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owners, said that in any given case concerning riparian or littoral rights, the court must necessarily *give due consideration to the correlative rights of adjoining upland owners*.¹⁵

Yet, in holding for the plaintiff in the instant case, the court looked solely to the fact that the state owned the submerged land in front of the property, using a rule that has thus far been used only to determine ownership of accretions to islands in rivers, rather than along the shore of an open sea. If the court is correct, this indicates that riparian rights such as ingress and egress are now determined by ownership of the submerged land. It is difficult to reconcile this concept with the well-established rule, mentioned in *Hayes*, that, "[L]ittoral or riparian rights are appurtenances to ownership of the uplands. They are not founded on ownership of the submerged lands."¹⁶

It is submitted that the court erred in the following respects: First, a rule which applies only to islands in a river was applied to the shore of the Gulf of Mexico; second, the defendant's riparian rights were completely disregarded; third, the rationale provided by the Supreme Court of Maryland¹⁷ was ignored.

It is expected that when the sea washes the land, the results will be arbitrary, but one expects more than caprice from a court of law.

WARREN M. SALOMON

INSURANCE—EFFECTIVE DATE DETERMINED BY PREMIUM PAYMENT AND DELIVERY

The plaintiff's husband applied for a life insurance policy from the defendant. The date of issue¹ was October 28, 1959. The policy was delivered to the plaintiff and her husband on November 24, 1959, when one month's premium was paid. On December 30, 1959, the insured died. The defendant contended that the effective date of the policy was October 28, 1959, as stated on the face of the policy, and that the policy lapsed on December 28th,² two days before the insured died.³ The trial court

15. *Id.* at 802.

16. *Ibid.*

17. Note 13 *supra*.

1. 44 C.J.S. *Insurance* § 262 (1945). "The words 'issue,' 'issuance,' and 'issued,' in reference to an insurance policy, are used in different senses, sometimes as meaning the preparation and signing of the instrument by the officers of the company, as distinguished from its delivery to the insured, and sometimes as meaning its delivery and acceptance whereby it comes into full effect and operation as a binding mutual obligation."

2. Sixty days after October 28, 1959—thirty days coverage for which premium had been paid plus the thirty-day grace period usually found in the standard life insurance policy.

3. *Carolina Life Ins. Co. v. DuPont*, 141 So.2d 624, 625 (Fla. 1st Dist. 1962). But in

held that the effective date of the policy was November 24th, the date of delivery and payment of the premium. On appeal, *held*, affirmed: the date of delivery of the policy and payment of the first premium, not the date on the face of the policy, is controlling in determining whether the policy was in effect at the time of death. *Carolina Life Ins. Co. v. Dupont*, 141 So.2d 624 (Fla. 1st Dist. 1962).

The problem of determining the effective date of a life insurance policy has arisen out of the general practice of insurers to date policies as of the same date appearing on the application. Usually that date is also made the due date for the payment of the premiums.⁴ However, generally the provisions in the policy state that the policy shall not take effect as a binding contract until a later validating event (most often delivery and payment of the first premium).⁵ The application is usually attached to the policy and becomes a part thereof. Therefore, an inconsistency results because the policy provides that the insured's obligation commences on an earlier date than the obligation of the insurer.⁶

The majority of courts⁷ resolve this inconsistency by holding that the policy date should be given controlling effect in determining whether the policy was in effect at the time of death.⁸ In a recent New Jersey

opposition, the plaintiff contended: "[F]irst that the actual date on which the policy was issued . . . was October 30, 1959, and that . . . the insured died while the policy was in force, howbeit on the last day before the policy lapsed; second, that insurance became effective on November 24, 1959, the date on which the policy was delivered to the insured and the first premium was paid"

4. VANCE, *INSURANCE* 287 (2d ed. 1930).

5. See generally Annot., 44 A.L.R.2d 472 (1955); VANCE, *INSURANCE* 247 (3d ed. 1951).

6. *Equitable Life Assur. Soc'y of United States v. Tucker*, 126 F.2d 396 (8th Cir. 1942), *cert. denied*, 316 U.S. 699; *American Nat'l Ins. Co. v. Gregg*, 123 Colo. 476, 231 P.2d 467 (1951); *Parham v. National Relief Assur. Co.*, 33 Ga. App. 59, 125 S.E. 519 (1924); *Stramaglia v. Conservative Life Ins. Co.*, 319 Ill. App. 20, 48 N.E.2d 719 (1943); *Wolford v. National Life Ins. Co. of United States*, 114 Kan. 411, 219 Pac. 263 (1923).

