

Creditor Claims Against Revocable Trust

Quick-Take: In a published court decision this week the Michigan Supreme Court rendered a somewhat surprising decision regarding what assets are available to satisfy a judgment creditor when the decedent's estate is insolvent, but assets are available to satisfy the judgement in the decedent's revocable trust. A life insurance policy made payable to the insured's revocable Trust was exempt from being available to satisfy a judgment against the insured when her estate was insolvent.

Background: A decedent's revocable trust can be subject to the claims of the settlor's creditors where the trust was established as a revocable trust but was rendered irrevocable at the settlor's death when the settlor's probate estate is insufficient to pay those claims. [MCL 700.7506(b)(1).] However, some assets are exempt from creditor claims under other statutes. One such asset is a qualified plan benefit. 401(k) proceeds cannot be reached by creditors because they are exempt as a payment from a retirement plan that is exempt under the Tax Code; they are not available under MCL 700.7506(1)(b). Similarly, life insurance death benefit proceeds are also beyond the reach of creditors because they would not have been subject to a claim against the settlor's estate "if they had been paid other than to the settlor's estate." [MCL 700.7605(4) and MCL 500.2207(2).] If a life insurance policy is made payable to the insured's estate, then they are available to pay claims against the insured, as a general rule.

These rules and the interpretation of when a death benefit is not available to satisfy claims against the insured were the subject of a recent Supreme Court decision, no doubt to the dismay of the Michigan Banker's Association.

In re Estate of Jennifer Fowler, Michigan Supreme Court No. 167501 (July 20, 2026)

Facts: The tragic facts were that Jennifer was patient advocate for her mother, Helen, age 79 with dementia, who was then in assisted living. Jennifer took her mother to Jennifer's home and proceeded to kill her mother and herself. One of Helen's surviving children, as Personal Representative of Helen's estate, then filed a wrongful death action against Jennifer. Jennifer was found liable; a judgment was entered against Jennifer (and her estate) which became a liability of the probate estate. Jennifer's estate was depleted in the

payment of legal fees it incurred to defend the wrongful death lawsuit, so it was technically insolvent when Helen's estate sought to enforce its judgment against the estate. Because the estate was insolvent, the claim was brought against Jennifer's revocable trust (now irrevocable) to be satisfied..

Dispute: Jennifer used a revocable Trust at the time of her death. Jennifer had named her Trust as the beneficiary of Jennifer's 401(k) account. Jennifer also had life insurance policy that was payable to her revocable Trust. The issue in controversy was that because Jennifer's probate estate was insolvent, which caused her Trust to be responsible to contribute to her probate estate to pay estate administrative expenses and outstanding claims and debts, was Jennifer's trust required to transfer the 401(k) funds transferred to it on Jennifer's death, along with the death benefit, to Jennifer's probate estate to pay the wrongful death judgment? Helen's estate argued that both the 401(k) funds and the death benefit paid to the Trust were available to satisfy in part the wrongful death judgment. Jennifer's Trust argued that the 401(k) funds and the life insurance death benefit were exempt from satisfying Jennifer's debts and the judgment against her based on two Michigan statutes.

Probate Court: The probate court held that MCL 700.7605(1) required that the life insurance proceeds payable to Jennifer's revocable Trust were available to satisfy Helen's estate's wrongful death judgement. However, the 401(k) proceeds paid to Jennifer's Trust were exempt, citing MCL 700.7605(2). Since the probate court 'split the baby' in its decision, both parties appealed the decision.

Court of Appeals: This Court reversed, in part, the probate court's decision. It held that both the 401(k) proceeds and the life insurance death benefit paid to Jennifer's Trust were available to satisfy Helen's estate's wrongful death judgment. Jennifer's Trust appealed this decision.

Michigan Supreme Court: The Supreme Court reversed both the probate court's decision, and the Court of Appeals decision. This Court found that both the 401(k) amount paid to Jennifer's Trust and the life insurance death benefit that was paid to the Trust were exempt from creditor claims, such that those assets were protected and exempt from satisfying the wrongful death judgment entered against Jennifer and her estate.

