Whether in **Tennessee**, children born-out-of-wedlock are entitled to recover all, some or none of the proceeds of a life insurance policy for a deceased parent. Must the child be listed as an intended beneficiary or may the claim be made without such an appointment?

When the life insurance policy names, as beneficiaries, "children" of the deceased, courts across the nation are divided on the issue of whether children born-within-wedlock are entitled to inherit.[1] When making the decision of whether to allow children born out-of-wedlock to inherit, the court must balance public policy in favor of not discriminating against children born-out-of-wedlock and the intentions of the insured. However, in Tennessee, when the evidence is clear and convincing that the insured was in fact the parent of the children born-out-of-wedlock, the Tennessee courts have been willing to include children born-out-of-wedlock in the same class as the insured's children born-within-wedlock for the purposes of payment of benefits.[2]

Absent a Sixth Circuit opinion, the only authority directly on point is the Tennessee Supreme Court decision in Robinson v. Tabb.[3] The Robinson court concluded that where clear and convincing evidence established the parentage of out-of-wedlock minor children, the life insurance proceeds would be awarded to the natural children of the deceased insured, regardless of the children's parents' marital status.[4] The court reasoned that use of the term "children" in the policy was broad enough to encompass all of the offspring of the insured father regardless of the father's marital status to each child's mother.[5] In this case the insured was the putative father of two very young sons and had not married their mother.[6] However, the father and mother, their two sons, and the mother's son from a previous partnership lived together as a family.[7] The clear and convincing evidence which established the parentage of the children born-out-of-wedlock included the facts that: the children's mother and father resided together; the father acknowledged paternity and subsequently supported the family; the father filed income tax returns listing the children as his dependants and their mother as his wife; the father took out life

insurance policies on the children at issue, and the mother's child from a previous union, naming the children's mother as beneficiary of those policies; eight eyewitnesses testified to these facts.[8] The standard of clear and convincing evidence above is the standard of evidence required to allow a child born out-of-wedlock to inherit from their intestate parents in Tennessee.[9] In Majors v. Smith, the court recognized that this statutory standard must be met before children born-out-of-wedlock would be allowed to inherit from their putative father.[10] The court cited the Tennessee Code, which requires evidence of a parent-child relationship for children born-out-of-wedlock to inherit from their parents.[11] The statute maintains that, for purposes of intestate succession, a child born out-of-wedlock is invariably the child of its mother.[12] Furthermore, a child born out-of wedlock is considered to be of its father when: (1) the parents attempted to be married in a ceremony, even though the marriage was void; or (2) paternity is established prior to the death of the father, or by clear and convincing evidence after the expiration of the putative father.[13]

Where children born-out-of-wedlock wish to inherit from their parents, they must show clear and convincing evidence of a parent-child relationship. Under Robinson, this statutory standard was extended to children born-out-of-wedlock wishing to benefit from their parents' life insurance policies which named "children" as the beneficiaries of the policy.

Additionally, it is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to deny life insurance benefits to children born-out-of-wedlock.[14] Under Levy v. Louisiana, the Court held that a Louisiana law was invidious to discriminate against children born-out-of-wedlock seeking to recover from their mother's physician and his malpractice insurance company for the wrongful death of their mother.[15] The court stated that the states generally have broad discretion in forming classifications; but the states may not discriminate

against an invidious class.[16] This case involved five, dependent, children, who were born-out-of-wedlock to a single mother who died in an unspecified manner. It was significant that the mother nurtured and cared for the children and that the children grieved her loss in the same way a child would grieve the loss of a married parent whom they were dependent on.[17] Although this case involved claims for wrongful death and pain and suffering on behalf of their deceased parent, rather than life insurance benefits, the Court makes it evident that discrimination against children born-out-of-wedlock as a class, is unconstitutional. Therefore, it follows that where a life insurance policy indicates the term "children" as the beneficiaries of the policy, "children" should apply to children born both within and outside of wedlock alike because to prevent children born-out-of-wedlock from recovering simply on the basis of the marital status of their parents would create an invidious class.

There are two specific life insurance programs which are controlled by federal legislation, one of which designates that children born-out-of-wedlock shall be considered the same as children born-within-wedlock. Those life insurance programs are the Servicemen's Group Life Insurance Act (SGLI)[18] and the Federal Employee's Group Life Insurance Act (FEGLI)[19]. The SGLI governs life insurance that is provided to members of the armed services, and their spouses and children under the Act. Likewise, the FEGLI governs the life insurance provided to federal employees, and their spouses and children, under the Act.

Where there are no named beneficiaries, both of these Acts provide payments of benefits to any surviving spouse, if there is no spouse then to the surviving "child or children" and if there is not a surviving "child or children" then to the surviving parents of the insured.[20] Under the SGLI, the term "child or children" denotes any natural children of the mother regardless of legitimacy, and of the father if certain criteria are met.[21] Those criteria are: (1) the father

acknowledged the child in a signed writing; or (2) the father was ordered by a court to support the child; or (3) a court determined the insured is the father of the child; or (4) proof of paternity is established by a public record which shows that the father was informed of his parentage and was named as the father of the child; or (5) proof of paternity is established by a governmental service department which shows that the father was informed of his parentage and was named as the father of the child.[22] Therefore, if these criteria are met, a child may benefit from his or her parent's SGLI policy regardless of legitimacy.[23] Additionally, because this is a federal law already governing the interpretation of the term "child or children" under this statute, state law will be preempted from construing the term differently for purposes of awarding SGLI benefits to natural children of the insured parties.

