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Liability of Insurer for Wrongful Death-Failure to Determine Policyholder's Interest

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LIABILITY OF INSURER FOR WRONGFUL DEATH— FAILURE TO DETERMINE POLICYHOLDER'S INTEREST

In the recent case of *Liberty National Life Insurance Company v. Weldon,* 100 So. 2d 696 (Ala. 1957), the Supreme Court of Alabama held that three life insurance companies [1] were liable in a wrongful death action for failing to exercise reasonable care in issuing life insurance policies to one having no insurable interest.

There are two primary questions set forth in this case: (1) whether a life insurance company is negligent in issuing a life insurance policy to one having no insurable interest,[2] and (2) whether such negligence is the proximate cause of the death of the insured, when the insured is murdered by the beneficiary in whose favor the policy was issued.

Briefly, the facts are as follows: On December 1, 1951, Mrs. Earl Dennison purchased a life insurance policy from the Liberty National Life Insurance Company in which she designated Shirley Dianne Weldon as the insured and herself as the beneficiary. In March, 1952, a similar policy was obtained from the Southern Life Insurance Company. And on April 23, 1952, a third policy was issued by the National Life Insurance Company, similar to the two previous ones. On May 1, 1952, Shirley Dianne Weldon, a child of two and a half years of age, was murdered by her aunt-in-law,[3] Mrs. Dennison. Mr. Gaston Weldon, the father of the deceased, brought this suit against the defendant insurance companies under Alabama's Homicide Statute.[4] Suit was predicated on the theory that the insurance companies were negligent in issuing the life insurance policies to Mrs. Dennison without ascertaining whether she had an insurable interest, and that their negligence was the proximate cause of the child's death. There was a verdict and judgment in favor of the plaintiff in the amount of $75,000. In affirming the judgment of the trial court, the Supreme Court of Alabama held that the insurance companies failed in their duty to exercise reasonable care by issuing life insurance policies to Mrs. Dennison without determining whether she had the required insurable in-

[1] Liberty National Life Insurance Co., National Life Insurance Co., and Southern Life Insurance Co.

[2] Rakestraw v. Cincinnati, 690 Ohio App. 504, 44 N.E.2d 278 (1942); Young v. Hipple, 273 Pa. 439, 117 A. 185, 25 A.L.R. 154 (1922); See 29 AM. JUR. 353. An insurable interest exists where there is a reasonable ground founded upon the relations of the parties to each other, either pecuniary, contractual, or by blood or affinity to expect some benefit or advantage from the continuance of the life of the insured.

[3] Mrs. Dennison was the wife of Mrs. Weldon's deceased brother. The aunt and niece relationship was created by marriage, not by blood.

[4] ALA. CODE tit. 7, § 119 (1940). This statute has reference to wrongful death actions, though commonly known as the "Homicide Statute".

terest, and their negligence was the proximate cause of Shirley Weldon's death, for the insurance companies should have reasonably foreseen that Mrs. Dennison might be induced, by the prospect of collecting the insurance proceeds from the policies, to take the child's life. Speaking for the Court, Judge Lawson said:

> "The duty which is upon all persons to exercise reasonable care not to injure another, requires of life insurance companies the exercise of reasonable care not to issue policies of life insurance in favor of a beneficiary who has no interest in the continuation of the life of the insured, a policy which is void as against public policy because it opens 'a wide door by which a constant temptation is created to commit for profit the most atrocious crimes'."[5]

Mrs. Dennison, as the aunt-in-law of the insured, clearly did not have the necessary insurable interest. A relationship of this nature has been held prima facie to be insufficient to sustain an insurable interest.[6] Mrs. Dennison could not reasonably expect future benefits from the child's continued life. The child was living with her parents in a different town several miles away, and Mrs. Dennison made only infrequent visits to the Weldon home.[7] In spite of this, and Mrs. Dennison's representation as the *aunt* of the child, none of the insurance companies made a reasonable investigation to determine exactly what relationship existed between the parties.[8]

