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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. The *WRNewswire* provides timely reports and commentary on tax and legal developments important to AALU members, clients and advisors, delivered to your inbox as they happen.

TOPIC: Suicide Clause Upheld in Favor of Insurer

CITES: [*Robinson v. American General Life Insurance Company*, C/A No. 3:14-cv-01325-JFA, 2014 WL 3385162 \(U.S.D.C., Dist SC, Columbia Div July 10, 2014\); S.C.Code § 38-63-225\(A\).](#)

SUMMARY: The U.S. District Court dismissed charges of breach of contract against American General Life Insurance Company in a case where it refused to pay the policy's death benefit based on its suicide clause.

FACTS: On February 1, 2011 Franklin Allen Mitchell, a resident of South Carolina, purchased an \$800,000 life insurance policy from American General. The application listed his wife Meredith Mitchell as the sole beneficiary of the policy.

The policy included the following exclusion:

In the event of the suicide of the insured, **while sane or insane**, within two years from the Date of Issue, American General Life Insurance Company's liability will be limited to the premiums paid. (Emphasis added.)

Mitchell paid all premiums on time.

On September 9, 2012, Mitchell was found dead. The cause of death was ruled to be a self-inflicted gunshot wound to the head.

Ms. Mitchell claimed benefits under the policy.

However, American General invoked the contract's suicide clause and refused to pay the death benefit. Instead, it sent a check in the amount of premiums paid under the policy to Ms. Mitchell.

Ms. Mitchell returned the check and demanded the full policy amount of \$800,000.00.

This suit resulted.

Mitchell had been receiving treatment from the Three Rivers Center for Behavioral Health for depression, and "did not want to die."

The plaintiff offered three expert affidavits that showed Three Rivers provided care that fell below the relevant standard of care. Thus, according to their expert opinions, Mitchell's death was "caused by the negligence of third-parties and not due to any conscious decision or intention to take his own life."

South Carolina law (S.C.Code § 38-63-225(A)), provides:

If an individual life insurance policy contains a suicide provision, it may not limit payment of benefits for a period more than two years from the date of issue of the policy and it must provide for at least the return of premiums paid on the policy.

In an unpublished decision construing South Carolina law, the Fourth Circuit has held:

where it is already established that the policyholder committed suicide ... the insurer need only establish that it has complied with the above two restrictions

to avoid liability—except for the return of premiums paid under the policy.

Here, the policy clearly complied with state law. First, it provided for the return of premiums paid on the policy and limited nonpayment of benefits to a two year term. Mitchell committed suicide on September 9, 2012, about nineteen months after the policy date of issue. That, of course, was well within the two year period described in the policy. Second, American General complied with the terms of the policy by attempting to remit the premiums paid under the policy to Ms. Mitchell.

As noted above, the plaintiffs argued that Mitchell's mental illness negated an *intentional* self-killing, and therefore removed it from the definitional ambit of the word "suicide." In support of this proposition, they cited a South Carolina criminal statute defining suicide as "the act or instance of taking one's life *voluntarily and intentionally*." (Emphasis added). However, their own experts called Mitchell's death a suicide, and the plaintiffs admitted that—in fact—Mitchell took his own life.

In essence the plaintiffs here—faced with the uncontested fact that Mitchell killed himself intentionally—attempted to avoid the clear “sane or insane” language of the policy and by doing so sidestep the real legal question: *Can insanity be used to avoid a suicide exclusion in a life insurance policy?*

However, the court held the parties to the language of the contract that the insured had signed, which in plain language meant insanity could not be used to avoid the suicide exclusion. The words “sane or insane” have a precise, definite, well-understood meaning. No one could be misled by them nor could an expansion of the language more clearly express the true intention of the parties.

The plaintiffs further argued that Mitchell’s death was caused by the negligence of third parties. It alleged through its three expert witnesses’ testimony that Three Rivers was guilty of medical malpractice and by inference claimed that Mitchell’s death was therefore not intentional and thus was not by suicide.

However, the court didn’t accept that argument. It pointed out that Mitchell’s shooting himself in the head was clearly an intentional act in the ordinary sense of the word. The argument that Mitchell “did not want to die” and did not voluntarily kill himself due to mental illness was rejected in the light of the policy language excluding coverage for suicide “while sane or insane.”

RELEVANCE: Almost all modern life insurance contracts contain a suicide exclusion. Most such contracts typically include the phrase “while sane or insane.”

What this case tells us is that, when a life insurance contract incorporates the phrase, “sane or insane,” into a suicide clause provision, the overwhelming odds are that the provision will not be defeated should the insured meet his death by suicide or self-destruction—even while insane. The words “sane or insane” encompass *any* intended self-destruction—whether or not the insured was of sound mind or in a state of insanity.

Of course, in all jurisdictions, there is a very high legal presumption *against* suicide so the insurer who in such cases resists paying the policy’s death benefit at the insured’s death almost always has the difficult burden of proof that the insured’s death was caused by self-destruction.

WRNewswire #07.21.14 was written by Steve Leimberg of [Leimberg Information Services, Inc. \(LISI\)](#) and [Leimberg & LeClair, Inc.](#)

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