Missouri Law Review

Volume 8
Issue 2 *April 1943*

Article 4

1943

Comments

Comments

FEDERAL JURISDICTION—JURISDICTIONAL AMOUNT—INSURANCE CONTRACTS

When the beneficiary or assured of an insurance contract brings an action for the total single benefit there promised, it is not difficult to ascertain "the sum or value" of the matter in controversy for purposes of federal jurisdiction;[1] but when only recovery of limited installments of a continuing benefit is sought—or when the insurer seeks to cancel his as yet unmatured contract—the problem becomes more baffling and the authorities less conclusive.

The guiding precedent for the "installment actions" was not an insurance case at all. In *Elgin v. Marshall*[2] suit was brought to recover $1,660.75 allegedly due on coupons detached from municipal bonds issued by defendant. Although decision of the case would also conclude the disputed liability on the much larger principal sum, not yet due, on principles of *res adjudicata,* the Supreme Court declined jurisdiction, holding that the statutes limiting federal jurisdiction in "diversity" and "federal question" cases to those where the matter in controversy exceeded the sum or value of $2000[3] had reference to the matter directly in dispute and did not permit the court to estimate its collateral effect in a subsequent suit. The Court was frank in its admission that the easy application of the rule was a cardinal reason for its adoption,[4] but much can be said for the decision as a logical interpretation of the controlling statute. The plaintiff makes the case, and "the matter in controversy" is no more than his right to what he asks from the defendant.[5] Any other result can be reached only by finding the statute to refer, by the words "matter in controversy," to disputes outside the particular action over which the jurisdiction of the federal courts, under the statute, is questioned.

Perhaps the leading case applying this doctrine to suits on insurance policies is *Wright v. Mutual Life Insurance Co. of New York,*[6] which was an action in a state court to recover the accrued monthly payments allegedly due on an accident policy. The amount of the payments due at the time of the suit amounted to only $420 but the substantial defense—that the insured's death was not accidental—affected all future liabilities under the policy. An attempt to remove the case to the federal court was unsuccessful, the circuit court of appeals observing: "It is

1. See (1940) 28 U. S. C. A. 41 (1).
2. 106 U. S. 578 (1882).
3. Now $3000, (1940) 28 U. S. C. A. 41 (1).
4. Elgin v. Marshall, 106 U. S. 578, 580 (1882).
5. The "plaintiff-viewpoint" rule in calculating the sum or value of the matter in controversy is elaborated by Professor (now Judge) Dobie in *Jurisdictional Amount in the United States District Court,* (1925) 38 HARV. L. REV. 733. See also DOBIE on FEDERAL JURISDICTION AND PROCEDURE, § 56 (1928).
6. 19 F. (2d) 117 (C. C. A. 5th, 1927), *aff. per curiam sub nomine,* Mutual Life Ins. Co. v. Wright, 276 U. S. 602 (1928).

well settled in this court that, when our jurisdiction depends upon the amount in controversy, it is determined by the amount involved in the particular case, and not by any contingent loss either one of the parties may sustain by the probative effect of the judgment however certain it may be that such loss will occur."[7]

Although there has been an understandable and recurrent sentiment to consider the actual difference to the plaintiff (in terms of his probable future benefits according to his life expectancy under the accepted mortality tables) or to the defendant (in terms of the reserves which the insurer must maintain to meet his liability under the policy) which the decision of the case will make, the distinct weight of authority follows the *Wright* case.[8] A recent decision in accord is *Mutual Life Insurance Co. of New York v. Mayle.*[9] *Contra* authority, such as *Enzar v. Jefferson Standard Life Insurance Co.*,[10] frequently relies on decisions rendered in suits of a different character—suits to cancel the policy are typical—where the entire policy is directly involved.

