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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* #15.04.09 was written by James S. Bainbridge, Esquire of The Bainbridge Law Firm, LLC.

TOPIC: Exclusion Upheld Where Insured Committed Suicide Two Days Prior to Expiration of Provision

CITATION: [*Partridge v. USAA Life Ins. Co.*](#), 2015 WL 12681993, No. 14-CV-170 (D. New Hampshire March 19, 2015).

SUMMARY: A New Hampshire federal district court recently upheld a carrier's decision to invoke a two year suicide exclusion clause where an insured committed suicide just two days before the exclusion expired. The beneficiary, the insured's widow, argued that the suicide exclusion was void because it differed from the language permitted by New Hampshire insurance regulations. She also argued that the carrier (who approved the application less than two months after it was submitted) negligently failed to diligently process the application within a reasonable period of time. The court rejected both of these arguments and entered summary judgment in favor of the carrier.

RELEVANCE: While the court acknowledged it was unaware of any legal duty of an insurance company to act on an insurance application in a reasonable time frame, the court still engaged in a lengthy analysis concerning the number of days that elapsed between each step in the insurance application process. It is not hard to imagine a scenario where, under different circumstances, a court would recognize such a duty on the part of a carrier (or agent) to act upon an application within a reasonable time frame. Moreover, one can imagine that certain beneficiaries of policies (and the attorneys who represent them) will continue to file similar claims in an effort to recover the death benefit or a reasonable settlement of the death benefit. To prevent becoming entangled in a scenario such as this, and to engage in good business practices, agents should take all reasonable steps to implement processes that efficiently and timely process applications on their end. Furthermore, an agent should also explain to prospective policy owners how the underwriting process might take weeks—or even months—to complete. One can imagine that is what the agent did here. That might explain why the agent was neither a defendant, nor referenced anywhere in the opinion.

FACTS: On March 30, 2011, Dr. Timothy Partridge submitted an application to USAA for a \$1 million life insurance policy naming his wife Jeanette Partridge as the beneficiary. Dr. Partridge chose the 26th day of each month for premiums to be paid via automatic withdraw. The application stated that no coverage would take effect unless and until: 1) the policy was delivered; 2) the insured's health and

insurability on the effective date was the same as stated in the application; and 3) USAA received the first full premium payment while Dr. Partridge was alive.

On May 27, 2011, less than two months after the application was submitted, USAA Life sent Dr. Partridge a letter informing him that his application had been approved with an “effective date” of June 26, 2011. The effective date was determined based on the day of the month he had chosen to make premium payments. Consistent with the aforementioned letter, the policy listed its effective date as June 26, 2011, defining that term as “the date on which coverage starts” and by which premiums, policy months, years and anniversaries are measured.

New Hampshire insurance regulations (which apply to Dr. Partridge’s policy) outline specific exclusions that are permitted to be included in a life insurance policy. The regulations specifically permit carriers to include a suicide exclusion stating that an exclusion for “[d]eath resulting from suicide with 2 years of the issue date of the policy, or, if later, the last date on which reinstatement was applied for in writing and accepted by the insurer” may be included in a policy. Where a policy contains exclusions not permitted by the regulations, the policy “shall be operative as if such prohibited exclusions were not excluded.” The regulations further provide that life insurance “[p]olicy exclusion provisions shall contain language substantially similar” to the language of the regulations.

In a section marked “Suicide Exclusion,” Dr. Partridge’s policy stated “[i]f the [i]nsured dies by suicide, while sane or insane, within two years from the Effective Date of the policy . . . we will pay a reduced death benefit equal to . . . [t]he premiums paid for benefits” at the time of death.

On June 25, 2013, Dr. Partridge committed suicide two days before the expiration of two-year suicide exclusion period. Invoking the exclusion, USAA refused to pay the death benefit, though it did tender an amount equal to the premiums remitted as of the date of death. Mrs. Partridge refused the tender and commenced litigation against USAA. Both parties filed for summary judgment at the close of discovery.

In her summary judgment motion, Mrs. Partridge argued that:

- 1) the suicide exclusion was void because it was broader in scope than the suicide exclusion permitted by New Hampshire insurance regulations; and
- 2) USAA negligently failed to process her husband’s application within a reasonable period of time and as a result he was deprived of the “loss of value of the life insurance policy.”

With respect to her first argument, Mrs. Partridge argued that the policy differed from the language permitted by New Hampshire insurance regulations in two respects: (1) the policy modified the term “suicide” by adding the phrase “while sane or insane,” a term which does not appear in the regulations; and (2) the policy used the term “effective date,” rather than the term “date of issue,” to identify the day on which the two-year exclusion period begins to run. Consequently, Mrs. Partridge argued that the policy’s suicide exclusion was void and the policy must be read as though it did not contain the exclusion.

The court rejected the “while sane or insane” argument. It held that any such inconsistencies do not render the exclusion void. Instead, the court chose to revise the policy terms by striking this broader language from the suicide exclusion. However, the court held that the suicide exclusion still stood and

since there was no evidence “that Dr. Partridge was insane at the time of his suicide,” the exclusion still precluded Mrs. Partridge from recovering the full death benefit.

Similarly, the court rejected the “effective date” argument as well holding that the language in the regulations (“date of issue”) and the policy (“effective date”) are substantially similar, *i.e.* the point in time when coverage attaches, and therefore, are not inconsistent. Mrs. Partridge had wanted to the court to define “date of issue” as the date the carrier agreed to provide coverage (when it issued the May 27, 2011 letter); however, the court refused to do so.

With respect to the negligence argument, the court held that it was unaware of any New Hampshire law that created a duty on the part of a carrier to act upon an application within a reasonable time period. Moreover, even assuming that USAA had a duty to do so, Mrs. Partridge failed to provide any evidence that USAA unreasonably delayed acting on Dr. Partridge’s application. To make this point, the court engaged in a lengthy analysis of how many days elapsed between each stage of the application process. Ultimately, the court stated that USAA acted within a reasonable time frame since it issued the policy less than two months after the application was submitted and most of that time was spent waiting for medical records it had requested just two days after the application was submitted.

The court also rejected the negligence argument on the grounds that, even assuming USAA delayed the processing of the application, Mrs. Partridge could not prove that any purported delay was the proximate cause of her damages, *i.e.*, that USAA could have reasonably foreseen that a delay in processing the application would have started the running of the suicide exclusion clock later than it would have if USAA had not delayed in processing the application.

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