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FALSE STATEMENTS BY APPLICANTS FOR POLICIES OF LIFE INSURANCE

G. KENNETH CROWELL*

THE innate desire of man to render himself and his dependents secure from adverse economic consequences which attend inevitable old age and death, is undoubtedly responsible more than any other factor, for the phenomenal rise within recent years of the life insurance business.¹

"The Company that reached Seventy Millions in Seven Years." This statement, taken from a late advertisement of a life insurance company, may be regarded as typical of the growth in the field as a whole. Economic depressions serve only to emphasize the necessity for making adequate provision for financial security. If the business continues to grow as it has within the past decade, the proportions which it will have assumed at the end of a generation are almost staggering to contemplate. It naturally follows that such a development in a particular field has had certain far-reaching effects, and in few branches of human activity have they been more striking than in that of the law. When it is considered that approximately one-half of the population of the United States are holders of life insurance policies, it is not surprising that the reports contain increasingly large numbers of decisions involving that field of law. And yet, while no accurate statistics are presently available, it is not improbable that the number of insurance claims contested in courts of law as compared with those voluntarily paid, is relatively insignificant.²

A realization that the law of insurance "is a thing apart" is essential to an intelligent understanding of its principles and rules as they have been evolved by the courts and legislatures. The solicitude of courts to protect the unwary individual from the over-reaching corporation, coupled with the over-zealousness of insurers to protect themselves from unfair and fraudulent conduct by policy holders, has resulted in the formulation of some rather anomalous legal doctrines. The general

* The author acknowledges the assistance of Robert H. Thompson, member of the North Dakota State Bar, in the preparation of this article.

¹ The following figures are significant: Total payments made by life companies in the United States to living policyholders and beneficiaries, exclusive of policy loans, during the depression years 1930-1934: \$13,741,000,000.00; total paid in 1934: \$2,700,000,000.00; Federal relief expenditures during the same year: \$1,260,000,000.00; total number policyholders in 1934: 65,000,000; life insurance sales, 1934: \$14,000,000,000.00; life insurance in force, 1934: \$98,000,000,000.00; total assets of life companies, 1934: \$21,800,000,000.00. (Figures compiled by National Life Underwriters Association.)

² One of the leading life companies reports that since its organization it has contested less than one death claim per year.

judicial attitude has been summarized as "the tendency on the part of courts to treat insurance contracts as in a class by themselves."³

The justification for this attitude must be found in the particular and peculiar features which distinguished contracts of insurance from contracts of any other type. Among these are the intricate language in which insurance policies are couched, being quite unintelligible to the ordinary lay mind; the fact that the words used are those of the insurer, which the applicant must accept without alteration or in the alternative forego the desired protection; and the general practice of the insuring public to leave it all to the agent who may or may not be a competent and dependable adviser. These, together with other considerations growing out of the superior bargaining position occupied by the insurer, have lead the courts, wherever possible, to decline to enforce forfeitures invoked in defense of honest claims. He who attempts to apply to problems arising within the general insurance field, ordinary common law principles of the law of contracts, will forthwith find himself in a maze of difficulties and inconsistencies.

While matters to be considered in this article are, for the most part, common to all types of insurance, the treatment is confined to a discussion of false statements (embracing representations and warranties) and their legal significance in the field of life insurance. As a background to a critical approach to comparatively recent applicable statutory enactments, the common law development will first be treated. Emphasis throughout will naturally be placed upon Wisconsin law.⁴

THE COMMON LAW

A determination of the question of liability on a policy of insurance, where the defense interposed was false statements made by the insured, depended principally under the common law, upon whether the statements were representations or warranties. A clear cut distinction between the two has long existed. It is said to have been first authoritatively laid down by Lord Mansfield⁵ in *Pawson v. Watson*⁶ as follows: "There is no distinction better known to those who are at all con-

³ *Wilson v. Commercial Union Assurance Company*, 90 Vt. 105, 96 Atl. 540 (1916).

See also Commissioner Roscoe Pound in *German Insurance Co. v. Schader*, 68 Neb. 1, 96 N.W. 604 (1903), "There has been a contest between the courts on one hand and counsel for insurance companies on the other, the latter devising skillfully framed clauses and provisions, and the former largely thwarting the purpose of these clauses by construing them strictly against the insurer. It cannot be denied that not a little subtlety has been displayed on both sides of this contest."

⁴ See *Helmer v. Equitable Reserve Association*, 214 Wis. 270, 252 N.W. 728 (1934) for an excellent discussion of the common types of life insurance contracts.

⁵ *Anderson v. Fitzgerald*, 4 H.L. Cas. 484, 496, 10 Eng. R. 551 (1853).

⁶ 2 Cowp. 785, 98 Eng. R. 1361 (1778).

versant in the law of insurance than that which exists between a warranty or condition, which makes a part of a written policy, and a representation of the state of the case. Where it is a part of the written policy it must be performed. * * * Nothing tantamount will do or answer the purpose. It must be strictly performed, as being part of the agreement. * * * So that there cannot be a clearer distinction than that between a warranty, which makes part of the written policy, and a collateral representation, which, if false in a point of materiality, makes the policy void; but if not material, it can hardly ever be fraudulent." This view was readily adopted by the American courts and soon became firmly established in the law.⁷ The words of Chancellor Kent are illustrative: "A representation relates to facts or information extrinsic to the policy. * * * Whatever averment or representation is inserted in the policy becomes a warranty and must be strictly true."⁸ The later authorities are in almost unanimous agreement that a representation is collateral to the contract, while a warranty is a part of it.

Under the earlier law, any breach of warranty, no matter how trifling or inconsequential, was held to avoid a policy.⁹ That "a warranty must be fulfilled to the letter and precludes all inquiry as to its materiality,"¹⁰ that "parties may contract as they please," that "No man can be compelled to adopt a better bargain than his own,"¹¹ and that a warranty being part of the contract defines the risk and not to enforce it strictly would be to substitute something different from that expressly assumed by the insurer,¹² are among the reasons advanced in justification of this arbitrary and highly technical view. The elements of good faith or intent¹³ or materiality¹⁴ were of no account. For example, "If a house be insured against fire, and the language of the policy is 'warranted, during the policy, to be covered with thatch,' the insurer would be discharged if, during the insurance, the house should be covered with wood or metal, although the risk is diminished."¹⁵

To representations, on the other hand, were attributed less drastic consequences. Substantial truth satisfied; and in all cases materiality to the risk was a positive prerequisite to avoidance by reason of falsity.¹⁶

⁷ 3 KENT, COMMENTARIES ON AMERICAN LAW, (12th Ed. 1873) 282; 11 Am. & Eng. Ency. of Law 291 (1890).

