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PAYMENT OF INSURANCE PREMIUMS THROUGH AN AGENT IN PENNSYLVANIA

By

ANDREW GREEN

Four Fact Situations

When the insured arranges to pay his premiums through an agent, four things may occur:

(1) The insured pays the agent and the agent pays the company.
(2) The insured pays the agent and the agent does not pay the company.
(3) The insured does not pay the agent, but nevertheless the agent pays the company.
(4) The insured does not pay the agent, and the agent does not pay the company.

Where the insured pays the agent and the agent pays the company, it is everywhere admitted that the premium is sufficiently paid, and the company cannot plead non-payment. The purpose of this article is to treat the last three fact situations.

No case will be considered as an authority on any of these fact situations unless the fact situation in question actually is present in the case, or unless the dicta in the case clearly intends to express an opinion on the fact situation.

Definitions

Throughout this article the three words "company," "agent," and "insured" will occur. The word "company" will mean the home office of the insurance company, or such person as is specifically designated by the language of the insurance policy to receive the premium (all the conditions necessary to his authority as set forth in the policy, having been met); thus payment to a general or countersigning agent of the company will be spoken of as payment to the "company." In other words, payment to the "company" is such payment as the policy expressly permits.

"Agent" will mean any intermediary between the company as above defined and the insured; thus the agent of a general agent, a sub-agent of the company, and an insurance broker, are all "agents" as defined herein. The "insured" is the person who is insured, or who is acting as his agent in the matter of insurance.

Relevant Clauses in Standard Insurance Policies

What constitutes payment to the company is never left to the general rules of agency to decide; every insurance policy sets forth some conditions relating to pay-
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Usually most policies contain three clauses relating to the power of an agent to receive payment of the premium. For the sake of brevity we shall speak of these clauses as:

(1) The prepayment clause,
(2) The lapse clause, and
(3) The no-waiver clause.

The prepayment clause usually provides that the insurance shall not be effective until payment is made to an officer of the company, or to an agent duly authorized in writing (the "general agent"), and countersigned by the person receiving the premium, and until the policy is delivered to the insured and a receipt is issued therefor.\(^1\) The lapse clause provides that the policy shall lapse upon non-payment of premiums.\(^2\) The no-waiver clause provides that no agent shall have any power to waive or alter any conditions of the policy and is accompanied by a clause that all conditions of the policy are contained therein,\(^3\) thus invoking the full force of the parol evidence rule against any oral understandings that the insured may have with the agent as to payment; even written understandings are made of no effect unless approved by the company in writing.

Relevant Statutes in Pennsylvania

The law of the Commonwealth of Pennsylvania prohibits illegal inducements for the purchase of insurance; thus overly-favorable arrangements made with the agent in regard to payment are prohibited and the company may be able to defend against the insured on this basis. Also, the law requires that all policies of life

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1. This clause in the standard form life insurance policy of the Penn Mutual Life Insurance Company reads:
   "This contract is made in consideration of the payment to the Company of premiums as provided in this section, and shall not be effective until this policy has been delivered and the first premium paid."

2. This clause in the standard form life insurance policy of the Penn Mutual Life Insurance Company reads:
   "This policy shall lapse upon failure to pay a premium in default within the grace period, and shall terminate immediately upon lapse except as hereinafter provided in Section 6."

3. This clause in the standard form life insurance policy of the Penn Mutual Life Insurance Company reads:
   "No modification or alteration of this policy, or waiver of any of its conditions shall be valid unless endorsed hereon, and signed by an officer of this Company. No agent is authorized to modify, alter or enlarge this contract, or to bind the company by any promise or undertaking as to distribution of surplus or future award of interest."

The policy also contains the usual exclusion clause:
"This policy and the application therefor, a copy of which is attached hereto, constitute the entire contract between the parties."
insurance contain a clause requiring prepayment of the initial premium and providing for the lapse of the policy after a thirty-day grace period.4

WHERE THE INSURED PAYS THE AGENT BUT THE AGENT DOES NOT PAY THE COMPANY

Two Theories: Possession and Credit

Two theories have been advanced in the cases as to when the insured is authorized by the company to pay the premium to the agent. The first theory we shall call the "possession" theory; the second we shall call the "credit" theory. The elements necessary to establish the authority of the insured to pay the agent under the possession theory are:

(1) There is payment of cash or check honored
(2) to the person in possession of the policy
(3) who has obtained his possession of the policy with the consent of the company
(4) for the purpose of delivering the policy and receiving the premium,
(5) and the payment is made by reason of reliance by the insured upon the possession of the policy in the agent,

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"Section 635. Rebates and Inducements Prohibited. No insurance agent, solicitor, or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy or on any policy or agent’s commission thereon, or earnings, profit, dividends, or other benefit founded, arising, accruing, or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue or any paid employment or contract for services of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this Commonwealth, now or hereafter to be written, which is not specified in the policy contract of insurance; nor shall such agent, solicitor, or broker, personally or otherwise, offer, promise, give, option, sell or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing thereon, or any other thing of value whatsoever, as inducement to insurance or in connection therewith. Nothing in this section shall be construed to prevent the taking of bona fide obligation, with legal interest, in payment of any premium.

"Section 636. Insured Persons and Applicants for Insurance Prohibited from Accepting Rebates. No insured person or party or applicant for insurance, shall, directly or indirectly, receive or accept, or agree to receive or accept, any rebate or premium, or any part thereof, or all or any part of any agent’s, solicitor’s, or broker’s commission thereon, or any favor or advantage, or share in any benefit to accrue under any policy of insurance, or any valuable consideration or inducement, other than such as are specified in the policy.”

