

1889

Change of Beneficiary in Contracts of Mutual Benefit Life Insurance

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T H E S I S .

C H A N G E O F B E N E F I C I A R Y

I N C O N T R A C T S O F

M U T U A L B E N E F I T L I F E I N S U R A N C E .

— B Y —

MYRON M. CRANDALL,

Class of '89,

C. U. L A W S C H O O L .

(June, 1890.)

In the case of the Central Bank of Washington v. Hume, 128 U.S. 195, the court in its opinion said,—"It is a general rule that a life insurance policy, and the money to become due under it, belong the moment it is issued to the person named in it as beneficiary, and that there is no power in the person procuring the insurance, by any act of his, by deed or will, to transfer to any other person the interest of the person named."

The rule as laid down by the Supreme Court is applicable to the contract of insurance between the ordinary life insurance company and the insured for the benefit of a third party. In such case the beneficiary becomes a party to the contract, and has a vested right to the amount which by the terms of the policy is to be paid to him on the death of the assured, and the rule would likewise be applicable to a contract of mutual benefit life insurance when other conditions are not imposed by the rules and regulations of the society.

We have, therefore, the general principle, that in the absence of expressed or implied provisions to the contrary, a third party beneficiary to the contract, has a vested right therein, and the company and the insured cannot

change the beneficiary without his consent.

And, secondly, if there is nothing in the contract by-laws, policy, or statutes giving to the company and the assured, or either of them a right to change a beneficiary, the same principle applies.

To this effect the courts have cited the case of Lawrence v. Fox, 20 N.Y. 268, which holds that "an action lies on a promise made by the defendant upon valid consideration to a third person for the benefit of the plaintiff, although the plaintiff was not privy to the contract."

But wherever there is a provision in the constitution and by-laws of a mutual benefit society, or in the statute, allowing a change of beneficiary at the will of the insured member, that provision becomes a part of the contract between the insurer and the insured, and the beneficiary receives a right to the death fund subject to that contingency; and there being no other objection the beneficiary's interest becomes vested upon the death of the member.

"A mutual benefit society is not a life insurance company in the restricted sense in which that term is used in our statute in relation to life insurance com-

panies, nor is a certificate of membership in such society a policy of life insurance in the same restricted sense of the term; yet it is manifest that such membership certificate is in the nature of a mutual life insurance policy. x x x x x Such contracts are therefore subject to the rules of law governing life insurance policies, except so far as those rules must be held to be modified by the peculiar organization, objects, and policy of such societies."

MARTIN v. STUBBINGS, 18 N.E. Rep. (Ill.) at p. 660.

Benevolence and charity being the admitted purpose of mutual benefit life insurance companies, and change of beneficiary, under certain restrictions, being thought in accord with such purpose, the right has been generally *provided* for, by the statutes of the various states, and specifically set forth in the constitutions and by-laws of such associations, so that nearly all, and as appears from the cases reported, all mutual benefit societies have made provision in their constitutions and by-laws as limited by the statutes, which vary their rights in this respect from that of regular life insurance companies.

"The right to change the contract by the mutual agreement of the parties is not derived from the charter

and by-laws, but may be either directly or impliedly limited thereby. Unless the power to change is thus limited, the beneficiary named in a certificate of membership has no vested interest in the fund prior to the death of the member."

MASONIC MUT. BEN. SOC. v. BURKHART, (Ind.) 11 N.E. Rep. 449, 10 Id. 79

In farther explanation of this exception to the general rule we adopt the language of a learned judge of the Supreme Court of New York, who said,—"The certificate is not a chose in action like an ordinary policy of insurance of life or property, in which the right of property may vest, but it is subject to the terms of the executory contract in which it vests, and to the modification in the particular respect which the member in the manner prescribed may direct and require to be made. The certificate is not therefore an executed contract during the life of the member in the sense required to make it an effectual promise to him within the principle of *Lawrence v. Fox*; supra.

SABIN v. GRAND LODGE A.O.U.W., 6 N.Y.S.R. 151 at p. 156.

(Same case again before the General Term, and affirmed in 8 N.Y. Supp. 185).

