

LIFE INSURER LIABLE FOR DEATH CAUSED BY
BENEFICIARY WITHOUT INSURABLE
INTEREST IN DECEDENT

Liberty Nat'l Life Ins. Co. v. Weldon,
100 So. 2d 696 (Ala. 1957)

It has been generally held that a life insurance policy, procured by and for the benefit of one without an interest in the life of the person insured, is illegal and void as against public policy.¹ While such policies have been characterized as wagers or as contracts which tend to promote crime, the insurable interest rule has been limited in its application to actions which have tested the contractual obligation of the insurer toward the beneficiary. In the present case, the Alabama Supreme Court was presented with a situation which directly involved the underlying policies of the rule.²

Mrs. Dennison procured life insurance policies from the three defendant companies on the life of her two-year-old niece by marriage, Shirley Weldon. Mrs. Dennison designated herself as beneficiary. It was proved that the three insurers knew, or failed to exercise reasonable diligence to ascertain, that Mrs. Dennison lacked an insurable interest in the life of her niece.³ Shortly after Mrs. Dennison acquired the policies, she murdered her niece by administering arsenic. Mrs. Dennison was convicted of murder in the first degree⁴ and was executed.⁵ The decedent's father brought suit against the three companies under the Alabama Wrongful Death Act.⁶ The theory of the plaintiff's case was that the issuance of the policies by the insurers constituted negligence which contributed to the child's death because the policies furnished an incentive to commit murder. In affirming a judgment for the plaintiff

¹ *Grigsby v. Russell*, 222 U.S. 149 (1911); *Geisler v. Mutual Benefit Health and Accident Ass'n.*, 163 Kans. 518, 183 P.2d 853 (1947); *Ryan v. Rotweiler*, 50 Ohio St. 595, 35 N.E. 679 (1893). 1 COUCH, *INSURANCE* §295 (1929); PATERSON, *ESSENTIALS OF INSURANCE LAW* §§22, 34, (1935); VANCE, *INSURANCE* §28 (3d ed. 1951); *Patterson, Insurable Interest in Life*, 18 COLUM. L. REV. 381 (1918). Further cases are collected at 1 COUCH, *op. cit. supra* at 767, n. 5 (1929); *Insurance*, Key Number 119, Decennial Digest.

² *Liberty Nat'l Life Ins. Co. v. Weldon*, 100 So. 2d 696 (Ala. 1957). This case was originally brought in the Alabama court, removed to the federal court, and then remanded to the state court. The action against the non-resident insurer was held not to be a "separate and independent claim" under 62 STAT. 937 (1948), 28 U.S.C. §1441(c) (1952). *Weldon v. Liberty National Life Ins. Co.*, 112 F. Supp. 315, 1 CCH Life Cases 2d 422 (M.D. Ala. 1953).

³ Under the Alabama insurable interest rule, neither an aunt nor an aunt by marriage has an insurable interest in her niece by reason of relationship. *Commonwealth Life Ins. Co. v. George*, 248 Ala. 649, 28 So. 2d 910 (1947).

⁴ *Dennison v. State*, 259 Ala. 424, 66 So. 2d 552 (1953).

⁵ N.Y. TIMES, Sept. 4, 1953, p. 9, col. 1.

⁶ ALA. CODE, tit. 7, §§119, 123 (1940).

of \$75,000,⁷ The Alabama Supreme Court held that the duty upon all persons to exercise reasonable care not to injure others requires life insurance companies to exercise reasonable care not to issue a life policy to one who has no interest in the insured. The insurer's negligence was held to be the proximate cause of the insured's death, notwithstanding the intervening criminal act of Mrs. Dennison.⁸

As noted above, the insurable interest rule with respect to life insurance is that a policy procured by one without an interest in the life insured, where the procurer is also the beneficiary, is void.⁹ However, the courts have usually held that the lack of insurable interest is a question which can be raised only by the insurer.¹⁰ An English case construing the Life Assurance Act of 1774¹¹ held that as between the creditors of the insured and the beneficiary, the beneficiary prevailed.¹² While the insurer could have contested its obligation to pay the beneficiary, no other interested party was allowed to contest the beneficiary's right to keep the proceeds.¹³ It is implicit, therefore, that the insurer is free to waive the defense and pay over the proceeds. In several instances, interpleader suits have been initiated by the insurer seeking a determination of the ownership of the proceeds.¹⁴ However, if the insurer elects not

⁷ *Id.* at §119. Under the Alabama act, the plaintiff's measure of damages is "such damages as the jury may assess . . ." The jury is properly instructed that due regard should be given "to the necessity of preventing similar wrongs." *Mobile Light & R. Co. v. Nicholas*, 232 Ala. 213, 222, 167 So. 298, 305 (1936).

⁸ This aspect of the case will not be treated here, aside from posing this question: Isn't foreseeing death the business of a life insurer?

