

1991

# Maurine Stevenson v. First Colony Life Insurance Company : Brief of Appellant

Utah Supreme Court

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO.

IN THE  
UTAH SUPREME COURT

91-0561-CA

91-0561-CA

MAURINE STEVENSON,

as personal representative of LaMar Stevenson  
and as trustee of LaMar D. Stevenson trust,

Plaintiff - Appellant - Cross-appellee

v.

FIRST COLONY LIFE INSURANCE COMPANY,

Defendant - Appellee - Cross-appellant

Appeal No. 900251

Argument Priority 16

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY  
Judge Ray M. Harding, Presiding

BRIEF OF APPELLANT

**FILED**

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Clerk, Supreme Court, Utah

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**Appendix A**

**List of All Parties**

**Plaintiff**

MAURINE STEVENSON, as personal representative of LaMar  
Stevenson and as trustee of LaMar D. Stevenson Trust.

**Defendants**

FIRST COLONY LIFE INSURANCE COMPANY,  
TALBERT CORPORATION, and  
ROGER FLEISS.



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### Jurisdiction

The Utah Supreme Court has jurisdiction over this appeal by virtue of the provisions of Utah Code Ann. § 78-2-2(3)(i) (1987). The subject matter, a claim for breach of a life insurance contract, is not one over which the Utah Court of Appeals has original appellate jurisdiction.

### Issues

The sole issue raised by the plaintiff's appeal is whether, in granting the plaintiff's motion for summary judgment, the trial court erred in awarding her damages of \$300,000.00 where her decedent had applied for \$500,000.00 worth of life insurance coverage.<sup>1</sup>

The standard for determining the propriety of summary judgment is the same at trial and appellate levels. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In this case, the trial court ruled as a matter of law that certain language in a conditional receipt applied to limit the insurer's liability. Issues of law are reviewed under a "correction of error" standard, giving no deference to the trial

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<sup>1</sup> The trial court also awarded prejudgment interest at ten percent (10%) and post-judgment interest at twelve percent (12%). The plaintiff does not dispute these interest figures.

court's ruling. Utah State Retirement Office v. Salt Lake County, 780 P.2d 813, 814-15 (Utah 1989); Camp v. Office of Recovery Servs., 779 P.2d 242, 244-45 (Utah App. 1989).

**Determinative constitutional provisions,  
statutes, ordinances and rules**

The Utah Insurance Code in effect in 1986 recognized that "conditional or binding receipts" may "conditionally grant life insurance coverage prior to physical delivery of the policy" and subjected these receipts to certain form filing requirements. Utah Code Ann. § 31A-22-422 (1953). However, the terms of any conditional coverage are determined by reference to the insurance contract itself and to caselaw rather than statutes.

**Statement of the case**

On July 7, 1986, LaMar Stevenson applied for \$500,000 worth of life insurance coverage with First Colony Life Insurance Company (First Colony). On October 16, 1986, he died in a tragic motor vehicle accident. At no time before his death did Mr. Stevenson receive any personal notification that his insurance application was declined or any refund of his insurance premium. In fact, his premium was not returned until several months after his death.

Nevertheless, when Mrs. Stevenson filed a claim for death benefits, First Colony denied coverage, insisting that her husband's insurance application had been rejected. She then filed

this action for breach of contract against First Colony, the insurance agent, and the insurance agency.<sup>2</sup>

Mrs. Stevenson and First Colony filed cross motions for summary judgment. The trial court granted Mrs. Stevenson's motion, finding that temporary insurance was created when Mr. Stevenson filed an application for life insurance with First Colony, completed a physical examination, and paid the full semiannual premium. The court concluded this temporary insurance was still in effect at the time of Mr. Stevenson's death because First Colony had not given adequate notice that his application was denied and had not timely returned his premium. (See Memorandum Decision of Jan. 2, 1990, Tab 1 of Addendum.)<sup>3</sup>

The court determined the plaintiff's damages to be \$300,000.00, an amount specified in small print on the conditional receipt form which had been attached as one of the last pages of Mr. Stevenson's insurance application forms. (See Memorandum Decision of March 6, 1990, Tab 3.) However, the first page of the application clearly stated in large handwriting that Mr. Stevenson was applying for coverage in the amount of \$500,000.00.

The order granting summary judgment was certified as final and

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<sup>2</sup> Claims against the insurance agent and the insurance agency are not involved in this appeal.

<sup>3</sup> The court indicated that formal findings of fact and conclusions of law were unnecessary after summary judgment. (Memorandum Decision of Jan. 19, 1990, Tab 2.)

appealable, and both parties appealed. (See Order of April 30, 1990, Tab 4.)

### **Relevant facts**

As First Colony pointed out in a memorandum in support of its motion for summary judgment, the material facts in this case are not in dispute. (See Memorandum at 5, Tab 5.)

From approximately 1984 until 1986, LaMar Stevenson had term life insurance in the amount of \$1,000,000 with Chubb LifeAmerica. (Tab 6 at 36-37.) As the cost of his insurance rose, Mr. Stevenson found it increasingly difficult to pay the premiums. (Tab 7 at 32-33.) He mentioned the problem to his insurance and bonding agent, Roger Fleiss, who worked for the Talbert Corporation in Salt Lake City. (Tab 8 at 11.) Fleiss referred Mr. Stevenson to Norman Close, Talbert's Financial Services Life Representative in Denver. (Tab 8 at 11-18; Tab 6 at 30 & 40.) Talbert's Denver office supplied Mr. Stevenson with pricing information for different kinds of coverage. (Tab 8 at 11.) After a long discussion with Fleiss, Close recommended that Mr. Stevenson obtain life insurance from First Colony rather than Chubb LifeAmerica. (Tab 9; Tab 7 at 32-36, 41-42 & 66.)

Mr. Stevenson filed an application with First Colony and completed the necessary physical examination. (Tab 10.) At first, he wanted to continue his coverage of \$1,000,000 but decided it was more than he could afford. (See Tab 11.) At Mr. Stevenson's



request, an employee in Talbert's Denver office crossed out the \$1,000,000 figure on the first page of his application and wrote "\$500,000" as the amount of coverage. (Tab 8 at 39 & 104; Tab 10.) The semiannual premium was then calculated to be \$410.00 for \$500,000.00 worth of coverage. (Tab 10.)

About July 7, 1986, Mr. Stevenson gave First Colony a check for \$410.00 as his first premium. (Tab 12.) He received a letter thanking him for "the First Colony Life Insurance application for \$500,000 of coverage" and requesting that he complete an aviation questionnaire as well. (Tab 13.) He completed and returned the questionnaire. (Tab 14.)

On July 21, 1986, Talbert's Denver office sent Mr. Stevenson a "conditional receipt." (Tab 10 at 9.) He was told only that "this is your receipt for application for life insurance policy"; no one explained the terms of the receipt to him. (Tab 15; Tab 8 at 45.) First Colony cashed Mr. Stevenson's check on July 25, 1986.

Several weeks later when Mrs. Stevenson called Talbert's Salt Lake office to ask why her husband had not yet received a policy from First Colony, she was told that First Colony intended to decline coverage because Mr. Stevenson's business had filed a petition in bankruptcy. (Tab 7 at 45-47.) However, First Colony proposed alternative "Life One" plans for Mr. Stevenson, and information about the plans was forwarded to Fleiss with a cover letter dated August 28, 1986. (Tab 16.)

Mr. Stevenson discussed various insurance options with the insurance agents, but it is important to note that neither First Colony nor the agents ever contacted Mr. Stevenson personally to inform him that coverage was in fact denied. Furthermore, First Colony kept his life insurance premium.

If First Colony decided to reject his application, Mr. Stevenson wanted his premium returned so he could purchase other life insurance. (Tab 7 at 50-51, 89-91; Tab 6 at 63.) He asked Fleiss about the premium, and Fleiss called Close. (Tab 8 at 101.) When First Colony failed to return the premium in a timely fashion, Talbert's Denver office contacted the underwriter repeatedly over a four-month period, from August through December, in an effort to get the premium refunded. (Tab 6 at 55 & 62.)

Meanwhile, Mr. Stevenson was killed in a motor vehicle accident on October 16, 1986.

First Colony denied Mrs. Stevenson's claim for death benefits. In December, nearly two months after her husband's death, she received a refund of the life insurance premium he had paid in July. (Tab 17.)

#### **Summary of the argument**

The trial court should have awarded the full \$500,000 of life insurance coverage to Mrs. Stevenson. After paying the full semiannual premium for \$500,000 worth of coverage, Mr. Stevenson had a reasonable expectation that he was insured to that extent

until First Colony actually rejected his application, communicated that rejection to him by appropriate notice and returned his premium. The limitation in the conditional receipt was not clear enough to be binding and was never pointed out to Mr. Stevenson.

The conditional receipt was part of Mr. Stevenson's insurance application, and the rest of his application should not be ignored in construing the terms of temporary coverage. Since the amount of temporary coverage is ambiguous, the amount written on the first page of the application governs because a handwritten provision prevails over a printed one and ambiguities in an insurance contract should be resolved in favor of the insured.

In any event, First Colony should be estopped from denying or limiting its liability in view of its inexcusably long and prejudicial delay in refunding Mr. Stevenson's insurance premium.

1.

Mr. Stevenson had a reasonable expectation of full and immediate life insurance coverage unless and until First Colony actually rejected his application, communicated that rejection to him by appropriate notice, and returned his premium.