The Prepayment Statute: Act of 1945, P. L. 334, sec. 1 (sec. 410) (a) of the insurance regulation law:

"Section 410. Uniform Policy Provisions. No policy of life or endowment insurance, except policies of industrial insurance where the premiums are payable monthly or oftener, shall hereafter be issued or delivered by a stock or mutual life insurance company in this Commonwealth unless it contains, in substance, the following provisions:

(a). A provision that all premiums shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers of the company who shall be named in the policy."

This statute was originally passed in the Act of 1911, P. L. 581, sec. 25, and reenacted as section 410 of the insurance regulation act by Act of 1921, P. L. 682, Act of 1935 P. L. 1020 and Act of 1937, P. L. 1634; it is also given in 40 P. S. 510.

The clause providing for the thirty-day grace period is given in note 53, infra.
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(6) and this reliance is shown by actual delivery of the policy to the insured by the agent.

Elements numbers 3, 4 and 6 may not be required.

The elements of the credit theory are similar:

(1) There is payment of cash or check honored,
(2) to the person who has received credit from the company,
(3) who has received his credit from the company for the purpose of receiving payment from the insured,
(4) and the payment is made by reason of reliance by the insured upon the extension of credit by the company to the agent.

Element number 3 may not be necessary.

When the elements of either theory are met, the payment to the agent will be payment to the company without regard to any of the written provisions of the policy. This conclusion has been reached largely without an explicit consideration of the parol evidence rule, but rather as the sense of justice by the courts was moved according to the facts of each case.

Distinction Between Cases Involving Initial and Subsequent Premium

When the initial premium is paid to the agent, the agent, if he has possession of the policy, usually delivers the policy to the insured, and the conclusiveness of the payment can be sustained under the possession theory. But when subsequent premiums are made to the agent, he may possess nothing to deliver to the insured; in fact, it has been held that the absence of a receipt is probative of the fact that the premium was not paid. If, however, the agent possesses the premium receipt, then the facts in legal significance are identical to the situation where the delivery of the policy accompanies the payment of the initial premium. If, however, the agent gives the insured nothing except his personal receipt, then the payment must be sustained if at all under the credit theory. Of course, it is an unusual situation where there is not either a policy or a premium receipt delivered in return for the premium. In cases like life insurance where new policies are not issued, a premium receipt is issued; in cases like accident insurance, it is customary to issue new policies at the beginning of every premium period.

Possession Theory: General

The clearest expression of the possession theory is given by Mr. Justice Dean in the case of Arthurhold v. Fire Insurance Co.:}

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"It ought to be held that, under such a clause (the prepayment clause), the insurers themselves waive it, whenever, by their voluntary act, the policy leaves the office to be delivered to the insured on payment of the premium. By the very fact of issuing a policy which requires, apparently, nothing but delivery and payment of premium to put it in force, the company arms every man into whose hands it may come with the power to receive its money; there could be no conduct more significant of an intention to waive an advantage of such a clause as this."

Although the possession theory has not always been expressed in these terms, among a long line of cases there have been only three or four cases which have refused to give the theory general approval.

The case of *Pottsville Insurance Co. v. Improvement Co.* has been a hindrance to an unhesitating assertion of the possession theory. In that case, fire insurance was taken through a chain of several intermediary brokers. Payment had reached the third broker before the loss, but it did not get either to the home office or to a general agent of the company. The policy, however, was delivered to the insured by his immediate broker at the same time he received payment. The result is not very equitable; the insured does what the insurance company invites him to do, pay the person in possession, and then because the transmitters are slow or dishonest, there is no insurance. Consequently, the cases have avoided the precedent;

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9 100 Pa. 137 (1882).
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first by distinguishing the case,¹⁰ and later by repudiation.¹¹ Only in the most recent cases have the courts ceased to consider it.

The decision next following the Pottsville case was Universal Insurance Co. v. Block.¹² There the court approved the doctrine of the Pottsville case, but held that the company had been constructively paid, because the payment had reached the hands of one who had been given credit by a general agent of the company at the time of the loss.

It is difficult to determine from the decision of Flynn v. Insurance Co.,¹³ whether the court intended to repudiate the possession theory or whether the court


¹¹ "We may agree that the result would have been different had Heller, who was the immediate agent of the plaintiff (insured), neglected to pay over the premium to Anderson or Huntzinger (agents of the company), for then the case has some resemblance to that of Pottsville Insurance Co. v. Improvement Co., 100 Pa. 137, for in that case the plaintiff's agent would have been chargeable with neglect which could not have been attributed to the company." Universal Insurance Co. v. Block, supra.

¹² "We have therefore but to add that the attempt to sustain the judgment of the court below by the case of Pottsville Insurance Co. v. Improvement Co., 100 Pa. 137, is a failure. The two cases are as wide apart as the poles. In that case the policy passed from the hands of the agent through no less than three brokers before it reached the insured; he did not pay the premium until after he had received the policy, and the money was never paid to the company nor its agent. More than this, the company refused to risk, and the agent, in vain, tried to recall the policy. It will thus be seen that the two cases are entirely dissimilar, and the one cannot by any ingenuity, be made to govern the other." Riley v. Insurance Co., supra.

¹³ Lebanon Mutual Fire Insurance Co. v. Erb, supra, was distinguished from Pottsville Insurance Co. v. Improvement Co., because the former case did not contain the clauses requiring payment of the premium "into the office of the company" and a no-waiver-by-any-agent clause.

¹⁴ This case is readily distinguishable from Pottsville Insurance Co. v. Improvement Co. In each of these cases the company was resting upon the positive provision of the policy, that it was not binding until actual payment of the premium. . . . In this case, however, the agency of Crane (the agent) was established by proofs satisfactory to the jury, and there was evidence from which the jury was justified in inferring that the company authorized the delivery of the policy and accepted the responsibility of their agent in lieu of the security afforded by this provision of the policy." Elkins v. Insurance Co., supra.


