

1997

Mary M. Baldwin v. Monumental Life Corporation, Cyprus Credit Union and Does 1-10 : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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SUPREME COURT OF UTAH

MARY M. BALDWIN,

Plaintiff,

vs.

MONUMENTAL LIFE CORPORATION,
CYPRUS CREDIT UNION and DOES 1-
10,

Defendants.

Civil No. 950901090

Appeal No. ~~970266~~ 970608-CA

Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM A SUMMARY JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE HOMER F.
WILKINSON PRESIDING

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CLERK OF COURT

CURT

SUPREME COURT OF UTAH

MARY M. BALDWIN,

Plaintiff,

vs.

**MONUMENTAL LIFE CORPORATION,
CYPRUS CREDIT UNION and DOES 1-
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I.
PARTIES TO THIS PROCEEDING

All parties to this proceeding are identified in the caption. Appellant Mary M. Baldwin was the plaintiff below. Appellees Monumental Life Corporation and Cyprus Credit Union were the defendants. "Does 1-10," listed in the caption of the complaint, were not identified or served.

II.

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IV.

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction of this appeal pursuant to §78-2-2(3), *Utah Code Annotated*.

V.

ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

The issue presented for review is as follows:

Whether or not the court below erred in concluding that there was no accidental death coverage in effect at the time of the death of plaintiff's decedent, where decedent had accepted defendants' offer and unconditionally authorized the withdrawal of premiums from his credit union account (R.204-7; A.3-6)?

Because this appeal is from an order granting summary judgment, all issues are reviewed as questions of law for correctness, with no deference to the trial court's conclusions. See Schurtz v. BMW of North America, 814 P.2d 1108, 1111-12 (Utah 1991).

VI.

**DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, RULES AND REGULATIONS**

There are no constitutional provisions, statutes, ordinances, rules or regulations, which are determinative of this appeal.

VII.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings and Disposition Below.

This case involves a dispute as to life insurance (accidental death) coverage on the life of John Baldwin, deceased. Plaintiff Mary Baldwin is the grandmother of decedent, and the policy beneficiary (R.39). The policy in question was underwritten by defendant Monumental Life Corporation and procured by defendant Cyprus Credit Union (R.36-37).

Defendants denied coverage, on the ground that an insurance upgrade, providing \$150,000 in coverage, did not become effective until after decedent's death (R.39). Decedent completed the upgrade form and mailed it on December 27, 1993 (R.38). He was killed in a hunting accident the following day, December 28, 1993 (R.38). Defendants claim that, according to the "Guaranteed Open Enrollment Notice" provided to decedent, the upgraded coverage was not effective until February 1, 1994 (R.39).

Plaintiff filed a three-count complaint on or about February 8, 1995 (R.1-8). Count I alleges bad faith denial of coverage, and seeks compensatory damages. Count II seeks punitive damages. Count III alleges conversion of the policy proceeds. The existence of a valid contract of insurance, as of the date of death, is necessary to all three counts.

On or about May 31, 1995, defendants answered and filed a counterclaim (R.9-23). Count I of the counterclaim alleged that the previously obtained basic coverage of \$1,000 was procured by fraud. Count II alleged that this suit was filed in bad faith. The court below

granted summary judgment for plaintiff on the counterclaim, and defendants have not cross-appealed (A.3-6). Thus, the counterclaim is not at issue.

On or about December 12, 1995, defendants filed a motion for summary judgment (R.34-35). Plaintiffs were granted an extension of time to respond, pursuant to Rule 56(f), *Utah Rules of Civil Procedure* (R.118). After further discovery, defendants renewed their motion for summary judgment, on or about October 11, 1996 (R.119-21). Defendants argued, that decedent's death had occurred before the effective date of coverage, which they asserted was February 1, 1994 (R.39). Defendants also argued, that decedent had failed to comply with all conditions precedent to obtaining coverage, and that decedent's completed upgrade form was an application which was never accepted by Monumental Life (R.41-43).

Plaintiff filed a cross-motion for summary judgment on her complaint (R.122-23). By minute entry dated January 17, 1997, the court denied plaintiff's cross-motion and granted defendants' motion for summary judgment on plaintiff's complaint (R.174).

On March 20, 1997, plaintiff filed a motion for summary judgment on defendants' counterclaim (R.177-78). By minute entry dated March 28, 1997, the court granted that motion (R.203). The court entered a written final order and judgment on April 30, 1997 dismissing both the complaint and counterclaim (A.3-6).

