Group Insurance: Agency Characterization of the Master Policy-Holder

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INTRODUCTION

The advent of group insurance has necessitated judicial inquiry into the legal relationships of the parties to the group insurance contract. One of the primary issues encountered by this inquiry has been whether or not the master policyholder of a group insurance contract is the agent of the insurer. The cases which have dealt with this issue are split, some holding that the master policyholder is the agent of the insurer, others holding that the master policyholder is not the agent of the insurer, and still others, in addition to holding that the master policyholder is not the insurer's agent, holding that the master policyholder is the agent of the insured. It is the purpose of this comment to discuss the factors important to an agency characterization and to formulate some suggestions as to how the issue should be approached and resolved.

I. GENERAL CONSIDERATIONS ABOUT GROUP INSURANCE

A. What is Group Insurance?

Group insurance as it is known today is of recent origin. Early forms of group insurance date back to the time when slave and coolie merchants were plying the seas with cargos of individuals for sale in this country. However, such early examples of group insurance are distinguishable from present day forms in that the master policyholder was the insured, not the individuals making up the group.

The first group insurance policy of the modern variety was issued in 1911 when the Equitable Life Assurance Society provided coverage for the lives of the employees of the Pentasote Leather Company.

2. See text at notes 8-11, infra.
3. D. Gregg, Group Life Insurance 5-7 (3d ed. 1962) [hereinafter cited as Gregg]. For additional information concerning the history of group insurance see Eddy, Development and Significance of Group Life Insurance and Follman, Development and
This policy was quite small in comparison to the policy that this same company issued soon after to Montgomery Ward which covered the lives of 2,912 employees.  

In spite of its comparatively recent origin, group insurance has grown at a phenomenal rate. For example, in the field of life insurance, the amount of group insurance in force has grown from $22.2 billion in 1945 to $391.1 billion in 1967. The 1967 figure represented 36% of all life insurance in force during that year in the United States. This fact and the growth rate of this form of insurance have prompted one commentator to speculate that the number of people insured under group insurance policies will some day be as large as the number of people insured by forms of social insurance such as social security.  

Group insurance differs markedly from forms of individual insurance. Some of the broad distinguishing features are: (1) the selection of risks is on a group rather than individual basis; (2) in many instances there is no requirement that applicants wishing coverage submit to medical examination; (3) the individuals covered by the policy are within the classification of the group; (4) instead of individual policies, the individual insureds are insured under one policy issued to the representative of the group who handles the administration of the policy; (5) the insureds receive certificates of insurance, rather than individual policies, which set out the information they need to know about the scope of their insurance coverage and the conditions upon which it will terminate; (6) the premiums paid by the group are experience rated; and, (7) the cost in comparison to individual insurance is much lower.


6. *Id.*


8. See generally Gregg, *supra* note 3, at 3-5; and Gregg in *Handbook*, *supra* note 3, at 32-33.


Experience rating is the general process whereby the annual premium charged during the first year for each eligible group in a given rating class is adjusted up-
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There are many forms of groups which seek coverage for their members. Master policies have been issued to unions and to combinations of unions and employers, creditor-debtor groups, credit card associations and other groups such as lawyers, dentists, and teacher associations. Most group insurance, however, is issued to employer-employee groups; for example, in 1966, a survey of group life insurance in force during that year found that 85.5% of the group insurance policies issued covered employer-employee groups.

There are three basic methods of financing group insurance: non-contributory, with the entire cost of the premium being paid by the master policyholder; contributory, with the insured and the master policyholder each paying part of the premium; and, non-contributory, with the insured paying the full cost of the premiums. This latter form of payment is restricted in some states. For example, in the State of Washington no policy covering an employee group may be issued where the entire premium is to be derived from funds contributed by the insured employees.

B. Basic Characteristics of the Group Insurance Contract

The group insurance policy is negotiated between the representative of the group and the insurance company. It provides that the insurance company will insure certain risks confronted by the members of the group. Generally these risks are life, disability and health. Unlike individual insurance, benefits are not paid to the policyholder but to those who are insured under the coverage of the policy. The provisions of group policies are generally uniform within each state since they

ward or downward for subsequent policy years on the basis of the claim experience that has actually emerged for that group.

12. See Gregg in HANDBOOK, supra note 3, at 10. See also INSTITUTE OF LIFE INSURANCE, LIFE INSURANCE FACTBOOK 30 (1968).

State insurance laws determine to an extent the types of groups that are eligible for group insurance. E.g., WASH. REV. CODE §§ 48.24.020-.070 (1961).


It should be noted that the agency question may be treated differently according to the kind of group insurance involved. Generally, however, the broad conclusions derived from employer-employee group cases will apply to other forms of group insurance as well.

14. Gregg in HANDBOOK, supra note 3, at 36-38. There are advantages and disadvantages to each of the forms of premium payment. See id. at 38-39.


are prescribed by state statutes. The master policyholder is prevented from being a beneficiary under the policy except in the case of creditor group insurance.

Once the master contract has been entered into, the eligible members of the group may apply to be covered under the terms of the policy. Upon acceptance of their application, they are issued a certificate of insurance setting out their rights under the policy, the designated beneficiary, and their rights upon termination, possibly most important of which is their right to convert the policy into an individual insurance contract. There is some confusion among the states as to whether or not the certificate is a part of the insurance contract; the majority rule is that it is not.

Unlike a contract of individual insurance which has three parties, viz., the insurance company, the insured and the beneficiary, a group contract has four: the insurance company issuing the policy, or the insurer; the representative of the group which negotiates and obtains the policy, the master policyholder or policyholder; the individuals of the group that are covered under the terms of the master contract, the insureds; and, the party designated to benefit by the insurance, the beneficiary.

In spite of the inclusion of the fourth party—the master policyholder—in group insurance, the courts, as a general rule, have viewed the group insurance contracts in much the same way as they have viewed individual insurance contracts. In so doing, they have ignored the insured and have concluded that the insurer and the master policyholder are the principals to the insurance contract. As a result, the

21. See generally Note, Some Economic and Legal Aspects of Group Insurance Policies, 36 Colum. L. Rev. 89, 96 (1936). In some forms of group insurance, such as health or disability, the beneficiary will be the same party as the insured.
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courts have failed to directly confront the unique problems posed by the four party relationship of group contracts, the most perplexing of which is whether the master policyholder is to be regarded as the agent of the insurer with respect to the administration of the group policy or as agent to the insureds.

The rule followed in the majority of cases in which the courts have in one way or the other considered the problem is that the master policyholder is not the agent of the insurer with respect to procuring the policy, accepting applications, reporting changes in the group, paying premiums, transmitting notice of claims, and in doing whatever else is required to keep the contract in force. The most important case in which a statement of the majority rule may be found is *Boseman v. Connecticut General Life Insurance Co.*, where the Court avoided the application of a state statute to an insurance contract on the ground that the contract was entered into outside the state between the insured and the master policyholder who was acting as an agent for the insured. Had the Court concluded that the master policyholder was the insurer's agent rather than that of the insured, the contract might have been subject to the state law in question.

