TRANSACTIONS OF SOCIETY OF ACTUARIES
1954 VOL. 6 NO. 16

LEGAL NOTES

B. M. ANDERSON*

ACCIDENT POLICY—ACCIDENTAL MEANS: *Hartford Accident and Indemnity Company v. Douglass* (C.A. 5, August 12, 1954) 215 F. 2d 201. The policy insured against death "caused directly and exclusively by bodily injury sustained, solely and independently of all other causes, through accidental means." The insured died from a ruptured aorta caused by a strain in lifting a heavy parcel. The beneficiary claimed that death sustained in this manner was covered under the terms in the policy and the lower court apparently agreed. On appeal, the Court of Appeals for the Fifth Circuit held that since there was nothing unusual, unforeseen, unexpected or out of the ordinary in the act of lifting the crate from the automobile, the death so sustained was not covered. Because of the failure of the lower court to distinguish between accidental death and death through accidental means, the Court of Appeals reversed and ordered judgment for the defendant in the absence of further evidence to sustain liability.

In recent years accident insurance companies quite generally have changed their policies to insure against accidental death rather than the somewhat more restricted coverage of death through accidental means. On the other hand, the life insurance companies under double indemnity clauses still very generally use the term "accidental means." Perhaps a majority of the courts still hold that there is a distinction between the two insuring phrases.

SUICIDE EXCLUSION—DATE OF ISSUE AND EFFECTIVE DATE: *New York Life Insurance Company v. Noonan* (C.A. 9, September 24, 1954) 215 F. 2d 905. The life policy was applied for on June 15, 1951, but was dated back to March 14, 1951, in accordance with the applicant's request to "save age." The application provided that "the policy shall be deemed to be in effect" from March 14, 1951. The policy, containing a copy of the application, stated that it was executed on June 22, 1951, "which is its date of issue." The policy excluded suicide committed within one year from the date of issue of the policy.

The insured committed suicide May 23, 1952, and the New York Life claimed that its liability under the circumstances was limited to the return of premiums paid with interest, which amount was tendered to the beneficiary but rejected. The District Court found for the beneficiary on the basis that the provisions of the policy and the application were conflicting. The Court of Appeals did not agree that conflict or ambiguity existed. In its opinion it pointed out that the suicide as well as the incontestability provisions were governed by the "date of issue," which in the policy was clearly specified as June 22, 1951, which was less

* B. M. Anderson, not a member of the Society, is a member of the Alabama, Connecticut, and United States Supreme Court Bars and is the author of the Third Edition of *Vance on Insurance*.

than one year prior to the date the insured committed suicide. The judgment in favor of the beneficiary was therefore reversed.

Many life policies do not specifically define date of issue and where the company dates back, the effect is to shorten the contestable and suicide periods.

INCOME TAX DEFICIENCY—GOVERNMENT'S CLAIM AGAINST BENEFICIARY: *United States v. New* (D.C. Illinois, March 25, 1954) 123 F. Supp. 312. The insured's estate was insolvent when he died owing the Government a substantial amount on account of unpaid income taxes. The beneficiary received $12,597.70 as the net proceeds of a life insurance policy under which the insured up to the time of his death had reserved the right to change the beneficiary. The Government brought this action against the beneficiary, claiming that the beneficiary was a transferee and therefore liable under Federal statutes. The beneficiary claimed that she was not a transferee and also that the policy proceeds were exempt under the Illinois exemption statute.

The District Court held that summary judgment should be entered against the beneficiary for the amount of proceeds received by her because she was liable as transferee and because the state exemption statute did not serve to protect the proceeds against the Government's claim.

BANKRUPTCY—POLICY LOANS MADE AFTER APPOINTMENT OF TRUSTEE: *Lake, Trustee v. New York Life Insurance Company* (D.C. Maryland, June 23, 1954) 122 Fed. Supp. 348. A bankruptcy petition was filed against the insured, Callis, August 6, 1951, and a receiver was appointed three days later to take possession of his assets. Among his assets not exempt under Maryland law were a number of life insurance policies, including eight policies issued by the five companies involved in this suit.

Later in August, 1951, these five companies in good faith and without knowledge of the bankruptcy made policy loans to the insured, aggregating $45,334.28. In applying for some of the loans, the insured denied that bankruptcy proceedings were pending against him. The trustee some months later learned of the existence of the policies and the fact that the policy loans had been made and filed this suit against the companies, claiming that as trustee he was entitled to an amount equal to the cash value on the date of bankruptcy without any deduction on account of the policy loans made thereafter. The principal basis of his claim was a provision in the Bankruptcy Act as amended in 1938 to the general effect that persons dealing with the bankrupt even in good faith are not protected where a receiver or trustee is in possession of all or the greater portion of the nonexempt property of the bankrupt, as was the case here. The companies claimed that this provision did not apply to life insurance and that in dealing with the insured in good faith and without actual notice of the bankruptcy they were entitled to protection.