Will Substitute: The Court acknowledged that a revocable Trust is often viewed as a Will substitute. Accordingly, assets paid to or held in a revocable Trust at the time of the settlor's death are normally available to pay debts and administrative expenses of the decedent's estate if that estate is insufficient to pay those expenses. That general rule is reflected in MCL 700.7605(1)(b). The Court spends a lot of time distinguishing between a revocable Trust (that becomes irrevocable on the settlor's death) and an irrevocable Trust.

Statutory Exemptions: Some assets are exempt from the general rule of being available, albeit held in the name of the decedent's Trust, from satisfying debts and expenses of administration. Those exemptions are identified in MCL 700.7605(2) and (4).

401(k) Proceeds: This one was pretty easy. MCL 700.7605(2) clearly says that at the proceeds from a qualified retirement account [not an IRA] if paid to the Trust are not available to satisfy creditor claims or estate administration expenses when the estate is insolvent, even though the Trust is the named beneficiary of that retirement account and even though the plan participant-settlor (Jennifer) had full control over the funds held in the 401(k) account at the time of her death. Even though the 401(k) account is not a 'trust' as that word is used in the exemption statute, the Court found that the exemption language "all payments from a 401(k) plan shall not be considered to be a trust described in subsection (1)" exempted the payment made to Jennifer's Trust.

Life Insurance Proceeds: This exemption was much more difficult for the Court to reach its desired conclusion.

MCL 700.7605(4) mandates that some 'property shall not be considered trust property available for the payment of a claim against the settlor's estate if the property that is held or received by the trust 'would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's Will or property held or received by a trust that would have been paid other than to the settlor's estate.' Admittedly, that is a pretty confusing description of what is exempt or not exempt from paying debts. However, MCL 500.2207(2) clearly excludes from the life insurance creditor exemptions when "*the beneficiary is the insured or the insured's executor or administrator.*" In short, if a life insurance policy is made payable to the insured's estate,

then the death benefit can be used to pay creditor claims, including debts and estate administration expenses.

Here, the life insurance policy was not made payable to Jennifer's estate, but to her revocable Trust, which was then responsible under the statute to pay debts and administration expenses if her estate was insolvent and could not pay those debts and expenses. Here the Trust argued, and the Court agreed, that death benefit were not left to Jennifer's estate, i.e., herself or her 'executors or administrators' but to her Trust, which made the benefit otherwise exempt. [MCL 700.500.2207(2).] In effect, the Court had to focus on the use of the words 'executor' and 'administrator' to find that Jennifer's Trust was neither.

"We conclude that MCL 500.2207(2) places life insurance proceeds outside the reach of the insured-decedent's creditors unless the proceeds are paid to their estate (i.e., to 'the insured' or their 'executors or administrators.' This falls within MCL 700.7605(4)'s exemption for trust proceeds that would be outside the reach of creditors if 'paid...other than to the settlor's estate."

Comment: Suppose a husband dies with a revocable Trust and a pour-over Will. The Will names the husband's wife as the Personal Representative. The Trust names the wife as the Successor Trustee on the husband's death. The husband maintained a life insurance policy that is made payable to 'the then acting trustee' of his Trust. Assume the husband's estate is insolvent, there are creditor claims outstanding, so those creditors turn to the husband's Trust. The life insurance policy is payable to the individual who serves both in the fiduciary roles as Personal Representative (death benefit is not exempt) and as Successor Trust (death benefit is exempt.) I could foresee a fair amount of litigation over the death benefit focusing on the settlor-insured's intent. A life insurance policy that names the Personal Representative as its beneficiary is not exempt from creditor claims. A life insurance policy that names the Trustee of the insured's Trust is exempt from creditor claims, because the Trustee is neither an executor, nor an administrator, yet he/she has the duty to contribute Trust assets to the insured's estate (in effect a surrogate executor or administrator) to assist in estate administration.

Conclusion: While I appreciate the Court's analysis, particularly as it relates to life insurance death benefits being exempt from creditor claims to me it is hard to reconcile the distinction between naming the insured's estate, versus naming the insured's revocable Trust, as the beneficiary. It would not surprise me to see the Michigan Banker's Association lobbying for a legislative change so make sure that life insurance if paid to either the insured's probate estate or to his/her revocable Trust, be made available to satisfying outstanding debts on the insured's death

If you would like to read additional missives, [click here](#).