Plaintiff filed her timely notice of appeal on May 29, 1997 (R.214-15; A.1-2). No cross-appeal was filed.

B. Statement of Facts Relevant to the Issues Presented for Review

Decedent John Baldwin was a member of defendant Cyprus Credit Union (R.36). In 1991, decedent obtained accidental death insurance through Cyprus in the amount of \$1,000 (R.37). That insurance was at no cost to the decedent. It was underwritten by Monumental Life (R.37).

Prior to December 27, 1993, defendants provided decedent with a "Benefit Upgrade Request," offering additional coverage up to \$150,000 (R.37). Specifically, three documents were provided--a letter from Cyprus (A.7); a Guaranteed Open Enrollment Notice (A.9-10); and, a Personal Insurance Statement with detachable Benefit Upgrade Request (A.8) (collectively Exhibit B to Fischer Aff.; R.52).¹

The letter from Cyprus states, that the insurer, Monumental Life, is conducting a "guaranteed open enrollment period" during which insured members may purchase additional insurance (A.7). The letter advises that to "upgrade . . . present coverage," the insured need only "simply complete the enclosed Benefit Upgrade Request form" and "[m]ail [it] to [defendants'] Speed Processing Department before the open enrollment deadline" (A.7). The letter does not mention any delayed effective date. Nor does it state that any review or approval by the insurer will be required.

¹These documents are in an envelope, which is designated as one page in the record. They are separately designated in the Addendum at A. 7-10.

The second document sent to decedent, a Benefit Upgrade Request form, is a simple card (A.8). Decedent was instructed to check the desired amount of additional coverage, accept or decline family coverage and sign (A.8). Decedent was not asked to provide any sort of information, which might be reviewed to decide if coverage would be provided. The form had a return deadline of January 3, 1994 (A.8). The form provides that the insured is to check the appropriate boxes, "sign and date the debit authorization," and "mail [it] in [the] enclosed envelope" (A.8). The "debit authorization," which appears just above the decedent's signature, provides in pertinent part:

I hereby authorize my Financial Institution [ie. Cyprus] to make the necessary periodic account debits . . . I further understand that coverage will only become effective if there are sufficient funds.

(A.8) (emphasis added).

Just below the signature block, the words "Automatic Speed Processing Form" appear in bold, red capital letters (A.8).

The third document, the "Guaranteed Open Enrollment Notice," emphasizes "You Are Eligible for \$150,000.00" (A.9). It specifically states, "[d]uring this open enrollment period you are guaranteed to be accepted" (A.9) (emphasis added). The "summary of insurance provisions," contained in that document provides, in part:

The final interpretation of any specific provision or claim is governed by the Master Policy.

Your coverage remains in force as long as the Master Policy is in force, premiums are paid and you remain an account holder of the eligible group.

Enroll Now For Additional Coverage.

(A.9-10).

The language, upon which defendants seek to rely, appears at the very bottom of page two (reverse side) of this document, under "effective date of coverage" (A.10). It states, "[t]hese are the dates on which coverage may become effective . . ." It then lists dates under two columns captioned "Completed Benefit Upgrade Requests Accepted by The Administrator" and "Effective Date of Coverage." The corresponding "effective date" for requests "accepted" between "October 2 - January 1" is "February 1."

There is nothing to fill out and no place to sign on this document (A.9-10). It does not purport to be a contract or application form. It is, at best, an informational flyer.

Decedent checked the boxes on his Benefit Upgrade Request form for \$150,000 in coverage and no family coverage (R.38). He signed the form and, on December 27, 1993, deposited it in the mail to the "Speed Processing Department" (R.38). Decedent did so, at that time, because he had an unfortunately prophetic concern about his upcoming hunting trip. On

the next day, December 28, 1993 , decedent was killed in a hunting accident (R.38). The form was received by defendants on or about December 30, 1993 (R.38).

At the time, decedent had sufficient funds in his Cyprus account to pay the first premium in the amount of \$15 (R.125). Notwithstanding decedent's signed authorization, no premium payments were debited (R.38). Plaintiff did nothing to prevent that from occurring.

VIII.

SUMMARY OF ARGUMENT

There was a binding contract for life insurance. The effective date provision, relied upon by defendants, was ambiguous and ineffective. Coverage commenced immediately when the form was executed and mailed by John Baldwin.

