12-1-1963

International Law: Insurance Claims on Policies of Cuban Nationals

Guillermo Castrillo

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol18/iss2/9
I. INTRODUCTION

Ever since January 1959, when Batista's Regime in Cuba was overthrown, there has been a steady migration of Cuban nationals into the United States, most of whom have settled in the State of Florida, particularly in Dade County. These Cuban nationals are mostly political refugees and among the few possessions which they brought from Cuba were their insurance policies, issued by American and Canadian corporations. However, in trying to enforce their rights as policyholders, the Cuban refugees have encountered a solid block of international legal entanglements arising under conflict of laws problems. The typical factual situation that is present in the cases now before the courts can be exemplified as follows: X, a Cuban national, bought insurance in Cuba from a foreign company, the policy being issued from the home office outside Cuba. After having changed his domicile to Miami, X now brings suit for insurance benefits. What law should the court apply as governing the insurance contract?

In this area of the law, the practicing attorney is often unable to find practical guidelines in the reported cases which will aid him in prosecuting his case.

II. CHOICE-OF-LAW RULES UTILIZED BY THE COURTS

Originally, in the United States, the federal courts had the power to promulgate rules covering conflict of laws principles which were generally accepted and followed by the state courts. Not until the abolition of this power, as a result of the Klaxon decision, did the Supreme Court seriously begin to look for a way to create federal conflicts law by means other than those precluded by this case. While many insurance companies are incorporated in one state, they nevertheless carry on business with hundreds of thousands of customers whose residences are in other

1. In Klaxon Co. v. Stentor Elect. Mfg. Co., 313 U.S. 487 (1941), the Court held that the prohibition declared in Erie R.R. v. Tompkins, 304 U.S. 64 (1938) against independent determinations by the federal courts, extends to the field of conflict of laws and that henceforth, the conflict of laws rules to be applied in the federal courts must conform to those prevailing in the state in which they are located.
states. It therefore follows, that nine out of ten insurance transactions contain, by virtue of this incidental fact, a foreign element sufficient to give rise to conflict of laws questions.\(^2\)

Standardized insurance contracts, having been drafted by powerful commercial units and offered to individuals on a take-it-or-leave-it basis, are carefully scrutinized by the courts for the purpose of avoiding enforcement of "unconscionable" clauses.\(^3\) Stipulations of applicable law contained in the printed policy will generally be ignored by the courts with the possible exception of cases in which the stipulated law proves favorable to the insured.\(^4\) If the *lex contractus* is discounted as inequitable or arising because of fortuitous circumstances, and the application of the *lex fori* is avoided so as not to invite undesirable forum shopping, the law of either party's domicile emerges as a useful alternative to reach equitable results. However, in many instances the intention of the parties, as gathered from attending circumstances, is controlling in determining the place of trial and the governing law. Liability for the breach of a contract partly performed in one state, and made and partly performed in another, is fixed by the laws of the state in which the breach occurred.\(^6\) Savigny\(^6\) and his school suggest the substitution of the law of the place where the contract was to be performed for that of where it was executed. Most jurisdictions in the United States apply the law of the place of performance without reference to the surrounding circumstances. When, however, insurance payments or life rents are made payable at the domicile of the creditor, his changes of domicile are decisive.\(^7\) It should be noted that the renvoi\(^8\) concept is generally foreign to the United States although it has proven useful in property and divorce cases. In these limited situations, the courts have come to accept the concept's application.

Other theories of the applicable contract law include the law of the debtor's domicile and the law most favorable to the contract. In the United States, preference has been given to the place where the law is most favorable to the validity of the obligation.\(^9\) The law of the insurer's home office has often been commended as the one most properly responding to his legitimate interest in the uniformity of contracts. In international conflicts cases where selection of an insurer is usually a matter of

---

4. The consistency of these holdings may explain the fact that insurance companies have apparently ceased to use choice of law clauses. New England Mut. Life Ins. Co. v. Olin, 114 F.2d 131 (7th Cir.), cert. denied, 312 U.S. 686 (1941).
8. A doctrine under which the court, in resorting to a foreign law, adopts the rules of the foreign law as to conflict of laws, which rules may in turn refer the court back to the law of the forum. 27 *Yale L.J.* 509 (1918); 31 *Harv. L. Rev.* 523 (1918).
conscious choice, a perfectly workable solution could be developed in accordance with this suggestion.

The principle of *lex loci contractus* has exercised a strong hold in insurance contracts. Under the concept of "contracts of adhesion," it has been asserted that the law of the place where the standard policy was drafted should apply, *i.e.*, because the application is on the standard form of the insurer, the contract is considered to have been completed by the insurer at his home office. As a rule, an insurance policy is a contract of adhesion and the courts will consider the terms of the contract strictly against the party choosing them. The strict construction occurs when the terms of the contract are not the result of mutual negotiations and concessions but rather, are fixed in accordance with a form to which the insured "adheres" if he chooses, but which he cannot change. However, in the case of a branch or agency established in a foreign country, the insurance contracts are generally subjected to the law of the country in which the branch or agency is located.

It should be noted that the New York courts have refused jurisdiction in a test case filed against the home office on the basis that the policy was issued by the branch in Germany to a German resident. However, the true basis for the holding was the overriding public policy.

This summary of the different views utilized by the courts in resolving conflicts problems would be incomplete without taking note of the fact that the uncertainty inherent in the principle of *lex loci contractus* is sometimes welcomed by the courts. When a proposal is sent from one state to another, or an agent intervenes in transmitting an order, an application, an insurance policy, or a note, proposed in one state and sent to another for approval and signature and then returned, a court may sometimes manage an equitable decision by purposely locating the place of contract in the desirable jurisdiction. It should be noted, however, that all international draft proposals have rejected the *lex loci contractus*.

