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Recovery of Insurance When Beneficiary Causes Death of Insured

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RECOVERY OF INSURANCE WHEN BENEFICIARY CAUSES DEATH OF INSURED.—It is a well established principle that a beneficiary cannot maintain an action for insurance proceeds after having murdered the insured.[1] West Virginia has a statute which provides that no person who has been convicted of feloniously killing another another shall take or acquire as beneficiary of an insurance policy any interest in the property of his victim.[2]

Although the statute clearly bars a beneficiary convicted of voluntary manslaughter or murder (both being felonious killings) from taking the proceeds of the insurance policy, it establishes no rule in regard to nonfelonious killings or felonious killings in which no conviction has been obtained. This note will deal with these and related problems.

The key to the various problems connected with the statute is contained in a determination of whether the statute establishes conviction of a felonious killing as the sole case in which a beneficiary is precluded from obtaining the proceeds of a policy. Although the West Virginia court has not yet ruled upon this point, it indicated in a dictum that the statute merely has supplemented the common law and gives no implication that a lesser verdict would furnish the basis for recovery.[3] At least one other court has endorsed this view in construing a similar statute.[4]

Since the West Virginia court is very likely to adopt the rule that the statute merely supplements the common law,[5] it is necessary to look to the law in existence prior to the enactment of the statute to determine whether other homicides by the beneficiary, not involving the elements of felonious killing, would bar him from recovery of the insurance proceeds. Most courts recognize the common law test barring recovery as being an unlawful intentional causation of the death of the insured.[6] In a dictum the West Virginia court adopted the "unlawful, intentional" test, but qualified it by adding the words, "whether felonious or not."[7] The qualifications added are of little importance inasmuch as a killing

[1] Johnson v. Metropolitan Life Ins. Co., 85 W. Va. 70, 100 S.E. 865 (1919). See Wade, *Acquisition of Property by Wilfully Killing Another,* 49 HARV. L. REV. 715 (1936).

[2] W. VA. CODE c. 42, art. 4, § 2 (Michie, 1949).

[3] See Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 518, 177 S.E. 188, 189 (1934).

[4] Smith v. Todd, 155 S.E. 323, 152 S.E. 506 (1930).

[5] See Comment, 41 W. VA. L.Q. 288 (1935).

[6] Metropolitan Life Ins. Co. v. Shane, 98 Ark. 132, 135 S.W. 836 (1911); see COOLEY, BRIEFS ON INSURANCE 5227 (2d ed. 1927).

[7] See Metropolitan Life Ins. Co. v. Hill, 115 W. Va. 515, 518, 177 S.E. 188, 189 (1934).

which is unlawful and intentional, but not felonious, is not conceivable.[8]

An examination of the cases shows that the courts have been uniform in allowing recovery where the killing did not amount to an unlawful intentional homicide. Recovery was allowed where death was caused by an insane beneficiary,[9] by a beneficiary acting in self-defense,[10] and under circumstances amounting to involuntary manslaughter.[11] It appears unlikely then that the West Virginia court would bar a beneficiary found to be guilty of only a nonfelonious killing from obtaining the proceeds of an insurance policy.

Analogous to the nonfelonious killing is the problem of whether the statute requires a conviction of the beneficiary. This question is most likely to arise where the beneficiary murders the insured and then commits suicide. Such a factual situation was faced by the South Carolina court in *Smith v. Todd.*[12] It was held that the statute merely raised the conviction of murder as a conclusive bar to the beneficiary's right to recover. The statute did not abrogate the common law principle that the beneficiary could be denied recovery on grounds of not being allowed to profit from his wrong, notwithstanding the fact that no conviction had been obtained. At least one court has taken a contrary view, the Kansas court holding that a similar statute required conviction.[13]

The West Virginia court has not yet ruled upon this point. In *Metropolitan Life Ins. Co. v. Hill,*[14] however, it held that the statute raises conviction of a felonious killing as a conclusive bar to the recovery of insurance proceeds in a civil action. Conviction of a lesser criminal offense, however, is not conclusive and the record of such conviction is not proper evidence in the civil action.[15] The conclusiveness of the felonious killing conviction establishes a statutory exception to the rule that a judgment in a criminal case is not proper evidence in a civil suit to prove facts on which it is based.[16] The latter rule is applicable to either conviction or acquittal of the beneficiary in a criminal proceeding. In cases

[8] Involuntary manslaughter is not an intentional killing. See State v. Weisengoff, 85 W. Va. 271, 284, 101 S.E. 450 (1919).
[9] Holdom v. Ancient Order, 159 Ill. 619, 43 N.E. 772 (1895).
[10] Hutcherson v. Sovereign Camp W.O.W., 112 Tex. 551, 251 S.W. 491 (1923).
[11] Schreiner v. High Court, 35 Ill. App. 576 (1890); Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 3 N.E.2d 17 (1936).
[12] 155 S.C. 323, 152 S.E. 506 (1930).
[13] Noller v. Aetna Life Ins. Co., 142 Kan. 35, 46 P.2d 22 (1935).
[14] 115 W. Va. 515, 177 S.E. 188 (1934).
[15] *Ibid.*
[16] Interstate Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922).

