Some Legal Problems in Group Insurance

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protective reach far beyond the one who contracts for it. The state is greatly interested in the business of insurance, as may be witnessed by the thousands upon thousands of statutory regulations which seek to safeguard those dependent upon its protection. And as a people we seem to be moving ever closer to the view that the risks to which life is subject must be reduced to a minimum as far as it may lie in our power to do so, whether the particular individual does anything about it or not. Thus it seems to follow that the more such risks are assumed by business the less the need will be for government to assume them. The extent to which they can be so assumed in our competitive society without an undue burden on the participants remains to be seen. There is no such thing as free insurance. Somebody must pay or a breakdown will be inevitable.

In any event, factors such as those suggested render any treatment of legal principles which operate in the field of insurance difficult if not impossible of analytical exactitude. This will be discernible in the accompanying student examinations of a group of subjects selected by them for study. The tendencies hereinabove mentioned are reflected in the statutory and jurisprudential treatment of warranties and representations, the concepts of waiver and estoppel, direct actions, the complex relationships resulting from group insurance, as well as the adjustment of the rights of multiple claimants and the insurer's possible right to subrogation. The views expressed herein are, of course, the views of the students. If it should be felt that in some places there is too much detail and not enough in others or too much emphasis here and not enough there, it should be remembered that choices of the kind involved are not easy. Although the reader may not find answers for which he may yearn, he will find exposed most of the problems in the areas considered. Perhaps, also, the attempt to weigh and evaluate them may be helpful.

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Group insurance covers the members of some specified group under a single master policy without the normal requirement that each insured be individually selected. In these arrange-

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1. For general treatments of group insurance, see 1 Appleman, Insurance
ments, the presence of an administrator of the master policy, such as an employer or lending institution, in addition to the insurer and insured group, has given rise to a number of problems peculiar to group insurance. Because the vast majority of the cases have involved employee groups, this Comment will be limited to a consideration of employee group insurance. However, to the extent that other group arrangements have the same operating characteristics, the same rules that apply to employee groups should be applicable.

Before discussing the problems arising from group insurance contracts it is necessary to consider the manner in which such contracts are negotiated and operated. The policy generally has its inception with negotiations between the employer and the insurer. If a satisfactory agreement is reached, the insurer issues a master policy to the employer setting forth the terms and conditions of coverage for the individual insureds. The policy may be either contributory or non-contributory. Under a non-contributory policy all premiums are paid by the employer. After arrangements between the employer and insurer have been completed, the employee is issued a certificate which informs him that he is insured under the master policy and which may, in addition, contain some of the terms and conditions of the insurance. If the policy is contributory, a portion of the premium is deducted from the insured employee's pay and the remainder is paid by the employer. Where such a policy is involved, the employee is not covered as soon as the employer and insurer have reached an agreement. Rather, he is merely notified that he may obtain coverage by making an application and authorizing the employer to apply a portion of his wages to payment of his share of the premium. The terms of the master policy usually provide that the employee will be insured as of the date of his request for coverage. The date of the issuance of the certificate is not necessarily the date coverage begins.

LAW AND PRACTICE § 41 et seq. (1948); VANCE, INSURANCE 1031 (3d ed. 1951); Cox, Group Insurance Contracts for Employees, 38 TEXAS L. REV. 211 (1959); Hanft, Group Life Insurance: Its Legal Aspects, 2 LAW & CONTEMP. PROB. 70 (1935).

2. For a more detailed treatment of these aspects of group insurance than is given here, see Cox, Group Insurance Contracts for Employees, 38 TEXAS L. REV. 211 (1959). The other authorities cited in note 1 supra are also helpful.

3. Id. at 214: "As to the commencement of insurance of an individual employee, . . . if the policy is contributory, a customary provision is that each eligible employee who requests insurance and agrees to make the required contribution shall become insured on the date of such request or on the date he becomes eligible, whichever is later. . . ."
Generally, the employer performs many of the administrative details necessarily connected with the group insurance arrangement. He receives applications for coverage, issues certificates furnished by the insurer, remits premium payments, and keeps the insurer informed as to the employees who should be added or dropped from coverage. Applications for a change in the beneficiary of a life policy and claims of loss under disability policies are also sometimes distributed, collected and forwarded by the employer.

It can be seen that in group contract operation there are more opportunities for disputes to arise than under the ordinary individual policy where there is no certificate and no third person corresponding to the employer. For instance, the master policy may be issued in one state and the certificate in another, with a consequent dispute over the applicable state law. There may be a variance between the terms of the certificate and those of the master policy. The employer has ample opportunity to make errors in his administration of the policy and so give birth to questions of the existence or scope of the employee's coverage. From a strictly analytical standpoint the solutions to these and related questions depends on a determination of the legal relations created between the employer, the employee, and the insured.

**Employee — Party or Third Party Beneficiary?**

There is disagreement on the question of whether the employee-insured under a group contract is a party to a contract with the insurer or a third party beneficiary of a contract between the insurer and the employer. Generally this question is not the basic issue litigated, and statements as to the contractual status of the employee appear in the rationale of the cases to support holdings on other issues. Thus statements that the employee is a party to the contract may be found in the rationale of cases ruling in favor of the employee on such points as whether his consent was required in order to modify the policy, whether notice of a change in the policy should have been given him, and whether the law of the state where the certificate was issued governed the contract. Similarly, cases holding


5. Poch v. Equitable Life Assurance Society, 343 Pa. 119, 22 A.2d 590 (1941) (master policy holder was an association of steelworkers).

against the employee often contain statements indicating that the employee is not a party to the contract, but a beneficiary of the contract between the employer and the insurer. Some cases have indicated that the employee is a party to a contributory policy but a third party beneficiary under a non-contributory policy.

