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Insurance Issues and Common Law Marriage

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1. Introduction

When insurance issues are interjected into any type of case a myriad of complex issues arise. Insurance touches almost every aspect of our every day life and relates to claims of injury, health, property damage, and death. Whether a common law marriage exists is no exception to contributing to already complex insurance law issues. Where insurance coverage is involved the primary inquiry is whether there is sufficient proof to establish a common law marriage for purposes of the insurance policy. An insurance policy should be examined closely to determine whether the parties to a common law marriage are afforded insurance coverage. Advising clients regarding coverage issues is key to avoiding common obstacles that occur in the event of an insurance claim.

2. Brief Insurance Law Overview

Every contract contains an implied duty of good faith and fair dealing, requiring the parties to the agreement to perform their contractual obligations in good faith and in a reasonable manner; insurance contracts are no exception to this rule. *Crown Life Ins. Co. v. Haag Ltd. Partnership*, 929 P.2d 42 (Colo. App. 1996). The relationship between an insurer and insured is initially and fundamentally based on the insurance contract. *Hansen v. Barmore*, 779 P.2d 1360 (Colo. App. 1989). As in other areas of contract law, the language of an insurance policy is determinative of the intent of the parties. Unless

an insurance policy is ambiguous, it must be enforced as written. Where policy provisions are clear and unambiguous, they cannot be rewritten, and provisions may neither be added to extend coverage beyond that contracted for nor delete provisions to limit coverage. *Geiger v. American Standard Insurance Co.*, 117 P.3d 16, 18 (Colo. App. 2004).

3. The Difference Between First-Party and Third-Party Coverage

First-party insurance is purchased to protect from direct loss and results in payments directly to the insured or on behalf of the insured. The types of coverages in this category include: health insurance, homeowner's insurance, automobile insurance and disability insurance.

- a. An example of a first-party coverage is uninsured motorist or underinsured motorist coverage under a standard auto insurance policy. This coverage allows an insured to recover damages for personal injuries caused by an uninsured or underinsured motorist. The insured must show that he or she is legally entitled to recover damages from the tortfeasor in order to obtain these benefits. Once this "burden" is met, the insured receives a direct benefit available under the insurance policy. See generally, C.R.S. §10-4-609.

Third-party coverage is purchased to protect an insured from third party liability claims. Insurance policies such as automobile and homeowner's insurance insure against both first-party and third party risks. See generally, *Travelers Ins. Co. v. Savio*, 706

P.2d. 1258, 1271-1275 (Colo. 1985); and *Farmers v. Trimble*, 691 P.2d 1138 (Colo. 1984).

a. An example of this type of coverage are the mandatory automobile insurance coverages of no less than bodily injury limits of 25,000 per person, \$50,000 per accident and \$15,000 per accident for property damage. See generally, C.R.S. § 10-4-620.

4. General Policy Provisions

One of the features of insurance is that a "new" or separate contract cannot be written for each insured. Insurance is constrained by the mathematics of very large numbers. Insurance is only able to function where a pool of many individuals subject similar risks may be assembled and agree to the same risk sharing arrangement. The risk sharing arrangement, the policy, cannot be made new or different for each individual. Insurance requires the entire group to make the same agreement. Most forms have been standardized by the insurance industry.

Insurance companies are also heavily regulated and must comply with various state laws and regulations regarding the policy forms among other things. Common policy terms and conditions to be aware of include the terms "You" and "Named Insured".

a. **The Anatomy of an Insurance Policy**

Most insurance policies are similarly organized and have specific, distinct and identifiable parts. Typically, the parts or sections of an insurance policy includes:

- i. The Declarations Page – This is where the policyholder is identified, the property or other item being insured, a description of the property being insured, and the limit of coverage. It is also location where many common law marriage issues could be resolved before they become problems; simply make both partners the first named insured.
 - ii. Insurance Clause – This section provides the basic agreement regarding the duties of the insurer and the insured. For instance, the insurer will provide coverage up to the limit in exchange for the insured’s payment of premium.
 - iii. Definitions – This section defines various terms used throughout the policy.
 - iv. Exclusions – An insurance policy generally grants broad coverage. The exclusions section limits coverage for certain events, property or situations.
 - v. Conditions – This further details the nature of the insurance relationship. This section contains provisions such as notice of loss, cancellation provisions, cooperation clause, and transfer of rights of recovery, policy assignment and changes to the policy.
 - vi. Other policy sections – some insurance policies may contain additional provisions such as state provisions, endorsements or other sections unique to a particular type of coverage.
- b. Specific Policy Terms

