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DEATH BE NOT PROUD—THE DEMISE OF DOUBLE INDEMNITY TIME LIMITATIONS

In 1949, the Franklin Life Insurance Company issued Bartholomew Burne a life insurance policy in the face amount of \$15,000. The policy also contained a double indemnity¹ rider providing for an accidental death benefit in the amount of \$15,000. This double indemnity provision contained the usual limitation—that the benefit will be payable only if death occurred within ninety days of the accident.²

On January 30, 1959, the insured was accidentally struck by an automobile while crossing a street in Miami, Florida. The injuries sustained were severe and only the use of the most sophisticated medical techniques prolonged the insured's life for 4½ years.

The insurer conceded that the injuries sustained were the direct and sole cause of the insured's death. The face amount of the policy was paid but the insurer denied liability for the accidental death benefits on the basis that the policy required that the insured's death occur within ninety days of the accident.³

The Pennsylvania Supreme Court ruled the ninety-day limitation unenforceable in circumstances where no question existed as to the insured's cause of death.⁴ *Burne v. Franklin Life Insurance Co.*, 451 Pa. 218, 301 A.2d 799 (1973).

1. A double indemnity provision is defined as "[a] provision in a life insurance policy, whereby the company agrees to pay twice the face of the contract in case of accidental death." WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1957). However, these benefits "have been variously designated as 'double indemnity,' 'additional indemnity,' and 'accidental death benefits. . . .' Strictly speaking, the term 'double indemnity' is no longer applicable now that companies . . . are willing to issue amounts of accidental death benefits which may be a multiple of the policy's face . . ." D. GREGG, LIFE AND HEALTH INSURANCE HANDBOOK 269 (2d ed. 1964) [hereinafter cited as GREGG].

2. J. GREIDER AND W. BEADLES, LAW AND THE LIFE INSURANCE CONTRACT 212 (rev. ed. 1968) [hereinafter cited as GREIDER AND BEADLES].

3. Supplemental Brief for Appellee at 13, *Burne v. Franklin Life Ins. Co.*, 451 Pa. 218, 301 A.2d 799 (1973).

4. A further limitation in the accidental death coverage provided that the benefit would not be paid if death occurred at a time when the premium was being waived by the insurer. However, no premiums are waived until the insured submits proof that he has been totally disabled for six months. The court determined that the waiver of premium exception violated public policy and thus was unenforceable. 451 Pa. at —, 301 A.2d at 801. Furthermore, the majority ruled that the waiver

The purposes of this note are to review briefly significant decisions which, unlike *Burne*, have upheld the validity of such time limitations; to examine the court's justifications for departing from prior decisions; and to explore the potential ramifications of *Burne* on insurance underwriting and claim practices.

Burne is the first decision which sustains the contention that enforcement of the time limitation where there is no question as to the insured's cause of death violates public policy.

In *Mullins v. National Casualty Co.*⁵ the court, under circumstances similar to those in *Burne*,⁶ refused to adopt medical causation as the criterion to be used in determining the insurers liability for double indemnity benefits. It did not rule the time limitation provision to be unreasonable or oppressive. Rather, it upheld the time limitation, observing that the parties had voluntarily entered into the contract and the contractual language was clear and unambiguous.

In *Douglas v. Southwestern Life Insurance Co.*⁷ the court enforced the limitation even though the insured had sustained fatal injuries which, but for extraordinary medical measures, would have resulted in the insured's death within the time period. *Douglas* further rejected a contention that such time limitations unduly influenced the beneficiaries' decision concerning medical treatment to be given the insured.

The majority in *Burne* without mentioning either *Mullins* or *Douglas* held that the time limitation violates public policy and propounded two reasons to support its decision. First, it declared that "to predict liability under a life insurance policy upon death occurring on or prior to a specific date . . . offends the basic concepts and fundamental objectives of life insurance. . . ."⁸ Second, it stated that such a provision "might . . . encourage something less than the maximum medical care on penalty of financial loss. . . ."⁹

With respect to the first of the aforementioned reasons, two apparent problems arise. First, the majority in *Burne* failed to articulate what "basic concepts and fundamental objectives" might have been contra-

of premium provision when read in conjunction with the ninety-day limitation created an ambiguity which would be construed in a light most favorable to the insured. 451 Pa. at —, 301 A.2d at 803.

