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Discovery of Liability Insurance: Broadening of the Doctrine in California

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NOTES

DISCOVERY OF LIABILITY INSURANCE: Broadening of the Doctrine in California

In *Pettie v. Superior Court*,[1] the plaintiff suffered injury in an automobile collision with one Roerman (the real party in interest, hereinafter referred to as defendant). She commenced a personal injury suit to recover damages and thereafter submitted written interrogatories to the defendant demanding to know whether or not defendant carried liability insurance and if so, who the insurer was and what the policy limits were.[2] The defendant filed a written answer setting forth the name and address of her insurer, but objected to the interrogatory seeking the limits of policy coverage on the grounds that such a question was not related to the subject matter involved in the pending action, that the information sought was not admissible as evidence, and that it did not appear to be reasonably calculated to lead to the discovery of admissible evidence. The district court of appeal, basing its decision on another recent California case,[3] issued a writ of mandate commanding the lower court to set aside its order sustaining defendant's objections and to issue an order overruling defendant's objections to the interrogatories. In so doing the court indicated both its continued willingness to allow wide ranging pre-trial discovery and its reluctance to limit the discovery procedure to matters put in issue by the pleadings.[4] Through this decision what has been a procedural stumbling block in many jurisdictions[5] has been eliminated in California.

It would be wrong, however, to conclude that the sole effect of *Pettie* is to give further interpretation to California's new discovery procedures, for the decision is based upon both procedural and substantive points of law. To analyze the decision in terms of the discovery statutes alone without taking into account California Insurance Code section 11580 would be to ignore the court's own rationale for its decision. Said the court, "The respondent court and amicus curiae overlook or minimize the fact *Superior Insurance* [upon which plaintiff relied] is essentially based on holdings that, under Insurance Code section 11580, a contractual relation is created be-

[1] 178 Cal. App. 2d 680, 3 Cal. Rptr. 267 (1960).

[2] The plaintiff argued that such information was discoverable under the provisions of CAL. CODE CIV. PROC. §§ 2016, 2030 (Supp. 1961).

[3] Laddon v. Superior Court, 167 Cal. App. 2d 391, 334 P.2d 638 (1959).

[4] See *id.* at 395, 334 P.2d at 640; *accord*, Maddox v. Grauman, 205 Ky. 422, 265 S.W.2d 939 (1954).

[5] *Compare* Orgel v. McCurdy, 8 F.R.D. 585 (S.D.N.Y. 1948), Brackett v. Woodall Food Prods., 12 F.R.D. 4 (D.C. Tenn. 1951) *and* People *ex rel.* Terry v. Fisher, 12 Ill. 2d 231, 145 N.E.2d 588 (1957) [allowing discovery], *with* McNelley v. Perry, 18 F.R.D. 360 (E.D. Tenn. 1955), *and* Gallimore v. Dye, 21 F.R.D. 283 (E.D. Ill. 1958) [denying discovery].

tween the insurer under an automobile liability policy and third persons who may be negligently injured by the insured. . . ."[6]

On the one hand the substantive element of a contractual relationship between insurer and injured must be considered; and on the other, the procedural machinery of discovery and its operation.[7] It is the combination of these two factors which makes California one of the most liberal states in allowing discovery of the extent of liability insurance coverage.[8]

This article briefly reviews these two areas of California law and attempts to draw some conclusions as to the combined effect of these upon the obligations of liability insurers, the rights and privileges of the insured and the injured, and the extent to which the requirement to reveal the amount of liability insurance helps or hinders the purpose of pre-trial procedure.

The Procedural Aspect

The 1957 Regular Session of the Legislature of California enacted new provisions relating to depositions and discovery.[9] This new Discovery Act is largely based upon the corresponding provisions in the Federal Rules of Civil Procedure.[10] Therefore the construction and interpretation given to the Federal Rules are helpful in understanding the new California procedures.[11] Particularly important in applying code section 2016(b) to a situation is the manner in which the phrase, "Relevant to the subject matter involved in the pending action" is construed by the courts.