⁸ *Ibid.*

⁹ *Campbell v. New Eng. Mutual Life Ins. Co.*, 98 Mass 391 (1867).

¹⁰ 3 KENT, *op cit. supra* note 7, at 283.

¹¹ See *Wood v. Hartford Fire Ins. Co.*, 13 Conn. 533 (1840).

¹² *Carter v. Boehm*, 3 Burr. 1905, 97 Eng. R. 1162 (1766); *McGowan v. Supreme Court of I. O. O. F.*, 107 Wis. 462, 83 N.W. 775 (1900).

¹³ *Fraser v. Aetna Life Ins. Co.*, 114 Wis. 510, 90 N.W. 476 (1902).

¹⁴ *Baumgart v. Modern Woodmen of America*, 85 Wis. 546, 55 N.W. 713 (1893).

¹⁵ See *Wood v. Hartford Fire Ins. Co.*, 13 Conn. 533 (1840).

¹⁶ *Prieger v. Exchange Mut. Ins. Co.*, 6 Wis. 89 (1859); *Keeler v. Niagara Fire Ins. Co.*, 16 Wis. 523 (1863); *May v. Buckeye Mut. Ins. Co.*, 25 Wis. 291

It is evident that the doctrine of strict construction, as applied to warranties, frequently resulted in the imposition of undue hardship upon the insured. The courts were alert to the situation and began to devise means of preventing forfeitures, wherever possible. Insurance companies were cautious to include stipulations in policies making all statements by the assured strict warranties and to incorporate such statements as express terms of the policies.¹⁷ But the judiciary became increasingly suspicious of such "labelling" and declined to hold that the mere incorporation of a statement within the policy made it *ipso facto* a warranty.¹⁸ Another indication of the early trend toward liberality was the recognition of the rule that some departure from the strict letter of the warranty was permissible.¹⁹

As time went on, certain recognized guiding principles were formulated as aids to the solution of the problem—representation or warranty. The mere fact that statements appear on the face of the policy does not give them the force of warranty. A warranty is created only by the clearest language unmistakably indicating the intent of the parties, and all reasonable doubts are to be resolved in favor of the insured.²⁰ Later decisions, moreover, show a marked tendency to inject the element of materiality into the warranty.²¹ The result of this changing attitude was that wherever consistent with a semblance of reason, statements were construed as representations rather than as warranties.

(1870); *Morrison v. Wis. Odd Fellows Mut. L. I. Co.*, 59 Wis. 162, 18 N.W. 13 (1884); *Murphy v. Amer. Mut. Accident Ass'n.*, 90 Wis. 206, 62 N.W. 1057 (1895).

¹⁷ *Sayles v. North Western Ins. Co.*, 21 Fed. Cas. 609 (C. C. R. I. 1854); *Silem v. Thornton*, 3 El. & Bl. 868, 118 Eng. R. 1367 (1854); *Eddy St. Iron Foundry v. Hampshire S. & M. Fire Ins. Co.*, 8 Fed. Cas. 300 (C. C. R. I. 1859); *Campbell v. New Eng. Mutual Life Ins. Co.*, 98 Mass. 391 (1867); see also 32 C. J. 1283, 1284 (1923).

¹⁸ "The use of the word warranty in the stipulation is not very significant; certainly it does not control the construction. There may be a warranty without the use of the word, and its use may not in every case create one." *Redman v. Hartford Fire Ins. Co.*, 47 Wis. 89, 1 N.W. 393 (1878).

¹⁹ "A trifling departure from the letter of the condition—a mere technical breach,—or perhaps an accidental or involuntary failure to perform the condition, not sanctioned by or known to the insured, which does not increase the risk, would not be held to defeat the policy." *Copp v. The German-American Ins. Co.*, 51 Wis. 637, 8 N.W. 127 (1881). " * * * In the absence of bad faith its falsity will not necessarily avoid the policy, unless the variance is substantial and material to the risk." *Johnston v. Northwestern Live Stock Ass'n.*, 94 Wis. 117, 68 N.W. 868 (1896).

²⁰ *May v. Buckeye Ins. Co.*, 25 Wis. 291 (1870); *Redman v. Aetna Ins. Co.*, 47 Wis. 89, 1 N.W. 393 (1878); *United American Fire Ins. Co. v. American Bonding Co.*, 146 Wis. 473, 131 N.W. 994 (1911); *Whinfield v. Mass. Bonding Co.*, 161 Wis. 1, 154 N.W. 632 (1915); see also *Lynchburg Fire Ins. Co. v. West*, 76 Va. 575, 44 Am. Rep. 177 (1882); *Scharzbach v. Ohio Valley Protective Union*, 25 W. Va. 622, 52 Am. Rep. 227 (1885); *Anders v. Supreme Lodge, etc.*, 51 N. J. L. 175, 17 Atl. 119 (1889); *Waterbury v. Dakota Fire & Marine Ins. Co.*, 6 Dak. 468, 43 N.W. 697 (1889); *Spence v. Central Accident Ins. Co.*, 236 Ill. 444, 86 N.E. 104 (1908).

²¹ *Copp v. The German Am. Ins. Co.*, 51 Wis. 637, 8 N.W. 127 (1881).

Since a representation, to be grounds for avoidance, must in all cases be material to the risk,²² the real question is, what is materiality? Broadly speaking, the test is, did the fact or circumstance represented or misrepresented operate to induce the insurer to accept the risk, or to accept it at a less premium?²³ The Wisconsin authorities, in the absence of controlling statutes, are in apparent conflict as to whether it is essential that a misrepresentation be fraudulent or made with intent to deceive, in addition to being material.²⁴ But a later case holds that a material representation, even though made in good faith and without intent to deceive, vitiates the contract of insurance.²⁵ The well established rule is otherwise, however, where the defense is concealment of a material fact.²⁶ In the latter situation, intentional and fraudulent concealment must be established.²⁷

No attempt at minute analysis or rationalization has been made in the foregoing. The general state of the law, prior to legislative entrance to the field, has been briefly set forth as the basis for a more detailed consideration of the present situation under the statutes.

