

I N D E X

	PAGE
Summons.	1
Complaint.	2
Answer.	9
Reply.	13
Testimony.	15
PLAINTIFF'S TESTIMONY:	
Elda H. Kissinger—Direct	16
Exhibit P1, Letter, J. B. Kissinger to Ray G. Kissinger.	33
Exhibit P2, Letter, to E. G. Kissinger.	35
Exhibit P3, Letter, Mrs. E. H. Kissinger to North American Union, 8/3/28.	36
Exhibit P4, Letter, North American Union to Mrs. E. H. Kissinger, 8/6/28.	37
Exhibit P5, Check	38
Exhibit D1, Certificate	39
Exhibit D2, Certificate	41
Exhibit D3, Insurance Policy	42

	PAGE
Exhibit D4, Constitution of the North American Union, Article VII, Section 1, The Supreme Secretary shall attest all official documents, and shall perform such other duties as shall be provided by law.....	45
By-Laws, Article II, Duties of Supreme Officers and Committees	45
President.....	45
Supreme Secretary	45
Laws.	46
Law 3, Membership	46
Law 11, Proof of Death.....	46
Exhibit D5, Testimony Taken De Bene Esse..	48
Notice of Taking of Testimony De Bene Esse	49
Commissioner's Oath	51
Deposition of Miss Lillian Prince.....	53
Defendant's Exhibit 1, Notice of Death.....	58
Defendant's Exhibit 1-a, Certificate of Death	62
Defendant's Exhibit 1-b, Certification	66
Defendant's Exhibit 1-c, Instructions for Execution of Death Proofs.....	68
Defendant's Exhibit 1-d, Attending Physician's Affidavit	72
Defendant's Exhibit 1-e, Undertaker's Affidavit.....	76

	PAGE
Defendant's Exhibit 1-f, Beneficiary Affidavit	79
Defendant's Exhibit 1-g, Continuation of Beneficiary Affidavit	83
Defendant's Exhibit 1-h, Council Report...	87
Deposition of Charles A. Gillespie.....	94
Defendant's Exhibit 2, Letter, Mrs. John Kissinger to Jos. S. Jackson, Secretary Camden Council No. 217.....	99
Defendant's Exhibit 3, Assessments and Dues.....	100
Deposition of Louis K. Cleaveland.....	103
Stipulation.	111
Memorandum Findings	112
Postea.	124
Rule for Judgment	125
Judgment.	127
Notice of Appeal.....	128
Grounds of Appeal.....	130

SUMMONS.

(Filed Jan. 30, 1929.)

THE STATE OF NEW JERSEY to North American Union 10
Life Assurance Society, a corporation ex-
isting under and by virtue of the State of
(Seal) Illinois. You are summoned to answer
the annexed complaint of Elda H. Kis-
singer, in an action at law in the Supreme
Court of the State of New Jersey. And take notice,
that unless you file your answer to said complaint
with the Clerk of the said Supreme Court, at Tren-
ton, within twenty days after service upon you of
this writ and the annexed complaint, the plaintiff 20
may proceed in the suit, and judgment may be en-
tered against you.

Witness: WILLIAM S. GUMMERE, ESQUIRE, Chief
Justice of the Supreme Court of New Jersey, at
Trenton this 3rd day of January, A. D., 1929.

FRED L. BLOODGOOD,
Clerk.

EDWIN G. SCOVEL,
Attorney.

COMPLAINT.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

ELDA H. KISSINGER,

Plaintiff,

v.

NORTH AMERICAN UNION

LIFE ASSURANCE SOCIETY,

a corporation existing

under and by virtue of

20 the State of Illinois,

*Defendant.*Action at Law.
Complaint.

Plaintiff, Elda H. Kissinger, of the City and County of Camden, State of New Jersey, says that:

- 30 1. Her husband, John Kissinger, being a member of the Supreme Council of the Legion of the Red Cross during his lifetime, was the holder of a death benefit certificate in said Legion, same being designated as No. 8341 (Class A), a copy of which is annexed hereto and marked Exhibit A, which certificate entitled the beneficiary duly named therein to the payment of \$1,000.00 (one thousand dollars) upon the death of the said Kissinger.

2. In said certificate the said John Kissinger had duly named plaintiff as beneficiary.

3. Defendant by virtue of an agreement of re-insurance and consolidation made between it and the said Supreme Council of the Legion of the Red Cross, by merger and consolidation on the 29th day of December, 1914, took over by assignment all the liabilities encumbent upon the said Supreme Council of the Legion of the Red Cross under and by virtue of said certificate as evidenced by a rider attached to said certificate bearing No. 48799, a copy of which is annexed hereto and marked Exhibit B. 10

4. The said John Kissinger duly designated plaintiff as his beneficiary in both of the above mentioned death benefit certificates. 20

5. All premiums or monthly assessments and dues on said certificate had been duly paid to defendant and accepted by it up to and a short time after the death of the said John Kissinger.

6. The said John Kissinger has departed this life and plaintiff has become entitled to the said sum of \$1,000.00 (one thousand dollars) by reason thereof as beneficiary and has made repeated demands upon defendant for the payment of the said sum so due under said death benefit certificate so issued by defendant, but defendant has steadfastly refused and still refuses to pay the same. 30

Plaintiff therefore demands as damages the sum of \$1,000.00 (one thousand dollars), the sum due to

her as beneficiary under said certificate together with interest and court costs.

EDWIN G. SCOVEL,
Attorney for Plaintiff.

10

EXHIBIT A.

Special Option Whole Life Protection—\$1000.00
Legion of the Red Cross

Class A

20 No. 8341

This certificate is issued to Companion John Kissinger, a member of New Jersey Council No. 16, located at Camden, New Jersey, on evidence received from said council that said companion is a contributing member of the order and upon conditions that the statements, representations, declarations, conditions, agreements, waivers and warranties made by the said companion in the medical examination and application for membership to said council and the
30 statements certified by said companion which are filed in the office of the Supreme Recorder, and subject to the conditions, stipulations and agreements set forth on the back hereof made part of this contract as fully as if herein set forth at large are true and upon conditions that the companion complies in the future with the laws, rules and regulations

now governing the said Council or may be inacted by the Supreme Council.

All these conditions being complied with the Supreme Council of the Legion of the Red Cross hereby promises and binds its-self to pay out of the death fund To Elda H. Kissinger, Wife, One Thousand Dollars, the said sum to be paid in accordance with and under the laws governing said fund, upon satisfactory evidence of the death of said companion, and upon surrender of this certificate, provided that the said companion has complied with all the laws of the order, at the time of death, and provided, also, that this certificate has not been surrendered by said companion and another certificate issued in accordance with the laws of the order. 10

In witness whereof the Supreme Council of the Legion of the Red Cross has hereunto affixed its seal and caused this certificate to be signed by the Supreme Commander and attested and recorded by the Supreme Recorder. 20

Baltimore, Md.
Signed, witnessed
and delivered
in our presence

H. C. Martin, S. C.
Jos. B. Treebler, S. R.
H. B. Alward,
Commander
A. Parkley,
Recorder.

Companion's Signature
John Kissinger,
January 2nd, 1908

EXHIBIT B.

North American Union
Certificate of Reinsurance and Consolidation

10

No. 48799.

This indenture witnesseth that under and by virtue of the agreement of reinsurance and consolidation made and entered into by and between the North American Union and the Legion of the Red Cross which became of force and effect on the 29th day of December, 1914, and said agreement and all the terms and conditions are hereof made a part, of

20 JOHN KISSINGER, holder of benefit certificate No. 8341, issued by said Legion of the Red Cross, is accepted to become a member of the North American Union, eligible to all the privileges of membership herein acquired under and according to the terms and conditions of said agreement of reinsurance and consolidation.

30 The North American Union assumes and agrees to pay to the beneficiary or beneficiaries named in the certificate or policy of insurance of said member or as such may lawfully direct in the advent of death of said member while in good standing and the furnishing of satisfactory proof as to the cause and fact of death under and according to the provision of the laws, rules and regulations of the said Legion of the Red Cross and its executive board in force and effect at the time of the execution of said articles of agree-

ment, subject to such changes as may be made and provided however that said member has made all the required payments in the time and manner provided by law and has complied with all the laws, rules and regulations of the North American Union now in force or hereafter inacted and the terms and conditions of said article of Agreement.

This certificate shall be null and void unless said member, at the time of issuing this certificate is in good standing, provided, however, that any member under suspension shall have the right to reinstate and become a member in good standing in accordance with the laws of the said North American Union. 10

In Witness whereof the North American Union has caused this certificate of reinsurance and consolidation to be signed by its Supreme President and attested and recorded by its Supreme Secretary.

Chicago, Ill.

20

This 2nd day of January, A. D. 1915

Harold Spensley, S. P.

G. Laughenny, S. S.

Rec'd and signed

January 20, 1915

John Kissinger

Per Elda H. Kissinger.

A true copy.

FRED L. BLOODGOOD,

Clerk

30

I hereby deputize and appoint Thomas Conrad of Hamilton Township a Special Deputy to Serve the within writ and make return thereto.

Witness my hand seal this 11 day of Jan. A. D. 1929.

John N. Race (L. S.) Sheriff of Mercer County,
by Philip S. Vine, Under Sheriff.

Served within Sum. & Complt. January 14th, A. D. 1929 upon North American Union Life Assurance Society, a corp. existing under and by virtue of the
10 State of Illinois, by leaving a copy of the same in the office of the Commissioner of Banking and Insurance of the State of New Jersey, in Trenton Trust Bldg., Trenton, N. J. with a service fee of Three Dollars, with Benjamin B. Johnson, Assistant Deputy Commissioner of Banking and Insurance.

John N. Race, Sheriff, by
Thomas Conrad, Spec. Dep.

ANSWER.

(Filed Feb. 2, 1929.)

NEW JERSEY SUPREME COURT.

10

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

Defendant.

Action at Law.
Answer.

20

The defendant, North American Union Life Assurance Society, a corporation existing under and by virtue of the laws of the State of Illinois, answering the complaint of Elda H. Kissinger, says that:

30

1. It admits the allegations of paragraph 1 of the complaint, but refers to the certificate described therein, for a statement of the contents thereof.

2. It admits the allegations of paragraph 2 of the complaint.

3. It admits the allegations of paragraph 3 of the complaint, but refers to the certificate of reinsurance and consolidation described therein, for a statement of the terms upon which said merger and consolidation took place, and of the rights of the assured and the plaintiff thereunder.
- 10 4. It admits the allegations of paragraph 4 of the complaint.
5. It admits the allegations of paragraph 5 of the complaint, but says that upon discovery of the facts hereinafter set forth, this defendant offered to return said premiums, assessments, and dues, upon surrender by plaintiff of said certificates.
- 20 6. It admits the allegations of paragraph 6 of the complaint that "The said John Kissinger has departed this life," and denies all other allegations of said paragraph except the allegation that "Defendant has steadfastly refused, and still refuses to pay the same," which allegation it admits.

FIRST DEFENSE.

- 30 7. This defendant is a fraternal, beneficiary society, organized without capital stock, and solely for the mutual benefit of its members, and their beneficiaries, and not for profit, and has a lodge system with ritualistic form of work and representative form of government.

8. This defendant's Constitution and By-laws constitute a part of the contract of insurance made between this defendant and the said John Kissinger.

9. Law No. 11 of said By-laws, provides as follows:

“Section 1. It is made the duty of the beneficiary, named or legal, on the death of a member, to give immediate notice of such death, together with the reputed cause, facts and circumstances in connection therewith, to the Secretary of the Council to which such member belonged, and request proof of death blanks. Such beneficiary shall thereafter diligently have made and furnished to the Order, before payment shall be made of such claim, upon forms provided for such purpose, satisfactory proof of the fact, cause and circumstances of such death, and the liability of the Order thereon.”

10. The plaintiff failed to notify this defendant of the death of said John Kissinger immediately after his death as required by said By-laws, but neglected and delayed notification thereof for more than two years after said death.

11. By reason thereof, the plaintiff's right to recover said \$1,000.00 terminated, and plaintiff is not entitled to recover any moneys in this action.

SECOND DEFENSE.

12. The allegations of paragraph 7 of the first defense are repeated.

10 13. The allegations of paragraph 8 of the first defense are repeated.

14. Law No. 3 of said By-laws provides as follows:

20 "Sec. 18. No member of this Order, or his beneficiary, or any other person or persons in his or their behalf, shall commence any action at law, or suit in equity against this Order for the recovery of any claim or demand whatsoever arising by or from his membership in the Order, or under or by virtue of his Benefit Certificate, unless such action or suit shall be commenced within one year next after the death of such member, and within one year next after the cause of action accrued."

15. The said John Kissinger died on or about August 16, 1925, and plaintiff failed to commence any action or suit for the recovery of said insurance within one year thereafter.

30 16. By reason of said failure and delay, plaintiff is not entitled to recover any sums from this defendant in this action.

Attorney of Defendant.

REPLY.

(Filed Feb. 8, 1929.)

NEW JERSEY SUPREME COURT.

10

CAMDEN COUNTY.

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

Defendant.

Action at Law.
Reply.

20

The plaintiff, Elda H. Kissinger, replying to the answer filed by the defendant in the above entitled cause says that:

30

1. She denies paragraph five of the answer.
2. She denies the contents of paragraphs seven, eight, nine and ten of the first defense.

3. She denies the allegations of paragraphs fourteen and fifteen of the second defense, except that she admits that the said John Kissinger died on or about August 16th, 1925.

EDWIN G. SCOVEL,
Attorney for Plaintiff.

10

20

30

TESTIMONY.

NEW JERSEY SUPREME COURT.

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE ASSOCIA-
TION,
Defendant.

10

June 17, 1929.

20

APPEARANCES:

For the plaintiff, VINCENT GALLAHER, ESQ.
For the defendant, RIGGINS & DAVIS, ESQS.

30

Before JESS, J., and a jury.

(Mr. Gallaher opens the case for the plaintiff to
the jury.)

(Mr. Davis opens the case for the defendant to the jury.)

10 THE CASE FOR THE PLAINTIFF.

ELDA H. KISSINGER, SWORN.

By Mr. Gallaher:

Q. Mrs. Kissinger, you are living here in Camden, aren't you?

A. Yes.

Q. You were married?

20 A. Yes.

Q. When were you married?

A. In 1885.

Q. And to whom?

A. To John Kissinger.

Q. How old are you now?

A. Sixty-five.

Q. Was your husband at that time a member of the Red Cross Legion, Legion of the Red Cross?

A. Not when I was first married.

30 Q. I cannot hear you.

A. Not when I was first married.

Q. When did he join that?

A. About thirty years ago.

Q. Subsequent to the time at which you were married?

A. Yes.

Q. Who was the beneficiary under the terms of that policy?

A. I was.

Q. Did the Legion subsequent to that time ever issue another policy?

A. Yes, in 1908.

Q. And who was the beneficiary under the terms of that policy? 10

A. I was.

Q. So that under the terms of both these policies you were made the beneficiary?

A. Yes.

Q. Now, when did your husband and you separate?

A. Well, prior to that.

Q. Prior to 1908?

A. Yes.

Q. Who had that certificate that was issued in 20 1908?

A. He signed it in my presence and the Legion and gave it to me.

Q. Who paid the assessments?

Mr. Davis: Objected to as immaterial.

The Court: Well, I suppose it is immaterial.

Q. Where were you living at the time you and 30 your husband separated?

A. Here.

Q. In Camden?

A. In Camden.

Q. Did you always live in Camden?

Mr. Davis: Objected to as immaterial. The issue here is very narrow. I think we can save a whole lot of time if we get right down to the point involved.

Q. After you and your husband separated, where did he go, if you know?

10 A. Well, he remained here and afterwards went to Pittsburgh.

Q. Did you know his address in Pittsburgh?

A. Yes, he gave the General Delivery because he traveled around and sold goods.

Q. Did you ever tell any agent of this society where Mr. Kissinger was located?

Mr. Davis: I object to that, if the Court please. That is wholly immaterial. In the first place, the
20 word "agent" is a conclusion.

Mr. Gallaher: It seems to me, your Honor, maybe I am anticipating the defense in this case, but they are going to prove his whereabouts were unknown.

Mr. Davis: How is that binding upon us? It is not the duty of this defendant to keep track of all
30 their members.

Mr. Gallaher: I am just endeavoring to prove she kept up with the by-laws.

The Court: You will then offer to show this evidence is competent or material?

Mr. Gallaher: Yes, I do, if he will offer his copy, I will offer mine.

Mr. Davis: I think our proofs should follow the ordinary course. This is a technical angle, and I think it ought to be tried in the usual form.

The Court: Counsel now says he will show this 10
evidence is material by connecting it up with some
provision in the by-laws. I understand that is the
offer.

Mr. Davis: If you will tell me what provision of
the by-laws—well, if the Court please, I do not see
that this has any materiality at all, this section of
the by-laws deals with the duty of the beneficiary to
keep the home office advised of the place of residence
of the assured. We are not making any point of the 20
fact whether we were or were not advised of the
place of residence. Our defense is, first, notice was
not given to us within the time limit, and, secondly,
the suit was not started within the time specified for
in the policy.

Mr. Gallaher: All right, we will confine ourselves
to these two points.

Q. When did you first learn of the death of your 30
husband?

Mr. Davis: We object. The question is when we
were notified.

The Court: I will overrule the objection.

(Exception noted for defendant.)

(Question repeated.)

A. October 21, 1927.

Q. How did you learn that?

A. Over the long distance telephone.

10 Q. Was it in response to a telephone call that you made?

A. Yes.

Q. And whom did you call?

A. A man who had been mentioned in letters that he had written to others, that my husband had written to others. I did not correspond with him at the time.

Q. Did you know that he was near Pittsburgh?

A. Yes.

20 Q. How did you know that?

A. By letters that I had seen to other people.

Q. I did not get that.

A. By letters that I had seen to others.

Q. I show you letter dated or postmarked January 5. Was that a letter which you saw?

A. Yes.

Q. To whom was that letter written?

A. It was written to my son.

Q. It was written to your son?

30 A. Yes.

Q. Were you living with your son or did he write to you?

A. He sent those on to me. I was in the East.

Q. So that this was a letter from Mr. Kissinger?

A. Yes.

Q. To your son?

A. Yes.

Q. And your son sent it to you?

A. Yes.

Q. So that you knew on January 5, 1925, that your husband was alive?

A. Yes.

Q. I show you another letter postmarked January 13. Can you tell me to whom that letter was written?
10

A. To the same person.

Q. You recognize the handwriting?

A. Yes, sir.

Q. I show you a letter—do you recognize the handwriting?

A. I would know this anywhere.

Q. Do you know then that was your husband's letter?

A. Yes.

20

Q. I show you the other letter postmarked January 5th—

Mr. Davis: What year?

Q. 1927. Is that the letter which your husband wrote to your son?

A. 1925.

Q. 1925. Pardon me. Is that the letter which your husband wrote to your son?
30

A. Yes.

Q. And how did you get this letter?

A. They were sent to me.

Q. By whom?

A. By him.

Q. By your son?

A. Yes.

Q. So you knew then that he was alive?

A. Yes.

Q. Now, you have stated that you learned of the death of your husband over the long distance telephone.

- 10 Mr. Gallaher: I would like to have that marked for identification.

(Letter of January 5, 1925, marked Exhibit P1 for identification; letter of January 13, 1925, marked Exhibit P2 for identification.)

Q. You have said you learned of the death of your husband over the long distance telephone. Will you tell me just why that telephone call was made?

20

Mr. Davis: I object to that as immaterial. We are not concerned with the reasons, if the Court please.

(Objection sustained.)

Q. You learned of the death of your husband then?

A. Yes.

- 30 Q. As a result of learning that, what did you do?

A. I notified the local council at once.

Q. What local council?

A. In Camden.

Q. Then what did you do?

A. And asked for what—asked instructions as to procedure.

Q. All right, go ahead and tell us.

A. Well, there was much delay before I received anything, and I sent the vital statistics, though, but they did not send me any final papers, and as soon as I did get them I went to Pittsburgh and investigated and got the proper data as required in the papers.

Q. What do you mean by the proper data? 10

A. Well, certain things, but, see, I went to the middle west, I was not in the east then, that is the reason I did not hear from him.

Q. In the papers which the company sent you or the association sent you, you stated that they asked for the proper data. Now, what do you mean by the proper data?

A. Well, as to how he died and all about it.

Q. And where did you get that information?

A. I got that right at the hospital, right in Pitts- 20
burgh and through people that he knew.

Q. And what did you find as the result of your investigation as to his death?

A. Well, I found that he had been admitted to the main —

Mr. Davis: I object to all this, if the Court please.

Q. As to the date of his death?

A. Oh, July 28th and he died on August 16th, 30
twenty days in the hospital.

By the Court:

Q. What year was this?

A. 1927.

Q. What date do you say he died?

A. He died on August 16, 1927—or 1925.

Q. 1925?

A. Yes, but I kept on paying his dues and did not know he was dead.

By Mr. Gallaher:

10

Q. When you wrote to the local council and requested the necessary papers to fill out showing his death?

A. Yes.

Q. Did you fill out those papers?

A. Yes.

Q. Did you send them to the company?

A. Yes.

20 Mr. Davis: We acknowledge receipt of the notice of the death of this man.

Mr. Gallaher: I will withdraw the question.

Q. Did you ever have any communications with any member of the lodge or the association?

A. Yes.

Q. During what period?

A. August the first was the first letter.

30 Q. Of what year?

A. 1927—no, 1928.

Q. Between what two periods? You stated that you had some correspondence commencing in 1927?

A. With the Supreme Council.

Q. Up to what period in 1928?

A. Up to August 31st.

Q. Did they ever refuse to pay the policy?

A. Not until August 31, 1928.

Q. During all that time they never refused to pay the policy?

A. No, positively not.

Q. I show you letter which is dated August 3d, and which purports to be in your handwriting. Did you ever send a letter similar to that to the supreme secretary of the North American Union Life Assurance Association? 10

A. Yes.

Q. Is this a carbon copy?

A. No.

Q. The jury cannot hear you.

A. No, it is not a carbon copy.

Q. Will you tell us just how you came to write that letter?

20

Mr. Davis: Objected to as immaterial.

Mr. Gallaher: I withdraw the question.

Q. You wrote to the North American Union a duplicate of that?

A. Yes.

Q. Word for word?

A. I believe it to be exact.

Q. Did you write this letter first and then copy off on to another letter, or did you write the other letter first? 30

A. I usually write the original first and keep the other.

Q. So this was made exactly as the other copy?

A. I believe it to be exact.

Mr. Davis: I object to it. It is a copy.

Mr. Gallaher: I would like to offer it in evidence, if your Honor please. She stated she made the other letter exactly the same as this one.

The Court: Was there a call made to produce the
10 original?

Mr. Davis: No, there was no call made.

Mr. Gallaher: No, sir, there was not.

