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INSURANCE

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INSURANCE OF THE PERSON

*Standard Life Insurance Co. v. Franks*¹ involved a life insurance policy taken out by the husband naming his wife as beneficiary. Subsequently, the husband and wife were judicially separated and entered into a community property settlement. Although the insurance policy was not expressly mentioned in the property settlement, the settlement contained a catch-all clause conveying all other community property to the husband. The couple was later divorced, but the named beneficiary of the policy was never changed. Upon the death of the husband, a contest developed between the ex-wife and the administrators of the succession. The Louisiana supreme court, correctly distinguishing between the insurance policy and the death benefits thereunder, held in favor of the divorced wife as named beneficiary. The insurance policy was community property transferred by the settlement, and the deceased was entitled to all ownership rights thereunder including the right to change the beneficiary.² However, the right to the death benefits is determined solely by the terms of the policy.³ Death benefits payable to a named beneficiary were not community property at the time of settlement and did not form part of the deceased's succession at death.⁴

The court of appeal in *Morein v. North American Company for Life and Health Insurance*,⁵ emphasized again that there must be strict compliance with the policy requirements in order to effectuate a change of beneficiary.⁶ The court also overturned a trial court award

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1. 278 So. 2d 112 (La. 1973).

2. See *Pollock v. Pollock*, 164 La. 1077, 115 So. 275 (1928).

3. "The death benefits of the life insurance policy were never community property, for there was a named beneficiary other than the estate of the insured. Death benefits payable to one other than the estate are not part of the community of acquets and gains, and they were not here made a part of that community through the settlement agreement. We need only examine the contract of insurance, therefore, to determine to whom are due the funds on deposit." *Standard Life Ins. Co. v. Franks*, 278 So. 2d 112, 114 (La. 1973).

4. The decision is in keeping with the jurisprudential determination to treat the transfer of funds through a life insurance policy as *sui generis* governed by the contract alone. See *Sizeler v. Sizeler*, 170 La. 128, 127 So. 388 (1930).

5. 271 So. 2d 308 (La. App. 3d Cir. 1972).

6. See, e.g., *Guiffria v. Metropolitan Life Ins. Co.*, 188 La. 837, 178 So. 368 (1938); *New York Life Ins. Co. v. Murtagh*, 137 La. 760, 69 So. 165 (1915). The courts of some states are not as strict as Louisiana, applying an "all that he can do" test. However,

against the agent which had been predicated upon his alleged negligence in failing to "follow through" timely in assisting the deceased with the change of beneficiary. The court found there was no duty owed by the agent to the "new" beneficiary.

INSURANCE ON PROPERTY

In *Brewster v. Michigan Millers Mutual Insurance Co.*,⁷ the plaintiff formerly owned property which he conveyed to his sons for a recited cash consideration. A house on the property was insured in the father's name prior to the sale. When the house was destroyed by fire after the sale, the insurer refused to pay the proceeds to the father, contending that he no longer had an insurable interest. Permitting oral testimony to establish that the parties to the sale intended for the father to retain the right of occupancy of the house, the court concluded that he had an insurable interest as defined in R.S. 22:614.⁸ The court properly applied the statutory test under which the inquiry is whether the insured had a substantial economic interest in the preservation of the property and awarded the face amount of the policy, citing R.S. 22:695(A)⁹ (valued policy law). There was no discussion of subsection E of that statute¹⁰ which apparently was a legislative attempt to limit recovery to the value of the insurable interest in situations such as the instant case.¹¹

the Louisiana approach is preferable in that the change of beneficiary should be accomplished solely by compliance with the policy to give added certainty to these valuable contractual rights and to protect against capricious expressions of the insured on which he may not carry through after cooler reflection. The Louisiana courts have found an effective change of beneficiary upon substantial compliance with the policy terms where the original beneficiary prevented full compliance. *See, e.g., Smith v. American Nat. Ins. Co.*, 25 So. 2d 352 (La. App. 2d Cir. 1946).

7. 274 So. 2d 213 (La. App. 2d Cir. 1973).

