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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

\_\_\_\_\_  
No. 05-1160  
\_\_\_\_\_

VERA CHAWLA, Trustee for Harald Giesinger Special Trust,  
*Appellant,*

v.

TRANSAMERICA OCCIDENTAL LIFE  
INSURANCE COMPANY,

*Appellee.*

\_\_\_\_\_  
APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
\_\_\_\_\_

**BRIEF OF *AMICI CURIAE*, THE LEAGUE OF LIFE AND HEALTH  
INSURERS OF MARYLAND, MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY, AND BANNER LIFE INSURANCE COMPANY  
IN SUPPORT OF AFFIRMING DECISION IN FAVOR OF APPELLEE,  
TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY**

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Dated: August 1, 2005

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## INTEREST OF THE *AMICI CURIAE*

*Amici curiae* submit this brief with the consent of counsel for the parties. The League of Life and Health Insurers of Maryland (the “League”) is a non-profit, non-stock membership corporation, which serves as the lead trade association for insurance company members in the State of Maryland. Many members of the League provide essential life insurance protection to Maryland residents and their families.

Massachusetts Mutual Life Insurance Company (“MassMutual”) is a Fortune 100 company providing life insurance protection to Maryland residents and their families. MassMutual currently has over \$8.7 billion in life insurance in force for Maryland residents.

Banner Life Insurance Company (“Banner Life”) is a Maryland domiciled life insurance company with its home office located in Rockville, Maryland. Banner Life provides essential life insurance protection to Maryland residents and their families. Banner Life currently has over \$7.8 billion in life insurance in force for Maryland residents.

The diverse parties joining in this brief reflect a consensus commitment to (1) providing Maryland residents and businesses with the opportunity to purchase life insurance through trusts in order to permit the flexibility needed to address financial and estate planning needs; and, at the same time, (2) preserving the

doctrine of insurable interest for life insurance policies issued to trusts. If, on appeal, the District Court's decision is not clarified, and remains the subject of misinterpretation and misapplication (as it already has been), then Maryland residents and businesses will suffer a significant disadvantage by having fewer product and planning options available to address critical concerns. In addition to disrupting the existing life insurance market and thereby limiting prospective estate and business planning options, the District Court's decision, if broadly misinterpreted and misapplied to mean a trust can never have an insurable interest, may call into question the viability of life insurance policies previously issued by League Members, MassMutual, and Banner Life – policies that currently are in force and for which premiums have been paid for many years. For the reasons explained above and more fully discussed below, the Court's decision may significantly impact Maryland law and how life insurance companies transact business in Maryland.

### SUMMARY OF ARGUMENT

Life insurance is frequently employed for business and personal estate planning purposes as a trust-funding mechanism. 1 *The Law of Trusts* § 1 (4<sup>th</sup> ed., Aspen Publishers, Inc. 2001); George Gleason Bogert, *The Law of Trusts and Trustees* § 235, at 66 (2d rev. ed. 1992). In an “insurance trust,” life insurance proceeds are paid to the trust for the benefit of the trust beneficiaries. *See* Bogert,

§ 235, at 69. For this reason, *amici* respectfully submit that, in a trust funded by life insurance, the trust beneficiaries are the individuals that the Court should consider for purposes of determining the presence of an insurable interest in the life of the insured.

In this case, the United States District Court for the Eastern District of Virginia, sitting in diversity, issued a decision concerning a life insurance policy purchased by the Harald Giesinger Special Trust (the “Giesinger Trust”) from Transamerica Occidental Life Insurance Company (“Transamerica”). *See Chawla v. Transamerica Occidental Life Ins. Co.*, 2005 U.S. Dist. LEXIS 3473, at \*1-2 (E.D. Va. Feb. 3, 2005). The Giesinger Trust was the owner and beneficiary of the policy. *See id.* The policy insured Harald Giesinger (“Mr. Giesinger”), who was the grantor, beneficiary, and a trustee under the Giesinger Trust. *See id.* Plaintiff, Vera Chawla (“Mrs. Chawla”), was the co-trustee. *See id.* Mrs. Chawla also was the successor beneficiary designated to receive the property of the Giesinger Trust upon the death of Mr. Giesinger. *See Chawla*, 2005 U.S. Dist. LEXIS 3473, at \*18.

