Washington and Lee Law Review

Volume 15 | Issue 1 Article 8

Spring 3-1-1958

Forgotten Insurance Policies In Divorce Cases

which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpoena, discovery or inspection *until said witness has testified on direct examination* in the trial of the case."[58]

In conclusion, it would seem fair to say that the rule declared in *Jencks* was neither drastic nor novel, but in reality involved the clarification of principles already established.[59] It is hoped that any procedural weakness in the decision, or any concern with regard thereto, has been alleviated by the recent Congressional enactment on this subject. Although pre-trial disclosure in this field has been prohibited by the new law, both the *Jencks* case and the attendant legislation, properly applied, should preserve to the criminal defendant the due process of law granted by the fifth amendment.[60]

J. HARDIN MARION, III

FORGOTTEN INSURANCE POLICIES IN DIVORCE CASES

The determination of rights to life insurance proceeds, subsequent to divorce, is the basis for unnecessary litigation.[1] The cases usually arise as a result of the former wife remaining as the named beneficiary following a property settlement between the parties. Special significance attaches to this problem where the decree of divorce incorporates a property agreement which does not refer to insurance.

The Wisconsin case of *Spalding v. Williams*[2] points up the complexity of such a situation. At the time of divorce, after three years of marriage, Doris Williams Spalding and Raymond Spalding entered into a stipulation covering their property. The judgment of divorce incorporated this stipulation, which was intended to be a full, final

[58]Pub. L. No. 269, 85th Cong., 1st Sess. § 3500(a) (Sept. 2, 1957), 18 U.S.C.A. § 3500(a). (Emphasis added).

[59]"The Jencks case does not introduce any revolutionary principles into the trial of criminal cases. The case enunciates a simple, fair and quite limited rule." United States v. Palermo, 21 F.R.D. 11, 14 (S.D.N.Y. 1957).

[60]See 103 Cong. Rec. 15052-55 (daily ed. Aug. 29, 1957).

[1]It is the basis for settlement even more than for litigation. See Moody, Insurance in Divorce Cases: Unsettled Rights Mean Future Litigation, 41 A.B.A.J. 315 (1955), for practical suggestions from the general attorney for a large life insurance company for solving insurance problems subsequent to a divorce.

[2]275 Wis. 394, 82 N.W.2d 187 (1957).

and complete property settlement, in lieu of alimony, between the parties. The wife was to receive specified personal effects and cash, while the husband assumed certain financial responsibilities and was awarded all the rest of the property. There was no listing of the specific property awarded to the husband. Neither the property stipulation nor the divorce decree referred to the insurance policies which became the subject of litigation. Sixteen days after the divorce, the husband was killed in an automobile collision. Two insurance policies were found in the glove compartment of the wrecked automobile. The policies contained clauses reserving the right to change the beneficiaries upon notification in writing to the company. In them the wife was named as the primary beneficiary and Charles Spalding, Raymond's father, was named as the contingent beneficiary. The wife refused to release her claim to the proceeds. Thereupon the father, individually and as administrator of the estate of Raymond F. Spalding, commenced an action against the former wife and the insurance companies for the proceeds. Under an agreement of all parties to the proceedings the insurance companies paid the proceeds into court pending termination of the action and were dismissed as party defendants.[3]

The Supreme Court of Wisconsin held that the policy provision for a change of beneficiary was not exclusive. The wife could divest herself of her interest by her own act under certain circumstances as provided by statute.[4] Moreover, another section gives a court having jurisdiction of such property in a divorce action the power to "divide and distribute the estate, both real and personal, of the husband and so much of the estate of the wife as shall have been derived from the husband, between the parties and divest and transfer the title of any thereof accordingly...."[5] The court states that her interest in the insurance policies is property obviously *derived from the husband,*[6] since it was he who originally named her as beneficiary and thereafter possessed the power to name a new beneficiary.

