

2015

**Diane Viel Ty and Jacob Lopez, Plaintiffs and Appellants, v. Utah State Retirement Board and Public Employees' Group Ter. Life Progr., Defendants and Appellees.**

Utah Court of Appeals

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IN THE  
UTAH COURT OF APPEALS

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DIANE WELTY and JACOB LOPEZ,

Plaintiffs and Appellants,

v.

UTAH STATE RETIREMENT BOARD and  
PUBLIC EMPLOYEES' GROUP TERM LIFE PROGRAM,

Defendants and Appellees.

---

BRIEF OF APPELLANTS

---

On appeal from the Utah State Retirement Board, Agency Decision Number 13-12L

---

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ORAL ARGUMENT REQUESTED

FILED  
UTAH APPELLATE COURTS

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ORAL ARGUMENT REQUESTED

## LIST OF ALL PARTIES

### **Appellants:**

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**Jacob Lopez**

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**Utah Retirement Board**  
**Public Employees' Group Term Life Program**

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## **JURISDICTIONAL STATEMENT**

Jurisdiction lies with the Utah Court of Appeals. A formal administrative hearing was held on July 16, 2015 before the Adjudicative Hearing Office of J. Dennis Frederick. Pursuant to Utah Code Ann. § 78A-4-103(2) "[t]he Court of Appeals has appellate jurisdiction . . . over a final order. . . from a formal adjudicative proceeding of a state agency. . . ."

## **STATEMENT OF ISSUES AND STANDARD OF REVIEW**

### **Statement of Issues Presented**

The principal issue of the case, and this appeal, is that Mr. Lopez contractually incorporated his decree of divorce into his life insurance contract with the Appellees, Utah State Retirement Board and Public Employees' Group Term Life Program (hereinafter together referenced as the "Life Program"), making his designation of Ms. Welty irrevocable pursuant to the terms of the incorporated contract.

The hearing officer erred in his interpretation of Chapter 20, Title 40 of the Utah Code by denying Ms Welty's request for payment of life insurance proceeds. The principles of law and equity dictate that Ms. Welty was the

irrevocable beneficiary under Jesse Lopez's life insurance policy. The Life Program paid the incorrect beneficiary under a forbidden change of beneficiary form because Ms. Welty had been designated an irrevocable beneficiary under the terms of the incorporated contract. The hearing officer ignored clear authority when he denied Ms. Welty's request for payment of life insurance proceeds.

Title 49 Chapter 20 of the Utah Code provides general guidelines for the state of Utah to create various group insurance programs for state employees. At the state's discretion, these programs may be offered to various cities to offer to city employees, at the city's discretion. Mr. Lopez, Ms. Welty's ex-spouse and Jacob Lopez's father, elected to participate in some of the offered programs offered by his city employer.

The statute is general in nature and allows the state to develop its own guidelines in offering and administering these insurance products. The applicable guidelines to the case at hand is known as the Life Program Group Term Master Policy (the "Master Policy"). The Master Policy creates the contractual obligations of the Life Program and the covered employees. The Master Policy specifically allows for the

written statements of covered employees to be part of the contract. Nothing in the Master Policy prevents a covered employee from irrevocably designating beneficiaries, nor does any provision permit the Life Program to administer the contracts in contravention of a court order.

Unfortunately the findings of fact and conclusions of law provide a scant record related to the hearing officer's interpretation and application of title 49, the contractual issues presented before the officer, or review of the applicable case law. The record's deficiencies highlight the need for this appeal. There are no findings of fact or conclusions of law related to the incorporation of the divorce decree into Mr. Lopez's life insurance contract. There are no findings of fact or conclusions of law related to Ms. Welty's argument about the forbidden nature of subsequent change of beneficiary forms. There are no findings of fact or conclusions of law related to the Life Program's actions taken in contravention of a court order.

#### **Standard of Review**

The hearing officer's order relies on interpretation of Title 49, Chapter 20 of the Utah Code. The Court of Appeals reviews decisions related to interpretation of statute

under a "correction-of-error standard" and gives no deference to the Board's interpretation under the Act.<sup>1</sup>

### **DETERMINATIVE STATUTORY PROVISIONS**

The following provisions are determinative to the issues set forth in this appeal:

"(1) The program shall: (a) act as a self-insurer of employee benefit plans and administer those plans . . . ."  
Utah Code Ann. 49-20-401(1)(a)

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

The case stems from Ms. Welty's demand for payment of life insurance proceeds on a life insurance policy upon the death of Jesse Lopez. The life insurance policy was administered by the Life Program. The facts are largely

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<sup>1</sup> See *Hilton v. State Ret. Bd.*, 2005 Utah App. LEXIS 405, 2005 UT App 408 (Utah Ct. App. 2005); *Epperson v. Utah State Ret. Bd.*, 949 P.2d 779, 781 (Utah Ct. App. 1997); *O'Keefe v. Utah State Retirement Bd.*, 929 P.2d 1112, 1114 (Utah Ct.App.1996), cert. granted, 939 P.2d 683 (Utah 1997); *Allred v. Utah State Retirement Bd.*, 914 P.2d 1172, 1174 (Utah Ct. App. 1996).

agreed to by the parties.

The Life Program wrongfully paid life insurance proceeds according to a forbidden change of beneficiary form. Diane Welty and Jesse Lopez divorced in 1997 and, per the divorce decree, Mr. Lopez was to "maintain in full force and effect" a life insurance policy which designated Diane Welty the irrevocable beneficiary for the benefit of the children as long as child support was due.

