INTERROGATION OF JURORS AS TO CONNECTIONS WITH INSURANCE COMPANIES

Prior to the trial of a personal injury suit the plaintiff submitted an affidavit to the court stating that he had "reasonable grounds for believing" that persons having some relationship to the insurance company interested in the defense might be among the panel of jurors selected for service in the case. The plaintiff requested permission to interrogate the jurors on voir dire concerning possible interests in the company. The court granted this request and approved the questioning of the jurors as to any relationships which they, or their friends and relatives, might have with a "company that makes a practice of investigating or defending cases of this kind." On appeal, the Illinois Supreme Court held that permitting this questioning was erroneous, since the affidavit did not establish that the inquiry was made in good faith and not for the purpose of suggesting to the jury that an insurance company was involved in the action. *Wheeler v. Rudek.*[1]

Within the past ten years, the Illinois Supreme Court has taken several conflicting positions regarding the circumstances under which prospective jurors may be questioned about possible relationships with insurance companies.[2] The *Wheeler* case, in effect, overruled two cases in which, on the basis of substantially similar affidavits, the plaintiffs were permitted to inquire about jurors' insurance connections.[3] But in the period between those decisions the court had blocked such an inquiry where the interested insurance company submitted an affidavit that none of the persons on the jury list had any connection with it.[4] These affidavits by the insurers do not, of course, protect the plaintiffs against the possibility that the jury may include friends and relatives of those who have a direct connection with the company.

The *Wheeler* case has now placed an even greater restriction on the voir dire examination. The effect of the decision is to preclude an inquiry about insurance connections except where the plaintiff has actual knowledge that a prospective juror has some connection with the insurance company or individuals interested in the company. Since ordinarily a plaintiff will not be familiar with the interests of the jury panel, the decision seems to foreclose questioning along this line except in those unusual instances where the plaintiff obtains the required information prior to the voir dire either by chance or through personal investigation.

While most courts do not allow the introduction of information that the de-

[1] 397 Ill. 438, 74 N.E. 2d 601 (1947).

[2] Questions concerning relationships with insurance companies need not, as in fact the questions asked in the Wheeler case did not, actually mention the words "insurance company." For convenience this note has not attempted to distinguish the various ways in which the question is propounded.

[3] Moore v. Edmonds, 384 Ill. 535, 52 N.E. 2d 216 (1943); Smithers v. Henriquez, 368 Ill. 588, 15 N.E. 2d 499 (1938).

[4] Kavanaugh v. Parret, 379 Ill. 273, 40 N.E. 2d 500 (1942); cf. Edwards v. Hill-Thomas Lime & Cement Co., 378 Ill. 180, 37 N.E. 2d 801 (1941).

fendant carries liability insurance on the ground of irrelevancy and prejudice to the defendant,[5] they do permit plaintiffs to ascertain relationships between possible jurors and insurance companies which may be cause for bias.[6] Nearly all courts allow the plaintiff to pursue some form of inquiry on voir dire directed at exposing these relationships, provided the inquiry is conducted in "good faith."[7] There is, however, little agreement as to what constitutes good faith. In some jurisdictions, questions regarding possible connections with insurance companies have been allowed even when the liability was not insured, on the ground that such questions were required to determine whether the jurors were defense-minded.[8] At the other extreme are those courts which adopt the approach taken in the *Wheeler* case.[9] In most jurisdictions, once it is established that the defendant is insured, courts will permit an inquiry as to insurance connections unless there is some indication that the inquiry is designed to inform the jury that the defendant is insured against liability.[10] The application of this

[5] 2 Wigmore, Evidence § 282a (1940). Two states permit joinder of the insurance company as a party defendant. Wis. Stat. (Brossard, 1943) § 260.11; La. Gen. Stat. Ann. (Dart, 1939) § 4248. Texas courts will permit joinder only when the insurance policy benefits the injured party as well as the insured. American Indemnity Co. v. Martin, 54 S.W. 2d 542 (Tex. Civ. App., 1932); Texas Landscape Co. v. Longoria, 30 S.W. 2d 423 (Tex. Civ. App., 1930); see 20 Corn. L.Q. 110 (1934), noting Vega v. Evans, 128 Ohio 535, 191 N.E. 757 (1934).

