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Insurance

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A number of the Georgia cases in the field of insurance were concerned with the question of whether the insurer had waived its right to rely on certain policy provisions. *Pacific Fire Ins. Co. v. Cash*[1] was a suit on an automobile collision policy. The company relied on a provision in the policy which stated that the insurance was not effective while the automobile was subject to encumbrances not described in the contract. The policy had blanks for the indication of encumbrances and other information. These blanks were not filled up. It appeared that the agent had not asked the plaintiff about encumbrances when the policy was written. The court decided that the failure of the agent to inquire amounted to a waiver of the clause concerning the existence of encumbrances.

Two cases found waiver of the policy provision requiring proof of loss to be filed within sixty days after loss. *Fidelity-Phenix Fire Ins. Co. v. Berry*[2] held that making oral proof of loss to a local agent and being assured that such statement was sufficient along with the fact that the company conducted an investigation within the sixty-day period would constitute a waiver by the company. Another case[3] held that refusal of liability on the part of the company amounted to a waiver of the proof of loss requirement.

Life & Casualty Ins. Co. of Tennessee v. Wood[4] was an action by the beneficiary of a life insurance policy. The insurer based its defense on the military clause which provided that the insured was only covered in time of war if the company was notified in writing and a higher premium paid. Plaintiff had not complied with this provision, but had orally notified a local agent who had no authority to waive policy provisions and who failed to notify the company. The court refused to find a waiver, and distinguished this case from an earlier decision[5] on the ground that in the earlier case an agent with authority to execute waivers had actual knowledge of the military service and had continued to accept premiums under those circumstances. In another case[6] on a life contract, the existence of a waiver of the policy provisions concerning reinstatement was denied on the ground that mere acceptance of premiums after the grace period by an agent without authority to waive policy provisions, and the retention by the company of the premiums for several weeks until demand was made for payment, was not such conduct as would constitute waiver. There must be

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1. 81 Ga. App. 102, 57 S.E.2d 708 (1950).
2. 81 Ga. App. 209, 58 S.E.2d 492 (1950).
3. Gilley v. Glens Falls Ins. Co., 81 Ga. App. 71, 58 S.E.2d 218 (1950).
4. 80 Ga. App. 56, 55 S.E.2d 254 (1949).
5. Harmon v. State Mutual Insurance Co., 202 Ga. 265, 42 S.E.2d 761 (1947).
6. Independent Life & Accident Ins. Co. v. Pantone, 80 Ga. App. 426, 56 S.E.2d 153 (1949).

some affirmative showing of a knowledge of the facts on the part of the company.

Carroll v. Garlington-Hardwick Co.[7] and *Standard Accident Ins. Co. v. Fowler*[8] dealt with the problem of cancellation of automobile liability insurance. In the *Carroll* case the company was sustained in its contention that the policy had been cancelled by the sending of notice to the insured that the policy would be cancelled if premiums were not received within five days. This was so in spite of the fact that the company later received premiums which were retained until it was discovered that the policy had been cancelled. The insured reeiid on the fact that credit had been extended on policies of earlier years, but the court decided that the notice sent negatived any credit after the notice date. The *Fowler* case was rather unique on its facts. The insured had applied to a lawyer, who was a claim adjuster for the defendant, for a liability policy. The lawyer had referred the matter to an agent who wrote the policy. Sometime later the plaintiff called the lawyer to inquire if he had to take the policy and was informed that he was legally bound but that the company would not hold him if he desired not to take the policy. Whereupon, the plaintiff expressed the desire to be released. The lawyer went on vacation at this point and failed to notify the company to cancel the policy. Plaintiff had an accident and then called at the defendant's office to inquire if his policy was still in force. He was informed that it was and, upon paying the premium, was presented with the policy. The court held that the policy was in effect at the time of the accident. The lawyer was termed a conduit through which the plaintiff attempted to convey his desire to cancel but which failed. The lawyer was found to have no power to issue or cancel policies for the company.

