HYDE v. BENEFICIAL INS. CO.

This is an action to secure payment under an insurance policy on the life of the deceased, Frank Hyde. The action is brought by the named beneficiary, Georgia Hyde, the deceased’s widow. The action is maintained in federal court based on diversity jurisdiction. Georgia Hyde is entitled to $1,000,000 (double indemnity) if her husband died in an accident and nothing if he committed suicide.

Witnesses:

1) Fellow employee - Ralph Salvon
2) Waitress - Cynthia Rider
3) State police officer - Officer Fryman
4) Coroner - Dr. Thomas Jacobs
5) Widow - Georgia Hyde
6) Insurance Agent - Greg Young
7) Family Doctor - Dr. Sid Lui

No evidence in the file will be excluded. All evidence is admissible. The judge will instruct the jury at the conclusion of the evidence, prior to closing argument, as follows: “Members of the jury, the only issue for you to decide is whether Frank Hyde intended to take his own life on the night he died. The insurance company has the burden of persuading you by a preponderance of the evidence that he had this intent. If you find that it is more probable than not that he did, your verdict must be for the defendant. If you find otherwise, your verdict must be for the plaintiff.” No other jury instructions will be given.
FELLOW EMPLOYEE--RALPH SALVON (October 1, YR-1)

I am a friend of the deceased, Frank Hyde. I worked at Phillip Morris with him for 15 years. On Oct. 1st, YR-2, I was at work with the deceased. Since my wife had just had a baby, I brought up the subject of life insurance with Frank. He told me that on Sept. 15th, YR-2, he had just increased his life insurance coverage from $250,000 to $500,000 because of his added responsibility to his family.

That same day was payday at the plant. Frank and I went to the company cashier to get our pay envelopes. As usual, we both opened up our pay envelopes. Inside his, there was a pink slip. Frank showed me his pink slip which indicated that he was fired, effective in two weeks. The slip listed as the reason for Frank’s firing his drinking on the job. He did drink on the job and had been reprimanded on two occasions.

After reading the note he referred to their prior discussion about insurance and he said, “looks like I’m worth more dead than alive.” He was a moody guy and did drink but didn’t really get drunk often. He was a big man at 6’3” and 230 and had a high tolerance for alcohol.

He looked so depressed that I suggested we go have a few beers at the local beer joint up the road. Each of us had several. I lost count at around 5 or six. I tried to console him but he was very upset and getting more depressed as time went by. He mentioned several bills that he had to pay each month and that he couldn’t bear the thought of facing his wife and family with the bad news. At one point he said that five years earlier, he had taken an overdose of valium and almost died before his life was saved at the hospital. He said, “I’d have been better off dead.” I didn’t know anything about this overdose or his almost dying. He looked so sad I didn’t know what to say.

Shortly after 11:00 p.m., Frank ordered several boilermakers (shots of whiskey and beer) and knocked them down in a few minutes. I just watched him drink these. It was too much for me. About 11:30 p.m. he stood up and said, “talking about it isn’t going to help.” I asked if he could make it home all right, and he walked out without answering me. But, as he reached the door, he turned to me. It looked a little like he had tears in his eyes as he said, “Say goodbye to the fellas at work for me, okay.” As I reached my car, I saw his squeal away from the parking lot. He proceeded up the road at a high rate of speed and that was the last I ever saw of him.

I heard over the radio that there had been an accident and that Frank had been killed. I called his wife when I heard the news and told her how sorry I was and that I might have been the last person to have seen Frank alive. I told her that he had been depressed about being fired and that I had taken him out for some drinks to try to cheer him up a bit. But, I had no success.
I work at the Petersburg Bar and Grill as a waitress. I’ve been working here since YR-7. We’re located just down the block from Phillip Morris. A lot of the Phillip Morris guys come in for lunch and for a drink or beer after work. I got to know Frank Hyde shortly after I started work. He was a regular for lunch. He was a nice guy, asked me about myself, and wasn’t trying to “hit” on me like a lot of the other guys at Phillip Morris. When I was first working there, he’d usually get a sandwich and a soda or maybe a beer.