A.

There Was a Valid and Binding Insurance Contract.

The form executed and mailed by decedent was not an application, but an acceptance of defendant's unconditional, guaranteed offer to upgrade decedent's benefits. See Ivey v. Wood, 387 P.2d 621, 626 (Okl. 1963). A binding contract was formed, when this acceptance was mailed. Decedent executed the only form required (A.8) and tendered his first premium by authorizing the debiting of his account for that purpose; accordingly, decedent was covered at that time. See Stevenson v. First Colony Life Ins. Co., 827 P.2d 973, 977 (Utah App. 1992); Phoenix Indemnity Ins. Co. v. Bell, 896 P.2d 32, 36-37, n.9 (Utah App. 1995).

B.

Coverage Became Effective Immediately

The Monumental Life policy is ambiguous as to effective date because it is contradictory and not readily understandable to an average reasonable insured. See U.S. Fidelity & Guaranty Co. v. Sandt, 854 P.2d 510, 523-25 (Utah 1993). The solicitation to which decedent responded offers a quick and easy upgrading of coverage, which conflicts with a delayed effective date. There was, at a minimum, temporary or conditional coverage at the time of decedent's death. See Stevenson, 827 P.2d 977.

IX.

ARGUMENT

A valid and binding contract was formed, as a matter of law, at the time decedent accepted defendant's offer for additional coverage by executing the Benefit Upgrade Request form and unconditionally authorizing the withdrawal of premium payments from his credit union account (A.8). Alternatively, there is a sufficient dispute as to the intent of the parties to preclude summary judgment, particularly for the insurer. That contract became immediately effective, when the form was deposited in the mail, notwithstanding the "effective date" listed at the end of the Guaranteed Open Enrollment Notice (A.10). The "effective date" provision was not part of the agreement, as presented to decedent. At a minimum, the contract as a whole is sufficiently ambiguous to preclude adopting the insurer's interpretation and granting summary judgment to defendants.

A.

There Was A Valid And Binding Insurance Contract

Decedent's execution of the Benefit Upgrade Request form was an acceptance of defendants' unconditional, guaranteed offer for additional coverage of \$150,000. This was not an application for insurance, subject to approval or acceptance by defendants. Decedent did all that was required of him to meet defendants' stated conditions, and "only ministerial acts [ie. "speed processing"] remain[ed] to be performed." Ivey v. Wood, 387 P.2d 621, 626 (Okla. 1963). The contract, thus, became effective when decedent deposited his unconditional acceptance in the mail, on December 27, 1993. See Restatement of Contracts 2d, §66.

Decedent responded to a solicitation to participate in a "guaranteed open enrollment." The defendants' notice specifically states, "you are guaranteed to be accepted." The cover letter from Cyprus also states, that to obtain this guaranteed coverage one must "simply complete the enclosed Benefit Upgrade Request form . . . [and m]ail [it]." That form is the only document, which decedent was asked or required to execute.

There is no reasonable manner in which that form can be regarded as an application for insurance. In addition to the guaranteed acceptance language, the form does not call for any information (other than coverage choice) to be provided. It does not set forth any conditions under which the insurer reserves the right to request proof or evidence of insurability, as is required by law. See § 31A-22-512(2), Utah Code Ann. Upon what basis were defendants planning to accept or reject this so-called "application"? The nature of this transaction is clear--defendants made an offer and decedent accepted it. A binding contract was formed.

The real key, here, is the debit authorization appearing just above where decedent signed (A.8). Basically, when one completes the prescribed forms and pays a premium, he is covered. See Stevenson v. First Colony Life Ins. Co., 827 P.2d 973, 977 (Utah App. 1992). It is equally well-established that, where any payment is required, an unconditional tender of such payment or unconditional promise to pay is sufficient. See Phoenix Indemnity Ins. Co. v. Bell, 896 P.2d 32, 36-37, n.9 (Utah App. 1995). By executing the debit authorization, decedent took the last step necessary to pay his premiums. He unconditionally authorized defendants to make the required debits. He, thereby, tendered payment. The fact, that defendants never actually debited the account, is irrelevant. They had the authority to do so. See e.g. Hill v. Chubb Life American Ins. Co., 870 P.2d 1133, 1139 (Ariz. App. 1993).² Thus, there was clearly a contract, and the issue is whether or not the "effective date" provision precluded coverage at the time of decedent's death.

