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Contract Law - Life Insurance Contracts - Temporary Insurance - Binding Receipts Imposing Conditions Precedent upon Temporary Insurance Coverage Held Ineffective in Pennsylvania

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Plaintiff's husband applied to the defendant, Nationwide Life Insurance Company (Nationwide), for a life insurance policy. Through its agent, Nationwide subsequently received from the husband a completed application form and a two month premium payment. In exchange for this prepayment, the agent gave the applicant a "conditional receipt." The application had contained a lengthy and technically phrased provision indicating that the policy would not take effect until the applicant had undergone a required medical examination. The conditional receipt, however, clearly specified that no insurance coverage would be provided until the completion of a medical examination that satisfied Nationwide that the applicant was an insurable risk.
Approximately six weeks after the application date, the plaintiff's husband was killed in an automobile accident without having submitted to the required examination. At the time of his death, Nationwide had not yet acted upon the application. When Nationwide later denied liability, the plaintiff, as the named beneficiary in the insurance application, commenced an action to recover benefits under the policy.

Ruling that a condition precedent to the claimed insurance coverage had not been fulfilled, the trial court granted Nationwide's motion for summary judgment. The superior court affirmed without an opinion. On appeal, the Supreme Court of Pennsylvania reversed, holding that when an insurer accepts payment of the first premium along with an application for life insurance, the insurer will be found to have issued temporary insurance unless it can establish by clear and convincing evidence that the applicant had no reasonable basis for believing that insurance coverage would commence immediately. Collister v. Nationwide Life Insurance Co., 479 Pa. 579, 388 A.2d 1346 (1978), cert. denied, 99 S. Ct. 871 (1979).

Binding receipts have long been familiar documents in life insurance transactions. Typically, they are issued by the insurer to an applicant following the submission of an application when the policy itself is not to be immediately delivered. Binding receipts are virtually always issued upon partial or total prepayment of the premiums to become due under the policy.

The reverse side of the receipt set forth only two provisions, each in type about twice as large as that found on the front, which provided:

**IMPORTANT**

The Company reserves the right to require a medical examination. Until you can provide proof that you are insurable, the Company provides no insurance.

If you are requested to have an examination, don't delay. Make arrangements promptly.

There is no insurance until a satisfactory medical examination has been made and all the conditions of this receipt are completed.

479 Pa. at 599 app., 388 A.2d at 1356 app. Although the court acknowledged that the applicant had been orally informed by the Nationwide agent that he would need a medical examination, the Collister court questioned whether the applicant was also orally informed that he would not be covered until he underwent that examination. Id. at 596, 388 A.2d at 1354-55. See notes 52 & 53 and accompanying text infra.

6. 479 Pa. at 582, 388 A.2d at 1347.

7. *Id.*

8. *Id.* The plaintiff brought suit to recover $42,500 from Nationwide. Record at 45a. This amount represented the aggregate of the coverage applied for by the decedent: $10,000, with double indemnity for accidental death, and $22,500 level term insurance. 479 Pa. at 582, 388 A.2d at 1347.

9. 479 Pa. at 582, 388 A.2d at 1347. There were cross-motions for summary judgment. *Id.*


12. *See Comment, Life Insurance Binding Receipts,* 33 ILL. L. REV. 180 (1938). More than a century ago, the United States Supreme Court was confronted with a dispute involving a binding receipt in Insurance Co. v. Young's Adm'r, 90 U.S. (23 Wall.) 85 (1875).

13. *Comment, supra* note 12, at 180. Absent a binding receipt, an applicant for life insurance is generally not covered until the policy has been delivered to him by the insurance.
icy. Aside from their function as documentation of such advance payment, binding receipts frequently purport to define the contractual relationship between applicant and insurance company in the period between the initial application and either issuance of a policy or rejection of the risk.

Conditional binding receipts provide for coverage which is dependent upon certain specified contingencies. These receipts contemplate: 1) that interim coverage is to attach only upon the fulfillment of some condition precedent, such as a medical examination; or 2) that coverage is subject to a condition subsequent, and will attach at a specific time and continue unless the applicant is found to be an uninsurable risk.

carrier. J. Greider & W. Beadles, Law and the Life Insurance Contract 84 (1960). By not issuing a binding receipt, the insurer avoids liability if the applicant dies during the period necessary to process his application. Id. There are, however, disadvantages for the insurer who does not utilize a binding receipt. Id. The application, as an offer by the applicant, can be withdrawn. Id. If this occurs, the company loses a customer as well as any expenses incurred in investigating the applicant's insurability. Comment, Life Insurance Receipts: The Mystery of the Non-Binding Binder. 63 Yale L.J. 523, 523-24 (1954). Though individually small, such unrecoverable losses can accumulate substantially. Id.

