

1971

James P. Knuckles v. Metropolitan Life Insurance Company, A Corporation : Brief of Appellant-Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsRobert H. Ruggeri; Attorney for Plaintiff Respondent

Recommended Citation

Brief of Appellant, *Knuckles v. Metro Life Insurance*, No. 12254 (Utah Supreme Court, 1971).
https://digitalcommons.law.byu.edu/uofu_sc2/220

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

**IN THE SUPREME COURT
of the
STATE OF UTAH**

JAMES P. KNUCKLES

Plaintiff-Respondent

vs.

METROPOLITAN LIFE INSUR-
ANCE COMPANY, a corporation,
Defendant-Appellant.

CASE NO.
12254

BRIEF OF APPELLANT - RESPONDENT

NATURE OF THE CASE

Plaintiff seeks indemnity for loss of sight of an eye under a "Group Insurance Certificate" issued by Appellant to employees of Texas Gulf Sulphur Company, Incorporated.

DISPOSITION IN LOWER COURT

Lower Court held in favor of Plaintiff.

RELIEF SOUGHT ON APPEAL

Affirmation of Lower Court's decision.

STATEMENT OF FACTS

Plaintiff-Respondent agrees generally with the Statement of Facts presented by Defendant-Appellant.

Plaintiff-Respondent does not agree with Defendant-Appellant's statement that "Plaintiff's injured eye is physiologically normal except for the loss of the crystalline lens and a slight scar on the cornea" and will direct his Statement of Facts primarily to this point.

Plaintiff-Respondent, while working for Texas Gulf Sulphur Company as an underground miner with normal vision without the use of lenses of any kind (Tr., page 12-15) participated in a group life and accident policy purchased by Texas Gulf Sulphur Company employees from the Metropolitan Life Insurance Company. Plaintiff's coverage commenced June 12, 1965, and was in effect February 23, 1967, (Tr. page 7 and Items 1 and 2 of Pre-Trial Order) when the accident causing the loss of the sight of his right eye, took place. The policy provided, among other things, for the payment to Plaintiff-Respondent of \$7500.00 in the event he suffered the "total and irrecoverable loss of the sight of one eye." (Policy attached to Plaintiff's Complaint as "Exhibit A".) As the direct and proximate cause of the injury (Depo. Dr. Robert W. Rigg, lines 4, 5, 6, page 20) and in an effort to restore his vision, Plaintiff-Respondent submitted to five surgical procedures, three to remove the crystalline lens (Dep. James P. Rigg, pages 4, 18 and 24) and two to correct muscular imbalance caused by the injury. (Dep. Robert W. Rigg, page 8.)

"Q. So, would you then describe the abnormalities that now exist in the eye?

"A. The abnormalities are from the standpoint of visual acuity. He has approximately 20/800 visual acuity in this eye.

"Q. But physiologically, what is now abnormal, just for my information?

"A. Physiologically, this is an abnormality." (Depo. James Rigg, Sr., page 25, lines 12 through 18, as amended.)

July 22, 1968

Mr. Blair Kinnersley
Claim Adjuster
State Insurance Fund
215 East Third South
Salt Lake City, Utah 84111

RE: James Paul Knuckles
File No. 67-2827 (2)
Inj: 2-23-67

My dear Mr. Kinnersley:

It is with deep regret that I did not identify the fact that Mr. Knuckles is totally blind in the right eye only. He has adequate vision in the left eye — 20/20. The only eye involved in compensation is the right.

May I graciously thank you for your letter.

Most sincerely,
s: James P. Rigg, Sr. M.D.

JPR :gf

”

(Letter marked Exhibit 2 and identified in the Deposition of James P. Rigg. See Rigg's deposition at page 29).

"Q. Now, would you have an opinion as to whether or not a person has lost his eyesight irrevocably because of a cataract operation?

