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Notice By Insurers of Termination of Group Coverage in Pennsylvania

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I. Introduction

Pennsylvania statutes regulating the insurance industry require that those persons who are covered by group insurance policies enjoy a privilege of converting to individual coverage when group coverage ends. This statutory requirement applies to both life[1] and health[2] insurance. An insured may convert life insurance if loss of group coverage is attributable to termination of employment, membership in an eligible class, or of his policy.[3] He may convert health insurance if his group coverage ends for any reason.[4] An insured may apply for an individual policy within thirty-one days of termination of group coverage.[5]

The Insurance Code requires notice of the conversion privilege. The certificate must include notice of the health conversion privilege. Furthermore, an insured must receive written notice within fifteen days before or after his group health coverage ends.[6] The Insurance Code is silent regarding the inclusion of a notice provision in a certificate of group life insurance; however, an insured must receive fif-

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1. 40 PA. CONS. STAT. ANN. § 532.6(8), (9), (10) (Purdon 1971). These subsections are essentially identical to a model statute prepared by the National Association of Insurance Commissioners in 1946 entitled "Group Life Insurance Definition and Group Life Insurance Standard Provisions." The conversion provisions are at paragraphs (8), (9) and (10) of the Standard Provisions section. 1946 Proc. NAIC pp. 338-44.

2. 40 PA. CONS. STAT. ANN. § 756.2(d) (Purdon 1971). This subsection is essentially identical to the NAIC Group Health Insurance Mandatory Conversion Privilege Model Act except for the notice requirement. *See infra* note 6. 1976 Proc. NAIC, Vol. I, pp. 494-99.

3. 40 PA. CONS. STAT. ANN. § 532.6(8), (9) (Purdon 1971).

4. *Id.* § 756.2(d).

5. *Id.* § 532.6(8) and § 756.2(d)(1).

6. *Id.* § 756.2(d)(19). Although Pennsylvania's health insurance conversion statute is in all other respects essentially identical to the NAIC model statute, *see supra* note 2, it has more elaborate notice requirements. The model statute only requires notice in the certificate. Pennsylvania's requirements for notice of the health insurance conversion privilege are similar to the requirements for notice of the life insurance conversion privilege.

teen days' notice before group life coverage ends.[7] Notice may be given by either the group policyholder, who is usually the insured's employer, or the insurer, although the insurer may rely on the policyholder for the address of the insured.[8]

Lack of notice extends the time during which an insured may apply for individual coverage. Moreover, some court decisions suggest that lack of notice may also extend coverage itself.[9] In each decision, however, that issue is dealt with superficially. Taken together, the decisions present disparate and contradictory approaches to the issue. They fail to set forth a consistent rule to guide insurers, policyholders and insureds.

II. Life Coverage

If an insured does not receive requisite notice of the conversion privilege, the Insurance Code provides that:

> [T]he individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy.[10]

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7. 40 PA. CONS. STAT. ANN. § 532.7 (Purdon 1971). This section is identical to the last section of the NAIC Group Life Insurance Definition and Group Life Insurance Standard Provisions Model Act. In the model act, it bears the title "Supplementary Bill Relating to Conversion Privileges." 1983 Proc. NAIC, Vol. I, p. 683. That provision was added to the 1946 version of the model act in 1949. 1949 Proc. NAIC pp. 252, 253.

8. 40 PA. CONS. STAT. ANN. § 756.2(d)(19) (Purdon 1971) provides that:

> . . . Written notice by the contract holder given to the certificate holder or mailed to the certificate holder at his last known address, or written notice by the insurer mailed to the certificate holder at the last address furnished to the insurer by the contract holder, shall be deemed full compliance with the provisions of this clause for the giving of notice.