Mr. Lopez complied with the decree by submitting a copy of his divorce decree along with his beneficiary change form to the Life Program, administered by the Life Program. The submission of the divorce decree met all legal requirements to incorporate the irrevocable designation of Ms. Welty as beneficiary into Mr. Lopez's contract with the life program. This incorporation by written statement was specifically allowed by the terms of the Master Policy which governs the contractual relationship between Mr. Lopez and the Life Program. By attaching a copy of the divorce decree, the Life Program was notified that the beneficiary change was irrevocable under Utah law. The Life Program was bound by the Third District Court ruling and was contractually bound to abide by the irrevocable

language in the divorce decree. Utah law is clear that when there is an irrevocable clause in a court-entered decree of divorce, it must be obeyed. The Life Program was contractually bound to designate Ms. Welty future beneficiary until Mr. Lopez's youngest child reached an age of majority.

During the formal hearing, the administrator of the Life Program declared that the PEHP has the authorization to refuse forms based upon a number of factors. Any change of beneficiary form submitted prior to the time Jacob Lopez turned majority age was forbidden pursuant to court order and incorporation of such court order into the contract. PEHP should have denied any attempts made by Mr. Lopez, or anyone else, to circumvent the parties' contractual rights or the court-entered divorce decree.

The order by the Utah State Retirement Board is contrary to the principles of equity, as well as interpretation of the contract. First, Ms. Welty had limited ability to monitor the beneficiary of the life insurance. Her only real method was to file motions in state court related to Mr. Lopez's obligations under the divorce decree. She did so, and Mr. Lopez complied with his

obligation by providing a copy of the divorce decree to designate Ms. Welty the irrevocable beneficiary to the life insurance. Ms. Welty had no way of knowing, or monitoring if Mr. Lopez decided to submit a subsequent change of beneficiary form.

On the other hand, the Life Program had a simple method of monitoring, by simply making note on the file that the beneficiary had been designated as irrevocable and forbid subsequent attempts to change the beneficiary forms. Further, the life insurance was in place, until the children reached the age of majority, to provide support for Mr. Lopez's biological children. Mr. Lopez desired for his son, Jacob, to attend college and specified to Jacob and Ms. Welty that these funds from the life insurance policy were to help support Jacob's education. The Utah State Retirement Board's mistake robbed Jacob of the intended benefit of the life insurance. Jacob has significant student loan debt because the Life Program granted the benefit of the life insurance to the wrong person.

#### Course of Proceedings

Ms. Welty filed a request for board action after her

claim on certain life insurance proceeds was denied by the Life Program. Ms Welty subsequently amended her request on April 5, 2013. The case proceeded through the administrative framework and was heard at a formal administrative hearing on July 16, 2015. The parties submitted stipulated facts and the only testimony taken at the hearing was from Ms. Welty, Jacob Lopez, and Chris Lamkin.

#### **Disposition Below**

The hearing officer ruled that the Life Program conformed with the requirements of Title 49, Chapter 20. The hearing officer did not offer a legal memorandum of his decision and his decision contains very little citation to statute or law.

#### **STATEMENT OF FACTS**

##### **Stipulated Facts**

The parties largely stipulated to the facts of the case. The statement of Stipulated Facts is included in the record page number 240. Ms. Welty and her son incorporate the Stipulated Facts in their entirety and recite them herein:

1. Jesse Gavino Lopez ("Mr. Lopez") was employed by



Salt Lake City Corporation ("City") and was covered by a group term life insurance policy offered to City employees through the Public Employees' Health Program ("PEHP") Life Program. [R. 240, ¶ 1.]

2. Mr. Lopez, and petitioner, Diane Welty ("Ms. Welty") were married in August 1978 and divorced in October 1997. [Id. ¶ 2.]

3. On October 29, 1997, a Decree of Divorce was ordered by Judge Pat B. Brian of the 3<sup>rd</sup> District Court of Salt Lake County, Utah. [Id. ¶ 3.]

4. In the Decree of Divorce, Mr. Lopez was ordered as follows:

24. That the Respondent currently has in force and effect a life insurance policy on his life in the face amount of \$325,000.00. That Respondent is ordered to maintain in full force and effect said life insurance policy until such time as the last of the parties' children reaches age 18 or alimony terminates, whichever is later. During the period that the child support is due, the Respondent should be ordered to irrevocably designate the Petitioner, as trustee for the minor children, beneficiary on said life insurance policy. The Respondent should be ordered to provide the Petitioner with proof that the insurance is in effect within 30 days of entry of the Divorce Decree and providing verification that said insurance is in effect by January 15<sup>th</sup> of each year thereafter.

[Id. ¶ 4.]

5. In July 1999, Mr. Lopez had coverage of \$173,000.00

with the Life Program, of which \$50,000.00 was funded by the City and the rest funded by Mr. Lopez. [Id. ¶ 5.]

6. On December 3, 1999, PEHP received a Group Term Life Application from Mr. Lopez dated on or about November 29, 1999. The application indicated that Mr. Lopez was applying for \$300,000.00 in Basic Group Term Life Coverage. The application named Diane (petitioner) for minor children as per attached divorce decree and Mary Ellen Lopez his wife as secondary beneficiary. Mr. Lopez's request for additional coverage was cancelled in December 1999 based upon contact from the City's Human Resources Department. [Id. ¶ 6.]