The Court: Well, I think that would be the only basis on which the copy could be used. You may ask counsel now if they have the original of that letter.

20

Mr. Davis: No, sir, we do not. I never knew of that letter until just this minute. We have none of the correspondence between this witness and the defendant.

The Court: I will admit this copy subject to the final disposition of your motion later on in the case. I will reserve a ruling and admit it for the present, but you may move later to strike it out.

30

(Said letter marked Exhibit P3.)

Q. In response to that letter which has just been shown you, did you ever receive a reply from the North American Union Life?

A. Yes, I did.

Q. I show you letter dated August sixth. Is that the letter that you received?

A. Yes.

Mr. Gallaher: Is there any objection to that?

Mr. Davis: Now, if the Court please, I would like to know the purpose of introducing this correspondence. We admit receiving notice of the death of this man and refusal to pay. Now, I would like to be informed. I think I am within my rights in suggesting that be done, counsel's purpose in offering to introduce this correspondence in evidence. 10

Mr. Gallaher: It seems to me they waive the provision of the by-laws by writing these letters.

Mr. Davis: Then, since counsel has stated the purpose, it is objected to as not within the purview of the pleadings. There is no waiver pleaded here, and, in the second place, the objection is further taken that the mere fact that some officer or employe or agent of this company may have impliedly waived these provisions, a solemn provision of the contract of insurance which was executed pursuant to the resolution of the Board of Directors cannot be waived by a mere act of omission or act by a given officer of the company. It would require just as solemn an act to waive it as to authorize the original execution of that contract. 20 30

Mr. Gallaher: If I may state at this time, your Honor, these letters are offered to show that they have waived the provisions of the policy. It was

due to their conduct in leading the plaintiff to believe she would receive her money that the action was not taken sooner. They never refused to pay it until August of 1928.

Mr. Davis: Suppose now, for instance, by reason of the failure to deny liability, they have permitted this woman to remain quiescent for three or four months, why, from her own testimony she was not in position to comply with the terms of the contract of insurance because she did not know of the death of this man until two or three years after he died. Waiver is not pleaded. It is a special defense and requires specific pleading.

Mr. Gallaher: I may be wrong but under the terms of the Practice Act it says nothing about it.

Mr. Davis: I think it is Hornbook law, if your Honor please. I think waiver, as well as the Statute of Limitations, anything of that kind, has to be alleged. In the answer there are detailed specific defenses set up and the reply is merely a general denial of our affirmative defenses.

The Court: Let me, in the first place, at this point, read over these pleadings, will you, please.

Mr. Gallaher, as I read the pleadings and as the matter now stands, you are seeking to recover under the certificate of insurance for the death of this plaintiff's husband?

Mr. Gallaher: That is correct.

(After argument.)

The Court: Well, my conclusion is, Mr. Davis, regardless of whether I dispose of the case or whether it goes on before the jury, I am going to admit these letters subject to your exception.

(Exception noted for defendant.) 10

Mr. Davis: Well, what does your Honor want to do, go on?

Mr. Gallaher: If we can get together and stipulate the facts and submit them to his Honor —

Mr. Davis: I guess all the facts are in.

The Court: There are really no disputed facts, 20
are there?

Mr. Davis: We have our depositions here annexing the copies of notices we received from this woman, date of death, we have here copies of formal proof of death which was furnished and affidavits of the proper officers of the company as to these facts. We also have a copy of the by-laws.

The Court: Have counsel any cases bearing di- 30
rectly on these points?

Mr. Davis: I have none. I might say there is a fact in the case that did not come out yet. We tendered a return of the assessments.

The Court: That is denied?

Mr. Gallaher: There was a tender of premiums over and above the amount paid in during that two year period.

10 Mr. Davis: We tendered back all the premiums and assessments paid between the time of the death and the time of the knowledge of the death; in other words, all the premiums and assessments which, under the by-laws, we were required to tender repayment of, we tendered and were refused. The facts are all in. Here are our depositions. This is the old policy in the Legion of the Red Cross and this is the certificate of insurance between this defendant and the deceased.

20 Mr. Gallaher: I think your Honor has heard enough to know the reason why notice was not given, and if we submit the testimony which Mr. Davis has and the two letters which I have offered for identification but not in evidence, let your Honor pass on it.

The Court: Your letters have been marked?

Mr. Gallaher: For identification.

30

The Court: Are you offering these?

Mr. Gallaher: I had not intended to. I intended to before the case was over.

Mr. Davis: You finish whatever you want to offer

so we can keep the record clean. I object to all these letters. They are going in under my objection.

Mr. Gallaher: I would like to offer that in evidence.

(Said letter is marked Exhibit P4.) 10

Mr. Gallaher: I would like to offer P1 and P2 for identification.

(Said letters marked Exhibit P1 and P2.)

Mr. Gallaher: I also offer the check.

(Said check is marked Exhibit P5.) 20

Mr. Gallaher: I think that covers everything.

The Court: The pleadings seem to deny these provisions are in the by-laws. Do I understand it is admitted they are?

Mr. Gallaher: Yes, they are.

The Court: There is no dispute as to that? 30

Mr. Gallaher: No, sir.

The Court: What do you have, Mr. Davis?

Mr. Davis: I first want to introduce and cause to be marked Exhibit D1 a certificate from the State

of New Jersey, Department of Banking and Insurance, dated February 8, 1915, certifying that the North American Union is duly authorized under the section of the statute we were discussing previously.

(Said certificate marked Exhibit D1.)

- 10 Mr. Davis: This is another certificate, under the hand and seal of the Department of Insurance, certifying that this defendant, formerly known as the North American Union, referred to in D1, is the same as the other.

(Said certificate marked Exhibit D2.)

- Mr. Davis: Then I have here an offer as one exhibit and ask that it be marked D3, a special option
20 whole life protection policy in the Legion of the Red Cross, dated January 2, 1908, and affixed to it a certificate, North American Union, No. 48799, certificate of re-insurance and consolidation with the North American Union and the Legion of the Red Cross, signed by the officers of the North American Union and by the plaintiff's deceased, and then also attached to that a receipt signed by John Kissinger, acknowledging receipt of re-insurance certificate No. 48799 in the North American Union.

30

(Said paper is marked Exhibit D3.)

Mr. Davis: Now, I have here and I might say this offer is being made by consent of counsel, I am offering the laws of the Legion of the Red Cross, not that they are going to help either side in this

case—they will not help or hurt either—but I am offering them merely because of the fact the terms of the certificate of re-insurance states that the North American Union assumes and agrees to pay to the beneficiary or beneficiaries named in the policy, and so forth. I thought that in order to complete the proofs these ought properly go in.

10

(Said paper is marked Exhibit D4.)

Mr. Davis: I also offer the depositions and annexed documents, taken pursuant to notice, depositions of Lillian Price, Gillespie and Cleveland taken in Chicago, Illinois, on April 12, 1929, before Carl Wallace von Helmold, Master in Chancery of New Jersey.

(Said depositions marked Exhibit D5.)

20

The Court: The foreman of this jury will be withdrawn and the jury excused from the further determination of this case.

EXHIBIT P1.

(COPY)

30

Pittsburgh, Pa. Jan. 5th,

Dear Son Ray,

I received your letter with the \$500. enclosed within was very glad to hear from you that the times has changed with you but they are numberless in the same predicament as times has never known to be

as bad as at present but we will have patience and endure them. This is the coldest day we had this winter down nearly zero weather just came in the Hotel and nearly froze my fingers so cold can hardly write will have to close for this time hoping all is well. You was speaking about mother that she was not feeling very well in health. I hope when this
 10 reaches you she is better. Since our difficulties I always wish her well in every turn of life, of course I should have acted better but the cursed drink was the cause of it but I can say truthfully that I have quit it or no doubt would not be living today if I would have continued on but I have will power and have no fear to face any person or anything that comes in my way. Wishing your mother all the success and good health in the future with my love to you both, as ever your Father, John B. Kissinger.
 20 Address Pittsburg
 Genl Delivery. Pa.

(Copy of Envelope)

If not delivered by
 Jan 5th please return
 30 to J. B. Kissinger
 Pittsburg, Pa.,
 Genl Delivery

Pittsburgh, Pa.

Jan 6

5 30 P M

1924

SEVENTH AVENUE HOTEL
Pittsburgh, Pa.

Mr. Ray G. Kissinger
Buffalo Bld,
Hartranch, Mich.

c/o Michigan Steel & Tube
Product Co.

10

EXHIBIT P2.

(COPY)

Pittsburgh, Pa. Jan 13, 1925

Your box was received but was sorry you sent it to me as I told you not to as they was nothing in I could use as I had an overcoat much better than the one you sent me so I give them all away it did not pay to bother with them was just a waste of postage stamps, but thank you just the same as you meant well by so doing, what I most needed was a pair of pants but we don't know everything. The day I received the box I sold her the last box of paper and she was getting ready to go to Detroit and she was just eating her dinner, and she invited me to eat with her she was so pleased with her present that she got in the box. She said the place Harnstrach where you mentioned was about six miles from Detroit and was a lovely country, nice and level, and said if I was there would like much better than here the people are more sociable than her are friendly and nice to get along with here she says it is nothing but grafting I noticed that by the way she treated me she said she would be gone about a fortnight and

would be pleased to have me call again she would buy some more paper if I came back again. I thanked her very much. Her husband is an electrician and makes

10 (Copy of Envelope)

Pittsburgh, Pa.

Jan 13

3 P M

1925

SEVENTH AVENUE HOTEL

PITTSBURGH, PA.

RECEIVED

Jan 15 1925

Mr. E. G. Kissinger
c/o P. O. Box No. 9,
Harnstrach, Mich.

20

EXHIBIT P3.

(COPY)

(Copy)

August 3, 1928.

30 Mr. C. A. Gillispie,
Supreme Secretary,
North American Union.

Dear Sir:

I received your letter requesting me to send you the policy without delay. I am sending the old Legion of the Red Cross certificate number 8341 and

the North American Reinsurance certificate number 48799 by registered mail.

Trusting you will adjust this as quickly as possible.

Yours truly,
Mrs. E. H. Kissinger.
(Copy)

10

EXHIBIT P4.

(COPY)

NORTH AMERICAN UNION LIFE
ASSURANCE SOCIETY.

New United Masonic Temple Bldg.,
32 W. Randolph St.

CHICAGO August 6, 1928

Office of
SUPREME COUNCIL

Mrs. E. H. Kissinger,
Room 303, 1140 Griswold St.,
Detroit, Mich.

Dear Madam:-

We are in receipt of yours of the 3rd inst, enclosing certificate held by your late husband, and the same will be referred to the Supreme President, as well as Camden Council, and the amount due you on this policy will be sent within the next 30 week.

Yours very truly,
NORTH AMERICAN UNION,
C. A. Gillespie
Supreme Secretary.

CAG*N

EXHIBIT P5.

(COPY)

Claim No. 3054

10 NORTH AMERICAN UNION
Life Assurance Society
32 W. Randolph St.

\$165.35

CHICAGO, August 17, 1928.

At ten days sight pay to the order of Elda H. Kissinger _____

THE SUM OF \$165 and 35 CTS Dollars

Value received and charged the same to account of

NORTH-AMERICAN UNION

Life Assurance Society

20

L. K. Cleaveland.

Supreme President.

To A. M. CORWIN, Supreme Treasurer
Payable Through the First National
Bank Chicago, Ills.

The sum shown on the reverse side hereof being the full amount payable, said sum is hereby received as a settlement, full payment and compromise and in full satisfaction and discharge of any and all claims and demands of every nature whatsoever
30 against the North American Union Life Assurance Society and all other affiliated societies arising out of the issuance of a certificate or certificates to

John Kissinger The undersigned, for the purpose of inducing the North American Union Life Assurance Society to pay the said money, represents and warrants herself to be legally related to

the deceased as signed below and is the legal beneficiary under said certificate and knowing that in paying said moneys, the North American Union Life Assurance Society relies on this representation and warranty.

Given voluntarily under seal.

Witness and Address	Beneficiary and Address	
_____	_____	(SEAL) 10
_____	_____	(SEAL)
_____	_____	(SEAL)
_____	_____	(SEAL)

Relation

& _____

20

EXHIBIT D1.

(41)

Permit

to

Foreign Fraternal Beneficiary Association.

STATE OF NEW JERSEY

30

Department of Banking and Insurance

Trenton, February 8, 1915.

IT appearing by the evidence submitted and filed in my office, that North American Union of Chicago in the State of Illinois is conducting its business in accordance with the provisions of the act entitled

“An act regulating fraternal beneficiary societies, orders or associations,” approved March 11th, 1893, as amended, and has otherwise complied with the preliminary requirements of said act;

NOW THEREFORE, I, Thomas K. Johnston, Deputy & Acting Commissioner of Banking and Insurance of the State of New Jersey, in pursuance of the act aforesaid, do hereby permit and authorize the said North American Union to transact business within the State of New Jersey.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at Trenton, the day and year first above written.

Thos. K. Johnston
Deputy & Acting Commissioner of Banking and Insurance.

20

[ENDORSED]

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND
INSURANCE
TRENTON

30 I, Frank H. Smith, Commissioner of Banking and Insurance of the State of New Jersey do hereby certify the foregoing to be a true copy of the Permit issued on February 8, 1915 to the North American Union, of Chicago, Illinois, under Chapter 128 of the Laws of this State for the year 1893, as amended.

IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed my
(Seal) Official Seal, at Trenton, this Twelfth day
of June, A. D. 1929.

Frank H. Smith,
Commissioner of Banking and Insur-
ance of New Jersey.

10

EXHIBIT D2.

STATE OF NEW JERSEY
Department of Banking and Insurance

Bureau of Insurance

20

TRENTON

Office in
Trenton Trust Company
Building

June 12, 1929.

I, Christopher A. Gough, Deputy and Acting Com-
missioner of Banking and Insurance of the State of
New Jersey, do hereby certify that the North Ameri-
can Union Life Assurance Society, of Chicago, Illi-
nois, formerly known as North American Union, was
duly authorized on February 8, 1915 to transact
business within the State of New Jersey under the
provisions of the Act entitled "An Act regulating
fraternal beneficiary societies, orders or associa-
tions, Approved March 11, 1893, as amended, and is
now so authorized.

30

In Witness Whereof, I have hereunto set
my hand and affixed my Official Seal, at
(Seal) Trenton, the day and year first above
written.

C. A. Gough
Deputy and Acting Commissioner
of Banking and Insurance of New
Jersey.

10

EXHIBIT D3.

2/2/5

FILL OUT, DETACH AND RETURN THIS
NOTICE OF RECEIPT AND ACCEPTANCE,
PROPERLY SIGNED, TO GENERAL
MANAGER.

20 MR. F. NUNEMAKER, General Manager
North American Union,
Railway Exchange Bldg., Chicago, Ill.

Dear Sir and Bro. :—

You are hereby notified that Certificate of Reinsur-
ance No. 48799 issued to me, by the NORTH
AMERICAN UNION, has been received, and my
name signed thereto this 26 day of January, 1915.

Fraternally yours,

30 NAME John Kissinger, per Elda H.
Kissinger, wife.

Member of New Jersey Council No. 16
Received Certificate No. Legion of the Red Cross
Jan 30 1915 8341

Mail Address Care H. M. Alward (F. C.)
519 Market Street,
Camden, N. J.

No. 48799

NORTH AMERICAN UNION
CERTIFICATE OF REINSURANCE
AND CONSOLIDATION

THIS INDENTURE witnesseth, that under and by virtue of the agreement of reinsurance and consolidation made and entered into by and between the NORTH AMERICAN UNION and the LEGION OF THE RED CROSS, which became of force and effect on the 29th day of Dec., 1914, and which said agreement, and all the terms and conditions thereof are hereby made a part hereof John Kissinger holder of benefit certificate No. 8341 issued by said LEGION OF THE RED CROSS, is accepted to become a member of the NORTH AMERICAN UNION, eligible to all the privileges of membership therein as acquired under and according to the terms and conditions of said agreement of reinsurance and consolidation. 10 20

The NORTH AMERICAN UNION assumes and agrees to pay to the beneficiary or beneficiaries named in the certificate or policy of insurance of said member, or as such member may lawfully direct, in the event of the death of said member while in good standing, and the furnishing of satisfactory proof, as to the cause and fact of death, the amount of insurance in force and effect and payable on death under and according to the provisions of the laws, rules and regulations of said LEGION OF THE RED CROSS, and its Executive Board in force and effect at the time of execution of said Articles of Agreement, subject to such changes as may be made and provided in and by the laws, rules and regulations of said NORTH AMERICAN 30

UNION, provided, however, that said member has made all the required payments in the time and manner provided by law and has complied with all the laws, rules and regulations of the NORTH AMERICAN UNION, now in force or hereafter enacted, and the terms and conditions of said Articles of Agreement.

- 10 This certificate shall be null and void unless said member, at the time of issuing this certificate, is in good standing, provided, however, that any member under suspension shall have the right to reinstate and become a member in good standing, in accordance with the laws of said NORTH AMERICAN UNION.

- 20 (Seal) IN WITNESS WHEREOF, the North American Union has caused this certificate of reinsurance and consolidation to be signed by its Supreme President and attested and recorded by its Supreme Secretary, at Chicago, Illinois, this 2nd day of January A. D., 1915.

NORTH AMERICAN UNION,

Harold Spensley

Supreme President

G. Laughenry

Supreme Secretary

- 30 Received and signed this 20th day of January, 1915.

John Kissinger,

Per Elda H. Kissinger.

EXHIBIT D4.

CONSTITUTION
OF THE
NORTH AMERICAN UNION 10

ARTICLE VII.

Section 1. The Supreme Secretary shall attest all official documents, and shall perform such other duties as shall be provided by law.

BY-LAWS 20

ARTICLE II.
DUTIES OF SUPREME OFFICERS AND
COMMITTEES.

PRESIDENT.

(10.) All proofs of deaths shall be approved by the Supreme President before being allowed or the benefit paid. 30

SUPREME SECRETARY

(3.) He shall also draw all warrants in payment of mortuary and disability claims which have been

46 *Exhibit D4, Extracts from By-Laws of
the North American Union*

approved by lawful authority, and shall not draw or attest any orders without such approval.

LAWS

10

LAW 3.

MEMBERSHIP.

20 Sec. 18. No member of this Order, or his beneficiary, or any other person or persons in his or their behalf, shall commence any action at law, or suit in equity against this Order for the recovery of any claim or demand whatsoever arising by or from his membership in the Order, or under or by virtue of his Benefit Certificate, unless such action or suit shall be commenced within one year next after the death of such member, and within one year next after the cause of action accrued.

LAW 11.

30

PROOF OF DEATH.

Section 1. It is made the duty of the beneficiary, named or legal, on the death of a member, to give immediate notice of such death, together with the reputed cause, facts and circumstances in connection therewith, to the Secretary of the Council to

Exhibit D4, Extracts from the Laws of 47
the North American Union

which such member belonged, and request proof of death blanks. Such beneficiary shall thereafter diligently have made and furnished to the Order, before payment shall be made of such claim, upon forms provided for such purpose, satisfactory proof of the fact, cause and circumstances of such death, and the liability of the Order thereon. 10

Neither the furnishing by the Order of such blank forms for the proof of death, nor the execution thereof, shall in any case constitute or be construed as an acknowledgment or admission of liability on its part; nor as a waiver or estoppel on its part of maintaining any defense which it may have against such alleged liability under the laws of the Order or the certificate or policy of insurance of the member, or of any default, suspension, or forfeiture of membership or benefits incurred or suffered by or on the part of such member prior to his death; nor shall the making or the execution of such proofs deprive or estop the Order of the right to have and require other, further or additional proof both as to the fact, cause and circumstances of such death, and the liability of the Order thereon, as in the judgment of the Supreme President, General Manager or the Executive Committee may be deemed necessary to establish satisfactorily such fact, cause, circumstances and liability. 20 30

EXHIBIT D5.

State of New Jersey }
County of Camden } SS.
10 IN THE Supreme COURT of New Jersey

Elda H Kissinger
vs.
North American Union } Depositions taken on
Life Assurance Society } April 12th, 1929 and
April 13th 1929

20

INDEX

	Witnesses	Direct	Cross	Re-Dir	Re-Cr
	Notice				
	Commissioner's Oath				
	Lillian Prince	2			
	Charles A. Gillespie	20			
30	Louis K. Cleaveland	29			

NOTICE OF TAKING OF TESTIMONY DE
BENE ESSE.

NEW JERSEY SUPREME COURT

Elda H. Kissinger,

Plaintiff,

vs.

North American Union
Life Assurance Society,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

Defendant.

ACTION AT LAW
NOTICE OF TAK-
ING OF TESTI-
MONY DE BENE
ESSE.

10

20

TAKE NOTICE that the defendant in the above
entitled action, will take the testimony de bene esse
of C. A. Gillespie, Lillian Prince, Alice Page, L. K.
Cleaveland, witnesses, who reside out of this State,
to wit: at Chicago, Illinois, before Carl Wallace
Von Helmolt, a Master in Chancery of the State
of New Jersey, on Friday the twelfth day of April, 30
A. D., One thousand nine hundred and twenty nine,
at eleven o'clock A. M., at the office of Brannon,
Maloney & Wooster, Esqs., Room 1915, 11 South
LaSalle Street, Chicago, Illinois, said testimony to
be taken on oath or affirmation of said witnesses
on interrogatories to be then and there put by the

defendant or its counsel, and that this notice is given to you in order that you may be present and put interrogatories on behalf of the plaintiff, if you shall see fit.

Dated March 30, 1929.

Yours respectfully,

Charles DeF. Besoré

Attorney of defendant.

10

To Edwin G. Scovel, Esq.,
Attorney of Plaintiff.

(Endorsed)

NEW JERSEY SUPREME COURT

20

Elda H. Kissinger,
Plaintiff,

vs.

North American Union Life Assurance
Society, a corporation, etc.,
Defendant.

ACTION AT LAW
NOTICE OF TAKING OF TESTI-
MONY DE BENE ESSE.

30

Charles DeF. Besore, Esq.,
Attorney of Defendant,
Trenton Trust Building,
Trenton, New Jersey.

Service of the within notice is hereby acknowledged this 1st day of April, 1929, and consent is hereby given to

take said testimony on short notice as therein provided.

Edwin G. Scovel
Attorney of Plaintiff
Charles DeF. Besoré
Trenton Trust Bldg.
Trenton, N. J.

10

STATE OF ILLINOIS }
COUNTY OF COOK } SS

ELDA H. KISSINGER,
Plaintiff,

vs

NORTH AMERICAN
UNION LIFE ASSUR-
ANCE SOCIETY, a cor-
poration existing under
and by virtue of the
State of Illinois,
Defendant.

ACTION AT LAW 20
Now pending and un-
determined in New
Jersey Supreme
Court, Camden
County, New Jer-
sey.

30

COMMISSIONER'S OATH.

