Conclusion

The Iowa Legislature, through the passage of Section 613.15, and the Iowa supreme court, through its new interpretation of Iowa Rule of Civil Procedure 8, have now made it possible for the survivors of the family unit to be more fairly and adequately compensated for their loss. While in the view of some, verdicts since the passage of Section 613.15 have been excessive, it is true that prior to this legislation verdicts were grossly inadequate. This was commonly the case where the decedent was a minor child.

If verdicts have been excessive, it is perhaps due to the fact that neither the courts, counsel nor juries have been able to adequately cope with expert testimony. While this writer agrees with the dissenters in *Schmitt* and *Adams* with respect to the use of an expert witness on the subject of loss of services, the fact remains that this testimony probably will be permitted together with testimony of a more concrete nature on loss of support. Therefore, defense counsel must be prepared to lessen the impact of this testimony by questioning its foundational basis and perhaps by calling expert witnesses of their own to contradict the plaintiff's expert. However, the latter tactic is considered by some to be objectionable either because it is tantamount to an admission of liability or because it tends to set a minimum amount which the jury will award if liability is found.

There is a scientific basis for challenging the expert witness on the issue of support. For example, the expert witness usually assumes a work-life expectancy of age 65 or beyond when statistically it is unlikely that a man will be working at those ages. The expert witness assumes continued employment without layoffs, constant increases in wages, continued inflation and continued physical and mental health. Taxes are sometimes not considered and, if they are, the expert witness will assume that there will be no increase in the tax rate. Personal expenditures of the decedent are generally estimated at a time when the decedent's family is at home and would be at the lowest and is not increased for the period after the children reach majority. One of the greatest factors in increasing the present worth value of services and support is the use of a low discount rate of four or five per cent by the expert when a safe investment today yields a much higher rate of return. If the jury is not made aware of the fallibility of expert testimony, it should not surprise anyone that the jury may well accept the testimony.

The effect of the inclusion of loss of society and companionship into loss of services under Iowa Rule of Civil Procedure 8 on the size of verdicts cannot be stated with any certainty. Because of the intangible and emotional nature of this element, it may well have a dramatic effect upon the size of verdicts.

Notes

EVERYTHING A BANKRUPT NEEDS TO KNOW ABOUT LIFE INSURANCE BUT WASN'T TOLD

I. Introduction

This Note deals with the Federal Bankruptcy Act[1] and its effect on life insurance policies which are owned by and which insure the lives of persons declaring bankruptcy. Special emphasis will be placed on the rights and exemptions granted to bankrupts domiciled in Iowa by a special Iowa exemption statute. However, to properly understand these rights and exemptions peculiar to Iowa domiciliaries, an overview of the applicable provisions of the Bankruptcy Act is a necessary starting point.

II. The Subsection 5 Proviso

A. *A Vesting Clause*

Any discussion of this subject must begin with an analysis of section 70 (a)[2] of the Bankruptcy Act. This section provides:

> The trustee of the estate of a bankrupt . . . shall in turn be vested by operation of law with the title of the bankrupt *as of the date of the filing of the petition* initiating a proceeding under [this Act], *except insofar as it is to property which is held to be exempt*, to all of the following kinds of property wherever located . . . ; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) *property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him*, or otherwise seized . . . *And provided further, That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within 30 days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets* . . . .[3]

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[1] 11 U.S.C. §§ 1 *et seq.* (1970).
[2] 11 U.S.C. § 110(a) (1970).
[3] *Id.* (Emphasis added).

Section 70(a)[4] is, of course, one of the most important sections of the Act. It is the section that specifically vests in the trustee, by operation of law, title to all of the bankrupt's nonexempt property for later distribution to the participating creditors. Moreover, it determines what property shall pass under the Act.[5] That section 70(a)[6] contemplates life insurance policies as being property within the meaning of the Act is made certain by specific reference to insurance policies in a proviso (hereafter referred to as the "subsection 5 proviso" or "proviso") at the end of section 70(a)(5).[7] While this subsection 5 proviso is the only specific reference to insurance policies in section 70(a)[8] (in fact, the only reference to insurance policies in the whole Bankruptcy Act), its inclusion was not necessary for the trustee to reach certain property rights a bankrupt might have in his policy. The Bankruptcy Act of 1867[9] was construed to reach life insurance policies by its provision that the trustee was vested with "all the estate, real and personal,"[10] of the bankrupt.[11] The first part of section 70(a)(5)[12] of the present Act is at least this broad in application when it provides that the trustee is vested with the property "which prior to the filing of the petition [the bankrupt] could by any means have transferred."[13] Because Congress saw fit, however, to add the specific subsection 5 proviso, the United States Supreme Court decided long ago in *Burlingham v. Crouse*[14] that the language and intent of this proviso would control over the more general language in the rest of section 70(a)(5).[15] Therefore, it was this proviso that would determine which insurance policies (and to what extent) would be considered property vesting in the trustee in bankruptcy.[16]

