

**Newbeck v Connecticut Gen. Life Ins. Co.**

2002 NY Slip Op 30128(U)

January 7, 2002

Sup Ct, Suffolk County

Docket Number: 009576/1999

Judge: Edward D. Burke

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**SUPREME COURT - STATE OF NEW YORK  
IAS/TRIAL PART 9 - SUFFOLK COUNTY**

**PRESENT:**

Hon. EDWARD D. BURKE  
Acting Justice of Supreme Court

CDISPSJ

**M E M O R A N D U M   D E C I S I O N**

**PATRICIA NEWBECK,**

Plaintiff(s),

- against -

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**CONNECTICUT GENERAL LIFE INSURANCE  
COMPANY,**

Defendant(s).

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The within action was assigned to the undersigned for a non-jury trial. Said trial commenced on July 24, 2001 and concluded on July 25, 2001. Based upon the credible evidence adduced at the non-jury trial, I find the following facts to have been established and determine the issues of law as hereinafter set forth:

While an employee of Fleet Bank in 1996, William Newbeck applied for and was issued a group life insurance policy in the amount of \$272,000.00 wherein the plaintiff, Patricia Newbeck, as the lawfully wedded wife of William Newbeck, was named as the sole beneficiary.

Upon William Newbeck's retirement from Fleet Bank, the insurance premiums were to be made directly by Mr. Newbeck as he was no longer an employee of the bank and, therefore, no longer eligible to be part of the employee group plan.

Insurance premium billings and payments were as follows:

- (1) On November 26, 1997, a first-quarter premium bill in the amount of \$505.57 was mailed to the plaintiff for the coverage period of January through March of 1998 and payment for same was received by the defendant from the insured on January 14, 1998;

On February 24, 1998, the second-quarter premium bill in the amount of \$505.57 was mailed to the plaintiff for the coverage period of April through June of 1998, with a due date of April 1, 1998. A reminder or "grace" notice was mailed by the defendant on April 8, 1998 for this same period. Payment for same was received by the defendant from the insured on May 21, 1998;

- (2) On May 27, 1998, the third-quarter premium bill with a due date of July 1, 1998 was mailed to the plaintiff for the coverage period of July through September of 1998;
- (3) After not having received the third-quarter payment, the defendant terminated the insured's coverage on September 9, 1998 and, by a letter dated September 10, 1998, advised the insured of this termination of coverage.
- (4) On September 12, 1998, William Newbeck suffered a heart attack and died.

As admitted by the defendant, its policy was to provide the insured with a sixty-one (61) day grace period within which the insured was required to pay any outstanding premium. Plaintiff testified that a "grace" bill was never received for this third-quarter payment.

While William Newbeck was an employee, his quarterly premium was \$301.95. When his employment terminated, his quarterly premium increased to \$507.57. Defendant's "group" was Fleet Bank employees. William Newbeck was no longer employed by Fleet Bank and, accordingly, his premium increased drastically upon retirement. For the defendant to increase William Newbeck's premium over \$200.00 per quarter and now argue that he remained subject to the provisions of the "group of Fleet Bank employees strains all credibility. Defendant removed William Newbeck from the group, thereby subjecting him to higher premiums. Defendant disavows this and cites its "group" label to prevent liability.

"As the party that seeks to rely upon cancellation of the policy, defendant has the burden of proving as a matter of law that the policy was cancelled prior to the date of the death of plaintiff's husband." (*Tracy v William Penn Life Ins. Co. of N.Y.*, 234 AD2d 745 at 747, 650 NYS2d 901 at 909 [3<sup>rd</sup> Dept 1996], see, also, *Viuker v Allstate Ins. Co.*, 70 AD2d 295, 420 NYS2d 926 [2<sup>nd</sup> Dept 1979]).

In order to prove cancellation, defendant must prove that William Newbeck received the grace notice or actual mailing of the grace notice. Defendant did neither. The only documentary evidence defendant offered in its attempt to prove mailing of the grace bill were various computer generated "registers". However, none of defendant's documents proved mailing and defendant offered no other evidence in support of defendant's mailing of the "grace" bill.

In order to be entitled to the legal presumption of receipt, "office procedure must be geared so as to ensure the likelihood that a notice of cancellation is always properly address and mailed." (*Nassau Ins. Co. v Murray*, 46 NY2d 828 at 830, 414 NYS2d 117 at 118[1978]).

Again, the only evidence offered by the defendants was computer generated lists of insureds who were to be mailed "grace" and/or other notices. Defendant did not prove any office procedure

in support of mailing. As a matter of law, this procedure is insufficient to create the presumption of receipt. (See, *Friedman v Allcity Ins. co.*, 118 AD2d 517, 500 NYS2d 124 [1<sup>st</sup> Dept. 1986]). Accordingly, defendant is not entitled to the presumption of receipt.

Insurance Law §3211 (a)(1) and (f)(1) provide, in pertinent part:

§3211. Notice or premium due under life or disability insurance policy notice to assignees of non-payment of premium

(a)(1) No policy of life insurance...shall terminate or lapse by reason of default in payment of any premium...in less than one year after such default, unless a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due.

(f) This section shall not apply to:  
(1) Any policy of group insurance.

Defendant's theory at trial was that it mailed out the default notice, which defendant refers to as the "grace" bill, on or about July 8, 1998. At trial, defendant was unable to offer any proof in support of its mailing. However, even if the Court were to accept defendant's theory, defendant's mailing, if it occurred, was more than forty-five (45) days before the policy allegedly lapsed on September 10, 1998. Defendant offered no evidence that it gave any other notice. Defendant claims that §3211(a)(1) does not apply because its policy was a group policy. However, once William Newbeck's employment ceased and defendant put Mr. Newbeck on a "direct bill" method, William Newbeck was no longer part of the group.

In view of the defendant's failure to prove cancellation, the court finds that the subject policy was in effect when William Newbeck died. Accordingly, plaintiff, Patricia Newbeck, is entitled to receive the full benefit of the life insurance policy of William Newbeck in the amount of \$272,000.00, with statutory interest of nine per cent (9%) per annum from September 12, 1998 to the present.

Settle judgment.

Dated: January 7, 2002

  
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EDWARD D. BURKE, A.S.J.C.