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

TOPIC: Materiality of Health Misrepresentation to Be Decided By Jury

CITATION: [*Principal National Life Ins. Co. v. Coassin, et al.*](#), 2015 WL 5680320, No. 3:13-cv-1520 (D. Conn. September 25, 2015).

SUMMARY: A Connecticut federal court recently ruled that the issue of whether a carrier would have issued a \$10 million life policy - had it known the true facts about an insured's medical history - should be decided by a jury.

In this case, the insured died of a brain tumor within the two-year contestable period. While there was no indication that the brain tumor had been discovered prior to the issuance of the policy, the carrier did discover that the insured made knowingly false statements about continued medical treatment for vertigo and lightheadedness.

The carrier initiated a declaratory judgment action seeking to void the policy based upon its position that the failure of the insured to disclose his continued treatment for vertigo and lightheadedness was a material misrepresentation. On a motion for summary judgment, the court ruled that, while the statements made by the insured were knowingly false as a matter of law, there was a dispute as to whether the carrier would have assumed the risk and issued the policy had it known the true facts about the treatment for vertigo. Consequently, the court refused to enter summary judgment on the issue of materiality and reserved this issue for the finder of fact.

RELEVANCE: Unfortunately for his beneficiaries, the insured's failure to disclose truthful information about his treatment for vertigo, "a common benign condition," has opened the door for the carrier to potentially void the policy. Indeed, the carrier's own representative testified that "[p]eople go on with benign positional vertigo and they are just fine and we issue [them] preferred policies." And the insured even disclosed its existence on the original application. Yet, he failed to disclose his subsequent treatment. This has placed the \$10 million death benefit in jeopardy. While it remains to be seen if these misrepresentations will be deemed material, there is a chance that the carrier will prevail and be allowed to void the policy.

Even if the policy is found to be valid, the policy owner will have incurred significant legal fees in defending this action. The lesson is that agents should encourage insureds to always answer policy application documents truthfully and completely. While this might seem patently obvious, cases like this remind us that we still need occasional reminders that honesty is (still) the best policy.

FACTS: On April 9, 2012, Plaintiff, Larry Coassin, applied for a \$10 million life policy with Principal Life in order to replace an existing \$10 million policy with MetLife. In completing the application, Mr. Coassin answered the following questions:

Question No. 18(j): "In the last ten years, have you had, been treated for or diagnosed as having ... any disease or disorder of the eyes, ears, nose, throat or skin?"

Answer: "No."

Question No. 21: "Date last seen by primary physician and reason."

Answer: "Nov 2011 - sinus infection - all fine now."

On April 17, 2012, Principal Life conditionally issued the policy to the Lawrence P. Coassin Revocable Trust dated 6/23/99 subject to the submission and approval of the following additional documents: (1) an Amendment form; (2) a Supplemental Statement of Health; and (3) an Acknowledgment and Delivery of Receipt, as well as the payment of the first premium.

The Amendment form, signed and submitted by the insured on April 25, 2012, stated the following:

With application amended to show response to question 18J, Part B; yes, earache with dizziness, lightheadedness and vertigo 12/11. Resolved completely without recurrence. No further MD visits needed.

The Supplemental Statement of Health, also signed and submitted by the insured on April 25, 2012, provided the following questions and answers:

Question: "Have you had any illness or injury or consulted a member of the medical profession since the date of the application?"

Answer: "No."

Subsequently, the policy was placed in force on April 25, 2012 and backdated per the insured's request to February 22, 2012.

Mr. Coassin passed away on July 8, 2013 and because the policy was within the two-year contestable period, Principal Life conducted a contestable claims review. During the review, it was discovered that Mr. Coassin had not been truthful about his continued treatment for vertigo and lightheadedness. Specifically, Principal Life became aware of the fact that, although he denied obtaining any medical treatment in April 2012, Mr. Coassin continued to be treated for vertigo and lightheadedness throughout the month of April 2012, including seeing an ENT specialist on April 17, 2012 for these conditions.

