Hastings Law Journal

Volume 13 | Issue 2 Article 9

1-1961

Omnibus Insurance--Rights of an Injured Named Insured Against the Permissive Driver

Richard L. Bowers

OMNIBUS INSURANCE — Rights of an Injured Named Insured Against the Permissive Driver

By RICHARD L. BOWERS*

A BUYS a new car, obtaining complete insurance coverage thereon from All Sure Insurance Company. In this new auto, and with his friend *B* he takes a pleasure trip during which *B*, while driving the auto misses a curve and drives into a ditch, injuring *A*.

A thereupon brings suit against *B* for his negligence and claims that the liability insurance carried by himself covers *B* under an omnibus clause so that All Sure must come to *B*'s defense and be obligated to *A* if he recovers a judgment against *B*.

This is a hypothetical case but very close to reality. Can an owner sue a permissive driver of his auto to collect for injuries sustained to himself due to the driver's negligence? Just what is an omnibus clause and how do courts construe such clauses?

Omnibus Clause

Independent of general insuring clauses in an auto liability policy, there oftentimes appears, either within the policy or by way of indorsement or rider, a clause purporting to extend the protection of the policy to any person or persons coming within a defined group. This is the omnibus clause.[1]

By this clause, the insurer agrees to indemnify not only the named policyholder but also any licensed driver or person riding in or operating the owner-insured's auto with the owner-insured's permission.[2] This clause obligates the insurance company to pay any legally binding obligation rendered against such person covered by the policy.

Interpretation

While there are not an abundant number of cases, there appears to be some conflict on the question whether the coverage of an auto liability policy includes the death of or an injury to, one who either is expressly named as an insured as the owner of the policy or one who is protected as an additional insured under an omnibus clause.[3]

It seems the differences in the conclusions and decisions of the courts may be explained because of the variations in the provisions of a particular policy under consideration.

---

* Member, Second Year class.

1 5 AM. JUR. *Auto* § 532 (1944).

2 5 AM. JUR. *Auto* §§ 533-34 (1944).

3 143 A.L.R. 1394 (1943).

In *MacBey v. Hartford Acc. & Indem. Co.*,[4] plaintiff, owner of a vehicle covered by an insurance policy, was injured while riding in her own auto driven by another with her permission. Plaintiff sued the driver and after receiving a judgment against him proceeded against the defendant on the policy contending that she, the plaintiff, would be entitled to recover under the omnibus clause of the policy. The policy contained an omnibus clause insuring *others* who were riding or operating the insured's vehicle with the insured's permission.

A Massachusetts statute concerning the liability of insurers to policyholders stated that the insurer should provide: ". . . indemnity for or protection to the insured, and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to *others* for bodily injuries."[5] [Emphasis added.]

The court in rendering a judgment against the plaintiff said that the word *"others"* describing persons to whom damages were to be paid, preceded by the words "insured" and "any person" joined as describing those to be protected by the policy, showed that the inclusion of the owner-insured within the class of beneficiaries was not the intent of the legislature.

The plaintiff could have no recourse to the insurance policy for any judgment rendered against the driver. The word *"others"* in the policy did not include the owner-insured.

Several cases[6] since *MacBey* have held that the insured was not covered by omnibus clauses. A Connecticut case[7] on facts similar to *MacBey*, when confronted with the task of construing an omnibus clause, said, "A public liability policy is not a policy of accident insurance indemnifying the insured against injuries suffered by himself in an accident. By its definite terms it assured against claims for damages for which the insured or others named in the policy might become liable."[8]

It seems that most of the cases concerning the right of the owner-insured to sue the permissive driver and have recourse on his own liability policy hinge on the construction of a few words in the omnibus clause. The word "others," has barred recovery in *MacBey* and its supporting cases. These cases have been cited a number of times and still seem to be the authority in their jurisdictions.[9]

---

[4] 292 Mass. 105, 197 N.E. 516 (1935).

[5] 3 MASS. ANN. LAWS ch. 90, 34A.

[6] Cain v. American Policyholders Ins. Co., 120 Conn. 645, 183 Atl. 403 (1936); Oliveria v. Preferred ASC Ins. Co. of New York, 312 Mass. 426, 45 N.E.2d 263 (1942).

[7] Cain v. American Policyholders Ins. Co., 120 Conn. 645, 183 Atl. 403 (1936).

[8] *Id.* at 653, 183 Atl. at 407.

