

# Third and Eleventh Circuits Show No “Lapse” in Judgment

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In the first half of 2020, two decisions were issued by federal appellate courts related to the lapse of life insurance policies. Both decisions affirmed the insurer’s position and rejected challenges to the determination of lapse.

In *Power v. Erie Family Life Insurance Co.*, the Third Circuit Court of Appeals affirmed that Pennsylvania’s implied duty of good faith and fair dealing did not require Erie Family Life Insurance Co. to notify the assignee of a life insurance policy of the policy’s impending lapse. Erie had sent notices of nonpayment and lapse to the address on file, but the assignee did not receive them because he had failed to provide Erie with his address. The assignee argued that once the company undertook to provide notices to him, “the law implies a duty” to “do so in good faith.” The assignee further argued that before the lapse, he had spoken with a representative of Erie who assured him that “nothing would happen to the policy without [him] being notified.” The court rejected these arguments because the “policy [did] not require Erie to remind [him] when premiums [were] due or otherwise notify him before the policy lapses.” The court further determined that even if the duty of good faith applied, it was the assignee’s “lack of diligence — not Erie’s — that rendered these notices undeliverable.”

Additionally, in *Brannen v. Jackson National Life Insurance Co.*, the Eleventh Circuit Court of Appeals affirmed the district court’s ruling that Jackson National did not waive the right to lapse by retaining a late premium payment for 12 days. Eight months after the insured had allowed his life insurance policy to lapse and subsequently died, his beneficiaries hired a lawyer to pursue the death benefit. The lawyer sent Jackson National a demand and a check for the past-due premium. Twelve days then elapsed, during which the company processed the lawyer’s documents, deposited the check, determined that the premium could not be accepted, and issued a refund. The Eleventh Circuit held that, under applicable Georgia law, “the insurance company did not improperly ‘retain’ the [beneficiaries’] belated payment so as to waive the policy lapse.” The court reasoned that 12 days was “not unreasonably long.” The court distinguished other cases finding a waiver of lapse that

involved longer retentions of late premium payments or other facts supporting waiver. The court found that there was no “pattern evidence in this case” and no basis for the argument that Jackson National purportedly created a new contract by cashing the check “with full knowledge of its purpose.”

These decisions should be useful support for life insurance companies in disputes over policy lapse, which are frequently litigated.

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