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

TOPIC: Policy Owner's "Duty to Read" Not Excused by Alleged Agent Conduct

CITATION: *Alfa Life Ins. Co., et. al. v. Reese,* 2015 WL 3964215, No. 1140053 (Supreme Ct. Ala. June 30, 2015).

SUMMARY: Relying upon the strict Alabama state law "duty to read" requirement imposed upon the parties to a contract, the Alabama Supreme Court recently rendered a judgment in favor of an insurance company where a policy owner claimed she was defrauded by misrepresentations made by the company's agents. The policy owner, who admitted she had never read the policy documents, had claimed that the agents allegedly informed her that she did not need to be truthful about her insured husband's health condition in the application.

The policy documents, however, clearly contradicted this position and the court held that the policy owner could not claim that she reasonably relied on any purported misrepresentations by agents because she was fully capable of reading and understanding the policy documents but instead "made a deliberate decision to ignore [those] written contract terms in favor of previous purported representations by" the defendants. Thus, no coverage was afforded by the policy.

RELEVANCE: While the decision ultimately reached here excused any purported misconduct on the part of the agents, not all courts will apply such a strict interpretation of a party's duty to read. In those instances, agents and carriers could be exposed to significant liability for their actions where they are found to have made misrepresentations in the course of selling a policy. Indeed, it is likely that had the policy owner been less involved in the application process or had the misrepresentations not been as overtly contradicted by the contract terms, the court may not have ruled in favor of the agents and carrier. Also, as we have pointed out many times before, regardless of the positive outcome for the agents and carrier in this case, the parties had to engage in the expensive and public process of litigating the case. Furthermore, conduct such as that alleged here would most likely subject the agents to disciplinary action from the carrier, including possibly termination.

FACTS: On April 4, 2010, the plaintiff, Wanchetta Reese, met with two Alfa insurance producers to purchase a life insurance policy on the life of her husband, Lee Reese. The plaintiff was to be the policy owner and beneficiary. The plaintiff informed the producers that she wanted the policy in order to cover the burial costs in the event her husband passed away. The plaintiff alleged that one of the producers "suggested that [the plaintiff] apply for no more than $15,000.00 in life insurance since this was the

maximum amount of insurance that could be sold without [Lee Reese] undergoing a physical examination." The other producer then completed the application on his laptop while the plaintiff supplied answers concerning her husband, including his past medical history. Specifically, the plaintiff informed the producer that her husband "suffered from chronic kidney disease and an amputation of his leg below the knee" as result of diabetes. After receiving these answers, the one producer spoke with the other producer who allegedly advised him, in the presence of the plaintiff, "to not put that information in the application" as the application stated that if the proposed insured had any of these conditions he would not be eligible for coverage. The producers also allegedly omitted reference to the fact that Lee Reese received insulin, had bypass surgery and that he wore a prosthesis for an amputated leg.

The application was subsequently signed by the plaintiff and one of the producers. Lee Reese was unable to physically sign the application, so the plaintiff signed his name for him. The application and related documents stated that the application was answered truthfully and, that if there were any false statements and/or misrepresentations, it may result in the loss of coverage.

The conditional receipt referenced in the application and subsequently provided to the plaintiff stated that the agents were not authorized to by the company to waive or modify any of the terms of the documents. However, the plaintiff admittedly did not read the application, was not asked to read the application, did not look at the application, and was not refused an opportunity by the agent to read the application. After the application was completed, the plaintiff paid the premium and made a second supplemental premium payment the following month.

On or about May 23, 2010, Lee Reese died and a claim for policy benefits was subsequently made by the plaintiff on or about June 16, 2010.

The claim was denied by Alfa in a letter dated August 16, 2010 as a result of misrepresentations concerning Lee Reese's health condition.

The plaintiff then filed suit against Alfa and the producers for (1) breach of contract; (2) bad faith; (3) fraud and (4) the tort of outrage. Alfa filed an answer and counterclaim seeking a rescission and asserting that the policy "provides no insurance coverage in that it was void *ab initio* due to untruthful answers in the application." Specifically, Alfa argued that the misrepresentations were (1) fraudulent; (2) material to the acceptance of the risk; and (3) caused Alfa to issue a policy it would not have otherwise issued or would have issued in a different amount or at a different premium level.

The parties filed a variety of motions that ultimately lead to the dismissal of the plaintiff's claims for the tort of outrage and the addition of a claim for "fraud, deceit and suppression" against the defendants. A consolidated motion for summary judgment seeking to dismiss the remaining three counts and declare the policy void or rescinded was filed by the defendants based upon the fraudulent nature of the misrepresentations.

The plaintiff responded by arguing that Alfa could not rescind or void the policy because the "responsibility for the false information was that of the agent who was fully appraised of the insured's medical problems yet opted to omit that from the policy in order to procure a policy of insurance." The plaintiff also argued that, under Alabama law, the conduct of the agent is imputed to the principal, Alfa, and therefore, Alfa knew of the insured's actual health condition and still issued the policy and then committed bad faith by denying the claim for the proceeds.

The court granted the motion in part by dismissing the plaintiff's bad faith claim but denied the motion as to the plaintiff's breach of contract and fraud claims, as well as to Alfa's rescission claim. After some additional substantive and procedural filings, a renewed motion for summary judgment was filed by the defendants addressing the same issues. This time, however, the defendants sought application of a recent Alabama Supreme Court decision applying the strict duty to read rule which states that "a plaintiff has a 'general duty' to read the documents received in connection with a particular transaction, along with a duty to inquire and investigate." The trial court denied this motion and after two attempts to certify the issue for appeal, the trial court finally certified the issue concerning the duty to read for appeal.

On appeal, the court addressed the duty to read and whether the plaintiff, who admitted she never read the documents, was excused from this duty. Specifically, the plaintiff argued that the agents' alleged misrepresentations about the contents of the document, as well as special circumstances present in the transaction (the fact that the application was completed on a laptop and signed on a separate signature pad) excused her from the duty to read. The Alabama Supreme Court agreed with the defendants and ruled that the plaintiff was not excused from this duty, thereby reversing the trial court's decision.

Specifically, the Alabama Supreme Court held that the plaintiff "admittedly made no attempt to read the application; her entire argument rests on her contention that she was never given a 'reasonable opportunity' to read the application because it was filled out on a laptop computer. However, for all that appears, [the plaintiff] decided to 'blindly trust… the agents' representations rather than taking even the most basic of precautions to 'safeguard [her] interests.'" The court further added that it did "not think it unreasonable to conclude as a matter of law that, in this day and age, any adult of sound mind capable of executing a contract necessarily has a conscious appreciation of the risk associated with ignoring documents containing essential terms and conditions related to the transaction that is the subject of the contract." The court also held that the plaintiff could cite to no authority supporting her position that any special circumstances were present and therefore, she was not relieved by special circumstances of the duty to read.

The plaintiff also argued that the knowledge the agents possessed regarding the insured's true medical condition of Lee Reese should be imputed to the insurance company. However, by its express terms, the conditional receipt limited the agents' authority and specifically provided that "[n]o information or knowledge obtained by any agent ... in connection with this Application shall be construed as having been made known to or binding upon the Company." The court held that the plaintiff was again "bound to know that information given to [the] agents . . . was not 'made known to or binding upon [Alfa] unless [it] is in writing and made a part of this Application.'"

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