Denver Law Review

Volume 29 | Issue 4 Article 3

January 1952

Relative Rights of Assignee and Beneficiary to Life Insurance Proceeds

James L. Tilley

RELATIVE RIGHTS OF ASSIGNEE AND BENEFICIARY TO LIFE INSURANCE PROCEEDS

JAMES L. TILLEY*

There is possibly no other aspect of insurance law which has caused so much uncertainty as that of the right to assign a policy of life insurance and the relative rights acquired by an assignee and those retained by the beneficiary of the policy. A study of the many cases on the point would give the impression that there is a complete lack of consistency upon the subject as viewed by various courts. Of the attempts which have been made to organize this chaos, none has been found which is adequate to simplify the problem and show constancy. For, example, in his Treatise on Insurance, Vance has stated that the conflict of decisions is more apparent than real, and he has offered an outline based on the nature and effect, or intended effect, of the assignment itself. Within this outline, Vance shows that the courts are quite consistent (with the normal number of dissenters), but the outline itself is admittedly confined to policies wherein the right of the insured to make the assignment is not questioned. This narrowing, of course, so limits the applicability of the outline that the value of its simplicity and uniformity of opinion is greatly diminished. This paper will deal with the broader coverage of the problem.

When the Right to Change Beneficiary is Not Reserved

When the insured has himself made application for the policy, paid the premiums thereon, and designated the person or persons to whom the proceeds are to be paid, it might seem at the outset that the right of the insured to assign the policy would be beyond dispute. However, the beneficiary so designated is the recipient of rights arising from a contract between the insured and the carrier, and the contract rules which apply to third party beneficiaries will obtain.

If the policy contains no reservation to the insured of the right to change the beneficiary, then the rights of the named beneficiary are, by the courts of this country, almost unanimously declared to be "vested rights" in the proceeds from the moment of the issuance of the policy. Thus, these rights are protected from infringement even by action of the insured. This creation of indefeasible rights in a donee beneficiary is not recognized in most foreign nations, where the general rule is that the insured retains complete control over the policy and may use, surrender, or assign it as he sees fit. Further, it is not wholly justifiable even in the United States, for in the leading third party beneficiary case of *Lawrence v. Fox*,[1] there was some doubt as to whether the prom-

* Student, University of Denver College of Law.

[1] 20 N. Y. 268 (1859).

isee could have released the promisor. This uncertainty is referred to by Vance[2] who points out that the third party beneficiary concept,

> . . . . By no means necessitates the conclusion that the designation of a person as beneficiary of a conditional promise to pay money at a future date gives the person a vested right in the promise. It is wholly a question of the promisee's intent. He may intend to retain entire control over the benefit of the promise until his death and that the beneficiary shall take nothing until that event, or that the beneficiary shall assume a present right to demand in future performance of the promisor, reserving to himself, however, the power to extinguish that right at will, or he may intend to make an irrevocable gift by way of declaration of trust. In the case of insurance contracts, this intent may be clearly expressed, as where an express trust in favor of the beneficiary is declared, but it is usually necessary to determine it by implication from the words of the contract taken in connection with the circumstances under which it was made.

An acceptable historical explanation of this "vested right" theory which is peculiar to the United States may be found in various state statutes whereby the beneficiary gradually gained more security of position. Such statutes were designed to preserve for the insured's widow and children, when designated as beneficiaries, the proceeds of the insurance policy free from any claims of the creditors of the insured. With this statutory guide, the courts were not slow in going further in protecting the beneficiary from the insured himself. This innovation comes from Bliss in his treatise on insurance wherein he states:[3]

> We apprehend the general rule to be that a policy, and the money to become due under it, belong the moment it is issued to the person or persons named in it as the beneficiary or beneficiaries, and that there is no power in the person the insurance by any act of his, or hers, by deed or by will, to transfer to any other person the interest of the person named. The person designated in the policy is the proper person to receipt for and sue for the money. The legal representatives of the insured have no claim upon the money and cannot maintain an action therefor, if it is expressed to be for the benefit of some one else.

