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Insurance: Authority of Insurance Agent to Countermand Notice of Cancellation Sent by the Carrier to the Insured

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RECENT DECISIONS

Insurance: Authority of Insurance Agent to Countermand Notice of Cancellation Sent by the Carrier to the Insured—Defendant-insurer, through its agent, issued a policy of insurance covering the plaintiff-insured's automobile. Upon investigation, it came to defendant's attention that plaintiff's son, whom the company considered a bad risk, had on occasion used the automobile. The defendant wrote its agent and informed him that it was cancelling the plaintiff's insurance policy because of this. The insurer requested that the policy be returned and stated that at such time, excess premiums would be remitted to plaintiff. The defendant, not having received the policy as requested, informed its agent that notice of cancellation was being sent directly to plaintiff, which notice was thereafter received by the insured. The plaintiff upon receipt of the notice of cancellation contacted the agent, who also handled all plaintiff's other insurance business, and inquired as to his standing in view of the carrier's notice. Plaintiff was told by the agent that he should disregard the notice and that the insurance was still in effect. The automobile was subsequently damaged and upon a claim made by the plaintiff through the agent, the defendant denied liability. The Supreme Court of Wisconsin held that the insurance agent, who had disregarded notice of cancellation sent by the insurance company directly to the insured, could not revoke the cancellation and reinstate the policy of insurance so as to make the insurer liable under the insurance policy. *Ingalls v. Commercial Insurance Company of Newark, N.J.*[1]

In analyzing any problem involving insurance, it becomes evident that insurance, contrary to many other areas of the law, has been subject to governmental supervision since its inception. The close connection between the field of insurance and the public interest was evident in legislation and judicial decisions of the late Middle Ages where the insurance contract of today finds its origin.[2] Bearing this point in mind, modern-day courts have bent over backwards in construing and applying legislative enactments designed to protect the rights of the insured who is, undoubtedly, often in an unequal bargaining position in the absence of such safeguards.[3] The decision of the Wisconsin Supreme Court in the *Ingalls*[4] case thus may seem to many to be a reversal of a trend founded on the history and nature of the insurance contract, as well as, somewhat inequitable and unjust. Such a conclusion, how-

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[1] 18 Wis. 2d 233, 118 N.W. 2d 178 (1962).
[2] See Vance, *The Early History of Insurance*, 8 COL. L. REV. (1908).
[3] This is particularly true in view of the fact that insurance policies are drawn up by the carriers and framed mainly in their interest.
[4] Note 1 *supra*.

ever, is not supported by an analysis of the court's decision and the authorities cited therein.

In reaching its decision in *Ingalls*,[5] the Wisconsin Supreme Court adopted the unanimous weight of authority.[6] Courts which have faced this problem previously have generally decided it on the question of agency, putting the plaintiff to his proof in establishing the authority of the agent to countermand the insurer's cancellation and ruling for the defendant insurer in the absence of such proof. The *Colonial*[7] and the *Hartford*[8] cases are cited by *Appleman*[9] in support of his statement which provides that: "An agent of the insurer cannot revive a canceled policy unless he has such authority in the specific case; and such authority cannot be presumed."

The functional issue of the *Ingalls*[10] case is clearly that of agency. Although the fact situation gave rise to a case of first impression before the Wisconsin Supreme Court, the problem of the apparent authority of a carrier's agent in dealing with an insured or prospective insured has been raised in Wisconsin on numerous occasions. Recovery has been granted to policy holders where an agent waived a policy condition against additional insurance by oral statements.[11] The court has also held that an agent has the power to modify insurance contracts already in existence unless provided otherwise by the contract itself or statute.[12] These cases refer to a Wisconsin statute[13] which provided that one who acted on behalf of an insurance company was its agent. This statute was repealed in 1955,[14] but the court has enunciated its principle as recently as 1957. In doing so, the court allowed recovery by an insured against a carrier on the grounds that an agent's statements, providing for modification of the policy so as to include complete coverage of property damage within the policy limits, estopped the defendant from asserting absence of authority on the part of its agent.[15] The application of this doctrine, estoppel *in pais*,[16] depends on the establish-

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[5] *Ibid.*

[6] Williams v. Republic Insurance Company, 286 App. Div. 876, 141 N.Y.S. 2d 870 (1955); Colonial Assurance Co. v. National Fire Insurance Co., 110 Ill. App. 471 (1903); Hartford Fire Insurance Co. v. Reynolds, 36 Mich. 502 (1877).

[7] *Ibid.*

[8] *Ibid.*

[9] 6 APPLEMAN, INSURANCE LAW AND PRACTICE §4197, at 776 (1947).

[10] Note 1 *supra.*

[11] Schomer v. Hekla Fire Insurance Company, 50 Wis. 575, 7 N.W. 544 (1880).

[12] Kiviniemi v. American Mutual Liability Insurance Co., 201 Wis. 619, 231 N.W. 252 (1930). A provision in *Ingalls* provided that no modification of the contract would be effective unless approved by the company.

[13] WIS. STAT. §1977 (1878), which became WIS. STAT. §209.05 (1953).

[14] Wis. Laws 1955, ch. 600.

[15] Jeske v. General Accident Fire and Life Insurance Corp., Ltd., 1 Wis. 2d 70, 83 N.W. 2d 167 (1957).

[16] 19 AM. JUR. *Estoppel* §34, at 634 (1939). "Equitable estoppel; or estoppel in pais is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or

ment of an agency relationship. However, it appears that the court's decisions have stretched the law of agency to the utmost in dealing with insurance contracts. This view of the law of agency taken by the courts in handling litigation involving insurance contracts is in keeping with the historical approach—public policy often demands that the equities lie in favor of the insured *vis-à-vis* the carrier; but a line must be drawn somewhere, for the integrity of contract is at stake.

