

# ORIGINAL

1                   IN THE SUPREME COURT OF THE UNITED STATES

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3 DONNA RIDGWAY AND PRUDENTIAL           :

4   INSURANCE COMPANY OF AMERICA,       :

5   Petitioners,       :       No. 80-1070

6                   v.                       :

7 HAYLEY D. RIDGWAY ET AL.               :

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9   Washington, D. C.

10    Wednesday, October 7, 1981

11       The above-entitled matter came on for oral argument  
12 before the Supreme Court of the United States at 1:25  
13 o'clock p.m.

14 APPEARANCES:

15       STEPHEN P. BEALE, ESQ., 465 Main Street, Lewiston,  
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18       General, Department of Justice, Washington, D. C. ;  
19       amicus curiae

20       CURTIS WEBBER, ESQ., 83 Pleasant Street, Auburn, Maine;  
21       on behalf of Respondents

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Ridgway and Prudential Insurance Company v. Ridgway.

Mr. Beale, you may proceed whenever you're ready.

ORAL ARGUMENT OF STEPHEN P. BEALE, ESQ.,  
ON BEHALF OF THE PETITIONERS

MR. BEALE: Mr. Chief Justice, and may it please the Court:

I have attempted a number of times to state the facts in this case as a pure proposition of law in a single sentence, and I find that whenever I do it the sentence necessarily has six or seven commas and an equal number of semi-colons, so I will attempt to do it by a brief reference to the facts and then develop the facts in more detail, followed by the argument.

At base, the question in this case is who to have the beneficial enjoyment of the proceeds of a Servicemen's Group Life Insurance policy. The two claimants are, first, the beneficiary designated under the procedures provided for by the federal statute and regulations, and on the other hand, the serviceman's ex-wife who claims the policy proceeds for the benefit of her minor children under a state court divorce decree.

The facts are these: Richard Ridgway was a career sergeant in the Army insured under the Servicemen's Group

1 Life Insurance program, which I will refer to hereafter a  
2 the SGLI Insurance program, in the amount of \$20,000. He  
3 was married to April Ridgway. They had three children, all  
4 of whom were minors at the time Sergeant Ridgway died.

5           The marriage deteriorated. April and Richard  
6 Ridgway were divorced in 1977, and in the divorce decree  
7 Sergeant Ridgway was ordered to maintain in effect for the  
8 benefit of his minor children his life insurance policies.  
9 The only life insurance policy he had at that time was his  
10 SGLI policy.

11           He did not do that, however. He subsequently  
12 married Donna Ridgway, the Co-Petitioner in this action.  
13 Shortly thereafter he changed the beneficiary designation in  
14 the manner provided for on the military form which embodied  
15 an order of precedent set forth in the applicable statute  
16 and regulations of 38 U.S.C. 770(g) --

17           QUESTION: I'm not sure --

18           MR. BEALE: -- 770(a) rather.

19           QUESTION: I'm not sure, it's a little irrelevant,  
20 but was a copy of the decree, the divorce decree brought to  
21 the notice of the insurance decree before -- as soon as it  
22 was entered, or soon after it was entered?

23           MR. BEALE: No, it was not, Your Honor, neither  
24 was it brought to the attention of the Uniformed Services,  
25 which would have been possibly a place to which it might

1 have been directed, although the statute and regulations  
2 specifically provide that it is only a specific form of  
3 writing signed by the serviceman which is effective to  
4 create or to change a beneficiary designation.

5           QUESTION: So that the -- I suppose your answer to  
6 the next question would be that it wouldn't make any  
7 difference if a copy of the decree had been filed with the  
8 Armed Services and the insurance company.

9           MR. BEALE: That is correct. Under a prior form  
10 of insurance, the former National Service Life Insurance  
11 program, such a document might possibly have been  
12 effective. However, in enacting the statutes and the  
13 regulations under the Servicemen's Group Life, the SGLI  
14 program, the manner in which beneficiaries can be created  
15 and changed is very specifically set forth by the statute  
16 and the regulations, and that requires that the beneficiary  
17 designation be in writing, signed by the serviceman and  
18 received by the appropriate military unit before the  
19 insured's death.

20           QUESTION: And that authority -- that authority to  
21 change the beneficiary cannot be waived or diminished by the  
22 insured person?

23           MR. BEALE: That is correct. He has the  
24 unalterable right, the unlimited right to change the  
25 designation at any time, not to inform the prior

1 beneficiary, and he may change it as many times as he wishes.

2 QUESTION: And the procedures and forms are fully  
3 complied with in this case.

4 MR. BEALE: They are, Your Honor.

5 QUESTION: On the change.

6 MR. BEALE: Yes, they are. The --

7 QUESTION: Did the Sergeant leave an estate in the  
8 case?

9 MR. BEALE: Pardon?

10 QUESTION: Did the insured Sergeant leave an  
11 estate, a probate estate?

12 MR. BEALE: It is -- I do not know the exact  
13 details of his probate estate, but it is my understanding  
14 that it was minimal if at all, if he left an estate at all.

15 QUESTION: So that if there is an action for  
16 breach of contract against the estate, you don't know  
17 whether it would be enforceable or collectable.

18 MR. BEALE: It would be our position, Your Honor,  
19 that -- it's an open question as to whether or not there is  
20 an action permissible against the estate for breach of  
21 contract, but if that were deemed to be appropriate, I  
22 cannot provide you with a definitive answer as to whether or  
23 not there would be a full recovery of the amount of the  
24 policy proceeds or not. It's my understanding that there  
25 would not be, but I cannot absolutely say that.

1 QUESTION: It's a matter of irrelevance to you, I  
2 suppose. It would be of some concern to the other side.

3 MR. BEALE: We do not wish to be hard-hearted  
4 about it, but it would be the primary concern of the other  
5 side if they wished to pursue that potential remedy.

6 QUESTION: Am I right in thinking that your client  
7 voluntarily agreed to assign the proceeds of the life  
8 insurance policy, or to have a trust imposed on them?

9 MR. BEALE: I am counsel for the Petitioners, Your  
10 Honor. It is Mr. Webber's -- the serviceman is not  
11 represented by any party here, per se, but the party who  
12 might have voluntarily agreed you're suggesting would have  
13 been Sergeant Ridgway.

14 QUESTION: Yes.

15 MR. BEALE: He is not represented per se in this  
16 action. The claimants are here, his ex-wife on behalf of  
17 the minor children, the designated beneficiary, who was his  
18 widow at the time of his death, and the insurance carrier,  
19 and I am counsel for the insurance carrier, arguing on  
20 behalf of the Co-Petitioner, the designated beneficiary and  
21 the carrier.

22 QUESTION: I see what you mean about the commas  
23 and clauses.

24 MR. BEALE: If I could continue with the facts --

25 QUESTION: You really represent Prudential then.

1           MR. BEALE: That is correct. But I'm arguing on  
2 behalf of Prudential and the designated beneficiary.

3           The -- as the -- after this divorce and the  
4 subsequent remarriage and the designation of the second  
5 wife, Sergeant Ridgway -- and he executed this beneficiary  
6 designation in the manner provided for under the statute and  
7 regulations which provided that the benefits be paid by law,  
8 which under the order of precedence had the effect of paying  
9 his widow, if he had one when he died. Donna Ridgway did  
10 continue to be married to Sergeant Ridgway when he died  
11 several months later. She thereupon filed a proper claim  
12 for the benefits in the appropriate form. Another claim was  
13 filed by April Ridgway on behalf of the minor children under  
14 the divorce decree.

15           Prudential stated its affirmative intention to pay  
16 the designated beneficiary, Donna, the second wife. April  
17 thereupon sued Prudential seeking a declaratory judgment  
18 that she was entitled to the proceeds and seeking injunctive  
19 relief to prevent Prudential from paying Donna.