¹⁶ The distinction: "The cases cited by appellant as holding a different rule are without doubt the law, but they are clearly distinguishable on their facts from the one before us. In Pottsville Insurance Co. v. Improvement Co., 100 Pa. 137, . . . our brother Green puts the decision expressly on the ground that the insured had paid the premium to a broker he knew was not the agent of the company, and therefore took the risk." (page 5)

¹⁷ The repudiation: "It ought to be held that, under such a clause, the insurers themselves waive it, whenever, by their voluntary act, the policy leaves the office to be delivered to the insured on payment of the premium. By the very fact of issuing a policy which requires, apparently, nothing but delivery and payment of premium to put it in force, the company arms every person into whose hands it may come with the power to receive its money; there could be no conduct more significant of an intention to waive the advantage of such a clause as this." (Italics mine) (page 9).

¹⁸ The only shred left of Pottsville Insurance Co. v. Improvement Co., supra, is a payment to a person in possession of the policy whom the insured actually knew came into possession of the policy without the consent of the company.

¹⁹ The Pottsville case is also observed by the court to be without authority in: Transcontinental Oil Co. v. Assurance Co., 278 Pa. 258, 364, 123 A. (1924); and Leving v. Insurance Co. 91 Pa. Super. 422, 425 (1927).

²⁰ 109 Pa. 535, 1 A. 523 (1885).

intended its decision to rest on narrower grounds, namely, that he who delivered
was not an agent of the company, but only an agent of the agent, and that he was
not in fact authorized to deliver (not receiving the premium therefor) and that
the agent of the company did not assert he had the right to receive, but said he
"would see what he could do." In that case the insured after much delay took de-
livery of the policy from a sub-agent, and paid the agent, on the same day his
horse died. The insured's haste to insure on the day the horse took ill, we may be
sure, did not recommend his case to the consideration of the court.

In Peretzman v. Insurance Co. the court approved the possession theory,
and held that it did not apply to the facts of that case because the insured delayed
too long in paying the agent (who did not remit) and perhaps also because the
insured did not protest seasonably the company's notice of cancellation (which
appeared in the facts but was not given as a reason for the decision). It is interesting
to observe that on almost identical facts excepting the delay of the insured, the
court in Gosch v. Fireman's Insurance Co. came to the opposite conclusion. It
remains as a reflection on the scholarship of our courts that the Gosch case was not
cited in the opinion of the Peretzman case.

May the Insurance Broker Be the Agent of the Insured To Obtain Insurance
and the Agent of the Company To Receive the Premium?

It has been held many times that the insurance broker may be the agent of
the insured to obtain the insurance and the agent of the company to receive the
premium. Hence fraudulent statements made by the broker to the company in
the procurement of the insurance are attributed to the insured. But likewise, the
fraud of the broker on the insured in executing the acts of the company will be
attributed to the company.

Possession Theory: Must the Agent be in Fact Authorized To Receive the Premium
and Deliver the Policy?

There is some indication in the earlier cases that the agent must in fact have
an oral authorization from the company to deliver the policy and receive the pre-
mium (although it is true that the showing of such oral authorization will set aside
the parol evidence rule to contradict the denial of such authority in the language

14 258 Pa. 319, 102 A. 22 (1917).
15 33 Pa. Super. 496 (1907).
16 Marland v. Insurance Co., 71 Pa. 393 (1872); Riley v. Insurance Co., 110 Pa. 144, 1 A.
17 Freedman v. Insurance Co., 182 Pa. 64, 37 A. 909 (1897); Bateman v. Insurance Co., 189
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of the policy), but the better conclusion from the cases is that actual authority is not required. However, those cases which have indicated that such authority is not necessary have seen fit to rule upon questions assuming that actual authority is necessary. Thus we have rulings that evidence is admissible on the question of actual authority. Or that proof of actual oral authority is sufficient to establish the effectiveness of the payment. There are rulings that the possession of the policy by the agent creates a presumption that the agent has authority to receive, although this presumption was denied in the first case which ruled upon it, but not thereafter. The authority to receive is, of course, a fortiori, when the policy in the possession of the agent contains an acknowledgement of the payment of premium.

Corollary to the question as to whether the agent must have actual oral authority to receive the premium, is the question whether the person who receives the premium from the insured must be an agent for the company for some other purpose than merely to receive that one particular premium and deliver that one particular policy. Perhaps the problem is really evidential; that is, unless the agency is more than singular in nature, there can be no presumption of authority to receive the premium in the absence of clear proof of actual authority to do so. The problem, however, has never been stated as an evidential one, but as an absolute requirement, and it has been answered in the affirmative several times that the person who receives must have some other agency from the company than to receive that one premium and to deliver that one policy. But despite the holdings or intimations in these cases, this writer believes that such broad authority in the

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20 See note 19, supra.