7. 29 Am. Jur. *Insurance* § 515 (1960); Annot., 44 A.L.R.2d 472 (1955).

8. *Pyramid Life Ins. Co. v. Williams*, 221 Ark. 74, 251 S.W.2d 1010 (1952); *McDaniel v. Missouri State Life Ins. Co.*, 185 Ark. 1160, 51 S.W.2d 981 (1932); *Thomas v. Northwestern Mut. Life Ins. Co.*, 142 Cal. 79, 75 Pac. 665 (1904); *Painter v. Massachusetts Mut. Life Ins. Co.*, 77 Ind. App. 34, 133 N.E. 20 (1921); *Wall v. Mutual Ins. Co.*, 228 Iowa 119, 289 N.W. 901 (1940); *Timmer v. New York Life Ins. Co.*, 222 Iowa 1193, 270 N.W. 421, 111 A.L.R.2d 1412 (1936); *Aetna Life Ins. Co. v. Magruder's Ex'x*, 293 Ky. 551, 169 S.W.2d 317 (1943); *Wilkinson v. Commonwealth Life Ins. Co.*, 176 Ky. 833, 197 S.W. 557, 6 A.L.R. 769 (Ct. App. 1917); *Oil Well Supply Co. v. New York Life Ins. Co.*, 214 La. 772, 38 So.2d 777 (1949); *Metropolitan Life Ins. Co. v. Jankowski*, 285 Mich. 291, 280 N.W. 766 (1938); *Johnson v. Metropolitan Life Ins. Co.*, 107 Mont. 133, 83 P.2d 922 (1938); *Reid v. Bankers Life Co.*, 148 Neb. 604, 28 N.W.2d 542 (1947); *Pladwell v. Travelers Ins. Co.*, 134 Misc. 205, 234 N.Y. Supp. 287 (Sup. Ct. 1928); *Pace v. New York Life Ins. Co.*, 219 N.C. 451, 14 S.E.2d 411 (1941); *Mougey v. Union Central Life Ins. Co.*, 123 Ohio St. 595, 176 N.E. 455 (1931); *California State Life Ins. Co. v. Bailey*, 176 Okla. 153, 54 P.2d 647 (1936); *Sydnor v. Metropolitan Life Ins. Co.*, 26 Pa. Super. 521 (1904); *Brown v. Mutual Life Ins. Co.*, 186 S.C. 245, 195 S.E. 552 (1938); *Berry v. Prudential Ins. Co. of America*, 23 Tenn. App. 485, 134 S.W.2d 886 (1939); *Myers v. Jefferson Standard Life Ins. Co.*, 271 S.W. 217 (Tex. Civ. App. 1925), *aff'd*, 284 S.W. 216 (1926); *Mercer v. South Atlantic Life Ins. Co.*, 111 Va. 699, 69 S.E. 961 (1911); *McKenney v. Phoenix Mut. Life Ins. Co.*, 138 Wash. 315, 244 Pac. 560 (1926); *accord*, *State Secur. Life*

case,⁹ the court said:

When a policy, although conditioned to take effect on the payment of the first premium, expressly specifies the date from which the premium period is to be computed and makes that date the determining factor which fixes the day on which the future premiums are due and payable, such date controls regardless of when the policy is delivered and notwithstanding the policy reservation that the insurance is not effective until the policy is delivered and the first premium paid.¹⁰

A few courts, although arriving at the same result, follow the rule that delivery and payment of the first premium are conditions precedent and once they are complied with, the policy is effective as of the prior date on the face of the policy.¹¹

Both of the above views are usually based on a finding that the language as to the premium due dates is clear and definite, and that the advantages of having such an important date clearly established outweigh any considerations of injustice in charging the insured for protection not actually afforded.¹²

A minority of jurisdictions has adopted the view that when the contract expressly provides that it shall take effect only on the condition of payment of the first premium, or on delivery, that provision controls.¹³ And in the absence of circumstances requiring a different result,¹⁴ the

Ins. Co. v. Kitner, 175 N.E.2d 36 (Ind. App. 1961); Prudential Ins. Co. of America v. Burch, 268 F.2d 159 (8th Cir. 1959).

9. Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 161 A.2d 717 (1960).

10. *Id.* at 721. Therefore the policy lapsed after the thirty-day grace period from the due date stated in the policy and death the next day was not within the coverage period although the policy provided that effective coverage would not begin until delivery of the policy and payment of the first premium.

11. Travelers Ins. Co. v. Wolfe, 78 F.2d 78 (6th Cir.), *cert. denied*, 296 U.S. 635 (1935); New York Life Ins. Co. v. Silverstein, 53 F.2d 986 (8th Cir. 1931); McCampbell v. New York Ins. Co., 288 Fed. 465, 469 (5th Cir.), *cert. denied*, 262 U.S. 759 (1923); Pladwell v. Travelers Ins. Co., 134 Misc. 205, 234 N.Y. Supp. 287 (1928).

12. *Ibid.* See cases cited note 8 *supra*.

13. American Nat'l Ins. Co. v. Gregg, 123 Colo. 476, 231 P.2d 467 (1951); Shinall v. Prudential Ins. Co. of America, 91 Colo. 194, 14 P.2d 183 (1932); Parham v. National Relief Assur. Co., 33 Ga. App. 59, 125 S.E. 519 (1924); Lentin v. Continental Assur. Co., 412 Ill. 158, 105 N.E.2d 735 (1952); Brady v. Bankers Cas. Co., 114 Kan. 865, 220 Pac. 1033 (1923); Howard v. Aetna Life Ins. Co., 350 Mo. 17, 164 S.W.2d 360 (1942); Stinchcombe v. New York Life Ins. Co., 46 Ore. 316, 80 Pac. 213 (1905); Lyke v. First Nat'l Life & Acc. Ins. Co., 41 S.D. 527, 171 N.W. 603 (1919); Great So. Life Ins. Co. v. Alcorn, 80 S.W.2d 429 (Tex. Civ. App. 1935).

14. The majority rule turns on the particular factual situations and particular policy provisions involved. The minority rule is applied except when there are circumstances requiring a contrary result. There may be the finding of a specific intent of the parties involved that the policy commence on the earlier date. Carolina Life Ins. Co. v. DuPont, 141 So.2d 624 (Fla. 1st Dist. 1962); Lentin v. Continental Assur. Co., 412 Ill. 158, 105 N.E.2d 735 (1952).

Acts or statements of the insured recognizing the date stipulated in the policy as that upon which premiums were due have often been held to require the conclusion that this

delivery date and not the prior date on the policy controls the time at which the first premiums must be paid, the expiration date of the policy, and the running of the grace period.¹⁵

The rationale of the minority view is that since the premiums are payable in advance, the dating of the policy at a time prior to the date of delivery and the subsequent payment of premiums is not sufficient to change an explicit provision in the policy that it take effect at a later date.¹⁶ This result is necessary to preclude the insured from getting less than he bargained for, *i.e.* less than one term's insurance.¹⁷

Additional basis for the minority view was given in *Lentin v. Continental Assur. Co.*,¹⁸ wherein the court stated: "[A]ny confusion or uncertainty which arises must be said to lie in the hands of the company which fashioned the conflicting provisions as to the effective date." This reasoning was cited with approval in the *Carolina Life* decision.¹⁹

The court in *Carolina Life* clearly stated that the minority view, to give the delivery date controlling effect, is the more equitable rule to apply when the insured dies subsequent to the delivery date. It does not seem equitable to allow the insurer to declare the policy forfeited before the expiration of the full term of effective insurance. To so hold would result in the insured paying for insurance during a period when the company was under no liability to him. This would allow the insurer to profit by the very ambiguity which it created.

