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July 8, 1954

To Honorable George F. Mahoney, Insurance Commissioner
Re: Insurer's Liability under a Maine Automobile Liability Policy

The following contentions have been advanced:

That the provisions of the financial responsibility law do not become applicable until an order has been issued requiring the policy holder to furnish proof of financial responsibility, or, in New Jersey, until an accident which would have been a proper basis for such an order has occurred;

That where there has been no such order or no basis for such order, an insurer does not become absolutely liable when loss or damage occurs, i.e., the insurer is not absolutely liable for the first accident.

There contentions are rejected for two reasons:

(1) All automobile liability policies issued or delivered in Maine, must conform to the provisions of the financial responsibility law;

(2) Under every Maine automobile policy, liability becomes absolute when loss or damage occurs, and the "first accident" defence is not available to the insurer.

(1) Regarding the identity of the provisions in ordinary policies, and financial responsibility policies, our statutes are specific.

R.S., c 19, s. 69-I, provides as follows:

> "I. Policy form; liability, bond. No motor vehicle liability policy, as defined in section 64, shall be issued or delivered in the state until a copy of the form of the policy has been on file with the insurance commissioner for at least 30 days, unless before the expiration of this period, said insurance commissioner shall have approved the form of the policy in writing, nor if said insurance commissioner notifies the company in writing that, in his opinion, the form of said policy does not comply with the laws of the state, provided that he shall notify the company in writing within said period of his approval or disapproval thereof. Said insurance commissioner shall approve a form of policy which contains the name and address of the insured, a description of the motor vehicles and trailers or semi-trailers covered, with the premium charges therefor, the policy period, the limits of liability, and an agreement that insurance is provided in accordance with and subject to the provisions of sections 64 to 71, inclusive."

R. S., c. 19, s. 69-IV provides as follows:

> "IV. Prohibition. No motor vehicle liability policy other than that defined in section 64 shall be issued or delivered in this state by any authorized insurance company, except that such an authorized insurance company may issue and deliver what is known as a standard automobile liability policy by having attached thereto an indorsement meeting the requirements of sections 64 to 71, inclusive, such indorsements to be in such form as the insurance commissioner shall prescribe and to be known as the Maine statutory motor vehicle liability policy indorsement. The insurance commissioner shall approve only such policy, indorsements, and binders as shall meet the requirements of sections 64 to 71, inclusive."

It will be noted that section 69-I applied to "motor vehicle liability policy as defined in section 64," while section 69-IV applies to "motor vehicle liability policy other than that defined in section 64."

Section 64 defines the motor vehicle policy required by the financial responsibility law. These two sections, 69-I and 69-IV, taken together, include all automobile liability policies which may be legally issued or delivered in Maine.

Section 69-I provides that the policy shall contain "an agreement that insurance is provided in accordance with and subject to the provisions of" the financial responsibility law.

Section 69-IV requires approval by the commissioner of all policy and indorsement forms. It expressly states that "the insurance commissioner shall approve only such policy, indorsements and binders as shall meet the requirements of sections 64 to 71 inclusive (the financial responsibility law)."

The plain meaning is that all automobile insurance policies, whether issued in compliance with an order to furnish proof of financial responsibility or not, must comply with the provisions of the financial responsibility law. Specifically, all policies must afford the same degree of protection to the insured, and must provide "indemnity for or protection to the insured and any person responsible to him for the operation of the insured's motor vehicle. . . who has obtained possession or control thereof with his express or implied consent. . ." R.S., c. 19, s. 64-I-G.

The commissioner has no power to waive these statutory requirements. It may be mentioned that the Maine standard policy provides omnibus coverages.

(2) Regarding absolute liability when loss or damage occurs, the Maine Legislature by Public Laws of 1927, c 146, enacted the following provisions, now R.S., c. 56, ss. 261-2:

"Liability Absolute When Loss Occurs

"Sec. 261. Liability of insurance company absolute when loss occurs. The liability of every company which insures any person, firm, or corporation against accidental loss or damage on account of personal injury or death, or on account of accidental damage to property, shall become absolute whenever such loss or damage, for which the insured is responsible, occurs; and the rendition of a final judgment against the insured, for such loss or damage, shall not be a condition precedent to the right or obligation of the insuring company to make payment on account of such loss or damage.

