

Boyd v. Liberty Life and SelectQuote



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Practice Areas:

- Insurance Coverage
- Workers' Compensation

The South Carolina Court of Appeals has concluded that an authorization to an insurance company to draft premium amounts from a checking account was insufficient consideration to form a contract for life insurance. *Boyd v. Liberty Life Insurance Company and SelectQuote Insurance Services* (Ct. App. Op. 4985, June 13, 2012)

SelectQuote is an insurance broker that offers consumers quotes and comparison information from a number of independent insurance companies. SelectQuote sent Boyd a solicitation to replace his existing life insurance policy. Based on a phone interview with a SelectQuote agent in which he admitted he was a smoker, Boyd was told that Liberty Life offered the lowest premium quote at \$406.17 per month, subject to a medical examination and Underwriter approval. SelectQuote confirmed in a letter which identified Boyd as "preferred tobacco", which means a smoker in excellent health. Boyd completed an application which included his authorization to draft his checking account and a copy of a blank voided check, and provided that to a nurse performing the medical exam on behalf of Liberty Life. Due to blood pressure issues revealed in Boyd's medical records, Liberty Life approved his application for the Underwriting classification "smoker non-preferred". SelectQuote informed Boyd that Liberty Life had approved him at an adjusted rate of \$417.73 which Boyd verbally accepted.

Boyd requested proof he was covered prior to cancelling his existing policy. SelectQuote sent a fax to Boyd stating his application had been approved by Liberty Life and the policy "will be issued and forwarded to you soon." In a subsequent phone conversation the SelectQuote agent advised Boyd he had "double coverage" until he cancelled his policy with Mutual of Omaha. Boyd asked SelectQuote agent when the first premium would be drafted; she replied it was dependent on the bank. Boyd acknowledged, "I know that no insurance is in effect until the premium has been paid." Two weeks later Boyd informed SelectQuote he had not yet received the policy. SelectQuote investigated and determined that the agent, through a clerical error had quoted Boyd the incorrect premium amount. She inadvertently selected non-tobacco from a pull down menu instead of tobacco. The smoker/non-preferred premium was actually \$1,037.90. A supervisor called Boyd and informed him of the error. Boyd declined the policy and subsequently bought a policy from another insurer for \$916.13 a month.

Boyd sued SelectQuote and Liberty Life for breach of contract, bad faith and negligent representation. The Court of Appeals affirmed the circuit court's grant of summary judgment to Liberty Life and SelectQuote on the ground that no valuable consideration existed to form a contract because Boyd had not paid the premium. Boyd contended the tender of a voided check and written authorization to draft his checking account was sufficient. The record did not contain any evidence that Liberty Life's approval of Boyd's insurance application constituted an agreement by Liberty Life to accept the tender of the voided check and authorization to draft his checking account as absolute payment of the premium.

In the absence of an express or implied agreement to the contrary, a check does not constitute payment unless it produces payment in cash. Additionally, Boyd had submitted the voided check and bank authorization as part of the application process two months before the premium amount was finalized. As a result, neither specified the amount of the premium. The court cited Holmes' Appleman on Insurance for the proposition that the insured's authorization of his bank to deduct the amount of the premium from the account does not satisfy the insured's obligation where no payment was actually made by the bank to the insurer. The Court also referred to Alabama case law, Haupt v Midland Nat'l Life Ins Co 567 So.2d 319 (1990) for a holding that an appellant's choice of the automatic withdrawal method of payment did not relieve him of his duty to pay the premium.

Boyd also argued the SelectQuote agents misquote of the \$417.00 was binding on Liberty Life because SelectQuote acted as Liberty Life's agent. The Court of Appeals rejected the argument, holding that communicating a premium amount to a prospective insured does not convert an insurance broker into an insurance agent. Moreover, Liberty Life did not approve Boyd for the non-smoker rate mistakenly quoted by the agent. An insurance broker cannot be converted into an agent of the insurer without evidence creating an inference that he was acting at the "instance or request" of the company.

About Pete Dworjanyn

Pete Dworjanyn is a shareholder and chair of Collins & Lacy's Insurance Coverage Practice Group and founding author of the South Carolina Insurance Law Blog. Pete also practices in workers' compensation. Following law school, Pete served as a law clerk for the Honorable Julius H. Baggett, Eleventh Judicial Circuit and as Assistant Solicitor in the Eleventh Circuit Solicitor's Office. Prior to joining Collins & Lacy in 1999, Pete was in private practice, focusing on civil litigation. Pete's reputation has earned him a BV rating by Martindale-Hubbell. He also is one of the Best Lawyers in America, the oldest and most respected peer-review publication in the legal profession.

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