### III. Russian Cases—The Old Guidelines

A typical instance in which the courts have been reluctant to protect the insured's rights, is exemplified by those claims following the

---

13. "The agency in Germany was established as a distinct entity, a German creation under German Law. A reserve fund was made and all premiums received were placed in that fund and invested in Germany under German official approval." Heine v. New York Life Ins. Co., 50 F.2d 382, 385 (9th Cir. 1931).
14. The court commented that 28,000 policies in Germany were sought to be enforced in the United States, thus indicating the underlying interest in preventing the flood of litigation as well as the economic impact which would have resulted had the plaintiffs and others in similar circumstances been afforded relief. Id. at 383.
Soviet decree of December 14, 1917, pronouncing the nationalization of Russian companies. The first impulse was to deny recognition to the Soviet decree on the ground that the government of the forum had not recognized the U.S.S.R. Some courts held that the legal existence of the insurance companies was destroyed as a result of the socialization, while others affirmed the capacity of the nationalized insurance corporation to appear before the courts. However, the Russian government was later accorded diplomatic recognition by the Litvinoff agreement, and as a result, the United States government was assigned any claims that the Russian corporations may have had to properties within the territory of the United States. Nevertheless, the Court of Appeals of New York held a local branch of a Czarist Russian insurance company to be in existence, because the strong state control over insurance business warranted the recognition of the branch as a separate entity despite the disappearance of the mother company. However, the Supreme Court of the United States overruled this construction and all other objections to the extraterritorial effect of the Soviet decrees. The theory of the Court in this instance, which identified recognition of the Soviet government with binding recognition of the nationalization decrees, was a regrettable deviation from well established principles of international law. However, recent decisions involving a similar situation in Cuba, have sought to correct this error.

The Florida courts are presently entertaining multiple suits against American insurance companies whose assets have been confiscated in Cuba. In these cases, the defendant companies argue that by virtue of the nationalization of their Cuban branches, the plaintiff policyholders could no longer look to the defendant's assets in Cuba for recovery on their policy, thereby releasing the insurance companies from their obligations to the Cuban policyholders. This argument assumes that the company's Cuban branch is a separate entity from the home office in the United States and its other domestic and foreign branches. It also assumes that the policyholders who had purchased insurance policies

25. Law No. 3 of 1960. See note 32 infra. On this basis, the insurance companies reason that as a result of the confiscation of their Cuban assets, the Cuban government also assumed all of the liabilities arising out of the policies issued through their Cuban branch.
from the company through its Cuban branch had intended to look to the Cuban branch of the corporation rather than the home office for payment under the terms of the policies. The plaintiffs, on the other hand, contend that it was the intention of the parties that all the assets of the insurance companies were to be utilized to satisfy payments in accordance with the terms and conditions of the policies.

The insurance companies utilize the Rossia case, in which a Russian insurance company (not a branch of an American firm) had been nationalized and a creditor filed suit seeking to recover from an American corporation as a transferee of the foreign corporation. The court held that it was necessary for the plaintiff to exhaust his remedies against the Russian corporation before proceeding against the transferee on the theory that the creditor must look to the primary obligor and exhaust his remedies against him before following the assets transferred. Also citing the Rossia case, the Cuban policyholders contend that their position is distinguishable in that the American home office is the primary obligor and not the Cuban branch; thus, they are exhausting their remedies through the primary obligor.

Another landmark case is Fred S. James & Co. v. Second Russian Ins. Co., in which the plaintiff received contracts as an assignee of a British insurance company, under which the defendant, a Russian corporation, reinsured the assignor's marine risks. In the action brought in New York by the plaintiff, the defendant alleged a Russian decree nationalizing its corporation in Russia and contended that by the same decree, insurance companies, of which the defendant was one, were released from the payment of debts and liabilities. The court nevertheless refused to declare the defendant immune from suit, holding that the attempted extinguishment of liabilities is brutum fulmen. The same result would apparently obtain in England as well as in the United States, even though the government making the attempt has been accorded diplomatic recognition.

27. Supe note 19.
28. "An empty noise; an empty threat. A judgment void upon its face ... by which no rights are divested, and from which none can be obtained, and neither binds nor bars anyone." BLACK, LAW DICTIONARY (4th ed. 1951).

The decree of the Russian Soviet government nationalizing its insurance companies has no effect in the United States unless, it may be, to such extent as justice and public policy require that effect be given. We so held in Sokoloff v. National City Bank, 239 N.Y. 158, 145 N.E. 917. Justice and public policy do not require that the defendant now before us shall be pronounced immune from suit. In the circumstances exhibited by this record, we find it profitless to consider whether the decree was intended to put the nationalized companies out of existence altogether, or, on the other hand, to preserve them as corporate entities though in the ownership of the government. ... Our concern is not so much with the consequences intended by the authors of the decree as with those that will be permitted in other
With regard to Cuban insurance claims, the plaintiffs have cited the Second Russian case, arguing that the principal distinguishing factor is that the defendant companies are alleging nationalization of their Cuban branch. On this basis, they argue as follows: If it be true that when the parent business or principal office is nationalized, a claim under the insurance policy is justified against a subsidiary or branch office, is it less equitable in a suit against a parent company, for the obligor or principal office of the company to be held liable under the contract when only a branch office is nationalized?

IV. CUBAN LAWS

Ever since the Spanish-American war, the dollar was admitted as legal tender in Cuba and had debt-redeeming force. Cuban Law number 13 of December 23, 1948 provided for the creation of the Banco Nacional de Cuba and after April 27, 1950, required the withdrawal of all United States currency from circulation. Presidential Decree number 1384 of April 9, 1951, granted an additional period until June 30, 1951, for the enforcement of law number 13. It also provided that henceforth all persons who had contracted obligations in dollars before June 30, 1951, were obligated to make all payments within the territory of Cuba in pesos at the rate of one peso per dollar. In January 1959, the Batista Regime was overthrown and Fidel Castro instituted the so-called “Provisional Government of Cuba,” which was granted diplomatic recognition by the United States.

Under Law number 568 of October 2, 1959, the Castro dictatorship prohibited the export of securities and funds abroad, except by authorization of the Cuban Currency Stabilization Fund, and provided the penalties to which the directors and the corporations would be subjected in the event that they violated the law. From a practical standpoint, these jurisdictions where the intentions of its authors are without effect as law. Id. at 251, 146 N.E. at 370.

30. GACETA OFICIAL EXTRAORDINARIA of Dec. 30 (1948).
PORTIONS OF TEXT OF LAW No. 568 OF SEPTEMBER 23, 1959 (English translation).

I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23, 1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tyranny was in power a constant drainage of foreign exchange was perpetrated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensibly delaying the restoration of our
penalties were seldom applied. Instead, all of the corporate assets were confiscated whenever the law was violated.

By Resolution number 3 of October 24, 1960, the then declared communist regime of Cuba ordered the expropriation of American enterprises in Cuba, including many insurance companies. Cuban Law num-

WHEREAS: It is necessary, therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the nation, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following:

LAW No. 568

Article 1.—For the purposes of this law, the following are considered felonies of monetary contraband:

(6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travelers' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets, or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

(7) To export or import national currency in excess of the limit that is set now or hereafter by the Currency Stabilization Fund.

