

1960

Marilynn Manning v. Western Airlines and Connecticut General Life Insurance Co. : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH
FILE

MARILYN K. MANNING,

Plaintiff and Appellant,

vs.

WESTERN AIRLINES, a corporation,
and CONNECTICUT GENERAL
LIFE INSURANCE COMPANY, a
corporation,

Defendants and Respondents.

Supreme Court, Utah

Case
No. 9109

BRIEF OF RESPONDENTS

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IN THE SUPREME COURT of the STATE OF UTAH

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Case
No. 9109

BRIEF OF RESPONDENTS

STATEMENT OF FACTS

Respondents consider appellant's statement of facts to be inadequate and misleading. Accordingly, it is contraverted generally, and the following statement is submitted.

Appellant was plaintiff below. She is the widow of Arthur M. Manning. She also is the designated beneficiary of the decedent to the extent of his participation in three group insurance plans in effect between respondents, defendants below: (1) Group Life Insurance; (2) Group Accident and

Sickness Insurance; and (3) Group Hospital and Surgical Expense Benefits, with a Family Benefit Option (Ex. D-1, D-3, D-9, P-6).

By her complaint, appellant sought recovery against both respondent insurance company, hereinafter called "Connecticut", and respondent airline, hereinafter called "Western", decedent's employer, of \$3,600.00 under such Group Life Insurance and of \$3,600.00 under such Group Accident and Sickness Insurance; Group Hospital and Surgical Expense Benefits were not claimed (R. 1-2). Respondents answered: (1) denying a right of recovery under such Group Life Insurance in that decedent's coverage had been cancelled prior to, and was not in effect at, his death; (2) denying a right of recovery under such Group Accident and Sickness Insurance in that such coverage did not provide for the payment of benefits for losses due to injuries arising out of, or in the course of, any employment for wage or profit; and (3) denying, in any event, a right of recovery against Western (R. 3-5).

In the discovery period, appellant admitted that the death of Arthur M. Manning resulted from an accident which occurred in the course of his employment for wage or profit (R. 17, 12). At pre-trial conference respondents introduced Group Accident and Sickness Insurance Certificate 8818, issued to decedent and containing the following exclusion: "... provided, however, that this insurance shall not cover losses due to injuries arising out of, or in the course of, any employment for wage or profit" (Ex. D-3, p. 2) and the basic policy containing an equivalent clause (Ex. P-4, page 2). By pre-trial admission, although apparently identifying the wrong

policy, appellant conceded the existence of such exclusion (R. 18, 37); in any event, no evidence denying its applicability was introduced. Accordingly, the pre-trial judge granted respondents' motion to dismiss that portion of appellant's complaint relative to recovery of \$3,600.00 under the Group Accident and Sickness Insurance (R. 38). Such dismissal was not disputed at trial and was incorporated in the final judgment of the trial court (R. 78). There thus remained for resolution at trial the question of whether appellant was entitled to recover \$3,600.00 from respondents as decedent's designated beneficiary under the Group Life Insurance Plan (R. 38). The case was set for jury trial pursuant to appellant's demand (R. 36, 38).

At the commencement of the trial hearing, the court stated: "The case was set this morning for jury trial, and I can't see a single fact in dispute" (R. 39). During the course of the proceedings, the trial judge sought stipulations of fact (R. 59-63), rejecting such of respondents' evidence as was not stipulated to or acquiesced in by appellant (R. 56). On the second day of trial, the court said: "... if after I hear this evidence I am going to ... take the matter from the jury, if it is going to be of such a nature that reasonable minds couldn't disagree, I didn't want to call a jury ..." (R. 65-66). Following introduction of evidence, stipulation of fact by respective counsel and an offer of proof by counsel for appellant (R. 67-68), the trial court ruled that there was no material of fact and ordered that the appellant's complaint be dismissed (R. 78).

The following are the undisputed facts:

(1) On March 18, 1930, respondents entered into a Group Life Insurance Policy which, as amended, was effective at all times relevant to this action (Ex. D-9). It provided that insurance rates might be changed from time to time (Ex. D-9; R. 51-52). It also provided, as did the pertinent employee's certificate, that when a particular employee cancelled his payroll deduction order, the coverage of such employee should cease at the end of the period for which the last deduction has been made (Ex. P-6, D-9).

