

1981

Insurance

Helen Clark

Follow this and additional works at: <http://scholarship.law.edu/lawreview>

Recommended Citation

Helen Clark, *Insurance*, 30 Cath. U. L. Rev. 769 (1981).

Available at: <http://scholarship.law.edu/lawreview/vol30/iss4/22>

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

INSURANCE

I. LICENSING

In *Taylor v. Montgomery*,¹ the District of Columbia Court of Appeals held that an applicant for a license to sell insurance was properly denied the license on the ground of untrustworthiness. The District of Columbia Superintendent of Insurance had rejected Taylor as not "trustworthy" in accordance with section 35-425 of the District of Columbia Code.² Taylor's application was denied in large part because he had two previous criminal convictions, one of which was a felony. On appeal, Taylor argued that his rejection violated due process because the standard in the statute for "trustworthiness" was unconstitutionally vague. The court stated that section 35-426,³ the provision governing suspension or revocation of a license, afforded sufficient notice that a felony conviction could be the basis for suspension or revocation of a license since a felony conviction might demonstrate untrustworthiness. The court held that the standard of untrustworthiness for suspension or revocation proceedings in section 35-426 also applied when the Superintendent considered an original license application under section 35-425. Thus, Taylor had been provided with sufficient notice and, therefore, the statute was not void for vagueness.

Taylor also argued that his previous convictions were too remote in time to bear a rational relationship to his present trustworthiness. He had been convicted six years earlier for receiving stolen property and eleven years earlier for petit larceny. The court rejected this contention. Although the petitioner's most recent conviction had occurred six years earlier, he was still on probation when he applied for the license. The court recognized that a rational relationship existed between the denial of his application on

1. 413 A.2d 923 (D.C. 1980).

2. D.C. CODE § 35-425 (1973) provides that "the superintendent of insurance [must be] reasonably satisfied that the applicant is a trustworthy person" before he may grant such applicant a license.

3. D.C. CODE § 35-426 (1973) states in pertinent part:

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker when and if, after investigation, it appears to the Superintendent that . . . such person . . . has been convicted of a felony, or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker.

the ground of untrustworthiness and these convictions when used as an element in the licensing assessment.

II. EFFECTIVE DATE OF COVERAGE

The District of Columbia Court of Appeals, in *Little v. Barry*,⁴ held that the employer's receipt of an employee's optional insurance election form⁵ was a condition precedent to the commencement of coverage. Little brought suit to enjoin her employer from deducting over \$400 from her pay for an optional group life insurance policy that her employer said she requested but for which she inadvertently had not been charged for almost ten years. The trial court granted summary judgment for the defendants. In reversing, the court of appeals distinguished between the mere *completion* of the insurance election by the employee and the *receipt* of the completed form by the employer. The court noted that there was no evidence that Little's employer had ever received the form she completed. The applicable regulations stated that the effective date of insurance coverage was to be calculated from the date "the election is received in [the] employing office."⁶ Thus, the employee's coverage never commenced and her employer was not entitled to deduct the cost of the premiums from her pay.

III. DISABILITY-RISK COVERAGE

In *Byrd v. Nationwide Mutual Insurance Co.*,⁷ the District of Columbia Court of Appeals affirmed the trial court's conclusion that a gunshot wound inflicted on the insured during an assault initiated by the insured does not constitute an "accidental" injury that would entitle the insured to benefits under a disability insurance policy. Byrd was convicted of attempted murder and possession of a sawed-off shotgun. During the confrontation that resulted in his arrest and conviction, Byrd fired the shotgun at a police officer and was severely wounded by police officers' return fire. The insurance company denied Byrd's claim for disability benefits. The trial court directed a verdict in favor of the insurer on the ground that the injury was not accidental. The court stated that injuries sustained by the initiator of an armed attack could be regarded as accidental if they were not reasonably foreseeable by the insured as a natural or probable result of his actions. However, the trial judge ruled that injuries to a person are

4. 417 A.2d 966 (D.C. 1980) (*per curiam*).

5. An optional insurance election form gives an employee the option of accepting or declining the life insurance plan provided by the employer. 5 C.F.R. § 871.202 (1980).

6. 5 C.F.R. § 871.203(a) (1980).

7. 415 A.2d 807 (D.C. 1980).

foreseeable as the natural and probable consequence of his assault with a deadly weapon. Thus, because the policy provided coverage only for "accidental" injuries, Byrd could not collect for his injuries.

IV. MULTIPLE COVERAGE OF RISK

In *Jones v. Medox, Inc.*,⁸ a case of first impression, the District of Columbia Court of Appeals decided a case in which two insurance companies insured one person for the same risk, using allegedly incompatible coverage methods. The appellant's policy with Globe Insurance Company (Globe) contained a pro rata "other insurance" clause, which provided that Globe would be liable for its proportion of the loss when other collectible insurance policies existed. Insurance Company of North America (INA), was one of the defendants in a suit by appellant and Globe to obtain a pro rata share of a settlement expense paid in full by Globe. The INA policy contained an excess "other insurance" clause. This clause provided that INA's insurance would be excess insurance over any other valid and collectible insurance. The court of appeals reversed the lower court holding that, where there was a conflict between one policy with an excess "other insurance" clause and another policy containing a pro rata "other insurance" clause, the pro rata insurer bore primary liability up to the policy limit. Instead, it adopted the *Lamb-Weston* rule⁹ that, in the event of conflicting "other insurance" clauses, the clauses are mutually repugnant and must be rejected with the result that liability will be prorated among the insurers. Although it acknowledged that the *Lamb-Weston* rule was the minority approach, the court emphasized the convenience, uniformity, and equity of applying the rule.

In dissent, Associate Judge Gallagher disagreed that the insurance clauses were in conflict. Gallagher argued that Globe's provision contemplated contribution from all other valid and collectible insurance. However, since INA's clause stated that it would not pay if the claim were covered by other valid and collectible insurance (up to the policy limit), the INA policy was not collectible insurance as contemplated by the Globe provision. Since Globe's policy stated that it would pay in any event, subject to pro rata contributions from other possible insurers, it should have been liable for the full amount of the policy. INA would have been liable for any excess.¹⁰ Moreover, Gallagher furthermore argued that an appli-

8. 413 A.2d 1288 (D.C. 1980).

9. *Lamb-Weston, Inc. v. Oregon Auto. Ins. Co.*, 219 Or. 110, 341 P.2d 110 (1959).

10. 413 A.2d at 1292 (dissenting opinion).

cation of the *Lamb-Weston* rule would disregard contractual language manifesting the intent of the parties to limit liability.

Helen Clark