In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1607

LORRIE R. MEIER,

Plaintiff-Appellant,

v.

PACIFIC LIFE INSURANCE CO.,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Western Division.
No. 20-C-50096 — **Iain D. Johnston**, *Judge*.

ARGUED FEBRUARY 8, 2023 — DECIDED MARCH 22, 2023

Before FLAUM, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Lorrie Meier sought to collect on a life insurance policy from Pacific Life Insurance Company following the death of her husband Ron. After applying for insurance—but before Pacific Life issued the policy—Ron learned he had terminal cancer. Pacific Life denied Lorrie's claim for coverage because Ron failed to disclose the cancer diagnosis before the policy was issued. The district court agreed with Pacific Life and determined that Ron's failure to

inform Pacific Life of the diagnosis constituted a material misrepresentation allowing for recission of the policy. We agree and affirm.

I

In early 2018 Ron and Lorrie Meier decided to purchase a life insurance policy for Ron. With the help of a third party, Monarch Solutions, they began searching for options. While considering a policy offered by Lincoln Financial Group, a nurse visited Ron to assess his health and recorded her findings on two forms—one titled the "Medical Supplement" and another the "Examiner's Report." After shopping for other options with different firms, Ron ultimately applied for a policy with Pacific Life Insurance Company.

On June 18, 2018, Pacific Life received a copy of the medical forms previously submitted to Lincoln Financial. A month later, on July 26, Ron completed his application for a Pacific Life policy, referencing the Lincoln Financial "medical examination" in the application's "Medical Certification" section. Ron also agreed to several terms and conditions, including a provision requiring him to update Pacific Life "in writing of any changes" to his health. Pacific Life accepted Ron's application on July 30 and began the underwriting process.

A week later, on August 6, Ron learned he had stage IV lung cancer and immediately began treatment. Ron and Lorrie orally disclosed Ron's cancer diagnosis to their representative at Monarch Solutions, but they did not take any steps to inform Pacific Life. On September 6 Pacific Life delivered the policy to Ron for his review. Ron received and signed the Policy Delivery Receipt on September 7, confirming his receipt and execution of the policy.

About a year later Ron died from lung cancer, and Lorrie filed a claim with Pacific Life. After learning that Ron had been diagnosed with—but failed to disclose—terminal cancer before the policy's issuance date, Pacific Life rejected Lorrie's claim. Pursuant to the Illinois Insurance Code, Pacific Life rescinded the policy and returned the premiums to Lorrie. She responded by bringing suit against Pacific Life in federal court to enforce the policy.

The district court entered summary judgment for Pacific Life and affirmed recission of the contract, concluding that Ron's failure to disclose his cancer diagnosis amounted to a material misrepresentation.

Lorrie now appeals.

II

With Lorrie residing in Illinois, both parties agree that Illinois law controls our resolution of the dispute. Section 154 of the Illinois Insurance Code allows insurers to rescind a policy when an insured makes a misrepresentation that materially affects the insurer's acceptance of risk. See 215 ILCS 5/154. The statute imposes no intent requirement. "[A] misrepresentation, even if innocently made, can serve as the basis to void a policy." *Illinois State Bar Assoc. Mut. Ins. Co. v. Law Off. of Tuzzolino & Terpinas*, 27 N.E.3d 67, 71 (Ill. 2015) (quoting *Golden Rule Ins. Co. v. Schwartz*, 786 N.E.2d 1010, 1015 (Ill. 2003)). All an insurer must show, then, is a misrepresentation that was material by the insured. See *id.*

A

The parties first dispute whether Ron's failure to disclose his cancer diagnosis amounted to a misrepresentation. Having taken our own independent review of the insurance

policy and application, we agree with the district court that it was. Ron agreed to inform Pacific Life of any changes to his health, and no reasonable jury could conclude otherwise.

Under Illinois law, we interpret an unambiguous insurance contract according to its plain language. *River v. Com. Life Ins. Co.*, 160 F.3d 1164, 1169 (7th Cir. 1998). The Pacific Life application that Ron completed in July 2018 contains several unambiguous terms imposing equally unambiguous obligations. At the end of the application under the heading "Declarations of All Signing Parties" are two relevant provisions:

> 6. I must inform the Producer or [Pacific Life] in writing of any changes in the health of any Proposed Insured(s). If any of the statements or answers previously provided on the ticket/request (if applicable), applications, and medical forms change prior to delivery of the policy, I am obligated to notify [Pacific Life] of the changes in writing no later than at the time the application is signed by the Proposed Insured(s).
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> …
>
> 15. This application will be attached to and made part of the policy.

