Hastings Law Journal

Volume 8 | Issue 2 Article 7

1-1957

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INSURANCE: APPLICATION AS CONSTITUTING AN OFFER BY THE INSURER

It is accepted that in the usual case involving negotiations for an insurance contract the insured makes the offer by his application to the company and they in turn either accept or reject.[1] As stated in *Burch v. Hartford Fire Insurance Co.*:[2] "An application for insurance, whether or not accompanied by payment of premium, amounts to but a proposal . . . ."[3] However, in the recent case of *Metts v. Central Standard Life Ins. Co.*,[4] the California District Court of Appeals set forth a striking exception to this general rule.

The facts in the *Metts* case were as follows: The plaintiff, Howard L. Metts, had been appointed by the defendant company as agent to sell polio insurance policies. On May 15, 1952, he filled out and mailed to the defendant an application for polio insurance for himself and his family, together with his personal check for the premium. On May 21, 1952, plaintiff's sixteen and one-half month old son was diagnosed as having polio. The defendant denied liability on the ground that the application was an offer and that this had not been accepted by the company.

The plaintiff contended that the application was itself an offer which he had accepted. This contention was based on certain words which were printed *on the back* of the application form as follows:

> "Infantile Paralysis. Immediate First Day Coverage Automatically Covers Entire Family. No Waiting Period. Pays from First Day that Poliomyelitis manifests itself and thereafter . . . ."[5]

The court decided that this language was ambiguous, and quoting from an earlier California Supreme Court case,[6] stated:

> "Where two interpretations equally fair may be made, that which affords the greatest measure of protection to the assured will prevail."[7]

Accordingly, the holding was that the insurance application was itself an offer of insurance which had been accepted by the applicant with coverage to take effect immediately upon his signing and posting of the application form.

There is little argument as to whether this is sound legal doctrine. As pointed out in *Mah See v. North American Acc. Ins. Co.*,[8] the insurance company draws the contract and therefore uncertainties and ambiguities should be resolved in favor of the insured. This doctrine has, however, found its most frequent acceptance in those cases in which the insurance *policy* itself was interpreted, and not where, as in the *Metts* case, the *application* for insurance was to be interpreted.[9] The present case evidences an extension of the rule far beyond any other case where the interpretation of the application, rather than the policy, was in issue.

In deciding this case the court relied heavily upon the decision in *Ransom v. Penn. Mutual Life Ins. Co.*,[10] which involved a statement within the application itself (not on the reverse side) to the effect that if the first premium was paid in

[1] VANCE, INSURANCE, § 35 (3d ed. 1951).
[2] 85 Cal.App. 542, 259 Pac. 1108 (1927).
[3] *Id.* at 552, 259 Pac. at 1112.
[4] 142 Cal.App.2d ....., 298 P.2d 621 (1956).
[5] *Id.* at ....., 298 P.2d at 624.
[6] Fageol Truck & Coach Co. v. Pac. Indemnity Co., 18 Cal.2d 731, 117 P.2d 661 (1941).
[7] *Id.* at 747, 117 P.2d at 669.
[8] Mah See v. North Am. Acc. Ins. Co., 190 Cal. 421, 213 Pac. 42 (1923).
[9] 14 CAL. JUR., *Insurance*, § 24 (1924); 29 AM. JUR., *Insurance*, § 166 (1940).
[10] 43 Cal.2d 420, 274 P.2d 633 (1954).

full in exchange for an attached receipt signed by the company's agent when the application was signed, the insurance would be in force "subject to the terms and conditions of the policy applied for."[11] The court stated that "An application must be construed as it would be taken by the ordinary applicant . . . ."[12] The court was especially moved to apply the doctrine favoring the assured in the *Ransom* case because it was clear that the applicant's belief that he would receive immediate insurance probably acted as an inducement to him to remit the premium, and for the company to receive the premium along with the application would be of great advantage to it.

Although the *Ransom* decision was heavily relied upon by the court in the *Metts* case, the two seem to have little in common, except that they both deal with the application rather than with the policy. In the *Ransom* case the applicant was expressly invited to send the premium. The ambiguous words were located within the body of the application form. It should also be noted that the applicant there was an average insurance applicant, and could be expected to interpret the language used in the same manner as would any average person.

But in the *Metts* case, there was no request for the premium. Also, the words which were interpreted against the insurance company were not within the application but rather upon the back. And finally the applicant was not an average applicant, but rather, an insurance agent for the defendant who issued the applications. It would seem that because the applicant was himself an insurance agent, the court might feel far less constrained to extend the rule in his case.

In the usual case, "An insurance company is not bound to accept an application or proposal for insurance, but may reject it for any reason or arbitrarily."[13] In view of this almost universally accepted rule, the facts should be very strong before an exception is made. The general rule in regard to agents who apply to their principal for insurance would seem to militate against making an exception in their favor:

> "Where an insurance agent himself is an applicant for insurance, the company is not bound or obligated, unless, being fully informed of the facts, the company accepts the risk."[14]

This rule was not referred to by the court in their opinion in the *Metts* case.

We should also consider the effect of the wording being on the back rather than incorporated within the application itself. On this matter Mr. Justice Carter of the California Supreme Court has stated:

> "With respect to the notation on the back of the application heretofore mentioned, suffice it to say that it was no part of the application and cannot be said to be binding. The matter appearing on the face of the application should control."[15]

This writer feels that the rule of the *Metts* case as generally applied, is highly desirable, because insurance companies do maintain an overwhelmingly superior position to that of the insured. However, even conceding the inherent flexibility

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[11] *Id.* at 423, 274 P.2d at 634.

[12] *Id.* at 425, 274 P.2d at 636.

[13] K. C. Working Chem. Co. v. Eureka Sec. Fire & Marine Ins. Co., 82 Cal.App.2d 12, 185 P.2d 832 (1947).

[14] Muncey v. Sec. Ins. Co., 43 Idaho 441, 252 Pac. 870 (1927). See also Annot., 83 A.L.R. 1507, 1509 (1933).

[15] Linnastruth v. Mutual Ben. Health & Acc. Ass'n, 22 Cal.2d 216, 137 P.2d 833 (1943).