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ADMISSIBILITY OF EVIDENCE AS TO LIABILITY INSURANCE IN NEGLIGENCE CASES

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MOST members of the bar have had some experience in negligence cases and are familiar with the general rule which provides that evidence of insurance shall be inadmissible. The rule is, however, subject to a number of qualifications and exceptions which are not so well known to the average lawyer. The general principles have become fairly well established in a veritable host of reported cases, although there is considerable conflict between the rules adopted in various jurisdictions. The Supreme Court of Colorado has passed upon several phases of the problem but the law has by no means been fully settled in this State. In spite of the vast amount of litigation upon the subject, a general dissatisfaction still exists in many quarters as to the present state of the law. This is particularly true among insurance men who have frequently seen the effect of a blind and unreasoning prejudice against insurance companies in these cases. It is a blind prejudice because the public often fails to realize that large verdicts are paid by an increase in insurance premiums. When that fact has become thoroughly assimilated, and when automobile liability insurance is carried by the great majority of citizens eligible for jury service, the problem now under discussion will lose its importance. The questions are very real today, however, and there are pronounced abuses which can, and should be, corrected.

The Courts commonly base the rule excluding evidence of liability insurance, upon the technical ground that such evidence is irrelevant and immaterial and tends to confuse the issues. The true basis for the rule of exclusion is, however, the extremely prejudicial character of such testimony. Some

courts have been so greatly impressed with the evil effects of testimony of insurance that the rule of exclusion has been made paramount to all of the ordinary rules of evidence and of trial procedure. The slightest infraction of the rule, even though innocent, has necessitated a new trial. It may be of interest to note some of the comments which have been made by the Courts in discussing the effect of such testimony.

The Supreme Court of Michigan has announced (Holman v. Cole, 242 Mich. 402, 218 N. W. 795) that it would take judicial notice that in a case where the jurors obtain information that the damages as fixed by them will be paid by an Insurance Company, the amount thereof is greatly enhanced.

A Texas Court (Beazley v. McEver, 238 S. W. 949) said that no circumstance is more surely calculated to cause a jury to render a verdict against a defendant without regard to the sufficiency of the evidence, than proof that the person against whom such verdict is sought, is amply protected by indemnity insurance.

Principally because of the resulting prejudice, the authorities are practically unanimous in holding that a plaintiff will not be permitted to show, as an independent fact, that the defendant is insured against the liability which the plaintiff seeks to establish. Nebraska is the only jurisdiction which has adopted a contrary rule. In Jessup v. Davis, 115 Neb. 1, 211 N. W. 190, the Supreme Court of Nebraska pronounced the rule that "Where a plaintiff in a personal injury action seeks by appropriate interrogatories on the cross examination to discover whether the defendant is indemnified from loss by an insurance company, it is error for the Court to sustain an objection to interrogatories which tend to develop the fact on that question." The decision was based upon public policy, the Court seeming to feel that any other rule would promote intolerable evils. The Court was somewhat caustic in its condemnation of insurance practices, as will be seen in the following passage taken from this opinion:

"Indeed, the entire theory of legal procedure, outlined in these contracts for liability insurance contemplates a proceeding carried on secretly, by a real, though unknown, party in interest, making use of concealment and deception. Its essential nature is therefore incompatible with an 'open Court'

and judgments publicly and openly arrived at. To compel and permit such proceeding is to countenance and participate in what is tantamount to a fraud."

It is comforting to insurance attorneys to know that three members of the Nebraska Supreme Court dissented from the opinion of the Court in that case, and that no other Court in the land has adopted such an extreme and critical view of the standard indemnity contract issued by insurance companies or of the practice of such companies in defending negligence cases.

The Nebraska Court in the same case advances also the following interesting theory:

"Are we not thus driven to conclude that when such insurance is arranged for, the feeling of liability, as well as responsibility, on the part of the individual insured is lessened, and that thereby recklessness or lack of ordinary care is bred, rather than ordinary care held in statu quo or greater care promoted? Should not such question be one for the jury or court trying the case as any other fact submitted for consideration, not as a question of intent on the part of the party causing the claimed injury, but as such fact may bear on the question of his care or lack of care or negligence in the particular case?"

