WRNewswire
An AALU Washington Report

The *WRNewswire* is created exclusively for AALU Members by insurance experts led ***by Steve Leimberg, Lawrence Brody and Linas Sudzius. WRNewswire #16.3.23*** was written by ***Steve Leimberg,*** co-author with **Howard Zaritsky,** of Tax Planning With Life Insurance**,** Publisher of Leimberg Information Services, Inc. (LISI) and Creator of NumberCruncher Software.

The AALU *WRNewswire* and *WRMarketplace* are published by the Association for Advanced Life Underwriting® as part of the Essential Wisdom Series, the trusted source of actionable technical and marketplace knowledge for AALU members—the nation's most advanced life insurance professionals.

TOPIC: Imposition of Constructive Trust on Insurance Proceeds Because of Unjust Enrichment of Named Beneficiary

CITATION: *Volk v. Goeser*, No. DA 14–0747, 2016 WL 888859 (S.Ct. MT, March 8, 2016).

SUMMARY: This was an appeal by Pamela Volk from a District Court summary judgment in favor of Valerie Goeser, the insured's sister and recipient of all his life insurance proceeds. The lower court had determined a constructive trust should not be imposed on $2,306,103.13 of Roy Volk's life insurance proceeds for the benefit of his minor son, RBV, because Valerie Goeser was not unjustly enriched when she received Roy Volk's life insurance proceeds. But the Supreme Court of Montana reversed that summary judgment and remanded the case back to the trial court for further proceedings in accordance with this opinion.

RELEVANCE: Many of our married clients will divorce. And many of those divorces involve life insurance – and in some cases large amounts of proceeds will be at stake. Some cases involve a mandatory retention of existing coverage, some the purchase of new insurance, and some various combinations of these and policy beneficiary or ownership designations. In many cases the parties comply with the terms of the

divorce decree – but often they do not. AALU members representing the parties to a divorce should be aware of the many problems that can occur, the issues that may arise, and the potential solutions.

This case is a good example of:

(1) insured owners who do not comply with the terms of the divorce agreement,

(2) beneficiaries who are not aware they are beneficiaries,

(3) recipients of proceeds that may or may not be entitled to – or have to forfeit – what they thought was rightfully theirs,

(4) how wording in a divorce decree can sometimes be inadequate to fully protect parties a divorce court intends to protect, and

(5) legal theories courts can take to "make things right".

In this case, the Montana Supreme Court recognized that the innocent beneficiary of the life insurance policy might have to sell a house purchased with life insurance proceeds received in order to fix a situation where the insured ignored the requirements of his child support obligations. The court decided that protecting the interests of the insured's children was the most important objective in this case.

FACTS: Roy Volk married to Pamela Dee Volk in 1996. The couple had a son, RBV, in the fall of 2000. In 2010, Roy filed for divorce.

Roy and Pamela entered into a marital settlement agreement (MSA) on December 20, 2011. Roy agreed "[h]usband shall execute a will naming his son as beneficiary of his estate, giving all of his assets to his son." This clause included Roy's agreement to leave all of his assets to RBV through a will that would be executed as a "future document." Attached to the MSA was a list of assets and liabilities for each party where Roy indicated that "[h]usband's New York Life insurance policy" (Policy 936) was an asset. The MSA further provided that if either husband or wife failed to disclose an asset, "that finding is presented to be grounds for the Court, without taking into account the equitable division of the marital estate, to award the undisclosed asset to the opposing party...."

At that time, Roy owned two term policies: (1) A $1,500,000 New York Life contract (Policy 799) and (2) a $1,000,000 New York Life contract (Policy 936) But Policy 799 was not disclosed to Pamela in the divorce. She was the sole beneficiary but was not aware the policy existed. Roy disclosed Policy 936 in the divorce. Pamela was an equal beneficiary with Roy's business, Volk Sand and Gravel – subject to a $200,000 collateral assignment to a lender, Stockman Bank.

On July 15, 2010, even though a restraining order preventing Roy from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any life insurance for the benefit of a child for whom support may be ordered was in effect, Roy changed the beneficiary designations on both policies and designated his sister, Valerie Goeser, as the new beneficiary.

Roy also had a daughter, Saraya Roberson. In June of 2005, Roy and Saraya's mother, Serena, had entered into a child support agreement (CSA) pertaining to Saraya. That agreement required Roy, within 30 days of the court's order approving the agreement, to purchase a life insurance policy of $100,000 naming Saraya as the owner and sole beneficiary. The CSA was approved and adopted by the Montana Eighth Judicial District Court on July 28, 2005. Roy never purchased the life insurance policy required by the CSA, nor did Roy name Saraya as a beneficiary on *any* life insurance policy.

On April 30, 2012, just over four months after the divorce was final, Roy died unexpectedly at age 45. Roy had no will. Valerie received the life insurance proceeds from both policies in the total amount of $2,306,103.13. She invested the proceeds in a home and real property in Newport Beach, California.

After Roy's death, Pamela discovered that Valerie had received the life insurance proceeds from Policy 936, due to Roy's surreptitious change of beneficiary during the divorce. Pamela wrote Valerie to inquire about the policy and notify her of RBV's equitable claim. Valerie did not respond to the inquiry and Pamela subsequently sent a subpoena to New York Life to determine how the policy benefit was dispersed. That's when she discovered the existence of the second life insurance policy, Policy 799, with the $1,500,000 benefit. Pamela also determined through discovery that she was the beneficiary on Policy 799 until Roy changed it and named Valerie sole beneficiary on July 15, 2010 – during the period when the restraining order was in effect. The New York Life records confirmed that the proceeds of both policies were paid to Valerie.

