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2017

Murder for Life Insurance Money: Protecting the Children

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MURDER FOR LIFE INSURANCE MONEY: PROTECTING THE CHILDREN

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I. INTRODUCTION	174
II. A CASE ON POINT	176
III. CURRENT STATUTES	179
A. <i>Deterrent Effect of Apprehension and Prosecution</i>	182
B. <i>Insurable Interest Doctrine</i>	185
1. <i>Insurable Interests in Property Insurance</i>	186
2. <i>Insurable Interests in Life Insurance</i>	190
IV. SCENARIOS OF RISK	198
A. <i>The Unlawful Beneficiary</i>	198
B. <i>The Lawful Beneficiary</i>	200
V. PROPOSED PROTECTIVE MEASURES	203
A. <i>Narrowly Define the Insurable Interest Doctrine</i>	204
B. <i>Penalize Insurers</i>	205
C. <i>Limit Coverage</i>	206
VI. CONCLUSION	208

ABSTRACT

Children are being murdered for life insurance proceeds.

Of course, if a beneficiary murders a child for the recovery of life insurance money and if he is apprehended, he will surely face numerous legal consequences. He will not recover the insurance money, he will be prosecuted and likely sentenced to life imprisonment or execution, he may be sued for the wrongful death of the child and he may be prosecuted for insurance fraud. However, all of these legal responses are triggered by the death of the child and, therefore, do not serve to protect the child from being murdered in the first instance.

On the other hand, there are legal doctrines in place that would appear to be directed toward protecting a child from being the target of a murderous beneficiary, most notably the insurable interest doctrine.

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Pertinent to this Article, this doctrine is intended to limit the pool of potential beneficiaries to a life insurance policy to those who, out of love and affection, would never consider murdering the child for money. However, the doctrine is often vaguely defined by the courts and loosely applied by insurance companies when issuing life insurance policies.

This Article explains the risk life insurance policies pose to children, discusses the ineffectiveness of current legal measures to protect children in such instances, and proposes significant but necessary measures to protect children from being murdered for life insurance money.

I. INTRODUCTION

It has served as a familiar fictional storyline for decades: a murderer kills his victim to recover, directly or indirectly, the life insurance proceeds.¹

In the typical scenario, the victim is found deceased and the police eventually conclude that he was murdered. The detectives remain baffled as to both motive and potential suspects. The decedent was a faithful spouse and a respected businessperson with adoring employees, so the motive for his murder is not immediately discovered. Concluding the murder was not motivated by either love or hate, the detectives begin looking for the money.

Assuming the victim was a person with assets, he likely had a will. Naturally, the detectives acquire the decedent's will and learn that his wife was his sole beneficiary. After determining the wife had no lover on the side but was a faithful spouse to the end, and that she already had access to everything she would receive under the will, she is eliminated as a suspect. She had no reason to commit murder to receive that to which she already had access.

Then, the detectives think to check for life insurance policies and find that the victim had in place a policy in the amount of \$1,000,000 payable to one or perhaps several beneficiaries, including the victim's spouse. Now, the spouse becomes a suspect once again. This is "new money," money to which she had no access until the death of her husband.

Perhaps they further discover that the victim's business partner and dear friend of thirty years, and also a beneficiary to the life insurance policy, needs a considerable sum of money to cover his gambling debt.

1. See, e.g., *Double Indemnity* (Paramount Pictures 1944) (portraying a wife who seduces her lover, who is also her husband's insurance agent, into murdering her husband to recover the proceeds of an "accident" policy).

The discovery of the insurance policy and its beneficiaries, on occasion, quickly lead to the undoing of the murderer when the police find the murder weapon hidden in the spouse's gym locker or beneath the floorboards of the partner's office. On other occasions, the writers avoid this common ending and use the discovery of the life insurance policy as a suspenseful diversion. The viewers or readers are set to condemn the beneficiary of the policy, the motive is so strong after all, when in the waning minutes or pages the detectives discover that the decedent's old college roommate committed the murder because the victim wronged him thirty years ago.

Either way, "murder for life insurance money" is a common theme, most likely because the viewers and readers so readily follow the logic and the motive. There is little room to doubt that there are those who have dreamt of waking one morning to discover that some distant relative has passed away leaving hundreds of thousands of dollars in insurance money to be shared by all of the decedent's kin. It does not stretch the imagination any farther to suppose that, on occasion, a particularly greedy and immoral beneficiary might want to hasten his good fortune by committing murder. If the insured was paying the policy premiums, the result is a complete windfall to the beneficiary. Even if the beneficiary was paying the policy premiums, perhaps even \$100 per month for a year or so, where could he find a better return on investment or a faster or more certain avenue to a get-rich-quick ending?

Whether art imitates life, life imitates art, or there is some combination of the two, the storyline is further believable because it happens in "real life." It is not at all uncommon to read a newspaper or online article detailing nonfictional instances where an insured person was murdered for life insurance proceeds.²

As horrifying as this storyline is in real life, it is even more tragic when the insured life is a child and the beneficiary murders the child for the insurance proceeds. Children, being among the most vulnerable of victims, are usually in no position to understand the position they are in, to see the danger approaching, or to defend against the threat of death. A life insurance policy, at least in certain circumstances and particularly where the potential proceeds are quite large, essentially paints a target on the child victim. The child's life becomes somewhat of a commodity because of the life insurance policy.

2. See, e.g., *Miami Man Who Killed Bride for Insurance Money Gets Life*, CBS NEWS CRIMESIDER (May 14, 2014, 11:50 AM), <http://www.cbsnews.com/news/miami-man-who-killed-bride-for-insurance-money-gets-life/> (reporting on a man who murdered his new wife in order to collect one millions dollars in life insurance proceeds).

Of course the law has in place certain legal devices *intended* to protect the child in the first instance.³ Further, there are a variety of legal devices in place to punish the murderer *after* the murder has occurred.⁴ However, the legal devices intended to protect children are, for the most part, fraught with problems that make them ineffective in some instances, and the legal devices in place to punish the murderer presume the murder itself, thus making them ineffective to protect children.⁵ An insurance policy that provides a significant payout of money upon the death of a child unfortunately creates a tremendous incentive and opportunity for someone to commit the heinous act of murdering the child to receive the payout, and the law in its current state actually provides very little protection to a child in this scenario.

Part I of this Article sets out an unbelievable but unfortunate true story about a young person named Brian who was murdered for no other reason than the fact that a large insurance policy had been issued on his life. His story is a large inspiration behind this Article. Part II examines the legal devices currently in place to protect persons such as Brian, and discusses how and why they fail miserably on more occasions than are acceptable. Part III discusses the particular factual scenarios under which insured children might become the target of a greedy murderer, either by circumventing the law or by actually complying with the law as it now exists. Part IV proposes a variety of new legal devices and rules that, either in substitution for the current devices or along with them, might better serve to protect children from such violent acts in the future. Finally, Part V provides a conclusion to the Article.

II. A CASE ON POINT

Brian Brewington was murdered early one morning before daybreak in a small town in North Carolina.⁶ The motivation behind his murder was the recovery of life insurance proceeds from a policy naming Brian as the insured life.⁷ Brian was eight years old.⁸

Because the circumstances surrounding his death are part of the inspiration for this Article, and because they are simultaneously incredible and horrifying, the facts of his case are set forth here in considerable detail.

3. *Infra* notes 57–67 and accompanying text.

4. *Infra* notes 47–56 and accompanying text.

5. *Infra* notes 47–67 and accompanying text.

6. *State v. Brewington*, 532 S.E.2d 496, 499 (N.C. 2000).

7. *Id.*

8. *Id.*

Brian lived with his great-grandmother, Frances (hereinafter “great-grandmother”), and his uncle, Robert (hereinafter “uncle”).⁹ The uncle was engaged to be married to Vera (hereinafter “girlfriend”), so she had become familiar with Brian’s home and living arrangements.¹⁰

In April of 1997, the uncle purchased two life insurance policies: one policy insured Brian’s life in an amount slightly in excess of \$58,000,¹¹ and the other insured Brian’s father, Patrick (hereinafter “father”), in the amount of \$75,000.¹² Both policies named the uncle as the beneficiary.¹³ To acquire the policies, the uncle forged the father’s signature on the insurance applications.¹⁴ Though the insurance agent who sold the policies to the uncle did not witness Brian’s father sign the application form for the policy insuring the father or the consent form for the policy insuring Brian, the agent signed both forms on the line marked for such a witness signature.¹⁵

In May of 1997, the uncle and his girlfriend attempted to purchase a lot and mobile home but were denied loan approval.¹⁶ Subsequently, the uncle and girlfriend concocted a plan to murder Brian so they could collect on the life insurance policy,¹⁷ and to murder the great-grandmother,¹⁸ apparently out of necessity because Brian lived with her. The girlfriend further solicited the assistance of her friend, Henry (hereinafter “friend”) to commit the murders, promising him “\$200 or \$300 Wednesday and about a \$1,000 in three to four months.”¹⁹ He consented to the arrangement.²⁰

The uncle, the girlfriend, and her friend initially planned to murder Brian’s father and recover the life insurance proceeds from the policy that covered him.²¹ However, after several failed attempts at murdering Brian’s father, the girlfriend suggested that they murder Brian.²² Her friend proposed that they kidnap Brian instead and hold him for ransom, but the

9. *Id.*

10. *See id.*

11. *Id.* The policy covering Brian also included a “double indemnity” clause which provided a payout in twice the policy amount in the event death was caused by an accident. Complaint & Demand for Jury Trial para. 40, Johnson v. Home Beneficial Life Ins. Co., No. 99-CVS-3799 (Wake Cty. Super. Ct. 1999).

12. *Brewington*, 532 S.E.2d at 499.

13. *Id.*

14. *Id.*

15. Complaint & Demand for Jury Trial, *supra* note 11, paras. 30–33.

16. *Brewington*, 532 S.E.2d at 499.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *Id.* at 499, 508.

22. *Id.* at 508.

girlfriend explained that they would get more money if they killed Brian,²³ apparently having the life insurance policy in mind.

