 (La. App. 1st Cir. 1936).

58. See note 43 *supra*.

In *Rogillio v. Cazedessus*,⁵⁹ the Louisiana Supreme Court first dealt with the third party operator under the omnibus clause. The son of the named insured, with his father's permission, drove the family car to a friend's home and left the keys to it with an unlicensed youth to whom he gave permission to move the vehicle if this was necessary to clear the driveway. The named insured had not given his son authority to permit anyone to use the car for any purpose. The youth drove the insured vehicle to town where he was involved in an accident. Construing the Family Policy under which the vehicle was insured, the court held that the driver was not an omnibus insured, because he operated it without the permission of the named insured.⁶⁰ This was so because the son of the named insured could not give initial permission to use the vehicle under the policy, and neither express nor implied permission flowed through him from the named insured. The result of the *Rogillio* case seems proper since it accords with earlier cases which held in substance that permission would not be implied where the first permittee had been given the vehicle for a specific mission and permitted a third party to use it for a different purpose.⁶¹ One Justice in the *Rogillio* case concurred on the ground that where the initial operator is in possession of it with the permission of the named insured, he has the implied authority to allow its use by another if the other is licensed to operate a motor vehicle on the public highways.⁶² In order for liability to attach

59. 241 La. 186, 127 So. 2d 734 (1961).

60. *Rogillio v. Cazedessus*, 241 La. 186, 195, 127 So. 2d 734, 737 (1961): "[O]nly the named insured or his spouse occupying the same household may constitute one a permittee and thus afford him coverage. . . . [N]either Mr. nor Mrs. Oliver granted [the third party] permission of any kind. He was therefore not afforded coverage under the [omnibus] clause."

61. See note 46 *supra*.

62. *Rogillio v. Cazedessus*, 241 La. 186, 201, 127 So. 2d 734, 739 (1961), Justice Sanders concurring: "Generally the delegation of the use or operation does not defeat coverage. The use of the vehicle by the second operator is treated the same as other deviations. The consent of the named insured is implied. . . . In my opinion, this rule is sound. I adhere to it." And further: "[I]t cannot be implied that the named insured granted permission for the use of his automobile by an unlicensed driver in violation of [R.S. 32:402]." *Id.* at 204, 127 So. 2d at 740. The following four cases were cited as authority for his proposition. It seems to the writer that their results followed Louisiana decisions dealing with implied permission without announcing the rule as posed here by Justice Sanders. In *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir. 1939), the first permittee was the foreman of the named insured and was given the complete care and custody of the vehicle, including the right to take it home at night. The second permittee was not only the son of the first permittee, but also was an employee of the named insured who used the insured vehicle while working for the named insured during the day. In *Donovan v. Standard Oil Co.*, 197 So. 320, 324 (La. App. 2d Cir. 1940), the court, in speaking of the omnibus clause, stated: "This provision relates only to the use of the vehicle, not to the identity of the person

in a case such as *Rogillio*, the concurring opinion would require only that the third operator be licensed to drive, whereas the majority opinion requires a grant of authority flowing through the first permittee. Considering the policy requirement that the named insured grant the third party permission to use the vehicle and the fact that this requirement has been followed in prior jurisprudence,⁶³ the majority opinion appears to be on solid ground. On the other hand, the concurring opinion would construe any initial entrusting of possession of one's vehicle to another as carrying with it the power to loan it to any other licensed driver. Only two states⁶⁴ have gone as far as the concurring opinion would go, and the *Rogillio* case indicates Louisiana's alignment with the majority position.⁶⁵

The *Rogillio* case raises the interesting inquiry as to whether or not the third party operator would have been classified as an omnibus insured had he operated the vehicle within the scope of the permission granted by the initial operator, *i.e.*, while moving the vehicle out of or within the driveway to allow free passage of other vehicles therein. Subsequent cases have cited *Rogillio* as authority for the proposition that authority given by

