

**DEATH CLAIMS IN FOREIGN JURISDICTIONS:**  
**CAN INSURERS PROTECT THEMSELVES**  
**FROM FRAUDULENT CLAIMS?**

I. INTRODUCTION

For some years, the life insurance industry has dealt with questions of whether death claims originating in underdeveloped, tumultuous regions of the world were legitimate or fraudulent.

Many claims from “third-world” countries are, of course, legitimate. However, as various regions continue to suffer war and unrest, as others emerge as new markets in the global economy and as some insurers continue to vigorously seek to increase market share in this country and in new foreign markets, the temptation of the easy payoff represented by a life insurance policy can prove too great for those willing to stage false deaths in return for cash rewards. This is especially true when a relatively small face amount in U.S. terms may support a very comfortable life style in many countries. It should also be noted that there have been some indication that insurance fraud of various types may have become an instrument for funding terrorist activities in certain parts of the world.

While the problem exists in the United States and the rest of the developed world, investigation of claims based on deaths occurring in developing countries in which the legal and public record systems may be completely unreliable pose unusual and fascinating challenges for life insurers. These challenges are heightened for direct response or mass marketing companies issuing policies not requiring the use of an agent or a medical examination. Such claims may be presented by beneficiaries residing in the United States to recover the proceeds of a policy obtained in the United States by a relative who unexpectedly died while on a trip back to his or

her native land usually after the expiration of the incontestable period. Because “official” hospital records, death certificates, and proofs of burial or cremation can be readily obtained upon payment of a fee from various countries in certain parts of the world (or on the streets of certain U.S. cities), or created by skillful use of desk-top publishing programs, insurers should not rely on the accuracy of those documents to verify that the death of an insured person has actually occurred. However, those foreign records may be fully sufficient to establish prima facie proof of death in a court of law. Therefore, the insurer must often act offensively and assure that it can go forward with evidence sufficient to deny a fraudulent claim and subsequently convince a judge or jury that the documents are fraudulent and that the claimed death did not occur.

This paper will consider several issues arising during the evaluation and investigation of foreign death claims confronted by insurers striving to protect their companies against fraudulent claims. Some suggestions will be offered as to the value of policy provisions which require “due proof” of death or proof “satisfactory” to the insurer. Additionally, there will be some discussion of issues to be considered when retaining an investigator to ascertain the true facts surrounding a foreign death. But first, to fully comprehend the exigencies involved and the need for offensive action, an analysis of the current state of the law regarding proof and admissibility of foreign official records will be provided.

## II. THE LEGAL LANDSCAPE

Generally, in order to establish a prima facie claim for the recovery of policy benefits sufficient to permit a jury to decide the issue, a claimant need only show: (1) the existence of the policy issued, (2) the death of the insured person, and (3) the giving of notice and proof of death as required by the policy. See Wolff v. Allstate Life Ins. Co., 985 F.2d. 1524, 1534 n.13 (11<sup>th</sup>

Cir. 1993); State Mutual Life Assur. Co. v. Wittenberg, 239 F.2d. 87, 90 (8<sup>th</sup> Cir. 1956). Proof of the second element is at the forefront of the present discussion. Such proof typically comes in the form of “official” foreign records such as death certificates, burial records from a government or a church, or medical or hospital records. Many other foreign documents, however, may likewise be offered as proof. These documents, no matter how superficially questionable, if deemed admissible by a court, will essentially shift the burden to the insurer to produce evidence that establishes that the records do not prove that the death occurred as represented. If the insurer fails to meet that burden, a judgment may be issued for the claimant. See Estate of Falhad Mohamud v. Monumental Life Ins. Co., 138 F. Supp.2d. 709, 717-18, 720 (E.D. Va. 2001). (Civil unrest prevented insurer’s investigation of circumstances of death in Mogadishu; Somali death certificate and other records admitted as there was no showing they were inaccurate.) Thus, if an insurer suspects that it might be dealing with a fraudulent foreign death claim, it must be prepared to block the plaintiff’s use of false “official” records and perhaps to have admitted any legitimate documents which tell the truth about the fate of the insured. For some foreign records submitted in support of a death claim, such as death certificates or reports of burial, there will be little dispute as to their relevance to a claim on a life insurance policy. These records are likely to be admissible provided they are properly authenticated. In the event the records are admitted, the insurer must be ready to attack the accuracy of the records.

A. Authentication of Foreign Death Records.

In order to have any document admitted into evidence, there must be a showing that the document is “authentic.” Fed. R. Evid. 901. Establishing that a document is “authentic” only allows it to be considered by a factfinder; it does not make the document presumptively truthful.