On June 1, 1997, the uncle and girlfriend finalized their plan to murder Brian and his great-grandmother.²⁴ The plan called for the uncle to rise early in the morning and go to work as usual, while the girlfriend and her friend committed the murders.²⁵ The uncle instructed his girlfriend to "make the crime look like a robbery, remove a few items such as the TV, stab [the great-grandmother] and Brian, and set the house on fire."²⁶ The uncle and girlfriend later acquired a knife from an "open-air" market to use in the planned murders.²⁷

Early on the morning of June 12, 1997, the girlfriend and her friend drove by Brian's home and honked the car horn to awaken the uncle.²⁸ They then proceeded to purchase two one-gallon containers of water, empty them, and refill them with gasoline from a local convenience store.²⁹ They then waited to meet with the uncle.³⁰

Meanwhile, the uncle dressed for work and packed into his car the insurance policies and his best clothes, which he intended to wear to both Brian's and his great-grandmother's funerals.³¹ He then left Brian's home, leaving the back door unlocked, and drove to meet his girlfriend and her friend.³² The uncle placed his property in his girlfriend's car and drove his own car to work.³³ The girlfriend and her friend drove to Brian's home.³⁴

Upon arriving at Brian's home, the girlfriend and her friend put on gloves and entered the house through the door Brian's uncle had left unlocked for them.³⁵ They carried with them the gasoline and the knife.³⁶ They entered the bedroom where Brian and his great-grandmother were sleeping and the girlfriend told her friend to stab Brian.³⁷ When the friend was not able to bring himself to stab Brian, the two poured the gasoline on the floor.³⁸ Brian and his great-grandmother awoke and started screaming.³⁹

23. *Id.*

24. *Id.* at 499.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *See id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

The girlfriend then stabbed Brian and her friend stabbed the great-grandmother.⁴⁰ Afterward, the girlfriend lit a dishcloth on a heater and ignited the gasoline on the bedroom floor.⁴¹ Brian and his great grandmother died during the fire.⁴²

The uncle, his girlfriend, and her friend were all arrested and tried for murder.⁴³ The uncle was found guilty of first-degree arson, two counts of conspiracy to commit first-degree murder, and two counts of first-degree murder.⁴⁴ The jury recommended death sentences for both murders, and the court subsequently sentenced the uncle to death for each of the two murders.⁴⁵ These legal proceedings and remedies were, of course, after Brian's death.

III. CURRENT SAFEGUARDS

A person who murders a child for the purpose of recovering the life insurance proceeds on the child's life will be subject to a variety of legal consequences that arise from criminal guilt and civil liability, assuming the murderer is apprehended and his guilt and liability are established.⁴⁶

First, it is highly unlikely that the murderer will recover the life insurance proceeds on the child's life.⁴⁷ As a general rule, either by case law,⁴⁸ statute,⁴⁹ or through a provision of the policy itself,⁵⁰ one who intentionally and feloniously murders the insured for the purpose of collecting the insurance proceeds will be disqualified from that recovery.⁵¹

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 518.

43. *Id.* at 500.

44. *Id.* at 499.

45. *Id.*

46. Much of this Article applies equally to children and adults who are insured by life insurance policies. But, because they are generally defenseless, naïve to the insurance industry, and surely the most vulnerable, this Article focuses on children as insureds.

47. F. S. Tinio, Annotation, *Killing of Insured by Beneficiary as Affecting Life Insurance or its Proceeds*, 27 A.L.R. 3d 794, 799 (1969 & Supp. 2016) ("The beneficiary's right to recover the proceeds, where he feloniously killed the insured, has been denied as a general rule . . .").

48. *See id.*

49. *Id.* at 798–99 ("In some jurisdictions, certain statutory provisions affect the right of the killer to the proceeds. While some statutes prohibit recovery by the beneficiary without regard to the nature of the killing, others require that the death of the insured must have been feloniously or wilfully caused, or, as still other statutes provide, that the beneficiary must have been convicted for the act." (footnotes omitted)).

50. *Id.* at 799 ("The beneficiary who takes the life of the insured may also be barred from collecting the insurance proceeds pursuant to a provision in the policy to that effect.").

51. *See, e.g.,* Peter Nash Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, 53 DRAKE L. REV. 477, 488–89 (2005) ("Accordingly, it is generally held

Second, the murderer will likely be liable in a civil suit by the next of kin for wrongful death based on intentional tort.⁵² Of course, it is probably equally as likely the plaintiffs will never actually recover on the judgment in this instance. Third, at least in certain instances and under certain facts, such as where the murderer actually makes claim to the life insurance proceeds after murdering the insured child, the murderer may face a conviction for insurance fraud.⁵³ Finally, the murderer will most certainly face a murder conviction.⁵⁴

Unfortunately, all of these legal consequences of the murderer's despicable act arise after the child is murdered. Thus, while these responses might protect against the likelihood of the murderer gaining from his wrongdoing and going even further to punish him for the same, they do not protect the life of the child in the first instance.⁵⁵ By way of example, they did not protect Brian.⁵⁶

There are currently two primary legal tools in place to help safeguard the life of a child from a would-be murderer who wishes to profit from life insurance covering the child. The first is the *deterrent effect* of the *threat* of apprehension, conviction, and potential life imprisonment or execution.⁵⁷ Of

that a beneficiary who intentionally kills the insured cannot, and should not, recover the life insurance policy benefits, and the life insurance proceeds should be paid instead to the innocent contingent beneficiary or to the estate of the deceased. This desirable legal result—that a beneficiary who unlawfully kills the insured is barred from receiving the proceeds of a life insurance policy—is based on the underlying rationale that it is contrary to state public policy, either under the common law or under a particular state's 'slayer statute,' to permit a person who has unlawfully killed another to benefit from his or her wrongdoing." (footnotes omitted)).

52. Dan B. Dobbs, *The Law of Torts* § 294, at 804 (2000) ("Wrongful death statutes create a new action in favor of certain beneficiaries who suffer from another's death as a result of a tort. States differ somewhat in measurement of the damages, but all states recognize some kind of claim. Because the statute creates a new cause of action and vests it in the survivors (or their representative), the wrongful death recovery does not go to the deceased's estate and is not subject to claims of the deceased's creditors.").

53. See, e.g., *People v. Hardy*, 825 P.2d 781, 811 (Cal. 1992) (en banc) (finding the evidence was sufficient to support defendant's conviction for conspiracy to commit insurance fraud because the evidence showed that defendant, "knowing he was ineligible to collect the benefits under the policies because of his involvement with the murders, concealed that fact when applying for the benefits.").

54. *Infra* notes 68–84 and accompanying text.

55. This statement is not intended to be an argument that the legal repercussions subsequent to the murder of the insured child are without utility, but that it is unfortunate that they do not go beyond the punishment of the defendant to further safeguard the child's life.

56. See *supra* notes 6–45 and accompanying text. Brian's uncle and beneficiary most certainly did not receive any of the proceeds of the insurance policy covering Brian's life, and he was convicted of first-degree murder and sentenced to death. However, Brian's life was lost before these remedies became relevant.

57. See *infra* notes 65–84 and accompanying text. The murderer's actual conviction occurs after, and as a result of, the child's murder and does not serve to protect the child in the first

course, this legal tool is a general response to murder and is not focused in particular on murders committed for the purposes of collecting life insurance proceeds on children.⁵⁸ Yet, to the extent such a criminal sentence is a deterrent to murder in general, presumably it would apply in the life insurance scenario. Unfortunately, at least in certain instances, the deterrent effect supposedly created by the threat of apprehension and prosecution is no deterrent at all.⁵⁹

The second legal tool, which *is* focused primarily on protecting the life of the insured from murder, is the insurable interest doctrine.⁶⁰ When applied properly by insurers, the doctrine, at least theoretically, protects children by requiring that the insurer permit only one who has an insurable interest in the child's life to become a beneficiary to the child's life insurance policy in the first instance.⁶¹ When applied narrowly by the civil courts, the doctrine substantially limits the list of individuals who have the sufficient legal interest in the child's life to be deemed an insurable interest and, therefore, limits the number of individuals who might economically benefit from the child's death.⁶² In this instance, the doctrine also likely produces at least some deterrent effect in that, at least theoretically, even if the would-be murderer without an insurable interest is able to defraud an insurer into making him the beneficiary under the policy, and even if he is not apprehended and convicted, the courts will not enforce the policy.⁶³

instance. However, the *threat* of conviction may in some instances be sufficient to deter the would-be murderer and, therefore, protect the child's life.

58. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 183 (1976) ("The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders.").

59. *Id.* at 185–86 ("Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may nevertheless assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent." (footnote omitted)).

60. See *infra* notes 121–69 and accompanying text.

61. See *infra* notes 131–37 and accompanying text.

62. See *infra* notes 141–44 and accompanying text.

63. Robert S. Bloink, *Catalysts for Clarification: Modern Twists on the Insurable Interest Requirement for Life Insurance*, 17 Conn. Ins. L.J. 55, 62 (2010) ("While . . . in at least some cases the insurable interest requirement is insufficient to eliminate the motivation of an individual with a criminal disposition to use life insurance as part of a nefarious scheme, the requirement is likely to have at least some deterrent effect by exponentially increasing the difficulty of securing a death benefit payout in the absence of an insurable interest."). Of course, this deterrent effect hinges on the would-be murderer knowing that, notwithstanding the fact the insurer permitted him to become a beneficiary while not having a legal insurable interest, the insurer will not pay the benefit upon discovering the absence of an insurable interest and he will not recover if forced into the civil courts to enforce the policy terms.

Thus, the would-be murderer would be subjecting himself to considerable risk and would not benefit from his act in any event.⁶⁴

Unfortunately, courts frequently fail to narrowly define the insurable interest doctrine,⁶⁵ and insurers frequently fail to properly apply it.⁶⁶ Even when the doctrine is narrowly defined and properly applied, a bit of planning permits a murderer to circumvent the doctrine and once again subject a child to the threat of murder.⁶⁷

A. *Deterrent Effect of Apprehension and Prosecution*

Murder motivated by anger can, of course, support a finding of premeditation and a first degree murder conviction.⁶⁸ Accordingly, the convicted murderer might be subject to the potential consequences of life imprisonment or execution.⁶⁹ However, criminal law also recognizes that a murder committed in anger might occur under such circumstances that the murderer acted out of a spontaneous fit of rage and without premeditation, and therefore committed second-degree murder.⁷⁰ The law also recognizes that a person might kill another in anger, but under adequate provocation or in the "heat of passion" such that the defendant is convicted of manslaughter.⁷¹ In both instances, the absence of premeditation serves to reduce the severity of the crime,⁷² and therefore, the punishment.

64. *See id.*

65. *See infra* note 199 and accompanying text.

66. *See infra* notes 158–65 and accompanying text.

67. *See infra* notes 173–208 and accompanying text.

68. *See, e.g.,* *People v. Lunafelix*, 214 Cal. Rptr. 33, 36 (Ct. App. 1985) ("[T]he law does not require that a first degree murderer have a 'rational' motive for killing. Anger at the way the victim talked to him or any motive, 'shallow and distorted but, to the perpetrator, genuine' may be sufficient." (citation omitted)) (quoting *People v. Smith*, 108 Cal. Rptr. 698, 709 (Ct. App. 1973), *disapproved of on other grounds by* *People v. Wetmore*, 583 P.2d 1308 (Cal. 1978) (en banc))).

69. *See, e.g.,* N.C. GEN. STAT. § 14-17(a) (2011 & Supp. 2012) ("A murder which shall be perpetrated by [any] means of . . . premeditated killing . . . shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine . . .").

70. *See, e.g.,* *People v. Rodriguez*, 77 Cal. Rptr. 2d 676, 680 (Ct. App. 1998) ("Unpremeditated murder resulting from spontaneous rage is normally second degree murder.").