(2) On May 21, 1957, decedent was employed by Western (Ex. D-1).

(3) On May 22, 1957, decedent was interviewed by the personnel division of Western. At that time he was informed of the Group Insurance Plans available to Western employees, and was handed an unfilled application blank (Ex. D-8, D-9; R. 54-55). He was also given, as a part of the program of advising him of such plans, a booklet summarizing them (App. Brf. p. 2; Ex. P-2). It is unknown whether he received a supplement to the booklet (R. 60). It is inaccurate to state that such booklet was prepared and published as a joint effort on the part of respondents (App. Brf. p. 2); the sole evidence on the matter was the answers of respondents (R. 27, 34) to appellant's written interrogatories (R. 23-24, 30-31). They indicated that such booklet, although checked as to format by an official of Western, was prepared and published by Connecticut.

(4) Decedent did not execute the application for the group plans on May 22, 1957 (Ex. D-8; R. 54-55). On May 25, however, he did so, applying for coverage under each

available plan, including Group Life Insurance (Ex. D-1). Such coverage was extended.

(5) Under date of June 4, 1957, decedent transmitted to E. H. Brown, Personnel Director of Western (Ex. D-7), a document which respondents chose to denominate and the trial court interpreted to be, a "payroll deduction cancellation request" but which appellant chooses to call an inquiry (App. Brf., p. 3). Respondents object to argumentative labelling in a recitation of facts on appeal; the important fact is that the communication which was forwarded read: "I wish to drop the life insurance part of my policy if possible. Thank you, /s/ Arthur M. Manning" (Ex. D-7, R. 74-75).

(6) As of the close of the month of June, 1957, Western notified Connecticut of the cancellation of decedent's group life insurance coverage (Ex. D-1, D-10, D-11; R. 55-56). Thereafter, no deduction for group life insurance was made from the pay of decedent (Ex. D-5), and no premium was paid by Western to Connecticut for such coverage (Ex. D-10; R. 55).

Respondents make particular objection to the second paragraph of appellant's statement of facts which deals with the cost of such group insurance to the employee and the deductions which were made therefrom (App. Brf. p. 2). The only possible relevance that these facts would have would be to show (a) that as the amount deducted from decedent's pay-check for insurance after receipt of decedent's request to cancel his policy was \$1.80 less (\$11.70 as opposed to \$13.50), and as the amount of the life insurance premium set forth in the booklet was \$1.80, this is corroborative of the fact that Western did actually cancel Manning's life insurance coverage

(a fact which is undisputed in any event [Ex. D-1, D-10, D-11; R. 55-56]); (b) that appellant by receipt of these payroll deduction stubs was thereby notified that his request to cancel had been honored; and (c) that for some reason the booklets given to employees explaining the various group policies of the company constituted an offer to insure forever the employee-recipient of the booklet, at the rate set forth in the booklet furnished.

The first two points are only of material assistance to respondents, not appellants. The latter point, although argued by appellant below, is now abandoned and need not be considered, as appellant states that "there is one basic issue to be decided by this appeal" (App. Brf., p. 6) which is whether the life insurance policy had been cancelled.

The only complicating factor as to deductions was that on December 1, 1956, the amounts deductible from employee's pay for certain of the group coverages (*not* including life insurance) were increased (R. 56-57). Thus, of course, that portion of the old booklet which set forth rates (Ex. P-2) would not be applicable after December 1, 1956. The undisputed evidence was that for a period after December 1st Western continued to hand its new employees the old booklet, together with a mimeographed supplement showing the rate changes, and that in May of 1957 (the month in which Manning was hired) a new booklet was printed showing the new rates. Western's employee who interviewed Manning can only testify as to the above general procedure and that she did give Manning a booklet (R. 60).

It is not unreasonable to assume that Manning either

received the old booklet with the mimeographed supplement or the new booklet because this would be consistent with general company policy. But, of course, it is completely immaterial what Mrs. Manning said her husband received since she was not present at the time. Certainly it is completely unfair to assert, as appellant does, that "deductions were being taken on the basis of a new schedule which the evidence would show had never been given to decedent and of which he was not aware" (App. Brf. p. 2). Respondents contend that the whole issue is immaterial and irrelevant in any event. *Both* the old and new pamphlets showed a life insurance deduction of \$1.80 per month (Ex. P-2, R. 11). It is undisputed that appellant received the payroll deduction vouchers showing a reduction of \$1.80 in his total insurance payments (Ex. D-5). Which ever booklet decedent received thus makes no difference.