"Judgment Creditor May have Insurance

"Sec. 262. Application of insurance money in cases after final judgment; company entitled to notice of accident or injury; bill not to be brought until 20 days after final judgment; exceptions. Whenever any person, administrator, executor, guardian, firm, or corporation recovers a final judgment against any other person, firm, or corporation for any loss or damage specified in the preceding section, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment by bringing a bill in equity, in his own name, against the insuring company to reach and apply said insurance money; provided that when the right of action accrued the judgment debtor was insured against said liability, and that before the recovery of said judgment the insuring company had had notice of such accident, injury, or damage; provided also that the insuring company shall have the right to invoke the defenses described in this section in said equity proceedings. None of the provisions of this paragraph and the preceding section shall apply:

I. When the automobile, motor vehicle, or truck is being operated by any person contrary to law as to age, or by any person under the age of 16 years where no statute restricts the age; or

II. When such automobile, motor vehicle, or truck is being used in any race or speed contest; or

III. When such automobile, motor vehicle, or truck is being used for towing or propelling a trailer unless such privilege is indorsed on the policy, or such trailer is also insured by the company; or

IV. In the case of any liability assumed by the insured for others;

V. In the case of any liability under any workmen's compensation agreement, plan or law; or

VI. When there is fraud or collusion between the judgment creditor and the insured.

"No bill in equity shall be brought against an insurance company to reach and apply said insurance money until 20 days shall have elapsed from the time of the rendition of the final judgment against the judgment debtors."

The following effects of this legislation may be noted:

(a) When loss occurs the insurance policy is transformed from a contract of indemnity into a contract to pay liabilities. The difference between the two is "that upon the former an action cannot be brought and a recovery had until the liability is discharged, whereas upon the latter, the cause of action is complete when the liability attaches"; Frye vs. Gas and Electric Company, 97 Me. 241, 241, 245; 54 A. 395; 59 LRA 444; 94 Am. St. Rep. 500 (1903).

(b) The injured party acquires a direct right against the insurer; this is not a right by subrogation.

(c) The statute grants the policy holder great latitude in giving the insurer notice;

(d) The only defenses available to the insurer are those set forth in section 262. See LaForge vs. Insurance Company 137 Me 208, 212; 18 A.2nd 138 (1941); Medico vs. Insurance Corp., 132 Me. 422; 172 A. 1 (1934). The "first accident" defense is not available to the insurer.

In the same year by P.L. 1927, c. 210, the first financial responsibility law was enacted. The separate enactment of the financial responsibility law emphasizes the fact that in Maine a liability policy provided as proof of financial responsibility was treated like any other liability policy. By Public Laws of 1941, c. 255 the financial responsibility law in substantially its present form was enacted. This is now R.S., c. 19, ss. 64 to 71 inclusive. Included in this enactment was the following "absolute liability" provision (Sec. 69):

"II-A. The liability of any company under a motor vehicle liability policy shall become absolute whenever loss or damage covered by said policy occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or duty of the company to make payment on account of said loss or damage. No such contract of insurance shall be canceled or annulled by any agreement between the company and the insured after the said insured has become responsible for such loss or damage, and any such cancellation or annulment shall be void. Upon the recovery of a final judgment against any person for any loss or

> damage specified in this section, if the judgment debtor was, at the accrual of the cause of action, insured against liability therefpr under a motor vehicle liability policy, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment."

While this section is more specific in some respects, there is no substantial difference between this and the earlier statute. No part of the earlier statute was repealed and the earlier statute provides the only way the absolute liability of the insurer can be enforced. The issues which may be presented in an action by a judgment creditor against the insurer are fixed and definite, and it is entirely immaterial whether the policy was issued to a voluntary purchaser, or whether it was issued in compliance with an order to furnish proof of financial responsibility.

In sum, the provisions of the financial responsibility law of 1941 when superimposed upon the absolute liability act of 1927, made liability no more nor less absolute than it had become in 1927. The financial responsibility law has made insurance compulsory in many cases; it has established minimum standards for liability coverage so far as personal injury (including death) and property damage are concerned; and it has required insurers to furnish all policy holders equal protection, whether the policy holders had been ordered to furnish proof of financial responsibility or not. Finally the insurer is required to apply the insurance money to the payment of judgment rendered against the insured and the "first accident" defense is not available to the insurer.

It is therefore recommended:

1. That an order be promulgated that no policies providing less than 10/20 and 5 coverage be issued or delivered in Maine;

2. That an order be promulgated that all policy forms and endorsements which restrict the meaning of "insured", as defined in section 64-I-G of chapter 19 of the Revised Statutes of Maine, be forthwith prohibited.

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