

1997

Mary M. Baldwin v. Monumental Life Insurance Co. Cyprus Credit Union and Does 1-10 : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Baldwin v. Monumental Life Insurance Corporation*, No. 970608 (Utah Court of Appeals, 1997).
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IN

MARY M. BALDWIN,

Plaintiff

5-1-64

vs.

MONUMENTAL

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CYPRUS CBT

1-10.

Defendant,

BRIEF

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ant/Appellee
Fourth Floor

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IN THE UTAH COURT OF APPEALS

MARY M. BALDWIN,

Plaintiff/Appellant,

Appeal No. 970608-CA

vs.

MONUMENTAL LIFE INSURANCE CO.,
CYPRUS CREDIT UNION and DOES
1-10,

Lower Court No.: 950901090

Priority No. 15

Defendant/Appellee,

BRIEF OF APPELLEE MONUMENTAL LIFE CORPORATION

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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STATEMENT OF JURISDICTION

Appellees Monumental Life Insurance Company and Cyprus Credit Union (referred to collectively as "Monumental") agree with the statement of jurisdiction contained in Mary Baldwin's Brief of Appellant.

ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

1. Did John Baldwin apply for additional accidental death insurance with an effective coverage date of February 1, 1994, which was some two months after his death?

2. Regardless of the effective date of coverage, was a contract for additional accidental death insurance even formed at the time of John Baldwin's death, or did he fail to meet the express conditions precedent to contract formation?

Issues presented on appeal from an order granting summary judgment are reviewed for correctness. Harline v. Barker, 912 P.2d 433, 438 (Utah 1996).

DETERMINATIVE PROVISIONS ON APPEAL

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

STATEMENT OF THE CASE

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

This case involves the decedent John Baldwin's application for an upgrade of accidental death insurance coverage with Monumental. The appellant Mary Baldwin was John Baldwin's grandmother and is listed as the beneficiary on his original application for coverage. (R. 3).

Ms. Baldwin filed this lawsuit in the Third Judicial District Court of Salt Lake County after Monumental denied coverage following the death of John Baldwin on December 28, 1993. Her Complaint alleges breach of contract and bad faith, and it seeks compensatory damages in the amount of \$150,000.00 and punitive damages. (R. 1-7). Monumental filed an Answer and Counterclaim alleging fraud and bad faith. (R. 9-23).

Ms. Baldwin moved for summary judgment on her Complaint and on Monumental's Counterclaim. (R. 122). Monumental moved for summary judgment on Ms. Baldwin's Complaint. (R. 34-35). Judge Wilkinson granted Ms. Baldwin's motion as to Monumental's Counterclaim and granted Monumental's motion as to Ms. Baldwin's Complaint. (R. 204-07). Ms. Baldwin appealed from the summary judgment as to her Complaint. (R. 214-15).

B. Statement of Facts.

John Baldwin was a member of the Cyprus Credit Union. (R. 36, 46). Cyprus Credit Union offers its members, at no cost, a \$1,000.00 accidental death insurance policy, which is underwritten by Monumental Life Insurance Company. (R. 37, 46). John Baldwin applied for this \$1,000.00 policy in October 1991, and Monumental issued him an insurance certificate under Master Policy MZ0800348-0000F with an effective date of November 1, 1991. (R. 48) (copy of the Master Policy attached as Addendum A). The Master Policy notifies the holder that issuance of a certificate of insurance does not trigger immediate coverage:

EFFECTIVE DATE OF INSURANCE

Issuance of a certificate is not a waiver of any of the following conditions:

MEMBERS AND DEPENDENTS. Each eligible Member and his Dependents will become insured under this Policy at the beginning of the Policy Quarter following acceptance by us of his enrollment form and the first premium.

(R. 105).

The Master Policy reiterates that if a insured applies for additional benefits, the same terms apply regarding the effective date of coverage:

CHANGES IN COVERAGE

If . . . any change in the benefits provided under this Policy is requested for a Covered Person, the Effective Date of Insurance for the Covered Person will be the beginning of the Policy Quarter following our acceptance of the enrollment form or change request and any additional required premium.

(R. 105).

Sometime in November or December 1993, Monumental sent Mr. Baldwin a "Benefit Upgrade Packet." (R. 37). The Benefit Upgrade Packet consisted of a letter from Sandra J. Hutchings of the Cyprus Credit Union, a Personal Insurance Statement with a detachable Benefit Upgrade Request Form, and a Guaranteed Open Enrollment Notice with Summary of Insurance Provisions. (R. 37, 52) (blank copy of Benefit Upgrade Packet, appearing in record as "R. 52," attached as Addendum B). The letter from Ms. Hutchings reminded Mr. Baldwin to "[p]lease take time to review the outstanding benefits available through this accident insurance plan." (R. 52).

The Guaranteed Open Enrollment Notice with Summary of Insurance Provisions is a one-page, two-sided document. (R. 52). The Summary of Insurance Provisions notifies Mr. Baldwin that

[i]n 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 your review.

(R. 52).

The Guaranteed Open Enrollment Notice and Summary of Provisions also contains a section entitled "Effective Date of Coverage," which is printed on the reverse side. The section states that coverage "may become effective" on one of four listed dates if two conditions have been met: 1) the Benefit Upgrade Request form has been received by the administrator; and 2) the first premium for additional coverage has been paid. (R. 52). This section further provides that if a completed Benefits Upgrade Request is accepted by the administrator between October 2 and January 1, the effective date of coverage will be February 1. The section allows for three other later effective dates of coverage, each representing the beginning of a Policy Quarter, if the Benefits Upgrade Request is accepted after February 1:

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 Request Accepted by the Administrator Between:	Effective Date of Coverage
October 2 - January 1	February 1
January 2 - April 1	May 1
April 2 - July 1	August 1
July 2 - October 1	November 1

(R. 52) (hereinafter referred to as "Effective Date of Coverage" provision).¹

¹The actual provision appears in larger type on the Guaranteed Open Enrollment Notice.

No part of the Benefit Upgrade Packet makes any mention of temporary or provisional insurance being provided in the interim. (R. 52). Furthermore, while the Benefit Upgrade Request contains the words "Automatic Speed Processing Form," nothing in the Benefit Upgrade Request, nor in any other portion of the Benefit Upgrade Packet, suggests that the effective date of coverage provision is somehow modified thereby or that the insurance is immediately effective. (R. 52).

On December 27, 1993, Mr. Baldwin completed, signed and mailed the Benefit Upgrade Request to Monumental requesting \$150,000.00 of additional accidental death insurance, and authorizing his "Financial Institution to make the necessary periodic account debits for the amount of additional insurance indicated. . . ." (R. 53). The next day, Mr. Baldwin was accidentally² killed while hunting. (R. 55). On December 30, 1993, two days after his death, Monumental received Mr. Baldwin's Benefit Upgrade Request and date-stamped it accordingly. (R. 53). Not having received the application until after Mr. Baldwin died, and not having a need to deduct premiums from his account before the effective date of coverage on February 1, 1994, Monumental never deducted any

²Monumental stipulates that Mr. Baldwin died accidentally for purposes of this appeal only.

premiums from Mr. Baldwin's account with Cyprus Credit Union. (R. 38, 46). On January 3, 1994, Ms. Baldwin requested that Monumental pay the \$1000.00 no-cost accidental death benefits, and Monumental did so on January 20, 1994. (R. 39, 50). On January 29, 1994, Ms. Baldwin requested payment of the \$150,000.00 additional accidental death insurance. (R. 39, 50). Monumental denied this request because there was no insurance policy for \$150,000.00 in coverage in effect on the date of death. (R. 39, 50). This lawsuit ensued.

SUMMARY OF ARGUMENT

POINT I: If John Baldwin had a valid contract for additional accidental death insurance at the time of his death, the contract was for insurance coverage effective February 1, 1994, after Mr. Baldwin's death. The Effective Date of Coverage provision is clear, and Ms. Baldwin's argument that statements in the Benefit Upgrade Packet regarding the quickness of processing the Benefits Upgrade Request somehow render the provision ambiguous is futile. Her argument that the Benefit Upgrade Request created a temporary contract of insurance, raised for the first time on appeal, is similarly unavailing. Ms. Baldwin has not pointed to any statement in the Benefit Upgrade Packet, as she cannot, suggesting that tem-

porary insurance is gifted to the applicant free of charge until the effective date of coverage.

