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# THE AWARDING OF PUNITIVE DAMAGES FOR BREACH OF INSURANCE CONTRACTS IN SOUTH CAROLINA

HUGH C. HOWSER *

## I. DEVELOPMENT OF PUNITIVE DAMAGES LAW IN SOUTH CAROLINA

By definition punitive, or exemplary, damages are damages which are given in enhancement merely of the ordinary damages on account of the wanton, reckless, malicious, or oppressive character of the acts complained of. 15 Am. Jr., Damages Sec. 265, p. 698. In South Carolina, however, by judicial construction, the rule concerning punitive damages has been greatly enlarged and liberalized in cases involving insurance contracts and the acts of agents of the various insurance companies. The concern of the insurance companies over the South Carolina rule was indicated in 1932 in an address [1] at Toronto, Canada, by the late P. M. Estes, general counsel of the Life and Casualty Insurance Company of Tennessee. The importance of the problem to counsel for insurer and injured alike, and its development in the past sixteen years, justify this review in an effort to determine, if possible, the status of the law today and the trend of the later decisions.

As pointed out by Mr. Estes, South Carolina has developed the rule that allows punitive, as well as actual, damages for the breach of a contract accompanied by fraud, and such rule obtains only in that jurisdiction. In no other state is it possible to recover punitive damages for breach of contract, insurance or otherwise, no matter if the event be willful, malicious, or fraudulent. And only in South Carolina is it possible to recover punitive damages for the tort growing out of the breach of the insurance contract.

The rule in South Carolina stems from the case of *Welborn v. Dixon*.[2] Plaintiff had conveyed a tract of land to defendant

* Member of the Nashville, Tennessee, bar; with the firm of Williams, Cummings & West.

1. Published in American Life Convention L. S. 1932, p. 169.
2. 70 S. C. 108, 49 S. E. 232, 3 Am. Cas. 407 (1904).

for $385.00 with a written agreement to reconvey on repayment of the consideration with interest. The defendant, however, sold the land for $600.00 and on tender of the $385.00 refused to reconvey, saying that he would rather spend $1,000.00 rather than let plaintiff have anything out of it. The court recognized the general rule, "that in an action for breach of contract the motives of the wrongdoer are not to be considered in estimating the amount of damages, and that he is only liable for such damages as are the natural and proximate result of his wrongful act. When, however, the breach of the contract is accompanied with a fraudulent act, the rule is well settled, certainly in this State, that the defendant may be made to respond in punitive as well as compensatory damages".

The first insurance case involving this question was *Prince v. State Mutual Life Insurance Co.*[3] The policy delivered was in accordance with plaintiff's application but differed from his agreement with the agent, and he brought suit. The jury gave a verdict for $500.00 punitive damages, but this was reversed on appeal, the Court holding that no fraudulent act was alleged.

*Williams v. Commercial Casualty Ins. Co.*[4] was the first insurance case in which punitive damages were recovered. There the agent had sold a "sample copy" by making alterations on the policy and the court held that such acts were fraudulent and allowed a recovery of $30.00 actual and $1,000.00 punitive damages. The Court said:

> "The principal is responsible in punitive damages for fraudulent acts of his agent done in course of his employment, even when they may have been performed *contrary to the express directions of the principal.*"

Following the *Williams* case came the best known punitive damages case in South Carolina, *Bradley v. Metropolitan Life Insurance Co.*[5] There the alleged fraud was the procurement of the policy from the beneficiary by the agent when he knew that the claim would be denied because of physician's statement that insured was suffering from tuberculosis at date of issue, and also the withholding of the policy by the com-

3. 77 S. C. 187, 57 S. E. 766 (1907).
4. 159 S. C. 301, 156 S. E. 871 (1931).
5. 162 S. C. 303, 160 S. E. 721 (1931).

pany. There was a verdict of $186.00 actual damages, plus $40.70 interest, and $2,000 punitive damages, and the *Williams* case was cited as authority for punitive damages.

*Crosby v. Metropolitan Life Insurance Co.*[6] was mentioned in Mr. Estes' paper as a case where the agent represented to plaintiff that she was the beneficiary, when in fact the policy was payable to the estate of insured. The verdict was $540.00 actual damages, and $2,400.00 punitive damages, which the court reduced to $1,200.00. The appeal had not been heard from at the date of Mr. Estes' paper.[7]

This was the development of the punitive damage law in regard to insurance contracts in South Carolina in 1932 when it was generally felt that it was impossible to tell what acts would be called a fraudulent breach of contract and therefore justify punitive damages.

## II. WHAT CONSTITUTES A BREACH OF INSURANCE CONTRACT JUSTIFYING PUNITIVE DAMAGES, AND HOW ARE SUCH DAMAGES DETERMINED

### A. *In General.*

A study of the more recent decisions in South Carolina will lead to no well established or well defined rule as to what acts of an insurance company, its agents and employees, will amount to fraudulent conduct justifying punitive damages. The law governing the cases is well settled, that where a fraudulent breach of contract is accompanied by a fraudulent act, the defendant may be made to respond in punitive as well as compensatory damages. The difficulty in ascertaining which acts may be held to be fraudulent, can be shown by referring to the decision by Justice Fishburne in *Thomas v. American Workmen Insurance Co.*[8] The alleged fraud there was misrepresentation by agent of content of policy. The defense was the negligence of insured in failing to use reasonable diligence for his own protection in finding out the contents, and relying on the agent. The Court said:

> "Whether or not reliance upon a representation in a particular case is justifiable, or excusable, what consti-

6. 161 S. C. 519, 159 S. E. 926 (1931).
7. The final result in this case discussed *infra.*
8. 197 S. C. 178, 14 S. E. 2d 886 (1941).

tutes reasonable prudence and diligence with respect to such reliance, and what conduct constitutes a reckless or conscious failure to exercise such prudence, will depend upon the various circumstances involved, such as the form and materiality of the representations, the respective intelligence, experience, age, and mental and physical condition of the parties, and the relation and respective knowledge of the parties.

"It is undoubtedly true that the principle of the right of reliance is closely bound up with a duty on the part of the representative to use some measure of protection and precaution to safeguard his interests. We approve the rule which was given by the trial court in its instruction to the jury in the case, and that is in respect to the right to rely upon representation, every person must use reasonable diligence for his own protection. So that the solution of the question will depend upon the particular situation of each case."

