

NEGLIGENCE: LIABILITY OF LIFE INSURANCE COMPANY FOR INJURY RESULTING FROM ISSUANCE OF POLICY TO BENEFICIARY HAVING NO INSURABLE INTEREST

Negligence law commands that all persons must conduct themselves according to an established standard in order to protect others against unreasonable risk of harm.¹ The usual standard imposed is the mythical conduct of the reasonably prudent man acting under the same or similar circumstances.² With few exceptions,³ injury resulting from the failure to comply with this standard imposes liability on the wrongdoer in order to compensate his victim. The full impact of this basic law was imposed on three life insurance companies in the recent case of *Liberty Nat'l Life Ins. Co. v. Weldon*.⁴ In this case the defendant insurers issued policies to Mrs. Earle Dennison on the life of her infant niece-in-law, Shirley Weldon. Mrs. Dennison named herself as beneficiary, and subsequently murdered Shirley to collect on the policies. Her conviction⁵ was followed by an action brought by Shirley's father against the defendants under the Alabama "homicide statute."⁶ The plaintiff's theory was based on ordinary negligence; specifically, he alleged that defendants failed to exercise reasonable care in issuing life insurance policies to a person who did not have an insurable interest⁷ in the life insured. In affirming a judgment for plaintiff of \$75,000, the Alabama Supreme Court held that the insurance companies had a duty to exercise reasonable care not to issue life policies to an applicant-beneficiary having no interest in the continuation of the life insured.⁸ The court reasoned that the purpose of the insurable interest rule in life insurance law was to protect human life, and that an in-law relationship in and of itself did not constitute an insurable interest.⁹ Therefore, failure of the

1. See Prosser, Torts § 30 (2d ed. 1955).

2. *Id.* § 31.

3. *Id.* § 109.

4. 267 Ala. 171, 100 So. 2d 696 (1957).

5. *Dennison v. State*, 259 Ala. 424, 66 So. 2d 552 (1954).

6. Ala. Code Ann. tit. 7, § 119 (1940).

7. While the meaning of the phrase "insurable interest" will be discussed more fully in text supported by notes 17-21 *infra*, for the reader's convenience the phrase means a legally recognized interest of the applicant-beneficiary in the preservation of the life insured in spite of the insurance, rather than in its destruction because of the insurance. Vance, Insurance § 31, at 190 (3d ed. 1951) (hereinafter cited as Vance).

8. 267 Ala. at 185, 100 So. 2d at 708.

9. *Id.* at 182, 100 So. 2d at 704.

defendants to use reasonable care to ascertain whether an insurable interest existed imposed liability on them for the death of the insured, despite Mrs. Dennison's intervening criminal act, because this criminal act was the sole foreseeable risk which gave rise to the defendant's duty to protect the insured.¹⁰

The court in the *Weldon* case appears to have applied ordinary negligence rules logically. However, it is the first case known to impose on an insurance company the duty to use reasonable care to determine that an applicant-beneficiary has an insurable interest in the insured's life before issuing a policy.¹¹ The rule requiring an insurable interest to support life insurance policies is well known in insurance law.¹² Since the promulgation of the rule almost two centuries ago, the lack of an insurable interest in the life insured has worked solely to the detriment of the procurer of the policy.¹³ Now, with the *Weldon* case as precedent, a policy unsupported by an insurable interest may also work to the detriment of the insurer. Because the application of negligence law in the *Weldon* case may have such a pronounced effect in this area of life insurance law, the purpose of this note is to analyze and evaluate the insurable interest rule and its rationale in comparison with the rationale and possible future effects of the *Weldon* case.

The insurable interest rule, in every state, either by force of statute or common law, requires that any person who procures for his own benefit an insurance policy upon the life of another must have an insurable interest in the life to be insured.¹⁴ Without such an interest

10. *Id.* at 188, 100 So. 2d at 710, citing Restatement, Torts § 448 (1934). The only act of negligence in the *Weldon* case was in issuing the policy unsupported by an insurable interest and thereby placing the insured in a situation wherein a recognized hazard, i.e., temptation to commit murder, existed. It would be a logical contradiction to limit liability for the intervening criminal act of murder which was the sole hazard created by the defendants' negligence in the first place. See Restatement, Torts § 281, comment e (Supp. 1948). An intervening criminal act will limit the liability for negligence when that act is outside of the scope of the foreseeable hazard or hazards created. See Prosser, Torts § 49, at 274 (1955). For example, the intervening criminal act of robbery limited the liability of a railway company for the robbery when its only act of negligence was overcrowding a carriage. *Cobb v. Great Western Ry.*, [1894] A.C. 419.

11. 267 Ala. at 185, 100 So. 2d at 708.

