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unanswered was whether the general contractor could obtain tort immunity by duplicating the insurance which the subcontractor carried.

The court, in the *Thomas*²³ case, regarded the general contractor as "a volunteer in taking out insurance . . ." ²⁴ that the law did not require. It was pointed out that the employee was not benefited by the fact that two persons carried compensation insurance for his benefit. The court concluded that immunity "is a benefit accruing from carrying compensation insurance only in case the law imposes a duty to do so. . . ." ²⁵ By its decision, the court has further restricted the concept of tort immunity as applied to the general contractor.

It is to be questioned whether the strict "no immunity" rule makes sufficient allowance for the fact that one of the objectives of "statutory employer" provisions is to give the general contractor an incentive to require his subcontractors to carry insurance.²⁶ If the general contractor does compel his subcontractors to provide the coverage, the general contractor's reward, under the "no immunity" rule, is loss of exemption from "third party" suits. Certainly, "a sounder result would seem to be a holding that the overall responsibility of the general contractor for getting subcontractors insured, and his latent liability for compensation if he does not, should be sufficient to remove him from the category of a 'third party'."²⁷ Thus, the general contractor is under a *continuing potential liability* and has assumed a burden in exchange for which he should be entitled to immunity from all "third party" damage suits.

JOSEPH P. METZGER

DUE PROCESS OF LAW — SUIT CLAUSES AS A DEFENSE

Defendant issued to plaintiff, in Illinois, a personal property floater policy on chattels then located in that state. Plaintiff subsequently moved to Florida where his insured property was destroyed or stolen. A clause in the policy required that suit be brought within twelve months after discovery of the loss. Defendant denied liability and plaintiff brought suit more than two years later in a federal court in Florida. The district court held the clause void under the public policy of the state as declared in a Florida statute which made illegal stipulations in *any* contract that

23. *Thomas v. George Hyman Constr. Co.*, 175 F. Supp. 381 (D.D.C. 1959).

24. *Id.* at 383.

25. *Ibid.*

26. 2 LARSON, WORKMEN'S COMPENSATION LAW § 72.31 (1952).

27. *Ibid.*

shortened the period of limitations.¹ *Held*, reversed: the "suit limiting clause" in the policy constituted a substantive property right protected by the fourteenth amendment, and in view of the forum's slight connection with the substance of the contract obligations, a violation of due process would result if the Florida statute were applied to this provision. *Sun Ins. Office, Ltd. v. Clay*, 265 F.2d 522 (5th Cir. 1959).

Contractual provisions reasonably limiting the time within which actions may be brought are generally valid.² A number of states, however, have enacted statutes³ making such stipulations void as against public policy.⁴ Serious constitutional problems are presented when a "suit limiting clause," *valid where made*, is used defensively⁵ in a jurisdiction that holds such clauses unenforceable.⁶

To prevent contractually assumed obligations from being expanded beyond original contemplation, certain constitutional safeguards have been

1. FLA. STAT. § 95.03 (1957) provides: "All provisions . . . in any contract whatever . . . fixing the period of time in which suits may be instituted under any such contract . . . at a period of time less than that provided by the statute of limitations of this state, are hereby declared to be contrary to the public policy of this state, and to be illegal and void. No court in this state shall give effect to any provision or stipulation of the character mentioned in this section."

2. U.S.: *Riddlesbarger v. Hartford Fire Ins. Co.*, 74 U.S. (7 Wall.) 386 (1869); *Colo.*: *Capitol Fire Ins. Co. v. National Fire Ins. Co.*, 131 Colo. 64, 279 P.2d 435 (1955); *Del.*: *Murray v. Lititz Mut. Ins. Co.*, 5 Terry 447, 61 A.2d 409 (Del. 1955); *Ky.*: *Johnson v. Calvert Fire Ins. Co.*, 298 Ky. 699, 183 S.W.2d 941 (1944); *Burlew v. Fidelity & Cas. Co.*, 276 Ky. 132, 122 S.W.2d 990 (1938); *Mass.*: *London Clothes, Ltd. v. Maryland Cas. Co.*, 318 Mass. 692, 63 N.E.2d 577 (1945); *Tenn.*: *Hill v. Home Ins. Co.*, 22 Tenn. App. 429, 145 S.W.2d 800 (1941); *Card v. Commercial Cas. Ins. Co.*, 20 Tenn. App. 132, 95 S.W.2d 1281 (1936); *Wis.*: *Griem v. Fidelity & Cas. Co.*, 99 Wis. 530, 75 N.W. 67 (1898).