- i. Typically, the insurance policy contains a section captioned “definitions used throughout this policy” and states that, “[a] s used throughout this policy, except where redefined, and shown in bold type . . . You and your mean the policyholder (or named insured) named in the declarations and spouse, if living in the same household.” This section is commonly located at the beginning of the policy or coverage form and not in the section labeled definitions
- ii. The policy may also define the term “insured” to mean you and residents of your household who are:
 1. Your relatives; or
 2. Other persons under the age of 21 and in the care of any person named above.

5. Insurance Policy Interpretation

As briefly mentioned before, the interpretation of the language of an insurance policy is a question of law. The plain language of the contract and the intent of the parties as expressed in that language serve as the starting point for the analysis to determine coverage. *Jefferson v. Scariano*, 949 P.2d 120, 121 (Colo. App. 1997). The provisions of an insurance contract cannot be considered in isolation but must be considered as a whole. *Id.* Whether one may be considered the resident of a household is an issue to be determined by the facts and circumstances of each particular case. *Iowa National Mu. Ins. Co. v. Boatright*, 33 Colo. App. 124, 127, 516 P.2d 439, 440 (1973). Important factors are the subjective or declared intent of an individual, the relationship

between the individual and the members of the household, the existence of a second place of lodging, and the relative permanence or transient nature of the individual's residence in the household. *USAA v. Mione*, 34 Colo. App. 448, 450, 528 P.2d 420, 421 (1974).

The terms of an insurance contract are construed, as they would be understood by a person of ordinary intelligence. The terms of an insurance contract are given their ordinary and plain meaning. Unless there is an ambiguity in the policy language, an insurance policy must be enforced as written. *Cruz v. Farmers Ins. Exchange*, 12 P.3d 307, 309 (Colo. App. 2000). A policy provision is ambiguous if it is susceptible of more than one reasonable interpretation. In determining whether there is an ambiguity in a policy provision, a court must evaluate the policy as a whole using the generally accepted meaning of the words employed. *Union Ins. Co. v. Houtz*, 883 P.2d 1057 (Colo. 1994).

If an ambiguity in the policy language exists, the language must be construed against the insurer and in favor of the insured. However, a mere disagreement between the parties regarding the interpretation of the policy does not create an ambiguity. *Cruz* at 311.

Where exclusions to coverage may be applicable, an insurer must draft an exclusionary clause in clear and specific language. To benefit from an exclusionary clause, an insurer must establish that the exclusion applies and is not subject to any other reasonable interpretation. *Cruz*, supra.

6. Common Law Marriage Principles

Colorado recognizes common law marriage. A common law marriage is established by the mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship. *People v. Lucero*,

747 P.2d 660, 663 (Colo. 1987). Absent an express agreement, the two factors considered most reliable in determining whether an intent to be married has been established are cohabitation and a general reputation in the community that the parties hold themselves out as husband and wife. *Whitenill v. Permanente*, 940 P.2d 1129, 1132 (Colo. App. 1997).

7. Whose Covered if there is a Common Law Marriage

Just as in other areas of law, this issue is fact driven when there is a common law marriage and is a matter of proof in the insurance context. It may be difficult to establish that a person is entitled to insurance coverage at the claim stage if there is not significant factual evidence such as the maintaining of a residence, the receipt of mail, the payment of household bills, the maintaining of joint or separate bank accounts, etc. Generally, an insured or claimant must submit their claim and show that they are entitled to coverage under an insurance policy. It should be noted that the identification of the named insured is of paramount interest to the insurer and courts have held that the term “named insured” has a restricted meaning and does not apply to any persons other than those named in the policy. *D.C. Concrete Management, Inc. v. Mid-Century Ins. Co.*, 39 P.3d 1205, 1207 (Colo. App. 2001).