12. See notes 14-15 *infra*.

13. See notes 29-34 *infra* and text supported thereby.

14. 1 Cooley, *Briefs on the Law of Insurance* 330 (2d ed. 1927) (hereinafter cited as *Cooley*); 1 Couch, *Cyclopedia of Insurance Law* § 295, at 769 (1929) (hereinafter cited as *Couch*); Vance § 31. However, it appears that in New Jersey policies without an insurable interest may be enforceable on the theory that the early common law rule enforcing such policies remains unchanged by statute or case law. See *Foster v. Washington Nat'l Life Ins. Co.*, 118 N.J.L. 228, 192 Atl. 59 (1937); Fulda, *Insurable Interest in Life*, *New Jersey View*, 1 Rutgers L. Rev. 29 (1947).

the policy is void ab initio and totally unenforceable.¹⁵ There are no exceptions to this rule. Any flexibility it has lies within the court's power to determine what particular interests are insurable, since no precise formula for determining what is an insurable interest is available.¹⁶ In general, it has been stated that an insurable interest exists whenever the relation between the beneficiary and the insured, whether by blood, marriage or commerce, is such that the beneficiary has a reasonable expectation of deriving benefit from the continuation of the insured's life, or of suffering detriment through its termination.¹⁷ For example, a parent has an insurable interest in the life of his minor child,¹⁸ one has an insurable interest in the life of his spouse,¹⁹ and a person in business has an insurable interest in the life of his partner.²⁰ On the other hand, it is clear that no one has an insurable interest in the life of a mere stranger, nor in the life of one who is only a close personal friend.²¹

Historically,²² the insurable interest rule originated in England as a result of public policy against wagering. An insurance policy procured on the life of another, without an insurable interest, was and remains today a mere wagering contract. At early common law, wagering contracts in general were enforced. However, the feeling grew prevalent that wagering was socially undesirable conduct, because it encouraged persons to seek unearned livelihood which in turn bred idleness, vice and social unrest. Wagering upon the duration of human life was considered to be especially harmful, since it created situations in which a strong temptation to commit murder existed. The English Parliament responded to these feelings in 1774, imposing by statute²³ the rule that no contract of insurance would be deemed enforceable unless supported by an insurable interest. The statute came too late to be considered a part of the common law in most American states, but our courts have felt no hesitancy in applying the rule on the sole basis of public policy.²⁴ The American cases have spoken of both of the reasons which gave rise to the rule, i.e., the hos-

15. 1 Couch § 295, at 769; Vance § 31.

16. Vance § 31, at 189-91.

17. Id. at 190.

18. 1 Cooley 380; 2 Couch § 414; Vance § 31, at 194.

19. 2 Couch §§ 396, 440d; Vance § 31, at 196.

20. 1 Cooley 395; 2 Couch § 415; Vance § 31, at 198.

21. Vance § 31, at 189-90. See also Grigsby v. Russell, 222 U.S. 149 (1911).

22. See generally Patterson, *Insurable Interest in Life*, 18 Colum. L. Rev. 381 (1918) for a more comprehensive analysis of the development of the rule.

23. 14 Geo. 3, c. 48 (1774).

24. See Warnock v. Davis, 104 U.S. 775 (1881); Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457 (1876); Commonwealth Life Ins. Co. v. George, 248 Ala. 649, 28 So. 2d 910 (1947).

tility toward wagering generally,²⁵ and the fear that wagering on lives would lead to murder.²⁶ However, text authorities have expressed the view that the prevention of wagering is the main reason for the rule, and that it is designed only secondarily to lessen the temptation to commit murder.²⁷

The primary sanction which the courts have employed in curtailing wagers upon lives has been the penalty contained in the insurable interest rule itself, i.e., that policies unsupported by an insurable interest are void and unenforceable.²⁸ This sanction has had a marked effect upon insurance litigation, for it has been given insurance companies a most decided advantage. This can best be seen by considering a typical case involving the normal application of the rule. Suppose that upon the death of an insured, the insurance company refuses to pay on the policy and the procurer-beneficiary brings suit to compel payment. The defense of lack of insurable interest is raised.²⁹ The burden of proving that such an interest existed at the policy's in-

25. *Aetna Life Ins. Co. v. France*, 94 U.S. 561 (1876); *Chisholm v. National Capitol Life Ins. Co.*, 52 Mo. 213, 14 Am. Rep. 414 (1873); *Chamberlain v. Butler*, 61 Neb. 730, 86 N.W. 481 (1901).

26. The murder rationale for the rule is emphasized in the following statement of Holmes, J., speaking for the court in *Grigsby v. Russell*, 222 U.S. 149, 154-55 (1911):

"A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end. And although that counter interest always exists . . . the chance that in some cases it may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose."

Cases which rely upon both the wager and murder rationale for the rule usually mention them in that order. See, e.g., *Geisler v. Mutual Benefit Health & Accident Ass'n*, 163 Kan. 518, 523, 183 P.2d 853, 856 (1947) where the court said: "[T]he doctrine holding such contracts void is founded upon considerations of public policy, the principal reasons for its pronouncement being (a) that they are speculative or wagering in character and (b) that they afford an incentive to crime. . . ." Cf. *Helmetag's Adm'r v. Miller*, 76 Ala. 183, 52 Am. Rep. 316 (1884); *Rumsey v. New York Life Ins. Co.*, 25 Hawaii 141 (1919).

