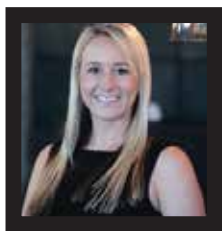**LAW MATTERS**

LIFE INSURANCE: DISCLOSE THE FACTS OR RISK REPUDIATION

SPONSORED COLUMN

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THE recent repudiation by Momentum of a life insurance policy, based on a non-disclosure by the insured, has emphasised the importance of disclosing all known facts to the insurer prior to the inception of the insurance policy.

In the case in question, the insured sustained a fatal gunshot wound during a hijacking incident.

However, Momentum repudiated the claim submitted under the life insurance policy on the basis that the insured had failed to disclose, when taking out the policy, that he suffered from high blood-sugar levels.

The company faced an unprecedented social media backlash on account of the non-disclosure being unrelated to the manner of death. As a result, Momentum has introduced a new clause in its life insurance policy to enable payment to be made in the case of death as a result of violent crime, regardless of the insured's previous medical history. However, Momentum still stands by its decision that the repudiation was valid in law.

So, this raises the question of what the legal requirements are for an insurer to avoid liability on the ground of an insured's misrepresentation or non-disclosure of facts?

In order to understand the legal issues, it is necessary to appreciate that an insurance contract is one in which the insured is required to act with utmost good faith. This, in turn, places an obligation on the insured to disclose all relevant facts which the insurer needs to consider in assessing the risk.

The Supreme Court of Appeal has held that the initial steps are for the insurer to prove the existence of the pre-existing medical condition of the deceased, and that the insured knew of the condition, before the further issues of misrepresentation or non-disclosure would even arise.

Thereafter, the court identified that the answer to whether a life policy can be repudiated, based on a misrepresentation or non-disclosure, lies within the wording of section 59 of the Long Term Insurance Act, 1998. Section 59 has since been repealed and its wording is now contained, for the most part verbatim, in the Policy Holder Protection Rules.

The Rules provide that a policy cannot be invalidated on account of any misrepresentation or non-disclosure, whether or not warranted by the insured to be true and correct, unless a reasonable person would consider that representation or non-disclosure as being likely to have materially affected the insurer's ability to assess the risk under the policy at the time of its issue.

Accordingly, for a non-disclosure or misrepresentation to be legally relevant it must be material. The representation or non-disclosure shall be regarded as material if a reasonable person would consider that the information constituting the representation, or which was not disclosed, should have been correctly disclosed to the insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk.

The Rules therefore provide for an objective enquiry into the facts and whether the insurer was provided with all necessary information required to assess its risk. Accordingly, the question is not whether the information which was not disclosed, or which was misrepresented, was at all related to the ultimate manner of death.

It was on this basis that Momentum repudiated the claim, as the insured's failure to disclose that he suffered from high blood-sugar levels, would have materially affected Momentum's ability to properly assess the risk it was underwriting when the policy incepted.

Accordingly, to safeguard payment of a claim under a life insurance policy, and the financial protection of loved ones, it is important for the insured to meet its obligation of acting in utmost good faith by disclosing all relevant facts to the insurer.

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