

1998

Marilyn Murdock v. Monumental Life Insurance Company, a foreign corporation doing business in Utah : Brief of Appellant

Utah Court of Appeals

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MARILYN MURDOCK,	:	
	:	
Plaintiff and	:	Case No. 981718-CA
Appellant,	:	
	:	Priority No. 15
vs.	:	
	:	
MONUMENTAL LIFE INSURANCE	:	
COMPANY, a foreign corporation	:	
doing business in Utah,	:	
	:	
Defendant and	:	
Appellee.	:	

**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND
FOR SALT LAKE COUNTY, THE HONORABLE SHEILA K. McCLEVE**

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IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION OF THE UTAH COURT OF APPEALS	1
ISSUES PRESENTED AND STANDARD OF REVIEW	1
STATEMENT OF THE CASE	2
I. Nature of the Case	2
II. Course of Proceedings and Disposition of Trial Court	3
STATEMENT OF RELEVANT FACTS	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
I. The Trial Court Erred by Concluding that Mr. Murdock's Death was not Accidental.....	8
II. The Trial Court Erred by Concluding that Mr. Murdock's Death Arose out of Felonious Conduct.....	11
III. The Trial Court Erred by Concluding that Monumental's Felony Exclusion was Not Ambiguous and by thus Failing to Construe the Exclusion in Favor of Coverage.....	17
CONCLUSION AND RELIEF SOUGHT	21
ADENDUM	

TABLE OF AUTHORITIES

<u>Alf v. State Farm Fire & Cas. Co.</u> , 850 P.2d 1272 (Utah 1993).....	2
<u>Ben Hur Life Ass'n v. Cox</u> , 181 N.E. 528 (Ind. App. 1932).....	14
<u>Browning v. Equitable Life Assurance Soc.</u> , 80 P.2d 348 (Utah 1938).....	12
<u>Denies v. First Nat'l Life Ins. Co.</u> , 144 So.2d 570 (La. App. 1962).....	15
<u>Draper City v. Estate of Bernardo</u> , 888 P.2d 1097 (Utah 1995).....	17
<u>Equitable Life & Casualty Ins. Co. v. Ross</u> , 849 P.2d 1187 (Utah App. 1993).....	19
<u>Glover v. Boy Scouts of Am.</u> , 923 P.2d 1383 (Utah 1996).....	7
<u>Hoffman v. Life Ins. Co. of North Am.</u> , 669 P.2d 410 (Utah 1983).....	9, 10
<u>Housh v. Pacific States Life Ins. Co.</u> , 37 P.2d 741 (Cal. 1934).....	20, 21
<u>Jordan v. Logia Suprema de la Alianza Hispano-Americana</u> , 206 P. 162 (Ariz. 1922).....	14
<u>LDS Hosp. v. Capitol Life Ins. Co.</u> , 765 P.2d 857 (Utah 1988).....	12, 13, 14, 16, 17, 18, 21
<u>Mountain States Tel. & Tel. v. Atkin, Wright & Miles</u> , 681 P.2d 1258 (Utah 1984).....	8
<u>Orr v. Travelers' Ins. Co.</u> , 24 So. 997 (Ala. 1899).....	20
<u>Richards v. Standard Accident Ins. Co.</u> , 200 P. 1017 (Utah 1921).....	9
<u>Sanders v. Metropolitan Life Ins. Co.</u> , 138 P.2d 239 (Utah 1943).....	11
<u>State ex rel. H.R.V.</u> , 906 P.2d 913 (Utah App. 1995).....	2
<u>State v. Richardson</u> , 843 P.2d 517 (Utah App. 1992).....	2
<u>Travelers Ins. Co. v. Kearl</u> , 896 P.2d 644 (Utah App. 1995).....	1, 7

<u>Wade v. Stangl</u> , 869 P.2d 9 (Utah App. 1994).....	2
<u>White v. Deseelhorst</u> , 879 P.2d 1371 (Utah 1994).....	1, 2, 7
Utah R. Civ. P. 56(c).....	7

JURISDICTION OF THE UTAH COURT OF APPEALS

Inasmuch as the Utah Supreme Court has transferred this appeal, this Court has original jurisdiction over the appeal pursuant to section 78-2a-3(2)(j) of the Utah Code.

ISSUES PRESENTED AND STANDARD OF REVIEW

1. Whether the trial court erred by concluding, either as a matter of law or undisputed fact, that the insured's death was not accidental, as is required for coverage under the insured's life insurance policy. (R. 69-72, 117-21, 129).

Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. White v. Deseelhorst, 879 P.2d 1371, 1374 (Utah 1994). Accordingly, the appellate court accords no deference to the trial court's conclusion that the facts are not in dispute nor the court's legal conclusions based on those facts. Travelers Ins. Co. v. Kearl, 896 P.2d 644, 646 (Utah App. 1995). In addition, the appellate court will view the properly submitted evidence, and the facts and inferences thereby supported, in a light most favorable to the party opposing summary judgment. Id. at 647.

2. Whether the trial court erred by concluding that the language of the "felony" exclusion contained in the insurance policy is clear and unambiguous and capable of only one interpretation. (R. 27-28, 73-75, 108-16, 129-30). Whether the terms of a contract are ambiguous is a question of law which the appellate

court reviews for correctness. Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1274 (Utah 1993); Wade v. Stangl, 869 P.2d 9, 12 (Utah App. 1994).

3. Whether the trial court erred by failing to construe the ambiguous insurance policy provisions in favor of coverage of the insured and to thus grant summary judgment in favor of the Plaintiff in this case. (R. 27-28, 73-75, 108-16, 129-30). This issue presents a question of law, dependent on the interpretation of binding case law, which the appellate court reviews for correctness. State v. Richardson, 843 P.2d 517, 518 (Utah App. 1992). Moreover, a trial court's determination of what legal principles to apply is reviewed for correctness. State ex rel. H.R.V., 906 P.2d 913, 915 (Utah App. 1995).