71. *See, e.g.,* *State v. Forrest*, 362 S.E.2d 252, 256 (N.C. 1987) ("[U]nder certain circumstances, one who kills another human being in the 'heat of passion,' produced by adequate provocation sufficient to negate malice, is guilty of manslaughter rather than murder." (citing *State v. Robbins*, 309 S.E.2d 188, 191 (N.C. 1983); *State v. Jones*, 261 S.E.2d 1, 6 (N.C. 1980), *overruled on other grounds by* *State v. McAvoy*, 417 S.E.2d 489 (N.C. 1992))).

72. *See, e.g.,* *State v. McCollum*, 579 S.E.2d 467, 470 (N.C. Ct. App. 2003) ("Murder in the first degree is the unlawful killing of a human being with malice and with premeditation and deliberation. Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation. Voluntary manslaughter is the unlawful killing of a human being without malice and without premeditation and deliberation. Involuntary

However, when it can be established that the motive for murder was the recovery of the proceeds of a life insurance policy covering a child, it is difficult to escape the conclusion that premeditation was involved.⁷³ The murderer must plan in such a way to become the child's life insurance beneficiary,⁷⁴ or plan in some way to benefit from the person who is the child's beneficiary,⁷⁵ and then plan to commit the murder in such a way as to avoid suspicion.⁷⁶ Thus, it would seem that one who murders for the purpose of collecting life insurance proceeds would, if convicted, almost always be subject to a first-degree murder conviction based on premeditation, and life imprisonment or execution.⁷⁷

While the law frequently finds it convenient to engage in the legal fiction that "every one is presumed to know the law,"⁷⁸ such a fiction would hardly seem necessary in this instance. Anyone who has the intellect to "game" the life insurance industry so as to benefit, directly or indirectly, from a child's life insurance policy, and to then commit premeditated murder, would likely have the intellect to understand that the potential consequences include life imprisonment or execution.⁷⁹ Accordingly, it would seem that a murderer who plans and plots the murder of a child in order to gain financially through life insurance proceeds would be aware that he may ultimately face the most serious legal consequences that the law allows, life imprisonment or execution, and would therefore be deterred from committing the murder.

Without doubt, these deterrent forces work in many instances even though it is impossible to prove empirically just how effective they are.⁸⁰

manslaughter is the unlawful killing of a human being without malice, without premeditation and deliberation, and without intention to kill or inflict serious bodily injury." (quoting *State v. Wilkerson*, 247 S.E.2d 905, 915 (N.C. 1978))).

73. See, e.g., *State v. White*, 457 S.E.2d 841, 857 (N.C. 1995) ("[E]vidence that defendant became one of the beneficiaries of an insurance policy on the victim's life days before he was killed was relevant to show her motive for murdering her stepson. This evidence tended to prove that defendant murdered the victim, at least in part, to collect the insurance proceeds from the victim's life insurance policy.").

74. See, e.g., *supra* notes 12–15 and accompanying text. In Brian's case, set forth in Part I of this Article, Brian's uncle essentially defrauded the insurer into making him a beneficiary to the policy covering Brian's life.

75. See, e.g., *supra* notes 16–23 and accompanying text. Brian's uncle's fiancée intended to benefit from the marriage to Brian's uncle, the uncle being the beneficiary under a life insurance policy covering Brian's life.

76. See, e.g., *supra* note 41 and accompanying text. Brian's murderers set fire to the house to make it appear that Brian died from a fire.

77. See *supra* notes 68–69 and accompanying text.

78. E.g., *Iterman v. Baker*, 15 N.E.2d 365, 370 (Ind. 1938).

79. See *supra* notes 68–69 and accompanying text.

80. Obviously, where the threat of prosecution successfully serves as a deterrent, the would-be murderer decides against committing the crime and his aborted intentions are rarely

One conclusion that can be drawn, however, is that they do not deter in all instances.

By way of example, they failed miserably in Brian's case.⁸¹ Perhaps those who planned and carried out Brian's murder thought they would never be apprehended, or perhaps the temptation of a payout in the thousands of dollars made the risk worth it.⁸² While the psychological makeup of the criminal mind and its responsiveness to deterrents and motivation is outside the scope of this Article,⁸³ it is clear that the threat of criminal punishment is not sufficient to protect children in all instances,

discovered. *See* *Gregg v. Georgia*, 428 U.S. 153, 184–85 (1976) (“Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive.” (footnote omitted)).

81. There is likely little doubt that Brian's uncle, and his conspirators, knew the risk they were taking but were not deterred in their conduct.

82. *See supra* notes 11–16 and accompanying text. The dollar value of the risk taken by Brian's uncle was a life insurance payout of \$58,552. The policy also contained a double indemnity clause which would provide a double payout of \$117,104 if Brian's death was caused by accident. Perhaps this is the reason his murderers set fire to Brian's residence. The payout to the uncle's girlfriend presumably would have been to share with the uncle the \$117,104. Interestingly, and most alarmingly, the value of the risk taken by the girlfriend's friend to assist in the commission of the murders was only around \$1,200 to \$1,300. *See supra* notes 11–16 and accompanying text.

83. *See generally*, Hummayoun Naeem et al., *Pain – Pleasure Theory of Motivation*, INTERDISC. J. CONTEMP. RES. BUS., June 2011, at 1489, 1489, 1493 (“The pain pleasure theory of motivation is based upon the assumption that human nature seeks pleasure and avoids pain. One is never comfortable in painful situation [sic] and in order to get rid of that painful situation, the individual puts efforts to come out and seeks pleasure. Level of efforts put to avoid pain indicates motivation level. In order to support the assumption, a scale indicating 5 different stages i.e. 20, 40, 60, 80, & 100 was developed. These stages indicate pleasure level of an individual. According to the theory, if an individual reaches the stage of 20 and gets stuck at this stage, either he will show his satisfaction or dissatisfaction. In case of satisfaction, he will not put any more effort to reach [the] next stage, he will be happy [with] whatever he has got. In case of dissatisfaction, he is going to face two situations; he will put more efforts to reach [the] next stage and may manage to reach the target stage; otherwise, his dissatisfaction would lead towards anxiety and depression. This psychological state would further lead towards two behavior patterns; either he will go to seek medical help or his psychological disorders will get intensified which will finally lead towards abnormal behavior patterns. . . . He may develop criminal inclinations starting from snatching and stealing to high level planned robberies.”); Charles R. Tittle and Ekaterina V. Botchkovar, *Self-Control, Criminal Motivation and Deterrence: An Investigation Using Russian Respondents*, 43 CRIMINOLOGY 307, 309 (2005) (“Self-control theory contends that all people face temptations (opportunities) for gratifying but potentially costly behavior, with the strongly self-controlled tending to resist while the weakly controlled tend to succumb. Since opportunities for misbehavior are ubiquitous, low self-control is claimed to be the main cause of all known variations, except by age, in criminal probability among individuals and socio-demographic categories. Age variation is presumably inexplicable with social variables” (citations omitted)).

particularly when the murderer stands to recover thousands or even hundreds of thousands of dollars in life insurance money.⁸⁴

B. *Insurable Interest Doctrine*

The second legal device in place to protect insureds, including children, from being murdered for the recovery of insurance proceeds is the insurable interest doctrine. The doctrine applies primarily to life insurance and to property insurance.⁸⁵ Briefly stated, the doctrine provides that before a person can recover for the loss of the insured life of another or for the loss or damage to insured property, he must have an “insurable interest” in the insured life,⁸⁶ or in the insured property.⁸⁷

While this Article focuses on life insurance, and particularly on life insurance covering children, it may be helpful to first examine the application of the insurable interest doctrine to property insurance. The doctrine appears to have arisen first in property insurance or, more precisely, marine insurance.⁸⁸ Further, its application to life insurance

84. See, e.g., *State v. Milke*, 865 P.2d 779, 781–82 (Ariz. 1993) (en banc) (affirming defendant’s conviction for first-degree murder, where defendant conspired to kill her four-year-old son after she took out a \$5,000 life insurance policy on him which named her as the beneficiary); *Davidson v. State*, 558 N.E.2d 1077, 1081–82 (Ind. 1990) (affirming defendant’s conviction for murdering her two infant children, where defendant was the beneficiary to life insurance policies in the amounts of \$5,000 on one child’s life and \$20,000 on the other); *Wilson v. State*, 764 A.2d 284, 288, 290 (Md. Ct. Spec. App. 2000) (affirming defendant’s conviction for first-degree murder of his infant son, where defendant was the beneficiary of two life insurance policies on the infant, one for \$50,000 and one for \$100,000), *rev’d*, 803 A.2d 1034 (Md. 2002); *Conley v. State*, 1999-KA-00521-SCT (¶ 1, 4) (Miss. 2001) (affirming defendant’s conviction for capital murder, where defendant murdered his three-year-old daughter after purchasing a \$100,000 life insurance policy on her); *Hill v. State*, 1999-KA-01511-SCT (¶ 1, 18) (Miss. 2001) (affirming defendant’s conviction for murder, where defendant suffocated her infant son after taking out a \$10,000 life insurance policy on him so that she would have enough money to bond her husband out of jail); *Merritt v. State*, 339 So. 2d 1366, 1367 (Miss. 1976) (affirming defendant’s conviction for the murder of his two-year-old daughter, where defendant was the beneficiary of a \$25,000 life insurance policy on her); *State v. White*, 457 S.E.2d 841, 845–47 (N.C. 1995) (affirming defendant’s conviction for the first-degree murder of her stepson, where defendant had been named a co-beneficiary to a \$15,000 life insurance policy on her stepson just days before he was murdered); *O’Bryan v. State*, 591 S.W.2d 464, 467 (Tex. Crim. App. 1979) (en banc) (affirming defendant’s conviction for capital murder, where defendant murdered his eight-year-old son after taking out multiple life insurance policies on him, including one for \$10,000 and another for \$20,000).

