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Standard Life Insurance Company of Indiana v. Veal: A Perspective Look at Punitive Damages in Mississippi

John Edward Hughes III

STANDARD LIFE INSURANCE COMPANY OF INDIANA V. VEAL: A PERSPECTIVE LOOK AT PUNITIVE DAMAGES IN MISSISSIPPI

by

*John Edward Hughes, III**

*B.A. 1967, J. D. 1970, University of Virginia; Member, Wells, Wells, Marble & Hurst, Jackson, Mississippi.

In the fall of 1968, a tremor emanated from the State of California, and its aftershocks have been recorded, in varying degrees, across the nation. This tremor was not the result of a sudden shift in the San Andreas Fault, but was caused by the decision of the California Court of Appeals in *Wetherbee v. United Insurance Company of America*[1] in which punitive damages were assessed against a life insurance company in an action on a disability claim. The injuries inflicted upon the Chicago home office personnel of United had barely time to heal before the earth beneath the industry was shaken for a second time by a California court. In the case, *Fletcher v. Western National Life Insurance Company,*[2] the California Court of Appeals again upheld an award of punitive damages against a life insurance company.

In the years that followed, California courts restated and, to some extent, expanded the underlying theories upon which that jurisdiction allowed awards of punitive damages against insurers. California defense counsel were heard to say, with only the faintest hint of a smile, that one must stop, look and listen before exiting the courthouse, lest one be trampled by the mad rush of plaintiffs' attorneys seeking to make instant millionaires of their clients.

The tremors from California were quickly noted on legal seismographs in every state in the Union. While it is not the purpose of this article to examine the California punitive damages decisions against life, disability, and health and accident insurers, one must take note of the origin of what has become a prime topic of conversation among lawyers sitting on either side of the trial bench. The concept of punitive damages being assessed against an insurer has been "cussed" and discussed, praised and condemned, and hailed and bemoaned. Perhaps no other subject in the law, certainly no other subject in the area of insurance law, has had more written about it on the national

[1] 265 Cal. App. 2d 921, 71 Cal. Rptr. 764 (1968), *aff'd on rehearing*, 18 Cal. App. 266, 95 Cal. Rptr. 678 (1971).

[2] 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970).

level in the past decade.[3] It is a popular topic of speakers at meetings of trial attorneys, as well as at meetings of the insurance industry, on a local, state and national level. Simply stated, the theories enunciated by the California courts have suddenly become the glamour issue in insurance law, at least from the standpoint of its receiving more attention than any other issue of insurance law.

The national attention given to the punitive damages cases arising in California can be attributed, for the most part, to the rather novel theories of liability which that court adopted as a basis for the imposition of punitive damages. Of course, the extremely large verdicts being awarded in California have not escaped attention. Attorneys for claimants across the country quickly brought to the attention of their courts the question of whether the California theories should be adopted in their jurisdictions. It is not within the scope and purpose of this article to examine the impact of the California decisions on a nationwide basis. Therefore, it should be sufficient to state that, with a few exceptions, courts in other jurisdictions have refused to engraft upon the local jurisprudence the theories of liability adopted by the California courts.

The shock waves of *Wetherbee* and other California cases have not gone unnoticed in Mississippi. It is now unusual for a suit to be filed in this jurisdiction, on any type of first party insurance policy, which does not include a prayer for punitive damages.[4] In November 1977, the Supreme Court of Mississippi upheld for the first time an award of punitive damages arising from an insurance contract, in the case of *Standard Life Insurance Company of Indiana v. Veal.*[5] The success

