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added that the "established authority" seems strongly on the side of *Schneider* and *Sprys*. The court also argued that it "took the point of view consistent with recognized public policy."[21] It did not elaborate on this point, and it did not explain how public policy is served by placing governmental bodies in an advantageous position over other organizations.

The court also failed to show that Congress intended that counties be recognized as "persons" under Taft-Hartley. The "piggy-back" case is not a convincing precedent, for Taft-Hartley includes corporations in its definition, and a railroad company is, after all, a corporation. A county, on the other hand, is not ordinarily regarded as a corporation in any sense.[22] To deal with it on the same basis as a railroad company seems an unreasonable broadening of statutory language. Analogy is, at best, a dangerous device, and it seems that in the *Local 313* case the court relied too heavily upon analogy and ignored several well-established precedent cases and rules of construction.

John W. Hopkins

TORTS: Duty of Life Insurance Companies to Observe Insurable Interest Rule

Two objections founded upon public policy considerations have long been urged against the indiscriminate enforcement of life insurance contracts: first, that they are wagering contracts; second, that they tend to encourage the taking of human life.[1]

These pernicious elements could be completely eliminated by statutory prohibition of the issuance of life insurance policies. However, the social utility of life insurance is so highly valued that, rather than resort to such a drastic cure, the law has chosen to strike a compromise between the interests involved. This compromise takes form in the "insurable interest" rule.[2] The effect of this rule is that a policy of life insurance taken out *by the beneficiary* on the life of another[3] (cestui que vie)[4] is contrary to public policy and void unless that beneficiary has an insurable interest in the life of the cestui.[5] An insurable interest exists where there is a bona fide desire and interest on the part of the beneficiary that the life of the cestui shall continue its natural term. The circumstances which evidence such a desire exist whenever the relationship between the beneficiary and cestui, whether by blood, affinity, or financial dealings, is such that the benefici-

21 *Ibid.*

22 1 McQuillin, Municipal Corporations § 2.46, at 497 (3d ed. 1949).

1 Patterson, *Insurable Interests in Life*, 18 Colum. L. Rev. 381, 385 (1918).

2 In most states the requirement of an insurable interest is not based upon statutory provisions, but results from the judicial application of public policy. In New York, Pennsylvania, and California an insurable interest is required by statute. See Patterson, Essentials of Insurance Law 158 (1957).

3 A policy procured by a person on his own life, *and on his own initiative,* is valid and enforceable in favor of any beneficiary named by him, regardless of whether the beneficiary has, or ever had, an insurable interest in the other's life. This rule, now adopted by statute in New York, has been accepted as the overwhelming weight of authority in this country, though not in England or Texas. *Id.* at 166. See also Vance, Law of Insurance 188 (1951).

4 Patterson, *op. cit. supra* note 2, at 158.

5 Vance, *op. cit. supra* note 3, at 184.

ary has a reasonable expectation of deriving benefit from the continuation of the insured's life.[6]

That there is a well recognized risk of murder by a beneficiary who has no insurable interest in the life insured raises a very important question: Does a life insurance company owe a duty to the cestui to use reasonable care not to issue a policy of insurance on his life in favor of a beneficiary who has no interest in the continuation of that life? This specific question arose for the first time in *Liberty Nat'l Life Ins. Co. v. Weldon.*[7]

In that case the defendant-insurance companies issued three policies in favor of *B* (beneficiary) on the life of *C* (cestui que vie), a two-year-old child. As aunt-in-law of the insured, *B* had no insurable interest in the life of *C*.[8] Shortly after the issuance of the last policy *C* died of arsenic poisoning. *B* was convicted of murdering her niece and was electrocuted. The motive for the crime was found to be the proceeds of the insurance policies,[9] totaling $6500.[10]

The father of the murdered infant then brought a wrongful death action in the amount of $100,000 against the insurance companies. The plaintiff maintained his action on the theory that *B* did not have an insurable interest in the life of *C*; that the defendants were negligent in issuing the policies because they knew there was no such interest or failed to use reasonable care to ascertain that fact *although there was a duty upon them to do so.*[11] He asserted the failure to perform that duty was in fact the proximate cause of the child's death for which the insurers should be held liable.

In support of the plaintiff's case, the jury made the following findings of fact: first, *B* did not have an insurable interest in *C*'s life; second, before issuing the policies none of the defendants made a reasonable effort to ascertain whether *B* did in fact have an insurable interest in *C*'s life; third, *B* murdered *C*; fourth, the motive for the murder was the insurance money.

The trial judge left the question of proximate cause to the jury which found for the plaintiff in the amount of $75,000, and judgment was entered accordingly. On appeal to the Alabama Supreme Court this judgment was affirmed.

