2014 EASTERN CLAIMS CONFERENCE
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SHOW ME THE MONEY – NAME THEM, FIND THEM, PAY THEM!

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On the surface, it seems so easy. When an individual procures a life insurance policy, he or she simply needs to let the insurer know who to pay in the event of their death. Although insureds may understandably agonize over the initial decision of who should receive this bounty—a spouse, child, sibling, friend, charity, or trust—the actual *act* of designating the beneficiary is straightforward and the insurer's subsequent payment should be relatively simple, right?

Ideally, yes. In a perfect world, the insured competently designates a beneficiary and goes on to maintain a peaceful and uneventful existence. In such a situation, insurers face little adversity when it comes time to pay the insured's named beneficiary. Unfortunately, however, reality all too often intrudes and forces the insurer to navigate a convoluted labyrinth in determining the proper recipient of the policy's proceeds. Insureds fail to properly designate a beneficiary or try to change the beneficiary without adhering to the policy's requirements. Insureds go through a divorce but fail to remove their ex-spouse as beneficiary, sign an ambiguous divorce decree, or consent to a problematic qualified domestic relations order. States expand the pool of eligible marriage applicants. A beneficiary kills the insured. A beneficiary lacks a legally sufficient relationship to the insured. The elderly suffer abuse. A minor is designated as beneficiary. An insurer faced with having to litigate multiple claims is forced to file an interpleader action. This paper is intended to identify for insurers the current legal framework affecting beneficiary designations to help them find the holiest of grails: the proper beneficiary.

I. Manner of Designating & Changing Beneficiaries

A. Documents—Applications, Plan Documents.

If an insured does not designate life insurance beneficiaries, or if she outlives all her primary and contingent beneficiaries and the policy does not otherwise prescribe beneficiaries, such as the insured's spouse, child, or siblings, the policy benefits will likely be paid to the insured's estate. That, however, is likely to necessitate expensive probate proceedings and could increase the estate's tax liability and reduce creditor protections.[1] Accordingly, at the outset, insurers should encourage insureds to identify contingent beneficiaries in addition to primary beneficiaries. Insurers should also carefully scrutinize an insured's attempt to designate a class of people as beneficiaries, such as "my spouse" or "children born to me," which could cause complications if the insured enters into a same-sex relationship or adopts or has a child out of wedlock.[2] Where an insured seeks to change its beneficiary designation, an insurer can avoid problems by making the process as simple and straightforward as possible.

The process for changing beneficiaries is usually governed by a provision in the policy itself as well as potentially by statute, though some state statutes may provide how a beneficiary may be changed, even if a policy does not.[3] Common requirements include: the insured's execution and submission to the insurance company of a written request to change a beneficiary, identifying the new beneficiary, and the insurance company's receipt of and consent to the request, or its approval of the request by endorsement or recording in its records.[4] Some insurers may also require that the signatures on a change of beneficiary request be witnessed.[5] A typical change of beneficiary provision may look like one of the following:

> **Change of Owner or Beneficiary.** During the Insured's lifetime, the Owner or the Beneficiary may be changed from time to time by written request. Such a change will take effect as of the date the request is signed, whether or not the Insured is living when the request is received at the Home Office, and shall be subject to any payment made or other action taken by the Company, as provided in this Policy, before such request is received at the Home Office.

> **Change of Beneficiary.** You may change Your beneficiary designation at any time by completing the appropriate change request form, and submitting it to Us. Your written request for change of beneficiary will not be effective until it is recorded by Us. After it has been so recorded, it will take effect on the later of the date You signed the change request form or the date You specifically requested. If You die before a change has been recorded, We will not alter any payment that We have already made. Any prior payment shall fully discharge Us from further liability in that amount.

Most insurance companies also require an insured to complete a specific "Change of Beneficiary" form to ensure all the necessary information and formalities are followed and that the beneficiary change will be valid.

B. Level of Compliance

1. Strict Versus Substantial

Ultimately, the specific requirements of a change of beneficiary provision may not matter if there is at least substantial compliance with the policy provisions. Some courts do require strict compliance with the terms of the insurance contract to change a beneficiary. For example, Louisiana generally requires strict compliance and only recognizes the substantial compliance doctrine in two very limited circumstances.[6] Louisiana courts will apply the substantial compliance doctrine only if (1) the original beneficiary wrongfully interfered with the insured's attempt to comply with policy requirements, or (2) the insured complied but the insurance company did not complete some internal procedure.[7] Florida is also a strict compliance state because it rejects "the notion that equitable arguments can trump the express terms of the contract agreed to by the parties . . . ."[8]

Other courts will enforce a change of beneficiary if the insured substantially complied with policy requirements[9] because, as the United States Court of Appeals for the Seventh Circuit has held: "technical requirements will not defeat the clear and manifested intention" of the insured.[10] Substantial compliance typically requires that the insured show (1) sufficient intent to make the change of beneficiary and (2) positive action towards effecting that end.[11] One court has also mandated that the insured show (3) that there be no prejudice to the insurer.[12]

2. Substantial Compliance Examples

Disputed beneficiary situations typically involve an insured who attempts to change the policy beneficiary but fails to complete the change prior to his or her death. Courts that apply the substantial compliance doctrine examine the facts of the case to determine whether the insured showed sufficient intent and committed some positive action toward the change of beneficiary. The following examples depict situations where courts have found substantial compliance:

- An insured did not submit formal written notice of his change of beneficiary, but the court, applying the federal common law doctrine of substantial compliance because the state version of substantial compliance law was preempted by ERISA, found substantial compliance because the insured intended to change his beneficiary and took several reasonable steps to that end, including signing a dual-purpose form that added his step-daughter to his medical insurance and changed the beneficiary of his life insurance from his son to his new wife and calling the agent to request the change, even though the insurer did not complete the change on its end and through its own fault.[13]

- An insured failed to complete the beneficiary designation portion of the form, but the court found substantial compliance because a memo attached to the enrollment form instructed the insured to complete all the areas marked "X" on the attached form, the insured completed all sections marked with an "X" but there was no "X" next to the beneficiary designation portion of the form, and the insured clearly intended to change the beneficiary to his parents.[14]

- The insured committed errors in the execution of the change of beneficiary form: he had checked the box for a policy other than the one that covered him. The court found substantial compliance because the insured indicated on the form that he wished to change his beneficiary designation, he designated new beneficiaries, the insurer's enrollment center sent the insured a letter confirming he mailed the form as required and did not inform the insured of his error in completing the form.[15]

- The insured failed to mail his change of beneficiary form before his death. The court found substantial compliance because two eyewitnesses, including an agent of the insurer, established that the change of beneficiary forms had been completed and signed, the decedent had changed the beneficiary on two other policies in favor of wife, and the decedent in the past had relied upon his secretary to forward all change of beneficiary forms to the head office.[16]

- The insured did not comply with the policy requirement of a request for a change of beneficiary to be in writing, but the court found substantial compliance because the insured evidenced her intent to change beneficiaries on her policy by making an oral request to her employer's agent and the overt action of changing the beneficiary of her accident policy to the same new intended beneficiaries. The court also found that the insured did everything to the best of her ability to change the beneficiary, namely requesting change of beneficiary forms, which the insurer did not have and was unable to provide before the insured died.[17]

Still, an insured's incomplete efforts to change beneficiaries does not always amount to substantial compliance. Courts in the following circumstances held that an insured did not substantially comply with the necessary change of beneficiary requirements:

- The insured completed a change of beneficiary form, changing the beneficiary from his wife to his children, 15 months before he died but did not submit the form to the insurer. The court analyzed several factors, noting that the unreasonable delay in submitting to the insurer may have manifested a change in the insured's intention, the disposition of the insured's other assets had no impact on the intent analysis, and the children could present no evidence that the insured sent or attempted to send the form to the insurer.[18]

- The insured executed a holographic will that left all his insurance benefits to his father and voided his previous bequests to his former wife, but there was no evidence that the insured made any attempt to change the policy's beneficiary designation during the seven years between his separation from his former wife and his death or that he was physically or mentally incapable of attempting to substantially comply with the policy's requirements.[19]

- The insured completed a form designating the beneficiary but placed the form in a dresser drawer in his apartment.[20]

- The insured obtained change of beneficiary forms, he never completed the forms and never submitted them to his insurance agent after apparently regaining his health and returning to work.[21]

- The insured originally signed a card designating his wife as beneficiary, but later asked an employee of the group policyholder to change the beneficiary by whiting out the insured's wife's name and writing in the name of another beneficiary. The insured did not substantially comply with the change in beneficiary requirements, according to the court, because he did not sign the card when the change was made.[22]

II. Situations Commonly Leading to Disputes

A. Divorce

1. Statutes Automatically Revoking Beneficiary Designations Upon Divorce

It is perhaps unsurprising that an insured would designate his or her spouse as the beneficiary on a life insurance policy. However, naming a spouse as beneficiary carries with it a number of potentially irksome issues in the event a couple divorces and the insured fails to change her beneficiary designation.

A number of states responded to this dilemma by promulgating statutes that automatically revoke a spouse as beneficiary following a divorce. The rationale behind these rules is that that the parties no longer care to provide for one another and the failure to remove an ex-spouse as beneficiary results not from a desire to support one's former partner, but rather from the insured's disinclination to accept the possibility of his or her own death.[23] Although application of the automatic revocation statutes was typically limited to wills prior to the 1990s,[24] a significant number of states now apply the statutes to life insurance policies.[25] Washington's automatic revocation statute is a good example. It provides that:

> If a marriage or state registered domestic partnership is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.[26]

Accordingly, in the State of Washington once a couple divorces, an ex-spouse is treated as having died on the date of the divorce, and the policy proceeds will instead go to the surviving beneficiaries. Notably, the statute does not apply in a number of situations, such as when the policy expressly permits an ex-spouse to remain as beneficiary or the divorce decree requires the insured to maintain a non-probate asset for the benefit of the former spouse.

The Washington Court of Appeals had an opportunity to examine the scope of the statute in *Mearns v. Scharbach*,[27] in which an insured died after divorcing his ex-wife but without changing her status as beneficiary. Upon the insured's death, both the ex-wife and the insured's children, listed as contingent beneficiaries, filed competing claims for the proceeds. The court held against the ex-wife in the ensuing interpleader action, rejecting her arguments that the statute's main focus was to discern the insured's intent, and, therefore, the statute would not apply if there was evidence the insured wanted the former spouse to remain a beneficiary. The court explained that the intent of the statute was to codify the presumption that divorced spouses desire to change their ex-spouse's beneficiary designation. As a result, the statute applies even when some evidence indicates that the insured wanted to retain the former spouse as beneficiary.

These automatic revocation statutes, however, are ineffective when a policy is governed by ERISA. In *Egelhoff v. Egelhoff ex rel. Breiner*,[28] an insured husband designated his wife as beneficiary under an ERISA-governed life insurance policy. The two divorced and the insured died intestate shortly thereafter without having changed the beneficiary designation. The insured's heirs filed suit, relying on Washington's automatic revocation statute and arguing that the ex-wife was no longer the policy's beneficiary and, because the policy lacked a contingent beneficiary, the proceeds should pass through the insured's estate. The United States Supreme Court rejected that argument and held that ERISA's preemption statute, which provides that ERISA will supersede state laws insofar as they "relate to" an ERISA employee benefit plan, preempted the state law.[29] The problem, the Court explained, was that following state law would require the plan administrator to depart from ERISA's so-called "plan document rule,"[30] which requires administrators to manage the plan and pay benefits according to the terms of a plan's governing documents. As a result of being preempted, the state law did not apply and consequently did not revoke the designation of the ex-wife as beneficiary of the ERISA plan benefits. Thus, the lesson for insurers that assist in the administration of ERISA plans is that ERISA requires them to pay benefits only to those persons identified in the plans' governing documents.

2. Divorce Decree Waivers

State and federal courts generally agree that an individual can waive her right to the benefits of her ex-spouse's life insurance policy as part of her divorce. Thus, if an insured dies before he can remove his ex-wife as the beneficiary of his life insurance policy (and there is no statute automatically revoking the beneficiary designation of an ex-spouse), the ex-wife's waiver of the benefits in a divorce decree may be effective, in which case the insurance company would be required to pay a contingent beneficiary or some other party.