As the Utah Supreme Court has stated, "it is unfair for an insurer to collect a premium which purports to cover a period when in fact no such coverage exists: i.e., between the time of the application and the delivery of the policy." Williams v. First Colony Life Ins. Co., 593 P.2d 534, 537 (Utah 1979). Thus, when an

applicant for insurance has done everything required of him and paid his premium, his insurance coverage generally takes effect from the time of the issuance of a binding or conditional receipt, even though the policy has not been delivered. Id.; Aho v. United Transp. Union Ins., 571 P.2d 1329, 1332 (Utah 1977) (Justice Crockett, concurring.)

Because it was clear that Mr. Stevenson had done everything required of him and had paid his premium<sup>4</sup>, the trial court concluded he had temporary insurance coverage. However, the trial court erroneously relied on a limitation in small print on the conditional receipt to set damages at only \$300,000. In doing so, the court failed to apply the "doctrine of reasonable expectations," one of the reasons for finding there was temporary insurance in the first place. See e.g., Miller v. Republic Nat'l Life Ins. Co., 714 F.2d 958, 959 (9th Cir. 1983) (applicant for life insurance who pays the first premium, receives a receipt, and submits to the insurer's medical examination has a "reasonable expectation" of coverage from the date of receipt).

First Colony admits that temporary insurance coverage was

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<sup>4</sup> Cf., Aho v. United Transp. Union Ins., 571 P.2d 1329 (Utah 1977) (holding there was no temporary life insurance coverage where applicant had not made required premium payment) and Wade v. Utah Farm Bureau Ins. Co., 700 P.2d 1093 (Utah 1985); Jacobson v. Kansas City Life Ins. Co., 652 P.2d 909 (Utah 1982); and Fabrizio v. Fidelity & Guaranty Ins. Co., 27 Utah 2d 248, 494 P.2d 953 (1972) (all holding there was no temporary life insurance coverage where applicant had not completed required physical examination).

created when Mr. Stevenson applied for life insurance, completed the necessary medical examination and paid his first premium. Despite the lack of notice to Mr. Stevenson that his insurance application was rejected, First Colony takes the position that his temporary coverage terminated prior to his death.

At most, the facts suggest that prior to his death Mr. Stevenson was uncertain about the status of his insurance application. First Colony was proposing alternate life insurance plans, had not sent any written notice of any declination to him, had not contacted him personally in any way, and had retained his insurance premium. In these circumstances, Mr. Stevenson continued to have a reasonable expectation of temporary insurance coverage.

Under the doctrine of reasonable expectations, the language of an insurance contract should be examined "from the viewpoint of the average purchaser of insurance who is not trained in law or in the insurance business." Wagner v. Farmers Ins. Exch., 786 P.2d 763, 764 (Utah App. 1990). The "objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even [if] painstaking study of the policy provisions would have negated those expectations." Bradley v. Mid-Century Ins. Co., 409 Mich. 1, 294 N.W.2d 141, 163 n. 69 (1980).

The Utah Supreme Court applied the doctrine of reasonable expectations to conclude that a life insurance applicant had temporary coverage in Prince v. Western Empire Life Ins. Co., 19

Utah 2d 174, 428 P.2d 163 (Utah 1967). The court wrote,

The understanding of an ordinary person is the standard which must be used in construing the contract, and such a person upon reading the application would believe that he would secure the benefit of immediate coverage by paying the premium in advance of delivery of the policy. There is an obvious advantage to the company in obtaining payment of the premium when the application is made, and it would be unconscionable to permit the company, after using language to induce payment of the premium at that time, to escape the obligation which an ordinary applicant would reasonably believe had been undertaken by the insurer.

428 P.2d at 168 (emphasis added), quoting Ransom v. The Penn Mutual Life Ins. Co., 43 Cal.2d 420, 274 P.2d 633, 636 (1954).<sup>5</sup>

The average purchaser of insurance "who is given a receipt for the first premium looks upon it as a receipt and is not bound to study it to discover conditions and limitations circumscribing its effectiveness." 12A J. Appleman, Insurance Law and Practice § 7243 at 249-51 (1981 & Supp. 1989). In this respect, a conditional receipt is "similar to a receipt given by a garage which purports to limit its liability for loss by fire or theft, or by a carrier

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<sup>5</sup> In Prince the court noted without discussion that the insurer's liability was limited by a provision in a binding receipt. 428 P.2d at 169. The issue of the applicant's reasonable expectations as to the amount of temporary coverage apparently was not raised.

which attempts to restrict its tort liability." Id. at 251 n.5.

The doctrine of reasonable expectations should apply in determining the amount of coverage as well as the other terms of temporary coverage. In interpreting insurance binders, there is a growing trend toward fulfilling the layman insured's reasonable expectations of coverage. 2 Couch on Insurance 2d, § 14:36 at 71 (1984).

At the advice of his insurance agent, Mr. Stevenson stopped trying to keep his life insurance in the amount of \$1,000,000 in force. Instead, he applied for a new policy in the amount of \$1,000,000 with First Colony. Later, he requested that the amount of coverage (with its corresponding premium) be reduced to \$500,000. The semiannual premium for \$500,000 of coverage was calculated to be \$410. Mr. Stevenson paid the full semiannual premium and was given a conditional receipt. Whatever the language in small print on his receipt, at that time he had a reasonable expectation of immediate insurance coverage in the amount of \$500,000.

## 2.

The \$300,000 limitation was not clear enough to be binding, and no one called it to Mr. Stevenson's attention when he paid the semiannual premium for coverage in the amount of \$500,000.

Even in the context of temporary insurance coverage, "limitations on the amount of coverage must be clear to be

binding." Insurance Law and Practice § 7237 at 196. A limitation in a conditional receipt will not be given effect where "the limiting language was neither plain nor conspicuous and . . . was not discussed with [the decedent] when he applied for insurance." Thompson v. Occidental Life Ins. Co., 109 Cal.Rptr. 473, 9 Cal.3d 904, 513 P.2d 353, 364 (1973).

An insurer must not only use clear and unequivocal language evidencing an intent to limit temporary coverage but must also "call such limiting conditions to the attention of the applicant." State Compensation Ins. v. Wangerin, 736 P.2d 1246, 1248 (Colo. App. 1986); also see Leland v. Travelers Indem. Co., 712 P.2d 1060 (Colo. App. 1985). "Absent proof of such disclosure, coverage will be deemed to be that which is expected by the ordinary layperson, namely complete and immediate coverage upon payment of the premium." Sanchez v. Connecticut Gen. Life Ins. Co., 681 P.2d 974, 977 (Colo. App. 1984) (emphasis added).

Courts often impose on the insurer "the burden of showing that it had taken appropriate steps to inform the applicant for insurance of [limiting] conditions." Puritan Life Ins. Co. v. Guess, 598 P.2d 900, 906 (Alaska 1979). Also see, Keene Corp. v. Insurance Co. of No. America, 667 F.2d 1034 (D.C. Cir. 1981), cert. denied, 455 U.S. 1007 (1982); Collister v. Nationwide Life Ins. Co., 479 Pa. 579, 388 A.2d 1346, 1355 (1978), cert. denied, 439 U.S. 1089 (1979).

The reasons for requiring clear disclosure were explained in



Young v. Metropolitan Life Ins. Co., 77 Cal.Rptr. 382, 272 Cal.App.2d 453 (1969). There, a conditional receipt unambiguously stated that the company's liability was limited to the receipt's terms until the policy was delivered. The trial court entered judgment for the insurer, but the court of appeals reversed, holding that the insurer may nevertheless be liable to the full extent of coverage under the application if there is no evidence that a limitation in the conditional receipt was called to the applicant's attention.<sup>6</sup> The court of appeals wrote,

[T]he insurer, as the dominant and expert party in the field, must not only draft such contracts in unambiguous terms but must bring to the attention of the insured all provisions and conditions which create exceptions or limitations on the coverage [citation omitted]. Manifestly, it should have even a greater duty to call attention to such provisions or conditions when they are contained in receipts given to an applicant after he has paid the premium in advance, because the very acceptance of an advance premium by the carrier tends naturally toward an understanding of immediate coverage though it be temporary and terminable [citation omitted]. In short, to the ordinary layman, payment of the insurance premium constitutes payment for immediate protection, and it is

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<sup>6</sup> On remand, the trial court found evidence that some of the receipt's provisions were called to the applicant's attention. See, Young v. Metropolitan Life Ins. Co., 98 Cal.Rptr. 77, 20 Cal.App.3d 777 (1971).

unlikely that he would carefully read the fine print contained in a receipt unless he was given the incentive to do so by the carrier's agent.

77 Cal.Rptr. at 387.

In this case, the \$300,000 limitation was neither plain nor conspicuous. Furthermore, there was no evidence that it was ever called to Mr. Stevenson's attention or that he read it when he paid the full semiannual premium for \$500,000 worth of coverage. Absent proof of such disclosure, coverage should be deemed to be the \$500,000 for which he applied.

3.

The application for insurance should not be disregarded in determining the terms of temporary coverage.

In setting Mrs. Stevenson's damages at \$300,000, the trial court explained, "Plaintiff's judgment is based on the conditional receipt, not the policy which was applied for; therefor[e] the limitation on the conditional receipt should apply." (Tab 3.) The court erred on this point. Mrs. Stevenson is not arguing that she should recover damages under a policy which was never delivered. Rather, she is arguing that the terms of her husband's temporary coverage must be determined by reference to his insurance application as well as his conditional receipt.

"It is agreed that the binding receipt and the application for insurance are to be considered and construed together." 43

Am.Jur.2d Insurance, § 222 (1982 & Supp. 1990). "A binding receipt and the application for insurance are to be considered and construed together and there is no reason why this rule should not apply to a conditional premium receipt." Machinery Center, Inc. v. Anchor Nat'l Life Ins. Co., 434 F.2d 1, 4 (10th Cir. 1970) (applying Utah law); also see, Liberty Nat'l Life Ins. Co. v. Patterson, 278 Ala. 43, 175 So.2d 737 (1965).