"A. No, you can't say that it's been lost to that extent, except if they cannot wear a contact lens or they cannot wear a forward lens. Then, it is essentially lost. It's never going to be as good as what the good Lord gave you. Nobody would deny that." (Depo. Robert W. Rigg, page 16, lines 7 through 14.)

"A. It's been reported that the average age of a cataract, an eye that has had a cataract removed, is about ten years. They are more prone to have retinal detachment and other conditions of their eyes than the average eye, than a normal eye, I should say." Depo. Robert W. Rigg, page 19, lines 19 through 23.)

"A. Only two things: he was injured in the eye, he had a blow in the eye, and he's had a cataract develop in the eye. It's an abnormal condition from the first and one which may have other problems. This is a known fact by all ophthalmologists and it will be verified by anybody, I'm sure." (Depo. Robert W. Rigg, page 21, lines 13 through 17.)

"Q. Would you have an opinion whether or not the loss of his eye without correction is irrecoverable?

"A. Oh, for certain.

"Q. I mean, is there anything — what I'm trying to get at doctor, is there anything more that surgery or medication could do that would result in that eye perceiving things more clearly?

"A. No, there's nothing. There is no other means except artificial unless you wait for the resurrection." (Dep. Dr. Robert W. Rigg, page 17, lines 1-10.) (Dep. Dr. Merrill, page 7, lines 13 through 15 and page 20, lines 7 through 11.)

"Well, the opinion without a lens is about five four-hun-

dreths, or it's almost useless vision." (Depo. Dr. Merrill, page 5, line 21.)

When not wearing a contact lens the Plaintiff-Respondent has, for all practical purposes, lost the sight of his right eye. Using the injured eye without a contact lens (Depo. Dr. Merrill, page 20, lines 7 through 11, vage 22, lines 1 through 7) he could not drive a car, watch television, see a football game, fish, sight a gun, or take care of his many needs. (Depo. James P. Rigg, pages 3, 4 and 35.) (Depo. Robert W. Rigg, page 18.) (Depo. Dr. Merrill, page 6, lines 6 through 15.)

"A. Uncomfortable to wear, but there again some people are more motivated than other people. Some people can't wear a contact lens, in normal condition, whereas other people can wear them in practically any kind of condition." (Depo. Dr. Merrill, page 10, lines 20 through 23.) Plaintiff's vision is substantially improved and by medical standards can be corrected to 20/20 minus 3 visual acquity when wearing contact and forward lenses. Medical testimony substantiates the fact that not all people can wear contact lens. (Depo. Robert W. Rigg, page 16, lines 21, 22.) (Tr. Dr. Ronald H. Merrill, page 37, lines 14-20.) Plaintiff testified he has been unable to wear the contact lens prescribed for him because of irritation to the eye. (Tr. pages 15, 16) although the lens had been re-worked to make it more comfortable. (Depo. Robert W. Rigg, page 9, lines 14, 15.)

See Findings of Fact prepared by Trial Court.

A R G U M E N T

POINT I

The Plaintiff-Respondent did suffer the "total and irre-

coberable loss of the sight" of his right eye within the meaning of the policy and the applicable laws.

45 C. J. S., Paragraph 900, page 986:

"c. Loss of Sight

"Provisions in accident policies for the payment of specified indemnity for loss of sight are liberally construed in favor of the insured, and within such provisions there is an entire loss of sight, although sight is not completely destroyed, if what sight is left is of no practical use or benefit.

"The term "irrecoverable and entire loss of sight" as used in accident insurance policies providing for specified indemnity therefore should be liberally construed in favor of insured, and the construction to be placed on this term is not affected by the fact that the policy also provides for weekly indemnity payments for other accidental injuries not otherwise specifically enumerated. So a provision for indemnity for loss of sight is not qualified by a separate provision in the policy for indemnity in case of total disability. Although sight is not completely destroyed, there is a "loss of entire sight" or an "entire loss of sight" within an accident policy if what sight is left is of no practical use or benefit. Practical use does not mean use in a particular calling or occupation, but rather that use which will render practical service with respect to many needs and pleasures, and the mere fact that insured could not advantageously use his eye in his work or in reading is not sufficient to entitle him to recover for entire loss of sight. Inability to use both eyes simultaneously constitutes loss of the practical use of one eye. Whether there is a loss of the practical use of an eye when peripheral vision exists depends on the facts of each individual case.*"

44 Am Jur 2d s 1604, page 494:

“s 1604. Loss of eyes or eyesight.

