

grantor; this sanction would have a powerful *in terrorem* effect, but, insofar as use of a lesser number of trusts would be considered proper, such a drastic penalty would appear illogical.

This comment has suggested a statute giving the Commissioner power to consolidate the returns of multiple trusts where tax minimization has been "a principal purpose" for using a number of trusts rather than a single trust. However, only one of the possible general approaches to the multiple trust problem has been examined. The discussion has indicated that it is apparently impossible to draft an adequate explicative statute and rather difficult to incorporate an "avoidance of taxation" or "trust purpose" standard into the trust area. Experience may demonstrate that there can be no adequate solution without re-examination of a more fundamental concept—recognition of the trust as a separate taxpaying entity. Perhaps the final solution lies in restricting the use of the accumulating trust, possibly by broadening the throwback rule.

COLLISION CLAUSES IN AUTO INSURANCE POLICIES—RECOVERY FOR DAMAGE BY FALLING OBJECTS OR ACTS OF GOD

The collision clause of the National Standard Automobile Policy reads: "To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object. . . ."¹ Since collision means "a violent meeting,"² the clause would seem to cover any loss from violent contact with another object,³ whether the automobile, the object or both were in motion. Although in defining collision many courts have used so broad a definition,⁴ insurance companies have argued, usually successfully, in favor of excepting collisions caused by falling objects⁵ or acts of God.⁶ This comment will consider the advisability of such exceptions.

¹ Quoted in *Barnard v. Houston Fire & Casualty Ins. Co.*, 81 So. 2d 132, 134 (La. App., 1955). Consult Faude, *Automobile Liability Coverage under the National Standard Automobile Policy*, 27 Miss. L. J. 120 (1956), for a brief historical sketch of the standard policy. In a standard policy the language of the analogous parts is uniform but there "[are] no rigid requirements as to sequence or arrangement. . . ." *Ibid.*, at 121.

² Webster's Int'l Dictionary 526 (2d ed., 1947).

³ In discussing "What Is 'Collision'?" one authority states "that (1) the insured automobile need not be in motion and (2) the collision need not be with another automobile." *Fire, Casualty and Surety Bulletins, Cpc-2, Auto (Fire)* (4th Printing, 1955). Also consult 5 Appleman, *Ins. Law and Practice* § 3201 (1941); 13-14 Huddy, *Cyclopedia of Automobile Law* § 228 (9th ed., 1931).

⁴ E.g., *Teitelbaum v. St. Louis Fire & Marine Ins. Co.*, 296 Ill.App. 327, 329, 15 N.E. 2d 1013, 1013 (1938), where the court said, "[C]ollision' means strictly the impact of objects . . . through any one of such objects moving against the other. . . ."

⁵ *Jacobs v. Camden Fire Ins. Ass'n*, 135 F.Supp. 837 (W.D. Pa., 1955); *O'Leary v. St. Paul Fire & Marine Ins. Co.*, 196 S.W. 575 (Tex.App., 1917). *Contra*: *Barnard v. Houston Fire & Casualty Ins. Co.*, 81 So. 2d 132 (La.App., 1955); *Teitelbaum v. St. Louis Fire & Marine*

In *Chandler v. Aetna*,⁷ a tornado blew parts of a dwelling against the plaintiff's car. His policy had collision, but not tornado, coverage. Recovery was denied from the insurance company on the grounds that the tornado was an act of God⁸ and that the plaintiff could have bought tornado insurance had he wished it, "from which it must reasonably be deduced that any damage immediately associated with or in the sphere of action of a tornado was not to be included in the coverage."⁹ All tornado¹⁰ and windstorm¹¹ cases and most of the flood cases¹² agree with the *Chandler* decision.

These decisions were the basis of the insurance company's defense in *Barnard v. Houston Fire & Casualty Ins. Co.*,¹³ where the plaintiff's truck had been struck by a falling object—a tree sawed by workmen. The court held that the collision clause covered such a loss, refusing to read the comprehensive clause,¹⁴ which

Ins. Co., 296 Ill.App. 327, 15 N.E. 2d 1013 (1938); *Universal Service Co. v. American Ins. Co.*, 213 Mich. 523, 181 N.W. 1007 (1921).