25 Lebanon Mutual Ins. Co. v. Erb, 112 Pa. 149, 4 A. 8 (1886). It is difficult to tell to what extent later cases relied on the acknowledgement of the premium in their reasoning, as they do not mention it, but cite the Lebanon v. Erb case which does. See cases note 23, supra; also Gosch v. Ins. Co., 33 Pa. Super. 496 (1907).

agent is not necessary, and that it is considered by the courts recently, where not denied,\textsuperscript{26a} only out of an abundance of caution.\textsuperscript{27}

**Possession Theory: Delivery**

There has been some suggestion in two cases that the policy must be physically delivered to the insured,\textsuperscript{28} but the insistence of these suggestions is so slight that it cannot be said there is any authority for this requirement. \textit{Flynn v. Insurance Co., supra}, however, might be said to stand for the proposition that the insured must pay upon the reliance of the possession of the agent as the authority of the agent to receive the premium.\textsuperscript{29} It is unnecessary to add that the delivery of a policy and the payment of the premium is conditional upon the money being genuine or the check honored when presented.\textsuperscript{30}

**Possession Theory: Legality**

It has been held that the authority of an agent to receive the payment of an


\textsuperscript{27} According to the rule announced in \textit{Arthurhold v. Ins. Co.}, this is not necessary. Sadler in his annotation of \textit{Pennsylvania Ins. Co. v. Carter}, 8 Sad. 191, indicates that the person who is paid must be an agent of the insurance company for other purposes than to deliver the particular policy in suit and to collect the premium on it, relying on the authority of \textit{Pottsville Ins. Co. v. Improvement Co.}, 100 Pa. 137, and \textit{Flynn v. Ins. Co.}, 4 Pa. Super. 137. While it seems probable to this writer that those cases did not intend to announce that theory (although those were the facts of the cases), the reasoning behind Sadler's views is that mere possession of the policy does not create an \textit{apparent agency} to deliver and collect. Hence, Sadler suggests a reconciliation of the cases by suggesting that possession plus general agency does create an apparent agency to deliver and collect. \textit{Universal Ins. Co. v. Block}, 109 Pa. 535, could also be reconciled to this point of view; for in that case, the general agent may be said to have received the premium because one to whom he had granted credit had received the premium. Likewise this view finds more explicit support in \textit{Riley v. Ins. Co.}, 110 Pa. 144:

"When therefore companies of this kind put it in the power of their agents to deliver their policies, ... they are estopped from gainsaying the regularity of ... collection" etc. (Italics mine).

\textsuperscript{28} Sadler's annotation of Pennsylvania Ins. Co. v. Carter, 8 Sad. 191 (Pa. 1887); Landy v. Ins. Co., 78 Pa. Super. 47 (1921). But see Simpson v. Assurance Soc., 127 Pa. Super. 386, 193 A. 449 (1937). The late Justice Sadler's annotation states that there must be delivery of the policy to make payment conclusive, relying on the authority of \textit{Marland v. Insurance Co.}, 71 Pa. 393, and \textit{Greene v. Insurance Co.}, 91 Pa. 387. What the \textit{Greene} case seems to hold is that the mere possession of the policy by the agent is ambiguous, and that it does not \textit{per se} indicate the extension of credit to the agent by the company, though it does give the agent authority to collect. The \textit{Marland} case, while its dicta indicated that credit to the insured was improper, clearly implied that payment to a broker in the possession of the policy was sufficient without an intimation as to the necessity of delivery. If Sadler's meaning is that if in fact neither the agent or the company is paid, then delivery is necessary to estop the company from asserting non-payment, and this is merely the parol evidence rule of \textit{Eaton v. New York Life Ins. Co.}, 315, Pa. 68, 172 A. 121, 93 A. L. R. 462 (1934). It should also be observed that in the \textit{Marland} and \textit{Greene} cases the agent was not in fact paid, so they do not speak, except as dicta as to the necessity of delivery if the agent were in fact paid. Simpson v. Assurance Soc. supra, held that a payment to the agent was valid even when the policy had not been delivered to the agent at the time of payment; the circumstances, however, may have been special, as they involved an exchange of policies.

\textsuperscript{29} Here insured, having received the policy from the sub-agent, then went to the agent, and paid him, but the agent at the time he received the money, expressly disavowed authority to receive it, and said he "would see what he could do." Hence, in this case there was no reliance on the agent's possession as authority to receive.

\textsuperscript{30} Brady v. Masonic Aid Ass'n., 190 Pa. 395, (1899).
The credit theory for giving an agent power to collect the premium has been clearly stated by Judge Orlady in *Essington Enamel Co. v. Insurance Co.*:

"When the usual course of dealing between an insurance company and its agent is for the company to treat the agent as its debtor for the premiums on the policies delivered to him (the agent), and to render bills periodically for them, the payment of the premium by the assured to the agent is payment to the company: Penna. Ins. Co. v. Carter, 8 Sad. 191; Elkins v. Ins. Co., 113 Pa. 386."

In the *Essington* case what the court held was that the agent has authority to extend credit to the insured because the company gave the agent credit; of course, if the agent may grant the insured his personal credit to effect a policy of insurance, a fortiori, the agent may receive the premium. Nevertheless, two of the early cases which refused to endorse the possession theory, sustained payment under the credit theory. In recent decisions, the courts have left the credit theory to sustain insurance effected by a credit from the agent to the insured, resting the authority to receive the payment on the possession theory, so that recent citations have been dicta. In recent years, however, Judge James used the theory to sustain a decision on workmen's compensation, where it was contended, apparently, that the employer was not insured because the broker had no power to receive the premium. It seems proper, therefore, to consider the credit theory a dead-letter today as far as sustaining payments to insurance agents is concerned.

In the early cases where credit had been granted to the agent, the courts did not make much distinction between cases where the insured actually paid the agent, and those in which the insured had merely been granted the personal credit of the agent. The idea seems to have been that the credit of the company to the agent was a kind of inchoate payment to the company, subject to be defeated only by the

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insured's not paying the agent in "usual course of business." Once the company gave the credit to the agent, it might be said that the court treated the policy as paid in the eyes of the company, subject to be defeated only if the insured "abandoned" the policy, that is, if the insured was unusually "irregular" or dilatory in paying the agent. Under such a view it is idle to talk about the agent's authority to receive from the insured or to give credit to the insured; such things do not really matter. What has happened is that the agent has volunteered to pay the insurance, although this payment is only by credit. But it is doubtful if the courts intended to push their views this far, for they stress the idea that the insured must pay in "the usual course of business." Credit to the agent is therefore not to be intended as a payment to the company but only as a power to receive or to give a "short credit" to the insured.

