

Court rules on lapsed life premiums

An insurance company has been ordered to pay death benefits in spite of unpaid premiums at the time of death

BY KEVIN MARRON

A RECENT JUDGMENT FROM British Columbia has found that an insurance company must pay death benefits, even though the premiums had lapsed at the time of the insured's death.

The case suggests that all may not be lost for clients when such events occur, while also making clear that it's wise to have systems in place to prevent premiums from lapsing through oversight.

It's a ruling that also offers a salutary warning to insurance companies and their agents, not only of the need for greater due diligence but also that they may no longer count on the courts to uphold the ethical obligation of insured people to tell them the whole truth, says Michael Thomas, partner with Harper Grey LLP in Vancouver: "It's a

weakening or a retreat from the obligations of the insured in a renewal process."

However, he adds, the peculiar facts perhaps explain why Justice William Ehrcke of the Supreme Court of B.C. may have chosen to waive some of these obligations.

The facts of the case are compelling, as many people may have found themselves in circumstances in which a temporary crisis potentially leads to long-term, permanent loss.

Susan Paul and her husband, Dennis, bought their West Vancouver home in 1989. In 2005, they opened a joint account with North Shore Credit Union and took out a mortgage for \$665,000. When they renewed that mortgage a year later, they took out a life insurance policy with CUMIS Life Insurance Co. and arranged with the credit union for mortgage payments and insurance premiums to be deducted automatically from their account each month.

For two years, these payments were processed without problems, except for a few occasions when the account showed a small overdraft, which the couple discharged within a few days. In September 2008, however, the credit union froze the account in response to a request from the Canada Revenue

Agency, and the pre-authorized payments were discontinued.

On Nov. 10, 2008, Susan Paul took out a second mortgage from a different lender and used the proceeds to pay the CRA \$196,740 and to pay the credit union for arrears in monthly payments.

She travelled to New Zealand to visit family on Nov. 12. A week later, Dennis Paul was admitted to hospital and Susan rushed home. Dennis died on November 24.

A female family friend who volunteered to help sort out the deceased's affairs found two unopened letters from CUMIS. One, dated Oct. 2, stated that the policy's coverage would lapse if a payment was not received within three weeks. The second letter, dated a week later, stated the policy had lapsed as of Aug. 28. Justice Ehrcke noted that neither letter was sent by registered mail as required under B.C.'s Insurance Act.

Susan Paul asked the friend to call CUMIS on her behalf because, as Paul says, "I was not, at that time, emotionally capable of dealing with anybody, or anything, concerning Dennis's business and affairs."

The employee at CUMIS who answered the friend's call subsequently told the court that the friend claimed to be Dennis

Paul. But the judge concluded it was "implausible" that a woman would represent herself as a man and ruled this was irrelevant in any event as the friend was an agent for Susan Paul, who had instructed the friend to call on Paul's behalf.

Without mentioning that Dennis Paul was already dead, the friend asked during the phone call that the insurance policy be reinstated; the CUMIS agent agreed. Susan Paul then sent CUMIS a bank draft for the outstanding amount, and CUMIS sent a letter to Dennis Paul stating that the policy had been reinstated.

When the widow later submitted a claim for death benefits, CUMIS responded that the policy had been reinstated in error because the insured person "by virtue of being deceased would not have been able to meet the reinstatement requirements on Nov. 25."

CUMIS argued that the friend who requested the reinstatement should have told the insurer that Dennis Paul was dead. However, Justice Ehrcke concluded that CUMIS had been entitled to demand renewed evidence of Paul's insurability as a precondition for reinstatement but failed to do so, thus waiving its rights.

This ruling, which is likely to be appealed, could represent a change in the law, according to

Thomas: "Under a traditional approach, you can argue pretty strongly that someone applying for insurance has certain ethical obligations [to provide material information]. Even if the insurer doesn't raise the question, some of those obligations still exist."

Nevertheless, Thomas observes, the facts of the case suggest that the policy should have been reinstated if the deceased did not open his letters and respond to them simply because he was sick and close to death. Says Thomas: "That's exactly what you buy life insurance for."

What's the message for insurers? Insurance litigator Diana Dorey, associate counsel with Davis LLP in Vancouver, says that, even if the insurance policy does not stipulate that notifications be sent by registered mail, it would be prudent to do so to avoid any argument that the insured person did not receive proper notice that the policy would expire if the premiums were unpaid within the notice period. Dorey also advises requiring written proof of insurability before reinstating a policy.

In CUMIS's case, Dorey says, "Since the insured had died at the time the request to reinstate the policy was made on behalf of his wife, the policy could not have been reinstated." **IE**