Nebraska Law Review

Volume 37 | Issue 2 Article 8

1958

Insurance—Consequences of Erroneous Filing of an SR-21 Form

Donald R. Wilson
University of Nebraska College of Law

Insurance—Consequences of Erroneous Filing of an SR-21 Form

In recent years a large majority[1] of state legislatures have enacted Motor Vehicle Safety and Financial Responsibility Laws.[2] In general, this legislation requires both the owner and operator of a vehicle involved in an accident, where the property damage is over $100 or where there is a personal injury, to file some type of security with the commissioner of insurance. If the operator or owner has automobile liability insurance, the insurer is required to file a notice of the coverage with the commissioner. If the insurer does not file this form, known as an SR-21, within a specified time, both the operator's license and the owner's registration are revoked.

The specific problem here is whether the insurer who files such a notice admitting coverage as to a certain accident, becomes liable on such policy even though it would not have been liable had it not filed the form. In nearly all automobile liability policies there is a clause limiting coverage to the named insured and anyone who has his permission to drive the vehicle.[3] In *Prisuda v. General Casualty Company*,[4] the plaintiff was injured by an automobile owned by the insured but driven by a boy who did not have the permission of the owner.[5] The defendant insurer mistakenly filed

[1] All states have passed some type of Safety Responsibility Law and 41 of them are substantially like those of Wisconsin, Iowa and Nebraska, which are discussed herein.

[2] Since these acts have been in effect the number of uncompensated injuries has gone down along with the number of uninsured motorists. See Aberg, Effect of, and Problems Arising from Financial Responsibility Laws, A.B.A., Proc. Ins. Law, §§ 45, 47 (1944).

[3] A typical example of an exclusion or limitation clause in an automobile liability policy of an authorized Nebraska insurance carrier; "Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word 'insured' includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured of such spouse or with the permission of either."

[4] 1 Wis. 2d 166, 83 N. W. 2d 739 (1927). This is the principle case and is hereinafter referred to as the *Prisuda* opinion.

[5] Prisuda v. General Casualty Co., 272 Wis. 41, 74 N. W. 2d 777 (1956). This case decided only the coverage issue.

an SR-21 as a notice of coverage for both the operator and the owner. It believed the operator had the permission of the owner, and filed in compliance with the Wisconsin Statute:[6]

> Upon receipt of notice of such accident, the insurance company which issued such policy or bond shall furnish for filing with the commissioner a written notice that such policy or bond was in effect at the time of such accident.

After discovering its mistake, the insurer sought to recover the SR-21 but the commissioner of insurance denied their request. *Held,* the insurer is liable because it filed the SR-21 even though it might not have been liable had it failed to file.[7] The *Prisuda* case is based primarily on previous Wisconsin cases. *Laughnan v. Griffiths*[8] was the first and was followed in less than two years by *Behringer v. State Farm Mutual Auto Insurance Company.*[9] These cases, on facts similar to those in *Prisuda,*[10] decided that the filing of an SR-21 precludes the insurance carrier from denying the statements made on the form.

These Wisconsin decisions represent the only body of cases in the United States dealing with the effect of an erroneous filing of an SR-21. The effect of these decisions is most certain to cause insurance carriers to be more prudent when investigating accidents and therefore the cases do implement public policy. These cases will undoubtedly be referred to should this problem arise in other jurisdictions. It is most important, then, that they form a sound basis for a rather uniform law.

[6] Wis. Stat. Ann. § 85.09 (5) (d) (Reissue 1957).

[7] May the insurance company recover in a subsequent action against the operator? Would the doctrine of unjust enrichment apply? Would the *Prisuda* case be stare decisis for such a suit? These questions all remain unanswered following the *Prisuda* opinion. To allow the insurance carrier recovery, would be to put the burden on the true wrongdoer. Such a result would still allow the injured party full compensation and also grant the company an opportunity for indemnification. Such quasi-contractual relief might be allowed under the doctrine of unjust enrichment. See Restatement, Restitution § 1. It must be remembered that the purpose of the Safety Responsibility Act is to compensate the injured, (See Laughnan v. Griffiths, 271 Wis. 247, 73 N. W. 2d 587 (1955)), and not to punish those who make mistakes while attempting to conform to the statute. The negligent operator is the true wrongdoer.

[8] 271 Wis. 247, 73 N. W. 2d 587 (1955).

[9] 275 Wis. 586, 82 N. W. 2d 915 (1957).

[10] 1 Wis. 2d 166, 83 N. W. 2d 739 (1957).

I. PROBLEMS OF INTERPRETATION

A.