Even as the question of fraud must depend upon the factual situation of each case, so also must the facts of each case be examined to determine the amount of punitive damages allowable. The only rule as to punitive damages for breach of contract in South Carolina is the one laid down in *Barnes v. Industrial Life & Health Insurance Co. of Atlanta,*[9] that punitive damages are not recoverable without proof of actual or nominal damages. But even then there was strong dissent based on *Cook v. Atlantic Coast Line Railway Co.,*[10] where it was held that "upon a conscious and willful violation of legal rights the law will presume damages sufficient to maintain an action, even though such damages be only nominal, and not capable of exact measurement, and in such suits a verdict for punitive damages without a finding of actual damages will be sustained." But no rule as to amount of such punitive damages has been given and they are said to be allowed as a punishment of defendant and as a determent to others.

Punitive damages are recoverable on two theories: The first and one on which most of the actions are brought is fraudulent breach of the insurance contract accompanied by a fraudulent act; the second sounds in tort and the action is based on fraud

9. 201 S. C. 188, 22 S. E. 2d 1 (1942).
10. 183 S. C. 279, 190 S. E. 923 (1937).

and deceit of the company acting through its agent or representative. *Crosby v. Metropolitan Life Insurance Co., supra,*[11] mentioned in Mr. Estes' paper, is an example of these theories. At the time the paper was prepared the plaintiff had obtained a judgment for the face amount of the policy, $540.00, as actual damages and $1,200.00 punitive damages. Facts were that agent had represented to plaintiff that she was the beneficiary under the policy so that plaintiff would continue paying premiums, when in fact the policy was payable to insured's estate. After the date of the paper the case was appealed and the South Carolina Supreme Court in an opinion in 167 S. C. 255, 166 S. E. 266 (1932), held that the action was not on the fraudulent breach of insurance contract, which was a valid policy payable to estate of insured, but on the fraud and deceit arising out of the promise of the agent that plaintiff was beneficiary. As the action was not on the policy, the charge by the court that damages would be the face amount of the policy, $540.00, was misleading, and it should be the amount of premium paid, that is 45¢ per week for 26 weeks, amounting to $11.70. The punitive damages were allowed to stand and judgment was for $1,211.70, 103 times the actual damages, even though the policy was a valid contract. So although there are two theories on which a plaintiff can recover, the method chosen does not seem to have any relation to the amount of punitive damages recoverable.

Although we cannot formulate a rule defining fraudulent conduct by an insurance company, it is possible to determine what acts of an insurance company, its agents and representatives, have been alleged to be fraudulent, and the result of these attempts to hold companies liable in punitive damages.

B. *Alleged Fraudulent Acts.*

1. *Failure of agent to call for premium as is his custom, and lapsing of policy as a result of the failure to receive premium.*

In *Mack v. Life & Casualty Insurance Co.,*[12] the alleged fraud was failure of agent to call at home of insured for weekly premium as was his custom for about 10 years, and the subsequent failure of company to accept premium at home

11. Footnote 6.
12. 171 S. C. 350, 172 S. E. 305 (1934).

office. For this fraudulent act plaintiff was awarded $160.00 acutal damages and $750.00 punitive damages, on a policy with $5.00 weekly sick benefit and $60.00 death benefit.

*Pack v. Metropolitan Life Insurance Co.*[13] was a case in which the alleged fraud was failure of the agent to call for premium. But the evidence there failed to prove any fraud as it showed that plaintiff had moved, had failed to advise agent of her address, and that agent had attempted to locate her, but was unable to do so. The lower court's verdict of $174.00 actual damages and $500.00 punitive damages on a $115.00 face value policy with $58.00 disability provision was reversed and recovery was allowed only for actual damages, which were defined by Justice Bonham, thus:

> "It is the sum of the premiums which have been paid by the insured, and loss by the lapse of the policy, and, the damage which the plaintiff has sustained by such lapse, to be ascertained, as for example, by ascertaining the life expectancy and the amount she would be required to pay for insurance of like character during such period, but such sum cannot equal the amount of the lapsed policy; and of course, any special damage which plaintiff has suffered."

This case has been followed and the same conclusion reached in several of the cases hereinafter referred to and is the rule today on actual damages for breach of insurance contract in South Carolina.

In *Sturkie v. Commonwealth Life Insurance Co.*,[14] the alleged fraud was agent's act in telling plaintiff that he would no longer call for weekly premium, and her account would be transferred to home office. In addition insured visited district office and made tender of her premiums, which were refused. The face value of policy was $144.00, and jury found $45.00 actual damages and $1,500.00 punitive damages. This verdict was upheld by the Supreme Court which cited *Mack v. Life & Casualty, supra.*[15]

The alleged fraud in *Holder v. Sovereign Camp W. O. W.*[16] was failure of financial secretary to find insured's card and re-

13. 178 S. C. 272, 182 S. E. 747 (1935).
14. 180 S. C. 177, 185 S. E. 541 (1936).
15. Footnote 12.
16. 180 S. C. 242, 185 S. E. 547 (1936).

fusal to accept premiums. The actual damages in that case was said to be governed by rule of *Pack v. Metropolitan Life Insurance Co.*, above.[17]

*Alexander v. Durham Life Insurance Co.*[18] was a case in which alleged fraud was refusal to accept premiums, and the cancellation of policy. The policy provided for $44.00 death benefit and $4.00 per week for 26 weeks disability payments. There was conflicting testimony as to when premiums were tendered and Court held that this made proper issue for jury. And the refusal to grant non-suit as to punitive damages on grounds of failure of evidence tending to support alleged fraud was held not to be error where insured was old, ignorant, and trusted insurer's agent who misinformed insured as to physical disabilities necessary to entitle insured to benefits. The trial court's verdict was $1,600.00 actual and $150.00 punitive damages. The actual damages were reduced by $100.00 and the verdict otherwise affirmed.

Another leading case is *Riley v. Life & Casualty Insurance Co.*,[19] where agent failed to call for premium as was his custom. The agent in this case was acting on orders from the District Manager who had seen insured and knew he was no longer insurable. There was sufficient testimony to go to jury on question of fraud and jury found $36.00 actual damages and $1,000.00 punitive damages on industrial policy of $155.00 face value. This verdict was affirmed, the Supreme Court saying the jury having found fraud, such fraud will support the verdict.