other than those where a conviction of a felonious killing has been obtained, the civil court will determine for purposes of recovery on the insurance policy whether or not the claimant was guilty. In the civil action the fact that the beneficiary killed the insured need not be proved beyond a reasonable doubt, but a fair preponderance of evidence is sufficient.[17]

Another possible solution to the nonconviction problem is through the application of the constructive trust doctrine. Applicable only where the slayer acquires property for which he may be required by equity to account as trustee, the constructive trust doctrine has been invoked extensively by the courts in cases dealing with wills.[18] It has been used sparingly in insurance cases, although at least one writer credits the constructive trust doctrine as being the basis for the insurance decisions:

> "In the cases the courts do not always speak of a constructive trust, or say in explicit words that the murderer is a constructive trustee of his claim on the policy. It seems clear, however, that a constructive trust is the basis of the result which is reached by the court."[19]

The West Virginia court has not yet applied the constructive trust doctrine to a nonconviction case of this sort. The court has attributed, however, the result of *Johnson v. Metropolitan Life Ins. Co.*[20] to a constructive trust doctrine.[21] An examination of the facts and holding in the *Johnson* case, however, makes it doubtful that the court did raise a constructive trust in that case.[22] The most likely opportunity which may arise for an application in the future of a constructive trust doctrine is in the nonconviction situation. It appears unlikely that the court would apply the device to a nonfelonious killing. At least one court has repudiated the device in a nonfelonious killing, saying:

> "If the maxim that no man shall profit from his own wrong be applied literally, then the slightest negligence of the beneficiary resulting in death of the insured would bar recovery. Such a result would be recognized generally as impracticable and unjust."[23]

Another problem raised by the statute is the disposition of the proceeds of an insurance policy when the named beneficiary

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[17] Jack v. Mutual Res. Fund Ass'n, 113 Fed. 49, 51 C.C.A. 36 (1902).
[18] Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927).
[19] 3 SCOTT, TRUSTS 2405 (1939).
[20] 85 W. Va. 70, 100 S.E. 865 (1919).
[21] State v. Phoenix Mutual Life Ins. Co., 114 W. Va. 109, 170 S.E. 909 (1933).
[22] See Colson, *Constructive Trusts in West Virginia*, 45 W. VA. L.Q. 357, 362-363 (1939).
[23] Minasian v. Aetna Life Ins. Co., 295 Mass. 1, 5, 3 N.E.2d 17, 19 (1936).

is ruled ineligible to take them. The statute provides that the proceeds should go to the persons who would have taken them if the beneficiary had been dead at the death of the insured.[24] The proceeds then are to revert to the estate of the insured and are to be taken by his next-of-kin. The heirs of the murderer are not entitled to the property unless they are also the persons who would have been heirs of the decedent if the murderer had predeceased him.[25] An assignee of the beneficiary likewise is barred from a recovery of the proceeds of the policy.[26]

The insurance company has been relieved of all liability under the policy in several situations. Where death of the insured at the hands of the beneficiary is an excepted risk in the policy, the provision has been held valid and sufficient to relieve the insurer of any duty of payment.[27] The West Virginia court has allowed the insurance company to retain the proceeds of the policy where the beneficiary was the sole heir and distributee of the insured's estate.[28] It has also denied the state the right to escheat the proceeds of the policy in such a case, holding that the state is a stranger to the insurance policy and has no equitable interest in the insurance money.[29] The estate of the insured was denied recovery where the beneficiary took out the policy and paid the premiums.[30]

R. J. W.

RIGHT TO BILL OF PARTICULARS IN EMINENT DOMAIN PROCEEDINGS.—The problem as to whether the general principles of pleading might be applied in eminent domain proceedings recently has been brought into focus by the many condemnation proceedings instituted by the West Virginia Turnpike Commission to secure the right of way for the turnpike currently under construction in southern West Virginia. This note concerns one phase of the above broad problem (as to whether the defendant can be required to submit a bill of particulars showing the exact nature of his claim for damages in his answer to the petition); but, in so particularizing the discussion, perhaps elucidation can be gained as to the overall question involved.

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[24] W. VA. CODE c. 42, art. 4, § 2 (Michie, 1949).
[25] 3 SCOTT, TRUSTS 2382 (1939).
[26] Johnson v. Metropolitan Life Ins. Co., 85 W. Va. 70, 100 S.E. 865 (1919).
[27] McDade v. Mystic Workers, 196 Iowa 857, 195 N.W. 603 (1923).
[28] Wickline v. Phoenix Mutual Life Ins. Co., 106 W. Va. 424, 145 S.E. 743 (1928).
[29] State v. Phoenix Mutual Life Ins. Co., 114 W. Va. 109, 170 S.E. 909 (1933).
[30] Anderson v. Life Ins. Co. of Va., 152 N.C. 1, 67 S.E. 53 (1910).