Respondents also object to appellant's references to conversations between the decedent and his wife (e.g., App. Brf., p. 3-4). What the decedent said to his wife about these matters is irrelevant, immaterial and inadmissible as the purest type of hearsay (R. 68-69). However, as respondents will show in this brief, as a matter of law it makes no difference for purposes of resolving this case what was said between the decedent and his wife.

ARGUMENT

I

THIS CASE DOES NOT INVOLVE CANCELLATION OF A POLICY; IT CONCERNS COVERAGE OF AN EMPLOYEE.

Appellant's brief argues in terms of whether or not "the life insurance policy had been cancelled" (App. Brf., p. 6). Such phraseology is unfortunate, because inaccurate. The only policy here involved (Ex. D-9) was between Western and Connecticut and was in effect at all times here pertinent. As is stated in 29 *Am. Jur., Insurance* § 1372:

"It is generally held that an employee's contract of insurance under the group plan consists of the policy issued by the insurer to the employer; the individual certificate delivered by the employer to the employee is no part of such contract, but only an instrument reciting the employee's right to protection under the terms of the group policy so long as there is compliance with the conditions of the policy."

The quoted language squares with the mandate of the Utah legislature, found at 31-23-2(3) UCA (1953), which requires that "the policy, the application of the employer and the individual applications, if any, shall constitute the entire contract between the parties . . . The individual certificate . . . issued by the insurance company setting forth a statement as to the insurance protection to which the individual is entitled shall not become a part of the contract between the parties."

The problem which is here involved is whether or not the decedent was, at the time of his demise, entitled to the coverage afforded by such existent policy. This depends, in turn, upon whether decedent's coverage was, prior to his death, terminated by virtue of his communication to Western (Ex. D-7), Western's consequent stoppage of group life deductions and its notification to Connecticut of the termination of such coverage (Ex. D-10, D-11).

II

THIS CASE IS GOVERNED BY PRINCIPLES OF LAW APPLICABLE TO GROUP INSURANCE.

The inaccuracy of appellant's designation of the question here involved reflects a lack of understanding, not shared by the courts, of the distinctive characteristics of group insurance.

Group life insurance represents "a distinct form of insurance differing in many, if not most of its aspects from the ordinary life insurance," *Miller v. Traveler's Insurance Company*, 143 Pa. Super. 270, 17 A.2d 807 (1941). "Group life insurance differs from ordinary old-line life insurance," *Leach v. Metropolitan Life Insurance Company*, 124 Kan. 584, 261 Pac. 603 (1927); *reh. den.* 125 Kan. 129, 263 Pac. 784 (1928). In this regard, it is worthy of note that the Utah legislature, recognizing that group life insurance possesses special characteristics, has enacted separate legislation pertinent thereto, Title 31, Chapter 23, UCA (1953). The following excerpt from 29 *Am. Jur., Insurance*, § 1371, expresses some of these distinctions:

"The group insurance contract is peculiar in that it is made by the insurer and the employer or someone in an analogous position¹, instead of between the insurer and the insured, as in other contracts of insurance, thus affecting four parties,—the insurer, the employer, the

¹See 31-23-1, UCA (1953) and 7 *Encyclopaedia of the Social Sciences, Group Insurance*, p. 182, for enumerations of those organizations, business units and political entities whose position is analogous to that of the employer. Among them are trade unions, consumers' co-operative societies, educational institutions, lending institutions, and municipalities.

insured and the beneficiary. Also, group insurance is often times a gratuity in that the employer pays either the whole or a part of the premium. Group insurance differs from old-line life insurance, but is similar in many respects to workman's compensation insurance, in that each is secured by the employer for the benefit of the employee, and in that employment is a condition, precedent to each to be effective. It should be borne in mind, however, that group insurance is not indemnity insurance for the benefit of the employer, but insurance on the life of the employee for his personal benefit and the protection of those depending upon him, and is in addition to and distinct from workman's compensation provided for by the laws of the state." (*Am. Jur.* footnotes eliminated; present footnote supplied.)