20           QUESTION: I'm a little curious as to why  
21 Prudential is so involved and upset and concerned. Why  
22 don't they pay the money into court?

23           MR. BEALE: Because -- Prudential has taken an  
24 affirmative position in wanting to pay the designated  
25 beneficiary not because of the first wife-second wife issue,



1 but because of the administrative uncertainty and terrible  
2 additional administrative burdens which will be occasioned  
3 if the result which April seeks were to come about.

4           QUESTION: Well, that isn't a very uncommon  
5 situation in controversies over insurance policy proceeds,  
6 and insurers are always paying into court.

7           MR. BEALE: Well, I think that what is going to  
8 happen is that at a minimum it will involve the insurance  
9 carrier in a very substantial number of cases in which it,  
10 even if has to just interplead and pay the proceeds into  
11 court and attempt to get out of this, sir, is going to  
12 involve a substantial expense of time and energy and legal  
13 expense in doing that.

14           Further, there is a substantial chance that the  
15 claim for the --

16           QUESTION: Well, that's a lot less time and energy  
17 and expense than your coming all the way here defending it.

18           MR. BEALE: I --

19           QUESTION: Go ahead. I just --

20           MR. BEALE: Your Honor, there are additional  
21 points. If, for example --

22           QUESTION: Does the Maine interpleader statute  
23 provide for recovery of attorneys' fees on behalf of the  
24 interpleader?

25           MR. BEALE: No.

1           To respond to an additional point, Justice  
2 Blackmun, it may well be that in many situations the carrier  
3 would pay the first claimant without being aware that there  
4 was a prior divorce decree outstanding, and one of the  
5 additional concerns is that the insurance company will  
6 certainly be sued in almost any event, whether before or  
7 after it pays the proceeds. If it's -- the first rule of  
8 plaintiff's counsel is usually to sue everybody in sight,  
9 and secondly --

10           QUESTION: Mr. Beale, in this case, on the holding  
11 below, supposing you paid a couple of months of benefits to  
12 the wrong party, the theory of the court below wouldn't hold  
13 you responsible for paying the price, would it?

14           MR. BEALE: No, I think not, but the --

15           QUESTION: So if we stuck to the theory of the  
16 court below, you don't really have a risk of double exposure.

17           MR. BEALE: I think -- well, we might have. I  
18 will --

19           QUESTION: At least not --

20           MR. BEALE: The theory of the court below is not  
21 clear on that point, Your Honor. It might possibly be --

22           QUESTION: It is not discussed.

23           MR. BEALE: -- that we would get sued again by the  
24 party who ultimately ended up being the correctly designated  
25 beneficiary and prior claimant.

1 QUESTION: how could that party possibly recover  
2 against you for merely doing what the policy directed you to  
3 do?

4 MR. BEALE: Well, the --

5 QUESTION: I don't understand that.

6 MR. BEALE: I'm not saying that they would prevail  
7 in the action, Your Honor, but I'm saying --

8 QUESTION: Well, I --

9 MR. BEALE: --they might initiate the action, and  
10 just the additional time and energy and expense that is  
11 consumed in trying to get out adds a burden.

12 QUESTION: Is this -- I'm interested in Justice  
13 Blackmun's point. Is this problem any different because  
14 it's a federal insurance, I mean, you know, the federal  
15 government's involved, than in any of the other countless  
16 situations in which insurance companies always have the risk  
17 of paying the wrong party?

18 MR. BEALE: Yes, it's completely different because  
19 here we're involved with a federal statute which not only  
20 provides affirmatively in order of precedence for  
21 beneficiary payment, but also contains a provision against  
22 attachment or --

23 QUESTION: Well, I understand the arguments in  
24 favor of your position. I'm not asking that.

25 Assuming you lost here and we said none of that

1 really applied, then wouldn't you have precisely the same  
2 practical problems that you have in your regular insurance  
3 business?

4 MR. BEALE: I think --

5 QUESTION: You're asking us to construe the  
6 statute in the way that will save you a lot of  
7 administrative costs that you have in the rest of your  
8 business.

9 MR. BEALE: I think that there is that and there  
10 is more. The additional factor that is involved here is the  
11 fact that this is a military benefit. It is a particularly  
12 unique form of benefit which is made available to  
13 servicemen, and that there are, as this Court has indicated  
14 in the Wissner decision which was reached some 30 years ago,  
15 Congress has set up a program of military benefits, a part  
16 of which was that military life insurance would be an  
17 attractive inducement to service.

18 QUESTION: Well, I understand. Those are reasons  
19 why you may be right, but what I'm saying is if you're wrong  
20 on the law --

21 MR. BEALE: Yes.

22 QUESTION: And I'm not suggesting you are -- you  
23 would just end up having the same kind of practical problem  
24 you do with the rest of your business.

25 MR. BEALE: I think that that is true, but except

1 that it would be magnified in degree if not in technical  
2 definition by virtue of the enormous number of these  
3 policies outstanding, the volatility of military existence,  
4 etc.

5 QUESTION: Well, big insurance companies have an  
6 enormous number of policies outstanding normally.

7 MR. BEALE: This is one of the most enormous, Your  
8 Honor.

9 QUESTION: To put it in another way, Prudential  
10 has no financial stake in this except the litigation expense.

11 MR. BEALE: And it -- well, it has an additional  
12 stake, Your Honor. As any other party, if you are  
13 associated with a program, you like it to work well.  
14 Prudential --

15 QUESTION: Well, that has nothing to do with the  
16 \$10,000.

17 MR. BEALE: \$20,000 Your Honor.

18 QUESTION: The stake.

19 MR. BEALE: No, no, nothing whatsoever, but there  
20 are interests broader than that. No one likes to be  
21 associated with a program which is going to constantly be  
22 subject to litigation, to challenges to the reliability of  
23 the beneficiary designation, to the retention of the  
24 proceeds in the hands of the designated beneficiary

25 QUESTION: Well, then, why go into the insurance

1 business?

2           MR. BEALE: That is an interesting question. The  
3 military -- the Congress has determined that this is a  
4 benefit that would be offered to the military. In setting  
5 up this particular form of military insurance, in contrast  
6 to prior forms, Justice Rehnquist, the government is not the  
7 insurer. The legislation specifically provided that a  
8 contract would be entered into between the Veterans  
9 Administrator and a private contract carrier to provide the  
10 coverage, and that is Prudential's role. It reinsures a  
11 great deal of this insurance with other parties, but it is  
12 standing in lieu of the government for purposes of this  
13 particular insurance program. So therefore, any ill effects  
14 of it reflect poorly on the carrier, poorly on the military,  
15 and may ultimately weaken the attractiveness of the life  
16 insurance as an inducement to military service.

17           QUESTION: I still have great problem with your  
18 only right being administrative convenience.

19           MR. BEALE: Well --

20           QUESTION: That's all, isn't it?

21           MR. BEALE: No, I think it is -- the right, Your  
22 Honor? No, that the right is created by the federal  
23 statute. The right in the designated beneficiary to -- in  
24 the serviceman first to designate his beneficiary absolutely is  
25 provided by statute. The right --

1 QUESTION: But how many interpleader cases does  
2 Prudential file in a year?

3 MR. BEALE: I cannot say, Your Honor.

4 QUESTION: It would be thousands, wouldn't it?

5 MR. BEALE: Oh, I think not.

6 QUESTION: And this would just be a drop in the  
7 bucket, wouldn't it?

8 MR. BEALE: No, we --

9 QUESTION: Isn't the only purpose is you just  
10 don't want to go through the formality of an interpleader  
11 suit?

12 MR. BEALE: No. As I have expressed previously,  
13 there are other purposes in addition to those that are  
14 directed solely from the point of view of Prudential as an  
15 insurance carrier. There are the aspects of the  
16 attractiveness of the benefit from the point of view of the  
17 military, from the point of view of the United States.

