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Judgment Against Insured Is Conclusive Proof of Amount of Claim Against Dissolved Insurer—*Commonwealth ex rel. Woodside v. Seaboard Mut. Cas. Co.**

Plaintiffs, injured in an automobile accident, brought suits against an insured taxicab company. Before the case came to trial, the insurance commissioner found the insurer insolvent. In a separate proceeding he obtained a court order dissolving the insurer, enjoining the prosecution of any legal action against the insurer's assets, and providing for the filing of proof of claims with the insurance commissioner. The insurer's attorney, who had entered an appearance on behalf of the taxicab company, withdrew, and in an undefended action the plaintiffs recovered judgments against the cab company totalling nineteen thousand dollars. Unable to obtain execution on these judgments and enjoined from proceeding by writ of attachment against the insurer, plaintiffs filed claims for the nineteen thousand dollars with the insurance commissioner. After presentation of plaintiffs' evidence, the commissioner, acting as a liquidator,[1] concluded that the claims were exaggerated and allowed 2,500

* 415 Pa. 72, 202 A.2d 42 (1964) [hereinafter cited as principal case].

1. Sections 501-11 of the Insurance Department Act, PA. STAT. ANN. tit. 40, §§ 201-11 (1954), provide for the liquidation of insolvent insurers by the insurance commissioner. Statutory provisions vesting the liquidation of insurers exclusively in insurance commissioners are becoming increasingly common because court-appointed receivers have tended to waste assets. Although the technical duties of statutory liquidators vary, their general functions are analogous to those of receivers in bankruptcy. See generally 2 COUCH, INSURANCE 729-54 (2d ed. 1959).

dollars.[2] The Court of Common Pleas affirmed, holding that the judgments were not binding on the liquidator.[3] On appeal to the Supreme Court of Pennsylvania, *held*, reversed, three justices dissenting. The amount of a judgment against a tortfeasor conclusively establishes the amount of the injured party's claim against the tortfeasor's dissolved insurer when the cause of action against the tortfeasor arises prior to the insurer's dissolution.

Although insurance has traditionally been subject to comprehensive state regulation,[4] the liquidation sections of many state insurance codes provide little guidance in administrative procedure.[5] In those states, claim allowance procedures are primarily set up according to the insurance commissioner's discretion. Commissioners typically consider it within their authority to determine independently the merit and amount of each claim.[6] However, the commissioner's wide procedural latitude may be limited by the policy underlying the doctrine of collateral estoppel: a matter should be litigated only once between the same parties.[7] Thus, when a claim is based on a judgment against an insolvent insurer prior to receivership, the liquidator is obligated to honor the claim in the amount of the judgment and is precluded from substituting an independent evaluation.[8] The court in the principal case extended the collateral estoppel effect of the damage award by binding an insurance com-

2. When, as in the principal case, the liquidation is of a mutual insurance company issuing assessable policies, the full amount allowed by the liquidator is generally recovered by the creditor. If the liquidated assets are insufficient to satisfy all claims, policyholders are assessed for the balance. See Boesel & Fieldman, *Liquidation of Mutual Insurance Companies in Wisconsin*, 1951 WIS. L. REV. 493, 509-13; Klaprat, *Discussion of Liquidations of Insurance Companies*, in 2 SYMPOSIUM ON INSURANCE AND GOVERNMENT, UNIVERSITY OF WISCONSIN, pt. 3, at 73 (1960). In the liquidation of other insurers and in bankruptcy proceedings, however, if the assets are insufficient claimants receive a pro-rated share determined by the allowance and their priority. See generally COLLIER, BANKRUPTCY § 65 (14th ed. 1964); MACLACHLAN, BANKRUPTCY §§ 301-03 (1956).

3. Commonwealth *ex rel.* Woodside v. Seaboard Mut. Cas. Co., 30 Pa. D. & C.2d 706 (C.P. 1963).

4. See generally 2 COUCH, *op. cit. supra* note 1, at 434-598; KIMBALL, INSURANCE AND PUBLIC POLICY (1960); PATTERSON, THE INSURANCE COMMISSIONER IN THE UNITED STATES—A STUDY IN ADMINISTRATIVE LAW AND PRACTICE (1927); Kimball, *The Purposes of Insurance Regulations—A Preliminary Inquiry in the Theory of Insurance Law*, 45 MINN. L. REV. 471 (1961).

5. The Pennsylvania Insurance Commissioner's claim allowance procedure is based on § 506 of the Insurance Department Act, PA. STAT. ANN. tit. 40, § 206 (1954), which provides broadly that liquidation shall be "by and under the direction of the Insurance Commissioner . . . ." See Boesel & Fieldman, *supra* note 2, for an analysis of judicial discretion in interpreting a "skeletal liquidation statute."

6. See Bennett, *Liquidations of Insurance Companies*, in 2 SYMPOSIUM ON INSURANCE AND GOVERNMENT, UNIVERSITY OF WISCONSIN, pt. 3, at 1 (1960). See also Beach, *Judgment Claims in Receivership Proceedings*, 30 YALE L.J. 674 (1921).

