Agents & Brokers

Intermediary and Insurer Exonerated of Misrepresentation and Fraud in the Sale of Joint Life Insurance Since Policy Was "Clear and Unambiguous"

Life Insurance Policyholder Did Not Suffer Damage As Result of Any Negligent Misrepresentation So Long As Insureds Were Still Alive

Horace Mann Life Insurance Company v. Nunaley, __ So.2d __, 2007 WL 2051532 (Miss., July 19, 2007)

Case at a Glance

Neither an insurance intermediary nor the insurer that issued a life insurance policy committed fraud when the "clear and unambiguous" language of the policy should have altered the policyholder to the policy's true contents. Even if they were guilty of negligent misrepresentation, the policyholder suffered no damages because the insureds were still alive and the policy was still in effect.

Summary of Decision

Mom, a teacher and school counselor with two master's degrees, met with her insurance agent to increase the size of her annuity. That idea proved to be too expensive, so she shifted to life insurance on her two sons. She testified that the agent told her she could buy two separate policies covering each child individually, "which would provide $300,000 in death benefits for a monthly premium of $50 per month," a sum she could afford.

The agent testified that he told her that she "could 'probably get about $300,000' worth of insurance." The agent typed her application on his laptop, went over it with Mom step by step, and she signed it. The application clearly stated that the policy being purchased was a joint life, first-to-die policy with an option to convert to. . .two single life policies. It also stated that the insurer would pay $256,514 if one of the sons died, and that it would pay that sum twice if both sons died within 31 days of each other. The policy itself said precisely this clearly, and it encouraged the purchaser to read the policy carefully. (Significantly, the terms of the policy closely resemble the terms of another Horace policy which had already been found to be clear and unambiguous by an appellate court in Mississippi. *Watts v. Horace Mann Life Ins. Co.*, 949 So.2d 833 (Miss. App. 2006).)

Mom stated in the application that neither son smoked. The medical exam of one of the sons, however, proved that he did. Horace sent an amendment reducing coverage "in the amount of $110,295." The intermediary mailed the amendment to Mom's home but the smoking son intercepted it and "signed this document as the owner of the policy, rather than the insured[,]" and then mailed it back. Consequently, Mom—who owned the policy--never saw the amendment, and Horace did not catch the error.

Nearly a year after first meeting with the agent and signing the application, Mom received the policy. Betty alleged that this was the first time she saw the policy and the amendment "reducing coverage to $110,295." She further said that this was the first time "she learned that she did not have two, single life insurance policies" covering her two sons, but instead had a joint life, first-to-die policy.

Less than a month after she received the policy, Mom sued Horace based upon eight theories. At trial, Mom's insurance sales expert testified that the language of the policy could easily have led Mom to think she was getting two single life policies, that the signature of the smoking son was clearly invalid, since Mom should have signed as the owner, and that the agent should have delivered the policy rather than mailing it. Her damage expert testified that she suffered actual damages in the amount of the premiums she paid plus the amount of lost earning she could have had on those premiums. His total was $4,156.94. Mom testified that she probably would not have purchased the type of policy she got, had she known what it actually was, and that she surely would not have bought the policy had she realized the reduction in amount.

Horace called several witnesses. The court reports the testimony of only one of them, a Vice President of Life Administration, who said that Betty should have rescinded the policy and gotten her premium money back. Mom had not done this, and the policy was in effect at the date of the trial.

In closing argument, Mom's counsel asked for $25,000 in compensatory damages. The jury returned a unanimous verdict in favor of Mom. It contained five components: (1) there was clear and convincing evidence that the agent engaged in fraud, (2) so did Horace, (3) the agent negligently misrepresented something; (4) so did Horace, and (5) Betty sustained $35,000 in actual damages.

The case then went on to punitive damages. Plaintiff's counsel asked for $19 million. By a 9-3 verdict, the jury awarded $1.935 million in punitive damages. The trial court entered a judgment consistent with the verdict four days after the verdict was entered. Horace moved for JNOV, a new trial, and remitter. These motions were all denied.

On appeal, Horace raised fourteen issues, but the Mississippi Supreme Court discussed only two of them. One concerned fraud. The other concerned compensatory damages in the context of negligent misrepresentation.

With respect to the first issue, the Mississippi Supreme Court ruled that the language of the policy was clear and unambiguous and hence "did not constitute fraud." The court says nothing whatever about whether the agent lied or what, if anything, the insurer knew or was up to. Therefore, the court impliedly held that if the policy is clear and unambiguous and both the agent and the insurer lied earlier in time—say, in the process of selling the policy—there can be no fraud case. Presumably, this holding is supported by the section of the policy which says the timely and quick return of the policy will entitled the owner to a return of total premium. The holding is extremely interesting since one of the sons apparently noticeably and wrongfully signed the amendment.

The supreme court apparently noticed that the jury verdict as to actual damages was more than seven time larger than the expert testimony and larger than what counsel for the plaintiff asked for in closing. It focused on something different, however. It explicitly concluded that Betty suffered no damages at all. Consequently, the plaintiff failed to prove an essential element in any negligent misrepresentation case, the court said, relying on four of its previous cases of nearly the last 25 years. The court reasoned that as long as the policy was still in effect and the insureds were alive, the policyholder suffered no damages.

Comment

This is an odd case and a strange opinion. The court says that the son signed the application for amendment, but it does not say how. Did he sign his name, or did he forge his mother's name? I have the impression that he did the former. It is surely misconduct of some sort for an insurer to miss this problem. In addition, it reports that Mom's expert said that the agent should have delivered the policy. Maybe so, but that is not where the problem lies. The agent should have delivered the application for amendment and discussed that with Mom. I would expect him to testify to exactly that, even in the lawyer missed it.

Moreover, what I earlier described as the implied holding—the holding that both insurers and agent can lie with abandon so long as the policy is clear and unambiguous—presupposes that it is realistic and appropriate that new policyholders read their policies after they get them. This idea—while deployed in the law for many years—is absolutely false, and it imposes an unrealistic obligation on policyholder. In fact, not reading or understanding policies is so widespread that one has to conjecture that there is some other reason why courts continue to deploy this rule. One wonders what it might be. // Quinn