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narrowing the venue, the solicitation of suits⁴⁶ would be greatly reduced. The Bill died in a Senate committee.

Another possible solution would be the creation of a workmen's compensation act applicable to employees of interstate railroads.⁴⁷ A reasonable compensation for all injuries sustained, regardless of negligence, might prove to be more desirable than a few cases of very large recoveries where the injury is a major one and where the railroad is clearly negligent. However, the adoption of a federal act in this field seems unlikely.⁴⁸

The evils surrounding the misuse of the venue privileges given by the Act could be greatly diminished by each state adopting the doctrine of *forum non conveniens* as part of its law, but at best this result would be slow and decidedly uncertain. Due to the inability of Congress or the federal courts, as displayed by the *Mayfield* case, to make the doctrine of *forum non conveniens* available as a procedural rule in the state courts,⁴⁹ serious reconsideration should be given to the *Jennings Bill* as offering the better solution to a proper administration of the federal act. Certainly, such flaunting of legal ethics and principles of justice⁵⁰ demands immediate and well considered attention.

WILLIAM C. MORRIS, JR.

Life Insurance—Killing of Insured by Primary Beneficiary— Recovery by Contingent Beneficiary

It has been almost universally held, based on broad grounds of public policy, that the beneficiary of a life insurance contract who intentionally and wrongfully kills the insured cannot recover the policy proceeds. This does not absolve the insurer from liability under the usual insurance contract, but only denies the beneficiary's right to recover. Under such circumstances the benefits may be recovered by the estate of the deceased insured on a constructive trust theory. However, the insurer has been held absolutely relieved of all liability under the policy where the beneficiary at the time of obtaining the policy of insurance intended to mur-

⁴⁶ An example of a state statute authorizing injunction against solicitation in this field is N. C. GEN. STAT. §84-38 (1950). This statute is discussed in 25 N. C. L. REV. 379 (1947).

⁴⁷ Winters, *Interstate Commerce in Damage Suits*, 29 JOUR. AM. JUD. SOC. 135, 144 (1946).

⁴⁸ *Ibid.* Labor generally regards the maximum benefits obtainable under existing state acts as far too small.

⁴⁹ Due to the fact that Congress cannot make procedural rules for the courts which it does not create, it is generally conceded that Congress may not make the *forum non conveniens* doctrine available as a procedural rule in state courts. This seems to be borne out by the fact that Congress, in enacting section 1404(a) of the Judicial Code (28 U. S. C.), made no attempt to apply that section to state courts in which actions under the FELA might be brought.

⁵⁰ For an example, see *Chicago, M., St. P. & P. R. R. v. Wolf*, 199 Wis. 278, 226 N. W. 297 (1929).

der the insured, or where the policy contained a clause specifically making the contract void upon the happening of such an occurrence.¹

While there is abundant authority to support the foregoing principles, the recent case of *Bullock v. Expressmen's Mut. Life Ins. Co.*² presented the North Carolina Supreme Court with a somewhat similar fact situation on which there is scant authority.³ The deceased insured had procured a life insurance policy naming his wife as primary beneficiary and a foster son as contingent beneficiary.⁴ Insured was killed by his wife who was convicted of manslaughter, sentenced to five years imprisonment, and was thereby disqualified from taking either as primary beneficiary under the policy⁵ or from the deceased's personal estate.⁶ The court, applying a strict construction to the insurance contract, held that the contingent provision necessary to qualify the foster son to take as beneficiary had not been fulfilled as the primary beneficiary had not predeceased the insured; therefore, the administrator of the insured's estate was allowed to recover.

The precise issue raised in the instant case was presented to an Ohio lower court in *Neff v. Massachusetts Mut. Life Ins. Co.*⁷ and a contrary result was reached. That court allowed the contingent beneficiary to recover, holding that when the contract of insurance named secondary or contingent beneficiaries, the insured had clearly indicated how the proceeds of the policy were to be paid; therefore, the contingent provisions of the contract should be carried out. It was noted that in those cases where the estate of the insured had been awarded the proceeds of