The conditional receipt was part of Mr. Stevenson's insurance application form. It was given to him in exchange for his completed insurance application and premium payment. There is a statement on the first page of the application that "the entire contract will consist of this application and the policy issued in response to it." (Tab 10 at 1, emphasis added.)

The rest of the application should not be ignored in construing the terms of the conditional receipt, especially where Mr. Stevenson was told only that it was a "receipt for his application." (See, Tab 15.)

#### 4.

**Ambiguities about the amount of temporary coverage should be resolved in favor of the insured.**

In this case, the amount of any temporary coverage is ambiguous. The conditional receipt states that "insurance as provided by the policy applied for and for an amount not exceeding that specified" in the second paragraph will become effective.

(Tab 10 at 9, emphasis added.) The second paragraph is the \$300,000 limitation. As the court pointed out in Thompson v. Occidental,

Assuming that [the decedent] did read the limiting language, he might well have assumed that the clause was intended only to notify applicants for insurance that [the insurer] was not "required" by law to insure a particular applicant in excess of the amounts specified. Nothing in the receipt's language states that [the insurer] will not voluntarily agree to exceed these limits, as it evidently did by accepting the first premium on a [higher] double indemnity policy.

513 P.2d at 364 (emphasis added).

Of course, the amount of coverage would not be ambiguous if the limitation in a binding or conditional receipt is well above the amount for which the applicant applied. Hildebrand v. Franklin Life Ins. Co., 118 Ill.App.3d 861, 455 N.E.2d 553, 562 (1983). The ambiguity arises when the limitation in the receipt is less than the amount for which the applicant applied. The amount of coverage is "constructively ambiguous" if a layman's ordinary understanding of the amount of coverage differs from the coverage he would obtain under a technical construction of the insurance agreement. See Note, Life Insurance Policies and "Binding" Receipts: Is the Insurer Bound?, 406 Utah L. Rev. 448, 450-51 (1968).

In Allen v. Metropolitan Life Ins. Co., 44 N.J. 294, 208 A.2d 638 (1965), the application stated that the company incurred no

liability "except as may be provided in a Conditional Receipt given on and bearing the same date as this application," but the conditional receipt provided that coverage would be effective as of the date of the application if approved at the home office. The court reasoned that the language of the conditional receipt was misleading to the ordinary person and upheld the beneficiary's claim for the full face value of the policy for which her decedent had applied.

Utah follows the rule that in interpreting insurance contracts any doubts, uncertainties, or ambiguities in the contract will be strictly construed against the insurer and in favor of the insured. Williams v. First Colony, 593 P.2d at 536; Machinery Center, 434 F.2d at 4. The language of the conditional receipt given to Mr. Stevenson should be construed as it would be understood by the ordinary applicant for insurance, and the ordinary applicant who pays his premium in advance expects complete and immediate insurance protection. See, Long v. United Benefit Life Ins. Co., Inc., 29 Utah 2d 204, 507 P.2d 375, 379 (1973).

**5.**

**The handwritten provision for coverage in the amount of \$500,000 prevails over a printed limitation.**

Documents executed in connection with an application for insurance are governed by the rules applicable to the construction and enforcement of contracts in general. Williams v. First Colony,

593 P.2d at 536. One of the general principles of contract interpretation is that:

Where part of the contract is in writing and part is in printing, the writing will be given effect if there is repugnancy between the two portions of the instrument. Also, if there is reasonable doubt as to the sense and meaning of the whole document, the words in writing will control the construction of the contract.

7 Williston on Contracts, § 622 at 774-75 (3d Ed. 1961 & Supp. 1990); also see, Mission Ins. Co. v. Nethers, 119 Ariz. 405, 581 P.2d 250 (App. 1978) (typewritten endorsement in legal malpractice policy prevailed over conflicting statement in printed portion of contract). A handwritten or typed portion is considered to be a special condition which modifies the printed portion. Williston, supra, at 781. Moreover, there is a secondary rule that when two clauses of a contract are contradictory, the first is favored. Id., § 624 at 816-17.

The \$500,000 figure appears in large handwriting on the front page of Mr. Stevenson's application. The \$300,00 figure is found in small print on the conditional receipt, which was one of the last pages of the application form. Under general contract principles, the \$500,000 figure should prevail.

These contract principles were applied to determine the amount of temporary coverage in Thompson v. Occidental, 513 P.2d 353 (1973). There, an insurance agent had inserted a figure of

\$100,000 into the application and used the figure of \$100,000 in calculating the amount of the first premium. The court ruled the insurer's liability was not limited to the \$50,000 printed on a receipt attached to the life insurance application.

Similarly in this case, where the insurance agency inserted a figure of \$500,000 into the application and used the figure of \$500,000 in calculating the amount of the first premium, the insurer's liability should not be limited to the \$300,000 printed on a receipt attached to the life insurance application.

6.

The court should impose full liability on the insurer in view of its inexcusably long and prejudicial delay in returning Mr. Stevenson's premium.

As discussed previously, there is no evidence that Mr. Stevenson himself was ever notified that his application for insurance was declined. At best, he was uncertain about the status of his coverage with First Colony. The main cause for this uncertainty was First Colony's unreasonably long delay in returning his insurance premium. As the California Supreme Court has explained,

When the insurer notifies the applicant of the rejection of his application but does not refund his premium, its action is uncertain and confusing. On the one hand, the notice of rejection indicates that the permanent policy the applicant

requested will not be issued; on the other, the retention of the premium indicates that "[the] immediate insurance [he was getting] for his money" . . . is still continuing.

Smith v. Westland Life Ins. Co., 123 Cal.Rptr. 649, 539 P.2d 433, 442 (1975).

First Colony admits that due to an inadvertent mistake, it failed to refund the premium until December 4, 1986--nearly five months after Mr. Stevenson paid it and nearly two months after his death. The delay kept Mr. Stevenson from obtaining other life insurance as he wanted to do in the event of a declination by First Colony. (See, Tab 7 at 50-51 & 89-91; Tab 6 at 63.)

In view of this inexcusably long and prejudicial delay in returning Mr. Stevenson's premium, the court should impose full liability on First Colony. A majority of the appellate courts that have considered the issue support the general proposition that an insurer is subject to liability when there is an unreasonable delay in acting on an application for insurance. R. Keeton & A. Widiss, Insurance Law, § 2.4(a) at 71 (1988). The principal theories of liability which courts apply include estoppel, breach of an implied agreement to act promptly, formation of a contract by the insurer's implied acceptance,<sup>7</sup> and breach of tort duties.

---

<sup>7</sup> For example, unreasonable delays in refunding a life insurance premium were held to constitute an acceptance of the application in Reck v. Prudential Ins. Co., 116 N.J.L. 444, 184 A. 777 (Err. & App. 1936) and Douglass v. Mutual Ben. Health & Accident Assoc., 42 N.M. 190, 76 P.2d 453 (1937).



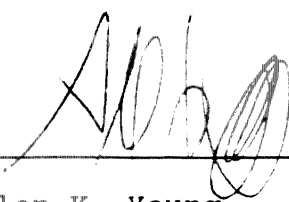
Under Utah law, several theories would apply. First Colony should be estopped from denying or limiting its liability for insurance coverage where it kept Mr. Stevenson's premium for so many months. An unreasonable delay in refunding money paid as a life insurance premium constitutes negligence. In addition, the failure to refund a life insurance premium within a reasonable period of time constitutes a breach of the duty of good faith and fair dealing which inheres in every contract. See, Bonneville Properties, Inc. v. Simons, 677 P.2d 1111 (Utah 1984). First Colony had a contractual duty to return the amount remitted "upon demand" if Mr. Stevenson's application was rejected, (Tab 10 at 9, ¶ 3), and the duty to perform contractual obligations in good faith forbids arbitrary action by one party that disadvantages the other. See, Resource Management Co. v. Weston Ranch & Livestock Co., Inc., 706 P.2d 1028, 1037 (Utah 1985).

For all these reasons, First Colony's liability should not be limited to anything less than the full amount of coverage for which Mr. Stevenson applied.

### Conclusion

In the circumstances of this case, the trial court erred in limiting the insurer's liability for temporary insurance coverage. The plaintiff asks this court to reverse the trial court's judgment as to damages and to remand the case with directions to enter judgment for the plaintiff in the sum of \$500,000.

Respectfully submitted by

A handwritten signature in dark ink, appearing to read 'A. K. Young', is written over a horizontal line.

Allen K. Young  
Douglas A. Baxter  
Young & Kester  
101 East 200 South  
Springville, Utah 84663

## EXHIBITS

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1. Memorandum Decision of Jan. 2, 1990
2. Memorandum Decision of Jan. 19, 1990
3. Memorandum Decision of March 6, 1990
4. Order of April 30, 1990
5. Defendant's statement from its memorandum in support of its motion for summary judgment
6. Excerpts from deposition of Roger I. Fleiss
7. Excerpts from deposition of Maurine Stevenson
8. Excerpts from deposition of Norman Close
9. Letter of May 28, 1986 from Close to Mr. Stevenson
10. Mr. Stevenson's application for life insurance, including medical reports and conditional receipt
11. First page of Mr. Stevenson's original application
12. Mr. Stevenson's check for insurance premium
13. Letter of July 14, 1986 from Talbert Corporation to Mr. Stevenson acknowledging his insurance application
14. Aviation questionnaire
15. Letter of November 19, 1986 from First Colony to Fleiss with his answers
16. Letter of August 28, 1986 from Talbert Corporation to Fleiss
17. Letter of December 3, 1986 and premium refund from Talbert Corporation to Mrs. Stevenson

**EXHIBIT 1**

JUN 12 12:45 PM '93  
JEA

IN THE FOURTH JUDICIAL DISTRICT COURT  
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

\*\*\*\*\*

MAURINE STEVENSON as personal  
representative of LAMAR STEVENSON,  
and as trustee of LAMAR D. STEVENSON  
TRUST,

Plaintiffs,

Case Number CV88-875

-vs-

RAY M. HARDING, JUDGE

FIRST COLONY LIFE INSURANCE  
COMPANY, TALBERT CORPORATION  
and ROGER FLEISS,  
Defendants.