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[3] J. McCARTHY, PUNITIVE DAMAGES IN BAD FAITH CASES (1st ed. 1976); Horn, *First Party Insurance Bad Faith: A Practical Discussion*, 22 U.C.L.A. L. REV. 847 (1975); Kircher, *Insurer's Mistaken Judgment - A New Tort?*, 59 MARQ. L. REV. 775 (1976); Kornblum, *The First Party Extra-Contract Case: The Defense Viewpoint*, 1977 DRI Monograph 7 (Jan. 1977); Lambert, *Commercial Litigation - Life Insurance Co. Liable to Pay Widow Damages for Severe Emotional Distress Caused by its Deliberate Refusal to Pay Her Policy Proceeds on Life of Her Husband*, 35 A.T.L.A. L. J. 220 (1974); Note, *the Tort of Bad Faith: A Perspective Look at the Insurer's Expanding Liability*, 8 CUMBERLAND L. REV. 241 (1977); Note, *Availability of Excess Damages for Wrongful Refusal to Honor First Party Insurance Claims - An Emerging Trend*, 45 FORDHAM L. REV. 164 (1976); Note, *Good Faith and Fair Dealing in Insurance Contracts*, 25 HASTINGS L. J. 699 (1974) and Note, *Insurance - Increasing Liability for Refusal to Pay First Party Claim: Bad Faith and Punitive Damages*, 13 WAKE FOREST L. REV. 685 (1977). These citations are intended to be illustrative of the literature in the area of extra- contractual liability in first party insurance cases, and no attempt has been made to cite all books or articles which have been published on this subject since 1968, the date of the *Wetherbee* decision.

[4] A limited survey of cases filed in Mississippi courts or in Mississippi United States District Courts from January 1, 1976, to July 1, 1978, involving life, disability or health and accident insurance policies reveals that 79.5% of the total cases included in the survey contained a prayer for punitive damages.

[5] 354 So. 2d 239 (1977).

of the plaintiff in *Veal* has attracted astonishing attention. It is safe to surmise that if the *Veal* opinion had been published privately, it would head the best seller list of legal publications in Mississippi. As a result of the attention given to the *Veal* decision and the recent emphasis and interest in the profession on the subject of punitive damages subsequent to the California decisions, it is appropriate to evaluate both the *Veal* decision and the change, if any, which it has made in the jurisprudence of Mississippi.

The *Veal* case involved what is commonly known as a credit life policy of insurance. Credit life insurance is essentially a group insurance product issued to a creditor and covering the debtors of the creditor who elect to become covered under the policy. It is basically term insurance which remains in force only during the term of the debt in question or until the debt is repaid, whichever time is shorter. Credit life products typically provide that the insurance company will pay the creditor the outstanding balance of the debt upon receipt of proof of death of the insured during the term of the coverage.

In July 1977, Eugene Veal obtained a loan through Ades Finance Company in the principal sum of $1,008.00. In connection with the obtaining of the loan, Ades issued a certificate of insurance evidencing that the plaintiff and his wife were covered under a group credit policy issued to Ades by Standard. The premium for credit life insurance was calculated by Ades and deducted from the loan proceeds to be paid to Veal.

The group policy issued to Ades contained the following definition: " 'Insured Obligor' as used herein means the principal or first signatory on a contract of indebtedness and his or her spouse by marriage not dissolved by a divorce or legal separation at the inception of the debt." The policy itself further provided that the insurance coverage was joint and that each "obligor" insured thereunder would be insured concurrently with the effective date of the indebtedness in question.

The certificate of insurance, which bore an effective date of July 23, 1973, contained the following provisions which are pertinent to the present inquiry:

CERTIFICATE OF INSURANCE

Insured Obligor *Mr. Eugene Veal*	Age 49	Social Security No. 427-46-4649
Spouse (Life Insurance Only) *Jessie Veal*	Age 48	Social Security No. 426-44-4884

* * * *

"THIS IS TO CERTIFY that the Insured Obligor and the spouse (if any) named above, are insured JOINTLY against the hazard of death . . . ."

> "JOINT LIFE INSURANCE (Insured Obligor and spouse): This is JOINT life insurance coverage and will pay only one death benefit. If a death benefit is paid as a result of the death of the Insured Obligor or the spouse, no insurance will thereafter be in effect under this certificate."

Veal's spouse died twelve days after the effective date of the certificate. Proof of Death was filed with the insurer, and the insurer thereafter wrote Ades that the claim would not be honored. The initial reason given by the insurer in support of its declination was "We regret we cannot honor this claim since Jessie's name did not appear on the debt instrument; so she had no insurable interest, and there was no debtor-creditor relationship." Veal thereafter retained the services of an attorney who corresponded with Standard on several occasions. In response to the attorney's inquiries, the insurer again referred to its letter of denial. Veal then filed suit against Standard.