⁶ By acts of God are meant such catastrophes as tornadoes, windstorms and floods. *United States Ins. Co. v. Boyer*, 153 Tex. 415, 269 S.W. 2d 340 (1954); *Saul v. St. Paul Mercury Indemnity Co.*, 173 Kan. 679, 250 P. 2d 819 (1952); *Glen Falls Ins. Co. v. McCown*, 149 Tex. 587, 236 S.W. 2d 108 (1951); *Mercury Ins. Co. v. McClellan*, 216 Ark. 410, 225 S.W. 2d 931 (1950); *Atlas Assurance Co. v. Lies*, 70 Ga.App. 162, 27 S.E. 2d 791 (1943); *Chandler v. Aetna Ins. Co.*, 188 So. 506 (La.App., 1939); *Ohio Hardware Mutual Ins. Co. v. Sparks*, 57 Ga.App. 830, 196 S.E. 915 (1938). *Contra*: *Providence Washington Ins. Co. v. Proffitt*, 150 Tex. 207, 239 S.W. 2d 379 (1951).

⁷ 188 So. 506 (La.App., 1939).

⁸ "Some part of the dwelling came in contact with the car but it would be unreasonable to say that the parties, in making the contract, contemplated that the coverage of 'collision' would include a house being blown against the car by a tornado." *Ibid.*, at 508.

⁹ *Ibid.*, at 508.

¹⁰ *Mercury Ins. Co. v. McClellan*, 216 Ark. 410, 225 S.W. 2d 931 (1950); *Ohio Hardware Mut. Ins. Co. v. Sparks*, 57 Ga.App. 830, 196 S.E. 915 (1938).

¹¹ *United States Ins. Co. v. Boyer*, 153 Tex. 415, 269 S.W. 2d 340 (1954); *Atlas Assur. Co. v. Lies*, 70 Ga.App. 162, 27 S.E. 2d 791 (1943). *Cf.* *Farmers Ins. Exchange v. Wallace*, 275 S.W. 2d 864 (Tex. Civ. App., 1955).

¹² The cases in accord with *Chandler* are: *Saul v. St. Paul Mercury Indemnity Co.*, 173 Kan. 679, 250 P. 2d 819 (1952); *Glen Falls Ins. Co. v. McCown*, 149 Tex. 587, 236 S.W. 2d 108 (1951). *Contra*: *Long v. Royal Ins. Co.*, 180 Wash. 360, 40 P. 2d 132 (1935); *Providence Washington Ins. Co. v. Proffitt*, 150 Tex. 207, 239 S.W. 2d 379 (1951). Although the *Providence* case was cited to the Texas Supreme Court on plaintiff's behalf in *United States Ins. Co. v. Boyer*, 153 Tex. 415, 269 S.W. 2d 340 (1954), the court refused to follow it and reverted rather to its prior decision in *Glen Falls Ins. Co. v. McCown*, *supra*. Consequently, the situation in Texas today is consistent with the *Chandler* case, notwithstanding the decision in *Providence*, *supra*.

¹³ 81 So. 2d 132 (La.App., 1955).

¹⁴ "To pay for any direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. *Breakage of glass* and loss caused by missiles, *falling objects*, fire, theft, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset." *Ibid.*, at 134. This is the standard wording of the comprehensive

had not been paid for, as affecting the plaintiff's coverage. *Chandler* and similar cases were distinguished on the theory that they dealt with acts of God.¹⁵

The *Barnard* decision that the unpaid-for clause should not be considered as an indicia of intent seems wise. A court must make two assumptions in order to say that the intent of the insured can be determined by looking at the coverages which he did not purchase.

First, it must assume that the insured has read all the coverages offered in the policy, not just those which he bought. Such an assumption seems unjustified: The policy may have been purchased by an insured who asked for collision only and who had no occasion to read the other coverages.¹⁶ Furthermore, a reasonable reading of the declaration at the beginning of the standard policy seems to require a reading of only the coverages desired. Its wording, which might well keep even the most exacting purchaser from reading the unpaid-for clauses, is as follows:

The insurance afforded is only with respect to such and so many of the following coverages as are indicated by special premium charge or charges. The limit of the company's liability against such coverage shall be as stated herein, subject to all the terms of the policy having reference thereto.¹⁷