18 QUESTION: Oh, you are here on behalf of the  
19 United States.

20 MR. BEALE: No, the United States is represented  
21 by a representative from the Solicitor General's Office, but  
22 --

23 QUESTION: They're not quite in agreement with  
24 you, are they?

25 MR. BEALE: There is an interconnection on --

1 QUESTION: So how are you representing them and  
2 they don't agree with you?

3 MR. BEALE: I do not speak for the United States,  
4 Your Honor. There is an office which has been established --

5 QUESTION: So it's your -- it's a problem that  
6 Prudential just doesn't want to go through the ordinary  
7 interpleader suit.

8 Well, I ask, would the interpleader suit solve  
9 this?

10 MR. BEALE: Prudential could potentially have  
11 removed itself from the action by interpleading, yes.

12 QUESTION: It could have.

13 MR. BEALE: Yes.

14 QUESTION: And been free and clear to do whatever  
15 it wanted to.

16 MR. BEALE: Yes, it could have, but it chose not  
17 to do so believing that it was in the better interests of  
18 the legislation and of the purpose and the entire program --

19 QUESTION: This is out of the goodness of  
20 Prudential's heart.

21 MR. BEALE: I think it felt, as I indicated  
22 previously, that any time you are associated with a program,  
23 if it doesn't work well, then that reflects poorly on you,  
24 so there is some self-interest there as well, admittedly.

25 QUESTION: Yes, but you don't have to bother us



1 with it.

2 MR. BEALE: Well, that is true, but in attempting  
3 to protect our self-interest we are defining here, or  
4 attempting to urge the Court to recognize a clearly  
5 established, federally created right which stands in  
6 substantial opposition to a state interest, and attempting  
7 to preserve the integrity of that federally created right,  
8 and we stand, argue for this position because of this  
9 contractual relationship between the government and the  
10 private insurance carrier in this particular case.

11 QUESTION: Mr. Beale, what if you had a case in  
12 which there was a change of beneficiaries, and the first  
13 beneficiary alleged that the second beneficiary had caused  
14 the decedent to change the beneficiaries by use of duress or  
15 fraud or something of that character, and so there really  
16 wasn't a voluntary choice? What would you do if you had  
17 that kind of a plight? Would you say you must pay the  
18 allegedly -- notwithstanding the allegedly -- the alleged  
19 fraud?

20 MR. BEALE: I think so, Your Honor, yes, and the --

21 QUESTION: There is no way of -- say a man just,  
22 he changed the beneficiaries at the point of a gun or  
23 something like that was alleged, he still -- the second  
24 beneficiary still gets the money?

25 MR. BEALE: That would be the position we would

1 take, Your Honor, yes, and if there is a cause of action  
2 over, it's against the party who caused the wrong in a  
3 separate action, or against the action of that party's  
4 estate as might have been the case here.

5           Their case was tried on stipulated facts. The  
6 Superior Court ruled that it -- that the Supremacy Clause  
7 did control the situation, that it could not make any award  
8 or order in favor of the minor children, that it was  
9 precluded from doing so by the federal statute and  
10 regulations.

11           The Maine Supreme Court interestingly, in  
12 reversing, held that there was no Supremacy Clause at issue  
13 here because there was no conflict between the stated  
14 federal purpose in enacting the military insurance program  
15 and the competing -- and the state interest in enhancing its  
16 state court divorce decrees. We find this inconceivable as  
17 a proposition of law. I think that it's clear that when the  
18 money goes to one party under one program and would go to  
19 another under the state court's award, that that's clearly a  
20 conflict.

21           We urge the Court to consider the unique military  
22 character of this benefit. The -- we think that the Maine  
23 court was clearly wrong, and that this Court in its McCarty  
24 decision, in attempting to focus on a federal enactment  
25 which clearly set forth a federal order of precedence to

1 which a state interest in the family law area did a  
2 substantial and meaningful harm has made it clear that in  
3 referring to the military beneficiary designation provisions  
4 at issue in *Wissner*, that that was a model for both the  
5 Court's opinion and the dissent on the federal statute in  
6 which the federal interest is enunciated with force and  
7 clarity to which the competing state interest did  
8 substantial harm, and it was resolved in favor of a  
9 determination of preemption. That preemption issue was  
10 determined in favor of the federal interest by virtue of the  
11 Supremacy Clause.

12           QUESTION: Do you suggest, Mr. Beale, that we  
13 can't decide against you without overruling *Wissner*?

14           MR. BEALE: *Wissner* was technically a community  
15 property case, Your Honor, and not one involving issues  
16 directly.

17           QUESTION: Well, it was an NSLI, too, and not --

18           MR. BEALE: It was NSLI, but the beneficiary  
19 designation provisions and the spendthrift provisions, the  
20 anti-attachment provisions of the two statutes are virtually  
21 identical.

22           QUESTION: Well, I repeat my question: do you  
23 think we can decide against you without overruling *Wissner*?

24           MR. BEALE: I think it is possibly, Your Honor, by  
25 -- simply by virtue of the fact that there is a distinction

1 between a community property interest and another interest  
2 at issue here, but I would urge the Court to adopt the same  
3 rationale that is embodied in Wissner, Hisquierdo and  
4 McCarty.

5 QUESTION: There's another difference, too, in  
6 that the policy holder there had not made any commitment not  
7 to designate anybody else as a beneficiary, but here he did.

8 MR. BEALE: That is true, but he subsequently made  
9 another, perfectly valid beneficiary designation.

10 QUESTION: I understand, but that's a difference  
11 between the two cases.

12 MR. BEALE: But there is a difference in the two  
13 cases.

14 QUESTION: Wissner, there was only one beneficiary  
15 designation. The question was whether it was a good one.

16 MR. BEALE: That is right, and Wissner is not a  
17 divorce situation either.

18 I would reserve the balance of my time.

19 CHIEF JUSTICE BURGER: Mr. Schwartz?

20 ORAL ARGUMENT OF JOSHUA I. SCHWARTZ, ESQ.,

21 AMICUS CURIAE

22 MR. SCHWARTZ: Mr. Chief Justice, and may it  
23 please the Court:

24 The Servicemen's Group Life Insurance program,  
25 which is the subject of this case, is an important feature

1 of the United States Military Personnel Policy, which was  
2 adopted with the intention that it alleviate a unique  
3 hardship of military service, which is the simple fact that  
4 meaningful commercial life insurance is not available to  
5 servicemen protecting them against the thing that their  
6 loved ones most need, that is, the extra hazards of military  
7 service in combat conditions or other war hazards. The  
8 program was adopted to boost morale of service members by  
9 making available a safe, convenient, sure form of insurance  
10 protection for anyone that the service member might choose  
11 to favor with these benefits.

12           As of the moment, there are over 3 million  
13 Servicemen's Group Life Insurance policies in effect, and  
14 the insured service members live in all 50 states in the  
15 United States.

16           The United States has participated as amicus  
17 curiae in this case in this Court because it has substantial  
18 interest in ensuring that the proceeds of policies issued  
19 under this program are distributed in accordance with the  
20 intentions of the Congress, and it might be appropriate to  
21 suggest that in response to Mr. Justice Rehnquist's question  
22 early out to Mr. Beale, that while we do not, the Government  
23 is not here speaking particularly for Richard Ridgway, I  
24 suppose that we are closest to that status in the sense that  
25 the interest of the United States is essentially the

1 interest of service members generally.

2           QUESTION: When you say distributed with -- in  
3 accordance with the intent of Congress, don't you actually  
4 mean with the intent, in accordance with the intent of the  
5 serviceman?

6           MR. SCHWARTZ: Yes. We read the statute, and we  
7 think it is quite plain on its face that what Congress  
8 intended is that whatever the service member intended be  
9 followed through so that the two merge in this case, in the  
10 instance where the service member has designated a  
11 beneficiary.