Comment, supra note 13, at 523-24. By securing payment in advance, the carrier obviates the possibility of losses due to the revocation of applications. Id. at 524. Moreover, any advance nonrefundable premium is likely to cover all investigatory and processing costs. Id. at 523. Applicants who withdraw are extremely unlikely to resort to lawsuits to recover their advance payments, which are generally relatively small sums. Id. Most significantly, the insurer enjoys the use of the money advanced from the date of application regardless of the ultimate contractual relationship established. Id.


A binder has been defined to be: "A written instrument, used when a policy cannot be immediately issued, to evidence that the insurance coverage attaches at a specified time, and continues . . . until the policy is issued or the risk is declined and notice thereof given". . . . Binders are commonly evidenced by binder certificates in writing or by written receipts.

Id., quoting Webster's International Dictionary 269 (2d ed. 1934). More recently, a federal court has observed:

An insurance binder is a contract of temporary insurance to be effective insurance coverage until a formal policy is drafted and issued. It is not a complete contract in a sense, but is evidence of the existence of a contractual obligation to be expressed in complete written form at a later date.


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16. Id. §§ 14:40, 41, at 620-24, 630-32. Many commentators use a closely analogous categorization, labelling conditional receipts as either the "approval" or "satisfaction" type. See Comment, supra note 13, at 527-28. The approval type is the most common, and provides a form of retroactive coverage; if the application is approved by the home office, the policy becomes effective as of the date the premium is prepaid and the application is signed. Id. at 528. See G. Couch, supra note 11, § 14:41, at 621-25. The satisfaction type generally specifies that coverage commences upon the furnishing of proof to the insurance company that the applicant is an insurable risk. Comment, supra note 13, at 528. See G. Couch, supra note 11, § 14:45, at 630-32. This proof is often required in the form of a favorable medical examination. Id. at 630. The conditional receipt in the case sub judice is within the satisfaction class. See note 5 and accompanying text supra. Any system of classification is not likely to be helpful in analyzing the contractual status of insurer and applicant since conditional receipts vary widely in contents and wording, thereby resisting generalizations. See Stonsz v. Equitable Life Assurance Soc'y, 324 Pa. 97, 100, 187 A. 403, 405 (1936).
In determining the rights and obligations, if any, that exist in the interim period, courts are in agreement that the application and binding receipt should be construed together as the integrated agreement between the parties. Additionally, since both documents are prepared by the insurer, their construction is subject to the universal principle that any ambiguities in language must be strictly construed against the insurer.

Courts in Pennsylvania and other jurisdictions have long confronted situations in which life insurance applicants paid premiums in advance, received binding receipts, and died before their policies were issued. As early as 1936, the Supreme Court of Pennsylvania, in Stonsz v. Equitable Life Assurance Society, recognized that temporary life insurance, which is effective until issuance of the actual policy, could be created by a binding receipt provided that this was the intention of the parties. The most influential and frequently cited opinion in this area, however, was written by

18. DeCesare v. Metropolitan Life Ins. Co., 278 Mass. 401, 407, 180 N.E. 154, 156 (1932); McAvoy Vitrified Brick Co. v. North Am. Life Assurance Co., 395 Pa. 75, 80, 149 A.2d 42, 44 (1959). In DeCesare, the court stated: "Upon the facts stated in the record we are of opinion that the agreement in the receipt, when construed with the application, created a valid contract for temporary insurance..." 278 Mass. at 407, 180 N.E. at 156. Similarly, in McAvoy, the Supreme Court of Pennsylvania noted: "The branch manager... signed and delivered... a 'deposit receipt' and an 'interim assurance certificate.' These two documents will have to be considered in detail, because they, with the application, constitute the integration of the contract between the parties if any contract existed." 395 Pa. at 80, 149 A.2d at 44. See G. COUCH, supra note 11, § 14:35, at 615.

19. G. COUCH, supra note 11, § 14:36, at 616. The rationale behind this principle was perhaps best stated by Judge Learned Hand in Gaunt v. John Hancock Mut. Life Ins. Co., 160 F.2d 599 (2d Cir.), cert. denied, 331 U.S. 849 (1947). Scrutinizing the wording of a life insurance application, Judge Hand wrote:

An underwriter might so understand the phrase, when read in its context, but 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 not be covered... To demand that persons wholly unfamiliar with insurance shall spell all this out in the very teeth of the language used, is unpardonable... A man must read what he signs, and he is charged, if he does not; but insurers who seek to impose upon words of common speech an esoteric significance intelligible only to their craft, must bear the burden of any resulting confusion.

