

matter of law under 204.34 (3). *Vlasis v. Cheese Makers Mut. Cas. Co.* 268 W 389, 68 NW (2d) 23.

204.30 and 204.34 (1) (a) deal with and apply only to automobile liability policies; they do not apply to collision policies insuring the named insured's motor vehicle against damage from collision without regard to anyone's negligence and under which such insured is liable to no one; and hence they do not preclude the inclusion in such a policy of a provision excluding such coverage where the insured is being operated at the time of collision by a person not legally licensed to operate an auto. *Schaal v. Great Lakes Mut. F. & M. Ins. Co.* 6 W (2d) 350, 94 NW (2d) 646.

Where an insurer knew of and investigated an accident in which its insured was killed, but was not made a party to a subsequent action for damages which was later dismissed and was not notified of the claim against its insured until 13 months after service, it was prejudiced by the failure to give notice. *American Ins. Co. v. Rural Mut. Cas. Ins. Co.* 11 W (2d) 405, 105 NW (2d) 798.

204.34 (2) was not intended to prohibit the issuing company from extending greater coverage to one of the members of the family of the named insured than required under 204.30 (3), without extending such coverage to all members of the family. *Klatt v. Zera*, 11 W (2d) 415, 105 NW (2d) 776.

See note to 204.30, on liability of insurer, citing *Stippich v. Morrison*, 12 W (2d) 331, 107 NW (2d) 125.

Failure to give the notice of accident within the time prescribed by the policy does not relieve the insurer from liability on the policy unless it was prejudiced by such delay, and the statute thereby creates a presumption of prejudice which the person claiming liability is required to rebut. *Kohls v. Glassman*, 29 W (2d) 324, 139 NW (2d) 37.

An automobile insurance company cannot avoid liability under 209.06 because of false statements in the application, since this would circumvent legislative intent. *Zepczyk v. Nelson*, 35 W (2d) 140, 150 NW (2d) 413.

Although Wisconsin does not permit a family exclusion in an insurance contract written and issued in Wisconsin, it is not against state policy to recognize and enforce such a provision in a foreign contract. *Urhammer v. Olson*, 39 W (2d) 447, 159 NW (2d) 688.

So much of 204.34, Stats. 1967, as sets forth as a limitation on what can be excluded from coverage in an automobile insurance contract "the operation, manipulation or use of such motor vehicle for unlawful purposes", must be read in conjunction with 346.94 (2), which provides that it is unlawful to participate in any "race or speed or endurance contest upon any highway", and thus the statutory limitation on exclusions of coverage encompasses use of the insured vehicle for the purpose of transversing a length of public highway in a prearranged speed contest. *Krempel v. Noltze*, 41 W (2d) 454, 164 NW (2d) 227.

204.34, Stats. 1967, applies only to insurance contracts written in Wisconsin. *Ford v. Graf*, 279 F Supp. 692.

Notice of accident to automobile liability insurer. 33 MLR 247.

The requirements and effect of the notice condition in the liability insurance policy. *Duffy*, 51 MLR 366.

The cooperation clause in automobile liability insurance policies. *Erdmann*, 51 MLR 434.

The "temporary substitute automobile" an unowned-owned vehicle. *Clancy*, 52 MLR 146.

Liability insurance: effect of false statements on duty to cooperate. *Schoone and Berzowski*, 52 MLR 221.

Liability of excess and primary automobile insurance companies for defense costs. *Anderson*, 52 MLR 367.

Interest payments under the supplementary payments provision of the standard automobile liability policy. *Anderson*, 52 MLR 396.

