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Insurance -- Recovery -- Valued Policy Statutes

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him in a criminal prosecution, and accomplishing the same result over the defendant's resistance. When the body is invaded for the purpose of procuring evidence, there is a violation of the person's rights, regardless of whether he struggles or is incapable of struggling due to unconsciousness. The taking of body fluids, whether by drawing blood,¹⁶ by stomach pump,¹⁷ or by any other unlawful means,¹⁸ clearly seems a violation of basic procedural due process.

MYRON SHAPIRO

INSURANCE — RECOVERY — VALUED POLICY STATUTES

The plaintiff insured a school building against loss by fire in compliance with the Florida Valued Policy Statute.¹ The valuation placed upon the building was \$6,500. Two years later, the defendant contracted to sell the building for \$2,300. Before title to the property was transferred, the building was totally destroyed by fire. In an action for declaratory relief, *held*, the plaintiff was liable for the agreed insurable value determined at the time the policy was issued, and its liability was not limited to the interest of the defendant in the property at the time of the fire. *National Fire Insurance Company v. Board of Public Instruction*, 239 F.2d 370 (5th Cir. 1956).

Valued policy statutes, such as the one applied in this case,² are founded upon what legislatures in several states have considered to be

16. *Trammell v. State*, 287 S.W.2d 487 (TEX. CIV. APP. 1956); *Turvey v. State*, 95 Okla. Crim. 418, 247 P.2d 304, 307 (1952) (dictum); *contra*, *People v. Hacussler*, 41 Cal.2d 252, 260 P.2d 8 (1953); *Block v. People*, 240 P.2d 512 (Colo. 1952), *cert. denied*, 343 U.S. 978 (1952); *State v. Smith*, 8 Ter. 334 (Del. Super. Ct.), 91 A.2d 188 (1952).

17. See note 7 *supra*.

18. *People v. Martinez*, 130 Cal. App.2d 54, 278 P.2d 26 (1955); *contra*, *People v. Woods*, 139 Cal. App.2d 515, 293 P.2d 901 (1956); *State v. Berg*, 76 Ariz. 96, 259 P.2d 261 (1953).

1. FLA. STAT. § 631.04 (1955). "Value of buildings insured to be fixed in policy of insurance."

"Any insurer insuring any building or other structure in this state against loss or damage by fire or lightning, shall cause such building . . . to be examined by an agent or other representative of the insurer and full description thereof to be made. . . .

" . . . in case of total loss the whole amount mentioned in the policy upon which the insurers receive a premium shall be paid. . . .

"The insurer shall be estopped from denying that the property insured was worth, at the time of insuring, the amount of the insurable value as fixed by the agent or other representative."

FLA. STAT. § 631.05 (1955). "Measure of damage in case of loss."

"In case of the total loss of the property insured the measure of damage shall be the amount upon which the insured paid a premium. . . ."

FLA. STAT. § 92.23 (1955). "Rule of evidence in suits on fire policies for loss or damage to building."

"In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire . . . the insurer shall not be permitted to deny that the insured therein on such property."

property insured was worth, at the time of insuring it by the policy, the full sum

2. *Ibid*.

sound public policies.³ These public policies, generally stated, are to avoid the uncertainty which may arise concerning the value of property after its destruction,⁴ to relieve the insured from the burden of proving the value of that property,⁵ and to prevent insurance companies from receiving premiums on a stated valuation and then repudiating that valuation after the property has been destroyed.⁶ Many courts have criticized valued policies by calling them "wagering contracts."⁷ Answering a criticism of this kind, Lord Mansfield wrote, "A valued policy is not to be considered as a wager policy. . . ." ⁸ But later in the same opinion he continued, ". . . it must be taken that the value was fixed in such a manner as that the insured meant only to have an indemnity."⁹

Fire insurance contracts are treated by the majority of courts as contracts of indemnity.¹⁰ They therefore stand as agreements under which there can be no recovery in excess of the amount sufficient to indemnify the owner of an insurable interest¹¹ in the destroyed property. The indemnification is limited to the extent of the insurable interest.¹² If there is no loss, there can be no recovery under such a policy.¹³ It should follow that where the loss is limited, there can only be limited recovery.¹⁴ Thus, if the object of fire insurance is to grant compensation for a property loss that may be sustained by the insured, and at the inception of the coverage a valuation is placed upon the property, is this amount a true compensation for a loss that may be sustained one day later, or one year later, or four years later? Would not the insurer have to make monthly

3. *Bright v. Hanover Fire Ins. Co.*, 48 Wash. 60, 92 Pac. 779 (1907); 6 APPLEMAN, *INSURANCE LAW & PRACTICE*, §§ 3827-3850 (1942).

