

Case study | Inappropriate Replacement

THE BACKGROUND:

In 2002 a prominent institutional trustee accepted, as successor, a trust containing a severely impaired life insurance policy. Shortly thereafter, the policy lapsed unintentionally and without prior knowledge of the successor trustee. Efforts to reinstate the policy were unsuccessful as the insured was deemed uninsurable by the carrier. The trustee, facing significant liability, contacted outside counsel.

Successor Trustee Accepts Severely Impaired Policy

Resource Insurance Consultants

The trustee asked three very important questions:

1. Were there material errors and omissions and are we liable?
2. Does the predecessor trustee have liability?
3. What representations did the insurance carrier make?



THE SITUATION:

RIC was retained as an independent risk manager for trust held life insurance to gather data from appropriate sources and to provide an investigative report to the trustee.



While a number of errors and oversights were committed by all parties involved, the primary cause for the policy lapse was a pattern of policy replacement and misrepresentation. Three separate policy replacements were discovered, leading to the failure of the final contract. Two existing universal contracts (one replaced from a previous policy) with guaranteed crediting rates of 4% were replaced with a variable life insurance contract in late 2000. At the time of replacement under the predecessor trustee, those existing contracts were only in their fifth and third policy years.

Proper suitability analysis should have determined that this exchange was inappropriate for a 71 year old widow. The assets were placed into high risk, volatile and subsequently poorly performing sub-accounts. No ongoing financial management or re-allocation was performed. RIC identified documents which misrepresented material facts of the proposed replacement. Less than four years after this exchange, over \$142,000 of cash value disappeared. Once the newly imposed surrender fees of \$43,000 equaled policy value, the contract lapsed.

Third party independent consultation mitigates trustee liability while serving the trust and its beneficiaries in the most responsible manner.

Resource Insurance Consultants

THE SOLUTION:

Through forensic investigation, analysis and documentation, RIC successfully negotiated the rescission of the variable life contract and re-instatement of the previous universal life policy. Additionally, the cash value was restored to its approximate amount prior to the unsuitable replacement.

In the end, the trustee fulfilled its fiduciary responsibility, further developed grantor and beneficiary relationships, mitigated liability and established an independent review process for new and existing policies held in trust.

Resource Insurance Consultants

2828 South 87th Street
Omaha, Nebraska 68118

Phone: 402-391-6356

Fax: 402-391-3772

E-mail: jjones@ricomaha.com

Website: www.ricomaha.com

