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## COMMENTS

### THE MEANING OF THE WORD "ACCIDENT" IN A LIABILITY INSURANCE POLICY

#### THE PROBLEM

The recent decisions of *St. Paul-Mercury Indemnity Co. v. Rutland*<sup>1</sup> and *Truck Ins. Exchange v. Rohde*<sup>2</sup> have highlighted a somewhat disturbing problem with which other jurisdictions may soon be faced. The problem, simply and directly stated, is, what is the meaning of the words "each accident" employed in the standard third-party liability insurance policies now in uniform use in this country. The problem can be readily appreciated in a situation where six automobiles with eighteen passengers are involved in a collision due solely to the negligence of one insured, possessor of a \$10,000-\$20,000 and \$5,000 third-party liability policy.<sup>3</sup> Conceivably there could be twenty-four claimants, with claims totaling far in excess of the policy limit. Is the insured limited by the "\$20,000 each accident" provision in the policy, in the settlement of these claims, or was the insured involved in an accident each time a different claimant's interests were affected? In other words, through whose eyes do we view this phrase "each accident"—through the eyes of the insurer—one act of negligence by the policyholder as proximate cause—hence one acci-

1. 225 F.2d 689 (5th Cir. 1955).
2. — Wash. 2d —, 303 P.2d 659 (1956).
3. The standard third-party liability insurance policy reads:

Coverage	Limit of Liability
Bodily injury liability: each person	\$10,000
each accident [occurrence]	20,000
Property damage liability: each accident [occurrence]	5,000

(Many policies employ the word "accident" throughout; others, the term "occurrence"; while still others refer to "occurrence" for bodily liability and "accident" for property liability. The figures used are optional.)

#### CONDITIONS

##### Limits of Liability

The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person in any one accident [occurrence]; the limit of such liability stated in the declarations as applicable to "each accident" [occurrence] is, subject to the above provision respecting each person, the total limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons in any one accident [occurrence]. See, e.g., *Truck Ins. Exchange v. Rohde*, — Wash. 2d —, —, 303 P.2d 659, 660-61 (1956).

dent; or through the eyes of those whose person or property is involved—hence multiple accidents? Quite obviously the answer to this question in effect will determine the extent to which, by a contract of insurance, the insurer has indemnified the policyholder against liability to third persons, that is, whether the stated figures in a policy of \$10,000-\$20,000 and \$5,000 are controlling or whether the limit of coverage might be two or three or six times these figures in a general catastrophe.

Under all state regulatory laws, there is a direct relationship between policy coverage and premium rates; rates must not be unfairly discriminatory, meaning that no one insured may be given more coverage than he purchased at the approved price. Accordingly, it is of great importance to the insuring public and to the casualty insuring industry that the words "each accident" be properly interpreted by the courts. The answer to the over-all problem would naturally seem to lie in the meaning of "accident" as used in the policy itself. However, the most significant fact derived from a reading of the policy is that the term "accident" or "occurrence" is not defined therein.<sup>4</sup>

#### CONSTRUCTION OF THE POLICY

The first step to the solution of the problem is the realization that the insurance policy is a contract subject to all the rules of interpretation that apply to ordinary contracts, that is, the intentions of the parties must be ascertained from the terms of the contract as they are understood by the average man.<sup>5</sup> To the reasonable man, when a passenger train negligently smashes into a freight train—825 persons injured, 32 box cars belonging to various shippers damaged—a terrible accident has taken place; but one accident, not 825, nor

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4. For purposes of this discussion there is no pertinent distinction between the terms "accident" and "occurrence." The word "occurrence," being more comprehensive in scope and purpose than the word "accident," includes those injuries and damages caused by exposure to conditions over a period of time such as vibrations, fumes, etc., as well as intentional acts and conduct. This distinction is discussed in detail in the *Insurance Law Journal*. See Berger, Coverage under "Occurrence Clause," *Ins. L.J.*, May 1954, p. 305. However, the terms when used in the same insurance policy, have proved confusing to more than one court. See, e.g., *Allen v. London Guarantee Co.*, 28 T.L.R. 254 (K.B. 1912). In our discussion of negligently caused injuries the words "accident" and "occurrence" necessarily have the same meaning, scope, and application.