MEMORANDUM DECISION

\*\*\*\*\*

The Court, having considered the cross motions for summary judgment in this case, will grant plaintiff's motion, and will deny defendant First Colony Life's motion.

The issue before the Court is whether written notice and return of the premium are required to terminate a temporary life insurance contract. In Smith v. Westland Life Insurance Co., The California Supreme Court held:

Where the insurer has received an application for insurance, together with payment of the premium, and thereafter decides to reject it, the contract of insurance immediately created upon the receipt of the application and payment of the premium is not terminated until (a) the insurer has actually rejected the application and by appropriate notice communicated such rejection to the insured, and (b) refunded the premium payment to the insured. Smith V. Westland Life Ins. Co., 539 P.2d 433 (1975).

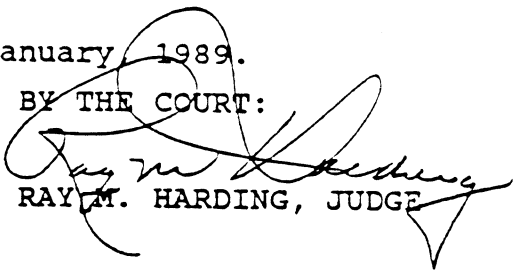
The Court holds that because there was not adequate notice that plaintiff's temporary insurance contract had been cancelled, and because the premium was not returned timely,

**F** contract was in full force and effect at the time of Mr. Stevenson's death.

Counsel for plaintiff to prepare a summary judgment consistent with the terms of this decision and submit it to opposing counsel for approval as to form prior to submission to the court for signature.

Dated this 2nd day of January, 1989.

BY THE COURT:

  
RAY M. HARDING, JUDGE

cc: Allen K. Young, Esq.  
Denton M. Hatch, Esq.  
D. Gary Christian, Esq.

STATE OF UTAH )  
COUNTY OF UTAH ) SS

I, the undersigned, Clerk of the Fourth District Court of Utah County, Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office as such Clerk.

Witness my hand and seal of said Court this 5th  
day of June, 19 90

CARMA B. SMITH, Clerk

By  Deputy

**EXHIBIT 2**



County, State of Utah.  
Jan 19, 1990  
CARMA B. SMITH, Clerk  
DFA  
Dept

IN THE FOURTH JUDICIAL DISTRICT COURT  
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

\*\*\*\*\*

MAURINE STEVENSON as personal  
representative of LAMAR STEVENSON,  
and as trustee of LAMAR D. STEVENSON  
TRUST,

Plaintiffs,

Case Number CV88-875

-vs-

RAY M. HARDING, JUDGE

FIRST COLONY LIFE INSURANCE  
COMPANY, TALBERT CORPORATION  
and ROGER FLEISS,  
Defendants.

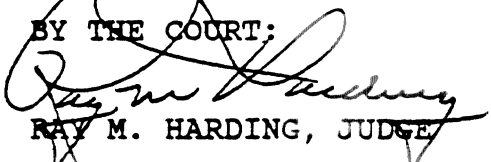
MEMORANDUM DECISION

\*\*\*\*\*

The Court, having received defendant's objection to  
proposed findings of fact, will in the interest of time  
indicate that findings of fact and conclusions of law are not  
necessary after the granting of a summary judgment. See  
U.R.C.P. rule 52. If plaintiff will prepare an appropriate  
summary judgment, it will be executed by the Court.

Dated this 19th day of January, 1990.

BY THE COURT:

  
RAY M. HARDING, JUDGE

cc: Allen K. Young, Esq.  
Denton M. Hatch, Esq.  
D. Gary Christian, Esq.

STATE OF UTAH )  
COUNTY OF UTAH ) SS

I, the undersigned, Clerk of the Fourth District Court  
of Utah County, Utah, do hereby certify that the  
annexed and foregoing is a true and full copy of an  
original document on file in my office as such Clerk.

Witness my hand and seal of said Court this 19  
day of June, 19 90  
CARMA B. SMITH, Clerk

By  Deputy

**EXHIBIT 3**

IN THE FOURTH JUDICIAL DISTRICT COURT  
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

\*\*\*\*\*

MAURINE STEVENSON as personal  
representative of LAMAR STEVENSON,  
and as trustee of LAMAR D. STEVENSON  
TRUST,

Plaintiffs,

Case Number CV88-875

-vs-

RAY M. HARDING, JUDGE

FIRST COLONY LIFE INSURANCE  
COMPANY, TALBERT CORPORATION  
and ROGER FLEISS,  
Defendants.

MEMORANDUM DECISION

\*\*\*\*\*

The Court, having heard oral argument regarding the amount of the summary judgment, will vacate the order it previously signed. The amount of the judgment is limited to \$300,000.00 as per the terms of the conditional receipt. Plaintiff's judgment is based on the conditional receipt, not the policy which was applied for; therefor the limitation on the conditional receipt should apply.

Counsel for plaintiff to prepare an amended summary judgment consistent with the terms of this decision and submit it to opposing counsel for approval as to form prior to submission to the Court for signature.

BY THE COURT:

  
RAY M. HARDING, JUDGE

cc: Allen K. Young, Esq.  
Denton M. Hatch, Esq. STATE OF UTAH )  
D. Gary Christian, Esq. ) SS  
COUNTY OF UTAH ;

I, the undersigned, Clerk of the Fourth District Court of Utah County, Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office as such Clerk.

Witness my hand and seal of said Court this 5th  
day of June, 1990

CARMA B. SMITH, Clerk

By  Deputy

**EXHIBIT 4**

100

MAURINE STEVENSON, as  
personal representative of  
LAMAR STEVENSON,  
  
Plaintiff,  
  
vs.  
  
FIRST COLONY LIFE INSURANCE  
COMPANY, TALBERT CORPORATION  
and ROGER FLEISS,  
  
Defendants.

FIRST COLONY LIFE INSURANCE  
COMPANY,  
  
Third-Party Plaintiff,  
  
vs.  
  
UNITED UNDERWRITERS AGENCIES,  
  
Third-Party Defendant.

Civil No. CV-88-875


Judge Ray M. Harding

1.

wholly disposes of that claim against defendant First Colony. Therefore, in accordance with the provisions of Rule 54(b) the court further orders and certifies that no just reason exists for delaying the appeal of said order.

DATED this 30 day of April, 1990.

BY THE COURT:

  
Ray M. Harding  
District Court Judge

STATE OF UTAH     )  
                              ) SS  
COUNTY OF UTAH )

I, the undersigned, Clerk of the Fourth District Court of Utah County, Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office as such Clerk.

Witness my hand and seal of said Court this 30  
day of June, 19 90  
CARMA E. SMITH, Clerk

By  Deputy

## **EXHIBIT 5**

To be sure, an "insurer may not be lawfully required to pay a loss against which it had specifically refused to insure or be held liable when it had definitely rejected the application for insurance and thereby refused to accept the risk." Leube v. Prudential Ins. Co., 147 Ohio St. 450, 73 N.E. 2d 76, 77 (1947) (insurer entitled to directed verdict because applicant received notice of rejection), cited in Quindlen v. Prudential Ins. Co. of Am., 482 F.2d 876, 880 (5th Cir. 1973).

The material facts in this case are not in dispute. Defendant First Colony issued Lamar Stevenson's conditional receipt after receiving a policy application and \$410.00. Defendant subsequently rejected Lamar Stevenson's application because of Stevenson's financial troubles.

By the first of September, 1986, Lamar Stevenson received notice of the rejection of his application. Mrs. Stevenson testified in her deposition on July 26, 1989, at page 105:

Q. From the point that Roger Fleiss notified you or United Underwriters, whichever is was first, you understood that you didn't have coverage with First Colony life; is that correct?

A. Probably.

In fact, Mr. Stevenson even admitted in his Banker's Life application, dated October 1, 1986, that First Colony previously denied coverage. Unfortunately, Lamar Stevenson was killed in an accident on October 18, 1986, before Banker's Life processed his insurance application. An unfortunate oversight by Defendant's employees delayed the return of Mr. Stevenson's premium until December 4, 1986.



## **EXHIBIT 6**

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

\* \* \*

MAURINE STEVENSON as personal:  
representative of LAMAR  
STEVENSON, :

Plaintiff, :

vs. :

FIRST COLONY LIFE INSURANCE :  
COMPANY, TALBERT CORPORATION  
and ROGER FLEISS, :

Civil No. CV-88-875

Defendant. :

Deposition of:

-----  
FIRST COLONY LIFE INSURANCE :  
COMPANY, :

ROGER I. FLEISS

Third-Party :  
Plaintiff, :

vs. :

UNITED UNDERWRITERS AGENCIES :

Third-Party :  
Defendant. :

-----:

BE IT REMEMBERED that on the 10th day of May,  
1989, the deposition of ROGER I. FLEISS, produced as a  
witness herein at the instance of the plaintiff in the  
above-entitled action now pending in the above-named court,  
was taken before Jennifer A. Russell, a Certified Shorthand  
Reporter (Certificate No. 125), Registered Professional  
Reporter, and Notary Public in and for the State of Utah,  
commencing at the hour of 9:45 a.m. of said day at  
175 South West Temple, #510, Salt Lake City, Utah.