After the filing of the suit, Standard's house counsel, who apparently was not given an opportunity to consider the claim in the claims handling stage, recommended that the Company pay $1,008.00, the face amount of the policy, based upon "economic" considerations. The plaintiff's attorneys refused to accept the offer. A Hinds County jury awarded the plaintiff $1,008.00 in actual damages and $25,000.00 in punitive damages, and the insurer promptly appealed.

The Mississippi Supreme Court declined to accept Standard's primary contentions that it was not liable because Veal did not have the right to bring the action because he was not a named beneficiary and that no premium was paid for coverage on the life of the deceased spouse. It is interesting to note that neither of the foregoing theories upon which the insurance company apparently litigated the case, and which were argued on appeal, were mentioned, directly or indirectly in the defendant's denial letter to Ades. It is submitted that this fact played a very important, if unarticulated, role in the court's result. One is drawn to the conclusion that the court felt that the two primary points argued by Standard's very able counsel on appeal resulted from an effort on the part of trial counsel to lend some degree of credibility to the company's initial action, when, in fact, the court was persuaded that the original denial was based upon entirely separate and wholly untenable grounds. Therefore, the court very quickly dispensed with the two primary arguments set forth by Standard. As to the argument that the plaintiff was not a proper party, the court considered this argument as being in the nature of an attack upon the standing of the plaintiff, and not as a true defense to the issue of liability. Although the court impliedly recognized that Ades, as beneficiary under the policy, should have been a party to the suit, the affirming justices found that Veal had a "beneficial interest" in

the policy.[6] The court found that the absence of Ades in the litigation was a mere non-joinder or misjoinder of parties which could have been cured by filing the appropriate plea.[7]

With regard to the issue of whether or not a premium had been paid for the spouse, the court simply stated, without citation of authority, that the fact that an insurer or its agent erroneously calculates the amount of a premium does not affect the question of liability under the policy. In fact, the court intimated that Standard would have been entitled to collect the correct premium, and it cited authority for the proposition that errors in insurance contracts may be objects of reformations.[8] The affirming justices also concluded that the premium which had been paid by Veal was sufficient to provide joint coverage under the policy through the date of the spouse's death. The court apparently based this conclusion upon a finding that premiums were payable by Ades to Standard on a monthly mode, although Veal had been charged a single premium at the outset of the term for which the coverage was effective.

The supreme court then moved to an examination of Standard's contention that the case was not a proper one for the assessment of punitive damages. The court's discussion of the punitive damages issue is very clearly divided into two parts: (1) a discussion of the applicable Mississippi law regarding the awarding of punitive damages, and (2) the application of the facts of the *Veal* case to the law.

Since the *Veal* case was rendered in November 1977, it has been consistently and loudly proclaimed in arguments at the trial level as a new approach by the Mississippi Supreme Court to the issue of punitive damages, perhaps in the belief that if something is said loud enough and often enough it will become fact. It is submitted that the Mississippi Supreme Court in *Veal* did not depart from its time-honored concept regarding the law of punitive damages, and that it adopted no new, unique, or novel theory of liability.

In order to analyze the impact and scope of *Veal*, it is necessary to digress briefly to consider the state of the law prior to that decison. Prior to the *Veal* case, the Mississippi Supreme Court had built up a fairly extensive body of law relating to the elements which must be

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[6] In concluding that Veal had a beneficial interest in the policy, the court considered principles established in cases involving loss payable clauses in favor of mortgages as analagous to the *Veal* case. The court cited and discussed Stuyvesant Ins. Co. v. Motor Sales Co., 135 Miss. 585, 99 So. 575 (1924) and Williams v. Home Insurance Co., 168 Miss. 443, 151 So. 728 (1934). The cited cases held that a mortgagor had standing to sue under insurance policies covering the destruction of the vehicles in question, despite the fact that the policies contained loss payable clauses in favor of the mortgagee. In *Veal*, the court extended the "beneficial interest" rule of those cases to credit life policies.

[7] MISS. CODE ANN. § 11-7-21 (1972); Wiener v. Pierce, 253 Miss. 728, 178 So. 2d 869 (1965).

