

AN INSURER'S DUTY TO INVESTIGATE

JOHN DWIGHT INGRAM*

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I. INTRODUCTION

“Life insurance policies are procured because life is, indeed precarious and uncertain.”¹ A buyer of insurance wants to provide for others in case of his² untimely death. Unfortunately, insurance on one’s life may have the unintended and undesirable effect of tempting a beneficiary to kill the insured in order to obtain the proceeds of the insurance policy.³

It is the universal rule in the United States that a murderer — and his heirs or other successors in interest — may not profit from

* John Dwight Ingram is a Professor of Law at John Marshall Law School; A.B., Harvard University, 1950; C.L.U., American College of Life Underwriters, 1957; J.D., John Marshall Law School, 1966. The valuable contributions of the author’s very capable Research Assistants — Chris Sulkson, Sara Busche, Erin Van Arkel, Shannon McGarrah — are gratefully acknowledged.

1. *Flood v. Fidelity & Guar. Life Ins. Co.*, 394 So. 2d 1311, 1313 (La. Ct. App. 1981).

2. When the gender for a personal pronoun could be either male or female, I use the masculine pronoun generically, due to habit and my masculine personal orientation. By doing so, I avoid the rather awkward “he or she” and the grammatically incorrect “they.” I trust that female authors will balance the scales on the other side.

3. *State v. Kimble*, 535 S.E.2d 882, 885 (N.C. Ct. App. 2000)(defendant was convicted of murder, conspiracy, and arson in connection with the death of his sister-in-law to collect life insurance proceeds).

his wrongful act by receiving any part of the victim's estate.⁴ "The principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing has long been applied to disqualify murderers from inheriting from their victims, whether the route of inheritance is a will, an intestacy statute, or a life insurance policy."⁵

At the time of the initial underwriting and issuance of a life insurance policy, and often later if there is a request to change the beneficiary, cancel the policy, or other administrative matters, there is always the danger that an insurer will act or fail to act in a way that may expose it to liability for negligence. A life insurer may incur liability if its negligent issuance of a policy or change of beneficiary results in the murder of, or injury to, the insured by the beneficiary — or someone acting on his behalf — in an attempt to obtain the proceeds of the policy.⁶

II. A DUTY OF INSURER TO INVESTIGATE

A. *In General*

It is generally held that any investigation made by an insurer is only intended for its own benefit, to determine whether to accept the risk offered and if so, at what premium. It is not done for the purpose of benefitting the insured or any third party.⁷

4. *Metro. Life Ins. Co. v. Pritchett*, 843 F. Supp. 1006, 1008 (D. Md. 1994) (where court applied federal law and explained "[t]he equitable maxim that one should not profit by his own wrongdoing . . . [.] known as the 'Slayer's Rule'"); *see also* *Ford v. Ford*, 512 A.2d 389, 391 (Md. 1986); *Moore v. Moore*, 186 S.E.2d 531, 533 (Ga. 1971); *Estates of Covert*, 717 N.Y.S.2d 392, 394 (N.Y. App. Div. 2000); *Diep v. Rivas*, 745 A.2d 1098, 1104 (Md. 2000); *State Farm Life Ins. Co. v. Davidson*, 495 N.E.2d 520, 521 (Ill. App. Ct. 1986).

5. *Prudential Ins. Co. of Am. v. Athmer*, 178 F.3d 473, 475-76 (7th Cir. 1999); *see also* *Cockrell v. Life Ins. Co. of Ga.*, 692 F.2d 1164, 1170 (8th Cir. 1982) (applying Arkansas law which required insurer to prove defendant intentionally shot insured with the intent to kill in order to be excluded under life insurance policy); *Wilkins v. Fireman's Fund Am. Life Ins.*, 695 P.2d 391, 392 (Idaho 1985). Public policy, even in the absence of a statute, bars a beneficiary who feloniously kills the insured from life insurance proceeds. *Neff v. Mass. Mut. Life Ins. Co.*, 107 N.E.2d 100, 102 (Ohio 1952).

