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LEGAL NOTES

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SERVICE OF PROCESS—BUSINESS DONE BY MAIL: *McGee v. International Life Insurance Company* (United States Supreme Court, December 16, 1957) 355 U.S. 220. Franklin, a California resident, purchased an accident policy from an Arizona company. International Life Insurance Company, a Texas company, reinsured the Arizona company, assuming its insurance obligations. International then mailed a reinsurance certificate to Franklin in California offering to insure him in accordance with the policy then held in the Arizona company. He accepted this offer and for almost two years until his death in 1950 paid premiums by mail from California to International in Texas. Franklin died and International refused to pay, claiming suicide. The beneficiary then brought suit in California. International, not licensed in California, was served by registered mail in accordance with a California service of process statute of the type approved by the National Association of Insurance Commissioners and now in force in most states. The trial court in California held that it had jurisdiction by reason of the service of process by registered mail even though neither International nor the Arizona company ever had any office or agent in California and, so far as the record indicated, International had never solicited or done any insurance business in California apart from the policy in question.

The California court assumed jurisdiction and entered judgment by default for the beneficiary. She was unable to collect her judgment in California and thereafter she filed suit on the judgment in a Texas court. The Texas trial court refused to enforce her judgment, holding that the service of process by mail was not valid. On appeal to a Texas Court of Civil Appeals this judgment was affirmed.

The United States Supreme Court reversed the judgment of the Texas Court of Civil Appeals on the basis that the California judgment must be honored in Texas and that the Due Process Clause of the Federal Constitution was not thereby violated. The Court also held that the California statute permitting service was properly applied in the case even though the statute was not enacted until after International reinsured the Arizona corporation.

In its opinion the United States Supreme Court (Mr. Justice Black) stated:

> Since *Pennoyer* v. *Neff*, 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their bound-

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aries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned "consent," "doing business," and "presence" as the standard for measuring the extent of state judicial power over such corporations. See Henderson, The Position of Foreign Corporations in American Constitutional Law, c. V. More recently in *International Shoe Co.* v. *Washington*, 326 U.S. 310, the Court decided that "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Id.*, at 316.

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Turning to this case we think it apparent that the Due Process Clause did not preclude the California court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. Cf. *Hess* v. *Pawloski*, 274 U.S. 352; *Henry L. Doherty & Co.* v. *Goodman*, 294 U.S. 623; *Pennoyer* v. *Neff*, 95 U.S. 714, 735. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum—thus in effect making the company judgment proof. Often the crucial witnesses—as here on the company's defense of suicide—will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process. Cf. *Travelers Health Assn.* v. *Virginia ex rel. State Corporation Comm'n*, 339 U.S. 643. There is no contention that respondent did not have adequate notice of the suit or sufficient time to prepare its defenses and appear.

The California statute became law in 1949, after respondent had entered into the agreement with Franklin to assume Empire Mutual's obligation to him. Respondent contends that application of the statute to this existing contract improperly impairs the obligation of the contract. We believe that contention is devoid of merit. The statute was remedial, in the purest sense of that term, and neither enlarged nor impaired respondent's substantive rights or obligations under the contract. It did nothing more than to provide petitioner with a California forum to enforce whatever substantive rights she might have against respondent. At the same time respondent was given a reasonable time to appear and defend on the merits after being notified of the suit. Under such circumstances it had no vested right not to be sued in California.

By these uniform process statutes, as construed in this case, persons doing business by mail with unlicensed insurers are given a remedy which is quite effective.

FEDERAL ESTATE TAX—COMBINATION LIFE POLICY—ABSOLUTE ASSIGNMENT: *Fidelity-Philadelphia Trust Company v. Smith, Collector of Internal Revenue* (United States Supreme Court, April 28, 1958) 356 U.S. 275. Mary Haines, then aged 76, took out in 1934 three single premium life insurance policies aggregating $350,000 face amount and three single premium life annuities. The life insurance policies could not have been purchased without the no-refund life annuities but the annuities could have been purchased separately. The size of each annuity was calculated so that if the purchaser died prematurely, the annuity cost less the amount allocated to annuity payments already made would combine with the companion life insurance premium plus interest to equal, after allowance for commissions and other expenses, the amount of insurance proceeds to be paid.