A very late similar case is *Clinkscales v. North Carolina Mutual Life Insurance Co.*[20] In that case insurance company had issued in 1936 a health, accident and death benefit policy, and premium was 25¢ weekly. The agent called for this premium regularly until 1939 and 1940 when insured became ill. During the period of illness some sick claims were paid, some were not. Plaintiff's testimony was that she sent premiums to agent during this period but on each occasion he refused to accept them. Finally in November, 1940, agent did accept $1.50 premium, later returning and having insured sign an application for revival while sick in bed. Plaintiff was able to

17. Footnote 13.
18. 181 S. C. 331, 187 S. E. 425 (1936).
19. 184 S. C. 383, 192 S. E. 394 (1937).
20. 201 S. C. 375, 23 S. E. 2d 1 (1942).

read and write, but did not read the application she signed. This application was claimed by defendant to be a release of all claims. There was a verdict for plaintiff for $1,500.00. This was upheld on appeal because tender by plaintiff during grace period, plus the sick claim due, was sufficient to keep the policy in force and therefore the cancellation of it was fraudulent, the agent knowing that plaintiff was not insurable when he ceased calling for premiums. The actual and punitive damages were not separated in the decree.

An interesting late case is *Harwell v. Mutual Benefit Health & Accident Assn.*[21] This was an action for the recovery of damages, actual and punitive, for the alleged wrongful and fraudulent refusal of defendant to accept a renewal premium on an accident policy. Verdict was for $46.50 actual and $1,250.00 punitive damages.

The policy provided, in large and conspicuous words on page one—Death Benefit without increase $1,000, with full increase $2,000.00. Premium required was $6.50 first year and $5.00 per year thereafter to keep the policy continually in force. In small print on page three, the policy provided that the acceptance of a renewal premium was optional with the company. Policy was issued in 1934, and refusal to accept premium was on June 21, 1943. The policy provided that mailing of notice at least 18 days before due constituted legal notice of premium due date. The local agent of company had established a custom of calling for the receipt of annual premium. However, the local agent had withdrawn from the company prior to due date, May 1, 1943, and plaintiff did not make payment until June 12, 1943, when he mailed premium directly to the company. The company returned the premium payment.

The Court's minority opinion, written by Justice Fishburne, held that the policy was an unconditional continuing contract, terminable only upon failure to pay premiums, notwithstanding the provision that acceptance of renewal premium was optional with the company.

That issue being decided, the Court passed on to the question of damages for the breach of the contract. Plaintiff insisted that the breach was fraudulent because of the following circumstances: (a) by so wording its contract as to de-

21. 207 S. C. 150, 35 S. E. 2d 160 (1945).

ceive the insured into purchasing what appellant now claims is, at its option, not a continuous policy, although from its major provisions, it appears to be a continuous contract with cumulative benefits; (b) cancelling the policy only after the accumulated benefits had nearly reached their maximum; (c) after its local agent had withdrawn from its employment, appellant deliberately failed to notify the insured that it would no longer have an agent to collect its premiums; (d) establishing a custom over a long period of time of collecting the annual premium by its agent, then suddenly and without warning breaking the custom; (e) failing to send the plaintiff notice (as was its practice) of the due date of the annual premium; (f) refusing the plaintiff's renewal premium after having maneuvered him into default and continuing to refuse to reinstate the policy until after this action had been instituted.

The minority held that the mailing of notice had a bearing on the charge of fraud, when after a custom was established, it was suddenly stopped. Also an evasive letter received by the plaintiff from the company when his premium was returned, was an element supporting the charge of fraud. The Court then said:

> "After a careful examination of the record in the light of previous decision, we are unable to conclude as a matter of law that the evidence in the case excludes all reasonable inference of fraud."

The majority opinion, written by Mr. Chief Justice Baker, agreed that the policy was a continuous one, and that actual damages were recoverable for the breach thereof, but that the evidence did not justify punitive damages. The failure to give notice, it was pointed out, was not such a fraudulent failure to notify as would justify punitive damages. Neither would the conduct of the company in refusing to accept renewal premiums, when such action was bona fide, the officers relying on a clause in the policy which they thought legal and valid. The judgment for actual damages was affirmed and for punitive damages reversed by the majority.

2. *The procurement of the policy at death of insured and failure to return policy when company denies liability.*

*Bradley v. Metropolitan Life Insurance Co., supra,*[22] was the first case to award punitive damages for failure of company to return policy after it had been procured by agent at insured's death. Just what the fraudulent act was, the procuring the policy with knowledge that the claim would be denied, or the withholding of the policy by the company, was not made clear, but the entire action was said to justify punitive damages of $2,000.00

A later case is *Cook v. Metropolitan Life Insurance Company,*[23] which was an action for fraud and deceit for defendant's alleged failure to revive or return an industrial life policy. Plaintiff held life policy of $240.00 issued in 1904, having paid up value of $136.00. Twice the policy had lapsed and had been reinstated by a premium lien endorsed thereon. In 1934, the policy again having lapsed, plaintiff made application to defendant company to revive the policy and at the same time delivered policy to agent who promised to revive and return policy. Defendant did neither and this is the alleged fraud. Trial resulted in a $5.00 nominal damage and $256.00 punitive damages. Supreme Court affirmed, saying, through Justice Fishburne:

> "When one promises to do a certain thing, having at the time no intention of keeping the agreement, it is a fraudulent misrepresentation of fact, and actionable as such. The interest of agent when he procured policy and question of fraudulent representation made a question for jury."

This case not only restates the rule of the *Bradley* case, but also lays down the rule that punitive damages may be awarded in absence of actual damages, if nominal damages are shown. Nominal damages are recoverable for any breach of legal duty, even though no actual damages are shown. This case, then, would seem to indicate that the slightest breach of duty by defendant would give rise to punitive damages. The rule does not go that far, however, and in *Barnes v. Industrial Life & Health Insurance Company of Atlanta,*[24] it is said that punitive damages cannot be given without actual or nominal damages. In that case there had been no actual injury to plaintiff

22. Footnote 5.
23. 186 S. C. 77, 194 S. E. 636 (1938).
24. Footnote 9.

and defendant had acted in good faith. Justice Fishburne dissented, however, on the basis of the holding in the *Cook* case, *supra,* that "upon a conscious and willful violation of legal rights the law will presume damages sufficient to sustain an action, even though such action be only nominal, and not capable of exact measurement, and in such case a verdict for punitive damages, without a finding of actual damages will be sustained."

The rule today, however, in South Carolina, is that if conduct of defendant in breaching a contract will allow a recovery of even nominal damages, then punitive damages may also be recovered. For defendant to resist punitive damages his conduct must be of such character that even nominal damages could not be assessed against him.