UNDER THE STATUTES

Statutes have been enacted in a number of jurisdictions²⁸ which, as compared by the courts, have effected a considerable change in the common law rules as to the legal effect of statements made by an insured. The phraseology of the statutes in the different jurisdictions varies to such an extent that generalization as to specific modifications

²² *Prieger v. Exch. Mut. Ins. Co.*; *Kent v. Niagara Fire Ins. Co.*; *May v. Buckeye Mut. Ins. Co.*; *Morrison v. Odd Fellows Mut. L. I. Co.*; *Murphy v. American Mut. Ass'n.*, all *supra* note 16.

²³ 3 COUCH, CYCLOPEDIA OF INSURANCE LAW, §829.

It has been held that inquiry by the company relative to a specific matter conclusively establishes its materiality. *Cobb v. Covenant Mutual Benefit Ass'n.*, 153 Mass. 176, 26 N.E. 230, 25 Am. St. Rep. 619 (1891).

²⁴ The weight of authority does not require a fraudulent intent. See 32 C. J. 1286, 1287 and cases cited.

²⁵ *Wright v. Hartford Fire Ins. Co.*, 36 Wis. 522 (1875), where, however, the insurer knew the true state of facts; *Melcher v. The Phoenix Ins. Co.*, 38 Wis. 665 (1875), where the company did not rely on applicant's statements but on its own agent's judgment.

²⁶ *Fraser v. Aetna Life Ins. Co.*, 114 Wis. 510, 90 N.W. 476 (1902).

²⁷ *Alkin v. New Hampshire Ins. Co.*, 53 Wis. 136, 10 N.W. 91 (1881); *Campbell v. Amer. Fire Ins. Co.*, 73 Wis. 100, 40 N.W. 661 (1888); *Vankirk v. Citizens' Ins. Co.*, 79 Wis. 627, 48 N.W. 798 (1891); *Johnson v. Scottish Union & Nat'l Ins. Co.*, 93 Wis. 223, 67 N.W. 416 (1896).

²⁸ The following states have statutes designed to change the common law rule as to the legal effect of statements made by the insured: California, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.

in the previous law is difficult, if not impossible. All, however, are obviously directed toward achieving the same end, that is, the placing of warranties and representations upon the same basis with respect to legal significance.²⁹ The pronounced tendency of the courts to construe false statements as representations rather than warranties, in order to prevent forfeitures, has been heretofore observed. There were, though, numerous situations in which they were compelled to place the brand of warranty upon the false statements in question.³⁰ If these statutes have served no other useful purpose they at least have relieved the courts from the task of indulging in what frequently appeared to be loose judicial thinking, in order to prevent the warranty from accomplishing its mission of destruction.³¹

The abolition of the technical common law distinctions between representations and warranties took statutory form in Wisconsin with the enactment of Section 4202(m), which became effective June 5, 1909.³² The only subsequent revision which is of any apparent significance was that made by the legislature in Chapter 487, Section 252, Laws of 1933, in which the word "actual," prior to the words "intent

²⁹ In *Penn. Mut. Life Ins. Co. v. Bank*, 72 Fed. 413 (C. C. A. 6th, 1896), Taft, J., says of them, that they were passed "to relieve against the hardships arising from the strict enforcement at common law of warranties in insurance policies concerning matters having no real or proximate relation to the risk assumed by the insurer. By the aid of such warranties, and the innocent mistakes of the insured, it often happened that the insurer was able to escape liability on a ground having no real merit, and of the purest technicality. That such statutes are remedial in their nature, and are quite within the police power of the legislature is no longer a debatable question."

³⁰ See *Baumgart v. M. W. A.*, 85 Wis. 546, 55 N.W. 713 (1893); *McGowan v. Supreme Court of I. O. O. F., etc.*, 107 Wis. 462, 83 N.W. 775 (1900).

³¹ No opinion is expressed as to whether or not the end justifies the means adopted.

³² Section 4202 (m), Wisconsin Laws (1909) as originally passed, provided as follows: "1. No oral or written statement, representation, or warranty made by the insured or in his behalf in the negotiation of a contract of insurance shall be deemed material or defeat or avoid the policy, or prevent its attaching unless such statement, representation or warranty was false and made with actual intent to deceive or unless the matter misrepresented or made a warranty, increased the risk or contributed to the loss.

"2. No warranty incorporated in a contract of insurance relating to any fact prior to a loss shall defeat or avoid such policy unless the breach of such warranty increased the risk at the time of the loss, or contributed to the loss, or unless such breach existed at the time of the loss."

By Chapter 487, Section 252, Wisconsin Laws (1933), the statute was revised to its present form, as follows: "*Insurance; application; effect.* (1) No oral or written statement, representation or warranty made by the insured or in his behalf in the negotiation of a contract of insurance shall be deemed material or defeat or avoid the policy, unless such statement, representation or warranty was false and made with intent to deceive, or unless the matter misrepresented or made a warranty increased the risk or contributed to the loss. "2. No breach of a warranty in a policy shall defeat or avoid such policy unless the breach of such warranty increased the risk at the time of the loss, or contributed to the loss, or existed at the time of the loss.

"3. This section applies to fraternal benefit societies."

Intervening revisions in the law are unimportant for present purposes.

to deceive" was deleted. The question of what effect, if any, the revision has produced has not been passed upon by the Supreme Court, but it would appear that the result is a relaxation of the intent feature of the statute. In other words, it seems that there is now an opening for insurers to rely upon the doctrine of constructive fraud, which they were probably foreclosed from asserting under the old act.

Subsection (2) of Section 209.06 of the 1933 statutes dealing with promissory warranties will not be accorded treatment herein because of its inapplicability to the majority of life insurance cases.

The legislative intent in the enactment of what is now Section 209.06 of the Wisconsin statutes has been dealt with in several Wisconsin decisions. In *Olson v. Herman Farmers Mutual Insurance Company*,³³ Jones, J. conceived the purpose of the statute to be "to mitigate the harshness which sometimes ensued when erroneous statements had been made by the insured causing forfeitures because they were made in perfect good faith."³⁴ As will appear from an analysis of the decision succeeding the statute the contemplated result has been substantially attained.