(8) To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

(9) To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders of which reside abroad, without first complying with the rules issued by the Currency Stabilization Fund in this respect.

(10) To receive and credit to bank accounts kept abroad, or to transfer to third parties, collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

Article 2.—The persons guilty of the felony of currency contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand cuotas, or both.

Article 3.—(a) Any person who sells or in any way assigns, transfers or transmits currency, checks, drafts, orders of payment, travelers' checks or any similar paper in a foreign currency, shall be liable to imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand cuotas, or both.

32. 24-26 LEYES DEL GOBIERNO PROVISIONAL DE LA REVOLUCION 139 (1960).

PORTIONS OF TEXT OF RESOLUTION NO. 3 OF OCTOBER 24, 1960 (English translation).

WHEREAS: The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness, that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it
ber 930 of February 23, 1961, provided that the Banco Nacional de Cuba would be in charge of the issuance of currency and that any obligations payable in other than Cuban currency, should be settled by payment in pesos. Thus, we have seen a sample of the applicable Cuban laws which will be discussed in subsequent sections.

V. FLORIDA CASES

The case of Pan-American Life Ins. Co. v. Recio, the leading Florida case in this area, involved an action for a declaratory decree that the policyholder was entitled to the cash surrender value of a policy issued by the Louisiana Company and sold to the insured in Cuba. The insurance company cited the case of Dougherty v. Equitable Life Assur. Soc'y of United States. In Dougherty it appeared that Equitable Life had qualified to do business in Russia and that it had issued policies in Russia to Russian nationals. The Russian branches of the American companies were expropriated by the Soviet government. After recognition of Soviet Russia by the United States, suits were filed in New York against the insurer under the policies issued in Russia. The plaintiffs were successful in the lower courts but in the court of appeals, they failed. The court in the Recio case commented on the Dougherty decision as follows:

As we gather the basis for the holding, it is that inasmuch as

pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties in obtaining national supplies.
WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.
WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.
WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.
THEREFORE: By virtue of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June, [sic, July] 1960.

RESOLVED

FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominion, all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest [including insurance companies].

SECOND: Therefore, the Cuban State is declared subrogated in place and grade of the natural and juridical person referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the "Whereas" clauses of this Resolution.

33. 154 So.2d 197 (Fla. 3d Dist. 1963).
34. 266 N.Y. 71, 193 N.E. 897 (1934).
the contracts involved were Russian contracts payable in Russia in Russian funds, and exclusively from Russian assets, the liability could be governed by Russian law. We do not think that this reasoning is applicable to the present case where the total assets of the appellant are pledged to the payment of the contract, and the contract is payable in the United States.\footnote{35}

The court then proceeded to hold that the law of the place of payment, United States law, applied to this contract, and therefore, the expropriation decrees were not a bar to the action upon the policy.

This holding is closely connected to the modern trend in the act of state doctrine which started in 1952 with the Tate Letter.\footnote{36} In this letter, the Department of State implicitly authorized the United States courts to determine whether a law of a foreign state is repugnant to the public policy of the United States and the principles of international law, before considering its application to the case at bar.

Another leading Florida case is Confederation Life Ass’n v. Ugalde,\footnote{37} which involved an action by a Cuban insured against Canadian insurers on a life insurance policy for payment of its cash surrender value in United States dollars, instead of Cuban pesos. The circuit court entered summary judgment against the insurer. On appeal, the district court of appeals held that the Cuban government, in furtherance of its fiscal policy, could properly make laws which related to currency and legal tender, and which effectively changed the terms of the life insurance policy contract from one payable in United States dollars to one payable in Cuban legal tender at one peso per dollar. As a result of this interpretation, the insurer’s obligation under the contract to pay the cash surrender value became an obligation to pay in Cuban legal tender. The court stated:

\footnote{35} Supra note 33, at 199. (Emphasis added.)

\footnote{36} 26 DEP’T STATE BULL. 984 (1952) (letter dated May 19, 1952) from the acting legal adviser of the Department of State to the Attorney General. In 1952, the Department of State, in its Tate Letter, announced that henceforth it would follow the restrictive theory of sovereign immunity when considering requests by foreign governments for immunity from jurisdiction in United States courts. According to this theory, a foreign sovereign’s immunity from local jurisdiction is recognized with regard to sovereign or public acts (jure imperii) of the state, but not with respect to private acts (jure gestionis), due to increase in Governments engaging in commerce.

The general tendency of the United States courts is to endorse the jure imperii-jure gestionis theory of immunity from suit already adopted by many European courts and by the State Department. The language of the instant case indicates that the Florida courts, in addition to complying with the trend, may well go even further by making the restrictive theory applicable to immunity from execution as well as immunity from suit. 15 U. MIAMI L. REV. 450, 456 (1961).


\footnote{37} 151 So.2d 315 (Fla. 3d Dist. 1963).
In the instant case, the Defendant asserted as a defense its right to pay in Cuban pesos at par and the allegation of the insured to accept payment in such form, as provided for in the insurance contract as modified by the laws and executive decrees of Cuba. The trial court rejected the defense. In so doing the trial court erred and deprived appellant of due process of law. 88

In order to more fully understand the disparity between the Ugalde and Recio cases, it is necessary to examine the central arguments asserted by the insurance companies.

VI. THE INSURANCE COMPANIES' POSITION

A. The Breach of Contract Argument

The defendant companies referred to a statement made by Justice Holmes that:

an obligation existing under the foreign law . . . is not enlarged by the fact that the creditor happens to be able to catch his debtor here. 89

On this basis, the companies claimed that inasmuch as no demand for payment was made in Cuba, and they had always been ready, willing and able to make payment in Cuba, no breach of contract existed and no cause of action had arisen.

A breach of contract is defined as a failure to perform "what is promised in a contract." 40 The defendant companies claimed that they contracted to make payments only in Cuba and that the plaintiffs had no contractual rights to demand payment at any place other than the one specifically designated in the contract. The insurance companies alleged that they were therefore entitled to disregard any request for performance inconsistent with the contract and that tender of performance cannot be challenged if made at the place specified in the contract. 41 In answer to this argument, the plaintiffs contended that an action based upon an insurance policy is transitory in nature and that the defendant companies were subject to the laws of the state of Florida, although the policies were written in Cuba. 42 They also noted the court's comments in the Recio 48 case:

[A] contract of a United States corporation payable in the

---

38. Id. at 318.
40. RESTATEMENT, CONTRACTS § 314 (1932).
42. Confederation of Canada Life Ins. Co. v. Manuel Antonio Vega y Arminan, 135 So.2d 867 (Fla. 3d Dist. 1961), cert. denied, 144 So.2d 805 (Fla. 1962).
43. Supra note 33.
United States in United States dollars cannot be governed by Cuban laws as to the method of performance.

