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Severability of Insurance Contracts

INSURANCE

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Plaintiff, assignee of a life insurance contract with disability clause, sued for breach of the life insurance feature. The policy provided for separate premiums, one for disability insurance and the other for life insurance. In a previous suit the insured had recovered for breach of the disability clause. Held, life insurance and disability clause constituted two distinct contracts and assignee had a separate cause of action. *Armstrong* v. *Illinois Bankers Life Association*, 29 N. E. (2d) 415 (Ind. 1940).

The court, in declaring the contract severable, relies upon the facts that the risk upon the two types of insurance is different and the consideration is apportioned. Since the contract is severable, there are two causes of action and a recovery for disability benefits in a previous suit is not res judicata to a suit for life insurance. *Rosso v. New York Life Insurance Company*, 157 Miss. 469, 128 So. 343, 69 A. L. R. 883, 889 (1930).

The test most frequently applied by the courts to determine severability in contract cases is whether the consideration is entire or apportioned. *Thompson v. Fesler*, 74 Ind. App. 80, 123 N. E. 188 (1920). In a previous case with facts similar to the principal case, an Indiana court denied recovery on the consideration test, since a single premium was paid. *Indiana Life Endowment Co.* v. *Carnithan*, 62 Ind. App. 567, 109 N. E. 851 (1916). In fire insurance cases the courts have adopted a further test that where the risk on one insured item is affected by the risk on the other insured item, the contract is entire. *Havens* v. *The Home Insurance Co.*, 111 Ind. 90, 12 N. E. 137 (1887). The risk test now seems to be applied to supplement the consideration test in life insurance policies with disability clauses. *Guardian Life Insurance Co.* v. *Barry*, 213 Ind. 56, 10 N.E. (2d) 614 (1937). In fire insurance policies the risk test alone is sufficient to declare a contract severable even where the premium is single. *The Phenix Insurance Co. of Brooklyn v. Pickel*, 119 Ind. 155, 21 N. E. 546 (1889). The principal case is in accord with other jurisdictions declaring the contract severable on the test of consideration. *Rosso v. New York Life Insurance Company*, 157 Miss. 469, 128 So. 343, 69 A. L. R. 883 (1930). The inclusion of the risk test is, however, unique and in view of the *Carnithan* case, it is doubtful if *the* test would be sufficient, by itself, to make the contract severable. A.M.H.