John B. Turner,

vs.

Travelers Insurance Company, Defe[illegible].

MEMORANDUM BRIEF.

The question before this court is:
loss in an insurance policy, and who can make the

At page 1336, Section 506, 14 R.C.L., we find the [illegible] language:

"Proof of loss may be made by an agent where the assured is not in a position to make them, especially where the insured property was in possession of the agent who procured the insurance and has full knowledge of all the facts. * * * * * * An insurance company which acts upon notice given by a third person of an accident to a policy holder incapacitated from himself giving notice thereof as required by the insurance contract because of resulting unconsciousness receives notice of the accident within the meaning of the terms of the policy."

See Lumberman's Mutual Ins. Co. v. Bell 57 A.S.R. 140;

Simms v. State Ins. Co., 47 Mo. 54; 4 A. R. 311;

Hilmer v. Western Travelers Ass'n, 27 L.R.A. n.s. 319.

But we find this question squarely decided by our Oklahoma Supreme Court in the case of Mid-Continent Life Ins. Co. v. Tackett, 149 Okla. 147. We find the court at page 149 using the following language:

"It is our conclusion that the letter as testified to by the plaintiff, if received, was sufficient to put defendant on notice that the insured had then been permanently disabled by disease for sixty days." Citing Insurance Co. v. N. A. Cochran 59 Okla. 200. American Nat'l Ins. Co. vs. Raffdin, 74 Okla. 146, and Brown v. Fraternal Accident Ass'n of America, 55 Pac. 53.

Since our Oklahoma Supreme Court has decided that a woman could write a letter, telling an insurance company that her husband was fully disabled as was done in the Tackett case above cited and that such proof was sufficient we feel sure that in the case at bar, when the doctor had made proof that the man was totally disabled, but he could not tell when

if eve[illegible]

other physicians and [illegible]

nounced it permanent, and the [illegible]

with the hope of a cure, most ce[illegible]

was furnished on their blanks for him [illegible] he was totally a[illegible] permanently disabled. We do not wish to take up the time of this court in a long brief, for all the authorities hold without a single exception that the insured beneficiary or agent can make proof of loss. See 33 C. J. page 6. Sec. 648. This is fine also Page 9 Sec 652.

In Vol 14 Standard Encyclopedia of Procedure page 51 we find the following language:

"Compliance with the conditions of the policy may be waived; Thus provisions of the policy governing the time for commencing of an action may be waived. An unqualified denial of any liability whatever on the policy relieves the plaintiff from the necessity of further compliance with provisions of the policy, expressly or impliedly, requiring the lapse of time before bringing suit. So, also such a denial within the time for giving notice and proofs of loss is a sufficient excuse for non-performance of the condition requiring notice and proof of loss within a specified time. Such a denial may also be a waiver of compliance with a stipulation requiring the amount of loss to be determined by arbitration."

The above authority and quotation cites approximately every state in the Union. At page 1337, Sec. 507, R. C. L. Vol. 14, we find the following language:

"Satisfactory proof within the meaning of a policy are such as the law deems reasonable and satisfactory. * * * To constitute satisfactory proofs they should be such as to make out a prima facia case against the insurrer, but the evidence need not be by an eye witness. Any form of evidence which is substantial and trustworthy enough to enable the insurer to form an intelligent estimate of its rights is sufficient." See Da Rin v. Casualty Co. of America, 137 A. S. R. 709 and note. 27 L. R. A. NS. 1164.

The note above referred to cites a great number of cases setting out the rule as above stated.

only question before the co... notice and proof heretofore given. The ... that where an insurance ~~in~~ company is sued and plead a general ... they thereby waive all preliminary notices, for the reason that they are denying liability under the policy and not that the suit is prematurily brought. In other words if the insurance company desires to plead that the suit was prematurily brought or raise the question as to proof of notice this must be done specifically. See 33 C. J. P. 32 Sec. 694.

The court may say why not furnish additional proof. This is the very thing the insurance company is wanting us to do for the reason that one court has construed such policies as the one in issue to mean that the proof must be made while the policy is in full force and effect. In other words the company does not become liable until the proof is made, and a company cannot become liable after the policy has expired. So to make the proof now of loss we would be met with the provisions of the policy whereby they were not to become liable until proof was made and no company can become liable under a void policy.

Most respectfully submitted,

Taylor Wallace

Attorneys for Plaintiff.

P. S. We overlooked calling the court's attention to the case of Da Rin v. Casualty Co. of America, and especially the note following this case, reported in 137 A. S. R. at page 719 under the heading as to what is meant by proof. We find the following authroities:

"Proof is merely that quantity of evidence which produces a reasonable assurance of the existance of an ultimate fact: Mo. Trust Co. v. McLachlan, 59 Minn 468, 61 N. W. 560. It has been defined to be a sufficient reason for assenting to a proposition. Horton v. St. Paul etc., 50 N. W. 363; or that quantity of appropriate evidence which produces assurance and certainty, sometimes in policies of life insurance we find the expression of due proof, or satisfactory proof, but the

of proof to be demand[illegible]

been used at all. See Jarvis v. Northwest Mutual Relief Ass'n, 102 Wis. 546.

At page 724 of the same authority we find a lengthy brief on the question of "THE MANNER OF MAKING THE PROOF". But at page 726 of the same authority we find a brief on the question "BY WHOM THE PROOF SHOULD BE MADE". In this connection we find the authority using the following language:

"Where the policy does not specifically name the person by whom the proof must be made it is clear that it may be furnished by any person who can give the required information. Be that as it may where the policy contains the usual provision that the proof shall contain answers to certain questions, it was held in Kelly v. Metropolitan Life Ins. Co. 44 N. Y. Supp. 179, that where the policy was in legal form and did not say that the claimant should furnish the proof the fact that some other person did it in support of the claim could furnish no ground of objection on the part of the company."

At page 730 of the same case we find waiver of proof, and especially at page 733 we find that great jurists of the Supreme Court of the United States, in the case of Manhattan Life Ins. Co. v. Francisco 17 Wall 672, using the following language:

"If the proofs were retained without objections the court could not declare them insufficient."

Also in Crotty v. Union Mutual Life Ins. Co., 144 U. S. 621, Mr. Justice Brewer puts it thus concisely:

"The purpose of proofs of death in life insurance and proofs of loss in fire insurance is to put the insurance company in possession of the facts concerning the death or loss as claimed by the beneficiary, or insured, upon which it is to base its determination as to making or refusing payments, and when it receives such proofs without question it is an admission on its part that they are informed sufficient but not that all the facts stated therein are true."