Alabama

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Formation of a Life Insurance Contract

Insurable Interest Requirement

The Alabama Insurance Code defines an insurable interest, with respect to personal insurance, as "an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of his or her death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or by law." Ala. Code §27-14-3(a). Alabama law has long recognized life insurance policies issued to a person lacking an insurable interest in the life of the insured as a "wager on the life of another" that violates public policy. *Ex parte Liberty Nat'l Life Ins. Co.*, No. 1140612, 2016 WL 1171505 (Ala. Mar. 25, 2016) (citing *Helmetag's Adm'x v. Miller*, 76 Ala. 183 (1884); *Commonwealth Life Ins. Co. v. George*, 248 Ala. 649, 28 So. 2d 910 (1947)). Accordingly, an insurance policy that lacks an insurable interest at the time it is procured is void. Ala. Code §27-14-3(g). "In the case of a void contract, the insurer shall not be liable on the contract but shall be liable to repay to the person, or persons, who have paid the premiums, all premium payments without interest." *Id.* However, the existence of an insurable interest is required only when a life insurance policy becomes effective, not at the time of an actual loss under the policy. Ala. Code §27-14-3(f); *Liberty Nat'l*, 2016 WL 1171505 at *6–7.

Must the Insured Sign the Application?

Generally, an insured must sign a policy application or authorize a third party to do so on his or her behalf. *See*, *e.g.*, *Alfa Life Ins. Corp. v. Reese*, 185 So. 3d 1091, 1094 (Ala. 2015) (noting that the insured was required to sign the application); *New York Life Ins. Co. v. Crumpton*, 160 So. 332, 334 (Ala. 1935) (finding insufficient proof of authority to sign an application on behalf of the insured). Except in the instance of group life insurance, the Alabama Insurance Code provides that "[n]o life… insurance contract upon an individual… shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto[.]" Ala. Code §27-14-6(a). There are three general exceptions to this rule:

> (1) A spouse may effectuate such insurance upon the other spouse;
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> (2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of, or pertaining to, such minor; and
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> (3) Family policies may be issued insuring two or more members of a family on an application signed by either parent, a stepparent or by a husband and wife[.]

Ala. Code §27-14-6(a). Note, however, that an insured may still be bound to policy terms not referenced in an application but included in a corresponding policy. The insured may be found to have manifested assent to the policy and, necessarily, the provisions within it even where the insured has not read or received the policy containing the provision. *Am. Bankers Ins. Co. of Fla. v. Tellis*, ___ So. 3d ___, 2015 WL 3935260, *4–5 (Ala. June 26, 2016) (finding that an insured may be bound to an arbitration provision contained in an undelivered life insurance policy despite the provision being unsigned and not included in the application).

Conditional Receipt/Temporary Insurance Application and Agreement ("TIAA")

Ordinarily, "a life insurance policy is not complete until the minds of the parties have met and they

arrive at an understanding of the terms of the agreement… and the risk does not attach until the conditions precedent have been fulfilled." *Knight v. Alpha Life Ins. Corp.*, 594 So. 2d 1229, 1230 (Ala. 1992) (quoting *Gillian v. Federated Guar. Life Ins. Co.*, 447 So. 2d 668, 671–72 (Ala. 1984) (internal citation omitted). However, insurance coverage may attach earlier if the application states so and/or if a conditional advance deposit receipt, also called a "binder receipt," is provided to the insured. *Id.* at 1230–31; *Liberty Nat'l Life Ins. Co. v. Smith*, 356 So. 2d 646, 647 (Ala. 1978). Where provided, the insured must meet all the conditions set forth in the conditional receipt before any coverage is deemed to exist. *Knight*, 594 So. 2d at 1230. This is true even where the conditional receipt requires approval by an insurer's underwriting department and allows no post-application change to an applicant's health status. *Alfa Ins. Corp. v. Colza*, 159 So. 3d 1240, 1246–47 (Ala. 2014).

Does the Insurer's Acceptance and Retention of a Premium Create a Life Insurance Policy?