POINT II: Mr. Baldwin never even had an enforceable insurance contract at the time of his death. Mr. Baldwin's mere act of mailing the Benefit Upgrade Request to Monumental on December 27, 1993, was insufficient to create a contract of insurance to cover his death the next day. The Benefit Upgrade Packet states that the Benefit Upgrade Request must be received by Monumental and the first premium paid for additional coverage before coverage may become effective. Neither of these conditions precedent to formation of a contract for accidental death insurance of \$150,000.00 was met at the time of Mr. Baldwin's death.

ARGUMENT

POINT I

**IF MR. BALDWIN HAD A VALID CONTRACT FOR
\$150,000.00 ACCIDENTAL DEATH INSURANCE AT THE
TIME OF DEATH, WHAT HE CONTRACTED FOR WAS
COVERAGE THAT BEGAN FEBRUARY 1, 1994, AFTER
HIS DEATH.**

The Effective Date of Coverage provision contained in the Summary of Insurance Provisions Mr. Baldwin received at the time of his application clearly explains that if the completed Benefit Upgrade Request is accepted by Monumental between October 2 and January 1, coverage becomes effective on February 1. The Master

Policy made available for Mr. Baldwin's review at the time of his application reiterates that notwithstanding the issuance of any certificate of insurance, coverage does not become effective until the beginning of the Policy Quarter following acceptance of the enrollment form and payment of the first premium. An insurance contract is interpreted pursuant to the same rules that apply to any other contract, and its express terms must accordingly be enforced. Village Inn Apartments v. State Farm Fire & Casualty Co., 790 P.2d 581, 582 (Utah App. 1990). If Mr. Baldwin had a valid contract for accidental death benefits in the amount of \$150,000.00 at the time of his death, what he contracted for (and what Ms. Baldwin was entitled to as the beneficiary), according to the plain language of the contract,³ was coverage that began on February 1, after his death.

³Ms. Baldwin asserts that the Guaranteed Open Enrollment Notice is "at best, an informational flyer" without any binding effect whatsoever and that the only portion of the Benefit Upgrade Package that can be considered as conveying the terms of insurance is the Benefit Upgrade Request. (Brief of Appellant at 6). Nonetheless, she refers to other portions of the Benefit Upgrade Package (such as the statement in the Guaranteed Open Enrollment Notice that "you are guaranteed to be accepted" and the reference to the Speed Processing Department in the letter from Cyprus) to support her contention that the Effective Date of Coverage provision is ambiguous. (Brief of Appellant at 4-5, 11). Ms. Baldwin cannot have it both ways. The letter from Cyprus makes clear that all documents included in the Benefit Upgrade Packet, which Mr. Baldwin was urged in the letter to "take the time to review," must be read to understand the benefits available.

A. The Effective Date Of Coverage Provision Is Not Ambiguous.

It is clear that coverage did not begin until February 1. Ms. Baldwin does not contend that the Effective Date of Coverage provision is ambiguous by itself; she claims that when read in conjunction with the "speed processing" references in the letter and the Benefit Upgrade Request, the provision becomes ambiguous. (Brief of Appellant at 11). The "speed processing" references do not contradict the Effective Date of Coverage provision--they simply imply that once the Speed Processing Department receives a completed Benefits Upgrade Request, the process of recording the applicant's desire for additional benefits will be quick. The fact that coverage cannot take effect until the next Policy Quarter, February 1, remains unchanged. Quick processing of an application does not mean the effective date of coverage will be any sooner than February 1. The Effective Date of Coverage provision is not ambiguous simply because Ms. Baldwin chooses to equate speedy processing of an application with coverage effective the day the Benefits Upgrade Request is mailed. See Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1274-75 (policy term is not ambiguous just because the insured accords it an interpretation benefiting his own interests).

Ms. Baldwin also contends the statement in the Effective Date of Coverage provision that coverage "may become effective" on one of four enumerated dates (February 1, May 1, August 1, and November 1) "provided your form has been received by the administrator and the first premium for additional coverage has been paid" is ambiguous, because it supposedly could be construed to mean that coverage could take effect sometime before February 1. (Brief of Appellant at 11). The word "may" is used in the Effective Date of Coverage Provision to convey that there are four possible dates on which coverage can become effective, and that coverage will become effective on one of these dates if the form is received and the first premium is paid. Ms. Baldwin's position that using the words "will become effective" would have been more emphatic, and therefore unambiguous, asks this Court to disregard reason and common sense in the name of semantic niceties--and strained semantic niceties at that. Although ambiguities in insurance contracts are resolved against the insurer, this Court should not engage in an illogical parsing of isolated contractual terms in order to create an ambiguity where none exists. Alf v. State Farm Fire & Cas. Co., 850 P.2d at 1272, n.14, citing Millar v. State Farm Fire & Casualty Co., 804 P.2d 822 (Ariz. App. 1990).

Finally, Ms. Baldwin maintains the Effective Date of Coverage provision is unclear not because its language is confusing, but because it is "buried at the bottom of the backside" of the Summary of Provisions. (Brief of Appellant at 11). Far from being "buried," the Effective Date of Coverage provision is visually set off on the one-page Guaranteed Open Enrollment Notice with columns, bold lettering, and capital lettering. Regardless of the location of a provision in an insurance contract, the provision still exists and remains a part of the contract; effect must be given to all terms in an insurance contract. Nielsen v. O'Reilly, 848 P.2d 664 (Utah 1992). The terms of the Effective Date of Coverage provision are repeated in the Master Policy, making the terms even harder to miss.

The Effective Date of Coverage provision should not be written out of the Summary of Provisions based on Ms. Baldwin's complaint that an effective coverage date of February 1 is somehow ambiguous. The Benefit Upgrade Packet clearly conveys that the applicant is applying for additional coverage that will take effect February 1. Ms. Baldwin is not entitled to benefits because Mr. Baldwin died before the effective coverage date.

B. Mr. Baldwin's Completion of the Benefits Upgrade Request Did Not Create a Contract of Temporary Insurance.

Ms. Baldwin claims that even if the effective coverage date of February 1 was unambiguous, coverage actually began as soon as Mr. Baldwin mailed the Benefits Upgrade Request because Monumental supposedly gave him free temporary insurance coverage in the amount of \$150,000.00 to last until February 1. She did not present this argument to the trial court and is precluded from raising it on appeal from a summary judgment. Franklin Financial v. New Empire Develop. Co., 659 P.2d 1045 (Utah 1983).

Ms. Baldwin made a cursory claim before the trial court that the mailing of the Benefits Upgrade Request created a statutory binder contract. (R. 128-29). This statutory argument is different from her new argument on appeal that a common law temporary insurance contract was created. In State v. Yoder, 935 P.2d 534, 543 n.6 (Utah App. 1997), the court noted that although the appellant presented arguments before both the trial court and appellate court regarding protections afforded under article I, §14 of the Utah Constitution, the arguments presented to each court were different, precluding the appellant from raising his new argument on appeal. Here, Ms. Baldwin improperly attempts to switch from a statutory basis for a binder insurance contract to a common-

law basis for a temporary insurance contract. Even if the statutory argument Ms. Baldwin mentioned below would be considered similar enough to her common-law argument to preserve it for appeal, Ms. Baldwin only devoted a half page in the record below, without any factual or legal analysis, to her statutory "argument." (R. 128-29). Mere mention of a legal argument, without explanation or analysis, is insufficient to preserve the issue for appeal. Mills v. Brody, 929 P.2d 360 (Utah App. 1996).

However, if this Court decides to consider Ms. Baldwin's argument on appeal, the contention that the Benefits Upgrade Request constituted a temporary contract with coverage effective on December 27 lacks merit. There is nothing in the Benefit Upgrade Packet suggesting that although coverage is not effective until February 1, coverage will be provided to last until February 1 as soon as the Benefits Upgrade Request is mailed. Indeed, the provision of immediate temporary coverage would be contradictory to an effective coverage date of February 1.