Shortly after the contracts were issued the three life insurance policies were assigned absolutely by the insured and a gift tax on the transfers was paid. Mrs. Haines continued to receive the income from the annuities. On Mrs. Haines' death in 1946 the Commissioner of Internal Revenue determined that the insurance proceeds, although paid to others in accordance with assignments executed long before, should be included for tax purposes as part of her estate. The basis of his claim was that Mrs. Haines retained for her life "the possession or enjoyment of, or the right to income from, the property . . .", which made the proceeds taxable as part of her estate under the Internal Revenue Code.

The executors of Mrs. Haines' estate claimed that the annuity payments represented income from the annuity contracts, which were separate from the insurance policies, and that since she had assigned the policies long before her death there was no basis for the estate tax. The executors paid the tax as demanded and then brought suit to recover the amount paid. The United States District Court agreed with the executors and entered judgment accordingly, but on appeal, the Court of Appeals for the Third Circuit reversed, holding that the proceeds were part of the decedent's estate for estate tax purposes.

The United States Supreme Court agreed to review the case and, after hearing, reversed the judgment of the Court of Appeals and held that the proceeds of the insurance policies were not, under the circumstances, taxable. There were, however, three dissents.

In its opinion the Court (Mr. Chief Justice Warren) stated:

> Illustrative of the distinction between *Helvering v. LeGierse* and the case at bar is the fact that the Government has not endeavored here to sustain the tax under the statutory provision applied in that case. Instead of the provision taxing transfers "intending to take effect in possession or enjoyment at or after" the transferor's death, the provision applied in LeGierse, the Government relies on the provision taxing transfers in which the transferor has retained until death "the right to income from"

the transferred property. However, the Government's position that the annuities were income from property which the insured transferred to her children under the life insurance policies is not well taken.

To establish its contention, the Government must aggregate the premiums of the annuity policies with those of the life insurance policies and establish that the annuity payments were derived as income from the entire investment. This proposition cannot be established. Admittedly, when the policies were purchased, each life insurance–annuity combination was the product of a single, integrated transaction. However, the parties neither intended that, nor acted as if, any of the transactions would have a quality of indivisibility. Regardless of the considerations prompting the insurance companies to hedge their life insurance contracts with annuities, each time an annuity–life insurance combination was written, two items of property, an annuity policy and an insurance policy, were transferred to the purchaser. The annuity policy could have been acquired separately, and the life insurance policy could have been, and was, conveyed separately. The annuities arose from personal obligations of the insurance companies which were in no way conditioned on the continued existence of the life insurance contracts. These periodic payments would have continued unimpaired and without diminution in size throughout the life of the insured even if the life insurance policies had been extinguished. Quite clearly the annuity payments arose solely from the annuity policies. The use and enjoyment of the annuity policies were entirely independent of the life insurance policies. Because of this independence, the Commissioner may not, by aggregating the two types of policies into one investment, conclude that by receiving the annuities, the decedent had retained income from the life insurance contracts.

INCONTESTABLE CLAUSE—PERSON IMPROPERLY INCLUDED AS INSURED: *Fisher v. United States Life Insurance Company* (C. A. 4, November 8, 1957) 249 F.2d 879. The United States Life issued a group life insurance policy in New York to the trustees of the Oil Heat Institute of America for the benefit of participating heating oil dealers and distributors. Fisher was founder and president of a participating employer. The policy specifically provided that if any employee is not regularly performing the duties of his occupation on the date he would otherwise become insured under the policy, the effective date of the insurance on him would be deferred until his return to active duty. The policy was noncontributory on the part of employees and no individual applications or medical examinations were required. Each contributing employer sent in to the trustees a list of eligible employees.

Prior to the effective date of the policy Fisher suffered a cerebral embolism resulting in paralysis and he had other mental and physical ailments. Until his death two-and-a-half years after the policy was issued he was receiving permanent disability payments under other insurance policies, and the jury found that at no time after the effective date of the group life policy was he regularly performing the duties of his occupation as required. Nevertheless his name was included as an eligible employee.