Part Payment

It has been held that there may be part payment of the premium on the policy where the policy is delivered by the agent. In *Aetna Life Insurance Co. v. Clark,* the insured paid the agent two-thirds of the premium by his note (which is proper) and assumed the debt of the agent to a stranger for the other one-third of the premium. Such assumption of an agent's debt was held to be an illegal rebate by the agent. Therefore, the insurance company could not sue for the full premium, but only for one-third of the premium (the agent had absconded with the other two-thirds) involved in the illegal rebate.

WHERE THE AGENT PAYS THE COMPANY BUT THE INSURED DOES NOT PAY THE AGENT

As we have already observed, dicta in many of the early cases indicated that the grant of credit to the agent was payment by the insured. Several recent cases,
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also, have directly ruled that the agent may volunteer payment of the premium in behalf of the insured and that such payment is conclusive as against the company. 40

**Argument in Favor of Volunteer Payments by Agent**

It is possible that the promise of an agent to make payments for the insured and grant the insured credit therefor would be an illegal inducement to purchase insurance under the statutes previously set forth. 41 But even if such promise to grant credit is illegal, the illegality does not touch the relation between the insured and the company, for without actual knowledge by the company of the promise the agent is to them a mere remitter. And even if the insurance company is made a party to the promise to grant credit, it is doubtful whether, after payment has been made, the company will be permitted to defend on the maxim *in pari delicto potior est conditio defendentis* for the purpose of denying the payment or avoiding the policy. The reason why rebates and favors to insured persons are made illegal inducements is that they tend to deplete the treasury of the insurance company (as will be discussed at length in the text hereinafter); consequently, when the company has actually been paid, there is no reason why the law should permit the defense of illegality. *Ratione cessante, lex etiam cessat.* And lastly, the cases actually hold that such a payment is good, even if the insured must ratify a forgery to take advantage of it. 42

**Where The Agent Does Not Pay The Company And The Company Does Not Pay The Agent**

Despite the presence in the policy of "prepayment" or "lapse on non-payment" clauses accompanied by "no waiver by any agent" clauses, as explained above, it has been held that the insured may buy his insurance on the credit of the agent when the company has given the agent authority to effect the insurance on the personal credit of the agent, even though the company has not in fact been paid. Such auth-

40 Farmers' & Breeders' Mut. Ins. Co., v. Derr, 59 Pa. Super. 600 (1915) (Although the company may defend on a suit for the cancellation refund by reason of the fact that the payment by the agent was an "illegal inducement," the insurance is effective.); Krebs v. Tomlinson, 12 D. & C. 26 (1929); American Casualty Co. v. Keator, 24 D. & C. 225 (1935) (if, under a confused state of facts, one finds the company was paid by the agent); Proudley v. Fid. & Guar. Fire Corporation, 345 Pa. 385, 29 A.2d 48 (1943) (payment by credit to agent); Infantino v. Ins. Co., 159 Pa. Super. 454, 48 A.2d 87 (1946).

41 See note 4, supra, for text of statute. Discussion of illegality is in text, infra.

42 Proudley v. Fid. & Guar. Fire Corp., 345 Pa. 385, 29 A.2d 48 (1943); Infantino v. Ins. Co., 159 Pa. Super. 454, 48 A.2d 87 (1946); White v. Ins. Co., 22 Pa. Super. 501 (1903) and Thomas v. Assurance Corp., 284 Pa. 129, 130 A. 322 (1925) hold than an insurance company has waived a defense where it has retained payment for an unreasonable length of time without informing the insured of its intention not to waive the defense, even though such waiver of defense is contrary to the written terms of the policy, and thus violates the parol evidence rule. These last two cases lend support to the view that an insurance company is estopped from asserting that the insured did not pay the premium if it knowingly accepts payment from a volunteer. The question remains whether the company should be charged with knowledge from the time it receives payment from its agent, or only from the time the company actually discovers that the payment was volunteered.
ority is presumed from the fact that the company granted credit to the agent.\textsuperscript{43} And likewise, such credit to the agent from the company is presumed from the possession of the policy by the agent.\textsuperscript{44} If, despite these presumptions, it is established that in fact the agent did not have such authority, then the insured may still assert the effectiveness of the insurance by reason of credit from the agent, if he reasonably thought that the agent had authority to effect the insurance on his personal credit, or if he reasonably thought the agent had paid the premium.\textsuperscript{45} It is reasonable for the insured to suppose that the agent has the authority to effect the insurance by credit when:\textsuperscript{46}

(1) The agent has possession of the policy, and
(2) The insured knows of the possession by the agent, and
(3) By reason of the possession of the policy by the agent, the insured supposes that the agent has either paid the company or been granted credit by it, and
(4) The insured cannot be charged with knowledge that the agent had not in fact either paid the premium or been granted credit by the company.

The whole problem boils down to this: what should the law do when the following dialogue takes place between agent and insured:

Agent: Your policy has been approved by the company, and I have your policy here. When would you like to pay the premium and receive the policy?
Insured: Well, I would like to be insured right away, but I am a little pressed right now for money. Will I be insured if I wait to pay you next week?
Agent: Your insurance will be all right to then; you pay me next week sometime.


