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# Insurance Contracts: Methods Of Interpretation

In *Wyatt,* the Supreme Court again recognized the present need for the privilege. In addition, it held that the privilege belongs not only to the defendant-husband, but also to the witness-wife. However, the Court compelled the wife to testify against her will under the supposed Mann Act exception, basing its decision upon the legislative intent in enacting the Mann Act. It is submitted that once the privilege is accepted, and it is considered the privilege of the witness as well as the defendant, then in *no case* should the wife *be compelled* to testify against her husband. If the wife does not desire to testify it may indicate that she considers the marriage harmonious and in need of the very protection which the privilege was designed to provide. In addition, if it is repugnant to allow a wife to testify voluntarily against her husband, it is even more repugnant to compel her to do so. If it is felt that the privilege needs to be abolished in any area, then it should be eliminated by the group primarily responsible for reflecting such policy—the legislature.[47]

E. J. SULZBERGER, JR.

## INSURANCE CONTRACTS: METHODS OF INTERPRETATION

Three decades ago it was thought that insurance contracts should be "interpreted by the same rules which apply to other contracts, and . . . enforced according to the intention of the parties."[1] Today, although the law is still expressed by text writers in similar language,[2] recent cases indicate that the contract rule has been considerably changed.

Nowhere is this change more clearly demonstrated than in the New York case of *Sperling v. Great Am. Indem. Co.*[3] In that case,

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[47]This is the argument of Judge Hand in United States v. Walker, 176 F.2d 564, 568 (2d Cir. 1949) and Judge Spratley in Meade v. Commonwealth, 186 Va. 775, 43 S.E.2d 858 (1947). See also Moser, Compellability of One Spouse to Testify Against the Other in Criminal Cases, 15 Md. L. Rev. 16 (1955). An indication of what a legislature might do is found in Alabama, where it was held that a wife could be compelled to testify. Johnson v. State, 94 Ala. 53, 10 So. 427 (1892). Later the Alabama legislature passed a statute which stated that she could not be compelled. Ala. Code tit. 15, § 311 (Recomp. 1959).

[1]2 Cooley, Briefs on Insurance 961 (2d ed. 1927). Accord, Liverpool & London & Globe Ins. Co. v. Kearney, 180 U.S. 132 (1901); Alterman v. Home Ins. Co., 112 Misc. 445, 183 N.Y.S. 62 (App. Div. 1920).

[2]1 Couch, Insurance §§ 15:1, 15:9 (2d ed. 1959); 13 Appleman, Insurance Law & Practice §§ 7381, 7385 (1943).

[3]7 N.Y.2d 442, 166 N.E.2d 482, 199 N.Y.S.2d 465 (1960).

Christine Nystrom, a sixteen year old girl with a learner's driver permit, stole a parked car from a public street in Mount Vernon, New York. When pursued by police and while traveling at a speed in excess of 90 miles per hour, she crashed into the rear of another car, fatally injuring its occupant. In a wrongful death action instituted against Christine, her negligence was adjudged to have been the proximate cause of the death, and the plaintiff recovered a judgment of approximately $125,000. The insurer, under a "Family Automobile Policy"[4] issued to Christine's mother, refused to defend Christine, disclaiming liability under the policy, and refused to pay any part of the judgment entered against her. The plaintiff then proceeded against the insurer to compel payment of the judgment to the extent of the coverage under the policy. Summary judgment was entered against the insurer. The New York Court of Appeals, in a four to three decision, affirmed the judgment.

The pertinent policy provisions with respect to a nonowned automobile insures against liability for any injuries or damages arising out of the use of such nonowned automobile when the automobile is being used by the following: "(1) the named insured, (2) any relative, but only with respect to a *private passenger automobile or trailer not regularly furnished for the use of such relative.*"[5]

In the instant case, the insurance company denied liability on the ground that the loss was not within the coverage of the contract. It argued that the word "furnished" implied consent and permission, so that the phrase "not regularly furnished for the use of" could only be interpreted to mean that coverage extended to an automobile voluntarily supplied by the owner to such relative for occasional as distinguished from regular use.[6]

The Court of Appeals refused to accept the insurer's argument.

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[4]For a general discussion, see Elliott, The New Family Automobile Policy, 37 Neb. L. Rev. 581 (1958).

[5]166 N.E.2d at 484.

