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# Insurance -- Insurer's Liability for Death or Loss Resulting from Violation of Law

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*Yancey second* and *Privett* should fall on constitutional grounds. The 14th Amendment to the United States Constitution guarantees that a state cannot take private property for public use without awarding just compensation.<sup>29</sup> North Carolina recognizes this right to just compensation as an integral part of the law of the land and declares that law of the land and due process are synonymous.<sup>30</sup> Interest, as compensation for delay in payment, is an essential element of just compensation.<sup>31</sup> It is contended that there is no substantial difference between delay in payment of the principal sum due the owner of condemned land and delay in payment of the judgment rendered on that sum, delay in either case being simply a description of the interval existing between the date of the taking and the date of payment. Consequently, interest on the judgment until final payment, compensating for this delay, is constitutionally guaranteed. The general rule that a state or state agency is not required to pay interest should, therefore, be held inapplicable to liabilities arising from the exercise of the power of eminent domain.<sup>32</sup>

RICHARD S. JONES, JR.

#### **Insurance—Insurer's Liability for Death or Loss Resulting from Violation of Law**

A felon flees the scene of a burglary with the police in hot pursuit. In the chase his wife's car is wrecked and he is injured. Under the wife's accident insurance policy covering the driver and containing no exception for injuries sustained in violation of law, may he recover his medical expenses? The Supreme Court of Michigan, in *Davis v. Detroit Auto. Inter-Ins. Exch.*,<sup>1</sup> said that he could. Recovery was allowed in the absence of a provision in the policy excepting the risk and in the absence of proof that the policy had been obtained in contemplation of the commission of a felony. The court further stated that this construction would not encourage crime or be contrary to public policy.

A vigorous dissent argued that generally one may not recover when the crime involved is one of moral turpitude. Since the policy provided

<sup>29</sup> *Slattery Co. v. United States*, 231 F.2d 37 (5th Cir. 1956); *Creasy v. Stevens*, 160 F. Supp. 404 (W.D. Pa. 1958); *Riden v. Philadelphia, B. & W.R.R.*, 182 Md. 336, 35 A.2d 99 (1943); *Spaugh v. City of Winston-Salem*, 234 N.C. 708, 68 S.E.2d 838 (1952); *Board of Educ. v. Campbells Creek R.R.*, 138 W. Va. 473, 76 S.E.2d 271 (1953); see generally 18 AM. JUR. *Eminent Domain* § 4 (1938).

<sup>30</sup> *E.T. & W.N.C. Transp. Co. v. Currie*, 248 N.C. 560, 104 S.E.2d 403 (1958); *Sale v. Highway Comm'n*, 242 N.C. 612, 89 S.E.2d 290 (1955); *Eason v. Spence*, 232 N.C. 579, 61 S.E.2d 717 (1950).

<sup>31</sup> *Seaboard Air Line Ry. v. United States*, 261 U.S. 299 (1923); see generally 1 ORGEL, *op. cit. supra* note 10, § 6.

<sup>32</sup> See *United States v. Alcea Band of Tillamooks*, 341 U.S. 48 (1951); *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585 (1947); *Smyth v. United States*, 302 U.S. 329 (1937); *Highway Comm'n v. Stupenti*, 222 Ark. 9, 257 S.W.2d 37 (1953); *Sholars v. Highway Comm'n*, 6 So. 2d 153 (La. App. 1942).

<sup>1</sup> 356 Mich. 454, 96 N.W.2d 760 (1959).

payment "to and for each person who sustains bodily injury," the recovery here was for the felon, and this was *not* a case involving an innocent beneficiary. Noting the distinction between conduct which is *malum in se* (wrong by its very nature) and that which is *malum prohibitum* (wrong only because prohibited), the dissent rejected the majority's reliance on *Bowman v. Preferred Risk Mut. Ins. Co.*<sup>2</sup> as precedent. That case allowed recovery under a policy containing no exclusionary clause, but there the conduct was clearly not a crime of moral turpitude. The insured had committed a simple trespass on another's automobile. Perhaps the strongest reason presented for denying recovery was that if the policy had expressly purported to cover such a risk, it would have been void on the grounds of public policy.

The two lines of thought set out by the majority and the dissent in the principal case illustrate the inconsistencies of the law in this area.<sup>3</sup>

In many cases recovery has been denied entirely on the ground that the loss was not within the terms of the policy. Such cases are, for the most part, excluded from this discussion unless they throw some light on the weight given by a particular court to circumstances outside of the policy itself.