It is well settled under Alabama common law "that acceptance of premiums by an insurer, after learning of a breach of a condition or ground for forfeiture, normally constitutes a waiver or estoppel." *Henson v. Celtic Life Ins. Co.*, 621 So. 2d 1268, 1277 (Ala. 1993) (citing *Gen. Ins. Co. v. Killen*, 120 So. 2d 887, 897–98 (1960)). Moreover, "the insurer must return the premiums within a reasonable time to avoid waiver or estoppel from arising from the acceptance of premiums in such a situation." *Id.* Although acceptance and retention of premiums may prevent an insurer from rescinding a policy based on a condition or forfeiture provision, it does not affect coverage provisions within the policy and thus cannot expand the coverage provided under actual policy terms. *Id.* For example, in *McGee v. Guardian Life Insurance Co.*, 472 So. 2d 993 (Ala. 1985), a decedent obtained life insurance coverage under a plan provided by his employer and paid premiums through payroll deductions. Years later, he became too ill to continue working but was assured by his prior employer that he was still covered by the plan. *McGee*, 472 So. 2d at 994. After his death, the decedent's wife was denied life insurance benefits. *Id.* This led her to sue for breach of contract and breach of implied contract. *Id.* The Alabama Supreme Court found that the applicable policies excluded coverage for employees who were not "active at work." *Id.* at 995–96. Because the "active at work" requirement was a coverage provision rather than a forfeiture provision, it could not be waived even if the insurer accepted and retained premiums from the decedent. *Id.* at 996.

Good Health Requirement at Time of Delivery

Many life insurance policies contain language requiring that an insured be in "good health" at the time of delivery of the policy in order for the policy to come into effect. "[A]lthough [this language is considered] a condition precedent in most states, [it] is to be given the legal effect of a warranty in Alabama." *Nat'l Life & Accident Ins. Co. v. Mixon*, 282 So. 2d 308, 313 (Ala. 1973); *Mut. Life Ins. Co. v. Mandelbaum*, 92 So. 440 (Ala. 1922). "As a warranty, the delivery in good health provision is then, by definition, a part of the contract." *Nat'l Life*, 282 So. 2d at 313. Thus, it is "treated the same as a representation so that avoidance of a policy on the grounds that the insured was not in good health at delivery of the policy would have to be based on actual fraud or an increased risk." *Id.* Moreover, "a material breach of the warranty of delivery in good health is cut off as a defense by the incontestability clause" of a policy. *Id.* at 313–14. However, the warranty of delivery in good health is distinguishable from a specific coverage exclusion such as a pre-existing disease clause. *Id.* at 315. Where an insured, for example, contracts a specific illness prior to delivery of the policy, the insurer would avoid paying benefits based on the particular policy exclusion rather than based on a breach of a warranty/fraud *or* condition precedent. *Id.*

Free Look Period After Policy Delivery

The Alabama Insurance Code does not include a statutory provision requiring or otherwise addressing a "free look" period in life insurance policies. However, a life insurance policy issued in Alabama may include such a provision, which is often titled a "right to examine." *See, e.g.*, *Metro. Life Ins. Co. v.*

Glisson, 295 F.3d 1192 (11th Cir. 2002). Where such a clause is included, an insured agrees to the terms of the policy, including all attachments, by failing to return the policy to the insurer or otherwise object within the time allotted by the right to examine clause. *Id.* at 1193–94; *see also Ex parte Rager*, 712 So. 2d 333, 335–36 (Ala. 1998) (enforcing an unsigned arbitration endorsement that was attached to the policy where the policy provided a ten-day right to examine and the insured failed to object within that time).

Electronic Signature Requirements

The Alabama Code has no specific provisions setting forth requirements for electronic signatures on life insurance applications or policies. However, electronic signature are generally allowed in Alabama. *See*, *e.g.*, *Alpha Life Ins. Corp. v. Colza*, 159 So. 3d 1240 (Ala. 2014) (involving an electronically signed application agreement).

