INSURANCE: Stipulated premium plan companies must comply with Senate Bill No. 126.

December 1, 1937

r3

FILED
76

Hon. George A. S. Robertson
Superintendent of Insurance
Insurance Department
Jefferson City, Missouri

Attention Mr. J. F. Allebach,
Deputy Superintendent.

Dear Sir:

This Department wishes to acknowledge your request for an opinion under date of November 26, 1937, wherein you state as follows:

> "A Missouri insurance company which writes accident and health contracts and which company is incorporated and authorized to do business under Article 4, Chapter 37, Revised Statutes of Missouri, 1929, as a stipulated premium company, asserts that it is not subject to the terms of Senate Bill No. 126.
>
> The reason that it gives for not being subject to the law is that Section 5762 of Article 4 states that any corporation 'which shall comply with all the provisions of this article, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of this article, except that the provisions of Sections 5684 and 5685 of the Revised Statutes of Missouri, 1929, shall be applicable.' Sections 5684 and 5686 have to do with the examination of insurance companies by this Department. This company takes the

position that since Senate Bill No. 126 is a statute which will be contained in Article 10, Chapter 37, which article contains the general provisions, that the same can have no application whatsoever to stipulated premium companies because of the exclusion given in Section 5762.

I would like to call your attention particularly to the case of Schott vs. Continental Auto Insurance Underwriters, 31 S. W. (2) 7. This case had to do with a similar provision in Article 11 in connection with reciprocal exchanges. Section 5977 in Article 11 provides as follows:

'Except as herein provided no law of this state relating to insurance shall apply to the exchange of such indemnity contracts***** .'

The Supreme Court of Missouri in this case determined that a law in the general provisions which authorized an injured party to proceed against the insurer of the party causing the injury for satisfaction of the judgment was applicable to reciprocal exchanges regardless of the provision contained in Section 5977. The Court held that the passage of the law really ingrafted an exception to Section 5977 and was applicable to reciprocal exchanges.

Senate Bill No. 126 provides that 'no policy of insurance against loss or damage from sickness or the bodily injury or death of the insured by accident, and no riders, endorsements, supplementary or additional terms and provisions shall be issued or delivered to any person in this state by any company doing business in this state*****.'

It seems to me that it was the intention of the Legislature to make the law applicable to all types of companies issuing accident and health

contracts whether the same were casualty companies under Articles 6 and 7, stipulated premium companies under Article 4 or old line life insurance companies under Article 2. Article 7 contains a provision similar to that quoted above from Article 4, that the general provisions do not apply to such companies.

The company says that the case of Key vs. Cosmopolitan Life, Health and Accident Insurance Company, 102 S. W. (2d) 797, decided by the St.Louis Court of Appeals on March 2, 1937, definitely eliminates stipulated premium companies from the terms and provisions of Article 10. This case holds in effect that Section 5929 which provides for allowance of damages and reasonable attorneys fees in case of vexatious refusal to pay is inapplicable to such companies.

We would appreciate it if you would advise us whether or not in your opinion the stipulated premium companies should be required to issue accident and health contracts which comply with the provisions of Senate Bill No. 126."

Article IV, Chapter 37, Section 5762 R. S. Missouri 1929, declares what statutory provisions are applicable to companies engaged in the business of life insurance upon the stipulated premium plan, in part as follows:

"Any corporation, company or association issuing policies or certificates promising money or other benefits to a member or policyholder, or upon his decease, to his legal representatives, or to beneficiaries designated by him, which money or benefit is derived from stipulated premiums collected in advance from its members or policyholders, and from

> interest and other accumulations and wherein the money or other benefits so realized is applied to or accumulated solely for the use and purposes of the corporation as herein specified, and for the necessary expenses of the corporation, and the prosecution and enlargement of its business, and which shall comply with all the provisions of this article, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of this article, except that the provisions of sections 5684 and 5685, Revised Statutes 1929, shall be applicable."