No case has put forth the requirements as they are listed here; in fact no case has made a careful distinction between proof of actual authority and apparent authority. But one can express the general “feeling” of the cases, which is what is done here. The Pennsylvania cases, and particularly the early cases, speak rather the language of proof of actual authority than of apparent authority; they almost indicate that the law will uphold insurance by credit only where a finding of actual authority can be sustained under the facts. See the following cases for such intimations as exist on this subject: Marland v. Ins. Co., 71 Pa. 395 (1872); Riley v. Ins. Co., 110 Pa. 144, 1 A. 528 (1885); Elkins v. Ins. Co., 113 Pa. 386, 6 A. 224 (1886); Lebanon Ins. Co. v. Hoover, 113 Pa. 591, 8 A. 163 (1886); Pennsylvania Ins. Co. v. Carter, 8 Sad. 181 (Pa. 1887); Pittsburgh Boat-Yard Co. v. Ins. Co., 118 Pa. 415, 11 A. 801 (1888).

It is worth noting the broad statement of the court in Essington Enamel Co. v. Ins. Co., 45 Pa. Super. 550 (1911) that actual authority is not required: "The question is not so much what authority the agent had in point of fact, as it is what powers a third party dealing with him had the right to suppose he possessed, judging from his acts and the acts of his principal."
PAYMENT OF INSURANCE PREMIUMS . . .

Or when the insured receives the policy from the agent with this letter:

"Enclosed find the insurance policies you requested. As these policies are immediately effective, may we urge upon you to give us prompt notice of any cancellations you may wish to make, for we will have to bill you for any premiums due up until the time we receive notice. Your prompt payment of the premiums due on the policies herein will be greatly appreciated."

Or suppose that the insured obtains his insurance through a broker who bills his clients only at quarterly periods without regard to when a particular policy may be effected?

Is the only remedy of the insured against the agent personally for breach of promise by the agent to pay the insurance for the insured, or for deceit for leading the insured to believe that the premium had been paid by the agent, or that the company had given the agent credit therefor? Does not the company by constituting persons agents for it mean that they ought to stand up behind the representations and actions of their agents in such circumstances?

Here the insured goes blithely on his way thinking he is insured because the agent told him "it would be taken care of," only to have the company inform him after a loss occurs that he is not insured because "we didn't get the money from the agent." The insured cannot know whether the agent has paid the company, or has been given credit by it, or has been given authority to give credit to the insured; and if the agent leads the insured to believe that any one of these things has been done, is not the company responsible for that representation? This writer believes that the insurance company is responsible. As regards an insurance broker, it remains in each case to establish how far he is an agent of the company, or is supposed by the insured to be an agent of the company.

It is of course equally necessary in this situation to establish the actual grant of credit to the insured by the agent as it is to establish the authority of the agent to grant credit. Cases which seem to deny the possibility of waiving the "prepayment" clause seem to this writer to have been actually decided on the absence of a grant of credit to the insured. Of course the fact of delivery of the policy to the insured is highly probative of a grant of credit to the insured, as the absence of a delivery to the insured is probative of the absence of any credit. Perhaps the delivery of the policy (without an acknowledgement of payment of the premium thereon) creates a presumption that credit has been granted to the insured. And

where the policy delivered contains an acknowledgement of the payment of the premium, a problem in estoppel is raised which will be considered in detail infra.

One situation which requires notice is in regard to subsequent premiums, where the insured has previously made late payments of premiums through his agent, and not being informed of any lapse, has been led to believe by the continued acceptance of his premiums without protest, that the agent is either paying the premiums, or that the company is granting credit to the agent; and that if the insurance were overdue again, the company would look to the agent as it had in the past for payment of the premium. The courts have not treated the insured with much favor in such circumstances, except where the facts involve the thirty day grace period and/or failure to send a premium notice; and the thirty-day grace period in regard to life insurance policies is now a statutory requirement.

In the citation of cases upon the problem of credit, the reader must remember the many possibilities of opinion which are open to the court, and the difficulty of determining which nuance, if any, the court is insisting upon. Probably more important than that is to try to see what result the courts are trying to achieve.

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53 For life and endowment policies: Act of 1945, P. L. 334, sec. 1 (sec. 401 (b) of the insurance regulation act, 40 P. S. 510 (b).), first enacted 1911, P. L. 581, sec. 25 (2). For annuities and pure endowments: Act of 1935, P. L. 1116, sec. 1 (Sec. 410B (b) of the insurance regulations act, 40 P. S. 510A (b).)
54 For example, the court may hold these several views in regard to the problems involved:
A. The agent's authority to grant credit to the insured is:
   (1) necessary;
   (2) necessary and may be presumed;
   (3) not necessary but must be apparent to the insured.
B. Delivery of the policy to the agent by the company:
   (1) is necessary to show credit from the company to the agent;
   (2) creates a presumption of credit from the company to the agent;
   (3) is sufficient payment by the insured;
   (4) presumes that the agent has authority to grant credit to the insured;
   (5) in se gives the agent power to grant credit to the insured.
C. Credit to the agent:
   (1) is necessary to the agent's authority to grant credit to the insured;
   (2) creates a presumption that the agent has authority to grant credit to the insured;
   (3) in se gives the agent power to grant credit to the insured.
D. Delivery to the insured:
   (1) is necessary to establish a credit to the insured by the agent;
   (2) creates a presumption that the agent has granted credit to the insured;
   (3) when there is an acknowledgement on the policy or premium receipt of payment of the premium, this estops the company from denying effectiveness of the insurance but not from denying the payment in order to recover the premium;
   (4) where there is an acknowledgement on the policy or premium receipt of payment of the premium, this estops the company from denying the effectiveness of the insurance and also from denying the payment in order to recover the premium.
Estoppel by Delivery of Receipted Policy or of Premium Receipt

A receipt according to the early cases seems to have been conclusive between the insurance company and the insured both as to the effectiveness of the policy and the fact of payment in the absence of fraud, accident or mistake, especially as to third persons. However, there were negative indications in other cases. It seems that the insured cannot claim delivery through a sub-agent where the insured knows when he receives delivery that the agent would not part with possession of the policy without actual payment; or where the receipt for the policy expressly states that the delivery is conditional; or where the insured has paid for the insurance with a check drawn on insufficient funds. And there is dicta to the effect that although the delivery by the agent may estop the agent from denying payment, it does not estop the Company from denying payment.