Louisiana's position on the question of the contractual status of the employee is not certain. The case of *Austin v. Metropolitan Life Ins. Co.* indicates that an employee under a non-contributory policy is a third party beneficiary. Dictum in *Carpenter v. Metropolitan Life Ins. Co.* indicates that the employee insured under a contributory policy is also a third party beneficiary, but no Louisiana case was found ruling squarely on this point.

### What Constitutes the Contract?

The proposition that the master policy issued to the employer...
is a part of the contract under which his employees are insured has seldom been challenged in cases involving disputes over substantive issues. The status of the certificate issued to an employee, however, is not so clear. From a substantive standpoint the status of the certificate is usually important to the parties for two purposes: to determine which state's laws should govern the provisions of the policy, and to resolve disputes arising when the terms of the certificate differ from those of the master policy.

In holding the contract completed in, and so governed by the law of, the state where the master policy was issued and delivered, a number of cases have used the argument that the certificate is not a part of the contract. This result has also been supported by reliance on policy provisions referring to applicable state law and on the idea that the policy should be uniformly interpreted everywhere. Support for the proposition that the contract does not include the certificate has been derived both from specific policy provisions and from the contention that

12. Strictly speaking, the master policy is not a part of the contract of insurance. It is evidence, though perhaps conclusive evidence, of the contract. However, it is convenient, when writing on this matter, to refer to the master policy and certificate as part of the contract and this is done throughout the paper.

13. One of the few cases to do so is Austin v. Metropolitan Life Ins. Co., 142 So. 337 (La. App. 2d Cir. 1932). There, beneficiary contended that the certificate issued to the insured employee under a non-contributory policy constituted the entire contract between the employee and the insurer. The beneficiary based this contention on La. Acts 1916, No. 227, which provided in part that every life insurance policy issued or delivered in Louisiana should contain the entire contract between the parties. The court held that the master policy, rather than the certificate, was the type of instrument contemplated by the statute. Often the master policy provides that it, together with the application of the employer and the individual applications of the employees, if any, shall constitute the entire contract between the parties. Boseman v. Connecticut General Life Ins. Co., 301 U.S. 196 (1937); Germain v. Aetna Life Ins. Co., 285 Mich. 318, 280 N.W. 776 (1938); Riske v. National Casualty Co., 268 Wis. 199, 67 N.W.2d 385 (1954).

14. Procedural problems are beyond the scope of this Comment.

15. Questions of which state should be able to regulate group insurance on a broader plane and specify such things as insurable groups and minimum enrollment are beyond the scope of this Comment.


18. Sometimes the master policy provides that the master policy, the application of the employer, and the applications of the individual insureds shall constitute the entire contract between the parties. In the Boseman case, cited in note
the employee is not a party to the contract. At least one case has held that the certificate is part of a contributory policy but not part of a non-contributory policy. Cases holding that the law of the state where the certificate is issued governs the policy provisions have generally based this conclusion on the idea that the contract was completed in that state, where the certificate was issued to the employee. One case has indicated that public policy dictates this conclusion.

The problem of what rights an employee has when the terms of the certificate differ from those of the master policy has been handled in various ways. It has been said that where there is a difference between the terms of the master policy and the certificate, the certificate is a part of the contract and is controlling. At least one case involving such a conflict has indicated that a certificate issued under a contributory policy is a part of the contract since the employee is a party to it, while under a non-contributory policy the certificate merely evidences the right of the employee as a third party beneficiary.

17 supra, the court relied in part on such language to conclude that the certificate was not a part of the contract.


20. Connecticut General Life Ins. Co. v. Moore, 75 S.W.2d 329 (Tex. Civ. App. 1934) so held on both these points where a question of applicable state law for the purpose of assessing penalties and attorney fees was involved.


22. Thieme v. Union Labor Life Ins. Co., 12 Ill. App.2d 110, 138 N.E.2d 857 (1956). In this case the master policy holder was a labor union. The master policy had been issued and delivered outside of Illinois. The employee involved, an Illinois worker, received his certificate in Illinois and a portion of his union dues went to the payment of the premium. The court stated that the master policy contained no provision as to applicable state law and that the public policy of Illinois with respect to the regulation of insurance was at issue. It then concluded that Illinois law should be utilized in interpreting the contract.

23. John Hancock Mutual Life Ins. Co. v. Dorman, 108 F.2d 220 (9th Cir. 1939). That the certificate should control only where such a rule is more favorable to the employee is indicated by Rothermel v. Aetna Life Ins. Co., 275 Mich. 425, 260 N.W. 404 (1936). In Rothermel, the insurer sought to limit the employee's rights to those granted under a provision in the certificate. The court, ruling against the insurer on this point, stated that the certificate was issued under the terms and conditions of the master policy. In Metropolitan Life Ins. Co. v. Wither, 172 F.2d 631 (7th Cir. 1949) the master policy named one beneficiary and the certificate another. The court held that the designation in the certificate governed.