B.

Coverage Became Effective Immediately

Once the existence of a contract is established, the case becomes a matter of contract interpretation. In this regard, an insurance policy or contract must be interpreted from the perspective of a reasonable lay person. See U.S. Fidelity & Guaranty Co. v. Sandt, 854 P.2d 510, 524-25 (Utah 1993). Any ambiguity must be resolved against the insurer and in favor of

²In Hill, the court held that merely designating automatic withdrawal as the method of payment was not a tender. The court contrasted this mere designation with cases where, as here, the insured executes an authorization for debit. 870 P.2d at 1139.

coverage. 854 P.2d at 523-25. An ambiguity exists where a provision is not clear to an average reasonable insured or is somehow contradictory. Id. See also Moore v. Energy Mutual Ins. Co., 814 P.2d 1141 (Utah App. 1991); Sparrow v. Tayco Construction Co., 846 P.2d 1323, 1327 (Utah App. 1993). In particular, exclusions or limitations must be clearly and unmistakably communicated to the insured. Moore, supra. A policy, like any contract, must be interpreted as a whole with meaning accorded to all parts thereof. See Nielsen v. O'Reilly, 848 P.2d 664, 665 (Utah 1992).

There is a clear conflict between "speed processing" and a thirty-day delay before coverage becomes effective. The tenor of defendants' solicitation, as a whole, is that an immediate, limited opportunity is being provided (A.7-10). There is a deadline for responding to a "speed processing department." With all the "speed" and "immediacy" provisions up front and the "effective date" provision buried at the bottom of the backside, the effective date would not be clear to an average insured. Indeed, what is the point of speed processing a simple upgrade form, then waiting for an effective date?

Additionally, the effective date provision uses the equivocal phrase "may become effective," rather than more affirmative language. For example, it could have provided, that coverage "shall not be effective" until a certain date. In this regard, nothing in any of the documents excludes the existence of temporary or conditional coverage, pending issuance of a policy at the later date, which is customary. See Stevenson, 827 P.2d at 977 ("when an insurer has received an application for life insurance together with payment of the first premium [or a valid tender thereof], a provisional contract granting temporary insurance is created"). Such a

contract for temporary insurance is deemed separate from the main contract for permanent coverage and, thus, is unaffected by any effective date provision. See Pappageorge v. Federal Kemper Life Assur., 878 P.2d 56, 60 (Colo. App. 1994).

Moreover, the "effective date" provision was not part of anything which decedent was required to sign. It was part of the Enrollment Notice. The card, which he signed and returned, contains no "effective date" provision. The card, which he signed and returned, contains no acknowledgement that he has read or reviewed anything in particular. It does not counsel or advise the prospective insured to read or review any other document before making a decision. That form card also specifically suggests, that coverage "will . . . become effective if there are sufficient funds [in the account to cover premiums.]" It requires the insured to authorize debiting his account to pay those premiums.

The Notice, itself, does not advise the insured to read it carefully and completely. It does not purport to set forth the terms of coverage. Primarily, it touts additional coverage which may be obtained quickly and easily. If the insured had begun to review the "Guaranteed Open Enrollment Notice," he would have read, on page 1, that his coverage was "governed by [a] Master Policy" which was not provided (A.9). He would have read that "coverage remains in force as long as the Master Policy is in force, premiums are paid and you remain an account holder" (A.9).³ Those three conditions were met here.

³It is more than a little confusing to speak of decedent's coverage in the present tense, prior to providing information as to a delayed effective date.

Defendants chose this method for marketing the additional coverage. They chose to utilize a collection of flyers, forms and letters, which emphasized speed and ease. They chose to bury any reference to a delayed effective date. They failed to clearly and unmistakably convey this limit upon coverage. They should suffer the consequences of those choices. See e.g. Government Employees Ins. Co. v. Dennis, 645 P.2d 672, 675 (Utah 1982). It was, therefore, error for the court below to decide, as a matter of law, that coverage was not effective until February 1, 1994. Even if there was little or no dispute as to historical facts, there is clearly a dispute as to the "understanding, intention or consequences of those facts," which precludes summary judgment. Sandberg v. Klein, 575 P.2d 1291, 1292 (Utah 1978). This is simply not an integrated, unambiguous insurance contract, which could be interpreted as a matter of law in favor of the drafter/insurer. See Bailey-Allen Co. v. Kurzet, 876 P.2d 421, 424 (Utah App. 1994); Sandt, 854 P.2d at 523-25. The judgment for defendants must, therefore, be reversed.