[9] Clark v. Hartford Acc. & Indem. Co., 148 Conn. 15, 166 A.2d 713 (1960); Joyce v. London & Lancashire Indem. Co. of America, 312 Mass. 354, 44 N.E.2d 776 (1942).

There are, however, jurisdictions not in accord with the principles of *MacBey*. In *Hardtner v. Aetna Cas. & Sur. Co.*,[10] the court undertook the problem of construing an omnibus clause containing the word "others" as in *MacBey*.

The court in rendering a judgment for the administrator of the owner-insured said that the intention of the contracting parties to the policy should govern, but to say the word "others" does not include the owner-insured is a strained construction of the policy. The word "others" is ambiguous and subject to more than one construction, but the court thought a reasonable construction would include persons other than the operator of the auto driving with the consent of the owner-insured, including the owner-insured.

This case turned on the word "others," which the court held included the owner-insured, contrary to previous cases discussed. Other cases allowing recovery have turned on similar words such as "any person or persons."[11]

The words, "any person," were construed in a New York case[12] where the omnibus clause provided that the insurer would pay damages for bodily injuries suffered by any person arising out of the use of an auto for which the insured becomes legally obligated to pay.

The court said the language used in an insurance policy must be given its ordinary meaning such as the average policyholder of ordinary intelligence, as well as the insurer, would attach to it. If an exclusion of liability is intended which is not apparent from the language employed, it is the insurer's responsibility to make such intention clearly known. The case held that the owner-insured was included by the words "any person" and could recover from his insurance company for his injuries sustained at the hands of a permissive driver.

Thus far in all cases mentioned there were no exclusion clauses contained in the insurance policies. In the absence of statutory provisions forbidding their inclusion, clauses providing that the coverage under an omnibus clause does not extend liability for bodily injury or death of an insured have usually been held valid and effective to protect the insurer.[13]

The California Position

There is only one case in California that has squarely met the point of construing the wording of an omnibus clause where the owner-insured was trying to collect on his own policy.

---

[10] 189 So. 365 (La. App. 1939).

[11] Howe v. Howe, 87 N.H. 338, 179 Atl. 362 (1935); Archer v. General Cas. Co. of Wisconsin, 219 Wis. 100, 261 N.W. 9 (1935).

[12] Aetna Cas. & Sur. Co. v. General Cas. Co. of America, 285 App. Div. 767, 140 N.Y.S.2d 670 (1955).

[13] Jenkins v. Morano, 74 F. Supp. 234 (1947); Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956); Musselman v. Mutual Auto Ins. Co. of Town of Herman, 266 Wis. 387, 63 N.W.2d 691 (1954).

In *Bachman v. Independence Indem. Co.*,[14] the owner-insured requested another to drive her on a trip. While on the trip the driver negligently drove over an embankment and killed the owner-insured. The deceased had previously obtained a liability policy from the defendant which read in part:[15]

> . . . [B]y reason of its ownership, [the auto's] maintenance, or use . . . shall cause bodily injuries by accident, . . . fatal or otherwise, to any person or persons, and for which bodily injuries the insured and/or others as herein provided are liable . . . then the company will insure against loss arising out of such liability . . . the named insured, and/or any person or persons while riding in or legally operating any of the automobiles . . . with the permission of the named insured.

Plaintiff, the administrator of the deceased, filed suit against the driver for wrongful death for which judgment was given, and then brought suit against the defendant demanding payment of the judgment.

The defendant contended that the proper test to apply is whether the deceased would have had a right of action against the driver had she lived. This was based on the theory that the heirs can not recover for a death unless the deceased would have been able to recover for an injury.

The California court held that the test contended by the defendant need not be considered because the plaintiff had sued and recovered a final judgment against the driver who operated the auto with the permission of the deceased.

The construction of the policy was the only concern of the court. If the insurer desired to place limitations upon its liability to cover the situation it had the opportunity to do so. Having prepared the policy, any ambiguity, if one exists, must be construed against the defendant.[16]

Although *Bachman* is squarely in point and has not up to this time been overruled, it is an older case and can not be taken by itself as the California position on the supposed factual situation.

Recovery by the Owner-Insured

In order for an owner-insured to sue and collect on his own policy he must meet certain requirements:

(1) He must prove that his auto liability policy includes himself and the permissive driver who injures him. In the absence of any law declaring the obligation of an insurer as to permissive use of an insured auto, the injured person is bound by any limitations contained in the

---

[14] 214 Cal. 529, 6 P.2d 943 (1931).