12           In the government's view, the decision of the  
13 Supreme Judicial Court of Maine fails to accord proper scope  
14 and effect to two provisions of the Servicemen's Group Life  
15 Insurance Act which effectively grant each service member  
16 insured under this program the right to determine who should  
17 determine the proceeds of his, his or her insurance policy,  
18 and to insulate those proceeds from any form of collateral  
19 attack whatsoever.

20           The first provision of the Act which is in our view  
21 significant here is the provision which provides, as I was  
22 just discussing, that the service member has the prerogative  
23 to designate any person to take the proceeds of the  
24 insurance, and there can be no question that Congress  
25 understood quite clearly that this was a broad leave to the

1 servicemen. On the floor of the Congress, Represent Everett  
2 as quoted in our brief, stated, this bill permits you to  
3 leave your insurance to your church, your college, or to  
4 your best friend. Clearly Congress had no illusions as to  
5 the scope of the license accorded the service member.

6           In so doing, Congress further went on to provide  
7 that if no designation were made, the proceeds be paid in  
8 the first instance to a widow or widower, in the second  
9 instance if no such widow or widower were available, to any  
10 surviving children or descendents of those children, then on  
11 to a parent, and finally, the last two options were to the  
12 executor or administrator of an estate or to any next of kin  
13 prescribed in accordance with state law.

14           QUESTION: But wasn't his designation of  
15 willingness to continue the policy in force for the children  
16 in effect an expression of willingness to do that?

17           MR. SCHWARTZ: Well, that may well be, Justice  
18 Rehnquist, but it fails to accord with the statutory  
19 standard in several respects. In the first instance, the  
20 statute provides that the designation, to be effective, must  
21 be received in writing in the service office. Furthermore,  
22 the regulations which were adopted contemporaneously with  
23 the initial enactment of the statute, and which are due some  
24 deference, have been continuously in force for fifteen or so  
25 years now, provide that the right to change the beneficiary

1 is retained at all times, and we believe this is consistent  
2 with the statutory language which expressly provides that  
3 the benefits be paid to whomsoever he designates, and that  
4 therefore he has the right to change his mind.

5           But whether or not that is true, the additional  
6 point which was raised earlier was the fact that this was  
7 not receiving in writing. In fact, although the record is  
8 somewhat unclear on this point and the government obviously  
9 has no view on the matter, it appears that there was not in  
10 fact, likely was not a written separation agreement, so  
11 there is failure to comply with the requirements of  
12 designation of intent in that respect, and --

13           QUESTION: Would the government's view be  
14 different if it had received the necessary writing required  
15 by the regulation?

16           MR. SCHWARTZ: No. The government's view would be  
17 the same, but we would think it a closer case.

18           For instance, it might be reasonable -- and we  
19 would think it might be reasonably done by Congress, if  
20 Congress deems it appropriate -- Congress could provide that  
21 in the event that a separation agreement is entered,  
22 particularly if it were embodied in a divorce decree, that a  
23 registered copy, certified by the clerk of the court, duly  
24 filed with the Servicemen's Group Life Insurance office in  
25 Newark, New Jersey, providing that there be an irrevocable



1 designation might have that effect.

2           Now, obviously those aren't the facts here both  
3 because that is not what occurred and that Congress hasn't  
4 done so, and we would think it is Congress's prerogative to  
5 do that. But in any event, there isn't a clear, written,  
6 unambiguous, final assertion of intent so that while we  
7 think the case is somewhat harder because of the oral  
8 separation agreement, we don't think that would be  
9 dispositive here.

10           QUESTION: Well, that puzzles, that argument  
11 puzzles me a little because there was a clear, unambiguous  
12 designation of the first wife as the beneficiary.

13           MR. SCHWARTZ: Of --

14           QUESTION: Of the first wife as the beneficiary,  
15 isn't that true?

16           MR. SCHWARTZ: Prior to the --

17           QUESTION: Prior to the divorce.

18           MR. SCHWARTZ: Yes.

19           QUESTION: So that what -- I mean, I don't see how  
20 the case would be any different if you received an amendment  
21 saying, well, instead of going just to the wife, going to  
22 the wife for the benefit of the children, isn't it still the  
23 same case?

24           MR. SCHWARTZ: Well, clearly on the --

25           QUESTION: Your view, as I understand it, is the

1 statute gives the man the absolute right to change  
2 beneficiaries no matter how faithfully he has promised not  
3 to do so and how many courts have ordered him not to do so.  
4 He has a federal right to change beneficiary in breach of a  
5 separation agreement.

6           MR. SCHWARTZ: We would suggest that that is  
7 correct. On the other hand, as an alternative argument, we  
8 would suggest that if -- if the effect of a court order is  
9 to somehow limit that -- and we would suggest that a state  
10 court doesn't have the power under the statute to so order  
11 -- that may not be enforced against the proceeds of the  
12 policy, and obviously we have no information or view as to  
13 whether, whether there are other assets available here, but  
14 we think it is not a small point that a distinction be drawn  
15 between enforcement of his promise as opposed to imposition  
16 of a constructive trust on the proceeds.

17           It seems to us that one of the things that is  
18 essentially different about this military service policy  
19 from other life insurance situations, putting aside the  
20 convenience of the insurer or anything such as that, is that  
21 it is a program intended for mass application for people  
22 sometimes serving overseas. It is intended to be simple.  
23 Congress designed it so that one is presumptively enrolled  
24 unless one opts out.

25           In the discussion in the legislative history you

1 find references to things such as the fact that that was  
2 intended to cover POWs in Vietnam. It was all intended to  
3 be very simple, cut and dried so that the serviceman might  
4 know that when he signed on this form that is provided by  
5 the military, which is within -- a copy of which is within  
6 the record, that he could rest assured that that beneficiary  
7 would receive those proceeds.

8           And we would submit that the Maine court, in  
9 supposing that by getting the insurance company off the hook  
10 as they purported to view, took a very restrictive view of  
11 what Congress intended. We would suppose that, all other  
12 things being equal, Congress would be more content to have  
13 Prudential litigating this than to have Donna Ridgway or  
14 people in her position faced with the burden of litigating  
15 this. We would suppose that part of what Congress meant was  
16 not only that there be financial security, but that this  
17 lawsuit not have occurred, and yet it obviously has, and  
18 therefore we share the view that a clear judgment of this  
19 Court having the effect that this insurance policy simply  
20 could not be an asset, could not be a chip in the bargaining  
21 in a separation agreement process would be beneficial.

22           The Respondents have suggested that that would be  
23 anomalous, make the insurance policy worthless and so on,  
24 but in many respects that would place this insurance on a  
25 similar basis -- on a basis similar to other insurance.

1 Other insurance may be cancelled for nonpayment of premiums,  
2 it may be cancelled because one is no longer eligible for  
3 health reasons, and it is, I think most divorce lawyers  
4 know, a very risky asset to take in a separation agreement,  
5 and contrary to what Respondents suggested, it would  
6 probably be beneficial were that clear to all counsel. And  
7 certainly a judgment of this Court to that effect would do  
8 so.

9           One other point I'd like to address is that there  
10 really can't be any question here that Congress was aware  
11 that it was superseding the application of state law in  
12 providing the right to designate the beneficiary by virtue  
13 of the fact that Congress did not simply ignore the  
14 existence of state law. In the table of order of  
15 precedence, down at the bottom, when you get to No. 5 and  
16 No. 6, referring to the executor of the estate or next of  
17 kin controlled by state law, those effectively incorporate  
18 state law. So Congress, aware of what it was doing, placed  
19 state law down at the bottom of the list.

