

CASE NOTES

GROUP HEALTH INSURANCE-UNDER SECTION 515.80 OF THE IOWA CODE, WHICH REQUIRES THAT A THIRTY-DAY NOTICE OF NONPAYMENT OF PREMIUMS BE SENT TO THE INSURED BEFORE CANCELLATION OF AN INSURANCE POLICY IS EFFECTIVE, THE FAILURE OF THE GROUP HEALTH INSURER TO SEND NOTICE DIRECTLY TO THE INSURED EMPLOYEE MAKES CANCELLATION INEFFECTIVE AS TO THAT EMPLOYEE.-*Freeman v. Bonnes Trucking, Inc.* (Iowa 1983).

Defendant Oran Bonnes was president and sole stockholder of defendant Bonnes Trucking, Inc.¹ Clarence Freeman was a full-time employee of Bonnes Trucking, and as such was entitled to receive medical expense insurance coverage maintained by Bonnes Trucking and issued by defendant, Guardian Life Insurance Company.² Under the policy, Freeman was also able to obtain coverage for his wife, as dependent, with Bonnes Trucking paying one half of the premiums for such coverage.³ Bonnes Trucking was responsible for the entire premium of each of its employees.⁴ Each employee, including Freeman, received a "Certificate of Coverage" explaining the insurance benefits of the employees and their dependents.⁵ Bonnes Trucking held the master policy and remitted the monthly premiums to Guardian.⁶

In the fall of 1979, Bonnes Trucking was unable to meet its bills and failed to pay these premiums, including the amount it continued to withhold from Freeman's wages for his wife's coverage.⁷ As a result, Guardian, without notifying Freeman, terminated the policy for nonpayment of premiums as of November 19, 1979, after sending a notice of termination to Bonnes Trucking.⁸ In January of 1980, Freeman became ill with a respiratory problem.⁹ After visiting with Bonnes and the office secretary at Bonnes Trucking, Freeman reportedly believed that his insurance was still in effect.¹⁰

1. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871, 874 (Iowa 1983).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* The office secretary of Bonnes assured Freeman his insurance was in effect. *Id.*

Both he and his wife subsequently incurred medical expenses in the amount of \$16,522.06.¹¹ Guardian refused to pay these expenses, claiming that the policy had expired.¹²

Freeman then brought an action against Bonnes and Bonnes Trucking seeking to recover the full medical expenses incurred, plus \$25,000 in punitive damages for fraud.¹³ Bonnes and Bonnes Trucking cross-petitioned against the defendant Guardian, and Freeman cross-claimed against Guardian.¹⁴ The trial court held Bonnes, Bonnes Trucking, and Guardian jointly liable to Freeman for the \$16,522.06 medical expenses, and awarded an additional \$25,000 as punitive damages against Bonnes and Bonnes Trucking.¹⁵ The Iowa Supreme Court, *held*, affirmed. Section 515.80 of the Iowa Code requires that a group health insurer send notice to employees insured under a group health insurance policy thirty days prior to forfeiture or cancellation of the policy for nonpayment of premiums.¹⁶ *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983).

The court was presented with three main problems with regard to the issue of whether Guardian was required to give notice to the employees insured under the group health insurance policy prior to termination of the policy.¹⁷ Guardian's liability rested upon determination of these questions.¹⁸ First, does section 515.80 of the Iowa Code, which requires notice of cancellation for nonpayment of premiums,¹⁹ apply to *group* health insurance?²⁰ Second, if section 515.80 of the Iowa Code does apply to group health insurance policies, did Guardian satisfy the requirement by mailing notice to Bonnes Trucking, the employer?²¹ Third, is section 515.80 of the Iowa Code inapplicable where the policy is one which lapsed upon the expiration of a

11. *Id.* A portion of those expenses was attributed to his wife's fractured elbow; the rest was attributed to his surgery and post-operative care. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. The court also held that Bonnes and Bonnes Trucking had committed fraud upon Freeman. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871, 879 (Iowa 1983).

Bonnes Trucking did not notify Freeman of the cancellation but on the contrary, continued to deduct from his wages for his wife's coverage. This money was used for other obligations of Bonnes Trucking. Far from leveling with Freeman about the true situation, Bonnes falsely led Freeman to believe he was insured.

Id. In addition, the court found that the fraud "was downright deceit committed with reckless disregard of Freeman's rights," and, therefore, an award of punitive damages was not unjustified. *Id.* at 880.

17. *Id.* at 875-78.

