WRNewswire
An AALU Washington Report

The WRNewswire is created exclusively for AALU Members by insurance experts led **by Steve Leimberg, Lawrence Brody and Linas Sudzius. WRNewswire 16.06.30** was written **by James S. Bainbridge, Esquire of The Bainbridge Law Firm, LLC.**

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.

Thursday, 30 June 2016 **WRN 16.06.30**

TOPIC: Suicide Exclusion Upheld Where Beneficiary Argued Insured Lacked Mental Capacity to Commit Suicide

CITATION: Collins v. Unum Life Ins. Co. of America, No. 2:15-CV-188 (U.S.D.C. E.D.Va. May 6, 2016).

SUMMARY: A Virginia federal court recently upheld a suicide exclusion contained in a supplemental group life insurance policy even though the beneficiary argued that the insured lacked the mental capacity to commit suicide. The insured, a former Navy SEAL, took his own life in 2014. The plan administrator denied the beneficiary's claim for the policy proceeds on the basis of the suicide exclusion. The beneficiary argued that the suicide exclusion should not apply because the insured was insane at the time he took his own life. The court found that the plan administrator's two determinations in question were reasonable. These were that:

(1) the insured's mental state was irrelevant, and

(2) that, even if it was relevant, the insured was not insane but that he possessed the mental capacity to appreciate his actions at the time he took his own life.

Consequently, the court upheld the denial of benefits and dismissed the beneficiary's lawsuit.

RELEVANCE: Suicide exclusions are one of the more often misunderstood provisions of a life insurance contract. Most of the general public incorrectly believes that a suicide, under any circumstances, would preclude payment of benefits on a life policy. However, this is generally not the case. To the contrary, suicide exclusions merely permit a life carrier to limit its liability where an insured commits suicide within a certain time period after policy issuance (typically two years). Virginia law, which is applicable to the instant case, is no different. Under Virginia law, a life carrier may include an express provision in a life policy that limits the liability of the carrier if the insured commits suicide within two years from the date of policy issuance. Here, the carrier included such a provision for any policy where an insured made premium payments on the policy. The policy at issue was an ERISA governed supplemental life policy taken out and paid for by the insured in connection with his post-military employment. While this complicated the analysis undertaken by the court, the instant decision provides a helpful analysis and background of these often misunderstood provisions of life policies.

FACTS: This case arises from the unfortunate death of a former Navy SEAL, David M. Collins, who took his own life on March 12, 2014. Collins served as a Navy SEAL for seventeen years during which time he "served in dangerous and stressful situations" in Iraq, Afghanistan and Kuwait. In September 2012, after retiring from the Navy, Collins began working at Blackbird Technologies in Virginia. Through his employment, Collins enrolled in two life insurance policies, a basic life insurance policy with a $104,000 face amount that was part of his group benefit plan and a supplemental life policy with an additional $500,000 in coverage. Unum Life Insurance Company was the underlying insurer and plan administrator of both policies.

In the years following Collins' discharge from the Navy, his wife began to notice changes in his behavior. Collins "became less social and more irritable." He also could not sleep or concentrate as well and was observed by co-workers to be uncharacteristically confused, indecisive, depressed and withdrawn.

In early 2014, Collins sought treatment for these afflictions. After tests, hospitalization, and treatment, Collins was diagnosed with Posttraumatic Stress Disorder (PTSD) and Generalized Anxiety.

In March 2014, Collins visited his primary care doctor complaining of "insomnia and anxiety." Collins told the doctor "that he was only sleeping two to three hours a night." Collins was prescribed medication for insomnia and anxiety.

On March 12, 2014, Mr. Collins sent a text to his wife that read "[p]ick up Sam so sorry baby I Love u all." He also had emailed a friend and fellow retired Navy SEAL, writing "I'm in bad times bro... please make sure my lovely wife Jennifer and children Sam and Grace are taken care of please.... hate to do this to you but you know how to get things done. Take care friend."

Later that day, Mr. Collins was found dead in the driver's seat of his car with a gunshot wound to his head and a handgun lying between his legs. The death was officially ruled a suicide by the medical examiner.

In April 2014, Collins's widow filed death claims under both the supplemental policy and the basic policy. Both policies contained an identical suicide exclusion, however, the exclusion only applies to policies in which the insured pays all or part of the premium. Since Mr. Collins' employer paid the premiums for the basic policy, the exclusion did not apply and Unum paid the death benefit to Mr. Collins' widow. Since Mr. Collins paid the premiums on the supplemental policy, the exclusion applied and Unum denied the death claim under the suicide exclusion contained in the supplemental policy.

Mrs. Collins appealed the denial by Unum claiming that Mr. Collins lacked the mental capacity to commit suicide. In support of her claim, Mrs. Collins submitted medical records detailing the problems Mr. Collins was having, military records evidencing the stressful and chaotic deployments he served in as well as his high service ratings and other research and opinions concerning PTSD, TBI, Chronic traumatic encephalopathy ("CTE") and the high rate of suicides among former Special Operations soldiers.