5. "When construing the terms of a policy of insurance, the court seeks to determine the intent of the parties, and the general rules governing the construction of contracts must be applied. The people to whom policies of insurance are issued consider and understand the terms in their popular and ordinary meaning, *Kane v. Order of United Commercial Travelers*, 3 Wash. 2d 355, 360, 100 P.2d 1036 (1940), and the court will give the language used such a construction. . . ." *Christensen v. Sterling Ins. Co.*, 46 Wash. 2d 713, 717, 284 P.2d 287, 289 (1955). See also, *United States Fidelity & Guaranty Co. v. Briscoe*, 205 Okla. 618, 621, 239 P.2d 754, 756 (1951): "One thing, at least, is well settled, the words, 'accident' and 'accidental' have never acquired any technical meaning in law, and when used in an insurance contract, they are to be construed and considered according to common speech and common usage of people generally."

32, nor 857.<sup>6</sup> All media of communication, radio, television, press, would refer to it as one accident, one catastrophe, that is, consider the accident as the cause of the injuries and damages, regarding the injuries and damages as a result or incidents of the one accident. This has come to be known as the "cause theory" as expressed in the leading case of *Hyer v. Inter-Ins. Exchange*.<sup>7</sup> Whence the problem? How could there be another interpretation since the manifested intention of the parties to the contract as understood by the ordinary man is that one negligent act is one accident, regardless of the number of persons or property involved?

In 1891, a British court in the leading case of *South Staffordshire Tramways Co. v. Sickness & Acc. Assurance Ass'n*,<sup>8</sup> in which 40 persons were injured when a tramway car overturned, held: "'any one accident' means any accident to any one claimant upon the insured."<sup>9</sup> The court went on to explain that: "accident . . . [is] the mischief suffered by a person injured to his person or property."<sup>10</sup> This view found favor and persuasion in Couch's *Cyclopedia of Insurance*,<sup>11</sup> but in its support Couch cites only the *South Staffordshire* decision.<sup>12</sup> This decision and the language in certain cases in which the issue was not whether there was more than one accident, but whether the occurrence qualified as an accident at all,<sup>13</sup> plus the language in *Anchor Cas. Co. v. McCaleb*<sup>14</sup> gave rise to the "effect theory," to wit: view the event through the eyes of each individual whose person or property is injured. "Accident" then is not the cause of the injury but rather equated with the resulting claims, so that there would be as many accidents as claimants. The strength of this position lies in a two-pronged attack: 1. The effect theory is the law, 2. but,

6. "It can hardly be denied that when ordinary people speak of an 'accident' in the usual sense, they are referring to a single, sudden, unintentional occurrence. They normally use the word 'accident' to describe the event, no matter how many persons or things are involved." *St. Paul-Mercury Indemnity Co. v. Rutland*, 225 F.2d 689, 691 (5th Cir. 1955).

7. 77 Cal. App. 343, 246 Pac. 1055 (1926).

8. [1891] 1 Q.B. 402.

9. *Id.* at 406.

10. *Id.* at 408.

11. 5 Couch, Insurance § 1165b at 4136 (1929).

12. In succeeding supplements, Couch adds in support of his proposition, *Anchor Cas. Co. v. McCaleb*, 178 F.2d 322 (7th Cir. 1949) discussed *infra* p. —.

13. Justice Cardozo in writing for the Court of Appeals of New York, pointed out: "Injuries are accidental or the opposite, for the purpose of indemnity, according to the quality of the results rather than the quality of the causes." *Messersmith v. American Fidelity Co.*, 232 N.Y. 161, 165, 133 N.E. 432, 433 (1921). See also, *Georgia Cas. Co. v. Alden Mills*, 156 Miss. 853, 862, 127 So. 555, 557 (1930): "Whether an injury is accidental is to be determined from the standpoint of the person injured." Those who advance these cases as authority for the "multiple accident" theory fail to take account of the basic difference between insurance against loss and insurance against liability. Liability insurance does not insure the injured persons against loss, but is a contract to indemnify one who incurs legal liability for such loss.