Similarly, 40 PA. CONS. STAT. ANN. § 532.7 (Purdon 1971) provides:

> Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

9. The argument has been made that mere existence of a conversion privilege extends coverage, but this argument has been rejected in Pennsylvania. Peyton v. Equitable Life Assurance Soc'y, 159 Pa. Super. 318, 48 A.2d 145 (1946); Best v. Equitable Life Assurance Soc'y, 165 Pa. Super. 452, 68 A.2d 400 (1949), *aff'd*, 365 Pa. 418, 76 A.2d 220 (1950). That is consistent with the following general rule:

> The view supported by cases from an overwhelming majority of the jurisdictions considering the point is that a conversion provision contained in a group policy does not extend the period of coverage beyond the period of time the employee is covered under the "termination of employment" clause.

Annot., 68 A.L.R. 2d 8, 116 (1959).

10. 40 PA. CONS. STAT. ANN. § 532.7 (Purdon 1971).

In *Harris v. St. Christopher's Hospital for Children*,[11] the Pennsylvania Superior Court construed this section to require that if an insured dies during an extended application period without having received notice of the conversion privilege, death benefits are due despite the insured's failure to apply for individual coverage. In this case, the policy, as required by statute, provided for conversion of life insurance coverage upon application within thirty-one days after termination of employment. Additionally, it provided for payment of death benefits if death occurred within the thirty-one day period regardless of whether application had been made.[12] The insured died seventy-one days after termination of her employment without having applied for conversion; however, she had never received written notice of her conversion privilege.

The court noted that the statute extends the thirty-one day application period to a ninety-one day period if an insured is not notified of the conversion privilege at least fifteen days before expiration of the application period. The court then held that in extending the application period from thirty-one to ninety-one days, the statute likewise extended the period during which payment would be made without application from thirty-one days to ninety-one days.

The insurer contended that the statute extended only the time during which the insured might apply for individual coverage, not the time during which the insured would automatically receive coverage. The insurer relied for this argument on a clause in the statute that "nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy."[13] The court found that this argument was "absurd" and that the result "could hardly have been the intent of the legislature, especially in a consumer protection statute."[14] The court, however, did not buttress its conclusion with legislative history or affirmatively explain the meaning of the clause.

The court did opine, however, that if the insured had died beyond the ninety-one day period, "then our holding would be differ-

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11. 291 Pa. Super. 451, 436 A.2d 203 (1981).

12. 40 PA. CONS. STAT. ANN. § § 532.6(10) (Purdon 1971) requires every policy to contain:

> A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

13. 40 PA. CONS. STAT. ANN. § 532.7 (Purdon 1971).

14. 291 Pa. Super. at 457, 436 A.2d at 205.

ent."[15] To support that conclusion, it cited New York law, noting that "New York's conversion privilege statute is in all relevant parts identical to 40 P.S. § 532.7."[16]

The sole Pennsylvania case that the court cited in support of its extension of coverage was *Jones v. Metropolitan Life Insurance Co.*[17] That case concerned notice of termination of employment rather than notice of termination of group insurance coverage. In *Jones*, the Superior Court held that the conversion privilege "contemplates that an employer terminating the employment of an employee, by discharge, shall do so in such a way that the employee has notice or knowledge that his employment is terminating," and that "until the employee is clearly informed that he is discharged, the employment relation is *not* terminated."[18] Although the result of its holding was to impose liability on the insurer, the *Jones* court did not impose it by finding a duty on the part of the insurer to give notice; rather, the insurer's liability flowed from operation of the terms of the policy, once the court found that employment had not terminated.

The Superior Court explicitly drew this distinction in *Ozanich v. Metropolitan Life Insurance Co.*,[19] when it held that death benefits were due because "there was ample evidence to support a finding by the jury that Ozanich was an employee . . ., within the meaning of the policy, on the day of his death . . . ."[20] In a supplement to that opinion, the court explained that:

> [W]e did not say . . . that the clause in the policy . . . entitling the insured employee, on the termination of his employment, to have issued to him . . ., without evidence of insurability, a policy of life insurance, . . . contemplated any notice by the insurance company to the employee . . . . We think the meaning of the opinion is clear that the clause . . . contemplates that an employer terminating the employment of an employee, by discharge, shall do so in such a way that the employee has notice or knowledge that his employment is terminated.[21]

The holding that an insurer has no duty to notify an insured would prevent extension of benefits beyond the time provided in the policy, unless a statute could be construed to extend benefits. Section 532.7 has created a duty to notify an insured. This duty rests jointly

