INDEX.

New Jersey Supreme Court.

ESSEX COUNTY.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,

Defendant.

Amended Complaint.

Plaintiff Ray Weiss, residing in the City of Newark, County of Essex and State of New Jersey, complaining against the defendant Union Indemnity Company, a corporation, says that:

1. At all times hereinafter mentioned, the defendant Union Indemnity Company was, and still is, a corporation duly organized and existing under the laws of Louisiana, and was at all times hereinafter mentioned, and still is, duly authorized to transact business in the State of New Jersey.

2. At all times hereinafter mentioned, and up to the time of his death, the plaintiff Ray Weiss was the wife of Samuel W. Weiss, and as such had a valuable interest in the life of the said Samuel W. Weiss.

3. On or about November 8th, 1920, in consideration of the payment to the defendant of the premium of $60.00, the defendant Union Indemnity Company, by its agents, duly authorized thereto, made and delivered its certain policy of insurance number DWI 215022 upon the life of

the said Samuel W. Weiss, wherein and whereby the said Union Indemnity Company insured the life of said Samuel W. Weiss for the term of twelve months from noon, standard time, where the insured resided when the policy was issued, of November 8th, 1920, in the sum of $15,000.00 against the effects of bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas when suffered through external, violent and accidental means, and resulting in immediate and continuous disability, including loss of life, if the effects of said bodily injuries, including death, shall result solely and exclusively from such injuries within ninety days from such accident, payable to the plaintiff immediately after receipt by the said defendant of due proof of the death of the said Samuel W. Weiss.

4. In consideration of premiums paid to it, the defendant Union Indemnity Company continued the said policy in full force and effect until 12:00 o'clock noon, standard time, of November 8th, 1926, subject to all the terms, provisions and statements of the said policy; and on or about November 8th, 1926, in consideration of the premium of $60.00 then paid to it, the said Union Indemnity Company continued in full force and effect its said policy number DWI 215022 for the period of twelve months from 12:00 o'clock noon, standard time, of November 8th, 1926, subject to all the terms, provisions and statements contained in the said policy.

5. On or about the 28th day of August, 1927, and while the said policy or contract of insurance was in full force and effect, the said Samuel W.

Weiss sustained bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas suffered through external, violent and accidental means and within ninety days from the date of said accident, to wit, on the said 28th day of August, 1927, and while the said policy or contract of insurance was in full force and effect, died as the sole and exclusive result of such bodily injuries. Said death did not occur through any one of the causes excepted in said policy.

6. The said Samuel W. Weiss and the plaintiff each duly and fully complied with, performed and observed all the conditions, privileges, restrictions, prohibitions, covenants and stipulations in the said policy or contract of insurance on their part to be complied with, performed or observed.

7. On or about September 22, 1927, plaintiff furnished the defendant Union Indemnity Company, with affirmative proof of loss of the death of the said Samuel W. Weiss, pursuant to the terms of said policy or contract of insurance.

8. The defendant has refused to pay said sum of $15,000.00, or any part thereof, and no part of the said sum assured has been paid, and there is now due and owing to the plaintiff from the defendant the sum of $15,000.00, together with interest thereon.

Plaintiff demands of the defendant as damages the sum of $15,000.00, together with interest and costs of suit.

LICHTENSTEIN, SCHWARTZ
& FRIEDENBERG,
Attorneys of Plaintiff.

Answer to Amended Complaint.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,

Defendant.

Defendant, Union Indemnity Company, a corporation organized and existing under the laws of the State of Louisiana, and authorized to transact business in this State, answering the amended complaint filed herein, says that:

1. It admits paragraph 1.

2. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 2, and leaves the plaintiff to her proof thereof.

3. It denies that part of paragraph 3 which states that the policy was issued in the sum of $15,000.00; the remaining allegations thereof it admits.

4. It admits paragraph 4.

5. It denies paragraphs 5 and 6.

6. It admits paragraph 7.

7. It admits that part of paragraph 8 which states that defendant refused to pay the sum of

$15,000.00, or any part thereof, but denies the remaining allegations thereof.

FIRST SEPARATE DEFENSE.

The policy herein provided that the defendant shall have the right and opportunity to make an autopsy, but the right and opportunity to make said autopsy was not granted to the defendant but was refused in spite of the demands of the defendant therefor.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant.

Reply to Answer to Second Amended Complaint.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.
Action at Law.

RAY WEISS,
Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,
Defendant.

Plaintiff, Ray Weiss, replying to the answer to second amended complaint filed by the defendant herein, says that:

She denies the allegations contained in the first separate defense.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Attorneys for Plaintiff.

Stipulation.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,

Defendant.

It is hereby stipulated between the plaintiff and the defendant herein, through their respective attorneys, that the only question in respect to the issues involved in the above matter which is to be submitted to the Court for its decision is that of the amount recoverable on the insurance policy which is the subject-matter of this suit, assuming that while the said policy was in full force and effect, the assured named therein sustained bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas, suffered through external, violent and accidental means, and within ninety days from the date of the accident alleged in the complaint filed herein, and that while the said policy was in full force and effect, the said assured died as the sole and exclusive result of such bodily injuries; that the defendant agrees to pay to the plaintiff, and the plaintiff agrees to accept from the defendant, in settlement of all issues involved in the above cause, a sum equivalent to one-half of

the amount of such liability as is found by the Court or, in the event that the judgment entered pursuant to such finding and this agreement should be appealed by either party within 30 days from the entry of judgment as is found by the Court of Errors and Appeals; that the defendant, for the purpose of this agreement, hereby admits liability to the plaintiff to the extent of one-half of the amount of such liability so found; that judgment shall be entered in this Court, in favor of the plaintiff and against the defendant, for such amount as the Court may find to be due to the plaintiff from the defendant, pursuant to this agreement; that the plaintiff agrees to accept, at any time prior to the decision of the Court or of the Court of Errors and Appeals, as aforesaid, the sum of Two thousand five hundred Dollars ($2,500.00) on account of whatever should be determined to be due to the plaintiff from the defendant, pursuant to this agreement; that this agreement, and the matters and things contained herein, are solely for the purpose of the determination of the issues involved in this cause, and for no other purpose, and that neither party shall pay, or be responsible to the other, for any costs whatsoever in this Court or the Court of Errors and Appeals.

Dated, January 31st, 1930.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Attorneys of Plaintiff.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant.

Postea and Findings.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,

Defendant.

This action was tried before Judge William A. Smith, to whom it had been referred for trial, without a jury at the Essex Circuit on having been submitted to the Court on December 3, 1929, when reached for trial.

The cause having been heard by the Court without a jury upon an agreed state of facts contained in a stipulation which is hereto annexed, and the insurance policy mentioned in said stipulation having been introduced in evidence and marked Exhibit P-1, and the Court having made its written findings, hereto annexed and hereof made a part wherein it found that the amount of the liability of the defendant under said policy would be the sum of $15,000 and that in view of the terms of said stipulation the liability of the defendant is the sum of $7,500, and the Court having found that under said stipulation the plaintiff is entitled to recover the sum of $5,000 from the defendant after deducting the sum of $2,500 paid by the defendant to the plaintiff on Feb-

ruary 15, 1930, on account of whatever sum should be determined to be due from the defendant to the plaintiff under said stipulation, and that the plaintiff is also entitled to recover the sum of $1,102.91 as interest at the rate of six per cent. per annum from September 24, 1927, the date upon which the plaintiff furnished the defendant with affirmative proof of loss of the death of the deceased pursuant to the terms of said policy,

WHEREUPON it is adjudged that the plaintiff recover of the defendant the sum of $6,102.91, but without costs to either party against the other.

March 20, 1930.

WM. A. SMITH,
Circuit Court Judge.

