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CASE SUMMARY: INSUREDS ENTITLED TO BENEFIT OF PREVIOUS LIFE INSURANCE POLICY WHERE SUBSEQUENT REPLACEMENT POLICY VOIDED FOR MISREPRESENTATION

Insurance law – Life insurance – Misrepresentation in obtaining insurance – Third parties – Practice – Summary judgments

Moss v. Sun Life Assurance Co. of Canada, [2018] A.J. No. 1383, 2018 ABQB 953, Alberta Court of Queen’s Bench, November 22, 2018, G.S. Dunlop J.

The insureds brought a summary trial application seeking a declaration as to the validity of two insurance policies. The insureds were the beneficiaries of the two life insurance policies. The deceased obtained a \$600,000 life insurance policy from the insurer in 1994. In April 2009, the deceased applied to the insurer for a replacement policy with the same benefit. The application included medical questions. The insurer reviewed the application and issued the policy.

The deceased died approximately six months later, following which the beneficiaries applied for the benefit under the policies. After investigating, the insurer rejected the claim and voided the 2009 policy on the basis of alleged misrepresentations to the answers to the medical questions.

The issue on the summary trial was whether, if the 2009 policy was voided by misrepresentation, the 1994 policy would be restored and the beneficiaries would be entitled to the benefit.

On the summary trial, the court found that if the 2009 policy were voided, the 1994 policy would be revived because the contract entered into between the deceased and the insurer in May 2009 was for both issuance of the 2009 policy and cancellation of the 1994 policy. Therefore, if the insurer is entitled to void the 2009 policy, it must also rescind the entire May 2009 contract which included the cancellation of the 1994 policy. Any misrepresentations made by the deceased in the 2009 application have no effect on the beneficiaries’ entitlement under the 1994 policy and so the court found the beneficiaries were entitled to the \$600,000 benefit.

This case was digested by [Cameron B. Elder](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at celder@harpergrey.com.