The District Court reviewed in detail the United States Supreme Court cases decided prior to 1938 and involving the rights of the trustee in life policies of the bankrupt and also reviewed in detail the 1938 amendment. The Court, conced-

ing some ambiguity, reached the conclusion that the 1938 amendment did not change the status of life insurance and that therefore the provisions which in effect withdrew protection to those acting in good faith where the receiver or trustee was in possession of the greater portion of the nonexempt property of the bankrupt did not apply to life insurance. The Court, in reaching this conclusion, said it was the correct rule of statutory construction "entirely apart from the contention of the Companies that a contrary conclusion would have a most serious consequence on the entire life insurance industry."

If on further appeal or in another case a contrary result is reached, the life insurance companies will be presented with a serious problem in connection with policy loans.

ANNUITY CONTRACT—RECOVERY OF CONSIDERATION: *Massachusetts Mutual Life Insurance Company v. Hardwick* (D.C. Tennessee, November 24, 1953) 118 F. Supp. 485. The annuitant was the widow of a prominent citizen of the community who had left her a substantial estate. This estate had been reduced considerably and on the advice of her son and her brother-in-law she took out a life or no refund annuity and died after receiving five monthly payments. The annuitant's administrators, including the son who advised the purchase of the contract, claimed that they were entitled to recover the $40,000 paid for the annuity less the monthly payments made during the annuitant's lifetime. The basis of this claim was that there had been a mutual mistake of fact, that the annuitant was mentally incompetent, that she was ignorant and inexperienced in such matters and that she was in poor physical condition.

The Massachusetts Mutual commenced this declaratory judgment action to determine its rights and liabilities under the circumstances. The evidence showed that about ten years prior to the purchase of the annuity she had been confined in a mental institution and that for several years prior to her death she had consulted her family physician for high blood pressure and excessive weight. The circumstances of the purchase of the annuity were examined, it appearing that the son and the brother-in-law had decided on the annuity and approached the Massachusetts Mutual agent to purchase it. The court found that the annuitant had acted freely, voluntarily and understandingly when she purchased the annuity contract and there was no basis on which a rescission could be directed. The court also found that the Massachusetts Mutual entered into the annuity contract in good faith without fraud, imposition or undue influence and upon its regular terms and for its established premium. The court held that the Massachusetts Mutual's motion for a directed verdict at the close of the evidence should have been granted and a decision was accordingly entered for the company.

In another recent and similar case, *Stockett v. Penn Mutual Life Insurance Company* (Rhode Island Supreme Court, July 16, 1954) 106 A. 2d 741, the court likewise refused to permit the administrator to recover the consideration paid for the annuity less annuity installments received. In this case the annuitant lived almost two years after the purchase of the annuity.

The courts appear to be extremely reluctant to permit the rescission of annuity contracts issued on regular terms by insurance companies even though the annuitant is not in good health, mentally or physically, and dies shortly after the contract is taken out. The early cases permitting rescission have largely involved annuity contracts other than those issued by insurance companies.

DOUBLE INDEMNITY—WAIVER OF AGE LIMIT: *Peninsular Life Insurance Company v. Howard* (Florida Supreme Court, May 4, 1954) 72 S. 2d 389. The double indemnity provision of the life policy provided that such coverage should expire upon the anniversary of the policy nearest the 60th birthday of the insured. Through clerical error the company had continued to collect the double indemnity premiums until his death from a fall at age 64. The company claimed that its liability on account of the accidental death benefit was limited to the refund of premiums paid beyond age 60. The beneficiary claimed that the company had waived or was estopped to assert that there was no such coverage because it had continued to accept the premiums for the coverage.

The trial court held that the beneficiary was entitled to the accidental death benefit and to attorney's fees as provided for by a Florida statute. On appeal, the Supreme Court of Florida held that by the acceptance of premiums the insurer waived or was estopped to assert that there was no accidental death coverage and that the insurer was liable. The court found that there was detriment to the insured in that he might have procured such coverage elsewhere because the insurer had not sustained the burden of proving that such coverage was not available. The company was also held liable for attorney's fees for the beneficiary as provided for under the Florida statute.

In effect, the Court holds that by waiver or estoppel liability had been created as to a risk which was not covered by the policy—a point which apparently was not urged. This decision is questionable.

DEATH ON POLICY ANNIVERSARY—DEDUCTION OF UNPAID PREMIUM: *Callahan v. John Hancock Mutual Life Insurance Company* (Massachusetts Supreme Judicial Court, July 2, 1954) 120 N.E. 2d 640. The life policy was dated January 21, 1947, and issued on the basis of an annual premium payable "on or before the twenty-first day of January" of each year. The policy provided for the deduction of any unpaid balance of the premium for the uncompleted policy year. The insured died January 21, 1953, and the John Hancock claimed the right to deduct from the policy proceeds an amount equal to the annual premium due on that day. The high court of Massachusetts (the case was reserved so there was no decision below) held that the John Hancock was entitled to deduct this premium, which the court said was "owed" on the first moment of the due date.

