

## NOTES

### Group Insurance—Relation of the Contracting Parties

It is the purpose of this note to examine into the relations of the parties to a group insurance contract and to attempt to find a workable theory by which the results of the cases may be explained and one which will account for the apparent anomaly, that an employer and an insurance company may change or cancel a policy against the will of the employee, and thereby destroy his rights.

A policy of group insurance is a policy in the nature of term insurance issued to an employer on a certain group of his employees. Any member of this group may by his consent place himself within the protection of the policy for the duration of his employment, and name the beneficiary in case of his death, sometimes contributing a part of the premium.

The cases on the subject of group insurance are in apparent conflict but it is submitted that the results are consistent and can be explained by considering the insurance company as having issued a "policy" to the employer making available a certain amount of coverage on a specified group of employees. Any employee coming within this group, by his consent, merely becomes the subject of the "risk" for so much of that protection as is provided for the individual members of his group by the master contract. He is thereby given the privilege to name his beneficiary for which privilege in some cases he contributes a part of the premium, the remainder being made up by the employer. The certificate issued to the employee by the insurance company is merely evidence of this protection.<sup>1</sup>

This contract is primarily between the employer and the insurance company.<sup>2</sup> The chief difficulty arises when we consider whether the

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1. *Thigpen v. Metropolitan*, 195 S.E. 591 (1938); *Lancaster v. Travelers' Ins. Co.*, 54 Ga. App. 718, 189 S.E. 79 (1936); *All States Life Ins. v. Tillman*, 266 Ala. 245, 146 So. 393 (1933); *Boseman v. Connecticut General Life Ins.*, 301 U.S. 196, 81 L. Ed. 1036 (1937).

2. *Gallagher v. Simmons Hdwe. Co.*, 214 Mo. App. 111, 258 S.W. 16 (1924); *Thigpen v. Metropolitan*, *supra* note 1; *Davis v. Metropolitan*, 161 Tenn. 165, 32 S.W. (2d) 1034 (1930); *McGee v. Equitable Life Ins.*, 62 N.D. 614, 244 N.W. 518 (1932); *Carpenter v. Chicago & E. I. Railroad*, 21 Ind. App. 88, 51 N.E.

employer is the agent of the insurance company or the agent of the employee in doing those things required of him under the policy and particularly in making changes or cancellations of the insurance. It has been held in well-considered cases that the employer acts either as agent for the employee or for himself in these matters.<sup>3</sup> It is submitted that, in fact, he acts for himself. Considering that the contract is made by the employer with the insurance company and that the employee is merely the subject of a part of the "risk", the employee should not obtain any vested rights under the contract and any change or cancellation entered into between the employer and the insurance company should be binding upon the employee.<sup>4</sup>

However, since the certificate issued to the employee is the evidence of his protection under the master contract, the employee may rely on this certificate and is entitled to be informed of any change or cancellation thereof.<sup>5</sup> If he is not so informed and relies on the certificate, the insurance company will be liable in accordance with the terms of the certificate.<sup>6</sup> However, no change in the policy can be made after the certificate has matured and liability to the employee has attached.<sup>7</sup>

The chief conflict in the language of the opinions is to be found in cases where the employer has cancelled or changed the policy and the

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493 (1898); *Missouri State Life v. Hinkle*, 18 Tenn. App. 228, 74 S.W. (2d) 1082 (1934); *Kloidt v. Metropolitan*, 18 N.J.Misc. 661, 16 A. (2d) (S. Ct. 1939).

3. *Boseman v. Connecticut General Life Ins.*, *supra* note 1; *Duval v. Metropolitan*, 82 N.H. 543, 136 A. 400 (1927); *Arment v. Metropolitan*, 8 N.J.Misc. 100, 149 A. 35 (S. Ct. 1930); *Kloidt v. Metropolitan*, *supra* note 2; *Lancaster v. Travelers' Ins. Co.*, *supra* note 1.

4. *Davis v. Metropolitan*, *supra* note 2; *Butler v. Equitable Life Ins.*, 233 Mo. App. 94, 93 S.W. (2d) 1019 (1936); *Kloidt v. Metropolitan*, *supra* note 2; *Missouri State Life v. Hinkle*, *supra* note 2; *Deese v. Travelers' Ins. Co.*, 204 N.C. 214, 167 S.E. 797 (1933).

5. *Butler v. Equitable Life Ins.*, *supra* note 4. Such a deduction can be made from the following cases. Though the language in the opinions is conflicting, the results uniformly show that notice of the change was not given. *Greer v. Equitable Life Ins. Co.*, 180 S.C. 162, 185 S.E. 68 (1936). *Deese v. Travelers' Ins. Co.*, *supra* note 4; *Jonson v. Inter-Ocean Casualty*, 112 W. Va. 396, 164 S.E. 411 (1932).

