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IN LOCO PARENTIS IN NATIONAL SERVICE LIFE INSURANCE

During World War II the United States Government, undertaking to provide life insurance coverage at reasonable rates for members of its armed forces,¹ enacted the National Service Life Insurance Act of 1940.² One important feature of the Act was the restriction upon the class of persons who might be designated as beneficiary.³ This condition gave rise to the problem of what constitutes the relationship of loco parentis⁴ as the insured was allowed to designate a "parent," which includes a person in loco parentis;⁵ and, in the absence of designation of a beneficiary or upon the death of the one named, the proceeds were payable in a prescribed manner which included payments to "parents" if there were no living widow, widower, or children of the insured.⁶

I. STATUTORY CHANGES IN POLICY COVERAGE

Restrictions upon the class of designated beneficiaries were removed by a 1946 amendment as to insurance policies maturing⁷ after August 1, 1946,⁸ thus eliminating the problem of loco parentis

1. See Dyer, *National Service Life Insurance for World War II Veterans*, 7 Texas B. J. 71, 92 (1944); Thompson, *National Service "Life Insurance" and the Pre-War Life Insurance of Persons in the Armed Forces*, 23 Mich. B. J. 65 (1944); Notes, 26 Iowa L. Rev. 853 (1941), 21 Notre Dame Law. 45 (1945).

2. 54 Stat. 1008 *et seq.* (1940), as amended, 38 U. S. C. § 801 *et seq.* (1946), 38 U. S. C. § 802 *et seq.* (Supp. 1951). Somewhat comparable coverage had been provided by War Risk Insurance of World War I. 38 Stat. 711 (1914), as amended, 38 U. S. C. § 421 (1946).

3. Occupying a somewhat analogous situation are fraternal benefit associations which sometimes limit the beneficiaries which their members may name. Cases involving these limitations might possibly aid in the solution of difficult loco parentis problems in National Service Life Insurance cases. Vance, *Insurance* 707 (3d ed., Anderson, 1951); Minn. Stat. § 64.06 (1949).

4. See 27 B. U. L. Rev. 338 (1947).

5. Section 601(g) of the original act, 54 Stat. 1010 (1940), provided: "The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided."

6. 54 Stat. 1010 (1940), 38 U. S. C. § 802(h) (1946).

7. "Maturing of the insurance" refers to the date when payment under the policy becomes due, the death of the insured. Kimbrough and Glen, *American Law of Veterans* 93 (Supp. 1951).

8. 60 Stat. 782, 38 U. S. C. § 802(g) (1946), *Burton v. United States*, 95 F. Supp. 474 (W.D. La. 1951), *Tannehill v. United States*, 82 F. Supp. 362 (N.D. Ala. 1949).

with respect to these policies. The amendment further provided that when the insured fails to designate a beneficiary or the beneficiary does not survive the insured or dies before all the payments become due, the proceeds shall then be payable to the estate of the insured or of the beneficiary, depending upon the policy terms.⁹ If the beneficiary was entitled to a lump-sum payment but elected to take under some other form of settlement and died before receiving all of the payments under that settlement, then the balance is payable to the estate of the beneficiary; but where a lump-sum payment is not involved proceeds go to the estate of the insured.¹⁰ Neither the insured's estate nor that of the beneficiary takes if the property would thereby escheat.¹¹

Policies matured before August 1, 1946¹² continue to be subject to the earlier provisions limiting the class of beneficiaries that may be designated.¹³ Among the permitted beneficiaries are "parents," which include "persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured."¹⁴ If the beneficiary is undesignated or does not survive the insured or the beneficiary dies before all of the installments have been paid, then the insurance is payable under a prescribed order of widow or widower, children, parents, and brothers or sisters.¹⁵ Thus the problem of loco parentis may still arise where a contingent beneficiary takes upon the death of a principal beneficiary, or where the unpaid amount is awarded according to the above table of priority.¹⁶

II. DEFINITION OF LOCO PARENTIS AND POLICY CONSIDERATIONS

Literally the term "loco parentis" signifies an individual standing in the place of a parent.¹⁷ The common law meaning encom-

9. 60 Stat. 786 (1946), 38 U. S. C. § 802(u) (1946).