It has been held in *Frozena v. Metropolitan Life Insurance Company*³⁵ that the provisions of Section 209.06 are limited to situations where there has been no certificate of health or recommendation of the risk by a medical examiner, and that where there has been such certificate or recommendation, Section 209.07 exclusively governs. Unless this is kept in mind, confusion of thought is likely to result. Therefore, cases arising under the two types of situations will be separately considered.

NON-MEDICAL CASES³⁶

A critical examination of Section 209.06 will reveal that it first of all does away with the vital distinctions between representations and warranties made in the negotiation³⁷ of a contract of insurance, by lumping together "oral or written statements, representations or war-

³³ *Olson v. Herman Farmers Mut. Ins. Co.*, 187 Wis. 15, 203 N.W. 743 (1925).

³⁴ See also *Pagel v. U. S. Casualty Co.*, 158 Wis. 278, 148 N.W. 878 (1914), "sec. 4202m, Stats. * * * obviously was intended by the legislature to cut off many technical defenses."

³⁵ *Frozena v. Metropolitan Life Ins. Co.*, 211 Wis. 373, 247 N.W. 333 (1933).

³⁶ This heading embraces cases in which there has been no medical examination prior to the acceptance of the risk by the insurer, and cases in which there has been such examination but no certificate of health or declaration of fitness has been made by the examiner. Of course, in the vast majority of life policies of substantial size, a recommendation is made by the physician to the company. However, industrial policies and special types of larger policies are still issued solely upon the basis of the applicant's own statements relative to his physical condition and medical history.

³⁷ The word "negotiations" means the entire transaction of applying for and issuing the completed contract. *Everson v. General A. F. & L. Assur. Corp.*, 202 Mass. 169, 88 N.E. 658 (1909).

ranties." The operative legal effect of each upon the rights of parties to the contract is by Section 209.06 made identical. Some of the statutes noted above³⁸ have stopped at this point by providing that warranties, in the absence of fraud, are to be treated as representations, without prescribing the conditions under which a policy may be avoided for misrepresentation by the assured. The requirements of a misrepresentation are left unchanged by such a statute. If material, it constitutes a defense, although made innocently and without any element of fraud. The test of materiality is the same as at common law, that is, did the fact or circumstance misrepresented operate to induce the insurer to accept the risk or to accept it at a less premium?³⁹ The standard is an objective one, and the inquiry is not what the particular insurer would have done under the circumstances had the facts been truthfully stated, but whether the representation is one that would naturally and reasonably influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance.⁴⁰ Under such statutes the courts are fully justified in holding that whatever fact or circumstance is inquired about in the application is *prima facie* material, else why would inquiry have been made? The question, however, is, by most authorities, considered to be one of fact for the jury.

The Wisconsin statute⁴¹ has proceeded a step further in the direction of modification of the common law rule by prescribing the precise circumstances under which false statements⁴² will operate to avoid a policy of insurance or defeat recovery thereon. It is provided, in effect, that no false statement in an application shall void a policy unless it is (1) made with intent to deceive, or (2) increased the risk, or (3) contributed to the loss.⁴³ In view of the obvious purpose which it was designed to accomplish, no legitimate reason is preserved for the use of the word "material" in the act. As a matter of fact, it is not unlikely that its very use has produced considerable confusion and a construction not contemplated by the framers.⁴⁴

The most radical change from the previous law that Section 209.06 has brought about is in the legal effect of what would properly be con-

³⁸ See pertinent statutes in states referred to *supra*, note 28, e.g., Section 58 of the New York Ins. Law, "all statements * * * made by the insured shall, in the absence of fraud, be deemed representations and not warranties * * *." See also, *Eastern District Piece Dye Works v. Travelers' Ins. Co.*, 234 N. Y. 441, 138 N.E. 401, 26 A. L. R. 1505 (1923).

³⁹ *Locker v. Metropolitan Life Ins. Co.*, 107 N. J. L. 257, 151 Atl. 627 (1930).

⁴⁰ See *Life Ins. Co. of Va. v. Pate*, 23 Ga. App. 232, 97 S.E. 874 (1919).

⁴¹ Wis. STAT. (1933) §209.06.

⁴² The term is employed in its broad sense as including both representations and warranties.

⁴³ See *Demirjian v. New York Life Ins. Co.*, 205 Wis. 71, 236 N.W. 566 (1931).

⁴⁴ *Ibid.*

strued as a warranty at common law. A warranty, if not literally true, even though made without intent to deceive and with respect to a matter immaterial to the risk, avoided the policy. Under the statutes, a false warranty, unless it is made with intent to deceive or increases the risk or contributes to the loss is of no consequence. The act has rather effectually stripped the warranty of most of its vitality.

What has Section 209.06 done to the representation? Probably little or nothing, as it has been construed by the Wisconsin court. Since the three separate grounds for avoidance are connected in the statutes by the disjunctive "or"⁴⁵ it would appear that an entirely reasonable construction would be that the existence of but one is required. Concretely applied, a false representation made with intent to deceive, might logically be held a defense, whether or not it be material, increases the risk, or contributes to the loss. No Wisconsin decision so holds, but the question has never been passed upon by the court. In view of the mischief that Section 209.06 was obviously designed to remedy, it is reasonably safe to predict that such a construction would not be sanctioned, since it would distinctly liberalize, rather than restrict, the common law rule which imposed upon all misrepresentations the positive requirement of materiality.⁴⁶

Undoubtedly, the most perplexing problem presented by the statute is that of its effect upon the concept of materiality. It would seem that the statute lays down a new test for materiality, that is, that a false statement is material if (1) the risk is thereby increased, or (2) if it contributes to the loss. If this hypothesis is correct, a significant limitation is placed upon the common law rule of materiality, since a statement which might influence the insurer in determining whether to accept the risk does not necessarily increase the risk or contribute to the loss.⁴⁷ The authorities on this particular question are in decided conflict. The leading case supporting the construction set forth above is *O'Keefe v. Zurich General Accident & Liability Insurance Company*,⁴⁸ in which the court stated relative to a North Dakota statute essentially

⁴⁵ *Olson v. Herman Farmers Mut. Ins. Co.*, 187 Wis. 15, 203 N.W. 743 (1925).