The United States Life denied liability when it learned after his death of these circumstances and suit was brought. The single question presented was whether or not the incontestable clause barred the defense that Fisher

had never become insured under the group policy. The United States District Court, and on appeal, the Court of Appeals for the Fourth Circuit held that under New York law the defense of no coverage was not barred by the incontestable clause. In the course of its opinion the Court of Appeals for the Fourth Circuit reviewed cases from New York and from other jurisdictions bearing on the effect of the incontestable clause in a situation such as was here presented and stated (Haynsworth, C. J.):

> Bearing in mind the fundamental purpose of the parties to provide life insurance for employees actively engaged in pursuing their occupations as such and to avoid extending the coverage of the insurance to strangers to that defined employment relationship, we conclude that the incontestable clause in the language used here does not foreclose the defense that a particular individual was a stranger to the defined employment relationship and was not within the coverage of the policy at the time of the effective date of the master policy or thereafter.
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> We have given consideration to the statutes of the State of New York controlling group insurance contracts and prescribing certain required conditions which must be met by their terms. The provisions of the group insurance contract in question here fully comply with the requirements of the New York statutes, however, and nothing has been found in those statutes which affects our construction of the language of the policy.

CONDITIONAL OR BINDING RECEIPT—EVIDENCE OF INSURABILITY: *New England Mutual Life Insurance Company v. Hinkle* (C. A. 8, November 5, 1957) 248 F.2d 879. The general agent of New England Life took the application of Hinkle for a reducing term policy, receiving at the time a quarterly premium at the regular rate in return for a conditional receipt. The conditional receipt provided for immediate coverage if the proposed insured was then in good health and if satisfactory evidence was received in the Company's home office that the proposed insured was then insurable for the amount, plan and rating applied for. The general agent added to the printed form of conditional receipt the notation "immediate coverage." There was an understanding that Hinkle would submit to a medical examination three days after the date of the application. In his application the insured answered in the negative the questions pertaining to aviation.

The day after the application was made and the conditional receipt delivered Hinkle was killed when the private plane he was operating crashed. Contrary to the statement in his application, he was a pilot, owning an interest in a plane, and he flew every Sunday when the weather permitted.

The New England Life claimed that the policy provided coverage conditional on the insured's good health and also on his insurability, that the terms were not synonymous, that the addition of "immediate coverage" by the general agent did not change the situation, that Hinkle applied for a policy at regular rates and that because of his aviation activity he was insurable for a policy only if he paid an extra premium, which he had not agreed to pay.

The trial court entered judgment for the beneficiary but, on appeal, the United States Court of Appeals for the Eighth Circuit reversed on the basis

that there was in fact a distinction between "insurability" and "good health" and that Hinkle did not satisfy both these conditions of the binding receipt. The Court disagreed with the trial court, which had held that the terms "good health" and "insurability" were virtually synonymous.

One of the three judges dissented on the basis that the conditional receipt should be construed as affording temporary coverage regardless of evidence of insurability—a view which few courts in this country hold.

The beneficiary filed a petition for a writ of certiorari with the United States Supreme Court and that Court granted this writ on March 10, 1958, thereby assuring a review of this case.

SUICIDE OR ACCIDENTAL DEATH—SHOTGUN FIRED TWICE: *New York Life Insurance Company v. Dick* (C. A. 8, February 7, 1958) 225 F.2d 43. The insured, a North Dakota farmer, held two life policies with double indemnity benefits. He was found dead in his barn and near his body was a shotgun in good condition with both barrels fired. He was an experienced hunter. He had been shot first in the chest and again in the head. There was no suggestion of foul play. A screwdriver which could have been used to push the two triggers was nearby. He had been shot at close range with resulting powder burns.

The New York Life claimed that he committed suicide and refused to pay the accidental death benefits. The widow sued and the trial judge left the question of suicide to the jury, which found for the plaintiff; and the court entered judgment accordingly.

On this appeal to the Court of Appeals for the Eighth Circuit, that Court reversed on the basis that the facts and circumstances surrounding the death could not be reconciled with any reasonable theory of accident, especially since the insured was an experienced hunter. The Court suggested that while even an experienced hunter might accidentally shoot himself once, it was not reasonable to believe that he could shoot himself twice, especially since both triggers of the shotgun had to be pulled. The Court ordered that the judgment below be reversed and that the complaint be dismissed.