7. On December 3, 1999 the Life Program received a Beneficiary Change Form signed by Mr. Lopez on November 29, 1999 which listed Petitioner, "Diane (petitioner) for minor children as per attached divorce decree" as primary beneficiary and Mary Ellen Lopez his wife as secondary beneficiary. [Id. ¶ 7.]

8. The Life Program received a written copy of the Decree of Divorce entered by the Third District of the State of Utah on October 29, 1997 attached to the Beneficiary Change Form submitted by Mr. Lopez on or about December 3, 1999. [Id. ¶ 8.]

9. In a Verified Response to Petitioner's Order to Show Cause signed by Mr. Lopez on December 6, 1999, Mr. Lopez provided the following:

- a. On or about the 31<sup>st</sup> day of October, 1997 this Court entered a Decree of Divorce based upon the entry of Respondent's default.
- b. The Decree of Divorce contained a number of misstatements of fact, some even inconsistent with the terms of the Petition from which the default was taken. Respondent was not provided with a copy of the Decree of Divorce until long after the time to set the default had expired under Rule 60(b), U.R.C.P.
- c. In reality Respondent never had a life insurance policy on his life with a face amount of \$325,000.00.
- d. At the time of divorce Respondent owned two policies. The first was a basic term policy offered through his employment for approximately \$100,000. The second was a universal life insurance policy offered through Allstate Insurance which insured his life for only \$50,000.00, and which also insured the life of Petitioner for \$50,000.00. (See Exhibit "A") [Exhibit not included]. Thus, Respondent's factual burden to carry insurance has always been approximately \$150,000.00.

. . .

[Id. ¶ 9.]

10. On July 24, 2003, the Life Program received an Additional Group Term Life Employee Enrollment Form signed by Mr. Lopez on or about July 15, 2003. Mr. Lopez applied for additional coverage up to \$300,000. The designated primary beneficiary was Petitioner Diane Lopez, his ex-wife for minor

child \$300,000 per divorce decree and his son Petitioner Jacob Lopez as contingent beneficiary. This beneficiary change form also reflects Jacob Lopez's date of birth as August 27, 1988. However, Mr. Lopez did not complete underwriting requirements, and he was never issued the additional coverage. [*Id.* ¶ 10.]

11. In addition to the Additional Group Term Life Employee Enrollment Form on July 24, 2003, PEHP received a Beneficiary Change Form signed on or about July 15, 2003, by Mr. Lopez. The form revoked any previous nominations of beneficiary(ies) and designated Mary Ellen Lopez, his wife, and his ex-wife Diane Lopez petitioner for minor child as primary beneficiaries. [*Id.* ¶ 11.]

12. On October 24, 2003, PEHP received a Group Term Life Change Form signed by Mr. Lopez on or about October 21, 2003. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez, his wife, as primary beneficiary and Joshua G. Lopez, his son, as contingent beneficiary. [*Id.* ¶ 12.]

13. On March 20, 2006, PEHP received a Group Term

Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez, his wife, as primary beneficiary. [*Id.* ¶ 13.]

14. Mr. Lopez died on July 9, 2006. [*Id.* ¶ 14.]

15. Jacob Lopez was 17 years old at the time of Mr. Lopez's death. [*Id.* ¶ 15.]

16. On July 26, 2006, PEHP received a Group Term Life Program Claimant's Statement from Mary Ellen Lopez. [*Id.* ¶ 16.]

17. On or about August 2, 2006, PEHP issued a check in the amount of \$173,000.00 to Mary Ellen Lopez, the beneficiary designated on the Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006. [*Id.* ¶ 17.]

18. The Life Program Group Term Life Master Policy ("Master Policy") is the contract between the Life Program and its covered members. [*Id.* ¶ 18.]

19. The Master Policy states:

PAYMENT OF BENEFITS

If a Subscriber and/or Dependent dies, the Plan will pay to the beneficiary, subject to the provisions set forth herein, the amount of coverage for which the Subscriber and/or Dependent is covered.

. . .

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. . . Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment.

. . .

BENEFICIARY

A Subscriber shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. A Subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan. The change will take effect as of the date the Subscriber signed the notice of change . . . Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.

. . .

MODIFICATION

No change in this Master Policy shall be valid unless approved by the Plan and unless approved by the Plan and unless such approval is evidenced by endorsement or amendment to this Master Policy. No agent has authority to change this Master Policy or waive any of its provisions.

. . .

NOTICE OF CLAIM

A written notice of claim must be given to the Plan within (20) days after the death of a Subscriber and/or Dependent unless it was not reasonably possible to do so. Notice given by or on behalf of a Subscriber and/or Dependent or his beneficiary if any, to the Plan at its office in Salt Lake City, Utah, with information sufficient to identify the Subscriber and/or Dependent, shall be deemed notice to the Plan.

. . .  
TIME OF PAYMENT OF BENEFITS

Benefits payable hereunder will be paid as soon as reasonably possible after receipt of an acceptable written proof of loss together with all supporting materials. . . .

. . .  
PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. If any payment remains unpaid at the death of the beneficiary, or if the beneficiary is a minor or is, in the opinion of the Plan, legally incapable of giving a valid receipt and discharge for any payment, the Plan, at its option, may pay such benefit to any relative or relatives by blood or connection by marriage of the Subscriber and/or Dependent who is deemed by the Plan to be equitably and legally entitled to receive the payment. Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment. . . .

. . .  
LEGAL ACTION

No legal action may be brought against the Plan for unpaid benefits until at least sixty (60) days after written proof of loss has been furnished in accordance with the requirements stated above. No legal action may be brought after the expiration of three years after the time written proof of loss is required to be furnished.

