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INSURANCE — FALSE STATEMENTS IN APPLICATION — IMPLIED KNOWLEDGE OF INSURANCE COMPANY AS GROUND FOR WAIVER — In a suit by the beneficiary on a life insurance policy, the insurance company defended on the ground that the insured knowingly had made false statements material to the risk in his application and therefore the company had a right to rescind the contract. The insured's false statements were to the effect that he had never been refused insurance on a former application, whereas in fact the John Hancock Insurance Co. had rejected his application in the preceding year. Both the John Hancock Co. and the defendant insurer were members of a common agency which gave information to its members concerning all applicants for life insurance. When the John Hancock Co. had rejected the insured's application, this agency had sent out information that said company had created a record against him. *Held,* for the beneficiary on the ground that the insurer had waived the false statements by issuing the policy when it had within its possession information which, if pursued with reasonable diligence, would have led to knowledge of the fact that the insured had made false statements in his application. *Columbian Nat. Life Ins. Co. v. Rodgers,* (C. C. A. 10th, 1940) 116 F. (2d) 705, cert. den. (U. S. 1941) 61 S. Ct. 838.

In the law of insurance, every material representation is considered as forming an ingredient in the contract, and every material misrepresentation or concealment by the insured is therefore deemed a fraud which will enable the insurer to avoid the contract. However, it is generally held that an insurer may waive or become estopped to rely upon a misrepresentation, false warranty or breached condition.[1] It is nevertheless essential that the insurer have knowledge or notice of the matter upon which the waiver or estoppel is based. The greatest difficulty arises in determining how much knowledge or notice is necessary to ground such a waiver or estoppel. Some authorities demand actual notice, refusing to charge the company with implied knowledge of those facts which its agents[2] might have discovered in the reasonable exercise of their duties.[3] However, many courts are now committed to the doctrine that the company is charged with knowledge of all facts which an agent could have ascertained by pursuing any information within his possession with reasonable diligence.[4] An

[1] VANCE, INSURANCE, 2d ed., 470 (1930).

[2] It is interesting to note that neither the majority of cases nor the textwriters seem to differentiate between the selling agents of the company and those agents which are employed at the home office. One would suppose that those at the home office should be held to a higher degree of care than the selling agents, not only because they are closer to the interworkings of the company but also because they are not subjected to the same conflict of interests that besets the selling agent, who is interested both in the applicant's welfare and that of the company which employs him.

[3] Williams v. Atlas Assurance Co., 22 Ga. App. 661, 97 S. E. 91 (1918); Wiley v. Rome Ins. Co., 12 Ga. App. 186, 76 S. E. 1067 (1912); Insurance Co. of North America v. De Loach & Co., 3 Ga. App. 807, 61 S. E. 406 (1907); North British & Mercantile Ins. Co. v. Steiger, 124 Ill. 81, 16 N. E. 95 (1888); Sanders v. Cooper, 115 N. Y. 279, 22 N. E. 212 (1889); Brown v. Farmers Mut. Fire Ins. Assn., 179 S. C. 274, 184 S. E. 670 (1936); Hartford Fire Ins. Co. v. Wright, 58 Tex. Civ. App. 237, 125 S. W. 363 (1909).

[4] British & Foreign Marine Ins. Co. v. Cummings, 113 Md. 350, 76 A. 571

important element in many of the insurance cases discussing the point at issue is the good or bad faith of the insured. Some courts have said that the rule imputing the agent's actual knowledge to the principal is designed to protect only those acting in good faith, and is not to serve as a shield for unfair dealings,[5] but there are decisions ignoring this distinction.[6] The relationship of insurer and insured is one demanding fair dealing by both parties, and because the insurer is presumed to have acted in reliance on the truth of material representations in the application,[7] it is suggested that the theory of actual knowledge in the insurer's agents should be the basis of notice to the company where the insured has acted in bad faith. However, in some situations the insurer may assume the duty of discovering any misrepresentations in the application,[8] and in such cases the good or bad faith of the insured would appear to be immaterial.[9]

(1910); Metcalf v. Mutual Fire Ins. Co., 132 Wis. 67, 112 N. W. 22 (1907); Life & Casualty Ins. Co. v. King, 137 Tenn. 685, 195 S. W. 585 (1917); Stanley v. Belt Automobile Indemnity Assn., 112 Kan. 412, 210 P. 1096 (1923); Chicago Fire & Marine Ins. Co. v. Sharpensteen, 37 Ariz. 132, 289 P. 985 (1930); Knights of Pythias v. Kalinski, 163 U. S. 289, 16 S. Ct. 1047 (1895); Hulbert v. National Life & Accident Ins. Co., (La. App. 1934) 151 So. 87; Loduca v. St. Paul Fire & Marine Ins. Co., (Mo. App. 1937) 105 S. W. (2d) 1011. See also, 5 COOLEY, BRIEFS ON INSURANCE, 2d ed., 3959 (1927).

[5] Mutual Life Ins. Co. of N. Y. v. Hilton-Green, 241 U. S. 613, 36 S. Ct. 676 (1915); Mudge v. Supreme Court, I. O. O. F., 149 Mich. 467, 112 N. W. 1130 (1907); Satz v. Massachusetts Bonding & Ins. Co., 125 Misc. 798, 211 N. Y. S. 718 (1925); State Mut. Fire Ins. Co. v. Arthur, 30 Pa. St. 315 (1858); National Life Ins. Co. v. Minch, 53 N. Y. 144 (1873).

[6] Miller v. Mutual Benefit Life Ins. Co., 31 Iowa 216 (1873); Sun Life Ins. Co. v. Phillips, (Tex. Civ. App. 1920) 70 S. W. 603.

[7] Shaner v. West Coast Life Ins. Co., (C. C. A. 10th, 1934) 73 F. (2d) 681; Wilson v. Carpenter's Admr., 91 Va. 183, 21 S. E. 243 (1894).

[8] In the principal case the insurance company delayed issuing the policy to the insured on the ground that it was "investigating the previous insurance record of the applicant." It might thus be said that the insurer had assumed a duty to discover any false statements in the application.

[9] Skinner v. Norman, 165 N. Y. 565, 59 N. E. 309 (1901); Pope v. Glenn Falls Ins. Co., 136 Ala. 670, 34 So. 29 (1902); Morrison v. Wisconsin Odd Fellows' Mutual Life Ins. Co., 59 Wis. 162, 18 N. W. 13 (1884); Morin v. Mercury Ins. Co., 87 N. H. 159, 175 A. 864 (1935).