The California courts, since the new discovery rules were enacted, have unanimously agreed that the provisions of the discovery statutes are to be liberally construed.[12] But "relevancy" and "subject matter" are very broad terms and to have some significance must be given a frame of reference. Thus our recourse to the Federal Rules and their interpretation which employ much of the same language.[13]

Since the leading case of *Hickman v. Taylor*,[14] the federal courts have held to the premise that one of the purposes of discovery proceedings is to bring to light all information which might be of use to the parties in preparation for trial.[15] To this end either party may compel the other to disgorge

[6] 178 Cal. App. 2d at 684, 3 Cal. Rptr. at 269.

[7] See Laddon v. Superior Court, 167 Cal. App. 2d at 395, 334 P.2d at 640 (1959).

[8] Before 1957 the contractual relationship between insurer and injured was the sole ground for allowing discovery. Now the liberalized rules of discovery many require revelation of liability insurance even without the aid of Insurance Code section 11580. See Rolf Holmes, Inc. v. Superior Court, 186 Cal. App. 2d 876, 9 Cal. Rptr. 142 (1960).

[9] CAL. CODE CIV. PROC. §§ 2016-35 (Supp. 1961).

[10] Fed. R. Civ. P. 26-37.

[11] See Grand Lake Drive In, Inc. v. Superior Court, 179 Cal. App. 2d 122, 3 Cal. Rptr. 621 (1960).

[12] *E.g.*, Clark v. Superior Court, 177 Cal. App. 2d 577, 2 Cal. Rptr. 375 (1960); Laddon v. Superior Court, 167 Cal. App. 2d 391, 334 P.2d 638 (1959); Grover v. Superior Court, 161 Cal. App. 2d 644, 327 P.2d 212 (1958).

[13] See generally *Report of Committee on the Administration of Justice of the State Bar of California*, 31 CAL. S. BAR J. 204 (1956).

[14] 329 U.S. 495 (1947).

[15] *E.g.*, California v. United States, 27 F.R.D. 261 (N.D. Cal. 1961); Republic of Italy v. De Angelis, 14 F.R.D. 519 (S.D.N.Y. 1953); Rosseau v. Langley, 7 F.R.D. 170 (S.D.N.Y. 1945).

whatever facts he has in his possession. Therefore the scope of a discovery interrogation may be exceedingly broad and is not closely limited by the restrictions of a trial examination.[16] If this were not so the entire value of the procedure would be destroyed and the sought-after goal of expediting the disposition of litigation would be lost. This explains the great hesitancy of the courts in putting any technical restrictions on discovery procedures which might reduce them to a formalized series of questions and answers not much more informative than the pleadings. The scope of the examination should not be limited unless the information sought is clearly privileged or irrelevant, and inquiry should not be limited to matters relevant only to the precise issues presented by the pleadings.[17] Just how much latitude this gives a party in forcing revelation of facts in any given case depends upon the particular circumstances there involved and is determined by the court after weighing the interests in disclosure against the interests in secrecy.[18]

While courts are sympathetic toward the liberal use of discovery proceedings, they will not allow explorations into purely collateral or peripheral matters.[19] Many courts have cataloged the discovery of liability insurance and policy limits in this area of irrelevance and immateriality.[20] These courts declare that the financial status of the defendant has nothing to do with the merits of the case, is not admissible as evidence, and is not calculated to lead to admissible evidence. In short, they hold the fact of insurance coverage not relevant to the subject matter of a personal injury or property damage case. The subject matter being the injury or damage sustained by the complaining party, interrogatories which are not directed in some way toward uncovering facts about such injury go beyond the bounds of statutory authority. The fact of insurance coverage is not linked in any manner to an explanation of what happened or how and why the injury was incurred. It in no way establishes or leads to a fact which might aid in proving negligence on the part of defendant.[21] Therefore, from a legalistic viewpoint it is arguable that the ability of a party to satisfy a judgment is not one of the issues of law involved in a personal injury trial and should therefore not be discoverable.