4. *Aetna Ins. Co. v. Norris Bros.*, 109 F.2d 172 (4th Cir. 1940); *Fox v. Milwaukee Mechanics' Ins. Co.*, 210 Wis. 213, 246 N.W. 511 (1933).

5. *Quisenberry v. National Fire Ins. Co.*, 132 Neb. 793, 273 N.W. 197 (1937); *Bright v. Hanover Fire Ins. Co.*, 48 Wash. 60, 92 Pac. 779 (1907).

6. See note 4 *supra*; *United States Fire Ins. Co. v. Sullivan*, 25 F.2d 40 (8th Cir. 1928), *cert. denied*, 278 U.S. 608 (1928); *Tedford v. Security State Fire Ins. Co.*, 224 Ark. 1047, 278 S.W.2d 89 (1956).

7. "According to the law in this state, insurance is indemnity. A contract for a fixed sum (a valued policy) would be illegal and wagering . . ." *Norwich Union Fire Ins. Assoc. v. Bainbridge Grocery Co.*, 16 Ga. App. 432, 85 S.E. 622 (1915). *But see*, *Orient Ins. Co. v. Daggs*, 172 U.S. 557 (1869); 19 CAN. L. T. 124.

8. *Lewis v. Rucker*, 2 Burr. 1167, 97 Eng. Rep. 769 (1761).

9. *Ibid.*

10. 4 APPLEMAN, *INSURANCE LAW & PRACTICE*, § 2107 (1941).

11. *Id.* at p. 17.

12. *Id.* § 2602; 1 COUCH, *CYCLOPEDIA OF INSURANCE LAW*, § 293 (1929 Supp. 1945).

13. *St. Paul Fire & Marine Ins. Co. v. Sheur*, 298 Fed. 257 (5th Cir. 1924); *Le Doux v. Dettmering*, 316 Ill. App. 98, 43 N.E.2d 862 (1942); *Tabbut v. American Ins. Co.*, 185 Mass. 419, 70 N.E. 430 (1904); *Home Ins. Co. v. Stone River Nat'l Bank*, 88 Tenn. 369, 12 S.W. 915 (1889); *German Ins. Co. v. Everett*, 36 S.W. 125 (Civ. App. Tex. 1896); *Ramsdell v. Insurance Co. of North America*, 197 Wis. 136, 221 N.W. 654 (1928).

14. *Karcher v. Philadelphia Fire and Marine Ins. Co.*, 32 N.J. Super. 496, 108 A.2d 638 (1955); 4 APPLEMAN, *op. cit.* *supra* note 10.

or semi-annual re-evaluations and corresponding premium adjustments in order to maintain an equitable valuation? The majority rule in jurisdictions not allowing valued policies is that the face value of the insurance policy may not be admitted as proof of the value of the property destroyed.¹⁵ It would seem that this is designed to encourage the delineation of a just amount of compensation in case of loss by fire.

The court in the instant case cannot be criticized for its application of the law. In its decision it followed the Valued Policy Statute of the State of Florida as it was written and has been interpreted.¹⁶ As this case demonstrates, the valued policy, though written in conformance with a statute, may result in more than mere indemnity.¹⁷ If the statute were designed to protect the public from the dangers of over-insurance,¹⁸ the instant case stands as an example of how the statute has failed to meet its purpose. Limiting the recovery in fire insurance to the extent of the interest of the insured in the property at the time of its destruction¹⁹ may give rise to problems of defining insurable interests.²⁰ However, the measurement of the insurable interest seems to be the only tool which will completely remove the fire insurance contract from the wagering category.

