

TURKSLEGAL Q&A

Murder by a co-insured

In this edition of TurksLegal Q&A, we respond to a client's question on how payments into court work.

Q: How does section 215 of the Life Insurance Act apply when a life insured is murdered by the beneficiary under the policy?

The case note about the recent Federal Court decision in *MLC Limited v Crickitt* "Not sure who to pay?"¹ has prompted a number of questions about the way section 215 of the *Life Insurance Act 1995* ('the Act') is intended to work.

The insurer in *Crickitt* grappled with the problem of who to pay when the surviving beneficiary was convicted of the murder of the other policy owner.

There have been several instances of murder by co-insureds recently, including the case featured in the [December 2016 edition](#) of the FSB; *Westpac Life Insurance Services Limited v Mahony*². *Mahony* was eventually convicted by a Supreme Court jury in Toowoomba of the murder of his long term partner and co-insured in November this year.

The Federal Court accepted in both *Crickitt* and *Mahony* that section 215 of the Act enabled it to give the insurer a discharge of its liability under the respective policies, because the section is engaged when "in the company's opinion, no sufficient discharge can otherwise be obtained"³.

Section 215 therefore applies when a company has formed the view that it will pay a benefit under a policy but is unsure who is legally able to give it a release in relation to that benefit payment. In other words, when there are competing claims to the benefit that is payable under the policy.

The section should not be used when the insurer has concerns it is not liable under the policy in the first place.

One common feature of cases where one co-insured kills another is that the perpetrator may have taken out policies of life insurance on the life of the victim in advance of the murder to obtain a financial benefit. This frequently occurs without the victim's involvement, knowledge or consent and may involve fraudulent misrepresentation and forged documentation.

In a case such as this, the insurer should not be concerned about getting a valid discharge, because the policy in question will be unenforceable because it was obtained without the other party's knowledge and through dishonest means.

Seeking to pay into court under section 215 is not the appropriate way of dealing with a policy that may be void on the above grounds and arguably might actually amount to a waiver of the insurer's right to avoid.

In a case where the insurer suspects the policy may have been obtained to gain a financial benefit as part of a criminal scheme, it should (if it has sufficient evidence) refuse payment of the benefit and seek to avoid the policy.

¹December 2016 FSB.

²[2016] FCA 1071. See also *Swiss Re Life & Health Australia Ltd v Public Trustee of Queensland* [2017] FCA 963 (featured in the [October 2017 FSB](#)).

³Section 215(1).