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Life Insurance--Change of Beneficiary in a Policy in Which Right to Make Such a Change has been Reserved to the Insured--Kentucky Rule

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flow into other factual situations, for it is believed that it was here that the courts hit upon the true interpretation of he statute.

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LIFE INSURANCE—CHANGE OF BENEFICIARY IN A POLICY IN WHICH RIGHT TO MAKE SUCH A CHANGE HAS BEEN RESERVED TO THE INSURED—KENTUCKY RULE

The standard provision in modern insurance policies is that the insured may, by written notice to the insurer at its home office, change the beneficiary under the policy, such change to become effective when it is endorsed on the policy by the insurer. Some divergence of opinion exists as to the necessity for strict compliance with this provision. In a few jurisdictions the procedure set out in the policy must be strictly followed in order to make an effective change. The usual basis for such a holding is that a condition respecting endorsement requires more than a ministerial act on the part of the insurer, and the rights of the original beneficiary cannot be cut off without a compliance with such provision.[1] However, by the great weight of authority, a change of beneficiary can be accomplished without a strict or complete compliance with the conditions of the policy regarding the endorsement of the insurer. These jurisdictions reason that the endorsement of the change of beneficiary by the insurer is a purely ministerial act which the insurer cannot refuse to perform, and that therefore a failure of the insurer to perform such act will not defeat the change of beneficiary if the insured has done everything reasonably within his power to effect a change.[2]

The cases place Kentucky unequivocably with the majority of jurisdictions upon this question.[3] *Manning* v. *Ancient Order of United*

[1]Sheppard v. Crowley, 61 Fla. 735, 55 So. 841 (1911); Freund v. Freund, 218 Ill. 189, 75 N. E. 925 (1905); Prudential Ins. Co. v. Deyerburg, 101 N. J. Eq. 90, 137 Atl. 785 (1927); Douglas v. Metropolitan Life Ins. Co., 11 Ohio N. P. N. S. 531, 21 Ohio Dec. N. P. 516 (1911); Kress v. Kress, 75 Pa. Super. Ct. 404 (1921).

[2]Reid v. Durboraw, 272 Fed. 99 (C. C. A. 4th, 1921); Johnston v. Kearns, 107 Cal. App. 557, 290 Pac. 640 (1930); Reliance L. Ins. Co. v. Bennington, 142 Md. 390, 121 Atl. 369 (1923); Kochanck v. Prudential Ins. Co, 262 Mass. 174, 159 N. E. 520 (1928); Quist v. Western and Southern L. Ins. Co., 219 Mich. 406, 189 N. W. 49 (1922); Re Lynch, 135 Misc. 406, 237 N. Y. Supp. 663 (1929); Teague v. Pilot L. Ins. Co., 200 N. C. 450, 157 S. E. 421 (1931).

[3]Manning v. Ancient Order of United Workmen, 86 Ky. 136, 5 S. W. 385 (1887); Lockett v. Lockett, 26 Ky. Law Rep. 300, 80 S. W. 1152 (1904); Howe v. Fidelity Trust Co. Trustee, 28 Ky. Law Rep. 485, 89 S. W. 521 (1905); Vaughan's Admr. v. Daugherty, 152 Ky. 732, 154 S. W. 9 (1913); Landrum v. Landrum's Admx., 186 Ky. 775, 218 S. W. 274 (1920); Twyman v. Twyman, 201 Ky. 102, 255 S. W. 1031 (1923); Hoskins v. Hoskins, 231 Ky. 5, 20 S. W. (2d) 1029 (1929); Farley et al. v. First National Bank, 250 Ky. 150, 61 S. W. (2d) 1059 (1933); Inter-

Workmen[4] is cited frequently[5] in other jurisdictions, as well as in Kentucky, as an early and leading case supporting the rule that a substantial compliance is sufficient. The rule has increased, rather than lessened, litigation, and the limits of "substantial compliance" have not yet been fully defined.