Judgment.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

Action at Law. On Postea.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY, a corporation,

Defendant.

Lichtenstein, Schwartz & Friedenberg, attorneys.

$6,102.91. No costs.

Judgment entered this twenty-first day of March, A. D. nineteen hundred and thirty, in favor of plaintiff and against the defendant for the sum of six thousand one hundred and two dollars and ninety-one cents damages, without costs.

WM. S. GUMMERE,
C. J.

"DOUBLE WEEKLY INDEMNITY" ACCIDENT POLICY

Providing indemnity for loss of life, limb, limbs, sight or time by accidental means to the extent herein provided.

No. DWI ~~216575~~ 215022

DUPLICATE

It is understood and agreed that this duplicate is only valid and is subject to all endorsements, assignments or cancellation thereof, the original or may be made on said original, and in case of cancellation the duplicate immediately becomes null and void.

Union Indemnity Company

Great Eastern DEPARTMENT
55 JOHN ST., NEW YORK

EXECUTIVE OFFICES
NEW ORLEANS, LA.

In Consideration of the agreements and statements in the application, a copy of which is endorsed hereon and made part hereof, and of

.............................Sixty and 00/100..................DOLLARS PREMIUM

HEREBY INSURES .....Samuel W. Weiss,.....................

by occupation ......Merchant............................

for The Principal Sum of.........Ten thousand and 00/100..................DOLLARS

and The Weekly Indemnity of.........One hundred and 00/100..................DOLLARS

subject to all the provisions and limitations herein contained, for the term of..Twelve..MONTHS from noon, standard time where the Insured resides when the policy is issued, of..November 8, 1920..., against the effects of **BODILY INJURIES** caused directly, solely and independently of all other causes by External, Violent and Accidental means, and which shall result in immediate and continuous disability, as follows:

ACCIDENT INDEMNITIES

Section 1.

If any loss specified in this Section shall result solely and exclusively from such injuries within ninety days from date of the accident, the Company shall be liable only for such loss, and will pay for

Loss of Life	The Principal Sum
Loss of Both Hands by complete severance at or above the wrists	The Principal Sum
Loss of Both Feet by complete severance at or above the ankles	The Principal Sum
Loss of One Hand and One Foot by complete severance as defined above	The Principal Sum
Loss of Entire Sight of Both Eyes if irrecoverably lost	The Principal Sum
Loss of Entire Sight of One Eye and severance of One Foot as defined above	The Principal Sum
Loss of Entire Sight of One Eye and severance of One Hand as defined above	The Principal Sum
Loss of Right Arm by complete severance at or above the Elbow	Seven-tenths the Principal Sum
Loss of Right Hand by complete severance at or above the Wrist	Three-fifths the Principal Sum
Loss of Left Arm by complete severance at or above the Elbow	Three-fifths the Principal Sum
Loss of Left Hand by complete severance at or above the Wrist	One-half the Principal Sum
Loss of Either Leg by complete severance at or above the Knee	Three-fifths the Principal Sum
Loss of Either Foot by complete severance at or above the Ankle	One-half the Principal Sum
Loss of Entire Sight of One Eye if irrecoverably lost	Two-fifths the Principal Sum

And in addition The Weekly Indemnity

for any period between date of the accident and date of the loss for which no weekly indemnity has been paid.

Section 2. **LOSS OF TIME—TOTAL**

If such injuries shall from date of the accident continuously and totally disable and prevent the Insured from transacting every kind of duty pertaining to his occupation, the Company will pay for the period of such total disability, not exceeding two years, **The Weekly Indemnity.**

LOSS OF TIME—PARTIAL

If such injuries shall from date of the accident or immediately following total disability, continuously disable and prevent the Insured from transacting a material part of the daily duties essential to his business, the Company will pay for the period of such partial disability, not exceeding thirty weeks, but the combined periods for any one accident shall not exceed two years, **One-Half The Weekly Indemnity.**

Section 3. **MEDICAL ATTENDANCE**

If such injuries shall not result in any of the above losses, but require medical treatment, the Company will pay the amount actually paid by the Insured for such treatment, not exceeding, however, **The Weekly Indemnity** for one week.

Section 4. **DOUBLE INDEMNITIES**

All the above amounts shall be doubled if such injuries shall be received

1st. While riding as a passenger in any passenger car of any street or other railway; or

2nd. While a passenger and on board a steam vessel licensed for the regular transportation of passengers.

The Amounts under Section 2 only shall be doubled if such injuries shall be received

1st. While a passenger in an elevator provided for passenger service only, excepting elevators in mines; or

2nd. While in a burning building in which the Insured shall be at the beginning of the fire; or

3rd. Through being struck by lightning; or

4th. Through the collapse of the outer walls of a finished building while the Insured is therein.

Section 5. **SPECIAL INDEMNITIES**

Sunstroke, freezing, hydrophobia, or the involuntary and unconscious inhalation of gas or other poisonous vapor, shall be covered with one-half of each of the indemnities provided by this policy when suffered through external, violent and accidental means.

Section 6. **BLOOD POISONING**

Blood poisoning resulting directly from a bodily injury caused solely by external, violent and accidental means is covered by this policy.

Section 7. **SURGEONS FEES**

If such injuries received after the date of this policy shall alone within ninety days from date of the accident and during the term of this policy necessitate a surgical Operation named in the "Schedule of Operations" hereinafter mentioned, the Company will pay in addition to the indemnity, the sum provided for such Operation, but when more than one Operation is required payment shall be made only for the first.

Section 8. **REGISTRATION AND IDENTIFICATION**

If the Insured shall, by reason of such injuries be physically unable to communicate with friends, the Company will, upon receipt of a message giving this Policy number, immediately transmit to such relatives or friends as may be known to it, any information respecting him, and will defray any expenses necessary to put him in communication with and in the care of friends, not exceeding a sum equal to four times **The Weekly Indemnity.**

Section 9. **SETTLEMENTS EVERY THIRTY DAYS**

In case of loss of time, payment will be made at the expiration of each thirty days upon request of the Insured and filing of due proof.

Section 10. **IMMEDIATE OPTIONAL SETTLEMENT**

If the Insured shall sustain an injury specified in the "Schedule of Optional Indemnities," hereinafter mentioned, he may, subject to all the conditions of the policy elect to receive in lieu of all other indemnity the sum specified in said Schedule for such injury, provided however, that he signify his election in writing to the Company at its Office in New York City within twenty days from the date of the injury, and provided further that the election may not be for more than one of the sums specified in said Schedule.

SCHEDULE OF OPERATIONS

FOR EACH $5.00 OF SINGLE WEEKLY INDEMNITY

AMPUTATION OF	
Foot, Hand or Forearm	$5.00
Leg	10.00
Arm above Elbow	10.00
Thigh	20.00
One or more entire Fingers	2.00
DISLOCATIONS, Reduction of	
Shoulder, Elbow, Hip, Knee, or Ankle	5.00
Wrist or Jaw	3.00
Finger or Fingers	2.00
EXCISION OF	
Shoulder, Hip or Knee Joint	20.00
Elbow, Wrist or Ankle Joint	10.00
Toe or Toes	5.00
FRACTURES. Reduction of Nose, Lower Jaw, Collar Bone or Shoulder Blade, Forearm (one or both bones)	$5.00
Breast Bone, Rib or Ribs, Fingers, Coccyx or Toes	2.00
Upper Arm	7.00
Wrist or Hand, Bones of Foot	3.00
Any of the Bones of the Pelvis or Sacrum	10.00
Thigh	15.00
Knee Cap or one or both Leg Bones	10.00
GUNSHOT WOUNDS—Treatment not necessitating Amputation or Laparotomy	5.00
HERNIA (abdominal)—Any cutting operation for the radical cure of the Reducible, Irreducible or Strangulated form	20.00
HYDROPHOBIA — Pasteur Treatment	$10.00
LAPAROTOMY (opening of the abdominal cavity for an operation on any organ contained therein)	20.00
SEQUESTROTOMY (removal of dead bone)	7.00
SKULL TREPHINING for fracture or other cause	20.00
SUTURING WOUNDS OF SCALP or other parts	1.00
SYNOVITIS (inflammation of the lining membrane of a joint)—Incision	5.00
TETANUS—LOCKJAW—Injection of anti-tetanic serum into frontal lobe of brain	20.00

