

TO PAY OR NOT TO PAY: THE NEVADA SLAYER STATUTE AND THE INSURANCE COMPANIES’ DILEMMA

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I. INTRODUCTION

Life is delicate. Consequently, life insurance policies play a significant role in Americans' financial and domestic affairs by protecting a family member or caregiver from a loss resulting from an untimely death of the insured.¹ Additionally, life insurance policies allow a surviving spouse or child to continue living the lifestyle they are accustomed to without depending on charity or state assistance.² Despite all of their benefits, life insurance policies create perverse incentives for beneficiaries. For example, a life insurance policy may tempt a greedy beneficiary to kill the insured in order to collect the policy proceeds.³ However, the ancient equitable maxim, *nullus commodum capere potest de injuria sua propria* (no one is permitted to profit from his own wrongdoing), prevents such a killer from collecting the insurance policy proceeds.⁴

Forty-five states, including Nevada, have codified this equitable maxim, as it applies to killers of insureds, into slayer statutes.⁵ Furthermore, slayer statutes provide some protections for insurance companies,⁶ who often face competing claims to insurance proceeds in the event of an insured's death.⁷ Every state within the jurisdictional boundaries of the Ninth and Tenth Circuit Courts of Appeals, except Nevada, has explicitly promulgated that an insurance company is liable if the insurance company makes a payment after it has received *written notice* of a claim adverse to the beneficiary's claim.⁸ By contrast, the Nevada slayer statute does not create insurance liability when an insurance

¹ Kelvin H. Dickinson, *Divorce and Life Insurance: Post Mortem Remedies for Breach of a Duty to Maintain a Policy for a Designated Beneficiary*, 61 MO. L. REV. 533, 533 (1996).

² *Id.* at 534.

³ Gary Schuman, *Life Insurance and the Homicidal Beneficiary: The Insurer's Responsibilities Under State Slayer Laws and Statutes*, 51 FED'N INS. & CORP. COUNS. Q. 197, 197-98 (2001).

⁴ Kathryn R. Bennett, Case Note, *Spencer v. Floyd: Distribution of Life Insurance Proceeds When the Primary Beneficiary is Disqualified*, 45 ARK. L. REV. 213, 218-19 (1992); *see also* Keen v. Weaver, 121 S.W.3d 721, 730 (Tex. 2003).

⁵ *In re Estate of Blodgett*, 147 P.3d 702, 705 n.10 (Alaska 2006); *see, e.g.*, NEV. REV. STAT. § 41B.200 (2007).

⁶ *See* ALASKA STAT. § 13.12.803(g) (2008); ARIZ. REV. STAT. ANN. § 14-2803(G) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

⁷ Schuman, *supra* note 3, at 221.

⁸ *See* ALASKA STAT. § 13.12.803(g) (2008); ARIZ. REV. STAT. ANN. § 14-2803(G) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH

company pays the proceeds to a beneficiary after receipt of written notice.⁹ Instead, in Nevada, a court may hold an insurance company liable if an insurance company has *actual knowledge* that a beneficiary is the killer of the insured.¹⁰ However, the Nevada Legislature failed to define “actual knowledge,” thereby creating a substantial ambiguity as to when an insurance company is liable for paying out policy proceeds.¹¹ For example, an insurance company is confronted with a “to pay or not to pay” dilemma where a beneficiary is not convicted of a felonious or intentional killing, but is a suspect of an insured’s murder.

This Note addresses the Nevada Legislature’s failure to define “actual knowledge” in its slayer statute and the repercussions insurance companies face as a result. In Part II, this Note provides the historical background of slayer statutes in general, the history of the Nevada slayer statute, and the current status of the Ninth and Tenth Circuit states’ slayer statutes (with the exception of Nevada). Next, Part III analyzes the legislative history underlying the Nevada slayer statute and interprets the Nevada Legislature’s intended meaning of “actual knowledge.” Additionally, Part III proposes a definition of “actual knowledge” that mirrors how the other Ninth and Tenth Circuit states define when an insurance company is liable. In the event that the Nevada Legislature does not amend the Nevada slayer statute to define “actual knowledge,” this Note proposes two additional solutions for insurance companies confronted with the “to pay or not to pay” dilemma. First, insurance companies should include a clause in their insurance policies stating they are not liable for paying the policy proceeds to the beneficiary unless they have received actual written notice of a claim adverse to the beneficiary. Second, insurance companies should file an interpleader action, deposit the policy proceeds with the court, and allow the court to determine which party should receive the monies. Finally, this Note concludes in Part IV.

II. A HISTORICAL OVERVIEW OF SLAYER STATUTES

A. A Brief History of Slayer Statutes

In the early English system, slayer statutes did not exist because the English system used common law doctrines of attainder, corruption, forfeiture of blood, and escheat to prevent slayers from monetarily collecting on their crimes.¹² However, in 1814, the English Parliament abolished these ancient doctrines.¹³ Fifty-six years later, the Parliament replaced these doctrines with the Forfeiture Act of 1870.¹⁴ The Forfeiture Act forced the English courts to either use innovative remedies or allow the slayers to monetarily benefit from

CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

⁹ See NEV. REV. STAT. § 41B.400 (2007).

¹⁰ *Id.*

¹¹ *Id.*

¹² Gregory C. Blackwell, *Property: Creating a Slayer Statute Oklahomans Can Live With*, 57 OKLA. L. REV. 143, 145-46 (2004).

¹³ *Id.* at 146.

¹⁴ *Id.*

their crimes.¹⁵ The English courts chose the former option, implementing public policy that no slayer was permitted to benefit from his wrongdoing.¹⁶

American colonial law did not adopt England's archaic doctrines of corruption of blood and forfeiture of estate.¹⁷ However, the American courts adopted the equitable maxim that no one may benefit from his own wrongs.¹⁸ The first reported American case involving a slayer attempting to reap the benefits of his crime is *New York Mutual Life Insurance Co. v. Armstrong*.¹⁹ In *New York Mutual*, a man bought an insurance policy on his own life and assigned the policy to a third party.²⁰ The assignee was convicted of killing the insured, and the insurance company refused to pay the policy proceeds to the slayer.²¹ The court held that the slayer forfeited his rights to the policy proceeds when he murdered the insured because "[i]t would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken."²²

