

USING LIFE INSURANCE TO SECURE SUPPORT OBLIGATIONS IN OREGON DISSOLUTION CASES[®]

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I. LIFE INSURANCE AS SECURITY FOR CHILD AND SPOUSAL SUPPORT

Oregon law encourages courts to protect child and spousal support against the risk that the payor spouse could die.

A. Public Policy

1. ORS 107.106. Judgments shall include provisions addressing maintenance of insurance or other security for support [see table 1 for text of statutes].

2. ORS 107.810(1)(a)(B). Divorcing parties are encouraged to cooperate in obtaining life insurance adequate to provide for continued support.

B. Automatic Restraining Order

ORS 107.093 creates an automatic restraining order restraining both parties from:

1. "...canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any...life insurance policy that names either of the parties or a minor child of the parties as a beneficiary; and

2. "...changing beneficiaries or covered parties under any...life insurance policy."

Practice Pointer: Check on the existence and status of life insurance early on in the divorce process. If a policy has lapsed or coverage or beneficiaries have changed, try to correct the problem immediately. Example - what happens if husband allows his \$1 million life policy to lapse after the divorce case is commenced and then he dies unexpectedly? Does the attorney have some responsibility?

C. ORS 107.820—Insurance Alternatives Available to the Court

When the judgment creates an obligation of spousal or child support, the court may:

1. Order the *obligated spouse to maintain existing insurance policies* on the life of the obligated spouse and in which the dependent spouse is named as beneficiary. [ORS 107.820(1)]

2. If the obligated spouse has no life insurance naming the supported spouse as beneficiary, the court may *order the obligated party to purchase a policy* naming the obligee as beneficiary. (The statute grants the obligor the option of obtaining a nonreducing term policy "or any other type of policy in lieu of using existing policies"). [ORS 107.820(2)]

3. *Permit the obligee to purchase a life insurance policy on the life of the obligor.* In such case the obligee is responsible for the payment and the court "shall order the obligated party to undergo a physical examination". [ORS 107.820(3)]

Practice Pointer: Consider adding the following language to confirm a wife's right to purchase a policy on her ex-husband's life:

“Wife has an insurable interest in husband’s life and is authorized by ORS 107.810 *et seq* to purchase insurance on husband’s life should she decide to do so. This includes the right to require that husband submit himself to a physical examination as required by ORS 107.830. Husband shall fully and promptly cooperate with any request made by wife in her effort to purchase insurance on husband’s life.”¹

4. Order the obligated spouse to *renew* a policy which was allowed to lapse for any reason during the pendency of the suit.

D. Obligee’s Right to Pay Missed Payments

ORS 107.820(5) grants the obligee the right to make payments in the event the obligor defaults on his life insurance payment obligation and to recover the payments via contempt.

E. Obligee’s Duties

ORS 107.108(6) establishes a procedure whereby the obligee can be assured that the required insurance is actually in place and remains unchanged. The steps are summarized below:

1. The dissolution judgment must describe the insurance obligation including:
 - a. The beneficiary;
 - b. The dollar amount of insurance required to be maintained;
 - c. The name of the insurance company issuing the policy; and
 - d. The policy number.
2. The obligee or attorney for obligee must then:
 - a. Cause a certified copy of the dissolution judgment to be delivered to the life insurance company; and
 - b. Request that the life insurance company notify the obligee whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy or when premium payments have not been made.

II. AVOIDING THE MALPRACTICE TRAP

A. Typical Dissolution Language Doesn’t Work

The typical life insurance language found in most Oregon divorce judgments does not comply with ORS 107.108(6). Typical language reads as follows:

“So long as husband has an obligation to pay child support, he shall maintain a life insurance policy insuring his life for at least \$150,000 naming wife as primary beneficiary”.

¹Note: ORS 17.830 provides: “If life insurance is obtained by a former spouse, the person obtaining the policy is responsible for all premiums to be paid.”

The problem is the language does not identify any particular life insurance company or policy number, so how can the obligation be enforced?