The minority rule is that the master policyholder acts as the agent of the insurance company for the purpose of carrying out the administrative duties required by the group insurance contract in order to maintain the insurance coverage. The leading contemporary case applying the minority rule is *Elfstrom v. New York Life Insurance Company*. There the company employee in charge of administering the group policy had, at the instruction of the president of the com-


pany, enrolled an ineligible individual (the president's daughter who was a part-time employee) to coverage under the terms of the policy. When the ineligible individual died, the insurer attempted to avoid the policy as to the deceased on the ground that it contained false representations. The California court rejected this contention and, emphasizing that individual insureds have no real control over the acts of the employer with respect to the administration of the policy, concluded that the employer was the agent of the insurer, and as such the insurer was charged with knowledge of the true facts and therefore estopped from denying benefits. 27

C. Situations in Which the Agency Characterization May be of Importance

Basically, there are two ways group insurance plans may be administered: by the insurer and by the master policyholder. In the former, the master policyholder collects the necessary information and transfers it to the insurer, who undertakes the administration. In the latter, the master policyholder performs both the functions of collecting and administering and the insurer does little except conduct periodic audits. 28

Under master policyholder administered plans, the policyholder enrolls the insureds, adds and deletes dependents, keeps records of designated beneficiaries, reinstates and terminates coverage, collects and remits premiums, etc. Thus, the master policyholder does everything necessary to effect and continue coverage of those individuals who seek coverage, and in the eyes of the individual insureds the master policyholder no doubt becomes the representative or agent of the insurer. Indeed, the master policyholder may even be viewed as the insurer itself in the view of some of the insureds. The records that do pass from the master policyholder to the insurer are general in nature, pertaining to such matters as the calculation and payment of premiums, number of people covered, the amount of insurance in force, and the specifications of the coverage and kinds of occupations the

27. The case was remanded to determine whether Elfstrom knowingly misrepresented the fact that his daughter was eligible for coverage under the terms of the policy.
28. GREGG, supra note 3, at 164-71. See also Halverson, Installation and General Administration of Group Plans, in HANDBOOK, supra note 3, at 541.
insureds are engaged in. This information is used by the insurer in part to determine the amount of premiums that should be charged.\textsuperscript{29} The functions undertaken by the master policyholder in this type of plan are subject to the supervision of the insurer. The insurer usually sends a representative to check on the records being compiled, lends assistance in improving practices of administration and encourages enrollment of more insureds under the plan.\textsuperscript{30} The most important reason for master policyholder administered plans is the savings involved, enabling the insurer to provide mass insurance at extremely low cost.\textsuperscript{31}

In light of the various functions that the master policyholder must perform under either plan, there are a number of situations in which the insureds will be affected by the characterization a court may attach to the legal relationship between the master policyholder and the insurer. Some of the more litigated situations are set forth in the following discussion.

1. **Master Policyholder Determination of Eligibility**

   The duties of master policyholder in self-administered insurance policies generally include the "receipt of the employee's application, the determination of his insurability as an employee, and of the amount of consideration to be paid by the insured employee."\textsuperscript{32} Whether the master policyholder is considered the agent of the insurer with regard to his handling of the policy may determine whether or not an employee who has applied for and is presumably covered under the terms of the policy really is insured. For example, an employer may issue a policy to a person who is later found not to have been an employee.\textsuperscript{33} If the master policyholder is regarded as the agent of the insured, the insurer will be able to avoid the policy by asserting

\textsuperscript{29} *Gregg*, supra note 3, at 164-71. This information is also used in experience rating. See note 11, supra.

\textsuperscript{30} *Gregg*, supra note 3, at 169. The insurer makes service visits to the master policyholder at which times it checks the administration of the plan, helps encourage a high level of participation, lends assistance in improving administrative procedures and reviews the terms of the policy to see whether they should be expanded or constricted. The insurer also performs auditing functions with respect to the records kept by the policyholder. \textit{Id.}

\textsuperscript{31} \textit{Id.} \textit{See also} Elfstrom v. New York Life Ins. Co., 67 Cal. 2d 503, 432 P.2d 731, 63 Cal. Rptr. 35 (1967).

\textsuperscript{32} John Hancock Mut. Life Ins. Co. v. Dorman, 108 F.2d 220, 222 (9th Cir. 1940).

\textsuperscript{33} Baum v. Massachusetts Mut. Life Ins. Co., 357 P.2d 960 (Okla. 1960) (account-
that it was issued to a person who was not eligible within the terms of the policy.\textsuperscript{34}

On the other hand, where the master policyholder is regarded as the agent of the insurer, the insurer will be charged with the knowledge of the master policyholder and will be estopped to avoid the coverage of an individual under the policy.\textsuperscript{35} An example is \textit{Piedmont Southern Life Insurance Co. v. Gunter}.\textsuperscript{36} There, an employee sought coverage under a group policy for herself and her husband as a dependent. The master policyholder's comptroller, who was in charge of handling the matters pertaining to coverage, had knowledge of a physical disorder which would have disqualified the dependent husband but told the applicant to leave this information out of the application. Based on this misrepresentation, the insurer attempted to avoid the payment of benefits. The court in rejecting the contention of the insurer held that the master policyholder's comptroller was an agent of the insurer, that knowledge of facts known to the agent would be attributed to the insurer, and therefore that the policy requirements had been waived when the certificate had been issued.

2. \textit{Failure of the Master Policyholder to Remit Premiums Once Deducted to the Insurer}

Much group insurance is contributory, with the master policyholder and the insured each paying a portion of the premium.\textsuperscript{37} In handling the ant who worked 12 hours a week was held not to have been an employee); \textit{John Hancock Mut. Life Ins. Co. v. Dorman}, 108 F.2d 220 (9th Cir. 1940).


35. \textit{See}, e.g., \textit{Baum v. Massachusetts Mut. Life Ins. Co.}, 357 P.2d 960 (Okla. 1960). The question whether the master policyholder is the agent of the insurer for purposes of determining eligibility arises in other contexts besides that of employee status. An example is \textit{South Branch Valley National Bank v. Williams}, 155 S.E.2d 845 (W. Va. 1967). In that case, a bank, as master policyholder of a creditor group policy, collected insurance premiums from one of its debtors. The collection of the premiums was effected by one of the bank's cashiers. The debtor later passed away and the bank sought to collect the debt from the deceased's estate and to collect the benefits of the policy. The insurer denied liability on the grounds that the policy had been erroneously issued to the debtor in that the debtor was over the age of sixty-five and the policy provided that coverage would not be extended to persons over that age. It went on to contend that the bank's cashier could not waive this provision. The court accepted this point of view and held that the terms of the policy were clear: the bank's cashier was not the agent of the insurer and could not waive the terms by accepting premiums from one who was ineligible.


this kind of policy, the master policyholder, usually an employer, deducts the individual employee's portion of the premium from his wages and then sends one check to the insurer covering the whole premium for all insured employees. Since the policy will terminate if the premiums are not paid, it becomes vitally important whether the employer is the agent of the insurer for the purpose of collection and remittance of premiums. The question arises: Is a deduction for insurance premiums effective for purposes of continuing coverage in spite of the fact that the employer may not have remitted them to the insurer? If the employer is treated as the agent of the insurer, payment to the employer in the form of a deduction from wages will be considered as payment to the insurance company, and the policy will not be considered to have lapsed for non-payment.

