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vulgence of the intercepted communication or, "the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto."[12] The Supreme Court having found that Section 605 was violated said, "evidence obtained by means forbidden by Section 605 whether by state or federal agents, is inadmissible in a federal court."[13]

The Supreme Court in the *Benanti* case has abolished the "Silver-Platter Doctrine" in relation to wiretap evidence. This construction of Section 605 is consistent with the spirit of the Holmes and Brandeis dissent in *Olmstead v. United States.*[14]

[12] Authority cited note 4 supra.

[13] Benanti v. United States, 355 U.S. 96, 100 (1957).

[14] 277 U.S. 438 (1928).

DISCOVERY–INSURANCE COVERAGE SUBJECT TO PRE-TRIAL INTERROGATORIES

Plaintiff, during the pendency of a personal injury action, requested the defendant to answer discovery interrogatories which would disclose the name of the defendant's insurer, if any; and if there was one, the policy limits for each person. The defendant refused to answer and the lower court ruled that the plaintiff was entitled to receive answers to the interrogatories. The defendant then brought a mandamus proceeding to compel the Circuit Court judge to expunge from the record the orders requiring petitioner to answer. The Illinois Supreme Court denied the writ and held that discovery interrogatories respecting the existence and amount of defendant's insurance were relevant to the merits of the matter in litigation as provided in Section 58(1) of the Civil Practice Act and the Supreme Court Rules.[1] *People v. Fisher,* 12 Ill. 2d 231, 145 N.E. 2d 588 (1957).

The principal issues raised are: (1) How broad is the scope of discov-

[1] Ill. Rev. Stat. (1957) c. 110, § 58(1). "Discovery, admissions of fact and of genuineness of documents and answers to interrogatories shall be in accordance with rules." Ill. Rev. Stat. (1957) c. 110, § 101.19-4 says, "(1) Discovery Depositions–Upon a discovery deposition, the deponent may be examined regarding any matter, not privileged, relating to the merits of the matter in litigation, whether it relates to the claim or defense of the examining party or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of relevant facts. . . . Ill. Rev. Stat. (1957) c. 110, § 101.19-10 says, ". . . (2) Discovery Depositions–Discovery depositions may be used only: (a) for the purpose of impeaching the testimony of deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness; or (b) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person; (c) if otherwise admissible as an exception to the hearsay rule. . . ."

ery?; (2) What kind of inquiries are considered relevant to the cause of action?

Supreme Court Rules 19-4(1) and (2) define the scope of discovery depositions and manner of examination; Rules 19-10(2) and (3) define their use.[2] "The discovery deposition is less useful at the trial but it allows broader inquiry. The scope of examination is more liberal in a discovery deposition."[3]

In the *Fisher* case, the court held:

> Discovery interrogatories respecting the existence and amount of defendant's insurance may be deemed to be "related to the merits of the matter in litigation," as provided in Civil Practice Rules 19–11 and 19–4. . . . Such a construction is in accordance with the intention of the framers of the amended Rules to give a broader scope to the practice of discovery and thereby enable attorneys to better prepare and evaluate their cases.[4]

There is no clear cut trend in the United States as to whether or not insurance coverage can be discovered, since divergent results have been reached in recent cases.

The courts denying such discovery appear to base their opinions on the following arguments: (1) Only those matters admissible in evidence are subject to discovery; (2) Defendant's insurance coverage does not apprise plaintiff of any additional rights; (3) Expediency should not cause the courts to overstep the boundaries of discovery; and (4) Such discovery would violate the defendant's right of privacy.

Some courts in construing the scope of discovery in a narrow sense consider only matters admissible in evidence or matters which will lead to new evidence as discoverable. They hold that other types of matter are not material to the issue. It was said in *Goheen v. Goheen*,[5] "The interogatories [concerning discovery of insurance coverage] propounded are not material to the issue and are not relevant and competent evidence for the plaintiffs."[6] In holding that discovery could be allowed only in connection with matters admissible in evidence, a South Dakota court[7] held that production and inspection could not be required under the statute relating to discovery since the insurance policy did not constitute or contain evidence material to any matter in the section.