B. A Malpractice Case Defines the Standard of Care

Seim v. Soriano, 94 Or App 67, 764 P2d 591 (1988) was an attorney malpractice case arising out of the fact that an obligor had died without leaving the required life insurance in place. Text of the case is found at Table 2. The case essentially defined the procedure a divorce lawyer should following in order to protect the obligee against the possibility the obligor will die without the insurance being in place:

*“The problem in this case started with the preparation of the dissolution judgment by defendant. It requires William to ‘maintain his present life insurance policy at the present limits for the minor children.’ We know from the record that there never was a policy naming the children as beneficiaries; there were at least five policies, some of which, at least, had named plaintiff Hively as beneficiary. Before the dissolution, William had changed the beneficiaries on those policies to be his parents, the Seims. We have no doubt that, if the judgment had described the policy or policies, giving the name of the insurer and the policy number or numbers and that, if a certified copy of the judgment had been delivered to the insurer, plaintiffs would have been protected. Plaintiffs, however, do not allege that defendant was negligent in either of those respects. Had they done so, that negligence would have been the direct cause of plaintiffs’ damage. In this action, plaintiffs accept the dissolution judgment as adequate and allege that defendant was negligent in failing to notify the insurer of the terms of the judgment, in failing to instruct plaintiffs to do so and in failing to determine the existence of insurance referred to in the judgment.[fn3] On this record, even if defendant had done those things, plaintiffs would not have been protected * * * because the judgment does not specifically identify the insurer or the policy number, if the company had received notice of the terms of the judgment, it would not have paid out, or even held up, the proceeds for the benefit of the children.” *Seim, supra* at page 71 [emphasis added].*

C. Constructive Trusts Often Don’t Work

Most judgments include language which provides that, in the event the payor spouse fails to maintain the required life insurance, a constructive trust will be imposed over the payor’s estate and life insurance proceeds to secure payment of the insurance obligation. This sounds good but, in practice, our courts have been reluctant to apply the remedy. The following Oregon decisions have rejected attempts to im-

pose a constructive trust on insurance proceeds where a deceased parent failed to maintain life insurance as required by a divorce judgment:

Tupper v. Roan, 227 Or App 391 (2009). In *Tupper*, the deceased father had signed a stipulated judgment requiring him to maintain \$100,000 of life insurance naming his ex-wife as beneficiary so long as he had an obligation to pay child support. [There was no evidence that the policy actually existed at the time the judgment was entered.] Subsequently, father began living with another woman (“Danette”). Thereafter, he purchased a life insurance policy with a death benefit of \$600,000, naming Danette as sole beneficiary. He died three months later and Danette received the funds. The ex-wife sued to impose a constructive trust over \$100,000 of the policy proceeds. Citing *McDonald* and *Oregon Pacific State Ins., infra*, the Court of Appeals refused to impose a constructive trust under these facts. The Court explained that a constructive trust is an extraordinary remedy available to avoid injustice where a party would be unjustly enriched if allowed to retain property belonging to another. To be successful, the ex-wife would have to show: (1) that designating Danette on the life insurance policy essentially gave Danette property that *previously* had belonged to the children; and (2) that Danette either knew or should have known of the wrongfulness of the father’s actions. The Court found that the ex-wife had failed to prove either requirement and that summary judgment should have been entered for Danette.

Oregon Pacific State Ins. Co. v. Jackson, 162 Or App 654 (1999). This was an interpleader action commenced by an insurer to resolve disputed claims to a deceased father’s insurance proceeds. Shortly before his divorce was finalized the father had changed the beneficiary of his existing \$50,000 policy to name his mother as trustee for the benefit of all four of his children including two children from a prior marriage. Later he died. The Court declined to impose a constructive trust citing *McDonald, infra*. The Court concluded that, because the father changed the beneficiary designation before the dissolution judgment was entered and because there was no evidence his mother had reason to know the change violated the terms of the judgment, the trial court erred in imposing a constructive trust against the policy proceeds.

McDonald v. McDonald, 57 Or App 6 (1982). Here as part of his divorce a father signed a property settlement requiring him to maintain \$10,000 of life insurance for the benefit of his children. At that time, he owned the required policy

and it designated the children as beneficiaries. Later the policy lapsed and was not renewed. He subsequently remarried and acquired five new policies which he left to his second wife. The Court refused to impose a constructive trust in favor of his children saying a constructive trust may only be imposed when the putative trustee holds property which rightfully belongs to another and is thereby unjustly enriched. The Court found that the insurance father's second wife received was never the property of his children and a constructive trust was not appropriate.

