

Case Notes

CONDITIONAL RECEIPT—THE UNAMBIGUOUS "SATISFACTION TYPE" RECEIPT PROVIDES THAT INSURABILITY SHALL BE A CONDITION PRECEDENT TO EFFECTIVE LIFE INSURANCE COVERAGE AND IS NOT CONTRARY TO LAW OR PUBLIC POLICY.—*Brown v. Equitable Life Insurance Co.* (Wis. 1973).

In January 1969, decedent contacted an agent for respondent insurance company to purchase life insurance. At the time decedent was troubled by a cancerous skin condition with which the insurance agent was familiar. Per the insurance company's requirement the decedent had a medical examination on January 29, 1969. On February 1, 1969, decedent completed and signed Part I of the insurance contract. He was issued a conditional receipt¹ for the initial premium check dated February 6, 1969. On February 11, 1969, before respondent insurance company had been able to process decedent's application, the decedent met with an untimely death as the result of a coronary occlusion, a death unforeseeable and totally unrelated to his cancerous skin condition. Respondent insurance company was promptly notified of the death and immediately conducted a good faith investigation to determine decedent's insurability as of February 6, 1969. The company determined that, because of the cancerous skin condition, the decedent was not insurable as a standard risk for the amount of coverage for which he applied. The respondent denied liability and returned the initial premium payment pursuant to the provisions of the conditional receipt. Appellant commenced this action to recover the \$30,000 face amount of said life insurance, claiming that upon payment of the first premium the conditional receipt created a contract of temporary insurance effective

1. The receipt used in the *Brown* case provides as follows:

The payment for which this conditional receipt is given provides insurance only after all of the following conditions are fully met:

1. The first premium for the policy is paid in full with Part I of the application bearing the same serial number and date as this receipt; and

2. The Company at its Home Office is satisfied, after investigation, that on the effective date defined below the person or persons to be insured are insurable under the Company's rules and practices for the amount of insurance on the plan applied for (including additional benefits if any), and at the rate of premium paid with Part I of the application; and

3. . . . Subject to the above conditions, the insurance shall be effective on the last of the following dates: the date of this receipt, the date of Part 2 of the application, or the date of the last of any medical examinations or tests required under the rules and practices of the Company. If the above conditions are not fully met or if Condition (2) above is not met within 60 days of the date of this receipt or the date of Part 2, if later, or if the insurance is declined by the Company within said 60-day period, then there shall be no liability on the part of the Company except to return this payment upon surrender of this Conditional Receipt. (emphasis included).

Brown v. Equitable Life Ins. Co., 60 Wis. 620, 626 n.1, 211 N.W.2d 431, 434 n.1 (1973).

as of the date of the receipt which would be terminated only by notification to the decedent that his application was rejected (condition subsequent approach). The trial court found that no interim coverage was provided and entered judgment for the insurance company. The Supreme Court of Wisconsin *held*, affirmed, the conditional receipt created a contract of insurance to become effective as of the date of receipt only after the respondent insurance company had made a good faith determination that the decedent was insurable as a standard risk (adopting the condition precedent approach). The use of the conditional receipt is not contrary to law or public policy. *Brown v. Equitable Life Ins. Co.* 60 Wis. 2d 620, 211 N.W.2d 431 (1973).

It should be noted that the scope of this Casenote is limited to the application of conditional receipts in life insurance. The use and validity of such receipts has long been a controversial topic,² and the response from the courts has varied widely from state to state.³ Conditional receipts are of two basic types: the approval type and the satisfaction or insurable variety. The approval type generally provides that the application must be approved at the home office in order for any insurance to take effect and, if approved, the coverage is retroactive to the specified date.⁴ The satisfaction or insurable type of conditional receipt provides that insurance will be in effect from the date of the application or of the medical examination provided the applicant is then insurable for the plan and amount and at the premium rate applied for as determined by the underwriting standards of the particular company.⁵ The trend has been toward the insurable type of conditional receipt, now the predominant variety.⁶

The central issue of the conditional receipt controversy involves the existence of insurance coverage during the necessary time lag between the proposed insured's application and its processing (followed by acceptance or rejection). Since insurance law generally follows the principles of contract law,⁷ the terms condition precedent and condition subsequent have been adopted to illustrate the effectiveness of the receipt's stated condition in creating or denying interim coverage. If the court views the condition as a condition subsequent, it is a condition which, if not met, would terminate coverage.⁸ Practically speaking,

