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INSURANCE

HERBERT A. KUVIN*

Since the last survey of this subject¹ the Florida Supreme Court reported nineteen decisions, and the federal court twenty-two opinions. The federal courts follow the substantive law of Florida;² therefore consideration is given herein to all decisions without specific distinction.

Both tribunals follow the established principles applicable to insurance matters. However, at times, in the application of these principles there appear to be some variances. Study must necessarily be made of the facts, the terms and provisions of the contracts of insurance and the actions of the parties to the contract or policy before, during and after the occurrence of the event insured against.

STATE REGULATIONS

There were no cases decided by the Florida courts during this period which considered the regulation of insurance companies. Neither the Florida statutes, the regulations promulgated by the Insurance Commissioner pertaining to the regulatory authority nor the validity of such authority was considered during this period. However, the federal courts of other jurisdictions considered matters which directly affect the rights of the states to regulate insurance companies. While the United States Supreme Court had not stated whether the states will be permitted to continue their regulation this determination will most certainly be submitted for decision.³

SCOPE AND COVERAGE OF POLICIES

The relative rights and obligations of the parties to insurance policies are primarily determined by and from the terms and provisions of the insurance contract. Thus, the principles of construction of insurance contracts are of primary consideration. Insurance policies, similar to other contracts, are construed and interpreted, where the language is plain and unambiguous, in accordance with the plain and accepted meaning of the words. The primary object is to ascertain the intention of the parties.⁴ The

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1. 10 *MIAMI L.Q.* 360 (1956).

2. *Equitable Life Assur. Soc'y. v. Neill*, 243 F.2d 193 (5th Cir. 1957).

3. *cf. The American Hospital and Life Ins. Co. v. FTC*, 243 F.2d 719 (5th Cir. 1957); *National Cas. Co. v. FTC*, 245 F.2d 883 (6th Cir. 1957) wherein the issue is squarely presented under the McCarran Act 59 *STAT.* 33 (20) §§ 1-5 (1945), 15 *U.S.C.* §§ 1011-1015 (1952). However, note the language in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 *U.S.* 310 (1955).

4. *Haenal v. United States Fidelity and Guaranty Co.*, 88 *So.2d* 888 (Fla. 1956).

court cannot, under the guise of construction, make a new contract for the parties.⁵ Where there is an ambiguity, or the language is not clearly indicative of the intention of the parties, the court in its determination of the intention of the parties, construes the contract against the insurer and in favor of the insured.⁶ The courts attempt to favor the position of the insured with a determination that he has insurance, if it is possible to construe the intention of the parties to that effect.⁷

Exemptions

Where a policy provided that burglary safe insurance was effective only if property was feloniously abstracted from a safe, there was no recovery if the safe was feloniously taken from insured's premises where no proof was submitted that the *contents of the safe* were feloniously abstracted. By implication, all risks not specifically provided for in the policy, the terms of which were not ambiguous, were expressly exempted or excluded.⁸

Exclusions

The same rule of law applied to policy provisions which specifically excluded certain hazards or risks from the coverage of the contract; basically, this is good law. Where a person undertakes to obligate himself in broad, general, all-inclusive language, it is proper that he limit such obligation by specific exclusions.⁹

Where an attempt was made to include a vehicle in the coverage of a fleet policy, where the type of vehicle was excluded by the terms of the contract, such an attempt would be considered abortive if the person was a broker and not an agent of the insurance company.¹⁰

In another matter, there was an attempt to include in a garage liability policy the loss or damage to the insured customer's property while in the custody of the insured. The court found that a specific exclusion existed in the policy with reference to this hazard or coverage and that since the insured did not pay any premium for this excluded coverage, although provision

5. *Ibid.*

6. *Chaachou v. American Cent. Ins. Co.*, 241 F.2d 889 (5th Cir. 1957); *Weis-Fricke Export and Import Corp. v. Hartford Acc. and Ins. Co.*, 143 F. Supp. 137 (N.D. Fla. 1956); *New Amsterdam Cas. Co. v. Knowles*, 95 So.2d 413 (Fla. 1957); *Moore v. General Cas. Co.*, 91 So.2d 341 (Fla. 1956); *Practorians v. Fisher*, 89 So.2d 329 (Fla. 1956); *Haenal v. United States Fidelity and Guaranty Co.*, 88 So.2d 888 (Fla. 1956); *Virginia Surety Co. v. Russ*, 86 So.2d 643 (Fla. 1956); *Service Fire Ins. Co. v. Markey*, 83 So.2d 855 (Fla. 1955).