5. 273 Ky. 686, 117 S.W.2d 928 (1938).

6. In both cases, the insured had sustained serious injuries which were likely to be fatal and which did eventually cause the insured's death. However, in both cases, due to the extraordinary medical measures taken, the death of the insured had been prolonged beyond the time specified in the policy.

7. 374 S.W.2d 788 (Tex. Civ. App. 1964).

8. 451 Pa. at —, 301 A.2d at 802.

9. *Id.*

vened. In support of its ruling, the court offered two observations: the thought of the "gruesome paradox"¹⁰ which is perceived would result from a denial of recovery and the observation that the "basic concepts and fundamental objectives" of life insurance have been breached by such a time limitation.

The second problem manifested by the majority's public policy ruling is the negative effect which may result from its literal application in cases not necessarily involving a double indemnity provision. The manner of predicting liability—which the court determined offended public policy—describes not only the ninety-day limitation and age requirement¹¹ in a typical double indemnity provision but includes term insurance as well.¹² It seems questionable whether the court intended to state its objection to the ninety-day limitation so broadly that, in doing so, it would cast doubt upon the validity of the oldest type of life insurance¹³ coverage as well as other types of time limitations.¹⁴

An analysis of the majority's second public policy argument, that the time limitation might adversely affect the insured's chances of receiving maximum medical care, need not extend beyond a restatement of the contentions raised by the dissent. Justice Pomeroy in his dissent, argued that there was nothing in the record of the case to substantiate the majority's conclusion that a time limitation might have a tendency to encourage the beneficiary to deny medical treatment to the insured. He believed, further, that even if beneficiaries were disposed to deny medical treatment to the insured because of the financial advantage that would accrue to them upon the death of the insured within the time stated in the double indemnity provision, such a disposition probably would not be abated simply by rejecting the ninety-day limitation.¹⁵ Thus, the ma-

10. *Id.* at —, 301 A.2d at 801. The paradox, according to the court, results in paying accidental death benefits to a beneficiary when the insured has died within the time specified in the limitation, but denying recovery to a beneficiary who incurs more expense and suffers greater agony by prolonging the insured's life. *Id.* at —, 301 A.2d at 801-02.

11. Another limitation customarily included in accidental death coverage is that the insured's death must occur before a specified age. J. MACLEAN, LIFE INSURANCE 244 (9th ed. 1962) [hereinafter cited as MACLEAN].

12. Term Insurance is defined as "[a] . . . policy under which the sum insured becomes payable only if the person insured dies within a stated period." *Id.* at 28.

13. GREGG, *supra* note 1 at 37.

14. Other limitations are incorporated into the double indemnity coverage for reasons different from the reason for the ninety-day limitation. The age limitation is inserted primarily to maintain the low cost of double indemnity coverage since the risk of accidental death increases rapidly in later life. See MACLEAN, *supra* note 11.

15. 451 Pa. at —, 301 A.2d at 808-09.

majority in *Burne* offered little of substance in support of its conclusion that the ninety-day limitation violates public policy.

However, the majority in *Burne* went beyond the argument that public policy had been violated by operation of the ninety-day limitation. The court stated categorically that prior decisions upholding the limitation were not persuasive since they provide no compelling rationale for applying the limitation where, as in *Burne*, no question existed as to the insured's cause of death.¹⁶

The rationale that the court found unpersuasive was first articulated in *Brown v. United States Casualty Co.*¹⁷ Brown, the insured, sustained serious injuries upon being thrown from a dogcart. The insurer admitted that the sole cause of the insured's death was the injuries sustained in the accident,¹⁸ yet the insurer denied liability because the death of the insured occurred beyond the time specified in the policy. The court determined the limitation to be "reasonable, clear and unambiguous" and, as such, a bar to recovery of the accidental death benefits. It substantiated its conclusion on the basis that the insured had contracted for the insurance with full awareness of the ninety-day limitation.¹⁹ Such a limitation was reasonable since the final result of an accident, according to experience and statistics maintained on the subject, could reasonably be expected within the time allotted in the provision.²⁰ Furthermore, it would be unreasonable to hold the insurer liable for a death occurring beyond the time specified in the provision since the premium charged the insured was only commensurate with the risk that had been assumed by the insurer; that is, the risk of death resulting within ninety days from the accident.²¹

In *Clarke v. Illinois Commercial Men's Ass'n*²² the court attended to the focal point of concern, the proximate cause of the insured's death.²³

16. *Id.* at —, 301 A.2d at 802-03.

