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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #15.01.27 was written by Steve Leimberg, co-author with Howard Zaritsky of [Tax Planning With Life Insurance](#), Publisher of [Leimberg Information Services, Inc. \(LISI\)](#) and CEO of [Leimberg & LeClair, Inc.](#)

TOPIC: *American General v. Underwood Part Two: Suit Begun Against Agents Who Allegedly Allowed Insured's Wife to Sign "His Signature" on Policy Delivery Documents*

CITE: *American General Life Insurance Company v. Brenda K. Underwood*; No. 3:10–CV–63 2015 WL 137529 (U.S. D. C., E.D. TN Knoxville Div. Filed 10/11/11).

SUMMARY: This is a complaint—not yet adjudicated—requesting a court to render judgment for American General Life Insurance Company (“AGLIC”) on the alleged grounds that Steve Ruth breached his contract with AGLIC by signing documents (purporting to be signed by the proposed insured decedent, David Underwood that were actually signed by his wife Brenda) as a witness or allowing Jack Barker, his agent to sign documents as a witness. The complaint requests the court render judgment for AGLIC requiring Steve Ruth to indemnify and hold AGLIC harmless against or from any and all expense, costs, causes of action, and damages including without limitation, reasonable attorney fees, resulting from his actions. The complaint also requests the court render judgment that Steve Ruth was negligent in permitting and instructing Brenda Underwood to sign in the name of her husband and in signing any documents that they did not witness David Underwood actually sign. Further, the complaint charges that Ruth and Barker committed negligent misrepresentation in instructing her to sign the documents and in representing to AGLIC that David, Brenda’s husband (the proposed insured) had signed the documents, on which AGLIC detrimentally relied, and that Ruth, Barker, and Brenda Underwood committed fraud and conspiracy against AGLIC and that AGLIC be awarded such damages as will be determined at trial.

NOTE: We recently received information stating that American General intends to dismiss its complaint against the agents if Brenda does not appeal the decision in AG’s suit to rescind the policy. However, the principles and warnings below are relevant to AALU agents regardless of the outcome.

RELEVANCE: “We’ve got the \$1,000,000 policy you and your husband wanted, Mrs X. Oh, your husband’s not here? No problem. Just sign his name and give us the check. The insurance company will never know the difference and the policy will be in force. That’s all that matters, isn’t it?”

What could possibly be wrong with that? The allegations against these agents are at this point just allegations. Whether true or not, this case may or may not be settled before it goes to court. No matter how it turns out (“*It’s not whether you win or lose that counts, it’s how much it costs to play the game*” – Leimberg’s Law of Lawsuits), everyone in this scenario loses. The alleged conduct is not only unethical, it is illegal.

If the facts *are* as alleged (which I again remind readers are at this point only allegations) and all the charges in this complaint are proven in court, the agents in the case above—as well as the wife who signed her husband’s name—have a lot to lose. Reputation and honor and a lot of money—not to mention the trauma of going through a public lawsuit, are *among* the potential costs.

My father always said, “Only a fool learns from his *own* mistakes.” Learning from the mistakes of others is why we study cases—so that we and our clients do not suffer the anguish of learning what is already known.

FACTS: Steve Ruth is an independent contractor who sold insurance policies for, among others, AGLIC. On September 9, 2008, with the assistance of Ruth, David Underwood completed and executed a \$300,000 20 year term insurance application Part A for a life insurance policy with AGLIC.

AGLIC relied on the information provided by David Underwood in the application in assessing his health, medical, and social histories to determine his insurability. David signed a policy which, among other things, provided that he had read the statements contained in this application and any attachments, that his answers were true and complete to the best of his knowledge and belief, and that any misrepresentation contained in this application and relied on by the company may be used to reduce or deny a claim or void the policy if: (1) such misrepresentation materially affects the acceptance of the risk; and (2) the policy is within its contestable period.

He also agreed that even if he paid a premium, no insurance would come into effect unless or until all three of the following conditions are met: (1) the policy had been delivered and accepted; and (2) the full first modal premium for the issued policy was paid; and (3) there was no change in his health that would change the answers to any questions in the application before items (1) and (2) in this paragraph had occurred.

The complaint alleges that Jack Barker was Ruth's agent or employee and was acting within the course and scope of his agency or employment. The complaint also alleges that, on January 24, 2009, Brenda Underwood, the insured’s wife, signed supplements to the application, including a health statement on behalf of her husband by signing his name at the direction of Ruth or Barker and that Barker witnessed Brenda’s signing of David’s signature on the health statement. By witnessing Brenda’s signing of David’s signature, Barker represented to AGLIC that he had seen David sign the health statement.

By executing the health statement, Brenda acknowledged for AGLIC that there had been no changes since the date of the application in either health or in any other condition which would affect David’s insurability; and that David had not, since the date of the

application, consulted a doctor or other practitioner or received medical or surgical advice or treatment, or acquired any knowledge or belief that any statements made in the application are now inaccurate or incomplete.

The statement Brenda signed with David's signature also noted that,

... if any statement above is not true, I should not sign this form. Instead, I should have the policy returned to the Company with full details for further underwriting consideration.