A probate was opened to settle Roy's estate. Pamela filed two creditor's claims in the probate on October 23, 2012. The first claim was on her behalf for payments Roy had previously agreed upon, and the second was on behalf of RBV for child support and health insurance costs totaling about $77,500. Roy's estate did not have sufficient funds to pay RBV's child support claim.

On April 29, 2013, Pamela, on behalf of RBV, sued Roy's estate and Valarie seeking the placement of a constructive trust over the insurance policy payouts for the benefit of her son, RBV. The complaint named Saraya (as co-personal representative of Roy's estate) as a defendant.

The district court granted summary judgment to Valerie and denied Pamela's claims on behalf of her son, RBV, that the policies' proceeds should be placed in a constructive trust for his benefit. Saraya filed a cross-appeal seeking imposition of a constructive trust for her benefit to fulfill the $100,000 liability. Subsequently, Saraya and Pamela entered an agreement under which Pamela would pay Saraya's claim from RBV's constructive trust if RBV prevailed on his claims against Valerie.

The Montana Supreme Court here reasoned that the purpose of the law requiring a temporary restraining order is to maintain the status quo with respect to all property of the parties and mitigate the potential harm to spouses and children caused by the dissolution process itself and ensure that reasonable provision is made for the spouse and children during the litigation. So the restraining order serves as a protective umbrella over all marital assets while the parties negotiate an MSA or proceed with litigation. If agreement is reached on division of property, the parties' agreements are incorporated in the MSA, the new contract between the parties. Then, with the MSA in place, the restraining order can be dissolved upon entry of the decree, and the MSA guides any further asset divisions and responsibilities of the parties.

The remedy for a breach of a restraining order in most cases is a civil or criminal contempt action against the violator and a court may order a return to the status quo – rendering transfers of property in violation of an injunction invalid. So courts, at a minimum, possess "equitable power to order a return to the status quo when a party violating a temporary restraining order has died."

The court determined that the dispositive issue on Policy 799 is the improper change of beneficiary while the dissolution restraining order was in place. Had Roy not changed the beneficiary in violation of the restraining order, the status quo on the policy would have allowed the benefit to be passed to the existing beneficiary,

Pamela, or—by operation of law—into Roy's estate. Once Roy filed the dissolution and the statutorily-mandated restraining order applied, he was no longer free to make beneficiary changes without the consent of the court and Pamela. Courts possess "equitable power to order a return to the status quo when a party violating a temporary restraining order has died." The court here concluded Roy's improper changes to his beneficiary designations must be set aside and the designations returned to the status quo, as they were prior to the dissolution, in order to promote both the fairness and equity the statute is intended to provide and the agreements that Roy made to support his children.

The problem here is that returning the parties to the status quo in this case would require return of the life insurance proceeds to the estate, a task complicated because the funds have been dispersed and invested in real property. Because Valerie received the proceeds under the express terms of the policies, the question arises whether she was unjustly enriched.

A constructive trust is a possible remedy to rectify the unjust enrichment of a party. It arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it. Courts generally have broad discretion afforded by the principles of equity to impose a constructive trust despite lack of any wrongdoing by the person holding the property. The court may simply declare a constructive trust to exist and nothing else is required.

A constructive trust requires proof of three elements: (1) a benefit conferred upon a defendant by another; (2) an appreciation or knowledge of the benefit by the defendant; and (3) the acceptance or retention of the benefit by the defendant under such circumstances that would make it inequitable for the defendant to retain the benefit without payment of its value. The defendant need not do anything wrong; it is sufficient that the defendant gained something that it should not be allowed to retain.

The three elements of unjust enrichment in this case are (1) a benefit was conferred on Valerie by Roy when she received the life insurance proceeds as a result of the improper designation, (2) Valerie, as the conferee, appreciated and possessed knowledge of the conferred benefit as she acknowledged receipt of both policies, and (3) she acknowledged she used the money from her brother to to hold the funds and invest in the house where she resides.

So the question remaining was: "After weighing the facts and evidence, did the retention of the benefit Valerie incurred create an inequitable and unjust result?"
The "circumstances" in this case were a result of Roy's improper change of the beneficiary while the statutorily-mandated restraining order was in place. The result of the circumstances is that Roy's estate was unable to pay claims to his children or provide for their future as was intended and promised under the MSA and the parenting agreement providing for Saraya. If Roy had not made this improper change, Pamela would have been removed as the beneficiary upon the dissolution of their marriage, and the life insurance proceeds would have diverted into the estate upon Roy's death, where it would have been distributed to Roy's children under the intestacy statutes. So the court concluded that the third element of unjust enrichment was met because Valerie is holding the life insurance proceeds, which she received as a result of Roy's improper change, "under such circumstances that in equity and good conscience she ought not to retain it."

Though Valerie did nothing wrong, she is holding title to property and subject to an equitable duty to convey it, or a portion thereof, to another on the ground that she would be unjustly enriched if she were permitted to retain it. Accordingly, the court determined that imposing a constructive trust on the proceeds of Roy's two life insurance policies, Policy 799 and Policy 936, in favor of RBV was the proper remedy in this case. The holding may require Valerie to sell her home if she is otherwise unable to pay the $2,306,103.13 that should have gone to Roy's estate. But the court noted that, "While requiring Valerie to sell her home is indeed significant, it is certainly no more significant of an issue than ensuring that Roy's estate is able to pay claims to Roy's children and provide for their future as was intended and promised under the MSA and the parenting agreement providing for Saraya."