It seems that while the valued policy statutes are attempts to solve real problems, their very presence in the forms used today may give rise to more serious and potentially dangerous problems. What is needed seems to be a compromise enactment which will be a more effective means of answering diametrically opposed problems.²¹ Perhaps judicial interpretation allowing flexibility to the valued policy statutes is the answer. The courts, however, are reluctant to change statutory inter-

15. See Bonbright & Katez, *Valuation of Property to Measure Fire Ins. Losses*, 29 COLUM. L. REV. 858 (1929).

16. *Martin v. Sun Ins. Office of London*, 83 Fla. 325, 91 So. 363 (1922). (The Florida valued policy statute held not in conflict with the Constitution of the State of Florida.) *Hartford Fire Ins. Co. v. Redding*, 47 Fla. 288, 37 So. 62 (1904). (The court held that the valued policy statute would not be unconstitutional if it deprives the insurer of the right to question the valuation.)

17. *American Ins. Co. v. Robinson*, 120 Fla. 674, 163 So. 17 (1935). "Valued policy statutes such as ours will not permit a reduction of the amount of insurance specified in the policy by reason of depreciation in value caused by use, decay, accident, casualty, or otherwise, where such supervening cause occurs subsequent to the issuance of the policy." But see, *Meier v. Eureka-Security Fire & Marine Ins. Co.*, 168 S.W.2d 127 (1943).

18. *American Ins. Co. v. Iaconi*, 8 Terry (47 Del.) 167, 89 A.2d 141 (1952); *Nathan v. St. Paul Mutual Ins. Co.*, 243 Minn. 430, 68 N.W.2d 385 (1955).

19. *Smith v. Northern Ins. Co.*, 232 App. Div. 354, 250 N.Y. Supp. 30 (Sup. Ct. 1931). (The thing insured is not the property described by the interest or estate of the insured therein.)

20. 36 GEO. L. J. 876 (1948).

21. W. J. Davis, *Fire Insurance & the Public Interest*, INS. L. J. 1951:461-7.

pretations, leaving such tasks to the legislatures.²² There is a need, as illustrated here, for the recognition of the conflict in this field and a concerted effort toward the fulfillment of a uniform solution.

WALTER M. DINGWALL

LABOR LAW — PICKETING BY UNION MEMBERS WHO ARE NOT EMPLOYEES OF SUBJECT EMPLOYER

The Fontainebleau Hotel was picketed by members of a Hotel Employees Union, a minority of whom were employees of the hotel. The union sought recognition as the bargaining agent of the employees of the hotel. The Florida Supreme Court indicated that the union had ignored the prerequisites of picketing established by law, because it had intimidated the employees and the patrons. *Held*, "... that the union as such, and as distinguished from the individual employees, *may not* (italics supplied) under the circumstances . . . engage in picketing by use of members of the union as pickets *who are not the employees of the subject employer.*" (italics supplied) *Fontainebleau Hotel Corp. v. Hotel Employees Union, Local No. 255*, 92 So.2d 415 (Fla. 1957).¹

In *American Federation of Labor v. Swing*, the Supreme Court of the United States held that the constitutional guarantee of freedom of speech was infringed upon by the judicial policy of a state forbidding peaceful picketing that was based on the grounds that the picketing had been conducted by strangers to the employers; thus, no proximate relationship existed between the employers and the pickets.² In the *Swing* decision the Court pointed out that a state can not exclude workingmen from peacefully exercising the right of free speech by drawing the circle of economic competition so small around the employer and the employees as to contain only himself and those employees *directly* employed by them.

Following this decision, many courts reversed earlier holdings concerning the unacceptability of "stranger" picketing and established precedents indicating the existence of labor disputes even though the employees

²² *Hunt v. General Ins. Co. of America*, 217 S.C. 453, 60 S.E.2d 891 (1955). "Courts should not annul contracts on doubtful grounds of public policy, in such matters it is better that the legislatures should first speak." *Bright v. Hanover Ins. Co.*, 48 Wash. 60, 92 Pac. 779 (1907). "To a certain extent the law undoubtedly gives legal sanction to the wagering contract, but the policy of such a law is for the Legislature, and not for the courts."

1. For a *thorough* examination of the background of Federal and Florida law in the field of labor relations, the reader is referred to: 8 *MIAMI L.Q.* 246 (1953) and 10 *MIAMI L.Q.* 208 (1956).

2. *American Federation of Labor v. Swing*, 312 U.S. 321 (1941).