TO: Judge
FROM: Donald
DATE: 11-8-82
RE: 78-64
Bennett Reynolds v. Life Insurance Company of North America

Hearing, Monday, 11-8-82, at 10:00 a.m.

Synopsis: Plff purchased an insurance policy from defendant whereby he would receive $150,000.00 in the event he became permanently and totally disabled. He alleged that he had become disabled, and the defendant refused to pay.

Partial judgment on the pleadings was entered on 4-25-78 in favor of plff in the amount of $37,500.

Pending Motions:

1. Plff's motion for substitution of parties. Plff died on July 6, 1982. His Will appointed Olga Keene Reynolds the executrix of his estate (who I would assume to be his widow).

2. Defendant has moved for summary judgment.

3. Plff has moved for summary judgment.

Comments:

1. I wonder how serious the parties are about continuing this action, especially since the death of the original plaintiff. The Court earlier has entered a show cause order as to why this action should not be dismissed, since the case had been on the docket for 3 years with no action taking place. After that order was entered on 10-5-81, things began to happen.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 78-64

OLGA KEENE REYNOLDS,
Executrix of the Estate of
Bennett Reynolds, deceased, PLAINTIFF,

VS. FINAL JUDGMENT

LIFE INSURANCE COMPANY
OF NORTH AMERICA, DEFENDANT.

* * * * * *

The matter came before the Court on cross-motions for summary judgment. Partial judgment was rendered in favor of Bennett Reynolds on April 25, 1978. The remaining issue was whether plaintiff was entitled to receive any additional benefits under the terms of the master policy in question. The Court having made its findings of fact and conclusions of law in its memorandum opinion entered simultaneously herewith,

IT IS HEREBY ORDERED AND ADJUDGED, as follows:

1. Plaintiff's motion for summary judgment is DENIED.

2. Defendant's motion for summary judgment is GRANTED.

3. This is a judgment upon the remaining issue submitted to the Court for its determination. There is no

just reason for delay and this judgment is entered as a final judgment.

4. This action is now STRICKEN from the Court's active docket.

This the 8th day of February, 1983.

G. WIX UNTHANK, JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 78-64

OLGA KEENE REYNOLDS,
Executrix of the Estate of
Bennett Reynolds, deceased, PLAINTIFF,

VS. MEMORANDUM OPINION

LIFE INSURANCE COMPANY
OF NORTH AMERICA, DEFENDANT.

* * * * *

This matter is now before the Court on cross-motions for summary judgment. The only remaining issue to be resolved in this action is whether plaintiff, as executrix of the estate of Bennett Reynolds, is entitled to receive any additional benefits on behalf of the decedent above the benefits that have previously been paid to the decedent by the defendant.

A brief review of the history of this action is in order. Bennett Reynolds initiated this action on August 16, 1977 in Pike Circuit Court, alleging that he became totally and permanently disabled as a result of an accident that occurred on February 10, 1975, and that by the terms of a group health and life insurance policy issued by defendant, he was entitled to benefits of One Hundred Fifty Thousand Dolllars ($150,000.00) as compensation therefor.

The defendant removed this action from Pike Circuit Court to this Court on March 7, 1978. On April 25, 1978, partial judgment was entered in favor of Bennett Reynolds in the amount of Thirty Seven Thousand Five Hundred Dollars ($37,500.00). The Court reserved for later determination whether Bennett Reynolds was entitled to any additional sum from defendant. The Court now determines, for the reasons specified below, that plaintiff is not entitled to any additional sum from the defendant.

FINDINGS OF FACT

This action stems from the interpretation and terms of a group health and life insurance policy Bennett Reynolds purchased on April 18, 1972, while he was employed by the policyholder, Kentland-Elkhorn Coal Corporation, a subsidiary of The Pittston Company, which purchased the contract of insurance from the defendant.

The employees of Kentland-Elkhorn Coal Corporation had the option to purchase this insurance coverage, and all employees who elected to be insured under the master policy in question (No. OK-2034), had to apply for the insurance. The pertinent information on the application for insurance is prefaced by the following sentence: "I hereby apply for accident insurance under the terms of the above Master Policy and authorize deductions of the monthly premium from my salary as follows:"

Item No. 8 on the application lists the amount of the principal sum as $150,000. Item No. 9 names the alternative types of coverage: Plan A concerns coverage unrelated to coal mining accidents and Plan B specifies the types and limitations of coverage pertaining to coal mining and mining-related accidents.