The policy contains a list of coverages including "Coverage C—Comprehensive" and "Coverage D—Collision." These are followed by a list of general "Insuring Agreements,"¹⁸ "Exclusions," and "Conditions." The conditions and exclusions refer specifically, i.e., by letter,¹⁹ to the coverages with which they are concerned. It would not be unreasonable for the purchaser to read the word *terms* in the

clause. The words *falling objects* were incorporated into this clause in 1941. Letter of R. H. Nelson, Nat'l Automobile Underwriters Ass'n, dated April 25, 1956. This indicates either a desire on the part of the companies to extend the coverage under comprehensive, or to limit further the definition of collision, or both. For a discussion of this problem, consult note 21 *infra*.

¹⁵ "The cases are distinguishable in that in the *Chandler* case no accident in reality was involved." *Barnard v. Houston Fire & Casualty Ins. Co.*, 81 So. 2d 132, 136 (La.App., 1955).

¹⁶ In several policies, to the right of the spaces for indicating the premium payments for the coverages desired, the following language appears: "The letter 'X' in any premium space shall mean that insurance is not afforded with respect to the coverage opposite thereto." Even if the premium spaces for unpurchased coverages are not lined out, they are left blank, while the premium spaces for purchased coverages contain the amount of the premium charge. This, also, is likely to cause an insured to read only those coverages for which he is paying.

¹⁷ Quoted in *Barnard v. Houston Fire & Casualty Ins. Co.*, 81 So. 2d 132, 134 (La.App., 1955).

¹⁸ Typical insuring agreements are those that define "Insured" and "Automobile," and the one that designates the "Policy Period, Territory, Purpose of Use" for the coverages purchased.

¹⁹ E.g., the first condition, that which concerns notifying the company of an accident, appears under "Conditions" as follows:

1. Notice of Accident
Coverages A, B and C.

The terms of the condition then follow to the right and beneath this title and subtitle.

declaration as referring not to the other coverages but to the general insuring agreements and to the exclusions and conditions keyed to those coverages which he has purchased.

Second, the court must assume that the insured read the coverages as being mutually exclusive, although some coverages are not. For example, in many policies loss caused by windstorms, hail, earthquakes and explosions is covered both in the comprehensive clause and in a separate clause.²⁰ While it must be admitted that the comprehensive and collision clauses are most susceptible to being read as mutually exclusive,²¹ it is unreasonable to demand that an insured draw the fine line between those coverages that are mutually exclusive and those that are not.

Although the *Barnard* court may be supported in its refusal to allow the unpaid-for clauses to affect the insured's coverage, its agreement with the *Chandler* line of cases that losses from acts of God are not within collision coverage is more questionable. The crucial issue is a distinction involving the underlying causation of the loss. In the tornado, windstorm and flood cases the damage to the automobile resulted from a force of nature—called by the courts an "act of God." In the usual collision cases,²² as in the falling object cases, the force responsible for the collision was set in motion by some human being. The distinction is attractive. Nevertheless, it must be admitted that both the act of God and falling object incidents are lexicographic collisions;²³ in using the word *collision* the insurance companies have used a term which, in its broadest sense, covers all losses due to a "violent meeting."²⁴ Thus an insured can argue that in buying collision he was insuring against collision in this broadest sense. However, it seems more reasonable to assume, as the *Barnard* court recognized, that in obtaining collision coverage an insured intends to insure against losses due to "accidents"²⁵ and not against losses due to natural catastrophes.

²⁰ E.g., the policies of the Niagra Fire Ins. Co. and the Universal Ins. Co.

²¹ This is so because the comprehensive coverage states that it insures against accidental losses, except losses caused by collision. The clause then goes on to say that certain occurrences are not to be deemed collision. Consequently, a person reading these two coverages might conclude that comprehensive covers all that is listed, while collision covers only those losses not listed. However, this delineation of "collision" in the comprehensive clause may apply only to that clause and be without significance beyond its limits.

The intent of the insurance companies in wording the comprehensive clause in such a manner is readily seen. On the one hand, they have an impressive list of accidents, purportedly covered by comprehensive, to show to potential purchasers. On the other hand, they do not have an impressive list of exceptions detracting from the salability of the collision coverage.

²² (1) Automobile hitting another automobile while both are moving; (2) moving automobile hitting a parked automobile; (3) moving automobile hitting a stationary object such as a tree or a wall.