⁹ There are four personalities who can be involved in a life insurance policy: (1) the *cestui que vie*, or the life insured, (2) the procurer of the policy from the insurer, (3) the insurer, and (4) the beneficiary. In the usual case where the insurable interest rule bars recovery, the procurer and the beneficiary are the same person.

¹⁰ *Baker v. Keet-Rountree Dry Goods Co.*, 318 Mo. 962, 2 S.W.2d 733 (1928); *Keckley v. Coshocton Glass Co.*, 86 Ohio St. 213, 99 N.E.2d 299 (1912). 1 COUCH, INSURANCE §295 at 722 (1929); VANCE, INSURANCE §31, at 199 (3d ed. 1951). 29 AM. JUR., Insurance §320 (1940); 44 C.J.S., Insurance §212 (1945). Further cases are collected under Insurance, Key Number 117, Decennial Digest. See Annot., 175 A.L.R. 1276 (1948).

¹¹ 14 GEO. 111 c. 48.

¹² *Worthington v. Curtis*, [1875] 1 Ch. 419 (C.A.). This result has been generally followed in the United States with the exception of Texas. *Langford v. Freeman*, 60 Ind. 46 (1877); *Standard Life & Acc. Ins. Co. v. Catlin*, 106 Mich. 138, 63 N.W. 897 (1895); *Keckley v. Coshocton Glass Co.*, *supra* note 10. *Contra*, *Cheeves v. Anders*, 87 Tex. 287, 28 S.W. 274 (1894).

¹³ In Texas the insurer is required to pay the proceeds to the estate of the insured. This equitable result denies the procurer the benefits of the policy while upholding the insurer's agreement. *Cheeves v. Anders*, *supra* note 12. Section 146(1) of the N.Y. INS. LAW gives the insured or his representatives the right to recover the proceeds from the beneficiary, but apparently only if the insurer has paid.

¹⁴ *Bynum v. Prudential Ins. Co.*, 77 F. Supp. 56 (E.D.S.C. 1948); *Travelers' Ins. Co. v. Morris*, 115 N.J.Eq. 142, 169 Atl. 335 (1934); *Keckley v. Coshocton Glass Co.*, *supra* note 10.

to pay the proceeds, the defense has not been waived by the issuance of the policy, nor is the insurer estopped to deny the lack of an insurable interest, and the beneficiary cannot compel payment.¹⁵ These rules illustrate a difference in the importance given the insurable interest rule. If the insurer is allowed to pay the proceeds, the rule appears to be merely a technical defense; if, however, the insurer is allowed to raise the defense notwithstanding a waiver or estoppel, the rule appears to embody a mandatory principle of public policy.

In a suit by the beneficiary to recover premiums, a number of jurisdictions allow recovery on the theory that the insurer should not be allowed to retain premiums where no insurable risk attached.¹⁶ Other cases deny recovery on the ground that the parties were in *pari delicto*, and the courts will not lend their aid to the parties to an illegal transaction.¹⁷ Recovery of premiums often turns on the issue of bad faith on the part of the procurer or the insurer.¹⁸ Here again, if the rule is a technical insurer's defense, the beneficiary will not recover; if the rule is an overriding policy, then the beneficiary recovers in the absence of any bad faith on his part.

With the development of insurance regulation by the states, one other relevant question arose under the insurable interest rule. Many states require that a life insurance policy contain a clause to the effect that the insurer will not contest its liability after a stated period.¹⁹ With one short-lived and notorious exception,²⁰ the courts nevertheless allow the insurer to defend after the policy has become incontestable on the grounds of lack of an insurable interest in the beneficiary.²¹ The approach here is that a policy which is void from the beginning cannot become binding by mere lapse of time, and the incontestable clause does not preclude asserting that the contract is void. While the rule remains an insurer's defense, the lack of an insurable interest in a policy which contains an incontestable clause leads the courts to characterize the policy as void *ab initio*.

Thus a large number of jurisdictions *describe* a policy where the

¹⁵ 1 COUCH, INSURANCE §295 (1929); VANCE, INSURANCE §85 (3d ed. 1951). 29 AM. JUR., Insurance §§320, 321 (1940).

¹⁶ Washington v. Atlanta Life Ins. Co., 175 Tenn. 529, 136 S.W.2d 493 (1940). 3 COUCH, INSURANCE §735 (1929); VANCE, INSURANCE §58 (3d ed. 1951). 29 AM. JUR., Insurance §454 (1940); 44 C.J.S., Insurance §§405, 407 (1945).

¹⁷ American Mutual Life Ins. Co. v. Mead, 39 Ind. App. 215, 79 N.E. 526 (1906); Ely v. Oakland Circuit Judge, 162 Mich. 466, 125 N.W. 375, modified on rehearing, 127 N.W. 769 (1910).

¹⁸ See Annot., 129 A.L.R. 57, 70-83 (1940).

¹⁹ VANCE, INSURANCE §97 (3d ed. 1951).

²⁰ Sun Life Assur. Co. v. Allen, 270 Mich. 272, 259 N.W. 281 (1935); Bogacki v. Great-West Life Assur. Co., 253 Mich. 253, 234 N.W. 865 (1931).

