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California Court of Appeal Refuses to Extend Insurer's Duties to Nonparty

Spouse of Deceased Insured Has No Independent Fraud Claim Against Carrier

By Amy Briggs and Nicholas Wenbourne

A spouse may not sue an insurer for individual tort claims under a health insurance policy issued to his deceased wife. Refusing to create a new tort under California law, California's Fourth Appellate District in *The Mega Life and Health Insurance Company v. Superior Court*, _ Cal. App. 4th _ (April 14, 2009) thus ordered the trial court to grant the health insurer's motion for summary adjudication on the plaintiff's fraud claim, although the spouse's claims as successor in interest to his deceased wife remained viable.

The Mega Life and Health Insurance Company ("Mega Life") issued a health insurance policy to the plaintiff's wife. After his wife passed away, the plaintiff brought an action for fraud against Mega Life not only as successor in interest to his wife, but also in his *individual capacity*. Plaintiff alleged that Mega Life misrepresented the scope of coverage offered by the policy and that it concealed certain facts relevant to his wife's decision to purchase the policy. Plaintiff further alleged that he was involved in the decision to purchase the policy, that community property was used to pay the premiums, and that after his wife's death, he was pursued by creditors and struggled to pay the medical debts. All these factors, he claimed, supported his own, independent cause of action against the carrier.

The appellate court, however, held that as a matter of law, the plaintiff – who simply was not a party to the contract – had no claim of his own.

The basis for the appellate court's conclusion was twofold.

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First, the Court of Appeal held that the plaintiff could not establish that he had *relied* on the carrier's misrepresentations. Notwithstanding that plaintiff claimed to have partially paid for the policy or that he participated in the decision to purchase the policy, the court labeled such arguments "paternalistic" and "irrelevant" because his wife, the insured, was clearly capable of making her own decisions. And, at the end of the day, the plaintiff just could not demonstrate that he had altered his position in any way as a result of the carrier's misrepresentations. Unable to prove reliance, plaintiff's fraud claim was fatally defective.

Second, the Court of Appeal rejected the notion of a "universal" tort duty and acknowledged that the law offered many examples of "wrongs" for which there is no remedy. Refusing to create a new tort in this instance, the appellate court noted that plaintiff's claims in his capacity as successor in interest allowed him to recover full compensation – including punitive damages – against the carrier. And while the court's holding cut off plaintiff's rights to recover for his own emotional distress, there were "no compelling reasons of policy" requiring that plaintiff's personal interest or role in the transaction give rise to an independent claim for damages.

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