



1-1-1967

# The Requirement of Notice to an Employee of the Termination or Cancellation of His Group Policy

Michael S. Williamson

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

## Recommended Citation

Michael S. Williamson, *The Requirement of Notice to an Employee of the Termination or Cancellation of His Group Policy*, 42 Notre Dame L. Rev. 523 (1967).

Available at: <http://scholarship.law.nd.edu/ndlr/vol42/iss4/6>

This Note is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

# THE REQUIREMENT OF NOTICE TO AN EMPLOYEE OF THE TERMINATION OR CANCELLATION OF HIS GROUP POLICY

## I. Introduction

Group insurance policies involve "the coverage of a number of individuals by means of a single or blanket policy, thereby effecting economies which frequently enable the insurer to sell its services at lower premium rates . . . ."<sup>1</sup> This practice of insuring a group of persons by a single comprehensive policy is a twentieth century innovation, the first policy having been written in 1911.<sup>2</sup> At first, policies provided only life insurance benefits to employees.<sup>3</sup> Today, however, with the phenomenal growth of group insurance, coverage may also include total and permanent disability as well as hospitalization and surgical expenses.<sup>4</sup>

This rapid expansion of the group policy concept has produced a host of legal problems. A common example is that of the insured employee who, when he presents his claim to the insurance company, discovers that his group policy has been previously terminated or cancelled without his knowledge. The purpose of this note is to define and analyze the duty of the employer or insurance company to notify the insured employee that his group insurance policy has been cancelled. There is a direct conflict among the various state jurisdictions over the content and extent of this duty.

### A. Scope

This note is confined to the two most prevalent ways in which an employee's coverage under a group insurance policy can be terminated. The first method of cancellation is simple; all group policies generally provide for termination when the insured's employment is discontinued.<sup>5</sup> When this occurs, most policies with life insurance benefits contain an extremely valuable conversion privilege which allows the former employee to convert all or part of his group insurance to an individual policy of life insurance without showing further evidence of insurability.<sup>6</sup> Secondly, an employee's coverage may be altered or completely eliminated either by a modification of the policy's terms by the employer and the insurer or by total cancellation of the policy.<sup>7</sup>

---

1 Land v. West Coast Life Ins. Co., 201 Ore. 397, 270 P.2d 154, 155 (1954). For a general discussion concerning the nature of group insurance policies, see 1 APPLEMAN, INSURANCE LAW AND PRACTICE §§ 41-48 (1965); Cox, *Group Insurance Contracts for Employees*, 38 TEXAS L. REV. 211 (1959); Notes and Legislation, 26 VA. L. REV. 487 (1940).

2 Cox, *supra* note 1, at 211.

3 *Ibid.*

4 In 1959, it was estimated that approximately 36 million employees in the United States were protected by group life insurance; some 20 million were insured for total and permanent disability; and around 44 million employees and their dependents were qualified to receive group hospitalization and surgical benefits. *Ibid.*

5 *Id.* at 215.

6 *Id.* at 218.

7 *E.g.*, Parks v. Prudential Ins. Co. of America, 103 F. Supp. 493 (E.D. Tenn. 1951), *aff'd*, 195 F.2d 302 (6th Cir. 1952); Lindgren v. Metropolitan Life Ins. Co., 57 Ill. App. 2d 315, 206 N.E.2d 734 (1965); Vandenberg v. John Hancock Mut. Life Ins. Co., 48 N.J. Super.

In contributory policies, where the employer and the employee both share in the payment of premiums, the employer usually remits the full premium to the insurance company after deducting a certain portion from the employee's wages. In addition to the two major methods of cancellation the termination of this type of policy may also occur upon a failure by the employee to pay his share of the premiums.<sup>8</sup> Nevertheless, in most cases, this third method usually appears as a hybrid form of the first two. Thus, when an employee's coverage has ceased because of a failure to pay premiums, his discharge from employment or a cancellation or modification of the group policy is also involved.<sup>9</sup>

### B. Preliminary Considerations

Although group insurance contracts are in certain respects distinct from individual insurance policies, it has been held that the general principles of personal insurance contract law will be binding upon one who seeks recovery under a group policy.<sup>10</sup> Many jurisdictions also treat the insured employee as a third party beneficiary of the insurance contract.<sup>11</sup>

The position in which the employer stands in relation to his employees and the insurer has been the subject of much dispute. In *Boseman v. Connecticut Gen. Life Ins. Co.*,<sup>12</sup> the Supreme Court determined that the employer was the agent of the employee and not the insurance company.<sup>13</sup> As Mr. Justice Butler pointed out:

When procuring the policy, obtaining applications of employees, taking payroll deduction orders, reporting changes in the insured group, paying premiums and generally in doing whatever may serve to obtain and keep the insurance in force, employers act not as agents of the insurer but for their employees or for themselves.<sup>14</sup>

The better reasoned state decisions have followed *Boseman*.<sup>15</sup> A minority of state courts, however, have regarded the employer as an agent of the insurer.<sup>16</sup> In both instances, the courts have frequently considered this issue to be of some

1, 136 A.2d 661 (1957); *Poch v. Equitable Life Assur. Soc'y of United States*, 343 Pa. 119, 22 A.2d 590 (1941).

A closely related, yet legally distinct, subject concerning the necessity of the employee's consent to cancellation or modification will not be discussed here. For a discussion of employees' consent to the cancellation of a group policy see Note, 49 *YALE L.J.* 585 (1940).

<sup>8</sup> *Cox, supra* note 1, at 215.

<sup>9</sup> *E.g.*, *Prudential Ins. Co. of America v. Lancaster*, 219 N.E.2d 607 (Ind. App. 1966); *Rivers v. State Capital Life Ins. Co.*, 245 N.C. 461, 96 S.E.2d 431 (1957); *Hanaieff v. Equitable Life Assur. Soc'y of United States*, 371 Pa. 560, 92 A.2d 202 (1952).

<sup>10</sup> *Zeigler v. Equitable Life Assur. Soc'y of the United States*, 219 Iowa 872, 259 N.W. 769 (1935); *Land v. West Coast Life Ins. Co.*, 201 Ore. 397, 270 P.2d 154 (1954); 1 *APPLEMAN, op. cit. supra* note 1, § 41.

<sup>11</sup> *E.g.*, *Kimbal v. Travelers Ins. Co.*, 151 Fla. 786, 10 So. 2d 728 (1942); *Mutual Bank & Trust Co. v. Shaffner*, 248 S.W.2d 585 (Mo. 1952); *Alsop v. Travelers Ins. Co.*, 196 Tenn. 346, 268 S.W.2d 90 (1954).

<sup>12</sup> 301 U.S. 196 (1937).

<sup>13</sup> *Id.* at 204-05.

<sup>14</sup> *Ibid.*

<sup>15</sup> *E.g.*, *Prudential Ins. Co. of America v. Lancaster*, 219 N.E.2d 607 (Ind. App. 1966); *Haneline v. Turner White Casket Co.*, 238 N.C. 127, 76 S.E.2d 372 (1953); *Hroblak v. Metropolitan Life Ins. Co.*, 50 Ohio L. Abs. 395, 79 N.E.2d 360 (1947).

<sup>16</sup> *E.g.*, *Neider v. Continental Assur. Co.*, 213 La. 621, 35 So. 2d 237 (1948); *Mutual Bank & Trust Co. v. Shaffner*, 248 S.W.2d 585 (Mo. 1952); *Baum v. Massachusetts Mut. Life Ins. Co.*, 357 P.2d 960 (Okla. 1960).

importance in determining whether the employee is entitled to notice of termination or cancellation of his group policy.

## II. Termination of Policy by Termination of Employment

### A. Notice Is Not Required

In this area, courts have found little difficulty in determining that notice is not required by either the employer or the insurer where it has been the employee who has severed his relationship with the employer.<sup>17</sup> As was stated in *Adkins v. Aetna Life Ins. Co.*:<sup>18</sup>

To require that he [the employee] be given notice of a situation of which he was already fully aware, and as to which he possessed equal or even greater knowledge than did his employer, could serve no useful end or purpose.<sup>19</sup>

Although these results seem quite justified since the employee by his own acts has voluntarily terminated his employment, confusion has developed where the acts of the employer or his employee do not unequivocally evince a termination of employment. Nevertheless, when there is a termination the employer proceeds to notify the insurer of an employee's discharge, and the insurer relies upon this notice in cancelling the employee's policy. In such cases, the line of reasoning adopted by many courts that hold notice of termination of employment or termination of the policy need not be given to the employee is that to exact such an obligation would be to read into the insurance contract something that is not there. Thus, when neither the master policy, which is in the hands of the employer, nor the certificate of insurance, which the employee possesses, provides for such notice, the courts have frequently refused to require it.<sup>20</sup> What was said in *Bell v. New York Life Ins. Co.*<sup>21</sup> is indicative of the conclusions reached by these courts: "From an examination of the certificate, we conclude that the appellants' decedent was adequately advised of the terms of his insurance and . . . we cannot make a new and different contract for the parties."<sup>22</sup>

17 *E.g.*, *Pearson v. Equitable Life Assur. Soc'y of the United States*, 212 N.C. 731, 194 S.E. 661 (1938); *Waltz v. Equitable Life Assur. Soc'y of the United States*, 233 S.C. 210, 104 S.E.2d 384 (1958); *Adkins v. Aetna Life Ins. Co.*, 130 W. Va. 362, 43 S.E.2d 372 (1947).

