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EFFECT OF PRESUMPTION OF DEATH AFTER UNEXPLAINED ABSENCE  
UPON LIFE INSURANCE POLICIES

Much has been written concerning the presumption of death after a period of unexplained absence as an evidentiary rule.<sup>1</sup> Generally, most of the published material concerns use of this presumption and other evidence in establishing the fact and time of death. It is the purpose here, however, to consider only its effect upon life insurance when the insured disappears.

The West Virginia statute,<sup>2</sup> similar to those of other jurisdictions,<sup>3</sup> provides in part that when a person has been absent from the state for seven or more years without being heard from by those persons who naturally would have heard, he shall be presumed dead, absent any proof to the contrary. Our highest court has recently held that the presumption will not be given effect unless all its elements are strictly complied with.<sup>4</sup>

What effect then, does such a presumption have upon a life insurance policy? Suppose A takes out insurance upon his own life, naming B as beneficiary. After A has paid premiums for a number of years, he disappears and is never heard from again. Several obvious questions immediately arise upon such a state of facts, and they in turn raise subordinate questions. First, is A dead? If he is dead, when did he die? When is B entitled to collect the proceeds of the policy? What must B do, if anything, to retain the right to the insurance proceeds? These are only a few of the questions which must be considered.

## 1. WHEN DID THE INSURED DIE?

The function of the statutory presumption of death after seven years unexplained absence is not to determine the *time* of the absentee's death, but only the *fact* of it. To establish the time of his death—which is of extreme importance in insurance litigation—there must be some evidence tending to show when it occurred, or else it will be presumed to have occurred at the end of the seven

<sup>1</sup> See, e.g., Roca, *When Did Ulysses Die?*, 23 GEO. WASH. L. REV. 172 (1954).

<sup>2</sup> W. VA. CODE ch. 44, art. 9, § 1 (Michie 1955).

<sup>3</sup> E.g., CONN. GEN. STAT. § 6984 (1949) (7 years); ALASKA COMP. LAWS tit. 62, ch. 1, § 15 (1949) (6 years); ARK. STAT. ANN. tit. 62, § 1601 (1947) (5 years). For a complete listing of such statutes, see Roca, *supra* note 1, at 183, n.16.

<sup>4</sup> *Flesher v. Board of Review*, 138 W. Va. 765, 77 S.E.2d 890 (1953).

year period.<sup>5</sup> There is authority that the fact and time of death may be established before the expiration of the statutory period upon consideration of the character and habits of the missing person,<sup>6</sup> or upon proof of his exposure to some specific peril,<sup>7</sup> in either of which case, the presumption is of little value.

Considering again the hypothetical case of A, where there are no facts from which a time of death could be fixed, it can be seen that the fact of his death is not established until at least seven years (or other statutory period) from the date of his disappearance. In view of the presumption of continuance of life,<sup>8</sup> it will probably be determined that A's death occurred at the end of the seven year period. This may mean that the policy will have lapsed before the date fixed for A's death; on the other hand, if after the end of the seven years period, the time of his death be established as some earlier date—such as the date of disappearance, or some intermediate date—the beneficiary, B, might conceivably be barred from collecting the proceeds by the running of the statute of limitations.<sup>9</sup>

## 2. WHEN IS THE BENEFICIARY ENTITLED TO THE PROCEEDS?

Of course, the beneficiary will not receive any of the proceeds if the policy has lapsed before the time of the insured's death.<sup>10</sup> If the beneficiary continues to pay the premiums on the policy throughout the period of absence, there will be no question of lapse. Apparently there is no legal reason why this cannot be done, at least in the absence of fraud or some contract provision to the contrary.<sup>11</sup> On the other hand, if the beneficiary can not or does not, for some reason or another, continue to pay the premiums for at least a portion of the period of absence, the chances are that the policy will lapse before the end of the statutory period, depending upon a

<sup>5</sup> *United States v. O'Brien*, 51 F.2d 37 (4th Cir. 1931).

<sup>6</sup> *Security Bank v. Equitable Life Assur. Soc'y*, 112 Va. 462, 71 S.E. 647 (1911); *Tisdale v. Connecticut Mut. Life Ins. Co.*, 26 Iowa 170 (1868).

<sup>7</sup> See *Roca*, *supra* note 1, at 189 and n.25.

<sup>8</sup> *Simpson v. Simpson*, 162 Va. 621, 175 S.E. 320 (1934).