In ERISA, however, the rules are not so straightforward. Courts have long agreed that language in a divorce decree can serve as a federal common-law waiver of the right to receive ERISA-plan benefits.[31] So long as a designated ERISA beneficiary "explicit[ly], voluntary[ily], and … in good faith" waived her rights to the plan's benefits, her waiver will be enforced.[32] The types of divorce decree waivers previously found to be effective provide that "[t]he parties each waive any interest or claim in and to any retirement, pension, profit-sharing and/or annuity plans resulting from the employment of the other party,"[33] or that "[the plan beneficiary] is hereby divested of all right, title, interest, and claim in and to … [a]ny and all policies of life insurance (including cash value) insuring the life of [the plan participant]."[34] One particularly comprehensive decree described the spouses' waivers as follows:

> Any and all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other

> rights relating to any profit-sharing plan, retirement plan, pension plan, employee stock option plan, employee savings plan, accrued unpaid bonuses, or other benefit program existing by reason of [the plan participant's] past, present, or future employment.[35]

A complication arises, however, if honoring a waiver means paying a beneficiary other than the one designated by the plan's governing documents. In that event, the waiver could not be enforced because it would conflict with the previously discussed "plan documents rule." The Supreme Court in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*,[36] confirmed that ERISA beneficiaries could disclaim their rights to ERISA plan benefits through common-law waivers contained in divorce decrees but it narrowed the circumstances under which a plan would be required to honor those waivers. If an ERISA plan provides a mechanism for a beneficiary to waive her right to benefits and the beneficiary does not do so under the mechanism provided, a plan administrator cannot honor the beneficiary's common-law waiver, as doing so would be inconsistent with ERISA's requirement that a plan be administered according to the terms of its governing documents.[37] Thus, it appears there are three ways a common-law waiver might be honored by an ERISA plan. The first is if a waiver is consistent with plan documents; *e.g.*, where a plan states that a beneficiary may waive her right to benefits but does not specify how the waiver may be effected.[38] The second is where a plan does not provide any mechanism for waiving benefits.[39] And the third is if the waiver is the basis for a "qualified domestic relations order" that identifies another recipient for the plan's benefits.

A qualified domestic relations order ("QDRO") is a specific type of state "domestic relations order"[40] that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan."[41] Because ERISA will preempt any state-court order that directs a plan to pay benefits in a manner other than that reflected in the plan's governing documents, an insurer must be certain that an order related to an insured's divorce constitutes a QDRO before it pays benefits to persons other than those identified in the plan's governing documents.

The Supreme Court largely resolved whether common-law waivers can be enforced *against a plan* but it specifically declined to address whether those waivers can be enforced against the waiving beneficiary *after the plan has disbursed the benefits*.[42] While disputes between competing beneficiaries do not involve insurer interests, understanding and appreciating what courts do and do not permit where ERISA benefits are concerned may help insurers determine what ERISA requires of them when faced with competing beneficiary claims.

The Michigan Court of Appeals addressed that issue in *MacInnes v. MacInnes*.[43] In that case, a divorce decree provided that "all rights of either party in and to the proceeds of any policy or contract of life insurance . . . upon the life of the other in which said party was named or designated as beneficiary . . . shall hereupon become and be payable to the estate of the owner of said policy, or such named beneficiary as shall hereafter be affirmatively designated." The wife had an ERISA-governed life insurance policy that named her ex-husband as beneficiary and she did not change the designation before her death. The plan paid the ex-husband the policy proceeds and the wife's estate brought an action *against the ex-husband* to enforce the divorce decree.

The Michigan Court of Appeals rejected the ex-husband's argument that ERISA preempted the divorce decree and concluded that it would follow the majority of courts that permit beneficiaries to waive their right to retain ERISA benefits that have been distributed to them by a plan.[44] As long as the waiver was explicit, voluntary, and made in good faith, the court advised the post-distribution waiver did not conflict with plan terms or plan administration and, therefore, could be enforced.[45]

B. Beneficiaries & Laws Concerning Same-Sex Relationships

The fact that some sates recognize same-sex marriage, civil unions, and domestic partnerships while others do not can complicate efforts to identify the proper beneficiary of a life insurance policy. When an insured purchases a life insurance policy in one state and dies in another, the fact that some states recognize interpersonal relationships that others do not can make identifying the proper beneficiary difficult. Insurance companies can take some steps to mitigate the challenges created by these changing laws but, ultimately, the safest course until the law related to interpersonal relationships evolves is to interplead the life insurance proceeds.

1. Same-Sex Marriage

A state's recognition of same-sex marriage means that a same-sex couple can legally be married in that state and is afforded all attendant rights and benefits of marriage provided under state law. Presently, seventeen states and the District of Columbia recognize same-sex marriages,[46] and thirty-three states specifically prohibit them.[47] Of the thirty-three states that prohibit same-sex marriage, four of them recognize at least some rights for same-sex couples.[48] Although federal judges in Oklahoma and Utah recently ruled that those States' bans on same-sex marriage are unconstitutional, the status of same-sex marriage in those states is uncertain pending appeal.[49]

At the federal level, the United States Supreme Court in 2013 struck down the Defense of Marriage Act's definition of "marriage" as a legal union between one man and one woman as husband and wife in *United States v. Windsor*.[50] The decision is discussed more fully below, but, as a result of the decision, same-sex couples who are legally married under state law can exercise and enjoy the 1,138 rights, benefits, and protections afforded to heterosexual married couples under federal law.[51] The federal government has also recently announced its intention to expand the effect of *Windsor* by finding that federal regulations, rights, and laws affected by marital status apply equally to same-sex couples.[52] For example, same-sex couples will be covered by spousal privilege in court cases and criminal investigations, the Bureau of Prisons will extend visitation rights to same-sex couples, same-sex couples will be recognized when determining eligibility for the 9/11 Victim Compensation Fund and other similar programs, and federal benefits will be extended to same-sex spouses of police killed in the line of duty.[53]

2. Civil Unions and Domestic Partnerships

a. What are they?

Civil unions and domestic partnerships are legal statuses, separate from marriage, that are available in some states. Practically speaking, there is little difference between the two concepts—each state that recognizes one or both of these relationships provides its own package of rights and benefits that applies to that relationship.[54]

Typically, civil unions and domestic partnerships provide participants many but not all of the rights and benefits available to married couples in that state.[55] For example, partners in a civil union in Colorado have hospital visitation rights but may not file joint state tax returns.[56] At the federal level, participants in civil unions and domestic partnerships do not receive the federal benefits of marriage because federal law extends those benefits to "spouses" but not to partners.[57] The Family and Medical Leave Act (FMLA), for instance, "guarantees family and medical leave to employees to care for parents, children or spouses."[58] The term "spouse" is defined for purposes of FMLA as "a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage."[59] Thus, "[a]s currently interpreted, [FMLA] does not provide leave to care for a domestic partner or the domestic partner's family member."[60] In light of the Supreme Court's decision in *Windsor*, however, the constitutionality of the FMLA's definition of "spouse" appears ripe for challenge.

b. What states recognize what relationships?

Four states allow same-sex couples to enter into civil unions providing the participants state-level spousal rights: Colorado, Hawaii, Illinois, and New Jersey.[61] Under Colorado and Hawaii's civil union laws, same-sex couples have nearly the same legal rights as married couples.[62] The civil union statues in Illinois and New Jersey provide less comprehensive rights.[63]

Seven states—California, Oregon, Washington, Maine, Hawaii, Nevada, and Wisconsin—and the District of Columbia have passed laws recognizing domestic partnerships.[64] The laws in Oregon, Washington, and Nevada are fairly comprehensive and provide nearly all rights, benefits, and responsibilities of marriage under state law.[65] The remaining states and the District of Columbia provide more limited rights.[66]

3. Interstate Recognition of Same-Sex Marriages, Civil Unions, and Domestic Partnerships

Nine states—California, Hawaii, Illinois, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington—and the District of Columbia recognize same-sex marriages, civil unions, and domestic partnerships sanctioned by other states.[67] Eight states—Connecticut, Delaware, Iowa, Maine, Maryland, Minnesota, New Hampshire, and Rhode Island—recognize same-sex marriages from other states.[68] One state—Nevada—recognizes civil unions and domestic partnerships from other states.[69] One state—Wyoming—despite not permitting same-sex marriage, civil unions, or domestic partnerships, recognizes out-of-state same-sex marriages for the purposes of divorce.[70] It is not clear at this point whether the remaining states recognize the same-sex relationships of other states.

4. Conflicts Between State Laws Could Complicate Beneficiary Determinations.

The patchwork of state laws concerning same-sex marriages, civil unions, and domestic partnerships has seen courts in states where those relationships are not recognized disregard them in disputes ranging from adoption,[71] child custody and visitation matters,[72] wrongful death actions,[73] actions for divorce,[74] and actions for dissolution of civil unions.[75] That practice has implications in the life insurance context. Life insurance policies frequently designate default categories of beneficiaries based on a person's legal relationship to an insured. For instance, when an insured dies without having designated a beneficiary to receive his or her benefits, or the designated beneficiary predeceases the insured, a policy may identify categories of eligible beneficiaries based on their relationships to the insured (*e.g.*, spouse and children) and the order of precedence for each category of beneficiary. The variety of state laws will almost certainly give rise to disputes over the proper beneficiaries of life insurance benefits. Consider, for instance, the following hypotheticals:

- S1 and S2 are both women and are married in State A. S1 has a child, C, from a previous marriage. S1 and S2 move to State B, which does not recognize their same-sex marriage, and S1 purchases a life insurance policy on her life. S1 dies without having designated a beneficiary for the life insurance benefit. The policy provides that benefits will be paid first to the insured's "spouse," which is not defined, and then to any children. C argues S2 cannot be considered a "spouse" because State B does not recognize same-sex marriages.

- S1 and S2 are married in State A where S1 purchases a life insurance policy on her life. S1 has a child, C, from a previous marriage. S1 and S2 move to State B, which does not recognize their same-sex marriage. S1 and S2 later seek to divorce and have complied with all of State B's prerequisites for divorce. The court in State B, however, denies the divorce petition because State B's family law statutes only permit divorce of "married" couples, which state law defines to exclude same-sex marriages. It is not clear whether a divorce can be obtained from State A since neither S1 nor S2 live there. Both States A and B have statutes that automatically revoke spousal beneficiary designations upon divorce. Before it can be determined whether State A will grant a divorce, S1 dies without having designated a beneficiary. In the absence of a beneficiary designation, the policy pays benefits first to a "spouse" and then to a child. C argues the life insurance benefits must be paid to him because, according to State B, S1 did not have a spouse and/or the automatic revocation statutes from States A or B should apply because S1 and S2 had done everything possible to obtain a divorce prior to S1's death and it was S1's clear intent that S2 not receive the benefits.

- S1 and S2 enter into a civil union in State A. S2 has a child, C, from a previous marriage and State A permits adoption by same-sex couples. S1 adopts child C and all three move to State B, which does not permit same-sex adoptions. S1 purchases a life insurance policy on her life and names S2 the beneficiary. S1 dies and S2 predeceased her. In the absence of a beneficiary designation, the policy provides that benefits will be paid first to the insured's spouse, then to her child, then to her siblings. S1's siblings argue the benefits must be paid to them because State B does not recognize same-sex adoptions and, therefore, C cannot be S1's child under the laws of State B.

The first step in determining who is entitled to the life insurance benefits in the foregoing examples is to check the terms of the policies. If the policy defines relevant terms such as "marriage" or "spouse," then these definitions control. If the policy contains no controlling definitions of the relevant terms, they will be interpreted consistent with state law. In most instances, the law of the state in which the policy was issued will govern.

a. Common law and constitutional principles that may help a beneficiary analysis.

Determining what law to apply is complicated, however, by the common-law doctrine of comity and the Constitution's Full Faith and Credit Clause that call on the forum state to recognize and apply the laws of another state.

i. Comity

"Comity" is "[a] practice among political entities (as nations, states, or courts of different jurisdictions), involving . . . mutual recognition of legislative, executive, and judicial acts."[76] The United States Supreme Court has described comity as a doctrine requiring consideration of a foreign sovereign's interests, born out of due respect for other sovereign entities, balanced against the principles and priorities of the forum's sovereign.

> Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.[77]

Comity permits litigants to use the forum state to enforce rights arising under the laws of another state, unless doing so would be repugnant to the public policy of the forum state.[78] The circumstances under which a forum court will rely on comity to permit a litigant to exercise rights unknown to the forum are highly fact-specific, turning on the specific actions and rights at issue and the public policies of the forum state as described by the state's constitution, statutes, and common law. For example, Pennsylvania, Rhode Island, and Texas have declined to recognize same-sex marriages on comity grounds, even for the limited purpose of obtaining a divorce.[79] At the same time, however, Wyoming, which prohibits same-sex marriage, recognized those marriages when couples domiciled in Wyoming wanted to divorce.[80] In its comity analysis, the Wyoming Supreme Court reasoned that comity permitted the court to "recogniz[e] a valid foreign same-sex marriage for the limited purpose of entertaining a divorce proceeding [because doing so] does not lessen the law or policy in Wyoming against allowing the creation of same-sex marriages."[81]

To the extent a lesson can be drawn from those decisions, it is only that it is extremely difficult to predict whether comity will compel a state that does not recognize same-sex marriages, civil unions, or domestic partnerships to recognize, even for limited purposes, the legal rights another state accords persons who have entered into those relationships.[82]

ii. The Full Faith and Credit Clause

The Full Faith and Credit Clause can avoid some of the confusion and uncertainty created by the patchwork of laws concerning same-sex relationships and rights. In particular, the Clause brings clarity concerning the circumstances under which a same-sex couple's adoption of a child will be honored by another state.

The Full Faith and Credit Clause "is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent sovereign States into a nation."[83] The Clause provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. [84]

Notably, the Clause "does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments."[85] The manner of enforcing a judgment, in other words, does not "travel with the sister state judgment" but rather the means of enforcement "remain subject to the even-handed control of forum law."[86]

In *Finstuen v. Crutcher*, The Tenth Circuit held that the Full Faith and Credit Clause required Oklahoma to issue a supplemental birth certificate to a same-sex couple who adopted a child born in Oklahoma.[87] The couple lived in California and adopted the child pursuant to California law. The adoption was adjudicated and memorialized by order of a California court. Citing that order, the couple requested from Oklahoma a supplemental birth certificate that would identify the couple as the child's parents.[88] Although Oklahoma had a statute that permitted it to issue supplemental birth certificates reflecting an adoption, it refused the couple's petition, citing another statute barring the State from "recogniz[ing] an adoption by more than one individual of the same sex from any other state or foreign jurisdiction."[89] The Tenth Circuit held that the California adoption was conclusive and that the Full Faith and Credit Clause meant Oklahoma could not refuse to recognize that fact.[90] Moreover, because Oklahoma had a mechanism for issuing supplemental birth certificates, the couple was entitled to insist on the "even-handed enforcement" of Oklahoma law to obtain such a certificate.[91]

Importantly, if Oklahoma did not have a mechanism for enforcing adoption judgments through the issuance of supplemental birth certificates, the Full Faith and Credit Clause might not have required it to issue one.[92] In *Adar v. Smith*, for instance, the Fifth Circuit rejected a same-sex couple's request for a revised birth certificate following their adoption under New York law of a child born in Louisiana.[93] Among the reasons the Fifth Circuit relied on to reject the couple's Full Faith and Credit Clause argument was that "Louisiana does not permit *any* unmarried couples—whether adopting out-of-state or in-state—to obtain revised birth certificates with both parents' names on them."[94]

Under the holdings in *Finstuen* and *Adar*, an out-of-state adoption by a same-sex couple will be honored by another state, even one that would not otherwise recognize the adoption, so long as the state would honor a similar out-of-state adoption by heterosexual couple. That bit of clarity is good news for a life insurance company that needs to determine whether it can pay life insurance benefits to an individual whose adoption by the insured and his or her same-sex partner might be subject to attack under the forum's laws.

Although the Full Faith and Credit Clause may require that some incidents of formalized same-sex relationships such as adoption are recognized by states where those rights would not otherwise be available, the Clause is of no help when it comes to the recognition of same-sex marriages. Section 2 of the Defense of Marriage Act ("DOMA") bars any argument that the Full Faith and Credit Clause requires a state to recognize a civil union or same-sex marriage.

> No State, territory or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession or tribe, or a right or claim arising from such relationship.[95]

Note that the recent Supreme Court decision in *United States v. Windsor*[96] only addressed the constitutionality of Section 3 of DOMA. To date, only one court has directly addressed the constitutionality of Section 2 as an exercise of Congress' power, and it concluded the Section was a valid exercise of Congress' express right under the Clause "to prescribe the Manner in which . . . Acts, Records and Proceedings shall be proved, and the Effect thereof."[97] Thus, litigants seeking legal recognition of their civil union, domestic partnership, or same-sex marriage by a state that does not recognize those arrangements will likely have to look to theories other than enforcement of the Full Faith and Credit Clause as a means to compel state recognition of their relationship.

b. *United States v. Windsor*: State Law Defines Marriage

Prior to the Supreme Court's decision in *United States v. Windsor*, the terms "marriage" and "spouse" were defined for purposes of federal law by DOMA. DOMA limited the term "marriage" to mean the legal union of one man and one woman as husband and wife, and the term "spouse" was limited to refer only to a person of the opposite sex. Thus, an insurance company whose policy was governed by federal law could not find that an insured's same-sex partner was his or her "spouse," unless perhaps that is how the policy defined the term.

In *Windsor*, a same-sex couple—Edith Windsor and Thea Spyer—wed in Ontario, Canada and lived in New York.[98] When Spyer died in 2009, she left her entire estate to Windsor, which was permitted under state law.[99] For federal tax purposes, however, the government denied Windsor the benefit of a spousal deduction due to DOMA's definitions of "marriage" and "spouse."[100] Windsor brought suit for a refund of the federal estate taxes she paid and for a declaration that Section 3 of DOMA violated the guarantee of equal protection as applied to the federal government through the Fifth Amendment.[101] The Supreme Court declined to decide the appropriate level of scrutiny for discrimination based on sexual orientation, and instead applied the “more muscular form” of rational basis scrutiny used in prior equal protection cases.[102] The Court held that Section 3 of DOMA is unconstitutional as a deprivation of equal protection for two major reasons: (1) because DOMA raises major concerns that it was the product of animus, especially given the legislative record indicating that the law was motivated by disapproval of same-sex couples’ sexual and family choices rather than an actual, legitimate federal interest and (2) because it is extremely difficult to envision some rational justification for DOMA’s discrimination.[103]

Thus, the Supreme Court declared DOMA’s definitions of “marriage” and “spouse” to be unconstitutional. As a result, if an insurance policy governed by federal law is silent with respect to the definitions of “marriage” and “spouse,” state law will be the authority for determining whether a partner in a legal same-sex marriage is a “spouse” for the purposes of the policy.

c. *Windsor’s* effect at the state level

Following *Windsor,* four states—New Jersey, Hawaii, Illinois, and New Mexico—moved to legalize same-sex marriage.[104] The federal district courts in Oklahoma and Utah expressly invoked *Windsor* to overturn their state’s constitutional provision that banned gay marriage.[105]

In the Oklahoma case, *Bishop v. U.S. ex rel. Holder*,[106] lesbian couples brought an action against various government officials in Oklahoma, claiming that Section 3 of DOMA, which functioned to deprive same-sex married couples of federal benefits, and the amendment to the Oklahoma constitution limiting marriage to opposite-sex couples, violated due process and equal protection.[107] The court held that the amendment to the Oklahoma constitution defining “marriage” as only the union of one man and one woman intentionally discriminated between groups of persons.[108] As a result, the amendment violated the couples’ rights to equal protection under the Fourteenth Amendment because its purpose was to exclude the class consisting of same-sex couples from marrying and it had a disparate impact on same-sex couples who desired to marry in Oklahoma.[109] Specifically, the effect of the amendment was to prevent only same-sex couples in Oklahoma from receiving a marriage license.[110] The Northern District of Oklahoma specifically invoked *Windsor* in its analysis and noted that although there is “no precise legal label for what has occurred in Supreme Court jurisprudence beginning with *Romer* [*v. Evans*] in 1996 and culminating in *Windsor* in 2013,” “this Court knows a rhetorical shift when it sees one.”[111]

Similarly, in *Kitchen v. Herbert*,[112] the Utah case, three gay and lesbian couples who either desired to be married in Utah or, having already married elsewhere, wished to have their marriage recognized in Utah, brought action against Utah’s current and former Attorneys General and county clerk, seeking to challenge Utah’s constitutional amendment, as well as two statutes, that prohibited same-sex marriage as violative of the couples’ due process and equal protection rights under the Fourteenth Amendment.[113] In its equal protection analysis, the District of Utah determined that the state’s purported interests in promoting responsible procreation, promoting optimal child-rearing, and proceeding with caution were not furthered by the prohibition against same-sex marriage.[114]

The effect of the Oklahoma ruling was stayed pending appeal, but the Utah ruling was not; at least not initially.[115] Eventually the Supreme Court stayed that ruling from taking effect as well but, in the interim, Utah had 1,300 same-sex marriages take place.[116] Other states may soon have similar litigation. Michigan, for example, is in the very early stages of two cases in the United States District Court for the Eastern District of Michigan that may overturn its constitutional provision banning gay marriage.[117]

In *Bassett v. Snyder*,[118] the Eastern District of Michigan granted a preliminary injunction to the plaintiffs—five same-sex couples in long term relationships, one domestic partner in each of which was a Michigan public employee—who challenged the constitutionality of a statute that, when read in conjunction with a state constitutional provision that limits marriage to one man and one woman, prohibits public employers from providing medical assistance and other fringe benefits to the same-sex partner of the public employee.[119] In granting the preliminary injunction, the court analyzed the plaintiffs' claims and held that they were not likely to prevail on their due process claim, but they were likely to prevail on their equal protection claim because the state's justifications based on cost savings and the furtherance of traditional marriage would likely fail.[120] The court also found that plaintiffs would prevail based on the animus argument addressed in *Windsor*.[121] Although the future of this case is uncertain because the court's rationale may not survive the pending trial and subsequent appeals, commentators predict that this case may effectively require Michigan to recognize same-sex marriage.[122]

In fact, another case in progress in Michigan, *DeBoer v. Snyder*,[123] like the Oklahoma and Utah cases, directly addresses Michigan's constitutional amendment that prohibits same-sex marriage. Michigan has a statute that limits adoptions to either single persons or married couples, and thus ostensibly bars the plaintiffs—a female couple who wish to jointly adopt three children—from adopting.[124] At this point the court has only issued a preliminary decision denying defendants' motion to dismiss, but commentators predict that the case will adjudicate whether the Michigan legislature acted with an improper motive when enacting the constitutional amendment at issue.[125]

In sum, the laws defining interpersonal relationships are in transition. When a life insurance policy defines a beneficiary by a person's legal relationship to an insured, identifying the correct beneficiary can be like trying to hit a moving target. Until the common law in these areas is more developed, insurance companies will likely need to rely on interpleader actions to resolve these types of beneficiary disputes. In the meantime, insurance companies can take some steps to mitigate these challenges by clearly defining who its beneficiaries are and ensuring that the terms used to describe those beneficiaries are sufficiently clear and unambiguous.

C. Slayer Statutes

So-called "slayer statutes" generally prohibit a life insurance beneficiary from receiving any portion of an insured's life insurance proceeds if the beneficiary killed the insured.[126] At least 45 states[127] have enacted slayer statutes, though states differ as to the degree of culpability a slayer must possess to be prevented from receiving such benefits.

Illinois, for example, prevents a person who "intentionally and unjustifiably causes the death of another" from receiving policy payments.[128] Illinois' slayer statute previously required a conviction but the state legislature removed the conviction requirement in 1983.[129] As a result, a beneficiary that killed his insured mother during a severe manic episode could not receive insurance proceeds; although the beneficiary was found not guilty of first degree murder by reason of insanity, insanity does not justify a killing and the beneficiary—who intentionally grabbed a knife and intentionally stabbed his mother—intentionally killed his mother, despite his acquittal at trial.[130] In this light, Illinois distinguishes between criminal intent, which can be negated by insanity, and civil intent, which cannot.