14. 178 F.2d 322 (5th Cir. 1949).

even if not the law by relative weight of authority, the fact remains that it is a reasonable, if erroneous, position. This latter point of view does not need to rebut the cause theory; but needs merely to establish that its position is a reasonable interpretation of the undefined word "accident." Granting this assumption, it follows as a legal necessity that there is more than one accident in a situation when more than one person's interest is involved—it being a well recognized rule of insurance law, that all ambiguities in an insurance contract must be construed most favorably to the insured. As declared by much case law authority,<sup>15</sup> if there is a reasonable basis for difference of opinion, then an "ambiguity" exists. The reply from the insurers is that, accepting the above general rule, the policy language must be given its usual and ordinary meaning, urging that the term "accident" should not be strained in order to create an ambiguity.<sup>16</sup> Furthermore, the insurers maintain that to follow the "effect theory" "would make the policy potentially limitless"<sup>17</sup>—"an artesian well of indemnification."<sup>18</sup> This is countered by the position taken by the Seventh Circuit Court of Appeals in *Johnson v. Maryland Cas. Co.* to the effect that: "Contracts of insurance are not to be construed to relieve insurance companies that write them from coverages broader than they intended and from coverages they would not advisedly have taken. . . ."<sup>19</sup>

Thus, a British decision, decided in 1891, a definition by Couch, a dissent in the *Hyer* case, and unfortunate dicta in the *Anchor* case, have given attorneys of insureds the weapons to advance a logically compelling, if basically unsound, "effect theory," to such proportions that a decision was recalled from the Federal Reporter,<sup>20</sup> after at least one other jurisdiction had relied upon it.<sup>21</sup>

15. "[T]here is logical ground for difference of opinion as to the proper construction of the language quoted. Such constitutes ambiguity." *London & Lancashire Indemnity Co. v. Neil Barron Fuel Co.*, 31 F. Supp. 599, 600 (W.D. Mo. 1940). Further, it is maintained by the Supreme Court in *Aschenbrenner v. United States Fidelity & Guaranty Co.*, 292 U.S. 80, 84-85 (1934): "The phraseology of contracts of insurance is that chosen by the insurer and the contract in fixed form is tendered to the prospective policy-holder who is often without technical training, and who rarely accepts it with a lawyer at his elbow. So if its language is reasonably open to two constructions, that more favorable to the insured will be adopted. . . ." See also, *Soukup v. Employer's Liab. Assurance Corp.*, 341 Mo. 614, 108 S.W.2d 86 (1937); *Kane v. Order of United Commercial Travelers*, 3 Wash. 2d 355, 100 P.2d 1036 (1940); *Guaranty Trust Co. v. Continental Life Ins. Co.*, 159 Wash. 683, 294 Pac. 585 (1930).

16. "We have taken the position in such matters that a rule of construction should not be permitted to have the effect to make a plain agreement ambiguous and then construe it in favor of the insured." *Hamilton Trucking Service, Inc. v. Automobile Ins. Co.*, 39 Wash. 2d 688, 691, 237 P.2d 731, 734 (1951). See also *Rew v. Beneficial Standard Co.*, 41 Wash. 2d 577, 250 P.2d 956 (1952).

17. *St. Paul-Mercury Indemnity Co. v. Rutland*, 225 F.2d 639, 692 (5th Cir. 1955).

18. *Underwriters for Lloyds v. Jones*, 261 S.W.2d 636, 637-38 (Ky. 1953).

19. 125 F.2d 337, 340 (7th Cir. 1942).

20. *St. Paul-Mercury Indemnity Co. v. Rutland*. The case will be found in the Federal Reporter Advance Sheets, 217 F.2d 535 (5th Cir. 1955). The opinion was set aside on March 22, 1955, and therefore it does not appear in the bound volume of the Federal Reporter system.