[8] Johnson v. Consolidated Am. Life Ins. Co., 244 So. 2d 400 (Miss. 1971).

present, in an action founded *ex delicto*, before punitive damages could be assessed against a defendant. Those elements were concisely stated by the court in *Bounds v. Watts*[9] in the following language:

> The elements necessary for the allowance of punitive damages are that the actions of the defendant were prompted by willful and conscious wrong, or by actual malice, or by conduct so grossly negligent and inexcusable as to amount to a reckless disregard of the rights of the opposite party. It is, of course, not enough that the rights of the opposite party may have been invaded negligently or merely that a wrong was done, for, if so, punitive damages would be the general rule rather than one to be applied in extreme and exceptional cases.[10]

Without exception, Mississippi cases discussing punitive damages in tort actions set forth the above elements as prerequisites for the imposition of exemplary damages. For example, prior opinions of the court contain the following expressions regarding punitive damages: "Punitive damages may be recovered for a willful and intentional wrong, or for such gross negligence and reckless negligence as is equivalent to such a wrong";[11] "In order to warrant the recovery of punitive damages, there must enter into the injury some element of aggression or some coloring of insult, malice or gross negligence. . . .";[12] and "It has been frequently held by this Court that punitive damages may be recovered only in cases when the acts complained of are characterized by malice, fraud, oppression, willful wrong, or gross negligence, evincing a disregard of the rights of others."[13] There has not been found a single case involving an issue of punitive damages in a tort action in which the supreme court has made any substantial variance from the above principles.[14]

In cases founded upon the breach of a contract, the Mississippi Supreme Court had adopted a philosophy similar to its approach in tort cases prior to *Veal*. In contract cases, the court had held that punitive damages are not recoverable unless the breach of the contract is attended by intentional wrong, insult, abuse, or such gross negligence as to amount to an independent tort.[15] In fact, *Veal* was

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[9] 159 Miss. 307, 131 So. 804 (1931).

[10] *Id.* at 805.

[11] Seals v. St. Regis Paper Co., 236 So. 2d 388, 392 (Miss. 1970).

[12] Fowler Butane Gas Co. v. Varner, 244 Miss. 130, 150, 141 So. 2d 226, 233 (1962).

[13] Wood v. Mississippi Power Co., 245 Miss. 103, 119, 146 So. 2d 546, 552 (1962).

[14] Among other cases setting forth the applicable principle are: T.G. Blackwell Chevrolet Co. Inc. v. Eshee, 261 So. 2d 481 (Miss. 1972); West Bros., Inc. v. Barefield, 239 Miss. 530, 124 So. 2d 474 (1960); Illinois Cent. R.R. Company v. Ramsay, 157 Miss. 83, 127 So. 725 (1930); Yazoo & Miss. Valley R.R. Co. v. Hardie, 100 Miss. 132, 55 So. 42 (1911); Cumberland Tel. & Tel. Co. v. Allen, 89 Miss. 832, 42 So. 666 (1907); Vicksburg R.R., Power and Mfg. Co. v. Marlett, 78 Miss. 872, 29 So. 62 (1901).

[15] *See* D.L. Fair Lumber Co. v. Weems, 196 Miss. 201, 16 So. 2d 770 (1944); Hood v. Moffett, 109 Miss. 757, 69 So. 664 (1915).

not the first case in which the supreme court had considered the issue of punitive damages under a contract of insurance. The court was called upon to decide its first punitive damages case under an insurance contract in *Lincoln National Life Insurance Company v. Crews*,[16] decided in February, 1977. Strangely, the *Crews* case, although the precedent most nearly in point in the *Veal* case, was not cited by either Veal or Standard in the briefs, nor was it cited by the court in its opinion. However, in the *Crews* case the court adopted as its rule of decision the traditional rule regarding punitive damages for actions arising from the alleged breach of a contract. In the *Crews* case, the court made the following statement in reversing an award of punitive damages:

> There is nothing in the Record capable of supporting a finding that Lincoln, in defending the suit and relying upon the provisions of the policy, acted other than in good faith. The mere fact that Lincoln rejected the claims under the provisions of its policy and defended the suit and lost does not justify imposition of punitive damages.[17]

Having briefly considered the law of Mississippi regarding punitive damages as it existed prior to *Veal*, we are left with the inquiry of whether *Veal* changed that law. It is submitted that this inquiry must be answered in the negative. A dissection of the court's discussion of the law in the *Veal* case, no matter how minute, fails to reveal any departure whatsoever from the well-established principles of Mississippi law relating to punitive damages. In fact, the court's entire discussion of the law applicable to the *Veal* case consists of quotations of well-established principles and citations of long-established authorities which, without exception, plainly require that the elements of agression, insult, malice, willfullness, intentional acts or gross negligence be present before punitive damages may be awarded. In addition to citing numerous cases involving various theories of tort liability,[18] the Court stated verbatim language which it had set forth in *Crews*,[19] and it cited the well-established authorities of *Hood v. Moffett*,[20] *American Railway Express Company v. Bailey*,[21] *D. L. Fair Lumber Company v. Weems*[22] and *Progressive Casualty Insurance Company v. Keys*,[23] which involved the alleged breaches of various types of contracts.

