

7-1-1959

# Insurance -- Separation Agreement -- Release of All Claims

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## Recommended Citation

Murray Goldman, *Insurance -- Separation Agreement -- Release of All Claims*, 13 U. Miami L. Rev. 474 (1959)  
Available at: <http://repository.law.miami.edu/umlr/vol13/iss4/8>

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refusal did not violate procedural due process. He placed great reliance on the warden's good faith determination<sup>28</sup> and the possible delays that might result from an adversary proceeding. On the other hand, Justice Frankfurter, dissenting, maintained that due process requires some procedure to assure that the warden "hear the other side"<sup>29</sup> although there need not be a formal adversary hearing before him.

In applying the decision in *Solesbee v. Balkcom*<sup>30</sup> to the instant case, the Court firmly re-established its initial view<sup>31</sup> on post conviction procedures, by extending it to a procedure authorizing the warden to make an ex parte determination of supervening sanity. The query of Mr. Justice Frankfurter, "What kind of constitutional right is it, especially if life is at stake, the vindication of which rests wholly in the hands of an administrative official whose actions cannot be inquired into, and who need not consider the claims of the person most vitally affected, the person in whom the constitutional right is said to inhere?"<sup>32</sup> goes directly to the substantive origin of the procedural requirements of due process.

It appears by implication from the present decision that whatever the right under the due process clause, its protective forcefulness as a limitation upon state activity, is almost non-existent. The standards set by the minimum procedures upheld in the case, conceivably can be met by almost any state procedure, no matter how arbitrary, so long as it is carried out in good faith by a responsible official. An affirmative adjudication of the substantive issue, which would require minimum procedural safeguards, seems quite unlikely at the present time.

MARK W. KAY

### INSURANCE—SEPARATION AGREEMENT— RELEASE OF ALL CLAIMS

The beneficiary of a life insurance policy, prior to divorce, released all her claims against the insured in a separation agreement. The insured husband subsequently died without having changed the beneficiary in his life insurance policies. In a suit contesting the beneficiary's right to the pro-

28. *Contra*, Mr. Justice Frankfurter, dissenting in *Solesbee v. Balkcom*, 339 U.S. 9, 25 (1950), argued that it was not a question of good faith. "The fact that a conclusion is reached in good conscience is no proof of its reliability. The validity of the conclusion depends largely upon the mode by which it was reached."

29. *Caritativo v. California*, 357 U.S. 549, — (1958) (dissenting opinion). "The right to be heard somehow by someone before a claim is denied, particularly if life hangs in the balance, is far greater in importance to society, in the light of the sad history of its denial, than inconvenience in the execution of the law."

30. 339 U.S. 9 (1950). See notes 6, 20 *supra*.

31. The initial view was set forth in *Nobles v. Georgia*, 168 U.S. 398 (1897), where it was held that it is within the discretion of the state to determine the nature of post conviction hearing procedures. See also notes 8, 18 *supra*.

32. *Caritativo v. California*, 357 U.S. 549 (1958).

ceeds of the policies, the trial court granted the beneficiary's motion for a summary judgment. *Held*, reversed: the beneficiary's right to the proceeds of the policies constituted a claim between the parties which had been released by the separation agreement. *O'Brien v. Elder*, 250 F.2d 275 (5th Cir. 1957).

The overwhelming weight of authority is that a release of all claims by a wife in a separation agreement does not release her interest in her husband's insurance policies.<sup>1</sup> The issue has arisen in two different situations: a) where the right to change the beneficiary was not reserved by the insured,<sup>2</sup> b) where the right to change the beneficiary was reserved by the insured.<sup>3</sup> The beneficiary named in a life insurance policy has a vested interest in that policy if the right to change the beneficiary has not been reserved by the insured.<sup>4</sup> When a wife has a vested interest as beneficiary of a policy, it has been concluded that her interest in such a policy is her individual property, free from her husband's control. A property settlement