Under the FEGLI the same preferential order of payment of benefits is the same as under the SGLI.[24] However, courts have generally construed the meaning of "child or children" under the terms of the insurance agreement according to the jurisdiction of the state in which the claim is brought or the jurisdiction of the state in which the policy is made.[25] As we have discussed previously in the Robinson v. Tabb case, Tennessee courts would probably construe the term "child or children," as applied to the FEGLI, to mean any natural child including those children which are born out of wedlock, so long as parentage is established by clear and convincing evidence.

In conclusion, Tennessee law is sparse on the topic of whether out-of-wedlock children are able to benefit under the life insurance policies of their parents. That neither the Supreme Court nor the Sixth Circuit has broached this topic makes the Supreme Court of Tennessee the highest judicial authority to have formed a decision on this issue in that jurisdiction. The Tennessee courts' opinion that children born-out-of-wedlock should be allowed to benefit under

the life insurance policies of their parents conforms to the Equal Protection Clause of the Fourteenth Amendment. That the Tennessee court has decided this matter within the parameters of constitutionality and the modern trend of allowing children born-out-of-wedlock to have the same rights as legitimate makes it easier for one to predict future Tennessee decisions regarding life insurance claims by children born-out-of-wedlock.[26] Most likely, future Tennessee claims will follow the modern trend, the trend already set by Robinson v. Tabb, allowing children born-out-of-wedlock to benefit as would a legitimate child.

While the cases above allow children born-out-of-wedlock to benefit under a life insurance policy when there are no named beneficiaries; future Tennessee cases may be decided against children born-out-of-wedlock where children born-within-wedlock are present to claim their rights as beneficiaries or where children born-within-wedlock are named beneficiaries. Likewise, this complication may be present in Tennessee claims based on FEGLI policies under which children born-out-of-wedlock try to benefit where children born-within-wedlock exist or are named beneficiaries. However, with regard to SGLI claims, the occurrence of children born-within-wedlock trying to recover under the same policy as children born-out-of-wedlock is not likely to result in discrimination against the claims of the children born-out-of-wedlock; given the federal statutory determination that the term "child or children" will be construed to mean all natural children regardless of the applicability of state law to the contrary.[27]

In sum, Tennessee law allows children born-out-of-wedlock of life insurance policy holders to benefit under the policy of their parents; if the child can prove, by clear and convincing evidence, the existence of a parent-child relationship with the insured, and there are no named beneficiaries. However, there is not yet Tennessee law in the specific case in which legitimate and children born-out-of-wedlock are both claiming benefits under the policy and

whether any preference will be given to the children born-within-wedlock, or minor children. None of the cases or statutes discussed the issue of whether the children would be able to recover all or some of the life insurance benefits. However, based on the fact that the policy term "child or children" has generally been construed by Tennessee courts to mean natural children of the insured, it is likely that children born-out-of-wedlock would receive amounts equitably proportional to that which their born-in-wedlock siblings would receive. This equitable amount may be modified by such variable factors as the children's ages at the time of death of their parent(s); any special needs the children may have; and/or any contracted agreements made by the children's parents designating life insurance benefits to a specific sibling set[28].

1 Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 59:31 (2007).
2 E.g., Robinson v. Tabb, 568 S.W.2d 835 (Tenn. 1978).
3 Id. at 836.
4 Id.
5 Id.
6 Id.
7 Id.
8 Id.
9 Majors v. Smith, 776 S.W.2d 538 at 540 (Tenn. Ct. App. 1989).
10 Id.
11 Tenn. Code Ann. § 31-2-105(2) (West 2007).
12 Id.
13 Id.
14 E.g., Levy v. Louisiana, 391 U.S. 68 (1968).
15 Id. at 72.
16 Id. at 71.
17 Id. at 72.
18 Servicemen's Group Life Insurance Act (SGLI), 38 U.S.C.A. §1965 (West 2008).
19 Federal Employee's Group Life Insurance Act (FEGLI), 5 U.S.C.A. § 8701 (West 2008).
20 38 U.S.C.A. § 1970(a) (West 2008).
21 38 U.S.C.A. § 1965(8) (West 2008).
22 Id.
23 Cantrell v. Prudential Ins. Co. of America, 477 S.W.2d 484, 485–86 (Ark. 1972), holding that where a policy beneficiary has not been named, children born-out-of-wedlock may benefit from the SGLI policy of their parents, even if they are precluded from any benefits under state law.
24 5 U.S.C.A. § 8705(a) (West 2008).

25 John D. Perovich, J.D., Annotation, Insurance: term "children" as used in beneficiary clause of life insurance policy as including illegitimate child, 62 A.L.R. 3d 1329 (2007).
26 Harry D. Krause, Why Bastard, Wherefore Base?, 383 Annals Am. Acad. Pol. & Soc. Sci. 58, 58-70 (May, 1969).
27 38 U.S.C.A. § 1965 (8).
28 See, e.g., Williams v. Williams, 2005 WL 1219955 (Tenn. Ct. App. 2005), holding that where children were born in wedlock, but parents contracted in their divorce settlement that father would maintain life insurance with the children as beneficiaries; the court upheld the validity of the contract disregarding statutory or common law reasons for modifying the contracted obligation.