<sup>9</sup> Usually the beneficiary is protected in such a case by holding that his cause of action does not accrue until the fact of death is established, or by some other means. *Frechette v. Travelers Ins. Co.*, 70 R.I. 347, 38 A.2d 645 (1944); see *Roca*, *supra* note 1, at 190.

<sup>10</sup> *National Life & Acc. Ins. Co. v. Ruffin*, 237 Ala. 401, 187 So. 488 (1939); *Security Bank v. Equitable Life Assur. Soc'y*, 112 Va. 462, 71 S.E. 647 (1911).

<sup>11</sup> See *Metropolitan Life Ins. Co. v. Goodwin*, 92 F.2d 274 (4th Cir. 1937); *Behlmer v. Grand Lodge*, 109 Minn. 305, 123 N.W. 1071 (1909).

number of factors. An interesting question is presented in case the beneficiary does continue to pay premiums throughout all or part of the period of disappearance. Will he be entitled to their return with interest in case death is established at some earlier time? Apparently this question has not been decided.

In West Virginia, and probably all the other states, all life insurance policies are required by statute to have nonforfeiture provisions.<sup>12</sup> The effect of such provisions is to extend the life of the policy, depending upon a number of factors, either for a period of time at the face amount (extended term insurance) or indefinitely at some reduced amount (paid-up insurance). A sampling of four policies shows that three of them provide for automatic extended term insurance upon failure to pay premiums,<sup>13</sup> while the fourth provides for paid-up insurance in a reduced amount.<sup>14</sup> The provisions of the policies indicate that only the insured, on his own application, has the power to change from extended term to paid-up insurance, so in the case of a disappearance, apparently the beneficiary would be bound by the policy provision.

Where the policy provides for automatic paid-up insurance, the time of death established by presumption will not be critical, since there is no danger of lapse within the seven year period. The amount of the benefit would, however, be sharply reduced<sup>15</sup> from the face amount, depending, among other things, upon the type of policy, the period it had been in force, and the age of the insured. It would appear that the beneficiary could collect the value of paid-up insurance immediately at the end of the statutory absence period, or if he had continued to pay premiums, he could then collect the face amount.

Where the insurance contract provides for automatic extended term coverage upon failure to pay premiums, the time of death of the insured becomes extremely important. At the end of the extended term, the policy lapses, and if the death of the insured is established after lapse, there can be no recovery. Since the length of the extended term depends upon the same factors as does

<sup>12</sup> W. VA. CODE ch. 33, art. 13, §§ 9, 30 (Michie Supp. 1958).

<sup>13</sup> Franklin Lift Ins. Co., participating 20 payment life; Fidelity Mut. Life Ins. Co., participating 30 payment life; National Serv. Life Ins., ordinary life.

<sup>14</sup> Equitable Life Ins. Co., juvenile 20 payment, 75 year endowment.

<sup>15</sup> At the end of the fourth policy year, paid-up insurance value is \$122; sixth year, \$187; eighth year, \$287; twelfth year, \$494 (per \$1000).

the amount of paid-up insurance, it is quite possible that the term will not be sufficiently long to cover the entire statutory period.<sup>16</sup>

Policy Year Completed	Extended Term (At Face Amount)		
	Franklin	Fidelity	Nat'l Serv.
2	4 yrs. 227 days	3 yrs. 76 days	2 yrs. 11 days
4	16 281	13 306	4 96
6	20 307	20 203	6 251
7			7 351

In such a case, the beneficiary would do well to read the nonforfeiture provisions and tables of the policy, and if possible pay the premiums for a sufficient time to extend coverage over the entire statutory period.

Once again considering the case of *A*, we find that *B* must wait until the end of seven years from the time of *A*'s disappearance before suing his insurer for the insurance benefit. If *A*'s contract provided for automatic paid-up insurance, *B* would then be entitled to recover this reduced amount regardless of the time of *A*'s death. But if the contract provided for automatic extended term coverage, *B* must either establish the time of *A*'s death within that term, or else continue to pay premiums until the term is sufficient to cover the remainder of the statutory period.

Although the presumption of death after unexplained absence has been severely criticised, it would seem to serve a useful purpose when there is no evidence upon which the fact or time of death can be established. While obviously the presumption may serve to deprive a beneficiary of life insurance proceeds at the time when they are needed most, yet the deprivation will not be permanent, provided only that the beneficiary acts when necessary to protect his interest.

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<sup>16</sup> Note the variation in length of extended term under policies listed in note 13, *supra*.