6. Many states have enacted statutes codifying the common law rule that no one should be allowed to benefit from his own wrongdoing. *Salak v. Protective Life Ins. Co.*, 19 F. Supp. 2d 953, 956 (S.D. Iowa 1998) (Iowa legislature enacted Iowa Felonious Death Statute); *see also* *Moore v. State Farm Life Ins. Co.*, 878 S.W.2d 946, 947-48 (Tenn. 1994); *United Presidential Life Ins. Co. v. Moss*, 838 P.2d 1011, 1014 (Okla. Ct. App. 1992); *Napoleon v. Heard*, 455 A.2d 901, 903 (D.C. 1983).

7. *See, e.g., Gerace v. Liberty Mut. Ins. Co.*, 264 F. Supp. 95, 97 (D.D.C. 1966) (holding that insurer which inspects for its own protection to reduce risks does not incur liability to insured's employees or others; public policy favors such inspections, which help protect people, and would be discouraged if insurer held liable); *Starks v. Commercial Union Ins. Co.*, 501 So. 2d 1214 (Ala. 1987) (holding that contractor's general liability insurer has no duty to undertake safety inspection of insured premises for protection of member of general public).

In several cases, courts have held that insurers did not have a duty to investigate as part of their underwriting procedures. In *City of Amsterdam v. Lam*,⁸ the city sued a fire insurer for the city's costs in extinguishing an arson fire set by the insured.⁹ The city alleged that the arson was induced by overinsurance on the property.¹⁰ The court held that the insurer had no duty to third parties to avoid overinsurance.¹¹ It also found that representations of the insured's broker led the insurer to believe that the amount of insurance was justified, and had no duty to make further inquiry, although in fact the property really was not worth nearly as much as the amount of the insurance.¹²

Similarly, in *Fireman's Fund Insurance Company v. Superior Court of Sacramento County*,¹³ persons injured in the crash of a plane piloted by a student pilot sued the plane's liability insurer on the theory that the insurer should have discovered the pilot's lack of a license during its underwriting investigation, prior to the issuance of an insurance policy.¹⁴ The court held that, just as liability insurance may be issued to any vehicle owner, it is the same as to aircraft owners, and it would be impractical to impose on insurers a duty to check the certification status of any pilots of insured planes prior to issuance of the policy and throughout the policy term.¹⁵

Additionally, in *Galanis v. Mercury International Insurance Underwriters*,¹⁶ the surviving heirs of deceased airplane passengers sued insurers which had issued flight insurance policies to the suicide-murderer who caused the plane to crash.¹⁷ The plaintiffs alleged that since flight insurance might create a danger that a passenger would cause the plane to crash, the insurers were negligent in failing to screen, interview or observe the buyer, who was despondent and bent on self-destruction, or to check his financial condition, which was very poor.¹⁸

The court held that no such duty exists in connection with the issuance of flight insurance on the lives of passengers. The risk of not investigating must be weighed against the utility of selling flight insurance in the usual way.¹⁹ The court noted that plaintiffs

8. 703 N.Y.S.2d 606 (N.Y. App. Div. 2000).

9. *Id.* at 608.

10. *Id.*

11. *Id.* at 609.

12. *Id.*

13. 142 Cal. Rptr. 249 (Cal. Ct. App. 1977).

14. *Id.* at 251.

15. *Id.* at 255-56.

16. 55 Cal. Rptr. 890 (Cal. Ct. App. 1967).

17. *Id.* at 892.

