

THE STATE OF SOUTH CAROLINA  
In the Supreme Court of South Carolina

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CERTIFIED QUESTION FROM UNITED STATES DISTRICT COURT  
District of South Carolina, Columbia Division

The Honorable Mary Geiger Lewis, Circuit Court Judge

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Case No.: 4:19-CV-00372-MGL

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Teresa B. Yates, individually and as Personal  
Representative of the Estate Gerald W. Yates,.....Plaintiff

vs.

Metropolitan Life Insurance Company and Jane A. Yates,.....Defendants.

Appellate Case No.: 2019-001264

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**BRIEF OF PLAINTIFF**

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## STATEMENT OF THE ISSUES

Is section 62-2-507 of the Code of Laws of the State of South Carolina, as amended, [(the revocation statute)] to be applied so that a divorce occurring prior to the revocation statute's effective date of January 1, 2014, revokes any beneficiary designation made prior to the divorce by the divorced individual to the divorced individual's former spouse?

## STATEMENT OF THE CASE

This case concerns the proceeds of a Whole Life Policy (the "Policy") issued by the Defendant, Metropolitan Life Insurance Company ("MetLife") to Gerald W. Yates (the "Decedent"). The parties to the action are the widow of the Decedent, the Plaintiff, Teresa Yates; the former spouse of the Decedent, the Defendant, Jane A. Yates ("Jane Yates"); and MetLife. Teresa Yates is also the Personal Representative of the Decedent's Estate. The case involves claims of the Plaintiff to the proceeds of the Policy.

Teresa Yates, individually and as Personal Repetitive of the Estate of the Decedent, commenced this action in the Court of Common Pleas for Florence County on January 2, 2019. (Compl.) Teresa Yates alleges numerous causes of action, including an action for Declaratory Judgement, whereby Teresa Yates alleges that the Policy's beneficiary designation of Jane Yates was revoked under S.C. Code § 62-2-507. (*Id.*) MetLife was served with a copy of the Summons and Complaint on January 9, 2019, through the South Carolina Department of Insurance. (Letter of S.C. Dep't Ins., Jan. 9, 2019) Jane Yates was served with a copy of the Complaint on January 25, 2019. (Aff. of Serv. of Jane Yates).

Jane Yates filed an Answer to the Complaint on February 8, 2019. (Answer, Jane Yates). Also, on February 8, 2019, MetLife filed and served its Notice of Removal, in accordance with 28 U.S.C. § 1446(b), requesting that the matter be removed to the United States District Court

for the State of South Carolina, Florence Division. (Not. Removal). MetLife asserted that removal was permitted pursuant to 28 U.S.C. §§ 1332 and 1441(a). (*Id.*, at ¶ 5). In addition to the Notice of Removal, MetLife filed and served a Motion to Dismiss and Answer to Complaint, which were filed with the United States District Court on February 8, 2019. (Mot. Dismiss; Answer of MetLife). On March 8, 2019, Teresa Yates filed and served a Motion to Remand. (Mot. Remand).

In its Motion to Dismiss, MetLife argues that Teresa Yates's claims as Personal Representative of the Estate fail because section 62-2-507 of the Code of Laws of South Carolina, as amended (the "Code"), does not apply retroactively. (Mem. Supp. Mot. Dismiss, p. 5-7). Conversely, in her motion to remand, Teresa Yates argues that section 62-2-507 does apply retroactively to revoke Jane Yates's beneficiary designation. (Mem. Supp. Mot. Remand, p 6). Finding that no directly controlling South Carolina appellate authority answers this question, the United States District Court dismissed MetLife's Motion to Dismiss and Teresa Yates's Motion to Remand with leave to refile so it could seek certification to this Court. (Order of D.S.C., July 10, 2019).

On July 29, 2019, the United States District Court issued an order to certify the following question to this Court:

Is section 62-2-507 of the Code of Laws of the State of South Carolina, as amended, [(the revocation statute)] to be applied so that a divorce occurring prior to the revocation statute's effective date of January 1, 2014, revokes any beneficiary designation made prior to the divorce by the divorced individual to the divorced individual's former spouse?