A similar problem arises where the master policyholder is supposed to deduct premiums but fails to do so. For example, in *General American Life Insurance v. Gant*, the employer failed to deduct and remit to the insurer premiums for a one-month period, although it had paid the premiums for prior and subsequent months. In defending against a claim on the policy, the insurer contended that the policy had lapsed due to failure of the master policyholder to pay the premiums for that one month. The court held the insurer liable on the policy on the ground that the master policyholder, for the purpose of making deductions and paying premiums, was the agent of the insurer.

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41. If the policyholder is not treated as the agent of the insurer for the purpose of deducting and remitting premiums, harsh results may obtain. In Boger v. Prudential Insurance Co., 259 N.C. 125, 130 S.E.2d 64 (1963), the employer deducted premiums from the employees' wages. It then sent a check to the insurer for the total amount of the premium due on the policy but the check was returned because of non-sufficient funds. The court denied a claim for benefits reasoning that the policy had lapsed due to non-payment of premiums; the employer was not characterized as the agent of the insurer.

It should be pointed out that in some cases even where the premium has been paid and accepted by the insurer, the insured may nevertheless find himself without coverage. In Haneline v. Turner White Casket Company, 238 N.C. 127, 76 S.E.2d 372 (1953), a premium deduction from an employee's wages was made which paid for coverage up to June 10. The employee was discharged on March 27 and died on May 16. The court held that although the premiums had been paid, coverage, according to the terms of the policy, came to an end in the policy month in which employment ceased. Since the end of the policy month was April 10, the deceased was no longer insured according
3. Employer's Wrongful Refusal to Accept Premiums for Remittance

The agency question may be important where the master policyholder wrongfully refuses to accept premium payments during a period of disability. For example, in *Hanaieff v. Equitable Life Assurance Society*, the master policy provided that coverage would continue during an employee's absence from work due to disability provided the insurance premiums were kept up. Since the insured was no longer actively employed he had to present cash payments of premiums. Although the master policyholder accepted a cash premium for one month, it would not accept advance payments for the next two months. When the disabled person attempted to pay for the second month's coverage, his representative was told that since the insured had been absent from work for thirty days he would have to present a medical statement of his disability. The company doctor who had treated the insured refused to give him the report because he did not have a certificate of birth. Since the insured had been absent from work without explanation (in reality, the company knew where he was and why) for thirty days, his employment was terminated along with his coverage. The court refused to hold the insurer responsible for the employer's conduct. The court reasoned that the master policyholder was not the agent of the insurer and that the proper party against whom a claim should have been brought should have been the negligent employer. Had the court held the employer to be the agent of the insurer, the insurer would have been held liable regardless of the employer's negligence.

4. Failure to Include the Name of the Insured on the Insurance Roll

As stated earlier, the master policyholder must send certain information to the insurer even in a self-administered policy. This information in some instances includes the names of the insureds. The agency characterization with respect to the policyholder is important where the name of one who has paid premiums has been excluded from the roll. If the insured is not listed and the policyholder is regarded as the agent of the insurer, the exclusion of the insured's name will not to the terms of the policy. (However, the court did order the return of the paid up premiums.)

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affect his coverage because the insurer will be charged with the knowledge known to the master policyholder.

On the other hand, if the policyholder is not the agent of the insurer, the insured will not be covered. An example of this result is *Blue Cross-Blue Shield v. Fowler,* in which the court held that even though the premiums had been deducted and sent to the insurer, the insured was not included within the coverage of the policy because the policyholder had failed to include the insured's name in the invoice of those who were participating in the group plan.

5. **Failure of the Master Policyholder to Provide Notice of Disability**

The agency characterization may become important in a situation where the policyholder fails to transmit information regarding the disability of the insured. Group insurance contracts may provide for continued coverage and continued payment of benefits during the period in which the insured is not working because of disability. Such extended benefits are conditioned upon notice to the insurer as to the reason and kind of disability. Usually the information is sent to the insurer by the master policyholder, and if the policyholder is characterized as the agent of the insurer its failure to send the information will not be charged to the insured. Where the policyholder is not characterized as the insurer's agent the opposite result may be reached. Of course this can be quite harsh. An example is *Bahas v. Equitable Life Assurance Society,* where the insured attempted to provide the necessary notice directly to the insurer. The insurer would not receive the notice and directed the insured to file notice of his disability with the master policyholder, in this case a union. He did so, but did not file all of the necessary information. He was led to believe that if anything more was required, the union would contact him. The union never did, and the insurer was able to show that the policy provisions had not been met. Therefore, there was no insurance coverage.

45. See, e.g., Coleman v. Metropolitan Life Ins. Co., 127 S.W.2d 764 (Mo. App. 1939).
47. 331 Pa. 164, 200 A. 91 (1931).
6. Waiver of the Notice of Disability Provision

The agency issue is also important with reference to whether the master policyholder can waive the provisions of the policy that require notice of disability. A hypothetical example might be as follows: The insured is injured on the job and fails to return to work due to some form of disability. The policy provides that coverage will continue for ninety days after disability, provided notice is given to the policyholder. The insured attempts to provide the necessary notice to the policyholder but is prevented from doing so because the policyholder's comptroller incorrectly believes that the insured's coverage under the policy has lapsed by reason of his failure to pay premiums. In such case, if the policyholder is characterized as the agent of the insured, the coverage would be terminated. However, if the policyholder is regarded as the agent of the insurer it might be argued that the statement of the comptroller regarding the futility of sending notice constituted a waiver of the notice requirements. 48

While there are more, 49 the foregoing situations indicate how the agency characterization of the master policyholder may make a difference. It is obvious that the insured will in most cases benefit from the characterization of the master policyholder as agent of the insurer; for example, the insured's coverage will not be terminated due to the master policyholder's failure and negligence in deducting and remitting premiums, including the insured's name on the roll, accepting premiums once submitted, transmitting notice of disability, transmitting notice of claims, providing necessary information regarding coverage, or generally leading one to believe he is covered under the

49. There are situations, other than those discussed, in which the agency characterization may be of some importance. For example, an agency characterization might be important in determining whether the insured is entitled to some notice when the insurer and master policyholder modify or cancel their relationship. See Note, The Requirement of Notice to an Employee of the Termination or Cancellation of His Group Policy, 42 Notre Dame Lawyer 523, 524-25 (1967). Further examples are situations where the master policyholder fails for some reason to change a beneficiary or fails to send timely notice of a claim.

