



WRNewswire

An AALU Washington Report

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TOPIC: Fiduciary Duty with Regard to Policy Lapse

CITATION: [Stewart v. Northwestern Mutual Life Insurance Company](#), No. 15 C 11600, 2016 WL 1555715 (U.S.D.C. ND IL, April 18, 2016).

SUMMARY: The insured’s estranged widow learned five days after his death that her husband’s life insurance policy had lapsed. Upon the advice of the life insurance agent (who was presumably the selling agent), she paid the unpaid premium in an effort to have the policy reinstated. Despite accepting the check and holding it for 17 days, the insurance company refused to pay the death claim and returned the premium which had been submitted in the insured’s widow’s effort to have the policy reinstated. She sued but the court granted the insurance company’s motion to dismiss the case.

RELEVANCE: This case is yet another important reminder to insureds about the importance of making timely premium payments – and to agents about monitoring potential lapses and following up quickly and decisively to prevent them. The facts of this case are unfortunate in that both the owner and the beneficiary of the policy were the insured. There are a number of questions raised by the facts in the case, including:

- Why didn't the agent get involved?
- Why wasn't the beneficiary designation questioned at the home office?
- Why didn't the agent question the insured naming himself beneficiary?
- If the agent left the business, why wasn't the orphan case assigned to someone else?

Since the insured lived alone, when he became sick with depression, there was no one to read the letters that the insurance company had sent warning the insured that the policy was about to lapse. By the time anyone opened the letters, the insured had died and the policy could not be reinstated.

FACTS: Defendant, Northwestern Mutual Life Insurance Company, issued a \$500,000 face amount policy to David Stewart in June 2004. Stewart was named as the sole owner and beneficiary of the policy. The contract called for annual premiums of \$1,420 for twenty years. Stewart arranged for a payment plan under which he paid monthly premiums. Stewart made his monthly payments on a timely basis until June 2012 when he failed to make his payment.

Northwestern Mutual sent him a letter informing him that he had missed his payment and the policy was entering a 31-day grace period. The letter further indicated that if he did not submit his missed premium payment with the next month's payment by July 11, 2012 that that policy would lapse.

On August 16, 2012 Stewart received another letter indicating that his policy had lapsed and stated "you can apply to restore full protection and policy values, provided the insured is living. To do so ... enclose the reinstatement payment coupon with your payment of \$1,436 ... by September 9, 2012.... If your payment is not received by September 9, 2012, the insured will be required to submit additional information, which may include a medical examination and records from a physician...."

Stewart did not open either letter. Stewart and his wife, Laura Stewart, were separated. Laura did not see the letters nor know that the policy had lapsed.

After battling depression for many months, Stewart died. On September 9, 2012, Laura found and read the letters. Laura claimed that she received a phone call on September 10 in which she was instructed to issue a check for her husband's past-due premium so that a Northwestern Mutual representative could pick it up from her home. An agent came to Laura's home and picked up the check later that day. Northwestern Mutual cashed the check sometime between September 10 and September 27.

On September 26, Northwestern Mutual telephoned Laura to tell her that her claim for the death benefit would not be honored because the policy had lapsed. The next day they sent her a check for \$1,436 refunding the money she had paid to the agent.

In November 2015, Laura brought this civil action against Northwestern Mutual, alleging four claims for relief: (1) breach of the insurance contract; (2) declaratory judgment that Northwestern Mutual had reinstated the policy by cashing her check and holding it for 17 days; (3) promissory estoppel (based on the agent's assurance that the policy would be reinstated if she provided him with a check covering the missed premium) and (4) breach of the agent's fiduciary duty to the insured.

The court granted Northwestern Mutual's motion to dismiss all four claims for Laura's failure to state a claim. In doing so, the court found that even if it accepted all facts as true – Laura could not establish a valid cause of action. Here is the court's reasoning:

First, the claim for breach of insurance contract was dismissed because the court found that an "insurer does not breach an insurance contract when it refuses to fulfill a claim on a lapsed policy." The facts reflected that the policy had lapsed and had not been reinstated by the time of the insured's death.

Second, the court refused to find that the policy had been reinstated when Northwestern Mutual accepted, cashed, and held Laura's check for 17 days. Even if the agent did tell Laura that the policy would be reinstated if she got him a check – the agent had no authority to bind Northwestern Mutual in this regard. Laura unsuccessfully attempted to use the principle of "implied agency" to make her argument. The court noted that implied agency requires the principal (in this case Northwestern Mutual) to create the apparent authority. Implied agency is NOT created by actions of the principal's agent.

Specifically, the court found that Northwestern Mutual's action did not create an implied agency relationship under which their agent's representation could have required it to reinstate this lapsed policy after the insured's death. In fact, the insurance application (which is incorporated into the life insurance contract) states that "no agent is authorized to make or alter contracts or to waive any of the Company's rights or requirements." Following Illinois law, the court stated that Northwestern Mutual's limited action of cashing the check was not sufficient to constitute reinstatement. Under Illinois law, an insurer must take some additional action beyond accepting premium that "reflects an intent to reinstate" the policy.

Third, the action under promissory estoppel was also rejected by the court. In rejecting this cause of action, the court relied upon the principal that promissory estoppel is only available "in the absence of a contract." Just because the insurance contract had lapsed did not mean that no contract existed. Lapse of the policy did not make the policy "void ab initio." In fact, the court found the argument that the policy was void ab initio to be inconsistent with Laura's status as an "intended beneficiary" of the insurance contract.

Fourth, the court also rejected the breach of fiduciary duty claim. Under Illinois law, the court found that an insurance agent does not have a fiduciary duty to a customer of the insurer. In addition, the court found no Illinois authority suggesting that an insurance agent who sells a life insurance policy owes a fiduciary duty to a beneficiary who is not a policyholder.

Moreover, nowhere in the complaint did Laura as much as allege that the agent was also her agent or even her husband's agent. Although the court did not address the issue directly – it is conceivable that the outcome would have been different if Laura had alleged or demonstrated that the agent was not simply an agent of the insurer— but was an agent of hers or her late husband.

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