(Order of D.S.C., July 29, 2019). This Court accepted the certified question from the United States District Court on September 19, 2019. (Order, Sept. 19, 2019)

## STATEMENT OF THE FACTS

The Decedent married Jane Yates on April 18, 1992. (Compl., ¶ 5). On January 28, 1993, the Decedent completed an application for \$100,000.00 in whole life insurance. (Not. Removal, Ex. A). The Decedent submitted the application for whole life insurance to MetLife. (*Id.*). The application identified the Decedent's then spouse, Jane Yates, as a revocable beneficiary. (*Id.*). The application identified the Decedent's then mother-in-law, Dora Sewell, as a revocable contingent beneficiary. (*Id.*). On March 1, 1993, MetLife issued a whole life insurance policy in the face amount of \$100,000.00 (the "Policy"). (*Id.*).

The Policy identified the Decedent as the owner and insured. (*Id.*) The Policy further identified the Beneficiary "AS DESIGNATED (SEE APPLICATION FOR CONTINGENT BENEFICIARY)." (*Id.*). The Policy provides that the Decedent may change the beneficiary or contingent beneficiary of the Policy. (*Id.*).

On April 1, 2013, Jane Yates initiated divorce proceedings in the Family Court for Florence County (the "Family Court"). (Compl., ¶ 9). On July 8, 2013, the Family Court issued a Decree of Divorce granting the divorce of Jane Yates from the Decedent. (*Id.* at ¶ 10). The Decedent subsequently married Teresa Yates. (*Id.* at ¶ 11). On January 27, 2016, the Decedent died testate. (*Id.* at ¶ 14). The Decedent's will devised all property to Teresa Yates. (*Id.* at ¶ 15). After the Decedent's death, on or about October 28, 2016, Teresa Yates submitted a life insurance claim form to MetLife. (Not. Removal, ¶ 9). MetLife ultimately advised Teresa Yates that Jane Yates was the designated beneficiary of the Policy. (*Id.*). Sometime in February 2017, MetLife paid the proceeds of the policy to Jane Yates. (Compl., ¶ 21).

## STANDARD OF REVIEW

In answering a certified question raising a novel question of law, this Court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right. *O'Neill v. Smith*, 388 S.C. 246, 695 S.E.2d 531, 532 (2010).

## ARGUMENT

**I. Under Section 62-2-507, the revocation of a beneficiary designation by the divorce or annulment of a marriage depends on the date of death of the decedent, not the date of the divorce or the annulment of the marriage.**

There is no retroactive application of section 62-2-507 in cases where the divorce or annulment of a marriage occurs prior to January 1, 2014 (the effective date of section 62-2-507), because the application of section 62-2-507 depends on the date of death of the decedent. 2013 Act No. 100, § 4(B)(1)-(2). Furthermore, because the revocable beneficiary of a life insurance policy has no vested rights in the proceeds until the death of the insured, *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 170, 700 S.E.2d 280, 282 (Ct. App. 2010) (citing *Horne v. Gulf Life Ins. Co.*, 277 S.C. 336, 338, 287 S.E.2d 144, 146 (1982)), there is no retroactive application of section 62-2-507, *see Papen v. Papen*, 224 S.E.2d 153, 155, 216 Va. 879 (1976) (holding no retroactive application in the case of a will where the divorce occurred prior to the enactment of the revocation-by-divorce statute); *Hadfield v. Prudential Ins. Co.*, 973 A.2d 387, 390, 408 N.J. Super. 48, 53 (N.J. Super. 2009) (applying the reasoning in *Papen* to New Jersey's revocation-on-divorce statute to a the proceeds of a life insurance policy); *Thrivent Fin. for Lutherans v. Anderson*, 300 P.3d 117, 120, 368 Mont. 256, 259-260 (Mont. 2013) (finding no retroactive application of revocation-on-divorce statute where the former spouse merely had an expectancy interest rather than vested rights in a life insurance policy).