It seems clear enough to all other courts that have discussed the suggestion of the Nebraska Court, that the true issue is whether the defendant was negligent on the occasion in question, not whether he was possessed of a tendency to be careless because of his insurance protection.

The general rule excluding evidence of insurance is, of course, applied in all stages of the trial—in the selection of the jury, in the direct, cross and redirect examination of the parties, and of witnesses, and in the arguments of counsel to the jury.

It should here be noted that the converse of the general rule above stated has also been almost universally adopted and a defendant may not show that he is uninsured. The unequal manner in which these two rules operate will be obvious, although evidence, or some suggestion, of insurance may creep into the case apparently without fault of the plaintiff or his counsel, under such circumstances that a new trial will not be granted, it is extremely difficult to conceive of the situation where a defendant may with an equal show of innocence, apprise the jury that he carries no insurance. It frequently

happens that an uninsured defendant is unjustly penalized as a result of "insurance questions" propounded to the jury on voir dire. That unfortunate situation could easily be prevented by a few simple changes in our system of procedure.

The majority of the courts hold that the rule excluding evidence of liability insurance is subject to the ordinary rules of evidence, and also to the usual rules of practice governing the examination of witnesses. Accordingly, evidence of insurance is deemed admissible under the following circumstances: (a) When the evidence is relevant to some material issue properly in the case; (b) When such evidence is disclosed in developing interest, bias, or motive on the part of witnesses; (c) When such evidence is an integral part of a conversation which constitutes an admission of liability by the defendant.

In States where laws relating to workmen's compensation have not been adopted, evidence of insurance is frequently admissible in damage actions between Master and Servant, where such relationship is in issue. Evidence that the Defendant carries indemnity insurance upon his employees, including the plaintiff, would be of strong probative value, going to show that plaintiff was in fact the employee of defendant. The evidence of insurance is therefore admitted upon the theory that evidence is admissible if it tends to prove one issue, even though it is not admissible to prove another issue, and is prejudicial upon such latter issue.

In automobile damage cases, when it becomes a material issue for the plaintiff to prove that the automobile causing the injury, was owned by defendant, many courts admit evidence that the defendant made a report to a casualty company wherein he admitted ownership of the automobile. Upon the same issue, it has been held competent for the plaintiff merely to show that liability insurance had been taken out by defendant upon the automobile in question.

It will be clear from what has been stated, that evidence of insurance will not, under the majority rule, be admitted as bearing upon the issue of negligence. As a logical sequence to that principle, it is well established that, even though the fact of insurance be shown as relevant to some other issue, it is error for the trial court to instruct the jury

that they may consider whether or not the fact that defendant was insured made him careless or reckless or whether or not a man having insurance against loss will be as careful as if he had no insurance.

The Colorado Supreme Court has not ruled upon the admissibility of evidence of insurance when relevant to material issues in the case, such as suggested above, but it seems likely, in view of the decisions of our Court generally upon the subject, that, when the question is presented, it will follow the majority rule.

Evidence of insurance is frequently placed before the jury under the well established doctrine that facts tending to show interest, bias or motive on the part of a witness may be elicited on cross examination, although such examination may necessarily disclose that the defendant is protected by insurance. This rule was adopted by the Supreme Court of Colorado in The Vindicator Consolidated Gold Mining Co. vs. Firstbrook, 36 Colo. 498. In that case, the defendant produced a witness to prove the execution of a release by the plaintiff, and Counsel for plaintiff brought out on cross examination that the witness, in taking the release, acted for an insurance company. The Court said:

"It appears that he (the witness) was not employed by the defendant to secure this release, but in doing so was acting as the agent of the insurance company. There was a conflict in the testimony with respect to the circumstances under which this release was obtained and it was competent for the plaintiff to bring to the attention of the jury the interest which the witness, by virtue of his relation to the insurance company, had in securing the release, as well as in the result of the action. Matters brought out on cross examination which are legitimate for the purpose of enabling the jury to determine the credibility of a witness, are not objectionable, although they may relate to questions not in issue in the case."