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15. 291 Pa. Super. at 457, 436 A.2d at 206.
16. 291 Pa. Super. at 457 n.3, 436 A.2d at 206 n.3.
17. 156 Pa. Super. 156, 39 A.2d 721 (1944).
18. 156 Pa. Super. at 164, 39 A.2d at 725 (emphasis in original).
19. 119 Pa. Super. 52, 180 A. 67 *reh'g denied*, 119 Pa. Super. 64, 180 A. 576 (1935).
20. 119 Pa. Super. at 64, 180 A. at 71.
21. 119 Pa. Super. at 65, 180 A. at 576.

on the insurer and the policyholder. The statute specifies that the consequence of a breach of the duty to notify is an extension of the time during which the insured may apply for conversion. In *Harris*, however, the Superior Court attempted to expand the consequences of failure to notify an insured to include extension of time for payment of claims. That attempt was subsequently repudiated in *Murtagh v. Bankers National Life Insurance Co.*[22]

In *Murtagh*, the group life insurance policy provided that coverage would end thirty-one days after termination of employment. It also provided that in the event of employment termination, the insured would be entitled to have an individual life insurance policy issued to him, without evidence of insurability, upon application and payment of the first premium within thirty-one days after termination. The insured's employment ended on June 4, 1979. He died several months later, on February 9, 1980, without ever having received notice of his conversion privilege.

The Allegheny County Court of Common Pleas held that despite the lack of notice of the conversion privilege, coverage ended thirty-one days after termination of employment pursuant to terms of the policy. The court relied on section 532.7, giving it a construction contrary to that given by the Superior Court in *Harris*. It held:

> In accordance with the legislature's mandate, the time for conversion was extended for an additional period of sixty (60) days and nothing more. This act states in clear and unambiguous terms that "nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy." Therefore, we conclude that the failure of the defendant to notify Mr. Murtagh of his conversion rights did not nor could it be construed to continue the policy of insurance which otherwise expired by its own terms.[23]

Thus, the Allegheny County Court of Common Pleas decided that the construction developed by the Superior Court in *Harris* is illogical. It maintained that the statute extends the time to apply for conversion and does "nothing more." The *Murtagh* court reached its decision well after the date of the *Harris* opinion, and curiously, it did so without mentioning that opinion.

Odder still, the Superior Court on appeal affirmed the Allegheny County Court's order granting summary judgment for the insurer.[24] It approved the entire opinion of the trial court, stating in a

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22. No. G.D. 81-33891 (C.P. Allegheny County, January 7, 1983), *aff'd* No. 00180 Pittsburgh, 1983 (Pa. Super., March 22, 1985).

23. *Id.*, slip op. at 5, 6.

24. No. 00180 Pittsburgh, 1983 (Pa. Super., March 22, 1985).

footnote in its memorandum opinion that "the lower court's opinion adequately sets forth the facts and the applicable law;"[25] yet, it cited *Harris*. After stating the history of the *Murtagh* case and the appellant's position, the court held, "We have carefully reviewed the record, the briefs, and the applicable law. The Act of May 11, 1949, P.L. 1210 § 7, 40 P.S. 532.7 is controlling. See *Harris v. St. Christopher's Hospital for Children*, 291 Pa. Super. 451, 436 A.2d 203, 204 (1981). Order affirmed."[26]

Since the insured died more than six months after termination of his employment and since *Harris* extended coverage for only ninety-one days, it would have been possible to find for the insurer without offending the rationale set forth in *Harris*. The trial court, however, found for the insurer by according section 532.7 a construction that was exactly opposite to the Superior Court's. The Superior Court's response was both to cite *Harris* and to approve the trial court's opinion.

The Superior Court's memorandum opinion in *Murtagh* does not reverse *Harris*, because the Superior Court has declared that its memorandum opinions "carry no precedential weight."[27] Without the memorandum opinion, the Superior Court's affirmation could be interpreted as approving the trial court's result but not its *ratio decidendi*. Even if the memorandum opinion has no precedential value, it provides a view of the court at work and creates substantial doubt about the soundness of the Superior Court's analysis of this issue.