The cases relied upon by Bliss in support of this "general rule" did not sustain it; nevertheless, in 1888, no less authority than the United States Supreme Court adopted the exact language above, citing Bliss as authority for the rule.[4]

---

[2] Vance, *The Beneficiary in Life Insurance*, 31 Yale L.J. 348-9.

[3] BLISS, INSURANCE 496 (1872).

[4] Washington Central Bank v. Hume, 128 U.S. 195 (1888).

The principle has since been accepted in all the states [5] except Wisconsin, in those cases *where no right is reserved* in the policy to change the beneficiary. Whether the rights of the beneficiary in such policies be designated vested or contingent, the beneficiary may assign and his assignee may receive whatever rights the beneficiary had.[6] One might question this result on the ground that the beneficiary can defeat by assignment the very protection which the insured sought to establish for such beneficiary.[7]

The beneficiary being the "owner" of the policy where the insured has not reserved therein the right to change beneficiaries, it follows that an assignee of the insured would take nothing as against the beneficiary or an assignee of the beneficiary.

WHEN THE RIGHT TO CHANGE BENEFICIARY IS RESERVED

Ordinarily, when the insured reserves to himself the right to change the beneficiary of his life insurance, the exercise of his right of ownership, whether by change of beneficiary, assignment, or surrender, would seem to be safe from attack, unless the attack be as to the validity of the change, assignment, or surrender. This would seem to be the case, at least, if the right is exercised in strictest compliance with the terms of the policy. In this manner it would be possible to destroy the entire interest of the revocable beneficiary, who has no vested interest, but only an expectancy, the policy itself being the measure of the beneficiary's rights.[8]

The Colorado courts, however, have not accepted this view, for this state apparently recognizes no interest as a "contingency" unless something more than the latent power of the insured to change the beneficiary stands between the beneficiary and an absolute right. Rather, the Colorado courts regard the interest as vested, subject to divestment.[9] The practical aspects of this difference in terminology are considered below.

The problem arises when insured fails to divest, in proper form, the rights of such a revocable beneficiary. For example, many policies provide for assignment procedure, but fail to make clear whether the revocable beneficiary must join in the assignment, as he would have to if his beneficiary status were irrevocable. That an assignment is not, per se, a change of beneficiary seems well settled in several jurisdictions, including Colorado.[10] As the

[5] The leading Colorado case is Anderson v. Grossbeck, 26 Colo. 3, 55 P. 1086

[6] Sheets v. Sheets, 4 Colo. App. 450, 36 P. 310 (1905).

[7] Collins v. Dawley, 4 Colo. 138 (1878).

[8] Grimm v. Grimm, 26 Calif, 2d 173, 157 P. 2d 841 (1945); Shay v. Merchants Banking Trust Co., 335 Pa. 101, 6 A. 2d 536 (1939); Davis v. Modern Industrial Bank, 279 N.Y. 405, 18 N.E. 2d 639 (1939).

[9] Johnson v. New York Life Ins. Co., 56 Colo. 178, 138 P. 414; Viles v. Prudential Life Ins. Co., 124 Fed. 78 (1942).

[10] Johnson v. New York Life Ins. Co., 56 Colo. 178, 138 P. 414 (1913); Muller v. Penn Mutual Life Ins. Co., 62 Colo. 245, 161 P. 148 (1916).

court pointed out in *Mutual Benefit Life Insurance Co. v. Swett,*[11]

> The assignment of a policy and a change of beneficiary are not the same, but different things. As assignment is the transfer by one of his right or interest in property to another. It rests upon contract, and, generally speaking, the delivery of the thing assigned is necessary to its validity. The power to change the beneficiary is the power to appoint. The power of appointment must be exercised in the manner agreed upon in the contract of insurance.