4. Whether the trial court erred by concluding, either as a matter of undisputed fact or of law, that the insured's death arose from the insured's committing an assault or felony such that the "felony" exclusion in the insurance policy applied. (R. 20-26, 76-78). Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. White v. Deseelhorst, 879 P.2d 1371, 1374 (Utah 1994).

STATEMENT OF THE CASE

I. Nature of the Case: This case involves a dispute between Marilyn Murdock, the beneficiary of a life insurance policy that provides accidental death benefits, and Monumental Life Insurance Company. Mrs. Murdock's husband, the insured, was killed when he was inadvertently run over by a van as he fled the

scene of a robbery, in which he participated. The insurance company refuses to pay the \$100,000 accidental death benefit, claiming that the insured's death was not accidental and was attributable to the insured's commission of an assault or felony, and is thus excluded from coverage under the policy.

II. Course of Proceedings and Disposition in Trial Court: Mrs. Murdock commenced an action against Monumental Life Insurance Company by filing a Complaint on February 10, 1998, alleging breach of contract, among other things. (R. 1). The insurance company filed an Answer on March 27, 1998, alleging that the death was not accidental and that any coverage could be legally denied pursuant to the aforementioned "felony" exclusion. (R. 9). Both parties moved for summary judgment, with Mrs. Murdock filing her motion on May 21, 1998, and with the insurance company filing its motion on June 12, 1998. (R. 16, 93). A hearing was held on the motions before Judge McCleve on July 17, 1999. (R. 160). Judge McCleve ultimately denied Mrs. Murdock's motion for summary judgment and granted summary judgment in favor of the insurance company. A Memorandum Decision was issued on August 4, 1998, and the Order was entered on August 18, 1998. (R. 137, 141). Copies of the Memorandum Decision and the Order are attached as Exhibit "A" of the Addendum to this Brief. This appeal ensued.

STATEMENT OF RELEVANT FACTS

1. On or about April 23, 1996, Zachary Murdock, participated in the robbery of two employees of a local movie theater as they attempted to make a late night deposit at a local bank. (R. 10, 67-68).
2. Upon completing the robbery, Mr. Murdock and an unknown accomplice fled the scene of the crime by running away on foot. (R. 10, 19, 68).
3. Mr. Murdock and the accomplice fled the immediate vicinity of the bank and ran into a field full of construction debris. (R. 68).
4. Once the two men had fled, the victims were no longer being attacked or threatened, but one of the victims, Richard Moser, subsequently got into a van and chased after Mr. Murdock and his accomplice in order to try to get the money back. (R. 91).
5. Mr. Moser ultimately drove the vehicle over two cement dividers, through a parking lot, and into the field full of construction debris. (R. 19, 68).
6. Approximately three hundred feet from the crime scene, the vehicle struck Mr. Murdock, causing his death. (R. 2, 10, 68, & R. 160, T. 25, 41).
7. Mr. Moser maintains that he did not intend to collide with Mr. Murdock. (R. 19, 38-52, 68, R. 160, T. 27).
8. The unknown accomplice escaped with the money. (R. 68, 91).

9. At the time of his death, Mr. Murdock's life was insured under two accidental life insurance policies with Monumental Life Insurance Company. (R. 66).

10. Mrs. Murdock, the decedent's wife, was named as the beneficiary of the policies purchased by Mr. Murdock. (R. 2, 10, 19).

11. Mrs. Murdock attempted to make a claim on the aforementioned life insurance policy as a result of the accidental death of her husband. (R. 2, 10).

12. The insurance company subsequently denied the claim and refused to pay the benefits, relying upon its assertion that Mr. Murdock's death was not accidental, and further relying upon an exclusion contained in the policy that purports to deny coverage if the death was caused by, resulted from, or contributed to by "committing an assault or felony." (R. 2, 10).

SUMMARY OF THE ARGUMENT

Mr. Murdock's death was accidental inasmuch as it was not the natural and probable consequence of his prior actions. It does not "ordinarily" follow under these circumstances that the victim would pursue Mr. Murdock and run him down in a vehicle; thus, Mr. Murdock's death was not a "natural" consequence of his prior actions. More importantly, the events were certainly not the "probable" consequence of Mr. Murdock's actions--more likely to happen than to not happen. Viewing the facts in the light most favorable to Mrs. Murdock, the trial court erred in concluding that Mr. Murdock's death was not an accident.

Mr. Murdock's death did not arise out of any assault or felony such that Monumental's "felony" exclusion applied to deny coverage. Exclusions must be strictly construed against the insurer. Moreover, there must be a sufficient causal link between any assault or felony and the death, including a sufficient relation in time and place, for the exclusion to apply. Because Mr. Murdock had already fled the crime scene, had already completed any assault or felony, and had already withdrawn any felonious intent by the time he was killed, there was no adequate causal relationship between the death and any assault or felony. In addition, the auto-pedestrian collision could be seen as an intervening and superseding cause, such as to eliminate the causation link. Furthermore, narrow construction of the exclusion leads to the conclusion that Mr. Murdock was not "committing" an assault or felony when his death occurred; thus, the exclusion should not apply. Finally, whether Mr. Murdock's death falls within the exclusion is a fact-sensitive question, inappropriate for determination on summary judgment. Indeed, when viewing the facts and inferences in a light most favorable to Mrs. Murdock's position, the trial court erred in granting summary judgment.

Finally, the language of the "felony" exclusion in the insurance policy is ambiguous. It is uncertain whether the exclusion refers to the insured's own acts or to those of another person or both. In addition, the uncertainty is not resolved by viewing all the listed exclusions as a whole. Ambiguities and uncertainties in an insurance contract must be construed against the insurance company and in favor

of coverage whenever possible, regardless of what the most logical construction would be. Accordingly, the trial court erred in determining that the "felony" exclusion was plain and unambiguous in this case.