A study of the law which the court applied in the *Veal* case leads

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[16] 341 So. 2d 1321 (Miss. 1977).
[17] *Id.* at 1322.
[18] 354 So. 2d at 247.
[19] 341 So. 2d at 1322.
[20] 109 Miss. 757, 69 So. 664 (1915).
[21] 142 Miss. 622, 107 So. 761 (1926).
[22] 196 Miss. 201, 16 So. 2d 770.
[23] 317 So. 2d 396 (Miss. 1975).

one to the conclusion that the court did not take a unique or novel approach to the question of punitive damages.

Since the court in *Veal* did not change its approach to the problem, one is left with the query as to the explanation for the different results reached by the court in *Crews* and *Veal*, decided less than one year apart. It is submitted that the difference comes, not in any modification of the law in Mississippi, but in the application of the peculiar facts of the *Veal* case to the well-established law of Mississippi. After its discussion of the applicable law, the *Veal* court stated the query as follows: "Does the evidence support an award for punitive damages?" Of course, the court did conclude that the peculiar facts of the *Veal* case supported the award of punitive damages. In discussing the facts in *Veal*, the court placed a great deal of emphasis upon the reasons given by the insurer originally for its denial of the claim, *i.e.*, that the spouse's name did not appear on the debt instrument, so she had no insurable interest, and there was no debtor-creditor relationship. The fact is that Standard was assessed with punitive damages because its original position in denying the claim appeared to be patently absurd. Why Standard denied the claim based upon the proproposition that the spouse's name did not appear on the debt instrument must remain a complete mystery in view of the plain and unambiguous language in the policy and in the certificate that the insured obligor and the spouse were insured jointly. The joint nature of the insurance was not set forth just once in the certificate, but was repeated in bold letters. There was absolutely no requirement in the policy or in the certificate that the name of the spouse appear on the debt instrument. There was absolutely no requirement in the certificate that the spouse be in a debtor-creditor relationship to the lender. As the court succinctly pointed out, Standard's position in denying the claim originally was contrary to its express definition of "insured obligor" as that term was used in the policy. The court clearly found not only that the claim of the spouse was a legitimate claim, but that the insurer had no conceivable justification whatsoever for its original action in denying the claim. It is submitted that an insurer will never be able to justify the denial of a claim when the position upon which the initial denial is based is clearly, and without question, contrary to the express terms of its contract with the insured. Of course, there will be instances in which an insurer mistakenly denies a claim based upon erroneous or incomplete facts which have been submitted to it. However, Standard's denial of the Veal claim clearly did not result from any erroneous impression of the facts underlying the claim, but the denial was based upon an attempt to impose restrictions upon the coverage which were in violation of express language of the policy. Therefore, the *Veal* case is distinguished from those instances in which, for example, an insurer erroneously denies a disability claim based upon incomplete or erroneous information from a physician

which raises a legitimate question about the extent of disability, if any, of the insured. No explanation is found in the record of why the company decided to deny the claim based upon an entirely specious position. In fact, the claims personnel who made the original decision did not testify at the trial. It is entirely possible, although purely a matter of conjecture, that since the insured's spouse died only 12 days after the effective date, the insurer suspected that it had been "taken" and sought some basis for denying what it felt was an illegitimate claim. However, the *Veal* case should clearly indicate to insurers that they are not now, nor, it is submitted, have they ever been, free to deny a claim merely because they have a feeling that they have been "robbed." There must be some basis in the contract and the facts for the denial of the claim. The *Veal* court makes it very clear that, in its opinion, the refusal of Standard to pay the claim in that instance was an intentional wrong which could not have been the result of an honest mistake.