Although the court, in the *Prisuda* case, said reliance was not a material issue and thereby destroyed the possibility of estoppel, this doctrine should be discussed in regard to the present problem. The court was justified in disallowing reliance on the part of the plaintiff. In the *Behringer* case[11] the court spoke on the purpose of filing an SR-21 and said:

> . . . the SR-21 is filed to protect such named insured as owner of the insured vehicle, against having his vehicle registration suspended.

The same purpose applies to the preservation of the operator's license. If there is any reliance it is only on the part of the State. But this does not mean that there is reliance on the part of the injured party who is suing for damages. The injured party cannot make use of the estoppel between the State and the insurance carrier. Even if he went to the office of the commissioner and looked at the SR-21 he could not plead estoppel. At the time of the accident he had a cause of action for damages and after looking at the form this cause of action is unchanged. Estoppel requires a justifiable reliance and a change of position due to the reliance.[12] The requirements are not met in this situation.

B.

The *Prisuda* opinion mentions but one statute, section 85.09 (5) (d)[13] but this section, as well as the rest of the act, does not contain an express provision of the consequences of filing an SR-21. Section 85.09 (5) (b) (3),[14] although not cited by the court, is susceptible of an interpretation that would justify the *Prisuda* decision. Subsection (3)[15] states that the security clause shall not apply:

> To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond.

The court may be seeking to implement this section. The filing of

[11] 275 Wis. 586, 82 N. W. 2d 915, 919 (1957).

[12] Coursey v. International Harvester Co., 109 F. 2d 774 (10th Cir. 1940); G. Amsinck & Co. v. Springfield Grocer Co., 7 F. 2d 855 (8th Cir. 1925).

[13] Wis. Stat. Ann. (Reissue 1957).

[14] Ibid.

[15] Ibid.

the SR-21, as notice of coverage of the operator, could be construed as "any other form of liability insurance," in the judgment of the commissioner. It is also arguable that the SR-21 is a type of bond guaranteeing the payment of any possible damages. The use of the word "judgment" in this section implies the insurer might be able to file a reservation of rights and let the commissioner decide the coverage issue. No express provision for reservations is found in the statutes and such reservations have not been accepted in Wisconsin,[16] but it would seem that if the insurer had provided the commissioner with all the facts it could not be estopped from asserting its regular policy defenses.

C.

It is clear that the legislature has been silent as to the effect on the insurance contract of the filing of an SR-21 as notice of coverage. In a similar case where an SR-21 was involved, the United States District Court[17] states that the silence of the legislature is significant and that it would appear that there was no intent to make the filing change the contract rights of any party. The Safety Responsibility Statute of Iowa[18] where this case took place is almost identical to the Wisconsin Statute.[19] Thus the United States District Court and the Wisconsin Supreme Court have answered the question in disagreement. The opinion advanced by the District Court seems to be a correct one.

The Wisconsin decision[20] implies that the effect of filing an SR-21 is to guarantee payment of damages by the insurer. But the word "guarantee" is not used in the Statute.[21] The Wisconsin court

[16] The Wisconsin Commissioner of Motor Vehicles has generally made it a policy to refuse to accept any type of conditions or reservations that may accompany an SR-21. The statutes of Wisconsin and Nebraska do not set up a standard for the withdrawal of a previously filed SR-21. Therefore the respective Commissioners dictate the rules for withdrawal. The Wisconsin Commissioner will not return an SR-21 while the present Nebraska Commissioner of Financial Responsibility will do so if a valid reason is offered. Mistake is recognized as a valid reason for withdrawal of an SR-21. Interview with Maurice M. Jacobsen, Supervisor of Financial Responsibility in Nebraska.

[17] Hoosier Gas Co. v. Fox, 102 F. Supp. 214, 229 (D. C. Iowa 1952).

[18] Iowa Code Ann. §§ 321A.4 to 321A.11.

[19] Wis. Stat. Ann. § 85.09 inclusive (Reissue 1957).

[20] 1 Wis. 2d 166, 83 N. W. 2d 739 (1957).