The wife's interest in the insurance policies, the court noted, was subject to reinstatement by the husband. Not only was there no show-

[3]The nature of the insurance business makes it probable that many of these cases will arise in federal courts. See Fed. R. Civ. P. 22 for applicability of interpleader in the federal system. See also 28 U.S.C. §§ 1335, 1397, and 2361 (1952), to which Rule 22 is an addition rather than a limitation. A statement of requisites in order to invoke the Federal Interpleader Act is given in Federal Life Ins. Co. v. Tietsort, 131 F.2d 448 (7th Cir. 1942), cert. denied, 318 U.S. 768 (1942).

[4]Wis. Stat. § 246.11 (1955).

[5]Wis. Stat. § 247.26 (1955).

[6]82 N.W.2d at 189.

ing of the husband's intention to give the wife an interest, but the action of the deceased in placing the policies in the glove compartment of his automobile showed a contrary intention. This action, according to the court, was sufficient to compel "an inference that he did so with the intention of changing the beneficiary."[7] The court distinguished several recent Wisconsin cases which would have indicated a contrary result. It was held in *Wolfe v. Jebe*[8] that the contingent interest of the wife as the beneficiary of her husband's life insurance was not properly the subject of a property stipulation and such an instrument could give him no greater rights than he already enjoyed—the right to change the beneficiary. Under *Hott v. Warner*,[9] if the right to change the beneficiary has not been exercised at death, then the named beneficiary's position is analogous to a beneficiary under a policy in which no right to change the beneficiary has been reserved. In the principal case, emphasis was placed on the short time lapse of only sixteen days between the divorce and death, while in the previous cases, periods of thirteen years, in *Wolfe v. Jebe*, and seven years, in *Hott v. Warner*, had expired.

In the absence of a statute[10] or a contrary provision in the policy, all courts agree that divorce is not ipso facto sufficient to bar a former

---

[7]Id. at 190.

[8]242 Wis. 650, 9 N.W.2d 124 (1943).

[9]268 Wis. 264, 67 N.W.2d 370 (1954). See Christman v. Christman, 163 Wis. 433, 157 N.W. 1099, 1100 (1916), decided under a 1915 statute, which held the wife's interest to the proceeds vested at death. Therefore, that court decided the former husband's attempt to name a new beneficiary by his will was unsuccessful.

[10]Different results are realized through statutes. Ky. Rev. Stat. § 403.065 (1955) makes possible the restoration of property obtained directly or indirectly from or through one spouse back to that spouse. It has the effect of depriving the wife of any right to insurance proceeds. For a criticism of this statute see Note, 34 Ky. L. Rev. 221 (1946), which questions the applicability of such a statute to insurance. Mo. Rev. Stat. § 452.090 (1949) deprives the guilty party of property derived from and by virtue of the marriage. Mich. Stat. § 552.101 (1948) divests the wife by operation of law in all instances where the parties to the divorce have failed to take advantage of the opportunity to make an agreement between themselves as to the ownership of the policy. This statute is discussed in the text at n. 40. Texas is the only state having a statute that requires a continuing insurable interest in order for the beneficiary to take the proceeds. However, Tex. Rev. Stat. Ann. Insurance Code, art. 3.49-1 (Vernon Supp. 1954), has mitigated the drastic effect of the Texas rule by allowing a beneficiary who originally had an insurable interest to take the proceeds, although the insurable interest is terminated before the policy matures. The first case to construe the new Texas statute was McCain v. Yost, 284 S.W.2d 898 (Tex. 1955). The effect of that case on Texas law is discussed in Note, 34 Tex. L. Rev. 1099 (1956). For a text survey of statutory enactments see 2 Couch, Cyclopedia of Insurance Law § 440h at 1272-1275 (1929).

spouse from recovering.[11] There is no doubt that the wife may surrender her rights as beneficiary by an express agreement with the husband.[12] Voluntary settlements between the parties are favored by the law and if free from fraud, misrepresentation, deceit or concealment are usually upheld.[13] However, courts have reached divergent results when determining the wife's remaining rights to the insurance proceeds where property settlements are the substance of these actions.[14] Courts must consider two related problems: first, whether rights to insurance proceeds expected at a future date are properly the subject of the agreement;[15] and, secondly, whether the

