INSURANCE

The Nebraska Supreme Court decided several important issues in insurance law during the survey period. The major issues before the court were the extent of coverage of a banker's blanket bond,[1] liability of insurers in the event of conflicting coverage clauses of separate policies,[2] joinder of an insurance company with an uninsured motorist,[3] and "stacking" of uninsured motorist coverage.[4]

OMAHA BANK FOR COOPERATIVES v. AETNA CASUALTY AND SURETY CO.: BLANKET BOND COVERAGE FOR EMPLOYEE'S ACTS

FACTS AND HOLDING

Omaha Bank for Cooperatives brought this action for a declaratory judgment to determine the liability of Aetna Casualty and Surety Company under a banker's blanket bond. This bond, written by Aetna, insured a group of farm credit banks, including the plaintiff bank, against losses caused by bank employees. The fact situation upon which the bank requested a declaration involved the actions of one of the bank's officers.[5]

The bank had made a loan commitment to Siouxland Cattle Cooperative for an amount not to exceed $1.4 million. The borrower intended to use the proceeds to construct and equip a 3,500-head cattle feedlot. A bank lending officer assured Siouxland that the bank would extend additional loans as necessary to expand the feedlot to a 5,000-head capacity. Siouxland relied on these promises of future loans and commenced construction. The bank then refused to make any additional loans. Asserting it was unable to repay the earlier loan of $1.4 million because the 3,500-head feedlot was not profitable, the borrower sued the bank for damages caused by the false representations as to the availability of future loans.[6]

This action for declaratory judgment was to determine

1. Omaha Bank for Coops. v. Aetna Cas. and Sur. Co., 207 Neb. 782, 301 N.W.2d 564 (1981).
2. Jensen v. Universal Underwriters Ins. Co., 208 Neb. 487, 304 N.W.2d 51 (1981).
3. Eich v. State Farm Mut. Auto. Ins. Co., 208 Neb. 714, 305 N.W.2d 621 (1981).
4. *Id.* Stacking is the allowance of full recovery on more than one applicable policy without proration among the policies. *Id.* at 722, 305 N.W.2d at 626.
5. 207 Neb. at 783, 301 N.W.2d at 565.
6. *Id.* at 783-84, 301 N.W.2d at 565.

whether Aetna would be liable under the terms of the bond for any judgment against the bank resulting from the borrower's suit.[7] The provision in question provided coverage for:

> [a]ny financial loss through any dishonest, fraudulent or criminal act of any Employee, . . . wherever committed, or through the failure of any Employee to properly or faithfully perform the duties imposed upon or entrusted to such Employee under any act of Congress or rules and regulations of the Farm Credit Administration, or imposed upon or entrusted to such Employee by the Farm Credit Administration or any of the above named Insured or by the Chairman of the Presidents Committee of the Farm Credit Banks of Omaha, or the Farm Credit Board of the Omaha District; and also any loss of Property . . . through any dishonest, fraudulent or criminal act of any Employee, wherever committed.[8]

The issue before the court was whether the bond insured the bank against losses incurred due to its own fraud.[9] Although the bond indemnified the bank against its employee's dishonest, fraudulent acts or failure to perform faithfully, the supreme court held that the blanket bond in question did not insure the bank against the consequences of its own torts.[10]

ANALYSIS

Banker's blanket bonds are contracts of insurance and are governed by the rules pertaining to contracts.[11] Although the term "blanket bond" indicates that coverage is to be broad,[12] blanket bonds do not cover all losses which a bank may incur.[13] Instead, a uniform dollar coverage is applied to each insuring agreement unless otherwise designated.[14]

It is generally agreed that banker's blanket bonds are to cover direct losses of the insured, and not to insure against losses of a third party.[15] Although banker's blanket bonds are not to be third

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7. *Id.* at 784, 301 N.W.2d at 565.
8. *Id.* at 784-85, 301 N.W.2d at 565-66.
9. *Id.* at 785, 301 N.W.2d at 566.
10. *Id.* at 791, 301 N.W.2d at 569.
11. ABA ANNOTATED BANKERS BLANKET BONDS 17 (1980).
12. United Pac. Ins. Co. v. Idaho First Nat'l Bank, 378 F.2d 62, 69 (9th Cir. 1967).
13. ABA ANNOTATED BANKERS BLANKET BONDS 6 (1980). Although it is the generally accepted rule that blanket bonds do not cover all risks, some courts have stated otherwise. *Id.* at 17.
14. *Id.* at 6.
15. Ronnau v. Caravan Int'l Corp., 205 Kan. 154, —, 468 P.2d 118, 122 (1970); Salley Grocer Co. v. Hartford Accident and Indem. Co., 223 So.2d 5 (La. Ct. App. 1968); 13 G. COUCH, COUCH CYCLOPEDIA OF INSURANCE LAW § 46:2 (2d ed. 1965).