[21] Wis. Stat. Ann. § 85.09; and see Pulvermacher v. Sharp, 275 Wis. 371, 82 N. W. 2d 163 (1957) for a discussion of the "guarantee" theory. This case, although distinguished by the court, seems inconsistent with the *Laughnan* and *Prisuda* cases.

may have reasoned that such filing is proof of security, but proof of security is provided for in a separate section of the statutes.[22] Proof of security is required before a driver or an owner can operate a car under Financial Responsibility legislation, whereas the SR-21 form is a feature of the Safety Responsibility law which deals with security after an accident. There is a great difference in these two statutes: "Security (the safety responsibility phase) . . . is retrospective in operation. Proof of financial responsibility . . . is prospective in operation. . . ."[23]

The District Court is not alone in its interpretation. The Wisconsin Attorney General,[24] in an opinion requested by the Commissioner of Insurance, suggested that the filing of a notice of insurance in conformity with the Safety Responsibility law does not result in absolute coverage. The provision that the filing of notice of insurance in conformity with the Safety Responsibility section does acknowledge that a policy of insurance was in effect at the time of the accident but it does not preclude the insurer from relying on its policy defenses. The Attorney General also states that an attempt on the part of the Motor Vehicle Commissioner to imply from such filing absolute coverage would be to deny to the insurer the benefit of certain sections of the Wisconsin Statutes which provide for certain limitations and restrictions of liability of insurance companies.[25]

D.

The interpretation of the Safety Responsibility Law used by the Wisconsin court results in a windfall to the plaintiff. Without this holding, the plaintiff has only a cause of action against the driver of the vehicle which caused his injuries. Now the plaintiff has an election; if the defendant driver is unable to respond in damages, the plaintiff has the opportunity to recover from the insurance company which would be financially able to meet the judgment.

E.

The defendant operator also receives a windfall. Without paying the usual insurance premiums, the operator is awarded a liability policy by the court that insures him in this particular accident. But, there is no contractual relationship between the operator and

[22] Wis. Stat. Ann. §§ 85.09 (17) to (30) (Reissue 1957).

[23] Hoosier Gas Co. v. Fox, 102 F. Supp. 214, 229 (D. C. Iowa 1952).

[24] 35 Opin. Atty. Gen. 210 (1946) Wisconsin.

[25] Wis. Stat. Ann. § 205.30.

the insurer. The court actually creates a contract for the parties. But the very terms of the policy exclude this coverage and the insurer should not even be made a party to the suit for damages. The legal dispute is between the injured party and the operator, who, as a matter of fact, is uninsured. The proposition that insurance contracts cannot be created in this manner has been upheld by the Wisconsin Supreme Court.[26] This same proposition is the basis for the dissent of Justice Gehl, joined by Justice Steinle, in *Laughnan v. Griffiths*.[27] It is submitted that the dissent is well taken and should be the law in the absence of statute expressly to the contrary.

By precluding the insurer from denying the statements made on the SR-21, the court defeats the intent of the parties. The insured owner knows the limitations of her insurance policy. She knew that she could not include the operator under the policy unless she gave her permission, yet she chose not to do this. It was found in the *Prisuda* case[28] that the operator did not have even the implied permission of the owner to drive the automobile. It appears that the court is aiding the operator where the owner chose not to do so.

II. A POSSIBLE SOLUTION

The Wisconsin legislature has seen the problem and has attempted to remedy the situation by introducing and passing Bill 116s,[29] which revises the old system under the Safety Responsibility Law and wisely does away with the SR-21 form. This bill repeals and recreates the sections of the Wisconsin statutes discussed herein. The new law[30] provides that after receipt of a report of an accident, which is to contain a statement relating to the insurance in effect at the time of the accident, the commissioner shall send to the insurance company that part of the report which pertains to an automobile liability policy or bond. The insurance company has 30 days in which to notify the commissioner of the correctness of the statement of insurance contained in the report. The company may notify the commissioner that the policy covered the operator only, the owner only, or was not in effect as to either of them. The commissioner shall asume the policy was in effect as to both owner and

[26] Maryland Casualty Co. v. Industrial Comm., 230 Wis. 363, 284 N. W. 36 (1939); Macomber v. Minn. F & M Ins. Co., 187 Wis. 432, 204 N. W. 331 (1925).

[27] 271 Wis. 247, 73 N. W. 2d 587 (1955).

[28] Prisuda v. General Casualty Co., 272 Wis. 41, 74 N. W. 2d 777 (1956).

[29] Wis. Session Laws (1957), c. 545.

[30] Ibid.

operator unless he receives a notice to the contrary from the insurance company. The company may correct the report only within 30 days and only if it files an affidavit signed by the owner stating that the operator did not have the required permission to operate the vehicle. Where the insurance company has failed to notify and this failure was caused by fraud, the company has 30 days after the discovering of the fraud in which to notify the commissioner of the correction. There is a further provision that nothing in this bill shall impose any obligation not assumed by the company in its policy, except where no correction is made within 30 days, or unless fraud is involved. The failure to correct estops the insurance company from using its policy defenses such as failure to give permission, purpose of use, or use beyond certain limits.

The new law is clearer but this does not mean it is entirely fair and correct. The insurance company is still without the benefit of a court decision as to coverage and cannot change the report after 30 days even if a court should, in the meantime, find there was no coverage.