¹ APPLEMAN, *INSURANCE LAW AND PRACTICE* §§381-385 (1941); 6 COOLEY'S *BRIEFS ON INSURANCE* 5227 (2d ed. 1927); RICHARDS, *LAW OF INSURANCE* §335 (4th ed., Long, 1932); VANCE, *INSURANCE* §117 (3d ed., Anderson, 1951); Grossman, *Liability and Rights of the Insurer When the Death of the Insured Is Caused by the Beneficiary or by an Assignee*, 10 B. U. L. REV. 281 (1930); Notes, 7 A. L. R. 828 (1920), 27 A. L. R. 1521 (1923), 70 A. L. R. 1539 (1931), 91 A. L. R. 1488 (1934); 29 A.M. JUR. §1310 (1940); 46 C. J. S. §1171 (1946).

² 234 N. C. 254, 67 S. E. 2d 71 (1951).

³ The writer found three cases with comparable fact situations. *Metropolitan Life Ins. Co. v. McDavid*, 39 F. Supp. 228 (E. D. Mich. 1941) (group insurance policy wherein the order of contingent beneficiaries was set forth); *Welch v. Travelers' Ins. Co.*, 178 N. Y. Supp. 748 (Sup. Ct. 1919) (insured's estate named as contingent beneficiary); *Beck v. West Coast Life Ins. Co.*, 228 P. 2d 832 (Cal. Dist. Ct. App. 1951) (beneficiary sentenced to life imprisonment which, under California statute, is treated as civil death and has the same legal effect as physical death). However, only one case was discovered which was on "all fours" with the principal case. *Neff v. Massachusetts Mut. Life Ins. Co.*, 96 N. E. 2d 53 (Ohio C. P. 1951). None of these cases was decided by a court of final jurisdiction.

⁴ Beneficiary provision was ". . . to [M], wife of the insured if living or if not living to [R], son of the insured. . . ." Transcript of Record, p. 8, *Bullock v. Expressmen's Mut. Life Ins. Co.*, 234 N. C. 254, 67 S. E. 2d 71 (1951).

⁵ *Anderson v. Life Ins. Co. of Virginia*, 152 N. C. 1, 67 S. E. 53 (1910).

⁶ *Garner v. Phillips*, 229 N. C. 160, 47 S. E. 2d 845 (1948); *Bryant v. Bryant*, 193 N. C. 372, 137 S. E. 188 (1927); N. C. GEN. STAT. §§28-10, 30-4, 52-19 (1950).

⁷ 96 N. E. 2d 53 (Ohio C. P. 1951) The court stated the issue to be ". . . when an insured has been murdered by the primary beneficiary, should the proceeds of the life insurance policy be paid to the insured's estate or to the persons named in the insurance policy as contingent or secondary beneficiaries?"

an insurance policy, there had been a complete failure of beneficiaries. Thus the court appears to have reached an equitable result effectuating the intent of the insured without changing the terms of the contract.⁸

The North Carolina court's construction of the contract may well be questioned. It has been said that the intention of the parties is the "polar star" of construction of an insurance contract,⁹ and that it is a practical rather than a literal or technical construction which is deemed desirable.¹⁰ The intention of the insured is the controlling element,¹¹ and a provision for disposition of the proceeds on the insured's death must be construed as the insured intended.¹² The mere fact that the insured named a contingent beneficiary seems clearly to express his intention as to whom should be the recipient of the policy proceeds in lieu of the primary beneficiary. Had the primary beneficiary predeceased the insured, undoubtedly the contingent beneficiary would have taken under the policy. What, then, is the distinction between disqualification by death and disqualification by law? Permitting recovery by the contingent beneficiary in the *Bullock* case would seem to have been both a reasonable and logical interpretation of the contract without reading anything into it.

A line of argument, not advanced to the court in the *Bullock* case, would allow the contingent beneficiary to recover under the precise terms of the insurance contract. On the death of the insured, the primary beneficiary's rights become vested and he holds the legal claim to the proceeds of the policy.¹³ However, on well established principles of public policy, the beneficiary may not receive and enjoy the benefits of this claim.¹⁴ Therefore, a constructive trust could be imposed upon this interest in the hands of the primary beneficiary.¹⁵ Once this constructive trust is established, the next step to be taken is the determination of the beneficiary of this trust. It would seem that such a determination should be based upon the intention of the insured, if ascertainable. Where the insured has clearly expressed his intent by naming a contingent beneficiary, even though the contingency has not occurred, the court should recognize this intention by designating the contingent

⁸ The North Carolina court stated that to reach such a result would be changing the terms of the contract which it had no power to do. *Bullock v. Expressmen's Mut. Life Ins. Co.*, 234 N. C. 254, 258, 67 S. E. 2d 71, 74 (1951).