Ms. Baldwin surmises that since she can think of no reason why Mr. Baldwin should have been made to wait until February 1 for coverage to begin, coverage must have commenced on December 27, 1993, through a temporary contract of insurance. (Brief of

Appellant at 11). Enforceability of an express provision in an insurance contract like the Effective Date of Coverage provision is not dependent upon providing an explanation that justifies its existence to the beneficiary's satisfaction. This Court should decline Ms. Baldwin's request to nullify the Effective Date of Coverage provision because she does not see "what the point is"⁴ in denying immediate coverage to an applicant the day he mails a Benefit Upgrade Request. (Brief of Appellant at 11).

The cases cited by Ms. Baldwin for the proposition that provision of immediate temporary coverage, pending issuance of the policy, is "customary," actually support Monumental's defense that there was no temporary insurance because nothing in the Benefit Upgrade Packet provides for it; all the cases she relies upon involve situations where the insured completed and mailed an insurance application along with the first premium payment, then received a written document from the insurance company stating that

⁴There are several compelling policy reasons why an insurance company would want an applicant to wait a few weeks after mailing his application before receiving coverage. For instance, this practice is akin to the "waiting period" provision in many life insurance contracts mandating that benefits are not payable to the beneficiaries of an insured who commits suicide unless the death occurs a certain length of time after the policy has been in force. Additionally, an insurance company that receives a large volume of applications on a daily basis may wish for the purposes of administrative efficiency and consistency to provide only certain dates that coverage can commence, coinciding with Policy Quarters.

it was furnishing temporary insurance that would allow the insured interim coverage until he received the insurance policy. In Stevenson v. First Colony Life Ins. Co., 827 P.2d 973 (Utah App. 1992) (cited extensively in Brief of Appellant), Stevenson filled out a life insurance application for an insurance policy that did not contain an effective date of coverage provision and tendered a check to the insurance company for the first premium payment. The insurance company subsequently issued Stevenson a "conditional receipt" that set forth the conditions under which conditional coverage would become effective prior to policy delivery. The insurance company did not attempt to return the premium check prior to Mr. Stevenson's death. Understandably, the court determined that a contract for temporary insurance was issued by the insurance company. Stevenson, 827 P.2d at 975. In Phoenix Indem. Ins. Co. v. Bell, 896 P.2d 32 (Utah App. 1995) (cited in Brief of Appellant at 7, 10), Bell sent a completed application for automobile insurance containing a binder of temporary insurance and a premium check to Phoenix Indemnity, and it deposited his check. Phoenix Indemnity issued the insurance policy, then attempted to cancel the insurance policy when it discovered that Bell did not have sufficient funds in his bank account to cover the premium check. The court determined that a provision in the insurance application

that "no coverage would be considered bound" if his premium check was not honored applied only to the binder of temporary insurance and could not be relied upon by Phoenix Indemnity to cancel the insurance policy. Phoenix Indem. Inc. Co. v. Bell, 896 P.2d at 33-36. Finally, in Pappageorge v. Federal Kemper Life Assur., 878 P.2d 56 (Colo. App. 1994) (cited in Brief of Appellant at 12), Pappageorge submitted an application for life insurance along with the first year's premium to Federal Kemper. He was given a conditional receipt that provided temporary coverage pursuant to detailed terms and conditions. The court observed that the extent of temporary coverage provided by the conditional receipt was "dependent primarily on the particular wording of the receipt in question." Paggageorge, 878 P.2d at 60.

By contrast, Mr. Baldwin never received a conditional receipt for temporary insurance after completing the Benefits Upgrade Request. No premium payment was ever debited from his account, so it cannot be argued that Monumental's use of Mr. Baldwin's money justifies creating some sort of implied contract of temporary insurance. Ms. Baldwin's frequent assertions in her brief that Mr. Baldwin "tendered" the premium by authorizing a debit aside,⁵

⁵Ms. Baldwin contends that in Hill v. Chubb Life American Ins. Co., 870 P.2d 1133 (Ariz. App. 1993), the court intimated that authorization for a debit could constitute a tender of a premium.

it is undisputed that Monumental never debited money from Mr. Baldwin's account for a premium payment. Indeed, it would have been impossible for Monumental to have debited his account before he died because Monumental did not receive the application until after his death. Moreover, Monumental had no reason to debit money from his account until February 1, when Mr. Baldwin would have received the benefit of insurance coverage in return for his premium payment.

While there appears to be authority, based on the case law cited by Ms. Baldwin, that a temporary contract of insurance may be created when an individual receives an actual document conveying temporary insurance and pays a premium, this is not the case here. Monumental never issued Mr. Baldwin a conditional receipt and it never received a premium payment. To the contrary, it was clear that coverage did not begin until February 1. It follows that there was no contract of temporary insurance providing coverage as

(Brief of Appellant at 10, n.2). Ms. Baldwin misreads Hill. The court concluded that an applicant's specification that premiums would be made by preauthorized automatic checking did not constitute "payment" of a premium. The court further noted that the insurance company could not debit the applicant's account until an insurance policy was issued. Hill, 870 P.2d at 1139. Similarly, notwithstanding the fact that Mr. Baldwin authorized the debiting of his account, Monumental was not entitled to debit the account until Mr. Baldwin received coverage on February 1.

soon as Mr. Baldwin mailed the Benefit Upgrade Request. The court in Watts v. Life Insurance Co. of Arkansas, 782 S.W.2d 47 (Ark. App. 1990) adopted similar logic towards an insurance company that rejected a beneficiary's claim that an application of insurance constituted a temporary life insurance contract. The application provided that "individual insurance will become effective on the first day of the month next following the date the application is received." The applicant died before that date. The court termed the "effective date of coverage" provision "clear and unambiguous," explaining that

as there is no provision for temporary coverage, [the effective date of coverage provision] determines the effective date of the individual insurance applied for by the decedent. Because the decedent died prior to that date, no insurance coverage was in effect under the terms of the policy at the time of her death.

Watts, 782 S.W.2d at 49 (attached as Addendum C).

The court in Watts accordingly affirmed summary judgment for the insurance company. Id. at 50. In Wells v. United States Life Insurance Co., 804 P.2d 333 (Idaho App. 1991), an application brochure for life insurance offered an effective date of coverage "the first day of the month following the approval of the application by insurance company, provided the first quarterly payment had been received." Rejecting the beneficiary's claim that she

nonetheless expected coverage would commence on the date the decedent submitted the application, the court considered the effective date of coverage provision to be unambiguous and affirmed summary judgment for the insurance company. Wells, 804 P.2d at 333-37.

Unable to point to any language in the Benefit Upgrade Packet conferring coverage effective on the date Mr. Baldwin mailed the Benefit Upgrade Request, Ms. Baldwin is reduced to arguing that an implied contract for temporary insurance should be read into the documents. Such an unprecedented expansion of the temporary insurance doctrine would contravene established Utah law requiring courts to enforce express contractual terms such as the Effective Date of Coverage provision. See, e.g. Allen v. Prudential Prop. & Cas. Ins. Co., 839 P.2d 798 (Utah App. 1992) (court expresses its "unwillingness to alter fundamentally the terms of insurance policies in the absence of legislative direction"); Martin v. Christensen, 22 Utah 2d 415, 454 P.2d 294 (1969) (duty of court to enforce clear provision in insurance contract). It would also create the undesirable result of forcing insurance companies that wait to collect premiums until the stated effective date of coverage to provide applicants with free temporary insurance as soon as the application is mailed. Mr. Baldwin died before the

coverage for the additional \$150,000.00 in benefits took effect. Assuming he had an enforceable contract for accidental death benefits, what he contracted for was coverage that commenced February 1, 1994, after his death. The trial court properly granted summary judgment on this ground.

POINT II

MR. BALDWIN NEVER HAD AN ENFORCEABLE CONTRACT WITH MONUMENTAL BECAUSE CONDITIONS PRECEDENT TO CONTRACT FORMATION WERE NOT MET.

Mr. Baldwin never even had an enforceable contract with Monumental because he died before he could meet conditions precedent to contract formation. The Effective Date of Coverage provision states that coverage may become effective "provided your form has been received by the administrator and the first premium for additional coverage has been paid." Thus, there were two conditions precedent to the formation and enforcement of a valid insurance contract: (1) the Benefit Upgrade Request must have been received by Monumental's administrator; and (2) the first premium must have been paid.