Section 532.7 is identical to the NAIC Supplementary Bill Relating to Conversion Privileges; thus, courts in other jurisdictions have construed the same language. They agree with *Murtagh*.

In *Preaseau v. Prudential Insurance Co.*,[28] the United States Court of Appeals for the Ninth Circuit construed life conversion provisions of the California Insurance Code.[29] Section 10209(b) gives an employee a privilege to convert, provided he applies and pays a premium within thirty-one days of termination of employment. In its first paragraph, section 10209(d) provides that if an employee dies during the thirty-one day conversion period without having applied for conversion, the amount of coverage to which he would have been entitled should nonetheless be "payable as a claim." In its second paragraph, section 10209(d) provides that if an employee is not given notice of his conversion privilege, he "shall have an additional

25. *Id.*, slip op. at 1.
26. *Id.*, slip op. at 1, 2.
27. K.N. v. Cades, 288 Pa. Super. 555, 432 A.2d 1010 (1981).
28. 591 F.2d 74 (9th Cir. 1979).
29. CAL. INS. CODE § 10209(b), (d) (West 1972).

period within which to exercise such right." It adds, "[N]othing herein contained shall be construed to continue any insurance beyond the period provided in such policy." The first paragraph of section 10209(d) is essentially identical to section 532.6(10) of the Pennsylvania Insurance Code, and the second paragraph of section 10209(d) is essentially identical to section 532.7.

The *Preaseau* court construed § 10209(d) as follows:

> The second paragraph of (d) must be construed as extending the option period of (b) and not the coverage period of the first paragraph of (d). First, the second paragraph begins by referring to the condition of (b): "if any employee . . . becomes entitled . . . to have an individual policy of life insurance issued to him without evidence of insurability." Second, the section refers to "such right," meaning the right to obtain individual coverage without producing evidence of insurability. Third, the paragraph refers to the "exercise [of] such right," a phrase that would apply to the exercise of the option to convert involved in (b), but would not relate to the obtaining of benefits under the first paragraph of (d). Finally, the second paragraph of (d) is devoid of any language similar to the language in the first paragraph of (d) extending the period of coverage. In short, the language of the second paragraph of (d) indicates that it was written to supplement (b), dealing with the option to convert the individual insurance, and not to extend the coverage period provided in the first paragraph of (d).[30]

Because the language of California's provision is essentially identical to Pennsylvania's provisions, this analysis applies equally well to Pennsylvania's scenario.

The *Preaseau* court then considered the proviso that "nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy." It concluded that "this proviso must be read as meaning that the legislature did not intend the second paragraph to extend the period of coverage; rather it extends only the time limit on the option to convert."[31] The plaintiff in *Preaseau* argued that the proviso applied only to "collateral benefits" under the policy, but the court replied that the words "any insurance" are too general to allow the proviso to be limited to only certain portions of coverage.[32]

The Ninth Circuit described its approach to statutory construction as follows: "[t]he language of the statute is the best and most reliable index of its meaning, and where the language is clear and

30. 591 F.2d at 81.
31. *Id.*
32. 591 F.2d at 81 n.6.

unequivocal it is determinative of its construction."[33] It applied that approach to section 10209 by remarking, "We believe that the statutory language clearly indicates that the failure to give proper notice provides the insured with an additional 25 to 60 days during which to exercise the option to convert to individual coverage, but does not otherwise extend the entitlement to benefits."[34]

The California Court of Appeal in *Daniels v. Equitable Life Assurance Society*[35] construed the same statute and adopted the analysis of the *Preaseau* court. It reasoned, "Assuming Daniels was entitled to additional notice of his conversion privilege at the time of termination, the failure to give him such notice would have extended only the time within which to apply for conversion and not, as plaintiffs are contending, insurance coverage . . . ."[36]