If a slayer were allowed to recover the policy proceeds, society's sense of morality and equity would be compromised, as exemplified in *Prudential Insurance Co. of America v. Harrison*.²³ In *Prudential*, a husband became angered when his wife innocently spoke to an acquaintance while they waited for their table at a restaurant.²⁴ When the husband and wife returned home after dinner, the husband struck his wife with such force that she fell into the bathtub, sustaining severe injuries.²⁵ The wife died in the hospital several hours later.²⁶ The husband was charged with murder, and the court held that his wrong prevented him from collecting on his wife's interest in the insurance policy.²⁷

In order to ensure that cases such as *Prudential* were decided in accordance with the equitable maxim that no one should benefit from his own wrongdoing, many state courts construed probate statutes to prevent a beneficiary who murdered the insured from collecting the insured's policy proceeds.²⁸ Over the years, the District of Columbia and forty-five states, including Nevada, codified the equitable maxim into what have become known as "slayer statutes."²⁹ The remaining five states retain a form of the common-law slayer rule.³⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* (citing *N.Y. Mut. Life Ins. Co. v. Armstrong*, 117 U.S. 591 (1886)).

²⁰ *Id.* at 146-47 (citing *N.Y. Mut.*, 117 U.S. at 592-93).

²¹ *Id.* at 147.

²² *Id.* (citing *N.Y. Mut.*, 117 U.S. at 600).

²³ See *PRUDENTIAL INS. CO. OF AM. v. HARRISON*, 106 F. Supp. 419, 426 (S.D. Cal. 1952).

²⁴ *Id.* at 421.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 425. The court, however, allowed the husband to recover his own interest in the policy as an owner of one half of the community property. *Id.* at 426.

²⁸ *In re Estate of Blodgett*, 147 P.3d 702, 705 (Alaska 2006).

²⁹ *Id.* at 705 n.10 (internal citations omitted).

³⁰ *Id.* (internal citations omitted). The common law follows the equitable maxim that no one may benefit from his own wrongdoing. *Id.* at 705.

Most states sought to address in their slayer statutes what “acts are necessary and sufficient to confer slayer status and how a potential plaintiff must prove those acts.”³¹ The majority of slayer statutes, including Nevada’s, state “a slayer is a person who, without legal excuse or justification, is responsible for the felonious and intentional killing of another.”³² A “felonious” killing refers to criminal offenses that are felonies.³³ Under the Model Penal Code section 1.04(2), “[a] crime is a felony if it is so designated in [the] Code or if persons convicted thereof may be sentenced [to death or] to imprisonment for a term that, apart from an extended term, is in excess of one year.”³⁴ Furthermore, a person is responsible for the “intentional” killing of another, as required to constitute a slayer under most slayer statutes, if the person acted with the intent to kill.³⁵ Premeditation is not required.³⁶ However, intent not only includes the consequences the actor intended to produce, but also the consequences the actor knew, to a substantial certainty, would occur.³⁷ An “intentional” killing for the purposes of a slayer statute does not typically include a reckless, accidental, or negligent killing.³⁸ Rather, manslaughter is defined as a reckless killing.³⁹ Therefore, the intent requirement excludes those individuals who commit manslaughter.⁴⁰

Furthermore, some states have taken steps to ensure that slayer statutes prevent a killer from benefiting from his own wrongdoing in cases of both intentional and unintentional felonious killings (including manslaughter killings).⁴¹ For example, Alaska has completely removed the word “intentionally” from its slayer statute to ensure the statute covers unintentional homicides, including manslaughter.⁴² In addition, Alaska has created a manifest injustice exception for unintentional homicides.⁴³ An Alaskan court may apply the manifest injustice exception “if the court makes special findings of fact and conclusions of law” that applying the slayer statute to an unintentional felonious killing would be unjust.⁴⁴ The Alaska Supreme Court, in *In re Estate of Richard Blodgett*,⁴⁵ analyzed whether the manifest injustice exception applied to a

³¹ Blackwell, *supra* note 12, at 169.

³² RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 8.4 (2003). The Nevada slayer statute is not based on the Uniform Probate Code and consequently the Restatement serves as mere guidance in interpreting the Nevada slayer statute. *See id.* reporter’s note 1.

³³ *Id.* cmt. f.

³⁴ *Id.* (citing MODEL PENAL CODE § 1.04(2) (2007)).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ MODEL PENAL CODE § 210.3(1)(a) (2001).

⁴⁰ *In re Estate of Blodgett*, 147 P.3d 702, 705 n.13 (Alaska 2006) (citations omitted).

⁴¹ *See id.* at 705 (removing the intent requirement from the definition of when an offender is a slayer under the slayer statute); *see also* NEV. REV. STAT. § 41B.250(3)(c) (2007) (adding voluntary manslaughter to the definition of when an offender is a slayer under the slayer statute); *February 24, 1999 Minutes: Hearing on Assem. B. 159 Before the Assem. Comm. on Judiciary*, 1999 Leg., 70th Sess. (Nev. 1999) [hereinafter *February 24, 1999 Minutes*].

⁴² *In re Blodgett*, 147 P.3d at 705.

⁴³ *Id.* at 706.

⁴⁴ *Id.* (citing ALASKA STAT. § 13.12.803(k) (2008)).

⁴⁵ *In re Blodgett*, 147 P.3d 702.

son who was convicted of negligent homicide for driving a dump truck while his father was entangled in the truck and was ultimately dragged to his death.⁴⁶ The *Blodgett* court held no manifest injustice resulted from applying the slayer statute to the son because the son was capable of financially sustaining himself without receiving the policy proceeds.⁴⁷

Nevada is another example of a state that has taken steps to ensure that its slayer statute covers both intentional and unintentional homicide.⁴⁸ The original Nevada slayer statute, codified at Nevada Revised Statutes section 688A.420, excluded manslaughter killings by prohibiting a person from collecting the proceeds of a life insurance policy if he was convicted of the policyholder's murder.⁴⁹ *Life Insurance Co. of North America v. Wollett*⁵⁰ represents an example of the Nevada Supreme Court strictly construing the original Nevada slayer statute and allowing a wife convicted of manslaughter to collect life insurance policy proceeds.⁵¹ In *Wollett*, Elizabeth Wollett shot and killed her husband and was subsequently charged with murder.⁵² Pursuant to a plea bargain agreement, the court reduced Mrs. Wollett's conviction to involuntary manslaughter.⁵³ The Nevada Supreme Court allowed Mrs. Wollett to receive her husband's life insurance policy proceeds because it held that the Nevada slayer statute clearly and unambiguously prohibited only those convicted of murder from profiting from their own wrongs.⁵⁴ Therefore, Mrs. Wollett was allowed to collect the policy proceeds as a result of her manslaughter conviction.⁵⁵

