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## Trusts and Estates

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## TRUSTS AND ESTATES

*Underwood v. Servicemen's Group Insurance*, 893 F.2d 242  
Per Curiam

Plaintiff's decedent, Underwood, was discharged from the United States Army on November 18, 1985. He was 100% disabled. As of that date, his insurance policy limitation, pursuant to 38 U.S.C. § 765(a), was \$35,000. On December 3, 1985, congress amended the statute to increase the policy limits to \$50,000, effective January 1, 1986. Underwood died on January 30, 1986. Defendant, Servicemen's Group Insurance, ("Servicemen's"), refused to remit more than \$35,000 to Underwood's estate. Servicemen's contended that since Underwood was not on active duty when the policy increase became effective, his beneficiary was not entitled to receive the increase. The district court held that the policy increase inures to the benefit of the policy holder who holds the policy when the increase becomes effective. The court held that this occurs regardless of whether the insured is eligible for a policy at the time of the increase.

The Tenth Circuit reversed the district court, holding that the interpretation of 38 U.S.C. § 765, is a question of law subject to *de novo* review. The court stated that even though the Veteran's Administration had not yet promulgated the corresponding regulation to the statute at the time of the district court's ruling, it has since published its interpretive regulation parallel to the statute. Pursuant to 38 C.F.R. § 9.4, the \$50,000 coverage does not apply to members released prior to January 1, 1986. The administrative regulation is based upon the plain language of the statute. This language says that the increase will have no effect on individuals not in active service at the time of the increase. Furthermore, the court reasoned that if Congress intended the statute to be retroactive, it would have stated this in the statute.