In *Henderson v. Capital Life and Health Insurance Co.,* [25] a policy of $116.00 was issued and delivered by agent to insured's father. No premium was paid at time of delivery and policy contained no stipulation that it would not be effective until payment of premium. Agent agreed to collect premium on his next visit, but the insured died before agent collected the premium. Agent thereupon procured policy and refused to return it to beneficiary. It was held that it was a question for the jury whether or not policy was in force at date of insured's death. The jury returned a verdict for actual and punitive damages. This was affirmed, the court holding that the manner of collecting premiums may be waived and credit extended.

In *Barber v. Industrial Life & Health Co.,*[26] suit was for alleged breach of contract, accompanied by fraudulent act of insurer. Plaintiff was administrator of the estate of beneficiary of life policy on the life of one Phillip Mitchell. The fraudulent act alleged is that after the death of Phillip Mitchell, the company switched or substituted a sick and accident policy, with death benefit of $50.00, in place of "straight life" policy of $250.00. It appeared that in his lifetime Phillip Mitchell had two policies with defendant company, one a sick and accident, the other a straight life. The premium was 25¢ per week on each policy. The Company records and proof offered by company showed that the "straight life" policy had lapsed, but that plaintiff's intestate had paid the premiums on sick and accident policy until death of insured.

25. 199 S. C. 100, 18 S. E. 2d 605 (1942).
26. 189 S. C. 108, 200 S. E. 102 (1938).

Plaintiff's proof was that they had no knowledge of sick and accident policy; that a "straight life" policy had been issued to Phillip Mitchell and plaintiff's intestate had it in her possession and had paid all premiums thereon. Further the premium receipt books, except the last one, had the number of the "straight life" policy in them, and plaintiff's intestate had no knowledge that the number was changed in the last book. Proof showed that insured was sick one and one-half years prior to his death, and that the collecting agent had seen the insured sick man and in bed, and that no claim had been filed, the insured believing he had only a life policy. The verdict was for $250.00 actual and $1,500.00 punitive damages, the latter being reduced to $1,000.00 by the court. The judgment was affirmed, the court saying that the question of fraudulent act was very close, and but for the changing of the number of the policy in the last receipt book by the agent, the duty of the trial court would have been to direct a verdict for defendant on the question of punitive damages.

3. *Agent's misrepresentation of coverage of policy.*

Whether the representations of an agent as to the contents of the policy will amount to fraud or not depends on all circumstances surrounding the case. *Thomas v. American Workmen Insurance Co., supra.*[27] In *Jamison v. American Workmen Insurance Co.,*[28] the defendant company issued to plaintiff, an illiterate colored woman, a policy providing for weekly sick benefits of $6.00 and death benefit of $2,000. The agent represented that the company would give ten days' notice of the due date of each monthly premium. For over a year the company gave notice and received and accepted all premiums, although all of the premiums did not arrive promptly. Thereafter the insured became ill and remained in such condition for six weeks. The company sent no notice of payments due for two months and thereafter refused the tender of premiums by plaintiff and cancelled the policy. The action was for fraudulent cancellation of insurance contract and resulted in a verdict for plaintiff of $20.00 actual damages and $480.00 punitive damages. In affirming, the Court said:

27. Footnote 8.
28. 169 S. C. 400, 169 S. E. 83 (1933).

> "The testimony of the plaintiff, the literature furnished her, the letters written her by the company, and the reasonable inference which may be drawn from the testimony, the literature, and the correspondence, were sufficient in our opinion, to require the Court to submit the issue of both actual and punitive damages, the latter on ground of fraudulent conduct on the part of the insurer, to the jury. The representations of the agent, the promises made, and the course of conduct of the insurer and its agents, all taken together, in the absence of any denial or explanation by the agent, were such as to justify the jury verdict."

And in *Schultz v. Benefit Association of R. E.*,[29] a case wherein the agent of defendant represented to plaintiff that the new policy was "non-cancelable," but upon a change of position by plaintiff, the defendant refused to accept premiums, a verdict of both actual and puntive damages was recovered, the Court saying:

> "This court has held repeatedly that where an insurance company refuses to accept premiums and it is clearly shown that the intention of the company is to cancel out policies which are existent and upon which rights have accrued, such action on the part of the company will sustain a verdict for punitive damages. *Wilkes v. Carolina Life*, 166 S. C. 475, 165 S. E. 188; *McLoud v. Met. Life Ins. Co.*, 167 S. C. 309, 166 S. E. 343; *Sutton v. Continental Casualty Co.*, 168 S. C. 372, 167 S. E. 647; *Mack v. Life & Casualty Co.*, 171 S. C. 350, 172 S. E. 305."

The case of *Thomas v. American Workmen Insurance Company, supra,* [30] allowing actual and punitive damages for misrepresentation of the agent, has already been discussed.

In *Speed v. American Workmen Insurance Co.*,[31] the plaintiff alleged that the agent of the company assured her that identical policies were issued to her boy and girl. The daughter died within six months of the date of the policy and plaintiff gave the policy to the agent for collection. The defendant

29. 175 S. C. 182, 178 S. E. 867 (1935).
30. Footnote 8.
31. 199 S. C. 187, 18 S. E. 2d 732 (1942).

company failed to return the original policy, but returned a substituted policy that limited liability. The policy held by the boy did not contain this limitation of liability clause. The jury found for plaintiff $296.00 as actual damages and $800.00 punitive damages. The court held that $800 was not excessive, but in order to promote substantial justice he would reduce it to $400.00 punitive damages. The verdict was affirmed on appeal.

In *McCullough v. The American Workmen*,[32] the suit was for fraudulent breach of a life, health and accident policy. Policy provided that monthly dues of $1.15 would never be increased, and the agent so advised plaintiff. Later the company raised dues to $1.35 per month and refused to accept plaintiff's offer of $1.15. Plaintiff, a colored woman of simple mind, was awarded $200.00 actual and $800.00 punitive damages by the jury. The $200.00 was reduced to $184.50 by the Court. The Supreme Court, opinion by Chief Justice Bonham, reversed, holding that suit was *ex contratu,* based on the alleged breach of contract and not *ex delicto,* as no fraud was alleged in the inception of the contract. The Court further held that the plaintiff had elected her remedy in contract, and was therefore estopped from asserting an action for fraud and deceit in its inception.