Apart from the situations discussed, there are other contexts in which the agency characterization may be important. The question might arise in a case where the primary issue is to determine what state's law will apply to the determination of rights and liabilities to the insurance contract. E.g. Boseman v. Connecticut General Life Insurance Co., 301 U.S. 196 (1936). The question might also arise where the state insurance commissioner is seeking to determine whether an insurer is doing business in the state. See W. Vance, Insurance 1040 (3d ed. 1951).
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terms of the master policy when in fact he is not. It is submitted that, at least in those situations discussed, the more equitable result usually follows from the characterization of the master policyholder as agent of the insurer.\(^{50}\)

II. DISCUSSION AND ANALYSIS OF THE AGENCY CHARACTERIZATION

A. Factors Important in the Characterization

1. The Nature of the Group Insurance Contract

The manner in which a court views the four party group insurance contract (insurer, master policyholder, insured, and beneficiary) will in most instances answer the question of whether or not the policyholder is the agent of the insurer. The courts have taken two basic approaches in answering this question.\(^{51}\) Some courts have failed to give any legal recognition to the middle position of the master policyholder, while other courts have recognized the curious middle position played by the master policyholder and have dealt directly with the question of whether the relationship should be characterized as one of agency. Under the first approach, there is said to be only two parties to the contract, the insurer and the master policyholder. The assumption is that the insured is the group entity and not the mere individual insureds who hold certificates of insurance.\(^{52}\) Thus, characterization of the master policyholder, who represents the group entity, as the insurer's agent is impossible because the master policyholder is a principal to the contract and there can be no agency between principals.\(^{53}\)

An example of this approach is *Equitable Life Assurance Society v.*

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51. See text at note 22, supra. See also W. Vance Insurance 1042 (1951).
53. Aetna Life Ins. Co. v. Messier, 173 F. Supp. 90 (D. Pa. 1959). In those cases which adopt this view, the statement is sometimes made that the insured as a third party beneficiary of the contract has no power to keep the master policy in force or to abrogate it. See Millers v. Travelers Ins. Co., 143 Pa. Super. 270, 17 A.2d 907 (1940). See also note 52, supra.
In this case the insured sought to recover disability payments from the insurance company. The insurer denied coverage on the ground that the policy precluded disability benefits to anyone who was over the age of sixty when he applied for coverage. The insured assented to the fact that he was over the age of sixty when he applied for insurance, but contended that the master policyholder, as the insurer's agent, knew this and that the insurer by accepting the application and premiums acquiesced and was therefore estopped from denying coverage. The court refused to accept the argument that the employer was the insurer's agent, pointing out that the contract was between the insurer and the master policyholder, and that, if anything, the master policyholder was the agent for the insured. Accordingly, the court held that the insurer was not bound by the facts known to the master policyholder.

In spite of the fact that a court may view the contract in conventional contract terms, the master policyholder may still be regarded as the agent of the insurer. Duval v. Metropolitan Life Insurance Co. is an example. There, insurance coverage under the group policy was to be effective during the employment of the insured. The deceased worked until June 11th and drowned on June 17th. The named beneficiary sought to show that deceased had been insured at the date of his death since prior to the drowning deceased had been reinstated, and that this nullified the earlier June 11th termination. The beneficiary relied upon eight provisions of the group policy to show that the employer-policyholder had the actual authority to reactivate the insurer's liability to the deceased, but the court rejected these arguments.

However, the court did concede in dicta that under the terms of the contract the master policyholder could be regarded as the agent of the insured for some purposes, noting that a provision in the contract requiring the employer to send the insurer a list of applicants created an agency for the purpose of receiving applications. Closely related to this is the position taken in some opinions that "persons not regularly appointed agents or acting solely for the benefit of the com-

54. 253 Ky. 450, 69 S.W.2d 977 (1934).
55. 82 N.H. 543, 136 A. 400 (1927).
pany [insurer] must be regarded as agents of the insured.\textsuperscript{56} However, as will be discussed later, the fact that the policyholder is not designated as the insurer's agent within the terms of the contract should not be determinative of whether its actions with regard to the policy should be charged to the insurer.\textsuperscript{57}

A second view of the group contract recognizes that the master policyholder stands in a curious middle position between the insurer and the insured, performing functions for each, and that, for the functions performed for the insurer, the master policyholder is the insurer's agent.\textsuperscript{58} This approach is a more realistic one since it adopts a view which is less rigid and it gives recognition to the realities of group insurance contracts, viz., that the individual insured only has contact with the insurer through the offices of the master policyholder.

2. \textit{Aligning the Interests of the Parties}

The general rationale for the majority rule—that the master policyholder is not the agent of the insurer—is the thought that the master policyholder is aligned with the insureds due to their identity of interests.\textsuperscript{59} The statement is frequently made that the employer holds the master policy, not for, but rather against, the insurer,\textsuperscript{60} and thus the policyholder cannot be regarded as the agent of the insurer. This identity of interests arises from the common impression that employers are acting for themselves and their employees in procuring group insurance for the employees.\textsuperscript{61} Thus, as one court put it: \textsuperscript{62}

The line dividing the three parties to the contract according to their interest and real position in these transactions puts the employer with the employee, as opposed to the insurer.

\textsuperscript{57} See notes 93-111, infra.
\textsuperscript{60} See, e.g., Kaiser v. Prudential Ins. Co., 272 Wis. 527, 76 N.W.2d 311 (1956).
While it cannot be denied that the employer is acting for its employees in obtaining a contract of insurance, the premise upon which the foregoing statement is based—that the employer is the employee's benevolent parent—is open to sharp criticism. In reality, the employer's motives can be expected to be self-serving. Group insurance provides many advantages to the employer: except in the case of non-contributory policies with the insureds paying the entire premiums, it is possible to increase the amount of money paid to employees without increasing their tax burden; it is a means of competing with other employers paying similar wages; it is a means of establishing employee loyalty because it causes the employee to have a better image of his employer and causes him to be hesitant to change jobs because of the fear of losing insurance benefits.  

The cases which align the interests of the policyholder with those of the insureds come to the general conclusion that under no circumstances can the employer act as the insurer's agent except where the contract specifically so provides. However, there are some opinions which, in spite of supporting the foregoing interests approach, have held that for some purposes the master policyholder may act as the insurer's agent. The reasoning is that where the master policyholder does not stand in a position adverse to the insurer, a master policyholder-insurer agency may be found.  

The rationale that the master policyholder acts either for his own benefit or for that of the insureds leads to the negative implication that the policyholder, by performing the administrative tasks of the policy, does not act in any way for the insurer's benefit. Consequently, it would seem that if it could be shown that the insurer benefits as much as the insured by having the master policyholder perform these administrative functions, the alignment of the policyholder with the insured might

63. See generally 36 Colum. L. Rev. 89 (1936); Wall Street Journal, Feb. 17, 1969, at 1, col. 1.

64. E.g., Kaiser v. Prudential Ins. Co., 272 Wis. 527, 76 N.W.2d 311 (1956) where the question presented to the court was whether the employer was the agent of the insurer with respect to an application for a change of beneficiary. The master policy required that beneficiary changes be submitted to the employer. The court adopted the position that for purposes adverse to the insurer such as determining the amount of the premium, the employer would not be characterized as the agent of the insurer. However, the court went on to state that the employer had no interest adverse to the insurer with respect to whom the benefits of a policy were to be paid and, therefore, concluded that for the purpose of accepting changes in beneficiaries the employer was the agent of the insurer.
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fall and the policyholder might, in turn, be characterized as the agent of the insurer.