21. *Tri-State Roofing Co. v. New Amsterdam Cas. Co.*, 139 F. Supp. 193 (W.D. Pa.

## THE CASES

The first American decision to pass on the problem raised in the *South Staffordshire* case was *Hyer v. Inter-Ins. Exchange*,<sup>22</sup> which squarely opposed the British view. In that case, the insured's automobile collided with an Overland automobile proceeding in the opposite direction. The collision deflected the insured's automobile into a Cadillac following behind the Overland. The liability policy limited coverage to \$1,000 for one accident. Total damage to the Overland and Cadillac exceeded this amount. The insured brought suit against his insurance company for the excess. In rejecting this contention, the court in part said: "Where, as here, one negligent act or omission is the sole proximate cause, or *causa causans*, there is, as a general rule, but one accident, even though there be several resultant injuries or losses. Let us suppose that in the instant case the owner of the Overland car had likewise been the owner of the Cadillac, and that the former vehicle had been towing the latter when the successive but causally connected collisions occurred—just as each car in a freight train pulls the car which is immediately behind it. Could it correctly be said in the case just supposed that there were two accidents, merely because two automobiles were damaged in sudden and unexpected crashes happening in continuous sequence as a connected chain of events, but springing from a single initial cause? Clearly not. It would no more be correct to say of such a case that there were two accidents than it would be to predicate two or more accidents on a general freight train wreck, merely because two or more cars in the train might have been demolished in the same catastrophe. If, in our supposititious case, there would be but one accident, though two automobiles belonging to the same person were injured, then how could that accident become two accidents merely because, under the facts of this case, the two injured vehicles were separately operated and owned? To ask the question is to answer it."<sup>23</sup>

The court distinguished the British case from the standard American third-party liability insurance policy on a semantic basis by pointing out: "This word 'accidents' in the plural, occurs twice in the policy [the British policy] preceding the phrase 'any one accident,' and was evidently intended to refer to 'accidents' occurring at any one time, and not to independent and wholly disconnected acci-

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1955). (This was reversed on rehearing after the decision in the St. Paul case was set aside.)

22. 77 Cal. App. 343, 246 Pac. 1055 (1926).

23. *Id.* at 350, 246 Pac. at 1057. A similar position was taken in *Perkins v. Firemen's Fund Indemnity Co.*, 44 Cal. App. 2d 427, 431, 112 P.2d 670, 672 (1941): "There is no ambiguity or uncertainty in the language used in the policy. Obviously . . . the words 'one accident' [refer] to the injury of several persons regardless of how many may suffer loss by reason thereof." See also, *Denham v. La Salle-Madison Hotel Co.*, 168 F.2d 576 (7th Cir. 1948). There the court regarded "occurrence" as synonymous with cause in a situation where there were 250 claimants as a result of a hotel fire.

dents such as might possibly occur at different times during the life of the policy."<sup>24</sup>

Perhaps the most honest appraisal of the British decision was that advanced by Justice Works in his concurring opinion. There he stated that if the *South Staffordshire* case could not be distinguished, then it was wrongly decided.<sup>25</sup>

Thereafter appeared *Anchor Cas. Co. v. McCalcb*,<sup>26</sup> the leading American decision espousing the theory that the phrase "each accident" should be interpreted in the light of the effect of the accident. Here the facts show that an oil well being reworked by the insured "blew in" with tremendous pressure causing oil, gas, sand and mud to be blown into the air and to fall into the surrounding area, remaining a "wild well" for approximately 50 hours. The damages resulting came from one continuous and unremitting eruption of sand, oil, and other debris from the well to the properties being damaged, with changes in the wind assisting in causing the damage to cover a greater area. The policy provided for property damage liability—\$5,000 each accident and \$25,000 aggregate as the limits of liability. The court, in its opinion, wrote as follows: "The wording 'each accident,' as used in the policy, must be construed from the point of view of the person whose property was injured. . . . When the separate property of each claimant was damaged, an accident occurred to the property of each owner. . . ."<sup>27</sup>