160 F.2d at 601-02 (footnote omitted).


21. 324 Pa. 97, 187 A. 403 (1936). In Stonsz, a miner applied for a policy containing provisions for death benefits, annuity payments for disability, and double indemnity. Id. at 99, 187 A. at 404. The applicant sought to recover for severe injuries which he suffered between application and issuance of the policy. Id. at 99-100, 187 A. at 404. Suit was subsequently brought on the policy rather than on the binding receipt received by the applicant. Id. at 104, 187 A. at 406. The court, resolving an ambiguity in favor of the applicant, held the carrier liable. Id. at 107, 187 A. at 408.

22. Id. at 101-04, 187 A. at 405-06. In deciding whether temporary coverage takes effect, the Stonsz court posited as the threshold question: "Does the language of this receipt indicate an intention to create a temporary insurance for the time during which the approval of the application was pending?" Id. at 102, 187 A. at 405.
the Supreme Court of California in 1954 in the case of *Ransom v. Penn Mutual Life Insurance Co.*\(^2\). In *Ransom*, an application was submitted along with full premium prepayment in return for a receipt signed by the company's agent.\(^2\) A clause in the application which purported to state the terms of interim coverage was susceptible to two interpretations.\(^2\) The court resolved the ambiguity in favor of the applicant and held that a temporary life insurance policy had taken effect immediately upon the insurer's acceptance of the application and premium.\(^2\) Underlying the *Ransom* decision was the court's conviction that the "understanding of an ordinary person is the standard which must be used in construing the contract, and such a person upon reading the application would believe that he would secure the benefit of immediate coverage by paying the premium in advance of delivery of the policy."\(^2\) Where ambiguity existed in temporary insurance provisions, the interpretation most accurately reflecting the reasonable expectations of an ordinary applicant was therefore to be given effect.\(^2\)

The Supreme Court of Pennsylvania adopted the *Ransom* rule of construction in *McAvoy Vitrified Brick Co. v. North American Life Assurance Co.*\(^3\). Subsequently, in *Steelnack v. Knights Life Insurance Co.* of

\(^2\) Id. at 425, 274 P.2d at 635. The court determined that this clause could mean: 1) that the insurer's satisfaction as to the applicant's insurability was a condition precedent to the existence of any contract and hence any coverage in the interim period; or 2) that the insurance applied for would be effective from the date of the application, subject to termination should the applicant be later deemed an uninsurable risk by the company. *Id.* at 425, 274 P.2d at 635-36. The court chose the latter alternative. *Id.* See notes 27-29 and accompanying text infra.

\(^3\) Id. at 425, 274 P.2d at 635. The *McAvoy* court indicated that binding receipts as well as applications were to be interpreted in accordance with the *Ransom* rule of construction, stating:

"We are at once met with several ambiguities in the language of the receipt. . . . We must
America, the court admonished a defendant insurance company that if it "had wished to make the taking of a medical examination a condition precedent to the contract, it should have done so with explicit language" in the conditional receipt. It has thus been accepted in Pennsylvania that an insurance company can impose conditions precedent to interim coverage if such conditions are stated in conspicuous, unequivocal language that is understandable to the ordinary layman.

Another trend in the area of insurance law, as illustrated in dicta by the Supreme Court of Pennsylvania in Brakeman v. Potomac Insurance Co., is the treatment of insurance contracts as adhesive in nature. Displaying similar viewpoints, courts in other jurisdictions have vigilantly protected the

Therefore resolve the ambiguities in favor of the plaintiff and against the defendant, which was their author. The receipt provides, "Under no circumstances will the company assume any liability until a policy has been delivered and the premium has been settled in full, unless an interim assurance certificate has been issued." This clause we construe to mean that by the issuance of an interim assurance certificate the company does assume liability.

Id. at 84, 149 A.2d at 46 (citations omitted). The court further noted:

The conclusion that we have reached is not only based on sound principles of contract law, but is supported by the weight of Pennsylvania authority and the tendency of the courts of other jurisdictions in recent years to resolve questions arising out of temporary insurance contracts in favor of the insured.

Id. at 86-87, 149 A.2d at 47.

31. 423 Pa. 205, 223 A.2d 734 (1966). In Steelnack, a binder issued pursuant to a premium prepayment was designed to condition interim coverage upon a completed medical examination. Id. at 207, 223 A.2d at 735. According to the court, however, the opposite meaning was implicit therein, "namely, that the coverage began on the date of the binder subject to being terminated if the medical examination revealed the insured not in good health." Id. The court therefore held that the requested examination was arguably a condition subsequent that could terminate coverage if the company were to find the applicant an uninsurable risk; it could not, however, be construed as a condition precedent. Id. at 208, 223 A.2d at 735.