(801) 322-3742 5 DAY DELIVERY

185 South State Street • Suite 380 • Salt Lake City, Utah 84111

1           A       No.

2           Q       Was there any conversation about the fact that

3           there was a policy in effect at that time?

4           A       I don't recall.

5           Q       That was in late '83 or early '84?

6           A       Yes.

7           Q       Did you do anything in response to that contact?

8           A       Yes. I called Denver.

9           Q       To whom did you talk in Denver?

10          A       Norm Close.

11          Q       Who is Norm Close?

12          A       At that time, he was our Financial Services Life

13          Representative.

14          Q       Is he still the Financial Services Life

15          Representative?

16          A       No.

17          Q       Where is he now?

18          A       I do not know. I do know he's in Denver, but I

19          don't know who he's employed by.

20          Q       Does he live in Denver?

21          A       Yes.

22          Q       Do you maintain a relationship with him?

23          A       No.

24          Q       How are you familiar with the fact that he lives

25          in Denver?

1 terminate that insurance?

2 A No.

3 MR. YOUNG: Counsel, maybe this would be a good  
4 time to take a break and let me thumb through this stuff.

5 (Recess.)

6 MR. CHRISTIAN: Before we start, let me say  
7 this, and I will do this in the spirit of being helpful, but  
8 the record will speak for itself. I think you will find  
9 that the great bulk of that is out of the Denver office, and  
10 this was a file that was acquired after this took place, and  
11 that may be of assistance to you in your questioning of him.

12 MR. YOUNG: Thank you.

13 MR. CHRISTIAN: I think very little was  
14 generated, am I right, out of Salt Lake?

15 A That's right.

16 Q (by Mr. Young) Mr. Fleiss, you have told us  
17 about the initial contacts in the fall of '83 or spring of  
18 '84 with the Stevensons about life insurance, and your best  
19 recollections about that? What resulted from those  
20 conversations, as best you recollect? Maybe I can be a  
21 little more specific. Did the Talbert Company obtain  
22 insurance through Chubb Insurance for LaMar D. Stevenson?

23 A Yes.

24 Q Was that as a result of those initial  
25 conversations?

1           A       Yes.

2           Q       When were those policies first written, to the  
3 best of your recollection?

4           A       I don't recall.

5           Q       Sometime in '84?

6           A       I believe that to be right.

7           Q       Was that for a million dollars worth of life  
8 insurance?

9           A       I believe that's correct.

10          Q       Would the applications have gone to the Denver  
11 office?

12          A       Yes.

13          Q       They would not have come to you?

14          A       That's correct.

15          Q       Do you have any independent recollection of any  
16 conversations with Maurine or LaMar or any other  
17 representative of LaMar with regard to that insurance?

18                 MR. CHRISTIAN: Are you talking about the Chubb  
19 Insurance?

20                 MR. YOUNG: Yes, and the obtaining of it.

21          A       I'm not sure I understand the question.

22          Q       (by Mr. Young) The policy, as I understand it,  
23 was for a million dollars.

24          A       Yes.

25          Q       Did you ever discuss that with Maurine or LaMar?

1 the Stevensons.

2 Q So it's your recollection that when the  
3 Stevensons had a question about life insurance, they would  
4 call you and then you would say, I will have Mr. Close in  
5 Denver call you.

6 A That's correct.

7 Q And you have no written documentation of those  
8 calls?

9 A No.

10 Q Do you recall that that did happen on occasion?

11 A Yes.

12 Q Did the amount of the policy, the million  
13 dollars, have anything to do with LaMar D.'s ability to  
14 bond?

15 A No.

16 Q Did the bonding company require any life  
17 insurance?

18 A No.

19 Q Was there ever any conversation between you and  
20 the Stevensons, either of the Stevensons, about the  
21 necessity of having life insurance for bonding purposes?

22 A It was suggested that it would be a good idea to  
23 have continuity within the firm, yes.

24 Q Continuity within the firm meaning LaMar D.  
25 Stevenson Construction Company?

1           Q       What is your independent recollection of it, do  
2 you have any?

3           A       Yes. It was they were not getting it back  
4 apparently in a timely fashion. We had to continually  
5 follow up. That is, Denver had to continually follow up  
6 with the agency which we dealt through for First Colony to  
7 get the money back.

8           Q       Do you know how many times they followed up?

9           A       The file would indicate that.

10          Q       Do you have any independent recollection of  
11 anything you did in relation to that, any --

12          A       Nothing.

13                 MR. CHRISTIAN: Let him finish his question,  
14 Roger.

15          Q       Did you have any conversations with Mrs.  
16 Stevenson --

17          A       Restate the question.

18          Q       -- that you recall? Sure. Did you have any  
19 independent conversations with Mrs. Stevenson about getting  
20 that money back?

21          A       No.

22          Q       Did you have any conversations about why or why  
23 not? Did you ever advise Mrs. Stevenson that First Colony  
24 had rejected them?

25          A       No.

1 correspondence of when Mr. Stevensons' application was  
2 rejected by First Colony?

3 A Other than the correspondence that I have now.

4 Q What is your recollection of that?

5 A Restate the question.

6 Q Sure. Based upon what you have read prior to  
7 coming here today -- you have been sued for a lot of  
8 money -- what is your understanding of when First Colony  
9 rejected LaMar Stevensons' application for insurance?

10 A I'd have to refer to the file. I don't remember  
11 the dates.

12 Q You don't. Do you remember about when?

13 A No. December, when the check came back.

14 Q Is when they rejected it?

15 A That was the final -- we were trying to get the  
16 check. There was about a four-month period, I believe.  
17 August -- it started the first part of August. We were  
18 trying to get that money back, and it took to December for  
19 it to finally get delivered, sent over.

20 Q Thank you for that answer. When you say "we were  
21 trying to get that money back", what do you mean by that  
22 answer?

23 A Our Denver office was contacting the agency,  
24 United Underwriters.

25 Q To try and get the money back?



1 A Yes.

2 Q Do you know why they were trying to do that?

3 A Yes.

4 Q Why?

5 A Because Maurine Stevenson had indicated that she  
6 couldn't pay the premium on the other policy until she got  
7 the refund check from First Colony.

8 Q To whom did she state that?

9 A Norm Close.

10 Q Has Mr. Close advised you of that?

11 A Yes.

12 Q Do you know what efforts Talbert Corporation made  
13 to try and get that money back?

14 A Yes.

15 Q What?

16 A The chronological order in there of the  
17 conversations that our secretary, the secretary for Norm  
18 Close had with United Underwriters.

19 Q Which was weekly. Is United Underwriters a  
20 company that Talbert Corporation did business with?

21 A Yes.

22 Q Would United Underwriters seek out First Colony  
23 and others for life insurance?

24 A Most likely.

25 Q I'm trying to figure out how that relationship

## EXHIBIT 7

# ORIGINAL

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY

STATE OF UTAH

---oooOooo---

MAURINE STEVENSON as : Civil No. CV-88-875  
personal representative of :  
LAMAR STEVENSON, :  
Plaintiff, :  
vs. : Deposition of:  
FIRST COLONY LIFE INSURANCE : MAUREEN STEVENSON  
COMPANY, TALBERT CORPORATION :  
and ROGER FLEISS, : (Judge Ray Harding)  
Defendants. :

---

FIRST COLONY LIFE INSURANCE :  
COMPANY, :  
Third-Party Plaintiff, :  
vs. :  
UNITED UNDERWRITERS AGENCIES, :  
Third-Party Defendant. :

---

Deposition of MAUREEN STEVENSON, taken at the instance and request of Defendants Talbert Corporation and Roger Fleiss, at the law offices of Kipp & Christian, City Centre I, Suite 330, 175 East 400 South, Salt Lake City, Utah, on the 26th day of July, 1989, at the hour of 10:15 a.m., before DENISE M. THOMAS, a Certified Shorthand Reporter, Utah License No. 129, and Notary Public in and for the State of Utah.

---oooOooo---



Associated Professional Reporters  
10 West Broadway / Suite 200 / Salt Lake City, Utah 84101

1 documents that will help you, but I'm just trying to get a  
2 sequence of it now.

3 A Right. I think that was secured about three years  
4 or so before his death, so that would be '83.

5 Q 1983?

6 A Uh-huh.

7 Q Around the time we're talking about now?

8 A Uh-huh.

9 Q And that was a life policy on Lamar, the Chubb  
10 policy we're talking about?

11 A Term life, yes.

12 Q Term life. What was the face amount of that; do  
13 you recall?

14 A A million.

15 Q A million dollars?

16 A Yes.

17 Q Was the policy actually issued?

18 A Yes.

19 Q How long was that in force?

20 A A couple of three years, I believe.

21 Q Do you remember what the premiums were?

22 A No, I don't. I know they started out at a lesser  
23 amount than what it was at the time of being discontinued.

24 Q So the premiums gradually increased on that policy?

25 A That's correct.

1 Q Do you know what a net level premium policy is?

2 A No, I don't.

3 Q But the premiums increased, as far as you can  
4 understand, but the face amount of the policy stayed the same?

5 A That's correct.

6 Q And that policy was eventually either -- coverage  
7 was discontinued?

8 A Yes.

9 Q Why did the coverage discontinue on that policy?

10 A The premium could not be met.

11 Q When the coverage was discontinued, what were the  
12 premiums running?

13 A Over a thousand dollars. I don't remember.

14 Q A thousand dollars a month or a year or what?

15 A I think it was quarterly or annually, but I'm not  
16 sure on that either.

17 Q How old was your husband then?

18 A Forty-six. Forty-five actually. Forty-five.

19 Q And you were having difficulty making the premium  
20 payments?

21 A That's correct.

22 Q Could you have financed it could you have continued  
23 to make the payments, or was it to the point that you were  
24 just unable to do it based upon your --

25 A It had become very difficult to do this, yeah.

1 Q And had you elected not to continue the coverage?

2 A I think it was something discussed between Lamar  
3 and Roger as to how it was done.

4 Q Why was the policy issued for a face amount of a  
5 million; do you know?

6 A No.

7 Q Was there discussion at this time that you know  
8 about of, say, reducing the face amount to three-quarters of a  
9 million or a half million or quarter of a million to reduce  
10 the premium?