- a. **The terms of the statute and legislative notes demonstrate that the South Carolina legislature intended that section 62-2-507 apply based on the date of death of the decedent, not the date of divorce.**

The language of section 62-2-507 and the legislative notes evidence the legislature's intent that section 62-2-507 operate to revoke a beneficiary designation where the divorce or annulment of a marriage occurred prior to its effective date. Section 62-2-507(c)(1)(i) provides, in pertinent part:

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(i) disposition or appointment of property or beneficiary designation made by a divorced individual to the divorced individual's former spouse in a governing instrument; . . . .”

S.C. Code Ann. § 62-2-507(c)(1)(i). A governing instrument is defined as “an instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse, including, but not limited to [a] . . . life insurance beneficiary designation. S.C. Code Ann. § 62-2-507(a)(4).

Section 62-2-507 was amended Act No. 100 of 2013. 2013 Act No. 100, § 4(A). Section 62-2-507 became effective on January 1, 2014. *Id.* While section 62-2-507 did not become effective on January 1, 2014, section 4(B) of Act No. 100 of 2013 provides:

[e]xcept as otherwise provided in this act, on the effective date of this act:

(1) this act applies to any estates of decedents *dying thereafter* and to all trusts created before, on, or after its effective date;

(2) the act applies to *all judicial proceedings concerning estates of decedents and trusts commenced on or after its effective date*; . . . .

2013 Act No. 100, § 4(B)(1)-(2) (emphasis added).

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Kirven v. Cent. Sates Health & Life Co.*, 409 S.C. 30, 760 S.E.2d 794, 798 (2014) (citing *Grier v. AMISUB of S. C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Id* at 798-799. If the intent of the legislature is clear, the courts are bound to give effect to that intent. *Kirven*, 760 S.E.2d at 799.

Here, the legislature clearly intended that the application of section 62-2-507 depend on the date of the death of the decedent rather than the date of the divorce or annulment of the marriage. 2013 Act No. 100, § 4(B)(1)-(2). Therefore, this Court should hold that, under section 62-2-507, the divorce or annulment of a marriage operates to revoke a beneficiary designation even when the divorce or annulment of the marriage occurs prior to January 1, 2014, the effective date of section 62-2-507. Because the Decedent died after January 1, 2014, (Compl., ¶ 14) there is no retroactive application of section 62-2-507, there is no retroactive application of section 62-2-507 in this case.

- b. Section 62-2-507 applies to revoke the revocable beneficiary designation of a life insurance policy regardless of the date of the divorce or annulment of a marriage because no rights to the proceeds are acquired by a beneficiary until the death of the insured.**

Section 62-2-507 only operates to revoke a revocable beneficiary designation in a governing instrument, including a life insurance policy. S.C. Code Ann. §§ 62-2-507(c)(i), 62-2-507(a)(4). However, a named beneficiary has no vested rights during the insured's life-time when the policyholder reserves the right to change the beneficiary in his policy. *Prince*, 390 S.C. at 170, 700 S.E.2d at 282 (citations omitted). Until the insured dies, the named beneficiary merely has an expectancy interest, and has no control over the policy. *Id.* All control of the policy is with the insured. *Id.*

Section 62-2-507, as amended in 2014, does not apply to a right that is acquired prior to the effective date of its amendment. 2013 Act No. 100, § 4(C). Rather, the law in place at the time the right was acquired applies to the circumstances, even if it is later repealed or superseded. *Id.* On the other hand, section 62-2-507 does apply to rights which are acquired prior to its effective date. *Id.* Because a revocable beneficiary has no vested interest until the death of the insured, the beneficiary has not acquired any rights under the life insurance policy. *See Prince*, 390 S.C. at 170, 700 S.E.2d at 282. Thus, when the insured dies after the effective date, there is no retroactive application of section 62-2-507 even though the divorce might have occurred prior to the effective date. 2013 Act No. 100, § 4(C) . Hence, the relevant date for application of section 62-2-507 is the date of death of the decedent, and this Court should so hold.