The *only* reported Oregon case where a constructive trust was successfully imposed in this context is *Sinsel v. Sinsel*, 47 Or App 153, 614 P2d 115 (1980). There the deceased father had changed the beneficiary of his only insurance policy in favor of his second wife *after* he had been ordered to maintain that same policy for the benefit of his children by his first wife. The court found that the second wife was aware of the decree's requirements and of her husband's acts, but that she was not involved in any "wrongful participation" in those acts. The Court concluded that the second wife had "actual or constructive notice" of her husband's acts and of their "wrongful nature," and that a constructive trust could properly be enforced upon her insurance proceeds under those circumstances.

D. Forms You Can Use to Avoid a Malpractice Claim

1. Table 3. Language for the Judgment of Dissolution [page 6-11].
2. Table 4. Example of Supplemental Judgment [page 6-12].
3. Table 5. Letter to Life Insurance Company [page 6-13].
4. Table 6. Example of reply from an insurance company [page 6-14].
5. Table 7. Closing letter example [page 6-15].

III. INSURANCE TO SECURE SUPPORT—OTHER ISSUES.

A. Both Parents May be Required to Provide Insurance for the Benefit of a Child

Willey and Willey, 155 Or App 352, 963 P2d 141 (1998) holds that both parents can be required to maintain life insurance for the benefit of a child. In *Willey*, the mother was awarded custody subject to 50% parenting time for father. She appealed from the trial court's order that she purchase life insurance for the benefit of the child. She argued only "the parent ordered to pay child support should be required to provide life insurance." The Court rejected her argument saying:

"ORS 107.106 requires a judgment providing for custody to include '[m]aintenance of insurance or other security for support[.]' Although wife does not have a net child support obligation, she does have a support obligation under the shared custody child support obligation. We conclude

that the court did not err in requiring the insurance here.”
Willey at page 357.

B. Ownership of the Policy

Attorneys should consider transferring ownership of the policy to the obligee spouse. Making the dependent spouse the owner of the policy has a number of benefits, including:

1. The obligee spouse is legally entitled to name the death beneficiary and control the flow of policy information thus being assured the death benefit will be paid as expected if the payor spouse should die.

2. Making wife the owner of the policy avoids the estate tax problem which arises when the death benefit is included in the deceased husband’s estate for estate tax purposes even though wife is the one who actually receives the money.

C. Who Should be Named as Beneficiary Where Children are Involved?

In the context of child support, the question of who to name as beneficiary frequently generates conflict. A number of options are available:

1. Naming the Payee Spouse

ORS 107.820 states that it is the payee spouse, not the children, who has the insurable interest to be protected:

“A court order for the payment of spousal or child support constitutes *an insurable interest in the party awarded the right to receive the support.*”

Many judges construe this language strictly. When disputes arise over whether wife or the children should be named as the beneficiary, judges frequently hold that it is the wife who is entitled to the support and it is she who should be named as the beneficiary.

2. Others May be Named as Beneficiary

Our Court of Appeals has held that courts have discretion in determining who should be beneficiary. For example, in *Stuart and Stuart*, 107 Or App 549, 813 P2d 49 (1991), the wife was awarded child and spousal support. She claimed the trial court erred in allowing husband to name his brother as the beneficiary of his life insurance policy in trust for the children. The Court of Appeals held that courts have discretion in determining who should be beneficiary but that in this case wife should be the beneficiary because the purpose of the policy was to secure the payment of husband’s child support obligation.

3. Children as Beneficiaries

Despite the language of ORS 108.820, many divorces are settled on a basis whereby the parties agree that the children will be named as the beneficiaries of the life insurance. Such an agreement is enforceable under ORS 107.104 (2) which provides that a dissolution court may enforce the terms of a settlement agreement or stipulated judgment “as contract

terms using contract remedies . . .[or] by imposing any remedy available to enforce a judgment, including, but not limited to, contempt.”

4. Naming a Trustee for the Children

When parties stipulate that the children should be named as beneficiaries of insurance, they tend not to think about the fact that minors cannot receive direct payment of the money. Instead, a conservator must be appointed to hold and manage life insurance until each child reaches the age of 18. No one seriously believes that an 18 year old will manage money wisely, so many divorcing couples agree that a trustee should be selected to manage the money for the children. This raises the question of who the trustee should be. Consider the following optional language:

“Until all child and spousal support under this Judgment has been fully paid, husband shall maintain the life insurance on his life described below in full force and effect *naming wife as trustee beneficiary* for the benefit of all of the parties’ children pursuant to a life insurance trust which the parties shall create.”