10. *Ibid.* See 2 Appleman, Insurance Law and Practice § 1143 (Supp. 1950).

11. 60 Stat. 786 (1946), 38 U. S. C. § 802(u) (1946).

12. It should be noted that the period of heaviest combat and the greatest number of service mortalities occurred prior to this date.

13. 54 Stat. 1010 (1940), as amended, 38 U. S. C. § 802(g) (1946).

14. 56 Stat. 659 (1942), as amended, 38 U. S. C. § 801(f) (1946).

15. 54 Stat. 1010 (1940), as amended, 38 U. S. C. § 802 (1946).

16. See, *e.g.*, *Strunk v. United States*, 80 F. Supp. 432 (E.D. Ky. 1948); *Dodd v. United States*, 76 F. Supp. 991 (W.D. Ark. 1948).

17. See *Thomas v. United States*, 189 F. 2d 494, 497 (6th Cir. 1951).

passes two concepts: the assumption of the parental status,¹⁸ and the discharge of parental duties.¹⁹ This relationship has been likened to an adoption without compliance with the necessary legal formalities.²⁰

Desiring to carry out the wishes of deceased servicemen, many courts approve a liberal interpretation of the term "in loco parentis" where a beneficiary is designated,²¹ but numerous others require a strict application of common law rules.²² Courts are less eager to find this status when the claimant seeks recovery under the succession of payments section governing benefits subsequent to the death of the designated beneficiary.²³ When faced with the loco parentis problem, it is quite natural that the courts should consider the possible application of the strict common law rules. But since these rules were developed in determining such problems as the right of a parent to the services of a child,²⁴ or the privilege of an individual standing in the position of parent to administer punishment to a child,²⁵ it is doubtful whether they should be applied to the determination of what constitutes a loco parentis relationship in life insurance cases, inasmuch as the considerations involved are obviously different.

Requiring certain basic elements for the finding of a loco parentis relationship is generally desirable, and mere attachment by the insured of the label "loco parentis" to a designated beneficiary should not be sufficient.²⁶ Yet, perhaps, rigidity of standards and

18. *Niewiadomski v. United States*, 159 F. 2d 683 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947); 13 U. of Detroit L. J. 52 (1949).

19. *Ibid.* *Mansfield v. Hester*, 81 F. Supp. 772, 775 (S.D. W. Va. 1949).

20. See *Niewiadomski v. United States*, *supra* note 18, at 686; 27 E. U. L. Rev. 338 (1947); 25 Chi-Kent Rev. 150 (1947).

21. *Richards v. United States*, 93 F. Supp. 208 (N.D. W. Va. 1950); *Jadin v. United States*, 74 F. Supp. 589 (E.D. Wis. 1947); *Baldwin v. United States*, 68 F. Supp. 657 (W.D. Mo. 1946); see *United States v. Zazove*, 334 U. S. 602, 610 (1948) (favoring a liberal construction of the act as to payments in general); *Meisner v. United States*, 295 Fed. 866 (W.D. Mo. 1924) (war risk insurance).

22. *United States v. McMaster*, 174 F. 2d 257 (5th Cir. 1949); *Leyerly v. United States*, 162 F. 2d 79 (10th Cir. 1947); *Niewiadomski v. United States*, 159 F. 2d 683 (6th Cir.); *cert. denied*, 331 U. S. 850 (1947); *Powl-edge v. United States*, 88 F. Supp. 561 (N.D. Ga. 1950); *Mansfield v. Hester*, 81 F. Supp. 772 (S.D. W. Va. 1949); *Maldonado v. United States*, 69 F. Supp. 302 (E.D. N.Y. 1946).

23. See *Bearhart v. United States*, 82 F. Supp. 652, 656 (D. Minn. 1949); *Mansfield v. Hester*, 81 F. Supp. 772, 775 (S.D. W. Va. 1949); *Bourbeau v. United States*, 76 F. Supp. 778, 781 (D. Me. 1948).