It has been held that death resulting from execution for murder does not avoid the insurer's liability under a life policy with an incontestability clause, notwithstanding the argument that such payment would be contrary to public policy.<sup>4</sup> Recovery has been allowed where the insured was killed by two peace officers while he was committing a robbery, on the ground, *inter alia*, that death is the thing insured against, and the risk includes human foibles.<sup>5</sup> The beneficiary has been allowed recovery where the insured was killed: by police, while attempting a hold-up;<sup>6</sup> by his intended murder and robbery victim;<sup>7</sup> by a homeowner, while attempting to flee from a burglary;<sup>8</sup> by a fire he set deliberately to collect on a fire insurance policy;<sup>9</sup> when his car overturned while he was fleeing from police officers who had attempted to stop him

<sup>2</sup> 348 Mich. 531, 83 N.W.2d 434 (1957).

<sup>3</sup> There is one class of cases about which there is very little disagreement. The great weight of authority today allows recovery by a beneficiary when the insured commits suicide and the policy makes no exclusionary reference thereto. 2 RICHARDS, INSURANCE § 240 (1952).

<sup>4</sup> *John Hancock Mut. Life Ins. Co. v. Tarrance*, 244 F.2d 86 (6th Cir. 1957).

<sup>5</sup> *Home State Life Ins. Co. v. Russell*, 175 Okla. 492, 53 P.2d 562 (1936).

<sup>6</sup> *Domico v. Metropolitan Life Ins. Co.*, 191 Minn. 215, 253 N.W. 538 (1934).

<sup>7</sup> *McDonald v. Order of Triple Alliance*, 57 Mo. App. 87, 90 (1894), where the court said, "[T]he insurer takes the subject insured, with his flesh, blood, and passions."

<sup>8</sup> *Jordan v. Logia Supreme De La Alianza Hispano-Americana*, 23 Ariz. 584, 206 Pac. 162 (1922).

<sup>9</sup> *Taylor v. John Hancock Mut. Life Ins. Co.*, 11 Ill. 2d 227, 142 N.E.2d 5 (1957).

for questioning;<sup>10</sup> by adulterated boot-leg whiskey;<sup>11</sup> and by complications resulting from submission to an abortion.<sup>12</sup>

Almost every court allowing recovery has to deal with the argument that recovery would be against public policy. Judgment for the plaintiff thus usually involves a finding that recovery is not repulsive to public policy. There are several more positive grounds generally relied upon by courts allowing recovery. Many courts find that since there is no exclusion clause in the policy, there is no reason to read into the policy what the insurer did not write into it.<sup>13</sup> Where the plaintiff is an innocent beneficiary, many courts reason that recovery does not violate the maxim that no man should be allowed to benefit from his own wrong-doing and, further, that an innocent beneficiary ought not suffer for another's wrong.<sup>14</sup> In the *Bowman* case, relied upon by the majority in the principal case, the Michigan court justified the plaintiff's recovery on the grounds that the crime involved was very minor—a misdemeanor at most—and as such should not be a bar to the insured's claim. It has also been argued that recovery will not act as an inducement to crime.<sup>15</sup>

Courts have refused recovery where the insured died from blood poisoning contracted by the use of a hypodermic, possession of which was a statutory misdemeanor<sup>16</sup> and where the insured was legally executed for murder.<sup>17</sup> A frequent justification for denying the insurer's liability is that recovery would be against public policy.<sup>18</sup> Directly related to this is the argument that what the policy could not expressly insure against, it cannot impliedly insure against.<sup>19</sup> It is stated or at least implicit in all of these cases that for recovery to be denied the death or injury must be the proximate result of the insured's violation of the law.

The first North Carolina case in this area, *Spruill v. North Carolina Mut. Life Ins. Co.*,<sup>20</sup> held that the insurer's liability was not avoided by the fact that the insured was a run-away slave, killed while resisting

<sup>10</sup> Metropolitan Life Ins. Co. v. Henkel, 234 F.2d 69 (4th Cir. 1956).

<sup>11</sup> Zurich Gen. Acc. & Liab. Ins. Co. v. Flickinger, 33 F.2d 853 (4th Cir. 1929).

<sup>12</sup> Payne v. Louisiana Indus. Life Ins. Co., 33 So. 2d 444 (La. 1948).

<sup>13</sup> See, e.g., Home State Life Ins. Co. v. Russell, 175 Okla. 492, 53 P.2d 562 (1936).

