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Doctrine of Reasonable Expectations

Clark-Peterson Case

- Strong form of the doctrine
Exclusion must be:
 - a. Bizarre or oppressive;
 - b. Eviscerate terms explicitly agreed; or
 - c. Eliminate dominant purpose of the transaction
- Discrimination: coverage vs. exclusion
 - a. Ambiguity created? Look at language:
 - *Contra profentem*
 - *Poor draftsmanship*
- Contract rewritten – strong form DRE

Doctrine of Reasonable Expectations

Max True Case

- CGL policy coverage for employees
 - a. Setting up competing business
- Reliance upon ambiguity to apply DRE (weak form DRE)
- Restatement Section 211
 - a. Insured's intent (ID perspective) gutted by exclusion
 - b. Insurer has a basis to believe (IR perspective) (would have caused insured to refuse coverage)
 - c. Unconscionable, obscured provision
 - d. Bold typeface
- Case rationale in conclusion is silly

Doctrine of Reasonable Expectations

Deni Associates (Supreme Court of Florida)

- Rejects DRE
- Relies upon ambiguity rule
 - a. If coverage or exclusion is ambiguous, resolve in favor of coverage against insurer
- Still Florida rule

Doctrine of Reasonable Expectations

So.....DRE analysis

- Related to misrepresentations of insurer (estoppel)
- Poor drafting, ambiguity/*contra profertem*
- Unconscionability – damn fraud
 - a. Adhesion contracts; hidden or obscured exclusions
- Happily inapplicable here in Florida

Chapter 4 – Common First-Party Coverages and Recurring Issues

- A. Life Insurance
- B. Accidental Death and Dismemberment
- C. Disability

Life Insurance Issues

Crobbons – Defining Death

- Brain death
 - a. Cessation of cortical activity
 - b. Cessation of all functions of the entire brain including brain stem
- Timing of death not always clear

Life Insurance Issues

Nielsen

- Self-destruction
- Suicide exclusions
 - a. “Sane or insane”
 - b. Suicide clauses excluding coverage
 - c. Viable despite incontestability statute
- See *Fla. Stat. 627.455 vs. 627.463*

Life Insurance Issues

Fla. Stat. 627.455 says:

Every insurance contract shall provide that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of disability and as to provisions which grant additional insurance specifically against death by accident or accidental means.

Life Insurance Issues

Fla. Stat. 627.463 says:

A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

Incontestability: A brief summary

- function
- purposes
- mandated by statute in most states
- typical length of period: 2 yrs
- insurer must “act” within 2 yrs
- period begins on “date of issue,” as defined in policy

Incontestability (cont.)

- case law determines what is and what is not contestable
- a contrarian rule on some kinds of fraud, etc.
misrepresentation of age
- *coverage is always contestable*
- --limitation on coverage is always effective, but
"condition" to coverage is ineffective after 2 yrs
- compare incontestability clause to warranty regulation
statutes

Life Insurance Issues

Crawford

- Incontestability v. disqualification for group coverage
- Discoverability Rule
- Misrepresentation

Simpson

- To the opposite effect

Life Insurance Issues

Fla. Stat. 627.422 says:

A policy may be assignable, or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle

Life Insurance Issues

Fla. Stat. 627.422 (cont'd) says:

the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

Changing the Beneficiary

- owner's right to change beneficiary
- substantial compliance rule
- effect of divorce

Choosing a rule

- *Crawford*: IR can contest more often
 - more litigation (& costs), better preserve integrity of pool
- *Simpson*: per se rule of discoverability, IR can contest less often
 - less litigation (saves money), but integrity of pool declines, unless spend more \$\$ on investigation

beneficiary's rights

- "old" rule: beneficiary's interest vests
- insurers respond by letting owner change beneficiary
- process for designating beneficiary
- process for changing beneficiary
- who benefits from formalities?
- insurer waiver of formalities?
- substantial compliance test

Process for changing the beneficiary

- two steps --
 1. written request
 2. company endorsement on original policy
- no requirement that beneficiary receive notice

substantial compliance test

- Lemke, p. 303, 2-prong test
- RHJ: owner's intent to change + at least some step to do so + "something more"
- "something more" can be
 - impossible for owner to comply
 - interception of change
 - owner did everything asked to do

Interpleader

- how it works
- benefits & costs
- I-R's waiver of change of ben requirements by filing interpleader

Lemke (p. 303)

- holding
- reasons change of ben is effective in these circumstances; applying the substantial compliance test
- trying to change beneficiaries by will
- deathbed utterances

Impact of divorce

- 1. “default rule”: divorce alone does not change ben designation
 - but see statutory modification (or UPC rule) in some states: default rule is “automatic disclaimer”
- 2. but divorce *decree* can trump ben designation
 - language specifically ordering a change of ben
 - “surrenders all interest” is sometimes enough to cause change of ben

Impact of divorce (cont.)

- 1 & 2: if prior spouse's interest is terminated (by statute or decree), prior spouse becomes ben only if owner re-designates former spouse as ben
- 3. owner's right to change ben may be restricted by decree

Divorce: practice pointers

- 1. have divorce decree name the new beneficiary
- 2. substituted beneficiary should notify I-R
- 3. risks for the insurer
- the ERISA problem

Accidental Death Insurance

Brundin

- Death during hemorrhoid surgery
- Sudden and unexpected (and unforeseen) from standpoint of the insured
- Accidental results
- If illness contributes in any way excluded

Accidental Death Insurance

Kasper

- The heavy hunter
- Heart attack during fire not an accident
- Accidental means and exclusion
- Summary p. 349

Accidental Death Insurance

- Risky Activities and Behaviors
 - a. X games – Jackie Knight
 - b. Alcohol
 - c. Drugs
 - d. Criminal Conduct

- Fact Intensive Analysis

Accidental Death Insurance

TEMPORAL LIMITATIONS

Kirk

- 90-day limit on benefits
- Causation law
- Moral hazard issue
- Public policy
 - a. Tough argument
 - b. Better be a clear point

Disability Insurance

Shapiro

- Standard language
- Inability to do “material and substantial duties of your occupation”
- What is the occupation?
- “Loss of capacity to work not income” is protected

Disability Insurance

Fla. Stat. 627.4233 says:

(1) If an individual or group policy of disability income insurance provides for the waiver of premiums or payment of claims upon total disability:

- (a) The policy must, at a minimum, provide that for the first 12 months of the disability, a person is totally disabled if the person is unable to perform the material and substantial duties of the person's regular occupation, or must include a provision at least as favorable to the insured.
- (b) The policy may provide that after the first 12 months of disability as described in paragraph (a), the insurer may predicate the continuance of benefits on the person's ability to perform any work or occupation for which the person is reasonably qualified or trained.

Disability Insurance

Fla. Stat. 627.4233 (cont'd) says:

(2) If an individual or group policy of life insurance provides for the waiver of premiums or payment of claims upon total disability, the definition of total disability may not be more restrictive than the person's inability to perform any work or occupation for which the person is reasonably qualified or trained.

(3) If an individual or group policy of medical expense insurance provides for extension of benefits for persons who are totally disabled on the date their insurance terminates, the definition of totally disabled may not be more restrictive than:

(a) For an employee, the person's inability to perform any work or occupation for which the person is reasonably qualified or trained; or

Disability Insurance

Fla. Stat. 627.4233 (cont'd) says:

- (b) For a dependent, the person's inability to engage in most normal activities of a person of like age and sex in good health.

Disability Insurance

Critical Nature of Coverage

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- “Factual” vs. “Legal Disability”

Covered or Not?



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