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THE PREMIUM DATE OF A MISSOURI LIFE INSURANCE POLICY

ORRIN B. EVANS

1. The Battlefield

The prospective applicant for life insurance must decide for himself a very considerable number of important questions before he completes his application. Once the policy is issued, at least if it is an "old line" policy free from restrictions on travel and occupation, and the chances are good that it is, ordinarily his only concern is to pay the recurring premiums on or before their due date. It would seem a simple matter to define the conditions he must satisfy, so that he might know precisely how much he must pay and when, but as the cases stand in Missouri today, it would be a bold lawyer who asserted positively the premium date on a good many of the policies outstanding. To put it another way, a great many Missouri policy holders cannot know exactly what they must do to keep their life insurance in force.

The premium date is uncertain whenever the policy, or the application incorporated into the policy, provides that the insurance shall not become effective until the policy is delivered to the applicant during his good health and the first premium paid; and that is true although the policy bears the date of its execution at the home office of the insurer and refers to the anniversary of that date as the premium date. Unquestionably the more recent decisions of the supreme court permit the parties to agree to any premium date they choose specifically, one that first arrives less than a year after the policy becomes effective—and in these opinions it is said that the uncertainty here asserted to exist in all such contracts will not be found if the language employed is unambiguous. Of course, if contracting parties insist upon using equivocal terminology, uncertainty is inherent by definition. I believe, however, that an examination of the cases will demonstrate the

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1. More than forty cases involve this precise issue.
accuracy of the broader statement. Missouri lawyers, who are neither knaves nor fools, have not been able to tell what language will be regarded as ambiguous and have shown their perplexity by carrying their cases to the appellate tribunals even more frequently than have their brethren in other jurisdictions.²

It is readily understandable why insurers writing old line policies want to defer liability until the first premium has been paid. Not only are the premiums calculated by discounting the interest to be earned upon premiums paid “in advance” but any delay in payment after the risk is taken will inevitably result in a less favorable mortality experience than was assumed in the actuarial tables, for those assureds who realize loss during the interim of delay will certainly pay up the premium and assert the liability of the insurer while a percentage of those incurring no loss will never take up the policies. In as much as it is not practically possible for the applicant to pay the premium at the exact moment the policy is approved at the home office, he must either pay in advance, with the consequent slight loss of “use” of his money until the policy is issued or the premium returned, or agree to postponement of the assumption of risk until he pays after the policy issues. If the latter alternative is chosen, why should not the local agent of the insurer, who delivers the policy and collects the first premiums, be authorized to insert the date of the policy, on the anniversary of which the next premium will be payable? It may be reckless to speculate about trade custom, which often has become accepted trade practice without any attempt to re-evaluate the conditions under which it first arose, but it seems quite probable that the underlying reason is a firm determination on the part of the insurers not to let selling agents have any authority whatsoever to determine any of the terms of the contract—including even the filling in of blank dates. Agents selling on commission do not have complete identity of interest with their principals, as insurers have found by experience. Moreover, if the policy should become effective as of delivery and the receipt of the first premium, and the next premium not be due until the full quarterly, semi-annual, or annual anniversary thereof, there will be a few days (between the time of the receipt by the agent and the completed transmission to the home office where investments are made) when the premium is not available for the

production of income, although the risk is being carried the whole period. All in all, dating the policy at the time of its execution at the home office and providing for subsequent premiums to be payable on the anniversary thereof, can hardly be considered reprehensible conduct on the part of the insurer, even though the inception of the risk is postponed until the first premium is paid.

There seems to be little justification for the additional condition of delivery in good health, however. It is vicious in every respect and as construed and applied in Missouri, it resurrects much of the ancient doctrine of warranty generally supposed to be obliterated by statute. One who represents in his application that he is in good health should be understood as stating only that he is in good health *so far as he knows*. Inserted as a condition of acceptance, however, it must be literally satisfied, regardless of the applicant's ignorant good faith (and possibly, regardless of the actual relationship of the latent disease to the ultimate mortality). Not only does it, in conjunction with dating of the policy at the time of earlier execution at the home office, "short-change" the insured on his first period of insurance; it gives the insurer the benefit of a more favorable experience than the probabilities upon which the premium was calculated. It is unnecessary to the insurer even in industrial policies written without physical examination, for the condition of the applicant's health can be ascertained by the agent as fairly at the time of application as at the time of delivery of the policy, and if a rule of selective risks is to modify the experience table based purely on age, health on the date when the applicant's insurance age is fixed, which is not the date when the policy is delivered, should be the determining factor. Understandably, courts have fought to escape from the harshness of its strictures, but the law would be more clearly delineated if the legislature would simply invalidate such conditions.

4. While the decisions apparently hold that the Missouri "material misrepresentation" statute (Mo. Rev. Stat. (1939) § 584) which in term applies only to "misrepresentation made in obtaining or securing" life insurance is applicable to "delivery-in-sound-health" clauses, which are conditions of acceptance of the offer, the distinction made in the recent cases cited supra note 3, suggests the validity of a distinction on materiality as well as intent. Cases are collected in comment (1941) 6 Mo. L. Rev. 338, note 26.
5. In some states the medical certificate of the examining physician is conclusive of the applicant's health. See note (1932) 8 Wis. L. Rev. 377. There is no evidence that these statutes have worked to the prejudice of the reasonable interests of insurer.
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Something could be said for a legislative policy making insurance writing a common calling, with all insurance written on the basis of comprehensive mortality tables which reflect the poor as well as the selected risks and compelling insurance carriers to accept all applicants. Of course, the preferred risks would pay more for their insurance than they do now, but it might be argued that the country has an interest in seeing that protection is available to the dependents of poor risks, and there would be real social advantages in being able to buy life insurance, like fire insurance, over the counter and effective immediately. At any rate, such a policy is not the law, and as long as insurance writers can select from among the applicants the risks they will accept, as a practical matter it becomes necessary to refer all applicants to a central office for decision. This means delay and from the delay come the problems dealt with in this paper.

a. Binder Receipts

It would seem that a solution might be found in more extensive use of binder receipts, issued at the time of the physical examination and receipt of the first premium. Though the terminology of the binder receipts is somewhat more elaborate, in essence it should be an agreement that the applicant is insured from that moment, either unconditionally for a limited period, or conditionally if, on the basis of his application and physical examination, he is at that time an insurable risk under the established rules of the insurer for the amount and kind of insurance applied for. If the binder receipt is to serve the only purpose for which it can be given in good faith, the officials of the home office must (a) have surrendered their authority to exercise an arbitrary discretion in the selection of individual applicants and (b) have authorized the local agents to bind the company, subject at most only to subsequent testing of the “insured’s” (sic) insurability by strictly objective standards established and applied to facts existing at the time of the “binding.” This testing will normally be made at the home office by experts with less personal bias than the selling agent and in a better position to apply the standards uniformly and with appreciation of the company’s over-all carriage of risks. If the local agent is not given the authorization so defined, if real discretion is reserved to the home office to reject the applicant on the basis of subjective standards, the so-called “binder receipt” is no “binder” at all and is a worse fraud than the judiciously criticized practice of dating the policy at the time of execution and postponing assumption of risk until delivery in good health.
Suppose that $A$, a fine specimen of young manhood, of exemplary character and roseate prospects, applies for a straight life policy, is examined, pays the first premium, and is issued a binder receipt. Suppose that he is accidentally killed before the application is approved and the policy executed at the home office. May the insurer deny liability? This is the acid test of the effect of the binder receipt, and we have no positive answer in Missouri. In *Wolfskill v. American Union Life Ins. Co.*, the Kansas City Court of Appeals ruled against the insurer, the receipt in that case reading "if a full first premium... has been paid at the time of making such application and declaration of such payment is made therein, the insurance, subject to the terms and conditions of the policy contract applied for and in use by the company of this date, shall take effect on the date hereof, provided the application is completed as agreed therein, and provided the applicant is on this date a risk acceptable to the company under its rules, on the plan, and for the amount and at the rate of premium declared paid, and provided further the applicant is on the date in good health..."

In *State ex el. Equitable Life Assur. Soc. of the U. S. v. Robertson* the binder receipt read, "Contract shall take effect as of the date of this receipt, provided the applicant is on this date in the opinion of the society's authorized officers in New York, an insurable risk under its rules and the application is otherwise acceptable on the plan and for the amount applied for." When the application was inspected in New York, the premium was rated up five years because the application showed the habitual use of intoxicants, although the physical examination indicated good physical condition. The applicant committed suicide before the rated-up policy was delivered. The supreme court, *en banc*, ruled for the insurer, holding that there was no completed contract of insurance. The applicant was not, in the opinion of the officers in New York, an acceptable risk at the premium applied for, and the applicant had never acceded to the counter-offer of the policy on the rated-up premium. The opinion does not discuss the question of whether the applicant's insurability for the amount and plan and at the premium applied for

7. The decision was positive on this point, although judgment below against the insurer was reversed because of variance between pleading and proof. The Court of Appeals made the point that the insurer should be permitted to introduce evidence that the applicant was not, at the time of application, insurable by its rules.
8. 191 S.W. 989 (Mo. 1917).
had to be judged by objective rules. As the original application had been rejected and the counter offer approved at the home office before notice of the applicant's death was received, it may be presumed that the officers acted in good faith and in accordance with accepted practice. The case is not much authority on the liability of the insurer prior to the issuance of the policy where the risk is plainly insurable, although the court did say, "Had the New York officers of the company approved the entire application, as it approved Kempf as an insurable risk, then unquestionably he would have been insured from that date, although ill health or death may have overtaken him prior to the issuance of the policy." It is hard to see how he could have been insured from the date of application although death might have overtaken him prior to the issuance of the policy unless the company was bound, at least in some measure, to issue the policy, or, to put it another way, unless the company was not at liberty to reject the application arbitrarily. The only other meaning which can be given to the quoted sentence would make the liability of the company depend upon whether it had happened to issue the policy before it learned of his prior death, an absurd result. The court goes on, "In other words, his contract of insurance was conditional, depending upon the company's acceptance of him as an insurable risk, and its approval of his application for the insurance as presented to it by him." Now it is quite evident that the contract of insurance said to be conditional could not be the policy ultimately to be issued. It must be the "contract" made by the binder receipt and there can be no contract unless the insurer is bound to some degree. As the only action by the insurer prior to passing upon the application was through the soliciting agent, if there was any contract, it must be because the soliciting agent had authority to bind the company, even though to but a limited degree.

