

1981

## General Motors Acceptance Corp. v. Hector Martinez et al : Brief of Appellants

Utah Supreme Court

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### Recommended Citation

Brief of Appellant, *General Motors Acceptance Corp. v. Martinez*, No. 18072 (Utah Supreme Court, 1981).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

---

GENERAL MOTORS ACCEPTANCE )  
CORPORATION, A New York )  
corporation, )

Plaintiff-Respondent, )

-vs- )

HECTOR MARTINEZ and MANUEL M. )  
RIVERA, )

Defendants-Appellants, )

-vs- )

GREAT EQUITY LIFE INSURANCE )  
COMPANY OF CHICAGO, ILLINOIS, )  
STREATOR CHEVROLET COMPANY, )  
INCORPORATED, AL BARRUTIA, )  
BRENT H. JENSEN, AND E. C. )  
ROSEBOROUGH, )

Third-Party Defendants. )

Supreme Court No.

18072

---

BRIEF OF APPELLANTS, HECTOR MARTINEZ AND MANUEL M. RIVERA

---

Appeal from Judgment of the District Court of Salt Lake County,  
State of Utah, Honorable Dean E. Conder, Judge

---

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Acceptance Corporation

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Defendants

FILED

DEC 28 1981

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## STATEMENT OF POINTS

### POINT I

WHERE THE JURY HANGS FIVE TO THREE ON A VERY MATERIAL ISSUE A NEW TRIAL SHOULD BE GRANTED.

### POINT II

WHERE THE INSURED PAID THE PREMIUM; WAS TOLD THAT HE WAS FULLY INSURED; AND THE COMPANY HAD THE RIGHT TO TERMINATE THE AGREEMENT IN THIRTY DAYS IF IT CONCLUDES THE APPLICANT IS NOT ACCEPTABLE; AND THE COMPANY FAILS TO ACCEPT OR REJECT THE APPLICANT UNTIL EIGHT MONTHS AFTER THE LOSS OCCURRED; THE COMPANY MAY NOT THEN VOID THE POLICY BY CLAIMING A PRE-EXISTING PHYSICAL CONDITION (HIGH BLOOD PRESSURE).

### POINT III

WHERE THERE IS ADMITTEDLY NO FRAUD AND THE INSURED IS LED TO BELIEVE THAT HE IS INSURED, THE COMPANY CANNOT DENY COVERAGE AFTER THE LOSS IS INCURRED.

### POINT IV

GENERAL MOTORS ACCEPTANCE CORPORATION AND STREATOR CHEVROLET ARE EQUALLY RESPONSIBLE BY REASON OF THE CONDITIONAL SALES CONTRACT AND THE CERTIFICATE OF INSURANCE.

### POINT V

THE GENERAL AGENT, REX ELTON, WAS REQUIRED TO INQUIRE AS TO THE APPLICANT'S HEALTH AND TO ADVISE HIM OF THE VOIDABLE CLAUSES IN THE POLICY.

### POINT VI

THE GENERAL MOTORS ACCEPTANCE CORPORATION IS NOT ENTITLED TO ANY ATTORNEY'S FEES.

## NATURE OF THE CASE

This is an action to replevy a new Chevrolet automobile purchased under a Conditional Sales Contract. The contract provided for disability and life insurance. The Buyers cross-complained against the insurance company by reason of a total disability (kidney failure). The Insurance Company refused payment on the grounds of a unilateral clause alleging a pre-existing condition.

## DISPOSITION IN THE LOWER COURT

The case was submitted to a Jury in the form of a Special Verdict. The Jury hung on the material Interrogatory five to three in the car buyer's (defendant's) favor. The trial Judge, Dean E. Conder, denied defendants' motion for Judgment on the Verdict and/or defendants' motion for a new trial. The trial Court further granted a directed Verdict in favor of General Motors Acceptance Corporation and Streater Chevrolet Company, Incorporated on the Conditional Sales Contract. From the denial of these motions the defendants, Hector Martinez and Manuel M. Rivera, file this appeal.

## RELIEF SOUGHT ON APPEAL

Defendants seek a Judgment against the Great Equity Life Insurance Company in the amount of the balance due on



the Conditional Sales Contract or an order granting a New Trial by reason of the hung Jury Verdict.

#### MATERIAL FACTS OF THE CASE

On the 12th of September, 1978, Hector Martinez, age 19, purchased a Chevrolet automobile from Streator Chevrolet Company, Incorporated. By reason of the Conditional Sales Contract, Hector Martinez also purchased a life insurance policy and paid a premium therefore in the amount of \$97.40; said contract also acknowledged and provided for the purchase of disability, accident and health insurance and paid a premium therefore in the amount of \$189.81. The Conditional Sales Contract did provide that should Hector Martinez die or become totally disabled that the Great Equity Life Insurance Company of Chicago, Illinois would pay off the contract in its entirety, to wit: the sum of \$5,995.00. The Conditional Sales Contract is annexed hereto as Exhibit "A" and by reference made a part of this brief. The Conditional Sales Contract was assigned by Streator Chevrolet Company, Incorporated, forthwith and immediately to General Motors Acceptance Corporation. Payments were faithfully made by Hector Martinez as provided by the Conditional Sales Contract up to and including November 19, 1978. On this day, Hector Martinez entered the University of Utah Hospital with lung congestion and on this date the doctors at

the hospital diagnosed a complete kidney failure and determined that Hector Martinez, as a result thereof, was completely disabled; claims under the policy were promptly filed.

On or about July 12, 1979, General Motors Acceptance Corporation, filed a complaint herein seeking to replevy a Chevrolet automobile from Hector Martinez alleging that Hector Martinez was eight months delinquent in payments under the contract. Hector Martinez, who had been completely disabled for the eight month period, to wit: from November 19, 1978 to July 12, 1979, cross-complained against the Great Equity Life Insurance Company and Streater Chevrolet Company, Incorporated, and counterclaimed against General Motors Acceptance Corporation, a New York corporation, alleging that he was entitled to the benefits of the disability insurance as provided in the Contract, he having become disabled, the contract was to be completely paid by the Great Equity Life Insurance Company. The Great Equity Life Insurance Company admitted that there was insurance contracted and paid for, commencing September 12, 1978, but alleged that they were entitled to retroactively void the insurance coverage after the loss was incurred by reason of a unilateral clause pertaining to pre-existing conditions.

Hector Martinez relied on the coverage as was set out in the Conditional Sales Contract, which is as follows:

Address

common solely for the disclosure purposes of the Consumer Credit Protection Act.

Buyer (and Co-Buyer)—Name and Address (Include—County and Zip Code)

Seller—Name and Address

**STREATOR CHEVROLET COMPANY**  
**MAIN at 5th SOUTH**  
**SALT LAKE CITY, UTAH 84111**

The seller hereby sells, and the buyer (meaning all undersigned buyers, jointly and severally) hereby purchases, subject to the terms set forth below and upon the reverse side be the following property, delivery and acceptance of which in good order are hereby acknowledged by buyer, viz.:

New or Used	Year Model	No. Cyl.	Make Trade Name	Body Type — If Truck, Give GVW	Model No. or Series	Vehicle Identification No.

If truck—Describe bodies and, major items of equipment sold—

Buyer represents that the purchase of said property is primarily for personal, family or household ☒, agricultural ☐, business (other than agricultural) ☐ use (check one).