Therefore, when the insured, acts alone in executing an assignment or in making a surrender, under a policy which does not state whether the current beneficiary must also be a signatory, the effectiveness of the surrender or of the rights acquired by the assignee (and, of course, of the beneficiary) are certainly open to question. Many cases can be cited which hold that such a surrender is binding upon a beneficiary [12] or that as between the beneficiary and the assignee, the assignee has the superior right.[13] These rulings were justified by saying that the form of the assignment was substantially the same as a change of beneficiary, and operated as such a change,[14] or by declaring that the insured is the actual owner of the policy and the mere expectancy of the beneficiary may be destroyed through the action of the owner.[15]

COLORADO FOLLOWS MINORITY RULE

Though the above may be termed the majority rule, it is apparently not the law in Colorado, which follows the New Jersey rule that the assignee can receive only those rights which remain in the insured, and cannot gain a right superior to that of the beneficiary. Therefore, a surrender form executed by the insured alone is no protection to the insurer [16] and a docket of Assignee v. Beneficiary would result in judgment for the defendant.[17]

Perhaps these two rules are not so divergent as may appear. If the assignee takes, under the Colorado rule, all rights which

[11] 222 F. 200 (CCA Mich. 1915).

[12] Morrison v. Mutual Life Ins. Co., 15 Cal. 2d 579, 103 P. 2d 963 (1940); Decker v. New York Life Ins. Co., 94 Utah 166, 76 P. 2d 568 (1938); Morgan v. Penn Mutual Life Ins. Co., 94 F. 2d 129 (CCA Mo. 1938); Neilson v. General American Life Inc. Co., 89 F. 2d 90 (CCA N.M. 1937).

[13] Aetna Life Ins. Co., v. Phillips, 60 F. 2d 901 (CCA Okla. 1934); Petty v. Mutual Life Ins. Co. 235 Iowa 455, 15 N.W. 2d 613 (1944); Rawls v. Penn Mutual Life Ins. Co., 253 F. 725 (CCA Fla. 1918). Countless citations to this point are available, but the persuasive effect of the numbers is somewhat lessened by the fact that in many of the cases, the policy involved specifically permitted assignment or surrender by the insured alone.

[14] Merchant's Bank v. Garrard, 158 Ga. 867, 124 S.E. 715 (1924).

[15] Rawls v. Penn Mutual Life Ins. Co., *supra*, note 13.

[16] Hill v. Capital Life Ins. Co., 91 Colo. 300, 14 P. 2d 1006 (1932).

[17] Muller v. Penn Mutual Life Ins. Co., *supra*, note 10.

were in the insured, this should include the right to change the beneficiary.[18] If, indeed, such right is transferred by the insured to the assignee, then it would appear that by the simple act on the part of such assignee of entering a change of beneficiary, naming himself in that capacity, that could be accomplished indirectly which could not be done directly. This point is virtually conceded in a Colorado case,[19] and would thus narrow the gap between the majority rule and the New Jersey and Colorado rules. Is the Colorado rule founded upon an insistence upon such a formality?

Moreover, the Colorado rule does little to protect the beneficiary (if that is the intent and purpose of the rule) except in the event that the insured in making the assignment fails to comply with the technical requirements of filing a proper change of beneficiary naming the assignee. This brings up the question of whether such change of beneficiary is required either of the assignor-insured or of the assignee if the beneficiary under the policy was designated as the estate of the insured. Clearly, any assignee, revocable or irrevocable, who joins in the assignment cannot then be heard to complain of such assignment. When an insured has assigned his interest under a policy naming his estate as beneficiary, is there included in that act the consent of the estate? If the insured cannot consent for and on behalf of his estate, who can?[20]

EXTENT OF ASSIGNMENT

Assuming that an insured has complied with all of the requirements to give the assignee superior rights to the beneficiary, either by having the beneficiary join in the assignment, or by a formal change of beneficiary, or through the procedure of declaring his estate as beneficiary (if that does free him to assign better rights to the assignee), there still remains the question as to the rights as between the assignee and the beneficiary if the insured did not intend that the assignee should take all the proceeds. From the above discussion, it can be seen that an assignment of a life insurance policy is not free from complications and opportunities for fraud, for normally the assignor-insured has departed this life when the issue arises. Here the nature and intended effect of the assignment begins to be the important factor in determining rights of the claimants, as opposed to the nature of the policy, or time and circumstances of the assignment.