Similarly, the proviso that "nothing shall be construed to continue any insurance" appears in Oklahoma's statute[37] and New Jersey's statute.[38] The Oklahoma Supreme Court in *Frank v. Sentry Life Insurance Co.*[39] and the New Jersey Superior Court in *Wells v. Wilbur B. Driver Co.*[40] construe the proviso to extend only the period for conversion, not coverage. The Oklahoma court found that the clause spoke to the issue "directly and specifically,"[41] and the New Jersey court held that it "explicitly countermanded" any idea that coverage should be extended.[42]

Thus, the construction that the Pennsylvania Superior Court in *Harris* said was "absurd" and "could hardly have been the intent of the legislature" has been adopted by the Ninth Circuit, the California Court of Appeal, the New Jersey Superior Court, and the Oklahoma Supreme Court. These courts found that construction to be "direct," "specific," "explicit," and "clear."

New York authorities, which the Pennsylvania Superior Court cited in *Harris*, extend coverage during the extended application period. The New York statute, however, is significantly different from legislation of other states. The New Jersey Superior Court in *Wells* explained:

> Significantly, the New York statute did not contain a stricture comparable to that included in N.J.S.A. 17:34-32.2, *i.e.*, that

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33. 591 F.2d at 81.
34. *Id.*
35. 123 Cal. App. 3d 467, 176 Cal. Rptr. 670 (1981).
36. *Id.* at 473, 176 Cal. Rptr. at 673.
37. OKLA. STAT. ANN. tit. 36, § 4104 (West 1976).
38. N.J. STAT. ANN. § 17B:27-24 (West 1985). That statute was formerly § 17:34-32.2.
39. 526 P.2d 1146 (Okla. 1974).
40. 121 N.J. Super. 185, 296 A.2d 352 (1972).
41. 526 P.2d at 1149.
42. 121 N.J. Super. 196, 296 A.2d at 358.

> the statutory extension of the period within which to exercise the conversion privilege shall not be construed to continue the insurance coverage beyond the period of the extended coverage which is provided in the insurance policy itself.[43]

The same distinction applies to *Paul Revere Life Insurance Co. v. Gardner*,[44] in which the Indiana Court of Appeals followed New York authority in extending coverage under Massachusetts' statute.[45] Like New York's statute, Massachusetts' statute does not contain the proviso that nothing shall be construed to continue coverage.

The intention of the NAIC in inserting the proviso into the model act was apparently to prohibit any extension of coverage, which is exactly what the courts in *Preaseau*, *Daniels*, *Frank* and *Wells* inferred from the language. The 1946 version of the model act contained no notice provision. The Life Committee of the NAIC noted that requiring notice creates problems for insurers, so it offered an extension of coverage for the forty-five day application period[46] instead:

> Perhaps the most troublesome point in connection with the Standard Provisions concerns the matter of notice of termination of insurance to the employee whose employment has terminated. There is no entirely satisfactory solution to this problem because in the usual case the insurer does not know that the employment has terminated until weeks or months thereafter. We have endeavored to meet this problem by providing a 45 day conversion period with free coverage during the period. This is in lieu of any provision for notice.[47]

In 1948 the Life Committee reported that it was continuing to consider requiring notice but again observed that "there are difficulties inherent in this problem."[48] Finally, in 1949 the Life Committee recommended a notice provision which included the proviso that "nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy."[49] The committee could have simply extended the forty-five day "free coverage" period, which it initially proposed in lieu of a notice requirement; instead, it chose to add an elaborate notice requirement to the model act. That fact and the committee's concern for problems that requiring notice creates for insurers suggest that the committee did not

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43. *Id.*
44. ___ Ind. App. ___, 438 N.E.2d 317 (1982).
45. MASS. GEN. LAWS ANN. ch. 175, § 134A (West 1972).
46. Pennsylvania's application period is 31 days. 40 PA. CONS. STAT. ANN. § 532.6(1) (Purdon 1971).
47. 1946 Proc. NAIC p. 336.
48. 1948 Proc. NAIC p. 460.
49. 1949 Proc. NAIC pp. 252, 253.

intend that coverage extend beyond the forty-five day period.