Under this principle, it would be quite permissible in order to show interest or bias of a physician, or any other witness offered by defendant to minimize the plaintiff's damages, to elicit on cross examination that such witness was in the service and pay of an insurance company. So also may it be shown upon cross examination of a witness for the defendant, who has given evidence of a written statement procured from the plaintiff, that the witness was a claim agent for an in-

surance company which carried the defendant's liability insurance, and that he was visiting the plaintiff in that capacity when he took the statement. Under an extension of the same rule, when a plaintiff was placed upon the witness stand by the defendant in order to identify a statement signed by the plaintiff, which it was claimed contradicted his testimony at the trial, the Supreme Court of Arizona held that it was not error for the plaintiff to show that the statement was actually prepared by an Adjuster for an insurance company—by one interested in the result of the case. (Arizona Cotton Oil Co. v. Thompson, 30 Ariz. 204, 245 Pac. 673). This doctrine makes it entirely unsafe for the defendant's attorney (who actually represents an insurance company) to take the stand in order to give proof of conflicting statements previously made by the plaintiff or his witnesses at other times.

It has been held, oddly enough, that although a plaintiff may show that a witness was sent by an insurance company to examine the extent of the plaintiff's injuries, and so might be biased in favor of his employer, the plaintiff may not even intimate to the jury that the insurance company was the real defendant. (Mitchell v. Heintzman, 23 Ont. Week. Rep. 763).

The rule which is probably subjected to more abuse than any of the other rules which admit evidence of insurance under particular circumstances, is the one providing that evidence showing an admission of liability by the Defendant may properly be admitted, although it is developed that in making the admission the Defendant stated that he carried liability insurance. Practically all courts are agreed that the mere voluntary statement of a party after an accident that he is insured, does not in itself constitute an admission, and is not admissible in the absence of other statements or circumstances tending to establish an admission of liability. The statement as to insurance is, however, brought out under the guise of offering a conversation between the plaintiff and the defendant constituting an admission of liability, and although the conversation may be stricken out, when its insufficiency appears, the plaintiff's purpose has been successfully accomplished.

Under the doctrine concerning admissions, reports made

by a defendant to his insurer containing statements of fact material and relevant to matters in controversy, have been held competent. In Hill vs. Jackson, 272 S. W. 105, which was a malpractice case where the defendant denied injuring the plaintiff, a Missouri Court held that a report of any kind to the insurance company, prior to threat of suit, would be competent as bearing on the issue as to whether he did injure the plaintiff. While the Court felt that plaintiff should not be permitted to indulge in a fishing expedition before the jury as to whether or not the defendant had made a report to his insurance company the court conceded the right of plaintiff's counsel to question the defendant outside of the presence of the jury, and to make use before the jury of such relevant information as might be uncovered. This doctrine seems neither wise nor just and has not been widely adopted. The communications between a defendant and his insurer are largely of a confidential character, and would better be considered privileged. In actual practice today, accident investigations are frequently made directly from the office of the company attorney. These communications are probably privileged, as being between attorney and client. The way is thus possibly open to defeat the rule which destroys the private character of the company correspondence. It would seem better sense to adopt one rule which would not distinguish between the attorney and the claim agent and which would encourage a complete and truthful statement of the facts from the nominal defendant to the party who holds the purse strings.

Passing now from the examination of witnesses to the arguments of counsel it may be stated as a general rule that statements by counsel inferring that the defendant carries liability insurance, are considered a ground for new trial, with the exception of those instances where the fact of insurance is properly in evidence. The Supreme Court of Colorado has expressed itself strongly upon this point in Coe v. Van Why, 33 Colo. 315. In that case, one of plaintiff's counsel in his opening argument to the jury stated: "It is a matter of common knowledge that employers and mining companies in this district protect themselves against liability on account of accidents by taking out insurance in insurance companies against such liability." The trial court immediately instructed

the jury that these remarks must not be considered by them for any purpose, but that the liability, if any, of defendants, depended, not upon any custom or habit of mining companies, but upon the facts proven in the case. The judgment which was obtained by the plaintiff below was reversed by the Supreme Court. The following passage from the opinion will bear repetition:

"It is admitted that there was no evidence in the case upon which to base the statement. That it was improper is conceded by counsel who made it, but it is said that no prejudice resulted to defendants because the court immediately cautioned the jury to disregard it. We are unable to agree with this specious kind of argument. In Tanner v. Harper, 32 Colo. 156, a personal injury case in which one of the learned counsel for plaintiff here was an attorney, plaintiff's counsel, in his opening statement, said that an insurance company was the real party defendant in interest, and, upon their voir dire, over the objection of defendants, he was permitted to ask each juror whether he was acquainted with the insurance company in question or had been in its employ. It was argued there that plaintiff was entitled to know if any of the panel of jurors was interested in the insurance company so as to exclude them from the jury that was to try the case. Such excuse cannot be given here, and we did not hold it valid there; but as there were no close questions of fact in the Tanner case for the determination of the jury, it affirmatively appeared that the defendants were not prejudiced by the alleged errors. But here, as we have seen, the jury had been selected when the comment was made. There were several closely contested questions of fact, and there had been one mistrial, and it may be that the jurors were largely influenced in returning the verdict against defendants because this improper statement of counsel convinced them that some insurance corporation, and not the defendants, would respond for any damages that might be awarded. We are satisfied that the unfavorable impression on the minds of the jury was not removed by the direction of the Court to disregard the statement. Counsel knew when he made it that it was improper and reprehensible, and it is fair to presume that he would not have done so, had he not supposed that some advantage to his client would thereby be gained. In such cases counsel who thus seeks to obtain that result takes upon himself the risk of losing what he hopes to secure."

This decision, it will be seen, places some importance upon the stage of the proceeding at which the improper comments are made. The offense is considered more serious after the selection of the jury than before.

Although it is considered highly improper for counsel to state or to suggest to the jurors, even prior to their selection, that the defendant is insured, the widest scope is usually allowed to counsel in their interrogation of the jurors upon

their voir dire examination. It is almost universal practice in cases where the defendant is insured, for plaintiff's counsel to question the jurors upon their relationship to the interested insurance company, or its officers or local agents. This practice has of course been challenged upon the ground that such questions lead the jury to believe that the defendant is protected by insurance, and that the questions actually accomplish no legitimate purpose. In a Texas case, (Tarbutton v. Ambriz, 282 S. W. 891) it is said that whether or not a juror or a member of his family is connected with, or has any interest in, a liability insurance company, has no legitimate bearing on the issue involved, for, if the juror should be employed or have an interest in such company, he would not know whether defendant was insured in that or any other insurance company, and it could not affect his verdict. This statement is not, however, strictly true in all cases, and the vast majority of the courts have felt that the protection of the defendant from possible adverse inferences does not justify so close a restriction upon the plaintiff's means of testing, within reasonable limits, and in good faith, the qualifications of proposed jurors.

In many decisions it has been held that counsel for plaintiff may be permitted to ask the jurors, either individually or collectively, upon their voir dire, whether they are engaged in the insurance business, or have any connections of any kind with *any* casualty or indemnity insurance companies, either as stockholder, agent or otherwise. In other decisions it is held that the jurors may be questioned concerning their relationship to a *specified* insurance company. Some courts permit the interrogatory to be made in either form, while some courts approve only the general form, and some only the specific.

In Colorado, several cases have recognized the right to inquire concerning the relationship of jurors with a specified company, but there have been no cases upon the right to inquire concerning the connection with insurance companies generally. The following cases contain some discussion of the subject.

Vindicator Company vs. Firstbrook, 36 C. 498.
Cripple Creek Min. Co. vs. Bradbout, 37 C. 423.
Cripple Creek Min. Co. vs. Estet, 37 C. 431.
Independence Coffee and Spice Co. vs. Kalkman, 61 C. 98.
Tatarsky vs. Smith, 78 C. 491.
Bolles vs. Kinton, 83 C. 147.