85. See *infra* notes 91–169 and accompanying text.

86. See *infra* notes 91–113 and accompanying text.

87. See *infra* notes 122–69 and accompanying text.

88. See ROBERT E. KEETON & ALAN I. WIDISS, *INSURANCE LAW: A GUIDE TO FUNDAMENTAL PRINCIPLES, LEGAL DOCTRINES, AND COMMERCIAL PRACTICES* § 3.2, at 142–43 (1988).

appears to have been, intentionally or otherwise, patterned somewhat after its application to property insurance.⁸⁹

I. Insurable Interests in Property Insurance

The insurable interest doctrine, as applied to marine insurance, originated in early English statutory law through the Statute of George II.⁹⁰

The preamble of the Statute of George II declared that such insurance contracts had “been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have . . . been fraudulently lost and destroyed, . . .” and whereby there was introduced “a mischievous kind of gaming or wagering, under the pretence of assuring the risque on shipping.” The Statute of George II, which applied only to marine insurance, declared that “no assurance or assurances shall be made . . . interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the assurer; and that every such assurance shall be null and void to all intents and purposes.”⁹¹

The wrong to be remedied and the remedy itself are found within the language of the statute.⁹² Insureds were acquiring marine insurance contracts covering ships and cargoes in which the insureds had no property interest.⁹³ Thus, the insureds were effectively engaging in “a mischievous kind of gaming or wagering,”⁹⁴ or essentially gambling that the ship or cargo would be lost and then recover a windfall because they received a large insurance payout for the meager cost of the contract itself but without any property loss of their own. To eliminate the mischief and harm associated with gambling, the statute made such insurance contracts “null and void.”⁹⁵

However, the statute refers to another, more sinister wrong that is of greater importance to this Article. Those who purchased such insurance contracts without an insurable interest would not always rely upon fate to create the loss, but would on occasion cause the ship and cargo to be “fraudulently lost and destroyed.”⁹⁶ The insured would recover a large insurance payout with no property loss of his own, but this time through the

89. *See id.* § 3.3, at 151, 155.

90. *Id.* § 3.2, at 142.

91. *Id.* at 142–43 (footnote omitted) (quoting Marine Insurance Act, 1745, 19 Geo. 2 c. 37 (Gr. Brit.), *repealed by* Marine Insurance Act, 1906, 6 Edw. 7 c. 41, § 92, sch. 2. (U.K.)).

92. *See id.*

93. *See id.* at 142.

94. *Id.* (quoting 19 Geo. 2 c. 37).

95. *Id.* at 143 (quoting 19 Geo. 2 c. 37).

96. *Id.* at 142 (quoting 19 Geo. 2 c. 37).

act of actually causing the loss to the property.⁹⁷ The remedy, again, was to make such contracts “null and void.”⁹⁸

In summary, England’s early insurable interest doctrine required the insured to have some economic, or insurable, interest in the property that was the subject of the insurance, or else the insured would be wrongfully gambling or wagering and may even be tempted to cause the destruction of the property itself in order to recover the insurance proceeds.⁹⁹ The insurable interest doctrine, at least theoretically, would avoid the problem with random gambling and also serve to deter the insured from destroying the property to simply recover in money what he had lost in property.¹⁰⁰

Though now the subject of statutes in some jurisdictions,¹⁰¹ in the United States the insurable interest doctrine for purposes of property insurance was largely adopted by common law.¹⁰² Generally consistent with the policy of England,¹⁰³ and the English statute,¹⁰⁴ the courts typically state that the objectives of the doctrine are to preclude wagering,¹⁰⁵ and to avoid the creation of a temptation to destroy the subject property for the recovery of the insurance proceeds.¹⁰⁶ To accomplish the doctrine’s objectives, courts require the insured to have some ownership or other interest in the property,¹⁰⁷ sufficient for the insured to suffer a loss by the destruction of the property.¹⁰⁸

97. *See id.*

98. *Id.* at 143 (quoting 19 Geo. 2 c. 37).

99. *See id.* at 142–43.

100. *See id.*

101. *See, e.g.,* Md. Code Ann., Ins. § 12-301(b) (LexisNexis 2011) (“A contract of property insurance or a contract of insurance of an interest in or arising from property is enforceable only for the benefit of a person with an insurable interest in the property at the time of the loss.”).

102. Keeton & Widiss, *supra* note 88, § 3.2, at 147.

103. Pritchett v. Ins. Co. of N. Am., 3 Yeates 458, 464 (Pa. 1803) (“We have adopted the policy and principles [13] which gave rise to the act of parliament, both in courts of justice and by commercial usage; but we are not prepared to say, that every particular provision or resolution under it, has been engrafted into our system of law.”).

104. *See supra* note 91 and accompanying text.

105. *See, e.g.,* Castle Cars, Inc. v. United States Fire Ins. Co., 273 S.E.2d 793, 794 (Va. 1981) (“The reasons for the rule are grounded in public policy. ‘If . . . one insures the property of another, the contract of insurance is void and carries with it temptations to crime into which we should not be led. It is against public policy.’” (quoting Liverpool & London & Globe Ins. Co. v. Bolling, 10 S.E.2d 518, 520 (Va. 1940))).

106. *See, e.g.,* Delk v. Markel Am. Ins. Co., 2003 OK 88, ¶ 9, 81 P.3d 629, 635 (“The distinction between wagering and insurance is now so firmly established in public perception, that the justification for the insurable interest doctrine is more readily apprehended today as the prevention of unproductive and wasteful commercial transactions, the limitation of insurance to true indemnity, and the deterrence of the fraudulent destruction of insured property.” (footnotes omitted)).

107. Warren v. Davenport Fire Ins. Co., 31 Iowa 464, 468 (1871) (“An ‘insurable interest’ is *sui generis*, and peculiar in its texture and operation. It sometimes exists where there is not any present property, or *jus in re*, or *jus ad rem*. Yet such a connection must be established between

The doctrine requires not only that the insured have an insurable interest in the property, but also limits the amount of the insurance recovery to the value of the insurable interest the insured had in the property.¹⁰⁹ Accordingly, if the insured has an interest valued at \$1,000 in an item of property, he cannot recover in excess of that amount even if he insured the property at a greater amount.

Of significant importance is the fact that the doctrine does not appear to place any enforceable obligation on the insurer to ascertain whether the insured has an insurable interest in the property before issuing the policy.¹¹⁰ “[I]n some contexts—including several types of property insurance—insurers typically will only make a careful examination after a loss occurs (1) of whether the requisite interest exists or (2) of the value of an insured’s interest.”¹¹¹ Instead, the doctrine merely makes such a policy null and void such that the insured who had no insurable interest in the property cannot recover after the property is damaged or destroyed.¹¹² For this reason, the doctrine does not so much serve the intended deterrent purposes of preventing wagering or the intentional destruction of property on the front-end when the policy is issued, but rather serves as a defense the insurer might raise to avoid paying the proceeds on the back-end after the property is damaged or destroyed.¹¹³

the subject-matter insured, and the party in whose behalf the insurance has been effected, as may be sufficient for the purpose of deducing the existence of a loss to him from the occurrence of the injury to it.” (citing *Buck v. Chesapeake Ins. Co.*, 26 U.S. 151, 152 (1828))); *see also* Keeton & Widiss, *supra* note 88, § 3.4, at 164 (“The basic types of property interests include: (1) Property (ownership) rights; (2) Contract rights; (3) Legal liabilities; (4) Representative relationships; and (5) Factual expectancies.” (footnote omitted)).

108. *Smith v. Eagle Star Ins. Co.*, 370 S.W.2d 448, 450 (Tex. 1963) (“The principle may be stated generally that anyone has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction.”) (internal quotation marks omitted)); *see also* Keeton & Widiss, *supra* note 88, § 3.4, at 164 (“In general, the existence of an insurable interest in property covered by a contract of insurance is determined on the basis of whether the insured’s relationship to the property is such that as a consequence of an injury to the property a loss will be sustained by the insured.”).

109. Keeton & Widiss, *supra* note 88, § 3.4, at 173 (“The objectives that underlie the insurable interest doctrine and the principle of indemnity include avoiding inducements to wagering, avoiding inducements to destruction of insured property, and *avoiding net gain to an insured through receipt of insurance proceeds that exceed the loss suffered by the claimant.*” (emphasis added)).

110. *Id.* § 3.3, at 162–63.

111. *Id.* at 150.

112. *See, e.g., Warren*, 31 Iowa at 467 (“Upon the ground of public policy, therefore, if the assured have no interest in the thing insured the policy must be held void.”).

113. Keeton & Widiss, *supra* note 88, § 3.3, at 156 (“The full implementation of the public interest that produced the insurable interest doctrine may be impeded if insurers elect not to question the adequacy or existence of the required interest. Indeed, an examination of cases in which the doctrine has been asserted as a defense by insurers suggests that in many (and perhaps most) instances the motivation for an insurer to raise the lack of insurable interest is to defeat a

Accordingly, such a practice by insurers may lead to a person who wishes to insure his neighbor's property on a wager that the property might be destroyed to successfully purchase such a policy. If so, the insured effectively wagers the cost of a property insurance premium against the possibility that his neighbor's property will be destroyed.¹¹⁴ If the property is destroyed by means other than at the hands of the insured, and if the insured makes a claim on the loss, the insurer might then investigate and determine that the insured had no insurable interest in property and raise its absence as a defense to paying the claim.¹¹⁵ In this instance, the insurable interest doctrine has not prevented wagering through an insurance policy, but at least the insured will not recover from his wager. Even if the insured's lack of an insurable interest is not discovered, the insured has committed nothing more than a form of gambling that is perhaps frowned upon by public policy.¹¹⁶ He did not cause the loss to the owner of the property and will not be civilly or criminally responsible for the loss.¹¹⁷ In short, the insured gambled on the loss, but he did nothing to cause it.

However, such a practice by insurers may lead to a person insuring his neighbor's property and subsequently hastening the process by actually causing the destruction of his neighbor's property. If the insurer then investigates and discovers the insured had no insurable interest, it will again raise the insurable interest doctrine as a defense and defeat the insured's claim.¹¹⁸ Further, because the insured actually caused the loss in this instance, if his actions are discovered he may be held civilly and criminally responsible for causing the loss.¹¹⁹ However, even if the insured's lack of an insurable interest and his misdeeds go undiscovered, he will simply recover money to which he is not legally entitled and avoid civil and criminal liability.¹²⁰ Of course, the true owner of the property will have to replace his property at his own expense or rely upon his own insurance coverage to replace the property. However, generally speaking, the property is replaceable and, even if it is not, it ultimately is still just property.

claim when an insurer either has some evidence or has strong suspicions of fraud, and that the existence of the fraud would be more difficult for the insurer to establish than a defense based on the lack of an insurable interest." (footnote omitted)).

114. ROBERT H. JERRY, II & DOUGLAS R. RICHMOND, *UNDERSTANDING INSURANCE LAW* § 44, at 299 (4th ed. 2007); see *supra* notes 93–95 and accompanying text.

115. *Id.* § 40, at 294–95; see *supra* notes 110–13 and accompanying text.

116. See *supra* note 105 and accompanying text.

117. Cf. Jacob Loshin, *Insurance Law's Hapless Busybody: A Case Against the Insurable Interest Requirement*, 117 *YALE L.J.* 474, 483 (2007).

118. See *supra* notes 110–13 and accompanying text.

119. Loshin, *supra* note 117, at 483.

120. See *id.*

While such after-the-fact investigation and enforcement does not necessarily prevent either wagering or the intentional destruction of property, only property is at stake. However, where the subject is life insurance rather than property insurance, the stakes are much higher.

2. *Insurable Interests in Life Insurance*

As was the case for the insurable interest doctrine's application to property insurance, its application to life insurance was also the subject of an early English statute.¹²¹ However, the statute that addressed life insurance differed in one very important way from the statute that addressed property insurance.