I, Carl W. von Helmolt, residing in the City of Chicago, in the County of Cook and in the State of Illinois, duly appointed a Foreign Commissioner of Deeds for New Jersey, do solemnly swear that I

will faithfully, fairly and impartially execute the commission to take the deposition of Lillian Prince, in the above action.

(Seal) Carl W. von Helmolt
Foreign Commissioner of
Deeds for New Jersey.

10 Subscribed and sworn to before me
this 12th day of April, A. D. 1929.
Clara E Lundquist
(Seal) Notary Public.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

20 I, HARRIET HEINEMANN, being first duly
sworn, upon oath by Carl W. Von Helmolt, Foreign
Commissioner of Deeds for New Jersey, depose and
say that I am a court reporter in the courts of Cook
County, in the City of Chicago, State of Illinois, and
that I will carefully, faithfully and impartially take
the evidence and testimony of the witnesses in this
case, and will carefully, faithfully and impartially
transcribe the same from my stenographic notes
taken on the hearing of the said deposition upon a
typewriter, so as to truly record the testimony of
30 each of the said witnesses.

Harriet Heinemann

Subscribed and sworn to before me this
30th day of April, A. D. 1929.
Carl W. von Helmolt
(Seal) Foreign Commissioner of
Deeds of New Jersey.

NEW JERSEY SUPREME COURT

CAMDEN COUNTY

ELDA H. KISSINGER

vs.

NORTH AMERICAN
UNION LIFE ASSUR-
ANCE SOCIETY, a cor-
poration existing under
and by virtue of the
State of Illinois

10

The DEPOSITION of MISS LILLIAN PRINCE, witness of lawful age, produced, sworn, and examined on her oath on the 12th day of April, A. D. 1929, at the office of Messrs. Brannan, Maloney & Wooster, before Carl W. von Helmolt, a foreign commissioner of deeds for New Jersey, 11 South Dearborn Street, Chicago, Illinois, in a certain suit and matter in controversy now pending and undetermined in the New Jersey Supreme Court wherein Elda H. Kissinger is plaintiff and North American Union Life Assurance Society, a corporation, is defendant. 20

The plaintiff was not represented by attorney, having failed to appear at the time of the taking of the deposition, either personally or by counsel; 30

The defendant appeared by Mr. David B. Maloney, its Chicago attorney.

I, CARL W. VON HELMOLT, a foreign commissioner of deeds for New Jersey for the district of Chicago, County of Cook and State of Illinois, duly appointed according to law by the Governor of New Jersey and empowered to take depositions, and having first taken an oath before CLARA LUNDQUIST, a Notary Public of Illinois well and
10 impartially to take the said deposition, upon notice that said deposition was to be taken before me on the 12th day of April, 1929, at the hour of 11 o'clock A. M. at the office of Brannan, Maloney & Wooster, Room 1915, 11 South La Salle Street, Chicago, Cook County, Illinois; do hereby certify that: to wit—

MISS LILLIAN PRINCE,

being first duly sworn by me as a witness in said
20 cause previous to the commencement of her examination to tell the truth, as well on the part of the plaintiff and the said defendant, so far as she shall be interrogated, deposed and testified as follows:

DIRECT EXAMINATION.

By Mr. Maloney:

- 30 Q. State your name?
A. Lillian Prince.
Q. And your address?
A. 1635 Chase Avenue.
Q. Chicago, Illinois?
A. Chicago, Illinois.
Q. You are connected with the North American Union Life Assurance Society, are you?

A. Yes, sir.

Q. And in what capacity are you connected with the North American Union?

A. Chief clerk.

Q. Now, then, what are your duties as chief clerk, referring particularly to claims?

A. I have charge of all death claims.

Q. For over what period of time have you had charge of all death claims? 10

A. About five years.

Q. Well, is it more than five years?

A. No, I don't think so; I think it is between four and five.

Q. You have had charge of them since, would you say about January, 1925?

A. Yes, sir.

Q. And during the time since January, 1925, have you received and examined all death claims or notices of death which were received by the North American Union Life Assurance Society or which came to the North American Union Life Assurance Society during the regular course of mail? 20

A. I have.

Q. Have you received all notices of claims or notices of death or proofs of death which came to the North American Union Life Assurance Society by messenger or personal delivery?

A. I have. 30

Q. Is there anyone else in the North American Union Life Assurance Society who would receive claims other than yourself?

A. No, sir.

Q. During that period of time, your answer would be the same?

A. Yes, sir.

Q. Now then, will you examine defendant's exhibit 1 for identification—which I will ask to have marked —

(Document marked as requested.)

10 Q. — purporting to be a form of proof of death, that is, defendant's exhibit 1 for identification (handing document to the witness), and ask you whether you recognize the same?

A. I do.

Mr. Maloney (Addressing reporter): Will you mark these first: the second page defendant's exhibit 1a and the next page 1b and the next 1c and the next 1d, and the next 1e, and the next 1f, and
20 the next 1g, for identification.

(Documents marked as requested.)

Q. Approximately when did you receive this document, that is, defendant's exhibit 1?

A. January 11, 1928.

Q. And is that in the same condition as it was at the time you received it?

A. It is.

30 Q. I hand you defendant's exhibit 1a and ask you whether or not you recognize that document?

A. I do.

Q. And when did you receive that document?

A. January 11, 1928.

Q. How did you receive those documents, now re-

ferring to defendant's exhibit 1 and 1a, for identification?

A. Through the United States mail.

Q. Through the regular course of the United States mail?

A. Yes, sir.

Q. Now then I hand you defendant's exhibits 1b to 1g, both inclusive, and ask you if you recognize 10
the same?

A. I do.

Q. And when did you receive this document?

A. March 2, 1928.

Q. How did you receive that document?

A. Through the regular course of the United States mail.

Q. Now then, did you at any time prior to the date of January 11, 1928, receive a notice of the death of John Kissinger? 20

A. No.

Q. Of Pittsburg, Pennsylvania?

A. No, sir.

Q. Did you prior to March 2, 1928, ever receive a proof of death?

A. No, sir.

Q. Of John Kissenger, a member of the North American Union Life Assurance Society?

A. No, sir.

Q. Is this document, defendant's exhibit 1b to g 30—the first and only proof of death that the North American Union received of the death of John Kissinger?

A. Yes, sir.

Q. Now then, upon receipt of this proof of death, did you do anything concerning the same?

A. I made a record of it in the regular manner.

Q. Did you send any notice to the beneficiary named there?

A. After we received this, you mean?

Q. Yes?

A. No, not personally.

Q. Now then, examine defendant's exhibits 1b to 10 1g, and state whether or not it is in the same condition as it was when you received it?

A. It is.

Mr. Maloney: I make the offer now to tender the same in evidence.

.....
The witness being first duly sworn upon oath to the said deposition says that her answers to the said questions are the 20 answers made on the taking of said deposition, and that the same are true.

Lillian Prince

(Seal)

Carl W. von Helmolt
Foreign Commissioner of
Deeds for New Jersey.

DEFENDANT'S EXHIBIT 1.

30

id

(Stamped):

RECEIVED

JAN 11 1928

N A U

NOTE—Forward this blank, properly filled out to

the Supreme Office, without delay, upon a death occurring in your Council.

NOTICE OF DEATH—Re: Benefit Certificate
No. 48799

To the Supreme Secretary, North American Union,
56 W. Randolph St., Chicago:

You are hereby notified that John Kissinger re-
(Give name in full) 10

siding at Pittsburgh Pa., insured in our Order for \$1000 whose monthly premium was \$610: for the Supreme Council, and \$75 ct. $\frac{1}{4}$, Council dues, a total of \$. per month, died on the 16 day of August A. D. 1925 at Pittsburgh Pa. Allegheney Co. Township of Sth Fayette.

My record shows the payments for last (12) months to have been as follows:

Ledger Page	Premium No.	For Month of	Date Paid	Total Paym't	Supreme Council	Local Council	Fines Paid	Remarks
132/15		Nov 1926	11/29/26		610	1/4		
132/15		Dec "	12/13/26		610	75		
139/9		Jan 1927	1/17/27		610			
139/9		Feb	2/28/27		610			
139/9		Mar	3/28/27		610	75		
139/9		Apr	4/11/27		610			
139/9		May	5/23/27		610			
139/9		June	6/13/27		610	75		
139/9		July	7/11/27		610			
139/9		Aug	8/22/27		610			
139/9		Sept	9/26/27		610	75		
139/9		Oct	10/24/27		610			

60 Exhibit D5, Testimony Taken De Bene Esse

Exhibit D5, Testimony Taken De Bene Esse 61

Cause of death
Give particulars if known

(In ink):

Enclosed please find Certf of Bureau of Vital
Statistics

I hereby certify that the information in this preliminary notice is a true and correct statement of the data contained in my records, that I have examined this notice and have copied said information correctly from my records. I make such statement for the purpose of furnishing information showing the actual standing of said member in the North American Union by my records, which I know to be correct. 10

WITNESS my hand and seal this 9 day of Jan,
1927

H B Phillips (Seal)

(Seal)

Collector. 20

Council Camden

No. 217

Address Wood Lynne N J Telephone No.

COLLECTOR. Forward this report at once as proofs will not be furnished until this report is received. BE SURE TO GIVE WHATEVER YOU NOW KNOW OF, AS TO CAUSE OF DEATH, stating any peculiar circumstances concerning the last illness of deceased, if you know of any.

(In pencil):

30

BC #48799—Ins 1000—Rate 6.10—Special Option
—OK L.D.

I hereby certify that I am the Commissioner before whom the deposition of Miss Lillian Prince

62 *Exhibit D5, Testimony Taken De Bene Esse*

was taken on this, the 12th day of April, 1929, in the case of Elda H. Kissinger versus North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's exhibit 1, for identification is the document identified by Lillian Prince on the taking of
10 the said deposition and by me identified by my signature.

(Seal)

Carl W. von Helmolt
Foreign Commissioner of
Deeds for New Jersey.

20

DEFENDANT'S EXHIBIT 1-a.
id

(Stamped):
RECEIVED
JAN 11 1928
N A U

No. 319519

This is to Certify that the following is a true and
30 correct copy of a certificate of death filed in the
Bureau of Vital Statistics, Pennsylvania State Department of Health, as directed by Act of Assembly.

Evelyn Jones
(State Registrar)

Jan. 4, 1928
(Date)

CERTIFICATE OF DEATH

1. Place of Death
County of Allegheny
Township of South Fayette
or
Borough of 10
or
City of
Registration District No. 150
Primary Registration District No. 2047
Commonwealth of Pennsylvania
Department of Health
Bureau of Vital Statistics
File No. 82013
Registered No. 374
[If death occurred in a Hospital or
Institution give its NAME instead 20
of street and number.]

2. Full Name John Kissinger
(a) Residence. No. St., ... Ward.
(Usual place of abode)
.....
(If nonresident give city or town and State)
Length of residence in city or town where death
occurred yrs. mos. ds.
How long in U. S., if of foreign birth? yrs. 30
mos. ds.

PERSONAL AND STATISTICAL
PARTICULARS

3. Sex Male
4. Color or Race White

64 *Exhibit D5, Testimony Taken De Bene Esse*

5. Single, Married, Widowed or Divorced (write the word) Widower
- 5a. If married, widowed, or divorced
Husband of
(or) Wife of
6. Date of Birth (month, day, and year)
7. Age 73 Years . . . Months . . . Days
10 IF LESS than 1 day . . . hrs. or . . . min.
8. Occupation of Deceased
(a) Trade, profession, or particular kind of work Laborer
(b) General nature of industry, business or establishment in which employed (or employer)
(c) Name of employer
9. Birthplace (city or town)
20 (State or Country) Pennsylvania
Parents
10. Name of Father John
11. Birthplace of Father (city or town)
(State or Country) Pennsylvania
12. Maiden Name of Mother Unknown
13. Birthplace of Mother (city or town)
(State or Country) Pennsylvania
14. Informant James S. Hammers, Medical Director & Superintendent
(Address) Mayview, Pa.
- 30 15. Filed Aug. 18, 1925 C. F. Marshall
Registrar
Oakdale, Pa.

MEDICAL CERTIFICATE OF DEATH

16. Date of Death Aug. 16 1925
(Month) (Day) (Year)

17. I Hereby Certify, That I attended deceased from 7-28-1925 to 8-16-1925, that I last saw him alive on 8-16-1925 and that death occurred, on the date stated above, at 5.15 A. M. The Cause of Death* was as follows:

Acute Myocarditis
..... (duration) yrs. mos. days
Contributory Senile Psychosis 10
(Secondary)
..... (duration) yrs. mos. days

18. Where was disease contracted
if not at place of death? Unknown
Did an operation precede death? Date of
Was there an autopsy?
What test confirmed diagnosis?

(Signed) Geo. I. Yearich
8-16-1925 (Address) Mayview, Pa.
*State the Disease Causing Death, or in deaths from 20
Violent Causes, state (1) Means and Nature of In-
jury, and (2) whether Accidental, Suicidal, or Hom-
icidal. (See reverse side for additional space.)

19. Place of Burial, Cremation or Removal
Anatomical Board
Date of Burial Aug. 18, 1925
20. Undertaker Wm. A. Kind
Address Mayview, Pa.

(In margin): 30

Margin Reserved for Binding
Write Plainly With Unfading Ink—This is a
Permanent Record
N. B.—Every item of information should be care-
fully supplied. AGE should be stated EX-

ACTLY. PHYSICIANS should state CAUSE OF DEATH in plain terms, so that it may be properly classified. Exact Statement of OCCUPATION is very important.

10 I hereby certify that I am the Commissioner before whom the deposition of Miss Lillian Prince was taken on this, the 12th day of April, 1929, in the case of Elda H. Kissinger versus North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked Defendant's Exhibit 1a for identification is the document identified by Lillian Prince on the taking of the said deposition and by me identified by my signature.
20

(Seal) Carl W. von Helmolt
Foreign Commissioner of
Deeds for New Jersey.

DEFENDANT'S EXHIBIT 1-b.
id

30 (Rubber Stamp)
RECEIVED
BY MAIL
MAR 2-1928
North American Union

To Whom It May Concern:—

In re: JOHN KISSINGER, deceased.

The following proofs of loss hereto attached are

furnished in accordance with request. These proofs of loss are furnished with the understanding that the North American Union does thereby waive no right it may have by reason of failure of the insured to comply with the laws, rules and regulations of the North American Union, or to abide by the obligations of his contract or as a member; said proofs of loss are furnished solely for the purpose of enabling the beneficiary to present any fact or to do anything which in her opinion may be proper, or may influence the North American Union in its disposition of any claim if and when presented. 10

Yours truly,
NORTH AMERICAN UNION.

I hereby certify that I am the Commissioner before whom the deposition of Miss Lillian Prince was taken on this, the 12th day of April, 1929, in the case of Elda H. Kissinger, versus North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's Exhibit 1-b to 1-h for identification is the document identified by Lillian Prince on the taking of the said deposition and by me identified by my signature. 20

(Seal)

Carl W. von Helmolt 30
Foreign Commissioner of Deeds
for New Jersey.

DEFENDANT'S EXHIBIT 1-c.

id

(Rubber Stamp)

RECEIVED

BY MAIL

MAR 2-1928

10

North American Union

(Rubber Stamp)

RECEIVED

BY MAIL

MAR 2-1928

North American Union

INSTRUCTIONS FOR EXECUTION OF
DEATH PROOFS

20

NOTE: The furnishing of these blanks by the North American Union, upon which to make proof of claim, is not an acknowledgment of any liability whatsoever of said Society, and is not to be construed as a waiver of any defense it may have.

30

All proofs in claims should be received at the North American Union Home Office, 56 W. Randolph Street, Chicago, not later than the tenth day of the month, in order that such claims may be considered by the Executive Committee at the meeting of that month.

1. ~~THE~~ THE RECORD OF DEATH FROM THE LOCAL OR STATE BOARD OF VITAL STATISTICS MUST BE FURNISHED IN ALL CASES WITH THE OTHER PROOFS OF DEATH.

2. To insure promptness in the settlement of death claims it is essential that care be taken in filling out the various proofs. 10

3. The undertaker and physicians will make out their statements in their own handwriting, and street and number of residence or business address in cities, should be stated. If more than one physician was engaged or called in consultation, the statement of each must be furnished on separate blanks. One blank will be found herein, and if more than one physician was engaged, request additional blanks from Home Office. 20

4. Where more than one beneficiary is named, each beneficiary should sign the beneficiary's affidavit (Blank No. 2), if possible, and where any are minors, a guardian must sign, who must furnish a certified copy of his appointment.

5. Should one or more of the beneficiaries named be dead, proof of the death must be made. 30

6. Where the beneficiary dies AFTER the member, and before proofs have been made, the administrator of the estate of the beneficiary will make and sign the beneficiary's affidavit, but a certified copy of his appointment as such must be furnished.

70 *Exhibit D5, Testimony Taken De Bene Esse*

7. If the remains were not identified by a member of the Order a special form of identification blank must be applied for.

8. In all cases of sudden or mysterious death, a certified copy of the verdict and the evidence on which such verdict is based, before coroner or other officers, will invariably be required, and in all cases of death from unknown causes the particulars and result of any investigation held in the case, whether official or unofficial, will be required.

9. Clippings from papers or publications must be secured and attached to or pasted to Blank No. 5. Be sure to give name of paper and date and place of issue.

10. Each certificate or statement requiring affidavit must be sworn to before an officer duly authorized to administer oath. The notary or other person before whom an affidavit is made, will in all cases attach his official seal. If a notary, he must also state when his commission expires.

11. If death proofs or any part thereof be executed in a foreign country, the official character of the person administering the oath or the clerk or other officer of a court, certifying thereto, must be authenticated by a consul or minister of the United States residing in such foreign country, nearest to residence of affiant.

12. The age and place of residence of all claimants must be stated, and duly certified copies of letters

of guardianship and of the bond must be provided in all cases where guardian has been appointed.

13. In case of minor children, a guardian must be appointed by a court having jurisdiction, and copies of appointment and bond certified by the officers of the court, under official seal, must be furnished before the claim can be adjusted. The guardian for minor children must fill out and swear to the answers in the blank entitled, "Beneficiary Affidavit," which accompanies these proofs. 10

14. The Society reserves the right to require such further evidence and information as may be deemed necessary, without thereby acknowledging any liability of the Society.

15. The local officers are forbidden to allow a copy of blanks of proof of death to be given to any person for any reason other than for the filling out of the proof of death of the deceased member. 20

16. In giving address of beneficiary, extreme care should be used in giving correct street address, or R. F. D. address.

✉ Mail to Mortuary Department North American Union, 56 W. Randolph Street, Chicago. 30

DEFENDANT'S EXHIBIT 1-d.

id

ATTENDING PHYSICIAN'S AFFIDAVIT

10

NOTE: The furnishing of these blanks by the North American Union, is not an acknowledgment of any liability whatsoever of said Society, and is not to be construed as a waiver of any defense it may have.

20 State of }
County of } ss.

..... M. D.,
address

Tel., a practicing physician of recognized good standing in the medical profession, first being duly sworn upon oath says: I graduated from Medical College in; that I was personally acquainted with.....

30 now deceased, formerly a member of..... Council No., residing and that the answers to the following questions are true and correct to the best of my knowledge and belief and are in my own handwriting.

1. Deceased's occupation and character of work
2. How long have you known deceased?.....
3. How long had you been the medical attendant or advisor of the deceased?.....
4. (a) When, (b) how long, and (c) for what did you treat or advise deceased prior to his last illness? 10
Give as complete a history as possible. A.....
5. (a) When, (b) how long, and (c) for what did you treat or advise deceased during his last illness? Give as complete a history as possible. A.....
6. Date of first visit..... 19...
Date of last visit 19... 20
7. (a) Place of death.....
(b) Date of death..... 19...
8. Names and addresses of physicians attending deceased during last 3 years. When and for what?
9. Was death caused by (a) disease.....
(b) accidental violence (c) homicide
..... or (d) suicide.....
10. IF DISEASE, state (a) what disease was 30
final cause of death.....
(b) What was the primary or predisposing cause?
- (c) Date or origin, at or about.....
(d) What were the dominant symptoms, or clinical features present during its progress?

74 *Exhibit D5, Testimony Taken De Bene Esse*

- (e) Is there any question in your mind as to the accuracy of your diagnosis?.....
- (f) Was it complicated by any other disease, acute or chronic?
- (g) If so, by what disease?
- And how long?
- (h) Was there any special cause, direct or indirect, for the death in the habits, occupation or residence of deceased? If so, state in full
-
- (i) State predisposing causes, date or first appearance of its symptoms, the history and symptoms during its process. A.....
-
-

Blank No. 3—Attending Physicians Affidavit.

- 20 . (Continued on reverse side.)
(Continued from reverse side.)
- 11. IF NOT FROM DISEASE, specify:
-
- 12. If from accidental violence, state fully how it occurred
- (a) If from homicide, state circumstances and means or weapons used in the killing
-
- (b) Name person or persons implicated
- 30
- 13. If suicide, state (a) by what means, as by weapons, drug, drowning, etc.
- (b) State motive or cause
- 14. If due to alcoholism, state whether (a) acute, (delirium tremens)
- or (b) chronic

Exhibit D5, Testimony Taken De Bene Esse 75

15. (a) Did the deceased use intoxicants or narcotics?

(b) If so, to what extent?

(c) Did it contribute to the fatal illness?

16. (a) Was an autopsy or post mortem held? ..

.....
(b) By whom and when?

Give address 10

(c) And what did it reveal?.....

17. For how long a time was deceased confined to the house or prevented from attending to business? A

.....
18. Did you see the dead body of said person and identify it as such?

19. Have you any knowledge or have you ever heard that deceased suffered from any other disease or physical ailment than as mentioned in question No. 4? If so, state the time and nature of the same and physicians attending. A..... 20

.....

20. Please give any information that in your judgment tended to shorten the life of the deceased, or that will assist in promptly getting all facts and circumstances clearly before us.

..... 30

.....

..... M. D.

Address

Telephone

76 *Exhibit D5, Testimony Taken De Bene Esse*

State of }
County of } ss.

Subscribed and sworn to in the said County of
..... State of
before me, a notary public in and for the County
and State aforesaid, this day of
10 A. D. 19...., and I certify that
the said affiant is personally known to me and I do
further certify that under and by virtue of the Laws
of this State that I as a notary public, am duly au-
thorized to administer oaths and take acknowledg-
ments as here done. My commission expires
..... 19....
.....
.....

20

DEFENDANT'S EXHIBIT 1-e.
id

UNDERTAKER'S AFFIDAVIT

30 NOTE: The furnishing of these blanks by the North
American Union, upon which to make proof of
claim, is not an acknowledgment of any liability
whatsoever of said Society, and is not to be
construed as a waiver of any defense it may
have.