It is important to the understanding of this subject to determine just what the subsection 5 proviso means when it says "insurance policy." So far I have used the term "insurance policy" to refer to life insurance policies generally. This use of the term is not completely accurate. The proviso actually refers only to those insurance policies which have a "cash surrender value payable to the [bankrupt], his estate, or personal representative." In other words, the insurance policies referred to are those policies issued by a legal reserve life insurance company[17] whereby the owner may surrender them before they are matured by time or death and receive a portion of the unused premiums called

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4 *Id.*
5 Bush v. Export Storage Co., 136 F. 918 (C.C.E.D. Tenn. 1904).
6 11 U.S.C. § 110(a) (1970).
7 *Id.* § 110(a)(5).
8 *Id.* § 110(a).
9 Act of Mar. 2, 1867, ch. 176, 14 Stat. 517. (The present Act was enacted in 1898).
10 *Id.* § 14.
11 *In re* McKinney, 15 F. 535 (S.D.N.Y. 1883).
12 11 U.S.C. § 110(a)(5) (1970).
13 Burlingham v. Crouse, 228 U.S. 459, 467 (1913).
14 228 U.S. 459 (1913).
15 11 U.S.C. § 110(a)(5) (1970).
16 Burlingham v. Crouse, 228 U.S. 459 (1913).
17 Legg v. St. John, 296 U.S. 489 (1936).

the "cash surrender value."[18] This specific reference by Congress to insurance policies with cash surrender values was held in *Burlingham* to be more than a mere realization that the right to these values represents present assets of the bankrupt estate. It was also the intent of Congress to limit the vesting of title in the trustee to only those policies having a cash surrender value and then only to the extent of this cash surrender value.[19] Other courts had reached this same result earlier in cases under the Bankruptcy Act of 1876 which had no comparable subsection 5 proviso. One such case, *In re McKinney*,[20] which was cited favorably in *Burlingham*, held that the only beneficial value that could pass out of the bankrupt's proprietary rights in his insurance policy to the trustee was the present pecuniary value of the policy to the bankrupt, *i.e.*, the cash surrender value. Future policy earnings or acquisitions were held not to pass to the trustee, and the executory portion of a life insurance policy with its unhappened contingency and the required future premium payments was decided to be more of a burden to the estate than an asset anyway.

In passing, additional comment should be made regarding specific insurance plans. Other types of life insurance policies besides ordinary life can be issued by legal reserve life companies and have cash surrender values. Tontine plan policies[21] and policies with endowment or investment features[22] (as opposed to standard annuity contracts),[23] where they have a cash surrender value available to the bankrupt, are also controlled by the subsection 5 proviso. In certain circumstances it should be noted that the bankrupt estate may even profit from health, disability, accident, and similar type insurance plans. These plans, of course, are not within the contemplation of the subsection 5 proviso. Here, the payment contingency, *e.g.*, sustaining a disabling injury, has fallen before the petition was filed, and the bankrupt's rights to the contracted payments can be transferred by the bankrupt and therefore are property within the meaning of section 70(a)(5).[24] And since these plans have no cash surrender value, they are not afforded the protective redemptive feature (to be discussed later) of the proviso even when they are annexed to a legal reserve life policy.[25]

Additional comment should also be made regarding the term "cash surrender value." As stated above, only those life insurance policies with a cash surrender value pass to the trustee and then title vests in the trustee only to the extent of the actual cash surrender value available to the bankrupt. This is true even where the bankrupt insured dies soon after filing his petition and the death proceeds of the policy are many times more than its cash surrender value.[26] Again as stated above, unmatured policies with no cash surrender