1. *Mayberry v. Kathan*, 232 F.2d 54 (D.C. Cir., 1956); *Parish v. Kaska*, 204 F.2d 451 (10th Cir., 1953); *Thompson v. Thompson*, 156 F.2d 581 (8th Cir., 1946); *Andrews v. Andrews*, 97 F.2d 485 (8th Cir., 1938); *Merchants Nat. Bank v. Hubbard*, 220 Ala. 372, 125 So. 335 (1929); *Miller v. Miller*, 94 Cal. App.2d 785, 211 P.2d 357 (1949); *Grimm v. Grimm*, 26 Cal.2d 173, 157 P.2d 841 (1945); *Pate v. Citizens and Southern Nat. Bank*, 203 Ga. 442, 47 S.E.2d 277 (1948); *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956); *Wallace v. Mut. Benefit Life Ins. Co.*, 97 Minn. 27, 106 N.W. 84 (1906); *John Hancock Mut. Life Ins. Co. v. Dawson*, 278 S.W.2d 57 (Mo. 1955); *John Hancock Mut. Life Ins. Co. v. Heidrick*, 135 N.J. Eq. 325, 38 A.2d 442 (1944); *Hott v. Warner*, 268 Wis. 264, 67 N.W.2d 370 (1954); 2 APPLEMAN, INSURANCE LAW AND PRACTICE § 921 (1941); 2 COUCH, CYCLOPEDIA OF INSURANCE LAW § 440h (1929).

2. *Thompson v. Thompson*, 156 F.2d 581 (8th Cir., 1946); *Wallace v. Mut. Benefit Life Ins. Co.*, 97 Minn. 27, 106 N.W. 84 (1906); *John Hancock Mut. Life Ins. Co. v. Heidrick*, 135 N.J. Eq. 325, 38 A.2d 442 (1944); *Hott v. Warner*, 268 Wis. 264, 67 N.W.2d 370 (1954).

3. *Backguard v. Carriero*, 237 F.2d 459 (9th Cir., 1956); *Mayberry v. Kathan*, 232 F.2d 54 (D.C. Cir., 1956); *Parrish v. Kaska*, 204 F.2d (10th Cir., 1953); *Andrews v. Andrews*, 97 F.2d 485 (8th Cir., 1938); *Merchants Nat. Bank v. Hubbard*, 220 Ala. 372, 125 So. 335 (1929); *Thorpe v. Randazzo*, 41 Cal.2d 770, 264 P.2d 38 (1953); *Miller v. Miller*, 94 Cal. App.2d 785, 211 P.2d 357 (1949); *Grimm v. Grimm*, 26 Cal.2d 173, 157 P.2d 841 (1945); *Pate v. Citizens and Southern Nat. Bank*, 203 Ga. 442, 47 S.E. 2d 277 (1948); *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956); *John Hancock Mut. Life Inc. Co. v. Dawson*, 278 S.W.2d 57 (Mo. 1955).

4. *Central Nat. Bank v. Hume*, 128 U.S. 195 (1888); *Mut. Benefit Life Ins. Co. v. Swett*, 222 Fed. 200 (6th Cir., 1915); *Boutwell v. Drinkard*, 230 Ala. 212, 160 So. 349 (1935); *Franklin Life Ins. Co. v. Calligan*, 71 Ark. 295, 73 S.W. 102 (1903); *Johnson v. New York Life Inc. Co.*, 56 Colo. 178, 138 Pac. 414 (1913); *Phoenix Mut. Life Ins. Co. v. Dunham*, 46 Conn. 79 (1878); *Merchant's Bank v. Garrard*, 158 Ga. 867, 124 S.E. 715 (1924); *Indiana Nat. Life Ins. Co. v. McGinnis*, 180 Ind. 9, 101 N.E. 289 (1913); *Condon v. New York Life Ins. Co.*, 183 Iowa 658, 166 N.W. 452 (1918); *Filley v. Illinois Life Ins. Co.*, 91 Kan. 220, 137 Pac. 793 (1914); *Townsend v. Townsend*, 127 Ky. 230, 105 S.W. 937 (1907); *Millard v. Brayton*, 177 Mass. 533, 59 N.E. 436 (1901); *Stahel v. Prudential Ins. Co.*, 189 Minn. 405, 249 N.W. 713 (1933); *Mut. Benefit Life Ins. Co. v. Willoughby*, 99 Miss. 98, 54 So. 834 (1911); *Deal v. Deal*, 87 S.C. 395, 69 S.E. 886 (1911); *Marquet v. Aetna Life Ins. Co.*, 128 Tenn. 213, 159 S.W. 733 (1913); *Washington Life Ins. Co. v. Berwald* 97 Tex. 111, 76 S.W. 442 (1903); 2 APPLEMAN, INSURANCE LAW & PRACTICE §911 (1941); 2 COUCH, CYCLOPEDIA OF INSURANCE LAW § 408 (1929).