17. 95 F. 935 (C.C.N.D. Cal. 1899).

18. *Id.* at 936.

19. *Accord*, *Mullins v. National Cas. Co.*, 273 Ky. 686, 688, 117 S.W.2d 928, 932 (1938); *Hargrave v. Fidelity Mut. Life Ins. Co.*, 196 Pa. Super. 627, 630, 175 A.2d 912, 914 (1961); *Douglas v. Southwestern Life Ins. Co.*, 374 S.W.2d 788, 793-94 (Tex. Civ. App. 1964).

20. *Accord*, *Shelton v. Equitable Life Assur. Soc'y of the United States*, 28 Ill. App. 2d 461, 469, 171 N.E.2d 787, 791 (1961). *Cf.*, *Crowe v. North American Acc. Ins. Co.*, 96 S.W.2d 670, 671 (Tex. Civ. App. 1936) (thirty-day limitation held unreasonable time for occurrence of final result of an accident but provision was nevertheless enforced because of its explicit terms).

21. *Accord*, *Bennett v. Life & Cas. Ins. Co.*, 60 Ga. App. 228, 3 S.E.2d 794 (1939); *Hudson v. Mutual Ben. Health & Acc. Ass'n*, 184 S.W.2d 188, 189 (Mo. Ct. App. 1944).

22. 180 Ill. App. 300 (1913).

23. *Id.* at 302-03.

Since questions as to the cause of the insured's death would inevitably arise, the court concluded that such a time limitation had been incorporated into the double indemnity coverage as a method of dealing with such a question.²⁴ Such an arrangement was acceptable to the court upon the theory that if death occurred beyond the time specified in the provision, it could reasonably be attributed to causes other than the accident.

In *Sidebothom v. Metropolitan Life Insurance Co.*,²⁵ the controlling authority in Pennsylvania prior to *Burne* on the validity of the time limitation in a double indemnity provision, it was the combined effect of bodily injuries sustained on three separate occasions which had caused the insured's death. Mrs. Sidebothom, the beneficiary, urged the court to adopt an interpretation of the ninety-day limitation which would merely require that there be a bodily injury within ninety days. The Pennsylvania Supreme Court ruled that the limitation covered cases involving a single bodily injury where death occurred beyond the time specified in the provision, as well as situations involving multiple injuries. The *Burne* court discarded *Sidebothom* because, unlike *Burne*, the injuries sustained by the insured in *Sidebothom*, involved inherent uncertainty as to their likely results.²⁶

However, nothing in the opinion of *Sidebothom* or any other prior case that dealt with the validity of the time limitation, indicates an intention to distinguish time limitation cases involving questions of proximate cause and time limitation cases involving no such question.

Moreover, it would seem that the factual distinction drawn by the court is questionable for three reasons. First, the court excluded from consideration cases where, as in *Burne*, the injury sustained by the insured would be considered fatal.²⁷ The court in each of those cases applied the limitation without placing any importance upon whether or not death was a likely result of the accident. Second, there seems to be little if any correlation between the factual distinction drawn by the court and its subsequent ruling that such a provision should not be enforced where the cause of death is undisputed. Conceivably, a situation could arise with some initial uncertainty both as to the severity of an accidental injury and as to whether death will ultimately result. Yet, when death does ensue it is unquestionably the result of the accidental injury sus-

24. *Id.* at 303.

25. 339 Pa. 124, 14 A.2d 131 (1940).

26. 451 Pa. at — n.4, 301 A.2d at 802 n.4.

27. *Mullins v. National Cas. Co.*, 273 Ky. 686, 687, 117 S.W.2d 928, 929 (1938); *Douglas v. Southwestern Life Ins. Co.*, 374 S.W.2d 788, 790 (Tex. Civ. App. 1964).

tained by the insured. Finally, of the cases cited by the court as supportive of its position, several present a situation where the limitation was enforced even though the insurer admitted that the insured's death was accidental.²⁸

