Kentucky Law Journal

Volume 47 | Issue 2 Article 13

1958

Workmen's Compensation--Insurance--"Full Coverage"

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reason why a party should not be able to dispose of his money in such a manner if he so desires. Generally, unequivocal acts are given more weight than verbal expressions in going to prove the intent of the actor. One who intentionally does an act will not be heard to say that he did not intend the legal consequences of that act. The same should apply here. The act of Mrs. Hays, in creating the account, was not ambiguous.[21] She clearly intended to sign the signature card, and in the absence of a showing of fraud or duress, her administrator should be bound thereby. The legal results necessarily flowing from an intentional act should in no way be affected by verbal protestations that these results were not intended.

The Kentucky Court *seems* to have promulgated an undesirable doctrine. Whether it has done so depends upon its future construction of this case. There is no valid reason why such an account as in the principal case should not be given the effect which is normally intended by the depositor. In the absence of fraud or duress, such an account can have but one purpose—to permit both parties to draw upon the account during their joint lives, with the balance to go to the survivor upon the death of either party. It is hoped in the future, that the court, if faced with a similar case, will not permit a survivor's claim to the balance of an account to be defeated so easily.

Unless fraud or duress is shown, a bank paying an account to a survivor should be protected against claims such as the administrator in this case asserted. If the court will not protect the bank, and thus give effect to such an account, the General Assembly should take cognizance of the problem and enact appropriate legislation.[22]

Carl R. Clontz

WORKMEN'S COMPENSATION—INSURANCE—"FULL COVERAGE"—The employee was killed while driving a taxicab for his employer who operated a theater, garage and taxi service in connection with the garage. The deceased did general work around the garage, was carried on the garage payroll, and customarily operated his employer's one-car taxi service when a fare called. The "risk classifications" in the employer's insurance policy related to automobile salesmen and garage chauffeurs. Since the activity of the deceased at the time of the

[21] If the account was merely a joint account, it might be argued that it was created for business convenience only. But this argument is of no avail when survivorship is added, since the addition could in no way facilitate any business purpose.

[22] Many states have to protected their banks. Brown, Personal Property sec. 65 (2d ed. 1955).

accident did not fall within either of these classifications, the court held that the insurer was not liable on this claim. In so holding the court affirmed a previous line of cases which held that the Workmen's Compensation Act does not require "full coverage" of the employer's liability under the act by the insurer, but rather, "full coverage" of those employees falling within the risk classifications set out in the policy. *Old Republic Insurance Co.* v. *Begley,* 314 S.W. 2d 552 (Ky. 1958).

The general problem presented is whether an insurer, under a Workmen's Compensation Act, must insure the entire liability of the employer under the act, or whether the insurer may limit its own liability by the provisions of its policy. Though the cases may differ in some degree because of the language in the particular act in question, there are two fairly distinct bodies of opinion on this problem. There is a group of cases upholding the right of the insurer to limit its liability or risk by the provisions of its policy, while another line of cases takes the view that liability cannot be limited, due to the provisions of the act in question or to a decision based on a positive public policy against such limitation of liability.[1]

In the present case the Kentucky Court affirmed its previous position that under the Kentucky act the insurer could by the provisions of its policy limit its liability to the risk classifications in the policy.[2] This result is reached by a construction of Kentucky Revised Statutes sec. 342.375 which provides that:

> Every policy or contract of workmen's compensation insurance . . . shall cover the *entire* liability of the employer for compensation under this chapter to everyone of his employees covered by such policy . . . regardless of whatever other contingencies may be insured or provided for by riders attached thereto or endorsements made thereon. On the face of every such policy shall be printed conspicuously the words, 'Insurance under this policy is in class (designating the class) of the company's workmen's compensation classification manual.' . . . If more than one class of risk is covered by the same policy, the separate risks and their corresponding manual classifications shall be stated in the same manner. (Emphasis added).

In effect, the court has held that the last part of this section modifies the first, resulting in "full coverage" only for employees falling within the particular classifications set out in the policy. Professor Larson, a leading authority in this field, calls this a "most remarkable piece of statutory demolition",[3] with which view the writer is inclined to agree.

[1] See cases collected in Annot., 45 A.L.R. 1329 (1926); Annot., 108 A.L.R. 812 (1937).

[2] Aetna Life Ins. Co. v. City of Henderson, 228 Ky. 1, 14 S.W. 2d 211 (1928); Kelly v. Nussbaum, 218 Ky. 330, 291 S.W. 754 (1926). See also, Rhymer v. Federal Life Ins. Co., 13 F. Supp. 181 (E.D. Ky. 1936).

[3] 2 Larson, Workmen's Compensation, sec. 93.20, at 461 (1952).