party beneficiary contracts,[16] blanket bonds are generally held to cover losses incurred when the insured is required to pay a third party.[17] In determining whether these losses are covered losses, the contract is construed most strongly against the insurer.[18] Accordingly, the bond should be interpreted broadly, based on consideration of the reasonable expectations of an insured and accommodation of the actual intentions of the parties involved.[19] Court decisions should be made upon a consideration of all these factors.

In holding that the bond's provisions did not insure the bank against the consequences of its own torts, the Nebraska Supreme Court relied on authority from other jurisdictions.[20] However, as the dissent indicated, the majority drew the issue in this case too narrowly.[21] This case not only involved a tortious misrepresentation to a third party, but the misrepresentations also constituted a tort against the bank.[22] The court did not address this latter issue. Additionally, the majority did not adequately address whether Aetna was liable under the "faithful performance" provision of the bond.[23] Under this provision, it appears that the majority could not have justified its holding.

Despite the fact that the acts of the loan officer were against the express wishes of the bank, the court had sufficient grounds for holding Aetna not liable under the provision guarding against dis-

16. *See* 13 COUCH, *supra* note 15, § 46:1 at 132-33.

17. Hooker v. New Amsterdam Cas. Co., 33 F. Supp. 671, 672-74 (W.D. Ky. 1940). *See* First Nat'l Bank of Sikeston v. Transamerica Ins. Co., 514 F.2d 981, 982-85 (8th Cir. 1975); Jefferson Bank and Trust Co. v. Central Sur. and Ins. Corp., 408 S.W.2d 825, 827-33 (Mo. 1966). "In other words, a bond insuring against loss sustained by reason of dishonesty, fraud, embezzlement, etc., covers losses imposed by the creation of liability to third persons." 13 COUCH, *supra* note 15, at § 46:101.

18. See note 14 and accompanying text *supra*.

19. 13 COUCH, *supra* note 15, § 46.10 at 138. *See* Western Nat'l Bank of Casper v. Hawkeye-Security Ins. Co., 380 F. Supp. 508, 511 (D. Wyo. 1974); Texas Nat'l Bank v. Fidelity and Deposit Co. of Maryland, 526 S.W.2d 770, 773 (Tex. Civ. App. 1975).

20. *See* Ronnau v. Caravan Int'l Corp., 205 Kan. 154, —, 468 P.2d 118, 122 (1970); Bank of Mead v. St. Paul Fire and Marine Ins. Co., 202 Neb. 403, 405, 275 N.W.2d 822, 824 (1979); Foxley Cattle Co. v. Bank of Mead, 196 Neb. 587, 593, 244 N.W.2d 205, 208-09 (1976).

21. *See* 207 Neb. at 791-92, 301 N.W.2d at 569 (McCown, J., dissenting).

22. *Id.* at 792, 301 N.W.2d at 569.

23. *See* Castetter v. Barnard, 98 Ind. App. 210, —, 183 N.E. 681, 688 (1932); Thursten County v. Chmelka, 138 Neb. 696, 705, 294 N.W. 857, 863 (1940). Fidelity bonds of bank officers are usually conditioned upon either the "faithful discharge of the duties" or the particular acts or defaults of the covered officer. A fidelity bond conditioned on the faithful discharge of the duties of a bank officer is broken by the violation of any valid bylaw which the bank may adopt. Conditions of this sort have been held not only to guarantee the personal honesty of the officer, *but also his competency, efficiency, and diligence in the discharge of his duties.* See Fiola v. Ainsworth, 63 Neb. 1, 4-5, 88 N.W. 135, 137 (1901).

honest and fraudulent acts.[24] It has been stated that when a bank lending officer makes a loan without the required authorization of the bank's loan committee, this is tantamount to a dishonest or fraudulent act.[25] Nevertheless, for the bond coverage to apply, an element of personal gain is usually required.[26] "Dishonest or fraudulent acts" as used in banker's blanket bonds means dishonest or fraudulent acts committed by a bank employee with the manifest intent (1) to cause the insured to sustain loss and (2) to obtain financial benefit for the employee or for another.[27] Since these two elements were not found, the court's holding that Aetna was not liable under the dishonest or fraudulent acts provision is correct in this respect.

