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TOPIC: Court Rules Proceeds of Key Person Life Policy Owed to Business After Employee's Retirement

CITATION: *Continental Assurance Company v. Cole Frago*, No. 3:14-CV-01364(VLB) (U.S.D.C. CT Dec. 2, 2015).

SUMMARY: The widow of a former employee of a business entity called Cole Frago brought suit in the Federal District Court of Connecticut, seeking to recover the death proceeds of a life policy originally purchased as key employee coverage.

Cole Frago asserted that it never transferred the key employee coverage to the insured, nor did it have any obligation to do so, and the death proceeds were properly paid to the company. The insured's widow countered that the parties' written agreement obligated Cole Frago to offer to sell the policy to the insured at his retirement, and no such offer was ever made.

The court granted summary judgment to Cole Frago, allowing it to keep the policy's death benefit.

RELEVANCE: There is no doubt that key person life insurance is intended to protect the business against the premature death of a key employee. It also is clear that, in the absence of an agreement to the contrary, the employer has the option to continue the coverage - even after the key employee terminates employment.

But what happens if there is ambiguity over the parties' intentions about their rights and obligations when the employment relationship ends? What if the employer and employee discussed the possibility of a policy transfer at some point in the future, but never committed to an actual agreement to do so and set nothing down in writing?

The *Cole Frago* decision underscores the idea that it is the policy owner, not the insured, who controls all the ownership rights—including the right to name the beneficiary of the life policy. In the absence of an *explicit* agreement (preferably in writing), the policy owner's control will continue even after the relationship between the parties changes (in this case, termination of the insured's employment by the policy owner).

FACTS: Cole, Frago, Cusick, Chestler & Co. LLC, an accounting partnership, incorporated as a limited liability company on January 1, 1994. At the time of incorporation, the partners, who became members of the company, were Frank Frago, Stanley L. Cusick Edward Chestler, James Cohen and Richard Guerriere.

The company purchased and maintained "key man" life insurance policies on the lives of each of its members, including the decedent Stanley L. Cusick. In fact, Cole Frago purchased two separate policies insuring the life of Stanley L. Cusick; the first policy was purchased from Continental in 1993 and had a $100,000 face value and the second policy was purchased from Jackson National with a $300,000 face value. Cole Frago was the owner and the beneficiary of both policies.

Stanley Cusick retired at the end of 1996 and entered into a retirement agreement with Cole Frago. Under the terms of the agreement, Cusick assigned to Cole Frago all "right, title, and interest" in the company in exchange for a lump sum retirement payment of $436,340 that was to be paid over the course of ten years until 2006.

The retirement agreement also provided that Cole Frago could, at its discretion, continue to pay for and maintain both the policies on Cusick's life:

> *The Company shall continue to pay for and maintain the life insurance policies owned by the Company which insure Cusick until December 31, 1996. The Company shall have the option to continue to pay for and maintain such policy or policies after such date.*
>
> *If the Company does not desire to continue to pay for and maintain any such policy, the Company shall give Cusick prior written notice and the opportunity to purchase such policy.*

After Cusick's retirement, Cole Frago maintained and paid for both policies; however, on November 1, 1997, the three remaining members of Cole Frago, defendants Guerriere, Cohen, and Chestler, merged their company with another accounting firm, Blum Shapiro and Co., P.C. Under the terms of the merger, Blum Shapiro agreed to assume the obligation to pay the remainder of Cusick's retirement benefit payments through 2006. Blum Shapiro also provided Cusick's medical insurance benefits from 2000 through 2005.

From 1997 through 2006, Blum Shapiro issued the checks that were used to pay the premiums for both of the life policies insuring Cusick. After 2006, Guerriere, on behalf of Cole Frago and its members, began paying the policy premiums directly.

In 2003, Guerriere filed articles of dissolution with the Connecticut Secretary of State on behalf of Cole Frago. Cole Frago elected not to liquidate or transfer any of the policies to effect a wind up, instead maintaining ownership of the policies until the eventual death of Cusick.

After the death of Cusick in 2014, the company and Cusick's widow--the executor of his estate--submitted competing claims for payment of the death benefit proceeds. Both life carriers filed similar interpleader suits against Cole Frago and Cusick's executor.

Cusick's executor argued that because of Cole Frago's dissolution as an entity in 2003, Cole Frago effectively chose to divest itself of its assets—including the insurance policies on Cusick. Since the company dissolution was arguably a liquidation of assets, the executor posited that the policies should have been offered to Cusick under the 1996 retirement agreement.

The court disagreed. It noted that even though Cole Frago had submitted paperwork for dissolution in 2003, it had not yet completely terminated operations even as late as the date of the court case. Furthermore, it ruled that simply filing articles of dissolution does not mean a company is immediately liquidating its assets. Winding up a company and its assets takes time, and in this case Cole Frago had simply not yet gotten around to dealing with the policy on Cusick's life. Therefore, because Cole Frago still effectively existed, it had not violated the retirement agreement—and therefore it was entitled to the death benefit.