Relevancy, like causation, covers a spectrum of facts from the event itself to the most distant and apparently unrelated happening. The courts are forced to draw a line at some point in this continuum and declare that everything on the far side of the line is irrelevant.[22] Relevancy then, in some respects, is analogous to proximate cause in that the matter is not one clearly

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[16] 4 MOORE, FEDERAL PRACTICE § 26.15 at 1062 (2d ed. 1950).

[17] *Id.* at 1065; Engl v. Aetna Life Ins. Co., 139 F.2d 469 (2d Cir. 1943).

[18] See United States v. Kohler Co., 9 F.R.D. 289 (E.D. Pa. 1949); Lewis v. United Airlines Transp. Corp., 27 F. Supp. 946 (Conn. 1939); Union Trust Co. v. Superior Court, 11 Cal. 2d 449, 81 P.2d 150 (1938); Comment, *Developments in the Law—Discovery*, 74 HARV. L. REV. 940, 1008 (1961).

[19] *E.g.*, Hickman v. Taylor, 329 U.S. at 507 (1947).

[20] See, *e.g.*, McNelley v. Perry, 18 F.R.D. 360 (E.D. Tenn. 1955); McClure v. Boeger, 105 F. Supp. 612 (D.C. Pa. 1952).

[21] *Contra*, in states where failure to show financial responsibility disqualifies one to drive and driving with a void license creates a presumption of negligence. See generally 5 STAN. L. REV. 326 (1953).

[22] 17 AM. JUR. *Discovery & Inspection* § 11 (1957).

defined by statute, but is left to the discretion of the court in each case, there being only general guidelines and precedents for the courts to follow.[23] Thus where the insurer is directly responsible to the injured party the fact of insurance is obviously relevant.[24] But where the insurer is liable only after a judgment against insured, the matter is not so clearly settled.[25]

The problem confronting the courts in this regard is whether or not the existence and amount of liability insurance are facts which should be used by a plaintiff in evaluation of his cause of action. Any fact which might disclose negligence, recklessness, contributory negligence, or extent of damage should be discoverable. The old rules of procedure allowed discovery of such facts on the basis that they contained evidence relating to the merits of the action or the defense therein. But the present test is relevancy to the subject matter which is believed to be a broader and more liberal test.[26] Information which was obtainable before the adoption of the 1957 Discovery Act should, wherever possible, be obtainable after its adoption.[27]

Liability insurance policy limits is a fact further removed from any of the above issues and enables a party to determine the worth of his cause of action by relating it to defendant's ability to pay. In the past this economic approach to evaluating a cause of action has been specifically rejected by a number of jurisdictions.[28] California decisions prior to the new Discovery Act also indicate that the courts would have denied discovery of liability insurance because such fact is not material to any issue potential or actual presented in the basic action.[29] The two early California decisions allowing discovery of liability insurance are both based upon the discoverable interest an injured party has because of the contractual relationship created by statute, a topic which will be discussed in the next section of this article.[30]

In a recent decision[31] the United States District Court in Montana, although allowing discovery of policy limits for the admitted purpose of appraising the case for settlement negotiation, recognized valid arguments against its position in stating, "Neither should expedience or the desire to dispose of lawsuits without trial, however desirable that may be from the standpoint of relieving congested calendars, be permitted to cause us to lose

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[23] See Dowell v. Superior Court, 47 Cal. 2d 483, 304 P.2d 1009 (1956); Union Oil Co. v. Superior Court, 151 Cal. App. 2d 286, 311 P.2d 640 (1957).

[24] See Acme Freight Lines v. Blackmon, 131 F.2d 62 (5th Cir. 1942); Connel v. Clark, 88 Cal. App. 2d 941, 200 P.2d 26 (1948).

[25] See Baggett v. Jackson, 244 Ala. 404, 13 So. 2d 572 (1943); Massey v. War Emergency Co-op. Ass'n, 209 S.C. 292, 39 S.E.2d 907 (1946); Keseleff v. Sunset Highway Motor Freight Co., 187 Wash. 642, 60 P.2d 720 (1936).