18. *Id.*

19. *Id.* at 894.

had conceded that, over the past thirty years, in eighteen airline bomb incidents, insurance was “established as a possible factor in [only] 5.”²⁰ Thus, the risk involved in selling flight insurance without an investigation into the mental and financial condition of prospective purchasers was minimal, and the balance clearly favored the social utility of selling flight insurance and the benefit to the public of being able to buy it.²¹ The court further noted that flight insurance, unlike ordinary life insurance, serves the needs of hurried travelers, who can buy insurance at an airport quickly with minimal paperwork. If flight insurers had to investigate, they would not be able to sell flight insurance, “which has achieved public acceptance and upon which the air traveler has come to rely.”²²

B. Where Innocent Third Party Victims of Insured's Negligence Would Not Be Compensated

In *Barrera v. State Farm Mutual Automobile Insurance Company*,²³ an injured pedestrian sought to recover from a liability insurer the amount of her judgment against the insurer's motorist-insured. The insurer denied liability because of misrepresentations in the insured's application for insurance as to a prior suspension of his license and prior probations.

The court concluded that an automobile liability insurer must make a reasonable investigation of insurability within a reasonable time from the issuance of the policy.²⁴ This is for the benefit of injured third persons. Here, the insurer saved minor costs at the expense of the public. Similar to *Galanis v. Mercury International Insurance Underwriters*,²⁵ the *Barrera* court based its decision on a weighing and balancing analysis, weighing the cost of obtaining information from the Department of Motor Vehicles and elsewhere, the availability of relevant information, and the administrative burden on the insurer against the importance of protecting innocent members of the public.²⁶ The court had no difficulty finding that the protection interest unquestionably outweighed the minimal burden of investigation.²⁷ The court also made clear that the beneficiaries of this rule would only be innocent third parties, not the misrepresenting insured.²⁸ After paying the amount of a

20. *Id.*

21. *Id.*

22. *Id.* at 894-95.

23. 456 P.2d 674, 677-79 (Cal. 1969).

24. *Id.* at 677. Some states have adopted the same rule by statute

25. 55 Cal. Rptr. 890 (Cal. Ct. App. 1967).

26. 456 P.2d at 690.

27. *Id.* at 685, 689.

28. *Id.* at 689.

judgment to the injured third party, the insurer may sue the insured for damages.²⁹

III. LIABILITY OF A LIFE INSURER FOR ITS NEGLIGENCE IN ISSUING A POLICY

A. *Insurer's Negligence is Proximate Cause of Injury to, or Murder of, Insured.*

In several cases, courts have held life insurers liable to the insured or his heirs on the grounds that the insurers' negligence was the proximate cause of the insured's injury or death. In *Overstreet v. Kentucky Central Life Insurance Company*,³⁰ the beneficiary was convicted of procuring the insured's murder.³¹ In holding that the insured's estate had a cause of action for wrongful death, the court stated that an insurer, "has the duty to use reasonable care not to issue a policy . . . in favor of a beneficiary who has no interest in the continuation of the life of the insured."³² A breach of this duty "is the proximate cause of the death of the insured if the trier of fact finds that this result was reasonably foreseeable."³³ In *Overstreet*, the insurer's agent accepted the application for insurance knowing that the proposed beneficiary had no insurable interest³⁴ in the insured's life. The insurer declined to issue a policy due to lack of insurable interest. The agent then suggested naming the insured's estate as beneficiary, and then changing it to the proposed beneficiary after the policy was issued, and this was done.³⁵

In *Life Insurance Company of Georgia v. Lopez*,³⁶ the insured claimed that the insurer's negligence had endangered his life and caused him injury.³⁷ The total annual family income was about \$9,000, but between 1974 and 1977 the insured's wife obtained policies on his life totaling \$130,000, plus double indemnity for accidental death; the annual premiums were \$7,464.³⁸ The insured did not know of the purchases; he was tricked into signing the

29. *Overstreet v. Ky. Cent. Life Ins. Co.*, 950 F.2d 931 (4th Cir. 1991) (applying Virginia law).

30. *Id.* at 934.

31. *Id.*

32. *Id.* at 936 (quoting *Liberty Nat. Life Ins. Co. v. Weldon*, 100 So. 2d 696, 708 (Ala. 1957)).