In the case of Key vs. Cosmopolitan Life, Health and Accident Insurance Company, 102 S. W. (2) (Mo.App.) 797, l. c. 800, the Court in holding that a statute providing for allowance of damages and reasonable attorney fees in case of vexatious refusal to pay insurance was inapplicable to an insurer organized and doing business on the stipulated premium plan, said:

> "It is finally suggested that the allowance of an attorney's fee was erroneous upon the theory that section 5929 R.S.Mo. 1929 (Mo. St. Ann. Sec. 5929, p. 4515), which provides for the allowance of damages and a reasonable attorney's fee in the case of vexatious refusal to pay, has no application to a company such as defendant which is organized and does business upon the stipulated premium plan. It is indeed provided by section 5762, R.S. 1929 (Mo. St. Ann. Sec. 5762, p. 4414), that any corporation, company, or association engaged in the business of life insurance upon the stipulated premium plan 'shall be subject only to the provisions of this article (article 4, chapter 37, R.S. Mo. 1929, Mo. St. Ann. art. 4, c. 37, Secs. 5759-5783, pp. 4412-4424), except that the provisions of sections 5684 and 5685, Revised Statutes 1929, shall be applicable.' The particular sections designated have to do only with

> the matter of the examination of companies by the insurance department and the payment of the expenses of such examinations. The language used in section 5762 would seem to disclose a clear legislative intent that no part of the Insurance Code shall apply to a company doing business upon the stipulated premium plan except the two sections specifically mentioned therein, and it necessarily follows, therefore, that section 5929 is inapplicable to the case."

Section 5929 supra, relating to allowance of damages and a reasonable attorney's fee in case of vexatious refusal to pay, appears in the General Statutes of 1865, page 402, Section 1, and passed into the revision of 1879, Article IV, Chapter 11, Section 6029, and into the revision of 1899, Article L, Chapter 89, Section 5227. The provision relative to attorneys fees was added by the Laws of Missouri 1899, page 254.

Section 5762 supra, relating to companies engaged in the business of life insurance on the stipulated premium plan first appears in the Laws of Missouri 1899, page 262.

The article relating to companies engaged in the business of life insurance on the stipulated premium plan having been adopted at a date subsequent to Section 5929 supra (although that portion relating to attorneys fees was adopted at the same session) it is evident that the Legislature in accordance with the views of the Court in the Key case could not have intended that Section 5929 be applicable to stipulated premium companies.

You state that a Missouri insurance company incorporated under Article IV, Chapter 37, R. S. Mo. 1929, and writing health and accident contracts takes the position that it is not subject to the terms of Senate Bill No. 126, found in the Laws of Missouri 1937, Section 5965a, page 360, in that the statute is "contained in Article X, Chapter 37, which article contains the general provision that the same can have no application whatsoever to stipulated premium companies because of the exclusion given in Section 5762."

Section 5965a, supra, provides as follows:

"No policy of insurance against loss or damage from sickness or the bodily injury or death of the insured by accident, and no riders, endorsements, supplementary or additional terms and provisions shall be issued or delivered to any person in this state by any company doing business in this state under the provisions of the insurance laws of the State of Missouri until a copy of the form thereof has been filed with the Superintendent of the Insurance Department for at least a period of thirty days (30) unless before the expiration of said thirty (30) days the Superintendent of the Insurance Department and the Attorney General of the State of Missouri shall have approved of the same in writing. If during such period of thirty (30) days or at any time thereafter, as provided in this section, the Superintendent of the Insurance Department or Attorney-General, in writing, disapprove of the form of such policy, it shall be unlawful for such policy to be issued or delivered in this State by the company filing same. If the Superintendent of the Insurance Department or the Attorney General are unable, by virtue of their other duties, to determine whether or not they shall approve or disapprove the form of such policies within the thirty-day period herein provided, the Superintendent of the Insurance Department may extend the time within which they may approve or disapprove to a period not to exceed ninety (90) days from the date of filing such forms, and the company filing such form or forms shall be notified by the Superintendent, in writing, of such extension of time. The Superintendent of the Insurance Department and the Attorney-General shall not approve such forms of policies unless every part is plainly printed in type not smaller than long primer or ten point type nor unless there is printed on the first page thereof and on its filing back in type not smaller than eighteen point or great primer a brief description of the policy; nor unless the exceptions be printed with the same prominence as the benefits to which such exceptions apply. If the Superintendent fails, within the thirty-day period of time or within the extended period, as herein provided, to notify the company

> in writing of his disapproval, then the company may issue such form of policy, but nothing herein contained shall permit an insurance company to issue policies in violation of other provisions of the insurance laws of this State, and nothing herein shall bar the Superintendent and Attorney-General from, at any time thereafter, disapproving such form after giving the company notice thereof and a hearing thereon. Whenever the Superintendent or Attorney-General disapprove a policy form, as herein provided, the Superintendent shall notify the company filing same, in writing, giving the reasons therefor. The Superintendent and Attorney-General are hereby directed to approve for use in this State only policies conforming to the express provisions of the insurance laws of Missouri, and only such words, phrases, figures, terms and conditions of policy forms, riders, endorsements, supplementary or additional terms and provisions affecting policies or agreements for insurance which are specific, certain and unambiguous, to meet needed requirements for the protection of lives and property of assureds. Any policy filed with the Superintendent pursuant to this section, not conforming to the requirements herein, shall be, by the Superintendent and Attorney-General, disapproved. Nothing in this section contained shall be held to apply to life insurance, endowment or annuity contracts, or contracts supplementary thereto."