OR

“Until all child and spousal support under this Judgment has been fully paid, husband shall maintain the life insurance on his life described below in full force and effect *naming a bank or corporate trustee that performs the function of trustee in the regular course of its business*. The terms of the trust shall be set forth in a life insurance trust which the parties shall create.” [Note: banks will typically decline to act as trustee unless the principal amount of the trust is at least \$150,000.]

5. Using the Term “Irrevocable Beneficiary”

Frequently we see judgments which require the husband to name his former spouse or children as “irrevocable beneficiary” of the policy. “Irrevocable” means what it says and is generally not what is intended. The proper designation is “primary beneficiary.” Use of the word “irrevocable” can leave the payor husband in a situation where his support obligation is terminated or fully satisfied yet no one else can be named beneficiary because the designation purports to be “irrevocable.”

End

TABLE 1—THE STATUTES

A. Public Policy

107.106 Additional requirements of decree. (1) An order or *judgment* providing for the custody, parenting time, visitation or support of a child under ORS chapter 25, 107, 108, 109 or 110 or ORS 419B.400 or 419C.590 shall include:

(a) Provisions addressing the issues of :

- (A) Payment of uninsured medical expenses of the child;
- (B) *Maintenance of insurance or other security for support*; and
- (C) Maintenance of health insurance for the child.

* * *

B. Life Insurance—To Secure Child or Spousal Support

107.810 Policy. It is the policy of the State of Oregon to encourage persons obligated to support other persons as the result of a dissolution or annulment of marriage or as the result of a legal separation to obtain or to cooperate in the obtaining of life insurance adequate to provide for the continued support of those persons in the event of the obligor's death. [1981 c.775 §§9]

107.820 Support order as insurable interest; order to obtain, renew or continue insurance; right of beneficiary to purchase insurance or pay premiums. A court order for the payment of spousal or child support whether issued prior to, on or following November 1, 1981, constitutes an *insurable interest in the party awarded the right to receive the support*. In any case of marital annulment, dissolution or separation, the issue of life insurance shall be determined as follows:

(1) *When the judgment creates an obligation of spousal or child support or awards a share of a pension or retirement plan, the judgment may also require that the obligated party maintain any existing insurance policies on the life of the obligated spouse and in which the dependent spouse is named as beneficiary. The judgment may require that the policies be maintained until the obligation is fulfilled. The premiums may be paid by the obligated spouse, and the court may consider the cost of premiums when determining the obligation. Any life insurance policies on the life of the obligated spouse owned by parties outside of the marriage or purchased and held for purposes clearly outside the marriage relationship are exempt from this subsection.*

(2) *If the party ordered to pay support or a share of a pension or retirement plan has no life insurance policy naming as beneficiary the party ordered to receive either support or a share of a pension or retirement plan, or if an existing policy is inadequate to cover the obligation, the court in a judgment may order that the party ordered to pay shall purchase a life insurance policy naming as beneficiary the party ordered to receive the support or a share of a pension or retirement plan and that the obligated party shall pay premiums on the policy and keep the policy in force until the obligation ends. The obligated spouse has the option of obtaining a nonreducing term life insurance policy or any other type of policy in lieu of using existing policies.*

(3) *Additionally, the party awarded the right to receive support or a share of a pension or retirement plan may purchase a life insurance policy on the life of the obligated party. In such case, the court shall order the obligated party to undergo a physical examination. All rights of policy ownership, including those regarding the extent of coverage, shall be in the party purchasing the policy under this subsection who shall also be responsible for paying the premiums. The provisions of this subsection may be exercised at the time of annulment, dissolution or separation, or at any later time while the obligation continues.*

(4) *Upon motion of either party, the court shall order a party to renew a life insurance policy allowed to lapse for any reason during the pendency of the suit.*

(5) *A party who is the beneficiary of any policy under this section upon which the other party is obligated to pay premiums is entitled, in the event of default, by the paying party, to pay the premiums on the policy and to obtain a supplemental judgment for reimbursement of any money so expended. A default in the payment of premiums by the party obligated by the judgment or order is a contempt of the court.*