18 *Supra* note 17.

19 *Id.* at 378-79, 43 S.E.2d at 381.

20 *E.g.*, *Bell v. New York Life Ins. Co.*, 134 Ind. App. 614, 190 N.E.2d 432 (1963); *Equitable Life Assur. Soc'y of United States v. Yates*, 288 Ky. 309, 156 S.W.2d 128 (1941); *Trimble v. Metropolitan Life Ins. Co.*, 305 Mich. 172, 9 N.W.2d 49 (1943); *Magee v. Sun Life Assur. Co. of Canada*, 182 Miss. 287, 180 So. 797 (1938); *Lineberger v. Security Life & Trust Co.*, 245 N.C. 166, 95 S.E.2d 501 (1956); *Huston v. Travelers Ins. Co.*, 79 Ohio App. 177, 70 N.E.2d 672 (1946).

In holding that no notice to the employee was required, the *Lineberger* case stressed the fact that the policy was noncontributory with the employer paying all of the premiums. *Lineberger v. Security Life & Trust Co.*, *supra* at 505. Although this distinction between contributory and noncontributory policies is frequently made when the employer and the insurer have cancelled or modified the group policy without notice to the employee, it appears that it has been seldom used by the courts in cases dealing with termination of the policy by cessation of employment.

21 *Supra* note 20.

22 *Id.* at 621, 190 N.E.2d at 435.

### B. Notice Is Required

Decisions that do not require notice by either the employer or the insurer appear to be based upon sound legal principles. A strong contention, however, which is frequently made by the employee or his beneficiary is that failure to receive notice has deprived him of the right to utilize his conversion privilege, which generally must be exercised within thirty-one days after termination of employment.<sup>23</sup> If the employee has not received notice that his employment has ended, this period will usually lapse without his knowledge. Thus, there are strong policy considerations that militate against denying the employee some form of notice. These considerations were aptly pointed out by the Superior Court of New Jersey in *Keane v. Aetna Life Ins. Co.*<sup>24</sup>

The employer negotiated the policy. The employer assumed a substantial administration role in the operation of the plan. The employee's knowledge may be assumed to be comparatively meagre. Unless the employer is charged with some obligation, a socially significant plan of protection may be lost in the ambiguity and obscurity which may attend, and here is claimed to have attended, the termination of the active work of the employee.<sup>25</sup>

At the other end of the spectrum is the seemingly justifiable reliance by the insurer upon the employer's affirmations that an employee has ceased to work for him.

Faced with this dilemma, several jurisdictions have begun to require that some form of notice be given to the employee. Those courts that have recognized this duty have generally imposed it upon the employer while allowing recovery against the insurance company. In arriving at these results, they have emphasized the employee's conversion privilege.<sup>26</sup> A leading case in this area is *Nick v. Travelers Ins. Co.*,<sup>27</sup> where the employee's right to convert had been lost because, although he was under the impression that he had been temporarily laid off from work, the employer had actually terminated his employment.<sup>28</sup> Nevertheless, the court felt that to allow termination of the employee's policy without notice of

<sup>23</sup> See text accompanying note 6 *supra*.

<sup>24</sup> 22 N.J. Super. 296, 91 A.2d 875 (1952).

<sup>25</sup> *Id.* at 312, 91 A.2d at 882.