Arizona's slayer statute prevents a beneficiary from receiving proceeds if he or she "feloniously and intentionally kills" the insured.[131] The statute accordingly does not require a conviction and will indeed bar receipt of benefits if it can be demonstrated by a preponderance of the evidence that the beneficiary *would* be found criminally accountable for the felonious and intentional killing of the insured.[132] Under the statute, moreover, a beneficiary can feloniously and intentionally kill a beneficiary if he or she solicits a murder but does not actually commit the murder, and the statute may be invoked even if the police lacked probable cause to arrest the beneficiary.[133]

The bar to slayer recovery is lower in Alaska, requiring only that a beneficiary feloniously—not necessarily intentionally—kill the insured. In that event, the beneficiary will be barred from recovering the policy proceeds, unless the court finds that applying the statute would result in a manifest injustice.[134] In *In re Estate of Blodgett*, for example, a son was charged with second degree murder arising out of his father's death but ultimately pled guilty to criminally negligent homicide.[135] Because criminally negligent homicide is an unintentional but felonious crime, the slayer statute would prevent the son from receiving any benefits unless the court found that a manifest injustice would result.[136] The court held that a finding of manifest injustice essentially required the court to compare the instant defendant to other defendants convicted of the same crime, *i.e.* whether the son was, in some form, less culpable than others convicted of criminally negligent homicide. The court found that application of the slayer statute would not cause a manifest injustice, as (1) the son did not receive the lightest possible sentence, (2) evidence of the father and son's previous relationship, described as a good relationship marked with occasional squabblings, wielded little influence, and (3) the son's scarce financial resources and physical disability should not factor into the analysis.[137] Accordingly, although the son would likely have received benefits in Illinois or Arizona, he was precluded from doing so in Alaska.

Conversely, Colorado's slayer statute will only prevent a slayer from receiving insurance proceeds if he or she is convicted of, pleads guilty to, or enters a plea of *nolo contendere* to first or second degree murder or manslaughter.[138] Although Colorado does not appear to have addressed whether its slayer statute would bar a beneficiary found not guilty by reason of insanity from receiving the policy proceeds, the state's conviction requirement strongly indicates that such an individual would indeed be entitled to the payment.

Attention must also be paid to whether a beneficiary convicted of murder (or manslaughter) is in the process of appealing his or her conviction. In *In re Peterson,*[139] which followed the well-publicized murder of Staci Peterson, an insurer brought an interpleader action alleging that both the insured's estate and the beneficiary, the insured's husband, claimed entitlement to life insurance proceeds. California's slayer statute provided that (1) a "final judgment" of a "felonious and intentional killing" is conclusive proof to invoke the statute, but (2) in the absence of a final judgment, the court may determine, by a preponderance of the evidence, whether the killing was felonious and intentional.[140] The California Appellate Court held that the husband's pending appeal precluded his murder conviction from constituting a final judgment, but a conviction on appeal can constitute substantial evidence of a felonious and intentional killing under the statute.[141] However, not all courts have adopted *Peterson's* reasoning, so insurers should exercise particular caution in deciding whether to pay a claim prior to resolution on final appeal.[142]

How does the possible application of a slayer statute affect insurers? The most obvious consideration is that upon an insured's death from unnatural causes the insurer should avoid paying a beneficiary until it has had the opportunity to conduct its own investigation. The lack of a criminal conviction or even arrest does not necessarily indicate that a beneficiary may take under a slayer statute, so the insurer cannot merely rely on a police investigation or the absence of a conviction to pay policy proceeds to a reported slayer beneficiary. Conversely, a beneficiary's conviction for murder will almost certainly invoke the slayer statute and prevent payment, although a murder conviction would occur well after an insurer would otherwise have to pay policy proceeds. Although the lack of an arrest by itself often does not render a slayer statute inapplicable, in the event of an arrest the most appropriate action would likely be to file an interpleader action. Interpleader is also likely appropriate if, even in the absence of an arrest, a potential beneficiary credibly asserts that the primary beneficiary killed the insured.

Slayer statutes typically do not permit insurers to rescind a policy and keep the proceeds. As a result, if an insurer suspects that a state's slayer statute might come into play, the typical and most prudent course of action would be to file an interpleader action and let the court decide the proper beneficiary. However, where a beneficiary murders the insured some insurers have had success in voiding the policy by demonstrating that the beneficiary procured the policy with the intent to murder the insured.[143] Nevertheless, it is uncertain how successful such arguments will be on a grand scale, as at least one court has rejected an insurer's arguments along these lines when the insured himself was not party to the scheme.[144]

D. Stranger Owned Life Insurance

A relatively old phenomenon that has caused a stir in the life insurance industry recently is the practice of an investor convincing an individual to obtain a life insurance policy. Under that scheme, the investor pays the insured a certain sum and in turn takes out an insurance policy on the insured's life, naming the investor as owner and beneficiary.[145] The major pitfall associated with these transactions is clear: the investor, who lacks any meaningful connection to the insured, has a greater interest in seeing the insured die than live. Courts and legislatures addressed these inherent problems long ago, with the United States Supreme Court confronting the issue as early as 1876[146] and various state legislatures promulgating statutes to ensure that anyone procuring insurance on another have an "insurable interest," which typically only permits a policy to be issued if the procurer is a close family member of the insured, would suffer extreme financial hardship in the event of the insured's death, or is a charitable organization.[147] For a while, then, insurers could look to the insurance application's owner or beneficiary designation and quickly determine if the policy was backed by someone who lacked an insurable interest.

However, an increasingly sophisticated secondary market—STOLI—has recently forced lawmakers to reexamine traditional approaches. For example, insurable interest statutes generally only looked to whether there was an insurable interest at the time of issuance, permitting the insured to later assign the policy to whomever he or she wanted.[148] In order to circumvent these statutes, STOLI investors convince an insured to purchase a policy in the insured's own name and simply delay assignment of the policy.[149] Such arrangements have led a number of courts to employ a good faith requirement that voids policies procured with the intent to eventually assign the policy to someone lacking an insurable interest.[150] In this light, courts will also examine whether the eventual assignee paid the premiums prior to assignment.[151] Although the good faith requirement does not provide much in the way of practical guidance when reviewing a policy application, it nevertheless reminds that insurers must pay close attention to whether the person to whom a policy is assigned has an insurable interest in the insured's life.

Insurance organizations have also acted to address STOLI issues. The National Association of Insurance Commissioners created the Viatical Settlements Model Act in 2007, which, in part, prohibits a policyholder from selling a policy to the secondary market within five years of procuring the policy.[152] The National Conference of Insurance Legislators promulgated the Life Settlements Model Act in 2007, which generally regulates STOLI policies and imposes a two year ban on assignments.[153] Although the NAIC's Model Act has been the basis for most state regulation[154] and 45 states have adopted legislation relating to STOLI policies,[155] as of 2010 only five states had adopted the NAIC Model Act and 13 had adopted portions of the Act.[156]

STOLI policies have also made recent headlines when an insurer attempts to void a policy outside of a policy's contestability period due to a lack of insurable interest. Virtually every state has a statute requiring insurers to insert incontestability provisions into life insurance policies, which generally prevent insurers from contesting a policy after it has been in force for at least two years.[157] A majority of courts have provided that, because policies lacking an insurable interest are void *ab initio* and against public policy, the incontestability statutes do not prevent an insurer from contesting a policy due to a lack of an insurable interest.[158] However, two courts recently bucked this trend and endorsed the minority approach, which finds that a lack of insurable interest cannot be distinguished from a misrepresentation and, therefore, contestability statutes should apply and preclude insurable interest contests more than two years after issuance.[159] States that apply incontestability statutes in this context effectively promote STOLI operator's schemes to circumvent existing statutes and, accordingly, it is critical to determine relevant state law before deciding to contest a policy in this light.

E. The Elderly and the Mentally Impaired

A common concern with elderly or mentally impaired insureds is that a reprobate will exert influence over the insured, become attorney-in-fact through a power of attorney ("POA"), and then use the POA to change the beneficiary to him or herself.

1. Power of Attorney: Definition and Validity

A power of attorney is a written instrument that states an agent's authority to perform certain specified acts on behalf of a principal.[160] The agent in this relationship is referred to as the "attorney-in-fact."[161] There are several types of powers of attorney, including general, durable, healthcare, and springing or contingent. The type of POA affects its inception, termination, and scope. A valid POA can be in any form that clearly shows the agent's authority, and it can be executed under any recognized common-law method for executing written instruments.[162] It should, however, "be executed with sufficient formality to carry on its face convincing evidence of genuineness."[163] The validity of the POA may be affected by the mental capacity of the person who executed it. Some courts have held that a mentally impaired person cannot execute a valid POA,[164] while others have held that a POA executed by a mentally impaired person is merely voidable.[165]

2. Grant of Authority

The principal can assign an attorney-in-fact the authority to perform any number of acts or kinds of acts.[166] Insurers should be aware, however, that the authority to conduct business related to an insurance contract may not necessarily include the authority to change a beneficiary.

In 2006, the Uniform Law Commission promulgated the Uniform Power of Attorney Act ("UPOAA").[167] The Act has been adopted by 13 states and the U.S. Virgin Islands.[168] It describes what and how authority can be granted in a power of attorney.[169] Certain conduct requires a specific grant of authority in the power of attorney, such as the authority to create or change a beneficiary designation.[170] The Commission notes that:

> Express authorization for the acts listed in Section 201(a) is required because of the risk those acts pose to the principal's property and estate plan. The purpose of Section 201(a) is to make clear that authority for these acts may not be inferred from a grant of general authority.[171]

Some states that have not adopted the UPOAA have their own set of similar rules or form powers of attorney. For example, the Illinois Statutory Short Form Power of Attorney for Property[172] expressly excludes the ability of the attorney-in-fact to change the beneficiary of a life insurance policy.[173] The principal may expressly grant, however, the power to change a beneficiary by including such language in the designation.[174]

3. Insurer's Duty to Investigate.

Insurance companies may have a duty to investigate whether an insured had the requisite mental capacity to execute a POA or whether the scope of the attorney-in-fact's authority includes the power to change a beneficiary or perform some other act concerning the policy. The UPOAA does not require that persons or entities that deal with the agent investigate the agent or the agent's actions.[175] Moreover, generally speaking, the insurer is under no duty to investigate the mental competency of the insured to change the beneficiary of the policy.[176] Courts have suggested, however, that a duty to investigate may be triggered if the insurance company had knowledge of circumstances reasonably suggesting the probability of the insured's mental incompetence.[177]

Precisely what kinds of facts insurers must look for to determine whether they have a duty to investigate, unfortunately have not been discussed or analyzed by the courts. In the context of fraud and undue influence cases, which the courts analyze similarly to mental competency cases regarding a change of beneficiary, *Villenouze v. Primerica Life Ins. Co.*,[178] provides one clue as to how insurers should conduct themselves. In *Villenouze*, the ex-wife brought a negligence claim against the insurer that changed the beneficiary on her ex-husband's life insurance policy from her to a woman named Flaherty and then paid the proceeds to Flaherty.[179] The ex-wife, Villenouze, alleged that the change of beneficiary document was a fraudulent and that her ex-husband's signature was a forgery.[180] She further alleged that the insurer "should have commenced an investigation prior to changing the beneficiary."[181] The court dismissed Villenouze's negligence claim for two reasons. First, "an insurance company is not obligated to hire an expert to analyze whether a signature was forged before the company may approve a change of beneficiary request."[182] Second, Villenouze had "completely failed" to allege any facts that the insurer knew or should have known that the change of beneficiary was fraudulent.[183]

Accordingly, there is little guidance for insurers as to what factors may trigger a duty to investigate the mental competency of an insured to change the beneficiary on his or her life insurance policy. Thus, insurers should carefully monitor changes of beneficiary, particularly those that take place through a power of attorney, and immediately act on any facts that might reasonably suggest that the insured is not mentally competent to make changes to his or her policy.

4. Other Liability Concerns.

Many states have begun to implement adult protection statutes to protect the elderly and/or mentally impaired against abuse, neglect, and exploitation.[184] Although these statutes typically focus on measures to prevent the physical abuse and neglect of a protected adult, some also provide a private right of action for financial exploitation.[185] These statutes offer potential awards for compensatory damages, punitive damages, and attorneys' fees and costs.[186] Of note for insurance companies or other financial institutions, some adult protection statutes allow for the possibility of suit against a bank or insurer that played a role in the financially exploitative conduct. For example, if an elderly person's caregiver engages in fraud or uses undue influence to gain control of annuity payments or life insurance benefits, the insurer that dispensed the funds could be liable in some circumstances.

