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RECENT LEGAL PHASES OF ACCIDENT INSURANCE.

A Paper read by Mr. J. C. Rosenberger, of the Kansas City, Mo., Bar, before the International Association of Accident Underwriters in Annual Convention, July, 1903, at Hotel Frontenac, Thousand Islands, N.Y.

It is also true that liability policies have always been issued on an unsigned schedule, but there has been surprisingly little litigation between the insurer and the insured in this class of insurance, and the law on this point cannot be regarded as settled. My own opinion is that the adoption of the unsigned application means a practical annihilation of the defense of breach of warranty in many States.

Another provision of accident policies which has been seriously impaired by judicial construction is the following: "No agent has authority to change this policy or waive any of its provisions, conditions or limits, and any notice to an agent or any knowledge by him shall not be held to effect any change or a waiver of any part of this policy."

We will suppose a case of this kind. The insured, in his application falsely states that he has never been refused indemnity by any other company, and that no policy ever issued to him has been cancelled. He sustains an injury. Breach of warranty is pleaded. The insured testifies that he told the solicitor, when he signed the application, that he had been insured in some other company which had cancelled his policy, but that the agent said this made no difference, and in filling out the application suppressed the real facts. It is the law in most jurisdictions that the knowledge of the agent is the knowledge of the company to the same extent as if the president of the company had been the solicitor, and this, too, notwithstanding the clause in the policy above quoted, limiting the authority of the agent or solicitor. The theory of these decisions is that the company cannot make the agent its instrument for obtaining business, and at the same time disable him from effecting a waiver while so engaged.

With respect to what constitutes "immediate" disability within the meaning of the words "immediate, continuous and total disability," the position of the company has been greatly strengthened by several recent decisions. It not infrequently happens that the insured sustains an injury which is not suaciently serious, as in his opinion, to require him to abstain from his business. He goes on with his regular duties for several weeks, and when some unexpected result of injury supervenes and he becomes wholly disabled, it is quite uniformly ruled that under such circumstances no indemnity can be recovered, the disability not having been immediate. The recent cases on the subject are: Pepper vs. U. C. T., 69 S. W. 956 (Ky.); Williams vs. Insurance Co., 91 Ala. 898; Merrill vs. Insurance Co., 91 Wis. 329.

As to what constitutes total disability the law has become fairly well settled. The difficulty with this feature relates not so much to the construction of the phrase as to the obstacles in the way of proof. It is almost impossible to checkmate the corrupt and scheming claimant, who sets out to make a case of total disability. If he has no regular occupation and abstain from labour, it is practically optional with him when he will terminate his claim. If his offer of settlement be refused he lets the weeks go by until the next visit of the adjuster. If the company deny liability and suit is begun, it becomes a question of veracity between the claimant and his physicians and the witnesses for the company. The issue is one of fact for a jury, and the usual result may be expected.

A distinction which is often lost sight of by many underwriters, is that which relates to the use of the word "while" and such expressions as "due to" or "resulting from." We frequently find in policies, even at this late day, such a phrase as: "This policy does not cover death or injuries resulting from intoxication." The plain purpose of the underwriter is to exclude from the benefit of the policy an injury due directly or indirectly to intoxication, yet under decisions both old and recent, such a clause will not be construed. There is a clear distinction between the words "while intoxicated" and "resulting from intoxication." Under the former there is no liability on the policy if the injury is sustained while the insured is intoxicated, whether the intoxication contributed to cause the injury or not; while under the clause "resulting from intoxication" it is necessary to prove not only that the insured was intoxicated, but that the intoxication was the sole and direct cause of the injury, and it will not exempt the company even if the intoxication was the indirect cause of the injury.

In other words, if the policy provides that it does not cover an injury *while* the insured is intoxicated the company is not liable, regardless of whether there was any causal connection between the injury and the intoxication or not. The rule is otherwise where the language is "resulting from intoxication." These observations apply with equal force to such clauses as "resulting from fighting," "resulting from disease," or "resulting from entering or trying to enter or leave a moving conveyance." The word "while" should be employed in all such clauses, because under it the company is relieved of liability by showing merely the existence of a certain condition of things, whereas if this word is not employed, the company must go further and show that such condition caused the injury, and this, in most cases, is exceedingly difficult of accomplishment. (See Shader vs. Insurance Co., 66 N. Y. 441; Insurance Co vs. Jones, 94 Ala. 434.)

With respect to service of notice and proof of death or disability, the law of waiver is being steadily extended in favour of the insured. It may surprise you to learn that in some of the States that absolute failure of the insured or beneficiary to serve any notice or proof of any kind or character is no defence to the company, unless the company stand on this defence alone. If in its answer the company join with such defense a plea that it is not liable because the death is not covered by the policy, or that the policy is not in force, this has been held to be, in itself, a waiver of notice and proof. Among the cases to this effect are: Insurance Co. vs. Dierks, 43 Neb. 475; Crenshaw vs. Insurance Co., 71 M. A., 48; Insurance Co. vs. Hildebrand, 54 Neb. 306; Taylor vs. Insurance Co., 50 U. S. 433; Allis Co vs. Insurance Co., 11 Col. App. 264; Insurance Co. vs. Winning, 58 Fed. 546.

But, after all, in spite of some adverse rulings by the courts, it is pleasingly noticeable that the companies are going right ahead adding to their surplus year by year, carrying out the beneficent objects for which they were