⁹ 13 APPLEMAN, *INSURANCE LAW AND PRACTICE* §7385 (1940).

¹⁰ 13 *id.* §7386.

¹¹ 2 *id.* §781.

¹² 13 *id.* §7424.

¹³ 2 *id.* §921.

¹⁴ *Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 591 (1886); *Anderson v. Life Ins. Co. of Virginia*, 152 N. C. 1, 67 S. E. 53 (1910); *VANCE, INSURANCE* §117 (3d ed., Anderson, 1951).

¹⁵ *RESTATEMENT, RESTITUTION* §189 (1937); 3 *SCOTT, TRUSTS* §494.1 (1939).

Although the North Carolina court did not infer that it was using the constructive trust theory in the *Bullock* case, note 2 *supra*, or in the *Anderson* case, *supra* note 14, it has employed that device to prevent a murderer from acquiring property by his own wrongful act. *Garner v. Phillips*, 229 N. C. 160, 47 S. E. 2d 845 (1948); Note, 26 N. C. L. REV. 232 (1948).

beneficiary as the recipient of the trust.¹⁶ In reaching such a result, the court would have (1) carried out the express terms of the contract, (2) applied the constructive trust theory to prevent a party from profiting by his own wrongdoing, and (3) reached an equitable result effectuating the intent of the insured.

While some jurisdictions have passed statutes allowing the contingent beneficiary to receive the proceeds of the policy in such a situation,¹⁷ other jurisdictions have reached the same result¹⁸ without statutory aid and with the approval of those writers¹⁹ who have commented on the subject. A similar result has also been reached by courts confronted

¹⁶ It should be noted that both the RESTATEMENT and SCOTT, *id.*, state that the beneficiary holds his interest under the policy upon a constructive trust for the estate of the insured. Apparently, however, this result is meant to apply only when there is no contingent beneficiary named in the contract for it is Scott's contention that in such a situation the contingent beneficiary should receive the policy proceeds and not the estate of the insured.

¹⁷ NEB. REV. STAT. §30-120 (1943): "No person who has been convicted of unlawfully killing another, or conspiring unlawfully to kill another, shall be entitled to any insurance on the life of the deceased. If the person so convicted is the beneficiary under any policy or policies of life insurance, or beneficial certificate or certificates, such insurance shall go to the person or persons who would have been entitled thereto if the person so convicted had been dead at the date of the death of the deceased."

S. D. CODE §56.0510 (1939): "Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him. . . ."

Other states have statutes directing that the insurance proceeds shall be disbursed by the laws of descent and distribution:

IOWA CODE ANN. §636.49 (1950): "In every instance mentioned in section . . . 636.48 [that section bars a beneficiary, who has taken the life of the insured, from receiving the policy proceeds], all benefits that would accrue to any such person upon the death . . . of the person whose life is thus taken . . . shall become subject to distribution among the other heirs of such deceased person, according to the foregoing rules of descent and distribution in case of death. . . ."

Of like effect: OKLA. STAT. ANN. tit. 84, §231 (1938); ORE. COMP. LAWS ANN. §16-203 (1940).

See *McDade v. Mystic Workers of the World*, 196 Ia. 857, 860, 195 N. W. 603, 604 (1923). The court in construing the Iowa statute stated that "The statute was evidently meant to meet a situation where a policy of insurance is made payable to a beneficiary who takes the life of the insured, and where there is no provision whatever in the policy as to the disposition of the proceeds of the insurance."

¹⁸ *Metropolitan Life Ins. Co. v. McDavid*, 39 F. Supp. 228 (E. D. Mich. 1941); *Welch v. Travelers' Ins. Co.*, 178 N. Y. Supp. 748 (Sup. Ct. 1919); *Neff v. Massachusetts Mut. Life Ins. Co.*, 96 N. E. 2d 53 (Ohio C. P. 1951); *accord*, *Beck v. West Coast Life Ins. Co.*, 228 P. 2d 832 (Cal. Dist. Ct. App. 1951); *see*, *Equitable Life Assur. Soc. v. Weightman*, 61 Okla. 106, 111, 160 Pac. 629, 634 (1916).