A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuban law.44

Most of the policies sued upon did not specify what law would govern, but inasmuch as they provided that they would become effective upon delivery and payment of the first premium, which was made in Cuba, the defendant companies alleged that this fixed Cuba as the place of making of the contract.45

The general rule is that unless a contrary intention is expressed in the contract, matters connected with its performance are regulated by the law prevailing in the place of performance.46 The very special cases where an agreement has been incorporated in the policy, purporting to waive jurisdiction as to courts other than those of Havana, have been held not to affect the jurisdiction of the Florida courts.47 Some courts have held that when the policies do not contain provisions regarding the exclusive place of payment under the policy, the cash surrender value can be recovered wherever the insurer has funds.48 Other cases applying the rationale of the intention of the parties as to the specific place of performance have denied recovery to the insured.49

It has been held in Florida that claims under policies made in Cuba should be governed by Cuban law where no significant contacts with the United States regarding the obligations of the policies exist, so as to justify or require that the laws of Florida or other jurisdiction, should govern.50 The defendant companies alleged that while the district court recognized in the Ugalde51 case that Cuban law should govern, the court failed to take notice of Cuban Law number 56852 which prohibited the export of currency or credits by the collection abroad of a Cuban obligation whether it be directly or through a third party or intermediary "for business transacted or services rendered in Cuba, regardless of the

44. Pan-American Life Ins. Co. v. Recio, 154 So.2d 197, 198, 199 (Fla. 3d Dist. 1963).
45. Columbian Nat'l Life Ins. Co. v. Lanigan, 154 Fla. 760, 19 So.2d 67 (1944);
Equitable Life Assur. Soc'y of the United States v. McRee, 75 Fla. 257, 78 So. 22 (1918).
47. Huntley v. Alejandre, 139 So.2d 911 (Fla. 3d Dist. 1962).
50. Confederation Life Ass'n v. Ugalde, 151 So.2d 315 (Fla. 3d Dist. 1963).
51. Ibid.
52. See note 31 supra.
source or origin of the respective funds." On this basis, the defendant companies argued that under established conflict of laws rules the courts of Florida must recognize that the law of the country controlling performance of the contract has prohibited performance in the manner sought by the plaintiff, and that under Cuban law, a cause of action could not give rise to the right to collect dollars abroad, since the collection was prohibited by Cuban law.

The plaintiffs on the other hand submitted that their claims were governed specifically by the Florida case of *Sun Ins. Office Ltd. v. Clay*. This case involved a policy issued by a British company operating in the state of Illinois. At the time of the application, the policyholder was a resident of Illinois where the application was signed and the premium was paid. Subsequently, the policyholder moved his residence to Florida where the loss occurred. The British company was qualified to do business in the state of Florida and suit was filed in the federal district court. The insurance company defended the suit alleging that the stipulation in the policy forbade suit unless it was instituted within one year of the loss, which provision the court held was no defense because a Florida statute prohibits such limitations. The court of appeals reversed the holding of the federal district court on the basis that the provision limiting the time in which suit can be brought is a substantial property right which is protected by the fourteenth amendment to the United States Constitution, and that a violation of due process would result from the application of the Florida Statute. On appeal to the Supreme Court of the United States, the court of appeals was reversed on the ground that the adjudication of the constitutional issues should have been reached only after considering whether, under Florida law, the above mentioned Florida statute was applicable to the case at bar. Acting upon the recommendation of the United States Supreme Court, an advisory opinion was requested from the Florida Supreme Court. The Florida Supreme Court held that Florida law made void any provisions of an insurance contract requiring suit to be filed within a period shorter than 5 years, and stated in its opinion:

> [I]t is clear that this state's contact with the subject contract and parties thereto is abundantly sufficient to give a court of this state jurisdiction of a suit thereon.

---

54. *Restatement, Conflict of Laws* § 360(1) (1934): "If performance of a contract is illegal by the law of the place of performance at the time for performance, there is no obligation to perform so long as the illegality continues."
55. 133 So.2d 735 (Fla. 1961).
57. *Id.* at 527-28.
The court then proceeded to hold that the law of Florida applied and not the law of Illinois.\footnote{Ibid.} Other jurisdictions have held that the place where demand for payment is made does not ultimately become the place of performance since the result would be to give the plaintiff a world-wide option as to the place of performance and controlling laws.\footnote{See cases cited at note 49 supra.}

It is also interesting to note the dissenting argument of Judge Horton in the Ugalde decision, holding that the option for payment of the cash surrender value under a life insurance policy constitutes no more than a continuing irrevocable offer by the company, and no completed contract to pay the value exists unless and until the offer is accepted by the insured in accordance with its tenor and terms. Judge Horton then concluded that the Ugalde case involved two contracts, the first made in Cuba at the time of the policy, and the second made in Florida when the plaintiff accepted the continuing irrevocable offer of the insurer to pay the cash surrender value of the policy. This latter contract was the one breached by the insurer’s refusal to pay and the one  

\footnote{61. Ibid. However, in Sun Ins. Office Ltd. v. Clay, 319 F.2d 505 (5th Cir. 1963), the court of appeals refused to apply the opinion of the Florida Supreme Court and utilizing constitutional arguments ordered that the district court enter a judgment for the defendant.  
62. See cases cited at note 49 supra.}

The defendant insurance companies generally argue that to make payment in dollars in the United States would deprive them of property without due process of law. They cite Home Ins. Co. v. Dick, 281 U.S. 397 (1930), in which the plaintiff was the assignee of a contract of insurance between a resident of Mexico and a Mexican insurance company. The contract provided that no suit might be brought on the policy more than one year after damage. More than a year after damage, however, the plaintiff brought suit in Texas. His recovery on the policy was affirmed by the Texas Supreme Court under a Texas statute voiding contractual stipulations limiting the time for suit to less than two years. The United States Supreme Court reversed. The one-year provision was “an express term in the contract of the parties by which the right of the insured and the correlative obligation of the insurer are defined.” \textit{Id.} at 406. Terms could not be modified by the courts of Texas, for nothing relating to the policy was to be done inside of Texas.

