INSURANCE: Inter-indemnity or reciprocal insurance companies may write health and accident policies in this state and are required to comply with Senate Bill No. 12[illegible].

May 3, 1938

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

Dear Mr. Rule:

This Department wishes to acknowledge your request for an opinion, together with enclosure of Policy Form No. 703 of the Farmers Automobile Inter-Insurance Exchange of Los Angeles, California, providing indemnity for loss of life, limb or limbs, sight or time by accidental means. You ask the following questions:

> "Can a reciprocal company write accident and health coverage in this State? If so, can we require them to meet the requirements of our law regarding suicide, misrepresentation, etc? See attached policy."

Chapter 37, Article XI, Section 5966 R.S. Missouri 1929, authorizes inter-indemnity or reciprocal insurance contracts providing indemnity from any loss that may be insured against under other provisions of the laws, except life insurance, as follows:

> "Individuals, partnerships and corporations of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance."

Couch, Volume 1, paragraph 5, page 5, Encyclopedia of Insurance Law, in discussing the nature of insurance contracts makes the following statement:

> "And broadly speaking it may be said that a contract of insurance is* * *except as to life and accident* * *one of indemnity".

And further at page 10 declares that:

> "It is elementary that insurance other than that of life and accident where the result is death, is a contract of indemnity."

The only Missouri case we have been able to find on the subject of whether an accident policy is a contract of indemnity is that of Lemaitre vs. National Casualty Company, 195 Mo. App. 599, 186 S.W. 964, l. c. 965. The Court in holding that accident insurance policies unlike policies of life insurance are contracts of indemnity for loss of time and consequences of injury especially when they are so labeled, said:

> "The learned counsel for appellant argue that policies of accident insurance are, with policies of life insurance, exceptions to the rule that contracts of insurance are contracts of indemnity. We are unable to appreciate the force of this, either as a general principle or as applicable here. On the very face of the policy here involved and over clause a, which is the first clause providing for the payment of any sum, it is referred to as "accident indemnity for total disability," and throughout the policy, heading other clauses which are not here material and which we have not here quoted, it is referred to as a contract of indemnity. Thus, paragraph d is headed, 'Double Indemnity,'

> paragraph e, 'Illness Indemnity,' paragraph i is headed, 'Special Death Indemnity,' paragraph j is headed 'Quarantine Indemnity.' Looking at this contract as a whole, construing it as a whole, it is very apparent that the main idea of it is indemnity, and the main feature in it is indemnity for loss of time in consequence of injury."

The enclosed policy makes a general statement in bold type that it insures

> "For the Principal Sum of $1000.00 with 100% Renewal Accumulation Feature, Weekly Disablement Indemnity of $25.00 for 26 weeks and other indemnities provided in the Policy."

Under total disablement, partial disablement, hospital expenses and graduate nurse expense a "weekly indemnity" is provided for, and throughout the policy it is referred to as a contract of indemnity.

It is to be noted that in the later case above referred to the Court declares that neither "as a general principle or as applicable here" are policies of accident insurance "exceptions to the rule that contracts of insurance are contracts of indemnity".

From the foregoing we are of the opinion that Inter-Indemnity or Reciprocal Insurance Companies may write accident coverage in this State.

Health insurance would clearly be a contract of indemnity for loss of time and consequences of illness, and we are of the opinion that an inter-indemnity or reciprocal insurance company may write health insurance.

Your next question is, Assuming that reciprocal companies have authority to write accident and health coverage can they be required to meet the requirements of our law covering suicide, misrepresentations, etc?

Article XI, Chapter 37, Section 5977 R. S. Missouri 1929, exempts inter-indemnity and reciprocal companies from the insurance laws of the State except the retaliatory law, as follows:

> "Except as herein provided no law of this state relating to insurance shall apply to the exchange of such indemnity contracts: Provided, however, that the provisions of the retaliatory law shall apply."

Referring to the above section alone it is evident that inter-indemnity and reciprocal companies would not be required to meet the insurance laws relative to suicide, misrepresentation, etc. The Legislature, however, in 1937 (Laws of Missouri 1937, Section 5965a, pp. 360, 361), enacted the following statute relating to health and accident policies (hereinafter referred to as the 1937 Act):

> "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 (30) days 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."

Can it be said that the above statute is applicable to reciprocal or inter-insurance companies? 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. 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 XI relating to inter-indemnity or reciprocal insurance contracts, including Section 5977, is a special law. The question of the repeal of a special act being one of intention, we need only to 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 inter-indemnity or reciprocal insurance 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 Mol 92, 31 S.W. (2d) 7; 59 C.J. Sec. 538. '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. 538; and cases cited in footnotes 85 and 89.
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> 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.

Since Section 5965a declares that "the Superintendent and Attorney General are hereby directed to approve for use only policies conforming to the express provisions of the insurance laws of Missouri", it is our opinion that reciprocal or inter-indemnity insurance companies can be required to meet the requirements of our insurance laws respecting suicide, misrepresentation, etc.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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