About five years ago, he began to have two or three beers during lunch and was stopping in regularly after work. He didn’t seem as happy as when I first met him. So I asked him what was going on. He told me that the company really screwed him out of a promotion he had been counting on. He said he really had wanted the job and the pay increase that went with it. He talked about maybe looking for another job, but said he didn’t know where to look.

I asked him whether he thought he might be drinking a little too much, and he told me, “Yeah, I have been, and it’s hurting me at work. But, it serves those s.o.b.s right for screwing around with me.” I said, “Look, Frank, it’s none of my business, but you’re not going to make anything better by drinking.” He said, “Right, I’ll get over it.”

I remember that right after Labor Day, YR-2, he came in after work one day and told me that he was thinking about opening his own sports bar, that he thought he could make some real money if he could just save enough for a downpayment to get him started, and if the bank would be willing to make him a loan. I told him it sounded like a pretty good idea. Cable TV and these fancy antennas get a lot of channels, and a sports bar would be popular in Petersburg. It was the first time I’d seen him “up” in a long time. He told me he wouldn’t be in after work for a while because he wanted to save some money for that downpayment. He said he was putting all his energy into this effort, and that he didn’t know what he would do if the bar didn’t work, because he couldn’t bear just doing what he was doing. During the next month, I don’t think he came into the bar much, if at all. I had the flu that month and missed a number of work days. To the best of my recollection, I did not see him during September, YR-2 after he told me that he wouldn’t be in after work for a while.
STATE POLICEMAN--OFFICER FRYMAN (September 1, YR -1)

I arrived on the scene at about midnight on October 1, YR-2, in response to truckers C.P. call into headquarters. When I arrived at the scene on Rt. 95 I found the deceased in what was left of his car some 40 yards from the road. The car had cut a path from the highway through a fairly wooded area and had come to rest at the foot of a huge oak tree. The tree was badly damaged from the impact with the car, the front of the car was crushed all the way back to where the driver was, and it appeared that the driver had not had a seatbelt on. I checked the pulse of the drive through the window which was broken, and the driver, later identified as Frank Hyde, was dead. The traffic was light on Rt. 95 that night, there had been no rain and there were no slippery spots on the highway where the car left the road. Judging by the distance traveled by the car and the damage to the car together with the small brush that the car had run over I would guess that the car was going about 50-60 MPH. The speed limit was 45 MPH. It was an odd accident, and I wanted to be as fully informed as I could be about how it occurred. An ambulance came to the scene as well as additional patrol cars. They lit up the area very well. I saw that there were newly laid rubber marks on the road that angled slightly toward the path the car had taken. The rubber marks were the type left when a car accelerates suddenly and were about 5 yards in length and began about 20 yards from where the car left the road. I checked the deceased’s tires, and they were incredibly hot, indicating to me that they had left the rubber marks I saw on the road. The path from the road to the tree was straight, and there were no signs that the car sought to brake, turn or avoid the tree. After investigating, I diagramed the placement of the car away from the road when I was at the scene. The diagram contains the notation: “1:00 a.m., October 2, YR-2.”

The state police lab regularly examines all autos involved in fatal crashes. The report on the car of the deceased showed that there had been no mechanical failure of any sort in Mr. Hyde’s car. I did not perform the lab work but was informed about the lack of mechanical failure by the head of the lab within a week after the accident. After receiving a copy of the lab report, I spoke to the coroner, Dr. Jacobs, who told me that Mr. Hyde had enough alcohol in his body to put him in the legally drunk category. Dr. Jacobs said the blood alcohol level was .13. As a result of a change in state law made in YR-3, a person is presumed be legally drunk if he has a blood alcohol level of .08 percent. I filed my final report on the crash and indicated that in my opinion the death resulted from a suicide. My report was based upon my examination of the accident scene, the lab’s examination of the car, and the coroner’s statement about the level of alcohol in Mr. Hyde’s blood. I had no other information when I wrote my report, and once I filed it I moved on to other cases and really had no further involvement with the death of Mr. Hyde.