1. CASH PRICE (including any accessories, services and taxes imposed on the cash sale) ..... \$ 4500.00 (1)

2. TOTAL DOWNPAYMENT — Trade-in Make, Model, Year \$ 7.00 Gross Trade-in Allowance \$ 7.00 (Payoff - made by seller) Trade-in (Net) plus \$ 1000.00 Cash Downpayment ..... \$ 1000.00 (2)

3. UNPAID BALANCE OF CASH PRICE (Difference between Items 1 and 2) ..... \$ 3500.00 (3)

4. OTHER CHARGES

\*A. Cost of Required Physical Damage Insurance ..... \$ 7.00 (4A)

\*\*B. Cost of Optional Mechanical Breakdown Insurance ..... \$ 7.00 (4B)

BUYER MAY CHOOSE THE PERSON THROUGH WHICH THE INSURANCE IN A AND B IS TO BE OBTAINED.

C. Cost of Creditor Insurance for the term hereof.

COVERAGE OF THE BUYER BY ANY SUCH INSURANCE IS NOT REQUIRED BY SELLER.

CHECK CREDITOR  
INSURANCE DESIRED

FOR THE TERM HEREOF

\*\*\* ☒ Life ..... \$ 97.40 (4C)  
☒ Disability (Accident and Health) ..... \$ 189.81 (4C)  
☐ Other (describe) ..... \$ 7.00 (4C)

BUYER'S APPROVAL: I DESIRE TO OBTAIN THE CREDITOR INSURANCE CHECKED ABOVE FOR THE BUYER PROPOSED FOR INSURANCE.

9/12/78  
(Date)

Signature

(Buyer's Signature)

(Co-Buyer's Signature)

D. Official Fees (Describe) ..... **SALES TAX** ..... \$ 225.00 (4D)

E. License and/or Registration Fees (Itemize) ..... \$ 8.50 (4E)

F. Certificate of Title Fee ..... \$ INCL. (4F)

G. Other (Describe) ..... **DOC. FEE** ..... \$ 7.50 (4G)

5. UNPAID BALANCE—AMOUNT FINANCED (Sum of items 3 and 4) ..... \$ 4023.21 (5)

6. FINANCE CHARGE ..... \$ 956.79 (6)

7. TOTAL OF PAYMENTS (Sum of items 5 and 6) ..... \$ 4980.00 (7)

8. DEFERRED PAYMENT PRICE (Sum of items 1, 4 and 6) ..... \$ 5985.00 (8)

9. ANNUAL PERCENTAGE RATE ..... 14.55% (9)

10. PAYMENT SCHEDULE: The Total of Payments (Item 7) is payable at seller's office designated below or at such office of any assignee as may be hereafter designated in 36 instalments of \$ 138.75 each, commencing 10/12, 1978, and on the same day of each successive month thereafter, or as indicate in space below.

The certificate of insurance named General Motors Acceptance Corporation, a New York corporation, as the creditor-beneficiary and provided that should Hector Martinez, age 19, die or become disabled during the term of the Conditional Sales Contract that the Great Equity Life Insurance Company would pay the Conditional Sales Contract of and in its entirety. The Certificate further provided that the term of insurance would commence as of September 12, 1978 and would expire on the maturity date of the indebtedness subject to acceptance by the insurer and within thirty days there would be delivered to Hector Martinez a certificate of insurance more fully describing the insurance. No policy of insurance was ever delivered. No notice of acceptance or rejection of Hector Martinez as an insured was given within the thirty days. No premium was ever returned to Hector Martinez. (Tr.-163) (Tr.-170)

Eight months after Hector Martinez was disabled by kidney failure, to wit: On July 12, 1979, the Great Equity Life Insurance Company denied coverage under the insurance certificate claiming that Hector Martinez has a pre-existing condition, to wit: High blood pressure, which permitted them to retroactively void the policy after the loss had been incurred.

Dr. Duffy testified that high blood pressure was non-symptomatic (a silent killer) and that Hector Martinez would not be aware of the ensuing kidney failure (Tr.-43).

In this regard, the Court submitted to the Jury a special Interrogatory and the Jury by a five to three vote found that Hector Martinez did not know nor should he have known of the pre-existing physical condition exclusion referred to in the insurance policy. Other Interrogatories were presented to the Jury to which there was no dispute, to wit:

Did the Disability policy have a pre-existing condition exclusion . . . ?

This was undisputed.

Did Hector Martinez have an injury or illness for which medical diagnosis or treatment was required?

This was undisputed.

Did the injury or sickness of Mr. Martinez cause a loss within six months after the effective date of the disability policy?

This was undisputed.

Did Hector Martinez become totally disabled?

This was not only undisputed but was part of the proof required by Hector Martinez to recover in the case. The key question was answered by a majority in Hector Martinez's favor.

It is undisputed that all insurance premiums were paid in full (Tr.-20); that the insurance company had thirty (30) days to accept or reject Hector Martinez as an insured (See D-25); that coverage was denied eight months after the



loss occurred without a return of any premium whatsoever. (Tr.-163)

On July 12, 1979 Hector Martinez was denied coverage under the insurance certificate on the basis that he had a pre-existing condition and that there was a clause in the policy that if Hector Martinez had a pre-existing condition that the insurance company could void the policy.

On November 19, 1978, Hector Martinez was admitted to the University of Utah Hospital with lung congestion at which time he suffered a complete kidney failure and became fully and completely disabled.

The Jury by a five to three vote found that Hector Martinez did not know nor should he have known of the pre-existing physical condition exclusion referred to in the insurance policy. Irrespective of this, Judge Dean E. Conder entered Judgment of No Cause of Action in favor of the insurance company and against Hector Martinez.

The general agent, Rex Elton, testified that he made no inquiries regarding the health of Hector Martinez (Tr-161, Tr.-156). He further testified that there was no fraud or deception of any type or nature by the insured (Tr.-155) and that he had no memory of any delivery of a certificate of insurance to Hector Martinez (Tr.-156) (See also Tr.-169).

When the insurance company denied coverage, General Motors Acceptance Corporation filed an action in replevin

in which they sought to immediately recover possession of the 1977 Chevrolet automobile. The finance company also sued for a deficiency judgment and extensive attorney's fees. The defendants, by third-party complaint made the Great Equity Life Insurance Company a third-party defendant and counterclaimed against General Motors Acceptance Corporation on the grounds that the finance company was a direct assignee of Streater Chevrolet and on the further ground that the finance company was the beneficiary under the insurance policy and as such had accepted payments and premiums and by reason of the assignments, the documents, the insurance policy, that the finance company was equally liable. Judge Conder directed a verdict in favor of General Motors Acceptance Corporation, and from this order the defendants appeal.

It is undisputed that the Great Equity Life Insurance Company accepted a good and sufficient premium; that they led Hector Martinez to honestly believe that he was fully and completely covered; that they failed to make the insurance certificate available to Hector Martinez or to inform him of the contents and that he was unaware of any clause by which the insurance company could unilaterally declare the policy void until after the loss had been incurred. By not informing Hector Martinez of their acceptance or rejection as an insured within thirty (30) days

as provided in the certificate, and the contract having been completed in good faith, the insurance was in full force and effect when the loss occurred. The Great Equity Life Insurance Company having plead an exception or exclusion as a defense, they had the burden of persuasion and the burden of proof to sustain their position. The Jury by a five to three vote found that they did not sustain their burden of proof and the Court should have granted a mistrial in favor of Hector Martinez.