[6]In addition the insurer contended that to find it liable would be against public policy since Christine would accordingly be the beneficiary of her own crimes. The court "conceded that the plaintiff's rights against the insurer under section 167 of the Insurance Law are no greater than Christine's...." 166 N.E.2d at 484. But the court said that "the fact that Christine had previously misappropriated the car with which she negligently caused the death of plaintiff's husband was wholly irrelevant in the wrongful death action, since 'injuries are accidental or the opposite for the purpose of indemnity according to the quality of the results rather than the quality of the causes'.... The insurer here has been called upon to indemnify Christine against the consequences of her negligence in the operation of a motor vehicle, not against the criminal consequences stemming from her willful misappropriation of the vehicle." 166 N.E.2d at 487.

It found that Christine was covered under the language of the policy because literally a stolen car is one not regularly furnished. Judge Froessel, speaking for the majority, said that "the exclusion of coverage for relatives driving nonowned automobiles was, by its terms, concerned with regularity of use, not permissiveness of use, and was designed to protect the company from being subjected 'to greatly added risk without the payment of additional premiums'."[7]

There would appear to be four possible solutions to cases with problems similar to those in *Sperling*: (1) The language is unambiguous, and therefore the intent of the parties must be inferred from a literal interpretation of the contractual language. (2) The language is unambiguous, but the intent of the parties must be inferred from the reasonable expectations and purposes of the ordinary person when making an ordinary business contract. (3) The language is apparently ambiguous, and therefore the contract must be construed against the insurer without regard to a reasonable interpretation of the contract or the intent of the parties as shown by extrinsic evidence. (4) The language is apparently ambiguous; and upon the finding of two reasonable interpretations, either of which could be the intent of the parties, the one most favorable to the insured must be accepted.

Under the first solution the intent of the parties is not a primary consideration. Intent is inferred from the literal interpretation of the language of the contract; and, to this extent, the contract reflects actual intent only so far as it is embodied in the contract. This solution may lead to seemingly ridiculous results. For example, in *Fidelity & Cas. Co. v. Lott*,[8] the named insured, while hunting, rested his rifle on the top of his car and fired at a deer. For some unexplained reason the bullet tore through the curved top of the vehicle and killed a companion sitting in the car. The pertinent automobile liability policy contracted "to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury... including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or *use* of the automobile."[9]

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[7]166 N.E. 2d at 485. (Emphasis omitted.) The court further stated that " 'the company is bound by the plain terms of its policy rather than by what it may have intended,' since, in construing a 'plain contract, clear and explicit in its terms,' a court is not at liberty, because of equitable considerations, 'to obviate objections which might have been foreseen and guarded against'.... We 'concern ourselves with what the parties intended, but only to the extent that they evidenced what they intended by what they wrote'...." Id. at 486.

[8]273 F.2d 500 (5th Cir. 1960).

[9]Id. at 502. (Emphasis added.)

In finding the insurer liable under the policy, the court found the words of the insurance contract to be unambiguous and said, "where the terms of a written contract are plain and unambiguous they alone are looked to to ascertain their meaning." The court deemed irrelevant the argument that the automobile was being used as a gun rest and not as an automobile. It determined the scope of the insurance policy by the literal interpretation of the words and ignored any consideration of the intent of the parties outside of this interpretation.

Under the second solution the guidepost in construing the unambiguous language of an insurance contract is the intention of the parties[10] as ascertained by reference to the reasonable expectation and purpose of the ordinary citizen when making an ordinary business contract.[11] For example, in *Habaz v. Employer's Fire Ins. Co.*[12] a flash flood carried an automobile onto the sidewalk so as to strike the plaintiff's place of business in such a manner as to direct the waters against the shop. This water pressure caused the door to break and the ensuing damage caused by the flood water formed the basis of the suit. The plaintiff's insurance policy covered "direct loss resulting from actual physical contact of a . . . vehicle with the property covered hereunder or with the building containing the property covered hereunder . . . ."[13] Summary judgment was awarded the insurance company and on appeal the judgment was affirmed. In holding that the words of the policy were unambiguous and that the damage was not within the coverage of the contract, the court quoted from the opinion of Judge Cardozo in *Bird v. St. Paul Fire & Marine Ins. Co.*,[14] a New York case which involved the construction and scope of an insurance contract: "Our guide is the reasonable expectation and purpose of the ordinary business man when making an ordinary business contract. It is his intention, expressed or fairly to be inferred, that counts."[15]

The flood in the *Habaz* case may be compared with the rifle in the *Lott* case. The flood and the rifle were the motivating forces, the actual cause of the damage that occurred, and the automobiles were merely a circumstance or condition incidentally connected with the injury.

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[10]29 Am. Jur. Insurance § 247 (1960).