agreement releasing all the wife's claims to her husband's property would not therefore include such a policy since it is her property and not his.<sup>5</sup>

When the right to change the beneficiary is reserved by the insured, the beneficiary has only an expectancy interest.<sup>6</sup> Basically, two theories have emerged from the decision on this point. The first theory is that an expectancy is not included in the release of all claims.<sup>7</sup> A claim is a legal claim, a demand of right;<sup>8</sup> an expectancy is a *mere possibility* and it is therefore held not to be within the purview of a claim.<sup>9</sup> The great majority of decisions which allow recovery to the wife, are based on the intention of the parties.<sup>10</sup> The failure of the parties to specifically mention the insurance policies<sup>11</sup> and the husband's failure to change the beneficiary<sup>12</sup> are examples of the criteria for determining that intent.

In the minority of cases in which the wife was *denied* recovery because she released her rights under a separation agreement, the decisions were

5. *Wallace v. Mut. Benefit Life Ins. Co.*, 97 Minn. 27, 106 N.W. 84 (1906); *Hott v. Warner*, 268 Wis. 264, 67 N.W.2d 370 (1954) (Husband had a right to change the beneficiary but never exercised it. Held, wife had a vested interest. The court then applied the theory as set out in the Wallace decision).

6. *Donnelly v. Northwestern Life Ins. Co.*, 59 F.2d 46 (CAA 5th Cir. 1932); *Meyerson v. New Idea Hosiery Co.*, 217 Ala. 153, 115 So. 94 (1927); *Blethen v. Pacific Mut. Life Ins. Co.*, 198 Cal. 91, 243 Pac. 431 (1926); *Pendas v. Equitable Life Assur. Soc'y* 129 Fla. 253, 176 So. 104 (1937); *Bancroft v. West*, 128 Fla. 193, 174 So. 327 (1937); *New York Life Ins. Co. v. Kincaid*, 122 Fla. 283, 165 So. 553 (1936); *Moon v. Williams*, 102 Fla. 214, 135 So. 555 (1931); *Tromp v. Nat. Reserve Life Ins. Co.*, 143 Kan. 98, 53 P.2d 831 (1936); *Crice v. Illinois Life Ins. Co.*, 122 Ky. 572, 92 S.W. 560 (1906); *Rosman v. Travelers Ins. Co.*, 127 Md. 689, 96 Atl. 875 (1916); *Oetting v. Sparks*, 109 Ohio St. 94, 143 N.E. 184 (1923); *Smith v. Todd*, 155 S.C. 323, 152 S.E. 506 (1930); *Spaulding v. Mut. Life Ins. Co.*, 94 Vt. 42, 109 Atl. 22 (1920); 2 APPLEMAN, *INSURANCE LAW & PRACTICE* § 911 (1941); 2 COUCH, *CYCLOPEDIA OF INSURANCE LAW* § 308 (1929).

7. *Merchant's Nat. Bank v. Hubbard*, 220 Ala. 372, 125 So. 335 (1929).

8. *Prigg v. Commonwealth* 241 U.S. (16 Pet.) 539 (1842); *Crow v. Abraham*, 86 Or. 99, 167 Pac. 590 (1917); *Vulcan Iron Works v. Edwards*, 27 Or. 563, 36 Pac. (1894); *In re Heinemann's Will*, 201 Wis. 484, 230 N.W. 698 (1930); *Town of Stephenson v. Industrial Comm.*, 180 N.W. 842, 173 Wis. 251 (1921) (A claim means a demand of some matter of right made by one person upon another to do or forbear to do some act or thing as a matter of duty).