WHERE THE FAILURE TO STRICTLY COMPLY IS DUE TO THE REFUSAL OR NEGLECT OF INSURER TO ACT ON REQUEST FOR CHANGE

There is considerable authority in other jurisdictions for the view that where the failure to comply with the provision for endorsement of the change on the policy is due to the neglect[6] of the insurer, or to the insurer's delay[7] in acting on a request for a change, the change is to be regarded as complete. It is said to be in accord with better reasoning that an insurance company cannot refuse to consent to a change by which the insured's trustee in bankruptcy is made beneficiary.[8] It has even been suggested that an insurer cannot refuse to endorse a change of beneficiary on a policy.[9]

The Kentucky court has frequently stated that the provision requiring an endorsement on the policy before a change can be effectuated is for the benefit of the insurer.[10] Nevertheless, the few cases which have arisen involving refusal or neglect of an insurance company to make this change do not bear out the implications of this statement. If the insurer fails to receive the request for change, or loses it before making the endorsement, the provision does not protect the company.[11]

Southern Life Ins. Co. v. Cochran, 259 Ky. 677, 83 S. W. (2d) 11 (1935).

The suggestion (Note (1936) 24 Ky. L. J. 507) that the Kentucky court has ever taken a contrary view is apparently erroneous; the case cited, Manning v. Supreme Lodge, A. O. U. W., 7 Ky. Law Rep. 752 (Super. Ct. 1886), was reversed on appeal in the case cited *supra*, note 6.

[4] 86 Ky. 136, 5 S. W. 385 (1887.)

[5] Hoskins v. Hoskins, 231 Ky. 5, 11, 20 S. W. (2nd) 1029, 1032 (1929).

[6] Goodrich v. Equitable Life Assur. Soc., 111 Neb. 616, 197 N. W. 380 (1924); Hall v. Prudential Ins. Co., 132 Misc. 162, 229 N. Y. Supp. 228 (1928).

[7] Brown v. Home L. Ins. Co., 3 F. (2d) 661 (E. D. Okla., 1925); John Hancock Mut. L. Ins. Co. v. White, 20 R. I. 457, 40 Atl. 5 (1898).

[8] Re Greenburg, 271 Fed. 258 (1921); Travelers Ins. Co. v. Middlekamp, 67 Colo. 162, 185 Pac. 335 (1919); Urick v. Western Travelers Acci. Ass'n., 81 Neb. 327, 116 N. W. 48 (1908).

[9] Metropolitan L. Ins. Co. v. Olsen, 81 N. H. 143, 123 Atl. 576 (1923).

[10] Meadows' Guardian v. Meadows' Admr., 13 Ky. Law Rep. 495 (Super. Ct. 1891); Lockett v. Lockett, 26 Ky. Law Rep. 300, 80 S. W. 1152 (1904) (These cases involved assignments only); Thompson Extrx. v. Thompson, 190 Ky. 3, 226 S. W. 350 (1920); Hoskins v. Hoskins, 231 Ky. 5, 20 S. W. (2d) 1029 (1929).

[11] Inter-Southern Life Ins. Co. v. Cochran, 259 Ky. 677, 83 S. W. (2d) 11 (1935). (Accident policy; but there is no suggestion of difference from ordinary life policy on this point.)

The change is effective in such case though the insurer remains in complete ignorance of it. A case more indicative of the court's attitude on this subject is *Thompson's Extrs.* v. *Thompson*,[12] involving the related question of assignments. The policy provided for written notice of assignment. The insured gave notice in writing, but the company rejected it as too informal. The court held the assignment was valid in spite of the insurer's refusal to accept it. In *Twyman* v. *Twyman*[13] the insurer had refused or failed to formally endorse a change of beneficiary on the policy because the insured had failed to fill out the forms completely, through no fault of his own. The change was effected nevertheless.