. . .  
ENTIRE CONTACT

This Master Policy, any modifications to it, and the written statements, if any, of Subscribers, constitute the entire contract.

[Id. ¶ 19.]

20. On August 28, 2012, Petitioner, Ms. Welty submitted a notice of claim to the Life Program in which she presented a dispute regarding the distribution of Mr. Lopez's life insurance coverage. [Id. ¶ 20.]

21. Ms. Welty indicated that Mr. Lopez had a life insurance policy with Allstate Life Insurance in the amount of \$300,000.00 on or about October 29, 1997. [*Id.* ¶ 21.]

22. Pursuant to Utah Code Ann. § 49-11-618 "All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action." Petitioners were not, and could not be, supplied with beneficiary designation information until they brought this request for board action. [*Id.* ¶ 22.]

23. On or about May 1, 2012, Diane Welty and Jacob Lopez served a summons and complaint to Utah Retirement Services and PEHP in Third District Court to recover life insurance proceeds paid by PEHP through the Group Term Life Plan to Mary Ellen Lopez the designated beneficiary of Mr. Lopez. Mary Ellen Lopez was also named as a Defendant in this action. [*Id.* ¶ 23.]

24. On September 19, 2012, the action brought in Third District Court against PEHP was dismissed without adjudication because the Court lacked subject matter jurisdiction over the claims against PEHP. In a Declaration submitted in the Third District Court, Petitioner, Ms. Welty indicated the following: "1. Shortly after the death of my



ex-husband, Mr. Lopez, I contacted Mrs. Lopez regarding the life insurance proceeds for my minor son, Jacob Lopez. 2. Mrs. Lopez told me that she had discussed the issue with her attorney, and that she did not have to pay any money to Jacob, but merely had to list Jacob on the title to her condo." [Id. ¶ 24.]

25. Petitioners filed an Amended Request for Board Action on April 5, 2013.

On September 3, 2013 Respondents waived all arguments relating to barring claims pursuant to an applicable statute of limitations. [Id. ¶ 25.]

The following additional facts from the administrative hearing are germane to the issues of appeal.

#### **Additional Facts**

1. Petitioners had power to determine that a submitted change of beneficiary form is invalid. [R. 299, 29: 125, 30:1-8].
2. Jacob Lopez has taken out student loans to fund his college education. [R. 299, 16: 15-25].
3. Ms. Welty filed a motion for an order to show cause against Mr. Lopez related to the requirement that he

carry life insurance and irrevocably designate Ms. Welty as a beneficiary. [R. 299, 8: 17-23].

### SUMMARY OF ARGUMENTS

The Master Policy allows covered employees to incorporate written documents into their life insurance contracts. Mr. Lopez was ordered, in a divorce decree, and subsequently through a hearing on a motion for an order to show cause, to irrevocably designate Ms. Welty as the beneficiary of the life insurance until his biological children reached the age of majority. The life program was aware of this requirement because Mr. Lopez incorporated his divorce decree into his contract with the Life Program when he submitted a change of beneficiary form referencing a divorce decree that was in fact provided with the form.

Mr. Lopez's incorporation of the divorce decree was accepted by the Life Program and established his contractual rights. Utah law recognizes a holder of a life insurance contract's ability to irrevocably designate beneficiaries. If the holder subsequently attempts to revoke an irrevocable beneficiary, the change of beneficiary is deemed forbidden and the insurance company bears the risk of paying under a forbidden change of

beneficiary form.

Mr. Lopez's attempt to change his beneficiary to his new spouse while his children were still minors was forbidden. Because the Life Program had notice that Ms. Welty was the irrevocable beneficiary, it breached its contractual duties under the Master Policy by paying pursuant to a forbidden change of beneficiary form. The Life Program took the risk, and now should be responsible to pay the proceeds of the life insurance contract to Ms. Welty, for the benefit of Jacob Lopez.

This result is fair in law and equity. Ms. Welty was legally unable to monitor the named beneficiaries of Mr. Lopez's life insurance contract. Ms. Welty took the necessary steps to force Mr. Lopez to irrevocably designate her as beneficiary, for the benefit of the minor children, of the life insurance contract. Ms. Welty accomplished just that, yet the Life Program ignored the court-ordered designation and paid pursuant to a forbidden change of beneficiary form anyway.

Jacob Lopez, a minor child at the time of Mr. Lopez's death, has borne the burden of the Life Program's mistake. He has incurred substantial student loans in pursuit of his

education, one of the goals his father had set for him.

### ARGUMENT

- I. THIS COURT SHOULD OVERRULE THE ORDER OF THE UTAH STATE RETIREMENT BOARD BECAUSE JESSE LOPEZ'S INITIAL BENEFICIARY DESIGNATION WAS IRREVOCABLE AND ENTITLED PETITIONERS TO THE PROCEEDS OF THE LIFE INSURANCE POLICY UNDER UTAH LAW.

