Missouri Law Review

Volume 25
Issue 4 *November 1960*

Article 2

1960

Insurance Law in Missouri

Robert E. Seiler

INSURANCE LAW IN MISSOURI*

ROBERT E. SEILER**

There have been nine decisions by the Supreme Court in the period under review dealing directly or indirectly with substantive questions of insurance law, all of which are of interest to the lawyer in general practice.

In *Hall v. Weston*,[1] the court held that for enforcement of an automobile liability insurance policy (the policy not containing a declaration that the named insured fully owned the described automobile), there is no need for the insured to show ownership or insurable interest in the vehicle, that the risk insured against is based on use, not ownership of property. The case also holds that notice to the local agent by telephone is sufficient notice to the company of a newly acquired automobile.

In *Brown v. Metropolitan Life Ins. Co.*,[2] the court reversed the St. Louis Court of Appeals and held that medical testimony that a combination of vile language and a hard pushing motion could with reasonable medical certainty be considered the events which precipitated a fatal coronary occlusion, was sufficient to support liability for accidental death benefits. The fact that the deceased already had heart trouble did not relieve the insurer.

In *O'Hare v. Pursell*,[3] the plaintiffs were insureds under a public liability insurance policy issued by the ill-fated Insurance Company of Texas and personally paid $15,516.97 in satisfaction of judgments obtained by parties injured in an accident. The plaintiffs then sought to recover the amounts paid from the reinsurer. This the court held the plaintiffs could do, despite the fact that ordinarily a contract of reinsurance is one of indemnity against loss and creates no privity between the original insured and the reinsurer, because under the terms of the particular reinsurance treaty here involved the reinsurer contracted to indemnify against *liability;* thus the insureds could proceed directly against the reinsurer.

---

*This Article contains a discussion of selected 1959 and 1960 Missouri Supreme Court decisions appearing in volumes 323 through 332 of the Southwestern Reporter, Second Series.

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

1. 323 S.W.2d 673 (Mo. 1959).
2. 327 S.W.2d 252 (Mo. 1959) (en banc).
3. 329 S.W.2d 614 (Mo. 1959).

Clarke v. Organ,[4] dealt primarily with the effect of the nonclaim probate statute on tort claims, but in rejecting an argument that the tort action involved should not be considered abated as against the liability insurer, the court declared again that a final judgment against the insured is prerequisite to the enforcement of liability of the insurer.

In *Steele v. Goosen*,[5] an automobile tort case, the court held that where there is $50 deductible collision insurance and the plaintiff assigns his entire claim for property damage to his insurer, the plaintiff is not the real party in interest, even though he had received $50 less than the cost of repairs. Therefore in these circumstances any action for the property damage must be brought in the insurer's name.

In *Magers v. National Life & Acc. Ins. Co.*,[6] there was presented a question of first impression in Missouri as to whether the cash surrender values in lapsed industrial insurance policies could be assigned, where the policy provided against assignment of "the policy or benefits thereunder." The court held that the obligation of the company to pay cash surrender values was absolute. Hence the claims were matured claims and the assignment did not violate the policy provisions.

In *Poland v. Fisher's Estate*,[7] the court held that the claim of lack of insurable interest, where the insurance company has paid the amount of the policy to the person named therein, is not available to one of the adverse claimants to the fund. The court also held that evidence that the deceased, a livestock dealer, did a large volume of business regularly over a period of years with the plaintiff in buying and selling livestock through use of plaintiff's facilities at the stockyards, for which plaintiff received compensation and commissions of about $3,000 per month, justified the finding of the trial court that plaintiff had an insurable interest in the life of the deceased.

In *Pfingsten v. Franklin Life Ins. Co.*,[8] the court held that a provision in a life policy that it would not take effect until the first premium was paid, being for the benefit of the insurer, could be waived by an extension of credit to the loan company which held the policy, where there was a course of dealing between the insurer and the loan company whereby the latter would add the premiums to the insured's monthly payments and remit in due course to the insurer. On the question of whether plaintiff made a

4. 329 S.W.2d 670 (Mo. 1959) (en banc).
5. 329 S.W.2d 703 (Mo. 1959).
6. 329 S.W.2d 752 (Mo. 1959) (en banc).
7. 329 S.W.2d 768 (Mo. 1959).
8. 330 S.W.2d 806 (Mo. 1959).

submissible case on the issue of whether the insured was in good health when the policy was delivered, as required by the policy, the court held that evidence that the insured was required to and did submit to a medical examination by the insurer's medical examiner, justified the assumption and constituted substantial evidence that the examiner found the insured in good health at that time (which was six days prior to the issuance of the policy) and that introduction *by the insurer* of the death certificate and hospital records containing statements to the contrary did not constitute conclusive evidence, so that the issue of good health was a question for the jury.

In *Giokaris v. Kincaid*,[9] the court held that the insurance company's exclusion clause as to the use of other automobiles was not ambiguous and plainly excluded the use of any other automobile owned by the insured or a member of the same household or furnished for regular use to the insured or a member of the same household. But on the question of the meaning of the term "a member of the same household" the court took the position that since the provisions involved were ones avoiding liability on the coverage afforded, they would be construed most strictly against the insurer. Since the grandmother (whose car the insured was using at the time of the accident) was only temporarily living at the insured's house, she was held not to be a member of the same household. The court held that if the insurer intended to exclude coverage in such circumstances it should have used more restrictive language.

9. 331 S.W.2d 633 (Mo. 1960).