

CHAPTER 62

ACCIDENT AND HEALTH INSURANCE

62.01 POLICY; FORM, APPROVAL

HISTORY. 1913 c 156 s 1; 1939 c 146 s 1; 1947 c 440 s 1; 1951 c 439 s 1; 1951 c 565 s 1, 2.

Corporation in medicine; the medical cooperative. 35 MLR 373.

Insurer's right to recover the amount of compensation award from a third party tortfeasor on an implied contract of indemnity. 35 MLR 684.

Automobile insurance, omnibus clause, implied permission through continued use. 36 MLR 157.

A farmer who suffered fatal injuries when his tractor collided with a barn and overturned was within the provisions of a policy insuring the farmer against death or injury through accidental means while operating an "automobile." *Koser v American Casualty Co.*, 162 Pa. 63, 56 At.(2d) 301.

A public liability insurance policy providing for the payment of damages because of bodily injury sustained by person or persons arising out of the ownership, maintenance or use of the premises, for the purpose stated in the declarations, and all operations during the policy period which are necessary to such purposes, covers injuries to a minor child living on the premises and injured in a fall down an elevator shaft located thereon, where it appeared from the record that the elevator had been locked down, padlocked, and was not in use for at least five years before the accident occurred. The language of an insurance policy being that selected by the insurer and for its benefit, must be clear and unambiguous, and any reasonable doubt as to its meaning must be resolved in favor of the insured. *Chase v General Accident Fire & Life Corp.*, 225 M 363, 30 NW(2d) 633.

Where defendant issued an insurance policy to plaintiff against loss or damage to a combine caused by fire, lightning, and transportation, in which the transportation clause was supplemented by a clause describing the transportation coverage as "by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the combine is being transported on land or on water," defendant is liable for loss incurred in a collision in which the combine first collided with another object before the conveyance on which it was loaded struck such object. *Jorgenson v Girard Fire Ins. Co.*, 229 M 49, 38 NW(2d) 209.

Section 62.01, subdivision 6, as amended by Laws 1947, Chapter 440, does not prohibit a group health and accident plan which includes members of an association. OAG Oct. 21, 1948 (249-B-9).

62.02 PROVISIONS OF POLICY

Auto collision policy with fire loss excluded; proximate cause. 32 MLR 71.

War risk exclusion clauses; meaning of the term "war." 32 MLR 74.

Effect of insurance on immunity from total liability; obligation of insurer. 33 MLR 634.

Immunity of governmental subdivisions from total liability. 33 MLR 635.

Where defendant insurance companies issued to plaintiff's decedent, a physician specializing in obstetrics and gynecology, three health and accident policies, two of which contained the following coverage clause: "If such injuries shall wholly and continuously disable the Insured for one day or more, the Company will pay a

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monthly indemnity ***so long as the Insured lives and suffers said total loss of time," and the third contained this provision: "For such injuries that wholly and continuously disable the Insured so long as the Insured lives and total loss of time continues" and where insured suffered a serious injury, the court did not err in charging the jury as follows: "I charge you that the phrase 'wholly and continuously disabled so long as the insured lives and total loss of time continues' does not mean that the plaintiff was required to be utterly helpless or absolutely dependent in order to sustain a recovery in this action. It is enough that he be unable to perform the substantial and material acts necessary to the successful prosecution of his occupation or employment in the customary and usual way. I charge you that the term 'total loss of time' refers to the loss of business time connected with plaintiff's occupation of physician and surgeon specializing in obstetrics and gynecology." *Weum v Mutual Benefit Health & Accident Ass'n, Omaha, 237 M 89, 54 NW(2d) 20.*

62.03 STANDARD PROVISIONS

A public liability insurance policy providing for the payment of damages because of bodily injury sustained by person or persons arising out of the ownership, maintenance or use of the premises, for the purpose stated in the declarations, and all operations during the policy period which are necessary to such purposes, covers injuries to a minor child living on the premises and injured in a fall down an elevator shaft located thereon, where it appeared from the record that the elevator had been locked down, padlocked, and was not in use for at least five years before the accident occurred. The language of an insurance policy being that selected by the insurer and for its benefit, must be clear and unambiguous, and any reasonable doubt as to its meaning must be resolved in favor of the insured. *Chase v General Accident Fire & Life Corp., 225 M 363, 30 NW(2d) 633.*

62.06 FALSE STATEMENTS

Recovery from insured of payments by insurer to third person beneficiary after discovery of the insured's fraud. 33 MLR 426.

