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July 3, 2007

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Re: The Travelers Life and Annuity Company v. Desderio, et al.  
C.A. No. 20284-VCN  
Date Submitted: March 20, 2007

Dear Counsel:

The pending cross-motions for summary judgment provide a platform for resolving a dispute between a father's fiancé and his children over the proceeds of the father's annuity contract. The day before he died, the father, knowing that he was terminally ill but not aware of just how little time he had left, called his life insurance agent, directing that the necessary steps be taken to change the beneficiary designation from his children to his fiancé. The question before the Court is whether the father's actions were sufficient to redirect the proceeds.

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## I. BACKGROUND

Thomas F. Meehan, III (the “Decedent”), in 1998—then divorced and the father of three children, Defendants Jacob D. Meehan, Angelina C. Meehan, and Helen Meehan (the “Children”)—purchased a variable annuity contract from Plaintiff The Travelers Life and Annuity Company (“Travelers”).<sup>1</sup> The contract was payable on maturity or death; the Children were designated as beneficiaries.<sup>2</sup>

The Decedent had begun dating Defendant Nancy Desderio (“Desderio”) in 1997 and in early September 2000 they became engaged. Shortly thereafter, the Decedent was diagnosed with cancer; he died on October 30, 2000.

The Decedent had mentioned to Desderio his intent to designate her as the beneficiary of the annuity contract.<sup>3</sup> On October 29, 2000, a Sunday, the Decedent called Timothy A. Ferrell (“Ferrell”), the life insurance agent who had sold him the annuity, and calmly left the following message on Ferrell’s answering machine:

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<sup>1</sup> Compl. Ex. A (annuity contract).

<sup>2</sup> *Id.* Ex. B.

<sup>3</sup> Affidavit of Nancy Desderio ¶ 5.

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Tim. Hi, it's Tom Meehan. I've made some decisions as to how I want the Roth IRA and my 403B to go. I'd like the beneficiary to be Nancy J. Desderio, D-E-S-D-E-R-I-O. Her social is [social security number redacted] and, of course, her address is up here with me, 8 Holt H-O-L-T Road, Newark, Delaware 19971. Please give me a call at 2 . . . it's 302-283-0881 to figure out what, if anything, I need to do to effect this change. Thank you. Have a good day.<sup>4</sup>

The Decedent died the next day before Ferrell could carry out his instructions.

Although Travelers' records continued to show the Children as the only beneficiaries, Desderio asserted a claim to the death proceeds. Travelers, thus, filed this interpleader action. It has deposited the proceeds and has been dismissed as a party. The annuity contract generated benefits of approximately \$26,000. The Decedent did fund, with life insurance proceeds in the approximate amount of \$350,000, a trust for the benefit of the Children.

## II. CONTENTIONS

Both Desderio and the Children seek to obtain the proceeds of the annuity contract. The Children base their claim on their status as the formally designated

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<sup>4</sup> Affidavit of Timothy A. Ferrell ¶ 7. The reference to "403B" is to the annuity contract. It is not questioned that: (1) the transcript of the message is accurate (the answering machine recording was transferred to a miniature cassette which remains in existence); (2) the person making the call was the Decedent; (3) the Decedent was competent and otherwise capable of changing the beneficiary designation; and (4) there was no fraud or duress.

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beneficiaries and their contention that the evidence does not demonstrate either that the Decedent intended to remove them as beneficiaries or that the Decedent did everything reasonably possible to effectuate a change. On the other hand, Desderio invokes equitable principles and the doctrine of substantial compliance. She relies on the unequivocal message that the Decedent left on Ferrell's answering machine.

### III. ANALYSIS

#### A. *Summary Judgment Standard*

The parties agree that no operative material facts are in dispute. With cross-motions for summary judgment and the absence of any identified factual dispute, the Court is confronted with “the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.”<sup>5</sup>

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<sup>5</sup> Ct. Ch. R. 56(h). The question of whether Desderio can satisfy the requirements of the substantial compliance doctrine is one of fact. *See, e.g., The Prudential Ins. Co. of Am. v. Kamrath*, 475 F.3d 920, 925 (8th Cir. 2007). Not only does Court of Chancery Rule 56(h) allow the Court, in this context, to make the ultimate factual finding, but also trial would add nothing of substance to assist the Court in performing that function.

