INSURANCE: Secti 5768, Article IV, Chapter 7, R. S. Missouri 1929, requires policies issued under stipulated premium plan to specify sum of money payable upon happening of contingency insured against.

January 31, 1938

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FILED

Mr. Virgil Rule
Assistant Actuary
Insurance Department
Jefferson City, Missouri

Dear Mr. Rule:

We wish to acknowledge your request for an opinion under date of January 29, 1938, wherein you state as follows:

> "Please render this Department your opinion as to whether Standard Provision 17 of the enclosed policy issued by the Mutual Benefit Health and Accident Association, a stipulated premium company licensed to do business in this state under Article IV, Chapter 37 R. S. Mo. 1929, is valid."

Standard Provision 17 of the enclosed policy provides as follows:

> "17. If the Insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Association, then in that case the Association shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined."

Section 5768 of Article IV, Chapter 37, R. S. Mo. 1929, provides as follows:

> "Every policy hereafter issued by any corporation, company or association doing business under the provisions of this article and promising any payments to be made upon a contingency provided for in this article, shall specify the sum of money which it promises to pay upon each contingency insured against and the time or times of payment after satisfactory proof of the happening of such contingency, unless the contract shall have been voided by fraud or breach of its conditions and warranties, or commuted, as provided for in section 5764, the company shall be obligated to the beneficiaries of the insured for such payment at the time or times specified and to the amount due under the policy. If any company fail or refuse to make such payment for ninety days after final judgment has been obtained under such claim, the superintendent or other officer charged with the supervision of insurance matters shall notify the company to issue no new policies until such indebtedness is fully paid, and no officer or agent of the company shall make, sign or issue any policy of insurance while such notice is in force."

In the case of McPike vs. Circle, 173 S. W. 71, 187 Mo. App. 679, l. c. 686, the Court in referring to the above statute said:

> "In this view, the certificate in suit must be regarded as a life insurance policy as if issued on the stipulated premium plan, and, according to the statute, reveal the amount of the sum insured in the policy, for such is the requirement of the statute with respect to policies of life insurance of that character.* * * * *The amount promised in the event of death must appear in the policy and not to be ascertained through the search of by-laws and the constitution of the company."

Section 5747, Article III, Chapter 37 of the R. S. Missouri 1929, provides as follows:

"Every policy or certificate hereafter issued by any corporation of this state doing business in conformity with the provisions of this article, and promising a payment to be made upon a contingency of death, sickness, disability or accident, shall specify the exact sum of money which it promises to pay upon each contingency insured against, and the number of days after satisfactory proof of the happening of such contingency at which such payment shall be made, and upon the occurrence of such contingency, unless the contract shall have been voided for fraud or breach of its conditions, the corporation shall be obligated to the beneficiary for such payment at the time and to the amount specified in the policy or certificate; and the said indebtedness shall be a lien upon all the property, effects and bills receivable of the corporation, with priority over all indebtedness thereafter incurred, except as may be provided by the law in case of the distribution of assets of an insolvent corporation. If the corporation refuses or fails to make such payment for thirty days after after final judgment against said corporation, the failure to pay the amount of such final judgment within said period of thirty days shall ipso facto constitute a forfeiture of the charter of such corporation, and it shall be the duty of the superintendent of the insurance department forthwith to cause proceedings by quo warranto to be instituted against said corporation for the purpose of ousting it of its charter; and upon the dissolution of said corporation, the superintendent of the insurance department shall take charge of its assets and affairs, and wind up the same, as now provided by law in the case of life insurance companies."

The above section relates to companies doing an insurance business on the assessment plan. It is to be noted that the underlined portion is similar to the underlined portion contained in Section 5768 supra which relates to companies doing an insurance business on the stipulated premium plan. Section 5747 states that the policy or certificate "shall specify the exact sum", whereas Section 5768 states that every policy "shall specify the sum".

The Court in the case of Melville vs. Business Men's Accident Assurance Company, 253 S. W. (St.Louis Court of Appeals) 68, l. c. 70, had before it for consideration the validity of a provision identical to the Stand Provision in the instant case.

