Slayers and Soldiers: The Validity and Scope of the Slayer's Rule under the Family Servicemembers' Group Life Insurance Act

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SLAYERS AND SOLDIERS: THE VALIDITY AND SCOPE OF THE SLAYER'S RULE UNDER THE FAMILY SERVICEMEMBERS' GROUP LIFE INSURANCE ACT

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Abstract: The "slayer's rule"—a common law doctrine—precludes a murderer from financially benefiting from the victim's death by denying him or her the right to proceeds from the victim's life insurance policy. Some jurisdictions have extended this rule to disqualify the slayer's exclusive family members from receiving the victim's insurance proceeds as beneficiaries. Exclusive family members are those either not related to the victim or related to the victim only by marriage. The slayer's rule applies to federal group life insurance policies, such as the Servicemembers' Group Life Insurance Act (SGLI), which provides life insurance to servicemembers. Spouses and dependent children of servicemembers may also receive life insurance under the Family Servicemembers' Group Life Insurance Act (FSGLI). If the spouse or any of the dependent children covered under the FSGLI dies, the servicemember is the automatic beneficiary. If the servicemember is disqualified by the slayer's rule from receiving the benefits and has not designated a beneficiary, the statute provides an order of precedence for determining designation by law: the policy goes first to the widow or widower, and then to the children. If there are no children, the policy then goes to the servicemember's parents. When the servicemember-slayer's relatives receive the proceeds from the victim-spouse's FSGLI policy, the servicemember-slayer could benefit indirectly from the killing: the servicemember-slayer's family members may use the money to support the slayer, or the slayer may inherit or otherwise control the proceeds. This Comment analyzes the continuing validity and scope of the slayer's rule with respect to the FSGLI and identifies examples of how the statute's beneficiary provision leaves open the possibility that the servicemember-slayer could benefit from the killing. This Comment also addresses the policy concerns courts consider in determining whether to impose a bright-line, extended rule disqualifying the slayer's exclusive relatives. Finally, this Comment argues that absent explicit legislative intent to abrogate the slayer's rule, courts should strictly construe the FSGLI to preserve the rule and to disqualify the servicemember's exclusive family members when the servicemember is the slayer.

INTRODUCTION

On July 12, 2005, Spc. Brandon Bare, a soldier who had received a Purple Heart for combat injuries endured in Iraq, murdered his eighteen-year-old wife, Nabila Bare, by stabbing her at least seventy-one times with knives and a meat cleaver.¹ He had returned to Fort Lewis three

months earlier to recover from his injuries. Investigators found her body naked with a pentagram carved into her stomach, “knife-like objects around her head,” and a note on her stomach saying, “‘Til death do us part . . . .” Spc. Bare was charged and convicted of premeditated murder in May 2006.

Spc. Bare had a life insurance policy under the Servicemembers’ Group Life Insurance Act (SGLI), and his wife had a life insurance policy under the Family Servicemembers’ Group Life Insurance Act (FSGLI). Under the FSGLI, he is the automatic beneficiary on his wife’s life insurance policy. However, because he murdered her, the slayer’s rule bars him from recovering the proceeds. Instead, the proceeds from his wife’s policy were distributed under the statute’s order of precedence, or “by law,” to Spc. Bare’s father because the Bares had no children. Nabila Bare’s parents, now in debt primarily as a result of her funeral costs, are suing for the insurance payout. Meanwhile, Spc. Bare’s father allegedly has admitted that he plans to

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3. Mitchell, Soldier’s Trial, supra note 2.


5. Id.


7. See infra note 70–72 and accompanying text.


10. See Jowers, supra note 4
use at least a portion of the proceeds to establish a spending account for Spc. Bare while he remains in prison. 11

The slayer's rule—the principle of law that disqualifies Spc. Bare from recovering the proceeds from his wife's policy—stems from common law principles of equity and prohibits killers from benefiting from the act of killing. 12 Courts have not yet applied the slayer's rule to insurance policies procured under the FSGLI, which Congress added to the SGLI in 2001. 13 Nor have courts considered the situation in which the servicemember is the slayer, 14 the victim-spouse is not a servicemember, and the servicemember-slayer and non-servicemember spouse have no natural children. Instead, courts have only determined the payment of proceeds on the servicemember's policy under the SGLI where the non-servicemember spouse is the slayer. 15 In these situations, the courts have not identified a binding rule for determining whether the slayer's exclusive family members 16 may receive the victim-servicemember's life insurance proceeds. 17 These courts have struggled to balance the public policy concern underlying the slayer's rule—that persons should not benefit from their act of killing—with the consequences of imposing a bright-line, extended rule that denies the slayer's innocent exclusive family members 18 the proceeds. 19

11. See id.
14. See infra Part III. But see Jones v. Prudential Ins. Co. of Am., 814 F. Supp. 500, 500 (W.D. Va. 1993) (addressing situation where both spouses were servicemembers without applying the slayer's rule).
16. This Comment uses the phrase "slayer's exclusive family members" to refer to those family members who are not blood-relatives of the victim. For example, the slayer's children from a previous marriage are the slayer's exclusive family members, even though they are the step-children of the victim-spouse.
17. See Athmer, 178 F.3d at 476-77 (declining to decide the issue and affirming the lower court's decision to allow the slayer's exclusive family member to recover); Tolbert, 320 F. Supp. 2d at 1381-82 (applying a bright-line, extended slayer's rule to disqualify slayer's exclusive family members).
18. Innocent family members include those who played no part in the crime, as well as those who have no intention of supporting the slayer through receipt of the victim's proceeds. See, e.g., In re
This Comment argues that where the servicemember does the killing and the FSGLI governs the non-servicemember spouse’s life insurance policy, courts should construe the statute strictly to preserve the common law slayer’s rule.\textsuperscript{20} Under the canon of strict construction, courts construe statutes in derogation of common law as consistent with and preservative of the common law, absent congressional intent to the contrary.\textsuperscript{21} The FSGLI is silent on the slayer’s rule.\textsuperscript{22} The minimal legislative history documenting the FSGLI’s inclusion in the SGLI reveals that Congress intended the statute to provide the servicemember, his or her spouse, and his or her dependent children with insurance benefits.\textsuperscript{23} The legislative history does not discuss the slayer’s rule, but neither does it suggest that Congress intended courts to reach the unconscionable result whereby the servicemember-slayer may receive the victim’s proceeds indirectly through the slayer’s family members.\textsuperscript{24} Therefore, courts should construe the FSGLI strictly to preserve the slayer’s rule and to disqualify the servicemember-slayer’s family members from receiving the insurance benefits as either designated beneficiaries or by-law beneficiaries of the non-servicemember spouse’s FSGLI policy. In the case of Spc. Bare, this would mean disqualifying Spc. Bare’s father from receiving the proceeds on the wife’s FSGLI policy.

Part I of this Comment describes the provisions and legislative history of the SGLI and the FSGLI. Part II discusses the federal common law slayer’s rule, court-identified policy concerns underlying the rule, and cases in which courts have applied the rule and its extended version to

\textsuperscript{20} Estates of Covert, 761 N.E.2d 571, 575 (N.Y. 2001) (refusing to disqualify slayer’s innocent heirs).

\textsuperscript{19} See, e.g., Athmer, 178 F.3d at 476–77 (stating it “need not decide” whether to adopt a bright-line extended federal common law slayer’s rule to disqualify all of the slayer’s relatives); Tolbert, 320 F. Supp. 2d at 1381 (endorse a bright-line extended slayer’s rule despite the consequences to innocent relatives).

\textsuperscript{22} See infra Part V. Because a wide variety of fact scenarios are possible under the slayer’s rule, this Comment will limit the scope of its discussion by focusing on a limited set of fact patterns and policy concerns.

\textsuperscript{21} See Shaw v. R.R. Co., 101 U.S. 557, 565 (1879); see generally 3 NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 61:1 (6th ed. 2001) (explaining strict construction of statutes in derogation of common law); infra Part IV.


disqualify the slayer’s family members. Part III explains how courts have applied the common law slayer’s rule under the SGLI and discusses the lack of a clear rule for determining how far the slayer’s rule extends in precluding family members from beneficiary status under the SGLI. Part IV addresses the canon of strict statutory construction courts use in interpreting statutes in derogation of common law and considers courts’ rationale for applying this canon. Finally, Part V argues that courts should interpret the FSGLI’s beneficiary provision strictly to preserve the common law slayer’s rule. A strict interpretation will ensure that courts avoid the unconscionable result of putting the servicemember-slayer in a position to benefit financially, through family members, from the killing.

I. THE FSGLI PROVIDES AUTOMATIC LIFE INSURANCE COVERAGE TO SERVICEMEMBERS’ SPOUSES AND DEPENDENT CHILDREN

In 1965, Congress enacted the Servicemembers’ Group Life Insurance Act (SGLI) “to provide special indemnity insurance for members of the Armed Forces serving in combat zones.” 25 Under the SGLI, servicemembers may either specifically designate beneficiaries or elect to have beneficiaries designated “by law” according to the statute’s order of precedence. 26 In 2001, Congress amended the SGLI to extend life insurance coverage to servicemembers’ spouses and dependent children. 27 The Family Servicemembers’ Group Life Insurance Act (FSGLI) 28—a provision housed within and operating in conjunction with the SGLI—provides that the servicemember is the automatic beneficiary if the insured spouse or any of the insured dependent children dies. 29 If the servicemember cannot take the proceeds because of death or another


28. See id. § 1967(a).

29. See id. § 1970(i).
disqualifying reason, the SGLI’s beneficiary provision controls payment of proceeds.

A. The SGLI Provides Automatic Life Insurance to Servicemembers

Congress’s purpose in enacting the SGLI in 1965 was to establish a group life insurance program whereby private insurance companies would provide coverage for uniformed servicemembers on active duty. Congress passed the SGLI in response to two factors. First, as hostilities and casualties increased in Vietnam, private insurance companies began restricting coverage of servicemembers. Second, the National Service Life Insurance Act of 1940 (NSLI), a predecessor program that had provided servicemembers with life insurance, ceased to be enforced after the Korean War. Because the NSLI “had been allowed to lapse,”

30. See id. § 1970(b) (providing alternatives for when “payment to such person [otherwise entitled to payment under this section] . . . is prohibited by [f]ederal statute or regulation”); see also Prudential Ins. Co. of Am. v. Neal, 768 F. Supp. 195, 198 (W.D. Tex. 1991) (interpreting 38 U.S.C. § 1970(b) as barring persons from recovery not only when prohibited by federal statute or regulation, but also when equitable principles such as the slayer’s rule apply).


32. Sept. 29, 1965. See Uniformed Services—Group Life Insurance, Pub. L. No. 89-214, §§ 765–76, 79 Stat. 880, 880 (1965). The U.S. Supreme Court provided a thorough discussion of the SGLI’s statutory background in Ridgway v. Ridgway, 454 U.S. 46, 50–53 (1981). In that case, the servicemember had originally designated his first wife as the beneficiary of his policy and upon divorce a state divorce judgment was entered ordering him “to keep in force the life insurance policies on his life now outstanding for the benefit of [his] three children.” Id. at 48. However, four months after the divorce, he remarried and six days after that, changed his policy’s beneficiary designation to be paid “by law.” Id. He died just over one year later. Id. at 49. Under the changed beneficiary designation, the servicemember’s second wife would receive the SGLI proceeds. Id. Both wives filed claims for the proceeds. Id. The Court held the SGLI preempted state law, including the state divorce judgment, and therefore the second wife was the proper beneficiary, not the first wife or the children from the first marriage. See id. at 60–63.