However, the bond in question contained not only a provision insuring against fraudulent or dishonest acts but also a provision insuring against failure of employees to faithfully perform their duties.[28] The trial court had found that the bank officer who had made the promises failed to perform his duties.[29] This failure should have been held to fall within the coverage of the faithful performance provision of the blanket bond.

CONCLUSION

Ambiguities in insurance policies are to be construed most strongly against the insurer,[30] but the court in *Omaha Bank* did not apply this rule strictly. Clearly, the bank officer failed to faithfully perform.[31] The bank had paid an additional consideration for the faithful performance provision, which reasonably could have been expected to cover this situation.[32] In this case, not all relevant provisions of the bond were subjected to a construction involving an analysis of reasonable expectations and actual intent. Therefore, the court reaches a conclusion which appears inequitable to the bank and contradictory to the plain language of the bond, and which ignores express findings of the district court.

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24. See note 8 and accompanying text *supra*.

25. Kruger & Sorenson, *Causation in Fidelity Cases*, 12 THE FORUM 420, 422 (1976).

26. Skillern, *Fidelity Coverage—What is Dishonesty?*, in BANKERS AND OTHER FINANCIAL INSTITUTION BLANKET BONDS 23, 40 (F. Skillern ed. 1979).

27. *Id.* at 39.

28. See note 8 and accompanying text *supra*.

29. 207 Neb. at 794-95, 301 N.W.2d at 570 (McCown, J., dissenting).

30. American Sur. Co. v. Pauly, 170 U.S. 133, 144 (1898); 1 COUCH, *supra* note 15, § 15:76 at 805 (2d ed. 1959); 10 AM. JUR. 2D *Banks* § 84 (1963).

31. See note 29 *supra*.

32. 207 Neb. at 795, 301 N.W.2d at 571 (McCown, J., dissenting).

JENSEN v. UNIVERSAL UNDERWRITERS INSURANCE CO.: "EXCESS INSURANCE" CLAUSES

A controversial and increasingly important insurance issue was faced by the Nebraska Supreme Court in *Jensen v. Universal Underwriters Ins. Co.*[33] Jensen, an employee of Byers Brothers, had the use of an automobile leased by his employer. The lessor and lessor's car dealership corporation were named as the insureds under a garage liability policy issued by Universal Underwriters Insurance Company. Jensen was also covered by a policy of insurance issued to his employer on this leased automobile. Jensen took the automobile to the dealership for repair and was given a loaner car for use until repairs were complete. Jensen was involved in an automobile accident with the loaner car.[34]

The lessee employer's policy provided for excess insurance[35] in the event that a temporary substitute automobile was used.[36] The lessor's policy, issued by Underwriters, provided coverage on loaner cars if the user was not covered under any automobile liability policy of his own, either primary or excess.[37] Jensen brought suit for a declaratory judgment to determine whether Underwriters must afford coverage for any liability Jensen might have as a result of the automobile accident.[38]

The court followed its earlier decision in *Bituminous Casualty Corp. v. Andersen*[39] and held Underwriters liable.[40] The only support indicated by the court for its holding was a quotation from *Bituminous Casualty Corp.*: "Where an excess insurance clause in a driver's automobile liability policy and a no-liability clause in the automobile owner's liability policy apparently conflict, the no-liability clause is ineffective and the driver's insurance [is] excess."[41]

The issue that *Jensen* presents has been the subject of much litigation in other jurisdictions.[42] These jurisdictions have re-

33. 208 Neb. 487, 304 N.W.2d 51 (1981).
34. *Id.* at 488, 304 N.W.2d at 53.
35. Excess insurance is defined as "[i]nsurance which, by a provision in the policy, is relieved for contributing to other insurers of the same risk; such a policy renders the insurer liable for the amount of loss or damage in excess of the coverage provided by another policy or policies covering the same risk." BALLENTINE'S LAW DICTIONARY 427 (3d ed. 1969).
36. *Id.* at 491-92, 304 N.W.2d at 54.
37. *Id.* at 491, 304 N.W.2d at 54.
38. *Id.* at 488, 304 N.W.2d at 52.
39. 184 Neb. 670, 171 N.W.2d 175 (1969).
40. 208 Neb. at 492, 304 N.W.2d 55.
41. Bituminous Cas. Corp. v. Andersen, 184 Neb. 670, 673, 171 N.W.2d 175, 176 (1969).
42. 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 24.39[3], at 24-139 to -143

solved such conflicts in a number of ways.[43] Some jurisdictions have held that an unambiguous no-liability clause should be given effect so long as there is a sufficient amount of other coverage to meet the statutory minimum.[44] Thus, in the event of conflicting no-liability and excess liability clauses, the policy containing the excess liability clause will have primary liability.[45] Other courts have determined that the purpose of excess insurance clauses is simply to limit or eliminate the liability of an insured.[46] Such clauses may be considered irreconcilable.[47] They have been held to be indistinguishable in meaning and intent, and impossible to be rationally chosen between.[48] Under this interpretation, the liability and cost of defending the insured is usually prorated among the insurers.[49]

