

1934

INSURANCE - APPLICATION OF DIVIDENDS TO THE PURCHASE OF EXTENDED INSURANCE

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Insurance Law Commons](#)

Recommended Citation

INSURANCE - APPLICATION OF DIVIDENDS TO THE PURCHASE OF EXTENDED INSURANCE, 33 MICH. L. REV. 311 (1934).

Available at: <https://repository.law.umich.edu/mlr/vol33/iss2/18>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

INSURANCE — APPLICATION OF DIVIDENDS TO THE PURCHASE OF EXTENDED INSURANCE — The defendant insurance company issued a participating life policy for \$10,000 to the insured, who paid premiums for four years. The premium payable June 10, 1931, was not paid within the thirty-one days of grace allowed by the policy. The insured died October 15, 1931. At that time the "loan" value of the policy was \$910, but loans against the policy amounted to \$898.88. However, on June 10, 1931, a dividend of \$74.80 had been declared in favor of the insured, which he had not elected to have applied in accordance with the options afforded to him by the terms of the policy.¹ Plaintiff, as beneficiary, brought suit on the policy, claiming that the dividend should have been applied to purchase extended insurance, in which event the result would have been to extend the policy beyond the date of the death of the insured.² *Held*, that neither under the terms of the policy, nor under a statute which provided that on default after three years' premium payment, insurer must secure insurance of net value "equal to the reserve at the date of default on the policy, and on any dividend additions thereto,"³ was the company required to purchase extended insurance, but was entitled to pay the dividend in cash. *Williams v. Union Central Life Ins. Co.*, 291 U. S. 170, 54 Sup. Ct. 348 (1934).

By statute or the terms of the policy, or both, forfeiture of a policy for non-payment of premiums is no longer tolerated.⁴ Hence, if the insured has paid premiums for a stated number of years, generally two, the lapsed policy will have a cash or surrender value, which is the amount of the reserve on the policy, minus certain surrender charges. This amount belongs to the insured⁵ and may be used in one of several ways. The insured may elect to take that

¹ The policy gave the following options as to disposition of dividends:

"Dividend Options. Dividends may be withdrawn in cash; or applied to the payment of premiums; or left to accumulate with interest at three per cent., increased from surplus earnings as apportioned by the Directors, until the maturity of the policy, subject to withdrawal at any time; or applied to the purchase of paid-up participating additions to the policy, convertible into cash at any time for the amount of the original dividends or the reserve of the additions, if larger, but payment may be deferred by the company ninety days from the date of application therefor." *Williams v. Union Central Life Ins. Co.*, 54 Sup. Ct. 348 to 349 (1934).

² Plaintiff also argued that the dividend should be applied in reduction of the amount advanced against the policy, but this argument was very properly rejected, since such advances do not create a debt of the insured which must be repaid, nor which the Company could sue for, but rather are a deduction from the amount which the company ultimately must pay. See *Board of Assessors of Parish of Orleans v. New York Life Ins. Co.*, 216 U. S. 517, 30 Sup. Ct. 385, 54 L. ed. 597 (1910). See also *Wagner v. Thieriot*, 203 App. Div. 757, 197 N. Y. S. 560 (1922), *aff'd* 236 N. Y. 588, 142 N. E. 295 (1923).

³ *Tex. Stat.* (1928), art. 4732, subd. 7.

⁴ *RICHARDS, INSURANCE*, 4th ed., p. 628 (1932); 4 *COOLEY, BRIEFS ON INSURANCE*, 2d ed., p. 3804 (1927).

⁵ It will be noted that in the absence of statutory provisions or express agreement, the insured has no right to the surrender value of the policy and the policy will be forfeited for non-payment of premiums. However, all States and life policies now provide for this. *RICHARDS, INSURANCE*, 4th ed., p. 628 (1932).

amount in cash, surrendering the policy; or he may elect to use the sum to purchase paid-up insurance—i. e. a policy fully paid up to cover the life of insured, the value of which is measured by that amount of insurance which the surrender value will purchase as a single premium; or this amount may be used to purchase extended insurance—i. e. insurance at the face value of the policy for so long a period as the surrender value will purchase. In addition to the surrender value, if the policy is a participating one, the insured is entitled to dividends on the policy as they are declared. These may be used in accordance with several options generally offered in the policy, one of which is to purchase paid-up additions to the policy—i. e. the amount added to the face of the policy, purchased by the dividend as a single premium. However, if the insured does not exercise any of the options afforded him regarding the use of the surrender value or dividends, statutes and policies provide for the automatic disposition of these sums. In the principal case the policy provided that the surrender value should be applied to purchase extended insurance. But since the insured had borrowed considerable sums on the policy, these had to be deducted from the amount available for extended insurance,⁶ and what was left was not sufficient to carry the policy beyond the death of insured. Consequently, the plaintiff sought to have dividends applied for this purpose. But the terms of the policy provided that if no election were made as to the disposition of dividends and the policy had lapsed, as here, they should be paid in cash. And the statute set out above did not require the application of dividends to purchase extended insurance; "dividend additions" as used in the statute did not mean dividends, but paid-up additions. The company is thus required to secure extended insurance only with the reserve on the policy and the reserve on any dividend additions thereto. Since the other dividends had been used to pay the premiums, there were no dividend additions in this case to avail the plaintiff.⁷ The result of the case is clearly in accord with the construction insurance men have given to such policies and to such statutes.

W. I. R.

⁶ *Hawthorne v. Bankers' Life Co.*, (C. C. A. 8th, 1933) 63 F. (2d) 971; see *Schoonover v. Prudential Ins. Co.*, 187 Minn. 343, 245 N. W. 476 (1932), and cases cited.

⁷ This interpretation would seem to be clear since the statute speaks of the reserve "on dividend additions," and since dividends are surplus earnings, clearly they require no reserve; whereas there must be a reserve behind paid-up additions to the policy. See *Jefferson v. New York Life Ins. Co.*, 151 Ky. 609, 152 S. W. 780 (1913) (construing "dividend additions" as used in the Kentucky statute to be paid-up additions); see also *Mutual Benefit Life Ins. Co. v. O'Brien*, (Ky. 1909) 116 S. W. 750, rehearing denied in 144 Ky. 308, 138 S. W. 245 (1911). But see *United States Life Ins. Co. v. Spinks*, (Ky. 1906) 96 S. W. 889; 126 Ky. 405, 103 S. W. 335, 13 L. R. A. (N. S.) 1053 (1906) (where the Kentucky court construes "dividend additions" in the New York statute to mean dividends which must be applied by the company to purchase extended insurance. See dicta contrary to decision of principal case in *Harvey v. Union Central Life Ins. Co.*, (C. C. A. 4th, 1930) 45 F. (2d) 78, cert. denied 51 Sup. Ct. 353 (1931). See also *Atlantic Life Ins. Co. v. Pharr*, (C. C. A. 6th, 1932) 59 F. (2d) 1024, cert. denied 53 Sup. Ct. 92 (1932), and *Great Southern Life Ins. Co. v. Jones*, (C. C. A. 8th, 1929) 35 F. (2d) 122, distinguished in the principal case.