24. Long, *Domestic Relations* § 262 (2d ed. 1913).

25. Prosser, *Torts* § 27 (1941).

26. See *Maldonado v. United States*, 69 F. Supp. 302, 303 (E.D. N.Y. 1946).

mechanical applications of these criteria should be tempered by a desire to give effect to the expressed intentions of the deceased serviceman whenever feasible, insofar as he designated a principal or contingent beneficiary. Decidedly more difficult are the cases of claimants in loco parentis seeking unpaid benefits subsequent to the death of named beneficiaries, and stricter adherence to common law standards is more justifiable in deciding these cases.

Individual cases are decided on the basis of the court's appraisal of the relationship and intentions of the insured and the claimant as evidenced by their actions and declarations.²⁷ The remaining sections of this Note deal with factual evidence considered by the courts and special problems that may arise.

III. AGE OF THE INSURED

Courts have split on the question whether the relationship of loco parentis can arise where the insured is not a minor.²⁸ Where the insured is mentally or physically incapacitated at the time the relationship allegedly arose, it would seem that the loco parentis relationship may exist even though the insured was an adult.²⁹ Even assuming that the relationship may not arise after minority, if started earlier it may continue after the insured reaches his majority.³⁰ The Veteran's Administration has followed a consistent policy of refusing to find a relationship of loco parentis which is claimed to have arisen after the insured was no longer a minor;³¹ however, they do not require that such relationship exist for a full year during the insured's minority but only that the inception of the status occur during minority.³² Irrespective of state law on the matter, the Veteran's Administration considers age twenty-one as the end of minority for insurance purposes as to both male and female veterans.³³

27. *Richards v. United States*, 93 F. Supp. 208 (N.D. W. Va. 1950).

28. Holding that minority is not a requisite: *Thomas v. United States*, 189 F. 2d 494 (6th Cir. 1951); *Zazove v. United States*, 156 F. 2d 24 (7th Cir. 1946); *Meisner v. United States*, 295 Fed. 866 (W.D. Mo. 1924) (war risk insurance). *Contra*: *United States v. McMaster*, 174 F. 2d 257 (5th Cir. 1949); *Powledge v. United States*, 88 F. Supp. 561 (N.D. Ga. 1950); *Howard v. United States*, 2 F. 2d 170 (E.D. Ky. 1924); *see Bland v. United States*, 185 F. 2d 395-396 (5th Cir. 1950).

29. *Horsman v. United States*, 68 F. Supp. 522 (W.D. Mo. 1946); *see Richards v. United States*, 93 F. Supp. 208, 213 (N.D. W. Va. 1950); *see 13 U. of Detroit L. J.* 52 (1949).

30. *Bland v. United States*, 185 F. 2d 395 (5th Cir. 1950); *Leyerly v. United States*, 162 F. 2d 79 (10th Cir. 1947); *see Richards v. United States*, 93 F. Supp. 208, 213 (N.D. W. Va. 1950).

31. Vet's Admin. Dec. No. 536 (1943); 25 Chi-Kent Rev. 150 (1947).

32. Vet's Admin. Dec. No. 675 (1945).

33. Vet's Admin. Dec. No. 793 (1948).

The respective ages of the several parties is another consideration, and one court was greatly influenced in finding a brother-sister rather than parent-child relationship where the age span between claimant and insured was only a few months.³⁴

Perhaps the most satisfactory approach would be closer scrutiny of the relationship in cases where it allegedly arose after the serviceman reached the age of twenty-one, particularly where the award to such claimants would thereby exclude natural parents or others who have stood in such a relationship to the insured for long periods prior to the time he lived with the claimants.

IV. ECONOMIC FACTORS

Traditionally the courts have viewed the assumption of parental obligations and responsibilities as an element of the loco parentis relation,³⁵ and certainly support of the insured by the claimant is a significant factor in deciding these cases,³⁶ although one court has contended that the duty of providing for another is not a requisite for loco parentis.³⁷

Support is to be distinguished from merely providing needed assistance to a relative even for an indefinite period of time,³⁸ and when the father supports the child by reason of a court order, the significance of that support is substantially minimized for purposes of loco parentis.³⁹ In ascertaining the extent to which the claimant assumed the responsibilities for supporting the serviceman, the courts have properly laid heavy emphasis upon the basic essentials such as food,⁴⁰ clothing,⁴¹ and shelter,⁴² as well as considered

34. See *Niewiadomski v. United States*, 159 F. 2d 683, 686 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947).

35. *Richards v. United States*, 93 F. Supp. 208 (N.D. W. Va. 1950); *Baldwin v. United States*, 68 F. Supp. 657 (W.D. Mo. 1946); 13 U. of Detroit L. J. 52 (1949).