27. See 1 Couch § 296, at 778; *Patterson*, *Essentials of Insurance Law* § 34, at 158 (2d ed. 1957) (hereinafter cited as *Patterson*). Cf. *Cooke*, *The Law of Life Insurance* §§ 58-59 (1st ed. 1891).

28. See note 15 *supra*.

29. It is generally held that, to be available, the defense of lack of insurable interest must be specially pleaded. 1 *Cooley* 431; *Shea v. Massachusetts Benefit Ass'n*, 160 Mass. 289, 35 N.E. 855 (1894); *Keeton v. National Union*, 178 Mo. App. 301, 165 S.W. 1107 (1914). However, the plaintiff is given the burden of proof, and is required to state sufficient facts from which the court can infer, as a matter of law, that an insurable interest existed. *Prudential Ins. Co. v. Hunn*, 21 Ind. App. 525, 52 N.E. 772 (1899); *Singleton v. St. Louis Mut. Ins. Co.*, 66 Mo. 63, 27 Am. Rep. 321 (1877).

ception is wholly upon the beneficiary.³⁰ There are no presumptions in his favor, and if the proof fails his action is lost. Neither waiver nor estoppel³¹ can be invoked against the insurer, who not only issued the policy in the first place, but readily accepted all of the premium payments. The beneficiary's action is thus handicapped, and almost always totally defeated,³² because courts will not aid either party in enforcing a contract which is void as against public policy. For the same reason, a policy's incontestable clause³³ is of no force or effect, though it plainly reads that the policy cannot be contested by the insurer after a stated period of time, and this period has elapsed when the suit is begun.³⁴ In short, nothing can save this transaction which in the eyes of the law could not be validly entered into in the first place.

It thus is apparent that the only sanction imposed by the insurable interest rule, i.e., unenforceability, is a sanction which operates solely against the person who procured the policy, and in no way against the insurance company. This result prevails even though insurance com-

30. 1 Cooley 432-34; 1 Couch § 295, at 769-70; see *Southern Mut. Life Ins. Co. v. Perry*, 144 Ark. 512, 222 S.W. 1067 (1920); *Rogers v. Atlantic Life Ins. Co.*, 135 S.C. 89, 133 S.E. 215 (1926).

31. The courts have generally treated waiver and estoppel by saying that mere knowledge on the part of the insurer that the beneficiary lacked an insurable interest when he procured the policy can in no way relieve the beneficiary from proving such an interest as a condition precedent to recovery on the policy. Parties cannot, even by solemn agreement, override the public policy which requires the beneficiary to have an insurable interest. *Cotton v. Mutual Aid Union*, 132 Ark. 458, 201 S.W. 124 (1918); *Sun Life Assurance Co. v. Allen*, 270 Mich. 272, 259 N.W. 281 (1935); *Elmore v. Life Ins. Co.*, 187 S.C. 504, 198 S.E. 5 (1938); 1 Couch § 295, at 770-71; Vance § 85, at 509.

32. It is the general rule that when the policy is void for lack of insurable interest, the beneficiary cannot recover even the amount of premiums he has paid to the insurer. Patterson § 43, at 186. However, this rule has been relaxed in a few cases in which the beneficiary procured the policy in the honest belief that he had an insurable interest or in which he was induced by fraudulent statements of the insurer or his agent to procure the policy and pay premiums thereon. *American Mut. Life Ins. Co. v. Bertram*, 163 Ind. 51, 70 N.E. 258 (1904); *Washington v. Atlanta Life Ins. Co.*, 175 Tenn. 529, 136 S.W.2d 493 (1940). Cf. *Fisher v. Metropolitan Life Ins. Co.*, 160 Mass. 386, 35 N.E. 849 (1894).

33. The "incontestable clause" is now an integral part of almost every outstanding life insurance contract. It provides that the contract's validity cannot be contested or disputed by the insurer after a specified time has elapsed since issuance (usually two years). The theory is that an insurer should have a reasonable opportunity to investigate the procurer's statements made in the application, but that after such period, any further right to question the policy's validity should be barred. But the clause cannot serve to validate a contract which is void ab initio as against public policy. Vance § 97, at 575-84.

34. *Ibid.*

panies are fully conscious of the rule,³⁵ whereas persons who procure policies in violation of it are obviously in complete ignorance of it. Undoubtedly, the procurer who has once felt the full impact of the rule will be effectively deterred from repeating his mistake in the future. Hence, the rule is an effective sanction to prevent future attempts at wagering by the once-defeated applicant. However, the sanction is not a deterrent against issuance of policies by insurance companies to *future* applicants who are as yet unaware of the rule's existence.

