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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #15.06.10 was written by Linas Sudzius of [*Advanced Underwriting Consultants*](#).

TOPIC: Agent Who Failed to Inform Policy Owners of Premium Loan Status Not Liable for Fraud

CITES: [*Thompson v. UBS Fin. Servs.*](#), No. 24–C–08–005476, 2015 WL 2448819 (Ct. App. MD, May 22, 2015).

SUMMARY: The adult children of Albert and Nancy Thompson bought insurance on their parents' lives. The husband of one of the children, Gordon Witherspoon, was the insurance broker for the case. The policy application signed by the children directed the insurance company to send all premium notices to Witherspoon.

For the first few years of coverage, the elder Thompsons made gifts to their children for the purpose of paying the premiums. But after the parents' gifts stopped, the children no longer made premium contributions to the policy. To continue the policy in force, the insurer took loans for seven years against the policy's cash values under the contract's automatic premium loan provision. Witherspoon, the agent, was informed but did not pass along the information to the Thompson children.

By 2007, the loan balance against the policy was more than \$900,000. The Thompson children sued Witherspoon. A jury found him liable for negligence, negligent misrepresentation, deceit, conversion, and constructive fraud.

After the trial court judge refused to set aside the judgment, Witherspoon appealed. One appeals court reversed part of the judgment against Witherspoon, and another appeals court dismissed the rest.

RELEVANCE: Has a client ever asked you to act as trustee or act otherwise as intermediary with regard to the payment and management of a life insurance policy? If so, read this case! For whatever reason, the agent volunteered to manage the premiums for this policy and he got sued. Even though the Maryland appeals courts ultimately decided that the agent was NOT liable, it was undoubtedly both financially and emotionally expensive to get to that point.

FACTS: Albert Thompson and Nancy Thompson were the parents of Karen, Susan, Carol, and Albert. The Thompsons' children purchased a life insurance policy on the lives of their parents. The children named themselves as owners and beneficiaries. Gordon Witherspoon, Susan's husband, was the insurance broker. The Thompson's children signed the application for the life insurance policy, which specifically listed Witherspoon's address as the place to send premium notices and policy information.

Each year from 1990 through 1995, and then again in 1997, the elder Thompsons made gifts of \$17,500 to each of their children. This equated to each child's share of the \$105,000. annual premium. For the bulk of the annual premium, the elder Thompsons deposited the money into the children's accounts with UBS, where Witherspoon worked. The money was then re-directed to the life insurance company.

Each year from 1996 through 2003 (except for 1997), the elder Thompsons did not make gifts of the annual life insurance premium. Thus, in each of those seven years, the life insurance company automatically issued a loan from the life insurance policy's cash value to cover the amount of the unpaid annual life insurance premium. The loans' principal totaled \$735,000.07, and the interest on the loans totaled \$165,457.12 as of October 2007.

The policy owners never consented to the loans. The life insurance company mailed to Witherspoon policy statements and policy notices that mentioned the loans. But Witherspoon never told the Thompsons' children about them.

The Thompsons' children sued UBS and Witherspoon. The trial jury found Witherspoon liable for negligence, negligent misrepresentation, deceit, conversion, and constructive fraud. Witherspoon asked the trial judge to set the verdict aside, which motion was denied.

Witherspoon appealed, and a Maryland Court of Special Appeals reversed, holding that the policy owners had failed to establish claims for conversion and constructive fraud. The court also ruled that the trial court made other errors that necessitated a new trial as to the other claims.

The Thompsons' children appealed, and the regular appeals court agreed to review the lower court's decision only as to the dismissal of the conversion and constructive fraud claims.

The appeals court ruled that Witherspoon did not exercise enough personal control over the actual life insurance policy for the Thompsons' children to be able to have a conversion claim against him under Maryland law. The key factor in the court's decision was that the policy owners had signed the application directing all policy correspondence to be sent to Witherspoon.

The appeals court then analyzed whether Witherspoon had defrauded the policy owners by failing to tell them about the policy's automatic premium loan status. The court concluded that he did not, in part because they should have known through other sources that the premium was not being paid:

Witherspoon was the life insurance policy's broker and that, during the relevant time frame, the life insurance company mailed all policy-related documents to Witherspoon's address. Petitioners did not solely depend on Witherspoon to know whether the annual life insurance premiums were being paid....The Thompson Parents—the ones who were supposed to pay for the annual life insurance premiums, and who did so for years—obviously knew whether they were paying for the annual life

insurance premiums. At any time during the relevant time frame, [the children] could have asked [their parents] whether they were still paying for the annual life insurance premiums.

The decision of the special appeals court—dismissing the constructive fraud and conversion claims against Witherspoon—was affirmed.

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