2. See generally 12 J. APPLEMAN, *INSURANCE LAW AND PRACTICE* §§ 7221-33 (1943); 1 G. COUCH, *COUCH ON INSURANCE* §§ 14.26-14.46 (2d ed. 1959); Comment, *Life Insurance Receipts: The Mystery of the Non-Binding Binder*, 63 YALE L.J. 523 (1954); Comment, *Operation of Binding Receipts in Life Insurance*, 44 YALE L.J. 1223 (1935); 60 HARV. L. REV. 1164 (1947); 7 STAN. L. REV. 292 (1955); 15 U. CHI. L. REV. 379 (1948).

3. Compare *Tripp v. Reliable Life Ins. Co.*, 210 Kan. 33, 499 P.2d 1155 (1972) with *Maldonado v. First Nat'l Life Ins. Co.*, 79 N.M. 354, 443 P.2d 744 (1968).

4. *Wright v. Pilot Life Ins. Co.*, 254 F. Supp. 1018 (W.D. Va. 1966), *rev'd on other grounds*, 379 F.2d 409 (4th Cir. 1967); *Dove v. Arkansas Nat'l Life Ins. Co.*, 238 Ark. 1033, 386 S.W.2d 495 (1965); *Allen v. Metropolitan Life Ins. Co.*, 44 N.J. 294, 208 A.2d 638 (1965).

5. *Pedersen v. Life of Mid-America Ins. Co.*, 164 N.W.2d 337 (Iowa 1969); *Prudential Ins. Co. of America v. Lamme*, 83 Nev. 146, 425 P.2d 346 (1967); *Morgan v. State Farm Life Ins. Co.*, 240 Ore. 113, 400 P.2d 223 (1965). See also note 1 *supra*.

6. W. MEYER, *LIFE AND HEALTH INSURANCE* § 5:11, at 98 (1971) [hereinafter cited as MEYER].

7. *Mutual Life Ins. Co. v. Hurni Packing Co.*, 263 U.S. 167 (1923).

8. *Prudential Ins. Co. of America v. Lamme*, 83 Nev. 146, 149, 425 P.2d 346, 348 (1947).

this means that interim coverage is provided but can be terminated on the grounds of uninsurability or lack of approval. Conversely, if the court adopts the condition precedent approach, the condition, if met, initiates coverage.⁹ The fulfillment of the condition precedent is a prerequisite to coverage although the coverage may be retroactive if the condition is met.

In contrast to the holding in the *Brown* case, conditional receipts have frequently been held to state a condition subsequent. The courts have traditionally used two methods of analysis in holding that interim insurance is provided: (1) ambiguity in the contract itself and (2) a public policy rationale. *Gaunt v. John Hancock Mutual Life Insurance Co.*¹⁰ is the leading case espousing the ambiguity approach.¹¹ In a strongly worded opinion, Judge Learned Hand emphasized that the

application was not to be submitted to underwriters; it was to go to persons utterly unacquainted with the niceties of life insurance, who would read it colloquially. It is the understanding of such persons that counts; and not one in a hundred would suppose that he would be covered, not as of the date of completion of (the application) but only as of the date of approval. Had that been what the defendant meant, certainly it was easy to say so; . . .¹²

If an ambiguity is found, it will be resolved against the insurance company¹³ and the insurance will be considered effective at the earliest possible date.¹⁴

A number of cases emanating from California have adopted the *Gaunt* ambiguity approach.¹⁵ Under *Ransom v. Penn Mutual Life Insurance Co.*,¹⁶ regardless of the insurability of the applicant,¹⁷ if the insurance company accepts a premium payment, it is bound by "the obligation which an ordinary applicant would reasonably believe had been undertaken by the insurer."¹⁸ This approach has been severely criticized for finding ambiguity even when there was none¹⁹ and until recently it appeared that it was beyond human capability to create a conditional receipt which would be considered clear and unequivocal

9. *Id.*

10. 160 F.2d 599 (2d Cir.), *cert. denied*, 331 U.S. 849 (1947).

