SOCIETY OF ACTUARIES

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"IT'S THE LAW"

A column by William D. Hager, Esq., Des Moines, Iowa

In an interesting decision entered by the Florida Supreme Court, it was held that an insurance company's failure to investigate circumstances relating to the issuance of a life insurance policy — where the company received notice of the beneficiary's murderous intentions — constituted a tort under Florida law for damages arising from the beneficiary's attempt to murder the insured in order to collect the benefits.

In the case of *Georgia v. Lopez,* No. 61, 58 (decision entered December 8, 1983) the insured filed suit against the life insurance company contending that the insurer's negligence endangered the insured's life and caused him injury.

The insured had annual income of $9,000 per year. The insurer issued a life insurance policy on the insured's life for $130,000 ($260,000 for accidental death) with annual premiums of $7,464. The insured was unaware of the purchase of the life insurance policy. The application and purchase was facilitated by the insured's wife. The insured later overheard his wife and brother-in-law plotting to kill him and informed the insurance company of the conspiracy, but apparently the company did not act upon that information.

The insured was subsequently involved in a near death drowning, but was rescued by a police officer. The insured's wife and brother-in-law were present at the time of near drowning. The Petition in this matter alleged that the insurance company was negligent because (1) it failed to discover the disproportionate relationship between the total face amount of coverage and the family's income and (2) for failing to investigate the murder conspiracy after receiving actual notice.

The trial court dismissed the complaint, but the Florida Supreme Court determined that an insurer can be liable in tort to the insured. This case is especially interesting in that Florida has no statutory case law directly addressing this issue and only two other states have recognized the related cause of action, Alabama (recognizing the insurance company's duty to exercise reasonable care not to issue a life insurance policy to one without an insurable interest in that life) and South Carolina (public policy prohibits issuance of a life insurance policy without knowledge and consent of the insured).

The Court determined that the existence of the tort was based on the company's negligence in investigating the insured's allegations as to a murderous intent by his wife. The Court found that to absolve the insurance company from liability in view of this actual notice would serve to permit the insurer to continue to collect the premium with the high probability of not having to pay on a claim (because the beneficiary would have murdered the insured). The Court found this result unacceptable. □

Letters

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financed on a "pay-as-you-go" basis, there exist no formal financing mechanisms to ensure the accumulation of a fund of this magnitude.

Because the sources of investment income for a national retirement program are usually some form of tax to be borne by the general population, the advantages associated with having a real rate of return on trust fund assets which exceeds the growth of real earnings (or the disadvantages associated with the opposite situation) may be more apparent than real. For any finite period, however, the sum of the contributions to a pension program plus investment return must equal benefits and expenses paid out, provided there exist no program assets at the end of each period. As long as the investment return is not negative, advance funding under these conditions will ultimately produce less-than-pay-as-you-go contribution requirements regardless of the relationship between investment return and the growth rate of earnings.

Given the projected pattern of the program's cost rate, I continue to believe that there are substantial advantages in pre-funding OASDI on an actuarial basis which anticipates a level or nearly level tax rate, as opposed to either pay-as-you-go financing or the unstructured advance-funding basis anticipated under current law.

Kenneth A. Steiner

Actuarial Responsibilities

Sir:

During the major part of our active actuarial careers there was a coherence to the profession and a simplicity, because it was concerned so largely with life insurance and annuities and with well established life insurance companies. The companies and their actuaries exercised an important discipline on the profession and gave it many of its better attributes. In more recent years a rather bewildering diversity has beset the profession. The newer types of "knowledge" have made much of what we labored over as students passe. Despite the efforts to develop an official Guide to Professional Conduct, I don't sense the existence of the standards of discipline that I feel I experienced. Some of this ambiguity and uncertainty goes back, in my mind, to the time when Bronson attempted to define actuarial soundness for non-insured pension plans.

I think it would be desirable and helpful to the profession if some person or persons could be identified as having a broad grasp of the diverse aspects of actuarial work as it is encountered today, who could be persuaded to attempt to describe the basic aspects of actuarial work (I hesitate to say science) and hopefully provide some unifying force. I would fear the Society is becoming hopelessly compartmentalized. I see this as a danger operating against attracting men for actuarial work who are likely to be the giants we would like to think existed at one time and who give the profession a desirable prestige.

Charles A. Siegfried

Ed. Note: Actuaries interested in this important subject may find it worthwhile to look up a letter from Gilbert Fitzhugh appearing in the December 1976 issue.

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Elections

Sir:

In a little publicized Georgia election for Justice of the Peace, there were 12 candidates, including five lawyers. The names on the ballot were listed in alphabetical order. The

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