Obviously influenced by the language in the *Anchor* decision, the lower courts in the *St. Paul*<sup>28</sup> and *Rohde* cases rendered decisions employing similar reasoning, that is, multiple accidents and hence virtually limitless liability.<sup>29</sup>

24. 77 Cal. App. at 353-54, 246 Pac. at 1059. The insurance policy in the English case provided in part as follows: "So far as regards claims for personal injury and damage to property made against the assured in respect of accidents caused by vehicles . . . and for which accidents the assured shall be liable, the association shall pay to the assured the sum of 250£. in respect of any one accident, but not exceeding in all the sum of 1500£. . . ." [1891] 1 Q.B. 402, 403.

25. 77 Cal. App. at 355, 246 Pac. at 1059.

26. 178 F.2d 322 (5th Cir. 1949).

27. *Id.* at 324-25. See also *Kuhn's of Brownsville, Inc. v. Bituminous Cas. Co.*, 197 Tenn. 60, 270 S.W.2d 358 (1954), for a similar situation where there was a lengthy time interval between the injuries suffered (here two days) from the same proximate cause.

28. It is well to note that the *St. Paul* case was decided in the same circuit as the *Anchor* decision, the lower court undoubtedly being affected by ties of stare decisis. It is also interesting to note that Judge Holmes wrote both opinions.

29. Yet, in 1953, after the *Anchor* decision and before the *St. Paul* and *Rohde* cases, the Kentucky Court of Appeals in *Underwriters for Lloyds v. Jones*, 261 S.W.2d 686 (Ky. 1953), found no difficulty in deciding whether a taxicab indemnity policy, issued pursuant to a Kentucky statute requiring such coverage, limited the liability of the insurer to \$5,000 for any one accident and to \$5,000 for each person killed or injured in any one accident. This is substantially the same issue as in point. The court, in holding the policy limit to be \$5,000, pointed out that: "If we were to accept the construction advocated by the Appellee, there would be no set limit of liability on the policy—the total potential liability would be in direct proportion to the number of passengers crowded into the taxicab." *Id.* at 687.

The *St. Paul* decision involved a single impact collision between an automobile and a freight train whereby the train was derailed causing damage to the road bed owned by the railroad, to sixteen freight cars belonging to fourteen different owners and to the contents of these cars. The insured argued that the one event constituted as many accidents as there were claimants. The Fifth Circuit, in a 2-1 decision, at first sustained the insured's contention that there were fourteen accidents, the rationale being that the accident must be viewed through the eyes of the individual whose person or property is injured. Upon motion for reargument, the original court unanimously granted the motion and recalled its former opinion from the Federal Reporter. A new panel of three judges heard the reargument and, by a majority decision, reversed the earlier decision. In the majority opinion, Judge Dawkins, speaking for the court, pointed out that while ambiguities in an insurance contract should be construed most favorably to the insured, ". . . the words used must be given their usual and ordinary meaning, and we may not strain their construction in order to perceive ambiguities."<sup>30</sup> Further, the court declared: "The only limit expressed in the policy for automobile property damage liability is the disputed phrase '\$5,000 each accident.' It can hardly be denied that when ordinary people speak of an 'accident' in the usual sense, they are referring to a single, sudden, unintentional occurrence. They normally use the word 'accident' to describe the event, no matter how many persons or things are involved. . . . We think it clear that the word 'accident' as used in the disputed phrase was intended to be construed from the point of view of the cause rather than the 'effect.'"<sup>31</sup> The court then distinguished the *South Staffordshire* and *Anchor* cases by pointing out that the English case involved a differently worded policy and that in the *Anchor* decision a unique factual situation had led the court to conclude that there was involved a "series of events" not comparable to a situation wherein, as in the case at bar, a single accident had occurred. This *St. Paul* decision is, of course, in perfect harmony with the *Hyer* decision of 1926. Judge Cameron, however, offered a dissent in which he reaffirmed the position of the *South Staffordshire* and *Anchor* holdings and the dissent in the *Hyer* case, maintaining that the vintage of the British decision should not affect the minds of the judges.<sup>32</sup> It is well to note, however, that the principal grounds upon which the dissent was based were that the majority opinion constituted an overruling of the *Anchor* decision, by which, the dissent urged, the court was bound under *stare decisis*.

