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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* #15.03.25 was written by James S. Bainbridge, Esquire of The Bainbridge Law Firm, LLC.

TOPIC: Policy Lapse Upheld Where Insured Did Not Receive Lapse Notices

CITATION: [*Wactor v. Jackson National Life Ins. Co.*](#), 2015 WL 1020653, No. 13-2367 (4th Cir. March 10, 2015).

SUMMARY: The Fourth Circuit Court of Appeals affirmed a South Carolina District Court ruling dismissing a beneficiary's attempt to collect the death benefit on a policy that had lapsed for failure to make timely premium payments prior to the insured's death. The beneficiary argued that the insured never received the grace-period or lapse notices sent by the carrier so the carrier could not rely on those notices to cancel the policy. The court rejected this argument holding that neither South Carolina law nor the policy required the carrier to provide notice to the insured before cancelling a policy so the issue of whether the insured actually received the notices was irrelevant. Consequently, the lapse was upheld.

RELEVANCE: In two prior articles (see *WRNewswires* #14.12.10 and #14.08.14), we have analyzed cases where courts were open to the possibility of saving policy owners and beneficiaries from a policy lapse. We always stress, however, that one cannot rely on the courts to save them because there are just as many instances where courts will uphold the lapsing of a policy even where, as here, it appears that the insured may never have received the grace period notices or lapse notices.

Again, the lesson is "prevention." Policy owners must exercise diligence in keeping up with premium payments and should remain in communication with their agents to ensure that premium payments are up-to-date. Agents should also quickly follow up with a policy owner when agents receive a grace period or lapse notice, since agents are routinely copied on these notices. Such follow-up would have been especially helpful here where there is evidence that the policy owner was experiencing a decline in his mental health. An agent's ethical obligations, potential legal duty under some circumstances, and good business practices (continuation of commissions) should all be incentives for an agent to quickly contact a policy owner when a grace period or lapse notice is received.

Additionally, the facts of this case indicate that the insured's wife was frustrated during her attempts to communicate with the insurer because she was not authorized to obtain policy information. This could have been prevented had a power of attorney already been in place prior to the insured's hospitalization. Unfortunately for the parties in this case, by the time the insured's wife realized she need a power of attorney, it was too late. Agents can add value (as well as potential business referrals) by inquiring as to whether a client has the appropriate estate planning and power of attorney documents in place when providing advice and servicing clients.

FACTS: In March 1991, Jackson National issued a term life insurance policy insuring the life of William Wactor. The beneficiary of the policy was Mr. Wactor's wife, Nancy Wactor. As of 2010, the face amount of the policy was \$200,000 and premium payments were due quarterly. The policy described a "series of procedures" that would apply in the event of a missed premium payment.

If a premium was not timely paid each quarter, the policy was considered "in default" and a thirty-one day grace period was triggered. Coverage remained in-force during the grace period and the policy could be reinstated by simply paying the overdue premium. If the premium remained unpaid after the grace period, the policy would then be cancelled and coverage would lapse. Once the policy was cancelled, it could only be reinstated if Jackson National received: (1) evidence of insurability satisfactory to the company; and (2) payment of all past due premiums with interest. The policy did not contain a notice provision requiring Jackson National to provide notice prior to cancelling coverage.

Mr. Wactor paid most of the premiums for the policy from his own bank account. However, on at least ten occasions, Mrs. Wactor paid premiums from her account. During the life of the policy, Mr. Wactor failed to make timely premium payments causing the policy to be in default at least twenty-two times. Each time this happened, Jackson National would mail a grace period notice and Mr. Wactor would make the required payment within the grace period before the policy was cancelled.

Mr. Wactor last made a premium payment in October 2009. When he missed the January 2010 quarterly payment, Jackson National, on February 4, 2010, sent a grace period notice to Mr. Wactor. This notice informed Mr. Wactor that his policy was in default and had entered the grace period. It also indicated that the insured had until February 25, 2010 to receive the past due premium and that if it did not, the policy would lapse.

When it did not receive the payment during the grace period, on February 25, 2010, Jackson National mailed a lapse notice to Mr. Wactor cancelling the policy. The lapse notice also stated that if the outstanding premium was paid by March 26, 2010, the insurer would waive the other reinstatement conditions. If payment was not received by then, the insured would have to meet all the requirements for reinstatement, including evidence of insurability. The court noted, without explanation, that Mr. Wactor never received either notice and no further premium payments were made.

According to Mrs. Wactor, the insured began experiencing a severe mental and physical decline, including dementia and Parkinsons disease, in January 2010. During this time he continued to handle his own finances. In May 2010, Mr. Wactor was hospitalized for a

broken foot and Mrs. Wactor became aware for the first time that the insured failed to pay several of his bills. In a follow-up, she contacted Jackson National on June 11, 2010 to inquire about the status of the policy and was told it was no longer in-force and had been cancelled because the last premium payment was made in October 2009. The insurer would not provide her with any further information, including the fact that the policy could be reinstated if certain conditions were met, because she did not have his power of attorney and was not authorized to receive information on the policy. The next day, before any further action could be taken, the insured died.

When she could not find the grace-period and lapse notices among the insured's papers, Mrs. Wactor submitted a claim for the death benefit. Her claim was subsequently denied on the grounds that the policy had been cancelled prior to Mr. Wactor's death. Mrs. Wactor filed suit in November 2011 in federal district court in South Carolina seeking the death benefit and damages for bad faith. Jackson National filed for summary judgment seeking to dismiss all of her claims. Mrs. Wactor opposed the motion by maintaining that three material questions remained at issue:

- 1) whether the two notices sent by the insurer effectively cancelled the policy because Mr. Wactor never actually received them and that by accepting late premium payments on twenty-two occasions it waived its right to cancel the policy;
- 2) whether the insurer acted in bad faith in processing the claim and ultimately refusing to pay the death benefit; and
- 3) whether the insurer was estopped from asserting that the policy was cancelled as a result of Mrs. Wactor's June 11, 2010 call where she sought information to cure the breach and the insurer would not provide it to her.

The District Court granted summary judgment in favor of Jackson National on all claims finding that:

- 1) Neither South Carolina law nor the policy required the insurer to provide notice before cancelling the policy so the issue of whether the insured received the notices is irrelevant; furthermore, Jackson National did not waive its right to cancel the policy by accepting late premium payments because it only accepted late payments during the grace period while the policy was in-default and not after the policy had been cancelled;
- 2) Jackson National had a reasonable grounds to contest Mrs. Wactor's claim for the death benefit, *i.e.*, the failure to pay premiums and subsequent lapse of the policy, and therefore could not have acted in bad faith in processing the claim or refusing to pay the death benefit; and
- 3) During the June 11, 2010 call, the insurer notified Mrs. Wactor of several ways she could obtain authority to act for Mr. Wactor and that there is no evidence that she was misled by Jackson National.

Mrs. Wactor sought reconsideration of the order granting summary judgment on the grounds that the District Court misunderstood her waiver argument. Mrs. Wactor asserted that by sending and actually furnishing grace period notices—even though not required to do so—the insurer modified the terms of the policy to create a contractual obligation to send *and ensure* Mr. Wactor actually received the grace period notices.

The District Court rejected this argument on the grounds that there was no evidence that Jackson National took any measures to ensure Mr. Wactor received any of the twenty-two grace period notices, nor that they were ever actually received. Mrs. Wactor subsequently appealed both to the Fourth Circuit Court of Appeals where the Appellate Court affirmed the rulings of the District Court.

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