And in another case in New York upon the same question of vested interest of beneficiary the court said,—"That

this has been the policy of the law in this state in respect to policies of life insurance is undoubtedly true, and if the same rules are to apply to the certificate in question which have obtained in respect to such policies the point would be well taken. But there are two differences in the case at bar which seem to show that the point cannot be taken. In the first place by the laws of the defendant the right to change a relief fund certificate after its issuance is expressly recognized where provisions made for such change, and the issuance of a new certificate upon the surrender of the old one; and in the second place, by the express provisions of section 18 of chapter 175 of Laws of 1883, which by section 16 is made applicable to associations organized in another state, but doing business in this, the right to effect such a change is obligatory upon such association, and the right is given to make such change without the consent of the beneficiary. These circumstances take the case out of the ordinary rule governing the construction of life insurance policies, in respect to which such features have not existed, and the legislation referred to shows that the policy of this state in respect to the certificates of benefit issued

by associations similar to the defendant is that the beneficiary shall take no vested right by the issuance of the certificate."

LUHRS v. SUPREME LODGE K. & L. OF H., 7 N.Y. Supp. at p. 488. The foregoing principles have been followed with but little, if any variation in all the states. See, Knights of Honor v. Watson, (N.H.) 15 Atl. Rep. 125 & note; Wendt v. Legion of Honor, (Ia.) 34 N.W. Rep. 470; Union Mut. Aid Ass'n v. Montgomery, (Mich.) 38 N.W. Rep. 588; Lamont v. Legion of Honor, 31 Fed. Rep. 177 & note; Appeal of Beatty, (Pa.) 15 Atl. Rep. 861; Fisk v. Eq. Aid Union, (Pa.) 11 Atl. Rep. 84; Titsworth v. Titsworth, (Kan.) 20 Pac. Rep. 213 & note; Gentry v. Supreme Lodge, 23 Fed. Rep. 718; Presb. Assur. Fund v. Allen, (Ind.) 7 N.E. Rep. 317.

It has been contended that a creditor of an assured member, having been appointed beneficiary to the extent of the debt, or part of it, could not be removed by the assured, and a new beneficiary appointed without his consent. But the courts have universally held that a beneficiary creditor has no greater rights under this kind of contract than any other class of persons, his rights depending upon the same contingencies. The effect of any other ruling would be to a great extent to lessen, or

perhaps destroy the beneficial results of these benevolent organizations. And as a protection to this benevolent purpose the benefit fund cannot be attached by creditors of the insured, nor assigned to them, except in the latter case there is a mutual agreement with the company, when the provision of the constitution and by-laws exempting creditors from the benefit will be held to have been waived by the company.

And it has been held that it would not be fraud on a beneficiary's creditors where the insured changes his first beneficiary who is his wife, and appoints his children new beneficiaries, in order to prevent the fund from falling into the hands of his wife's creditors after his death. In the opinion to that case the court said, - "If the wife had a vested interest, such as could pass the title, there is no reason why the benefits might not have been garnished prior to the husband's death. If this could be done, it would virtually annul the entire object of the association, and defeat the benevolent intention of the member by appropriating his means used in creating this fund to the payment of the debts of the beneficiary."

SCHILLINGER v. BOES, (Ky.) 3 S.W. Rep. 427.

While the constitution and by-laws of a mutual benefit association, and the statute through which it receives its power to do business, give the insured right to change a beneficiary at will, they frequently limit the range of charitable objects of the association, by requiring a selection of beneficiary from certain classes of persons which they enumerate. Such insurance contracts are said to be restrictive in their nature, and an appointment of a beneficiary outside of the stipulated classes will not be valid, at least as against a first named beneficiary.

If the selection is not of a person prohibited by the general rule of public policy, or by the statutes the company may waive a restrictive clause in its laws, and accept such unauthorized designation. In deciding questions upon this point the courts depend mostly upon the language of the constitution and by-laws, and the general statutory provisions.

The following extract from an opinion in the United States Circuit Court doubtless expresses the rule as adopted in most, if not all the states as to who may be a beneficiary under a mutual benefit life certificate.

"The Kentucky cases in which it has been held that the

member's power of appointment is limited to his family, or to some portion thereof, as a class, are cases in which such a limitation was found in the charter. xxxxxxxx

But the court of appeals of Kentucky, while so deciding, recognizes the principle that in these mutual benefit societies, the member may have as broad a range of choice in selecting his beneficiary as the organic law of his society gives him."