By completing and signing the application, Ron knowingly and voluntarily agreed to these terms, and Lorrie does not argue otherwise.

What immediately catches our eye is the first sentence of Declaration 6. By its terms, Ron agreed to "inform the Producer or [Pacific Life] in writing of any changes in [his] health." The language imposed a clear obligation: after Ron submitted his application, Pacific Life wanted to know of

changes to his health in case it needed to alter its ongoing assessment of Ron's risk and corresponding premiums for his life insurance policy. This makes sound sense—any significant changes to Ron's health would not have been included in the original application, but they could still bear on Pacific Life's underwriting analysis.

And Ron's health did change in a substantial way upon learning he had stage IV lung cancer. The diagnosis came between the time Ron submitted the application in July 2018 and Pacific Life's delivery of the policy two months later in September. Ron did not notify Pacific Life, but the company's employees testified that this was exactly the kind of change in health that it sought to include in its assessment of risk before issuing a life insurance policy. We see no way around the conclusion that Ron's cancer diagnosis reflected a significant change in his health that he had to bring to Pacific Life's attention before the company delivered the policy. Like the district court, we conclude that Ron violated the plain terms of Declaration 6 by failing to inform Pacific Life about his cancer diagnosis. His omission amounted to a misrepresentation.

Lorrie urges a different analysis by pointing to the end of the second sentence in Declaration 6, which qualifies Ron's obligation to update Pacific Life about his health as extending to "the time the application is signed" by Ron. Lorrie insists that "application" refers narrowly to the document Ron signed on July 26, 2018, such that any obligation he had extended only through that date. She explains that because Ron had not yet been diagnosed with cancer on July 26, his representations to Pacific Life up to that date were true and complete. Under Lorrie's reading, then, Ron had no duty to disclose his later cancer diagnosis.

We cannot agree. Declaration 6 imposes a precise and unmistakable duty on an applicant to report changes in health until the insurer delivers the policy. Although we acknowledge that the use of the word "application" here may have been a poor word choice on Pacific Life's part, we do not think that Ron's obligation to report changes to his health began and ended with the four corners of the document he filed on July 26, 2018. Indeed, Declaration 15 informs the applicant that "[t]his application will be attached to and made part of the policy." A reasonable applicant would understand these words to mean that the application would remain open until the policy is delivered and executed.

Lorrie's contrary reading would render Declaration 6's duty to update meaningless. It cannot be the case that the only time a potential insured must report changes in health is at the time he first submits the application. To report a change in health, there must be some baseline giving rise to that change. But until the insured submits the application, there has been no baseline showing of health. We are unsure what would otherwise constitute a change in health that Pacific Life requires an applicant to report if not those changes occurring between the time the application is submitted and the policy is delivered. So it must be the case that, when fairly read, "changes to health" within the meaning of Declaration 6 include the type that Ron experienced with his post-application, pre-delivery cancer diagnosis.

Our conclusion remains unchanged by the parties' separate debate over whether the Lincoln Financial forms—showing a nurse's assessment of Ron's health in May 2018—were part of Ron's application to Pacific Life. It does not make a difference either way. Declaration 6 imposed on Ron an

independent duty to disclose changes to his health through the policy's delivery date regardless of any other representations he may have made in the application.

B

The parties next dispute whether Ron's omission was material. Under Illinois law, we must ask "whether reasonably careful and intelligent persons would have regarded the facts stated [or omitted] as substantially increasing the chances of the events insured against, so as to cause a rejection of the application." *American Country Ins. Co. v. Mahoney*, 560 N.E.2d 1035, 1042 (Ill. App. Ct. 1990).

The district court had no trouble finding Ron's omission of his cancer diagnosis material. Nor do we. A terminal cancer diagnosis substantially increases the chances of a person's death such that a life insurance company would either reject that application or, at the very least, reconsider its premiums. See *Lauer v. American Fam. Ins. Co.*, 769 N.E.2d 924, 928 (Ill. 2002) (holding that a lung cancer diagnosis was material to a life insurer's assessment of risk). Indeed, Pacific Life employees testified as much. In short, Ron's cancer diagnosis was material to the life insurance policy and no reasonable jury could decide otherwise.