SCHEDULE OF OPTIONAL INDEMNITIES

FOR EACH $5.00 OF SINGLE WEEKLY INDEMNITY

LOSS	
Of one or more entire Fingers	$32.00
Of one or more entire Toes	40.00
COMPLETE HERNIA	16.00
COMPLETE DISLOCATION	
Of the Shoulder	12.00
Of the Elbow	20.00
Of the Wrist	24.00
Of the Hip	60.00
Of the Knee	32.00
Of two or more bones of Foot, (not toes)	32.00
Of the Ankle	32.00
Of two or more Toes	12.00
Of two or more Fingers	12.00
COMPLETE FRACTURE	
Of the Skull, both tables	$64.00
Of the Lower Jaw	16.00
Of the Collar Bone	32.00
Of the Pelvis	48.00
Of the Thigh	60.00
Of the Leg (tibia and fibula)	40.00
Of the Knee Cap	40.00
Of the Arm	32.00
Of the Fore Arm (radius and ulna)	20.00
Of two or more Ribs	20.00
Of two or more bones of the Foot (not toes)	24.00
Of two or more bones of the Hand (not fingers)	24.00
Of two or more Toes	20.00
Of two or more Fingers	20.00

STANDARD PROVISIONS.

1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.

If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

4. Written notice of injury on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury. In event of accidental death immediate notice thereof must be given to the Company.

5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Company, at New York, N. Y., or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

8. The Company shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the Insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each thirty days during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the Insured is payable to the beneficiary if surviving the Insured, and otherwise to the estate of the Insured. All other indemnities of this policy are payable to the Insured.

12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the Insured, and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

13. Consent of the Beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address as shown by the records of the Company together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

ADDITIONAL PROVISIONS.

(a) No claims shall be valid for more than one of the losses herein specified, except as hereinbefore provided.

(b) This insurance does not cover suicide or any attempt thereat, sane or insane, or loss from injuries received while insane, or injuries, fatal or otherwise, resulting wholly or in part, directly or indirectly, from, riding in or on, or being in, or attempting to get in or out of any aerial machine or conveyance, or loss fatal or otherwise, caused by war, acts of any country at war, or by conditions arising from a state of war.

(c) In case of injuries, fatal or otherwise, except drowning, of which there shall be no external and visible contusion or wound on the exterior of the body at the place of the injury, the body itself in case of death not to be deemed such; or any loss resulting wholly or in part, directly or indirectly, from ptomaines or from the bite or sting of, or inoculation by any disease-carrying insect, or from intoxicants, corrosives, poisonous substances, violating law, riding in or on any locomotive, freight or handcar, being on the road-bed or bridge of any railway except while crossing at a public highway or with a legal right to be there, medical or surgical treatment except amputation within three months from date of accident and made necessary thereby and except as provided in Section 3 or 7, or any altercation or quarrel except unprovoked assault, then and in every such case the Company's liability for any loss specified in Section 1 shall be one-twentieth of the amount provided therefore, and for any other loss one-fifth of the amount otherwise payable.

(d) Loss from injuries, fatal or otherwise, received by the Insured while entering or leaving, or attempting to enter or leave, or while upon the step or steps, or platform or running board of any conveyance, shall be covered only by single indemnity.

(e) The copy of application endorsed hereon is hereby made a part of this contract. No provision of the Charter, or By-Laws of the Company shall be used in defense of any claims arising under this policy. Compliance on the part of the Insured and beneficiary with all the provisions of this policy is a condition precedent to recovery hereunder and any failure in this respect shall forfeit to the Company all right to any indemnity. This policy may be renewed subject to all its provisions from term to term with the consent of the Company, and by the payment of the premium in advance.

IN WITNESS WHEREOF the UNION INDEMNITY COMPANY has caused this Policy to be executed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

Countersigned at New York, N.Y.

this 8th day of November 1920

(Signed) By William H. Pinder
Authorized for the purpose.

W. Irving Moss
President.

Countersigned at Newark, N.J.

this 8th day of November 1920

(Signed) Frederick J. Fischer
Resident Agent.

Arthur J. Hug
Secretary.

COPY OF APPLICATION

I hereby apply for a Policy to be based upon the following representation of facts. I understand and agree that the right to recovery under any policy which may be issued upon the basis of this application shall be barred in the event that any one of the following statements, material either to the acceptance of the risk or to the hazard assumed by the Company is false, or in the event that any one of the following statements is false and made with intent to deceive.

1. My full name is Samuel W. Weiss,

2. (a) My Age is 47 (b) My Weight is 165 lbs. (c) My height is 5 ft. 7½ inches.
(d) I am a White Male. (e) I was born on the 3rd. day of May 1873

3. My Residence is { No. 310 Seymour Avenue, ~~Street~~ Town Newark,
County Essex State New Jersey

4. My Place of Business is { No. 73 Winthrop, Street
Town Newark, State New Jersey

5. I am { member of firm / ~~employed by~~ } Globe Art Mfg. Co.

6. My occupation is Merchant.

7. The kind of goods manufactured, handled or sold by me is Phonograph Parts.

8. The duties of my occupation are fully described as follows: Office duties & Traveling.

9. Beneficiary's { Name in full Ray Weiss,
Residence Relationship Wife Age

10. I have no Accident or Sickness Insurance in this or any other Company except as follows: Utica.

11. No application ever made by me for Accident, Sickness or Life Insurance has been declined except as follows: No Exceptions

12. No Accident, Sickness or Life Insurance policy issued to me has ever been cancelled or renewal refused except as follows: No Exceptions

13. I have no other application for Accident, Sickness or Life Insurance pending except as follows: No Exceptions

14. My average weekly earnings exceed the total single weekly indemnity under all policies which I have or have applied for, except as follows: No Exceptions

15. I have never received indemnity for any accident or sickness except as follows: No Exceptions

16. ~~I have not in contemplation any special journey or hazardous undertaking except as follows:~~ No Exceptions

17. I have no impairment of hearing or vision except as follows: No Exceptions

18. I am in whole and sound and healthy condition mentally and physically, and have never been ruptured or suffered the loss of a hand, foot or eye, except as follows: No Exceptions

19. I have never had diabetes, kidney disease, syphilis or any sickness or disorder of the brain, spine or nervous system except as follows: No Exceptions

20. I have not had during the past seven years, nor have I now any bodily or mental infirmity, defect or sickness except as follows: No Exceptions

21. I have not during the past seven years been disabled nor received medical or surgical attention or advice except as follows: No Exceptions

In ..... (Give date) for..... (Name sickness or injury) lasting ..... (Give duration)
In ..... for..... lasting .....
In ..... for..... lasting .....
In ..... for..... lasting .....

Dated at Newark, N.J. this 6th. day of November 1920.

Signature of Applicant Samuel W. Weiss,

Upon the foregoing representation of facts, the risk is classified by the Company as E.P.

P. I. Dept.

Union Indemnity Company

Great Eastern DEPARTMENT 55 JOHN ST., NEW YORK

"DOUBLE WEEKLY INDEMNITY"
ACCIDENT POLICY

Providing indemnity for loss of life, limb, sight or time by accidental means to the extent herein provided.