More recent cases seem to have drawn the distinction between estoppel in regard to denying effectiveness of insurance and in regard to denying payment of the premium in order to collect the delinquent premium, holding that the company is not estopped for the purposes of the latter. The Hon. T. McKeen Chidsey, present Attorney General of the Commonwealth, in the Master’s Report he made, reported in Thomas v. Charles Baker and Co., held directly on both points; that the defendant was insured by reason of estoppel, but that defendant nevertheless had to pay the premium because the estoppel did not prevent a suit for the premium. Likewise, the doctrine of Real Estate Co. v. Rudolph does not prevent the company’s asserting non-payment, despite the receipt, for the purpose of collecting the premium, for that case holds that the defendant is estopped to assert want of consideration by reason of non-payment.

However, it seems that Eaton v. New York Life Insurance Co. has changed this rule and that the company is not estopped by a delivery of a receipt from asserting the invalidity of the policy by reason of non-payment. Especially in the face of an admission by the insured that the premium was not paid. The reasoning of Eaton v. Insurance Co., supra, was that where the delivery was conditional upon payment, both the condition of payment and the fact of non-payment may be shown by parol; yet of course, the decision adds that by reason of the parol evidence rule the...
receipt when delivered prevents the showing of non-payment by parol. The reasoning to this writer seems self-contradictory. If the parol evidence rule is to be applied to insurance receipts, the fact in the receipt, (using the late Judge Reese's distinction between facts in and facts of) viz., payment, is the one condition of delivery which may not be shown by parol. In Van Dusen v. New York Life Insurance Co., the federal court ignored the part of the opinion of Eaton v. New York Life Ins. Co., supra, about delivery being conditional on payment and applied, approving the case, the part of the opinion concerning the parol evidence rule, thus preventing the company from showing non-payment. In Corrigan v. Home Life Insurance Co., decided after Eaton v. Insurance Co., supra, the Superior Court held that the receipt book of a ten-cent a week policy estopped the company from asserting the invalidity of the policy by reason of non-payment.

It seems, therefore, that if a definite answer is to be given as to whether the insurance company is estopped from asserting non-payment when payment is a condition of the delivery, further litigation will be required, despite the application of the doctrine of Eaton v. Insurance Co., supra, in a later Pennsylvania Supreme Court case.

Credit for Insurance Premiums as an Illegal Inducement

Until the passage of the Act of 1899, P. L. 405, 40 P. S. 275, as amended, it was uniformly held that the agent might lawfully grant credit to the insured. Then came the decision of Ellis v. Anderson in which Judge Porter held that it was not an illegal inducement for an agent or insurance company to receive payment by an interest-bearing legal obligation. If the opinion had stopped there, it would be of no particular significance, but Judge Porter went on to say that the Act of 1909 "works a decided change in insurance law" (p. 252), and that it was only because the act was a penal one and required strict construction (p. 253) that permitted him to decide that payment by an interest-bearing legal obligation was not an illegal inducement. "The result (of liberal construction) would be, in short, to put it out of the power of an insurance company to waive the benefit of any covenant of the policy or of the assured to assert such waiver." (p. 254)

The Act of 1895, P. L. 430, Sec. 1, applied to life insurance only, whereas the Act of 1909, P. L. 405 applied to all insurance. Under the previous act, it

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69 It is not worth trying the reader's patience by tracing in detail all the legislative transformations of the illegal inducement statutes. Suffice it to say that the language became more specific with succeeding statutes. The Act of 1889, P. L. 118 applied to life insurance only. The Act of 1895, P. L. 430 made it illegal to receive an inducement as well as illegal to give one for life insurance. The Act of 1909, P. L. 405 was made to apply to all insurance. The Act of 1913, P. L. 743 simplified the text and permitted interest-bearing legal obligations to be made lawful payment for premiums. The Act of 1921, P. L. 789, sec. 635, 636 (page 816) removed the prohibition from companies to give "inducements" for insurance and limited the prohibition to "agents, solicitors, or brokers"; it is still illegal for any one to receive an inducement.
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had not occurred to the courts that credit in case of life insurance was illegal by rea-
son of the act.\textsuperscript{69a} The immediate effect of the decision of Ellis v. Anderson, \textit{supra},
was to cause the assembly to revise the act and to permit the payment of insurance
premiums by "bona-fide obligations, with legal interest."\textsuperscript{69b}

There are persuasive reasons why the extension of credit to the insured by the
agent should be held an illegal inducement. As Judge Porter states them:

"The things which are in the sentence (the Act of 1909) specifically en-
umerated are such as directly tend to deplete the treasury of the insurance
company, thus giving a rebate of the premium. . . .

"If this defendant had paid his notes when they came due, the insur-
ance company would have had in its treasury the full premium on the
policy, with interest thereon to the date of the payment. This being the
case, it cannot be said that the company had agreed to accept less than
the amount of the premium named in the policy. . . .

"The statute as we have already said does not require insurance pre-
miums to be paid in advance. . . . In the absence of any such prohibition
or regulation this plaintiff and the company which he represented had
the discretion ordinarily exercised by those engaged in business to ex-
tend credit to persons whom they believed to be financially responsible."
(p. 255, 256)

In other words, the public policy of the act is to favor sound insurance companies
who deal with all members of the public on a basis of equality. Credit is therefore
an illegal inducement because it is unlikely that there will be one hundred per cent
collection where credit is granted; but if interest is required where credit is grant-
ed, this risk is equalized, and the equality between cash and credit buyers of insur-
ance is maintained.

