

Michigan Law Review

Volume 56 | Issue 4

1958

Insurance - Recovery - Delay of Insurance Company in Rejecting Application for Insurance

Harry D. Krause S.Ed.

University of Michigan Law School

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



Part of the [Contracts Commons](#), [Insurance Law Commons](#), and the [Torts Commons](#)

Recommended Citation

Harry D. Krause S.Ed., *Insurance - Recovery - Delay of Insurance Company in Rejecting Application for Insurance*, 56 MICH. L. REV. 642 (1958).

Available at: <https://repository.law.umich.edu/mlr/vol56/iss4/10>

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—RECOVERY—DELAY OF INSURANCE COMPANY IN REJECTING APPLICATION FOR INSURANCE—Plaintiff, designated as beneficiary by deceased life insurance applicant, sued defendant life insurance company in assumpsit. Deceased, a combat pilot in the Korean War, had applied for one of defendant's policies, passed the medical examination, and made several premium payments on the policy. After the applicant was killed in combat defendant refused payment, contending that it had never accepted the risk but that it had responded to the application with a counter offer containing an aviation waiver. Because of the applicant's frequent change of address and his early death this proposal had never been communicated to him. On appeal from the lower court's directed verdict for defendant, *held*, judgment vacated and case remanded for new trial. The evidence was sufficient to send to the jury the question whether a contract of insurance had resulted prior to applicant's death.¹ *Wadsworth v. New York Life Insurance Company*, 349 Mich. 240, 84 N.W. (2d) 513 (1957).

The subject of delay on the part of an insurance company in handling an insurance application has caused much comment in the law reviews.² Since an application for insurance would seem to be no more than an offer,³ finding the delaying insurance company bound would appear to be in

¹ Since there was evidence which might have warranted the inference that an actual contract had resulted prior to applicant's death it is unlikely that many courts would have reached a different holding on these facts. However, for the purpose of guiding the retrial of the case, the court commented on the consequences of delay in rejecting an application for insurance. In extended dictum the court accepted the "contract theory," imposing a contract as a matter of law when an insurance company fails to reject an application for insurance within a reasonable time. It thus follows the views of a very small minority of jurisdictions. See 32 A.L.R. (2d) 487 (1953).

² Prosser, "Delay in Acting on an Application for Insurance," 3 UNIV. CHI. L. REV. 39 (1935); Funk, "The Duty of an Insurer To Act Promptly on Applications," 75 UNIV. PA. L. REV. 207 (1927); notes and comments, 11 BOST. UNIV. L. REV. 230 (1931); 48 DICK. L. REV. 51 (1943); 1955 INS. L. J. 441; 20 IOWA L. REV. 165 (1934); 23 MARQ. L. REV. 28 (1938); 32 MICH. L. REV. 395 (1934).

³ *Hayes v. Durham Life Ins. Co.*, 198 Va. 670, 96 S.E. (2d) 109 (1957).

conflict with traditional contract law.⁴ Thus, most courts which have held the insurance company liable⁵ have employed the so-called tort theory,⁶ under which the delay in acting upon the insurance application is considered actionable negligence. Although a finding of duty is prerequisite to a holding of negligence,⁷ courts have had difficulty in discovering a duty of the insurance company to reject applications promptly. Some courts have found a duty arising out of the retention of premiums by the insurance company.⁸ Others have found the duty simply by referring to the peculiar nature of the insurance business and the possibility of irretrievable loss to the individual.⁹ Use has been made of the general tort principle that one who undertakes a course of action for another is liable for negligence in that action.¹⁰ In cases where the delay is caused by the insurance agent acting in the scope of his authority, his negligence may be charged to his principal.¹¹ A few courts hold that the state's grant of a franchise to the insurance company obligates the company to provide speedy and efficient insurance service to the public.¹² Aside from the problem of finding a duty, the tort theory involves several other difficulties. The problem of proximate cause has proved to be an insurmountable obstacle for some courts,¹³ while others approach it with the traditional "but for" test, arguing that the damage to the applicant was caused by his having been prevented from obtaining insurance elsewhere while he could still have done so.¹⁴ Since the duty, if one exists, would seem to be to the applicant, most courts consider the tort as committed against the applicant;¹⁵ consequently it has been questioned whether the applicant is actually damaged by the lack of insurance at the time of his death, since he never was to receive any of the proceeds of the policy.¹⁶ Also the argument that no cause of action accrued to the applicant

⁴ *Swentusky v. Prudential Ins. Co. of America*, 116 Conn. 526, 165 A. 686 (1933).