Simply stated, Standard of Indiana had to pay punitive damages because its original position in denying the claim clearly had no basis whatsoever in its contract, and in fact, was expressly contrary to its own contract. Standard was unable to persuade the court that it was not guilty of some intentional wrong. The court clearly could have found that Standard acted with such gross negligence as to evidence an utter disregard for the rights of the insured.

What then has caused the furor surrounding *Veal*? *Veal* clearly stands only as the application of the facts in one particular case to the well-established law of the State of Mississippi. It is submitted that the *Veal* case goes no further than that, and it establishes no new theory for the imposition of extra-contractural liability on insurers. It is submitted that the attention has come as a result of a commonly observed fault of trial lawyers: a complusion to take favorable language in an opinion out of context and recite it as the governing rule of law, rather than analyzing the case as a whole. The attention devoted to *Veal*, and the problem arising from *Veal*, stem from the fact that lawyers are attempting to cite dictum as the holding of the case, thereby seeking to elevate *Veal* into a new principle of law to be applied in every case, rather than recognizing it as the application of the particular facts of that case to a well-established principle of law. The language in *Veal* which is causing the furor is as follows:

> This case demonstrates the necessity of awarding punitive damages when an insurance company refuses to pay a legitimate claim, and bases its refusal to honor the claim on a reason clearly contrary to the express provisions of its own policy. If an insurance company could not be subjected to punitive damages it could intentionally and unreasonably refuse payment of a legitimate claim with veritable impunity. To permit an insurer to deny a legitimate claim, and thus force a claimant to litigate with no fear that claimant's maximum recovery

> could exceed the policy limits plus interest, would enable the insurer to pressure an insured to a point of desperation enabling the insurer to force an inadequate settlement or avoid payment entirely.[24]

The above language is clearly dictum in the case, and it is submitted that this language was not intended by the court to create any new principle of law in Mississippi jurisprudence. However, many lawyers seem to be taking the position that the supreme court has held in *Veal*, by virtue of the above language, that if an insurer litigates an issue of liability, and that issue is resolved against it by the trier of fact, that punitive damages are automatically justified. Other trial attorneys seem to take the position that if there is an issue of fact for the trier of fact as to the insurer's liability, the issue of punitive damages should automatically be submitted to the jury also. Such is clearly not the holding of the *Veal* case, and this philosophy exhibits once again a danger that the supreme court has cautioned against in the past: the taking of quotations, often dicta, out of context from a supreme court opinion, and attempting to apply them as rules of law in other cases.[25] That the supreme court did not intend, by *Veal*, to embrace this philosophy is shown by its concluding statement regarding punitive damages:

> Of course, if an insurance company has a legitimate reason or an arguable reason for failing to pay a claim, punitive damages will not lie, but in this case defendant had no reason to contest the claim filed with it. We therefore hold that punitive damages were allowable.[26]

At the other end of the spectrum, some insurers have expressed the fear that the *Veal* case created a new rule of law which would subject it to punitive damages if it merely happened to make a mistake of judgment in considering a claim. It is submitted that this proposition is no more accurate than the philosophy adopted by many counsel for claimants. The problem which Standard of Indiana had in *Veal* is that its original position was so obviously without foundation that it was unable to convince the court that it had made a legitimate mistake, especially in view of the fact that its position was restated after it had been given an opportunity to reconsider its position. It is submitted that it would be extremely difficult to convince any court that the position taken by the insurer in *Veal* was the result of any mistake in judgment. In fact, it would seem difficult to sustain an argument that any considered judgment was applied in denying Veal's claim. One suspects that the court was of the opinion that the insurer's original position was so absurd that it could not have resulted from an honest

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[24] 354 So. 2d at 248.

[25] Freeze v. Taylor, 257 So. 2d 509 (Miss. 1972); Gulf, M. & N.R. Co. v. Weldy, 193 Miss. 59, 8 So. 2d 249 (1942); Graves v. Hamilton, 184 Miss. 239, 184 So. 56 (1938).