*A. The Divorce Decree was incorporated by reference in the Change of Beneficiary form submitted by Jesse Lopez and is part of a binding contract between Jesse Lopez and the Life Program.*

Ms. Welty and Jacob Lopez are entitled to the proceeds of Jesse Lopez's life insurance policy benefit through Life Program because Jesse Lopez made the initial beneficiary designation irrevocable by incorporating by reference the Decree of Divorce, which required him to maintain a life insurance policy with an irrevocable beneficiary designation in favor of the Ms. Welty and her son. The Utah Supreme Court echoes the common view that "the provisions of a divorce decree control the disposition of the proceeds of an insurance policy."<sup>2</sup> Utah's position seems to be the

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<sup>2</sup> *Travelers Ins. Co. v. Lewis*, 531 P.2d 484, 485-486 (Utah 1975).

overwhelming majority stance.<sup>3</sup> Even when a life insurance

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<sup>3</sup> See e.g., *Rollins v. Metropolitan Life Ins. Co.*, 912 F.2d 911 (7th Cir. 1990) (interpreting Indiana law) (finding that mandated beneficiaries of a divorce decree life insurance provision have a vested right in certain proceeds of a decedent's life insurance policy naming another person as beneficiary when the decedent failed to comply with the divorce decree; *Tintocalis v. Tintocalis*, 20 Cal. App. 4th 1590, 25 Cal. Rptr. 2d 655, 659 (Cal. App. 1993) ("Where, as here, the obligor spouse violates an order to maintain life insurance, a constructive trust may be imposed."); *Reeves v. Reeves*, 236 Ga. 209, 223 S.E.2d 112 (Ga. 1976) (finding that children mandated beneficiaries had vested interest in certain proceeds of the decedent's life insurance policy); *Appelman v. Appelman*, 87 Ill. App. 3d 749, 410 N.E.2d 199, 43 Ill. Dec. 199 (Ill. App. 1980) (finding that former wife mandated beneficiary was entitled to the imposition of a constructive trust pertaining to proceeds of the decedent's life insurance policy); *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E.2d 189, 408 N.Y.S.2d 359 (N.Y. 1978) (imposing constructive trust in favor of former wife mandated

policy's amount, policy number or even company are unclear, the rights established by the divorce decree stand.<sup>4</sup>

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beneficiary); *McKissick v. McKissick*, 93 Nev. 139, 560 P.2d 1366 (Nev. 1977) (finding that former wife mandated beneficiary entitled to life insurance policy proceeds); *Thomas v. Studley*, 59 Ohio App. 3d 76, 571 N.E.2d 454 (Ohio App. 1989) (finding that mandated beneficiary child entitled to life insurance policy proceeds); *Madsen v. Moffitt*, 542 P.2d 187 (Utah 1975) (finding that mandated beneficiaries were entitled to certain life insurance policy proceeds); *Nielsen v. Nielsen*, 535 P.2d 1239 (Utah 1975) (finding that mandated beneficiaries entitled to amount of life insurance policy proceeds specified in the divorce decree). But see *Lock v. Lock*, 8 Ariz. App. 138, 444 P.2d 163 (Ariz. App. 1968) (finding that the mandated beneficiaries' only remedy is an action against the decedent's estate for breach of the divorce decree); *Rindels v. Prudential Life Ins. Co.*, 83 N.M. 181, 489 P.2d 1179 (N.M. 1971) (finding that since no fraud was shown, mandated beneficiaries were not entitled to proceeds of life insurance policy).

<sup>4</sup> See *Madsen v. Moffitt*, 542 P.2d 187, 188 (Utah 1975).

Under Utah law parties may incorporate writings that are not written into the contract itself. The provisions of the referenced writings become fully enforceable parts of the contract.<sup>5</sup> Writings are incorporated by reference when they are clear and unequivocal, alert the parties that the terms are being incorporated, and the writing is easily available to the parties.<sup>6</sup> The incorporated writing governs the contractual relationship of the parties as if the writing was included in the four corners of the contract.<sup>7</sup>

In the instant case, the Life Program Group Term Master Policy (the "Master Policy") is the contract between the Life Program and its covered members. As discussed *infra*, the statute under which the administrative judge made his ruling grants the Master Policy broad discretion regarding the formation of the contract between the Life Program and its covered members. Ultimately, the Master Policy, as formed and accepted between the parties, is the contract that governs

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<sup>5</sup> *Peterson & Simpson v. IHC Health Servs.*, 217 P.3d 716, 721 (Utah 2009).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

the distribution of plan benefits. The Master Policy specifically allows its covered members to incorporate written statements as part of the contract.<sup>8</sup> The Master Policy gives the covered member discretion to designate a primary beneficiary and does not prohibit a covered member from making beneficiary designation irrevocable.

The undisputed facts in this case establish that Mr. Lopez incorporated the divorce decree into his contract with the Life Program by meeting the factors required by state law: (1) the reference to the divorce decree was clear and unequivocal, (2) all parties were alerted that that the divorce decree was being incorporated, and (3) the divorce decree was easily available to the parties.<sup>9</sup>

On December 3, 1999 Mr. Lopez submitted a Change of Beneficiary form to the Life Program, in accordance with the

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<sup>8</sup> Stipulated Facts, R. 240, 244-45 ¶ 19 stating "This Master Policy, and modification to it, and the written statements, if any, of Subscribers, constitute the entire contract."

(emphasis added)

<sup>9</sup> *Peterson & Simpson v. IHC Health Servs.*, 217 P.3d 716, 721 (Utah 2009).



terms of the Master Policy, which specifically listed the beneficiary as "Diane (petitioner) for minor children as per attached divorce decree"<sup>10</sup> (emphasis added). By including "as per attached divorce decree" in the beneficiary designation, Mr. Lopez exercised the right to incorporate a written statement that would govern his contractual relationship with the Life Program. Mr. Lopez's written statement was clear and unequivocal.