It will have been observed that the wording of this receipt differed from that before the court in the *Wolfskill* case, in that it conditioned the assumption of the risk upon the applicant's insurability under the insurer's rules "in the opinion of the society's authorized officers in New York." Even the literal construction of such language limits the scope of the officer's discretion to "insurability under its rules," however, and it is surely not unreasonable to insist upon an honest opinion on that point. A denial of the application because the applicant was no longer insurable when the application was acted

9. Possibly before the injury and death occurred.
10. 191 S.W. 989, 992 (Mo. 1917).
upon is not an opinion of the officers upon his insurability at the time the application was taken. Even under such a binder receipt, the action of the officers at the home office is not the acceptance of an offer to take out insurance; it is but evidence of a fact—i.e., their honest opinion of his insurability under their rules, for the policy and in the amount and at the premium applied for, which fact was a condition of the insurance effected by the binder receipt.

Several cases coming to the federal courts for Missouri have involved receipts worded in this fashion: "Any insurance effected shall be in accordance with the terms and conditions of this policy granted, and by reason of this payment shall be binding and in force from the date of the medical examination; provided, said application shall be duly approved and accepted at the home office...." Literally, such a receipt is no binder at all, for it imposes no limitations upon the insurer's arbitrary right to refuse to issue the policy, upon the issuance of which the immediate insurance is said to depend. It is nothing but an excuse for antedating the policy which may be executed and to say that competent persons are free to contract as they please on that point simply ignores the generally admitted facts that laymen applicants do not deal on an equal level with the professional insurers, that they might easily be misled by such language, that their misconceptions are often encouraged by the efforts of the insurers' selling agents, and that they suppose they are getting something for their money. The federal cases just referred to denied the interim liability of the insurer, using language much broader than the facts involved required and relying ultimately upon the decision of the United States Supreme Court in Mutual Life Insurance Co. of N. Y. v. Young's Administrators, a case in which (a) a promissory note and not cash had been delivered by the applicant and (b) the injury

11. Mohrstadt v. Mutual Life Insurance Co., 115 Fed. 81 (C.C.A. 8th, 1902); Drake v. Missouri State Life Insurance Co., 21 F. (2d) 39 (C.C.A. 8th, 1927); Brancato v. National Res. Life Ins. Co., 35 F. (2d) 612 (C.C.A. 8th, 1929). The Circuit Court of Appeals for the 8th circuit has reached the same conclusion in other cases not involving Missouri law. Perhaps they are of equal significance or of equally little significance today, for the decisions cited, having been rendered in the pre-Erie R.R. v. Tompkins era, were based on "general" law.


13. "Binding receipts substantially like the one relied upon by the appellant have received frequent consideration by the courts, and it is settled that the right reserved to the insurance company to accept or reject the application for insurance referred to in the receipt is absolute. Such binding receipts leave it within the power of the company wholly to reject, without giving any reason...." Ibid.

resulting in his death was suffered after the application had been rejected at the home office by making a counter offer in the form of a different policy.

In dealing with receipts of this character, it might be pertinent to ask, could the applicant withdraw his application and insist upon return of the premium at any time prior to the execution and delivery of the contemplated policy? From the standpoint of the insurance carrier, one of the incentives for issuing binder receipts is protection against business loss when the applicant seeks to withdraw after overhead in the way of medical examination and administrative expense has been incurred. Some receipts explicitly deny the applicant's right to return of his money unless the policy is refused, while others merely state that the money will be returned if the application is not accepted. Depending upon the approach to the subject, provision for retention of the premium may be either ineffectual for want of consideration or the basis for implying a promise of indemnification to supply the mutuality otherwise lacking. There have been few cases involving attempts to rescind the application but the South Dakota Supreme Court has held the insurer liable for interim loss on the reasoning suggested.

The most recent binder receipt case from our supreme court is Bearup v. Equitable Life Assur. Soc. of U. S. Some time after the policy containing a double-indemnity-for-accidental-death clause had been issued, the insured killed himself while insane. Such death is accidental by Missouri law but not by New York law. The court held New York law controlling, arguing that the binder receipt dispensed with the necessity of delivery (which would otherwise have placed the last act necessary to a completed contract in Missouri) but that by its terms (which were identical with those in the Robertson case) the insurance was not effective unless the officers in New York approved the application, thus fixing New York as the place of contracting. The application form contained the further provision that only

15. It is well settled that in the absence of a binder, at least, the applicant can (a) refuse to proceed with his application and reject the policy tendered and (b) recover any premium paid in advance, until the time the risk attaches.
17. 351 Mo. 326, 172 S.W. (2d) 942 (1943).
the officers in New York could make or vary the contract. Granting that a conflict of laws case is a useful precedent in other situations to but a limited degree, the opinion may be significant in indicating the court's approach to the effect of the binder receipt. There is nothing to suggest that the court thought the insurer might in fact and law have authorized its local agent to bind it, despite its assertions to the contrary in the application. Such assertions would eliminate any question of apparent authority but could hardly conclude inquiry into actual delegation of authority. Nor is there anything to suggest that the court would not construe the language of the receipt literally, permitting the exercise of uncontrolled discretion by the officers at home in accepting or rejecting applications. The case can be criticized as a mechanical and extreme application of the place-of-contracting rule of conflict of laws, for certainly the Missouri contacts seem the more significant. If there had been no binder receipt, Missouri law would have applied because of the necessity of delivery here, although the same, or greater, discretion could have been exercised by the New York officers as a necessary element in the contract. Because a binder receipt was issued in Missouri, purporting to give coverage from the moment of its issuance, the insurance contract lost its Missouri identity. However, we are at this time more con-

19. In Patterson v. Prudential Ins. Co., 23 S.W. (2d) 198 (Mo. App. 1930), insurer's agent solicited applicant's mother to take out insurance on his life. She had but three dollars with her at the time, which she gave to the agent, receiving a binder receipt in the only form which he had with him at the time. It read, "Received from Mrs. Patterson the sum of $3.00, being the payment of ............ week's premium on account of an Industrial policy applied for ... if death occur after the date hereof, and of the application from which this receipt is detached and prior to the issue of such policy, payment of the amount thereof in accordance with and subject to the conditions and agreements therein contained shall be made, provided the insured was in sound physical health on the date of the application." (Italics added.) In fact, the application from the receipt was detached was not used; the application presently made was for, and on a form for, "whole life" insurance, and it in turn provided that if the entire first premium of $9.17 was paid in advance, the insurance should be effective immediately if the application was approved at the home office. The applicant was accidentally killed before the execution of any policy. In denying recovery, the court held there was no evidence of either real or apparent authority in the agent to bind the defendant for the kind of insurance actually applied for, at least in the absence of payment of the full first premium. In so far as suit was based upon the binder receipt given, such binder was conditioned upon a non-existent fact, the application for industrial insurance. The case does not hold that the agent with authority to issue the binder receipt for an industrial policy did not have authority to bind the company from the moment of that type of application and there is some intimation that he would. And see Horton v. New York Life Ins. Co., 151 Mo. 604, 617, 52 S.W. 356 (1899).

cerned with the suggestion that the receipt had no binding force of itself, implicit in the court’s argument that there was no contract of any kind until the company’s authorized officers acted in New York. The analysis of binder receipts which I have heretofore urged treats them as but one part of a single and entire contract of insurance, of which the binder receipt is the temporary and incomplete evidence and the policy ultimately issued the permanent and complete evidence. That analysis is based upon the proposition that the policy is not the contract, or essential to a contract, but is merely evidence of the contract. It is quite possible to find two separate contracts, the first for interim insurance until the application is acted upon (or for a definite number of days, if the binder receipt is so phrased), the second for the term of the policy issued and taking effect at that time. Indeed, some binder receipts are explicitly written in this fashion. The interim insurance is supported by the company’s right to retain the first premium until it passes upon the application despite the possibility of the applicant’s desire to rescind, or, as Professor Havighurst puts it,21 “the temporary insurance is thus in effect the consideration for an option given to the company to accept or reject the application. . . .”

Such interim insurance may be unconditional, in which case it makes no difference whether the applicant was, at the time of application, insurable for the amount, kind of policy, and at the premium applied for under the company’s rules; he is insured in any event for the period specified, or until the company passes upon the application, subject only to the defense of misrepresentation or fraud in obtaining the binder receipt. Binder receipts plainly written in this form22 offer certain administrative advantages. They remove the necessity of deciding whether the applicant was insurable at the time of medical examination; whether the company acts in good faith on his application. They eliminate any ambiguity in regard to the applicant’s status while his application is being passed upon, as there is no nunc pro tunc feature. The objection from the insurer’s standpoint is that they re-


22. The following form is stated by Professor Goble to be in use (Goble, Cases on Insurance (1931) p. 42, n. 9). “Received the sum of ............ dollars, being the first premium on a policy of assurance on the life of ................ (kind and amount of policy applied for.) In consideration of the representations and agreements contained in the said application, and of the payment of the above sum, the above-mentioned life is assured, in accordance with the terms and conditions of the policy which may be granted in this particular case, for 30 days from the present date. Should the company decline to issue the policy, the assurance hereby granted thereupon cases, and in such case the amount herein acknowledged shall be returned to the applicant.”
quire even more delegation of authority to the soliciting agent than do other
honest binder receipts of the conditional type, as the agent must decide on
his own responsibility whether temporary insurance is to be in force.

If the binder receipt be regarded as creating a separate contract for
interim insurance, albeit a conditional contract, we can perhaps minimize
the effect of the customary statements in application and policy that selling
agents may not contract for the company, by restricting the reference of
the statements to the policy to be issued and to constitute a second and
separate contract. Such analysis also serves to restrict the breadth of the
Robertson, Young, and Bearup cases as precedent. Clearly in Mutual Life
Ins. Co. of N. Y. v. Young’s Administrators, probably in State ex rel Equit-
able Life Assur. Soc. of U. S. v. Robertson, the application had been re-
jected, thus terminating the interim insurance, before injury to the appli-
cant. The policy sued upon in Bearup v. Equitable Life Assur. Soc. of U. S.
may more easily be regarded as executed in New York, and as representing
a New York contract, if it be deemed a contract distinct from the interim
insurance. However, it seems to me the more natural reading of the binder
receipts which have been before the Missouri courts shows a single contract,
continuous from the time of application. Such a reading also seems to me
more in accord with the actuarial practice of the insurers, who in such
cases calculate the premiums on the basis of the age of the applicant at the
time of application.