This appears to be the position taken by the California Supreme Court in *Elfstrom*.\(^{65}\) The court, in rejecting the reasoning supportive of the majority rule, stated:\(^{66}\)

> It cannot be said that the employer acts entirely for its own benefit or for the benefit of its employees in undertaking administrative functions. While a reduced premium may result if the employer relieves the insurer of these tasks, and this, of course, is advantageous to both the employer and the employees, the insurer also enjoys significant advantages from the arrangement. The reduction in the premium which results from employer-administration permits the insurer to realize a larger volume of sales, and at the same time the insurer's own administrative costs are remarkably reduced.

It should be cautioned that a black and white approach to the alignment of benefits can be illusory. There are benefits accruing to all parties to a group contract when a master policyholder performs administrative functions and, therefore, any alignment of interests is at best tenuous.

3. **Cost**

Cost is another factor used in characterizing the legal role of the master policyholder. Cases which have held that the master policyholder is not the agent of the insurer have made reference to two cost-related arguments. First, cost has been used with reference to the benefit rationale. The courts point out that self-administered plans effect a cost savings in the insurer's overhead, making it possible to issue group insurance at a very low premium and thereby directly benefit the insured. In light of this direct benefit, the courts taking this position find it difficult to conclude that the master policyholder is acting for the insurer in undertaking to perform various administrative tasks.\(^{67}\)

Secondly, the proponents of the majority position argue that treating

\(^{65}\) 67 Cal. 2d 503, 432 P.2d 731, 63 Cal. Rptr. 35 (1967).

\(^{66}\) 67 Cal. 2d 503, 432 P.2d at 737, 63 Cal. Rptr. at 41 (1967).

the master policyholder as the agent of the insurer will cause the cost of group insurance to increase. This increase would assertedly be due to two factors: (1) the insurer would have to perform a greater function with respect to the administration of the policy thereby increasing its overhead, and (2) the insurer would, because of its responsibility for the actions of the master policyholder, have to issue benefits to a greater number of claimants claiming under policies which should not have been issued or continued.

As to the first assertion, it is doubtful that an agency relationship between the insurer and the policyholder will actually cause administrative overhead to rise, or rise to the extent that the use of group insurance would be discouraged. In spite of the adoption of the minority rule in certain jurisdictions, large amounts of group insurance are still being sold. Indeed, it may even be the case that the insurer, in conducting audits and giving administrative advice, is already doing all that he would have to do.

The second assertion—that there will be an increase in claims resulting in the payment of more benefits—is not a valid argument against the adoption of an insurer-policyholder agency since even though the insurer will be responsible for the actions of the master policyholder, and thus will have to pay on policies it might otherwise have avoided under the majority rule, nevertheless, the insurer will be able to recover from the master policyholder on theories of breach of contract or negligence where the policyholder has failed to properly perform his duties. However, even if it were true that the adoption of an insurer-policyholder agency would increase the cost of group insurance, the increase may be well worth it if at the same time it improves group insurance. As one commentator has put it:

It must be remembered, however, that the cheapness of group insurance is supposed to spring from economies produced by the nature of the device, such as the elimination of medical examinations, and the savings in agents commissions and administration expense attendant on insuring many persons at once. If group insurance can be kept cheap only by being kept inferior, then its

68. Id.
70. See note 30 and accompanying text, supra.
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cheapness is deceptive. . . Group insurance would deserve no place as a new social device if it constituted nothing more than the bargain basement of insurance companies.

4. Control

Courts which have characterized the policyholder as the agent of the insurer have placed much emphasis on the insured's lack of control over the actions of the policyholder.\(^\text{72}\) In *Elfstrom* the court stated:\(^\text{73}\)

The most persuasive rationale for adopting the view that the employer acts as the agent of the insurer, however, is that the employee has no knowledge of or control over the employer's actions in handling the policy or its administration.

As will be discussed,\(^\text{74}\) the court used this control factor with reference to an agency test. However, it better describes an equitable consideration that one should not be bound by the acts of persons over whom he has no control. Thus, for example, an insured should not lose his coverage under the group policy where the employer, after having deducted premiums, fails to remit them to the insurer.

The control factor has the most relevance in an employer-employee relationship since the employee is not likely to question his employer as to whether or not he is performing the functions required by the policy. Query, however, as to what would be the case where the group was a labor union. It might be argued that the insured as a member of the group has control over the master policyholder. This situation points out that control should not mean group control—employees as a group have some control over their employer—but rather individual control. That is, where one does not have effective control as an individual over the administration of the group policy under which he believes he is covered, it appears to be proper to hold that his coverage would not be affected by mistakes and failures of the master policyholder.

A most graphic example of complete inability to control the master policyholder is a situation where a holder of a credit card pays pre-


\(^{73}\) *Elfstrom v. New York Life Ins. Co.*, 67 Cal. 2d 503, 432 P.2d at 738, 63 Cal. Rptr. at 42.

\(^{74}\) See text accompanying notes 104-111, infra.
miums for coverage under a policy issued to the credit card issuer and later finds that the credit card company failed to include his name on the list sent to the insurer of people who had paid premiums. It would hardly be equitable for the insured not to be able to collect from the insurer since there was nothing further he could have done to ensure that he was covered. Closely related to this idea of control is that in dealing with the insurance company the insured is usually required to direct his dealings through the master policyholder. Consequently, the insured is led to believe that he should refer only to the master policyholder when he has a problem related to his coverage and that there is little he can do when the master policyholder is being uncooperative. Justice Musmanno, dissenting in *Hanaieff v. Equitable Life Assurance Soc'y*, made the following statement:  

Here we have the clearest case of a man dealing wholly and exclusively with his employer, the steel company, not even knowing of the existence of the insurance company.

... It was the insurance company which required that the insured pay the premiums to the steel company, and the premiums were so paid until the collecting agency by demanding an impossible and superfluous birth certificate, lowered a steel curtain in the face of decedent's conscientious attempt to meet the insurance company's requirements.

Neither the lower court nor the majority opinion points out any duty devolving upon the insured which was not fulfilled. To now withhold from the insured's beneficiary the money which he paid, through the steel company, into the coffers of the insurance company, is in my opinion a grave injustice.

This closely follows the rule of agency that where a principal places a person in a position where a reasonable man dealing with that person is led to believe that he is an agent of the principal, the principal, as against the third person, is estopped from contending that that person's authority is less that it appeared.

It has been suggested that one counter to the effects of such a rule would be a provision in the insurance contract, or the individual

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certificate, designating the master policyholder as the insured's agent. However, the relations of the parties in an area as important as this should be determined by public policy based on the reality of the facts and not by contractual boiler plate.

5. Statutes

Some decisions holding the master policyholder the agent of the insurer have relied in part on statutes which generally provide that one who transmits any application, delivers policies of insurance, or receives or collects premiums will be considered the agent of the insurer. As yet, this type of statute has not been used as the sole grounds for finding an insurer-policyholder agency relationship. It is conceivable, however, that in a situation other than an employer-employee group policy, where the relation between the insureds and master policyholder is not as close, primary reliance might be placed on such a statute.