18. The trial court's disallowance of an untimely motion by Guardian to amend its pleading to include claims for contribution and indemnity from Bonnes Trucking and Bonnes was upheld by the court. *Id.* at 878.

19. IOWA CODE § 515.80 (1983).

20. 337 N.W.2d at 875 (emphasis added).

21. *Id.* at 876.

specified term?²²

The court began by stating that any discussion of a common law duty of an insurer to give notice to employees under a group policy was unnecessary, in that the requirements of notice to an insured are set out in section 515.80 of the Iowa Code.²³ Section 515.80 provides:

No policy or contract of insurance provided for in this chapter shall be forfeited or suspended for nonpayment of any premium, assessment, or installment provided for in the policy, or in any note or contract for the payment thereof, unless within thirty days prior to, or on or after the maturity thereof, the company shall serve notice in writing upon the insured that such premium, assessment, or installment is due or to become due, stating the amount, and the amount necessary to pay the customary short rates, up to the time fixed in the notice when the insurance will be suspended, forfeited, or cancelled, which shall not be less than thirty days after service of such notice, which may be made in person, or by mailing in a certified mail letter addressed to the insured at his post office as given in or upon the policy, and no suspension, forfeiture, or cancellation shall take effect until the time thus fixed and except as herein provided, anything in the policy, application, or a separate agreement to the contrary notwithstanding.²⁴

If this section is applicable here, then the requirements of this statute must be followed by the parties to the insurance contract.²⁵ "A statute applicable to a contract of insurance enters into and forms a part thereof in the same manner as if it had been actually written as copied therein"²⁶ The case of *Thames v. Piedmont Life Insurance Co.*²⁷ demonstrates the application of this principle.²⁸ The group life insurance policy at issue in *Thames* contained an "automatic cancellation" clause.²⁹ Georgia law required written notice five days prior to cancellation.³⁰ The court reiterated

22. *Id.* at 878.

23. *Id.* at 875. Other cases have held that "the employer is the agent of the insurer in performing the duties of administering group insurance policies." See *Elfstrom v. New York Life Ins. Co.*, 67 Cal. 2d 503, 512, 432 P.2d 731, 737, 63 Cal. Rptr. 35, 41 (1967). In *Elfstrom*, the policy in issue provided group coverage to those employees who worked more than thirty-two hours a week and were thus considered full-time. *Id.* at —, 432 P.2d at 733, 63 Cal. Rptr. at 37. An employee who had reduced her employment with the corporation to part-time was mistakenly covered under the plan. *Id.* The court held that because an agency relationship existed, the insurer was ultimately responsible for misstatements contained on an application in the absence of a knowing misrepresentation. *Id.* at —, 432 P.2d at 738-39, 63 Cal. Rptr. at 43-44.

24. IOWA CODE § 515.80 (1983).

25. *Benzer v. Iowa Mut. Tornado Ins. Ass'n*, 216 N.W.2d 385 (Iowa 1974).

26. *Id.* at 388. See also *In re Estate of Brown*, 205 N.W.2d 925, 927 (Iowa 1973).

27. 128 Ga. App. 630, 197 S.E.2d 412 (1973).

28. *Id.*

29. *Id.* at —, 197 S.E.2d at 413. This policy insured those who had borrowed money at a bank, and contained a provision whereby the insurance was cancelled in the case where the insured had become in default with the bank for three months. *Id.* at —, 197 S.E.2d at 414.

30. GA. CODE ANN. § 56-2430 (1968). Georgia law now requires thirty days notice of can-

the rule that the statutory law of a state becomes a part of the contract to which that law applies.³¹ "Thus, the policy of insurance in [that] case contained, by operation of law, a provision that it could be cancelled *only upon giving of five days written notice.*"³²

The *Freeman* court took notice of the fact that chapter 515 of the Iowa Code contains general provisions relating to non-life insurance.³³ The greater number of chapters in the Iowa Code which relate to insurance concern specific kinds of insurance.³⁴ Of these, chapter 509 of the Iowa Code deals directly with group insurance of the type of which we are here concerned.³⁵ In *Commercial Insurance Co. v. Burnquist*,³⁶ it was stated that chapter 509, being the more specific and recently enacted code section, would control over other earlier enacted provisions of chapter 515, which were "fundamentally inconsistent" with it.³⁷

It was clear to the *Freeman* court that the General Assembly intended that the provisions in section 515.80 were to apply to group non-life insurance contracts.³⁸ "Chapter 509 on group insurance contains no provision comparable to section 515.80; hence no express conflict exists."³⁹ An argument was made, however, that this fact is not controlling, in that section 515.80 itself contains language which denies the application of that section to policies falling under chapter 509.⁴⁰ Section 515.80 states in pertinent part: "[n]o policy or contract of insurance *provided for in this chapter* shall be forfeited" without the requisite notice.⁴¹

The court found that section 515.80 *provides for* all non-life insurance when read in conjunction with section 515.1 of the Iowa Code.⁴² Section 515.1 makes it clear that, "[c]orporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chap-

cellation. GA. CODE ANN. § 56-2430 (1982).