The parties were alerted to the reference. Mr. Lopez's clear and unequivocal statement alerted all parties to the incorporation of the divorce decree. The change of beneficiary form on its face was insufficient to establish who the beneficiary truly was under the life insurance. The form did not contain a last name for "Diane" and referenced a title of a party, "petitioner" that was not defined on the change of beneficiary form. Nevertheless, the Life Program did not reject the change of beneficiary form.<sup>11</sup> The referenced divorce decree was necessarily incorporated and the parties were aware of its necessity.

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<sup>10</sup> Stipulated Facts, R. 240, 241-42, ¶ 7.

<sup>11</sup> *Id.* ¶ 7-9. See also R. 299, 29: 125, 30:1-8.

The divorce decree was available and in the possession of all parties to the life insurance contract.<sup>12</sup> Mr. Lopez provided a copy of the decree of divorce entered by Utah's Third District Court<sup>13</sup> by attaching a copy of the decree of divorce to the Change of Beneficiary form, providing the Life Program with the specific writing that he was referencing and incorporating.

The Life Program is therefore bound by the decree's terms.<sup>14</sup> In *Peterson & Simpson*, the court found that, even though the parties did not have a copy of the incorporated document, as long as it was easily accessible, the terms were incorporated into the contract.<sup>15</sup> Even if the administrator did not have a copy of the divorce decree in his hands, it was easily accessible. Mr. Lopez's actions definitively alerted the Life Program to the terms being incorporated. Thus, pursuant to *Peterson & Simpson*, the Life Program is bound by the incorporated decree even if they were unaware of

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<sup>12</sup> Stipulated Facts, R. 240, 242 ¶ 8-9.

<sup>13</sup>*Id.* ¶ 8.

<sup>14</sup> See *Peterson & Simpson*, 217 P.3d at 721.

<sup>15</sup> See. *Id.*

what the decree stated, chose not to read the decree, or simply did not care to implement the decree.<sup>16</sup>

The decree of divorce contained only one provision related to life insurance policies.<sup>17</sup> This provision ordered Jesse Lopez to ". . . irrevocably designate [Diane Welty], as trustee for the minor children, beneficiary on said life insurance policy."<sup>18</sup> The decree of divorce does not need to specify the policy number, underwriter, or company with which it is held for the divorce decree to dictate the terms of the contract.<sup>19</sup> In *Madsen v. Moffitt*<sup>20</sup> the court recognized contractual obligations established by the decree of divorce although the decree failed to provide specific and correct facts. In the instant case, the lack of specificity in the decree does not alter the Life Program's obligation under the decree to irrevocably designate Appellant, Diane Welty, as beneficiary under the life insurance contract.

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<sup>16</sup> See *Id.*

<sup>17</sup> See R. 301 Pl. Exhibit 1, Decree of Divorce, ¶ 24.

<sup>18</sup> *Id.*; Stipulated Facts, R. 240, 241 ¶ 4.

<sup>19</sup> See *Madsen v. Moffitt*, 542 P.2d 187 (Utah 1975).

<sup>20</sup> *Id.*

***B. Changing an irrevocable beneficiary designation is forbidden under Utah law.***

The Life Program was forbidden from processing any change of beneficiary designation that altered the irrevocable nature of the beneficiary designation. Specifically, Utah law dictates that when a divorce decree orders that a beneficiary be irrevocable, subsequent changes of beneficiary are forbidden.<sup>21</sup> General principles of insurance law concur that although an insured has the right to change the designation of a policy's beneficiary, the rights of a beneficiary designated pursuant to a divorce decree become vested and are superior to those of any subsequently designated persons.<sup>22</sup>

In *Travelers Insurance Co. v. Lewis*, the Utah Supreme Court held that an attempted change of beneficiary whereby the second wife was substituted for the first wife was

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<sup>21</sup> *Id.* at 485.

<sup>22</sup> *Dubois v. Smith*, 599 A.2d 493, 497 (N.H. 1991) (quoting M. Rhodes, 5 Couch Cyclopedia of Insurance Law 2d § 28:36, at 48, § 28:41 238-39 (Rev. ed. 1984) and J.A. Appleman and J. Appleman, 2 Insurance Law and Practice § 922, at 515-16 (1966)).

forbidden because the divorce decree between the husband and the first wife ordered the husband to maintain a life insurance policy with the first wife as a beneficiary and three minor children as contingent beneficiaries.<sup>23</sup> After the husband remarried, he changed the beneficiary of the life insurance policy to his second wife. When the husband died, the children and the second wife attempted to claim the proceeds of the life insurance policy. The court held that the provisions of the divorce decree controlled the disposition of the life insurance policy, which rendered the husband's attempt to change the beneficiary to his second wife forbidden.

Utah contract law binds Respondents to perform in light of the terms of the decree of divorce submitted by Mr. Jesse Lopez. Any subsequent change of beneficiary forms were forbidden and had no effect on Ms. Welty's contractual rights disclosed and known by the Life Program on or about December 3, 1999.<sup>24</sup>

**C. Respondents were responsible to monitor the beneficiaries under Utah law and the Master**

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<sup>23</sup> *Travelers Ins. Co.*, 531 P.2d at 485.

<sup>24</sup> See Stipulated Facts, R. 240, 241-42 ¶ 7.