[15] *Id.* at 530, 6 P.2d at 943.

[16] Missen v. Bolich, 177 Cal. App. 2d 145, 1 Cal. Rptr. 912 (1960).

policy.[17] The owner-insured must prove that he has not been excluded from recovery by the policy limitations.

(2) The owner-insured must obtain a judgment against the negligent permissive driver before he can bring in his insurance company under an omnibus clause. The victim of an auto accident has no right of action against the insurer of a driver until the recovery of a judgment against the latter, in absence of any provisions in the policy that it should inure directly to the benefit of "any injured person."[18]

Qualifying Under the Omnibus Clause

In California,[19] an owner's vehicle liability policy insures the person named therein and any *other* person, as insured, using any described motor vehicle with the express or implied permission of the named insured against loss from the liability imposed by law for damages arising out of ownership, maintenance or use of the vehicle.

Every liability policy issued in California must have a clause insuring *others* using the owner-insured's auto with his permission.[20]

It is against public policy for an insurance company to limit coverage so as to exclude coverage when an auto is driven by someone other than the insured.[21]

The owner-insured's problem is establishing himself in the category of "others" under the mandatory clause when his auto is being driven by a permissive driver.

While California Vehicle Code section 16451 is explicit in its terms,[22] in that every liability policy must insure the named insured and other persons using the insured's auto with his permission, it becomes somewhat confusing when read with California Vehicle Code section 17150,[23] which makes every owner of a motor vehicle liable for death or injury resulting from use of the owner's auto by himself or by another with his permission.

---

[17] Western Mach. Co. v. Bankers Indem. Ins. Co., 10 Cal. 2d 488, 75 P.2d 609 (1938).

[18] Mercer Cas. Co. v. Lewis, 41 Cal. App. 2d 918, 108 P.2d 65 (1940).

[19] CAL. VEH. CODE § 16451.

[20] Wildman v. Government Employees Ins. Co., 48 Cal. 2d 31, 307 P.2d 359 (1957).

[21] *Id.* at 39, 307 P.2d at 364.

[22] CAL. VEH. CODE § 16541: "An owner's policy of liability insurance shall: (A) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby intended to be granted. (B) Insure the persons named therein and any other persons, as insured, using any described motor vehicle with the express or implied permission of said assured; against loss from liability imposed by law for damages arising out of ownership, maintenance, or use of such motor vehicle . . . ."

[23] CAL. VEH. CODE § 17150: "Every owner of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from negligence in the operation of the motor vehicle, in the business of the owner, or otherwise, by any person using or operating the same with the permission, express or implied, of the owner and the negligence of such person shall be imputed to the owner for all purposes of such civil damages."

Reading the two sections together in the light of an omnibus clause seems to be ambiguous.

How can an owner establish himself as what is referred to as "others" under section 16451 and then in section 17150 have it be said that the negligence of a permissive driver will be imputed to him.

The owner-insured is contending he should be allowed to recover under an omnibus clause for negligence imputed to himself. Viewing the situation in that aspect, an owner-insured could never contend that as a passenger riding in his own auto he could qualify as a beneficiary of the omnibus clause. The effect would be that the owner-insured would be collecting from his own insurance company for his own negligence (negligence imputed to him).

Until recently a defense following this line was available. A decision handed down by the California district court of appeal wiped out any defense set up by section 17150. The case in point is *Mason v. Russell.*[24] The plaintiff, owner-insured, permitted defendant to drive his auto. Defendant negligently struck and injured the plaintiff.

The trial court held that under California Vehicle Code section 17150 an owner could not recover from a permissive driver because the negligence of the driver was imputed to the owner.

The district court of appeal reversed the decision saying the negligence of a permissive driver of an auto is not imputed to the owner so as to bar recovery by the owner for injuries sustained by himself against the driver. In the *Mason* case the owner was not riding in the auto but it seems by the holding, that whether he was riding in the auto or not the same result would be reached.

Obtaining Judgment Against the Permissive Driver

Recent California cases have made California Vehicle Code section 17158 a possible bar to recovery by the owner-insured.[25]

As stated previously if the owner-insured is a qualified beneficiary under the omnibus clause of his policy he must first receive a judgment against the driver before the insurance company becomes legally liable.[26]

California Vehicle Code section 17158 states:

> No person who as a guest accepts a ride in any vehicle upon a highway, without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of such vehicle or against any other person legally liable for the conduct of such driver on account of personal injuries to or the death of the guest during the ride, unless the plaintiff in any such action establishes that

---

[24] 158 Cal. App. 2d 391, 322 P.2d 486 (1958).