24. Parks v. Prudential Ins. Co., 103 F. Supp. 493 (E.D. Tenn. 1951) (contributory master policy and certificate were originally in harmony but master policy was later amended without notice to the employee).
Estoppel has also been used to allow recovery in accordance with the terms of the certificate,25 the idea being that the insurer may not assert the terms of the master policy to contradict the provisions of the certificate, but there seems to be a conflict in the decisions on the question of whether or not estoppel created by a variance between the certificate and master policy may be used to enlarge coverage.26

No Louisiana decision was discovered involving a conflict between the terms of the certificate27 and master policy or a question of applicable state law. However, in Austin v. Metropolitan Life Ins. Co., the contention that a certificate issued under a non-contributory policy constitutes the entire contract was rejected.28 The court went on to state that the master policy was the entire contract. Federal district courts sitting in Louisiana, in keeping with the Boseman29 case, have held that the

26. In Riske v. National Casualty Co., 268 Wis. 199, 67 N.W.2d 385 (1954) it was held that a provision in the certificate granting coverage to the employee's spouse prevailed over a master policy indicating otherwise. The court said that the certificate "effectively estops the respondent from showing that the coverage, conditions, and limitations of the policy are different from those stated in the certificate." Id. at 207, 67 N.W.2d at 389. Pool v. Protective Life Ins. Co., 26 Ala. App. 161, 155 So. 631 (1934) indicates a contrary rule with respect to extension of coverage, though perhaps what the court said on that point was dictum. It is interesting to note that a similar split of authority has arisen in cases involving the effect of incontestability clauses on group policies. Some courts have taken the position that such clauses cannot enlarge the coverage of the policy. Washington National Insurance Co. v. Burch, 270 F.2d 300 (5th Cir. 1959); Fisher v. United States Life Ins. Co., 249 F.2d 879 (4th Cir. 1957); Rasmussen v. Equitable Life Assurance Society, 239 Mich. 482, 292 N.W. 377 (1940); John Hancock Mutual Life Ins. Co. v. Dorman, 108 F.2d 220 (9th Cir. 1939); Eagon v. Union Labor Life Ins. Co., 2 App. Div.2d 843, 156 N.Y.S.2d 37 (1956), aff'd, 3 N.Y.2d 785, 164 N.Y.S.2d 37 (1957). It is interesting to note that a similar split of authority has arisen in cases involving the effect of incontestability clauses on group policies. Some courts have taken the position that such clauses cannot enlarge the coverage of the policy. Washington National Insurance Co. v. Burch, 270 F.2d 300 (5th Cir. 1959); Fisher v. United States Life Ins. Co., 249 F.2d 879 (4th Cir. 1957); Rasmussen v. Equitable Life Assurance Society, 239 Mich. 482, 292 N.W. 377 (1940); John Hancock Mutual Life Ins. Co. v. Dorman, 108 F.2d 220 (9th Cir. 1939); Eagon v. Union Labor Life Ins. Co., 2 App. Div.2d 843, 156 N.Y.S.2d 37 (1956), aff'd, 3 N.Y.2d 785, 164 N.Y.S.2d 37 (1957). Louisiana has taken the view that under a group policy the incontestable clause will not serve to extend coverage. In Allison v. Aetna Life Ins. Co., 158 So. 339 (La. App. 2d Cir. 1935), rev'd on other grounds on rehearing, 161 So. 945 (La. App. 2d Cir. 1935), the court said that an incontestable clause would not extend coverage. It then held that the question of whether or not an employee in the firm which had secured the contributory policy was actively employed at the time a rider increasing insurance was attached, was a question of validity and not coverage.

27. Dictum to the effect that a certificate issued in accordance with a contributory policy is not part of the contract may be found in Metropolitan Life Ins. Co. v. Lewis, 142 So. 721 (La. App. 2d Cir. 1932). There an employee attempted to effect a change in the beneficiary of a contributory policy by applying through the employer. His application was mailed, but he died before action on it was taken by the insurer. In holding that the beneficiary had not been changed, the court noted that the provisions of the master policy controlled with respect to the manner of changing beneficiary. However, there appears to have been no real conflict between the provisions of the certificate and master policy.

28. 142 So. 337 (La. App. 2d Cir. 1932). This contention was based on La. Acts 1916, No. 227, which provided in part that life insurance contracts delivered in Louisiana should contain the entire contract between the parties without incorporating other terms by reference.

The law of Louisiana is not applicable to master policies issued and delivered elsewhere even though the certificates are issued to employees in Louisiana. Louisiana has a statute requiring the issuance of a certificate to each insured under a group life policy setting forth a statement as to his insurance protection. Similar policy provisions have been used to support recovery by the employee in accordance with the terms of the certificate where it conflicts with the master policy.

**Employer as Agent of the Insurer**

The cases are in conflict on the question of whether the employer is an agent of the group insurer. This question arises when an employee claims that the insurer is bound by the policy despite the failure of the employer to perform some administrative task under the policy. The problem also arises when the employer has misled the employee as to the existence or extent of his coverage and the employee attempts to recover in accordance with the contract as he has been led to believe it existed.

Some cases have held the employer to be the agent of the insurer for collecting premiums, for receiving notice and proof.

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31. LA. R.S. 22:176(7) (1950) provides that each master policy insuring life must provide that a certificate "setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with the provisions concerning conversion rights" shall be issued to each insured.