Since persons who procure policies which violate the insurable interest rule are obviously ignorant that their policies are unenforceable, it follows that the rule can in no way prevent the murder of the insured in such cases, assuming that the procurer has murder in mind as a method of hastening his collection on the policy. Yet, the prevention of murder is the second reason for the rule's existence.³⁶ It may be contended that the law imposes other sanctions to cope with the murder temptation, viz., the severe criminal punishment prescribed for murder, plus the civil law rule that no beneficiary who murders an insured is allowed to collect the policy's proceeds.³⁷ However, these sanctions, like the sanction of unenforceability against wagering discussed above, come into play only *after* the policy has been issued and the insured person has met his death. If the danger of murder is significant, it follows that an additional safeguard is needed.

The court in the *Weldon* case believed that the danger of the insured being murdered was significant when the applicant-beneficiary had no insurable interest in the life insured.³⁸ Therefore, the court

35. That insurers are fully conscious of the insurable interest rule is apparent from the advantageous position they maintain in collection controversies. The court in the *Weldon* case intimated that it was aware of the insurers' consciousness of the rule in refuting the defendants' argument that the duty imposed by the court would place an unreasonable burden on insurers. The court answered that it was no more unreasonable than the burden placed on the procurers who are required by the terms of many policies to prove an insurable interest at any time deemed proper by the insurers. The court recognized that such clauses in insurance policies were devised to effect a savings to the insurance companies upon an attempted collection by one having no insurable interest in the life insured. 267 Ala. at 186, 100 So. 2d at 708.

36. See note 27 *supra* and text supported thereby.

37. This rule operates to bar the recovery by any beneficiary who murders an insured, whether an insurable interest existed or not. The reason for the rule is said to be expressed by the maxim that "a man may not profit by his own wrong." This moral sentiment has led the courts to unanimously deny a murderer the right to collect and retain the policy's proceeds. Patterson § 35. Any interest which the beneficiary has under the policy thereafter, he holds upon constructive trust for the estate of the insured. See Restatement, Restitution § 189 (1937).

38. 267 Ala. at 186, 100 So. 2d at 708.

imposed a new tort duty and sanction to deter insurers from issuing such policies.³⁹ In Alabama, at least, insurers now have the duty to use reasonable care to determine the existence of an insurable interest before issuing a policy, and face tort liability for any harm resulting to the insured from their breach of this duty. The reason for its decision, the court said, was that the insurable interest rule was promulgated to protect human life, and it believed the new duty and sanction would effect this purpose.⁴⁰ That the rule was promulgated to protect insurance companies was emphatically denied,⁴¹ although such a purpose might be inferred from the usual application of the rule's sanction against wagering. The court indicated that it was fully aware of the rule's sanction and its effect in the more prevalent collection controversies.⁴² Therefore, in essence, the court to reach its decision subordinated the historical reason for the rule, i.e., to prevent wagering, in favor of what many authorities believe is only the secondary reason. As a result, many proponents of the insurable interest rule and its sanction may contend that the *Weldon* case is an unreasonable encroachment upon almost two centuries of insurance law.

However, the rule's proponents should recognize that the court in the *Weldon* case applied well established principles of negligence law in addition to its consideration of the insurable interest rule.⁴³ Conceivably, an insurer might be held liable for negligence alone in a situation, not unlike the *Weldon* case, whether an insurable interest existed or not. For example, suppose that an insurer, knowing that a certain husband has dangerous propensities, issues to him a policy upon the life of his estranged wife. Technically, the husband has an insurable interest in the life of his wife,⁴⁴ but should he murder her to collect on the policy, a jury might well hold the insurer liable for negligence. This is because all persons have the duty to conduct themselves according to an established standard in order to protect others against unreasonable risk of harm.⁴⁵ In the hypothetical posed, the insurer breached the duty owed to the insured by knowingly placing her in a dangerous situation. The insurer's breach was the proximate

39. *Ibid.*

40. *Ibid.*

41. The court said: "[T]he defendant seems to be of the opinion that the insurable interest rule is to protect insurance companies. We do not agree. The rule is designed to protect human life. Policies in violation of the insurable interest rule are not dangerous because they are illegal; they are illegal because they are dangerous." *Ibid.*

42. See notes 29-34 *supra* and text supported thereby.

43. See notes 8-10 *supra* and text supported thereby.

44. See note 19 *supra*.

45. See note 1 *supra*.

cause of the harm, despite the intervening criminal act of the husband because his act was the sole foreseeable risk from which the insurer had the duty to protect the insured.⁴⁶ Thus, the insurer is liable without resorting to the question of insurable interest.