<sup>26</sup> *E.g.*, *Emerick v. Connecticut Gen. Life Ins. Co.*, 120 Conn. 60, 179 Atl. 335 (1935); *Kolodziej v. Metropolitan Life Ins. Co.*, 307 Ill. App. 657, 30 N.E.2d 916 (1940); *Leavens v. Metropolitan Life Ins. Co.*, 135 Me. 365, 197 Atl. 309 (1938); *Geisenhoff v. John Hancock Mut. Life Ins. Co.*, 209 Minn. 223, 296 N.W. 4 (1941); *Nick v. Travelers Ins. Co.*, 354 Mo. 376, 189 S.W.2d 532 (1945); *Keane v. Aetna Life Ins. Co.*, *supra* note 24; *Jones v. Metropolitan Life Ins. Co.*, 156 Pa. Super. 156, 39 A.2d 721 (1944). Despite the decision in *Jones*, the Supreme Court of Pennsylvania in *Hanaieff v. Equitable Life Assur. Soc'y of United States*, 371 Pa. 560, 92 A.2d 202 (1952), denied recovery to the beneficiary of a group policy from the insurer. Although the court recognized that the employer might have a duty to inform the insured employee that his employment had been terminated, it felt that the beneficiary did not have a cause of action against the insurer. *Jones*, however, was not overruled. *Accord*, *Metropolitan Life Ins. Co. v. Thompson*, 203 Ark. 1103, 160 S.W.2d 852 (1942). See also *Spartan Aircraft Co. v. Coppick*, 201 Okla. 522, 207 P.2d 790 (1949) (employer's duty does not extend to the beneficiary).

<sup>27</sup> *Supra* note 26.

termination of employment would be to render the conversion privilege of little value.<sup>28</sup>

Similarly, *Jones v. Metropolitan Life Ins. Co.*<sup>30</sup> persuasively points out the importance of an employee's conversion privilege. In *Jones*, the court thought that such a provision showed an intention between the employer and the insurer that the former would discharge his employees only in such a manner as would clearly indicate to them that their employment had been terminated.<sup>31</sup> The court reasoned that "similar considerations of justice call for notice to the employee when his certificate is ended by the termination of employment."<sup>32</sup> Consequently, it stated, in order for the provision calling for termination of the policy by termination of employment and for the conversion privilege to become effective, the employer must clearly and unequivocally notify the employee that he has been discharged. Until this is accomplished, for the purpose of the group insurance policy, the employment relation between the employer and the employee was held to continue.<sup>33</sup> By imposing this obligation upon the employer, the court felt that it was interpreting the contract of insurance "to operate fairly and justly as presumably the employer and the company intended."<sup>34</sup>

It is this last concept of presumed intention that appears to run directly counter to those earlier mentioned decisions in which the courts refused to read into the insurance contract a requirement of notice.<sup>35</sup> Other jurisdictions, however, have employed this concept.<sup>36</sup> In *Emerick v. Connecticut Gen. Life Ins. Co.*,<sup>37</sup> the court declared that it was bound to presume that both the employer and the insurer intended that the group policy

should operate fairly and justly to the employee and that, in return for his acceptance of its provisions and payment to the employer of the amount deducted from his wages as premiums, he should be assured of the benefits apparently conferred by the policy.<sup>38</sup>

Consequently, an employee's valuable right of conversion is not terminated simply by the employer notifying the insurer. The court reasoned that it was the intent of neither the employer nor the insurer to so endanger the employee's rights under the policy. Notification or knowledge of some type must also be communicated to the employee.<sup>39</sup>

*Leavens v. Metropolitan Life Ins. Co.*,<sup>40</sup> decided by the Supreme Court of

28 *Id.* at 388, 189 S.W.2d at 536.

29 *Id.* at 391, 189 S.W.2d at 538.

30 156 Pa. Super. 156, 39 A.2d 721 (1944).

31 *Id.* at 163, 39 A.2d at 725.

32 *Id.* at 164, 39 A.2d at 725.

33 *Ibid.*

34 *Ibid.*

35 Cases cited note 20 *supra*.

36 *Emerick v. Connecticut Gen. Life Ins. Co.*, 120 Conn. 60, 179 Atl. 335 (1935); *Leavens v. Metropolitan Life Ins. Co.*, 135 Me. 365, 197 Atl. 309 (1938). See generally *Keane v. Aetna Life Ins. Co.*, 22 N.J. Super. 296, 91 A.2d 875 (1952).

37 *Supra* note 36.

38 *Id.* at 66, 179 Atl. at 338.

39 *Id.* at 68, 179 Atl. at 338.

40 135 Me. 365, 197 Atl. 309 (1938).

Maine, contains this significant statement regarding the supposedly true intention of the employee and the insurer:

To hold that the employer and the insurer executed the insurance contract with the intention that the conversion privilege assured to the employee could be destroyed without his knowledge at the will of the employer, thus stripping him, it may be, of the power to obtain any life insurance at a time when he is disabled or advanced in years and no longer insurable, is to read into the policy, we think, an unfair and unjust provision which is neither expressed nor necessarily implied.<sup>41</sup>

Thus, not only has the Maine court refused to adopt the principle that if no provision for notice is found in the contract, none is required, but it has affirmatively stated that to do so would work a harsh and unjust result.

