Michigan Law Review

Volume 48 | Issue 8

1950

INSURANCE-REINSTATEMENT-"INSURABILITY"

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INSURANCE—REINSTATEMENT—"INSURABILITY"—Insured took out a policy of life insurance with defendant company which contained a clause providing for reinstatement within five years after default on presentation "of evidence of insurability satisfactory to the company" and payment of overdue premiums with interest. After default in payment of premiums, insured requested reinstatement. The insured had taken up aviation in the interval between issuance of the policy and the request for reinstatement. The company agreed to reinstate on condition that the insured would agree to a modification of the policy, so that it would not cover death resulting from operation of any kind of airplane. The insured was killed in a plane crash. The beneficiaries contend that the meaning of the term "insurability" is no broader than "good health" and since the insured was in good health at the time he applied for reinstatement, there is no consideration for his agreement to modify the policy. *Held,* judgment for beneficiary reversed. The existence of serious hazards not present when the insurance was taken out will normally justify an insurer's refusal to reinstate on grounds of lack of insurability. *Schiel v. N.Y. Life Ins. Co.,* (9th Cir. 1949) 178 F. (2d) 729.

The usual insurance policy contains a clause providing for reinstatement of the policy after default in payment of premiums. The clause found in the policy

involved in the principal case is typical.[1] It is generally agreed that such a provision gives the insured a contractual right to reinstatement upon compliance with the stated conditions.[2] If the company insists upon additional conditions they will be held invalid for want of consideration.[3] One of the major problems has been to determine the scope to be accorded the word "insurability." A few courts have held that this term is synonymous with "good health."[4] However, a majority of the cases, which have discussed this question, have held that the company is entitled to consider factors other than the health of the insured.[5] One writer, attempting to reconcile the cases on their facts, has argued that the company is entitled to consider only the facts it inquired into at the time the original policy was issued.[6] The problem generally arises where the risk has increased due to events happening after the issuance of the original policy.[7] The problem is clearly one of construction. The term "insurability" must be defined according to the intent of the parties. In this light the majority view seems to be the more logical. Certainly the company intended to give itself as much leeway as possible. If it had intended to limit its inquiry to matters concerning the health of the insured it would have been a simple matter to write the clause in that form. Since it is not uncommon to use the phrase "good health" to express the condition precedent to reinstatement, it is inferable that the company means something else when it uses the term "insurability" instead. That is the approach generally taken where a statute has prescribed the use of the word "insurability" and the common practice had been to use only the term "good health" in the reinstatement clause.[8] The example commonly cited in support of this theory is that of the man sentenced to death, who is in good health, and whose policy has lapsed due to default in payment of premiums. Certainly he could not reasonably expect the company to reinstate his policy on a showing of good health. The average layman does not assume he is insurable merely because he is in good health. Thus it seems rea-

[1] Commonly such a stipulation will be required by statute. Rosenblum, "Reinstatement of Life Insurance Policies," INS. L.J. 270 (May 1944). See §155(i) of the N.Y. Insurance Law for a typical statutory provision.

[2] Bowie v. Bankers Life Co., (C.C.A. 10th, 1939) 105 F. (2d) 806; 3 APPLEMAN, INSURANCE LAW AND PRACTICE 667 (1941).

[3] Missouri State Life Ins. Co. v. Hearne, (Tex. Civ. App.) 226 S.W. 789 (1920); 6 COUCH, CYCLOPEDIA OF INSURANCE LAW 4939 (1930).

[4] Missouri State Life Ins. Co. v. Hearne, supra, note 3; Smith v. Bankers Nat. Life Ins. Co., 130 Neb. 552, 265 N.W. 546 (1936); Chambers v. Metropolitan Life Ins. Co., 235 Mo. App. 884, 138 S.W. (2d) 29 (1940); 162 A.L.R. 668 (1946).

[5] Kallman v. Equitable Life Assur. Soc., 248 App. Div. 146, 288 N.Y.S. 1032 (1936); Kirby v. Prudential Ins. Co. of America, 239 Mo. App. 476, 191 S.W. (2d) 379 (1945); 162 A.L.R. 668 (1946).

[6] 162 A.L.R. 668 at 677 (1946). This approach may be consistent with the facts of the decided cases, but it certainly is not in accord with the language used. The split between the majority and minority views is more than a difference in fact situations.

[7] Typical situations are overinsurance [Greenberg v. Continental Casualty Co., 24 Cal. App. (2d) 506, 75 P. (2d) 644 (1938)]; change in financial condition [Kallman v. Equitable Life Assur. Soc., supra, note 5]; engaging in hazardous activity [Kirby v. Prudential Ins. Co. of America, supra, note 5].

[8] Kallman v. Equitable Life Assur. Soc., supra, note 5; Rosenblum, "Reinstatement of Life Insurance Policies," INS. L.J. 270 (May 1944).

sonable to say that both parties would define "insurability" as covering more than good health. If that is so then the company is able to inquire into matters which affect the risk, and which were not present at the time the original policy was issued. However, this is not an arbitrary right. The company's determination of insurability is subject to judicial review.[9] The general approach is that satisfactory evidence of insurability is that evidence which would satisfy a reasonable person experienced in the life insurance business.[10] This adds weight to the majority approach, for without this limitation a court might well hestitate to give "insurability" the broader definition for fear that the company might refuse to exercise its discretion fairly.

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[9] Lanier v. N.Y. Life Ins. Co., (C.C.A. 5th, 1937) 88 F. (2d) 196; 3 APPLEMAN, INSURANCE LAW AND PRACTICE 667 (1941).

[10] Bowie v. Bankers Life Ins. Co., supra, note 2.