32. Riske v. National Casualty Co., 268 Wis. 199, 67 N.W.2d 385 (1954) involved a certificate issued under such a statutorily required policy provision. The court there held an insurer estopped to maintain that the master policy did not provide protection for the employee's spouse where such protection was set forth in the certificate. It stated that such a provision was a representation that the insurer's interpretation of essential features, coverage, and conditions of the policy was to be found in the certificate. The court added that it could find no purpose in requiring such a certificate if it was to be given no effect. In Parks v. Prudential Ins. Co., 103 F. Supp. 493 (E.D. Tenn. 1951) a provision in the policy for the issuance of such a certificate appears to have been used to support a conclusion that the certificate was a part of the employee's contract with the employer and hence controlling.

33. Shanks v. Travelers' Ins. Co., 25 F. Supp. 740 (N.D. Okla. 1938); All States Life Ins. Co. v. Tillman, 226 Ala. 245, 146 So. 393 (1932); Greer v. Equitable Life Assur. Soc., 160 S.C. 162, 185 S.E. 68 (1936). Where the policy is non-contributory, the failure of the employer to pay the premium is generally held to terminate the employee's coverage. All States Life Ins. Co. v. Steward, 242 Ala. 258, 8 So.2d 784 (1942); Tedesco v. Turner & Seymour Manufacturing Co., 13 Conn. Supp. 192, 110 A.2d 650 (1954); Curd v. Travelers' Ins. Co., 51 Ga. App. 306, 150 S.E. 249 (1935). It is interesting to note that in cases where the employee failed to make his contribution but the employer nevertheless paid the entire premium it has been held that coverage continued notwithstanding.
of loss, and for changing the beneficiary of a life policy. On the other hand there are cases holding the employer not the agent of the insurer in performing similar functions. The cases are also divided on the question of whether or not the insurer is bound by statements or conduct on the part of the employer which misleads the employee as to his rights under the policy.

In Louisiana it appears that the insurer is responsible for failure of the employer to perform administrative duties, but the extent to which the insurer will be responsible for misleading conduct of the employer is not clear. In the leading
case of *Neider v. Continental Assur. Co.*, the employer told the employee that premiums were paid for him as long as he was on the payroll. Because of the employer's complicated bookkeeping system the employee was paid two weeks after his employment had terminated and after premium payment on his behalf had been discontinued by the employer. The court found that the employee was reasonable in believing that deductions were being made from his salary and applied to the payment of premiums and allowed recovery under the policy. The court stated that,

"We feel that the employer owes to the employee the duty of good faith and due care in attending to the policy, and that the employer should make clear to the employee anything required of him to keep the policy in effect, and the time that the obligations are due. In its position as administrator of the policy, the employer should be considered as the agent of the insurer, and any omission of duty to the employee in its administration should be attributable to the insurer."  

*Neider* seems clearly to have established the proposition that, with respect to at least some acts of administration, the employer acts as agent of the insurer, though there were indications to the contrary in the prior jurisprudence.

It should be noted that in the *Neider* case the employer did not mislead the employee as to the terms and conditions of the policy but only misled him on the question of whether he was

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40. Holloman v. Jefferson Standard Life Ins. Co., 188 So. 500 (La. App. 2d Cir. 1939) involved employees insured under ordinary policies who subscribed to a "Salary Savings Franchise" plan under which their employer agreed to deduct their premiums from wages and forward them to the insurer. The employer's failure to pay premiums timely resulted in loss of coverage of an employee and the beneficiary later sued the insurer alleging, among other things, that the employer acted as its agent in collecting and remitting premiums. The court analogized this insurance arrangement to a group contract, and appeared to rely on group insurance cases holding the employer not an agent of the insurer in refusing recovery. In Peyton v. Metropolitan Life Ins. Co., 148 So. 721 (La. App. Orl. Cir. 1933) an employee whose employment was terminated and who was notified that this would terminate his insurance unless he exercised an option to convert his group policy to an individual policy later sought recovery against the insurer. Among other things he contended that the insurer accepted premiums in his behalf after his employment was terminated and was therefore estopped to assert that his coverage expired at the termination of employment. The court stated that this plea was filed too late to be of any effect against the insurer. It added, however, that the acceptance of premiums could have no effect against the insurer since the insurer did not know of any change in the employee's status. Thus the court impliedly ruled out the idea that knowledge of the employer should be imputed to the insurer.
earning a salary from which premium payments were being deducted. Whether misleading action as to the terms or conditions of coverage would fall within the scope of the administrative functions of the employer for which he is the insurer's agent remains to be determined.

_Cancellation or Amendment of the Policy — Necessity of Consent or Notice?_

Sometimes the employer and insurer undertake to modify or terminate group insurance coverage by mutual agreement or by unilateral act. When the employee later attempts to recover from the insurer he does so by contending that his consent was necessary in order to effect a change in his coverage or that the insurer should at least have given him notice of the change in his status. Frequently the employee has a valuable conversion privilege which he might exercise within a limited time after termination of his coverage so that notice has an importance to him beyond his normal desire to be informed as to his current insurance status.

