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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. The *WRNewswire* provides timely reports and commentary on tax and legal developments important to AALU members, clients and advisors, delivered to your inbox as they happen.

TOPIC: Divorce Decree Obligations Supersede Beneficiary Designation

CITES: *USAA Life Insurance Company v. Benvenuto*, No. 13 CV 660, 2014 WL 4379087 (U.S.D.C. N.D.IL E. Div Sept 3, 2014); 5 C.F.R. § 870.801–.802**.**

SUMMARY: Paul Benvenuto had two policies insuring his life with an aggregate face amount of $1,062,000. As part of his divorce decree with his ex-wife, Katherine St. Clair, he had an obligation to maintain life insurance for the benefit of their children in the amount of $500,000. Paul named his current wife, Lori Dunn Benvenuto, the beneficiary of the insurance policies. When Paul died, both Lori and Katherine made claims for the insurance proceeds. The court ruled that a constructive trust was created for Paul's children to be funded from the life policy death proceeds.

BACKGROUND: Paul Benvenuto, a federal employee of the FBI, was married to Katherine St. Clair, with whom he had two children. In 2009, Paul and Katherine divorced. The divorce decree ordered Paul to maintain a life insurance policy in the amount of $500,000 for the benefit of his children until they graduated from college. Paul maintained two life insurance policies: a USAA policy for $250,000 and a MetLife policy for $812,000. The decree also required Katherine and Paul to maintain a joint savings account to pay for their children's college education.

Paul died in October 2012. Before his death, Paul made his second wife, Lori Dunn Benvenuto, beneficiary of both insurance policies. He also withdrew half of the money from the joint savings account.

After Lori and Katherine both made claims for the policies' death proceeds, the two insurance companies filed complaints for interpleader in federal court in the Northern District of Illinois. USAA and MetLife deposited the proceeds of the policies with the court and were dismissed as parties in the case. Katherine then filed a three-count cross-complaint against Lori.

In her first count, Katherine sought (1) a declaration that her children have an equitable right to the proceeds of the USAA policy that is superior to any other claimant's right and (2) the imposition of a constructive trust on the USAA death proceeds for the benefit of her children. In the second count, Katherine sought the same remedies with regard to up to $500,000 of the proceeds of the MetLife policy. In her third count, Katherine sought to impose the same constructive trust obligations with regard to the nearly $10,000 which was withdrawn from the joint account by Paul before his death.

Lori filed a motion to dismiss Katherine's complaint, which prompted the court's decision.

FACTS: Lori did not dispute that the decree conferred an equitable right in the USAA policy's death proceeds to Paul's children. Instead, she tried to disclaim her interest in the policy's death proceeds to defeat that equitable claim.

The court ruled that whether Lori or the successor beneficiaries had a right to the death benefit, it did not alter the fact that Paul's children had an equitable claim. Under Illinois law, when a beneficiary possesses an equitable right to life insurance proceeds because of a marital settlement agreement, the imposition of a constructive trust on the insurance proceeds is an appropriate remedy to enforce the beneficiary's equitable right.

The MetLife policy was issued to Paul pursuant to the Federal Employees Group Life Insurance Act (FEGLIA). Lori argued that FEGLIA preempts any state law remedies, and thus the proceeds should be paid to Lori unencumbered by constructive trust claims.

The court noted that under FEGLIA regulations (5 C.F.R. § 870.801–.802), when a federal employee with a FEGLIA life insurance policy dies, the beneficiary designated by the employee is to be paid first, unless a court order provides otherwise. To be effective, however, a certified copy of the court order must be received by the employer *before* the death of the insured.

In this case, Katherine had given a copy of the divorce decree to Paul's employer—the FBI—prior to Paul's death. Lori argued that Katherine hadn't given the decree to the correct department of the FBI, so she hadn't met the technical requirements of the regulations. The court ruled that this was a dispute between the parties that would require a hearing to sort out, so it refused to grant Lori's motion to dismiss the claim against the MetLife policy.

Finally, with regard to the joint account, the court decided that it was reasonable to conclude that Paul had taken the money from it for the benefit of himself and Lori. It therefore denied Lori's motion to dismiss the constructive trust claim against the $10,000 withdrawal.

RESULT: The court ruled that the USAA policy proceeds were definitely subject to a constructive trust for the benefit of Paul and Katherine's children. It also ruled that the MetLife and joint account monies were potentially available to satisfy the constructive trust obligation. The court invited the parties to negotiate an agreed order to work out the details with regard to the three assets. If the parties fail to do so, the case will continue.

RELEVANCE: The *Rice* and *Clark* cases, which we discussed in *WRNewswires* #14.03.25 and 14.06.16, underscored the importance of doing a beneficiary review as soon as possible after a client's divorce.

In this case, the insured changed the beneficiary of his life insurance policies *after* the parties divorced. Both changes were made in a manner that was arguably inconsistent with the requirements of the insured's divorce decree. As a result, the court ruled that the policies' death benefits needed to be preserved to protect the financial rights of the insured's children.

In the articles on the prior cases, we made the point that clients and their life insurance professionals need to review life beneficiary designations during and right after divorce. This case is a reminder to take care from the other direction. If working with a client who has been divorced or legally separated in the past, insurance professionals need to make sure that actions to change beneficiaries or otherwise change life insurance coverage are consistent with the requirements of the divorce decree.

***WRNewswire* #14.09.22 was written by Linas Sudzius of Advanced Underwriting Consultants.**