actually driving it." It seems to the writer that this language was unnecessary. The named insured had given general discretion and control of the vehicle to its foreman. The foreman loaned the vehicle to a service station for the delivery of a set of tires the station had sold, and while an employee of the station was delivering the tires, the accident occurred. In *Brooks v. Delta Fire & Cas. Co.*, 82 So.2d 55 (La. App. 1st Cir. 1955), the first permittee had the named insured's permission to drive the insured vehicle from Baton Rouge to New Orleans and back. The first permittee asked a friend to accompany her to care for her six-weeks old baby. Before returning the vehicle to the named insured the friend was asked to drive the insured vehicle, and while she was driving it the accident occurred. In the *Rogillio* case the court stated that there was implied permission for the friend to drive the vehicle in the *Brooks* case because the first permittee had the control of the car at the time of the accident and had merely turned its operation over to the third party during a slight emergency. See *Rogillio v. Cazedessus*, 241 La. 186, 197, 127 So.2d 734, 738 (1961). In *Garland v. Audubon Ins. Co.*, 119 So.2d 530 (La. App. 1st Cir. 1960), the first permittee had taken out the insurance policy but had named her husband as the named insured upon the suggestion of the insurance agent because she and her husband were living separate and apart. She had given the third party operator permission to drive the insured vehicle. In *Rogillio v. Cazedessus*, 241 La. 186, 198, 127 So.2d 734, 738 (1961), the Supreme Court said of the coverage in the *Garland* case that "the correct ruling was that the omnibus clause afforded insurance protection, because the person who granted permission to use the car was for all intents and purposes the named insured."

63. See note 36 *supra*.

64. *Guzenfield v. Liberty Mut. Ins. Co.*, 286 Mass. 133, 190 N.E. 23 (1934); *Chavers v. St. Paul Fire & Marine Ins. Co.*, 188 F. Supp. 39 (N.D. Ohio 1960).

65. *Rogillio v. Cazedessus*, 241 La. 186, 196, 127 So.2d 734, 737 (1961): "[C]ounsel . . . declare that . . . we have . . . so extended the interpretation of 'permission of the named insured' that it applies to anyone who has been given . . . control of the car. *With this we cannot agree.*" (Emphasis added.)

another insured under the Family Policy is insufficient to make a third party operator an omnibus insured, where the third party uses the vehicle without the scope of the permission given him.⁶⁶ Only one reported Louisiana case is in point,⁶⁷ and only one other case has been found in other jurisdictions where this problem was squarely presented. These cases allowed coverage under the omnibus clause.⁶⁸

Conclusion

In Louisiana, the first permittee is an omnibus insured if he has the named insured's permission to use the vehicle initially, whether or not its use at the time of the accident was contemplated. The third party operator is an omnibus insured if he has the named insured's express or implied permission to use the vehicle. Whether or not he has the implied permission is a question of fact determined by examining the permission granted the first permittee to use the vehicle. If the permission to the first permittee is found to include the authority to allow a third party to operate the vehicle, implied permission will be found. Whether or not the third party operator remains an omnibus insured when he operates the vehicle for purposes other than that for which it has been entrusted him has been infrequently litigated, but it seems that he remains covered under the omnibus clause.

H. F. Sockrider, Jr.

66. In *Coco v. State Farm Mut. Auto. Ins. Co.*, 136 So.2d 288, 295 (La. App. 3d Cir. 1962) the court stated: "The basis for [the *Rogillio*] decision . . . is that the tossing of the keys to [the third party operator] did not constitute permission for him to *drive the car into the city*." (Emphasis added.) In *Hurdle v. State Farm Mut. Auto. Ins. Co.*, 135 So.2d 63, 67 (La. App. 2d Cir. 1961), in discussing *Rogillio*, the court stated: "[F]or permission to carry over to [the third party operator] it must be established . . . that he had permission by [the initial operator] to use the automobile. . . . [A]t no time did [he] receive permission to drive to Baton Rouge or to operate the car *on the public highways*." (Emphasis added.)

67. *Perrodin v. Thibodeaux*, 191 So. 148 (La. App. 1st Cir. 1939). The son of the first permittee was given insured vehicle to go to a fish-fry and was told to return upon its termination. Instead, he went to another town and on the way from that town to still another town, an accident occurred. The court held that the son was an omnibus insured in that he had the implied permission of the named insured to use the vehicle, and that deviations from initial permission were immaterial.

68. See note 67 *supra*; *Chavers v. St. Paul Fire & Marine Ins. Co.*, 188 F. Supp. 39 (N.D. Ohio 1960) (restaurant parking lot attendant held to be an omnibus insured as a third party operator).