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1948–1962: Dudley W. Woodbridge (Acting Dean  
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## Insurance (1959-1967)

Dudley Warner Woodbridge  
*William & Mary Law School*

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# Insurance

9. Until 1957 Mary Jones had enjoyed sound health, but on June 2nd of that year she went to the hospital suffering from abdominal pains. On June 13th, she underwent an operation and her surgeon removed a mass growth from her intestines, and Mrs. Jones was so informed. Though Mrs. Jones' actual trouble was cancer, that fact was not told to her or to her daughter, Alice Brown. The doctor fully realized the seriousness of his patient's illness, but hoped to cure her so that she might resume a normal life. After the operation, Mrs. Jones improved, and on July 1, 1957 she was able to leave the hospital and return to her home. A week or so later she resumed her normal life and was reasonably active for a woman of 53 years of age. She performed all of her usual house work, such as washing, cooking and attending to her flowers, etc.

In June, 1958, S.R. Smith, an insurance agent, went to Mrs. Alice Brown and talked with her about a life insurance policy on her mother, Mrs. Jones. Mrs. Brown informed the agent about the operation upon her mother for the removal of a growth from her intestines. The insurance agent asked Mrs. Brown if her mother's health was good, and Mrs. Brown told the agent, "As far as I know, Mother feels a lot better than I do." The agent took out an application for insurance and asked Mrs. Brown numerous questions, which she answered truthfully. After the application was filled out the agent asked Mrs. Brown to sign it for her mother, which she did. Mrs. Brown signed her mother's name thereto without reading any of the answers that had been written by the agent. The company issued the policy payable to the estate of Mrs. Jones. The agent made no attempt to interview Mrs. Jones, and she was never informed that the application had been made or that a \$1,000 policy was issued. It later turned out that as to a material question, an answer had been written that Mrs. Brown did not give. The question asked was if insured had ever suffered from cancer. The answer "No" was there written by the agent. In March, 1959, Mrs. Jones became ill and went back to the hospital. She became increasingly worse and died of cancer in April, 1959. Upon Mrs. Jones' death, her Executor demanded payment of the thousand dollars claimed to be due under the policy, but the Company denied liability on the policy on the ground that false representations and answers material to the risk had been made in the application and hence, the contract of insurance was void. Mrs. Brown comes to you and states the above facts, and asks you whether the Company is liable under the policy. How would you advise?

(INSURANCE) <sup>59</sup> One of these answers should be given: (1) The Company would be liable. The wrong was that of the Company's agent. Mrs. Brown could assume that if she gave correct answers such answers had been put down. So held in 194 Va. 966. The statement that her mother was in good health means only that as far as she knows she is in good health, or (2) Under V#38.1-330 it is necessary that the individual insured apply for the policy, has knowledge thereof or consents thereto at the time of the making of the contract except in the cases of group insurance, insurance between husband and wife, and insurance on the life of a minor. Since this statute is one stating Virginia's public policy it cannot be avoided by waiver or estoppel. Hence the Company would not be liable.

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7. During 1954 while happily married, Ruth Rhodes was issued a policy of insurance by Sure-Pay Life Insurance Co. insuring the life of her husband Caleb Rhodes. The policy provided for the payment of \$10,000 to Ruth on the death of Caleb. Thereafter Ruth and Caleb became estranged and in February of 1959 the two were divorced. The divorce decree provided for an absolute divorce and extinguished the rights of each in the property of the other. In October of 1959 Caleb died and Ruth, who at all times had paid the premiums with her own private funds, tendered the policy to Sure-Pay Life Insurance Co. and demanded that it pay her \$10,000. The Company denied that it owed Ruth the \$10,000, asserting that she had no insurable interest in the life of Caleb. The Company did, however, tender to her a refund of the \$1,482 she had previously paid as premiums on the policy. Ruth now asks you whether she may recover from Sure-Pay Life Insurance Co. the full of \$10,000, or whether she should accept the premium refund. What should you advise her?

(INSURANCE) I would advise her that she was entitled to the whole \$10,000. In life insurance an insurable interest is required only at the inception of the policy, so the policy is valid. The fact that she herself had paid all the premiums gives her a still stronger case. Her contract with the insurance company was her property and not her husband's, so the divorce decree extinguishing the rights of each in the property of the other had no effect on her rights in the policy.