It can be seen that the results in *Jones*, *Emerick*, and *Leavens* are partially based upon policy considerations and are in direct conflict with the holdings found in *Bell* and similar cases. Those courts supporting the position argued for by the insurer have placed particular emphasis on the explicit provisions of the insurance contract, while those favoring the plight of the employee have pointed to the injustice involved if the insured should lose his conversion privilege because he was not notified that his employment had been terminated. Certainly this latter argument is justified where the employee honestly believes his absence from work is only temporary. At the same time, however, the reliance of the insurer upon the employer's statements would appear equally justifiable. To hold that the insurer presumably intended to remain liable to the employee until the latter was notified by the employer is to impose an unwarranted interpretation upon the insurance contract. Perhaps a more equitable solution in this area would be to impose liability upon the employer, rather than the insurer, for failure to give notice.

### III. Cancellation or Modification Between the Employer and the Insurer

One of the most frequently litigated issues involving group insurance policies concerns whether the insured employee is entitled to be notified of the cancellation or modification of the group policy. Here, the employer and the insurer might agree to eliminate a certain provision of the contract, such as the total and permanent disability clause,<sup>42</sup> or the employer might notify the insurer that he no longer wishes to continue the policy.<sup>43</sup> In both instances, the employee may not have received notice of these actions. Again, while little harmony exists among the courts, the weight of authority would appear to be that notice is required.

41 *Id.* at 370-71, 197 Atl. at 311.

42 *E.g.*, *Butler v. Equitable Life Assur. Soc'y of the United States*, 233 Mo. App. 94, 93 S.W.2d 1019 (1936); *Poch v. Equitable Life Assur. Soc'y of the United States*, 343 Pa. 119, 22 A.2d 590 (1941).

43 *E.g.*, *Lindgren v. Metropolitan Life Ins. Co.*, 57 Ill. App. 2d 315, 206 N.E.2d 734 (1965); *Satz v. Prudential Ins. Co. of America*, 225 S.W.2d 480 (Mo. Ct. App. 1949); *Taylor v. Continental Assur. Co.*, 104 Ohio App. 78, 144 N.E.2d 213 (1956).

### A. Notice Is Not Required

Several jurisdictions that have held an employee is not entitled to notice when the employer and the insurer have cancelled the group policy have adopted reasoning similar to those cases involving termination of a group policy by discharge from employment. Thus, unless the insurance contract somewhere provides for notice of cancellation, none will be demanded by these courts.<sup>44</sup> *Prudential Ins. Co. of America v. Lancaster*<sup>45</sup> is a recent decision exemplifying this line of reasoning. The court found the language in the contract to be clear and unambiguous. There was no express requirement of notice to an insured employee, nor was the court able to discover any agreement between the insurer and the employer that such notice would be given. Finally, since the state legislature had not included in its group insurance statute a requirement of notice, the court felt bound to declare that none was necessary.<sup>46</sup>

A second method which has been used by some courts in denying relief to the employee is to treat the group policy solely as a contract between the employer and the insurer with the insured employee having no contractual relationship with the insurer.<sup>47</sup> As was stated in *Johnson v. Metropolitan Life Ins. Co.*:<sup>48</sup>

[T]he company looked exclusively to the employer for the payment of premiums [although the policy was contributory] . . . . Since it was only the employer who could renew, it likewise follows that it was only the employer who could discontinue the policy, and the fact that the employee was not given notice by the employer that such action [cancellation of the policy] would be taken did not operate to keep alive the policy after it had been actually terminated by agreement between the contracting parties. Notice by the employer to the employee of the intended cancellation would have availed nothing, since the employee could not have assumed the position of the employer in continuing the policy in force.<sup>49</sup>

Although the logic of *Johnson* seems appealing, to state that an insured is not entitled to know of the cancellation of his group policy because he himself has no right or power to keep the contract alive does not adequately resolve the issue. Although the policy might not provide for a conversion privilege upon cancellation or modification but only upon termination of employment, if the employee continues to allow the employer to deduct a certain amount from his wages supposedly for premiums and forbears from obtaining an individual policy because he believes the group policy is still in effect, it would seem that he should be entitled to some notice that the policy has been extinguished or amended.

