

# **Fraudulent Foreign Death Claims Present Challenges to Life Insurers**

**By J. Snowden Stanley, Jr. and Christopher J. Lyon**

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

These claims continue to present real challenges to insurers.

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 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 lifestyle in many countries. 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 contestable period. It should also be noted that there have been some reports 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 that issue policies not requiring an agent or a medical examination.

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 desktop publishing programs, insurers should not rely on the accuracy of those documents to verify that the death of an insured 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 often must act offensively to assure that it can go forward with evidence sufficient to deny a fraudulent claim, and then to convince a judge or jury that the documents are fraudulent and that the claimed death did not occur.

This article considers several issues confronted during the evaluation and investigation of foreign death claims by insurers striving to protect their companies against fraud. Some suggestions are offered as to the value of policy provisions which require “due proof” of death, or proof “satisfactory” to the insurer. Additionally, the article discusses some of the 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.

## **The Legal Landscape**

Generally, in order to establish a *prima facie* claim for policy benefits sufficient to permit a jury to decide the issue, a claimant need show only (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 (11th Cir. 1993); *State Mut. Life Assur. Co. v. Wittenberg*, 239 F.2d 87, 90 (8th 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 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 Sampathachar v. Federal Kemper Life Assur. Co.*, 186 Fed.Appx. 227 (3d Cir. 2006) (death certificate from Devaprayag, India, admissible based on deposition testimony of employee who issued certificate, despite employee’s lack of authority to issue); *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 death in Mogadishu; Somali death certificate and other records admitted, as there was no showing that they were inaccurate).

Thus, if an insurer suspects that it may 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 that tell the truth about the fate of the insured. For some foreign records, 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.

## **Authentication of Foreign Death Records**

In order to have any document admitted into evidence, including foreign official records, there must be a showing that the document is “authentic.” Fed. R. Evid. 901; Fed. R. Civ. Proc. 44; 28 U.S.C. § 1741. 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. Fed. R. Evid. 901. 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. *See* Fed. R. Evid. 902(3); *see also* Fed. R. Civ. Proc. 44(a)(2). Courts often utilize this provision to determine whether foreign records purporting to establish the death of an insured are properly authenticated. *See, e.g., Minh Tu v. Mutual Life Ins. Co. of N.Y.*, 136 F.3d 77, 81 (1st Cir. 1998); *Allahabi v. New York Life Ins. Co.*, 2000 WL 335553 at \*2 (S.D.N.Y. Mar. 30, 2000); *Woodley v. Monumental Life Ins. Co.*, 2000 WL 1721158 at \*3 (N.D. Ill. Nov. 15, 2000). Some 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.

Federal Rule of 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 a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position . . . 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 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 United States or of a foreign country assigned or accredited to the United States, attesting to the genuineness of the signature on the records. *See, e.g., Minh Tu*, 136 F.3d at 81; *Woodley*, 2000 WL 1721158 at \*3. 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 consular personnel, or even against fraud perpetrated by staff members of those offices.

For instance, in *Minh 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 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. *Minh Tu*, 136 F.3d at 78–79, 80.

Similarly, the *Woodley* court denied admissibility of the 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 the employee of the Ministry of Foreign Affairs whose name appeared on the seal. *Id.* at \*8–10.

On the other hand, in *Loo v. The Prudential Ins. Co. of Am.*, 2004 WL 3017013 (S.D.N.Y. Dec. 30, 2004), 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 Province in China who, in turn, certified the signature of 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 *Minh Tu* and *Woodley* courts. The court in *Mohamud* permitted admission of a Somali death certificate not attested by a 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.

In *Mohamud*, the insured purchased two insurance policies requiring the insurer to pay

the outstanding balance on the insured's mortgage loan upon his death. *Mohamud*, 138 F. Supp. 2d at 711. The claimant (the 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 death certificate (the certificate was not attested by a U.S. government official). *Id.* at 714–15.

The *Mohamud* court admitted the Somali death certificate as sufficient proof of death because the claimant had presented other admissible evidence in support of her claims. *Id.* at 716–18. That evidence included (1) the certified statement of a Somali physician that the insured died due to a gunshot wound to his chest, (2) notice that the insured was buried free of charge in Sh.Ali Abdulle Cemetary in Somalia, and (3) affidavits from persons stating that the insured died in Somalia and that they attended the insured's funeral in Mogadishu. *Id.* at 718.

The *Mohamud* court noted that its holding was distinguished from that of the *Minh Tu* court. *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 certificate as a prerequisite for recovery. *Id.* Second, unlike in *Minh 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. The court concluded that the evidence proffered by the claimant as a whole sufficiently proved the insured's death. *Id.* Additionally, the court pointed out that the insurer had failed to produce any evidence that the insured's documents were fraudulent. *Id.* at 716–17.

The insurer was unable to prove the inaccuracy of the insured's claim because the insurer

could not secure its own investigator to challenge proof of the 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. *Id.* at 712.