Exhibit D5, Testimony Taken De Bene Esse 77

I,, an undertaker, with place of business at Street, City of State of being first duly sworn on oath, says: that on the day of, 19..., I was called to prepare the body of then lying dead at 10 Street, City of State of That I did prepare said remains for burial (or shipment). That I did bury (or ship) the remains of said at (or to) Cemetery, located at County of, State of on the day of 19... I further state that I was able to positively identify 20 the remains of said State if acquainted with deceased during life, or upon what information identification is based. A Remarks: State if there were any unusual circumstances in connection with the death or burial of Deceased (Question must be answered.) 30

STATE OF }
COUNTY OF } ss.

Subscribed and sworn to in the said County of State of

..... before me, a
notary public in and for the County and State afore-
said, this day of
A. D. 19...., and I certify that the said affiant is
personally known to me and I do further certify
that under and by virtue of the laws of this state
that I, as a notary public, am duly authorized to
10 administer oaths and take acknowledgments as here
done. My commission expires
19....

.....
(SEAL) Notary Public.

Blank No. 4—Undertaker.

NEWSPAPER CLIPPINGS

IMPORTANT—Pin or paste to this sheet clip-
pings from all papers or periodicals mentioning the
circumstances in relation to the death and burial of
20 the deceased member, and in the blank spaces state
name and location of paper, and date of issue. It
is important that all clippings be secured and for-
warded with this notice. If there was no newspaper
account, so state.

The following clipping was taken from
..... paper published
at on the
day of 19...

The following clipping was taken from
30 paper published
at on the
day of 19...

The following clipping was taken from
..... paper published
at on the
day of 19...

These clippings were attached hereto by
.....
Address.
Blank No. 5—Newspaper.

DEFENDANT'S EXHIBIT 1-f. 10
id

BENEFICIARY AFFIDAVIT
TO ESTABLISH PROOF OF DEATH AND
AFFIANT'S INTEREST

NOTE: The furnishing of these blanks by the North American Union, is not an acknowledgment of 20 any liability whatsoever of said Society, and is not to be construed as a waiver of any defense it may have.

STATE OF Michigan }
COUNTY OF Wayne } ss.

IMPORTANT: The answers to the following 30 questions must be made before a Notary Public, or Clerk of Court, by the Beneficiaries or Claimants.

1. Name of deceased in full and residence John Kissinger 428 Duquense Way, Pittsburgh, Pa.
2. Date of death, Aug. 16th 1925 Place Mayview Hospital, Mayview, Pa.

3. Last occupation deceased engaged in and when selling stationery and jewelry—traveling-Jobber, buying and selling own goods no employer. (Give full particulars, employers' addresses, time, etc.)

4. Date of birth Dec. 9, 1851 Place Martinsburg, Pa.

10 5. Source from which date of birth was obtained? Bible record.

6. (a) Contributing cause of death Senile Psychosis.

(b) Immediate cause of death Acute heart decease.

7. Benefit Certificate. No. 8341 Date Jan 2, 1908 Amount, \$1000. Now in the possession of Elda H. Kissinger.

Name and Address.

8. Beneficiaries and addresses (give all).

20 Elda H. Kissinger, 2260 Fullerton Ave.

Age. Amount. Relation.

64 \$1000 Wife

9. If any are minors, give name and address of guardian, also attach certified copy of letters of guardianship

.

10. Give various occupations in which deceased has been engaged for past five years with the years: When. Day Occupation. Salesman How long. 25

30 years Employers and Addresses. No Employer

11. Give names and addresses of each and every physician who prescribed for or attended deceased during last five years of life and for what ailments and year each was consulted Know of no attending physician other than at Mayview.

12. (a) Duration of last illness 20 days (b) When

first noticed about April 1925 (c) How? by frequent disability.

13. List of other Life benefits or insurance carried: No other insurance

Name of companies or societies and addresses:

	Amount
.....	
.....	10
.....	
.....	
.....	
.....	
.....	
.....	

(Continued on reverse side.)

Blank No. 2—Beneficiary Affidavit.

(Continued from reverse side.)

14. Have any relatives (including uncles and aunts) or ancestors of the deceased ever had, or did they die of insanity, consumption, Bright's kidney disease, scrofula or any hereditary disease? If so, state names, relationship, disease and date.

None that I know of.

Name and place of death.	Relation.	Date of Death.	Disease	
.....				
.....				
.....				30

15. Names and addresses of parents and brothers and sisters of the deceased living.....

.....
.....

16. If any of family of deceased are dead, give

their ages at death, cause and date. Do not use such terms as "fevers," "change of life," "exposure," "old age" or "debility." If the answer is "child-birth," state whether or not there was any disease of the chest connected with it.

- | | | | |
|----|--|------------------|----------------|
| | Name. | Age. | Date of Death. |
| | Father John Kissinger | Not Know | Not Know |
| 10 | Cause. | Place of Death. | |
| | Not Know | Wyoming, Ill. | |
| | Name. | Age. | Date of Death. |
| | Mother Elizabeth Camerer | Not Know | Not Know |
| | Cause. | Place of Death. | |
| | Not Know | Martinsburg, Pa. | |
| | Name. | Age. | Date of Death. |
| | Daughter Ida May Kissinger | 3 years | Oct. 27, 1882 |
| | Cause. | Place of Death. | |
| | Diphtheria | Brooklyn, N. Y. | |
| 20 | Brothers and Sisters (half and full) | None | |
| | 17. If beneficiary or one of them is the widow or widower of deceased, give date and place where married to deceased member Nov. 5, 1885 Pittsburgh Pa Rev J T McCrory U P Ch. License #284. | | |
| | 18. How many times was deceased married, to whom, where and dates? Twice Ida A Crolius, Brooklyn N Y. Nov 2-1876 | | |
| | 19. Names of former husbands or wives. Ida A Kissinger Died or Divorced. Died Date. Dec 30-1880 Where. Brooklyn, N. Y. | | |
| 30 | 20. Was death caused by violence, or any other than natural causes? (If so, describe) no | | |
| | 21. Was death caused by suicide? (means) No | | |
| | 22. Give number and date of payment of last three assessments paid by member as appears on his receipt. | | |

Number	For month of	Date Paid	Amount
8		August 15th, 1927	\$6.10
	Paid to	Paid by	
	H. B. Phillips	Elda H. Kissinger	
Number	For month of	Date Paid	Amount
9		September 16th, 1927	6.10
	Paid to	Paid by	
	H. B. Phillips	Elda H. Kissinger	10
Number	For month of	Date Paid	Amount
10		October 21st, 1927	6.10
	Paid to	Paid by	
	H. B. Phillips	Elda H. Kissinger	

23. (a) Did deceased, to your knowledge, ever make any assignment of the certificate? (b) If so, to whom? (c) For what purpose or consideration? (d) When? No Assignment.

24. Have you stated fully, without evasion or mental reservation all matters connected with the health and history of the deceased, of which you are aware Yes

If not, state remainder here:.....

(Continued on next page)

DEFENDANT'S EXHIBIT 1-g.

id

30

(Continued from proceeding page)

STATE OF Michigan }
 COUNTY OF Wayne } ss.

I, Elda H Kissinger, who bore relationship to the deceased of Wife

and I,
who bore relationship to the deceased of.....
and I,
who bore relationship to the deceased of.....
and I,
who bore relationship to the deceased of.....
and I,
10 who bore relationship to the deceased of.....
and I,
who bore relationship to the deceased of.....
the Claimant.. (or Guardian for Claimants or
minors) named in this statement, each for himself,
having been first duly sworn, upon oath deposes and
says that the foregoing questions and answers have
been carefully read; that each and every one of said
answers is full, complete, and true, and made with-
out evasion, concealment or mental reservation, for
20 the purpose of establishing an interest in the bene-
fits that may, be due upon Benefit Certificate No.
48799, held by John Kissinger late a member of
Camden Council No. 217, Council No. 217 located
at Camden, New Jersey and I further certify that
I have carefully read and examined the certificate
of Vital Statistics, Attending Physicians Affidavit,
Affidavit of Family Physician, Undertakers Affi-
davit, Coroners report and transcript of testimony
taken at Inquest, if one was held, and that the same
30 are submitted by me as a true statement of the facts
pertaining to the death of the insured, now deceased,
knowing that the North American Union will rely
upon the same in determining the legality of the
claim against the North American Union, and that
the same will be used by the North American Union
for any and all purposes in connection with this

claim against the North American Union, and that in making payment the North American Union will rely upon the same as being a full and true warranty of the facts therein contained.

Elda H. Kissinger

.....
.....
..... 10
.....
.....

STATE OF Michigan }
COUNTY OF Wayne } ss.

20

I A. J. Monnig a in
(Notary Public or Clerk of Court of Record.)
and for the said County in the State aforesaid, do hereby certify that the foregoing affidavit was subscribed and sworn in the said County before me this 23rd day of February, 1928, by the said Elda H. Kissinger who severally appeared before me in person, and who has personally known to me to be the person.. whose name is subscribed to the foregoing oath, and is credible citizen.. residing in said County and State. I further certify that I am a Notary Public in and for the County and State aforesaid and that under and by virtue of the Statutes and Laws of said State, I am authorized to act in the manner and form as here done as such officer. 30

I further certify that my commission expires January 6, A. D. 1931.

(Seal) A. J. Monnig
Notary Public, Wayne Co. Mich.
(Official Designation of Officer
taking acknowledgment.)

10



STATE OF }
COUNTY OF } ss.

I a in
(Notary Public or Clerk of Court of Record.)
20 and for the said County in the State aforesaid, do
hereby certify that the foregoing affidavit was sub-
scribed and sworn in the said County before me
this day of,
19...., by the said.....
.....
who severally appeared before me in person, and
who personally known to me to be the person..
whose name subscribed
to the foregoing oath, and credible
30 citizen.. residing in said County and State. I fur-
ther certify that I am a.....
in and for the County and State aforesaid and that
under and by virtue of the Statutes and Laws of
said State, I am authorized to act in the manner and
form as here done as such officer. I further certify

that my commission expires

A. D. 19.....

(SEAL)

.....
.....

(Official Designation of Officer taking
acknowledgment.)

Blank No. 2—Beneficiary Affidavit—Continued. 10

DEFENDANT'S EXHIBIT 1-h.

id

NOTE: The furnishing of these blanks and filling 20
out of the same by the officers or the local coun-
cils of the North American Union, is not an ac-
knowledgment of any liability whatsoever of
said Society, and is not to be construed as a
waiver of any defense it may have.

NORTH AMERICAN UNION

56 West Randolph Street

CHICAGO, ILL.

In re: John Kissinger Deceased. Benefit certificate 30
No. 48799 \$1000.00

COUNCIL REPORT

was admitted by card
This is to certify that John Kissinger was initiated
into this Council on the.....
day of, 19.... His or her

occupation at time of admission was.....

The Benefit Certificate is payable as follows:

Name and Address: Relation: Amount: Age:

.....
.....
.....

10 Was this information taken from the Certificate?..

.....
The death resulted from....., after an illness of

That the last employment of deceased was.....

.....
.....

(Describe nature of work fully. Give employer's name and address.)

20 That the occupation of the deceased for the prior two years was as follows:

Nature of work: Employer and Address: Time:

.....
.....
.....

That the residence of the deceased at the time of death and for

(Years or months.)

prior thereto, was.....

30 Give the dates of the Council meetings, the minutes of which show the appointment of the Committee, and the reading and approval of this report: 2/27/28.

The Council Committee who identified the remains, together with the acting officers, certify that the

foregoing facts are true to the best of their knowledge and belief:

John A. Flemming
President.

Ida S. Jackson
Secretary.

H. B. Phillips
Collector.

Date 2/27 1928 10

Council Committee:

.....
.....
.....

(Secretary will attach seal of the Council.)

(SEAL)

No. 20
NORTH AMERICAN UNION
PROOFS OF DEATH
of

.....
Deceased
..... Council No.
Certificate No. \$.....
Approved

.....
Medical Ex. 30
.....
Attorney

.....
Supreme President
Paid the day of 19..
Check on.....

Bank

.....

Secretary

(Rubber Stamp)

10

RECEIVED
BY MAIL
MAR 2-1928
North American Union

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

20 HARRIET HEINEMANN, being first duly sworn, deposes and says that she is a shorthand reporter, regularly engaged in the taking of shorthand notes in the courts of Chicago, Cook County, Illinois; that she reported in shorthand the foregoing deposition of Miss Lillian Prince, and reduced the same to type-writing, and that the transcript thereof is true and correct to the best of her knowledge and belief.
Harriet Heinemann

30 Subscribed and sworn to before me this 12 day of April, A. D. 1929.
Charles Scates
Notary Public of Cook County,
Illinois.
(Seal)

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

I, CHARLES SCATES, being first duly sworn, upon oath by Carl W. Von Helmolt, Foreign Commissioner of Deeds for New Jersey, depose and say that I am a court reporter in the courts of Cook County, in the City of Chicago, State of Illinois, 10 and that I will carefully, faithfully and impartially take the evidence and testimony of the witnesses in this case, and will carefully, faithfully and impartially transcribe the same from my stenographic notes taken on the hearing of the said deposition, upon a typewriter, so as to truly record the testimony of each of the said witnesses.

Charles Scates

Subscribed and sworn to before me this 20
30th day of April, A. D. 1929.

Carl W. von Helmolt
Foreign Commissioner of Deeds of New Jersey.
(Seal)

I, CARL W. VON HELMOLT, of the County of Cook and State of Illinois, foreign commissioner of deeds for New Jersey, empowered to take the deposition of the said Miss Lillian Prince, do hereby 30 certify that previous to the commencement of the examination of the said Lillian Prince as a witness in the suit between the said Elda H. Kissinger, plaintiff, and North American Union Life Assurance Society, a corporation, defendant, she was duly sworn

by me as commissioner to testify the truth in relation to the matters in controversy between the said Elda H. Kissinger, plaintiff, and the said North American Union Life Assurance Society, a corporation, defendant, so far as she should be interrogated concerning the same; that the said deposition was taken by me at the office of Brannan, Maloney & Wooster, 11 South La Salle Street, Room 1915, in the city of Chicago, Cook County, Illinois, on the 12th day of April, A. D. 1929; that I caused the interrogatories of the said witness to be reduced to writing in the order in which they are set forth in said deposition;

I further hereby certify that said deposition is by me continued for a further hearing for the taking of further evidence to April 13, 1929, at two o'clock P. M., at the same place.

20

(Seal)

Carl W. von Helmolt
Foreign Commissioner of
Deeds for New Jersey.

30

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

ELDA H. KISSINGER

10

vs

NORTH AMERICAN
UNION LIFE ASSUR-
ANCE SOCIETY, a corpo-
ration existing under and
by virtue of the State of
Illinois.

The DEPOSITIONS of CHARLES A. GILLES- 20
PIE, and LOUIS K. CLEAVELAND, witnesses of
lawful age, produced, sworn and examined on their
oaths on the 13th day of April, A. D. 1929, at the
office of Messrs. Brannan, Maloney & Wooster, be-
fore Carl W. Von Helmolt, a foreign commissioner
of deeds for New Jersey, 11 South Dearborn Street,
Chicago, Illinois, at 2:00 o'clock P. M., in a certain
suit and matter in controversy now pending and un-
determined in the New Jersey Supreme Court
wherein Elda H. Kissinger is plaintiff and North 30
American Union Life Assurance Society, a corpora-
tion, is defendant.

The plaintiff was not represented by attor-
ney, having failed to appear at the time of
the taking of the depositions, either person-
ally or by counsel.

The defendant appeared by Mr. David B. Maloney, its Chicago attorney.

I, CARL W. VON HELMOLT, a foreign commissioner of deeds for New Jersey, for the District of
10 Chicago, County of Cook and State of Illinois, duly appointed according to law by the Governor of New Jersey, and empowered to take depositions, do hereby certify that having first taken an oath before Clara Lundquist, a notary public of Illinois, well and impartially to take the said depositions, upon notice that said depositions were to be taken before me on the 12th day of April, 1929, at the hour of 11 o'clock A. M. at the office of Brannan, Maloney & Wooster, Room 1915, 11 South LaSalle Street,
20 Chicago, Cook County, Illinois, I appeared there at that hour on that day and took the deposition of Lillian Prince, set out above; and that owing to the absence of the witnesses named in the caption and notice, Charles A. Gillespie and Louis K. Cleveland, the taking of their depositions was adjourned until the following day, April 13, 1929, at the hour of two o'clock P. M.; at which time said witnesses appeared before me; and

30 CHARLES A. GILLESPIE,

having been first duly sworn by me as a witness in said cause previous to the commencement of his examination to tell the truth, as well on the part of the plaintiff as the said defendant, so far as he shall be interrogated, deposed and testified as follows:

Direct examination.

By Mr. Maloney:

Q. State your name, please?

A. Charles A. Gillespie.

Q. And your address?

A. 11133 South Park Avenue.

Q. You are connected with the North American Union, are you? 10

A. I am.

Q. In what capacity?

A. Secretary.

Q. Are you acquainted with the plaintiff in this case Elda H. Kissinger?

A. I know her. I am not personally acquainted with her. I know her.

Q. You have met her? 20

A. I have met her twice.

Q. By that you mean you had no personal acquaintance prior to your connection with the claim in this case?

A. No.

Q. But since the claim was presented you have become acquainted with her?

A. Yes, sir.

Q. She is also known as Mrs. John Kissinger?

A. As far as I know. That is the name that I located her under at that time. 30

Q. Now, then, I hand you defendant's exhibits 2 and 3 for identification, and ask you whether or not you recognize those documents (handing papers to witness)?

A. I do.

Q. How did you receive the documents, Mr. Kissinger?

A. We received them in the mail.

Q. In the regular course of the United States mail?

A. Yes, sir, the date is on the top.

Q. You received them on the date approximately
10 that is stamped on the documents?

A. We did.

Q. Now then, Mr. Gillespie, after having received exhibit 3 for identification, did you ever go to see the plaintiff in this case, Elda H. Kissinger, also known as Mrs. John Kissinger?

A. Yes, sir.

Q. Where did you go to see her?

A. Detroit.

Q. And approximately when?

20 A. The first time I went in July, 1928, about the middle of July, 1928.

Q. And did you find her?

A. I could not locate her at all. I looked for two days.

Q. Did you later return to Detroit?

A. After I found out where she was in Detroit I went again on September 18th.

Q. 1928?

A. 1928.

30 Q. Did you see Mrs. Kissinger on September 18th, 1928?

A. I did.

Q. And what did you do at that time, and concerning what did you see her?

A. I talked over the matter with her in regard to the claim that she had made against the North

American Union, and I told her that under the laws we were only liable for the amount she had paid to the Society; and after some talk with her I made a tender to her.

Q. Just tell what you did.

A. I offered her seven \$20.00 bills, a ten, a five, three ones and 60 cents in silver, which made \$158.60, I remember that distinctly, because I 10 went and got large bills.

Q. Now then, where did you see her on that day?

A. Now, I have been trying to think. What is the name of the hotel opposite the Statler.

Q. You saw her at the hotel opposite the Statler in Detroit?

A. Yes, sir, in the parlor about three o'clock in the afternoon.

Q. And where did you have this money that you refer to? Did you hold the money in your hand? 20

A. I laid it on the little table which was between us, where we were talking.

Q. And did you say what the money was for?

A. I did.

Q. What did you say?

A. I told her that was the amount of money that she had paid into the Society.

Q. What did she say?

A. She says, "I don't see it." And she got up and walked out. Well, she also added, "I am in 30 the insurance game myself and I know something about this."

Q. Mr. Gillespie, as Secretary of the North American Union, you have charge and custody of all of the records of the North American Union?

A. I do.

Q. Including the original by-laws and all original records?

A. I do.

Q. I hand you defendant's exhibit 4, a book of 141 pages purporting to be the by-laws of the North American Union, being the edition of 1913, and ask you whether or not you recognize the same (handing book to witness)?

10

A. I do.

Q. Is that a true and correct copy of the by-laws of the North American Union in force and effect in 1913, and from that date down to date, excepting for the amendments thereafter made?

A. It is.

Q. And is that a true copy of the by-laws, of the originals that you have of record?

A. It is.

20 Q. Now then, Mr. Gillespie, will you examine defendant's exhibit 5, purporting to be the amendments to the by-laws of the North American Union from June 13, 1918, to August 20, 1920, and I will ask you whether you recognize the same (handing paper to witness)?

A. I do.

Q. Is this a true and correct copy of the amendments to the by-laws of the North American Union since the year 1913, down to date?

30 A. It is.

Q. And is that a true copy of the by-laws, the originals of which you have in your possession?

A. It is.

Q. And is that all of the amendments to the by-laws since that time?

A. Up to this date, yes.

Mr. Maloney: I make the offer now to tender the exhibits 2, 3, 4 and 5, in evidence.

.....

The witness being duly sworn on oath to the said deposition says that his answers to the said questions are the answers he made on the taking of said deposition and that the same are true. 10
Charles A. Gillespie,

Subscribed and sworn to before me
Carl W. von Helmolt,
Foreign Commissioner of Deeds for
New Jersey.
(Seal)

_____ 20

DEFENDANT'S EXHIBIT 2, for Identification.
C. S.

RECEIVED
BY MAIL
Mar 2—1928
NORTH AMERICAN UNION

Mr. Jos. S. Jackson,
Sec. Camden Council No. 217 30
Dear Sir:

I am sending my affidavit, and an estimate of the assessments and dues paid after his death, please forward without delay to the Supreme Council, with the certified copy of his death from the State Board of Vital Statistics that I sent to Mr. Phillips. I

100 *Exhibit D5, Testimony Taken De Bene Esse*

understand this is what is required in this case.
I am

Yours truly

Mrs. John Kissinger,
1140 Griswold Street,
Detroit,
Michigan.

10 Address:
Room 303

I hereby certify that I am the Commissioner before whom the deposition of Charles A. Gillespie was taken, on this, the 13th day of April, 1929, in the case of Elda H. Kissinger vs. North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's exhibit 2 for identification is the document identified
20 by Charles A. Gillespie on the taking of the said deposition and by me identified by my signature.

Carl W. von Helmolt,

(Seal)

Foreign Commissioner of Deeds
for New Jersey.

30 DEFENDANT'S EXHIBIT 3 for Identification.
C. S.

Supreme Council North American Union
Assessments and dues paid to The North American Union, by Elda H. Kissinger, after the death of John Kissinger. Died August 16, 1925.