Maintenance of a Life Insurance Policy

Grace Period

The Alabama Insurance Code requires that every life insurance policy include "a provision that a grace period of 30 days or, at the option of the insurer, of one month or not less than 30 days shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force[.]" Ala. Code §27-15-3. However, "if a claim arises under the policy during such period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds." *Id.*

Lapse for Failure to Timely Pay Premiums

"The general rule in Alabama is that unless the policy so provides, the failure to pay the premium on a life insurance contract does not of itself forfeit the contract." *Grimes v. Liberty Nat'l Life Ins. Co.*, 551 So. 2d 329, 332 (Ala. 1989); *Haupt v. Midland Nat'l Life Ins. Co.*, 567 So. 2d 1319, 1321 (Ala. 1990); *Equitable Life Assur. Soc. of the U.S. v. Golson*, 48 So. 1034 (Ala. 1909). However, terms in policies providing for forfeiture of the policy for nonpayment of premiums are valid and enforceable. *Id.* Following a lapse for nonpayment,

> unless the policy has been surrendered for its cash value, or its cash surrender value has been exhausted or the period of any extended insurance provided by the policy has expired, the policy will be reinstated at any time within three years after the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all overdue premiums and payment, or, within the limits permitted by the then cash value of the policy, reinstatement, of any other indebtedness to the insurer upon the policy, with interest as to both premiums and indebtedness at a rate not exceeding the rate of interest on policy loans specified in the policy in accordance with the provisions of [the insurance code].

Ala. Code §27-15-11.

Changes in the Beneficiary

Substantial Compliance Rule

Under Alabama law, changes to a beneficiary designation are governed by the terms of the policy itself. *Gibson v. Henderson*, 459 So. 2d 845 (Ala. 1984). However, an insurer may waive strict compliance with policy terms. *Whitman v. Whitman*, 142 So. 413, 413–14 (Ala. 1932). Interpleading life insurance proceeds, for example, may be considered a waiver of the policy requirements with respect to change of beneficiary. *McDonald v. McDonald*, 102 So. 38, 41–43 (1924). Additionally, an insured may effectively change a beneficiary designation by substantially complying with the policy provisions for such a change. *Gibson*, 459 So. 2d at 847. The "substantial compliance" test looks to whether the insured has done everything they could to effect a change in beneficiary. *Id.* at 848. Substantial compliance has been defined as "compliance which substantially, essentially, in the main, for the most part, satisfies the means of accomplishing the objectives sought to be effectuated[.]" *Pittman v. Pittman*, 419 So. 2d 1376, 1379 (Ala. 1982). The substantial compliance rule also applies in instances involving a divorce decree that includes a provision regarding the disposition of insurance proceeds.

"Strict compliance with a literal reading of the insurance provision in the decree is not necessary if there is *substantial compliance* that effectuates the underlying purpose of that provision and the intent evidenced by it." *Id.* (emphasis in original).

Revocation of Death Benefits by Divorce or Annulment

With respect to life insurance policies, Alabama law is clear that "where the insured fails to exercise his right to change the beneficiary, and absent a clause in the policy that conditions the rights of a beneficiary-spouse on the continuance of the marriage, the right of the beneficiary to receive proceeds pursuant to the policy is not affected by a divorce." *Walden v. Walden*, 686 So. 2d 345, 346 (Ala. Ct. App. 1996) (citing *Flowers v. Flowers*, 224 So. 2d 590 (Ala. 1969)). Although marriage annulment is not directly addressed, the same principle would presumably apply. Namely, that following such an occurrence an insured has an opportunity to change the beneficiary on the insurance policy. Where an insured fails to do so, and the decree granting a divorce or annulment makes no specific mention of the disposition of insurance proceeds, the beneficiary designation will stand despite dissolution of the marriage. *See Walden*, 686 So. 2d at 346.