The rationale of cases involving consent and notice questions has been varied. Among the reasons given for requiring notice have been the existence of a conversion privilege and the contributory nature of the policy. The idea that the employee is a party to the contract has also influenced courts to require notice. One case, though speaking of the employee as a third party beneficiary, required notice by interpreting the words “termination of employment” in a policy providing for a cessation of coverage upon termination of employment to mean a

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41. A conversion privilege entitles the employee to have issued to him, upon timely application and payment of premium, an individual life policy in the amount of the group policy without furnishing evidence of insurability. The effect of the conversion privilege is not entirely settled. It is clear that if it is exercised and a new individual policy issued this policy becomes the contract under which the employee is covered. But what if the employee dies within the time in which he could have exercised his conversion privilege but has not done so? The case law in most jurisdictions where the question has arisen is to the effect that the conversion privilege does not operate to keep the group policy in effect, but is only an option and so the beneficiary cannot recover in such a situation. The minority view is that coverage continues under the group policy for this period. See cases cited in Annot., 68 A.L.R.2d 8 (1959). Louisiana has adopted a statute specifically providing that each master policy must contain a provision granting insurance in the amount of the obtainable individual policy as a claim under the group policy if the employee dies during a time within which he could have exercised his conversion privilege. LA. R.S. 22:176(12) (1950).


43. Ibid.

termination of employment with notice. Among the reasons given for refusing to require notice have been the following: the possibility of conversion was not open to the employee, the terms of the policy did not require notice, and the employee’s insurance was a gratuity.

The contributory nature of the policy has led some courts to hold the employee a party to the contract at least to the extent that it cannot be modified without his consent. On the ground that the employee and his beneficiary had vested interests in the policies, one case held that an agreement between the insurer and the employer was ineffective to terminate coverage of an employee under both contributory and non-contributory policies. A requirement of consent has been refused on the ground that the employee is not a party to the contract.

Louisiana’s position on the question of whether notice must be given or consent obtained is not certain. In *Austin v. Metropolitan Life Ins. Co.* the cancellation of an entire non-contributory master policy was held to terminate coverage of the employees formerly insured thereunder. Language in *Carpenter v. Metropolitan Life Ins. Co.* indicates that a contributory policy also may be cancelled or modified by the insurer and employer without consulting the employee. This was only dictum, however, because there the employee involved learned of the proposed change prior to loss and applied for new coverage. From these two cases an inference (though it rests on shaky ground) may be drawn that there is no necessity to obtain the employee’s consent under either contributory or non-contributory policies.

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46. Riefler v. Equitable Life Assur. Soc., 21 Ill. App. 2d 122, 157 N.E.2d 429 (1959); Satz v. Prudential Ins. Co., 225 S.W.2d 480 (Mo. App. 1949) (contributory policy). In *Satz* it was also said that the employee was too old to obtain other insurance.
52. See notes 9, 10, 28, supra.
53. See note 11 supra.
The Neider case, holding the insurer responsible for misleading conduct of the employer which caused the employee to believe his insurance was still in effect, is closely analogous to situations in which other jurisdictions have required notice. This, coupled with its result, probably indicates that Louisiana will require notice.

**Duty of Employer to Employee**

When the employer takes out a group insurance policy, certainly he does not become an insurer of the employee. However, a duty to properly administer the policy has been maintained by some cases involving contributory policies. It has been held that an employer who had sufficient funds belonging to his employee to pay a premium but who failed to do so, causing the employee's coverage to terminate, is liable to the employee. The employer has also been held responsible for failure to give notice to an employee of the fact that the employer considered the employee's coverage terminated. At least one

54. See note 38 supra.
55. The Neider case is closely analogous to situations in which employment is terminated without the employee's knowledge. For a more detailed treatment than is given below of the problems which arise in connection with termination of employment, see Annot., 68 A.L.R.2d 8 (1959). Generally, an employee's coverage terminates when his employment ends. Usually he is aware of the fact that he is no longer employed. However, this is not always true. Some cases have held that notice of the employer's intention to consider the employment at an end must be given to a sick or laid-off employee in order for his coverage to be terminated by this action on the part of the employer. Nick v. Travelers Ins. Co., 354 Mo. 376, 189 S.W. 2d 532 (1945); Melikian v. Lincoln National Life Insurance Co., 185 Pa. Super. 209, 138 A.2d 170 (1958). The Nick case furnishes a good example of this kind of situation. There the policy provided that a temporary lay-off should not be considered termination of employment unless the employer elected to consider it such. A jury found that the employee had been temporarily laid off and that the employer had elected to consider this a termination of employment. The court held that the employee was entitled to notice of this election before his insurance could be terminated.
57. None of the cases examined allowed recovery against an employer for cancellation or poor administration of a non-contributory policy.
58. Peyton v. United States Steel Co., 368 Pa. 591, 84 A.2d 192 (1951). The measure of recovery in such a case is the amount of insurance the employee would have received under the policy. There is a difference between the situation where the employer's failure to pay causes the employee to lose coverage and the situation in which the employer never takes out the insurance on the employee. In the first situation the employer's misconduct has caused the employee to lose coverage while in the second he is prevented from acquiring it. Thus in the first situation it would appear that an employee who is not individually insurable would have a cause of action, while in the second he would not. Minter v. Georgia Piggly-Wiggly Co., 185 Ga. 116, 194 S.E. 176 (1937) sustained a demurrer in the second situation above when the employee failed to allege that, in reliance on the employer, he had failed to get other coverage which he could have obtained.
case has denied recovery to a life beneficiary on the ground that any duty owed by the employer in the administration of the policy is owed only to the insured employee or his personal representative.\textsuperscript{60} Two more recent decisions have held, however, that an employer is responsible to such a beneficiary for failure to make the required deductions and payments without notifying the employee.\textsuperscript{61}