11 A At this point we're talking about?

12 Q Uh-huh.

13 A Yes, there was discussions at that point as to the  
14 availability of funds to make premiums.

15 Q Were there discussions so far as you know between  
16 Lamar and Roger?

17 A Yes.

18 Q Did you participate in any of those discussions?

19 A No.

20 Q Did Lamar tell you about the discussions?

21 A Yes.

22 Q What did he tell you?

23 A Just that he was working with Roger on getting as  
24 much coverage as we could feasibly provide a premium amount  
25 for.

1           Q       Did Lamar tell what you alternatives were discussed  
2 as related to obtaining coverage as much as you could for  
3 whatever you could afford?

4           A       I'm not sure I understand what you're saying.

5           Q       As I understand it, Lamar had a policy for a  
6 million dollars.

7           A       That's correct.

8           Q       Face amount. And it was a straight term with the  
9 face amount staying the same and the premiums increasing.

10          A       Yes.

11          Q       And you couldn't afford it?

12          A       Right.

13          Q       So you had to do something else about insurance.

14          A       That's correct.

15          Q       I suppose there were probably several options. You  
16 could reduce the face amount of the policy or get some other  
17 kind of insurance.

18          A       Yes.

19          Q       Were those alternatives discussed? Did Lamar tell  
20 you any alternatives that were discussed?

21          A       Yes.

22          Q       What were the alternatives?

23          A       That Roger was trying to do the best -- give us the  
24 most coverage from other companies. He was checking out with  
25 other companies what could be secured as far as the most

1 coverage nearest to the million we could get.

2 Q So there was no particular amount of coverage, just  
3 that Roger did the best he could to get you the most he could  
4 for what you could afford to pay?

5 A That's correct.

6 Q What could you afford to pay then?

7 A Well, he was getting several different policies to  
8 look at, and then we were deciding what we could do at that  
9 point.

10 Q Was the million dollars policy still in force and  
11 effect at this time?

12 A No. I believe that it was -- it had lapsed, and  
13 Roger was trying to see what could be done about getting it  
14 reinstated.

15 Q It had lapsed because you couldn't make the  
16 payment?

17 A Yes, I believe so.

18 Q Do you know what was resolved? What was decided on  
19 the various alternatives, and let me ask: Did you participate  
20 ever in any discussions with Roger Fleiss and your husband or  
21 you and Roger relative to obtaining any other coverage after  
22 the Chubb policy lapsed?

23 MR. YOUNG: At what time, Counselor?

24 MR. CHRISTIAN: Any time.

25 Q (BY MR. CHRISTIAN) From the time that policy



1           A       Yes.

2           Q       But a different one than the first one you just  
3 told me about?

4           A       Yes. It was sort of an ongoing thing as time  
5 progressed and things were being done that Roger was to secure  
6 several policies -- or options from several companies as to  
7 what could be done and then we would have some choices.

8           Q       Was there any amounts talked about yet? I mean  
9 face amounts?

10          A       No, I don't think so.

11          Q       Tell me the next one. If you'd help me with dates  
12 or times, I'd appreciate that, too.

13          A       Okay. Those are very fuzzy for me, so I'm not sure  
14 that I can.

15          Q       Okay.

16          A       I guess it came down to the point where Roger and  
17 Lamar had spoke about the policy with First Colony and that he  
18 had decided to -- I'm sure he talked it over with me, and I  
19 was pretty much in agreement with him as to that that sounded  
20 the best to go with.

21          Q       When you say he, I presume you're talking about  
22 Lamar?

23          A       Lamar, yes.

24          Q       So Lamar had talked to you and said I've talked it  
25 over with Roger and he's talking about the First Colony

1 Insurance Company and that sounds good to me?

2 A Yes.

3 Q And you agreed?

4 A Yes.

5 Q Whatever it was that Lamar told you?

6 A Yes.

7 Q Up to that point had you ever talked to Roger  
8 Fleiss, you personally?

9 A I've talked to Roger, yes. Specifically that, I  
10 don't recall, no.

11 Q Up to the time I'm talking about, up to the time  
12 about the discussion with Lamar and First Colony, had you  
13 talked to Roger Fleiss up to that point?

14 MR. YOUNG: About anything?

15 MR. CHRISTIAN: Yeah.

16 THE WITNESS: Yes. About anything. I don't  
17 remember specifically anything to do with insurance.

18 Q (BY MR. CHRISTIAN) You had talked to him, but you  
19 don't remember what you had talked to him about?

20 A No, I really don't.

21 Q Was that a conversation on the telephone or was it  
22 a face to face encounter?

23 A I remember a couple of appointments we had with  
24 Roger. I accompanied my husband to Roger's office.

25 Q Was Roger still with Fred A. Moreton at that time?

1 the insurance policy other than just conversations with  
2 Fleiss.

3 MR. CHRISTIAN: Sure. I appreciate that.

4 Q (BY MR. CHRISTIAN) I think what I want to know is  
5 conversations with Lamar or with Lamar and Roger or with you  
6 and Roger, any of those, and you can tell me -- if you'll just  
7 tell me what conversation it is, I'd appreciate that.

8 A All right. After the point of issuing the check  
9 we're speaking of?

10 Q Uh-huh.

11 A That was done on July the 7th.

12 Q Of '86?

13 A Yes. We were very much involved in getting things  
14 arranged with the new company, A. J. Perea, so we were really  
15 involved heavily in a lot of things going on in our life at  
16 that time. Towards the end of August, Lamar said to me,  
17 Maureen, we have not received that policy yet, and I said no,  
18 that's true, so then I initiated a call to Roger's office.

19 Q Okay.

20 A I spoke to a gentleman, I don't recall his name,  
21 that was --

22 Q In Salt Lake?

23 A Yes. He said Roger was in Denver, and I stated to  
24 him that we had been in the process of getting an insurance  
25 policy through Roger, that I'd issued a check in July and we

1 had not yet received the policy and we were concerned.

2 Q When you called Roger's office on the occasion  
3 you're telling me about, you identified yourself, I presume?

4 A Oh, yes.

5 Q Did this man seem to know who you were?

6 A Yes.

7 Q When you talked about the policy, did this man seem  
8 to know about the policy?

9 A He said he didn't know what the status was, that he  
10 would check it out and get back to me.

11 Q Did he?

12 A Yes.

13 Q How much longer?

14 A I think the next day or two he returned the call,  
15 told me that First Colony had declined coverage on Lamar. I  
16 asked why, because he had cleared everything in the physical  
17 aspect. He said because we were in a Chapter 11, the company  
18 was in a Chapter 11.

19 Q Was it?

20 A Yes. And I said, "What does that have to do with  
21 life coverage on Lamar?" And the fellow said, "You have to  
22 understand the mentality of an insurance company," and I said  
23 okay. "What do you mean?" He said, "They do not want to  
24 issue a policy when someone is in that sort of financial  
25 position," and I said, "Why?" He said, "Because of a

1 possibility of suicide," and I said, "Well, so. With suicide  
2 the policy isn't in effect anyway." I had no comprehension of  
3 what he was trying to tell me, and he said, "Well, there have  
4 been such occasions when suicides have been done and looked  
5 for real as an accident," and so they were just -- First  
6 Colony had backed off because of those reasons.

7 Q Now, when this man, whatever his name was, was  
8 giving you the information you have just described, did you  
9 understand that he was telling you something that was coming  
10 from the company or something he was making up and telling  
11 you? How did you take that?

12 A I hadn't thought of that.

13 Q Or did you take it in any sense?

14 A No, I really didn't, just as the facts of what was  
15 taking place.

16 Q Who did you talk to next?

17 A Roger then called. He returned --

18 Q How long after?

19 A Just shortly. The next day or so forth.

20 Q Okay.

21 A He again reiterated basically what was said by the  
22 fellow in his office and that he didn't see any problem  
23 because he could get Lamar right into another company who he  
24 didn't see would give this same reasoning or any problem about  
25 securing the policy.

1           Q       Did you offer to give Mr. Fleiss sufficient money  
2 to pay for the new premium through whatever company would do  
3 it?

4           A       He told me that he would secure this other amount  
5 that we had already previously put out from First Colony, and  
6 my assumption was that that would be handled within his  
7 office.

8           Q       Sure. Did you have sufficient money to give him  
9 for a new premium?

10          A       Not really.

11          Q       So if he'd have said to you, Mrs. Stevenson, you  
12 need to send me -- I think we can get you coverage for the  
13 same thing, but you need to send me \$425 or whatever it was to  
14 bind the new coverage, when the refund comes back I'll give it  
15 to you, you couldn't even have gotten him the four hundred  
16 dollars?

17          A       No.

18          Q       So you, indeed, needed the refund back from First  
19 Colony before any new coverage could be acquired?