7. Note 4 *supra*.

8. *Moore v. General Cas. Co.*, 91 So.2d 341 (Fla. 1956).

9. Note 4 *supra*.

10. *Pacific Employers Ins. Co. v. A. J. Peddy & Sons, Inc.*, 144 F. Supp. 632 (S.D. Fla. 1956).

had been made in the policy for the purchase of such coverage, the policy did not insure for the risk or hazard excluded.¹¹

Likewise in a life insurance policy which exempted double indemnity for accidental death, if the death did not result "solely through external, violent and accidental cause," the beneficiary could not prove the death to be within the terms of the exclusion primarily because a pre-existing health condition was a contributing factor to the assured's death, despite the fact that rough treatment by robbers was the cause of the death.¹²

In a suit for a declaratory decree the court held that an attendant of a convalescent home was not such a person within the intent of the exclusion as to absolve the insurer from liability for "professional services" performed or supplied at such home.¹³ The decision was predicated on the principle of a liberal construction in favor of the insured.

An insurance broker, who had no authority to represent an insurance company and who negotiated with the insurer's agent for the policy of insurance, lacked authority to extend coverage to his client (the insured) to include liability expressly excluded from the policy.¹⁴ The general law of contracts, to the effect that there must be an apparent meeting of the minds by the parties to a contract effected by them or their duly authorized agents, was utilized to preserve the right of the insurer to exclude hazards or risks.

Conditions

The same rules of law that pertain to the validity of exemptions and exclusions also apply to conditions in insurance contracts whether precedent or subsequent. Where a fire insurance policy contained a provision prohibiting the insured from having or taking out any additional fire insurance on the insured property, violation of this prohibition voided the policy.¹⁵

Cancellation

Cancellation of insurance contracts is governed by the same principles as that applicable to other contracts. The terms of the agreement are construed to give effect to the intention of the parties. If the method agreed upon and the procedure set forth have been pursued, the courts will decree effective cancellation. In one case, a judgment in favor of the insured was reversed on the basis that no jury question was involved when the facts indicated that the insurer complied with the cancellation provision of the policy before the loss occurred by sending the notice of cancellation to the insured to the address shown in the policy. The notice was sent by

11. See note 4 *supra*.

12. *Berg v. New York Life Ins. Co.*, 88 So.2d 915 (Fla. 1956).

13. *New Amsterdam Cas. Co. v. Knowles*, 95 So.2d 413 (Fla. 1957).

14. *Peddy v. Pacific Employers Ins. Co.*, 246 F.2d 306 (5th Cir. 1957).

15. *Hunter v. United States Fidelity and Guaranty Co.*, 86 So.2d 421 (Fla. 1956).

ordinary mail. The court held the terms to be unambiguous and that they should be construed according to their plain intent. Registered mail or the failure to prove receipt were not contractual requirements; hence no jury issues were raised.¹⁶ In a maritime case, the insured, owner of the boat, financed his premium payments with a bank and authorized the bank to cancel the policy, on his behalf, upon his default in the payments of his installments. He regularly defaulted in installment payments, and upon each default the bank sent notices of cancellation to the insurance company. However, a short time after each cancellation was sent, the bank rescinded such cancellation requests, which rescissions were honored by the insurance company. Finally, notice of cancellation was sent, the boat was destroyed by fire, this cancellation request was held in abeyance by the insurer and then the insurer, learning for the first time that the insured boat was destroyed by fire, refused payment of the loss on the basis that the policy was cancelled before the loss. It was held, "request for cancellation of an insurance policy must be unequivocal and absolute." In the instant case, last notice, by custom and usage between the parties was not sufficient.¹⁷

MAKING THE CONTRACT

Premiums

Premiums are part of the consideration for the contract of insurance. Unless a premium is paid, the policy does not take effect as to any or all coverages therein. Where, in a garage liability insurance policy, no premium was provided for or paid as to "liability for injury to, or destruction of property owned by, rented to, in charge of insured, etc.," the insured had no coverage, since there was no contractual agreement between the parties as to this coverage.¹⁸ The Florida statutes¹⁹ provide for nonforfeiture premium payment grace periods and where there is any conflict between the policy provisions and the statutory requirements, the latter control. In a case where a weekly premium accident policy contained no grace period provision, the court held there was a mixed question of law and fact, based upon the acts of the parties, as to which grace period should be deemed applicable, and the case was remanded for a retrial.²⁰

16. *Service Fire Ins. Co. v. Markey*, 83 So.2d 855 (Fla. 1955).