(6) *Life insurance retained or purchased by an obligor under subsection (1) or (2) of this section for the purpose of protecting the support, pension or retirement plan obligation shall not be reduced by loans or any other means of reduction until the obligation has been fulfilled. The obligee, or the attorney of the obligee, shall cause a certified copy of the judgment to be delivered to the life insurance company or companies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life insurance company or companies identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy. [1981 c.775 §§11; 1983 c.728 §§5; 1987 c.885 §§4; 1993 c.716 §§5; 2003 c.576 §§131]*

107.830 Physical examination may be ordered; responsibility for premiums. *The court may order a party to undergo a physical examination for the purpose of obtaining life insurance and may order this party to pay any premiums on such policy, except in cases in which the life insurance policy has been obtained under ORS 107.820 (3). If life insurance is obtained by a spouse or former spouse with an insurable interest, the person obtaining the policy is responsible for all premiums to be paid and for the choice of policy type and amount. If either party owns life insurance on the life of the paying spouse, and it is allowed to lapse for any reason during the suit, upon the request of the party receiving support, the paying spouse can be ordered to submit to a physical examination for the purpose of renewing the policy, if such examination is a requirement for renewal. [1981 c.775 §§12]*

TABLE 2—*SEIM V. SORIANO*, 94 OR APP 67, 764 P2D 591 (1988)

This was an attorney malpractice case. The defendant attorney had drafted a dissolution judgment on behalf of his client, the wife. The judgment required husband to “maintain his present life insurance policy at the present limits for the minor children.” The husband died six months later leaving the insurance benefits to his parents. The client sued the attorney alleging he failed to protect her under ORS 107.820. The specific acts of negligence complained of were:

“(1) He failed to notify the insurance company that insured the life of William Seim of the terms of the Decree of Dissolution.

“(2) He failed to instruct plaintiffs to notify the insurance company that insured the life of William Seim of the terms of the Decree of Dissolution.

“(3) He failed to determine the existence of insurance referred to in the Decree of Dissolution.” Seim, *supra* at page 70.

Defendant attorney offered evidence from the insurance company to the effect that the company would not have honored the decree even if it had received notice of it because it did not clearly describe a policy issued by that company. Based on this evidence, the Court held that the attorney’s mistake was not properly described in the complaint, hence a judgment should be entered for the defendant attorney. As part of its ruling, the Court made the following comments:

*“The problem in this case started with the preparation of the dissolution judgment by defendant. It requires William to ‘maintain his present life insurance policy at the present limits for the minor children.’ We know from the record that there never was a policy naming the children as beneficiaries; there were at least five policies, some of which, at least, had named plaintiff Hively as beneficiary. Before the dissolution, William had changed the beneficiaries on those policies to be his parents, the Seims. We have no doubt that, if the judgment had described the policy or policies, giving the name of the insurer and the policy number or numbers and that, if a certified copy of the judgment had been delivered to the insurer, plaintiffs would have been protected. Plaintiffs, however, do not allege that defendant was negligent in either of those respects. Had they done so, that negligence would have been the direct cause of plaintiffs’ damage. In this action, plaintiffs accept the dissolution judgment as adequate and allege that defendant was negligent in failing to notify the insurer of the terms of the judgment, in failing to instruct plaintiffs to do so and in failing to determine the existence of insurance referred to in the judgment.[fn3] On this record, even if defendant had done those things, plaintiffs would not have been protected * * * because the judgment does not specifically identify the insurer or the policy number, if the company had received notice of the terms of the judgment, it would not have paid out, or even held up, the proceeds for the benefit of the children.”* Seim, *supra* at page 71 [emphasis added].

TABLE 3—SAMPLE LIFE INSURANCE LANGUAGE TO AVOID MALPRACTICE

The policy name, # and face amount must be stated
See Seim v. Soriano, 94 Or App 67 (1988)

Life Insurance. Until all child and spousal support under this Judgment has been fully paid, husband shall maintain the life insurance on his life described below in full force and effect naming wife as primary beneficiary

NAME OF COMPANY	POLICY #	FACE AMOUNT OF INSURANCE
Great Western Life Insurance Co.	A789461	\$150,000

Husband shall not borrow money from the insurance policy. Pursuant to ORS 107.820(6), husband shall provide wife with a true copy of the insurance policy described above and shall immediately provide written notice of any action that will reduce the death benefit or change the designation of the beneficiaries under the policy.