The Official Policy of the State Police is to discourage those of us who investigate accidents from volunteering to persons outside the police department our opinions as to the cause of an accident. But, we are permitted to offer an opinion if we are subpoenaed to testify in a deposition or in a trial and if we have an opinion as to causation. I was subpoenaed for a deposition six months ago. My testimony was the same as my report. I said in my deposition that the deceased intentionally drove his car at a high rate of speed off the highway and aimed at...
the tree which he struck. That was my opinion after the accident. It was my opinion six months ago, and it is my opinion now. I found no signs that the deceased took any action that would have suggested he was trying to avoid the accident. I have investigated hundreds of accidents over a seven year period and never saw one before exactly like this. This is the first time I have given an opinion that an accident I investigated was a suicide.
I have been the coroner for the City of Petersburg since YR-8. Educational background:

B.S. U. Of Maryland YR-26
M.D. Johns Hopkins YR-22
Interned at Boston General. YR-21
Specialized in pathology during my residency at MCV in Richmond
Member American Pathology Institute
Performed about 1000 autopsies and testified at about 50 of them.

I was called to come to the morgue on Oct. 2, YR-2, at 8 a.m. to perform an autopsy on Frank Hyde. He was a male Caucasian in his mid thirties. Height 6'3" and weight 230.

I determined the cause of death to be massive head injuries. I made no determination as to whether the death was an accident or suicide. My examination was confined to determining what was the medical cause of death. I had no information about the nature of the event that caused Mr. Hyde’s death.

We also ran a routine check on Mr. Hyde’s alcohol level and found it to be in the “legally drunk” range. The blood alcohol level was .13. Given the size of the deceased, it is very doubtful that this alcohol level was so high that it would have caused him to pass out. Of course, the effects of alcohol vary greatly depending on several factors such as prior use of alcohol, what the person has had to eat, the person’s general health, etc. I had little information about Mr. Hyde at the time that I checked the alcohol in his blood. I could see that he was a big man, and probably could consume more alcohol than many smaller men. But, I was unaware of the extent to which he used alcohol on previous occasions, what he ate before and during the time he was drinking, his health record, or any other factors that might have caused him to drink or affected his behavior as a result of drinking.
I am 35 years old. I live in Petersburg with my four children--Mary, age 13; Joe, age 11; and the twins, Sara and Steve, who were born on July 4, YR-2. I was married to Frank Hyde in YR-17. Frank was killed in a car crash on Oct. 1, YR-2. I heard about the crash when I got a telephone call from Ralph Salvon. Frank was 38 when he died. I was named as sole beneficiary in a life insurance policy which I found in his desk. The policy was from the Beneficial Insurance Company and was valued at $500,000 with double indemnity if my husband died as a result of an accident. The insurance company refused to pay, however, because they said his death was a suicide and the policy did not pay in the event of suicide. I am now suing the company claiming that my husband’s death was an accident and I am entitled to payment. I have nothing left but the house and the insurance policy. I did not work outside the home while Frank was alive.

Frank worked at Phillip Morris during our entire marriage. He drove a fork lift and loaded cigarette cartons on trucks for shipping. When we were first married Frank talked a lot about going west and getting into business for himself raising chinchillas. He had a lot of ambition. But then we started having babies and gradually realized we would always stay in Petersburg. Then all he talked about was taking care of the kids, making sure they got to college. He worried about not having enough money to take care of us like he wanted to.

He loved the kids, always went to their soccer and lacrosse games, and loved to tell them stories about his playing football at Petersburg High where he was captain of the team. The twins were a surprise to us both. We love them, but they are a lot of work.