The reason generally stated for the requirement of insurable interest is to prevent wagering or gambling contracts. The Supreme Court of Pennsylvania, in the case of *Paschuck v. Metropolitan Life Insurance Company*,[9] in referring to the statute [10] requiring insurable interest, said: "The purpose of this Act of Assembly was to prevent wagering contracts on the life of another by one having no insurable interest therein." However, by carrying this line of thought to its ultimate conclusion, it can reasonably be seen that a further basis for the rule is to prevent the temptation by the beneficiary to shorten the life of the insured in order to collect the insurance proceeds. Many courts have recognized that a person who gambles on another's life, may possibly attempt to make sure of his gamble. The Court in the *Weldon* case adopted the language stated in the Alabama case of *Helmetag's v. Miller:* [11]

> "The reason of the law which vitiates wager policies, is the pecuniary interest, which the holder has in procuring the death of the subject of the in-

[5] 100 So.2d at 708.
[6] Commonwealth Life Insurance Co. v. George, 248 Ala. 649, 28 So.2d 910 (1947); People's First National Bank & Trust Co. v. Christ, 361 Pa. 423, 65 A.2d 393 (1949); Appleman, INSURANCE LAWS AND PRACTICE § 822 (1941).
[7] 100 So.2d at 704.
[8] *Id.* at 708.
[9] 124 Pa. Super. 406, 188 A. 614 (1936).
[10] PA. STAT. ANN. tit. 40 § 512 (1921).
[11] 76 Ala. 183, 52 Am. Rep. 316 (1884).

surance, thus opening a wide door in which a constant temptation is created to commit for profit the most atrocious crimes."

In the case of *Warnock v. Davis*,[12] the Supreme Court of the United states said:

"Otherwise the policy is a mere wager, by which the party taking the policy is directly interested in the early death of the insured. Such policies have a tendency to create a desire for the event. They are therefore, independent of any statute on the subject, condemned as being against public policy."

The Supreme Court of Pennsylvania in the case of *First National Bank of Glen Campbell v. Burnside National Bank*,[13] stated:

"In no class of insurance has the law been stricter on the subject of insurable interest than it has been in life insurance, and this for the obvious reason that speculative life insurance has a tendency to and at times has resulted in murder."

The principle that a life insurance policy issued in favor of one having no insurable interest is illegal and void is well-settled.[14] There is some difficulty, however, in determining whether the statutes or the case law requiring insurable interest are in force to prevent the insurer from issuing such policies in order to protect the insured, or to prevent the purchaser from buying them, since the insurer will not be liable for the value of the policies on the basis that they are illegal and void. Whether the rule is by judicial mandate as in Alabama, or by statute as in Pennsylvania, mere violation of the rule will not impose liability on the insurer. It must be shown that the intent of the legislatures or the courts was to protect the plaintiff or the class of persons of which he is a member. Therefore, if it can be concluded that one of the reasons behind the insurable interest rule is to protect the insured from an untimely death at the hands of the beneficiary, the insurer's violation of the rule is a breach of the duty owed to the insured and therefore constitutes negligence. The duty required here is one which is fundamental in the law. That is the duty which is imposed upon all of us to exercise reasonable care not to injure another. On this basis, negligence of the insured is based on issuance of such policies where there is an absence of fraud or deception by the purchaser of the insurance policy. As between insurer and purchaser, it seems more reasonable to put the burden on the insurer, because he is in a better position to know the law and to take steps to prevent such

[12] 104 U.S. 775 (1881).
[13] 314 Pa. 536, 172 A. 641 (1934).
[14] Grigsby v. Russel, 222 U.S. 149 (1911); VANCE, INSURANCE § 28 (3d Ed. 1951).

policies from being issued. While it is true that ignorance of the law is generally no defense, it does not prevent a person having no insurable interest from purchasing a policy, and then committing murder in the belief that the policy is valid as did Mrs. Dennison in the *Weldon* case. The Court in the *Weldon* case declared the purpose of the insurable interest rule to be to protect human beings when it said:

> "The defendants seem to be of the opinion that the insurable interest rule is to protect insurance companies. We do not agree. The rule is designed to protect human life. Policies in violation of the insurable interest rule are not dangerous because they are illegal; they are illegal because they are dangerous.
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> As we have shown, it has long been recognized by this court and practically all courts in this country that an insured is placed in a position of extreme danger where a policy of insurance is issued on his life in favor of a beneficiary who has no insurable interest. There is no legal justification for the creation of such a risk to an insured and there is no social gain in the writing of a void policy of insurance. Where this court has found that such policies are unreasonably dangerous to the insured because of the risk of murder and for this reason has declared such policies void, it would be an anomaly to hold that insurance companies have no duty to use reasonable care not to create a situation which may prove to be a stimulus for murder." [15]