Although the court distinguished past authority, concluding it to be inapplicable to the facts as presented in *Burne*, it nevertheless needed some reason for not applying the limitation. The court provided a rationale by focusing on the supposed purpose of the limitation. The court concluded that such limitations were incorporated into double indemnity coverage in order "to govern situations where there existed some possible uncertainty over whether the injuries sustained in an accident would actually result in death."²⁹ The court reasoned that, since the injuries sustained by the insured in *Burne* were likely to be fatal and since such a contingency was not within the intended scope of the ninety-day limitation, the limitation, on the basis of well established precedent, should be disregarded as incapable of reasonable application to the present facts.³⁰ This aspect of the court's reasoning is not beyond reproach, since the court's initial premise as to the underlying purpose of the limitation would appear to be unsupported.³¹ Furthermore, the dissent contended that the principle of disregarding a provision, if it cannot reasonably be applied to the facts, is a rule of law to be invoked only where there exists

28. *Spaunhorst v. Equitable Life Assur. Soc'y of the United States*, 88 F.2d 849 (8th Cir. 1937); *Brown v. United States Cas. Co.*, 95 F. 935 (C.C.N.D. Cal. 1899).

29. 451 Pa. at —, 301 A.2d at 802.

30. *Id.* at —, 301 A.2d at 802-03.

31. The *Clarke* case, 180 Ill. App. 300 (1913), appears to be the only instance prior to *Burne* where the court chose to articulate what it understood to be the purpose of the time limitation. The court concluded that the limitation was intended to provide a method for dealing with questions that might arise over the insured's cause of death. If death occurred beyond the time specified in the policy, it could, in all likelihood, be attributed to either prior or intervening causes. See text accompanying nn. 22-24 *supra*. Therefore, the severity of the injury and the fact that the injury did eventually cause the insured's death would be irrelevant in determining the liability of the insurer if death resulted beyond the time specified in the policy.

These conflicting interpretations as to the purpose of the ninety-day limitation should be compared with the following statements: The ninety-day limitation "is reasonable on practical grounds since, if a long period elapses between an accident and death, there may be a real question whether the accident was the sole cause of death." MACLEAN, *supra* note 11.

"The purpose of this restriction is to assure reasonably that the accident was the sole cause of the death." S. HUEBNER AND K. BLACK JR., *LIFE INSURANCE* 200 (8th ed. 1972).

The ninety-day limitation "is intended primarily to reduce problems that may arise when the intervening time lapse might make it doubtful that the injury was the true cause of death." GREIDER AND BEADLES, *supra* note 2.

some question as to the intention of the parties, a situation the dissent felt was not present in *Burne*.³²

Assuming that the court's conclusion as to the purpose of such limitations was correct and that they should not be applied in cases with facts similar to *Burne*, the court failed to show why medical causation should be the criterion used to determine the insurer's liability. Therefore, not only was the court's departure from past authority questionable, it predicated its determination that such clauses are unreasonable upon two weak premises: an interpretation of the purpose of such limitations which appears to be unsupported, and a line of precedent which arguably does not apply to the facts as presented in *Burne*.

It is proper, at this point, both to examine certain factors not considered by the *Burne* court, and to evaluate the court's rationale for ignoring the time limitation. The court in *Burne* raised the question, but did not hold, that the reasonableness of the limitation may be suspect in light of modern medical advances. This analysis will begin by focusing on this unanswered question. In *Brown*, the court ruled that the time specified in the provision was a "fair length of time for the final result of an accident" ³³ In the 100 years since this rationale was first propounded, modern medicine has become quite adept at prolonging life.³⁴ Therefore, if ninety days is not already an unfair amount of time to allow for the final result of an accident, it would, assuming medical research continues to grow, eventually become so. One method to obviate this problem would be to increase the number of days within which the accidental death must result. While ninety days is the usual time for such a limitation,³⁵ there are other periods³⁶ and it does not seem beyond comprehension that one of the reasons for companies offering a longer time period has been a recognition by them of such medical advances. However, simply extending the period of time is not the optimal solution, for eventually the advances of medicine would cast doubt upon the reasonableness of this new period. The decision in *Burne* avoids this pitfall

32. 451 Pa. at —, 301 A.2d at 806-08.

33. 95 F. at 937.

34. Artificial respirators, blood-matching, antibiotics, artificial valves and transfusion systems are but a few examples of the modern equipment and techniques that may be utilized to keep an accident victim alive. See generally TIME, July 16, 1973, at 36-37.