62.07 DEFENSES, WHEN NOT WAIVED

Effect of insurance on immunity from total liability; obligation of insurer. 33 MLR 634.

Immunity of governmental subdivisions from total liability. 33 MLR 635.

Effect of temporary breach of radius indorsement in automobile liability insurance policy. 34 MLR 474.

A contract of indemnity may provide for indemnity against loss or damages and also indemnity against liability and a single contract may indemnify against both actual loss or damages and liability; and in case of a strict contract of indemnity, no action accrues thereon until the indemnitee has suffered a loss against which the covenant runs by being compelled to pay and paying. *Aetna Casualty & Surety Co. v Bros, 226 M 466, 33 NW(2d) 46.*

62.08 ALTERATION OF APPLICATION

Effect of temporary breach of radius indorsement in automobile liability insurance policy. 34 MLR 474.

62.09 POLICY ISSUED IN VIOLATION OF CHAPTER

Effect of temporary breach of radius indorsement in automobile liability insurance policy. 34 MLR 474.

62.10 RECIPROCAL PROVISIONS

Retaliatory insurance tax laws. 32 MLR 256.

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62.11 DISCRIMINATION PROHIBITED

Appropriation of dividends and classification of policies, with or without disability benefits, for purposes of anti-discrimination statutes. 32 MLR 186.

62.12 APPLICATION

NOTE: See Section 131.26.

CHAPTER 63

ASSESSMENT BENEFIT ASSOCIATIONS

NOTE: Sections 63.36 and 63.37 provide for licensing and supervision of employers by the commissioner of insurance after reference to the chairman of the industrial commission. The present law relating to assessment benefit associations originated with Laws 1933, Chapter 241, (Sections 63.01 to 63.22). Section 63.23 excepts certain charitable or religious associations from provisions of the chapter; but as originally enacted, permitted certain existing associations, under defined conditions, to qualify under the act. Sections 63.24 through 63.35 deal with re-insurance. Associations organized under this chapter are not subject to premium tax under provisions of section 60.63. They are exempt under section 61.57. Laws 1945, Chapter 178, coded as section 63.015, was a much needed law, permitting amendment of articles to permit many new features. The law was again very materially amended by Laws 1947, Chapter 440. Laws 1933, Chapter 241, Section 23, permitted certain existing associations, under defined conditions, to qualify under this act.

63.01 AUTHORIZATION

Assessment benefit associations may transform themselves into fraternal beneficiary societies, cooperative life or legal reserve life insurance companies. 32 MLR 387.

63.015 Renumbered 63.235.

63.02 APPLICATIONS, PERMIT TO SOLICIT

HISTORY. 1933 c 241 s 2; 1951 c 257 s 1.

63.235 LEGAL RESERVE PLAN

HISTORY. 1945 c 178 s 2; 1951 s 257 s 2.

A "waiver" is a voluntary relinquishment of a known right and consideration is not essential to establish it. The evidence supported a finding that the insurer waived the forfeiture clause relating to double indemnity and the insurer could not thereafter revoke its action in so doing. The instructions given by the trial judge when read as a whole sufficiently presented the question of the insurer's waiver of the right to declare a forfeiture of the double indemnity provision. *Engstrom v Farmers & Banker's Life Insurance Co.*, 230 M 308, 41 NW(2d) 422.

63.36 LICENSES REQUIRED FOR EMPLOYEES MAKING DEDUCTIONS FROM WAGES OF EMPLOYEES

Laws 1943, Chapter 86, authorizes the deletion of laws for fire caused by foreign enemies as a risk excepted from the standard fire insurance policy. 31 MLR 57.