

INSURANCE: Union Automobile Club membership contract providing reasonable, minimum and maximum indemnities in money for risks incurred in a contract of insurance and may not be issued without compliance with the Insurance Code of Missouri.

October 10, 1950



Honorable C. Lawrence Leggett
Superintendent, Division of Insurance
Department of Business and Administration
Jefferson City, Missouri

Dear Sir:

The following opinion is rendered in compliance with your request of September 20, 1950, reading as follows:

"Enclosed herewith is a specimen copy of the contract written by the Union Automobile Club of Kansas City, Missouri. Also enclosed are changes suggested by their attorney in Articles 14, 15, and 16.

"This company has been operating in the State of Missouri, and the question has been raised by a number of persons as to whether or not the contract as written constitutes doing insurance business. The attorney for this company was called in and has made the suggested changes enclosed herewith.

"Will you please advise this department whether or not the contract, as written, with the suggested changes, constitutes an insurance contract and comes under the regulation of the insurance department which would require them to organize a corporation under some of the insurance laws of the State of Missouri."

In this instance we must construe the form of membership contract, forwarded with the letter requesting an opinion from this office, which is being issued by Union Automobile Club of Missouri. It stands admitted that Union Automobile Club is not at this time licensed by the Division of Insurance to conduct an insurance business in Missouri. If provisions of the membership contract being

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construed cause the same to fit the definition of an insurance contract as defined by our appellate courts, then the Union Automobile Club or those acting for or in its behalf in effecting the membership contract are amendable to the general regulatory and penal provisions of Missouri's Insurance Code found in Chapter 37, R. S. Missouri, 1939.

Section 6020 of Article 10, Chapter 37, R. S. Missouri, 1939, provides, in part, as follows:

"Any association of individuals, and any corporation transacting in this state any insurance business, without being authorized by the superintendent of the insurance department of this state so to do, or after the authority so to do has been suspended, revoked, or has expired, shall be liable to a penalty of two hundred and fifty dollars for each offense, which penalty may be recovered by ordinary civil action in the name of the state, * * *"

In State ex rel. Inter-Insurance Auxiliary Company v. Revelle, 165 S.W. 1084, 257 Mo. 529, 1. c. 535, the Supreme Court of Missouri spoke as follows:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he shall suffer a specified loss."

In the case of Rogers v. Shawnee Fire Insurance Company of Topeka, Kansas, 111 S.W. 592, 132 Mo. App. 275, 1. c. 278, the Kansas City Court of Appeals used the following language in discussing the words, "indemnity" and "insurance":

"Indemnity signifies to reimburse, to make good and to compensate for loss or injury
* * * Insurance is defined by Bouvier, 'to be a contract by which one of the parties, called the insurer, binds himself to the other called the insured, to pay him a sum of money, or otherwise indemnify him.'"

We now turn to the membership contract and discuss its various provisions. The face of the contract discloses that the services or benefits described therein are provided by Union Automobile Club to the holder of such contract only after a membership fee in money is paid by the holder, and that such membership is

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for a term of years; that the services or benefits provided by the contract are available to the member holding such contract and his immediate family, on a motor vehicle to be described in the contract, and that the contract "is a non-assessable automobile club membership." In the contract, services and benefits are fully described in twenty-five general provisions. At the very outset we find that general provisions numbered 4, 5, 6, 13, 18, 19, 20, 21, 22, 23, 24 and 25 provide for certain services to be rendered by the Union Automobile Club to its contract holders without such persons being obligated over and above the membership fee charged. This cannot be said of general provisions numbered 1, 2, 3, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 17 of the contract, and since the ultimate conclusion to be reached in this opinion will result in denominating benefits under these numbered provisions to be insurance risks, such benefits are now described, as they are titled in the contract, as follows:

1. Day and night road service;
2. 24-hour towing service;
3. Tire changing;
7. \$5,000 bail bond;
8. Legal expense for defense of criminal charges;
9. Legal expense for defense of traffic violations;
10. Legal expense for defense of property damage claims;
11. Legal expense for collecting collision damages;
12. Legal advice and counsel;
14. Accident medical care;
15. Ambulance service;
16. Hospital benefits;
17. Cash for accident travel expense.

In the numbered and titled provisions, as above set forth, except general provisions numbers 7 and 17, the Union Automobile Club contracts to reimburse the contract holder in "reasonable," and "maximum" amounts of money actually expended by the contract holder for expenses resulting directly from the risks incurred. General provision numbered 7 provides a bail bond in the amount of \$5,000 and general provision 17 provides not to exceed \$50 in cash for travel expenses from the scene of an accident. It is not feasible or necessary to discuss each of the general provisions of the contract which provide indemnity in order to rule on the contract as a whole. However, general provisions numbered 14, 15, and 16 of the contract are hereinafter set forth, in order to acquaint readers of this opinion with the scope of indemnity offered by the contract.

"XIV. The Club will reimburse the member upon presentment of a receipted bill for an amount not to exceed Ten (\$10.00) Dollars for professional services rendered to the member or any

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of member's immediate family at the scene of a collision involving the motor vehicle described herein or within twenty-four (24) hours hereafter by a duly licensed medical doctor when such services are for bodily injuries sustained as a direct result of collision occurring while said member or any of member's immediate family is engaged in the operation of the motor vehicle herein described.