Lorrie does not dispute that a cancer diagnosis is generally important to a life insurance company's assessment of risk. Rather, she suggests that Pacific Life viewed Ron's particular cancer diagnosis as immaterial based on its underwriting guidelines. But our conclusion in no way turns on the details of Pacific Life's underwriting guidelines—Illinois law directs us to a general standard of reasonableness. See *American Country Ins. Co.*, 560 N.E.2d at 1042 (imposing a "reasonably

careful and intelligent person[ ]" standard). Even the plain terms of Declaration 6 tell us that changes in a potential insured's health are important to Pacific Life. That Pacific Life requires applicants to communicate such diagnoses bolsters our conclusion that the diagnosis was material in this case.

C

Lorrie raises three final matters. None changes our view, however, that Ron's failure to disclose his cancer diagnosis constituted a material misrepresentation that entitled Pacific Life to rescind the contract on that basis.

Disclosure to an Agent. Lorrie first argues that as a matter of agency law, Pacific Life had notice of Ron's cancer diagnosis and therefore waived its right to rescind the contract. She contends the Meiers' oral disclosure of Ron's diagnosis to Kevin Klaas—a sales representative at Monarch Solutions, the third party helping the Meiers purchase the insurance policy—can be imputed to Pacific Life. But that is not the case. We agree with the district court that no reasonable jury would find that Klaas was an agent of Pacific Life.

Illinois courts look to four factors to determine whether an intermediary such as Klaas is an agent or a broker: (1) who initiated the intermediary's actions; (2) who controls the intermediary's actions; (3) who pays the intermediary; and (4) whose interests the intermediary represents. See *Royal Maccabees Life Ins. Co. v. Malachinski*, 161 F. Supp. 2d 847, 851–52 (N.D. Ill. 2001) (citing *Roby v. Decatur Steel Erectors, Inc.*, 375 N.E.2d 1355, 1359 (Ill. App. Ct. 1978)). Determining whether Klaas was an agent or broker is important because "the knowledge of an insurance 'broker' generally cannot be

imputed to the insurance company," whereas the knowledge of an agent can. *Id.* at 851.

Each of these four factors supports Klaas's status as the Meiers' representative rather than an agent of Pacific Life. Klaas and his firm initiated the Meiers' search for life insurance policies, and Klaas helped the Meiers shop for several options, including first at Lincoln Financial and later at Pacific Life. Klaas did not take direction from Pacific Life beyond complying with its general forms and requirements, and we see no evidence Klaas received compensation from Pacific Life beyond a commission. By its terms, Klaas's contract with Pacific Life categorizes him as an "independent contractor" and expressly disclaims him as a Pacific Life employee. All told, Klaas represented the interests of the Meiers and not Pacific Life.

Under these factors, no reasonable jury could find that Klaas was an agent of Pacific Life. The Meiers' oral disclosure to Klaas cannot be imputed to Pacific Life, so Pacific Life cannot be said to have waived its right to recission.

Section 155 Vexatious Conduct. Lorrie next contends that Pacific Life's denial of her claim was vexatious and unreasonable under Section 155 of the Illinois Insurance Code. Illinois law provides that a bona fide dispute over coverage is a complete defense to a Section 155 claim. *Med. Protective Co. v. Kim*, 507 F.3d 1076, 1087 (7th Cir. 2007). We see more than a genuine dispute over coverage—we conclude that Pacific Life correctly denied Lorrie's claim. So we also conclude that Pacific Life's actions were neither vexatious nor unreasonable and thus reject Lorrie's Section 155 claim.

Validity of Ron's Signature on the Policy Delivery Receipt. Lorrie's final assertion is that Ron's signature on the Policy Delivery Receipt appears forged such that he cannot be bound to the terms of the insurance policy. The district court saw no need to wade into this point. Nor do we. As we explained, Declaration 6 of the application—which Ron undisputedly signed—directly controls the question of Ron's material misrepresentation to Pacific Life. Whether Ron did or did not sign the Policy Delivery Receipt does not alter the terms he agreed to in his initial application.

For these reasons we AFFIRM.