The contention by the defendants in the *Weldon* case that such a duty imposes an unreasonable burden on the insurance companies was dismissed by the court. It stated that it is no more difficult to determine whether a person has an insurable interest before the policy is issued and thereby avoid the risks involved than it is to determine the same set of facts after the death of the insured when it becomes necessary to pay the amount due on the policy.[16] As has been previously stated, the insurance companies knew Mrs. Dennison was the aunt of the insured. It can hardly be said that it would have been an impossible task for them to determine whether she had the required insurable interest. The insurance companies even ignored the rules in their respective policies requiring an insurable interest by the party purchasing the policy. As an added factor, the deceased was a small child, defenseless and unable to protect herself. In the case of *Prudential Insurance Company v. Jenkins,*[17] the court said: "The insurance of children who are helpless and under the control and authority of others, is susceptible of such possibilities of evil that it should not be encouraged." Further, none of the insurance companies sought to obtain the consent of the child's parents.[18]

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[15] 100 So.2d at 708.
[16] *Ibid.*
[17] 15 Ind. App. 297, 43 N. E. 1056, 57 Am. St. Rep. 228 (1896).
[18] 100 So.2d at 707.

It is hardly unreasonable to require insurance companies to exercise reasonable care before they issue a policy to one having no insurable interest. Otherwise, the insurance companies have nothing to lose, since they do not have to pay the due amount of the policy for the reason that it is illegal and void. Unscrupulous companies can issue such policies, collect the premiums and then be relieved of any obligation to pay the policy benefits. The policy owner does have the right in the absence of fraud or deception on his part to recover the premiums, but if for any reason they are not recovered, the insurance companies have been unjustly enriched. A beneficiary under a contract of personal insurance who murders the insured cannot recover the policy benefits.[19] This does not mean, however, that the insurer is absolutely relieved of all liability under the contract. Proceeds are payable to the estate of the murdered insured,[20] except: [21] (1) Where the policy was procured by the beneficiary intending at the time the insurance was secured to murder the insured; [22] (2) Where the policy specifically makes the contract entirely void in such contingency; and [23] (3) If there are no heirs other than the beneficiary who has produced the insured's death.[24] In relation to the third exception, it is to be noted that at least one state holds that the proceeds will go to the state.[25] The situation in the *Weldon* case falls within the first exception. The cases where the insurer is liable to the estate of the insured for the proceeds refer only to situations where an insurable interest existed at the time the policy was issued and was therefore valid.

There are situations, however, where strict compliance with the insurable interest rule on the part of the insurance companies may create a problem. For instance, life insurance companies that issue policies through vending machines to people who are taking a trip, such as an airplane trip, may have to restrict their method of issuing those policies. This would be true, even if it is stated on the policy that only the person making the trip can purchase the policy. It does not remove the possibility that a person who is ignorant of the law will purchase such a policy on the life of one making a trip, and

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[19] Protective Life Insurance Co. v. Linson, 245 Ala. 493, 17 So.2d 761 (1944); PA. STAT. ANN. tit. 20 § 3442 (1941), "Slayer Act"; See APPLEMAN, INSURANCE LAWS AND PRACTICE § 381 (1941).

[20] Robinson v. Metropolitan Life Insurance Co. of Virginia, 69 Pa. Super. 274 (1918); Moore v. Prudential Insurance Co. of America, 342 Pa. 570, 21 A.2d 42 (1941); See APPLEMAN, *op. cit. supra* § 381.

[21] APPLEMAN, *op. cit. supra* § 382.

[22] National Aid Life Ass'n. v. May, 201 Okl. 450, 207 P.2d 292 (1949).

[23] Markland v. Modern Woodmen of America, 210 S.W. 921 (1919).

[24] Spicer v. New York Life Insurance Co., 268 F. 500, (C. C. A. Ala. 1920).