4. *The waiver by the company of the exact requirements of a policy by granting extensions, credits, etc., followed by cancellation or lapsing of policy contrary to the established custom of dealing.*

A case illustrating this section is *Welch v. Missouri State Life Insurance Co.*[33] In that case it appeared that insurer had from time to time granted extensions, accepted post-dated checks and waived provision requiring premium to be paid on due date. The insurer wrote insured after one of such extensions, and enclosed further extension notes, but four days thereafter cancelled policy. The court held that such wrongful cancellation by the insurer gave the insured the right to actual damages, but as there was no fraudulent intent by insurer punitive damages could not be recovered. The Court

32. 200 S. C. 84, 20 S. E. 2d 640 (1942).
33. 176 S. C. 494, 180 S. E. 447 (1935).

quoted this rule from *Williams v. Metropolitan Life Insurance Company*:[34]

> "Punitive damages are not recoverable for a mere breach of contract. To recover damages of that character, the plaintiff must show that the breach was accomplished with a fraudulent intention, and was accompanied by a fraudulent act. *Welborn v. Dixon,* 70 S. C. 108; *Holland v. Spartanburg,* 166 S. C. 454, and many other cases too numerous to mention.
>
> "Acts of willfulness, accompanying the breach of contract, unless there is fraud also, will not support a claim for punitive damages. *Holland* case, *supra.*
>
> "The mere violation of a contract is not sufficient to support an allegation of fraud. *Holland* case, *supra; Caldwell v. Duncan,* 87 S. C. 331; *Coleman v. Stevens,* 124 S. C. 8."

5. *Fraud and deceit practiced by agent independent of the insurance contract.*

Two of the earliest cases authorizing a recovery of punitive damages against an insurance company for breach of contract were based on the acts of the agent. *Williams v. Commercial Casualty Co.* and *Crosby v. Metropolitan Life Insurance Company, supra.*[35] The *Williams* case gave punitive damages for acts of the agent that not only were outside the contract, but were performed contrary to the express direction of his principal. The *Crosby* case illustrated the distinction between a recovery for breach of contract, and for fraud and deceit of the agent.

In an action by the beneficiary for damages for fraud in that the agent represented that the policy would be payable upon the death of the insured for any cause, when in fact it was an accident policy, a recovery was denied in *Frierson v. Inter-Ocean Casualty Co.,*[36] because the beneficiary who took out the policy and signed the application was possessed of intelligence, could read and write, kept the policy in force until the death of her sister, the insured, and had ample opportunity to learn the character and contents of the policy.

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34. 173 S. C. 448, 176 S. E. 340.
35. Footnotes 4 and 6.
36. 168 S. C. 178, 167 S. E. 232 (1933).

*Hood v. Life & Casualty Co.*[37] was a similar case where the court held that failure of the beneficiary to learn the contents of an accident policy would prohibit her recovery in an action based on fraudulent representations of the agent.

In *Souba v. Life Insurance Company of Virginia,*[38] the negligence of the beneficiary precluded a recovery by her in an action based on fraud and deceit by an agent of the company. There the plaintiff had paid the premiums because of the false statement of the agent that she was the named beneficiary. However, the evidence showed that the plaintiff had read the policy and remarked that the named beneficiary had not been changed. Plaintiff also kept the policy in her possession for a number of months without making an inquiry at the office of the company, although she lived a short distance therefrom.

And in *Knox v. Metropolitan Life Insurance Co.,*[39] plaintiff recovered $43.75 actual and $800.00 punitive damages for failure of agents to accept premiums from plaintiff. The policy had been in force nearly ten years, and the offered premium of $3.00, plus a $2.00 receipt for dividend would have enabled plaintiff to obtain a loan on said policy. A loan on the policy would have resulted in a decrease in the agent's income; hence the agent's refusal to accept same. The plaintiff also wrote the Home Office of the Company, but received no reply for over thirty days. The Supreme Court affirmed the judgment of the lower court.

It is thus seen that the facts in the respective cases are controlling as to fraud. Justice Fishburne in *Thomas v. American Workmen Insurance Co., supra,*[40] gave a splendid view of the attitude of the courts when he said:

> "The policy of the Courts is on the one hand, to suppress fraud, and on the other, not to encourage negligence and inattention to one's own interest. Either course has obvious dangers. But the unmistakable drift is toward the just doctrine that a wrongdoer cannot shield himself from liability by asking the law to condemn the credulity of the ignorant and unwary."

37. 173 S. C. 139, 175 S. E. 76 (1934).
38. 187 S. C. 311, 197 S. E. 826 (1938).
39. 190 S. C. 504, 3 S. E. 2d 245 (1939).
40. Footnote 8.

C. *Available Defenses.*

Any lawsuit alleging fraudulent conduct by an insurance company necessitates a defense by the company. The facts of any case determine the practicability of any defense, and likewise what ground to stand on if a defense is undertaken. An examination of the various defenses pleaded, and the results thereof, in various cases, would seem to be in order.

1. *No fraudulent act is alleged.*

This defense seems to be the most widely used and, of course, will continue to be so. When issue is taken as to whether or not any given act constitutes fraud, there is usually presented a question which only a jury can decide. A survey of the cases indicates that most of the juries find that any act of an agent or official of the insurance company that tends to deny liability is a fraudulent act. The fraudulent act having been determined, punitive damages that are allowed for this fraud have in many cases soared to unbelievable heights. It would be unfair not to mention that the courts, on numerous occasions, have, in order to promote substantial justice, reduced these judgments.

In one of the early cases seeking punitive damages from an insurance company for fraud, *Prince v. State Mutual Life Insurance Co., supra,*[41] the jury returned a verdict of $500.00 punitive damages. This was allowed to stand in the lower court but the Supreme Court reversed as to punitive damages as no fraudulent act was alleged. And in *Speed v. American Workmen's Insurance Co., supra,*[42] the jury's verdict of $800.00 punitive damages was reduced to $400.00 by the court. In *Crosby v. Metropolitan Life Insurance Co.*[43] the punitive damages agreed on by the jury was $2,400.00 and this was reduced to $1,200.00. It must be remembered that in an action based on tort there may be an allowance of punitive damages although no actual damages are shown. *Fields v. Lancaster Cotton Mills,*[44] and *Doster v. Western Union.*[45] And it has been

41. Footnote 3.
42. Footnote 31.
43. Footnote 6.
44. 77 S. C. 546, 58 S. E. 608 (1907).
45. 77 S. C. 56, 57 S. E. 671 (1907).

pointed out how nominal damages alone will support a verdict for punitive damages for fraudulent breach of contract.

In *Welch v. Missouri State Life Insurance Co.*[46] punitive damages were denied because there was no fraudulent act alleged. Defendant company had cancelled plaintiff's policy four days after it had sent extension notes. This was a negligent and wrongful act, but not fraudulent, the court held, and allowed actual damages, but refused punitive damages.