ARGUMENT

The trial court granted summary judgment in favor of Monumental Life Insurance Company (hereinafter "Monumental"), concluding, as a matter of law, that Mr. Murdock's death arose out of his felonious conduct, that his death was not accidental, and that the death benefit is excluded by the plain meaning of the parties' insurance contract.

"Summary judgment is appropriate only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." Glover v. Boy Scouts of Am., 923 P.2d 1383, 1385 (Utah 1996); see also Utah R. Civ. P. 56(c). Inasmuch as summary judgment is granted as a matter of law, the trial court's ruling is reviewed for correctness. White v. Deseelhorst, 879 P.2d 1371, 1374 (Utah 1994). Accordingly, the appellate court accords no deference to the trial court's conclusion that the facts are not in dispute, nor the court's legal conclusions based on those facts. Travelers Ins. Co. v. Kearl, 896 P.2d 644, 646 (Utah App. 1995). Finally, all

[d]oubts, uncertainties or inferences concerning issues of fact must be construed in a light most favorable to the party opposing summary judgment. Litigants must be able to present their cases fully to the court before judgment can be rendered against them unless it is obvious . . . that the party opposing judgment can establish no right to recovery.

Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, 681 P.2d 1258, 1261 (Utah 1984).

**I. The Trial Court Erred by Concluding that
Mr. Murdock's Death was not Accidental.**

The parties' insurance contract provided for the payment of an accidental death benefit for situations in which "death occurs as a direct result of an injury" and "within 365 days" of the occurrence of the event causing the "injury". Moreover, the term "injury" is defined in the policy as "bodily injury caused by an accident." A copy of the policy is attached as Exhibit "B" in the Addendum to this Brief.

Mrs. Murdock has the burden to establish that her husband died within the aforementioned parameters giving rise to coverage under the policy. Se generally Quaker State Mini-Lube, Inc. v. Fireman's Fund Ins. Co., 868 F.Supp. 1278 (D. Utah 1994). The trial concluded that, as a matter of law, Mr. Murdock's death was not accidental. By so concluding, the trial court removed the insured from the scope of coverage of the accidental death policy.

Nevertheless, when viewing the facts in the light most favorable to Mrs. Murdock, and when applying the proper legal principles to those facts, the trial court erred by reaching the conclusion it did.

The term "accident" is not expressly defined in the policy. However, Utah courts have adequately set forth the standard to apply when determining if an event should be considered an "accident" or "accidental" for purposes of an accidental

death policy. In 1921, the Utah Supreme Court first indicated that "accident" and "accidental" are:

descriptive of means which produce effects which are not their natural and probable consequences An effect which is the natural and probable consequence of an act or course of action is not an accident, nor is it produced by accidental means. It is either the result of actual design, or it falls under the maxim that every man must be held to intend the natural and probable consequences of his deeds.

Richards v. Standard Accident Ins. Co., 200 P. 1017, 1023 (Utah 1921). That court further declared that:

[t]he natural consequences of means used [is] the consequence which ordinarily follows from their use--the result which may be reasonably anticipated from their use, and which ought to be expected. The probable consequence of the use of given means is the consequence which is more likely to follow from their use than it is to fail to follow.

Id.

Indeed, Utah courts still follow these same guidelines when determining whether death resulted from an accident for purposes of insurance coverage. See Hoffman v. Life Ins. Co. of North Am., 669 P.2d 410, 415-16 (Utah 1983). In Hoffman, the court further clarified that "a person is a victim of an accident when, from the victim's point of view, the occurrence causing the injury or death is not a natural and probable result of the victim's own acts." Id. at 416 (emphasis in original).

Moreover, "the test is not whether the result was foreseeable, but whether it was expected. . . . [S]ince the common meaning of the term ["accident"] is

defined in terms of whether the event was naturally and probably expected or anticipated by the insured, it is that definition which must be applied, and not one founded on foreseeability." Id.

While it may have been "foreseeable" that one of Mr. Murdock's robbery victims, though not the owner of the stolen property and no longer in immediate danger, might give pursuit in a vehicle, might drive over cement barriers and into a field full of construction debris, and might unintentionally collide with Mr. Murdock, causing his death, such a sequence of events certainly could not be viewed to be the "natural and probable consequence" of the completed robbery. This especially so if the events are analyzed from Mr. Murdock's point of view, as Hoffman mandates, and if the facts are viewed in a light most favorable to concluding the death was accidental, as determination of a summary judgment motion would mandate.

It does not "ordinarily" follow under these circumstances that the victim would pursue Mr. Murdock and run him down in a vehicle; thus, Mr. Murdock's death was not a "natural" consequence of his prior actions. More importantly, the events were certainly not the "probable" consequence of Mr. Murdock's actions--more likely to happen than to not happen. The result would seem even less probable in light of the fact that Mr. Moser did not intend to run down Mr. Murdock with the van.

Applying these established rules, the Utah Supreme Court has previously held that two juvenile boys, intentionally fleeing from a law enforcement officer in a stolen vehicle at speeds exceeding eighty miles per hour, could not reasonably have anticipated that death or injury was likely to result from a high-speed chase. Sanders v. Metropolitan Life Ins. Co., 138 P.2d 239, 242 (Utah 1943).

It is clearly more likely that death or injury would result under the circumstances occurring in Sanders than under the circumstances involving Mr. Murdock. Even so, the Sanders court concluded that the boys' death was accidental. The trial court in our case even indicated that she even considered that the events "might be foreseeable, but not likely." (R. 160, T. 29). Accordingly, the trial court erred by concluding that Mr. Murdock's death was not accidental.

