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Ohio Court Holds No Insurer Duty to Search Death Master File

Life insurance companies in Ohio have no affirmative duty to search the Social Security Death Master File (DMF) or otherwise seek out information on possible deaths, the Ohio Court of Appeals has held in *Andrews v. Nationwide Mutual Insurance Company*, No. 97891 (Ohio Ct. App. Oct 25, 2012). Affirming the dismissal of a putative class action filed by private plaintiffs, the court held that the life insurance contracts at issue “do not impose a duty on [the insurer] to search the DMF to determine whether their insureds are deceased,” and therefore “obligating [the insurer] to solicit or gather information pertaining to an insured’s death would be contrary to the terms contained in the insurance policy.” Opinion ¶¶ 19 & 28. The court found “no validity to appellants’ allegations that [the insurer] has breached the implied covenant of good faith and fair dealing by failing to utilize the DMF for the benefit of its life insureds.” *Id.* ¶ 25. Click [here](#) for the opinion.

The *Andrews* case is one of four putative class actions brought by private plaintiffs in Ohio seeking to require life insurers to undertake death matches. These putative class actions were brought following significant regulatory activity relating to unclaimed property issues in the life insurance industry. The complaints alleged that the defendant insurers had an affirmative duty to search the DMF at least annually for possible deaths of insureds under life insurance policies and to pay death benefits without requiring any further notice of death.

In the *Andrews* complaint, the plaintiffs alleged that although they were alive, the “actuarial probability” of their mortality was greater than 70%. They alleged that the insurer’s duty of good faith and fair dealing required it to check the DMF, at least on an annual basis, to see whether any insureds at or above the asserted 70% death probability threshold have died, and to pay insurance proceeds “even in the absence of a submission of proof of death.” Plaintiffs sought an injunction requiring defendants to search for deaths at least annually, a declaratory judgment to the same effect, and a further declaratory judgment that, as to deceased class members, defendants must “pay the proceeds of the insurance contract, without first requiring further notice of death.” They also asserted a breach of the duty of good faith and fair dealing and a claim for unjust enrichment.

In the first appellate decision to consider these claims, the Ohio Court of Appeals rejected the plaintiffs’ arguments and affirmed the trial court’s dismissal in a strongly worded opinion. The court found that the life insurance contracts did not require the insurer to search the DMF and instead “expressly require[d] ‘receipt’ of ‘proof of death.’” *Id.* ¶ 28. (In Ohio, all life insurance policies are required to include a provision stating that “when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death. . . .” Ohio R.C. 3915.05(K).) The plaintiffs argued that the proof of death provision was ambiguous, because the contracts “are silent as to the party upon whom the responsibility for providing proof falls,” but the court rejected this argument, observing that “[t]he terms ‘receipt’ and ‘receiving’ demonstrate [the insurer’s] passive role in establishing an insured party’s proof of death; they do not connote an obligation to procure such information.” *Id.* ¶ 19.

The court also rejected the plaintiffs’ argument that life insurance policies are distinguishable from other forms of insurance policies. The plaintiffs argued that unlike automobile or accidental death insurance policies where the triggering event is not certain to occur, the death of a party with a life insurance policy is certain to occur. The court disagreed; “we are not persuaded that such certainty places an additional

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duty on [life insurers] beyond what is expressed in the life insurance contracts.” Instead, the court held that both the plaintiffs’ contracts and Ohio law “placed the burden on the claimant or the beneficiary to produce the proof of death.” *Id.* ¶ 24. The court stated that “we will not import additional unspoken duties and obligations onto [the insurer] that will conflict with the parties’ contracted term,” holding that the insurer had not breached its duty of good faith and fair dealing by failing to search the DMF “when it is not contractually or legally obligated to do so.” *Id.* ¶¶ 24 & 28.

The death matching issues have primarily been the focus of state regulatory action rather than private litigation. Insurance industry practices regarding use of the DMF are under scrutiny by state officials in multistate market conduct examinations and unclaimed property audits. Numerous insurance companies are subject to unclaimed property audits by multiple states, and a number of state insurance regulators are investigating insurers’ practices with respect to DMF searches and payment of death benefits under life insurance policies. In addition, the State of West Virginia has recently filed at least 20 actions against life insurers alleging an affirmative duty to search the DMF.



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