31. *Thames v. Piedmont Life Ins. Co.*, 128 Ga. App. at —, 197 S.E.2d at 414.

32. *Id.* at —, 197 S.E.2d at 414 (court's emphasis).

33. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 875.

34. *Id.*

35. IOWA CODE §§ 509.1-.18 (1983). Section 509.1 states:

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer

IOWA CODE § 509.1 (1983).

36. 105 F. Supp. 920 (N.D. Iowa 1952).

37. *Id.* at 934.

38. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876.

39. *Id.*

40. *Id.*

41. IOWA CODE § 515.80 (1983) (emphasis added).

42. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876 (emphasis added).

ter 491 except as modified by the provisions of this chapter."⁴³ It is also clear that other language contained in section 515.80, relied upon to show that this section was not meant to apply to group insurance, is merely "a holdover from this original section, which applied only to fire insurance policies."⁴⁴

Additionally, the *Freeman* court found support for the applicability of section 515.80 in a provision of chapter 509 of the Iowa Code.⁴⁵ Section 509.2, which specifically sets out those provisions which are part of a group life policy, exempts them from the standard requirements of individual life insurance policies.⁴⁶ Moreover, it declares that "nothing herein shall be construed to require that group life insurance policies contain the same non-forfeiture provisions as are required for individual life insurance policies."⁴⁷ In contrast to section 509.2, section 509.3,⁴⁸ which pertains to accident and health policies, "contains no such exemptions from the standard requirements of non-life insurance."⁴⁹ The court thus found that section 515.80 is applicable to group health insurance policies.⁵⁰

In *Freeman*, the court held that the provisions of section 515.80 had not been complied with, notwithstanding that Guardian had sent a notice of cancellation to Freeman's employer, Bonnes Trucking.⁵¹ Section 515.80 states that "the company shall serve notice in writing upon the insured"⁵² A careful analysis by the *Freeman* court lead to the conclusion that Bonnes Trucking was not the insured under the policy.⁵³

43. IOWA CODE § 515.1 (1983) (emphasis added). Chapter 491 is the general corporation chapter applying to corporations formed prior to July 1, 1971. IOWA CODE §§ 491.1-.115 (1983). Chapter 496A applies to corporations formed subsequent to that date. IOWA CODE §§ 496A.1-.146 (1983).

44. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876-77. The court refers to language from the original act which declares that the notice must "[state] the amount, and the amount necessary to pay the customary short rates," and must be "addressed to the insured at his post office as given in or upon the policy." *Id.* (quoting from 1880 Iowa Acts ch. 2, § 2).

45. *Id.* at 876.

46. IOWA CODE § 509.2 (1983). Section 509.2 states in pertinent part: "[T]he standard provisions required for individual life insurance policies shall not apply to group life insurance policies" *Id.*

47. IOWA CODE § 509.2 (1983).

48. IOWA CODE § 509.3 (1983).

49. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876 (emphasis in original).

50. *Id.* The court quickly disposed of the argument that since *Freeman* did not contribute to the insurance premiums, the insurance had been provided only as a gratuity, and would not be subject to the provisions of section 515.80. *Id.* at 877. "The insurance clause in the employment contract was part of the employee's compensation for his services, just as surely as if the employer had paid the employee the amount of the premium in cash and the employee himself had sent the premium to Guardian." *Id.* See also Note, *Group Insurance: Notification of Termination of Coverage*, 40 S. CAL. L. REV. 697, 699 (1967).

51. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 877.

52. IOWA CODE § 515.80 (1983) (emphasis added).

53. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876-77.