34. See Ridgway, 454 U.S. at 50.


37. See Ridgway, 454 U.S. at 50–51 (explaining that after the Korean hostilities, “commercial insurance generally became available to service members”); S. REP. NO. 91-398, at 1 (1969), as
Servicemembers in active military service could not receive federal life insurance.\textsuperscript{39} Servicemembers serving in combat zones, such as Vietnam, also could not obtain private life insurance "at standard rates and without war exclusion clauses."\textsuperscript{40} The combined effect left servicemembers on active duty with no means of obtaining life insurance.\textsuperscript{41} The SGLI provides automatic life insurance to any servicemember falling within its statutory definitions.\textsuperscript{42} Today, these definitions include a wide range of members\textsuperscript{43} on "active duty,"\textsuperscript{44} "active duty for training,"\textsuperscript{45} and "inactive duty for training."\textsuperscript{46} A servicemember must affirmatively opt out if he or she does not want SGLI coverage.\textsuperscript{47}

Servicemembers have great discretion in designating beneficiaries under the SGLI.\textsuperscript{48} Specifically, the servicemember may designate as beneficiaries "any person, firm, corporation or legal entity (including the insured's estate), individually or as a trustee."\textsuperscript{49} If the servicemember


39. \textit{See id.}; \textit{see also} S. REP. NO. 91-398, at 1 (explaining that "[b]etween 1956 and 1969 persons in active military service were not covered under [f]ederal legislation unless they still retained Government life insurance obtained prior to April 25, 1951").
44. \textit{See id.} § 1965(1)(A)-(D) (defining “active duty”).
46. \textit{See id.} § 1965(3)(A)-(B) (defining “inactive duty training”).
47. \textit{See id.} § 1967(a)(2)(A); HANDBOOK, supra note 8, at ch. 3.01.
48. \textit{See Ridgway v. Ridgway}, 454 U.S. 46, 53 (1981); HANDBOOK, supra note 8, at ch. 6.02 (explaining that the servicemember has discretion to designate primary and contingent beneficiaries, and to assign "fractions, percentages, or monetary amounts" to be paid to each beneficiary).
49. \textit{HANDBOOK, supra note 8, at ch. 6.01; \textit{see also Ridgway}, 454 U.S. at 53 (providing the same). Additionally, the servicemember may change beneficiary designations at any time without the consent or knowledge of the beneficiary, though if that beneficiary is a spouse, the spouse will be notified of the change. \textit{See 38 C.F.R. § 9.4(b) (2007); HANDBOOK, supra note 8, at ch. 6.05.}
does not designate any beneficiaries, the policy goes to the servicemember's family members according to the statute's order of precedence. Electing to have beneficiaries designated under this provision is referred to as designating beneficiaries "by law." Under the statute's order of precedence, the proceeds will go first to the widow or widower, followed by the servicemember's children, parents, executor or administrator, and finally the servicemember's next of kin. Thus, the servicemember has a wide choice in designating beneficiaries, but if the servicemember does not designate beneficiaries, the servicemember's relatives generally become the beneficiaries by law.

B. The FSGLI Extends Automatic Life Insurance to the Servicemember's Spouse and Dependent Children and Makes the Servicemember the Automatic Beneficiary on These Policies

In June 2001, Congress approved an amendment to the SGLI extending life insurance coverage to the families of servicemembers. Congress's purpose in enacting the FSGLI was to provide affordable coverage to servicemembers' families. To that end, it added "insurable dependent[s]," defined as the servicemember's current spouse and children, to the SGLI's statutory definitions of insured persons.

50. See 38 U.S.C. § 1970(a); HANDBOOK, supra note 8, at ch. 6.06 ("If a member does not designate a beneficiary, the insurance will automatically be paid in the . . . order of precedence.").

51. See Ridgway, 454 U.S. at 48 (describing situation where servicemember changed his SGLI policy to be paid "by law" under the statute's order of precedence); HANDBOOK, supra note 8, at ch. 6.02 ("If a member does not want to designate a specific beneficiary but prefers the proceeds to be paid in the order of precedence, the member should enter 'By Law' in the appropriate space on the form.").


53. See Ridgway, 454 U.S. at 56 ("There can be no doubt that Congress was aware of the breadth of the freedom of choice accorded the service member under the SGLIA.").


58. See HANDBOOK, supra note 8, at ch. 10.02 (defining persons eligible for FSGLI program as "current" spouses though the statute itself, 38 U.S.C. § 1965(10)(A), does not use the language
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If any insurable dependent covered by an FSGLI policy dies, the servicemember is, by operation of law, the automatic beneficiary. The non-servicemember insured may not designate alternative beneficiaries to the policy. The servicemember's death or disqualification from such automatic beneficiary status triggers the SGLI's beneficiary provision. In these situations, the proceeds, by operation of law, go "to the person or persons entitled to receive payment of the proceeds of insurance on the member's life." Therefore, the insurance benefits go first to the servicemember's designated beneficiaries and if none, then to the servicemember's beneficiaries under the SGLI's statutory order of precedence. This statutory procedure has two important implications: first, the servicemember designates beneficiaries under both the SGLI

“current”).


“(1) All unmarried natural born children and legally adopted children under the age of 18. (2) All unmarried stepchildren under the age of 18 who are members of the servicemembers [sic] household. (3) Any unmarried dependent child who, after attaining the age of 18 and until completion of education or training (but not after attaining the age of 23), is pursuing a course of instruction at an approved educational institution. (4) Any unmarried dependent child who has been declared permanently incapable of self-support before the age of 18.” Handbook, supra note 8, at ch. 10.02.


61. See 38 U.S.C. § 1970(i) (providing “[a]ny amount of insurance in force on an insurable dependent of a member under this subchapter . . . on the date of the dependent’s death shall be paid, upon the establishment of a valid claim therefor, to the member . . . ”); Handbook, supra note 8, at ch. 10.01(f) ("FSGLI is a servicemembers’ benefit, and the member is the beneficiary of the policy.").

62. See generally 38 U.S.C. § 1970; Handbook, supra note 8, at ch. 6, ch. 10.09(a). However, the non-servicemember spouse may elect to convert the policy into a private policy upon termination of the servicemember spouse’s policy. See 38 U.S.C. § 1968(b)(3)(A).


65. See 38 U.S.C. § 1970(i); supra notes 48–54 and accompanying text.


67. See id. § 1970(a), (i); supra notes 48–54 and accompanying text.
and the embedded FSGLI; and second, in the absence of designation, if the servicemember is disqualified from receiving the proceeds, the servicemember’s relatives, not those of the insurable dependent, will likely be the beneficiaries on the insurable dependent’s FSGLI policy under the statute’s order of precedence.

In sum, the SGLI ensures automatic life insurance to servicemembers, while the FSGLI, a recent amendment to the SGLI, extends that automatic life insurance to spouses and dependent children of servicemembers. Under both programs, the servicemember determines beneficiary designations and is the automatic beneficiary by law in the context of FSGLI policies. Where the servicemember is disqualified from automatic beneficiary status, the proceeds are distributed under the SGLI’s beneficiary provision to the servicemember’s designated beneficiaries or to those falling under the SGLI’s order of precedence provision.

II. THE FEDERAL COMMON LAW SLAYER’S RULE STEMS FROM PRINCIPLES OF EQUITY AND APPLIES UNDER THE SGLI

The equitable principle that wrongdoers should not benefit from their criminal acts forms the basis of the slayer’s rule. Most courts agree that

68. Other statutory procedures also emphasize the servicemember’s control over FSGLI policies. For example, the servicemember may reduce or cancel spousal coverage at any time, or may elect not to insure the spouse at all. See HANDBOOK, supra note 8, at ch. 10.06; 38 U.S.C. § 1967(a)(2)(H) (servicemember may elect in writing not to insure spouse); 38 U.S.C. § 1967(f)(1) (Supp. 2007).

69. See 38 U.S.C. § 1970(a), (i); supra notes 48–54 and accompanying text.

70. See, e.g., N.Y. Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591, 600 (1886) (articulating the public policy underlying slayer’s rule); Prudential Ins. Co. of Am. v. Athmer, 178 F.3d 473, 475 (7th Cir. 1999) (disqualifying the slayer from receiving proceeds under the SGLI, and citing the “principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing”); Austin v. United States, 125 F.2d 816, 819 (7th Cir. 1942) (disqualifying slayer and identifying “a well established public policy against payment of insurance to the murderer of the insured”); Atwater v. Nortel Networks, Inc., 388 F. Supp. 2d 610, 615 (M.D.N.C. 2005) (explaining that in Georgia slayers may be barred from beneficiary status by statute and by “the common law rule that no one may profit from their own wrongdoing”); Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1380 (S.D. Ga. 2004) (disqualifying slayer from receiving proceeds under the SGLI “because public policy (the ‘slayer’s rule’) generally precludes killers . . . from benefitting [sic] from their victim’s death”); In re Estate of Mueller, 655 N.E.2d 1040, 1047 (Ill. App. Ct. 1995) (refusing to construe state slayer’s statute to allow slayer’s children to recover because doing so would enable the slayer to receive the proceeds through the children in contradiction with “the strong public policy that murderers should be denied the fruits of their crimes.” (quoting In re Estate of Vallerius, 629 N.E.2d 1185, 1189 (Ill. App. Ct. 1994)); Heinzman v. Mason, 694 N.E.2d 1164,
the act of killing the insured disqualifies the killer from recovering directly, as primary beneficiary, the proceeds on the victim-insured’s policy. Some courts apply an “extended slayer’s rule” to effectuate the policy underlying the rule, holding that in some circumstances, the slayer’s exclusive relatives are also barred from receiving the benefits.

However, no universally accepted bright-line, extended slayer’s rule

1167 (Ind. Ct. App. 1998) (disqualifying both slayer and slayer’s heirs and stating that “[w]ell-established principles of equity require that neither one who takes property as a result of feloniously killing his spouse nor his heirs benefit from such wrongdoing”). The Court of Appeals of New York stated in 1889:

“No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes.”

Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889); see also Mary Louise Fellows, The Slayer Rule: Not Solely a Matter of Equity, 71 IOWA L. REV. 489, 490 (1986) (discussing the purpose and foundation of the slayer’s rule, as well as the courts’ role in creating the rule absent legislative enactments).

71. This Comment draws a distinction between the slayer recovering directly and indirectly. For purposes of this Comment, recovering directly means recovering as a primary beneficiary, while recovering indirectly means recovering through another beneficiary who passes the proceeds, or benefits of the proceeds, to the slayer. While there may be situations where the slayer is the contingent beneficiary under the policy terms and kills both the insured and the primary beneficiary to reach the policy proceeds, for sake of clarity, this Comment focuses on the situation where the slayer is the designated primary beneficiary or the beneficiary by order of precedence under the policy’s terms.

72. See Athmer, 178 F.3d at 475–76 (citing N.Y. Mut. Life Ins. Co., 117 U.S. at 600; Riggs, 22 N.E. at 190–91; Swietlik v. United States, 779 F.2d 1306, 1306–07 (7th Cir. 1985)). But see Jones v. Prudential Ins. Co. of Am., 814 F. Supp. 500, 501–02 (W.D. Va. 1993) (allowing husband-servicemember to recover wife-servicemember’s SGLI policy where wife died in car accident in which husband-servicemember had been driving drunk, but where there was no evidence the husband intended to murder his wife or that Prudential knew or should have known the husband may have been disqualified); Owens v. Owens, 6 S.E. 794, 794–95 (N.C. 1888) (allowing slayer to inherit under intestacy statute where statute only prohibited adulterers from recovery); Fellows, supra note 70, at 491 n.8 (identifying instances when courts rejected the slayer rule because “they felt constrained to apply property statutes”).