Following the application portion of the certificate of insurance is the section entitled "Description of Coverage", which outlines the injuries that will entitle the insured to the full amount of the principal sum of $150,000, and the injuries which shall entitle the insured to only a fraction of the principal sum. As stated in the "Exclusions" section of the certificate of insurance, any mining or mining-connected accident is not covered under Plan A; all such accidents are addressed by Plan B.

Therefore, the Court must determine the scope of coverage provided the insured under Plan B. The schedule itemizing the losses occurring as a result of mining or mining-connected activities covered under Plan B plainly illustrates that the maximum benefits paid under Plan B are equal to one-fourth of the principal sum. In the present case, one-fourth of the principal sum ($150,000) amounts to $37,500.00.

The factual background concerning the claim of Bennett Reynolds reveals that he became a shop foreman on

October 1, 1968 and was employed in that capacity when he was injured on February 10, 1975 as the result of a fall in the repair shop which rendered him to be totally and permanently occupationally disabled. He testified that he fell over an electrical motor that was about twenty (20) inches tall as he was trying to escape an electrical fire.

By virtue of his total disability, the defendant has paid to Bennett Reynolds the sum of $37,500 (one-fourth of the principal sum).

Mr. Reynolds asserts that he should be entitled to the full amount of the principal sum because he was never advised of the limitations of coverage as specified by the master policy and the riders attached thereto. Mr. Reynolds has testified that: (1) he did not read the certificate of insurance at the time of receipt, but that he read it within a few days subsequent to his application; (2) that he had never heard of the master policy until after his accident; and (3) that office personnel of his employer told him that the policy would pay $150,000 if he was killed or disabled.

CONCLUSIONS OF LAW

The Court holds that the instant case requires a holding that is consistent with the holding in Willard Fuller v. Life Insurance Company of North America, Civil Action No.

76-801, United States District Court, Eastern District of Kentucky, which was decided by this Court on September 7, 1979. The United States Court of Appeals for the Sixth Circuit affirmed the judgment of this Court in Willard Fuller, supra, in a mandate issued on July 28, 1981.

The instant case is virtually on all fours with Willard Fuller, supra. The facts are almost identical. The Court held that Mr. Fuller was bound by the terms of Master Policy #OK-2034 and was only entitled to receive one-fourth of the principal sum. Mr. Fuller's policy was identical to Mr. Reynolds' policy.

Willard Fuller was also employed by the policyholder, Kentland-Elkhorn Coal Corporation and was insured by the same master policy issued by the same defendant. Mr. Fuller was employed as a general mine foreman when he became totally occupationally disabled from a back injury he suffered on July 5, 1975.

The same rider (No. 8) was attached to Fuller's master policy as was attached to Mr. Reynolds' master policy. This rider expressly limited recovery for mining-related accidents to 25% of the applicable sum (in this case, 25% of $150,000, or $37,500).

Plaintiff submits that a recent decision by the Kentucky Supreme Court, Breeding v. Massachusetts Indemnity and Life Insurance Company, 29 K.L.S. 5 (April 20, 1982)

requires that plaintiff be awarded the full amount of the principal sum stated in Item 8 on the face of the certificate of insurance.

In Breeding, supra, the Court held that the insured was entitled to the full amount of the accidental life insurance policy he purchased in conjunction with the rental of an automobile from Budget Rent-A-Car. The Breeding Court found that the insured was never given a certificate of insurance; therefore, the defendant insurance company was in violation of K.R.S. 304.18-080(2), which provides:

> (2) A person covered under a blanket health insurance policy or contract who pays any part of the premium or is required to submit an application as to such insurance shall be furnished a certificate by the insurer reasonably setting forth a summary of such person's coverage and restrictions thereon.

The Court holds that Breeding, supra, is factually distinguishable from the present case and is not controlling here. Mr. Breeding, unlike Mr. Fuller and Mr. Reynolds, was never supplied with a certificate of insurance. The Court finds that Mr. Reynolds was supplied with a certificate of insurance, even though he may not have thoroughly read same, which reasonably set forth a summary of his coverage and the limitations of his coverage.

The present case is controlled by the facts and the holding in Willard Fuller, supra. Accordingly, the Court holds that plaintiff is not entitled to receive any additional sum from the defendant. The partial judgment entered by this Court on April 25, 1978, awarding Bennett Reynolds the sum of $37,500.00, represents the maximum amount, based on the terms of the master policy, that plaintiff is entitled to receive.

A final judgment will be entered upon this now resolved issue pursuant to this memorandum opinion and shall issue herewith.

This the 8th day of February, 1983.

G. WIX UNTHANK, JUDGE

written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

(6) A provision that the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy where it is not prohibited by law.

(7) A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished. (Enact. Acts 1970, ch. 301, subtitle 18, § 7.)