II. The Trial Court Erred by Concluding that Mr. Murdock's Death Arose out of Felonious Conduct.

The parties' life insurance policy in this case also contains a list of exclusions from coverage. More specifically, the insurance contract provides that "We will not pay a benefit for a loss which is caused by, results from, or contributed to by . . . committing an assault or felony." It is Mrs. Murdock's contention that this exclusion is ambiguous because it is unclear whose conduct it refers to. In any event, assuming, arguendo, that the exclusion language can only be referring to Mr. Murdock's "committing an assault or felony," the trial court erred by concluding, as a matter of law, that his death in fact arose from his committing an assault or felony, and that any death benefit was therefore excluded.

Utah law makes it clear that the insurer has the burden to prove that an exclusion to coverage applies such that the insurer can escape liability. Browning v. Equitable Life Assurance Soc., 80 P.2d 348, 350-51 (Utah 1938). Moreover, Utah courts apply the basic principle that "exclusionary clauses are to be strictly construed against the insurer. It must not be forgotten that the purpose of insurance is to insure, and that construction should be taken which will render the contract operative, rather than inoperative." LDS Hosp. v. Capitol Life Ins. Co., 765 P.2d 857, 859 (Utah 1988) (quoting Phil Schroeder, Inc. v. Royal Globe Ins. Co., 659 P.2d 509, 511 (Wash. 1983) (further indicating that "[e]xclusion clauses are strictly construed against the insurer, especially if they are of uncertain import. An insurer may, of course, cut off liability under its policy with a clear language, but it cannot do so with that dulled by ambiguity.")).

In LDS Hospital, the court was construing an accident policy exclusion that indicated that benefits would not be paid in cases "arising out of an attempt at assault or felony." Id. at 858. The Utah Supreme Court chose to adopt the position that the insurer had to first establish a "causal relationship" between the insured's injuries and the felony violation, relying on a Colorado case for the principle that "in order to relieve the insurer of liability in such situations, the insured must have been actually engaged in a felony at the time and place of the injury." Id. at 860.

The court in LDS Hospital then proceeded to analyze the facts of that case, and concluded that the felony "was merely incidental to" the insured's injuries and that the insurer improperly denied coverage. Id. The court so concluded because the insured's conduct in driving while legally intoxicated and colliding head-on with another vehicle did not technically become felonious until the person with whom the insured collided died five minutes later. Id. Accordingly, despite the fact that the events giving rise to the felony of manslaughter, to which the insured later pleaded guilty, had already been set in irreversible motion at the time the insured was injured in the collision, the insured's injuries were not sufficiently caused by the felony. Id. at 858, 860.

Applying the same principles of strict construction and burden of proof to this case, the trial court should not have concluded, as a matter of law, that Mr. Murdock's death had a sufficient causal link with the commission of any assault or felony to allow Monumental to avoid paying the benefits for which Mr. Murdock contracted.

Any crime committed by Mr. Murdock was completed by the time he fled the bank area. The defining elements of any felony or assault that could have occurred do not include "running away," as was occurring in this case when Mr. Murdock was inadvertantly killed by Mr. Moser. If Mr. Murdock had committed an assault or felony, he was already guilty of the assault or felony whether he ran away or not, and whether he actually escaped or not. Accordingly, Mr. Murdock's

fleeing a crime scene and being accidentally run over, were not sufficiently connected to the "time and place" of crime to establish the necessary causal link any more than the events in LDS Hospital were tied to the time and place of the felony committed by the insured in that case.

Indeed, other courts have required a legally proximate causal connection between the allegedly excluded conduct and the injury received. Where the life policy contained an exclusion for death resulting from a violation of the law, an Indiana court held that "[n]ot only must there be a causative connection between the violation of law and the death, but such connection must be direct and not indirect: proximate or immediate, and not remote." Ben Hur Life Ass'n v. Cox, 181 N.E. 528, 531 (Ind. App. 1932). The auto-pedestrian collision that caused Mr. Murdock's death could easily be considered an intervening and superseding cause to break the chain of proximate causation.

Of more significance to our case, when the insured was killed when his own gun discharged in a scuffle with a person whose home the insured had just burglarized and from whom the insured was trying to escape, the Arizona Supreme Court held that "[t]he cause of his injury was not the burglary, but the accidental discharge of the weapon after the commission of the crime. Where one is killed while attempting to escape or to avoid arrest after the commission of the crime it is not within the [felony] exception." Jordan v. Logia Suprema de la Alianza Hispano-Americana, 206 P. 162, 164 (Ariz. 1922) (emphasis added).

Moreover, cases in other jurisdictions have held that if the insured is no longer engaged in the excluded event at the time of his death, then the exclusion no longer applies, even if the chain of events may have included, and to an extent precipitated by, the conduct of the insured intended to be excluded under the policy. For example, in Denies v. First Nat'l Life Ins. Co., 144 So. 2d 570 (La. App. 1962), the life insurance policy included an exclusion in the case where death occurred "while fighting . . . or violating the law." Id. at 572. The insured in that case had provoked a bar fight, but had been persuaded to leave the bar and had reached his vehicle when the person with whom he had been fighting inside approached the insured and the two engaged in fighting again, during which time another individual shot and killed the insured. Id. at 571-73. The court concluded that the exclusion should not apply because the insured had "withdrawn from the affray" and was no longer "the aggressor" when he was shot. Id. at 573. The court reached this conclusion despite the fact that the insured was fighting at the time of his death, and even though it would not seem unreasonable that the person with whom he had initiated the fighting inside the bar might come after him outside the bar.

The evidence in our case would support an inference that Mr. Murdock, similarly, had withdrawn any felonious intent at the time he was running away. The trial court in our case seemed to be of the opinion that "[f]leeing is not withdrawing felonious intent." (R. 160, T. 18). Nevertheless, what more could

Mr. Murdock do to withdraw such intent? If a vehicle was fast approaching from behind, it would not be logical to simply stop in place. Death or serious injury would become even more possible by doing so. In addition, the accomplice escaped with the stolen money. No evidence has ever indicated that Mr. Murdock was carrying the money bag, which he could then have dropped to evidence his present intent.

