

Michigan Law Review

Volume 33 | Issue 5

1935

INSURANCE-DELAY IN ACTING ON APPLICATION-TORT LIABILITY

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Recommended Citation

INSURANCE-DELAY IN ACTING ON APPLICATION-TORT LIABILITY, 33 MICH. L. REV. 807 (1935).

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INSURANCE—DELAY IN ACTING ON APPLICATION—TORT LIABILITY—
Plaintiff sued for damages for alleged negligence of defendant in failing to take action within a reasonable time upon plaintiff's application for a policy of health and accident insurance, plaintiff having paid defendant's soliciting agent the premium quoted by him. *Held*, there is no liability, since there is no duty for defendant to accept or reject an application within a reasonable time. *Schliep v. Commercial Casualty Ins. Co.*, 191 Minn. 479, 254 N. W. 618 (1934).

The instant case, holding that the imposition of tort liability on the insurer for delay in acting on an application would constitute judicial legislation, follows the recent trend in this field of insurance law. After the *Duffy* case¹ (decided

¹ *Duffy v. Bankers' Life Ass'n*, 160 Iowa 19, 139 N. W. 1087, 46 L. R. A. (N. S.) 25 (1913).

in 1913) held the insurer liable in tort for such delay, all the courts in which the question arose, with the exception of those in Arkansas² and Illinois,⁸ followed this holding.⁴ Until 1929 this was considered a firmly established rule, but contrary to prediction⁵ almost all the cases since that date have decided against liability of the insurance company.⁶ The question was presented to the Minnesota court for the first time in the principal case, and it followed the recent decisions, rejecting the "novel" and "interesting and rather surprising rule" of tort liability under such circumstances.⁷ This court adheres to established legal principles,⁸ refusing to make an exception and hold the insurer liable merely because the contract involved was one of insurance.⁹

N. E.

² *Nat. Union Fire Ins. Co. v. School Dist. No. 55*, 122 Ark. 179, 182 S. W. 547 (1916); *Interstate Business Men's Accident Ass'n v. Nichols*, 143 Ark. 369, 220 S. W. 477 (1920).

³ *Bradley v. Fed. Life Ins. Co.*, 295 Ill. 381, 129 N. E. 171 (1920).

⁴ *Wilken v. Capital Fire Ins. Co.*, 99 Neb. 828, 157 N. W. 1021 (1916); *Johnson v. Farmers' Ins. Co.*, 184 Iowa 630, 168 N. W. 264 (1918); *Wallace v. Hartford Fire Ins. Co.*, 31 Idaho 481, 174 Pac. 1009 (1918); *Security Ins. Co. v. Cameron*, 85 Okla. 171, 205 Pac. 151 (1922); *Columbian Nat. Life Ins. Co. v. Lemmons*, 96 Okla. 228, 222 Pac. 255 (1923); *Fox v. Volunteer State Life Ins. Co.*, 185 N. C. 121, 116 S. E. 266 (1923); *De Ford v. New York Life Ins. Co.*, 75 Colo. 146, 224 Pac. 1049 (1924); *Dyer v. Missouri State Life Ins. Co.*, 132 Wash. 378, 232 Pac. 346 (1925); *Strand v. Bankers' Life Ins. Co.*, 115 Neb. 357, 213 N. W. 349 (1927); *Kukaska v. Home Mut. Hail-Tornado Ins. Co.*, 204 Wis. 166, 235 N. W. 403 (1931); *American Life Ins. Co. v. Nabors*, (Tex. Civ. App. 1932) 48 S. W. (2d) 459; *Royal Neighbors v. Fortenberry*, 214 Ala. 387, 107 So. 846 (1926); *Brown v. Missouri State Life Ins. Co.*, 124 Okla. 155, 254 Pac. 7 (1927); *Lewis v. Brotherhood of Locomotive Firemen & Enginemen*, 220 Ala. 270, 124 So. 889 (1929).

⁵ See Funk, "The Duty of an Insurer to Act Promptly on Applications," 75 *UNIV. PA. L. REV.* 207 (1927). Mr. Funk predicted that "the firmly established doctrine" of tort liability for delay in acting on application would be followed by a majority of the courts in which the question had not yet arisen.

⁶ *Savage v. Prudential Life Ins. Co.*, 154 Miss. 89, 121 So. 487 (1929); *Metropolitan Life Ins. Co. v. Brady*, (Ind. App. 1930) 174 N. E. 99; *American Ins. Co. v. School Dist.*, 182 Ark. 158, 30 S. W. (2d) 217 (1930); *Swentusky v. Prudential Ins. Co.*, 116 Conn. 526, 165 Atl. 686 (1933); *Thornton v. Nat. Council Junior Order United States American Mechanics*, 110 W. Va. 412, 158 S. E. 507 (1931); *Munger v. Equitable Life Assur. Soc. of U. S.*, (D. C. W. D. Mo. 1933) 2 F. Supp. 914. The *Munger* case, a leading case refusing to hold the insurer liable, is commented on in 32 *MICH. L. REV.* 395 (1934).

⁷ VANCE, *HANDBOOK OF THE LAW OF INSURANCE*, 2d ed., sec. 64 at p. 190 (1930).

⁸ For an analysis of the difficulties in surmounting the obstacles of established rules of tort law in order to hold insurer liable for delay, see 19 *MICH. L. REV.* 737 (1921), 40 *YALE L. J.* 121 (1930), and 32 *MICH. L. REV.* 395 (1934).

⁹ For a still more recent case involving delay in acting upon an application for hail insurance, see *Tjepkes v. State Farmers Mut. Ins. Co.*, 2 *U. S. LAW WEEK*, index p. 634 (March 5, 1935), also decided by the Minnesota Supreme Court.