33. *Id.* One has an insurable interest in the life of another if one will benefit from the continuance of the other's life, or suffer loss if the other's life should end.

34. *Id.*

35. *Id.*

36. 443 So. 2d 947 (Fla. 1983).

37. *Id.* at 948.

38. *Id.*

forms, believing his wife was buying health insurance.³⁹ In 1977, he heard “his wife and her brother plotting to kill him.”⁴⁰ He called the insurance agent and told him, but no inquiry was made by the insurer.⁴¹ A few months later his wife and her brother tried to drown him, but he was rescued by a passing sheriff.⁴² The insured alleged the insurer should have discovered the disproportion of coverage to family finances, and it should have investigated the murder conspiracy after getting actual notice.⁴³

The court held that an insurer can be liable where the beneficiary tries to murder the insured to collect the policy proceeds and the insurer had actual notice of the beneficiary’s murderous intent.⁴⁴ Notice of the beneficiary’s intentions “should have triggered an investigation which would [quickly have discovered] the disproportion between the insured’s economic worth to the beneficiary dead and alive, the insured’s lack of consent . . . and the financial impossibility of” paying premiums for very long.⁴⁵

Such an aggravation of suspicious circumstances must surely impose on [an insurer] a duty to eliminate any motive for effecting the insured’s death, if not by withdrawing the coverage as void for reasons of public policy, then at least by warning the beneficiary that no proceeds would be payable if she in fact murdered the insured. Knowledge that the insurance company was aware of the plot and would scrutinize the insured’s ‘accidental’ death would surely serve as a deterrent to the accomplishment of the evil purpose.⁴⁶

The court further concluded that to absolve the insurer would let it collect premiums with a high probability of avoiding payment.⁴⁷ The insurer could “make book” that murder would occur to its benefit, and that would be unconscionable.⁴⁸ As to this latter point, the dissent correctly points out that while it’s true that the insurer wouldn’t have to pay the wife, it would have to pay the contingent beneficiary.⁴⁹ So the insurer would only benefit if the policy was

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 949.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 951 (Boyd, J., dissenting). The dissent also argued that there was no allegation

void *ab initio* due to the wife's fraudulent intent, and there was no allegation that the wife was already planning murder when the policies were applied for.⁵⁰

In a much older case, *Liberty National Life Insurance Company v. Weldon*,⁵¹ there were policies totaling \$6,500 on the life of a child who was about two-and-a-half-years-old at the time of her death. The applicant and beneficiary on the policies was the child's aunt-in-law, who murdered the child.⁵² Suit against the insurer for wrongful death was brought by the child's father, whose theory was that the applicant-beneficiary had no insurable interest in the child's life, that the insurers knew or should have known that, and their negligence was a proximate cause of the murder of the child to collect the insurance proceeds.⁵³ Judgment for the father for \$75,000 was affirmed, the court stating that the amount of recovery under the wrongful death statute was intended to serve as punishment and deterrence.⁵⁴

The insurers argued that the beneficiary is presumed to know the law, that the policies were illegal and void, due to no insurable interest;⁵⁵ hence, those policies could not have been an inducement to kill.⁵⁶ However, the court found that, since the beneficiary was convicted of the murder of the child, she must have thought the policies were valid and collectible, and this was the motive for murder.⁵⁷ The "jury was well justified in finding that none of" the insurers made a reasonable effort, before issuing the policies, to ascertain whether the beneficiary had an insurable interest in the child's life.⁵⁸

The court held that a life insurer has a duty to use reasonable care not to issue a life insurance policy in favor of a beneficiary who has no insurable interest.⁵⁹ Murder of the child was reasonably foreseeable, and the insurers created a situation which "afford[ed] temptation to a recognizable percentage of humanity to commit murder."⁶⁰

that the insurer's negligence was the proximate cause of the insured's injury. *Id.* at 952.

50. *Id.*

51. 100 So. 2d 696, 700 (Ala. 1957).