20           The government's interest in this case is  
21 obviously not identical with Sergeant Ridgway's, and we  
22 don't particularly have a brief for the facts of this case.  
23 Our brief is obviously for the program, and we suggest that  
24 in general it would be best if the sanctity of the  
25 serviceman's designation were upheld in all respects, and

1 that if, as Congress may deem it appropriate to devise a  
2 system whereby effect may be given to a state judgment, that  
3 is best fashioned by Congress.

4           In this regard, it might be worthwhile to point  
5 out that subsequent to the filing of the briefs in this  
6 case, Congress has adopted legislation which alters the  
7 result in *Hisquierdo*, doesn't overturn the Court's decision  
8 nor suggest that it was wrong. It creates a uniform federal  
9 solution under the Railroad Retirement Act which Congress  
10 deemed equitable. It is national in application. It does  
11 not turn on whether it's a community property state or not.  
12 Obviously this is something the Court could not do, could  
13 not have done in *Hisquierdo*. And the newspapers also tell  
14 us tha Congress is considering uniform national solutions to  
15 introduce some kind of equity for divorced spouses which  
16 would alter the result in *McCarty* but not suggest that it be  
17 overruled directly.

18           These are matters which Congress is clearly  
19 addressing closely. It is much more within the province of  
20 Congress to make the kind of fine adjustments which would be  
21 appropriate, perhaps. The judgment is for Congress in  
22 certain circumstances, but there seems to no need to subject  
23 the beneficiaries of a Servicemen's Group Life Insurance  
24 policy to the kind of constructive trust which was imposed  
25 in this case.

1           The Court in its recent decisions in Hisquierdo  
2 and McCarty has outlined a two-step test for judging matters  
3 such as this which involve the question of preemption of  
4 state law relating to marital property when it is applied to  
5 a federal benefit program. We would submit that on the  
6 facts of this case, both of those elements are satisfied  
7 because there is both a conflict between the state right  
8 based on state law which is asserted, and a clear impairment  
9 of the federal purpose sufficient to require that the state  
10 right not be recognized.

11           The purpose of the program as we understand it was  
12 to ensure that the serviceman's intent be enforced, and  
13 under the circumstances, we suggest that reversal of the  
14 judgment of the Maine court is appropriate.

15           Thank you, Mr. Chief Justice.

16           CHIEF JUSTICE BURGER: Very well.

17           Mr. Webber?

18           ORAL ARGUMENT OF CURTIS WEBBER, ESQ.,

19           ON BEHALF OF RESPONDENTS

20           MR. WEBBER: Mr. Chief Justice, and may it please  
21 the Court:

22           I am sorry that I have to begin by apologizing for  
23 the numerous typographical errors in the brief which I  
24 discovered when I was preparing for this argument. Rather  
25 than taking the Court's time with simply detailing some of

1 those which may be confusing, I propose to submit something  
2 to the Clerk within the next few days indicating those areas  
3 where there may be some confusion because of the  
4 typographical mistakes that were made.

5           This was a case in which the serviceman made an  
6 agreement with his wife prior to a divorce, a fact which was  
7 not mentioned by Mr. Beale in his description of the facts,  
8 by which he committed himself to make his service life  
9 insurance payable to his children. He accepted the benefits  
10 of that contract. There were negotiations between the  
11 parties which presumably permitted him to perhaps make lower  
12 support payments, and then he subsequently refused to honor  
13 it.

14           He consented to the entry of a divorce decree  
15 which made his obligation to make these insurance proceeds  
16 payable to his children part of the court order, and he  
17 later ignored that.

18           I think that on these facts -- well, I should add  
19 also that finally his second wife, Petitioners argue, is  
20 entitled to retain the proceeds even though they were  
21 certainly a windfall to her and a result of her husband's  
22 illegal act in defiance of the court decree and his own  
23 agreement.

24           Now, on these facts, I think we're entitled to ask  
25 what overriding policies are there which would compel this

1 Court to reach the result which I would characterize as  
2 totally absurd and unfair.

3 QUESTION: Would the Supremacy Clause help?

4 MR. WEBBER: Well, Your Honor, I don't really  
5 believe that the Supremacy Clause is at issue here because I  
6 don't believe there's really a conflict between the state  
7 law in imposing constructive trust, and the federal statute.

8 QUESTION: Are you resting that on some theory  
9 that the insured is not free to change the beneficiary under  
10 this statute, under this statutory scheme?

11 Is he or is he not free to change any time he  
12 wants to?

13 MR. WEBBER: Well, we have taken the position that  
14 he is free and that a state court order to the contrary  
15 would be superseded by the Supremacy Clause. It is  
16 conceivable, however, that Congress did not intend to carry  
17 the authorization to servicemen that far, and that the  
18 intention was solely to permit changes of beneficiaries  
19 where this would not be in contravention of state law.

20 However, the right to change the beneficiary is  
21 still subject to all of the common law doctrines which have  
22 clearly over the years made it clear that the beneficiary of  
23 a -- of insurance policies such as this may not keep the  
24 proceeds where to do so would be to result in unjust  
25 enrichment.



1           Now, several of the Justices asked the attorney  
2 for Prudential a question which has been puzzling me, which  
3 is, why are they here? The administrative inconvenience  
4 argument is difficult for me to follow since the Maine  
5 Supreme Court made it clear that the constructive trust  
6 theory applies only to the proceeds in the hands of the  
7 beneficiary, so that the insurance company may safely pay  
8 the beneficiary in every case unless they are subject to  
9 some court restraint directing them not to do so.

10           QUESTION: Well, isn't one of the reasons they're  
11 here is because we granted their petition for certiorari?

12           MR. WEBBER: That's a practical, certainly a  
13 practical reason they're here.

14           QUESTION: One of the reasons they're here.

15           MR. WEBBER: As several Justices indicated or  
16 implied in their questions, in any case where an insurance  
17 company in the position of Prudential has been faced with  
18 conflicting demands for policy proceeds and has been made  
19 subject to a court order not to pay, it can simply resolve  
20 the question by interpleading the parties. This is  
21 certainly a nominal expense which would be justified by the  
22 object of preventing fraud and unjust enrichment as occurred  
23 here.

24           Now, I would also raise a question as to the  
25 interest of the United States in these proceedings. The

1 Solicitor General's brief begins with a section entitled  
2 Interest of the United States, and in that portion of his  
3 brief he indicates that the purpose of the servicemen's life  
4 insurance program is in part, "designed to render military  
5 service more attractive" and also, "to maintain morale of  
6 service members."

7           Now, in examining the interest of the United  
8 States, we must keep in mind the fact that as the Court said  
9 in *Hisquierdo*, local law dealing with family law problems  
10 will be followed by this Court unless "there is major damage  
11 to clear and substantial federal interest." The Solicitor  
12 General's brief does not explain why there is any damage to  
13 federal interest as a result of the holding of the court  
14 below, and what objectives will be frustrated by that  
15 holding.

16           I find it hard to imagine that any prospective  
17 enlistee in the military services would be dissuaded from  
18 doing that if he were told by a recruiter that we offer a  
19 program of group life insurance at low cost, but I must warn  
20 you that if you intend to defraud your dependents at some  
21 later time, under the holding of the Maine Court and the  
22 Supreme Court of the United States you will not be able to  
23 do so. That sounds like a ridiculous proposition, but it  
24 certainly --

25           QUESTION: Maybe it would be more appropriate to

1 put that in the affirmative, if they informed him that he  
2 was always free to change the beneficiary at any time he  
3 wanted under all conditions. Anything wrong with that?

4 MR. WEBBER: Well, I --

5 QUESTION: That's true. That's true when you buy  
6 private life insurance, isn't it?

7 MR. WEBBER: But that masks the concern of the  
8 Solicitor General which is only in the case dealt with here,  
9 which is limited to those circumstances where there is  
10 unjust enrichment coupled with a fiduciary relationship or  
11 fraud.