8. LA. R.S. 22:614(B) provides: "'Insurable Interest' as used in this Section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage."

9. "(A) Under any fire insurance policy . . . the insurer shall pay to the insured, in case of total destruction . . . the total amount for which the property is insured. . . ."

10. "(E) Liability of the insurer, in the event of total or partial loss, shall not exceed the insurable interest of the insured in the property and nothing herein shall be construed as precluding the insurer from questioning or contesting the insurable interest of the insured."

11. In *Lighting Fixtures Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35 (1932), the court held that a lessee's recovery under fire insurance on fixtures which were to become the property of the lessor upon termination of the lease was limited to the value of the right to use the fixtures for the remaining term of the lease. *The Forge, Inc. v. Peerless Casualty Co.*, 131 So. 2d 838 (La. App. 2d Cir. 1961) and *Southern*

LIABILITY INSURANCE

The most interesting insurance case decided by the Louisiana supreme court, *Jackson v. Lajaunie*,¹² involves a set of facts which one might suspect was lifted from a law school examination. Plaintiff, while a customer in defendant's filling station, was shot in the chest by the defendant who fired the pistol as a prank believing it loaded with blanks. The defendant had a garage liability policy and personal liability coverage under a homeowner's policy. The court held there was coverage under the garage liability policy,¹³ finding no requirement that liability arise out of a condition of the premises or a necessary operation of the business.¹⁴ Broadly interpreting the Garage Liability Hazard, the court pointed to the fact that the plaintiff was a customer paying for his gasoline when the shooting occurred.

On the other hand, the supreme court found there was not cover-

Produce Co. v. American Insurance Co., 166 So. 2d 59 (La. App. 4th Cir. 1964) construed a 1952 amendment to R.S. 22: 695(A) as overruling *Lighting Fixtures* to permit recovery of the face value of the policy. Shortly after *Southern Produce* was decided, subsection E was added. Subsequent decisions have not allowed insurers to use subsection E to defeat recovery by owners of the face amount under subsection A. *Harvey v. General Guar. Ins. Co.*, 201 So. 2d 689 (La. App. 3d Cir. 1967). However, in a footnote in *Harvey*, the court made the following observation: "Actually, the probable purpose of the amendment is to overrule decisions applying the valued policy law in situations such as in *Forge v. Peerless Casualty Co.*, La. App. 2d Cir., 131 So. 2d 838 and *Roberts v. Houston Fire & Casualty Ins. Co.*, La. App. 3d Cir., 168 So. 2d 457, where the policy holder did not possess full or undivided ownership of the property destroyed, so that his actual insurable interest was only for a proportion of the total property destroyed. See *Lighting Fixture & Supply Co. v. Pacific Fire Ins. Co.*, 176 La. 499, 146 So. 35." 201 So. 2d at 693 n.4.

See also *Roberts v. Houston Fire & Cas. Co.*, 168 So. 2d 457 (La. App. 3d Cir. 1964). In *Brewster* the court found the father "retained the right of occupancy." There was no finding that he was owner of the improvements. Presumably, his "insurable interest" was limited to the lifetime right of occupancy. It is submitted that the father's interest was similar to that of a lessee's, and the court should have dealt with subsection E.

12. 270 So. 2d 859 (La. 1973).

13. The insuring clause in the garage liability policy read as follows: "The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of: A. bodily injury or; B. property damage; to which Part 1 applies, caused by accident and arising out of the 'garage operation' hazard."

The Garage Operations Hazard was defined as: "The ownership, maintenance or use of the premises for the purposes of a garage, and all operations necessary or incidental thereto, hereinafter called 'garage operations.'" *Id.* at 861.

