

# Legally Obligated to Pay as Damages, Death Clause Coverage

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## Legally Obligated to Pay As Damages – Third Circuit (Pennsylvania Law)

***Modular Steel Sys. Inc. v. Westfield Ins.***

No. 21-1766, 2022 WL 832048 (3rd Cir. Mar. 21, 2022)

The U.S. Court of Appeals for the Third Circuit affirmed the federal district court's decision granting a motion to dismiss filed by the defendant, Westfield Insurance (Westfield), against the plaintiff, Modular Steel Systems Inc. (Modular), for its failure to state a claim upon which relief could be granted.

Modular was hired to furnish “prefabricated modular units” for the construction of a hotel. In turn, it hired a subcontractor to install the modular units. The subcontractor was tasked with “setting and weather-tight[en]ing” the units, but after a storm struck, the units suffered water damage. Modular paid over \$100,000 out of pocket to fix the damage. In turn, it sought coverage under its commercial general liability insurance policy from Westfield, seeking reimbursement for what it spent to repair the damage. After Westfield denied coverage, Modular filed suit in Pennsylvania state court, which was removed to the federal district court. The district court granted Westfield's motion to dismiss for failure to state a claim because, absent a third-party suit against Modular, Westfield did not have an indemnity obligation, and therefore, did not breach the policy.

On appeal, the appellate court explained that the policy “obligates Westfield to pay those sums that the insured becomes legally obligated to pay as damage[s].” The language, therefore, created a duty to indemnify the insured from liability to third parties. The appellate court determined that there was no suit filed against Modular, so its “unilateral decision to fix the storm damage in an effort to meet its contractual obligations for the construction project is simply not a legal[ ] obligat[ion] to pay ... damages[,] as contemplated in its liability insurance policy.”

By: Joshua LaBar

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## Death Clause in Homeowners Insurance – Sixth Circuit (Michigan Law)

***Davis v. Westfield Ins. Co.***

No. 21-2797, 2022 WL 767156 (6th Cir. Mar. 14, 2022)

The U.S. Court of Appeals for the Sixth Circuit held that Bobby Davis and Yvonne Jones (plaintiffs) were not entitled to insurance coverage under their deceased mother's home insurance policy after a fire

damaged her home in March 2019. The plaintiffs submitted a claim to Westfield Insurance Company (Westfield) under their mother's home insurance policy (the Westfield policy). However, at the time that Westfield issued its yearly policy to the mother, she was the sole named insured under the policy and unbeknownst to Westfield, she had already died. At the time of her death, Yvonne Jones lived with her mother, which qualified her as an insured under the Westfield policy. Bobby Davis was the mother's conservator prior to her death, and the plaintiffs co-owned the home with their mother. The Westfield policy contained a death clause, which stated that, if the "person named in the Declarations" dies, Westfield will "insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death[.]"

Westfield denied the plaintiffs' claim and rescinded coverage because it was unaware that the plaintiffs' mother died prior to renewing coverage. The plaintiffs filed the subject suit for breach of contract, equitable estoppel and equitable reformation under Michigan law. Westfield moved for summary judgment on the basis that the Westfield policy was void because the named insured was dead at the time of the renewal of the policy. The district court granted Westfield's motion for summary judgment, reasoning that no contract existed. The plaintiffs appealed.

On appeal, the plaintiffs argued that summary judgment is inappropriate where a court may grant reformation of the Westfield policy, substituting the named insured. The appellate court noted, however, that in order to obtain reformation, the plaintiffs must show the existence of a valid contract. The plaintiffs argued that the policy renewal was a continuation of the contract already in effect between Westfield and their mother.

The appellate court disagreed, stating that "Michigan's well-established principles of contract law cut against the plaintiffs' theory" because there was no acceptance of the Westfield policy renewal, which is a new contract, where the named insured was deceased and unable to accept Westfield's offer of renewal. The plaintiffs further failed to advance an argument that Westfield had actual or constructive notice of their mother's death in order to find an implied contract. Because there was no valid contract, the appellate court held that it could not grant reformation, and the plaintiffs' claim to equitably estop Westfield from denying coverage failed. As such, the appellate court affirmed that Westfield is entitled to summary judgment.

By: Danielle Chidiac