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18 *Id.*; Burlingham v. Crouse, 228 U.S. 459 (1913).
19 Burlingham v. Crouse, 228 U.S. 459 (1913).
20 15 F. 535 (S.D.N.Y. 1883).
21 Hiscock v. Mertens, 205 U.S. 202 (1907).
22 Pearl v. Goldberg, 300 F.2d 610 (2d Cir. 1962).
23 *In re* Power, 115 F.2d 69 (7th Cir. 1940).
24 11 U.S.C. § 110(a)(5) (1970); Legg v. St. John, 296 U.S. 489 (1936).
25 Legg v. St. John, 296 U.S. 489 (1936).
26 Everett v. Judson, 228 U.S. 474 (1913).

value available to the bankrupt do not pass in bankruptcy at all. The key word here is "available." A cash surrender value may not be available for a number of reasons, all of which are sufficient to place life insurance policies outside of the operation of the Bankruptcy Act. For example, by the terms of the policy there may be no cash surrender value available until after a certain period of continued coverage not yet attained when the petition in bankruptcy was filed or the bankrupt may have taken out a full value policy loan against his policy's cash surrender value prior to the filing of the petition in bankruptcy.[27] Also, the title to the policy may have been completely and absolutely assigned away.[28] The mere fact that the face value of the policy is payable to another instead of the bankrupt or his estate *does not* make the cash surrender value unavailable to the bankrupt where he has reserved the right to change the beneficiary.[29] However, where no such reservation is made or no policy provision is present giving the bankrupt the right to receive the cash surrender value in spite of the vested interest of an irrevocable beneficiary, the fact that the beneficiary must consent to the surrender of the policy *does* make the cash surrender value unavailable to the bankrupt.[30] In any case, the burden is upon the trustee to prove that a life insurance policy has a cash surrender value,[31] and this value must have been available to the bankrupt at the time the petition in bankruptcy was filed.[32]

B. *A Redemption Clause*

The subsection 5 proviso is, of course, much more than a codification of pre-existing court determinations as to which (and to what extent) life insurance policies become assets of bankrupt estates. The proviso by its very wording is primarily a redemption clause. It allows the bankrupt policy owner, where he is a natural person, to pay over or secure to the trustee an amount equal to the cash surrender value and thereby maintain his policy free from the claims of participating creditors. The purpose of this redemptive feature is "to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset; otherwise to leave to the insured the benefit of his life insurance."[33] Were the policy to be actually surrendered by the trustee, the bankrupt, when purchasing insurance subsequent to his bankruptcy (assuming,

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[27] Curtis v. Humphrey, 78 F.2d 73 (5th Cir.), *cert. denied*, 296 U.S. 605 (1935); *see* Burlingham v. Crouse, 228 U.S. 459 (1913).

[28] Lincoln Nat'l Life Ins. Co. v. Scales, 62 F.2d 582 (5th Cir. 1933). The result is opposite where the assignment is in fraud of his creditors. 11 U.S.C. § 110(a)(4) (1970); *In re* Levy, 227 F. 1011 (E.D.N.Y. 1915).

[29] Frederick v. Fidelity Mut. Life Ins. Co., 256 U.S. 395 (1921); Cohen v. Samuels, 245 U.S. 50 (1917).

[30] *In re* Simmons & Griffin, 255 F. 521 (1st Cir. 1919); *In re* Gannon, 241 F. 733 (2d Cir.), *aff'd*, 247 F. 932 (1917) (Bankrupt must be able to get cash surrender value by his own effort).

[31] Union Guardian Trust Co. v. Lohmann, 68 F.2d 311 (6th Cir. 1933).

[32] Everett v. Judson, 228 U.S. 474 (1913).

[33] Burlingham v. Crouse, 228 U.S. 459, 473 (1913); *accord*, Frederick v. Fidelity Mut. Life Ins. Co., 256 U.S. 395 (1921).

of course, that he could even establish insurability), would have to pay higher rates because of his increased age and suffer the running of another contestability period. Instead, the bankrupt can pay an amount equal to the cash surrender value (usually done by taking out a full value policy loan and endorsing the loan check over to the trustee) and continue future premium payments, thereby retaining the other beneficial ownership interests in his policy. The bankrupt, by properly redeeming his policy, takes it out of the general principle vesting in the trustee title to all property which the bankrupt could have transferred.[34] Therefore, no formal abandonment nor conveyance back of title by the trustee should be necessary to clear the bankrupt's title to his policy.

