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Similarly, to impute that an individual is unable to meet his obligations, or that one is the victim of abject poverty has been found libelous per se. *Gross v. Needham Co-Operative Bank*, 312 Mass. 309, 44 N. E. 2d 690 (1942). *Katapodis v. Brooklyn Spectator Inc., supra.* See Note 3 A. L. R. 1590 (1918).

The refusal of a majority of the courts to hold that charges of indebtedness or delinquency in paying a debt are libelous per se when published concerning a non-trader seems to proceed upon the theory that unless such imputations reflect upon a trader or merchant who needs credit in his business, or unless the charges can be construed to impute dishonesty or insolvency so as to impeach the reputation of a non-trader, there can be no legal presumption of damages. The majority theory is not espoused by the Restatement, Torts Sec. 559, Comment b (1938):

> "Communications are often defamatory because they tend to expose another to hatred, ridicule, and contempt. A defamatory communication may tend to disparage another by reflecting unfavorably upon his personal morality or integrity, or it may consist of imputations which, while not affecting another's personal reputation, tend to discredit his financial standing in the community, and this is so whether or not the other is engaged in business or industry."

In view of the true nature of libel per se as propounded in the instant case, the distinction made by the majority of states between the credit reputation of traders and merchants as opposed to the individual's financial reputation represents an erroneous graft upon the law of libel per se. Moreover, the theory upon which this distinction reposes seems to ring artificial in the light of an individual's credit needs and modern credit practices.

Maynard C. Schaus, Jr.

INSURANCE—FIDELITY BONDS HELD CONTINUING CONTRACT—RECOVERY DENIED BEYOND FACE VALUE

Plaintiff was insured against losses through embezzlement by employees under a Blanket Position Bond issued by defendant insurer; the amount of the defendant's maximum liability as to acts of the insured's bookkeeper being stated as $5,000. Plaintiff paid annual premiums from 1942 until 1948 when it paid an amount equal to two and one-half times the annual premium for which the term of the bond was extended three years. A clause in the bond stipulated: "The payment of annual (or agreed) premiums during the term shall not render the amount of this bond cumulative from year to year." In 1948 plaintiff discovered that its bookkeeper had embezzled more than $5,000 during each of the years 1945, 1947 and 1948 and $3,975.47 in 1946. Plaintiff contended it should receive $18,975.47

under the bond. Defendant admitted liability of $5,000. The U. S. District Court for the District of Columbia granted a motion by the defendant for summary judgment limiting liability to $5,000. Plaintiff agreed that under the phrase "cumulative from year to year" if the bond remained in effect four years a loss of $20,000 occurring the fourth year could not be fully compensated but that recovery would be limited to $5,000 for that year. But plaintiff insisted that four losses of $5,000, one occurring in each of the four years should be fully covered. The Court of Appeals affirmed the judgment of the District Court, holding that the fact that premiums were paid annually did not create a series of separate yearly contracts, and that this continuing term together with the provision against cumulative liability limited recovery by the insured to the face amount of the bond. *Columbia Hospital For Women and Lying-In Asylum* v. *United States Fidelity and Guaranty Co.*, 188 F2d 654 (D. C. Cir. 1951).

The decision is in accord with the weight of authority which holds that an insured's liability is limited to the amount stated in the bond, irrespective of the number of annual periods in force or the number of annual premiums paid, based upon the rationale that there is no justification for increasing the maximum liability upon which the parties have specifically and expressly agreed. *Hack* v. *American Surety Co. of N. Y.* 96 F2d 939 (7th Cir. 1938), *cert. denied* 305 U. S. 631 (1938) and see *Extent of Liability on Fidelity Bonds Renewed From Year to Year*, 7 A. L. R. 2d 946-990. Some cases have taken the opposite view. *Standard Accident Insurance Co.* v. *Collingdale State Bank*, 85 F2d 375 (3rd Cir. 1936); but most can be distinguished upon their facts. *Cf. Maryland Casualty Co.* v. *First National Bank*, 246 F 892 (5th Cir. 1917), *cert. denied* 246 U. S. 670 (1917); *United States* v. *American Surety Co.*, 172 F2d 135 (2nd Cir. 1949), *cert. denied* 337 U. S. 930 (1949).

The fidelity bond in the principal case, as is usual in such bonds, contained a Discovery Clause limiting the surety's liability to losses discovered within a specified time (in this case two years) after the termination of employment of the embezzler or the termination of the bond. Such limitations of liability have been held reasonable and will be enforced. *First National Bank* v. *National Surety Co.*, 228 N. Y. 469, 127 N. E. 479 (1920). Were it not for this limitation as to Discovery Period an insured could avoid the limitation imposed by the "non-cumulative" provision by insuring each year with a different company. A leading reference book in discussing a hypothetical case says, "If the bond had been renewed with a different company each year and the Discovery Period had not yet expired, the insured would collect the entire loss, as each year's loss would be covered in full by each of the bonds." Werbel, General Insurance Guide 3106 (April 1951). This peculiarity has persuaded at least one court to hold that separate contracts are created by annual premiums. *Standard Accident Insurance Co.* v. *Collingdale State Bank*, 85 F2d 375 (3rd Cir. 1936) *supra.* It has occasioned implications that

legislative action is called for. See *Fidelity Bonds—Does It Pay To Renew Them?* 27 Mich. L. Rev. 442 (1928). It has been judicially termed "a game of heads I win, tails you lose." *Aetna Casualty & Surety Co.* v. *Commercial State Bank,* 13 F2d 474, 476 (E. D. Ill. 1926), *rev'd on other grounds and rehearing denied* 19 F2d 969 (7th Cir. 1926).