**204.35 History:** Stats. 1931 s. 208.03 (4) to (6); 1933 c. 344 s. 22; Stats. 1933 s. 204.35; 1947 c. 100; 1951 c. 33.

**Revisor's Note, 1933:** Transferred to chapter 204 for better arrangement. The law which specifies the legal investments for domestic fraternal benefit societies is extended to foreign societies seeking a license. This makes the rule more certain and simple. The change probably adds to the kinds of investments which such foreign societies may make. Subsection (6) was 1955a—1, renumbered by chapter 639, Laws 1913, (7) was 1955b—5 created by chapter 158, Laws 1909; (8) was created by chapter 639, Laws 1913. The limitation on insurance companies (other than fraternal benefit societies) is in 201.16. [Bill 51-S, s. 22]

**204.36 History:** 1941 c. 240; Stats. 1941 s. 204.36.

## CHAPTER 205.

### Workmen's Compensation Insurance.

**205.01 History:** 1917 c. 637 s. 2; Stats. 1917 s. 1921—1; 1923 c. 291 s. 3; Stats. 1923 s. 205.01; 1933 c. 487 s. 162; 1933 c. 489 s. 10; 1937 c. 329; 1961 c. 354.

**Committee Note, 1961:** The transaction of workmen's compensation insurance is regulated by chapter 205. The last major revision of this chapter was in 1933, and many sections are more than 30 years old. There have been several relatively minor amendments or repeal of certain sections which has resulted in a numbering of the sections and a presentation of material that is frequently not in proper sequence in the existing statute. The current practices of the Wisconsin compensation rating bureau, the industrial commission and the insurance department are in several respects quite different from the procedures described by statute. There has been a considerable evolution in the approach to insurance regulation since the enactment of P.L. 79-15. There are important considerations on which the present statute is silent which have been incorporated in the proposed new chapter. The chapter as proposed is intended to update the law consistent with current practices without effecting any significant changes from the essential elements of the present statute. [Bill 190-A]

**205.03 History:** 1961 c. 354, 624; Stats. 1961 s. 205.03; 1969 c. 337 ss. 62, 88.

Rules and regulations providing for workmen's compensation insurance as prescribed by ch. 205, Stats. 1925, and rules and regulations adopted by the compensation insurance board for regulating and controlling the method of doing and carrying on such business, are binding upon all members and prohibit any insurance company from writing insurance at rate or deposit premium other than that approved by the board. Any violation of that law or rules adopted by the board should be prosecuted under provisions of this section. 16 Atty. Gen. 306.

"Rejected" compensation insurance risks are allotted among bureau companies in rotation. A mutual company may not require of such risk a rider waiving dividends of a company applicable to its compensation insurance. A merit rating schedule may not classify "rejected risks" as such, but must base its merit rating upon actual conditions affecting hazard. 21 Atty. Gen. 472.

**205.04 History:** 1961 c. 354; Stats. 1961 s. 205.04.

**205.05 History:** 1961 c. 354; Stats. 1961 s. 205.05; 1969 c. 144 s. 27; 1969 c. 276 s. 584 (1) (b).

Under ch. 205, Stats. 1935, the commissioner of insurance, in establishing a plan of experience rating for an industry and in making an experience rate for an employer, must charge the employer for failure to take precautions to protect his employes as well as credit him for precautions that he does take. The plan for merit rating for compensation insurance and for experience rating for the employer must be uniform and apply to all those who are insured in the same class. The rating plan in effect when a contract of insurance is made becomes part of the contract and the commissioner may not revise the plan and make it retroactive to the beginning of the policy year. Where the insurer, before writing the policy, required the physical examination of employes which resulted in the discharge of several and their filing of compensation claims, and the insurer set up reserves against the claims and settled and paid the claims pursuant to settlements approved by the commissioner the claims amounted to an incurred loss which was to be considered in determining the employer's experience rate. Wisconsin Compensation R. & I. Bureau v. Mortensen, 227 W 335, 277 NW 679.

In deciding on the adequacy of the schedule of expense loading of a company writing workmen's compensation insurance, the compensation insurance board cannot consider an agreement by representatives of the company to pay all expenses in excess of such schedule. 6 Atty. Gen. 781.

