Cession – claim by cessionary – duty of insurer as debtor – buy and sell arrangement.

Introduction

Insurers, being debtors under the policies they issue, are at risk if they pay out to the wrong party e.g. to a third party who claims to be a cessionary (when he is not) or to a cessionary who claims to be entitled to payment (when he is no longer). An insurer is thus fully justified in satisfying itself that the claimant for payment is truly entitled to the proceeds of the policy. But if an insurer is too meticulous or pedantic in requiring proof it can redound to its disadvantage. One such case was the following:

Background

The complainant was a director, shareholder and employee of Company X. Company X took out a life policy on his life in 1997 with the complainant as the life assured and the company as the policyholder to provide for the eventuality that he should die while in service and the company should become liable to compensate his estate for his interest in the business, a so-called "buy and sell" arrangement. The company paid the premiums.

In February 2003 the complainant left the company's employ. According to him the policy was "signed off" to him by the then Managing Director, Mr V. Since the complainant was no longer employed he could no longer afford the premiums on the policy and, so he said, he asked the insurer in February 2003 to cancel his policy and pay him the proceeds thereof. The insurer, however, had no record of this initial request prior to April 2003 when it received an application from the complainant for a cash withdrawal on the policy.

Since this application was not counter-signed by Company X itself the insurer could not give effect thereto. It forwarded certain documents for the complainant to complete, being a cession by the company to him and a corresponding application for the surrender of the proceeds of the policy.

This document, duly completed by two office-bearers on behalf of the company, Mr V, the Managing Director and Mr P, the Operational Director, were received by the insurer on 12 May 2003.

Discussion

And this is where the problem became even more complex. By this time the company no longer existed or at least was no longer operational. Yet the insurer insisted on "a copy of the registration of the company to determine the directors who can sign and a company letterhead or stamp".

The complainant informed the insurer both by letter and by personal visit, that he was unable to locate the signatories to the document and that the company never had an official stamp. But this did not satisfy the insurer who informed the complainant that the policy would continue unaltered and that the premium debt would be deducted from the cash value of the policy.

It was only in December 2003, after the complainant managed to obtain a further document signed by Mr D that Mr V was authorised to act on behalf of the company, that the insurer relented.

A new surrender form was requested, since the previous one had expired in the meantime (according to the company's own internal procedures). An amount reduced by the premiums that had been deducted was paid to the complainant.

It was then that the complainant complained to us. After much toing and froing we ruled that the insurer's insistence on additional formalistic proof of authorisation was unreasonable in the circumstances of this case and that the surrender value should be recalculated with reference to the date in May 2003 when it received the cession and application forms for surrender.

Result

The insurer accepted this ruling and, after some further debate about the correctness of the deduction, paid the sum to the complainant for which he duly thanked us.

PMN
April 2006