It is obvious that the legislature was prompted toward this enactment because of the recent Wisconsin Supreme Court cases.[31] In all but one of the other states the question has not arisen.[32] This does not mean that the deficiency in the various Safety Responsibility Laws will never be a problem. More and more SR-21s are being filed[33] and more than likely other states will some day see the gap in this legislation and try to fill it like the Wisconsin legislature has done. The law is now fairly clear in Wisconsin and the insurance companies are confronted by legislation that, although it may not be for their benefit, sets up a certain procedure that warns them that they may be estopped from asserting their policy defenses under certain situations.

III. APPLICATION TO NEBRASKA

The next question that arises in the minds of Nebraska insurance companies and their attorneys is: What would and should happen if this problem arose in our state? The Nebraska and Wis-

[31] Laughnan v. Griffiths, 271 Wis. 247, 73 N. W. 2d 587 (1955); Behringer v. State Farm Mut. Auto Ins. Co., 275 Wis. 586, 82 N. W. 2d 915 (1957); and Prisuda v. General Casualty Co., 1 Wis. 2d 166, 83 N. W. 2d 739 (1957).

[32] Hoosier Gas Co. v. Fox, 102 F. Supp. 214 (D. C. Iowa 1952) was an Iowa Case.

[33] In Nebraska the exact figures are not available but the Accident Record Bureau reports that accidents and injuries are up 4 to 5 per cent and this, along with increased number of automobile liability policies issued, would necessitate a great many more SR-21's being filed.

consin Safety Responsibility Laws were very similar before the recent changes effected in Wisconsin.[34] Both the acts set up a commissioner and call the security form an SR-21. The Nebraska statute even has a section similar to the one in Wisconsin where the commissioner's judgment plays such a significant part.[35]

There are two important differences in Wisconsin and Nebraska laws. First, the Wisconsin statutes allow an insurance company to be brought directly into the suit as a party defendant.[36] This is not allowed in Nebraska.[37] The injured party, in these cases, would have to sue the operator and then the insurer would be liable for any loss incurred, subject to the terms of the insurance contract. Second, in Wisconsin the SR-21 is allowed to be used in evidence.[38] The Nebraska statute states that neither the findings of the department nor the reports required by the statute shall be referred to, ". . . nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages."[39] From this statute it could be suggested that in Nebraska the SR-21 could not be used in evidence and therefore the plaintiff could not use the doctrine of estoppel and could not speak of the filing as an admission against interest. The only way the plaintiff could recover would be to prove that the operator was included within the policy coverage and the exclusions and limitations provisions of the liability policy were not violated. It may be that this Nebraska statute applies only in the action between the injured party and the defendant in determining liability and damages.

The Wisconsin statute[40] could form the basis for a more equitable proposal. The deficiency in the Wisconsin statute seems to be in its treatment of the insurer's policy defenses. If the commissioner's discretion could be expanded and the insurance carrier allowed to file a memorandum or reservation of rights when there

[34] Neb. Rev. Stat. §§ 60-501 to 60-569 (Reissue 1952); Wis. Stat. Ann. § 85.09.

[35] Neb. Rev. Stat. § 60-508 (Reissue 1952).

[36] Wis. Stat. Ann. § 260.11 (Reissue 1957).

[37] It is generally recognized that the liability of an insurer and an insured is contract and tort respectively and therefore statutory permission is required to sustain their joinder. Smith Stage Co. v. Eckert, 21 Ariz. 28, 184 Pac. 1001 (1919), 7 A.L.R. 995 (1920). Nebraska has no such provision and the usual no-action provision in liability policies will prevail. See 22 Marq. L. Rev. 75 (1938) for further discussion on this question.

[38] Wis. Stat. Ann. § 85.09 (11) (Reissue 1957).

[39] Neb. Rev. Stat. § 60-515 (Reissue 1952).

[40] Wis. Session Laws (1957), c. 545.

is a question as to coverage, the same result would be accomplished with a minimum of hardship on either party. The commissioner would decide the coverage issue and the company would have a specified period of time in which to appeal through regular judicial channels or they would then be estopped from asserting their policy defenses.

If these proposals were incorporated in a new statute the public policy would be served in the same manner but the insurance company would have the opportunity of a court decision as to coverage. It is true that many companies would file a reservation but claims without basis would quickly be decided and the coverage problem, if very questionable, usually would come up in the judicial system, without such a statute.

Under any statute the consequences of filing an SR-21 should be set out in a clear and equitable manner. The increased usage of these forms points to the fact that this problem may soon become very serious in Nebraska.

Donald R. Wilson, '60