What has been considered reasonable by the courts usually depends upon the particular factual pattern present for decision. Most policies state that action must be brought within twelve months after the occurrence which gives rise to the claim. *Rouse v. Old Colony Ins. Co.*, 203 N.C. 345, 166 S.E. 177 (1932). Stipulations of six months have been upheld: *Griem v. Fidelity & Cas. Co.*, 99 Wis. 530, 75 N.W. 67 (1898); as have provisions requiring that action be brought within four months: *Cunningham Leather Co. v. American-Hawaiian S.S. Co.*, 285 Mass. 232, 189 N.E. 98 (1934) (provision included in bill of lading.)

Some states have statutes whereby insurance companies may not include a limitation of less than one year in the policy: *CONN. GEN. STAT. § 38-27* (1958); *VA. CODE § 38.1-341* (1950).

3. *Ala.*: *ALA. CODE tit. 7, § 28* (1940); *Ariz.*: *ARIZ. REV. STAT. § 20-1115* (1957); *Fla.*: *FLA. STAT. § 95.03* (1957); *Idaho*: *IDAHO CODE ANN. § 29-110* (1947); *Kan.*: *KAN. GEN. STAT. § 60-306* (1949); *Miss.*: *MISS. CODE ANN. § 724* (1942); *Mo.*: *MO. ANN. STAT. § 431.030* (Vernon 1956); *Mont.*: *MONT. REV. CODES ANN. § 13-806* (1947); *N.D.*: *N.D. REV. CODE § 9-0805* (1943); *Okla.*: *OKLA. STAT. ANN. tit. 15, § 216* (1937); *S.C.*: *S.C. CODE § 10-116* (1952); *S.D.*: *S.D. CODE § 10.0705* (1939).

4. Such provisions, when included in a contract executed in any of these states would not be upheld there or in another jurisdiction, because a contract invalid where made will not be given judicial enforcement in any state. *J. R. Watkins Co. v. Hill*, 214 Ala. 507, 108 So. 244 (1926); *American Nat'l Ins. Co. v. Smith*, 13 S.W.2d 720 (Tex. Civ. App. 1929). See *STUMBERG, CONFLICT OF LAWS* 226 (2d ed. 1951).

5. The courts have drawn a distinction between actions in which affirmative enforcement is desired and those where a party is attempting to assert the suit clause as a substantive defense. *Holderness v. Hamilton Fire Ins. Co. of New York*, 54 F. Supp. 145 (S.D. Fla. 1944) discusses the difference. It is the only case which has interpreted the Florida statute under a similar fact pattern. In the *Holderness* case, the insurance

established. Thus it has been said that once these obligations lawfully vest, they cannot be ignored by a sister state on the grounds of its public policy.⁷ When expressed within the framework of the fourteenth amendment, due process will not permit the forum to widen the limits of liability as established by the contract in accordance with the law of the place where made.⁸

In the case of *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*,⁹ which expanded the doctrine of *Home Insurance Co. v. Dick*,¹⁰

policy was executed in North Carolina on property located there, which was destroyed there. The Florida district court would not deny enforcement to the policy's suit limiting clause as Florida's contacts were not sufficient to warrant the application of the statute. In *Ciampittiello v. Ciampittiello*, 134 Conn. 51, 57, 54 A.2d 669, 671 (1947), the parties entered into a gambling contract in Rhode Island where it was enforceable. The Connecticut court would not enforce plaintiff's claim stating that it contravened the "ancient and deep rooted public policy of this state and therefore cannot be enforced in our courts." In *Lloyd v. Cooper Corp.*, 101 Fla. 533, 134 So. 562 (1931), the Florida court declined to enforce a note executed by a married woman in Illinois, when she could not have executed such a note in Florida. See *Loucks v. Standard Oil Co. of New York*, 224 N.Y. 99, 120 N.E. 198 (1918).