At any rate, it should be quite apparent that if the receipt does not bind
the insurer from the moment it is given, he will obtain the benefit of specially
favorable mortality experience not reflected in the premium and will retain
a premium for which no proportionate insurance coverage is provided. There
is no law that insurance premiums must be payable at regularly
recurring dates throughout the life of the policy, or that the first premium
may not be larger than subsequent premiums. The greater part of the
overhead in writing the policy is incurred in the first year and much could
be said for a system putting a larger portion of that cost on the first pre-
mium. However, the doctrine of “open covenants openly arrived at” is
good morals in private as well as international law, and binder receipts
which do not bind simply delude the applicant, both as to the state of his
coverage at the moment and as to the amount of insurance he ultimately

23. This is what is accomplished, though not openly, by the preliminary
term-whole life policies discussed infra.
gets for his money (for in these cases there is no actual reduction in subse-
quent premiums to compensate for the extra charge on the first).

Until the effect of the binder receipt as an instrument of immediate in-
surance is conclusively determined in Missouri, it is not possible to state its influence on the due date of the second and subsequent premiums. The question was potentially present in *Scotten v. Metropolitan Life Insurance Co.*, but the decision went on the ground that the parties by their con-
duct had demonstrated their own interpretation of the policy. In *Johnson v. American Central Life Insurance Company*, the so-called binder receipt recited that in consideration of the payment of the first premium at the time of application, the policy should be in force from the time of approval of the application by the medical director. However, the policy ultimately issued provided that it should not be effective until delivered to the applicant during his good health. In holding that subsequent premiums were not due until the anniversary of the delivery of the policy, the court relied primarily on the doctrine that ambiguities should be construed against the insurer who prepared the contract. Neither court nor counsel seemed very certain of the significance of the receipt, and the decision seems quite justified to me, for the insurer was apparently playing both ends against the middle in most extreme fashion. However, the court made the unnecessary observa-
tion that the binder receipt could hardly control the terms of the policy subsequently issued. Presumably, a binder receipt which expressly and unequivocally insured the applicant from the moment of application on the terms of the policy to be issued could not be vitiated by a condition in the standard policy of the insurer that the insurance doesn't take effect until delivery of the policy during the good health of the applicant; if the applicant died pending the execution of the policy, the insurer should be liable. And if the applicant did not die, and a policy were in fact issued to him containing such a restriction on the date of effectiveness, it still could hardly be argued that he would not get a full year's insurance for his full first premium unless the second premium date were postponed until the anniversary of delivery of the policy. There would still remain the question of the definiteness with which the subsequent premium dates were designated by the entire contract, and the decision of the instant case, rendered during

25. 336 Mo. 724, 81 S.W. (2d) 313 (1935).
26. 249 S.W. 115 (Mo. App. 1922).
the period between *Halsey v. American Central Life Insurance Co.*\(^{27}\) and *Prange v. International Life Insurance Co.*,\(^{28}\) should be confined to the facts recited in the opinion.\(^{29}\)

2. The Battle Lines Are Formed

*Halsey v. American Central Life Ins. Co.*, decided by Division 1 of the Missouri Supreme Court in 1914, was the first case in this jurisdiction to deal with the question to which this paper is addressed, and the decision of that case established a doctrine which, though not confined to this state, was for a time at least primarily associated with it.\(^{30}\) The application for life insurance had been made and was dated May 24, 1906; the policy was executed and dated at the home office in Indianapolis on May 31, 1906; and the policy was delivered to the insured at his home in Missouri on June 5, 1906, at which time the first premium was paid. The second premium was tendered and refused on May 31, 1907. The insured died June 5, 1907. In view of the subsequent interpretation of the decision in the case, it is necessary to set out the exact language of the contract at some length. The application read, "I, Augustus C. Halsey, of St. Louis, Mo., hereby propose to insure my life with the American Central Life Insurance Co. to the amount of ten thousand dollars. ... The annual premium to be made payable in advance on the 24th day of May. ... I hereby expressly agree that there shall be no contract of insurance until a policy shall have been issued and delivered to me when in good health and the premium paid to said company or its duly authorized agent during my lifetime. ... That if any premiums on said insurance shall not be paid when due all previous premiums shall be forfeited to the company, except as provided in the

27. 258 Mo. 659, 167 S.W. 951 (1914).
29. In the first place, the court did not quote verbatim, and in its original context, the language of the contract specifically referring to subsequent premium dates. It appeared that the policy might have been dated at the time of application in order "to hold the applicant's age," which would have been a powerful argument for the equity of insurer's position, but the court was not fully satisfied on that point and, so far as the binder receipt was concerned, it by its terms only purported to bind from the time of approval by the medical officer, which approval was given after the change of insurance age. Finally, the binder receipt did not purport to be a present contract of insurance but an agreement as to the date of the policy which might be issued, and the policy issued contained two different dates of effectiveness, neither coinciding with that of the binder receipt. I am puzzled by absence of any reference to "days of grace," so universally permitted today as to be assumed in most cases, but which, if present in the principal case, would have been a complete and independent ground for the decision rendered.
policy. . . . That all premiums on any policy issued on this application shall be annual premiums. . . . This application and the policy hereby applied for taken together shall constitute the entire contract between the parties hereto.” At the time of application, the applicant also executed a loan agreement in these words, “This certifies that the American Central Life Insurance Company has issued to me a policy upon its fifteen payment plan and has this day loaned me the sum of $61.40 to be used in payment of part of the first annual premium on the policy above mentioned No. 10,701, issued to me on the 24th day of May, 1906. . . . It is understood and agreed that should death of the insured occur at any time within fifteen years from the date of said policy, . . . I hereby authorize the secretary of said company to insert in this loan agreement the date of the policy issued to me.”

The court set forth the following recitations as the pertinent provisions of the policy:

“The American Central Life Insurance Company . . . in consideration of the agreements and warranties in the printed and written application for this policy of insurance and of the loan certificate given the company, all of which is hereby made a part of this contract, and of the payment in advance of the sum of $307, hereby insures the life of Augustus C. Halsey . . . for a period of one year from the 24th day of May, 1906, and in consideration of the further payment in cash of $307 on or before the 24th day of May and every year thereafter during the continuance of this policy until fifteen full annual premiums shall have been paid, hereby promises to pay ten thousand dollars to the insured’s executors. . . . After this policy shall have been in force three years, it cannot be forfeited as hereinafter provided. After three years’ premiums have been paid . . . this policy will become a non-participating paid-up policy for the amount stated in the table above the paid-up policy column for the end of the last year for which complete annual premiums have been paid. . . . After three full years’ premiums have been paid should the holder hereof so elect within sixty days from date of lapse . . . the company will, on surrender of this, issue a non-participating policy for paid-up insurance for the full amount of this policy, to cease after the number of years and months stated in the table above for the end of the year for which complete annual premiums have been paid. . . . After the policy shall have been in force three full years the company within sixty days after written request will in conformity with its rules then in force

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loan up to the amount stated in the table above for the end of the last year
for which complete annual premiums have been paid . . . provided . . .
(4) that the premiums must be fully paid to the end of the year in which
the loan becomes due. . . . If the insured be living and this policy is in
full force on the 24th day of May, 1921, the company will then pay to the
insured, or his assigns, the accumulated surplus. . . . The payment of the
first annual premium hereon is a condition precedent to the taking effect
hereof and it is expressly agreed that this policy shall not become binding
upon the company until said premium is actually paid during the life time
and good health of the insured and that the delivery of this policy without
such payment shall not be a waiver of such precedent condition."

Before considering what the court said and held, it might be profitable
to make note of what it did not say. In the first place, it did not supply a
designation for the type of policy at issue, and from the portions quoted
it would be hard to supply a descriptive name with any confidence. It was
evidently not a whole life policy. It may have been a fifteen year endow-
ment or a fifteen year term policy with investment features. One sentence
reads very like one year preliminary term insurance. The court evidently
was not concerned over the type of policy. In the second place, the issue
before the court was not when the non-forfeiture clauses took effect, or the
computation of the reserve. By no possibility of argument had the policy
been executed, issued or the insurance in effect for three years. Finally,
the word "ambiguous" nowhere appears in the opinion, but the word "clearly"
does.

The court held that the tender of the second premium on May 31, 1907
was timely, the policy not at that time having lapsed, that the refusal of the
tender was a waiver of prompt payment of the second premium, and that
the policy was in force at the time of insured's death. For this remarkable
result, these reasons were advanced. (1) Courts give a very liberal construc-
tion to insurance policies and never permit a miscarriage of justice (sic) by
a technical or narrow construction. (2) All the parts of the contract, policy
as well as application, must be construed together. (3) "Under the terms of
this contract, . . . the deceased was clearly insured for one full year from
June 5, 1906 to the last minute of June 4, 1907." (The court advances this
as a reason. It is obviously a conclusion for which no reason is given, and
is literally in direct contradiction of the language of the policy.) (4) The
act of the parties in paying and accepting the first premium on June 5, 1906
put a practical construction on the premium dates. (5) "If this is not the true meaning of the parties then the appellant is driven to the conclusion that the deceased paid for a full year's insurance, but under the terms of the policy he was entitled to about eleven and one-half months of insurance. This, nor any other court should allow an insurance company to thus stultify itself after taking the premium for a full year, and then escape liability by interposing the technical question that by the application for the policy the insured agreed to pay the premium long before it was due." (Passing without comment Judge Woodson's questionable rhetoric, it is apparent that the assertion involves several prejudicial assumptions; it is also clear that it is a definite alternative ground for the decision.)

During the next 18 years the several courts of appeals consistently applied the doctrine that a full year's premium entitled the insured to a full year's insurance, and that the date for payment of premiums was the anniversary of the date the insurance took effect. (There was no doubt in their minds what the Halsey case meant.) Only one of these cases was reviewed by the supreme court. In State ex rel. Missouri State Life Ins. Co. v. Allen, the insured, who had been born Feb. 15, 1876, applied for insurance on Sept. 12, 1917. Insurer's agent told him that by dating back the premium to Aug. 14th, the premium would be lowered and the suggestion was followed. The application, which was incorporated into the policy, provided that the insurance should not take effect until the first premium should be paid and the policy delivered and accepted during the applicant's good health. The policy, issued and delivered September 17, 1917, read, "This insurance is granted in consideration ... of the payment in advance of $68.20, being the premium


32. 295 Mo. 307, 243 S.W. 839 (1922). The case in the St. Louis Court of Appeals was reported 234 S.W. 1042 (1921) sub nom Landrigan v. Missouri State Life Ins. Co., and the opinion conforming to the mandate of the supreme court may be found in 211 Mo. App. 89, 245 S.W. 382 (1922).
for the first year's insurance under this policy ending on the 14th day of August, 1918, which is term insurance. The insurance will be continued thereafter as whole life insurance upon the payment of the annual premium of $62.80, on or before the 14th day of August, in every year during the continuance of this policy." Thirty one days of grace were allowed. The insured died Sept. 26, 1918 without having paid any more premiums. Both the trial court and the court of appeals held that the insurance was still in force at his death, on the ground that the second premium was not due until the anniversary of the delivery of the policy, and the days of grace carried the insurance to the date of death. Said the supreme court en banc, "Under our ruling in the Halsey case, insured had a full year's insurance from the delivery and acceptance of the policy, regardless of the date of the policy . . . the Court of Appeals followed the Halsey case and with light from the decision of court in other states and the federal courts, reached and announced its own decision on the question . . . Until this court has ruled on the question the Court of Appeals has undoubted power thus to decide the question authoritatively, whether or not we might reach the same conclusion."

