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1997 Survey of Rhode Island Law: Cases: Insurance Law

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Insurance Law. *Hindson v. Allstate Insurance Co.*, 694 A.2d 682 (R.I. 1997). Where two insurance policies are applicable to a loss, and each would provide primary coverage if it were the only applicable policy, the court will require that each insurer pay a pro-rata share despite the existence of an other-insurance clause.

FACTS AND TRAVEL

On November 10, 1991, William Hindson (Hindson) was a passenger in a vehicle driven by Joseph Lukowicz (Lukowicz).[1] The Lukowicz vehicle was rear-ended by a vehicle driven by Michael Casino (Casino). Hindson was injured in the crash.[2] The Casino vehicle had liability insurance in the amount of $15,000 per person/$30,000 per accident. This amount was less than the damages claimed by the plaintiff. Lukowicz was insured by a policy issued by Pennsylvania General Insurance Company (Penn General). This policy provided uninsured/underinsured-motorist coverage for a maximum amount of $300,000. Hindson had personal automobile insurance with Allstate Insurance Company (Allstate) for $100,000 per person/$300,000 per accident.[3]

Hindson notified Penn General and Allstate that he intended to file an underinsured claim under both policies.[4] Both insurance companies attempted to limit their liability. Penn General claimed, under its policy, that each insurer should pay a pro-rata share of the loss.[5] Allstate claimed that its coverage should be in excess, and Penn General should be the primary insurer.[6]

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1. *See* Hindson v. Allstate Ins. Co., 682, 683 (R.I. 1997).

2. *See id.* Hindson's wife was also injured in the crash. For convenience, the court referred only to William as the plaintiff within its opinion. *See id.* at 683 n.3.

3. *See id.*

4. *See id.* Under Rhode Island law, "[a]n underinsured motorist is the owner or operator of a motor vehicle who carries automobile liability insurance with coverage in an amount less than the limits or damages that persons insured pursuant to this section are legally entitled to recover because of bodily injury, sickness, or disease." R.I. Gen. Laws § 27-7-2.1 (1956) (1994 Reenactment).

5. *See Hindson*, 694 A.2d at 683. The pertinent clause in the Penn General policy stated: "[i]f there is other applicable similar insurance we will pay only *our share* of the loss. *Our share is the proportion that our limit of liability bears to the total of all applicable limits.*" *Id.* (emphasis added).

6. *See id.* The provision in the Allstate policy stated that "[i]f the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, this coverage will be *excess*." *Id.* (emphasis added).

Hindson filed an action for a declaratory judgment, asking each insurer to pay a pro-rata share of his loss.[7] Penn General filed a motion for summary judgment, arguing that precedent favored pro-rata coverage. Allstate objected and filed a cross-motion for summary judgment.[8] Allstate's motion was granted. The motion judge held that Penn General's policy was primary, and Allstate's was excess.[9] Penn General appealed this decision.

BACKGROUND

In *Brown v. Travelers Insurance Co.*,[10] the Rhode Island Supreme Court discussed other-insurance clauses.[11] The court described four variations of other-insurance clauses:

> (1) the "pro-rata" clause, which provides that an insurer will pay its share of the loss in proportion to the aggregate liability coverage available for the same risk, (2) the "excess" clause, which provides that an insurer will pay for a loss only after any primary coverage of other available insurance has been exhausted, (3) the "escape" clause, which provides that the insurer is not liable for any and all liability if other coverage is available, and (4) the "excess-escape" clause, a hybrid, which provides that the insurer is liable for the amount of the loss that exceeds the limits of other available insurance and that the insurer is not liable when other available coverage contains limits equal to or in excess of its own limits.[12]

In *Brown*, two policies contained other-insurance clauses. The Metropolitan policy contained an excess clause.[13] The Travelers policy contained an escape clause.[14] The court searched other jurisdictions to decide how to interpret the clauses because *Brown* was a case of first impression in Rhode Island.[15]

