COMMENTS ON THE RECENT AMENDMENTS TO THE INSURANCE CODE

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Introduction

Batas Pambansa Blg. 874 which was approved by the President on June 12, 1985 amended five sections of Presidential Decree No. 1460 otherwise known as the Insurance Code of 1978. At the inception five separate Parliamentary Bills were introduced by the author but said bills were consolidated into one and later approved by the Batasang Pambansa on May 8, 1985 as Batasan Pambansa Blg. 874.

On Concealment

Section 26 of the Insurance Act provided –

> A concealment whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

When Presidential Decree No. 1460, otherwise known as the Insurance Code of 1978 was enacted, the phrase "whether intentional or unintentional" was eliminated it its Section 27. Such amendment caused confusion and several author's on the subject advanced conflicting views and some simply ignored the amendment and treated the provision as if it was not changed at all. The late Justice Simeon Gopengco in his Mercantile Law Compendium[1] made the following question and answer:

> "44.1 Is it necessary that concealment be intentional?
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> No. The duty of communication is independent of the intention, and is violated by the fact of concealment, even where there is no design to deceive."

Governor Aguedo Agbayani[2] shared the same view as Justice Gopengco and stated

> "The rule in the Philippines is that fraudulent intent to conceal is not necessary to entitle the injured party to rescind the contract of insurance x x x ".

Both of said learned authors cited the case of *Henson v. Philamlife*, CA, 56 O.G. 7328, a case that should not really be an authority on the issue because it was decided prior to the enactment of the Insurance Code of 1978 and at a time when

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the phrase "whether intentional or unintentional" was still a part of the law. On the other hand, the author of this article gave the following opinion[3] –

> "It could be argued that notwithstanding the amendment made by this section, the injured party may still rescind the contract of insurance by the mere fact that concealment was committed whether intentionally or unintentionally because this section does not distinguish what kind of concealment would give the injured party the right to rescind and, therefore neither should we distinguish. On the other hand, there seems to be no reason to make one rule for concealment and another rule for representation and, therefore, when the Code amended the provision on representation by requiring it to be intentionally false[4] and at the same time eliminated the phrase "intentional or unintentional" in this section, the intention of the framers of the Code seems to place concealment and representation on equal footing; that is, to require intention to deceive in either case. Thus, it would appear that notwithstanding the difficulty to be encountered by the injured party, and the impracticability of the new provisio i, the policy of the new Code apparently is to change the former rule that concealment whether intentional or unintentional gives the injured party the right to rescind. Therefore, it seems that under the new Code, concealment must be intentionally made in the same manner that representation must be intentionally false so as to entitle the injured party the right to rescind".

The author's opinion found subsequent support in *Ng Gan Zee vs. Asian Crusader Life Assur. Corp.*, 122 SCRA 461 where the Supreme Court ruled that concealment must be intentional and fraudulent to enable the injured party to rescind the contract.

All of the foregoing became moot and academic when Section 1 of Batas Pambansa Blg. 874 amended Section 27 of the Insurance Code of 1978 so as to read as follows:

> "Sec. 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance".

In the Explanatory Note of Parliamentary Bill No. 1340 which was later enacted as Section 1 of Batas Pambansa Blg. 874, the author of this article gave the following explanation:

> "Section 26 of the Insurance Act provided, "A concealment whether intentional or unintentional, entitles the injured party to rescind a contract of insurance". When Presidential Decree No. 1460 otherwise known as the Insurance Code of 1978 was passed, Section 27 thereof eliminated the phrase "whether intentional or unintentional" after the word "concealment" as appearing in the original provision of the Insurance Act cited above.
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> Said change in the right to rescind as a consequence of concealment causes confusion as to the intention of the framers of the Code. And this is compounded by a lack of recorded deliberation which could be the basis of interpretation. If the amendment was intended to deprive the injured party of the right to rescind in case of unintentional concealment, it should have been expressly stated that only intentional concealment would provide a ground for rescission. And if such really was the intention, it would prove to be difficult, if not impossible, for the

insurer to protect itself against fraudulent and improper claims, and as pointed out by the Supreme Court in *Saturnino vs. Philippine American Life Insurance Co.* 7 SCRA 316, 319*. "It (the insurer) would be wholly at the mercy of anyone who wished to apply for instance, as it would be impossible to show actual fraud except in the extremest cases. It could not rely on an application information on which it could act. There would be no incentive to an applicant to tell the truth.

Under the present law therefore, the party injured by concealment does not have to prove intention to conceal by the other party to be able to rescind the contract, as we have reverted to the rule originally embodied in the Old Insurance Act.