The case of Schott vs. Continental Auto Insurance Underwriters, 31 S. W. (2) (Mo. Sup.) 7, l. c. 11, presents a situation analogous to the one in the instant case. The appellant's contention was that the Act of 1925 was not applicable to reciprocal or inter-insurance exchanges operating under Article XIII, Chapter 50, R. S. Mo. 1919 (Now Article XI, Chapter 37, R. S. Mo. 1929). Section 6385 (now section 5977 R. S. Mo. 1929), relating to reciprocal or inter-insurance contracts provided in part as follows:

> "Except as herein provided no law of this state relating to insurance shall apply to the exchange of such indemnity contracts******"

The Court in holding that the 1925 law was applicable to reciprocal insurance companies, said:

> "Appellant's argument in support of its contention under this head seems to run as follows: The act of 1925 (hereinafter called the act) is a general law; said article 13 relating to reciprocal and interinsurance contracts, including said section 6385, is a special law; section 6385 provides that no law of this state relating to insurance shall apply to the contracts of companies operating as reciprocals; the act does not in express terms repeal or amend section 6385; and a general law does not repeal a prior special law by implication. 'It is* * *true that the presumption against implied repeals has peculiar and special force when the conflicting provisions which are thought to work a repeal are contained in a local or special act and a later general act. The presumption is that the special is intended to remain in force as an exception to the general act.' 25 R.C.L. 927, Sec. 177. But there is no rule which prohibits the repeal of a special act by a general one, the question being always one of intention. And there can be no doubt but that it was the legislative intention that the act should apply to contracts of reciprocal companies; by its express terms they are made subject to its provisions. The effect of the act in that respect, therefore, is to ingraft upon said section 6385 another exception."

The Act of 1937 is a general law, whereas Article IV relating to stipulated premium plan contracts, including Section 5762, is a special law. The question of the repeal of a special act being one of intention, we need only examine the following underlined portions of the 1937 act, supra, to remove any doubt but that it was the intention of the legislature that the act shall apply to contracts of stipulated premium plan companies:

> "No policy of insurance against loss or damage from sickness or the bodily injury or death of the insured by accident, and no riders, endorsements, supplementary or additional terms and provisions shall be issued or delivered to any person in this state by any company doing business in this state under the provisions of the insurance laws of the State of Missouri* * * *"

And in the case of State vs. Koeln, 61 S. W. (2) (Mo. Sup. En Banc) 750, l. c. 756, the Court cites the Schott case and points out that:

> "* * *a special act may be impliedly repealed by a general one and the question whether it has been so repealed is always one of legislative intention; Schott vs. Continental Auto Ins. Underwriters, 326 Mo. 92, 31 S. W. (2d) 7; 59 C.J. Sec. 536. 'The special act is not repealed unless a different intent is plainly manifested, or where the two acts are irreconcilably inconsistent or repugnant, or where the general act covers the whole subject matter of the special one* * *or is clearly intended to establish a uniform rule or system for the whole state.' 59 C.J. Sec. 536; and cases cited in footnotes 85 and 89. (Italics ours.)
>
> In applying the foregoing rule we are at liberty to take judicial notice of matters of common knowledge, of matter of current history as related to affairs of public interest and concern,* * * *"

Taking judicial notice of matters of common knowledge, and from an examination of the 1937 Act, it is at once apparent that the Legislature was striking at the practice of certain insurance companies to avoid payment of honest claims by resorting to such trickery as printing the benefits of the policies in bold print, whereas the exceptions were printed in small print cleverly hidden away in the body of the policy. There can be no question of the legislative intention to ingraft upon Section 5762 another exception.

It is the opinion of this Department that stipulated premium plan companies are required to issue health and accident contracts which comply with the provisions of Senate Bill No. 126, found in the Laws of Missouri 1937, Section 5965a, page 360.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

MW:MM