Finally, neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. \ldots Dick’s permanent residence [being] \ldots in Texas [was] without significance [and insufficient to confer power on the Texas courts] to affect the terms of contracts so made. \ldots [the court’s] attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law. \textit{Id.} at 408.

The principle was again applied in Hartford Acc. & Indem. Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934). The plaintiff, a Mississippi corporation, brought suit in that state against the insurance company on a suretyship contract that had been applied for and delivered in Tennessee and which was therefore “governed by the laws of Tennessee.” \textit{Id.} at 146. A condition in the contract, valid under the law of Tennessee, absolved the defendant from liability for claims not made within 15 months after termination of the suretyship. Mississippi refused to give effect to this provision and held the insurance company liable. The Supreme Court reversed. The state may not “ignore a right which was lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations.” \textit{Id.} at 150. As in \textit{Dick}, the plaintiff’s residence at the time of the suit in the state where suit was brought did not permit that state to override the rights vested under another law.

\footnote{63. Confederation Life Ass’n v. Ugalde, 151 So.2d 315, 323 (Fla. 3d Dist. 1963).}
sued upon by the insured, and since it was made in Florida, Florida law should control.

The majority opinion in the Ugalde decision made an extended comment concerning the rights of a sovereign nation to regulate its currency and monetary agreements. This principle was asserted in support of the contention that Cuba was entitled to enforce its currency regulations and that this practice was not in violation of the public policy of the United States.\(^{64}\)

American courts under the act of state doctrine\(^{65}\) have been generally reluctant to pass judgment on the validity of the laws of a foreign state or the acts of its officials.\(^{66}\) This doctrine was somewhat relaxed in the Sabbatino case,\(^{67}\) in which it was held that the act of state doctrine is one of the conflict of laws rules applied by American courts, but is not of itself a rule of international law. On this basis, the court held that when the executive branch of the United States government announces that it does not oppose inquiry by American courts into the legality of foreign acts, an exception arises to the judicial abnegation required by the act of state doctrine.\(^{68}\)

In the recent Kane\(^{69}\) decision, which involved citizens of the United States who stated that they were the holders of a majority of the stock in a Cuban corporation, suit was brought against an arm of the government of Cuba as the defendant. The Florida district court refused to extend the Sabbatino decision and held that the doctrine of sovereign immunity applied, and that to declare invalid an act of expropriation by the Cuban government, because the act was confiscatory, would be a denial of the sovereignty of a foreign state. However, in another recent decision\(^{70}\) the United States Court of Appeals, Fifth Circuit, held that the act of state doctrine does not compel the United States courts to give force and effect to decrees of the Cuban government which would have the effect of erasing any rights which Cuban refugees would have to monies which might be due them under contracts with American citizens. Neither the Bretton-Woods Monetary Agreement\(^{71}\) nor the...

---


\(^{66}\) Pons v. Republic of Cuba, 294 F.2d 925 (D.C. Cir. 1961); Bernstein v. Van Heyghen Frères Société Anonyme, 163 F.2d 246 (2d Cir.), cert. denied, 332 U.S. 772 (1947). The "involuntary novation" theory was maintained in Tillman v. National City Bank, 118 F.2d 631 (2d Cir. 1941).

\(^{67}\) Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962).

\(^{68}\) Ibid.


\(^{71}\) See note 74 infra.
Cuban currency control statutes\textsuperscript{72} could preclude suit by Cuban refugees against a Louisiana insurer for a declaration that they were entitled to receive the cash surrender value of certain policies, although the insurer had asserted that the policies were governed by Cuban law.\textsuperscript{73}

B. The International Monetary Fund Argument

One of the basic arguments of the insurance companies is that under the Articles of Agreement of the International Monetary Fund, the defendant has a right to rely on the Cuban exchange laws and that to deny the effectiveness of the exchange laws would impair the obligations of the United States under this treaty.\textsuperscript{74} The courts in the United States have recognized that positive effect must be given to article VIII, section 2(b) of the International Monetary Fund Agreement.\textsuperscript{75} The defendant companies have alleged:

(1) The Cuban Exchange Control regulations applicable to the instant case are imposed consistently with the above mentioned Fund Agreement.

(2) The insurance policies sought to be enforced by the plaintiff's are exchange contracts within the meaning of the Fund Agreement.\textsuperscript{76}

\textsuperscript{72} See note 31 supra.

\textsuperscript{73} Rodriguez v. Pan-American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).

\textsuperscript{74} Dec. 27, 1945, 60 Stat. 1401, T.I.A.S. No. 1501. The International Monetary Fund Agreement is a treaty to which the United States, Canada and Cuba are parties. Art. VIII, § 2 of the Agreement provides:

(a) \[N\]o member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

Congress has provided by express statutory enactment that the first sentence of Art. VIII, § 2(b) of the Fund Agreement shall have "full force and effect in the United States." 59 Stat. 516 (1945), 22 U.S.C. § 286(h) (1946). The purpose of the enactment was to give effect to that portion of the fund agreement which provides that when other member countries have exchanged controls which are consistent with the articles of agreement, United States courts will not enforce exchange contracts that violate such controls. H.R. Rep. No. 629 (79th Cong., 1st Sess.) 70 (1945); S. Rep. No. 452 (79th Cong., 1st Sess.) 28 (1945).

\textsuperscript{75} In re Sik's Estate, 205 Misc. 715, 129 N.Y.S.2d 134 (Surr. Ct. 1954); see Southwestern Shipping Corp. v. National City Bank, 6 N.Y.2d 454, 190 N.Y.S.2d 352, cert. denied, 361 U.S. 895 (1959); cf. Perutz v. Bohemian Discount Bank in Liquidation, 304 N.Y. 553, 110 N.E.2d 6 (1953). In Brill v. Chase Manhattan Bank, 14 App. Div. 2d 852, 220 N.Y.S.2d 903 (1961), the appellate division reversed the judgment of the trial court awarding recovery on a check, payment of which the defendant alleged to be in violation of the Cuban exchange control regulations. And the case was remanded for trial. A dissenting opinion pointed out that a summary judgment should have been granted for the defendant due to the illegality of the transaction as being in contravention of the exchange regulations of Cuba, and thus in violation of the Fund Agreement.