Payment of Life Claims

Interpleader

Generally, an insurer may be liable where it refuses to pay a claim unless there is "a legitimate or arguable reason for failing to pay the claim." *Gilbert v. Congress Life Ins. Co.*, 646 So. 2d 592, 593 (Ala. 1994) (citing *Nat'l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982)). When an insurer is unsure to whom life insurance benefits are payable, it may initiate an interpleader action. This allows the insurer to "admit[] that it holds funds that are not its own, but [state] that it owes those funds to an undetermined party." *Id.* "Because filing an interpleader action is equivalent to the [insurer] admitting that it is willing to pay the legitimate claimant, an interpleading stakeholder cannot logically be subjected to a claim alleging bad faith refusal to pay[.]" *Id.* (citing *Stone v. Southland Nat'l Ins. Corp.*, 589 So. 2d 1289 (Ala. 1991). The Alabama rules allow an insurer to join all persons with a claim to the insurance proceeds as defendants, deposit the funds with the court, and be discharged from any further liability while the court determines who is entitled to the proceeds. Ala. R. Civ. P. 22. The insurer must, however, pay the full amount due under the policy into the court. *See Gilbert*, 646 So. 2d at 593 (noting that the stakeholder must pay "to the court an amount that the parties do not dispute is the full amount due").

Slayer Statute and Related Common Law Rule

Like many other states, Alabama has a "slayer statute" prohibiting any person from benefitting financially from the intentional killing of another person. The statute provides:

> A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal oblige or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

Ala. Code §43-8-253(c). The slayer statute does not extend to persons who are related to the "slayer," such as where the relative is named in the insurance contract as an alternative beneficiary or where the slayer takes his own life. *Willingham v. Matthews*, 163 So. 3d 1016, 1019–20 (Ala. 2014); *Alpha Life Ins. Corp. v. Bonner*, 933 So. 2d 362, 366–67 (Ala. Ct. App. 2005).

Interest on Life Insurance Proceeds

The Alabama Insurance Code provides:

> …if an insurer fails to pay the proceeds of or make payment under a policy pursuant to a death claim within 30 days after receipt of satisfactory proof of death and of the interest of the claimant, and if the beneficiary of the policy elects to receive a lump-sum payment through a retained asset account or otherwise,

> the insurer shall pay interest on any money due and unpaid after the expiration of the 30-day period. The insurer shall compute the interest from the date of receipt of due proof of the death of the insured and interest of the claimant until the date of payment. The rate of interest shall be the current rate of interest on death proceeds left on deposit with the insurer.

Ala. Code §27-15-13(b).

Contested Life Insurance Claims

Contestability Period

Under the Alabama Insurance Code, life insurance policies are incontestable after a maximum of two years. The Code requires life policies to include a provision stating that they are incontestable, "except for nonpayment of premiums, after [the policy] has been in force during the lifetime of the insured for a period of two years from its date of issue." Ala. Code §27-15-4. The insurer has the option to exclude "provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means" from the required incontestability clause. *Id.* Additionally, credit life insurance policies are incontestable after only twelve (12) months. Ala. Ins. Reg. No. 28 §VI(J)(2) (1991).

Can a Claim Still Be Contested After Expiration of the Contestability Period?

The contestability clause of a life insurance policy "shall preclude only a contest of the validity of the policy or contract and shall not preclude the assertion at any time of defenses based upon provisions in the policy or contract which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause." Ala. Code §27-15-15. In other words, the policy itself cannot be invalidated but a claim may still be contested after expiration of the contestability period if based upon a policy term or exclusion. *See Nat'l Life & Accident*, 282 So. 2d at 314 (noting that an incontestable clause cannot extend coverage of a policy to cover un-bargained-for risks such as a pre-existing condition; while the policy cannot be voided, a claim may still be denied as outside the policy coverages).

Suicide

An insurer may deny a claim for life insurance benefits based on suicide by the insured so long as the policy includes a provision excluding coverage for death by suicide. *See Fed. Guar. Life Ins. Co. v. Wilkins*, 435 So. 2d 10, 13 (Ala. 1983). Where an insurer has an arguable basis for denying a claim based on suicide, such as a coroner's report indicating suicide, the insurer cannot be held liable for bad faith claim denial. However, whether the insured indeed committed suicide such that no benefits are due is a question of fact that may best be determined through a declaratory judgment action. *See id.* Additionally, there is a legal presumption against suicide in Alabama. *Jefferson Standard Life Ins. Co. v. Pate*, 274 So. 2d 291, 294 (Ala. 1973). An insurer may avoid operation of the presumption by showing direct, rather than circumstantial, evidence of suicide. *Id.* at 295.