Summary judgment could be granted to plaintiff--and she filed a cross-motion to that effect. This is because, in the insurance context, an ambiguous contract may be interpreted as a matter of law in favor of coverage. See Sandt, 854 P.2d at 523-25. Additionally, coverage is effective, once a premium is paid. See Stevenson, 827 P.2d at 977. Here, it is undisputed that decedent executed the debit authorization, thereby tendering full payment.

X.

CONCLUSION

For the reasons set forth herein, plaintiff/appellant respectfully submits that the summary judgment entered for defendant must be reversed and, either the case should be remanded for trial or summary judgment entered for plaintiff.

DATED this 26th day of September, 1997.

ROBERT J. DEBRY & ASSOCIATES
Attorney for Plaintiff

By: 
MARK DALTON DUNN

XI.
ADDENDUM

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| Benefit Upgrade Request Form | A.8 |
| Guaranteed Open Enrollment Notice | A.9-10 |

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FILED
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SALT LAKE COUNTY
BY DEBRY & ASSOCIATES
5/29/97

Attorney for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | |
|--|--|
| MARY M. BALDWIN, Plaintiff, vs. MONUMENTAL LIFE CORPORATION, CYPRUS CREDIT UNION and DOES 1- 10, Defendants. | NOTICE OF APPEAL Civil No. 950901090 Judge Homer F. Wilkinson |
|--|--|

NOTICE IS HEREBY GIVEN that plaintiff, Mary M. Baldwin, appeals to the Utah Supreme Court the final Judgment of Dismissal of the Honorable Homer F. Wilkinson entered upon the granting of Summary Judgment in favor of defendants in this matter on April 30, 1997. The appeal is taken from the entire Judgment.

DATED this 29th day of May, 1997.

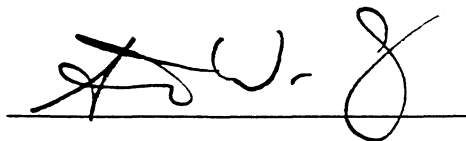
ROBERT J. DEBRY & ASSOCIATES
Attorney for Plaintiff

By: AW. Gray
ALBERT W. GRAY

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL (*Baldwin v. Monumental Life Corporation et al.*) was mailed, postage prepaid, this 29th day of May, 1997 to the following:

Warren Patten
FABIAN & CLENDENIN
P. O. Box 510210
Salt Lake City, UT 84151-0210

A handwritten signature, likely of Warren Patten, is written over a horizontal line. The signature is stylized and appears to be "W. Patten".

8222.016

APR 30 1997

By DEWE (SALT LAKE COUNTY)
Clerk

4/30/97

Warren Patten, A2537
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Attorneys for Defendants

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

MARY M. BALDWIN,

Plaintiff,

vs.

MONUMENTAL LIFE CORPORATION,
CYPRUS CREDIT UNION and DOES 1-
10,

Defendants.

) ORDER GRANTING DEFENDANT'S
) MOTION FOR SUMMARY
) JUDGMENT ON THE COMPLAINT,
) DENYING PLAINTIFF'S MOTION
) FOR SUMMARY JUDGMENT ON
) THE COMPLAINT, GRANTING
) PLAINTIFF'S MOTION FOR
) SUMMARY JUDGMENT ON THE
) COUNTERCLAIM, DENYING
) DEFENDANT'S MOTION TO STRIKE
) AND DISMISSAL OF COMPLAINT
) AND COUNTERCLAIM WITH
) PREJUDICE

) No. 950901090

) Judge Homer F. Wilkinson
)

On January 17, 1997 this matter came before the Court upon cross motions for summary judgment respecting the claims set out in the Complaint. Albert W. Gray, Esq. argued for the plaintiff; Warren Patten, Esq. argued for the defendants. Based on the memoranda of law, the affidavits on file and the oral arguments, the Court rules that there is

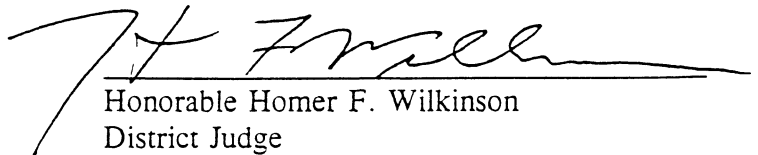
no material issue of fact and that those uncontested facts demonstrate that the additional insurance applied for never became effective during the lifetime of the applicant. Therefore, the Court grants the defendants' motion for summary judgment respecting the Complaint and denies plaintiff's motion for summary judgment respecting the Complaint.