III

BY THE NATURE OF A GROUP POLICY, THE EMPLOYER, WESTERN, IS NOT LIABLE TO APPELLANT.

The employer is not liable in a suit to recover the benefits under the policy, *Mason's Adm'x v. Prudential Insurance Company*, 291 Ky. 347, 164 S.W. 2d 328 (1945); *Peyton v. Metropolitan Life Insurance Company*, 148 So. 721 (La. App., 1933); *Gallego v. Simmons Hardware Company*, 214 Mo. App. 111, 258 S.W. 16 (1924); *Haneline v. Turner White Casket Company*, 238 N.C. 127, 76 S.E. 2d 372 (1953). The reasoning of the cases is summarized at 8 *Couch's Cyclopaedia of Insurance Law*, § 2094:

"Since a contract for group insurance is between the employer and the insurer for the benefit of the employee, the right of action by the employee or his

beneficiary or representative is against the insurer, and not against the employer, between whom and the employee there is no contract of insurance."

Whether the issue is phrased in terms of cancellation (as in appellant's brief) or of coverage (as in this brief), it is clear that appellant now contends that she is entitled to recover on the master policy. That being the case, Western is not liable to appellant.

IV

UNDER THE GROUP POLICY HERE INVOLVED, THE RELATIONSHIP OF WESTERN TO DECEDENT WAS THAT OF AGENT TO PRINCIPAL.

The document of greatest importance to this case is a communication from decedent-employee to Western, his employer (Ex. D-7). It is, therefore, requisite that their relationship be defined.

In *Boseman v. Connecticut General Life Insurance Company*, 301 U.S. 196, 57 S. Ct. 686, 81 L. Ed. 1036, 110 A.L.R. 732 (1937), *affirming* 84 F.2d 701 (5 Cir., 1936), the United States Supreme Court stated, at 301 U.S. 204-5:

"When procuring the policy, obtaining applications of employees, taking payroll deduction orders, reporting changes in the insured group, paying premiums and generally in doing whatever necessary to obtain and keep the insurance in force, employers act not as agents of the insurer but for their employees and for themselves." (Citations eliminated.)

In making this statement, the Supreme Court cited the initial judicial analysis of the relationship of employee *vis-a-vis* employer under the group insurance plan, found in *Duval v. Metropolitan Life Insurance Company*, 82 N.H. 543, A. 400. 50 A.L.R. 1276, 1282-3 (1927):

"The claim that the employer is the agent of the insurer in the collection and forwarding of premiums is wholly without foundation. By the express terms of the policy the company looks to the employer for the payment of the premiums. It has no concern with whether it collects part of them from the employee or not. The employee is insured because he has made application, and because the employer promises to pay the insurer the premiums. The promise to pay is for the benefit of the employee.

"Again, it is urged that, as the provisions as to notice of claim, proof of loss, etc. are contained in the master policy, therefore the employer is the insurer's agent to give information of these subjects. It is said that the whole purpose of the group insurance scheme would be frustrated unless the employer co-operates with the employee as agent 'by implication' for the insurer.

"That the employer is expected to cooperate with the employee is evident. The whole scheme is paternalistic. The error of counsel, here and elsewhere, is in failing to appreciate that the paternalism is that of employer towards employee. It does not have the effect of making the benevolent parent the agent of the party with whom he inaugurates a contract for the benefit of his children. The line dividing the three parties to the contract according to their interest and real position in these transactions puts the employer with the employee, as opposed to the insurer."

With the decision of further cases involving group insurance, the view that the employer acts as an agent of the employee has become standard.²

The fact that an employer does not act as the agent of the insurance carrier was recognized by this court in *Ralston v. Metropolitan Life Insurance Company*, 90 Utah 496, 62 P.2d 1119 (1936). In that case, the employee sought recovery of total and permanent disability benefits provided for by the group life policy in effect between the insurance company and Southern Pacific Company, his employer. One of the issues at trial and upon appeal was whether proof of claim had been