32. Id. at 208, 223 A.2d at 735.

33. Id.

34. Id. Ambiguous language is apt to be construed in a manner quite different from that intended by the insurer. This was certainly the result in Ransom, McAvoy, and Steelnack. See notes 23-32 and accompanying text supra. California courts have further required that an insurance company must inform the applicant of any limiting conditions upon temporary coverage. See, e.g., Smith v. Westland Life Ins. Co., 15 Cal. 3d 111, 133, 539 P.2d 433, 441, 123 Cal. Rptr. 649, 657 (1975); Young v. Metropolitan Life Ins. Co., 272 Cal. App. 2d 453, 461, 77 Cal. Rptr. 382, 387, rehearing denied, 272 Cal. App. 2d 462, 78 Cal. Rptr. 568 (1969).


36. Id. at 72, 371 A.2d at 196. The Brakeman court stated:

The rationale underlying the strict contractual approach reflected in our past decisions is that courts should not presume to interfere with the freedom of private contracts and redraft insurance policy provisions where the intent of the parties is expressed by clear and unambiguous language. We are of the opinion, however, that this argument, based on the view that insurance policies are private contracts in the traditional sense, is no longer persuasive. An insurance contract is not a negotiated agreement; rather its conditions are by and large dictated by the insurance company to the insured. The only aspect of the contract over which the insured can "bargain" is the monetary amount of coverage.

Id. Although Brakeman involved a notice provision in a policy of automobile liability insurance, the court's comments were intended to encompass all insurance instruments, including life insurance binding receipts. Id. at 72-73, 371 A.2d at 196.
reasonable expectations of insurance applicants.\textsuperscript{37} Courts have consequently developed a heightened sensitivity to ambiguities in temporary insurance provisions, and have become more willing to construe these provisions liberally in favor of applicants to avoid unconscionable results.\textsuperscript{38} Where the language used has been clear and unequivocal, however, courts have consistently enforced temporary insurance provisions as written.\textsuperscript{39}

The Supreme Court of Pennsylvania\textsuperscript{40} began its discussion of the issues presented in \textit{Collister} with a lengthy survey of the pertinent case law.\textsuperscript{41} Drawing upon the views of various commentators and tribunals,\textsuperscript{42} the court emphasized the adhesive quality of insurance documents,\textsuperscript{43} stating that "[t]o accept the insurer's argument that its liability is contingent on a condition precedent permits the insurer to hold itself immune from liability . . . while at the same time enjoying the benefits that flow from immediate collection of the premium."\textsuperscript{44} The court maintained that normal contract principles are no longer strictly applicable to insurance transactions,\textsuperscript{45} and concluded that the reasonable expectation of the insured has clearly become the paramount consideration in determining rights under insurance policies.\textsuperscript{46}

\textsuperscript{37} For example, in strongly worded dicta, the Supreme Court of New Jersey has stated: While insurance policies and binders are contractual in nature, they are not ordinary contracts but are "contracts of adhesion" between parties not equally situated. The company is expert in its field and its varied and complex instruments are prepared by it unilaterally whereas the assured . . . is a layman unversed in insurance provisions and practices. He justifiably places heavy reliance on the knowledge and good faith of the company and its representatives and they, in turn, are under correspondingly heavy responsibility to him. His reasonable expectations in the transaction may not justly be frustrated and courts have properly molded their governing interpretative principles with that uppermost in mind. Allen \textit{v. Metropolitan Life Ins. Co.}, 44 N.J. 294, 305, 208 A.2d 638, 644 (1965) (citations omitted). See also Smith \textit{v. Westland Life Ins. Co.}, 15 Cal. 3d 111, 123, 539 P.2d 433, 442, 123 Cal. Rptr. 649, 658 (1975).


\textsuperscript{40} Justice Manderino authored the majority opinion.

\textsuperscript{41} 479 Pa. at 583-93, 388 A.2d at 1348-53. The court acknowledged the existence of temporary insurance contracts in Pennsylvania, and reviewed the holdings in \textit{Stonz, McAtoy}, and \textit{Ransom Id.} For a discussion of these cases, see notes 18-39 and accompanying text \textit{supra}.


\textsuperscript{43} 479 Pa. at 586-93, 388 A.2d at 1350-53. For a discussion of adhesion and its applicability to insurance contracts, see notes 35-39 and accompanying text \textit{supra}.

\textsuperscript{44} 479 Pa. at 588, 388 A.2d at 1350 (citation omitted). See note 14 \textit{supra}.

\textsuperscript{45} 479 Pa. at 590, 593, 388 A.2d at 1351, 1353.