California's elder abuse statute defines financial abuse of an elder or dependent adult to include "assist[ing] in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both."[187] Recent case law has interpreted the term "assist" to include the conduct of a bank,[188] a mortgage company,[189] and a long-term care insurer[190] that provided services for or paid money to the third party actually committing the financial abuse against the elderly or dependent account-holder.

In *Das v. Bank of America, N.A.*,[191] the account-holder at the defendant bank, Mr. Das, suffered from strokes, brain tumors, dementia, and deficits in language, communication, reasoning, personality, and judgment that severely compromised his ability to manage his finances.[192] His appearance and countenance meant his deficiencies were "readily apparent to the eyes of even casual observers."[193] Several years after the onset of these impairments, a third party drew Mr. Das into fraudulent real estate transactions wherein the bank foreclosed on a $105,000 mortgage loan Mr. Das obtained.[194] Subsequently, another third party drew Mr. Das into an illegal lottery scam, pursuant to which he liquidated his assets, placed the funds in his bank account, and then transferred the money to bank accounts in other countries.[195] The bank followed his instructions and transferred over $300,000.[196] After Mr. Das died, his daughter brought suit against the bank under various elder abuse statutes and for breach of fiduciary duty and negligence.[197] The court construed the term "assists" from the elder abuse statute quoted above as including instances where, "as here, a bank provides ordinary services that effectuate financial abuse by a third party," so long as "it knew of the third party's wrongful conduct."[198] Because the daughter did not allege that the bank knew about the schemes that victimized Mr. Das, the court held that she failed to allege a claim under the elder abuse statute.[199]

If this kind of statute, and the interpretation of the word "assist" as used in this statute, spreads to other states, insurers are likely to become targets to the extent they play any role in the financial exploitation of an elderly or mentally impaired person. Although insurers who investigate attorneys-in-fact and confirm the validity of their appointments are generally relieved of liability for the attorney's later frauds, one can easily imagine a scenario where such a statute could be used to obviate those insurer protections. If an attorney-in-fact asks to change a beneficiary designation to himself or someone else whose designation indirectly benefits the attorney-in-fact and the insurer complies, only to later learn the change was part of a scheme to defraud the dependent adult, the insurer could conceivably be liable for "assisting" in the fraud, notwithstanding its investigation into the validity of the attorney's appointment. In light of this, insurers would be well-advised to diligently monitor and understand the circumstances surrounding beneficiary changes for persons protected by elder and dependent adult abuse statutes.

F. Minors

Another category of beneficiary that requires special protection is minor children. In most states, a "minor" is defined as a child age 17 or under.[200] In 1983, the Uniform Law Commission promulgated the Uniform Transfers to Minors Act ("UTMA") to protect the transfer of real, personal, tangible, or intangible property to minors through a custodianship which remains until the minor becomes 21.[201] This Act is meant to protect against putting property in the hands of inexperienced children who may mismanage or be incapable of managing the property.[202] The Act also protects third parties who may not want to deal with minors because minors can disaffirm contracts.[203] Nearly all 50 states, as well as the District of Columbia and the U.S. Virgin Islands, have adopted a version of the UTMA.[204] In the life insurance context, the UTMA safeguards insurers when the beneficiary of a life insurance policy is a minor.

The UTMA operates as follows: when it comes time for an insurance company to pay a death benefit to a minor beneficiary, it should first check to see if the insured nominated a custodian for the minor. If so, the UTMA requires that the death benefit be paid to that person on the minor's behalf.[205] If the insured did not nominate a custodian, "or all persons so nominated as custodian die[d] before the transfer or [were] unable, decline[d], or [were] ineligible to serve," then the insurance company has a choice to make.[206] If the property does not exceed $10,000 in value,[207] the insurance company can make the transfer to an adult member of the minor's family or to a trust company or the insurer may elect to require the court to choose and appoint a conservator to receive payment.[208] If the property exceeds $10,000 in value, then the insurance company must ask the court to choose and appoint a conservator to receive the property.[209] Thus, the insurance company has the authority through the UTMA to ensure that the death benefit is paid to an appropriate guardian for the minor beneficiary.

An insured can revocably nominate a custodian—typically an adult or a trust company—to receive the death benefit on behalf of the minor beneficiary upon the occurrence of the insured's death.[210] Custodianship can be created by using language or a simple form provided in Section 9 of the UTMA.[211] The custodian has authority to perform certain actions relating to the property, including taking control, registering or recording, and collecting, holding, managing, or investing.[212] The property is, however, "indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in [the Act], and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in [the Act]."[213] The custodianship remains in place until the minor turns 21 years old.[214]

The UTMA protects insurance companies by clearly defining their obligations and, for the most part, absolving them of liability when they abide by the UTMA. Section 8 provides that a custodian's written acknowledgement of receipt of payment constitutes a complete discharge of an insurer's obligation such that an insurance company has no further responsibility for the custodial property.[215] Section 16 exempts an insurance company from liability when it acts on the instructions of or otherwise deals with a custodian.[216] The UTMA makes clear that an insurer has no duty to determine the validity of the custodian's designation or the propriety of his or her conduct.[217]

Payment to a minor beneficiary's UTMA custodian or court-appointed guardian typically protects an insurance company from liability where minor beneficiaries are concerned. In *Hood v. Jenkins*, for instance, the insurer disbursed life insurance proceeds owed to a minor beneficiary to the minor's guardian based on a facially valid appointment order from juvenile court.[218] After the guardian misappropriated the insurance proceeds, the minor brought an action against the guardian and the insurer.[219] The court held that the insurer did not breach its contractual duty in disbursing the death benefits to the guardian [220] In contrast, the insurer in *Iverson v. Scholl Inc.*, an Illinois case, was unaware that the beneficiary was a minor and made payment to the minor directly, whose father misappropriated the funds.[221] The insurer was contractually obligated under the policy to discharge its liability by paying the policy proceeds to the beneficiary.[222] Because the beneficiary was a minor, however, he was legally incapable of discharging the insurance company of its obligations.[223] Thus, paying the minor directly was legally the same as not paying at all.[224] As a result, the court concluded the insurance company breached the policy when it refused to pay benefits a second time to the minor's guardian.[225] The court further held that it was immaterial that the payment was made in good faith and the insurer had no knowledge that the beneficiary was a minor.[226] As a result, the insurer was required to pay the amount of the policy proceeds to the minor's guardian.[227]

III. Unclaimed Property

What if a life insurance beneficiary cannot be found or identified? West Virginia, along with 14 other states and the U.S. Virgin Islands, has adopted the Uniform Unclaimed Property Act ("UPA").[228] The Act describes the process through which property, in particular intangible personal property like a life insurance benefit, is deemed abandoned and escheats to the state.[229]

Under the Act, the "amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated" is considered abandoned:

> three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based."[230]

Holders of property presumed abandoned are required to report that property to the state and, in the case of an annuity or a life or endowment insurance policy, must provide the full name and last known address of the annuitant or insured and of the beneficiary.[231]

States have recently begun using their unclaimed property and false claims acts to recover unclaimed life insurance benefits from insurance companies. In 2012, the Treasurer of the State of West Virginia filed sixty-nine lawsuits against life insurance companies doing business in West Virginia.[232] The complaints alleged the insurers failed to comply with West Virginia's Unclaimed Property Act. Specifically, the state alleged the companies failed to turn over unclaimed life insurance benefits, as required by the UPA, and that they "breached their statutory duties of good faith and fair dealing by failing to conduct annual examinations of life insurance policy holders to determine if they are deceased or three years past the applicable limiting age that would make one's policy payable under the UPA."[233]

The Circuit Court of Putnam County, responding to defendants' motions to dismiss, determined that the threshold question of law is "whether or not the UPA creates a statutory duty obligating life insurance companies to periodically search the [Death Master File] DMF or other similar database to determine if any of their policy holders have died."[234] The court began by noting that, under the UPA, only property that fits the definition of "presumed abandoned" must be reported and paid to the administrator.[235]

> As it applies to life insurance proceeds, the property is presumed abandoned "three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based."[236]

The court further analyzed the West Virginia insurance code, and found that the insurer's "obligation to pay" arises upon receipt of due proof of death.[237] Thus, the court held that the "only two statutory triggers for the unclaimed property dormancy period are receipt of due proof of death and the limiting age."[238] Because insurers have no duty to report to the administrator until the property is "presumed abandoned," and the triggers for that status are easily determined, the court held that there is no need for insurers to proactively search the DMF.[239] The court in this case granted all defendants' motions to dismiss with prejudice,[240] but other states are similarly looking to collect unclaimed life insurance benefits through various avenues.

For example, a company called Total Asset Recovery Services has filed *qui tam* actions under the Florida False Claims Act, the Illinois False Claims Whistleblower Reward and Protection Act, and the Minnesota False Claims Act against Prudential, on behalf of the respective states, alleging that Prudential failed to properly escheat unclaimed life insurance proceeds to the state.[241] In January 2012, Prudential entered into agreements with the unclaimed property departments of 20 states and jurisdictions related to its use of the Social Security Master Death File, which has prompted those and other jurisdictions to consider proposals that would "require life insurance companies to take additional steps to identify unreported deceased policy and contract holders."[242] The agreement requires Prudential to cross reference its database of insureds with the Social Security Administration's DMF, to find the proper beneficiaries, and to send them their benefits.[243] In March 2012, John Hancock Life Insurance Company entered into a similar multi-state agreement, paying $20 million in policy proceeds.[244]

In response to these kinds of lawsuits, some life insurance carriers have begun to proactively file suit against the state, claiming that no affirmative obligation exists for insurers to search the Social Security Administration's DMF.[245] On September 4, 2013, three life insurance companies filed suit against the Illinois Department of Insurance and its Director in Cook County, Illinois, seeking a declaration that "there is no obligation under the Illinois Insurance Code or applicable insurance regulations to use the Death Master File to determine whether an insured is deceased; as well as no obligation to investigate, settle, or pay death claims until the insurer receives a claim and due proof of death."[246] Although this case is in the early stages, commentators believe that this will be an indicator for future policy regarding the proper use of the DMF.[247]

Accordingly, insurers can choose to check the DMF and voluntarily report to the states in which they do business or refuse and risk suit from the state or *qui tam* actions from companies like Total Asset Recovery Services. Ultimately, the correct course of action will be unclear until suits like the one against the Illinois Department of Insurance are resolved.

IV. Interpleader

Where multiple individuals claim entitlement to policy proceeds, insurers should strongly consider an Interpleader action. The insurer could, of course, attempt to discern the proper payee on its own, as life insurers who in good faith pay the proceeds to the party listed as beneficiary on the policy are generally discharged from further liability.[248] However, an insurer might have to spend time and money litigating whether its payment was made in good faith. Moreover, if an insurer believes that someone other than the designated beneficiary is entitled to the policy proceeds, a good faith payment to this non-beneficiary will not necessarily discharge the insurer from further liability.[249] That is what happened in a Texas case because the state's good faith payment statute only protected insurers that in good faith paid a designated beneficiary, not insurers that in good faith paid a non-designated beneficiary.[250] Although the Texas statute at issue has since been repealed, the court's strict interpretation could be repeated in another jurisdiction.

The requirements for filing an interpleader are simple. As long as an insurer can allege facts showing a reasonable probability of "double vexation,"[251] double liability,[252] or a reasonable doubt as to whom the proceeds belong,[253] the insurer has a good faith action for interpleader and a court should expeditiously permit the insurer to deposit the disputed funds and withdraw from the case without further liability. The Ninth Circuit recently expressed the rationale behind an interpleader action:

> The purpose of interpleader is for the stakeholder to protect itself against the problems posed by multiple claimants to a single fund. This includes protecting against the possibility of court-imposed liability to a second claimant where the stakeholder has already voluntarily paid a first claimant. But it also includes limiting litigation expenses, which is not dependent on the merits of adverse claims, only their existence.[254]

Insurers are often able to recover the attorney's fees they incur in connection with an interpleader action. California vests the trial court with discretion to award an insurer attorney's fees, and an insurer does not necessarily have to delay filing an interpleader action until it actually receives adverse claims.[255] Texas maintains rules that are slightly less liberal. It gives judges discretion to award attorney's fees only if the judge finds (1) there were indeed rival claimants, and (2) the insurer did not unreasonably delay filing the action.[256] Not all courts are inclined to permit insurers to recover attorney's fees. For example, in *New York Life Insurance Co. v. Apostolidis*,[257] a federal district court in New York recognized that a stakeholder plaintiff can recover attorney's fees if it (1) is disinterested, (2) conceded liability, (3) deposited the disputed funds into the court, and (4) sought a discharge from liability.[258] The court, however, observed that attorney's fees are inappropriate if they are incurred in the ordinary course of business.