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7. *See id.* at 684.
8. *See id.*
9. *See id.*
10. 610 A.2d 127 (R.I. 1992).
11. *See id.* at 128.
12. *Id.*
13. *See id.*
14. *See id.*
15. *See, e.g.*, State Farm Mut. Ins. Co., v. Auto-Owners Ins. Co., 331 So. 2d 638 (Ala. 1776); Bertini v. State Farm Mut. Auto. Ins. Co., 362 N.E.2d 1355 (Ill. 1977); Royal-Globe Ins. Cos v. Safeco Ins. Co. of Am., 560 S.W.2d 22 (Ky. Ct. App. 1978); American Home Assurance Co., v. Fish, 451 A.2d 358 (N.H. 1982); Equity Mut. Ins. Co. v. Spring Valley Wholesale Nursery, Inc., 747 P.2d 947 (Okla. 1987).

The court noted that this other-insurance clause issue "forced some courts to referee the 'battle of the draftsmen' waged by insurance companies."[16] The court's concern was that each insurer attempted to disclaim liability "toward Brown, a result that cannot be permitted to occur."[17] The rule that the court found most effective was that of jurisdictions that require "both insurers to share the loss on a pro-rata basis."[18] The court held that "this conflict between an excess clause in one policy and an escape clause in another is more readily and efficiently resolved by requiring both insurers to afford pro-rata liability."[19]

ANALYSIS

In *Hindson*, under Penn General's position, each insurer would pay a "pro-rata share of the loss based on the ratio between the amounts of insurance provided under the insurers' individual policies."[20] Allstate's position was that due to the availability of other insurance, "it is only responsible for the excess, after the limits on the Penn General policy have been exhausted."[21]

This issue was a case of first impression in Rhode Island. Therefore, the Rhode Island Supreme Court looked to other courts to decide how to deal with the competing other-insurance clauses.[22] The court noted two distinct lines of authority.[23] The majority of courts take the same position as Allstate—that the court disregards the pro-rata clause and gives the excess clause full effect.[24]

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16. *Brown*, 610 A.2d at 130.

17. *Id.* The court observed that the real victim of the battle of the draftsmen was the insured:

> Although we do not believe that either clause, taken together, is mutually repugnant, we do believe that ruling in full for either Metropolitan or Travelers would lend more ammunition to the battle of the drafters. We do not wish to encourage the complication of insurance legerdemain at the expense of the policy holders' money or the courts' time.

Id.

18. *Id.*

19. *Id.*

20. *Hindson*, 694 A.2d at 684.

21. *Id.*

22. *See id.*

23. *See id.*

24. *See id.* (citing 16 *Couch on Insurance* 2d § 62:72, at 530 (rev. ed. 1983)).

There are two theories to this authority. One theory is that the policy with the pro-rata clause conflicts with the excess clause. Since the pro-rata policy has no other insurance to prorate with, it "becomes the primary coverage."[25] The second theory is that where the nonowner's insurance contains an excess clause, the vehicle owner's insurance provides the primary coverage.[26] The court rejected these theories and instead adopted the reasoning of the Oregon Supreme Court in *Lamb-Weston Inc. v. Oregon Automobile Insurance Co.*[27]

In *Lamb-Weston*, there were two insurers, St. Paul Fire and Marine Insurance Company (St. Paul) and Oregon Automobile Insurance Company (Oregon).[28] The Oregon policy contained a pro-rata clause.[29] The St. Paul policy contained an excess clause.[30] If either insurance policy was the only applicable insurance policy, then that company would have been liable for the loss.[31] The trial court found that Oregon was the primary insurer and therefore responsible for the entire loss. Oregon argued that it should be liable for only one-half of the loss.[32]

The trial court stated that in a situation such as this, a "court is faced with determining which company shall be considered primarily liable, or treating the 'other insurance' clause in each insurer's policy as so repugnant that they must both be ignored, and apply the rule that the loss shall be equally prorated between them."[33] The trial court had applied the rule of primary and secondary liability.[34]

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25. *Id.*; *see also* Rutgers Cas. Ins. Co. v. State Farm Mut. Ins. Co., 560 A.2d 722 (N.J. 1989).

26. *See id.*; *see, e.g.*, Grinnell Mut. Reins. Co. v. Globe Am. Cas. Co., 426 N.W.2d 625 (Iowa 1988).