The word "insured" is defined by *Black's Law Dictionary* as "[t]he person who obtains or is otherwise covered by insurance on his health, life, or property. The 'insured' in a policy is not limited to the insured named in the policy, but applies to anyone who is insured under the policy."⁵⁴ Furthermore, the statutes which govern this group policy define the employer as the "policyholder."⁵⁵ Under section 509.1(1), a policy is issued to an employer, "which employer . . . shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer . . ."⁵⁶ In section 509.3(2), the roles which employer and employee have assumed under the policy are made even clearer.⁵⁷ This section provides "that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate . . ."⁵⁸

The *Freeman* court noted that it was the employee for whom the protection was acquired and to whom any benefits would run, should such benefits become necessary.⁵⁹ "The employer is not the insured; the employees are. They, alone, receive the benefits."⁶⁰ Several references are also made throughout the "Certificate of Coverage," leaving little doubt that *Freeman* "is in fact the insured."⁶¹ The court thus held that *Guardian* failed to give notice to the insured as required by section 515.80.⁶²

The *Freeman* court next addressed the possibility that the policy was one which had lapsed according to its own terms.⁶³ If the policy was written for a definite term, then the policy lapses at the end of that term.⁶⁴ Where

54. BLACK'S LAW DICTIONARY 726 (5th ed. 1979).

55. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876.

56. IOWA CODE § 509.1(1) (1983) (emphasis added).

57. IOWA CODE § 509.3(2) (1983).

58. *Id.*

59. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876.

60. *Tabb v. Louisiana Health Servs. & Indem. Co.*, 361 So. 2d 862, 863 (La. 1978) overruled on other grounds, *Rudloff v. Louisiana Health Servs. & Indem. Co.*, 385 So. 2d 767 (La. 1980).

61. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 876. "[T]he employee named below . . . is entitled to the benefits described in this Certificate . . ." *Id.* (citing Trial Exhibit 1, App. at 22, *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983)). "Your insurance under the group plan is effective on the date shown on the Certificate of Coverage . . ." *Id.* (citing Trial Exhibit 1, App. at 22, *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983)). Exclusion of "any such person who is insured as an Employee . . ." *Id.* (citing Trial Exhibit 1, App. at 22, *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983)). "Insured Dependent refers to any Eligible Dependent on behalf of whom you have become insured." *Id.* (citing Trial Exhibit 1, App. at 22, *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983)).

62. *Id.* at 877. There is also authority for the proposition that the objectively reasonable expectations of insured regarding the terms of his policy should be upheld. *Rodman v. State Farm Mut. Auto. Ins. Co.*, 208 N.W.2d 903, 906 (Iowa 1973).

63. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 878.

64. *Travelers Indem. Co. v. Fields*, 317 N.W.2d 176, 183 (Iowa 1982); *Gibson v. Milwaukee Mut. Ins. Co.*, 265 N.W.2d 742, 744 (Iowa 1978); *Hensley v. Aetna Casualty & Sur. Co.*, 200

the policy has lapsed, section 515.80 does not apply.⁶⁵ However, if the policy is for an indefinite term, then it falls under section 515.80, and notice of termination is required.⁶⁶

A policy runs for a definite term where that term has been set in the policy, "even though the insurer might consent to additional periods upon payment of further premiums."⁶⁷ In such policies, "[b]oth starting and terminating dates [are] given with certainty."⁶⁸ The court, in *Hoefler v. Farm & City Insurance Co.*, stated that such cases are governed by the *Rules of the Insurance Department*:

A contract of insurance may specifically provide for a specific term of duration, in which event the contract automatically expires at the end of that term, without the giving of any notice. For illustration, a policy written for a term of one year with the premium paid in advance automatically expires at the end of the year.⁶⁹

Section 505.8 grants the Commissioner of Insurance the power to formulate rules,⁷⁰ and it "is controlling if the policy . . . is for a 'specific term of duration.'"⁷¹

Gibson v. Milwaukee Mutual Insurance Co. exemplifies the type of policy which is for an indefinite term.⁷² In *Gibson*, the policy required payments at six month intervals; however, there were no words of duration within the policy.⁷³ In addition, notices sent by the company to Gibson evidenced an intent that the policy not lapse by its own terms:

We have seen the policy provides a method (not followed here) for cancellation where the insured fails to pay premiums when due. The existence of this provision is significant. It is an indication the arrangement was as plaintiff contends because it is inconsistent with defendant's assertion the policy automatically lapsed upon nonpayment. It is inconsistent for defendant to provide for cancellation of a policy under circumstances which it contends would result in automatic lapse of the policy. It is that same claimed lapse which defendant, in turn, argues makes

N.W.2d 552, 554 (Iowa 1972); *Hoefler v. Farm & City Ins. Co.*, 193 N.W.2d 538, 539 (Iowa 1972).