In 1999, the Nevada Legislature amended its slayer statute to prevent persons convicted of manslaughter from collecting insurance proceeds.⁵⁶ Legislative history reveals the Nevada Legislature looked to its fellow Ninth Circuit states, California, Idaho, and Oregon, for guidance when it contemplated whether to amend the Nevada slayer statute.⁵⁷ California, Idaho, and Oregon all prohibit a beneficiary convicted of murder or voluntary manslaughter to collect policy proceeds.⁵⁸ After deliberation, the Nevada Legislature amended its slayer statute to define a felonious and intentional killing as a killing that constitutes murder of the first or second degree or voluntary manslaughter.⁵⁹ Therefore, under the current Nevada slayer statute, Mrs. Wollett would not have been allowed to benefit from killing her husband, despite her manslaughter conviction.⁶⁰

⁴⁶ *Id.* at 703 n.2.

⁴⁷ *Id.* at 704.

⁴⁸ *February 24, 1999 Minutes*, *supra* note 41.

⁴⁹ *Id.*

⁵⁰ *LIFE INS. CO. OF N. AM. v. WOLLETT*, 766 P.2d 893 (Nev. 1988).

⁵¹ *See id.* at 894-95.

⁵² *Id.* at 894.

⁵³ *Id.*

⁵⁴ *Id.* at 895.

⁵⁵ *Id.*

⁵⁶ *February 24, 1999 Minutes*, *supra* note 41.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*; *see also* NEV. REV. STAT. § 41B.250(3)(c) (2007).

⁶⁰ *See* NEV. REV. STAT. § 41B.250(3)(c) (2007).

B. *The Nevada Slayer Statute*

The current Nevada slayer statute is codified in a series of statutes incorporating the ancient maxim that a slayer may not benefit from his wrongdoing.⁶¹ Under the current Nevada Revised Statutes section 41B.200(1), “a killer cannot profit or benefit from his wrong.”⁶² A “killer” is a person who is deemed to be a culpable actor in a “felonious” and “intentional killing,” and convicted in a criminal proceeding of murder of either the first or second degree or voluntary manslaughter.⁶³ A person may also be a “killer” if he or she is found, by a preponderance of evidence in a civil proceeding, to be “a culpable actor in the felonious and intentional killing of the decedent.”⁶⁴

Furthermore, the Nevada slayer statute provides protection for insurance companies that pay life insurance policy proceeds to slayers without actual knowledge that the beneficiary is the slayer.⁶⁵ Pursuant to Nevada Revised Statutes section 41B.400:

Except as otherwise provided by specific statute, if a payor or other third person, in good faith, pays or transfers any property, interest or benefit to a beneficiary in accordance with the provisions of a governing instrument, the payor or other third person is not liable to another person who alleges that the payment or transfer to the beneficiary violated the provisions of this chapter unless, before the payment or transfer, the payor or other third person had *actual knowledge* that the beneficiary was prohibited from acquiring or receiving the property, interest or benefit pursuant to the provisions of this chapter.⁶⁶

However, nowhere in the Nevada slayer statute did the legislature define “actual knowledge.” An insurance company is thus faced with the “to pay or not to pay” dilemma when it is questionable whether the insurance company actually knows that the beneficiary is the slayer of the insured.

C. *Other States’ Slayer Statutes in the Ninth and Tenth Circuits*

States in both the Ninth and Tenth Circuits have similar slayer statutes to the Nevada statute, with the exception of one major difference—they expressly define when a court may hold an insurance company liable for disbursing the policy proceeds to a beneficiary.⁶⁷ In every Ninth and Tenth Circuit state (except Nevada), the statutes expressly provide that a court may hold an insurance company liable if it distributes the proceeds to a beneficiary after the insurance company receives *written notice* of a claim adverse to the benefici-

⁶¹ See NEV. REV. STAT. §§ 41B.010-420 (2007).

⁶² *Id.* § 41B.200(1).

⁶³ *Id.* § 41B.250(1), (3)(c).

⁶⁴ *Id.* § 41B.260(2).

⁶⁵ *Id.* § 41B.400.

⁶⁶ *Id.* (emphasis added).

⁶⁷ See ALASKA STAT. § 13.12.803(g) (2008); ARIZ. REV. STAT. ANN. § 14-2803(G) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); NEV. REV. STAT. § 41B.400 (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

ary.⁶⁸ An insurance company receives written notice of an adverse claim when a person mails to the insurance company a claim that the beneficiary is not entitled to the proceeds.⁶⁹ Oral notice is insufficient to hold the insurer liable.⁷⁰

The Arizona slayer statute exemplifies the “written notice” language that the states within the Ninth and Tenth Circuits use to define when an insurance company is liable for distributing the policy proceeds to a beneficiary.⁷¹ Pursuant to Arizona Revised Statutes section 14-2803(G):

A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or for having taken any other action in good faith reliance on the validity of the governing instrument on request and satisfactory proof of the decedent’s death and before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. Any payor or other third party is liable for a payment made or any other action taken after the payor or other third party received *written notice* of a claimed forfeiture or revocation under this section.⁷²

The case *Alfa Life Insurance Corp. v. Culverhouse*⁷³ provides an excellent example of courts strictly construing the express written notice requirement.⁷⁴ In *Alfa*, an unknown killer murdered the insured, a father of two sons, Jason Hunter and Robert Culverhouse.⁷⁵ Jason Hunter was the named beneficiary on his father’s life insurance policy.⁷⁶ Mr. Hunter’s brother, Robert Culverhouse, believed that Mr. Hunter murdered their father.⁷⁷ Mr. Culverhouse called the insurance company and orally notified it of his claim to the policy proceeds because he believed Mr. Hunter was a prime suspect of the insured’s murder.⁷⁸ One month after Mr. Culverhouse’s phone call, the insurance company paid Mr. Hunter the full amount due under his father’s insurance policy.⁷⁹ Four

⁶⁸ See ALASKA STAT. § 13.12.803(g) (2008); ARIZ. REV. STAT. ANN. § 14-2803(G) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); NEV. REV. STAT. § 41B.400 (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

⁶⁹ *Alfa Life Ins. Corp. v. Culverhouse*, 729 So. 2d 325, 328-29 (Ala. 1999).

