Wyoming Law Journal

Volume 11 | Number 1 Article 12

December 2019

Liability of Insurance Companies for Advertising Encouraging Low Verdicts

John W. Pattno

speedier method of disposing of civil controveries. Pre-trial procedure was designed to strip the dispute of non-essentials and to mold it into such form that disposition of the contest would be fair and proper with the least amount of time and expense. These objectives can be better accomplished when the judge acts as an active director of the litigation. With this informal and expedient method, the pre-trial judge not only advances the cause of the administration of justice but also enhances the respect of the public for our courts.

DEAN BORTHWICK

LIABILITY OF INSURANCE COMPANIES FOR ADVERTISING ENCOURAGING LOW VERDICTS

In 1953 a group of insurance companies published in several national magazines[1] a series of advertisements which related to the verdicts of juries sitting in judgment on suits involving personal injuries. The advertisements were not directed at any individual litigation and could be interpreted simply as urging jurors to render decisions according to the evidence. However, connecting the parts of the advertisements dealing with the effect of high money judgments on the cost of insurance premiums and with the tendency of jurors to give excessive awards, they could also be interpreted as attempting to influence juries to render low verdicts. Although all of the advertisements were not the same, there were two features that were identical; one was the relationship between judgments and the cost of premiums, and the other was the tendency of jurors to give excessive awards in claims for damages in suits involving personal injuries.

Two cases resulted directly from the aforementioned advertisements. In *Hendrix v. Consolidated Van Lines,*[2] a proceeding was brought against two insurance companies for indirect contempt of court in causing the advertisements to be published. The case grew out of an action for damages to an automobile and for personal injuries, the plaintiff claiming that a verdict based solely on the evidence had been seriously prejudiced as a result of the advertisements. The trial court found for the defendant and on appeal the Supreme Court of Kansas held that the contempt charged was criminal and dismissed the case on the ground that there is no right of appeal from a judgment of not guilty of criminal contempt. In *Hoffman v. Perrucci,*[3] while an automobile accident suit was pending, plaintiffs filed a motion for issuance of a contempt citation in that the advertisements constituted jury tampering. The trial court found for the defendant and on appeal to the United States Court of Appeals the action was dismissed since the motion was one for citation

1. Life Magazine, Jan. 26, 1953, p. 91; Life Magazine, Mar. 9, 1953, p. 157; The Saturday Evening Post, Feb. 14, 1953, p. 118; The Saturday Evening Post, Mar. 28, 1953, p. 155.
2. Hendrix v. Consolidated Van Lines, 176 Kan. 101, 269 P.2d 435 (1954).
3. Hoffman v. Perrucci, 222 F.2d 709 (3rd Cir. 1955).

for criminal contempt, from which appeal could only be taken by or on behalf of the United States.

Whether these advertisements, or advertisements such as these, constitute conduct that would tend in some manner to influence a court's decisions or impede, embarrass or interrupt a court's proceedings so that the insurance companies could be held liable, has therefore never been decided. The purpose of this note is to examine the law applicable to such publications.

Courts generally consider publications that bring influence upon a court to be an indirect contempt or a criminal contempt of court.[4] It is generally held that publications, to constitute a contempt, must relate to pending litigation or a case presently being litigated before liability might be imposed upon the publisher.[5] There is some authority that the power of the court to punish for contempt is not limited to cases pending, but those cases refer to contempts committed against a court after it has tried the case.[6] The publication of any article, whether true or false concerning a pending cause, that tends to impede the orderly administration of justice in that cause, constitutes a contempt, and the fact that the publisher believed it to be true is immaterial, except in the mitigation of punishment.[7]

To prosecute for publications such as those for contempt, it would seem necessary that the publications only be published in the area of one court. In this manner the publication would have a direct reference to the court and could be prosecuted in that it would bring embarrassment and disrepute to the court by calling the decisions unfair.[8] In such an instance, it would not be necessary that it refer to a pending cause.

It has been suggested that the proper cause of action where no case is pending and the court is scandalized, is prosecution for criminal libel.[9] The basis for such liability at common law is the injurious effect on the public or its tendency to provoke a breach of the public peace.[10] Such advertisements would seem to come within these requirements, but, because of the national scale of the publication, proof of the connection of the libel to the court may be difficult.

A possible solution would be an equitable action, brought by the state,

4. Van Dyke v. Superior Court, 22 Ariz. 508, 211 Pac. 576 (1922); Freeman v. State, 188 Ark. 1058, 69 S.W.2d 267 (1934); Cormack v. Coleman, 120 Fla. 1, 161 So. 844 (1935).
5. In re San Francisco Chronicle, 1 Cal.2d 630, 36 P.2d 369 (1934); State v. Kaiser, 20 Ore. 50, 23 Pac. 964 (1890); Ex parte Lindsley, 75 Cal. App. 122, 241 Pac. 934 (D.C. of App. 1925).
6. In re Chadwick, 109 Mich. 588, 67 N.W. 1071 (1896); State ex rel. Attorney General v. Hildreth, 82 Vt. 382, 74 Atl. 71 (1909).
7. In re San Francisco Chronicle, 1 Cal.2d 630, 36 P.2d 369 (1934).
8. Ex parte Lindsley, 75 Cal. App. 122, 241 Pac. 934 (D.C. of App. 1925); Toledo Newspaper Co. v. United States, 247 U.S. 402, 38 S.Ct. 560, 62 L.Ed. 1186 (1917).
9. In re Fite, 11 Ga. App. 665, 76 S.E. 397 (1912).
10. State v. Gardner, 112 Conn. 121, 151 Atl. 349 (1930); Annenberg v. Coleman, Sheriff, 121 Fla. 133, 163 So. 405 (1935).

for an injunction against such an association to prevent any further publications. This injunctive relief may be granted against false and misleading publications which work an irreparable and continuing injury to the complainant and for which remedy at law is inadequate.[11] Although these advertisements fit this description, the basis for the injunction would be to restrain such libels on business and the American courts have declined to extend jurisdiction to restrain these torts.[12]

Perhaps the evil of such advertisements is offset by today's use of demonstrative evidence and other modern techniques which induce juries to return with five and six figure awards. Such rationale will not improve the situation, as the evil, although not great, is still there and is still without a remedy. As long as insurance companies, or anyone else are allowed to defend their positions by publications, the contents of which may not be admissible in a trial, the net result may well be a deterioration of the effectiveness of our juries rendering verdicts upon the evidence as presented in the court rooms and result in verdicts based upon "trials by publication."

JOHN W. PATTNO

11. Casey v. Cincinnati Typographical Union No. 3, 45 F. 135 (1891); Shoemaker v. South Bend Spark Arrestor Co., 135 Ind. 471, 35 N.E. 280 (1893).
12. Reyes v. Middleton, 36 Fla. 99, 17 So. 937 (1895); Shoemaker v. South Bend Spark Arrester Co., 135 Ind. 471, 35 N.E. 280 (1893).