Exhibit D5, Testimony Taken De Bene Esse 101

Assessments	Dues	Month	Year	Paid to
No 9	\$6.10	.75	Sept. 21 1925	H. B. Phillips
" 10	6.10		Oct. 21 1925	" " "
" 11	6.10		Nov. 23 1925	" " "
" 12	6.10	.75	Dec. 14 1925	" " "
<hr/>				
	24.40	\$1.50		
No 1	6.10		Jan. 22 1926	H. B. Phillips 10
" 2	6.10		Feb. 16 1926	" " "
" 3	6.10	.75	Mar. 22 1926	" " "
" 4	6.10		April 19 1926	" " "
" 5	6.10		May 22 1926	" " "
" 6	6.10	.75	June 21 1926	" " "
" 7	6.10		July 24 1926	" " "
" 8	6.10		Aug. 21 1926	" " "
" 9	6.10	.75	Sep. 13 1926	" " "
" 10	6.10		Oct. 21 1926	" " "
" 11	6.10		Nov. 21 1926	" " " 20
" 12	6.10	.75	Dec. 13 1926	" " "
<hr/>				
	97.60	4.50		
No 1	6.10		Jan. 14 1927	" " "
" 2	6.10		Feb. 21 1927	" " "
" 3	6.10	.75	Mar. 21 1927	" " "
" 4	6.10		April 11 1927	" " "
" 5	6.10		May 15 1927	" " "
" 6	6.10	.75	June 12 1927	" " "
" 7	6.10		July 12 1927	" " " 30
" 8	6.10		Aug. 15 1927	" " "
" 9	6.10	.75	Sep. 16 1927	" " "
" 10	6.10		Oct. 21 1927	" " "
<hr/>				
	\$158.60	\$6.75		

102 *Exhibit D5, Testimony Taken De Bene Esse*

26 assessments — 9 Quarters

Elda H. Kisinger

1140 Griswold St.

Room 303

statute of limitation

10 I hereby certify that I am the Commissioner before whom the deposition of Charles A. Gillespie was taken, on this the 13th day of April, 1929, in the case of Elda H. Kisinger vs. North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's Exhibit 3 for identification is the document identified by Charles A. Gillespie on the taking of the said deposition and by me identified by my signature.

20

(Seal)

Carl W. von Helmolt,
Foreign Commission of Deeds
for New Jersey.

(On back)

30

A. C. Ross
Astrological
Studio
15860
675

16535

I hereby certify that I am the Commissioner before whom the deposition of Charles A. Gillespie was taken, on this, the 13th day of April, 1929, in the case of Elda H. Kissinger vs. North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's Exhibit 4 for identification is the document identified by Charles A. Gillespie on the taking of the said deposition and by me identified by my signature. 10

(Seal) Carl W. von Helmolt,
Foreign Commissioner of Deeds
for New Jersey.

I hereby certify that I am the Commissioner before whom the deposition of Charles A. Gillespie was taken, on this, the 13th day of April, 1929, in the case of Elda H. Kissinger vs. North American Union Life Assurance Society, a corporation, pending in the New Jersey Supreme Court, and that the document hereto attached and marked defendant's Exhibit 5 for identification is the document identified by Charles A. Gillespie on the taking of the said deposition and by me identified by my signature. 20

(Seal) Carl W. von Helmolt,
Foreign Commissioner of Deeds 30
for New Jersey.

LOUIS K. CLEAVELAND,

being first duly sworn by me as a witness in said cause previous to the commencement of her exami-

nation to tell the truth, as well on the part of the plaintiff as the said defendant, so far as he shall be interrogated, deposed and testified as follows:

DIRECT EXAMINATION.

By Mr. Maloney:

10

Q. What is your name?

A. Louis K. Cleaveland.

Q. Your address?

A. 32 West Randolph Street, Chicago, Illinois.

Q. You are connected with the North American Union?

A. I am.

Q. In what capacity?

A. President.

20

Q. Mr. Cleaveland, how long have you been continuously connected with the North American Union?

A. Thirteen years.

Q. And were you connected with the North American Union in 1915?

A. I was.

Q. And at that time did you have an opportunity to know as to all claims, death claims presented against the North American Union?

A. I did.

30

Q. And have you ever since that time been familiar with all claims, death claims presented against the North American Union?

A. I have.

Q. What are your duties and what have been your duties with regard to death claims since that time?

A. Prior to my election as President I had charge of the claim department.

Q. When was your election as President?

A. 1922.

Q. And prior to that time, since 1915, were all claims against the North American Union submitted to you?

A. Yes, sir, they were.

10

Q. And if any claim was presented to the North American Union, a proof of death, during that time was it presented to you?

A. It was.

Q. And since that time what have been your duties with reference to claims, since 1922?

A. I have passed my approval on all claims, I have considered and passed my approval on all claims.

Q. During your connection with the North American Union, did you prior to January 1928, receive any notice as to the death of John Kissinger?

20

A. No, sir.

Q. Was the first notice of death of John Kissinger the notice which you received on January 11, 1928?

A. Yes, sir.

Q. Now, Mr. Cleaveland, in your connection with your duties as President of the North American Union, do you have occasion to come in touch with the operations of the subordinate councils of the North American Union from time to time?

30

A. I do.

Q. How do they conduct their meetings, Mr. Cleaveland?

A. With what is known as the ritualistic form of work.

Q. Just what do you mean by the ritualistic form of work, Mr. Cleaveland?

A. What is known as the ritual which provides the manner of the services being held.

Q. And are all meetings conducted according to that ritual?

10 A. They are.

Q. Of all councils in the order?

A. They are.

Q. And the ritual is prepared by whom?

A. The ritual is prepared by the Supreme Council.

Q. Now then, what about the meetings of the subordinate councils?

A. The subordinate councils hold regular meetings.

20 Q. By regular you mean stated?

A. Regular stated meetings as provided for in the by-laws and approved by the Supreme Council.

.....

The witness being duly sworn on oath to the said deposition says that his answers to the questions are the answers made on the taking of said deposition and that the same are true.

Louis K. Cleaveland,

30

Subscribed and sworn to before me.

Carl W. von Helmolt,

Foreign Commissioner of Deeds for New Jersey.
(Seal)

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

CHARLES SCATES, being first duly sworn, deposes and says that he is a shorthand reporter, regularly engaged in the taking of shorthand notes in the courts of Chicago, Cook County, Illinois; that he reported in shorthand the foregoing depositions of Charles A. Gillespie and Louis K. Cleaveland, and reduced the same to typewriting, and that the foregoing transcript is true and correct to the best of his knowledge and belief. 10

Charles Scates.

Subscribed and sworn to before me
this 23rd day of April, A. D. 1929.

Madeline Giles
Notary Public of Cook County, 20
Illinois.
(Seal)

I, Carl W. von Helmolt, of the County of Cook and State of Illinois, foreign commissioner of deeds for New Jersey, empowered to take the depositions of the said Charles A. Gillespie and Louis K. Cleaveland, do hereby certify that previous to the commencement of the examinations of the said Charles A. Gillespie and Louis K. Cleaveland, as witnesses in the suit between the said Elda H. Kissinger, plaintiff, and North American Union Life Assurance Society, a corporation, defendant, they and each of them was duly sworn by me as commissioner to tes- 30

tify the truth in relation to the matters in controversy between the said Elda H. Kissinger, plaintiff, and the said North American Union Life Assurance Society, a corporation, defendant, so far as they should be interrogated concerning the same; that the said depositions were taken by me at the office of Brannan, Maloney & Wooster, 11 South La-
10 Salle Street, Room 1915, in the City of Chicago, Cook County, Illinois, on the 13th day of April, A. D. 1929; and that I caused the interrogatories of the said witnesses to be reduced to writing in the order in which they are set forth in said depositions.

I further certify that the taking of said depositions was adjourned from the date set in the original notice to the 13th day of April, 1929, owing to the inability of the said Charles A. Gillespie and Louis K. Cleaveland to attend on the date set in the
20 original notice.

(Seal) Carl W. von Helmolt,
Foreign Commissioner of
Deeds for New Jersey.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

30 I, CARL W. VON HELMOLT, of the County of Cook and State of Illinois, Foreign Commissioner of Deeds for the State of New Jersey, empowered to take the deposition of Lillian Prince, Charles A. Gillespie, and Louis K. Cleaveland, do hereby certify that in accordance with the notice for the taking of deposition de bene esse of Charles A. Gillespie,

Lillian Prince and Louis K. Cleaveland, I did on the 12th day of April, 1929, proceed with the taking of the said deposition in accordance with the said notice at the hour of 11 o'clock P. M., at the office of Brannan, Maloney & Wooster, Room 1915, 11 South LaSalle Street, Chicago, Illinois, and being first duly sworn, did faithfully, fairly and impartially execute the oath to take said deposition before Clara Lundquist, Notary Public of the County of Cook and State of Illinois, and thereupon proceeded to swear the said witnesses to take said deposition at this time; thereupon administering the oath to Lillian Prince, a witness on behalf of the defendant, and that I thereupon administered the oath to Harriet Heinemann to carefully, faithfully and impartially take the testimony of the said witness or witnesses and to correctly transcribe the same in type-writing, and that the said testimony of the said Lillian Prince was thereupon taken down in shorthand by the said Harriet Heinemann and transcribed upon a typewriter, and that the said testimony is embodied in the said deposition; that the said deposition was on the said date by me adjourned to Saturday, the 13th day of April, 1929, at 2 o'clock P. M., at the same place; that on the 13th day of April, 1929, at 2 o'clock P. M., at the office of Brannan, Maloney & Wooster, Room 1915, 11 South LaSalle Street, Chicago, Illinois, I caused an oath to be administered to Charles Scates, a court reporter, in the City of Chicago, to faithfully, fairly and impartially take the testimony and evidence, and to make a true and correct transcript thereof, of the witnesses to testify on the said hearing; and thereupon administered an oath to

Charles A. Gillespie and Louis K. Cleveland, prior to their testimony on the said case. That thereupon I caused the said testimony to be taken down by the said Charles Scates and transcribed by typewriter, said testimony being embodied in this deposition.

I DO FURTHER CERTIFY that the exhibits identified by the witnesses on the taking of said
10 depositions, are the exhibits hereto attached, and made part of this deposition, the said exhibits being identified by my signature.

I DO FURTHER CERTIFY that after the deposition of each witness named herein was transcribed as above set forth, it was signed and sworn to by said witness in my presence; and that all of said depositions, together with the exhibits offered in evidence with them are contained in the foregoing
34 pages herewith returned.

20

(Seal)

Carl W. von Helmolt,
Foreign Commissioner of Deeds
for New Jersey.

STIPULATION.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ELDA H. KISSINGER,	} Action at Law.
<i>Plaintiff,</i>	
v.	} On Appeal from New
NORTH AMERICAN UNION	
LIFE ASSURANCE ASSOCI-	
ATION,	
<i>Defendant.</i>	} Jersey Supreme
	} Court.
	} Stipulation.

20

It is stipulated between counsel for the respective parties in the above matter that Defendant's Exhibit 4, consisting of the constitution of the laws of the North American Union and the laws of the Legion of the Red Cross, and Defendant's Exhibit 5, being the amendments to the laws of the North American Union, need not be printed in their entirety, but that so much thereof as pertains to the issues in this cause shall be embodied in the State of the Case. 30

EDWIN G. SCOVEL,
Attorney for Plaintiff.
 CHARLES DEF. BESORÉ,
Attorney for Defendant.

MEMORANDUM FINDINGS.

(Filed October 18, 1930.)

NEW JERSEY SUPREME COURT.

10

CAMDEN COUNTY.

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
20 a corporation,
Defendant.

Action at Law.
Memorandum
Findings.

For the plaintiff, EDWIN G. SCOVEL and VINCENT
L. CALLAHER.

For the defendant, CHARLES DEF. BESORÉ and RIG-
GINS & DAVIS.

30

JESS, J.:

This is a suit by the beneficiary designated in a death benefit certificate issued by a fraternal beneficiary society, to recover the amount named in said certificate and payable to her, upon the death of the

member, who was the husband of the plaintiff. The plaintiff will hereinafter be referred to as the beneficiary, her husband, the holder of the benefit certificate, as the insured, and the defendant, as the insurer.

The cause came on for trial before the Court and jury. When the plaintiff's case had been put in the defendant moved for a non-suit. After argument on this motion, it was agreed by counsel to submit the case to the Court for decision on the facts and the law, it being conceded that there was no dispute as to the facts and that the determination of the legal questions raised by the defense would be dispositive of the issues. Testimony taken *de bene esse*, on behalf of the defendant, is in evidence. 10

The contract of insurance was made originally between the Legion of the Red Cross and John Kissinger, the insured, under date of January 2nd, 1908. By this contract the Supreme Council of the Legion of the Red Cross bound itself to pay, out of its Death Benefit Fund, to Elda H. Kissinger, wife of John Kissinger, \$1,000, "upon satisfactory evidence of the death of said companion—provided that the said companion has complied with all the laws of the order at the time of death." By virtue of an agreement of reinsurance and consolidation entered into between the North American Union (now known as North American Union Life Assurance Society), a fraternal beneficiary society incorporated under the laws of the State of Illinois, and duly authorized to do business in New Jersey, and which agreement took effect December 29th, 1914, a certificate was issued to Kissinger of mem- 20 30

bership in the North American Union. By this certificate, dated January 2nd, 1915, the North American Union assumed and agreed to pay to the beneficiary named therein, in the event of the death of Kissinger while in good standing, and the furnishing of satisfactory proof as to the cause and fact of death, the amount of insurance in effect and payable on death, under and according to the provisions of the laws, rules and regulations of said Legion of the Red Cross and its executive board, subject to such changes as might be made in and by the laws, rules and regulations of said North American Union, provided that the said member had made all the required payments and had complied with all the laws, rules and regulations of the North American Union, then in force or thereafter enacted, and the terms and conditions of said articles of agreement. This agreement is not in evidence.

The insured was a member of Camden Council, No. 217. He died in the Township of South Fayette, County of Allegheny, Pennsylvania, on August 18, 1926. He and his wife, the beneficiary, were not living together at the time of his death. They had been separated for several years. They did not correspond. The beneficiary would hear of her husband occasionally through her son, who exchanged letters with his father. The beneficiary first learned of her husband's death about October 1st, 1927. The first notice of death, given by her initiative, was received by the insurer from the collector of Camden Council, on January 11th, 1928, together with a certificate of death from the Bureau of Vital Statistics of the Department of Health of the Commonwealth of Pennsylvania. In this certificate the age

of the decedent was given as 73 years, he was reported to be a widower and the cause of death was stated to be acute myocarditis, with senile psychosis assigned as a contributing cause. The forms for the proof of death prescribed by the insurer, were sent to the beneficiary and received back from her, filled out, on March 2nd, 1928. On the same date the insurer received a letter from the beneficiary, addressed to the secretary of Camden Council, enclosing a statement of the assessments and dues she had paid on her husband's certificate from September 21st, 1925, to October 21st, 1927, aggregating in amount, \$158.60 for assessments and \$6.75 for dues. 10

In response to his request, the beneficiary, on August 3rd, 1928, sent to the Supreme Secretary, the Legion of the Red Cross Certificate, No. 8341, and the North American Union Reinsurance Certificate No. 48799. On August 6th, the Supreme Secretary wrote to the beneficiary as follows: "We are in receipt of yours of the 3rd instant, enclosing certificate held by your late husband, and the same will be referred to the Supreme President as well as Camden Council, and the amount due you on this policy will be sent within the next week." There is in evidence a check, drawn by the insurer to the order of the beneficiary, dated August 17th, 1928, for \$165.35, which is the precise amount of the dues and assessments paid by her. This sum was stated on the back of the check to be received "as a settlement, full payment and compromise and in full satisfaction and discharge of any and all claims and demands of every nature whatsoever against the North American Union Life Assurance Society, and 20 30

all other affiliated societies arising out of the issuance of a certificate or certificates of John Kissinger." This check was not cashed by the beneficiary. The Supreme Secretary called upon the beneficiary in Detroit, on September 18th, 1928, and informed her that "under the laws we were only liable for the amount she had paid to the society." He tendered her in settlement of that conceded liability, \$158.60. The beneficiary declined the tender. Whether this offer was in the nature of a compromise, as indicated by the endorsement on the check above referred to, or was, in fact, a proposal to pay an admitted liability, as suggested by the secretary's statement, is not clear.

Suit was brought by the beneficiary against the insurer on January 3, 1929, to recover the amount of \$1,000 and interest.

The insurer denies all liability. It admits the contract of insurance, the death of the insured and its refusal to pay the amount of the death benefit certificate. It sets up two special defenses, each of which is based upon the allegation that its constitution and by-laws constitute a part of the contract of insurance. The first defense is founded upon Law 11 of the insurer, Sec. 1, which reads as follows:

"It is made the duty of the beneficiary, named or legal, on the death of a member, to give immediate notice of such death, together with the reputed cause, facts and circumstances in connection therewith, to the Secretary of the Council to which such member belonged, and request proof of death blanks. Such beneficiary shall thereafter diligently have made and furnished

to the Order, before payment shall be made of such claim, upon forms provided for such purpose, satisfactory proof of the fact, cause and circumstances of such death, and the liability of the Order thereon."

The second defense rests upon Law #3, Sec. 18, which provides that:

10

"No member of this Order, or his beneficiary, or any other person or persons in his or their behalf, shall commence any action at law, or suit in equity against this Order for the recovery of any claim or demand whatsoever arising by or from his membership in the Order, or under or by virtue of his Benefit Certificate, unless such action or suit shall be commenced within one year next after the death of such member, and within one year next after the cause of action accrued."

20

It is well settled that the relation created by such a beneficial certificate as that involved in this suit, is contractual in its character. The contract between the association and its beneficiary members is to be discovered from the certificate issued to the member, read with the rules and by-laws of the society and the statute from which it obtained its corporate powers. The contract, when discovered, is to be construed and given effect as other contracts upon a similar subject. *Tepper v. Royal Arcanum*, 59 N. J. E. 321. Courts can only interpret and enforce contracts of such associations according to their terms. *Golden Star Fraternity v. Martin*, 59 N. J. L. 207.

30

The first defense is that the beneficiary failed to notify the insurer of the death of the insured immediately after it occurred, "but neglected and delayed notification thereof for more than two years after said death." Assuming that the law of the insurer requiring immediate notice of death is a part of the contract of insurance, would the fact
10 that notice of death was not given immediately after it occurred, defeat the beneficiary's right to recover? It seems to me that it would not, for several reasons, founded in part upon general principles and in part upon circumstances peculiar to this particular case. The law of the insurer itself merely makes it the "duty" of the beneficiary to give immediate notice of death. Moreover, such a stipulation, concerning a condition to be performed after the death of the insured, could be waived by an officer or agent of the insurer, even though the contract provided against such waiver. *Robbins v. Farmers Mutual Fire Asso.*, 133 Atl. 513; *Carson v. Jersey City Ins. Co.*, 43 N. J. L. 300; *Bohles v. Insurance Co.*, 83 N. J. Law, 904.
20

The argument of the plaintiff that there was an implied waiver of this provision finds some support in the evidence.

The first defense of the insurer, however, is not rested strictly upon the fact that the death was
30 not reported immediately, but upon the ground that the beneficiary "neglected and delayed notification thereof for more than two years after said death." This defense is not established by the evidence. The only proofs on that phase of the case negative the idea that the lapse of time between the death and the notice thereof was due to any negligence of the

beneficiary or any failure on her part, to act, under the circumstances, with reasonable promptitude. She did not learn of the death for more than two years after the event. Her own testimony to that effect is corroborated by the fact that she paid the dues and assessments on the beneficial certificate as they fell due from September, 1925, until October, 1927. The nature of the first defense furnishes a practical interpretation by the insurer itself of the rule requiring immediate notice of death, that the rule is to be construed reasonably and is to be invoked as a bar to recovery only when there has been negligence or culpable delay in complying with it. This interpretation certainly is in harmony with the canon of construction applicable to such a rule when it is sought to be read into a contract of insurance. 33 *Corpus Juris*, p. 15, Secs. 663, 664 and 665. 10

Furthermore, the duty of the beneficiary, under the laws of the insurer, was to report the death of the insured to the local council of which he was a member. The evidence is that upon learning of the death of the insured, the beneficiary at once notified that council of the fact. The notice of death was not received by the insurer until January 11th, 1928, so that about three months elapsed between the notification given by the beneficiary and its receipt by the insurer. This delay cannot be charged to the beneficiary, since she reported the death as soon as she had knowledge of it, to the agent designated by the insurer to receive it. 20 30

The second defense also is purely technical, in that the insurer insists that the beneficiary cannot recover because she did not bring her suit within

one year after the death. This defense is based upon the law of the insurer hereinbefore cited.

Four things are essential under the contract to entitle the beneficiary to recover: Payment of the assessments and dues on the benefit certificate; compliance by the insured with the laws, rules and regulations of the insurer; death of the insured while
10 in good standing; satisfactory proof of the fact and cause of death. There is no question that all these requirements have been met. That being so, the insurer has obligated itself to pay to the beneficiary the amount of insurance in force and effect and payable on death under and according to the provisions of the laws, rules and regulations of the insurer and its predecessor. The laws, rules and regulations mentioned in this clause of the contract must be held to comprehend those only which are
20 pertinent to the subjects therein expressly enumerated. The insured having died in good standing, after compliance with all the stipulations to be performed on his part, and the beneficiary having furnished satisfactory proof of death, her right to recover, under the contract, became, *prima facie*, fixed. If, in order to enforce or test that right, she must have recourse to a suit at law, she is not to be barred of her action by a law or rule of the insurer, unless such law or rule was expressly or im-
30 plicitly within the terms of the contract upon which she relies.

In *Roblin v. Knights of the Maccabees*, 112 Atl. 70, the Supreme Court of Pennsylvania held that a law of a fraternal benefit association which provided that any action arising out of a life benefit certificate must be brought within fifteen months of

the death of the member, was not enforceable against the beneficiary. The Court said:

“The stipulation is that the member shall comply with the amended by-laws, not that the beneficiary shall do so after his death; and such stipulations are construed strictly and in favor of the assured.”

10

Assuming that the rule upon which the insurer, in its second defense, relies, is implicit in the contract, it is not clear that it operates to estop the beneficiary from asserting in this action the rights which she claims under the insurance contract. The rule relied upon by the insurer provides that a suit by a member or a beneficiary shall be commenced within one year next after the death of such member “*and within one year next after the cause of action accrued.*” The effect of this rule is to create a forfeiture. Therefore, if a construction which will defeat it is reasonably deducible from the terms or words used to express it, that construction should be adopted. *Hampton v. Hartford Fire Ins. Co.*, 65 N. J. Law, 265, and cases therein cited. Provisions in insurance contracts creating forfeitures are to be construed most strongly against the insurer. *Precipio v. Ins. Co. of Penna.*, 103 Id. 595; *Snyder v. Insurance Co.*, 59 Id. 544. 20

Where there is an ambiguity found in a contract of this nature, the provision giving rise to the ambiguity should be most strongly construed against the insurer, and should be construed in a sense so as not to work an injustice to an assured. *Michler v. New Amsterdam Casualty Co.*, 104 N. J. L. 30, affirmed Id. 663. The construction of the rule in 30

question most favorable to the beneficiary is that the limitation of her right of action began to run from the time that right accrued; that is, from the time she furnished proofs of death, to wit, March 2, 1928.

