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INSURANCE - DELAY IN ACTING ON APPLICATION - TORT LIABILITY

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INSURANCE — DELAY IN ACTING ON APPLICATION — TORT LIABILITY — Appellant, administrator of the deceased's estate, sued the defendant for damages caused by its negligent failure to accept or reject deceased's application for life insurance within a reasonable time. A deposit had been made on the premium, and, but for the delay, the policy would have been approved and the deceased covered by it at the time of his death. The jury returned a verdict for the appellant, who appealed when the judge rendered judgment *non obstante veredicto* in favor of appellee. *Held*, that the insurance company was under no duty to accept or reject the application within a reasonable time in order to escape tort liability. *Zayc v. John Hancock Mutual Life Ins. Co. of Boston, Mass.*, 338 Pa. St. 426, 13 A. (2d) 34 (1940).

By the great weight of authority, unreasonable delay of the insurer in acting upon an application for insurance does not constitute acceptance of the contract, even though the first premium is retained for an unreasonable time.[1] A few jurisdictions hold that such facts constitute acceptance,[2] but this view seems to overlook the stipulation of the insurance company that it must approve the application before a contract can exist. Since contract proved a poor medium for finding liability, the courts turned to the more flexible concept of negligence as an implement for reaching the desired result.[3] After *Duffie v. Bankers' Life Assn.*,[4] decided in 1913, the trend towards tort liability became quite definite, and up until 1929 was followed by all courts in which the question arose except Arkansas [5] and Illinois.[6] Since the latter year, however, the trend seems to have

[1] VANCE, INSURANCE, 2d ed., § 64 (1930).

[2] Preferred Accident Ins. Co. of New York v. Stone, 61 Kan. 48, 58 P. 986 (1899); Richmond v. Travelers' Ins. Co., 123 Tenn. 307, 130 S. W. 790 (1910); Robinson v. United States Benevolent Soc., 132 Mich. 695, 94 N. W. 211 (1903); Patterson, "The Delivery of a Life-Insurance Policy," 33 HARV. L. REV. 198 at 216 (1919).

[3] Carter v. Manhattan Life Ins. Co., 11 Hawaii 69 (1897); Duffie v. Bankers' Life Assn. of Des Moines, 160 Iowa 19, 139 N. W. 1087 (1913); Boyer v. State Farmers' Mutual Hail Ins. Co., 86 Kan. 442, 121 P. 329 (1912).

[4] 160 Iowa 19, 139 N. W. 1087 (1913).

[5] National Union Fire Ins. Co. v. School Dist. No. 55, 122 Ark. 179, 182 S. W. 547 (1916); Interstate Business Men's Accident Assn. v. Nichols, 143 Ark. 369, 220 S. W. 477 (1920).

[6] Bradley v. Federal Life Ins. Co., 295 Ill. 381, 129 N. E. 171 (1920).

been broken [7] and the divergence in opinion accentuated.[8] Only ten days after the principal case was decided, the North Dakota court in *Bekken v. Equitable Life Assurance Society of United States* [9] held the insurance company liable for negligence on substantially similar facts. Thus we have two different approaches to the same problem. The court in the principal case considers the facts in the light of the remedy afforded by the common law. Starting with the principle of contract law that a bare offer imposes no liability upon the offeree until he accepts, the court is then unwilling to find that unreasonable delay in acting upon the application can result in tort liability. The case comes within the scope of contract law and thereby excludes the doctrine of negligence where it might otherwise apply. Even though it might be socially desirable to place a duty to answer within a reasonable time upon the insurance company, the court feels that this is a matter solely for the legislature. There is no authority in the court to assume the police power of the legislature and distort the common law in the process of enforcement. But the North Dakota court looks at the situation from the standpoint of the applicant's need for a right of action. It points out that the insurance companies have pre-empted the field and have created a seller's market in which they control the terms of the policy. Furthermore, the delay in issuing a policy from the time of application is inherent in the contracting methods used by the companies. It is only natural for the applicant to await an answer before going elsewhere for insurance, and during the interval he is not protected and the insurance company has his money. Finding the need clear, the court is willing to place its finding of tort liability upon either of two grounds. First, the insurance business is affected with a public interest which renders it subject to manifold regulations by the state and justifies the judicial finding of a public obligation to act promptly. But the police power of a state is to be exclusively exercised by the legislature and the courts cannot impose a duty on an insurer because the legislature might do so.[10] Second, the terms of the insurance contract, by their very nature, render it sui generis and not subject to the application of devised common-law rules. Certainly this reasoning would seem to deprive the court of the right to find a duty and would call for legislative aid. But since the court has found the insurance company negligent in failing to take reasonably prompt action on the application, it should be equally ready to find contributory

[7] 32 MICH. L. REV. 395 (1934); 33 MICH. L. REV. 807 (1935).

[8] Recovery has been allowed in: Alabama, Colorado, Idaho, Iowa, Kansas, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Texas, Washington, and Wisconsin; denied in: Arkansas, Connecticut, Minnesota, Mississippi, Pennsylvania, and West Virginia.

[9] (N. D. 1940) 293 N. W. 200.

[10] "State regulation of insurance companies has its basis in the police power and by no means in the public interest with which the insurance business is affected. The fact of public interest is not the source of that power, it but affects the locus of the boundary line limiting its exercise. And the police power is exclusively to be exercised by the Legislature, never by the judicial branch of government. The courts cannot impose a duty on insurance companies by virtue of a power which the courts do not possess and cannot exercise." Munger v. Equitable Life Assur. Soc. of the United States, (D. C. Mo. 1933) 2 F. Supp. 914 at 918.

negligence on the applicant's part in failing to revoke his offer and seek insurance elsewhere after a reasonable time has elapsed.[11]

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[11] "If the appellant was dilatory in acting on the proposal, the deceased could have quickened its diligence, by demanding prompt action; or, if not assenting to the delay, he could have retracted his proposal, and reclaimed the money he had advanced and his note. He had no right, without any action on his part, . . . to rely on the supineness of the appellant, no greater than his own, as an acceptance of the proposal." Alabama Gold Life Ins. Co. v. Mayes, 61 Ala. 163 at 168 (1878).