20          A       Yes, and again within my assumption that that was  
21 just a matter of fact that he would handle.

22          Q       I understand.

23          A       And I wouldn't have anything to do basically with  
24 that.

25          Q       Sure. I understand. So your understanding was

1 that whoever Mr. Fleiss or Talbert was dealing with, whether  
2 it was First Colony or some agency between him and First  
3 Colony, when they decided they wouldn't insure Lamar, they  
4 would refund the money back through channels, eventually get  
5 it to Mr. Fleiss, and he would take care of it with whoever  
6 the new company was going to be?

7 A Yeah.

8 Q And any new company that Mr. Fleiss was to get for  
9 Lamar was contingent upon the receipt of the refund or the  
10 premium back from First Colony?

11 A Basically, yes.

12 Q Who did you talk to next after this conversation  
13 you told me about?

14 A I don't recall any specific conversation, again,  
15 there may have been until after Lamar's death.

16 Q You told me he was killed on October 16th, was it?

17 A Yeah.

18 Q 18th or 16th? 16th? Okay. So you're telling me  
19 that was about August, that conversation?

20 A Yes. Well, August through a couple of weeks could  
21 be into September.

22 Q Into September, and then Lamar was killed on the  
23 16th, and then you had a conversation with Roger Fleiss after  
24 that?

25 A Yes.

1      lapsed because you couldn't make the payments?

2           A       That's right.

3           Q       The premium?

4           A       That's right.

5           Q       So I believe you previously told me that the policy  
6      through Chubb you just couldn't make the payments on the  
7      premium?

8           A       That's correct.

9           Q       So that policy would have lapsed regardless of  
10     whether it was the best thing to do or not; isn't that true?

11          A       Yes. However, there was discussions before -- as I  
12     understand it, before it had truly lapsed --

13          Q       Yeah.

14          A       -- with Roger Fleiss and his advice that it would  
15     probably be better, more advantageous to us, to let it lapse  
16     and secure another one.

17          Q       Sure, it would be advantageous because you couldn't  
18     make the payments anyway?

19          A       That's correct.

20          Q       Let me show you what's been marked as Exhibit 11.  
21     It's a document that says prepared for Mr. Stevenson, age 47,  
22     Life One Plus, First Colony, and ask you if you've ever seen  
23     that before?

24          A       I don't recall, but I probably have.

25          Q       What date is that? This is Life One Plus, First



1 filled out, then would you send them directly back to Denver,  
2 or in every case would you route them back through Roger?

3 A No. A lot of times because we wanted things done,  
4 we did mail them directly to Denver.

5 Q And your recollection is the refund on the premium  
6 check for \$410 from United Underwriters came directly from  
7 Denver to you?

8 A Yes, I believe it was accompanied with that letter  
9 from Denver.

10 Q And did the funds represented in Exhibit 22, that  
11 is to say the \$410 that had been previously paid by you, and  
12 when I say you now, Mrs. Stevenson, I mean you or Lamar, that  
13 is, the family, that was paid by you, were the funds that were  
14 necessary for you to pay additional coverage?

15 A Yes.

16 Q Without this premium refund, you could not get  
17 other coverage because you didn't have sufficient funds to pay  
18 a premium; is that correct?

19 A I'm not so sure that that couldn't have been  
20 accomplished. It's just that that's the way it was handled.  
21 Roger indicated to me that that would be returned and we could  
22 use it in the other trust company.

23 Q Are you aware in the Complaint that was filed, Mrs.  
24 Stevenson, that you've alleged that it was necessary that the  
25 refund come before you get other insurance?

1 MR. YOUNG: If you know.

2 Q (BY MR. CHRISTIAN) If you know.

3 A I don't know.

4 Q But is that true? Was it necessary that this  
5 refund come before you could get other insurance?

6 MR. YOUNG: Counsel, that's been asked and answered  
7 several times, and she just answered it again.

8 Q (BY MR. CHRISTIAN) Is your answer she doesn't  
9 know?

10 MR. YOUNG: No. Her answer is on the record. Her  
11 answer was nobody ever suggested that to her, that this is the  
12 way it was going to be, not that she could or couldn't afford  
13 it. It's just that that was the way it was going to be done.

14 Q (BY MR. CHRISTIAN) Who was it that indicated that  
15 was the way it was going to be done?

16 A Roger.

17 Q So that was the way you were going to do it?

18 A Yes.

19 Q And your testimony is regardless of whether or not  
20 you could pay an additional premium or not, that's the way it  
21 was going to be done?

22 A Yes.

23 Q Did Mr. Fleiss tell you that directly?

24 A Tell me what directly?

25 Q That that's the way it was going to be handled

1 regardless of whether or not you could pay any other premium?

2 A His conversation was I will have the amount that  
3 was given to First Colony so that we can use that in securing  
4 the new policy.

5 Q Was that the extent of the conversation?

6 A Yes.

7 Q He didn't say anything else about it other than  
8 that?

9 A I don't recall anything else.

10 Q Did you have any conversations with Mr. Fleiss  
11 relative to the delay in having this premium returned to you  
12 after First Colony indicated they wouldn't cover your husband?

13 A Did I give him any --

14 Q Did you have any conversation, by you, Maureen  
15 Stevenson ever have any conversation with Roger Fleiss,  
16 personally now, relative to any delay in First Colony or  
17 United Underwriters returning this premium check to you after  
18 First Colony said they wouldn't insure Lamar?

19 A No, I didn't specifically.

20 Q Did you talk with anyone at the Talbert Corporation  
21 in Denver?

22 A No.

23 Q Did you talk to anyone at First Colony?

24 A No.

25 Q Did you talk to anyone at United Underwriters?

## **EXHIBIT 8**

IN THE JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

Civil No. CV-88-875

**COPY**

DEPOSITION OF: NORMAN CLOSE, January 23, 1990

MAURINE STEVENSON, as personal representative of  
LAMAR STEVENSON,

Plaintiff,

v.

FIRST COLONY LIFE INSURANCE COMPANY, TALBERT CORPORATION and  
ROGER FLEISS,

Defendants.

FIRST COLONY LIFE INSURANCE COMPANY,

Third-Party Plaintiff,

v.

UNITED UNDERWRITERS AGENCIES,

Third-Party Defendant.

PURSUANT TO NOTICE, the deposition of NORMAN CLOSE was  
taken on behalf of the Defendants and Third-Party Plaintiff at  
1120 Lincoln Street, Suite 1100, Denver, Colorado 80203, on  
January 23, 1990 at 2 p.m., before Jill L. Webster, Registered  
Professional Reporter and Notary Public within Colorado.



1 were two of us.

2 Q. You and Chris?

3 A. That's correct.

4 Q. Tell us what you recall about what Lamar decided  
5 to do about the Chubb policy.

6 A. Lamar, through Roger Fleiss, and through Roger to  
7 our office, discussed pricing of different kinds of coverages  
8 and the cost of reinstating the Chubb policy up to the point  
9 where three-and-a-quarter or three-and-a-half premiums were  
10 due--or three-quarter premiums were actually due, which were a  
11 substantial sum of money. And the decision, as we understood  
12 it, was to be made to go with First Colony as opposed to  
13 reinstate the Chubb because of the accumulation of premium.

14 Q. In January of 1986, did he want to keep the Chubb  
15 policy at that point?

16 A. My understanding was that he did not.

17 Q. Where did you get that understanding?

18 A. From Roger Fleiss.

19 Q. Do you recall what Roger told you?

20 A. No, I don't.

21 Q. Okay. But it was your understanding that Lamar  
22 wanted to let the Chubb policy lapse; is that correct?

23 A. That's correct.

24 (Deposition Exhibit 2 was marked.)

25 Q. Can you tell us what Exhibit 2 is?

1           A.    Correspondence between Chris Fresquez and Roger  
2 requesting aviation verification from Lamar Stevenson.

3           Q.    For what?

4           A.    Subsequent to issuance of a First Colony life  
5 insurance policy, part of the underwriting process is to  
6 determine the number of hours and the expertise they have.

7           Q.    So in January of 1986 you were considering  
8 applying to First Colony; is that right?

9           A.    I would assume so.  It would appear so.

10          Q.    And the documents attached, are they the aviation  
11 questionnaire, to the best of your knowledge?

12          A.    Yes, they are.

13          Q.    Do you recall discussing First Colony with Lamar  
14 in January of 1986?

15          A.    No, I don't.

16                   (Deposition Exhibit 3 was marked.)

17          Q.    Let's look at the next one, Exhibit 3, a January  
18 16, 1986, letter.  Can you identify that?

19          A.    Letter to Roger from Chris Fresquez concerning  
20 illustrations from First Colony.

21          Q.    Is that Chris Fresquez' signature?

22          A.    I believe that it is.

23          Q.    Were you familiar with her signature?

24          A.    I think so.

25          Q.    Have you read that exhibit?

1 A. Yes.

2 Q. Is that accurate to the best of your knowledge?

3 A. To the best of my knowledge it is, yes.

4 (Deposition Exhibit 4 was marked.)

5 Q. Let's look at Exhibit 4. Can you identify that?

6 A. That's correspondence from Chubb LifeAmerica to  
7 Lamar Steve concerning a lapse of coverage due to nonpayment.

8 Q. Did you get copies of that in your office?

9 A. Normally we did, yes.

10 Q. Have you seen this before, do you know? You can't  
11 recall?

12 A. As far as this is--as this case, yes.

13 Q. This was found in your file; is that right?

14 A. I think most of this information has come from our  
15 file.

16 (Deposition Exhibit 5 was marked.)