17. *Saskatchewan Government Ins. Office v. Padgett*, 245 F.2d 48 (5th Cir. 1957).

18. Note 4 *supra*.

19. As to accident policies, FLA. STAT. § 642.10 (1957) states that policies shall be construed as though the terms and provisions of § 642 are set forth in such policies and any terms or provisions in the policies to the contrary notwithstanding. § 642.031 (4) (c) provides for a grace period of not less than 7 days for weekly premium policies.

20. *Guilford v. Conger Life Ins. Co.*, 92 So.2d 625 (Fla. 1957). The court split 4 to 3 with a dissenting opinion by Justice Hobson, concurred in by other dissenters, who maintained that insured was injured more than the statutory 7 days after premium default and policy had lapsed and no jury question existed.

Application

The application for insurance is considered the offer by the assured. Where an answer was inserted in an application without the knowledge or consent of the insured, it was held that the inserted answer was not that of the insured and therefore did not constitute any part of the offer for insurance. This rule applies with equal force in life insurance applications²¹ and in casualty or liability policies.²²

Insurable Interest

A tenant under a lease and option to purchase agreement entered into with the Government was required by the terms of the lease to take insurance on the leased property. It had an insurable interest under this lease and option to purchase not only in the property leased, but also as to the property installed by it on the leased property. A cancellation of the lease by the Government, done in accordance with the terms of the lease agreement, after a loss had been sustained, did not terminate the assured's right to the proceeds of insurance for its interest and loss as of the time of the loss.²³ Its insurable interest was not terminated by the end of the lease since the tenant's right had accrued before such termination. Where a vendor entered into a contract for the sale of realty and the vendee was made an additional assured on the existing fire insurance policy, the vendee had a valid insurable interest pending consummation of the sale.²⁴

Agency

The general law of agency, while very helpful in insurance cases, is not determinative of the question of whose agent the person was. Since insurance is a business affected with a public interest,²⁵ statutory regulations relative thereto influence determinations respecting its transactions. However, custom and usage developed over the long history of the insurance business, also exert strong influence in the determination of legal principles applicable to insurance transactions. A "general insurance broker" not duly authorized by the insurance company that issued the policy, is legally the agent of the insured, and not the agent of the company by estoppel.

21. *Woodmen of the World Life Ins. Soc'y. v. Jackson*, 243 F.2d 558 (5th Cir. 1957), where insured signed a blank application, which was filled in incorrectly by agent of society. Held, no false answers by insured, so as to invalidate policy.

22. *Providence Washington Ins. Co. v. Rabinowitz*, 227 F.2d 300 (5th Cir. 1955). The insertion of information by insurance company's agent in Jewelers Block Policy application, which was furnished him by insured, or his misunderstanding of situation, was not a warranty, the breach of which would avoid the policy.

23. *Seaboard Mach. Corp. v. Hanover Fire Ins. Co.*, 149 F. Supp. 362 (N.D. Fla. 1957).

24. *National Fire Ins. Co. v. Board of Public Instruction*, 239 F.2d 370 (5th Cir. 1956).

25. *O'Gorman & Young v. Hartford Fire Ins. Co.*, 282 U.S. 251 (1931); *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1914).

He could not, therefore, bind the insurance company by any representations made by him²⁶ notwithstanding general and specific statutory definitions²⁷ of "agents," "solicitors" and "brokers" or the statutory attempt to make them *prima facie* the alter ego of the insurers.²⁸ The rights existing between agents and companies, *inter se*, is treated hereinafter under the heading of Rights of Parties.

