

When Must Insurers Pay Death Benefits? 1st Overrules State Policy

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The First District Court of Appeal, Tallahassee

Timing is everything when it comes to when death benefits are due and payable, and the Florida Department of Financial Services got the question wrong, an appeals court has decided.

The First District Court of Appeal reversed a declaration of the state agency, which had decided that life insurance funds are due immediately upon the death of the insured.

Thrivent Financial for Lutherans didn't like the answer, so it appealed to the First District.

First District Judge James Wolf, author of Tuesday's opinion, said the DFS's interpretation was clearly erroneous.

The purpose of Thrivent's question was to confirm when the "dormancy period" begins. Under Florida law, insurance companies must remit to the DFS any unclaimed insurance funds. If the insurer does not do this by the time the dormancy period expires, DFS may impose penalties and charge interest on the funds that are not reported and paid to DFS.

"Section 627.461 states that payment 'shall be made upon receipt of due proof of death and surrender of the policy,'" Wolf wrote.

Put simply, the clock can't start until the insurance company is given a death certificate and a copy of the insurance policy. In the alternative, contracts that are "not matured" by proof of death can be considered mature if the insurer either knows by some other means that the insured has died, or the insured, still alive, has reached the policy's age limit, Wolf said.

"Nothing in the plain language ... supports DFS' interpretation that funds become 'due and payable' at the moment the insured dies," Wolf said.

DFS also argued that the First District should impose a duty on insurance companies to search death records in order to ascertain whether any insurer has died. The department suggested insurers search databases such as Google, LexisNexis and the Social Security Administration's Death Master File.

Wolf gave the department a flat no.

"Nothing in the plain language of section 717.107 imposes an affirmative duty on insurers to search these death records," Wolf said.

Thrivent Financial attorney, Timothy Schoenwalder of the Meenan law firm in Tallahassee, said, "We're obviously happy with it, because we believe it's a correct interpretation of the statutes and the issue. The court was given a chance to consider some pretty thorough legal scholarship addressing the key points and came down on the right side."

Thrivent Financial is a fraternal benefit society based in Wisconsin. Andrew Kay of Cozen O'Connor in Washington argued their case before a First District panel on July 15.

Paul Stadler Jr. of the DFS represented the DFS.

Companies, agencies mentioned: [LexisNexis](#) | [DFS](#) | [Financial Services](#) | [Google Inc.](#) | [First District Court](#) | [Thrivent Financial for Lutherans](#) | [Florida Department of](#)

Law firms mentioned: [Cozen O'Connor](#)

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