7. See Moore, *Res Judicata and Collateral Estoppel in Bankruptcy*, 68 YALE L.J. 1, 27-38 (1958).

8. See Annot., 168 A.L.R. 671 (1947); Annot., 96 A.L.R. 485 (1935). See also 3 COLLIER, *op. cit. supra* note 2, § 63.

pany which was not a party to the original proceeding and which was not even in existence at the time the judgment was rendered.[9]

The Pennsylvania Supreme Court relied primarily upon *Riehle v. Margolies*,[10] a bankruptcy case[11] in which a claimant based the amount of his claim on a judgment against the bankrupt corporation; the receiver decided that the claim should be tried de novo, noting that although the cause of action had arisen prior to the commencement of the receivership proceedings, the judgment had been rendered after the proceedings had begun. The United States Supreme Court unanimously held that the receiver was not entitled to a hearing de novo, and that the claim should have been allowed in the amount of the judgment. The dissent in *Seaboard* emphasized the distinctions between the principal case and *Riehle*.[12] The cause of action and judgment in *Riehle* were against a corporation in receivership, but in *Seaboard* they were against a company not involved in the liquidation proceedings;[13] in addition, the judgment in *Seaboard* was rendered not merely after a receiver's assumption of control, but after dissolution. The significance of these distinctions, however, is questionable. Since an insurer's contractual obligation is to pay the insured's liability,[14] it seems illogical to suggest that the amount of the judgment is not binding upon the insurer, and therefore upon the liquidator, since the insurer's contractual right to defend the insured[15] is one which the liquidator could have asserted to protect the assets. In addition, there is case authority in partial support of the majority position. In *In re International Reins. Corp.*,[16] under facts almost identical to *Seaboard*, the Delaware court, relying on the insolvency clause of the insurance contract,[17] held that

9. Plaintiffs argued that, under the Insurance Department Act § 505, PA. STAT. ANN. tit. 40, § 205 (Supp. 1963), the suspension of the insolvent company's operation did not operate as a dissolution. Brief for Appellant p. 11. However, the court order had been drafted under § 206, which specifically provides for dissolution.

10. 279 U.S. 218 (1929).

11. The Bankruptcy Act § 4, 30 Stat. 547 (1898), 11 U.S.C. § 22 (1958), specifically excludes insurance companies from its coverage. Nevertheless, since the liquidation of insurance companies is in many respects analogous to bankruptcy proceedings, courts often do not distinguish between the two actions for purposes of precedent and policy. See, *e.g.*, *In re* International Reins. Corp., 29 Del. Ch. 34, 48 A.2d 529 (1946); Commissioner of Ins. v. Massachusetts Acc. Co., 314 Mass. 558, 50 N.E.2d 801 (1943); Commonwealth v. Union Cas. Ins. Co., 287 Pa. 6, 134 Atl. 435 (1926).

12. Principal case at 80, 202 A.2d at 45-46.

13. This distinction in many instances would be determinative since application of the doctrine of collateral estoppel presupposes that the parties in both actions are the same. See RESTATEMENT, JUDGMENTS §§ 79-111 (1942), for an explanation of the general rule and the exceptions.

14. See generally BRAINARD, AUTOMOBILE INSURANCE 69-99 (1961).

15. *Id.* at 120-38.

16. 29 Del. Ch. 34, 48 A.2d 529 (1946).

17. Under an indemnity theory, the injured party recovers from the tortfeasor who is then reimbursed by the insurer. Arguably, when the tortfeasor is insolvent, the injured party recovers nothing and the tortfeasor suffers no loss, so the insurer need

the injured party could proceed directly against the receiver to recover the amount of the judgment.[18]

Nevertheless, the decision in the principal case has created practical problems. Since the insurer's corporate existence ends upon dissolution and it is no longer able to defend suits against those it insured, the possibility of uncontested suits and collusive judgments is increased. It is imperative for the insurer to be represented at trial in order to protect the interests of its policyholders, stockholders, and creditors. Because of the nebulous considerations affecting awards for pain and suffering, appellate courts often refuse to re-evaluate tort damages even when the judgment appears excessive.[19] In the principal case the attorney representing the cab company withdrew, and a conservative interpretation of the evidence indicates that damages for pain and suffering constituted more than eighty per cent of the total judgment.[20] Yet the Pennsylvania Supreme Court rejected the commissioner's argument that the judgments were excessive, not-

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not reimburse. Insolvency clauses prevent insurers from thus escaping liability. See generally BRAINARD, *op. cit. supra* note 14, at 132.

Insolvency clauses are mandatory in Pennsylvania. The relevant provisions of PA. STAT. ANN. tit. 40, § 117 (1954) are as follows:

> "No policy of insurance against loss . . . resulting from [an] accident . . . for which the person insured is liable . . . shall hereafter be issued . . . in this State . . . unless there shall be contained within such policy a provision that the insolvency . . . of the person insured shall not release the insurance carrier from the payment of damages . . . and stating that in case execution against the insured is returned unsatisfied [because of insolvency] in an action brought by the injured person . . . then an action may be maintained by the injured person . . . against [the insurer] . . . for the amount of the judgment in said action, not exceeding the amount of the policy."