[25] Ahlgren v. Ahlgren, 152 Cal. App. 2d 723, 313 P.2d 88 (1957); Ray v. Hanisch, 147 Cal. App. 2d 742, 306 P.2d 30 (1957).

[26] Rupley v. Huntsman, 159 Cal. App. 2d 307, 324 P.2d 19 (1958); Spencer v. State Farm Mut. Auto Ins. Co., 152 Cal. App. 2d 797, 313 P.2d 900 (1957).

the injury or death proximately resulted from the intoxication or wilful misconduct of the driver.

Is the owner-insured a guest in his own auto while riding with a permissive driver? It must be remembered that here we are dealing only with ordinary negligence and not wilful misconduct or intoxication. Under the latter conditions there seems to be no question that the owner-insured or any other person may sue the permissive driver.

By the wording of the statute it is clear that an insurance company can not be held liable if the owner is a guest in his own car. The statute explicitly states the driver is not liable for civil damages nor any other person legally liable for the conduct of the driver.

Under the standard omnibus clause the insurance company obligates itself to become legally liable for a permissive user of an insured's auto. If the owner-insured is a guest, California Vehicle Code section 17158 negates any legal liability imposed on the insurance company by the omnibus clause

What position have the California courts taken on the question, "Can an owner be a guest in his own auto under section 17158?"

In *Ray v. Hanisch,*[27] plaintiff and defendant were on a pleasure trip in the plaintiff's auto, and while defendant was driving an accident occurred. Plaintiff was injured and brought suit for personal injuries in two counts.

The first count alleged ownership of the auto and ordinary negligence. The second alleged the same facts plus an agreement by plaintiff and defendant to share oil and gas expenses. Defendant demurred and the trial court sustained the demurrer. Plaintiff appealed after refusing to amend the complaint.

The appellate court in affirming the trial court cited various cases[28] and stated that the *mere fact that plaintiff was riding in her own vehicle while being driven by another did not classify her as a "guest" within Code section 17158.*

By the courts admission the question raised in *Ray* was one of first impression.[29] What prompted the court to make a definite statement that an owner could not be a guest in his own car? The court discussed cases in point from other jurisdictions[30] concluding that the reasoning of those cases was logical and unanswerable and without further discussion made its conclusion.

After making this statement the court proceeded to discuss the counts alleged by plaintiff. The court held that the first count, which

[27] 147 Cal. App. 2d 742, 306 P.2d 30 (1957).

[28] Gledhill v. Connecticut Co., 121 Conn. 102, 183 Atl. 379 (1936); Lorch v. Englin, 369 Pa. 314, 85 A.2d 841 (1952).

[29] 147 Cal. App. 2d at 746, 306 P.2d at 32.

[30] Gledhill v. Connecticut Co., 121 Conn. 102, 183 Atl. 379 (1936); Lorch v. Englin, 369 Pa. 314, 85 A.2d 841 (1952).

alleged ownership and ordinary negligence, standing alone, was sufficient for a cause of action.

If the court had stopped at this point or if the plaintiff had only alleged ownership and negligence the case would probably have gone to trial on the merits. However, plaintiff in a second count realleged the facts in the first count plus an agreement by plaintiff and defendant to share oil and gas expenses.

To this count the court declared that plaintiff had not alleged sufficient compensation as defined in section 17158 and since the second count pleaded in detail the facts of the first count and the second did not allege adequate compensation they both were vulnerable to defendant's demurrer and the demurrer was sustained.

What has the court inferred by sustaining the demurrer? The first count alleged a cause of action and if the case had gone to trial the defendant could have raised a defense that plaintiff was a guest and possibly this contention would have been upheld. It seems the plaintiff anticipated this defense and tried to overcome this by pleading compensation. The court said adequate compensation had not been alleged and thus plaintiff had pleaded herself out of court. The court has inferred that because the plaintiff had not alleged adequate compensation she was a guest.

Why did the court even discuss compensation? Before affirming the demurrer the court said outright that an owner did not become a guest in his own auto merely because he is being driven by another; but then turned around and said that plaintiff had not alleged adequate compensation and thus had no cause of action on the second count. If the plaintiff was not a guest as stated by the court then what does it matter that she had not stated adequate compensation? It would not be necessary if she were not a guest. Why should compensation matter or why should the demurrer be sustained if the plaintiff were not a guest?