STOLI/BOLI/COLI and Stranger Owned Annuity Contracts

"It has long been established under Alabama's common law and statutory law that a life-insurance policy issued to a person not having an insurable interest in the life of the insured is considered a 'wager' on the life of another and is therefore void as against public policy." *Liberty Nat'l*, No. 1140612, 2016 WL 1171505, at *3; *Mut. Sav. Life Ins. Co. v. Noah*, 282 So. 2d 271, 273–74 (Ala. 1973). Based on this same public policy, many states prohibit third party life insurance and annuities such as STOLI and STOA. However, Alabama has not enacted legislation directly prohibiting such. Instead, the insurance code allows a party to, in good faith, assign a policy to another person who lacks an insurable interest and to change the beneficiary designation to a person who lacks an insurable interest. Ala. Code §27-14-21. So long as an insurable interest existed at the time the policy was issued, the policy is not void. *Id.* This is because, "[a]s a contract of life insurance is generally not regarded as a contract of indemnity,… it is immaterial that the [insurable] interest ceased prior to the death of the insured unless the contract provides otherwise." *Liberty Nat'l*, No. 1140612, 2016 WL 1171505, at *6–7; *see also Hanner v. Metro Bank*, 952 So. 2d 1056 (Ala. 2006)

(recognizing an assignment of a life insurance policy to a bank). An insurer may only avoid ownership of insurance policies or annuities by strangers, banks, or companies by including language in the policy prohibiting such ownership.

Material Misrepresentations in the Application

Applicable State Statute

The Alabama Insurance Code provides that an insurer is entitled to rely on the statements and representations made in an insurance application. Ala. Code §27-14-6(b). "[N]o insurer shall incur any legal liability except as set forth in the policy by virtue of any untrue statements, declarations or representations so relied upon in good faith by the insurer." *Id.* As such, the Code states:

> All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by, or in behalf of, the insured or annuitant shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy or contract unless either:
>
> (1) Fraudulent;
>
> (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or
>
> (3) The insurer in good faith would not have issued the policy or contract, or would not have issued a policy or contract at the premium rate as applied for, or would not have issued a policy or contract in as large an amount or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been known to the insurer as required either by the application for the policy or contract or otherwise."

Ala. Code §27-14-7(a). A complaint filed for misrepresentation or fraud in connection with policy issuance must be "accompanied by a payment into court of all premiums paid on the policy or contract." Ala. Code §27-14-7(b).

Prima Facie Case of Misrepresentation

An insurer may void a life insurance policy where it has relied upon an intentional misrepresentation of material fact by the insured. *Clark v. Ala. Farm Bureau Mut. Cas. Ins. Co.*, 465 So. 2d 1135, 1139 (Ala. Civ. App. 1984) (citing *Bankers Life & Cas. Co. v. Long*, 345 So. 2d 1321 (Ala.1977). No intent to deceive is required for an insurer to void the policy. *Id.* If an insured "innocently made an incorrect statement that was material to acceptance of the risk, or would have caused [the insurer] in good faith not to have issued the policy as it did, the insurer may properly deny a claim and void the policy. *Id.* (citing *Nat'l Sav. Life Ins. Co. v. Dutton*, 419 So. 2d 1357, 1361 (Ala.1982) (construing §27-14-7 of the Code of Alabama 1975)).

Impact of "to the Best of My Knowledge and Belief" Language in Application

Because the effect of misrepresentations in an application are governed by §27-14-7, the "best of my knowledge and belief" language has no impact in the life insurance context. Alabama courts have construed §27-14-7 and its predecessor to allow an insurer to void a policy based on an innocent, but nevertheless incorrect, statement in an application so long as it is material. *Clark*, 465 So. 2d at 1139 (quoting *Dutton*, 419 So. 2d at 1361). The courts have relied on this standard, rather than a heightened standard requiring proof of intent to deceive, even where the applicant signs a statement certifying that the answers in the insurance application are correct to the best of their knowledge. *See Alpha Life Ins. Corp. v. Lewis*, 910 So. 2d 757 (Ala. 2005) (policy rescinded due to misrepresentations in application despite language stating that answers were "complete and true to the best of my knowledge and belief").