*Pack v. Metropolitan Life Insurance Co., supra,*[47] referred to above as establishing the South Carolina rule for actual damages, also denied punitive damages where the alleged fraud was the agent's failure to call for premiums. The evidence showed that the plaintiff had moved and that agent had attempted to locate plaintiff and had searched diligently for her, but had been unable to locate her.

Although the policies uniformly provide for the payment of premiums at the home office, the cases generally hold that the failure of the agent to call for premiums, after having established a custom or course of dealing, and the resulting cancellation of the policy, is a fraudulent act. To defeat this the defendant must show that there was no scheme to cancel the policy and that the agent made efforts to collect premiums, as in the *Pack* case.

2. *Full disclosure by agent at the time of applications, during the life of the policy, and after claim made.*

A case showing full disclosure is *Moore v. Metropolitan Life Insurance Co.*[48] That was an action for fraud and deceit for failure of the defendant company to issue a 20-year payment policy. The plaintiff had applied for a life policy in 1936, but the application was refused because plaintiff was under weight. An "industrial endowment" policy was issued, however, and plaintiff testified that before the endowment policy was issued to her she decided to apply for a 20-year pay policy and the agent advised her that he would secure it for her. The company refused to make this change and this is the alleged fraud. In holding for the defendant company, the court held that no fraud and deceit existed since plaintiff was kept

46. 176 S. C. 494, 180 S. E. 447 (1935).
47. Footnote 13.
48. 189 S. C. 44, 199 S. E. 904 (1938).

advised at all times; First, that straight life could not be issued because she was underweight; and second, that 20-year pay could not be issued for the same reason; the endowment policy was issued in lieu thereof.

The defense of full disclosure is, of course, a direct denial of fraud and is, in effect the same defensive plea as no allegation of fraud. Thus where the insured had been supplied with the application for reinstatement after policy had lapsed, and then had sued for disability benefits under the policy, the defense was based on the statement of the insured in the application. The court held:

> " . . . we can find no evidence from which a reasonable inference could be drawn that the appellant fraudulently breached the contract of insurance or practiced 'fraud or deceit' in the procurement of any of the re-instatement applications." *Glenn v. Metropolitan Life Ins. Co.,* 202 S. C. 316, 24 S. E. 2d 609 (1943).

And in *King v. North Carolina Mutual,*[49] it was held that failure to supply insured with application blanks for disability payment was not evidence of fraud, and the judgment for punitive damages was reversed. Actual damages were allowed however.

The defense of full disclosure usually results in a jury question as to whether there was such disclosure or not. In most cases where an agent procured policy at the death of the insured, in accordance with the terms of most industrial policies, so that the claim might be submitted to the company, the juries have held such acts fraudulent upon the disallowance of the claim by the company. The defense of full disclosure must be denied by plaintiff, thus making an issue for the jury, and the cases seem to indicate that the average jury in South Carolina has given more credit to the statements of the plaintiff than to the denials of fraud by the defendant.

3. *Admitting the fraud of defendant, the failure of plaintiff to avail himself of the contents and coverage of policy is such negligence as to preclude recovery.*

This defense is governed in *Thomas v. American Workmen Insurance Co., supra,*[50] that recovery will depend on the va-

49. 194 S. C. 367, 9 S. E. 2d 788 (1940).
50. Footnote 8.

rious circumstances involved. It has been repeatedly pointed out that what would constitute negligence by a reasonably prudent man is not the test for an illiterate and ignorant plaintiff, and that each case must rest on its own merits.

*Souba v. Life Insurance Company of Virginia, supra,*[51] *Hood v. Life & Casualy Insurance Co., supra,*[52] and *Frierson v. Inter-Ocean Co., supra,*[53] are all cases wherein the negligence of plaintiff in failing to learn the contents of the policy prevented a recovery.

A later case showing how plaintiff's negligence can prevent recovery is *Bull v. Metropolitan Life Insurance Co.*[54] The headnote gives the holding:

> "Where insured knew from interest notice which she received periodically from 1933 to commencement of action in 1938, and from loan certificate bearing her signature, which were attached to life policy, the loans were charged against her, but she continued all the while to pay interest charges without protest, and did not notify insurer of alleged forgery of signature on application for loans, even if insured was defrauded, she was barred by her own conduct constituting 'waiver' from bringing action because of the alleged fraud."

4. *A previous action on same policy for fraudulent breach of contract resulting in a verdict for defendant company will bar a subsequent suit based on same policy for fraud and deceit, the defense of "res judicata" being applicable.*

This is a special plea that would only be available under a particular factual arrangement. However, it is well to know that the courts will not allow plaintiff a second chance at a recovery on the identical sets of facts. This was the holding in *Smith v. Volunteer State Life Insurance Co.*[55] Facts of the case were that on June 14, 1939, plaintiff as administratrix brought suit against the defendant company for full amount of $5,000.00 policy for breach of insurance contract accompanied by fraudulent act. The case was removed to Federal

51. Footnote 38.
52. Footnote 37.
53. Footnote 36.
54. 195 S. C. 536, 12 S. E. 2d 24 (1940).
55. 201 S. C. 291, 22 S. E. 2d 885 (1942).

Court where a non-suit was ordered because evidence that was introduced showed that plaintiff was not entitled to recovery. Thereafter on April 19, 1941, plaintiff brought suit against the same defendant on the same policy for $2,900.00 actual and punitive damages for fraud and deceit. The jury found a verdict for plaintiff for $1,658.10 actual and $1,241.90 punitive damages. On appeal this verdict was reversed, the Court saying in part:

> "The essential elements of *res adjudicata* are: (1) Identity of the parties: (2) identity of the subject matter; and (3) an adjudication in the former suit of the precise question sought to be raised in the second suit . . . there was an identity of the parties . . . there was an identity of the subject matter . . . We do not think that a party may bring an action for a breach of contract, and having lost that case, afterwards maintain another suit for an earlier breach of the identical contract. We think that the judgment of the Federal Court was conclusive in the second action."

*Glenn v. Metropolitan Life Insurance Co.*[56] was mentioned before as a case wherein plaintiff failed to establish fraud. While the Court did make this finding the case was actually decided on the legal ground of *res judicata*. The plaintiff had brought an action for benefits, provided by disability feature of life policy, but a verdict was directed for the company because of plaintiff's statement in reinstatement application that he was in good health. No appeal was taken. Later plaintiff brought an action based on same policy, but alleged fraud and deceit by the company in inducing him to sign the reinstatement application. The jury returned a verdict of $500.00 actual and $1,000.00 punitive damages.