“Under policies merely insuring against loss of sight, there is no necessity that the eye be so physically damaged that it must be removed, although a policy may expressly require the physical removal of the eye. However, where the insured has sustained a loss of sight or of useful sight, the courts are not in agreement as to whether the insured has lost his sight within the meaning of the policy where his vision can be restored by a surgical operation or by the use of glasses, or where the insured has retained or regained usable vision in his injured eye, although he has suffered a loss of binocular vision so that he can use one eye or the other but cannot use them both together.”

78 A. L. R. 2d 488:

“Loss of useful sight as test. Whether the policy insures against loss of sight, loss of entire sight, or entire loss of sight, or whether it refers to blindness or total blindness, it is generally interpreted to mean loss of practical use of sight rather than literal blindness.”

The Supreme Court of the State of Utah is committed to the reasonable and responsible interpretation of “loss of sight” and has repeatedly declared that a contract of insurance will be construed in such a way as to give practical effect to its terms and conditions.

MAYNARD v. LOCOMOTIVE ENGINEERS MUTUAL
LIFE AND ACCIDENT INS. ASSN.

Supreme Court of Utah, November 4, 1897

16 Utah 145; 51 P 259

In holding that total and permanent loss of the sight of one eye entitles insured to recover for the “total and permanent loss of eyesight” where such injury disables him from pursuing his usual and accustomed occupation, the Court said:

“**The terms of the by-law in question must be interpreted liberally and reasonably, and as they appear to be susceptible of two constructions, that must be adopted which will more nearly carry out the benign object of the association, and sustain the claim of the injured. The provisions will not be scrutinized for the purpose of enabling the organization to escape liability to any of its members, or for the purpose of creating limitations, in favor of the association, which do not satisfactorily appear within the terms of the by-law. Where associations or corporations are organized for the purpose of mutual benefit and relief, their by-laws will not be so interpreted as to favor the forfeiture of the rights of its members or those dependent upon them. The by-laws of mutual benefit societies should be construed liberally, and with a view to effectuate the benevolent purposes of their organization. When there is any ambiguity or inconsistency in the terms of such by-laws, that construction should be given to them which is most favorable to the rights of the members. Nibl. Ben. Soc & Acc. Ins. ss 17, 143; Bac. Ben Soc. s 86; Insurance Co. v. Mund, 102 Pa. St. 89; Burkhard v. Insurance Co., Id 262; Humphreys v. Association, 139 Pa. St. 264; 20 Atl. 1047; Hoffman v. Insurance Co. 32 N. Y. 405.”

CLARK v. STANDARD ACCIDENT INSURANCE COMPANY OF DETROIT

District Court of Appeals, Second District Division 1, Calif. (1941)

43 C. A. 563; 111 P 2d 354.

The appellate court found that the trial court's finding of fact that the Plaintiff lost entire sight of the right eye was not supported by the evidence and remanded the case for new trial. In doing so the court stated:

"It is true that it has been held that the terms irrecoverable and "entire loss of sight" as used in insurance policies should be liberally construed in favor of the insured and that a person need not therefore be totally blind to recover indemnity for an irrecoverable and entire loss of sight. *Pan American Life Ins. Co. v. Terrill*, 4 Cir. 29 Fd 460; *Locomotive Engineers' Mut. Life & Acc. Ins. Co. v. Meeks*, 157 Miss 97; 127 South 699, 702; *International Travelers Ass'n v. Rogers*, Tex Clv. App. 163, S. W. 421; *Tracey v. Standard Accident Ins. Co.*, 119 Me 131, 109 Atl 490, 9 A. L. R. 521, and other numerous decisions many of which have been cited by appellant.