Three salient facts were (1) the policy was ante-dated so that the applicant might receive, and he did receive, a lower premium than that to which he was entitled under the rules of the company on his age at the actual time of application, whether or not it stated on its face that this was done, (2) it was a one year preliminary term whole life policy and so stated quite plainly, and (3) so far as the contract could control the premium date, it stated in language about as plain as can be imagined that the premium date was August 14th. The case illustrates what the lower courts were doing under the Halsey decision and the language of the supreme court opinion was certainly not calculated to discourage them. So far as the holding in the highest court goes, it may be said that it was confined to the question of conflict with prior supreme court decisions, and surely it doesn't conflict with the Halsey v. American Central Life Ins. Co., whether or not required by that decision.

During this 18 year period only one case in which it could, with any show of plausibility, have been argued that postponing the date of effective insurance had the effect of postponing the subsequent premium dates, was decided in favor of the insurer. In State ex rel. Winters v. Trimble the

33. 315 Mo. 1295, 290 S.W. 115 (1926). The case in the Kansas City Court of Appeals is reported sub nom Winters v. Reserve Loan Life Ins. Co., 290 S.W. 109 (1926).
insured had held a straight life policy on which the premiums were admittedly due on Feb. 17th. of each year. He had borrowed very heavily against the reserve and had paid the premium due Feb. 17, 1916 by an additional note secured by the reserve. On Jan. 22, 1917, faced by the imminent necessity of paying another premium he did not have the cash to meet, as well as paying the last premium note, he applied to the insurer for a substitution of a new and different policy. The new policy was called a “single premium limited-payment” policy, and required a large first premium and nine annual smaller level premiums, when it would become paid up. As of the previous Feb. 17th, the old policy had a surrender value of $1031.35. Outstanding was the old indebtedness of 916.65 and the premium note of $125.60. The application for the new policy was itself dated back to Feb. 17, 1916 and stated that the substituted policy should bear that date. All computations were made as of that date. Premiums on the substitute policy were calculated for insured’s age as of the previous February. The premium note given at that time was cancelled without payment in any form. The indebtedness of $916.65 was subtracted from the surrender value of $1031.35, and the balance of $114.70, plus $69.55 in cash, plus $1010 loan from the insurer (because of the large first premium, the substitute policy carried immediate loan and cash surrender values) made up the first premium of $1194.25 on the substitute policy dated Feb. 17, 1916. The policy was actually issued in Jan. 23, 1917 and declared that it should not be effective until delivered to the insured in good health and first premium paid. The insured died Jan. 11, 1918 without having paid any additional premiums, specifically the one claimed by the company to have been due on Feb. 17, 1917. The beneficiary contended, of course, that as the first annual premium on the substitute policy had been paid, the insured was entitled to a full year’s insurance from the date it became effective, so that the policy was in force at the time of death.

The supreme court did not consider the decision for the insurer to conflict with the Halsey or Allen cases. It was emphasized that those cases dealt with original insurance whereas this was concerned with substitute insurance, but the real point would seem to be that in such a case of substitute insurance the provision postponing the effective date of insurance could not have the effect of depriving the applicant-insured of any period of coverage for which he was paying a premium. Although the original policy—the piece of printed paper—may have been surrendered with the application for the substitute insurance, inasmuch as the premiums up to that time had
been paid to keep it in force until Feb. 17, 1917, its insurance would still cover the insured to the very moment when it was replaced by the new policy taking effect. There was no double payment of premiums, in as much as the premium paid on the old policy on Feb. 17, 1916 was, in effect, refunded through cancellation of the premium note. One can find no equities on behalf of the insured justifying a strained interpretation of the language of the contract.

The Trimble case was not regarded by the courts of appeals as involving the Halsey doctrine as they understood it and they continued to find that premiums subsequent to the first were not due until the anniversary of the effective date of the policy. With Prange v. International Life Ins. Co., however, the tide began to turn. At the time of application (April 28, 1922), insured was a few days closer to his next birthday than his last, a circumstance which required his premium to be calculated as of the higher age. The soliciting agent pointed out that a substantial saving in annual premiums could be made by ante-dating the policies some 24 days. When the policies were delivered on May 18th, they bore date of April 4th and on receiving them, the insured executed a supplementary application stating, "I desire my policies to be dated April 4, 1922." The premium was appropriate for the lower age. The policy contained a conventional clause postponing liability until delivery in good health and payment of the first premium "... after delivery of this policy to the insured it shall take effect as of the 4th day of April, 1922." It was further stipulated, "This contract is made in consideration of the application herefor, which application is made a part hereof, and the payment of $700.75, constituting payment of premium for term insurance ceasing at noon on the fourth day of April, 1923, from which date it may be renewed as an Ordinary Life policy by the payment of like sum on said date and on each succeeding anniversary date of policy during the lifetime of the insured." The question was whether the policy had lapsed for non-payment of a second premium prior to May 16, 1923.

The straightforward opinion of Ragland, J., holding that the policy had lapsed, would not permit criticism if the case were truly one of first impression. In substance, he said, (a) the policy in its inception was not one for whole life but for a preliminary term positively declared to end on April 4, 1923 unless converted into an Ordinary Life policy at that time by

34. See note 31, supra, for cases decided between 1926 and 1932.
35. 329 Mo. 651, 46 S.W. (2d) 523 (1932).
the payment of an additional premium, (b) there was no fraud or deception practiced upon the insured, who was an experienced business man and must have understood the situation, (c) the insured might well have thought that a reduction in the premium he would have to pay for the rest of his life to keep the insurance in force outweighed the disadvantage of paying a full year's premium for ten and a half month's insurance, (d) the law fixes no maximum charge for insurance, (e) the Arkansas law (the contract having been made in that state) does prohibit discrimination between policyholders with the same expectation of life, and such discrimination can be avoided if the premium stipulated is to be charged a man of insured's age only by ante-dating the policy.

If the language of the application and policy was clear, then reasons (b) and (d) were sufficient for the decision. The trouble comes in reconciling the Halsey case, where the court declared itself unwilling to allow a company to charge a full year's premium for less than a year's insurance, apparently announcing a rule of law. Of the Halsey case, Judge Ragland said, "Both the facts and the policy provisions in the two cases are different. In the former the policy was dated May 31, 1906, the date of its issuance, but was not delivered until June 5, 1906, when the first annual premium was paid. It was held that, the entire contract considered, the parties intended the deceased to be insured for one full year from June 5, 1906 to the last minute of June 4, 1907. That case is not authority for the position taken by the appellants in this." Having stated that the facts were different, the learned judge proceeded to state facts which are certainly not remarkable, unless there was something peculiarly fateful about the date of June 5, 1906. It is true that as one of the two grounds for the Halsey decision, it was found that there was an intention to contract for a full year's insurance, but the court in 1932 as well as in 1914 could find intention only in the written language and the circumstances under which it was employed. The reader will have to compare the policy provisions for himself; I see very little difference to justify, let alone require, a different interpretation. That it was a preliminary term policy which was involved in the Prange litigation (reason (a) hardly seems material. "Preliminary-term" is simply the name given to a policy in which the accumulation of reserves is postponed. See special note on "preliminary term insurance" at the end of this article.
extended beyond the period regardless of his desire in the matter, but it would be irrelevant if it were. The issue is not whether liability terminates at the end of the term but what date is the end of the term. Term policies do usually stipulate with some degree of definiteness and positiveness when the term shall expire, and preliminary-term policies must use similar language to differentiate themselves from ordinary life policies if they are to be freed from the reserve requirements imposed upon the latter, but the question still remains whether they have done so with sufficient clarity to defeat the "whole year's insurance for a whole year's premium" doctrine. Reading back to the discussion of the Halsey case, we find that the company had there, in consideration of the first premium, insured", . . . for a period of one year from the 24th day of May", language not very different from that of "preliminary term".

Judge Ragland's reason (c) is also irrelevant. The question is what contract the parties made, or the law allows them to make, not the insured's own estimate of probabilities or values.

Of his last point, it should be observed at the outset that there was no difference between the Arkansas and Missouri statutes which would affect the decision, either at the time of the Halsey, Allen, or Prange cases. There was no mention of a change of insurance age in the Halsey case. (It was present in State ex rel. Missouri State Life Insurance Co. v. Allen, but so far as the supreme court is concerned, the force of that decision as precedent is limited.) It will be recalled that the Halsey case was distinguished on the basis of intention. The appropriateness of the premium to the age of the insured has very little to do with intention unless explained in the contract itself. It might very well have great force in restricting a rule of law that an insured was always entitled to a full year's insurance for his first premium no matter what his contract provided.