304.18-080. Application and certificates. — (1) An individual application need not be required from a person covered under a blanket health policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate, if such person does not pay all or part of the premium for such insurance.

(2) A person covered under a blanket health insurance policy or contract who pays any part of the premium or is required to submit an application as to such insurance shall be furnished a certificate by the insurer reasonably setting forth a summary of such person's coverage and restrictions thereon. (Enact. Acts 1970, ch. 301, subtitle 18, § 8.)

DECISIONS UNDER PRIOR LAW

1. Rights Under Certificate.

Where insurance company issued group policy to corporation, insuring such employes of corporation as elected to become insured, and certificates issued to each insured employe recited that group policy together with employer's application constituted entire contract between parties, negotiations between corporation and insurance company pursuant to which provision of original policy giving permanent disability coverage was eliminated by rider, and issuance of new policy not containing permanent disability coverage were effective to eliminate disability coverage as to each insured employe, and failure of employe to surrender his original certificate could not give him any right other than that to which he was entitled under the new certificate issued under the new policy. Equitable Life Assurance Soc'y v. McCarty's Comm., 280 Ky. 764, 134 S.W.2d 629 (1939).

304.18-090. Payment of benefits under blanket policy. [Effective until July 1, 1982.] — (1) Except as provided in subsection (2) of this section, all benefits under any blanket health policy or contract shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured is a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian or other person actually supporting him.

Set for Monday, May 17, 1982 at 1:00 P.M.

STATUS CONFERENCE: Bennett Reynolds v. Life Ins. Co. of America

At a Status Conference held February 11, 1982, we ordered that:

1) All discovery be completed by April 12, 1982

2) This be set for another Status Conference (May 17) to determine the distinction, if any, between this action and 76-801.

3) The defendant file 12 days before next SC a memo concerning the similarities of the two cases, and that the plaintiff file a memo showing distinctions.

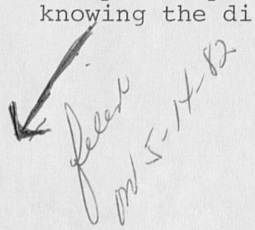
Since that time, plaintiff moved for extension of time in which to complete discovery, which motion was granted, and parties given up to May 10, 1982 to complete discovery.

We also gave the plaintiff until May 14 in which to file the distinctions between the two cases. He has failed to do so.

However, defendant has file its memo of the similarities between the two cases. Since there are some 15 similarities, I will not repeat them here, but suffice it to say that the cases appear to involve the same policy and same underlying facts (such as knowledge of plaintiff, employer, etc.).

I hope the plaintiff will file his memo so we have some way of knowing the dissimilarities.

Satch



to determine distinction between this action & 76-801

ASSIGNED FOR Status Conference/ AT PIKEVILLE JUDGE UNTHANK

DATE May 17, 1987 AT 1:00 P.M.

CIVIL ACTION NO. 78-64

BENNETT REYNOLDS — Stratton, May & Hays

VS:

LIFE INSURANCE COMPANY OF NORTH AMERICA — Michael Schmitt

FILED		PLEADING
3/7/78	#1	PEITION FOR REMOVAL
	#2	BOND for cost of removal
	#3	NOTICE of Removal
	#4	ANSWER of deft
2/12	#12	CIVIL MIN. deft to fil memo as to similarities contained in this case & 76-801; plff to file memo as to dis-similarities- 12 days prior to status conference
5/12	#20	MEMORANDUM of deft
5/14	#21	MEMORANDUM of plff

78-64: Bennett Reynolds v. Life Ins. Co. of America

(STATUS CONFERENCE)
HEARING SET FOR FEBRUARY 11, 1982

Judge: This case is an action on an insurance policy; specifically, it involves the interpretation of the total disability provision. Plaintiff moved for and was granted partial summary judgment way back in April, 1978. Since that time nothing ~~has~~ happened until we gave a show cause order.

Plaintiff responded to the show cause order stating that the case was held in abeyance pending the decision of a case involving an interpretation of the same provision of the insurance contract in question. That case went to the Sixth Circuit(don't know the name of it) and a final decision was handed down recently. Plaintiff thinks the decision will resolve a portion of the controversies still remaining in this case, and stated that the defendant was going to file a motion for summary judgment based upon the Sixth Circuit decision. No such motion has been filed by the defendant.

RECOMMENDATION: maybe we can settle this thing once and for all if the parties file some memoranda informing us of the specific issues to be decided and a copy of the Sixth Circuit case on point.

dwt

motion for Partial Summ. J. filed.
by agreement of parties submitted.

1 PM

5 status Conference 17 May