After concluding that material misrepresentations in the insurance application voided the policy, the District Court observed that, in the alternative, payment of the policy proceeds also would be barred because the Giesinger Trust lacked an insurable interest in the life of Mr. Giesinger. *See id.* at \*11-16.

Although the Court, interpreting insurable interest pursuant to section 12-201 of the Insurance Article of the Annotated Code of Maryland (the “Maryland Insurance Article”), properly concluded that Mrs. Chawla, as trust beneficiary, failed to establish any of the types of insurable interest recognized by Maryland law, *see* Md. Code Ann., Ins. § 12-201(b) and (c), its decision has caused concern among consumers, policyholders, agents, attorneys, and insurers.

*Amici* are committed to preserving and protecting the doctrine of insurable interest; at the same time, they are concerned that *Chawla* not be misinterpreted and misapplied. Significantly, at least one commentator has suggested that the District Court “ruled a multimillion-dollar life insurance policy in Maryland void because it was owned by a trust.” *See* Albert B. Crenshaw, *A Matter of Trusts*, Wash. Post, Feb. 20, 2005, at F1. Such an analysis, however, ignores the history and development of both insurance trusts and the doctrine of insurable interest. Indeed, another alarming and incorrect conclusion drawn from *Chawla* is that, under Maryland law, a trust can never have an insurable interest. *See id.* (“In the judge’s view, Maryland law bars a trust from having an insurable interest in a person.”) The District Court’s opinion, therefore, has caused disruption in the insurance marketplace and created concern among the citizens of Maryland and elsewhere concerning the viability of life insurance policies issued to trusts. The opinion also interjects substantial uncertainty into a valuable insurance product and

important financial planning mechanism.<sup>1</sup> Accordingly, *amici* submit the Court should construe Maryland law by holding that, when a trust is designated the beneficiary of a life insurance policy, insurable interest exists if the trust beneficiaries have an insurable interest in the life of the insured.

## ARGUMENT

### I. The Doctrine Of Insurable Interest Precludes Wagering, But Does Not Preclude The Designation Of A Trust As Owner Or Beneficiary Of A Life Insurance Policy

#### A. The Doctrine Of Insurable Interest Evolved From The Common Law

The doctrine of insurable interest began its evolution more than three hundred years ago when, under the law of England, policies lacking an insurable interest were void as against public policy. *See Conn. Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457, 460 (1889). With respect to life insurance, the doctrine evolved to discourage wagering on the life of another. *See Beard v. Am. Agency Life Ins. Co.*, 550 A.2d 677, 680-81 (Md. 1988); *see also Conn. Mut. Life*, 94 U.S. at 460 (policies in which there is no interest in the property or life insured, but only an interest in its loss or destruction, are mere wager policies and void as against public policy). The beneficiaries under such wagering contracts received no economic or other benefit from the insured's continued existence and stood to

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<sup>1</sup> According to a recent commentary, for example, the *Chawla* decision “has created quite a stir” and, until the insurable interest issue is resolved, attorneys should be cautious when creating trusts. *See Trust has no Insurable Interest in Insured* *Chawla v. Transamerica Occidental Life Ins. Co.*, 2005 Westlaw 405405 (E. D. Va. Feb. 3, 2005) 32 Est. Planning 44 (RIA) (July, 2005).

profit from the insured's death rather than suffer a loss. *See Rubenstein v. Mut. Life Ins. Co. of N.Y.*, 584 F. Supp. 272, 279 (E.D. La. 1984) (“[I]nsurable interest is required by law in order to protect the safety of the public by preventing anyone from acquiring a greater interest in another person's death than in his continued life ....”); *Woody's Adm'r v. Schaaf*, 56 S.E. 807, 808 (Va. 1907) (wagering policy is contrary to public policy, and party claiming proceeds must have insurable interest).

