Zulkiewski v. American General Life Insurance Company

The Michigan Court of Appeals, 12 June 2012

The Michigan Court of Appeals held in Zulkiewski v. American General Life Insurance Company that the online service program used by American General Life Insurance Company was sufficient to attribute the e-signature to the insured inindividual.

A 12 June 2012 unpublished decision of the Michigan Court of Appeals shed light on the necessity for and possible methods of attributing electronic signatures and in the process, found an insurance company's online account service program adequately attributed the electronic signature to the insured. The decision in Zulkiewski v. American General Life Insurance Company (No. 299025, Marquette Circuit Court LC No. 09-047293-CZ, 2012 Mich. App. LEXIS 1086) ended a two-year battle over the $250,000 life insurance of Dr. Ronald Zulkiewski, who committed suicide at age 34.

In 1999, Zulkiewski bought the insurance policy from American General's predecessor, naming his then-wife beneficiary and his parents contingent beneficiaries. In 2006, he changed the beneficiaries in writing, removing his wife and naming his mother primary beneficiary and his father contingent beneficiary. Dr. Zulkiewski remarried; he was married to his second wife, Julie, at his death in 2009.

In December 2008, someone purporting to be Dr. Zulkiewski enrolled in American General's online account service program. The online account service allowed a change of beneficiaries to be made online, but only after entry of an insurance policy number, social security number, mother's maiden name, password and an email address. Minutes after the online account service enrolment, the policy beneficiary was changed online, from Dr. Zulkiewski's mother to his wife Julie. The insurer confirmed the change by email on the same day it was made, and a week later with a written letter. The doctor took his life seven months after the beneficiary change. Julie Zulkiewski made a claim for the insurance proceeds, as did the doctor's mother, Sharon Zulkiewski.

American General sought and won a summary judgment, based on a trial court finding that the evidence indicated Dr. Zulkiewski made the online beneficiary change himself. At trial, American General documented its security policies and provided an affidavit from Julie Zulkiewski that she did not make the beneficiary change. She also testified that her husband was very computer literate and handled all his financial transactions electronically.

Sharon Zulkiewski appealed, challenging the security procedures used by American General in its online account service program. Her argument - that the electronic signature couldn't definitively be attributed to her son - turned on whether safeguards in the online account service program were sufficient to prevent forged electronic signatures. ('What appellants assert is that American General's security process, or lack thereof, allowed plaintiff [decedent's wife Julie Zulkiewski] to forge decedent's signature.') The appeals court noted that 'although the UETA permits an electronic signature, it must still represent the act of the party authorized to sign a contract or other document.' In other words, the signature must be attributable to a person.

The Michigan UETA (Mich. Comp. Laws §450.839) allows attribution of electronic signatures 'in any manner,' including by 'a showing of efficacy of security procedures applied to determine the person' to which the signature is attributable. The appeals court observed that efficacy of security procedures is one, but not the only method for attributing signatures. But Sharon Zulkiewski didn't challenge the electronic signature or its attribution to her son on other grounds; her case rested on her claim of flawed security procedures in the insurer's online account service program.

Other possible challenges to attribution of Dr. Zulkiewski's signature, as outlined by the appeals court, might have included mistake, 'computer glitch' or that the beneficiary change was made erroneously or randomly (by a computer hacker, for example). If Sharon had argued that the change of beneficiary was made erroneously or randomly, American General might have had to introduce expert testimony to address its processes and error-correcting protocols. This testimony wasn't necessary here, because Sharon's case boiled down to a claim that 'someone' defrauded the insurer based on its insufficient security procedures.

The insurer met the limited challenge in this case with a two-pronged response: first, the personal information required to use the online account service made it unlikely that an unknown third party could do so, and second, Dr. Zulkiewski's wife testified that she didn't make the beneficiary change. This was sufficient for the appeals court to uphold summary judgment for the insurer. In so doing, the court observed that Sharon Zulkiewski's case was 'nothing more than conjecture.' As Sharon provided no substantive admissible evidence that her son did not perform the beneficiary change, no question of fact was created as to the authenticity of the beneficiary change and summary judgment was warranted.

The case provides something of a roadmap for future challenges and defences to electronic signature attribution claims. First, it reminds us that the specifics of state electronic signature laws must be reviewed carefully. Here, the plaintiff mistakenly assumed that

an example of attribution under Michigan law was a requirement for attribution. In fact, methods of attribution can vary. Moreover, some electronic signature laws were amended after their enactment; in some cases, these amendments affect attribution. For example, New York's Electronic Signatures and Records Act was amended after its adoption to remove the requirement for a personal identifier in an electronic signature.

Second, a person's familiarity with online transacting, regular use of electronic platforms for performing contractual transactions, and his previous, simultaneous, or contemporaneous conduct of similar online transactions can provide useful evidence about whether he intended an electronic signature to be his act. Dr. Zulkiewski was described by his widow as computer-savvy and in the habit of conducting financial transactions online. Where a challenged electronic transaction is part of a person's customary behaviour, rather than an isolated incident on the part of one lacking online transacting experience, there may be a higher bar to invalidating the transaction for failure of attribution.

Third, a company providing its customers' electronic contracting options should be both mindful of its security and recordkeeping processes and ready to offer the testimony of experts who can vouch for the integrity of procedures, records and error-correcting protocols. This requires having knowledgeable experts identified and available should challenges arise. An example of the risk of failing to have the right experts available (and to timely produce their testimony) is found in a 2009 New York case involving the widower of the insured and an insurance company. The parties disagreed about when the deceased's insurance application was submitted. The insurer's printout showed the application was submitted on 15 May 2004, but the insurer failed to offer evidence to prove the printout accurately reflected the date of submission. This failure was a factor in denial of the summary judgment sought by the insurer.

Insurers and others making consumer contracts online can learn much from the Zulkiewski case. Attribution of electronic signatures is a moving target, and those formalising contracts online with electronic signatures should keep an ear turned to judicial decisions on the subject.

Postscript

For other recent cases involving the validity of an electronic signature on a contract for insurance, see Long v. Time Insurance Co., 572 F. Supp. 2d 907 (S.D. Ohio, Eastern Division, 2008) (upholding validity of electronic signature on an application for short-term medical insurance where application contained false statements about the insured's prior medical treatment) and The Prudential Insurance Company of America v. Dukoff, 674 F.Supp.2d 401 (Eastern District N.Y., 2009) (noting that the validity of electronic signatures for insurance documents has not been addressed by New York courts, 'although courts applying New York law have generally held that ... an electronic signature is a valid signature.')

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