Under the common statutes—or policy provisions—making the insurance policies incontestable for any reason other than nonpayment of premiums after the expiration of a comparatively short time, in many cases the insurer can protect himself from fraud or misrepresentation only by a suit to cancel the policy. It is here that the "sum or value of the matter in controversy" is the most difficult to ascertain and the law the most uncertain. Jurisdiction has been most frequently tested by the face value of the policies sought to be cancelled, on the theory that the right to be relieved from such liability was the matter in controversy.[11] Un-

---

7. The court was here quoting from New England Mortgage Co. v. Gay, 145 U. S. 123, 130 (1892).

8. Equitable Life Assur. Soc. of U. S. v. Wilson, 81 F. (2d) 657 (C. C. A. 9th, 1936); Small v. New York Life Ins. Co., 18 F. Supp. 820 (N. D. Ala., 1937); Berlin v. Travellers Ins. Co., 18 F. Supp. 126 (D. C. Md., 1937); Edelman v. Travellers Ins. Co., 21 F. Supp. 209 (D. C. Md., 1937); Shabotzky v. Mass. Mut. Life Ins. Co., 21 F. Supp. 167 (S. D. N. Y., 1937); Stockman v. Reliance Life Ins. Co., 28 F. Supp. 446 (W. D. S. C., 1939); *cf.* New York Life Ins. Co. v. Viglas, 297 U. S. 672 (1936).

9. 116 F. (2d) 434 (C. C. A. 4th, 1940). This was an action for declaratory judgment, but the only factual issue was of "total and permanent" disability, and the judgment fixed only the liability for the benefits claimed due at the time of suit.

10. 14 F. Supp. 677 (E. D. S. C., 1936). In that case there was a prayer for "specific performance" in the future as well as for payment of past due installments. To decree specific performance in such a case, in absence of more positive evidence that it was necessary to prevent a multiplicity of suits, would seem to extend jurisdiction beyond previously recognized limits. Trainor v. Mutual Life Ins. Co., 131 F. (2d) 895 (C. C. A. 7th, 1942). *Quaere,* does such a prayer change the character of the suit sufficiently to justify a different test of jurisdictional amount. The court was admittedly not uninfluenced by it, and, it is submitted, rightly so, if there appeared from the face of the bill any legal possibility of obtaining the relief sought. Trainor v. Mutual Life Ins. Co., *supra.*

11. New York Life Ins. Co. v. Swift, 38 F. (2d) 175 (C. C. A. 5th, 1930); Pacific Mut. Life Ins. Co. v. Parker, 71 F. (2d) 872 (C. C. A. 4th, 1934); Mass. Protective Ass'n., Inc. v. Kittles, 2 F. (2d) 211 (C. C. A. 5th, 1924). In Jensen v. New York Life Ins. Co., 50 F. (2d) 512 (C. C. A. 8th, 1931), jurisdiction was sustained but the court adopted no single test. Referring to the "face value" test,

fortunately, the conclusion does not follow from the premise. That the matter in controversy is the insurer's right to be relieved from the obligations of the contract for the reasons alleged is true, but it is seldom that the right is worth the face amount of the policy to him, for by the very terms of the contract he will become liable for that amount only in case future premiums are paid to him. The true value of the right to cancel is the difference between the face amount of the policy less the present value of the premiums to be expected from one in the insured's circumstances under the mortality tables.

To put the case concretely, let us assume that a man of twenty-seven receives a $5000 policy by virtue of an application falsely stating he had never suffered any pulmonary disease. The annual premium is $125. If he had truthfully stated that he had been treated for pulmonary tuberculosis but had had no symptoms for five years, the company would have "rated up" his policy fifteen years, and the annual premium would have been $150. One year later the insurer sues to cancel the policy for fraudulent misrepresentation. By its own estimate, it may expect to receive under the policy the inadequate premium of $125 for as many years as constitute the life expectancy of a man of forty-two (in a cancellation suit, the insurer must tender back the premiums received, so the case must be viewed as of the date of contracting). The difference to the plaintiff of winning or losing his suit is the difference between $150 and $125, multiplied by the actual life expectancy of the defendant and discounted to the date of the policy.