Reliance upon a statute of this kind has had a unique history in Georgia. In Cason v. Aetna Life Insurance Co., the court, relying in part on such a statute, held that a municipality-master policyholder was the agent of the insurer. In 1961, a new insurance code became effective in Georgia which, in defining "agent," provided that a person who serves the master policyholder in keeping and administering the group policy and who does not receive a commission from the insurance company is not the insurance company's agent.

77. See Borst, Group Policyholder as Agent of Insurer or Group Member, 14 Fed. or Ins. Couns. Q. 1, 30 (1963-64).

As a practical solution, it is suggested that in individual group member applications, the member designate and constitute the policyholder as his agent for all purposes in connection with administration of the group policy.

78. See text accompanying notes 120-24, infra.


81. For example, where the group is not a real group entity, such as a credit card group in which the policyholder is in reality selling insurance, this kind of statute may be used to treat the policyholder as the insurer's agent.


83. Ga. Code Ann. § 56-801a (1963) provides:

Under a group insurance plan, a person who serves the master policyholder of group insurance in administering the details of such insurance for the employees or debtors of such person, or a firm or corporation by which he is employed, and who
ern Life Insurance Co. v. Gunter, the insurance company argued that this statute changed the earlier Georgia law relied upon in Cason to the effect that the master policyholder could not be regarded as the agent of the insurer. The court rejected this argument stating that the new statute dealt only with the licensing of insurance agents, exempting those persons working for master policyholders from being agents who must be licensed, and in no way changing the prior law whereby a policyholder was considered to be the agent of the insurer. Thus if anything, the legislative exemption was legislative recognition of the master policyholder-insurer agency.

The statutory development in Georgia has importance with regard to a problem which has not been discussed in the cases dealing with the issue of whether the policyholder is the agent of the insurer. This is the possible fear that multiple state regulation of group insurance contracts might be a result of treating the policyholder as the agent of the insurer. An argument may be made that since the master policyholder is regarded as the insurer's agent, the state insurance commissioner may be able to require the insurer to be licensed. Such a result would lead to multi-state regulation which in turn might make it difficult for an insurer to issue a group insurance policy to a multi-state employer.

This fear of multiple state regulation is not an unreasonable one. However, the Georgia statutory experience indicates that a simple solution would be the enactment of legislation specifically exempting the master policyholder as agent for purposes of licensing. Also, it should be pointed out that an agency for the purposes of licensing is far different from an agency for the purposes of making the insurer liable for the acts of the policyholder with respect to his administration of the policy.

B. The Role of Precedent

A possible criticism of some of the cases which have held that the master policyholder is not the agent of the insurer is their seemingly

does not receive insurance commissions for such service, shall not be deemed to be an agent. . . .


blind adherence to precedent. In many decisions, the courts appear to have looked mechanically to prior cases and have neglected genuine discussion of the merits. For example, it is not too unusual to find a court, citing a previous case and quoting or paraphrasing language found in that case, to conclude that the master policyholder is not the agent of the insurer for purposes of policy administration. The two cases most frequently relied upon are *Duval v. Metropolitan Life Insurance Co.* and *Boseman v. Connecticut General Life Insurance.*

Not only have the courts which have relied upon these prior cases not discussed the relative merits of each position, but they have not considered factors relating to these cases which might tend to diminish their value as precedent. For instance, in *Duval* the court was of the impression that the employer was acting in a paternalistic manner toward its employees in procuring group insurance. This case was decided in 1927, and perhaps this view was substantially correct then. Today however, because of the large volume of group insurance, the employer is probably not motivated by mere paternalism but rather by competitive necessity to provide group insurance as a fringe benefit.

A factor diminishing the precedential value of the cases citing *Boseman* is that the context of those decisions is not analogous to that of the *Boseman* case. In *Boseman* an employee, who was a Texas resident, sought to recover disability benefits under a group policy which had been issued in Pennsylvania to a Pennsylvania corporation, which was the corporate parent of plaintiff's Texas employer. The policy required that notice of disability be given within a certain time period, and the insured employee failed to comply with this provision. The plaintiff contended that he did not have to comply because, according to the law of Texas, the notice provision of the policy was void. Therefore the issue before the Court was whether the policy was governed by the law of Texas, and the Court concluded that it was not, on the grounds that the employer rather than the insurer

86. See, e.g., Equitable Life Assur. Soc'y v. Hall, 253 Ky. 450, 69 S.W.2d 977 (1934).
87. Id.
88. 82 N.H. 543, 136 A. 400 (1927).
89. 301 U.S. 196 (1936).
90. See note 65, supra.
did all that was necessary to effect coverage of the insureds and thus the insurer was not doing business in Texas. In reaching this conclusion the Court stated:91

When procuring the policy, obtaining applications of employees, taking payroll deduction orders, reporting changes in the insured group, paying premiums and generally in doing whatever may serve to obtain and keep the insurance in force, employers act not as agents of the insurer but for their employees or for themselves.

Although the decision was unanimous and although the Court cited cases which have reached the same result outside the conflict of laws context,92 it may nevertheless be posited that since the Court was using the agency argument for the purpose of preventing multi-state regulation of insurance policies, the above quoted statement should not be used as the ultimate authority for the argument that the master policyholder is not the agent of the insurer for all purposes. Further, such statement ignores the possibility that for some purposes, the contract might expressly regard the master policyholder as the agent of the insurer.

C. Contractual Attempts to Avoid Agency Characterization

In some instances, the terms of the insurance contract may be referred to by the courts to aid them in their attempt to determine whether the master policyholder is the agent of the insurer.93 Consequently, it has been suggested that the agency characterization may be affected if the contract of insurance provided an answer to the inquiry.94

A case considering the effects of express contractual provisions and giving support to them is *Blue Cross-Blue Shield of Alabama v. Fowler.*95 In that case plaintiff was insured under a group health

91. 301 U.S. at 204-05.
92. See 301 U.S. at 205 n.8.
insurance plan under which the employer was to deduct and remit premiums to the insurer. Plaintiff’s employment had been interrupted due to a layoff, during which time she had paid the premiums directly to the insurance company. Upon return to work, premiums were once again deducted from her wages; however, at this time the employer failed to include the plaintiff’s name on the premium invoice which it periodically sent to the insurer. Plaintiff contended that once the premium had been deducted she was covered by the insurance policy regardless of the fact that her name was not sent to the insurer. The lower court accepted this position and gave instructions to the jury to the effect that payment to the employer would be payment to the insurer whether or not the premiums deducted were actually remitted. On appeal, this instruction was held to be in error because it was contrary to an express provision in the contract.

The basis for the lower court’s instruction was an earlier group insurance case which had held that the employer was the agent of the insurer for purposes of accepting premiums. The court in Fowler indicated that this prior law was not effective under the facts of this case since the contract provided that the “remitting agent” could not bind the insurer by its mistakes. The contract treated the employer as the agent of the insured by providing that the remitting agent would be the agent of the subscriber and, in addition, it stated that the insurer would not be responsible for the failure of the remitting agent to pay the premiums when due.

