

TEXAS INSURANCE LAW NEWSBRIEF

FEBRUARY 25, 2014

FAILURE TO FOLLOW PROCEDURE TO REINSTATE LAPSED POLICY IS FATAL

U.S. District Court Judge John McBryde granted the insurer's motion for summary judgment because the life insurance beneficiary failed to follow the proper procedure to reinstate a lapsed life insurance policy. In *Hall v. Fidelity & Guaranty Life Insurance Company*, 4:13-CV-394-A, 2014 WL 642802 (N.D. Tex. Feb. 18, 2014), Plaintiff's husband purchased a life insurance policy on his life and named his wife, the plaintiff, the sole beneficiary. When Plaintiff's husband died, she sued F&G for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Deceptive Trade Practices Act and violations of the Texas Insurance Code for refusing to pay her the death benefits. She contended the insurer improperly allowed her adult daughter to use an invalid power of attorney to change the beneficiary. The Court disagreed.

The Court held the reason the insurer did not pay the death benefits to Plaintiff was because the life insurance policy lapsed for failure to pay premiums. Initially, the first premium payment was missed because Plaintiff's husband's checking account was closed so monthly premium payments could not be drafted on it. The insurer sent a notice of rejected payment to Plaintiff's husband. When nothing was paid, the insurer sent two late payment notices to Plaintiff's husband informing him the policy would lapse if the premiums were not paid by the end of the grace period. When payment was still not sent, the insurer sent a notice that the policy had lapsed and was terminated for failure to pay premiums, but that it could be reinstated by sending to the insurer a reinstatement application and payment of all past due premiums. F&G later received payment of one past due premium, but no reinstatement application. Plaintiff's husband then died a few days later. The insurer denied Plaintiff's claim for death benefits and returned the one premium payment.

The Court held there was no breach of contract because Plaintiff was not entitled to any benefits under the terms of the insurance policy. The insurer had not received a reinstatement application or the remaining missed premium payments. Additionally, the Court held there was no evidence that a change of beneficiary was ever made, so Plaintiff's claim about one was irrelevant. Finally, the Court held because there was no breach of contract, there was also no showing the Defendant breached any extra-contractual duties.

ALLIANZ WINS SIU-INSURANCE FRAUD TRIAL IN DALLAS FEDERAL COURT

Following a two week trial in federal court in Dallas, an 8-person jury returned a unanimous verdict late last Thursday exonerating Allianz subsidiary AGCS Marine Insurance Company from the allegations brought by the insured seeking payment on an alleged commercial robbery claim from March 2012. In *MM United Enterprise, Inc. v. AGCS Marine Insurance Company*, case no. 3:12-CV-03744-L, the insured, MM United, filed a claim seeking recovery of \$600,000 in allegedly stolen diamonds from its property insurer which was denied following a lengthy SIU investigation which concluded that the insured had failed to prove that a covered loss occurred. The insured immediately filed suit seeking substantial damages for breach of contract, bad faith, and Texas Insurance Code violations. The case proceeded in federal court in Dallas before Judge Sam Lindsay.

On the first day of trial, the bad faith and other extra-contractual claims were dismissed by the Court. During the following two week trial, the insured argued a robbery did occur when a customer drugged the insured inside his wholesale jewelry business and cleaned out his open safe and, as such, and the insurer was in breach of contract for not paying the covered claim. The insurer presented extensive evidence of numerous "red flags" developed by the carrier's SIU group including: the inability of the investigating police officers to conclude that a crime had occurred, the policy had only been in force for 8 weeks when a policy limits claim was made, the insured refused to provide proof that any diamond sales had occurred before the alleged robbery, two-thirds of the diamonds allegedly stolen were on consignment from two other men but neither of those men cooperated in the investigation to show the existence of the diamonds, and in the insured retained legal counsel eight days after the claim was submitted to the insurer. The insurer also presented evidence that the insured's security systems were highly questionable and, for example, only videotaped the insured sitting at his desk and not his customers and a second camera for the safe room didn't show the inside of the safe. The insured had explanations for every failure or criticism raised by the insurer and he vigorously challenged the fraud allegations of the carrier.

The jury heard extensive testimony from the insured and the consignors of the diamonds allegedly stolen. Three investigating police officers and a treating physician also testified. The lead SIU investigator and corporate representative for trial testified in Plaintiff's case when called adversely. Because the bad faith claims had been dismissed on the first day of trial, the Court severely limited the

amount of evidence the insurer could introduce at trial. The insurer was prohibited by the court from introducing evidence or testifying about the multiple prior claims and multiple prior lawsuits of the insured or the consignors of the diamonds. The insurer was also prohibited from testifying about the involvement of the FBI in the investigation. Numerous parts of the claims file, the police reports and other investigative documents were heavily redacted by the trial court and severely limited what the insurer was allowed to discuss at trial.

Following a two week trial, the jury concluded last Thursday that the insured had failed to prove that the insurer breached its contract of insurance. All of the other issues for the jury (specifically the applicability of the policy exclusions, whether or not the insured breach the contract by failing to fully cooperate, and damages for the insured in the event the policy was breached) were not answered by the jury because the court conditioned all other questions on a “yes” answer to the breach of contract question. Because the jury determined that no breach occurred, the jury didn’t answer the other questions. On Friday, a take-nothing final judgment was entered in favor of AGCS by the Court.

Editor’s Note: Founding Partner Chris Martin and Associate Robbie Wall of MDJW tried this case for AGCS. The firm wishes to congratulate the team with AGCS and Allianz for this victory and to thank everyone involved for the opportunity to try this case to verdict.