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Insurance--Accidental Death--Notice to Insurer

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requiring of an examination and license without continuing supervision would provide little protection for the public. *Barsky v. Board of Regents, supra.*

The act herewith concerned is aimed at the practitioner, not at the science, and the line has been drawn where the legislature has found the practitioner to be "border-lining" the other recognized theories of healing. Where human lives are concerned, it is inadequate to provide merely a penalty for exceding limitations. This act erases the opportunity for "border-lining" by requiring a higher standard of skill and learning.

Such "border-lining" is evident among other professions also. An accountant, called upon to solve a tax problem, may inadvertently give his client purely legal advice. The same result may occur in the relationship between client and real estate broker. A nurse, in the normal course of her duties, might be guilty of practicing medicine without a license. However, it would clearly be unreasonable to require all accountants and real estate brokers to be lawyers and all nurses to be graduates of accredited medical colleges for doctors. Each of these professions is necessary to facilitate daily business and personal affairs and none is inherently dangerous. The most important distinction is that the titles attached to these professions and the definitions of the professions themselves do not mislead the public by appearing to show qualification in any other field.

The South Carolina legislature has determined that naturopaths are not adequately equipped to be general practitioners. Whether or not this determination was reasonable is, at most, fairly debatable. In such case it is clear that the court will not substitute its judgment for that of the legislature. *Zahn v. Board of Public Works, supra; Radice v. New York,* 264 U.S. 292 (1924); *Rast v. Van Deman & L. Co.,* 240 U.S. 342 (1916); *Price v. Illinois,* 238 U.S. 446 (1915); *Hadacheck v. Sebastian,* 239 U. S. 394 (1915); *Davis* v. *Beeler,* 185 Tenn. 638, 207 S.W.2d 343 (1947). See GELLHORN, INDIVIDUAL FREEDOM AND GOVERNMENTAL RESTRAINTS (1956).

C. R. S.

INSURANCE—ACCIDENTAL DEATH—NOTICE TO INSURER.—*A*, a resident of Virginia, purchased an airline ticket for an airplane trip from Newark to Provincetown. Before boarding the plane at Newark, he purchased from *B* an airline trip insurance policy with *A*'s wife, *C*, as beneficiary. The plane carrying *A* went down at sea and *A* was

lost, presumably drowned, and his body was never found. *C* was prostrate with grief and shock at the news and remained under a doctor's care for two or three weeks. Since she had received no official notification of his death, *C* refused to believe that *A* was dead. On July 10, 1953, in order to have an administrator appointed to handle *A*'s affairs, *C* made oath that *A* died on July 8, 1953. On August 13, 1953, she signed death claimant's statements for the proceeds of two insurance policies with another company upon the insistence of the agent that it was necessary before the company could investigate the matter. *C* still maintained that she was not convinced of *A*'s death. After a fruitless trip to Provincetown to obtain additional information of the accident, *C* employed an attorney to represent her and notice of *A*'s death was given to the insurer on September 1, 1953. The insurance policy issued by *B*, as expressly amended to comply with the applicable Virginia statute, required that notice be given within twenty days after the occurrence of the loss or as soon thereafter as is reasonably possible. Upon these facts, the district court, sitting without a jury, found as a fact that notice was given as soon as was reasonably possible and gave judgment for *C*. *Commander v. Fidelity & Casualty Co.*, 135 F. Supp. 59 (W.D. Va. 1955). On appeal to the United States Court of Appeals, *held*, that the facts sustain the finding of the district court that notice was given as soon as was reasonably possible. *Fidelity & Casualty Co. v. Commander*, 231 F. Supp. 347 (4th Cir. 1956).

This case presents a unique situation in regard to giving notice of a loss covered by insurance. Heretofore, failure to give notice within the time required by the policy has been excused where it was impossible to give such notice, as where the insured was physically incapable because of injuries. *Glens Falls Indemnity Co. v. Harris*, 168 Va. 438, 191 S.E. 644 (1937), or where the insured was insane, *Swann v. Atlantic Life Ins. Co.*, 156 Va. 852, 159 S.E. 192 (1931). It has been held that where the beneficiary of the policy was ignorant of its existence for several months after the insured's death, but immediately gave the insurer notice of death when the policy was found, such notice was sufficient. *Continental Casualty Co. v. Lindsay*, 111 Va. 389, 69 S.E. 344 (1910).