In *Ingalls*,[17] the plaintiff and defendant entered into a contract, an express provision of which dealt with cancellation by either party upon written notice. The Wisconsin Supreme Court has held that the right of cancellation of an insurance policy exists only by contract—a clause to that regard being in the nature of a condition precedent.[18] Defendant gave notice to the insured in accordance with the unambiguous and unequivocal terms of the insurance contract. If an insurance policy is to have legal standing as a contract, no rule of agency can be invoked to countermand a cancellation without proof of the agent's authority to countermand the principal's expressed intention.[19] Thus when the *Ingalls*[20] case is viewed as giving rise to a basic question of contract, the decision of the Wisconsin Supreme Court takes on new meaning beyond the question of agency. The world of commerce, indeed all society's paths of enterprise, rests on the law of contract—the right to enforce a promise and the right to act pursuant to provisions attached thereto. Applying this basic jurisprudential principle of the law of contract to *Ingalls*,[21] the plaintiff's case must fall in view of the power to cancel, which was an express provision of the contract, and the provision which provided that no modification would be effective without the carrier's approval.[22]

The decision in the *Ingalls*[23] case, as already noted, may seem harsh, but any hardship suffered by plaintiff points only to a seeming obligation owing to him from the defendant. The court, certainly, cannot

asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or conduct, to believe and act upon them thereby, as consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed."

[17] Note 1 *supra*.

[18] See Suennen v. Ervard, 254 Wis. 565, 36 N.W. 2d 685 (1949). Under the Financial Responsibility Law of the State of Wisconsin, WIS. STAT. ch. 344 (1961), automobile policies which must be certified as provided by §§344.31 and 344.32 can be cancelled only 10 days after notice of the cancellation is filed in the office of the commissioner, policy provisions as to cancellation notwithstanding. See WIS. STAT. §344.34 (1961).

[19] See RESTATEMENT, AGENCY §34 (1933), especially §34(c); see also RESTATEMENT, AGENCY §§39, 108(1) (1933).

[20] Note 1 *supra*.

[21] *Ibid.*

[22] See text preceding, note 12 *supra*.

[23] Note 1 *supra*.

allow recovery in such a case where an apparent injustice is without substantive basis. Any wrong suffered by plaintiff has been at the hands of the agent, and any feelings of inequity which may accompany the *Ingalls*[24] decision will be mitigated in light of plaintiff's cause of action against the agent.[25]

In conclusion, this decision, which limits an insurance agent's apparent authority, rests on sound principles of agency and contract law.

PAUL J. CLULO

Charitable Immunity: Prior Abrogation of the Doctrine of Charitable Immunity Application to Churches—Plaintiff, a member of defendant church, tripped over a permanently extended kneeler and was injured. In a suit against the church, the court in re-examining the doctrine of immunity as applied to religious institutions, found the doctrine of *respondeat superior* applicable to the defendant church.[1]

In Wisconsin prior to 1962, three institutions enjoyed immunity from the torts of their employees—governmental, charitable, and religious. Of the five theories available on which to base this immunity,[2] Wisconsin's rule was based on the inapplicability of *respondeat superior* to these institutions. The immunity rule was first expressed in *Morrison v. Henke*,[3] in which the defendant hospital was found immune from liability for the negligence of its nurse because it derived no profit in aiding the needy.[4] This immunity was applied in favor of the government in *Apfelbacher v. State*,[5] where it was pointed out that to deny the application of *respondeat superior* to the state in its exercise of a

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[24] *Ibid.*

[25] See, Note, *Liability of an Insurance Agent for Malpractice*, 11 KAN. L. REV. 184 (1962), and Note, *Liability of an Insurance Agent in Procuring and Maintaining Insurance for an Owner*, 12 VAND. L. REV. 839 (1939).

[1] Widell v. Holy Trinity Catholic Church, 19 Wis. 2d 648, 121 N.W. 2d 249 (1963).

[2] Parks v. Northwestern University, 218 Ill. 381, 75 N.E. 991 (1905) (The trust fund theory); Cohen v. General Hosp. Soc., 113 Conn. 188, 154 Atl. 435 (1931) (public policy theory); Taylor v. Protestant Hosp. Assn., 85 Ohio St. 90, 96 N.E. 1089 (1911) (inapplicability of *respondeat superior*); Wilcox v. Idaho Falls Latter Day Saints Hosp., 59 Idaho 3502, 82 P. 2d 849 (1938) (waiver theory); University of Louisville v. Hammock, 127 Ky. 564, 106 S.W. 219 (1907) (agencies of the government theory).

[3] 165 Wis. 166, 160 N.W. 173 (1917), followed in Schumacher v. Evangelical Deaconness Society, 218 Wis. 169, 260 N.W. 476 (1935).

[4] Morrison v. Henke, 165 Wis. 166, 170, 170 N.W. 173, 175 (1917): "The maxim of *respondeat superior* is bottomed on this principle, that he who expects to derive advantage from an act which is done by another for him must answer for any injury which a third party may sustain from it."

[5] 160 Wis. 565, 575, 152 N.W. 144, 147 (1915): "The doctrine of *respondeat superior*, while an ancient one in English law, is not one that rests upon direct primary principles of justice. These principles require that the person actually committing the wrong should alone respond in damages. The doctrine rests rather upon secondary principles deduced from primary conceptions of justice. It rests upon the idea that where an enterprise is carried on for the financial benefit of a master, it is considered just that he should answer for the tort of his servant in conducting it because he is deemed to profit financially by its being carried on."