Although it is possibly true that inquiries directed to the particular company which has insured the defendant is a more logical and effective method of determining the qualifications of the jurors in the particular case on trial, it seems doubtful that the Supreme Court of Colorado would consider the asking of questions concerning the relationship of the juror to *any* insurance company, to be reversible error. This would be particularly true where counsel for defendant refused to divulge the name of the insurer. Under such circumstances, it would probably be good practice, to inquire, in the absence of the jury, whether any liability insurance company is connected with the case. If the name is divulged by counsel for defendant, the interrogatories could be directed to the particular company. If not, counsel would be justified in making general interrogations.

It is probably unnecessary to state that it is usually held error for plaintiff's counsel to propound the usual insurance questions, without knowing that the defendant is insured. Where there is in fact no insurance, it should not in justice be held error for the defendant to show the true fact when counsel for plaintiff has mentioned insurance in the voir dire examination. There seem to be no cases upon that particular point although the courts have frequently said that there must be a basis for the insurance questions on voir dire. Upon this point, attention is called to the following passage taken from the opinion in Tatarsky vs. Smith, 78 Colo. 491, 495;

"In Independence Coffee and Spice Co. vs. Kalkman, 61 Colo. 98, we held that a plaintiff has the right to inquire if any member of the panel has an interest in the corporation which has *or is supposed to have,* indemnified the defendant against the liability asserted . . . "

Although the right of plaintiff's counsel to question the jurors concerning their insurance connections, is, in most cases, conditioned upon good faith and proper motive, it is doubtful whether proper motive is any longer a condition to the right

in Colorado. In Bolles vs. Kinton, 83 Colo. 147, the Court said at page 153:

"The plaintiff's counsel was permitted to ask the jury on voir dire whether any of them were interested in a certain insurance company. This was proper. The plaintiff had a right to ascertain the fact as to their interest. True, counsel may have had a desire to let the jury know that defendants carried liability insurance, but we do not see how he or the Court could have treated the matter more fairly. All argument was in chambers and the court restricted the examination on this point to the one simple question."

In the earlier case of Vindicator Company vs. Firstbrook, 36 Colo. 498, it was expressly held that such voir dire questions might be propounded provided it appeared that they were pertinent, and made in good faith, and for the purpose of excluding from the panel partial or prejudiced persons. Insurance counsel have unsuccessfully attempted to utilize this qualification by submitting affidavits before trial that none of the jurors on the panel were in the slightest degree interested in or connected with the insurance company. The trial courts have nevertheless granted to counsel the right to propound such questions to the jurors, thus effectively nullifying the former condition of proper motive. It is scarcely to be doubted that if the general rule excluding evidence of insurance is a salutary rule, the present practice regarding the voir dire examination of jurors, is unsound and works great injustice, even admitting the unquestioned right of the plaintiff to test the qualifications of the jurors. Other methods of procedure have been suggested which effectively prevent any prejudice to the defendant and at the same time fully protect the rights of the plaintiff.

The Supreme Court of Ohio, by a four to three decision in Pavilonis vs. Valentine, 165 N. E. 730 sustained questions as to insurance connection on the *voir dire* examination. One of the dissenting judges, Marshall, C. J. suggested two methods of prevention that are worthy of close consideration.

(1) "Let the judge conduct the examination on this point, after first stating that he has no knowledge whether or not the defendant is insured, and that they (the jurors) must assume that he is not insured."

(2) "Let a questionnaire be submitted to each juror

when the summons is served on him, making minute inquiry as to his connection with or relation to automobile liability insurance, the answers to be placed on file in the Clerk's office and to be available at all times to counsel."

Referring to the first suggested method above, it would seem more proper for the Court to state that "he has no knowledge whether or not either the plaintiff or defendant is insured." Thus, attention would not be directed to either party.

Another method which is practiced generally in Vermont, requires the presiding judge or the judge who organizes the juries, at the first day of the week or term, or other period when the veniremen are called, to inquire of each of them minutely as to their interest in or connection with any insurance company. A note is made showing in detail the name of the company with which he is connected or in which he is interested, and the information contained thereon is passed on to all trial lawyers by memorandum on the printed list of jurors. From that time on during the term of service of such jurors no other questions are permitted.