Louisiana’s position with respect to the employer’s liability to the insured employee is not certain. The only Louisiana decision discovered involving a suit by an employee against his employer arising out of a group insurance contract was \textit{Peyton v. Morgan’s Louisiana R.R. & S.S. Co.}.\textsuperscript{62} There the beneficiaries of a contributory policy insuring an employee who had been discharged and appropriately notified of his conversion privilege, later sued the employer. In holding that their petition stated no cause of action against the employer, the court pointed out that it contained no allegation that the employer agreed to insure the employee, withheld premiums which should have been

\textsuperscript{60} Meyerson v. New Idea Hosiery Co., 217 Ala. 153, 115 So. 94 (1928). Here the beneficiary of a contributory life policy sought recovery against an employer who, without notifying the employee, had allowed the policy to lapse by failing to make the required deductions and premium payments. The court said that although in view of the employer’s undertaking to pay the insurance out of the insured’s pay, he was under a duty to notify the insured before allowing his insurance to lapse, nevertheless a breach of this duty would only give rise to a cause of action in favor of the insured or his personal representative. Assuming that an employer should be held to owe a duty of notice to the employee in a situation such as \textit{Meyerson}, the result reached there appears unsound. If the personal representative of the deceased insured has the right of action in behalf of the deceased’s estate, it appears that the duty is rendered illusory. Under the policy the insurer never was obligated to pay anything to the insured, so what should his personal representative recover? The value of the right to name a beneficiary? If the personal representative is to sue in behalf of the beneficiary, then matters are unduly complicated.

\textsuperscript{61} Keane v. Aetna Life Ins. Co., 22 N.J. Super. 296, 91 A.2d 875 (1952); Quinten v. United States Steel Corp., 186 Pa. Super. 384, 142 A.2d 370 (1958). In \textit{Keane} the court said that where the insured designated the beneficiary with the manifest intention that the beneficiary should benefit there was no valid reason for defeating that purpose by applying concepts which might foster justice in other situations, but which would defeat it here. In \textit{Quinten} the court said that the answer to the contention that the employer owed a duty only to the insured was that the employer had failed to notify anyone.

\textsuperscript{62} 148 So. 724 (La. App. Orl. Cir. 1933). This case was a companion to the employee’s suit against the insurer and it is in the suit against the insurer that the court discusses the claim against the employer. \textit{Peyton v. Metropolitan Life Ins. Co.}, 148 So. 721 (La. App. Orl. Cir. 1933).
transmitted to the insurer, or failed to pay over proceeds re-
ceived from the insurer. In *Neider v. Continental Assur. Co.*, involving a suit against an insurer based on a contributory policy, it was stated that the employer owes the employee a duty of good faith and due care in administering the policy. The court went on to hold, however, that in performing this duty the employer acts as the agent of the insurer so that a breach of the duty does not result in termination of the employee's coverage. This being so, it seems that in such a situation the employer has caused the employee no loss and consequently should not be subject to suit by the employee. Whether the range of the employer's duty to the employee extends beyond the ambit of the employer's agency has not been decided.

*Suggestions*

Because of the great conflict in legal theory surrounding group insurance contract, some speculation as to the desirable legal relations between the parties involved might prove helpful. In this section some thoughts on the problems previously discussed will be advanced.

On a strictly analytical basis it seems that an employee insured under a contributory group policy is a party to a contract of insurance with the insurer. In order to be deemed such it is necessary that he reach an agreement with the insurer supported by consideration. The employee enters contractual negotiations with the insurer by filling out his application for coverage, whether this be regarded as an offer or acceptance. He bargains for coverage and by authorizing the payment of a portion of the premium from his salary gives consideration to support the insurer's undertaking to insure. Many master policies contain provisions that the master policy, the application of the employer, and the individual applications of the employees shall constitute the entire contract between the parties. Therefore only make reference to that opinion.

63. These statements actually appear in a companion case involving the employee's suit against his former insurer. *Peyton v. Metropolitan Life Ins. Co.*, 148 So. 721 (La. App. Orl. Cir. 1933). In the suit against the employer the court stated that it had discussed the entire matter in the insurer case and would therefore only make reference to that opinion.

64. 213 La. 621, 35 So.2d 237, 2 A.L.R.2d 846 (1948).

they imply that the employee is a party since if the employee's individual application is part of the contract it is only logical to conclude that he is a party thereto. It should be noted at this point that there are as many contracts as there are insureds under the above analysis, even though the terms of all of them may be evidenced by the same master policy.

The idea that the employer has an interest in seeing that insurance is available to his employees and that he has a contract with the insurer are not inconsistent with the view that the employee is a party to a contract with the insurer. A contract does exist between the employer and the insurer, but it is not a contract of insurance. No one is insured in a contributory policy situation solely by virtue of an agreement between the employer and the insurer. Action on the part of the individual employee is necessary, and only after it is taken does coverage arise. The employee's application for insurance should not be regarded as the acceptance, as a third party beneficiary, of a stipulation in his favor. First, no coverage exists as to the employee until he applies, while if he were a third party beneficiary he would be insured upon agreement to that effect between the insurer and employee. In the second place, the employee does more than accept. He gives something to the insurer in order to secure an advantage.