36. See *United States v. Henning*, 191 F. 2d 588, 589 (1st Cir. 1951) *cert. granted*, 72 Sup. Ct. 365 (1952); *Leyerly v. United States*, 162 F. 2d 79, 86 (10th Cir. 1947); *Niewiadomski v. United States*, 159 F. 2d 683, 684 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947); *O'Brien v. United States*, 84 F. Supp. 531 (D. N.J. 1949).

37. See *Thomas v. United States*, 189 F. 2d 494, 503 (6th Cir. 1951).

38. See *Niewiadomski v. United States*, 159 F. 2d 683, 686 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947).

39. *United States v. Kwasniewski*, 91 F. Supp. 847 (E.D. Mich. 1950).

40. See, e.g., *United States v. Henning*, 191 F. 2d 588, 590 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952); *Mansfield v. Hester*, 81 F. Supp. 772, 774 (S.D. W. Va. 1949).

41. See, e.g., *Golden v. United States*, 91 F. Supp. 950, 952 (M.D. Ala. 1950); *Derrell v. United States*, 82 F. Supp. 18, 24 (E.D. Mo. 1949).

42. See, e.g., *United States v. McMaster*, 174 F. 2d 257, 259 (5th Cir. 1949); *Lorden v. United States*, 83 F. Supp. 822, 823 (D. Mass. 1949).

whether spending money was provided.⁴³ Self-support and independence of action have been characterized as refuting parental control and responsibility,⁴⁴ although the insured's subsequent attainment of a self-supporting status after an earlier dependent relationship may not be within this prohibition.⁴⁵

*Strauss v. United States*⁴⁶ presented the problem of whether the loco parentis relationship might arise in spite of welfare payments to the claimant for supporting the child. In that case the court found that weekly payments by a welfare society of six or seven dollars to the claimant negated the existence of a loco parentis relationship as against the claim of the serviceman's father, who had been suffering from poor health. In a subsequent district court case, however, monthly payments to claimants of nineteen to twenty-two dollars for the care of Indian children did not prevent the relationship from arising, where the father had deserted the children and the natural mother showed no interest in them.⁴⁷ Apparently present in the latter case was a growing sense of affection arising out of what started to be a primarily business arrangement. A specific agreement between the boy and the claimants that he is to live with them and be treated as their son may be the basis for a finding of loco parentis in spite of welfare payments.⁴⁸ A Massachusetts federal district court distinguished the *Strauss* case, saying that the *Strauss* case involved only boarding of the boy, but that the case before them included education, housing, parental guidance, and treatment of the boy as a son, in addition to the element of welfare board assistance.⁴⁹ Thus, while the payment of welfare assistance often indicates a lack of the parental undertaking of responsibility to support children, it may, nevertheless, in some circumstances be consistent with the relation of parent and child.

Closely related to state welfare support of the child is the factor whether the insured himself provided for his support by payment of room and board. The courts have noted whether the insured paid

43. See *Horsman v. United States*, 68 F. Supp. 522, 523 (W.D. Mo. 1946); *Meisner v. United States*, 295 Fed. 866, 867 (W.D. Mo. 1924).

44. See *Richards v. United States*, 93 F. Supp. 208, 213 (N.D. W. Va. 1950).

45. See *Burke v. United States*, 85 F. Supp. 93, 97 (E.D. Pa. 1948), *aff'd* 176 F. 438 (3d Cir. 1949).

46. 160 F. 2d 1017 (2d Cir.), *cert. denied*, 331 U. S. 850 (1947).

47. *Jadin v. United States*, 74 F. Supp. 589 (E.D. Wis. 1947).

48. *Jensen v. United States*, 78 F. Supp. 974 (D. Me. 1948).