There seems to be no possible reason to assume that since risk classifications must be set out in the policy the conclusion must follow that the insurer may limit its *liability* by the classifications in the policy. This does not seem to follow from the requirement that the contract of insurance "shall cover the *entire* liability of the employer". Other jurisdictions with similar statutory language have interpreted this to require coverage of all employees of the assured in all occupations and all businesses.[4] The main purpose of the classifications is to determine premium rates to be charged rather than to provide a means by which the insurer may limit its liability under the act.[5]

The real solution to the problem lies in considering the policy considerations involved in interpreting this section of the act. The question is: What is the best rule to adopt in determining how broad the insurer's liability should be under the act? The court has recognized that the provisions of the act form a definite part of the insurance contract, and that the liability of the insurer must depend on the construction of the statute.

The policy reasons for a "full coverage" interpretation of the statute are obvious. If insurers were allowed to select some risks and not others, they would naturally select the better risks and exclude the worst. If the insurer must insure the employer's entire liability under the act, it is convenient to the employee, since one suit can settle the liability of both the insurer and the employer. Otherwise, it may take two suits to settle the matter, the first to determine the employer's liability, and the second to see if the insurer's policy covered that liability.

Under the Kentucky act the employer must insure his risk through an authorized insurer or, in case he refuses to elect, he must place an acceptable security, indemnity, or bond with the Board.[6] This shows a clear intent on the part of the legislature that the employees must at all times be adequately secured so that the employer's obligation and duty under the law will be satisfied. In this case, the employer was not insured so far as the deceased was concerned nor had he posted adequate bond, so far as the facts indicate, to cover his liability to this particular employee. Technically, he was in violation of the act. If the employer is judgment proof the employee would be deprived of the protection intended by the legislature.

[4] Skuey v. Bjerkan, 173 Minn. 354, 217 N.W. 358 (1928); Fidelity & Casualty Co. v. Hill Const. Co., 11 N.J. Mis. R. 58, 164 Atl. 16 (D.C. N.J. 1933); Werner v. Industrial Commission, 212 Wis. 76, 248 N.W. 793 (1933).

[5] Fidelity & Casualty Co. v. Hill Const. Co., 11 N.J. Mis. R. 58, 164 Atl. 16, 19 (D.C. N.J. 1933).

[6] Ky. Rev. Stat. secs. 342.016, .340 (1959). See also, K.R.S., secs. 342.345, 355 (1959).

This points up the major problem involved in giving the statute a "partial coverage" interpretation. Such a construction leaves a "no-man's land" in determining whether the employer's liability under the act is secured, as required by the legislature, either by insurance or posting of adequate bond. Employees could never be quite sure whether they were protected and employers would likewise be in doubt whether common-law liability and even penalties might attach if the court finds that the policy does not cover the employer's liability in a particular case. This situation will result in employees in some employment activities being uninsured without the employer's knowledge contrary to the intendment of the act. Many instances would arise where it would be impossible for the injured employee or his dependents to recover the compensation which the spirit of the law plainly intends should be secured. Also there would be endless controversey over the question of whether the provisions of the policy covered the injury in question.

The insurer voluntarily enters into the contract to assume the risk of the employer under the act, and since he is to be paid a just premium for the risks it does not seem unreasonable to require that the insurer be held for the employer's liability under the act. The burden of ascertaining just what risks are involved should be placed on the insurer. If it later turns out that certain employees in the assured's business are in higher risk classifications, proper adjustments in premiums could be made, the burden being on the insurer to ascertain what risks he is carrying. In the present case, the court noted that the premiums for taxi drivers are higher than garage employees generally, but it should not follow that the insurer cannot be held liable if his premiums to date have not taken into consideration the risk classifications of particular employees.

The practical criticism of such an approach is that some employers may have diverse and far-flung businesses making it very difficult for insurers to ascertain the various risks. The New York statute provides that the policy shall cover all employees employed at or in connection with the business of the employer carried on, maintained or operated at the location set forth in the contract.[7] This statute meets the criticism by restricting "full coverage" to those employees operating at the locations named in the policy. Other states have by decision approved allowing the insurer to limit his liability to those employees operating at named locations in the policy.[8] If such were the rule in

[7] N.Y. Workmen's Compensation Law sec. 54 (1952).

[8] American Mut. Liability Ins. Co. of Boston v. Tuscaloosa Veneer Co., 237 Ala. 187, 186 So. 133 (1939); Miller Bros. Const. Co. v. Maryland Casualty Co., 118 Conn. 504, 155 Atl. 709 (1931).

Kentucky, the insurer would have been liable in the present case since the deceased would have fallen within that class of employees working at the location of business named in the contract.

In the light of the policy considerations just discussed, it appears that the true spirit of the act demands that the entire liability of the employer under the act be insured so that his obligations under the act will at all times be met. The language of the act clearly justifies such a construction. However, since the present case has affirmed the previous holdings of the court on this matter, the chance for re-examination and reversal appears slim. In such case, the General Assembly may find it wise to amend this section of the act by providing that insurance policies covering liability under the act shall be deemed to cover all employees of all businesses of the insured employer.[9] Or an alternate approach would be to follow the New York statute, which provides that the policy shall cover all employees employed at or in connection with the business of the employer carried on, maintained or operated at the locations set forth in the policy.

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[9] Mich. Comp. Laws sec. 414.1 (1956).