73. See, e.g., Tolbert, 320 F. Supp. 2d at 1381 (advocating a bright-line extended slayer’s rule); In re Estate of Mueller, 655 N.E.2d at 1047 (disqualifying slayer’s children); Heinzman, 694 N.E.2d at 1167–68 (holding that equity requires disqualifying slayer’s heirs); Crawford v. Coleman, 726 S.W.2d 9, 11 (Tex. 1987) (construing state slayer’s statute as disqualifying slayer’s son and mother from recovering victim’s proceeds as contingent beneficiaries and instead requiring distribution of proceeds to the victim-insured’s nearest relative); Estate of Safran, 306 N.W.2d 27, 37 (Wis. 1981) (precluding slayer’s unborn children under rule that “persons directly related to the murderer are disqualified with him” and considering “the interests of children neither born nor conceived to be too remote to consider an exception under the facts of this case”). But see Athmer, 178 F.3d at 476–77 (declining to decide whether a uniform, federal extended slayer’s rule disqualifying the slayer’s relatives should exist); In re Estates of Covert, 761 N.E.2d 571, 575 (N.Y. 2001) (allowing innocent family members to recover proceeds).
exists, and whether a court applies the extended slayer’s rule depends on the facts and circumstances of a given case. 74

A. The Mandate of the Slayer’s Rule Is Based on the Policy Concern that Slayers Should Not Benefit from the Criminal Act of Killing Directly as Primary Beneficiaries

The slayer’s rule is a fundamental common law rule rooted in principles of equity and public policy. 75 It mandates that “no man shall be permitted to profit by his own wrongful act.” 76 The U.S. Supreme Court articulated the policy behind the rule in 1886, stating “[i]t would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken.” 77 The rule effectively disqualifies murderers from inheriting from their victims directly as primary beneficiary, whether by will, intestacy statute, or life insurance policy. 78

74. Compare In re Estates of Covert, 761 N.E.2d at 574 (addressing distribution under a husband and wife’s joint will of couple’s individual, independently-owned property, joint property with a right of survivorship, and individual assets with named beneficiaries, and stating “where a victim’s will makes bequests to the wrongdoer’s family—innocent distributees—their status as legatees under the victim’s will is not vitiated, and they are not disinherited by virtue of their familial relationship to the wrongdoer”) with Tolbert, 320 F. Supp. 2d at 1381–82 (applying a bright-line, extended slayer’s rule to disqualify a slayer’s family members from receiving the victim-service member’s SGLI policy proceeds).

75. See United States v. Kwasniewski, 91 F. Supp. 847, 851 (E.D. Mich. 1950); see also Riggs, 22 N.E. at 190 (explaining that the common law slayer’s rule is based on fundamental maxims of common law and is “dictated by public policy” that requires courts prohibit profiting by fraud, wrongdoing, iniquity, or crime).


77. N.Y. Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591, 600 (1886) (holding the assignee under an endowment policy payable to the assured or his assigns or legal representatives “forfeited all rights under it when, to secure its immediate payment, he murdered the assured”).

78. See Athmer, 178 F.3d at 475–76 (“The principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing has long been applied to disqualify murderers from inheriting from their victims, whether the route of inheritance is a will, an intestacy statute, or a life insurance policy.”). See also Austin v. United States, 125 F.2d 816, 819 (7th Cir. 1942) (“Our laws will not reward one for the commission of crime, and whenever the effect of the enforcement of a right which one would otherwise have, would be to give her an advantage by reason of her felonious act, the courts will decline to entertain it because it is contrary to the good order of society, and an encouragement to crime to allow a beneficiary who murders the insured to receive the benefits of the insurance.”).
Nearly every state has enacted a slayer's statute codifying the common law rule barring killers from receiving the victim's life insurance proceeds as the primary beneficiary. Nevertheless, courts have concluded that the common law slayer's rule applies regardless of whether a state or federal statute expressly gives it effect and have applied the common law rule to "control the effect and nullify the language" of beneficiary designations in wills and life insurance policies. Hence, the common law slayer's rule has retained its vitality despite the emergence of codified law.

79. See RESTATEMENT (THIRD) OF PROP. § 8.4, Reporter's Note (2003) (explaining the "slayer-rule is codified in most states"); 26B C.J.S. Descent and Distribution §§ 57-58 (2001) ("Many states have enacted 'slayer statutes' intended to prevent a person who has feloniously caused the death of a decedent from inheriting or receiving any part of the estate of that decedent."). These statutes vary with regard to the elements required to disqualify the slayer, as well as the method of distribution upon disqualification. See generally RESTATEMENT (THIRD) OF PROP. § 8.4; 26B C.J.S., Descent and Distribution, § 58. Some statutes and jurisdictions treat felonious, intentional, reckless, or negligent homicides differently. See generally F.S. Tinio, Annotation, Killing of Insured by Beneficiary as Affecting Life Insurance or Its Proceeds, 27 A.L.R.3d 794 (1969), (Supp. 2007). For instance, the Revised Uniform Probate Code (UPC), adopted in some states, limits disqualification to felonious and intentional killings, but excludes accidental manslaughter killings. See UNIF. PROBATE CODE § 2-803(b), cmt. (2001) (amended 1993 and 1997).

80. See, e.g., Athmer, 178 F.3d at 476 (stating slayer's rule "is undoubtedly an implicit provision" of the SGLI); Atwater v. Nortel Networks, Inc., 388 F. Supp. 2d 610, 615 (M.D.N.C. 2005) (concluding under either North Carolina's slayer statute or under federal common law slayer's rule, slayer could not recover the victim's ERISA benefits); Riggs, 22 N.E. at 190 (explaining slayer's rule has its "foundation in universal law administered in all civilized countries, and [has] nowhere been superseded by statutes"); Heinzman v. Mason, 694 N.E.2d 1164, 1167 (Ind. Ct. App. 1998) (stating "even in the absence of statutory authority, a court may properly" rely on its powers of equity to enforce the common law slayer's rule).

81. Riggs, 22 N.E. at 190 (applying common law slayer's rule to preclude slayer-grandson from inheriting under victim-grandfather's will).

82. See, e.g., Athmer, 178 F.3d at 475-76 (slayer's rule applies to disqualify slayers from inheriting from victims "whether the route of inheritance is a will, an intestacy statute, or a life insurance policy"); In re Estates of Covert, 761 N.E.2d 571, 575-76 (N.Y. 2001) (applying slayer's rule to inheritance under will and refusing to disqualify slayer's innocent heirs); In re Estate of Mueller, 655 N.E.2d 1040, 1042, 1047 (Ill. App. Ct. 1995) (applying slayer's rule to inheritance under will and disqualifying slayer-wife's child, who was not victim's natural born child).

83. Codified law includes state slayer's statutes and the Revised Uniform Probate Code. See UNIF. PROBATE CODE § 2-803(b), supra note 79 and accompanying text.
B. Courts Have Applied an “Extended Slayer’s Rule” to Disqualify the Slayer’s Family Members Where a Contrary Ruling Would Result in Allowing the Slayer to Benefit Indirectly

While courts generally agree that principles of equity compel disqualifying the slayer from directly benefiting as the primary beneficiary, some courts have also adopted an “extended slayer’s rule” to preclude the slayer’s exclusive family members from receiving the proceeds. The courts that have disqualified the slayer’s exclusive relatives, including innocent relatives, reason that a contrary ruling risks placing the slayer in a position to benefit from the killing indirectly through such family members. Specifically, these courts reason that the potential for this kind of indirect benefit frustrates the equitable principle underlying the slayer’s rule. Cases that apply an extended slayer’s rule identify two main avenues whereby the slayer could indirectly benefit

84. See supra notes 70–72, 75–83 and accompanying text.
85. See, e.g., Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1380, 1382 (S.D. Ga. 2004) (disqualifying slayer’s brother and mother and noting “public policy (the ‘slayer’s rule’) generally precludes killers, and sometimes their families, from benefiting from their victim’s death”); Heinzman, 694 N.E.2d at 1167–68 (disqualifying slayer’s heirs); In re Estate of Cox, 380 P.2d 584, 590–91 (Mont. 1963) (disqualifying slayer’s heirs).
86. See, e.g., Beck v. Downey, 198 F.2d 626, 628 (9th Cir. 1952) (Alger Fee, J., concurring) (“In this case, over and beyond all else, there is the murderer as primary beneficiary and the murderer’s mother as the alternate. If judicial policy dictates that he cannot take directly, no technical consistency should permit him to benefit indirectly by a gift to his family, especially a mother, from whom he would normally acquire property by the statutes of descent and distribution.”); Tolbert, 320 F. Supp. 2d at 1381 (disqualifying slayer’s exclusive family members and reasoning bright-line, extended rule “allays all suspicion” slayer will enjoy “indirect benefits” from the act of killing); Heinzman, 694 N.E.2d at 1167–68 (concluding that allowing slayer’s “heirs to benefit from [the slayer’s] wrongdoing would, in effect, confer a benefit upon [the slayer] as a result of his wrongdoing,” violating slayer’s rule and requiring disqualification of slayer’s heirs); In re Estate of Cox, 380 P.2d at 590 (disqualifying the slayer’s heirs and stating “who can say it was not the intention of the murderer to benefit his heirs when he took the life of his wife”).
87. See Beck, 198 F.2d at 628 (Alger Fee, J., concurring) (explaining rationale for disqualifying slayer’s mother and stating “[t]he policy is pronounced that neither he [the slayer] nor any who takes through him or for his benefit should be recognized” as a beneficiary); Tolbert, 320 F. Supp. 2d at 1381; Heinzman, 694 N.E.2d at 1167–68; In re Estate of Cox, 380 P.2d at 590–91 (“If the logic [disqualifying the slayer] is persuasive in the [slayer], it should be nonetheless persuasive when applied to the heirs of the murderer.”).
88. A third set of cases characterizes fulfilling the slayer’s intent as itself a form of benefiting the slayer. See Heinzman, 694 N.E.2d at 1167; In re Estate of Cox, 380 P.2d at 590. These courts reason the slayer may have killed the victim-spouse to allow the slayer’s children or relatives to benefit financially from the death; therefore, these courts disqualify the slayer’s relatives from beneficiary status. See Heinzman, 694 N.E.2d at 1167–68 (precluding innocent heirs though slayer had committed suicide after the killing); In re Estate of Cox, 380 P.2d at 590 (same). In fact, one court disqualified the slayer’s innocent, natural children though the victim, while not adopting the slayer’s
from the killing through exclusive family members: first, where the slayer’s exclusive family member receives the proceeds and uses them to support the slayer,89 and second, where the slayer’s exclusive family member receives the proceeds, but the slayer stands to inherit, or otherwise control, the family member’s assets.90

1. Courts Have Recognized the Risk that the Slayer’s Exclusive Family Members Could Use the Victim’s Life Insurance Proceeds to Support the Slayer

Courts have identified situations in which the slayer’s exclusive family members could use the proceeds from the victim’s policy to support the slayer.91 In considering the consequences of allowing the slayer’s son (the victim’s stepson) to recover, one court contemplated that the son could use the money to pay for the slayer’s attorneys fees, to buy books or goods for the slayer while in prison, and to support the slayer once out of prison.92 While the slayer’s son nevertheless recovered in that case,93 a lower district court in different district

children, had raised them. See Heinzman, 694 N.E.2d at 1166–68. In so barring these children, the court expressly invoked the equitable principle underlying the slayer’s rule: “the equitable policy of [disqualifying slayers from receiving the victim’s proceeds by imposing a constructive trust to keep the proceeds out of the slayer’s reach] must apply with equal force to the wrongdoer’s heirs even where the heirs, as here, are completely without fault.” Id. at 1168.

89. See Prudential Ins. Co. of Am. v. Athmer, 178 F.3d 473, 476 (7th Cir. 1999) (discussing ways slayer’s son could potentially use SGLI policy proceeds to indirectly benefit slayer); Tolbert, 320 F. Supp. 2d at 1381 (discussing ways slayer’s mother and brother could use SGLI policy proceeds to indirectly benefit slayer).

90. See In re Estate of Mueller, 655 N.E.2d 1040, 1046 (Ill. App. Ct. 1995) (disqualifying slayer’s natural child because slayer “is still alive, and is the guardian of her minor child. Under these circumstances, there exists a danger that [the slayer] could take property through her child . . . despite her wrongful and criminal act of murder”); In re Estate of Vallerius, 629 N.E.2d 1185, 1186, 1188–89 (Ill. App. Ct. 1994) (disqualifying two grandsons from inheriting mother’s estate where grandsons had murdered the grandmother who had left her estate to the mother and where grandsons were the mother’s only heirs).