The lower courts did not immediately, universally, and unanimously abandon the Halsey doctrine, but they shortly began to follow the later


38. McDonnell v. Hawkeye Life Ins. Co. of Des Moines, Iowa, 64 S.W. (2d) 748 (Kansas City Court of Appeals, 1933); Kennedy v. National Accident and Health Ins. Co., 76 S.W. (2d) 748 (Kansas City Court of Appeals, 1934); Wilson v. Kansas City Life Ins. Co., 128 S.W. (2d) 319 (Kansas City Court of Appeals, 1939) (preliminary term insurance); Glosch v. Central Life Ins. Co. of Ill., 176 S.W. (2d) 46 (St. Louis Court of Appeals, 1943) (preliminary term insurance—insured died one day after expiration of days of grace at end of "term" without having paid second premium).
case as they understood it. It is not surprising that these cases do not automatically sort themselves or that they are not readily distinguished in principle from the earlier courts of appeals decisions. In those decisions where a full year’s insurance for a full annual premium was not insisted upon, the policies involved were usually term or preliminary term, this feature of the Prange case supplying an obvious method of identification. However, the unsatisfactory explanation of the distinction between the Halsey and Prange cases on this ground, already pointed out, becomes more apparent when one considers the actual language embodied in the contracts considered to be essentially different from an ordinarily life policy. In Peterson v. Metropolitan Life Ins. Co.  the insurance was “for the term of six months from Feb. 19th, 1932 . . . This policy may, with the consent of the company, and subject to all of the terms, conditions and provisions of this policy, be periodically renewed upon each successive expiration, for a further period of an equal number of months, upon the payment of the premium herein stated, as the premium for each successive renewal . . . Upon each such renewal, a grace of thirty one days, without interest charge, shall be granted for the payment of the premium, during which period the insurance shall continue in force provided such payment is made within such period of grace.” In what way does such an agreement vary from an ordinary life policy with premiums payable semi-annually? It is not a true renewable term policy, for the amount of premium does not increase with age. It is not even effective to postpone the accumulation of reserve, the real purpose of preliminary term whole life insurance (and the premium being level, the accumulation of a reserve is imperative), for the statutes authorizing preliminary term limit the period of the term. If the question is one of law, there is certainly no reason why the insured should not get as much insurance for his money under this type

39. Medlin v. American Banker’s Ins. Co., 59 S.W. (2d) 738 (Springfield Court of Appeals, 1933) (special interim insurance covered period between application and declared effective date); Petersen v. Metropolitan Life Ins. Co., 84 S.W. (2d) 157 (St. Louis Court of Appeals, 1935); Evans v. Equitable Life Assur. Soc. of U.S., 109 S.W. (2d) 380 (Kansas City Court of Appeals, 1937); Vail v. Midland Life Ins. Co., 108 S.W. (2d) 147 (Springfield Court of Appeals, 1937) (the initial premium was declared to be “for the first year’s insurance . . . , which is term insurance, and for the legal reserve, if any,” (italics mine); Hussey v. Ohio National OLIFE Ins. Co., 119 S.W. (2d) 455 (St. Louis Court of Appeals, 1938); Lacy v. Am. Central Life Ins. Co., 115 S.W. (2d) 193 (Kansas City Court of Appeals, 1938); Magers v. Kansas City Life Ins. Co., 191 S.W. (2d) 320 (Kansas City Court of Appeals, 1945). Ashburn v. Sun Life Assur. Co. of Canada, 197 S.W. (2d) 694 (St. Louis Court of Appeals, 1946) was decided under North Carolina law.

40. 84 S.W. (2d) 157 (Mo. App. 1935).

of policy as under an ordinary life policy. If the question is one of intent of
the parties as evidenced by their words, it becomes a matter of deciding
whether in this contract they indicated a different date for the payment of
subsequent premiums than in the *Halsey* case, or in the numerous cases
following it.

Should it make any difference whether the policy reads, "for a period
15th, 1946"? I would think not, but the cases indicate that the insurer is in
a better position if it employs the former terminology.

The *Petersen* case seems to me impossible to square with *Kennedy v.
National Accident and Health Ins. Co.*, implying accident insurance on
a "month to month" basis.

In *Vail v. Midland Life Ins. Co.*, the policy denominated "preliminary
term" declared that the initial premium was "for the first year's insurance
under this policy ending on the second day of April, 1935, which is term
insurance and for the legal reserve, if any." As the whole point of preliminary
term whole life insurance is to avoid the accumulation of legal reserve during
the preliminary term, the quoted declaration is very strange, although the
policy went on to provide in clear language for the date of the payment of
subsequent premiums.

Possibly some of the cases cited above as adopting the *Prange* doctrine
(whatever that may be) are not really in point on the issue, despite the
court's reliance on that decision as its authority. Thus, in *Medlin v. American
Bankers' Ins. Co.*, the application made on April 24th provided that the
insurance, for which the annual premium was to be $47.82, should not take
effect and the premium not be payable until Nov. 9th. Apparently some
arrangement for interim insurance was made, for the policy delivered in June
carried a rider to the effect that, "In consideration of $10.68, the receipt of
which is hereby acknowledged, and in consideration of the promise to pay
the first annual premium, the insurance granted by such policy shall be in
full force and effect from the ninth day of May, 1923 to and including the
ninth day of November, 1923." Premiums were paid which, without contro-
versy, carried the insurance at least to Nov. 9, 1928. Although there was

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42. 76 S.W. (2d) 748 (Mo. App. 1934).
43. 108 S.W. (2d) 147 (Mo. App. 1937).
461 (1942).
44. 59 S.W. (2d) 738 (Mo. App. 1933).
no insurance of any kind until delivery of the policy several weeks after the date when it was stated to take effect, the "short changing", if any, occurred in the interim insurance which had expired by any construction long before the litigation. Even though the Halsey case might be considered to require the interim insurance to run until December to give the insured full value, it does not follow that the principal insurance did not begin November 9th, giving the insured who paid $47.82 on that date double coverage for the balance of November. Moreover, there was no explanation of how the premium for the interim insurance was calculated, hence no evidence that five months insurance was not full value for $10.68. In Evans v. Equitable Life Ass. Soc. of U. S. the suit was on a substituted policy issued to reduce the amount of insurance, change the beneficiary, and to change the premium-paying periods. The substitute policy was written and issued on a date when the original policy was admittedly in force, purported to adjust the accumulated reserve on the original and larger policy to the smaller substituted policy and gave credit for the balance on the first premium on the latter, and in accordance with such an adjustment set a premium date on the substituted policy which did not coincide with the premium date, application date, or delivery date of the first policy or the application, execution, or delivery date of the substitute policy. Obviously, a decision that the premiums on the substituted policy were due on the date mentioned therein is not inconsistent with the proposition that the premiums on the original policy were not due until the anniversary of its delivery, and the court stated quite plainly that if the original policy had stood alone, such would have been its decision. The judgment for the insurer was rested primarily on the ground that the parties had interpreted the original contract for themselves, by issuing and accepting a substituted policy calculated on the basis of rights existing under the original contract if the premium dates were as stipulated therein; partly on the ground that the substituted policy was, in a sense, an accord and satisfaction of any dispute about the first policy. The decision might also be rationalized on the theory suggested previously, that as insured was truly covered at all times, even from the ante-dated time of the substitute policy, there could be no question of his getting full value for any premiums paid on it. Perhaps the original policy

46. 109 S.W. (2d) 380 (Mo. App. 1937).
was in force longer than appeared on the face of either policy, to give the insured full insurance for the premiums paid on it, but even such extended period had expired and the suit was only on the substituted contract.

In *Eiring v. Kansas City Life Ins. Co.* whatever premiums had been paid at all were paid by insured's father at the time of application. The application provided that if the initial premium accompanied the application, the insurance should be effective from date of approval, otherwise from date of delivery and payment. Insured died one year and 34 days after the approval of the policy, one year and thirty days after delivery. As the insured cannot postpone the date for payment of subsequent premiums by delay in paying the first, at the same time claiming coverage, the insurance was either never in force at all, or having taken effect from date of approval, expired before insured's death. There was no real issue of the *Halsey* doctrine.

So much for the cases in the lower courts. So far as they are concerned, the lines were drawn by the *Halsey* and *Prange* decisions and although in their capable and earnest efforts to distinguish the two authorities the lower courts took cognizance of the subsequent supreme court decisions on the subject, they were not greatly helped by the later cases. While counsel arguing before one of the courts of appeals must rely on or distinguish the opinions rendered by that court, the fact is that the reader trying to ascertain or rationalize "the law" in Missouri will find little in those cases which is not necessarily superseded by supreme court opinions upon indistinguishable facts.

3. Subsequent Maneuvers

In *National City Bank of St. Louis v. Missouri State Life Ins. Co.* the application for a five year term policy, made March 19, 1923, provided if the first premium did not accompany the application, "the insurance shall not be effective until the policy is delivered to and accepted by me and the first premium thereon actually paid during my lifetime in continued good health, but upon such delivery, acceptance and payment during my lifetime in continued good health, the policy shall be deemed to have taken from and shall bear the date of approval at the home office or other date specifically requested by the applicant, on which date each year thereafter subsequent premiums will be due and payable." The policy was dated March 19 (the application date) and was delivered by the local agent, with whom

47. 129 S.W. (2d) 1086 (Mo. App. 1939).
48. 332 Mo. 182, 57 S.W. (2d) 1066 (1933).
the insured had a running account, on March 30, but the insured did not pay the first premium to the agent nor did the agent pay the insurer on that date. The policy provided for payment if death "shall occur within five years from March 19, 1923 and while this policy is in full force" and declared that it was issued" in consideration of the application . . . and the payment in advance of $89, and of the payment of a like amount on the 19th day of September, 1923, being the premiums for the first year's insurance under this policy, ending on the 19th day of March, 1924. The insurance will be continued thereafter upon the payment of a semi-annual premium of $89 on or before the 19th day of each of the months of March and September in every year during the continuance of this policy, until premiums for five policy years, including the first, have been paid." The agent paid the first premium on May 23, 1923 and insured re-imbursed the agent on Jan. 2, 1924. It does not appear how and when the subsequent premiums were paid, but the premium falling due in the latter part of 1926 was never paid. Insured died November 19, 1926 and his beneficiary contended that as the last premium was not due until the semi-annual anniversary of the date of actual payment of the first premium—i.e. Nov. 23, 1926—the policy was still in force.

The supreme court held for the insurer. It must be noted that to do so, it was not necessary to give effect to the several statements in the policy that premiums were payable on the 19th. If they were payable on the 30th, the anniversary of delivery, the policy had lapsed. Among the several reasons advanced for the decision, one was to the effect that the requirement of pre-payment of the first premium, being for the benefit of the insurer, could be waived and had been waived by the delivery of the policy and the acceptance of the insured's liability upon the agent's open account. While there might have been room for argument over the agent's authority to make such waiver (as well as the fact of intention to waive) if suit had been brought upon the policy prior to any payment by the insured, the beneficiary was in a poor position to contest the fact or validity of the waiver after the unreasonable delay of the insured in retaining the policy and making tardy settlement with the agent. In discussing this aspect of the case the court went further than the facts required to state the the insured could not, by his own tardiness in performing the condition of payment, prolong the liability of the insurer. If the Halsey case still has any vitality, the question would seem to be, did the insurance become effective prior to the payment? If not,
the insurer would still get full consideration for the insurance which took
effect later and lasted longer than the dates specifically mentioned in the
policy, except as the insured's "insurance age" changed during the period
of delay.