On Representation and Waiver of Rescission

Section 45 of the Insurance Code of 1978 provided –

"Section 45. If a representation is intentionally false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false."

The aforequoted section amended Section 44 of the Insurance Act by inserting the word "intentionally" before the word "false". By virtue of such amendment it was commented that:

"The effect of such amendment is to prevent the injured party from rescinding an insurance contract where there is an innocent or unintentional misstatement."

Other authors, on the other hand, gave no importance to the insertion of the word "intentionally" before the word "false" and treated the provision as if there was no change at all.[7]

Section 2 of Batas Pambansa Blg. 874 further amended Section 45 of the Insurance Code of 1978 by removing the word "intentionally" thereby reverting to the old provision of the Insurance Act. Aside therefrom, a second sentence was added to the provision. The amended section now provides:

"Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. The right to rescind granted by this Code to the insurer is waived by the acceptance of premium payments despite knowledge of the ground for rescission".

In the Explanatory Note in Parliamentary Bill 1341 which the author of this article filed and which subsequently became Section 2 of Batas Pambansa Blg. 874, it was stated that:

"The word "intentionally" before the word "false" was not a part of the original provision of the Insurance Act. When said word was inserted in the present law, the effect of such amendment is to prevent the injured party from rescinding an insurance contract unless fraudulent intent of the other party is established. The Supreme Court, in the case of *Saturnino v. Philippine-American Life Insurance Co.*,

> 7 SCRA 316, 319 ruled, "It (the insurer) would be wholly at the mercy of any one who wished to apply for insurance, as it would be impossible to show actual fraud except in the extremest cases. It could not rely on an application information on which it could act. There would be no incentive to an applicant to tell the truth.
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> This bill seeks to correct the inequity created by the amendment of the original provision of the Insurance Act by reverting to the latter. The word "intentionally" as used in the aforecited provision of the Insurance Code of 1978 must be eliminated".

The second sentence was brought about by amendment during the debate on the bill. By virtue of such addition, whenever the Code grants the insurer the right to rescind the policy for any reason such right is waived by the acceptance of premium despite knowledge of the ground for rescission. The following are cases on this point:

Edillon v. Manila Bankers Life Insurance Corporation (117 SCRA 187)

Carmen Lapuz applied for insurance coverage against accident and injuries. In her application dated April 15, 1969, she gave the date of her birth as July 11, 1904. She paid the premium and the insurer issued the policy. The policy, however, excluded liability to persons who are under 16 years of age or over the age of 60. During the existence of the policy, Lapuz died in a vehicular accident. The insurer refused to pay on the ground that Lapuz was more than 60 years old at the time the policy was issued. *Queston:* Was the refusal to pay correct? *Answer:* The refusal of the insurer to pay was not correct because it was barred by estoppel from claiming forfeiture of the policy. Lapuz indicated in her application that she was almost 65 years of age and yet the insurer accepted payment of premium and issued the policy.

Stokes v. Malayan Ins., Co., Inc. (127 SCRA 766)

Daniel Adolfson obtained a car insurance policy covering own damage and third-party liability from Malayan Insurance. Adolfson authorized James Stokes, an Irish tourist to drive the car insured. Stokes had been a tourist for more than 90 days and had a valid Irish driver's license but without a Philippine driver's license. While being driven by Stokes the car insured collided with another vehicle. One day after the accident, Malayan accepted payment of the premium. Later, Malayan denied liability for the damage on the ground that Stokes was not an "authorized driver" under the policy which requires the person authorized by the insured to drive the car to be licensed to drive the vehicle. *Questions:* (1) Is the insurer estopped from denying liability by accepting premium payment? (2) Is the insurer liable? *Answers:* (1) Acceptance of premium within the stipulated period for payment thereof, including the agreed period of grace, merely assures continued effectivity of the insurance policy in accordance with its terms. Such acceptance does not *estop* the insurer from interposing any valid defense under the terms of the insurance policy. (2) The insurer is not liable because the driver does not have a valid license to drive in the Philippines. Under the law, a tourist duly licensed to drive in his country is allowed to drive in the Philippines during but not after 90 days of his sojourn in the Philippines. Stokes

had been in the Philippines for more than 90 days and therefore, he is not an authorized driver under the terms of the insurance contract.

On Suicide.