\textsuperscript{76} In support of this contention the insurance companies have referred to an article by Meyer, Recognition of Exchange Controls After the International Monetary Fund Agreement, 62 YALE L.J. 867, 887 (1953), which comments:

That the term "exchange contracts," as used in Article VIII, Section 2(b), means transactions having their basis in contract and involving exchange, whether of cur-
For these reasons the defendant companies have claimed that an insurance policy is an express contract, and that after 1951, all payments of premiums were made in pesos, making the contract a peso obligation. They then argued that the plaintiff's attempt to recover dollars outside of Cuba would result in an exchange of currency. They also asserted that the determination of the character of the contract is dependent on the nature of its performance (payment of monies) and not on its original purpose at the time of contracting (insurance against risk).

The companies have also stated that the primary function of an insurance contract is the rendering of a service and that the premium payment is one for current services within the definition of article XIX(i). It has been claimed that the cash surrender value of a policy represents not a payment for a service, but a repayment of premium deposits much like an ordinary savings account, which is the most obvious kind of capital asset. Also, that its transfer from one country to another involves an international capital movement. Therefore, the transfer from one country to another of the savings portion of an insurance policy, in this case the cash surrender value, is a similar international capital movement and that the transfer is subject to the control of the Cuban Currency Stabilization Fund. The plaintiffs' reply to this argument was that an insurance policy is transitory in nature and by its very terms collectable anywhere. As evidence of this, they have noted that the International Monetary Fund Agreement argument was not even discussed in the Ugalde decision of the district court of appeal. Judge Horton, in his dissenting opinion, summarily dismissed the question by saying that the Cuban acts to which the insurance companies refer only prohibit the export of currency or securities, or the transfer of funds to points abroad, and do not attempt by their scope, inference or implication, to affect funds which may have already been located abroad or possessed by nationals in other states.

He then stated that the defendant insurance company was authorized

[The contract must be express, but] once it is determined that such a deliberate contract exists, it does not matter where the contract was made, whether or not it involved exchange at its inception (provided only that exchange is involved at the time the question arises), or whether or not the proceeding in which the question is raised is between the parties to the contract.

77. "One who insures his life with a company of his domicile may find, after emigration, that payment of the surrender value of its policy cannot be made without a license." Meyer, supra note 76, at 868.

78. Dec. 27, 1945, 60 Stat. 1401, at 1425. Article XIX(i) of the fund agreement gives examples of current, as opposed to capital, transactions:

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
(2) Payments due as interest on loans and as net income from other investments;
(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;
(4) Moderate remittances for family living expenses.

79. Confederation Life Ass'n v. Ugalde, 151 So.2d 315 (Fla. 3d Dist. 1963).
80. Id. at 324.
to do business in Florida and, as established by prior decisions, if jurisdiction can be legally obtained, resident aliens may bring suit against the insurers in the courts of Florida to recover on policies such as the one involved in the *Ugalde* case. Judge Horton further commented that the insurance companies authorized to do business in Florida must maintain minimum deposits with trust institutions of 300,000 dollars in order to comply with the statutes for the protection of policyholders, and therefore, the defendant insurance company did not have to violate the laws and decrees of Cuba by exporting currency or transporting funds from Cuba to the United States.  

Three months after the Florida district court rendered the *Ugalde* decision and the companion case, the court of appeal of Louisiana rendered a conflicting opinion. In that case, the Louisiana court took judicial notice of the International Monetary Fund Agreement. However, it would appear from a reading of the purposes of that agreement that the intention was to promote international trade, and not to place restrictions on citizens or corporations who had made a private contract, except where capital transfers are involved.

---

82. Confederation Life Ass'n v. Ugalde, 151 So.2d 315 (Fla. 3d Dist. 1963) (dissenting opinion).
83. Crown Life Ins. Co. v. Calvo, 151 So.2d 687 (Fla. 3d Dist. 1963), in which the court simply referred to its previous *Ugalde* decision as authority for its holding.
84. Theye y Ajuria v. Pan-American Life Ins. Co., 154 So.2d 450 (La. App. 1963). The court held that the Cuban law requiring that payments between the insured and the insurer be made in Cuba, was applicable to the life insurance policy before the court and that inasmuch as the American branch in Cuba was nationalized at the time the insured was a resident and national of Cuba, the Cuban government subrogated itself in all of the rights and duties of the nationalized company and the policyholder could not recover the cash surrender value of the policy from the insurer in the United States.
86. Dec. 27, 1945, 60 Stat. 1401, T.I.A.S. No. 1501:

Article I. Purposes. The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all member countries as primary objectives of economic policy.
(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
(v) To give confidence to members by making the Fund's resources available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its decisions by the purposes set forth in this Article. The last paragraph very clearly points out that decisions in regard to the agreement shall be governed and guided by the purposes set forth in the article.
87. Dec. 27, 1945, 60 Stat. 1409. Section 3 of Art. VI—CAPITAL TRANSFERS—reads as follows:
The plaintiffs further contended that the agreement specifically provides that no member shall, without the approval of the fund, impose restrictions on the making of payments and transfers for current international transactions. They further denied that an insurance policy is similar to an exchange contract. The plaintiffs also pointed out that an insurance policy is primarily a service contract, although it might also be considered, with regard to annuity policies, as an investment or, when matured, as payments for depreciation of direct investments—any of which interpretations would classify the insurance policies as a current transaction under the agreement.

The long established rule is that the primary purpose of life insurance is to insure against the risk of death and while it may also serve as a savings plan in certain annuity arrangements, the weight of authority is that a policy or contract for life insurance is an entire, indivisible and continuous contract in which the risk of death is the predominant feature. Furthermore, the question of divisibility between the death and savings aspects must rest primarily on the intent of the parties deducible from the stipulations of the contract and the rules governing the ascertainment of that intention.

On the basis of this interpretation, the plaintiffs have asserted that an insurance policy is not an exchange contract and does not represent the purchase of an equivalent amount of dollars. Instead, an insurance policy is intended solely to insure the life of the party, and that the exchange value of the currency is never considered. The

---

Controls of Capital Transfers. Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2.

The central issue in this section could be stated as follows: Whether the effects of a recovery on an insurance policy issued in the United States but sold to a Cuban national in Cuba can be considered a capital exchange transfer from Cuba, prohibited under Cuban law, and whether in that event, the United States courts should, in accordance with the Bretton Woods Agreement, give extra-territorial application to the Cuban decrees.