215022

No. DWI ~~216575~~

ISSUED TO

SAMUEL W. WEISS

DATE November 8th, 1920

PREMIUM, $ 60.00

O.W. SULZBACHER

PLEASE READ YOUR POLICY

In the event of any accident notice with full particulars should be given immediately. It is not necessary for the Insured or the Beneficiary to employ any person to collect any indemnity provided in this policy.

Accident Policy.

Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY,

Defendant.

To Lichtenstein, Schwartz & Friedenberg, Attorneys for Plaintiff:

TAKE NOTICE that the Union Indemnity Company, the defendant above named, does hereby appeal to the New Jersey Court of Errors and Appeals from and whole and every part of the final judgment entered in favor of the plaintiff and against the defendant the first day of March, 1930, for $6,102.91.

FURTHER TAKE NOTICE that the following are the grounds of appeal which the defendant will urge and rely upon:

(1) Because the learned Judge of the Circuit Court before whom the said cause was tried erred in holding that the plaintiff under the terms of the policy written by the defendant was entitled to recover from the defendant the principal sum of $10,000, mentioned in the said policy, and in

addition thereto the special indemnity of $5,000, under what is known as Section 5 of the policy, a total of $15,000.

(2) Because under the terms of the policy written by the defendant the only sum recoverable for the involuntary and unconscious inhalation of gas or other poisonous vapor, was one-half of the indemnity for loss of life, to wit, $5,000.

(3) Because the learned Circuit Judge before whom the said cause was tried erred in holding that the special indemnity was an indemnity additional to the general indemnity under the policy.

(4) Because the learned Judge of the Circuit Court failed and refused to give effect to the additional provision, paragraph (a) of the policy, reading as follows:

> "No claims shall be valid for more than one of the losses herein specified, excepting hereinbefore provided."

(5) Because under the said policy of insurance and a stipulation between the parties it was error to hold that defendant was liable to plaintiff for more than $2,500 and interest.

(6) Because judgment was entered in favor of plaintiff and against defendant for $6,102.91.

Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant-Appellant.

Opinion.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

Action at Law.

RAY WEISS,

Plaintiff,

vs.

UNION INDEMNITY COMPANY,

Defendant.

Case submitted on agreed state of facts.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG, Attorneys for Plaintiff.

MCDERMOTT, ENRIGHT & CARPENTER, Attorneys for Defendant.

SMITH, *C. C. J.*:

The facts in this case are agreed upon, and by the stipulation it appears that the assured, Samuel W. Weiss, sustained bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas suffered through external, violent and accidental means resulting in death solely and exclusively from such bodily injuries, and the controversy between the parties is over the construction of a clause contained in an accident policy reading as follows:

"Section 5. Special Indemnities. Sunstroke, freezing, hydrophobia, or the in-

> voluntary, unconscious inhalation of gas or other poisonous vapor, shall be covered with one-half of each of the indemnities provided by this policy when suffered through external, violent and accidental means."

It is the contention of the plaintiff that this is an additional indemnity of one-half more than the face of the policy of $10,000, making an indemnity of $15,000. It is the contention of the defendant that this is an indemnity of only one-half of the amount of the policy, so that the amount of the insurance would be $5,000.

There is an agreement between the parties that whichever way the Court decides, the amount shall be one-half of the amount construed to be due under the policy.

Section 5 is somewhat ambiguous, and under the general rule of construction it must be construed most strongly against the defendant. It seems to me that the construction of Section 5 turns upon the question of whether or not the assured was covered by the policy for the loss stipulated upon. If Section 5 were omitted and the parties have stipulated between them that the deceased came to his death by sustaining bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas suffered through external, violent and accidental means, that, as I understand it, recites a bodily injury and the assured was therefore covered by the general terms of the policy. That being the case, it is my view that the special indemnity is an additional one to that of the general indemnity under the policy.

Opinion.

It will be noted by a reading of Section 5 that it says that the particular loss by inhalation of gas shall be covered *with* one-half of each of the indemnities. It does not say *by,* thus indicating the amount of the coverage of the loss; but it says that this special class shall be covered with one-half of each of the indemnities, and does not by any direct words limit the general clause.

The section is one of a number headed "Accident Indemnities." Section 1 refers to the loss of life, the principal sum. Section 2, as to indemnities for loss of time. Section 3, medical attendance. Section 4, double indemnities. And then comes Section 5, Special Indemnities. Section 6 is a special indemnity including blood poisoning, which no doubt would not be included in the general terms of the policy. Section 7 is surgeons' fees. The next three do not refer to amounts. Then follows the schedule of operations and optional indemnities. Then come the sections of the policy under standard provisions which contain the standard provisions of accident insurance. At the end of the standard provisions there are additional provisions, and these are the ones by way of limitation or reduction of the policy.

I therefore find that there would be due under the policy the sum of $15,000, and under the terms of the stipulation there should be a judgment in favor of the plaintiff and against the defendant in the sum of $7,500.

March 1, 1930.

WM. A. SMITH,
Judge.

New Jersey Court of Errors and Appeals.

Action at Law.

On Appeal from Supreme Court.

RAY WEISS,
Plaintiff-Respondent,

VS.

UNION INDEMNITY CO., a corporation,
Defendant-Appellant.

BRIEF OF McDERMOTT, ENRIGHT & CARPENTER FOR THE APPELLANT.

This case was tried before Honorable William A. Smith, at the Essex Circuit, on the 20th day of March, 1930. The Court rendered a judgment in favor of the plaintiff and against the defendant, on the 21st day of March, 1930, in the sum of $6,102.91, without costs, said matter having been tried on stipulation. The matter is before this Court on an appeal from said judgment.

Statement of Facts.

This is an action on an accident insurance policy in the principal sum of $10,000, issued by the defendant-appellant, and naming the plaintiff-respondent, wife of the insured deceased, as beneficiary. The policy insured the deceased against effects of bodily injuries caused directly, solely

and independently of all other causes by external, violent and accidental means, and which should result in immediate and continuous disability, including loss of life.

Section 1 of the policy provides: "If any loss specified in this section shall result solely and exclusively from such injuries within ninety days from date of the accident, the Company shall be liable only for such loss, and will pay for Loss of Life..... The Principal Sum."

Section 5 of the policy is as follows:

"SPECIAL INDEMNITIES

> Sunstroke, freezing, hydrophobia or the involuntary and unconscious inhalation of gas or other poisonous vapor, shall be covered with one-half of each of the indemnities provided by this policy when suffered through external, violent and accidental means."

In the stipulation entered into between the parties, it is agreed that the assured sustained bodily injuries caused directly, solely and independently of all other causes by the involuntary, unconscious inhalation of gas, suffered through external, violent and accidental means, and within ninety days from the date of the accident alleged in the complaint, and that while the said policy was in full force and effect, the said assured died as the sole and exclusive result of such bodily injuries. The plaintiff-respondent maintains that in view of Section 5 of the policy, quoted above, she is entitled to recover from the defendant-appellant, the sum of $15,000, the same being the principal sum of the policy, namely, $10,000 plus one-half of the same, namely, $5,000. On

the other hand, the defendant-appellant maintains that under said section, plaintiff-respondent is entitled to recover only $5,000, being one-half of the principal sum of the policy. By stipulation (State of Case, p. 7) it is agreed that the plaintiff shall receive one-half of the amount of the liability as determined by the Court.

The sole question, therefore, to be determined by the Court, is whether the liability under the policy, in view of the above state of facts is $15,000 or $5,000; in other words, whether the policy should be construed to mean that in the event that death occurred from the involuntary and unconscious inhalation of gas, the liability under the policy is one-half of the face amount, in addition to the face amount, or only one-half of the face amount.