In 1774, the English Parliament enacted the Statute of 14 George III, chapter 48, requiring insurable interest with respect to life insurance policies. *See Conn. Mut. Life*, 94 U.S. at 460; *Ruse v. The Mut. Benefit Life Ins. Co.*, 23 N.Y. 516, 525 (1861); *see also* Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* §§ 3.2(a)-(b) (West Publishing Co. 1988); 1-1 Appleman on Ins. § 1.3. Notably, the English statute was construed as extending the insurable interest requirement such that parties may not agree, prior to issuance of a policy, to assign the proceeds to someone lacking insurable interest. *See Silvey v. Hodgdon*, 52 Cal. 363, 365 (1877). Absent such an extension of insurable interest laws, a person barred from receiving a direct benefit could receive the policy proceeds indirectly. *See id.*<sup>2</sup>

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<sup>2</sup> Similarly, if a person designated as owner and beneficiary of a policy does not have an insurable interest in the life insured, the parties should not be allowed to circumvent the insurable interest requirement by creating a trust and naming that person as trustee and beneficiary of the trust.

By 1896, a number of states had enacted statutes similar to those enacted by the English Parliament.<sup>3</sup> *See Conn. Mut. Life*, 94 U.S. at 460. Further, in states lacking an insurable interest statute, most courts either followed the English statutes or adopted the English common law. *See id.* In 1889, the Court of Appeals of Maryland recognized the general concurrence of judicial opinion and authority requiring insurable interest under life insurance policies. *See Rittler v. Smith*, 16 A. 890, 891 (Md. 1889). Thus, under Maryland common law, a person not possessing an insurable interest in the life of another could not insure that life. *See Beard*, 550 A.2d at 681; *Rittler v. Smith*, 16 A. at 891-92. Maryland courts also recognized the general common-law rule that, if a person enters into an insurance contract upon the life of another without having insurable interest, then that contract is against public policy and void. *See Beard*, 550 A.2d at 681. Significantly, although some states found that contracts lacking insurable interest were incentives to crime, Maryland's insurable interest doctrine was based solely on the public policy against encouraging gambling contracts. *See id.* at 681 n.1; *Rittler v. Smith*, 16 A. at 891-92.

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<sup>3</sup> Today, most states have insurable interest statutes. *See, e.g.*, Ark. Code Ann. § 23-79-103 (2005); Idaho Code § 41-1804 (2005); N.Y. Ins. Law § 3205 (2005); Pa. Stat. Ann. tit. 40, § 512 (2005); Tex. Ins. Code Ann. § 1103.002 (2005); Va. Code Ann. § 38.2-301 (2005); W. Va. Code § 33-6-2 (2005).

B. Insurable Interest In Maryland Is Governed By The Insurance Article

The Maryland Legislature codified the common law principles requiring and defining insurable interest by enacting Article 48A, § 366, in 1956. *See Beard*, 550 A.2d at 681. In 1995, section 366 was re-codified without substantial amendments as section 12-201 of the Maryland Insurance Article (Chapter 36 of the Laws of 1995). Subsection 12-201(a)<sup>4</sup> provides, in pertinent part:

(a) In general. –

(1) An individual of competent legal capacity may procure or effect an insurance contract on the individual's own life or body for the benefit of any person.

(2) Except as provided in subsection (c) of this section, a person may not procure or cause to be procured an insurance contract on the life or body of another individual unless the benefits under the insurance contract are payable to:

(i) the individual insured;

(ii) the individual insured's personal representative; or

(iii) a person with an insurable interest in the individual insured at the time the insurance contract was made.

The Maryland Insurance Article defines “person” as “an individual, receiver, *trustee*, guardian, personal representative, fiduciary, representative of any kind,

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<sup>4</sup> Unless otherwise indicated, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

partnership, firm, association, corporation, or other entity.” Md. Code Ann., Ins. § 1-101(dd) (emphasis added). Consequently, a “trustee” under section 12-201(b) has an insurable interest in the life of an insured if (i) the individual trust beneficiaries are closely related by blood or law to the insured, or (ii) the trust beneficiaries have a lawful and substantial economic interest in the continued life, health, and safety of the insured. *See* Md. Code Ann., Ins. §§ 12-201(b)(1)-(3).