Under a non-contributory policy the employee should properly be considered a third party beneficiary because his coverage arises without any action on his part. He engages in no contractual negotiations with the insurer, through an agent or otherwise, and gives no consideration to the insurer. In Anglo-American jurisdictions where the insurance is gratuitous, i.e., not furnished by the employer in response to some actual or asserted duty, the employee should be considered a donee beneficiary. Where the coverage is not gratuitous the employee

66. Under the definitions given in Restatement, Contracts § 133 (1932), a person other than the promisee who will be benefitted by the promise is a donee beneficiary "if it appears from the terms of the promise in view of the accompanying circumstances that the purpose of the promise in obtaining the promise of all or a part of the performance thereof is to make a gift to the bene-
should be deemed a creditor beneficiary.\textsuperscript{67} If circumstances indicate that the employee actually bargained with the insurer he should properly be considered to have a contract with the insurer notwithstanding the fact that premiums are paid by his employer. In Louisiana the rights of a third party beneficiary do not depend upon whether the stipulation in his favor was secured with the intent of making a gift;\textsuperscript{68} therefore the distinctions between the donee and creditor beneficiaries in Anglo-American law are unimportant in Louisiana.

Whether or not the employee is a party or a third party beneficiary to the contract under which he is insured, the terms of the certificate should not be a part of the policy.\textsuperscript{69} Many policies so provide by stating that the master policy, the application of the employer and the individual applications of the employees, if any, shall constitute the entire contract between the parties.\textsuperscript{70} But though a certificate is not a part of the policy, it does not necessarily follow that the laws of the state in which the master policy was issued and delivered should govern. Most contributory policies provide that an employee is insured upon

\begin{footnotes}
\item[67] See note 66 \textit{supra}.
\item[68] \textit{La. Civil Code} arts. 1890, 1902 (1870) carry the French \textit{stipulation pour autrui} into Louisiana law. These articles draw no distinction comparable to the donee and creditor beneficiaries of Anglo-American law. Once it has been accepted, the stipulation may not be revoked without the consent of the beneficiary unless the power to do so has been reserved. For a detailed discussion of the \textit{stipulation pour autrui}, see Smith, \textit{Third Party Beneficiaries in Louisiana: The Stipulation Pour Autrui}, 11 \textit{Tul. L. Rev.} 18 (1936).
\item[69] The terms of the policy are the terms of the agreement between the parties to the contract. Where the employee is a party and he and the insurer reach an agreement the terms of that agreement are, of course, the terms of the policy. Since the employer's application operates as an acceptance of the insurer's offer of coverage, which is represented by the master policy, the contract comes into existence then and its terms are then fixed. The certificate, issued subsequently, cannot be a part of that agreement. Where the employee is a third party beneficiary, the contract of insurance is fixed upon agreement of the employer and insurer. Again subsequent issuance of a certificate cannot alter that contract.
\item[70] See note 65 \textit{supra}.
\end{footnotes}
application for insurance. Therefore his contract of insurance is completed in the state where the application is submitted to the employer and the laws of that state should govern. If the master policy is so worded as to require acceptance of an application before the commencement of coverage, the contract might properly be held governed by the law of the state of acceptance, in the absence of statute. However, most states, including Louisiana,\textsuperscript{71} undertake to regulate by statute the terms of insurance contracts delivered within the state. Although a certificate is not a policy of insurance, it is delivered to employees in lieu of a policy. Its delivery should be considered equivalent to delivery of a policy for purposes of determining applicable state law. The purpose of such statutes is to prevent insurers from insuring the citizens and inhabitants of a state though escaping the state's regulations as to policy terms and penalties for failure to perform properly. This is exactly what insurers could accomplish if allowed to accept applications out of state and avoid regulation by the issuance of certificates rather than policies.

In the absence of a statute of the type discussed above, non-contributory policies in which the employee is not a party to the contract\textsuperscript{72} should be governed by the laws of the state in which the master policy is issued and delivered. In the presence of such a statute, and assuming that delivery of a certificate under a contributory policy is tantamount to delivery of the policy, the same result should obtain. Delivery of a certificate issued under a non-contributory policy should not be held tantamount to delivery of the policy because the employee is not a party to the contract. He has not bargained with the insurer for coverage and the analogy between such an employee and an insured under an individual policy breaks down here.

Since a certificate is not properly part of the contract, its terms should not control over conflicting terms of the master policy. This should be true of contributory as well as non-contributory policies. However, the insurer should be estopped to assert master policy provisions which conflict with the terms of the certificate as a defense against an employee who has reasonably relied on the terms of the certificate to his detriment. This may be what courts have in mind when they say that if there is a difference between the terms of the certificate and

\textsuperscript{71} LA. R.S. 22:611, 629 (1950).

\textsuperscript{72} As has been previously pointed out, in certain unusual situations the employee might be a party even though the policy is non-contributory.
those of the master policy, the certificate is a part of the contract. Although it may be generally true that consideration is required to create a legal duty by way of contract, in an otherwise appropriate case for estoppel there is no reason why the fact that coverage will be extended should make the doctrine inapplicable.\footnote{73} 

Where the employee is a party to the contract the employer, in his administration of the policy, should generally be considered an agent of the insurer. In opposition to this view it has sometimes been said that the employee has an interest in securing coverage and acts for himself and on behalf of his employees.\footnote{74} True, the employer has an interest in securing employee coverage, but this interest is not adverse to that of the carrier in the sense that the employer stands to gain where the carrier loses. The work done by the employer in administering a group policy is work that would have to be done by the insurer under an individual policy. The employer is the only party with whom the employee has any direct contact and once the employee has authorized deductions from his earnings or given notice or claim of loss to the employer there is little more that he can do. If the employer is not held to be the insurer’s agent, recovery may be had against him by the employee. In such a case the employer is forced to pay substantial sums for relatively minor errors. The insurer, who is in the business of taking risks into account would appear a better party to bear risks of employer error. Where the employer has misled the employee as to coverage this should still apply. The question in such a situation is not so much one of agency as it is one of the authority of the agent. If the insurer makes it abundantly clear to the employee that the employer has no authority to interpret policies and waive provisions, then the insurer should have no responsibility for such action by the employer.\footnote{75} 