The position Nebraska has taken is not unique. In similar situations, the conflict has generally been resolved by imposing liability on the insurer issuing the policy containing the no-liability clause.[50] The reasoning is that the policy providing only "excess insurance" does not in fact provide other valid and collectible in-

(1979); P. PRETZEL, UNINSURED MOTORISTS § 25.5, at 81-87 (1972); 2 I. SCHERMER, AUTOMOBILE LIABILITY INSURANCE § 25.02, at 25-5 to -11 (rev. ed. 1981).

43. *Id.*

44. Zurick Gen. Accident and Liab. Co. v. Clamor, 124 F.2d 717, 720 (7th Cir. 1941); Continental Cas. Co. v. Weekes, 74 So.2d 367, 369 (Fla. 1954); Government Employees Ins. Co. v. Globe Indem. Co., 415 S.W.2d 581 (Ky. 1967); Davis v. DeFrank, 33 A.D.2d 236, —, 306 N.Y.S.2d 827, 832 (1970); Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, —, 152 S.E.2d 436, 444-45 (1967); Faltersack v. Vanden Boogaard, 39 Wis. 2d 64, —, 158 N.W.2d 322, 324 (1968).

45. *See id.*

46. Allstate Ins. Co. v. American Underwriters, Inc., 312 F. Supp. 1386, 1388 (N.D. Ind. 1970); Werley v. United Servs. Auto. Ass'n, 409 P.2d 112, 117 (Alaska 1972); Union Ins. Co. (Mutual) v. Iowa Hardware Mut. Ins. Co., 175 N.W.2d 413, 415 (Iowa 1970); Lamb-Weston, Inc. v. Oregon Auto. Ins. Co., 219 Oreg. 110, —, 341 P.2d 110, 119 (1959); Note, *Concurrent Coverage in Automobile Liability Insurance*, 65 COLUM. L. REV. 319, 320 (1965); Recent Developments, *Resolution of Conflicting "Other Insurance" Clauses: New Developments in Indiana*, 46 IND. L. REV. 270 (1971).

47. Allstate Ins. Co. v. American Underwriters, Inc., 312 F. Supp. 1386, 1388 (N.D. Ind. 1970); Wenley v. United Servs. Auto. Ass'n., 498 P.2d 112, 117 (Alaska 1972); Union Ins. Co. v. Iowa Hardware Mut. Ins. Co., 175 N.W.2d 413, 415 (Iowa 1970); Lamb-Weston, Inc. v. Oregon Auto. Ins. Co., 219 Ore. 110, —, 341 P.2d 110, 119 (1959); Recent Developments, *Resolution of Conflicting "Other Insurance" Clauses: New Developments in Indiana*, 46 IND. L. REV. at 271.

48. Allstate Ins. Co. v. American Underwriters, Inc., 312 F. Supp. 1386, 1388 (N.D. Ind. 1970); Werley v. United Servs. Auto. Ass'n., 498 P.2d 112, 117 (Alaska 1972); Union Ins. Co. v. Iowa Hardware Mut. Ins. Co., 175 N.W.2d 413, 415 (Iowa 1970); Lamb-Weston, Inc. v. Oregon Auto. Ins. Co., 219 Ore. 110, —, 341 P.2d 110, 119 (1959).

49. Allstate Ins. Co. v. American Underwriters, Inc., 312 F. Supp. 1386, 1388 (N.D. Ind. 1970); Indiana Ins. Co. v. Federated Mut. Ins. Co., 415 N.E.2d 80, 84 (Ind. App. 1981); Lamb-Weston, Inc. v. Oregon Auto. Ins. Co., 219 Ore. 110, —, 341 P.2d 110, 118-19 (1959).

50. State Farm Mut. Auto. Ins. Co. v. Travelers Ins. Co., 184 So.2d 750, 754-55

surance so far as the "no-liability" clause of the other policy is concerned.[51] Such a position is also in accordance with settled principles of equity requiring that insurance policies be construed liberally in favor of the insured and strictly against the insurer.[52] Thus, the Nebraska Supreme Court's position on this issue is sound.