The Court in holding such a provision invalid as it relates to companies doing business under the assessment plan said:

> "When this policy was written the defendant was doing business on the assessment plan, subject to the provisions of what is now article 3, c. 50, Rev. Stat. 1919. Section 6157 of that article and chapter provides that every policy or certificate issued by any corporation doing business in conformity with the provisions of that article, promising a payment be made upon a contingency of death, sickness, disability, or accident, 'shall specify the exact sum of money which it promises to pay upon each contingency insured against.' etc. And it is plaintiff's contention that the policy provision here in question contravenes that statute and is therefore void. A consideration of this matter has led us to the conclusion that this contention should be sustained. The effect of this statute upon a policy provision of such character as that here involved has not been the subject of decision by our courts. But our courts have frequently had occasion to apply this statute, and have declared void various provisions of the contracts of insurance involved which were deemed repugnant to the mandate of the statute. See McFarland vs. Accident Ass'n. 124 Mo. 204, loc. cit. 221, 27 S. W. 436; Goodson vs. Accident Ass'n. 91 Mo. App. 339; Easter vs. Brotherhood of American Yeomen, 154 Mo. App. 456, 135 S. W. 964; Kribs vs. United Order of Foresters, 191 Mo. App. 524, 177 S. W. 766; Bondurant vs. Brotherhood of American Yeomen (Mo. App.) 199 S. W. 424. In this connection, see McPike vs. Mystic Circle, 187 Mo. App. 679, 173 S. W. 71, wherein effect was given to what is now section 6178, applicable to insurance on the stipulated premium plan, requiring the policy to 'specify the sum of money which it promises to pay,' etc. And we may note that there are cases

of like tenor involving a provision of the fraternal insurance statute (section 6405, Rev. Stat. 1919) providing that the certificate 'shall specify the amount of benefit provided thereby.' See Parker vs. Sovereign Camp of Woodmen (Mo. App.) 196 S. W. 424; Wilson vs. Brotherhood of American Yeomen (Mo. App.) 237 S. W. 212.

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"We think that the purpose of the lawmakers in enacting the statute was to require an insurer, coming within its terms, to distinctly and exactly specify in the policy the precise amount of insurance vouchsafed; and that when the amount is once definitely fixed by the policy, it may not be scaled down by stipulations inserted in the contract looking to partial avoidance of liability by providing that the sum named as indemnity shall be reduced in certain contingencies. Though it be that the insured may be able from the terms of the policy, with the attending circumstances, to arrive at the reduced amount to which the defendant company thus seeks to limit its liability, we think that when full effect is given to the explicit and forceful language of this statute the clause of the policy here in question is repugnant thereto and therefore void.

The statute does more than to require that the policy contain provisions from which the insured, with the information possessed or obtained by him, may compute the liability of the insurer by making deductions, in certain contingencies, from the principal sum named. It requires the insurer to state in the policy the exact sum of money promised to be paid, and to pay that sum upon the happening of the contingency insured against."

The case of State ex rel. Business Men's Assurance Company vs. Allen, 259 S. W. 77, 302 Mo. 525, was a certiorari to review the judgment of the Court in the above case on the ground that it is in conflict with the decisions and opinions of the Missouri Supreme Court.

The Court after setting out the opinion in the Melville case supra, observes that:

> "The views expressed above seemingly accord with the views expressed by this court in McFarland vs. Accident Association, 124 Mo. loc. cit. 221, 27 S. W. 436. In that case Judge Macfarlane said:
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> 'This question has, however, been put at rest in this state by the statute which authorizes and regulates insurance companies on the assessment plan. It requires all policies to specify the exact sum of money which the company promises to pay upon the happening of the contingency insured against and also requires the payment of such sum upon the occurrence of such contingency.'
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> In McFarland's case the amount could have been rendered certain by multiplying the number of members by two, and the number of dollars of the liability would appear. The facts for the calculation were as easily ascertainable as in the instant case. But the rule was announced that this statute meant something more than a mere calculation to find out the liability. The court was giving to the statute a sensible meaning, and that meaning w as that the sum to be paid upon any contingency was to be expressed in exact figures. The ruling simply emphasized that portion of the statute by saying that the policy, in the language of the statute, 'shall specify the exact sum of money which it promises to pay upon each contingency insured against.' To 'specify the exact sum of money' does not mean that you can find out the 'exact sum' by some kind of calculation from facts to be developed.
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> There is no conflict of opinions shown, and our writ should be quashed."

The Melville case related to a company doing business on the "assessment plan", the statute providing that the policy "specify the exact sum". In the case before us the company does business on the "stipulated premium plan", under a statute providing that the policy "specify the sum". The Melville case after stating:

> "Our records have frequently had occasion to apply this statute and have declared void various provisions of the contracts of insurance involved which were deemed repugnant to the mandate of the statute",

cites the McPike case supra, which related to a company doing business on the stipulated premium plan.

It is apparent from an examination of the above cases that the fact that the calculation is easily ascertainable is not the controlling factor. The statute says that the policy "shall specify the sum", and not the sum to be determined by calculation from facts to be developed.

From the foregoing we are of the opinion that Standard Provision 17 is in conflict with Section 5768 R. S. Missouri 1929, and therefore invalid.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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