Because insurers are often faced with competing claims, the court reasoned insurers generally are not able to recover attorney's fees incurred in filing an interpleader action.[259]

Interpleader actions cannot protect an insurer that otherwise runs afoul of a state's bad faith statute from liability for those violations. For example, in *State Farm Life Insurance Co. v. Martinez*,[260] an insured attempted to change the beneficiary on his life insurance policy from his ex-wife to his current wife but died on August 25, before he was able to properly effect the change. Within three weeks of his death the insurer received conflicting claims from his daughter (September 2), his ex-wife (September 5), and his widow (September 10). The widow sued the insurer on November 20, and the insurer filed an interpleader action on November 22. Although the competing beneficiaries eventually settled, the widow claimed the insurer violated Texas' prompt payment statute[261] when it failed to pay her within 60 days of receiving her claim. As a result, the widow argued she was entitled to attorney's fees and an interest penalty at the rate of 18% per year.

The court refused to read an exception for interpleader into the statute and, because the insurer waited 72 days after receiving the surviving wife's claim to file the action, held that the insurer's delay rendered it liable for the penalty and attorney's fees. However, the court went on to hold that the filing of the interpleader action stopped the accrual of the 18% penalty, so the insurer was only penalized for the 12 days it was late and not throughout the entire action. Although the Texas legislature, likely in response to *Martinez,* amended the prompt payment statute and now permits an insurer to file an interpleader action within 90 days,[262] *Martinez* nevertheless serves as a reminder that an insurer must act promptly to determine whether there is a valid claims dispute and, if so, to file an interpleader action within a reasonable time thereafter.

V. Conclusion

Navigating the laws that affect beneficiary designations can be difficult. By identifying and explaining the legal framework within which those laws operate, this paper attempts to provide those working on insurance beneficiary issues the tools they need to find the correct beneficiary and pay them.

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[1] William Schemmel, *Life Insurance Awareness Month: A Good Time to Review One's Beneficiary Designations*, Res Gestae, September 2010, at 54.
[2] *Id.*
[3] *See* Mass. Gen. Laws ch. 175, § 123 (requiring witnesses when the insured signs the change of beneficiary form); *Freund v. Freund*, 218 Ill. 189, 199, 75 N.E. 925, 928 (1905) (requiring the insurer's consent to a change of beneficiary).
[4] *See, e.g., Franck v. Equitable Life Ins. Co.*, 203 F.2d 473, 474 (8th Cir. 1953) (change of beneficiary required notice in writing and endorsement at the insurer's home office).
[5] *See, e.g., Glass v. Transamerica Life Ins. Co.*, 322 S.W.3d 556, 563 (Mo. Ct. App. 2010) (change of beneficiary required written notice, consent by recording at the insurer's administrative office, with each signature on the notice witnessed by a disinterested party).
[6] *Sun Life Assur. Co. of Canada v. Richardson*, 299 F.3d 500, 503 (5th Cir. 2002).
[7] *Id.*
[8] *U.S. Life Ins. Co. in the City of New York v. Logus Mfg. Corp.*, 845 F. Supp. 2d 1303, 1314 (S.D. Fla. 2012).
[9] *See e.g., Minnesota Life Ins. Co. v. Kagan*, 724 F.3d 843, 849 (7th Cir. 2013); *Howell v. Phoenix Ins. Co.*, 451 F. App'x 891, 895 (11th Cir. 2012); *Aetna Life Ins. Co. v. Wise*, 184 F.3d 660, 664 (7th Cir. 1999).
[10] *Wise*, 184 F.3d at 664.
[11] *Kagan*, 724 F.3d at 849.
[12] *Larsen v. Nw. Nat'l. Life Ins. Co.*, 463 N.W.2d 777, 781 (Minn. Ct. App. 1990).
[13] *Phoenix Mut. Life Ins. Co. v. Adams*, 30 F.3d 554 (4th Cir. 1994).
[14] *Wise*, 184 F.3d 660 (applying Illinois law).
[15] *Metro. Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002) (applying federal common law).
[16] *IDS Life Ins. Co. v. Estate of Groshong*, 736 P.2d 1301 (Idaho 1987).
[17] *Bell v. Parker*, 563 So.2d 594 (Miss. 1990).
[18] *Minnesota Life Ins. Co. v. Kagan*, 847 F. Supp. 2d 1088 (N.D. Ill. 2012) aff'd, 724 F.3d 843 (7th Cir. 2013).
[19] *McCarthy v. Aetna Life Ins. Co.*, 704 N.E.2d 557 (N.Y. 1998).
[20] *In re Estate of Capone*, 518 N.E.2d 619 (Ohio Prob. Ct. 1987).
[21] *Commercial Life Ins. Co. v. Robinson*, 662 So. 2d 486 (La. Ct. App. 1995).
[22] *Androvette v. Treadwell*, 532 N.E.2d 1271 (N.Y. 1988).
[23] Alan S. Wilmit, Note, *Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 CORNELL L. REV. 653 (1988).
[24] *Id.*

[25] *See generally* Colo Rev. Stat. § 15-11-804; Minn. Stat. § 524.2-804; Mont. Code Ann. § 72-2-814; N.J. Stat. Ann. § 3B:3-14; Ohio Rev. Code Ann. § 5815.33; 20 Pa. Cons. Stat. § 6111.2; Tex. Fam. Code Ann. § 9.301; Wash. Rev. Code. § 11.07.010.
[26] Wash. Rev. Code. § 11.07.010.
[27] 12 P.3d 1048 (Wash. Ct. App. 2000).
[28] 532 U.S. 141 (2001).
[29] In finding that the statute was preempted, the Court reasoned, in part, that the statute frustrated ERISA's goal of uniform administration, as enforcing the statute would force plan administrators to familiarize themselves with each state's statutes to determine whether the named beneficiary's status was revoked by operation of law. *Id.* at 149-50.
[30] ERISA requires "[e]very employee benefit plan [to] be established and maintained pursuant to a written instrument" that "specif[ies] the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1) and (b)(4). *See also Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 555 U.S. 285, 129 S.Ct. 865 (2009); *Trustees of the AFTRA Health Fund v. Biondi*, 303 F.3d 765, 773 (7th Cir. 2002); *In re Estate of Sauers*, 32 A.3d 1241 (Penn. 2011).
[31] *See, e.g., Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990); and *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994).
[32] *Melton v. Melton*, 324 F.3d 941, 945 (7th Cir. 2003); *see also Clift v. Clift*, 210 F.3d 268 (5th Cir. 2000).
[33] *Fox Valley & Vicinity Const. Workers Pension Fund*, 897 F.2d at 277.
[34] *Clift*, 210 F.3d at 272.
[35] *Brandon*, 18 F.3d at 1323.
[36] *Kennedy*, 555 U.S. 285.
[37] *Kennedy*, 555 U.S. at 303.
[38] *Kennedy*, 555 U.S. at 299 n. 10 ("[O]ur conclusion that [ERISA's anti-alienation provision] does not make a nullity of a waiver leaves open any questions about a waiver's effect in circumstances in which it is consistent with plan documents.").
[39] *Kennedy*, 555 U.S. at 303-04 n. 13.
[40] A "domestic relations order means any judgment, decree, or order (including approval of any property settlement agreement) which … relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a participant," and satisfies other statutory requirements. 29 U.S.C. § 1056(d)(3)(B)(ii).
[41] 29 U.S.C.A. § 1056(d)(3)(B)(i)(l). To "qualify" as a QDRO, a domestic relations order must, *inter alia*, provide specific information concerning the benefits at issue and the persons who are obtaining a right to those benefits pursuant to the court's order. 29 U.S.C. § 1056(d)(3)(B), (C), and (D).
[42] *Kennedy*, 555 U.S. at 299 n. 10, 129 S.Ct. at 875 n. 10 ("[W]e [do not] express any view as to whether the Estate could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed.").
[43] 677 N.W.2d 889 (Mich. Ct. App. 2004).
[44] *Id.* at 892-93; *See also Andochick v. Byrd*, 709 F.3d 296 (4th Cir. 2013) (life insurance and 401(k) benefits); *Estate of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 136-37 (3d Cir. 2012) (401(k) benefits); *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 678-79 (6th Cir. 2000) (life insurance benefits); *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 39 F.3d 1078, 1086 (10th Cir. 1994); *Flesner v. Flesner*, 845 F. Supp.2d 791 (S.D. Tex.

2012) (life insurance benefits); *Appleton v. Alcorn*, 291 Ga. 107, 109, 728 S.E.2d 549, 551-52 (Ga. 2012) (life insurance and 401(k) benefits); *Sweebe v. Sweebe*, 474 Mich. 151, 155-56, 712 N.W.2d 708, 711-12 (Mich. 2006) (life insurance benefits); *Pardee v. Personal Representative for Estate of Pardee*, 112 P.3d 308, 316 (Okla. Ct. App. 2004) (pension benefits).

[45] *MacInnes*, 677 N.W.2d at 893.

[46] California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington, and the District of Columbia. *See Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, NATIONAL CONFERENCE OF STATE LEGISLATURES (last updated Jan. 7, 2014), http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx.

[47] Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. *See id.*

[48] Colorado, Nevada, Oregon, and Wisconsin. *See Marriage Center: Relationship Recognition Map*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/campaigns/marriage-center (last visited Jan. 28, 2014); *Civil Unions & Domestic Partnership Statutes*, NATIONAL CONFERENCE OF STATE LEGISLATURES (last updated June 26, 2013), http://www.ncsl.org/issues-research/human-services/civil-unions-and-domestic-partnership-statutes.aspx.

[49] *See Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, *supra* note 46.

[50] 133 S. Ct. 2675 (2013). Section 3 of DOMA, 28 U.S.C. § 1738C, was overturned in June 2013. *Id.*

[51] Those rights, benefits, and protections include, for instance, surviving spouse benefits under social security, the ability to file income tax returns jointly as a married couple, leave rights to care for a spouse under the Family Medical Leave Act, access to benefits under federal employee benefit plans and under COBRA. *An Overview of Federal Rights and Protections Granted to Married Couples*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/resources/entry/an-overview-of-federal-rights-and-protections-granted-to-married-couples (last visited Jan. 28, 2014); *see* Annie Lowrey, *Gay Marriages Get Recognition from the I.R.S.*, N.Y. TIMES, Aug. 30, 2013, at A12, *available at* http://www.nytimes.com/2013/08/30/us/politics/irs-to-recognize-all-gay-marriages-regardless-of-state.html?hp&_r=0.

[52] Matt Apuzzo, *More Federal Privileges to Extend to Same-Sex Couples*, N.Y. TIMES (Feb. 8, 2014), *available at* http://www.nytimes.com/2014/02/09/us/more-federal-privileges-to-extend-to-same-sex-couples.html?_r=1.

[53] *Id.*

[54] Functionally, the process of entering a civil union versus a domestic partnership and having them recognized by the state may differ. For example, Illinois civil unions require that the couple apply in person for a civil union license at the county clerk's office. *Civil Union Records*, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, http://www.idph.state.il.us/vitalrecords/civilunion_faq.htm (last visited Sept. 11, 2013). The license is valid for 60 days, and no particular type of ceremony is required. *Id.* The law only requires that the civil union ceremony be performed by certain public officials, including a judge of a court of record, a county clerk in counties with more than 2 million residents, or an officiant of any religious denomination. *Id.* A domestic partnership in Oregon, on the other hand, simply requires filing for registration of the domestic partnership at the local

county marriage office. *Domestic Partnership Forms & Instructions*, OREGON HEALTH AUTHORITY, http://public.health.oregon.gov/birthdeathcertificates/registervitalrecords/pages/dp.aspx (last visited Jan. 28, 2014).

[55] *See Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States*, NATIONAL CENTER FOR LESBIAN RIGHTS, *available at* http://www.nclrights.org/wp-content/uploads/2013/07/Relationship_Recogition.pdf (last visited Jan. 28, 2014).