With regard to the first condition precedent, Monumental received the Benefit Upgrade Request on December 30, 1997, after Mr. Baldwin died. With regard to the second condition precedent, it is undisputed that no debits had been made to Mr. Baldwin's

account at the time of his death. Because Mr. Baldwin mailed the Benefit Upgrade Request only one day before he died, Monumental was unaware at the time of his death that he had even signed this document. Since Monumental had not yet received his Benefit Upgrade Request at the time of his death, it had no reason to debit his account for a premium payment.

A condition precedent is a contractual requirement that "must be performed by the one party to an existing contract before the other party is obligated." Commercial Union Assocs. v. Clayton, 863 P.2d 29, 37 (Utah App. 1993). The Effective Date of Coverage provision makes coverage contingent upon receipt of the Benefit Upgrade Request and payment of a premium, and these two provisos are conditions precedent to contract formation. Since neither condition occurred here, Mr. Baldwin never had a contract for additional coverage of \$150,000.00, irrespective of whether coverage is viewed to commence on December 27 or February 1. Adams v. Gubler, 731 P.2d 494 (Utah 1986) (contract unenforceable where conditions precedent had not been met).

This Court should affirm summary judgment on the basis that no enforceable contract for additional benefits was formed.

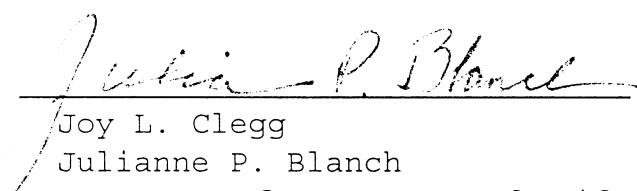
CONCLUSION AND RELIEF REQUESTED

As the beneficiary of an individual who died the day after mailing an application for accidental death insurance, before the insurance company received the application, before any premium was paid, and before coverage took effect, Ms. Baldwin faces considerable hurdles on appeal. She has not been able to show that the trial court erred in granting summary judgment, and Monumental requests that this Court affirm summary judgment in its favor.

DATED this 29th day of October, 1997.

SNOW, CHRISTENSEN & MARTINEAU

By


Joy L. Clegg

Julianne P. Blanch

Attorneys for Monumental Life
Corporation

N:\19186\2\BRIEF.WPD

CERTIFICATE OF MAILING

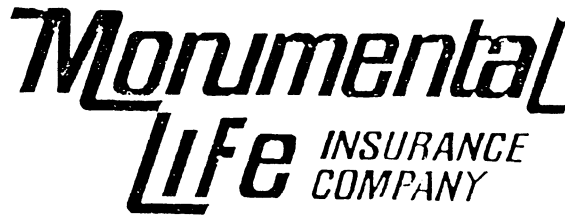
I hereby certify that two (2) true and correct copies of the foregoing were mailed on the 29th day of October, 1997 to:

Mark Dalton Dunn
ROBERT J. DEBRY & ASSOCIATES
3575 South Market Street, #206
West Valley City, Utah 84119

John P. Blum

ADDENDUM A:

MASTER POLICY



1111 N. Charles Street
Baltimore, Maryland 21201

(referred to as we, us, our)

This Policy is issued to the Policyholder named in the Schedule. The Policy is issued in consideration of a completed application and payment of premiums as provided by its terms.

We agree to pay benefits in accordance with all the provisions of this Policy.

Premiums are payable to us or our agent in amounts determined by this Policy. The first premium is due on the Effective Date. Future premiums are due thereafter as provided by the terms of this Policy.

EFFECTIVE DATE; RENEWAL AGREEMENT

EFFECTIVE DATE. This Policy and the insurance provided by it become effective 12:01 A.M. Standard Time at the Policyholder's address on the Effective Date shown on the Schedule.

RIGHT TO RENEW. This Policy is renewable at your option or our option subject to the payment of premiums when due. The Covered Person may renew his insurance subject to the Individual Termination of Insurance provision.

The provisions found on the following attached pages form a part of this Policy as if recited over the signatures shown below.

This Policy is executed on the Effective Date, at Baltimore, Maryland.

NON-CONTRIBUTORY & CONTRIBUTORY GROUP INSURANCE POLICY ACCIDENTAL DEATH INSURANCE NON-PARTICIPATING

A handwritten signature in cursive script, reading "H. Stacey Boyer".

H. Stacey Boyer
Secretary



A handwritten signature in cursive script, reading "B. Larry Jenkins".

B. Larry Jenkins
President

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SCHEDULE OF BENEFITS

Group Policy Number: MZ0800348/0000F - 0232
Effective Date: November 1, 1983
Anniversary Date: November 1, 1984
The Policyholder: Financial Services Trust c/o Cyprus Credit Union
(referred to as you, your, and yours)

Insurance Benefits are determined by this Schedule and the terms of this Policy.

ACCIDENT INSURANCE BENEFITS*

Non-Contributory Accidental Death (Benefit A)

An amount of insurance as selected by the Participating Organization equal to \$1,000.

<u>Member's Age at Death</u>	<u>Benefit Payable</u>
Under 70	100%
70 - 75	50%
75 and over	25%

Contributory Accidental Death (Benefit B)

An amount of insurance as selected by the Member from \$10,000 to \$150,000.

Dependent spouse is insured for 50% of the Member's benefit if children are covered; 60% of the Member's benefit if children are not covered.

Dependent children are insured for 20% of the Member's benefit if the spouse is covered; 25% of the Member's benefit if the spouse is not covered.

All benefits will reduce by 50% on the date the Member attains age 70 and further reduce by 50% when he attains age 75.

ADDITIONAL BENEFITS

AMOUNTS & LIMITS

Amount of Insurance, as used in this Policy and any attached Riders, refers to the original Contributory Accidental Death coverage and any subsequent increases in coverage, as elected by the Member. It does not include the automatic increases under the Accumulation Benefit, except where noted.

Accumulation Benefit 5% of the amount of insurance every two years for 10 years.

Education Benefit	2% of the amount of insurance for each qualifying child for each uncompleted year of education up to 4 years. If no children qualify, the death benefit is \$3,000 per dependent child.
Total Disability Benefit	1% of the amount of insurance per month. Elimination Period - 12 continuous months. Maximum Benefit Period - 25 months.
Accident Hospital Indemnity	1% of the amount of insurance, up to \$1,500 per month. Elimination/Waiting Period - 7 continuous days. Maximum Benefit Period - 12 months.
Common Carrier Death Benefit	An amount equal to the amount of insurance.
Dismemberment Benefit	Benefit is as shown on Rider. (also applies to Benefit A)
AGGREGATE LIMIT OF LIABILITY	\$1,000,000 for all Covered Persons as the result of a common accident.

TABLE OF PREMIUMS

As shown on the records of the Participating Organization.

DEFINITIONS

When used in this Policy the following words and phrases have the meaning given. The use of any personal pronoun includes both genders.

BENEFICIARY means the person or entity named by the insured Member, on forms and in a manner approved by us, to receive benefits.

COMMON CARRIER means a licensed public conveyance operated for the regular transport of passengers.

CONFINED OR CONFINEMENT means that the Covered Person is a registered bed patient in a Hospital and is charged room and board by the Hospital. He must be in the Hospital on the advice of a Physician and under the regular care and treatment of a Physician.

Confinement does not include treatment received in the outpatient department of the Hospital. Outpatient treatment means service rendered for a period of less than 24 hours.

COVERED PERSON means the insured Member and his insured Dependents, if any.

DEPENDENT means the Member's spouse, unless they are legally separated; the Member's unmarried children under age 19; or under age 23; if enrolled as a full-time student in an accredited college, university, vocational or technical school; and children whose support is required by a court decree.

Children include natural children, stepchildren and legally adopted children. They must be primarily dependent on the Member for support and maintenance and must live in a parent-child relationship with the Member.

A spouse or child who is insured under this Policy as a Member will not be eligible as a Dependent. If a husband and wife are both insured as Members, a child will be the Dependent of only one.

HOSPITAL means an institution which meets all of the following requirements:

- (1) it must be operated according to law;
- (2) it must give 24 hour medical care, diagnosis and treatment to the sick or injured on an in-patient basis for which a charge is made;
- (3) it must provide diagnostic and surgical facilities supervised by Physicians;
- (4) registered nurses must be on 24 hour call or duty; and
- (5) the care must be given either on the Hospital's premises or in facilities available to the Hospital on a pre-arranged basis.