[6] Courts confront somewhat similar problems in connection with the right of the plaintiff to question witnesses as to their interest or bias. See 3 Wigmore, Evidence § 969 (1940). Where the relationship of the witness to the interested insurance company is such that his testimony may be affected, many courts have permitted the relationship to be disclosed even though the jury is thereby informed about the insurance company. 2 Wigmore, Evidence § 282a (1940). As a practical matter, defendants rarely introduce witnesses who might reveal that the defendant is insured.

[7] 2 Wigmore, Evidence § 282a (1940) and cases cited; 9 Blashfield, Automobile Law and Practice § 6296 (1935).

[8] Silvestro v. Walz, 222 Ind. 163, 51 N.E. 2d 629 (1943); cf. Roselle v. Beach, 51 Cal. App. 2d 579, 125 P. 2d 77 (1942); Shams v. Saportas, 152 Fla. 48, 10 So. 2d 715 (1942); Hedgecock v. Orloskey, 110 Ind. App. 504, 39 N.E. 2d 452 (1942).

[9] The Kentucky courts are in accord. Ewing–Von Allmen Dairy Co. v. Godwin, 304 Ky. 161, 200 S.W. 2d 103 (1947); Duncan Coal Co. v. Thompson's Adm'r, 157 Ky. 304, 162 S.W. 1139 (1914).

[10] White v. Teague, 353 Mo. 247, 182 S.W. 2d 288 (1944); Edwards v. Quackenbush, 112 Colo. 337, 149 P. 2d 809 (1944); Olguin v. Thygesen, 47 N.M. 377, 143 P. 2d 585 (1943); Heinrich v. Ellis, 113 Ind. App. 478, 48 N.E. 2d 96 (1943); Popoff v. Mott, 14 Wash. 2d 1, 126 P. 2d 597 (1942).

To come within the scope of the good faith doctrine it has been said that counsel must word his questions so that they will include only such facts as are reasonably necessary to discover the desired information. Jones v. Bayley, 49 Cal. App. 2d 647, 122 P. 2d 293 (1942); Faris v. Burroughs Adding Machine Co., 48 Idaho 310, 282 Pac. 72 (1929); Daniel v. Asbill, 97 Cal. App. 731, 276 Pac. 149 (1929). Remarks made by counsel within the hearing of the jury stating that the defendant is insured are indicative of bad faith. Curtis v. McAuliffe, 106 Cal. App. 1, 288 Pac. 675 (1930); Spinney's Adm'x v. Hooker & Son, 92 Vt. 146, 102 Atl. 53 (1917). Nor is it good faith to propound such interrogatories where the proceedings are held in a small town and counsel is familiar with the occupations and interests of the jurors. Ryan v. Simeons, 209 Iowa 1090, 229 N.W. 667 (1930); cf. Miller v. Kooker, 208 Iowa 687, 224 N.W. 46 (1929). Contra: Eagen v. O'Malley, 45 Wyo. 505, 21 P. 2d 821 (1933); Ulmer v. Farnham, 28 S.W. 2d 113 (Mo. App., 1930).

criterion to particular cases involves the difficult task of determining the plaintiff's motivation.

It is questionable whether denying the plaintiff the privilege of inquiring about insurance connections would jeopardize his right to an impartial jury.[11] The questions usually asked of prospective jurors will reveal their occupations as well as those of immediate relatives and close friends; moreover, counsel may ascertain stock holdings of the jurors and even of friends and relatives without asking the questions prohibited in the *Wheeler* case. There are, however, some relationships, difficult to specify, which will be known to the juror but which cannot be exposed without unduly long questioning unless there is some reference to insurance connections. It seems unlikely that relationships with individuals who are connected with insurance companies other than the one in suit will be a source of partisanship. The juror will probably not anticipate that a verdict for the plaintiff will have an impact on the interests of his friends and relatives because their interests will appear remote from the imposition of liability on the insurance company concerned in the suit.[12] This will certainly be true in those cases where the juror is not aware that the liability is insured unless it is assumed that the unexposed connection would tend to make the juror defense-minded. One may doubt, however, whether a relationship that is so distant that it is not exposed on the voir dire will operate to influence the juror's verdict.