Rex Elton failed and refused to ask Hector Martinez any questions whatsoever concerning his health even though there was a Buyer's Age Statement and Health Declaration as set forth in the Conditional Sales Contract:

**BUYER'S AGE STATEMENT AND HEALTH DECLARATION** (Applicable Where a Charge Has Been Authorized in 4C Above and Insurance Under Prudential Group Policy GL-350 is Proposed).

Age last birthday of Buyer Proposed for Life Insurance? ☐ Under 65

I, the Buyer Proposed for Life Insurance, understand that the insurance is only available to a buyer who makes the following declarations to induce Prudential to effect such insurance: I do hereby declare that within the past three months (1) I have not consulted or been under the care of a doctor or other practitioner for cancer, and (2) I have not been confined in a hospital or other institution because of any condition of the heart, brain, liver, kidneys or lungs. I hereby authorize any physician or hospital to disclose to Prudential all information concerning my medical history prior to the date of this contract.

Signature



(Signature of Buyer Proposed for Life Insurance)

In addition thereto, there evidently was issued a life insurance and disability insurance certificate which Rex Elton had no memory of ever delivering to Hector Martinez and in addition thereto he had no recollection of ever mailing same to Hector Martinez. (Tr.-150) (Tr.-157)



The Signer(s) of the contract hereby take(s) notice that group credit life insurance coverage and/or group credit accident and health insurance coverage will be applicable to this contract if so marked on the front of the contract and each such type of coverage will be written by the insurance company name above. This insurance, subject to acceptance by the insurer covers only the person(s) signing the request for such insurance. The amount of charge is indicate for each type of credit insurance to be purchased. The term of insurance will commence as of the date the indebtedness is incurred and will expire on the date 15 days after the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days, there will be delivered to the insured debtor a certificate of insurance more fully describing the insurance, in the event of prepayment of the indebtedness, a refund of insurance charges will be made where due.

Applicant \_\_\_\_\_ Witness \_\_\_\_\_ Date \_\_\_\_\_  
Co-Signer \_\_\_\_\_

## STATEMENT OF POINTS

### POINT I

WHERE THE JURY HANGS FIVE TO THREE ON A VERY MATERIAL ISSUE  
A NEW TRIAL SHOULD BE GRANTED.

### POINT II

WHERE THE INSURED PAID THE PREMIUM; WAS TOLD THAT HE WAS  
FULLY INSURED; AND THE COMPANY HAD THE RIGHT TO TERMINATE  
THE AGREEMENT IN THIRTY DAYS IF IT CONCLUDES THE APPLICANT  
IS NOT ACCEPTABLE; AND THE COMPANY FAILS TO ACCEPT OR REJECT  
THE APPLICANT UNTIL EIGHT MONTHS AFTER THE LOSS OCCURRED;  
THE COMPANY MAY NOT THEN VOID THE POLICY BY CLAIMING A PRE-  
EXISTING PHYSICAL CONDITION (HIGH BLOOD PRESSURE).

### POINT III

WHERE THERE IS ADMITTEDLY NO FRAUD AND THE INSURED IS LED  
TO BELIEVE THAT HE IS INSURED, THE COMPANY CANNOT DENY  
COVERAGE AFTER THE LOSS IS INCURRED.

POINT IV

GENERAL MOTORS ACCEPTANCE CORPORATION AND STREATOR  
CHEVROLET ARE EQUALLY RESPONSIBLE BY REASON OF THE CONDI-  
TIONAL SALES CONTRACT AND THE CERTIFICATE OF INSURANCE.

POINT V

THE GENERAL AGENT, REX ELTON, WAS REQUIRED TO INQUIRE AS  
TO THE APPLICANT'S HEALTH AND TO ADVISE HIM OF THE VOIDABLE  
CLAUSES IN THE POLICY.

POINT VI

THE GENERAL MOTORS ACCEPTANCE CORPORATION IS NOT ENTITLED  
TO ANY ATTORNEY'S FEES.

POINT I

WHERE THE JURY HANGS FIVE TO THREE ON A VERY MATERIAL ISSUE  
A NEW TRIAL SHOULD BE GRANTED.

The Jury found by a 5 to 3 vote in favor of Hector Martinez and against the Great Equity Life Insurance Company (the insurance company failed to sustain their burden of proof) in the following particulars:

Interrogatory No. 2: Did Hector Martinez know or should he have known of the pre-existing physical condition exclusion referred to in question 1.

Yes 3

No 5

Great Equity's principal witness was Rex Elton, car salesman, insurance agent and employee of Streater Chevrolet Company (Tr.-146), who testified as follows:

Q: Do you recall dealing with Hector Martinez, the gentleman behind me--

A: No, sir. (Tr.-150)

Q: If I understand you right you have no memory of waiting on Hector Martinez at all.

A: That's correct.

Q: No memory of him being in your office?

A: No, sir.

Q: And if I understand you further the best of your recollection, no questions regarding health of any type or nature were asked of Hector Martinez?

A: That's correct.

Q: You did evidently handle the execution of Plaintiff's Exhibit 1?

A: Yes, sir. (Tr.-157)

Q: Did you have Hector Martinez sign any type of an application for insurance with Great Equity Insurance Company?

A: Only thing they signed is on the Conditional Sales Contract. (Tr.-157)

Q: You don't know whether or not a policy of insurance was mailed to him or not do you?

A: I can only tell you what is normally done. (Tr.-158)

Q: You never asked Hector Martinez if he had (a pre-existing condition)?

A: No, sir. (Tr.-161)

Q: He looked healthy to you, didn't he?

A: Yes, sir.

Q: You were happy to insure him and take his money? Isn't that true?

A: Yes, sir. (Tr.-161)

Q: Well, as an agent, didn't you receive a commission for --

Mr. Hansen: Raise the same objection.

Mr. Miner: I think it's admissible, your Honor. Goes to his credibility, and bias and prejudice.

The Court: I don't think so. Sustained.

Mr. Miner: It was to your advantage to sell this particular policy to Hector Martinez monetarily?

Mr. Hansen: Same form of question really.

The Court: Sustained. (Tr.-159)

Q: Do you know whether or not there was ever any refund of any premium to Hector Martinez, of your own knowledge?

A: No, sir.

The Jury found in favor of Hector Martinez and against the Great Equity Life Insurance Company that the policy of insurance was never delivered to Hector Martinez, and therefore he did not know and could not know of the pre-existing condition exclusion existing in the policy. The legal effect of the Jury's findings are:

(a) That where the insured has no knowledge of a condition which would render a policy voidable, and

(b) Where the general agent, who has complete knowledge of the voidable condition fails to advise the applicant of the condition, and

(c) In addition thereto, where the general agent fails and refuses to ask any questions concerning the applicant's health, and

(d) Where the agent failed and refused to fill out or ask any of the questions set forth on the Conditional Sales Contract, and

(e) Where the agent testified that there were no false representations of any type or nature on the part of Hector Martinez, and

(f) Where the general agent issues a policy in good faith and specifically agrees that there was no intent to deceive or to misrepresent any facts on the part of the insured, the Great Equity Life Insurance Company under the law, will not be permitted to avoid coverage under the policy. (See Wootton vs. Combined Insurance Company of America, 16 Utah 2d 52, 54-55, 395 P.2d 724 (1964)).