A Hospital is not a rest, convalescent, extended care, rehabilitation or other nursing facility. It is not a place which primarily treats mental illness, alcoholism or drug addiction; nor does it include any ward, wing or other section of the Hospital that is used for such purposes. It is not a facility where, in the absence of insurance, there is no legal obligation to pay.

INJURY means bodily injury caused by an accident. The accident must occur while the Covered Person's insurance is in force under this Policy. The Injury must be the direct cause of loss and must be independent of all other causes. The Injury must not be caused by or contributed to by Sickness.

LOSS means the death of the Covered Person or any physical impairment, incurred expense, or other benefit covered under the terms of this Policy and any attached Riders.

MEMBER means a member of a Participating Organization, association or other eligible entity who has been accepted by us and has paid the required premium. The words "he", "his", and "him" refer to the Member.

NURSE means a Registered Graduate Nurse (R.N.), Licensed Practical Nurse (L.P.N.), or Licensed Vocational Nurse (L.V.N.). A Covered Person's immediate family or other household members will not be considered a Nurse.

PARTICIPATING ORGANIZATION means an Organization which has signed a Participation Agreement adopting the Policyholder's plan of insurance.

PHYSICIAN means a person licensed by the state in which he is resident to practice the healing arts. He must be practicing within the scope of his license for the service or treatment given. The Physician may not be the Member or a member of his immediate family.

POLICY means the contract issued to the Policyholder providing the benefits described.

POLICYHOLDER means the legal entity in whose name this Policy is issued, as shown on the Schedule of Benefits. The terms "you", "your" and "yours" mean the Policyholder.

POLICY QUARTER means the period of time starting on the first day of the quarter; it ends on the last day of the same quarter.

SICKNESS means an illness or disease which results in a covered loss while insurance for the Covered Person is in force under the Policy.

ELIGIBILITY AND EFFECTIVE DATE OF INSURANCE

ELIGIBILITY

Members and Spouses and Dependent Children will be eligible for insurance as Covered Persons.

EFFECTIVE DATE OF INSURANCE

Issuance of a certificate is not a waiver of any of the following conditions:

MEMBERS AND DEPENDENTS. Each eligible Member and his Dependents will become insured under this Policy at the beginning of the Policy Quarter following acceptance by us of his enrollment form and the first premium.

NEWBORN DEPENDENTS. Newborn children are covered immediately from birth. However, any required premium must be paid within 31 days to continue coverage beyond 31 days.

EFFECTIVE DATE. The Effective Date of Coverage will be shown on the certificate.

CHANGES IN COVERAGE

If a Member adds an eligible Dependent after issue of his certificate or if any change in the benefits provided under this Policy is requested for a Covered Person, the Effective Date of Insurance for the Covered Person will be the beginning of the Policy Quarter following our acceptance of the enrollment form or change request and any additional required premium.

ACCIDENTAL DEATH BENEFIT

When we receive due proof that a Covered Person dies, we will pay the benefit shown on the Schedule of Benefits to his named Beneficiary; provided:

- (1) death occurs as a direct result of an Injury; and
- (2) death occurs within 365 days of the accident causing the Injury.

EXPOSURE AND DISAPPEARANCE

If by reason of an accident covered by this Policy a Covered Person is unavoidably exposed to the elements and, as a result of such exposure, suffers a covered loss and a benefit is otherwise payable, the loss will be covered by the Policy.

If a Covered Person is involved in an accident which results in the sinking or wrecking of a licensed public conveyance in which he was a passenger and his body is not located within one year of such accident, it will be presumed that the Covered Person died as a result of an Injury.

EXCLUSIONS

We will not pay a benefit for a loss which is caused by, results from, or contributed to by:

- (1) suicide, attempted suicide or intentionally self-inflicted injury, while sane or insane (in Missouri while sane);
- (2) declared or undeclared war or any act of war;
- (3) participating in a riot; committing an assault or felony;
- (4) Sickness or its medical or surgical treatment, including diagnosis;
- (5) bacterial infection except through a wound accidentally sustained;
- (6) operating or riding in any kind of aircraft except as a passenger in an aircraft having a valid Airworthiness Certificate and being piloted by a person having a valid certificate of competency with a rating authorizing him to pilot the aircraft; or as a passenger in a transport plane operated by the Military Airlift Command (MAC) of the United States of America. Airworthiness Certificate means the standard accreditation issued by the Federal Aviation Administration of the United States Government or its foreign equivalent issued by the country of the aircraft's registry;
- (7) alcohol intoxication, as defined in the state where the accident occurred;
- (8) taking of any drug, medication, narcotic or hallucinogen, unless as prescribed by a Physician;
- (9) taking of alcohol in combination with any drug, medication or sedative;
- (10) voluntary gas inhalation or poison voluntarily taken, administered or inhaled;
- (11) riding or driving as a professional in any kind of race for prize money or profit.

INDIVIDUAL TERMINATION OF INSURANCE

A Covered Person's insurance automatically ends on the first of the following dates:

- (1) The date this Policy is terminated;
- (2) The premium due date the Member fails to pay the required premium, except as provided in the Grace Period;
- (3) The premium due date after the Member is no longer a member of the Participating Organization;
- (4) The premium due date next following the date the Participating Organization ceases to participate in this plan of insurance.

The insured Dependent's insurance automatically ends on the first of the following dates:

- (1) The date the Member's coverage terminates, except as provided in the Continuance of Dependent Insurance provision;
- (2) The premium due date after a Covered Person ceases to be an eligible Dependent.

If an insured dependent child attains the specified age limit and proof is submitted within 31 days that the child:

- (1) is not able to become gainfully employed because of mental retardation or physical handicap;
- (2) became so incapable prior to the age limit; and
- (3) is primarily dependent on the Member for support and maintenance,

then the age limit will not apply as long as the child continues to meet these conditions. The child will be insured for the same benefits he previously had. Proof of continued disability and dependency may be required but not more often than once a year. Such child's insurance will not continue beyond the date it would otherwise end.

CONTINUANCE OF DEPENDENT INSURANCE. If the Member dies while insured under this Policy, the spouse may continue coverage if insured. The spouse's premium will be based on his attained age. Coverage may also continue for any Dependent Children covered at the time of the Member's death at the applicable premium. However, if there is no spouse upon the Member's death, coverage for Dependent Children will end.

Termination of this Policy will not prejudice any claim originating prior to termination subject to all other terms of this Policy.

PREMIUMS

We provide insurance coverage in return for premium payment. Premiums are payable by the insured Member. The Member's first premium is due on his Effective Date. Premiums are paid to us on or before the due date. The initial premium rates are shown on the Table of Premiums.

PREMIUM CHANGES. We have the right to change the premium rates on any premium due date. We will provide written notice at least 31 days before the date of change. The premium rates may also be changed at any time the terms of this Policy are changed.

Premiums may be paid monthly, quarterly, semi-annually, or annually. The premium mode may be changed by sending us a written request. Upon our approval, the change will be made.

GRACE PERIOD. This Policy has a 31 day grace period for the payment of each premium due after the first premium. Coverage will continue in force during the grace period. It will terminate at the end of the grace period if all premiums which are due are not paid. We will require payment of all premiums for the period this coverage continues in force including the premiums for the grace period.

REINSTATEMENT OF INSURANCE. If we terminate insurance for nonpayment of premium, the Member may reinstate coverage within 90 days following the last unpaid premium due date. He must pay all overdue premium. The reinstated policy will not cover a loss which occurred during the lapse period.

UNPAID PREMIUM. When a claim is paid for a loss incurred during the Grace Period, any premium due and unpaid may be deducted from the claim payment.

GENERAL PROVISIONS

ACTS OF THE POLICYHOLDER. In administering this Policy all Covered Persons must be treated equally. We will rely on your acts.

AGGREGATE LIMIT OF LIABILITY. Our aggregate limit of liability for all benefits payable for all Covered Persons under this Policy as a result of a common accident will be as shown on the Schedule. In the event this amount is not sufficient to pay the full benefit for each Covered Person, as determined by the Schedule, the benefit we will pay for each will be the same as the ratio of the aggregate limit of liability to the total amount of benefits which would have been paid, except for this provision.

