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Insurance

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plaintiff or the defendant claims the privilege against self incrimination the court may properly strike his complaint or answer and enter judgment against him. This interpretation indicates that the court has placed "the penalizing construction" on the Rule. Under this construction the Rule could operate to compel a defendant who has no choice in bringing the action or in taking the stand to either incriminate himself or to have judgment entered against him. Were Rule 42 actually to be applied so as to confront a defendant with this choice the question of the constitutionality of the Rule as applied could then arise.

It is doubtful whether applying Rule 42 so as to compel a defendant to make this choice in a state court would present a constitutional question under the fifth and fourteenth amendments of the U.S. Constitution.[7] However, the Rule so construed and applied could raise a substantial constitutional question under the prohibition against compulsory self incrimination contained in the Washington State Constitution.[8]

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INSURANCE

Accident—Determination of Number of Accidents in One Mishap. The concept of proximate cause was used by the Washington Supreme Court in *Truck Insurance Exchange v. Rohde*[1] to determine the number of "accidents" arising from a collision of four vehicles, in an action brought by the Exchange to determine its liability under a policy in which Rohde was the named insured.

Rohde, while driving under circumstances conceded to be negligent, collided with three motorcycles. Rohde's car crossed the center line and struck the first motorcycle, spun around and then collided with two other motorcycles traveling in echelon formation seventy-five feet apart. Rohde did not regain control of his car between the first and last impacts.

[7] The United States Supreme Court has held that the exemption from self incrimination is not a privilege or immunity of national citizenship guaranteed against abridgement by the states by the privileges and immunities clause of the fourteenth amendment, nor is it inherent in due process of law which the States are prohibited by the due process clause of the fourteenth amendment. Twining v. New Jersey, 211 U.S. 78 (1908).

[8] Art. I, § 9.

[1] 149 Wash. Dec. 451, 303 P.2d 659 (1956) *petition for rehearing denied* 149 Wash. Dec. 865 (1957).

The insuring agreement contained the standard limit of liability clause:

> Bodily Injury Liability each person $20,000.00 each accident $50,-000.00 Property Damage Liability each accident $5,000.00

Judgments had been entered against the insured in excess of the $50,000.00 aggregate limit for one accident. The lower court found in favor of the insured, Rohde, that there were three accidents. From this finding the Exchange appealed. The Exchange contended that all three impacts were the direct result of one negligent act and therefore constituted a single "accident" under the terms of the policy. Rohde based his opposing contention on the theory that the test was the *effect* upon the persons injured rather than the cause of the impacts.

An insurance policy is a contract and the intention of the parties controls.[2] The court found that the parties contemplated injury to more than one person or piece of property in one "accident". This construction will probably have effect most frequently where there was more than one person riding in a car when it is struck. There was nothing, however, confining the application of the limiting clause to persons riding in the same car. Nor was there any language adopting the number of causes of action against the insured arising out of one mishap as determinative of the number of "accidents". On this basis the court held that the parties contemplated injury to more than one person riding in different vehicles.

If an "accident" may involve more than one person and more than one vehicle, the question remains of determining what is the unifying factor which renders those separate injuries a single "accident" within the meaning of the policy. The Washington Supreme Court used the test of proximate cause. Relying on a California case, *Hyer v. Inter-Insurance Exchange of the Automobile Club of Southern California,*[3] and a Fifth Circuit case, *Saint Paul-Mercury Indemnity Co. v. Rutland,*[4] it held that all impacts resulting from one single, continuous act constitute one "accident".

In the *Hyer* case, under almost identical facts and similar liability limits, the California Court of Appeals considered the same contention that Rohde made in the instant case, i.e. that the effect to the person injured is the determining factor rather than the cause of the impact.

[2] Silen v. Silen, 44 Wn.2d 884, 890, 271 P.2d 674 (1954).
[3] 77 Cal. App. 343, 246 Pac. 1055 (1926).
[4] 225 F.2d 689 (5th Cir. 1955).