POINT I.

The learned Judge of the Circuit Court before whom the said cause was tried erred in holding that the plaintiff under the terms of the policy written by the defendant was entitled to recover from the defendant the principal sum of $10,000 mentioned in the said policy, and in addition thereto the special indemnity of $5,000 under what is known as Section 5 of the policy, a total of $15,000.

The language of Section 5 of the insurance policy, which is here in question, is entitled "SPECIAL INDEMNITIES".

The language of this section reads as follows:

> "Sunstroke, freezing, hydrophobia, or the involuntary and unconscious inhalation of

> gas, or other poisonous vapor, shall be covered with one-half of each of the indemnities provided by this policy, when suffered through external, violent and accidental means."

The appellant argues here that the only proper, logical and reasonable construction that can be placed on the above section, is that liability exists only for *one-half of the face amount of the policy,* and not one-half in *addition* to the face amount of the policy.

Section 4 of the policy here, is entitled "DOUBLE INDEMNITIES" and in that section, the insurer has clearly stated under what circumstances they would pay this additional bonus. The language of this section succinctly states that "ALL THE ABOVE AMOUNTS SHALL BE DOUBLED IF SUCH INJURIES SHALL BE RECEIVED, etc."

This latter section, of course, is immediately followed by Section 5 which is entitled as set out above, to wit, "SPECIAL INDEMNITIES". The pertinent language of this section are the words that state that the insured "SHALL BE COVERED WITH ONE-HALF OF EACH OF THE INDEMNITIES PROVIDED BY THIS POLICY."

Therefore, in the light of the preceding section, namely, Section 4, how can it be argued that the defendant-appellant intended to grant, under Section 5, one-half of the face amount of the policy in *addition* to the full face amount of the same. If the defendant-appellant had so intended, it could have as clearly expressed its intention in Section 5, as it did in Section 4. The language of both these sections as well as all the other terms, provisions, and conditions of the policy, outline the liabilities and obligations of the parties,

fairly in simple and unequivocal language. Therefore, to argue that Section 5 means nothing else than what the average, prudent or reasonable man would interpret it to mean, would be an attempt to strain and distort the meaning of this particular section and arrive at a conclusion contrary to any understanding or intention on the part of either party.

Now let us again examine the specific words in issue. They are as follows: "SHALL BE COVERED WITH ONE-HALF OF EACH OF THE INDEMNITIES PROVIDED BY THIS POLICY."

Erasing from mind any portion of the policy with the exception of Sections 1 and 5, what is a reasonable interpretation of Section 5 in relation to Section 1?

Can we soundly argue that this section intends to give the policy holder one-half of the face amount of the policy in *addition* to each of the indemnities outlined in the first section? To so argue would be an unfair distortion of the clear language of the section which specifically states that one-half of each of the indemnities is to be paid the assured under the circumstances outlined therein. We respectfully contend, therefore, that "one-half of each of the indemnities" means exactly that, and not one-half in addition to the face amount of the policy. The illogicality of contending otherwise is plainly manifested by this examination.

It is necessary to adopt tenuous reasoning before a contrary construction may be placed on the language in question, whereas the casual reader or possible purchaser would give to the words their plain and unequivocal meaning, as heretofore stated.

POINT II.

Under the terms of the policy written by the defendant the only sum recoverable for the involuntary and unconscious inhalation of gas or other poisonous vapor, was one-half of the indemnity for loss of life, to wit, $5,000.

As conclusive evidence of the only *possible* construction of Section 5, as well as a reasonable one, we need only refer to paragraph "C" under the section of the policy entitled "ADDITIONAL PROVISIONS."

This paragraph plainly manifests the purpose of Section 5, beyond any doubt. It clearly demonstrates that the latter section was intended as an inducement to the prospective policy holder to purchase the said policy, and therefore is properly entitled "SPECIAL INDEMNITIES" as it is a clause which extends liability and does not limit it.

The paragraph reads as follows:

> "In case of injuries, fatal or otherwise, except drowning, of which there shall be no external and visible contusion or wound on the exterior of the body at the place of injury, the body itself in case of death not to be deemed such; * * * then and in every such case the Company's liability for any loss specified in section 1, shall be one-twentieth of the amount provided therefore, and for any other loss one-fifth of the amount otherwise payable."

Certainly it will not be argued that the language of the aforegoing provision is equivocal. It is

open to no more than one construction. Therefore, if Section 5 were not a part of the policy and paragraph "C" were retained within it, the plaintiff-respondent would have been entitled to an extremely limited recovery far below the amount your appellant admits to be due. In short, the death of the insured in our case, having occurred "by the inhalation of gas or other poisonous vapor", it was, therefore, brought immediately under the terms of paragraph "C", for death encountered in such a manner leaves "no external and visible contusion or wound on the exterior of the body at the place of the injury."

It is plain to see, therefore, with what intention Section 5 was placed in the policy. Without it the plaintiff below would have acquired a much smaller right of recovery than it does have with the section included. In other words, Section 5 sets up specific exceptions to paragraph "C", and allows a recovery of $5,000, where originally under the terms of the policy, if Section 5 were excluded, the assured would receive only one-twentieth of the amount provided in Section 1, or in this particular case, one-twentieth of $10,000 which is $500.

Therefore, to argue that the plaintiff below was entitled to $15,000, under the terms of this section, would be a conclusion contrary to the express provisions of the policy.

It is our contention that the Court could not arrive at a proper interpretation of the policy without referring to all of the sections of the policy and therefrom to gather the intention of the parties. In support of this well known rule of construction we respectfully refer the Court to the paragraph above referred to, which contains language of a most pertinent character, thereby

serving to clear up beyond any doubt these alleged ambiguities, which do not exist in fact.

POINT III.

Under the said policy of insurance and a stipulation between the parties it was error to hold that defendant was liable to plaintiff for more than $2,500 and interest.

In the case of *Cochran* v. *Standard Acc. Ins. Co. of Detroit, Mich.*, 271 S. W. 1011 (Missouri), 1925), the Court sets out the law of construction at some length. The words of the Court are as follows:

> "'So long as the contract is plain and unambiguous, not open to different constructions, and is so framed that the insured is not justified in thinking the contract to be something other than it is, it is not within the power of the courts to change it or to make a new contract for the parties by judicial construction.' *Taylor* v. *Loyal, etc., Ins. Co.* (Mo. App.), 194 S. W. 1055, 1057. But when an insurance contract is so drawn as to be 'fairly susceptible of two different constructions, so that reasonably intelligent men on reading the contract would honestly differ as to the meaning thereof, that construction will be adopted which is most favorable to the insured.' *Imperial Fire Ins. Co.* v. *Coos County,* 151 U. S. 452, 462, 14 S. Ct. 379, 381 (38 L. Ed. 231). Such construction, where there is room for it, should be as favorable to the insured, as reasonably may be, but it must be 'only a natural

> and logical one, and not a strained or sophistical one.' *Bader* v. *New Amsterdam Casualty Co.,* 102 Minn. 186, 112 N. W. 1065, 1066 (120 Am. St. Rep. 813). *However, the 'just interpretation of a contract arises on the whole subject-matter. It must be viewed from end to end and corner to corner, and all its terms pass in review for one clause may modify, limit or illuminate the other.' Mathews* v. *Modern Woodman,* 236 Mo. 326, 342, * * * and, as said in *Cooper* v. *National, etc., Ins. Co.,* 212 Mo. App. 266, 274, 253 S. W. 465, 467."

In another case, *Wehle* v. *United States Mutual Accident Association,* 153 N. Y. 116, 47 N. E. 35, the Court in a *Per Curiam* decision said:

> "Conditions in insurance policies, as in all other contracts, should be construed strictly against those for whose benefit they were reserved."