44 *E.g.*, *Kimbal v. Travelers Ins. Co.*, 151 Fla. 786, 10 So. 2d 728 (1942); *Zaunczkowski v. Travelers Ins. Co.*, 3 N.J. Super. 442, 66 A.2d 463 (1949); *Taylor v. Continental Assur. Co.*, *supra* note 43.

45 219 N.E.2d 607 (Ind. App. 1966). The facts in *Lancaster* are somewhat ambiguous. However, it appears that both an attempted cancellation and a failure to pay premiums on the part of the employer were involved. The court seemed to treat the case primarily as one that involved a failure to pay premiums.

46 *Id.* at 609. For Indiana's Group Insurance Policy statute, see IND. ANN. STAT. §§ 39-4221-24 (1965).

47 See, *e.g.*, *Johnson v. Metropolitan Life Ins. Co.*, 52 Ga. App. 759, 184 S.E. 392 (1936); *Kloidt v. Metropolitan Life Ins. Co.*, 18 N.J. Misc. 661, 16 A.2d 274 (1939).

48 *Supra* note 47.

49 184 S.E. at 395.

### B. Notice Is Required

In *Taylor v. Continental Assur. Co.*,<sup>50</sup> the court denied recovery to the beneficiary of a group insurance policy because it felt constrained by those sections of the Ohio statute that dealt with termination of group policies and that made no mention of a requirement of notice.<sup>51</sup> In doing this, however, the court was cognizant of the possible injustice to the employee:

We agree that it would be desirable that some notice be accorded to employees covered by group policy of its termination so that they might be assured of the accrual of the right to have a new policy issued to them, but we cannot hold that the phraseology employed in the section will permit of this construction.<sup>52</sup>

Thus, while the Ohio court refused to exact this obligation of notice from the insurer without legislative sanction, many jurisdictions, by emphasizing the contributory nature of most group policies, have readily done so.<sup>53</sup>

*Butler v. Equitable Life Assur. Soc'y of the United States*<sup>54</sup> is a leading case that upholds the insured employee's right to notice because he had been obligated to pay a certain portion of the premiums due the insurer. The court declared that since these contributory payments placed certain burdens upon the employee, and his contributions constituted a part of the consideration running to the insurer, the insurer was bound to give notification that a total and permanent disability provision was no longer in effect in order to preserve the benefits guaranteed to the employee by the policy.<sup>55</sup> Furthermore, the court reasoned that "when a third party makes application and pays the contributions as expressed in the master policy and the same is accepted by the parties . . . such payment and such acceptance endows the third party with a vested interest."<sup>56</sup>

The Supreme Court of Pennsylvania has also adopted the *Butler* approach to the issue of notice. In *Poch v. Equitable Life Assur. Soc'y of United States*,<sup>57</sup> the court did not follow those decisions denying recovery to an employee because he was not a party to the insurance contract.<sup>58</sup> On the contrary, the court determined that at least as to the necessity of advising an employee of the cancellation or modification of his group policy, a definite contractual relationship existed between the employee and the insurer.<sup>59</sup> Any attempt by the employer

50 104 Ohio App. 78, 144 N.E.2d 213 (1956).

51 *Id.* at 82-83, 144 N.E.2d at 216-17. OHIO REV. CODE ANN. §§ 3917.06(E) and (F) (Page 1954) require that each group policy contain a guarantee to the employee that he may convert his policy upon termination of employment, policy termination, or amendment.

52 *Taylor v. Continental Assur. Co.*, *supra* note 51, at 83, 144 N.E.2d at 217.

53 *E.g.*, *Clauson v. Prudential Ins. Co. of America*, 195 F. Supp. 72 (D. Mass.), *aff'd*, 296 F.2d 76 (1st Cir. 1961); *Lindgren v. Metropolitan Life Ins. Co.*, 57 Ill. App. 2d 315, 206 N.E.2d 734 (1965); *Butler v. Equitable Life Assur. Soc'y of the United States*, 233 Mo. App. 94, 93 S.W.2d 1019 (1936); *Poch v. Equitable Life Assur. Soc'y of the United States*, 343 Pa. 119, 22 A.2d 590 (1941). See also *Metropolitan Life Ins. Co. v. Korneghy*, 37 Ala. App. 497, 71 So. 2d 292 (1954).

54 *Supra* note 53. *But see* *Satz v. Prudential Ins. Co. of America*, 225 S.W.2d 480 (Mo. Ct. App. 1949) (distinguishing *Butler* on its facts).