[56] *See id.*, at 4.

[57] *See id.*, at 2.

[58] *An Overview of Federal Rights Granted to Married Couples*, *supra* note 51.

[59] 29 C.F.R. § 825.122.

[60] *An Overview of Federal Rights Granted to Married Couples*, *supra* note51. Notably, however, a subset of federal employees may obtain benefits for their same-sex domestic partners and for the children of their domestic partners. *Frequently Asked Questions: Same Sex Domestic Partner Benefits*, OFFICE OF PERSONNEL MANAGEMENT, http://www.opm.gov/faqs/topic/domesticpartner/index.aspx (last visited Jan. 28, 2014). The U.S. Office of Personnel Management, using its own definition of "domestic partner," extends certain benefits to the domestic partners of federal employees. *Id.* The OPM's definition of "domestic partner" likely covers all state-defined civil unions and domestic partnerships:

> [A] "domestic partner" is defined in OPM regulations (e.g. 5 C.F.R. § 875.213) as a person in a domestic partnership with an employee or annuitant of the same sex. The term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—(1) are each other's sole domestic partner and intend to remain so indefinitely; (2) maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle); (3) are at least 18 years of age and mentally competent to consent to contract; (4) share responsibility for a significant measure of each other's financial obligations; (5) are not married or joined in a civil union to anyone else (6) are not the domestic partner of anyone else; (7) are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the partnership was formed; (8) are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. § 1001, and that the method for securing such certification, if required, shall be determined by the agency; and (9) are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Id.; *see also* 5 U.S.C. § 5582(b); 5 U.S.C. § 8342(c) (CSRS); § 8424(d) (FERS). These benefits include reimbursement under the Federal Flexible Spending Account Program, subsidization of child-care costs, and assistance under the Employee Assistance Program ("EAP") for the partners of federal employees.

[61] *See Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, *supra* note 46.

[62] *See Civil Unions & Domestic Partnership Statutes*, *supra* note 51. Note that Hawaii and Illinois maintain civil unions alongside same-sex marriage, but the status of civil unions is uncertain in New Jersey. *Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, *supra* note 46.

[63] *See id.* Illinois grants those in civil unions "some of the same benefits available to married couples, including the right to visit a sick partner in the hospital, disposition of a deceased loved one's remains and the right to make decisions about a loved one's medical care." *Id.* In New Jersey, "[c]ivil unions offer same-sex couples" and opposite-sex couples older than 62, "state-level spousal rights and responsibilities." *Id.*

[64] *Id.*

[65] *See id.* Washington's laws will be limited to couples in which at least one of the persons is 62 years of age or older effective June 30, 2014, and Nevada's laws do not mandate that employers provide health care coverage for domestic partners. *Id.*

[66] *Id.* Maine's domestic partnership law, for example, provides "a handful of rights to domestic partners, including the right to intestate succession, the right to elect against the will, the right to make funeral and burial arrangements, the right to receive victim's compensation, and preferential status to be named as guardian and/or conservator in the event of the death of a domestic partner." *See Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States*, *supra* note 55.

[67] *See Marriage Center: Interstate Recognition Map*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/campaigns/marriage-center (last visited Jan. 28, 2014).

[68] *Id.*

[69] *Id.*

[70] *See Marriage Center: Interstate Recognition Map*, *supra* note 67; *see also Christiansen v. Christiansen*, 253 P.3d 153 (Wyo. 2011) (holding that district court had subject matter jurisdiction to dissolve same-sex marriage lawfully entered into in Canada).

[71] *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

[72] *Burns v. Burns*, 560 S.E.2d 47 (Ga. App. 2002); *Gestl v. Frederick*, 754 A.2d 1087 (Md. Ct. Spec. App. 2000).

[73] *Langan v. St. Vincent's Hosp. of N.Y.*, 765 N.Y.S. 2d 411 (N.Y. Sup. Ct. 2003).

[74] *Port v. Cowan*, 44 A.3d 970 (Md. 2012); *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007).

[75] *Rosengarten v. Downes*, 802 A.2d 170 (Conn. App. Ct. 2002).

[76] BLACK'S LAW DICTIONARY (West 9th ed. 2009).

[77] *Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895).

[78] *See, e.g.*, *Port*, 426 Md. at 444; *Christiansen*, 253 P.3d at 156.

[79] *Chambers*, 935 A.2d 956; *In re J.B.*, 326 S.W.3d 654 (Tex. App. 2010); *Kern v. Taney*, 11 Pa. D. & C. 5th 558 (2010). Notably, the Rhode Island Supreme Court's decision in *Chambers* is now outdated as legislation permitting same-sex marriages in that state was enacted on May 2, 2013 and went into effect August 1, 2013.

[80] *Christiansen*, 253 P.3d at 156.

[81] *Id.*

[82] *See, e.g.*, *Cote-Whitacre v. Dept. of Public Health*, 446 Mass. 350, 403 (2006) (Ireland, J., dissenting) ("[N]o one can accurately predict the circumstances in which another jurisdiction may elect to give effect to an incident of a same-sex marriage performed [in Massachusetts].").

[83] *Finstuen v. Crutcher*, 496 F.3d 1139, 1152 (10th Cir. 2007) (quoting *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948)).
[84] U.S. Const. art. 4, § 1.
[85] *Finstuen*, 496 F.3d at 1153–54 (quoting *Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998)).
[86] *Id.*
[87] *Id.* at 1154.
[88] *Id.*
[89] *Id.* at 1142.
[90] *Id.* at 1154.
[91] *Id.*
[92] *Id.* ("If Oklahoma had no statute providing for the issuance of supplementary birth certificates for adopted children, the [plaintiffs] could not invoke the Full Faith and Credit Clause in asking Oklahoma for a new birth certificate.").
[93] 639 F.3d 146, 161 (5th Cir. 2011).
[94] *Id.* (emphasis added).
[95] 28 U.S.C. § 1738C.
[96] 133 S. Ct. 2675 (2013).
[97] *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1303–04 (M.D. Fla. 2005).
[98] *Windsor*, 133 S. Ct. at 2682.
[99] *Id.*
[100] *Id.*
[101] *Id.* at 2683.
[102] Paul Smith, *The Court Opts for an Incremental Approach but a Major Victory Nonetheless*, SCOTUSBLOG (June 26, 2013 5:25p.m.), http://www.scotusblog.com/2013/06/the-court-opts-for-an-incremental-approach-but-a-major-victory-nonetheless/.
[103] *Id.*
[104] Richard Socarides, *The Growing Impact of the Supreme Court's Gay-Marriage Ruling*, THE NEW YORKER, http://www.newyorker.com/online/blogs/newsdesk/2014/01/the-widening-impact-of-the-supreme-courts-gay-marriage-ruling.html (last visited Jan. 28, 2014).
[105] *Id.*
[106] No. 04–CV–848, 2014 WL 116013 (N.D. Okla. Jan. 14, 2014).
[107] *Id.* at *2.
[108] *Id.* at *22–*23.
[109] *Id.*
[110] *Id.*
[111] *Id.* at *25 – *33.
[112] No. 2:13–cv–217, 2013 WL 6697874 (D. Utah Dec. 20, 2013).
[113] *Id.* at *1.
[114] *Id.* at *25 – *28.
[115] Socarides, *supra* note 109.
[116] *Id.*
[117] *See DeBoer v. Snyder*, 12-CV-10285, 2013 WL 3466719 (E.D. Mich. July 1, 2013); *Bassett v. Snyder*, 12-10038, 2013 WL 3285111 (E.D. Mich. June 28, 2013).
[118] 951 F.Supp.2d 939 (E.D. Mich. 2013).
[119] *Id.* at 946.

[120] *See* Marty Lederman, *After* Windsor*: Michigan Same-Sex Partners Benefits Suit Advances*, SCOTUSblog (July 1, 2013 5:38p.m.), http://www.scotusblog.com/2013/07/after-windsor-michigan-same-sex-partners-benefits-suit-advances/.
[121] *Id.*
[122] *Id.*
[123] No. 12–cv–10285, 2013 WL 3466719 (E.D. Mich. July 1, 2013).
[124] *Id.* at *1.
[125] *See* Marty Lederman, *After* Windsor*: Michigan Same-Sex Partners Benefits Suit Advances*, SCOTUSblog (July 1, 2013 5:38p.m.), http://www.scotusblog.com/2013/07/after-windsor-michigan-same-sex-partners-benefits-suit-advances/.
[126] *See generally* Ariz. Rev. Stat. Ann. § 14-2803; Colo. Rev. Stat. § 15-11-803; 755 Ill. Comp. Stat. 5/2-6.
[127] Alissa Macomber, Note, *To Pay or Not to Pay: The Nevada Slayer Statute and the Insurance Companies' Dilemma*, 9 NEV. L.J. 475, 476 (2009).
[128] 755 Ill. Comp. Stat. 5/2-6.
[129] *Dougherty v. Cole*, 934 N.E.2d 16 (Ill. Ct. App. 2010).
[130] *Dougherty v. Cole*, 934 N.E.2d 16, 22; *see also In re Estate of Kissinger*, 206 P.3d 665 (Wash. 2009) (en banc) (reaching a similar result under statute that prohibited life insurance beneficiary who participated in the "wilful and unlawful" killing of another from receiving benefits).
[131] Ariz. Rev. Stat. Ann. § 14-2803.
[132] *Id.*
[133] *Castro v. Ballesteros-Suarez*, 213 P.3d 197, 204 (Ariz. Ct. App. 2009).
[134] Alaska Stat. § 13.12.803(a), (k).
[135] *In re Estate of Blodgett*, 147 P.3d 702 (Alaska 2006).
[136] *Id.* The *Blodgett* son was attempting to receive benefits from his father's will and not his life insurance policy, but Alaska's slayer statute does not treat the two vessels differently.
[137] *Id.* at 709.
[138] Colo. Rev. Stat. § 15-11-803.
[139] *In re Peterson*, 67 Cal. Rptr. 3d 584 (Cal. Ct. App. 2007).
[140] Cal. Probate Code § 254.
[141] *Peterson*, 67 Cal. Rptr. 3d at 591-92; *see also United Investors Life Ins. Co. v. Severson*, 151 P.3d 824 (Idaho 2007) (slayer's appeal of conviction does not prevent court from deciding interpleader action).
[142] *See generally American Gen. Life Ins. Co. v. Jones*, No. 08-0211-WS-B, 2010 WL 2926239 (S.D. Ala. July 20, 2010) (beneficiary's murder conviction qualified as a final judgment even though beneficiary's appeal was pending).
[143] *Fed. Kemper Life Assur. Co. v. Eichwedel*, 639 N.E.2d 246, 251 (Ill. App. Ct. 1994).
[144] *Ganelina v. Pub. Adm'r, N.Y. County*, 963 N.Y.S.2d 545, 550 (N.Y. Sup. Ct. 2013).
[145] *See* Eryn Mathews, Note, *STOLI on the Rocks: Why States Should Eliminate the Abusive Practice of Stranger-Owned Life Insurance*, 14 CONN. INS. L.J. 521 (Spring 2008).
[146] *Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457 (1876).
[147] Additional permissible relationships exist. *See generally* Fla. Stat. Ann. § 627.404; Cal. Ins. Code § 10110.
[148] Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI, and Securitization*, 13 U. PA. J. BUS. L. 173, 179-80 (Fall 2010).
[149] 14 CONN. INS. L.J. at 528-29, 543-44.

[150] *Sciaretta v. Lincoln Nat'l Life Ins. Co.*, 899 F. Supp. 2d 1318 (S.D. Fla. 2012); *Life Product Claring, LLC v. Angel*, 530 F. Supp. 2d 646 (S.D.N.Y. 2008). Courts have not uniformly adopted a good faith requirement. *Lincoln Nat'l Life Ins. Co. v. Gordon R.A. Fishman Irrevocable Life Trust*, 638 F. Supp. 2d 1170, 1178-79 (C.D. Cal. 2009).
[151] *Sciaretta*, 899 F. Supp. 2d at 1325.
[152] Viatical Settlements Model Act, available at http://www.naic.org/store/free/MDL-697.pdf (last visited January 31, 2014). Section 11 of the act provides that:

> It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions has been met within the five-year period . . ."