88. See note 74 supra.
89. 60 Stat. 1425 (1945). Section (i) of Art. XIX—Explanation of Terms: Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:
   (1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
   (2) Payments due as interest on loans and as net income from other investments;
   (3) Payments of moderate amounts for amortization of loans or for depreciation of direct investments;
   (4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

90. Ibid.
92. 44 C.J.S. Insurance § 336 (1945).
plaintiff thus argued in the *Ugalde* case,\(^93\) that the Cuban policyholder purchased the policy in Cuba and at that time, had no intention whatsoever of exchanging pesos for dollars. His sole purpose was to insure his life and after the law of Cuba was changed in 1951, payments continued to be made with no intention of exchanging pesos for dollars, but to continue the original policy in force. This policy, they contended, would have been payable in pesos in Cuba if the insured had remained there, but it became payable in dollars once the Cuban policyholder transferred his residence to the United States as he was entitled to do under the terms of the policy. In fact, the plaintiffs pointed out that the purpose of purchasing insurance is not to receive back an equivalent amount of the cash paid in but to safeguard against the financial loss resulting from the death of the insured. Thus, if the policyholder should die in the initial stages, the insurance company then pays more than was paid in, and conversely if the insured lives, the insurance company receives much more than it will eventually have to pay upon the death of the insured.

Judge Horton in his dissenting opinion in the *Ugalde* decision\(^94\) cited a New York case\(^95\) in which an agreement provided that the plaintiff could receive payment in pesos in Columbia, if he so elected, or in dollars in New York. The plaintiff chose the latter and the defendant alleged that the foreign exchange control laws of Columbia prohibited the payment in dollars. The court held that this was not an international exchange operation and that the control laws did not prohibit the defendant from making payment to the plaintiff in dollars out of funds available to the defendant in New York. The court further stated that whether the contract be governed by the laws of Columbia or by the laws of New York, the result would be the same in that the plaintiff was entitled to be paid *in the currency of his choice*.\(^96\)

In a recent decision of the United States District Court, Southern District of Florida,\(^97\) it was pointed out that the defendant insurance companies were not required to invest their assets in Cuba except for an initial deposit of 25,000 dollars, nor was there any indication that the claims of the policyholders would be paid solely from the insurance companies' assets located in Cuba. On the contrary, the court found, as a matter of law, that the total assets of the insurance companies were pledged to the payment of their insurance contracts regardless of loca-

---

93. Confederation Life Ass'n v. Ugalde, 151 So.2d 315 (Fla. 3d Dist. 1963).
94. Id. at 323.
96. Ibid. On a similar proposition, see Banco do Brasil S.A. v. Israel Commodity Co., 29 Misc. 2d 229, 215 N.Y.S.2d 3 (Sup. Ct. 1961), in which the court held that the only provision of the Bretton Woods Agreement which refers to acts of private individuals is Art. VIII, § 2(b). See note 74 supra.
tion, as evidenced by the fact that none of the policies had any restrictions as to residence, travel, or occupation of the insured. Even the text of Cuban Law number 13 of December 23, 1948,\textsuperscript{98} does not show any indication that it was to have extra-territorial effect.

Judge Choate, referring to the previously mentioned Louisiana case\textsuperscript{99} noted:

The intermediate Louisiana court was not deciding the matter on Louisiana law, but on its interpretation of the Bretton Woods Agreement, the United States recognition of the present Cuban government, and 22 U.S.C. § 286 et seq. Thus, if we apply Klaxon Co. v. Stentor Electric Mfg. Co., we come full circle back to a determination of federal and international law. Unmistakably, a federal court sitting in diversity is not bound by state decisions in interpreting federal questions.

Not only is this court not required to give recognition to the described acts of the present Cuban government, but the Castro decrees have no extra-territorial effect . . . . We are of the opinion that neither the persons nor the subject matter of this action is subject to the sovereignty of the present State of Cuba.\textsuperscript{100}

In summarizing, Judge Choate noted that the recent holdings tend to protect the insureds from the greater power of insurers by means of the "choice-of-law" rules.\textsuperscript{101} Applying this reasoning, the court found that insurance contracts are governed by the law of the domicile of the insurers. This view is consistent with the result reached by the Florida district court of appeal in the \textit{Recio} case,\textsuperscript{102} by application of the place of performance test.

\textbf{VII. CONCLUSIÓN—THE PRESENT TREND}

Had the \textit{Ugalde} and \textit{Recio} cases been before the courts at the time of the \textit{Dougherty} decision,\textsuperscript{103} the result might have been in favor of the insurance companies' position.\textsuperscript{104} Today, the act of state doctrine has

\begin{itemize}
\item \textsuperscript{98} See note 30 \textit{supra}.
\item \textsuperscript{99} Theye y Ajuria v. Pan-American Life Ins. Co., \textit{supra} note 84.
\item \textsuperscript{100} Blanco v. Pan-American Life Ins. Co., 221 F. Supp. 219, 226 (S.D. Fla. 1963).
\item \textsuperscript{101} The drafter's comments contained in \textit{Restatement (Second), Conflict of Laws} § 364h (Tent. Draft No. 6 1960), point out that normally the validity of a life insurance contract is governed by the local law of the state where the insured was domiciled at the time the policy was issued. However, if the contacts which the contract has with another state are sufficient to establish a more significant relationship between the contract and the other state, the local law of the other state will govern. It is significant, that the reason underlying the choice of law rule is \textit{to allow the maximum protection to the insured}.
\item \textsuperscript{102} Pan-American Life Ins. Co. v. Recio, 154 So.2d 197 (Fla. 3d Dist. 1963).
\item \textsuperscript{103} Dougherty v. Equitable Life Assur. Soc'y, 266 N.Y. 71, 193 N.E. 897 (1934).
\item \textsuperscript{104} One of the basis for the holding in \textit{Dougherty} was that since diplomatic recognition was accorded to the Russian revolutionary government, the court, under the common law of New York, had to recognize that a foreign state may by its decree, impair, cancel,
been modified as a result of the communist threat, and the executive branch of the United States government has expressly authorized the courts to examine the validity of Cuban laws in suits pending before them.

It is doubtful that the courts will affirm the holding of the Ajuria case and the trend seems to be to consider the Bretton Woods Monetary Agreement inapplicable to claims under insurance policies issued to Cuban nationals in Cuba. Even if Law number 568 were applied, it would affect a "current transaction," which is specifically excluded from the purview of the agreement and in order to be enforceable it would require that the member nations expressly approve the disposition as stipulated under article VIII, section 2(a).