27. 341 P.2d 110 (Or. 1959).

28. *See id.* at 113.

29. *Id.* at 112. The clause said that "if the insured has other insurance against a loss covered by this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declaration bears to the total applicable limit of all valid and collectible insurance against such loss." *Id.*

30. *See id.* at 114. The clause stated that "[i]f the Insured's liability under this policy is covered by any other valid and collectible insurance, then this policy shall act as excess insurance over and above such other insurance." *Id.*

31. *See id.*

32. *See id.*

33. *Id.* at 114.

34. *See id.*

The Oregon Supreme Court found that the difficulty with this rule of primary and secondary liability was not in its application, "but in finding sound reasoning upon which to base a determination of primary and secondary liability."[35] After searching other jurisdictions for an answer to this question, the court held that "[i]n our opinion, whether one policy uses one clause or another, when any come in conflict with the 'other insurance' clause of another insurer, regardless of the nature of the clause, they are in fact repugnant and each should be rejected in toto."[36]

In *Hindson*, the Rhode Island Supreme Court stated that *Lamb-Weston* "provides the better solution to these conflicting other-insurance-clause cases."[37] The *Hindson* court acknowledged that the argument that the court should give other-insurance clauses effect. However, the court rejected this reasoning, stating:

> On the one hand, we wish to avoid using an arbitrary "rock, paper, scissors" approach in comparing other-insurance clauses and then determining which policy or policies should provide primary coverage. On the other hand, we also seek to call at least a temporary halt to the incessant "battle of the draftsmen" waged by, between, and among the various insurance companies in these other-insurance-clause cases.[38]

The Rhode Island Supreme Court held that, "[w]hen as here an insurance policy would provide primary coverage to an insured if it were the only applicable policy, we are of the opinion that the coverage responsibilities of all such insurers should be shared on a pro-rata basis despite the existence of conflicting other-insurance clauses."[39]

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35. *Id.* The court also discussed the theory of prior in time. In this theory, courts hold the policy issued first as primary and give effect to its provision. The court recognized that many courts have rejected this theory. *See id.* The court also rejected the rule that primary and secondary coverage is decided by which policy is "the most specific in its terms or coverage or rejection of coverage." *Id.*

36. *Id.* at 119.

37. *Hindson*, 694 A.2d at 685.

38. *Id.* The Oregon Supreme Court also recognized that an argument exists that some effect should be given to an "other-insurance clause." *See Lamb-Weston* 341 P.2d at 119. Here, this would result in Oregon paying its pro-rata share, and St. Paul paying the excess. The court stated that although this may be a just result, it leads " to a return to the circular reasoning necessary to establish primary and secondary liability." *Id.*

39. *Id.*

CONCLUSION

Insurance policies are infamous for their clauses. As the Rhode Island Supreme Court in *Hindson* acknowledged, the "battle of the draftsmen" is a problem for the courts. It creates a greater problem for the insured who needs to wait out the battle to get paid. The court stated in *Hindson*:

> Inevitably the front-line casualties of such clashes are the insureds. Thus in this case, despite the passage of five-and-one-half years since the November 10, 1991 automobile accident, the entrenched insurers continue to exchange legal gunfire over the fine print in their other-insurance clauses—only pausing, periodically, to glare at one another warily from their respective parapets—while the plaintiff has still not recovered for his insured losses.[40]

The court solves this problem by holding that both insurers must pay a pro-rata share despite the existence of other-insurance clauses.

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40. *Id.*

Insurance Law. *Ryan v. Knoller*, 695 A.2d 990 (R.I. 1997). An intoxication-exclusion provision contained in an automobile rental-insurance agreement is void as against public policy.