6. The court must decide whether the statute was intended to apply to interstate as well as intrastate transactions. In the absence of express legislative intent to the contrary, such statutes are usually enacted with only the intrastate situation in mind, notwithstanding the use of such broad terms as "any contract." See FLA. STAT. § 95.03 (1957); Cheatham & Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959, 975 (1952).

Insurance policies are generally construed as contracts made where the first premium is paid and the policy delivered. *Mutual Life Ins. Co. of New York v. Johnson*, 293 U.S. 335 (1934); *Sovereign Camp, Woodmen of the World v. Mixon*, 79 Fla. 420, 84 So. 171 (1920); *American Fire Ins. Co. v. King Lumber & Mfg. Co.*, 74 Fla. 130, 77 So. 168 (1917), *aff'd*, 250 U.S. 2 (1919); *National Life & Acc. Ins. Co. v. Whitlock*, 198 Okla. 561, 180 P.2d 647 (1946).

Most courts have solved the problem by looking to the *lex locus contractus*. Impressed with the need for uniformity and certainty of adjudication, these courts have used the rules of conflict of laws to obtain the same result as if suit were brought at the *locus contractus*. *Brooks v. Travelers' Protective Ass'n of America*, 47 F.2d 618 (E.D.N.Y. 1931); *Clarey v. Union Cent. Life Ins. Co.*, 143 Ky. 540, 136 S.W. 1014 (1911).

7. *Hartford Acc. & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934); *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930).

8. *Ibid.*

9. 292 U.S. 143 (1934).

10. 281 U.S. 397 (1930). In the *Dick* case, Texas denied the insurer the benefit of a suit limitation stipulation where the only interest that Texas had was that the insured was a resident of the state. The United States Supreme Court recognized that had the Texas courts been permitted to increase the obligations of the insurer and thereby impose burdens for which he had not contracted, he would have been deprived of his property without due process of law under the fourteenth amendment. The Court held that this property right could not be abrogated even in the name of the public policy of Texas.

Some state courts have made the same error as Texas did, apparently overlooking the constitutional issue of deprivation of property without due process of law. *Gallihier v. State Mut. Life Ins. Co.*, 150 Ala. 543, 43 So. 833 (1907); *Gulf Ins. Co. v. Holland Constr. Co.*, 218 Ark. 405, 236 S.W.2d 1003 (1951). *Contra*, *Miller v. American Ins. Co. of Newark, N.J.*, 124 F. Supp. 160 (W.D. Ark. 1954). In the *Miller* case, the court enforced an arbitration clause that was valid by the law of Texas where the policy was written and delivered, although if such a clause had been contained in an Arkansas contract it would not have been upheld, there being a statute in Arkansas forbidding arbitration in insurance policies. The federal court in *Miller* appears to have overlooked the decision of the Arkansas court in the *Gulf* case. In that case, the court held that the particular clause was like a statute of limitations, that it was procedural rather

the Mississippi court, based on grounds of public policy and state law, refused to allow the insurer to defensively assert a suit limitation clause. This, in effect, resulted in an extension of the insurer's liability beyond the contractually agreed upon limits. In reversing the Mississippi court, the United States Supreme Court unanimously held that enforcement of such a legislative policy without first considering "the relative importance of the interests of the forum as contrasted with those created at the place of the contract conflicts with the guaranties of the Fourteenth Amendment."¹¹