The next major statutory contribution to the development of the insurable interest doctrine in England was enacted in 1774, during the reign of George III. The preamble to this statute addressed "a mischievous kind of gaming" in relation to "the making of insurances on lives, or other events, wherein the assured shall have no interest." Nothing was said of the destruction of the subject matter of insurance, an evil that was specifically adverted to in the preamble of the marine insurance act of 1746. Apparently, the members of Parliament were not inclined to charge that no-interest life insurance had produced pernicious practices that amounted to murder. The 1774 act declared that "no insurance shall be made . . . on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest"¹²²

In England, there appears to have arisen a type of side-line business whereby individuals would purchase life insurance policies covering the lives of criminals who might face execution, thus essentially wagering that they would, in fact, be executed, as well as on the lives of the elderly.¹²³ Thus, while the statute that addressed insurable interests in property sought

121. See KEETON & WIDISS, *supra* note 88, § 3.2(b), at 143.

122. *Id.* (footnotes omitted).

123. See Swisher, *supra* note 51, at 481 ("In life insurance, [wagering or] 'gaming' practices developed in the eighteenth century. Popular accounts of the period describe the practice of purchasing insurance on the lives of those being tried for capital crimes. These policies constituted naked wagers on whether the accused would ultimately be convicted and executed for the alleged offense. A related practice was the purchase of insurance on the lives of famous, elderly persons; the premium would be a function of what was known about the person's health, including any recent illnesses. Insuring a life in which one has no interest creates a temptation to bring the insured's life to an early end, but the greater concern in eighteenth-century England was the practice of wagering." (alteration in original) (quoting ROBERT H. JERRY, II, UNDERSTANDING INSURANCE LAW § 40, at 292 (3d ed. 2002))).

to avoid both “wagering” and the “pernicious practices” of intentionally causing the loss of a ship and its cargo,¹²⁴ the statute that addressed insurable interests in life insurance perhaps focused more on the practices of the day and sought to avoid only “a mischievous kind of gaming.”¹²⁵

In the United States, similar to the doctrine’s adoption for purposes of property insurance,¹²⁶ the doctrine has been adopted for life insurance through common law,¹²⁷ and by statute.¹²⁸ Unlike the doctrine’s application to property insurance, however, the insurable interest doctrine’s application, or misapplication, to life insurance can result in very dangerous consequences for the insured’s life.¹²⁹

Many American courts today continue to state that the purpose of the insurable interest doctrine in life insurance is to avoid gaming, gambling, or wagering.¹³⁰ Others have noted that the doctrine’s purpose is also to avoid creating in the beneficiary of the policy a temptation to commit murder to

124. *Supra* note 91 and accompanying text.

125. *See supra* note 123 and accompanying text.

126. *See supra* notes 101–02 and accompanying text.

127. Keeton & Widiss, *supra* note 88, § 3.2(e), at 147.

128. *Id.*

129. *See infra* notes 160–67 and accompanying text.

130. *See, e.g.,* N. Am. Co. for Life & Health Ins. v. Lewis, 535 F. Supp. 2d 755, 759 (S.D. Miss. 2008) (“Mississippi follows the general rule that in order to be entitled to proceeds from an insurance policy, the purchaser of the policy must have an insurable interest in the property or life insured.’ This rule ‘is based on the public policy that one should not be permitted to wager on or have a direct interest in the loss of life or property of another.’” (citation omitted) (quoting Aetna Cas. & Sur. Co. v. Davidson, 715 F. Supp. 775, 776 (S.D. Miss. 1989))); Mut. Life Ins. Co. of N.Y. v. Allen, 138 Mass. 24, 27 (1884) (“The policy is a common form of what is called life insurance, and is a contract by which the insurer, in consideration of an annual payment to be made by the assured, promises to pay to her a certain sum upon the death of the person whose life is insured. To prevent this from being void, as a mere wager upon the continuance of a life in which the parties have no interest except that created by the wager itself, it is necessary that the assured should have some pecuniary interest in the continuance of the life insured.”); Crosswell v. Conn. Indem. Ass’n, 28 S.E. 200, 201 (S.C. 1897) (“It is firmly established that insurance procured by one person on the life of another, in which the party effecting the insurance has no interest, is void as a wager contract against public policy, which condemns gambling speculation upon human life.”).

recover from the policy.¹³¹ Still others combine the purposes by equating wagering to murder.¹³²

It is the modern doctrine's "murder avoidance" objective that comes into sharp focus when examining the doctrine's effectiveness in safeguarding the lives of insured children.

Simply stated, the insurable interest doctrine—for purposes of life insurance—provides that a person may not be the beneficiary to a life insurance policy covering the life of another person unless he has a sufficient relationship with the insured life to constitute an insurable interest.¹³³ Thus, the doctrine focuses on the relationship, or absence thereof, between the insured life and the beneficiary.¹³⁴ Accordingly, if "A" purchases a life insurance policy covering "B's" life and names himself as the beneficiary to the policy, "A," as the beneficiary, must have an insurable interest in "B," the insured life.¹³⁵ Otherwise, the policy is invalid.¹³⁶

One interesting exception to the rule of the insurable interest doctrine applies where a person purchases a life insurance policy covering his own life. In this instance, he may name any person or entity as beneficiary with or without the beneficiary having an insurable interest in the insured's life.¹³⁷ Perhaps this exception addresses the doctrine's original purpose of the avoidance of wagering,¹³⁸ and recognizes the beneficiary is not

131. See *Cisna v. Sheibley*, 88 Ill. App. 385, 389 (1899) ("A policy obtained by a party who has no interest in the subject of insurance is a mere wager policy. But policies without interest upon lives are more pernicious and dangerous than any other class of wager policies, because temptations to tamper with life are more mischievous than incitements to pecuniary fraud.") (quoting *Ruse v. Mut. Benefit Life Ins. Co.*, 23 N.Y. 516, 525 (1861)); *Allen v. United of Omaha Life Ins. Co.*, 236 S.W.3d 315, 322 (Tex. App.—Fort Worth 2007, pet. denied) ("Two policies drive this rule: A practice that encourages one to take another's life should be prohibited, and no one should be permitted to wager on the life of another." (citing *Torrez v. Winn-Dixie Stores, Inc.*, 118 S.W.3d 817, 820 (Tex. App.—Fort Worth 2003))).

132. See, e.g., *Ruse*, 23 N.Y. at 526 ("[P]olicies without interest upon lives are more pernicious and dangerous than any other class of wager policies; because temptations to tamper with life are more mischievous than incitements to mere pecuniary frauds.").

133. See *JERRY & RICHMOND*, *supra* note 114, § 43, at 293; see also cases cited *supra* notes 131–32.

134. *JERRY & RICHMOND*, *supra* note 114, § 43, at 293.

135. Though factually less likely, where "A" purchases a life insurance policy covering "B's" life and names "C" as the beneficiary, "C" must have an insurable interest in "B's" life. However, the doctrine does not necessarily suggest that "A," as the purchaser of the policy but not its beneficiary, must also have an insurable interest in "B."

136. *JERRY & RICHMOND*, *supra* note 114, § 41, at 278.

137. See, e.g., *Mut. Sav. Life Ins. Co. v. Noah*, 282 So. 2d 271, 273 (Ala. 1973) ("This rule is to the effect that a person has an unlimited insurable interest in his own life and may designate any person as his beneficiary so long as the insurance was procured or taken out by the insured and the premiums paid by him . . .").

138. See *supra* note 131 and accompanying text.

gambling if he had nothing to do with the procurement of the policy.¹³⁹ Or, perhaps it addresses the modern purpose of the avoidance of murder and recognizes that the insured, who also purchased the policy, would not name as beneficiary a person he has reason to suspect might murder him to collect the insurance proceeds.¹⁴⁰

Where the beneficiary must have an insurable interest in the life of the insured, consistent with the doctrine's purpose of avoiding the creation of an inducement to commit murder,¹⁴¹ an insurable interest is generally deemed to exist where the beneficiary has sufficient reason to want the life of the insured to continue to exist.¹⁴² To that end, the doctrine generally requires either that the beneficiary have a sufficient economic or pecuniary interest in the continued life of the insured, or that the beneficiary have sufficient familial ties to the insured so that his love and affection for the insured causes the beneficiary to want the insured's life to continue.¹⁴³

Thus, the first basis that would support a finding of an insurable interest in the life of another exists where the beneficiary has a pecuniary interest in the life of the insured such that the beneficiary would suffer a financial loss upon the death of the insured.¹⁴⁴ By way of example, a pecuniary insurable interest may be deemed to exist where the beneficiary

139. *Crosswell v. Conn. Indem. Ass'n*, 28 S.E. 200, 201 (S.C. 1897) ("[I]t is also well settled that a person may insure his own life, and make the policy payable to whomsoever he chooses, even though the beneficiary has no insurable interest in his life, provided the transaction is bona fide, and not a mere cover to evade the law against wager policies."); see also Keeton & Widiss, *supra* note 88, § 3.5, 189 ("Sometimes decisions holding that a designation of a beneficiary without an insurable interest or an assignment to a person without an insurable interest is valid when made by the person whose life is insured have given little, if any, recognition to avoidance of inducement to murder as an objective of the insurable interest doctrine. In such cases, it frequently has been observed that the central objective of the insurable interest rule is the avoidance of wagering, and participation in the transaction by the person whose life is insured adequately protects against wagering." (footnote omitted)).

140. *Jerry & Richmond*, *supra* note 114, § 43, at 293 ("The person who takes out insurance on her own life has the power to designate any beneficiary; it is presumed that the person will not designate a beneficiary likely to murder the insured. In virtually every state, it is not necessary that the named beneficiary have an insurable interest in the life of the insured.").

141. See *supra* note 132 and accompanying text.

142. See *JERRY & RICHMOND*, *supra* note 114, § 43, at 294–95.

143. See, e.g., *Johnson v. Nelson*, 861 N.W.2d 705, 713 (Neb. 2015) ("In Nebraska, an '[i]nsurable interest, in the matter of life and health insurance, exists when the beneficiary because of relationship, either pecuniary or from ties of blood or marriage, has reason to expect some benefit from the continuance of the life of the insured.'" (alteration in original) (quoting Neb. Rev. Stat. ANN. § 44-103(13)(b) (LexisNexis 2010))); Keeton & Widiss, *supra* note 88, § 3.5, at 179 ("The common or unifying characteristic of these two types of relationships is that in both there is a reason for the beneficiary of the life insurance to anticipate that some economic benefits either will or may result from the continuation of the assured's life, and that such benefits will be lost in the event of the assured's death—that is, there is a factual expectancy which will be curtailed by the assured's death.").