65. *Hoefler v. Farm & City Ins. Co.*, 193 N.W.2d at 539.

66. See *Gibson v. Milwaukee Mut. Ins. Co.*, 265 N.W.2d at 744.

67. *Travelers Indem. Co. v. Fields*, 317 N.W.2d at 184.

68. *Hoefler v. Farm & City Ins. Co.*, 193 N.W.2d at 540.

69. *Id.* at 539.

70. IOWA CODE § 505.8 (1983).

71. *Hoefler v. Farm & City Ins. Co.*, 193 N.W.2d at 539.

72. 265 N.W.2d 742 (Iowa 1978).

73. *Id.* at 744. "The only words from the original policy referring to its duration were: '1. Policy Period, Territory. This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.'" *Id.* at 744 n.1.

cancellation unnecessary.⁷⁴

The *Freeman* court concluded: "[w]hile the present policy is not precisely the same as the one in *Gibson*, we apply the *Gibson* rationale and hold that section 515.80 applies."⁷⁵

The court noted two additional factors which distinguished *Freeman* from the *Fields*, *Hensley* and *Hoeftler* line of cases.⁷⁶ First, in those cases, "the premium notice went directly to the insured, who then failed to pay."⁷⁷ An individual insurance policy which lapsed by its own terms would essentially satisfy the policy requirements of *Farmers Insurance Group v. Merryweather*,⁷⁸ by giving the insured constructive notice; he may then either renew or replace the policy if he so wishes.⁷⁹ However, such constructive notice was not available to Freeman; his employer, Bonnes, was responsible for remittance of the premiums, and Freeman had no way of knowing that Bonnes had failed to do so.⁸⁰ Second, because the Certificate of Coverage received by Freeman "did not deal with the subject of nonpayment of premiums," Freeman was not aware of any specific term for which the policy was to run.⁸¹

Even without regard to these factors, the policy did not expire so as to make section 515.80 inapplicable.⁸² The "Grace in Payment of Premiums—Termination of Policy"⁸³ clause exhibits the same kind of contradiction which occurred in *Gibson v. Milwaukee Insurance Co.*⁸⁴ The provision for a method of cancellation contained in the policy gives an "indication of what the parties understood the terms of the contract to be . . ."⁸⁵ Section 515.80 thus applied to this group health insurance policy.⁸⁶

Section 509.3 must be read in conjunction with the notice requirements of section 515.80.⁸⁷ As the "insured," Freeman was entitled to notice of the

74. *Id.* at 745.

75. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 878.

76. *Id.*

77. *Id.*

78. 214 N.W.2d 184 (Iowa 1974).

79. See *Hensley v. Aetna Casualty & Sur. Co.*, 200 N.W.2d 552, 554 (Iowa 1972). "There could be no possible misunderstanding about the term of the policy or its expiration date." *Id.* See also *Hoeftler v. Farm & City Ins. Co.*, 193 N.W.2d at 540. "If this provision did anything, it emphasized to the policy holder that his policy expired on a date certain and that affirmative action by both parties was necessary to continue the coverage thereafter." *Id.* (emphasis added).

80. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 877.

81. *Id.* at 877.

82. *Id.*

83. Trial Exhibit 31, App. at 110, *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983).

84. 265 N.W.2d 742 (Iowa 1978).

85. *Id.* at 745.

86. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 878.

87. *Id.* at 876. Compare Iowa CODE § 509.3 (1983) with Iowa CODE § 515.80 (1983) (sec-

cancellation of his insurance coverage under the group policy.⁸⁸ Such notice would have allowed him to either convert to an individual policy issued by Guardian or seek insurance elsewhere.⁸⁹ Application of section 515.80 to group health policies by the *Freeman* court will apprise the insurance industry as to the duty to give insured employees notice thereunder.⁹⁰ The *Freeman* court also appears to have closed the door on group health policies which expire according to their own terms.⁹¹ Distinguishing factors, such as remittance of premiums by a policyholder who is not the insured, warrant different treatment of these group policies.⁹² The employee insured under a group health insurance policy has thus been afforded needed protection by this decision.

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tion 509.3 contains no disclaimer relating to the applicability of section 515.80).

88. *Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d at 877.

89. *See generally Freeman v. Bonnes Trucking, Inc.*, 337 N.W.2d 871 (Iowa 1983).

90. *Id.*

91. *See id.* at 878.

92. *Id.*