52. 49 *Id.*

53. *Id.*

54. *Id.* at 713.

55. *Id.* at 701. The court held that the aunt-niece relationship does not provide an insurable interest, and the beneficiary here was only an aunt-in-law. *Id.* at 704. An in-law does not sustain an insurable interest. *Id.*

56. *Id.* at 701

57. *Id.* at 705.

58. *Id.*

59. *Id.* at 708.

60. *Id.* at 711.

B. Foreseeable?

When an insurer fails to fulfill its duty to use reasonable care to avoid issuing a policy where the beneficiary has no interest in the continuation of the life of the insured, that breach of duty will be deemed the proximate cause of the death of the insured if that result was reasonably foreseeable.⁶¹ Foreseeability should be readily established where the insurer had actual notice of the beneficiary's murderous intent.⁶² And the murder of the insured can be found to be foreseeable to the insurer where the beneficiary had no insurable interest in the insured's life, and the insurer knew or should have known that, since there is clearly a danger in such a situation that the beneficiary will murder the insured in hopes of collecting the insurance proceeds.⁶³

IV. INVESTIGATE INSURABLE INTEREST OF OWNER AND/OR BENEFICIARY

A. Incentive to Murder Insured

Most states require that the applicant/owner of a life insurance policy, when that person is not the insured, have an insurable interest in the life of the insured. Certain close family relationships, such as spouse and parent-child, are presumed to create an insurable interest.⁶⁴ Where the applicant/owner does not have a presumed insurable interest, the requirement may also be satisfied if that person has a pecuniary interest in the continuation of the insured's life. For example, in *Henry v. Lincoln Income Life Insurance Company*,⁶⁵ the insured's aunt purchased insurance on her nephew's life because he was indebted to her for loans.⁶⁶ Even if the aunt was not presumed to have an insurable interest, she did have a pecuniary interest in the continuation of the insured's life until his loans were repaid.⁶⁷

61. *Overstreet v. Ky. Central Life Ins. Co.*, 950 F.2d 931, 936 (4th Cir. 1991).

62. *Bodine v. Fed. Kemper Life Assur. Co.*, 912 F.2d 1373, 1374 (11th Cir. 1990); *see also* *Life Ins. Co. of Ga. v. Lopez*, 443 So. 2d 947, 949 (Fla. 1983).

63. *Liberty Nat. Life Ins. Co. v. Weldon*, 100 So. 2d 696, 700 (Ala. 1957). Allowing any person of lawful age to procure insurance on his own life for the benefit of anyone else. N.Y. INS. LAW. § 3205(b)(1) (2002).

64. Sometimes this is extended to include siblings and grandparents, but rarely farther.

65. 405 S.W.2d 167 (Tex. Civ. App. 1966).

66. *Id.* at 168.

67. *Id.* at 169-70.

The rationales for requiring insurable interest were succinctly reannounced by the court in *New England Mutual Life Insurance Company v. Null*:⁶⁸

[I]t is contrary to a sound public policy to permit one, having no interest in the continuance of the life of another, to speculate upon that other's life— and it should be added that to permit the same might tend to incite the crime of murder * * and that the rule is enforced, and the defense permitted, not in the interest of the defendant insurer, but solely for the sake of the law, and in the interest of a sound public policy[.]⁶⁹

And even where there is pecuniary insurable interest, the *Null* court stated:

It is well settled that “to allow the creditor to procure insurance greatly exceeding the amount of the debt might be to tempt him to bring the debtor's life to an unnatural end, and thus contravene the principle of public policy which has been seen to lie at the very basis of the doctrine of insurable interest[.]”⁷⁰

B. Insurer's Duty Before Issuing Policy

[M]urder is such a serious crime that [it] is against public policy not to discourage any act which even marginally increases the risk that a murder will be attempted. We therefore refuse to hold that an insurance company has no liability if it negligently issues an insurance policy which acts as a [sic] incentive for a murder or attempted murder. The increased risk caused by the negligent issuance of life insurance may be slight, but it is certainly foreseeable.⁷¹

68. 605 F.2d 421 (8th Cir. 1979).