<sup>14</sup> See, e.g., Taylor v. John Hancock Mut. Life Ins. Co., 11 Ill. 2d 227, 142 N.E.2d 5 (1957).

<sup>15</sup> Home State Life Ins. Co. v. Russell, 175 Okla. 492, 53 P.2d 562, 563 (1936). "It is not to be presumed that policy holders as a class, or any appreciable number of them, will go out and seek death in unlawful pursuits in order to mature their policies."

<sup>16</sup> Townsend v. Commercial Travelers Mut. Acc. Ass'n, 188 App. Div. 370, 177 N.Y. Supp. 68 (1919).

<sup>17</sup> Simmons v. United States, 120 F. Supp. 641 (M.D. Pa. 1954).

<sup>18</sup> Acme Fin. Co. v. National Ins. Co., 188 Colo. 445, 195 P.2d 728 (1948).

<sup>19</sup> Townsend v. Commercial Travelers Mut. Acc. Ass'n, 188 App. Div. 370, 177 N.Y. Supp. 68 (1919).

<sup>20</sup> 46 N.C. 126 (1853).

apprehension by a posse. The court interpreted the exclusion from liability for death "by the hands of justice" to mean "by some judicial sentence for the commission of some felony" and allowed recovery by the beneficiary.

When the insured was lawfully killed in a fight in which he was the unlawful aggressor, the North Carolina Supreme Court, in *Clay v. State Ins. Co.*,<sup>21</sup> denied recovery for death "by accidental means." The policy excluded liability where the insured was killed while violating the law. This would seem to put the case outside the scope of this note. The court, however, stated a rule which merits mention: "[T]he true test of liability in cases of this character is whether the insured, being in the wrong, was the aggressor, under circumstances that would render a homicide likely as the result of his own misconduct."<sup>22</sup> The decision appeared to place very little stress on the exclusion cause, with emphasis on the stated rule as it related to death "by accidental means." At least two North Carolina cases, *Fallins v. Durham Life Ins. Co.*<sup>23</sup> and *Scarborough v. World Ins. Co.*,<sup>24</sup> both involving insurance against death by accidental means, have since decided the question of the insurer's liability on the basis of the *Clay* rule.

The next important case in which our court set down a rule in this area, *Poole v. Imperial Mut. Life & Health Ins. Co.*,<sup>25</sup> involved an injury insured suffered while riding without permission on a freight train, a statutory misdemeanor.<sup>26</sup> In allowing recovery the court took notice of the fact that the policy contained no exclusion clause for violations of law. It further stated that the right of recovery should not be affected by the unlawful conduct of the plaintiff unless it was so reckless or occurred under such circumstances as to remove the injury from that classification of events called "accidents," and so withdraw it from the effects of the policy.

The next important case, *Blackwell v. National Fire Ins. Co.*,<sup>27</sup> a property insurance case, held that an insured could recover for damage to his automobile which resulted when he attempted to escape arrest while transporting intoxicating liquor, a misdemeanor.<sup>28</sup> The per curiam opinion stated several reasons for affirming the judgment for plaintiff. The policy contained no exclusion clause and the loss came within the terms of the policy. The insurance contract had no direct connection with the violation, but was merely collateral thereto. There was no

<sup>21</sup> 174 N.C. 642, 94 S.E. 289 (1917). <sup>22</sup> *Id.* at 645, 94 S.E. at 290.

<sup>23</sup> 247 N.C. 72, 100 S.E.2d 214 (1957). The insured was killed by an outsider, attempting to break up a fight. Citing *Clay*, the court pointed out that here there was no showing that insured was an aggressor. Recovery was allowed.

<sup>24</sup> 244 N.C. 502, 94 S.E.2d 558 (1956). Here the facts were nearly identical to *Clay*, in that the insured was killed in an act of unlawful aggression. Citing *Clay*, the court refused recovery to the beneficiary.

<sup>25</sup> 188 N.C. 468, 125 S.E. 8 (1924).

<sup>27</sup> 234 N.C. 559, 67 S.E.2d 750 (1951).

<sup>26</sup> N.C. GEN. STAT. § 60-104 (1950).

<sup>28</sup> N.C. GEN. STAT. § 18-49.3 (1953).

evidence of loss by any intentional act of the insured. This is the only North Carolina case the writer could find comparable to the principal case and it seems readily distinguishable on the basis of the felony-misdemeanor distinction. In the principal case the conduct of the insured was quite clearly *malum in se*, being the felony of burglary. By contrast, in the North Carolina case insured's actions were at worst a misdemeanor, and wrong only because prohibited by statute.