Would the result be the same if the death of the insured had occurred subsequent to the date on the policy but prior to any delivery or payment of the first premium? It is the opinion of this author that the Florida court would, in the circumstances just posed, give the policy date controlling effect, thus affording coverage at the time of the insured's

date was controlling in determining whether the policy coverage had lapsed, as against the contention that the later date, when the policy was delivered and the first premium paid, should control. See *Business Men's Assur. Co. of America v. Davies*, 106 Colo. 51, 101 P.2d 432 (1940), where the insured constantly referred to the prior date in correspondence with the insurer; *Prange v. International Life Ins. Co.*, 329 Mo. 651, 46 S.W.2d 523 (1931), wherein the policy expressly stipulated that after delivery of the policy, it shall take effect on a specific prior date and the insured had signed an application expressing his desire to have it dated at such earlier time. For specific provision providing that after delivery and first premium paid, coverage shall take effect on the earlier date see *Meadows v. Continental Assur. Co.*, 89 F.2d 256 (5th Cir. 1937).

15. *Shinall v. Prudential Ins. Co. of America*, 91 Colo. 194, 14 P.2d 183 (1932); *Hampe v. Metropolitan Life Ins. Co.*, 21 S.W.2d 926 (Mo. App. 1929); see also cases cited note 14 *supra*.

16. *Ibid*; VANCE, INSURANCE 287 (2d ed. 1930).

17. *Lentin v. Continental Assur. Co.*, 412 Ill. 158, 105 N.E.2d 735 (1952); *accord*, *Yannuzzi v. United States Cas. Co.*, 19 N.J. 201, 207, 115 A.2d 557 (1955); *Schneider v. New Amsterdam Cas. Co.*, 22 N.J. Super. 238, 243, 92 A.2d 66 (App. Div. 1952); 13 *Appleman, Insurance Law and Practice* § 7401 (1943); 1 COUCH, INSURANCE 776 (2d ed. 1959).

18. 412 Ill. 158, 167, 105 N.E.2d 735, 739 (1952).

19. *Carolina Life Ins. Co. v. DuPont*, 141 So.2d 624, 626 (Fla. 1st Dist. 1962).

death. Basis for this opinion is found in the court's two-fold rationale. First, although the minority view was followed in *Carolina Life*, the court qualified its adoption stating that this view was the "better and fairer in the particular fact situation." Secondly, the court cited the rationale of *Lentin v. Continental Assur. Co.*,²⁰ wherein it was stated that the confusion and uncertainty as to the effective date will lie at the hands of the company fashioning such provisions. Thus, the court has not bound itself either to the majority or minority rule but apparently will alternate to arrive at the more equitable result.

Insurance companies will be continually faced with unfavorable decisions in both fact situations until they establish provisions which entitle the insured to coverage on the same date his premiums are payable.

RODNEY G. ROSS

DEDUCTIBILITY OF THE EXPENSES OF OBTAINING A LAW DEGREE

Taxpayer, an Internal Revenue Agent assigned to a "fraud group," attended night law school for three years as a degree candidate. Shortly after he entered law school, his request was granted for transfer to the Intelligence Division as a Special Agent.¹ A few months after graduating and passing the state bar examination, the taxpayer left government service to engage in private law practice. He claimed expense deductions on his tax returns for amounts expended during the three-year period for tuition and books. The Commissioner of Internal Revenue disallowed the taxpayer's claim for refund on the theory that the expenses were incurred for the primary purpose of obtaining a new skill. *Held*: since the taxpayer's primary motive at the time of engaging in these studies was to improve and maintain his existing skills, his educational expenses were deductible. *Welsh v. United States*, 210 F. Supp. 597 (N.D. Ohio 1962).

Until this decision, one proposition seemed certain in the area of

20. Note 18 *supra*.

1. A "fraud group" is a team of Special Agents, Revenue Agents, and other employees of the Internal Revenue Service who are engaged in a special project involving suspected acts of criminal tax evasion. Internal Revenue Agents are basically concerned with performing the audit phase of the investigation, and are primarily accountants. Special Agents of the Intelligence Division acquire information and prepare and develop evidence to be used at the trial of cases involving criminal tax evasion. These functions of a Special Agent, apart from the other activities of the Internal Revenue Service, require a high degree of knowledge of the laws of evidence, criminal procedure, trial technique, constitutional law, and other subjects that can best be acquired through legal training.