Materiality

If "the fact concealed would have shown the liability of the insurer for the loss to be greater than appeared upon the facts disclosed, and would, in consequence, have induced a rational underwriter, governed by principles presumed to govern prudent and intelligent underwriters in practice, to have rejected the risk or

accepted it only at an increased premium, the fact is material." *Clark*, 465 So. 2d at 1139 (quoting 9 Couch on Insurance §38:27 (2d ed. 1962) (Supp. 1983)). Whether a particular fact increases the risk of loss and thus is material is ordinarily a question of fact. *Id.* (citing *Nat'l Sec. Ins. Co. v. Tellis*, 104 So. 2d 483 (Ala. 1958). However, Alabama courts have recognized some conditions as increasing the risk of loss as a matter of law. *See Liberty Nat'l Life Ins. Co. v. Trammel*, 33 So. 2d 479 (1947) (cancer); *Ginsberg v. Union Cen. Life Ins. Co.*, 240 Ala. 299, 198 So. 855 (1940) (misstatement of age); *Crumpton v. Pilgrim Health & Life Ins. Co.*, 46 So. 2d 848 (1950) (Hodgkin's disease). Additionally, an insurer may more easily demonstrate materiality where the application specifically requests information regarding a particular fact, such as a particular medical condition because where such an inquiry is made, the insured is put on notice that the insurer considers that fact material. *Lewis*, 910 So. 2d at 762 (citing *Christiana Gen. Ins. Corp. of New York v. Great Am. Ins. Co.*, 979 F.2d 268, 280 (2d Cir. 1992)).

Causal Connection

The Alabama Insurance Code does not contain a requirement that a misrepresentation contribute to a loss for an insurer to avoid a policy. This follows the "clear majority rule" that no causal connection is required. *See* 6 Couch on Insurance 3d §§82:21, 82:34 (2004); 7 Couch on Insurance 3d §99:1 (2004); 7 Couch on Insurance 2d §35:87 (rev. ed. 1995 & Supp. 1994); Robert E. Keeton & Alan I. Widiss, Insurance Law, A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices at 572 n.20 (West 1988); 43 Am. Jur. 2d Insurance §1058 (1982).

Impact of Agent's Knowledge and False Responses

Where an insurance application includes language stating that information or knowledge obtained by an agent shall not be construed to be known to or binding upon the insurer, Alabama courts decline to impute the agent's knowledge to the insurer. *Alfa Life Ins. Corp. v. Reese*, 185 So. 3d 1091, 1104 (Ala. 2015). The same is true where an application includes language stating that an agent lacks authority to waive any terms and/or conditions of the policy. *See First Nat'l Life Ins. Co. of Am. v. Rector*, 142 So. 392, 392 (Ala. 1932). Absent such language, "[m]isrepresentations resulting *solely* from the act or oversight of the soliciting agent taking the application, without the knowledge of the insured or beneficiary, are not available to the insurer, although the issuing authority acts upon the application as presented, and without knowledge of the misfeasance of its agent." *Inter-Ocean Cas. Co. v. Ervin*, 156 So. 844, 845 (Ala. 1934) (emphasis added).

Defenses

Statutes of Limitation/Contractual Limitations Period

Generally, a term in an insurance policy providing for a contractual limitations period is valid. *See Provident Fund Soc. v. Howell*, 18 So. 311, 311 (Ala. 1895) (finding that a stipulation that legal proceedings would not be brought within three months of date proof of injury provided or at all unless within six months is valid). Otherwise, the statutory limitations periods are applicable for claims arising from a life insurance policy. Actions for breach of contract, such as for failure to pay a claim, must be commenced within six years. Ala. Code §6-2-34(9); *McMahan v. Old S. Life Ins. Co.*, 512 So. 2d 94, 96 (Ala. 1987). Such claims begin to accrue at the time of the breach. *Id.* Bad faith claims, however, are subject to a two year limitations period. Ala. Code §6-2-38(l). This is because "bad faith refusal to pay a claim is merely a species of fraud and, as such, the statutes of limitation applicable to fraud apply." *Dumas v. S. Guar. Ins. Co.*, 408 So. 2d 86, 89 (Ala. 1981). Bad faith claims accrue "upon the event of the bad faith refusal, or upon the knowledge of the facts which would reasonably lead the insured to a discovery of the bad faith refusal." *Blackburn v. Fid. & Deposit Co. of Md.*, 667 So. 2d 661, 668 (Ala. 1995) (quoting *Safeco Ins. Co. of Am. v. Sims*, 435 So. 2d 1219, 1222 (Ala. 1983)).