In the instant case, except for the time the beneficiary was under a doctor's care, she was not physically incapable of giving notice, nor was she ignorant of any existing fact which prevented her from notifying the insurer of the accident. The only apparent reason for the delay is that the beneficiary was not convinced of

the insured's death. Whether notice was given as soon as was reasonably possible seems to depend upon whether it was reasonable for the beneficiary to cling to the belief that the insured was still alive.

The district judge's opinion relates facts which indicate that this is not just another instance where one standing in close relationship to the deceased refuses to accept the fact of death merely because she does not want to believe it. Immediately after the accident, the insured was seen alive and swimming in the water. He was not seen thereafter. The law presumes that a person shown to be alive at a given time remains alive until the contrary is shown by some sufficient proof, or, in the absence of such proof, until a different presumption arises. *Ashby v. Red Jacket Coal Corp.*, 185 Va. 202, 38 S.E.2d 436 (1946); 16 AM. JUR., *Death* § 13 (1936). That presumption remains in full force and effect until the passage of the seven year statutory period, and is conclusive in the absence of credible evidence to the contrary. *Ashby* case, *supra.* Since proof of death was not an issue in the principal case, no evidence was presented to rebut the presumption. It is certainly rebuttable. In other jurisdictions it has been held that the death of an absent person may be inferred or presumed before the expiration of seven years where it appears that within the period he encountered some special peril or eminent danger which might reasonably be expected to destroy life, such as exposure to drowning or murder. 16 AM. JUR., *Death* § 27 (1936). There is no case holding that such a presumption exists under Virginia law. However, where such person encounters some special peril, as did the insured in this case, the circumstances of the accident, the age and physical condition of such person, and the probability that he was injured in the accident, may be sufficient to rebut the presumption of the continuance of life. But as no sufficient proof is present, the presumption stands in support of the beneficiary's belief, making it an entirely reasonable one under the circumstances.

The policy of insurance here involved contemplated the possibility that there might not be direct evidence of the insured's death and provides that if the insured's body is not recovered within one year after the accident it shall be presumed that he died as a result of the accident. In any action against the insurer in which the fact of the insured's death should come into question, no liability could attach, in the absence of other proof of death, until one year after the accident. The insurer is not bound to consider the insured as

dead until the presumption arises under the policy. Is there any conceivable reason for requiring the beneficiary to consider him as dead before that time? In the absence of proof of death, the beneficiary should be at liberty to believe that the insured lives until the presumption of his death arises. When the beneficiary becomes convinced of his death and gives notice to the insurer, it should not be said that such notice was not given as soon as was reasonably possible.

Whether notice of the loss was given as soon as was reasonably possible was a question of fact to be determined by the jury. *Glens Falls Indemnity Co. v. Harris, supra; Yanago v. Aetna Life Ins. Co.*, 164 Va. 258, 178 S.E. 904 (1935). No jury having been demanded by the parties, the court made the necessary findings of fact. The court of appeals cannot reverse findings of fact of the district court unless they are clearly erroneous. *United States v. Ladd,* 193 F.2d 929 (4th Cir. 1952); *Rodgers v. United States Lines,* 189 F.2d 226 (4th Cir. 1951). Under the circumstances it cannot be said that the finding of the district court that notice was given as soon as was reasonably possible was erroneous. It follows that the decision of the court of appeals was correct.

L. L. P.

STATES—CONSTITUTIONAL DEBT LIMITATION—ISSUANCE OF REVENUE BONDS SECURED BY PLEDGE OF UNIVERSITY TUITION FEES.—Relator, under authority of W. Va. Acts 1956, c. 7, adopted a resolution authorizing the issuance of revenue bonds of the State to finance construction of agricultural and engineering buildings at West Virginia University. The bonds were to be secured by a pledge of a new special fund to be composed of University tuition fees, which were formerly paid into the State treasury as general revenue. The State constitution provides: "No debt shall be contracted by the State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war . . . ." W. VA. CONST. art. X, § 4. *D*, Secretary of State, refused to attest or place the Great Seal of the State upon one of the bonds, contending that the bond issue would create a debt against the State, in violation of the State constitution. Relator sought a writ of mandamus to compel *D* to do the necessity acts to complete the execution of the bond. *Held,* that the legislation would not create a debt against the State within