### ***Policy.***

The Life Program was responsible for reviewing and approving any change of beneficiary designations submitted by Mr. Lopez. PEHP is governed by Title 49, Chapter 20 of the Utah Code. In part, the Life Program is required to "act as a self-insurer of employee benefit plans and administer those plans."<sup>25</sup> Part of administering plans is reviewing and confirming change of beneficiary designations. The Master Policy requires that all benefits be payable to the beneficiary upon the death of a subscriber.<sup>26</sup> Under Utah law, the insurance company runs the risk of paying the policy twice if it pays pursuant to a forbidden change of beneficiary.<sup>27</sup>

Under Utah Civil Procedure, if a party to a decree of divorce is non-compliant, the remedy is to seek an Order to Show Cause from the court that issued the decree.<sup>28</sup> The court will then take steps to determine compliance with the

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<sup>25</sup> Utah Code § 49-20-401(1)(a) (2015).

<sup>26</sup> See Stipulated Facts, R. 240, 244-45 ¶ 19

<sup>27</sup> *Travelers Ins. Co.*, 531 P.2d at 485.

<sup>28</sup> See Generally, Utah R. Civ. Pro. 101

decree and, if necessary, order the breaching party to perform.<sup>29</sup> A party who seeks an order too often and without cause can be liable for costs of the opposing party in defending the action. <sup>30</sup>

The determination of the validity of a Change of Beneficiary form is solely within the Life Program's power<sup>31</sup>. The Life Program was in the best position, and were obligated to enforce the contractual rights established by the decree of divorce. At the hearing held on July 16, 2015, Mr. Lamkin, Life Program Administrator, confirmed that if a form was incomplete or illegible that PEHP has the power to not honor the form or request more information from the subscriber.<sup>32</sup> Under the terms of the Master Policy, the Life Program has a duty to pay the beneficiary of a policy. Just as it has the power and duty to review a Change of Beneficiary form for completeness, it accordingly

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<sup>29</sup> See *id.*

<sup>30</sup> See Utah R. Civ. Pro. 73; Utah Code Ann. § 78B-5-825.

<sup>31</sup> Stipulated Facts, R. 240, 242-43 ¶ 7-9. See also R. 299, 29: 125, 30:1-8.

<sup>32</sup> R. 299, 30: 7-8

has the power and duty to verify that the change can be made pursuant to any terms incorporated, such as a duly incorporated decree of divorce.

Respondents could have, and should have, rejected a Change of Beneficiary form that did not conform with the incorporated Divorce Decree previously submitted by Mr. Lopez. Ms. Welty attempted to verify the beneficiary designation on the insurance policy through the Life Program, but she was refused access to the information by Respondents. Subsequently, she sought an Order to Show Cause within the jurisdiction of the divorce proceedings in the Third District Court to ensure Mr. Lopez's compliance with the divorce decree. In November of 1999, Ms. Welty took the extraordinary step of paying the costs associated with moving the court for an order to show cause regarding violation of the decree of divorce.<sup>33</sup> Mr. Lopez represented to the court that he was compliant with paragraph 24 of the decree because he had submitted the change of beneficiary form to the Life Program naming Ms. Welty an irrevocable beneficiary of that life insurance and providing a copy of

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<sup>33</sup> See Stipulated Facts, R. 240, 242 ¶ 9.



the decree to the Life Program. The court found that to be sufficient compliance.

Ms. Welty had no other recourse regarding enforcement of the decree's requirement that she be named as the irrevocable beneficiary to the life insurance held with the Life Program by Mr. Lopez. A former spouse is not in a position to verify the accuracy of a beneficiary designation, nor should the former spouse have to if an irrevocable beneficiary designation has been made.

Life insurance programs, in administering and processing beneficiary forms, bear the risk of double payment if they pay a beneficiary that replaced an irrevocable beneficiary designation. Courts routinely order parties to maintain life insurance policies with irrevocable beneficiary designations to ensure support of minor children if the obligor parent dies while the minor children still rely on the obligor for support.<sup>34</sup> At the time of Mr. Lopez's death, his son was still a minor and relied on Mr. Lopez for support. Consequently, the Life Program's payment of the beneficiary to anyone but Ms.

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<sup>34</sup> Nielson, 535 P.2d at 1240.

Welty violated the contract between Mr. Lopez and the Life Program established by the incorporation of the divorce decree. The Life Program's action also violated their duties under Utah Code Ann. § 49-20-401(1)(a). The Life Program should bear the risk of double payment because it failed to properly administer the policy by ensuring that the Change of Beneficiary forms comply with the incorporated Divorce Decree.

II. EQUITY FAVORS A FINDING THAT RESPONDENTS ARE LIABLE TO MS. WELTY AND HER SON FOR INSURANCE PROCEEDS PAID TO MARY ELLEN LOPEZ FROM JESSE LOPEZ'S LIFE INSURANCE POLICY.

In addition to the being entitled to legal relief because of the Life Program's breach of contract, this Court should find that the Life Program is liable to Ms. Welty as the rightful beneficiaries under Jesse Lopez's life insurance policy because it is the equitable result. The principles of equity dictate the same result as the legal analysis for two reasons: A) public policy concerns favor upholding an irrevocable beneficiary designation pursuant to a divorce decree, and B) the Life Program is the only entity or person in a position to monitor beneficiary designations. Further, Jacob Lopez has now born the cost of the Life Program's mistake.