The undisclosed relationships that may generate prejudice are those between the prospective juror and distant relations or acquaintances who may be stockholders, officers, supervisory employees, or agents and brokers of the interested company.[13] Each of these does have some personal interest in the company's finances. Here again the distance of relationship will operate to lessen its influence on the verdict. But even if there are more immediate relationships which will not be disclosed, it should be observed that only a relatively small number of individuals connected with any one liability company will be eligible for jury service within a county; thus there is but small chance that a friend or relative who favors a particular company will become a member of a jury in a case involving that company.

On the other hand, the probability is significantly greater that questions suggesting the interest of the insurance company—even if the use of the word "insurance" is avoided—will lead the jury to believe that an indemnity company will bear the ultimate liability. The jurors, knowing that not all persons carry liability insurance, would reasonably have doubts as to whether the defendant

[11] See Goldstein, Trial Technique § 252 (1935).

[12] Whether a juror who is connected with another liability company will be defense-minded is arguable. The existence of competition between casualty companies would suggest that one would not be anxious to benefit another. On the other hand, every liability company does have some interest in discouraging personal injury suits.

[13] Although even these relationships could theoretically be exposed by a sufficiently extended interrogation on voir dire, it is questionable whether such an interrogation would be feasible or permitted.

is insured.[14] These doubts might well be resolved by questions relating to insurance connections.

Narrowly restricting the voir dire inquiry, as did the *Wheeler* case, does not adequately solve the problem. While there remains a possibility that one of the jurors may be biased in favor of the defendant, the plaintiff's right to a fair trial is, to that extent, imperiled. The solution offered by the *Wheeler* case may, in addition, lead to other undesirable consequences. It may induce plaintiffs to approach prospective jurors before the voir dire in order to gain information that will bring them within the "good faith" requirement suggested in the case; it may also unduly prolong the voir dire examination.

A more satisfactory solution would be found in legislation authorizing the addition of a question on the form questionnaire which jurors are at present required to answer, concerning their relationships, direct and indirect, with insurance companies.[15] Such legislation might also permit counsel to challenge jurors for cause on the basis of information disclosed in the questionnaire.[16]

THE ATTORNEY-CLIENT PRIVILEGE AS AFFECTED BY THIRD PARTY'S PRESENCE

The only evidence offered in support of a claim against a decedent's estate was the testimony of an attorney who had represented the decedent for eleven years prior to her death. Over objection, he was permitted to testify that the decedent had said to the claimant in his presence, "You are going to get your $5,000, don't worry about it, . . . it will be paid as soon as 'The Elms' [a part of the decedent's husband's estate] are sold," and also that the decedent had

[14] The Chicago Motor Club estimates that 75 to 80 per cent of the motorists in the state of Illinois carry liability insurance. Private communication from Mr. A. Ulrich, Jr., Underwriter, The Inter-Insurance Exchange of the Chicago Motor Club (February 4, 1948).

[15] Compare 43 Mich. L. Rev. 621 (1944), noting Moore v. Edmonds, 384 Ill. 535, 52 N.E. 2d 216 (1943). Individuals eligible for jury service are required to answer the questionnaire at the time they are placed on the jury list. Its contents are governed by statute. Ill. Rev. Stat. (1947) c. 78, § 25. Since there may be a considerable lapse of time between the date when the questionnaire is answered and the date when jury service begins, it would be advisable for the legislation to provide for additional questioning at the commencement of the juror's service as to changes in his interests.

[16] While each counsel is now permitted five peremptory challenges where there are only two record parties to the litigation, Ill. Rev. Stat. (1947) c. 110, § 190, the plaintiff will be afforded much greater protection if, in addition, he can automatically exclude from jury service those who might be biased in favor of the insurance company. A New York statute makes an interest in any liability insurance company a ground for challenge in personal injury suits. N.Y. Civ. Prac. Ann. (Cahill-Parsons, 1946) § 452. In Illinois a juror's connection with the defendant's insurer is probably a ground for challenge for cause. See Smithers v. Henriquez, 287 Ill. App. 95, 4 N.E. 2d 793 (1936). In other jurisdictions it has been held that a direct connection with an insurance company other than the one in suit is not a ground for challenge for cause. Anderson v. Todd Shipyard Corp., 63 F. Supp. 229 (N.Y., 1945); see Vega v. Evans, 128 Ohio 535, 191 N.E. 757 (1934); Mortrude v. Martin, 185 Iowa 1319, 172 N.W. 17 (1919). This question has not arisen in Illinois.