[26] CALIF. CIVIL PROCEDURE BEFORE TRIAL 682 (Cont. Ed. Bar 1957).

[27] Clark v. Superior Court, 177 Cal. App. 2d at 580, 2 Cal. Rptr. at 378.

[28] See, *e.g.*, Gallimore v. Dye, 21 F.R.D. at 285 (E.D. Ill. 1958); McNelley v. Perry, 18 F.R.D. at 361 (E.D. Tenn. 1955); McClure v. Boeger, 105 F. Supp. at 613 (D.C. Pa. 1952).

[29] See General Elec. Co. v. Superior Court, 45 Cal. 2d 897, 291 P.2d 945 (1955); Holm v. Superior Court, 42 Cal. 2d 500, 267 P.2d 1025 (1954).

[30] Superior Ins. Co. v. Superior Court, 37 Cal. 2d 749, 235 P.2d 833 (1951); Demaree v. Superior Court, 10 Cal. 2d 99, 73 P.2d 605 (1937).

[31] Johanek v. Aberle, 27 F.R.D. 272 (Mont. 1961).

sight of the limitations of the discovery rules or the boundaries beyond which we should not go."[32]

This fear of doing injustice to the defendant has prevented the courts from admitting that insurance coverage, as a practical matter, is very relevant to a plaintiff's cause of action.[33] To force a plaintiff to litigate a matter only to find after a judgment in his favor that the defendant is judgment proof places an inequitable burden upon the injured party and is a grossly inefficient way of operating a judicial system. The liberalized federal discovery procedures, after which California's new Discovery Act was patterned, were enacted to prevent just such wasteful effort.[34]

In California the line between relevant and irrelevant is being drawn so as to favor maximum discovery.[35] The line is drawn so that only those discovery procedures which are utilized solely to annoy, embarrass, or oppress the deponent are prevented; and in each case such deponent must show good cause why such questioning is annoying, embarrassing, or oppressing.[36]

Greyhound Corp. v. Superior Court[37] expressly ruled "fishing expeditions" permissible under California discovery procedure. Emphasizing that the "game" element of trial and pre-trial procedure is to be eliminated, the court reviewed the purposes of discovery under the 1957 Discovery Act. One of these purposes is to educate the parties in advance of trial as to the real value of their claims and defenses, thereby encouraging settlements. The court declared the rule to be not only one of liberal interpretation, but one that also recognizes that disclosure is a matter of right unless statutory or public policy considerations clearly prohibit it. Since the fact of liability insurance is not privileged matter, there is neither statutory nor policy reasons for denying discovery of this fact. The provisions of such a policy are not a matter for the sole knowledge of the named assured and the insurance carrier to the exclusion of the injured person. The very pendency of an action by the injured brought in good faith against the named insured gives the former a discoverable interest in the policy.[38]

The Substantive Aspect

One of the early rulings allowing discovery of liability insurance was a California case in which a proceeding for the perpetuation of testimony was employed to force the defendant to produce the insurance policy.[39] The defendants alleged that the sanctity of a private contract should not be invaded merely because someone says he someday expects to sue another to enforce payment of a judgment expected to some day be obtained. The court rejected the contention on the grounds that an automobile liability policy evidences a contractual relation created by statute which inures to

[32] *Id.* at 277.

[33] See Johanek v. Aberle, 27 F.R.D. at 277 n. 10 (Mont. 1961).

[34] See 74 HARV. L. REV. 940, 945 (1961).

[35] See Carlson v. Superior Court, 56 A.C. 428 (1961); Cembrook v. Superior Court, 56 A.C. 420 (1961); Filipoff v. Superior Court, 56 A.C. 441 (1961); Greyhound Corp. v. Superior Court, 56 A.C. 353 (1961); Steele v. Superior Court, 56 A.C. 400 (1961); West Pico Furniture Co. v. Superior Court, 56 A.C. 405 (1961).

