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Chapter 28: Insurance

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CHAPTER 28

Insurance

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A. COURT DECISIONS

§28.1. Policy construction: Due proof. Wording of insurance contracts is extremely important since courts interpret policies as liberally as possible, resolving all ambiguities in favor of the insured.[1] In some cases the final result seems to be almost completely opposite to the initial intent of both the insurer and the insured. A very great need for definition exists in the field of insurance law. During this SURVEY year the Supreme Judicial Court rendered two opinions that further clarify the phrase "due proof."

Manzi v. Provident Mutual Life Insurance Co.[2] was an action for disability recovery. The insurance policy required that due proof be rendered to the company in writing not later than one year after the policy anniversary date nearest the insured's sixtieth birthday; the insured must have become totally disabled as a result of bodily injury or disease prior to this date, and the disability must continue for at least four months. The defendant contended that the plaintiff did not file seasonable written proof. The plaintiff furnished three written proofs of claim, the third of which was not within the specified one-year period after the anniversary date. The Court held the three proofs together set forth a clear picture of the plaintiff's loss. The discrepancy among the three proofs of loss arose because final determination could not be had until all symptoms were available and the discrepancy showed only a progression in available evidence.

Krantz v. John Hancock Mutual Life Insurance Co.[3] was a contract action to recover double indemnity for loss of life. To recover, the plaintiff had to show that the death of the insured was a result of bodily injury caused solely by external, violent and accidental means and was not caused by self-destruction. The trial judge ruled that

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§28.1. [1] 13 Appleman, Insurance Law and Practice §7401 (1943).

[2] 335 Mass. 71, 138 N.E.2d 581 (1956).

[3] 1957 Mass. Adv. Sh. 557, 141 N.E.2d 719. For comment on evidence aspects of this case, see §33.3 *infra*.

the proof submitted was insufficient and ordered judgment for the defendant. The plaintiff submitted in her proof of loss several official records, including the record of death, the medical examiner's report, and the autopsy report. Each form listed suicide as the cause of death. The plaintiff blacked out these statements as well as those in the body of the proof of loss form that the plaintiff would be bound by all declarations contained in the documents. The Court held that the proof of loss form submitted to the plaintiff by the defendant implied that the various official documents were required as a part of the proof of loss and that binding the plaintiff to the opinions of suicide contained therein would completely deny a cause of action. It was a jury question as to whether a reasonable man would interpret the facts as shown in the proof of loss to be accidental death or death by suicide. That the plaintiff had stricken out various sections of the official document did no more than would have resulted had the entire document been submitted as evidence since opinions were not admissible.

The Court in the *Krantz* case cited the statement in the *Manzi* case that a purpose of the requirement to furnish due proof is to enable the defendant "to form an intelligent estimate as to whether the death came within the terms of the policy." [4] Both cases cited the discussion of due proof in *Howe v. National Life Insurance Co.*[5] which stated that in the absence of some provision designating its form, due proof may be submitted in any appropriate form and, if furnished by one or more documents, they may be construed separately or collectively in determining whether the information required has been given. The *Howe* case represents the general rule as to due proof in this Commonwealth.[6]

§28.2. Policy construction: Conditions. The headache of policy construction was again at issue in *Paratore v. John Hancock Mutual Life Insurance Co.*[1] wherein the problem was whether policies were void or voidable, or more particularly whether the condition was precedent or subsequent. The plaintiff was suing to recover under a life insurance policy. The policy contained a typical clause stating that the policy was "voidable" if the insured had heart disease or if during the two years preceding the policy date he had been treated for serious disease.[2] The plaintiff had been treated for hypertension prior to the policy date and had a previous five-year history of the disease. In holding that the company properly denied coverage the Court,

4 1957 Mass. Adv. Sh. at 560, 141 N.E.2d at 723.

5 321 Mass. 283, 72 N.E.2d 425 (1947).

6 Cooper v. Prudential Insurance Co. of America, 329 Mass. 301, 107 N.E.2d 805 (1952); Howard v. Metropolitan Life Insurance Co., 326 Mass. 722, 96 N.E.2d 708 (1951). See also Annotation, 170 A.L.R. 1254 (1947); Twenty-eighth Report, Judicial Council of Massachusetts for 1952, 37 Mass. L.Q. No. 4, p. 31 (1952); Note, 27 B.U.L. Rev. 497 (1947).

§28.2. 1 335 Mass. 632, 141 N.E.2d 511 (1957).

2 The entire clause is quoted in 335 Mass. at 634, 141 N.E.2d at 512.

however, took a rather troublesome line of argument. The tenor of the opinion suggests that the Court considered that the policy was void and not voidable and that absence of disease was a condition precedent to the policy taking effect. The policy clause, however, specifically makes the policy voidable, which would make the clause a condition subsequent. The result of this case, of course, would be the same under either theory.