BENEFICIARY CHANGES. The Member may name any person to be his Beneficiary at the time of enrollment. The Member may change his Beneficiary at any time. When we receive and record the change request, it will take effect as of the date the Member signed it. If the Member dies prior to the date we receive and record the change, any payment we make to the new Beneficiary will be valid. The prior Beneficiary's interest ends the date the new designation takes effect.

If more than one Beneficiary is named without stating their respective interests, they will share equally. If a Beneficiary dies before the Member, that interest ends. The Beneficiaries that survive will share equally unless the Member makes a written request to the contrary.

A Dependent's Beneficiary is the Member. If the Member dies before the Dependent, any benefit for the Dependent will be paid to the first surviving class of the following: the Dependent's: spouse, children, parents, brothers and sisters, executors or administrators.

CERTIFICATES. Certificates will be provided for each Member. They will describe the coverage provided; to whom benefits are paid and the provisions of this Policy which apply to Covered Persons.

The certificate is not a part of this Policy. Any conflict between the terms of the certificate and this Policy will be decided in favor of the Policy. A copy of the Policy may be examined at your office or the office of the group insurance administrator.

If the Member is not satisfied for any reason, he may return his certificate within 30 days after receipt. His premium will be refunded. When so returned, the certificate will be void from the beginning. The certificate must be returned to us at our Home Office or to our authorized agent.

CHOICE OF PHYSICIAN. The Covered Person is free to be treated by any Physician he chooses.

CLERICAL ERROR. Clerical errors or delays in keeping records for this Policy will not deny insurance which would otherwise have been granted; not extend insurance which otherwise would have ceased and call for a fair adjustment of premium and benefits to correct the error.

CONFORMITY TO LAW. Any provision of this Policy which is in conflict with the laws of the state in which it is issued is amended to conform with the laws of that state.

ENTIRE CONTRACT; CHANGES. This Policy, your application, and any other attachments is the entire contract between us. Any statement you or the Member makes is a representation and not a warranty. No statement will be used by us to void or reduce benefits unless that statement is a part of the written application.

This Policy may be changed at any time by written agreement between us. Only our President, Vice-President or Secretary may change or waive the provisions of this Policy. No agent or other person may change this Policy or waive any of its terms. The change will be endorsed on this Policy.

INCONTESTABILITY. After this Policy has been in force for two years, it can only be contested for non-payment of premiums. No statement made by a Covered Person can be used in a contest after his insurance has been in force two years during his lifetime. No statement a Covered Person makes can be used in a contest unless it is in writing and signed by him.

MISSTATEMENT OF AGE. If the age of a Covered Person has been misstated in the enrollment form for insurance under this Policy, the benefits payable will be those which the premiums paid would have purchased based upon his correct age, otherwise, there will be an equitable adjustment of premiums.

NONPARTICIPATING. This Policy is a nonparticipating Policy; it does not share in our surplus.

OPTIONAL SETTLEMENT METHODS. The Member, or the Beneficiary after the Covered Person's death, may elect to have loss of life benefits paid in installments. Such election must be sent to us in writing. The amounts and terms of the installments will be those which we offer at the time of election.

OTHER INSURANCE IN THIS COMPANY. The Covered Person may only have an aggregate of \$1,000,000 of accidental death insurance in force with us or any other AEGON, U.S.A. Inc. affiliate at one time. If we determine that accidental death insurance is in force in excess of this amount, the Covered Person must choose which coverage he wants to remain active. All other insurance will be terminated. All premiums paid for cancelled certificates or policies will be returned to the Member.

RECORDS. Sufficient records must be maintained to show the names of all Covered Persons; the dates they became insured; and any such other information required to administer this Policy.

RIGHT TO TERMINATE. You may end this Policy by giving written notice to us 31 days prior to the desired date. You must notify all Members of such Policy termination.

WORKER'S COMPENSATION. This Policy is not a Worker's Compensation Policy. It does not satisfy any requirement for coverage by Worker's Compensation Insurance.

CLAIM PROVISIONS

NOTICE OF CLAIM. We must be given written notice of claim within 20 days after a covered loss occurs. If notice cannot be given within that time, it must be given as soon as reasonably possible.

The notice must contain the Covered Person's name and enough information to identify him. Notice may be mailed to our Home Office or to our agent.

CLAIM FORMS. When we receive notice of claim, the Covered Person will be sent forms to file proof of loss. If the forms are not sent within 15 days after we receive notice, then the Covered Person will meet the proof of loss requirements by giving us a written statement of the nature and extent of the loss. This must be sent to us within the time limit stated in the Proof of Loss provision.

PROOF OF LOSS. Written proof must be sent to us within 90 days after the date the loss occurs. If it was not reasonably possible to give us written proof within 90 days, we will not reduce or deny a claim for this reason, if proof is filed as soon as reasonably possible.

PAYMENT OF CLAIMS. Claims for benefits provided by this Policy will be paid as soon as written proof is received.

Benefits for loss of life will be paid in accordance with the beneficiary designation in effect at the time of payment. All other benefits are paid directly to the Covered Person, unless otherwise directed. If a benefit is unpaid at his death or if we feel he is not able to give a valid receipt for payment, we may pay an amount up to \$1,000 to any relative by blood or marriage who we deem to be equitably entitled.

If a Beneficiary is a minor and there is no parent or legal guardian, or if he cannot give a valid release, the benefit will be paid as follows: to the person or institution we decide has assumed custody or support of the Beneficiary.

Any payment that we make in good faith will fully discharge us to the extent of that payment.

RIGHT OF RECOVERY. If payments for claims exceed the maximum amount payable under any benefit provisions or riders of this Policy, we have the right to recover the excess of such payments.

PHYSICAL EXAMINATION AND AUTOPSY. At our expense, we have the right to have the Covered Person examined as often as necessary while a claim is pending. At our expense, we may require an autopsy unless the law forbids it.

LEGAL ACTIONS. No legal action may be brought to recover against this Policy within 60 days after written proof of loss has been given. No such action will be brought after three years from the time written proof of loss is required to be given.

If a time limit of this Policy is less than allowed by the laws of the state where the Covered Person lives, the limit is extended to meet the minimum time allowed by such law.

ACCUMULATION BENEFIT RIDER

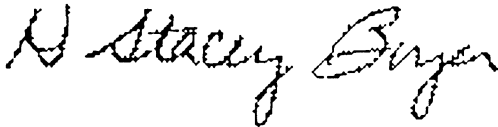
This Accumulation Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Every other year, beginning with the second anniversary of the initial Effective Date of Insurance, the Contributory Accidental Death Benefit will automatically increase by the percentage shown on the Schedule for all Covered Persons. The increases will stop as indicated in the Schedule.

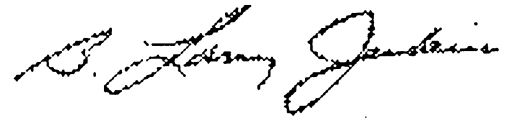
Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY



Secretary



President

EDUCATION BENEFIT RIDER

This Education Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Upon receipt of due proof of the primary insured's death, we will pay the benefit shown on the Schedule for each Dependent Child. The benefit payable is subject to the following conditions:

- (1) a death benefit must be payable under the terms of the Policy;
- (2) Dependent coverage must be in force on the date of the accident causing the Injury; and
- (3) the Dependent Child must be attending or enrolled to attend an institution of higher learning beyond the 12th grade level, as a full-time student, on the date of the accident causing the Injury.

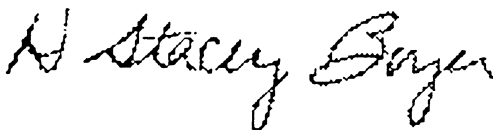
If there is Dependent coverage but there are no child(ren) who qualify for this benefit at the time of the primary insured's death, we will pay to his Beneficiary the amount shown on the Schedule.

Benefits provided by this Rider are paid in addition to the Amount of Insurance shown on the Schedule.

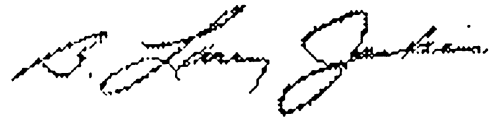
Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY



Secretary



President

TOTAL DISABILITY BENEFIT RIDER

This Total Disability Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Upon receipt of due proof that the Covered Person is Totally Disabled, we will pay the benefit shown on the Schedule. The benefit payable is subject to the following conditions:

- (1) the Total Disability must be a direct result of an Injury;
- (2) the Total Disability must begin within 365 days of the accident causing the Injury; and
- (3) the Covered Person must satisfy the Elimination Period specified on the Schedule.