About 5 years ago, Frank was up for a promotion to manager of the loading dock. It would have meant more money and Frank really wanted it. But, it went to another guy who had only been at the plant for a couple of years but who had a college degree. I had never seen Frank so depressed. He came home and had obviously been drinking. In fact, I don’t think I ever saw him as obviously drunk as he was when he got him. Before, he drank often but rarely got drunk. He told me that “some college guy got the promotion despite the fact that I had so many more years experience than this jerk that it’s not funny. I feel like a complete failure.” I tried to console him, but he was just so depressed. He moped around with the saddest look on this face and finally went up to bed. Soon after, I went into the bedroom and discovered Frank had opened a bottle of Valium I keep around for my occasional nerve problem and had taken every pill in the bottle. There were at least 12 pills there. I don’t think Frank ever had gone near my Valium before. He used to warn me to be careful with the drug because it is so powerful. I had to call an ambulance and Frank’s stomach was pumped out. We rushed him to the emergency room where they pumped his stomach. He almost died but he recovered after his stomach was pumped. The emergency room physicians were unanimous; wanted to put Frank in the hospital for observation and initially refused to release him. Frank became incensed and threatened the doctors. He said, “You can’t keep me here against my will. Whatever I want to do, I’ll do, and it’s none of your business. I’m walking out of here, and if you try to stop me, I’ll slug you and
then I’ll sue you. He walked out, and I followed him. We took a cab home. I assumed the incident was just an accident, although Frank and I never really talked much about it. After that, Frank was very moody and depressed all the time.

At one point in the year after the valium incident, I suggested that he see our family doctor, Dr. Lui, and to talk with the doctor about his feelings and whether he should be taking some medication. Frank said he would do so. He later told me that he had seen Dr. Lui, that Dr. Lui wanted him to take Prozac, and that he had refused to do so because he was afraid to take a drug that might affect his mood. He had started drinking a lot after the Valium incident and talked about being a failure. He said that he would never be able to do any good for me and the kids. I remained worried about Frank and called Dr. Lui one day to see if Frank had seen him recently. Dr. Lui said that he had not seen Frank recently, and I told him I was worried about Frank’s condition.

I found out about the insurance policy six months before Frank died. Frank had not told he had taken out the policy. This bothered me. I thought the $125 dollar monthly premiums were a lot, especially since we owed money to several finance companies just to get by, but Frank insisted on keeping the policy paid up. He talked about the need to make sure that the kids and I were taken care of no matter what happened to him. He loved us, and I agreed that the policy made sense. I did not know that he had increased the policy after the twins were born, but I guess he wanted to be sure that there was enough money to take care of four kids and me if he could not do so.

Despite our problems, I can’t believe Frank would take his own life. I often told him that the money didn’t matter as long as we had each other. I told Frank that once the twins were in school I’d be glad to work so we would have a little extra income. He said we’d talk about it when the time came, but that he would always take care of the family and see to it that we had enough to live on without sacrificing.
The release signed by Mrs. Hyde conforms to the requirement of the Health Insurance Portability and Accountability Act.

I am 28 yrs. old and live in Petersburg, Va. I sell insurance for the Beneficial Insurance Company, a Delaware corporation with its principal place of business in Boise, Idaho. Beneficial is a large company with sales offices nationwide. I am the Petersburg agent.

I sold Frank Hyde a life insurance policy on Sept. 15, YR-3. The value of the policy was $250,000 dollars. Mrs. Georgia Hyde was named beneficiary. The policy provided double indemnity if Frank were to die in any sort of accident, including one caused by his own negligence. But the policy was not payable if Frank committed suicide. Mr. Hyde signed a waiver of doctor-patient privilege and a release of all medical records in connection with the policy. Mrs. Hyde also signed a release following her husband’s death when she sought to recover the proceeds of the policy. The releases permitted us to contact and speak with his doctor or doctors.* We contacted his family doctor, Dr. Lui, examined his medical records and issued the policy.

On August 15, YR-2, Mr. Hyde came to my office, told me that his wife had just given birth to twins, and he wanted to renew his policy for another year and to raise the coverage to $500,000. I did the paperwork, and Mr. Hyde did in fact renew his policy, effective September 15, YR-2, and raise his coverage. Mr. Hyde signed a second waiver of doctor-patient privilege and a second release of all medical records in connection with the policy. We again contacted his family doctor, Dr. Lui. Again, we examined his medical records and issued the policy. I delivered the policy to him at work on September 30, YR-2 and told him, “you now have more coverage than anyone in town. Your family will have nothing to worry about if anything happens to you. He smiled and thanked me for my efforts.