Before reargument in the *St. Paul* case was granted and the opinion withdrawn from the Federal Reporter, a similar situation arose in the State of Washington where one Rohde, while negligently operating his car, collided with the first of a group of three on-coming motorcycles carrying five persons and traveling in echelon formation about seventy-five feet apart. Rohde was so spun counter-clockwise that he immediately collided with the second motorcycle and then the third (three distinct impacts). The entire event

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30. 225 F.2d at 691.

31. *Id.* at 692.

32. *Id.* at 694.



occurred within two seconds. All five cyclists were either killed or injured. The trial court, influenced by the "multiple accident" rationale of the *Anchor* and *St. Paul* cases, held in substance that there were three separate "accidents" or "occurrences." On appeal, the Supreme Court of Washington, in a 5-3 decision, following the reargued *St. Paul* decision and rejecting the contentions of respondent and the lower court that there were three accidents, re-enunciated the cause theory of one accident, citing the *St. Paul* and *Hyer* decisions.<sup>33</sup> The court in analyzing the policy held that the insured and insurer contemplated injury to more than one person in a single "accident" or "occurrence" and, since faced with the somewhat unique factual situation of three distinct and separate impacts held, that: "If within the confines of a single accident or occurrence, damage to more than one item of property was contemplated, more than one impact also was contemplated. . . ."<sup>34</sup> Dissenting, Judge Rossellini urged that there was more than one accident based on the argument of ambiguity. Referring to *South Staffordshire* and *Anchor* decisions, Judge Rossellini uses them not as authority for the proposition that the effect theory is the law, but rather to show that the standard policy is open to two interpretations (reasonable, since made by reasonable men, to wit: judges). Thus, there would exist an ambiguity which, according to insurance law, must be decided in favor of the insured.

#### DISCUSSION

The British court, faced only with the problem of bodily injury, advocated that the word "accident" must be equated with the number of persons injured. Today, however, this interpretation must fail in light of the policy itself as seen in the limits of liability section: "the limit of such liability applicable to 'each accident' [occurrence] is . . . the total limit of the company's liability for all damages . . . sustained by two or more persons in any one accident [occurrence]." If these words were being viewed by the contracting parties through the eyes of the person injured, with the result that each person injured equals an accident, then the parties would be guilty of absurd inconsistency by providing as they did that two or more persons could be injured in a single accident.

The reasoning of the British decision was echoed in the first *St. Paul* case where the court, though faced only with the problem of property damage in a single impact collision, maintained that the word "accident" must be viewed through the eyes of the individual whose *person* or property is injured. From an analysis of the decision on reargument, rejecting this contention, it is seen that the impelling reason for its rejection was the fact that the court realized that since the policy itself provided that two or more persons could be involved in one accident, it was logical that two or more property owners could likewise be involved in one accident. To hold otherwise, would mean that the word "accident" had two different meanings within the same policy. Certainly

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33. *Truck Ins. Exchange v. Rohde*, — Wash. 2d —, 303 P.2d 659 (1956).

34. *Id.* at —, 303 P.2d at 662.

this was not intended by the parties. But, even confining the effect theory purely to the property damage aspect, problems arise. For instance, if six persons bought a truck worth \$30,000 and an insured negligently destroyed the truck, the insurance company's liability would extend to the full value of the vehicle. However, if the same persons had happened to incorporate and held the truck in the corporate name, the insurer's liability would be limited to \$5,000 (the policy limit). Further, if it were later found that the corporation was improperly organized, lacking even *de facto* existence, the limits of liability would again jump to \$30,000. It should be manifest from the foregoing example that the parties in no way intended to hinge the extent of coverage upon such irrelevant contingencies. An accident causing damage to property does not become two accidents because the property happens to be owned by more than one person.