In finding that these policy provisions should be given effect, the court quoted a passage from an earlier case to the effect that insurance companies, in order to determine the extent of the risk they have undertaken, have the right to write policies of narrow coverage. The court stated:

Our cases recognize the same right of insurance companies (statutory provisions to one side) as individuals to limit their liability and to impose such conditions as they wish upon their

96. 195 So. 2d at 914.
97. 195 So. 2d at 914, citing All States Life Ins. Co. v. Tillman, 226 Ala. 245, 146 So. 393 (1933).
98. 195 So. 2d at 911.
obligations, not inconsistent with public policy, and that the courts are without right to add or subtract therefrom. The companies have the right to write contracts with narrow coverage, and a small premium fixed on careful calculation of the hazard assumed. And we have said, speaking of such contracts, that they should be enforced, not a new or enlarged contract made for the parties.

Upon rehearing, the court stated that there was no public policy which would prevent the insurer from limiting its liability by using a contractual provision making the remitting agent the agent of the employee. The court further pointed out that the earlier case holding that the employer was the agent of the insurer did not set "up a rule of prohibition against the language used" since it only set up a rule of construction which should be applied when the group contract is silent regarding the characterization of the employer.\textsuperscript{100} Without specific statutory language the court would not "ignore the plain words of the contract."\textsuperscript{101}

This case appears to be a clear statement that where the contract of insurance specifically labels the employer as the agent of the employee, rather than that of the insured, it will be given effect in spite of case law to the contrary. A point that should be made with reference to \textit{Fowler} is that the court seemed to view the label given the employer in the contract as coinciding with the realities of the situation; to the court, the employer in reality did play the role as the agent of the employees. This conclusion is based on the fact that the court viewed the insurance contracts as being separate contracts between the insurer and the employees, and, unlike regular group contracts in which the employer is the "owner" of the policy of insurance, here the employee was the "owner." The conclusion of the court was that\textsuperscript{102}

The instant arrangement is not group insurance but rather a group of employees who remitted premiums collectively for \textit{themselves}.

In its application for rehearing, the appellee (plaintiff below) empha-
sized that the insurance was indeed group insurance and that, contrary to the court’s opinion, the employer was not the agent of the employees since the employees had no control over the actions of the employer with respect to the deduction and remittance of premiums. As to this latter point, the appellee grounded his position on the fact that the insurer had regularly sent the employer a list setting out and describing the premiums which were due. The court rejected the application for rehearing. It pointed out that the employer was not controlled by the insurer with respect to the lists which were sent to it since the lists were merely the previous month’s lists sent in by the employer. The implication was that the employer was the employee’s agent and that the contractual label conformed to the role actually played.

In a case where the contractual label does not fit the role played by the employer in the eyes of the court, such provisions might be found nugatory. For example, in Elfstrom v. New York Life Insurance Co., the court placed primary emphasis on the fact that the employees have no control over the actions of the employer with respect to the administration of the group policy. According to the court, an agency relationship depends on “consent by one person that another shall act in his behalf and be subject to his control.” Using this test, the court found that the employer could be characterized as the agent of the insurer, and could not be characterized as the agent of the employees because the insurer rather than the employees directs the performance of the administrative acts and has the power of control. Obviously, the concern here is with the actual relationship between the parties and not with the label which the contract may place upon the part the employer might play.

Thus, in a case where the court is willing to look at the real relationship and finds that the employees have no control over the actions of the master policyholder, the characterization of the employer as an agent of the insurer should not be defeated or reversed by a provision in the contract to the contrary. Note, however, that a court

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103. 280 Ala. 708, 95 So. 2d 919 (1967).
104. 67 Cal. 2d 503, 432 P.2d 731, 63 Cal. Rptr. 35 (1967).
105. 67 Cal. 2d 503, 432 P.2d at 738, 63 Cal. Rptr. at 42 (emphasis added).
106. Id.
willing to give expression to this approach should also be alert to the contrary need of insurers to be able to write narrow contracts so that they may be able to determine the extent of the risk they are undertaking to insure.\textsuperscript{107}

A troublesome feature about \textit{Elfstrom} is that the agency relationship is based on "consent" and "control."\textsuperscript{108} The question posed is whether a "consent" on the part of the employees in their applications for coverage that the employer will be their agents for the purposes of administration will be effective to avoid a judicially created rule to the contrary. It would seem that such a question would be answered in the negative in that in the agency test expressed by the court, consent and control are conjunctive rather than disjunctive elements.

Apart from the considerations advanced in the foregoing paragraphs, another contractually related attempt to avoid the characterization of the master policyholder as agent of the insurer might be to place in the insurance contract the provisions which have the effect of controlling the actions of the master policyholder with respect to the fulfillment of his administrative duties. For instance it has been suggested that the insurer reserve in the contract the right to determine the eligibility of the applicants and the right to make regular audits of the master policyholder's records.\textsuperscript{109} These kinds of provisions would not prevent the court from characterizing the master policyholder as the agent of the insurer. In fact, they may have the opposite effect since the court might consider such restrictions as attempts to limit the authority of one who is an admitted agent performing functions that are insurer's functions.\textsuperscript{110}

An example of how a court might treat these provisions is found in \textit{Elfstrom}. There, the insurer's representative was empowered to make an annual audit to determine whether the employees were being insured according to the provisions of the policy. The court relied

\textsuperscript{107} See text accompanying note 99, \textit{supra}.

\textsuperscript{108} 67 Cal. 2d 503, 432 P.2d 731, 63 Cal. Rptr. 35 (1967).


\textsuperscript{110} Where the insurer places a number of provisions in the policy which may be used to reserve final authority over the master policyholder, it may be argued that such reservation of authority is a recognition on the part of the insurer that the master policyholder is its agent.
upon this fact as support for the proposition that the insurer had control over the master policyholder rather than the insureds. Therefore, it could be argued that the provisions relating to the power of the insurer to control the actions of the master policyholder emphasize the fact that since the insurer rather than the insured is in a position to control the actions of the employer, it should take the responsibility for those actions.\textsuperscript{111} In summary, provisions restricting the actions of the master policyholder may be positive criteria upon which to found an insurer-master policyholder agency relationship.

D. Rights of the Insured Against the Master Policyholder\textsuperscript{112}

It was stated earlier that an insurer-master policyholder agency relationship is often a more equitable conclusion.\textsuperscript{113} Additional support for this conclusion comes from the fact that where an insured or his beneficiary may be injured as a result of the master policyholder’s neglect, he might find that he does not have a cause of action against the master policyholder; that even if he does, the damage remedy may be inadequate; and, that in any case, it is inequitable to place the insured or the beneficiary in a position where he has to seek the advice and services of an attorney.