⁴⁶ The proper construction of the statute is undoubtedly that adopted by the Minnesota court in *Johnson v. National Life Ins. Co.*, 123 Minn. 453, 144 N.W. 218 (1913), where it is stated relative to the Minnesota statute, essentially similar to Section 209.06 of the Wisconsin Statutes, "As we construe the statute a material misrepresentation, made with intent to deceive and defraud, avoids the policy. A material misrepresentation, not made with intent to deceive or defraud, does not avoid the policy unless by the misrepresentation the risk of loss is increased. If a material misrepresentation increases the risk of loss, the policy is avoided, regardless of the intent with which it was made. An immaterial representation, though made with intent to deceive and defraud, does not avoid the policy."

⁴⁷ *E.g.*, statements relating to other insurance in force, prior applications for other policies, earnings, occupation, etc.

⁴⁸ *O'Keefe v. Zurich A. & L. Ins. Co.*, 43 F. (2d) 809 (C. C. A. 8th, 1930).

the same as Section 209.06, "No change was accomplished, if, after its adoption in the same sense as before, whatever affects the acceptance of the risk still defeats the policy."⁴⁹

In spite of the evident purpose of the statute it appears that the Wisconsin court is committed to the rule that what affects the acceptance of the risk, increases the risk of loss.⁵⁰ It should be observed, however, that in decisions containing language approving a broad construction of the phrases "increased the risk" or "contributed to the loss" the representations proved, beyond controversy, did increase the risk or contributed to the loss, so that the results reached are therefore correct under either construction.

To indicate the treatment which has been accorded the statutory requirements of intent to deceive, increase of risk, and contribution to loss (death in life insurance), the principal Wisconsin decisions dealing with each will be separately considered.⁵¹

*Intent to Deceive*⁵²

The understandable reluctance of courts and juries to attribute to deceased persons that stigma of fraud accounts in no small measure for

⁴⁹ The court states elsewhere in the opinion " * * * it (the North Dakota statute) seems to us to mean that misrepresentation or false statement made in an application for insurance is *ipso facto* a defense. It is a defense only when it is proved that 'the matter misrepresented increased the risk of loss,' that is to say, when it is proved that the hazard insured against would be more likely to happen in the real state of facts than in the state of facts not actually existing, but falsely represented as the real state of facts." Accord under similar statutes: *Everson v. Assurance Corp.*, 202 Mass. 169, 88 N.E. 658 (1909); *Provident etc. Co. v. Whaynes, Adm.*, 131 Ky. 84, 93 S.W. 1049 (1906); *Hermany v. Life Ass'n.*, 151 Pa. 17, 24 Atl. 1064 (1892).

⁵⁰ See *Calligaro v. Midland Casualty Co.*, 211 Wis. 319, 247 N.W. 846 (1933), action on accident policy. The court stated, "The fact that the company would have rejected the application if it had known that Calligaro was a bartender in a speak-easy shows that the matter misrepresented (his occupation) increased the risk."

Demirjian v. N. Y. Life Ins. Co., 205 Wis. 71, 236 N.W. 566 (1931); action on life policy, "If questions material to the risk are answered falsely, the risk is necessarily increased."

Monahan v. Mutual Life Ins. Co., 192 Wis. 102, 212 N.W. 269 (1927), action on life policy, " * * * three physicians, through whose hands applications for life insurance in the appellant company generally passed, testified without contradiction that the disclosure of the facts would have resulted in a rejection of her application. We therefore conclude that the false statements made by the insured increased the risk and contributed to the loss."

Conklin v. N. Y. Life Ins. Co., 200 Wis. 94, 227 N.W. 251 (1929), in which the court approved a decision of the trial court which stated that "if the applicant had truthfully answered all questions, the information thus given, together with truthful answers *might* have prevented the issuance of the policy" (italics supplied); *Flikeid v. N. Y. Life Ins. Co.*, 163 Minn. 134, 203 N.W. 600 (1925); *Hughes Bros. v. Aetna Ins. Co.*, 148 Tenn. 293, 255 S.W. 363 (1923).

⁵¹ The justification for this resort to "briefing technique" is the anticipated value of familiarity with some of the factual situations which have been deemed to satisfy the demands of the statute.

⁵² Whether the striking of the word "actual" from Section 209.06(1) by the legislature in 1933 produces any significant change in effect remains a matter

the relatively few cases in which an intent to deceive has been found to exist. The primary difficulty attending its proof is that in most life insurance cases the alleged deceiver is dead, cannot be questioned, and the conclusion must be based upon inferences drawn from all of the circumstances.

In *Monahan v. Mutual Life Insurance Company*⁵³ the insured, a school teacher, did not state, in response to direct questions in her application for a life insurance policy, that she had consulted a physician 24 days prior to the application and that he had diagnosed her illness as appendicitis. Death resulted from tubercular peritonitis six months after the date of the application. The jury found that the statements were false but that there was no intent to deceive. In reversing the judgment, the Supreme Court held that the evidence disclosed, as a matter of law, an actual intent to deceive, since no inference consistent with an innocent purpose on the part of the insured could be drawn from the facts or circumstances.

The insured in *Conklin v. New York Life Ins. Co.*⁵⁴ made false answers to questions in the application dealing with past condition of health and medical treatment. The court held that the trial judge rightly changed the jury's finding of absence of intent to deceive and stated that, "It seems incredible that an intelligent man such as the deceased undoubtedly was, who had been treated for diabetes over a period of more than a year with eleven days in a hospital, could forget such weighty and material matters * * *. The false answers could have been made for no other possible purpose than to induce reliance upon them and thereby deceive the defendant company. The judgment of the trial court was therefore correct."

In *Frozena v. Metropolitan Life Insurance Company*⁵⁵ the applicant denied any ailment or disease of the stomach and medical treatment. The evidence revealed that for several years prior to the application he had complained of frequent sharp pains in his stomach and had consulted a physician relative to this condition. The jury found that the insured "was subject to such pains and ailments" and was conscious thereof when he made his application, but that the statements were not made with the intention of deceiving the insurer and inducing the issuance of the policy. The appellate court found no room for an innocent interpretation of the insured's conduct and declared " * * * we can discover no ground upon which deliberate or intentional withholding of this information could be made without intent to deceive."

of conjecture. It is suggested that it may open the door for the entrance of misrepresentations resulting from mistake, ignorance, accident or negligence.

⁵³ *Calligaro v. Midland Cas. Co.*; *Demirjian v. N. Y. Life Ins. Co.*; *Monahan v. Mutual Life Ins. Co.*; *Conklin v. N. Y. Life Ins. Co.*, all *supra* note 50.