144. *JERRY & RICHMOND*, *supra* note 114, § 43, at 296.

and insured are business partners,¹⁴⁵ or where the insured is an employee of the beneficiary's business.¹⁴⁶

As is the case with property insurance,¹⁴⁷ such a pecuniary interest in the insured subject discourages wagering in the sense that the beneficiary will suffer a true financial loss upon the death of the insured and, therefore, gain no windfall from his death. Presumably, such a pecuniary interest discourages the commission of homicide by the beneficiary as well.

While an insurable interest grounded in pecuniary considerations might suggest its own unique problems worthy of attention,¹⁴⁸ it is rare that an insured child would be in such a position as to be a pecuniary benefit to the beneficiary.¹⁴⁹ Therefore, it is the second basis for an insurable interest that most directly impacts children.

The second basis for an insurable interest requires that the beneficiary have a sufficient family tie to the insured such that the love and affection the beneficiary has for the insured will cause the insured to wish the continued existence of the insured life.¹⁵⁰ This prong appears to be aimed directly at preventing insurance proceeds from becoming an incentive for murder. Accordingly, the family ties generally must be quite close.

Most jurisdictions tend to agree that an insurable interest exists between insureds and their relatives located along the vertical family tree.¹⁵¹ Thus, a given individual has an insurable interest in his parents and his children.¹⁵² On the other hand, the horizontal family tree is quite limited. Spouses, of course, have insurable interests in each other,¹⁵³ while

145. See, e.g., N.C. Gen. Stat. § 58-58-80 (2011) ("Any partner has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of any other partner or partners who are members of the same partnership for his benefit, either alone or jointly with another partner or partners of the same partnership."); JERRY & RICHMOND, *supra* note 114, § 43, at 296.

146. See, e.g., N.C. Gen. Stat. § 58-58-75 ("An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer."); JERRY & RICHMOND, *supra* note 114, § 43, at 296.

147. See *supra* notes 90–121 and accompanying text.

148. For example, one business partner might decide to murder the other to not only recover the life insurance proceeds but to also avoid sharing some lucrative opportunity for the partnership.

149. But see *infra* notes 187–89 and accompanying text (discussing "wait and see" beneficiaries).

150. See *supra* notes 143–44 and accompanying text.

151. Keeton & Widiss, *supra* note 88, § 3.5, at 181.

152. *Id.* at 181–82.

153. *Id.* at 181.

approaches vary in regard to siblings.¹⁵⁴ However, in the absence of a pecuniary interest, the doctrine's list of acceptable beneficiaries generally stops there; uncles, aunts, and cousins, with few exceptions, are outside the reach of an insurable interest.¹⁵⁵ Courts vary regarding the effect of the relationship between a stepparent and stepchild.¹⁵⁶

Further, unlike the doctrine's application to property insurance—where its existence is often an after-the-fact of loss consideration and defense to payment of the insurance proceeds—the insurable interest doctrine's application to life insurance has teeth that presumably prompts the insurers to make sure policies are in compliance with the doctrine on the front-end before the policy is issued. Particularly regarding children, where an insurer issues a policy that names a beneficiary who does not have an insurable interest, and where the beneficiary subsequently murders the child for the insurance proceeds, the insurer may be subject to a suit in negligence.¹⁵⁷

For example, in an Alabama case, an aunt murdered her niece, who was a few months over two years of age, by serving her a soft drink that contained arsenic.¹⁵⁸ Before she committed the murder, the aunt applied for and acquired three life insurance policies on her niece's life naming herself as the beneficiary to all three.¹⁵⁹ The young girl's father subsequently sued all three insurance companies in negligence for issuing policies that made the aunt, a person with no insurable interest, the beneficiary.¹⁶⁰

After discussing the importance of the insurable interest doctrine in protecting the lives of insureds,¹⁶¹ the court addressed the defendant

154. See, e.g., *id.* at 182 & n.7.

155. *Id.* at 182 & n.9.

156. See, e.g., Jerry & Richmond, *supra* note 114, § 43, at 295 ("As for the relationship between a stepfather/stepmother and stepchild, the courts are not uniform. It would seem that whether the step-parent/step-child relationship, without more, creates an insurable interest should turn on whether the relationship is functionally equivalent to other kinds of familial relationships where the insurable interest is found. For example, one court has held that adopting parents have an insurable interest in a child after the child has been placed in the parents' home but before the adoption decree becomes final. Although this decision can be explained based on the economic interest adopting parents have both in the adoptee and in the adoption process being brought to a successful conclusion, this result can also be founded on the fact that the adopting family during the post-placement, pre-final decree period resembles, for all practical purposes, other family units." (footnotes omitted)).

157. See *id.* § 47, at 313–14.

158. *Liberty Nat'l Life Ins. Co. v. Weldon*, 100 So. 2d 696, 700, 703 (Ala. 1957).

159. *Id.* at 700.

160. *Id.*

161. *Id.* at 705 ("No principle of the law of life-insurance is at this day better settled, than the doctrine, that a policy taken out by one person upon the life of another, in which he has no insurable interest, is illegal and void, as repugnant to public policy. Such contracts are aptly termed 'wager policies,' and are entitled to no higher dignity, in the eye of the law, than gambling

insurance companies' argument that they owed no duty in negligence to make sure the beneficiary had an insurable interest before issuing the policy.¹⁶²

The position of the defendants seems to be that if murder results the insurance companies are, of course, sorry that the insured met with such a fate, but they have no liability if there is no insurable interest although they can treat such policies as completely void. If an early death from natural causes makes the policy unprofitable, the defendants can and do refuse to pay the beneficiary for the reason that such policies are void. In other words, the defendants seem to be of the opinion that the insurable interest rule is to protect insurance companies. We do not agree. The rule is designed to protect human life. Policies in violation of the insurable interest rule are not dangerous because they are illegal; they are illegal because they are dangerous.

As we have shown, it has long been recognized by this court and practically all courts in this country that an insured is placed in a position of extreme danger where a policy of insurance is issued on his life in favor of a beneficiary who has no insurable interest. There is no legal justification for the creation of such a risk to an insured and there is no social gain in the writing of a void policy of insurance. Where this court has found that such policies are unreasonably dangerous to the insured because of the risk of murder and for this reason has declared such policies void, it would be an anomaly to hold that insurance companies have no duty to use reasonable care not to create a situation which may prove to be a stimulus for murder.¹⁶³

In the same case, the insurers argued that, regardless of any duty owed, the act of the aunt in murdering the niece constituted an unforeseeable and intervening cause such that their liability was severed.¹⁶⁴ The court stated:

We cannot agree with the defendants in their assertion that we should hold as a matter of law that the murder of the young girl was

speculations, or idle bets as to the probable duration of human life. There is no limit as to the insurable interest which a man may have in his own life; *but there are forcible reasons why a mere stranger should not be permitted to speculate upon the life of one whose continued existence would bring to him no expectation of possible profit or advantage.* All wagers, at common law, were not illegal, but only such as were contrary to good morals or sound policy. The statutes of this State make all contracts by way of gaming or wagering void. However this may be, wager policies, *or such as are procured by a person who has no interest in the subject of insurance, are undoubtedly most pernicious in their tendencies, because in the nature of premiums upon the clandestine taking of human life.*" (citations omitted) (quoting *Helmetag's Adm'r v. Miller*, 76 Ala. 183, 186 (Ala. 1884)) (internal quotation marks omitted)).

162. *Id.* at 707-08.

163. *Id.* at 708.

164. *Id.* at 709.

not reasonably foreseeable. They created a situation of a kind which this court and others have consistently said affords temptation to a recognizable percentage of humanity to commit murder.¹⁶⁵

It would seem, then, that the courts tendency to limit the insurable interest doctrine's acceptance of qualified beneficiaries to the closest of relatives and that the bite of a negligence action for noncompliance with the doctrine on the part of insurers would tend to deter insurers, if not murderers, from ignoring the insurable interest doctrine such that children should be relatively safe. However, such is not the case.

First, certain jurisdictions appear to take a rather reckless "wait and see" approach in deciding whether a beneficiary had an insurable interest in the life of the insured.¹⁶⁶ These courts do not set out a definitive list of appropriate beneficiaries but instead analyze the relationship between the insured and the beneficiary "after the fact" of the death of the insured to decide whether the beneficiary had sufficient love and affection, perhaps coupled with a vague pecuniary interest, for the insured so as to constitute an insurable interest.¹⁶⁷ Of course, where it can be established that the beneficiary murdered the insured, the analysis becomes irrelevant.¹⁶⁸ However, the fact that such an analysis is possible in certain jurisdictions no doubt makes insurers less prudent in the face of such a vague application of the law, lends support for insurers who argue that they were not negligent in issuing a policy naming such an individual as the beneficiary, and does little if anything to deter would-be murderers from rolling the dice on committing murder with the hope of subsequently qualifying as a beneficiary under such a nebulous standard.

Second, even in jurisdictions where the doctrine is well-defined and where insurers may be subject to negligence suits, insurers continue to fail in making sure the beneficiary has an insurable interest in the insured. Such were the facts in young Brian's murder.¹⁶⁹

It is therefore evident that criminal and civil responses currently in place to protect children from being murdered for the recovery of life insurance proceeds are not serving the purpose of, in all instances, protecting the children. Accordingly, other solutions to this horrible loss of life are necessary.

165. *Id.* at 711.

166. *See infra* notes 187–92 and accompanying text.

167. *See infra* notes 187–92 and accompanying text.

168. Tinio, *supra* note 47, at 802.

169. *See supra* notes 6–45 and accompanying text.

IV. SCENARIOS OF RISK

Before offering proposals that might better protect children from becoming the targets of murder for life insurance proceeds, it may be useful to first consider the various scenarios through which children may be most at risk and then measure proposed solutions for their effectiveness in light of these scenarios. While there may be any number of fact-specific situations in which children are placed at risk, they can be generalized into two very broad categories. The first category includes scenarios that arise where the beneficiary was an “unlawful beneficiary” in the sense that the beneficiary defrauded the insurer into issuing the policy under which he became an unlawful beneficiary,¹⁷⁰ or where the insurer acted carelessly or negligently in issuing a policy naming him as beneficiary.¹⁷¹ The second category includes scenarios that arise where the beneficiary was a “lawful beneficiary” in that the beneficiary had the requisite insurable interest in the insured child, but where the safety of the child was nonetheless at risk.¹⁷²

A. The Unlawful Beneficiary

In the first category, a person without an insurable interest, and therefore one who lacks a sufficient family tie to suggest the presumptive love and affection that would protect the child, has in some manner managed to place himself in the position of beneficiary to the child’s life insurance policy. One scenario that *might* lead to this result is the instance where the unlawful beneficiary defrauds an otherwise innocent insurer. For example, the unlawful beneficiary might manage to convince the insurer that he is, in fact, a parent or perhaps a grandparent to the child to be insured and that he, therefore, does have an insurable interest in the child.