**205.06 History:** 1961 c. 354; Stats. 1961 s. 205.06.

**205.07 History:** 1961 c. 354; Stats. 1961 s. 205.07.

**205.08 History:** 1961 c. 354; Stats. 1961 s. 205.08; 1969 c. 276 s. 584 (1) (b); 1969 c. 337.

**205.09 History:** 1961 c. 354; Stats. 1961 s. 205.09.

**205.10 History:** 1961 c. 354; Stats. 1961 s. 205.10.

**205.11 History:** 1961 c. 354; Stats. 1961 s. 205.11; 1969 c. 337 s. 88.

**205.14 History:** 1917 c. 637 s. 2; Stats. 1917 s. 1921—29; 1923 c. 291 s. 3; Stats. 1923 s. 205.29; 1933 c. 487 s. 190; 1961 c. 354; Stats. 1961 s. 205.14.

**205.16 History:** 1951 c. 514; Stats. 1951 s. 205.31; 1961 c. 354, 562, 624; Stats. 1961 s. 205.16.

**205.17 History:** 1961 c. 354; Stats. 1961 s. 205.17.

## CHAPTER 206.

### Life Insurance.

**206.01 History:** 1907 c. 637; 1909 c. 120; Stats. 1911 s. 1946x; 1915 c. 312 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 206.01; 1933 c. 487 s. 192.

In construing contracts such as life insurance policies words should be given common, not technical interpretations according to common and approved usage, unless inconsistent with the manifest intent. *Charette v. Prudential Ins. Co.* 202 W 470, 232 NW 848.

**206.02 History:** 1870 c. 59 s. 1, 3, 27; 1878 c. 214; R. S. 1878 s. 1947; 1885 c. 101; 1887 c. 309; Ann. Stats. 1889 s. 1947; Stats. 1898 s. 1947; 1903 c. 214 s. 1; Supl. 1906 s. 1947; 1907 c. 640; 1909 c. 39; 1915 c. 604 s. 81; 1917 c. 599; 1919 c. 671 s. 32; 1923 c. 291 s. 3; Stats. 1923 s. 206.02; 1933 c. 487 s. 193; 1943 c. 436; 1947 c. 240; 1955 c. 537, 661; 1961 c. 562; 1969 c. 276 s. 597 (2), (3); 1969 c. 337 s. 88.

**Revisor's Note, 1933:** The first proviso in (10) is invalid. *Terral v. Burke Const. Co.* 257 US 529 (overruling *Doyle v. Insurance Co.* 94 US 538). The second proviso is a duplication of 201.43. The subject of 206.02 (3) (b) is chiefly and perhaps wholly covered by 201.11, 201.14 and 201.17. Section 206.02 (3) (b) was created by chapter 39, Laws 1909, and 201.11 was created by chapter 460, Laws 1909. Chapter 39 was a slight amendment whereas chapter 460 was a new enactment of a general scheme of insurance. Subsection (5) is made general. [Bill 50-S, s. 193]

The commissioner of insurance cannot arbitrarily refuse to license a company to do insurance business in this state if it has complied with all prescribed qualifying conditions. 1904 Atty. Gen. 157.

A foreign stock life insurance corporation may loan money in Wisconsin to be secured by real estate mortgages in this state without first obtaining the license as provided in 206.02 (11), Stats. 1949. Before engaging in such business, the company must comply with 226.02 (2). 38 Atty. Gen. 316.

**206.03 History:** 1903 c. 104; 1915 c. 604 s. 48, 99; Stats. 1915 s. 1947a; 1917 c. 106 s. 2; 1919 c. 425 s. 18; 1919 c. 702 s. 73; 1923 c. 291 s. 3; Stats. 1923 s. 206.03; 1933 c. 236 s. 2; 1933 c. 487 s. 194; 1943 c. 143; 1957 c. 455.

**Revisor's Note, 1933:** The first part is a repetition of 201.05 (2) (b) and later it con-