On March 28, 1997 this matter come before the Court upon plaintiff's motion for summary judgment respecting the Counterclaim and on defendant's motion to strike the affidavit filed in support. Albert W. Gray, Esq. argued for the plaintiff; Brock R. Belnap, Esq. argued for the defendant. Based on the memoranda of law, the affidavits on file and the oral arguments, the Court rules that there is no material issue of fact and that those uncontested facts demonstrate that defendant cannot establish material elements of the claims set out in the Counterclaim. The Court further denies the motion to strike. Therefore, the Court grants plaintiff's motion for summary judgment respecting the Counterclaim.


Accordingly, all claims of the Complaint and the Counterclaim having been disposed of, it is hereby ORDERED, ADJUDGED and DECREED that the Complaint and the Counterclaim in this matter be dismissed with prejudice, each party to bear their own costs and attorneys' fees.

DATED this 3rd day of April, 1997.

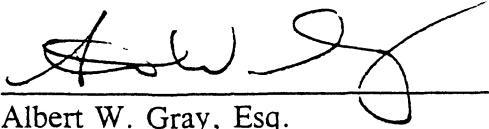
BY THE COURT:


Honorable Homer F. Wilkinson
District Judge

APPROVED AS TO FORM:



Warren Patten, Esq.
FABIAN & CLENDENIN
Attorneys for defendants



Albert W. Gray, Esq.
ROBERT J. DEBRY & ASSOCIATES
Attorney for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 1997, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSAL OF COMPLAINT WITH PREJUDICE, to:

Albert W. Gray, Esq.
Robert J. DeBry & Associates
3575 South Market Street
Suite 206
West Valley, Utah 84119





3505 South 8400 West
Magna, Utah 84044
(801) 250-5858

Midvalley
5750 South Redwood Road

West Jordan
1381 West 90th South

Dear Member:

Thank you for doing business with Cyprus Credit Union. To show our appreciation, we have requested that the insurance company provide our insured members an opportunity to purchase extra financial security by conducting a guaranteed open enrollment period. The Basic Insurance Benefit is paid for by us at no cost to you. It is our way of saying "thanks" to our valued members.

Your Personal Insurance Statement is enclosed for your review. Current coverage limits are identified on the form. During this enrollment period you may take this opportunity to upgrade your present coverage up to \$150,000.00. Each \$10,000.00 of added individual protection costs only \$1.00 per month.

Please take time to review the outstanding benefits available through this accident insurance plan. To upgrade your present coverage simply complete the enclosed Benefit Upgrade Request form. Mail your form to our Speed Processing Department before the open enrollment deadline.

We appreciate you doing business with us and we want to continue to serve your future needs. If you have any questions about this offer, you may call our Insurance Information Center at 1-800-527-2209. Ask for an Open Enrollment Consultant.

Sincerely,

A handwritten signature in cursive script that reads 'Sandra J. Hutchings'.

Sandra J. Hutchings
President

IMPORTANT: This is an upgrade enrollment only. No action is necessary to retain your present level of coverage.

DETACH HERE AND MAIL IN THE ENCLOSED ENVELOPE BY THIS DATE

FINANCIAL INSTITUTION
ACCIDENT INSURANCEBENEFIT UPGRADE REQUEST
FINANCIAL INSTITUTION
CYPRUS CREDIT UNION

RETURN FORM BY:

01/03/96

INSTRUCTIONS:

1. CHECK BOX BY AMOUNT DESIRED.
2. CHECK BOX FOR FAMILY COVERAGE, IF DESIRED.
3. SIGN AND DATE THE DEBIT AUTHORIZATION.
4. MAIL IN ENCLOSED ENVELOPE. SEND NO MONEY!

