CONSTRUCTION OF SO-CALLED "STANDARD" POLICIES OR CLAUSES

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There is no principle of insurance more firmly established than this, that doubtful expression occurring in a policy of insurance are to be construed most strongly in favour of the insured and against the company, the reason underlying this rule being that the companies prepare their own policies with the greatest care and deliberation for their own protection, that the insured has no election except to take the policy as it is written, that if the company had intended the unfavourable construction to govern, it would have provided for the same in unmistakeable terms, and that it is only fair that these doubtful terms should be construed against the company in order to carry out the object for which the insurance was obtained.

This rule was established by the Courts, however, at a time when each company had a free hand in preparing its own policy; but in Canada, the various Provinces have prescribed certain so-called "statutory conditions" which shall apply to all policies, the object being to secure uniformity and to protect the interest of the insured.

Across the line many of the States have "gone one better" and have prescribed a complete policy, known as the "standard policy," so that every policy issued in the State contains uniform terms.

"A law providing for a uniform policy, known as the standard policy, and which makes its use compulsory upon insurance companies," says a New York Court, "marks a most important and useful advance in legislation relating to contracts of insurance. The practice which prevailed before this enactment, whereby each company prescribed the form of its contract, led to great diversity in the condition of insurance policies, and frequently to rank injustice. Parties taking insurance are often mislead by unusual clauses or obscure phrases, which are often so printed so as to elude discovery. Unconscionable defences based upon such conditions, were not infrequent, and Courts seem sometimes to have been embarrassed in the attempt to reconcile the claims of justice to the law of contracts. Under the law providing for a standard policy, companies are not permitted to insert conditions in the policies at their will. The policies they now issue must be uniform in their provisions, arrangement and type. Persons seeking insurance come to understand to a greater extent than heretofore the contract into which they enter."

In connection with these "standard policies" or "statutory conditions," which are prescribed by the legislative power and must be uniform in all cases, a rather important point arises, as in some cases the insurance companies have contended that the above rule, namely, that the doubtful terms in insurance policies shall be construed most strongly against the company, does not apply to a standard policy, on the ground that since the law compels the company to use a standard policy the company cannot be regarded as selecting the terms of the policy, and that the company should not, therefore, be compelled to have the policy construed most strongly against itself, as the reason for that rule, namely, that the policy was prepared by the company itself, now no longer exists.

This point has been before the American Courts on several occasions, and, while there seems to be considerable in the argument of the insurance companies, the Courts have decided against them, and hold that doubtful terms occurring in a standard policy are still to be construed in favour of the insured.

"While many of the unfair features of the earlier policies have been eliminated from the modern standard policies," says a leading American textbook on insurance, "the Courts still apply to this instrument the same rule of construction which they applied to the old form. Any doubtful terms are always construed in favour of the insured. It has been contended inasmuch as the law compels the use of the standard policy, and will not allow any variance from it, except in certain limited particulars, the company cannot be regarded as selecting any of the terms of the contract and should not be subjected to an unfavourable rule of construction on that account. . . . This contention, however, has been held to be without merit, for the terms of these standard policies were chosen with reference to the construction by the Courts of similar terms in other policies, and, therefore, ought to be regarded as being used in the sense of their previous construction. It is also apparent from an examination of these instruments, as well as from the history of their adoption, that their terms are really chosen by the underwriters with particular reference to their own interests."

"Nor has the rule the doubtful terms are to be construed favourable to the insured, been changed," says the North Carolina Court, and similar decisions have been given by the Courts of Kentucky, Michigan, Maine, Pennsylvania and other American Courts.

LIEUT. R. A. ROBERTSON WOUNDED.

Lieutenant Robert A. Robertson, (Gordon Highlanders) son of Mr. John Robertson, Joint General Manager of the Northern Assurance Company, was severely wounded in the left arm in France last month. He is now in Hospital in England, and is making good progress.—Post Magazine.

AN IMPORTANT SUIT.

A policyholder has brought suit against the Travelers Insurance Co. of Hartford for $136,000, and the case is of interest to all life companies because it involves the question of the extent of the company's liability under total and permanent disability.

It seems that the policyholder in question had taken a policy in the Travelers for $100,000, paying on it a half-yearly premium. Shortly afterwards in alighting from a train he was thrown under the wheels, losing both feet. Under the policy the company agreed to pay $6,800 annually for 20 years in the event that the assured should suffer total and permanent disability, the loss of both feet being defined as that. As the company did not pay the first annual instalment within one year of the date of injury, the policyholder has brought suit for the whole 20 instalments.

The company's defence is that the policyholder had paid only one half-yearly premium, while the policy provided that the total and permanent disability provision should be effective only after one full yearly premium had been paid.

Aside from the very large amount involved, the after-effects on the total and permanent disability feature in life policies will give the case very great interest in life insurance circles.