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# Life Insurance: Disposition of Proceeds by Residuary Clause in Will

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result, rightfully ignoring the refined and academic distinction between the meaning of common phraseology in leases.

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## LIFE INSURANCE: DISPOSITION OF PROCEEDS BY RESIDUARY CLAUSE IN WILL

*Johnson v. Remy, 220 F.2d 73 (5th Cir. 1955)*

Henry M. Remy owned a $10,000 insurance policy on his life. The executors, administrators, or assigns of his estate were the beneficiaries. He died in 1952, survived by his wife but no children, and left a will that neither mentioned the insurance policy nor contained any specific devise or bequest for his wife, who was nevertheless named sole residuary legatee. The admission of the will to probate and the widow's election of dower were not contested; the insurance company appeared as interpleader to ask determination of her additional right to the insurance benefits. By summary judgment the United States District Court for the Southern District of Florida awarded the benefits to the widow, on the ground that her election of dower did not affect her right as statutory[1] beneficiary of her husband's unbequeathed life insurance. On the executor's appeal, HELD, the proceeds of life insurance payable to the insured's estate, when not specifically bequeathed by the insured, pass by the residuary clause in his will, and by electing dower the widow waives her right as residuary legatee. Judgment reversed.

A Florida statute[2] provides that the benefits of insurance payable to the executor, administrator, assigns, or estate of an insured shall inure to the benefit of the deceased's spouse and children in equal portions, or to any person for whose benefit the insurance is declared in the policy. The statute further provides:

> "... whenever the insurance is for the benefit of ... the insured, his executors, administrators or assigns, the proceeds of the insurance may be bequeathed by the insured to any person

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[1]FLA. STAT. §222.13 (1953).
[2]*Ibid.*

whatsoever . . . as he may bequeath or devise any other property or effects of which he may be possessed, and which shall be subject to disposition by last will and testament."

The statute saves life insurance proceeds harmless from the claims of the testator's creditors unless they are named beneficiaries in the policy, and a provision in the will directing the payment of the testator's debts does not affect this immunity.[3] A specific legacy of proceeds payable under the policy to the deceased or to his estate passes directly to the legatee as if he had been named beneficiary, and his rights are unimpeached by the survival of a spouse[4] except to the extent of a widow's dower right.[5]

Confusion arises with respect to the passage of insurance proceeds by a general residuary clause when the deceased is survived by a spouse, child, or children. Other states having statutes similar to that of Florida have generally held that such residuary clauses are not sufficient to pass insurance proceeds.[6] The rationale of this view is that the specific legislative intent evinced by the statute is not to be defeated by a general clause in the decedent's will.[7]

The Florida Court in 1917 chose to deviate from the interpretation given such statutes by other states and, in *Sloan v. Sloan*,[8] held that life insurance proceeds payable to an insured or his estate passed by a general residuary clause. In that case the wife was to receive one third of all residuary property and the balance was to go to other relatives. There were no surviving children. Subsequently, in *Lowe v. Lowe*,[9] the Florida Supreme Court held that the general terms of a residuary clause were not sufficient to pass the life insurance proceeds to the residuary legatees and that the benefits were therefore payable to the executor in trust for the surviving children of the insured. The *Sloan* case was expressly distinguished on its facts. The basis of the distinction was not explained in the *Lowe* case.

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[3]Milam v. Davis, 97 Fla. 916, 123 So. 668 (1929).

[4]Maclean v. Fisher, 60 Fla. 331, 53 So. 614 (1910).

[5]Milam v. Davis, 97 Fla. 916, 123 So. 668 (1929).

[6]*E.g., In re* Estate of Clemens, 226 Iowa 31, 282 N.W. 730 (1938); Adams v. Garraway, 179 Tenn. 93, 162 S.W.2d 1086 (1942); see Black and Scoles, *Disposition of Life Insurance Proceeds Payable to Insured's Estate*, 26 FLA. L.J. 131, 134 (1952).

[7]Hathaway v. Sherman, 61 Me. 466 (1872); Cooper v. Wright, 110 Tenn. 214, 75 S.W. 1049 (1903).

[8]73 Fla. 345, 74 So. 407 (1917).

[9]142 Fla. 266, 194 So. 615 (1940).