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5. Bereaved Spook filed a Motion for Judgment in the Circuit court of Rappahannock County against Granite Life Insurance Co. to recover the benefits of a life insurance policy issued by that company to her husband, Spector Spook. At the trial of the case the following facts were proved:

That Weasel, the local insurance agent for Granite Life Insurance Co., sold a life insurance policy to Spector Spook which named plaintiff as beneficiary; that all premiums on said policy had been promptly paid; that before the policy was issued Weasel explained to Spector that he would have to file a written application for the policy; that the application was filled out by Weasel; that Spector informed Weasel that he had been treated for arteriosclerosis and that he had previously been denied life insurance by three other companies; that Weasel wrote the answers to the questions on the application blank and falsely stated that Spector had never suffered from arteriosclerosis, and that he had never been turned down for insurance by any other company; that Spector signed the application without reading it; that a policy was issued to Spector, to which a copy of the application was attached, and that Spector placed the policy in his lock box; and that Spector never read the policy or application prior to his death. After plaintiff announced that she rested her case, defendant moved to strike the evidence. How should the court rule on the motion?

(INSURANCE) The motion should be denied. The question states that the facts set forth therein were proved. Hence deceased acted in good faith. He could assume that correct answers were put down by the agent as long as he had no reason to suspect the contrary. If the insurance company has been defrauded it was by an act of its own agent, and the loss should fall on it rather than on the innocent insured and his beneficiary. See 194 Va.966 on p.2118 of Insurance Cases in these notes.

6. <sup>160</sup> Bliss was indebted to Vickers in the sum of \$5,000 as a result of a business transaction between them. When Bliss was unable to pay this debt, Vickers cancelled the obligation out of generosity and his regard for Bliss. Mindful of Vickers' kindness to him, Bliss purchased a policy of life insurance on his own life, in the face amount of \$5,000, and named Vickers as beneficiary. He reserved the right to change the beneficiary at any time. Shortly thereafter, Bliss felt another economic crisis coming, and he borrowed \$1,000 from Bank and assigned the life insurance policy as collateral security. Vickers joined in the assignment.

Upon Bliss' death without having paid Bank, the insurance company paid Bank \$1,000, demand on the administrator of Bliss' estate for payment to him of \$1,000 from the estate, but this demand was likewise refused.

Vickers seeks your advice and asks you (a) whether he has sufficient legal interest in the policy to entitle him to recover any of its proceeds, and (b) if so, is he entitled to recover \$1,000 from the estate of Bliss. How would you advise him with respect to questions (a) and (b)?

(INSURANCE) (a) Yes, Vickers has sufficient legal interest in the policy to collect \$4,000. The assignment was to secure a debt of \$1,000. Vickers still remained beneficiary subject only to the assignment. The law permits anyone who is sui juris to make anyone he wishes the beneficiary. The insured has an insurable interest in his own life. Since Bliss could have made the insurance payable to his estate and then willed it to Bickers there is no reason why he cannot do directly what he could do indirectly. If Bliss has that much confidence in Vicker's integrity, the chances of Vickers killing Bliss to get the insurance are negligible. (b) Yes. Bliss was primarily liable for the \$1,000 and Vickers' interest in the policy was security therefor -- a suretyship in re. On suretyship principles Vickers would be subrogated to Bank's rights against Bliss' estate. See 184 Va.259 on p.2107 of the Insurance Cases in these notes.

5. <sup>161</sup> Motorist, a resident of Roanoke, Va., effected an automobile liability policy in Safedriver Insurance Co. While driving on a trip to Norfolk, he was involved in a collision with a car driven by Claimant, who received serious injuries. Motorist was

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not hurt. The State Trooper investigating the accident told Motorist that the physical evidence showed conclusively that the accident resulted solely from the negligence of Claimant, who was given a traffic summons and forfeited his appearance bond. Motorist was so sure that he would hear nothing further from Claimant, and that the collision was due solely to Claimant's negligence, that he did not report the occurrence to his insurance company until he was sued by Claimant almost two years after the accident. As soon as suit papers were served on Motorist, he sent them to the Insurance Company and then learned for the first time that his policy contained this provision:

"When an accident occurs, written notice shall be given by or on behalf of the insured to the Company as soon as practicable."

Insurance Company asks your opinion on the above facts as to its liability for the defense of the action and the payment of any adverse judgment that might be rendered.