91. See, e.g., Athmer, 178 F.3d at 476–77 (considering ways in which slayer’s son could use the proceeds to benefit the slayer and affirming lower court’s judgment, which nevertheless allowed the son to recover as contingent beneficiary); Tolbert, 320 F. Supp. 2d at 1381–82 (discussing ways in which slayer’s mother and brother could use proceeds to benefit slayer and disqualifying both from recovering as beneficiaries).

92. See Athmer, 178 F.3d at 476. The policy named the slayer-wife’s son as “contingent or secondary beneficiary.” Id. at 474.

93. Though the court affirmed the lower court’s judgment allowing the slayer’s son to recover the victim’s life insurance policy proceeds, the court so affirmed on grounds other than the policy concerns it identified as supporting an extended slayer’s rule. See id. at 477; infra note 161 and accompanying text.
concluded that these examples of benefiting indirectly through family members compelled precluding the slayer's mother and brother from recovering the proceeds.94

2. Courts Have Recognized the Risk that the Slayer Could Inherit or Control the Victim's Life Insurance Proceeds Through the Slayer's Exclusive Family Members

Courts have applied an extended slayer's rule to disqualify the slayer's exclusive family members from recovering the proceeds from the victim's policy where a contrary ruling would position the slayer to inherit or control the proceeds.95 For instance, one court addressed how to distribute proceeds where the victim-husband had designated the slayer-wife as the primary beneficiary of over one-half of his estate, and her natural children from a previous marriage as the heirs to her share of his estate.96 The slayer-wife in that case murdered her husband to collect her share of his estate.97 Because the slayer's rule barred the slayer-wife from receiving her portion of his estate, the court had to address whether her minor child98 could receive her portion of his estate under the terms of the will.99 The court, interpreting the state's probate act, precluded the slayer's natural child (the victim's stepchild) from receiving her share of the estate.100 In doing so, the court reasoned that neither of the slayer's natural children would have inherited the victim's life insurance policy

94. See Tolbert, 320 F. Supp. 2d at 1380–82.
95. See, e.g., In re Estate of Mueller, 655 N.E.2d at 1046 (interpreting state's probate act and disqualifying slayer's natural child from receiving proceeds where slayer remained guardian of the child, thereby controlling the proceeds); In re Estate of Vallerius, 629 N.E.2d at 1188–89 (interpreting state's probate act and disqualifying grandsons from inheriting mother's estate where grandsons had murdered the grandmother who had left her entire estate to the mother for whom the grandsons were the sole heirs). See also Beck v. Downey, 198 F.2d 626, 628 (9th Cir. 1952) (Alger Fee, J., concurring) (disqualifying slayer's mother because slayer would inherit proceeds through her under statutes of descent and distribution).
96. See In re Estate of Mueller, 655 N.E.2d at 1042–43. The victim-husband originally bequeathed fifty-percent of his estate to the slayer-wife, but subsequently increased her share to sixty-percent. See id.
97. See id.
98. Though the will made the slayer-wife's two children heirs, only one was a minor child and therefore under the slayer's financial control. See id. at 1043, 1046.
99. See id. at 1042–43 (stating the issue as "whether individuals who are named as contingent beneficiaries in a will may take property under that will when the original taker is precluded... and the contingent takers are heirs of the precluded person but not of the testator").
100. See id. at 1046–47.
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under probate law had there been no will. Instead, the slayer’s natural children were only in line to inherit their mother’s portion of the victim’s estate because the victim named them in the will before their mother killed him. Further, the court identified policy concerns compelling it to disqualify the slayer’s minor child from beneficiary status: the slayer was still alive and, as the guardian of the child, could take the victim’s assets through the child. Therefore, the slayer could still benefit, though indirectly through her child, from her criminal act, thereby effectively allowing her to circumvent the common law rule’s mandate against allowing persons to benefit from acts of killing.

Additionally, another court decided two natural grandsons were precluded from inheriting, through their mother’s estate, the estate of the grandmother whom one of them had killed. While one of the grandsons killed the grandmother, the other, at the same time and in the same place, killed the grandmother’s friend. The two slayers would have indirectly benefited from the killing—their mother was their grandmother’s sole heir, and the two slayers were the sole heirs of their mother. Their mother’s death of natural causes set the two slayers up to inherit their victim-grandmother’s estate. The court interpreted the state’s probate act as disqualifying both persons who directly kill another person and those who aid, abet, or conspire in the killing of another person, from recovering the victim’s proceeds. Thus, the court disqualified both slayers from inheriting the portions of their mother’s estate that had come to the mother through the grandmother.

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101. See id. at 1045.
102. See id.
103. See id. at 1046. See also In re Estate of Vallerius, 629 N.E.2d 1185, 1188–89 (III. App. Ct. 1994) (precluding two grandsons from inheriting their mother’s estate where the grandsons had killed the grandmother and the mother was the slain grandmother’s sole heir).
104. See In re Estate of Mueller, 655 N.E.2d at 1046–47.
105. See In re Estate of Vallerius, 629 N.E.2d at 1188–89. Though this case did not involve the issue of whether to disqualify the slayer’s relatives to preclude the slayer from inheriting the victim’s assets, it illustrates the same principle of disqualifying slayers from benefiting indirectly from the act of killing—by inheriting the victim’s assets through family members. Id.
106. See id. at 1186.
107. See id.
108. See id. at 1186–87.
109. See id. at 1188.
110. See id. at 1188–89. “The plain words of the statute compel us to hold that [the grandson who did not directly kill the grandmother] cannot be permitted to receive any benefit by reason of the death of [the grandmother], whether through her estate directly or indirectly through the estate of her daughter.” Id. at 1188. The court did not, however, disqualify the grandsons from inheriting
reaching this conclusion, the court cited "the strong public policy that murderers should be denied the fruits of their crimes."\(^{111}\)

On the other hand, courts refusing to apply an extended slayer's rule reason that when the slayer's family members are innocent of the act of killing, they should not be disinherited or disqualified by "virtue of their familial relationship to the wrongdoer."\(^{112}\) For instance, in one case a court refused to disinherit the wrongdoer's innocent family members when the victim's will made such family members heirs.\(^ {113}\) In that case, the slayer killed his wife and then committed suicide.\(^ {114}\) The couple's shared will provided that in the event one of them died, the property of the deceased spouse would pass to the surviving spouse, and in the event both died, certain property would pass to the wife's sister, with the remaining property "to be distributed into three equal shares," with one-third going each to the husband's parents, the wife's parents, and the couple's siblings.\(^ {115}\) In refusing to disqualify the slayer-husband's parents and siblings, the court stated, "[a]bsent a showing that the [slayer's family members] are anything other than innocent distributees, [the slayer's rule] is inapplicable."\(^ {116}\) The court therefore declined to invalidate any clause of the will.\(^ {117}\) Other courts have criticized the

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\(^{111}\) See id. at 1189.

\(^{112}\) See In re Estates of Covert, 761 N.E.2d 571, 574, 576-77 (N.Y. 2001) (applying principles of testamentary instrument construction to three forms of property—individual property owned independently by husband and wife, joint property with a right of survivorship, and individual assets with named beneficiaries—and holding slayer-husband's parents and siblings not disqualified from inheriting through the couple's will their portion of his individual assets, his one-half of the joint tenancy, and his insurance and pension plans when innocent of the wrongdoing). But see Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1381 (S.D. Ga. 2004) (adopting bright-line, extended slayer's rule while acknowledging such a rule could be "perhaps unfair to honest relatives").

\(^{113}\) See In re Estates of Covert, 761 N.E.2d at 574 (addressing distribution of individual property owned independently by husband and wife, joint property with a right of survivorship, and individual assets with named beneficiaries, and holding slayer-husband's parents and siblings not disqualified from inheriting through the couple's will their portion of his individual assets, his one-half of the joint tenancy, and his insurance and pension plans when innocent of the wrongdoing); supra note 112 and accompanying text.

\(^{114}\) See id.

\(^{115}\) See id.

\(^{116}\) Id. at 575.

\(^{117}\) See id. at 576.
extended slayer’s rule as requiring courts to speculate about and investigate into family dynamics.\textsuperscript{118}

In sum, while courts universally disqualify the slayer from recovering as primary beneficiary, they do not uniformly apply an extended slayer’s rule to preclude the slayer’s exclusive relatives from beneficiary status in every circumstance. Courts that have demonstrated a willingness to apply an extended slayer’s rule do so in situations where the slayer could benefit indirectly through his or her family members. These courts consider the facts of each case, weighing the circumstances of the familial relationships and the ways in which the slayer could receive financial benefits in violation of the fundamental equitable principle that no person should benefit from the wrongful act of killing.

III. COURTS HAVE APPLIED THE FEDERAL COMMON LAW SLAYER’S RULE TO THE SGLI

Courts interpreting questions involving the payment of proceeds under the SGLI that are not answered by the statute have consistently invoked federal common law.\textsuperscript{119} Because the SGLI is silent on the slayer’s rule,\textsuperscript{120} courts engage in choice of law analysis and apply the federal common law slayer’s rule, rather than state slayer’s statutes, to fill the gap in the SGLI and to disqualify slayers from primary beneficiary status.\textsuperscript{121} However, courts applying the slayer’s rule to the

\textsuperscript{118} See Prudential Ins. Co. of Am. v. Athmer, 178 F.3d 473, 478 (7th Cir. 1999) (identifying states that have rejected the extended slayer’s rule).

\textsuperscript{119} See Ridgway v. Ridgway, 454 U.S. 46, 57, 59–60 (1981); Athmer, 178 F.3d at 475; Tolbert, 320 F. Supp. 2d at 1380. However, some courts conclude that under either federal or state law, the result would be the same: the slayer would be disqualified from beneficiary status. See, e.g., Conn. Gen. Life Ins. Co. v. Riner, 351 F. Supp. 2d 492, 497 (W.D. Va. 2005) (explaining that the court did not need to resolve the issue of whether ERISA preempted a state slayer’s statute because “the outcome of this case is the same whether state or federal law applies—[the slayer] is not entitled to the proceeds of the life insurance policy”).

\textsuperscript{120} See 38 U.S.C. §§ 1965–79 (2003); see also Athmer, 178 F.3d at 476 (stating slayer’s rule “is undoubtedly an implicit provision” of the SGLI); Prudential Ins. Co. of Am. v. Tull, 690 F.2d 848, 849 (4th Cir. 1982) (per curiam) (applying federal common law slayer’s rule to preclude slayer under SGLI); Tolbert, 320 F. Supp. 2d at 1380–81 (concluding court must turn to federal common law to answer question of whether slayer’s family members were disqualified from recovery under SGLI, because SGLI contains no provisions on the issue and federal law governs); Jones v. Prudential Ins. Co. of Am., 814 F. Supp. 500, 501 (W.D. Va. 1993) (stating the SGLI “makes no provision for the situation where the designated beneficiary is implicated in the death of the insured”); Prudential Ins. Co. of Am. v. Neal, 768 F. Supp. 195, 197–98 (W.D. Tex. 1991) (applying federal common law slayer’s rule to preclude slayer from recovery under SGLI).