It should be noted, however, that the widow in the *Sloan* case was one of the residuary legatees as well as the sole statutory recipient of the insurance proceeds. A holding that she took as legatee and not as widow did not severely reduce her award. On the other hand, a similar decision in the *Lowe* case would have denied three of the insured's children any benefits of the insurance policy.

In 1944 the doctrine of the *Sloan* case was again applied; the Florida Court held, *In re Estate of Seaton*,[10] that insurance proceeds were covered by the residuary clause and thereby passed to a trustee in accordance with the directions of the testator. The Court held that "The rule of Sloan v. Sloan . . . is in full force . . . in cases where it applies, and is the settled construction of the court on the statute involved."[11] The language of the *Seaton* case does not effectively reflect a choice between the *Sloan* and *Lowe* theories. The *Sloan* decision is only "in full force" when the court decides that "it applies," and its effect may be avoided simply by applying the *Lowe* case instead. The federal district court was unable to resolve the dilemma and in *Pacific Mutual Life Insurance Co. v. Jones*[12] followed the *Seaton* case only because it was decided subsequently to the *Lowe* decision. In so doing the court confessed that it was "unable to find any legal basis for the apparent conflict, as is indicated in the Lowe and Seaton cases."[13]

The federal court was called upon to decide the instant case with no means of determining which of the previous decisions should govern. The court of appeals followed the *Pacific Mutual* decision and adopted the *Seaton* theory, holding that the residuary clause passed the insurance proceeds and that Mrs. Remy's right to the benefits emanated from her status as residuary legatee, not from her status as widow. Her election of dower therefore waived her right to the insurance benefits as surely as if they had been specifically bequeathed to her.

The instant decision neither aids nor hinders accurate interpretation of the statute. Until the *Sloan* or the *Lowe* case is overruled litigants in the federal courts must find satisfaction in the uncertain commitment of the *Pacific Mutual* decision, and those in the Florida courts have no basis for ascertaining which of the two apparently conflicting theories will be applied.

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[10]154 Fla. 446, 18 So.2d 20 (1944).
[11]*Id.* at 449, 18 So.2d at 22.
[12]100 F. Supp. 466 (N.D. Fla. 1951).
[13]*Id.* at 468.

A remedy for this confusion might be provided by the Florida Legislature. A statute expressly stating that a residuary clause either does or does not pass insurance proceeds would suffice. Pending the appearance of a legislative or judicial mandate on the problem, the only practical solution of the problem is careful drafting of wills. A specific bequest of the proceeds of insurance payable to the insured or his estate circumvents the problem and makes unnecessary an evaluation of the *Sloan* and *Lowe cases.*

BEN BUTLER

## NEGLIGENCE: APPLICATION OF THE LAST CLEAR CHANCE DOCTRINE TO INATTENTIVE DEFENDANTS

*Springer v. Morris, 74 So.2d 781 (Fla. 1954)*

Plaintiff, while crossing a street at night, was struck and seriously injured by defendant's automobile. Defendant testified that he was talking to passengers in the back seat of his car and did not see plaintiff until the instant of impact. Evidence indicated that plaintiff did not see the approaching vehicle, although the street was straight, level, and well lighted. The trial court, in instructing the jury on the doctrine of last clear chance, charged that a verdict for plaintiff would be proper if the defendant saw or *should have seen* the plaintiff in time to avoid the accident. Defendant appealed from a verdict for plaintiff, assigning as error the trial court's instruction. HELD, defendant had the last clear chance to avoid the accident, even though he did not discover the danger to plaintiff. Judgment affirmed.

The doctrine of last clear chance is generally stated as follows: A plaintiff who has negligently placed himself in a position of peril, and is either unconscious of his danger,[1] or unable to avoid it,[2] or both,[3] may nevertheless recover from a defendant who inflicts injury if the defendant could have avoided the injury after discovering plain-

[1]Wawner v. Sellic Stone Studio, 74 So.2d 574 (Fla. 1954); Becker v. Blum, 142 Fla. 60, 194 So. 275 (1940).

[2]Consumers Lumber & Veneer Co. v. Atlantic C.L.R.R., 117 F.2d 329 (5th Cir. 1941).

[3]Merchants Transportation Co. v. Daniel, 109 Fla. 496, 149 So. 401 (1933).