² 1 Appleman, *Insurance Law and Practice*, § 43; 29 Am. Jur., *Insurance* § 1379; C.J.S., *Insurance*, § 140; *Metropolitan Life Insurance Company v. Quilty*, 92 F.2d 829 (7 Cir., 1937); *Connecticut General Life Insurance Company v. Speer*, 185 Ark. 615, 48 S.W. 2d 553 (1932); *Blaylock v. Prudential Insurance Company*, 84 Ga. App. 641, 67 S.E. 2d 173 (1951); *Thigpin v. Metropolitan Life Insurance Company*, 57 Ga. App. 405, 195 S.E. 591 (1938); *Lancaster v. Travelers Insurance Company*, 53 Ga. App. 718, 189 S.E. 79 (1936); *Metropolitan Life Insurance Company v. Henry*, 217 Ind. 33, 24 N.E. 2d 918 (1940); *Morales v. Equitable Life Assurance Soc.*, 115 Ind. App. 565, 60 N.E. 2d 747 (1945); *Leach v. Metropolitan Life Insurance Company*, supra; *Mason's Adm'x v. Prudential Insurance Company*, supra; *Equitable Life Assurance Soc. v. Hall*, 253 Ky. 347, 164 S.W. 2d 386 (1934); *Kloidt v. Metropolitan Life Insurance Company*, 18 N.J. Misc. 661, 16 A.2d 274 (1939); *People ex. rel. Kirkman v. Van Amringe*, 266 N.Y. 277, 194 N.E. 754 (1935); *Rivers v. State Capital Life Insurance Company*, 245 N.C. 461, 96 S.E. 2d 431, 68 A.L.R. 2d 205 (1957); *Haneline v. Turner White Casket Company*, supra; *Dewease v. Travelers Insurance Company*, 208 N.C. 732, 182 S.E. 447 (1935); *Hroblak v. Metropolitan Life Insurance Company*, 79 N.E. 2d 360 (Ohio App., 1947); *Hanaieff v. Equitable Life Assurance Soc.*, 71 Pa. 560, 92 A.2d 202 (1952); *Best v. Equitable Life Assurance Soc.*, 165 Pa. Super. 452, 68 A.2d 400 (1949), *aff'd*, 365 Pa. 418, 76 A.2d 220 (1950); *McFadden v. Equitable Life Assurance Soc.*, 351 Pa. 570, 41 A.2d 624 (1945); *Miller v. Traveler's Insurance Company*, supra; *Insurance Company v. Jackson*, 12 Tenn. App. 305 (1931).

furnished to the insurance company. The employee adduced evidence that he had furnished such proof to Southern Pacific and that it had denied his claim. On the basis of this undisputed evidence, the trial court instructed the jury that Metropolitan has waived due proof of claim. This court reversed, holding at 62 P.2d 1121:

"This letter of March 3, 1931, from the Southern Pacific Company to Ralston, containing a denial of liability, did not bind the insurance company. The Southern Pacific Company was not the agent of the defendant for that purpose. The court's instruction directing the jury that due proof of plaintiff's disability was waived on March 3, 1931, was error."

Both concurring opinions expressly voiced agreement with this view, Mr. Justice Folland's at 62 P.2d 1124 and Mr. Justice Wolfe's at 62 P.2d 1125. The decision is in accord with the North Carolina case of *Dewease v. Traveler's Insurance Company*, supra. Appellants are unable to read into *Bucher v. Equitable Life Assurance Soc.*, 91 Utah 179, 63 P.2d 604 (1936), cited by appellant (App. Brf., p. 15), an overruling by this court of the principle recognized in *Ralston* which had been decided ten days previously. *Bucher* did not involve the relationship between employee and employer, but, rather, the attempt by an insurer to set up a defense based upon a provision not in the master policy.

Inasmuch as the employer acts as agent of the employee, not of the insurer, service of process upon the employer does not constitute service upon the insurer, *Connecticut General Life Insurance Company v. Speer*, supra; *Blaylock v. Prudential Insurance Company*, supra. Nor can the employer bind the

insurer by accepting premiums subsequent to the cancellation of the master policy, *Lancaster v. Traveler's Insurance Company*, supra.