GENTRY v. SUPREME LODGE KNIGHTS OF HONOR, 23 Fed. Rep. 718.

Creditors compose the largest class restricted from beneficiary rights by such limitations. But the restrictions vary, and some contracts will be found quite as liberal as ordinary life insurance contracts. And where the conditions are liberal, questions of insurable interest, and of wagering contracts present themselves, as in the common life insurance.

For further information, see, *Maneely v. Knights of Birmingham*, (Pa.) 9 Atl. Rep. 41 & note; *Massey v. Mutual Relief Ass'n*, (N.Y.) 7 N.E. Rep. 619; *Pres. Assur. Fund v. Allen*, (Ill) 317; *Mitchell v. Grand Lodge*, (IA.) 30 N.W. Rep. 865 & cases cited; *Holland v. Taylor*, (Ind.) 12 N.E. Rep. 116; *Whitehurst v. Whitehurst*, (Va.) 1 S.E. Rep. 801.

It is the practice of mutual benefit life insurance

companies to provide some special manner in which a new beneficiary may be appointed. This form being part of the contract, the authorities hold that the association may demand a strict compliance with its terms in order that a valid change may be made. And in a recent New Jersey case where the question of strict compliance was discussed, the court said, - "It will be remembered that one of the complainant's by-laws expressly declares that no act of a member, done for the purpose of changing his beneficiary, shall entitle the new beneficiary to any benefit unless such act is in strict accordance with the laws of the corporation. This by-law constitutes a natural part of every contract made by the complainant with a member. Its obvious design is to keep the complainant constantly informed as to whom it will be liable in case of the death of the member, and thus prevent it from being subject to litigation by adverse claimants, and the consequent waste of its benefit fund. There can be no doubt about the power of the complainant to make such a regulation, nor that a proper regard for the best interest of its members requires that it should be faithfully observed. x x x x x x x x x x x x

The best considered cases on this subject are uniform

in holding that the by-law above recited constitutes an essential part of contracts like the one under consideration, and that no person can successfully assert a right to the fund payable on the death of a member unless he can show that he was appointed beneficiary of such member in the manner required by the contract, and that, in cases where the contract requires the assent of the corporation to his designation, he will acquire no right to the fund unless such assent is given." SUPREME COUNCIL AMER. LEGION OF HON. v. SMITH, 17 Atl. Rep. at p. 772. See also, Daniels v. Pratt (Mass.) 10 N.E. Rep. 166; Vollman's Appeal, 92 Pa. St. 50; Society v. Dupold, 101 Pa. St. 111; Knights of Honor v. Nairn, (Mich.) 26 N.W. Rep. 826; Association v. Brown, 33 Fed. Rep. 11.

But the courts have held that as it is a ~~mere~~ matter of form, and is for the sole convenience of the insurer they have the right to waive the formality, and from their actions before the death of the member insurers may be estopped even from setting up such formality. And where there has been a new benefit certificate issued for changing the beneficiary, application having been made in accordance with the by-laws of the union, and the president and secretary of the society have signed the cer-

tificate, and the seal of the supreme lodge has been placed upon it, it is not invalid because the officers of the subordinate lodge have not signed and affixed their seals to it. (Fisk v. Eq. Aid Union, (Pa.) 11 Atl. Rep. 84.)

The association will also be estopped from setting up such formality when justice would be sacrificed to mere form.

"Deceased procured a certificate of insurance in an organization, making his betrothed the beneficiary, but retaining the certificate in his possession. She marrying another, and the certificate having been lost, he made a statement of the loss, and applied for a re-issue of the certificate, making his son the beneficiary. Such application was refused, - the rules of the organization requiring the change to be indorsed on the original certificate; but, by the advice of the officers of the organization, he attempted to make the change of beneficiary by giving power of attorney to another to collect the amount which should accrue under the certificate. Held, that such ~~change~~ acts constituted an equitable change of beneficiary, and that the son was entitled to the fund."

GRAND LODGE v. CHILD, (Mich.) 38 N.W.Rep.1.

In the above case the court thought that the loss of the certificate was not the fault of the assured. That after its loss there was an impossibility of complying with the rules as laid down in the by-laws of the order. And that assured having done all he could to make a new designation, and his son being more justly entitled to the fund than the first named beneficiary, the maxim ought to apply that "Equity will consider that done which ought to have been done."