How ought you to advise it?

(INSURANCE) I would advise that it was not liable. The provision for notice is so important that it goes to the essence of the insurance contract and is an implied condition to liability even when not made an express condition. See 189 Va.913 in the Insurance Cases in these Notes and 199 Va.221 in accord therewith.

7. Henry Hopewell worked as an employee of the Fair Furniture Company in Lawrenceville, Virginia. In 1959, during his employment there, Henry became covered by a group insurance policy which provided for termination of coverage upon termination of employment, but gave the employee the right to convert the policy to an individual one within 30 days after termination of his employment.

Henry's employment at Fair Furniture Company was terminated on January 30, 1960. Under the terms of the above policy, he applied for and obtained an individual policy, the stated effective date of which was February 1, 1960, naming his wife as beneficiary. On January 20, 1961 he committed suicide. The new policy limited the Company's liability to return of premium if suicide occurred within one year from its effective date.

Hopewell's wife has sued for the full amount of the policy, contending that the new policy was but a continuation of the group insurance, and therefore the suicide clause did not apply. How ought the court to rule?

(INSURANCE) The court should rule that the clause does apply. The individual policy is a new contract made at a different time and for a different premium. The suicide clause is a usual provision in such policies. 199 Va. 273 on p. 2121 of the Insurance cases in these notes.

7D47 While riding as a guest passenger in an automobile owned and operated by his brother-in-law Maverick, Mangle was seriously injured when the car struck a telephone pole. Maverick reported the accident to Black Hawk Insurance Co., his liability carrier, and informed the adjuster that the accident was entirely his fault. The company suspected that Maverick was not telling the truth about how the accident occurred, although it had no proof that he was falsifying at that time. The insurance policy contained the customary requirement that the insured cooperate with the company in the defense of any action brought against him, and the policy contained the further provision that no action should lie against the company unless the insured had fully complied with all of the terms of the policy. Mangle sued Maverick to recover damages for his injuries, and Maverick promptly forwarded the motion for judgment to his insurance company. The insurance company advised Maverick that it would defend him in the action brought by Mangle, but reserved the right to deny liability for the payment of any judgment if it could be later shown that Maverick had failed to cooperate with the company as required by the policy. At the trial of the case Maverick testified that while driving his car at a speed over 70 miles per hour he reached into the back seat to get a bottle of beer and that this caused him to strike the pole. A judgment was rendered against Maverick for the sum of \$15,000 in favor of Mangle.

Shortly after the judgment became final, the insurance company for the first time learned that Maverick had withheld from it the names of three witnesses who would have testified unequivocally that they saw the accident, and that Maverick was driving at a speed of 35 miles per hour, and that Maverick was forced off of the road by Banjo who suddenly stepped in front of Maverick's vehicle, causing him to swerve from the road. The speed limit was 55 miles per hour. In a later action by Mangle against Black Hawk Insurance Company to recover the amount of the judgment, the company denied liability claiming that Maverick had violated the provision of the policy requiring him to cooperate with the company in the defense of the action brought against him. Who should prevail?

(INSURANCE) Insurance Company should prevail. There has been a flagrant violation of the co-operation provision justifying the company in rescinding its contract with Maverick. Insurance Company has avoided a waiver by expressly reserving its rights. Mangle can have no greater rights against the Company than Maverick has for if Maverick's policy can be avoided, its avoidance destroys any derivative rights Mangle would otherwise have. See 199 Va. 908 on p. 2122 of the Insurance Cases in these Notes.

7. <sup>183</sup> Moss purchased and paid the premium for an automobile liability insurance policy from Insurance Company. One of the provisions of the policy was as follows:

"The Insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits."

While driving his automobile, Moss collided with a n automobile owned and operated by Prim. Prim instituted an action against Moss for damages, alleging that Moss had negligently caused him injuries. Insurance Company defended the action under a reservation of its rights. The trial resulted in a verdict and judgment for Prim in the amount of \$1,000. When Insurance Company failed to pay the judgment to Prim, and after execution against Moss was returned "no effects", Prim instituted an action against Insurance Company alleging that he was entitled to recover his judgment against Moss by virtue of Moss' liability policy. At the trial of this action, Insurance Company's adjusters testified that they had first learned of the accident from Prim two days after it occurred, that Prim had supplied the names of all witnesses, that Moss declined to come to the Company's office to advise it how the accident occurred, and that it was not until the morning of the trial of Prim v. Moss that Moss gave the Company his version of how the accident occurred.