[25] West Coast Life Insurance Co. v. Crawford, 58 Cal. App. 2d 777, 138 P.2d 384 (1943).

then proceed to sabotage the flight,[26] with the hope of recovering the insurance proceeds. Though the policy is illegal and void, it nevertheless presents the temptation to commit the act to one who is either ignorant or insane. This produces a conflict of public policies. On the one hand there is the desire to protect human life, and on the other there is the benefit derived by the public in being able to purchase trip insurance at a reasonable rate. Is it desirable to restrict the use of policies of this nature, or at least make them more expensive, or is it better to maintain the status quo and thereby run the risk of causing the loss of human life? It seems quite feasible for insurance companies to hire personnel to issue the policies without having to raise their rates exorbitantly, since they already have high rates in view of the low accident rate in air travel and the short term of the policy. The degree of reasonable care that would be required here would be that they check and verify that only a passenger making a flight is issued a policy.

Though the insurance companies may be negligent for their failure to exercise reasonable care in issuing a life insurance policy to a party who has no insurable interest in the life of the insured, liability is imposed only if the injury or death was proximately caused by their negligent conduct. The proximate cause of an injury is that cause, which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[27] The rule used by the majority of the courts, including Pennsylvania, and applied in the *Weldon* case, is set forth in the *Restatement of Torts* [28] as follows:

> "The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a crime, unless the actor at the time of his negligent conduct should have realized the likelihood that such a situation *might* be created thereby and that a third person *might* avail himself of the opportunity to commit such a crime." (Italics added.)

In line with the *Restatement of Torts,*[29] the Superior Court of Pennsylvania in the case of *Smith v. Cohen,*[30] said: "If, at the time of the original negligence,

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[26] Graham v. People, 302 P.2d 737 (1956). John Gilbert Graham, by placing a bomb in his mother's luggage, blew up a United Air Lines DC-6B, on November 1, 1955. He had purchased life insurance policies in the amount of $37,500 prior to the flight. The policies designated his mother as the insured and himself as the beneficiary. He was convicted of murder and sentenced to death.

[27] See 38 AM. JUR. § 50.

[28] RESTATEMENT OF TORTS, § 448.

[29] *Ibid.*

[30] Smith v. Cohen, 116 Pa. Super. 395, 176 A. 869 (1935).

the criminal act could have been foreseen, the causal chain is not broken by the intervening criminal act."

The contention by the defendants in the *Weldon* case was that the separate, independent, intervening, superseding, wilful, malicious crime of murder became "the responsible cause" of the death of Shirley Dianne Weldon.[31] Therefore, the issue is whether the criminal act of Mrs. Dennison could have been foreseen by the insurance companies. The court in the *Weldon* case said:

> "We cannot agree with the defendants in their assertion that we should hold as a matter of law that the murder of the young girl was not reasonably foreseeable. They created a situation of a kind which this court and others have consistently said affords a temptation to a recognizable percentage of humanity to commit murder." [32]

It was decided in the *Weldon* case that the criminal act was reasonably foreseeable by the insurance companies. Whether other courts will reach the same conclusion, based on a similar set of facts, is mere speculation since the situation presented in the *Weldon* case, according to the Supreme Court of Alabama, is new and has never been decided elsewhere in this country. Trip insurance extends the possibility of such a situation occurring again. Much depends on how far the various courts are willing to go in their interpretation of what criminal acts are reasonably foreseeable. In the recent Pennsylvania case of *Farley v. Sley System Garages*,[33] the court said that the Restatement of Torts [34] applies only to criminal acts under special circumstances, such as where a railroad ignores the warnings of the plaintiff that vagrants and hoboes loiter around the railroad station in the early hours of the morning, and that she is alone and unprotected, and subsequently she is in fact assaulted and ravished. Here, the railroad should have foreseen the criminal act and its failure to act was a breach of duty owed to the plaintiff.[35]

On the face, there is a distinction between the *Weldon* case and the *Neering* case in that the defendant in the latter case, having received warning, was placed on notice of the risk. However, if it is accepted that the statutory or policy prohibition against issuing policies of insurance to persons having no insurable interest is based in part on the ground that it will discourage or prevent risk of harm to the insured, then the statute or policy itself

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[31] 100 So.2d at 709.

[32] *Id.* at 711.

[33] 144 A.2d 600 (1958). Plaintiff was struck by an automobile stolen from the garage of the defendant. The court held that the criminal act of the thief was an intervening cause between the defendant's negligent act and plaintiff's injury. Defendant owed a duty only to the owner of the car, not to the world.