⁵ It must be realized that there is substantial authority disallowing any recovery in cases of this nature. See 32 A.L.R. (2d) 487 (1953).

⁶ See 32 A.L.R. (2d) 487 (1953).

⁷ *Burks v. Colonial Life & Accident Ins. Co.*, (D.C. Ga. 1951) 98 F. Supp. 140, *affd.* (5th Cir. 1951) 192 F. (2d) 643, cert. den. 343 U.S. 915 (1952).

⁸ *DeFord v. New York Life Ins. Co.*, 75 Colo. 146, 224 P. 1049 (1924). But see *Hayes v. Durham Life Ins. Co.*, note 3 *supra*.

⁹ *Coffey v. Polimeni*, (9th Cir. 1951) 188 F. (2d) 539.

¹⁰ See concurring opinion in *Wallace v. Hartford Fire Ins. Co.*, 31 Idaho 481, 174 P. 1009 (1918).

¹¹ *Stark v. Pioneer Casualty Co.*, 139 Cal. App. 577, 34 P. (2d) 731 (1934), noted in 23 CALIF. L. REV. 215 (1934).

¹² *Security Ins. Co. of New Haven, Conn. v. Cameron*, 85 Okla. 171, 205 P. 151 (1922). See 27 HARV. L. REV. 92 (1913).

¹³ It is often held that the damage is proximately caused by the happening of the contingency rather than by the inaction of the insurance company. See *Munger v. Equitable Life Assur. Soc.*, (D.C. Mo. 1933) 2 F. Supp. 914.

¹⁴ *Wyble v. Preferred Life Assur. Soc.*, (La. App. 1955) 83 S. (2d) 785.

¹⁵ *Smith v. Minnesota Mut. Life Ins. Co.*, 86 Cal. App. (2d) 581, 195 P. (2d) 457 (1948); *Burks v. Colonial Life & Accident Ins. Co.*, note 7 *supra*.

¹⁶ *Thornton v. Order of Mechanics*, 110 W. Va. 412, 158 S.E. 507 (1931).

during his life is not without some force.¹⁷ From the point of view of incidence of damage it would appear only reasonable to consider the tort as one committed against the intended beneficiary;¹⁸ however, it is very difficult to find a duty to the beneficiary. The measure of damages has generally been the face amount of the policy applied for,¹⁹ rather than the premiums paid. Some courts have found contributory negligence of the applicant in his failure to make an inquiry or to procure insurance elsewhere after a reasonable time has elapsed.²⁰ A very small group of cases allows recovery on a contract theory.²¹ Under this approach, which is favored by the principal case in extended dictum, silence of the insurance company over an unreasonable period of time is held to amount to an implied acceptance, binding the company to the contract applied for.²² Most courts, however, reject this view as being in conflict with established principles of contract law,²³ for normally after the expiration of a reasonable period of time an offeror should consider his offer rejected rather than accepted.²⁴ The contract theory has the advantage of providing logical certainty as to the measure of damages and the identity of the person damaged and entitled to recovery;²⁵ therefore, at least in these respects, it would appear to be preferable to the tort theory of recovery. The cases have not favored estoppel arguments.²⁶ Courts have questioned whether an applicant can reasonably consider the retention of his application equivalent to an acceptance of it,²⁷ and have doubted that his failure to seek insurance elsewhere was induced by the insurance company.²⁸ Many cases are complicated by additional factors. It appears to be the general practice of insurance companies to issue a "binder"²⁹ at

¹⁷ See *Bradley v. Federal Life Ins. Co.*, 295 Ill. 381, 129 N.E. 191 (1920).

¹⁸ See *Bekken v. Equitable Life Assur. Soc.*, 70 N.D. 122, 293 N.W. 200 (1940).