At the conclusion of all the evidence Insurance Company, over the objection of Prim, requested the court to instruct the jury as follows:

"If you believe from a preponderance of the evidence that Moss failed to cooperate with Insurance Company, even though you may also believe from the evidence that such failure to cooperate did not prejudice the company, then your verdict should be for Insurance Company."

Should the court so instruct the jury?

(INSURANCE) Yes. Cooperation on material matters is contractual and a . . . condition. Hence it is immaterial whether the Company was prejudiced. The Company is also privileged to defend under a timely reservation of rights without waiving any of its own rights. Creditors of the insured can have no greater rights than the insured. Note that this was not a policy of insurance issued to satisfy the provisions of the Motor Vehicle Safety Responsibility Act in which case the provisions of that act would apply. See 189 Va.913.

6. Father and Son jointly owned an automobile. A policy of liability insurance was effected on this automobile, which stated that Father was the sole and unconditional owner. There was a provision in the policy which provided that if the ownership of the automobile was not sole and unconditional, the insurance should not apply. Son loaned the automobile to Friend, who was involved in an accident, in which third persons were injured. The Insurance Company consults you and tells you that if it had known that Son was a joint owner with Father, it would have issued a policy and named both of them as insureds, and asks you whether the fact that the ownership was not sole and unconditional affects the Company's liability. How ought you advise?

(INSURANCE) It does not. If the misrepresentation is not material to the risk when assumed it will not avoid the policy. Here the Company admits it was immaterial. To allow avoidance on that ground would also violate the spirit of the statute requiring each automobile liability insurance policy to contain the omnibus clause which insures anyone driving the car with insured's permission. See 202 Va.579 on p.2126 of the Insurance Cases in these Notes.

6. <sup>767</sup> John Kerns, a business executive of Culpeper, Va., purchased in 1955 a \$10,000 policy of life insurance on his life and designed his estate as beneficiary. All premiums were, through the life of the policy, paid by him. Reserving the right to change the beneficiary, he subsequently named his girl friend, Ruby Burton, the beneficiary under the policy. In 1961, Kerns borrowed from Farmers Bank the sum of \$3,000 and assigned the policy, with other collateral, to secure the payment of the note executed to evidence the debt. Insurance Company was notified of the assignment. In 1963, upon the death of John Kerns, the Insurance Company, at the bank's request, paid \$3,000 to Farmers Bank on the debt and delivered to Ruby Burton a check for the balance of \$7,000. William Kerns, Administrator of the Estate of John Kerns, instituted an action against Ruby Burton, claiming that she had no insurable interest in the life of John Kerns and should pay over to his estate the \$7,000. Ruby counterclaimed, setting forth that not only was she entitled to the \$7,000, but that the estate owed her the \$3,000 deducted from the policy and paid on the note to Farmers Bank. Issue was joined on these two claims. How ought the Court decide?

(INSURANCE) The Court should decide in favor of Ruby Burton on both matters. Every person has an insurable interest in his own life, and, if sui juris, may make anyone the beneficiary. Since John Kerns only pledged the policy as security he did not intend to divest Ruby Burton of her rights. Hence she is subrogated to the bank's rights against Kern's estate. Had Kerns redeemed the policy, as he intended, he would have had \$3,000 less in his estate and \$3,000 more in life insurance for the benefit of Ruby Burton. See 184 Va.259.

9. <sup>765</sup> Doubting Thomas was issued a \$10,000 life insurance policy by Southern Bell Life Insurance Company. In his application he truthfully warranted that he was a professional actor, and that he was not engaged in the employ of a railway company or an airplane company. The policy provided that the company insured the life of Thomas so long as he was engaged solely in the business of a professional actor. The policy also provided:

"This policy shall be incontestable for any cause after it shall have been in force during the life of the insured for two years from its date."

After the policy had been in effect for three years Thomas was killed while he was employed as a brakeman by a railway company. Thomas was employed by the railway company without the knowledge and consent of the insurance company. The beneficiary in the policy sued the insurance company to recover the face amount of the policy and the company defended, denying liability on the ground that Thomas was employed as a brakeman by a railway company at the time of his death, and had been so employed for six months previously. The beneficiary insisted that the company could not deny liability in view of the incontestable clause.