## POINT II

WHERE THE INSURED PAID THE PREMIUM; WAS TOLD THAT HE WAS FULLY INSURED; AND THE COMPANY HAD THE RIGHT TO TERMINATE THE AGREEMENT IN THIRTY DAYS IF IT CONCLUDES THE APPLICANT IS NOT ACCEPTABLE; AND THE COMPANY FAILS TO ACCEPT OR REJECT THE APPLICANT UNTIL EIGHT MONTHS AFTER THE LOSS OCCURRED; THE COMPANY MAY NOT THEN VOID THE POLICY BY CLAIMING A PRE-EXISTING PHYSICAL CONDITION (HIGH BLOOD PRESSURE).

The Great Equity Life Insurance Company intended to execute the insurance policy affording Hector Martinez the coverage purchased; and, the policy issued contained a condition rendering it voidable from its inception. This was known to the general agent and the insurance company. Under Utah law it is presumed that the Great Equity Life Insurance Company intended to issue a valid policy. It is further presumed that the insurance company was informed

of all facts concerning the coverage requested and purchased. Under these facts the policy must be enforced as a valid policy. The law clearly states that where the insurance company by their actions and conduct induced the insured (Hector Martinez) to act to his detriment, then and in that event, the law denies the insurance company the legal effect to a provision of the policy inserted for the benefit or protection of the insurer. (See, Manufacturer & Merchants Indemnity Company vs. Claman, 96 F. Supp. 385 (D. Iowa 1951); Hully vs. Aluminum Company of America, 143 F. Supp. 508 (D. Iowa 1956); Standard Accident Insurance Company vs. Roberts, 130 F. 2d 794 (8th Cir. Ark. 1942); Fidelity National Bank vs. Central Manufacturers Mutual Insurance Company 48 So. 2d 668 (La Appellate 1950); Stokes vs. American Cent. Insurance Company, 211 Miss. 584, 52 So. 2d 358 (1951).

There was an agreement on the part of Rex Elton, the general agent of the Great Equity Life Insurance Company, to issue an insurance policy on the life of Hector Martinez and to provide disability insurance, health and accident, for Hector Martinez as set forth below:

COVERAGE OF THE BUYER BY ANY SUCH INSURANCE IS NOT REQUIRED BY SELLER.

CHECK CREDITOR  
INSURANCE DESIRED

\*\*\* ☒ Life ..... \$ 97.40 (4C)  
☒ Disability (Accident and Health) ..... \$ 189.81 (4C)  
☐ Other (describe)..... \$ n.a. (4C)

FOR THE TERM HEREOF

BUYER'S APPROVAL: I DESIRE TO OBTAIN THE CREDITOR INSURANCE CHECKED ABOVE FOR THE BUYER PROPOSED FOR INSURANCE.

9/12/78  
(Date)

Signature

Rex Elton

(Buyer's Signature)

(Co-Buyer's Signature)



Rex Elton failed and refused to ask Hector Martinez any questions whatsoever, concerning his health even though there was a Buyer's Age Statement and Health Declaration as set forth in the Conditional Sales Contract:

**BUYER'S AGE STATEMENT AND HEALTH DECLARATION** (Applicable Where a Charge Has Been Authorized in 4C Above and Insurance Under Prudential Group Policy GL-360 Is Proposed).

Age last birthday of Buyer Proposed for Life Insurance? ☐ Under 65

I, the Buyer Proposed for Life Insurance, understand that the insurance is only available to a buyer who makes the following declarations to induce Prudential to effect such insurance: I do hereby declare that within the past three months (1) I have not consulted or been under the care of a doctor or other practitioner for cancer, and (2) I have not been confined in a hospital or other institution because of any condition of the heart, brain, liver, kidneys or lungs. I hereby authorize any physician or hospital to disclose to Prudential all information concerning my medical history prior to the date of this contract.

Signature



(Signature of Buyer Proposed for Life Insurance)

In addition thereto, there evidently was issued a life insurance and disability insurance certificate which Rex Elton had no memory of ever delivering to Hector Martinez and in addition thereto, he had no recollection of ever mailing same to Hector Martinez. (In fact he had no memory of the transaction at all).

The Signer(s) of the contract hereby take(s) notice that group credit life insurance coverage and/or group credit accident and health insurance coverage will be applicable to this contract if so marked on the front of the contract and each such type of coverage will be written by the insurance company named above. This insurance, subject to acceptance by the insurer covers only the person(s) signing the request for such insurance. The amount of charge is indicated for each type of credit insurance to be purchased. The term of insurance will commence as of the date the indebtedness is incurred and will expire on the date 15 days after the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days, there will be delivered to the insured debtor a certificate of insurance more fully describing the insurance. In the event of prepayment of the indebtedness, a refund of insurance charges will be made where due.

Applicant \_\_\_\_\_ Witness \_\_\_\_\_ Date \_\_\_\_\_

Co-Signer \_\_\_\_\_

From the foregoing it is obvious that Hector Martinez was never requested to sign the certificate nor did he sign it, and as the Jury so found: Hector Martinez did not know nor should he have known of the pre-existing physical condition exclusion referred to in the policy.



The premium was paid. No refund was ever made. (Tr.-163). The policy by its very terms gave the Insurance company the right to terminate the policy within thirty days if it concluded that Hector Martinez was not acceptable. The Company failed to act within the specified thirty day period--this is tantamount to the acceptance of Hector Martinez as an insured--under these circumstances the company cannot be permitted to void the policy eight months after the loss occurred.

Good faith on all contracting parties is admitted. No deception was alleged or proven. The policy holder honestly believed he was properly insured. Hector Martinez was not aware of any kidney failure (Tr.-43). He was induced to believe he was properly insured. To permit the insurance company to assert a voidable clause eight months after the loss occurred would be in defiance of the established law.

The Great Equity Life Insurance Company having plead an exception or exclusion as a defense, they had the burden of persuasion and the burden of proof to sustain their position. The Jury by a five to three vote found that they did not sustain their burden of proof and the Court should have granted a mistrial in favor of Hector Martinez.

### POINT III

WHERE THERE IS ADMITTEDLY NO FRAUD AND THE INSURED IS LED TO BELIEVE THAT HE IS INSURED, THE COMPANY CANNOT DENY COVERAGE AFTER THE LOSS IS INCURRED.

It was stipulated and agreed and conclusively shown that Rex Elton is a general agent of the Great Equity Life Insurance Company and as such he was given broad and general power (a) to accept risks, (b) bind insurer, (c) to fix an extra premium for hazardous risks, and (d) to collect premiums and issue policies. (See Phenix Insurance Company vs. Munger, 49 Kan. 178, 30 P. 120 (1892); Stephan vs. Mutual Benefit Health and Accident Association, 146 Kan. 307, 69 P. 2d 694 (1937); Maynard vs. National Fire Insurance Company, 147 W. Va. 589, 129 S.E. 2d 443 (1963).