By sustaining the demurrer the court in reality held that an owner may be a guest in his own auto if no compensation is given for the ride. Unfortunately, the court discussed decisions of Connecticut and Pennsylvania[31] holding that an owner could not be a guest in his own auto and declared these cases sound, despite the fact that the holding of the court was contrary to those cases.[32]

The California court followed *Ray* in *Ahlgren v. Ahlgren*,[33] saying that an owner may not be a guest in his own auto. The court in *Ahlgren* stated no opinion on the question presented and only said that *Ray* was the controlling case on the issue in question. No other case was cited on the issue and the whole basis of the decision rested on *Ray*.

[31] *Id.*

[32] See also, 32 So. CAL. L. REV. 93 (1958); 4 U.C.L.A.L. REV. 652 (1957).

[33] 152 Cal. App. 2d 723, 313 P.2d 88 (1957).

The court in *Ahlgren* failed to apprehend the meaning of the ambiguous language in *Ray* and followed the opinion without close examination. The Supreme Court of Minnesota[34] when confronted with a problem similar to that of *Ray* and *Ahlgren* reviewed the two cases. The court stated it did not understand the decision reached in *Ahlgren* and that apparently the court in *Ahlgren* overlooked the decision of *Ray* on the second count.[35]

Since *Ahlgren* is the latest case in point, holding that an owner may not be a guest in his own auto, this is law in California.

Ray, being the first case in the jurisdiction to bring up the question "Can an owner be a guest in his own auto?" it is only natural that the court in *Ahlgren* looked to it as authority. However, what precedent has *Ray* set? The language is clear but the decision does not conform with the rule stated, and its reasoning is ambiguous. *Ahlgren* is the law, but how sound is it when based upon such ambiguous authority? Will the next case before the court hold that *Ray* is so ambiguous that the decision reached in *Ahlgren* is not sound?

By looking at *Ray* it is by no means definite that an owner is not a guest and it seems that an owner may be a guest in his own auto in California.

Taking this interpretation, unless a permissive driver is guilty of wilful misconduct or intoxication, or the owner-insured has given some sort of compensation to the driver, the owner-insured has no cause of action against the permissive driver for ordinary negligence. As concluded the owner-insured has no recourse to his insurer under an omnibus clause in his liability policy. The problem hinges upon whether an owner-insured can be a guest in his own auto and this does not seem to be a well defined matter at the present time.

As to the matter of compensation it is for the courts to decide. However, in *Ray*, the exchange of social amenities or reciprocal hospitality such as sharing the cost of gas or oil and driving while one rests was not sufficient compensation as is defined in California Vehicle Code section 17158.

The picture on the California horizon is not clear. For a clearer view of the question it might be well to compare *Bachman* and *Ray*.

The fact situations in *Bachman* and *Ray* are similar. In both cases the plaintiff had asked another to drive. In both cases the plaintiff, owner-insured, was injured (killed in *Bachman*) when the driver negligently drove off the road. In neither case was wilful misconduct or intoxication alleged. In both cases only ordinary negligence was the alleged cause of the accident.

In *Bachman* the plaintiff recovered a judgment against the driver and the owner-insured's insurance company. In *Ray* the owner-insured

[34] Phelps v. Benson, 252 Minn. 457, 90 N.W.2d 533 (1958).

[35] *Id* at 468, 90 N.W.2d at 541.

was barred from recovery against the driver and thus was barred from recovery if she had tried to place herself under the benefit of an omnibus clause in her insurance policy.

In *Bachman* the plaintiff recovered a judgment against the driver for negligence. Although the case in which the plaintiff in *Bachman* recovered is not recorded or cited[36] it seems from the reports that nothing was brought up concerning a guest statute of any kind. The defendant had contended that the administrator of Bachman should not be able to recover unless the decedent would have had an action against the driver if she had lived.

The court's cognizance of the contention was slight in saying that the plaintiff had sued the driver and recovered a judgment and that the theoretical rights of the decedent were not involved.

Now, turning to *Ray*, the whole decision of whether the owner-insured could have recourse to his own policy depends upon the owner-insured's theoretical rights. In *Ray* the plaintiff was not killed but if he had been killed could his administrator have sued the driver for negligence? By *Bachman* he could! If the owner-insured was a guest he could not, if he was not a guest, then a suit could be brought. The two cases are so close they can hardly be distinguished.