(For general investigation, see, *Wendt v. Legion of Honor*, 34 N.W.Rep.470; *Mayer v. Eq. Res. Fund*, 2 N.Y. Supp. 79; *Masonic Relief Ass'n v. Laudenbach*, 5 N.Y. Supp. 901; *Martin v. Stubbings*, (Ill.) 18 N.E.Rep.657; *Knights of Honor v. Watson*, (N.H.) 15 Atl.Rep.125.).

In considering the question of strict compliance with the form prescribed for change of beneficiary, among other exceptions to the rule, it has been held that in certain cases change of beneficiary by will may be valid. The rules and regulations of mutual benefit associations often provide for change by will; but even when the association accepts such change, expressly or impliedly, where not provided for in the contract of insurance,

it is estopped from insisting on the prescribed form.

However, in either case a change cannot be valid as against former beneficiaries unless the designation of a new beneficiary by will is accepted by the company, either expressly or impliedly, before the death of the member. But though it be the desire of the association to carry out the ^{intent} ~~desire~~ of the assured in regard to a change, by will or otherwise, yet such associations have not the power to consider such change made if there has not been a substantial agreement and acceptance on the part of the insurer and assured.

"The will of L. bequeathed the sum in question to his mother or, in the event of her death, to his brother.

This was in no manner brought to defendant's knowledge until after the testator's death. Held, that this did not operate as a new designation." (Hellinberg v. I.O. of B.B. 94 N.Y. 580.) And, in another case the court said, -

"It is controlled by the contract as it was at the death of the assured." But in speaking of the waiver of the contract by the company, the court concluded that there was no proof ^{that} ~~of~~ the intent of assured to make a new designation was assented to by the company. (Wendt v. Legion of Honor, Ia., 34 N.W. Rep. 470.)

"M. became a member of an organization engaged in the business of life insurance upon the assessment plan, and received a certificate payable to his wife. Upon his wife's death M., who had never had any children, made no change in the certificate, but shortly after executed a will bequeathing the insurance in question to the daughter of his wife by a former marriage with whom he resided, and on the day after its execution sent the will to the proper officer of the lodge, and at about the same time apprised the reporter of the lodge of its contents. The will was returned by the lodge without objection. At M's. death the lodge refused to pay the money, under a provision in its constitution that in the event of the death of the beneficiary, before the decease of the member, if he shall make no other disposition thereof, the benefit shall be paid to the heirs of the member, and if no person shall be entitled to receive such benefit by the laws of the order, it shall revert to the widow and orphan fund. Held, that under all the circumstances M. made a sufficient disposition of the fund within the meaning of such provision; and that, if this were not so, the retention of the will by the officers of the lodge without objection to the form or manner

of designation was waiver of any defect or irregularity in such designation or disposition."

KEPLER v. SUPREME LODGE, 10 N.Y.S.R. 383, 45 Hun 274. See also, Sup. Council v. Perry, (Mass.) 5 N.E. Rep. 634; Kaiser v. Kaiser, 13 Daly 522; Olmstead v. Mason. Mut. Ben. Soc., (Kan.) 14 Pac. Rep. 449; Holland v. Taylor, (Ind.) 12 N.E. Rep. 116; Daniels v. Pratt, (Mass.) 10 N.E. Rep. 186; Hellenberg v. I.O. of B.B., 94 N.Y. 580.

Assignment of a mutual benefit certificate is but another irregular form of changing a beneficiary. The usual rules governing other irregular changes therefore apply to assignments. And where the contract provides for a change of beneficiary without his consent, a beneficiary by assignment would be subject to removal the same as any other person in similar contracts.

Notice of assignment should be given to the company, and if not given till after the death of the member insured, it will be invalid, and the beneficiary by assignment cannot claim a waiver on part of the company, as a defense to an action by a former beneficiary under the certificate properly appointed.