By like token, the rules of the law of agency apply to the relationship between the employer and employee. The following case is an illustration:

In *Metropolitan Life Insurance Company v. Henry*, supra, it was claimed that the employee did not have notice of the maximum time in which proof of claim might be made. The Indiana Supreme Court rejected the respondent's position, noting: (1) it was undisputed that the master policy at all times pertinent was in the physical possession of the employer; (2) under Indiana law, knowledge of the terms of a policy by its possessor is conclusively presumed; and (3) the knowledge of the employer-agent was imputed, as a matter of law, to the employee-principal. The rule of the *Henry* case was applied by the Indiana Appellate Court in *Morales v. Equitable Life Assurance Soc.*, supra, which involved the employee's claimed lack of knowledge of a temporary lay-off provision.

In *Mason's Adm'x v. Prudential Insurance Company*, supra, the employee (for whom his administratrix was substituted following his death) sought to recover from the insurer disability benefits under a group policy. The insurer defended on the ground that the policy has been cancelled by it and the employer. The Kentucky Supreme Court held that the employer, in procuring the policy, acted for the benefit of its employees, including Mason. It stated at 164 S.W. 2d 388-9: •

"Such agency was ratified by application for coverage under the policy and the contract completed on accept-

ance of the certificate under the policy. Therefore the railroad company's act in cancelling the policy was the act of the insured."

The relationship between decedent and Western relative to the group policy in question was that of agent and principal. Through the card (Ex. D-1) by which decedent accepted the policy of group insurance he expressly authorized Western to act in his behalf in deducting premiums from his wages. By the communication dated June 4, 1957, decedent instructed Western as follows: "I wish to drop the 'life insurance' part of my policy if possible. Thank you." Western, in reliance thereon (it is not contended by appellant that Western's actions were fraudulent) ceased to make life insurance deductions and informed Connecticut that decedent's insurance had been terminated (Ex. D-10, 11). Decedent, consequently appellant, was bound by such notification.

V

UNDER APPLICABLE RULES AS TO COMMUNICATIONS BETWEEN AGENT AND PRINCIPAL, DECEDENT'S COVERAGE WAS TERMINATED.

Appellant confuses the more exacting tests courts have applied to the cancellation of non-group insurance policies with the instant case, which involves an instruction from principal to agent.

Respondent contends that the communication dated June 4, 1957, is clear and unambiguous under any reasonable interpretation. But giving appellant every benefit and conceding *arguendo* that the communication "I wish to drop the 'life

insurance' part of my policy if possible. "Thank you" is subject to being construed as a mere inquiry, it surely cannot be contended that it is *unreasonable* to construe this as a request to drop decedent from the group coverage. At most, appellant contends that the communication in question is ambiguous. Granting this premise, it is reasonably susceptible to the interpretation placed upon it by Western.

In such event, it is clearly established that neither respondent is liable to appellant. *Mechem on Agency* (2d Ed.) § 1266 states:

"If the principal desires his instructions to be pursued, it is obviously necessary that he should make them intelligible and clear. If however they are so ambiguous as to be fairly capable of two interpretations and the agent in good faith and with due diligence adopts one of them, he cannot be held liable to the principal for a loss that may result on the latter's claim that he meant the other."

This view is adopted by the *Restatement of Agency* 2d, § 26:

" . . . authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account."

This rephrases the rule that a document is to be construed most strongly against its drafter, *Restatement of Contracts*, § 235(d).

Indeed, the request to drop decedent from group coverage is put to no more exacting tests as to interpretation than the

original request by decedent to make the deductions, which automatically placed him within the covered group.

It is elementary that the principal is bound by the proper act of his agent, *Linseed Oil Company v. Montagio and Smith*, 65 Iowa 67, 21 N.W. 184 (1884); *Falskin v. Falls City State Bank*, 71 Neb. 29, 98 N.W. 425 (1904); *Picket v. Parsons*, 17 Vt. 470 (1845).

Inasmuch as Western, decedent's agent, acted properly in relying on decedent's communication of his payroll deduction order, decedent's group life coverage was terminated.

VI

THERE WAS NO JURY QUESTION.

Appellant contends that as the communication of June 4, 1957 (Ex. D-7) was "sufficiently ambiguous" appellant should have been able to submit the matter to a jury (App. Brf. p. 19).

It is submitted that appellant confuses the function of judge and jury in this case. By definition the word "ambiguous" means "capable of being understood in either of two or more possible senses," *Webster's New International Dictionary*, Unabridged, 2d Ed. By appellant's very statement (which respondent does not concede) as the statement was "ambiguous" it was one on which two reasonable people could disagree. Thus, even if Western placed a different meaning on the communication than what was intended, as it was concededly ambiguous, Western's conduct was concededly reasonable. As a jury is only entitled to pass upon matters concerning which reasonable men can disagree, and as by appellant's own postu-

lation the action of Western was reasonable, there is no jury question.