Is the beneficiary entitled to recover?

(INSURANCE) No. The incontestable clause has to do with the insurer's right to avoid a voidable contract of insurance. It has nothing to do with the coverage which remains the same throughout the life of the policy. See 159 Va.832 and 170 Va.479.

8. Billy Jenkins had acted as an agent of Premier Fire Insurance Co. for many years. On June 15, 1964 he approached the President of Richmond Tobacco Corporation urging that there be obtained from Premier Fire Insurance Company a policy insuring the corporation's tobacco warehouses against loss by fire. The President, who had been authorized to do so by the Board of Directors, signed on behalf of the corporation an application for such fire insurance in the face amount of \$200,000. A policy for that amount was promptly issued to the corporation by Premier Fire Insurance Co. in exchange for the initial premium of \$500 paid by the corporation. In August of 1964, a large tobacco warehouse of Richmond Tobacco Corporation was destroyed by fire, and the corporation made demand upon Premier Fire Insurance Co. to compensate it for the loss. Premier Fire Insurance Co. refused to do so. Shortly thereafter Richmond Tobacco Corporation brought an action on the policy against Premier Fire Insurance Company in the Law and Equity Court of the City of Richmond, asking recovery of \$140,000 as its loss.

On the trial of the case, Premier Fire Insurance Co. proved that for many years it had followed a fixed rule advising its agents that it would not insure against loss by fire any building which had been damaged by another fire within twelve months prior to the time of the making of application for fire insurance; that this rule was well known to Billy Jenkins; that the destroyed warehouse had been damaged by fire on January 10, 1964, and again on May 11th in the same year; that the application for insurance which had been signed by Richmond Tobacco Corporation, after the question "Have these premises been damaged by fire within the past twelve months?" bore the answer "No"; that the misrepresentation was material to the risk of Premier Fire Insurance Co.; that it would not have issued the policy to Richmond Tobacco Corporation had the true facts been stated; and that it had tendered back to Richmond Tobacco Corporation the \$500 premium paid. Richmond Tobacco Corporation proved that its President, at the time the application was solicited, told Jenkins of the two prior fires; that Jenkins informed the President that such prior losses were not material; that Jenkins had the President sign on behalf of Richmond Tobacco Corporation a blank form of application; that all answers to the questions on the form were filled in by Jenkins after he left the President's office; and that Richmond Tobacco Corporation at no time prior to the fire loss was advised of the answers placed on the application form by Jenkins. The jury returned a verdict for Richmond Tobacco Corporation for \$134,000. Premier Fire Insurance Company then moved the court to set aside the verdict as contrary to the law of the case. Should this motion have been sustained?

(INSURANCE) No. The rule in Virginia is that if the applicant makes true statements and the agent puts down false ones and the applicant is in no way to blame, notice to the agent is notice to the principal and the company who employs such an agent is estopped to rely on its own agent's wrong. See 168 Va. at p. 645; also 198 Va. 255 on p. 2121 of the Insurance Cases in these Notes.

6. <sup>D66</sup> John Dare had for some time been seeking out Dave Smooth to "teach him a lesson" for taking out John's girlfriend and John carried a pistol for this purpose. Finally, John caught up with Dave at a local beer parlor, and without warning, fired a shot at Dave. John's aim was not too good, for the shot only creased Dave's head. Dave dove at John and a scuffle ensued. During the scuffle John fell to the floor, hitting his head upon the bar railing. As a direct result of this blow to his head, John died. At the time of his death, John had in effect a policy of accidental death insurance in which the insurance company had agreed to pay the named beneficiary, John's mother, \$5,000, upon the death of John, if the death were "effected solely through external, violent, and accidental means." The insurance company refused to pay the beneficiary, on the ground that John's death had not been caused by accidental means within the meaning of the policy. The beneficiary now comes to you for advice.

How ought you to advise her?

(Insurance) There was no accident here, so there can be no collection on the policy. The deceased precipitated a fight and death could have been reasonably foreseeable. There is no accident if death could reasonably be anticipated from the activity. See 202 Va. 758.

