North Dakota Law Review

Volume 33 | Number 2 Article 10

1957

# Insurance - Accident Insurance - Benefits for Death While Comitting Felony

John M. Riley

INSURANCE — ACCIDENT INSURANCE — BENEFITS FOR DEATH WHILE COMMITTING FELONY. — Plaintiff, beneficiary under an accident policy insuring against injuries sustained solely through external, violent and accidental means, brought suit to recover under the policy for the death of the assured who was burned to death while intentionally burning a building to collect the insurance on it. After preparations for ignition had been made, the insured had reentered the building with the consent of the owner, a fellow arsonist. While in the building, the fire ignited prematurely, and he was burned to death. The Appellate Court for the Third District of Illinois, in reversing the lower court, *held* that the fire was the proximate cause of death, and since it occurred prematurely to the time which was intended, it was an accident entitling the beneficiary to recovery under the accident policy. *Taylor v. John Hancock Mut. Life Ins. Co.*, 132 N.E.2d 579 (Ill. 1956).

The general rule is that the insurer must make an exception in the policy if it is not to cover death due to, or connected with, violation of law.[1] New York has a statute expressly requiring this exception to be included,[2] while North Dakota permits such an exception under certain conditions.[3] It has been held that recovery must be denied because the exception clause is a mere statement of public policy which would control regardless of the provisions of the contract.[4] Recovery has also been denied where it was shown that the violation of law was the proximate cause of the death[5] or injury,[6] and the insured could reasonably expect to be injured or killed as the result of his acts.[7]

It has been held by courts allowing recovery that it is not sufficient that an unlawful act was committed by the insured, and death occurred during the time he was engaged in its commission, but it must be shown that the act had a direct connection with the death.[8] Courts have defined an accident as that which happens by chance, or which is unexpected, unusual and unforseen.[9] These courts reason that the injury or death has resulted through accidental means where, in the act which precedes the injury, something unforseen and unexpected occurs and produces the injury or death.[10] Under this theory, the insurance company is liable unless it can be shown that the insured purchased the policy in contemplation of the commission of the felony, and the conse-

---

1. Domico v. Metropolitan Life Ins. Co., 191 Minn. 215, 253 N.W. 538 (1934); Van Riper v. Constitutional Government League, 1 Wash. 2d 635, 96 P.2d 588 (1940).

2. N. Y. Insurance Law, § 164—4-(f)-21.

3. N. D. Rev. Code § 26-03A03 (Supp. 1953) (Provides that the exception may be included at the option of the insurance company, provided that the exact words of this section are used; or, if not used, the consent of the Commissioner is obtained. Either the caption of this subsection, or a similar caption approved by the Commissioner, must precede the statement of exception in the policy).

4. Wells v. New England Mut. Life Ins. Co., 191 Pa. 207, 43 Atl. 126 (1899); DeMello v. John Hancock Mut. Life Ins. Co., 281 Mass. 190, 183 N.E. 255, 257 (1932) (dictum); Berne v. Prudential Ins. Co., 235 Mo. 178, 129 S.W.2d 92, 98 (1939) (dictum).

5. Winter v. Metropolitan Life Ins. Co., 235 Mo. 184, 129 S.W.2d 99 (1939).

6. Hutton v. State Accident Ins. Co., 267 Ill. 267, 108 N.E. 296 (1915).

7. Udisky v. Metropolitan Life Ins. Co., 264 App. Div. 890, 35 N.Y.S.2d 1021 (2d Dep't. 1942).

8. Accident Ins. Co., v. Bennett, 90 Tenn. 256, 16 S.W. 723 (1891).

9. United States Mut. Acc. Ass'n v. Barry, 131 U. S. 100 (1889); Olinsky v. Railway Mail Ass'n., 182 Cal. 669, 189 Pac. 835 (1920).

10. See *e. g.*, Koester v. Mutual Life Ins. Co., 6 W. W. Harr. 537, 179 Atl. 327 (Del. 1934).

quent danger.[11] The reasoning seems to be based on the fear of establishing an unjustified means for evasion of liability.[12]

Several courts have allowed recovery on the theory that the beneficiary derives his rights through contract rather than from the estate of the insured.[13] Courts also say that when the insured purchases his policy, the beneficiary obtains a vested interest which should not later be divested or jeopardized by any wrongful act of the insured, not excluded from the policy, for which the beneficiary was not responsible,[14] unless it is positively shown that the policy was obtained in contemplation of the crime.[15]

It seems that the contractual right of the beneficiary presents the best argument in favor of recovery. The insured usually does not purchase the policy for his own benefit, but rather for that of a third party; and since ample consideration is paid for the indemnity, the third party should not be deprived of his rights under the contract merely because one of the original parties has died or been injured as the result of an unlawful act. The court in the instant case apparently avoided the necessity of adopting one of the theories set out above by reasoning that the accident occured before the actual commission of the felony.

JOHN M. RILEY.

NUISANCE — INJUNCTION — ENJOINING OPERATION OF USED CAR LOT.—Plaintiffs, home owners in a zoned residential district were granted a perpetual injunction prohibiting the defendants operation of a "used car lot" which was located on an adjacent unincorporated area and separated from the zoned district by a federal highway. The plaintiffs alleged that the defendant's business diminished the value of their property, created excessive noise and illumination, and was unsightly. In affirming the decree of the lower court the Supreme Court of Appeals *held* that the evidence was sufficient to justify a finding that the used car lot constituted a nuisance in fact. *Martin v. Williams,* 93 S.E.2d 835 (W. Va. 1956).

A person may use his property as he sees fit so long as he does not invade the rights of others, based upon the ordinary standards of life and the conceptions of reasonable men.[1] When the use of property is unreasonable, unlawful, or when it unwarrantably impairs the rights of another it becomes a nuisance,[2] depending upon the particular facts of each case. A common conception of a nuisance is that it is anything which results in the disturbance or annoyance of one in lawful use, possession, or enjoyment of his property or which renders its ordinary use or occupation physically uncomfortable.[3] Nuisances have been

11. Domico v. Metropolitan Life Ins. Co., 191 Minn. 215, 253 N.W. 538 (1934); Home State Life Ins. Co. v. Russell, 175 Okla. 492, 53 P.2d 562 (1936).

12. Zurich Gen. Acc. & Liab. Ins. Co. v. Flukinger, 33 F.2d 853 (4th Cir. 1929); Sanders v. Metropolitan Life Ins. Co., 104 Utah 75, 138 P.2d 239, 243 (1943) (dictum).

13. Home State Life Ins. Co. v. Russell, 175 Okla. 492 53 P.2d 562 (1936); Collins v. Metropolitan Life Ins. Co., 232 Ill. 37, 83 N.E. 542, 544 (1907) (dictum).

14. Mutual Life Ins. Co. v. Guller, 68 Ind. App. 544, 119 N.E. 173 (1918); Payne v. Louisiana Industrial Life Ins. Co., 33 So.2d 444 (La. 1948).

15. Home State Life Ins. Co. v. Russell, 175 Okla. 492, 53 P.2d 562 (1936).

1. Wilson v. Evans Hotel Co., 188 Ga. 498, 4 S.E.2d 155 (1939).

2. Kramer v. Pittsburgh Coal Co., 341 Pa. 379, 19 A.2d 362 (1941); *accord,* City of Temple v. Mitchell, 180 S.W.2d 959, 962 (Tex. Civ. App. 1944) (the invasion must be substantial).

3. Jones v. Trawick, 75 So.2d 785 (Fla. 1954).