\textsuperscript{121} See, e.g., Athmer, 178 F.3d at 475–76; Tolbert, 320 F. Supp. 2d at 1380–81.
SGLI have not conclusively determined whether the rule’s mandate also requires disqualifying the non-servicemember slayer’s exclusive family members.\textsuperscript{122} Although the Seventh Circuit Court of Appeals weighed the policy concerns on both sides of the issue, it ultimately did not decide whether a bright-line rule governing the slayer’s rule under the SGLI should exist, or if so, what its contours should be.\textsuperscript{123} Instead, that court limited its holding to affiriming the lower court’s disqualification of the non-servicemember slayer only.\textsuperscript{124} Five years later, a district court in Georgia picked up where the Seventh Circuit left off and affirmatively adopted a bright-line, extended slayer’s rule that not only precluded the non-servicemember slayer, but also the non-servicemember slayer’s exclusive relatives from beneficiary status.\textsuperscript{125}

\textbf{A. Courts Have Applied the Common Law Slayer’s Rule to Fill the Statutory Gap in the SGLI}

Courts deciding questions relating to federal insurance programs look first to the controlling federal statutes.\textsuperscript{126} Where such statutes are silent on the matter, courts must determine whether to adopt a federal rule of decision or to invoke state law.\textsuperscript{127} If the court determines federal law governs, it will adopt a federal rule of decision.\textsuperscript{128} A court may apply federal common law as the federal rule of decision to fill the statutory interstices.\textsuperscript{129}

\textsuperscript{122} See \textit{Athmer}, 178 F.3d at 475–77 (affirming the lower court’s decision to allow slayer’s family member to recover under the SGLI); \textit{Tolbert}, 320 F. Supp. 2d at 1381–82 (disqualifying slayer’s family members from recovering under the SGLI).
\textsuperscript{123} See \textit{Athmer}, 178 F.3d at 476–77.
\textsuperscript{124} See \textit{id.} at 476–77, 479.
\textsuperscript{125} See \textit{Tolbert}, 320 F. Supp. 2d at 1381–82.
\textsuperscript{126} See, e.g., \textit{Athmer}, 178 F.3d at 475 (looking first to the SGLI to determine distribution of life insurance policy proceeds when one spouse murders another and, after finding it silent on the issue, looking to federal common law to fill the gaps) (citing Boyle v. United Techs. Corp., 487 U.S. 500, 504–05 (1988); Rollins v. Metro. Life Ins. Co., 863 F.2d 1346, 1350 (7th Cir. 1988); Prudential Ins. Co. of Am. v. King, 453 F.2d 925, 931 (8th Cir. 1971); \textit{cf.} Ridgway v. Ridgway, 454 U.S. 46, 56–60 (1981); Metro. Life Ins. Co. v. Christ; 979 F.2d 575, 580 (7th Cir. 1992); Prudential Ins. Co. of Am. v. Tull, 690 F.2d 848, 849 (4th Cir. 1982) (per curiam)).
\textsuperscript{128} See \textit{id.} at 727–28 (explaining that federal programs that must be uniform in character throughout the country require controlling federal rules); \textit{Athmer}, 178 F.3d at 475. The court may incorporate state law as the federal rule of decision. See \textit{Kimbell Foods Inc.}, 440 U.S. at 728.
\textsuperscript{129} See \textit{Athmer}, 178 F.3d at 475 (refusing to borrow state slayer’s statutes to fill SGLI’s statutory gaps, and finding that uniform set of rules across jurisdictions is preferable).
Because the plain language and legislative history of the SGLI are silent on the slayer’s rule, courts determining issues regarding payment of proceeds under the SGLI must engage in choice of law analysis. The U.S. Supreme Court ruled that the SGLI preempts and displaces inconsistent state law. Subsequent courts have concluded that “when a question relating to the interpretation and administration of an insurance policy issued under” the SGLI “arises that is not answered by the statute itself, then as with other government contracts . . . the answer is to be supplied by federal common law.”

Thus, courts have consistently applied federal common law, rather than state slayer’s statutes, in considering the scope of the slayer’s rule under the SGLI. These courts reason that Congress’s desire for uniformity supports applying federal common law to the issue of distribution of policy proceeds under the statute.


131. See, e.g., Athmer, 178 F.3d at 475 (stating that when the victim-servicemember has two policies, one under the SGLI and one through a private life insurance carrier, the “choice of law issue must be analyzed separately for each policy,” and concluding federal common law applied to the SGLI policy, but not to the private policy); Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1380 (S.D. Ga. 2004) (engaging in choice of law analysis because the “policies [were] issued under a federal statute (SGLI) to a federal soldier,” and concluding that therefore, the “Court must turn to federal common law”).

132. See Ridgway v. Ridgway, 454 U.S. 46, 57–60 (1981) (emphasizing the SGLI’s pervasiveness and specificity, as well as the federal interest in government subsidy programs); see also Mounts v. United States, 838 F. Supp. 1187, 1193 (E.D. Ky. 1993) (noting that its conclusion that the Federal Employees’ Group Life Insurance Act (FEGLI) preempts state law is consistent with Ridgway’s conclusion that the SGLI, modeled after the FEGLI, preempts state law).

133. Athmer, 178 F.3d at 475 (citations omitted) (stating that “in filling gaps left by Congress in a federal program the courts seek to effectuate federal policies”); Tolbert, 320 F. Supp. 2d at 1380.

134. See Athmer, 178 F.3d at 475 (stating that “borrowing state law would be a mistake in the case of soldiers’ life insurance policies”); Prudential Life Ins. Co. of Am. v. Tull, 690 F.2d 848, 849 (4th Cir. 1982) (per curiam); Tolbert, 320 F. Supp. 2d at 1380 (stating that “the Court must turn to federal common law”); Jones v. Prudential Ins. Co. of Am., 814 F. Supp. 500, 501 (W.D. Va. 1993) (noting that the SGLI does not contain slayer’s rule and stating that “courts interpreting the Act have applied the Common Law ‘slayer’s rule’ to prevent a beneficiary from profiting from his own wrong”); Prudential Ins. Co. of Am. v. Neal, 768 F. Supp. 195, 197–98 (W.D. Tex. 1991) (“Because the life insurance policy held [by the servicemember-victim] was a serviceman’s life insurance policy issued pursuant to the [SGLI], distribution of the proceeds of that policy is governed by federal law.”).

135. See, e.g., Athmer, 178 F.3d at 475 (concluding that federal law should govern issues relating to SGLI policy distribution because the federal policies supporting the statute “should be governed by a uniform set of rules untethered to any particular jurisdiction,” and because the statute’s “detailed” order of preference provision demonstrates “Congress’s desire for uniformity”).
B. Courts Have Employed the Common Law Slayer's Rule Under the SGLI to Disqualify a Non-Servicemember Slayer from Benefiting Directly as Primary Beneficiary

In four cases—Prudential Insurance Co. of America v. Athmer,136 Prudential Insurance Co. of America v. Tull,137 Prudential Insurance Co. of America v. Tolbert,138 and Prudential Insurance Co. of America v. Neal139—courts have considered the scope of the common law slayer's rule under the SGLI where a non-servicemember slayer kills a servicemember spouse.140 These cases illustrate the courts' consistent application of the common law slayer's rule to disqualify the non-servicemember slayer from directly benefiting as the primary beneficiary.141

Of these four cases, two—Athmer and Neal—addressed the SGLI's silence on the slayer’s rule by interpreting the statute as implicitly embracing it.142 In Athmer, the Seventh Circuit stated that the “principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing” is “undoubtedly an implicit provision of the [SGLI] . . . and it disqualifies [the slayer-spouse] from receiving any of

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136. 178 F.3d 473 (7th Cir. 1999).
137. 690 F.2d 848 (4th Cir. 1982) (per curiam).
140. In each case, the non-servicemember spouse killed the servicemember and the policy was issued under the SGLI. Athmer, 178 F.3d at 474; Tull, 690 F.2d at 848; Tolbert, 320 F. Supp. 2d at 1379; Neal, 768 F. Supp. at 197.
141. See Athmer, 178 F.3d at 474, 476; Tull, 690 F.2d at 848–49; Tolbert, 320 F. Supp. 2d at 1379–80; Neal, 768 F. Supp. at 197–98. But see Jones v. Prudential Ins. Co. of Am. 814 F. Supp. 500, 500–02 (W.D. Va. 1993) (holding that though the servicemember-husband had been convicted of negligent homicide for driving drunk and killing his servicemember-wife in a car accident, there was no evidence showing he intentionally killed her and Prudential did not face liability for paying the victim-wife’s proceeds to the husband because it did not know nor should have known the husband may have been disqualified from receiving the payments under the SGLI, and therefore the husband was not disqualified from receiving the proceeds).
142. See Athmer, 178 F.3d at 476; Neal, 768 F. Supp. at 198. In Neal, the court interpreted language in the former 38 U.S.C. § 770(b) that is identical to the current, renumbered 38 U.S.C. § 1970(b) (2003), which provides, “[i]f any person otherwise entitled to payment under this section . . . is prohibited by [f]ederal statute or regulation, payment may be made in the order of precedence as if such person had predeceased the member,” as applying “not just to a person who is barred from recovery by a federal statute or regulation, but also to a person who is barred from recovery by the equitable principle that no one should benefit by her own wrong.” Neal, 768 F. Supp. at 198.
the proceeds of [the victim-servicemember’s] SGLI policy, even though [the slayer-spouse] is the primary beneficiary named in it.\textsuperscript{143}

Additionally, in each instance of disqualifying the non-servicemember slayer from primary beneficiary status, the courts relied on the equitable policy underlying the slayer’s rule.\textsuperscript{144} For instance, in \textit{Tull}, the Fourth Circuit stated, “[f]ederal law recognizes that the beneficiary’s claim is barred by the equitable defense: ‘No person should be permitted to profit from his own wrong.”\textsuperscript{145} Thus, courts agree that the non-servicemember slayer-spouse may not recover as primary beneficiary on the victim-servicemember’s SGLI policy.

Further, courts faced with the question of whether the victim-servicemember’s family members may recover the policy proceeds as contingent beneficiaries (often replacing the non-servicemember slayer) have answered in the affirmative.\textsuperscript{146} In two cases—\textit{Tull} and \textit{Neal}—the courts allowed the proceeds to go to the victim-servicemember’s children from a previous marriage,\textsuperscript{147} and the victim-servicemember’s mother and daughter,\textsuperscript{148} respectively.

Therefore, it appears that there are two settled principles regarding the scope of the common law slayer’s rule under the SGLI. First, the non-servicemember slayer-spouse may not directly recover the victim-servicemember’s proceeds under the SGLI as the primary beneficiary.\textsuperscript{149} Second, the victim-servicemember’s family members may receive the proceeds as beneficiaries “by law”\textsuperscript{150} or contingent beneficiaries\textsuperscript{151} in the place of the disqualified non-servicemember slayer-spouse.

\textsuperscript{143} Athmer, 178 F.3d at 475–76.
\textsuperscript{144} See \textit{id.}; \textit{Tull}, 690 F.2d at 849; \textit{Tolbert}, 320 F. Supp. 2d at 1380; \textit{Neal}, 768 F. Supp. at 198.
\textsuperscript{145} \textit{Tull}, 690 F.2d at 849 (quoting Shoemaker v. Shoemaker, 263 F.2d 931, 932 (6th Cir. 1959) (per curiam)).
\textsuperscript{146} See \textit{Tull}, 690 F.2d at 848–49; \textit{Neal}, 768 F. Supp. at 198–200.
\textsuperscript{147} See \textit{Tull}, 690 F.2d at 848–49 (distributing the victim-servicemember’s proceeds to his seven children from a previous marriage where the victim-servicemember designated his proceeds “should be distributed ‘by law’”).
\textsuperscript{148} See \textit{Neal}, 768 F. Supp. at 198–199 (distributing the proceeds of the victim-servicemember’s SGLI policy to his mother and daughter, whom he had named as contingent beneficiaries).
\textsuperscript{149} See \textit{Athmer}, 178 F.3d at 476; \textit{Tull}, 690 F.2d at 849; \textit{Tolbert}, 320 F. Supp. 2d at 1380; \textit{Neal}, 768 F. Supp. at 198. \textit{But see Jones v. Prudential Insurance Co. of America}, which appears to be the only existing exception to this general principle. 814 F. Supp. 500, 502 (W.D. Va. 1993) (allowing servicemember-husband to recover proceeds of his servicemember-wife’s SGLI policy though he killed her in a car accident while driving drunk).
\textsuperscript{150} See \textit{Ridgway v. Ridgway}, 454 U.S. 46, 48 (1981) (using the term “by law” to indicate situations where the servicemember has chosen to have the police proceeds be distributed under the SGLI’s statutory order of precedence); \textit{Tull}, 690 F.2d at 848–49 (addressing distribution of an SGLI
C. Courts Have Not Conclusively Adopted a Bright-Line, Extended Slayer's Rule Disqualifying the Non-Servicemember Slayer's Exclusive Family Members Under the SGLI

Courts have not yet interpreted the scope of the slayer's rule under the recently included FSGLI provision. The courts that have interpreted the rule under the SGLI have not determined, conclusively, whether the non-servicemember slayer's exclusive family members may receive the victim-servicemember's policy proceeds. Prudential Insurance Co. of America v. Athmer and Prudential Insurance Co. of America v. Tolbert—the two cases engaging in this debate—deal with the situation where the non-servicemember spouse kills the servicemember. In Athmer, the Seventh Circuit affirmed the lower court's disqualification of the non-servicemember slayer from primary beneficiary status, but declined to adopt a bright-line, extended rule precluding the non-servicemember slayer's son from a previous marriage from receiving the victim-servicemember's proceeds. However, in Tolbert, a district court in Georgia—facing almost identical facts—picked up where Athmer left off and adopted a bright-line extended slayer's rule to disqualify both the non-servicemember slayer and the non-servicemember slayer's mother and brother from receiving the victim-servicemember's SGLI policy proceeds.

