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Insurance Limit of Liability - Meaning of Each Accident

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practice of service stations to make services available to customers and guests alike.[16] Would the plaintiff acquire the business invitee status when she came to meet her husband later, instead of accompanying him, irrespective of whether she arrived before, during, or after the business was consummated? Is meeting an invitee a purpose for which a service station is thrown open?

The instant court concluded that the husband's status as a business visitor ended when after he had completed his business he choose to remain in the office and wait for his wife. The invitation, expressed or implied, did not contemplate his use of the premises as a waiting place.[17] Presumably, the visitor would be "protected", under this view, only for a length of time sufficient for him to reach his auto and drive away.[18]

The preferred position of an invitee can be changed to that of a "mere", "bare" or "gratuitous" licensee while he is on the premises.[19] This conversion, however, has traditionally resulted from a venture into a restricted area,[20] or some other conduct of the invitee beyond the spirit of the invitation.[21] Some cases do hold that waiting beyond a reasonable length of time also converts the invitee into a licensee.[22]

The court in the instant case did not state whether the plaintiff would have been entitled to compensation had her husband retained his status of a business invitee. It merely concluded that under the circumstances presented, the status of the principal governed.[23] Thus the guest's status is derivative rather than of his own right. A rigid application of this rule might require that if a child accompanied its parent shopping and the parent went into a restricted area, thus becoming a licensee, and the child was injured outside the restricted area, the child would be denied recovery because of the parent's frolic. Had the wife, in the instant case, joined her husband *before* conclusion of his business, application of this "status by derivation" theory would enable her to recover.

LOUIS R. MOORE

INSURANCE LIMIT OF LIABILITY — MEANING OF "EACH ACCIDENT". — Plaintiff's truck was negligently operated so as to collide with a freight train and damage sixteen cars owned by fourteen separate companies. Plaintiff's insurance contract obligated defendant insurer to pay $5,000 property damage for "each accident" involving the insured. After suit was brought against

16. *See* Wingrove v. Home Land Co., 120 W.Va. 100, 196 S.E. 563, 566 (1938) "It would be strange indeed if the owner of an automobile driving into a filling station with members of his family, or with selected and invited guests, would be held to be an invitee, and the other occupants mere licensees."
17. Instant case at 528-9.
18. *See* Prosser, Torts §79 (1941) (Invite has right to safe exit).
19. *See* Prosser, Torts §79 (1941); 65 C.J.S. Negligence §46 p. 535, note 35.
20. *E.g.* Wilson v. Goodrich, 218 Iowa 462, 252 N.W. 142 (1943); Keeran v. Spurgeon Mercantile Co., 194 Iowa 1240, 190 N.W. 99 (1922); Pellicot v. Keene, 181 Md. 138, 28 A.2d 826 (1942).
21. Southwest Cotton Co. v. Pope, 25 Ariz. 364, 218 P. 152 (1923); Lerman Bros. v. Lewis, 277 Ky. 334, 126 S.W.2d 461 (1939); *see* Hickman v. First Nat. Bank of Great Falls, 112 Mont. 398, 117 P.2d 275, 277 (1941); Prosser, Torts §79 (1941).
22. Heinlein v. Boston & P. R. Co., 147 Mass. 136, 16 N.E. 698 (1888).
23. *See* Meyer v. Manzer, 179 Misc. 355, 39 N.Y.S. 5, 7 (1943).

plaintiff, he sued his insurer demanding indemnity for property damage in amounts substantially exceeding $5,000. Defendant contended the collision constituted but one accident within the meaning of the policy limit. The court *held* that the injury to fourteen property owners constituted fourteen separate accidents and that defendant was thus obligated to pay up to $5,000 to each property owner. *Saint Paul-Mercury Indemnity Co. v. Rutland,* 217 F.2d 585 (5th Cir. 1954).[a]

Judicial determination of the scope of the word "accident" has resulted in contradition.[1] An early English case similar to the one at hand held the injury to each person to be a separate accident.[2] In 1926 a California court held injuries to several property owners did not constitute separate accidents, but rather that each injury was merely an incident of one accident;[3] a later California decision flatly stated that any one accident may be made up of injuries to an unlimited number of persons.[4]

Probably the most persuasive argument in the majority opinion points out that the insurer used the word "occurrence" when referring to the limits applicable to personal injuries, but used the word "accident" with respect to its limits for property damage. The court observed: "The words in the policy, each person, each occurrence, and each accident, were evidently used with comprehension and discrimination as to their differences in meaning."[5] Although the court followed the principle that any ambiguity must be construed most strongly against the insurer and in favor of the insured,[6] the above analysis apparently led it to conclude that in its context, the phrase "each accident" required the result reached; that in fact, there was no ambiguity.

Had the court found no ambiguity, there would have been no opportunity for a construction in favor of the insured.[7] Rather, the cardinal rule of contract construction requiring that the policy be enforced according to the intention of the parties [8] would have been applied. Thus, the dissent-

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(A). Since this comment was written the circuit court has granted a rehearing in the instant case.