In the hypothetical posed, the insurer would be liable for *knowingly* placing the insured in a dangerous situation; in the *Weldon* case the insurers were liable for placing the insured in a situation which insurance law recognizes to be dangerous. It is highly improbable that situations similar to the hypothetical posed will frequently occur. The danger lies more prominently in that area where the procurer has no recognized legal interest in the *continuance* of the life insured.⁴⁷ It was for this reason that the court in the *Weldon* case couched the duty of the insurer in terms of ascertaining the existence of an insurable interest prior to issuing policies.⁴⁸ By this means the court hoped to discourage a form of undesirable conduct much more repugnant to society than wagering per se.⁴⁹

The proponents of the wagering rationale for the insurable interest rule, while disagreeing with the result of the *Weldon* case, may seek some consolation in the fact that the sanction it imposes may more effectively combat wagering than does the sanction imposed by the rule itself. For the rule's sanction merely makes wagers unenforceable, whereas the sanction of the *Weldon* case, besides preventing murder, should effectively discourage wagering *attempts*. For noticeably, this tort sanction materially differs in two respects from the sanctions previously employed. First, it is imposed on the insurer, not the procurer. Secondly, this sanction places the burden of determining the existence of an insurable interest on the party who is most conscious of the rule's requirements, the insurer, and requires the determination to be made before the issuance of the policy. Because of these two distinguishing characteristics, and assuming that the circumstances of the *Weldon* case will recur with enough frequency to constitute a substantial economic threat to insurers, insurance companies may well revise their procedure in processing applications to include a feasible means of determining the existence of the applicant's insurable interest. If no legal interest exists, the insurer will refuse to issue the policy rather than face possible tort liability. As a result the number of policies without an insurable interest will be reduced to a minimum, reducing proportionately the need for the rule's own sanction, i.e., unenforceability of the policy. There will be fewer controversies where the procurer, ignorant of the rule's exist-

46. See note 10 *supra*.

47. 267 Ala. at 189, 100 So. 2d at 711.

48. *Id.* at 186, 100 So. 2d at 708.

49. *Ibid.*

ence, faithfully pays his premiums and vainly attempts to collect on the policy upon the natural death of the insured. Further, since the prior determination by the insurer will reduce the number of unenforceable policies, the possibility that such policies might motivate the procurer to murder the insured will be reduced proportionately. Thus, the sanction imposed by the *Weldon* case may more effectively combat the evils which created the need for the insurable interest rule than the sanctions heretofore imposed.

If the rule in the *Weldon* case is to be generally adopted, the question remains of how the insurer is to discharge this duty to exercise reasonable care in determining whether a procurer has that type of interest which the law calls "insurable." Despite the existence of the insurable interest rule for almost two centuries, the question of what constitutes an insurable interest in a life remains subject to considerable dispute.⁵⁰ The law is not in complete chaos on the subject, for the courts are substantially agreed that in a number of specific instances, a person invariably has an insurable interest in the life of another person by the mere fact of relationship alone. Examples, which have already been mentioned, are the relationships of husband-wife and parent-minor child.⁵¹ However, difficulty arises out of the fact that there is no precise formula for ascertaining the existence of an insurable interest in all cases.⁵² This can best be seen by considering an area which has been troublesome to courts in the normal collection controversies—the area of blood relationships. No court has been willing to list those blood relationships which will support an insurable interest in and of themselves; rather, it is merely said that there must be a close blood relationship.⁵³ Does this mean that a

50. 1 Couch § 294, at 763; Vance § 31; Comment, 15 Mo. L. Rev. 65 (1950). See *Geisler v. Mutual Benefit Health & Accident Ass'n*, 163 Kan. 518, 183 P.2d 853 (1947).

51. See notes 18-19 *supra*.

52. Vance § 31, at 191.

53. A primary source of difficulty in evaluating relationships has been the fact that a contract of life insurance is not one of indemnity, i.e., the amount of recovery is a fixed sum and the beneficiary need not prove just how much the insured's life is worth to him. Ordinarily, a wife's interest in the life of her husband would greatly exceed that of an interest in the life of her brother, but if a court holds that both relationships are "close" enough to support an insurable interest, she could insure the lives of both in equal amounts or in whatever amounts she chooses. See Vance § 28, at 158-59. Professor Cooley has stated that "it seems to be settled" that, if insurable interest is grounded on consanguinity alone, the parties must be related "as closely as the second degree." 1 Cooley 372. However, he appears to have based this mainly upon dictum taken from *Crosswell v. Connecticut Indemnity Ass'n*, 51 S.C. 103, 114, 28 S.E. 200, 204 (1897), to the effect that "close ties of blood or affinity, as parent, child, brother, sister, husband, wife" are a surer guaranty against the taking of the insured's

person always has an insurable interest in the life of his brother or sister? Some decisions indicate that he does,⁵⁴ while others say he does not.⁵⁵ Likewise, the cases are split upon whether a grandparent has an insurable interest in the life of a grandchild merely because of the blood relationship.⁵⁶ Such cases divide primarily on the issue of whether or not the beneficiary must show a definite pecuniary interest in the life insured,⁵⁷ or whether the natural ties of love and affection in such relationships are sufficient to take the policies out of the wagering category.⁵⁸ Professor Vance believes that in a majority of states the rule is that a mere relationship, however close, is not sufficient alone to constitute an insurable interest, although he finds many dicta, and some decisions, to the contrary.⁵⁹ It would thus appear that a prudent insurer, before issuing a policy to a procurer in a jurisdiction having no clear precedent whether the particular

life than any mere pecuniary interest. 1 Cooley 373. The court in the Crosswell case obviously intended to mention these relationships only by way of example, and not as an all-inclusive listing.