Moreover, the trial court's ruling it consistent with the well-established general rule that the interpretation, construction, meaning and legal effect of written instruments are matters of law for the court. As Mr. Justice Brandeis states: "The construction and effect of a written instrument is a question of law." *Swift and Company v. Hocking Valley R. Co.*, 243 U. S. 281, 37 S. Ct. 287, 61 L. Ed. 722 at 725 (1917). The Eighth Circuit, in denying defendant's claim that the meaning of the written language in question should have been left to the jury, quoted with approval the following general rule:

"Undoubtedly, the general rule is that the question whether written instruments constitute a contract, as well as the interpretation of such written instruments when it is determined that they do constitute a contract, belongs to the court, and not to the jury." *Drainage District No. 1 v. Rude*, 21 F.2d 257 (8 Cir., 1927). See Digest, Key No. Contracts, 176.

Utah law recognizes this rule. Thus § 78-21-3 UCA 1953 requires that "All questions of law including . . . the construction of statutes *and other writings* . . . are to be decided by the court and all discussions of law addressed to it." As this court has stated, in holding that the trial court erred in submitting a question of the meaning and construction of a written document to the jury that "The legal effect of written instruments is necessarily a question of law, and hence is one that must be determined by the court. To that rule there is no exception . . ." *Verdi v. Helper State Bank*, 57 Utah 502, 196 P. 225 at 228, 15 A.L.R. 641 (1921).

Appellant claims no oral or written communication to Western supplemental to decedent's writing of June 4, 1957. Appellant admits this communication was the "only communication" (App. Brf. p. 15). What he said to his wife about this is inadmissible and irrelevant. The legal effect of the communication must be found from its four corners. As this court has very recently held, a person's undisclosed intention can not vary the language of a written instrument, *Clyde v. Eddington Cannery Co.*, Utah, 347 P.2d 563 (1959). This job the trial court quite properly assumed.

The trial court extensively reviewed the case and the facts with counsel. Appellant has failed to show any specific facts, other than the interpretation of the writing of June 4, 1957, which she contends would have gone to a jury. Indeed there are none.

Our rules are designed for the most expeditious disposition of litigation. As this court quite recently pointed out "The letter and spirit of our rules are 'designed toward effectuating an inexpensive and expeditious determination of litigation.' " *Aetna Loan Company v. Fidelity & Deposit Company of Maryland*, Utah, 346 P.2d 1078 (1959).

VII

DECEDENT'S COMMUNICATION OF JUNE 4, 1957, CLEARLY AND UNEQUIVOCALLY EXPRESSED HIS INTENTION TO DROP HIS LIFE COVERAGE.

Despite the fact that, as pointed out above, a communication from employee to employer is not bound by the standards

as to clarity which courts have set forth as to requests for cancellation made from an insured to an insurer, it is submitted that the communication in question meets even these tests and is reasonably capable of no other interpretation.

The policy provides for termination of coverage "if any employee cancels his employee deduction order" (Ex. D-9). There was no particular form prescribed for effecting such cancellation and under general rules of insurance law "no particular form of notice of request is requisite" (45 C.J.S. Insurance, § 458, p. 117. Even where the use of a particular form appears in any policy it is inserted clearly for the convenience of the insurance company and can be waived by it by accepting such requests in other ways. This has even been held to be the case where the insurance company did not in fact treat such a request on an unauthorized form as a cancellation. In a recent Virginia case, the insured wrote to the company "Please cancel my Policy #34230-NS-46 as of today. Please return my earned premium. I am getting rid of my car and will not need insurance. Thanking you for your co-operation." The company replied that the request had been referred to its agent. The agent filled out a form, "Policy Holder's Request for Cancellation," and mailed it to the insured who never signed it. Nevertheless, the court held that the insured's letter affected cancellation, *State Farm Mutual Auto Insurance Co. v. Pederson*, 185 Va. 941, 41 S.E. 2d 64 (1947). The receipt of such a request effectively terminates insurance without any further action by the insurance company. Where an insured wrote requesting cancellation on March 1, had a fire loss on the 13th, and the insurance company wrote notifying the insured that the policy had been

cancelled as of March 17, the court nevertheless held that the policy had been effectively terminated as of the 1st. The court held that the request *ipso facto* operated to terminate the contract. *Atlantic Fire Insurance Co. of Raleigh, North Carolina v. Smith*, 183 Okla. 97, 80 P.2d 216 (1938).

