

INSURANCE:



Insurance companies subject to Sections 379.205 to 379.310 RSMo 1949, are not exempt from the provisions of Section 376.400 RSMo 1949 when issuing regular accident and health policies, and such companies may include a death benefit payment in comprehensive automobile casualty and liability policy without making such policy a regular accident and health policy required to be filed and approved under Section 376.400, RSMo 1949.

March 7, 1956

Honorable C. Lawrence Leggett
Superintendent of the Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Leggett:

This opinion is rendered in reply to your inquiry reading as follows:

"The captioned insurance company, organized and doing business under the provisions of Sections 379.205 to 379.310, inclusive, Revised Statutes of Missouri, 1949, has filed with this Division for use in Missouri the captioned forms.

"Form No. A-1.10 is a 'Combination Automobile Insurance Policy' providing under Part III, Coverage D, indemnity for the death of the insured (defined as including only first named insured and his spouse) resulting from bodily injury caused by accident and sustained by the insured 'While in or upon, entering or alighting from, or from being struck by an automobile'.

"Form No. A-2.11 is the declarations form to be used in connection with Form No. A-1.10.

"We are also inclosing Memoranda submitted to this office by the captioned company concerning their authority to provide the accidental death benefit in a policy which does

Honorable C. Lawrence Leggett

not conform to the provisions of Section 376.400, Revised Statutes of Missouri, 1949, governing policies of accident and health insurance, for your information.

"It is the contention of the company that this accidental death benefit is not governed by Section 376.400, Revised Statutes of Missouri, 1949, on two grounds:

"First: That the M.F.A. Mutual Insurance Company, by virtue of the exemption contained in Section 379.310, Revised Statutes of Missouri, 1949, is not subject to said Section 376.400; and second: that the accidental death indemnity is 'Automobile Insurance' under Paragraph (3) of Section 379.230, Revised Statutes of Missouri, 1949, and as automobile insurance is not subject to the said Section 376.400, Revised Statutes of Missouri, 1949.

"I respectfully request your official opinion on the following questions in connection with the submission of the captioned forms.

"1. Is the M.F.A. Mutual Insurance Company, a corporation organized and existing under Sections 379.205 to 379.310, inclusive, Revised Statutes of Missouri, 1949, exempt from the provisions of Section 376.400, Revised Statutes of Missouri, 1949?

"2. Is the accidental death indemnity afforded under Part III, Coverage D, of the inclosed captioned policy accident insurance subject to the provisions of Section 376.400, Revised Statutes of Missouri, 1949, or is it 'Automobile Insurance' under Paragraph (3) of Section 379.230, Revised Statutes of Missouri and, as such, not governed by the provisions of Section 376.400, Revised Statutes of Missouri, 1949?"

Honorable C. Lawrence Leggett

It is conceded that the basic law of incorporation of the company in question is found at Sections 379.205 to 379.310 RSMo 1949. The general exemption statute applicable to such company, which it is contended relieves it of compliance with Section 376.400 RSMo 1949, is Section 379.310, which provides:

"Except as provided herein, or as such companies may be hereafter expressly designated in any other law, insurance companies organized or admitted to do business in this state under sections 379.205 to 379.310 shall not be subject to any other law of this state governing insurance companies."

Attention is immediately directed to Section 379.275 RSMo 1949, of the basic law of incorporation of this company, and such statute provides:

"1. Any law requiring that policies be countersigned and delivered through a resident agent shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent.

"2. Such mutual company may insert in any form of policy prescribed by the law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with any law of this state."

Under Section 376.400 RSMo 1949, the Superintendent of the Division of Insurance and the Attorney General are directed to approve accident and health policies. This statute is of considerable length, but it is deemed necessary, in this instance, to quote its complete language as follows:

"1. 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

Honorable C. Lawrence Leggett

insurance laws of the state of Missouri until a copy of the form thereof has been filed with the superintendent of the insurance division for at least a period of thirty days unless before the expiration of said thirty days the superintendent of the insurance division and the attorney general of the state of Missouri shall have approved of the same in writing.

"2. If during such period of thirty days or at any time thereafter, as provided in this section, the superintendent of the insurance division 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.

"3. If the superintendent of the insurance division 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 division may extend the time within which they may approve or disapprove to a period not to exceed ninety days from the date of filing such form, and the company filing such form or forms shall be notified by the superintendent, in writing, of such extension of time.

"4. The superintendent of the insurance division 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.

Honorable C. Lawrence Leggett

"5. 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.

"6. 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.

"7. 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.

"8. 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.

"9. Nothing in this section contained shall be held to apply to life insurance, endowment or annuity contracts, or contracts supplementary thereto."