WRONGFUL DEATH STATUTE—MURDER OF INSURED BY BENEFICIARY—NO INSURABLE INTEREST: *Liberty National Life Insurance Company v. Weldon* (Alabama Supreme Court, November 14, 1957) 100 So.2d 696. Liberty National issued its $500 endowment policy on the life of Shirley, a two-year-old child. The policy was applied for and the premium was paid by the "aunt-in-law," who was named as beneficiary. The beneficiary did not support Shirley and the parents of the child knew nothing of the insurance. Some weeks thereafter another company issued a $5,000 life policy to the aunt-in-law on the life of Shirley. This policy was issued on the basis of a medical certificate which was false in that there was no examination by the doctor. Shortly thereafter the aunt-in-law applied for a $1,000 policy, which was in the process of being issued by a third company when the aunt-in-law poisoned the child. She was subsequently electrocuted for this murder and the father of the child brought this action against the three insurance companies under the Alabama homicide

statute which gives a cause of action to the parent when the child meets a wrongful death through the negligence of another.

There was a verdict and judgment for the plaintiff in the trial court in the amount of $75,000, from which the three insurance companies appealed to the Supreme Court of Alabama. That Court affirmed the judgment below on the basis that the issuance of the policy on the life of the minor child in favor of the applicant who had no insurable interest was the proximate cause of the child's death. The Alabama Supreme Court rejected the contention that there was no duty on the part of the companies not to issue a policy to a person without insurable interest on the life of the insured. It rejected the claim of Liberty National that its $500 policy was a type of industrial policy requiring no insurable interest and it also rejected the claim of the third company that since the murderer did not know of the issuance of its policy (not then delivered) at the time of the murder, such policy could not be regarded as a cause of the murder. The Alabama Supreme Court also rejected the claim that the $75,000 award was excessive, pointing out that the damages are entirely punitive, imposed for the preservation of human life.

In its opinion the Alabama Supreme Court (Lawson, J.) stated:

> The plaintiff has proceeded against these defendants on the theory that Mrs. Dennison did not have an insurable interest in the life of Shirley and hence the policies involved were illegal and void as against public policy; that the defendants were negligent in the issuance of the policies in that they knew there was no such interest or failed to exercise reasonable diligence to ascertain that fact before issuing the policies, although there was a duty upon them to do so; and that the failure to perform that duty was in fact the proximate cause of the child's death.
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> Does a life insurance company have the duty to use reasonable care not to issue a policy of life insurance in favor of a beneficiary who has no interest in the continuation of the life of the insured?
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> No case has come to our attention where this specific question has been considered by any court. But we are of the opinion that such a duty exists, for there is a duty upon all to exercise reasonable care not to injure another. . . .
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> The position of the defendants seems to be that if murder results the insurance companies are, of course, sorry that the insured met with such a fate, but they have no liability if there is no insurable interest although they can treat such policies as completely void. If an early death from natural causes makes the policy unprofitable, the defendants can and do refuse to pay the beneficiary for the reason that such policies are void. In other words, the defendants seem 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.
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> As we have shown, it has long been recognized by this court and practically all courts in this country that an insured is placed in a position of extreme danger where a policy of insurance is issued on his life in favor of a beneficiary who has no insurable interest. There is no legal justification for the creation of such a risk to an insured and there is no social gain in the writing of a void policy of insurance. Where this court has found that such policies are unreasonably dangerous to the insured because of

the risk of murder and for this reason has declared such policies void, it would be an anomaly to hold that insurance companies have no duty to use reasonable care not to create a situation which may prove to be a stimulus for murder.

This appears to be a case of first impression and on its facts quite unusual.

AVIATION EXCLUSION—DEATH AFTER DESERT LANDING: *Chambers v. Kansas City Life Insurance Company* (California District Court of Appeals, December 18, 1957) 319 P.2d 387. The aviation rider attached to the life policy excluded death "as a result, directly or indirectly, of service, travel or flight in any species of aircraft, or as a result of descending therefrom or therewith, . . ." The insured took off in a private plane with a companion from Los Angeles destined for Las Vegas. His body was found in a remote desert area some months thereafter and about twenty miles from the plane. The exterior of the plane was somewhat damaged but there was no damage to the interior. The remains of the companion were found about ten miles from those of the insured with an indication that they had started out together but thereafter became separated.

The company claimed that the evidence conclusively showed that the plane crash-landed in the remote desert area in mid-July and that the insured died from the heat, from exhaustion and from lack of water after wandering in the desert area and that the death clearly occurred indirectly as a result of the insured's flight in the plane. The beneficiary brought suit for the full policy proceeds on the basis that the exclusion provision did not under the circumstances apply. The trial court agreed with the beneficiary and, on appeal, the California District Court of Appeals for the Fourth District affirmed the judgment of the trial court.

