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Jury - Peguniary Interest - Prospective Jurors Shown to Be Policyholders in Defendant's Mutual Insurance Carrier Will Be Excluded from Venire on Plaintiff's Motion before Voir Dire Interrogation

John A. Smith

JURY—PECUNIARY INTEREST—PROSPECTIVE JURORS SHOWN TO BE POLICYHOLDERS IN DEFENDANT'S MUTUAL INSURANCE CARRIER WILL BE EXCLUDED FROM VENIRE ON PLAINTIFF'S MOTION BEFORE VOIR DIRE INTERROGATION.—In *Rains v. Schutte*, 53 Ill. App. 2d 214, 202 N.E.2d 660 (5th Dist. 1964), the Illinois Appellate Court considered the question of whether a plaintiff has the right to move for exclusion, i.e., challenge for cause, of any prospective jurors shown to be policyholders in a mutual insurance company which carried the defendant's liability coverage. The court held that, upon a good faith request by the plaintiff, prospective jurors, shown to be policyholders in the defendant's mutual insurance carrier, should be excluded from the venire before voir dire interrogation.

In the *Rains* case, a personal injury action against the defendant Schutte, the plaintiff made a pre-trial request for disclosure of the names of any prospective jurors on the venire who were policyholders in the Country Mutual Insurance Company, the defendant's liability carrier. The defendant disclosed that seventeen members of the venire were insured with Country Mutual. The plaintiff then filed a pre-trial motion to dismiss, for cause, the seventeen prospective jurors, or, in the alternative, for permission to interrogate them on voir dire regarding their relationship with Country Mutual. Both requests were denied and during the voir dire interrogation, the plaintiff was forced to utilize all his peremptory challenges against those veniremen who were insured by Country Mutual. He was unable, however, to prevent seven of the policyholders from being impaneled on the jury. The jury returned a verdict for the defendant.

On appeal, the Illinois Appellate Court reversed and remanded, holding that the trial court should have granted plaintiff's motion and excused for cause, without interrogation by the court or counsel, all jurors on the venire who were insured by Country Mutual Insurance Company. The court accepted the plaintiff's argument that it is against the fundamental concept of jury trials to allow a jury to decide issues in which the jurors have financial interests. It also found that the plaintiff's motion was made in good faith and, being made out of the presence of the venire, indicated a proper reluctance to introduce the issue of insurance into the case. The court concluded that sufficient evidence had been presented to support the motion, inasmuch as the policy contained a clause providing that:

> This policy is on the mutual or participating plan and the named insured, during the continuance of this policy shall be entitled to participate in such *savings* and earnings of the company as the Board of Directors may determine to distribute to like policyholders. [Emphasis by the court.][1]

The decision in the *Rains* case departs from the established trend of Illinois cases and is the most recent in a series of decisions dealing generally

[1] Rains v. Schutte, 53 Ill. App. 2d 214, 216, 202 N.E.2d 660, 661 (5th Dist. 1964).

with the problem of eliminating jurors who have a pecuniary interest in the issue being tried. Previously, where a possible pecuniary interest in the outcome of the case was shown to exist in the prospective veniremen, no exclusion, prior to voir dire, was allowed. However, dictum in *Smithers v. Henriquez*,[2] indicated, in a negative way, that the Illinois Supreme Court envisioned this possibility. In that case, the court felt that an onerous and unreasonable burden would be imposed upon the litigants if they were required to examine a jury list to determine the qualifications of prospective jurors. It indicated that such a requirement would nullify time-honored customs of examining jurors at the trial.

The court, in *Smithers*, did hold, however, that where a plaintiff can show reasonable grounds for believing that a prospective juror has a financial interest in the cause, the plaintiff should be allowed to propound questions on voir dire to determine whether the juror does, in fact, have an interest in any outside insurance company, or any other company which might defend an action similar to the case being tried.[3] This rule is predicated upon a showing by the plaintiff that he was acting in good faith and upon reasonable grounds.[4]

But more than mere speculation or surmise is required to satisfy the good faith requirement necessary to support interrogation of a prospective juror regarding his possible pecuniary interest in the case. In *Wheeler v. Rudek*,[5] the plaintiff had filed a pretrial motion for permission to interrogate the prospective jurors regarding their insurance interests and had declared by affidavit that reasonable grounds existed for the request.[6] Neither justification for, nor explanation of, the reasonable grounds were set forth in the affidavit. The Illinois Supreme Court held that it was error to allow the plaintiff to interrogate the venire regarding interest in an insurance company without a more positive showing of the juror's interest than mere speculation and surmise.[7]

Similarly, the defendant in *Edwards v. Hill-Thomas Lime & Cement*

2 Smithers v. Henriquez, 368 Ill. 588, 15 N.E.2d 499 (1938).

3 In Smithers v. Henriquez, *supra* note 2, the plaintiff knew that the case was being defended by the insurance company's counsel, and received permission to propound one question which might determine if any of the venire had such knowledge or an interest in the company. This was deemed sufficient to satisfy the good faith requirement. A decision for the plaintiff was affirmed.