It must be conceded, however, that assignment immediately after issuance to one with no insurable interests raises the ques-

[18] In this connection, *see* Johnson v. New York Life Ins. Co., *Supra*, note 10

[19] *Id.*

[20] For an interesting discussion of this problem, *see* Rahe v. Prudential Ins. Co. of America, 103 Colo. 241, 85 P. 2d 725 (1938).

tion of whether the assign is part of a scheme of wager or speculation on human life.

The major divisions of such assignments are generally accepted.[21] They are: (1) Conditional Assignments to secure creditors; (2) Absolute Assignments; and, (3) Pretended Assignments.

Conditional Assignments to Secure Creditors.

This popular assignment may be made to secure debts due, or advances to be made. Although such an assignment may appear absolute on its face, the fact that it was only conditional may freely be shown.[22] Such assignments must qualify under the rules of pledges, which require that:

a. Legal title must remain in the pledgor. Clearly the assignee takes only the rights in the policy held by the insured-assignor, and the assignee's claim is subject to whatever equities or defenses would have prevailed against the assignor.

b. The pledgee must have a lien on the property for the payment of a debt or the performance of an obligation due him by the pledgor. The lien of the assignee of a life insurance policy is held to be a right to reimbursement from the proceeds of a sum equal to the amount of the debt secured, plus any premiums paid by him, and interest thereon. Although as between the assignee and the insurer, the assignee is entitled to all of the proceeds, he holds the excess over the amount due him in trust for the bneficiaries or the personal representatives of the decedent.[23] The assignee of such a policy normally need show no insurable interest aside from the debt itself, and he may collect on the policy even though the debt itself be uncollectable because of expiration of the statute of limitations or due to discharge in bankruptcy.[24]

c. Possession of the pledged property must pass from the pledgor to the pledgee. Apparently, this does not mean that physical transfer of the policy must occur, for even in the jurisdictions which hold this an essential element of the security assignment, any writing in the hands of the assignee which evidences that such an assignment was made will generally constitute substantial delivery.[25]

Absolute Assignment.

An absolute assignment may be made to a volunteer beneficiary. Any time that a beneficiary or assignee is designated

---

[21] *Vance* on *Insurance*, sec. 129 (1951).

[22] For cases, *see* VANCE 764, n. 6.

[23] Bosma v. Evans, 96 Colo. 504, 44 P. 2d 511 (1935); Allen v. Home Nat. Bank, 120 Conn. 306, 180 A. 498 (1935); Detroit Life Ins. Co. v. Linsenmier, 241 Mich. 608, 217 N.W. 919 (1928).

[24] Mercer Nat. Bank v. White's Ex'r., 236 Ky. 128, 32 S.W. 2d 734 (1930); Charlotte Nat. Bank v. Mutual Benefit Life Ins. Co., 210 N.C. 140, 185 S.E. 648 (1936).

[25] Muller v. Penn Mutual Life Ins. Co., *supra*, note 10; N.W. Mutual Life Ins. Co. v. Wright, 153 Wisc. 252, 140 N.W. 1078 (1938); Weaver v. Weaver, 182 Ill. 287, 55 N.E. 338 (1898).

who is not one of the natural objects of the insured's bounty, the ugly head of suspicion appears, and the possibility of a wager on human life is raised. However, there seems to be no valid reason to deny an insured the right to designate, by appropriate means as set forth in the insurance contract, any person as beneficiary. The right to so designate certainly exists at the time of application for the policy, and the mere passage of time would not seem sufficient to deny or curtail the exercise of that right. If such a designation appears to be simply a tardy selection of a beneficiary, it is allowable in all jurisdictions except Texas, where any beneficiary must be shown to have an insurable interest, as though he himself were the actor in procuring the policy.[26]

An absolute assignment may also be made to purchasers for value. The same objection as above applies here, but the federal courts, and some 28 of the state courts, as well as those in the English and Canadian jurisdictions permit an honest sale by the insured without a showing of insurable interest in the purchaser.[27] Of the remaining states, six disallow such transfer on the grounds of public policy, although five of these (Texas again dragging her feet) permit the designation of a beneficiary without such an interest, which would seem to accomplish the same general purpose.[28] Moreover, most of these same courts will recognize this "anti-public policy" assignment to the extent of regarding it as though it were a collateral assignment, and thus will permit the assignee to collect his legitimate expenditures.[29]

Pretended Assignments.