In *Ryan v. Knoller*,[1] the Rhode Island Supreme Court held that an automobile rental-insurance agreement, which excluded liability coverage when the vehicle was used by an intoxicated driver, was void as against public policy. The court held that public policy dictates that innocent third parties should be protected by state financial-responsibility laws. This public policy cannot be frustrated through the use of such exclusions.[2]

FACTS AND TRAVEL

On August 20, 1993, Suzanne Arechavala (Arechavala) rented a car from International Car Rental in Newport, Rhode Island.[3] Ms. Arechavala listed Christopher Knoller (Knoller) as an "additional driver" in the rental agreement. The rental agreement provided liability coverage, underwritten by Indemnity Insurance Company of North America (Indemnity).[4] Rhode Island mandates liability insurance for rental cars.[5] The rental agreement, however, stated that coverage would only be provided if the vehicle was used in accordance with the rental agreement.[6] The rental agreement specifically stated that the "vehicle will not be used by anyone . . . [w]hile intoxicated."[7] Knoller was also personally insured by Worldwide Underwriters Insurance Company (Worldwide), which covered him "whenever he drove a vehicle that he did not own."[8]

On August 23, 1993, while under the influence of alcohol, Knoller was driving the rental vehicle and was in an accident with Kevin Ryan and Lisa Young.[9] Mr. Ryan and Ms. Young filed suit against Knoller, Arechavala and International Car Rental for inju-

1. 695 A.2d 990 (R.I. 1997).
2. *See id.* at 992.
3. *See id.* at 991.
4. *See id.*
5. *See* R.I. Gen. Laws § 31-34-1 (1956) (1996 Reenactment).
6. *See Ryan*, 695 A.2d at 991.
7. *Id.*
8. *Id.*
9. *See id.*

ries sustained in the accident.[10] The suit was settled for $92,500.[11] Indemnity and Worldwide continued the action via a fourth-party complaint to determine which company was liable for payment and for what amount.[12] The superior court granted summary judgment for Indemnity based on the intoxication-exclusion clause contained in the rental agreement.[13] Worldwide appealed the judgment to the Rhode Island Supreme Court.[14]

BACKGROUND

Since 1950, Rhode Island has required owners of rental vehicles to maintain liability insurance.[15] As of November 1, 1993—two months after this accident—all drivers were required to maintain liability insurance under the Motor Vehicle Reparations Act.[16] The purpose of this subsequent act is to ensure "that motorists shall be financially able to respond in damages for their negligent acts, so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them."[17]

Numerous jurisdictions have considered insurance policies which contain intoxication exclusions.[18] The "overwhelming majority" of jurisdictions have concluded that intoxication exclusions are void as against public policy.[19] Courts so holding find the statement of public policy integrated in mandatory insurance legislation.[20] These jurisdictions have found that allowing such exclusions would frustrate the public policy of protecting innocent third parties.[21] Furthermore, the courts theorize that if the exclusions are allowed, then insurers would soon create exclusions for any

10. *See id.*
11. *See id.*
12. *See id.* at 991-92.
13. *See id.* at 992.
14. *See id.*
15. *See* R.I. Gen. Laws § 31-34-1 (1956) (1996 Reenactment); *see also* Miles-Un-Ltd. v. Fanning, 624 A.2d 843, 846 (R.I. 1993).
16. *See* R.I. Gen. Laws §§ 31-47-1 to -19 (1956) (1996 Reenactment).
17. R.I. Gen. Laws § 31-47-1(b) (1996).
18. *See* cases cited *infra* notes 20, 22.
19. *Ryan*, 695 A.2d at 992-93.
20. *See, e.g.*, Royal Indem. Co. v. Olmstead, 193 F.2d 451, 453 (9th Cir. 1951).
21. *See id.*

negligence on the part of the driver, effectively reducing the insurance to a nullity.[22]

A minority of jurisdictions have held that intoxication exclusions do not violate public policy. In *Sutherland v. NN Investors Life Insurance Co.*,[23] the First Circuit held that Massachusetts does not have such a policy.[24] This decision was based on a long-repealed statute which mandated the wording of an insurance-intoxication exclusion.[25] The First Circuit held that Massachusetts public policy allowed such exclusions, and the repeal simply allows the exclusion to take any form.[26] Other jurisdictions have found the exclusions valid because of the absence of statutes mandating insurance.[27]

