

## CASE 11/2012 FINAL DETERMINATION

*Funeral Policy – policy term providing for payment to relative if no spouse and no beneficiary – on death of the life insured the insurer paid the ex-spouse – as this was not in accordance with the policy provisions, insurer ordered to pay his mother*

### Background

- 1) The deceased had been a life insured and member of a funeral scheme through his membership of a Trade Union. He died on 17 June 2011. No beneficiary was nominated in terms of the policy.
- 2) The policy provided for benefits to be paid as follows:  
  
*“If the Principal Member dies and no nominated beneficiary has been nominated or can be found, and no clear proof of marriage can be provided by the Spouse, Safrican shall pay the Benefits to his/her relative, subject to same providing clear proof of relationship.”*
- 3) The deceased’s ex-spouse claimed the benefit from Safrican and stated her relationship to the deceased to be “wife”, but included a copy of her divorce order with the claim documentation.
- 4) The claim totalling R26 000 was paid to the deceased’s ex-spouse on 7 July 2011. (Although not directly relevant, it appears that neither she nor the deceased’s children contributed to the funeral)
- 5) The complainant, the brother of the deceased, complained to this office on behalf of the deceased’s family, in particular his mother, after the claim was paid to the ex-spouse. The mother, a pensioner, was responsible for the funeral costs.
- 6) The insurer initially advised that the claim had been paid to the ex-spouse on the basis of “good faith” and that they had no reason to assume that she was not the deceased’s wife. They furthermore indicated that there was no principle that prevented a divorced spouse claiming as it was often the divorced spouse who was responsible for the funeral costs.
- 7) The insurer was asked to reconsider their stance based on the provisions of the policy. In response, the insurer relied on the law of succession, stating that the children were the rightful beneficiaries. As they had not claimed, the status quo would remain until they did so.
- 8) The insurer was again referred to the policy provisions, but it stood by its decision to pay the ex-spouse on the basis that she was the first to claim.

### Provisional determination

- 9) Our office made a provisional determination on the following basis:
  - In terms of the policy, the benefit was payable to a relative where there was neither a spouse nor a beneficiary.
  - The ex-spouse could not be considered as a relative.

- The insurer was in possession of a copy of the divorce order and could not reasonably have been under the impression that the claimant was the spouse. Payment to the ex-spouse was incorrect.
  - Payment must, in terms of the policy, be made to a relative of the deceased, namely his mother, as she claimed the benefit.
  - The law of succession did not apply in the light of the provisions of the policy.
- 10) Safrican disputed the provisional determination. It argued again that the ex-spouse had provided the necessary documentation and information for them to process the claim and that the children of the deceased who were eligible to claim in terms of the law of succession, had not stepped forward to claim or dispute the matter. Safrican maintained that unless the children disputed the matter, the divorced spouse was able to claim the proceeds as in many instances divorced spouses still had relationships with their ex-spouses.

### **Final Determination**

- 11) The matter was again discussed at an adjudicator meeting. The meeting held that for reasons set out in the provisional determination, Safrican's further submissions could not be upheld and that the policy provision should prevail. Safrican was instructed to pay the claim amount to the deceased's mother.
- 12) Safrican paid the claim as instructed.

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