INSURANCE: Medical payment plan included in liability policy does not make policy subject to approval of Superintendent and Attorney General.

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Honorable Edward L. Scheufler
Superintendent of Insurance
State of Missouri
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your request of recent date for an official opinion, which reads as follows:

> "Several casualty insurance carriers have offered for filing and use in this State, Automobile Liability and Property Damage policies, including, in addition to the liability and property damage and for an additional premium, an agreement to pay medical fees, hospital expenses, etc., but not including any indemnity for loss of time or a principal sum, in event of injury to the occupants of the insured car. Typical of the language of such provisions is the following:
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> "'Medical Payments--To pay to or for each person who sustains bodily injury, caused by accident and arising out of the use of the automobile classified as "pleasure and business", while in or upon, entering or alighting from the automobile while the automobile is used by or with the permission of the named insured, the reasonable expense of necessary medical, surgical, ambulance, hospital and professional nursing services and, in the event of death resulting from such injury, the

reasonable funeral expense, all incurred within one year from the date of accident.'

"A medical payment provision has been used in Missouri for several years, applying only to persons other than the named insured. The suggested coverage is intended to include the named insured as well as other passengers. It is our understanding that such coverage is now being offered generally throughout the United States.

"Question: Will you please advise whether or not, in your opinion, this additional coverage, described as 'Medical Payments', constitutes accident and health insurance as contemplated by Section 6077 R. S. Mo. 1939 and is subject to the requirements of that section?"

What is now Section 6077, R. S. Mo. 1939, was passed by the General Assembly in 1937 (Laws of Missouri, 1937, page 359) and 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 (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 in-

> surance 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 title to said Act reads as follows:

> "AN ACT to amend Article 10, Chapter 37, Revised Statutes of Missouri, 1929, relating to insurance, by adding thereto a new section to be numbered 5965a relating to the same subject, providing for the right of approval or disapproval of the Superintendent of the Insurance Department and the

> Attorney-General of all accident and health policies of any insurance company writing accident and health policies, doing business in this state under the provisions of the insurance laws of the State of Missouri."

Since we are concerned here with accident insurance policies only, and not with health insurance policies, we will confine ourselves to matters connected with accident insurance contracts. Accident insurance is thus defined in 1 C. J. p. 404:

> "Accident insurance is a contract whereby the insurer agrees to pay, in case the insured receives any personal injury through accident, a weekly amount for the period of disability resulting from such accident, or a fixed amount in case of certain specified injuries, or of injuries resulting in the death of the insured."

Another definition of accident insurance is given in 1 C. J., page 404, as follows:

> "A system which indemnifies the insured person for loss of business time resulting from disabling bodily injuries inflicted by external and accidental violence, or in case of death therefrom within a certain time pays the legal heirs a sum stated in the contract."

Still another definition is given in 1 C. J., page 404, as follows:

> "A contract to pay a fixed sum on death resulting from accident, either generally

> or limited to accidents of a particular kind. Some policies also provide for payments of a fixed weekly sum during incapacity caused by an accidental injury."

The above legal definitions are likewise the popular conception of the term "Accident Insurance Policy." In such a policy the insurer agrees to pay, in case of an injury, a stipulated weekly fixed amount or a fixed amount in case of certain specific injuries such as $5,000.00 for the loss of two legs, a lesser amount for the loss of one leg, a certain fixed amount for the loss of an arm, finger etc. Accident insurance policies also provide for a fixed sum in the event of death and this amount is to be paid to the named beneficiary of the insured. Frequently provisions are also contained in such policies for the payment of certain medical fees and hospital costs but these additional features are incidental to the main purposes and objects of accident insurance policies. It is apparent that the main purpose and the reason why accident and health insurance policies are purchased, is to secure the fixed periodical payments to compensate for the loss of earning power, together with the life insurance feature which provides for the payment of a specific sum in the event of death by accidental means. Policies of this description are known as "Accident Insurance Policies" within the insurance circles and are undoubtedly so considered by the insurance buying public.

With these definitions and observations on "Accident Insurance Policies" in mind, we refer again to the title used by the Legislature in enacting Section 6077. It is a familiar rule of law that if the title to an act is restrictive or descends into particulars, the statute cannot include anything beyond the restrictive wording of the title. In the case of City of Columbia v. State Public Service Corp., 43 S. W. (2d) 813, it appeared that the title to the act establishing the Missouri Public Service Commission provided that it might regulate and control public service corporations, persons and utilities. The act itself provided further for the control of light plants owned and operated by municipalities. In holding that the title was too narrow to permit the regulation of rates on light plants owned by municipalities by the Public Service

Commission since the title descended into particulars and did not mention municipalities, the court said (l. c. 816):

> "If the legislative intent was to provide for the 'regulation and control' of all four of the subjects thus separately defined and distinguished in the act itself, it is fair to assume that the title would have expressly named all four subjects. Certainly, in the light of these definitions, a title that omitted one subject would not be a 'fair forecast of the contents of the bill,' if any of such contents undertook to regulate and control the omitted subject, and such is the status of the act now under consideration. Such a title is obviously misleading and violative of the constitutional provision herein invoked. * * *
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> "For the reasons above stated, we are constrained to hold that the power to fix such rates has not been validly conferred upon the Public Service Commission, and the judgment if affirmed."