[26] 354 So. 2d at 248.

mistake. At the very least, giving Standard the full benefit of the doubt, the reasons which it expressed as the basis for denying the claim could be considered as being the result of such gross negligence as to evidence a disregard for the rights of the plaintiff. Therefore, it is submitted that the *Veal* Court did leave insurers leeway to make human error without being liable for punitive damages. However, the *Veal* court did make it clear that the human error or mistake in judgment must be committed in the course of a legitimate effort to consider the claim in view of the express language of the policy in question and the facts which are available to it at the time the decision is made. It is submitted that punitive damages are not allowable in actions against insurers under the well-established law of Mississippi, as reaffirmed in *Veal*, in those cases in which an insurer has declined a claim based upon erroneous facts or incomplete information which has been furnished to it, or in any situation in which there exists a legitimate question whether the facts available to the insurer establish coverage under the policy. It is also submitted that an insurer will not be liable for punitive damages, under the current state of the law, if it reverses a decision made in good faith upon receipt of additional or correct information subsequent to the original declination. In short, it would not appear that Mississippi law would assess punitive damages on an insurer if its claims decision appears, from the proof, to have been the result of anything other than a denial of the claim under circumstances in which it knew that its denial was wrong or unless it has been so grossly negligent that its denial should be given the same effect.

No discussion of *Veal* would be complete without pointing out that the verdict of the trial court was affirmed on a four-to-four vote (the abstaining justice had presided at the trial). The dissenting justices wrote a very thorough and complete opinion. However, an examination of the dissenting opinion reveals that the dissenters had no quarrel with the law as stated by the majority, but felt that the application of the facts to the law by the majority was erroneous. The spokesman for the dissent did express the same concern which has been expressed by the industry that the opinion may be taken to stand for the proposition that punitive damages can be imposed merely if an insurer makes and honest mistake in evaluating a claim. Subsequent events have shown that the concern of the dissenters was justified. However, if one accepts the proposition that the result in *Veal* was based upon the court's finding that there was no proof that the denial was other than knowingly wrong or grossly negligent, then it is apparent that the court in *Veal* did not create any new theory of punitive damages liability.

As a result of what has been read into *Veal* by some trial counsel, and in view of the apprehensions of the insurance industry as the result of *Veal,* it is hoped that the court will act to verify that *Veal* does not mean that an insurer may be assessed with punitive damages

just because a finder of fact happens to resolve an issue against it or because a human error was made in the course of an earnest effort to correctly evaluate a claim.

The rules of law which were set forth by the court in *Veal* have stood the test of time. Those principles have served the cause of jurisprudence well during the many decades they have governed the actions of persons in Mississippi. It is submitted that the traditional rule of law in Mississippi regarding punitive damages, which was reaffirmed in *Veal*, is a wise, workable, and just principle of law. After all, exemplary damage is a penal concept under the law, and one very fundamental part of our entire system of jurisprudence has always been based, with few exceptions, upon the proposition that a person must have been guilty of some affirmative, intentional, deliberate action before penal sanctions will be imposed against him. The *Veal* case stands for the proposition that the traditional rule regarding punitive damages works in Mississippi. That case has served notice on insurers that the court will not hesitate to impose punitive damages in an appropriate case. However, the *Veal* court served its warning in a case where the facts justified the imposition of the penalty. The Mississippi Court has not departed from the principle that there must be a unique set of facts in order to justify the imposition of punitive damages. Insurers and other defendants may conduct their business with the assurance that the elements which delineate the scope of their liability are still in force and effect in Mississippi and have not been abrogated in favor of vague theories. It is sincerely hoped that the Mississippi Supreme Court will continue to adhere to traditional notions of what constitutes elements justifying the imposition of punitive damages.[27] It is also hoped that the supreme court will adhere to the notions which seem to be inherent in the rules of law stated in *Veal*, *i.e.*, that an honest mistake, a human error, will not support an award of damages without some element of intentional wrongdoing, maliciousness, aggression, or such gross negligence as is equivalent thereto. The traditional rule regarding punitive damages has served well in the past, it works now, and *Veal* is living proof that there is no reason to discard it.

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[27] Since the court decided *Veal*, it reversed an award of punitive damages in New Hampshire Ins. Co. v. Smith, 357 So. 2d 119 (Miss. 1978). That case did not involve a life, disability or health and accident policy, and the court's discussion of punitive damages was very brief. However, in reversing the award of punitive damages, the court re-stated the traditional elements justifying punitive damages in contract cases, and it cited Lincoln Nat. Life Ins. Co. v. Crews, 341 So. 2d 1321 (Miss. 1977), thus confirming that *Veal* did not overrule its decision in *Crews*.