Volume 100
Issue 5 *A Tribute to Franklin D. Cleckley: A Compendium of Essential Legal Principles From His Opinions as a Justice on the West Virginia Supreme Court of Appeals*

Article 21

June 1998

Insurance Law

Robin Jean Davis
West Virginia Supreme Court of Appeals

Louis J. Palmer Jr.

XVII. INSURANCE LAW

A. Farmers' Mutual Life Insurance Companies

In *Yeager v. Farmers Mutual Insurance Co.*[419] Justice Cleckley had an opportunity to develop legal principles concerning the Code's provisions for farmers' mutual fire insurance companies. The opinion held "W. Va. Code, 33-17-9 (1957), referred to as the valued policy law, does not apply to farmers' mutual fire insurance companies. The legislature clearly indicated such companies are exempt by its enactment of W. Va. Code, 33-22-7(c) (1957)."[420]

The *Yeager* opinion then addressed the burden of proof on a claim loss as follows:

> If a farmers' mutual fire insurance company and its insured cannot agree on the actual cash value for a total loss of the insured property, the burden of proof rests on the party who seeks to show an amount different than the value stated on the policy. This decision does not prevent a farmers' mutual fire insurance company from placing a limit on the amount paid under the policy.[421]

The burden of proof holding was qualified. Justice Cleckley ruled that

> [a]bsent a statutory provision expressing a contrary intent, the burden of proof for a total loss of the insured property shall not be applied retrospectively to situations where a farmers' mutual fire insurance company and its insured have agreed on an actual cash value and the insured has signed an otherwise valid release of claims.[422]

---

419 453 S.E.2d 390 (W. Va. 1994).

420 *Id.* at Syl. Pt. 1.

421 *Id.* at Syl. Pt. 2.

422 *Id.* at Syl. Pt. 3.

B. *Subrogation*

The issue of subrogation was succinctly, but meaningfully, addressed in *Richards v. Allstate Insurance Co.*[423] Justice Cleckley opined that "[n]o right of subrogation can arise in favor of an insurer against its own insured, since by definition subrogation arises only with respect to rights of the insured against third persons to whom the insurer owes no duty."[424]

C. *Stacking*

The issue of stacking automobile policy coverage was focused upon in *Payne v. Weston.*[425] *Payne* held,

> [t]here is no common law right to stack coverage available for multiple vehicles under the same policy or under two or more insurance policies. The right to stack must arise from the insurance contract itself (as that is the agreement of the parties) or from a statute (as in the uninsured and underinsured motorist coverage statutes).[426]

The opinion also held that "[a]n insured is not entitled to stack liability coverages for every vehicle covered by his or her policy when the insured received a multi-car discount, when only one vehicle was involved in the accident, and when the policy contains language limiting the insurer's liability."[427]

XVIII. CORPORATE LAW

In *Frymier-Halloran v. Paige*,[428] the court held, "W. Va. Code, 11-15-17 (1978), explicitly provides that an officer of a corporation shall be personally liable for any consumers sales and service tax along with any additions, penalties, and

---

423 455 S.E.2d 803 (W. Va. 1995).

424 *Id.* at Syl. Pt. 2.

425 466 S.E.2d 161 (W. Va. 1995).

426 *Id.* at Syl. Pt. 1.

427 *Id.* at Syl. Pt. 3.

428 458 S.E.2d 780 (W. Va. 1995).