\textsuperscript{46} \textit{Id.} at 590, 388 A.2d at 1351. Moreover, the court suggested that the use of conditional receipts tends to encourage deception. \textit{Id.} at 592, 388 A.2d at 1352. In support of this proposi-
Pursuant to these concepts, the Collister court promulgated the basic principle applicable to the instant case:

[W]here the circumstances of the transaction do not indicate that the insurer intended to provide interim insurance, but nevertheless show that the insurer accepted payment of the first premium at the time it took the application, it is then up to the insurer to establish by clear and convincing evidence that the consumer had no reasonable basis for believing that he or she was purchasing immediate insurance coverage.\(^{47}\)

To ascertain the reasonable expectations of the consumer in any given situation, the court prescribed a thorough examination of the "dynamics of the insurance transaction."\(^{48}\) Reviewing the facts in Collister, the court held that Nationwide had failed to establish convincingly that the applicant could not have entertained a reasonable expectation of immediate protection.\(^{49}\) In support of its determination, the Collister court asserted that the ordinary consumer does not consider a receipt to be a document of any contractual significance, but rather as evidence that money has been paid.\(^{50}\) The court reasoned that since the receipt here was given only upon payment of the first premium, the actual transaction had already been completed and any conditions in the receipt were therefore irrelevant.\(^{51}\) Additionally, the court found no per-
suasive evidence that Nationwide's agent had informed the applicant that he was paying for coverage that would not commence until successful completion of a medical examination. Under such circumstances, the court noted that the contents of a binding receipt are to be given no effect in ascertaining the reasonable expectations of a consumer. The court's conclusion that the applicant could reasonably have expected immediate coverage was therefore "not determined by the language of the conditional receipt, but by the dynamics of the transaction viewed in its entirety." 

Finally, discussing alternatives available to insurers, the Collister court counseled that to avoid liability for the interim period following application, insurers need only delay acceptance of premium payments until the date on which coverage is to start. Furthermore, if they wish to impose a condition precedent to interim coverage, the insurers need only "inform the prospective applicant, before any money changes hands," that advance payment will bring no immediate unconditional coverage. The court emphasized that such notice must not only be timely, but must also be afforded in a clear and certain manner. These criteria, the court stated, could not be met by notice printed on a receipt.

The court might have noted that the only clear provisions of the conditional receipt in Collister appeared on the reverse side signed by the agent. See note 5 supra. Conceivably, the ordinary applicant could have assumed that the reverse side was blank. 52 479 Pa. at 596, 388 A.2d at 1354-55. The court added that "[t]he fact that he informed appellant's husband that a medical examination was required by the insurer does not affect our conclusion." Id., 388 A.2d at 1355. For criticism of this finding, see notes 73-79 and accompanying text infra.

53. 479 Pa. at 598, 388 A.2d at 1355. The terms of a conditional receipt seem to have been deemed ineffectual only to the extent that they impose restrictions on immediate coverage. As the court explained, if the language of the application and conditional receipt "indicates an intent on the part of the insurer to provide interim insurance, then such benefits will be awarded by the court." Id. at 594, 388 A.2d at 1353.

54. Id. at 595, 388 A.2d at 1354.

55. Id. at 597, 388 A.2d at 1355. This is frequently termed "C.O.D." insurance. Id. As one court explained, in such a transaction the payment of the initial premium and delivery of the policy are usually concurrent acts, thereby creating a period between the signing of the application by the applicant and the delivery of the policy during which no money has been advanced to the insurance company, and no insurance is in effect.


56. 479 Pa. at 598, 388 A.2d at 1355 (emphasis in original). Such notification, according to the court, "would have to be given before the consumer paid the initial premium in order to avoid placing that consumer at the psychological disadvantage of having to ask for a return of the premium if he or she is dissatisfied with such terms." Id. (emphasis in original).

57. Id.

58. Id.
In an emphatic dissent, Justice Pomeroy criticized the majority for having ignored "the clear and unambiguous language of an insurance contract" to arrive at a result "unsupported by the agreement of the parties." The language used by Nationwide in its conditional receipt, the dissent observed, explicitly set forth the condition precedent to liability. Moreover, according to the dissent's reading of the record, the applicant had been orally informed by the Nationwide agent of all of the policy's terms and conditions. Justice Pomeroy thus maintained that there were no ambiguities to be resolved, and that the contract should have been enforced as written. Given the factual setting in Collister, the dissent stated that the applicant could not reasonably have entertained any expectations of unconditional interim coverage. Deeming the majority's contrary analysis as so "strained" that it presented a "complete tour de force," Justice Pomeroy cautioned that the idea of "recognizing 'reasonable expectations' of an applicant ... does not mean that a claimant ... is entitled to every benefit imaginable within a contractual framework." The treatment afforded conditional receipts in Collister radically departs from established precedent. Almost without exception, courts have dis-
regarded interim coverage restrictions imposed in conditional receipts only where ambiguous language has been used by the insurer and construed by the court in favor of the insured.\(^{67}\) In contrast, the conditional receipt in *Collister* clearly stated its provisions.\(^{68}\) Its contents, however, were deemed irrelevant by the court,\(^{69}\) whose ruling effectively precludes conditional receipts from having any bearing on the substance of the agreement between insurer and insured.\(^{70}\)

Unquestionably, the court’s innovative construction produced a harsh result for the defendant in *Collister*. Nationwide had fully complied with the *Steelnack* admonition\(^{71}\) by clearly stating its condition precedent in the receipt it issued.\(^{72}\) Nonetheless, Nationwide was ultimately rendered liable


\(^{68}\) For the contents of the receipt in *Collister*, see note 5 supra.

