

But for the Plan (Life Insurance Claim)

Senora and Senor Torres (not their real names) came to Canada as refugees, when they fled their troubled country of El Salvador. This hardworking couple never learned English, but they managed to raise a family and put them through school.

Senora Torres suffered from high blood pressure and heart problems, for which she was treated over the years. Four years ago, she was approached by a somewhat unscrupulous life insurance agent, who was also from the Spanish speaking community of Toronto. This agent had her fill out an application for life insurance, and since she neither spoke nor read English, he filled it in and merely had her sign it. When her daughter Beatriz read it, she immediately identified some statements which were not true. For example, Senora Torres stated that she did not suffer from any illness, and had not seen a doctor for any health issues. She also stated that she read and spoke English. Beatriz was very concerned about this, and so with her mother present, she phoned the insurance agent and told him about the errors. He assured them that these were unimportant matters, and that the application was fine. The policy was issued, and the beneficiaries were Senor Torres and their daughter Beatriz.

Three years later, Senora Torres died suddenly of a massive stroke. After the mourning period, her daughter made an application for the life insurance, which was for the amount of \$26,000.00. After investigation, the application was denied, with the insurer citing the errors in the original application. The insurer told the Torres family that their mother had misrepresented her health situation, and this material misrepresentation voided the insurance policy.

Fortunately, Beatriz was by this time married to a Unifor member, and was entitled to the many benefits available to union members and their spouses. The couple was having a Will and Powers of Attorney done by a Unifor Legal Services staff lawyer, and mentioned the problem to her during the interview. The staff lawyer opened a file, and wrote to the insurance company, pointing out that all material facts had been disclosed to the agent who sold them the policy. She also noted, more importantly, that the Insurance Act provides in s. 184 (2) where a life insurance contract has been in place for more than two years, a failure to disclose information or the misrepresentation of a fact does not, in the absence of fraud, void the contract.

The insurer still did not budge, and so the staff lawyer commenced an action in Superior Court for the amount of the policy plus interest from the date of death. She also claimed punitive damages. Once the claim was served on the insurer, its lawyer called immediately and agreed to pay the entire amount plus interest, admitting that they had no defence to the claim. The matter was settled and the cheque was in the mail within days.

Had it not been for the Unifor Legal Services Plan, it is very likely that Beatriz and her father would not have pursued this matter. Once again, the Unifor Legal Services Plan has been able to assist members to obtain quick and affordable access to justice.



*... Submitted by Kathleen Howes, Staff Lawyer
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