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# Insurance - Optional Right of Insurer Under the Louisiana Non-Forfeiture Statute

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fore, it seems that the only logical interpretation of the article is that the drafters of the Code intended to omit that requirement. If an additional argument is needed, a review of the decisions under the old statute<sup>20</sup> will lend force to the above interpretation of the new Article 92.

B.R.D.

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INSURANCE—OPTIONAL RIGHT OF INSURER UNDER THE LOUISIANA NON-FORFEITURE STATUTE—Action by beneficiary to recover face value of a policy which lapsed due to nonpayment of premiums after being in existence for more than three years. The policy contained a stipulation providing for automatic paid-up insurance in the event of lapse for nonpayment of premiums. Defendant contends that in accordance with the authority granted it by Act 57 of 1932, and because of a stipulation contained in the policy providing for automatic paid-up insurance in the event of lapse for nonpayment of premiums, the maximum amount of defendant's liability was the paid-up insurance value of said policy. *Held*, the insurer cannot insert in their policies conditions requiring the insured to exercise his option before the policy lapses. The insurer's right granted by statute to apply the reserve fund is a conditional right. The policy not having granted the insured an option as required by Act 193 of 1906, as amended by Act 57 of 1932, the secondary optional right of the insurer never came into existence. *Edwards v. National Life & Accident Insurance Company, Incorporated*, 11 So. (2d) 125 (La. 1942).

"The delinquent policyholder has no inherent right to the reserve value of his policy. . . . Hence any claim made by the insured to paid-up or extended insurance must necessarily be based upon an agreement or a statute according to him such a right."<sup>1</sup> Statutes giving the insured certain rights to the reserve for the purpose of this note will be classified into five categories. First, the minority group of non-forfeiture statutes provide that in the event of a default in payment of premiums, the reserve shall be applied in the one form which is stipulated in the statute.<sup>2</sup> The better constructed non-forfeiture statutes compose the

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20. *State v. Ramey*, 173 La. 478, 137 So. 859 (1931); *State v. Lewis*, 183 La. 823, 165 So. 1 (1935).

1. Vance, *Handbook of the Law of Insurance* (2 ed. 1930) 302, § 88.

2. Me. Rev. Stat. (1930) 998, § 133, provides that, on forfeiture of a life policy for nonpayment of premiums after it has been in force three full

second category. These give the insured an option, state the term within which insured must exercise this option, and specify the procedure the insured must follow in exercising it.<sup>3</sup> The third group of statutes grant the insured an option and specify the term within which he must exercise it, but do not stipulate the procedure he must follow in exercising the option.<sup>4</sup> The Louisiana non-forfeiture statute as originally drafted exemplifies a fourth group of statutes. These grant the insured an option and stipulate the procedure he must follow in exercising his option, but do not specify the term within which he must exercise this option.<sup>5</sup> In the fifth category are the statutes which merely provide that the insured has an option, but do not state the term within which he must exercise his option nor the procedure he must follow in exercising the option.<sup>6</sup> Although the statutes in the second, third, fourth, and fifth categories differ in certain particulars, they are unanimous in granting the insured an option, and in

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years, the reserve shall be considered as a net single premium of temporary insurance and applied to the purchase of such insurance.

3. N.Y. Insurance Law (McKinney's Consol. Laws) § 208, provides in the event of default in payment of a premium after three full years' premiums have been paid, the insurance company, *upon surrender of such policy within three months* from the due date of the payment in default shall pay to the person thereto a cash surrender value. The person entitled to such cash surrender value may, upon demand, therefore, within three months elect to receive in lieu of cash surrender value, either extended term insurance or reduced paid-up insurance. If no other option be selected within three months after the due date of the premium in default, the amount of such non-forfeiture value shall be applied to continue the insurance in force as extended term insurance.

4. Mo. Stat. Ann. (1932) § 5741 provides that after three annual payments a policy shall not become void by reason of nonpayment of premiums, but the reserve shall be taken as the net single premium for temporary insurance. Section 5742 provides that the legal holder of the policy may demand a paid-up policy, not later than sixty days from beginning of the extended insurance.

5. La. Act 193 of 1906, § 1 [Dart's Stats. (1939) § 4115] declares that every life or endowment policy shall contain a stipulation that after three full annual premiums have been paid, it shall not be forfeited for nonpayment of any premium thereafter and that it is issued subject to provisions of this act. Section 2 provides that, where such a policy lapses, the reserve shall *upon demand with surrender of the policy* be applied as a surrender value as agreed upon in the policy, provided that if no other option expressed in the policy be availed of by the owner of the policy, the same without any further act on the part of the owner shall be applied to continue the insurance in force at its full amount, so long as such surrender value will purchase temporary insurance. This section further provides that any attempted waiver of these provisions shall be void.

6. Colo. Stat. Ann. (Michie, 1935) c. 87, § 65, provides that after three full years of premiums have been paid, in the event of default of the payment of premiums, there shall be secured to the insured either paid-up insurance or extended insurance. The section also provides for cash surrender value.

providing for the application of the reserve, if the insured does not exercise his option.<sup>7</sup>

Louisiana Act 57 of 1932<sup>8</sup> amending and re-enacting Section 2 of Louisiana Act 193 of 1906 reads identically the same as the 1906 act except for one change. The 1932 act<sup>9</sup> purports to give the insurer an option if the insured fails to exercise his option, whereas the 1906 act made the election<sup>10</sup> for the insured if he failed to exercise his option.