In this regard Rex Elton, as a general agent was duty bound to make such inquiries and to ask the necessary questions to provide Hector Martinez with proper insurance concerning his life and disability. It was the general agent's duty to ascertain whether or not Hector Martinez was insurable and to provide him with the proper policy. (See Wootton vs. Combined Insurance Company of America, 16 Utah 2d 56).

The Utah Supreme Court has specifically held that a general insurance agent is held to the standard of a

reasonable prudent insurance agent and as such he cannot "blind himself from ascertaining the truth and then provide the applicant with a policy of insurance which can unilaterally be declared void by reason of the agent's failure to ascertain from the applicant the status of his health"; he is required to investigate the health and condition of the applicant; he is required to determine whether or not the applicant is insurable under the policy; and, where the agent failed and refused to do so, under Utah law, it is presumed that he did so. (See, Couch on Insurance, Section 11:21. See also, New York Life Insurance Company vs. Strudel, 5 Cir. 243, Fed. 2d 90; Wootton vs. Combined Insurance Company of America, 16 Utah 2d 52, 54-55, 395 P. 2d 724 (1964); Marks vs. Continental Casualty Company, 19 Utah 2d 119, 122, 427 P. 2d 387 (1967).

In Wootton vs. Combined Insurance Company of America, supra, our Supreme Court specifically held that an applicant for insurance is not required to volunteer information about his health and by reason of the agent's superior position that the general agent is required to ascertain all facts that are needed to issue the policy.

In this regard, the general agent of the Great Equity Life Insurance Company did lead Hector Martinez to honestly believe that he was covered with a good and sufficient life insurance policy and a disability insurance policy

and by reason thereof Hector Martinez has suffered great and serious damage in that he did not obtain other insurance and the insurance that was issued to him is now being unilaterally declared void. Had Rex Elton, the general agent of the insurance company, made known to Hector Martinez the contents of the insurance policy or had he delivered to Hector Martinez a copy of the policy, as was required, Hector Martinez would then have been in a position to reject the policy and to obtain insurance elsewhere.

It is undisputed that the Great Equity Life Insurance Company accepted a good and sufficient premium; they led Hector Martinez to honestly believe he was fully and completely covered and by doing so and by their failure to make the policy available to Hector Martinez or to inform him of the contents thereof, under Utah law there was deliberate, wilful conduct and statements on the part of the insurance company which caused Hector Martinez to reasonably believe that he was insured and they thereby induced him to act in the belief that he was insured; and by their deliberate and wilful conduct--they are denied the right of now asserting that the policy they issued is voidable.

It is the general law, and as such has been adopted by our Supreme Court, that where the insured has been misled or imposed upon by an insurance company, the conditions which provide for a avoidance of the policy and thereby violates

the dominant purpose of the insurance should be disregarded with princely liberality. The insurance company should be prevented from asserting the clause whenever necessary to prevent fraud or injustice from being perpetrated. (See Farm Bureau Mutual Automobile Insurance Company vs. Bobo, 214 F. 2d. 575 (4th Cir. S.C. 1956); Travelers Fire Insurance Company vs. Robertson, 103 Ga. Appellate 816, 120 S.E. 2d 657 (1961); Mee vs. Bankers Life Association, 69 Minn. 120, 72 N.W. 74 (1897); Bubuque Fire and Marine Insurance Company vs. Miller, 219 S.C. 17, 64 S.E. 2d 8 (1951).

The insurance company by their deliberate, wilful conduct and statements caused Hector Martinez to change his position to his detriment. (See, Plan vs. Parkview Drugs, 250 Southwest 2d, 181 Mo. Appellate 1952). The Court's attention is also called to Farrington vs. Granite State (Utah) Fire Insurance, 232 Pac, 754, in which our Supreme Court held that an insurance company cannot adopt and take the benefits of their general agent's conduct which is favorable to them and deny and not be bound by his conduct which is contra to their benefit. The insurance company is conclusively charged with his knowledge and his conduct. (See also, Turner vs. Mutual Benefit and Health Insurance, (24 Northwest 2d 534).

The Court's attention is further called to Couch on Insurance, Section 10:7, which states the general law, that if the contract has been completed in good faith so

that the risk has been commenced the insurance is in effect as of the date that it was to issue. (See, Couch on Insurance, Section 10:7). Both parties contracted in good faith as of September 12, 1978. The risk commenced. Insurance was in effect as of that date. The insurance company's attempt to avoid the policy from the beginning should be denied in that the agent is charged with investigating the health of the applicant and it is presumed that he did so. (See, Couch on Insurance, Section 11:21).

Delivery is not necessary to place the insurance in effect. (See, Prince vs. Western Empire Insurance Company, 19 Utah 2d, 174, 428 P.2d 163; Ida Long vs. United Benefit Insurance Company, Incorporated, Supreme Court No. 12844, filed March 8, 1973). In these cases, our Supreme Court held that where an applicant has completed and submitted an application and paid a premium, and a receipt was issued which provides that the effective date of the insurance is the effective date of the application, a contract of insurance is created, and thereafter an insurance company cannot terminate the coverage by rejection after a loss has occurred. (See also, JoAnn B. Moore vs. Prudential Insurance Company of America, 26 Utah 2d 430). In the instant case, where the Great Equity Life Insurance Company has plead an exception or exclusion as a defense to the claim asserted by Hector Martinez, in which they claim a particular loss falls



within the exception to the coverage, the insurance company has a burden of persuasion and a burden of proof on this issue. (See Rowland H. Long on the Law of Liability Insurance, Section 26.21, paragraph 5, and the cases cited thereunder: Gusson vs. Boston Mutual Life Insurance Company, 326 Mass. 571, 95 N.E. 2d 670). In this case the insurance company completely failed to sustain their burden of proof on the second question, and Judgment should be rendered in favor of Hector Martinez or in the alternative, the Court should grant a mistrial by reason of the Jury's 5 to 3 vote in favor of Hector Martinez.

The Court's attentions is respectfully called to Long vs. United Benefit Insurance Company, Incorporated, 29 Utah 2d 204, where our Supreme Court properly held that where an application is filled out by a general agent and the first payment premium is paid in full, the insurance becomes effective as of the date of the application. Temporary insurance coverage is given for the time during which the application or approval of the application is pending. The Court will note that in the application blank (which was never signed and which was never given to Hector Martinez) it provided that the Great Equity Life Insurance Company had thirty (30) days to approve or disapprove the application for insurance. On Page 209, Long vs. United Benefit Insurance Company, Incorporated, supra, our Supreme Court went on to say that the

company was bound to either act affirmatively or negatively on the application. If the insured was an acceptable risk, he was entitled to the policy. if he was not acceptable, the insurance company was requiried to so notify him and return the premium paid, or if rated up notify him by tendering him an application at a high rate. On the facts in the Long case, supra, the insured was never notified during his life that his application was accepted, rejected, or that it would be considered at a higher premium. Here the money for the first premium was retained by the insurance company until after the insured's death, when tender was made to the beneficiary for the return of the premium, which he rejected. In the instant case, Hector Martinez paid his premium. He was conclusively told that he was insured for disability insurance and at this point the Great Equity Life Insurance Company was under a duty to act either affirmatively or negatively on the application. If Hector Martinez was not acceptable the insurance company was required to notify him and to return the premium paid, or if rated up, notify him by tendering an application at a higher rate. This would have permitted Hector Martinez to purchase elsewhere and thereby be protected. The Company, by failing to act either affirmatively or negatively on the application denied Hector Martinez of this valuable right. As in the Long case, the insurance company did not deny coverage until after the loss had been incurred.