While this first scenario is worthy of consideration when exploring ways in which to better protect children, it is a somewhat unlikely scenario for at least two reasons. First, it would take a significant amount of planning for the unlawful beneficiary to assume the identity of the child’s parent or grandparent so convincingly that the insurer would be *innocently* deceived. At the very least, the unlawful beneficiary would likely have to create false documents of identification. Second, assuming the subsequent murder of the child results in an investigation, the fact that the unlawful beneficiary assumed a false identity would seem to be a fact that would be easily discovered and worthy of considerable suspicion.

170. See *supra* notes 11–15 and accompanying text.

171. See, e.g., *Liberty Nat’l Life Ins. Co. v. Weldon*, 100 So. 2d 696, 704, 707 (Ala. 1957).

172. See cases cited *supra* note 84.

A second and more likely scenario would be the instance where a fraudulent beneficiary is coupled with a negligent or at least careless insurer, as opposed to an innocent insurer as in the above scenario. For example, in one case a man successfully defrauded an insurer into believing that he was the son of the person he proposed to insure.¹⁷³ He obtained an application from the insurer and told the insurer's representative that he would take the application to his "father" to obtain his signature.¹⁷⁴ The insured life was an actual person, of course, but the man seeking to create the insurance coverage was not his son.¹⁷⁵ The representative permitted the man to take the application with him in violation of the insurer's own procedural rules.¹⁷⁶ The man returned with the "signed" application, naming himself as the beneficiary, and the insurer's representative further signed the application "witnessing" the "father's" signature.¹⁷⁷ The "father" was later found stabbed and beaten to death in his apartment, resulting in the allegation that the beneficiary committed the murder.¹⁷⁸

While this case involves an adult beneficiary and an adult insured, it illustrates how bold a person might be in defrauding an insurer and how gullible and careless an insurer might be in issuing a life insurance policy.

This scenario partially explains what happened in young Brian's case.¹⁷⁹ Brian's uncle obtained a life insurance application from the insurer and then returned the application to the insurer after fraudulently forging Brian's father's signature on the application, purporting to give the insurer permission to insure Brian's life, and after naming himself the beneficiary to the policy on the application.¹⁸⁰ The insurer then acted carelessly, if not negligently, in at least a couple of ways. First, the circumstances under which Brian's father's signature appeared on the application suggests that the insurer never actually discussed the matter with Brian's father but rather took the uncle's "word" as true.¹⁸¹ Second, apart from the forged signature, the insurer caused an insurance policy to issue, naming Brian as the insured life and Brian's uncle, who under state law did not have an insurable

173. *Bajwa v. Metro. Life Ins. Co.*, 804 N.E.2d 519, 523 (Ill. 2004).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at 524.

179. *See supra* notes 6–45 and accompanying text.

180. *See supra* notes 13–14 and accompanying text.

181. *See supra* notes 14–15 and accompanying text.

interest in any event, as the beneficiary.¹⁸² Thus, this second scenario is not only likely but now has a history.

The third scenario would be the instance where the unlawful beneficiary did not act fraudulently but nonetheless became a beneficiary under a policy insuring a child solely because of the negligence of the insurer. Brian's case, as well as other cases,¹⁸³ suggests that it is not out of the realm of possibility that a person who does not have an insurable interest could become the beneficiary to a child's life insurance policy for the simple reason that insurance company personnel are not adequately trained in the insurable interest doctrine or otherwise do not appreciate its significance. Accordingly, an aunt, an uncle, or someone of even more distant relation,¹⁸⁴ who does not have an insurable interest in the child might, without resort to fraud in any form, merely request and obtain such a policy from a negligent insurer.¹⁸⁵

In summary, an "unlawful beneficiary" is generally the product of a fraudulent beneficiary, a negligent insurer, or both.

B. *The Lawful Beneficiary*

This second category that may result in risks to children insureds includes scenarios where the beneficiary was a "lawful beneficiary" in that the beneficiary did, in fact, have a lawfully recognized insurable interest in the insured child, but where, due to various circumstances, the child continues to be at risk.

The first scenario in this category of cases involves a lawful beneficiary who actually should be deemed an unlawful beneficiary but, due to the lax approach of state law, at least initially is deemed a lawful beneficiary.¹⁸⁶ For example, some jurisdictions take what can perhaps best be described as a "wait and see" approach in determining whether a beneficiary had a lawfully recognized insurable interest in the insured life.¹⁸⁷ This approach permits a distant family member such as an aunt or uncle, who otherwise would not qualify as a beneficiary to the child because the familial relationship is not sufficiently close, to establish an

182. See *supra* notes 11–13 and accompanying text; see also *Wharton v. Home Sec. Life Ins. Co.*, 173 S.E. 338, 339 (N.C. 1934) ("[I]t is very generally held that the relationship of uncle and nephew does not of itself create an insurable interest in favor of either.").

183. See, e.g., *Liberty Nat'l Life Ins. Co. v. Weldon*, 100 So. 2d 696, 704–05 (Ala. 1957).

184. Such a scenario would likely require that the unlawful beneficiary be at least related to the child because it would seem that one who attempts to purchase a policy on a child without any relation to the child would raise suspicion in even a negligent insurer.

185. E.g., *Weldon*, 100 So. 2d at 705–06.

186. See *KEETON & WIDISS*, *supra* note 88, § 3.5, at 182–83.

187. See *id.*

insurable interest by buttressing a familial relationship with evidence of some pecuniary interest in the child.¹⁸⁸ “For example, a woman who had supported her niece from infancy was held to have an insurable interest in the niece’s life on the basis of an expectation of pecuniary benefit incident to what the court viewed as a moral obligation of the niece to the aunt.”¹⁸⁹ The case referenced above illustrates both the application and the problem with the “wait and see” approach.

An aunt or uncle, or some other distant relative who does not have a sufficient familial connection to the child to establish an insurable interest based upon presumptive love and affection, is nonetheless permitted to become the child’s life insurance beneficiary based upon a strained contention that the relative has a pecuniary interest in the child pursuant to some vague “moral obligation.”¹⁹⁰ Then, upon the death of the child, this being the “wait and see” aspect of this dangerous practice, the court apparently examines the familial and pecuniary ties to the child and makes a posthumous decision as to the existence of an insurable interest.¹⁹¹ Obviously, if it is discovered that the distant relative caused the death of the child, the relative will not recover the life insurance proceeds and will further suffer all the punishment the law can bring to bear.¹⁹² Problematically, of course, all of this occurs after the death of the child.

While a pecuniary interest can establish the existence of a sufficient insurable interest in the life of another, such an interest is generally found where the beneficiary has some realistic and continued source of income provided by the insured life sufficient to cause the beneficiary to desire that the insured life continue to exist.¹⁹³ Where the insured and the beneficiary are both adults, such a pecuniary interest may in fact exist. However, as previously discussed, the likelihood of an adult having a realistic pecuniary interest in a child is practically nonexistent.¹⁹⁴ Permitting a distant relative to become a lawful beneficiary to a child’s life insurance policy on the vague notion that the relative might receive future monetary compensation from the child based on some “moral obligation” simply places the child at great risk. The beneficiary, in the absence of significant love for the insured, may be tempted to commit murder to make certain the “moral obligation” is fulfilled.

188. *Id.* at 182 & n.9.

189. *Id.* at 182–83.

190. *Id.*

191. *Id.*

192. *See* Tinio, *supra* note 47, at 802.

193. For example, the insured and the beneficiary may be business partners or the insured may be the beneficiary’s employee. *See supra* notes 145–47 and accompanying text.

194. *But see* KEETON & WIDISS, *supra* note 88, § 3.5, at 183.

Jurisdictions that take this “wait and see” approach permit those who have no insurable interest in a child to acquire an insurance policy on the front-end, subject to finding no insurable interest on the back-end when it is too late to protect the child. This practice places children at significant risk.

The second scenario involving a lawful beneficiary arises where a parent, a grandparent or, theoretically at least, a sibling, who has a lawful insurable interest in the life of the child acquires a life insurance policy on the child and is appropriately named the beneficiary under the policy. The lawful beneficiary then develops a relationship with a “significant other,” perhaps a boyfriend or girlfriend who may or may not become a subsequent spouse. The “significant other,” who has no blood relationship to the child and would otherwise have no insurable interest in the child, is then placed in a position to benefit from the child’s death through the lawful beneficiary. Such a person might benefit from the policy directly, such as by becoming a co-beneficiary with the lawful beneficiary upon marriage to the lawful beneficiary,¹⁹⁵ or indirectly through a less committed relationship with the lawful beneficiary.¹⁹⁶

For example, in one case a father and mother purchased a life insurance policy on their child in the amount of \$15,000, naming themselves as beneficiaries, and subsequently divorced.¹⁹⁷ The father remarried and a short time before his four-year-old child died the father amended the life insurance policy to name his second wife as a beneficiary.¹⁹⁸ The second wife was later charged with murdering the child and, on appeal, the court affirmed her conviction without discussion of whether a stepparent has an insurable interest in a stepchild.¹⁹⁹ Thus, the second wife, who otherwise would have had no insurable interest in the child, placed herself in a position to benefit directly from the policy by marrying the child’s father and becoming a named beneficiary.²⁰⁰

Brian’s case was somewhat similar, at least to the extent of the involvement of a “significant other.” Though Brian’s uncle was not a lawful beneficiary, he did acquire a life insurance policy on Brian’s life.²⁰¹ Then, his girlfriend, or “significant other,” placed herself in a position to benefit

195. *E.g.*, *State v. White*, 457 S.E.2d 841, 845–47 (N.C. 1995).

196. *See, e.g.*, *Wilson v. State*, 764 A.2d 284, 289–91 (Md. Ct. Spec. App. 2000), *rev’d*, 803 A.2d 1034 (Md. 2002).

197. *White*, 457 S.E.2d at 846.

198. *Id.* at 845–47.

199. *Id.* at 845.

200. *See id.* at 845–47.

201. *See supra* note 11 and accompanying text.

indirectly from the life insurance proceeds, assisted in planning the crime, and then participated in its commission.²⁰²

Though all the scenarios presented thus far can result in placing a child in danger, the third and final scenario in this category is perhaps the most gut-wrenching of all and the most difficult to prevent. In this third scenario, someone with a lawful insurable interest, usually a parent, purchases a policy on his or her child and then commits the murder for the proceeds.²⁰³

Of the various parties who qualify as having an insurable interest in a child's life, perhaps none better reflect the love and affection for the child upon which the insurable interest is based, than a parent. No fraud is necessary by the parent,²⁰⁴ no negligence is required by the insurer,²⁰⁵ and no potential lawful beneficiary raises less suspicion when attempting to insure a child's life. However, because of the relative simplicity in orchestrating this scenario, cases involving a homicidal parent may be more plentiful than cases involving fraudulent beneficiaries,²⁰⁶ "wait and see" beneficiaries,²⁰⁷ or those who attempt to recover indirectly as a "significant other."²⁰⁸

In summary, the scenarios involving lawful beneficiaries pose significant risks to children for the very fact that the beneficiaries are lawful. Whether the law is lax, the beneficiary meets a "significant other," or otherwise becomes greedy and homicidal, these cases arise because the insurable interest doctrine does not contemplate these factual scenarios and does not provide protection to the child in these instances.