Thus, the Pennsylvania Superior Court's opinion in *Harris* is not only inconsistent with its subsequent opinion in *Murtagh*, but it is also contrary to both analyses of other courts that have considered the issue[50] and to the intent of the NAIC when it drafted the model act. The other authorities hold that an insurer has no duty to give notice except as required by statute and that explicit statutory provisions establish that breach of the duty results only in extension of the time in which an insured may apply for conversion, not the time during which benefits will be paid.

III. Health Coverage

The Pennsylvania Insurance Code describes the effect of lack of notice of the conversion privilege for group health coverage as follows:

> [I]f such notice be given more than 15 days but less than 90 days after the date of termination of group coverage, the time allowed for the exercise of such privilege of conversion shall be extended for 15 days after the giving of such notice. If such notice be not given within 90 days after the date of termination of group coverage, the time allowed for the exercise of such conversion privilege shall expire at the end of such 90 days.[51]

There is no case analogous to *Harris* which provides that as a general rule, failure to give notice of the privilege to convert group health coverage extends coverage during the extended application period. Pennsylvania courts have, however, hinted that group health coverage may extend on other grounds.

An argument has been made that the right to group health benefits vests upon occurrence of an injury or illness before the policy or employment ends. According to that argument, the insurer must continue to pay benefits as long as services are required to treat injury or sickness, even though the policy provides that coverage ends when either the policy or employment terminates. The Pennsylvania Supreme Court rejected this argument in *Guardian Life Insurance*

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50. A life and health insurance text, in discussing the proviso that nothing should be construed to continue coverage, interpreted it in the same manner as did *Preaseau*, *Daniels*, *Frank* and *Wells* and assumed without discussion that the proviso prohibited extension of coverage:

> The model supplemental bill provides that "nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy." The quoted clause is omitted in the Massachusetts and New York provisions. The New York provision has been interpreted to have the opposite effect of the model supplementary bill, that is, it has been construed to continue the extended death benefit up to ninety days.

W.F. MEYER, LIFE & HEALTH INSURANCE LAW § 10:30 (1971).

51. 40 PA. CONS. STAT. ANN. § 756.2(d)(19) (Purdon 1971).

Co. v. Zerance,[52] holding that clearly worded termination provisions stop payment of benefits, whether or not further treatment of sickness or injury is necessary. In dictum, the court opened the possibility that coverage may continue because of the lack of notice of intended termination of coverage.

The policy in *Zerance* provided that coverage would end on the date of the policy's termination, except that if the insured was totally disabled on that date, coverage pertaining to the disabling injury or sickness would extend during the continuance of the disability but not beyond the last day of the calendar year following the calendar year in which the policy terminated. On February 16, 1974, the insured became disabled. On November 30, 1978, the group policyholder terminated the policy effective December 1, 1978. The insurer continued paying under the extended benefits provision until December 31, 1979, when all payments ceased.

The insured asserted that his right to payment of benefits had vested when he became disabled and that the termination provision of the policy could not divest him of that right. The Superior Court agreed,[53] but the Supreme Court reversed the Superior Court and held that the policy clearly provided for cessation of payments at the end of the extended benefits period and that such a provision is not contrary to public policy in Pennsylvania.

The Supreme Court noted, however, that termination of coverage must be "consistent with the provisions of the policy,"[54] and that an insured must be given notice of intended termination in accord with *Poch v. Equitable Life Assurance Society*.[55]

In *Poch* the policy provided both life and health coverage. Although the policy did not reserve a right to cancel any coverage, the insurer and the policyholder agreed to cancel disability coverage. Although notice of the cancellation was posted on a bulletin board at the policyholder's office and new certificates were issued to the policyholder for delivery to employees, there was no evidence that the insured had received notice of the cancellation. The premiums, which were paid by the employees, remained the same despite the cancellation. The court held:

> A group policy like that now before us . . . cannot be cancelled or any of its effective provisions eliminated, by either the employer or insurer, except in a manner provided by the policy, without giving such employee notice of the intended cancellation or modification, so that he may timely exercise any conversion

52. 505 Pa. 345, 479 A.2d 949 (1984).
53. 314 Pa. Super. 529, 461 A.2d 283 (1983).
54. 505 Pa. at 350, 479 A.2d at 952.
55. 343 Pa. 119, 22 A.2d 590 (1941).