55 *Butler v. Equitable Life Assur. Soc'y of the United States*, *supra* note 53.

56 93 S.W.2d at 1024.

57 343 Pa. 119, 22 A.2d 590 (1941).

58 See cases cited note 45 *supra*.

59 *Poch v. Equitable Life Assur. Soc'y of the United States*, 343 Pa. 119, 128, 22 A.2d 590, 594 (1941).

and the insurer to cancel the policy or eliminate a provision, except in a manner provided by the policy, without notifying the employee would be ineffectual. To hold otherwise might result in the insurer not exercising his right of conversion, if such right existed, or not seeking an individual policy elsewhere.<sup>60</sup>

These concepts of a vested interest, a contractual relationship, or the need to allow an employee the opportunity to exercise whatever rights he might have under the policy or at least to obtain insurance elsewhere have been applied by courts in Tennessee,<sup>61</sup> Illinois,<sup>62</sup> Montana,<sup>63</sup> and Massachusetts.<sup>64</sup> In *Parks v. Prudential Ins. Co. of America*,<sup>65</sup> a federal court applying Tennessee law declared that "one holding a beneficial certificate under a group policy, for which he has paid all or a portion of the premium, has a definite contractual relation with the insurance company."<sup>66</sup> Therefore, to condone any attempt by the insurer to alter the insurance contract without notice to the employee would do violence to the "contractual relation."<sup>67</sup>

Likewise, in *Lindgren v. Metropolitan Life Ins. Co.*,<sup>68</sup> the Illinois court found that the contributory payments by the insured employee conferred upon him a vested interest in the policy that could not be defeated without notification.<sup>69</sup> Finally, the Montana Supreme Court in *Cantrell v. Benefit Ass'n of Ry. Employees*<sup>70</sup> expressed its concern over the possibility that an insured employee might forbear from purchasing insurance elsewhere if he believed that his group policy was in effect. Accordingly, to eliminate this possibility, and to enable the employee to obtain his own policy, notice of cancellation must be given.<sup>71</sup>

Two other theories have been enunciated by courts to require notice by the insurance company to the insured employee. It will be recalled that while discussing the necessity of notifying the employee that his employment and consequently his group policy had been terminated, several courts developed the doctrine of presumed intention.<sup>72</sup> In *Vandenberg v. John Hancock Mut. Life Ins. Co.*,<sup>73</sup> the Superior Court of New Jersey was called upon to adjudicate the validity of a group policy amendment made between the insurer and the employer without notice to the employees. The group policy was delivered in New York and required that New York law be followed.<sup>74</sup> Unable to find any reliable indication of the law of New York on this precise question, however, the court was forced to apply common law.<sup>75</sup> In so doing, it reached this important conclusion:

---

60 *Ibid.*

61 *Parks v. Prudential Ins. Co. of America*, 103 F. Supp. 493 (E.D. Tenn. 1951), *aff'd*, 195 F.2d 302 (6th Cir. 1952).

62 *Lindgren v. Metropolitan Life Ins. Co.*, 57 Ill. App. 2d 315, 206 N.E.2d 734 (1965).

63 *Cantrell v. Benefit Ass'n of Ry. Employees*, 136 Mont. 426, 348 P.2d 345 (1959).

64 *Clauson v. Prudential Ins. Co. of America*, 195 F. Supp. 72 (D. Mass.), *aff'd*, 296 F.2d 76 (1st Cir. 1961).

65 103 F. Supp. 493 (E.D. Tenn. 1951).

66 *Id.* at 496.

67 *Id.* at 498.

68 57 Ill. App. 2d 315, 206 N.E.2d 734 (1965).

69 *Id.* at 319, 206 N.E.2d at 736.

70 136 Mont. 426, 348 P.2d 345 (1959).

71 348 P.2d at 348.

72 See text accompanying notes 29-39 *supra*.

73 48 N.J. Super. 1, 136 A.2d 661 (1957).

74 *Id.* at 3, 136 A.2d at 662.

75 *Id.* at 9, 136 A.2d at 666.

The gross unfairness to an insured of effectuation of such a policy amendment as that here involved without notice to the insured, under the circumstances obtaining, while not of itself compelling a construction precluding effectuation without notice, strongly bespeaks a contractual intent of that tenor. It is hardly to be assumed that the Trustees and the Insurance Company, while bestowing a valuable [conversion] privilege on the insured with one hand, would be intending to snatch it from him, he all unaware, with the other.<sup>76</sup>

Thus, in order to preserve the employee's right to convert his group policy, the court implied that it was not the intention of the employer and the insurer to defeat this right without notice to the employee. It does not appear, however, that the exact rationale of the *Vandenberg* decision has been followed in this area of cancellation or modification.

