

MEMORANDUM

To: Jane Doe, Esq.

From: Lawfinders Associates, Inc.

Re: *Third-Party Beneficiary Research*

Date: March 1, 200x

I. INTRODUCTION

Pursuant to your request, we have researched the duties imposed on beneficiaries of life insurance contracts. Specifically, we have reviewed whether a beneficiary has a duty of good faith and fair dealing to an insurance company. Additionally, we have reviewed whether the beneficiary is required to furnish information to a life insurance company who is conducting an investigation before paying a claim. The beneficiary may be required to furnish information to satisfy a condition precedent in a life insurance contract. However, it is unlikely that the beneficiary has a duty of good faith and fair dealing to the insurance company.

II. BENEFICIARIES MAY BE REQUIRED TO FURNISH INFORMATION TO RECEIVE BENEFITS FOR ACCIDENTAL DEATH POLICIES

Insurance policies may require proof that death occurred in a certain fashion before the insurer is required to pay benefits. For example, in an action to recover benefits pursuant to an accidental death clause, the claimant may have the burden of showing the death was accidental and may not be entitled to benefits if claimant cannot make that showing. (*Blake v. Aetna Life Ins. Co.* (1979) 99 Cal.App.3d 901, 904 [160 Cal.Rptr. 528].) In *Blake*,

Thomas Blake had a life insurance policy through his employer with Aetna. There was an additional benefit under the policy if Mr. Blake died accidentally. Mr. Blake later died from a prescription drug overdose and the official cause of death was undetermined, which was distinguished from accident, suicide, or homicide. Aetna paid the 10,000 for the policy, but refused to pay the double indemnity for the accidental death because Ms. Blake did not demonstrate that the death was accidental. (*Blake, supra*, at p. 904.) The Court determined that Ms. Blake could not claim bad faith because she had the duty to demonstrate the death was an accident, the insurance company did not have the duty to prove the death was not accidental. (*Blake, supra*, at p. 922.) The beneficiary in your case may have a contractual duty to furnish information as a condition precedent to receiving the benefits, notwithstanding the fact that the beneficiary likely has no duty of good faith and fair dealing.

Even if the beneficiary fails to provide the requisite information, the insurance company must fulfill its duty of good faith and fair dealing. The portion of *Blake* indicating that the insurer can avoid its responsibilities when the insured acts in bad faith has been rejected by *McCormick v. Sentinel Life Ins. Co.* (1984) 153 Cal.App.3d 1030 [200 Cal.Rptr. 732]. In *McCormick*, the Court determined that the insured's failure to supply information does not absolve the insurer's duty to deal in good faith. (*McCormick, supra*, at p. 1044-45.) McCormick submitted his disability form, but the doctor's certification was missing and the insurance company refused to pay. (*McCormick, supra*, at p. 1044-45.) The Court suggested that the insured person's may have to submit a proof of loss, but if the insured substantially

complies with the requirements, the insurance company must act in good faith. (*McCormick, supra*, at p. 1046.) The insurance company must act in good faith, but under the *McCormick* case, the beneficiary's actions will be reviewed as well. It will be important, therefore, for the beneficiary to furnish the information required by the terms of the contract, or the beneficiary may be jeopardizing any future claim for bad faith on the part of the insurer.

III. BENEFICIARIES LIKELY DO NOT OWE A DUTY TO INSURERS

The beneficiaries are not parties to the insurance contract and are likely not subject to the duties imposed by the contract. Neither party to an insurance contract may take action that will injure the right of the other party to receive the benefits of the agreement. (*Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390 [2 P.3d 1, 97 Cal.Rptr.2d 151].) This concept applies to insureds as well as insurers. (*Center Foundation v. Chicago Ins. Co.* (1991) 227 Cal.App.3d 547, 560 [278 Cal.Rptr. 13].) In *Center Foundation*, the Court of Appeal determined that the insured had a duty to the insurer when choosing a defense attorney that will be compensated by the insurance company. (*Center Foundation, supra* at 560.) One of the benefits of the insurance agreement was the insurer's ability to participate in the defense of actions against its insureds. (*Center Foundation, supra*, at p. 560.) The insured's duty, however, is limited to refraining from injuring the insurer's right to the benefit of the agreement.