It must be remembered that the subsection 5 proviso requires that in order to redeem his policy the bankrupt secure or pay over the cash surrender value within thirty days of the date the cash surrender value was stated to the trustee by the insurer. It would seem, however, that as long as the trustee has not actually surrendered the policy the bankrupt should still be able to redeem his policy by tendering the proper amount. This conclusion is certainly in concert with the protective purpose and spirit of the proviso. Since the trustee must obtain an order from the court before he can actually surrender the policy,[35] he might be hard pressed to show how it would be more advantageous to the participating creditors to surrender the policy and wait for a check from the insurer rather than to accept the same amount in cash from the bankrupt right away.

III. Life Insurance as Exempt Property

A. *State Law Adopted*

While a bankrupt's failure to take advantage of the right to redeem his life insurance policies causes him to suffer their surrender, even harsher results attach where section 6[36] of the Bankruptcy Act is applicable but overlooked. Section 6[37] provides:

> [This Act] shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State . . . .

The effect of this section is to preclude the distribution under the Bankruptcy Act of property owned by the bankrupt which, pursuant to applicable state law (as construed and applied by the highest court in the state),[38] would not

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[34] Burlingham v. Crouse, 228 U.S. 459 (1913).
[35] Lincoln Nat'l Life Ins. Co. v. Scales, 62 F.2d 582 (5th Cir. 1933).
[36] 11 U.S.C. § 24 (1970).
[37] *Id.*
[38] Holden v. Stratton, 198 U.S. 202 (1905); Meritz v. Palmer, 266 F.2d 265 (5th Cir. 1959); *In re* Feilchenfeld, 99 F.2d 710 (7th Cir. 1938).

be subject to levy and sale for the benefit of his creditors.[39] Indeed, section 70(a)[40] (which, it should be remembered, vests title to the bankrupt's property in the trustee) specifically excepts exempt property, and title to this exempt property remains uninterrupted in the bankrupt.[41]

Since the Bankruptcy Act has adopted and incorporated the local exemption laws in determining what if any of the bankrupt's property is exempt from the Act's operation, it would seem reasonable that state exemption laws exempting a debtor's insurance policies from actions brought by his creditors would keep these policies from passing to the trustee in bankruptcy. However, in 1899 the Federal District Court for the Northern District of Iowa held in *In re Lange*[42] that the general language of section 6[43] allowing bankrupts those exemptions prescribed by state law was restrained by the specific subsection 5 proviso. In other words, because of the specific redemptive type protection afforded life insurance policies by the subsection 5 proviso, they were held to lose their status as exempt assets, state exemption laws and section 6[44] of the Act notwithstanding. As one might expect, this interpretation of the Act did not stand very long. In 1905 the United States Supreme Court held in *Holden v. Stratton*[45] that a life insurance policy, if exempt by state law, did not pass to the trustee in bankruptcy as an asset of the bankrupt estate even though the policy had a cash surrender value payable to the bankrupt or his estate at the time the petition was filed. This case brings us to the second half of this Note, to wit: Are life insurance policies exempt property in Iowa?

B. *The Iowa Exemption Statute*

The life insurance exemption statute in Iowa is found at section 511.37 of the Iowa Code.[46] It provides in part:

> A policy of insurance on the life of an individual, in absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his creditors.

To maintain that this section (hereafter referred to as the "Iowa exemption statute" or "exemption statute") is self-explanatory is to profess clairvoyance

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39 Smalley v. Laugenour, 196 U.S. 93 (1905).

40 11 U.S.C. § 110(a) (1970).

41 Chicago, Burlington & Quincy R.R. v. Hall, 229 U.S. 511 (1913); Clark v. Nirenbaum, 8 F.2d 451 (5th Cir. 1925); *see* Burlingham v. Crouse, 228 U.S. 459 (1913) *and* Holden v. Stratton, 198 U.S. 202 (1905). It must be kept in mind, though, that the Bankruptcy Act has a general requirement that bankrupts must claim their exemptions. 11 U.S.C. § 25(a)(8). This fact is brought home by the indignancies expressed in some letters to an insurer by trustees (paid on a percentage of the bankrupt estate's distributable assets) where the insurer has informed its bankrupt insureds of their right to claim the exemption.

