

‘Buy and Shelve’: A Deadly Strategy For Life Insurance

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Common sense—and any good insurance recovery lawyer—will urge policyholders to regularly review their insurance policies. Whether it be homeowner’s, director’s and officer’s, first party property, cyber or any other line of coverage, circumstances change, and policies should be consistently monitored and updated to keep pace.

Large corporations typically have dedicated risk management departments that stay on top of their coverage portfolios, but individual policyholders all too often purchase policies and simply file them away—in the apparent hope that the mere act of buying coverage serves as a hedge against ever needing it. This is the “buy and shelve” approach to insurance. And, while it’s never a good strategy, it is particularly dangerous in the context of life insurance.

Life insurance is a long-term play. Many policyholders buy it in the (completely understandable, but entirely futile) hope that coverage will never be triggered. Comprehensively reviewing any insurance contract is a daunting task—and adding the specter of death to policy review makes the process feel even less approachable. Consequently, the instinct to “buy and shelve” life insurance can be particularly strong.

But the very nature of a life insurance policy makes regular review all the more important. The



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unfortunate reality of life insurance is that any ambiguity, mistake, or vestige of past circumstances in a policy probably won’t be discovered until the person whose intent matters most—the decedent—cannot weigh in on their wishes.

Alternatively, even if the policyholder is fortunate enough to reach an advanced age, regular payment of policy premiums may become a difficult task to remember and execute, risking a lapse in coverage.

Real Life (Insurance) Examples

The fact patterns that lead to contentious life insurance disputes are remarkably common; e.g., remarriage, death of a beneficiary, birth or adoption

of a child or merely a change of heart. Take, for instance, *Metropolitan Life Insurance v. McDonald*, 395 F. Supp. 3d 886 (E.D. Mich. 2019), where a federal district court decided on summary judgment that a decedent's life insurance proceeds were payable to the decedent's ex-wife pursuant to their divorce agreement, rather than to his surviving spouse, who was the named beneficiary at the time of decedent's death.

When inadequate understanding of policy terms and lack of diligence are added to such common scenarios, disastrous results inevitably ensue. In the case of *Thrivent Financial for Lutherans v. Strojny*, 882 F. Supp. 2d 260 (D. Mass. 2012),

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decedent named his father and his cousin as the original beneficiaries under his life insurance policy. Upon his father's death, decedent attempted to change his initial beneficiary designation. Specifically, decedent named two "friends" as his new beneficiaries—which was an improper designation under the insurance carrier's bylaws.

Following his death, the court invalidated decedent's attempt to update the beneficiary designation and held that the decedent's surviving, original beneficiary (his cousin) was the proper recipient of the policy proceeds.

Carrier bylaws are not the only thing that can trip up the uninitiated. Because insurance coverage jurisprudence is developed on a state-by-state basis, it is essential for policyholders to know and understand the particular state laws that govern their specific policy. In the very recent case of *Ameritas Life Insurance v. Wilmington Savings Fund Society*, FSB, D.N.J. 24-cv-00865,

the decedent's policy was purchased by a trust in his name, which also paid the policy premiums, and which then transferred the policy to a bank (WSFS). Upon decedent's death, the insurer investigated the policy and sued the bank, claiming that, under New Jersey law, the policy was an illegal "Stranger-Originated Life Insurance Policy," or "STOLI" —effectively, a human life wager. This suit remains in the pleading stage, but is an interesting one to watch.

The cases outlined above—which range from commonplace fact patterns to the fringes of death pools—share two essential elements:

- First, a *change* in the policy's beneficiary designation or ownership threw the policy proceeds into question.
- Second, and more significantly, the failure to conduct regular policy reviews during the insured's lifetime led to expensive and time-consuming litigation after the policyholder's death.

...And If I Don't? Consequences, Interpleader Actions and Policyholder Guardrails

Though perhaps not directly traceable to the "buy and shelve" mindset, courts have nonetheless established special proceedings to address the fallout from a failure to properly monitor life insurance policies.

Among the cases mentioned above, *Metropolitan Life* and *Thrivent* are united in that they involved such special proceedings known as "interpleader" actions. Interpleader actions are a form of lawsuit meant to help insurers, banks, pension plan administrators, and other entities that may hold disputed funds, from facing multiple liability to multiple claimants. In a life insurance-based interpleader action, an insurer that faces multiple claims to the same policy proceeds may bring all the potential claimants to court, deposit the disputed funds, and then bow out with a waiver of liability. And, while interpleader actions can be a beneficial safeguard for insurers, the claimants

in *Metro Life* and *Thrivent* would be among the first to note how costly they are for individuals.

Of course, these special proceedings can also cut the other way. Consider certain instances where the insurance providers are at fault. Perhaps a policyholder submits a policy application or a change to their policy application but the carrier—or a third party, like a broker—fails to implement the change as requested, or fails to notify the policyholder of an ambiguity or improper element of their application. Without diligence and regular review, such issues may not come to light until after the policyholder passes. In such circumstances, interpleader actions may become the only means for survivors to honor the decedent’s true intent.

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Legal remedies against an insurer—e.g., claims for negligence and/or breach of contract—are still available to an intended beneficiary even in the context of an interpleader action. And, where the claimants are in the right, these special proceedings offer no quarter to a liable carrier. That is because interpleader relief is *not* available to an insurer that “stands as a wrong-doer with respect to the subject matter of the suit, rather than being free from blame in causing the controversy.” *United of Omaha Life Insurance v. Womack-Rodriguez*, 461 F. Supp. 3d 455, 470 (W.D. Tex. 2020).

It is worth noting that still other life insurance-related guardrails exist outside the courtroom. Perhaps the best example is one that has developed in direct response to the increasing longevity of the United States citizenry. For many Americans, aging

leads to cognitive decline. And the associated memory loss can result in, among other things, missed insurance premium payments. In recognition of this all too common occurrence, certain states now require insurance carriers to affirmatively notify policyholders of their right to designate a second person to receive notices of overdue premiums.

For instance, California Insurance Code §10113.72 requires insurers to annually notify life insurance policyholders of their right to designate secondary payers—which, in turn, can help ensure that a cognitively impaired individual does not forfeit the policy benefit for which they have paid a lifetime of premiums.

Parting Thoughts

Life insurance can be an extremely valuable addition to any long-term financial and estate plan. As the adage goes, nothing in life is certain except death and taxes—and individualized, up-to-date life insurance policies can hedge against the liabilities arising from both.

In the end, best practices call for vigilance, advanced planning, and the advice of insurance coverage counsel. Purchasing and ignoring may seem a tempting path—especially when one wishes to avoid contemplating their own mortality. But, particularly when it comes to life insurance, the “buy and shelve” approach can be a deadly mistake.

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