GOOD HEALTH PROVISION—SUBSTANDARD RISK: *Green v. Acacia Mutual Life Insurance Company* (Ohio Court of Appeals, May 24, 1954) —— N.E. 2d ——. The medical examiner found the blood pressure of the applicant rather high and for this reason the company refused to issue the policies on a standard basis but

did issue the policies with substantial ratings. The policies provided that there should be no contract of insurance unless the policies were delivered "during the proposed insured's life and continuance in good health." The insured died shortly after the policies were issued and the company defended on the basis of fraud and misrepresentation and also on the basis that the policies did not take effect because the insured was not in good health at the time of delivery, as required. The trial court refused to disturb the jury's finding on the issue of fraud and misrepresentation and held that the insurer waived or was estopped to assert the defense based on the high blood pressure because it knew at the time the policy was issued of this condition. The Court of Appeals affirmed this judgment, stating:

> The phrase "sound health" has a relative meaning. It cannot be construed to mean freedom from every conceivable ailment, no matter how trivial. To construe it to mean perfect health [*sic*]. To so construe it would (we venture to say) invalidate most insurance policies. It must be given a reasonable construction under the circumstances. It certainly cannot be construed to include those ailments of which the insurer had actual knowledge, or those ailments, symptoms of which are known and appreciated, and because of the presence of which the insured is classified as a substandard risk and a higher premium is paid.

INSURANCE TRUST—TESTAMENTARY DISPOSITION: *Gordon v. Portland Trust Bank* (Oregon Supreme Court, June 17, 1954) 271 P. 2d 653. The insured entered into a trust agreement with the bank and then named the bank as beneficiary under his fifteen life policies. He reserved the right to change the beneficiary without the beneficiary's consent. He also reserved the right to modify, alter or terminate the trust agreement, which imposed few, if any, duties on the trustee while the insured lived.

After the insured died the trustee collected the policy proceeds from the companies. The widow, as executrix of the insured's estate, brought this action, claiming that the bank was not entitled to the proceeds because the transaction was testamentary in character and the instrument was not executed with the formality required of wills. The trial court held against the widow and, on appeal, this decision was affirmed by the Oregon Supreme Court. The Court in its opinion examined the decisions relating to the interest of a revocable beneficiary and held that the ownership of such a policy is actually divided between the beneficiary and the insured. The Court held that since the insured intended to and did transfer to the trust company a present interest in the policies, the transaction was not testamentary and was valid.

It is quite well established now that the transaction is not testamentary in character even though the designation of the beneficiary is revocable and even though the trust be revocable and subject to modification.

MISREPRESENTATION AS TO INSANITY—INCONTESTABLE CLAUSE: *Arnold v. Life Insurance Company of Georgia* (South Carolina Supreme Court, September 15, 1954) 83 S.E. 2d 553. The insured's husband persuaded her to apply for this $3,000 policy and other insurance. He paid the premium on this insurance, mur-

dering her a few weeks later. He was convicted of this crime and sentenced to life imprisonment. The husband assigned the policy to another and the assignee brought suit on the policy, which suit was later dismissed. This action was then commenced by Arnold, administrator of the insured's estate. The company defended on the basis that there was misrepresentation in that the insured stated she had not been a patient in a hospital or a sanitarium and, in fact, had been committed some months previously to a private institution and then to the state hospital for the insane.

The trial court and, on appeal, the South Carolina Supreme Court held that this was material misrepresentation and the policy was voided. The administrator also claimed that the policy was incontestable because two years had elapsed between the date of the policy and the commencement of this action. The court held, however, that since the insurance company had set up the defense of fraud in the first action the policy would not, in effect, become incontestable. The incontestable clause was obviously of the old type and not the modern "in force during the lifetime" type of clause. The court also said that the running of the statutory incontestable period would be suspended pending the appointment of the administrator, and for this additional reason the policy was in no event incontestable.

ACCIDENT INSURANCE—BURNING OF BUILDING: *Pacific Mutual Life Insurance Company v. Walt* (Tennessee Court of Appeals, August 23, 1954) — S.W. 2d —. The accident policy provided double indemnity for death "in consequence of the burning of a building." The insured died after his mattress had been set on fire. The fire was confined to the mattress and did not flare up until it was thrown outside of the house by the firemen. The insured was found on the floor, and the floor at the point was scorched badly in two places parallel with the side of the bed.

The Pacific Mutual claimed that it discharged its liability when it paid the single indemnity accidental death benefit and that the insured did not die in consequence of the burning of a building but, rather, in consequence of the burning of the contents of a building. The court affirmed the judgment below holding that under the circumstances the company was liable for the double indemnity benefit. In reaching this conclusion, the court examined conflicting decisions from other jurisdictions but elected to adhere to the view that the policy should be construed as imposing liability when death was due to the burning of the contents of the building.