Defining this language literally and applying it to our own case, Section 5 of the policy should be strictly construed against the respondent, for it is a reservation for the policy holder's benefit and not for that of the defendant. The clause is one that extends liability and does not limit it.

Also, under the rules of construction, it has been decided by the courts generally, that a special clause in a policy which creates an exception to a general clause governs the latter.

> *Bowman* v. *Pacific Ins. Co.,* 27 Mo. 152;
> *Mitchell Furniture Co.* v. *Imperial Fire Ins. Co.,* 17 Mo. App. 627;
> "Joyce on Insurance", Vol. I, p. 569.

And also that a special stipulation in a certificate will control a general stipulation therein.

Northwestern Mutual Ins. Co. v. *Hazelett,* 105 Ind. 212, 4 N. E. 582;
"Joyce on Insurance", Vol. I, p. 569.

The courts have further decided that the meaning of general words, phrases, and stipulations will be restricted when it is evident from the special or particular provisions of the contract that they were not intended to have the broad signification of which they are fairly susceptible.

Sun Ins. Office v. *Varble,* 103 Ky. 758, 46 S. W. 486;
"Joyce on Insurance", Vol. I, p. 569.

The New Jersey decisions are also in accord with the aforementioned authorities. In fact it has been held by the courts in *The State, The Morris & Essex R. R. Co. Prosecutors* v. *The Commissioner of R. R. Taxation,* 37 N. J. Law 228, affirmed in 38 N. J. Law, page 472, in construing a statute, containing a general enactment, and also a particular enactment, that the repugnancy of specific provisions to the general language, will supersede the intent of the Legislature, as declared in the general enacting part.

Furthermore, in *David S. Griscom* v. *Thomas Evens,* 40 N. J. Law, page 402, the New Jersey Supreme Court held on a question involving the construction of wills, that where there is a clear enumeration of particulars importing on their face to be designated as qualifications of a preceding general description, words of general devise must yield to the particular description.

Therefore, it follows in the light of the preceding authority that the defendant intended by the separate clause to provide that in case of death or in any one of the other injuries specifically mentioned in the policy's schedule, to wit, losses by sunstroke, freezing, hydrophobia, or the involuntary and unconscious inhalation of gas, or other poisonous vapor, if it arose by external, violent and accidental means, but "one-half of each of the indemnities provided by this policy would be paid."

POINT IV.

Judgment was entered in favor of plaintiff and against defendant for $6,102.91.

Summary.

In conclusion, we state that Section 5 of the policy, being read in connection with the other terms of the policy and by virtue of its clear language, means that the insured is entitled to one-half of the face amount of the policy, or $5,000, in the event of death by gas or other poisonous vapor.

However, by virtue of the stipulation entered into below, the plaintiff below is only entitled to $2,500 with interest and the Court below erred in awarding a larger sum, namely, $6,102.91.

Respectfully submitted,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant-Appellant.

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New Jersey Court of Errors and Appeals

RAY WEISS, Plaintiff-Respondent, v. UNION INDEMNITY COMPANY, a corporation, Defendant-Appellant.	Action at Law. On Appeal from Supreme Court.

BRIEF OF PLAINTIFF-RESPONDENT.

The statement of facts contained in defendant-appellant's brief is correct, and it would serve no useful purpose to reiterate the same. However, the defendant-appellant neglected to state that, since the filing of the stipulation referred to, it paid to the plaintiff-respondent the sum of $2,500.00 on account of whatever should be determined to be due to the plaintiff-respondent from defendant-appellant, and, in fact, it assumes in its summary that said money was not paid. The fact is that the plaintiff-respondent received this amount, as is recited in the Postea and Findings, and that the judgment in the sum of $6,102.91 is for one-half of the sum of $15,000.00 found by the lower court to be the amount of liability under the policy, after deducting the said sum of $2,500.00 so paid (in other words, the sum of $5,000.00), plus $1,102.91 as interest.

POINT I.

A reading of the policy as a whole indicates an expressed intention on the part of the insurance company to pay, in the event of death by inhalation of gas, one-half of the face amount of the policy, IN ADDITION to such face amount.

In *Cochran* v. *Standard Acc. Ins. Co. of Detroit, Mich.*, 271 S. W. 1011 (Missouri, 1925), the court laid down the test of the construction of an insurance policy in the following language:

> "Now, what would a 'reasonably intelligent man on reading the contract' and about to accept and pay for the policy, understand to be the meaning of that entire paragraph?"

and the same test is followed in all the cases which we have been able to find on the subject. In other words, the question resolves itself into: What would the ordinary layman, who is about to purchase a policy, understand the meaning of Section 5 to be, upon reading the same?

Attention should first be directed to the fact that Section 5, which is the section in dispute, is headed in large, heavy type "SPECIAL INDEMNITIES." The word "special" is defined in the Standard Dictionary as "having in a peculiar and distinguishing degree some characteristic or characteristics; out of the ordinary; singular or unique; express; particular." In view of this definition, it is apparent that the insurance company intended the section in question as an inducement to the prospective purchaser of the policy to buy the same, because by the inclusion of this section the policy would give him an additional right, namely, the

right to obtain a sum in addition to the face amount of the policy in the event of liability thereon. In other words, the use of the word "special", when a layman is about to purchase a policy, indicates to him that something unusual or out of the ordinary is being given to him as an inducement to buy the policy. If such were not the case, and it were the intention of the company to cut down, rather than increase, the liability under the policy in the event of gas poisoning, the word "Special Indemnities" certainly would not be used, but, instead, such words as "Limitation of Liability" or "Partial Indemnities", etc., would be used.

In the second place, it is important to note the kinds of accidents which are covered by Section 5, namely, sunstroke, freezing, hydrophobia and inhalation of gas. It is a fact, of which the court can take judicial notice, that accidents of this kind are extremely rare and unusual. It may, therefore, safely be assumed that it was the intention of the company, in formulating this policy, to incur a greater liability in the case of accidents such as these than in the case of other accidents, in view of the settled policy of insurance companies, especially in accident policies, to incur greater liability in cases of greater rarity. That such is the policy of insurance companies is without question and is indicated by the very policy involved in this case.

In the third place, we should look at various sections of the policy in order to aid in the interpretation of Section 5. It is not necessary to cite authority for the proposition that in construing an insurance policy, or any other contract, all the terms thereof must be considered. Attention should first be directed to Section 4, which is headed in the same heavy type as Section 5, and also in capitals, "DOUBLE INDEMNITIES". This Section

provides for double indemnity in the event of injuries received while the insured is a passenger on board various vehicles and conveyances. If it were the intention of the insurance company to cut down the liability in the case of gas poisoning, it certainly would be inconsistent to head Section 4 "Double Indemnities" and to head Section 5 "Special Indemnities". Instead, the company would undoubtedly have headed Section 5 "Partial Indemnities". The fact that Section 5 is headed "Special Indemnities" and Section 4 "Double Indemnities" is consistent with but one interpretation, namely, that in the case of gas poisoning etc., the liability was not to be one-half of the face amount of the policy, but one-half in addition to such face amount.

Attention should further be given to Section (d) under "ADDITIONAL PROVISIONS". This provision reads as follows: "Loss from injuries, fatal or otherwise, received by the Insured while entering or leaving, or attempting to enter or leave, or while upon the step or steps, or platform or running board of any conveyance, shall be covered only by single indemnity." It will be observed that in order to cut down the liability in case of coverage by this provision, the policy uses the words *"only by single indemnity"*. It should also be observed that in Section 5, the words used are "shall be covered with one-half of each of the indemnities", etc. If it were the intention of the company to decrease the liability under Section 5, why did it use the word "only" in Section (d) and not in Section 5? It is submitted that the reason is obvious, namely, that there is to be no cutting down of liability in Section 5, whereas there is to be in Section (d), but that under Section 5, the liability is increased.