\footnote{73} Statements that estoppel cannot be used to enlarge coverage probably find their basis in the idea that to so use estoppel would be to hold binding a promise not supported by consideration. The idea that a promisor may be bound though he has not received what is normally thought of as consideration is embodied in \textit{Restatement, Contracts} § 90 (1932). It provides: “A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.”


\footnote{75} Theoretically, the insurer who is forced to pay because of the employer’s negligence then has an action against the employer to recover what he has paid.
The employee insured by virtue of a non-contributory contract to which he is not a party should not consider his employer as the insurer's agent. Here the employer acts as one of two parties to a contract under which the employee is a stipulated beneficiary. The general rule with respect to third party beneficiaries is that their rights can rise no higher than those of the party to the contract who secured the stipulation in their favor. To hold the insurer bound in spite of a breach of the contract by the insurer on an agency theory would do violence to this idea.

Under general principles of contract consent of a party is a prerequisite to termination or modification of the contract unless he has previously agreed that none will be required. Likewise, a donee beneficiary in Anglo-American law generally cannot be deprived of coverage without his consent. In Louisiana, the rights of a third party beneficiary who has accepted a stipulation in his favor cannot be modified without his consent. So, whether the policy is contributory or non-contributory, and whether the employee is a party to the contract or a third party beneficiary, consent of the employee should usually be required to modify or terminate his rights unless the policy provides otherwise. The inquiry then would shift to the extent of the employee's rights under the policy with respect to continuance of his coverage.

Where consent is required the necessity of notice is ines-

However, no such suit was discovered in the preparation of this Comment. Perhaps this is due to the desire of insurers to remain on good terms with the employers upon whose cooperation their group insurance plans depend.

76. Thus, if the policy provided that it might be cancelled by the employer and insurer by mutual agreement at any time, such cancellation would be effective without consent whether the employee was viewed as a party or not. Generally, it would seem that the rights of the employee to have the policy kept in force could extend, at most, to the end of the period for which premiums have been paid on his behalf. Certainly the insurer and employer do not bind themselves to continue indefinitely an unsatisfactory arrangement. This idea appears to have been the basis of decision in the case of Metropolitan Life Ins. Co. v. Kornegby, 37 Ala. App. 417, 71 So.2d 292 (1954). There the employer and insurer agreed to cancel the master policy insofar as it covered a certain class of employees, and gave appropriate notice of this fact. An employee sued for recovery of all of the share of premiums he had paid since the beginning of his coverage. In denying his claim, the court did not say whether he was to be considered as a party to the contract. It did say, however, that if there was no contractual obligation upon the employer and insurer to keep the insurance in effect they were free to modify the arrangement. Other cases looking toward the agreement between the insurer and employer in determining whether consent was required are: Satz v. Prudential Ins. Co., 225 S.W.2d 480 (Mo. App. 1949) (modification of master policy; no consent needed); Butler v. Equitable Life Assur. Soc., 233 Mo. App. 94, 93 S.W.2d 1019 (1936) (cancellation of individual coverage under master policy; no consent needed).
capable. However, a failure to notify might properly result in insurer liability in situations where consent is not needed. It may be possible to find policies which indicate that notice is required as a prerequisite to an effective termination of the contractual obligations created by the policy. Nevertheless, where a failure to notify is to result in insurer liability, estoppel should more often be the appropriate vehicle. The difference, of course, is that where recovery is based on estoppel the employee must show reasonable reliance to detriment. Since estoppel may operate in the absence of contract, it should be applicable whether the employee is a party or merely a third party beneficiary. A difference might arise between these two policy situations, however, with respect to the extent the employer could be the agent of the insurer so as to bind the insurer through estoppel.

For errors in performing those functions in which the employer acts as agent of the insurer, the employee should have no recovery against the employer since in such a situation the employer has caused him no loss. However, the employer whose negligent administration of a contract to which the employee is a party has freed the insurer of responsibility should be liable for the loss sustained by the employee.\textsuperscript{77} Similarly, where the employee has reasonably relied to his loss on negligent employer conduct he should be able to hold the employer accountable even though under the contract the insurer was never responsible for the loss sustained.\textsuperscript{78} Having undertaken to administer or interpret the policy the employer should be held to have assumed a duty to exercise reasonable care in that respect. Under a policy conferring gratuitous coverage it is doubtful that the employer is burdened with a duty to preserve coverage. Nevertheless, wherever conduct of the employer can be fitted into a pattern of misleading action causing reasonable reliance and consequent injury recovery should be appropriate.

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\textsuperscript{77} Thus, for example, an employer, whose failure to forward a claim of loss relieved the insurer of liability, should bear the loss.

\textsuperscript{78} An example of this situation would be the case of an employer who negligently informed an employee that he was entitled to disability benefits when such was not the case. In this category might be put also cases where the employer fails to notify the employee of a change in coverage. On this point see note 59 \textit{supra}. 

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