Such a holding is consistent with courts in other jurisdictions that have addressed the retroactive application of revocation-on-divorce statutes to wills and life insurance policies. *See Papen*, 224 S.E.2d at 155 (holding no retroactive application in the case of a will where the divorce occurred prior to the enactment of the revocation-by-divorce statute); *Hadfield*, 973 A.2d at 390 (applying the reasoning in *Papen* to its revocation-on-divorce statute to a the proceeds of a

life insurance policy); *Thrivent Fin.*, 300 P.3d at 120, (finding no retroactive application of revocation-on-divorce statute where former spouse merely had an expectancy rather than vested interest in a life insurance policy).

In *Papen*, the Supreme Court of Virginia addressed whether a revocation-on-divorce statute applied to revoke a former's spouse beneficiary designation in a decedent's will when the divorce occurred prior to the enactment of the statute. *Papen*, 224 S.E.2d 153, 216 Va. 879. In *Papen*, Herman A. Papen executed his will on August 27, 1940, devising his entire estate to his spouse, Alice Clayton Papen. *Id.* 224 S.E.2d at 153, 216 Va. at 880. The Paperns were divorced on October 8, 1947. *Id.* The statute in question became effective in 1968, over 20 years later. *Id.* Herman A. Papen died in 1972. *Id.*

The statute in effect at the time of Herman A. Papen's death provided for revocation of all provisions in a will in favor of a testator's divorced spouse. *Id.* 224 S.E.2d at 153, n. 1. There, the court reasoned that because the will was subject to change or revocation by the testator at any time, and gave no vested rights prior to probate, the divorced spouse had no "rights or claims to activate [the statute] or to require only prospective application . . . ." *Id.* 224 S.E.2d at 156, 216 Va. at 882.

A will, like a life insurance policy with a revocable beneficiary, may be modified or revoked by a testator at any time until his death. *In re Estate of Paradeses*, 426 S.C. 388, 391-392, 826 S.E.2d 871, 873 (Ct. App. 2019) (citing *In re Estate of Pallister*, 363 S.C. 347, 448, 611 S.E.2d 250, 256 (2005) (citations omitted)). Thus, like the former spouse in *Papen* had no vested rights in the will prior to probate, Jane Yates, as a revocable beneficiary, had no vested rights in the Policy prior to the death of the decedent. *Prince*, 390 S.C. at 170, 700 S.E.2d at 282 (citations omitted). Because Jane Yates had no vested rights in the policy until after the

Decedent's death, which occurred after January 1, 2014, section 62-2-507 is being applied prospectively. *Hadfield*, 973 A.2d at 390; *Thrivent Fin.*, 300 P.3d at 120. Therefore, there this Court should hold that section 62-2-507 applies to revoke a beneficiary designation when the divorce or annulment of a marriage occurs prior to the effective date of section 62-2-507.

**II. Even if the court finds retroactive application, the language of the statute and legislative notes evidence the legislature's clear intent for section 62-2-507 to apply retroactively as a rule of construction.**

Generally, statutes are to be construed prospectively, unless there is a specific provision or clear legislative intent that the statute be applied retroactively. *S.E. Site Prep LLC*, v. Atl. Coast Builders, 394 S.C. 97, 106, 713 S.E.2d 650, 654-655 (Ct. App. 2011) (citing *Bartley v. Bartley Logging Co.*, 293 S.C. 88, 90, 359 S.E.2d 55, 56 (1987)). The terms of the section 62-2-507 and the legislative notes clearly demonstrate that the South Carolina Legislature intended that the amendment to section 62-2-507 apply in cases where the divorce occurred prior to its effective date. Section 4(B)(4) of Act No. 100 of 2013 provides:

(4) subject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; . . . .