Appellant cites *Saskatchewan Government Insurance Office v. Padget*, 245 F.2d 48 (5 Cir., 1957). The case is of no assistance to us, as that court points out that "There is no provision in the policy issued by Saskatchewan which permits cancellation by or on behalf of Padget [the insured]." Nor is this court aided in this case by decisions turning on interpretations of lengthy communications, construed in their entirety, [e.g., *Phillips v. Hirschi*, 92 Mich .693, 201 N.W. 196 (1942)]. The communication before this court is the epitome of brevity.

Appellant strains to torture the communication as a mere request for information. This is done by emphasizing the use of the words "wish" and "if possible". The use of other decisions is only of limited value because the statement must be construed in its own context. Thus the words "if possible" and the context of the communication at most condition the request on the objective fact of the possibility of Western's being able to do the required act. Objectively, it was possible to drop the life insurance coverage, and thus the objective condition was met, and Western acted within this possibility. There are no other conditions set forth in the note.

As to the word "wish" one need go no further than the dictionary to sustain the trial court's interpretation. Thus "wish" is defined as meaning *inter alia* "to request; command".

The noun is defined as "expression of desire; request petition." *Webster's New International Dictionary*, Unabridged, 2d Ed. Going no further than appellant's own cited source we find the statement "wish to cancel" as used in a letter stating that the writers "wish to cancel" a certain contract, "imports nothing in the nature of a request for consent or deference to the views of the other party. It announces, though in civil phrase, the intention of the writer to exercise his right reserved to him . . .", *Ireland v. Dick*, 130 Pa. 299, 18 A. 735, 736 (1889); 45 *Words and Phrases*, p. 361.

In *Gately-Haire Co. v. Niagara Fire Insurance Company*, 221 N.Y. 162, 116 N.E. 1015 (1917); the insured wrote the company, "On taking our inventory, we find we are carrying more insurance than is necessary. We wish to cancel Policy No. 15,997 This cancellation to take effect at once. Please give this matter your immediate attention and oblige." The insured subsequently argued, as appellant does here, that the word "wish" indicated that the letter was merely the expression of a hope, rather than a request. The court disagreed and held that the policy had been cancelled.

One need only consider that this was the communication between an employee to his superior to understand that the decedent would naturally wish to preserve the normal amenities of polite correspondence. Surely it would have been most unusual for a newly-hired employee to couch such a request in words, for example, "I demand my life insurance coverage be dropped forthwith!" Courtesy certainly is not so exceptional that we should allow its day-to-day use to alter the clear meaning of business communication.

Moreover, assuming that the decedent was in any doubt as to whether his request had been acted upon, he need only have observed that his insurance deductions after the end of the pay-period following the submission of his request, reflected a deduction of \$1.80 less than previously. The \$1.80 was the amount shown as that portion of the life insurance premium which employees were to pay in the brochure which appellant admits decedent received. While as observed above confirmation by the insurance company of a request to cancel is unnecessary, the request operating *ipso facto* to affect this, it is clear, as the trial court pointed out, that decedent was advised of this in any event.

CONCLUSION

The instant case raises the issue as to whether decedent was included within the life insurance portion of his employee's group insurance policy at the time of his death. The employer is not liable in any event. Decedent was not included at the time of his death because of a prior written communication from him to his employer, acting as his principal, which could reasonably be construed as a request to drop this coverage, the employer did drop decedent from this coverage and ceased to withhold that portion of the premium chargeable to the employee for life insurance. Moreover, even if the communication from decedent were categorized as a request from the insured to his insurer to cancel a policy, which respondent contends it is not, the communication clearly and unequivocally expressed decedent's intention to drop his coverage and such

coverage was terminated upon the pay-period following its receipt. Thus, respondent respectfully urges that the decision of the trial court be affirmed.

Respectfully submitted,

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