It seems evident that the provision is of no protection to the company where the failure to endorse the change upon the policy was a result of the company's neglect or delay. It is also reasonably certain that the company cannot refuse to make the endorsement except for the most compelling reasons of self-protection. The question is seldom litigated, since the almost invariable practice of the insurer when more than one claimant appears is to interplead and pay the money into court. An early attempt on the part of the insurer to escape liability on the ground that an ineffectual attempt to change the beneficiary invalidated the policy was, of course, unsuccessful.[14] If the attempted change is invalid for any reason, the rights of the original beneficiary are not affected, and the original designation remains in force.[15]

WHERE THE INSURED HAS FAILED TO STRICTLY COMPLY

Kentucky concurs with the universal holding[16] that where the insured's failure to send in his policy for the endorsement of a change of beneficiary thereon is caused by the refusal of the original beneficiary to surrender the policy to him, the change will nevertheless be given effect if he has otherwise substantially complied with requirements.[17] "An attempted change will be recognized as a valid one, where . . . the insured has done all that he could do to comply with

[12] 190 Ky. 3, 226 S. W. 350 (1920).

[13] 201 Ky. 102, 255 S. W. 1031 (1923)

[14] Provident Savings Life Assurance Co. v. Dees, 120 Ky. 285, 86 S. W. 522 (1905).

[15] Ibid., also Sturges v. Sturges, 126 Ky. 80, 102 S. W. 884 (1907).

[16] Nally v. Nally, 74 Ga. 669 (1885); Marsh v. Supreme Council, 149 Mass. 512, 21 N. E. 1070 (1889); Supreme Tent, K. M. v. Altman, 134 App. 363, 114 S. W. 1107 (1908); Burke v. Kiekebusch, 205 App. Div. 503, 199 N. Y. Supp. 663 (1923); Taff v. Smith, 114 S. C. 306, 103 S. E. 551 (1920).

[17] Leaf v. Leaf, 12 Ky. L. Rep. 47 (Superior Ct., 1890) (surrender of certificate was unnecessary where original beneficiay refused to give up policy, even though this beneficiary had paid some of the premiums); Twyman v. Twyman, 201 Ky. 102, 255 S. W. 1031 (1923) (apparently the original beneficiary had disappeared with the policy and could not be found); Farley et al. v. First National Bank, 250 Ky. 150, 61 S. W. (2d) 1059 (1933) (custodian who was not a beneficiary refused to surrender policy).

requirements."[18] If the person having custody of the policy refuses to give it up, the law will not ask the impossible by requiring the insured to surrender it to the insurer for endorsement.

Kentucky has gone much further than other states in interpreting attempts to change the beneficiary as a substantial compliance with policy provisions.[19] It is clearly established that if the insured fills out the company's change of beneficiary forms, and mails them with his policy to the home office of the company, his death before the forms are received by the company and the change endorsed on the policy, will not prevent the changes from becoming effective.[20] It is sufficient, even, if the insured gives the application for change to the local agent of the insurer, though this local agent does not mail it until after insured's death.[21] Going still further in its effort to effectuate the insured's intentions, the court has held that the failure to send in the policy along with the application for change, was not fatal to a change, where it would have been difficult for the insured to have obtained the policy in order to send it to the insurer;[22] this though the "difficulty" was merely one of sending word to a backwoods community to mail or send the policy to the company or the insured.

Some attempt to comply with the policy provisions is required. Where there is no question of assignment, a mere oral statement of change of beneficiary, coupled with intent to make the change formally later, is not sufficient;[23] nor is the insertion of a name on the face of the policy.[24] The consent of the original beneficiary at the time of such informal attempt to change does not cure the defect.[25] Some steps must be taken in an *attempt* to notify the insurer.[26]

The question has been somewhat complicated in Kentucky by the court's unfortunate tendency to confuse attempts to change the beneficiary with assignments. In *Lockett* v. *Lockett*[27] the insured. just before his death, manually delivered the policy to his wife with the

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[18] Farley et al. v. First National Bank, 250 Ky. 150, 153, 61 S. W. (2d) 1059, 1061 (1933).

[19] Hoskins v. Hoskins, 231 Ky. 5, 18, 20, S. W. (2d) 1029, 1035. (The dissenting judge admits Kentucky's "extreme liberal interpretation".)