4 Wheeler v. Rudek, 397 Ill. 438, 74 N.E.2d 601 (1947). *Accord*: Kavanaugh v. Parret, 379 Ill. 273, 40 N.E.2d 500 (1942); Edwards v. Hill-Thomas Lime & Cement Co., 378 Ill. 180, 37 N.E.2d 801, (1941); Smithers v. Henriquez, *supra* note 2. For a general discussion, see 4 A.L.R.2d 748 and the note following.

5 Wheeler v. Rudek, *supra* note 4.

6 The motion was based upon the belief that the defendant held a public liability insurance policy issued by a specified insurance company. It further stated that the insurance company employed numerous persons in its offices and that interested persons might be among those called into the venire.

7 The court reversed and remanded a verdict for the plaintiff.

Co.,[8] stated under oath that the veniremen had no interest in the case.[9] The Illinois Supreme Court concluded in the *Edwards* case that no reasonable grounds existed to justify the plaintiff's pre-trial request to interrogate the veniremen regarding insurance interests.[10]

By way of contrast, the plaintiff in the *Rains* case made the required positive showing of interest when, upon plaintiff's request, the defendant disclosed that seventeen members of the venire were policyholders in the Country Mutual Insurance Company.

Likewise, mere information and belief will not constitute sufficient grounds upon which to question a prospective juror concerning his pecuniary interest in the outcome of the proceeding. In *Kavanaugh v. Parret*,[11] a judgment for the plaintiff, which had been affirmed by the Illinois Appellate Court, was reversed because the only effect of the question propounded to the jurors was to advise them that an insurance company was conducting the defense of the case.[12]

It should be noted that each of the foregoing cases can be distinguished from the *Rains* case on the basis that the request to interrogate the jurors was granted, whereas in *Rains* it was not. Furthermore, in all of the cases, the defendant demonstrated that no member of the venire was either connected with the insurance company or assessible whereas, in *Rains*, the defendant indicated that seventeen of the venire were policyholders in a mutual company.

In addition, the decision in *Rains* appears unusual even as to holdings in other jurisdictions. For example, the Missouri Appellate Court has held in *Kendall v. Prudential Life Insurance Co. of America*,[13] that it was error for the trial court to deny the plaintiff's motion to dismiss for cause any jurors who were policyholders in one of the largest mutual insurance companies in the world, when the request, based upon reliable information

8 Edwards v. Hill-Thomas Lime & Cement Co., *supra* note 4.

9 The plaintiff had made a pre-trial request for permission to interrogate the venire regarding any interest they might have in the insurance company which admittedly was conducting the defendant's defense. However, the pre-trial request was oral, no affidavit having been filed, and no showing made giving any reason why such interrogation was necessary. When the request was made, the defendant stated under oath that the policyholders were not liable for assessments to pay judgments, and, further, that none of the employees or agents of the insurance company were on the panel of jurors in attendance. The request was granted.

10 The court reversed and remanded a verdict for the plaintiff.

11 Kavanaugh v. Parret, 397 Ill. 273, 40 N.E.2d 500 (1942).

12 The plaintiff filed a pre-trial motion requesting permission to interrogate the venire along insurance lines, based upon information and belief. The defendant filed a counter-affidavit to the effect that the insurance company was not a mutual company and that the policyholders were not subject to assessment, and, further, that no person connected with the insurance company, in any way, was on the jury list. On voir dire, the plaintiff asked his question, and requested that the veniremen raise their right hands if the answer was affirmative. None so indicated.

13 319 S.W.2d 17 (Mo. App. 1958).

and made in good faith, was made outside the presence of the venire. However, the Missouri Supreme Court overruled the decision and disallowed the dismissal for cause holding that the jurors' ability to render a fair and impartial verdict would not be unduly affected merely because they were policyholders in a world-wide insurance company.[14]

Thus, the Illinois Appellate Court has, by its holding in the *Rains* case, provided another weapon to combat the resources of insurance carriers. It is a matter of common knowledge that most individuals, and especially those who own and operate automobiles, carry liability insurance.[15] It will, therefore, be necessary for the plaintiff to request a list of policyholders, as well as stockholders or other financially interested persons, from the defendant's insurance carrier. Upon receipt of such a list, the plaintiff would then necessarily assume the onerous task, suggested in *Smithers*,[16] of cross-checking the list against the venire roster before voir dire. He then would present his motion to dismiss, for cause, any jurors found to be policyholders in the defendant's mutual insurance company. This, of course, would eliminate only one group of interested jurors, but the plaintiff would still have available the right to ask questions of the remaining veniremen regarding any other possible financial interest they might have in the case.

Clearly then, the effect of the decision in the *Rains* case will be to preserve the plaintiff's limited number of peremptory challenges and enable him to utilize more fully those challenges against other prospective jurors who might, in his judgment, rule adversely.

JOHN A. SMITH

14 Kendall v. Prudential Life Insurance Co. of America, 327 S.W.2d 174 (Mo. 1959).
15 Wheeler v. Rudek, 397 Ill. 438, 74 N.E.2d 601 (1947).
16 Smithers v. Henriquez, 368 Ill. 588, 15 N.E.2d 499 (1938).