69. *Id.* at 423-24 (quoting from *Henderson v. Life Ins. Co. of Va.*, 179 S.E. 680, 692 (S.C. 1935)).

70. *Id.* at 424 (quoting from *Lakin v. Postal Life and Casualty Ins. Co.*, 316 S.W.2d 542, 551 (Mo. 1958), quoting Vance on Insurance, 3d ed., § 32).

71. *Williams v. John Hancock Mut. Life Ins. Co.*, 718 S.W.2d 611, 613 (Mo. Ct. App. 1986). While this imposition of duty on an insurer would be approved by most, if not all, courts in regard to the issuance of ordinary life insurance policies, a small risk of inducing murder/suicide by an aircraft passenger was held to be insufficient to create a duty in

As the court pointed out in *Liberty National Life Insurance Company v. Weldon*,⁷² the insurable interest requirement is not to protect insurers. It is “to protect human life. Policies in violation of the insurable interest rule are not dangerous because they are illegal; they are illegal because they are dangerous.”⁷³ Practically all courts recognize that “an insured is placed in a position of extreme danger where a policy of insurance is issued on his life in favor of a beneficiary who has no insurable interest.”⁷⁴

C. Consent of Insured Required?

An important protection for the insured against murder by a beneficiary is the usual requirement that the insured must give his consent in writing when another person procures insurance on his life.⁷⁵ An exception is usually allowed where the insured is a minor below a certain age.⁷⁶ Many states also make an exception when a spouse procures insurance on the other spouse.⁷⁷

Apparently no such spousal exception was available in *Ramey v. Carolina Life Insurance Company*,⁷⁸ in which the insured brought an action for his injuries resulting from the insurer’s negligence in issuing a policy on his life, without his knowledge or consent,⁷⁹ which named his wife as beneficiary. She then gave him arsenic in an attempt to kill him and collect the proceeds.⁸⁰

The court recognized that, “[a]s a general rule, a wife has an insurable interest in the life of her husband.”⁸¹ However, a policy “taken out on the life of another, without the latter’s consent, is against public policy and void, even though the applicant has an insurable interest in the insured’s life.”⁸² The public policy

connection with the issuance of flight insurance, being outweighed by the social utility and public benefit in having such insurance available on a commercially feasible basis. *Galanis v. Mercury Int’l. Ins. Underwriters*, 55 Cal. Rptr. 890, 894-95 (Cal. Ct. App. 1967).

72. 100 So. 2d 696, 708 (Ala. 1957).

73. *Id.*

74. *Id.*

75. *See, e.g.*, N.Y. INS. LAW § 3205(c)(2002).

76. *See, e.g.*, N.Y. INS. LAW § 3205 (c)(2) (providing an exception for insureds under age of fourteen years and six months).

77. *See, e.g.*, N.Y. INS. LAW § 3205 (c)(1). This is based on a legislative recognition of the apparent belief of some spouses — usually husbands — in their own immortality, or at least long life, and their resulting unwillingness to provide insurance protection for the pecuniary loss their families would suffer in the event of their untimely death.

78. 135 S.E. 2d 362 (S.C. 1964).

79. *Id.* at 363. He alleged that his signature on the insurance form was forged, and that the insurer knew this.

80. *Id.* at 364.

81. *Id.*

82. *Id.* (quoting *Moseley v. Am. Nat. Ins. Co.*, 166 S.E. 94 (S.C. 1932), quoting Joyce on Insurance, 2d ed., § 2509D).

rationale for this rule is the same as the rationale for requiring an insurable interest “to protect human life.”⁸³

D. Insured Requests Cancellation

Most of the cases alleging negligence of an insurer have involved negligence at the time of issuing the policy, but a few have alleged negligence in refusing to cancel a policy after the insurer becomes aware that there is a danger that the beneficiary will murder the insured.