[20] Manning v. Ancient Order of United Workmen, 86 Ky. 136, 5 S. W. 385 (1887); Howe v. Fidelity Trust Co., Trustee, 28 Ky. Law Rep. 435, 89 S. W. 521 (1905); Vaughan's Adm. v. M. B. of A., 129 Ky. 587, 149 S. W. 937 (1912).

[21] Hoskins v. Hoskins, 231 Ky. 5, 20 S. W. (2d) 1029 (1929).

[22] Ibid. See also Farley et al. v. First National Bank, 250 Ky. 150. 61 S. W. (2d) 1059 (1933), where the custodian of the policy *failed* or refused to give the policy to the insured at his request; *held*, change valid, though policy not surrendered.

[23] Spurlock v. Spurlock, 271 Ky. 70, 111 S. W. (2d) 443 (1937).

[24] Sturges v. Sturges, 126 Ky. 80, 102 S. W. 884 (1907).

[25] Harden v. Harden, 191 Ky. 331, 230 S. W. 307 (1921).

[26] Ibid. See also the dissenting opinion in Hoskins v. Hoskins, 231 Ky. 5, 17, 20 S. W. (2d) 1029, 1034; but the majority opinion did not deny the necessity of an attempted communication; the disagreement was in interpreting the facts.

[27] 26 Ky. L. Rep. 300, 80 S. W. 1152 (1904).

statement that he gave it to her for her own benefit. The wife prevailed over the named beneficiary, despite the fact the policy contained the usual provision for written application and endorsement of change. "A life policy . . . may be assigned or otherwise disposed of as other choses. Conditions . . . requiring that notice of assignment be given to the insurer . . . are not meant . . . to curtail [insured's] right to change the beneficiary of the policy, or to assign it."[28] This case has never been overruled, and later cases of a similar nature have apparently recognized its authority.[29] The court erred in the *Lockett* case in not recognizing that a life insurance policy is a third party beneficiary contract, in which only the insured's interest, which ceases at his death, is properly assignable. Perhaps the court's failure to mention the *Lockett* case in a recent decision involving somewhat similar facts, indicates a change of opinion.[30]

An important question which remains for the future is the sufficiency of a formal application for change of beneficiary which is sent to the insurer without the policy, though the policy is in the possession of the insured, who omits to send it merely through oversight or ignorance. It is submitted that in such case the insured has not "done all that he could do to comply with the requirements",[31] but it is doubtful if the court would fail to give effect to the insured's intention on that account.

SUMMARY

In summarizing, it may be said that Kentucky will recognize an attempted change as effectual when: the insurer has neglected or unreasonably refused to make the change, and the insured has otherwise substantially complied with the requirements; the failure to comply is due to the refusal of the custodian of the policy to give it up; the insured has "substantially complied" by doing all that he could do *without difficulty* to comply, even though his death occurs before any notice reaches the company.

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WILLS—EFFECT IN KENTUCKY OF ADOPTION OF A CHILD ON A PRIOR MADE WILL

Kentucky provides by statute that when a child is born after the execution of a will in which no provision has been made for him, the will is revoked to the extent that the afterborn child takes the same share he would have taken had his parent died intestate.[1] This statute,

[28] Id. at 301, 80 S. W. at 1152.

[29] Harden v. Harden, 191 Ky. 331, 230 S. W. 307 (1921); Metropolitan L. Ins. Co. v. Brown's Admr., 222 Ky. 211, 300 S. W. 599 (1927). (But the decision did not follow the *Lockett* case, on the ground the factual situations were different.)

[30] *Supra*, note 23.

[31] *Supra*, note 18.

[1] Kentucky Statutes (Carroll's 1936) sections 4847 and 4848; Sneed v. Ewing, 28 Ky. (5 J. J. Marsh.) 460, 22 Amer. Dec. 41 (1831); Knut v. Knut, 22 Ky. L. Rep. 972, 58 S. W. 583 (1900).