CR252

Suicide - exclusion clause - onus of proof.

Claim repudiated on insurer's presumption of suicide, based on post-mortem and police report – onus on insurer to prove suicide exclusion applied – insufficient evidence to prove suicide on a balance of probabilities – unreasonable in circumstances to await inquest report

Background

After her daughter died on 6 August 2004 at age 32, the complainant claimed under her funeral policy, the date of inception of which had been 1 December 2003. The death certificate reflected the cause of death as "Under investigation". The insurer told the complainant that they would only consider the claim once there was an inquest report. By December 2007, when the complaint was lodged, no inquest had yet been held.

In the first response to our office the insurer simply stated that the claim had been refused as the deceased had "died within 24 months of the suicide clause". The clause referred to read:

> "The company will have no liability under the policy if any person assured under this policy, upon whose death a benefit is payable, dies by his own hand … within two years of the issue date of the policy".

We pointed out that the insurer's response was inadequate and that we required copies of the claim documentation on which the insurer sought to rely. The insurer then sent us documentation, indicating that it relied on the post-mortem report and the police report, "*which indicated suicide*", and that as they had been unable to obtain an inquest verdict they had made a presumption of suicide.

Discussion

The onus of proving that the risk described in the policy has materialised, i.e. that the insured event has occurred, lies with the insured. The deceased insured died on 6 August 2004, and the insurer had been provided with the death claim declaration, certificate of medical attendant, death certificate, post mortem report, and the "Police report accompanying body to mortuary". This documentation had brought the claim "within the four corners of the promise made" (*Eagle Star Insurance Co Ltd v Willey* 1956 (1) SA 330 (A) 334 B–C).

We pointed out to the insurer that there is substantial case authority to the effect that the onus of proving that an exclusion applies (such as the suicide exclusion in this case) rests on the insurer: if the insured brings her claim within the four corners of the promise she does not have to prove that the exclusions do not apply to her claim. If the insurer cannot prove within a

reasonable time, on a balance of probabilities, that an exclusion applies, the claim should be paid.

We analysed the documentation provided, which was, in chronological order:

(i) "Police report accompanying body to mortuary" dated 6 August 2004. This was completed by the investigator, a police inspector. He had not marked "Suicide" with an x as being the applicable square on the form. Under "Remarks" he stated "It is suspected that it might be CO_2 still investigation continue". No grounds for this suspicion were disclosed.

(ii) "Report on a medico-legal post-mortem examination" dated 13 August 2004. The doctor completing this had reported "No signs of injuries seen" and stated that the cause of death was "undetermined".

(iii) "Certificate of medical attendant" dated 24 August 2004. This was completed by the same doctor. She stated that the immediate cause of death was "undetermined", the date of commencement of the immediate cause of death "unknown", and that it was "undetermined" whether any conditions preceded or co-existed with the immediate cause of death. Under "other relevant facts" she stated "DOA in hospital. Death under investigation and autopsy was held on 13/08/04. Multiple specimens sent for toxicology".

In our view the statement by the police inspector, who was not a medical officer, that "it is suspected that it might be CO_2" did not constitute sufficient proof of suicide on a balance of probabilities. There was no additional evidence to support such speculation on the part of the police inspector, and the death might well have been due to natural causes.

It appeared that the forensic analysis had still not yet been performed, some three and a half years later. We appreciated that this was beyond the insurer's control. As mentioned, however, the onus lies with the insurer to prove the operation of the suicide exclusion on which it seeks to rely, and this must be done within a reasonable time. In our view three and a half years was an unreasonable period of time to withhold payment of a claim. We advised the insurer of our view that in the circumstances the claim should be paid.

Result

The insurer paid the claim, together with interest.

SM
May 2008