18. *In re* International Reins. Corp., 29 Del. Ch. 34, 44, 48 A.2d 529, 535 (1946). The value of *International* as precedent is somewhat limited since the receiver was appointed, not upon dissolution of the insurer, but rather to continue its existence. Nevertheless, the case would seem to answer the dissent's first distinction.

International was followed in Collins v. Dacus, 211 Ga. 779, 89 S.E.2d 198 (1955). It is not clear in *Collins* whether the insurer was dissolved or merely suspended. The question is moot, however, since Georgia provides by statute for the continuation of all corporations for three years following dissolution. GA. ANN. CODE § 22-1874 (Supp. 1963).

19. See MCCORMICK, DAMAGES § 88 (1935).

20. Brief for Appellant, pp. 21-23, 11a, 14a, 24a:

Medical Expenses			
Plaintiff #1	$ 359.00		
Plaintiff #2	425.00		
		$ 784.00	4.2%
Loss of employment			
Plaintiff #1	910.00		
Plaintiff #2	845.00		
		1,755.00	9.2%
Pain and suffering			
Plaintiff #1	7,731.00		
Plaintiff #2	8,730.00		
		16,461.00	86.6%
Judgments			
Plaintiff #1	9,000.00		
Plaintiff #2	10,000.00		
		19,000.00	100.0%

ing simply that the argument was not supported by the record.[21] Legislation requiring or permitting the insurance commissioner as liquidator to continue the defense of suits pending against insureds would solve the problem of representation, but payment of attorneys' fees would further deplete the limited assets.[22] Furthermore, any possibility of administrative expediency is negated if the statutory liquidator is forced to wait for judicial determination of the extent of liability.[23] This problem, which was not readily apparent in the principal case because the judgment was rendered within the period established by the commissioner for the filing of proof of claims, might be solved by allowing claimants to use judgments as proof of claims only if the judgments are rendered prior to an arbitrary cut-off date. While this arbitrariness could be prejudicial where crowded dockets delay adjudication, some adversity is inherent in any liquidation proceeding.

Since legislative clarification seems desirable, Pennsylvania might consider eliminating the problem at its source rather than attempting to patch, in piecemeal fashion, the difficulties involved. New York has provided that judgments against an insured taken after the date of the liquidation order are not to be considered as evidence of liability or of the amount of damages.[24] Although imposing an additional burden on the injured party, New York does not prevent him from having his claim allowed by the commissioner after a hearing de novo.[25] Fear of arbitrary administrative evaluation is allevi-

21. Principal case at 75, 202 A.2d at 44. By coincidence, the trier of fact who awarded the $19,000 judgments was Judge Henry X. O'Brien, at present an associate justice of the Pennsylvania Supreme Court. Had Justice O'Brien, who voted with the majority in the principal case, been excused from the appellate decision, presumably the statutory liquidator's $2,500 allowance would have been affirmed by an equally divided court.

22. The Michigan Insurance Commissioner, for example, has no attorneys on his staff, and legal services in connection with liquidation proceedings must be paid for on a fee basis from the company's assets. Interview with Michigan Insurance Commissioner in Ann Arbor, Michigan, Jan. 22, 1965.

23. To expedite the liquidation process in Michigan, claim adjusters attempt to settle all disputes and obtain releases from satisfied claimants. In addition, partial dividends are declared periodically as assets are liquidated. Interview with Michigan Insurance Commissioner in Ann Arbor, Michigan, Jan. 22, 1965. Nevertheless, the complexity of insurance lends itself to delay. Justice Musmanno characterized the delay in the principal case (from 1952 to 1961) as "bureaucratic Rip Van Winkleism" in an unpublished opinion written prior to reargument.

24. N.Y. INS. LAW § 544(4). This approach has also been adopted by Arizona, ARIZ. REV. STAT. ANN. § 20-639(C) (1956); Arkansas, ARK. STAT. ANN. § 66-4829(3) (Supp. 1963); Florida, FLA. STAT. ANN. § 631.291(3) (1960); Maryland, MD. ANN. CODE art. 48A, § 160(c) (1964); and Oklahoma, OKLA. STAT. tit. 36, § 1829(C) (1958).

25. N.Y. INS. LAW § 544(4). The Pennsylvania Insurance Commissioner has reacted to the principal case by refusing to accept the claims of injured third parties. Refusal is based on the Insurance Department Act § 510, PA. STAT. ANN. tit. 40, § 210 (1954), which provides for distribution of assets to creditors, policyholders, and stockholders. The commissioner contends that third parties are not included within the three categories of section 510. Letter from Cecil P. Harvey, Special Assistant Attorney

ated by the claimant's right to a judicial appeal. Centralization of control in a well-qualified insurance commissioner would place more responsibility for decision-making in the governmental agency best able to evaluate the interests of all parties concerned.

General of the Commonwealth of Pennsylvania, November 18, 1964. It would seem arguable, however, that when the insurer agrees to pay on behalf of the insured, a creditor of the insured is likewise a creditor of the insurer.