One of the reports submitted was from the medical director at the brain center Mr. Collins visited, Dr. Andre Fredieu, M.D. Dr. Fredieu opined that "at the time of [Mr. Collins'] death he was not of sound mind enough to understand the finite nature of his action, at which point he was not cognitively in a position to resist/overcome his impulse to commit suicide." However, it was noted that Dr. Fredieu did not personally examine Mr. Collins and based the report only upon a review of his medical records.

Unum assigned a claims examiner to review the claim on appeal. In addition to reviewing Mr. Collins' medical records and the other materials submitted by Mrs. Collins, Unum had the file reviewed by an RN and a board certified neurologist. The neurologist opined that the medical evidence supported a diagnosis of CTE, however, she refused to assess whether Mr. Collins was insane at the time he took his own life.

Her reasoning was that this determination "crossed into the 'realm of psychiatry.'" Unum then sent the file to a board certified psychiatrist, Dr. Peter Brown, who was also the Senior Medical Director at Unum.

Dr. Brown ultimately opined "that although Mr. Collins' 'ability to refrain or consider other [non-suicidal] options would have been impaired,'" the "highly restrictive and somewhat archaic" legal definitions of mental states relating to the legal concept of insanity precluded him from finding Mr. Collins to have been insane. Specifically, "Dr. Brown concluded that Mr. Collins 'was able to understand the physical consequences of his act;' that '[p]art of his motivation appears to have been how he understood his duties to his family and his own personal code;' that '[h]e was able to make meaningful choices and resist impulses;' that '[h]e was not globally out of touch with reality i.e. not psychotic or delirious to an extent that he did not understand or control anything of what he was doing;' and, finally, that '[h]is suicide was planned and he was able to understand the immediate consequences of his actions.'"

Consequently, Unum denied Ms. Collins' appeal of the denial of benefits. In doing so, Unum provided two alternative rationales for its denial:

> (1) Unum was not required to investigate the insured's state of mind as the exclusion applied to any death resulting from a suicide; and
>
> (2) To "the extent that Mr. Collins' mental state was relevant, Mr. Collins 'was not insane at the time he killed himself,' nor was he 'impelled to kill himself by an impulse he was incapable of resisting.'"

Mrs. Collins filed suit against Unum alleging that the denial of benefits by Unum was an abuse of discretion and a breach of fiduciary obligations. Both parties filed for summary judgment. On summary judgment, the court addressed the two primary issues raised by Mrs. Collins:

> (1) whether the plan administrator's decision denying benefits was reasonable; and
>
> (2) whether the applicable suicide exclusion was invalid under Virginia law.

The court ruled in favor of Unum on both issues.

On the first issue, the court initially addressed the applicable standard of review. Since this policy was governed by ERISA, the court noted that the plan administrator's "decision is granted deference and will be overturned only where the decision is an abuse of discretion" and under the abuse of discretion standard, the court "will not disturb a plan administrator's decision unless it is unreasonable." Consequently, if either of the two determinations made by Unum in denying benefits was found by the court to be reasonable, then the court must uphold the denial of benefits.

Mrs. Collins argued that the definition of suicide applied by Unum was ambiguous because it failed to state that it applied to any and all manner of suicide. Specifically, she argued that because it did not contain the specific language "whether sane or insane," the suicide exclusion did not apply to "insane suicide." In countering, Unum argued that it applied the "plain and ordinary" meaning of suicide, which "encompasses any non-accidental, deliberate, taking of one's own life, regardless of mental state." The court was clear to point out that it did not need to determine what the "plain and ordinary" meaning of suicide is, but only determine whether Unum's interpretation of the term suicide was reasonable. After a lengthy analysis, it determined that it was reasonable for Unum "to interpret suicide to mean any non-accidental, self-inflicted death" regardless of whether the insured was sane or insane.

While the above determination was alone sufficient to uphold the denial of benefits, the court analyzed the process by which Unum reached the conclusion that Mr. Collins was sane at the time he took his own life. The court concluded that Unum's determination that Mr. Collins was sane at the time of his death was the result of a deliberate, principled process supported by substantial evidence. "Accordingly, it was appropriate to deny benefits even if the suicide exclusion in the policy only excluded sane suicides," which the court found earlier that it did not.

On the second issue, Mrs. Collins argued that the applicable suicide exclusion did not comply with Virginia law because it did not precisely mirror the language of the Virginia statute addressing suicide exclusions. The specific phrase missing from the policy provision was the same phrase at issue in the first argument, the phrase "whether sane or insane." Mrs. Collins argued that because this language was absent from the exclusion, the exclusion was invalid under Virginia law. After a lengthy analysis of Virginia common law, public policy and the specific requirements of the statute, the court ultimately upheld the validity of the suicide exclusion under holding that, even though the phrase at issue was missing, the exclusion nevertheless complied "with the

language, history and purpose" of the statute and was, therefore, valid under Virginia law.