As a link between these sections, the words of Allen, J., of the Massachusetts bench of 1884, in *Mutual Life Ins. Co. v. Allen* (no relation),[30] on the subject of whether or not an assignee need have an insurable interest, are quite apt:

> The other objection urged is, that such transaction may lead to gaming contracts . . . . Most contracts have an element of gambling in them. There is uncertainty in the value of any contract to deliver property at a future day, and great uncertainty in the present value of an annuity for a particular life, or of a sum payable in the event of a particular death, and such contracts and rights are often used for gambling purposes. The ques-

[26] Manhattan Life Ins. Co. v. Cohen, 139 S.W. 51 (Tex. Civ. App. 1911); Griffin v. McCoach, 123 F. 2d 500 (CCA Tex. 1941).

[27] See cases collected in 73 A.L.R. 1036.

[28] *See* Metcalf v. Montgomery, 229 Ala. 156, 155 So. 582 (1934) where the Alabama court refused to attempt to justify this distinction.

[29] Metcalf v. Montgomery, *supra*, note 28; Matthews v. Matthews, 163 Kan. 755, 186 P. 2d 233 (1947); Irons v. United States Life Ins. Co., 128 Ky. 640, 108 S.W. 904 (1908); Schneider v. Kohler, 201 S.W. 499 (Mo. App. 1947); Werenzinske v. Prudential Ins. Co., 339 Pa. 83, 14 A. 2d 279 (1940); Manhattan Life Ins. Co. v. Cohen, *supra*, note 26.

[30] 138 Mass. 24 (1884).

tion is whether the right to a sum of money, payable on the death of a person under a contract in the form of an insurance policy, has any special character or quality which renders it less assignable than the right to a sum payable at the death of the same person under any other contract or assurance, or than a remainder in real estate expectant on such death.

The charitable misnomer of "pretended assignments" refers, of course to wagering assignments wherein the "assignee" gambles on a life which he could not insure directly. Just which of the parties is doing the most gambling is open to question, for a hale and hearty insured might be regarded bitterly as a "wasting asset" in the eyes of the assignee who holds a double indemnity policy, and the possibilty of outmaneuvering the mortality tables cannot be entirely discounted. Nonetheless, some of history's notorious sell-outs would wince at their greed in the presence of one easy-going chap who sold the right to gamble against his longevity for "a dollar or two and a supply of whisky." [31]

Such wagering contracts are regarded with pious tongue-clucks in nearly all jurisdictions, but it is sometimes a different matter when one reaches court. Since the true actor in the affair is the pretended assignee, it follows the basic rules of contracts to declare such a transaction void, both as to the assignment and as to the policy itself. And indeed, in some jurisdictions it is so held, so long as the action is against the insurer by either the beneficiary or the assignee,[32] but when those two meet in the forum, the insurer having paid one or having paid into court, only the assignment is held to be invalid and the policy valid,[33] presumably upon the theory that if the insurer does not object to the fraud, the courts will overlook it also. Since the assignment is invalid, can the family of the insured reap the monetary harvest? Ah, not so, for the gambler-assignee is entitled to be reimbursed for his expenses.[34] The theory of this result is explained after a fashion in *Finnie v. Walker* [35] as follows:

> The theory . . . . seems to be that the assignment is said to be good as a designation of an appointee to receive payment from the insurance company, and as a security for advancements. The illegality is in the attempt of the assignee to retain entire proceeds.

Thus we have circumscribed the matter and find ourselves going out the door through which we entered, for this is the rationale of the first type of assignment discussed, i. e., the conditional assignment to secure creditors, past, present, or future.

---

[31] Nat'l. Life Ass'n. v. Hopkins, 97 Va. 167, 33 S.E. 539 (1899).

[32] See cases cited in VANCE on INSURANCE 769, n. 32.

[33] *Ibid*, at n. 33.

[34] *Ibid*, at n. 34.

[35] 257 F. 698 (CCA N.Y. 1919).