Two other facts were considered to distinguish the *Halsey* case. (1) This
was term insurance. (2) The *Halsey* case was one of construing ambiguity
against the insurer who prepared the contract. There is nothing
ambiguous here, for the policy which provides for postponing the inception
of liability until payment of the first premium in the same sentence declares
that when the premium is paid at a date subsequent to the application, the
policy shall be effective from time of its approval and subsequent premiums
payable on the anniversary thereof. Of the first point it may be asked, as the
controversy arose before the five years had expired by any method of
computation, what difference does it make whether liability terminated five
years after the date of approval or five years after payment of the first
premium? The issue here is not the same as under the "preliminary-term"
policies, where it can be argued that delay in paying the second premium is
fatal because the so-called term has ended. However, in both types of cases
there seems to be the thought that the *Halsey* doctrine of a full year's
insurance for a full year's premium can not possibly operate to prolong
liability beyond the expiration of the stated (sic) term; so in this case it
would do no good to insist upon a full year's insurance for the first full
premium, because the insured would simply be squeezed at the other end.
The distinction based on the difference between level premium term and a
whole life policy is not very satisfactory. Actuarially there is very little
difference between a 60 year level premium term policy and an ordinary
life policy, issued to a man aged 36. There seems to be little reason why a
premium on one policy shouldn't buy as much insurance as a premium on
the other. The best comment on the second point will be found by turning
back to the discussion of the *Halsey* case and reading Judge Woodson's exact
language as there reproduced under (5).

*Scotten v. Metropolitan Life Ins. Co.*49 was not very significant on
the broader aspects of the problem. The plaintiff did not introduce evidence
of the delivery date of the policy, other than that it was sometime after the
date of execution, so that there was little to justify a holding that the
admittedly unpaid premium was not due when the forfeiture was claimed

49. 336 Mo. 724, 81 S.W. (2d) 313 (1935).
by the insurer. More to the issue which concerns us, the court found that
the parties by their conduct had interpreted the policy as claimed by the
insured. Payment on a quarterly basis as orginally required was changed at
the request of the insured to payment on an annual basis "beginning with
April 15th." Checks given for premium payments bore the notation, "for
premium due April 15th." On two occasions insured signed applications for
restoration of the policy because, in his own words, it had "lapsed for non-
payment of the premium due April 15th." Without intending to quarrel
with the particular decision, it might be proper to assert a caveat to the
application to this type of case of the sound and well-established rule which
gives great weight to the parties' own interpretation of their contract. No
sensible man waits to the last minute before paying his insurance premium.50
It is a well known fact that insured persons rely on the insurers to give
notice of premiums due and pay on the basis of such notices, usually given
from a month to a fortnight in advance, without much concern for the exact
date. The moment he is paying his premium is the last time at which it
might occur to him that a dispute over payment of a future premium would
arise, or that he might die at a moment when there was question of lapse for
non-payment of premium. If the matter did occur to him, would he want
to risk forfeiture by delaying payment or incur the expense of a test case
in order to settle an issue which might well be moot? Under the circumstances,
insured's apparent acquiescence in insurer's assertion of the premium date as
evidenced by payment of premiums in accordance with notices given by the
insurer is hardly an expression of his real intention or understanding about
the contract. So far as an application for restoration or re-instatement of
the policy goes, might the force of the reference to the due date of the
unpaid premium not depend upon whether the application was made before or
after the anniversary of the date of delivery? If made before, particularly
if made upon the printed forms supplied and filled in by the insurer, much
of what has been said about the significance of "early" premium payments
is applicable.51 If made after, of course the original policy had unquestionably
lapsed and the application is virtually an offer for a new contract, which
when accepted is supported by adequate consideration.

50. Our own supreme court has been as rigid as any in requiring the premium
to reach an authorized agent of the insurance company on time. Suess v. Imperial
Life Ins. Co., 193 Mo. 564, 91 S.W. 1041 (1906) (holding that the insured took
the risk of late delivery by the mails).
1920).
Table v. General Am. Life Ins. Co. contained facts raising substantial equities for the insurer and it is doubtful if the actual decision for the insurer did great violence to the Halsey case. The insured executed a blank application on Feb. 17, 1926, the form reading, "If the first premium is not paid in cash at the time the application is made, or if a policy different from the one described in this application is issued, the insurance shall not take effect until the first premium thereon had actually been paid to and accepted by the company, or its duly authorized agent, and the policy delivered to and accepted by me during my life and good health; but in that event the policy shall bear the date of its issuance and all future premiums shall become due on such policy date and all policy values and extended insurance shall be computed therefrom." The application showed insured's birth date as September 3, 1898 and his age as 27. It is apparent that for insurance purposes, he could have been rated at "age 27" only if the policy were dated prior to March 3, 1926. On that basis the policies were dated March 2, 1926 and the application filled in to describe the policies, which were tendered insured sometime in March. Preliminary term endowment policies for much more than he had contemplated taking, the insured did not immediately accede to the proposition, but retained the policies until May 26, 1926, when he paid for the first premium. In the meantime, the premium had been charged to him on his running account with the soliciting agent. The policies contained the usual provisions referring to the end of the preliminary term and the ultimate endowment period, all as on March 2nd and declared that it would be kept in force by the payment of "the annual premium of $172.20 on or before the Second Day of March in every year during the continuance of this policy." Insured had his troubles keeping up premium payments and there were several applications for re-instatement of the policies, containing language similar to that of the Scotten case. The policy in suit finally lapsed for non-payment of premiums and the case turned on the date of lapse, the issue being the period of extended insurance to the purchase of which the reserve was applied.

Taken as a whole, the language of policy and application could hardly have been considered ambiguous. Possibly pre-payment of the first premium had been waived by the agent (though it is hard to find any contract prior to the actual payment by the insured, as the policies issued constitute a

52. 342 Mo. 726, 117 S.W. (2d) 278 (1938).
counter-offer which the insured was "of two minds" about accepting). Possibly—just possibly—an insured who accepts a policy tendered him without prior application should be held to the consequences of ante-dating more rigidly than one who has himself initiated the contract (though I can't see why, aside from the probability that he reads the contract as written more closely. In neither case is there any suggestion of fraud in fact, and in both there is no insurance until the insured, with full opportunity of examining the policy, accepts delivery). Perhaps the insured had demonstrated his acquiescence in the policy as written by his subsequent conduct. All these points were made by Hyde, Commissioner. Most important was the fact of change in insurance age, eliminating any equity in the contention that premium dates should recur from the date of acceptance by the insured in the face of the clear language of the policy. Insured got full value from his money; he got a better contract than if it had been written as of the date of inception of the risk, with premiums calculated on his insurance age of that date.

On the element of fair value, the opinion goes on, "The principal basis of the Halsey case seems to be that unless the insurance continued for a full year after the delivery of the policy then the insured did not get anything for a part of his premium money. That could not be true here because, by cutting down the first term paid for, Tabler did get something for that proportional part of his premium money. He got both a lower rate, throughout the whole of his policy, and an earlier endowment maturity." It should be borne in mind that an ordinary life policy is fully paid up at age 96, so that it is really the same thing as an endowment policy for the number of years between the insured's age at issue and 96. Therefore, the same argument could be made of the whole life policy, that by antedating the inception of risk the insured gets an earlier paid-up date. As the endowment policy involved in the Tabler case would not have matured until the insured attained 86 years of age, the comparison is not too fanciful. Moreover, if there is validity in the argument based upon earlier endowment maturity, why does it not cut both ways to require, of most of all policies, an extension of time for premiums on term insurance, the darling of Prange case? An earlier expiration of the term surely does not benefit the insured.

In the National City Bank case, quoted again in the Tabler case (and later in Broadway Laundry Co. v. New York Life Ins. Co.) the "doctrine"

53. Understandably, the judge was not very positive about the basis of the Halsey case.
of the *Halsey* case was stated in these words, “If the policy provides for the payment of premiums annually, semi-annually, or quarterly, on or before certain days, occurring periodically after the date of the policy, and if the policy (or application) further provides that it shall not take effect until it is delivered and the first premium paid on a day subsequent to the date (specified), then in the event of an issue of liability for want of timely payment of premiums, the premium paying periods are to be determined from the date of delivery of the policy and payment of the first premium.”

The difficulty of distinguishing the several cases reaching an opposite result might well cause one to wonder if the *Halsey* case had not been overruled in fact if not in name. Any such conclusion must be revised promptly in the light of the two appeals of *Howard v. Aetna Life Ins. Co.*, decided respectively by Division 2 and Division 1 of the supreme court. The first appeal was taken from a ruling on defendant’s demurer to plaintiff’s complaint, which did not quote from the policy, so with an abbreviated record before it, the court could not include the exact language of the contract in its opinion. The second appeal was taken from a ruling on defendant’s motion in the nature of a demurrer to the evidence and the more elaborate record included the policy itself. It appears that insured, who was an agent of defendant insurer, had been born Dec. 31, 1887. He applied for insurance on June 29, 1932 (two days before his age would have changed for insurance purposes) errorously stating that he had been born Dec. 31, 1886 and that his age was 45. The policy which was dated June 28, 1932 and delivered sometime between July 1 and September 10 declared that it was made “in consideration of the quarterly premium of fifty dollars and eighty cents to be paid to the company on or before the 28th day of June, September, December and March in each and every year for five years, and of the quarterly premium of ninety three dollars and ninety cents payable under the same conditions thereafter, during the lifetime of the insured,” that it “should not become effective until the first premium upon it is paid during the good health of the insured,” and that “if the age of the insured has been mistated, the amount payable hereunder shall be such an amount as the premium paid would have purchased at the company’s published rate now in use for the correct age.” The first premium was paid Sept. 10, 1932, in what manner does not appear. Pursuant
to notice that the next premium would be payable September 28th, insured requested the company to charge it to his commission account, which was done on Oct. 27th. No further premiums were paid and insured died April 5, 1933 within two quarters and 31 days from September 10th but not from June 28th. The premiums required were those appropriate to a man of age 45 under the company's rates.

Both appeals were said to be ruled by the Halsey case, declared to have been distinguished but never overruled. In discussing the Prange case and those following it, no new distinctions were suggested, but the subsequent interpretation of the ground for each of those decisions may be significant.

(a) Prange. According to Howard I, "There was an express agreement that the date of the policy should be April 4th. The insured's insurance age changed April 5th. He applied for insurance April 28th, after the change had taken effect. The court held the contract of pre-dating so as to give the insured a lower rate was based upon a valuable consideration and valid." Howard II merely restated the facts and quoted from the Prange opinion the portion that courts could not rewrite the contracts the parties have made for themselves.

(b) National City Bank. According to Howard I, "the same point as the opinion in the Prange case. . . . In each case there was an express agreement as to the date the policy should be dated." According to Howard II, "the insurer 'waived the prompt payment of the first' semi-annual premium, and the policy 'took effect from its delivery on March 30, 1923'. It was held, however, that the semi-annual premiums were due March 19 and September 19, as claimed by the insurer and that the plaintiff could not recover. The court decided the case on 'the principles applied' to the Prange case. . . . Also the fact that the policy was a term policy, as in the Prange case, seemed57 to be of consequence in ruling the case."