⁷⁰ *Id.*

⁷¹ See ARIZ. REV. STAT. ANN. § 14-2803(G) (2008).

⁷² ARIZ. REV. STAT. ANN. § 14-2803(G) (2008) (emphasis added); see also CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); NEV. REV. STAT. § 41B.400 (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

⁷³ *Alfa Life Ins. Corp.*, 729 So. 2d 325.

⁷⁴ See generally *id.*

⁷⁵ *Id.* at 325.

⁷⁶ *Id.*

⁷⁷ *Id.* at 326.

⁷⁸ *Id.*

⁷⁹ *Id.*

years after the insurance company paid the policy proceeds, Mr. Hunter admitted to having killed his father.⁸⁰ Mr. Culverhouse subsequently filed a lawsuit against the insurance company, alleging the insurance company should have paid the policy proceeds to him instead of his brother, the killer.⁸¹ The *Alfa* court held the insurance company did not have *actual notice* of Mr. Culverhouse's adverse claim because Mr. Culverhouse did not send written notice of his claim to the insurance company's home office or principal address, as required by the Alaska slayer statute.⁸² The court concluded Mr. Culverhouse's oral notice to the insurance company of his adverse claim was insufficient to provide the insurance company with actual notice.⁸³

The ensuing section analyzes the insurance companies' "to pay or not to pay" dilemma, the possible definitions of "actual knowledge," and proposes defining "actual knowledge" as "written notice" so as to clarify when an insurance company is liable for paying policy proceeds to a beneficiary in Nevada.

III. DILEMMA SOLVED: ACTUAL KNOWLEDGE AS WRITTEN NOTICE

A. *The Insurance Companies' "to Pay or Not to Pay" Dilemma*

Insurance companies have a duty to pay insurance policy proceeds to the correct recipient in a "timely and reasonable manner."⁸⁴ An insurance company's obligation to pay is owed to the primary and contingent beneficiaries of an insurance policy.⁸⁵ In general, if an insurer pays the proceeds to the proper recipient in good faith, then the payment discharges the insurer from liability on the policy.⁸⁶ By contrast, when a beneficiary of an insurance policy is convicted of a felonious and intentional killing of an insured, the beneficiary is a slayer for purposes of a slayer statute and the insurance company's duty is clear: it cannot pay out the policy proceeds to the beneficiary.⁸⁷

An insurance company may find itself in the "to pay or not to pay" dilemma, however, when a beneficiary is a suspect or accused of an insured's death, but not convicted of a felonious and intentional killing in a criminal proceeding, or found to be the slayer in a civil proceeding.⁸⁸ If the insurance company pays the beneficiary, it faces possible litigation from the decedent's family or estate.⁸⁹ If the insurance company refuses to pay the beneficiary, it faces potential litigation from the beneficiary for breach of contract or bad faith.⁹⁰ The "to pay or not to pay" dilemma occurs in Nevada because it is

⁸⁰ *Id.*

⁸¹ *Id.* at 325.

⁸² *Id.* at 328-29.

⁸³ *Id.*

⁸⁴ Schuman, *supra* note 3, at 219.

⁸⁵ *Id.*

⁸⁶ *Alfa Life Ins. Corp.*, 729 So. 2d at 327.

⁸⁷ RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 8.4 cmt. d. (2003). The Nevada slayer statute is not based on the Uniform Probate Code and consequently the Restatement serves as mere guidance in interpreting the Nevada slayer statute. *See id.* reporter's note 1.

⁸⁸ *See* Schuman, *supra* note 3, at 198-99.

⁸⁹ *See id.* at 198.

⁹⁰ *See id.*

unclear when an insurance company would have “actual knowledge” that a beneficiary is the killer of an insured.⁹¹

B. What is “Actual Knowledge?”

Although the Nevada Legislature did not define “actual knowledge” in the slayer statute, it defined “knowingly” in Title 15 for crimes and punishments.⁹² Pursuant to Nevada Revised Statutes section 193.017, which is codified in Title 15, “‘knowingly’ imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.”⁹³ However, it is unclear whether this definition would be applicable to the Nevada slayer statute. In fact, as Brad Wilkinson, a member of the Committee Counsel, Legal Division of the Legislative Counsel Bureau for the State of Nevada, noted during the March 5, 1999 Senate Committee hearing regarding the Nevada slayer statute, “actual knowledge” in the Nevada slayer statute could be defined as either: (1) direct knowledge; or (2) reason to know or constructive notice.⁹⁴

The difference in the two definitions likely would affect an insurance company’s willingness to pay out the policy proceeds to a beneficiary. Mr. Wilkinson’s first definition of “actual knowledge,” direct knowledge, creates a higher burden than constructive notice to prove an insurance company actually knew a beneficiary was the killer of an insured. Such a high standard would more readily allow an insurance company to pay the policy proceeds to a named beneficiary because absent a criminal conviction, civil suit, or written notice of adverse claims, it is less likely an insurance company will have direct knowledge a beneficiary is the killer of an insured. By contrast, Mr. Wilkinson’s second definition of “actual knowledge,” reason to know or constructive notice, is a much lower burden of proof. The lower standard would hinder an insurance company’s willingness to pay policy proceeds to a beneficiary because it would increase its potential liability by making it easier to prove the insurer had “actual knowledge” that a beneficiary is the killer of an insured.

The more appropriate definition of “actual knowledge” in the Nevada slayer statute is direct knowledge. The legislative history underlying the Nevada slayer statute, and the commonly accepted definition of “actual knowledge” in other states within the Ninth and Tenth Circuits support interpreting “actual knowledge” to mean exactly what it implies: that an insurance company must have direct knowledge that a beneficiary is in fact the killer of an insured.

⁹¹ See NEV. REV. STAT. § 41B.400 (2007).

⁹² See NEV. REV. STAT. § 193.017 (2007).

⁹³ *Id.*

⁹⁴ See *March 5, 1999 Minutes: Hearing on Assem. B. 159 Before the S. Comm. on Judiciary*, 1999 Leg., 70th Sess. (Nev. 1999) [hereinafter *March 5, 1999 Minutes*].