## II. Maryland Recognizes A Trust Is A Suitable Vehicle For Distributing Life Insurance Proceeds

### A. Maryland Law Recognizes A Trust May Be The Owner Or Beneficiary Of A Policy

There is no Maryland law, statutory or otherwise, precluding a trust from being the owner or beneficiary of a policy. Indeed, although the Maryland Insurance Article does not expressly state that a trust may be the owner or beneficiary of a life insurance policy, the statutory language clearly contemplates that a trust may procure the insurance, be the beneficiary under the policy, and have an insurable interest in the life of the insured. Specifically, the Maryland Insurance Article provides that a person must have an insurable interest and that such person may be a trustee. *See* Md. Code Ann., Ins. §§ 12-201; 1-101(dd).

The Maryland Estates and Trusts Article also contemplates that a trust may be the owner or beneficiary of a policy. *See* Md. Code Ann., Est. & Trusts §§ 15-116; 15-514. Section 15-116, for example, states that a trustee who acquires,

retains, or owns a policy on the life of the grantor of a trust, or on the lives of the grantor and the grantor's spouse, children, or grandchildren, owes a duty of loyalty and fair dealing, implying that a trustee may purchase and own a life insurance policy. In addition, section 15-514 states that a trustee must allocate proceeds of a life insurance policy, or other contract designating the trust or trustee as beneficiary, to the principal of the trust.

B. A Trust Benefits The Trust Beneficiaries, Not The Trustee

The fact that Maryland law contemplates issuance of a policy owned by and payable to a trust makes sense considering the nature and uses of trusts. A “trust” is an arrangement whereby legal title to property is held by one or more persons under an equitable obligation to use, transfer, or otherwise manage that property for the benefit of others.<sup>5</sup> See *From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church*, 803 A.2d 548, 566 (Md. 2002); *Millholland v. Whalen*, 43 A. 43, 43-44 (Md. 1899). The elements of a trust include: (i) a designated trustee and beneficiary, (ii) trust property, and (iii) transfer of trust property to the trustee for the benefit of another. See *Sieling v. Sieling*, 135 A. 376, 381-82 (Md. 1926) (describing circumstances needed to create valid trust); see also

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<sup>5</sup> The modern trust owes its origin and development to medieval England. See George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 2, at 13-14 (2d rev. ed. 1984). Toward the end of the eighteenth century, trusts came into more common use in the United States. See *id.* at 28. During that period, the American colonial and early state chancellors adopted the English system of equity jurisprudence, which included the law of trusts. See *id.* Eventually, a number of states enacted statutes codifying many trust principles and prescribing detailed rules governing the creation and administration of trusts. See *id.* at 31-33.

Black's Law Dictionary 1047 (6<sup>th</sup> ed. 1991) (describing essential elements of trust). Thus, a requisite factor in the creation of a trust is the transfer of the trust property to the trustee with the intent that it be administered for the benefit of the trust beneficiaries, not the trustee. *See id.*

Further, the trustee holds legal title and is responsible for managing the trust's corpus assets and income for the benefit of the beneficiaries. *See Wilshire Credit Corp. v. Karlin*, 988 F. Supp. 570, 572 (D. Md. 1997) (settlor had no interest in trust property because trustee held legal title and beneficiary held equitable title); *Mory v. Michael*, 18 Md. 227, 240 (1862) (trustee took legal title with limitations against using it for his benefit); *see also* Restatement (Second) of Trusts § 3(3) (1999) (trustee holds property in trust); Black's Law Dictionary 1053 (6<sup>th</sup> ed. 1991) (trustee holds legal title and must carry out specific duties with regard to trust property). The beneficiaries, however, hold equitable title and benefit from the trust. *See Wilshire Credit Corp.*, 988 F. Supp. at 574 (creditors could not attach trust property because the trust beneficiaries owned said property); *Mory v. Michael*, 18 Md. at 240-41 (creation of trust requires intent for person to hold property for benefit of another, and such person will be considered trustee holding legal title for the beneficial owner); *see also* Black's Law Dictionary 1047 (6<sup>th</sup> ed. 1991) (describing trust as entity created for benefit of designated beneficiaries); Restatement (Second) of Trusts § 3(4) (1999) (trust is established

for the benefit of trust beneficiaries). This includes co-beneficiaries as well as any successor beneficiaries. *See* Md. Code Ann., Est. & Trusts § 15-501 (defining beneficiary as including income and remainder beneficiaries); *see also* Restatement (Second) of Trusts, § 113 cmt. b (1959) (interests of several beneficiaries may be enjoyed simultaneously or successively).