Pursuant to ORS 107.820(6) wife shall cause a certified copy of the Judgment dissolving the parties’ marriage to be delivered to the applicable life insurance company or companies requesting notification when premium payments have not been made or the insured takes any action that will change the beneficiary or reduce the death benefit payable under the policy. The company shall notify wife whenever a premium payment has not been made or the insured takes any action that will change the beneficiary or reduce the benefits of the policy. In the event husband violates these insurance provisions, a constructive trust shall be imposed over the husband’s estate as well as the proceeds of all insurance owned by husband at the time of his death to secure payment of this insurance obligation.

Employer Provided Policies	Insurance not yet Purchased
<p>Practice Pointer: If the insurance is provided via an employer provided policy, it is sometimes difficult to determine who the insurer is and who is responsible for complying with ORS 107.820. Try naming the insurer and the employer <i>and</i> send the letter to both:</p> <p><u>NAME OF COMPANY</u> Aetna Life provided as an employee benefit by Nike, Inc.</p>	<p><i>Insert the following:</i></p> <p>Husband shall immediately purchase a life insurance policy on his life in the amount stated above. As soon as it is available and not later than 60 days from the date this Judgment is signed by the court, he shall provide the company name and policy number to wife. Thereafter, the parties shall promptly sign a supplemental judgment confirming the policy details so that a copy of the judgment as supplemented may be served on the applicable life insurance company.</p>

TABLE 4—CORRECTING THE JUDGMENT TO INSERT INSURANCE INFORMATION
(See ORS 107.843 and ORCP 71A)

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

IN THE MATTER OF THE MARRIAGE OF

IVAN BINHAD,

No. C03-47585

Petitioner,

and

**SUPPLEMENTAL JUDGMENT
AMENDING LIFE INSURANCE
OBLIGATION**

TWILA BINHAD,

Respondent.

This matter came before the court based upon a stipulation of the parties made through their respective attorneys and it appearing from the stipulation that information regarding Petitioner's life insurance obligation was left blank when it was submitted to this court and that the parties now desire to fill in the missing information.

NOW THEREFORE, IT IS ORDERED AND ADJUDGED that paragraph 18 of the General Judgment of Dissolution of Marriage signed in this case on February 24, 2004 is hereby corrected and supplemented so as to provide the following information regarding petitioner's life insurance obligation:

<u>NAME OF COMPANY</u>	<u>POLICY #</u>	<u>FACE AMOUNT OF INSURANCE</u>
Northwestern Life Insurance Company	A789461	\$150,000

Dated this ___ day of _____, 2009.

Circuit Judge

IT IS SO STIPULATED:

Paul J. DeBast OSB #72065
Attorney for Petitioner

Paul Saucy OSB #79374
Attorney for Respondent

TABLE 5—LETTER TO LIFE INSURANCE COMPANY

DeBAST, McFARLAND & RICHARDSON LLP

ATTORNEYS AT LAW

9600 S.W. Barnes Road, Suite 325

Portland, Oregon 97225

Telephone: (503) 297-9600

Fax: (503) 297-9500

*Paul J. DeBast
Barbara P. McFarland*

James B. Richardson

*Cindy Blocker
Marie Gordy*

Legal Assistants

August 15, 2004

Northwestern Life Insurance Company
720 East Wisconsin Ave.
Milwaukee, WI 53202

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Re: Northwestern Mutual Life Policy No. 13-856-211 on the life of Ivan Binhad

Ladies and Gentlemen:

This office represents Twila Binhad, the former wife of your policyholder, Ivan Binhad. Enclosed is a court certified copy of General Judgment of Dissolution of Marriage involving your insured, Ivan Binhad. The judgment requires Mr. Binhad to maintain the policy in full force and effect naming Twila Binhad as primary beneficiary.