The requirement of authentication as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the document in question is what its proponent claims it to be. Id. Such evidence might come in the form of testimony by a witness who has personal knowledge with regard to the document. Id. When dealing with foreign documents, however, such testimony may be difficult, if not impossible, to obtain. The Federal Rules address such difficulties with a “self-authentication” provision relating to foreign public documents.<sup>1</sup> See FED. R. EVID. 902(3). Courts have recently been utilizing this provision to determine whether foreign records purporting to establish the death of an insured are properly authenticated. See, e.g., Tu v. Mutual Life Ins. Co. of New York, 136 F.3d. 77, 81 (1<sup>st</sup> Cir. 1998); Allahabi v. New York Life Ins. Co., 2000 WL 335553 at \*2 (S.D. NY. March 30, 2000); Woodley v. Monumental Life Ins. Co., 2000 WL 1721158 at \*3 (N.D. Ill. Nov. 15, 2000).

Federal Rule Evidence 902(3) provides that extrinsic evidence of authenticity as a condition precedent to admissibility is not required for foreign public documents under the following circumstances:

“Foreign public documents: A document purporting to be executed or attested in an official capacity by a person authorized by the laws of foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official person . . . . of the executing or attesting person . . . . A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown, order that they be treated as

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<sup>1</sup> Same State rules have similar self-authentication provisions pertaining to foreign documents. See e.g. CAL. EVID. CODE §1454; FLA. STAT. ANN. §90.902; MD. RULE 5-902; N.Y.C.P.L.R. 4542. However, when proceeding in a state court, careful attention must be paid to the applicable rules of evidence.

presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.”

In ascertaining whether foreign death records are properly authenticated, most courts have required that the “final certification” be made by a consular official of the U.S. or of a foreign country assigned or accredited to the U.S., attesting to the genuineness of the signature on the records.<sup>2</sup> See, e.g., Tu, 136 F.3d at 81; Woodley, 2000 WL 1721158 at \*3.

For instance, in Tu, a beneficiary’s attempt to submit Cambodian documents establishing the death of his wife was rejected on the grounds that the documents were not properly authenticated because the U.S. Embassy in Cambodia advised that the documents submitted by plaintiff were not consistent with the usual practice for death reports in the country, and the key witness in Cambodia admitted that he had never seen the body. Tu, 136 F.3d at 78-79, 80. Similarly, the Woodley court denied the admissibility of insured’s Saudi Arabian death certificate and Saudi Arabian Traffic Accident Report because the documents were not adequately authenticated. 2000 WL 1721158 at \*4. The death certificate and the traffic report included an authentication seal of the U.S. Vice Consul at Riyadh, Saudi Arabia; however, the documents were not signed either by the Vice Consul or by an employee of the Ministry of Foreign Affairs whose name appeared on the seal. Id. at \*’s 8-10. On the other hand, in Loo v. The Prudential Insurance Company of America, 2004 WL 3017013 (SDNY), the Court found sufficient to avoid summary judgment for the insurer, the Plaintiff’s certification by an American Vice-Consul concerning the signature and authority of the manager of the Foreign Affairs Office of Fujian

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<sup>2</sup> While such an attestation may provide some reassurance of the legitimacy of a foreign record, by itself it provides no protection against inadequate attention and investigation by overworked or understaffed U.S. Embassy or counselor personnel or even against fraud perpetrated by staff members of those offices.

Province in China who in turn certified the signature of the a notary in Fuzhou, China as to the Certificate of Death of the insured. Id. at \*9.

However, not all courts have followed the authentication requirements followed by the Tu and Woodley courts. The United States District Court for the Eastern District of Virginia in Mohamud permitted admission of a Somali death certificate not attested by an U.S. Government Official, because the court found that the claimant had provided adequate proof of the insured's death with other admissible records. Mohamud, 138 F. Supp. 2d at 715-16, 718 (the certificate was certified by Somali authorities, but not by any U.S. officials).

In Mohamud, the insured purchased two insurance policies requiring the insurer to pay the outstanding balance on insured's mortgage loan upon his death. Mohamud, 138 F. Supp. 2d at 711. The claimant (insured's wife) alleged that the insured was shot and killed by bandits while sitting in a coffee shop in Mogadishu, Somalia. Id. at 712. Pursuant to the policy terms, the claimant provided the insurer with the insured's Somali certified death certificate (the certificate was not attested by an U.S. Government Official). Id. at 714-15. The Mohamud court admitted the Somali certified death certificate as sufficient proof of death because the claimant had presented other admissible evidence in support of her claims.<sup>3</sup> Id. at 716-18.