²¹ See Annot., 170 A.L.R. 1040, 1046 (1947); 35 A.L.R. 1491 (1925); 13 A.L.R. 674 (1921); 6 A.L.R. 448, 452 (1920).

beneficiary does not have an insurable interest as "void," "illegal," "contrary to public policy," and "pernicious." Nevertheless, few of them have *held* the insurable interest rule to be more than a narrow rule of insurance law.²²

Even in those jurisdictions which treat the insurable interest rule as a principle of public policy, the opinions are not clear as to which rationale for the rule was paramount. The two underlying reasons commonly given are that such a policy is a wagering contract²³ and a contract which induces people to commit crime.²⁴ These two reasons are closely related. The legitimate beneficiary, because of his emotional or pecuniary relationship with the insured, is primarily interested in the continued life of the insured, and regards the possibility of his death as a peril against which he protects himself with insurance. On the other hand, the beneficiary without an insurable interest suffers no emotional or pecuniary loss on the death of the insured; his interest is solely in the proceeds of the policy. The arrangement will be more profitable the sooner the insured dies. To say that such policies are wagers is to say that persons who bet on the lives of strangers might be moved to win the wager by truncating the stranger's life.

The cases clearly indicate that the notion of preventing murder is the more significant. In the situation where the insured himself procures the policy and designates as beneficiary one who lacks an insurable interest in his life, the beneficiary is allowed to recover the proceeds over the objection of the insurer.²⁵ The reason generally given is that the insured is a capable judge of those whom he will trust. "The selection of the beneficiary . . . will sufficiently protect the insured."²⁶ If an aversion to wagering contracts were the primary basis for denying recov-

²²See 11 N.Y.U. INTRA. L. REV. 239 (1956).

²³The origin of the wagering basis appears to be the Life Assurance Act, 14 GEO. III c. 48 (1774). The preamble to this statute states: "Whereas it hath been found by experience that the making insurances on lives or other events wherein the assured shall have no interest hath introduced a mischievous kind of gaming . . ." The outrageous insuring of notable invalids and condemned convicts is described in WRIGHT AND FAYLE, A HISTORY OF LLOYD'S 93-96 (1927). A contract between two Englishmen on the life of Napoleon Bonaparte was litigated in *Gilbert v. Sykes*, 16 East. 149, 104 Eng. Repr. 1045 (1812).

²⁴The murder rationale was articulated by Holmes: "The chance that in some case [the policy] may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose." *Grigsby v. Russell*, *supra* note 1. Patterson minimizes the murder rationale by noting the severe criminal sanction and the uncollectability of the proceeds by a murderer. PATTERSON, ESSENTIALS OF INSURANCE LAW §34 (1935). Both ideas ignore the beneficiary's working assumption: he won't be caught.

²⁵*Grigsby v. Russell*, *supra* note 1; *Reed v. Provident Savings Life Assur. Soc.*, 190 N.Y. 111, 82 N.E. 734 (1907); *Northwestern Masonic Aid Ass'n. v. Jones*, 154 Pa. 99, 26 Atl. 253 (1893). VANCE, INSURANCE §31 at 188-89 (3d ed. 1951).

²⁶VANCE, INSURANCE §31 at 189 (3d ed. 1951).

ery, it would not matter who procured the policy.²⁷

The Alabama court in the instant case, consistently with this general line of reasoning, felt that the insurable interest rule should serve as a standard of insurer conduct.

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.

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.²⁸

Previous implementation of the insurable interest rule did not expose the insurer to any substantial risk of financial loss. Raising the insurable interest rule to a standard of conduct to which insurers must adhere will undoubtedly have sharp repercussions in two areas: tort liability and sales activity. There is no doubt that the insured could maintain an action for personal injuries inflicted by the beneficiary in attempting to murder the insured. The Alabama opinion does not appear to be limited to life insurance; the property owner should be able to assert a similar claim for damage inflicted on his property by a beneficiary without an insurable interest. While it is probable that overly energetic selling activity has been lessened by prior use of the rule, insurers will undoubtedly take steps to avoid writing such policies. The basic problem in the sales area appears to be the determination of what must be done to satisfy "reasonable diligence."²⁹

While adoption of a technical rule of insurance law as a standard of conduct in tort may be novel it does not seem improper to expect life insurers to refrain from issuing "void and illegal" policies which serve to induce crimes of violence.

J. Donald Cairns

²⁷ Even when the beneficiary has an insurable interest, the insured must consent to the policy or it is invalid. VANCE, INSURANCE §34 (3d ed. 1951).

²⁸ Liberty Nat'l Life Ins. Co. v. Weldon, 100 So. 2d 696, 708 (1957).

²⁹ One of the agents in the instant case testified that he did not know whether the policy was in violation of the company's rules even though his instruction book did not include an aunt or an aunt-in-law as "acceptable beneficiaries."