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151. See Neal, 768 F. Supp. at 197, 199-200.
152. Existing case law addresses the scope of the slayer's rule under the SGLI only. See Athmer, 178 F.3d at 474-76; Tall, 690 F.2d at 848-49; Tolbert, 320 F. Supp. 2d at 1379-81; Neal, 768 F. Supp. at 197-98. These cases were decided before Congress amended the SGLI to include the FSGLI provision. See Veterans' Survivor Benefits Improvements Act of 2001, Pub. L. No. 107-14, sec. 4, §§ 1965, 1967-70, 115 Stat. 25, 26-30 (2001).
153. Compare Athmer, 178 F.3d at 476-77 (leaving issue unresolved), with Tolbert, 320 F. Supp. 2d at 1380-81 (addressing issue and applying a bright-line, extended rule to disqualify the slayer's exclusive relatives).
154. See Athmer, 178 F.3d at 474 (non-servicemember wife had her lover murder her servicemember-husband); Tolbert, 320 F. Supp. 2d at 1379-1380.
155. See Athmer, 178 F.3d at 474, 476-77 (noting the party who would have benefited from a bright-line, extended rule had not argued it and therefore the court did not need to decide the issue).
156. See Tolbert, 320 F. Supp. 2d at 1379-82. Because the husband, the alleged slayer, had not yet been civilly or criminally convicted at the time of this decision, the court's holding that the husband and his mother and brother should be disqualified from receiving the victim-servicemember's SGLI policy was contingent upon a trial court finding the husband civilly or criminally liable for the wife's death. See id. at 1380, 1382-83.
1. The Seventh Circuit Disqualified the Non-Servicemember Slayer But Did Not Decide the Issue of Whether to Adopt a Bright-Line, Extended Slayer’s Rule

In Athmer, a case in which the wife-beneficiary had her lover murder her servicemember-husband, the Seventh Circuit declined to decide whether to adopt a bright-line extended slayer’s rule. First, the court applied the slayer’s rule to disqualify the non-servicemember slayer-wife from primary beneficiary status under the policy. Second, the court addressed the issue of whether the non-servicemember slayer’s son, who had been named the contingent beneficiary on the SGLI policy, could recover in her place. Because the servicemember’s daughter, the appellant in the case, did not argue for a bright-line federal rule, the court affirmed the lower court’s judgment, which had allowed the non-servicemember slayer’s natural son (the victim-servicemember’s stepson) to receive the SGLI proceeds. Nevertheless, the court engaged in a discussion of the policy concerns a court must consider in formulating such a rule.

In determining whether the slayer’s son could receive the servicemember-victim’s policy, the court acknowledged that generally, when circumstances disqualify the primary beneficiary from recovering the proceeds, the contingent beneficiary takes the primary beneficiary’s place. However, the court also recognized that where the contingent

157. Athmer, 178 F.3d at 474.
158. See id. at 477.
159. See id. at 475–76.
160. See id. at 474, 476. The court separately considered whether the slayer’s sister could recover as a contingent beneficiary under a private life insurance policy governed by state law, rather than federal law. See id. at 474, 477–79.
161. See id. at 476–77, 479. On appeal, the victim-servicemember’s natural daughter urged the court to apply Illinois law. See id. at 477. Illinois’s slayer’s statute “forbids the murderer [from] ‘receive[ing] any property, benefit or other interest by reason of the death [of the murderer’s victim], whether as heir, legatee, beneficiary . . . or in any other capacity.’” Id. at 478. The daughter argued that the definition of “benefit” was broad enough to encompass benefits passed to the slayer indirectly, through family members. See id. On the other hand, the non-servicemember slayer’s son argued the court should apply federal law and adopt a uniform federal rule that would not automatically disqualify the murderer’s relatives. See id. at 477. The court agreed with the son that federal law governed. See id. at 475. This disposed of the daughter’s argument under Illinois law. See id. at 477. Because the daughter did not argue for a uniform bright-line, extended rule, the court did “not decide whether [a bright-line, extended slayer’s rule] is or should be the federal common law rule governing murders by beneficiaries of [SGLI] policies.” Id.
162. See id. at 476–77.
163. See id. at 476. The Athmer court assumed that if the contingent beneficiary had murdered or
beneficiary is related to the non-servicemember slayer, the family member could pass the benefits on to the non-servicemember slayer, creating the risk that the non-servicemember slayer could still benefit, though indirectly, from the killing.\(^\text{164}\) The court noted that in a hypothetical situation, the son could use the money to pay for his mother’s attorney’s fees or to support her once released from prison.\(^\text{165}\) However, the court expressed concern that adopting a rule precluding the non-servicemember slayer’s exclusive family members from recovering the servicemember-victim’s proceeds would require courts to engage in an “inherently speculative judgment about the future and an investigation of family relations quite likely to be of Faulknerian opacity.”\(^\text{166}\)

By not deciding the issue of whether a bright-line, extended slayer’s rule should exist, and by affirming the lower court’s application of the SGLI’s beneficiary provision, the court allowed the son’s recovery of the policy proceeds to stand.\(^\text{167}\) In so doing, the court stated, “[t]he [‘murdering heir’] rule forbids the murderer to take under the will or other instrument; it does not impress on the benefits a kind of reverse constructive trust placing them forever beyond the murderer’s reach.”\(^\text{168}\) Thus, the court declined to decide the scope of the slayer’s rule under the SGLI or to adopt a bright-line rule addressing whether a slayer’s exclusive relatives may recover policy proceeds.

2. The Tolbert Court Adopted a Bright-Line, Extended Slayer’s Rule to Bar the Non-Servicemember Slayer’s Exclusive Family Members from Recovering Under the SGLI

In Tolbert, a federal district court in Georgia, facing nearly identical facts as the Seventh Circuit, adopted a bright-line, extended slayer’s rule to disqualify the non-servicemember slayer’s exclusive relatives from

\(^\text{164}\) See id. at 476.
\(^\text{165}\) See id.
\(^\text{166}\) Id. at 478 (identifying policy concerns with a “murdering heir” rule like Illinois’s, which governed the victim-servicemember’s private life insurance policies and which “requires the trial court to make a factual determination whether allowing a relative of the murderer to take in the place of the murderer is likely to confer a significant benefit on him”).
\(^\text{167}\) Id. at 476–77, 479.
\(^\text{168}\) Id. at 476.
receiving the victim-servicemember’s policy proceeds. As with the Seventh Circuit, the Tolbert court first disqualified the non-servicemember slayer from primary beneficiary status by applying the slayer’s rule to the SGLI policy. Also like the Seventh Circuit, the court then addressed the issue of whether the non-servicemember slayer’s exclusive relatives could receive the victim’s policy proceeds consistent with the common-law rule.

In considering this issue, the court looked to the Seventh Circuit’s discussion of the extended slayer’s rule. The court noted, however, that the Seventh Circuit had not decided the issue because the argument for a uniform, bright-line, extended rule disqualifying the slayer’s relatives “was not raised” in that case. Nevertheless, the court continued with the analysis the Seventh Circuit started, considering a circumstance in which the non-servicemember slayer could benefit from the killing if his mother and brother received the proceeds as beneficiaries. For instance, the court suggested that the mother could use the money to pay for the slayer’s defense, to buy the slayer legal books in prison to prepare for an appeal of a possible conviction, or to fund the slayer’s prison account. The court reasoned that these possibilities raised the grave risk that the non-servicemember slayer could indirectly benefit, through his family members, from his act of killing.

Because of the serious risk that the non-servicemember slayer could benefit from the killing through his or her exclusive family members, the court disqualified the non-servicemember slayer’s relatives from receiving the benefits. However, the court went a step further: it adopted a bright-line, extended slayer’s rule disqualifying a non-

170. See id. at 1380 (“There is no dispute that the slayer’s rule applies to [the slayer] ... ”).
171. See id. at 1379–81.
172. See id. at 1380–81. The court also looked to cases applying state law, though it still applied federal common law. See id. at 1381 (citing Beck v. Downey, 198 F.2d 626, 628 (9th Cir. 1952) (Alger Fee, J., concurring) (applying state law in diversity case), and In re Estate of Vallerius, 629 N.E.2d 1185 (Ill. Ct. App. 1994)).
173. Id. at 1381.
174. See id. (noting “there is no other authority deciding this question” and therefore the court needed to turn to policy).
175. See id.
176. See id.
177. See id. at 1381–82.
servicemember slayer’s exclusive relatives from beneficiary status in all instances.\textsuperscript{178} As the court noted, other jurisdictions had applied an extended slayer’s rule to “disqualify[all relatives other than those also related to the victim] to “prevent killers from receiving even the ‘indirect benefits’ of their wrongdoing.”\textsuperscript{179} The court explained that while a bright-line, extended rule could be “unfair to honest relatives,” such a rule “nevertheless allays all suspicion, drains at least \textit{that} amount of financial incentive out of money-driven murders, and supplies a bright legal line.”\textsuperscript{180} Thus, the policy concern motivating the slayer’s rule—that killers should not benefit from the act of killing—prompted this court to adopt a bright-line rule barring all the slayer’s exclusive relatives from receiving the victim’s life insurance proceeds under the SGLI.\textsuperscript{181}

In sum, courts agree that the federal common law slayer’s rule applies to disqualify the non-servicemember slayer-spouse from primary beneficiary status under the SGLI, but they have not conclusively determined, through binding precedent, whether the non-servicemember slayer’s exclusive relatives can recover as contingent beneficiaries or as beneficiaries under the statute’s order of precedence provision. In each instance, courts have relied on the policy of the slayer’s rule to disqualify the non-servicemember slayer-spouse from primary beneficiary status or from beneficiary status under the statute’s order of precedence provision. On the one hand, courts have allowed the victim-servicemember’s relatives to receive the servicemember’s SGLI proceeds in place of the non-servicemember slayer-spouse, as contingent beneficiaries or as beneficiaries under the statute’s order of precedence provision. On the other hand, courts have not adopted a binding bright-line, extended slayer’s rule disqualifying the non-servicemember slayer’s exclusive relatives from receiving the victim-servicemember’s SGLI proceeds as either contingent beneficiaries or beneficiaries under the statute’s order of precedence provision.

\textsuperscript{178} See id. at 1381.
\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} See id.
IV. COURTS INTERPRET STATUTES IN DEROGATION OF COMMON LAW RULES SUCH AS THE SLAYER’S RULE STRICTLY TO PRESERVE THE RULES

Courts use the canon of strict construction to interpret statutes in derogation of common law doctrines. Courts generally interpret statutes consistently with the common law, absent an express congressional statement abrogating the doctrine. In the context of the slayer’s rule, courts have construed statutes strictly so as to preserve the rule’s mandate against allowing slayers to benefit from the act of killing.