Use of the mortality tables to test jurisdictional amount has received judicial sanction in analogous cases. *Thompson v. Thompson*[12] was a suit by a wife for maintenance of herself and her child, which had been fixed at $75 a month. Holding that the future payments were not in any way contingent or speculative, though subject to change, the court looked at the life expectancies of the parties to sustain federal jurisdiction. (As the case was on appeal from the original decree first determining the right to, and fixing the amount of, the maintenance, the decision should not be confused with the installment cases exemplified by *Town of Elgin v. Marshall* and *Wright v. Mutual Life Insurance Co.*)

Brotherhood of Locomotive Firemen and Enginemen v. Pinkston[13] was a suit for accounting, determination of priorities and proper liquidation of a pension fund which defendant had decided to abolish and from which plaintiff was entitled to a $135 monthly pension for life. Determination of plaintiff's entire interest was essential to final adjudication of the suit. Actuarial determination of the extent of plaintiff's interest was necessary for this purpose, and was resorted to in order to sustain jurisdiction.

---

the "maximum possible loss" test, and the "ultimate pecuniary loss" test, jurisdiction was said to be satisfied by any of the three.

12. 226 U. S. 551 (1912).
13. 293 U. S. 96 (1934).

Missouri Law Review, Vol. 8, Iss. 2 [1943], Art. 4

No case has been found squarely adopting the test suggested above in cancellation suits.[14] In many cases the life expectancy of the insured, who, for the very reasons that cancellation is sought, may not be subject to any available mortality table (in other words, is uninsurable at any premium), cannot be found with sufficient precision to justify its use. This fact, however, does not make any more accurate the "face value" test, nor the "cash reserve" test sometimes employed[15] on the theory that the suit is one to relieve the company of the necessity of maintaining a reserve against the policy. Cancellation of the policy does not necessarily mean a saving to the company of the amount of the reserve, nor that it would otherwise be lost if the policy stayed in force. Again, the only loss to the company, through its effect on the reserve, is the actuarial inadequacy of the policy sought to be cancelled.

The courts have been extremely liberal about sustaining jurisdiction in these cases. The general rule requires a plaintiff to allege, and if challenged, to prove the facts giving federal jurisdiction. Difficulty of precise valuation won't prevent jurisdiction but hopeless uncertainty will. But in suits to cancel life insurance policies not only have the courts tested jurisdiction by theories patently too favorable to the plaintiff but at least one court, recognizing the pertinency of a life expectancy valuation, observed that if the object sought has a value which could exceed $3000, the allegation of jurisdictional amount could not be refuted.[16]

O. B. E.

---

14. The point was recognized in Mutual Life Ins. Co. v. Thompson, 27 F. (2d) 753 (W. D. Va., 1928) but no actual estimate of the value was made and jurisdiction was sustained on the theory that the maximum possible loss exceeded $3000. *Accord,* Mutual Benefit Health and Accident Ass'n. v. Fortenberry, 98 F. (2d) 570 (C. C. A. 5th, 1938), where the policy provided for waiver of premium payments during disability.

15. Jensen v. New York Life Ins. Soc., 50 F. (2d) 512 (C. C. A. 8th, 1931); New York Life Ins. Co. v. Jensen, 38 F. (2d) 524 (D. C. Neb., 1929); Tharkelson v. Aetna Life Ins. Co., 9 F. Supp. 570 (D. C. Minn., 1934); Mutual Benefit Health and Accident Ass'n. v. Fortenberry, 98 F. (2d) 571 (C. C. A. 5th, 1938); Penn. Mut. Life Ins. Co. of Philadelphia v. Joseph, 5 F. Supp. 1003 (D. C. Minn., 1934).

16. Mutual Life Ins. Co. v. Thompson, 27 F. (2d) 753 (D. C. Va., 1928).