It is felt that in order to reconcile the respective rights of plaintiff and defendant in these cases, the Colorado courts might well adopt one, or a combination, of the remedies suggested above.

Every trial court well knows how many times evidence of insurance is improperly brought into a case. It is unfortunately true that counsel, when representing a plaintiff, are often lax in the performance of their unquestioned duty to keep such improper influence from the jury.

In Frohm vs. Siegel-Cooper Co., 116 N. Y. S. 90, a New York court said: "The record presents a very flagrant instance of a practice on the part of plaintiff's counsel at trial which is unhappily becoming too common in accident cases, and which has frequently been characterized by this Court and the Court of Appeals as reprehensible."

The Supreme Court of Carolina said in Horsford vs. Carolina Glass Co., 92 S. C. 236, 75 S. E. 533:

"One of the most manifest and pressing duties, not only of courts, but of lawyers, is to prevent influences of this kind from finding their way into the administration of justice. In the discharge of this duty, the entire com-

monwealth is deeply concerned, for the use in evidence and argument of such influences produces injustice and waste of the time and labor of courts and jurors at great public cost."

It has proved most difficult to find a satisfactory remedy when such error occurs. Only two possibilities are open—one to instruct the jury to disregard such testimony—the second to grant a new trial. Although some courts seem to require a new trial at the mere mention of liability insurance, such doctrine is neither just nor practicable, for the power is thus placed with the defendant to prevent the entry of judgment, and the burden of the courts is increased to an intolerable degree. More and more the courts are tending to make good faith of the plaintiff and his counsel, the test of the form of relief to be granted to the defendant. If the error is wilful, a new trial will be granted. If not, the court often contents itself with instructing the jury to disregard the improper testimony. Although, an innocent statement as to liability insurance is fully as prejudicial to the defendant as a wilful statement, the distinction drawn by the courts is probably justified by the circumstances. A plaintiff should not be required to retry his case because of an inadvertent remark by one of his witnesses, not responsive to the question asked.

A more strict rule is however, applied to the plaintiff and to his counsel, as to their own statements. It is their duty to protect the case from improper influences and a negligent failure so to do is equivalent to wilful misconduct. The New York Court of Appeals held in Rodzborski vs. American Sugar Ref. Co., 210 N. Y. 262, 104 N. E. 616, that it will be assumed, where the plaintiff as a witness in his own behalf, or other important witnesses for the plaintiff, state on the examination in chief matters tending to establish that the defendant is insured against liability, that the plaintiff's counsel knew that the question put would elicit such statement.

It seems unquestionably the duty of plaintiff's counsel to instruct him upon the impropriety of statements to the effect that defendant carries liability insurance. When counsel fails so to do, and error occurs, it is altogether just that a new trial be granted, as in the case of wilful misconduct. When a claimant consults an attorney regarding his rights in a damage case, one of the first questions put to him by the attorney con-

cerns the insurance carried by defendant and there can be no excuse whatever for an "unexpected" or "unresponsive" answer by plaintiff to his attorney's questions upon the trial of the case.

In determining whether a new trial shall be granted on account of improper statements concerning liability insurance, the Colorado Courts, as well as many other Courts, also apply another test. Does it affirmatively appear that the defendant was not prejudiced by the alleged errors? If that is the situation, of course a new trial will not be granted. The burden to establish lack of prejudice seems to be upon the plaintiff. In Tanner vs. Harper, 32 Colo. 156, when the jury was being empaneled, counsel for plaintiff stated that an insurance company was the real party in interest, in defense of the suit. Upon objection by defendant, the Court advised the jury that they should disregard the remark of counsel. The Supreme Court affirmed the judgment below on the ground that there were no close questions of fact in the determination of which the jury might have been unconsciously influenced by the consideration of extraneous and improper matter, and that it appeared affirmatively that the defendants were not prejudiced by the erroneous statements of counsel.