54. *Aetna Life Ins. Co. v. France*, 94 U.S. 561 (1876); *Webb v. Imperial Life Ins. Co.*, 216 N.C. 10, 3 S.E.2d 428 (1939); *Rogers v. Atlantic Life Ins. Co.*, 135 S.C. 89, 133 S.E. 215 (1926).

55. *Gulf Life Ins. Co. v. Davis*, 52 Ga. App. 464, 183 S.E. 640 (1936); *Miller v. Travelers' Ins. Co.*, 81 Ind. App. 618, 144 N.E. 554 (1924); *Locher v. Kuechenmiester*, 120 Mo. App. 701, 98 S.W. 92 (1906).

56. Cases holding the grandparent-grandchild relationship is sufficient to support an insurable interest are *Breese v. Metropolitan Life Ins. Co.*, 37 App. Div. 152, 55 N.Y.S. 775 (1899); *Hilliard, Adm'r v. Sanford*, 6 Ohio Sup. & C.P.Dec. 449, 4 Ohio N.P. (n.s.) 363 (1897). Contra, *Burton v. Connecticut Mut. Life Ins. Co.*, 119 Ind. 207, 21 N.E. 746 (1889). See 2 Couch §§ 368a, 414a.

57. *Life Ins. Clearing Co. v. O'Neill*, 106 Fed. 800 (3d Cir. 1901); *Bush v. Victory Industrial Life Ins. Co.*, 165 So. 486 (La. 1936).

58. The definition which has been most frequently relied upon by courts in determining what constitutes an insurable interest is contained in the classic case of *Warnock v. Davis*, 104 U.S. 775 (1881). The court stated that: "It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation; for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. . . . But in all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured." *Id.* at 779.

As Professor Patterson has pointed out, this language leaves undecided the question whether "benefit or advantage" means only an economic benefit or also includes a purely emotional satisfaction. The case has been cited by one court to support a holding that an adult son has an insurable interest in his aged mother's life, *Woods v. Woods' Adm'r*, 130 Ky. 162, 113 S.W. 79 (1908); and by another court to prove that an adult son has no insurable interest in his aged father's life, *Life Ins. Clearing Co. v. O'Neill*, 106 Fed. 800 (3d Cir. 1901). Patterson § 40, at 180.

59. Vance § 31, at 191-93.

relationship involved will support an insurable interest, should require a showing that the procurer has some definite and reasonable pecuniary interest in the continued life of the insured.

In a number of states, statutes have been enacted upon the subject of insurable interest in life. However, a considerable proportion of these are fragmentary.⁶⁰ Even those which are more complete are obviously intended only to declare general common law principles,⁶¹ thus leaving courts and litigants upon much the same footing as if no codification had taken place. No statute attempts to make a comprehensive listing of relationships to which insurers could look in determining whether particular applicants have an insurable interest. Nor does it appear that any such listing has ever been considered as a feasible solution to the problem.⁶²

60. Ala. Code Ann. tit. 28, § 2 (1940); Ark. Stat. Ann. § 66-502 (1947); Del. Rev. Stat. Ann. tit. 18, §§ 919, 921 (1953); Ga. Code Ann. § 56-901 (1953); Mo. Rev. Stat. §§ 376.530, 376.550, 377.080 (1949); N.J. Rev. Stat. tit. 17, c. 34, §§ 26, 28 (1937), tit. 17, c. 34, § 30 (Supp. 1957); Ohio Rev. Code § 3911.09-.11 (Baldwin 1958); Utah Code Ann. § 31-19-5 (1953); Wyo. Comp. Stat. Ann. § 52-514 (1945).

61. Cal. Civ. Code § 10110 (Deering 1949); Idaho Code Ann. §§ 41-201, 41-1520 (Supp. 1957); Mont. Rev. Code §§ 40-1002, 1003 (1947); Neb. Rev. Stat. § 44-103 (1943), § 44-704 (Supp. 1957); N.D. Rev. Code §§ 26-0204, 26-0209, 26-0302, 26-0312 (1943); Pa. Stat. Ann. tit. 40, § 512 (Purdon 1954); S.D. Code §§ 31.1502-.03 (1939). For more comprehensive state statutes see note 62 *infra*.

62. New York's statute is one of the most comprehensive state statutes. It states:

"1. Any person of lawful age may on his own initiative procure or effect a contract of insurance upon his own person for the benefit of any person, firm, association or corporation, but no person shall procure or cause to be procured, directly or by assignment or otherwise any contract of insurance upon the person of another unless the benefits under such contract are payable to the person insured or his personal representatives, or to a person having, at the time when such contract is made, an insurable interest in the person insured. . . . If the beneficiary, assignee or other payee under any contract made in violation of this subsection shall receive from the insurer any benefits thereunder accruing upon the death, disablement or injury of the person insured, the person insured or his executor or administrator as the case may be, may maintain an action to recover such benefits from the person so receiving them.