A second theory advanced for denying discovery of insurance was by a Nevada court[8] which said that it was irrelevant and would not appraise plaintiff of additional rights.

[2] Ibid.

[3] Illinois Civil Practice Act Symposium, 50 Nw. U. L. Rev. 586, 632 (1955).

[4] 12 Ill. 2d 231, 239, 145 N.E. 2d 588, 593 (1957).

[5] 9 N.J. Misc. 507, 154 Atl. 393 (1931).

[6] Ibid., at 508, 393.

[7] Bean v. Best, 80 N.W. 2d 565 (S.D., 1957).

Other courts raise a third theory that expediency in clearing the dockets and disposing of cases at the earliest possible time should not give way to a proper judicial determination. The court in *Jeppesen v. Swanson*[9] well illustrates this point by saying:

> Under the guise of liberal construction, we should not emasculate the rules by permitting something which never was intended or is not within declared objects for which they were adopted. Neither should expedience or the desire to dispose of lawsuits without trial, however desirable that may be from the standpoint of relieving congested calendars, be permitted to cause us to lose sight of the limitations of the discovery rules or the boundaries beyond which we should not go.[10]

In a recent case, the Florida court in *Brooks v. Owen*[11] denied discovery of insurance coverage and followed generally the *Jeppesen* case. The court held that settlement between the parties before a judicial proceeding was not a determination.[12]

A new argument was advanced in the most recent decision on the subject.[13] The question of whether such discovery violates the United States Constitution was raised.[14] It could be argued that it naturally and logically follows that from the discovery of defendant's insurance coverage, the plaintiff should be informed of the defendant's other assets or entire financial status so as to make a proper determination of whether or not to proceed further with litigation. Under such circumstances a plaintiff could find out the total financial position of a defendant by merely filing suit. Since such proceedings are of public record, the defendant's assets could be known to the world before he has been found guilty. It is believed that obtaining this information before a judicial determination is had would be an invasion of the right of privacy.[15]

The courts which allow discovery of insurance coverage reason that the framers of the various discovery acts intended that matters subject to discovery must be broader than those admissible in evidence in order to apprise a plaintiff of all his rights before the trial.[16]

[8] State v. Second Judicial District Court, 69 Nev. 196, 245 P. 2d 999 (1952).

[9] 243 Minn. 547, 68 N.W. 2d 649 (1955).

[10] Ibid., at 562, 658.

[11] 97 So. 2d 693 (Fla., 1957).

[12] The court, at p. 700, quoted the Jeppesen case, saying, "... the word 'determination' refers to the disposition of the action in some manner over which the court has control. That the court does not control a settlement is of course obvious."

[13] Gallimore v. Dye, E.D. Ill., Docket No. 3,851 (Jan. 13, 1958).

[14] U.S. Const. Amend. 5. "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[15] Trial Briefs, Illinois State Bar Association Section on Civil Practice and Procedure, Feb., 1958.

[16] People v. Fisher, 12 Ill. 2d 231, 145 N.E. 2d 588 (1957).

Through discovery of insurance coverage the courts believe that it will appraise the injured party of rights otherwise unknown, give counsel a realistic appraisal of his adversary and of the case he must prepare for, and afford a sounder basis for the settlement of disputes.[17]

In *Superior Insurance Co. v. Superior Court*,[18] the court held that insurance inures to the benefit of any and every person who might be negligently injured, and therefore, the injured party has a discoverable interest; and in *Maddox v. Grauman*,[19] the court said, "If the insurance question is relevant to the subject matter after the plaintiff prevails why is it not relevant while the action pends? We believe it is."[20]

Another reason for allowing discovery of insurance coverage is that counsel for the plaintiff can better prepare his case, appraise its worth, and determine whether to proceed further with litigation or negotiate a settlement. The court, in *People v. Fisher*,[21] said:

> The presence or absence of liability insurance is frequently the controlling factor in determining the manner in which a case is prepared for trial. That there will be actual rather than nominal recovery conditions every aspect of preparation for the trial of these cases,—investigators, doctors, photographers and even the taking of depositions.[22]

Discovery of insurance coverage would make settlement more feasible, for the parties would be better acquainted with their rights, and consequently help alleviate the problem of crowded court dockets. In the *Fisher* case the court affirmed this viewpoint when it said:

> Such knowledge . . . would also lead to more purposeful discussions of settlement, and thereby effectuate the dispatch of court business. This aspect is most significant in terms of effective judicial administration in coping with today's congested dockets which are largely attributable to the increasing volume of personal injury litigation.[23]

[17] Ibid.