14. The court of appeal had held that the "[u]se of the pistol for purposes of pranks cannot be considered an act 'arising out of a garage operations hazard' within the clear meaning of the policy language even though the incident occurred on the business premises." *Jackson v. Lajaunie*, 253 So. 2d 540, 544 (La. App. 1st Cir. 1971).

age under the homeowner's policy. Although the "business pursuits" exclusion was found inapplicable,¹⁵ the court ruled out coverage under the exclusion for "any act or omission in connection with the premises [other than the insured premises] . . . which are owned, rented or controlled by an Insured." Finding the phrase "in connection with" was even broader than "arising out of" as used in the garage policy, the court held that the negligent act occurred in connection with the station. Two justices dissented, suggesting that "in connection with" required causal relationship with the premises.¹⁶

In *Graham v. American Casualty Co.*¹⁷ and *Deane v. McGee*¹⁸ decided last year, the supreme court permitted stacking of uninsured motorist benefits under two or more policies. The court found that the "other insurance" clauses in the policies designed to prevent stacking were invalid as they were in conflict with R.S. 22:1406.¹⁹ Relying on *Graham* and *Deane*, the courts of appeal made further extensions this year. In *Crenwelge v. State Farm Mutual Automobile Insurance Co.*,²⁰ the plaintiff was injured through the negligence of an uninsured motorist while driving one of two cars he owned, both of which were insured under separate State Farm policies. Each policy clearly excluded coverage while occupying another automobile owned by the named insured.²¹ Construing the *Graham* and *Deane* cases as

15. This exclusion provided that the policy did not apply: "(a)(1) to any business pursuits of an Insured except . . . activities therein which are ordinarily incident to non-business pursuits. . . ."

The court reasoned that practical jokes are ordinarily incident to non-business pursuits. The supreme court did not expressly mention the exclusion for intentional conduct, but the court of appeal had held it inapplicable because there was "no evidence in the record that Mr. Lajaunie intended to cause any bodily injury to Mr. Jackson. . . ." *Id.* at 545.

16. Apparently to avoid any inconsistency with their concurrence in the finding of coverage under the garage liability policy, the dissenting justices pointed out that insuring clauses are to be broadly construed in favor of coverage whereas exclusions are to be strictly construed against the insurer. However, this double standard might lead to the ultimate absurdity of the same phrase being given two different interpretations depending upon whose ox was being gored. In fact, there appears to be very little basis for distinguishing the meanings of "arising out of" and "in connection with."

17. 261 La. 85, 259 So. 2d 22 (1972); Note, 33 LA. L. REV. 145 (1972).

18. 261 La. 686, 260 So. 2d 669 (1972); Note, 33 LA. L. REV. 145 (1972).

19. LA. R.S. 22:1406 requires automobile liability insurers to provide uninsured motorist coverage "in not less than" the minimum limits under the Motor Vehicle Safety Responsibility Law. LA. R.S. 32:872 (Supp. 1952), as amended by La. Acts 1962, No. 495 § 1; 1967, No. 24 § 1, No. 106 § 1; 1968, No. 600 § 1; 1970 No. 623 § 1.

20. 277 So. 2d 155 (La. App. 3d Cir. 1973).

21. "This policy does not apply under Part IV: (a) to bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by the named insured or a relative or through being struck by such an automobile." *Id.* at 158.

requiring that each policy provided the statutory minimum coverage, the court held that the insured was entitled to recovery under both policies.²² In *Smith v. Trinity Universal Insurance Co.*,²³ the plaintiff was injured through the joint negligence of two motorists, one insured and the other uninsured. As the limits of liability of the insured motorist were inadequate,²⁴ the court permitted the plaintiff also to recover from his own uninsured motorist carrier, finding the "reduction" clause²⁵ in the plaintiff's policy unenforceable in light of R.S. 22:1406.²⁶ These decisions overload a statute already strained to fatigue by *Graham and Deane*.²⁷

In *Tingstrom v. State Farm Mutual Automobile Insurance Co.*,²⁸

22. Earlier, in *Elledge v. Warren*, 263 So. 2d 912 (La. App. 3d Cir. 1972) another panel of the same court held the same exclusion invalid where recovery was sought for injuries received through the negligence of an uninsured motorist by the named insured's son while riding his own uninsured motorcycle. The court concluded that a motorcycle was an "automobile" within the meaning of the exclusion, but that the exclusion was ineffective as in conflict with R.S. 22:1406. There is a persuasive concurring opinion suggesting the exclusion was valid and the decision would be more soundly based upon a conclusion that the motorcycle is not an automobile. The *Crenwelge* panel specifically noted that it was expressing no opinion on the *Elledge* decision or whether the exclusion would be ineffective in preventing recovery by an insured while occupying another owned but uninsured automobile.