(c) Scotten. According to Howard I, "the conduct of the parties bound them to the theory that the date of the policy controlled." According to Howard II, there was a reasonable doubt as to the date the annual premium was due and the court accepted the construction placed upon the policy by the parties.

57. Commissioner Bradley, like Commissioner Hyde, "seems" a little uncertain. And what was the character of the Aetna policy in the Howard case? Presumably, it was not denominated "preliminary term" or "convertible term," but there was to be a time when the premiums were to increase and the difference is but one of degree between a fixed date for termination of all liability and a date for termination of liability unless a higher premium were paid thereafter.
PREMIUM DATE OF MISSOURI POLICY

(d) Tabler. According to Howard I, "the parties expressly agreed that all further premiums should become due on the dates mentioned in the policy; that the insured should have the benefit of policy values et cetera on the basis of the date of the policy, which included the amount of the premium on the basis of the insured's being twenty seven years of age and not twenty eight, which was his insurance age when the policy became effective by its delivery." According to Howard II, "the policy was issued without any application being made, and it was held that the insured 'must have decided to accept it on the basis of its terms'."

Significantly, attempts were also made to distinguish, rather than simply to overrule, the several courts of appeals decisions cited under footnote 39, supra.

In the Howard cases, a good deal could have been made of the mis-statement of age, by reason of which the premium was appropriate only if the policies took effect after July 1st. No point was made of it at all. In the first appeal, it was said to be a mere co-incidence. In the second, it was declared to be "not important, so far as concerns the question as to whether the policy was in force at the time of the insured's death." Instead of taking this easy way of avoiding conflict with the anti-discrimination statute, Division II said that the insured had not contracted with respondent as to the rate, or to date the policy prior to July 1st. (This, of course, more or less begs the question. It was being argued by defendant that acceptance of a policy stating that premiums were due on June 28 made a contract to that effect.) Division I spoke to the question of the statute by holding that the provision adjusting the amount payable to the true age of the insured eliminated any possibility of discrimination. (Such a provision was also present in the Tabler case, which, in relying on the Prange case, pointed out that anti-discrimination statutes existed in Missouri as well as Arkansas.) Just possibly the evidence that insured was one year younger than he stated himself to be in his application was not totally convincing and the court preferred not to rest its decision upon uncertain facts, but if that evidence was not accepted, the decision goes squarely in the teeth of much language advanced as the rationale of the National City Bank and like cases, where it was said

58. This clause is almost standard. One may suspect it was included in the policies involved in other cases but not mentioned by the court. In analyzing a decision, we must take the facts recited by the court, but it is not without significance that a court fails to include in its recital of facts, evidence which is in the record. The plain inference is that the court regards it as immaterial.
that the insured by his own delay in paying the premium should not be able to obtain a more favorable construction of the contract and the advantage of a lower premium rate than was appropriate for his age at the date of payment.

In both appeals it was suggested that a policy effective only upon delivery and payment differed from a policy effective upon payment only, that payment as a condition precedent could be waived so that the policy might be deemed effective from delivery in the former case, and insured could not postpone subsequent premium dates by tardiness in performing his part—the paying of the first premium. However, the difference which is very real when there has been no delivery seems non-existent when the insurer makes delivery without obtaining the premium. If delivery and payment are two distinct requirements, why is the delivery a waiver of pre-payment? If they are sufficiently related that delivery waives pre-payment when both are stipulated to be conditions precedent to the inception of risk, why not when only pre-payment is expressly declared a condition?

Most of the cases subsequent to the *Halsey* decision declared it to be an example of construction of ambiguities against the insurer. As the *Howard* appeals undertook to distinguish the *Prange, National City Bank, Tabler*, and like decisions, consistent weight was given to the presence in the latter policies of a clause expressly reconciling what might be deemed inconsistencies. 59 I do not see that such a clause really adds much to the policy which says the same thing divided into two separate paragraphs, but if it has any special meaning, it must be because without it, the policy which declares the annual premiums due on the 24th day of May of each year is nevertheless ambiguous. The clear holding of the two *Howard* cases was that the policy before the courts was unambiguous. In the second appeal, it was held that evidence of the parties’ construction was inadmissible, the meaning of the contract being too clear.

*McQueeney v. National Fidelity Life Ins. Co.* 60 was a long and complicated opinion on the computation of reserve values available for extended insurance in the event of lapse. There were several independent reasons for the decision by the court *en banc* in favor of the insurer. One of the alter-

59. That is, a provision that if the premium were not paid in advance, the policy should not take effect until delivery and payment of first premium in good health; but then, and in that event, it should bear the date of issue and premiums be payable as of that date.

60. 350 Mo. 469, 166 S.W. (2d) 461 (1942).

http://scholarship.law.missouri.edu/mlr/vol12/iss2/1
native grounds for judgment was that the policy lapsed on the anniversary of the date of issue, despite the fact that it had not been delivered and did not become effective until 22 days later. Insured was born December 28, 1873. He applied for insurance July 13, 1923 when his "age, nearest birthday," was 50. The application provided that the policy should bear the date of its approval at the home office "unless otherwise requested in statement Nine". In the application, the "age, nearest birthday" was given as 49, and in the space for statement Nine was written, "date policy June 28, to hold age." Of this the court said, "In this case a specific date was agreed upon for a specific purpose. . . . The purpose indicated by the application could only be accomplished on the theory that the date of the policy controlled and premium payments ran from that date. We hold that the evidence objected to (evidence of the construction of the contract put upon it by the parties) did not tend to vary any plain and unambiguous terms of the policy, and was properly admitted."

The last shot was fired in Broadway Laundry Co. v. New York Life Ins. Co. by Division 2 of the supreme court, and a disconverting salvo it was. On June 19, 1934 insured applied for a seven year term policy, requesting "date of policy as of date of application." He was then 53 years old but for insurance purposes became 54 on June 23rd. The application provided "that the insurance hereby applied for shall not take effect unless and until the policy is delivered to and received by the applicant and the first premium paid in full during his lifetime . . . provided, however, that if the applicant at the time of making this application, pays the agent in cash the full amount of the first premium for the insurance applied for . . . and receives from the agent a receipt therefor on the receipt form attached hereto, and if the company, after medical examination and investigation, shall be satisfied that the applicant was, at the time of making this application insurable . . . then said insurance shall take effect and be in force . . . from and after the time this application is made, whether the policy be delivered to and received by the applicant or not." The policy was delivered and the first premium paid on July 2, 1934. The policy provided, "New York Life Insurance Company agrees to pay . . . $10,000 upon receipt of due proof of death (insured) within Seven years from the date this policy takes effect (hereinafter called the term period). This contract is made in consideration of the application

61. 351 Mo. 278, 172 S.W. (2d) 851 (1943).
therefor and of the payment in advance of the sum of $257.50, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this policy for the period terminating on the 19th day of June, 1935, and of a like sum on said date and every twelve calendar months thereafter until premiums for seven full years shall have been paid from the date on which this policy takes effect, or until the prior death of the insured. This policy takes effect as of the 19th day of June, 1934, which day is the anniversary of the policy."

The quoted provisions contain every word of the application and policy set forth in the opinion. The insured paid all seven "annual" premiums and died on June 28, 1941. The court held that the policy expired June 19th, 1941, on the authority of the Prange case. The Halsey case and those like it were said to rest upon construction of ambiguities not present here. Moreover, they were all whole life policies while this is a term policy.

The opinion makes no reference to the method of calculating the premiums. We may presume they were appropriate to age 53 rather than age 54. The court might well establish a positive rule that delay in the inception of the risk should not prolong the risk where the postponed risk would be an increased risk for which adequate premiums were not paid. Such a rule would do no great violence to the Halsey authorities, although it might be observed that the necessary but arbitrary calculation of premiums on an annual basis does not mean that mortality risks do not always increase with increased age, whether or not a birthday anniversary happens to recur during the particular passage of time. But when the court undertakes to distinguish this case from the Halsey and Howard cases, and the many courts of appeals cases, on the basis of certainty of language and of term provisions, how can a lawyer advise his client? I said at the beginning of the article that one of the major difficulties was ascertaining what was the court's conception of ambiguous language, and I think I have demonstrated that it is impossible to predict the treatment of any case. Bear in mind that the issue of the Broadway Laundry case was not the date of premiums but the date of expiration of the term. The court quoted no explicit statement in the policy that the term expired June 19th, 1941. All that the quoted portions of the policy contained on this point was in the promise to pay upon proof of death "within Seven years from the date this policy takes effect." At the most it can be said that the policy contained two absolutely inconsistent provisions in regard to the date it took effect. One clause declared that it took effect
from the date of delivery and receipt by the applicant, the other stated that it took effect “as of” (not “from”) June 19th. Moreover, the net result is that the insured is put in the same position as if he had paid the premium in advance and accepted a binder receipt, which alternative he did not choose. Aside from the equities resulting from the change in insurance age, and regarding only the language of the policies, this case seems to me a far stronger one for the beneficiary than Halsey v. American Central Life Ins. Co., State ex. rel. Missouri State Life Insurance Co. v. Allen, or Howard v. Aetna Life Ins. Co.

4. Retreat from Drawn Battle

If the policy is one for a term, or is a preliminary term policy; if it provides that it shall not take effect until delivery and the payment of the first premium in good health, but shall then be deemed to have taken effect as of the date of issue (all this being in the same sentence); if the policy states that it is issued in consideration of the first premium, for which insurance is given until a named date, which is the anniversary of the date of issue, and in consideration of subsequent premiums payable on that same date in each succeeding year; if the applicant’s insurance age has increased between the date of the policy and the date on which the first premium was paid (particularly if the policy was delivered prior to the payment of the premium and particularly if the application, executed after the change of insurance age, states that the policy shall be pre-dated to hold age); if the insured has for several years paid the premiums on the anniversary of the date of execution of the policy and by various written statements recognized that date as the premium date; if all these elements are present, then under the Missouri authorities it would appear that premiums after the first are payable on the anniversary of the date of issue. Eliminate any one of these facts and the outcome is unpredictable.