1. Nevada Legislators Have Interpreted "Actual Knowledge" in the Slayer Statute

Courts consider the legislature's intent when interpreting an ambiguous statute.⁹⁵ Furthermore, when a statute is prone to multiple interpretations, courts consider reason and public policy to decipher the legislature's intent in order to apply the law in accord with that foreseen by the adopting legislature.⁹⁶ The legislative history underlying the Nevada slayer statute demonstrates the legislature's intent that the standard for "actual knowledge" should be interpreted as meaning "direct knowledge," rather than "reason to know" or "constructive notice."⁹⁷ The following is a brief recitation of the legislative history behind Nevada's current slayer statute, as amended.

On February 24, 1999, Assemblywoman Dawn Gibbons of District Twenty-Five presented Assembly Bill 159 at the Assembly Committee on Judiciary hearing.⁹⁸ Assembly Bill 159 proposed an amendment to the Nevada slayer statute to further prevent collection of life insurance proceeds "if the beneficiary committed voluntary manslaughter or conspired to commit the murder of the policyholder."⁹⁹ Additionally, Assembly Bill 159 proposed to hold an insurance company liable for paying proceeds when it had "actual knowledge" that a beneficiary is the killer of an insured.¹⁰⁰ The Assembly Committee on Judiciary passed the bill unanimously on February 26, 1999 and referred the bill to the Senate Committee on Judiciary.¹⁰¹

On March 5, 1999, the Senate Committee on Judiciary heard the measure proposed by Ms. Gibbons.¹⁰² Fred Hillerby, a lobbyist for the American Council of Life Insurance, and Senator Valerie Wiener, discussed what constituted "actual knowledge" to hold an insurance company liable for paying policy proceeds to a beneficiary.¹⁰³ Understandably, several insurance company lobbyists were present at the Senate Committee on Judiciary's hearing.¹⁰⁴

Mr. Hillerby expressed concern with holding an insurance company liable when it is under an obligation to pay the policy proceeds within a certain period of time.¹⁰⁵ Mr. Hillerby noted that the original Nevada slayer statute, prior to its amendment, required the insurer to pay the proceeds within thirty days of the death of the insured.¹⁰⁶ Therefore, Mr. Hillerby argued that an insurance company likely would have paid the proceeds prior to a determination of whether a beneficiary was the killer of the insured.¹⁰⁷

In response to Mr. Hillerby's concerns, Senator Wiener asked Mr. Hillerby whether there was a distinction between "actual knowledge" and "knowl-

⁹⁵ County of Clark *ex. rel.* Univ. Med. Ctr. v. Upchurch, 961 P.2d 754, 757 (Nev. 1998).

⁹⁶ *Id.*

⁹⁷ See March 5, 1999 Minutes, *supra* note 94.

⁹⁸ February 24, 1999 Minutes, *supra* note 41.

⁹⁹ *Id.*

¹⁰⁰ March 5, 1999 Minutes, *supra* note 94.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

edge.”¹⁰⁸ Brad Wilkinson, a member of the Committee Counsel, Legal Division of the Legislative Counsel Bureau, added to Senator Weiner’s inquiry by distinguishing between “actual” and “constructive” knowledge.¹⁰⁹ Mr. Wilkinson stated that “constructive knowledge” means “a person has reason to know something, but does not actually know it,” whereas “actual knowledge” means a person actually knows something.¹¹⁰ Following the same discussion, Chairman Mark James suggested, “the language should probably be ‘knowledge’ or ‘reason to know.’”¹¹¹

The Nevada Legislature consciously rejected Chairman James’ suggestion and instead, intentionally used the term “actual knowledge.”¹¹² If the legislature intended to place the lesser standard of constructive notice on the payor of a life insurance policy, the language of the current Nevada slayer statute would have simply included the term “knowledge” or “reason to know,” rather than the term “actual knowledge.”¹¹³ Furthermore, as numerous insurance company lobbyists were present at the Senate Committee on Judiciary hearing,¹¹⁴ the insurance industry likely would not have supported the amendment if it believed the legislature intended “actual knowledge” to mean the lesser standard of “reason to know” or “constructive notice.” Thus, the Nevada Legislature intended to hold an insurance company liable if it pays the proceeds to a beneficiary when it *actually knows* the beneficiary was the killer of the insured.

2. Interpretation of “Actual Knowledge” in Nevada Should Be Consistent with the Commonly Accepted Definition of “Actual Knowledge”

“Actual knowledge” means exactly what it imports: “‘knowing’ rather than ‘reason for knowing.’”¹¹⁵ In fact, *Black’s Law Dictionary* defines “actual knowledge” as “[d]irect and clear knowledge, as distinguished from constructive knowledge.”¹¹⁶ *Black’s Law Dictionary* defines “constructive knowledge” as “[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person.”¹¹⁷ Therefore, “actual knowledge,” by its clear and common meaning, requires actual notice of an actual event.¹¹⁸ It cannot be a mere suspicion of a possible event because that goes beyond the use of reasonable care required for constructive knowledge.¹¹⁹ Consequently, the actual knowledge requirement in the Nevada slayer statute should comply with the commonly accepted meaning of “actual knowledge” and hold an insurance company liable if: (1) a beneficiary has *actually* killed

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See NEV. REV. STAT. § 41B.400 (2007).

¹¹³ See *id.*

¹¹⁴ See March 5, 1999 Minutes, *supra* note 94.

¹¹⁵ *Tipton v. Town of Tabor*, 567 N.W.2d 351, 359 (S.D. 1997); *Walther v. KPKA Meadowslands Ltd. P’ship*, 581 N.W.2d 527, 532 (S.D. 1998).

¹¹⁶ BLACK’S LAW DICTIONARY 888 (8th ed. 2004).

¹¹⁷ *Id.*

¹¹⁸ *Tipton*, 567 N.W.2d at 359; *Walther*, 581 N.W.2d at 532.

¹¹⁹ See BLACK’S LAW DICTIONARY 888 (8th ed. 2004).

the insured; and (2) the insurance company *actually* knows that a beneficiary was the killer prior to the time it paid out the policy proceeds to the beneficiary.