*The constitution of a mutual benefit association permitted a change ofx in the beneficiary, but provid-

ed that it "must" be done on a prescribed form of blank, the signature to which should be attested before a notary, and the change entered on the books. It also provided that, at ~~length~~, benefits should be paid "to the person designated in the application for membership, as shown by the books, or as ordered by last will." An applica^{tion}~~tion~~ for membership named his wife as beneficiary in his application, and her name was so entered on the books. His application also set out that the receipt of the party to whom he designated his death loss to be paid should discharge the association. He subsequently executed a paper assigning his policy to one of his creditors as collateral security; but no application for a change was made to the association, nor was the assignment made ~~for the~~ upon the prescribed blank, nor had the association any notice of it until after the death of the member intestate, when both the widow and the assignee claimed the benefits. Held, on bill of interpleader, that the widow was entitled to the fund."

ASSOCIATION v. BROWN, 33 Fed. Rep. 11. See also, Lamont v. Legion of Honor, (supra); Wendt v. Legion of Honor, (supra); Grand Lodge v. Child, (supra); Martin v. Stubblings, (supra); Association v. Montgomery, (supra); Bloom-

ington Association v. Blue, 11 N.E. Rep. 331; Lamont v. Association, 30 Fed. Rep. 817.

There has been considerable discussion, and some diversity of opinion as to whether the rules laid down in the laws of a mutual benefit association, stating the manner in which new beneficiaries are to be appointed, shall in all cases be strictly construed and enforced. This depends principally upon the parties to the action.

In one case the court said, - "We know that there is some seeming conflict of authority on this question, and it may be suggested that the contrariety of opinion found in the books, if carefully examined and traced to their sources, will be found to have originated in the differences of the parties to ~~the~~ actions of this character."

TITSWORTH v. TITSWORTH, (Kan.) 20 Pac. Rep. at p. 216.

In an action by or against the company, on a question of attempted change of beneficiary, it has the right, unless estopped, to insist on a strict compliance with the form prescribed. This is so because these rules are ~~some~~ ~~of the~~ terms of the contract. And the adjudications upon the subject hold that a strict enforcement, in most cases, is reasonable, and for the good of the association as well as those who receive its benefits.

But where the company, assuming that the fund is due to

someone, pays the money into court, and by bill of interpleader substitutes one of the contesting beneficiaries, in its place, it is held to have waived its right to insist upon the particular mode of designation, and where an irregular though substantial change of beneficiary has been made, with the knowledge of the insurers, and without their objection, and before the death of assured, the beneficiary first named cannot insist upon a strict compliance with the rules, because his interest was subject to defeasance at the will of the company and assured, by the terms of the contract, and if the contract allowed a change, it could be accomplished in whatever manner they agreed upon, the usual mode being waived.

But where the assured makes an attempted change which is not assented to, either expressly or impliedly, by the insurers, before his death, or even if the change is but slightly defective and the company has not assented to it, the first named beneficiary who has been properly designated, having acquired certain rights on the death of the member, may insist on a strict conformity to the contract, even though the company is willing to carry out the intention of the deceased member.

But in *Knights of Hon. v. Nairn*, (supra), the court said,

"It is possible x x x that when a member has executed and delivered to the reporter his attested surrender, in favor of a competent beneficiary, his death, before a new certificate was rendered, may leave his power of designation so far executed as to enable a court of equity to relieve as against the accident."

The above principles governing the performance of rules for change of beneficiary, are derived from an examination of all the cases on the subject, including change by testamentary provision, change by assignment, and other irregular methods. They do not appear to have been laid down in a collective form in any adjudicated case thus far cited in the digests.

Recent enactments giving the assured ~~power~~ enlarged powers in changing his beneficiary, have been the cause of a nice discussion as to whether rights of a beneficiary appointed under the provisions of a former statute, are lessened or taken away by subsequent enactments restricting such beneficiary's rights. The conclusion reached in the courts of Massachusetts, and it has not been established otherwise in the courts of other states, is, that such rights are not lessened by the

enactment of such statutes, and they may operate upon certificates issued before their enactment, as well as after.

And secondly, whether the additional powers are, or ~~are~~ are not incorporated into the laws of the society, any use of them by a member which is acquiesced in by the company, will be valid.

This can only be where the beneficiary has such a right under the contract as may be defeated at the will of the company and the assured. And the courts have argued that the beneficiary in a contract of this kind, not having a vested interest in the fund, cannot be said to be injured in respect to his rights under the contract, by a subsequent enactment giving the member enlarged powers of designation.