In Williams Lumber and Mfg. Co., v. Ginsburg, 146 S. W. (2d) 604, the Supreme Court of Missouri, said (l. c. 605):

> "However, if the title is restrictive, the Act must also be restrictive and cannot include anything beyond the restrictive wording of the title. Hunt v. Armour & Co., 345 Mo. 677, 136 S. W.(2d) 312; Sherill v. Brantley, 334 Mo. 497, 66 S. W. (2d) 529.
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> "The purpose of the constitutional provision above quoted is to prevent surprise or fraud upon the legislators by barring from the body of a bill everything not indicated

by the title. Williams v. Atchison, T. & S. F. Railroad, 233 Mo. 666, 136 S. W. 304."

The title to Section 6077 appears to be restrictive in that it applies only to "Accident and Health Insurance Policies" as such. If the title had applied to accident and health insurance or to the accident insurance business generally, it might be said that all coverages which touch upon that general character of insurance in any way, however remote, would be included. However, the said title does descend into particulars and expressly mentions only the "Accident and Health Policies" of any insurance company writing "Accident and Health Policies." It appears, therefore, that Section 6077 would be applicable if the Medical Payments Plan changes an automobile liability insurance contract into an accident insurance contract and the said section would not apply if the character of any such liability contract were not thereby changed. In the case of Logan v. Fidelity & Casualty Company, 146 Mo. 114, 47 S. W. 948, the court held that a life insurance contract was not divested of its character as insurance on life because it also provided for amounts to be paid in the event of the disability of the insured. The court said (l. c. 950);

"The mere addition of one or more features or elements in a contract of insurance on life, that may serve to give the contract or policy a particular designation in the business or insurance world, will not in the least divest the contract or policy of its chief character of insurance on life, or make the contract other than life insurance. The promise to pay a weekly indemnity by an insurance company in the event the insured receives an injury from an accident not resulting in death does not change the character of the agreement. * * * * * * *

"The calling of a contract of insurance an 'accident', 'tontine', or 'regular' life policy, or, for that matter, by any other appellation that may be adopted for business or conventional uses or classification, can-

> not make a policy containing an agreement to pay to another a sum of money designated upon the happening of an unknown or contingent event, depending upon the existence of life, less a policy of insurance on life."

In Provident Life & Accident Ins. Co. v. Rimmer, 12 S. W. (2d) 365, the Supreme Court of Tennessee cited the Logan case, supra, as authority for the following statement (l. c. 367):

> "The policy in the Equitable Life Assurance Society covered loss of life from natural as well as external and accidental causes, and was life insurance. The mere addition of the double indemnity clause providing for increased insurance upon proof of death by accident did not divest the policy of its character of insurance on life, or make the contract other than life insurance, for insurance on life includes all policies of insurance in which the payment of the insurance money is contingent upon the loss of life."

It appears, therefore, that a "Liability Policy" containing Medical Payments Plan still remains a "Liability Policy of Insurance" and is not transformed into an accident policy of insurance by the "mere addition of one or more features or elements" such as is provided by the Medical Payments Plan you outline. An Automobile Liability Policy principally covers the liability of the insured within specified limits such as the limit of $10,000.00 for any one accident in which the insured might be liable to other parties for personal injuries or property damage. Such a policy is principally and primarily an automobile liability policy and the inclusion of the relatively small benefits, such as the agreement to pay certain doctor bills and hospital expenses to all persons, including the insured, who might be injured

in and about the insured's automobile, does not appear to change the character of the insurance policy. It is still a liability insurance policy and cannot be classed as an "Accident Insurance Policy." Therefore, since the title to Section 6077 refers only to "Accident Insurance Policies" as such, it would follow that the said section was not intended by the Legislature to be applicable to such incidental benefits, when included in a liability policy which remains a liability policy. Section 6077 does not apply to Liability Insurance Policies. It applies only to "Accident and Health Policies" of companies writing "Accident and Health Policies."

We do not intend to say that it would be impossible for a company writing automobile liability insurance to transform the same into an accident and health policy within the meaning of Section 6077. This might easily occur if any such company would actually write into a contract of that type all of the features involved in an accident insurance policy such as indemnity for loss of time and a principal sum payable upon the death of the insured, together with certain specific amounts for certain types of injuries. It would be possible for a company to change the "character" of any policy, and undoubtedly any company could change any type of policy, whether it be life or fire insurance, into a matter altogether different. However, such matters must be determined as the occasion arises. In this opinion we are only attempting to say that the Medical Payments Plan which you have outlined, does not, in our opinion, have the effect of transforming the policy into an accident insurance policy and consequently Section 6077 has no application.

CONCLUSION

Section 6077 R. S. Mo. 1939, dealing with the filing and approval of accident insurance policies is not applicable to an automobile liability insurance contract which includes, as an incidental feature, the Medical Payments Plan designed to pay certain medical and hospital bills to all persons, including the insured, who might be injured in and about the insured automobile. Liability insurance policies are not covered by said section and since the addition of the Medical Payments

Plan does not transform liability insurance policies into accident insurance policies by the mere addition of this one additional feature, Section 6077 has no application since the Legislature intended it to apply only to accident and health insurance policies as such.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

AO'K:CP