3. *A Lesser Standard Than “Actual Knowledge” Requires an Insurance Company To Act as the Jury to Determine Whether a Beneficiary is a Killer*

In circumstances where there is no criminal conviction or civil claim against a beneficiary, interpreting “actual knowledge” as meaning “constructive notice” would force an insurance company to act as the jury by judging whether a beneficiary is in fact the killer of an insured. Lucille Lusk, a lobbyist for Nevada Concerned Citizens, remarked during the 1999 Senate on Judiciary Committee hearing, that “ultimately[,] the insurance company can decide if somebody is guilty of murder.”¹²⁰ Chairman James countered that juries decide cases, not insurance companies.¹²¹ However, Ms. Lusk advocated allowing a criminal court to determine if someone is guilty of murder rather than “have a civil situation where the insurance company is making decisions that it will not pay even though the criminal courts are not convicting.”¹²² Ms. Lusk concluded, “if the criminal court cannot prove murder under the proper standard for murder, there ought to be no penalties as if a murder were committed.”¹²³

Ms. Lusk’s opinion that an insurance company should not determine whether a beneficiary is guilty of murder is both logical and reasonable. Insurance companies lack the knowledge and resources to judge whether a beneficiary is a slayer under the slayer statute. Although Chairman James noted that juries decide murder cases, in the absence of a criminal conviction or civil judgment, an insurance company must play the role of the jury and decide who should receive the policy proceeds. Placing this burden on insurance companies, which are ill equipped to determine whether a beneficiary is the killer of an insured, is unacceptable.

C. *Nevada’s Sister States in the Ninth and Tenth Circuits Expressly Provide When an Insurance Company May Be Liable*

The Nevada Legislature likely did not define “actual knowledge” in its slayer statute because it did not anticipate statutory constructions other than direct knowledge. In contrast to Nevada, all of the other states within the Ninth and Tenth Circuits expressly provide that an insurance company is not liable if it pays the policy proceeds to a beneficiary before receiving written notice of a claimed lack of entitlement, forfeiture or revocation.¹²⁴ Further, it is reasonable to look to Nevada’s sister states for guidance because the Nevada Legisla-

¹²⁰ *March 5, 1999 Minutes, supra* note 94.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See ALASKA STAT. § 13.12.803(g) (2008); ARIZ. REV. STAT. ANN. § 14-2803(G) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8) (2008); HAW. REV. STAT. § 560:2-803(h)(1) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(1) (2008); MONT. CODE ANN. § 72-2-813(8)(a) (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH

ture previously looked to California, Idaho, and Oregon when it amended its definition of a killer in its slayer statute to include a person convicted of voluntary manslaughter.¹²⁵

Although all of the Ninth and Tenth Circuit states, except Nevada, require written notice, the complexity of the definition of written notice varies among the states. For example, Alaska, Arizona, Hawaii, and Montana from the Ninth Circuit, and Colorado, Kansas, New Mexico, and Utah from the Tenth Circuit, all define written notice in explicit detail.¹²⁶ Under these states' statutes, a claimant must mail written notice of his or her adverse claim to the insurance company's main office or home address by certified mail, return receipt requested, or serve the insurance company in the same manner as a summons in a civil action.¹²⁷ Once an insurance company receives written notice of an adverse claim, it may pay any amount owed under the insurance policy to a court having jurisdiction over the probate proceedings relating to the decedent's estate.¹²⁸ If no probate proceedings relating to the decedent's estate have commenced, an insurance company may then pay the amount owed under the insurance policy to a court having jurisdiction of probate proceedings relating to the decedent's estate located in the county of the decedent's former residence.¹²⁹ After an insurance company pays the money to the court, the court relieves the insurance company from any and all claims for the policy proceeds.¹³⁰ The court then holds the monies until it determines who is rightfully and lawfully entitled to the proceeds.¹³¹

With the exception of Nevada, the remaining states within the Ninth and Tenth Circuits (California, Idaho, Oregon, and Washington from the Ninth Cir-

CODE ANN. § 75-2-803(8)(a) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

¹²⁵ See *February 24, 1999 Minutes*, *supra* note 41; see also discussion *supra* Part II.A. See generally NEV. REV. STAT. § 41B.250(3)(c) (2007).

¹²⁶ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(b) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

¹²⁷ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(b) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

¹²⁸ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(c) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

¹²⁹ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(c) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

¹³⁰ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(c) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

¹³¹ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); COLO. REV. STAT. § 15-11-803(8)(c) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008).

cuit, and Oklahoma and Wyoming from the Tenth Circuit) also establish that an insurance company making a payment according to the terms of its policy is not liable unless it has received written notice of an adverse claim.¹³² However, these states do not define the circumstances surrounding written notice as explicitly as the Alaska, Arizona, Hawaii, Montana, Colorado, Kansas, New Mexico, and Utah statutes.¹³³ For example, these remaining states do not explain the steps an insurance company should take once it receives written notice (e.g., paying the proceeds to the court).¹³⁴ Furthermore, the California, Idaho, and Washington statutes are more explicit than the Oklahoma, Oregon, and Wyoming statutes because they expressly provide that an insurance company may not be liable for paying policy proceeds to the beneficiary unless it has received written notice by a claimant “*at its home office or principal address.*”¹³⁵ By contrast, the Oklahoma, Oregon, and Wyoming statutes do not specify where the claimant must send the written notice.¹³⁶

Nevada should follow its sister states and interpret the “actual knowledge” requirement in the Nevada slayer statute as written notice. The definition of “actual knowledge” as written notice would eliminate the subjective inconsistencies of a constructive notice standard and would require documented proof that the payor of a policy has actual notice of probative and provable facts that justify withholding payment on a policy.

D. Solutions

1. *The Insurance Companies Should Lobby the Nevada Legislature to Amend the Statute to Define “Actual Knowledge” as Written Notice*

The Nevada Legislature should amend the current Nevada slayer statute to define “actual knowledge” as written notice of an adverse claim.¹³⁷ For example, the legislature could amend the Nevada slayer statute to provide the following:

Except as otherwise provided by specific statute, if a payor or other third person, in good faith, pays or transfers any property, interest or benefit to a beneficiary in

¹³² See CAL. PROB. CODE § 256 (West 2008); IDAHO CODE ANN. § 15-2-803(k) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

¹³³ See ALASKA STAT. § 13.12.803(h) (2008); ARIZ. REV. STAT. ANN. § 14-2803(H) (2008); CAL. PROB. CODE § 256 (West 2008); COLO. REV. STAT. § 15-11-803(8)(b)–(c) (2008); HAW. REV. STAT. § 560:2-803(h)(2) (2008); IDAHO CODE ANN. § 15-2-803(k) (2008); KAN. STAT. ANN. § 58-714(a)(2) (2008); MONT. CODE ANN. § 72-2-813(8)(b) (2007); N.M. STAT. § 45-2-803(H) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); UTAH CODE ANN. § 75-2-803(8)(b) (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

¹³⁴ See CAL. PROB. CODE § 256 (West 2008); IDAHO CODE ANN. § 15-2-803(k) (2008); OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); WASH. REV. CODE § 11.84.110 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

¹³⁵ See CAL. PROB. CODE § 256 (West 2008) (emphasis added); see also IDAHO CODE ANN. § 15-2-803(k) (2008); WASH. REV. CODE § 11.84.110 (2008).