***A. Public policy favors honoring irrevocable beneficiary designation over any subsequent changes made by the subscriber as long as minor children are still reliant on the subscriber for support.***

This Court should overrule the Order of the Utah State Retirement Board because it violates strong public policy in favor of utilizing irrevocable beneficiary designations in divorce decrees to ensure support of minor children after the death of a parent who is obligated to provide their support. Courts often require an obligor parent to provide life insurance to insure that support payments will continue to be available in the event of the obligor parent's death.<sup>35</sup> The State has a strong interest in preventing children of dissolved marriages from becoming charges of the State.<sup>36</sup> Courts have even held that children from a dissolved marriage have an interest in life insurance proceeds when the divorce decree required the obligor parent to maintain insurance for the children and the insurance policy did not name the children as beneficiaries.<sup>37</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Dubois*, 599 A.2d at 497 (quoting J.A. Appleman and J.

The Order of the Utah State Retirement Board clearly violates public policy in that it allows an obligor parent to avoid the support requirements placed upon it through a divorce decree, even when that obligor parent specifically incorporates the divorce decree into the terms of a life insurance policy.

It is undisputed that Mr. Lopez's son, Jacob, was still a minor on the date Mr. Lopez died and was still dependent upon him for support.<sup>38</sup> Courts have held insurance policies liable for that support in circumstances with even less documentation and support for the incorporation of the divorce decree into the terms of the policy. Allowing the Life Program to avoid payment on an irrevocable beneficiary designation that was still in effect pursuant to the divorce decree while Mr. Lopez had minor children sets a bad precedent and flies in the face of well-established public policy in favor of supporting minor children through life insurance policies under a divorce decree.

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Appleman, 2 Insurance Law and Practice § 922, at 102 (Supp.1991)).

<sup>38</sup> See Stipulated Facts, R. 240, 243 ¶ 14-15.

***B. The Life Program was the only entity or person that could monitor the beneficiary designations.***

It is undisputed that Ms. Welty did not have access from the Life Program regarding the beneficiary designation under Mr. Lopez's life insurance.<sup>39</sup> The Life Program was the only entity that could monitor the beneficiary designations. Ms. Welty could not be expected to bear the cost of filing motions orders to show cause to ensure that Mr. Lopez was compliant with the divorce decree, Ms. Lopez had already established that herself as the irrevocable beneficiary of the life insurance through the judicial process and had a reasonable expectation that the Life Program would abide by the designation in the divorce decree.

***C. Jacob Lopez has born the burden of the Life Program's payment pursuant to a forbidden change of beneficiary form.***

There is no dispute that Mr. Lopez's son, Jacob, was a minor at the time of Mr. Lopez's death. Ms. Welty and her son still relied on Mr. Lopez for support at the time of his death, and the life insurance policy was required to be irrevocable for the purpose of ensuring support for his minor children in the event of his death. Furthermore, Jacob and

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<sup>39</sup> See Stipulated Facts, R. 240, 245-46 ¶ 22.

Ms. Welty testified at the hearing that Mr. Lopez had taken out the life insurance policy to support Jacob through post-secondary education. They also testified that Mr. Lopez desired that Jacob attend post-secondary education and strongly encouraged him to do so.

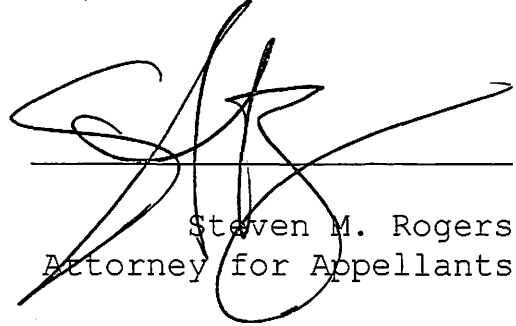
Following his father's counsel Jacob is a recent college graduate, seeking to continue onto master and possible doctorate degrees. Now, Ms. Welty is retired and Jacob Lopez is saddled with student loan debt, incurred because the life insurance was not paid to the correct beneficiary. Ms. Welty and her son were harmed because of the Life Program's breach, and equity requires that the Life Program make Ms. Welty and her son whole, even if the Life Program already paid the policy proceeds to a subsequent, forbidden beneficiary.

#### **CONCLUSION**

The Court should overturn the Utah Retirement Board's ruling and direct the Life Program to pay Ms. Welty for the benefit of Jacob Lopez the proceeds from the life insurance policy held by Mr. Lopez.

SIGNATURE OF COUNSEL

Appellants respectfully submit the foregoing by and through their undersigned counsel of record, Steven M. Rogers, on this the 21st day of December, 2015.

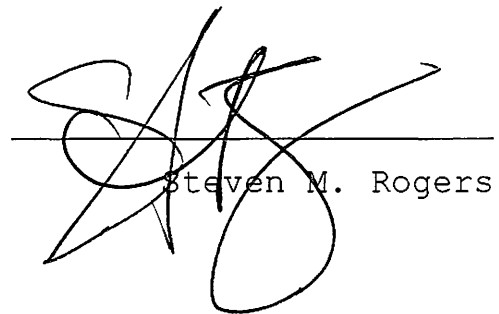


Steven M. Rogers  
Attorney for Appellants

Certificate of Service

I hereby certify that on this the 21st day of December, 2015, I caused the foregoing *Brief of Appellants* to be served on the following persons via first-class U.S. Mail postage prepaid:

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ADDENDUM

The Appellants do not believe that there is an Addendum necessary as all referenced and necessary documents are included in the Index of Record filed with the Court on November 10, 2015.

## REQUEST FOR ORAL ARGUMENT

Appellee requests oral argument in order to answer questions concerning the arguments above.

DATED: December 21, 2015.

Huntsman | Lofgran, PLLC

/s/ Steven M. Rogers

STEVEN M. ROGERS

*Attorney for the Plaintiffs*

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By /s/ Steven M. Rogers  
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