Under all cited cases and under our Utah laws, the Great Equity Life Insurance Company and its general agent are prevented from taking a legal position prejudicial to its insured to whom it induced by words or conduct to act to his detriment. Under this theory the Great Equity Life Insurance Company is denied the right to assert the legal effect of a provision inserted in the policy for the benefit and protection of the insurance company. Hector Martinez was grievously misled and imposed upon by Rex Elton, the general agent, and by the Great Equity Life Insurance Company. Their conduct was tantamount to a fraud and a great injustice to Hector Martinez. The Jury so found the Great Equity Life Insurance Company failed to sustain their burden of proof that Hector Martinez knew or should have known of the pre-existing physical condition exclusion and by reason thereof Judgment should be entered in favor of Hector Martinez and against the Great Equity Life Insurance Company or in the alternative, the Court should grant a mistrial on the grounds that the Jury was hung.

#### POINT IV

GENERAL MOTORS ACCEPTANCE CORPORATION AND STREATOR CHEVROLET ARE EQUALLY RESPONSIBLE BY REASON OF THE CONDITIONAL SALES CONTRACT AND THE CERTIFICATE OF INSURANCE.

Rex Elton was admittedly an agent, servant, and employee of Streator Chevrolet Company, Incorporated, and empowered to fully complete and execute the Conditional Sales Contract and to complete the sale of the motor vehicle involved in this suit. The Conditional Sales Contract was printed and provided by General Motors Acceptance Corporation, in accordance with their instructions and requirements. Rex Elton was further empowered by General Motors Acceptance Corporation and Streator Chevrolet Company, Incorporated to write insurance for and on behalf of the Great Equity Life Insurance Company under a group insurance policy which the group premiums were paid by Streator Chevrolet Company, Incorporated and under which General Motors Acceptance Corporation was a creditor-beneficiary. Irrespective of the foregoing Judge Conder, by his rulings refused to permit defendant, Hector Martinez's, attorney to show that Rex Elton was biased and prejudiced, in that he received a commission from the sale of the policy and that he was acting in dual capacities. (Tr.-159)

Rex Elton testified that at all times he was acting as an agent, servant, and employee of Streator Chevrolet

Company, Incorporated and that he well knew that Streator Chevrolet Company, Incorporated was the policy holder and that General Motors Acceptance Corporation was the beneficiary under the policy. The Court refused inquiry as to who paid him his commission and the amount thereof. This is assigned as error. (See also, Group Policy, defendant's Exhibit 16).

The Conditional Sales Contract was negotiated forthwith from Streator Chevrolet Company, Incorporated, to General Motors Acceptance Corporation. Car payments were made by Hector Martinez to Streator Chevrolet Company, Incorporated for and on behalf of General Motors Acceptance Corporation. After Hector Martinez suffered his disability, an insurance premium and/or car payment of \$40.00 was paid directly to General Motors Acceptance Corporation, the creditor-beneficiary under the policy. General Motors Acceptance Corporation saw fit to interpret the policy and to notify Hector Martinez that he was not covered under the group policy on or about July 12, 1979. (At least a letter to that effect was introduced into evidence). (Tr. 47, p-11)

When General Motors Acceptance Corporation accepted the Conditional Sales Contract in its entirety and the insurance policy under which they were the creditor-beneficiary they became bound by all the terms of the contract and by all the terms and conditions of the group insurance policy

and the certificate of insurance. They were necessary parties to the entire transactions and became equally responsible to Hector Martinez under the terms and conditions thereof.

#### POINT V

THE GENERAL AGENT, REX ELTON, WAS REQUIRED TO INQUIRE AS TO THE APPLICANT'S HEALTH AND TO ADVISE HIM OF THE VOIDABLE CLAUSES IN THE POLICY.

Rex Elton testified he had no memory of the execution of the Conditional Sales contract or the issuance of Insurance. He denied all knowledge of the \$5000.00 transaction. He had no memory of ever dealing with Hector Martinez (Tr.-150) (Tr.-151). This is very hard to comprehend in that Hector Martinez and Manual M. Rivera were son and father; several documents were prepared by Elton and executed. It is submitted that this was a convenient loss of memory, in order to base a case on custom and usage. Custom and usage should not stand against positive evidence testified to by the father and son, both of them were present and testified, no policy was delivered or explained. The insurance company's case was based solely on a no memory premise--this should be reversed.

POINT VI

THE GENERAL MOTORS ACCEPTANCE CORPORATION IS NOT ENTITLED TO ANY ATTORNEY'S FEES.

At the conclusion of the General Motors Acceptance Corporation's case, Jay V. Barney requested the Court to take under advisement, the issue of attorney's fees and argued that the issue of attorney's fees was to be determined by the Court and not the Jury. This Motion was made at the bench with the Jury sitting in place. Mark S. Miner advised Jay V. Barney in the presence of the Court (out of the hearing distance of the Jury) that the issue of attorney's fees for breach of the contract was an issue for the Jury and that if Mr. Barney desired to seek attorney's fees he should proceed with his evidence in the presence of the Jury and permit the Jury to decide the issue. Mr. Barney refused to present any evidence with regard to attorney's fees. The record is devoid of any evidence of attorney's fees. The matter was never presented to the Jury. By not presenting the evidence to the Jury and/or to the Court, the General Motors Acceptance Corporation waived their right to attorney's fees and none should be awarded. (See Peterson vs. Ohio Copper Company, 71 Utah 444, 266 P. 2d 1050).

## CONCLUSION

Hector Martinez purchased disability insurance in good faith. The Great Equity Life Insurance Company granted the insurance subject to their acceptance of Hector Martinez as an insured and agreed that within thirty (30) days there would be delivered to Hector Martinez, a certificate of insurance. No policy was ever delivered. There was no acceptance or rejection within the thirty-day period. No premium was ever returned. The Jury, by a five to three vote, found in favor of Hector Martinez and against the Great Equity Life Insurance Company, that Hector Martinez did not know of any pre-existing physical condition existing in the policy. The policy was issued in good faith; Hector Martinez relied upon the policy. Under these circumstances the insurance company should not be permitted to void the policy eight months after the loss occurred. The insurance company failed to sustain their burden of proof and judgment should be rendered against them and the policy enforced or in the alternative a new trial should be granted by reason of the hung jury.

Respectfully submitted,



MARK S. MINER  
Attorney for Hector Martinez  
and Manuel M. Rivera

CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy  
of the foregoing Brief of Appellants, Hector Martinez and  
Manuel M. Rivera to:

Jay V. Barney, Esq.  
Attorney for Plaintiff-Respondent  
General Motors Acceptance Corporation  
45 East Vine Street  
Murray, Utah 84107

William J. Hansen, Esq.  
Attorney for Third-Party Defendants  
Great Equity Life Insurance Company  
900 Kearns Building  
Salt Lake City, Utah 84101

and that said Brief was duly served according to law on  
this 22 day of December, 1981, postage  
prepaid.

  
MARK S. MINER



Address

Section solely for the disclosure purposes of the Consumer Credit Protection Act.