NO CURRENTLY HAVE
ADDITIONAL
☒ \$150,000
☐ \$75,000
☐ \$20,000

☐ \$125,000
☐ \$50,000

☐ \$100,000
☐ \$30,000
BENEFITS AND WISH TO
UPGRADE THEM TO:

DEC. 30 '93

I WANT
FAMILY
PROTECTION☐ YES ☒ NO

*I hereby authorize my Financial Institution to make the necessary periodic account debits for the amount of additional insurance indicated above. I further understand that coverage will only become effective if there are sufficient funds in my account at the time of each over and above any minimum required to maintain an account in my Financial Institution. I understand that my additional coverage will continue only upon payment of subsequent premiums as they become due.

2-0232-000000000068429

JOHN A BALDWIN
836 NO REDWOOD
SALT LAKE CITY, UT 84116

AUTOMATIC SPEED PROCESSING FORM

25-014 (Rev. 4/82) Underwritten by: Monumental Life Insurance Company

From policy no. -318
 G.A. no. 0068429

940596146

GUARANTEED OPEN ENROLLMENT NOTICE

YOU ARE ELIGIBLE FOR

\$150,000.00I HAVE 150,000
BENEFIT.

During this open enrollment period you are guaranteed to be accepted. Select the upgrade amount of Accidental Death and Dismemberment Coverage on your BENEFIT UPGRADE REQUEST form enclosed.

ACT NOW: You must complete and mail your BENEFIT UPGRADE REQUEST by: **January 3, 1994** ←

Your \$1,000 Basic Coverage is paid for by: **CYRUS CREDIT UNION**

IMPORTANT: The next guaranteed upgrade open enrollment will not be until: **November 1, 1995**

Master Policy No.
MZ0800348/0000F

Bart Herbert Jr.
Bart Herbert, Jr., President
Monumental General Insurance Group

SUMMARY OF INSURANCE PROVISIONS

As an account holder of the Sponsoring Group and age 18 and over, you are eligible to upgrade your Accidental Death and Dismemberment Insurance as shown above. The premiums for the Basic Coverage are paid for by your financial institution. **THERE IS NO COST TO YOU.** As shown on your enclosed Personal Insurance Statement, you are eligible to upgrade any additional coverage you may have previously selected.

In this summary, we have attempted to explain clearly and briefly the benefits available to you. All the provisions of the Plan are contained in the Master Policy issued by Monumental Life Insurance Company. The final interpretation of any specific provision or claim is governed by the Master Policy. A copy of the master policy is on file at your Financial Institution for review. This Plan is not available to institutions in NY.

Your coverage shall remain in force as long as the Master Policy is in force, premiums are paid and you remain an account holder of the eligible group. Provisions of the Basic and Additional Coverage are explained below.

24 HOUR WORLDWIDE COVERAGE

The plan offers full 24-hour coverage for accidents while insured and which occur anywhere in the world, on or off the job, on business - on vacation - at home.

ELIGIBILITY

All account holders age 18 and over are eligible to participate. Reduced coverage is also provided to all account holders and spouses over age 70 who enroll. Under the Additional Coverage option, you may insure your family members as follows:

- Your spouse age 18 and over
AND/OR
- Your unmarried dependent children (including step, foster, or legally adopted children) under 19 years of age—or until age 23 if the child is a full-time student in actual attendance at an accredited school or college and dependent on you for support and maintenance.

BENEFIT SCHEDULE — Accidental Death and Dismemberment

If injuries result in death or dismemberment within one year of the date of the accident, the plan will pay as follows:

| Loss of | Benefit Amount Payable for Basic and Additional Coverage |
|--|---|
| Life..... | 100% |
| Two or more members..... | 100% |
| Speech and hearing..... | 100% |
| One member..... | 50% |
| Speech or hearing..... | 50% |
| Thumb and index finger of same hand..... | 25% |

"Member" means hand, foot or sight of one eye.

Only one amount, the largest to which you are entitled, is paid for all losses resulting from one accident. Loss of speech, hearing or sight must be total and irrecoverable. Coverage will be reduced 50% at age 70 and further reduced by 50% at age 75. (For example: If you are age 50 and enroll for \$100,000—at age 70 your coverage is reduced to \$50,000. At age 75 your coverage is reduced to \$25,000.)