\(^{69}\) 479 Pa. at 598, 388 A.2d at 1355.

\(^{70}\) Where conditional receipts are issued upon premium prepayment, according to the *Collister* court, they are to be ignored in assessing the reasonable expectations of the applicant and the resultant liability of the insurance company. *Id.*, 388 A.2d at 1354-55. If conditions are to be placed upon interim coverage, they must be unequivocally revealed before any payment is accepted, presumably by conspicuous provisions in applications or by agents’ representations. *Id.* Otherwise, an expectation by the applicant of immediate coverage would be justified and should thus be enforced regardless of the contents of the conditional receipt. *Id.* For a further discussion of the *Collister* court’s analysis and conclusions, *see* notes 49-58 and accompanying text supra.

Analogous treatment was recently afforded the policy itself in *Rempel v. Nationwide Life Ins. Co.*, 471 Pa. 404, 407, 370 A.2d 366, 367 (1977). In *Rempel*, the beneficiary of a life insurance policy sued Nationwide, contending that its agent had either negligently or fraudulently misrepresented the extent of coverage under the policy. *Id.* Determining that reliance on these representations had been justified, the court stressed that a policyholder has no duty to read the policy unless under the circumstances it is unreasonable not to do so. *Id.* at 411-12, 370 A.2d at 369. The principle is based upon the belief that the significant decision by the consumer is not made when the policy is received. *Id.* at 410, 370 A.2d at 368-69. *See also Keeton, supra* note 38, at 968. A similar rationale applied to the application. *Id.* at 410, 370 A.2d at 369. By the time the written policy is actually received, it has lost its importance to the insured. *Id.* Presumably, the same reasoning could apply to binding receipts. *See* notes 49-53 and accompanying text supra. *See also* notes 80-86 and accompanying text infra.

\(^{71}\) See notes 31-34 and accompanying text supra.

\(^{72}\) For the contents of the receipt, *see* note 5 supra. *See* notes 49-54 and accompanying text supra.
in the instant case for the same coverage it had sought to exclude under the formula supplied by the court itself only a few years before.

Somewhat more unsettling is the readiness with which the court determined that the dynamics of this particular transaction included no clear evidence that the applicant should reasonably have been aware of the condition precedent to temporary insurance.73 As Justice Pomeroy noted in dissent,74 an examination of the record before the court provided sufficient contrary indicia to raise serious doubts about the reasonableness of this applicant's expectation of unconditional coverage.75 In light of the crucial importance of precisely determining which expectations were reasonable, the court's summary disposal of this issue remains puzzling.76 There was, however, no genuine issue concerning the lack of clarity in the application provision which specified the condition precedent.77 This provision was quite difficult to comprehend, as it was couched in highly legalistic phrasing and spread within a single protracted sentence of more than 260 words.78 It is submitted that this aspect of the transaction, rather than any additional "dynamics," served as the primary factual influence upon the formulation of the court's ruling.79

While not immune to criticism, the majority's reasoning is likewise not without its logical and pragmatic appeal. The court based its holding upon the assumption that the reasonable expectation of the insured has become the focal point of the insurance transaction,80 a position that has been adopted in a considerable number of jurisdictions.81 Once this premise is accepted, the proposition that a conditional receipt enters the transaction at too late a time to have any contractual significance would appear entirely

