

*WRNewswire #15.10.22* was written by *Steve Leimberg*, co-author with *Howard Zaritsky*, of [Tax Planning With Life Insurance](#), Publisher of [Leimberg Information Services, Inc. \(LISI\)](#) and Creator of [NumberCruncher Software](#).

**TOPIC: Reinstatement of Policy After Insured Was Dead**

**CITATION:** [Orchin v. Great–West Life & Annuity Insurance Company](#), No. 13–00055 (RDM) ( U.S.D.C., D.C. September 30, 2015).

**SUMMARY:** This case arose out of a dispute over the \$750,000 life insurance coverage of Dr. Eugene C. Gadaire, which was assigned to a trust maintained for the benefit of his wife. The trustee, the Gadaires’ friend and fellow dentist, Jeremy Orchin, failed to make two semi-annual premium payments on the policy. That led to the lapse of the insurance policy on Dr. Gadaire’s life.

Dr. Gadaire died shortly after the insurance lapsed. After learning of his death and realizing that he had failed to make the required payments, Orchin contacted Great–West, and successfully convinced it to reinstate the insurance. However, in doing so, he failed to mention that the insured had died. When the insurer discovered Dr. Gadaire was already dead at the time it reinstated the coverage, it asserted that the reinstatement was invalid and refused to pay the proceeds.

On behalf of the trust, Orchin sued Great–West. He alleged it breached its contractual obligations and failed to comply with relevant laws in terminating the insurance and also that it should have honored the reinstatement. Gadaire’s widow also sued Great–West. (Not surprisingly, she sued Orchin for missing the payments and causing the insurance to lapse; that case continues).

Orchin and Mrs. Gadaire requested summary judgment against Great–West. Great–West requested summary judgment against both Orchin and Mrs. Gadaire. The court granted summary judgment to Great-West.

**RELEVANCE:** Among the many lessons to be learned from this case are these:

1. Typically, an insurer is required to provide notice to a policy holder that a premium is overdue before it can terminate a policy for non-payment of premiums. But generally, it is only required to prove that a legally sufficient notice was addressed and mailed. It has no responsibility to assure it was *received* by the policy holder.
2. In the case of a trust-owned policy generally, insurers are not under an implied duty of good faith and fair dealing to notify the insured or trust beneficiaries prior to cancelling coverage.
3. Duplicate premium notices should help prevent unintentional policy lapses.
4. Agent notifications and follow-up will help prevent policy lapses.
5. Most states' laws are highly protective of insureds and look with disfavor on forfeiture of an insurance contract for nonpayment of premiums. But courts will not undo a lapse where the insurer lacked knowledge of a *pre-existing* loss. As this case indicates, if the insurer had no knowledge of the insured's death, its acceptance of overdue premiums on a life insurance policy will not constitute a waiver of the delinquency. An insurance company cannot knowingly and intentionally relinquish a right to enforce a lapse in coverage if it has no knowledge that the insured loss has already occurred.
6. Follow-through by agents, attorneys, and other members of the planning team is essential. While this case is not ultimately about buy-sell planning, it does help illustrate the impact (and shock) where a buy-sell is discussed, insurance on one party is difficult or impossible to place, and alternative solutions (e.g. a "sinking fund" or installment arrangement to buy out the uninsurable's interest) are not considered and implemented.
7. Senior management employees at insurance companies often exercise discretion to grant exceptions to normal procedures. Where such a request is abusive—as it was in this case—the policy owner should not expect any temporarily-granted exception request to be honored in the end.



**FACTS:** In April 1975, Dr. Gadaire, a recent graduate of dental school, obtained insurance through an American Dental Association's group term life insurance policy administered by Great-West. He named his wife as one of the insurance's beneficiaries.

Premiums were payable semi-annually, once on July 1 once on January 1. The certificate of insurance provided a 31 day grace period for premium payments, after which coverage would terminate if the premium was not paid.