> privilege . . . or, where such privilege is not given, in order that he may seasonably obtain similar insurance protection on his own account elsewhere; further, that in the absence of notice, an agreement of cancellation or modification . . . is, as to such employee, legally ineffective to relieve the insurance company from liability under the original policy.[56]

Because the policy in *Poch* did not provide for the cancellation of coverage which was attempted and because the court excepted termination of coverage made in a manner provided by the policy, *Poch* appears to hold that no notice need be given to an employee if the policy explicitly provides for termination,[57] although *Zerance* could be understood to suggest otherwise. The inference could be drawn from *Zerance* that termination is ineffective if an employee receives no notice, even if termination without notice is consistent with the terms of the policy. That inference, however, is contrary to the holding of the Pennsylvania Supreme Court in *Hanaieff v. Equitable Life Assurance Society*.[58]

In *Hanaieff* the court held that the provisions in a group life policy for automatic termination of coverage were effective despite lack of notice to the insured. The group life insurance policy provided that coverage automatically ended upon cessation of premium payments or thirty-one days after termination of employment. Subject to payment of premiums, a disabled employee would be considered to be employed during the period of disability. In that case, after an employee became disabled, he attempted to pay premiums, but the employer refused to accept the payments. The employer then recorded the insurance as having ended due to nonpayment of premiums and employment as having ended because of the disabled employee's absence from work. The claimant based her claim against the insurer on the ground that the employer's refusal of the proffered premiums was improper and that the employee had received no notice of termination of employment and, therefore, had been deprived of the opportunity to apply for conversion. The court held that coverage had terminated according to the terms of the policy. On the issue of notice, it held, "Nor . . . was there any obligation on the

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56. *Id.* at 128, 22 A.2d at 594.

57. In Murtagh v. Bankers Nat'l Life Ins. Co., the trial court applied *Poch* to deny extension of coverage as follows:

> The key portion of the Court's holding as it affects the instant case is the phrase "except in a manner provided by the policy." Here, the policy provides for termination under certain specified conditions and one of these conditions has been met, *e.g.*, the termination by Mr. Murtagh of his employment with his employer, MTS.

Slip op. at 3.

58. 371 Pa. 560, 92 A.2d 202 (1952).

insurer's part to notify him of the termination of his employment, whatever may have been the duty of the employer in that respect."[59]

The United States District Court for the Eastern District of Pennsylvania has also held that the duty to notify an insured rests on the employer, not on the insurer. In *Brezan v. Prudential Insurance Co.*,[60] a group health policy excluded claims for injury arising out of employment and for disease covered by any worker's compensation law. The insured asserted that the insurer's failure to explain the exclusion estopped it from applying the exclusion. The insured relied on a rule made by the Superior Court that "the burden of establishing the applicability of [an] exclusion . . . involves proof that the insured was aware of the exclusion . . . and that the effect thereof was explained to him."[61] The Pennsylvania Supreme Court subsequently repudiated this rule.[62] In the course of holding that the Superior Court's rule did not apply to group insurance, the district court added the following dictum:

> Moreover, an insurer has no duty to inform an *employee* covered by group insurance directly; rather the insurer must provide a copy of the master policy to the *employer* who shoulders the responsibility for transmitting group insurance policy information to employees . . . . The defendant had no legal duty to guarantee that the policy information reached members of the group and that they understood the terms and conditions thereof.[63]

Since *Brezan* involved an exclusion rather than termination of coverage, its applicability to termination is unclear.[64] It is, however, consistent with *Hanaieff*, which the *Brezan* court cited. The general statements in *Hanaieff* and *Brezan* that an insurer has no duty to notify are qualified by the requirement in section 756.2(d)(19) that either the policyholder or the insurer must notify the insured of his conversion privilege. The statute, however, limits the effect of lack of notice to extension of the time allowed for exercise of the conversion privilege. Thus, there is no duty to notify except as statutes may require, and the sole statutory requirement does nothing to extend

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59. *Id.* at 566, 92 A.2d at 205.