1. *See, e.g.,* Hyer v. Inter-Insurance Exchange, 77 Cal. App. 343, 246 Pac. 1055, 1057 (1926) (The following *dicta* presenting an interesting contrast to the instant case appeared: "It would be no more correct to say of such a case that there were two accidents than it would to be predicate two or more accidents on a general freight train wreck, merely because two or more cars in the train might have been demolished in the same catastrophe.")

2. The South Staffordshire Tramways Co., Ltd. v. The Sickness and Accident Assurance Ass'n, Ltd., 1 Q.B. 402 (1891).

3. Hyer v. Inter-Insurance Exchange, 77 Cal. App. 343, 246 Pac. 1055, 1058 (1926) (Insured's automobile colided with another causing the steering gear to break on insured's vehicle so that he collided with a second car. The damage exceeded the $1,000 limit provided in the policy for "one accident". The court held the entire catastrophe to be one accident saying in part, "So here the collision with the Cadillac, a part of the general catastrophe in which the three automobiles were involved, was but an 'incident' of the accident, and not a separate accident.").

4. Perkins v. Fireman's Fund Indemnity Co., 44 Cal. App. 2d 427, 112 P.2d 670 (1941).

5. Instant case at 588.

6. *See, e.g.,* Lee v. Aetna Cas, & Surety Co., 178 F.2d 750, 753 (2d Cir. 1949); Sampson v. Centurv Indemnity Co., 8 Cal. 2d 476, 66 P.2d 434, 436 (1937); Freese v. Saint Paul-Mercury Indemnity Co., 252 S.W.2d 653, 656 (Mo. 1952).

7. *See* London & Lancashire Indemnity Co. v. Neil Barron Fuel Co., 31 F. Supp. 599, 600 (W.D.Mo. 1940).

8. *E.g.,* Zehnder v. Michaud, 145 F.2d 713 (8th Cir. 1944); New York Cas. Co. v. Sinclair Refining Co., 108 F.2d 65 (10th Cir. 1939); M. O'Neil Supply Co. v. Petroleum Heat & Power Co., 280 N.Y. 50, 19 N.E.2d 676,679 (1939) ("The fundamental rule in the construction of all agreements is to ascertain the substantial intent of the parties.").

ing opinion pointed out that the ordinary meaning of the word "accident" may include many injuries and any number of collisions. To illustrate this, the following report from the New York Times was cited: "Two persons were killed, seven persons were injured and twenty-seven vehicles, including a bus and three trucks, were damaged today in four accidents on a fog-shrouded, half-mile section of the New Jersey Turnpike. The four accidents occurred within twenty minutes. . . ."[9]

For years insurance companies have used the words "one accident" or "each accident" to limit liability. The standard automobile liability policy limits coverage to a fixed amount for bodily injuries to "each person", a larger amount for all bodily injuries resulting from "each accident" and a fixed amount for property damage resulting from "each accident".[10] Obviously, when used with reference to bodily injury, the phrase, "each accident" must necessarily contemplate the inclusion of injuries to more than one individual since, if the injury to each person were viewed as a separate accident, the higher limit would become meaningless. It is submitted that the intention of the parties, when using the word "accident", is to include injury or damage to as many individuals as may be involved in one general catastrophe or mishap, so long as the injuries flow from a common act of negligence, provided a substantial amount of time has not intervened between injuries. It is the ordinary meaning of the word that must control in seeking the intention of the parties.[11] Given an ordinary interpretation, then, a single *accident* will include the damage to two vehicles when they collide although the property of two individuals is damaged. The press and radio, with their great influence on the language, have accorded such a meaning to the word and there is little apparent reason for attaching a different meaning when it is used in an insurance policy.

JON N. VOGEL

SALES — REMEDIES OF BUYER — ELECTION OF REMEDIES. — Plaintiff, a candy manufacturer, purchased pecans from defendant and used some of them in candy. The defective condition of the pecans was discovered after some candy had been returned by customers. Plaintiff, upon suggestion of Defendant, returned the unused pecans in exchange for enough usable pecans to make up the deficiency. Plaintiff then sued for damages for the loss of the value of the candy in which the defective pecans were used and for the loss of prospective profits and good will resulting from sale of the candy containing the defective pecans. Defendant contended Plaintiff had

9. Instant case at 589 (dissenting opinion).

10. 4 Richards, Law of Insurance 2083, 2084 (5th ed. 1952) (A reprint of the Standard Automobile Policy Garage Liability).

11. Instant case at 590 (dissenting opinion) "Since 1891 the word 'accident', certainly in relation to highway disasters, has acquired a very definite meaning in the United States."; Perkins v. Fireman's Fund Indemnity Co., 44 Cal. App. 2d 427, 112 P.2d 670, 672 (1941) "Obviously, the words 'one person' refer to the injured person, and the words 'one accident' to the inury of several persons, regardless of how many may suffer loss by reason thereof."; Wilderman v. Watters, 149 Neb. 102, 30 N.W.2d 301, 303, 304 (1948) "The cardinal rule in the interpretation of a contract is to ascertain the intention of the parties, and to give effect to such intention if it can be done consisently with legal principles. In construing contracts the court's sole duty is to ascertain what was meant by the language of the instrument."