[11]Federal Life Ins. Co. v. Tietsort, 131 F.2d 448 (7th Cir. 1942), cert. denied, 318 U.S. 768 (1942); Tromp v. National Reserve Life Ins. Co., 143 Kan. 98, 53 P.2d 831 (1936); Wallace v. Mut. Benefit Life Insurance Co., 97 Minn. 27, 106 N.W. 84 (1906); Kurtz v. Dickson, 194 Va. 957, 76 S.E.2d 219 (1953); 2 Couch, Cyclopedia of Insurance Law § 440h at 1271 (1929); 1 Richards, Insurance § 108 (5th ed. 1952); Note, 34 Ky. L. Rev. 221 (1946); Annot., 175 A.L.R. 1220, 1224 (1948); Annot., 52 A.L.R. 386, 389 (1928); 29 Am. Jur., Insurance § 1309 (1940).

[12]Western and Southern Life Insurance Co. v. Hague, 140 N.E.2d 89 (Ohio C.P. 1956); 1 Richards, Insurance § 108 (5th ed. 1952); 29 Am. Jur., Insurance § 1309 (1940). See 140 N.E.2d, supra, at 91, which quotes from 29 Am. Jur. 977-78, stating that the power of a former spouse to relinquish rights to insurance policies on a former spouse's life is a well recognized exception to the general rule that divorce does not affect the right of a former spouse to take the proceeds as beneficiary at maturity. See also United Benefit Life Insurance Co. v. Price, 46 Wash. 2d 529, 283 P.2d 119, 122 (1955), questionably relying on Meherin v. Meherin, 99 Cal. App. 2d 596, 222 P.2d 305 (1950), as holding that the wife may divest herself by agreement of all interest as beneficiary, although no divorce follows the agreement and no power is reserved to change the beneficiary. Some courts consider the agreement either as an equitable assignment of the proceeds or an estoppel. See Prudential Insurance Co. of America v. Quay, 115 F. Supp. 63, 67 (S.D. Cal. 1953).

[13]The validity of these agreements is conditioned upon the wife's being fully apprised of the nature and extent of the marital rights she is surrendering. Connecticut General Life Insurance Co. v. Hartshorn, 238 F.2d 417 (9th Cir. 1956); 27 C.J.S., Divorce § 301 (1940); see Brown v. Brown, 265 S.W.2d 484 (Ky. 1954). The burden of proving all the required elements rests upon the party relying on the agreement. Potter's Ex'r v. Potter, 234 Ky. 769, 29 S.W.2d 15 (1930). See also Annot., 27 A.L.R.2d 883 (1953).

Once the property agreement is incorporated into the divorce decree, it becomes more than an agreement between the parties; it is a judicial disposition of the property with the rights of the parties thereafter resting on the court decree rather than on the property agreement. The decree vests title in the designated spouse and simultaneously divests the other spouse of all interest in the property. United Benefit Life Insurance Co. v. Price, 46 Wash. 2d 529, 283 P.2d 119 (1955).

[14]See Annot., 175 A.L.R. 1220, 1230 (1948); Annot., 52 A.L.R. 386, 400 (1928); 2 Couch, Cyclopedia of Insurance Law § 440h at 65, notes 17-20 (Supp. 1957); Lindey, Separation Agreements and Ante-Nuptial Contracts § 18 at 181 (Cumm. Supp. 1954-57); 1 Richards, Insurance § 108 (Cumm. Supp. 1956).