"2. The term, 'insurable interest,' as used in this section, shall mean: (a) in the case of persons related closely by blood or by law, a substantial interest engendered by love and affection; and (b) in the case of other persons, a lawful and substantial economic interest in having the life, health or bodily safety of the person insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury, as the case may be, of the person insured. . . ." N.Y. Ins. Law § 146.

Statutes which are identical, or very similar to the New York law are found in Ariz. Rev. Stat. Ann. § 20-1104 (1956); Ky. Rev. Stat. Ann. § 304.650 (Baldwin 1955); La. Rev. Stat. Ann. § 613 (1950); Md. Ann. Code Gen. Laws art. 48A, § 167 (1957); Okla. Stat. Ann. tit. 36, § 3604 (Supp. 1957); Va. Code § 38.1-329 (1953); Wash. Rev. Code § 48.18.030 (1953). For a detailed review and

Since there is some diversity of authority among states about what particular relationships will support an insurable interest, insurers who are writing life policies in several states cannot safely ignore the fact that a conflict of laws problem could arise in this area. A full treatment of the subject is beyond the scope of this note; however, the following example will serve to illustrate the difficulties. An insurance company incorporated in New Jersey might issue a policy to an applicant-beneficiary residing in Georgia, upon the life of a resident of Florida.⁶³ Suppose that the relationship of the beneficiary to the insured is not recognized under Georgia law as supporting an insurable interest, but that it is so recognized in New Jersey, and further, that the law of Florida is not decided on the question. Then assume that the facts of the *Weldon* case are superimposed upon this situation, and that the insured's survivor brings a wrongful death action against the insurer. Major problems arise in deciding which state's law must govern the case. First, where did the tort occur? In the state where the murder took place, or in the state under whose law the validity of the policy would be determined? If the latter, then a second major problem arises, namely, which state's law should determine the policy's validity? The principles to which courts look in deciding conflict of laws cases are sufficiently broad to permit a variety of results, making it difficult to predict the outcome of any given case.⁶⁴ Therefore, an insurer who has relied upon the insurable interest law of one state in issuing a policy may well find that the law of another state is actually controlling.

Assuming that the problems thus far indicated are not insurmountable, a further question must be posed. In exercising reasonable care

comparison of various statutory provisions, plus a suggested model statute on the subject of insurable interest (based partly on the New York statute, *supra*), see Hollenberg, *Is a Uniform Statute on Insurable Interest Desirable?*, Proceedings of the Section of Insurance Law, A.B.A. Cincinnati Meeting (1946).

63. These were the basic facts which arose in the early New York case of *Ruse v. Mutual Benefit Life Ins. Co.*, 23 N.Y. 516 (1861). Upon the natural death of the insured, the beneficiary sued to compel payment. In allowing recovery, the court said that the legal rights arising under such a contract must depend on the laws of the place where the contract was to be performed, unless the parties had specially in view the law of the place where the contract was made. There was nothing to indicate the parties contracted with special reference to the law of Georgia. "As no other place was mentioned, payment was of course to be made in New Jersey, where the principal office of the company was located. The contract was to be performed there, and hence . . . the validity of the contract . . . must depend upon the law of New Jersey." 23 N.Y. at 522. As Professor Carnahan indicates, New Jersey had the most liberal doctrine as to insurable interest, and the court thus chose the rule most favorable to the beneficiary. Carnahan, *Conflict of Laws and Life Insurance Contracts* § 64 (2d ed. 1958).

64. Carnahan, *op. cit. supra* note 63, § 15, at 52.

to determine whether an insurable interest exists, to what extent should the insurer investigate the representations made by the procurer in the policy application?⁶⁵ The procurer may represent, either intentionally or inadvertently, that he bears a much closer relation to the insured than he actually does. For example, he might represent that he is the "father" of the insured, when in fact he is only the step-father or father-in-law. The latter two relationships in and of themselves are not recognized as supporting an insurable interest in the majority of states.⁶⁶ In determining if sufficient facts exist to support an insurable interest, would the insurer be justified in relying upon a report obtained from an independent insurance inspection agency?⁶⁷ Significantly, the court in the *Weldon* case relied upon the fact that the relationship shown in the applications (aunt and niece by marriage) did not support an insurable interest in and of itself.⁶⁸ Therefore, it was necessary to give to the jury the question whether any additional facts existed which would give rise to an insurable interest.⁶⁹ It is submitted that the same procedure will be used in any future cases arising upon similar facts. If the jury finds that such facts did not exist, it is rather unlikely that it would then find the insurer had used reasonable care in determining their existence before issuance of the policy. Realistically, a jury which is first confronted with the fact that the beneficiary has murdered the insured to collect on the policy will be very difficult to persuade that an insurable interest existed, much less that reasonable care was used in determining such interest prior to the issuance of the policy which motivated the murder. In the face of this difficulty, insurers may well conclude that conducting investigations which are thorough enough to persuade juries that reasonable care was used will be financially prohibitive; and therefore, that policies should not be

65. For a survey of the duty of insurers generally to investigate the representations of the procurer in the policy application, see Note, Insurance—Insurer's Duty—Investigation for Suspected Fraud Prior to Issuance of Life Policy, 10 Ark. L. Rev. 499 (1956).