35. GREIDER AND BEADLES, *supra* note 2.

36. The accidental death benefit provision in life insurance policies issued by the New York Life Insurance Company contain 120-day time limitations, while 180-day limitations are provided in similar coverage offered by the Massachusetts Mutual Life Insurance Company.

by focusing its attention on actual causation rather than on an arbitrary time limitation.

Another reason advanced by many of the courts which have held the time limitation to be reasonable takes the form of a categorical pronouncement that such a limitation was within the contemplation of the parties.³⁷ However, the time stated within the provision is not reached by process of negotiation between the parties but is a standard time which the individual must accept if he desires the accidental death protection. Can it be said that the time limitation was voluntarily³⁸ contracted for or that the individual desirous of obtaining accidental death protection intended to exclude such recovery simply because of the misfortune of having his life prolonged, although death was unquestionably the result of an accident?³⁹

Decisions have also based the reasonableness of such a limitation upon a conclusion that statistics were kept on the number of deaths which occur within the time limitation and that these statistics then provided the basis for calculation of the premium to be charged the insured.⁴⁰ The dissent accepted as fact that "insurance companies . . . set their

37. *Clarke v. Ill. Commercial Men's Ass'n*, 180 Ill. App. 300 (1913); *Douglas v. Southwestern Life Ins. Co.*, 374 S.W.2d 788 (Tex. Civ. App. 1964).

38. The beneficiary in *Burne* contended that the double indemnity agreement was a "classic example of a 'contract of adhesion,'" in which there was no "arms length" bargaining over the terms to be included in such coverage. As a result, the deceased had no opportunity to render the provision inapplicable "where the historical basis for the clause is not present. . . ." Supplemental Brief for Appellant at 16-20, *Burne v. Franklin Life Ins. Co.*, 451 Pa. 218, 301 A.2d 799 (1973).

39. GREIDER AND BEADLES, *supra* note 2, at 213. In assessing the validity of the time limitation, the *Burne* court could have inquired as to whether, under the circumstances, the time limitation was within the reasonable expectations of the applicant. Professor Keeton in his article, *Insurance Law Rights At Variance With Policy Provisions*, 83 HARV. L. REV. 961 (1970), states this principle as the following:

The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.

Id. at 967.

However, the precise circumstances which would allow application of the Doctrine of Reasonable Expectations are in dispute. While Professor Keeton would apply the principle very liberally, others have suggested that it be confined to situations where the extent of the policy's coverage is unclear. Perlet, *The Insurance Contract and the Doctrine of Reasonable Expectation*, 6 FORUM 116 (1971); Squires, *A Skeptical Look at the Doctrine of Reasonable Expectation*, 6 FORUM 252 (1971).

40. *Brown v. United States Cas. Co.*, 95 F. 935 (C.C.N.D. Cal. 1899); *Bennett v. Life & Cas. Ins. Co.*, 60 Ga. App. 228, 3 S.E.2d 794 (1939); *Hudson v. Mutual Ben. Health & Acc. Ass'n*, 184 S.W.2d 188 (Mo. Ct. App. 1944).

rates in reliance on the actuarial statistics and other data pertaining to deaths within 90 days."⁴¹ However, what was initially stated as a presumption⁴² on the part of the court and later articulated as fact⁴³ has little basis in reality, for it would seem that no such statistics exist.⁴⁴

Finally, the contention is made that to allow medical causation to determine liability would be to open the courts to a flood of litigation regarding the cause of the insured's death.⁴⁵ Three factors militate against supporting such a conclusion. First, the essence of the insurance contracted for is to provide against an accidental death. It would seem to be more logical to focus upon medical causation rather than on whether the insured died within a specific number of days. Even though past decisions upheld the time limitation as a suitable substitute for an actual determination of the insured's cause of death, such a conclusion was grounded on a number of assumptions pertaining to the limitation's reasonableness, some of which, as this note has attempted to show, seem questionable. Second, while there appear to be no statistics maintained upon the number of cases in which accidental death results outside the

41. 451 Pa. at —, 301 A.2d at 809.

42. *Brown v. United States Cas. Co.*, 95 F.2d 935, 937 (C.C.N.D. Cal. 1899).

43. *Bennett v. Life & Cas. Ins. Co.*, 60 Ga. App. 228, 3 S.E.2d 794 (1939); *Hargrave v. Fidelity Mut. Life Ins. Co.*, 196 Pa. Super. 627 (1961). See Comment, *Insurance—Effect of Death More Than 90-days After Accident, Under Double Indemnity Policy*, 35 ILL. B.J. 169 (1946).