[15]Generally, the significant language will be whether the separation agreement purports to include all property that "he may own," "arose out of the marital relationship," or is in fact broad enough to cover "the entire estate of the former

language in the particular agreement under consideration is adequate to be interpreted as a waiver of such rights by the beneficiary.[16]

The courts seem to have some difficulty[17] in defining the nature of the wife's interest, but the better reasoned decisions have held that her interest in a policy naming her as beneficiary, subject to revocation, is only an expectancy.[18] Her position is analogous to that of a

---

spouses." The first clause is seen in Hott v. Warner, 268 Wis. 264, 67 N.W.2d 370 (1954). The second clause is illustrated in John Hancock Mutual Life Insurance Co. v. Soluri, 134 F. Supp. 86 (S.D.N.Y. 1955), and in Hergenrather v. State Mut. Life Assur. Co. of Worcester, 79 Ohio App. 116, 68 N.E.2d 833 (1946). The final all-inclusive clause is represented in Spalding v. Williams, 275 Wis. 394, 82 N.W.2d 187 (1957), and in Western and Southern Life Insurance Co. v. Hague, 140 N.E.2d 89 (Ohio C.P. 1956), which also discusses the difference between the last two clauses. However, as pointed out in the Hague case, supra, at 93, the problem of the forgotten insurance policy cannot be solved without considering the collateral facts in conjunction with the language of the agreement. Also see the text at n. 24-28.

[16]See text at n. 30-33. Many of the cases cited in this note are from jurisdictions having community property laws. However, when the wife is the named beneficiary under her husband's life insurance policies, the policy and also the proterest to the wife. If the designation of a beneficiary is subject to change by the ceeds become the wife's separate property. Although the premiums come from community property, it is presumed that the husband has made a gift of his ininsured, her rights do not become perfected until his death. An exception to the general rule exists in Texas, where the proceeds are held to be the separate property of the husband. 1 de Funiak, Principles of Community Property §§ 79, 123, and 233 (1943). Moreover, when the court's decree in granting a divorce to the parties takes notice of an outside agreement to settle the community property interests, such a decree is a final determination of the relative rights to the community property and is not subject even to collateral attack. 1 de Funiak, supra, at § 231. See Grimm v. Grimm, 26 Cal. 2d 173, 157 P.2d 841, 842 (1945), where it was held that the former wife could waive her community interests in the policy and still take the proceeds as the named beneficiary. For a comprehensive survey, by states, of the community property system and its effect upon life insurance principles, see Annot., 168 A.L.R. 342 (1947), supplementing Annot., 114 A.L.R. 545 (1938). For material thoroughly treating the whole field of life insurance within community property states, see Catlett, Status of the Proceeds of Life Insurance Under the Community Property System, 5 Wash. L. Rev. 45 (1930); Huie, Community Property Laws as Applied to Life Insurance, 17 Tex. L. Rev. 121 (1930), 18 Tex. L. Rev. 121 (1930). 1 de Funiak, supra, § 233 at 663 concludes that the problem is solved under the laws pertaining to insurance rather than under the rules of community property.

[17]Cf. Western and Southern Life Insurance Co. v. Hague, 140 N.E.2d 89, 91 (Ohio C.P. 1956), pointing to the rights the insured has in policies of insurance upon his own life as an additional source of difficulty.

[18]Baekgaard v. Carreiro, 237 F.2d 459 (9th Cir. 1956); Merchant's Nat. Bank of Mobile v. Hubbard, 220 Ala. 375, 125 So. 335 (1929); Sandrosky v. Prudential Insurance Co., 217 Cal. 578, 20 P.2d 325 (1933); Equitable Life v. Stilley, 271 Ill. App. 283 (1933); 29 Am. Jur., Insurance § 1276 (1940); Lindey, Separation Agreements and Ante-Nuptial Contracts § 18 at 332 (rev. ed. 1953). Cf. Cohen v. Samuels, 245 U.S. 50 (1917), in which the trustee in bankruptcy prevailed over the beneficiaries, securing the cash surrender value of policies in which there was a right to change the beneficiary.

