

IP & Technology

Electronically-Filed Insurance Application Raises Host of Issues

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In *Prudential Insurance Company of America v. Dukoff*, the U.S. District Court for the Eastern District of New York denied both a plaintiff insurer's and a defendant beneficiary's cross motions for summary judgment. In doing so, the court affirmed the importance of implementing clear electronic transaction procedures.

Prudential initiated the action to void a life insurance policy issued on the life of the wife of the defendant and beneficiary on the basis of alleged misrepresentations in the application. In response to Prudential's complaint, defendant Dukoff and his wife's estate filed a counterclaim for the full value of the policy, disputing the charge that it had been procured via fraud. In resolving the parties' cross motions, the district court considered numerous issues traditionally associated with life insurance claims, including those related to the applicability of a two-year incontestability period. The court was also called upon to consider a host of issues stemming directly from the fact that the application was submitted electronically via what the court called "a standard internet click-through process."



The defendants argued that a box that was checked at the end of the electronic application process did not constitute a valid electronic signature under New York's Electronic Signatures and Records Act (ESRA), and thus, Prudential was barred from challenging statements in the application to invalidate the contract. While the court was unaware of any other court that had addressed the validity of electronic signatures for insurance documents under ESRA, in deference to holdings in advisory opinions by the New York Insurance Department, the court held that Prudential could challenge the statements if Prudential could reasonably identify the person who made them. The court then held that there was a triable issue of fact as to whether the final page of the application, which included personal information inputted by the applicant, sufficiently identified the person who signed the application.

The electronically filed application also raised evidentiary issues with regard to who actually submitted the application and when. According to the court, a computer printout produced by the plaintiff insurer shows the application was submitted on a date suggesting that Mrs. Dukoff did not submit the application. The court concluded, however, that the plaintiff insurer did not offer sufficient evidence to establish that this printout accurately reflects the date of submission.

In conducting business electronically, insurers should anticipate the need to produce evidence that proves a given person signed a given electronic document on a given date (and perhaps even at a given time of day). In this regard, insurers may take such steps as including authentication procedures to verify the identity of the signatory, and maintaining evidence of not only the particular electronic document that was signed electronically, but also the electronic process that was followed in obtaining the electronic signature on the electronic document.