In the *Rohde* case, the court was faced with a situation where both property and persons suffered injury, with the additional aspect of three distinct impacts. In holding there were three accidents, the trial court cited the *South Staffordshire*, *Anchor* and *St. Paul* decisions as support for the multiple accident position, but realized in light of the policy itself, that the effect theory enunciated in the cited cases, could not be logically followed. If this theory were fully pursued, the riders of the first motorcycle were involved in two accidents or occurrences. Indeed, there would have been a third if the motorcycle was owned by a third person. It is suggested that the *Rohde* case in effect advanced a new theory—the impact theory. If *A* hit three motorcycles simultaneously with six persons involved, there would be only one accident, but if three distinct impacts—three accidents. Hence the dichotomy of cause and effect becomes restricted to what is the cause of the accident—the negligent act or the impact. The impact position is untenable, for under such a theory if a passenger were riding in the insured's vehicle in the *Rohde* factual situation, he could be entitled to \$50,000 in the policy of \$20,000-\$50,000 and \$5,000, since the \$20,000 per person limitation applies to injuries "sustained by one person in any one accident." Each cyclist, on the other hand, is limited by the \$20,000 figure. So interpreted, the policy is stripped of both provisions and there is substituted an elastic monetary limit which expands and contracts with the number of persons able and willing to sue. Surely such results, which violate the principles upon which all insurance contracts are founded, could never have been intended by the parties.

The *Anchor* case can be readily explained by its unique factual situation and, it is urged, should be the law for a continuing series of events as occurred in that case, even though there be only one act of negligence. It can further be explained by the wording of the policy to include for property liability \$5,000 each accident and \$25,000 aggregate.<sup>35</sup> The "aggregate" terminology is not common to standard insurance policies and the argument could be advanced that this indicates an intention by the parties to regard "accident" as damages to each property owner, and "aggregate" as the total happening to

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35. The policy provided for bodily injury liability: \$25,000 each person and \$50,000 each accident; for property damage liability: \$5,000 each accident and \$25,000 aggregate.

different persons. However, there was no such aggregate limit for bodily liability provided in the *Anchor* policy. Hence the policy is virtually limitless for bodily injuries but limited to \$25,000 for property damage. This follows unless we regard the same word "accident" as having two different meanings in the same policy.

It would appear that the strongest, in fact the only argument for the position of the insured, is based on ambiguity, as advanced by Judge Rossellini in his dissent in the *Rohde* decision. Comparison of the viewpoint of the various judges from the leading cases cited, shows a striking weight (numerically speaking) of judicial authority supporting the insured's claim. This would lead one to believe that the policy is open to two or more reasonable interpretations and thus, following recognized insurance law, the policy must be construed most favorably to the policyholder. It is felt that this position can be readily dismissed by the realization that judges, trained to probe, weigh, and consider all facets of a problem, are not "ordinary men" for purposes of interpretation of contracts.

#### CONCLUSION

Interpretation of each accident in accordance with the contention of the insured virtually emasculates the limits set out in the policy. So interpreted, the sole limit on the insurer's liability would be the number of persons whose property or bodies were damaged as a result of the single event, or the number of distinct impacts. Not only would such a limit be wholly indeterminate and therefore illusory, but, under such reasoning, it would not be possible to establish even a total aggregate monetary figure fixing the insurer's potential liability for damages arising out of a single event. Under such a theory, rate schedules would become meaningless. Neither policyholder nor insurer would know the amount of insurance which had been purchased. The folly of such a situation is obvious. However, it would be well to watch other jurisdictions for developments concerning this disturbing if false problem, especially as the time interval between impacts becomes longer, even though caused by only *one* act of negligence. If nothing else, ingenious attorneys for the insured have pointed up the need for a revision of the standard policy to preclude a reoccurrence of this attack.