legatee under a will, both of whom possess an expectancy of a gift at the time of death.[19] If at death, the insured has not taken advantage of his privilege to choose a new beneficiary, and the wife has not been otherwise deprived of her interest, his estate should not be allowed to exercise it for him to the detriment of the named beneficiary, whose rights became vested upon the happening of the event insured against.[20]

The *Spalding* court considered the wife's interest in the insurance proceeds as being *derived through the husband.*[21] However, courts that are hesitant to infer intent usually state that her rights arise from the contract of insurance itself[22] rather than the marital relationship.[23] Therefore, the beneficiary's interest is not the type of *property* contemplated in a property settlement,[24] but rather a type of interest whose alienation should be subject to the established principles of contract law.[25] Even these courts admit that the wife's right to the insurance proceeds may be abrogated by a property settlement.[26] But, as this right is not a *property* right it is not embraced within an instrument purporting to settle marital rights unless specifically included, or the language used is strong enough necessarily to imply

---

[19]Baekgaard v. Carreiro, 237 F.2d 459 (9th Cir. 1956); Grimm v. Grimm, 26 Cal. 2d 173, 157 P.2d 841 (1945).

[20]Andrews v. Andrews, 97 F.2d 485 (8th Cir. 1938); John Hancock Mutual Life Insurance Co. v. Dawson, 278 S.W.2d 57, 61 (Mo. App. 1955); Equitable Life v. Stilley, 271 Ill. App. 283 (1933); Simmons v. Simmons, 272 S.W.2d 913 (Tex. Civ. App. 1954); cf. Western and Southern Life Insurance Co. v. Hague, 140 N.E.2d 89 (Ohio C.P. 1956).

[21]82 N.W.2d at 189.

[22]John Hancock Mutual Life Insurance Co. v. Soluri, 134 F. Supp. 86 (S.D.N.Y. 1955); Merchant's Nat. Bank of Mobile v. Hubbard, 220 Ala. 375, 125 So. 335 (1929); Hergenrather v. State Mut. Life Assur. Co. of Worcester, 79 Ohio App. 116, 68 N.E.2d 833 (1946); Simmons v. Simmons, 272 S.W.2d 913 (Tex. Civ. App. 1954).

[23]Federal Life Ins. Co. v. Tietsort, 131 F.2d 448 (7th Cir. 1942), cert. denied, 318 U.S. 768 (1942); Merchant's Nat. Bank of Mobile v. Hubbard, 220 Ala. 375, 125 So. 335 (1929); Tromp v. National Life Ins. Co., 143 Kan. 98, 53 P.2d 831 (1936); Wallace v. Mutual Ben. Life Ins. Co., 97 Minn. 27, 106 N.W. 84 (1906); Simmons v. Simmons, 272 S.W.2d 913 (Tex Civ. App. 1954); Kurtz v. Dickson, 194 Va. 957, 76 S.E.2d 219 (1953).

[24]Sandrosky v. Prudential Insurance Co., 217 Cal. 578, 20 P.2d 325 (1933); Equitable Life v. Stilley, 271 Ill. App. 283 (1933).

[25]John Hancock Mutual Life Insurance Co. v. Soluri, 134 F. Supp. 86 (S.D.N.Y. 1955); John Hancock Mutual Life Insurance Co. v. Heidrick, 135 N.J. Eq. 326, 38 A.2d 442 (1942); Hergenrather v. State Mut. Life Assur. Co. of Worcester, 79 Ohio App. 116, 68 N.E.2d 833 (1946); Kurtz v. Dickson, 194 Va. 957, 76 S.E.2d 219 (1953).

