

**Insurance Policies—Rates, Discrimination In—Forms Of.**

Forms of insurance policies construed and held not to constitute a discrimination in rates.

Sept. 25, 1919.

Hon. Geo. P. Porter,  
State Auditor,  
Helena, Montana.

Dear Sir:

You have submitted to me Forms 588 E. H. and F., and Forms 594, E. H. and F., submitted for approval by the Metropolitan Life Insurance Company. It appears that their usual disability provision recites that without prejudice to any other cause of disability, the entire and irrevocable loss of the sight of both eyes, or the severance of both hands above the wrists, or of both feet above the ankles, or of an entire hand and one entire foot, will be considered as total and permanent disability.

Forms 594, E. H. and F., cover cases where the insured, on account of the fact that he has lost one hand, or one foot, or has an existing impairment of the eyesight, that the loss of the other hand or the severance of one foot; or in the case of the loss of one foot, that the loss of the other foot, or the severance of one hand or in the case of the impairment of sight, that the entire and irrevocable loss of sight by insured shall not be considered in any of these cases total and permanent disability. These forms being intended for acceptance by the applicant, and a modification of the total permanent disability provision.

Forms 588 E. H. and F. contain the foregoing provisions in what is designated supplemental agreement to policy No.———. issued on the life of —————.

These forms, as I understand, are for use in writing future policies, and cannot affect those written without this provision.

The question is: Do they constitute discrimination in rates prohibited by the statute?

No insurance company organized under the laws of this state, or doing business in this state, shall make or permit any discrimination or distinction in favor of individuals between insurants or property of the same class in the amount of premiums or rates charged for policies, or in any other of the terms and conditions of the contracts it makes.

Section 4026, Revised Codes.

The provision refers only to persons within the same class. It needs no argument to show that a man with one hand off, or one foot off, or of impaired vision is in a different class respecting insurance against injury to those members than one who is not under any of these disabilities. Whether it is in fact a greater risk could only be determined by test and experience in a great number of cases. It might be contended that the man with one hand or one foot only has to lose one more in order to make his case that of total disability, while the man with two would have to lose both and, therefore, his chances were diminished by one upon the happening of which payment must be made for both. This is true but not

conclusive, since the absence of one of the members renders it certain that no future accident can happen to him to deprive him of the member already lost and he would have an even chance with the man with all his members in any accident that would have deprived him of both had he had both. Or it might be argued that having lost one hand, one foot, or one eye, he would, by reason of this fact, be unable to protect himself so well in the future, but this very fact might also make him more cautious and careful and less inclined to risk himself in a dangerous situation.

The fact remains in this case that total permanent disability as defined by the policy is the loss of both hands or both feet, or the loss of one hand and one foot, or the loss of the sight of both eyes, and if it is provided in the contract just what this shall be construed to mean in a case where the insured is under some disability, I cannot see that any discrimination has occurred. (Discrimination means a different treatment or favor extended to those within the same class or risk.) No one can be compelled to enter into a contract with another against his own consent or in terms which he is unwilling to adopt.

In re. Insurance Co. v. Rates, 12 Pa. Dist. 664, where it was held a discrimination in rates of insurance for different geological sections of the state established by the underwriters' association is not contrary to law.

Respectfully,

S. C. FORD,

Attorney General.