44. One of two methods is used in determining the premium for accidental death benefits. The insurer may charge a flat rate per \$1,000 of insurance irrespective of the insured's age, or the insurer may base his premium rate upon the "Intercompany Accidental Death Table." This table bases the rate upon the experience of a group of companies during the period of 1926 to 1933. In 1959 a new table based on the period 1951 to 1956 was published. MACLEAN, *supra* note 11, at 245. Nothing within this authority suggests that actuarial statistics based upon the number of deaths which occur within the ninety-day period are maintained.

In response to a questionnaire, the following insurance companies replied to the *DePaul Law Review* that they maintained no statistics on the number of deaths that occurred within the time specified in the time limitation: (1) John Hancock Mutual Life Insurance Company, (2) The Equitable Life Assurance Society of the United States, (3) The Mutual Benefit Life Insurance Company. Letters on file in the offices of the *DePaul Law Review*.

Insurance companies that predicate their rates on the "Intercompany Accidental Death Table" may argue that their rates are determined with reference to the ninety-day limitation, since the experience for that table was accumulated with the ninety-day limitation in effect. However, since no actual statistics are maintained reflecting the instances where the individual died within the time limitation or where the insurer waived the provision, it is difficult to say that these rates would have been different had the limitation not been in operation.

45. Supplemental Brief for Appellee at 6, *Burne v. Franklin Life Ins. Co.*, 451 Pa. 218, 301 A.2d 799 (1973).

time limitation, the number of such cases is likely to be few.⁴⁶ Finally, the practice is not uncommon in the insurance industry for a company to maintain an in-house policy of waiving the ninety-day provision where no question exists as to the cause of the insured's death.⁴⁷ Perhaps such a policy of waiving the time limitation is tacit recognition on the part of the insurer that medical causation is a better approach to determining whether an insured is entitled to recover accidental death benefits.

Thus, *Burne* is not only a reasonable result but the better approach to determine the insurer's liability for double indemnity benefits where no question exists as to the insured's cause of death.

Concerning the future judicial treatment of such time limitations one can only speculate as to the effect *Burne* will have on the underwriting or claim practices of the insurance industry as a whole. It is unlikely that insurers will change their policies to substitute medical causation for the time limitation. Rather, they will leave their policies undisturbed, preferring to rely upon the overwhelming weight of authority contrary to *Burne*. Such a posture by the insurer places a burden upon a beneficiary of determining the likelihood of a court following the ruling in *Burne*. However, under factual situations similar to the one presented in *Burne* where death is clearly the result of the accident and the amount of the benefit is nominal, it would not seem unlikely to see an increased tendency of waiving the ninety-day limitation rather than litigating the issue of its enforceability. It is also unlikely that the decision in *Burne* will result in any increase in the cost of life insurance because the premium charged for double indemnity coverage makes up only a small part of the total life insurance cost structure.⁴⁸

46. The Department of Policy Claims of the Equitable Life Assurance Society of the United States stated that, while the company maintains

no statistics on the number of cases processed which invoke the waiver or invoking of the 90-day clause, . . . from experience I would venture to estimate that not more than nine or ten cases a year turn on this question.

Incidentally we process some 1600 accidental death cases a year.

Letter from W.A. Narducci to the *DePaul Law Review*, Aug. 14, 1973, on file in the offices of the *DePaul Law Review*.

47. GREIDER AND BEADLES, *supra* note 2, at 213. In response to a questionnaire, several major companies acknowledge that they in fact would, under certain circumstances, honor a claim for double indemnity benefits where the insured had died beyond the time specified in the policy. They emphasized that there were no set guidelines as to what circumstances would lead to a waiver of the ninety-day limitation, since the validity of each claim had to be decided on a case-by-case basis. Letters on file in the offices of the *DePaul Law Review*.

48. MACLEAN, *supra* note 11, at 241-42; D. BICKELHAUPT AND J. MAGEE, *GENERAL INSURANCE* 720 (8th ed. 1970).

While cynics will note *Burne* as just another instance of a court ignoring the clear and unambiguous language of a policy provision, the decision is significant for what it may bring about. It may urge other jurisdictions to reexamine rationales espoused in support of the validity of the time limitations, which in far too many instances were but perfunctorily applied.

Gregory M. White