CONCEALMENT, REPRESENTATIONS, AND WARRANTIES

Florida follows the common law since it has no statutory provisions relating to this aspect of insurance law. Violation of these common law rules by the insured precludes him from recovery on his insurance contract.²⁹ It is immaterial whether the violation by the insured is as to circumstances surrounding the making of the contract and therefore pertaining to warranties, concealment or the misrepresentation of material facts upon which the contract was entered into, or a violation of good faith or breach of covenants, conditions, or warranties after the contract is in force. The violation of a policy provision not to take out any additional fire insurance on the insured property, even though such other insurance existed before the policy in question was entered into, precluded assured's right to recover thereon.³⁰ Fraud and false swearing after a loss, on subject matter which is material to the insurance or the nature and extent of the loss, will avoid the policy and prevent recovery by the insured, since utmost good faith is required of the insured both after a loss and before the contract is made.³¹ Utmost good faith has always been the prime ingredient of insurance transactions, but unfortunately, somewhere in the maze of judicial consideration of insurance cases, and in the anxiety of the legislatures and courts to protect the rights of insureds, the rights of the insurers, as parties to the contracts, were often forgotten.^{31a}

Even in marine insurance, where there is usually some appearance of strict interpretation of warranties to the advantage of the insureds, the court

26. *Pacific Employers Ins. Co. v. A. J. Peddy & Sons, Inc.*, 144 F. Supp. 632 (S.D. Fla. 1956), *aff'd* in 246 F.2d 306 (5th Cir. 1957).

27. FLA. STAT. § 625.01 (1957).

28. *Centennial Ins. Co. v. Pamell*, 83 So.2d 688 (Fla. 1955). The statute does not conclusively fix the scope of authority between agents, companies and third parties.

29. See note 15 *supra*.

30. *Ibid.*

31. *Chaachou v. American Cent. Ins. Co.*, 241 F.2d 889, 893 (5th Cir. 1957):

Courts have long recognized that, "The moral hazard is one of the main elements, if not the chief element, of an insurance risk, and it is never negligible. It is always material to the risk." *Connecticut Fire Ins. Co. v. Manning*, 160 F. 382, 385 (8th Cir. 1908). It reflects the assumption that the relationship created by the contract is one requiring the utmost honest, good faith dealing. *Globe & Rutgers Fire Ins. Co. v. Stallard*, 68 F.2d 237,240 (4th Cir. 1934). . . .

31a. *Stipchich v. Insurance Co.*, 277 U.S. 311, 316 (1928); 48 S. Ct. 512 (1928); even from the time of Lord Mansfield's pronouncement in (1766); *Carter v. Boehm*, 3 Burr. 1905, 1 Bl. 593, 97 Eng. Reprint 1164, has this principle of utmost faith been recognized as valid law.

in considering an action for breach of warranty of seaworthiness of the insured vessel indicated that utmost good faith on the part of the insured was required.³²

False answers in the application for insurance will avoid the application and the policy of insurance based thereon, unless it is shown that the insured did not utter, ratify or in any way participate in their creation.³³ This is just another manner of indicating that the insured did not breach the good faith required of him, although the court placed its determination upon the basis that the company waived any rights accruing to it stemming from the wrong information in the application.

WAIVER AND ESTOPPEL

In the construction of insurance contracts or the determination of the relative rights of the parties to the controversy, the courts often rely upon waiver or estoppel in their attempt to dispense substantial justice. Effects of fraudulent representations in applications for life insurance can be nullified by proof that the company's representative, with knowledge of the facts, inserted the improper answers.³⁴ Exclusions in policies, i.e., lack of insurance coverage, may be waived, although it was determined that the insurance broker was not the agent of the insurer and had no authority to waive on behalf of the insurer.³⁵ An examination of an applicant by an insurance company's medical examiner waives any future contentions as to the applicant's health at or prior to the time of the examination.³⁶ Subrogation rights and settlement with knowledge of a finance company's director and inaction to enforce such rights is a waiver of the rights.³⁷ An insurer is estopped to take advantage of a misstatement in a policy proposal made without the knowledge and consent of the insured by a unilateral mistake or by willful act of the insurer's agent.³⁸ The insertion of false answers by the insurer's agent in an application for life insurance, even if insured signs such application in blank and thereby permits or creates the situation, will estop the insurer from relying on such misrepresentations.³⁹ Where the beneficiary of a life insurance policy kills the insured, public

32. *Saskatchewan Gov't. Ins. Office v. Spot Pack*, 242 F.2d 385, 388 (5th Cir. 1957), speaking of the effect of the warranty in that case, said:

. . . It is, rather, stated in the negative, that the Owner, from bad faith or neglect, will not knowingly permit the vessel to break ground in an unseaworthy condition. And, unlike a breach of a warranty of continuing seaworthiness, express or implied, which avoids the policy altogether, the consequence of a violation of this 'negative' burden is merely a denial of liability for loss or damage caused proximately by such unseaworthiness.

