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Insurance

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Of the four cases decided by the Circuit Court of Appeals and the eight cases decided by the Supreme Court of South Carolina, the problems on a whole were not novel ones. However, one of the more unique problems was involved in the case of *State Farm Mutual Automobile Insurance Company v. Cooper*[1] and was created as a result of the somewhat recent motor vehicle financial responsibility law enacted in South Carolina.

In this case action was brought by a wife to recover from the insurance company the amount of a judgment which she had recovered against her husband for injuries suffered by her as a result of an accident to his automobile while she was riding with him as a guest. The company denied liability under the husband's policy because the policy under "Exclusions" expressly provided that it should not cover any obligation of the insured to pay damages to any member of his family residing in the same household with him because of bodily injury caused by accident and arising out of the use of the automobile. The policy in question provided that the insurance afforded by the policy for bodily injury liability should comply with the provisions of the motor vehicle financial responsibility law of any state which would be applicable. The Motor Vehicle Safety Responsibility Act of South Carolina[2] provides that the liability of the insurance carrier under a motor vehicle liability policy required by the statute shall become *absolute* whenever injury or damage covered by the policy occurs. The Circuit Court of Appeals, however, in reversing judgment for the wife by the District Court, held that the statute in South Carolina was not applicable in that there is no requirement that all owners and operators of motor cars carry liability insurance and the statute does not come into play until the owner or operator has been involved in an accident. The policy here was taken out voluntarily

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1. 233 F. 2d 500 (4th Cir. 1956).
2. Code of Laws of South Carolina, 1952 Section 46-750.26 (1).

prior to the accident and not under compulsion of the South Carolina Motor Vehicle Safety Responsibility Act.

Fraudulent Breach of Contract

Contrary to previous years there was only one case involving the breach of contract. This was the case of *Taylor v. United States Casualty Company,*[3] which was an action for fraudulent breach of contract of automobile liability insurance covering assigned risk. The court held that the failure of insured's agent to remit to insurer premium paid by insured did not constitute a fraudulent breach of contract but only constituted negligence, nor could the resulting cancellation of the policy be construed as constituting a fraudulent act. Insured could only, therefore, recover for breach of contract and not punitive damages, and the jury could consider as an element of damage plaintiff's inability to comply with the motor vehicle safety responsibility law.

Comprehensive Crime Policy

American Mutual Liability Insurance Co. v. Thomas & Howard of Spartanburg, South Carolina[4] was an action by insured against insurer under comprehensive crime policy for inventory loss which insured alleged it sustained through fraud or dishonesty of insured's employees. The policy contained a record keeping provision — that as a condition precedent to recovery under said policy the insured was to keep verifiable records of all property covered by this policy. Insured admitted that inventory of each year was kept twelve months and destroyed and that certain inventory listings which were necessary to determine what items of inventory might be missing and the value thereof had been destroyed. The Court determined that the failure on the part of the insured to keep such books and records as would accurately reflect the amount of loss which it claimed deprived the insurance company completely of its protection against fraudulent claims on the part of the insured, that being manifestly the purpose of the record keeping provision of the policy and it being the settled law of South Carolina that record keeping provisions of a policy are valid and that substantial compliance by the insured is required.

3. 229 S. C. 230, 92 S. E. 2d 647 (1956).
4. 233 F. 2d 215 (4th Cir. 1956).

Cooperation of Insured

The Circuit Court of Appeals held in the case of *Pennsylvania Threshermen and Farmer's Mutual Casualty Insurance Company v. Owens*[5] that whether or not the insured has met his obligation to cooperate as provided by the terms of the policy is for determination of the trier of facts with the insurer carrying the burden or proving the alleged non-cooperation of the assured — that the mere showing that insured has disappeared by time of trial of the action without showing any circumstances affording a hint to explain his disappearance is insufficient to show lack of cooperation which would relieve insurer of liability under the policy. The insured in this instance had given a statement to the insurer which was held by the trial judge to occupy the same position as any other testimony offered by plaintiff.

Disability Under Policy

The Court held in the case of *Wardlaw v. Woodmen of The World Life Insurance Society*[6] that the evidence showed that the insured became disabled during the time the policy was in force and it was immaterial whether premiums were paid during a period thereafter; that the fact that no proof of disability was filed is an affirmative defense and must be pleaded.

Excess Insurer

In the case of *South Carolina Electric & Gas Company v. Aetna Life Insurance Company,*[7] the plaintiff insured had an excess machinery policy with a company paying for loss in excess of $10,000. Insured suffered damage to machinery and executed a loan receipt to the excess insurer wherein it was stated that from any recovery on fire policies and after payment of attorney fees and expenses of litigation, the excess insurer would be reimbursed for the amount it paid. Insured thereupon brought action against the insurer under the fire policies and such insurer moved for production of certain records by insured and an order requiring the excess insurer to be substituted as plaintiff in the action. The Court held that the right of action was vested in the insured alone and the excess insurer was not a necessary party at all

5. 238 F. 2d 549 (4th Cir. 1956).
6. 230 S. C. 234, 95 S. E. 2d 253 (1956).
7. 230 S. C. 340, 95 S. E. 2d 596 (1956).

and its joinder as a proper party was within the discretionary power of the Court. Further, it was stated that, assuming that the coverages here were mutually exclusive, it could not be adjudged as a matter of law, as contended by defendant, that the effect of payment by the excess insurer to insured was to relieve the defendant from liability under their policies.

