



WRNewswire

An AALU Washington Report

Thursday 21, August 2014

WRN# 14.8.21

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: Good Health Representation Failure and False Statements Result in Invalidation of Contract

CITES: *Ramsey v. Penn Mutual Life Insurance Company*, No. 12-1738, 2014 WL 3871024; (U.S.D.C. N.D. OH, Eastern Div; Aug. 7, 2014); [Ohio Revised Code § 3911.06](#).

SUMMARY: A U.S. District Court granted an insurer's motion to deny coverage for death benefits on the grounds that the law imposed a duty on the policy applicant to "stand behind his answers in the insurance application, inform the company of any changes, up to the date of delivery of the policy," and "to keep his answer in the application truthful..."

FACTS: In February 2010, John Ramsey applied for life insurance with Penn Mutual. He stated that he had been hospitalized for colitis in 1984 but that he had made a "full recovery" and had last been seen for this condition in 2006 and that the exam yielded "normal findings."

Ramsey signed the typical "good health" representation under which he agreed that insurance would not be issued unless (a) the first premium was paid in full, (b) the policy was delivered, and (c) his "health, habits, occupation and other facts" are "the same as described" in the application, the medical examiner's report attached, and in any subsequent amendments or supplements.

Penn Mutual obtained various medical records and, after reviewing those records, offered to insure Ramsey at a higher than usual premium.

Ramsey, meanwhile, unknown to Penn Mutual, was seeing a Dr. Lavery for serious and continuing rectal bleeding and diarrhea. However, when asked to sign an amendment, Ramsey did not disclose that he had seen Dr. Lavery in April and May of 2010, despite having represented in the original application that he had not seen Dr. Lavery since 2006.

Shortly thereafter, on June 24, 2010, during surgery to address five months of “rectal bleeding and diarrhea,” John Ramsey was discovered to have colon cancer.

He died fifteen months later due to complications from that cancer.

Ramsey’s wife, Barbara, filed an application for death benefits.

Penn Mutual rescinded the policies, returned the premiums, and denied payment of death benefits. Penn Mutual argued that a condition precedent to formation of a valid contract of insurance was that Ramsey’s health be the same at the time the insurance policy was delivered as it was at the time of the application and that Ramsey’s serious gastrointestinal problems, including frequent, bloody stools, prior to delivery of the policy shows his health was not the same as when he applied for the coverage.

Penn Mutual also asserted that any right to recover under these policies was precluded by Ramsey’s knowingly false answer to the question in the application and the application amendment concerning whether he had indications of intestinal bleeding. Ramsey “knew of his treatments between the time of the application and the delivery of the policies, and knew that they rendered untrue the statement in the application that he ‘had no gastrointestinal problems since (2004).’” Since they were made without any knowledge by the insurer of their falsity, and induced the insurer to deliver insurance policies that—but for the false answers would *not* have been delivered—Ramsey violated Ohio Revised Code § 3911.06 which renders the policies void *ab initio*.

Barbara Ramsey countered that her husband’s answers on both the application and the application amendment were not false nor willfully intended to defraud, and further that Penn Mutual had knowledge of the actual situation and still issued the policy and so cannot claim ignorance. She claimed John was simply experiencing “characteristic symptoms of colitis” in his abdominal pain and bloody stools and that Penn Mutual knew of those symptoms and these occurrences were neither unusual nor remarkable to Ramsey. Therefore, she contended, when he submitted his answers there was no change in his health—at least to his knowledge—and thus no willful falsity on his part.

The court found for Penn Mutual. First, it focused on the “good health” requirement. It noted that this “clause does not refer to a future act or event, but rather is an assurance that the present facts, which the parties all suppose to then be true, remain true.” Therefore, technically, that provision is not a condition precedent but rather a representation—but one that is in fact a *condition* of the policy. Therefore, if the applicant’s health changes between the time of his application and the date the life insurance was to take effect, the insurer could refuse payment

since the policy's terms have not been met. Here, Ramsey represented (in essence promised) as part of the insurance contract that his health—at policy delivery—would be the same as he represented it in the application and its amendment. In fact, his health was not the same and Ramsey neglected to so inform Penn Mutual. This was sufficient to permit Penn Mutual to deny payment.

RELEVANCE: This case emphasizes points we've made before:

- A policy applicant does not need to know the exact nature of a physical ailment from which he suffers or for which he has been treated before he is required to inform the insurer.
- The applicant has a contractual obligation to inform the insurer and update the answers given in his application if there is a change of health.

That duty to update becomes obvious when medical intervention is necessary in the interim between application and policy delivery. That duty cannot be avoided by claiming that the applicant “did not know the ultimate findings of the tests” before the policy was delivered. A key question is, “Would the insurer unquestionably have made further inquiry before delivering the policy had it known the new or undisclosed facts?”

Of the emotional argument made by Barbara Ramsey that it would be a “terribly self-serving reading” of the “good health” clause of the contract to deny a widow and children the death benefits they “desperately need” due to the applicant's failure to report the change in his health, this court made it clear how future courts will likely react:

While anyone should be sympathetic to the distress facing Barbara Ramsey and her children, I am bound to apply the law to the contract John Ramsey signed.

The bottom line is that your clients must:

- (1) stand behind their answers in the insurance application,
- (2) inform the insurer of any changes, up to the delivery date of the policy, and
- (3) keep answers in the application truthful.

WRNewswire 14.8.21 was written by Steve Leimberg, CEO of [Leimberg Information Services, Inc.](#) and [Leimberg & LeClair, Inc.](#) and co-author of [Tax Planning With Life Insurance](#).

DISCLAIMER

In order to comply with requirements imposed by the IRS which may apply to the Washington Report as distributed or as re-circulated by our members, please be advised of the following:

THE ABOVE ADVICE WAS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, BY YOU FOR THE PURPOSES OF AVOIDING ANY PENALTY THAT MAY BE IMPOSED BY THE INTERNAL REVENUE SERVICE.

In the event that this Washington Report is also considered to be a “marketed opinion” within the meaning of the IRS guidance, then, as required by the IRS, please be further advised of the following:

THE ABOVE ADVICE WAS NOT WRITTEN TO SUPPORT THE PROMOTIONS OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE WRITTEN ADVICE, AND, BASED ON THE PARTICULAR CIRCUMSTANCES, YOU SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR.

The AALU *WRNewswire* and *WRMarketplace* are published by the Association for Advanced Life Underwriting® as part of the Essential Wisdom Series, the trusted source of actionable technical and marketplace knowledge for AALU members—the nation’s most advanced life insurance professionals.