33. Note 21 *supra*.

34. *New York Life Ins. Co. v. Strudel*, 243 F.2d 90 (5th Cir. 1957).

35. Note 26 *supra*.

36. *Mathews v. Metropolitan Life Ins. Co.*, 89 So.2d 641 (Fla. 1956).

37. *Lake City Auto Finance Co. v. Waldron*, 83 So.2d 877 (Fla. 1955).

38. Note 22 *supra*.

39. Note 21 *supra*.

policy estops her from the right to recover the proceeds of the policy by virtue of the common law axiom that no person is permitted to benefit from his own wrong.⁴⁰ A reading of any of these cases will clearly demonstrate that the courts are overworking the doctrines of waiver and estoppel especially since sufficient other principles of law exist to obtain the same results. It is the constant resort to the equitable doctrines of "waiver and estoppel," regardless of whether it is one or the other, that has caused confusion and loose application of one doctrine for the other erroneously. In many instances the courts call them one, when it was not essential to resort to either or both doctrines.

RIGHTS OF PARTIES

Policyholders-Insureds

Aside from the law of construction of insurance policies and the terms and provisions thereof, insureds' rights have been determined under certain circumstances and policy contracts.

Whether a seventy year old dentist remained totally and permanently disabled was a question of fact for determination by the jury.⁴¹

A vendor under a contract of sale could recover insurance proceeds up to the balance of the contract price for a fire which occurred prior to consummation of the sale. The vendee, an additional insured, was entitled to the balance of the proceeds.⁴²

Under a weekly premium accident insurance policy, which contained no provisions as to premium grace periods, the court determined that the insured had at least the statutory period and that a jury question arose as to what was a reasonable time for such grace period. In other words, it was for the jury to decide whether the insurance policy lapsed under the conditions.⁴³

Fraud and false swearing occurring after and pertaining to a loss, in connection with any matter of insurance, such as indicates that insured did not act with the utmost good faith, will result in a loss of rights under a policy.⁴⁴

One situation, that of a casualty insurance company's liability in excess of policy limits for failure to settle a claim against an insured, has become the subject of discussion⁴⁵ and judicial determination. Evidence of bad faith is a jury question and is not to be determined by the court on motion when it concerns a company's action in failing to settle a claim of an

40. *Carter v. Carter*, 88 So.2d 153 (Fla. 1956).

41. Note 2 *supra*.

42. *National Fire Ins. Co. v. Board of Public Instruction*, 239 F.2d 370 (5th Cir. 1956). See also Note, 11 *MIAMI L.Q.* 531 (1957).

43. Note 20 *supra*.

44. Note 6 *supra*.

45. *Appleman, Conflicts in Injury Defenses*, 31 *FIA. B.J.* 402 (1957).

injured person against the insured, thereby resulting in a trial and jury verdict in excess of policy coverage limits.⁴⁶ The District Court for the Southern District of Florida was reversed and the cause remanded for proper procedure, relative to an action for damages against the insurance company for failure to settle a claim against the insured, and the court reiterated the principle that the company is at least under a duty to exercise good faith in the settlement of a claim against the insured.⁴⁷

Beneficiary

Who is a beneficiary under the terms of a policy of life insurance was determined to encompass the word beneficiary in its broadest legal aspect, and in that sense has reference to the survival of a beneficiary eligible to take.⁴⁸ Therefore, where the designated beneficiary in a life insurance policy becomes ineligible to receive the policy proceeds, either through death or common law disqualification because she murdered the insured, the courts will examine the entire insurance policy to ascertain the intention of the insured and will resort to the same legal principles of ascertainment as in matters concerning testamentary documents and instruments of trust.⁴⁹