On Oct. 2, YR-2, I heard that Mr. Hyde had died in a car crash. Mrs. Hyde subsequently claimed her rights as beneficiary under the policy. Our company talked to the police officer who investigated the accident. We spoke to Ralph Salvon about the night of the accident. We talked to Phillip Morris and discovered that Mr. Hyde was fired just before the accident. We spoke to Mrs. Hyde about the family’s financial condition. We also obtained some additional information from Dr. Lui. I didn’t make the calls or get the information. Our investigators did. We denied payment because we concluded that Mr. Hyde’s death was a suicide. That is the only ground for denial. We looked over his applications for insurance and found no problems with them.

I knew Mr. Hyde only as a client. I knew he had a wife and four children and worked at the Phillip Morris cigarette plant. He seemed normal enough to me. He paid all his premiums on time.

* The release signed by Mrs. Hyde conforms to the requirement of the Health Insurance Portability and Accountability Act.
FAMILY DOCTOR - DR. SID. LUI (September 16, YR-1)

I am an M.D. with a degree in medicine from the University of Virginia in YR-15. I obtained an undergraduate degree in biology from the same school in YR-19. I interned and did my residency at the University of Virginia Hospital in Charlottesville from YR-15 until mid-way through YR-12. Then I moved to Petersburg where I have been practicing family medicine since YR-12.

The Hyde family became my patients shortly after I arrived in Petersburg. I am the doctor for the entire family. When Joe was born, I was the doctor who attended him after Mrs. Hyde’s delivery. I also attended the twins after they were delivered. And, I have been administering to Frank and Georgia Hyde for most of the time that I have been in Petersburg.

Frank Hyde came to see me sometime around YR-4. He told me that the previous year he had been denied a promotion at Philip Morris and that he was so distraught that he got drunk, came home, took his wife’s valium bottle from a medicine chest where she had placed it far out of the reach of the children, and took most of the valium along with more liquor. I asked him why he had done this, and he said he did not know. So, I pressed him and asked whether he had tried to kill himself. I’ll never forget what he said, which was “I wasn’t thinking of being alive or dead. I just wanted to escape.” When I asked him whether he meant he wanted to escape by taking his own life, he got mad and said, “What kind of man do you think I am? I would not kill myself with my wife and kids in the house. I just wanted to make the hurt go away, to escape and not have to deal with it any more.” He said that, since the valium incident, he was feeling more depressed and drinking more. He said that, since he was released from the emergency room, he did not feel like himself. He felt like a failure, he saw little hope, he was worried about his ability to take care of himself and his family, and he was increasingly depressed.

We spoke some more and Frank said to me that some day he might want to run for office, get a security clearance, join the service, or get insurance. He was concerned that if his medical records revealed any kind of serious mental or emotional problem, he might suffer adverse consequences. I told him that I was no psychiatrist, and that I would not record any of the details in my records and would indicate only that he came to see me because he was not feeling well. Although I am not a psychiatrist or a psychologist, I am trained to recognize severe depression. I saw it in Frank and recommended that he consider taking Prozac, an anti-depressant, to make him feel better. He said that he would never take a drug that would alter his mood, stated “I’d rather be depressed than taking medicine no matter what.” I could not persuade him to take Prozac, even after I explained to him that we would start with a low dosage that would not affect his work or produce any sever side effects. I told him that I was worried about him, and that made him angry. He said he would be alright and that maybe he should not have come to see me. I could tell that he was regretting confiding so much in me. So, I said that he should come back anytime even if he only wanted to talk.

I was worried about Frank. I called Georgia, told her that Frank seemed depressed to me.
Georgia said that he was increasingly depressed and that she was worried about him. But, that was YR-4. I don’t believe that Frank came back to see me after that date. He had been getting yearly physicals, but he stopped them. Sometime in YR-3, toward the end of the year I think, I got a call from Georgia Hyde asking me whether Frank had been to see me. I said no, and she said “I’ve been asking Frank to see you, because he’s getting worse I think.”