**1. ALL NOW FOR ADDITIONAL COVERAGE
AND RECEIVE THESE OTHER OUTSTANDING BENEFITS**

FAMILY PROTECTION PLAN – UP TO \$90,000.00

The Family Protection Option, if selected, will automatically insure your spouse for 50% of your additional coverage and each of your unmarried dependent children for 20% of your coverage—regardless of the number. If you have no dependent children, your spouse will be insured for 60% of your additional coverage. If you have no spouse, each of your dependent children will be insured for 25% of your additional coverage.

HOSPITAL EXPENSE BENEFIT – UP TO \$18,000.00

If hospital-confined for more than 7 days due to an accident, within one year of the date of the accident, the plan pays a benefit of 1% of the additional coverage up to \$1,500 per month to the covered person, retroactive to the first day. The daily benefit will be equal to 1/30th of the monthly benefit.

- It pays in addition to any other medical coverage and is payable for up to 12 months.
- Covers dependents if family plan is selected.

PERMANENT DISABILITY BENEFIT – UP TO \$37,500.00

If an accident causes continuous total disability to the insured person for a period lasting twelve calendar months and at that time if the insured person remains continuously disabled, the plan:

- Beginning with the thirteenth month will pay 1% of the insured person's additional coverage up to \$1,500 per month for a maximum period of 25 months. The daily benefit will be equal to 1/30th of the monthly benefit.
- Covers dependents if family plan is selected.

EDUCATIONAL ASSISTANCE BENEFIT – UP TO \$12,000.00

If an accident causes loss of your life, within one year of the date of the accident, and you have selected the family plan, the plan will pay in addition to all other benefits:

- Educational Assistance for each eligible dependent child who was enrolled as a full-time student in an accredited institution of higher learning on the date of the accident or was at the 12th grade level and enrolls in an accredited institution of higher learning within one year.
 - Assures continuance of higher education by paying 2% of your additional coverage to a maximum of \$3,000 yearly for up to 4 years.
- OR:
- If you have no dependent children that qualify at the time of the accident, the plan will pay an additional \$3,000 for each dependent child.

DOUBLE INDEMNITY BENEFIT (COMMON CARRIER) – UP TO \$300,000.00

If an accident causes loss of life, within one year of the date of the accident, as a result of riding as a fare-paying passenger, in or on a public conveyance being operated commercially by a licensed common carrier to transport passengers for hire, the plan will pay two times your additional coverage amount:

- If you select \$150,000 of additional coverage, your beneficiary receives \$300,000.

"COST OF LIVING" BENEFIT – UP TO 25% INCREASE

Every two years, on the anniversary date of your enrollment, your original amount of additional coverage will be automatically increased by 5% as long as you remain insured under the program, or until your coverage has been increased a full 25%. Any change in coverage amount begins a new period.

EXCLUSIONS

The policy does not cover loss resulting from self-inflicted injuries, suicide or any attempt thereof (in Missouri while sane); air travel, except while riding as a passenger only, unless otherwise provided; declared or undeclared war or any act of war; participating in a riot; the voluntary use of any drug, except as prescribed by a doctor; riding or driving in any kind of race as a professional; commission of or attempt to commit a felony; sickness or its medical or surgical treatment (except when necessitated by injury due to a covered accident), or bacterial infection (except through a wound accidentally sustained).



UNDERWRITTEN BY

MONUMENTAL LIFE INSURANCE COMPANY

1111 North Charles Street • Baltimore, Maryland 21201

This plan is underwritten by Monumental Life Insurance Company of Baltimore, Maryland. Monumental Life, a division of AEGON USA, Inc., is rated "A+" (Superior) by the A.M. Best Company, independent analysts of the insurance industry. Both Monumental Life and AEGON USA are rated "AA+" (Excellent) by Standard & Poor's Insurance Rating Services. AEGON USA, Inc. is wholly owned by AEGON nv, whose over \$35 billion in assets make it one of the world's largest life insurance companies.

EFFECTIVE DATE OF COVERAGE

These are the dates on which coverage may become effective, provided your form has been received by the administrator and the first premium for additional coverage has been paid.

Completed Benefit Upgrade Requests
Accepted by the Administrator Between:

October 2 - January 1
January 2 - April 1
April 2 - July 1
July 2 - October 1

Effective
Date Of Coverage:
February 1
May 1
August 1
November 1

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing **APPELLANT'S BRIEF** (*Baldwin v. Monumental Life Corporation et al.*) was mailed, postage prepaid, this 26th day of September, 1997 to the following:

Joy L. Clegg
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Appellees
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145-5000



8222.brf