¹⁹ While this would appear to be a contract measure of damages, courts have held that the loss suffered was the value of the policy applied for. *Mann v. Policyholders' Nat. Life Ins. Co.*, 78 N.D. 724, 51 N.W. (2d) 853 (1952).

²⁰ *Wyble v. Preferred Life Assur. Soc.*, note 14 *supra*.

²¹ See 32 A.L.R. (2d) 487 (1953). It has also been suggested that there is an implied contract to decide promptly whether to accept or reject the risk. See *Travellers Insurance Co. v. Taliaferro*, 176 Okla. 242, 54 P. (2d) 1069 (1935).

²² See *Harvey v. United Ins. Co.*, 173 Kan. 227, 245 P. (2d) 1185 (1952).

²³ Compare *Hayes v. Durham Life Ins. Co.*, note 3 *supra*, with 1 *CONTRACTS RESTATEMENT* §72 (1932), where silence is held to be an acceptance when accompanied by acts of dominion over things offered to the offeree.

²⁴ *More v. N.Y. Bowery Fire Ins. Co.*, 130 N.Y. 537, 29 N.E. 757 (1892).

²⁵ The measure of damages would clearly be the face amount of the policy. Also, this view would allow recovery by the intended beneficiary rather than by the estate of the deceased applicant.

²⁶ *Paulk v. State Mut. Life Ins. Co.*, 85 Ga. App. 413, 69 S.E. (2d) 777 (1952).

²⁷ See *Reed v. Prudential Ins. Co.*, 229 Mo. App. 90, 73 S.W. (2d) 1027 (1934).

²⁸ *Zielinski v. General American Life Ins. Co.*, (Mo. App. 1936) 96 S.W. (2d) 1059.

²⁹ "The memorandum of an agreement for insurance intended to give temporary protection pending investigation of the risk and issuance of a formal policy." *BLACK'S LAW DICTIONARY*, 4th ed., p. 213 (1951).

the time of application when the premium is paid in advance.³⁰ The argument that such binders create temporary contracts of insurance has been made with a degree of success³¹ which varies with the court and the wording of the binding receipt. Another misleading practice is the customary requirement that renewal premiums must be paid on the anniversary of the date of application rather than of the date of final acceptance.³² Thus it would seem that an insurance company could help to avoid liability in some of these cases by being as precise as possible in its dealings with applicants. Public policy, of course, is a vital factor in these cases. Arguments can be made on both sides of the controversy.³³ While the public interest in the prompt availability of insurance should not be underestimated, the interest in maintaining low insurance rates is perhaps as great.³⁴ The attempts to apply inapplicable existing doctrine to these cases frequently can be considered judicial legislation;³⁵ and in view of the persistence of the problem, it would seem to be desirable for the legislatures to act in this field.

Harry D. Krause, S.Ed.

³⁰ See comments, 44 *YALE L. J.* 1223 (1935); 63 *YALE L. J.* 523 (1954).

³¹ See *Rabb v. Public Nat. Ins. Co.*, (6th Cir. 1957) 243 F. (2d) 940; *Killpack v. National Old Line Ins. Co.*, (10th Cir. 1956) 229 F. (2d) 851. See also 107 *A.L.R.* 194 (1937); 60 *HARV. L. REV.* 1164 (1947).

³² It is generally held, however, that receipt of premiums does not abrogate the necessity for acceptance and issuance of a policy. See *Reese v. American Nat. Ins. Co.*, (5th Cir. 1949) 175 F. (2d) 793. Nor is the circumstance that the offer was solicited by the insurance company regarded as relevant. See *Patten v. Continental Cas. Co.*, 162 *Ohio St.* 18, 120 *N.E.* (2d) 441 (1954).

³³ It must be remembered that in the usual case a widow or orphans appear as plaintiffs.

³⁴ It is apparent that the other policy holders are paying for each recovery in cases of this nature, either by higher future rates or by having less funds available to secure their policies.

³⁵ See *Savage v. Prudential Life Ins. Co. of America*, 154 *Miss.* 89, 121 *S.* 487 (1929).