The court recognized this view but expressly limited its application to workmen's compensation cases, stating,[5]

> But as commonly used in Liability insurance policies, the word accident is predicated on an occurrence which is the *cause* of the injury. (Emphasis added)

In the *Rutland case,* the insured collided with a train causing injury to sixteen railroad cars belonging to fourteen separate owners. The Court of Appeals for the Fifth Circuit rejected the view that the number of "accidents" is determined by looking at the collision from the point of view of the persons whose property had been injured rather than the cause of the accident, stating,

> Considering only the policy involved here without reference to the previous judicial interpretations, we think it clear that the word accident in the disputed phrase was intended to be construed from the point of view of the *cause* rather than the *effect.*[6] (Emphasis added)

In the instant case the court held that a single proximate cause of all three impacts was Rohde's negligence. Applying the rule of the *Hyer* and *Rutland* decisions, the court determined that there was one "accident" under the terms of the policy. By following these cases the Washington Court has aligned itself with the majority view on the subject.

The dissent argued that the Washington court had committed itself to the *effect* test in *Jeffries v. General Casualty Co. of America.*[7] In that case the court said,[8] "We are not concerned with the cause of the accident but where it took place." However in the *Jefferies* case the question was not whether or not there was an accident, but where it took place. The case dealt with an exclusionary clause excepting "accidents" not happening on the insured's premises. The negligent hitching of trailer, which caused the accident, occurred on the insured premises, but the actual accident took place elsewhere. In the *Rohde* case, however, the question was how many accidents took place. The rejection of proximate cause for the determination of where an "accident" took place is not a basis for rejecting the use of proximate cause to determine the number of "accidents" in a multiple collision.

The dissent also believed that the word "accident" as used in the contract was ambiguous and that the contract should be construed

[5] 77 Cal. App. 344 246 Pac. at 1057.
[6] 225 F.2d at 692.
[7] 46 Wn.2d 543, 283 P.2d 128 (1955).
[8] 46 Wn.2d at 547, 283 P.2d at 131.

in favor of the insured in accordance with the normal interpretation of rules of insurance argeements.[9] The majority on the other hand, held that, reading the contract as a whole, the language used was not ambiguous, and that the intention of the parties and what they desired to accomplish was clearly expressed.

Of course, almost any language can be made ambiguous when subjected to close and unfriendly scrutiny. It is the opinion of the writer that the majority did give interpretation to the words as intended by the parties and that there was no ambiguity. In the common sense meaning of the word "accident" it is highly doubtful that anyone witnessing the events in this case would have said, "I just saw three accidents."

The *Rohde* case seems to commit the Washington Court to the proposition that, unless "accident" is otherwise defined in an insurance policy, the number of "accidents" arising from one mishap will be determined by looking to the cause of the impacts. If conduct of the insured is a single, proximate cause of injuries, uninterrupted by regained control by the insured, those injuries will be considered one "accident."

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LABOR LAW

Picketing—When Subject to Injunction as Coercive. In *Audubon Homes, Inc. v. Spokane Building and Construction Trades Council,*[1] the Washington Supreme Court determined the fate of organizational picketing. The Court ruled that stranger picketing—picketing by a union which has no members employed by the employer being picketed —is coercive and unlawful. It makes no difference whether its purpose is to force the employer to coerce his employees into joining the union, or to force the employer out of business because his employees had not joined the union.

Plaintiff, who was engaged in building new homes in Spokane, employed eleven non-union workers. Defendant union made an unsuccessful attempt to organize the workers and finally resorted to picketing the construction site with banners reading:

Non-Union Employees Working on This

[9] Guaranty Trust Co. v. Continental Life Ins. Co., 159 Wash. 683 294 Pac. 585 (1930).

[1] 149 Wash. Dec. 144, 298 P.2d 1112 (1956).