¹⁹ 3 SCOTT, TRUSTS §494.1 (1939): "If by the terms of the policy, or in the case of a fraternal organization by the by-laws of the organization, an alternative beneficiary is designated, and the principal beneficiary murders the insured, the alternative beneficiary is entitled to the proceeds of the policy." See Wade, *Acquisition of Property by Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 742 (1936).

It is interesting to note that both authors and the Ohio court in the *Neff* case, note 7 *supra*, cited *Parker v. Potter*, 200 N. C. 348, 157 S. E. 68 (1931), to support their conclusions. The North Carolina court in the *Bullock* case, note 2 *supra*, did likewise!

with this problem when mutual benefit association certificates were involved.²⁰ Concededly, these cases are distinguishable in that the association's charter or by-laws contained a provision for alternative or contingent beneficiaries if the original designation failed; yet, any distinction appears unreal when an old line insurance policy contains a contingent beneficiary provision.

As the precise issue presented by the *Bullock* case was one of first impression before any court of final jurisdiction in the United States,²¹ it is regrettable that the decision reached was contrary to the existing authority on the subject. Furthermore, as the result was patently contrary to the intention of the insured²² and will probably be binding on the court under the doctrine of *stare decisis*, the following statutory proposal is offered for consideration:

Where the beneficiary of a life insurance policy or certificate, or the assignee of such policy or certificate, or the survivor of a joint life policy or certificate, has feloniously taken, or procured to be taken, the life of the insured, any proceeds payable under the terms of such policy or certificate shall be paid to any alternative or contingent beneficiary named in the policy or certificate who does not claim through the slayer; provided, if no alternative or contingent beneficiary is designated in the policy or certificate, such proceeds shall be paid to the estate of the insured decedent.²³

DAVID L. STRAIN, JR.

Negligence—Automobiles—Joint Enterprise

In cases involving automobile accidents, North Carolina has recognized and followed the joint enterprise doctrine since 1921.¹ In a recent decision, *James v. Atlantic & E. C. R. R.*,² the court stated that

²⁰ *Supreme Lodge v. Menkhousen*, 209 Ill. 277, 70 N. E. 567 (1904); *Schmidt v. Northern Life Ass'n.*, 112 Ia. 41, 83 N. W. 800 (1900); *Sharpless v. Grand Lodge*, 135 Minn. 35, 159 N. W. 1086 (1916).

²¹ See note 3 *supra*.

²² *Bullock v. Expressmen's Mut. Life Ins. Co.*, 234 N. C. 254, 258, 67 S. E. 2d 71, 74 (1951) ("... in the case at bar it may be presumed in the light of subsequent happenings the insured would have wished his foster son to have the insurance money. . .").

²³ See Wade, *Acquisition of Property by Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 741 (1936), for an extensive discussion of the intent and purpose of such a statute.

¹ *Pusey v. Atlantic Coast Line R. R.*, 181 N. C. 137, 106 S. E. 452 (1921). In the *Pusey* case the court seemingly states that the doctrine of joint enterprise was adopted by North Carolina in *Hunt v. Railroad*, 170 N. C. 442, 87 S. E. 210 (1915), but the court in the *Hunt* case does not mention the doctrine. It merely reiterates the rule that the negligence of the driver will not be imputed to a passenger unless he is the owner of the car or controls the driver in some way.

² 233 N. C. 591, 65 S. E. 2d 214 (1951). Other N. C. cases dealing with the doctrine are: *Matheny v. Central Motor Lines*, 233 N. C. 681, 65 S. E. 2d 368 (1951); *Rollison v. Hicks*, 233 N. C. 99, 63 S. E. 2d 190 (1951); *Pike v. Seymour*, 222 N. C. 42, 21 S. E. 2d 884 (1942); *Harper v. Seaboard Air Line Ry. Co.*, 211 N. C. 398, 190 S. E. 750 (1937); *Exum v. Poole*, 207 N. C. 244, 176 S. E. 556