Honorable C. Lawrence Leggett

It is concluded that Section 376.400 RSMo 1949, quoted above is within the phrase "any law of this state" as such language is used in Section 379.275 RSMo 1949, supra, and companies organized under and subject to Sections 379.205 to 379.310 RSMo 1949 are not exempt from Section 376.400 RSMo 1949 when writing a general accident and health policy. This conclusion is further supported by language contained in the general exemption statute, Section 379.310 RSMo 1949, applicable to the type of company in question, such statute reading as follows:

"Except as provided herein, or as such companies may be hereafter expressly designated in any other law, insurance companies organized or admitted to do business in this state under sections 379.205 to 379.310 shall not be subject to any other law of this state governing insurance companies." (Emphasis supplied).

The phrase "except as provided herein" found in Section 379.310 RSMo 1949, quoted above, has reference to the basic law of incorporation of the company with which we are dealing, and is a positive directive to refer back to Section 379.275 RSMo 1949 of such law of incorporation which directs that such a company may insert in its policies only those provisions or conditions which are not in conflict with "any law of this state." We now pass to the second and more difficult question posed in the inquiry, which reads:

"2. Is the accidental death indemnity afforded under Part III, Coverage D, of the inclosed captioned policy accident insurance subject to the provisions of Section 376.400 Revised Statutes of Missouri, 1949, or is it 'Automobile Insurance' under Paragraph (3) of Section 379.230, Revised Statutes of Missouri and, as such, not governed by the provisions of Section 376.400 Revised Statutes of Missouri, 1949?"

Part III, Coverage D, referred to above provides:

"1. COVERAGE D--Accidental Death--MFA Mutual will pay the principal sum stated in the Declarations in the event of the death of the insured, which shall result directly and independently of all other causes from bodily

Honorable C. Lawrence Leggett

injury caused by accident and sustained by the first named insured or spouse, while in or upon, entering or alighting from, or through being struck by an automobile, provided the death shall occur within one year after the date of the accident.

"2. Definition of Insured--With respect to the insurance afforded under Coverage D, the unqualified word 'insured' includes only the first named insured and his spouse.

"3. Payment of Benefits--The indemnity for the death of the insured, shall be payable to the surviving spouse of such deceased person and if there is no surviving spouse, to the estate of said deceased person.

"4. Exclusions--Coverage D does not apply:

"a. To death resulting from bodily injury sustained while in or upon, entering or alighting from a home, office, store or display trailer;

"b. To death caused by or resulting from disease;

"c. To suicide, committed while sane or insane;

"d. To death due to war or invasion."

Subparagraph 1 of Section 376.400 RSMo 1949 causes the statute to be applicable to a "* * policy of insurance against loss or damage from sickness or the bodily injury or death of the insured by accident,* * *." The form of policy which is the subject of this opinion is designated as a "Combination Automobile Insurance Policy."

Without descending into detail in discussing each of the insuring agreements found in the policy, it will suffice to say that the language of all such agreements establishes the fact that the contract of insurance is intended to cover an

Honorable C. Lawrence Leggett

indemnifiable loss, or liability which will occur only by reason of the insured's ownership or use of an automobile. This fact immediately distinguishes the contract from a "policy of insurance against loss or damage from sickness or the bodily injury or death of the insured by accident," as such language is used in Section 376.400 RSMo 1949, for such statute does not purport to further subdivide insurance against accidental bodily injury or death into accidental loss or liability for bodily injury or death from causes solely related to the use and ownership of a motor vehicle. This distinction becomes important when we consider language found in Section 379.230 RSMo 1949, which statute outlines the types of insurance which the company in question may write, and such statute reads as follows:

"Any company organized under the provisions of sections 379.205 to 379.310 is empowered and authorized to make contracts of insurance or to reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles for the kinds of insurance following:

"(1) Liability insurance. Against loss, expense or liability by reason of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability, including workmen's compensation;

"(2) Disability insurance. Against bodily injury or death by accident and disability by sickness;

"(3) Automobile insurance. Against any or all loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle: provided, no policies shall be issued under this subsection against the hazard of fire alone;

"(4) Steam boiler insurance. Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, fly wheels, elevators and machinery in connection therewith and against loss of use and occupancy

Honorable C. Lawrence Leggett

caused thereby and to make inspection and issue certificates of inspection thereon;

"(5) Use and occupancy insurance. Against loss from interruption of trade or business or loss of rents which may be the result of any accident or casualty;

"(6) Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance and fire insurance."

Insurance companies formed under Sections 379.205 to 379.310 RSMo 1949, have long been referred to in this state as "miscellaneous mutual casualty companies." The descriptive language in Section 379.230, supra, applicable to risks to be covered clearly discloses a "casualty line" of coverage, as distinguished from a general accident and health policy. At 44 C.J.S., Insurance, Sec. 6, we find the term "casualty insurance" treated in the following language:

"Although 'casualty insurance' is a term of quite frequent use, it cannot be said that its definition has been very accurately settled by the courts. It is commonly held to include those forms of indemnity providing for payment for loss or damage to property, except from fire or the elements, resulting from accident or some such unanticipated contingency, and for loss through accident, or casualties resulting in bodily injury or death. The term, however, is more properly applied to insurance against the effects of accidents resulting in injuries to property."