Benefits begin on the first day of Total Disability which follows the end of the Elimination Period. They will continue until the earlier of:

- (1) the date the Covered Person is no longer Totally Disabled; or
- (2) the maximum number of payments shown on the Schedule has been paid.

One-thirtieth of the monthly benefit will be paid for each day of a partial month of Total Disability.

Any amount paid under this Rider will be paid in addition to any benefits payable resulting from the same accident.

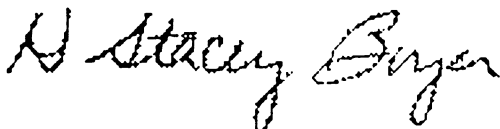
Totally Disabled means:

- (1) as the result of an Injury, the inability of the Covered Person to perform the material and substantial duties of any occupation for which he is reasonably fitted by education, training, or experience; or
- (2) if the Covered Person is not gainfully employed, the inability of the Covered Person to perform all normal daily activities of a person of like age and sex.

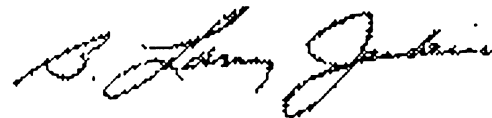
Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY



Secretary



President

ACCIDENT HOSPITAL INDEMNITY BENEFIT RIDER

This Accident Hospital Indemnity Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Upon receipt of due proof that a Covered Person is Confined as a result of an Injury which occurs while insurance is in force, we will pay the benefit shown on the Schedule. The benefit payable is subject to the following conditions:

- (1) the Confinement must begin within 365 days of the accident causing the Injury and while insurance is in force for the Covered Person; and
- (2) the Covered Person must satisfy the Waiting Period specified on the Schedule.

Benefits begin on the first day of Confinement which follows the end of the Waiting Period and will be paid retroactively to the first day of Confinement.

The Covered Person will receive benefits as long as he is Confined up to the Maximum Benefit Period specified in the Schedule for each period of Confinement.

One-thirtieth of the monthly benefit will be paid for each day of a partial month of Confinement.

Successive periods of Confinement will be considered as separate periods of Confinement; unless:

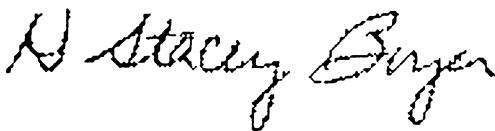
- (1) the new period of Confinement is due to the same cause or causes as the prior one; and
- (2) the new period of Confinement starts less than 90 days after the prior one stopped.

Benefits provided by this Rider are paid in addition to the Amount of Insurance shown on the Schedule.

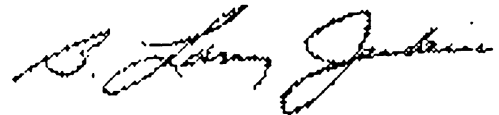
Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY



Secretary



President

COMMON CARRIER DEATH BENEFIT RIDER

This Common Carrier Death Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Upon receipt of due proof of the Covered Person's death, we will pay the benefit shown on the Schedule. The benefit payable is subject to the following conditions:

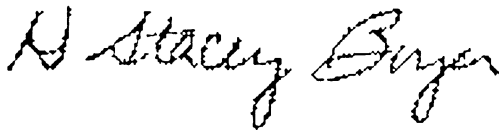
- (1) a death benefit must be payable under the terms of the Policy; and
- (2) the accident causing the Injury must occur while riding as a fare paying passenger in or on a licensed public conveyance operated by a common carrier for the regular transport of passengers.

Benefits provided by this Rider are paid in addition to the Amount of Insurance shown on the Schedule.

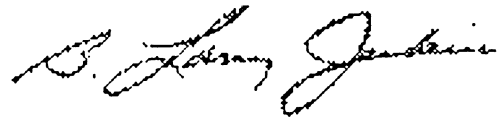
Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY



Secretary



President

DISMEMBERMENT BENEFIT RIDER

This Dismemberment Benefit Rider is a part of the Policy to which it is attached. It is issued in consideration of the application and the continued payment of the required premium.

Upon receipt of due proof that a Covered Person suffers a loss shown in the Table below, we will pay the benefit shown in the Table below. The benefit payable is subject to the following conditions:

- (1) the loss must occur as a direct result of an Injury; and
- (2) the loss must occur within 365 days of the accident causing the Injury.

TABLE OF LOSSES AND BENEFITS

<u>Loss:</u>	<u>Benefit</u> Percent of Amount of Insurance as shown <u>on the Schedule:</u>
Both Hands; Both Feet or Sight of Both Eyes	100%
One Hand and One Foot	100%
One Hand and Sight of One Eye	100%
One Foot and Sight of One Eye	100%
Speech and Hearing	100%
One Hand; One Foot or Sight of One Eye	50%
Speech or Hearing	50%
Thumb and Index Finger of Same Hand	25%

Loss is defined as follows:

- (1) Loss of Hand: complete severance at or above the wrist joint.
- (2) Loss of Foot: complete severance at or above the ankle joint.
- (3) Loss of Sight: total and irrecoverable loss of sight.
- (4) Loss of Speech: total and irrecoverable loss of speech.
- (5) Loss of Hearing: total and irrecoverable loss of hearing.
- (6) Loss of Thumb and Index Finger: complete severance at or above the metacarpophalangeal joint.

Loss of sight must be certified by a licensed physician specializing in ophthalmology and certified by the American Board of Ophthalmology.

Loss of speech and hearing must be certified by a licensed physician specializing in otolaryngology and certified by the American Board of Otolaryngology.

Any amount paid for any of the above losses will be deducted from any benefit payable for loss of life resulting from the same accident.

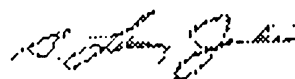
If a Covered Person sustains more than one loss from one accident, we will pay for the loss which has the greatest benefit. Payment will be made only for the loss that results from that accident, without regard to any loss from a prior accident.

Benefits are subject to all terms and conditions of the Policy. This Rider does not waive, alter or extend any provisions or limitations of the Policy except to the extent shown above.

This Rider takes effect and ends concurrently with the Policy to which it is attached.

MONUMENTAL LIFE INSURANCE COMPANY


Secretary


President

AD1013PRM

090117

ADDENDUM B:

BLANK COPY OF BENEFIT UPGRADE PACKET



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.

GUARANTEED OPEN ENROLLMENT NOTICE

YOU ARE ELIGIBLE FOR

\$150,000.00

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: **CYPRUS 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:

<u>Loss of</u>	<u>Benefit Amount Payable for Basic and Additional Coverage</u>
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.)

**ENROLL 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

PERSONAL INSURANCE STATEMENT

FINANCIAL INSTITUTION	
NAME OF INSURED	
CERTIFICATE NO.	EFFECTIVE DATE
PRESENT COVERAGE A recent audit of Financial Insurance Records indicates that you are insured under your Financial Institution Accident Insurance Program as shown below.	

DETACH HERE AND MAIL IN THE ENCLOSED ENVELOPE BY THIS DATE

**FINANCIAL INSTITUTION
ACCIDENT INSURANCE**

BENEFIT UPGRADE REQUEST

FINANCIAL INSTITUTION

RETURN FORM BY:

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!**

I CURRENTLY HAVE

BENEFITS AND WISH TO
UPGRADE THEM TO:

**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 debit, 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.

X

Signature

Date

AUTOMATIC SPEED PROCESSING FORM

25-014 (Rev. 4/92) Underwritten by: Monumental Life Insurance Company

ADDENDUM C:

Watts v. Life Insurance Co. of Arkansas

782 S.W.2d 47 printed in FULL format.

Velerick "Rick" WATTS v. LIFE INSURANCE COMPANY OF ARKANSAS

No. CA 89-269

Court of Appeals of Arkansas, Division One

30 Ark. App. 39; 782 S.W.2d 47; 1990 Ark. App. LEXIS 7

January 10, 1990, Opinion delivered

PRIOR HISTORY: [***1]

Appeal from Desha Circuit Court; Paul K. Roberts, Judge.