In YR-3, an insurance company representative gave me a doctor-patient waiver and a release of medical regards, and I turned over Frank’s records to the company. As I promised Frank, the records did not contain any reference to the valium incident or to depression. The company did not ask for additional information, and I did not provide any. In YR-2, the insurance company asked for updated records on Frank, and I told them that I had none. After Frank died, the insurance company contacted me and asked me whether I had any information about Frank Hyde that would suggest he was depressed or unhappy. The company reminded me of the waiver and release that Frank signed and I gave them information about the valium incident and my conversations with Frank and Georgia.
APPLICATION FOR LIFE INSURANCE

Proposed Insured
Name: Birth Date: SSN:
Residence Address: Occupation:
Employer:

Beneficiary Designation
Primary Beneficiary: Relationship to Insured: Birth Date: SSN: Address:

Statement of Health
Height and Weight of Proposed Insured: _____ Feet _____ Inches _____ Lbs.

Name and address of your personal physician:

To the best of your knowledge and belief do you have, or have you ever had or been treated for any of the following (please check applicable items and give details):

a. Disorder of eyes, ears, nose or throat? ___ Yes ____ No
b. Convulsions, paralysis, mental or nervous disorder? ___ Yes ____ No
c. Chest pain, high blood pressure, heart attack, or other heart disorder? ___ Yes ____ No
d. Any other mental or physical disorder?
   i. Had a checkup, consultation, illness, injury or operation? ___ Yes ____ No
   ii. Been a patient in a hospital, clinic or other medical facilities? ___ Yes ____ No
   iii. Been advised to have any diagnostic test, hospitalization or surgery which was not completed? ___ Yes ____ No
f. Have you ever been treated for alcoholism or been advised by a physician to discontinue the use of alcohol for health reasons? ___ Yes ____ No
g. Have you ever used any intravenous drugs, narcotics, barbiturates, excitant drugs, hallucinogens, tranquilizers unless on the advice of a physician? ___ Yes ____ No
h. Have you smoked one or more cigarettes in the last 12 months? ___ Yes ____ No
If yes, number of packs per day _____

i. Have you been treated for or advised to seek treatment for alcohol abuse, drug abuse, depression, anxiety or other psychological or mental condition? ___ Yes ____ No

MEDICAL RECORDS WAIVER AND RELEASE: The above statements and answers are true and complete to the best of my knowledge and belief. I hereby waive the doctor patient privilege and authorize a release of all of my medical records in connection with the policy.

__________________________ ________ _______________________     _________
Signature/Proposed Insured Date Signature/Witness Date

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THIS AGREEMENT is made as of the 15th day of August, 2004, between Beneficial Insurance Company, a Delaware corporation having its headquarters at 123 Fairview Lane, Boise, Idaho 82705, and Frank Hyde, an individual residing at 123 Main Street, Petersburg, Virginia.

WHEREAS Mr. Hyde, the owner of this policy, agrees to pay monthly premium payments of $125.00 by the 1st day of every month;

WHEREAS upon timely payment of these premiums, Beneficial Life Insurance agrees to insure Mr. Hyde by paying benefits upon his death to his primary beneficiary;

WHEREAS Mr. Hyde’s primary beneficiary is Mrs. Georgia Hyde, his wife;

WHEREAS Mr. Hyde’s total benefit at the time of death is $500,000;

WHEREAS this policy shall provide for double indemnity in the case of accidental death, including that caused by his own negligence, resulting in a death benefit of $1,000,000;

WHEREAS this policy shall be null and void if the owner of this policy, Frank Hyde, dies by his own hand by committing suicide.

_________________________________________     ______________________
Frank Hyde, Policy Owner           Date

_________________________________________     ______________________
Greg Young, Issuing Agent       Date
MEMORANDUM

TO: Frank Hyde

FROM: Jamie Brown, Human Resources Manager

SUBJECT: Termination from employment

DATE: October 1, 2004

The Phillip Morris Company regrets to inform you that your employment with the company will be terminated effective October 15, 2004. The basis for this action is your repeated drinking of alcoholic beverages while on the job. You are a highly valued and dedicated employee; unfortunately, prior counseling has not been effective and we cannot tolerate drinking on the job. We wish you well in the future and have every confidence that you will enjoy success in your future endeavors.