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QUESTION

- ❑ Whether the trustee of an insolvent deceased estate is entitled, in Reference over the nominated beneficiaries, to the proceeds of insurance policies, for distribution to the deceased's creditors?

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GENERAL RULES

- “37C. Disposition of pension benefits upon death of member. - (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of section 37A(3) and 37D, not form part of the assets in the estate of such a member.....”

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EXCEPTION TO THE GENERAL RULE:

- 37C.(1)(c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee,

Exception to the General Rule(Cont)

- ❑ Shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

Three types of payments contemplated in 37C.(1)(c):

- ❑ Where a member has nominated a beneficiary to receive a portion of the benefit, the remaining balance of the benefit in terms of S37C(1)(b) is paid into the estate;
- ❑ Where there are no dependants or any nominees and the entire benefits is paid into the estates;

Three types of payments contemplated in 37C.(1)(c): (Cont)

- ❑ When the liabilities of the estate exceed the assets and the member is survived by nominees only and then the estate has a claim to the extent of the shortfall.

The question relates to the third type of payment.

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The Long Term Insurance Act, 1998:

- ❑ 63. Protection of policy benefit under certain long-term policies.-

(1) Subject to subsections(2) and (3), the policy benefits provided or to be provided to a person under one or more assistance, life, disability or health policies in which that person or the spouse of that person is the life insured and

LTI Act 1998: (Cont)

- ❑ Which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy –
 - (a) during his or her lifetime, not be liable to be attached or subjected to execution under a judgment of a court or

LTI Act 1998:(Cont)

- (a) form part of his or her insolvent estate; or
- (b) upon his or her death, if he or she is survived by a spouse, child, step-child or parent, not be available for the purpose of the payment of his or her debts.

LTI Act 1998:(Cont)

(2) The protection contemplated in subsection (1) shall apply to –

- (a) assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided; and

LTI Act 1998:(Cont)

- (b) policy benefits and assets so acquired (if any) to an aggregate amount of R50 000 or another amount prescribed by the Minister.

□ The question is whether the trustee of an insolvent estate can rely on section 63 of the Long Term Insurance Act in support of the contention that they are entitled to the proceeds of insurance policies in preference over the nominated beneficiary?

The Supreme Court of Appeal was faced with this question in the matter between:

- ❑ Pieterse v Shrosbree and Others; Shrosbree NO v Love and Others [2004] 11 BPLR 6187 (SCA)

Brief Facts

- The trustee of the Insolvent Estate/ second respondent sought to claim the policy proceeds
- The parties were married out of Community of Property
- One party committed suicide
- Appellant was an unrehabilitated insolvent

Brief Facts (Cont)

- ❑ Second respondent is the trustee of the Insolvent Estate of the appellant
- ❑ The deceased at the time of death had 3 Life Insurance policies and nominated as beneficiary was the appellant

It was held:

- ❑ Section 63 deals with the protection of policy benefits under certain long – term policies.
- ❑ In the ordinary course, the proceeds of an insurance policy will go directly to a nominated beneficiary.
- ❑ Section 63 does not purport to divert the proceeds of an insurance policy from a nominated beneficiary to the insolvent estate of the deceased policy holder.

It was held: (Cont)

- ❑ The trustee of an insolvent estate does not also become a creditor of the nominated beneficiary by virtue of section 63.

❑ A similar situation could arise in respect of a dispute between the trustees of a fund and the trustees of an insolvent estate in respect of the shortfall in the insolvent estate in respect of the distribution of a section 37C benefit.

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Thank you.

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