

# Denial of Reinstatement of Lapsed Life Insurance Policy Affirmed Due to Failure to Satisfy Required Underwriting Standard

December 29, 2017

In *European Pensions Management Limited v. Columbus Life Insurance Co.*, a pension benefit plan that had purchased a life insurance policy on the secondary market and then permitted it to lapse for non-payment of premiums sued the insurer Columbus Life, alleging breach of contract and bad faith. The plaintiff in this Southern District of Ohio case originally contended that Columbus Life had wrongfully lapsed the policy, but abandoned that claim and instead decided to pursue only a claim that Columbus Life wrongly refused to reinstate the policy. The policy provided a right to reinstatement within five years of lapse, if the insured was still living, and "subject to evidence of insurability satisfactory to" Columbus Life. The insured answered questions in the reinstatement application about adverse medical conditions in the negative, although he had been diagnosed with Parkinson's disease, dementia, peripheral vascular disease, and chronic kidney disease. Reinstatement was denied based on "overall current medical history." The plaintiff contended that the "insurability" standard was ambiguous and must be interpreted in its favor. The court disagreed and granted summary judgment to the insurer, finding that the language "evidence of insurability satisfactory to the company" must be included in reinstatement provisions pursuant to Ohio Rev. Code § 3915.05(J), and that such language had been deemed "plain, clear and unambiguous" by the Ohio Court of Appeals and courts in other states. The court held that the common sense meaning of that phrase "requires an indication of the insured's relative good health and must be proven with medical evidence." This standard is to be interpreted "using an objective standard such that the evidence must be satisfactory to a reasonable insurer." This meant that the insured must be insurable at the same standard mortality class rating determined by the initial underwriting. The plaintiff failed to satisfy this standard, and denial of reinstatement was upheld. The opinion also granted a motion to exclude evidence from plaintiff's expert based on the failure to provide sufficient expert disclosures under FRCP 26, the failure to properly explain the opinions in deposition, and a deposition errata sheet which sought to change one of the expert's opinions.

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