

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

08-168

FLOYD RIDEAU, ET UX.

VERSUS

WALTER J. EDWARDS, ET AL.

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 99-378
HONORABLE DAVID ALEXANDER RITCHIE, DISTRICT JUDGE**

**ELIZABETH A. PICKETT
JUDGE**

Court composed of Ulysses Gene Thibodeaux, John D. Saunders, and Elizabeth A. Pickett, Judges.

REVERSED AND RENDERED.

**Michael Edward Parker
Allen & Gooch
P. O. Drawer 3768
Lafayette, LA 70502-3768
(337) 291-1350
Counsel for Defendant-Appellee:
Louisiana Insurance Guaranty Association**

**Jamie C. Gary
David Paul Bruchhaus
David P. Bruchhaus
Mudd & Bruchhaus, LLC
410 E. College Street
Lake Charles, LA 70605
(337) 562-2327
Counsel for Plaintiff-Appellant:
Floyd Rideau, et al.**

1 **PICKETT, Judge.**

2 The plaintiffs-appellants, Floyd Rideau, his wife, and his three children, appeal
3 the trial court's ruling granting summary judgment in favor of the Louisiana
4 Insurance Guaranty Association (LIGA).

5 **STATEMENT OF THE CASE**

6 In October 1998, a tractor-trailer driven by Walter J. Edwards overturned and
7 collided with a pickup truck driven by Floyd Rideau. At the time of the accident,
8 Edwards was acting in the course and scope of his employment with CX-Trans/TIC
9 United Corporation (TIC United). TIC United owned the tractor-trailer, and Reliance
10 National Indemnity Corporation (Reliance) provided liability insurance coverage for
11 the vehicle.

12 Rideau sustained injuries in the collision. Rideau, his wife, and his children
13 sued Edwards and TIC United. TIC United filed for bankruptcy protection in late
14 2000. The Rideaus amended their petition to add Reliance as a defendant. When a
15 court in Pennsylvania liquidated Reliance, the Rideaus amended their petition to add
16 as a defendant LIGA, as guarantor of Reliance.

17 LIGA filed a motion for summary judgment. In its motion, it alleged three
18 grounds: "(1) the putative policy of insurance issued to TIC United Corporation by
19 Reliance Insurance Company is unaccompanied by a transfer of insurance risk, and
20 is therefore not an insurance policy for which LIGA is responsible; (2) coverage
21 provided by the Texas Property and Casualty Insurance Guaranty Association
22 (TPCGA) is primary to any coverage provided by LIGA; and (3) LIGA is entitled to
23 reduce any recovery for which it may be responsible by the deductible provided under
24 the Reliance policy[.]" Following a hearing, the trial court denied the motion for

1 summary judgment on the issues of transfer of risk and TPCGA’s coverage. But the
2 trial court granted LIGA’s motion for summary judgment on the third issue. The trial
3 court found that the Reliance policy did contain a one million dollar deductible, and
4 any recovery by the Rideaus from LIGA would be limited to any amount in judgment
5 above one million dollars. The trial court issued a judgment and certified it as
6 immediately appealable. The Rideaus have appealed the trial court’s grant of
7 summary judgment in favor of LIGA.

8 **ASSIGNMENTS OF ERROR**

9 The Rideaus assert two assignments of error:

- 10
11 1. The trial Court erred in failing to recognize that an endorsement within
12 the Reliance policy required LIGA to pay the “first dollar” of coverage.
13
14 2. The trial Court erred in failing to apply the Louisiana Direct Action
15 Statute, which states that an insurer cannot escape the liability of a
16 bankrupt insured.
17

18 **DISCUSSION**

19 **Standard of Review**

20 The supreme court discussed the standard applicable to appellate review of
21 summary judgments involving insurance contracts in *Robinson v. Heard*, 01-1697,
22 pp. 3-4 (La. 2/26/02), 809 So.2d 943, 945:

23 A reviewing court examines summary judgments de novo under
24 the same criteria that govern the district court’s consideration of whether
25 summary judgment is appropriate. *Smith v. Our Lady of the Lake*
26 *Hospital, Inc.*, 93-2512 (La.7/5/94), 639 So.2d 730, 750. A reviewing
27 court thus asks the same questions as does the trial court in determining
28 whether summary judgment is appropriate: whether there is any genuine
29 issue of material fact, and whether the mover is entitled to judgment as
30 a matter of law. *Smith*, 639 So.2d at 750.
31

32 Interpretation of an insurance contract is usually a legal question
33 that can be properly resolved in the framework of a motion for summary
34 judgment. *Sanchez v. Callegan*, 99-0137 (La.App. 1 Cir. 2/18/00), 753
35 So.2d 403, 405. When the language of an insurance policy is clear and

1 unambiguous, a reasonable interpretation consistent with the obvious
2 meaning and intent of the policy must be given. *Sanchez*, 753 So.2d at
3 405.
4

5 **LIGA’s Obligations under the Reliance Policy**

6 When the Commonwealth of Pennsylvania declared Reliance insolvent, the
7 Rideaus substituted LIGA as a defendant pursuant to the Insurance Guaranty
8 Association Act. La.R.S. 22:1375, et seq. LIGA’s liability as guarantor of the
9 Reliance policy is the same as Reliance’s liability would be had it had not been
10 declared insolvent. La.R.S. 22:1382(A)(1). Likewise, LIGA has all of the rights,
11 duties, and obligations of Reliance under the terms of the policy. La.R.S.
12 22:1382(A)(2).