2013 Act No. 100, § 4(B)(4).

When construing a statute, courts may consider the Reporter's Comments to assist with determining the intent of the legislature. *See Epstein v. Coastal Timber Co. Inc.*, 393 S.C. 276, 711 S.E.2d 912 (2011) (relying on Reporter's Comments in construing section 36-2-107 of the Uniform Commercial Code). The Reporter's Comment to section 62-2-507 provides that section 62-2-507 "effectuates a decedent's presumed intent: without a contrary indication by the

decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent's death." Reporter's Comment to section 62-2-507. Because section 62-2-507 attempts to effectuate the intention of the donor, it is a rule of construction. *Stillman v. Teachers Ins. & Annuity Ass'n College*, 343 F.3d 1311 (10th Cir. 2003). Therefore, as a rule of construction, section 62-2-507 applies to life insurance policies that were executed prior to the amendment of section 62-2-507. 2013 Act No. 100, § 4(B)(4). Thus, the legislature clearly intended for section 62-2-507 to be applied retroactively. *See Stillman*, 343 F.3d at 1317 (holding that the revocation-on-divorce statute for the state of Utah, which is nearly identical to section 62-2-507, as a rule of construction applies retroactively).

While it is unclear how the date of divorce affects the operation of section 62-2-507, the operation of section 62-2-507 implicitly necessitates the execution of a policy naming a spouse as a beneficiary and a subsequent divorce or annulment of a marriage. *See S.C. Code Ann. § 62-2-507(c)(i)*. Thus, because the legislature clearly intended that section 62-2-507 be retroactively applied to governing instruments executed prior to its effective date, and since the execution necessarily occurs prior to the date of divorce or annulment of the marriage, the legislative history also evidences the legislatures intent to apply section 62-2-507 retroactively even when the divorce or annulment of the marriage occurs prior to the effective date. Thus, this Court should hold that section 62-2-507 applies to revoke a beneficiary designation made prior to the divorce or annulment of a marriage occurring before January 1, 2014.

**III. Even if this Court finds that the legislature did not intend that section 62-2-507 apply retroactively to revoke a beneficiary designation when the divorce or annulment occurred prior to January 1, 2014, this Court should apply the section 62-2-507 retroactively because it is remedial in nature.**

Although statutes generally are to be construed to apply prospectively, there is an exception to the general rule if the change effected by statutory enactment is remedial or procedural in nature. *S.E. Site Prep LLC*, 394 S.C. at 106, 713 S.E.2d at 654-655 (citations omitted). A statute is remedial if it creates new remedies for existing rights, unless it violates a contractual obligation, creates a new right, or divests a vested right. *Id.* 394 S.C. at 106, 713 S.E.2d at 655 (citing *Smith v. Eagle Constr. Co.*, 282 S.C. 140, 143, 318 S.E.2d 8, 9 (1984)).

Section 62-2-507 is remedial in nature because it merely creates a new remedy, the revocation of a beneficiary designation upon divorce, for an existing right, the right of an insured to revoke or change the beneficiary designation of a governing instrument. S.C. Code Ann. § 62-2-507(c)(1)(i). Section 62-2-507 does not violate any contractual obligation of the Policy for either the Decedent or MetLife, nor does it create any new rights between the parties. The Decedent maintained the obligation to pay the premiums and otherwise comply with the Policy, and MetLife maintained its obligations to pay the proceeds to the lawful beneficiary. Furthermore, section 62-2-507 does not create a new right or divest any vested right because a revocable beneficiary has no vested rights during the insured's life-time. *Prince*, 390 S.C. at 170, 700 S.E.2d at 282 (citations omitted).

**IV. Retroactive application of section 62-2-507 does not violate the Contract Clause of either the Constitution of the United States or the Constitution of South Carolina.**

If this Court does hold that the legislature intended section 62-2-507 to apply retroactively, then this Court must also determine whether retroactive application violates the Contract Clause of the United States and South Carolina Constitutions. The United States Constitution prohibits a state from enacting a law that impairs the obligations of a contract. U.S. Const. art. I, § 10. Likewise, the South Carolina Constitution also provides that no law impairing the obligation of contracts may be passed. S.C. Const. art. I, § 4. The United States Supreme Court recently held that Minnesota's revocation-on-divorce statute, which is similar to section 62-2-507, does not violate the Contract Clause of the United States Constitution where the beneficiary designation of a life insurance policy was made prior to the statute's enactment. *Sveen v. Meelin*, 138 S. Ct. 1815, 1818 (2018).