11. It should, however, be noted that the *Gaunt* case did not present an example of the typical conditional receipt since the application had to be approved by the company prior to the death of the applicant in order to become effective.

12. *Gaunt v. John Hancock Mut. Life Ins. Co.*, 160 F.2d 599, 601 (2d Cir. 1947).

13. *Mutual Life Ins. Co. v. Hurni Packing Co.*, 263 U.S. 167 (1923); *Allen v. Metropolitan Life Ins. Co.*, 44 N.J. 294, 208 A.2d 638 (1965).

14. *See, e.g.*, *Gaunt v. John Hancock Mut. Life Ins. Co.*, 160 F.2d 599 (2d Cir. 1947); *Denney v. Washington Nat'l Life Ins. Co.*, 14 Mich. App. 469, 165 N.W.2d 600 (1968).

15. *Wood v. Metropolitan Life Ins. Co.*, 193 F. Supp. 371 (N.D. Cal. 1961), *aff'd*, 302 F.2d 802 (9th Cir. 1962); *Metropolitan Life Ins. Co. v. Grant*, 268 F.2d 307 (9th Cir. 1959); *Slobojan v. Western Travelers Life Ins. Co.*, 70 Cal. 2d 432, 450 P.2d 271, 74 Cal. Rptr. 895 (1969); *Ransom v. Penn Mut. Life Ins. Co.*, 43 Cal. 2d 420, 274 P.2d 633 (1954); *Brunt v. Occidental Life Ins.*, 223 Cal. App. 2d 179, 35 Cal. Rptr. 492 (Ct. App. 1963).

16. 43 Cal. 2d 420, 274 P.2d 633 (1954).

17. *Metropolitan Life Ins. Co. v. Wood*, 302 F.2d 802, 803 (9th Cir. 1962).

18. *Ransom v. Penn Mut. Life Ins. Co.*, 43 Cal. 2d 420, 425, 274 P.2d 633, 636 (1954).

19. *Morgan v. State Farm Life Ins. Co.*, 240 Ore. 113, 400 P.2d 223 (1965).

by the California courts. Then in *Young v. Metropolitan Life Insurance Co.*,²⁰ the conditional receipt was held to be unambiguous. However, the courts placed a dual requirement on the use of such a receipt; it must not only be clear and unambiguous but the insurer must actually point out to the applicant all provisions and conditions which create exceptions or limitations of the coverage.²¹

A New Jersey decision, *Allen v. Metropolitan Life Insurance Co.*,²² openly adopted the condition subsequent approach as a matter of law and public policy, and held that interim coverage would be in effect until rejection of the application and notification to the applicant. This is certainly the more harsh and direct method of finding interim coverage as it provides a blanket answer regardless of the terms or clarity of the receipt itself or the understanding between the parties. The policy is based on the belief that conditional receipts tend to encourage deception.²³ Nevada,²⁴ Hawaii,²⁵ Kansas,²⁶ North Dakota²⁷ and Idaho²⁸ have now followed the New Jersey decision. Tennessee,²⁹ Ohio,³⁰ and Colorado³¹ also favor the existence of interim coverage.

Yet the majority of jurisdictions has held that an unambiguous insurable or approval type conditional receipt creates a condition precedent so that unless the condition is met no insurance is ever in force. Such is now the law in twenty-four of the states which have recently addressed the issue.³² In addi-

20. 272 Cal. App. 2d 453, 77 Cal. Rptr. 382 (Ct. App. 1969).

21. *Id.* at 460, 77 Cal. Rptr. at 387.

22. 44 N.J. 294, 208 A.2d 638 (1965).

23. Prudential Ins. Co. of America v. Lamme, 83 Nev. 146, 149, 425 P.2d 346, 347 (1967).

24. *Id.*

25. Law v. Hawaiian Life Ins. Co., 51 Hawaii 288, 459 P.2d 195 (1969).

26. Tripp v. Reliable Life Ins. Co., 210 Kan. 33, 499 P.2d 1155 (1972).

27. Damm v. National Ins. Co. of America, 200 N.W.2d 616 (N.D. 1972).

28. Dunford v. United of Omaha, 95 Idaho 282, 506 P.2d 1355 (1973); Toevs v. Western Farm Bureau Life Ins. Co., 94 Idaho 151, 483 P.2d 682 (1971).