Change of Beneficiary

In the case of *Swygert v. Durham Life Insurance Company*[8] the plaintiff was named as beneficiary under a policy of insurance in 1942 wherein the right was reserved to the insured to change the beneficiary. Plaintiff, to whom the insured was at one time engaged, kept the policy although insured paid the premiums. Six years later, insured applied for a new certificate of insurance in which he stated that the policy as originally issued was lost or destroyed and agreed that should the original policy be found the certificate of insurance would be null and void and that he would immediately return the certificate of insurance to the company for cancellation. A new certificate was issued and subsequently, pursuant to application of the insured, a change of beneficiary from plaintiff to insured's wife was effected and such change was endorsed on the back of the certificate. The Court held that insured had effected a valid change in beneficiary even though insured represented that the original policy had been lost or destroyed when he actually knew of its location — that the beneficiary has no right to raise objections to the failure to produce the policy for endorsement of the change of beneficiary thereon and that the provision in the policy requiring production of the policy for such purpose is for the benefit of the insurer and can be waived by it as was the case in this action.

Procedure

Hodge v. Reserve Life Insurance Company,[9] was an action by plaintiff seeking damages against defendant, a foreign corporation, for alleged fraud and deceit in the solicitation for the sale to plaintiff of policies of surgical and hospital insurance. The action was commenced in the Court of Common Pleas for Darlington County and upon the defendant moving for an order changing the place of trial upon the

8. 229 S. C. 199, 92 S. E. 2d 478 (1956).
9. 229 S. C. 326, 92 S. E. 2d 849 (1956).

grounds that this was an action *ex delicto* and it had no agent and maintained no office in Darlington County, the lower court denied such motion. Such decision was based on the provisions of Section 10-306 of the Code of Laws of South Carolina, 1952,[10] and concluded that while the action was in tort for fraud and deceit, the alleged damages arose out of claimed misrepresentations by defendant's agent as to coverage under the policies, which damages occurred in Darlington County and the alleged damages were within the statutory term "loss." On appeal, this order was reversed and the case remanded for entry of order transferring it to a county where defendant maintained an office and agent, the Court stating:

> We think that the phrase, 'where the loss occurs,' contemplates loss from a casualty insured against under the terms of the policy.

It was held in the case of *Blackwell v. United Insurance Company of America,*[11] that in the absence of the contract documents — the policy — the verity of the allegations of the answer could not be determined and it was, therefore, error to grant the motion of plaintiff to strike the answer as sham and frivolous and to order judgment thereupon for plaintiff.

Certain Provisions of Policies

The Court held that the company acted within its right in refusing to accept the renewal premium and thus extend the term of the policy in the case of *Chastain v. United Insurance Company.*[12] The policy contained a clause stating that the acceptance of any renewal premium should be optional with the company and the Court found no ambiguity in this provision of the contract and the rule of strict construction against the insurer would not apply here.

The case of *Jersey Insurance Company of New York v. Heffron,*[13] involved an appeal by the defendant insurance company from a judgment for the plaintiff in the United States District Court for damages growing out of an alleged explosion.

10. "All suits brought against any and all fire, life or other insurance companies in this state may be brought in the county where the loss occurs. . . ."
11. 229 S. C. 296, 92 S. E. 2d 702 (1956).
12. 230 S. C. 465, 96 S. E. 2d 464 (1957).
13. 242 F. 2d 136 (4th Cir. 1957).

The facts were quite interesting. Plaintiff's property was a two story frame dwelling on Queen Street in Charleston. Adjoining it was a two-story brick building formerly used as a garage for the post office. There was a space of approximately ten and one-half feet between the east wall of the old post office garage and plaintiff's house.

On December 4, 1951, the east and west walls of the garage fell or were blown out so that the west wall went to the west and the east wall went to the east. The north and south walls were substantially unaffected. There was considerable noise accompanying the happening described as "like a bomb exploding", etc. Large pieces of mortar from the garage wall were propelled by the force of the occurrence to the roof of plaintiff's house which was higher than the garage wall.

Under those facts, Judge Wyche sitting without a jury held that an explosion had occurred. The Court of Appeals affirmed saying:

> In this case the facts do not compel the conclusion reached by the Court as to the manner in which the damage to Plaintiff's property occurred, but we cannot say that the conclusion was without substantial basis. While the Court of Appeals has broader powers in reviewing a District Judge's findings of fact than in reviewing the findings of a jury (U. S. v. U. S. Gypsum Company, 333 U. S. 364, 395), it will not disturb his findings merely because it may doubt their correctness. It is required that the Court of Appeals be satisfied that the District Judge is clearly in error before it will set his findings aside. Federal Rules Civ. Proc. 52 (a) 28 U. S. C. A.

The Court likewise decided adversely to defendant's contention that the word "rupture" as used in the policy connoted a gradual rather than a sudden happening.