Conclusions

An attorney unfamiliar with auto insurance law might be inclined to feel that an omnibus clause is surplusage. It is conceded by most that an auto policy is intended for the protection of the owner-insured and persons operating with his permission from legal liability imposed by others, and is not intended to compensate the insured for his own injuries.

In more recent policies issued, a direct policy exception prohibits recovery for injury or death of a named insured and where such exclusion is contained in the policy, it is enforced according to its terms.[37] More difficulty is present where the policy contains no such express exceptions.

The majority of the courts have permitted the owner-insured to recover for his own injuries. The reason for the majority rule is not without logic. The insurer intends to protect any person operating with the insured's permission in every case. If the insurer denies recovery to the owner-insured then it is not affording complete protection to the additional insured under the omnibus clause. Since most policies purport to render complete protection by the omnibus clause the rule of strict construction against the company must be applied.[38]

[36] Bachman v. Independence Indem. Co., 112 Cal. App. 465, 297 Pac. 110 (1927).

[37] Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956); Canadian Indem. Co. v. Western Nat. Ins. Co., 134 Cal. App. 2d 512, 286 P.2d 532 (1955).

[38] Artukovich v. St. Paul-Mercury Indem. Co., 150 Cal. App. 2d 312, 310 P.2d 461 (1957).

By applying the rule favorably to the additional insured the accident is covered and the owner-insured is permitted to recover.[39]

The decisions of the courts contend that it is the insurer's privilege and indeed its duty to insert exclusions in their policies if they desire to prohibit recovery in the situations where the owner-insured is injured.[40]

It has been argued and upheld that the cases must be examined from the point of view of the driver. The driver expects and demands protection. It does not matter to him who the plaintiff is, but rather, the matter of consequence being that he has become liable to pay a judgment and needs the benefit of the insurance.[41]

As concluded here, *Bachman* falls under the majority rule and is sound law in California. Yet, in the light of *Ray, Bachman* takes on a role of minor importance.

It is the rule that a judgment must be rendered against the person alleged to be covered by the omnibus clause in the policy before the insurance company becomes liable.[42]

Looking at the words of the court in *Ray,* an owner-insured may sue and have judgment rendered against a permissive driver. Looking at the holding of the court and the ambiguity of the entire case, in most instances an owner-insured injured while riding in his own auto being driven by another is a guest and can not sue the driver.[43]

While *Ahlgren* might have been the catalyst that evolved a definite meaning from *Ray* it seems that the court overlooked the meaning of the case. *Ahlgren* has made a definite holding but only by citing *Ray.* Has *Ahlgren* really resolved the problem?

As the problem now stands, California is a jurisdiction that will allow an owner-insured to collect on his own liability policy. This conclusion is reached by looking at *Bachman, Ray,* and *Ahlgren.* But it seems *Ray* is a weak link in this chain of cases. Its ambiguity gives rise to suspicion that a forceful argument could be made against an owner-insured who is trying to collect under the omnibus clause of his own policy. Such argument could bar recovery against the negligent permissive driver and thus bar recovery from the owner-insured's insurance company.

---

[39] Farmer v. United States Fid. & Guar. Co., 11 F. Supp. 542 (1935); Bachman v. Independence Indem. Co., 214 Cal. 529, 6 P.2d 943 (1931); State Farm Mut. Auto Ins. Co. v. Madison, 11 Ill. App. 2d 206, 136 N.E.2d 533 (1956); Hardtner v. Aetna Cas. & Sur. Co., 189 So. 365, (La. 1939); Farm Bureau Mut. Auto Ins. Co. v. Garland, 126 A.2d 246 (N.H. 1956); Aetna Cas. & Sur. Co. v. General Cas. Co. of America, 285 App. Div. 767, 140 N.Y.S.2d 670 (1955); Archer v. General Cas. Co., 219 Wis. 100, 261 N.W. 9 (1935).

[40] Bachman v. Independence Indem. Co., *supra* note 39.

[41] APPLEMAN, 7 INSURANCE LAW & PRACTICE 221 (Supp. 1961).

[42] Rupley v. Huntsman, 159 Cal. App. 2d 307, 324 P.2d 19 (1958); Spencer v. State Farm Mut. Auto Ins. Co., 152 Cal. App. 2d 797, 313 P.2d 900 (1957).

[43] See also, 32 So. CAL. L. REV. 93 (1958), 4 U.C.L.A.L. REV. 652 (1957).