The complaint also alleges that Brenda executed the amendment of application by signing David's name at the direction of Ruth or Barker and that Barker witnessed Brenda's signing of David's signature on the amendment of application. The complaint alleges that, by witnessing Brenda's signing of David's signature, Barker represented to AGLIC that he had seen David sign the amendment. The complaint further alleges that Brenda that same day also executed an acknowledgement of policy delivery by signing David's name at the direction of Ruth or Barker and that Ruth signed the acknowledgment that was signed by Brenda who again signed David's signature. The complaint alleges that, by signing the acknowledgement, Ruth represented to AGLIC that he had delivered the Policy to David.

On February 22, 2010, AGLIC filed a lawsuit against Brenda Underwood seeking rescission of the policy and requesting a declaratory judgment that the policy never came into effect. (See *WRNewswire # 15.01.26*)

Brenda filed her answer and counter-claim alleging breach of contract and alleged that she signed David's name on the January 24, 2009 documents at the request of AGLIC's agent, in reference to Ruth or Barker. She also submitted interrogatory responses that stated that she signed David's name to the amendment of application and health statement at the request of Barker.

When Steve Ruth completed an appointment application with AGLIC, he signed an acknowledgement declaring

... I have received and reviewed the 'Compliance Manual' for the American General Life Companies, and/or 'Operations Manual' and I agree to abide by those principles, as amended or supplemented from time to time, in representing any of the Companies that appoint me.

He also entered into an agency agreement with AGLIC that states in pertinent part:

The REPRESENTATIVE shall indemnify and hold the Insurer harmless against or from any and all expense, costs, causes of action, and damages including without limitation, reasonable attorney fees, resulting from or growing out of any unauthorized or negligent act of commission or omission by the REPRESENTATIVE or its employees, directors, officers or Representatives under its jurisdiction. This provision shall survive termination of this agreement.

The REPRESENTATIVE is responsible for assuring that any Representative under the Jurisdiction of the REPRESENTATIVE: (1) become fully informed as to the provisions and benefits of each product

offered by the Insurer for which the Representative conducts Insurer business; (2) represent such products adequately and fairly to prospective purchasers; and (3) act in compliance with the Insurer's policies and procedures as set out in the Customer Service and Compliance Manual, Operations Manual, or otherwise communicated to the REPRESENTATIVE, including, without limitation, those regarding suitability of sales inquiries and compliance with the Insurer's principles and code of ethical market conduct.

AGLIC issued a compliance manual to Ruth. With respect to signatures, that manual provides,

The information and customer signatures required on these documents are essential elements of the Company's compliance with state and federal laws and regulations. It is therefore essential that these documents accurately reflect information provided by the customers and contain the signatures of the customers, certifying that they have reviewed and approved all the information on the documents.

The responsibility for the accuracy of these customer documents and the authenticity of the customers' signatures rests with the distributors who sell the Company's products. Accordingly, it is the Company's policy that distributors take steps to assure themselves that:

The customer has signed the final form of the documents and initialed any and all changes.

It is the Company's policy that there be no exceptions to these requirements, even with customer consent. Specifically, distributors are strictly prohibited from signing a document as a witness if the distributor has not actually seen the customer sign the document; and knowingly entering or permitting a customer to enter false information on any document.

On August 25, 2008, AGLIC issued a compliance update to Ruth which states:

the following practices are strictly prohibited and may result in Company discipline, regulatory sanctions and or civil or criminal liability:

. Signing a document as witness if the producer has not actually seen the customer sign the document.

The complaint alleges that under the agency agreement and the common law doctrine of *respondeat superior*, Ruth is responsible for Barker's actions that violated the terms of AGLIC's compliance manual.

The complaint charges the two agents with breach of contract in that Ruth signed documents as a witness or allowed Barker, his agent, to sign documents as a witness purporting to be signed by David Underwood that were actually signed by Brenda Underwood, and thus render them liable to AGLIC for compensatory damages in an amount to be determined at trial.

The complaint also requests indemnity. It charges that Ruth's and Barker's actions exceeded the scope of the authority granted to Ruth by AGLIC and pursuant to his agreement with AGLIC and at common law. It requests that Ruth indemnify and hold AGLIC harmless against or from any and all expense, costs, causes of action, and damages including without limitation, reasonable attorney fees, resulting from his actions.

Further, the complaint charges negligence, negligent misrepresentation, and negligent supervision. It alleges Ruth and Barker were negligent in permitting and instructing Brenda to sign in the name of David and in signing any documents that they did not witness David Underwood actually sign. Further, the complaint alleges they committed negligent misrepresentation in instructing her to so sign the documents and in representing to AGLIC that David had actually signed the documents, on which AGLIC detrimentally relied and suffered injury. The complaint seeks indemnity on the grounds that Ruth negligently supervised Barker's witnessing of the signing of the documents.

The complaint also makes fraud and conspiracy charges against Brenda, Ruth, and Barker. It alleges Brenda Underwood, Ruth, and Barker agreed to make, and in fact made, false representations of past or existing material facts to AGLIC and that they acted in concert, with the other's knowledge and with the intent, to accomplish an unlawful purpose or to accomplish a purpose not itself unlawful by unlawful means, including wrongfully inducing AGLIC to issue a policy of life insurance to decedent and to commit other unlawful and/or illegal acts. According to the complaint, Underwood, Ruth, and Barker maliciously possessed a common understanding or design to harm AGLIC by means of committing various unlawful acts, including breach of contract, negligence, and negligent misrepresentation and that the insurer is, as a result of this alleged civil conspiracy, entitled to compensatory and punitive damages in an amount to be determined at trial.

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