The Court, in *Delta & Pine Land*, recognized that there would be cases "in which enforcement of a contract as made outside a state may be so repugnant to its vital interests as to justify enforcement in a different manner."¹² This exception to the protection given vested property interests by the fourteenth amendment is best exemplified by *Watson v. Employers Liability Assur. Corp., Ltd.*¹³ In *Watson*, the United States Supreme Court held that Louisiana could, under its direct action statute, deny the insurer the benefit of a clause, valid where made, that suit could not be brought against the insurer until after suit had been brought against the manufacturer. The issue involved in *Watson* was not whether liability was barred, as in *Delta & Pine Land*, but rather whether the injured party could obtain a procedural advantage against the insurer.¹⁴ The Court, using the same "interest-contact" approach in *Watson* as was used in the *Sun Insurance* case, felt that "Louisiana's legitimate interest in safeguarding the rights of persons injured there"¹⁵ was vital enough to permit local law to be asserted over the *lex locus contractus*. Thus, the *Watson* case does not seem inconsistent with the *Delta & Pine Land* case, nor would it dictate a contrary result than that reached by the court in the *Sun Insurance* case.¹⁶

than substantive and would be controlled by the law of the forum. Although both cases dealt with different statutes, the reasoning applied by the Arkansas court would inescapably lead to a contrary result from that reached by the federal court. Professor Leflar believes that the Arkansas court may unknowingly have run afoul of the Due Process Clause by holding that the suit clause was procedural. He referred to *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930), where the United States Supreme Court held that an almost identical clause was substantive and that the Texas courts violated the Due Process Clause when they disregarded the suit clause by characterizing it as procedural. Leflar, *Conflict of Laws: 1948-54*, 9 *ARK. L. REV.* 1, 4 (1955). It is submitted that the federal court in *Miller* reached the correct result and would not have had to follow the state law if it violated the United States Constitution. See *Sampson v. Channell*, 110 F.2d 754 (1st Cir.), *cert. denied*, 310 U.S. 650 (1940).

11. *Hartford Acc. & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143, 150 (1934).

12. *Ibid.*

13. 348 U.S. 66 (1954).

14. The manufacturer was not amenable to the jurisdiction of the Louisiana courts, and plaintiff, a Louisiana resident, would have been put to the inconvenience and expense of bringing suit in another state.

15. *Watson v. Employers Liab. Assur. Corp., Ltd.*, 348 U.S. 66, 73 (1954).

16. Professor Ehrenzweig contends that *Watson* has supplanted the general rule of *Delta & Pine Land*, and stands for the proposition that "mandatory dismissal under the constitutional compulsion of due process has in effect been abandoned." EHRENZWEIG, *CONFLICT OF LAWS* 140 (1959).

As this action was based on diversity of citizenship, the federal court had to look to the substantive law,¹⁷ the conflict of laws rules,¹⁸ and the public policy¹⁹ of the state in which it was sitting. The court avoided the difficult question of whether a Florida court would apply its statute prohibiting "suit limiting clauses" by following the dictum in *Sampson v. Channell*,²⁰ wherein Judge Magruder commented that a federal court sitting in diversity was not bound to apply what it thought state law to be if such an application would result in a violation of the United States Constitution.²¹ The court in the instant case concluded that Florida's connections with the contract were insufficient to effectuate its own public policy by striking down a clause which was valid where made.²²

By comparison, the "interests" of Mississippi in the *Delta & Pine Land* case and those of Florida in the *Sun Insurance* case are strikingly parallel. In both cases, the contract was entered into outside the forum, property was the subject matter of the insurance policy, the "suit limiting clause" was lawful where made, neither the bonded employee nor the insured property was in the forum state at the time of the contract's execution, the loss occurred in the forum, and as a result enforcement was sought therein. It is interesting to further note that although both contracts were transitory in nature, in *Delta & Pine Land* the insurer and the insured were licensed to do business in Mississippi, and twenty-one of the insured's bonded employees were then working there. Based on these facts, there was a possibility that if a loss did occur, it might very well happen in Mississippi. At least the geographical locale of possible loss was within the contemplation of both parties as contrasted with the fortuity of the insured's moving to Florida in the *Sun Insurance* case.