The appellate court reversed, saying that the doctrine of *res judicata* was clearly applicable to the case. The court cited *Johnson v. Carolina Life Insurance Co.*[57] In the *Johnson* case, Helen Johnson brought action against the insurance company as beneficiary under a $120.00 insurance policy, in which the intervenor Ransom Johnson, was the named beneficiary. It was held that Ransom Johnson was the beneficiary and proceeds paid to him. Thereafter Helen Johnson brought suit

56. 202 S. C. 316, 24 S. E. 2d 609 (1943).
57. 200 S. C. 308, 20 S. E. 2d 713 (1942).

against the insurance company for damages for failure to change the policy and make her the beneficiary. The court held that the first suit was controlling and that the doctrine of *res judicata* was applicable. To hold otherwise, the Court said, is to give respondent two bites at the cherry when in contemplation of law, they are entitled to but one.

5. *No injury has been done to insured.*

The latest case to plead this defense is *Barnes v. Industrial Life & Health Insurance Co. of Atlanta.*[58] There the agent of defendant company had fraudulently mis-stated the age of applicant at 55 when she had informed him 65. Premiums were collected at the rate of 15¢ per week for 78 weeks on a policy providing for $72.00 death benefit. At that time agent of defendant company induced plaintiff to give up her policy and sign a release therefor on payment of an amount equal to the sum of all premiums paid, to-wit, $11.70, by informing her that mis-statement of age, and the old age pension law would prohibit a recovery on the policy. Thereafter suit was brought and company agreed to return policy upon return of premiums. Facts also show that plaintiff had procured a similar policy for $72.00 from a different company at the rate of 10¢ per week. The court decided that disregarding the fact that plaintiff had held policy 18 months without examining it, the verdict should still be for defendant because the offer to return the policy and waiving interim premiums repudiated the fraud of its agents, and further plaintiff had suffered no actual damages; and any presumption of the existence of nominal damages not capable of exact measurement had been affirmatively dissipated by the procurement by plaintiff of another policy of insurance in another company in the identical amount, and at a smaller premium.

While the rule has been stated in some jurisdictions that the amount of damages for fraudulent breach of insurance contract is the difference in cost of breached contract and a similar policy, such does not seem to be the rule in South Carolina. In *Rogers v. Jefferson Standard Life Insurance Co.*,[59] it was held that the actual damage for breach of two $5,000.00 life policies with disability clauses was in accordance with the

58. 201 S. C. 188, 22 S. E. 2d 1 (1942).
59. 182 S. C. 51, 188 S. E. 432 (1936).

rule of *Pack v. Metropolitan Life Insurance Co., supra,*[60] and was the amount of total premiums paid with interest, less the payment and interest owing on policy loans. Punitive damages were agreed on in that case. It was pointed out that while insured was still an insurable risk it would be impossible to get a policy with annuity disability payments, as companies have quit writing them. Same rule as to actual damages was given in *Latta v. Sovereign Camp, W. O. W.*[61]

It has been pointed out heretofore that a showing of nominal damages would support punitive damages, therefore a defense that no injury has been done must also negative even nominal damages in order for defendant to be accorded a judgment.

## III. CONCLUSION

The law governing punitive damages for breach of contract is well settled in South Carolina and the decisions over the past decade have not materially changed it. Fraud having been found by the jury, the jury is authorized upon a finding of either nominal or actual damages, to set any sum they choose as punitive damages. The first insurance case, *Williams v. Commercial Casualty Co.,*[62] in 1931 resulted in a verdict of $30.00 actual and $1,000.00 punitive damages. The fraud there was the act of the agent in selling a sample copy. One of the latest decisions, *Clinkscales v. North Carolina Mutual Life Insurance Co.,*[63] awarded $1,500.00 actual and punitive damages for fraudulent cancellation of a health, accident and death benefit policy that carried a 25¢ per week premium. As pointed out so often by the court the factual situation of any case is controlling. The case of *Crosby v. Metropolitan Life Insurance Co.*[64] allowed $1,200.00 punitive damages when the actual damages were $11.70 and seemed to set the highest proportion for punitive over actual damages. The fraud there was a mis-statement of agent that plaintiff was a beneficiary.

When a problem is controlled by the facts of the case, it is exceedingly difficult to undertake to estimate any trend in

60. Footnote 13.
61. 179 S. C. 376, 184 S. E. 157 (1936).
62. Footnote 4.
63. 201 S. C. 375, 23 S. E. 2d 1 (1942).
64. Footnote 6.

the decisions. It must be emphasized that the decisions in South Carolina definitely do not indicate that there will be any relaxation in the awarding of punitive damages for fraudulent breach of insurance contracts accompanied by any fact that is held to be fraudulent. If the cases do establish any trend they can be set out under the following three main heads:

(1) The court's refusal to call all denials of liability a fraudulent breach of contract.

In *King v. North Carolina Mutual,*[65] the alleged fraud was the failure of insurance company to furnish plaintiff with application blanks for disability payments. The court held that this action could not be evidence of a frudulent breach of contract accompanied by a fraudulent act.

In *Barnes v. Industrial Life and Health Ins. Co. of Atlanta,*[66] the alleged fraud was the procurement of a release from insured. The court held that such act could not be fraud because the insured had not been injured as the evidence showed that he had procured a similar policy with another insurance company, and even at a smaller premium.

The alleged fraud in *Moore v. Metropolitan Life Insurance Co., supra,*[67] was a failure of the company to issue a twenty-year policy. The facts there showed, however, that the insured was advised at the time he made application that he was underweight and therefore ineligible for such policy. The court held for the defendant company.

In *Welch v. Missouri State Life Insurance Co., supra,*[68] the Court held that the wrongful cancellation of a policy gave the insured a right to actual damages, but that there was no fraudulent intention, and punitive damages could not be recovered.

(2) Court's tendency to make a remittance where punitive damages are excessive.

The Court in *Crosby v. Metropolitan Life Insurance Co.,*[69] reduced the punitive damages from $2,400.00 to $1,200.00, but actual damages were only $11.70. And in *Alexander v.*

65. 194 S. C. 367, 9 S. E. 2d 788 (1940).
66. Footnote 24.
67. Footnote 48.
68. Footnote 46.
69. Footnote 6.