Buyer (and Co-Buyer)—Name and Address (Include—County and Zip Code)

Seller—Name and Address

**STREATOR CHEVROLET COMPANY**  
**MAIN at 5th SOUTH**  
**SALT LAKE CITY, UTAH 84111**

The seller hereby sells, and the buyer (meaning all undersigned buyers, jointly and severally) hereby purchases, subject to the terms set forth below and upon the reverse side hereof, the following property, delivery and acceptance of which in good order are hereby acknowledged by buyer, viz.:

Year Used	Year Model	No. Cyl.	Make Trade Name	Body Type — If Truck, Give GVW	Model No. or Series	Vehicle Identification No.

If truck—Describe bodies and, major items of equipment sold—

Buyer represents that the purchase of said property is primarily for personal, family or household ☒, agricultural ☐, business (other than agricultural) ☐ use (check one).1. CASH PRICE (including any accessories, services and taxes imposed on the cash sale) ..... \$ 4500.00 (1)2. TOTAL DOWNPAYMENT — Trade-in Make, Model, Year 1978 Make, Model, Year 1978 Make, Model, Year 1978 plus \$ 1000.00 Cash Downpayment ..... \$ 1000.00 (2)3. UNPAID BALANCE OF CASH PRICE (Difference between Items 1 and 2) ..... \$ 3500.00 (3)

## 4. OTHER CHARGES

\*A. Cost of Required Physical Damage Insurance ..... \$ 0.00 (4A)\*\*B. Cost of Optional Mechanical Breakdown Insurance ..... \$ 0.00 (4B)

BUYER MAY CHOOSE THE PERSON THROUGH WHICH THE INSURANCE IN A AND B IS TO BE OBTAINED.

C. Cost of Creditor Insurance for the term hereof.

COVERAGE OF THE BUYER BY ANY SUCH INSURANCE IS NOT REQUIRED BY SELLER.

CHECK CREDITOR  
INSURANCE DESIRED\*\*\* ☒ Life ..... \$ 97.40 (4C)☒ Disability (Accident and Health) ..... \$ 189.81 (4C)☐ Other (describe) ..... \$ 0.00 (4C)

FOR THE TERM HEREOF

BUYER'S APPROVAL: I DESIRE TO OBTAIN THE CREDITOR INSURANCE CHECKED ABOVE FOR THE BUYER PROPOSED FOR INSURANCE.

9/12/78  
(Date)

Signature

(Buyer's Signature)

(Co-Buyer's Signature)

D. Official Fees (Describe) ..... **SALES TAX** ..... \$ 225.00 (4D)E. License and/or Registration Fees (Itemize) ..... \$ 8.50 (4E)F. Certificate of Title Fee ..... \$ 18.00 (4F)G. Other (Describe) ..... **DOC. FEE** ..... \$ 7.50 (4G)5. UNPAID BALANCE—AMOUNT FINANCED (Sum of items 3 and 4) ..... \$ 4022.21 (5)6. FINANCE CHARGE ..... \$ 966.79 (6)7. TOTAL OF PAYMENTS (Sum of items 5 and 6) ..... \$ 4989.00 (7)8. DEFERRED PAYMENT PRICE (Sum of items 1, 4 and 6) ..... \$ 5989.00 (8)9. ANNUAL PERCENTAGE RATE ..... 14.55% (9)10. PAYMENT SCHEDULE: The Total of Payments (Item 7) is payable at seller's office designated below or at such office of any assignee as may be hereafter designated in 36 instalments of \$ 138.75 each, commencing 10/12, 1978, and on the same day of each successive month thereafter, or as indicated in space below.

Any instalment which is more than twice the amount of an otherwise regularly scheduled equal instalment is a BALLOON PAYMENT. Unless the property described in this contract is to be used primarily for agricultural or leasing purposes, buyer has the right to refinance the amount of any Balloon Payment at the time it is due without penalty and under terms which shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the Payment Schedule is adjusted to the seasonal or irregular income of the buyer.

11. DEFAULT CHARGE IN EVENT OF LATE PAYMENT If any instalment is not paid within 10 days after it is due, buyer agrees to pay a delinquency charge equal to 5% of the unpaid instalment not to exceed \$9 if property hereunder is purchased primarily for personal, family, household or agricultural use.

12. DESCRIPTION OF SECURITY INTEREST Seller retains a security interest under the Uniform Commercial Code in the property described above and any proceeds to secure payment and performance of buyer's obligation hereunder, including any additional indebtedness incurred as provided herein, and under any extensions or renewals hereof.

13. PREPAYMENT REBATE Upon prepayment in full buyer is entitled to a rebate of the Finance Charge (Item 6) computed in accordance with the Rule of 78 if the obligation hereunder is originally payable in 61 instalments or less; otherwise in accordance with the actuarial method. A minimum charge will be retained in determining the amount of the rebate as follows: \$5 if the Amount Financed does not exceed \$75; \$7.50 when the Amount Financed exceeds \$75. No rebate under \$1 will be paid.

## \*Required Physical Damage Insurance

Insurance Company Max Term: 36 months☐ \$ 0.00 Deductible Collision—and also select one of the following:☐ Full Comprehensive including—Fire-Theft and Combined Additional Coverage☐ \$ 0.00 Deductible Comprehensive including—Fire-Theft and Combined Additional Coverage☐ Fire-Theft and Combined Additional Coverage☐ Optional if desired—Towing and Labor costs ☐ Rental Reimbursement ☐

The insurance, if any, referred to in this contract does not include coverage for bodily injury and property damage caused to others.

According to terms and conditions set forth in policy or certificate of insurance issued by the insurer as checked below and in "Notice of Proposed Creditor Insurance on Life of Buyer" contained on reverse of buyer's copy of contract.

Buyer Proposed For Life Insurance: The person whose name appears on line A below (co-buyer, if any, on line B, when buyer is a corporation or partnership).

☐ The Prudential Insurance Company of America, Newark, New Jersey, under its Group Policy No. GL-360. The insurance under said group policy does not cover (I) the Buyer Proposed for Life Insurance if age 65 or more on the date of this contract or (II) suicide within one year therefrom. Under said group policy, the maximum amount of insurance for this contract is \$10,000 and the maximum aggregate amount of insurance for this and any other instalment contract of the buyer is \$15,000.

BUYER'S AGE STATEMENT AND HEALTH DECLARATION (Applicable Where a Charge Has Been Authorized in 4C Above and Insurance Under Prudential Group Policy GL-360 Is Proposed).

Age last birthday of Buyer Proposed for Life Insurance? ☐ Under 65

I, the Buyer Proposed for Life Insurance, understand that the insurance is only available to a buyer who makes the following declarations to induce Prudential to effect such insurance: I do hereby declare that within the past three months (1) I have not consulted or been under the care of a doctor or other practitioner for cancer, and (2) I have not been confined in a hospital or other institution because of any condition of the heart, brain, liver, kidneys or lungs. I hereby authorize any physician or hospital to disclose to Prudential all information concerning my medical history prior to the date of this contract.