9. *Merchant's Nat. Bank v. Hubbard*, 220 Ala. 372, 125 So. 335 (1929). See *Grimm v. Grimm*, 26 Cal.2d 173, 157 P.2d 841 (1945) (This theory was discussed briefly, but the case was decided on the theory of the parties' intentions.)

10. *Backguard v. Carreiro*, 237 F.2d 459 (9th Cir. 1956); *Mayberry v. Kathan*, 232 F.2d 451 (D.C. Cir. 1953); *Parish v. Kasha*, 204 F.2d 451 (10th Cir. 1953); *Andrews v. Andrews*, 97 F.2d 485 (8th Cir. 1938); *Thorp v. Randazzo*, 41 Cal.2d 770, 264 P.2d 38 (1953); *Miller v. Miller*, 94 Cal. App.2d 785, 211 P.2d 357 (1949); *Grimm v. Grimm*, 26 Cal.2d 173, 157 P.2d 841 (1945); *Pate v. Citizens & Southern Nat. Bank*, 203 Ga. 442, 47 S.E.2d 277 (1948) (agreement was intended for the purpose of settling alimony); *Anderson v. Idaho Mut. Benefit Ass'n*, 77 Idaho 373, 293 P.2d 760 (1956) (insurance was not within the contemplation of the parties); *John Hancock Mut. Life Ins. Co. v. Dawson*, 278 S.W.2d 57 (Mo. 1955).

11. *Mayberry v. Kathan*, 232 F.2d 54 (D.C. Cir. 1956). See *Thorp v. Randazzo*, 41 Cal.2d 770, 264 P.2d 38 (1953) (agreement specifically mentioned policy and it was held that parties intended to include wife's expectancy interest. Wife failed to recover.)

12. *Parish v. Kasha*, 204 F.2d 451 (10th Cir. 1953); *Andrews v. Andrews*, 97 F.2d 485 (8th Cir. 1938); *John Hancock Mut. Life Ins. Co. v. Dawson*, 278 S.W.2d 57 (Mo. 1955). (Husband lived five years without changing beneficiary and parties had been married thirty years).

also governed by the intention of the parties.<sup>13</sup> It should be noted that in each of the minority cases the insurance policies were specifically mentioned in the property settlement agreement.

The disposition of the cases under consideration have been affected by various specific laws existing in different jurisdictions. In Kentucky, by statute,<sup>14</sup> the fact of divorce divests a wife of any interest she may have had in her former husband's insurance policies<sup>15</sup> unless she procured and paid for the insurance out of her own funds during marriage.<sup>16</sup> A different situation exists in those states which are governed by community property law.<sup>17</sup> It has been held that under community property law, the wife has a vested interest in one-half of the proceeds of a policy insuring the husband's life if the premiums were paid with community funds.<sup>18</sup> The insured husband cannot change the beneficiary without the wife's consent notwithstanding the fact that such right was reserved in the policy.<sup>19</sup> The rule is otherwise when National Service Life Insurance policies are involved.<sup>20</sup>

The court in the instant case determined the nature of the beneficiary's interest to be an expectancy. The insured remained the real owner of the policy. It was therefore determined that the beneficiary's interest was derived from the insured: as a result, any claim which the beneficiary had was against the insured and was released by the agreement. No analysis

13. *Backguard v. Carreiro*, 237 F.2d 459 (9th Cir. 1956); *Thorp v. Randazzo*, 41 Cal.2d 770, 264 P.2d 38 (1953).

14. KY. REV. STAT. § 403.060 (2) (1948) "Upon final judgment of divorce from the bonds of matrimony, each party shall be restored all the property . . . that he or she obtained from or through the other before or during the marriage and in consideration of the marriage."

15. *Miller v. Miller*, 266 Ky. 539, 99 S.W.2d 720 (1936); *Sea v. Conrad*, 155 Ky. 51, 159 S.W. 622 (1913). The fact that the husband failed to change the beneficiary as it was his right to do by express reservation does not give the wife any right to the proceeds, *Algee v. Algee*, 168 Ky. 362, 182 S.W. 197 (1916).