ANALYSIS AND HOLDING

In determining the public policy of the State of Rhode Island, the Rhode Island Supreme Court first looked to the statute mandating liability insurance for rental-car owners.[28] The statute requires rental owners to purchase insurance and not self-insure.[29] In an earlier decision, the court found that the self-insurance prohibition "require[s] owners of rental vehicles to comply with a more rigorous standard for proving financial responsibility than normal operators of motor vehicles."[30] In *Ryan*, the supreme court determined that this requirement "thereby express[es] a policy in this state in favor of insurance coverage by rental vehicle companies."[31] The court noted that the Motor Vehicle Reparations Act, although

22. *See, e.g.*, Allstate Ins. Co. v. Sullivan, 643 S.W.2d 21, 23 (Mo. Ct. App. 1982) ("The liability protection for which the lessee has paid could be reduced to a nullity by rental provisions prohibiting operation of the car negligently or contrary to any statute or ordinance.").

23. 897 F.2d 593 (1st Cir. 1990).

24. *See id.* at 596.

25. *See id.* at 595-96. Massachusetts General Laws provide mandatory language for numerous provisions in insurance contracts. *See* Mass. Gen. Laws ch. 175, § 108 (1987). Before 1971, this section included mandatory language for intoxication exclusions. *See Sutherland*, 897 F.2d at 596.

26. *See Sutherland*, 897 F.2d at 596

27. *See, e.g.*, Public Employees Mut. Ins. Co. v. Hertz Corp., 800 P.2d 831, 833 (Wash. Ct. App. 1990) ("[W]e will not rely on the out-of-state cases cited . . . because the results in those cases are grounded on specific state statutes.").

28. *See Ryan*, 695 A.2d at 992.

29. R.I. Gen. Laws § 31-34-1 n.1 (1996).

30. Miles-Un-Ltd. v. Fanning, 624 A.2d 843, 848 (R.I. 1993).

31. *Ryan*, 695 A.2d at 992.

not in effect at the time of the accident, further demonstrates that public policy requires insurance.[32]

Before ascertaining whether intoxication exclusions violate this public policy, the court first had to determine the purpose behind the policy. Since section 31-34-1 does not contain a statement of purpose, the court had to look elsewhere.[33] The justices were likely influenced by the Motor Vehicle Reparations Act, an act not in effect at the time of the accident.[34] In that Act, the legislature stated that the purpose was the protection of innocent victims.[35] The court characterized the purpose of the mandatory vehicle-rental insurance as "protection of the public."[36]

Having determined that public policy requires insurance for the protection of the public, the court held that intoxication exclusions may not be used to elude that purpose.[37] The condition of the driver "is wholly beyond the ability of the injured person to control."[38] "[I]ntoxication exclusion provisions that attempt to restrict or limit insurance coverage for rental vehicles are void."[39] The court thus joined the majority of the jurisdictions that have considered the issue.

The court proceeded to distinguish decisions from those jurisdictions that have held intoxication exclusions valid. The First Circuit's holding in *Sutherland* was distinguished because Massachusetts ostensibly has a public policy favoring the exclusion.[40] The court distinguished other jurisdictions that lack statutes mandating liability insurance.[41]

CONCLUSION

The Rhode Island Supreme Court held that the General Assembly enacted mandatory insurance for rental vehicles to protect the public. Intoxication exclusions defeat that protection for the innocent victims of accidents. Consequently, intoxication exclu-

32. *See id.*
33. R.I. Gen. Laws § 31-34-1 (1956) (1996 Reenactment).
34. R.I. Gen. Laws § 31-47-1 (1956) (1996 Reenactment).
35. *See id.*
36. *Ryan*, 695 A.2d at 992.
37. *See id.*
38. *Id.*
39. *Id.* at 995.
40. *See id.* at 994-95; *supra* notes 24-26 and accompanying text.
41. *See id.* at 994.

sions are void as against public policy. The same analysis dictates that the exclusions may be invalid in the case of ordinary driver's insurance. Similar exclusions, which would result in diminishing the protection of the public required by statute, face a similar fate.

The basis for determining the public policy was statutory. An insurance provision that reduces coverage to the statutory minimum when the driver is intoxicated was not before the court, and may still be valid. Similarly, an exclusion provision that eliminates protection afforded under non-liability policies may also be valid.

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