

**INSURANCE****Denial of Claim****Lawyer killed lover, made claim for his life insurance proceeds****VERDICT (P)** **Liability only**

CASE Amuel Lynn Hodgson and Christine Hodgson v. Mark Swaim, No. 2003-63374
COURT Harris County District Court, 234th, TX
JUDGE Reece Rondon
NEUTRAL(S) Michael Clann
DATE 4/6/2005

PLAINTIFF

ATTORNEY(S) Joseph "Joe" B. Stephens, The Stephens Law Firm, Houston, TX

DEFENSE

ATTORNEY(S) Pete Patterson, Patterson * Young, Houston, TX
 Jerry M. Young, Patterson * Young, Houston, TX

FACTS & ALLEGATIONS On Feb. 7, 2003, the son of plaintiffs Lynn and Christine Hodgson was shot and killed by his longtime lover Mark Swaim, a Houston attorney who specialized in estate planning, bankruptcy and insurance law. Swaim, 42, told police that he shot Keith Hodgson, 37, in self-defense after Hodgson began brutally beating a high school student who had moved in with the couple. In November 2003, a Harris County jury found Swaim not guilty of murder. Swaim then made claims on two life insurance policies that he had taken out on Hodgson. Farmer New World Life paid the \$100,000 policy without notifying the next of kin, but Transamerica Occidental Life Insurance Co. refused to pay on a \$500,000 policy and tendered the money into the registry of the court.

Hodgson's parents sued Swaim, alleging that he intentionally and knowingly killed their son, and that he was not acting in self defense as he claimed. Therefore, they alleged, they were

the rightful beneficiaries because under Texas law, a life insurance beneficiary who willfully causes the death of the insured cannot collect the proceeds.

Swaim admitted that he intentionally shot Hodgson but claimed that it was done in self-defense. He contended that he was the lawful beneficiary of the policies.

According to the plaintiffs, about two months before their son was killed, Adam Liotta, 18, moved in with Hodgson and Swaim. He slept with the couple, then Swaim and Liotta became close and excluded Hodgson. "Cat fighting" broke out among the three, and shortly before Hodgson's death, Swaim assaulted Hodgson, seriously injuring him.

In addition, Swaim was heavily in debt and had lavish tastes. He worked out of his home but had no clients. Hodgson's parents alleged that by killing their son, Swaim could collect \$600,000 in life insurance and become sole heir to his estate. Another motive the Hodgsons alleged was that their son was a material witness holding damaging information against Swaim in a lawsuit that accused him of fraud.

A week before Hodgson was killed, Swaim and Liotta allegedly hatched the plot to kill Hodgson for the insurance money while sitting in their hot tub.

On the day Hodgson was killed, Swaim allegedly called the hair salon that Hodgson owned and told him that a bill collector was trying to repossess a piano. Hodgson rushed home to prevent the repossession, where Swaim and Liotta staged a fight. Swaim grabbed his 9mm pistol and shot Hodgson in the head at point blank range when Hodgson tried to take the gun from him.

The repossession company brought records to court that proved it had not been there that day. His parents alleged that Swaim had lured Hodgson home to murder him.

According to Swaim, the couple took in Liotta because he was homeless, they re-enrolled him in high school and they insisted that he attend Alcoholics Anonymous meetings because he had recently been discharged from a rehabilitation

center. Swaim maintained that Hodgson began abusing steroids, his temper radically changed and Swaim and Liotta became afraid of him. Two weeks prior to his death, Hodgson allegedly assaulted Liotta, chasing him out of the house without his possessions. Swaim maintained that he and Hodgson had taken out life insurance policies on each other and that he inherited a sizable debt because the couple's finances were intertwined. Swaim testified that he transferred Hodgson's separate property to Hodgson's sisters.

Police did not believe that Swaim shot Hodgson to stop a violent altercation, partly because they would have expected more evidence of physical disturbance if a fight had broken out with Hodgson brutally beating and kicking Liotta for a long time throughout the home. Liotta had only minor scratches and abrasions, and he did not seek medical attention. He did not even have a bloody lip, although he claimed he was beaten and kicked in the head.

Also, Swaim claimed that Hodgson lunged forward at the time of the shot, but his body was found lying away from Swaim. Defense counsel reported that this was "a huge issue" at trial, and the plaintiffs alleged that Swaim and Liotta told four different versions of how the incident took place.

Tom Bevel, a renowned blood spatter expert who has taught Houston homicide officers how to perform blood spatter analysis, testified that Swaim's story did not match blood spatter evidence at the scene. Homicide officers found no blood on the gun, nor was there any evidence of fingerprints on the gun.

Although Swaim called 911 and admitted to shooting Hodgson, later that evening he refused to make a statement to police. He did, however, cooperate by allowing police to search the house.

Swaim and Liotta still live together and they share a joint banking account.

INJURIES/DAMAGES The Hodgsons sought to keep Swaim from collecting \$500,000 from their son's Transamerica life insurance proceeds. Swaim allegedly spent the \$100,000 collected from the Farmers policy. They also sought several hundred thousand for their claims under Texas' wrongful death and survival act provisions. However, according to plaintiffs' counsel, Swaim's bankruptcy filing extinguished the Hodgsons' wrongful death and punitive damage claims.

RESULT The jury was asked whether they found from a preponderance of the evidence that Swaim willfully caused the death of Keith Hodgson. The definition of "willful" is the same as in the definition for murder under the Texas Penal Code. They answered yes.

DEMAND The Hodgsons stated that they did not want Swaim to recover "even a nickel" of the insurance proceeds for the death of their son.

OFFER Swaim offered to split the proceeds from the Transamerica policy with Hodgson's parents.

TRIAL DETAILS Trial Length: 9 days
Trial Deliberations: 1.5 days
Jury Vote: 12-0
Jury Composition: 6 male, 6 female

**PLAINTIFF
EXPERT(S)** **Tom Bevel**, bloodstain pattern analysis, Norman, OK
Sgt. Hub Mayer (retired), homicide, Houston, TX (investigating officer)
Officer Todd Tyler, homicide, Houston, TX (investigating officer)
Steven Wilson, M.D., manner of death, Houston, TX (Harris County Medical Examiner)

**DEFENSE
EXPERT(S)** None reported

POST-TRIAL Swaim has filed a motion for new trial, alleging (1) improper jury argument, (2) discovery abuse, (3) error in the jury charge, and (4) error for the court not to instruct the jury that Swaim was acquitted of murder. Following their verdict, the jury was told of Swaim's acquittal. Defense counsel reported that half of them indicated that they felt that they had made the wrong decision. Judge Reece Rondon has taken the Swaim's motion for new trial under advisement.

EDITOR'S NOTE Attorneys for both sides noted that Hodgson's parents, who live in Daingerfield, did not attend the evidentiary portion of the trial. Defense counsel reported that it looked to one juror like they were ashamed of their son because of his sexual orientation and they had abandoned him. To the contrary, plaintiff's counsel stated, the Hodgsons loved their son and they were traumatized by his death.

—Don Maines