A. Courts Construe Federal Statutes Strictly, as Consistent With the Common Law, Unless Congress Expressly Abrogates the Common Law Rule

Courts interpret federal statutes as consistent with and preservative of long-established common law doctrines, unless Congress explicitly provides otherwise. Analysis of whether a federal statute abrogates well-established common law rules requires a court to determine congressional intent. Except where a statutory purpose expresses a contrary intent, a court reads statutes in derogation of the common law with a presumption favoring the long-established principles of the common law. This presumption means courts strictly interpret statutes


183. See id. at 565 ("No statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express."); Reynolds v. Bement, 116 P.3d 1162, 1169 (Cal. 2005) ("A statute will be construed in light of the common law unless the Legislature ‘clearly and unequivocally’ indicates otherwise.") (quoting Cal. Ass’n of Health Facilities v. Dep’t of Health Servs., 940 P.2d 323, 331 (Cal. 1997)).

184. See In re Estate of Vallerius, 629 N.E.2d 1185, 1188–89. (Ill. Ct. App. 1994) (construing a state slayer’s statute); Price v. Hitaffer, 165 A. 470, 471–74 (Md. 1933) (interpreting state descent and distribution statutes in light of common law slayer’s rule and stating “the common law must be allowed to stand unaltered as far as is consistent with a reasonable interpretation of the new law”).

185. See supra note 183 and accompanying text.

186. See Stribling v. United States, 419 F.2d 1350, 1352 (8th Cir. 1969) (addressing proper distribution of proceeds under a deceased servicemember’s SGLI policy when the servicemember may have changed his beneficiary designation, and stating “[i]t is axiomatic that congressional intent is the guidepost to judicial interpretation of [federal statutes].”)

in derogation of common law and requires “that nothing be taken as intended that is not clearly expressed.” However, “[t]he rule that statutes in derogation of the common law are to be strictly construed does not require such an adherence to the letter as would defeat an obvious legislative purpose or lessen the scope plainly intended to be given to the measure.” Under this approach to statutory construction, a statute’s scope may be restricted by common-law principles. For instance, where a statute creates new benefits, its enforcement may be limited by the powers inherent in courts of equity. Generally, courts employing this canon conclude that “[i]n the absence of any contrary statutory authority, the common law rule must apply.”

B. Courts Have Adopted the Canon of Construction Requiring Strict Interpretation of Statutes in Derogation of the Common Law in the Context of the Slayer’s Rule

Courts have adopted the canon of strict construction when faced with application of the common law slayer’s rule. These courts reason that strictly construing statutes to preserve the contours of the common law slayer’s rule avoids absurd consequences. For instance, in interpreting

188. See id.; Cal. Ass’n of Health Facilities, 940 P.2d at 331.
190. Isbrandtsen Co., 343 U.S. at 783 (quoting Jamison v. Encarnacion, 281 U.S. 635, 640 (1930)).
191. See Cal. Ass’n of Health Facilities, 940 P.2d at 331 (stating “unless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules”).
192. See, e.g., United States v. Kwasniewski, 91 F. Supp. 847, 851, 853-54 (E.D. Mich. 1950) (invoking inherent powers of court of equity to disqualify the insured’s estranged, natural father from receiving the insured’s policy proceeds under the National Service Life Insurance Act of 1940 (NSLI), 38 U.S.C. § 1901, where the insured had designated his mother as primary beneficiary and his step-father as contingent beneficiary, but where the step-father had murdered the mother, disqualifying the step-father from beneficiary status and leaving the estranged natural father as the beneficiary under the statute’s order of precedence provision).
194. See In re Estate of Vallerius, 629 N.E.2d 1185, 1188-89. (Ill. App. Ct. 1994) (construing a state slayer’s statute to preserve the parameters of the slayer’s rule); Price v. Hitaffer, 165 A. 470, 473-74 (Md. 1933) (construing a state descent and distribution statute as consistent with the common law slayer’s rule). While these cases considered state statutes, rather than a federal benefits scheme, the courts’ rationale for choosing this canon is illustrative.
195. See Kwasniewski, 91 F. Supp. at 853 (refusing to interpret the NSLI’s order of precedence provision as requiring distribution of the deceased-insured’s policy proceeds to the insured’s natural father where the father was estranged, though the insured’s mother and step-father, the primary and
a state slayer's statute, one court stated, "[w]e cannot construe the broad language of the statute in so technical and rigid a fashion that its application violates longstanding public policy or serves to unjustly increase the estate of one who participates in murder." In that case, the court addressed the issue of whether the slayers, two grandsons, could inherit the estate of their grandmother, who they had murdered, through their mother, who died intestate but who had been the sole inheritor of the grandmother's estate. The slayer's statute at issue disqualified from beneficiary status a person who "intentionally and unjustifiably causes" a person's death. The court rejected one grandson's argument that because he did not actually swing the sledgehammer that killed his grandmother, he did not "cause" the death and therefore could not be disqualified from inheriting his grandmother's estate through his mother. In rejecting this argument, the court explained "the word 'causes' . . . encompasses the actions of one participating in the intentional and unjustifiable death of another, whether as an aider and abettor, a coconspirator, or one who hires another to kill the decedent." The court, in applying the statute to bar the grandson from receiving "any property, benefit, or interest from the estate," refused to "read into the statute words of limitation that are not there, particularly since the limitation espoused by [the grandson] would be directly contrary to the strong public policy that murderers should be denied the fruits of their crimes." Instead, the court construed the state slayer's statute to preserve the common law slayer's rule and thus disqualified the grandson.

contingent beneficiaries, could not recover because the step-father had murdered the mother, and reasoning that "[h]aving rid himself of the responsibilities of the father-child relationship, it would be unconscionable and contrary to justice and public policy to permit him at this time to reap any benefits as a result of the death of a child to whom he once bore such relationship but which relationship he disavowed by his acts many years ago"); In re Estate of Vallierius, 629 N.E.2d at 1188; Price, 165 A. at 471 ("[i]f there arises out of [statutes] collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void." (quoting William Blackstone, I Commentaries *91)).

196. See In re Estate of Vallierius, 629 N.E.2d at 1188.
197. See id. at 1186.
198. Id. at 1188.
199. See id. at 1187–88.
200. Id. at 1188.
201. Id. at 1188–89.
202. See id.
Similarly, an early case dealing with the issue of statutory construction in the context of the slayer's rule explained that "provisions of a will and the statutes of descent and distribution should be interpreted in the light of those universally recognized principles of justice and morality."\textsuperscript{203} The court further stated that "such interpretation is justified and compelled by the public policy embraced in those principles or maxims, which must control the interpretation of law, statutes, and contracts."\textsuperscript{204} In holding that the slayer's rule applied to a state descent and distribution statute, as well as to private insurance policies, the court reasoned that "common-law equitable maxims must be taken into consideration and applied in the interpretation of statutes as well as contracts."\textsuperscript{205} According to the court, "[s]tatutes are likewise to be construed in reference to the principles of the common law; for it must not be presumed that the legislature intended to make any innovation upon the common law, further than the case absolutely required."\textsuperscript{206}

In sum, courts interpret statutes strictly to preserve common law rules when such statutes do not expressly abrogate common law doctrines. In particular, courts have adopted this canon of strict construction when applying the common law slayer's rule under a statute. To preserve the common law slayer's rule and its mandate that slayers should not benefit from their murderous acts, courts construe statutes directing distribution of proceeds strictly.

V. COURTS SHOULD CONSTRUE THE FSGLI STRICTLY TO DISQUALIFY THE SERVICEMEMBER-SLAYER'S EXCLUSIVE FAMILY MEMBERS

Because Congress did not expressly abrogate the common law slayer's rule in the FSGLI,\textsuperscript{207} courts should construe the statute as consistent with and preservative of the rule.\textsuperscript{208} When the servicemember kills his or her spouse and the FSGLI governs the issue of policy

\textsuperscript{203} Price v. Hitaffer, 165 A. 470, 470 (Md. 1933) (rejecting argument that disqualifying the slayer worked a corruption of blood in violation of constitutional provisions).

\textsuperscript{204} \textit{id.} at 470.

\textsuperscript{205} \textit{See id.} at 474.

\textsuperscript{206} \textit{id.} at 473 (quoting James Kent, \textit{I Commentaries} *464).

\textsuperscript{207} \textit{See infra} notes 211–214 and accompanying text.

distribution, courts should follow the Tolbert court’s lead and apply a bright-line, extended slayer’s rule to disqualify the servicemember-slayer’s exclusive family members from either contingent or by-law beneficiary status.\(^{209}\) This approach properly preserves the mandate of the slayer’s rule that a killer should not benefit from the act of killing. Further, under the canon of strict construction that courts apply to statutes in derogation of the common law slayer’s rule, courts construing the FSGLI should, where the servicemember spouse killed the non-servicemember spouse, reach the Tolbert court’s conclusion of disqualifying the servicemember-slayer’s exclusive relatives from receiving the policy benefits.\(^{210}\) Therefore, the proper approach to determining who should receive the insurance benefits under the FSGLI requires courts to construe the beneficiary provisions strictly in accord with the principle that prohibits killers from benefiting from their criminal acts, whether directly as primary beneficiaries or indirectly through their exclusive family members.

### A. The Plain Language and Legislative History of the FSGLI Reveals Congress Did Not Intend to Abrogate the Common Law Slayer’s Rule

Congress did not expressly abrogate the common law slayer’s rule in either the text or the legislative history of the FSGLI.\(^{211}\) Indeed, the statute’s text and legislative history are silent on the slayer’s rule.\(^{212}\) Congress also did not enact the SGLI or the newer FSGLI provision as a substitute for the common law slayer’s rule or to displace the rule and its principles through codified law.\(^{213}\) Instead, Congress intended the FSGLI to serve a relatively limited purpose: to extend life insurance benefits to servicemembers’ family, specifically spouses and dependent

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213. See generally 38 U.S.C. §§ 1965–1979; see also Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783 (1952) (stating in absence of express congressional intent, presumption is in favor of interpreting statutes to preserve the common law).
children. In the absence of an express statement to the contrary, Congress could not have intended courts to apply the FSGLI in so mechanical a fashion as to allow a servicemember-slayer to benefit, through the servicemember-slayer’s family, from his or her act of killing.

B. Courts Should Apply an Extended Slayer’s Rule to Determine Payment of Proceeds Under the FSGLI Where the Slayer Is the Servicemember

Where the slayer is a servicemember, courts should apply an extended slayer’s rule to preclude the servicemember’s exclusive family members from beneficiary status under the FSGLI. Courts employing an extended slayer’s rule have identified two main justifications for disqualifying the servicemember slayer’s exclusive relatives, even innocent members: first, ensuring the slayer does not receive, through relatives, the financial benefits of the killing; and second, ensuring the slayer cannot inherit or otherwise control, through relatives, the proceeds from the victim’s policy. When a servicemember kills his or her spouse and the FSGLI governs payment of policy proceeds, both of these justifications are triggered.

First, under the FSGLI, the servicemember-slayer’s family members will most likely replace the servicemember as beneficiary. Under the FSGLI, the non-servicemember spouse cannot designate beneficiaries. Instead, the non-servicemember spouse’s policy proceeds go to either the servicemember-slayer’s choice of beneficiaries or family members (beneficiaries by law). In the absence of children in common with the victim, under the statute’s order of precedence provision, the proceeds go first to any children the servicemember has from previous or other relationships, then to the servicemember’s parents, and if none, then to

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215. See supra notes 91–94 and accompanying text.
216. See supra notes 95–111 and accompanying text.
217. See supra notes 50–54 and accompanying text.
218. See 38 U.S.C. § 1970(a), (i); HANDBOOK, supra note 8, at ch. 6.01–6.02 (defining scope of servicemembers’ authority to designate beneficiaries).
220. This Comment does not argue that children the servicemember-slayer and victim-spouse have together should be disqualified from receiving the victim-spouse’s policy proceeds under the FSGLI.
the servicemember's appointed executor or administrator, and if none, then to the servicemember's next of kin.\textsuperscript{221} Therefore, the servicemember slayer's exclusive family members will most likely receive the victim's policy benefits.