[36] CAL. CODE CIV. PROC. §§ 2019(b) & (d).

[37] 56 A.C. 353 (1961).

[38] Superior Ins. Co. v. Superior Court, 37 Cal. 2d 749, 235 P.2d 833 (1951).

[39] *Id.*

the benefit of any and every person who might be negligently injured by the assured as completely as if such injured person had been specifically named in the policy; that is, a contractual relation is created between the insurer and injured third parties.[40]

What is the nature of this contractual relationship between injured and insurer? Is the insurer directly responsible to the injured party under the terms of the insurance contract? Is the insurance policy designed solely to indemnify the insured, or is it designed to benefit all potential victims of insured's negligence? These are a few of the questions that are involved when interpreting the California Insurance Code section 11580.

The pertinent part of this code section makes it unlawful to issue an insurance policy unless there is a provision stating that the insolvency or bankruptcy of the insured will not release the insurer from liability for payment of damages covered under the terms of the policy; and also a provision that whenever a judgment is secured against the insured, then an action may be brought against the insurer on the policy, and subject to its terms and limitations, the judgment creditor may recover on the judgment.[41] It is apparent that the legislature intended to place a greater responsibility upon the insurer than merely that of indemnifying its policyholder against damages caused by his negligence. Even though the insured is judgment proof, the insurance carrier cannot escape its obligations to the injured party.[42]

The question of whether this obligation arises at the very moment of injury or only upon judgment against the insured becomes critical in determining the relevancy of liability insurance in an action against insured. California courts have ruled that the obligation is created when the injury occurs, but is not enforcible until a final judgment against the insured has been entered.[43] Thus every person is potentially a party to the insurance contract and the condition upon which the insurance carrier incurs a duty to any specific party is upon the occurrence of an injury covered by the policy. Then, in effect, the injured party is subrogated to the rights of the insured in the policy and upon determination that the insured would be entitled to indemnity from damages, the injured party has an enforcible claim against the insurer.

The California rulings have been explained in these words:[44]

> It is true that in California the contractual obligation may not be enforced until judgment has first been secured against the person responsible. This, however, does not detract from the fact that at the time of an accident an injured person has a right against the insurance company identical with that against the responsible party, subject only to its establishment by judgment.

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[40] *Accord,* Abrams v. American Fid. & Cas. Co., 32 Cal. 2d 233, 195 P.2d 797 (1948); Hynding v. Home Acc. Ins. Co., 214 Cal. 743, 7 P.2d 999 (1932); Malmgren v. Southwestern Auto. Ins. Co., 201 Cal. 29, 255 Pac. 512 (1927).

[41] CAL. INS. CODE § 11580(b).

[42] See Malmgren v. Southwestern Auto. Ins. Co., 201 Cal. 29, 255 Pac. 512 (1927).

[43] See *id.* at 33, 255 Pac. at 513; Superior Ins. Co. v. Superior Court, 37 Cal. 2d at 754, 235 P.2d at 835.

[44] State *ex rel.* Allen v. Second Judicial Dist. Court, 69 Nev. 196, 245 P.2d 999 (1952).

Having established the existence of this contractual relationship at the time of the injury, it is but a small and logical step for the courts to rule that the injured party has a discoverable interest in any insurance policy covering the incident. The interest in such a policy is then relevant to the subject matter of the pending action because the contractual relationship between the injured and insurer arises out of that very injury. The injured party should be given the opportunity to investigate his contractual rights and duties as they relate to the incident which created such interests.

In a recent Illinois case[45] where a statute[46] similar to California Insurance Code section 11580 is in force, the court determined that an insurance policy was relevant to the litigation against the insured defendant because of such a statutory requirement. Discovery apprises injured plaintiffs of rights in the matter of litigation of which they might not otherwise avail themselves. Said the court:[47]

> It is not inconceivable that a plaintiff with serious injuries would settle a substantial judgment against defendant of modest means for a fractional sum, simply because he has no knowledge of any additional rights against the insured. Thus to deprive an injured party from learning of his rights against the insurer would in effect, nullify the benevolent purpose of such statutes, and permit insurance companies to avoid their statutory obligation.