Where an insured, under the terms of a National Service Life policy, has become permanently and totally disabled, and has been so declared by the Veteran's Administration relative to his receipt of service incurred disability benefits, but has failed to notify the Veteran's Administration Insurance Division that he is entitled to the benefit of the waiver of premium provision in his policy and then dies with his premiums in default, the beneficiary of the policy is not entitled to a retroactive waiver of premiums. The benefit of this provision is lost by the failure of the insured to make timely application therefor.⁵⁰

In an action of interpleader instituted by the insurance company, the court found that the deceased insured had changed the beneficiary from that of his wife to some other person. Such action was not the result of duress or undue influence but was a voluntary act by the insured. The court directed the company to pay the proceeds of the policy to the last designated person as the changed beneficiary.⁵¹

Where a statute⁵² provides that proceeds of an insurance policy payable to the estate of an insured could be bequeathed to *any person*, such proceeds were held exempt from the claims of creditors of the insured. They belonged

46. *Springer v. Citizens Cas. Co.*, 246 F.2d 123 (5th Cir. 1957).

47. *Dotschay v. National Mut. Ins. Co.*, 246 F.2d 221 (5th Cir. 1957).

48. Note 40 *supra*.

49. *Ibid.*

50. *United States v. Sinor*, 238 F.2d 271 (5th Cir. 1956).

51. *Equitable Life Assur. Soc'y. v. Nichols*, 84 So.2d 500 (Fla. 1955).

52. *FLA. STAT. § 223.13* (1957).

to the three surviving sisters of the deceased who were his sole surviving heirs and the residuary legatees of his estate.⁵³

Creditors of Insured

The proceeds of an insurance policy are exempt from all claims of the creditors of the insured,⁵⁴ even though the policy makes the proceeds payable to the insured's estate. When these proceeds come into the hands of the executors or administrators, they are, however, subject to costs of administration of the estate.

A bank or finance company, which loans money that the insured uses for premium payments has no right in, to, or relative to the insurance contract, unless these rights are expressly provided for, either by endorsement on the policy or by agreement between the bank and the insured, with notice to the insurance company.⁵⁵

Landlord and Tenant

Both the landlord and the tenant have insurable interests in property, the landlord by virtue of his ownership, and the tenant since he, too, has an estate in the property. Each may insure his interest in property and the other can claim nothing from the proceeds of such insurance, unless the policy covers the other's interest.⁵⁶ The courts will prorate the proceeds in accordance with the interest of each, if the policy insures the interest of both.

Owner and Mortgagee

The same principles apply as in landlord and tenant cases.⁵⁷

Vendor and Vendee

The same principles apply as in landlord and tenant cases.⁵⁸

Assignees

The assignee of an insurance policy, unless the assignment is acknowledged and acquiesced in by the insurer, has no rights under such contract. An insurance policy is an agreement only between the parties thereto, the insurer and insured. However, once an assignment is recognized by the insurer, an assignee acquires all of the insured's rights therein.⁵⁹

53. Estate of Frank Mitchell, 96 So.2d 661 (Fla. 1957).

54. *Ibid.* See also note 53 *supra*.

55. Note 17 *supra*.

56. Note 23 *supra*.

57. Note 17 *supra*.

58. National Fire Ins. Co. v. Board of Public Instruction, note 42 *supra*.

59. Note 17 *supra*.

Agents

Aside from the relationship of the agent to the public, Florida looks to the contract which establishes the agency to determine the relative rights of the agent and the insurance company. Such contracts are construed according to the usual principles and the agent may be held responsible for an accounting.⁶⁰ A determination may be made by declaratory proceedings of an agent's rights to commission on renewal premiums.⁶¹ An agent has no vested rights in commissions on renewal premiums, and his right to such commissions must be based entirely upon the terms of his contract.⁶²

Excess Insurer

An insured carried primary insurance with one company and excess insurance with another. As a result of a claim for injuries asserted by a third party in excess of the primary insurance coverage, which resulted in a judgment against insured for such excess, much litigation resulted by reason of the assertions of the parties as to their respective rights.⁶³ The court construed the excess insurance policy in accordance with the plain meaning of the language thereof and held that the insured had failed to give timely notice to the excess carrier. This failure to give notice relieved it from any obligation under the terms of its policy.

