

Insurance Law Final Exam – Fall 2008

QUESTION #1

Ken Saxton and George Franzi are equal, 50% shareholders of a small, sub-chapter S corporation known as *Acceptable Computer Technology, Inc.* (“ACT”). They are best friends, and have lived next door to each other for years. George and Ken started the company in George’s garage approximately 5 years ago and, by the sweat of their collective brows and a little good luck, the company has flourished. And why shouldn’t it have? The boys are the perfect combination. George is the “fly by the seat of his pants” type who likes high risk gambling, good cigars, and strong whisky. Ken, on the other hand, is an MBA who has a keen eye for the killer deal. The company now boasts \$10 million dollars a year in gross revenue, and employs ten people. The boys are clearly the impetus behind the success of the company, and the loss of either could wreak financial havoc with the company’s outlook. Accordingly, their insurance agent, Arthur Fleecim, has recommended the purchase of two, “key-man” term life insurance policies, each valued at \$10 million dollars.

Fleecim explained that he would obtain the policies through *Whatalife Insurance Company*, (“*Whatalife*”), and that George and Ken would each own one policy. The named beneficiary in each respective policy would be the company, ACT. Upon the death of either, the boys have an agreement, executed by both (and their respective spouses) that will authorize the surviving shareholder to disburse \$5 million dollars to the decedent’s spouse, and deposit the remaining \$5 million dollars in the company’s account. The idea behind this arrangement is to allow the surviving shareholder to purchase the decedent’s shares from the decedent’s surviving spouse. George insisted on this arrangement since Ken’s wife, Myra, loathed George, and his decadent life style. George made it clear to Ken that he did not want to end up with “Broom Hilda” as his partner in the event that Ken “bailed out early.”

The boys each completed and signed applications for the “key-man” life insurance policies. Fleecim filled out the applications for them using information obtained from the boys. If you can believe it, Fleecim actually believed George when he told him that he really didn’t drink or smoke. George even managed to convince the unsuspecting agent that they should memorialize the momentous occasion with a Macanudo cigar and a single-malt Glenlivet scotch! In fact, Fleecim was so convinced of the truth of George’s proclamation, that he listed George as a non-drinker/non-smoker on the application. (Ken couldn’t believe that George had pulled it off!) After reviewing the application, George stated that everything looked fine. Both George and Ken signed their respective applications, and delivered them to Fleecim.

George and Ken then delivered a company check in the amount of \$3,500.00, representing one month’s coverage, and were given a “Receipt for Application,” which stated that the money was received “*as payment on application for insurance on Kenneth Saxton and George Franzi.*” The receipt also provided that: “*This receipt is issued for deposit on application for insurance. The policy will be considered in force from the date of the receipt and the Whatalife Insurance Company will assume all liability under the terms of the policy contract.*”

The receipt was dated December 29, 2004. Before leaving, Fleecim assured George and Ken that “everything will be taken care of.”

On December 31, 2004, just two days after the submission of the applications, (and prior to the issuance of the policies), George decided to launch the mother of all New Year’s Celebrations. As you might have guessed, George didn’t make it to midnight. He’d passed out in his room by 11:00 p.m., but the party raged on without anyone noticing his absence. Myra and Ken, on the other hand, were trying to enjoy an intimate New Year’s celebration of their own. They had hoped to sit out in the yard, and reflect on their good fortune by the light of their chimminea, but the raucous crowd next door put an early end to that idea. Enraged, Myra took a log from the pile, and slammed it into the smoldering fire.

Unbeknownst to Myra and Ken, however, the embers from the fire became airborne, and ignited an inferno at George’s house. Tragically, no one realized that George was in the house, and he succumbed in the fire. Moreover, the house and all its contents were completely destroyed. Fortunately, George, who was the sole title holder to the property, had an active policy of homeowner’s insurance through *Patron’s Mutual Insurance Company (“Patrons”)*. George’s wife (Kathy) was so distraught, however, that she couldn’t even think to respond to the numerous inquiries posed by Patron’s property damage adjuster.

As you correctly guessed, Ken filed a claim for benefits on behalf of ACT against Whatalife, and Kathy, (George’s Wife), filed a claim for benefits pursuant to the Patron’s homeowner’s policy.

Prepare a well-organized essay concerning the rights and liabilities of **ALL PARTIES**, including the insurers. Discuss all possible claims and defenses. Include all relevant issues as they relate to each party, and be certain to discuss the relevant minority and majority rules. Be certain to discuss all the relevant legal theories that might provide a basis for denial by each insurer.

*Have a great holiday season, and Happy New Year from George!*