"Under the liberal construction of the terms of a policy providing indemnity for irrecoverable and entire loss of sight, as above noted, the determination of loss of sight is based upon the practical use to which the injured eye may be put. See *International Travelers Ass'n. v. Rogers* supra; *Pan American Life Ins. Co. v. Terrill*, supra; *Murray v. Aetna Life Insurance Co.*, D. C. 243, F 285. Practical use does not necessarily mean use in a particular calling or occupation, but rather that use which will render practical service in respect to many needs and pleasures. See *Murray v. Aetna Life Ins. Co.* supra. While there is some authority holding that practical use is not the test, such decisions appear to be based on a literal construction of the term "entire loss of sight" hence under a liberal interpretation, the loss of practical use of the eye appears to be the equivalent of the loss of the "entire" sight of the eye, as that term is used in the policy of insurance here in question. The fact that a policy provides for disabilities in addition to those specifically enumerated should not, as argued by appellant, alter the construction to be placed on the provision for loss of sight."

**CLARK v. STANDARD ACCIDENT INSURANCE CO.
OF DETROIT**

43 C. A. 2d 563; 112 P 2d 298

This case denied rehearing of 111 P 2d 354 supra. In denying rehearing the Court said:

“The pleadings herein presented two questions for the trial. First: Had appellant actually lost the entire sight of the eye, and second: If appellant had not actually lost the entire sight of the eye, had the vision been so greatly impaired as to destroy the practical use of the eye.

“It may be well to state here, also, that in view of the undisputed evidence of the existence of peripheral vision in the injured eye, whether practical use of the eye has been lost presents a very close question. See *Powers v. Motor Wheel Corporation*, 252 Mich 639; 234 N. W. 122; 73 A. L. R. 702. However, where questions of this nature arise, their determination depends so much upon the facts of each individual case that it would create a dangerous and undoubtedly harsh precedent to establish, as a rule of law, that the existence of peripheral vision in every case constituted existence of practical use of eyesight.”

**JAMES DWIGHT TRACEY v. STANDARD ACCIDENT
INSURANCE COMPANY**

119 Me. 131; 109 Atl. 490; 9 A. L. R. 521

This case, among other things, revolved on the following question:

“5. Did he lose the entire sight of his eye? **The phrase “loss of entire sight” should be so construed as to give the Plaintiff what he bought and paid for, and not to defeat the whole purpose and intent of this contract. It should be held to mean that the entire loss of the use of the eye from blindness is a loss of the entire sight of that

eye. But if technicalities were to be invoked, then the meaning of the word "sight" becomes as important as the meaning of the word "entire." "Sight" is defined in Wester's Standard Dictionary: 1. The power of seeing the faculty of vision or perceiving objects. 2. Act of seeing; perception of objects by the instrumentality of the eyes; view. "To see" is defined: to perceive with the eye; to have knowledge of the existence and apparent qualities of by the organs of sight; to examine with the eyes; to behold; descry; view; observe; inspect."

POINT II

The fact that the Plaintiff's blindness can be temporarily corrected during the times that the artificial means are in actual use does not restore the "total and irrecoverable loss of sight" of his right eye, nor does it alter the terms of his insurance contract providing for payment of the loss of sight which he has sustained.

WESTERN CONTRACTING CORPORATION, et al v.
INDUSTRIAL COMMISSION OF UTAH, et al.

Supreme Court of Utah 1964
15 Utah 2d 208; 390 P 2d 125

"Original proceeding for review of an award of the Industrial Commission. The Supreme Court, Wade J., held that Industrial Commission's award of statutory 100 weeks' compensation for total blindness of one eye, a substantial function of which was restored by the use of optical lens, could not be held capricious, arbitrary, or unreasonable and it would be affirmed."