Section (d) also bears out, in another respect, our contention that the liability under Section 5 is in addition to the principal sum recoverable under the policy. Section 5, it will be recalled, reads "* * * shall be covered *with* one-half of each * * *" On the other hand, Section (d), under "ADDITIONAL PROVISIONS", reads " * * * shall be covered only *by* single indemnity." In other words, the author of the policy in question, in order to carry out his intention of limiting the amount of liability under certain circumstances, in Section (d) not only uses the word "only", but uses the word "by" and not the word "with", which is used by him in Section 5. It is submitted, therefore, that the choice of the word "by" is peculiarly apt in order to express a limitation of liability, or, in other words, the total coverage of the loss under the circumstances set forth, whereas the use of the word "with" in Section 5 is intended not to indicate a limitation of liability under the general clause, but an additional liability, or one which goes together "with" the liability under the general clause.

It is furthermore to be observed that nothing in the policy, down to the end of the third page, has anything to do with any limitation or disclaimer of liability on the part of the defendant company. The only apparent attempt to make such limitation or disclaimer is to be found in all of the clauses under the heading "ADDITIONAL PROVISIONS", namely, clauses (a), (b), (c), (d) and (e). In other words, it is apparent that the company intended to provide for a limitation or disclaimer of liability only in those clauses coming under the heading "ADDITIONAL PROVISIONS", and not under Section 5, which is in the prior portion of the policy.

It is submitted that defendant-appellant's argument, contained in Point II of its brief, to the effect that Section (c) under "ADDITIONAL PROVISIONS" indicates that Section 5 means that under the circumstances named its liability is only one-half of the face amount of the policy, is untenable. In the first place, as stated above, Section (c) is placed among the only clauses which obviously intend to limit or cut down the liability of the defendant, namely, a clause under "ADDITIONAL PROVISIONS", such clauses not being found in the previous portion of the policy. Such clauses are in the proper place in the policy, in view of their apparent intention to permit, under the circumstances named, a recovery for less than the amounts due under the clauses in the first part of the policy. As is pointed out in the opinion of the lower court, Section 6, which follows Section 5, provides for a special indemnity covering blood poisoning, which undoubtedly would not be included in the general terms of the policy. In other words, there is a provision following Section 5 which adds to the liability under the general clause of the policy. If Section 5 were to be construed to cut down, and not to add to, the liability of the defendant-appellant, obviously it is included in an improper place, because it is among clauses which add to the liability of the defendant-appellant, and not among those clauses which limit or lessen the same.

In the next place, it is submitted that the argument of defendant-appellant contained in Point II of its brief is unsound for the reason that the language of Section (c) is quite different from that of Section 5. Section (c) reads "* * * the *Company's liability* * * * shall be one-twentieth of the amount provided therefore* * *." On the other

hand, Section 5 reads "* * * inhalation of gas * * * shall be *covered with* one-half * * *." Therefore, even if Section (c) means that the total liability of the defendant-appellant is one-twentieth of the amount provided under Section 1, it does not at all follow that Section 5 means that under the circumstances enumerated the defendant-appellant's liability is one-half of the face amount of the policy. In fact, Section (c) indicates quite the contrary, because of the fact that entirely different language is used in each of the sections, the language of Section 5 indicating not a limitation of liability, but an additional coverage or a coverage *together with* the coverage provided for in Section 1.

POINT II.

Even assuming that Section 5 is ambiguous, it must be construed, under the uniform holding of the courts, most strongly against the defendant insurance company.

This principle is one which is uniformly applied by the courts, without dissent.

In *Harris* v. *American Casualty Company of Reading, Pennsylvania,* 83 N. J. L. 641, Chancellor Walker says:

> "But, assuming that there is such ambiguity in the terms of the policy that would make it at least doubtful as to whether collision with water and land, horizontal objects, was within the terms of the policy, still it is a familiar rule that the words used in a policy of insurance should be interpreted most strongly

against the insurer where the policy is so framed as to leave room for two constructions."

Cochran v. *Standard Acc. Ins. Co. of Detroit, Mich.*, 271 S. W. 1011 (Missouri, 1925), was an action upon an accident insurance policy, wherein defendant insured plaintiff's husband against the effects of bodily injuries received during the term of insurance, "effected solely by external, violent and accidental means", and promised to pay $2,500.00 if such injuries should, independently of all other causes, result in death within ninety days.

The controversy arose over the construction and effect to be given to a provision in the policy which provided that it was issued by the company and accepted by the insured with the understanding and agreement that no benefits would be paid for injuries resulting, fatally or otherwise, received under or in consequence of any of the following conditions: (1) while on a locomotive * * *; while entering or leaving * * * a moving conveyance; or while improperly on railroad right of way; or (2) as a result of being affected by * * * intoxicants, anaesthetics, narcotics, etc., in any form, * * * ; or (3) while engaged in aerial navigation, hunting, fishing, or in exploring expeditions, or under any circumstances from firearms, of any kind, explosives, war or riot; * * *.

Defendant relied upon the above exception clause No. 3, and asked a declaration of law from the trial court, sitting as a jury, to the effect that if deceased was killed in his seat in a coach by a man suddenly and without warning firing a pistol, then plaintiff could not recover. The court refused to give the declaration, and rendered judgment for plaintiff, and defendant appealed.

TRIMBLE, P. J.

" 'So long as the contract is plain and unambiguous, not open to different constructions, and is so framed as that the insured is not justified in thinking the contract to be something other than it is, it is not within the power of the courts to change it or to make a new contract for the parties by judicial construction.' Taylor v. Loyal, etc., Ins. Co. (Mo. App.) 194 S. W. 1055, 1057. But when an insurance contract is so drawn as to be 'fairly susceptible of two different constructions, so that reasonably intelligent men on reading the contract would honestly differ as to the meaning thereof, that construction will be adopted which is most favorable to the insured.' Imperial Fire Ins. Co. v. Coos County, 151 U. S. 452, 462, 14 S. Ct. 379, 381 (38 L. ed. 231). Such construction, where there is room for it, should be as favorable to the insured as reasonably may be, but it must be 'only a natural and logical one, and not a strained or sophistical one.' Bader v. New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065, 1066 (120 Am. St. Rep. 813). However, the 'just interpretation of a contract arises on the whole subject-matter. It must be viewed from end to end and corner to corner, and all its terms pass in review for one clause may modify, limit or illuminate the other.' Mathews v. Modern Woodmen, 236 Mo. 326, 342, * * * and, as said in Cooper v. National, etc., Ins. Co., 212 Mo. App. 266, 274, 253 S. W. 465, 467:

'When it is attempted to relieve the insurer from liability for such an (accidental) injury by a clause in the nature of an ex-

ception in a policy of this character, it can only be accomplished by language unequivocal in its meaning.'

"* * * Considering, then, the entire paragraph, it manifestly sets out or specifies various situations wherein the insured, by getting into certain relations or enterprises has increased the hazard or risk of injury. *Now, what would a 'reasonably intelligent man on reading the contract' and about to accept and pay for the policy, understand to be the meaning of that entire paragraph?* He would naturally and reasonably understand that, * * * under exception No. 3 the policy would afford no insurance if he were hurt or killed, 'while engaged in' aerial navigation, hunting, fishing, or exploring expeditions, or under any circumstances from firearms of any kind; * * *

"* * * Hence, insured would understand that the firearms clause, like the others, refers merely to those situations where he has increased the risk either by engaging in enterprises where firearms are used or by handling or using them himself; and that he must not engage in such enterprises and must refrain from handling or using firearms if he would avoid coming within the exemption as to them. *Would it ever enter the mind of a reasonably intelligent man accepting insurance under this contract* that if he were to go on board a vessel and a cannon should get loose and roll about the deck, as in Victor Hugo's 'Ninety-Three' and crush the life out of him, his beneficiary could not recover because his death was caused by a firearm?