The Court (Barnard, P. J.) in its opinion stated:

> The exclusion provision here in question appears to be more narrow and limited in its scope that those involved in the cited cases. By its terms it is limited to where the insured dies as a direct or indirect result of his travel or flight in an airplane, or of descending "therefrom or therewith." The latter clause would seem to indicate an intention that the exclusion provided for would end when the insured had safely descended from the plane. In other words, that it was intended to exclude death resulting from the flight itself, or from leaving the plane, and not from some subsequent peril. All of the cases seem to hold that the intention of the parties in agreeing to the exclusion clause is the controlling element. From the language here used it could reasonably be held that the intention of the parties as expressed in the policy was to exclude from coverage only the danger normally or usually attached to riding in an airplane, or descending therewith or therefrom. It may well be doubted that these parties intended to exclude death resulting from other conditions long after a safe descent from a plane had been completed. Questions of fact were here present and it cannot be said that the sole issue was one of law. Because the word "indirectly" was also used it does not necessarily follow that this exclusion provision was intended to apply where a safe landing had been made and where death occurred a couple of days later and miles away from the airplane, as a result of other circumstances and conditions.
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> It does not necessarily follow that the same rule should be applied here as that applicable where a plane lands on the ccean where the drowning may well be considered an indirect, if not a direct, result of the flight. Where a plane goes down at sea a safe

descent is often impossible, and drowning which follows is in a practical sense a part of the descent. In a forced landing on terra firma within this country a very different situation may well appear. Here a safe landing, insofar as anything to do with the insured's leaving the plane is concerned, could be and was made. The insured did not die as a direct result of riding in this plane or of descending therefrom, and the only possible indirect connection between the plane ride and his death is the fact that he arrived in that locality by airplane. The conditions which caused his death were met after the airplane ride was safely completed, and the same conditions would have existed had he arrived in any other manner. After he left the plane and started to walk he was subject to the same perils he would have been if he had arrived there in an automobile and the automobile had broken down. While there are perils in such desert areas they are not necessarily fatal and many persons who arrive in such areas in other ways are able to survive while others are not, depending upon many factual circumstances. The mere fact that the insured would probably not have been there if he had not gone on this plane ride is not sufficient to establish that his death occurred indirectly from this flight. That element appears in any automobile accident but it can have no controlling effect. If the insured had landed safely at a city airport and was killed in an automobile accident while en route to a hotel, it might be true that he wouldn't have been in that automobile had he not taken the plane ride, but this could not reasonably be said to have resulted indirectly from his ride in the plane, or his exit therefrom, within the meaning and intent of this exclusion clause. This exclusion clause is in no way conditioned upon a safe arrival at an intended destination. It may reasonably be interpreted as intended to relate to death resulting from the flight itself or from leaving the plane, and not from perils thereafter encountered. There are well-known dangers on highways and city streets, as well as in desert areas, and death as a result of any of those dangers would clearly come within the general provisions of this policy. This exclusion provision, limited as it is, should not be held as a matter of law to automatically exclude coverage because of this possible danger which arose only after a safe descent from the plane had been made. If there had been any intention to include such a peril as this in the exclusion clause the insurance company should have used language more clearly showing such an intent. The language used in this exclusion provision could reasonably be interpreted in either of two ways, and issues of fact were presented which were properly submitted to the jury.

DISABILITY BENEFITS—ATTEMPTED SUICIDE—PUBLIC POLICY: *Potts v. Travelers Insurance Company* (New Jersey Superior Court, Appellate Division, February 4, 1958) 138 A.2d 574. The insured was covered under a policy issued by Travelers to meet the requirements of the Private Plan Section of the New Jersey Temporary Disability Benefits Law. The policy provided coverage for disability as a result of "accidental bodily injury or bodily disease" not thereinafter excepted. There was no specific exception of disability due to attempted suicide, which is a felony at common law and disorderly conduct under a New Jersey statute.

The Travelers refused to pay on the basis of the attempted suicide but was ordered to pay by the hearing official of the New Jersey Division of Employment Security. Travelers appealed and on this appeal the court held that it would be against the public policy of New Jersey to permit the insured to thus recover for disability intentionally inflicted while sane whether or not there was a policy exception.