### C. Trusts Funded By Life Insurance Policies Play A Significant Role In Financial Planning

Today, there are many types and uses of trusts, including the life insurance trust. 76 Am. Jur. 2d *Trusts* § 11 (2004); 1 The Law of Trusts § 1. The term “life insurance trust” or “insurance trust” refers to a trust in which the sole or principal trust property consists of life insurance. *See* 76 Am. Jur. 2d *Trusts* § 11 (2004); Bogert, § 235, at 65-67. The insurance is usually on the life of the grantor of the trust, and the proceeds are held for distribution to the trust beneficiaries in accordance with the grantor’s instructions. *See* Bogert, § 235, at 65-67.

Although life insurance trusts were not particularly popular before 1930, their use has increased significantly since that time. *See id.* at 67. The advantages of a life insurance trust include building up an estate, fostering savings, and protecting family members from the financial ramifications of untimely death. *See id.* These advantages are shared by all life insurance policies, but the life insurance trust allows the grantor to dispose of the policy proceeds based on present circumstances and to plan for future contingencies. *See id.* Payment of the

proceeds to the trustee of an insurance trust provides flexibility in meeting the needs of family members. *See id.* at 70. If an intended beneficiary is a minor, for example, payment to an insurance trust may eliminate the disadvantages associated with guardianship and facilitate distribution of the proceeds. *See id.* at 71 (insurers generally require appointment of guardian when beneficiary of policy is a minor). An insurance trust also is beneficial as a means of protection against creditors' claims and taxation. *See id.*; *see also* Jason A. Frank, *Elder Law in Maryland* §§ 4-1(a)(2)(ii), 4-1(b) (2d ed. 2003); *Planning for Small and Moderate Sized Estates: Document Drafting and Tax Planning* §§ 10.1.1-10.1.3 (Micpel 1999); Joseph E. Cole, *Introduction to Estate and Tax Planning Fundamentals*, 47 A.F.L. Rev. 189, 199 (1999); Robert B. Smith, *Reconsidering the Taxation of Life Insurance Proceeds Through the Lens of Current Estate Planning*, 15 Va. Tax. Rev. 283, 309 (1995).<sup>6</sup>

D. A Trust Or Trustee May Own Or Be The Beneficiary Of A Life Insurance Policy

An insurance trust may be created by designating the trust or trustee as beneficiary under an existing policy. *See* Bogert, § 235, at 65-67. A trustee of an existing trust also may purchase a life insurance policy as property for the trust.

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<sup>6</sup> Absent an insurance trust, life insurance proceeds generally will provide liquidity to pay debts or offset the effects of estate taxes, but such proceeds may constitute a portion of the decedent's estate for tax purposes. *See* Joseph E. Cole, *Introduction to Estate and Tax Planning Fundamentals*, 47 A.F.L. Rev. 189, 199 (1999). An irrevocable life insurance trust, however, may eliminate all incidents of ownership, thereby removing the proceeds from the taxable estate. *See id.*; *see also* I.R.C. § 2042.

*See id.* at 77-78. Significantly, some state statutes expressly authorize a trustee to make such purchases. *See id.* at 77.<sup>7</sup> Other states, including Maryland, have enacted statutes that prescribe the parameters of the duties of a trustee with respect to acquiring life insurance on the life of a grantor of a trust and the grantor's spouse, children, or parents. *See* Md. Code Ann., Est. & Trusts § 15-116 (2005); *see also* S.C. Code Ann. § 62-7-302(J) (2004). Even where there is no express provision for the purchase of life insurance, a trustee may be statutorily authorized to receive proceeds as a designated beneficiary of an insurance policy. *See* Md. Code Ann., Est. & Trusts § 11-105 (2005); Or. Rev. Stat. § 128.470 (2003).