The Mohamud court noted that its holding was distinguished from that of the Tu court for the following reasons. Id. at 717-18. First, the Mohamud policy did not expressly require "due proof" of loss in order to recover and Virginia law did not mandate admissibility of a death

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<sup>3</sup> Evidence included: (1) Certified statement of Somali physician that the insured died due to gunshot wound to his chest, (2) Notice that the insured was buried free of charge in Sh. Ali Abdulle Cementry in Somalia, (3) Affidavits from persons stating that the insured died in Somalia and that they attended the Insured's funeral in Mogadishu. Muhamud, 138 F. Supp. 2d at 718.

certificate as a prerequisite for entitlement of recovery. Id. Second, unlike in Tu, the Mohamud court had the benefit of analyzing the weight and credibility of the other records and evidence presented. Id. at 718. Therefore, the Mohamud court determined that the mere inadmissibility of the Somali death certificate did not end the court's inquiry into the sufficiency of the proof submitted. Thus, the court concluded that the evidence as a whole proffered by the claimant sufficiently proved the insured's death. Id. Additionally the court pointed out that the insurer had failed to produce any evidence that indicated the insured's documents were fraudulent.<sup>4</sup> Id. at 716-17.

Accordingly, whether a foreign document purporting to establish the death of the insured meets the self-authentication provision of Rule 902(3) or not, the insurer must be prepared to introduce evidence to refute the legitimacy of the foreign documents. Preparation for a successful refutation begins from the moment the claim is submitted.

B. Accuracy of the Foreign Death Records.

In addition to the foreign records being adequately authenticated, courts also look at the accuracy of the information in the records to determine whether the claimant has established sufficient proof of insured's death. Allahabi, 2000 WL 335553, at \*2. It is at this stage that the extent of an insurer's investigation of the foreign claim becomes crucial. If other evidence casts a doubt on the accuracy of the information contained in the death certificate, then reduced or no

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<sup>4</sup> The insurer was unable to adequately prove the accuracy of the insured's claim because the insurer could not secure any of its own investigators to verify the proof of insured's death in Somalia. Mohamud, 138 F. Supp. 2d at 717, 720. At the time of the insured's killing, Somalia did not have a national government, a legal system or a functional judicial system and therefore the political situation in Somali was plagued with inter-clan fighting and random banditry. The country was in a state of civil unrest at the time of the insured's death. Id. at 712.

weight will be given to the death certificate. Id. Thus, in situations where the insured has died in a foreign country, and the claimant has successfully authenticated documents purporting to show the occurrence of the death, the burden shifts to the insurance company to introduce evidence to show that the insured's alleged death was fraudulent. See, Mohamud, 138 F. Supp. 2d at 717-18, 720. (The insurer was unable to investigate the validity of the insured's death in Somalia, therefore, the insured's foreign death records were admitted as there was no showing that the records were falsified).

In the past, courts have analyzed the evidence in its entirety to ascertain whether the foreign records indicating the insured's death are reliable. See, e.g., Allahabi, 2000 WL 335553, at \*2; Tu, 136 F.3d at 81-82. In Tu, the claimant's wife was apparently killed by bandits on a trip to Cambodia. 136 F.3d at 78. The claimant submitted insured's Cambodian death certificate as proof of death. Id. at 78-79. The insured and her husband were experiencing financial difficulty at the time they assumed the huge insurance premiums, checks were found signed by the insured after the insured's death, there was no good reason for the insured to visit Cambodia and the disappearance occurred in a place where effective investigation would be difficult and dangerous. Id. at 81-82. Therefore, in light of the evidence surrounding the insured's alleged death, the Tu court held that the Cambodian death certificate was inadmissible and the claimant (insured's husband) had failed to establish sufficient proof of death. Id. at 82.

In Allahabi, the insurer had issued a life insurance policy on claimant's cousin's life. Approximately ten months after the policy was issued, the claimant filed for insurance proceeds alleging that the insured had died in Yemen as a result of a snake bite. 2000 WL 335553 at \*1. The claimant introduced two death certificates, one issued by the Yemeni Hospital and the other

by the Civil Status & Registration Authority. Id. The Allahabi court determined that the Yemeni death certificates were entitled to no weight because (a) the death certificates were not adequately authenticated as required by Federal Rule of Evidence 902(3), and (b) the evidence supporting the insured's death looked suspicious. Id. at 5-8. For instance, the insured was dead in less than a year after the policy was effective, insured was aware that false documents could be easily obtained in Yemen,<sup>5</sup> and insured and the claimant were previously involved in fraudulent insurance schemes. Id.

