

## What Obligation does an Insurance Company have to Review Beneficiary Designations with the Policy Holders?

David Morgan Smith (Partner) and Jacqueline Palef (Student-at-Law), Hull & Hull LLP

When an item is purchased from a retailer, there are certain warranties and representations the retailer must provide to the seller. In the realm of insurance, these obligations differ. What obligation does an insurer have to provide the insured with information regarding the insurance purchased? In many workplaces, employers offer their employees a group insurance policy in which the employee may receive benefits under a group life insurance contract. Typically, there are three parties involved in a group insurance policy: (1) the policy holder who purchases the policy, (2) the insured who benefits under the policy, and (3) the insurer who supplies the policy. In situations involving group insurance policies, the policy holder is typically the employer, while the insured is the employee, and the insurer is the insurance company. In this scenario, the insured seeking to obtain a copy of their policy may be directed by the insurer to retrieve the policy from their employer, while the employer may direct the insured to make the request of the insurer. These types of policies create ambiguity as to whether there is an obligation for an insurer of a group insurance policy to provide the individual insured with on-going access to his or her policy.

The *Insurance Act* is the statute governing the obligations of an insurer. In the case of group insurance, section 174(4) of the *Insurance Act* states that on request, the insurer shall furnish to a group life insured or claimant under the contract a copy of the group life insured's application and any written statements or other records, not otherwise part of the application, provided to the insurer as evidence of the insurability of the group life insured contract.<sup>1</sup> Further, section 174(5) provides that on request and reasonable notice, the insurer shall permit a group life insured or claimant under the contract to examine, and shall furnish to that person, a copy of the policy of group insurance.<sup>2</sup> This suggests that if an insured is seeking to review their policy, the responsibility lies with the insured to make the inquiry of the insurer and not the other way around.

Section 177(1) of the *Insurance Act* provides that in the case of a contract of group insurance or of creditor's group insurance, an insurer shall issue, for delivery by the insured to each group life insured or debtor insured, a certificate or other document which shall include the following information:

1. The name of the insurer and a sufficient identification of the contract.
2. The amount, or the method of determining the amount, of insurance on,

---

<sup>1</sup> *Insurance Act*, R.S.O. 1990, c. I. 8 at s. 172(4) [*Insurance Act*].

<sup>2</sup> *Ibid.* at s. 174(5).

- i. the group life insured and on any person whose life is insured under the contract as a person dependent upon or related to the group life insured, or
  - ii. the debtor insured.
3. The circumstances in which the insurance terminates and the rights, if any, upon such termination, of,
  - i. the group life insured and of any person whose life is insured under the contract as a person dependent upon or related to the group life insured, or
  - ii. the debtor insured.
4. In the case of a contract of group insurance that contains a provision removing or restricting the right of the group life insured to designate persons to whom or for whose benefit insurance money is to be payable,
  - i. the method of determining the persons to whom or for whose benefit the insurance money is or may be payable, and
  - ii. the following statement in conspicuous bold type:

This policy contains a provision removing or restricting the right of the group life insured to designate persons to whom or for whose benefit insurance money is to be payable.
5. In the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group life insured under the replaced contract, whether a designation of a group life insured, a group life insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacement contract.
6. The rights of the group life insured, debtor insured or a claimant under the contract to obtain copies of documents under subsection 174 (5) or (6).
7. The following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.<sup>3</sup>

A reading of the *Insurance Act* suggests that there is no obligation on the part of the insurer to provide any additional documentation to the insured. The language of the *Insurance Act* suggests that if an insured wishes to update their policy, whether it be by increasing the value

---

<sup>3</sup> *Ibid.* at s. 177.

of the policy or changing the name of the beneficiary designation, the onus is on the insured to take the steps necessary to do so. There does not appear to be a statutory obligation on the part of the insurer to contact the insured to review, and change their policy after the initial purchase.

While there may not be a statutory obligation, it is worth considering whether an obligation arises under the duty of good faith. The Supreme Court of Canada in *Bhasin v. Hrynew* established that the insurer owes the insured a duty of good faith. The Court held that the duty of good faith requires that an insurer deal with its insured's claim fairly, both with respect to the manner in which it investigates and assesses the claim, and the decision whether or not to pay it.<sup>4</sup>

In the Court of Appeal for Ontario's decision in *Usanovic v. Penncore Life Insurance Co.*,<sup>5</sup> Chief Justice Strathy notes that, "there is no doubt that parties to an insurance contract owe each other a duty of utmost good faith." In this case, the Court was reluctant to expand the scope of the good faith doctrine, finding that there was no obligation on the part of the insurer to inform the insured of limitation periods. The Court has taken the approach that discoverability is the responsibility of the insured, not the insurer.

Now that courts have accepted that a duty of good faith exists, questions are arising as to when that duty is first invoked. In *Alquire v. Manufacturers Life Insurance Co.*, the Superior Court of Justice considered when the duty of good faith arises:

While the categories of breach of a duty of good faith are not necessarily foreclosed, in an insurance context the jurisprudence is clear that a breach of the duty on the part of the insured relates to the obligation to *perform* the contract in good faith. The insurer is required to reasonably investigate and evaluate an insured's claim in a timely manner, but the duty is not invoked until an insured submits a claim.<sup>6</sup>

Much of the case law in this area focuses on the good faith obligations of the insurer that arise once a claim is commenced, and suggests that the duty of good faith may only be invoked after the insured submits a claim. There does not appear to be current case law that addresses whether there is an obligation on the insurer to advise the insured on any matters arising outside of those articulated in the *Insurance Act*. If an insured is seeking information beyond the statutory provisions, it is the insured's obligation to make the inquiry.

In situations where the beneficiary designation of an insurance policy is contested, section 214 of the *Insurance Act* requires that the insurer apply to the court for an order for payment of

---

<sup>4</sup> *Bhasin v. Hrynew*, 2014 SCC 71 at para. 55, citing to *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 at para. 63, citing to *702535 Ontario Inc v. Non-Marine Underwriters, Lloyd's London, England* (2000), 184 D.L.R. (4<sup>th</sup>) 687 at para. 29 (Ont. C.A.).

<sup>5</sup> *Usanovic v. Penncorp Life Insurance Co.*, 2017 ONCA 395 at para. 25, citing to *Bhasin v. Hrynew*, 2014 SCC 71 at para. 55, and *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 79.

<sup>6</sup> *Alquire v. Manufactures Life Insurance Co.*, 2016 ONSC 1455 at para. 19.

the proceeds into court.<sup>7</sup> While this provision provides protection to the policy once a claim arises, it does not address any ongoing obligations of the insured to review the beneficiary designation with the policy holder.

As courts continue to flush out what the duty of good faith consists of and whether its obligations begin prior to the commencement of a claim, it will be interesting to see whether this will include an ongoing obligation to provide the insured with information regarding their policy, and specifically, information about their beneficiary designation. For now, if an insured is seeking to review and update their policy, the insured must be proactive and make the necessary inquiries.

---

<sup>7</sup> *Insurance Act*, *supra* note 1 at s. 214.