Signature

(Signature of Buyer Proposed for Life Insurance)

## \*\*Optional Mechanical Breakdown Insurance

Insurance Company MaxTerm: ☐ 36 months or 36,000 miles, whichever occurs firstTerm: ☐☐ \$25 Deductible ☐ \$50 Deductible ☐ \$ 0.00 Deductible☒ **GREAT EQUITY LIFE**

(If Other Policy, Name Insurer)

**CHICAGO, ILLINOIS**

(Home Office Address)

Under policy of above designated insurer, maximum amount of insurance under this contract is \$ 4995.00

and maximum aggregate amount of insurance under this an.

any other instalment contract of the buyer is \$ 15000

## NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Executed in quintuplicate, copy of which was delivered to, and receipt is acknowledged by, buyer, this 12 day of 9, 1978.

Buyer Signs in Ink

Co-Buyer B Signs in Ink

Seller Signs in Ink

**STREATOR CHEVROLET COMPANY**

By

(Title)

The foregoing contract is hereby assigned under the terms of the "Seller's Recommendation, Assignment and Guaranty (With Recourse)" on the reverse side.

The foregoing contract is hereby assigned under the terms of the "Seller's Recommendation and Assignment (Without Recourse or With Limited Recourse)" on the reverse side.

Seller By (If Corp. or Partnership) (Title)

Seller By (If Corp. or Partnership) (Title)



# GREAT EQUITY LIFE INSURANCE COMPANY

CHICAGO, ILLINOIS

(herein called "the Company")

## NOTICE OF PROPOSED CREDIT LIFE & DISABILITY INSURANCE

CERTIFICATE NUMBER  
**A536914**

INSURED DEBTOR (herein called "You") <b>Hector M. Martinez</b>		AGE <b>19</b>	CREDITOR <b>GMAC P.O. BOX 25873 Salt Lake City, Utah 84125</b>		GROUP POLICY NO. <b>8416</b>
STREET ADDRESS <b>8101 South 2200 West</b>					
CITY <b>West Jordan, Utah</b>	STATE <b>84084</b>	ZIP CODE	DATE OF INDEBTEDNESS		
			MONTH <b>9</b>	DAY <b>12</b>	YEAR <b>78</b>
CO-SIGNER (LIFE INSURANCE ONLY) <b>n.a.</b>		AGE	TERM OF INSURANCE (MONTHS) <b>36</b>		
SECOND BENEFICIARY <b>Estate</b>		STREET ADDRESS		CITY	STATE
		ZIP CODE			

LIFE INSURANCE			TOTAL DISABILITY INSURANCE		
COVERAGE (ELECT ONE)	CHARGE	INITIAL AMOUNT	CHARGE	MONTHLY BENEFIT	WAITING PERIOD
SINGLE LIFE <input checked="" type="checkbox"/>	\$ 97.40	\$ 4995.00	\$ 189.81	\$ 138.75	BENEFITS ARE PAYABLE AFTER <u>14</u> DAYS COMMENCING WITH THE <u>1st</u> DAY.
JOINT LIFE <input type="checkbox"/>					
Maximum age: cannot exceed age 69 at the scheduled maturity date of indebtedness.		MAXIMUM AMOUNT OF INSURANCE		MAXIMUM MONTHLY BENEFIT (TOTAL DISABILITY)	
		LIFE INSURANCE \$15,000	DISABILITY INSURANCE \$15,000	\$400.00	
LIENHOLDER (if different from Creditor)			MAXIMUM TERM FOR DISABILITY INSURANCE 48 MONTHS		

The Signer(s) of the contract hereby take(s) notice that group credit life insurance coverage and/or group credit accident and health insurance coverage will be applicable to this contract if so marked on the front of the contract and each such type of coverage will be written by the insurance company named above. This insurance, subject to acceptance by the insurer covers only the person(s) signing the request for such insurance. The amount of charge is indicated for each type of credit insurance to be purchased. The term of insurance will commence as of the date the indebtedness is incurred and will expire on the date 15 days after the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days, there will be delivered to the insured debtor a certificate of insurance more fully describing the insurance. In the event of prepayment of the indebtedness, a refund of insurance charges will be made where due.

Applicant \_\_\_\_\_ Witness \_\_\_\_\_ Date \_\_\_\_\_  
Co-Signer \_\_\_\_\_

### LIMITATION OF COVERAGES

**EFFECTIVE DATE:** The effective date of coverage is the date you become obligated to the Creditor (shown above as the "Date of Indebtedness").

**MAXIMUM AGE:** No person is eligible for this insurance if on or before the scheduled maturity date of indebtedness, such person will have passed the age of 69, unless such indebtedness results from the renewal or refinancing of an indebtedness for which such person was previously insured by the above group policy.

**PERSONS INSURED:** If single life insurance is elected, only you are insured in the event of death. If joint life insurance is elected, both you and your co-signer are insured in the event of death. Joint life insurance will pay only one death benefit. If a death benefit is paid, as a result of your death or the death of your co-signer, no insurance will thereafter be in effect under this certificate. If your death and your co-signer's death occur simultaneously, one death benefit will be paid for your death only.

If disability insurance is elected, only you are insured in the event of total disability and only if you are gainfully employed for compensation for at least thirty hours per week on the effective date of coverage.

No person is eligible for any insurance hereunder if such person is a corporation, association or partnership.

**EXCLUSIONS:** NO INSURANCE IS PROVIDED HEREUNDER: IF DEATH RESULTS FROM SUICIDE, WHETHER SANE OR INSANE, WITHIN ONE YEAR FOLLOWING THE DATE OF INDEBTEDNESS. IF DISABILITY RESULTS FROM (a) NORMAL PREGNANCY; (b) INTENTIONALLY SELF-INFLICTED INJURY WHILE SANE OR INSANE; (c) FLIGHT IN A NON-SCHEDULED AIRCRAFT; (d) WAR OR MILITARY SERVICE; (e) INJURY SUSTAINED OR SICKNESS CONTRACTED FOR WHICH MEDICAL DIAGNOSIS OR TREATMENT WAS REQUIRED, OR WOULD HAVE CAUSED A REASONABLY PRUDENT PERSON TO HAVE SOUGHT MEDICAL DIAGNOSIS OR TREATMENT WITHIN SIX MONTHS PRIOR TO THE EFFECTIVE DATE OF THIS CERTIFICATE AND WHICH CAUSES A LOSS WITHIN SIX MONTHS AFTER SUCH EFFECTIVE DATE OF COVERAGE; PROVIDED, HOWEVER, THAT DISABILITY COMMENCING AFTER SIX MONTHS FROM THE EFFECTIVE DATE OF COVERAGE RESULTING FROM SUCH CONDITION SHALL BE COVERED.

**PARTIAL LIFE INSURANCE COVERAGE:** If the initial indebtedness exceeds the maximum amount of life insurance permitted for an indebtedness on the date of the loan, the amount of indebtedness covered by the life insurance throughout the term of the loan shall be the ratio of the maximum amount of life insurance shown above to the initial indebtedness and such ratio shall be established on the date of the indebtedness.

**DISABILITY INSURANCE LIMITS:** The amount of Monthly Disability Benefit set forth in the schedule may be less than the monthly installment payments necessary to discharge the unpaid indebtedness. In no event will the Company issue an amount of Monthly Disability Benefit in excess of the lesser of (a) maximum monthly benefit set forth in the schedule, (b) the initial indebtedness divided by the number of monthly payments and (c) an amount which would result in aggregate monthly disability payments of \$15,000.

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