In both Tu and Allahabi, the insurers' investigation saved the companies from paying out on death claims that were not properly supported. The remaining sections of this paper will set forth factors that should trigger insurer suspicion with regard to a foreign death claim and the means by which an insurer can both verify the legitimacy of the claim and prepare to defend itself should the claim eventually be litigated.

### III. EVALUATION OF A FOREIGN DEATH CLAIM FILE: HAS SUFFICIENT, RELIABLE PROOF BEEN PRESENTED?

In dealing with official records from a jurisdiction in which there is reason to have faith in the veracity of their content, the evaluation of the claim will present little difficulty to a life insurer. However, in dealing with a claim arising from a death in a foreign jurisdiction in which "official" records may be suspect, insurers must consider an on-the-ground investigation in order to determine whether a payable claim has been presented.

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<sup>5</sup> Insured's employer, through deposition testimony, explained that insured had "described the ease with which he could obtain false official documents in Yemen". 2000 WL 335553, at \*3.

While some life insurance policies simply require a beneficiary to provide “proof” of death of the insured, others specify the submission of “due proof” or proof “satisfactory” to the insurer. Courts have refused to interpret these terms to require a claimant to establish the details of a death with certainty. However, they have been applied to set a higher standard against which proof of death must be measured and have been helpful in situations in which insurers have had reason to question the accuracy of proofs submitted. Loo, 2204 WL 3017013 at \*’s 9-10; Tu, 136 F.3d. at 79-80; Woodley, 2000 WL 1721158 at \*2-3; Allahabi, 2000 WL 335553, at \*2-3; Tutorship of Lisa Renee Price v. Standard Life Ins. Co., 569 So.2d. 261, 266 (La. 1990); Kaplan v. Guardian Life Ins. Co., 231 F. Supp. 874, 878 (W.D. Mo. 1964).

No matter what the language of the applicable policy, claims personnel and counsel have important opportunities to detect a potentially fraudulent claim by an early and careful analysis of materials submitted by the claimant. This effort can set the stage for a potentially successful investigation on the ground in the country in which the death allegedly occurred.

Among the many questions which must be considered in evaluating claims supported by foreign death certificates, reputations of burial, and/or medical or hospital records are:

- 1.) Is the documentation too complete? If at an early stage a claimant living in this country submits not only a purported death certificate but also medical and hospital records of a last illness, local newspaper reports of the death, and a record of burial or cremation, all from a developing country translated into English, considerable care should be devoted to verifying the authenticity of these documents. In such an instance, insistence upon receiving complete, legible copies of such documents in their original language and form to permit the company to obtain its own translation and to verify that the documents are consistent with the requirements of the

statutes and ordinances of the area in which the death occurred are essential.

2.) Is there no independent witness who claims to have seen the insured die? If the only person who claims to have known or seen the insured is the beneficiary, especially if the claim is then supported by various “official” documents based upon the beneficiary’s statements, considerable suspicion as to the validity of the proof may be justified.

3.) Are documents expected to be submitted with a claim or requested during the claims process missing or “unavailable”? Is the passport unavailable because it was “buried with the deceased”? Is the unused portion of a round trip plane ticket “missing”? Are the originals of the death certificate, medical records unavailable?

4.) Does the documentation submitted with the claim reflect a disposition of the insured body inconsistent with the local custom or religious practice of the area in which the death occurred? For example, in one case suspicions began to be focused upon a claim when the documentation submitted to the insurer included a statement that the insured, a Hispanic Catholic resident of a rural area in Mexico, had been cremated. In another, a claimant stated that he did not know where or how his insured “father” had been buried after a heart attack on a business trip to a rural area of a West African nation although the insurer learned that the custom of his tribe considered it an “abomination” for a son not to attend and participate in his father’s burial.

5.) Was the claim filed just after the end of the two-year incontestable period?

6.) Are all the documents submitted with a claim internally consistent in terms of date, location and cause of death, etc.? Are some important questions left unanswered?

7.) Was the insured an American citizen traveling or living abroad? If so, U.S. consular officials in the country in which the death occurred may prove very helpful in

ascertaining the truth about such a claimed death. In carrying out their duties to report on the death of U.S. citizens in their jurisdictions, consular officials are required to satisfy themselves that local authorities have identified the remains of a U.S. citizen using appropriate forensic methods, to obtain any death certificate issued by local authorities and when satisfied that the death occurred, issue a Report of Death of an American Citizen Abroad which must then be distributed to the State Department and the next of kin. See 22 U.S.C.A. §§4195-4197 (1990); 22 C.F.R. §§72.1-72.55. This assistance can be a great help in certain instances, even in some cases in which the State Department personnel decide that they must refuse to issue the “official” report of death due to inadequate information. See Tu, 136 F.3d at 79. However, it cannot be relied upon in every case of a claim arising from the death of a U.S. citizen abroad as political unrest or inadequate staffing may make it impossible for any real assistance to be provided for some investigations.