Clearly Mr. Murdock's actual intent at the time of his death, like that of the insured in Denies, should be extremely relevant to determine whether or not he was committing an assault or felony at the time. Viewing the facts and inferences in a light most favorable to Mrs. Murdock, the trial court should have at least concluded that a genuine issue of material fact existed with respect to Mr. Murdock's intention at the time of his death.

Admittedly, Monumental's language is broad, but it still must be construed strictly and, if possible, in favor of coverage. The LDS Hospital court also relied heavily on the policy's use of the term "attempt" in the exclusion. 765 P.2d at 860-61. In our case, Monumental's policy employs the term "committing" with reference to an assault an felony. The rule of strict and narrow construction dictates that Monumental's felony exclusion should only apply if it arises in connection with the "committing" of an assault or felony, stated in the present tense, and not if it arises after the assault or felony has already been committed, as

would apply to Mr. Murdock's situation. LDS Hospital would seem to compel such a conclusion.

Indeed, a broad reading of Monumental's felony exclusion could result in a near limitless exclusion. If the insured is a convicted felon and is incarcerated and dies in an accidental fire while doing nothing wrong at the time, Monumental could still make a claim that the insured's death was "contributed to" by the felony. Such a result, however, would defeat the purpose of procuring insurance, and would not be upheld by Utah courts.

Accordingly, the trial court erred by concluding that Monumental had met its burden of proof and that its felony exclusion applied, as a matter of law, to exclude coverage of Mr. Murdock under the facts of this case. In any event, whether or not Mr. Murdock's death was sufficiently connected to the committing of an assault or felony is a very fact-sensitive question. "Fact sensitive cases such as this do not lend themselves to a determination on summary judgment." Draper City v. Estate of Bernardo, 888 P.2d 1097, 1101 (Utah 1995) (being cited for the general proposition stated). The question should have been put to the jury.

III. The Trial Court Erred by Concluding that Monumental's Felony Exclusion was Not Ambiguous and by thus Failing to Construe the Exclusion in Favor of Coverage.

Utah courts do not favor insurance policy exclusions because they render the insurance contract inoperative rather than operative. See LDS Hosp. v. Capitol Life Ins. Co., 765 P.2d 857, 858-59 (Utah 1988). This is why exclusions are to be

construed strictly against the insurer. Id. Moreover, the law is clear in Utah that "any ambiguity or uncertainty in the language of an insurance contract must be resolved in favor of coverage." Id. at 858 (indicating as well that "since the policy is drawn by the insurer, ambiguities are construed against that party").

An insurer, of course, has an incentive to draft broad, vague, and uncertain exclusions so as to try to exclude coverage under the most possible interpretations. Accordingly, Utah courts follow the rule that "[a]n insurer may, of course, cut off liability under its policy with a clear language, but it cannot do so with that dulled by ambiguity." Id. at 859.

The exclusion in this case simply states that Monumental "will not pay a benefit for a loss which is caused by, results from, or contributed to by . . . committing an assault or felony." The exclusion does not identify whether it is referring to the committing of an assault or felony by the insured or by a third party.

Utah courts will generally evaluate whether the insurance contract language would "be plain to a person of ordinary intelligence and understanding, viewing the matter fairly and reasonably, in accordance with the usual and natural meaning of the words, and in light of the existing circumstances, including the purpose of the policy." Id. In other words, an ordinary insured, or purchaser of the policy, must plainly understand what is being excluded. Moreover, the "contract language may be ambiguous if it is unclear, omits terms, or if the terms used to express the

intention of the parties may be understood to have two or more plausible meanings." Equitable Life & Casualty Ins. Co. v. Ross, 849 P.2d 1187, 1192 (Utah App. 1993).

The ordinary insured would not know whether this exclusion is referring to his or her own conduct or to the conduct of some third person which may directly or indirectly result in the insured's death. Rest assured that the insurance company would like to claim exclusion from coverage under any and all scenarios. The trial court apparently accepted this all-inclusive interpretation, indicating that the exclusion language in question "means anybody can commit an assault or felony and they won't pay on the insured's case." (R. 160, T. 9).

The confusion is amplified by the fact that the exclusions are not all drafted in parallel fashion, and some clearly refer to the insured and others clearly to third parties. For example, the policy excludes "a loss which is caused by . . . suicide." Obviously this exclusion refers to the insured's suicide. However, the policy also refers to "a loss which is caused by . . . declared or undeclared war or any act of war." In all likelihood, the insured will not be waging war; thus, this exclusion refers to acts of third persons. Others are simply unclear, including the exclusions for losses resulting from "alcohol intoxication," "full-time military service," "taking any drug," or "committing an assault or felony."

To an extent, the trial court recognized the ambiguity but simply ignored it. The court expressed her view that the exclusion "could be argued to be ambiguous

because I don't know to whom they are referring," but later declared that "I can't imagine that there is any way to totally unambiguously without any vagueness communicate in plain English totally perfectly." (R. 160, T. 12, 14).

Of course, any confusion could have been resolved by inserting the words "by the insured" or "by a third party" or a combination of the two. Nevertheless, it does not contain such language. When faced with a similar claim of uncertainty as to whose conduct is being referred, one old court held the view that the rule that "ambiguous terms . . . are construed most strongly against the insurer" did not apply "for the reason that the language employed expresses clearly an exemption from the risk of injuries inflicted intentionally by another as well as by the insured." Orr v. Travelers' Ins. Co., 24 So. 997, 998 (Ala. 1899). The implication of the holding was that the exclusion would have been considered ambiguous if it was not clear whether it referred to acts of the insured or another party.

Moreover, insurance companies have attempted to construe such vague exclusions to refer to the acts of third persons, in addition to the acts of the insured. For example, in Housh v. Pacific States Life Ins. Co., 37 P.2d 741 (Cal. 1934), the accidental death policy provided that it did "not cover any loss resulting from . . . suicide, sane or insane, or any attempt thereat, or intentionally inflicted injuries." Id. at 742. The insured was shot to death by a companion. Id. The insurance company sought to deny coverage because death resulted from an intentional injury. Id. The court upheld coverage, claiming that exclusion "would

logically refer to the acts of the parties to the contract [namely the insured in this case] and in the case of ambiguity in a policy of insurance as has often been said, such uncertainty is resolved against the insurer. Id. at 743 (emphasis added).