49. *Lorden v. United States*, 83 F. Supp. 822 (D. Mass. 1949).

board,⁵⁰ whether it was paid for him by a parent,⁵¹ or whether he worked to obtain room and board.⁵² Generally speaking, payment for board and lodging is inconsistent with the relationship of loco parentis.⁵³ On the other hand, performance of certain services for the insured while he was living with the claimants is considered indicative of the existence of loco parentis. For example, the courts have noticed whether the claimants washed⁵⁴ or mended⁵⁵ the serviceman's clothing, provided medical care,⁵⁶ or nursed him through illness.⁵⁷

V. PSYCHOLOGICAL FACTORS

The courts consider not only economic relations and elements but psychological factors as well, that is, the intentions and attitudes of the insured and the claimants.⁵⁸ Informal agreements between the serviceman and claimants providing for the care of the insured during his youth are considered and analyzed.⁵⁹ While one court stated that either a formal or informal adoption is a requisite of loco parentis,⁶⁰ apparently a definite agreement is not necessary for the relationship.⁶¹ Claimant's consideration of legal adoption of the insured which claimant drops because of fear of red tape may also be noted as indicating a loco parentis relationship.⁶²

50. See *Niewiadomski v. United States*, 159 F. 2d 683, 684 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947).

51. See *Bourbeau v. United States*, 76 F. Supp. 778, 780 (D. Me. 1948).

52. See *Richards v. United States*, 93 F. Supp. 208, 213 (N.D. W. Va. 1950).

53. See *Maldonado v. United States*, 69 F. Supp. 302, 304 (E.D. N.Y. 1946).

54. See *United States v. Henning*, 191 F. 2d 588, 590 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952); *Thomas v. United States*, 189 F. 2d 494, 497 (6th Cir. 1951); *Mansfield v. Hester*, 81 F. Supp. 772, 774 (S.D. W. Va. 1949); *Baldwin v. United States*, 68 F. Supp. 657, 659 (W.D. Mo. 1946).

55. See *Thomas v. United States*, 189 F. 2d 494, 497 (6th Cir. 1951); *Burke v. United States*, 85 F. Supp. 93, 95 (E.D. Pa. 1948), *aff'd*, 176 F. 2d 438 (3d Cir. 1949).

56. See *Wood v. United States*, 74 F. Supp. 732, 734 (W.D. S.C. 1947); *Tudor v. United States*, 36 F. 2d 386, 388 (W.D. Wash. 1929) (war risk insurance).

57. See *Thomas v. United States*, 189 F. 2d 494, 497 (6th Cir. 1951); *Bourbeau v. United States*, 76 F. Supp. 778, 780 (D. Me. 1948).

58. See notes 21 and 22 *supra*.

59. See *Jensen v. United States*, 78 F. Supp. 974, 976 (D. Me. 1948); *Wood v. United States*, 74 F. Supp. 732, 733 (N.D. S.C. 1947).

60. See *Powlledge v. United States*, 88 F. Supp. 561, 564 (N.D. Ga. 1950).

61. See *Thomas v. United States*, 189 F. 2d 494, 505 (6th Cir. 1951).

62. See *Golden v. United States*, 91 F. Supp. 950, 953 (M.D. Ala. 1950).

Estrangement between the insured and his former parents is significant in measuring the type of relationship between insured and the claimants who say they were his last parents.⁶³ In one recent case estrangement was exemplified by a law suit between the insured and his natural father,⁶⁴ while estrangement in another case resulted from the marriage of the insured's mother to one of his friends after the death of the insured's natural father.⁶⁵ The courts have tried to ascertain whether the degree of affection between claimant and insured is comparable to the customary affection of parents for their children.⁶⁶ Kindness and generosity alone are not sufficient,⁶⁷ and absent other factors even a strong bond of affection may not be enough.⁶⁸

Several courts regard it significant that the insured's designation of beneficiary was made without coercion and that claimant's prior acts had been performed without the hope of gain.⁶⁹ Insured's explanation to others of his reasons for naming the claimants as beneficiaries is relevant.⁷⁰

With whom the insured lived for various portions of his life is frequently considered by the courts⁷¹ and was extensively relied upon by at least one tribunal.⁷² The fact that insured lived with someone other than the claimant for long periods of time indicates an absence of a loco parentis relationship,⁷³ although this fact may not be determinative when the claimant's absence is necessitated by

63. See *Jadin v. United States*, 74 F. Supp. 589, 591 (E.D. Wis. 1947) (desertion by father and lack of interest by mother).