13 The liability policy issued by Reliance covers up to \$1 million in damages,
14 with a \$1 million deductible. LIGA successfully argued in the trial court that the \$1
15 million deductible is applicable to the damages suffered by the Rideaus. The Rideaus
16 argue that the trial court incorrectly interpreted an endorsement to the policy. They
17 claim that the “Endorsement for Motor Carrier Policies of Insurance for Public
18 Liability under Sections 29 and 30 of the Motor Carrier Act of 1980” requires LIGA
19 to pay the Rideaus claims subject to reimbursement from the insured, TIC United.
20 The parties refer to this endorsement as the MCS-90. It states, in relevant part:

21 This insurance is primary and the company shall not be liable for
22 amounts in excess of \$1,000,000 for each accident.

23
24
25

26 The insurance policy to which this endorsement is attached
27 provides automobile liability insurance and is amended to assure
28 compliance by the insured, within the limits stated herein, as a motor
29 carrier of property, with Sections 29 and 30 of the Motor Carrier Act of
30 1980, and the rules and regulations of the Federal Highway
31 Administration (FHWA) and the Interstate Commerce Commission
32 (ICC).

1 In consideration of the premium stated in the policy to which this
2 endorsement is attached, the insurer (the company) agrees to pay, within
3 the limits of liability described herein, any final judgment recovered
4 against the insured for public liability resulting from negligence in the
5 operation, maintenance or use of motor vehicles subject to the financial
6 responsibility requirements of Sections 29 and 30 of the Motor Carrier
7 Act of 1980 regardless of whether or not each motor vehicle is
8 specifically described in the policy and whether or not such negligence
9 occurs on any route or in any territory authorized to be served by the
10 insured or elsewhere. Such insurance as is afforded, for public liability,
11 does not apply to injury to or death of the insured's employees while
12 engaged in the course of their employment, or property transported by
13 the insured, designated as cargo. It is understood and agreed that no
14 condition, provision, stipulation, or limitation contained in the policy,
15 this endorsement, or any other endorsement thereon, or violation
16 thereof, shall relieve the company from liability or from the payment of
17 any final judgment within the limits of liability herein described,
18 irrespective of the financial insolvency or bankruptcy of the insured.
19 However, all terms, conditions, and limitations in the policy to which
20 the endorsement is attached shall remain in full force and effect as
21 binding between the insured and the company. The insured agrees to
22 reimburse the company for any payment made by the company on
23 account of any accident, claim, or suit involving a breach of the terms
24 of the policy, and for any payment that the company would not have
25 been obligated to make under the provisions of the policy except for the
26 agreement contained in this endorsement.

27
28 It is further understood and agreed that, upon failure of the
29 company to pay any final judgment recovered against the insured as
30 provided herein, the judgment creditor may maintain an action in any
31 court of competent jurisdiction against the company to compel such
32 payment.

33
34 The limits of the company's liability for the amounts prescribed
35 in this endorsement apply separately, to each accident, and any payment
36 under the policy because of any one accident shall not operate to reduce
37 the liability of the company for the payment of final judgments resulting
38 from any other accident.

39
40 The language used in the MCS-90 endorsement comes directly from federal
41 regulations. See 49 C.F.R. §§ 387.7, 387.15 (2008). The MCS-90 endorsement
42 creates a suretyship obligation on the part of the insurer. *Travelers Indem. Co. of*
43 *Illinois v. W. Am. Specialized Transp. Serv., Inc.*, 409 F.3d 256 (5th Cir. 2005). "The
44 MCS-90 endorsement is 'in effect, suretyship by the insurance carrier to protect the

1 public – a safety net,’ and not an ordinary insurance provision to protect the insured.”
2 *Id.* at 260 (footnote omitted). The insurer can later recover any payments the insured
3 would not have been liable for under policy. *Id.* The obligation of the insurer
4 extends even to amounts that are deductibles under the terms of the policy. *Am. Inter-*
5 *Fidelity Exch. v. Am. Re-Insurance Co.*, 17 F.3d 1018 (7th Cir. 1994).

6 We find that the MCS-90 endorsement requires LIGA to cover any loss under
7 the Reliance policy, irrespective of the amount of the deductible. Having found that
8 the MCS-90 endorsement allows the Rideaus to recover from LIGA, we also find that
9 the Louisiana Direct Action Statute allows the Rideaus to substitute LIGA as a party
10 as a result of TIC United’s bankruptcy.

11 The Direct Action Statute affords a victim the right to sue the
12 insurer directly when the liability policy covers a certain risk. The
13 statute does not, however, extend the protection of the liability policy to
14 risks that were not covered by the policy or were excluded thereby (at
15 least in the absence of some mandatory coverage provisions in other
16 statutes).

17 *Anderson v. Ichinose*, 98-2157, p. 9 (La. 9/8/99), 760 So.2d 302, 307. After Reliance
18 was declared insolvent, LIGA became the statutory successor to Reliance. Thus,
19 LIGA is the proper party defendant in this suit.

20 **Conclusion**

21 The judgment of the trial court granting the motion for summary judgment in
22 favor of LIGA is reversed and the case is remanded. We order that LIGA pay the
23 costs of this appeal.

24 **REVERSED AND REMANDED.**