7. <sup>1965</sup> Strict, a resident of Norfolk, Va., let his seventeen-year-old son, Loafer, use the family automobile but on the condition that he was not to let anyone else drive it. Loafer faithfully promised to honor this command, but toward the end of a gay evening, he decided to let his friend, Sharpie, drive so that Loafer and his date could ride in the back seat. While driving the automobile, Sharpie negligently struck and injured Faultless, who thereafter sued Sharpie for damages for personal injury.

Strict had a liability insurance policy issued in Norfolk, Va., on his automobile which provided insurance protection only when the driver had the permission or consent of the named insured to operate the automobile, and the company denied liability under the policy and refused to defend the action against Sharpie. After Faultless recovered a judgment against him, Sharpie sued the insurance Company for the amount of the judgment. Is the company liable?

(INSURANCE) The Company is liable. V#38.1-381(a) as amended in 1962 expressly provides that consent may be given by the owner or custodian. The son was a custodian and gave his consent.

Note: Before the amendment the law was otherwise where the owner told the party to whom he entrusted the car not to let anyone else drive. It is arguable that the above statute in so far as it relates to custodians is applicable only to a non-owned automobile (as where X buys a stolen car and takes out liability insurance). A recent federal case, 238 F.Supp. 141 (1965) allowed a recovery with no mention of the above statute although the case arose after the effective date of the 1962 amendment.

3. <sup>See</sup> Jones, a special agent of the Allright Life Insurance Co., solicited Strong to take out a policy of life insurance in that company. Jones had no authority to do anything except solicit applications and collect and remit to the Company the first premium. Pursuant to the solicitation Strong signed an application for a policy of \$5,000. The material parts of the application were: "No statements or promises made by the person soliciting this insurance shall be binding on the Company, and the Company shall incur no liability on account of this application until a policy is issued and delivered to the applicant during his lifetime, he then being in good health and having then paid the first premium."

Jones arranged for a medical examination of Strong and seeing him after the examination had been made said to him: "You passed the medical all right. I have sent your application in to the Company. Now pay me the premium and you will be insured". Strong then paid Jones the first premium. The medical report was not satisfactory and the Company delayed several week in acting on the application while it was making further investigation. Before the investigation was completed, Strong was killed. The Company tendered the return of the premium and denied liability.

You are consulted as to the right of the beneficiary to recover. How ought you to advise?

(INSURANCE) Beneficiary may not recover, the company's application being a proposal and no acceptance except as the conditions of its statement were to be complied with. At least as to its liability on the contract, the company was under no duty to act promptly, although some few cases throughout the nation have held that it might constitute tort liability if the delay was negligent because unreasonable, and the applicant was misled. 198 Va.670.

9. John Smith held a policy of public liability automobile insurance issued by Imperial Insurance Company. The policy provided for coverage up to \$15,000 for injuries caused any one person through the negligence of Smith in the operation of his automobile. On Sept. 14, 1966, Smith carelessly drove through a red light and struck John Rolfe, a young business man who was properly walking across the intersection. As a result of the accident, Rolfe was severely injured and permanently crippled. Smith promptly gave proper notice of the accident to Imperial Insurance Company and asked that they defend any claim made against him, as provided for by the policy. In February of 1967, Rolfe brought an action against Smith in the Law and Equity Court of the City of Richmond seeking damages of \$75,000. After the action was brought, Smith called upon Rolfe and persuaded him to compromise the action by accepting \$6,000, in full settlement. Smith at once notified the Insurance Company of Rolfe's willingness to settle at that figure and recommended that the Company make the necessary payment. The Insurance Company, which under the terms of the policy, had the sole right to determine the compromise of claims, advised Smith that they thought the settlement figure was too high and rejected it, and said they would let the litigation continue and defend the case on behalf of Smith. The case was tried without error on May 15, 1967, and the jury returned a verdict against Smith and for Rolfe awarding the latter damages of \$54,000. On May 22nd, Imperial