In concluding that the defendants were liable the court analyzed this unique factual situation as presenting two main issues: Did the insurance companies have a duty to use reasonable care not to issue policies of life insurance in violation of the insurable interest rule? If the defendants did have such a duty, was the breach thereof the proximate cause of *C*'s death, or was the criminal act of *B* a superseding cause?

The defendants were quick to point out that there was a total lack of precedent

[6] *Id.* at 190.

[7] ....Ala........., 100 So.2d 696 (1957).

[8] *Id.* at........, 100 So.2d at 704. *B* had no insurable interest on the basis of family relation, because an in-law relationship in and of itself will not support an insurable interest. See National Life & Acc. Ins. Co. v. Ball, 157 Miss. 163, 127 So. 268 (1930). Secondly, *B* had no insurable interest based on any reasonable expectation of possible profit or advantage to her from the continued life of *C*. See Commonwealth Life Ins. Co. v. George, 248 Ala. 649, 28 So.2d 910 (1947).

[9] Denninson v. State, 259 Ala. 424, 66 So.2d 552 (1953).

[10] ....Ala. at........, 100 So.2d at 700.

[11] It is necessary to note that the duty referred to was owed by the defendant-insurers to the now deceased child, and not to the plaintiff-father. The right of the father to sue for the wrongful death of his minor child is purely statutory. See White v. Ward, 157 Ala. 345, 47 So. 166 (1908).

for the finding of such a duty. The court rejected this reverse stare decisis argument, taking the position that reasonable care required the imposition of such a duty.[12] In so holding, the court relied on the following language in *Helmetag's Adm'r v. Miller:*[13]

> Wager policies, or such as are procured by a person who has no interest in the subject of insurance are undoubtedly most pernicious in their tendencies, because . . . [such policies encourage] the taking of human life . . . The reason of the law which vitiates wager policies is the pecuniary interest which the holder has in procuring the death of the subject of insurance, thus opening a wide door by which a constant temptation is created to commit for profit the most atrocious of crimes.[14]

Having found a duty and a breach thereof, the court cited the Restatement of Torts, section 448, as the general rule pertaining to intervening criminal acts. That section states, in effect, that the intervening criminal act of a third person is superseding *unless* its likelihood should have been foreseen by the original actor at the time of his negligent conduct. The court then held that the insurers should have foreseen and guarded against the criminal act of the beneficiary, their failure to do so rendering them liable. The court relied on Comment *b* of the Restatement of Torts, section 448, to support the finding of foreseeability:

> There are certain situations which are commonly recognized as affording temptations to which a recognizable percentage of humanity will yield.

Counsel for the plaintiff are to be commended for their ingenuity and imagination in conceiving of a theory of liability under the facts of the *Weldon* case. Perhaps even more praiseworthy is the bold and forthright stand taken by the Alabama Supreme Court in arriving at a decision for which there is no authority other than justice and sound public policy. In at least one minor respect, however, the court's reasoning is open to question.

As already indicated, the court analyzed the case as presenting two main issues —duty and causation. However, it would appear that the question of *duty,* not *proximate cause,* was the only issue, and that the subject of causation deserved only a perfunctory reference instead of the protracted discussion which it was accorded. Dean Prosser's comments on the subject are particularly in point:[15]

> . . . [Where] the causal connection between the act and the harm is . . . clear . . ., the attempt to subdivide the indivisible by way of "proximate" only offers obstacles to the determination of the real issue. It is possible . . . to state nearly every question which arises in connection with "proximate cause" in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?

[12] ......Ala. at......, 100 So.2d at 708.

[13] 76 Ala. 183, 186–87 (1884).

[14] Notwithstanding the strong language of the *Helmetag* case, a survey of the authorities reveals that prime emphasis is usually placed upon the prevention of pernicious wagering contracts in themselves as the reason for vitiating wagering policies. The same authorities are unanimous in their recognition of the existence of the murder-risk where the beneficiary has no insurable interest in the life insured, but only as a secondary policy consideration. However, this universal recognition, coupled with the grim fact that the murder-risk was actually realized in a given case, appears to justify the court's reliance on the *Helmetag* case as the basis for the imposition of a duty on the defendants. See Holmes in Grigsby v. Russell, 222 U.S. 149, 156 (1911); PATTERSON, *op. cit. supra* note 2, at 158.

[15] PROSSER, TORTS 253 (2d ed. 1955). See also Feezer, *Intervening Crime and Liability for Negligence,* 24 MINN. L. REV. 635, 642; 2 HARPER & JAMES, TORTS 143 (1956); RESTATEMENT, TORTS § 449, Comment *a* (1934).

It is remarkable how readily the facts of the *Weldon* case lend themselves to this approach.

