

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 9, 1977

o Frank M. Hogerty, Jr., Superintendent Dept. Bureau of Insurance

rom S. Kirk Studstrup, Assistant Dept. Attorney General

Subject The Legal Relationships between Parties to Group Credit Life and Credit Health Insurance

This memorandum responds to your request for an opinion of this office on the question of the legal relationships among the various parties involved with group credit life and credit health insurance. This form of insurance is governed by 24-A M.R.S.A. Chapter 37, which contains provisions for regulation, but does not specifically set forth the legal relationships among the parties. It is our understanding that in the typical case a creditor, such as a bank, would purchase from an insurer a group policy which would cover obligations of the debtor to the creditor in case of the death or disability of the debtor.

The legal relationships among and between the three parties to this form of insurance (the insurer, the creditor and the debtor) have been the subject of various opinions in different jurisdictions. See generally 1 Appleman, Insurance Law and Practice, § 43. However, this question has been settled in Maine by the Supreme Judicial Court in the case of Palmer v. Newport Trust Company, 245 A.2d 438 (Me., 1968). The Palmer case involved a group credit life policy purchased by the defendant trust company to cover its mortgage loan debtors. The debtors paid a monthly premium along with the mortgage payments to the trust company and the trust company paid a total premium to an insurance agent who in turn forwarded the premium to the insurance company. Due to a change in policies, there was a change in provisions and the trust company never informed its debtors of this change. In this particular case, a technical default on the loan caused automatic termination of the insurance coverage under the terms of the policy, but the debtor was never informed of this termination. One of the primary issues in the case was whether the survivors of the debtor had an action against the trust company or against the insurance company.

The Court held that the creditor was acting as an agent of the insured (the debtor) and not the insurance company in this situation. The Court noted the controversy on this point among the various States, but concluded,

"The better view, in our opinion, is that the insurance company stands on the one side and the holder of the group policy and the beneficiaries thereunder on the other."
(Extensive citations omitted)

Therefore, since the trust company was an agent of its customers, it could not waive the automatic cancellation provisions of the policy. Any action by survivors of the creditor would be against the trust

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company and the trust company alone. There could be no question of third party liability for the insurer unless and until the creditor was first found liable.

Although the Palmer case was decided prior to enactment of the new Insurance Code in 1969, there is nothing in the Code which would indicate a different treatment of the relationships among the parties to this type of insurance. Nor do we find any provision in the Maine Consumer Credit Code concerning "consumer credit insurance" which would indicate a different result. 9-A M.R.S.A. § 4.101, et seq.^{1/} The Palmer case is still the controlling decision on this point in Maine, and we believe that decision adequately answers your question.



S. KIRK STUDSTRUP
Assistant Attorney General

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^{1/} We note parenthetically that the provisions of Title 24 and Title 9-A overlap with regard to consumer credit insurance. Title 9-A M.R.S.A. § 4.111 indicates the manner in which these overlapping provisions are to be administered.