⁵⁴ *Ibid.*

⁵⁵ *Frozena v. Metropolitan Life Ins. Co.*, 211 Wis. 373, 247 N.W. 333 (1933).

"Want of education and low intelligence" first appears as a circumstance to be taken into account in determining intent to deceive in *Demirjian v. New York Life Insurance Company*⁵⁶ and it was determined that the jury's finding of no intent to deceive was not unwarranted. A distinction based upon relative intelligence was made between the case before the court and the *Monahan* case⁵⁷ where the insured was a school teacher, and the *Conklin* case⁵⁸ involving a creamery operator, "who was undoubtedly a man of intelligence."

The possibility that the applicant for an accident policy may not have differentiated in his mind between a soft drink parlor and a speak-easy was held sufficient to sustain a jury finding of absence of intent to deceive in *Calligaro v. Midland Casualty Company*.⁵⁹ Apparently the physical location of the so-called "spot" is a factor to be accorded weight, since it is said in the opinion, "to him a soft drink parlor in or near to Hurley may have meant an ordinary speak-easy."

Increase of Risk

A satisfactory analysis of the cases in this particular group is made difficult because of the apparent failure of the Wisconsin courts to recognize any distinction between the terms "material to the risk" and "increases the risk."⁶⁰ In short, under the Wisconsin decisions, the vital inquiry is: If the matter had been truthfully represented, would the policy have been issued?⁶¹ It seems also that the standard is an individual one and not that of the "prudent insurer." The general type of misrepresentations in applications which are considered to increase the risk are fairly definitely set forth in the decisions.⁶²

A frequently referred to case is *McGowan v. Supreme Court of Independent Order of Foresters*⁶³ where it is said that "all of the questions as to the health, or death, or age at death, of the ancestors or

⁵⁶ *Demirjian v. N. Y. Life Ins. Co.*, 205 Wis. 71, 236 N.W. 566 (1931).

⁵⁷ *Calligaro v. Midland Cas. Co.*; *Demirjian v. N. Y. Life Ins. Co.*; *Monahan v. Mutual Life Ins. Co.*; *Conklin v. N. Y. Life Ins. Co.*, all *supra* note 50.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, see discussion.

⁶¹ *Ibid.*, cases and discussion; *Whinfield v. Mass. Bonding & Ins. Co.*, 162 Wis. 1, 154 N.W. 632 (1916), where it was held in an action on an indemnity bond that the misrepresentation in the principal's application as to the quantity of securities held by the defaulting agent, for the principal, did not increase the risk or contribute to the loss because the insurer had made an independent investigation and therefore did not rely upon the applicant's statements.

⁶² *Calligaro v. Midland Casualty Co.*, 211 Wis. 319, 247 N.W. 846 (1933); *Demirjian v. N. Y. Life Ins. Co.*, 205 Wis. 71, 236 N.W. 566 (1931); *Monahan v. Mutual Life Ins. Co.*, 192 Wis. 102, 212 N.W. 269 (1927); *Conklin v. N. Y. Life Ins. Co.*, 200 Wis. 94, 227 N.W. 251 (1929); *cf. Wood v. Hartford Fire Ins. Co.*, 13 Conn. 533 (1840); *Olson v. Herman Farmers Mutual Ins. Co.*, 187 Wis. 15, 203 N.W. 743 (1925).

⁶³ *McGowan v. Supreme Court I. O. O. F.*, 104 Wis. 173, 80 N.W. 603 (1899).

brothers and sisters of the deceased, were material to the risk as a matter of law, and the court should have so declared." And in *Demirjian v. New York Life Insurance Company*⁶⁴ it was held that ulcers of the stomach increased the risk as a matter of law. After quoting the rule posited in the *McGowan* case⁶⁵ the court continues: "With stronger reasons are questions as to the insured's own health previous to the application material to the risk."

In *Monahan v. Mutual Life Insurance Company*⁶⁶ the existence shortly before the making of the application of an ailment diagnosed as appendicitis was held to have increased the risk and contributed to the loss, the court stating that "this is a matter of common knowledge." Representations as to past medical treatment and consultations with physicians are similarly treated.⁶⁷ The age of the applicant would undoubtedly also be held to increase the risk as a matter of law. The decisions up to the present time lay down no rule with respect to numerous other, perhaps less vital, subjects relative to which information is sought by the insurer in the application. It is suggested that since, under Section 209.06(1) the question properly is, Did the matter misrepresented increase the risk?, the issue is one of fact unless it is one concerning which reasonable men could not differ.⁶⁸

Contributes to Loss

The Wisconsin statute,⁶⁹ unlike those in most other states,⁷⁰ contains the alternative provision "or contributed to the loss." Action upon a policy of life insurance may, therefore, be defeated if the false statement contributed to the insured's death, although in no sense did it increase the risk. A particular representation, more frequently than not, will produce both consequences, but not necessarily. The scope of judicial inquiry in the second is much narrower than in the first. A false statement increases the risk if it enhances the probability of death from any cause. It contributes to the loss only if it had some causal relationship to the particular death in question. The conclusion that something contributes to the death must very often be based solely upon the opinion testimony of medical men.

No Wisconsin decisions have been discovered in which the matter misrepresented was held to contribute to the death, but not to increase

⁶⁴ *Demirjian v. N. Y. Life Ins. Co.*, 205 Wis. 71, 236 N.W. 566 (1931).

⁶⁵ *McGowan v. Sup. Ct. I. O. O. F.*, 104 Wis. 173, 80 N.W. 603 (1899).

⁶⁶ *Calligaro v. Midland Casualty Co.*; *Demirjian v. N. Y. Life Ins. Co.*; *Monahan v. Mut. Life Ins. Co.*; *Conklin v. N. Y. Life Ins. Co.*, all *supra* note 50.

⁶⁷ *Peterson v. I. O. O. F.*, 162 Wis. 562, 156 N.W. 951 (1916).

⁶⁸ *O'Keefe v. Zurich Gen. Acc. & Liability Ins. Co.*, 43 F.(2d) 809 (C.C.A. 8th, 1930).

⁶⁹ Wis. STAT. (1933) §209.06(1).