Total or Partial Disability

Where a policy provided that total and permanent disability existed when insured was prevented from doing any work, insured was not required to remain completely idle to be entitled to benefits. He could confine his activities either to his home or to recreational pursuits and had a right to make investments, or could perform occasional tasks without pay so long as these activities did not impair his health. This is a jury question in each case.⁶⁴ However, where the insured in an action on a policy failed to move for a directed verdict in his favor, and permitted the case to be submitted to the jury with a charge to the jury which he helped prepare, he had no grounds for appeal if the jury decided the issue against him.⁶⁵ Therefore, it appears clear, that in actions on accident or health insurance policies, issues of fact are to be treated the same as issues of fact in any other type of litigation.

60. *Meehan v. Grimaldi & Grimaldi, Inc.*, 240 F.2d 775 (5th Cir. 1957).

61. *Frank O. Pruitt, Inc. v. Southern Underwriters*, 83 So.2d 115 (Fla. 1955).

62. *Ibid.*

63. *American Fidelity and Cas. Co. v. Greyhound Corp.*, F.2d 89 (5th Cir. 1956); *Greyhound Corp. v. Excess Ins. Co.*, 233 F.2d 630 (5th Cir. 1956); *Greyhound Lines v. Jones*, 60 So.2d 396 (Fla. 1956).

64. Note 2 *supra*.

65. *Stokes v. Continental Assur. Co.*, 242 F.2d 893 (5th Cir. 1957).

Lack of Insured's Cooperation

When an insured fails to cooperate with the insurance company, especially where the contract requires such cooperation, the insurer is absolved of its obligations under the policy. By the same reasoning, where the insured has been guilty of fraud and false swearing in relation to the extent of the damage under a windstorm policy, the law will not regard it as unsound that such insured has lost the benefit of the contract by his willful, immoral, dishonest acts which the contract itself condemns.⁶⁶

UNAUTHORIZED INSURER'S SERVICE OF PROCESS

Where insured was not a resident of Florida at the time of application for and the issuance of a policy and there had been no communications or transactions by way of payment of premiums or otherwise between the insured and the foreign insurer during insured's residence in Florida prior to his death, service of process on either the Insurance Commissioner⁶⁷ or on the Secretary of State⁶⁸ was invalid. There was no showing of any activity in Florida of the insurer connected with the policy prior to the death of the insured.⁶⁹

SUBROGATION

Aside from the insurer's right to subrogation in workmen's compensation cases, which is not within the scope of this article, insurers of property damage losses are entitled to be subrogated to the rights of the insured upon payment of the insured's claim.⁷⁰ However, where a finance company notified a truck owner and his insurer of its claim prior to a settlement effected with a conditional buyer and the trucker's insurance agent notified the finance company that he would include it in the settlement check if it would not jeopardize the settlement he was about to make with the conditional buyer, and the insurer thereupon settled and took a complete release from the conditional buyer, the finance company had been put on notice that the insurer was likely to make separate settlement with its conditional buyer. The finance company, having taken no appropriate action to protect its interest in the property, was barred by the settlement.⁷¹

In a subrogation action by a Mexican insurer against a Florida resident third party wrongdoer, the court permitted recovery at the rate of exchange in effect on the date of collision.⁷²

66. *Chaachou v. American Cent. Ins. Co.*, *supra* note 6.

67. FLA. STAT. §§ 625.28, 625.30 (2) (1957).

68. FLA. STAT. § 47.16 (1957).

69. *Baker v. Commercial Travelers Mut. Acc. Ass'n.*, 150 F. Supp. 725 (S.D. Fla. 1955).

70. 46 C.J.S., *Insurance* § 1209 (1946).

71. Note 37 *supra*.

72. *La Interamericana, S. A. v. The Narco*, 146 F. Supp. 270 (S.D. Fla. 1956).