Generally, a person claiming to the benefits of the policy must prove that they are entitled to them. The insurance company only bears the burden of proving an exclusion that would eliminate coverage that the policyholder has otherwise established. Ostensibly, courts will determine that the claimant or insured bears the burden of proving a valid common law marriage. However, the insurer may have the burden of proof where

it attempts to eliminate coverage on the premise that there is not a valid common law marriage.

The majority of insurance cases involving issues of common law marriage arise out of situations pertaining to auto insurance or worker's compensation.

In *Valencia v. Northland Ins. Co.*, 514 P.2d 789 (Colo. App. 1973), a plaintiff was struck and injured by a hit-and-run motorist. An insurance policy was issued by Northland to Mariniano Valencia. The policy provided benefits to the named insured, his wife, and his family in the event that any covered individual was injured by an uninsured motorist or hit-and-run automobile. The parties stipulated at the commencement of trial that the sole question was whether the plaintiff was the common law wife of the named insured. The Colorado Court of Appeals affirmed the trial court's decision that plaintiff failed to establish the existence of a common-law marriage on the date of the accident. Some of the evidence present in that case was the fact that plaintiff and the named insured rented an apartment as husband and wife prior to plaintiff's previous marriage terminating. Plaintiff and the named insured alleged that they began living together the day after plaintiff's divorce was final. The existence of a common law marriage was placed in doubt by testimony of independent witnesses such as the police officer who investigated the accident. He reported that the named insured referred to plaintiff as his "girlfriend". Plaintiff also told hospital personnel that the named insured was her "boyfriend". Plaintiff also was employed under her maiden name instead of the named insured's name. Plaintiff completed with her employer a Withholding Exemption Certificate in her maiden name and indicated she was single. The Colorado Court of

Appeals determined that the existence of a common law marriage was a question of fact to be determined by the trier of fact.

There are a series of worker's compensation cases with varying outcomes. Appellate courts seldom inclined to overturn a trial court or administrative agency's finding on whether a valid common law marriage exists. Where there is conflicting evidence some discretion must rest in the trial tribunal. *Rocky Mountain Fuel Co. v. Reed*, 110 Colo. 88, 90, 130 P.2d 1049, 1050 (1942).

In *Reed*, the sole question was whether Mr. Reed and Mrs. Reed were husband and wife at the time of his death. Mr. Reed sustained an accidental injury while working, which compensation was allowed by the Commission and he returned to work. Shortly after his initial injury, Mr. Reed had another accident that resulted in instant death. Mrs. Reed claimed she was entitled to the remaining worker's compensation benefits because she was Mr. Reed's common law wife at the time of his death. Although the court and the Commission ruled in her favor, the employer and insurer challenged the relationship. Mrs. Reed was previously married to Mr. Mason but shortly separated from him. Approximately four years later, she took up her residence with Mr. Reed. Four years later, Mr. Mason obtained a divorce in California and the Reeds continued their residence and relationship for approximately eight years after the date of the divorce. The employer and insurer claimed that the Reeds' relationship was illegal at its inception. Mrs. Reed maintained that continued cohabitation after the removal of an obstacle to marriage raised a presumption of a valid common law marriage. Mutual consent by conduct as well as express words was also present. The Colorado Court of Appeals reasoned:

“These [case law cited by the parties] we find no occasion to here examine, reconcile, and distinguish. That there are some minor conflicts, and much confusing diversity of facts, is indisputable. On the whole, however, our investigation satisfies us of the existence and reason of the several rules and discloses the real difficulty confronting appellate courts, i.e., the application of recognized rules to a given state of facts. The conclusion is inevitable that in such cases as that now before us some discretion must rest in the trial tribunal.

While the record before us leaves much to be desired in way of guidance, and discloses numerous defects which it would appear counsel on either side might well have supplied at the hearing before the Commission, we still think it justifies the assertion that if there ever was a case where a relationship, unlawful in its inception, could be matured into a valid common-law marriage by the conduct of the parties without proof of specific declaration, this is that case. Eight years of conjugal cohabitation without the existence of any impediment to the marriage relation, a course of life and conduct inconsistent with any other conclusion, an orderly household, mutual recognition of man and woman as husband and wife, unvarying representation among friends and neighbors of the existence of the relationship, and nowhere along their pathway a single sign point to the contrary. If ever a common law marriage should be recognized we think this should be and are convinced that that recognition is consistent with great weight of authority and imperatively demanded by justice, public policy, and a due regard for human relationships.” *Id.*

There are also a number of worker’s compensation cases where the outcome of the factual analysis favored the insurance company because the factual disputes were too great.