It is this substantive and enforcible right of the injured party which must be given the protection of the courts by allowing discovery of liability insurance, policy limits, and policy provisions.

The fact that the contractual relationship between insurer and injured plays a large part in the court's determination that insurance coverage is discoverable is illustrated by a recent California decision[48] where the insurance policy did not fall within section 11580 of the California Insurance Code. But the court recognized that by its own terms the policy might provide that a judgment creditor of the insured could bring an action against the insurer on the policy. The court reviewed the California decisions holding insurance policies discoverable on the principle of a contractual relationship and ruled that the plaintiffs were entitled to learn from defendant if they were insured against liability for malpractice and, if so, to see the policy to determine whether there was any contractual relationship between plaintiffs and the insurer.[49] Thus the California courts are recognizing the right of an injured party to be informed of his contractual relationship with an insurance carrier, whether this contractual relationship is created by the terms of the policy itself, or by the statutory requirement.

Many of the decisions in other jurisdictions denying discovery point out that there is no statute in the jurisdiction comparable to the California Insurance Code section 11580.[50] The court in *Pettie* even disdained to review

[45] People *ex rel.* Terry v. Fisher, 12 Ill. 2d 231, 145 N.E.2d 588 (1957).

[46] ILL. INS. CODE § 388.

[47] 12 Ill. 2d at 238, 145 N.E.2d at 593.

[48] Rolf Holmes, Inc. v. Superior Court, 186 Cal. App. 2d 876, 9 Cal. Rptr. 142 (1960).

[49] *Id.* at 881, 9 Cal. Rptr. at 145.

[50] See DiPietruntonio v. Superior Court, 84 Ariz. 291, 327 P.2d 746 (1958); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957); Jeppeson v. Swanson, 243 Minn. 547, 68 N.W.2d 649 (1955); Peters v. Webb, 316 P.2d 170 (Okla. 1957).

the various conflicting cases in other jurisdictions, since no statute comparable to section 11580 was there in existence.[51] In other words, it appears that if there is not some statutory provision giving the injured party a contractual relationship with the insurer, or such a provision is not specifically included in the insurance contract, the courts are prone to regard the existence and amount of liability insurance as irrelevant to the subject matter of an action for damages against the insured.

Conclusion

The immediate effect of *Pettie* is to extend the rule declared in *Laddon* to one of the most frequently litigated areas of liability insurance, automobile collisions. Millions of drivers, as well as passengers are thus assured of obtaining knowledge of their contractual rights *before* settlement of a claim for damages. This is perhaps the most important consequence to be derived from the decision. The court has expressly upheld the plaintiff's right to be informed about an insurance policy in which he has a contractual interest.

In so doing, the court has neither invaded the rights nor prejudiced the interests of the insured. The revelation of facts which enables parties to carry on useful settlement negotiations should aid rather than harm the insured. The argument put forth by one writer[52] that disclosure of policy limits encourages plaintiffs to hold out for the upper limit when they might otherwise settle does not seem to be borne out in practice.[53] It is just as probable that a plaintiff, guessing blindly as to the defendant's ability to satisfy an adverse judgment, would stick to a demand far in excess of whatever insurance coverage there might be. As pointed out by one California court, "Conceivably, knowledge of low policy limits might constitute a benefit to defendants by tending to discourage a seriously injured plaintiff from holding out for a settlement commensurate with the extent of the injuries."[54] Few plaintiffs are willing to make a settlement for less than the full amount of damage when it is believed that there is an insurance policy in existence which would enable the injured party to entirely recoup his losses. In a case where the defendant is able to negotiate such a settlement by keeping the fact of liability insurance under a wrap of secrecy, it would appear that the plaintiff has been manifestly deprived of his proper and just compensation. Should the matter go as far as a jury trial, the insured and insurer are still protected by the evidentiary rules of California which make mention of insurance coverage objectionable and grounds for a new trial.[55]

Often the reason policy limits have not been discoverable is to protect the insurer. The fear that insurance companies might be subjected to increased pressure to settle at the upper limits of a policy in order to protect themselves from a possible suit by the insured for negligent failure to settle has led courts to protect insurance carriers by ruling insurance policies irrel-

[51] 178 Cal. App. 2d at 686, 3 Cal. Rptr. at 271.