[18] 37 Cal. 2d 749, 235 P. 2d 833 (1951).

[19] 205 Ky. 422, 265 S.W. 2d 939 (1954).

[20] Ibid., at 426, 942. Accord: Brackett v. Woodall Food Products, 12 F.R.D. 4 (E.D. Tenn., 1951), which allowed discovery of defendant's insurance policy on the ground that it might afford plaintiff rights he would not have otherwise and this was enough to make it relevant to the subject matter. In the Fisher case the court said at 238 Ill. 2d, 593 N.E. 2d, "It is not inconceivable that a plaintiff with serious injuries would settle a substantial judgment against a defendant of modest means for a fractional sum, simply because he had no knowledge of any additional rights against the insurer. Thus, to deprive an injured party from learning of his rights against an insurer would, in effect, nullify the benevolent purpose of such statutes, and permit insurance companies to avoid their statutory obligation."

[21] 12 Ill. 2d 231, 145 N.E. 2d 588 (1957).

[22] Ibid., at 238, 593.

[23] People v. Fisher, 12 Ill. 2d 231, 239, 145 N.E. 2d 588, 593 (1957). The dissenting judge in Brooks v. Owen, 97 So. 2d 693 (Fla., 1957) reasons along the same line as the Illinois court that such insurance disclosure would help stop a hide and seek game between plaintiff and defendant for both would know all the facts in issue, which knowledge is necessary to settle disputes.

The argument that allowing discovery of insurance coverage opens the door for discovering the defendant's entire financial status before judgment, which would invade his right of privacy can be met by answering that liability insurance policies contain unique characteristics due to statutory regulation. In the *Fisher* case, the court pointed out that statutory provisions confer an interest in such a policy on every member of the public that is negligently injured and that the unique characteristics of a liability insurance policy distinguish it from other financial resources.

After the *Fisher* case was decided in May, 1957, a motion for leave to appear amicus curiae and file a brief in support of the petition for rehearing, for and in behalf of five hundred ninety-two insurance companies, was requested and granted. However, even after the rehearing in which the opinion of *Brooks v. Owen*[24] was called to the attention of the court, the Illinois Supreme Court held to its original decision. What influence the contrary case of *Gallimore v. Dye*[25] will have on the rule of the *Fisher* case is undetermined at this time.

[24] 97 So. 2d 693 (Fla., 1957).

[25] E.D. Ill., Docket No. 3,851 (Jan. 13, 1958).

LABOR LAW–STRIKE UNLAWFUL WHEN CONTRACT DISPUTE IS PENDING BEFORE RAILROAD ADJUSTMENT BOARD

The Norfolk and Portsmouth Belt Line Railroad proposed to change the established starting and quitting points for five of its train crews. The carrier based its right to initiate this plan on its interpretation of a clause in the collective bargaining agreement which stated, "The point of going on and off duty shall be governed by local conditions." The union maintained that this action by the carrier could be effected only with the consent of the union or upon prior negotiation. After threat of strike and petition by the union to the National Mediation Board, the parties were referred to the Railroad Adjustment Board. The carrier submitted the dispute to the Adjustment Board but the union again called for a strike. The carrier petitioned the lower court for an injunction which was refused. On appeal to the United States Court of Appeals, Fourth Circuit, the judgment was reversed and a permanent injunction prohibiting the strike was granted. The court impliedly stated that the carrier had the right to initiate procedures, and the union could properly bring up complaints in the established grievance procedure after the carrier has set the proposed change into operation. *Norfolk and Portsmouth Belt Line R. Co. v. Brotherhood of Railroad Trainmen, Lodge No. 514*, 248 F.2d 34 (C.A. 4th, 1957).

The problem before this court is one of the most debated and oft-