The final vehicle which has been utilized to require notice to an employee is the doctrine of estoppel. *Voris v. Aetna Life Ins. Co.*<sup>77</sup> involved both a failure to pay premiums on a contributory policy and a non-contributory one and a subsequent cancellation of the contributory policy while the employee was absent from his employment.<sup>78</sup> Applying Oklahoma law, the federal court held that the insurance company was estopped from asserting that both policies had been cancelled or forfeited.<sup>79</sup> It should be noted, however, that the court based its conclusion primarily on the holding that the employer was an agent of the insurer,<sup>80</sup> a position maintained by a minority of state courts.<sup>81</sup> Accordingly, since the employer was acting on the insurer's behalf in collecting the premiums from the employee on the contributory policy and remitting all payments due on both policies, the employee was justified in believing that such a course of action would continue. This consistent reliance by the employee entitled him to notice of any discontinuance of the policies.<sup>82</sup> The reasoning in *Deese v. Travelers Ins. Co.*<sup>83</sup> is somewhat analogous to the *Voris* holding. In that case, although the doctrine of estoppel was not explicitly mentioned, the court, in requiring that notice of policy cancellation be given by the insurer to the employee, did allude to the reliance by the latter upon the provisions of the policy, since he continued to pay his portion of the premiums.<sup>84</sup>

#### IV. Conclusion

There seems to be little hope that the states will be able to reconcile their differences concerning the duty to notify an insured employee that his group insurance has ceased or been altered due to termination of employment or cancellation or modification of the policy itself. The contention of the insurer that

---

76 *Id.* at 6-7, 136 A.2d at 664.

77 26 F. Supp. 722 (N.D. Okla.), *remanded per stipulation*, 105 F.2d 1014 (10th Cir. 1939).

78 *Id.* at 724.

79 *Id.* at 726.

80 *Id.* at 725.

81 See text accompanying note 16 *supra*.

82 *Voris v. Aetna Life Ins. Co.*, 26 F. Supp. 722, 726 (N.D. Okla. 1939).

83 204 N.C. 214, 167 S.E. 797 (1933).

84 *Id.* at 217, 167 S.E. at 799.

he has relied upon the statements of the employer that an employee has been discharged should not be summarily dismissed. Likewise, in a strict legal sense, the argument that neither the master policy nor the certificate of insurance explicitly requires notice is sound.

At the same time, there are countervailing arguments which support the employee's position. It has been pointed out that with the possible exception of the initiation of a contributory group policy where agents of the insurance company explain the operations of the policy to the employee, the employee may have no further direct contacts with the insurer.<sup>85</sup> Justice Prime in his dissent in *Lancaster* noted that rarely does the insured read his insurance contract, and even if he did, little knowledge would be gained.<sup>86</sup>

Mindful of these policy considerations, a number of jurisdictions have attempted to mitigate the harsh results to the employee if notice is not required. In demanding notice of termination of employment, these courts have stressed the importance of the employee's conversion privilege. In demanding it in the area of cancellation or modification, they have been influenced by the fact that today most policies are contributory. This in turn has led them to find a vested interest in the employee or a definite contractual relationship between the employer and the insurer.

One possible solution to the many questions which have arisen over this issue of notice would be for state legislatures to include in their group insurance statutes a requirement of notice. Until this is accomplished, the most equitable solution is to impose liability upon the employer, rather than the insurer, for the former's failure to notify the employee that his employment, and consequently his group insurance policy, has been terminated. On the other hand, in the area of cancellation or modification of the policy by the employer and the insurer, the courts have been quite justified in requiring notice to the employee from the employer while permitting recovery against the insurer. Since the employee has made premium contributions to the insurer through his employer, he should be regarded as possessing a vested interest in the contract. Therefore, until he has been adequately notified of cancellation or modification of the policy, redress against the insurer should be allowed.

*Michael S. Williamson*

---

<sup>85</sup> Cox, *Group Insurance Contracts for Employees*, 38 TEXAS L. REV. 211, 218-19 (1959).

<sup>86</sup> Prudential Ins. Co. of America v. Lancaster, 219 N.E.2d 607, 611 (Ind. App. 1966) (dissenting opinion).