EICH v. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.: STACKING OF UNINSURED MOTORIST COVERAGE

In *Eich v. State Farm Mutual Automobile Insurance Co.*[53] the plaintiff suffered personal injuries in a collision between the auto driven by her and one operated by Wojcik, an uninsured motorist. Eich joined as defendants State Farm Mutual Automobile Insurance Co. and Wojcik in an action to recover damages for her injuries. State Farm insured plaintiff's automobile and, in one or more separate policies, other automobiles in the Eich household.[54]

Although Wojcik did not appear, there was sufficient evidence for the trial court to direct a verdict against Wojcik and State Farm on the issue of liability. Plaintiff was permitted to recover on all applicable policies without proration.[55] On appeal, the Nebraska Supreme Court held that joinder of State Farm and Wojcik was error, but "stacking" of uninsured motorist policies was proper.[56]

This was the first time the Nebraska Supreme Court faced the issue of joinder of the plaintiff's insurer and an uninsured motorist.[57] Jurisdictions are split regarding the proper approach to this issue.[58] The issue is complicated, since although the insurance company should be given an opportunity to defend itself from potential liability, there is a conflict of interests.[59] On the one hand, the insurer is interested in showing that the uninsured motorist was not negligent in order to avoid liability under the uninsured

(La. App. 1966) (Tate, J., concurring); 8A J. APPLEMAN, INSURANCE LAW AND PRACTICE § 4909.45 at 418 (1981); Annot., 46 A.L.R.2d 1163, 1164-65 (1956).

51. *Id.*

52. Indiana Ins. Co. v. Federated Mut. Ins., 415 N.E.2d 80, 84 (Ind. App. 1981).

53. 208 Neb. 714, 305 N.W.2d 621 (1981).

54. 208 Neb. at 715, 305 N.W.2d at 622.

55. In a deposition, Wojcik admitted that he drove through a stop sign and collided with the Eich automobile, and that he had been drinking at the time. This deposition was later received in evidence at the trial. *Id.* at 716, 305 N.W.2d at 623.

56. *Id.* at 719, 722, 305 N.W.2d at 624, 626.

57. *Id.* at 718, 305 N.W.2d at 623.

58. *Id.* at 718, 305 N.W.2d at 624; A. WIDISS, UNINSURED MOTORIST COVERAGE § 7.2, at 254 (1969) [hereinafter cited as A. WIDISS].

59. A. WIDISS, *supra* note 58, at 253-55.

motorist provision.[60] On the other hand, the insurer is interested in proving that the insured was not negligent in order to protect the insured from liability under a cross-complaint and thereby avoid liability itself under the automobile liability coverage.[61]

The court avoided directly confronting this complicated issue by relying on a Nebraska procedural rule.[62] Nebraska requires that united causes of action must affect all parties to the suit.[63] Clearly the action against Wojcik affected State Farm, but the contract action against State Farm did not directly affect Wojcik.[64] Therefore, in accordance with Nebraska law, the court held that the joinder of State Farm and Wojcik was improper.[65]

The issue of stacking uninsured motorist coverage was not so easily resolved.[66] Stacking allows the injured party full coverage of more than one policy without proration between the liable insurers.[67] One policy's limit may be stacked on top of another, and possibly a third or more may be stacked on top of that.[68]

Nebraska has allowed stacking of uninsured motorist coverage in the past.[69] Therefore, the fact that the court allowed stacking was not surprising in itself. The Nebraska Supreme Court followed the present trend in most jurisdictions by deciding that the insurance policies could be stacked.[70] As a majority of jurisdictions hold, the insurer should not be able to deny the insured the benefit of "what he paid for on each policy."[71] Furthermore, it would be contrary to the purposes of mandatory uninsured motorist coverage to limit protection because of the existence of other coverage.[72] Thus, Nebraska's allowance of stacking of uninsured motorist policies is well supported. More significant was the

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60. *Id.* at 255.

61. *Id.*

62. 208 Neb. at 718-19, 305 N.W.2d at 624.

63. *Id.* at 719, 305 N.W.2d at 624; NEB. REV. STAT. § 25-702 (Reissue 1979).

64. 208 Neb. at 719, 305 N.W.2d at 624.

65. *Id.*

66. *Id.* at 720-23, 305 N.W.2d at 625-26.