WORDS AND PHRASES

During the period covered by this survey, the courts have defined the following words and phrases: "attendant,"⁷³ "beneficiary,"⁷⁴ "continued insurability,"⁷⁵ "convalescent home,"⁷⁶ "dishonesty,"⁷⁷ "in charge of,"⁷⁸ "no beneficiary surviving,"⁷⁹ "professional services,"⁸⁰ "total and permanent disability,"⁸¹ "valued policy,"⁸² "solely through external means,"⁸³

ATTORNEY'S FEES

Florida is one of the few states which has a statutory provision⁸⁴ allowing the award of attorney's fees to the claimants in actions on insurance policies. Where a policy of insurance was delivered in Ohio, a state which had no statutory provision as to attorney's fees and the policy contained no such provision, then the award of attorney's fees is proper and is not violative of federal constitutional provisions if the action is brought in Florida by the beneficiary.⁸⁵

Where conflicting demands are made by claimants, as beneficiaries, under terms of a life policy and the company files cross complaints of interpleader to actions against it, by reason of the insurer's admitting liability under the policy but declining to pay either claimant until the dispute between them had been settled by negotiation or judicial fiat, there was no wrongful refusal to pay the policy proceeds, and no attorney's fees would be assessed against the insurer under the statute.⁸⁶

Under a "valued policy," where insurer had claims of both the vendor and the vendee, as their respective interests may appear, and it refused to pay the full amount of insurance, but instead, filed an interpleader action and tendered the contract of "sale price of the property" into court, it was in violation of the statute and attorney's fees would be awarded against it.⁸⁷

In an action against a fraternal benefit society for proceeds under its policies, the beneficiary was not allowed recovery of attorney's fees because

73. Note 13 *supra*.

74. Note 40 *supra*.

75. Note 36 *supra*.

76. Note 13 *supra*.

77. *Glens Falls Indemnity Co. v. National Floor & Supply Co.*, 239 F.2d 412 (5th Cir. 1957). This was an action on employees fidelity position bond and the decision turned on the courts interpretation of the bond provision relative to employee dishonesty.

78. Note 4 *supra*.

79. Note 40 *supra*.

80. Note 13 *supra*.

81. Note 2 *supra*.

82. Notes 42 and 23 *supra*.

83. Note 12 *supra*.

84. *FLA. STAT. § 625.08 (1957)*.

85. *Slate v. Berkshire Life Ins. Co.*, 142 F. Supp. 691 (S.D. Fla. 1956).

86. Note 51 *supra*.

87. Note 43 *supra*.

the statute does not apply to actions against fraternal societies. Unless the society's benefit certificate contained a provision allowing such recovery, none could be had.⁸⁸

In an action against the insurer by the insured, to recover the amount of legal costs and attorney's fees which insured was compelled to incur in defending an action against it, which the insurance company refused to defend, the court allowed recovery of attorney's fees under the statute, in addition to the damages sustained by the insured.⁸⁹

STATUTORY ENACTMENTS AND AMENDMENTS

As usual, Florida, being one of the forward looking states relative to legislation providing for the welfare of its citizens and to make certain that they have the most possible protection commensurate with constitutional authority, has enacted many statutory provisions. For brevity's sake, a digest and summary of the legislation enacted during the 1957 General Sessions will be set forth in the footnotes herein.⁹⁰

88. Note 21 *supra*.

89. *Virginia Surety Co. v. Russ*, 86 So.2d. 643 (Fla. 1956).

90. FLA. STAT. § 642.01 (1957). The requirement that cooperative or assessment companies file form of policy containing estimated cost of contracts issued by them has been deleted. FLA. STAT. § 642.031 (15) (16) (1953) has been repealed and § 642.03 (15) has been added which is as follows: "This subsection shall take effect Oct. 1, 1956." FLA. STAT. § 642.05 (1957) substitutes a new definition of industrial accident and sickness insurance. FLA. STAT. § 642.06 (1957) has been amended relative to blanket policies covering enumerated groups and gives the insurance commissioner discretion in determining which provisions are favorable or unfavorable to insureds. FLA. STAT. c. 644 (1957) has been amended to provide for licensing of agents, FLA. STAT. c. 636 (1957) has been amended to provide for licensing and regulation of adjusters and public adjusters. FLA. STAT. c. 627 (1957) has been amended. It is a comprehensive enactment relative to requirements of persons applying for agency licenses. FLA. STAT. c. 634 (1957) has been amended. It is a comprehensive enactment relative to requirements of persons applying for licenses as life agents. FLA. STAT. c. 205 (1957) has been amended to clarify taxation provisions. (Note: many more provisions were enacted, but since many are amendments of administrative or regulatory provisions, it was deemed not necessary to set them all out herein.)