Duty to Read Policy

Alabama has taken a "decidedly stricter view [of the duty to read]" than other jurisdictions. *Reese*, 185 So. 3d at 1105. Under this view, "any adult of sound

mind capable of executing a contract necessarily has a conscious appreciation of the risk associated with ignoring documents containing essential terms and conditions related to the transaction that is the subject of the contract." *Alfa Life Ins. Corp. v. Colza*, 159 So. 3d 1240, 1259 (Ala. 2014). Accordingly, when a person signs an insurance application, he or she "is chargeable with notice of the application's contents and is bound thereby[,]" even where the applicant fails to read the application or have it read to them. *Id.* at 1253 (quoting *Gen. Ins. of Roanoke, Inc. v. Page*, 464 S.E.2d 343, 344–45 (Va. 1995)).

The duty to read exists even in the face of purported misrepresentations or suppression of information by the agent. *Reese*, 185 So. 3d at 1105; *Colza*, 159 So. 3d at 1251. Where faced with policy terms that do not match statements by an agent, the applicant has a duty to inquire and investigate the inconsistencies. *Reese*, 185 So. 3d at 1105; *Colza*, 159 So. 3d at 1251. Failing to do so, absent evidence of an inability or incapacity, demonstrates a "deliberate decision to ignore [those] written contract terms in favor of previous purported representations" by an agent. *Reese*, 185 So. 3d at 1105; *Foremost Ins. Co. v. Parham*, 693 So. 2d 409, 421 (Ala. 1997). However, the duty to read may be avoided "where there have been misrepresentations regarding the contents of a document and there are special circumstances or a special relationship between the parties or the plaintiff suffers from a disability rendering him or her unable to discern the contents of the document." *Reese*, 185 So. 3d at 1105 (citing *Potter v. First Real Estate Co.*, 844 So. 2d 540, 548–51 (Ala. 2002)).

Waiver/Estoppel

The Alabama Insurance Code provides:

> [w]ithout limitation of any right or defense of an insurer otherwise, none of the following acts by, or on behalf of, an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:
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> (1) Acknowledgement of the receipt of notice of loss or claim under the policy;
>
> (2) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such form or proofs completed or uncompleted; or
>
> (3) Investigating any loss or claim under any policy or engaging in negotiations looking toward possible settlement of any such loss or claim.

Ala. Code §27-14-27. Outside these exclusions, the doctrine of waiver and estoppel, "as applied to the law of insurance, arises out of and is rested upon dealings between the insurer and insured in respect to the insurer's obligation to pay the loss sustained by the insured[.]" *Liverpool & London & Globe Ins. Co. v. Dickinson*, 13 So. 2d 570, 572 (Ala. 1943).

> The substance of the doctrine of waiver as applied in the law of insurance is, that if the insurer, with knowledge of facts which would bar an existing primary liability, recognizes such primary liability by treating the policy as in force, he will not thereafter be allowed to plead such facts to avoid his primary liability.
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> This doctrine, however, cannot be invoked by the insured to create such primary liability. To create such primary liability all the elements of a binding contract are essential.

McGee v. Guardian Life Ins. Co., 472 So. 2d 993, 995–96 (Ala. 1985) (quoting *Protective Life Ins. Co. v. Cole*, 161 So. 818, 819 (1935) (on rehearing)). In other words, coverage provisions in a policy are not subject to the doctrine of waiver. *Id.* at 996. Additionally, the application of "the law of waiver and estoppel with respect to insurers cannot be abolished by contract." *Provident Life & Accident Ins. Co. v. Hudgens*, 158 So. 757, 758 (Ala. 1935).

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