67. P. PRETZEL, UNINSURED MOTORISTS § 25.5(B), at 87-88 (1972); 5 CUMBERLAND-SAMFORD L. REV. 106, 108 (1974).

68. *Id.*

69. Protective Fire and Cas. Co. v. Woten, 186 Neb. 212, 217-18, 181 N.W.2d 835, 838 (1970); Bose v. American Family Mut. Ins. Co., 186 Neb. 209, 211-12, 181 N.W.2d 839, 841 (1970).

70. 208 Neb. at 722-24, 305 N.W.2d at 625-27; P. PRETZEL, UNINSURED MOTORISTS § 25.5(B), at 87 n.14 (1972).

71. 58 MINN. L. REV. 677, 679 (1974). *See* Note, *Stacked Recovery Under the Uninsured Motorist Endorsement of the Automobile Liability Policy*, 9 VAL. L. REV. 135, 143-44 (1974) [hereinafter cited as *Stacked Recovery*].

72. *Id.*; 58 MINN. L. REV. 677, 679 (1974); *Stacked Recovery, supra* note 71, at 146-47.

court's invalidation of an exclusion contained in the insurance policy. In the past the Nebraska Supreme Court has upheld exclusions such as that provided in the insurance policy at issue.[73] The exclusion from liability applied: "To *bodily injury* to an *insured* while *occupying* or through being struck by a land motor vehicle owned by the named insured or any *resident* of the same household, if such vehicle is not [covered by the policy]."[74] The net effect of allowing such an exclusion would be to withdraw coverage from an insured occupying or being struck by an automobile owned by any insured but not covered under the policy.[75] Despite the substantial narrowing of coverage provided by this exclusion, Nebraska, along with a minority of other jurisdictions, had formerly held the exclusion valid.[76]

Under *Eich* the Nebraska Supreme Court accepted the majority view that the exclusion offended both the language and intent of the mandatory uninsured motorist legislation.[77] The statute is intended to protect the insured against the negligence of an uninsured motorist; the fact that plaintiff's vehicle is insured is not to be considered as an operative factor.[78] The statute itself sets out the limitations that the insured must be entitled to recover damages and that the negligent driver must be uninsured.[79] The primary purpose of the legislation is to place the insured in the same tort recovery position he would have been in had the tortfeasor carried liability insurance.[80] If such is the situation, the insured's recovery against the tortfeasor should not be barred when the plaintiff is not insured.[81] The exclusion has been held to circumvent this legislative intent and the public policy requiring gap-filling coverage.[82] Therefore, the Nebraska Supreme Court has wisely reversed its prior position and recognized that such exclusion provisions should not be upheld.

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73. Herrick v. Liberty Mut. Fire Ins. Co., 202 Neb. 116, 117-19, 274 N.W.2d 147, 148-49 (1979); Shipley v. American Standard Ins. Co., 183 Neb. 109, 110-12, 158 N.W.2d 238, 239-40 (1968).

74. 208 Neb. at 720-21, 305 N.W.2d at 625.

75. 2 I. SCHERMER, AUTOMOBILE LIABILITY INSURANCE § 25.02, at 25-6 (rev. ed. 1981).

76. *Id.*

77. *Id.* at 25-7. *See* 58 MINN. L. REV. 677, 679 (1974).

78. Nygaard v. State Farm Mut. Auto. Ins. Co., 301 Minn. 10, —, 221 N.W.2d 151, 157 (1974); 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 24.19[1], at 24-25 (1979).

79. NEB. REV. STAT. § 60-509.01 (Reissue 1974).

80. 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 24.06, at 24-19 (1979).

81. I. SCHERMER, *supra* note 75, § 25.02 at 25-8 to 25-9.

82. *See* Mullis v. State Farm Mut. Auto. Ins. Co., 252 So.2d 229, 233-35 (Fla. 1971); Otto v. Farmers Ins. Co., 558 S.W.2d 713, 717-19 (Mo. Ct. App. 1977).

CONCLUSION

The decisions rendered in *Jensen* and *Eich* are in accord with the generally accepted rule that insurance agreements are to be construed most strongly against the insurer. They reflect a consumer protection commitment in insurance matters and indicate a preference of holding for the insured over the insurer. These decisions are also in accord with the current authority on the relevant issues.

The *Omaha Bank* case, however, does not seem to follow the rule of construing insurance policies most strongly against the insurer. Furthermore, courts in a majority of jurisdictions could have reached a different conclusion. The holding appears contrary to the express language of the policy and is inequitable to the bank.

James G. Jandrain—'83