[26]See note 12 supra.

such an intention.[27] If not included, the rights arising from the policy must be determined at a later date as if the parties were never married.[28]

In deciding whether the parties have successfully terminated the wife's interest in the insurance policies, courts must consider each case on its own facts,[29] keeping several general rules in mind. This is stressed in *Miller v. Miller*,[30] which reviews the conflict in the California cases thus: "It would seem from these cases that, where such a settlement agreement covers all of the property of the parties and the wife, in accepting certain provisions for her benefit, fully releases the husband with respect to all other property, such a release would ordinarily cover and include her interest as named beneficiary under an insurance policy; and that where the language used is not broad enough to include such an interest, or where an intent appears to exclude such rights as a present part of the settlement, the wife will still take as beneficiary if the policy so provides."[31]

The intent of the parties is the criterion used in determining whether the wife's interest has been abrogated by the property agreement when the insurance policies are not specifically referred to therein.[32] This intent may be inferred from the wording of the agreement,

---

[27]Connecticut General Life Insurance Co. v. Hartshorn, 238 F.2d 417, 422 (9th Cir. 1956); Throp v. Randazzo, 41 Cal. 2d 770, 264 P.2d 38, 41 (1953); Miller v. Miller, 94 Cal. App. 2d 785, 221 P.2d 357, 360 (1949). See In re Crane, 6 Cal. 2d 218, 57 P.2d 476, 104 A.L.R. 1101 (1936); Wallace v. Mutual Ben. Life Ins. Co., 97 Minn. 27, 106 N.W. 84, 86 (1906) (concurring opinion); Lindey, Separation Agreements and Ante-Nuptial Contracts § 18 text at n. 4 (rev. ed. 1953).

[28]Cf. Townsend v. Huntzinger, 41 Ind. App. 223, 83 N.E. 619, 620 (1908).

[29]Miller v. Miller, 94 Cal. App. 2d 785, 211 P.2d 357 (1949); United Benefit Life Insurance Co. v. Price, 46 Wash. 2d 529, 283 P.2d 119 (1955).

[30]94 Cal. App. 2d 785, 211 P.2d 357, 360 (1949).

[31]Ibid. This concept has been stated with much regularity. See Baekgaard v. Carreiro, 237 F.2d 459, 462 (9th Cir. 1956); Mayberry v. Kathan, 232 F.2d 54, 55 (D.C. Cir. 1956); Throp v. Randazzo, 41 Cal. 2d 770, 264 P.2d 38, 40 (1953).

[32]Miller v. Miller, 94 Cal. App. 2d 785, 211 P.2d 357, 360 (1949). The cases generally disclose that the courts are trying to carry out the intentions of the parties. Although not referred to in the decisions, courts seem to recognize the frailties of human behavior in negligently postponing matters such as making a change of beneficiary. Thus, if given any evidence from which they can infer an intention to change the beneficiary, courts are hesitant to rule otherwise. See Prudential Insurance Co. of America v. Quay, 115 F. Supp. 63, 66 (S.D. Cal. 1953). There the court held that the giving of a power of attorney by the former wife to her former husband to use in effecting a change of beneficiary, although never exercised, represented a sufficient excess of caution by the latter to negative any possibility that he desired his former wife to have the proceeds. But see John Hancock Mutual Life Insurance Co. v. Soluri, 134 F. Supp. 86, 88 (S.D.N.Y. 1955), which shows a reluctance to dispute the right of the beneficiary: " 'If a court were authorized to guess rather than to rule on the facts before it, one might surmise that the deceased

giving adequate consideration to its objective, and from circumstances regarding the relationship of the parties before, during, and after divorce.[33] Unless the wife's waiver of future expectancies is clearly expressed, or the language otherwise indicates such an intent, courts will not construe general clauses or phrases in settlement agreements as extinguishing her interest as beneficiary.[34]

If the insured failed to act following a property settlement agreement which refers to his existing right to change the beneficiary, courts will allow the former wife to continue as the named beneficiary and take the proceeds.[35] Moreover, if the separation agreement requires the wife to discharge certain duties to aid the husband in effecting a change of beneficiary, and he does not call upon her to perform,[36] or else he does not act to complete the transaction after she does perform,[37] then she is not barred from taking the proceeds. The theory evidently is that the agreement in such a situation gives the insured an option that *he may use* to control the ultimate ownership of the proceeds.[38] Provisions of this type do not force him to take any action, nor are they self-executing;[39] therefore, to change title to the proceeds by law after his death can frustrate the insured's true intention, or violate his undeniable right to grant more to his former wife as a matter of bounty.[40]

---

wife would not have intended that her former husband should continue to benefit from the supplementary contract. But even of that guess we cannot be too sure.... Perhaps it is just as well that we do not rely on the guess as distinguished from the fact for which there is evidence.' "

[33]Merchant's Nat. Bank of Mobile v. Hubbard, 220 Ala. 375, 125 So. 335 (1929).