In 1993, Dr. Gadaire made an absolute assignment of ownership of the coverage to a trust he created. His wife was sole beneficiary. The trust provided that Orchin, as trustee, would make payments on the insurance. Whenever Orchin received a statement, he would call Mrs. Gadaire, tell her a payment was due, and she would then deposit money in the trust's checking account. Orchin would then write a check to Great-West.

Great-West mailed premium notices to Orchin's address of record, his home on 44<sup>th</sup> St in Washington, DC. He made premium payments regularly from 1993 through January 1, 2009. But while renovating a new home, Orchin temporarily moved into an apartment in Maryland. Allegedly, he submitted change of address forms to the U.S. Postal Service after each move, but he did not notify Great-West. In June 2009, Great-West mailed a notice for the premium due on July 1, 2009, to Orchin's address of record, the old 44th Street address. When Orchin did not pay the premium within the 31-day grace period that expired on July 31, Great-West mailed a notice of termination, which offered an additional 31-day period during which insurance could have been reinstated without re-application or re-qualification.

Orchin testified he never received a premium notice in July 2009 and did not receive a lapse notice in August 2009. No payment was made for the premium due on July 1, 2009. The coverage terminated August 1, 2009. The deadline for the next payment also passed without Orchin or the Gadaires making a payment or contacting Great-West.

Dr. Gadaire died suddenly on January 15, 2010. Three days later, Orchin, who was aware of Dr. Gadaire's death and realized that he had not made the most recent payment on the insurance, called Great-West. In that recorded phone call, Orchin stated: "I'm the trustee of a life insurance trust for a friend of mine and I



think I need to clear up a discrepancy in billing. I haven't gotten a statement for the balance that was due in December. I think I've moved several times and I've put in a change of address but I'm not sure it's gotten through so I need some help to clarify this."

A Great-West representative explained the coverage had been terminated. She told Orchin the insurer listed his address as 44th Street in D.C. Orchin told her he was the trustee and stated that he needed "to reinstate the policy because there was a miscommunication on addresses," and asked whether any notices "would have been sent out ... because he didn't get anything." He was told, "a bill would have been sent out in June for the July 1 renewal, and then since Great-West did not receive payment within that 31 day grace period, by the end of July, a lapse notice would have been sent out." He was then asked if he had put in a change of address form. He answered, I "neglected to do that because of ... two moves in six months." He admitted that it was "his fault" and that he was under "a lot of pressure because he was the trustee."

He was told the coverage could not be reinstated and that Dr. Gadaire would have to re-apply for life insurance. In response, Orchin essentially replied, "Is there someone else I can talk to that might have more influence because I'm feeling so guilty, I've been a trustee for 15 years and I've never let it slip and I don't want [him or them—parties disagree ] to know that I did this. There must be a way that I can pay the past monies or something."

After speaking to several people, a senior level person decided to exercise her authority to reinstate the coverage as "a one-time exception." Orchin paid the back premiums, and the insurance was reinstated.

During this course of these communications, Orchin never disclosed that he knew that Dr. Gadaire had died. Great-West did not learn that Dr. Gadaire had died until his former business partner called several weeks later to report the death. That partner incorrectly believed that he and Dr. Gadaire had obtained "buy/sell insurance," life insurance intended to provide surviving business partners with the funds needed to buy out a partner's share of the business upon death. In fact, although the two had applied for buy-sell insurance in 2007, the request was denied because Great-West concluded that Dr. Gadaire was uninsurable due to a heart condition.



Upon being informed of Dr. Gadaire’s death, Great–West’s personnel “followed normal procedures” by sending a claim form to Orchin, as trustee for the beneficiary of record, Orchin signed and returned the claim form on February 10, 2015. But upon investigating Dr. Gadaire’s death, Great–West quickly became aware that he had died three days before the insurance was reinstated, and denied Orchin’s claim both on that basis and because Great–West employees concluded that Orchin had misled them. Great–West also sent a refund of the back-premiums that Orchin had paid in order to reinstate the insurance.

***Keywords:* Reinstatement, Notice, Lapse**