23. 270 So. 2d 637 (La. App. 2d Cir. 1972).

24. The total judgment was \$18,567.35. Only \$10,000 in coverage was available to the insured motorist. The plaintiff carried uninsured motorist coverage with applicable limits of \$5000.

25. "Any amount payable under the terms of this Part because of bodily injuries sustained in an accident by a person who is an insured under the Part shall be reduced by

"(1) All sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury . . . and

"(2) The amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law." *Id.* at 641.

26. Previously, *Williams v. Buckelew*, 246 So. 2d 58 (La. App. 3d Cir. 1971), held the reduction clause ineffective with regard to workmen's compensation benefits paid to the insured.

27. In dicta in the *Crenwelge* decision, the court indicated that provisions requiring credit of medical payment benefits against the uninsured limits would likewise be held ineffective. However, the insurer in *Crenwelge* was not claiming credit. The same circuit has permitted credit both before and after *Deane* and *Graham*. *Robinson v. Allstate Ins. Co.*, 267 So. 2d 257 (La. App. 3d Cir. 1972); *Bailes v. Southern Farm Bur. Cas. Ins. Co.*, 252 So. 2d 123 (La. App. 3d Cir. 1971). Since medical payments coverage is not required by statute, there appears to be no valid ground for refusing to enforce such credit provisions.

28. 274 So. 2d 911 (La. App. 1st Cir. 1973), *writ denied*, 279 So. 2d 202 (La. 1973).

the issue was whether a minor in military service stationed in another state was a "resident" of his father's household. The court held that he was not, thus extending coverage under the minor's policy to an accident which occurred while the minor was driving his father's automobile.²⁹ This decision is difficult to reconcile with *Taylor v. State Farm Mutual Automobile Insurance Co.*,³⁰ in which the court extended coverage by finding that the "legal residence" of the minor remained with his father.³¹

In *Carlton v. Great American Insurance Co.*,³² a compromise settlement was set aside on the ground of error because of misrepresentations as to the amount of insurance coverage.³³ In *Louisiana Insurance Guaranty Association v. Guglielmo*,³⁴ the court held that coverage under the Louisiana Insurance Guaranty Law is determined by the date the insurer became insolvent and not the date the claim arose, thus extending protection to claims which arose prior to the effective date of the Act where the insurer became insolvent after that date.³⁵

29. The father's automobile was insured by State Farm under a separate policy which provided the primary coverage. The issue was whether a policy on the son's car was also applicable. For coverage under the son's policy, the father's auto must qualify as a "non-owned automobile" defined in the policy as "an automobile or trailer not owned or furnished for the regular use of either the named insured or any relative." A "relative" was defined as a "relative of the named insured who is a *resident* of the same household." *Id.* at 915. (Emphasis added.)

30. 248 La. 246, 178 So. 2d 238 (1965).

31. The only factual distinction was that the minor in *Tingstrom* was in military service. However, the court correctly noted that the minor remained domiciled with his father, which was the basis of the finding in the *Taylor* case.

32. 273 So. 2d 655 (La. App. 4th Cir. 1972), *writ denied*, 277 So. 2d 442 (La. 1973).

33. The adjuster represented that only one policy with limits of \$5000 was applicable when in fact there was excess coverage. The claim was settled for \$4900. The decision is unclear whether the adjuster had actual knowledge of excess coverage available to the insured, but the court concluded that the adjuster was "charged with constructive knowledge" of what information the insured had regarding his own coverage. *Id.* at 659. Finding the misrepresentation as to coverage the principal cause for the low settlement, the court held that it was not necessary to prove fraud. *Id.* at 661.

34. 276 So. 2d 720 (La. App. 1st Cir. 1973), *writ denied*, 279 So. 2d 690 (La. 1973).

35. The effective date of the Act was September 1, 1970.