The court imposed a duty on the defendants for only one reason—*to guard against the intervening criminal act of murder by the beneficiary.* This specific hazard was the only conceivable risk incident to the issuance of a life insurance policy in violation of the insurable interest rule. How, then, could the realization of that very risk constitute a superseding cause or even merit discussion as such? Given the duty, the obvious breach thereof, the damage resulting to the interests of another, and the causation in fact[16] (already established by the jury's finding in the trial court), liability should have followed automatically upon the failure of the defendants to interpose a successful defense to this prima facie case.

It seems reasonable to assume, however, that insofar as this was a case of first impression, the court felt constrained to defend its decision from every standpoint. Therefore, while the above criticism is technically justified, overriding practical considerations may have necessitated the court's discussing proximate cause as well as duty.

Section 291 of the Restatement of Torts represents what appears to be the soundest rationale for the finding of liability under the unique factual situation of the *Weldon* case. This section states in effect that *where the magnitude of the risk outweighs the utility of the act, the risk is unreasonable and the conduct negligent.*

The risk was murder of the insured by the beneficiary. While it is true that the realization of this risk was highly improbable, it threatened the insured with the gravest of consequences. It is the dire nature of the hazard, notwithstanding its mathematical improbability, that should induce a reasonably prudent man to take action to avoid it. An analogy borrowed from Dean Prosser's discussion of "unreasonable risk" is illustrative:[17]

> The odds may be a thousand to one that no train will arrive at the very moment that an automobile is crossing the railway track, but the risk of death is nevertheless sufficiently serious to require the driver to look for the train. *As the gravity of the possible harm increases, the apparent likelihood of its occurrence need be correspondingly less.* (Emphasis added.)

Given on the one hand a risk of the greatest possible magnitude, we look then to the social utility of the insurers' conduct. In this respect we find the balance singularly lacking. There is clearly no social justification for the issuance of policies in violation of the insurable interest rule. To the contrary, it represents a direct controversion of a long established mandate of public policy. Justice Lawson, delivering the opinion of the Alabama Supreme Court, paraphrased Restatement section 291 without actually referring to it. He succinctly pointed up the lopsidedness of risk as against utility:[18]

> There is no justification for the creation of such a risk to the insured and there is no social gain in the writing of a void policy of insurance.

Given these two variables, we might consider an additional element—the burden which would be placed upon life insurance companies to guard against this risk. This burden would entail a reasonable effort by the insurance companies, *prior* to issuing a life insurance policy, to ascertain the presence of an insurable

16 PROSSER, *op. cit. supra* note 15, at 165.
17 *Id.* at 122.
18 ....Ala. at........, 100 So.2d at 708.

interest in the beneficiary. Although the defendants in the *Weldon* case called this burden "impossible," all three insurance policies contained the statement that the company may at any time require proof of an insurable interest.[19] The logical question which demolishes the "impossibility" defense follows: Why is it more of an "impossible burden" to determine the presence of an insurable interest *before* issuing the policy than it is *after* the insured is dead?

Notwithstanding the large judgment and the ominous warning of the *Weldon* case, it is reasonable to assume that some life insurance companies will continue the indiscriminate issuance of their policies and, in so doing, continue to flaunt public policy and endanger the lives of others. The premise of this assumption is that the insurers will certainly realize that the premiums to be gained by continuing to ignore the insurable interest rule make it worth the gamble against a recurrence of another one-in-a-million *Weldon* case.

Although other courts may be ready and willing to emulate the example of the Alabama Supreme Court, the odds are heavily against such opportunity. It appears that legislation is the only means by which life insurance companies could be compelled to observe the insurable interest rule *prior* to the issuance of policies. To be effective, this legislation would have to be aimed at the life insurers' pocketbook, their Achilles' heel. Only by making it economically disadvantageous for insurance companies to wink at the insurable interest rule, can such companies be compelled to respect it. A possible solution would be to assess criminal penalties against any insurance company that negligently or intentionally issues a policy of life insurance to a beneficiary who has no insurable interest in the life insured. Whatever form such a statute might take, it is clear that until our legislatures take positive action to enforce public policy, the insurable interest rule will be nothing more than a means by which some life insurance companies may profit by their own wrong.[20]

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[19] *Ibid.*

[20] Since a policy procured by a person without an insurable interest, on the life of another, is a wagering contract and hence illegal, as a general rule the contract is wholly void, and the insurer may lawfully refuse to pay anyone the amount of the policy. It is true that the insurer, assuming that it was not deceived, is as much at fault as the insured, and is able to escape its obligation; nevertheless, the courts leave the parties where they find them due to the illegality of the contract. PATTERSON, *op. cit. supra* note 2, at 186.