Construing the coverage clause of an insurance policy in relation to a specific set of facts has given rise to some of the most difficult cases in the law of insurance. A nice question of construction and application of the coverage clause arose in *Wallace v. Virginia Surety Co.*[9] There, the policy contained the following language:

> "In consideration of the premium at which the policy is written, it is agreed that the automobile or automobiles described in the policy will be used and operated within a radius of 500 miles of the place where such automobile or automobiles as described in said policy are principally garaged.
>
> "It is further agreed that the company shall not be liable for, nor will it pay any loss or claim whatsoever that results from any accident or loss occurring while the automobile or automobiles described in the policy are being operated outside of the radius of 500 miles. . . . "

Plaintiff's truck had been on a trip to Miami, a distance of 725 miles from the place of garage, but the accident occurred on the return trip when the truck was only 275 miles from the place where it was principally garaged. The majority held that the policy did not cover a trip which took the truck outside of the 50 mile radius. The dissent thought that the first clause was ambiguous but that the second clause made it clear that liability was denied only when the accident occurred outside of the de-

7. 79 Ga. App. 708, 54 S.E.2d 441 (1949).
8. 80 Ga. App. 503, 56 S.E.2d 807 (1949).
9. 80 Ga. App. 50, 55 S.E.2d 259 (1949).

scribed radius. The question was so close that either opinion is difficult to criticize; but, in view of the rule that ambiguous clauses are construed against the insurer, the dissent seems to take the sounder position.

Moore v. American Ins. Co. of City of Newark, New Jersey[10] was another case requiring an interpretation of the coverage clause. Plaintiff purchased a truck without a bed or body. He insured the truck with the defendant and told the agent at the time that he planned to put a cement mixer on the truck. The policy described the truck and stated that the truck and its "permanent equipment" were covered. Plaintiff welded the cement mixer to the chassis. The truck and mixer were damaged in a collision whereupon the plaintiff sought to recover under this policy. The court found that "permanent equipment" referred to equipment permanently attached at the time the policy was issued and not a $4,000 mixer later added. The opinion seemed to place a great deal of weight on the fact that the mixer was worth almost as much as the rest of the truck and found it difficult to believe that the policy was intended to cover such added equipment at the same premium. The court's opinion seems sound but, nonetheless, there is a good chance that the plaintiff was reasonably led to believe that all of the truck's equipment was covered.

In one case[11] the court held that the plaintiff's claim that her husband was a dependant within the meaning of a policy obligating the company to pay a sum to her on the accidental death of a "dependant" member of her family was not subject to a general demurrer. The fact that the law places the duty of support on the husband would not control in this case, but rather it was a question of actual dependency. Also, in *Interstate Life & Accident Ins. Co. v. Hulsey,*[12] the word "steamship" in an accident policy was interpreted not to cover a motor launch in which the insured was riding out to board a steamship.

The court interpreted an accidental death policy in *Independent Life & Accident Ins. Co. v. Hopkins.*[13] The pertinent provision read: "The agreement as to benefit under this policy shall be null and void if the insurer's death results, directly or indirectly, from any of the following causes: . . . (a) as a result from the intentional act or acts of any person or persons." It was determined that even though the death resulted from the willed act of another, the intention of the actor must have been to cause the result before it would bring the death within the quoted exception.

Aetna Life Ins. Co. v. Jones[14] was a ruling that the jury would be justified in finding that a death resulted "directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means . . . " in spite of the fact that it was shown that the deceased suffered from Parkerson's disease. But in *Gulf Life Insurance Co. v. Bolt*[15] insufficient evidence was presented to justify a recovery on an accident policy for loss of eyesight.

Two cases, *Liberty Nat. Life Ins. Co. v. Hearing*[16] and *Gulf Life Ins.*

10. 81 Ga. App. 219, 58 S.E.2d 197 (1950).
11. Roberts v. Employers Ins. Co. of Alabama, 79 Ga. App. 611, 54 S.E.2d 465 (1949).
12. 81 Ga. App. 276, 58 S.E.2d 463 (1950).
13. 80 Ga. App. 348, 56 S.E.2d 177 (1949).
14. 80 Ga. App. 472, 56 S.E.2d 305 (1949).
15. 80 Ga. App. 779, 57 S.E.2d 455 (1950).
16. 80 Ga. App. 81, 55 S.E.2d 641 (1949).