No Maryland court has ever held that a trust may not own or be the beneficiary of a life insurance policy. Indeed, in light of the fact that Maryland statutorily permits a "trustee" to purchase insurance, have an insurable interest, and receive death benefits, there would be no statutory basis for such a holding. *See* Md. Code Ann., Ins. §§ 1-101(dd) (defining "person" to include a "trustee"); 12-201(a)(2) (a person purchasing insurance on another must have an insurable interest); Md. Code Ann., Est. & Trusts §§ 15-116 (trustee who acquires, retains, or owns a policy on the life of the grantor of a trust, or on the lives of the grantor and the grantor's spouse, children, or grandchildren, owes a duty of loyalty and fair

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<sup>7</sup> Alabama, Indiana, and Massachusetts, for example, have enacted statutes authorizing a trustee to purchase insurance contracts on the life of a beneficiary of the trust or a person in whose life the beneficiary has an insurable interest. *See* Ala. Code § 19-3-125 (1975); Ind. Code § 30-1-5-1 (2005); Mass. Gen. Laws ch. 203, § 25A (2005).

dealing); § 15-514 (trustee shall allocate proceeds of life insurance policy, or other contract designating trust or trustee as beneficiary, to principal of trust).

Further, holding that a trust lacks insurable interest but a trustee of a trust has an insurable interest would elevate form over substance. Trust assets are owned by the trust, but the trust can only act through the trustee, and the trustee can only act for the benefit of the trust beneficiaries. *See Heyman v. M.L. Mktg. Co.*, 116 F.3d 91, 96 (4<sup>th</sup> Cir. 1997) (“Trustees act on behalf of trusts.”); *Sieling*, 135 A. at 5381-82; Restatement (Third) of Trusts § 40 cmt. b (2003) (any interest in real or personal property may be held in trust by trustee); Black’s Law Dictionary 1054 (6<sup>th</sup> ed. 1991) (defining “trust res” as property of which trust consists). There is no functional difference between whether a trust or its trustee is designated as the beneficiary of a policy, and designating a trust as the beneficiary is the same as designating a trustee. Thus, regardless of whether the trust or the trustee is identified as the beneficiary of a life insurance policy, the same legal test for insurable interest should apply and the same legal result should obtain.

### III. A Trust Or Trustee Can Have An Insurable Interest In The Life Of An Insured

In order to determine whether a trust has an insurable interest under a life insurance policy, the Court should consider the parties to the insurance contract, the parties under the trust instrument, and the insurable interest requirements dictated by section 12-201. If a trust or trustee is the owner of the policy and the

proceeds are not payable to the insured or the insured's personal representative, then the trust, as beneficiary under the policy, must demonstrate the existence of an insurable interest as defined in subsections 12-201(b) and (c). *See* Md. Code Ann., Ins. § 12-201(a).

A. Insurable Interest Should Be Examined From The Perspective Of The Trust Beneficiaries, Not The Trustee

Although the Maryland Insurance Article authorizes a “trustee” to procure insurance on the life of another, it would be illogical and unreasonable to limit the insurable interest inquiry to whether the trustee has an insurable interest. *See Degren v. State*, 722 A.2d 887, 895 (Md. 1999) (“We should construe the statute in a manner that results in an interpretation ‘reasonable and consonant with logic and common sense.’”); *Lewis v. State*, 705 A.2d 1128, 1131 (Md. 1998) (“We shall not interpret a statute to produce unusual or extraordinary results, absent the clear legislative intent to enact such a provision.”). The trustee holds bare legal title and is under a duty to administer the proceeds of life insurance policies held in trust for the benefit of the trust beneficiaries.<sup>8</sup> *See Nat’l Bank of Commerce & Trust Co. v. Northwestern Mut. Life Ins. Co.*, 67 F. Supp. 694, 699 (D.R.I. 1946). Further, the trust property, including the proceeds of an insurance policy, inures to the benefit