The Louisiana courts have never stated precisely when the insurer has a right to make a choice. They have excluded the insurer's option, basing their decisions on the settled point that the insured's option cannot be waived by stipulations in the policy making the election.<sup>11</sup> The majority decisions of other jurisdictions are in accord.<sup>12</sup>

The statute places the insurer in a position of possessing a choice, knowing what he may choose from, but not knowing when he has a right to make his choice. The court in the *Edwards* case stated that the option is a conditional one; conditioned "upon the failure of the owner to avail himself of an *express* option after the policy lapsed." It seems to follow from this rule that if the policy states categorically how the reserve fund is to be applied, it is elemental that it has failed to provide the primary right, that is, an express option, and therefore the conditional or secondary right of the insurer to apply the reserve can never come into existence; consequently the question is—when may the insured exercise his option? Since the right of the insurer is conditional upon the failure of the insured to exercise his option, the insurer's

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7. Colo. Stat. Ann. (Michie, 1935) c. 87, § 65; Me. Rev. Stat. (1930) 998, § 133; N.Y. Insurance Law (McKinney's Consol. Laws) § 208.

8. La. Act 193 of 1906, § 2, as last amended by La. Act 57 of 1932, § 1, [Dart's Stats. (1939) § 4116].

9. *Ibid.* This act provided that if no other option be availed of by the owner, the reserve, without any further act on the part of the owner of the policy, shall be applied either to purchase paid-up insurance, or to continue the insurance in force at its full amount.

10. La. Act 193 of 1906 provided that if no other option be availed of by the owner, the reserve, without any further act on the part of the owner of the policy shall be applied to continue the insurance in force at its full amount.

11. *Crump v. Metropolitan Life Ins. Co.*, 183 La. 55, 162 So. 800 (1935); *Cryer v. National Life & Accident Ins. Co., Inc.*, 183 La. 67, 162 So. 804 (1935); *Succession of Watson v. Metropolitan Life Ins. Co.*, 183 La. 25, 162 So. 790 (1935); *Williams v. National Life & Accident Ins. Co., Inc.*, 183 La. 64, 162 So. 803 (1935); *Furlong v. National Life & Accident Ins. Co. of Tennessee*, 185 La. 352, 169 So. 431, 106 A.L.R. 40 (1936); *Cruze v. Life Ins. Co. of Virginia*, 184 So. 735 (La. App. 1938); *Dominique v. Liberty Industrial Life Ins. Co.*, 192 So. 110 (La. App. 1939); *Parretti v. Metropolitan Life Ins. Co.*, 196 So. 663 (La. App. 1940).

12. 26 A.L.R. 103 (1923), supplemented by 115 A.L.R. 1389 (1938).

optional right comes into existence when the insured has failed to exercise his choice. The question then is when has the insured failed to exercise his option. The Louisiana non-forfeiture statute does not specify the term within which the insured must make his election. However, when the issue becomes pertinent, the Louisiana courts will probably follow the general rule that when no time limit for the exercise of an option is fixed by the contract or statute, the right to exercise it expires after the passage of a reasonable time<sup>13</sup> and what constitutes a reasonable time must be determined by the circumstances of each case.<sup>14</sup> Once it has been determined that the conditional option has come into existence the language of the statute "without any further act on the part of the owner of the policy" infers that the insurer may exercise his option without any hesitation or notification to the insured.

In order to be more certain that they will be allowed to exercise their option in the event the insured fails to exercise his, the insurance companies should be careful to omit any clauses in policies issued in Louisiana which the court might interpret as a waiver of the insured's right to an option at the time the policy lapses. Since it is a settled rule of contract law that parties may agree upon what constitutes a reasonable time, it might be wise for insurance companies to insert a term provision in their policies to the effect that sixty days after the lapse of the policy the insurer will exercise his right to apply the reserve fund in one of two ways. However, particularly in a hard fact case, the court might decide that the sixty day clause is a restriction or delimitation on the insured's right. A lengthy stride might be taken by the Louisiana legislature toward settling the uncertainties which exist in the Louisiana non-forfeiture statute and relieving our courts of numerous, costly controversies by following the examples of the majority of jurisdictions and inserting a time limit clause stipulating when the insured's option terminates.

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NEGLIGENCE—SCOPE OF TORTFEASORS LIABILITY—ON PREGNANCY AND OTHER PRE-EXISTING CONDITIONS—Plaintiff had stopped her car at an intersection in obedience to a traffic signal. While in this stationary position the automobile was run into from the rear by a truck owned by the defendant company and driven by one of

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13. 3 Couch, *Encyclopedia of Insurance Law* (1929) 2078-2079, § 641a. *Marti v. Midwest Life Ins. Co.*, 108 Neb. 845, 189 N.W. 388, 29 A.L.R. 1507 (1922).

14. 4 Cooley, *Briefs on the Law of Insurance* (2 ed. 1927) 3815, c. 14.