Because Spc. Bare's father received the proceeds from the victim-wife's policy and allegedly indicated his intent to use the proceeds to support his slayer-son in prison,\textsuperscript{222} Spc. Bare's case exemplifies the grave possibility that the servicemember-slayer will benefit from the killing through family members. Such a situation contradicts the purpose and policy of the slayer's rule's mandate.\textsuperscript{223} Therefore, despite the risk that innocent family members may be precluded from beneficiary status,\textsuperscript{224} courts should apply an extended slayer's rule under the FSGLI where the servicemember is the slayer. Invoking this extended rule to disqualify the servicemember-slayer's exclusive relatives under the FSGLI avoids reaching the unconscionable result that the servicemember-slayer could financially benefit indirectly from the criminal act.\textsuperscript{225}

Second, the concern that the servicemember-slayer could inherit the proceeds through family members should compel courts to apply an extended slayer's rule under the FSGLI. Where no children in common with the victim exist, and where the servicemember did not designate non-familial beneficiaries, the servicemember's parents receive the victim's policy proceeds first,\textsuperscript{226} as occurred in Spc. Bare's case.\textsuperscript{227} Under these circumstances, the servicemember-slayer stands to inherit the proceeds from the parents, who likely will not outlive the servicemember-slayer. This possibility raises the serious risk the servicemember-slayer will benefit financially from the act of killing.\textsuperscript{228} The fact that this risk would exist contradicts the common law slayer's

\textsuperscript{222} See supra notes 8–11 and accompanying text.
\textsuperscript{223} See supra notes 86–87 and accompanying text.
\textsuperscript{224} See Prudential Ins. Co. of Am. v. Tolbert, 320 F. Supp. 2d 1378, 1381 (S.D. Ga. 2004) (considering the fact that a bright-line, extended rule would avoid "undesirable speculation" into family relations, but "at the expense of honest relatives who would not otherwise collaborate with the slayer").
\textsuperscript{225} See id. (balancing these risks).
\textsuperscript{226} See 38 U.S.C. § 1970(a), (i).
\textsuperscript{227} See supra notes 8–9 and accompanying text.
\textsuperscript{228} See supra notes 91–111 and accompanying text.
rule’s maxim and frustrates principles of equity.\textsuperscript{229} For these reasons, courts applying the FSGLI to questions of policy payment where the servicemember killed the spouse should apply an extended slayer’s rule to disqualify the servicemember-slayer’s exclusive relatives from beneficiary status.

C. The Tolbert Court’s Bright-Line Approach Disqualifying the Slayer’s Exclusive Family Members Under the SGLI Properly Preserves the Mandate of the Slayer’s Rule

The \textit{Tolbert} court’s bright-line approach to the issue of whether the servicemember-slayer’s exclusive family members can recover as beneficiaries under the SGLI correctly embraces the policy underlying the rule.\textsuperscript{230} Because this approach cuts the slayer entirely off from any financial benefits that might flow, directly or indirectly, from the killing,\textsuperscript{231} it better effectuates the principle of the slayer’s rule than a simple application of the statute’s order of precedence.\textsuperscript{232}

In \textit{Tolbert}, the court reasoned that the risk that the non-servicemember slayer could benefit indirectly through relatives that receive the victim-servicemember’s policy benefits under the SGLI required disqualifying the relatives from beneficiary status.\textsuperscript{233} In particular, the court considered the risk that the mother and brother would use the victim-servicemember’s policy proceeds to provide financial support to the non-servicemember slayer,\textsuperscript{234} thereby indirectly benefiting the slayer and violating the slayer’s rule.\textsuperscript{235} The court reasoned that the possibility of such a benefit to the slayer outweighed the risk that innocent family members might be disqualified.\textsuperscript{236}

Thus, courts applying the slayer’s rule under the FSGLI should, where the servicemember kills the spouse, follow the \textit{Tolbert} court’s

\begin{itemize}
  \item \textsuperscript{229} See \textit{Tolbert}, 320 F. Supp. 2d at 1381.
  \item \textsuperscript{230} See \textit{id}.
  \item \textsuperscript{231} See \textit{id}.
  \item \textsuperscript{232} See \textit{Tolbert}, 320 F. Supp. 2d at 1381 ("On balance, [a bright-line extended rule] is a better practice than its non-extended version."); see also \textit{Prudential Ins. Co. of Am. v. Athmer}, 178 F.3d 473, 477 (7th Cir. 1999) (deciding not to determine whether to adopt a bright-line, extended rule where such a rule was not argued and instead affirming the lower court’s judgment allowing the slayer’s son to receive the victim’s SGLI policy proceeds).
  \item \textsuperscript{233} See \textit{Tolbert}, 320 F. Supp. 2d at 1381.
  \item \textsuperscript{234} See supra notes 174–181 and accompanying text.
  \item \textsuperscript{235} See supra notes 174–181 and accompanying text.
  \item \textsuperscript{236} See supra note 180 and accompanying text.
\end{itemize}
lead. Under the FSGLI, the servicemember-slayer controls the beneficiary designation\textsuperscript{237} and, where the servicemember has no children in common with the victim and did not designate other beneficiaries, the servicemember stands to benefit through his or her exclusive relatives, including parents.\textsuperscript{238} To fulfill the purpose of the slayer's rule, courts should adopt the Tolbert court's bright-line extended slayer's rule to disqualify the servicemember-slayer's exclusive family members from beneficiary status. This approach would ensure that the servicemember-slayer does not benefit indirectly, either through relatives establishing bank accounts for the slayer, as was alleged in the Spc. Bare case,\textsuperscript{239} or through inheritance.

Further, where the issue of the rule's scope arises in the context of FSGLI policies and the servicemember's criminal act of killing, this approach avoids the possibility that courts might, in the absence of a clear rule, reach conclusions that lead to unconscionable results. In Athmer, the Seventh Circuit affirmed the lower court's judgment allowing the slayer's son to recover the victim's SGLI policy proceeds because the party who would benefit from such a uniform bright-line extended slayer's rule did not argue it.\textsuperscript{240} In affirming the lower court, the Seventh Circuit considered the possibility that the slayer could benefit indirectly through relatives.\textsuperscript{241} While acknowledging this risk, the court affirmed the lower court's judgment on other grounds, allowing the slayer's son to receive the insurance benefits.\textsuperscript{242} Because the risk the slayer could benefit from the act of killing indirectly, through family members, violates the slayer's rule and leads to unconscionable results, courts should instead decide the issue affirmatively and disqualify the slayer's exclusive relatives.\textsuperscript{243}

For these reasons, where the servicemember is the slayer and the victim is a non-servicemember spouse covered under the FSGLI's insurance program, courts should follow the Tolbert court's reasoning and adopt its bright-line rule to disqualify the servicemember-slayer's exclusive relatives from receiving the policy benefits. This approach

\textsuperscript{237} See 38 U.S.C. § 1970(a) (2003); HANDBOOK, supra note 8, at chs. 6.01, 6.02.
\textsuperscript{238} See 38 U.S.C. § 1970(a), (i).
\textsuperscript{239} See supra notes 8--9, 11 and accompanying text.
\textsuperscript{240} See Prudential Ins. Co. of Am. v. Athmer, 178 F.3d 473, 477 (7th Cir. 1999); supra note 161 and accompanying text.
\textsuperscript{241} See supra notes 163–166 and accompanying text.
\textsuperscript{242} See supra note 161 and accompanying text.
properly fulfills and preserves the mandate of the slayer’s rule while avoiding the unconscionable result that the servicemember-slayer could benefit in any way from the act of killing.

D. Courts Interpreting the Slayer’s Rule Under the FSGLI Must Construe the Statute Strictly, Requiring Courts to Reach the Same Result as the Tolbert Court

Courts interpreting questions regarding the payment of insurance benefits under the FSGLI should adopt the canon requiring strict statutory construction. Construing the FSGLI strictly means interpreting and applying it to preserve the slayer’s rule and purpose: barring slayers from benefiting from the act of killing. The Tolbert court implicitly employed this canon to adopt the bright-line rule disqualifying all of the non-servicemember slayer’s relatives from beneficiary status. In fact, to reach its conclusion, the Tolbert court had to construe the SGLI’s beneficiary provision strictly, refusing to apply it without regard to the policy underlying the slayer’s rule. A contrary application of the statute would have required the court to allow the non-servicemember slayer’s mother and brother to receive the proceeds, thereby creating the risk the non-servicemember slayer would prosper from the act of killing.

The policy underlying the slayer’s rule—that killers should not benefit from the act of killing—motivated the Tolbert court to construe the SGLI’s beneficiary provision strictly. Indeed, the Tolbert court stated that “justice” required disqualifying the non-servicemember slayer’s relatives from receiving the proceeds as beneficiaries. In implicitly employing this canon of construction, the court looked to a state court case construing a slayer’s statute strictly. Further, in strictly construing the statute, the court reached the conclusion the Seventh Circuit decided it did not need to reach. By extending the Seventh

244. See supra Part IV.
245. See supra notes 178–181 and accompanying text.
246. See Tolbert, 320 F. Supp. 2d at 1380–82.
248. Tolbert, 320 F. Supp. 2d at 1381 n.3.
249. See id. at 1381; supra notes 179, 196–202 and accompanying text.
250. See Tolbert, 320 F. Supp. 2d at 1381 (“[The Seventh Circuit] expressly noted that it ‘need not decide whether that is or should be the federal common law rule governing murders by beneficiaries of [SGLI] policies’”).
Circuit's discussion and coming to its own conclusion, the *Tolbert* court fulfilled the mandate of the slayer's rule.251

Thus, courts construing the FSGLI should interpret the statute strictly to give the slayer's rule full effect where the servicemember kills the spouse. In so doing, courts will reach the same conclusion as the *Tolbert* court: allowing the servicemember-slayer's exclusive family members to recover the proceeds as designated or by-law beneficiaries under the statute would lead to the unconscionable result that the slayer could benefit from the killing.252 Therefore, a strict construction of the statute should lead courts to disqualify the servicemember-slayer's exclusive family members from beneficiary status.

Further, strictly construing the FSGLI where the servicemember kills the spouse ensures that though the servicemember-slayer has the statutorily-mandated discretion to designate beneficiaries, and though the servicemember-slayer's relatives will be the beneficiaries under the statute's order of precedence, the servicemember-slayer will not benefit from the act of murder.253 Either through intentional or by law designations, the servicemember-slayer's family members will generally be the contingent beneficiaries on the non-servicemember spouse's policy under the FSGLI.254 Under these circumstances, the financial benefits from the victim-spouse's policy could be passed to the servicemember-slayer through the servicemember-slayer's family members.255 Allowing the servicemember-slayer's relatives to receive the benefits of the victim-spouse's policy under the FSGLI creates the grave risk that the servicemember-slayer will receive the benefits of the act of killing.256 Nothing in the SGLI or FSGLI demonstrates Congress intended the unconscionable result that servicemembers could receive the financial rewards through their family members for the act of killing spouses covered under the FSGLI.257 Therefore, courts should, where the servicemember kills the spouse, interpret the FSGLI strictly. This strict construction would lead courts to follow the *Tolbert* court's bright-line

251. See *id.*
252. See *id.*
254. See supra notes 50–54 and accompanying text.
255. See supra notes 91–111 and accompanying text.
rule of disqualification and thereby fulfill the mandate of the slayer’s rule.

VI. CONCLUSION

Congress did not abrogate the slayer’s rule in either the SGLI or the FSGLI. Where the servicemember kills the spouse and the court must determine whether the servicemember’s exclusive family members may receive the victim’s proceeds under the FSGLI, courts should apply an extended slayer’s rule to disqualify the family members. Case law involving both state slayer’s statutes and the SGLI supports this conclusion. Additionally, the canon of strict statutory construction invoked by courts construing statutes in derogation of the common law slayer’s rule leads courts to this result. A contrary application of the FSGLI provisions would lead to the possibility that the servicemember-slayer could benefit indirectly from the killing. This risk both violates the mandate of the slayer’s rule and leads to unconscionable results. Therefore, courts addressing this issue should adopt a bright-line rule disqualifying the slayer’s family members in the strict circumstances discussed in this Comment: where the servicemember kills the spouse and the FSGLI governs the spouse’s policy.