In light of the uncertainty and ambiguity existing in this case, the trial court was obligated to construe the exclusion in favor of coverage, even if such a construction is not the most logical possible construction. That legal principle is most plainly applied in the LDS Hospital case. The most logical reading of the exclusion in that case would have led the court to exclude coverage. However, because of the ambiguity, the court construed the exclusion in favor of coverage. 765 P.2d at 860-61.


Accordingly, the trial court erred by concluding that the exclusion plainly and unambiguously applied to exclude coverage in this case.

CONCLUSION AND RELIEF SOUGHT

On the basis of the foregoing arguments and analysis, the Court of Appeals should reverse the trial court and set aside the summary judgment entered in favor of Monumental. In addition, the Court of Appeals should conclude that the "felony" exclusion in this case is ambiguous and direct that it be construed in favor of coverage. In the alternative, the Court of Appeals should either conclude as a matter of law that Mr. Murdock's death was not sufficiently connected to the

commission of any assault or felony or else remand the case for trial with respect to that issue.

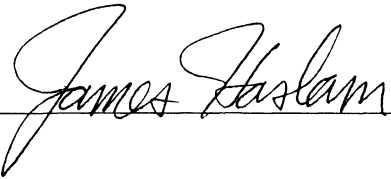
DATED this 19th day of July, 1999.


G. ERIC NIELSON
JAMES K. HASLAM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be mailed by U.S. mail, postage
prepaid, ²a true and correct copy^{ies} of the foregoing **BRIEF OF APPELLANT** this
19th day of July, 1999, to the following:

Joy L. Clegg
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145



Tab 1

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

MARILYN MURDOCK,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 980901404
vs.	:	
MONUMENTAL LIFE INSURANCE	:	
COMPANY, a foreign corporation doing		
business in Utah,		
Defendant.	:	

Plaintiff's Motion for Summary Judgment and defendant's cross Motion for Summary Judgment came on for hearing on July 17, 1998. Defendant's submitted courtesy copies of cases cited in briefs on July 20, 1998 and plaintiff submitted courtesy copies of cases on July 28, 1998. Now being fully advised in the premises, the Court finds that no material issues of fact are in dispute in this case.

In April of 1996 Richard Moser and Deb Alires went to deposit the night's theatre receipts at a Zion's Bank night drop. Zachary Murdock, the Plaintiff's husband, and an unknown accomplice took the money Mr. Moser carried from him after pointing a hand gun at him, threatening to shoot him, hitting him repeatedly with a stungun, tearing his clothing, gouging his chest and kicking him to the ground. They continued hitting him with the stungun and kicking him after he fell to the ground. After also attacking Ms. Alires, the men ran out of the bank area. To get the money back, Mr. Moser got into a van and pursued the two men into a field full of construction debris. The man with the money

got into a gray truck and Mr. Moser tried to block his path with the van. The robber got away and Mr. Moser's van developed mechanical problems so he gave up the chase. Later Mr. Moser learned he had struck and killed one of the robbers when he was driving the van. The robber who was killed was the plaintiff's husband. He had obtained group accidental death insurance with the defendant. Under the decedent's plan an accidental death benefit will not be paid to the beneficiary for a loss which has been excluded from coverage. The pertinent exclusionary language reads:

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

(4) . . . committing an assault or felony; . . . “

This Court finds as a matter of law that the decedent's death arose out of his felonious conduct because Mr. Moser's immediate chase of his attackers in flight was a natural and probable consequence of their brutal robbery of him. Accordingly plaintiff's husband's death was not accidental. However, for argument's sake, even if his death (because unexpected by him) could somehow be considered to be accidental, nonetheless, the death benefit is clearly excluded by the plain meaning of the language of the contract. There is no ambiguity in the wording or its context. The defendant's felonious conduct is excluded from coverage. The Court adopts defendant's arguments in support of defendant's Motion as consistent with the Court's ruling.

The Court therefore denies plaintiff's Motion for Summary Judgment and grants defendant's Motion for Summary Judgment. The defendant is to prepare an Order consistent with the Court's ruling.

Dated this 3rd day of August, 1998.



SHEILA K. MCCLEVE
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 4 day of August, 1998:

G. Eric Nelson
BERTCH & BIRCH
Commerce Center, Suite 100
5296 S. Commerce Drive
Salt Lake City, UT 84107

Joy L. Clegg
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
P O Box 45000
Salt Lake City, UT 84145



A handwritten signature, likely "Joy L. Clegg", is written over a circular stamp. The stamp contains some illegible text and a date. A horizontal line is drawn across the signature and stamp.

FILED DISTRICT COURT
Third Judicial District

AUG 18 1998

SALT LAKE COUNTY

By _____

Deputy Clerk 

JOY L. CLEGG (A4138)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendant
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

MARILYN MURDOCK,

ORDER

Plaintiff,

vs.

MONUMENTAL LIFE INSURANCE
COMPANY, a foreign corporation doing
business in Utah,

Civil No. 980901404

Judge Sheila K. McCleve

Defendant.