It remains also to be considered whether, even if the company cannot grant
credit to the insured, the agent should be permitted to grant credit to the
insured, if the company has granted credit to the agent. The insured has no way
of knowing the state of accounts between the agent and the company, and if the
company chooses to grant credit to the agent, is there any public policy that says
the insured must pay the agent? It is not the agent whom the law seeks to protect
but the company and the general public.

All the cases which have considered the Act of 1909 or its successors have
agreed that credit is an illegal inducement.\textsuperscript{70} But in other cases the courts have susta-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{69a} Snyder v. Ins. Co., 202 Pa. 161, 51 A. 744 (1902). In \textit{Surgeant v. Ins. Co.}, 189 Pa. 341, where it was decided that the insured had committed suicide, and where the company also offered to show the inconclusiveness of a receipt for premiums, the question of illegal inducement by credit if the receipt had been conclusive was not raised.
\item \textsuperscript{69b} Act of 1913, P. L. 745 (See note 4 for text as incorporated in Act of 1921, P. L. 789, Sec. 635).
\end{itemize}
\end{footnotesize}
cussing the question of illegality; apparently the courts will not be astute to find illegality. In those cases which have held credit to be an illegal inducement, many of them are not thoroughly considered or of limited authority. In *Harrisburg Trust Co. v. Mutual Life Insurance Co.* the case was primarily decided on the fact that an insurance broker was not the agent of the insured to receive the policy (but an agent of the company to deliver) and so the company was not estopped to deny payment by reason of delivery; nor without the fact of delivery was there sufficient evidence to establish a credit to the insured. Hence the argument of illegal inducement through credit was mostly *a fortiori*. Further, Mr. Justice Schaffer relied on the authority of *Marland v. Insurance Co.* for the ruling that credit was an illegal inducement, and although there is language in the case implying that credit to the insured is never permissible in any circumstances, when carefully read the case cannot be considered to hold more than that the bare possession of the policy by the agent is not such apparent authority in the agent to grant credit to the insured that the insured may rely on it (for it was shown as a matter of fact that the company had granted no credit to the agent, and that the agent had no authority to grant credit to the insured).

In *Farmers’ and Breeders’, etc., Ins. Co. v. Derr* it was held that illegality of the agent’s grant of credit would prevent the insured from suing the company for the refund upon cancellation even though this illegality did not, in the opinion of the court, affect the validity of the insurance. In *Landy v. Insurance Co.* it was held that even though the company had granted credit to its agent, it could assert that the policy was not paid by the subsequent grant of credit to the insured by the agent, because this was an illegal inducement. However, it was doubtful whether in this case credit had been granted to the insured by the agent, and on the witness stand the agent denied that the insured had received credit. In *Hirsch v. Singer* the force of the entire statute was largely destroyed by a holding that it was true that a non-interest-bearing legal obligation was an illegal inducement, nevertheless an oral obligation to pay the agent would be presumed to be agreed to be interest-bearing if there was no evidence to the contrary. Such a ruling, if enforced, would vitiate the entire statute. Incidentally, it was held in *Krebs v. Tomlinson* that an interest-bearing negotiable instrument was not an illegal inducement. In consideration of the weakness of these decisions there is still considerable question as to whether the grant of credit to the insured by the agent is an illegal inducement.

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73 71 Pa. 393 (1872).
76 86 Pa. Super. 605 (1926).
77 2 D. & C. 126 (1929).
Illegality of Credit in Relation To Life Insurance

As the reader will recall, there is a statute which requires the presence in every policy of life insurance of a clause which requires the prepayment of premiums. The court called upon this statute in support of its decision in *Harrisburg Trust Co. v. Mutual Life Ins. Co.*, supra. The reader will recall from our analysis of this case that the decision rested mostly on the fact that no credit had been granted to the insured. Although the *Harrisburg Trust* case was cited in *Katchmer v. Life Ins. Co.* and *Shook v. Life Ins. Co.* those later cases did not mention the Act of 1921, P. L. 682, Sec. 410 (a) or its successors. It has been held that the Act does not require the beneficiary of the insured to produce a receipt as a condition of his recovery under the policy, but that oral proof of payment may be admitted. It was also held that where the policy did not specifically mention whether the premiums were to be paid in advance or not, then the statute must be read into the policy.

This writer is unable to see why the statute requiring the presence of a prepayment clause in life insurance policies should cause the clause to receive a different interpretation from those insurance policies where the clause is present but no statute requires its presence. The requirement of the presence of a clause in a contract is not a prohibition of its waiver under reasonable circumstances.

Effect of Parol Evidence Rule on Illegality of Credit for Premium

If the law prohibits and will not recognize credit granted by the agent to the insured for an insurance premium, will this prohibition stand against the parol evidence rule? Or, will a person be permitted to establish illegality by means of parol evidence to defeat the parol evidence rule? P. Y. R. in a note in 12 *TEMPLE LAW QUARTERLY* 413 criticizing the ruling in *Van Dusen v. New York Life Insurance Co.* argues that the mandatory presence of a "prepayment" clause in the policy requires not only actual payment of the premium before the policy shall be effective, but that the rule announced in *Eaton v. Life Insurance Co.* that a delivered receipt cannot be contradicted by parol, must be set aside to permit the showing of non-payment of premium in order to carry out the public policy of the statute. P. Y. R. observes that *Eaton v. Insurance Co.* supra, was construing a New York contract, but this case has always been treated by bench and bar as a statement of the Pennsylvania law. And the Federal District Court followed the rule of the *Eaton* case in the case criticized by P. Y. R. What the ruling would be if the matter were directly presented to the courts is problematical.