From the foregoing it seems safe to conclude that the decisions—considering the nation as a whole—show a lack of coherence. The courts seem inclined to make their decisions rather summarily, relying upon one or two of at least a dozen different reasons to justify the particular holding. It is suggested that there is a perspective, which none of the courts have appeared to use, that might prove helpful in clarifying this area of the law.

Anglo-American law has never been amenable to the use of rigid formulae in determining the outcome of particular cases. This proposal is in no way intended to conflict with that tradition. It is suggested, not as a pigeon-hole system of disposing of cases, but rather as a consistent perspective from which to view the circumstances in any given case.

Some of the preceding decisions have been based at least in part upon the seriousness of the violation of law involved, others upon a consideration of proper treatment of the innocent beneficiary, and still others upon the maxim that no one shall profit from his own wrong. It is urged that all three of these elements ought to be considered as crucial in the determination of any such case where the loss is within the terms of the insurance contract. These elements, in combination, create four distinct types of cases:

- I. Where it is the insured himself who will benefit from the recovery, and the violation was *malum in se*.
- II. Where the insured will benefit, and the violation was *malum prohibitum*.
- III. Where the beneficiary will benefit from the recovery, and the violation was *malum in se*.
- IV. Where the beneficiary will benefit, and the violation was *malum prohibitum*.

In Class I, the overbearing consideration ought to be that no man be allowed to profit from his own wrong when that wrong is a serious crime against society. Just as clearly, in Class IV a completely innocent beneficiary ought not to be deprived of the benefits of a policy merely because of a minor infraction of the law by another. It is Classes II and III which present the most difficult questions. Here the courts must "balance the equities" and choose consciously between two opposing social policies. To decide cases falling into Class II, the courts

must choose between withholding recovery, thereby punishing the violator, and labeling the violation as too inconsequential to merit so severe a sanction. In the opinion of this writer, the preferable choice here is to allow recovery, on the ground that by its very nature an act *malum prohibitum* is not so repugnant to society as to warrant denying the insured recompense for his injuries. In Class III cases the courts must determine whether the needs of society and the law will be better served by compensating an innocent beneficiary or by providing another sanction for serious crime. Again the writer would approve recovery, primarily because of the beneficiary's insulation from the wrongful act.

The principal case, viewed from this suggested perspective, becomes a questionable decision. It was the felon who was to benefit directly from the proceeds of a recovery. His crime was unquestionably *malum in se*. As a Class I case, it would have been better decided in favor of the defendant insurer.

A brief glance backward reveals that none of the North Carolina cases fall into Class I. Only one case, *Fallins v. Durham Life Ins. Co.*,<sup>29</sup> can be fitted into Class IV. That case allowed recovery to the innocent beneficiary and thus reaches the same result as the proposal. Both of the cases which fit into Class II, *Blackwell v. National Fire Ins. Co.*<sup>30</sup> and *Poole v. Imperial Mut. Life & Health Ins. Co.*,<sup>31</sup> are in harmony with the proposal. In each the violation amounted to no more than a misdemeanor. In each of them our court granted recovery to the insured in spite of his violation of the law. Two of the decisions, *Scarborough v. World Ins. Co.*<sup>32</sup> and *Clay v. State Ins. Co.*,<sup>33</sup> fit into Class III and are in conflict with the writer's proposal in that they deny recovery to an innocent beneficiary because of the gravity of the insured's conduct. While *Spruill v. North Carolina Mut. Ins. Co.*<sup>34</sup> might be said to fall into Class III also, the writer prefers not to attempt to categorize the morality of running away from slavery, a point long since mooted.

None of the North Carolina cases which lend themselves to the proposed analysis have been on all fours with the principal case. Considering the language used by our court in related cases, stressing the seriousness of the crime involved or the nature of the insured's conduct in general, the court, if presented with a case like the principal case, should have no difficulty following the demands of logic and the best societal policy to a conclusion contrary to that reached by the Michigan court.

BARRY T. WINSTON

<sup>29</sup> See note 23 *supra* and accompanying text.

<sup>30</sup> See note 27 *supra* and accompanying text.

<sup>31</sup> See note 25 *supra* and accompanying text.

<sup>32</sup> See note 24 *supra* and accompanying text.

<sup>33</sup> See note 21 *supra* and accompanying text.

<sup>34</sup> See note 20 *supra* and accompanying text.