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Insurance Company paid Rolfe \$15,000, Smith paid him the remaining \$39,000, and the judgment was marked "satisfied". Smith has now brought an action against Imperial Insurance Company to recover damages for \$39,000, and his motion for judgment has alleged all the foregoing facts, and has charged that the Company did not act in good faith when it refused to compromise the case for only \$6,000. Imperial Insurance Company has demurred to the motion for judgment. Should the demurrer be sustained? (INSURANCE) No. The motion for judgment alleged all the facts sufficient to constitute a cause of action and therefore the demurrer will not lie. The Supreme Court of Appeals, in 206 Va.749(1966), recognized that where an insured is sued on a liability insurance policy by an injured party and an offer to compromise the claim within the limits of the coverage of the policy is rejected by the insurer, who is defending the insured, and a verdict is returned well in excess of the policy coverage against the insured, the insured has a cause of action against the insurer for the excess amount which he must satisfy, if the insurer acted in what amounts to bad faith in rejecting the offer of compromise. The Court stated the "the obligation assumed by the insurer with respect to settlement is to exercise good faith in dealing with offers of compromise, having both its own and the insured's interests in mind. Thus stated, the Court adopted the Bad Faith Rule in relation to the liability of the insurer to his insured. Smith, in his motion for judgment, stated all the facts and then alleged that the insurer did not act in good faith in rejecting the offer of compromise. Thus, Smith has stated a cause of action and the demurrer should be overruled.

8. <sup>D67</sup> Hawkeye purchased and carried a life insurance policy issued by Southern Life Insurance Co. The policy provided for the payment to Hawkeye's sister as beneficiary, an amount indicated in a schedule of sliding payments ranging upward from five hundred dollars for death of the insured at age of twenty-one to five thousand dollars for death at fifty years of age, thereafter gradually decreasing in amount for added age. The policy contained this language:

"In each case the amount of benefits is to be determined by the attained age at the time of death."

The policy contained this further provision:

"Should the insured die or death be caused directly or indirectly from heart disease, liver, bladder or kidney trouble, contracted within three years from the date of this policy, the company will pay one-fifth of the amount otherwise payable under the terms of this policy."

The insured died from heart disease which had its inception during the third year from the date the policy was issued. The beneficiary made claim for three thousand dollars, the amount named in the policy at the attained age of the insured at the time of his death. The company refused payment in that amount, and offered to pay the sum of six hundred dollars, being one-fifth of the amount otherwise payable. The beneficiary refused to accept that amount and sued the company to recover three thousand dollars, contending that the company could not contest its obligation to pay according to the schedule contained in the policy. In support of this contention the beneficiary relied upon the provision of the Virginia statute which provides that a policy of life insurance shall be incontestable "for any cause after it shall have been in force during the lifetime of the insured for two years from its date."

Is the contention of the beneficiary sound, and may she recover the sum of three thousand dollars?

(INSURANCE) The beneficiary may not recover the sum of three thousand dollars. The incontestable statute applies when the validity of an insurance policy is contested; it does not apply to the contract provisions of the policy which exclude certain risks. Here the contest relates to the coverage of the policy, and not to its validity, and hence the incontestable statute has no application. 170 Va.479, 38.1-441.

7. <sup>D67</sup> Homer Vance purchased a life insurance policy from the Beneficial Life Insurance Company, naming as the beneficiary therein his daughter, Sally Vance. He also purchased a fire insurance policy on his home from the Fire and Casualty Insurance Company. Sally Vance, for consideration, assigned her interest in the life insurance policy to Happy Creek, who was in no way related to Sally and her father. Also, Homer Vance, for consideration, assigned his fire insurance policy to Ralph Surry, who had no interest in the property. Both assignments were made without the knowledge and consent of the insurance companies. Neither policy contained a provision respecting assignability. A year after the assignment of the fire insurance policy, and while Homer Vance was still living, his house was destroyed by fire. Six days after the house burned Homer Vance died.

(a) Ralph Surry consults you and inquires whether he may enforce collection of the fire insurance from Fire and Casualty Insurance Company.

(B) Happy Creek consults you and inquires whether he may enforce payment of the life insurance policy assigned to him. What would you advise?

(INSURANCE) Surry may not enforce collection of the fire insurance, since he had no interest in the house at the time of loss. Furthermore, the general rule as to fire insurance policies is that since they are regarded as personal contracts depending upon the confidence reposed by the insurers in the owners of property, they are not assignable before loss without the consent of the insurer. 29 Am Jur

#652, pp.929,930.

(b) Happy Creek may enforce payment of the life insurance policy. In the absence of contrary provision in the policy, an assignment may be made of a life insurance policy without regard to whether the assignee has an insurable interest in the life insured or not, and the assignee may recover upon it whatever the insured might have recovered but for such assignment. 38.1-442.