In Vol. 1, Couch On Insurance, Sec. 13, we find the following:

Honorable C. Lawrence Leggett

"In some jurisdictions a distinction, largely based on statutes, is drawn between accident and casualty insurance, the former being held to relate to accidents resulting in bodily injury or death, and the latter to property losses resulting from accident or casualty, such as boiler, plate glass, injury to property by strikes, etc. But as a general rule 'casualty insurance' covers accidental injury both to persons and to property. In fact casualty insurance has been defined as an insurance against loss through accidents or casualties resulting in bodily injury or death."

"Automobile insurance" is broadly defined in Section 379.230, supra; and when we consider the terms "liability insurance," "disability insurance" and "miscellaneous insurance" as they are defined in such statute, it is evident that a company subject to such statute has wide latitude in its coverages, subject to the positive prohibition against writing "life insurance" and "fire insurance." It then appears that the second question posed in the request for this opinion may be thus resolved:

Will the inclusion of a death benefit payment to the insured in a comprehensive automobile casualty and disability policy issued under authority contained in Section 379.230 RSMo 1949, change such policy into a regular accident and health policy required to be filed with the Superintendent of the Division of Insurance under Section 376.400 RSMo 1949?

In resolving the above stated question we draw an analogy between the situation at hand and one wherein the courts have construed the question as to whether disability benefits in a life insurance policy are to be considered as accident and health insurance. In the case of *O'Brien v. General American Life Insurance Company*, 103 N.E. (2d) 193, 345 Ill. App. 264, l.c. 271, the Court, in 1951, spoke as follows:

Honorable C. Lawrence Leggett

"In a number of cases, courts have construed the question as to whether disability benefits in a life insurance policy are to be considered as accident and health insurance. This has arisen principally in cases where the insured having a life insurance policy containing a disability provision, fails to set it forth in answer to a pertinent question when making application for accident and health insurance. *Bowles v. Mutual Benefit Health & Accident Ass'n* (C. C. A. 4th, 1938), 99 F. (2d) 44, 119 A. L. R. 756; *Purcell v. Washington Fidelity Nat. Ins. Co.*, 141 Ore. 98, 16 P. (2d) 639; *Mutual Benefit Health & Accident Ass'n of Omaha v. Bell*, 49 Ga. App. 640, 176 S. E. 124. In *Bowles v. Mutual Benefit Health & Accident Ass'n*, supra, the insurance company defended against a claim on a health and accident policy on the ground that the insured failed to disclose that he had other such policies. Two life policies had been issued to him by the Equitable Life Insurance Company of Iowa. The court held that although the life insurance policies contained a provision for double indemnity and liability, they were still life insurance policies and insured was not under duty to disclose them. In *Mutual Benefit Health & Accident Ass'n of Omaha v. Bell*, supra, the court held that the fact that the life insurance policies contained total disability clauses did not render them health and accident policies. The other cases were to the same effect. In the Illinois case cited, *Julius v. Metropolitan Life Insurance Co.*, 299 Ill. 343, a life insurance policy provided that if other policies of insurance were in force at the time of death, the amount payable should not exceed the amount specified, less the total amount payable on the other policies by whomsoever issued. Insured was accidentally killed and at the time of his death held an accident policy which his beneficiary collected. It was contended that the amount of this accident policy should be deducted from the life insurance. The Supreme Court of this State held that accident or health insurance is not life

Honorable C. Lawrence Leggett

insurance and although the amount was payable on death, it should not be deducted from the amount of the life insurance. This conclusion was arrived at even though the words of the policy covered all insurance and was not restricted to life insurance.* * *

In holding in this opinion that an insurance company subject to the provisions of Sections 379.205 to 379.310 RSMo 1949 may include in its comprehensive automobile casualty and liability policy a death benefit payment to the insured when death results from an accident growing out of the ownership or use of such automobile, without changing the character of such policy to that of a regular accident and health policy required to be filed and approved under Section 376.400 RSMo 1949, such ruling will not apply if the policy on its face discloses that it is a regular accident and health policy.

CONCLUSION

It is the opinion of this office that insurance companies subject to the provisions of Sections 379.205 to 379.310 RSMo 1949, are not exempt from the provisions of Section 376.400 RSMo 1949 when issuing regular accident and health policies, and such policies are required to be filed with, and approved by the Superintendent of the Division of Insurance and the Attorney General, and such companies may include in their comprehensive automobile casualty and liability policies a death benefit payment to the insured when death results from an accident growing out of the ownership or use of such automobile, without changing the character of such policy to that of a regular accident and health policy required to be filed and approved under Section 376.400 RSMo 1949, so long as the policies on their face do not disclose that they are regular accident and health policies.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General