64. See *Baumet v. United States*, 191 F. 2d 194, 195 (2d Cir. 1951).

65. See *Golden v. United States*, 91 F. Supp. 950, 951 (M.D. Ala. 1950).

66. See *United States v. Henning*, 191 F. 2d 588, 589 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952); *Golden v. United States*, 91 F. Supp. 950, 952 (M.D. Ala. 1950); *Baldwin v. United States*, 68 F. Supp. 657, 662 (W.D. Mo. 1946).

67. See *Richards v. United States*, 93 F. Supp. 208, 213 (N.D. W. Va. 1950).

68. *Strauss v. United States*, 160 F. 2d 1017 (2d Cir.), *cert. denied*, 331 U. S. 850 (1947).

69. See *Wood v. United States*, 74 F. Supp. 732, 735 (W.D. S.C. 1947) (lack of coercion); *Horsman v. United States*, 68 F. Supp. 522, 525 (W.D. Mo. 1946).

70. See *Baldwin v. United States*, 68 F. Supp. 657, 660 (W.D. Mo. 1946).

71. See *United States v. Henning*, 191 F. 2d 588, 590 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952); *Strunk v. United States*, 80 F. Supp. 432, 434 (E.D. Ky. 1948); *Bourbeau v. United States*, 76 F. Supp. 778, 780 (D. Me. 1948).

72. See *Neuhard v. United States*, 83 F. Supp. 911, 913 (M.D. Pa. 1949).

73. See *Maldonado v. United States*, 69 F. Supp. 302, 304 (E.D. Ky. 1946).

work elsewhere to obtain income needed to support the insured.⁷⁴

Greater importance should be attached to the general tenor of the relationship within the home. Courts notice whether the parties treat each other as members of the family⁷⁵ and specifically whether insured is treated like a son by the claimants⁷⁶ and like a brother by the other children of the claimants.⁷⁷ That claimant considered insured as a brother and not a child is detrimental to her claim of standing in loco parentis.⁷⁸

The manner by which the insured and claimants refer to each other is significant, as where the claimant calls insured "son" and he calls her "mom."⁷⁹ Calling his stepfather "dad" was noted by one court,⁸⁰ but the fact that claimant does not refer to insured as her "son" does not prevent the loco parentis relationship from arising.⁸¹ Closely related to this criterion is the examination of letters from the insured to claimant to determine whether they contain the normal amount of affection.⁸² One court looked at the contents of a telegram,⁸³ while others noted the heading and closing of letters⁸⁴ for indications of the relationship.

Education of the boy and general responsibility for his schooling are indicative of parental responsibilities.⁸⁵ Similarly, sending him to church may help establish the claimant's assumed responsibility in the moral and spiritual education of the child.⁸⁶ Closely

74. See *Derrell v. United States*, 82 F. Supp. 18, 23 (E.D. Mo. 1949).

75. See *Thomas v. United States*, 189 F. 2d 494, 496 (6th Cir. 1951).

76. See *Lorden v. United States*, 83 F. Supp. 822, 823 (D. Mass. 1949); *Horsman v. United States*, 68 F. Supp. 522, 524 (W.D. Mo. 1946); *Meisner v. United States*, 295 Fed. 866, 867 (W.D. Mo. 1924) (war risk insurance).

77. See *Bearhart v. United States*, 82 F. Supp. 652, 656 (D. Minn. 1949).

78. See *Niewiadomski v. United States*, 159 F. 2d 683, 685 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947).

79. See *Derrell v. United States*, 82 F. Supp. 18, 24 (E.D. Mo. 1949).

80. See *United States v. Kwasniewski*, 91 F. Supp. 847, 850 (E.D. Mich. 1950).

81. See *United States v. Henning*, 191 F. 2d 588, 590 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952).

82. See *Mansfield v. Hester*, 81 F. Supp. 772, 774 (S.D. W. Va. 1949); *Bourbeau v. United States*, 76 F. Supp. 778, 780 (D. Me. 1948); *Wood v. United States*, 74 F. Supp. 732, 734 (W.D. S.C. 1947); *Horsman v. United States*, 68 F. Supp. 522, 524 (W.D. Mo. 1946).

