Missouri Law Review

Volume 23
Issue 4 *November 1958*

Article 5

1958

Insurance Law in Missouri-1957

Robert E. Seiler

INSURANCE LAW IN MISSOURI–1957*

ROBERT E. SEILER**

In 1957 the supreme court passed on three cases involving primarily substantive questions of insurance law, one of these being a case of first impression.

Readenour v. Motor Ins. Corp.[1] deals with the question of insurance agents and insurance brokers. The question was whether a farm implement dealer, Lewis, who also wrote insurance was defendant's agent so that through him the insurance company had knowledge the combine in question was covered by a mortgage. Lewis testified that in addition to carrying on the implement business (he sold the combine to plaintiff) he had an insurance business, that he wrote insurance for the defendant and "issued" the original policy and notified plaintiff each year when the time was up, that plaintiff would then authorize him to renew the insurance, that he (Lewis) collected the premium, sent it to defendant and received a commission on all policies issued. The majority of the court held this evidence was sufficient to justify the trial court in holding Lewis was the agent of the insurance company and in reforming the policy to show the existence of the mortgage. This would appear to be in accord with the general rule that knowledge acquired by a soliciting agent on a point such as the existence of a chattel mortgage is sufficient to create a waiver or estoppel binding on the company. Judge Hyde dissented (Judge Eager concurring) on the ground that since Lewis did not countersign the policy, had no authority to do so, merely took information from the person seeking a policy and sent it to the company, which sometimes sent the policy to Lewis to deliver and sometimes sent it directly to the company, and Lewis collected and remitted the premium, without retaining any portion, that Lewis was a broker and the case should be remanded to develop whether he was representing the insurer or the insured, and also to develop matters pertaining to reformation of the policy and waiver by failure to tender premiums.

---

*This Article contains a discussion of selected 1957 Missouri court decisions.

**Attorney, Joplin, Missouri; LL.B., University of Missouri, 1935.

1. 297 S.W.2d 554 (Mo. 1957) (en banc), *affirming* 287 S.W.2d 135 (K.C. Ct. App. 1956).

In *Smith v. Prudential Ins. Co. of America*,[2] division one had before it for the first time under these facts an aviation clause in a life policy, limiting the benefit if the insured died in an airplane accident " 'if the insured is a pilot, officer or member of the crew of such aircraft, or is operating or assisting in the operation of such aircraft, or is giving or receiving any kind of training or instruction, or has any duties whatsoever aboard such aircraft while in flight!' "[3] The deceased, Colonel Smith, was commandant of students at Randolph Field. He was an administrative officer, not a flying instructor. He was under temporary duty orders to proceed from Randolph Field to Fairfax Field and then to Lowry Field. The orders designated him as copilot and he was the highest ranking officer on the plane, which crashed into a mountain on the second leg of the flight, from Fairfax to Lowry, killing all passengers. There was no way of ascertaining from the wreckage what Colonel Smith's position or those of the other occupants was at the time of the crash. Plaintiff contended the burden was on defendant to show the insured, at the time of his death, was actually engaged in performing the duites of the copilot. The defendant contended the aviation clause became fully operative, upon proof the insured was in the plane under orders and flight plan wherein he was named as copilot. Plaintiff offered evidence of customs and standard operating practices of the service to show that the insured might not have actually been performing the duties of the copilot at the time of the crash. But the court held that from plaintiff's own evidence the trial court was correct in ruling as a matter of law that the insured, at the time of death, was engaged in activities restricting the liability of the defendant under the aviation clause. The clause was held clear and not subject to construction. The court held that since there was no evidence that the insured was not actually performing the duties of a copilot (in the face of the written orders and flight plan designating insured as copilot) the defendant did not have the burden of establishing the deceased was actually at the controls and performing the copilot's duties at the time of crash.

Kelso v. Kelso[4] was a garnishment action by the judgment creditor against the liability insurer growing out of an action for damages by one brother against the other, where the insurance company denied coverage

2. 300 S.W.2d 435 (Mo. 1957).
3. *Id.* at 438.
4. 306 S.W.2d 534 (Mo. 1957).

on the grounds the two brothers resided in the same household, that the insured automobile was not fully owned by the insured, and that since the insured had defaulted in the original trial there was no "actual trial" within the meaning of the terms of the policy. The case was tried before the court and in reviewing the case de novo the supreme court concluded the weight of the evidence was that the two brothers were quite clearly not members of the same household. As for the point that plaintiff was a joint owner of the car because he stated on cross examination that he and his brother each paid one half of the purchase price and owned the car jointly, the court said that was of no significance in view of the fact the certificate of title was in the name of the other brother, under the Missouri decisions as to certificates of titles on automobiles. On the point that the default judgment against the defendant brother was not the result of an "actual trial", since it was by default, the court pointed out that the insurance company had disclaimed any coverage because of the household exclusion and refused to defend the original action and this was a waiver of the so-called "actual trial" clause.

A fourth case is *Baugh v. Life & Cas. Ins. Co. of Tenn.*[5] which went to the supreme court from the St. Louis Court of Appeals[6] on a conflict in decisions of the courts of appeals as to the weight to be given hospital records. We include this case under the insurance decisions, but it turns largely on evidence questions arising from the insurer's defense in an action on a life policy that the insured was not in sound health on the date of the policy, contrary to his representations. The court held that uncontradicted hospital records stating that the insured had congenital heart disease were not conclusive on the issue. The court also held the application was admissible, despite the recital in the policy that the policy constituted the entire contract between the parties, because defendant had alleged fraud in the procurement and defendant could therefore show it had been fraudulently induced to enter into the contract.

5. 307 S.W.2d 660 (Mo. 1957).
6. 299 S.W.2d 554 (St. L. Ct. App. 1957).