⁷⁰ Compare statutes of states cited note 28, *supra*.

the risk. In the *Monahan* case⁷¹ where the applicant failed to report a previous diagnosis of appendicitis and death ensued from tubercular peritonitis in the abdominal region, the court held that the 'false statement both increased the risk and contributed to the loss. The matter misrepresented in the *Demirjian* case⁷² (previous ailments and consultation with a physician) was found by the jury not to have contributed to the loss, but the Supreme Court held the risk was necessarily increased.⁷³

MEDICAL EXAMINATION CASES

Situations embraced within this group are those in which the insurer's medical examiner has issued a certificate of health or recommended the applicant to the company as a fit subject for insurance.⁷⁴ The Wisconsin legislature has declared by an act which became effective on July 3, 1911⁷⁵ (now Section 209.07) that where such is the case, the insurer "shall thereby be estopped from setting up in defense of an action on a policy issued thereon that the insured was not in the condition of health required by the policy at the time of the issue or delivery thereof, unless the same was procured by or through the fraud or deceit of the insured."⁷⁶ Similar statutes are found in Iowa⁷⁷ and South Dakota.⁷⁸

This statute, just like Section 209.06, represents a distinct departure from the common law rules of the legal effect of false statements made by applicants for life insurance. It carries on, in a sense, from the point

⁷¹ *Calligaro v. Midland Cas. Co.*; *Demirjian v. N. Y. Life Ins. Co.*; *Monahan v. Mut. Life Ins. Co.*; *Conklin v. N. Y. Life Ins. Co.*, all *supra* note 50.

⁷² *Demirjian v. N. Y. Life Ins. Co.*, 205 Wis. 71, 236 N.W. 566 (1931).

⁷³ The cause of death is not given in the reported case.

⁷⁴ Practically all of the larger policies are in this category.

⁷⁵ Section 4202s, Wisconsin Session Laws (1911), as originally enacted provided as follows: "In any case where the medical examiner, or physician acting as such, of any life or disability insurance company or association doing business in this State, shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall thereby be estopped from setting up in defense of an action on such policy or certificate that the insured was not in the condition of health required by the policy at the time of the issue or delivery thereof, unless the same was procured by or through the fraud or deceit of the insured."

In its present form, Section 209.07 provides as follows: "*Estoppel by report of medical examiner, effect of fraud.* If the medical examiner of any life or disability insurance company shall issue a certificate of health, or declare the applicant a fit subject for insurance, or so report to the company or its agent under the rules and regulations of such company, it shall thereby be estopped from setting up in defense of an action on a policy issued thereon that the insured was not in the condition of health required by the policy at the time of the issue or delivery thereof, unless the same was procured by or through the fraud or deceit of the insured. This section shall apply to fraternal benefit societies."

Intervening amendments are unimportant.

⁷⁶ WIS. STAT. (1933) §209.07.

⁷⁷ See *Mickel v. Mutual Life Ins. Co.*, 204 Iowa 421, 213 N.W. 765 (1927).

⁷⁸ See *Cunningham v. R. N. A.*, 24 S. D. 489, 124 N.W. 434 (1910).

where Section 209.06 stops, by depriving insurers of the defense of false statements pertaining to past or present condition of health regardless of materiality, increase of risk or contribution to loss, in all cases where the company's medical examiner has certified the applicant to be a fit subject for insurance.

The theory of Section 209.07 seems to be eminently fair and reasonable. It says, in effect, that where the insurer has chosen to conduct an independent investigation of the applicant's physical condition through one of its own skilled experts, it will not, in the absence of fraud or deceit practiced on the examiner, be permitted to interpose as a defense the physical infirmities of the insured, of which it knew or might have known as a result of the examination.⁷⁹

The statute presents several rather perplexing problems in construction which will be briefly considered in the light of the relevant Wisconsin cases and those decided by the Iowa courts dealing with an identical statute.⁸⁰

1. Who is the medical examiner? In Iowa, it was held in *Peterson v. Des Moines Life Association*⁸¹ that the medical examiner or physician contemplated in this section is the person who examines the applicant, determines his condition of health and reports whether he is a proper risk and not the general medical adviser or director at the home office, whose advice is taken into account in determining whether the risk should be accepted.

2. To what does the estoppel extend? In express terms, the statute declares that the estoppel is as to condition of health at the time of issue or delivery of the policy. The company is estopped from showing the falsity of statements made in the application or to the examining physician, so far as they relate to the health of the insured and his acceptability as a risk on that account. In the *Peterson* case⁸² it is held that the estoppel applies to statements as to previous sickness, treatment, accident, etc., since such statements "bear only upon the health and physical condition at the time the company is asked to accept the risk, and it is the evident purpose of the statute to limit inquiry with reference to the truth of these statements to the question whether assured, by fraudulent representations or concealments, induced the medical examiner to recommend the risk so far as health and physical

⁷⁹ See *Weimer v. Economic Life Ass'n. of Clinton*, 108 Iowa 451, 79 N.W. 123 1899; but cf. *Whinfield v. Mass. Bonding & Ins. Co.*, 162 Wis. 1, 154 N.W. 632 (1916).

⁸⁰ The Iowa cases referred to herein were decided prior to the enactment of what is now Section 209.07, Wisconsin Statutes, and under familiar principles are to be generally taken as authoritative precedents.

⁸¹ *Peterson v. Des Moines Life Ass'n.*, 115 Iowa 668, 87 N.W. 397 (1901).

⁸² *Ibid.*

condition are concerned, when, if the assured had acted in good faith, such a recommendation would not have been made."

What of statements as to age, occupation, other insurance and allied matters, which are taken into account in determining whether the applicant is a suitable risk? "Condition of health" is but one of the elements of acceptability of the risk. As to statements pertaining to other subjects of inquiry, Section 209.07 is inapplicable, the estoppel is not raised, and Section 209.06 should govern.⁸³

3. To what do the words "the same" refer? That from a grammatical point of view Section 209.07 is a rather crude exhibition of draftsmanship, is evidenced by the large number of Iowa cases, in which the question has been raised as to whether the fraud or deceit specified in the statute relates to obtaining the certificate of the examiner or to obtaining the policy of insurance.⁸⁴ Not until 1933 in *Frozena v. Metropolitan Life Insurance Company*⁸⁵ was the problem judicially solved in Wisconsin with the pronouncement, in agreement with the Iowa authorities, that the fraud or deceit referred to is that, "practiced by the insured upon the medical examiner in order to induce a favorable report."