By following and reaffirming the standards of due process established in *Delta & Pine Land*, the *Sun Insurance* case again illuminates the pitfall inherent in the application of a forum's public policy concepts as an exception to conflict of laws rules without giving due regard for underlying constitutional norms. The present case clearly indicates that

17. *Eric R.R. Co. v. Tompkins*, 304 U.S. 64 (1938); *Urda v. Pan Am. World Airways*, 211 F.2d 713 (5th Cir. 1954).

18. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 486 (1941).

19. *Griffin v. McCoach*, 313 U.S. 498 (1941); *Stahl v. Township of Teaneck*, 162 F. Supp. 661 (D.N.J. 1958).

20. 110 F.2d 754 (1st Cir.), *cert. denied*, 310 U.S. 650 (1940).

21. The court, in the *Sun Insurance* case, after reviewing Florida authority, believed that Florida would not attempt to apply either the statute or its ideas of public policy to contracts which were valid where entered into, but felt that it did not have to make that difficult decision.

22. The dissenting judge in the *Sun Insurance* case disregarded due process considerations and argued that the Florida legislature could protect its residents against the offending suit clause regardless of where the contract was executed. *Sun Ins. Office, Ltd. v. Clay*, 265 F.2d 522, 528 (5th Cir. 1959). His contention was clearly refuted by Mr. Justice Brandeis in *Home Ins. Co. v. Dick*, 281 U.S. 397, 408 (1930), where he noted that insofar as due process of law was concerned, it was immaterial that Dick was a permanent resident of Texas.

in the absence of sufficient interests, a "suit limiting clause" can not be characterized as being so repugnant to a state's vital interests as to justify its being disregarded on the basis of public policy. What factors will be legally sufficient to balance the demands of due process against the public policy of the forum have not yet been decided in this area, and will be subject to final determination through review by the United States Supreme Court.²³

REUBEN M. SCHNEIDER

CONSTITUTIONAL LAW — SEARCH WITHOUT WARRANT UNDER STATE POLICE POWER

The defendant's refusal to permit entry to the Commissioner of Health, who acted after finding a pile of rat-infested debris on defendant's property, resulted in a fine under the Baltimore City Code,¹ which permits daylight demands for entry without warrant by the Commissioner. *Held*: a penalty imposed for resisting the inspection of a health official, without warrant, prompted by a danger to the public health, does not violate due process of law under the fourteenth amendment. *Frank v. State of Maryland*, 359 U.S. 360 (1959).

The authorization of searches by an administrative officer without warrant, under the state police power, has undergone a progressive development in the law. It is acknowledged that the guaranty of the fourth amendment to be secure against unreasonable searches and seizures, does not apply directly to state actions.² However, that security is "implicit in the concept of ordered liberty, and as such, enforceable against the states through the Due Process Clause."³ Generally, this limitation has been construed to allow reasonable searches by implication⁴ and has not been held enforceable against the unlawful acts of individuals in which the government has no part.⁵ A search without a warrant demands

23. *Sun. Ins. Office, Ltd. v. Clay*, 265 F.2d 522 (5th Cir.), cert. granted, 361 U.S. 874 (1959).

1. BALTIMORE, MD., HEALTH CODE art. 12, §120 (1950): "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the daytime, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

2. *Weeks v. United States*, 232 U.S. 383 (1914); *National Safe Deposit Co. v. Stead*, 232 U.S. 58 (1914); *Boyd v. United States*, 116 U.S. 616 (1896).

3. *Wolf v. People of the State of Colorado*, 338 U.S. 25, 27 (1949).

4. *United States v. Rabinowitz*, 339 U.S. 56 (1914); *Harris v. United States*, 331 U.S. 145 (1946); *Co-Bart Importing Co. v. United States*, 282 U.S. 344 (1931).

5. *Burdeau v. McDowell*, 256 U.S. 465 (1921); *Gouled v. United States*, 255 U.S. 298 (1921); *Perlman v. United States*, 247 U.S. 7 (1918); *Boyd v. United States*, 116 U.S. 616 (1886); *United States v. Jordan*, 79 F. Supp. 411 (E.D. Pa. 1948).