In *Zuzich v. Leyden Lignite Co.*, 120 Colo. 21, 206 P.2d 833 (1949), the Colorado Supreme Court affirmed the Commission’s finding that claimant was not the common law wife of the deceased and was not a dependent of the deceased. In that case, Mike Zuzich died because of injuries he sustained at work on August 14, 1944. Frances Tegel Zuzich claimed to be entitled to worker’s compensation benefits because she was a dependent of the deceased and was his common law wife. The claimant was previously divorced and continued to use her previous married name “Tegel.” Although she claimed

to have cohabitated with Zuzich for approximately 10 years, the telephone listing was in her name “Tegel”, and Zuzich’s name was not listed in the telephone directory. There was no evidence of joint accounts. Since claimant and the deceased did not associate with friends or neighbors there were no independent witnesses to corroborate their holding themselves out as husband and wife. Claimant also testified that because they were both Catholic, claimant and Zuzich did not consider themselves married unless a priest performed a ceremony. They both planned to go to a ceremonial marriage but neglected to do so prior to Zuzich’s death. The claimant had discussions with the embalmer at the funeral home and represented that Zuzich was not married; “not through church, no.” The Colorado Supreme Court made clear that very seldom would they be inclined to disturb factual findings of the Commission or trial court.

In *Employers Mut. Liability Ins. Co. of Wisconsin v. Industrial Commission*, 124 Colo. 68, 243 P.2d 901 (1951). The Colorado Supreme Court reversed and remanded the Industrial Commissions’ award in favor of the alleged surviving common law wife. The Colorado Supreme Court directly instructed the Industrial Commission to set aside its award, but allow claimant to present further evidence in support of her claim, should she so desired.

In that case, the claimant alleged that she was the common law wife of Antonio Fernandez at the time he died of a work related accident. The sole question presented was whether the claimant was entitled to worker’s compensation benefits as his dependent wife. In her notice of claim and claim presentation, claimant alleged that she and the decedent were married on January 15, 1947. However, a final divorce degree related to her previous marriage was issued February 5, 1947. Claimant claimed to have

cohabitated with the decedent from January 15, 1947 until his death on July 31, 1950. No children were born to the claimant and decedent. Claimant was employed during the period of cohabitation; his father paid funeral arrangements for the decedent; and claimant made no payments towards decedent's burial. Two independent witnesses testified that claimant and decedent held themselves out as husband and wife. The Supreme Court determined that the record disclosed no evidence of a contract or agreement between claimant and decedent to marry. There was no evidence of joint debts or accounts. There was no evidence in the record that claimant's daughter from the previous marriage lived with her during the period of cohabitation with decedent. The claimant's daughter lived with her sister. The Court noted that claimant used the first personal pronoun when she stated, "I had to give my sister so much money to help support the baby." Decedent did not claim exemption as married on withholding exemption certificates with his employer. There was not sufficient evidence to establish a common law marriage existed by substantial evidence either cohabitation as man and wife or general repute of marriage.

8. Conclusion

Insurance issues are complex and fact driven under normal circumstances. These issues are further complicated where an issue regarding common law marriage arises. Insurance policies typically contain language identifying the named insured and other insureds under certain circumstances. Given the almost insurance industry's general use of standardized forms it is important to over come obstacles by including both common law spouses on each policy of insurance. For purposes of automobile insurance, each car driven by each spouse should be included in the schedule. The more factual information

that can be developed regarding the relationship the better. It is suggested that if a couple truly views themselves as married, then it is best to identify each other as beneficiaries under health insurance policies, life insurance policies. Based upon the insurance cases involving the issue of common law marriage, courts look to the conduct of the parties. Important factors are what is reported to governmental agencies for tax purposes, what is reported to employers for purposes of benefits and withholding instructions, does the couple have children, the surname used by the children and common law wife are important. These are issues that courts find difficulty sorting out. It would be most helpful if these issues were ironed out prior to the purchase of insurance and certainly before a claim arises.