“In interpreting the Contract Clause of South Carolina, this Court has followed federal precedent construing the federal Contract Clause. *Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co.*, 323 S.C. 532, 539, 476 S.E.2d 481, 486 (2014) (citing *G-H Ins. Agency v. Continental Ins. Co.*, 278 S.C. 241, 246, 294 S.E.2d 336, 339 (1995)). Therefore, this Court should follow suit with the United States Supreme Court and hold that section 62-2-507 does not violate the Contract Clause. *Ken Moorhead*, 323 S.C. at 539, 476 S.E.2d at 486.

If this Court does not decide to follow suit with the United States Supreme Court, then it must determine whether section 62-2-507 violates the Contract Clause of the South Carolina Constitution. In order to determine whether a statute violates the Contract Clause, a court must first determine whether the statute being challenged substantially impairs the contract at issue. *Id.* 323 S.C. at 539-540, 476 S.E.2d at 486; *Kirven*, 760 S.E.2d at 800. If the statute does not substantially impair the contract at issue, the inquiry ends. *See id.* If, however, the statute does

substantially impair the contract at issue, the court must then determine whether the statute is reasonable and necessary to carry out a legitimate governmental purpose. *Id.*

This Court should hold that section 62-2-507 does not violate the contract clause for two reasons. First, section 62-2-507 does not substantially impair the contract at issue. Second, even if section 62-2-507 impairs the contract at issue, section 62-2-507 is reasonable and necessary to carry out a legitimate governmental purpose.

**a. Section 62-2-507 does not substantially impair contracts for life insurance.**

When determining whether a contract is substantially impaired, it must consider whether the statute in question altered the reasonable expectations of the parties. *Kirven*, 760 S.E.2d at 800. A life insurance policy is a contract between the insured and the insurance company. *See Thalia S. v. Progressive Select Ins. Co.*, 401 S.C. 395, 736 S.E.2d 863, 865 (Ct. App. 2012). In order for a beneficiary to have a contractual interest, the beneficiary must have a vested interest, not merely an expectation. *See Prince v. Liberty Life Ins. Co.*, 390 S.C. at 170, 700 S.E.2d at 282; *Sveen*, 138 S.Ct. at 1822; *Allstate*, 200 F. Supp. 2d 102, 1018 (E.D. Wis. 2002) (citing *Dodge v. Bd. of Educ.*, 302 U.S. 74, 77-78, 58 S.Ct. 98 (1937)). In South Carolina, a revocable beneficiary has no vested interest in a life insurance policy. *Prince. Co.*, 390 S.C. at 170. Therefore, there is no contractual relationship for which section 62-2-507 can impair as it relates to a beneficiary, the only party who is arguably impaired by the revocation.

Furthermore, the revocation caused by section 62-2-507 does not alter any contractual obligations of the policyholder or the insurance company. Under section 62-2-507 the life insurance policy remains in effect and enforceable. *See Allstate*, 200 F. Supp. 2d at 1020. Neither the obligations of the policyholder or the insurance company changed. *Id.* The policyholder must still pay the premiums and the insurance company must pay the benefits, albeit to a different

beneficiary. *Id.* Therefore, the bargained-for-exchange remains in tact. *Id.* (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S.Ct. 2716 (1978)). Even if the policyholder did not desire to revoke the former spouse, section 62-2-507 merely provides a default rule of construction reflecting a policyholder's intent, which the policyholder can easily change. *Sveen*, 138 S.Ct at 1822.

**b. Even if section 62-2-507 substantially impairs contracts for life insurance, section 62-2-507 is reasonably necessary to carry out a legitimate government purpose.**

Should this Court find that section 62-2-507 substantially impairs the contracts for life insurance, section 62-2-507 is reasonably necessary to carry out the purposes of its enactment. The purposes for amending the Probate Code through Act No. 100 of 2013 include simplifying and clarifying the law concerning the affairs of decedents, discovering and effectuating the intent of a decedent, and to unify the laws of this State with the law of other jurisdictions. S.C. Code § 62-1-102(1), (3), (5).

