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J. Wesley Oler

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LIFE INSURANCE AS CONSTITUTING PART OF A BANKRUPT'S ESTATE IN PENNSYLVANIA

J. WESLEY OLER*

The following rules apply in Pennsylvania with respect to the interests of a bankrupt in policies of life insurance:

(A)

Policies Owned by the Bankrupt and Insuring His Own Life.

(1) If the insurance is payable to the bankrupt, his estate, or his personal representatives:

(a) The cash surrender value of the policy, as of the date of filing the petition in bankruptcy, passes to the trustee in bankruptcy,¹ subject to the right of the bankrupt, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the insurer, to pay or secure to the trustee the sum so ascertained and stated, and to continue to hold, own, and carry the policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings.²

(b) The cash surrender value is the maximum interest that passes to the trustee in bankruptcy.³ The death of the bankrupt after the filing of the petition, even though prior to the adjudication, does not entitle the trustee to the face value of the policy, but only permits him to collect the cash surrender value as of the date of the filing of the petition. The excess of the proceeds over and above the cash surrender value on that date must be given to the bankrupt's personal representatives.⁴

*A.B., 1932, Dickinson College; LL.B., 1935, Dickinson School of Law; member of the Philadelphia bar.

¹Bank of Minden v. Clement, 256 U. S. 126, 65 L. Ed. 857 (1921).

²Bankruptcy Act of July 1, 1898, sec. 70a(5), 30 U. S. Stat. at L. 565, 11 U. S. C. A. 110a(5).

³Burlingham v. Crouse, 228 U. S. 459, 57 L. Ed. 920 (1913); In re Greenspan (D.C., S.D.N.Y.), 8 F. Supp. 582.

⁴Everett v. Judson, 228 U. S. 474, 57 L. Ed. 927 (1913); McCahan's Estate, 312 Pa. 515 (1933).

(2) If the insurance is payable, either directly or through a trustee,⁵ to the bankrupt's wife, child, or dependent relative, even though the bankrupt has reserved the absolute right to change the beneficiary,⁶ and even though the policy has a cash surrender value,⁷ no interest in the policy or in the cash surrender value passes to the trustee in bankruptcy.

(3) If the insurance is payable to a third person (other than the wife, child, dependent relative, or personal representative of the insured), and no absolute right is reserved by the insured to change the beneficiary without the latter's consent, no interest in the policy or in the cash surrender value thereof passes to the trustee in bankruptcy.⁸

(4) If the insurance is payable to a third person (other than the wife, child, dependent relative, or personal representative of the insured), and the insured has reserved the absolute right to change the beneficiary without the latter's consent, the cash surrender value of the policy, as of the date of filing the petition, passes to the trustee,⁹ subject to the right of the bankrupt, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the insurer, to pay or secure to the trustee the sum so ascertained and stated, and to continue to hold, own, and carry the policy free from the claims of creditors participating in the distribution of his estate under the bankruptcy proceedings.¹⁰

(B)

Policies Owned by the Bankrupt But Insuring Another's Life.¹¹

(1) If the policy is payable to the bankrupt, his estate, or personal representatives:

(a) If the person whose life is insured dies before the filing of the petition in bankruptcy, the trustee in bankruptcy takes the proceeds of the policy.

(b) If the person whose life is insured is still living when the petition in bankruptcy is filed, the trustee is entitled to the cash surrender value of the policy, as of the date of filing the petition, subject to the bankrupt's right to pay or secure

⁵In *re Phillips* (D.C., M.D., Pa.), 7 F. Supp. 807 (1934); In *re Bosak* (D.C., M.D.Pa.), 12 F. Supp. 278 (1935).

⁶Act of June 28, 1923, P. L. 884, sec. 1, 40 P. S. 517; In *re Rose* (D.C., E.D.Pa.), 24 F. (2d) 253 (1928), *aff'd* (C.C.A. 3), 24 F. (2d) 254 (1928); *Bowers v. Reinhard* (C.C.A. 3), 78 F. (2d) 776, reversing *In re Bowers* (D.C., E.D.Pa.), 11 F. Supp. 848 (1934), and *cert. den.* 296 U. S. 640, 80 L. Ed. 455 (1935). The *Bowers* case seems to go too far.

⁷*Joseph v. N. Y. Life Insurance Co.*, 308 Pa. 460 (1932).

⁸*In re Simmons & Griffin* (C.C.A.1), 255 Fed. 521 (1919).

⁹*Cohen v. Samuels*, 245 U.S. 50, 62 L. Ed. 143 (1917); In *re Cooper's Estate* (D.C., Md.), 28 F. (2d) 438 (1928).

¹⁰See note 2, *supra*.

¹¹Owing to the infrequency with which situations under this division arise, actual cases have not been found in support of the rules here stated, but it is believed that they are sustainable.

to the trustee the sum of such surrender value and thus maintain the policy free from the claims of the creditors in bankruptcy.¹²

(2) If the policy is payable to any third person (including the wife, child, or dependent relative of the bankrupt):¹³

(a) If the bankrupt has not reserved the absolute right to change the beneficiary, the cash surrender value of the policy does not pass to the bankrupt's trustee where the insured is still living at the time the bankruptcy proceedings are begun, nor do the proceeds of the policy pass to the trustee where the insured has died before such time.

(b) If the bankrupt has reserved the absolute right to change the beneficiary:

Where the insured is still living at the time the petition in bankruptcy is filed, the trustee takes the cash surrender value of the policy, subject to the bankrupt's right to pay or secure to the trustee the sum of such surrender value and thus maintain the policy free from the claims of the creditors in bankruptcy.¹⁴

Where the insured has died before the bankruptcy proceedings are instituted, the proceeds of the policy pass to the beneficiary, not to the trustee.

(C)

Policies Not Owned by the Bankrupt, But in Which He is the Named Beneficiary.

(1) If the insured has died before the filing of the bankruptcy petition, the bankrupt's vested right to the proceeds of the policy passes to the trustee, whether or not the power to change the beneficiary had been reserved by the owner of the policy.¹⁵

(2) If the insured dies after the filing of the petition:

(a) Where the owner of the policy had reserved the absolute right to change the beneficiary, the proceeds of the insurance pass to the bankrupt free from the claims of the creditors in bankruptcy, and no interest in such proceeds passes to the trustee.¹⁶

(b) Where the owner of the policy had not reserved the absolute right to change the beneficiary without the latter's consent, whatever transferable interest the bankrupt had in the policy at the time the petition in bankruptcy was filed passes to the trustee.¹⁷

Philadelphia, Pa.

J. Wesley Oler.

¹²See note 2, *supra*.

¹³The Act of June 28, 1923 (see note 6, *supra*), applies only to the wife, child, or dependent relative of the *insured*. *United Brethren Mut. Aid Society v. Grove*, 6 W.N.C. 328 (1878).

¹⁴See note 2, *supra*.

¹⁵*International Life Insurance Co. v. Carroll* (D.C., W.D.Tenn.), 26 F. (2d) 369 (1928).

¹⁶*In re Hogan* (C.C.A. 7.), 194 Fed. 846 (1912).

¹⁷*Inferentially, Robinson v. U. S.* (D.C., W.D.N.Y.), 12 F. Supp. 550 (1935).