The present situation is quite advantageous to the bar. It reminds one of the lawyer’s best friend, the jolly testator who draws his own will. The court might over-rule the Halsey and Howard cases, thus eliminating the confusion which breeds litigation. That situation would be quite advantageous to the insurance companies. I can not conceive of the court over-ruling the Tabler case. I do think it would be possible to preserve the precise rulings of most of the supreme court decisions by frankly rejecting a great deal of the language in the opinions and by adhering to a rule of law that, regardless of the language of the contract, the insured was entitled to a full year’s
insurance for a full annual premium, except where, by reason of change of insurance age between the date of policy and the date on which it takes effect, the premium stipulated would under the established rates of the insurer, be inadequate for the face amount of the policy at the attained age of the insured.

Special Note on Preliminary Term Insurance

The mortality tables give us the percentage of any group of individuals of a given age who will die during each succeeding year. The natural cost of life insurance is simply the quotient obtained by dividing the total amount of death benefits to be expected in a particular year according to the mortality table by the number of policyholders paying premiums at the beginning of that year (assuming all parties are of identical insurance age and hold identical policies). Because a larger percentage of that group will die each succeeding year, thus increasing the dividend in relation to the divisor, the quotient, or natural premium, increases with each year of age. The premium for a one year term policy is simply the natural premium, discounted to compensate for the use of the money by the insurer during the period between the time it is received at the beginning of the insurance year and the time it is paid out for death benefits (i.e. on the average, half a year), and loaded with the administrative expense of the insurer. And in renewable term insurance, as each year’s coverage must pay for itself, the premium mounts with each succeeding year until, at age 95 (if such insurance were to be written) the premium would equal the benefit payable under the policy, subject only to discount and loading.

Renewable term insurance might be written on a whole life basis, although almost universally it is not because after, say, 60 years, the adverse selection of risks becomes so marked as to upset the experience tables on which the premiums were calculated. (The healthy, with prospects of long lives, drop out in the face of the mounting premiums; only the poor risks stay on.) Whole life insurance, then, as a practical matter is written almost exclusively on a level or a limited premium basis. Unlike the situation in
one year term insurance, the insurer is not here primarily concerned with the number of death benefits he must pay; it is inherent in the plan of insurance that ultimately he must pay the full death benefit on every life in the group. The significance of the mortality table now is that it discloses how many premiums can be expected from the entire group, payable at the beginning of each year, during the entire period that any of them is alive. (It is obvious that all will pay the first premium, only those who survive the first year will pay the second, only those surviving the first two years will pay the third, etc). With the total number of premiums to be expected thus ascertained, the calculation of the level premium is exactly the same as in the term policy. The total death benefit (the number of policy holders multiplied by the amount of the policy) is divided by the number of premiums expected from all members of the group during their lives. As the period between receipt of premiums and payment of death benefits is more extended, giving the insurer greater use of the money, the discount to compensate for that use becomes more important, and here the experience table must again be referred to to calculate the period. The final result may be called the net level annual premium for a whole life policy. The important thing to bear in mind is that the insurer does not take the risk of any single life as a contract unrelated to his other risks. He does not calculate the premium on the basis of the "life expectancy" of the individual applicant, charging more than the natural premium during the early years of the contract to build up a reserve out of which deficiencies in the later years could be made up. (If he did that, the cash surrender value of the policy would decrease in later years, whereas in fact it increases every year to death.) From the insurer's standpoint, each policy holder is but one member of an indefinitely large group of persons identically situated, and the net premium is calculated to bring the insurer out exactly even on the group as a whole. (Insurers work on the precept of Wilkins Micawber, that income must balance expenditure, but practice the theory more faithfully than did he.) The reserve which is attributable to any policy (the accumulation of which by the insurer is absolutely essential to his breaking even on the total group) is thus composed not so much of the excess of premiums over natural premiums which has been paid on that policy as it is composed of the excess over natural premiums theretofor paid on the policies held in the group by those who have died. That is why the reserve constantly increases until the last survivor in the group has, at age 96, a fully paid up policy. (The argument advanced in GILBERT, Life Insurance—A Legalized Racket (1936), is absolutely fallacious from
an actuarial standpoint. On the basis of present rates, no insurance company could possibly pay both the face amount of the policy and the accumulated reserve on that policy at the time of death. However, the book is not without value in calling attention to the frequently disregarded merits of term insurance.)

The administrative and selling costs of the insurance company must be added to the net premium to give the gross or actual premium charged. Some of the costs are incurred throughout the life of the policy—such as general overhead of the company, of which each policy must bear its part, the management of investments, the mailing of premium notices, etc. Certain special costs are incurred at the death of the policyholder. The greater part of the total costs are incurred at the inception of the policy. The simplest and most logical procedure would be to add them to the first premium, but either to preserve the form of level premiums or to conceal the amount of the soliciting agent’s commissions, that is never done. The total expense attributable to the policy is estimated, it is divided by the number of premiums expected to be paid, and the resulting figure added to the net premium. This means, of course, that from other sources the company must find the means of carrying the initial expense of the policy until it is made up from the later premiums, a matter of some concern to smaller or newer companies if not to the old and established insurers with their gigantic surpluses.

The so-called preliminary term policies were devised to meet this problem. The theory may best be explained by reference to typical cases. On the basis of the American Experience Table, and using a 3% discount rate, the net premium on an old line whole life policy at age 35 is $21.08, at age 36 is $21.74. The natural cost for one year’s term insurance at age 35 is $8.68. (Calculated as stated on the basis of the American Experience Table, this disregards both the fact that the Experience Table is somewhat out of date and the more important fact that a practice of selecting risks makes the actual cost to the insurer considerably less, especially in the first year when the factor of selective risks has its greatest influence.) The significance of each of these figures has been explained. So far as the whole life premiums are concerned, it should now be clear that the difference of 66 cents results from the fact that in the group of lives being insured at age 36, there is one less year in which the insurer can collect the total amount in premiums to make up the death benefits he must pay out—or to put it another way, because at the higher age the policy holders will die more rapidly, there will
be fewer premium payments from which to make up the necessary sum. Because the reserve allocated to any policy in force consists primarily of "excess" premiums collected from policy holders who have died, the reserve on the policies issued at age 36 will accumulate faster than the reserve on otherwise similar policies issued at age 35. On either policy, the reserve at age 95 will be exactly the face amount of the policy less one year's premium.

As a matter of contract law, the ordinary whole life policy is not regarded as insurance for one year, with a perpetual option in the insured to renew by the payment of another premium at the beginning of each year. The contract of insurance is considered single and entire, payment of premiums after the first being merely performances of conditions subsequent. From a functional standpoint, however, it makes not the slightest difference how you analyze it. The amount of death benefits the insurer must pay out, and the amount he must collect in premiums, remains the same in either case. So an insurer who issues a one year term policy at age 35, convertible at the option of the holder into a whole life policy at the end of the year, is under exactly the same potential liabilities as if he had issued the whole life policy at age 35 in the first instance. (The only difference in practice is the effect on risk selection through a premium change at the end of the year.) He ultimately must collect at least as much in premiums. So if he charges the regular term insurance rate for the first year ($8.68 net), he must make it up by charging level premiums on the converted policy at least 66 cents higher than on the whole life policy issued at age 35.

The figures given have been for net premiums. The administrative expense on the convertible policy is the same as for the whole life policy. Suppose our insurer, disregarding the legal point that the convertible policy creates two contracts, regards it all as a single liability on which he will add his overhead. He can either divide the overhead into equal installments and add the same amount to each premium, in which case there will still be a $13.06 jump between the first and subsequent premiums (the difference between net term premium plus loading and net whole life premium at age 36 plus loading), or he can (a) deduct $13.06 from the total estimated administrative expense to be charged against the policy, (b) divide the balance by the number of anticipated premiums, (c) add the quotient, which is his loading charge, to $21.74, and (d) charge a gross premium of $21.74 plus loading charge for every year, including the first term year. When he does this, we have the so-called one year preliminary term whole life
policy. The insurer has taken a total of $13.06 out of loadings on subsequent premiums (the reduction in loading on each being 66 cents) and has added it to the loading on the first premium, where it, in addition to the same loading as is put on the subsequent premiums, can be used to defray initial expense, and by postponing the accumulation of the reserve, he has not affected the soundness of his contracts. The gross premium charged is the same as for a whole life policy at age 35. The insurer's shifting around of net premiums and loading charges is hidden in the level gross premium and the only clue to the insured of what has been done is the designation of the policy as one of preliminary term and a different table of reserve or surrender values, neither of which he understands.

Preliminary terms of not more than one year, subject to limitations not here relevant, are permitted by Mo. Rev. Stat. 1939, Sec. 5831, Missouri Laws 1943, p. 599. It has been held that the Missouri non-forfeiture statute guaranteeing to the owner of a whole life policy not less than three fourths the value of the reserve of a similar policy computed on the actuaries or combined experience table at 4%, in case of default in premiums after three years, should be applied to preliminary term policies only after four premiums had been paid, on the ground that there was no reserve at the end of the first year. *Doty v. American Nat. Ins. Co.*, 350 Mo. 192, 165 SW (2d) 862 (1942). I went on record as sharply criticizing this decision when it was rendered (8 Mo. L. Rev. 271) but after reflection, I am convinced the court was absolutely right and I was wrong. Any other decision would nullify the statute authorizing such preliminary term insurance, which must therefore be considered to have modified the non-forfeiture statute. Directing my attention too exclusively to the latter statute, which was the one immediately under construction, I took issue with the court's argument that by definition there was no reserve for the first year because it was term insurance. That seems to me to beg the issue. Regardless of what he calls it, the insurer is under potential liability for the insured's whole life, as he has no control over the insured's power to keep the insurance in force by subsequent payments of premiums of identical amounts. In other words, it is not true one year term insurance, for which there is no need of reserve because the insurer's liability is ended when the term ends. Where the liability may continue, the insurer must either increase the premiums to take care of the increasing mortality rate, as he does in renewable term or convertible term
insurance, or he must provide a reserve from the first year's premium to offset the increased natural cost of the insurance in subsequent years, if he is to remain solvent. The question was whether the non-forfeiture statute does not require the use of the second method, when he charges a level gross premium. Taken alone, I thought—and think—it does, but in conjunction with the authorization for preliminary term policy, I acknowledge it does not. The insurer may use the first method, but conceal the increase in net premiums in the level gross premiums.

It may be pertinent to point out in this very brief discussion of the calculation of premiums and reserves that the premiums on a whole life policy, 60 year endowment policy, 60 year term policy (level premium basis), and 60 payment whole life policy issued to a man, aged 36, would be exactly the same. In fact, the rights under each policy would be exactly the same except for the very slight possibility that he might "outlive" the mortality table, in which case the term insurance would not cover his death. Hence, insurance companies do not offer such a selection. The whole life policy covers all the needs of a 36 year old applicant who is willing to pay 60 premiums.