"At the time of issuing a certificate of membership in a beneficiary corporation the statute in force (Public Stat. Mass. c. 115, par. 8,) authorized such corporations to establish a fund for the purpose of assisting "the widows, orphans, or other persons dependent upon deceased members." Statute 1882, c. 195, enlarged the powers of such corporations by adding to the class of beneficiaries "other relations" of deceased members. It did not

appear that defendant corporation had formally adopted the provisions of the latter statutes, but it stood ready to pay the fund to the plaintiff, the mother of the member, who had substituted her as beneficiary in place of his wife, after the passage of that statute. Held that, it could not be objected that the corporation was not authorized to make such disposition of the fund."

And in the opinion to this case, the court said,

"All that a beneficiary has during the life of the member who holds the certificate is a mere expectancy, which gives no vested right in the anticipated benefit, and is not property, as, owing to his right of revocation, it is dependent on the will and pleasure of the holder."

"As the beneficiary has only an expectancy, it would seem that a law changing the persons to whom benefits might be designated, and enlarging their number, would apply to certificates issued before it took effect, as well as to those subsequently issued."

MARSH v. SUPREME COUNCIL A.L.O.F.H., (Mass.) 13 N.E.Rep.840;

(Decided in 1889).

The court in this case overruled *Elsey v. Association*,

(Mass.) 7 N.E.Rep.840, and *Tyler v. Association*, (Mass.)

13 N.E.Rep.360, because in those cases the statute of

1882, referred to above, was not observed in the consideration of those cases.

The case of Supreme Council v. Smith, cited on page 11 of this thesis, arose from the ~~same~~ statute just referred to. The courts of New Jersey are not, as would at first appear, in opposition to the doctrine laid down in Marsh v. Supreme Council, (supra), though it would seem that if the learned judge who wrote the opinion in that case, had read the opinion to Marsh v. Supreme Council, he would not have based his authority upon the two overruled cases mentioned above, the lateness of both the Massachusetts case, and the New Jersey case probably accounts for the oversight.

In the former case the company stood ready to pay the benefit to the beneficiary newly appointed from the additional class which the statute of 1882 contained.

In the latter case the company refused to accept the newly designated beneficiary, so in that case the first named beneficiary was not legally superseded, there having been no agreement between the company and the member as to the second named beneficiary. The following is an extract from the opinion to Sup. Council v. Smith.

"When the complainant first acquired corporate existence,

its power over its benefit fund was limited to making contracts to pay the fund to the widows and orphans of deceased members and other persons dependent on deceased members. As already stated, its power was enlarged in 1882 so as to give~~ix~~ it capacity to make contracts to pay its fund to other relatives of deceased members besides widows and orphans. But in making its contract with M. Henry Smith it did not exercise this enlarged power. x x x x x The complainant undoubtedly had capacity, when it made the contract in question, to agree to pay other relatives of Smith than those constituting his family, but the question is not what contract the complainant might have made, but what contract did it make? In my judgment, M. Henry Smith had no right or power under the contract, to appoint his brother, Thomas, his beneficiary without the consent of the complainant; and, as it appears that the complainant refused to consent to such an appointment, it must be held that Thomas has no right to the fund in question." See also, *Byrne v. Casey*, (Tex.) 8 S.W. Rep. 38; *Order of Forrester v. Callahan*, (Mass.) 16 N.E. Rep. 14; *Supreme Council v. Morrison*, (R.I.) 17 Atl. Rep. 57; *Splawn v. Chew*, 60 Tex. 534; *Legion of Hon. v. Perry*, (Mass.) 5 N.E. Rep. 634.

As appears from the cases, contracts of ordinary, and mutual benefit life insurance differ from each other in consequence of additional provisions in the latter contract.

Primarily they are the same, unless a distinction is made in regard to their purpose.

But from the nature of mutual benefit life insurance, the practice has necessarily been to insert conditions in the contract whereby the vested interest which a beneficiary would ordinarily get, is made contingent upon the will of the company and the member, and only vests when the death of the member places an obstacle in the way of farther action.

Upon the question of vested interest, therefore, depends the right of a member of a mutual benefit society to change his beneficiary, and it runs through most every point in this subject.

Myron M. Crandall.

