SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 11 | Issue 3

1960

Insurance

Edgar I. King

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

Part of the Law Commons

Recommended Citation
Edgar I. King, *Insurance*, 11 Wes. Res. L. Rev. 394 (1960)
Available at: https://scholarlycommons.law.case.edu/caselrev/vol11/iss3/17

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

> to such beneficiary . . . then in that event and from that time forward the absolute right of such beneficiary to the income and/or principal hereunder shall cease and determine. . . .[38]

It is obvious from the portion of testator's will quoted above that the draftsman, through oversight, failed specifically to exclude Trust A from the spendthrift provisions. The court properly noted that Trust A probably would not qualify, "for the so-called estate tax marital deduction if the widow's rights are subject to the restrictions of Item X."[39] Also, the court realized that "nothing could be more clear than that the testator intended Trust A to qualify for such deduction."[40] With this in mind, the court explained that Item X did not apply to Trust A because in case of alienation, sale, transfer, or assignment, the will stated "then and in event," whereas Trust A stated that testator's wife has power to appoint the Trust A property "in all events."

ROBERT N. COOK

INSURANCE

In *Benton v. United Insurance Company of America,*[1] the insured executed a form whereby the beneficiary of his life insurance policy with defendant was changed. According to the testimony, the document was posted the evening preceding his death, but was not postmarked until some six hours after his death. In a suit by the substituted beneficiary to require payment under the policy, the validity of this purported change was challenged by the company. The court found that a change in the beneficiary had been effected. The requirement that the insured make clear his intention to apply for a change and do all that he could, under the circumstance, to comply with the provision regarding such application, was, in the opinion of the court, satisfied. It should be noted that in addition to the fact that the requested change was not postmarked nor received by the company until after the insured's death, the opinion does not indicate why the policy was not forwarded with the change request. It is suggested that the effect of this decision is to sanction a change of beneficiary on the basis of a clear expression of intent by the insured and that the further requirement, that the insured do all that he can to effectuate the change, which is a part of the stated rule in even the most liberal cases, has virtually disappeared.

An automobile liability insurance policy contained the promissory provision that the company would defend any suit brought against

38. *Ibid.*
39. *Id.* at 817.
40. *Id.* at 818.

the "assured to enforce a claim arising from the ownership or operation" of the automobile involved "whether groundless or not and whether or not covered by this policy," and an exclusionary provision that the policy became void if possession was delivered to another by sale or an agreement to sell. Possession was so delivered and an accident occurred. The court held that the company had no obligation to defend under the promissory provision when the policy had become void under the exclusionary provision.[2]

An insured had an automobile liability policy which excluded coverage for bodily injury to all of his employees other than domestic ones. The insured was a practicing physician who made his home on a farm which he cultivated. The injured party was a general laborer on the grounds, devoting his time to the garden, the cattle, and the farm. The court found that the injured person was a domestic employee and that liability of the insured attached.[3] Because the insured "chose to live on a track of agricultural land and cultivate it he did not thereby become a farm operator whose employees became farm laborers as distinguished from domestic employees notwithstanding he sold excess milk not used for family purposes."[4] In the same case an interpretation of the accident "arising out of the ownership, maintenance or use of the automobile" clause of the policy was required. The injured person was standing between a Studebaker and a jeep, and was about to attach a line to the jeep so that it could be towed, when the insured backed the Studebaker into the jeep, crushing the injured person between the two vehicles. The insurer of the jeep claimed that the accident did not arise out of the "ownership, maintenance or use" of the jeep. The court rejected this attempted disclaimer of liability, saying that the relationship of the jeep to the injury was neither remote nor incidental. The owner was attempting to start the jeep by towing it, and the fact that the jeep was not in motion and was not being operated by the insured-owner was unimportant.

Cox, alleged permittee of the named-insured, Howe, was using the latter's automobile when he injured the plaintiff. Cox immediately left town without stating his destination and had not been heard from since. Neither Cox nor Howe notified the insurance company of the accident. The notification came from the plaintiff's attorney. Plaintiff filed a suit for personal injuries against Cox, which the insured refused to defend. A judgment was recovered and remained unsatisfied. A supplementary action was then filed against the insurer, who claimed as a defense lack of co-operation on the part of

1. 159 N.E.2d (Ohio Ct. App. 1959).
2. De Victor v. Preferred Ins. Co., 156 N.E.2d 157 (Ohio Ct. App. 1958).
3. Hall v. United States Fidelity & Guarantee Co., 107 Ohio App. 13, 155 N.E.2d 462 (1957).
4. *Id.* at 18, 155 N.E.2d at 466.