6. *Supra* note 5.

7. *Liner v. Travelers' Ins. Co.*, 50 Ga. App. 643, 180 S.E. 383 (1935); *Prudential Ins. v. Ferguson*, 51 Ga. App. 341, 180 S.E. 503 (1935).

employee attempts to sue on the original contract as it stood before the change or cancellation. It is submitted that regardless of the language to be found in the opinions it will be seen from an examination of these cases that an element of estoppel must appear to permit the employee to recover on the original contract after a change or cancellation of the master contract has taken place. For, in those cases where the employee was allowed recovery, he had not been informed of the change or cancellation of the master policy and the certificate was allowed to remain in his possession uncontradicted.<sup>8</sup>

In those cases where recovery was denied, the employee had either been informed of the change made in the policy or he had not relied on the certificate to his damage.<sup>9</sup> This is entirely consistent with the idea that the certificate is merely evidence of the policy and the employee is entitled to rely on that evidence. This element of estoppel is the one consistent element found in all of the cases where recovery was allowed unless liability had already attached.

An excellent illustration of how an estoppel may work against an insurance company after a change or cancellation of the policy, by allowing the uncontradicted certificate of a prior policy to remain in the hands of the employee, may be found by an examination of several cases all decided on different theories but reaching what is submitted to be consistent results. In a Tennessee case,<sup>10</sup> the employee was discharged and the policy cancelled, thus terminating the ordinary group insurance. The employee was not notified of this cancellation. However, before cancellation he had a right to convert the policy within thirty-one days but died before the expiration of this grace period. It is significant, however, that this grace period for the right of conversion was not mentioned in the certificate issued to the employee. He apparently had no knowledge thereof and recovery was denied. It is submitted that this employee did not rely on the privilege of conversion within thirty-one days. The same result was reached in a recent New Jersey case. In this case the policy was changed and the employee was notified to turn in

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8. *Supra* note 5.

9. *Supra* note 5.

10. *Missouri State Life v. Hinkle*, 18 Tenn. App. 228, 74 S.W. (2d) 1082 (1934).

his certificate so that a new one consistent with the provisions of the new policy might be issued to him. He objected to the change and refused to turn in the certificate. After the date that the change was to become effective, he was totally and permanently disabled but was denied recovery under the old policy, the provision for such recovery having been removed from the new policy. It is submitted in this case that there is no ground of estoppel against the insurance company since the employee was amply notified of the pending change and had no right to rely on his certificate. However, in a North Carolina case,<sup>11</sup> where recovery was allowed, the plaintiff employee held a certificate of insurance. His firm went into receivership but the employee was not notified of this. He continued to pay premiums to the receiver and was not notified that the policy had been cancelled. He knew of the thirty-one days' grace period and died within this period. It is submitted that in this case the employee actually did rely on the provisions of the policy and since the insurance company allowed the evidence of his insurance to remain in his hands uncontradicted, they were estopped from setting up the cancellation of the policy as a defense.

If it were held that the rights of the beneficiary were vested, it is submitted that mere notice would not divest him of those rights. Moreover, if the employer were regarded as merely the agent of the employee, then no change made by the employer against the will of the employee, after the revocation of this agency as in *Kloidt v. Metropolitan*,<sup>12</sup> could be binding, nor could the employer, for obvious reasons, be regarded as the agent of the insurer, for, then, no change made by him would be binding upon the employee without his consent. Any theory of agency would require the employer to be the agent of the insurer or the employee, depending on the individual transaction then taking place. It is submitted that the view taken above (that the contract is between the employer and the insurer with no vested rights in the employee before liability attaches, but that the employee has a right to rely on his certificate which is the evidence of his insurance) is much simpler and will both explain the results and achieve justice in these cases.

It would seem to be impractical for business and financial reasons

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11. *Deese v. Travelers' Ins. Co.*, 204 N.C. 214, 167 S.E. 797 (1933).

12. *Kloidt v. Metropolitan Life*, 18 N.J.Misc. 661, 16 A. (2d) 274 (S. Ct. 1939).

to deprive the employer of the right of changing or cancelling the policy as seems best to him because of the inherent difficulties in subjecting the employer and the insurance company to the will of several hundred or perhaps thousands of employees in such matters. There is not sufficient injustice done to the employee by a change or cancellation of the policy if he has been seasonably notified thereof to justify the courts in construing the contract in such a way as to tie the hands of the employer. Any construction of the contract by the courts, whereby the employer's hands are tied, might tend to discourage rather than encourage such contracts by the employer by which the employee is provided with insurance at a very low cost. Innumerable occasions might arise when the employer might wish to change or cancel the policy for business or financial reasons and, hence, would hesitate to bind himself in such a manner as he could not change or cancel the policy as circumstances might arise.