The medical records also revealed that the ENT specialist who examined the insured in April 2012 ordered the insured to undergo additional testing including an MRI in May 2012. While the MRI did show an abnormality, it was not in the area of the brain that the ENT specialist was concerned with to treat the insured's vertigo. Nevertheless, he still recommended Mr. Coassin see a neurologist. In June 2012, Mr. Coassin contacted his brother-in-law who happened to be a neurologist. The neurologist reviewed the MRI and determined that there was no cause for concern and that the abnormality had no "relationship to any dizziness or vertigo which

Mr. Coassin had experienced.” It was determined at that point that no further investigation was necessary or appropriate.

In November 2012, Mr. Coassin had a second MRI scan which revealed the existence of a brain tumor in the area where the abnormality was located. It was disputed whether this tumor could have been observed on the May 2012 MRI. However, it was undisputed that the tumor was not diagnosed by any doctor who reviewed the May 2012 MRI.

Upon completion of the contestable claim review, Principal Life concluded that, had it known the truth about the continued vertigo treatment in April 2012, it would not have issued the policy. Principal Life subsequently determined that the policy was not payable and filed a declaratory judgment action seeking to have the policy declared void *ab initio*. The policy owner counterclaimed arguing that Principal Life is liable for payment of the death benefit. At the close of discovery, Principal Life moved for summary judgment seeking to have the policy declared void as a matter of law.

On summary judgment, Principal Life argued that it met the necessary criteria under Connecticut law to have the policy declared void. Specifically, it argued that both the Amendment and Supplement contained (1) misrepresentations (or untrue statements) which were (2) knowingly made and (3) material to the Principal Life’s decision whether to insure.

The court granted Principal Life’s motion with respect to the first two criteria. The court agreed that the misrepresentations made in the Amendment and Supplement were untrue and were knowingly made inasmuch as “[i]n the short span of two weeks, Mr. Coassin saw not just one but two doctors for the same symptoms, and those symptoms were worrying enough to one of the doctors to cause him to order further testing.” Moreover, “[t]he second of the two appointments was just eight days before Mr. Coassin signed the Amendment and the Supplement attesting that he had not seen any doctors in the previous two weeks and that his symptoms had resolved.” The court held that “[n]o reasonable factfinder could find otherwise.”

With respect to the third criteria, however, the court held that there was a dispute concerning whether the misrepresentations were material to the

decision to insure. There was a genuine issue of material fact as to whether Principal Life, had it known the true facts concerning Mr. Coassin's continued treatment for vertigo, would have still issued the policy.

Principal Life argued that had it known about the April 2012 visits, it would have delayed issuance of the policy and made an inquiry with the treating doctors where it would have learned about the May 2012 MRI and that the ENT specialist recommended that the insured see a neurologist. Upon learning about the ENT specialist's recommendation that Mr. Coassin see a neurologist, Principal Life would have at that point declined coverage as it "could not properly evaluate the risk that it would assume in offering life insurance coverage to Mr. Coassin, nor could it determine if it would be willing to accept such risk."

The policy owner argued that the ENT specialist only diagnosed Mr. Coassin with "benign positional vertigo" and that per Principal Life's own representative, it regularly issues preferred policies to people with this diagnosis. The policy owner further argued that, per Principal Life's underwriting guidelines, the correct underwriting action in this instance would have been to postpone a decision on the application rather than to decline the issuance of the policy. "Had Principal [Life] merely postponed its decision as directed by its own guidelines and had [it] conducted a reasonable investigation," it would have learned that the ENT specialist had no further plan for treating Mr. Coassin other than his seeing a neurologist. If Principal Life would have then contacted the neurologist, it would have learned that his opinion was that "the observed white matter was a normal result of the aging process, was of no medical significance, and that no further investigation was indicated." Under these circumstances, it was argued that Principal Life would have still issued the policy.

The court found this position compelling enough to hold that there was "a genuine dispute of material fact as to whether Principal Life would have issued Mr. Coassin the policy if it had known the true facts which he misrepresented on his application."