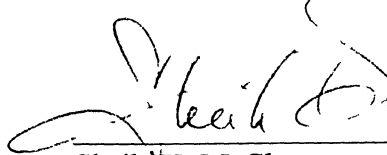
Plaintiff's Motion for Summary Judgment and defendant's Cross Motion for Summary Judgment came on for hearing on July 17, 1998, with Joy L. Clegg of Snow, Christensen & Martineau appearing as counsel for defendant, and G. Eric Nielson appearing as counsel for plaintiff. Defendant submitted courtesy copies of cases cited in briefs on July 20, 1998, and plaintiff submitted courtesy copies of cases on July 28, 1998. Being fully advised in the premises, the Court finds that there are no material issues of fact and it is hereby

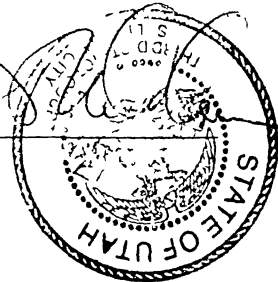
ORDERED:

1. That plaintiff's Motion for Summary Judgment is denied; and
2. That defendant's Motion for Summary Judgment is granted and that judgment is hereby granted in favor of defendant and against plaintiff, and that plaintiff's Complaint is dismissed with prejudice, no cause of action, without costs.


DATED this 18th day of AUGUST, 1998.

BY THE COURT:


Sheila K. McCleve
District Court Judge



APPROVED AS TO FORM this
10 day of August, 1998


G. Eric Nielson
Attorney for plaintiff

Tab 2

GROUP ACCIDENTAL DEATH PLAN

CERTIFICATE OF INSURANCE

We certify that, subject to the terms of the Group Policy, the Member named in the Certificate schedule (referred to as you, your and yours) is insured for the benefits described in this Certificate. Your eligible Dependent, if any, for whom premiums have been paid is also insured for the benefits described in this Certificate. You and your Dependent are referred to as the Covered Person.

EFFECTIVE DATE OF INSURANCE

The insurance takes effect at 12:01 A.M. Standard Time on the Effective Date shown on the Certificate Schedule.

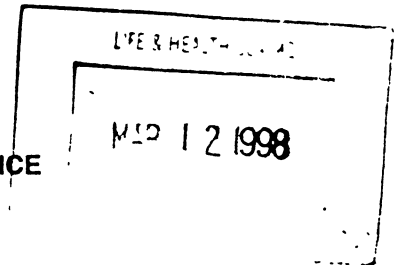
In this Certificate Monumental Life Insurance Company will be called we, our or us. This Certificate summarizes certain provisions of the Group Policy. All coverage and provisions are subject to those in the Group Policy issued to the Policyholder.

THIRTY DAY RIGHT TO EXAMINE CERTIFICATE

If you are not satisfied for any reason, you may return your Certificate within 30 days after receipt. Your premium will be refunded. When so returned, the Certificate is void from the beginning. Return the Certificate to us at our Home Office or to our authorized agent.

Our President and Secretary witness this Certificate.

PLEASE READ YOUR ACCIDENTAL DEATH INSURANCE
CERTIFICATE CAREFULLY



Secretary

President

NAME AND ADDRESS OF MEMBER

Zack Murdock
1852 E. 4650 S.
Salt Lake City, UT 84117 5102

FIRST SECURITY BANK CUSTOMER

CERTIFICATE NUMBER

894-0641332

EFFECTIVE DATE

01/15/94

POLICY NUMBER

MZ0800175 0562F

POLICYHOLDER

NATIONAL FINANCIAL INSTITUTION
GROUP INSURANCE TRUST

PARTICIPATING INSTITUTION

FIRST SECURITY BANK

-- SCHEDULE OF BENEFITS --

ACCIDENTAL DEATH BENEFITS

MEMBER

UNDER AGE 65	\$100,000.00*
AGE 65 THROUGH 74	\$75,000.00
AGE 75 THROUGH 79	\$50,000.00
AGE 80 THROUGH 84	\$25,000.00
AGE 85 AND OVER	\$.00

SPOUSE

90% OF MEMBER BENEFIT (100% IF
CHILDREN NOT COVERED)

CHILDREN

10% OF MEMBER BENEFIT (15% IF
SPOUSE NOT COVERED)

* \$50,000.00 Effective 01/15/94

* \$50,000.00 Effective 07/15/94

- DUPLICATE -

0011

<u>PROVISION</u>	<u>PAGE NUMBER</u>
Accidental Death Benefit	3
Changes in Coverage	3
Definitions	2, 3
Exclusions	3
Exposure and Disappearance	3
General Provisions	5
Premiums	4, 5
Schedule of Benefits	2
When Coverage Ends	4
When There Is A Claim	5, 6

SCHEDULE OF BENEFITS

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

ACCIDENT INSURANCE BENEFITS*

Contributory Accidental Death:

An amount of insurance as selected by you from \$25,000 to \$150,000 in increments of \$25,000.

Dependent spouse is insured for 90% of your benefit if children are covered; 100% of your benefit if children are not covered.

Dependent children are insured for 10% of your benefit if a spouse is covered; 15% of your benefit if spouse is not covered.

- * All benefits for Covered Persons will reduce to 75% of the Amount of Insurance Benefit on the date you attain age 65, to 50% at age 75, and to 25% at age 80; coverage terminates at your age 85.

DEFINITIONS

When used in this Certificate 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.

DEPENDENT means your spouse, unless you are legally separated; your 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 you for support and maintenance and must live in a parent-child relationship with you.

A spouse or child who is insured under the Group 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.

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

INJURY means bodily injury caused by an accident. The accident must occur while the Covered Person's insurance is in force under the Group Policy. The Injury must be the direct cause of the 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 the Group Policy and any attached Riders.

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

POLICYHOLDER means the legal entity in whose name the Group Policy is issued as shown on the Schedule of Benefits.

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

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

CHANGES IN COVERAGE

If, after your Effective Date of Insurance, you add an eligible Dependent or request a change in benefits for a Covered Person, the Effective Date of Insurance for the new coverage will be the beginning of the Policy Month following our acceptance of the enrollment form or change request, subject to the payment of any additional required premium.

NEWBORN DEPENDENTS

Newborn Dependents are covered at birth, however, any required premium must be paid within 31 days from birth to continue coverage beyond 31 days.