¹³⁶ See OKLA. STAT. tit. 84, § 231 (2008); OR. REV. STAT. § 112.535 (2008); WYO. STAT. ANN. § 2-14-101(c) (2008).

¹³⁷ See NEV. REV. STAT. § 41B.400 (2007).

accordance with the provisions of a governing instrument, the payor or other third person is not liable to another person who alleges that the payment or transfer to the beneficiary violated the provisions of this chapter unless, before the payment or transfer, the payor or other third person had *actual knowledge* that the beneficiary was prohibited from acquiring or receiving the property, interest or benefit pursuant to the provisions of this chapter.¹³⁸

The payor or other third person has actual knowledge that the beneficiary was prohibited from acquiring or receiving the property, interest or benefit pursuant to the provisions of this chapter if the payor or other third person has received *written notice* of a claimed forfeiture or revocation or lack of entitlement. The written notice shall indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation or lack of entitlement is being made under this section. The written notice shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action.¹³⁹

If the Nevada Legislature fails to amend the slayer statute to define "actual knowledge" as written notice of an adverse claim, insurance companies will continue to face the "to pay or not to pay" dilemma. Consider the following hypothetical. The law enforcement, while investigating a homicide, informs an insurance company that a beneficiary is a person not to be permanently excluded as a suspect. However, the beneficiary is never actually charged or convicted of killing the insured. Neither the police, the district attorney's office, nor an investigative grand jury with the ability to subpoena witnesses and compel testimony under oath, are able to assemble sufficient evidence to bring a criminal case against anyone, whether the beneficiary or otherwise, for any crime involving the death of the insured.

Under the facts of this hypothetical and the current Nevada slayer statute, whether the insurance company has "actual knowledge" that the beneficiary is the killer of the insured would remain unknown. Surely, it is absurd to expect the insurance company to conclude, without a court's assistance, that the beneficiary is the killer of the insured and to consequently withhold the policy proceeds.

Of course, the insurance company would have the option to file an interpleader action. However, amending the slayer statute for clarity is more cost effective and resource efficient than requiring insurance companies to instigate litigation (the interpleader action) every time they are faced with the "to pay or not to pay" dilemma or to defend themselves in litigation filed by either the decedent's family or the beneficiary.¹⁴⁰ If the legislature amended the Nevada slayer statute to provide that an insurance company is not liable unless it has received written notice of an adverse claim prior to paying the proceeds to the beneficiary, the "actual knowledge" ambiguity would be resolved, and an insur-

¹³⁸ The foregoing language is the text of the current Nevada slayer statute. *See id.* (emphasis added).

¹³⁹ The foregoing language is not currently in the Nevada slayer statute and is suggested in accordance with the slayer statutes in the Ninth and Tenth Circuit states.

¹⁴⁰ *See* the discussion of an insurance company's option to file an interpleader action *infra* Part III.D.3.

ance company would know exactly when to pay and when not to pay the policy proceeds under the above hypothetical.

2. *An Insurance Company May Attempt to Avoid Liability by Providing a Slayer Clause in its Insurance Policy Contracts*

An insurance company facing litigation may attempt to rely on its policy contract with the insured to avoid any potential liability.¹⁴¹ An insurance company could incorporate in its contract a clause relieving the insurance company from liability for refusing to issue the policy proceeds to the beneficiary if the beneficiary killed the insured.¹⁴² Following the language of the Nevada slayer statute, the contract clause could also state, “the insurance company is not liable for paying the policy proceeds to the beneficiary unless it has actual knowledge that the beneficiary is the slayer of the insured.” In fact, an insurance company may exceed the language of the current Nevada slayer statute by adding to the contract clause that it is relieved of liability unless it has received *written notice* of an adverse claim.

The case *Polish National Alliance of United States of North America v. Crowley*¹⁴³ is an example of an insurance company successfully relying on its contract to avoid liability in this context.¹⁴⁴ In *Polish*, the court held the beneficiary who murdered the insured was precluded from recovering the insurance policy proceeds pursuant to a clause in the insurance policy that stated, “[n]o mortuary benefit shall be paid to the beneficiaries of a member after his death, if the member lost his life by reason of any act or acts designed on the part of the beneficiary or beneficiaries for the purpose of securing the mortuary benefit.”¹⁴⁵ Therefore, as exemplified in *Polish*, an insurance company may be able to defeat an adverse claim to the policy proceeds by relying on a specific provision in the insurance policy contract.¹⁴⁶

3. *An Insurance Company May Also Attempt to Avoid Liability by Filing an Interpleader Action*

An insurance company’s safest alternative may be to instigate an interpleader action.¹⁴⁷ Under the Nevada Rules of Civil Procedure, Rule 67(a), “[i]n an action in which any part of the relief sought is a . . . disposition of a sum of money . . . a party . . . may deposit with the court all or any part of such sum or thing to be held by the clerk of the court . . . subject to withdrawal . . . at any time thereafter upon order of the court.”¹⁴⁸

¹⁴¹ See F. S. Tinio, Annotation, *KILLING OF INSURED BY BENEFICIARY AS AFFECTING LIFE INSURANCE OR ITS PROCEEDS*, 27 A.L.R.3D 794, 819 (1969).

¹⁴² See *id.*

¹⁴³ *Polish Nat’l Alliance of U.S. of N. Am. v. Crowley*, 176 N.E. 492 (Ohio Ct. App. 1930).

¹⁴⁴ *Id.* at 492.

¹⁴⁵ *Id.*

¹⁴⁶ See Tinio, *supra* note 141, at 819; see also *Polish Nat’l Alliance*, 176 N.E. at 492.

¹⁴⁷ See generally David B. Levendusky, Annotation, *AVAILABILITY OF INTERPLEADER TO INSURANCE COMPANY FOR RESOLVING DISPUTE AS TO INSURANCE POLICY UNDER FEDERAL INTERPLEADER ACTS (PRESENTLY 28 USCS §§ 1335, 1397, 2361) AND RULE 22 OF FEDERAL RULES OF CIVIL PROCEDURE*, 19 A.L.R. FED. 166 (1974); see also Schuman, *supra* note 3, at 221.