83. See *Thomas v. United States*, 189 F. 2d 494, 496 (6th Cir. 1951).

84. See *Burke v. United States*, 85 F. Supp. 93, 96 (E.D. Pa. 1948), *aff'd*, 176 F. 2d 438 (3d Cir. 1949); *Jensen v. United States*, 78 F. Supp. 974, 977 (D. Me. 1948); *Baldwin v. United States*, 68 F. Supp. 657, 660 (W.D. Mo. 1946).

85. See *Burke v. United States*, 85 F. Supp. 93, 95 (E.D. Pa. 1948), *aff'd*, 176 F. 2d 438 (3d Cir. 1949); *Lorden v. United States*, 83 F. Supp. 822, 823 (D. Mass. 1949).

86. See *Burke v. United States*, *supra* note 85.

related to education of the insured are matters of parental guidance⁸⁷ and supervision,⁸⁸ both of which constitute crucial elements in the psychological relationship.

In general, it may be said that psychological factors are of equal significance with economic factors in the determination of the type of relationship and whether it measures up to the requirements of *loco parentis*. The best reasoned decisions are based on a careful analysis of all factors, including economic and psychological.

VI. RELATIONSHIP OF THE PARTIES

Presence of the claim on behalf of natural parents naturally impedes the claim of persons seeking to recover insurance on the basis of *loco parentis*, and death of natural parents is noted by the courts.⁸⁹ Rights asserted by one natural parent may be weakened when the other natural parent supports the claimant in *loco parentis*.⁹⁰ One court stated that a person who stands in *loco parentis* to the insured for one year before the insured enters the service takes precedence over natural parents not named as beneficiaries.⁹¹ Several judges have suggested that the right of natural parents is revived after any superseding status between insured and a grandparent has been terminated by the death of the grandparents.⁹² In a rather broad statement one court enunciated the questionable rule that the parental status continues regardless of support, discipline, or desertion of the child by the parent.⁹³ Although the existence of a natural parent constitutes an obstacle to sustaining a claim on the basis of *loco parentis*, it does not prevent recovery.⁹⁴

87. See *Lorden v. United States*, 83 F. Supp. 822, 823 (D. Mass. 1949).

88. See *Burke v. United States*, 85 F. Supp. 93, 95 (E.D. Pa. 1948), *aff'd*, 176 F. 2d 438 (3d Cir. 1949); *Gibbs v. United States*, 80 F. Supp. 907, 908 (E.D. N.C. 1948). Supervision of claimant was subject to general supervision of grandparent in *McDonald v. United States*, 91 F. Supp. 163, 167 (D. Mass. 1950).

89. See *Thomas v. United States*, 189 F. 2d 494, 496 (6th Cir. 1951); *United States v. Niewiadomski*, 159 F. 2d 683, 684 (6th Cir.), *cert. denied*, 331 U. S. 850 (1947).

90. See *Baldwin v. United States*, 68 F. Supp. 657, 658 (W.D. Mo. 1946); see *Leyerly v. United States*, 162 F. 2d 79, 85 (10th Cir. 1947) (by implication).

91. See *Burke v. United States*, 85 F. Supp. 93, 97 (E.D. Pa. 1948), *aff'd*, 176 F. 2d 438 (3d Cir. 1949).

92. See *Mansfield v. Hester*, 81 F. Supp. 772, 776 (S.D. W. Va. 1949); *Strunk v. United States*, 80 F. Supp. 432, 435 (E.D. Ky. 1948).

93. See *Henning v. United States*, 93 F. Supp. 380, 382 (D. Mass. 1950), *rev'd on other grounds*, 191 F. 2d 588 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952).