[34] RESTATEMENT OF TORTS, § 448.

[35] Neering v. Illinois Central R. Co., 383 Ill. 366, 50 N.E.2d 497 (1943).

would seem to constitute sufficient notice to all insurers. Whether other courts will accept and will decide that a criminal act such as occurred in the *Weldon* case was one of special circumstances, is again mere speculation. It would, however, be in line with the new trend in the law of *Torts,* evidenced by cases which decide negligence on the basis of whether one's interests are subjected to one or more hazards, rather than on the theory of proximate cause. The *Restatement of Torts* [36] states that the actor's negligence lies in his subjecting the other to certain hazards. The duty established by law to abstain from the negligent conduct is established in order to protect the other from the risk of having his interest invaded by one or more of this limited number of hazards. The problem which is involved in determining whether a particular intervening force is or is not a superseding cause is in reality a problem of determining whether the risk that the force would intervene was, at least, one of the reasons for imposing the duty upon the actor to refrain from the negligent conduct. If the duty is imposed in part, at least, to protect the other from the risk of being harmed by the intervening force, or by the effect of the intervening force operating on the conditions created by the negligent conduct, then the intervening force is not a superseding cause. If the hazard is considered in retrospect to be highly extraordinary, however, the court is likely to hold that the defendant is not liable for the harm caused by his conduct. The actor's conduct is negligent if it creates an unreasonable risk of harm to a class of persons of which the other is a member by subjecting the other to the hazard from which the harm results. In order that a negligent actor be held liable for harm resulting to another from his conduct, it is only necessary that it be *the* cause.[37] To be the legal cause, the defendant's conduct must be a substantial factor in bringing about the harm, or in other words his conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause.[38]

The recent case of *Genovay v. Fox* [39] held that once a duty is found on the part of the defendant to refrain from exposing the plaintiff to a particular hazard that is likely to cause him harm, though the risk of harm to the plaintiff is attributable to voluntary activity of others not under control of the defendant, it does not preclude him from liability if the harm by human inter-

[36] RESTATEMENT OF TORTS, § 281, comment f; comments e and ee, as amended.

[37] RESTATEMENT OF TORTS, § 430, comment d; comment a, as amended. The word "the" here means the sole and even the predominant cause.

[38] RESTATEMENT OF TORTS, § 431, comment a.

[39] 50 N.J. Super. 538, 143 A.2d 229 (1958). Action against proprietor of bowling alley-bar for injuries sustained by customer in conflict with armed robber. Although the proprietor had no duty to his customers to protect his premises against robbery, he had a duty not to precipitate the conflict by conduct suggesting that the robber was subject to attack. An appeal to the Supreme Court of New Jersey has been granted.

vention was foreseeable and a reasonable man so situated would take precautions to prevent it. In referring to proximate cause, the court said: "that foreseeability in the negligence field is more appropriately allocable to the sphere of definition of duty than to that of proximate cause."

Notwithstanding this new development and trend, as expressed in the *Restatement of Torts* and the *Fox* case, it seems plausible that the result on facts similar to those of the *Weldon* case would be the same in other jurisdictions. As was stated earlier, it is foreseeable that the resulting premature death of the insured may occur if he is exposed to the particular hazard of having his life insured by one who has no insurable interest and who is not interested in having his life continue, but who is interested in ending it.

It will be interesting to observe to what extent the decision in the *Weldon* case will stimulate insurance companies to alter their methods of investigating prospective purchasers and to maintain a tighter control over their agents. Higher rates of insurance should not necessarily ensue, since a more diligent investigation by insurers will reduce the possibility of repetition of such a situation as that which arose in the *Weldon* case. The burden imposed on the insurance companies, to use reasonable care before issuing life insurance policies to persons having no insurable interest is slight when compared with the risk involved in the possibility of the loss of human life. The insurance companies have a duty not to expose individuals to a hazard that may cost them their lives. Such an event is foreseeable by insurers in view of their knowledge of the law and of human behavior gleaned from past experience and consonant with the nature of their business. The decision in the *Weldon* case indicates progress in that it balances the slight cost of investigation against the value of a human life. Other courts would do well to follow the lead of the Alabama Supreme Court when and if a similar situation is presented to them.

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