"* * * 'It is a familiar rule in the construction of terms to apply to them the meaning naturally attaching to them from their context. "Noscitur a sociis" is a rule of construction applicable to all written instruments. Where any particular word is obscure or of doubtful meaning, taken by itself, its obscurity or doubt may be removed by reference to associated words. And the meaning of a term may be enlarged or restrained by reference to associated words. And the meaning of a term may be enlarged or restrained by reference to the object of the whole clause in which it is used.' 1 Fed. Stat. Ann. (2nd Ed.) of Statutes and Statutory Construction, 115. It is a rule of interpretation by which the meaning of not merely one word but that of several may be arrived at where there is use or room for construction. Brown v. Chicago, etc., R. Co., 102 Wis. 137, 77 N. W. 748, 78 N. W. 771, 44 L. R. A. 579. * * * 'The grammatical construction of a contract will not be followed if a different construction will better give effect to the intention of the parties as shown by the whole instrument and accomplish the object for which the contract was executed. Rules of grammatical construction, however, are not to be disregarded where they serve to throw light on the intention of the parties.' 13 C. J. 534."

In *American Cent. Life Ins. Co.* v. *American Trust Co.*, 5 F. (2d) 71 (District of Tennessee), the court said:

"The controversy relates solely to the construction of the limitation clause 'during the premium-paying period and not less than one

year from the date thereof'; that is to say, whether this clause means, as defendant contends, within one year from the date of the policy, or whether * * * the words 'premium-paying period,' meant the period in which the insured was not relieved from the payment of premiums under the preceding 'disability benefit' provision. * * *

"* * * *To say the least, we think a reading of the entire paragraph would not suggest to the unskilled policy-holder* that the double indemnity for which he was in terms paying a special premium, in addition to what would otherwise be the policy premium, had no application during the year for which such payment was being made. * * * Had it been the intention to exclude double liability during the first year of the policy's existence, we think the insurer would naturally have said 'not less than one year from the date hereof' or 'from the date of this policy.' At this point, it is enough to say that *the intention to limit double indemnity to cases of death in a subsequent year was not unambiguously expressed. That being so, the rule is fundamental that the words used by the insurer, in a policy prepared by its attorneys, officers, or agents, must be construed most strongly against it.*"

In *Wadsworth* v. *Canadian Railway Accident Insurance Company*, 26 Ontario L. R. 55 (Ann. Cas. 1913 A. p. 546), the court, speaking of a clause in the policy, says:

"While the clause does not aim to destroy absolutely the liability of the company, yet its language is intended to limit that liability to

a fractional amount of the sum payable under other circumstances, and so it ought to be construed strongly against the company. The insurer accepts the policy with the view and for the purpose of covering all accidents which may 'happen' to him. In Etherington v. Lancashire, etc., Acc. Ins. Co. (1909), 1 K. B. 591, Vaughan Williams, L. J., says, at page 596: 'I start with the consideration that it has been established by the authorities that in dealing with the construction of policies, whether they be life, or fire, or marine policies, an ambiguous clause must be construed against rather than in favor of the company.'

"* * * I have arrived at the conclusion that notwithstanding the finding of the trial judge, which we are bound to accept, that it was the fit that caused the upsetting of the lantern and the subsequent fire, the injuries 'happened' not from the fit, but from the fire.

"Therefore * * * the appeal should be allowed in part, and judgment entered for the plaintiff for $10,750."

And again:

"In considering this question, *we must look at the case from a common-sense, business point of view, avoiding metaphysical subtlety; ever having in mind that such agreements, being in the language selected by the company, should, where there is a real ambiguity, be construed most strongly against the company, we are not, by too refined or unnatural an interpretation of the language employed, to conjure up an ambiguity where none really exists.*

> "It is only a fair rule * * * which courts have adopted to resolve any doubt or ambiguity in favor of the insured and against the insurer."

In the case of *Wehle* v. *United States Mutual Accident Association,* 153 N. Y. 116, 47 N. E. 35, the court, in a per curiam decision, said:

> "Conditions in insurance policies, as in all other contracts, should be construed strictly against those for whose benefit they were reserved."

In the case of *Gallagher* v. *F. & C. Co.,* 163 A. D. 556, 560, affirmed 221 N. Y. 664, it was held:

> "Accident insurance companies do business mostly with the common people, and the term 'accident' as used in these policies should be construed most strongly against the companies, and be defined according to the ordinary and usual understanding of its signification". (Young v. Railway M. Ass'n, 126 Mo. App. 325) * * *
>
> "If the language is vague and indefinite it must be construed most strongly against the insurer."

In the case of *Zivitz* v. *Maryland C. Co.,* 192 A. D. 83, 87, it was held:

> "* * * the policy must not be so construed as to work a forfeiture unless by clear and unambiguous language, readily understandable, not by judicial officers or trained experienced members of the bar, but by business men of average intelligence who have occasion to

require such insurance, it appears that it was so intended."

In *Janneck* v. *Met. Life Ins. Co.,* 162 N. Y. 574, 577, and in *Paskusz* v. *Phila. Cas. Co.,* 213 N. Y. 22, 26, it was held:

> "Insurance contracts, above all others should be clear and explicit in their terms. They should not be couched in language as to the construction of which lawyers and courts may honestly differ. In a word, they should be so plain and unambiguous that men of average intelligence who invest in these contracts may know and understand their meaning and import."

In the case of *Finucane* v. *Standard A. I. Co.,* 184 A. D. 280, 282, it was held:

> "Where an accident insurance policy contains exceptions and limitations to the previously expressed liability of the company, and these clauses are ambiguous and uncertain in their meaning and capable of more than one construction, the rule is well settled that that construction should be adopted which is most favorable to the insured, and *they should be held to have the meaning which the insured might reasonably have understood them to have* * * * As has been well said, *they should not be terms which mean one thing in the hands of a solicitor and another in the hands of an adjuster.*"

We do not understand the argument of the defendant- appellant in its brief under Point III that

under the case of *Wehle* v. *United States Mutual Accident Association, supra,* Section 5 should be strictly construed against the plaintiff-respondent. It says in its brief, referring to Section 5, "The clause is one that extends liability and does not limit." We do not believe that defendant-appellant means this statement for it expresses exactly what we are contending for. If defendant-appellant's argument is that Section 5 is for the benefit of the plaintiff-respondent because it extends, and does not limit, the liability of the defendant-appellant and should therefore, be construed most strongly against the respondent, obviously it is not necessary to so construe it, because defendant-appellant has already construed it as being for the benefit of the plaintiff-respondent.

Defendant-appellant's citation in its Point III of cases with respect to the rules of law concerning the control of general words to be special or particular provisions, it is submitted has no application to the present case, because the question involved is whether Section 5 means, by its language, or should be construed to mean in view of its ambiguity, that it adds to or lessens the liability under Section 1.

Summary.

In conclusion, we submit that to the ordinary business man, Section 5 of the policy, in view of its heading, of the other clauses of the policy and of its wording, means that the insured is entitled to one-half of the face amount of the policy, in addition to such face amount, in the event of death by gas poisoning, and that even assuming that such is not its unequivocal meaning and that the clause is ambiguous, the terms of such clause must be

construed, under the principle that policies of insurance are to be construed most strongly against the insurer, to mean that the amount of recovery, in such a case, is the larger, and not the smaller, amount.

It is, therefore, submitted that the judgment of the court below, for the sum of $6,102.91, should be affirmed.

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