It should be noted that whether it be found that the insurance contracts are governed by United States law from the beginning or as a result of the exercise of the cash surrender option, or even assuming that Cuban law is applicable, the policyholders should be successful at least in claims under insurance policies initially issued by insurance companies from their home offices outside Cuba. Once the insurer's liability is admitted, the question of whether payment should be made in dollars or in pesos, at the rate of exchange of one dollar per peso, acquires significance. This is especially true when there are involved policies in which the cash surrender option has not been exercised, since

and destroy the obligations of Russian nationals suing in New York. However, as pointed out in Judge Lehman's concurring opinion:

We cannot hold that Russian law can relieve the defendant of an obligation for which it has received payment unless we give Russian law an extraterritorial effect which under our own law we are not required to accord to foreign law. Id. at 107, 193 N.E. at 910.

However, today the Cuban confiscatory laws have been denied extraterritorial application. See notes 67 and 73 supra. The question of how recovery is to be measured is not the central issue as it was in the Dougherty case. There, the unrestrained inflation rendered the currency, in which payment was to be made, valueless, and thus made the recovery in New York, based on the exchange value of the rubles on the day upon which the assured was to receive payment, equally valueless.

106. 26 DEP'T STATE BULL. 984 (1952).
107. Theye y Ajuria v. Pan-American Life Ins. Co., 154 So.2d 450, 454 (La. App. 1963), in which the court stated:

Cuban Law 568 of September 29, 1959, required payments between plaintiff and defendant be made in Cuba, regardless of language of the contract. Despite this, plaintiff attempts to deny the decrees and laws of Cuba, the sovereign to whom it owed allegiance to come into this country and collect his debt in the currency of another nation. This would nullify and frustrate his own sovereign's legislative will and powers.

The court in the Ajuria case found the Monetary Fund argument of the insurance company most persuasive, since their opinion was in substance an almost exact reproduction of the insurance companies' argument.

108. See notes 31 and 78 supra.
109. See note 74 supra.
110. See note 102 supra.
111. Confederation Life Ass'n v. Ugalde, 151 So.2d 315 (Fla. 3d Dist. 1963).
there is always the possibility that the official rate of exchange might differ and accordingly affect the amount of recovery. The only possibility of the insurance companies avoiding total liability is if the insurance policies are considered exchange contracts controlled by the Cuban monetary regulations in accordance with the Bretton Woods Monetary Agreement. This interpretation would indirectly produce the extra-territorial confiscation of insurance policies owned by Cuban nationals residing in the United States, and would, therefore, be contrary to the public policy of the United States which provides that all expropriations must be preceded by adequate compensation in order to be recognized under the principles of international law.

The extra-territorial application of the Cuban confiscatory laws has been denied by American courts on the basis of public policy and international law. Furthermore, the insured's rights to the cash surrender value under an insurance contract are the same whether civil law or common law is applied. It was the policyholders' option to accept the irrevocable offer for the cash surrender value in the United States since it has been established that an action for the breach of an insurance contract is transitory in nature. A New York case has held that it is the claimant's option to request payment in the currency of his choice when allowed by the terms and conditions of the contract.

It should also be noted that Cuban Laws numbers 13 and 568 were never intended to have extra-territorial application and in this respect the Ugalde decision should be reversed in accordance with the view expressed by Judge Horton in his dissenting opinion. This action would be similar in result to the later Recio and Blanco decisions, which would avoid the duality of interpretation which later decisions have exhibited concerning the currency in which payment is to be made.

112. See notes 67 and 73 supra.
113. See note 95 supra.
114. See note 102 supra.
115. See note 97 supra.
116. Sun Life Assur. Co. of Canada v. Solf Edward Klawans, Civil No. 62-457 (Fla. 3d Dist., September 25, 1963), in which the court stated:

As to the amount of the judgment, if any to be entered upon remand of this case, it would appear that the amount of said judgment would be controlled by the principles announced in Confederation Life Association v. Ugalde, Fla. App. 1963, 151 So.2d 315; and in Crown Life Insurance Company v. Calvo, Fla. App. 1963, 151 So.2d 687.

See also Pan-American Life Ins. Co. v. Raij, 156 So.2d 785, 786 (Fla. 3d Dist. 1963), in which the court stated:

The appellant has filed a petition for rehearing, pointing out that, in rendering the opinion in this case, the court overlooked and failed to consider its contention that this transaction was governed by the Bretton Woods Agreement relating to the International Monetary Fund and the Federal legislation pertaining thereto. See: 22 U.S.C.A. § 286 et seq. At the time of the original opinion in this cause, this Agreement was considered and deemed to be not applicable, for the reason that the contract involved was a contract with an American company, made in the United States, payable in United States Dollars; that premiums had been accepted in United States Dollars since 1942, and that the effect of the chancellor's decree
It is settled law that aliens may institute legal proceedings in any type of procedure available under the *lex fori,*\textsuperscript{117} as provided by section IV of the Declaration of Rights of the Florida Constitution.\textsuperscript{118} Furthermore, the Florida courts have refused to decline jurisdiction under the common law doctrine of *forum non conveniens.*\textsuperscript{119} Thus, “unblocked”\textsuperscript{120} Cuban nationals will eventually obtain equitable results in spite of the complexities of this area of the law.\textsuperscript{121}

GUILLERMO CASTRILLO

was only to require the appellant to continue to accept premium payments in United States Dollars. Not only were we of the opinion that the Bretton Woods Agreement was not applicable to the contract in the instant case, we were further of the opinion that the Bretton Woods Agreement pertained only to contracts “involving the currency of any member” of the Fund and that an American contract, upon which payments were to be made to or by the appellant in United States currency, was not an unenforceable contract within the provisions of Article VIII, § 2(b) of the Bretton Woods Agreement. (Emphasis added.)


\textsuperscript{118} FLA. CONST. DECL. OF RIGHTS § 4.

\textsuperscript{119} Menendez v. Aetna Ins. Co., 311 F.2d 437 (5th Cir. 1962); Rodriguez v. Pan-American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).


\textsuperscript{121} After the completion of this article, the Supreme Court of Florida rendered a decision in the case of Confederation Life Ass'n v. Ugalde, Civil No. 32,780, February 24, 1964, rehearing requested, in which the court held:

The Cuban laws relating to the establishment of currency control are similar to those which have been enacted in this country with respect to our own currency and are not violative of United States policy. The Florida Courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved.

The petitioner having, upon demand, offered to make payments of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the petitioner.

The above decision represents a complete reversal of the apparent trend of the Florida courts in the instant claims, and when final, many of the questions raised by this article would have been answered in Florida, since the court has found meritorious both of the defendant companies' main arguments, *i.e.,* the Monetary Fund argument and the Breach of Contract argument.