94. See *Bland v. United States*, 185 F. 2d 395 (5th Cir. 1950) (aunt); *McClendon v. United States*, 163 F. 2d 895 (7th Cir. 1947) (aunt); *Golden v. United States*, 91 F. Supp. 950 (M.D. Ala. 1950) (guardian); *Jensen v.*

Courts consider whether claimant and insured are blood relatives,⁹⁵ but the absence of consanguinity does not necessarily prevent the loco parentis relationship.⁹⁶ The great stress laid upon the existence of blood ties has been sharply criticized,⁹⁷ and while too much emphasis undoubtedly can be placed upon this factor, it may be well to consider it as part of the total picture. Stepparents may be designated as beneficiaries, but unless they are so designated their claims must be presented as falling within the definition of parent which includes father or mother by adoption or persons standing in the relation of loco parentis.⁹⁸

Two recent court of appeals decisions⁹⁹ reached conflicting conclusions on the unique question of whether an insured may have more than one material and one parternal parent for purposes of loco parentis. An earlier district court case stated that there could be only one parent of each sex for these purposes.¹⁰⁰ However, a later decision indicated the possibility of two women standing in loco parentis to a boy, saying that the second woman if acting as the bread-winner might perform the duties of a father and be fictitiously charged with the father's rights, duties, and responsibilities.¹⁰¹ By regulation the Veteran's Administration has ruled that only one father and one mother may be recognized in a particular case.¹⁰² In applying this regulation the Veteran's Administration held the while it was possible to have two parents of one sex successively, it was not possible to have two parents of the same sex contemporaneously.¹⁰³ While the Second Circuit in *Baumet v. United States*¹⁰⁴ cited and applied this regulation, the First Circuit in

United States, 78 F. Supp. 974 (D. Me. 1948) (foster parent). But see *Bearhart v. United States*, 82 F. Supp. 652, 655 (D. Minn. 1949) (aunt); *Mansfield v. Hester*, 81 F. Supp. 772, 773 (S.D. W. Va. 1949) (aunt).

95. See *United States v. McMaster*, 174 F. 2d 257, 259 (5th Cir. 1949) (father and third-party claimants).

96. See *Jensen v. United States*, 78 F. Supp. 974, 975 (D. Me. 1948) (natural parents apparently indicated very little interest in child).

97. 25 Chi-Kent Rev. 150, 153 (1947).

98. See *Dodd v. United States*, 76 F. Supp. 991, 994 (W.D. Ark. 1948).

99. Compare *United States v. Henning*, 191 F. 2d 588 (1st Cir. 1951), cert. granted, 72 Sup. Ct. 365 (1952), with *Baumet v. United States*, 191 F. 2d 194 (2d Cir. 1951).

100. See *Mansfield v. Hester*, 81 F. Supp. 772, 775-776 (S.D. W. Va. 1949).

101. *Reynolds v. United States*, 96 F. Supp. 257 (D. Kan. 1951) (alternative holding).

102. Vet's Admin. Reg. No. 10, para. 7, as amended 57 Stat. 556 (1943) 38 U. S. C. A. § 257 (Supp. 1951).

103. Vet's Admin. Dec. No. 792 (1948).

104. 191 F. 2d 194 (2d Cir. 1951).

United States v. Henning,¹⁰⁵ reached a contrary decision on this point. In light of the regulation it is difficult to rationalize the conclusion reached by the court in the *Henning* case; yet the merits of the rule itself may be open to some question in those exceptional cases where several persons of the same sex jointly undertake to care for the insured during his youth.

VII. CONCLUSION

Various grounds have been relied upon by the courts in reaching their decision as to whether a claimant stands in loco parentis, and seldom is one factor so conclusive as to warrant ignoring the other elements of the case. Moreover, often the factors do not all point toward one result, and in those cases a sound balancing of considerations is needed. First, the court in all fairness to parties must evaluate the proffered evidence as to the weight that it warrants. Mechanical application of these factors and a mere totaling up of the number of elements on each side is unwise and often leads to undesirable results. Common sense application of these factors should be made in the light of the Congressional policy of limiting the insured's power to designate beneficiaries. A viewpoint somewhat more liberal than the strict common law approach would be warranted by the nature of the subject and those for whose benefit the policies were set up.

105. 191 F. 2d 588 (1st Cir. 1951), *cert. granted*, 72 Sup. Ct. 365 (1952).