Prior to the amendment of section 62-2-507, the revocation-on-divorce statute only effected any beneficiary designations of a will, powers of appointment or fiduciary nominations. S.C. Code § 62-2-507 (2009) (prior to the 2014 amendment). Thus, the amended section 62-2-507 simplifies the law concerning the affairs of decedents by providing for revocation by divorce to both probate and non-probate transfers. Furthermore, it seeks to presume the intent of a decedent, that a former spouse not receive any probate or nonprobate transfer as a result of the decedent's death. Reporter's Comment to section 62-2-507. Finally, the amendment to section 62-2-507 serves the public interest by unifying South Carolina's laws with that of other states. Therefore, the amendment to section 62-2-507 is reasonably necessary to carry out a legitimate governmental purpose. *See Allstate*, 200 F. Supp. 2d at 1021 (holding that Wisconsin's

revocation-on-divorce statute was reasonably necessary to carry out the legitimate government purpose by creating consistent between probate and nonprobate transfers and to unify the law between states).

### CONCLUSION

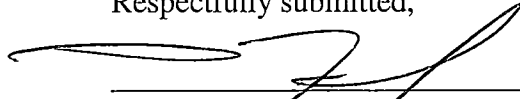
This Court should hold that section 62-2-507 of the Code of Laws of the State of South Carolina, as amended [(the revocation statute)] applies so that a divorce occurring prior to the revocation statute's effective date of January 1, 2014, revokes any beneficiary designation made prior to the divorce by the divorced individual to the divorced individual's former spouse. First, the application of section 62-2-507 depends on the date of death, not the date of the divorce. This result is consistent with South Carolina law regarding revocable beneficiary designations, because a revocable beneficiary has no vested right to the proceeds of a life insurance policy until the insured dies. Furthermore, the terms of the statute, legislative notes, and reporter's comments evidence the legislature's intent for section 62-2-507 to apply retroactively.

The retroactive application of section 62-2-507 does not violate the Contract Clause of either the United States Constitution or the South Carolina Constitution. Section 62-2-507 does not substantially impair contracts with revocable beneficiary designations. However, even if section 62-2-507 substantially impaired contracts with revocable beneficiary designation, its amendment is reasonably necessary to carry out the purposes of the statute, including to simplify and clarify the law concerning the affairs of decedents, to discovery and effectuate the intent of a decedent, and to unify the laws of this State with the law of other jurisdictions.

*[Signature Page Follows]*

December 27, 2019

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In the Supreme Court of South Carolina

**RECEIVED**  
DEC 31 2019  
S.C. SUPREME COURT

CERTIFIED QUESTION FROM UNITED STATES DISTRICT COURT  
District of South Carolina, Columbia Division

The Honorable Mary Geiger Lewis, Circuit Court Judge

Case No.: 4:19-CV-00372-MGL

Teresa B. Yates, individually and as Personal  
Representative of the Estate Gerald W. Yates,.....Plaintiff


vs.

Metropolitan Life Insurance Company and Jane A. Yates,.....Defendants.

Appellate Case No.: 2019-001264

**PROOF OF SERVICE**

I certify that I have served the Brief of Plaintiff on the Defendants, Metropolitan Life Insurance Company and Jane A. Yates, by depositing a copy of each in the United States Mail, postage prepaid, on today's date, addressed to their attorney's of record J. Derrick Quattlebaum, P.O. Box 2048, Greenville, SC 29602, and D. Malloy McEachin, Jr., 180 N. Irby St., Room 503, Florence, SC 29501.

  
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Patrick B. Ford, Esquire

December 27, 2019  
Florence, South Carolina

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**CERTIFICATION OF COUNSEL**

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I certify that the Brief of Plaintiff complies with Rule 211(b) of the *South Carolina Appellate Court Rules*.



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Patrick B. Ford, Esquire

December 27, 2019  
Florence, South Carolina

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