"XV. The Club will reimburse the member upon presentment of a receipted bill for an amount not to exceed Five (\$5.00) Dollars for conveying the member or any of member's immediate family from the scene of a collision involving the herein described motor vehicle to the nearest place at which the member or any of member's immediate family can receive medical treatment, when such medical treatment is urgently required due to bodily injuries received as a direct result of such collision.

"XVI. The Club will reimburse the member upon presentment of a receipted bill for hospital expenses incurred by the member or any of member's immediate family, when said member or any of member's immediate family sustains bodily injuries as a direct result of a collision occurring while said member or any of member's immediate family is engaged in the operation of the vehicle herein described, and when said member or any of member's immediate family is committed for treatment to a recognized hospital by a duly licensed medical doctor. The Club will, upon request, pay member's hospital bill as hereinbefore set forth, directly to the hospital upon presentment of a verified statement from said hospital. The limit of the Club's obligation under this Section shall not exceed Five (\$5.00) Dollars for each day the member or any of member's immediate family is hospitalized for injuries as a direct result of said collision; nor shall the Club's obligation extend for more than a period of thirty (30) days following the date of said collision; nor shall the Association be liable or obligated for more than One Hundred Fifty (\$150.00) dollars hereunder during the term of this contract."

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Along with the opinion request there has been submitted suggested changes in general provisions numbered 14, 15 and 16 of the contract. Even with suggested changes, general provisions numbered 14 and 15 still promise a maximum amount in money for medical care and ambulance service. The only appreciable change to be noted in the suggested changes is that they would do away with the necessity of the contract holder presenting receipted bills before the contract liability is discharged. Suggested changes in general provision numbered 16 still contain the provision that the club will provide the hospital benefits described therein upon presentation of a receipted bill for such expenses. In attempting to rewrite general provisions numbered 14, 15 and 16 of the contract an effort has been made to disguise the indemnity offered as merely a service to the contract holder.

National Auto Service Corporation v. State, 55 S.W. (2d) 209, was a suit by quo warranto by the State of Texas at the instance of the Insurance Commission of Texas to forfeit the charter of National Auto Service Corporation on the ground that the corporation was writing insurance without complying with the insurance laws of Texas. In that case the National Auto Service Corporation issued to its members a membership certificate, which provided, among other things, that for annual dues of \$25.00 it would cause to be repaired in its membership garages during that year any damage to the member's automobile caused by accident not less than \$7.50, not more than \$250.00. A certificate for a maximum repair charge not to exceed \$500.00 was also issued for an annual charge of \$45.00. The certificate also contained certain provisions limiting liability of the company, as to notice, expulsion, and nonassessment of members, etc., and the following clause:

"* * * It must be clearly understood that this is not insurance, as the corporation never pays its members any money, as indemnity except to repair any damage to member's automobile at the corporation's authorized repair shops as hereinabove provided.* * *"

In sustaining a forfeiture of the corporation's charter the Court of Civil Appeals of Texas spoke as follows:

"What constitutes insurance has been defined by statute in many states, and has been frequently defined by the courts. Its essential elements as relate to property are that it provides, for a consideration, indemnity against loss or damage to property, in which the assured has an interest which may result from some uncertain or unforeseen contingency.

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Cooley's Briefs on Insurance (2d Ed.) Volume I, page 6, defines an insurance contract as 'an agreement by which one party for a consideration promises to pay money or its equivalent or do some act of value to the assured upon the destruction or injury of something in which the other party has an interest.;

"Couch's Cyc. of Insurance Law, Vol. 1, p. 2, defines such contract as 'an undertaking by one party to protect the other party from loss arising from named risks, for the consideration and upon the terms and under the conditions recited.' * * * Whether or not a contract is one of insurance is to be determined by its purpose, effect, contents, and import, and not necessarily by the terminology used, and even though it contain declarations to the contrary. * * * Nor is it essential that loss, damage or expense indemnified against necessarily be paid to the contractee. It may constitute insurance if it be for his benefit and a contract on which he, in case of a breach thereof, may assert the cause of action. * * * In the instant case we think it clearly appears that the purpose of the contract made by appellant was, for a fixed consideration, to indemnify the holder of the certificate against loss resulting from accidental damage to his car within the limits fixed by the certificate, and that it constituted an insurance contract under the rules above announced."

We consider the contract being construed as well within the rules announced in National Auto Service Corporation v. State, cited above. The contract contains eleven special provisions relating to reinstatement, cancellations, suspended status, period of grace, exclusions, legal expense, definitions of terms, bail bond, acceptance by member and action against the association. For the purpose of this opinion it will not be necessary to discuss any of the special provisions, since the conclusion hereinafter stated rests on our interpretation of general provisions contained in the contract.

CONCLUSION

It is the opinion of this department that the membership contract issued by the Union Automobile Club, and particularly described

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in this opinion, is a contract of insurance, and the issuance of the same constitutes the doing of insurance business; that the issuance of such a contract without being qualified to do so under applicable provisions of Chapter 37, R. S. Missouri, 1939, constitutes a violation of the Insurance Code of Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General