More recently in 2006, the *Sampathachar* court similarly permitted admission of a foreign death certificate not attested to by a U.S. government official. In *Sampathachar*, the claimant sought recovery on a \$1 million life insurance policy for the drowning death of his wife in 2001. The couple had moved from the United States back to India that same year. On October 17, 2001, the wife unexpectedly left their home, taking nothing with her except the clothes she was wearing. After the police informed the husband that the wife had checked into a hotel in Devaprayag, India, some 2,500 kilometers from the couple's home, and after unsuccessfully searching for her there, the wife's family hired rafters to search the Ganges River for her body. A partially decomposed female body was discovered.

The insurer contested the wife's death. In the years leading up to the claim, the wife had secured \$10.5 million in life insurance from seven different insurance companies. Also, the insurer contended that the wife had made material misrepresentations about her income and her net worth on several of her life insurance applications. Moreover, the insurer argued that certain physical characteristics of the body pulled from the Ganges River were inconsistent with the insured's medical and dental records. After completion of the postmortem examination and identification of the insured by her family, the claimant had the body cremated.

As proof of his wife's death, the claimant offered a Devaprayag death certificate to which

the insurer objected. The authenticity of the certificate was not attested to by a U.S. government official. Instead, deposition testimony of the employee who issued the certificate was permitted to authenticate the certificate, notwithstanding that the employee lacked the authority to issue the certificate.

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.

### **Accuracy of the Foreign Death Records**

In addition to the authentication of foreign records, courts also look at the accuracy of the information in the records to determine whether the claimant has established sufficient proof of the 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 doubt on the accuracy of the information contained in the death certificate, then reduced or no weight will be given to the death certificate. *Id.*

Thus, where the insured has died in a foreign country and the claimant has successfully authenticated documents purporting to show the occurrence of death, the burden shifts to the insurance company to introduce evidence that the insured's alleged death was fraudulent. *See Mohamud*, 138 F. Supp. 2d at 717–18, 720 (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 were reliable. *See, e.g., Allahabi*, 2000 WL 335553 at \*2; *Minh Tu*, 136 F.3d at 81–82. In *Minh Tu*, the claimant's wife was apparently killed by bandits while on a trip to Cambodia. 136 F.3d at 78. The claimant submitted the 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 *Minh Tu* court held that the Cambodian death certificate was inadmissible and that the claimant had failed to establish sufficient proof of death. *Id.* at 82.

In *Allahabi*, the insurer issued a policy on the life of the claimant's cousin. Approximately 10 months after the policy was issued, the claimant filed for insurance proceeds, alleging that the insured had died in Yemen as the result of a snake bite. 2000 WL 335553 at \*1. The claimant introduced two death certificates, one issued by a 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 less than a year after the policy was effective, the insured was aware that false documents could be easily obtained in Yemen, and the insured and

the claimant had previously been involved in fraudulent insurance schemes. *Id.* The insured's employer, through deposition testimony, explained that the insured had "described the ease with which he could obtain false official documents in Yemen." 2000 WL 335553 at \*3.

In both *Minh Tu* and *Allahabi*, the insurers' investigation saved the companies from paying death claims that were not properly supported. The remaining sections of this article 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.

### **A Foreign Death Claim File: Has Sufficient Proof Been Presented?**

In dealing with official records from jurisdictions in which there is good reason to have faith in the veracity of their contents, 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.

While some life insurance policies simply require "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 the proofs submitted. *Loo*, 2204 WL 3017013 at \*9-10; *Minh 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 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 on-the-ground investigation 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, records of burial, and/or medical or hospital records are these:

- Is the documentation too complete? If at an early stage a claimant living in the United States 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, it is essential to insist upon 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.
- 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.

- Are documents that are expected to be submitted with a claim or that are 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 and medical records unavailable?
- Does the documentation submitted with the claim reflect a disposition of the insured’s body inconsistent with the local customs or religious practices of the area in which the death occurred? For example, in one case suspicions began to be focused on 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 while on a business trip to a rural area of a West African nation. The insurer learned, though, that the custom of his tribe considered it an “abomination” for a son not to attend and participate in his father’s burial.
- Was the claim filed just after the end of the two-year contestable period?
- 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?
- 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, to 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. §§ 4195–97 (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 Minh 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.

### **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, if 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.

At various stages in the investigation of a foreign death claim, it may become absolutely necessary to conduct investigations in the foreign country where the death allegedly occurred. For example, if sufficient due proof of the death has been submitted, such an investigation may be the only way to verify the statements of witnesses, to ascertain whether the doctor who signed

medical records or a certificate of death exists, really treated the insured, and can truly confirm his or her death, to 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 on the country and the issues involved, such efforts may be appropriate for an investigator. Others may also require a local attorney who can 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 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.

## **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 often will require visits to the area where the death occurred, and interviews of 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 also will 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 continue to present a challenge to life insurance claims personnel.

J. Snowden Stanley is a principal in the Baltimore, Maryland, firm of Semmes, Bowen & Semmes. His practice has focused on the defense of life, health and disability insurers in the state and federal courts of Maryland and the District of Columbia. He is a longtime member of DRI and its Life, Health and Disability Committee, and is regional editor of its newsletter. Christopher J. Lyon is an associate with Semmes, Bowen & Semmes. He is a member of the

firm's litigation department and an active participant in DRI. His practice includes the representation of insurers in coverage and claims litigation.