Prior to Batas Pambansa Blg. 874, the liability of the insurer in a life insurance in case the insured committed suicide was not well-settled and instead subject to conflicting opinions and decisions. The views in such case may be stated as follows:[8]

1. When the policy does not expressly state whether suicide is excepted in the policy or covered therein, a distinction should be made as to whether suicide was committed while the insured was insane or sane. When the insured was insane when he took his own life, the insurer is liable on his contract as insanity is one of the diseases to which the insurer must have known that the insured was liable, and the unwitting act of self-destruction is as much the consequence of that disease as if some vital organ was thereby fatally affected.[9] On the other hand, when the insured committed suicide while sane, the following views had been advanced:

> "(a) First View: The insurer is still liable since suicide is one of the risks assumed by the insurer unless it is by express terms excepted.[10]
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> (b) Second View: The insurer is not liable[11] because: (i) in the absence of an express exception of sane suicide in any contract of life insurance, such an exception is to be implied. It is an inherent and fundamental part of every such contract that the insured shall not intentionally take his own life. No act so contrary to good morals and the usual course of human nature can be held to be within the contemplation of the parties to a contract of life insurance, unless it is clearly and unequivocally expressed.[12] (ii) And furthermore, it is against public policy to allow recovery in case of suicide while sane.[13]"

Since there was no decision yet upholding either the first or the second view and B.P. Blg. 874 was not enacted yet, the author of this article advanced the opinion that the second view was better principally due to Section 87 of the Insurance Code which provides that an "insurer is not liable for a loss caused by the willful act or through the connivance of the insured." If the insured was sane when he committed suicide, his act of self-destruction was a willful act for which the insurer should not be made liable.

2. When the policy expressly excepted suicide from its coverage, such exception is generally considered to refer only to suicide of the insured while sane, and has no application to his self-destruction due to the misforutne of insanity.[14] Therefore, notwithstanding such exception, the insurer is still liable for suicide committed while the insured was insane. On the other hand, if the policy covers suicide after the lapse of the incontestable clause either in express terms or by implication from the terms of the incontestable clause, the insurer is liable[15] for suicide committed after the expiration of the period of incontestability, but not for suicide committed within a stated period.[16]

Taking into account the conflicting views on the matter, the author of this article filed Parliamentary Bill No. 1342 and stated in the Explanatory Note that:

> "The present Insurance Code of 1978 like the previous Insurance Act failed to provide for consequences of suicide. Whether the life insurer should be liable or not in case the insured commits suicide has been the subject of conjectures and speculations. To clarify the legal consequences of suicide and put an end to speculations, approval of this bill is earnestly recommended."

The said bill became Section 3 of Batas Pambansa Blg. 874 which inserted Section 180-A in the Insurance Code which reads as follows:

> "Section 180-A. The insurer in a life insurance contract shall be liable in case of suicide only when it is committed after the policy has been in force for a period of two years from the date of its issue or of its last reinstatement, unless the policy provides a shorter period: Provided, however, That suicide committed in the state of insanity shall be compensable regardless of the date of commission. (as amended by B.P. Blg. 874)"

Section 180-A now provides for the effects of suicide. Under said provision, the insurer is not liable in a life insurance policy where the insured commits suicide within two years from the issuance of the policy or last reinstatement. But if the insured commits suicide after the said two-year period, the insurer is liable. In case the insured is insane at the time he commits suicide, the insurer should be made liable regardless of the time when suicide is committed because death in such case should be treated as a result of an illness, the insanity of the insured.

Prescriptive Period in Motor Vehicle Insurance

While the period of prescription of action in insurance cases is ordinarily ten years from the accrual of the cause of action[17], Section 63 of the Insurance Code of 1978 allows the parties to stipulate in the policy that the action on the policy should be filed within a certain period provided that the period agreed upon is not less than one year from the accrual of the cause of action. And whenever the insurance contract provides that an action thereon should be brought within a period of one year from the denial of the claim, such agreement is in the nature of a condition precedent to the liability of the insurer and if the action is not filed by the insured within the period agreed upon, the insurer is relieved from any liability under the policy.[18] The stipulation in the policy that an action on a claim denied by the insurer must be brought within a certain period of time from the denial, prevails over the rules on prescription of actions,[19] provided that the agreed period is not less than one year from denial of the claim.[20]

The period of prescription said the Supreme Court in *Ang v. Fulton Fire Ins. Co.*, 2 SCRA 945, should be counted from the date of denial of the claim and not from the occurence of the loss because before the claim is denied, there is no cause of action against the insurer. However, under Section 384 of the Insurance Code of 1978, an action for the recovery of damage under the compulsory motor vehicle liability insurance must be brought "within one year from the date of the accident" thereby making the period of prescription run from the

date of the accident and not from the denial of the claim by the insurer.