*Durham Life Insurance Co., supra,*[70] the jury found actual damage for breach of an insurance policy providing for $44.00 death benefit and $4.00 per week for 26 weeks disability payment, at $1,600.00. The court reduced this to $100.00. In the case of *Speed v. American Workmen Insurance Co.,*[71] the jury found the actual damages at $296.00 and punitive damages at $800.00. The court lowered the punitive damages to $400.00 and otherwise affirmed the verdict. And in *Weaver v. Metropolitan Life Insurance Co.,*[72] in an action on a $500.00 policy, the jury found the actual damages at $493.24 and set the punitive damages at $750.00. The court reduced the actual damages by ordering remittitur of $332.27, and otherwise affirmed.

(3) The application of doctrine of *res judicata* to prevent plaintiff from bringing a second cause of action on a different theory on the identical set of facts.

In *Glenn v. Metropolitan Life Insurance Co.,*[73] the insured sued for disability benefits, but the court directed a verdict for the insurer. Later plaintiff brought an action for fraud and deceit based on application for reinstatement for the purpose of depriving the insured of the disability payment. The Court held the second action was barred by the rule of *res judicata* and dismissed the action.

And in *Smith v. Volunteer Life Insurance Company,*[74] it was held that a prior suit in Federal Court for the face value of the policy was a bar to a subsequent suit in the state court based on the same act.

The attitude of the Federal District Court is shown in the case of *Pacific Mutual Life Insurance Co. of California v. Rhame.*[75] That was an action by plaintiff insurance company against the defendant insured, for a declaratory judgment with respect to an insurance contract. In a former action on this policy by Rhame against the company in the state court,

70. Footnote 18.
71. Footnote 31.
72. 197 S. C. 363, 15 S. E. 2d 673 (1941).
73. Footnote 56.
74. Footnote 55.
75. 32 Fed. Supp. 59 (1940); also in state action, see 179 S. C. 297, 184 S. E. 685 (1936).

the insured had brought suit to recover benefits, which would have accrued to him but for the fraudulent breach and cancellation of policy and actual and punitive damages alleged to have been sustained as a result thereof. The court held that there was a question for the jury and the verdict was given for $1,000.00 actual and $700.00 punitive damages, on a disability policy with $100.00 per month payments. Now the insurance company seeks a complete determination of the rights of the parties under the contract in the Federal District Court.

Two questions involved: First, whether the Court should take the view that the judgment of the State Court in favor of defendant should be construed as a suit on the contract, and not a tort, and second, whether the court, in the absence of any definite expression by Supreme Court of South Carolina on appeal as to the nature of the action, should refuse the declaratory judgment and permit defendant to bring his action for continued disability benefits claimed under the contract of insurance; as the result of which action, the Supreme Court will be in a position to construe its own decision.

The Court held:

> "Under this court's view of South Carolina decision on election of remedies, punitive damages are allowed only when insured's rights under contract of insurance have been surrendered and released and so recognized by him. And the court is bound by what insured did at that time, and not his present claim.
>
> "Should plaintiff be denied his relief on assumption that insured may induce South Carolina Supreme Court to do what it has not done and what, as this court is convinced, would be a reversal of the law of the State of South Carolina in its recognition of doctrine of election of remedies."

The court went on to point out that in South Carolina cases the insured may elect to enforce the contract or to treat it as rescinded, citing *Rogers v. Jefferson Standard Life Insurance Co., supra,*[76] *Alexander v. Durham Life Insurance Co., supra,*[77] and especially the case of *Shuler v. Equitable Life*

76. Footnote 59.
77. Footnote 18.

*Assurance Society of U. S.*,[78] where Justice Fishburne points out the three courses available to insured when insurer wrongfully cancels the policy.

> "(1) He may elect to treat the policy as still in force, and let the test of the validity of the cancellation repudiation await until the policy is payable and is sued on; (2) he may sue in equity to set aside the cancellation, and to have the policy declared to be valid and in force; or (3) he may maintain an action at law to recover damage for the wrongful cancellation or repudiation.
>
> "Defendant chose as his remedy the alternative of treating the contract at an end and instituting an action at law to recover damages for its wrongful cancellation or repudiation. He did not treat the policy as still being in force, or of suing in equity, to have the cancellation set aside and policy declared to be valid and in force.
>
> "To treat the contract at an end for the purpose of recovering damages for its breach, and therefore to seek to have it treated as in force, is to occupy positions, not only inconsistent, but repugnant to each other."

This case was decided subsequent to the celebrated case of *Erie Ry. Co. v. Tompkins*,[79] and by the rule of that case the Federal District Court must apply the law of South Carolina to the problem. This decision is worthy of attention as it gives the Federal District Court's view of the South Carolina law where a suit has been brought for fraudulent breach of insurance contract. The court held that such action is a repudiation of the contract and an extinguishment of the right of the parties under such contract. The *Shuler* case, cited by the Federal District Court as giving the rule in South Carolina does not seem to go that far. In the *Shuler* case the insurance company wrongfully cancelled the contract by refusing premiums, and required an application for the reinstatement of the policy. Thereafter the company relied on the facts in the application for reinstatement to deny liability and insured brought an action for fraudulent cancellation, and the court held for the insured. Later the beneficiary under the policy brought an action on the same policy, and while relief is denied her as her rights are only contingent, the court recog-

78. 184 S. C. 485, 193 S. E. 46 (1937).
79. 304 U. S. 64, 58 Sup. Ct. 817; 82 L. Ed. 1188 (1938).

nizes that the policy is still in effect and valid and that the action by the insured did not terminate it. Of course in the *Rhame* case, the South Carolina Supreme Court did not decide whether the policy was still in effect and left the question open leaving the opening upon which the Federal District Court later based its decision.

The case is also an example of a determination of rights of parties to an insurance contract under the declaratory judgment law. It seems to follow the trend of the courts to allow an insured only one action against an insurance company for breach of contract, and to bind him by his election.

This review makes it clear that an insurance company doing business in South Carolina is subject to the possibility of heavy punitive damages for alleged fraudulent breach of contract. In many instances the companies have been unfairly treated by juries. On the other hand, the companies, usually through incompetent or unworthy agents, have given the insured a raw deal in other cases. A contract that gives careful consideration to the factors set out above, plus a careful selection of agents, and their subsequent proper training, is the first step in combatting an unfortunate situation.

With this as a foundation, it is submitted that circumstances calling for punitive damages will less frequently exist, and that the companies will be in a position successfully to defend unwarranted claims for punitive damages under the existing laws of South Carolina.