In *Bodine v. Federal Kemper Life Assurance Company*,⁸⁴ the insured's corporate employer was the beneficiary of a key man life insurance policy. The FBI uncovered a plot to murder the insured; one of the insured's “partners” in the company was behind the plot.⁸⁵ The insured called the insurer on November 7, 1983, and demanded that it cancel the policy. Besides this actual notice of the murder plot and the likely motive, the insurer also received verification from law enforcement personnel, or could have upon appropriate investigation.⁸⁶ Yet the insurer did nothing prior to December 6, 1983, when the insured's new attorney made another demand to cancel, which the insurer finally did on December 7, 1983.⁸⁷ The attorney was then notified of the cancellation, but the insured had gone into hiding and did not learn of the cancellation until February 28, 1984.⁸⁸ The court affirmed a jury verdict that the insurer was liable to the insured for its negligence “with respect to the request to cancel the insurance policy.”⁸⁹

In *Life Insurance Company of Georgia v. Lopez*,⁹⁰ the insured claimed that the insurer's negligence had endangered his life and caused him injury. He alleged that he told the insurer's agent of a plot by his wife-beneficiary and her brother to kill him, but no investigation was made by the insurer.⁹¹ The court held that an insurer can be liable where the beneficiary tries to murder the insured to collect the policy proceeds and the insurer had actual notice of the beneficiary's murderous intent.⁹² The insurer clearly had “a duty to eliminate any motive for effecting the insured's

83. *Id.* at 366-67 (quoting *Liberty Nat. Life Ins. Co. v. Weldon*, 100 So. 2d 696, 708 (Ala. 1957)).

84. 912 F.2d 1373, 1374 (11th Cir. 1990).

85. *Id.* The court used the words “partner” and “partners,” though presumably they were fellow officers and shareholders in the corporation.

86. *Id.*

87. *Id.*

88. *Id.* at 1374-75.

89. *Id.* at 1375.

90. 443 So. 2d 947, 948 (Fla. 1983) (where insured overheard wife and brother-in-law plotting to kill him and he told insurer, but insurer did nothing).

91. *Id.*

92. *Id.* at 949.

death, ...[either] by withdrawing the coverage as void for reasons of public policy, ...[or] at least by warning the beneficiary that no proceeds would be payable if she . . . murdered the insured.”⁹³

However, in *Meehan v. Transamerica Occidental Life Insurance Company*,⁹⁴ when the insured sought cancellation of policies owned by his former wife after she was convicted of attempting to murder him, the trial court’s refusal to do so was affirmed on appeal. The court reasoned that there was no proof of any conspiracy to kill the insured or any actual danger caused by the existence of the policies.⁹⁵ There was no reason to assume that his former wife would try again, and even if she succeeded she could not recover the proceeds, providing a good reason for her to not try again.⁹⁶ The court also pointed out that cancellation would destroy the interest of the contingent beneficiaries — the insured’s children — and there was no allegation of wrongdoing by them.⁹⁷

The result in *Meehan* seems to be based on very weak assumptions. Is it likely that the ex-wife knew that a murderer cannot collect the insurance proceeds? Might she never be prosecuted or convicted for the murder? And even if she were, that wouldn’t save the insured! The court properly recognized the interest of the contingent beneficiaries, but those interests could have been protected better by a court order eliminating the ex-wife as a beneficiary and promoting the children to primary beneficiaries in her stead, while continuing the policies in force.

E. Conclusion

Insurers should recognize the fact that they may be held liable if they are negligent in the initial underwriting and issuance of a policy, or when there is a request to change the beneficiary, cancel the policy, or some other administrative matter. They should be very sure that they exercise due care in such procedures.

93. *Id.*

94. 499 N.E.2d 602, 603 (Ill. Ct. App. 1986).

95. *Id.* at 604.

96. *Id.*

97. *Id.*