10 The defense that the suit was not brought within time is subject to the further objection that after the period of limitation had expired the insurer, in negotiations and transactions with the beneficiary, must be held to have recognized the continued validity of the policy. It received the notice and proofs of death without objection. It asked for and received from the beneficiary the benefit certificates. The Supreme Secretary wrote to the beneficiary on August 6th, 1928, that the amount due on the certificate would be sent to her. On August 17th a check for \$165.35 was mailed to her, which was
20 stated to be in full payment and compromise of her claim against the insured. On the 18th of September the Supreme Secretary informed the beneficiary that the insurer was liable only for the amount she had paid to the society and tendered to her the amount conceded to be due. So that it was not until August, at the earliest, that the beneficiary had any intimation from the insurer that its full liability on the benefit certificate was disputed.

30 If in any negotiations or transactions with the assured, after knowledge of the forfeiture, the company recognizes the continued validity of the policy, the forfeiture is waived, *Martin v. State Ins. Co.*, 44 N. J. Law, 485.

It is to be noted finally that where other conditions of the contract are such that a reasonable compliance with them, insisted upon by the insurer,

is inconsistent with the observance of the limitation rule, the latter will not be allowed to defeat a recovery. *Martin v. State Ins. Co., supra.* A requirement that immediate notice of death shall be a condition precedent to a recovery is, under the circumstances of this case, inconsistent with the observance of the limitation rule. The requirement that the death shall be reported necessarily presupposes knowledge of the fact of death, and if for reasons beyond the control and without the fault of the beneficiary, that knowledge was not acquired by her in time to permit a compliance with the limitation rule, that rule cannot be invoked to defeat her recovery. 10

For the reasons stated, neither the first nor the second defense constitutes a bar to the plaintiff's action.

The Court finds in favor of the plaintiff and 20 against the defendant.

The damages are assessed at \$1,000, together with interest from March 2nd, 1928.

FRANK B. JESS,
Circuit Court Judge.

POSTEA.

(Filed Jan. 27, 1930.)

10

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

ELDA H. KISSINGER,
Plaintiff,

v.

20 NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

Defendant.

Action at Law.
Postea.

30 The above case was heard before Judge Frank
B. Jess, and by stipulation of counsel the law and
facts were submitted to the Court for determination
at the Camden Circuit on the 16th day of June,
1929.

The Court, on January 15th, 1930, rendered a gen-
eral verdict against the defendant in favor of the

plaintiff for one thousand dollars (\$1,000.00), together with interest thereon from March 2nd, 1928.

FRANK B. JESS,
Judge.

A true copy.

FRED L. BLOODGOOD,
Clerk.

10

RULE FOR JUDGMENT.

(Filed Jan. 27, 1930.)

NEW JERSEY SUPREME COURT.

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

Defendant.

Action at Law.
On Postea.

20

30

Damages \$1,000.00

Costs 68.62

\$1,068.62

Int. on damages from Mar. 2, 1928.

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of one thousand dollars, with interest from March 2, 1928, besides costs to be taxed *nisi*.

Entered January 27, 1930.

On motion of

10

EDWIN G. SCOVEL, *Atty.*

A true copy.

FRED L. BLOODGOOD,

Clerk.

20

30

JUDGMENT.

(Filed Jan. 27, 1930.)

NEW JERSEY SUPREME COURT.

10

ELDA H. KISSINGER,
Plaintiff,
 v.
 NORTH AMERICAN UNION
 LIFE ASSURANCE SOCIETY,
 a corporation existing
 under and by virtue of
 the laws of the State of
 Illinois,
Defendant.

Action at Law.
 On Postea.
 Edwin G. Scovel,
 Attorney. 20

\$1,000.00
 68.62

 \$1,068.62

30

Int. on damages from March 2, 1928.

Judgment entered this twenty-seventh day of January, A. D. nineteen hundred and thirty in favor of plaintiff and against the defendant for the sum of one thousand dollars damages with interest from

March 2, 1928, and sixty-eight dollars and sixty-two cents costs.

WM. S. GUMMERE,
C. J.

A true copy.
FRED L. BLOODGOOD,
Clerk.

10

NOTICE OF APPEAL.

(Filed March 21, 1930.)

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

20

ELDA H. KISSINGER,
Plaintiff,

v.

NORTH AMERICAN UNION
LIFE ASSURANCE SOCIETY,
a corporation existing
under and by virtue of
the laws of the State of
Illinois,

30

Defendant.

Action at Law.
Notice of Appeal.

To Edwin G. Scovel, Esq., Attorney of Plaintiff:

Take notice that the defendant, North American Union Life Assurance Society, a corporation, ap-

peals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, in favor of the plaintiff, Elda H. Kissinger, and against the said defendant, North American Union Life Assurance Society.

RIGGINS & DAVIS,
Attorneys of Defendants,
North American Union 10
Life Assurance Society, a
corporation.

[ENDORSED]

Due and legal service of the within 20
notice of appeal is hereby acknowl-
edged this 19th day of March, 1930.

Edwin G. Scovel,
Attorney for Plaintiff.

30

GROUNDS OF APPEAL.

(Filed March 27, 1931.)

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

	ELDA H. KISSINGER,	} Action at Law.
	<i>Plaintiff,</i>	
	v.	} On Appeal from New Jersey Supreme Court. Grounds of Appeal.
	NORTH AMERICAN UNION	
	LIFE ASSURANCE ASSOCI-	
20	ATION, <i>Defendant.</i>	

The following are the grounds of appeal in the above-entitled cause:

1. The following question and answer were permitted over the objection of the defendant:
 - 30 1. To Elda H. Kissinger:

“Q. When did you first learn of the death of your husband?
By Mr. Davis: We object. The question is when we were notified.”
 2. The trial Court erred in admitting in evidence,

over objection of the defendant, Plaintiff's Exhibit
1.

3. The trial Court erred in admitting in evidence,
over objection of the defendant, Plaintiff's Exhibit
2.

4. The trial Court erred in admitting in evidence, 10
over objection of the defendant, Plaintiff's Exhibit
3.

5. The trial Court erred in admitting in evidence,
over objection of the defendant, Plaintiff's Exhibit
4.

6. The trial Court erred in permitting the plain-
tiff to introduce evidence, over objection of the de-
fendant, offered for the purpose of showing a 20
waiver by the defendant of the requirements of
the provisions of its by-laws and the policy of in-
surance.

7. The plaintiff not having pleaded waiver in her
reply filed to the answer of the defendant and the
various defenses set forth therein, the trial Court
erred in permitting the plaintiff to introduce in
evidence proof offered for the purpose of showing
that the defendant had waived the provisions of 30
its by-laws and policy of insurance.

8. The trial Court erred in finding in favor of
the plaintiff and against the defendant, because of
the fact that the plaintiff failed to comply with the
provision of the defendant's by-laws in that she did

not give immediate notice of the death of the insured, but on the contrary failed to notify the defendant of said death for more than two years thereafter.

9. The trial Court erred in finding in favor of the plaintiff and against the defendant, by reason of
 10 the fact that the plaintiff failed to comply with the provision of its by-laws which requires any action or suit on its benefit certificate to be instituted within one year next after the death of its member, and the plaintiff, on the contrary, failed and neglected to institute such suit until more than two years after the death of the insured.

10. Because, at the conclusion of the whole case, the trial Court found in favor of the plaintiff and
 20 against the defendant.

11. Because there was no evidence to sustain the findings of the trial Court and the judgment entered thereon.

CHARLES DEF. BESORÉ,
Attorney for Defendant.

30

[ENDORSED]

Due and legal service of the within grounds of appeal is hereby acknowledged.

Edwin G. Scovel,
 Attorney for Plaintiff.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

New Jersey Court of Errors and Appeals

ELDA H. KISSINGER,
Plaintiff-Respondent,

v.

NORTH AMERICAN UNION LIFE ASSURANCE SOCIETY,
a corporation existing under and by virtue of the
laws of the State of Illinois,
Defendant-Appellant.

ACTION AT LAW.

BRIEF OF DEFENDANT-APPELLANT.

This case brings up on appeal the judgment entered in this cause in the New Jersey Supreme Court on January 22, 1930, which judgment was entered on the conclusions filed by late Hon. Frank B. Jess, Circuit Court Judge in the Camden County Circuit, in favor of the plaintiff and against the defendant.

This is a suit by the beneficiary designated in a death benefit certificate issued by a fraternal beneficial society to recover the amount named in said certificate and payable to her upon the death of her husband. We will hereafter refer to the plaintiff as "beneficiary" the holder of the benefit certificate, her husband as "insured" and the defendant as the "insurer."

At the conclusion of the plaintiff's case, a motion for non-suit was made, as stated in the findings of the trial judge, although the motion and the grounds therefor do not appear in the transcript as printed in the state of the case (S. C., p. 113, l. 9).

After argument, it was agreed by counsel to submit the case to the Court for decision on the facts and the law, there being no disputed questions of fact and that the determination of the legal questions would be dispositive of the issues.

The contract of insurance was originally made between the Legion of the Red Cross and the insured, on January 2, 1908 (S. C., p. 17, l. 8).

By virtue of an agreement of re-insurance and consolidation (S. C., p. 43, ll. 1-12) entered into between the North American Union (now known as North American Union Life Assurance Society) and Legion of the Red Cross, fraternal beneficial societies incorporated under the Laws of the State of Illinois, the former of which is duly authorized to transact business in New Jersey, (S. C., p. 39, l. 24 to p. 42, l. 10) and which agreement took effect December 29, 1914, a certificate was issued to the insured in the North American Union and was dated January 2, 1915.

By this certificate, the North American Union as-

sumed and agreed to pay to the beneficiary therein named, in the event of the death of the insured, while in good standing and upon the furnishing of satisfactory proof as to the cause and fact of death, the amount of insurance in effect and payable on death, under and according to the provisions of the laws, rules and regulations of said Legion of the Red Cross and its executive board, subject to such changes as might be made in and by the laws, rules and regulations of said North American Union; provided, that the said member had made all the required payments and had complied with all of the rules, laws and regulations of the North American Union then in force or thereafter enacted under the terms and conditions of such articles of agreement (S. C., p. 32, l. 18; Ex. D3, S. C., p. 43).

The insured was a member of Camden Council No. 217 (S. C., p. 22, l. 30). He died in a town near Pittsburgh, Pennsylvania, (S. C., p. 23, l. 4) on August 16, 1925 (S. C., p. 24, l. 3). He and the beneficiary were not living together at the time of the death and had been separated since prior to 1908 (S. C., p. 17, l. 15). They did not correspond but the beneficiary would hear of the insured occasionally through their son, who was in communication with the insured, his father (S. C., p. 20, l. 20 to p. 21, l. 36). The beneficiary first learned of the death of the insured on about October 21, 1927 (S. C., p. 19, l. 30 to p. 20, l. 17), a period of more than two years and two months after his death.

The first notice of death given by her was received by the insurer from the Collector of Camden

Council on January 11, 1928 (Ex. D5, S. C., p. 56, ll. 10-14-24-36) a period of approximately two years and five months after his death and three months and ten days after the beneficiary first learned of his death.

Accompanying the notice was a certificate of death from the Bureau of Vital Statistics of the Department of Health of the Commonwealth of Pennsylvania (S. C., p. 63, l. 1 to p. 65, l. 30) and in said certificate the age and cause of death were stated.

The forms of the proof of death prescribed by the insurer were sent to the beneficiary and received back from her, filled out, on March 2, 1928 (S. C., p. 57, ll. 24-34; S. C., p. 66, l. 30 to p. 71, l. 30) and on the same date the insurer received a letter from the beneficiary addressed to the Secretary of Camden Council enclosing a statement of the assessments and dues she had paid on her husband's certificate from September 21, 1925, to October 21, 1927, aggregating in amount \$158.60 for assessments and \$6.75 for dues (S. C., p. 99, l. 22 to p. 102, l. 5).

In response to the request of the Supreme Secretary of the insurer, the beneficiary, on August 3, 1928, sent to him certificate of the Legion of the Red Cross No. 8341 and certificate of the North American Union re-insurance certificate No. 48799 (S. C., p. 36, l. 29 to p. 37, l. 9).

On August 6, 1928, the Supreme Secretary wrote to the beneficiary acknowledging receipt of her letter of the 3rd and the enclosures and advised her that the same would be referred to the Supreme President, as well as Camden Council and that the

amount due her on the policy would be sent within the next week (S. C., p. 37, l. 12). The insurer sent to the beneficiary, payable to her order, a check in the amount of \$165.35, dated August 17, 1928, which is the exact amount of the dues and assessments paid by her. On the back of the check it was recited that the check was to be received in settlement, full payment, compromise and in full satisfaction and discharge of any and all claims and demands against the insurer and all other affiliated societies arising out of the certificate issued to the insured (S. C., p. 38, l. 1 to p. 39, l. 19). This check was not cashed.

On September 18, 1928, the Supreme Secretary of the insurer called upon the beneficiary in Detroit and informed her that the insurer was only liable for the amount that she had paid to the society and tendered her, in settlement of the conceded liability, \$158.60, in cash, which was declined by the beneficiary (S. C., p. 96, l. 30 to p. 97, l. 36).

On January 3, 1929, the beneficiary instituted an action at law, in the Camden County Circuit of the New Jersey Supreme Court, to recover from the insurer the sum of One Thousand Dollars (\$1,000.00), the amount of the certificate, together with interest (S. C., p. 1, l. 1 to p. 8, l. 18).

The insurer, the defendant, denies liability. It admits the contract of insurance, the death of the insured and its refusal to pay. The separate defenses which are set up by the defendant and relied upon are Laws 3 & 11 (S. C., p. 46, l. 10 to p. 47, l. 30).

The grounds of appeal are as follows:

1. The following question and answer were permitted over the objection of the defendant:

abandoned
2. The trial Court erred in admitting in evidence, over objection of the defendant, Plaintiff's Exhibit 1.

3. The trial Court erred in admitting in evidence, over objection of the defendant, Plaintiff's Exhibit 2.

4. The trial Court erred in admitting in evidence, over objection of the defendant, Plaintiff's Exhibit 3.

5. The trial Court erred in admitting in evidence, over objection of the defendant, Plaintiff's Exhibit 4.

6. The trial Court erred in permitting the plaintiff to introduce evidence, over objection of the defendant, offered for the purpose of showing a waiver by the defendant of the requirements of the provisions of its by-laws and the policy of insurance.

7. The plaintiff not having pleaded waiver in her reply filed to the answer of the defendant and the various defenses set forth therein, the trial Court erred in permitting the plaintiff to introduce in evidence proof offered for the purpose of showing that the defendant had waived the provisions of its by-laws and policy of insurance.

8. The trial Court erred in finding in favor of the plaintiff and against the defendant, because of the fact that the plaintiff failed to comply with the provision of the defendant's by-laws in that she

did not give immediate notice of the death of the insured, but on the contrary failed to notify the defendant of said death for more than two years thereafter.

9. The trial Court erred in finding in favor of the plaintiff and against the defendant, by reason of the fact that the plaintiff failed to comply with the provision of its by-laws which requires any action or suit on its benefit certificate to be instituted within one year next after the death of its member, and the plaintiff, on the contrary, failed and neglected to institute such suit until more than two years after the death of the insured.

10. Because, at the conclusion of the whole case, the trial Court found in favor of the plaintiff and against the defendant.

11. Because there was no evidence to sustain the findings of the trial Court and the judgment entered thereon.

ARGUMENT.

The defendant abandons its first ground of appeal.

The next grounds of appeal for consideration are those numbered "2" and "3," which concern the Plaintiff's Exhibits 1 and 2, which are two letters

written by the insured to plaintiff's son. These were introduced in evidence over defendant's objection (S. C., p. 31, ll. 1-15). It is respectfully submitted by the defendant that these letters were inadmissible as being at a time too remote from the accrual of the plaintiff's alleged cause of action and were incompetent because they had no bearing upon any issue involved in this cause.

It is respectfully submitted that the Court erred in admitting these letters.

The next ground of appeal is that numbered "4," which deals with the admission in evidence by the Court over defendant's objection, of Exhibit 3. This letter was a copy (not a duplicate original) of a letter the plaintiff claimed to have written to the defendant. The admission of this letter was objected to, but admitted, nevertheless, by the trial Court (S. C., p. 25, l. 25 to S. C., p. 26, l. 30; also S. C., p. 30, l. 36 to S. C., p. 31, l. 3). It is respectfully submitted that no call having been made for the original and this letter obviously being a copy, it was, under well recognized rules of evidence, inadmissible, and it is respectfully submitted that the trial Court erred in admitting this letter in evidence.

The next ground of appeal is that numbered "5," which pertains to the admission in evidence of Plaintiff's Exhibit 4 over the objection of the defendant (S. C., p. 31, l. 10).

This letter was admitted as tending to show a waiver by defendant of the provisions of its by-laws and the contract of insured. This precise point will be argued later in this brief and, therefore, will be just touched upon at this point. In discussing this ground of appeal, the defendant respectfully urges this Court that this letter was inadmissible as being binding upon the defendant. It was written by the Supreme Secretary of the defendant to the plaintiff and while it might perhaps have been admissible as a letter written in the course of correspondence concerning the subject matter of the suit, yet so far as its binding effect upon the company is concerned, we respectfully submit that its admission in this respect was error.

By the constitution and by-laws of the defendant, the only duties of the Supreme Secretary are to attest all official documents and to perform such other duties as shall be provided by law; also to draw all warrants in payment of mortuary and disability claims which have been approved by lawful authority and shall not draw or attest any orders without such approval. It is the Supreme President who is required to approve all proofs of death before being allowed or benefit paid (S. C., p. 45, l. 1 to S. C., p. 46, l. 5).

It is respectfully submitted that the trial Court erred in admitting this letter.

The next grounds of appeal are those numbered "6" and "7" respectively which will be discussed

together. These grounds of appeal deal with the error of the trial Court in permitting the plaintiff to introduce in evidence over the objection of the defendant a letter addressed to her by the Supreme Secretary of the defendant (Ex. P4, S. C., p. 37, l. 12) for the purpose of showing a waiver by defendant of the requirements of its by-laws and its certificate of insurance. Inasmuch as the plaintiff had not pleaded waiver in her reply filed to the answer of the defendant, in which answer the specific defenses, referred to in the foregoing statement of facts, are set forth, it was error to admit the letter.

It is respectfully submitted that, under our practice, defenses such as waiver, statute of limitations, fraud, etc., must be specifically set up in the pleadings, in order that the pleading party may have the advantage there (*Corpus Juris*, Vol. 45, p. 293, Sup. Ct. R. 1913, 58). The plaintiff in her reply merely joined issue on the complaint and the answer. The reply is entirely silent as to any answering plea which she had or may have had against the defenses set forth in the answer. When this letter was offered in evidence, it was objected to on the ground that waiver had not been pleaded and also on the ground that the writer of the letter had no authority to bind the company by any waiver, expressed or implied (S. C., p. 27, l. 1 to p. 29, l. 10 and S. C., p. 30, l. 37 to p. 31, l. 10).

In this connection we respectfully desire to call the Court's attention to the fact that all of the letters offered by the plaintiff up to this point; that is to say, Plaintiff's Exhibits 1, 2, 3 and 4 were admitted in evidence by the Court over the

defendant's objections to which admission exception was taken (S. C., p. 29, ll. 1-10).

The admission of letter Exhibit P4 this defendant respectfully suggests was most harmful to the defendant because of the fact that the trial Court in deciding the case rested his decision to a very large degree on the fact that the defendant, by this letter, had waived the requirements of its constitution, by-laws and policy of insurance.

It is respectfully submitted that since the plaintiff had failed immediately to notify the defendant of the death of the insured for a period in excess of two years, whereas laws of the society require immediate notice, there could not be any waiver because, we contend, there was nothing for the defendant to waive because the plaintiff's right to the proceeds of this policy of insurance had expired because of her breach of the law requiring immediate notice.

This defendant could have been estopped, by its acts or declarations, from relying upon the provisions of its by-laws and constitution, both with respect to the furnishing of proofs of death and the time within which suit should have been brought. The society might also have waived the same, but we submit that there was nothing done by this defendant, or any of its agents, or representatives, which caused the plaintiff to postpone any action or which prevented her acting until the expiration of the time limited because, at the time

the proofs of death were submitted, it was more than two years after the death of the insured and also the time when suit was instituted was very nearly four years after the death of the insured, while such action should have been commenced one year next after the death of the insured and within one year next after the cause of action accrued.

It may be argued by the plaintiff that the acceptance of the proofs of death constituted a waiver by the defendant.

It has been held that the sending by a society of proofs of death, without notifying the beneficiary that it intends to rely on his failure to send notice of death, within the time required, waives want of timely notice even though, as in this case, the society's constitution and the blank proofs of death provide that the sending of the blanks should not constitute a waiver of any defense and that in sending the same the society does not waive any provision of the constitution but expressly reserves the same (45 *Corpus Juris*, p. 242). On the other hand, it has been held that the mere sending by the society of blanks containing such an endorsement, as was done in the instant case, does not waive any provision of the constitution and is not a waiver of failure to give notice of death within the required time where the beneficiary merely filled out and sent in the blanks but went to no expense and was not misled to her prejudice (45 *Corpus Juris*, p. 242, Section 187; *Allman v. Order United Commercial Travellers*, 277 Mo. 678; 213 S. W. 429).

Where the beneficiary permits the period to pass within which suit may be brought, the claim is thereby wiped out and no subsequent acts of the company will revive the claim unless the acts are such as to constitute a new contract. Waiver can only be based upon acts done which mislead the beneficiary before the period expires.

- William v. Vermont Mutual Fire*, 20 Vt. 222, 230, 231;
National Insurance Co. v. Brown, 128 Pa. 386, 391-392; 18 Atl. 389;
Everett v. London & L. Ins. Co. 142 Pa. 332, 343-344; 21 Atl. 819;
Insurance Co. v. LaCroix, 45 Texas 158, 168;
Hill v. Phoenix Ins. Co. 14 Wash. 164, 166-167; 44 Pac. 146;
Vincent v. Mutual Life Ins. 74 Conn. 684; 51 Atl. 1066;
Carlson v. Metropolitan Life, ~~172~~¹⁷² Mass. 142; 51 N. E. 525.

“The acts of the company may be such as to estop it from relying upon the condition, as where its conduct prevents the bringing of the action within the stipulated time. *It would seem that the act relied on to constitute a waiver must have been within the period of limitations.*” (33 *Corpus Juris*, page 79, Section 789).

It is respectfully submitted that the trial Court fell into error in admitting Plaintiff's Exhibit #4

as well as Plaintiff's Exhibits 1, 2 and 3, previously referred to in discussion under the foregoing grounds of appeal.