²³ Consult notes 2 and 3 supra.

²⁴ This is the dictionary definition quoted in text at note 2 supra.

²⁵ The *Barnard* court impliedly defined "accident" as an occurrence caused by a human agency when, in distinguishing the *Chandler* case, it said, "the cases are distinguishable in

Under the rule that a policy should be read most strongly against those who have chosen its words,²⁶ insurance companies should not be allowed to escape liability by the technical argument that unpaid-for clauses are to be read to determine intent. Once the device of reading unpaid-for clauses to limit collision coverage is dismissed, there still remains a sound argument, under present law, for excepting acts of God from the coverage. However, it would be better if, within the clause itself, such accidents were specifically excluded.²⁷

that in the Chandler case no accident in reality was involved." *Barnard v. Houston Fire & Casualty Ins. Co.*, 81 So. 2d 132, 136 (La.App., 1955). The court in *Ohio Hardware Mut. Ins. Co. v. Sparks*, 57 Ga.App. 830, 834, 196 S.E. 915, 918 (1938), was even more definite when it said that the "tornado was not an accident, but was an act of God."

²⁶ This is one of the great doctrines of insurance law. Consult 13-14 Huddy, *Cyclopedia of Automobile Law* § 48 (9th ed., 1931); 13 Appleman, *Insurance Law and Practice* § 7401 (1943).

²⁷ In *Providence Washington Ins. Co. v. Proffitt*, 150 Tex. 207, 239 S.W. 2d 379 (1951), the court recommends such an addition.

AVAILABILITY OF INJUNCTIVE RELIEF UNDER STATE CIVIL RIGHTS ACTS

Though twenty-two states¹ have enacted "civil rights" legislation,² the statutes have clearly failed to achieve the drafters' goal of eliminating overt discriminatory practices. Those statutes which provide for specific relief³ make available either a civil action for damages,⁴ a criminal penalty of fine and/or

¹ Cal. Civil Code (Deering, 1949) §§51-54; Colo. Rev. Stat. (1953) §§25-1-1; Conn. Gen. Stat. (1949) §8375, amended by Public Acts (1953) No. 326; Ill. Rev. Stat. (1953) c. 38, §125 et seq.; Ind. Stat. Ann. (Burn's, 1956) §§10-901, 10-902; Iowa Code (1954) §§735.1, 735.2; Kan. Gen. Stat. Ann. (1949) §21-2424; Mass. Ann. Laws (1933) c. 272, §§92A, 98; Mich. Stat. Ann. (1935, Supp., 1953) §28.343; Minn. Stat. (1953) §327.09; Mont. Rev. Codes Ann. (1947, Supp., 1955) §64-211; Neb. Rev. Stat. (1943) §§20-101, 20-102; N.H. Rev. Laws (1942) c. 208 §§3, 4, 6; N. J. Rev. Stat. (1937, Supp., 1953) §§10:1-2-10:1-7; N. M. Stat. Ann. (1953, Supp., 1955) §49-8-1 et seq.; N. Y. Consol. L. Ann. (McKinney, 1948) Civil Rights, §§40, 41; Ohio Rev. Code (Baldwin, 1953) §§2901.35, 2901.36; Ore. Rev. Stat. (1953) §§30.670-30.680; Pa. Stat. Ann. (Purdon, 1945) tit. 18, §4654; R. I. Gen. Laws (1938) c. 606, §§28, 29, amended by R. I. Acts and Resolves (1952) c. 2958; Wash. Rev. Code (1951) §9.91.010; Wis. Stat. (1953) §942.04. The statutes vary widely in their scope and provisions. They are compared in Konvitz, *The Constitution and Civil Rights* 116-19 (1947); consult also *Private Remedies under State Equal Rights Statutes*, 44 Ill. L. Rev. 363 (1949).

² The acts are largely the outgrowth of the Supreme Court's invalidation of the Federal Civil Rights Act of 1875, 18 Stat. 348 (1875), in the Civil Rights Cases, 109 U.S. 3 (1883). The Act served as the model for much of the subsequent state legislation. Insofar as here relevant it provided: "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude."

³ In Montana and New Mexico no sanctions are specified for violation.

⁴ California and Oregon.