12 QUESTION: Suppose you add to the hypothetical  
13 that when the recruiter approaches him, his wife is with  
14 him? Do you think that the statement that the Chief Justice  
15 suggested that the recruiter make would give her a brighter  
16 vision of military service?

17 MR. WEBBER: Well, you are assuming his  
18 hypothetical rather than mine, where the recruiter --

19 QUESTION: Yes. I mean, wouldn't she be somewhat  
20 upset knowing that -- and perhaps attempt to dissuade him  
21 from entering the military service if she knew that he could  
22 change the beneficiary on the policy regardless of any  
23 estate law policy or interest that she might otherwise  
24 accrue in the policy?

25 MR. WEBBER: I assume that is conceivable.

1 QUESTION: When that statute was passed, weren't  
2 there draftees? Weren't there?

3 MR. WEBBER: That was during the Vietnam  
4 conflict. I'm not sure whether there was a draft -- yes,  
5 there was a draft then.

6 QUESTION: Well, were you able to resist the draft  
7 on the grounds that you didn't like the life insurance  
8 policy?

9 (Laughter.)

10 QUESTION: Was that a good ground?

11 MR. WEBBER: No, but that's not the ground offered  
12 by the Solicitor General as supporting the interest of the  
13 United States, as an inducement --

14 QUESTION: I'm not bound by his argument.

15 MR. WEBBER: There's nothing to interfere with the  
16 operation of the service life insurance program as it is  
17 outlined by Congress except in these rare cases where unjust  
18 enrichment and fraud would result. In those cases it would  
19 be stopped.

20 And I ask what interest of the United States is  
21 adversely affected by that.

22 Now, I have researched the legislative history  
23 insofar as it is available to us in Maine, and I can find  
24 nothing, not a hint that Congress intended to carry the  
25 rights of designated beneficiary in the Servicemen's Group

1 Life Insurance Act this far, to this extreme. In fact, we  
2 know from the 1974 amendments to the Social Security Act  
3 that Congress had lost patience with servicemen who were  
4 refusing to support their families, and I suggest it is  
5 unlikely that they would have been in favor of the kind of  
6 result which Petitioners here ask this Court to reach.

7           Perhaps it's a point so obvious that it doesn't  
8 need to be stated, but it does seem to me that the result  
9 which Petitioners request this Court to reach also  
10 encourages servicemen to disregard their legal and moral  
11 obligations, in this case, in addition, the serviceman's  
12 obligation under his own contract, as evidenced by the  
13 separation agreement with his wife.

14           QUESTION: Mr. Webber, let me ask you, is there an  
15 estate of the decedent in existence?

16           MR. WEBBER: The estate was insolvent as far as I  
17 understand, Your Honor.

18           QUESTION: Well, as far as you understand. Don't  
19 you know?

20           MR. WEBBER: I -- well, our information was not  
21 very good. Mr. Ridgway died in Alabama, and that was some  
22 distance away, and communication was screened because of the  
23 fact that there was another marriage.

24           QUESTION: And you came into this case only by our  
25 appointments at a fairly recent date, is that correct?

1 MR. WEBBER: No.  
2 QUESTION: How long have you been in it?  
3 MR. WEBBER: I have been in it since the time of  
4 the divorce.

5 QUESTION: I see.

6 QUESTION: We just confirmed an appointment that  
7 had been made before.

8 MR. WEBBER: That's correct.

9 QUESTION: Let me ask you one other question.

10 Suppose that the Sergeant was limited in his  
11 recognition of credit and to all of his creditors he  
12 indicated, oh, I have a national service life insurance  
13 policy and I have made it payable to my estate, and I shall  
14 not change that designation. Does your theory of the case  
15 go so far as to protect creditors?

16 MR. WEBBER: No, it doesn't, Your Honor. We would  
17 say --

18 QUESTION: Where do you draw the line?

19 MR. WEBBER: Pardon?

20 QUESTION: Where do you draw the line as between a  
21 first wife, or children, rather, and creditors?

22 MR. WEBBER: I draw the line at the same place  
23 that this Court drew it in the Wissner case, between those  
24 obligations which arise out of the marital or parental  
25 obligation, which are not commercial transactions, and those

1 which are more commercial in nature. In that case the  
2 Court, of course, held that a community property  
3 relationship was that kind of a quasi-commercial  
4 relationship.

5           Now, Justice Stevens asked a question earlier  
6 which is connected with the next point I'd like to address,  
7 that is, that although the Petitioners have emphasized the  
8 absolute right of a serviceman to change the beneficiary  
9 under his policy and also have insisted there must be strict  
10 compliance with that designation, the fact is that there are  
11 a number of examples which I assume that Petitioners would  
12 acknowledged in which equitable principles have been allowed  
13 to prevail over the strict language of a statute or a  
14 contract in which a particular person is designated as the  
15 beneficiary.

16           QUESTION: Over a federal statute?

17           MR. WEBBER: Yes. Let me give you some examples.

18           What if, in our case, Donna Ridgway had -- the  
19 second wife, had been advised by Richard that he was having  
20 second thoughts and decided he wanted to name the children  
21 after all and she killed him to prevent that from happening,  
22 hoping to get away with it but it was found out? This Court  
23 -- excuse me, the circuit courts have held, and I think  
24 perhaps this Court has held under somewhat similar  
25 circumstances that when a person who murders the insured is

1 not entitled to the proceeds of the policy on equitable  
2 principles, and in the Sixth Circuit, held under language  
3 which was identical to that in the Servicemen's Group Life  
4 Insurance, this being language dealing with federal  
5 employees, which has the same language in it about the right  
6 to designate beneficiaries, that the murderer could not  
7 receive the proceeds of the policy.

8           Now, suppose in this case Donna had been told by  
9 Richard that he wanted to change the beneficiary back to the  
10 children and he gave her a form to send to New Jersey which  
11 would have accomplished that, but she surreptitiously  
12 destroyed it and did not do what he wished. This is a case  
13 where unclean hands on the part of the claimant, Donna,  
14 would bar her under well recognized decisions from  
15 collecting the insurance proceeds. And again, this is an  
16 example of a situation where equitable principles were  
17 allowed to prevail over language of the statute.

18           And we cited cases in our brief in which this was  
19 done. These are cases, again, involving the federal  
20 employees life insurance program.

21           Now, suppose in our case that Donna had agreed  
22 with Richard, again supposing he had second thoughts about  
23 changing the beneficiary designation, that she would hold  
24 the proceeds for the benefit of his children and would make  
25 sure that they received them, and he died subsequently,



1 believing that that would be the case. We cited two cases  
2 in which exactly this was done and a constructive trust was  
3 imposed and the language of the statute involved was  
4 identical with that presented in the case of Bonner.

5 QUESTION: But there you have evidence of conduct  
6 which interfered with the will and desire of the insured.  
7 You don't have that here.

8 MR. WEBBER: But, Your Honor, the point of the  
9 example is not that there is interference with carrying out  
10 the will of the insured, but the fact that despite  
11 Petitioners' contention that absolute compliance with the  
12 beneficiary designations must be insisted upon in all cases,  
13 that in fact there are numerous situations where courts have  
14 invoked equitable principles not to comply exactly with  
15 those policy designations.

16 QUESTION: Can you give me a case where equitable  
17 principles ran up against the sovereignty clause, the  
18 Supremacy Clause?