Pursuant to ORS 107.820(6) Ms. Binhad hereby requests that you notify her whenever Mr. Binhad takes any action that will change the beneficiary, reduce the benefits or when premium payments have not been made. **YOU MUST HONOR THIS REQUEST OR SUFFER LEGAL PENALTIES AND POSSIBLE DAMAGES FOR FAILURE TO DO SO.** Until further notice, any notices you are required to give Ms. Binhad should be sent to the following address:

Ms. Twila Binhad
20715 SW Westview
Portland, Oregon 97229

Very truly yours,

DeBAST, McFARLAND & RICHARDSON LLP

Paul J. DeBast

TABLE 6—EXAMPLE—LETTER FROM INSURER ACKNOWLEDGING NOTICE

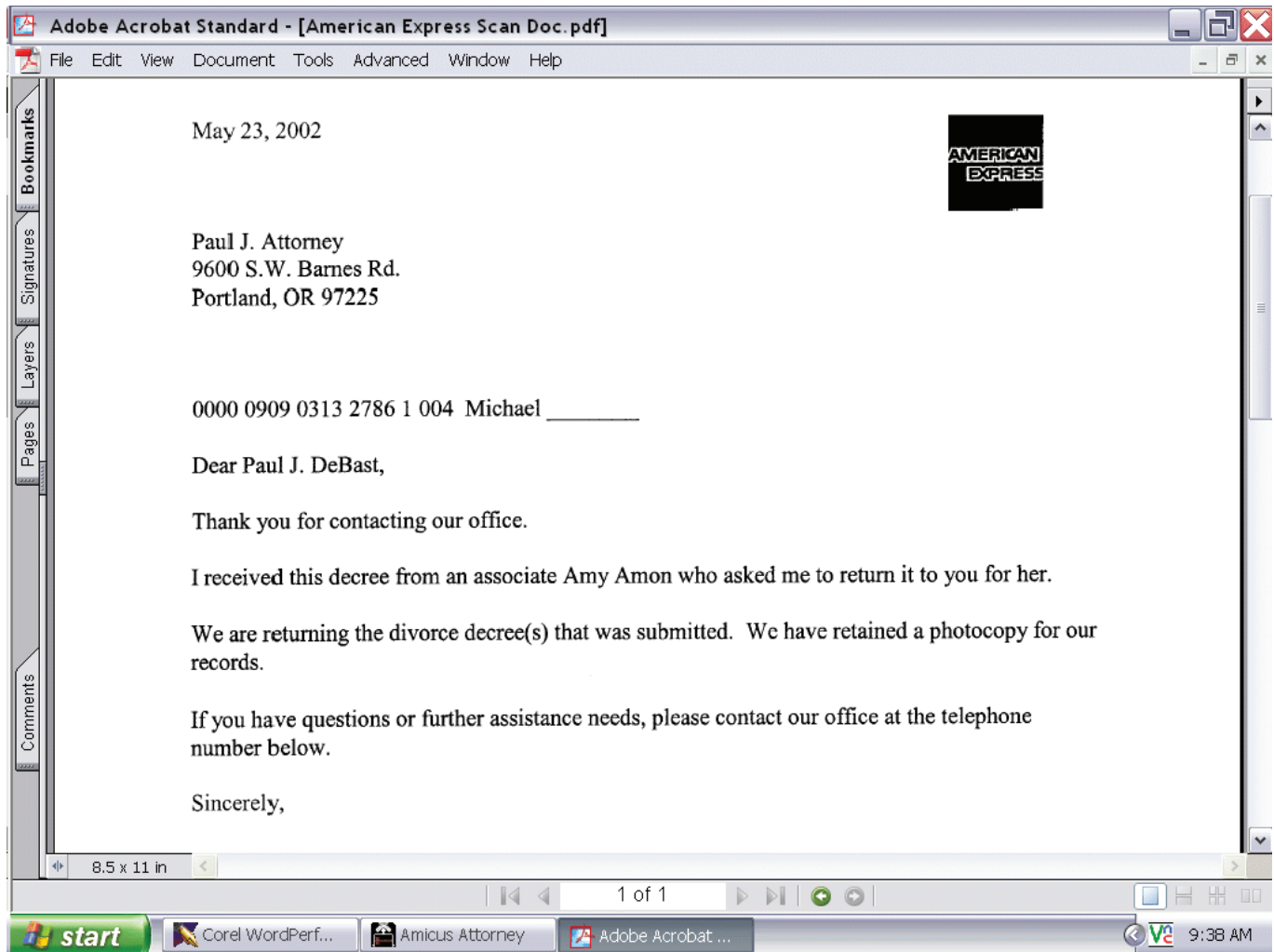


TABLE 7—CLOSING LETTER

DeBAST, McFARLAND & RICHARDSON LLP

ATTORNEYS AT LAW

9600 S.W. Barnes Road, Suite 325

Portland, Oregon 97225

Telephone: (503) 297-9600

Fax: (503) 297-9500

*Paul J. DeBast
Barbara P. McFarland*

James B. Richardson

*Cindy Blocker
Marie Gordy*

Legal Assistants

March 23, 2004

Ms. Twila Binhad
20715 SW Westview
Portland, Oregon 97229

Dear Twila:

Enclosed is a copy of the court's judgment dissolving your marriage. Oregon law provides that your divorce is effective on the day the judge signs it. This is an important document and should be kept in a safe place for future reference. Now that the case is concluded, there are several things I need to tell you about.

ALTERNATE #1 WE REPRESENT OBLIGEE AND WE SENT LIFE INS. LETTER

Life Insurance. Your divorce judgment requires Ivan to maintain his \$150,000 Northwestern Life Insurance Company policy in force naming you as primary beneficiary. You are supposed to be provided with a copy of the policy. You should let me know if you have trouble getting the policy copy. Oregon law permits you to send Northwestern Life Insurance Company a copy of the Judgment of Divorce and a request for notice if Ivan should fail to perform his duties regarding the policy. Enclosed is a copy of a letter I am sending to Northwestern Life Insurance Company on your behalf. We cannot undertake to keep the insurance company advised as to changes in your address, so this will be your responsibility. It is imperative that you notify the company by certified mail if and when you move so that they can continue to correspond with you.

ALTERNATE #2 LIFE INSURANCE INFORMATION NOT FILLED IN ON JUDGMENT

Life Insurance. As you know, the Court's judgment requires Ivan to maintain certain amounts of life insurance on his life naming you as beneficiary. Oregon law gives you the right to send a certified copy of the judgment to his life insurance company. The notice can include a request that the company inform you if the policy is allowed to lapse or the beneficiary is changed. The trouble is that the company name and policy number were not inserted in the appropriate section of the divorce judgment before it was signed by the judge. As a result, if you sent the judgment to the insurance company and