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B. *The Merits of the Dispute*

The Decedent designated the Children as the beneficiaries of the annuity contract. The annuity contract requires that, in order to be effective, any change of beneficiary must be in writing. At the Decedent's death, the Children remained the beneficiaries and no writing had been signed by the Decedent to change that designation.

In common with the law of most states acknowledging that strict enforcement of the requirement for a duly processed writing may work an inequity, Delaware has recognized the doctrine of substantial compliance which

holds that if an insured has done all that it is reasonably possible or necessary for him to do in order to alter an insurance policy, and he has a right to so alter it, a court of equity will give effect to the intended change despite a failure to comply strictly with the formalities usually required for such a change.<sup>6</sup>

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<sup>6</sup> *Green v. Conn. Mut. Life Ins. Co.*, 1977 WL 5189, at \*3 (Del. Ch. May 25, 1977) (citing *N.Y. Life Ins. Co. v. Cannon*, 194 A. 412 (Del. Ch. 1937); *N.Y. Life Ins. Co. v. Lawson*, 134 F. Supp. 63 (D. Del. 1955)). The method for changing the beneficiary is set forth in the annuity contract. Courts have acknowledged that strict compliance with the prescribed process may be necessary to protect the insurance company from the risk of multiple payments. Once the insurance company's interest is protected—it does not dispute that someone is entitled to the proceeds—then the need for rigid application gives way to inquiries into whether the Decedent's intent has been clearly expressed and whether it is appropriate to effectuate that intent.

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From the message left on Ferrell's answering machine, it is clear that the Decedent knew that something else, *e.g.*, paperwork, would be necessary to change formally the beneficiary. It is also clear that it was the Decedent's unambiguous intent to change that designation to Desderio.

Merely talking about changing the beneficiaries, of course, would not be sufficient. Some affirmative step in the process is required and, by calling his agent, the Decedent took a positive step toward accomplishing that result.

The Decedent on that Sunday, with the insurance agent's office closed, had only a small number of hours to live and did all that he could do at that time under the circumstances. He gave an unambiguous instruction to a reasonably chosen representative of Travelers. Moreover, there is no reason to believe that he might have changed his intent during the remaining hours.

The Decedent, of course, did not follow up the call to the agent. That, however, was a consequence of his death. Thus, this instance is not one in which the insured has contacted the agent but did nothing more over a period of several months or longer. In those circumstances, the inference might well be that he had abandoned his plans.

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As noted, the Decedent's intent was clear. He also had the right to change the beneficiary designation. Whether the Decedent's efforts to implement that intent were sufficient is best measured under the following two-part test: "(1) when it is beyond the power of the insured to comply literally with the requirements and (2) when the insured has done all in his or her power to effect the change, but dies before the change is completed."<sup>7</sup> The Decedent, when he decided to change the beneficiary designation, was unable to comply strictly with the specified procedures because the agent's office was closed on Sunday. In addition, he did all that he could have done on that Sunday—he called his agent. Of course, he died before he had a practicable opportunity to move the process further along.<sup>8</sup>

In sum, Desderio has demonstrated that the Decedent met the requirements of the substantial compliance doctrine and that awarding the proceeds from the annuity contract to her would carry out the Decedent's intentions.

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<sup>7</sup> 29-180 APPLEMAN ON INSURANCE LAW AND PRACTICE, § 180.07[B][1] (2d ed. 2006).

<sup>8</sup> No paperwork had been started, but that is not necessarily required. Where the paperwork has been submitted, but not fully processed, the insured has completed more of the steps and the possibility of a post hoc misunderstanding of his intent is reduced. Nevertheless, clear and unambiguous oral instructions may be sufficient. *See, e.g., Vaughn v. Baker*, 438 S.W.2d 517, 519-20 (Ky. 1969).

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#### IV. CONCLUSION

For the foregoing reasons, Desderio's motion for summary judgment is granted and the Children's motion for summary judgment is denied. The proceeds of the subject annuity contract shall be paid to Desderio. The parties shall bear their own costs.

Counsel are requested to confer and to submit a form of order to implement this letter opinion.

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Katharine V. Jackson, Esquire  
Register in Chancery-K