The Court stated: Many of the losses separately scheduled in this statute are much more similar than these, and the legislature, had it so intended could easily have

scheduled two different losses, one for total blindness of one eye and one for such total blindness which could be substantially restored by an artificial lens.”

GOODYEAR SERVICE STORE, et al vs. INDUSTRIAL
COMMISSION OF UTAH, et al.

Supreme Court of Utah, July 31, 1968
21 Utah 2d 249; 444 P 2d 119

In this case the claimant had suffered an eye injury that resulted in the loss of vision of his eye uncorrected.

“Dr. Smith reported to the Commission on July 18, 1966, that the operation had been performed with good result. He stated that with the use of glasses Mr. Dowdle had satisfactory vision in all fields of gaze, but that without them double vision continued with the same deficiency he had stated before, to-wit: But without his glasses he has visual efficiency loss of one eye. Without his glasses, this would then represent a 25 percent loss of binocular visual efficiency, with 100 percent visual efficiency loss of one eye.”

The Court, in holding that the injured party was entitled to receive full compensation for the loss of the sight of his one eye, stated as follows:

“(1) Whether a 100 percent loss of the visual efficiency of one eye is due to the inability of the lens of that eye to further function, or is the result of an injury to the muscles of the eye that provide motility, thus resulting in loss of vision by diplopia, the result appears to be the same — the patient has a loss of total vision equivalent to 100 percent loss of visual efficiency of one eye.***”

McCULLOUGH v. SOUTHWESTERN BELL TELEPHONE CO.

Supreme Court of Kansas 1942
155 Kan 629; 127 P 2d 467

This is an industrial case where the Plaintiff lost the sight of his eyes which vision could be substantially restored by artificial appliances. The Court said:

“We have no case in our state suggesting that compensation for the loss of a leg, for the arm, hand, or other member of the body, where such compensation is provided by the schedule, should be decreased by the use of an artificial limb, or that a partial loss of such a member should decrease the compensation because of braces or other artificial appliances. We are cited no case from other jurisdictions so holding, and our own research has disclosed none. **A further reason, if one be needed, is that the use of glasses would not restore the lens of the eye lost by the injury Plaintiff received in this case — the physical injury is not cured by the use of glasses as a hernia would be cured by a successful operation.”

OTOE FOOD PRODUCTS CO. v. GRUISKHANK

Supreme Court of Nebraska
141 Neb 298; 3 NW 2d 452

“The Plaintiff received an eye injury to his right eye that left him with peripheral vision and without the aid glasses and that with glasses the eye could be corrected to 97% normal.

“Issue: Whether or not, under the Nebraska Industrial Act the court should take into consideration in “determining the loss of vision of an eye or eyes, the fact that vision may be restored or corrected in part or in whole, by the use of glasses. **We should not, by construction, put into a law provisions which it does not contain, nor

read into it a meaning not intended by the legislature. If the act is faulty, the correction should be made by the legislature and not by the court. We see no more logic in holding that the legislature intended to base disability in an eye case on the condition of the eye after correction, than in a leg or arm case where compensation should be awarded on the extent of disability after attachment of a brace or other appliance. The fact that glasses are required to restore vision is evidence of the permanency of the injury and whether artificial means may partially or even wholly restore sight, it nevertheless cannot obliterate the effect of the accident causing the injury."

POCAHONTAS FUEL CO. v. WORKMEN'S COMPENSATION APPEAL BOARD

118 W. Va. 565; 191 S E 49

"Subsection (e) of Sec. 6, Art 4, Chapter 23 of the Code provides: (e) The total loss of one eye, or the total and irrecoverable loss in the sight thereof shall be considered a thirty-three percent disability**. The only question presented on this appeal is whether, under subsection (e) the claimant shall be compensated for the loss of vision with correction by the use of glasses or without such correction. An examination of the authorities would seem to indicate that a conflict of authority exists among the courts of the country. 99 A. L. R. 716; 24 A. L. R. 1469; 8 A. L. R. 1330. This conflict of authority is more apparent than real. Many of the cases are founded upon statutes based upon the theory that compensation was payable only when the accident led to a loss of earning power. The West Virginia statute provides for compensation for loss of eye or vision, total or partial, attributable to a permanent injury. Nothing in the statute indicates an intention on the part of the legislature that glasses or corrective lens should be considered in determining the loss of the whole or a fractional part of the vision of an eye. **The position is amply sustained by authority."

