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Profiting from death?

Lawsuit filed in court here focuses on legality of whether firms can take out insurance policies on workers' lives and pocket the benefits.

by L.M. SIXEL

Jane Sims always knew her husband was a valuable employee to Wal-Mart. She just didn't know how valuable.

Sims discovered recently that Wal-Mart, the company her husband, Douglas, worked for before he died, had taken out a life insurance policy in his name.

When Douglas Sims died in 1998 of a sudden heart attack, Wal-Mart received about $ 64,000. She got nothing from that policy.

"I never dreamed that they could profit from my husband's death," said Sims, whose husband worked in receiving at Wal-Mart's distribution center in Plainview for 11 years.

Companies routinely take out secret life insurance policies on the lives of their low-level employees and collect thousands of dollars when they die. The families never know the policies are in place and typically receive none of the money.

The policies are called corporate-owned life insurance policies or COLIs for short. But they're better known in the insurance industry as "dead peasant" and "dead janitor" policies.

While many companies buy life insurance on their key officers, so-called "dead peasant" policies are different because the deaths of low-level employees do not affect a company's financial health.

Those kinds of policies are not permitted in Texas anyway because the state Legislature did not want to create an incentive for murder or wagering on human life. But many employers continue to buy them, expecting no one will ever find out.

And they generally don't because there is no way to tell if an employer has taken out a policy on a worker's life.

That has caught the attention of U.S. Rep. Gene Green, D-Houston, who is looking into the federal jurisdiction of whether employers can be required to notify employees of such policies.

Green is also concerned that an employer may have a disincentive to provide a safe workplace because he would profit from the employee's death.

It is impossible to know how many companies purchased COLI policies on their employees because of secrecy surrounding the policies.

But an attorney for the Hartford Life Insurance Co. estimated that one-fourth of the Fortune 500 companies have them, which cover the lives of between 5 million and 6 million workers.

For example, Proctor & Gamble and AT&T have them, but representatives of both companies would not comment on the details.

While COLIs are usually kept under wraps, they have suddenly become the focus in a lawsuit here against Wal-Mart, one of the city's largest employers, and Camelot Music.

Wal-Mart took out about 350,000 life insurance policies on the lives of its employees payable to the company, according to the lawsuit filed by Sims and other family members of deceased Wal-Mart employees. Hartford Life Insurance Co. and AIG Life Insurance Co. sold the policies to Wal-Mart.

Wal-Mart borrowed money from the insurers to pay the premiums, which the company was able to write off as a business expense on it federal taxes.

Scott Monroe Clearman, a Houston lawyer representing the workers, said those policies are used as an "elaborate tax dodge."

Clearman, who specializes in insurance law, is responsible for uncovering the "dead peasant" policies in Texas.

After reading in a magazine that Wal-Mart took out policies in other states, he began to wonder if any were on Texas employees.

Through obituary listings in Texas newspapers, Clearman tracked down surviving family members of Wal-Mart employees.

Linda Waller, whose husband, Craig, worked in the automotive department at Wal-Mart's Comanche store before he died, received a letter from Clearman about a $ 64,000 life insurance policy on her husband.

Waller took it to Wal-Mart's human resource representatives in Comanche. They researched it and assured her that Wal-Mart did not carry insurance that names the company.

A Wal-Mart representative dismissed Waller's suspicions and said they were being stoked by "ambulance chasers."

But Waller discovered that her husband was covered and she and other relatives of deceased Wal-Mart employees are suing the retailer.

Clearman has proved to U.S. District Judge Nancy Atlas that the retailer has no "insurable interest" and Wal-Mart is not entitled to insurance money and that death benefits should go to the deceased workers' estates.

But he must determine just how many employees are due the benefit.

That could amount to millions of dollars of liability for Wal-Mart, Clearman said. He could not be more specific because he did not know how many Texas employees died or how much each policy was worth.

The way the companies find out is that the firms who manage the insurance policies for them run sweeps of Social Security numbers or "death runs" to uncover who has died every quarter. The death certificates are located and forwarded to the insurance company.

In Texas, only those with an "insurable interest" can take a life insurance policy out on someone. That would include a spouse or child, a creditor or "one having a reasonable expectation of pecuniary benefit or advantage from the continued life of another."

Texas is unusual, said Barry Chasnoff, a lawyer with Akin Gump in San Antonio who is representing the Hartford Life Insurance Co. In most states, companies have an insurable interest in every employee. (Rules allow an employer to take out a life insurance policy on a key officer. When an executive leaves a company, the insurance lapses.)

When a company well-versed in insurance codes comes to Hartford to buy COLI policies, Hartford does not pay attention to whether "insurable interest" needs to apply, Chasnoff said.

Camelot Music was also sued in the same case after former employees, including many part-time workers making close to mimumum wage, discovered they were insured for between $ 273,000 and $ 368,000 each. All are former employees, who left the company by 1998, and say they are rightful owners of the policies.

Atlas said that even though Camelot did not have an insurable interest in their lives, she did not have the power to convert the ownership to the individual employees. But if the policies were still in effect when the former employees died, the estates would be owed the money.

The Camelot case came to light after it sued the Internal Revenue Service after it disallowed the company's tax deductions on the insurance premiums.

Though Texas law does not permit "dead peasant" insurance, Wal-Mart and Camelot thought they could still insure their Texas employees if the policies were created out of state.

In the Wal-Mart case, the insurance policies were signed in Georgia and the company managing its insurance is in Georgia. But Atlas ruled that the policies are governed by Texas law because the workers lived in Texas, worked in Texas and the death certificates are in Texas.

It's not just a Wal-Mart issue, said Bill Wertz, a company spokesman in Bentonville, Ark. The company, like many in the Fortune 500, availed itself of the insurance policies because of the tax benefits.

"The company feels it acted properly and legally in doing this," he said. Georgia law, not Texas law, should govern, he said.

Wertz said Wal-Mart acted aboveboard with its employees, that no harm was caused and that employees were notified of the policies through a special "death benefit" offer.

Initially,, Wal-Mart gave its employees a special $ 5,000 death benefit when it launched the program in 1994 through 1996.

But Clearman contended there was no mention that the underlying policy was worth far more. And it appeared that if an employee turned down the "special" death benefit, that worker also must forfeit health insurance, Clearman said.

Wal-Mart contended that the money from the insurance policies went to pay other employee benefits. But Clearman said he cannot find evidence to support that claim.

Meanwhile, National Convenience Stores also has bought accidental death policies on its employees. When an employee died at work, such as in a robbery, NCS received $ 250,000, said Clearman.

The insurance came to light after an NCS manager died in a car wreck going to get change for the store, said Clearman, who represented the estate of the deceased employee, Ramon Pamez. The case is set for trial in Houston on Monday in state district court.

Because it had insurance, NCS did not have incentive to provide security at the convenience stores, Clearman said.

At the same time, Diamond Shamrock was installing bulletproof glass and putting in two employees at night, Clearman said.

Between 1991 to 1995, Diamond Shamrock had one on-the-job death in Texas while NCS had nine, Clearman said.

Camelot Music earned $ 1.3 million in insurance proceeds from its employees who died, Clearman said. The firm insured 1,400 people, and it had more deaths than mortality tables suggest, he said. "What's the incentive to provide good security?" he asked.

Though Wal-Mart canceled its policies in January, Camelot's policies remain in effect.

An attorney for Camelot did not return phone calls for comment.