19 MR. WEBBER: Yes.

20 QUESTION: That's the kind of case I'd be  
21 interested in.

22 MR. WEBBER: All right.

23 I'd like to talk about two cases in particular  
24 that involved United States Savings Bonds. One is Free v.  
25 Bland, which was decided by this Court in 1964, and the

1 second is Yiatchos --

2 QUESTION: Is that in your brief? Is that in your  
3 brief?

4 MR. WEBBER: Yes, it is, Justice Marshall.

5 QUESTION: Okay. I missed it. It's not the first  
6 one I missed.

7 MR. WEBBER: Free v. Bland is cited on several  
8 pages in our brief.

9 The Yiatchos case is cited also at three different  
10 pages in --

11 QUESTION: I just want one place. Where is it  
12 cited one place in your brief?

13 MR. WEBBER: Well --

14 QUESTION: What page?

15 MR. WEBBER: Yiatchos is cited on pages 3, 16 and  
16 17.

17 QUESTION: Three --

18 MR. WEBBER: And Free is cited on 3, 16, 17, and  
19 18.

20 The case of Free v. Bland, decided in 196 --

21 QUESTION: You also cite Hisquierdo as saying  
22 that, too.

23 MR. WEBBER: Hisquierdo distinguished,  
24 distinguished those two cases.

25 QUESTION: Oh, I see. I missed it.

1 MR. WEBBER: In Free v. Bland, Mr. Free bought a  
2 Savings Bond in the name of himself and his wife. Mrs. Free  
3 died, and her heirs contested the fact that Mr. Free was to  
4 take, as a survivor, take the full amount of the bond. This  
5 Court held that the community property principle would have  
6 to be subordinated to the Treasury regulation specifying  
7 that the survivor take the whole thing, but it pointed out  
8 and noted a concession by the Solicitor General who appeared  
9 as an amicus in that case that Federal bonds would not be "a  
10 sanctuary for a wrongdoer's gains."

11 The Yiatchos case followed this, the case of Free  
12 v. Bland two years later. In that case, Mr. Yiatchos bought  
13 a Savings Bond, but this time not in the name of himself and  
14 his wife. He used community property, and this was a  
15 community property state. The bonds were purchased in his  
16 own name and the name of his brother. Upon Mr. Yiatchos'  
17 death, there was a contest between his heirs and his brother.

18 QUESTION: And of course, the other side says  
19 that's different, a community state, property state is  
20 different from Maine.

21 Isn't that their position?

22 MR. WEBBER: No, this case did not turn --

23 QUESTION: Well, my question was isn't that their  
24 position, not that I agree with it.

25 MR. WEBBER: Yes, yes, it is their position.

1 I'd like to quote the Treasury regulations just  
2 very briefly which were in effect covering the bonds in that  
3 case. They stated that when either co-owner dies, "the  
4 survivor will be recognized as the sole and absolute owner,"  
5 and also, "no judicial determination will be recognized  
6 which would defeat or impair the rights of survivorship  
7 conferred by these regulations." And I would suggest that  
8 these are as definitive and positive expressions of federal  
9 intent as can be found in the cases brought under the  
10 Servicemen's Group Life Insurance.

11 Yet despite those regulations, this Court held in  
12 Yiatchos that because it was found by the court below that  
13 there had been a constructive fraud on the part of Mr.  
14 Yiatchos in using community property in light of his  
15 fiduciary relationship as a manager of that property, to the  
16 disadvantage of his wife, that it would not permit the  
17 federal rules regarding the disposition of property to  
18 become an instrument of fraud.

19 QUESTION: Well, the difference is, is it not --  
20 and I'm not an authority on community property law -- but is  
21 the difference that at the time that they are alive they  
22 owned the property jointly, which is not true in Maine.

23 MR. WEBBER: That's correct.

24 QUESTION: Isn't that the difference?

25 MR. WEBBER: But there's a difference in the fact

1 that Maine is not a community property state, but a  
2 difference which is not applicable to the principle which I  
3 am pressing upon the Court at this point, which is that this  
4 Court overrode the clear language of the Treasury  
5 regulations dealing with the disposition of the Savings  
6 Bonds when it found that to do so would be to permit a fraud.

7           QUESTION: I guess you're suggesting that although  
8 normally the premiums are paid by withholding from the  
9 serviceman's pay, I guess these policies often continue  
10 after the man leaves service, and presumably he could pay  
11 the premiums, the wife might -- made an agreement to have  
12 the wife pay the premiums, you have the same sort of facts  
13 you had in Yiatchos, the wife pay the premiums on the  
14 understanding he wouldn't change the beneficiary, then he go  
15 ahead and change it. But the government says there's a  
16 federal interest in letting him change the beneficiary, even  
17 though the wife pays the premium, and he agrees that that's  
18 in the consideration he won't change it.

19           MR. WEBBER: Is that a question?

20           QUESTION: I'm just thinking out loud, I guess,  
21 but that's your analogy. I think you're trying to make the  
22 analogy that even in a case -- that in that case, because  
23 the wife contributed to the purchase of the bonds, it was a  
24 fraud on her to -- for him to claim the full benefit, and  
25 the same kind of thing could happen with insurance. That's

1 your argument I guess.

2 MR. WEBBER: Essentially. The case indicated that  
3 the -- I don't recall. I think it might have been -- well,  
4 I don't recall the name of the state, but the state court  
5 held -- I think it was Washington.

6 QUESTION: Washington.

7 MR. WEBBER: That the husband is, under community  
8 property law, the manager of the community property has a  
9 fiduciary relationship to the spouse in that situation, and  
10 it was a breach of this fiduciary relationship which  
11 defrauded her of her interest in the community property  
12 which caused this Court to say we'll not permit the Treasury  
13 regulations to be used as an instrument of fraud in this  
14 instance.

15 In Hisquierdo, this Court characterized those two  
16 cases, distinguished those two cases, and Wissner, as being  
17 -- excuse me, it distinguished that case from Wissner, those  
18 two, as being ones -- one in which survivorship rules in  
19 federal insurance will prevail unless "fraud or breach of  
20 trust occurs."

21 So in Hisquierdo, this Court recognized that  
22 thread of distinction that was running in those other three  
23 cases.

24 Now, I'd like to speak for a moment about  
25 something that Mr. Schwartz commented on in the close of his

1 argument, that is, the practical consequences of the result  
2 which Petitioners seek in this case. I would submit that if  
3 the decision of the Maine Supreme Court were overruled that  
4 insurance policies under the Servicemen's Group Life  
5 Insurance Act will continue to be a trap for unwary persons  
6 and lawyers such as myself who aren't aware of the pitfalls  
7 and difficulties of transferring federal insurance, and with  
8 all due respect to this Court, I don't believe that even a  
9 decision of this Court would necessarily be calculated to  
10 get the word out to all persons who are practicing divorce  
11 law of the dangers of dealing with federal life insurance.  
12 I don't know how it is in other jurisdictions, but in Maine  
13 I know that there -- a very small minority of the  
14 practitioners read Law Week and keep abreast of events,  
15 especially in such esoteric fields of the law as this.

16           QUESTION: Of course, Wissner was decided in about  
17 1949.

18           MR. WEBBER: That's true, but Wissner really is  
19 not dispositive of this case.

20           QUESTION: I agree, it's not dispositive, but it  
21 represents a trend in the laws.

22           MR. WEBBER: But in that case the Court did  
23 distinguish the situation which would arise in a non- --  
24 where the obligation of the husband arose out of a marital  
25 obligation, and also, there was no -- as Justice Stevens

1 mentioned earlier, there was no separation agreement, there  
2 was no fraud on the spouse in that situation. So it really  
3 was quite different than the case of Bonner.

4           It seems to me that the Court should take account  
5 of the fact that ironically, if the result that the  
6 Petitioners seek is allowed, that Servicemen's Group Life  
7 Insurance policies will become assets that no one will know  
8 what to do with, assuming, for a moment, that lawyers  
9 practicing divorce around the country do become aware of the  
10 fact that there are problems in committing servicemen  
11 irrevocably to keep the beneficiaries as they agree to keep  
12 them in a divorce decree.

13           QUESTION: Well, with four million or more  
14 veterans, most of whom have this insurance, and many of whom  
15 get divorces, I suppose it's filtered around rather widely.