42 91 F. 361 (N.D. Iowa 1899); *accord, In re* Scheld, 104 F. 870 (9th Cir. 1900).

43 11 U.S.C. § 24 (1970).

44 *Id.*

45 198 U.S. 202 (1905).

46 Iowa Code § 511.37 (1971).

and to ignore the many cases struggling with its interpretation and application. Thus, it is necessary to turn to these cases to understand its operation.

The only case dealing specifically with the Iowa exemption statute[47] and its effect on the Bankruptcy Act was *Jens v. Davis*[48] which came down from the Eighth Circuit Court of Appeals in 1922. The court, noting a lack of controlling Iowa case law, interpreted the exemption statute to preclude a life insurance policy from being executed upon by an insured's judgment creditors in Iowa (thereby precluding the vesting of the cash surrender value of the policy in the trustee in bankruptcy) where the beneficiary of the policy was the insured's wife. This conclusion was reached even though the insured had the right to change the beneficiary to a person not protected by the statute, *i.e.*, a beneficiary other than the wife or children of the insured, and even though the insured had the right to surrender the policy and receive its cash surrender value or to make policy loans against that value. The court reasoned that, since most modern policies give the policy owner these rights, to hold otherwise would give the exemption statute almost no field of operation. It also noted that the federal courts were required to give liberal construction to state exemption statutes in bankruptcy proceedings and that the incidental policy ownership rights of the bankrupt insured should not be allowed to defeat the statute's primary purpose of protecting the spouse.

In 1959 the Supreme Court of Iowa adopted the *Jens v. Davis* interpretation of the Iowa exemption statute. In *Westinghonse Credit Corp. v. Crotts*[49] the court held that the Iowa exemption statute's provision that such policies, "in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children [of the insured] independently of his creditors," precluded a judgment creditor from executing on the cash surrender value of the judgment debtor's life insurance policies. The fact that the policies gave the judgment debtor the power to change the beneficiary and the right to make loans against the policies or to surrender them altogether and receive their cash surrender values did not nullify the operation of the statute. In the words of the court:

> It follows, if appellees [the judgment creditor's] position is correct, that in every instance where such a contract is outstanding, creditors can, by garnishment or other appropriate action proceed to collect debts due them from such assured by appropriating the cash surrender value of the debtor's policies. The statutory provision that "a policy of insurance on the life of an individual * * * shall inure to the separate use of the * * * wife and children of said individual, independently of his creditors" would thus be nullified. There are times when the assureds need the reserve in the cash value of the policies to take care of premiums and preserve their contracts. A policy clearly does not inure to the separate use of the wife and children, independently of

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[47] The statute at issue was IOWA CODE § 1805 (1897) which for the purposes of this Note is the same as the present statute.

[48] 280 F. 706 (8th Cir. 1922).

[49] 250 Iowa 1273, 98 N.W.2d 843 (1959).

> creditors, as the statute says it shall, if the creditors are allowed to take a substantial part of its value.[50]

Finally, it should be noted that the Iowa exemption statute does not protect life insurance policies where the insured debtor by "an assignment or agreement to the contrary" has provided that the policies are not to "inure to the separate use of [his spouse] and children."[51] The question, then, is what constitutes "an agreement or assignment to the contrary." The typical assignment to the contrary arises where an insured has assigned his ownership interests in a policy to another. However, even though the policy is no longer exempt, his creditors (and therefore the bankrupt estate)[52] will not benefit since nothing remains to execute upon.

The typical agreement to the contrary arises where the insured has designated a person other than the protected spouse or children as beneficiary under the policy. Here, the protection of the exemption statute is lost.[53] However, what happens when the insured debtor's estate is made the benficiary? In disputes between a surviving spouse and the insured's heirs or creditors, the Iowa court has held that the insured decedent has made no agreement to the contrary by making his estate the beneficiary under his life policy.[54] The words "to the separate use of the [spouse] and children" mean that the insurance proceeds are not even part of the estate except to the extent that the estate holds them in trust for later distribution to the spouse and children.[55] In *In re Clemen's Estate*,[56] where the insured decedent's estate was the beneficiary of his life insurance policy, the Iowa court said:

> [The statute] is more than an exemption statute . . . . [T]he surviving spouse or the children of the decendent shall have the proceeds of the insurance, not only to the exclusion of the decendent's creditors, but likewise to the exclusion of his other heirs at law.[57]

Since the Iowa court has never differentiated between living and deceased insureds in applying the exemption statute, a judgment debtor's life insurance policies should be exempt from execution where he has designated his estate to be the beneficiary. However, the Iowa court has ruled that a deceased insured has made an agreement to the contrary where his estate is the beneficiary and he has by specific provision in his will (as opposed to a residuary

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50 *Id.* at 1276, 98 N.W.2d at 845 (1959).