Virtually the same holding was made in Parkdale Fuel Co., vs. Taylor, 26 C. A. 304, wherein counsel for plaintiff asked a juror on his voir dire examination, "Do you know Mr. Felker or Mr. Dickinson, who represents the Ocean Insurance Company in this case?" The Court in its opinion recognized and condemned the improper motive of plaintiff's counsel, but, in affirming the judgment of the trial court, stated that "it affirmatively appears from the record that the verdict was not the result of the misconduct of counsel, but is sustained by sufficient evidence."

Coe vs. Van Why, supra, is the only Colorado case which has been found, containing a discussion of error of this nature occurring after the jury has been selected and sworn. As before stated in this paper, error occurring after the selection of the jury seems to be considered more prejudicial and in that case the Court held that the error was not cured by an instruction from the court to disregard the comments of counsel.

In Tatarsky vs. Smith, 78 Colo. 491, the defendant counterclaimed against plaintiff who was the insured party. Defendant in establishing the damage to his automobile testified in answer to his attorney's question that an itemized statement for the estimated cost of repairs, furnished by an automobile company, was in the hands of the indemnity company. The court in affirming the judgment below, which was against the insured plaintiff, made no comment upon this alleged error.

Attorneys for insurance companies are as a whole well satisfied that objections to prejudicial testimony or statements of this nature, followed by an instruction from the court that the jury disregard such matters, works to increase rather than to decrease, the prejudicial effect.

The Illinois Court of Appeals said in Wiersema vs. Lockwood and S. Co., 147 Ill. App. 33 that instructions make more emphatic the evil intended to be cured, and also, that if counsel are permitted to resort to the practice of violating the law of evidence, and then curing the violation by merely giving an instruction to the jury to disregard the unwarranted and illegitimate remarks, the law of evidence would be useless and but a farce.

The comment of the United States Circuit Court of Appeals of the Fourth Circuit in Stewart vs. Newby, 266 Fed., 287, upon the irremovable prejudice of such evidence is worthy of repetition;

> "The only purpose for which such evidence is presented is to prejudice the jury and the poison is of such character, that once being injected into the mind it is difficult of eradication . . . The removal of the fly does not restore an appetite for the food into which it has fallen."

It is therefore commonly considered that an instruction from the Court does not cure the error. A new trial is the only effective remedy. Defense attorneys accordingly no longer protest every possible mention of insurance, but are prone to keep an eye upon the apparent motive of counsel, and if wilful misconduct is obvious, or if the violation of the rule is inexcusable, a motion is promptly made for an order of mistrial. In the absence of misconduct justifying an order of mistrial, defense counsel usually prefer to accept the situation without comment.

It should be remarked that the introduction of evidence of insurance is not without advantage to the defendant in some cases. When the evidence is legitimately in the case, and is not therefore "untouchable", the defendant is able properly to gain some support with the jury from the argument that large jury verdicts affect the jurors themselves by increasing the cost of insurance, and from the further argument that the defendant, having no personal interest in the result, is without the tendency towards falsification or exaggeration, which unavoidably attaches itself to the interested party.

The rule excluding evidence of liability insurance in negligence cases is probably violated by attorneys more frequently and more flagrantly than any other rule of evidence or of procedure prescribed by the Courts, and apparently without any excuse other than that of self-interest. The Courts have declared that attorneys have a very positive duty in respect to this rule, and it is respectfully submitted that attorneys should join with the Courts in an earnest effort effectively to restrain inexcusable violations.

"LEGAL TITLES"

A new book, with the above title, compiled and published by the Landon Abstract Company, of Denver, is already proving a great convenience to attorneys, particularly to those handling real estate matters in the four counties,—Denver, Adams, Arapahoe and Jefferson. This book gives a complete list of the correct legal titles of all Additions and Subdivisions in those four counties, making a total of 2,510 titles. Because of its accuracy, even in such matters of detail as commas and apostrophes, this list is invaluable in drawing instruments involving legal descriptions.

Much other often-needed information, such as facts about tax levies and lists of abstracters in the various counties, is included in easily accessible form.