[34]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). See In re Crane, 6 Cal. 2d 218, 57 P.2d 476, 104 A.L.R. 1101 (1936). See also United Benefit Life Insurance Co. v. Price, 46 Wash. 2d 529, 283 P.2d 119, 122 (1955): " 'A wife as beneficiary under an insurance policy retains her status as such unless it clearly appears from the agreement that in addition to the segregation of the property of the spouses, it was intended to deprive her of the right to take under the insurance contract as beneficiary. Such rights are waived only when it appears that the intention of the parties was directed to such expectancies and their intention to disclaim future rights that might develop from such expectancies was made clear in the contract.' "

[35]Grimm v. Grimm, 26 Cal. 2d 173, 157 P.2d 841 (1945).

[36]Ibid.

[37]John Hancock Mutual Life Insurance Co. v. Dawson, 278 S.W.2d 57 (Mo. 1955).

[38]Grimm v. Grimm, 26 Cal. 2d 173, 157 P.2d 841, 844 (1945).

[39]Ibid.

[40]Id. at 843. See In re Crane, 6 Cal. 2d 218, 57 P.2d 476, 478, 104 A.L.R. 1101, 1103 (1936), which is quoted in the Grimm case, supra, at 843 as follows: "If the testator had not executed this will until after the date of the property settlement agreement, it would not be reasonable to say that he was without right to make such subsequent will and thereby give additional property to his wife. But in substance and effect he did the same thing by leaving his will unchanged...."

Admittedly, attorneys should be careful to settle clearly and certainly the property rights of the parties to a separation agreement. However, the possibility of nondisclosure by clients in such instances should not be overlooked. It would seem that final responsibility for clearly administering the relative rights of separating spouses as to any insurance policies they may own, although not revealed, rests with the trial judges.

A statute requiring trial judges to incorporate into every decree of divorce a determination of all rights to any existing insurance on the husband's life would be a workable solution. Moreover, the problem of the forgotten insurance policy could be solved by having the statute operate to transfer ownership of the proceeds even though for some unexplained reason the decree remained silent as to insurance policies. Michigan has such a statute. There, the legislature has placed a *duty* on the courts in *every decree of divorce* to:

"[D]etermine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of the husband in which she was named or designated as beneficiary, or to which she became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, and unless otherwise ordered in said decree such policy or contract shall thereupon become and be payable to the estate of the husband or to such named beneficiary as he shall affirmatively designate."[41] Moreover, the Michigan statute does not prevent the

[41]Mich. Comp. Laws § 552.101 (1948). "552.101—Divorce decree; provision in lieu of dower; determination of rights of wife in insurance policy.

"Sec. 1. When any decree of divorce is hereafter granted in any of the courts of this state, it shall be the duty of the court granting such decree to include in it a provision in lieu of the dower of the wife in the property of the husband, and such provision shall be in full satisfaction of all claims that the wife may have in any property which the husband owns or may thereafter own, or in which he may have any interest.

"Hereafter every decree of divorce shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of the husband in which she was named or designated as beneficiary, or to which she became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, and unless otherwise ordered in said decree such policy or contract shall thereupon become and be payable to the estate of the husband or to such named beneficiary as he shall affirmatively designate: Provided, That the company issuing such policy or contract shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or on behalf of the insured or the estate of the insured or 1 of the heirs of the insured, or any other person having an interest in such policy or contract of a claim thereunder and the aforesaid divorce."