GROF v. NATIONAL STEEL PRODUCTS CO., et al

225 Mo. App. 702; 38 W. 2d 518

"It was well said in the case of *Allessandro Petrillo Co. v. Marioni*, 3 W. N. Harr (33 Del) 99; A. 164, 165; It may be true that an artificial instrumentality, such as glasses or a corrective lens may subsequently be used by virtue of which the loss of vision may be reduced from 80 percent to 10 percent during the time such glasses are actually in use, but the loss suffered by the injury remains the same and is the compensable basis.

"If 80 percent of the vision of an eye is destroyed in an accident and yet the injured person while actually using specially prepared glasses can obtain normal sight, can it be successfully contended that no loss or injury at all has been sustained? Such a position is indeed difficult to maintain.

"The very fact that artificial instrumentalities such as glasses, braces, and artificial limbs are necessary to be used, is in itself evidence of the permanency of the injury, but the use of the mechanism itself, although it may allow a member to function with entire normality, yet it cannot obliterate the effect of the accident causing the injury."

MARYLAND REFINING CO., et al vs. COLBOUGH, et al

110 Okl 238; 238 P 831

"The State Industrial Commission is not required, under the Workmans Compensation Act, to take into consideration that the effect of a permanent injury to the eye might be minimized by artificial means in fixing the award for such permanent injury."

To the same effect: 168 Okla 96; 31 P 2d 925

McDONALD v. STATE TREASURER, et al

52 Idaho 535; 16 P 2d 988

"It is the contention of appellant that the use of glasses

cannot be taken into consideration in determining whether appellant is industrially blind or in determining his compensation. There is a conflict of authority upon this question, as a result, in some jurisdictions, or statutory provisions relating to the use of artificial appliances. We have no such statute and are of the opinion that the weight of authority and the better rule in the absence of statute sustain appellant's contention."

None of the arguments made by the Defendant Appellant hold up under examination.

In Defendant-Appellant's Points I and IV he states that the instant case involves no factual issues and the Court is obligated to determine the legal question involved.

Plaintiff Respondent has no quarrel with Defendant Appellant's contention that the Court must decide the legal question in view of the following facts:

1. A good healthy, young eye was destroyed in an industrial accident while an insurance policy insuring industrial employees eyes, including the Plaintiff's eye, was in effect and the premium paid.

2. The Plaintiff's right eye was rendered essentially useless and of no practical value except during times when a specially prepared contact lens is in actual use.

3. Not all persons can wear a contact lens. (Medical testimony of all three medical experts whose testimony is in evidence.)

4. Plaintiff has testified that he has been unable to wear his contact lens without pain and irritation.

5. The prognosis for the life of the injured eye is 10 years.

Applying these undisputed facts the Appellate Court

should have little trouble in affirming the trial court's determination of the single question of law the Defendant Appellant refers to.

Plaintiff-Respondent submits that the reasoning of the various Supreme Courts in industrial cases is applicable in non-industrial commission cases, interpreting such words as "total and irrecoverable loss of sight," "loss of entire sight," "entire loss of sight," "total blindness." When a person is insured against loss of sight, he should be compensated for such loss when an injury results in the practical loss of his sight. It is spurious to argue that the Plaintiff-Respondent has "recovered" his lost vision because he can see during times that an artificial device, he cannot wear without irritation, is in actual use.