29. National Life & Accident Ins. Co. v. Carmichael, 53 Tenn. App. 280, 381 S.W.2d 925 (1964); Life and Cas. Ins. Co. v. Vertress, 44 Tenn. App. 672, 318 S.W.2d 559 (1958); American Nat'l Ins. Co. v. Thompson, 44 Tenn. App. 627, 316 S.W.2d 52 (1957).

30. Leube v. Prudential Ins. Co. of America, 147 Ohio St. 450, 72 N.E.2d 76 (1947); Duncan v. John Hancock Mut. Life Ins. Co., 137 Ohio St. 441, 31 N.E.2d 88 (1940).

31. Farmers New World Life Ins. Co. v. Crites, 29 Colo. App. 394, 487 P.2d 608 (1971).

32. *Alabama*: National Life and Accident Ins. Co. v. Claytor, 254 Ala. 413, 48 So. 2d 180 (1950). *Arkansas*: Dove v. Arkansas Nat'l Life Ins. Co., 238 Ark. 1033, 386 S.W.2d 495 (1965); National Life & Accident Ins. Co. v. Baker, 234 Ark. 670, 354 S.W.2d 1 (1962). *Delaware*: Novellino v. Life Ins. Co. of N. America, 59 Del. 187, 216 A.2d 420 (1966). *Florida*: Suarez v. Southland Life Ins. Co., 158 So. 2d 536 (Fla. 1963). *Georgia*: McLemore v. Life Ins. Co. of Georgia, 119 Ga. App. 404, 167 S.W.2d 234 (1969); Woodmen of the World Life Ins. Soc'y v. Etheridge, 223 Ga. 231, 154 S.E.2d 369 (1967). *Illinois*: La Barre v. Prudential Ins. Co. of America, 284 Ill. App. 653, 2 N.E.2d 354 (1937); Gerrib v. Northwestern Mut. Life Ins. Co., 256 Ill. App. 506 (1930). *Iowa*: Pedersen v. Life of Mid-America Ins. Co., 164 N.W.2d 337 (Iowa 1969); Reynolds v. Northwestern Mut. Life Ins. Co., 189 Iowa 76, 176 N.W. 207 (1920). *Kentucky*: Investors Syndicate Life Ins. & Annuity Co. v. Slayton, 429 S.W.2d 368 (Ky. 1968). *Louisiana*: Gonsoulin v. Equitable Life Assurance Soc'y of the United States, 152 La. 865, 94 So. 424 (1922). *Maryland*: Peoples Life Ins. Co. v. Mediary, 255 Md. 534, 258 A.2d 429 (1969); Simpson v. Prudential Ins. Co. of America, 227 Md. 393, 177 A.2d 417 (1962). *Michigan*: Trotter v. Prudential Ins. Co. of America, 374 Mich. 682, 133 N.W.2d 182 (1962); Smiley v. Prudential Ins. Co. of America, 321 Mich. 60, 32 N.W.2d 48 (1928).

tion, the federal courts in Indiana³³ and Maine³⁴ have concurred in the majority view while attempting to apply the law of their respective states. However, it should be noted that no ambiguous receipt will be viewed favorably. In New York, for example, the effectiveness of the conditional receipt clearly varies with the clarity of the receipt itself although the condition precedent analysis is followed if the receipt is found to be unambiguous.³⁵

The variety of approaches adopted by the courts in analyzing this type of receipt is evidenced by the lack of uniformity in terminology. The type of instrument used in *Brown* has alternatively been referred to as a binder,³⁶ a binding receipt,³⁷ a conditional binding receipt,³⁸ an advance payment receipt³⁹ and a conditional receipt.⁴⁰ While the nomenclature used is not determinative of the courts' response, "binding receipt" may prove to be a particularly unfortunate choice if the nature of the obligation is not understood. There are in fact two general types of receipts referred to as "binding." Each creates its own obligations, one which has terms that clearly provide for immediate insurance coverage and a second (herein referred to as a conditional