4. What is fraud or deceit within the meaning of the statute? This question arose in the *Monahan* case,⁸⁶ the facts of which have been previously stated. It was there held that reference must be made to Section 209.06 "in determining what constituted such fraud and deceit," and that when this is done, it is found that it is not sufficient to prove that the statements were merely false, but it must appear that they were made with actual intent to deceive.⁸⁷ On the facts of the *Monahan* case it was concluded that the false statements (relative to health, history and medical attendance) were made with intent to deceive and constituted a procurement of the examiner's favorable report by fraud and deceit.⁸⁸

If the certificate of fitness is issued pursuant to a conspiracy or connivance between the examiner and the applicant, the insurer is clearly entitled to show such situation, and if established, the estoppel is not raised.⁸⁹ However, in *Klieger v. Metropolitan Life Insurance*

⁸³ *Ibid.*

⁸⁴ *Weimer v. Econ. Life Ass'n. of Clinton*, 108 Iowa 451, 79 N.W. 123 (1899); *Stewart v. Equitable Mut. Life Ass. Ass'n.*, 110 Iowa 528, 81 N.W. 782 (1900); *Wood v. Farmers Life Ass'n.*, 121 Iowa 44, 95 N.W. 226 (1903); *Roe v. National Life Ins. Ass'n.*, 137 Iowa 696, 115 N.W. 500 (1908).

⁸⁵ *Frozena v. Metropolitan Life Ins. Co.*, 211 Wis. 373, 247 N.W. 333 (1933).

⁸⁶ *Calligaro v. Midland Cas. Co.*; *Demirjian v. N. Y. Life Ins. Co.*; *Monahan v. Mutual Life Ins. Co.*; *Conklin v. N. Y. Life Ins. Co.*, all *supra* note 50.

⁸⁷ This case was decided before the word "actual" was deleted from the statute.

⁸⁸ *Frozena v. Metropolitan Life Ins. Co.*, 211 Wis. 373, 247 N.W. 333 (1933).

⁸⁹ *McGinty v. Brotherhood of Railway Trainmen*, 166 Wis. 83, 164 N.W. 249 (1917).

*Company*⁹⁰ where the jury found that correct information was given to the examiner by the applicant, it was held that the former was the agent of the company and that his omissions or mistakes were those of the company and not the insured.

A question of considerable import, which arises in connection with the scope of Section 209.07 is whether the statute precludes application of the so-called rule of "continuing representation." There is an imposing array of authorities recognizing the rule that if, after the application for insurance and before the consummation of the contract, (generally by delivery of the policy and payment of the initial premium) the applicant has died, or there has been a material change in his health, the insured, or those claiming under him are under a legal obligation to inform the insurer of such known changes.⁹¹ Statements made in the application are treated as continuing to the time when the policy becomes a binding contract and, though once true, they become false upon the occurrence of an intervening material change in health.

This duty of disclosure, failure to perform which voids the policy, has been sanctioned by the Wisconsin courts in *Blommer v. Phoenix Insurance Company*⁹² as being applicable to fire insurance. There are no life insurance decisions in Wisconsin passing upon the question either before or after the enactment of Section 209.07. The Iowa court, reasoning that the estoppel created by the statute extends to all matters concerning condition of health down to the time of the issue or delivery of the policy, refused to impose the duty of notification upon the insured in *Mickel v. Mutual Life Insurance Company*.⁹³ The wisdom of so broad an interpretation of the estoppel statute is open to serious doubt as applied particularly to a state of facts where delivery of the policy is unduly delayed, and where such delay is occasioned through the fault of the insured, such as inability to meet the first premium payment. The statute must contemplate that the medical examination and the consummation of the contract shall be reasonably contemporaneous acts. The medical investigation is necessarily confined to ascertaining

⁹⁰ *Klieger v. Metropolitan Life Ins. Co.*, 180 Wis. 102, 212 N.W. 269 (1927).

⁹¹ *Trail v. Baring*, 10 L.T. (n.s.) 215, 4 DeG. J. & S. 318, 46 Eng. R. 941 (C. of A. 1864); *Canning v. Farquhar*, 16 Q.B.D. 728 (C. of A. 1886); *Harrington v. Pearl Life Ins. Co.*, 30 L.T. 613 (C. of A. 1914); *Looker v. Law Union & Rock Ins. Co.*, [1928] 1 K.B. 554; *Piedmont v. Arlington Life Ins. Co.*, 92 U. S. 377, 23 L. ed. 610 (1876); *Stipcich v. Metropolitan Life Ins. Co.*, 277 U. S. 311, 48 Sup. Ct. 512, 72 L. Ed. 895 (1928); *New York Life v. Gay*, 36 F. (2d) 634 (C. C. A. 6th, 1929); *Security Life v. Booms*, 31 Cal. App. 119, 159 Pac. 1000 (1916); *McKenzie v. Northwestern Mutual Life*, 26 Ga. App. 222, 105 S.E. 720 (1921); *Goldstein v. New York Life Ins. Co.*, 162 N. Y. Supp. 1088, 125 N.E. 898 (1917); *Gordon v. Prudential Ins. Co.*, 231 Pa. 404, 80 Atl. 882 (1911); *Fitzgerald v. Metropolitan Life Ins. Co.*, 90 Vt. 291, 98 Atl. 498 (1916).

⁹² *Blumer v. The Phoenix Ins. Co.*, 45 Wis. 622 (1878).

⁹³ *Mickel v. Mutual Life Ins. Co.*, 204 Iowa 421, 213 N.W. 765 (1927).

the state of health at the time it was made. It seems entirely reasonable to conclude that the logical justification for the statutory estoppel disappears if the insurer is prevented from showing a condition of health inconsistent with that represented, where that condition could not conceivably have been discovered by the examiner.

Conclusion

It is evident that a great deal has been accomplished by legislative entrance into a field where a change in the substantive law to meet changing conditions would otherwise have been quite impossible. The growth is away from the formalistic to the common sense attitude. False statements made by applicants for insurance policies should be grounds for avoidance under certain circumstances. It is difficult, however, to support with the force of reason the common law warranty rule permitting avoidance for immaterial false statements made in good faith.

That under the statutes the law remains in a state of some confusion is not surprising when the history of false statements in the law of insurance prior to legislation is thoroughly appreciated. The problem of the immediate future is not change but clarification.

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