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 the Group 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 Group 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) full-time military service;
- (4) participating in a riot; committing an assault or felony;
- (5) Sickness or its medical or surgical treatment, including diagnosis;
- (6) bacterial infection except through a wound accidentally sustained;
- (7) operating or riding in any kind of aircraft except as a fare-paying passenger on a regularly scheduled commercial flight;
- (8) alcohol intoxication, as defined in the state where the accident occurred;
- (9) taking of any drug, medication, narcotic or hallucinogen, unless as prescribed by a Physician;
- (10) taking of alcohol in combination with any drug, medication or sedative;
- (11) voluntary gas inhalation or poison voluntarily taken, administered or inhaled;
- (12) riding or driving as a professional in any kind of race for prize money or profit.

WHEN COVERAGE ENDS

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

- (1) The date the Group Policy is terminated;
- (2) The premium due date you fail to pay the required premium, except as provided in the Grace Period;
- (3) The premium due date after you are 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;
- (5) The premium due date next following your 85th birthdate.

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

- (1) The date your 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 you 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 you die while insured under the Group Policy, your 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 your death at the applicable premium. However, if there is no spouse upon your death, coverage for Dependent Children will end.

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

PREMIUMS

We provide insurance coverage in return for premium payment. Premiums are payable by you. Your first premium is due on your Effective Date. Premiums are paid to us on or before the due date. The initial premium rates are shown on your Certificate Schedule.

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 the Group 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. You have 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, you may reinstate coverage within 90 days following the last unpaid premium due date. You must pay all overdue premiums. The reinstated policy will not cover a loss which occurred during the lapse period.

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

GENERAL PROVISIONS

BENEFICIARY CHANGES You may name any person to be your Beneficiary at the time of enrollment. You may change your Beneficiary at any time. When we receive and record the change request, it will take effect as of the date you signed it. If you die 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 you, that interest ends. The Beneficiaries that survive will share equally unless you make a written request to the contrary.

You are your Dependent's Beneficiary. If you die before your 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.

INCONTESTABILITY. No statement made by you can be used in a contest after your insurance has been in force two years during your lifetime. No statement you make can be used in a contest unless it is in writing and signed by you.

MISSTATEMENT OF AGE. If the age of a Covered Person has been misstated in the enrollment form for insurance under the Group 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.

OPTIONAL SETTLEMENT METHODS. You, 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 canceled certificates or policies will be returned to you.

RIGHT TO EXAMINE. The Policy is in the possession of the Policyholder; it will be available to be inspected by you at any time during business hours at his office.

WHEN THERE IS A CLAIM

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 it is shown that written proof of the loss was given as soon as reasonably possible.

PAYMENT OF CLAIMS. Claims for benefits provided by the Group 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 the Group 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 the Group 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 the Group 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.



(referred to as we, us, our)

CERTIFICATE OF INSURANCE

Subject to the terms of Policy No. MZ 0800175/0561F, issued to:

**TRUSTEES OF THE NATIONAL FINANCIAL
INSTITUTION GROUP INSURANCE TRUST**

**c/o First Security Bank
(the Policyholder)**

We certify that, subject to the terms of the Group Policy, the Member to whom this Certificate is issued (referred to as you, your and yours) is insured for the benefits described in this Certificate on and following the effective date on which he is eligible.

In this Certificate Monumental Life Insurance Company will be called we, our or us. This Certificate summarizes certain provisions of the Group Policy. All coverage and provisions are subject to those in the Group Policy issued to the Policyholder.

SCHEDULE OF BENEFITS

<u>Your Age at Death</u>	<u>Benefit</u>
Under Age 65	\$1,000.00
Age 65 but less than age 75	\$ 750.00
Age 75 but less than age 80	\$ 500.00
Age 80 but less than age 85	\$ 250.00

*Benefits terminate on the premium due date following the date you attain age 85.

DEFINITIONS

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

INJURY means bodily injury caused by an accident. The accident must occur while your insurance is in force under the Group 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.

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

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

ACCIDENTAL DEATH BENEFIT

When we receive due proof that you die, we will pay the benefit shown on the Schedule of Benefits to your 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.

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) full-time military service;
- (4) participating in a riot; committing an assault or felony;
- (5) Sickness or its medical or surgical treatment, including diagnosis;
- (6) bacterial infection except through a wound accidentally sustained;
- (7) operating or riding in any kind of aircraft except as a fare-paying passenger on a regularly scheduled commercial flight,
- (8) alcohol intoxication;
- (9) taking of any drug, medication, narcotic or hallucinogen, unless as prescribed by a Physician;
- (10) taking of alcohol in combination with any drug, medication or sedative;
- (11) voluntary gas inhalation or poison voluntarily taken, administered or inhaled,
- (12) riding or driving as a professional in any kind of race for prize money or profit.

WHEN COVERAGE ENDS

Your insurance automatically ends on the first of the following dates:

- (1) The date the Group Policy is terminated;
- (2) The premium due date following the termination of your account with the Participating Organization;
- (3) The premium due date next following the date the Participating Organization ceases to participate in this plan;
- (4) The premium due date next following your 85th birthdate or your 5th anniversary, whichever occurs first.

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

GENERAL PROVISIONS

BENEFICIARY. Your Beneficiary shall be as specified on the records of the Administrator.

RIGHT TO EXAMINE. The Policy is in the possession of the Policyholder; it will be available to be inspected by you at any time during business hours.

WHEN THERE IS A CLAIM

NOTICE OF CLAIM. Claims for benefits provided by the Group 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 you.

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.

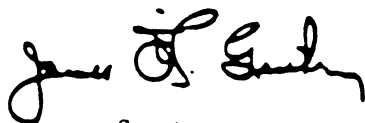
Any payment that we make in good faith will fully discharge us to the extent of that payment.

PHYSICAL EXAMINATION AND AUTOPSY. At our expense, we have the right to have you 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 the Group 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 the Group 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.

MONUMENTAL LIFE INSURANCE COMPANY


Secretary


President