DISPOSITION: Affirmed.

HEADNOTES:

1. Judgment -- summary judgment. -- Ark. R. Civ. P. 56(c) provides that a summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

2. Appeal & error -- review of summary judgment. -- The appellate court needs only to decide if the granting of summary judgment was appropriate based on whether the evidentiary items presented by the appellee in support of the motion left a material question of fact unanswered.

3. Insurance -- when coverage begins. -- An applicant for insurance is afforded no coverage until the coverage becomes effective under the terms of the policy unless the receipt or application expressly provides for temporary insurance; only then is the applicant covered prior to the effective date provided in the policy.

4. Insurance -- when term is ambiguous. -- In order to be ambiguous, a term in an insurance policy must be susceptible to more than one equally reasonable [***2] construction.

5. Insurance -- terms not ambiguous. -- Where the date that was filled in after the application was submitted and that appellant claimed had caused an ambiguity in the contract was in that portion of the application clearly marked for use by appellee only, it was not susceptible to more than one reasonable construction.

6. Insurance -- no coverage provided for. -- Where

there was no provision for temporary coverage and the applicant died before coverage became effective under the terms of the policy, no insurance coverage was in effect at the time of her death.

7. Insurance -- insurer has right to define effective date of coverage. -- The insurer has the right to define in its policy the effective date for coverage.

8. Insurance -- power of courts to declare contract void. -- The power of the courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt.

COUNSEL: Bill R. Holloway, for appellant.

Davidson, Horne & Hollingsworth, A Professional Association, by: Allan W. Horne and [***3] Patrick E. Hollingsworth, for appellee.

JUDGES: Donald L. Corbin, Chief Judge. Cracraft and Mayfield, JJ., agree.

OPINIONBY: CORBIN

OPINION: [*40] [**48] This appeal comes to us from Desha County Circuit Court. Appellant, Velerick "Rick" Watts, appeals the trial court's granting of a motion for summary judgment by appellee, Life Insurance Company of Arkansas. We [*41] affirm.

Appellant is the named beneficiary in an application for accidental life insurance coverage which was completed on September 3, 1985, by Debbie Watts, appellant's deceased sister and the named insured. On September 18, 1985, Debbie Watts was murdered. On October 10, 1985, appellant submitted proof of claim to appellee. Appellee, upon learning of the death of Debbie Watts, returned the premium that was submitted with the application and denied appellant's claim for

benefits. Appellant on April 23, 1988, filed a complaint claiming entitlement to the proceeds of the accidental life insurance policy. Appellee responded by filing on June 13, 1988, a motion for summary judgment stating that there was no insurance in force at the time of decedent's death. From the trial court's granting of the motion on March 2, 1989, comes this appeal. [***4]

Appellant's only point for reversal is as follows:

I.

THE LOWER COURT ERRED WHEN IT CONCLUDED THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT TO BE DETERMINED BY A JURY WHEN THE EFFECTIVE DATE ON AN INSURANCE APPLICATION WAS LEFT BLANK UNTIL AFTER IT WAS SIGNED BY THE APPLICANT AND WHEN THERE IS NO LEGITIMATE NEED FOR A WAITING PERIOD BETWEEN THE DATE OF APPLICATION AND THE EFFECTIVE ISSUANCE OF THE POLICY IN THE CASE OF AN ACCIDENTAL DEATH LIFE INSURANCE POLICY.

[1, 2] Arkansas Rules of Civil Procedure 56(c) provides that a summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The appellate court needs only to decide if the granting of summary judgment was appropriate based on whether the evidentiary items presented by the appellee in support of the motion left a material question of fact unanswered. [*42] *Barraclough v. Arkansas Power & Light Co.*, 268 Ark. 1026, 597 S.W.2d 861 (Ark. App. 1980).

Appellee [***5] issued a group accident life insurance policy to Dumas Public Schools on October 1, 1983. On September 3, 1985, the decedent, an employee of Dumas Public Schools, applied to appellee for individual life insurance under the policy and on September 18, 1985, the decedent died. The policy states, "This policy, including the organization's application, endorsements and the attached papers, if any, constitutes the entire contract of insurance." The application which was attached to and formed part of the policy that was issued to Dumas Public School in 1983 provides:

After the policy effective date, newly eligible persons may apply within 31 days after they become eligible, and individual insurance will become effective on the first day of the month next following the date the application is received. Eligible persons who do not apply

either during the initial enrollment period or within 31 days after becoming eligible may thereafter apply, but individual insurance [**49] shall not become effective until the first day of the month next following the date the application is approved by the Company after submission of satisfactory evidence of insurability. [Emphasis added.]

[3-5] [***6] Appellant asserts that the effective date on the application for insurance was left blank until after it was signed by the decedent thereby making the policy ambiguous as to its effective date and creating a reasonable expectation in the decedent that coverage was in force from the time the premium was submitted with the application. Appellant urges this court to adopt the Pennsylvania rule that although the parties to an insurance contract may fix some future date as the effective date of the policy, the burden is on the insurance company to prove by clear and convincing evidence that the consumer had no reasonable basis for believing coverage would be immediately effective. However, we instead follow our supreme court's holding in *Employers Protective Life Assurance Company v. Gatlin*, 246 Ark. 244, 437 S.W.2d 811 (1969), under which an applicant for insurance is afforded no coverage until the coverage becomes effective under the terms of the policy. Only where the receipt or [*43] application expressly provides for temporary insurance is the applicant covered prior to the effective date provided in the policy. *Dove v. Arkansas Nat'l Life Ins. Co.*, 238 Ark. 1033, 386 S.W.2d 495 (1965). [***7] Furthermore, in order to be ambiguous, a term in an insurance policy must be susceptible to more than one equally reasonable construction. *Wilson v. Countryside Casualty Co.*, 5 Ark. App. 202, 634 S.W.2d 398 (1982). Here, the date which was filled in after the application was submitted and which appellant claims causes an ambiguity in the contract is in that portion of the application clearly marked for use by appellee only and as such is not susceptible to more than one reasonable construction.

[6] The above stated provision from the policy in this case is clear and unambiguous and, as there is no provision for temporary coverage, determines the effective date of the individual insurance applied for by the decedent. Because the decedent died prior to that date, no insurance coverage was in effect under the terms of the policy at the time of her death.

Appellant further asserts that as a matter of public policy, Arkansas law regarding the effective date of coverage for policies such as the one in this case should be changed. He argues that because of the nature of the accidental death policy there is no legitimate reason for a waiting period [***8] between the application for the

policy and its effective date.

[7] Arkansas courts have held that insurance contracts are subject to the same rules as other contracts as follows:

The insurance company had the right to fix the terms and conditions upon which it would insure the appellee, the latter had the right to accept or reject the insurance under these terms and conditions, but, having accepted the same, it was a contract between them, and, being in violation of no principle of law nor in contravention of the policy of the law, must be enforced according to its terms and meaning; and the courts have the right neither to make contracts for parties nor to vary their contracts to meet and fulfill some notion of abstract justice, and still less of moral obligation.

Interstate Business Men's Accident Assoc. v. Nichols, 143 Ark. 369, 220 S.W. 477 (1920) (quoting *Standard Life and Accident Ins. Co. v. Ward*, 65 Ark. 295, 45 S.W. 1065 (1898)). More [*44] specifically, our courts have long recognized the right of the insurer to define in its policy the effective date for coverage. See *Harris v. Mutual Benefit Health & Accident Ass'n*, 187 Ark. 1038, 63 S.W.2d 975 (1933). [***9]

The parties to the insurance contract in the case at bar freely entered into the agreement which provided for coverage to be effective no earlier than the first day of the month next following the date of the application. As the application was submitted on September 3, 1985, and the decedent died prior to October 1, 1985, there was at the time of her death no insurance [**50] coverage in effect under the terms of the policy.

[8] The power of the courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt. *Sirman v. Sloss Realty Co.*, 198 Ark. 534, 129 S.W.2d 602 (1939).

We are not convinced by appellant's arguments that this is one of those cases requiring the contract be declared void and, therefore, decline to do so. Furthermore, based on the foregoing we cannot say that the evidentiary items presented by the appellee in support of the motion for summary judgment left a material question of fact unanswered and, therefore, hold that the granting of summary judgment was appropriate. [***10]

Affirmed.