16. *Ficke v. Prudential Life Ins. Co.*, 305 Ky. 171, 202 S.W.2d 429 (1947). See Annot. 175 A.L.R. 1220 (1948).

17. Community property law is recognized in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

18. *Wissner v. Wissner*, 338 U.S. 655 (1950); *In re Coffey's Estate*, 195 Wash. 379, 81 P.2d 283 (1938); *Occidental Life Ins. Co. v. Powers*, 192 Wash. 475, 74 P.2d 27 (1937). See Annot. 114 A.L.R. 545 (1938).

19. *Metropolitan Life Ins. Co. v. Skov*, 51 F. upp. 470 (D.C. Or. 1943); *Grimm v. Grimm*, 26 Cal.2d 173, 157 P.2d 841 (1945); *Aaron v. Aaron*, 173 S.W.2d 310 (Tex. Civ. App. 1943); *Allen v. Brewster*, 172 S.W.2d 192 (Tex. Civ. App. 1943) *rev'd on other grounds*, 142 Tex. 127, 176 S.W.2d 311 (1943); *In re Towey*, 22 Wash.2d 212, 155 P.2d 273 (1945); *Jones v. Davis*, 15 Wash.2d 567, 131 P.2d 433 (1942); *King v. Prudential Life Ins. Co.*, 13 Wash.2d 414, 125 P.2d 282 (1942); *Occidental Life Ins. Co. v. Powers*, 192 Wash. 475, 74 P.2d 27 (1937). In an attempt to relieve this situation, the Washington legislature in WASH. REV. CODE § 48.18.440 (1951) provided:

"In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses."

20. *Wissner v. Wissner*, 338 U.S. 655 (1950); *Barton v. United States*, 75 F. Supp. 703 (S.D. Cal. 1948). See 26 WASH. L. REV. 61 (1951).

of the meaning of "claim" was attempted in the majority opinion, although the comprehensiveness of the term was noted. The court concluded that the parties' intention was to include the life insurance policies in the separation agreement. To determine this intent the court considered the object the parties had in view and the nature of the agreement; that is, a final and complete property settlement to be incorporated into the divorce decree.

The dissent pointed out the correct meaning of "claim"; that is, a legal claim, a demand of right. It further noted that the wife's mere expectancy was not a property right, and not within the purview of "all claims." With reference to the parties' intention, the dissent noted that the settlement agreement made no specific reference to the insurance policies although the scope of the agreement was comprehensive.

The court in the instant case reached a decision contrary to that reached in the majority of cases. It is submitted that while the final result based on the intent of the parties was correct, the basic theory of the court that an expectancy is released by a release of all claims is incorrect. The error of the court was its attempt to correlate a vested right with an expectancy. It was correctly reasoned that when the beneficiary has a vested right he is the real owner of the policy and any claim he might have is against the insurer and not the insured. Such a policy would not be included in a release of all claims against the insured. The court erred in continuing to reason that when the beneficiary has an expectancy the insured is the true owner of the policy. Consequently any claim the beneficiary has is against the insured and is waived by the agreement. The weakness of such reasoning lies in the correlation. While a beneficiary with a vested right has a claim against the insurer, the beneficiary with an expectancy, rather than having a claim against the insured has no claim at all. He has nothing but a hope.

A property settlement agreement is a contract and should be governed by the intention of the parties. It is suggested, however, that all existing circumstances should be considered in determining this intention, and a court should not limit itself to the four corners of the instrument or to a few isolated circumstances. In the case under examination the court recited that its consideration was limited to the four corners of the instrument. One could wonder if facts not contained within the agreement affected the court's conclusion regarding the parties' intent. These facts are: the insured died three months after the divorce; the insured had made an appointment to change the beneficiary; and among the insured's possessions was found a notation to make a new will and change insurance policy beneficiaries. With these facts as a basis, it is difficult to avoid the conclusion that the court reached the correct destination, however uncertain its route.

MURRAY GOLDMAN