Because fidelity insurers felt that the limitation of liability imposed by the Discovery Period stifled competition, in that it discouraged an insured from changing companies, they introduced a so-called Superseded Suretyship Rider which is attached to fidelity bonds written to replace others. By the terms of this rider the insurer agrees to assume any losses which may have occurred under the previous bond, recovery for which is barred by the expiration of the Discovery Period or by the Statute of Limitations. The Superseded Suretyship Rider, which modifies the basic contract, very carefully specifies that it shall not be construed to create an aggregate liability in excess of the face amount of the bond to which it is attached. Clearly where a defalcation occurring during the period covered by the prior bond is discovered within the Discovery Period specified in that bond and at the same time a further defalcation during the period covered by the new bond is discovered the insured can collect for each loss up to the face amount of each bond—when the two bonds were written by two different companies. Similar situations arising in cases where both bonds were written by the same company, in order to change the form of bond for example, have resulted in full recovery on both bonds, the courts holding the limitation as to aggregate liability in the Superseded Suretyship Rider to be inapplicable as the Discovery Periods on the prior bonds had not yet elapsed. *Maryland Casualty Co.* v. *Tulsa Industrial Loan and Investment Co.,* 83 F2d 14 (10th Cir. 1936); *Globe Indemnity Co.* v. *Wolcott & Lincoln,* 152 F2d 545, (8th Cir. 1945).

There is no question but that the intent of the surety is to limit its liability to the face amount of the bond regardless of the term for which coverage is afforded. See Werbel, *supra* at 3105. The courts will read this intent into the contract in the absence of a contrary provision. II Cooley's Briefs on Insurance 1410 (2nd ed.). The intent of the insured to so limit his protection is not nearly so clear; but it has been held that the use of the term "renewal period" is no indication that the bond was understood to be other than a continuous contract. *Brulatour* v. *Aetna Casualty & Surety Co.,* 80 F2d 834 (2nd Cir. 1936). Even a bond which bore on the back the inscription, "Dated: Sept. 1st, 1935, Expires: Sept. 1st, 1936" was construed to be a continuous contract under a rule of insurance law which holds that conditions indorsed on the back of a policy must be ignored in construing it if no sufficient reference thereto is made in the face of the instrument. *Montgomery Ward v. Fidelity & Deposit Co.,* 162 F 2d 264 (7th Cir. 1947); 1 Couch, Insurance 316 (1929). There is a well established rule that if a fidelity bond is reasonably susceptible of two constructions, one favorable to the insured and one favorable

to the insurer, that construction will be adopted which favors the liability of the insurer for the act or default in question. 5 Couch, Insurance 4327 (1929). The terms of these bonds have generally been found "unequivocal in their nature" and "unambiguous." *Aetna Casualty & Surety Co. v. First National Bank,* 103 F2d 977 (3rd Cir. 1939); *United States Fidelity & Guaranty Co.* v. *Barber,* 70 F2d 220. (6th Cir. 1934).

It has been argued that in view of the fact that an employee's defalcation in a previous year had exhausted the insurer's liability as to him, premiums were paid in subsequent years with no compensatory return. In answer it is pointed out that the insured is still at an advantage in that it is not necessary for him to prove that the loss took place in any particular year so long as it can be established that it was within the time the bond was in force; and further that the Discovery Period is extended by each annual premium. See *Leonard v. Aetna Casualty & Surety Co.,* 80 F2d 205 (4th Cir. 1935).

The result of the instant case is unfortunate in that an insured may find himself at a distinct disadvantage if he deals with the same company instead of changing insurers each year; and moreover an insurer which receives a given premium over a three year period from one insured accepts only one-third the exposure that it would have if it received the same amount of premium income from three insureds in one year. However the function of the court here was not to create a new contract for the parties, but rather to interpret the existing contract to which the parties had agreed.

Robert J. Blaney

CONSTITUTIONAL LAW—ORDINANCE RESTRICTING DOOR TO DOOR SALES HELD CONSTITUTIONAL

Appellant, engaged in soliciting magazine subscriptions for a Pennsylvania corporation, was convicted for violation of an ordinance of the City of Alexandria, La., which made it a misdemeanor for solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise to go upon private residences without first having been requested to do so. Appellant claimed that the ordinance was invalid in that it violated the Due Process Clause of the Fourteenth Amendment to the Federal Constitution; that it was a burden on interstate commerce; and that it violated the guarantee of the First Amendment of "freedom of press" made applicable to the States by the Fourteenth Amendment. The Supreme Court in affirming the conviction held that the ordinance was not a violation of the Due Process Clause nor did it burden interstate commerce, and that the "freedom of the press" is not absolute, nor does it give one the right to invade the privacy and repose of the inhabitants of a city that has passed an ordinance to give its citizens