Co. v. Griffin,[17] involved the application of the "sound health" clause. In the *Hearing* case there was no positive evidence of an unsound condition of health known to the applicant at the time the policy was issued, although it did appear that the deceased was a nervous person and not completely developed as to her mental status. The court found no violation of the clause providing that the policy would not take effect if the insured was not in good health at the time of delivery of the policy. In the *Griffin* case the following language was used in reference to the application of the "delivery in sound health" clause: The sound health clause "refers to a change in the condition of the applicant's health between the time of taking the application for insurance and the date of the issuance and delivery of the policy, and is unavailable as a defense unless it is shown that the insured's disease developed during that period." It was also noted that the clause meant only ". . . that the insured enjoys such health and strength as to justify the reasonaable belief that he is free from derangement of organic functions, and to ordinary observation and to outward appearance his health is reasonably such that he may with ordinary safety be insured upon ordinary terms."

The application of Code Section 56-703, providing for payment of attorney's fees and a penalty against insurance companies failing in bad faith to pay claims, was considered in three cases. In one case[18] the court stated that bad faith meant a "frivolous and unfounded denial of liability." And it also added that if there is a reasonable ground for denying liability, there will not be such bad faith as contemplated by the statute. In *Independent Life & Accident Ins. Co. v. Hopkins*[19] the court decided that the failure of the insurance company to investigate a claim within sixty days from the filing of the claim was sufficient to sustain a jury finding of bad faith. In a case involving a contract surety bond[20] it was found uncessary to determine whether Code Section 56-703 applied to surety bonds because there was not enough evidence to show bad faith even if the statute was applicable.

C. L. Fain Co. v. Baltimore American Ins. Co.[21] and *Great American Ins. Co. v. Gusman*[22] were found, on their own peculiar facts, to have established thefts within the meaning of their policies.

No important legislation concerning the substantive law of insurance was passed during the survey period. The following statutes concerning procedural and administrative matters were enacted during the period: an amendment to clarify the autohrity of mutual incorporated and co-operative fire insurance companies to write insurance against loss occasioned by the operation of any and every kind of motor vehicle;[23] acts providing for substituted service of process on insurres not authorized to transact busi-

17. 80 Ga. App. 730, 57 S.E.2d 296 (1950).
18. Life & Casualty Ins. Co. of Tennessee v. Freeman, 80 Ga. App. 443, 56 S.E.2d 303 (1949).
19. 80 Ga. App. 348, 56 S.E.2d 177 (1949).
20. Southeastern Const. Co., *for use of* Beckham v. Glens Falls Indemnity Co., 81 Ga. App. 770, 59 S.E.2d 751 (1950).
21. 81 Ga. App. 105, 57 S.E.2d 879 (1950).
22. 80 Ga. App. 471, 56 S.E.2d 319 (1949).
23. Ga. Laws 1950, p. 426.

ness in Georgia;[24] an act to regulate unfair trade practices in the marketing of insurance;[25] an act changing the license fee for compaines and agents;[26] an act raising the capital stock requirement to $100,000 for companies doing industrial life, health and accident underwriting, and permitting them to write ordinary life insurance;[27] an act dealing with participation in net reserves by policyholders;[28] and an act authorizing political subdivisions and state departments, bureaus. etc., to deduct amounts from the wages of employees for the purchase of group insurance, provided employee consent is obtained.[29]

24. Ga. Laws 1950, p. 347; Ga. Laws 1950, p. 58.
25. Ga. Laws 1950, p. 326.
26. Ga. Laws 1950, p. 122.
27. Ga. Laws 1950, p. 10.
28. Ga. Laws 1950, p. 121.
29. Ga. Laws 1950, p. 355.