

# From The Bench

legal news of interest

April 2002

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## RECENT DECISIONS ON THE DUTIES OF INSURERS AND INSURED

by Carol S. Hunter

In *Haynes v. New Orleans Archdiocesan Cemeteries*,<sup>1</sup> the plaintiff tripped on a concrete slab beneath a tomb in a cemetery owned by the Archdiocese. Haynes sued the cemetery and the heirs of the original owners of the tomb. Two of the heirs, Deborah Younce and Dennis J. St. Amant, III, were insured by Allstate at the time of the incident. However, Allstate was never named by Haynes as a defendant in the action. Younce was served with the suit but never notified Allstate. St. Amant notified Allstate of the claim against him and Allstate provided him with a defense. Younce failed to file an answer and a default judgment was entered against her. She did not appeal the judgment; therefore, it became final. Younce finally notified Allstate when she was served with a subpoena for a judgment debtor rule. Haynes then filed a direct action suit against Allstate, seeking to enforce the default judgment against Allstate.

Haynes argued at trial Allstate had notice of the suit against Younce because it defended and later settled the claim on behalf of St. Amant. Because Allstate received notice of the suit against St. Amant, Haynes also argued the insurer had a duty to determine whether it insured any of the other named defendants. The trial court dismissed Haynes' suit against Allstate, finding Allstate had no duty to investigate whether it insured any of the other named defendants. It concluded Younce was obligated to notify Allstate that a suit was filed against her, but did so only after the default judgment had been rendered and had become final. Therefore, Allstate was unable to defend itself and was prejudiced by Younce's failure to give timely notice.

Haynes appealed and argued she had a direct cause of action against Allstate regardless of lack of notice. The Fourth Circuit Court of Appeal disagreed. The Louisiana Direct Action Statute makes an insurer solidarily liable with the insured to the claimant. As a general rule, an insurer may not raise the failure of its insured to give notice of an accident or suit as a valid defense to the claims of an injured third party. However, the injured party's right to recover from the insurer may be defeated if the insurer can show prejudice from the insured's failure to comply with the policy's notice provisions.

The Allstate policy issued to Younce specifically provided, in the event of bodily injury or property damage, the insured was required to promptly notify Allstate of any claims and to forward to Allstate any legal documents relating to such claims. Since Younce did not notify Allstate until well after the default judgment had become final, Allstate was prevented from defending the suit and/or filing an appeal. Thus, Allstate successfully proved it was prejudiced by Younce's failure to comply with the policy's notice provisions.

**Q. Does an insurer have a duty to determine whether it represents other defendants in a lawsuit?**

**a. No.**

**Q. Must an insurer pay for independent counsel for its insured if coverage is denied?**

**a. Yes.**



The Court of Appeal further held an insurer who has been notified by its insured that suit has been filed against him has no duty to investigate whether any of the other named defendants are also its insureds.

In *Smith v. Reliance Insurance Company of Illinois*,<sup>2</sup> the plaintiffs filed suit against the Port of South Louisiana, which owned and operated wastewater treatment facilities in Reserve, Louisiana. The plaintiffs claimed they sustained personal injury, mental and economic damages and/or inconvenience as a result of the release of substances, including hydrogen sulfide, which caused noxious odors.

The Port filed a third party demand against Reliance Insurance Company of Illinois seeking a defense of the plaintiffs' claims. Reliance claimed there was no duty to defend and no coverage under the marine commercial general liability policy which Reliance issued to the Port. Reliance and the Port both moved for summary judgment.

The trial court granted the Port's motion and denied the motion of Reliance. The Fifth Circuit Court of Appeal found Reliance's policy exclusions were either ambiguous or inapplicable when construed according to the allegations of the plaintiffs' petitions. The court further found some allegations of damages claimed by the plaintiffs were not unambiguously excluded by the Reliance policy. Since these exclusions did not preclude every possibility of coverage, Reliance owed a defense to its insured. The court noted, "[a]n insurer is obligated to defend if the complaint discloses even a *possibility* of liability under the policy."<sup>3</sup>

The Court of Appeal also held because a conflict of interest existed between the insured and insurer, the insured was entitled to assume control of its defense and select its own counsel. Reliance, therefore, had to underwrite the reasonable defense costs incurred by its insured.

<sup>1</sup> 2001-0261 (La.App 4 Cir. 12/19/01), 805 So.2d 320.

<sup>2</sup> 01-888, (La.App. 5 Cir. 01/15/02), 807 So.2d 1010.

<sup>3</sup> *Smith*, at p.14 citing, *Jensen v. Snellings*, 841 F.2d 600, 612 (5 Cir. 1988).



## Update on Named Driver Exclusions

The Louisiana Supreme Court recently resolved a conflict among the Louisiana Courts of Appeal and held a named driver exclusion as to a household resident remained valid even though the excluded driver no longer resided in the household at the time of the accident.<sup>1</sup>

<sup>1</sup> *Williams v. Watson*, 2001-C-0495 (La. 10/16/01), 798 So.2d 55.

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