¹⁴⁸ NEV. R. CIV. P. 67(a).

An interpleader action's primary purpose is to protect the stakeholder, such as an insurance company, from multiple liability and the expense of multiple lawsuits.¹⁴⁹ An interpleader action is not denied even if "the possibility of multiple liability or multiple litigation is remote or rests on tenuous grounds."¹⁵⁰ Therefore, a stakeholder can instigate an interpleader action to avoid the expense of defending multiple claims in court.¹⁵¹ An insurance company may file an interpleader action even if it maintains that only one of the adverse claims has merit.¹⁵² Although an insurance company is likely to resist instigating a legal action, interpleader is an attractive and cost-effective alternative to defending against multiple lawsuits from multiple parties.

An interpleader action will also ensure insurance policy proceeds are justly paid. During the debates surrounding the amendment of the Nevada slayer statute in 1999, Chairman James argued that the objective of adding the "actual knowledge" language to the slayer statute was to reach a just result, not necessarily to minimize litigation.¹⁵³ Allowing the courts, rather than an insurance company, to determine who should receive the policy proceeds better serves justice, because the courts are better equipped to make such a determination.

*State Farm Life Insurance Co. v. Pearce*¹⁵⁴ illustrates an example of an insurance company filing an interpleader action when it was not clear who was lawfully entitled to the policy proceeds, given the circumstances surrounding the insured's death.¹⁵⁵ In *State Farm*, Wayne Pearce owned three State Farm insurance policies, totaling \$200,000.¹⁵⁶ The insurance policies named Roberta Pearce, Wayne Pearce's wife, as the primary beneficiary and her sister, Charlotte Miles, as the contingent beneficiary.¹⁵⁷ On January 31, 1989, Mrs. Pearce stabbed her husband to death.¹⁵⁸ Mrs. Pearce was charged and convicted of first-degree murder and shortly thereafter, she assigned her rights under the insurance policies to Ms. Miles.¹⁵⁹

Both Wayne Pearce's estate and Ms. Miles demanded from State Farm the insurance policy proceeds.¹⁶⁰ Consequently, State Farm filed an interpleader action and deposited the proceeds with the clerk of the court.¹⁶¹ State Farm obtained a dismissal from the action, thereby relinquishing any exposure to liability for payment of the proceeds.¹⁶² Therefore, as exemplified in *State Farm*, an insurance company may wash its hands of the "to pay or not to pay"

¹⁴⁹ *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030, 1034 (9th Cir. 2000) (citations omitted).

¹⁵⁰ *Noey v. Bledsoe*, 978 P.2d 1264, 1272 (Alaska 1999) (citations omitted).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See *March 5, 1999 Minutes*, *supra* note 94.

¹⁵⁴ *STATE FARM LIFE INS. CO. v. PEARCE*, 286 Cal. Rptr. 267 (Cal. Ct. App. 1991).

¹⁵⁵ *Id.* at 268.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

dilemma by filing an interpleader action and allowing the court to determine who should receive the proceeds.

IV. CONCLUSION

In 1999, the Nevada Legislature amended the Nevada slayer statute and provided that an insurance company is not liable for paying policy proceeds to a beneficiary, unless it has “actual knowledge” that the beneficiary is the killer of the insured.¹⁶³ Unfortunately, the Nevada slayer statute, as amended, does not define “actual knowledge.”¹⁶⁴ As a result, insurance companies in Nevada find themselves in the “to pay or not to pay” dilemma under circumstances where it is unclear whether the beneficiary is the killer because there is no criminal charge, no criminal conviction,¹⁶⁵ and no civil judgment against the beneficiary.¹⁶⁶ Consequently, if an insurance company pays the policy proceeds to the beneficiary, it may face a bad faith claim from the estate or the contingent beneficiary.¹⁶⁷ By contrast, if an insurance company pays the policy proceeds to the estate or the contingent beneficiary, it may face a breach of contract or bad faith claim from the primary beneficiary.¹⁶⁸

To resolve the “to pay or not to pay” dilemma in Nevada, the Nevada Legislature should amend its slayer statute to define “actual knowledge” as written notice. Under such a definition, an insurance company would not be liable unless it paid the policy proceeds to a beneficiary after receiving written notice of a claim adverse to the beneficiary. Even if the Nevada Legislature does not amend its slayer statute, an insurance company should incorporate a slayer clause in its insurance policy contracts, which would provide that the insurance company is not liable for refusing to pay a beneficiary who is the slayer of the insured.¹⁶⁹ Any such clause should also include language stating, “in the event that the insurance company pays the beneficiary, the insurance company is not liable unless it had actual knowledge, meaning written notice of an adverse claim, that the beneficiary was the slayer of the insured, at the time of payment.” This explicit contract provision would alleviate the Nevada Legislature’s failure to define “actual knowledge” in the current Nevada slayer statute. Furthermore, an insurance company’s most viable alternative when facing the “to pay or not to pay” dilemma is to file an interpleader action and pay the policy proceeds to a court.¹⁷⁰ By doing so, an insurance company will wash its hands of multiple liability and the court, rather than the insurance company, will determine which party should receive the proceeds.¹⁷¹ The interpleader action will consequently save an insurance company the expense of defending multiple adverse claims from multiple parties.

¹⁶³ See *March 5, 1999 Minutes*, *supra* note 94; see also NEV. REV. STAT. § 41B.400 (2007).

¹⁶⁴ See NEV. REV. STAT. § 41B.400 (2007).

¹⁶⁵ See *id.* § 41B.250(3)(c).

¹⁶⁶ See *id.* § 41B.260(2).

¹⁶⁷ Schuman, *supra* note 3, at 221.

¹⁶⁸ *Id.* at 222.

¹⁶⁹ See Tinio, *supra* note 141, at 819.

¹⁷⁰ See Schuman, *supra* note 3, at 221.

¹⁷¹ See *STATE FARM LIFE INS. CO. v. PEARCE*, 286 Cal. Rptr. 267, 268 (Cal. Ct. App. 1991).

In sum, the best solution is for the Nevada Legislature to amend the slayer statute to define “actual knowledge” as written notice. Such an amendment would, once and for all, resolve the insurance companies’ “to pay or not to pay” dilemma in Nevada.