66. National Life and Accident Ins. Co. v. Ball, 157 Miss. 163, 127 So. 268 (1930); Young v. Hipple, 273 Pa. 439, 117 Atl. 185 (1922); 1 Cooley 387; Vance § 31, at 192-93.

67. Insurance companies today customarily rely upon reports purchased from commercial investigation agencies, as a means of gathering unbiased information in regard to policy applications. The usual inspection report contains information, based on community and neighborhood reputation, about the applicant's identity, health, habits, finances and character traits. It is considered to be an invaluable source of underwriting data, since inspection agencies have no interest either in procuring or in preventing the issuance of the policy. Mehr & Osler, Modern Life Insurance 459 (rev. ed. 1956).

68. 267 Ala. at 182, 100 So. 2d at 704.

69. Ibid.

issued in the future to many persons⁷⁰ who seek to procure them upon the lives of others.

Another problem confronting insurers is what action to take concerning policies already issued and now in force, which were procured by beneficiaries possibly having either no interest or a doubtful one. An insurer might also consider it financially prohibitive to conduct an exhaustive investigation of all such outstanding policies, especially where the purpose of the investigation is to cancel or retract policies upon which regular premiums are being paid. In deciding upon what course of action to take, insurers must weigh the expense against the possible liability which they now face in future negligence actions brought against them under the precedent established by the *Weldon* case. This possible future liability is, of course, an "unknown factor" incapable of reduction to a monetary estimate, but certainly it merits consideration in view of the size of the judgment recovered in the *Weldon* case. The *Weldon* case was a wrongful death action in which, under Alabama law, the jury was not limited in fixing the amount of recovery.⁷¹ Even though some states do put an upper limit upon recovery in such cases,⁷² the insurer should bear in mind that such limit would not apply if its negligence resulted in a serious injury to the insured, instead of death. In other words, the insured might be the victim of an unsuccessful attempt by the beneficiary to use murder as a means of collecting on the policy. In such case the insured himself would bring the action against the insurer, and the jury would be free to fix whatever amount necessary to fully compensate the insured.

Clearly, the problems indicated above are substantial hindrances to insurance companies in their efforts to avoid future liability under the *Weldon* case. Because of these problems, some courts may consider that the case imposes an unreasonable burden upon insurers, and hence either should not be followed, or else should be confined within narrow and well-defined limits of liability. Other courts may feel that the burden placed on insurers is outweighed by the higher aim of protecting society as a whole against the evils inherent in the practice of issuing life insurance policies to persons having no legal interest in the continued lives of insured persons. Whichever view is

70. An insurer might well decide to restrict the issuance of policies to those cases where the applicant first proves that he bears the exact relationship to the beneficiary that he has stated in the application, provided that such a relationship has been clearly recognized by case law or statute in the jurisdiction as constituting an insurable interest.

71. The so-called Alabama "homicide statute" allows the plaintiff to recover "such damages as the jury may assess" without placing a limit on the amount. Ala. Code Ann. tit. 7, § 119 (1940).

72. McCormick, Damages § 104 (1935).

chosen, a careful analysis of all important factors should precede any final determination in future cases.

In summary, this note has attempted to point out factors both for and against the new sanction imposed by the *Weldon* case. It has been shown that the sanction of negligence liability imposed upon insurers who issue policies in violation of the insurable interest rule will probably serve the actual purposes behind the rule more efficiently than have any sanctions heretofore imposed. The sanction is accompanied, however, by serious problems. Chief among these is the problem of defining "insurable interest." Another is the serious conflict of laws problem which may arise when the insurer is issuing policies to residents of a number of different states. Finally, insurers may find that the conducting of investigations thorough enough to convince a jury that reasonable care has been used to determine the existence of an insurable interest will be too costly, and hence they will either disregard the *Weldon* case or will refuse to issue policies to many persons who are entitled to insurance protection. If it be believed that these problems place an unreasonable burden upon insurers, then it is submitted that courts could very well limit liability to cases in which the insurers, at the time of issuing policies, consciously adverted to the unmistakable lack of an insurable interest in the life insured, or in which insurers adverted to enough facts to put a reasonable person on notice that an insurable interest was absent.⁷³

73. While the problem is beyond the scope of this note, it is submitted that the reasoning of the *Weldon* case might be applied to hold an assignor of an enforceable policy liable for assigning it to one having no insurable interest in the life insured. Presently, the majority rule upholds such assignments. *Vance* § 33. Might not such an assignment create a temptation to commit murder to hasten the collection of the policy's proceeds?