[11]Silverstein v. Metropolitan Life Ins. Co., 254 N.Y. 81, 171 N.E. 914, 915 (1930); D'Agostino Excavators, Inc. v. Globe Indem. Co., 7 App. Div. 2d 483, 184 N.Y.S.2d 378 (1st Dep't 1959); Ettlinger v. Importers' & Exporters' Ins. Co., 138 Misc. 743, 247 N.Y.S. 260 (1st Dep't 1931).

[12]243 F.2d 784 (8th Cir. 1957).

[13]Id. at 785.

[14]224 N.Y. 47, 120 N.E. 86 (1918).

[15]Id. at 87.

In the *Lott* case the court construed the unambiguous phrase "arising out of the ownership, maintenance or use" according to its literal meaning. The key word "use" was interpreted in its broadest sense, and no regard was given to the reasonable expectations of the parties The loss that occurred was not caused by a use of the automobile as an automobile but by the independent act of firing the rifle.[16] The words used in the contract were broad general terms designed to give the insured comprehensive coverage against liability that might be incurred because of the ownership, maintenance and use of the automobile.[17] But the insurance policy containing this phrase should be construed fairly and reasonably to effectuate the intent of the parties and the purposes of the insured in buying the policy.[18] Obviously the insured did not intend to cover liability that might be incurred through a hunting accident. In *Habaz* the court modified the unambiguous language by seeking the intent of the parties.[19] It felt that this intent was to insure against loss occasioned by normal use of a vehicle. The court recognized that the loss did not occur because the object damming up the waters was a vehicle; the automobile was not being used as a vehicle at that time. Thus, by comparison of the *Lott* and *Habaz* cases the more reasonable approach to the problem appears to be the "second solution," and it results in a decision within the contemplation of the parties which coincides with contractual expectations.

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[16]The words "arising out of the ownership, maintenance and use of" are of much broader significance than "caused by." "They are ordinarily understood to mean originating from, having its origin in, growing out of, or flowing from, or in short, incident to, or having connection with, the use of the car." Red Ball Motor Freight, Inc. v. Employers Mut. Liab. Ins. Co., 189 F.2d 374, 378 (5th Cir. 1951). (Internal quotation marks omitted.) Accord, Schmidt v. Utilities Ins. Co., 353 Mo. 213, 182 S.W.2d 181, 184 (1944).

[17]Red Ball Motor Freight, Inc. v. Employers Mut. Liab. Ins. Co., supra note 16. Schmidt v. Utilities Ins. Co., supra note 16. Appleman summarizes the scope of the coverage given by the phrase "ownership, maintenance, and use" and states rules that have been indicated by decisions to determine whether the facts of a particular case come within the coverage: "1. The accident must have arisen out of the inherent nature of the automobile, as such; 2. The accident must have arisen within the natural territorial limits of an automobile, and the actual use, loading, or unloading must not have been terminated; 3. The automobile must not merely contribute to cause the condition which produces the injury, but must, itself, produce the injury." 7 Appleman, Insurance Law & Practice § 4317 (1942). For further discussion see Cunningham, Ownership, Maintenance and Use, 22 Ins. Counsel J. 494 (1955).

[18]Morgan v. New York Cas. Co., 54 Ga. 620, 188 S.E. 581 (Ct. App. 1936) (construing the word "use").

[19]Accord, Mercury Ins. Co. v. McClellan, 216 Ark. 410, 225 S.W.2d 931 (1950); Ohio Hardware Mut. Ins. Co. v. Sparks, 57 Ga. App. 830, 196 S.E. 915 (1938). See, Abady v. Hanover Fire Ins. Co., 266 F.2d 362 (4th Cir. 1959).

Under the third solution it appears that any ambiguity in the language will be construed against the insurer without regard for a reasonable interpretation of the contract or the intent of the parties as shown by extrinsic evidence. For example, in *Juzefski v. Western Cas. & Sur. Co.*,[20] one Keys, while driving his father's car was involved in an accident with the plaintiff. The plaintiff recovered a judgment against Keys which was partially satisfied by the father's insurer. The plaintiff then brought an action against the insurance company which had issued a policy to Keys. That policy covered a car owned personally by Keys and it gave general coverage when Keys was driving other cars not regularly furnished for his use, with this exception: "this insuring agreement does not apply: to any other automobile owned by . . . the named insured or a member of *his household* . . . ."[21] The trial court held for the defendant insurance company.[22] The California District Court of Appeals reversed and held that the phrase "his household" was ambiguous. The court said the words could be construed as referring either to a household of which Keys was a member, or to a household of which Keys was head. The contract was interpreted against the insurance company with the result that the latter construction was adopted. Therefore coverage extended to casual or occasional use by the insured of his father's car with his permission even though the insured lived with his parents and hence was a member of his father's household.

