

Insured's death during cancellation period does not automatically convert life insurance policy

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I. Background

Janice Thomson, the respondent, was the owner and sole beneficiary of a 10-year term life insurance policy (the term policy) on the life of her estranged husband, James Thomson. The term policy provided a death benefit of \$1.3 million payable to Janice in the event of James's death. Ivori, the appellant, was the insurer of the term policy.

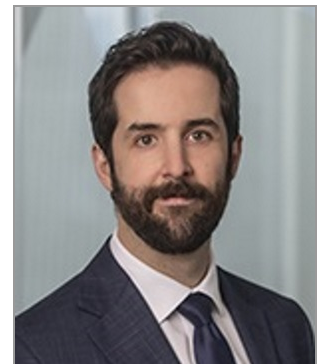
The term policy was set to expire in December 2017. Janice had the option to either renew the term policy or convert it to a universal life policy with a reduced premium for a lower death benefit of \$400,000 (the "converted policy").

Janice converted the term policy. Under the terms of the converted policy contract, however, Janice had a 10-day "free-look" period during which she was allowed to cancel the converted policy and render it void (the cancellation attachment).

James died unexpectedly within the 10-day free-look period. Janice in turn cancelled the converted policy and claimed the \$1.3 million under the term policy. Ivori denied Janice's claim, arguing that the cancellation period expired the moment James died and, at any rate, cancelling the converted policy did not automatically revert the converted policy to the term policy.



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At trial, Justice Kevin Feth determined that Janice was entitled to cancel the converted policy and in doing so, the converted policy reverted to the term policy (see *Thomson v. Ivori* 2022 ABKB 598). Justice Feth held that the term policy could not have been terminated because there was no effective date of the converted policy, nor could the term policy be converted because there was no new policy

in (para 96). Justice Feth concluded that the term policy automatically renewed in the absence of a new policy (para. 97). Consequently, Janice was entitled to the benefit of \$1.3 million under the term policy.

The Alberta Court of Appeal agreed with the trial court that Janice was entitled to cancel the converted policy and revert her claim to the \$1.3 million benefit under the term policy. The court determined that the cancellation provision was effectively a standard form insurance contract under the Alberta *Fair Practices Regulation* (see Alta Reg 128/2001 [the regulation]). Furthermore, the cancellation provision was unambiguous and clearly provided that Janice was entitled to cancel the converted policy at any point in the 10-day review period.

II. Court of Appeal's analysis

The Court of Appeal focused on the cancellation attachment as a standard form consumer protection provision, which was not argued at trial. Specifically, the cancellation attachment fell under s. 5 of the regulation, which states:

5(1) A person who buys a contract of life insurance, accident and sickness insurance or, subject to subsection (2)(b), travel insurance underwritten by an insurer may rescind the contract within 10 days after receiving the insurance policy or within any longer period specified in the contract.

(2) Subsection (1) does not apply

- (a) to a segregated fund or an annuity offered by the insurer, or
- (b) to travel insurance where the policy term is less than 190 days.

(3) A person who rescinds a contract under subsection (1) is entitled to receive from the insurer a refund of the whole premium that has been paid.

The court noted that this section of the regulation is consumer protection legislation that provides insurance consumers a period of time during which they can review an insurance policy to ensure it meets their needs without pressure to buy from the insurer (see *Thomson v. Ivari* 2023 ABCA 369 at para. 7). The court observed that there were no exceptions for replacement or converted policies in the regulation; as such, the regulation applied whenever a consumer replaced an existing policy (para. 7). Moreover, the court held that the intention of the parties was extraneous when interpreting s. 5 of the regulation, as that section is not subject to regular principles of contractual interpretation (para. 8). The cancellation attachment was unambiguous and clearly provided that Janice could cancel the converted policy within the 10-day free-look period.

Ivari had argued that the insurance policy should not be interpreted literally if the interpretation brought about an unrealistic result or a result that wasn't contemplated in the commercial atmosphere surrounding the insurance contract. In Ivari's view, the nature of life insurance was that it allocated risks associated with future events, and once the insured dies, that risk crystallizes, which should extinguish the insured's right to vary that risk (para. 18). Ivari argued that the death of James effectively terminated the right to cancel the policy within the 10-day free-look period.

The court rejected Ivari's argument. It held that allowing the cancellation of the policy after the insured's death did not go against the essential rationale of insurance. For the court, the insurer bore an inherent risk that there will be a material change in the insured's circumstances within the 10-day free-look period; that the insured died in this case did not change the nature of the inherent risk being insured against.

Furthermore, the court determined that the cancellation attachment was not in itself an insurance policy but an insurance contract. As an insurance contract, the cancellation provision covered both the term policy and the converted policy. In the court's words, "[e]ffectively, the respondent had one contract with the appellant and two policies under the one umbrella contract: the Term Policy and the Converted Policy." (Para. 14.)

Significantly, the court determined that the cancellation attachment was essentially a condition subsequent, which, once triggered, resulted in the converted policy becoming void. The court noted

that, in *Moss v. Sun Life Assurance Company of Canada* 2018 ABKB 953, the Alberta Court of King's Bench concluded that voiding a replacement life insurance policy revived the original policy (cited in *Thomson v. Ivari*, para. 25). In that case, the court noted that the insurer would have created two separate contracts had it intended the issuance of the new policy and the cancellation of the old policy to be two separate transactions (*Thomson v. Ivari*, para. 25).

Similarly, in this case, the court found that the cancellation attachment was one transaction, as the issuance of the converted policy was contingent on the cancellation of the term policy. The cancellation policy, according to the court, was a condition subsequent that, once triggered, served to nullify the replacement of the term policy with the converted policy — “[t]he Converted Policy never survives the condition subsequent.” (para. 30)

III. Takeaway

This case involved an insurance dispute centered on the improbable circumstance of an insured dying during a free-look cancellation period of a replacement life insurance policy. As such, the decision may appear to be of limited application to insurers of replacement life insurance policies.

However, insurers should pay special attention to the court's discussion regarding cancellation provisions that are constructed as single transactions. Insurers may want to take care to draft policy conversions as two distinct transactions, so as to mitigate the potential risks they bear in the 10-day free-look period associated with converted insurance policies.

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