The insurance relationship depends on the good faith of the insurer. The relationship between an insurer and an insured is an unusual relationship characterized by the insured's unequal bargaining power. (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142 [33 P.3d 487, 113 Cal.Rptr.2d 70].) Although an insurer is not a fiduciary, it is held to a higher duty because of the special nature of the relationship. (*Vu, supra*, at p. 1151.) There is no corollary expressed in the case law that either an insured or a beneficiary owes a higher duty to an insurance company. At most, the beneficiary would be required to discharge the duties of the insured under the contract. We were unable to locate any case where the court extended the duty of good faith to an express beneficiary to a life insurance contract. The California courts have had conflicting approaches to claims involving other third-party beneficiaries.

While in older cases, the courts extended the implied duty of good faith and fair dealing to parties outside the insurance contract, this concept has been rejected more recently. In *Kaiser Foundation Hospitals v. North Star Reinsurance Corp.* (1979) 90 Cal.App.3d 786, 792 [153 Cal.Rptr. 678], the court determined that both a primary insurer and the insured owe a duty of good faith and fair dealing to an excess insurance company. (*Kaiser Found. Hosp. v. North Star Reinsurance Corp.* (1979) 90 Cal.App.3d 786, 792 [153 Cal.Rptr. 678].) In *Kaiser*, the hospital was insured by Lloyd's, London, and also purchased excess insurance from North Star. (*Kaiser, supra*, at p. 788.) The court, in dicta, announced that even though Lloyd's was not a party to the excess insurance contract, both Kaiser and

Lloyd's owed a duty to the excess carrier. (*Kaiser, supra*, at p. 793.) But, this principle was later called into question in *Fireman's Fund Ins. Co. v. Maryland Casualty Co.* (1994) 21 Cal.App.4th 1586 [26 Cal.Rptr.2d 762], where the court held that an excess insurer was not entitled to sue the primary insurer for breach of the implied covenants because no contractual relationship existed between primary and excess insurer. Under this analysis, the beneficiary may not be subject to any implied duties created by the contract between the insured and the insurer. In any event, the insured's duty is to refrain from injuring the insurer's right to receive the benefit of the agreement. Even if the court extends this duty to the beneficiaries, the beneficiaries must only refrain from injuring the insurer's right to receive the benefit.

It should be noted that an insurance company may not recover from an insured for breach of the implied duty of good faith and fair dealing. The duty owed by the insured is conceptually distinct from the duty owed by the insurer and the violation of the duty owed by the insured is not a tort. (*Kransco, supra*, at p. 400.) In *Kransco*, the California Supreme Court rejected the insurance company's claim that its liability for bad faith should be reduced for the insured's violations of the implied covenant of good faith and fair dealing. (*Kransco, supra*, at p. 404.) The Court determined that the parties were not subject to identical duties due to the disparity in the relationship. (*Kransco, supra*, at p. 404.) If the courts are reluctant to allow insurance companies to recover against insureds for bad faith, they will likely be equally hesitant to allow insurance companies to assert bad faith claims against beneficiaries to life insurance policies. The beneficiaries are not direct parties to the

insurance contracts, and at most, the beneficiary will be held to the duty imposed on the insured.

IV. CONCLUSION

The beneficiary may be required to furnish information to the insurance company if the insurance policy requires such information. Additionally, if the claim is pursuant to a policy with a condition precedent, such as an accidental death policy, the beneficiary will have the burden of showing the condition precedent has been met. However, the beneficiary likely has no duty of good faith and fair dealing to the insurance company. If such a duty exists, it is probably limited to refraining from interfering with the insurance company's right to the benefit of the bargain. In any event, the beneficiary probably cannot be sued for breach of the duty of good faith and fair dealing. If you have any questions, or if you require further research on this issue, please do not hesitate to contact us.