51 However, it should also be noted here that the Iowa exemption statute (paragraph 2) specifically exempts from payments for one's debts "The proceeds of an endowment policy payable to the assured on attaining a certain age . . . ." This provision is fairly self-explanatory and will not be considered any further.

52 Lincoln Nat'l Life Ins. Co. v. Scales, 62 F.2d 582 (5th Cir. 1933).

53 *In re* Tellier's Estate, 210 Iowa 20, 230 N.W. 545 (1930).

54 *In re* Clemen's Estate, 226 Iowa 31, 282 N.W. 730 (1938); *In re* Ensign's Estate, 181 Iowa 1081, 165 N.W. 319 (1917).

55 *In re* Clemen's Estate, 226 Iowa 31, 282 N.W. 730 (1938); *In re* Galloway's Estate, 222 Iowa 159, 269 N.W. 7 (1936).

56 226 Iowa 31, 282 N.W. 730 (1938).

57 *Id.* at 33-34, 282 N.W. at 731 (emphasis added); *accord,* Bankers Trust Co. v. Allen, 257 Iowa 938, 135 N.W.2d 607 (1965).

clause)[58] given the policy proceeds to a person other than his spouse or children.[59] Does this mean that a judgment debtor's life insurance policy can be executed upon when at the time of execution such a will exists? Any answer to this question would be pure conjecture on this writer's part; however, the judgment debtor could reasonably argue (since the exemption statute is to be construed liberally)[60] that a proposed legatee's mere expectancy interest in the insurance proceeds should not constitute a binding "agreement or assignment to the contrary" until the testator (judgment debtor) dies.

IV. Conclusion

In conclusion, life insurance policies which are owned by and which insure the lives of Iowa bankrupts occupy the very best of all possible positions. With the Bankruptcy Act's incorporation of the exemption statutes of the state in which the bankrupt is domiciled, an Iowan's policy meeting the very liberal requirements of the Iowa insurance exemption statute never becomes part of the distributable assets of the bankrupt estate. Even in situations where the exemption statute is not applicable, *e.g.*, another besides the bankrupt's spouse or children is the designated beneficiary, a special proviso in the Bankruptcy Act affords additional protection. The bankrupt can pay over to the trustee an amount equal to the cash surrender value of the policy which was available to him at the time the petition in bankruptcy was filed and thereby preclude the policy from ever being surrendered by the trustee. This redemption privilege when opted for by the bankrupt reinvests complete title to the policy in the bankrupt and saves for him his beneficial ownership interests. And, finally, where no cash surrender value is available under the policy to the bankrupt at the time the petition in bankruptcy is filed, no title to the policy vests in the trustee at all.

Gerald J. Newbrough

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[58] Nolte v. Nolte, 247 Iowa 868, 76 N.W.2d 881 (1956); *see* Bankers Trust Co. v. Allen, 257 Iowa 938, 135 N.W.2d 607 (1965).

[59] Bankers Trust Co. v. Allen, 257 Iowa 938, 135 N.W.2d 607 (1965); *In re* Clemen's Estate, 226 Iowa 31, 282 N.W. 730 (1938); *In re* Ensign's Estate, 181 Iowa 1081, 165 N.W. 319 (1917).

[60] Westinghouse Credit Corp. v. Crotts, 250 Iowa 1273, 98 N.W.2d 843 (1959); *In re* Harding's Estate, 235 Iowa 337, 16 N.W.2d 585 (1944). Note, also, that in bankruptcy cases the federal courts must, in issues not specifically decided by the state's highest court, interpret a state exemption law with the same liberalness as evidenced by other cases out of that state's highest court. Meritz v. Palmer, 266 F.2d 265 (5th Cir. 1959).