73. 479 Pa. at 595, 388 A.2d at 1354-55.
74. Id. at 601, 388 A.2d at 1357 (Pomeroy, J., dissenting).
75. For a discussion of these contrary indicia, see note 61 supra.
76. The majority discussed reasonable expectations in an abstract sense, and apparently paid little attention to the actual facts in Collister. 479 Pa. at 595-96, 388 A.2d at 1354. See notes 48, 50 & 51 and accompanying text supra. It is submitted that the court in Collister sought to prescribe a new standard of contractual conduct for insurers in transactions similar to the one here. See notes 87-94 and accompanying text infra.
77. For the language of the application, see note 4 supra.
78. See id. In its brief, counsel for the plaintiff bluntly appraised Nationwide's choice of words: "To read the bottom page of the application . . . is enough to induce a headache in a person trained in the use of words, let alone the applicant in this case, whose occupation was long distance truck driving." Brief for Appellant at 12 (citations omitted), Collister v. Nationwide Life Ins. Co., 479 Pa. 579, 388 A.2d 1346 (1978), cert. denied, 99 S. Ct. 871 (1979). The court had similarly expressed its disapproval of the insurance industry's use of such "lengthy, complex, and cumbersomely written" documents, as well as the resulting unconscionable deception of consumers. 479 Pa. at 594, 388 A.2d at 1353.
79. See note 76 supra.
80. 479 Pa. at 594, 388 A.2d at 1353.
81. See notes 37 & 38 and accompanying text supra. Interestingly, the current emphasis was forecast by the Stonsz court in 1936 when it perceived "a trend in the courts to construe the conditions liberally, and to treat receipts . . . as binding during the interim regardless of the ultimate action of the carrier on the application." 324 Pa. at 102, 187 A. at 405. The assumption underlying this trend, according to Stonsz, was the belief that "no other result could have been intended by the parties" if the receipt were to have any significance, "for unless the insured was to be protected . . . during the interim period there would be no advantage to him in paying his premium in advance." Id. (emphasis omitted).
reasonable. An application for life insurance, when coupled with premium prepayment, is equivalent to an offer by the applicant to buy a policy from the insurance carrier.\(^{82}\) As suggested by the majority, it is normal for an applicant to assume that the insurer's receipt of his money constitutes an acceptance of his offer and the conclusion of the contract formation process.\(^{83}\) This assumption is simply one component of the applicant's reasonable expectations, which courts have become reluctant to frustrate.\(^{84}\)

Moreover, it is a fundamental contract principle that a party may not unilaterally impose additional terms upon an already concluded agreement.\(^{85}\) There thus appears to be no justification, other than custom, for allowing such a practice in life insurance transactions through the use of conditional receipts.\(^{86}\)

It is submitted that as a result of \textit{Collister}, life insurers in Pennsylvania will be required to include conspicuously and clearly all temporary insurance provisions in their application forms if they wish to delay coverage while enjoying the benefits derived from advance premium payments.\(^{87}\) The function of binding receipts in life insurance transactions has thus been effectively limited to the documentation of advance payment.\(^{88}\) The signifi-

\(^{82}\) J. GREIDER & W. BEADLES, \textit{supra} note 13, at 87. These authors have explained: "By submitting the premium with his application, the applicant makes it clear that he intends to enter into a contractual relation with the insurance company." \textit{Id.} at 90. Where no premium accompanies the application, the applicant is making an invitation to the insurer to make an offer. \textit{Id.} at 83. If the insurer subsequently decides to issue a policy, it does so by making an offer to the applicant. \textit{Id.} There is, however, no contract until payment of the premium, which, in any situation, is the single most crucial component of the whole transaction. \textit{Id.}

\(^{83}\) 479 Pa. at 596, 388 A.2d at 1354. See notes 50 & 51 and accompanying text \textit{supra}; note 81 \textit{supra}.

\(^{84}\) See notes 37-39 and accompanying text \textit{supra}.

\(^{85}\) See \textit{generally} 1 S. WILLISTON, \textit{supra} note 11, §§ 99-103, at 367-96.

\(^{86}\) This line of reasoning is in accord with the Supreme Court of Pennsylvania's reasoning in \textit{Rempel v. Nationwide Life Ins. Co.}, 471 Pa. 404, 370 A.2d 366 (1977). For a discussion of \textit{Rempel}, see note 70 \textit{supra}. The decision to purchase insurance in the type of transaction involved in \textit{Collister} is, as suggested in \textit{Rempel}, made when the application is signed and the money paid. 471 Pa. at 409-10, 370 A.2d at 368-69. Once the conditional receipt is issued, any terms contained therein are arguably unimportant to the insured. \textit{See id.}

\(^{87}\) For a discussion of these benefits, see notes 13 & 14 \textit{supra}. It is important to note that in \textit{Collister}, Nationwide did indeed include all temporary insurance terms in the application. \textit{See} text accompanying note 4 \textit{supra}. These terms, however, were evidently deemed inoperative due to the obscurity of the language in which they were stated. \textit{See} notes 77-79 and accompanying text \textit{supra}.

\(^{88}\) The dissent in \textit{Collister} suggested that such regulation is within the sole province of the legislature. 479 Pa. at 600 n.1, 388 A.2d at 1356 n.1 (Pomeroy, J., dissenting). As Justice Pomeroy stated: "I am of the opinion that this Court has neither the responsibility nor the expertise to balance" the considerations of insurers militating against interim coverage "with those conflicting considerations favoring coverage of an applicant pending approval of his application." \textit{Id.} The Supreme Court of Wisconsin has reached a similar conclusion:

It is not within the province of this court to determine what coverage, in its good conscience, the life insurance industry should be required to offer . . . . That function is vested by the legislature in the office of the commissioner of insurance. We do not have the power to create a new contract for the parties. Thus, while we may not approve of such a sales device as a conditional receipt and would like to see interim insurance afforded, we are powerless to so legislate.