The fourth solution is a rule of construction applied by the courts when the insurance policy will lend itself to two reasonable constructions, either of which could be the intent of the parties. In such a case the interpretation most favorable to the insured must be accepted.[23] The test in determining whether there is ambiguity is not what the insurer intended the words to mean, but what a reasonably prudent

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[20]173 Cal. App. 2d 118, 342 P.2d 928 (Dist. Ct. App. 1959).

[21]Id. at 930. (Emphasis added.)

[22]The trial court said that the exclusionary provisions of the policy were not ambiguous and excluded coverage when the insured was driving any automobile owned by a member of his household. Id. at 931.

[23]13 Appleman, Insurance Law & Practice § 7483 (1943). See Ward v. State Farm Mut. Auto Ins. Co., 241 F.2d 134 (5th Cir. 1957); Associated Eng'rs, Inc. v. American Nat. Fire Ins. Co., 175 F. Supp. 352 (N.D. Cal. 1959); Empire Life Ins. Co. v. Gee, 178 Ala. 492, 60 So. 90 (1912).

New York states the rule as follows: " 'if a policy of insurance is written in such language as to be doubtful or uncertain in its meaning, all ambiguity must be resolved in favor of the policy holder and against the company' since 'the burden . . . [is] on the defendant to establish that the words and expressions used not only are susceptible' of the construction urged by it 'but that it is the only construction that can fairly be placed thereon'." Piliero v. Allstate Ins. Co., 195 N.Y.S.2d 89, 95 (Sup. Ct. 1959).

person, applying for insurance of the type involved, would have understood them to mean.[24] When an ambiguity is found in an insurance contract, the court might look at the surrounding circumstances to ascertain which of more than one possible meaning must have been intended.[25] If the apparently ambiguous language is found on further investigation to be susceptible of only one interpretation, then that interpretation should be controlling.[26] In such a case, it would not be necessary or practical to construe the language against the insurance company.[27]

Judge Foster in his dissent in the *Sperling* case apparently adopted this approach. He reasoned that " the intent of the parties, therefore, must be found not only in the language used in the policy but also in the normal implications that flow therefrom. I find it quite impossible to believe it was the intent of the parties that the policy would cover the operation of a stolen car."[28]

It is quite obvious why the insurance contract did not contemplate coverage of a thief. The theft of an automobile entails serious criminal sanctions if the thief is apprehended. Therefore, a thief is willing to take greater chances while driving—especially if these chances become necessary to avoid capture. This would substantially increase the risk of negligent injury to third parties, and an insurance company would not intentionally assume this risk.[29] Construction

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[24]New York Life Ins. Co. v. Rotman, 231 Iowa 1249, 3 N.W.2d 603 (1942).

[25]Hardware Mut. Cas. Co. v. Hartford Acc. & Indem. Co., 6 Wis. 2d 457, 95 N.W.2d 215 (1959).

[26]Beard v. Peoples Indus. Life Ins. Co., 5 So. 2d 340 (La. App. 1941).

[27]See Chandler v. Aetna Ins. Co., 188 So. 506 (La. App. 1939).

[28]166 N.E.2d at 488.

[29]Query, would it be against public policy to insure against the negligent operation of a stolen car when the operator is also a thief? It is well settled that a man cannot enter into a contract that might tend to promote an illegal act or impede law enforcement. Fidelity & Deposit Co. v. Moore, 3 F.2d 652 (D. Ore. 1925); See also Farm Bureau Mut. Auto Ins. Co. v. Hammer, 177 F.2d 793 (4th Cir. 1949). "[A] construction of the policy which would extend the benefits for accidental death to include a case where death results from the felonious stealing of an automobile . . . [as] in the course of escape and pursuit . . . would be contrary to public policy . . . ." Rousseau v. Metropolitan Life Ins. Co., 299 Mass. 91, 11 N.E.2d 921 (1937). In Acme Finance v. National Ins. Co., 118 Colo. 445, 195 P.2d 728 (1948), the owner of an automobile insured against damage by impact "while being used for pleasure or business," joined with others in perpetrating a crime and permitted one of his confederates to use the car as a "getway." In doing so it was wrecked beyond repair. In an action against the insurer, it was held that the owner, in permitting his confederates to use the car, was not using it "for business or pleasure," and consequently that the loss was not covered by insurance; and that if the policy could be otherwise construed it could be unenforceable as against public policy. See also, Davis v. Detroit Auto. Inter-Ins. Exch., 356 Mich. 454, 96 N.W.2d 760, 763 (1959) (dissenting opinion); Bowman v. Preferred Risk Mut. Ins. Co., 348 Mich. 531, 83 N.W.2d 434, 441 (1957) (dissenting opinion).