Where an employment contract includes group insurance, the failure of the employer to provide it would be an actionable breach of the employment contract.\textsuperscript{114} For example, in Peyton v. U.S. Steel Co.\textsuperscript{115} the employer undertook to deduct premiums from the employees’ wages but failed to remit them to the insurer. The policy lapsed and the employer, on the basis of the employment contract which in-

\textsuperscript{111} In Elfstrom, the court used the provisions to show that the insurer did indeed have control over the master policyholder whereas the insured did not. 432 P.2d at 738, 63 Cal. Rptr. at 42.

\textsuperscript{112} The discussion which follows will deal only with cases where the master policyholder is an employer and the insured is an employee.

\textsuperscript{113} See text accompanying notes 49-50, supra. See also 1 Appelman § 43 at 56 (1965); Elfstrom v. New York Life Ins. Co., 67 Cal. 2d 503, 432 P.2d 731, 63 Cal. Rptr. 35 (1967).


cluded group insurance, was held liable to the beneficiary in the amount he would have received had the policy been kept in force.

Where, however, there is no clear duty, contractual or otherwise, to provide group insurance or keep it in force, it is unclear whether a master policyholder could be held responsible to pay the damages resulting from its failure to maintain a policy. It has been stated that the employer, in deducting the necessary contributions from the employees' wages, is a gratuitous agent and as such does not owe a duty to the employee.116 Also, many cases have held that the employer as master policyholder is under no duty to keep the policy in force or to give notice that it has been terminated or modified.117 However, even where the insured or his beneficiary does have a cause of action against the policyholder, it might be impossible for him to realize any recovery from a judgment on his behalf.118

The most important reason why the master policyholder should be regarded as the agent of the insurer is that under such a rule the insurer's responsibilities for the master policyholder's actions or lack of action will result in the payment of benefits without the necessity of the insured or his beneficiary to resort to litigation.119 In the absence of such clearly defined responsibilities, resort to legal process may become necessary. Such a result would be highly unfair because, through no fault of his own, the insured or the beneficiary must seek the advice and services of an attorney to obtain the benefits to which, it is submitted, he is entitled. This may be quite an onerous task since it may be uneconomic to hire professional assistance due to the small amount of money which is often involved.

III. SUGGESTIONS AND CONCLUSIONS

As may be seen from the foregoing discussion, the most equitable result would appear in most cases to be a finding of an agency relation-

117. See Note, The Requirement of Notice to an Employee of the Termination or Cancellation of His Group Policy, 42 Notre Dame Lawyer 523 (1966-67); Note, Cancellation of Group Insurance Policy By Employer Without Consent of Employee, 49 Yale L.J. 585 (1940).
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ship between the insurer and the master policyholder. However, it
is important that the courts maintain a flexible approach. Such an
approach was suggested in 1935 when group insurance was still in its
infancy by Frank W. Hanft, who wrote:

Courts have taken great pains to determine whether the em-
ployer is the agent of the insurance company or not. Better
results might have been achieved had they gone directly to the
problem of determining whether, in view of the way group insur-
ance is set up and operated, and of the relations and character of
the parties, the employer should be charged with the performance
of certain functions on behalf of the insurance company. If it is
found that the employer should be held to act for the company in
certain particulars, it is not objectionable to describe the result by
saying that the employer is the company's agent for those pur-
poses. If it is determined that in other particulars the employer's
acts should not be chargeable to the insurance company, it is
equally unobjectionable to label this result by stating that the
employer is not the company's agent for those other purposes.
The harm comes in reversing the process. When courts first ex-
amine the question whether under the law the employer is an
agent, find he is not, and then decide that therefore he is not to
be charged with certain functions on behalf of the insurance
company, the law does not serve group insurance, but group in-
surance the law.

This approach seems to have been used by the Louisiana court in
the leading case of Neider v. Continental Assurance Co. There the
plaintiff-beneficiary was allowed to recover on a group life insurance
policy insuring her husband's life where, due to the employer-master
policyholder's complicated accounting system, the insured mistakenly
believed he was up to date on his premium payments. The insurer
resisted payment on the grounds that the policy, as per the certificate,
had terminated for failure to pay premiums. The court was impressed
by the complicated nature of the accounting system and concluded
that the employer was under a duty to inform the employee as to what
date his insurance premiums had been paid through payroll deduc-

120. See text accompanying notes 28-50, supra.
121. Hanft, Group Life Insurance: Its Legal Aspects, 2 LAW & CONTEMP. PROB. 70,
86 (1935).

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tions. The opinion emphasized that the social usefulness of group insurance would suffer if poor administration of the policy could defeat an insured's coverage.

The court in *Neider* did not approach the problem posed—whether the beneficiary could recover from the insurer—by first determining the agency characterization of the employer. Rather, it looked to the facts of the case and determined that a grave injustice would be done, both to the individual beneficiary and to group insurance, if the insurer would not be held responsible for the negligence of the master policyholder. Finding the master policyholder to be the agent after this inquiry is far superior to the approach which considers the agency point first, since under the former the equities of the facts can be considered while under the latter they cannot.

Another method of analysis is to distinguish clerical duties from discretionary duties. Under this method a determination that the duties are clerical would imply a master policyholder-insurer agency whereas a finding that the duties are discretionary would not. Thus, the characterization of a relationship as that of agency would depend in turn upon how certain duties are characterized. The author of this suggestion characterizes receipt and forwarding of premiums, forwarding applications and recording of beneficiaries as clerical duties, and duties involving termination of policies, determination of employment status, and waiver of policy provisions as discretionary duties.123

This suggestion comes close to the Hanft suggestion in that the first inquiry should be as to the functional relationship between the parties and the result would be a finding of agency for some purposes but not for others. A criticism of the clerical/discretionary characterization, however, is that it does not involve a clear consideration of policy; that is, it does not ask the question of whether the insurer should be held responsible for the acts of the master policyholder.

CONCLUSION

It is submitted that the courts should consider closely the facts of each case to determine whether the insurer *should* be held responsible

for the acts of the master policyholder, instead of approaching the cases from a standpoint of whether or not the master policyholder is the agent of the insurer in performing certain functions. That is, the courts should look at the equities of the situation rather than the agency position of the parties.

In executing this approach, certain factors should be kept in mind:  
1. The insurer rather than the insured is in a better position to control the conduct of the master policyholder.  
2. The insurer is in a better position to recoup some of the losses occasioned by the master policyholder's conduct. For example, in a situation where the insurer must pay benefits on a policy which the master policyholder never should have issued in the first place, the insurer would be in a better position to sue the master policyholder for his negligence than would the individual insured. Further, the insurer is in a position to spread the risks throughout the participants in the group insurance plan.  
3. It should be determined whether, under the circumstances, the insured was justified in his reliance that he was in fact covered by the terms of the policy.  
4. It should be recognized that to the insured the group insurance contract is one of adhesion which he must accept as is.  
5. It should be borne in mind that the institution of group insurance will lose some of its usefulness if its image can be tarnished by poor administration.

Stephen K. Eugster*

124. (T)he judicial approach has too frequently been in terms of an attempted mechanical application of an all too vague agency concept, rather than on the basis of a recognition of the employee's necessary reliance on the employer for contact with the insurer.  