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INSURANCE LAW IN MISSOURI*

ROBERT E. SEILER**

Several interesting insurance decisions were recently handed down by the supreme court. In *Le Page v. Metropolitan Life Ins. Co.*,¹ the court held that merely sending the insurance company a check for the premium is not sufficient to keep the policy in force; the general rule applies that delivery of a check is not payment until the check itself is paid.

In *Arditi v. Massachusetts Bonding & Ins. Co.*,² a case of first impression in Missouri, the court was faced with two automobile liability insurance policies applying to the same accident, one covering the particular vehicle involved and the other covering the driver on non-owned vehicles. Each insurer claimed its policy was excess coverage only and that the other policy provided primary coverage. The court held that inasmuch as the "other insurance" provisions of the two policies were indistinguishable they would be regarded as mutually repugnant and the loss would be prorated in proportion to the respective coverages of the two companies. The court refused to follow, as a hard and fast rule, the general rule of thumb that the car owner's insurance is primary.

In *Miller v. American Bonding Co.*,³ the court held that a requirement, in an indemnity policy against loss from dishonest employees, that the "Assured shall keep verifiable records of all property covered by this Policy" was valid and prevented recovery for an alleged loss of \$6,100 in cash from the company safe where the only records were various notations on the envelope containing the cash and the envelope was never recovered.

In *Lakin v. Postal Life & Cas. Ins. Co.*,⁴ the court held that merely because there is a partnership between two men does not necessarily mean that one partner has an insurable interest in the other; facts must be shown whereby one partner can reasonably expect some benefit

*This Article contains a discussion of selected 1958 and 1959 Missouri court decisions.

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1. 314 S.W.2d 735 (Mo. 1958).
2. 315 S.W.2d 736 (Mo. 1958).
3. 319 S.W.2d 530 (Mo. 1958).
4. 316 S.W.2d 542 (Mo. 1958).

or advantage from the continuance of the life of the other. The court also held that for a creditor to procure insurance on the debtor greatly in excess of the debt would void the policy as a wager contract and the same would be true if the policy were originally taken out by one having no insurable interest and later assigned to said person.

In *Bechtolt v. Home Ins. Co.*,⁵ the court held that hail insurance falls within the "or other insurance" phrase of the penalty statute,⁶ being "like" cyclone or lightning insurance, which are specifically named in the statute, and reaffirmed the general rule that penalties cannot be allowed where there is evidence showing defendant had reasonable grounds to question the extent of the claimed loss.

There were several decisions where insurance was involved, but the cases did not turn on the substantive law of insurance. The court in *State ex rel. Subscribers at Eagle Reciprocal Exch. v. Brady*,⁷ where the question was whether an assignee of unearned premiums of policyholders in an inter-insurance exchange could obtain valid service of process upon the superintendent of insurance in an action to recover unearned premiums, held that such service could be obtained. *Morris v. I.C.T. Ins. Co.*,⁸ decided that a plaintiff could collect his judgment against a foreign insurance company by requiring the superintendent of insurance to pay the judgment from funds deposited with him in compliance with the Missouri retaliatory law. *State ex rel. Leggett v. Jensen*,⁹ involving another effort by the attorneys involved in the insurance rate overcharge litigation to collect for services rendered, decided that the circuit court of Jackson County had no jurisdiction to review the action of the superintendent of insurance in denying a hearing to determine the amount of fees due said attorneys. *Prudential Ins. Co. of America v. Gatewood*,¹⁰ involved the question of whether the proceeds of life insurance policies were to go to the trustee for the benefit of the insured's children or to the executor of the insured's estate. In *Johnson v. Fotie*,¹¹ the contest was over the proceeds of life insurance policies, but the opinion deals mainly with matters of creditors' rights.

5. 322 S.W.2d 872 (Mo. 1959).

6. § 375.420, RSMo 1949.

7. 308 S.W.2d 652 (Mo. 1958) (en banc).

8. 316 S.W.2d 636 (Mo. 1958).

9. 318 S.W.2d 353 (Mo. 1958) (en banc).

10. 317 S.W.2d 382 (Mo. 1958).

11. 308 S.W.2d 662 (Mo. 1958).

In *M.F.A. Mut. Ins. Co. v. Hill*,¹² there was a one-car accident, in which two occupants of the car were injured and the third (the insured) was killed. This was followed by suits for damages by the two occupants against the insured's administratrix, each occupant claiming the deceased was the driver while the administratrix claimed one or the other of the occupants was the driver. The court held that the liability insurer was not entitled to interpleader against the two surviving occupants, because the insurer was not exposed to double recovery for a single liability, but was merely faced with defending actions resulting from the alleged negligence of the deceased.

12. 320 S.W.2d 559 (Mo. 1959).