#### IV. THE EFFECTIVE INVESTIGATION

In order to understand whether such foreign records will be sufficient to prove a payable life insurance claim, an insurer must often be prepared to engage in a thorough investigation of the death. This investigation serves two purposes. First, it will help the insurer determine whether a legitimate claim has been submitted. Second, where the insurer decides to deny the claim, it will provide the critical evidence necessary to attack the authenticity and accuracy of the documents offered in support of the claim by the claimant.

At various stages in an investigation of a foreign death claim, it may become absolutely necessary to conduct investigations in the foreign country in which the death allegedly occurred. For example, if sufficient due proof of the death has been submitted, such an investigation may

be the only way in which the insurer can verify the statements of witnesses, ascertain whether a doctor who signed medical records or a certificate of death exists and really treated the insured and can truly confirm his or her death, verify that the official whose name is on the public record actually signed the document, etc.

Documents, statements or even affidavits obtained by such efforts can be of great value in developing a successful challenge to fraudulent foreign records. Depending upon the country and the issues involved, such efforts may be appropriate for an investigator. Others may also require a local attorney who could deal more precisely with evidentiary concerns of defense counsel.

One question to be answered if investigative work on the ground is required is whether to use United States personnel or to retain investigators and/or attorneys from the country in which the death occurred. Many United States based and international firms have a long record of service to the insurance industry on a wide variety of matters throughout the world through use of American born personnel or natives of the particular country involved. Whatever the means by which local investigative and legal personnel are selected, great attention needs to be paid to making certain that the assigned individuals understand what methods of investigation are acceptable. A failure to make this clear from the start could be disastrous to their United States insurance company clients.

For example, in one case, acting on the advice of a well-known international investigative firm, an insurer retained a Nigerian investigator, who had provided services to Equifax and other companies, to investigate the insured's mysterious death in a community hospital in a small town in Eastern Nigeria several hundred miles from the investigator's office in Lagos. He went to the

hospital, interviewed the doctor who had signed a “Medical Certificate of Cause of Death” and other hospital personnel and promptly submitted reports pronouncing the certificate fraudulent and the claim a hoax. Some weeks later, the attorney representing plaintiff called defense counsel to complain that the investigator had threatened the Nigerian doctor and other hospital personnel with a gun which he had ostentatiously placed on the table during their interviews as he insisted that they admit that the Medical Certificate was bogus.

Later, in response to complaints by defense counsel that certain new records from the hospital where the insured had died had never been produced, plaintiff’s counsel provided a copy of a letter dated weeks earlier by which the hospital had transmitted the records to the insurer’s Nigerian investigator. These records, if authentic, would clearly have supported plaintiff’s claim that the insured had died in that hospital on the date claimed.

When questioned about this, the investigator did not deny the accusations but stated that he had simply used his “usual” methods in this interview at the hospital and could not understand why they should cause concern. He also acknowledged that he had received the records from the hospital but had not sent them to defense counsel because he knew they were “fraudulent”. The fact that the documents appeared to prove the death of the insured as alleged did not shake his conviction that they should simply be ignored.

While this example may be extreme, there is no doubt that if the results of onsite investigative work are ever to be used (by either side) in court, great care must be taken in the selection and supervision of local personnel assisting in the investigation of the claim. As important as the investigation is, only proper methods will prove helpful in the long run.

## V. CONCLUSION

Life insurance claims for deaths in countries torn by violence or civil war or those with less reliable public record systems may be supported by false death certificates, hospital or medical records and the like. Indeed, those records may have been purchased on the streets of major U.S. cities. However, if not properly refuted, those records might be deemed sufficient to support a judgment on a life insurance policy.

Consequently, such claims, no matter how far-fetched, must be taken quite seriously and fully investigated by competent professionals. This investigation will often require visits to the area in which the death occurred, interviewing doctors, government officials and religious leaders who provided records in support of the claim. It may require talking to the officials who, according to local law, should have issued the death certificate or other records appropriate under local law. It will also require carefully obtaining and preserving the information learned in such a way that it can be used as evidence in court. The defense of these claims may require an effort to prove that an insured remains alive.

This process is often extremely time-consuming and expensive and may not seem warranted especially when a small face amount policy is involved. That issue is, of course, well-known to those inclined to pursue fraudulent death claims. Hence this issue will likely remain a continuing challenge to the life insurance industry.