But see Denney v. Washington Nat'l Ins. Co., 14 Mich. App. 469, 165 N.W.2d 600 (1968). *Mississippi*: *Life & Cas. Ins. Co. v. Harvison*, 187 So. 2d 847 (Miss. 1966). *Missouri*: *Summers v. Prudential Ins. Co. of America*, 337 S.W.2d 562 (Mo. 1971); *Porter v. Farm Bureau Life Ins. Co.*, 322 S.W.2d 927 (Mo. Ct. App. 1959). *Nebraska*: *Adolf v. Union Nat'l Life Ins. Co.*, 170 Neb. 38, 101 N.W.2d 504 (1960). *New Mexico*: *Maldonado v. First Nat'l Life Ins. Co.*, 79 N.M. 354, 443 P.2d 744 (1968); *Vargas v. Pacific Nat'l Life Assurance Co.*, 79 N.M. 152, 441 P.2d 50 (1968). *New York*: *Erath v. Prudential Ins. Co. of America*, 25 App. Div. 2d 707, 268 N.Y.S.2d 235 (1966); *Corning v. Prudential Ins. Co. of America*, 248 App. Div. 187, 288 N.Y.S. 661 (1936), *aff'd*, 273 N.Y. 668, 8 N.E.2d 338 (1937). *North Carolina*: *Adams v. State Capital Life Ins. Co.*, 11 N.C. App. 678, 182 S.E.2d 250 (1971); *McLean v. Life of Virginia*, 11 N.C. App. 87, 180 S.E.2d 431 (1971). *Oregon*: *Morgan v. State Farm Life Ins. Co.*, 240 Ore. 113, 400 P.2d 223 (1965). *Pennsylvania*: *Thomas v. Chesapeake Life Ins. Co.*, 226 Pa. Super. 360, 313 A.2d 332 (1973). *But see Steelneck v. Knights Life Ins. Co.*, 523 Pa. 205, 223 A.2d 734 (1966). *South Carolina*: *Roland v. Colonial Life & Accident Ins. Co.*, 217 S.C. 483, 61 S.E.2d 50 (1950); *Hyder v. Metropolitan Life Ins. Co.*, 183 S.C. 98, 190 S.E. 239 (1937). *Texas*: *National Life & Accident Ins. Co. v. Blagg*, 438 S.W.2d 905 (Tex. 1969); *American-Amicable Life Ins. Co. v. Lawson*, 419 S.W.2d 823 (Tex. 1967); *United Founders Life Ins. Co. v. Carey*, 363 S.W.2d 236 (Tex. 1962). *Utah*: *Winger v. Gem State Mut.*, 22 Utah 2d 132, 449 P.2d 982 (1969). *But see Long v. United Benefit Life Ins. Co.*, 29 Utah 2d 204, 507 P.2d 375 (1973). *Virginia*: *Elliott v. Interstate Life & Accident Ins. Co.*, 211 Va. 240, 176 S.E.2d 314 (1970). *Wisconsin*: *Brown v. Equitable Life Ins. Co.*, 60 Wis. 2d 620, 211 N.W.2d 431 (1973).

33. *Thone v. Aetna Life Ins. Co.*, 286 F. Supp. 620 (N.D. Ind.), *cert. denied*, 396 U.S. 826 (1969).

34. *Palmer v. Mutual Life Ins. Co.*, 324 F. Supp. 254 (S.D. Me. 1971).

35. Compare *Corning v. Prudential Ins. Co.*, 248 App. Div. 187, 288 N.Y.S. 661 (1936) and *Erath v. Prudential Ins. Co. of America*, 25 App. Div. 2d 707, 268 N.Y.S.2d 235 (1966) with *Anderson v. Metropolitan Life Ins. Co.*, 69 Misc. 2d 205 (N.Y. City Ct. 1972) and *Hart v. Travelers' Ins. Co.*, 236 App. Div. 309, 258 N.Y.S. 711 (1932), *aff'd*, 261 N.Y. 563, 185 N.E. 739 (1933).

36. *National Life & Accident Ins. Co. v. Claytor*, 254 Ala. 413, 48 So. 2d 180 (1950); *Dove v. Arkansas Nat'l Life Ins. Co.*, 238 Ark. 1033, 386 S.W.2d 495 (1965).

37. *Allen v. Metropolitan Life Ins. Co.*, 44 N.J. 294, 208 A.2d 638 (1965); *Cheek v. Pilot Life Ins. Co.*, 215 N.C. 36, 1 S.W.2d 15 (1939).