Id.
[153] *See* Life Settlements Model Act § 11 (Nat'l Conf. of Ins. Legislators 2007).
[154] Michael G. Koutnik, Comment, *Long Live Life Settlements: The Current Status and Proposed Direction of the Life Settlement Market*, 96 MARQ. L. REV. 913, 945 (Spring 2013).
[155] Sharo Michael Atmeh, *Regulation not Prohibition: The Comparative Case Against the Insurable Interest Doctrine*, 32 N.W. J. INT'L L. & BUS. 93, 110 n.98 (Fall 2011).
[156] *Id.* Nebraska, North Dakota, Oregon, Vermont, and West Virginia adopted the model act. Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Minnesota, Nevada, Ohio, Oklahoma, Rhode Island, Tennessee, and Washington adopted a portion of the act. The Life Insurance Settlement Association lists the current iteration of each state's insurable interest statute, available at http://www.lisa.org/state-document-report.aspx.
[157] *See generally* Fla. Stat. Ann. § 627.455; N.Y. Insurance Law § 3203(a)(3); Del. Code Ann. Tit. 18, § 2908.
[158] *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1065 (Del. 2011) (majority of courts have held that "a life insurance policy lacking an insurable interest is void as against public policy and thus never comes into force, making the incontestability provision inapplicable").
[159] *Ganelina*, 963 N.Y.S.2d 545; *Pruco Life Ins. Co. v. U.S. Bank*, No. 12-24441-CIV, 2013 WL 4496506, at *5 (S.D. Fla. Aug. 20, 2013); *contra Sciaretta*, 899 F. Supp. 2d at 1328 (different judge in same district court reaching opposite conclusion).
[160] Restatement (Third) Of Agency § 1.04 (2006); 3 Am. Jur. 2d Agency § 20.
[161] 3 Am. Jur. 2d Agency § 20.
[162] 3 Am. Jur. 2d Agency § 22.
[163] *Id.*
[164] *Beaucar v. Bristol Federal Sav. & Loan Ass'n*, 268 A.2d 679 (Conn. Cir. Ct. App. Div. 1969).
[165] *Parrish v. Rigell*, 188 S.E. 15, 19 (Ga. 1936); *Parton v. Robinson*, 574 S.W.2d 679, 682 (Ky. Ct. App. 1978).
[166] 3 Am. Jur. 2d Agency § 20.
[167] UNIF. POWER OF ATTORNEY ACT, pref. n. 1 (amended 2006), *available at* http://www.uniformlaws.org/shared/docs/power%20of%20attorney/upoaa_final_may08.pdf (last visited Jan. 30, 2014).

[168] Legislative Fact Sheet—Power of Attorney, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Power%20of%20Attorney (last visited Jan. 30, 2014).
[169] UNIF. POWER OF ATTORNEY ACT, Art. 2 gen. cmt.
[170] *Id.* Art. 2 § 201(a)(4).
[171] *Id.* Art. 2 gen. cmt.
[172] 755 Ill. Comp. Stat. § 45/3-1 *et seq.*
[173] 755 Ill. Comp. Stat. § 45/3-4.
[174] 755 Ill. Comp. Stat. § 45/3-3.
[175] UNIF. POWER OF ATTORNEY ACT, pref. n. 2.
[176] 162 A.L.R. 547 (Originally published in 1946).
[177] *Id.*; *see also Demerath v. Knights of Columbus*, 268 Neb. 132, 680 N.W.2d 200 (2004) (The court held that "whether an insurance company has a duty to investigate the propriety of an attorney in fact's change in beneficiary designation under an insurance policy depends on whether the insurance company had knowledge of facts reasonably suggesting the change was improper" but found no evidence in the record of such knowledge); *Metro. Life Ins. Co. v. Bramlett*, 140 So. 752, 753 (Ala. 1932) ("Unless there are facts present, putting the bank on notice, it is under no obligation to investigate or assure itself of the drawer's sanity").
[178] No. RDB–11–0099, 2011 WL 4479699 (D. Md. Sept. 26, 2011).
[179] *Id.* at *2.
[180] *Id.*
[181] *Id.* at *5.
[182] *Id.*
[183] *Id.*
[184] *See e.g.*, Adult Protective Services Act, Ariz. Rev. Stat. Ann. § 46-451 *et seq.*; Elder Abuse and Dependent Adult Civil Protection Act, Cal. Welf. & Inst. Code § 15600 *et seq.*; Tennessee Adult Protection Act, Tenn. Code Ann. § 71-6-101 *et seq.*; Adult Protective Services Act, Wyo. Stat. Ann. § 35-20-101 *et seq.*
[185] *See e.g.*, Ariz. Rev. Stat. Ann. § 46-456(B); Cal. Welf. & Inst. Code § 15657.5; Tenn. Code Ann. § 71-6-120(b).
[186] *See e.g.*, Ariz. Rev. Stat. Ann. § 46-456(B) ("B. A person who violates subsection A of this section or § 13-1802, subsection B shall be subject to actual damages and reasonable costs and attorney fees in a civil action brought by or on behalf of a vulnerable adult and the court may award additional damages in an amount up to two times the amount of the actual damages."); Cal. Welf. & Inst. Code § 15657.5; Tenn. Code Ann. § 71-6-120(b).
[187] Cal. Welf. & Inst. Code § 15610.30(a)(2).
[188] *Das v. Bank of Am., N.A.*, 112 Cal. Rptr. 3d 439 (Cal. Ct. App. 2010).
[189] *Chavers v. GMAC Mortgage*, LLC, 2:11-CV-01097-ODW SS, 2012 WL 2343202 (C.D. Cal. June 20, 2012).
[190] *O'Brien v. Cont'l Cas. Co.*, 5:13-CV-01289 EJD, 2013 WL 4396761 (N.D. Cal. Aug. 13, 2013).
[191] 112 Cal. Rptr. 3d 439 (Cal. Ct. App. 2010).
[192] *Id.* at 444.
[193] *Id.*
[194] *Id.*
[195] *Id.*

[196] *Id.*
[197] *Id.* at 444–45.
[198] *Id.* at 454.
[199] *Id.*
[200] Termination of Support—Age of Majority, NATIONAL CONFERENCE OF STATE LEGISLATURES (last updated Jan. 2014), http://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx.
[201] Transfers to Minors Act Summary, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/ActSummary.aspx?title=Transfers%20to%20Minors%20Act (last visited Jan. 28, 2014).
[202] *Id.*
[203] *Id.*
[204] Legislative Fact Sheet—Transfers to Minors Act, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Transfers%20to%20Minors%20Act (last visited Jan. 28, 2014). Only Georgia, New Hampshire, Ohio, South Carolina, and Vermont have not enacted the 1983 UTMA but, instead, use some version of the 1956, 1965, or 1966 Uniform Gifts to Minors Act. *Id.*
[205] UNIF. TRANSFERS TO MINORS ACT § 3, § 7(b) (amended 1983), *available at* http://www.uniformlaws.org/shared/docs/transfers%20to%20minors/utma83_w_1986_amend.pdf (last visited Jan. 29, 2014) ("If a person having the right to do so under Section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.").
[206] *Id.* § 7(c).
[207] This value may vary by state as it is bracketed in the text, giving each state the opportunity to choose its own cut-off value. For example, Illinois choose to keep the value set at $10,000. 760 Ill. Comp. Stat. § 20/7.
[208] UNIF. TRANSFERS TO MINORS ACT § 7(c), § 7 cmt.
[209] *Id.; see also* § 7 cmt.
[210] *Id.* § 3.
[211] *Id.* § 9.
[212] *Id.* § 12(a).
[213] *Id.* § 11(b).
[214] *Id.* § 20.
[215] *Id.* § 8 & cmt.
[216] *Id.* § 16.
[217] *Id.*
[218] *Hood v. Jenkins*, E2011-02749-SC-R11CV, 2013 WL 6699505, at *1 (Tenn. Dec. 19, 2013).
[219] *Id.*
[220] *Id. But see Prudential Ins. Co. of Am. v. Frazier*, 914 S.W.2d 296 (Ark. 1996) (insurer held liable because the guardianship paperwork had not gone through).
[221] *Iverson v. Scholl Inc.*, 483 N.E.2d 893 (Ill. App. Ct. 1985).
[222] *Id.* at 897.
[223] *Id.* at 897–98.
[224] *Id.* at 898.
[225] *Id.*
[226] *Id.* at 897.

[227] *Id.* at 898.
[228] Legislative Fact Sheet—Unclaimed Property Act, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Unclaimed%20Property%20Act (last visited Jan. 31, 2014).
[229] Unclaimed Property Act Summary, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (last visited Jan. 31, 2014).
[230] UNIF. UNCLAIMED PROPERTY ACT § 2(a)(8) (amended 1995), *available at* http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (last visited Jan. 31, 2014).
[231] *Id.* § 7(a)(4).
[232] *See State of W. Va. ex rel. John D. Perdue v. Nationwide Life Ins. Co.*, No. 12-C-287, slip op. at 2 (W.V. Cir. Ct. Dec. 27, 2013), *available at* http://www.sutherland.com/portalresource/WestVaOrder.pdf (last visited Jan. 31, 2014).
[233] *Id.*
[234] *Id.* at 3.
[235] *Id.* at 5.
[236] *Id.* at 5–6 (citations omitted).
[237] *Id.* at 6–7.
[238] *Id.* at 8.
[239] *Id.* at 9.
[240] *Id.* at 18.
[241] *See* Prudential Financial, Inc. 2012 Annual Report 217-19, *available at* http://www.prudential.com/media/managed/Prudential-AR2012.pdf (last visited Jan. 31, 2014).
[242] *Id.*
[243] Darla Mercado, *Prudential Settles with 20 States Over Unclaimed Death Benefits*, INVESTMENTNEWS (Jan. 13, 2012 4:41p.m.), http://www.investmentnews.com/article/20120113/FREE/120119952#.
[244] *Id.*
[245] Paul MacCready, *Life Insurers File Action Over Use of Death Master File*, KEANE (Sept. 11, 2013), http://unclaimed-property.keaneco.com/life-insurance-carriers-file-lawsuit.
[246] *Id.*
[247] *Id.*
[248] *Coots v. Allstate Life Ins. Co.*, 313 F. Supp. 2d 539, 544 (D. Md. 2004).
[249] *J.C. Penney Life Ins. Co. v. Heinrich*, 32 S.W.3d 280, 285 (Tx. App. 2000).
[250] *Id.*
[251] *Farmers New World Life Ins. Co. v. Rees*, 161 Cal. Rptr. 3d 678, 684 (Cal. Ct. App. 2013).
[252] Fed. R. Civ. P. 22(a); *Perlman v. Fid. Brokerage Services LLC*, 932 F. Supp. 2d 397, 415 (E.D.N.Y. 2013).
[253] *State Farm Life Ins. Co. v. Martinez*, 216 S.W.3d 799, 806 (Tex. 2007) (further providing that "every reasonable doubt should be resolved in favor of the stakeholder's right to interplead").
[254] *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004, 1009 (9th Cir. 2012).
[255] Cal. Civ. Proc. Code § 386.6.
[256] *Clayton v. Mony Life Ins. Co. of Am.*, 284 S.W.3d 398, 405-06 (Tex. App. 2009).
[257] 841 F. Supp. 2d 711 (E.D.N.Y. 2012).
[258] *Id.* at 721.

[259] *Id.*; *see also Banner Life Ins. Co. v. U.S. Bank, N.A.*, 931 F. Supp. 2d 629, 632 (D. Del. 2013) (refusing to award interpleading insurer attorney's fees because doing so would shift the insurer's ordinary business expenses to claimants). Not all federal courts follow *Apostolidis'* example. *See generally N.Y. Life Ins. & Annuity Corp. v. Cannatella*, --- F. App'x ---, No. 12-30663, 2013 WL 6727353, at *4 (5th Cir. Dec. 23, 2013) (awarding attorney's fees to life insurer); *Allianz Life Ins. v. Agorio*, 852 F. Supp. 2d 1163, 1168 (N.D. Cal. 2012) (awarding attorney's fees to life insurer and providing that the Ninth Circuit has not barred recovery of attorney's fees to insurers).
[260] 216 S.W.3d 799.
[261] Tex. Ins. Code Ann. § 542.058, 542.060.
[262] Tex. Ins. Code Ann. § 542.058(c).