The next ground of appeal is that numbered "8," in which the defendant contends that by reason of the plaintiff having failed to comply with the provisions of the defendant's by-laws by which immediate notice of the death of the insured is required, she was not entitled to recover and that the trial Court erred in finding in her favor because she did not so notify the defendant until more than two years after her husband's death.

There is no question but that the law is, and the cases so hold, that all provisions in a policy of insurance (whether it be the ordinary life insurance policy or a mutual benefit certificate) or any provision in the by-laws or constitution of a mutual benefit society which operate or will tend to operate as a forfeiture, are most strongly construed and interpreted against the insurer. This rule is so well known that it requires no citation of authorities; however, while this is the law, yet nevertheless, this principle must be applied reasonably. In the instant case, the plaintiff relies in the endeavor to maintain her position upon the cases which hold that where it is impossible for the beneficiary to obtain notice of the death of the insured, any provision in the policy of insurance, by-laws or constitution requiring notice of death, within any certain

time, or as in the instant case, immediate notice, is of no force or effect as against the given beneficiary.

It is most respectfully submitted that this line of cases has no application to the case here on appeal. Here we have a woman who had been separated from her husband since before 1908 and the only evidence in the case which establishes any even indirect communication between the insured and the plaintiff, are Plaintiff's Exhibits 1 and 2, which were letters written by the father to the son in 1924 and in 1925, respectively, which letters were in turn mailed by the son to the mother, the plaintiff.

Certainly, it seems to the defendant that this plaintiff is not and never has been in a position whereby she is justified in attempting to avail herself of the excuse of the impossibility of learning of the death of her husband.

The very fact that she received these two letters from her son shows that it was not impossible for her to have kept in contact with her husband, even indirectly. The last letter received by the plaintiff from her son was in January, 1925, and she learned of the death of her husband, on or about October 1, 1927, a period of one year and ten months thereafter during which time she neither communicated with her son, nor apparently, from the testimony, did her son communicate with her.

Further, this plaintiff did not notify the defendant of the death of the insured, until three months after she did in fact learn of it.

A notice given within a reasonable time, it has been held, is a sufficient compliance with a requirement of immediate notice. *Biederman v. Commercial Casualty Co.*, 4 Misc. 591; *Corpus Juris* 45, p. 238, Section 184. How can it be said that the notice given in this case under consideration, under all the circumstances, is reasonable notice, not to say immediate notice?

“In the absence of *special circumstances justifying it*, where notice is required immediately, forthwith, promptly, or as soon as possible or practicable, any *considerable delay is unreasonable.*” (*Corpus Juris*, page 12, paragraph 657).

33

It is respectfully submitted in concluding the discussion of this question, that the Court erred in holding that the plaintiff, notwithstanding her failure to comply with this provision of the laws of the Society, was entitled in law to maintain her action and to recover against defendant, and for this reason this defendant respectfully requests this Honorable Court to reverse the judgment below. (45 *Corpus Juris*, p. 239, Section 185).

The next ground of appeal is that numbered “9,” in which the defendant urges that since the plaintiff failed to institute her suit within one year next after the death of her husband and within one year next after the cause of action accrued, the Court erred in permitting her to recover.

The trial Court in considering this defense, held that there was an ambiguity in law 3 (S. C., p. 46,

l. 32 to S. C., p. 47, l. 30) in that the law provides that the suit commenced by a member or beneficiary "shall be commenced within one year next after the death of such member and within one year next after the cause of action accrued." The trial Court held that where there is an ambiguity in a contract of this nature, the provision giving rise to the ambiguity should be most strongly construed against the insurer and quoting cases substantiating that doctrine. He held that the time of the accrual of the right of action was March 2, 1928, when she furnished the proofs of death.

We respectfully submit that there is no ambiguity in this law. We submit that this law has to be read in conjunction with the requirement as to the notice of death and reading the two together, the law under consideration means that if actual and immediate notice of death be given, any action must be started within one year thereafter. If immediate notice in fact be not given, then when the notice is given the cause of action then accrues and within one year thereafter, in such case, suit must be started.

It seems to us that the construction of the accrual of the cause of action in this case must be determined by the Court's decision with regard to whether or not the plaintiff had furnished the proper notice. Unquestionably, if this Court holds that the notice which she gave, which was more than two years after the death of the insured [at which time under ordinary circumstances the right of action would accrue (45 *Corpus Juris*, p. 277, Sec. 220)], was immediate notice as provided for by law 3 (S. C., p. 46, l. 10), then her suit was

started within one year next after her cause of action accrued, but we respectfully submit that it is not reasonable to hold that such notice was immediate notice and under the circumstances of this case it would be manifestly unjust to hold that her right of action accrued on March 2, 1928, two years and six months after the death of the insured. We respectfully submit that this provision of the defendant requiring suit to be instituted within one year after the death of the insured and within one year next after the cause of action accrued, should be construed to mean that notice be given immediately and as soon as reasonably possible and that thereafter suit should be started within one year. The question as to whether or not suit was started within one year as provided by law 3, is purely a question of construction to be determined from the phraseology of the contract (Vol. 45, *Corpus Juris*, p. 278, Section 223 to p. 279, Section 224).

We call this Court's attention to 33 *Corpus Juris*, page 77, Second Section of Paragraph 784, as follows:

“Where the policy of a mutual company is regarded as constituting the contract between the parties, a by-law in force at the date of the policy limiting the period within which action may be brought is not a bar to an action after such period, unless the by-law is made a part of the policy. The rule is other wise where the policy is by its terms made subject to the provisions and conditions of the charter and by-laws of the company.”

We respectfully call the Court's attention to the fact that in the instant case the policy of insurance, by its terms, was made subject to the provisions of the constitution, laws, rules and by-laws of the association.

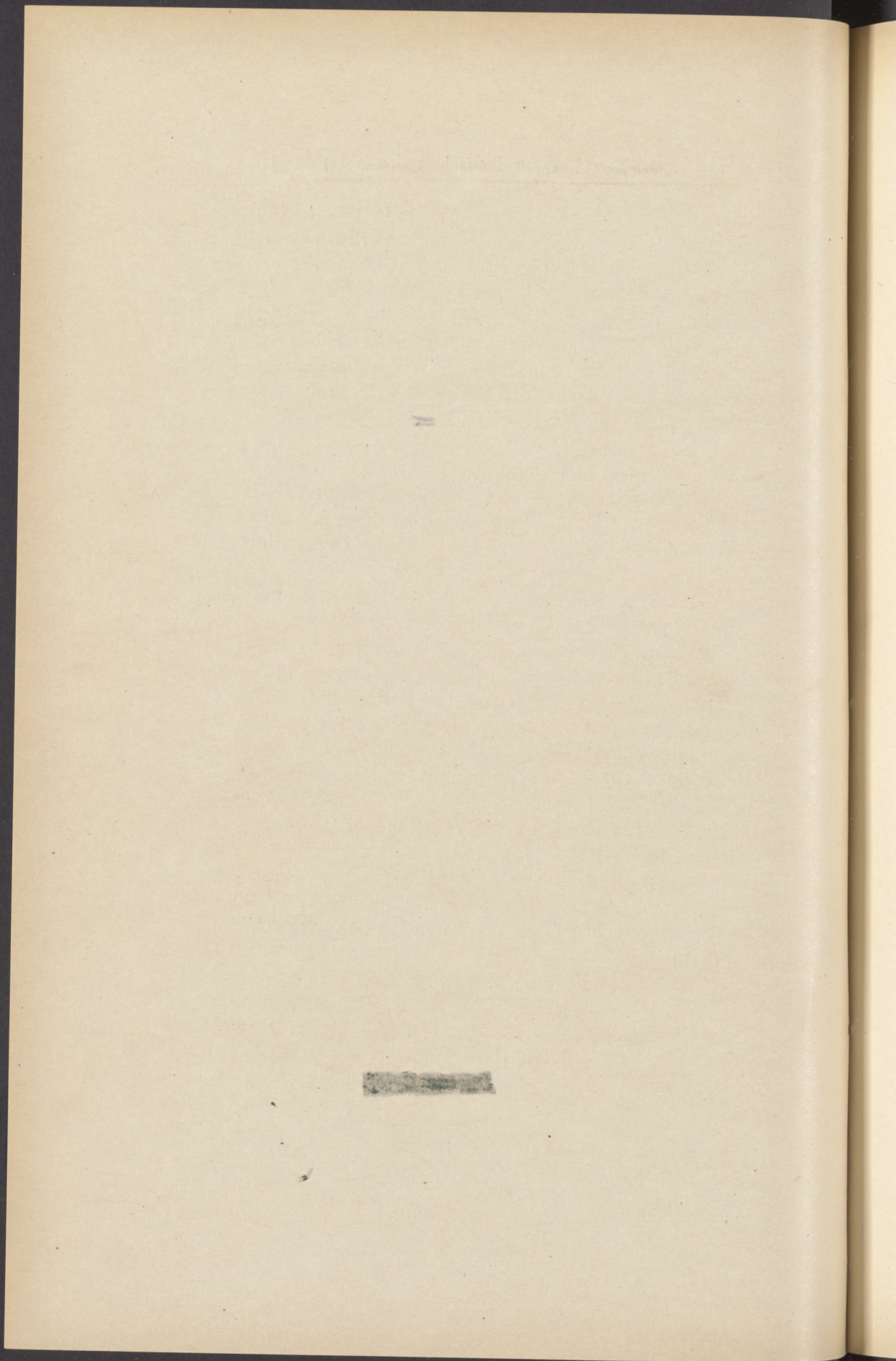
We respectfully submit that the trial Court erred in finding that the plaintiff's suit was commenced within the time provided for in law 3, and that, therefore, the judgment should ~~not~~ be reversed.

The next grounds of appeal are those numbered "10" and "11" which are more or less inter-related and have been covered in the above discussion.

We respectfully request the Court to consider all of the argument hereinbefore contained as pertaining to these grounds of appeal because grounds of appeal 10 and 11 embrace the entire case. We respectfully urge that considering all of the points made by this defendant, the trial Court should have found in favor of the defendant and against the plaintiff and that there is not sufficient evidence in the case to sustain a verdict in favor of the plaintiff and against the defendant.

It is submitted, in conclusion, that the trial Court erred in the instances stated in the grounds of appeal and for that reason the judgment below should be reversed.

Respectfully submitted
CHARLES De F. BESORE,
Attorney of Defendant.
RIGGINS & DAVIS,
~~On the Brief~~



NEW JERSEY COURT OF ERRORS
AND APPEALS.

ELDA H. KISSINGER,
Plaintiff-Respondent,

v.

NORTH AMERICAN UNION LIFE ASSURANCE SOCIETY,
a corporation existing under and by virtue
of the laws of the State of Illinois,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL.

BRIEF OF PLAINTIFF-RESPONDENT.

FACTS.

Plaintiff-respondent, Elda H. Kissinger was married to John Kissinger. The said John Kissinger was a member of the Legion of the Red Cross, a fra-

ternal beneficial society, and had taken out a policy on his life in the sum of \$1,000 in which his wife, Elda H. Kissinger, was the beneficiary. Later, another certificate for such insurance was issued by the Legion of the Red Cross, a copy of which is marked Exhibit A and attached to the complaint (S. C., pp. 4-5). The plaintiff-respondent was the beneficiary under the terms of such certificate of insurance (S. C., p. 5, l. 6). In 1915 the Legion of the Red Cross consolidated with the defendant-appellant society, and a certificate of re-insurance and consolidation was issued, incorporating by reference the previous certificate of insurance (Exhibit A), a copy of which is annexed to the complaint and marked Exhibit B (S. C., pp. 6-7). Prior to 1915 the said Elda H. Kissinger and John Kissinger had separated. Elda H. Kissinger knew that her husband, John Kissinger, was in Pittsburgh, Pennsylvania, because her son corresponded with him, and she in turn corresponded with her son who had forwarded to her some of her husband's letters, such letters being marked P1 (S. C., pp. 33-4) and P2 (S. C., pp. 35-36). These letters were dated January, 1925. In October, 1927, Elda H. Kissinger, not having heard anything of her husband since the above letters referred to (P1 and P2), called Pittsburgh on the telephone, and as a result of the call learned that her husband had died in August of 1925. The Camden, New Jersey, Council was notified of the death, and as soon as proofs of death could be obtained, they were submitted to the society. They were received, filled out, by the society on March 2, 1928. No objection was made to the notice given or to the proofs furnished, nor was Elda H.

Kissinger, the plaintiff-respondent, informed that the claim was refused. On August 6, 1928 the defendant-appellant society, through its Supreme Secretary, wrote Elda H. Kissinger stating that the certificate had been received, and the amount due on the policy would be paid within the next week. Exhibit P4 (S. C., p. 37). It was not until after this date that the claim was refused. A period of approximately ten months elapsed from the time the company was notified until the claim was refused. During the period from August, 1925, when John Kissinger died, unknown to his wife, until October, 1927, when Elda H. Kissinger learned of the death, she had continued to pay all dues and assessments, which were received and accepted by the defendant-appellant society.

Inasmuch as defendant-appellant has for the purposes of the brief designated the plaintiff-respondent as "beneficiary," the holder of the benefit certificate, her deceased husband, as "insured," and the defendant as the "insurer" (Insurer's Brief, p. 2, ll. 5-8), the same designations will be used hereafter in plaintiff-respondent's brief.

ARGUMENT.

Since the insurer abandons its first ground of appeal, no further reference is necessary on that point.

The insurer next argues reasons for appeal, numbered 2 and 3, together, and therefore the answers to such reasons will be argued together. Insurer contends that the Court erred in admitting into evidence two letters marked Exhibits P1 and P2 (S. C., pp. 33-36), on the ground that they were too remote and also incompetent. These exhibits were letters which had been sent by the insured to his son, and were in turn forwarded by the son to his mother, the beneficiary, who was the wife of insured. These letters were offered on behalf of the beneficiary for the purpose of showing that she had made a reasonable effort to keep in touch with the whereabouts of her husband, from whom she was separated, and for the further reason that she knew he was in Pittsburgh, and how she came by that knowledge. This, because Section 20 of Law III of the Amendments of the By-Laws of the insurer, required notice of any permanent change of address, and that if the residence of any member was unknown to his or her family, or the secretary of his or her council, for one year, then such member should stand suspended. Counsel for the insurer makes no point of this in their brief. Such being the case, compliance on the part of the beneficiary with such provision stands admitted, and reasons 2 and 3 need no further answer, as they serve no purpose either for or against the insurer or beneficiary.

The next ground of appeal urged by insurer is that numbered 4 (Insurer's Brief, p. 6, ll. 8-9), and is directed at Exhibit P3 (S. C., pp. 36-37), which is a copy of a letter dated August 3rd, 1928, and written by the beneficiary to the insurer. This

ground of appeal is so connected with the ground of appeal numbered 5 (Insurer's Brief, p. 6, ll. 10-11) that it really forms a part of it, and reasons 4 and 5 can be more clearly discussed together.

It is true that Exhibit P3 is a copy of a letter, and the manner in which such copy was made is stated in the testimony of the beneficiary (S. C., p. 25, ll. 8-36; p. 26, ll. 1-29). It is a copy of a letter written to the insurer, but the Exhibit P4 (S. C., p. 37) which is a reply of the insurer to the original of such copy (*i. e.*, Exhibit P3) refers distinctly to the letter represented by Exhibit P3, when it recites "we are in receipt of yours of the 3rd instant." Such statement in Exhibit P4 was an incorporation by reference of Exhibit P3, thereby making Exhibit P3 part of Exhibit P4, so that if Exhibit P4 is admissible, Exhibit P3 is also admissible. It is a mere explanation of what is meant in Exhibit P4 by the words "we are in receipt of yours of the 3rd instant." As such it is admissible, even though not the original letter. In 22 *Corpus Juris*, p. 1183, par. 1583 (13) it is said:

"A reference to a particular writing, however, does not exclude evidence other than the writing so referred to."

As to the question of the making of a demand before introducing into evidence Exhibit P3, it might be noted also that Exhibit P3 is not the main issue in the cause, but merely collateral to Exhibit P4, and in such case a demand for production of the original letter before offering the copy in evidence is not necessary. In 22 *Corpus Juris*, p. 1060, par. 1359, b (1), it is said:

“In cases where it is sought to prove not the contents of an original document, but some fact collateral thereto, or WHERE THE DOCUMENT RELATED NOT TO THE MAIN ISSUE IN THE CAUSE, but to some collateral circumstance, notice to produce the writing is not prerequisite to the introduction of parol evidence.”

Exhibit P3 is not the main issue, but a collateral circumstance to Exhibit P4 which is the main issue, and therefore is dependent on the admissibility of Exhibit P4.

Thus, then, if Exhibit P4 is admissible the trial Court committed no error in receiving Exhibit P3 in evidence. The argument as to the admissibility of Exhibit P4 so as to avoid confusion will parallel the argument of the insurer, so it will not be discussed further at this point, but will be argued later herein.

Further answering the contention of the insurer as to the binding effect on it of Exhibit P4 on the ground that such letter was signed by the Supreme Secretary, and as such was without his scope of authority, and therefore not binding on the insurer, we have recourse to the adjudications of the courts of this State. It might be well to note in passing that Exhibit D4 (S. C., pp. 45-47) does not expressly prevent the sending of such letters or statements by the Supreme Secretary, as evidenced by the letter marked Exhibit P4 (S. C., p. 37). But even assuming such an interpretation could be taken from Exhibit D4 (S. C., pp. 45-47), yet such provisions are

held not to be applicable to those conditions which are to be performed AFTER the loss has occurred.

Carson v. Jersey City Insurance Company, 43 N. J. Law, pp. 300, 310. This doctrine was re-affirmed in *Dimick v. Metropolitan Life Insurance Company*, 69 N. J. Law 384, 398, and in *Robbins v. Farmers Mutual Fire Insurance Association*, 133 Atl. Rep. 513, N. J. Law (not quoted in State reports); quoting with approval the above case of *Carson v. Jersey City Insurance Company*.

In the case of *Rosenberg v. Maryland Casualty Company*, 130 Atl. Rep. 726, N. J. Law (not quoted in State reports), the Supreme Court held:

“That a provision ‘that no change whatever in the policy, and no waiver of its provisions, shall be valid, unless an endorsement is added thereto, signed by the president, secretary or assistant secretary of the company, expressing such change or waiver,’ did not apply to conditions to be performed AFTER the loss occurred, such as service of the notice of loss.” Citing *Bohles v. Insurance Company*, 83 N. J. Law, 246, 83 Atl. Rep. 904.

Can it be said then, that the Supreme Secretary, an officer of the insurer, an agent for the transaction of business who signs the certificate of insurance, as evidenced by Exhibit B (S. C., pp. 6-7) has no authority to bind the insurer?

In 33 *Corpus Juris*, p. 24, par. 682, it is said:

“Stipulations of the policy requiring notice of proofs of loss and prescribing the forms and requisites thereof, are expressly waived, either

wholly or in part when the company THROUGH AN AUTHORIZED OFFICER OR AGENT, gives an insured a direct and explicit assurance that all or some of them need not be complied with, or that he has sufficiently complied with them. However, as in other cases, a waiver to be effective must have been made with knowledge of the facts.”

The insurer does not deny that they had knowledge of the facts. The letter written on August 6, 1928 (see Exhibit P4) stated that the insurer would on receipt of the policy send the amount due thereunder. The insurer, at that time, had full knowledge of the facts, as the letter was written about six months after proofs of death were furnished, and about ten months after notice was given.

In *Joyce on Insurance*, Second Edition, Volume 2, pages 1438-40, paragraph 602, it is said:

“Where a general agent, with authority to act in relation to proofs of loss, misleads the assured so that he delays to bring action within the time limited in the policy therefor, the company is estopped from availing itself of such delay. So where the time limit for suing as provided in the policy was ‘within one year after the loss,’ and by the acts and omissions of the insurer’s general agent the insured delayed five months in making the preliminary proofs of loss, it was held that that time must be excluded in determining the time within which action must be brought. And where the period limited in the policy for suing has ex-

pired, and the company's agent thereafter recognizes its liability, there is a waiver of the limitation. * * * So the insured is justified in delaying action until after the period limited expires, WHERE THE SECRETARY OF THE COMPANY STATES IN A LETTER TO HIM THAT THE LOSS WILL BE PAID AT A CERTAIN DATE."

In *Joyce on Insurance*, Second Edition, Volume 2, page 1307, paragraph 533, it is stated:

"A waiver is an intentional relinquishment of a known right, AND ANY CONDUCT RELIED UPON WHICH WARRANTS THE BELIEF THAT SUCH RELINQUISHMENT HAS BEEN MADE constitutes in law a waiver."

In *Joyce on Insurance*, Second Edition, Volume 2, page 5585, paragraph 3367, it is said:

"If the silence of the insurers at the time of the receipt of the proofs subsequently (*i. e.*, after the limitation expressed in the policy) is, however, accompanied by other acts or conduct on their part which might fairly lead the claimant TO BELIEVE that the company still regards the contract to be in force and binding, this will operate as a waiver of the delay in furnishing the proofs."

In *Joyce on Insurance*, Second Edition, Volume 2, page 5374, paragraph 3207, it is said:

"A provision requiring suit to be brought

within a certain time may be waived, and this waiver MAY BE INFERRED from acts and conduct on the part of the insurer. And if the insured is induced by the acts of the OFFICERS OR AGENTS of the insurer to suspend for a certain time the performance of acts required on his part after loss, such time should be added to the time limited for bringing action.

Again, a stipulation limiting the time within which an action may be brought on an insurance policy or certificate, being for the benefit of the company, MAY BE WAIVED BY IT. So a condition in a policy that a failure to bring suit within a certain time after loss shall constitute a forfeiture, is a contract, and not a statute of limitations, and MAY BE WAIVED by the insurer, or he MAY BE ESTOPPED BY his acts from insisting upon its enforcement. And a condition in a policy requiring suit to be brought within six months after the loss may be waived and such waiver need not be express, but may consist OF THE ACTS AND CONDUCT OF THE COMPANY AND ITS OFFICERS, which throw the insured off his guard and lull him into security until the expiration of the time mentioned in the condition. So the limitation clause and arbitration clause in a policy can be orally waived by the insurer. It is held that in order to constitute a waiver by the company of a condition in the policy limiting the time in which suit shall be brought after loss, the act or declaration relied upon must be done or made during the running of the period of limitation. But

it is also declared that this is so decided only in a few cases, and that the true rule and the one founded upon better reason is that such a condition may be and is waived if assurer, WITH FULL KNOWLEDGE OF A FORFEITURE INDUCES ASSURED TO INCUR TROUBLE OR EXPENSE IN THE BELIEF THAT THE VALIDITY OF HIS CLAIM IS RECOGNIZED. Again, when an insurance company attempts to defeat a recovery on a policy upon a condition for its own benefit, and which deprives the assured, no matter how honest his claim, of the indemnity which he paid for, the company must be held to entire good faith, and the breach of condition must be promptly taken advantage of. Nothing else must be alleged as a reason for non-payment, and the assured must not be led astray by proposing settlement on grounds other than the alleged breach of condition.