60. 507 F. Supp. 962 (E.D. Pa. 1981).

61. Hionis v. Northern Mut. Ins. Co., 230 Pa. Super. 511, 517, 327 A.2d 363, 365 (1974).

62. Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 469 A.2d 563 (1983).

63. 507 F. Supp. at 966 (emphasis in original).

64. Subsequently, in Olkowski v. Prudential Ins. Co., 597 F. Supp. 1197 (E.D. Pa. 1984), the District Court for the Eastern District of Pennsylvania held that notice of termination of coverage was required even though the policy provided for termination, but the holding was based on the court's finding that the policy was ambiguous on the issue of whether termination was automatic or dependent on notice.

coverage.

If, despite *Hanaieff*, *Poch* were to be understood to extend group health coverage indefinitely, it could similarly be understood to extend group life insurance coverage indefinitely. The *Harris* court, relying on section 532.7, however, stated that life insurance coverage would not be available for more than ninety-one days beyond the original termination date. The *Harris* court did not discuss *Poch*, but its rejection of extending life coverage indefinitely suggests that courts may be reluctant to extend health coverage indefinitely when policy provisions clearly end it. The court did discuss New York authority, proposing that it was applicable because of the similarity of the statutes.[65] The New York health conversion statute[66] is similar to Pennsylvania's, and the Appellate Division of the New York Supreme Court has held that the obligation created by New York's statute to give notice creates no rights beyond the right specifically provided by the statute to convert during an extended period and that this statutory obligation does not give employees a cause of action for failure to provide notice.[67]

Perhaps the *Zerance* court referred to giving notice even when termination follows the terms of a policy because of section 756.2(d)(19) and, pursuant to that statute, intended lack of notice merely to extend the time to apply for conversion rather than to render termination ineffective. Since the statement about notice in *Zerance* was made in passing, a court should be slow to draw an inference from it which would misconstrue *Poch* or which would extend coverage contrary to *Hanaieff*.

IV. Conclusion

Pennsylvania has not developed a cohesive response to the question of the effect of lack of notice of termination of coverage. The Supreme Court in *Zerance* made an offhand statement from which

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65. 291 Pa. Super. at 457 n.3, 436 A.2d at 206 n.3.

66. N.Y. INS. LAW § 3221(e)(8) (McKinney 1985), provides as follows:
(A) Each certificate holder shall be given written notice of such conversion privilege and its duration with 15 days before or after the date of termination of group coverage, provided that if such notice be given more than 15 days but less than 90 days after the date of termination of group coverage, the time allowed for the exercise of such privilege of conversion shall be extended for 45 days after the giving of such notice. If such notice be not given within 90 days after the date of termination of group coverage, the time allowed for the exercise of such conversion privilege shall expire at the end of such 90 days.(B) Written notice by the policyholder given to the certificate holder or mailed to the certificate holder's last known address, or written notice by the insurer mailed to the certificate holder at the last address furnished to the insurer by the policyholder, shall be deemed full compliance with the provisions of this subsection for the giving of notice.

67. Jakobsen v. Wilfred Laboratories, Inc., 99 A.D.2d 525, 471 N.Y.S.2d 306 (1984).

an inference could be drawn that lack of notice prevents termination of coverage, even if the policy provides for termination. This inference would be contrary to both *Poch*, which *Zerance* cited, and *Hanaieff*.

The Superior Court in *Harris* glibly dismissed statutory language which suggests that coverage should not extend beyond the period provided in the policy. The court held that section 532.7 does extend coverage beyond the period provided in the policy, stating that the legislature "could hardly" have intended otherwise. Yet it failed to explain what the legislature did mean by that language. In *Murtagh*, it subsequently approved a trial court opinion that reached an opposite conclusion, but it never attempted to explain the inconsistency. Courts in other jurisdictions have construed similar language to prevent extension of coverage.

The best analysis of all the authorities is that lack of notice of termination of group coverage and of the conversion privilege should have no effect other than extending the period for applying for individual coverage and should not extend group coverage itself. But it remains for Pennsylvania courts to clarify this matter.