Plaintiff Respondent acknowledges the statement made by the Defendant Appellant and supported in 44 Am. Jur 2d, page 44 (supra) that "the courts are not in agreement as to whether the insured has lost his sight within the meaning of the policy where his vision can be restored by surgical operation or by the use of glasses." The Utah Supreme Court, however, appears to be counted among those holding that the use of artificial lenses is not "restored" vision when contact lenses give temporary relief only. (Maynard v. Locomotive Engineers supra) (Western Contracting Corp. v. Industrial Comm.) (Goodyear Service v. Industrial Comm. supra).

Plaintiff Respondent submits that when insurance companies write group policies for industrial concerns like Texas Gulf Sulphur Company's mine near Moab, Utah, that it is charged with the duty to so word the contract that it will be clearly understood. That the contract should be interpreted

so as to carry out the intention of both parties and not merely the intention of the insurance company that wrote the contract. The same rational applies in this case to the Defendant Appellant as it applied to the legislature in the case of *Western Contracting Corporation v. Industrial Commission* (supra) when the Utah Supreme Court said: "The legislature, had it so intended, could easily have scheduled two different losses, one for total blindness of one eye and one for such total blindness which could be substantially restored by an artificial contact lens." The Kansas court said it well when it stated that the physical injury is not cured by the use of glasses as a hernia would be cured by a successful operation.

The reasoning of the Tennessee case of *Benson v. Grand Lodge of the Brotherhood of Firemen, et al.* 54 SW 132 is applicable here where the Court stated: "The second assignment of error is not well taken, and is likewise overruled. To hold that the parties have in contemplation the use of lenses would be to add to the contract a term that is not in it.**"

To paraphrase the Nebraska and Missouri Supreme Courts, the very fact that the wearing of a contact lens is essential to make it possible for the Plaintiff Respondent to have any practical use of his right is the best evidence of the permanency of the injury, and explanations and legal arguments of the insurance carrier, no matter how ingenious, do not obliterate the effect of the accident causing the injury. For Defendant-Appellant to state that "Plaintiff's injured eye is physiologically normal except for the loss of the crystalline lens and a slight scar on the cornea" in view of the medical testimony is equivalent to saying that a leg amputated at the ankle is physiologically normal except for the loss of the foot and the injury to the leg. To deny recovery in this case re-

quires a judicial addition to the contract of insurance never contemplated.

In conclusion Plaintiff Respondent quotes Justice Wolfe in the case of *Browning v. Equitable Life Assurance Society*, 94 Utah 532; 72 P 2d 1060, page 1073:

“(9) Insurance policies, while in the nature of written contracts, are not prepared after negotiations between the parties, to embrace the terms at which the parties have arrived in their negotiations. They are prepared before hand by the insurer, and the company solicitors then sell the insurance idea to the applicant. Normally, the details and provisions of the policy are not discussed, except that the particular form of policy is best suited to give the applicant the protection he seeks. If he reads the policy he is generally not in a position to understand its details, terms, and meaning except that, in the event against which he seeks insurance, the company will pay the stipulated sums. He seldom sees the policy until it has been issued and is delivered to him. He signs an applicant blank in which the policy sought is described either by form number or by a general designation, pays his premium, and in due course thereafter receives, either from the agent or through the mails, his policy. Many of the terms and all of its defenses and super-refinements he has never heard of and would not understand them if he read them. Such fact is evident from the fact that cases like this arise where lawyers and courts disagree as to what such provisions mean. In fact, there are about as many different constructions by the courts of terms such as those involved here as there are insurance companies issuing such policies. For this reason the rule of *strictissimi juris* has been applied almost universally to insurance contracts, and this jurisdiction, like many others, has declared in favor of a liberal construction in favor of the insured to accomplish the purpose for which the insurance was taken out and for which the premium was paid.”

C O N C L U S I O N S

The judgment rendered by the trial court should be affirmed.

Respectively submitted,

Robert H. Ruggeri

59 East Cenuter Street

P. O. Box 310, Moab, Utah 84532

Attorney for Plaintiff Respondent