So the rule first stated applies where the company, by fraud or by holding out reasonable hopes of an adjustment, prevents the assured from bringing suit within the time limited for the insurer cannot, after it has induced the insured to believe that the loss will be adjusted amicably and the amount finally paid, and thus lulled the latter into inaction, refuse to pay the loss after the time limited has expired, by claiming that the provision as to the time of bringing suit has not been complied with. And it is not necessary for the insured to show that the company directly requested him to delay bringing the suit.”

In view of this construction by our Courts, and of the other quoted authorities, there can be no question as to the right of the Supreme Secretary to waive provisions and stipulations of the by-laws, and it requires no further discussion or argument.

Reasons numbered 6 and 7 (Insurer's Brief, p. 6, ll. 12-24) are next urged as a ground for reversal. Inasmuch as they are so interrelated the insurer has chosen to argue them together, and answering argument will be raised in the same manner.

These reasons again bring Exhibit P4 (S. C., p. 37) into discussion, attacking its admissibility. This letter is admissible on two grounds. 1. As a waiver. 2. As a declaration against interest.

As to the first ground: Waiver.

Neither the New Jersey Practice Act nor the Supreme Court Rules state that a waiver must of necessity be pleaded in order to introduce evidence thereof. Of course, in some instances it should be done, but those instances will vary with the circumstance.

How could surprise be alleged when one of its own officers wrote the letter (Exhibit P4)? An officer who, in view of the cases of *Carson v. Jersey City Insurance Company* (*supra*), *Dimick v. Metropolitan Life Insurance Company* (*supra*) and *Robbins v. Farmers Mutual Fire Insurance Association* (*supra*), is a proper person for the purpose of writing such letters?

The Illinois Courts apparently took this view when, in the case of *Harvick v. Modern Woodmen of America*, 158 Ill. App. 570, it was held that:

“In an action for insurance benefits against a fraternal benefit society (which the present insurer is), the plaintiff is entitled to the benefit of the defense of waiver WITHOUT SPECIALLY PLEADING IT.”

In view of the foregoing argument and citation of authority, it is respectfully submitted that the trial Court did not err in permitting Exhibit P4 to be introduced in evidence on the ground of waiver.

It might be noted at this point that when the insurer raised objection to the introduction in evidence of Exhibit P4, in the trial court (which is shown in S. C., pp. 27-28), there was considerable discussion as to the question of waiver, all of which does not appear on the record. This is evidenced in S. C., p. 29, l. 1, by the words, “After Argument.” In such discussion, beneficiary requested the right to amend her pleadings so as to show waiver, which was not passed on by the Court; and by reason of the Court thereafter taking control of the matter, beneficiary had not the opportunity of amending her pleadings. Although this does not appear in the record, that such is the case is borne out by the fact that it so stated in the last paragraph on the last page of the brief of the beneficiary filed in the court below.

We are now brought to the second ground for sustaining the admission of Exhibit P4, *i. e.*, that it is a declaration against interest.

This proposition is so elementary as to obviate the necessity of any further discussion thereon. Defendant cannot complain of this. It is therefore

respectfully submitted that the letter was properly admitted.

The insurer is inconsistent in its arguments. In one place (argument in Insurer's Brief, page 9, under Reason 5) it contends that the Supreme Secretary had no right to waive the provisions of the by-laws, and in another place (Reasons 6 and 7, page 11, lines 10-20 of Insurer's Brief) it argues that there was nothing to waive. Just which points insurer relies on cannot be ascertained from its brief. But certain it is, as well as undisputed, that the beneficiary did not learn of decedent's death until more than two years had passed. She then acted with reasonable promptness in notifying the local council, of which the deceased was a member, of the death. This was in accordance with one of the by-laws, which is not part of the record. Notice was received by the Camden Council on January 11, 1928, a period of approximately three months after learning of the death of the insured, and forms for the proof of death were then mailed to the beneficiary and were returned to the insurer, filled out, on March 2, 1928.

As to the eighth reason for reversal.

The insurer urges that the beneficiary has no standing by reason of the fact that immediate notice of death was not given. This, of course, under the circumstances, was impossible, as the beneficiary had no knowledge or notice of death until October, 1927, although the insured had died in August, 1925.

Provisions are inserted in by-laws for some reasonable and practicable purpose, and not with a view of defeating a recovery in a case of loss by

requiring parties interested to do something manifestly impossible. Under the facts as outlined it was manifestly impossible for the beneficiary to give notice of her husband's death, because she did not know he was dead. She continued to pay premiums from August, 1925, until October, 1927, unaware of her husband's death. Immediately on learning of her husband's decease she notified the insurer, showing that she endeavored to comply with the by-laws.

In 33 *Corpus Juris*, at page 7, paragraph 649, it is said:

“Reasonable conditions of the policy requiring notice and proofs of loss to be given the company by insured or the claimant under the policy are valid and enforceable, and the Courts will not relieve insured against his failure to comply therewith UNLESS HE HAS A VALID EXCUSE therefor, or unless the company has lost its right to insist on compliance by estoppel or WAIVER. Generally speaking, the conditions are construed IN FAVOR OF THE INSURED, and the Court will not IMPLY a forfeiture of the insurance for non-compliance herewith, UNLESS THE POLICY SO PROVIDE. Ordinarily they are construed as requiring only what is reasonably possible on insured's part. All that is required of him is a reasonable and substantial compliance with the requirements of the policy.”

Under the above section and the facts submitted, it is evident that the beneficiary has a valid excuse

for not giving the notice required by the by-laws, and it cannot be doubted that she did everything reasonably possible under the circumstances.

In 33 *Corpus Juris*, at page 11, pararaph 657, it is said:

“A stipulation of the policy that notice of loss be given immediately, forthwith, at once, promptly, or as soon as possible or practicable, requires the giving of notice within a reasonable time, and is satisfied, if insured or the insurance claimant, acts in the matter with DILIGENCE and gives notice without UNNECESSARY DELAY. If no time is fixed by the policy, notice must be given within a reasonable time. What constitutes a reasonable time for giving notice depends on the circumstances of the particular case.”

Under this section the beneficiary certainly gave a reasonable notice, and she acted with diligence and no unnecessary delay. To say, now, that she should have complied with the by-laws is to attribute to plaintiff a knowledge which is not possessed by mortals; it would imply that plaintiff was omniscient.

In 33 *Corpus Juris*, at page 14, paragraph 662, it is said:

“The effect of a failure to give notice or proofs of loss within the stipulated time depends upon the provisions of the policy in that regard. If giving notice and furnishing proofs in such time are made conditions precedent to liability on the part of the company, or if a

forfeiture is provided for if they are not given in the time fixed, notices and proofs must be given as and when specified in the policy or no recovery may be had, and additional proofs furnished long after the time required by the policy cannot be considered. The Courts, however, are reluctant to construe provisions requiring notice and proofs of loss as in the nature of forfeitures, and where the serving of notice or proofs within the specified time is not EXPRESSLY MADE A CONDITION PRECEDENT TO RECOVERY, AND NO FORFEITURE IS PROVIDED FOR IN CASE OF DEFAULT IN SERVICE, notwithstanding forfeitures are stipulated for in case of breach of other requirements of the policy, the failure to serve notice or proofs merely postpones the time of payment and the time for bringing suit, and if notice and proofs are subsequently served insured or the insurance claimant may recover on the policy notwithstanding his delay."

It will be noted that the by-laws in the present case do not make the notice a condition precedent. They do not state that a forfeiture is created, or that a loss shall be incurred for failure to comply with the provision. Such provision is not a condition, but is inserted to expedite the insurer's business affairs. It will be further noted that the by-laws (S. C., p. 46, ll. 31-22) makes it the "duty" of the beneficiary to give immediate notice of death, etc., but it is not made mandatory; it is directory only.

In 33 *Corpus Juris*, page 15, paragraph 663, it is said:

“A default in serving notice or proofs of loss as required by the policy may be excused, where the circumstances are such as to render strict compliance with the requirement IMPOSSIBLE or UNREASONABLE, and insured has not failed to use due diligence.”

And in 33 *Corpus Juris*, page 16, paragraph 663, it is said:

“IGNORANCE OF INSURED OF THE FACT OF THE LOSS or the insurance claimant's ignorance of the policy, or of the requirements thereof in reference to notice and proofs, MAY EXCUSE A DEFAULT, although the ignorance of one or of two persons jointly insured does not excuse the default of the other.”

Under the present facts the notice provided by the by-laws would be excused, because the circumstances rendered compliance therewith impossible, as she was ignorant of insured's death.

In 33 *Corpus Juris*, page 16, paragraph 664, it is said:

“The object of the notice is to acquaint the company with the occurrence of the loss so that it may make proper investigation and take such action as may be necessary to protect its interests.”

And in 33 *Corpus Juris*, page 17, paragraph 665, it is said:

“The object of proofs is to furnish the company with the particulars of the loss and all data necessary to determine its liability and the amount thereof.”

If this is so, can it be said that defendant's rights or interests in the present case were in any way impaired?

In 33 *Corpus Juris*, page 77, paragraph 785, it is said:

“A contractual provision limiting the time within which an action may be brought against the company being in derogation of a common law right, is not entitled to a broad construction and is to be confined to actions based upon the policy.”

The case of *Knickerbocker Ins. Co. v. McGinis*, in 87 Illinois Reports, page 70, is applicable to the present situation. Briefly, the case is as follows:

“Where a policy of insurance required immediate notice to be given by the assured in case of a loss, and in the great fire in Chicago, on October 9th, 1871, the plaintiff's property insured was burned, notice of the loss given November 13th, 1871, was held to have been given in sufficient time, in view of the great derangement of all kinds of business caused by the fire.” Syllabus.

J. Breese delivered opinion as above.

The case of *Magner v. Mutual Life Association of City of Brooklyn*, in 44 New York Supp., page

862, is also applicable. In that case Follett, J., at page 364 says:

“The provision of the by-laws and of the policy in respect to bringing actions must be construed together, and the by-law which provides that no action shall be maintained unless begun within six months after the death of the insured, should be held to be void, AS UNREASONABLE, when attempted to be applied to a case like the present, in which the defendant delayed its final determination as to whether the claim would or would not be paid until three days before the expiration of the six months. Insured died March 14, 1895, and notification of rejection of claim was dated September 11, following.”

In the case of *Case v. Sun Ins. Co.*, 83 Cal. 473, 23 Pacific Rep. 234, it was held

“that where it is impossible to comply with the provisions of the policy before the time limited for bringing suit has expired, COMPLIANCE WITH THIS PROVISION WILL BE EXCUSED.”

Can it be doubted that in the present situation it was impossible for the beneficiary to make proofs according to the by-laws? This being so, the beneficiary is excused.

In *Joyce on Insurance*, Second Edition, Volume 5, page 5477, paragraph 3280 (a) it is said:

“When strict compliance excused; impossi-

bility of performance, etc., delays, reasonable time. When causes exist rendering impossible the giving of notice of an accident and injury within the time required by an insurance policy, notice may be given thereafter, and the beneficiary will be excused for failure, if done within a REASONABLE time, or within the time stipulated AFTER the cause preventing prior compliance ceases to exist."

Further, on page 5477, it is said:

"Service of notice of claim by a beneficiary in an accident policy, made as soon as practicable after obtaining knowledge of the existence of the policy, is sufficient, as compliance with the terms of the policy as to notice and proofs of loss within a reasonable time after knowledge of its existence under all the circumstances of the particular case is all that is required. So where a life policy requires proof of death to be furnished within two months thereof, in default of which all claims under the policy shall be forfeited, such requirement is a condition subsequent, and is complied with by a submission of proof of death within a reasonable time after knowledge thereof, and of the existence of the policy, under all the circumstances of the particular case. Proofs are also submitted within a reasonable time after insured's death, where by reason of want of knowledge of said death and of the existence of the policy and the distance between the place where insured died and the plaintiff's residence,

notice was not given for several months and proofs were submitted some months thereafter but as soon as plaintiff was able to obtain the legal assistance necessitated by insurer's refusal to pay. And a provision in a life policy that 'notice of the claim and proof of death shall be submitted to the company within 90 days after the decease' does not defeat the claim of the beneficiary when he does not know of the existence of the policy or of the death of the insured, until more than a year thereafter, and he notifies the company at once after acquiring such knowledge."

In 33 *Corpus Juris*, page 25, paragraph 683, it is said:

"To constitute a waiver, however, the words or conduct of the company must be inconsistent with an intention to rely on the requirements of the policy and be calculated to lead insured into the belief that the requirements will not be insisted upon."

In the present case the insurer by its conduct and actions, in furnishing blanks for proof of death after receiving notice, and in receiving such proofs, and by the letter written (Exhibit P4) stating "and the amount due you on this policy will be sent within the next week," most certainly led the beneficiary to believe that the amount would be paid, and the provisions of the by-laws would not be insisted upon.

The case of *Prentice v. Knickerbocker Life Insurance Company*, 77 N. Y. Reports, 483, is directly in point and is as follows:

“Defendant issued a policy of insurance upon the life of Mitchell. A condition in the policy provided that defendant should be notified forthwith of the death of the insured; also, that full proofs of loss should ‘be presented within twelve months from the time the loss occurs, or the claim will be forfeited.’ Mitchell, in December, 1867, with the knowledge and assent of defendant, assigned the policy to plaintiff who thereafter paid the premiums. In July, 1872, plaintiff being about to go to Europe, paid to defendant’s general agent, in advance, the premium for that year falling due in August. The question being raised as to the position of the parties in case the insured should die before such premium became due, said agent stated that defendant had agents who would know of the death before he could; if he advanced the money it would be returned, ‘and that there was no trouble at all in regard to that whole thing.’ Plaintiff paid the premiums for 1873 and 1874, upon receiving the usual notices from defendant of the date they would fall due; and defendant executed and delivered the usual renewal receipts. Immediately after being advised of Mitchell’s death plaintiff notified defendant of the fact, and upon application was furnished with blanks for proofs of loss, which proofs he had prepared, stating therein the time of death, and delivered them to defendant. July 9th, 1875, defendant received and retained the proofs until some time in October, 1875, without objection, and then took the ground that the claim was forfeited, because proofs were not furnished with-

in twelve months, making no offer to return the premiums received after the death, until after commencement of the action. HELD, that the circumstance justified a finding of A WAIVER OF THE FORFEITURE, and by such waivers defendant was PRECLUDED FROM INSISTING UPON THE FORFEITURE AS A DEFENSE. Syllabus.”

Andrew, J., at page 488, says:

“When the fact that Mitchell had died in 1873 was ascertained, the plaintiff acted with promptness and served his proofs on the defendant. Common fairness required that company, if it intended to rely upon the technical defense now insisted upon, should then take its grounds. It would not have changed the position of the plaintiff, but the question here is, did the defendant by its silence, IN CONNECTION WITH OTHER CIRCUMSTANCES, justify the inference that it accepted the proofs as a compliance with the policy?”

Further, at page 489, he says:

“We are of the opinion that the NATURAL AND REASONABLE PRESUMPTION is that the company retained the proofs because it ELECTED TO WAIVE A TECHNICAL DEFENSE and thereby CONCLUDED ITSELF FROM INSISTING UPON THE FORFEITURE.”

Further, at page 489, he says:

“It is now understood to be the doctrine of the Court, that NO NEW CONSIDERATION IS REQUIRED to support a waiver by an insurance company of a condition in respect to the time of serving proofs of loss, and that it may be done by acts of conduct occurring SUBSEQUENT TO THE BREACH OF THE CONDITION, indicating an intention to waive such condition, although THERE IS NO CONSIDERATION, and although THERE MAY BE NO TECHNICAL ESTOPPEL.”

The above case also covers the points of consideration for a waiver, and answers insurer's contention (insurer's brief, page 13, lines 1-5), that the acts must be such as to constitute a new contract.

The case of *Rokes v. Amazon Insurance Company of Cincinnati*, 51 Md. Reports, 512, in which Justice Robinson rendered the opinion as follows (page 521):

“3. Estoppel, as an element in connection with a waiver of preliminary proofs of loss, means where the insurer knowing that the proofs have not been furnished within time, SO BEARS HIMSELF THEREAFTER IN RELATION TO THE CONTRACT, AS FAIRLY TO LEAD THE ASSURED TO BELIEVE that he still recognizes the policy to be in force and binding upon him.”

Further at page 524, he says:

“4. A clause in a fire insurance policy that

provided 'no waiver or modification of any of the terms or conditions of this policy shall be made in any event,' referred to those conditions and provisions of the policy which entered into and formed a part of the contract of insurance, and were essential to make it a binding contract between the parties, and which were properly designated conditions, AND IT HAD NO REFERENCE TO THOSE STIPULATIONS WHICH WERE TO BE PERFORMED AFTER A LOSS HAD OCCURRED, such as giving notice and furnishing proofs of loss.'

In the case of *Ames v. N. Y. Union Insurance Company*, 14 N. Y. Rep. 253, it was held that ACTS AND PROMISES ON THE PART OF THE OFFICERS of the company were directly calculated to lull plaintiff into inactivity, and that by so doing the defendants INTENDED AND DID WAIVE the limitations stipulated.

In *Canon v. Home Insurance Company of New York*, 53 Wis. 585, 11 N. W. 11, the Court held:

"that where there has been a breach of a condition in an insurance policy, and the insurer, with full knowledge thereof, and without denying its liability on that ground, REQUIRES THE ASSURED TO FURNISH, AND HE DOES FURNISH, AT SOME TROUBLE AND EXPENSE, PROOF OF A LOSS UNDER THE POLICY (whether first or additional proofs) such breach cannot be set up as a defense to an action on the policy."

The case of *Horse v. City of London Fire Insurance Company*, 73 Texas Rep. 67, 11 S. W. 148, states:

“Recognition by an insurance company of its liability in a policy, that no adjustment or further proofs of loss were necessary, and a refusal to pay on the grounds that garnishment proceedings by creditors of the insured were pending, and a promise to pay upon the determination of those proceedings, are sufficient to constitute a waiver of the condition in the policy requiring suit thereon to be brought within twelve months after the loss.”

The case of *Howard v. West Jersey & S. S. R. R. Co.*, 141 Atl. Rep., page 755, is a leading case, and applicable to the present situation. While that case was held in Chancery, involving equitable matters, nevertheless there are certain principles of law there laid down which have a bearing on the present situation. In that case Vice-Chancellor Leaming, at page 757, states:

“It must be recognized that the statute of limitations is for the benefit of individuals, and not to secure general objects of policy; hence, it may be waived by express contract or by NECESSARY IMPLICATION, or its benefits may be lost by conduct invoking the established principles of estoppel in pais. *Freeman v. Conover*, 95 N. J. Law 89, 112 A. 324.”

It will be noted that the insurer alleges that the beneficiary NEGLECTED AND DELAYED NOTI-

FICATION THEREOF for more than two years after said death (S. C., page 10, lines 22-26), but they do not maintain that position. The words "neglected" and "delayed" import knowledge on the part of the beneficiary, whereas it is undisputed that she had no knowledge of the death of the insured until quite some time after death. The rule as to notification must be reasonably interpreted and should only be invoked as a bar to recovery when there has been negligence or culpable delay in complying with it.

On page thirteen of its brief, the insurer cites several authorities for the contention that where the beneficiary PERMITS the period to pass within which suit may be brought, the claim is thereby wiped out, etc. Such argument and citation of authorities, however, has no bearing in the present case, because there is no question here as to the PERMISSION of the period to pass. That imports knowledge, whereas it is undisputed that in the present case the beneficiary had no knowledge of the insured's death.

As to the ninth ground of appeal.

The rule relied on by defendant (S. C., page 46, lines 15-20); provides that a suit by a member or a beneficiary shall be commenced within one year next after the death of such member, and within ONE YEAR NEXT AFTER THE CAUSE OF ACTION ACCRUED. The effect of the former portion of this rule is to create a forfeiture, and since the law is opposed to forfeitures, if a construction which will defeat it is reasonably deducible from the terms or words used to express it, that construction should be

adopted. *Hampton v. Hartford Fire Insurance Company*, 65 N. J. Law 245, and cases therein cited. Provisions in insurance contracts creating forfeitures are to be construed most strongly against the insurer. *Precipie v. Insurance Company of Pennsylvania*, 103 N. J. Law 589, *Snyder v. Insurance Company*, 59 N. J. Law 544.

The provision in the by-law above referred to (S. C., p. 46, ll. 15-20), is in itself ambiguous, and where there is an ambiguity found in a contract of this nature, the provision giving rise to the ambiguity should be most strongly construed against the insurer and in such a manner as will not work an injustice to an insured. *Michler v. New Amsterdam Casualty Co.*, 104 N. J. Law 30, affirmed in 104 N. J. Law 663. The construction of the rule in question most favorable to the beneficiary is that the limitation of her right of action began to run from the time that right accrued, *i. e.*, from the time she furnished proofs of death, to wit, March 2, 1928, and since suit was started within a year from that date, the beneficiary's action is within time.

It is undisputed that after the period of limitation as contained in the by-laws, in the negotiations and transactions with the beneficiary, the insurer recognized the validity of the policy. It received notice and proof of death without objection, and asked for and received the benefit certificate. It was held in *Martin v. State Insurance Company*, 44 N. J. Law 485, that, if in any negotiations or transactions with the assured, after knowledge of the forfeiture, the company recognizes the continued validity of the policy, the forfeiture is waived.

The insurer argues at great length on the ques-

tion of what is meant by the provision of its by-laws above mentioned (S. C., page 46, lines 15-20). On page 16, lines 23-28 of insurer's brief, which is the reason numbered 9, it urges that the provision should be construed to mean that notice be given immediately AND as soon as reasonably possible, and thereafter suit should be started within one year. Such a position is not consistent. If the notice must be given immediately, then it could not be given as soon as reasonably possible, because it would be unreasonable to assume that the beneficiary could give notice of death when she did not have knowledge thereof. On the other hand, a notice as soon as reasonably possible (which was given) could not be immediate. Yet by the use of the conjunction "AND" the insurer wishes the Court to adopt a construction that both immediate notice AND a notice as soon as reasonably possible should have been given. This is manifestly impossible. If the insurer means that "notice as soon as reasonably possible be given," then under the circumstances of the case we respectfully submit that the notice was given as soon as reasonably possible, at which time the cause of action arose, *i. e.*, March 2, 1928, the day on which proofs of death were received by the insurer, and suit was started within one year thereafter.

As to reasons 10 and 11, they are more or less generally covered by the previous argument, and the decision on the previous points will also be dispositive as to these reasons.

It is respectfully urged that in view of the argument herein and the authorities cited in support of

such argument, the trial Court, in view of the admitted facts, committed no error.

It is, therefore, respectfully submitted that the appeal should be dismissed.

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