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<sup>8</sup> Trustees, especially banks and attorneys, often are selected because they are disinterested parties that can be relied upon to fulfill the expressed intentions of the grantor. *See* Alan Newman, *The Intention of the Settlor Under the Uniform Trust Code: Whose Property is it, Anyway?*, 38 Akron L. Rev. 649, 694 (2005) (general common law rule that trust beneficiaries may not remove trustees except for cause reflects deference given to intent of grantor of trust). Any holding requiring insurable interest by the trustee, therefore, would severely limit the grantor's options in selecting trustees.

of the trust beneficiaries, in whom equitable title rests. *See* 3 Couch on Ins. 3d § 42:72 (2004); *see also* *Citizen's Bank & Trust Co. v. Scott & Sanders*, 72 S.W.2d 1064, 1066-67 (Tenn. Ct. App. 1933) (insurable interest existed where fire insurance was purchased by trustee for benefit of trust beneficiary). Thus, the logical inquiry is whether the beneficiaries of a trust have an insurable interest.

Not only is this analysis of Maryland law consistent with principles of statutory construction, but it also is consistent with the approach followed by the courts. Courts historically have examined the trust beneficiary's interest for purposes of determining the extent of the insurable interest of a trust. *See Md. Nat'l Bank v. Tower*, 374 F.2d 381, 382-86 (4<sup>th</sup> Cir. 1967) (trustee of pension plan providing death benefits had insurable interest to extent benefits were due to beneficiary); *Gibbons' Estate*, 200 A. 55, 56-57 (Pa. 1938) (insurable interest existed under policy assigned to trustee of trust, which existed for benefit of creditors that had paid the insured's debts); *Butler v. State Mut. Life Assur. Co.*, 8 N.Y.S. 411, 412 (N.Y. Sup. Ct. 1890) (noting trust lacked insurable interest because the trust beneficiary was not related to the insured).

B. A Trust Or Trustee Is A Nominal Beneficiary And Holds The Policy Proceeds For The Trust Beneficiaries

A life insurance policy purchased by a trust or trustee is not void if the trust beneficiaries have an insurable interest in the life of the insured. *See* 3 Couch on Ins. 3d § 42:72 (2004); *see also Md. Nat'l Bank v. Tower*, 374 F.2d at 382-86 (noting trustee had insurable interest to extent benefits were due to beneficiary); *Gibbons' Estate*, 200 A. at 56-57 (noting trustee had insurable interest because trust was for benefit of creditors that had paid the insured's debts). Indeed, a trust or trustee is merely a nominal beneficiary, receiving no pecuniary benefit from the insured's death and accepting the proceeds for the benefit of another. Thus, insurable interest should be determined from the perspective of the trust beneficiaries, not based on the interests of the trustee who merely acts as a conduit for the insurance proceeds.

If the trust beneficiaries could have purchased the policy, then the outcome should be no different simply because the trust or trustee, holding bare legal title, purchased the policy for the benefit of the trust beneficiaries. So, for instance, if the children of the insured could have purchased a policy on the life of their mother or father, it should make no difference whether a trust purchased that same policy for the benefit of the children.

In sum, if a trust is the beneficiary of a life insurance policy, and the trust beneficiaries possess an insurable interest in the life of the insured, then the trust should be determined to have an insurable interest in the policy. Assuming the policy and trust meet all other statutory and common law prerequisites, the insurance policy should be a valid and proper means of funding the trust. If the trust beneficiaries lack an insurable interest, however, then there is no insurable interest and the policy should be declared void under Maryland law.

### CONCLUSION

The District Court's decision, absent this Court's intervention, will continue to be a source of confusion for estate planners, the insurance industry, and consumers. Accordingly, the Court should construe and clarify Maryland law by holding that, if a trust or trustee is designated the beneficiary of a life insurance policy, then insurable interest is determined by examining whether the trust beneficiaries have an insurable interest in the life of the insured.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1<sup>st</sup> day of August, 2005, pursuant to Federal Rule of Civil Procedure 25(a)(2)(B), the Brief of *Amici Curiae*, The League of Life and Health Insurers of Maryland, Massachusetts Mutual Life Insurance Company, and Banner Life Insurance Company, in Support of Affirming Decision in Favor of Appellee, Transamerica Occidental Life Insurance Company, was sent by Federal Express to the Clerk and two copies were mailed, first class, postage prepaid, to:

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