§28.3. Limitation of right of action. *Employers Mutual Life Insurance Co. of Wisconsin v. Ford Motor Co.*[1] held that the plaintiff insurer lost its right of action because it did not bring suit within the nine-month period prescribed for third-party suits by the carrier in workmen's compensation cases. The case is fully discussed elsewhere in the SURVEY.[2]

§28.4. Compulsory motor vehicle insurance rates. Massachusetts law empowers the Commissioner of Insurance to set the compulsory automobile insurance rates.[1] He may call for such data, statistics, schedules or information from the companies as he deems necessary. In determining the rates for the year 1957, the Commissioner took the rates in effect for 1956 and made adjustments for repeal of the demerit surcharge provisions of the Highway Safety Act.[2] The Commissioner relied upon the efforts being made to speed up the court docket by means of the auditor system on the theory that the delay in obtaining a jury trial is caused mainly by automobile tort cases and a speeding up would result in a substantial saving to the insurers. The Court overruled the Commissioner's rates in *American Employers' Insurance Co. v. The Commissioner of Insurance.*[3] Of the Commissioner's claim that early trial of cases would result in a saving to the insurers the Court said, "This is a mere conclusion reached by the respondent and is unsupported by any evidence."[4] The Court ordered the Commissioner to fix the 1957 rate on the evidence previously submitted by the companies.

B. LEGISLATION

§28.5. New insurance. The General Court during the SURVEY year enacted several statutes opening up new areas of insurance coverage to the industry. Acts of 1957, c. 453 authorizes insurers engaged in casualty underwriting to write policies insuring against legal liability or loss or damage caused by nuclear energy hazards. It sets forth the various combinations of insurance that are permissible, the means of

§28.3. [1] 335 Mass. 504, 140 N.E.2d 634 (1957).
[2] See §30.1 *infra.*

§28.4. [1] G.L., c. 175, §113B, added by Acts of 1925, c. 346, §4.
[2] Id., c. 90A, added by Acts of 1953, c. 570, §1.
[3] 1957 Mass. Adv. Sh. 605, 142 N.E.2d 341.
[4] 1957 Mass. Adv. Sh. at 610, 142 N.E.2d at 345.

notification of loss, the surplus required prior to writing such insurance, and other conditions. The importance of this legislation is readily apparent. The National Chamber of Commerce has for some time been endorsing this type of insurance as a means of enhancing the economy of the various states by encouraging, through insurance protection, peacetime use of atomic power. Massachusetts is one of the last links in the chain of jurisdictions authorizing this type of insurance.

Acts of 1957, c. 115 is one of the more important of these new insurance enactments. It permits certain handicapped children of subscribers to medical service plans to be eligible under the membership of the parent, notwithstanding that such children are over nineteen years old. These children will thus continue to be covered under blanket family policies regardless of age.

Acts of 1957, c. 177 modifies G.L., c. 175, § 94B by authorizing the writing of burglary, livestock and reinsurance as additions to the types of coverage reciprocal insurance exchanges may write.

Acts of 1957, c. 242 provides that cities and towns may purchase contributory group life insurance for their employees and prescribes the procedure to be followed. Group life, almost universal in private industry, is now available to municipalities.

§28.6. Motor vehicle insurance. Acts of 1957, c. 194 sets up provisions for non-criminal fines and punishments to be imposed on juvenile offenders of the motor vehicle laws. It provides that the adjudication and disposition of these matters are to be admissible as evidence in any proceeding for cancellation of motor vehicle insurance policies covering the vehicle.

§28.7. Investments and assets. Acts of 1957, c. 183 provides for investment by certain insurance companies in mortgages or leasehold estates, thus providing a new avenue of investment for these insurance companies. Acts of 1957, c. 152 corrects accounting practice to exclude all land costs from book value in computing the rate at which investments by life insurance companies in real property shall be written down.

§ 28.8. Miscellaneous provisions. Acts of 1957, c. 541 exempts foreign insurance companies from taxation. The most striking feature of this enactment is its retaliatory nature; Massachusetts will grant this exemption only if the state of the principal office of the foreign corporation grants a similar exception to corporations organized under Massachusetts law.

Acts of 1957, c. 161 provides that an insurance agent's wife will be allowed to continue the work of her deceased husband so long as she is under the direct supervision of a licensed agent or broker. This is similar to statutes in other jurisdictions although they do not always require supervision.

Acts of 1957, c. 633 provides indemnity, similar to compulsory limits, on all state vehicles being operated by employees within the course of their employment. This closes another of the gaps in the compulsory motor vehicle coverage.