38. *Morgan v. State Farm Life Ins. Co.*, 240 Ore. 113, 400 P.2d 223 (1965); *American Mut. Ins. Co. v. Alejandro*, 449 S.W.2d 151 (Tex. Civ. App. 1970).

39. *McLean v. Life of Virginia*, 11 N.C. App. 87, 180 S.E.2d 431 (1971).

40. *Investors Syndicate Life Ins. & Annuity Co. v. Slayton*, 429 S.W.2d 358 (Ky. 1968); *Simpson v. Prudential Ins. Co. of America*, 227 Md. 393, 177 A.2d 417 (1962); *Prudential Ins. Co. of America v. Lamme*, 83 Nev. 146, 425 P.2d 346 (1967).

receipt) which states a condition (insurability or approval), the fulfillment of which is necessary to the insurance company's obligation. While both types of binding receipts are used in the life insurance industry,⁴¹ it is necessary to carefully read the particular receipt in order to determine its nature rather than merely relying on the title applied to it.⁴²

*Brown v. Equitable Life Insurance Co.*⁴³ presented a case of first impression in Wisconsin. In reaching its decision the Supreme Court of Wisconsin correctly analyzed the nature of the conditional receipt. Although it is generally recognized that the conditional receipt used as a sales device benefits the insurer by reducing the number of policies not taken,⁴⁴ the benefit to the applicant can be overlooked if the nature of the conditional receipt is misunderstood.⁴⁵ The satisfaction type conditional receipt provides a substantial benefit to the applicant since, if the condition is subsequently met, coverage will be afforded as of the date of the application or of the medical exam and the applicant is protected against loss or a change in health from that time.⁴⁶ The conditional receipt confers certain rights on the applicant and a company may not simply deny liability after a loss has occurred by arbitrarily failing to approve or determine insurability⁴⁷ although the burden may be on the beneficiary to prove that the condition is met.⁴⁸ Although the courts must always be on guard to prevent misuse of the insurance contract, a decision to give effect to an unambiguous conditional receipt furthers the interest of both insurer and applicant and so appears to be the better policy. It is hoped that all jurisdictions will recognize the practical necessity and desirability of the condition precedent approach and adopt the rationale of the *Brown* decision.

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41. MEYER, *supra* note 6, at § 5:11, at 99.

42. *Adolf v. Union Nat'l Life Ins. Co.*, 170 Neb. 38, 101 N.W.2d 504 (1960); *McLean v. Life of Virginia*, 11 N.C. App. 87, 180 S.E.2d 431 (1971); *Duncan v. John Hancock*, 137 Ohio St. 441, 37 N.E.2d 88 (1940).

43. 60 Wis. 2d 620, 211 N.W.2d 431 (1973).

44. *Brown v. Equitable Life Ins. Co.*, 60 Wis. 2d 620, 626, 211 N.W.2d 431, 434 (1973). See also note 45 *infra*.

45. See, e.g., *Ransom v. Penn Mut. Life Ins. Co.*, 43 Cal. 2d 420, 274 P.2d 633 (1954); *Toeys v. Western Farm Bureau Life Ins. Co.*, 94 Idaho 151, 483 P.2d 682 (1971); *Allen v. Metropolitan Life Ins. Co.*, 44 N.J. 294, 209 A.2d 638 (1965).

46. *Brown v. Equitable Life Ins. Co.*, 60 Wis. 2d 620, 626, 211 N.W.2d 431, 434 (1973).

47. *Occidental Life Ins. Co. v. Bob LeRoy's Inc.*, 413 F.2d 819 (5th Cir. 1969); *Taylor v. New York Life Ins. Co.*, 324 F.2d 768 (10th Cir. 1963); *Reynolds v. Northwestern Mut. Life Ins. Co.*, 189 Iowa 76, 176 N.W. 207 (1920); *Long v. United Benefit Life Ins. Co.*, 29 Utah 2d 204, 507 P.2d 325 (1973).

48. *Heer v. Reserve Life Ins. Co.*, 446 F.2d 873 (9th Cir. 1971); *Simpson v. Prudential Ins. Co. of America*, 227 Md. 393, 177 A.2d 417 (1962). But see *Damm v. National Ins. Co. of America*, 200 N.W.2d 616 (N.D. 1972).