In Parliamentary Bill No. 1343 which later embodied an amendment of Section 384 of the Insurance Code of 1978, the author of this article explained the purpose of amending said section as follows:

> "The period of prescription of insurance claims should be counted from the denial or rejection of the claim by the insurer and not from the time of loss. As stated by the Supreme Court in *Eagle Star Insurance Co. Ltd. v. Chia Yu*, 96 Phil 696, a cause of action against the insurer accrues only upon rejection of the claim by the insurer because before such rejection there is no necessity for bringing suit against the insurer. Section 63 of the Insurance Code of 1978, as amended, even stressed that:
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> > "SECTION 63. Any condition, stipulation, or agreement in any policy of insurance, limiting the time for commencing an action thereunder to a period of less than one year from the time when the cause of action accrues, is void."
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> However, in motor vehicle liability insurance, Section 384 of the Insurance Code of 1978 as amended, makes the period of prescription run not from the denial of the insurance claim but from the date of the accident. The said provision places an insurance claimant at a very great disadvantage. He could not sue the insurer until the latter denies the claim because before denial of the claim, there is no cause of action against the insurer. But if the insurer denies the claim only after one year from the accident has elapsed, the claimant's cause of action will accrue only when it has already prescribed.
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> The period of prescription should be made to run from the denial of the claim and not from the date of the loss."

Section 384 was thus amended by Section 4 of Batas Pambansa Blg. 874 so as to read as follows:

> "Sec. 384. Any person having any claim upon the policy issued to this chapter shall, without any unnecessary delay, present to the insurance company concerned a written notice of claim setting forth the nature, extent and duration of the injuries sustained as certified by a duly licensed physician. Notice of claim must be filed within six months from date of the accident, otherwise, the claim shall be deemed waived. Action or suit for recovery of damage due to loss or injury must be brought in proper cases, with the Commissioner or the Courts within one year from denial of the claim, otherwise the claimant's right of action shall prescribe, (as amended by B.P. Blg. 874)"

Under the present law therefore, as amended, the period of prescription in motor vehicle insurance cases for the recovery of loss or damage is one year from denial of the claim and not one year from the date of the accident.

On Appeal

Under B.P. Blg. 874, appeals from the decision or final order of the Insurance Commissioner may now be made to the Intermediate Appellate Court instead of the Supreme Court as originally provided in Section 416.

FOOTNOTES:

[1]p. 405, 1983 ed.

[2]Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 1978 ed., p. 56.

[3]MP Hernando B. Perez, Insurance Code and Insolvency Law with Comments and Annotations, 1983 ed., pp. 53-54.

[4]Section 45, Insurance Code of 1978.

[5]Citing Kasprzyk v. Metropolitan Insurance Co., 140 N.Y.S. 211, 214.

[6]Perez, Insurance Code and Insolvency Law, Ibid., p. 73.

[7]See Gopengco: Commercial Law Compendium, p. 412; Agbayani: Commercial Laws of the Philippines, Ibid., p. 77.

[8]Perez: Insurance Code and Insolvency Law, Ibid., p. 228.

[9]Vance, 2nd ed., 807, citing Conn. Mut. Life Ins. Co. v. Alkens, 150 U.S. 468, 14 S. Ct. 155, 37 L. Ed. 1148; John Hancock Mut. Life Ins. Co. v. Moore, 34 Mich. 46.

[10]Vance, 2nd ed., 802, citing Grand Lodge Independent Order of Mutual Aid v. Wieting, 168 Ill. 408, 48 N.E. 59, 61 Am. S. Rep. 123.

[11]Ritter v. Mutual Life Ins. Co., 169 U.S. 139, 18 Sup. Ct. 308, 42 L. Ed. 699.

[12]Vance, 2nd ed., 803-804, citing Shipman v. Protested Home Circle, 174 N.Y. 398, 67 N.E. 83, 63 L.R.A. 347.

[13]Vance, 2nd ed., 802-803.

[14]Vance, 2nd ed., 807, citing Blackstone v. Ins. Co., 74 Mich. 592, 42 N.W. 156, 3L.R.A. 466.

[15]Vance, 2nd ed., 805.

[16]Gopengco, 267. But there is authority to the effect that a provision allowing recovery for suicide is against public policy as tempting or encouraging suicide so as to make provisions for his dependents. (9 Couch 2d, 646).

[17]Art. 1144, Civil Code.

[18]Ang v. Fulton Fire Ins. Co., 2 SCRA 945.

[19]Ibid.

[20]Section 63, Insurance Code.