\textit{Brown v. Equitable Life Ins. Co.}, 60 Wis. 2d 620, 630, 211 N.W.2d 431, 436 (1973). For examples of legislation in this area, \textit{see} note 94 \textit{infra}.\hfill\textit{\hfill}
RECENT DEVELOPMENTS

The impact of Collister upon the insurance industry in general should not be underestimated. Few consumers have been spared the task of attempting to decipher the technical language in insurance instruments. It is submitted that the Supreme Court of Pennsylvania intended in Collister to signal the end of judicial tolerance for the insurance industry’s persistent employment of the confusing jargon that has been the source of frequent litigation. Perhaps in anticipation of such a judicial posture, at least one major insurance company has redrafted its policies in very simple language, emphasizing the clarity of its insurance instruments in its advertising. It is expected that in the near future other insurance carriers will follow suit.

William Jackson

89. For discussion of the intended function of binding receipts, see notes 11-17 and accompanying text supra.

90. It is submitted that the Collister court went far beyond the principle of honoring the reasonable expectations of the insured and actually rewrote the contract between the parties. Such rewriting, according to one commentator, amounts to an “explicit judicial endorsement of a new ground of decision—a development connoted by the term ‘doctrine.’” Keeton, Reasonable Expectations in the Second Decade, 12 FORUM 275, 276 (1976).

91. Some illuminating comments were made by several justices of the Supreme Court of New Jersey during oral arguments in Gerhardt v. Continental Ins. Co., 48 N.J. 291, 225 A.2d 328 (1966). See JURY VERDICT WEEKLY NEWS, Jan. 13, 1969, at 3. Chief Justice Weintraub, after looking at the insurance policy involved, stated: “I don’t know what it means. I am stumped. They say one thing in big type and in small type they take it away.” L. FULLER & M. EISENBERG, BASIC CONTRACT LAW 558 (3d ed. 1972), quoting JURY VERDICT WEEKLY NEWS, supra, at 3. Justice Haneman added: “I can’t understand half of my insurance policies.” L. FULLER & M. EISENBERG, supra, at 558, quoting JURY VERDICT WEEKLY NEWS, supra, at 3. Justice Francis voiced what has long been the suspicion of many consumers: “I get the impression that insurance companies keep the language of their policies deliberately obscure.” L. FULLER & M. EISENBERG, supra, at 558, quoting JURY VERDICT WEEKLY NEWS, supra, at 3. Confusion has frequently been further magnified by the use of conditional receipts, which have never been favored by courts. See note 46 supra.

92. It has been inferred from the insurers’ failure to remedy this situation by appropriate language that insurance “companies would rather assume a calculated risk in an isolated case... than lose the benefits flowing from the general acceptance of premiums in advance, thus binding and committing the insured immediately to the contract as written.” Wood v. Metropolitan Life Ins. Co., 193 F. Supp. 371, 374 (N.D. Cal. 1961), aff’d per curiam, 302 F.2d 802 (9th Cir. 1962).

93. Sentry Insurance Company (Sentry) has devised “plain talk” policies, in which emphasis is placed on brevity and high readability. Gardner, Reasonable Expectations: Evolution Completed or Revolution Begun?, 1978 INS. L.J. 573, 581. These policies exhibit a rather dramatic reduction in the average number of syllables per word and the average number of words per sentence. Id. They are set in 11-point type, instead of the conventional 8-point, and adopt a personal approach, referring to “you” and “we” in place of the traditional third person formality. Id. The result is a substantially shorter document with the understandability of a typical newsstand magazine. Id. For the full text of Sentry’s “Plain Talk Car Policy,” see id. at 584-86. See generally Reuthershan & Kunze, Who Wants A New Insurance Policy?, 24 DRAKE L. REV. 753 (1975).

94. There has been some legislative activity in this area. For example, the Pennsylvania Unfair Insurance Practices Act, PA. STAT. ANN. tit. 40, §§ 1171.1-15 (Purdon Supp. 1978), authorizes the Insurance Commissioner to make rules regarding the language of insurance instruments. Id. §§ 1171.7-13. A New York law requires that all consumer contracts be “written
... in a clear and coherent manner using words with common and everyday meanings.” N.Y. GEN. OBLIG. LAW § 5-701(b)(1) (McKinney 1978). Similarly, a Massachusetts statute passed late in 1977 promulgates rules governing the style, organization, and appearance of policies. MASS. GEN. LAWS ANN. ch. 175, § 2B (West Supp. 1978). It is submitted that legislation, properly refined and implemented, could ultimately lead to standardized application forms and policies whose use would obviate much of the need for litigation concerning the rights and liabilities of insurer and insured. See Gardner, supra note 93, at 581-83.