16           MR. WEBBER: All right, assume it -- let's assume  
17 now that the word does get around, as you suggest. Assume  
18 that there's a situation in which husband and wife and their  
19 attorneys are negotiating a settlement and a division of  
20 marital property, and one of the assets that is to be  
21 decided upon is the Servicemen's Group Life Insurance  
22 policy. Let's assume he doesn't have any other life  
23 insurance. He obligates himself to support the children, to  
24 provide for their medical care, perhaps, clothing allowance  
25 -- these are all things that were part of the agreement in



1 this case -- and then the parties say, well, what will we do  
2 in case you die? What will replace the money that you are  
3 now contributing to the children in these various ways?  
4 Obviously you look to the life insurance. Well, we can't  
5 look to the Servicemen's Group Life Insurance. If you  
6 assume a knowledgeable attorney, he'll advise the wife, no,  
7 you can't accept those. We'll have to insist before we can  
8 reach an agreement that the serviceman go out and buy  
9 private insurance so that you can be adequately protected.

10 QUESTION: Sometimes that is done, is it not, as  
11 part of a divorce settlement?

12 MR. WEBBER: I suppose it might be, but suppose  
13 the serviceman really can't afford to buy another, a second  
14 insurance policy, or suppose he has a medical condition.  
15 The parties are left in an impossible situation.

16 This would be particularly frustrating to a  
17 serviceman who knew in good faith he wasn't going to cheat  
18 his dependents as Sergeant Ridgway did, and in good faith  
19 wanted to make the proceeds of his insurance policy  
20 available to them, and he is being told by his wife and her  
21 attorney, we can't let you do it because we can't trust  
22 you. The constructive trust doctrine won't apply, no court  
23 order will apply, and there's nothing we can do to hold you  
24 to your agreement.

25 QUESTION: Mr. Webber, we are speaking

1 practicalities now. With a private policy I think one can  
2 have a beneficiary designation made irrevocable, and get the  
3 policy turned over to the wife, then wife.

4           Is there anything comparable on the governmental  
5 side? Is there a certificate that has to be turned in, do  
6 you know?

7           MR. WEBBER: To change the beneficiary?

8           QUESTION: Yes.

9           MR. WEBBER: Yes. You have to file a form in  
10 which you indicate --

11           QUESTION: Well, you file a form, but is there  
12 also a certificate that has to go in, do you know?

13           MR. WEBBER: I'm not aware of any.

14           QUESTION: So it isn't comparable to the private  
15 policy then.

16           MR. WEBBER: Well, I can't say that my experience  
17 with private policies is large enough to be able to answer  
18 that question intelligently, Justice Blackmun, but I'm  
19 certainly not aware of any way that if the Maine court is  
20 reversed, a serviceman's obligation expressed in a  
21 separation agreement and a divorce decree to keep the policy  
22 in force for the dependents can be enforced, and I would  
23 suggest that this result, if it were to take place, would be  
24 totally at odds with the express purpose of Congress in the  
25 legislative history to make insurance of this sort available

1 to protect the dependents of the servicemen in question.

2           As I indicated earlier, I could find no hint in  
3 the legislative history of any intention on the part of  
4 Congress to express the beneficiary the right of the -- to  
5 protect, I should say, the right of the serviceman to change  
6 his beneficiary, even, even when it resulted in fraud and  
7 unjust enrichment. But it is clear that Congress did intend  
8 these insurance proceeds to be available to protect the  
9 dependents of the serviceman, and this is a result which I  
10 would suggest would be frustrated if the Maine Supreme  
11 Court's decision is overruled.

12           CHIEF JUSTICE BURGER: Mr. Beale, I believe you  
13 have three minutes left.

14           ORAL ARGUMENT OF STEPHEN P. BEALE, ESQ.,  
15           ON BEHALF OF PETITIONERS -- REBUTTAL

16           MR. BEALE: Thank you, Mr. Chief Justice. May it  
17 please the Court:

18           In brief response to several points raised by Mr.  
19 Webber, first, as to the unjust enrichment item, the  
20 argument which Mr. Webber advances lose sight -- loses sight  
21 of one very fundamental, important point, which is that  
22 Donna, the second wife and designated beneficiary, is simply  
23 not unjustly enriched here in that she has done nothing  
24 wrong. She has committed no improper act herself. She was  
25 Sergeant Ridgway's legitimate wife. She remained his wife

1 at the time of his death. She --

2 QUESTION: Isn't the question of unjust enrichment  
3 a question of state law?

4 MR. BEALE: I think it probably would have been.

5 QUESTION: Hasn't the Supreme Court of the State  
6 of Maine decided it?

7 MR. BEALE: On these particulr facts, not to my  
8 knowledge, Your Honor.

9 QUESTION: Didn't they hold that there was unjust  
10 enrichment here?

11 MR. BEALE: I understand your question now.

12 Yes, they did in effect, and they not only  
13 declared that the remedy of a constructive trust would  
14 potentially be available, which the Superior Court had  
15 decided was not even available for it to consider because of  
16 the Supremacy Clause issue, the Maine Court went beyond that  
17 and sua sponte imposed the constructive trust on the  
18 proceeds without even remanding to the Superior Court.

19 QUESTION: Well, maybe they committed all sorts of  
20 errors of state law, but normally we don't review those.

21 MR. BEALE: True. But the central point is that I  
22 think that in contradistinction to what the Maine Court  
23 held, that Donna Ridgway was not unjustly enriched, in  
24 short, that holding is wrong.

25 As to the Supremacy Clause --

1 QUESTION: But again, is that relevant?

2 Would you agree with his example of say you've got  
3 a beneficiary who murders the policyholder? What about that  
4 case?

5 MR. BEALE: I think in that case, then, again,  
6 under this particular program, the proceeds ought to be paid  
7 absolutely to the --

8 QUESTION: The murderer?

9 MR. BEALE: -- designated beneficiary, and it is  
10 then incumbent upon the party whose interest has been  
11 damaged to proceed accordingly.

12 QUESTION: But that's what you're asking us to  
13 hold, that in that case, as this, pay the murderer.

14 MR. BEALE: That is correct, Your Honor.

15 As to the Supremacy Clause question, that the real  
16 issue here is not whether the Supremacy Clause applies or  
17 not, and whether there's a preemption issue, but how far the  
18 preemption extends. The Respondents' argument would have  
19 the Court hold that the preemption argument extends only to  
20 the mechanical payment of the proceeds to the designated  
21 beneficiary, and that the federal preemption then stops and  
22 a constructive trust may be imposed on the proceeds in the  
23 hands of the designated beneficiary.

24 Well, that's a hollow argument. It's clear that  
25 the intent here has to be that the federal preemption must

1 extend to the beneficial enjoyment of the proceeds. That  
2 point is made in the Hisquierdo decision, it's made again in  
3 the McCarty decision, that what is really at issue is where  
4 the beneficial enjoyment of the proceeds ends up and not the  
5 mere mechanical payment.

6           QUESTION: Well, it would solve the insurance  
7 company's problem if the trust didn't arise except in the  
8 hands of the named beneficiary.

9           MR. BEALE: Well, this gets us back --

10          QUESTION: And that you would be off the hook if  
11 you paid the named beneficiary, but then the trust would  
12 pick up on the proceeds in her hands.

13          MR. BEALE: That is nominally correct, Your Honor,  
14 but for the reasons we've discussed previously, we feel that  
15 it is to the greater benefit of the entire program because  
16 of the unique position that the insurance carrier holds in  
17 lieu of the government to ensure that that result does not  
18 obtain and that the proceeds are paid absolutely without  
19 restriction.

20          CHIEF JUSTICE BURGER: Thank you, gentlemen.

21          The case is submitted.

22          (Whereupon, at 2:27 o'clock p.m., the case in the  
23 above-entitled matter was submitted.)

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:  
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and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Sharon Conolly

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