gave the notice request, the company would not know that the judgment describes their policy and, hence the company may not honor your request.

This may not seem very important to you now, but if something were to happen to Ivan, you would be very unhappy if the insurance were not in force or the beneficiary clause named someone else other than you or your children. For this reason, I urge you to follow up on this issue and insist that Ivan provide you with the information so that we can fill it in on a supplemental judgment. Once that is done, we can have it signed by a judge and then send a certified copy of the supplemental judgment to the insurance company along with your request for notice if the beneficiary changes or the policy lapses. Some clients tell us they want to avoid further legal expense after the judgment is signed so they do not want us to follow up on the insurance issue and make sure the job is completed. Accordingly, we will not do anything further in terms of trying to force Ivan to complete the supplemental judgment unless you ask us to.

ALTERNATE # 3 REMINDER FOR OBLIGOR

Life Insurance. Your divorce judgment requires you to maintain certain amounts of life insurance in force. Oregon law requires you to provide (NAME OF FORMER SPOUSE) with a true copy of the policy, as well as written notice of any action you take that will reduce the insurance benefits or change the beneficiaries under the policy. Please let me know if you have questions about this obligation.

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Wills and Death Benefits. If you currently have a Will, Oregon law provides that your divorce revokes all provisions in your Will which run in favor of Ivan and the effect of the Will is the same as though Ivan did not survive you. You should also know that a remarriage revokes any will you may have. If you do not have a Will, Oregon law provides that your assets pass to children (even if they are too young to handle the money). If a person does not have children, the law says assets pass first to parents and, if parents are not living, then to brothers and sisters and so on down the blood line. I would be happy to help you revise your Will or help you prepare a new Will, Trust or estate plan if you do not have one. **Life insurance**, pension and retirement benefits are typically not affected by the court's judgment. You must change the beneficiary designation on your life insurance and retirement benefits unless you want these benefits to pass to your former spouse upon your death.