[52] 74 HARV. L. REV. 940, 1019 (1961).

[53] See Superior Ins. Co. v. Superior Court, 37 Cal. 2d at 755, 235 P.2d at 836.

[54] *Ibid.*

[55] *E.g.*, Pierce v. United Gas & Elec. Co., 161 Cal. 176, 118 Pac. 700 (1911); Roche v. Llewellyn Iron Works, 140 Cal. 563, 74 Pac. 147 (1903); Perez v. Crocker, 86 Cal. App. 288, 260 Pac. 838 (1927).

evant to an action against the insured.[56] But the need for protection from this danger is to some extent counterbalanced by the possibility that refusal to disclose policy limits may result in liability on the part of the insurer in excess of its policy limits in a case where the judgment exceeds the amount of insurance coverage because such action by an insurer constitutes bad faith exercised in complete derogation of the right of the policyholder.[57] Whether or not the courts allow discovery of policy limits the insurer is in a vulnerable position when there is a judgment in excess of the insured's policy limits and protection of the insurance carrier from this risk is not accomplished by refusing discovery of policy limits.

On the other hand, *Pettie* should encourage the prompt and just settlement of personal injury actions where insurance policies are involved. Less time and money will be spent by litigants in "hide and seek" contests with unindentified insurers which serve no useful purpose.

The California Supreme Court recently quoted the language of *Pettie* to the effect that the presence or absence of liability insurance is frequently the controlling factor in determining the manner in which a case is prepared for trial. That there will be actual rather than nominal recovery conditions every aspect of preparation for trial of these cases—investigators, doctors, photographers and even the taking of depositions.[58]

The point has been made that to allow discovery of policy limits and not allow discovery of defendant's other assets is inconsistent; that if a party is allowed to determine the amount of insurance coverage an opposing party has, he ought also be allowed to discover defendant's other assets such as stocks, bonds, real estate and bank accounts.[59] The answer to this argument was concisely expressed by the Illinois court in its statement that, "Unlike other assets, a liability insurance policy exists for the single purpose of satisfying the liability that it covers. It has no other function and no other value."[60] This peculiarity of purpose sets the liability insurance policy apart from other types of assets and makes apparent the need to insure that an injured party is made cognizant of his rights arising from the injury.

Finally, the end to be served by discovery procedures is the just, speedy, and inexpensive determination of actions.[61] In allowing discovery of liability insurance and the limits thereof the California courts have removed another impediment to the accomplishment of this goal. Discovery of policy limits means that opposing parties may make settlement offers with the full assurance that they are not forfeiting any of their rights kept hidden by an arbitrary rule of procedure. Parties dealing openly with one another in the confidence that each has a complete understanding of the situation are more likely to arrive at a mutually acceptable settlement than parties who are secretive and defensive about disclosing information necessary for settlement negotiation. The California courts should continue to foster the disclosure of all facts which may be pertinent to a cause of action and this includes

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[56] See 74 HARV. L. REV. 940, 1019 (1961).

[57] Appleman, *Circumstances Creating Excess Liability*, A.B.A. REP. 315 (1960).

[58] Rolf Holmes, Inc. v. Superior Court, 186 Cal. App. 2d at 879, 9 Cal. Rptr. at 144.

[59] Gallimore v. Dye, 21 F.R.D. 283, 285 (E.D. Ill. 1958).

[60] People *ex rel.* Terry v. Fisher, 12 Ill. 2d at 238, 145 N.E.2d at 593.

[61] FED. R. CIV. P. 1.