Since criminal law responses do not adequately deter criminal conduct in many of these cases, since the threat of a negligence suit does not always cause insurers to properly apply the insurable interest doctrine, and since the doctrine itself, even if applied properly, does not always guarantee the safety of children insureds, other protective measures must be implemented to stop these horrible murders for life insurance proceeds.

V. PROPOSED PROTECTIVE MEASURES

Perhaps the most certain and conclusive protective measure that can be implemented to prevent the murder of children for life insurance proceeds is to simply prohibit the issuance of life insurance policies covering children.

202. See *supra* notes 16–43 and accompanying text.

203. See cases cited *supra* note 84 (offering examples of parents who were charged with murdering their children for the recovery of insurance proceeds).

204. See *supra* notes 174–79 and accompanying text.

205. See *supra* notes 184–86 and accompanying text.

206. See *supra* notes 174–79 and accompanying text.

207. See *supra* notes 188–93 and accompanying text.

208. See *supra* notes 198–203 and accompanying text.

However, because there are very good reasons why someone, typically a parent, might want to insure a child's life, a blanket prohibition to such coverage would completely frustrate otherwise good and necessary intentions. For example, certain families would surely have difficulty affording the high cost of even a simple funeral and burial for their child without the availability of life insurance coverage on the child. This fact alone justifies the continued practice of permitting life insurance on children, at least in some minimal amount.

More problematically, a mother, a father, or both may suffer from a hereditary disease and have a valid belief that their child will also develop the disease as he ages. If the hereditary disease is one that might eventually disqualify the child from purchasing life insurance himself when he gets older, his parents might opt to purchase a policy on the child when he is young and before the disease appears, so that he will have life insurance for the ultimate benefit of his own spouse and children later in life. This fact also justifies life insurance on children, and in this instance the amount of insurance might even be significant if there is a concern that the child might not later be able to increase the amount of insurance because of the hereditary disease.

Accordingly, any protective measures must be calculated to continue to permit the issuance of life insurance policies covering children while simultaneously reducing the risk that a child might be murdered for the insurance proceeds.

A. Narrowly Define the Insurable Interest Doctrine

The first such protective measure would be to narrowly and specifically define the insurable interest doctrine, either by case law or through legislation. As it pertains to children, the insurable interest doctrine must be defined such that the only person who has an insurable interest in a child, and therefore the only person who can become the beneficiary to such a life insurance policy, is the child's parent(s) or a person who financially stands in the place of the parent(s). This approach would conclusively eliminate grandparents, siblings, and "wait and see" beneficiaries,²⁰⁹ except where they stand in the place of a parent in terms of having financial responsibility for the child. It would also advance the objective of the insurable interest doctrine as it applies to children in that, in most instances, it would limit potential beneficiaries to those who would seem to naturally harbor the presumptive love and affection for the child that justifies the doctrine in the first instance.

209. See *supra* notes 188–90 and accompanying text.

Further, a policy insuring a child should issue only after the proposed beneficiary provides birth and identification records proving that he or she is the child's parent, or after providing legal documents proving that the beneficiary financially stands in the place of the parent(s). At the very least, this approach would significantly limit the pool of potential beneficiaries and, therefore, limit the number of persons who might harm the child to recover insurance proceeds.

Admittedly, this approach does not, of itself, preclude a "significant other" from becoming involved with a parent and then harming a child,²¹⁰ or preclude a parent from committing murder for the insurance proceeds. Thus, other measures are necessary.

B. Penalize Insurers

Once the insurable interest doctrine has been cleaned up and narrowly defined it must be enforced, not on the back-end by the courts but on the front-end by insurers before the policy issues. Regulatory sanctions in the form of hefty fines as well as license and certification revocations are likely necessary to prompt such enforcement.

It is no secret that life insurance agents receive commissions for the policies that they sell, so they have a strong financial incentive to sell as many policies as possible.²¹¹ It is also no secret that life insurance companies make much of their money from the premiums paid by insureds, so they, too, have a financial incentive to sell as many policies as possible. However, agents and insurance companies are also in the unique position of being the only ones who can enforce a narrowly defined insurable interest doctrine on the front-end by refusing to sell or issue a policy in contravention of the doctrine. It is this tension between sales and child safety that makes sanctions against agents and insurers necessary.

Brian's case illustrates the problem as well as the need for this protective measure.²¹² There is little doubt that Brian's uncle knew that he might face first-degree murder charges, along with appropriate punishment, when he planned Brian's murder. Yet, this possibility did not deter his criminal conduct. On the other hand, it is highly doubtful that Brian's uncle knew he did not have an insurable interest in Brian's life when he first sought to obtain insurance on Brian's life and name himself as beneficiary.

210. See *supra* notes 198–203 and accompanying text.

211. Cf. Mark Duggan & Steven D. Levitt, *Winning Isn't Everything: Corruption in Sumo Wrestling*, AM. ECON. REV., Dec. 2002, at 1594, 1604 (discussing potential corruption in the sport of sumo wrestling as the result of a system that financially rewards and incentivizes match rigging).

212. See *supra* notes 6–45 and accompanying text.

However, there is little doubt that the insurer and its agent knew that Brian's uncle did not have a lawful insurable interest. There is also little doubt that at least the insurance company was aware that issuing such a policy might lead to a negligence action based on its negligent conduct. Yet, in the face of this knowledge and deterrent, the agent sold the policy and the insurer issued it.²¹³

Since the threat of criminal action does not deter the unlawful beneficiary,²¹⁴ and since the threat of a civil action does not deter the agent or the insurer,²¹⁵ perhaps it is now time to consider other sanctions against the agent and the insurer. Such sanctions might include imposing significant monetary fines against both the agent and the insurer when they violate the insurable interest doctrine and its procedures. Further, generally insurance agents must be licensed,²¹⁶ and insurance companies must be certified, or permitted, to sell insurance within a particular state.²¹⁷ Applicable sanctions might therefore include license and certificate revocations.

Narrowing the doctrine's application and going to greater lengths to make certain the doctrine is enforced at the front-end by insurers will help protect children. However, a parent with a lawful insurable interest will still be able to purchase a policy on a child and ultimately benefit from the child's death. Therefore, other measures are still necessary to protect children.

C. *Limit Coverage*

The third and final proposal to protect insured children is to limit the amount of available coverage. This step would require legislative action limiting the amount of coverage on a child's life to some specified amount adequate to cover funeral and burial expenses. The limit would need to remain in place until the child reaches a certain age, preferably eighteen.

213. See *supra* note 11 and accompanying text.

214. See *supra* notes 68–84 and accompanying text.

215. See *supra* notes 158–66 and accompanying text.

216. E.g., Cal. Ins. Code § 1631 (West 2013), preempted by *Rodriguez v. RWA Trucking Co.*, 162 Cal. Rptr. 3d 250 (Cal. Ct. App. 2013) (“Unless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 . . . unless the person holds a valid license from the commissioner authorizing the person to act in that capacity. The issuance of a certificate of authority to an insurer does not exempt an insurer from complying with this article.”).

217. E.g., N.C. Gen. Stat. § 58-7-10 (2011) (“No domestic insurance company may issue policies until upon examination of the Commissioner, his deputy or examiner, it is found to have complied with the laws of the State, and until it has obtained from the Commissioner a certificate setting forth that fact and authorizing it to issue policies. The issuing of policies in violation of this section renders the company liable to the forfeiture prescribed by law, but such policies are binding upon the company.”).

However, merely limiting the amount of coverage to a sum sufficient to pay for funeral and burial expenses would not fully solve the problem. This Article previously referenced a case in which a woman murdered a child for the relatively small sum of \$15,000,²¹⁸ an amount which could likely be described as a reasonable amount to pay for funeral and burial expenses in many parts of the country.

For this reason, in addition to limiting the amount of coverage, such legislation would further have to provide that the insuring agreement between the parent and the insurance company must include a provision making the funeral services provider the payee under the policy, with any overage being paid to the parent or person who financially stands in the place of the parent. If the amount of coverage is sufficiently limited, after payment to the funeral services provider there should be such a minimal amount of money left in the policy that no parent would risk a murder conviction to recover it.

With the amount of coverage limited and payment being made directly to the funeral services provider by the insurance company, the incentive to commit murder is greatly reduced. However, these steps leave the problem that arises when a parent wants to purchase life insurance on a child in a large amount out of fear that the child may later develop a hereditary disease and be rejected for life insurance coverage. The insurance limit frustrates a parent's true and legitimate desire to protect the child in the future as well as the child's future spouse and children.

However, there is certainly a method, likely again through legislative action, by which to meet the parent's praise-worthy objective without jeopardizing the safety of children. For example, a parent might be permitted to purchase a life insurance policy on his or her own life, making the child or a spouse the beneficiary, and then transfer the policy to the child such that the child becomes the named insured at some specified age. The child, or perhaps adult at the time, could then change the beneficiary under the normal procedures for making such a change.

As another example, a parent might be permitted to purchase a policy on his or her child's life, making himself or herself the beneficiary, but limited in the amount of coverage as discussed earlier. Then, perhaps in consideration of a one-time additional and reasonable fee, the parent could also purchase an option to permit the child to increase the coverage when he or she reaches a certain age regardless of health status of the child at that time. The result would be that coverage would be limited through childhood, thus reducing the incentive to murder the child, but could be

218. See *supra* notes 198–201 and accompanying text.

increased when the child reaches adulthood, again regardless of any otherwise disqualifying disease that may be present at the time.

In either event, limiting the amount of available coverage and directing that payment be made directly to the funeral services provider, when coupled with narrowly defining the insurable interest doctrine, and making certain insurers are enforcing its mandates, would provide children with the protection they so badly need. These measures would effectively take the targets off the children by minimizing the incentive and opportunity to commit murder for life insurance proceeds.

V. CONCLUSION

Children are being murdered for life insurance proceeds. The current legal responses to this problem are insufficient to protect children. Certain legal responses are triggered only after the death of the child and, therefore, provide no actual protection to the child, while those that appear to be directed at protecting children are ineffective at best.

Under the current status of the law, a parent, grandparent, or even older sibling can purchase a life insurance policy on a child and name himself or herself the beneficiary to the policy. Further, the amount of coverage is limited only by the ability to make the premium payments to keep the policy intact. In some jurisdictions, an aunt, uncle, or perhaps even more distant relatives can do the same upon a later showing of a pecuniary interest in the child, such as some vague moral obligation the child has to repay the relative for his generosity when the child was young.

The current status of the law is dangerous to children and new measures are necessary for their protection. The remedies to the problem proposed above will dramatically change the way life insurance covering children is sold, written and managed, and will no doubt be deemed less than desirable to some. However, the problem is real and the measures taken to protect children must be effective. They are innocent and vulnerable, and are not able to protect themselves.