17 Q. Tell us what Exhibit 5 is.

18 A. Appears to be a memo with what appears to be  
19 Chubb's 800 number covering a reinstatement of a policy number.

20 Q. Do you recognize the handwriting?

21 A. I would have to assume it's Chris's, Chris  
22 Fresquez.

23 Q. Does it look like hers to you?

24 A. I would say so.

25 Q. Do you know what "checks sent due first thing"



1 means?

2 A. No, I don't.

3 Q. What does it mean to you?

4 A. I would suppose that it's a premium payment check  
5 sent to Chubb.

6 Q. Do you recall that happening?

7 A. No.

8 Q. Is that new to you?

9 MR. CHRISTIAN: Is what new to him?

10 MR. HATCH: The concept of a premium check being  
11 sent to Chubb.

12 MR. CHRISTIAN: Just a minute. I don't think he  
13 said that. You're asking him what it meant to him. He said he  
14 assumes that's what it meant to him. That doesn't mean  
15 necessarily that's what it means.

16 Q. (BY MR. HATCH) Is that concept new to you?

17 A. Which concept?

18 Q. The concept that a check was sent to Chubb, if it  
19 was.

20 A. If I knew from whom, to what purpose. It wouldn't  
21 be out of line, but I have no idea for what purpose or from whom  
22 any check was sent.

23 Q. Now, this came out of your file, the Stevenson  
24 file, didn't it?

25 A. My assumption is that everything that you see here

1 is more than less out of the Talbert file.

2 MR. CHRISTIAN: I think it is.

3 Q. (BY MR. HATCH) We're referring to Exhibit 5 when  
4 we say that. So I assume that relates to Stevenson; is that  
5 correct?

6 A. If that's the policy number.

7 MR. BAXTER: I think if you look back on Exhibit 4  
8 they have the policy number on that.

9 MR. CHRISTIAN: I think that is a policy number.

10 Q. (BY MR. HATCH) If that's the policy number, what  
11 does that tell you?

12 A. Doesn't tell me any more.

13 Q. Other than that, this refers to Stevenson on  
14 Exhibit 5, right?

15 A. That's correct.

16 (Deposition Exhibit 6 was marked.)

17 Q. Let's look at Exhibit 6. I'll give you a chance  
18 to read that.

19 A. Okay.

20 Q. Can you identify that?

21 A. It is a letter from Chris Fresquez to Lamar  
22 Stevenson recognizing the receipt of a premium check in Chubb's  
23 office, but waiting for the reinstatement form.

24 Q. Does that refresh your recollection?

25 A. Most of this stuff you're seeing, as far as

1 correspondence, is day-to-day routine and it's usually handled  
2 not at my level or the producer's level.

3 Q. So Chris would have handled it without your  
4 knowledge, perhaps, is what you're saying?

5 A. She had full authority to do so, to handle the  
6 paperwork.

7 Q. Were you shaking your head yes?

8 A. Yes.

9 Q. I want to make sure.

10 Can you tell from that letter where the premium  
11 was sent from?

12 A. I only have a supposition.

13 Q. What is your supposition?

14 A. Supposition is it was sent from Lamar  
15 directly--well, it was sent by Lamar. To where I have no idea.

16 Q. It could have been sent directly to Chubb or it  
17 could have been sent to you, you don't know which?

18 A. I don't know which. I would speculate that it  
19 wasn't sent through our office.

20 Q. Was not?

21 A. Uh-huh.

22 Q. Do you recall him changing his mind and wanting to  
23 reinstate his policy?

24 A. No.

25 Q. With Chubb, I mean.

1           A.    The only thing that I would read into that is if  
2 he pays a premium to reinstate the policy, I would have to  
3 assume that he decided to reinstate it.

4           Q.    But you had no independent recollection of that?

5           A.    Oh, no.

6           Q.    Do you have any independent recollection of  
7 talking with him or Roger Fleiss or someone else about him in  
8 January or February of 1986?

9           A.    Any conversations I have about a reinstatement or  
10 other items have always been through Roger. We tried to  
11 correspond and keep the communication going through the producer  
12 and himself. That's a matter of policy.

13          Q.    Do you recall any?

14          A.    No direct contact between me and Lamar. Contacts  
15 between Roger and I were frequent for a number of reasons for a  
16 lot of different cases, or whatever his needs might be.

17          Q.    Did you do anything in connection with Lamar  
18 Stevenson other than this--other than help obtain--excuse me,  
19 let's go back--other than working with him on obtaining life  
20 insurance?

21          A.    In working with Roger to place the coverage.

22          Q.    You were assisting Roger in his efforts to help  
23 Lamar, weren't you?

24          A.    I was assisting Roger in finding markets that  
25 Roger needed for life insurance coverage for Lamar.

1           A.    The only thing that I would read into that is if  
2 he pays a premium to reinstate the policy, I would have to  
3 assume that he decided to reinstate it.

4           Q.    But you had no independent recollection of that?

5           A.    Oh, no.

6           Q.    Do you have any independent recollection of  
7 talking with him or Roger Fleiss or someone else about him in  
8 January or February of 1986?

9           A.    Any conversations I have about a reinstatement or  
10 other items have always been through Roger. We tried to  
11 correspond and keep the communication going through the producer  
12 and himself. That's a matter of policy.

13          Q.    Do you recall any?

14          A.    No direct contact between me and Lamar. Contacts  
15 between Roger and I were frequent for a number of reasons for a  
16 lot of different cases, or whatever his needs might be.

17          Q.    Did you do anything in connection with Lamar  
18 Stevenson other than this--other than help obtain--excuse me,  
19 let's go back--other than working with him on obtaining life  
20 insurance?

21          A.    In working with Roger to place the coverage.

22          Q.    You were assisting Roger in his efforts to help  
23 Lamar, weren't you?

24          A.    I was assisting Roger in finding markets that  
25 Roger needed for life insurance coverage for Lamar.

1 Q. Okay. You viewed Lamar as Roger's client?

2 A. Definitely.

3 Q. Was he also your client?

4 A. No. If you mean to say that is he a Talbert  
5 Corporation client, this is true, but his agent was Roger  
6 Fleiss.

7 Q. Okay. What was your relationship to him? How  
8 would you characterize your role?

9 A. Market finder.

10 Q. Were you entitled to part of the commission if the  
11 insurance was secured?

12 A. No.

13 Q. How were you paid for--

14 A. I was paid a salary by the Talbert Corporation to  
15 find coverages and do planning for Talbert Corporation clients.

16 Q. So you were not on commission?

17 A. No.

18 Q. Roger would receive all the commission?

19 A. Roger's office received commissions, but he was  
20 also--

21 THE DEPONENT: Correct me if I'm wrong, Bob, but  
22 he's also on salary, too.

23 Q. (BY MR. HATCH) Are we talking about 1986?

24 A. It's been that way with the Talbert Corporation  
25 since the very beginning that the producers were salaried and

1 or part 1s, and two of them appear to be duplicates.

2 Q. That was a mistake, I think. Just take the most  
3 complete one.

4 MR. BAXTER: No, they're not the same.

5 MR. CHRISTIAN: They're not the same.

6 Q. (BY MR. HATCH) I don't think they're the same,  
7 but let's take the most complete one. I think if you look at  
8 Box 12--

9 A. Replacement, no replacement. Well, obviously the  
10 change of face amount. I don't know how United organized that.

11 Q. Let's take those three and put them in front.  
12 We'll keep it together, and maybe you can tell us what they  
13 are.

14 A. Except for the actual exam that was done in Utah,  
15 these are applications for life insurance from First Colony that  
16 started at \$1,000,000 and was changed to \$500,000. And the  
17 other difference is that it was replacement. There appears to  
18 be a replacement; at one time was changed to a non-replacement.

19 Q. Was this the application sent with Exhibit 17 to  
20 United Underwriters?

21 A. I would have to assume so. Probably not the one  
22 \$1,000,000 one, but the corrected one. Because my recollection  
23 is the decision was made to go to a \$500,000 policy instead of  
24 \$1,000,000.

25 Q. What is Select-20?

1 Q. Are you familiar with its contents?

2 A. Fairly well. We handle a number of companies, and  
3 all the conditional receipts for all the carriers are quite  
4 unique, and also tedious.

5 Q. So the conditional receipts are not alike?

6 A. Between carriers?

7 Q. Yes.

8 A. Not necessarily.

9 Q. Did you talk to Lamar about this conditional  
10 receipt?

11 A. No.

12 Q. But it's your understanding he received a copy; is  
13 that right?

14 A. That's my understanding.

15 Q. Let me give you a chance to review it, if you'd  
16 like to, or are you already familiar with it?

17 A. I've scanned it.

18 Q. You dealt with United Underwriters in Denver; is  
19 that right?

20 A. That's correct.

21 Q. And then they corresponded with the Salt Lake  
22 office; is that your understanding?

23 A. Yes.

24 Q. How long had you dealt with them? We'll talk  
25 about you personally and talk about Talbert Corporation after



1 whether it was a phone call or written correspondence. It seems  
2 like just a running commentary.

3 Q. Do you see anything in there indicating a call  
4 requesting return of premium?

5 A. No.

6 Q. Do you recall a time when you made a phone call on  
7 that subject?

8 A. It was subsequent of a phone call from Roger  
9 prompted by Lamar saying, "Where is my premium?"

10 Q. Would it have been before his death?

11 A. Definitely, because the conversation was between  
12 Lamar and Roger, not Maurine and Roger.

13 Q. Can you pin it down any more specifically?

14 A. No.

15 Q. Did Roger say it was prompted by Lamar?

16 A. He would either say, "Lamar wants to know," "the  
17 Stevensons want to know where their money is." It was either  
18 "Stevenson" or "Lamar."

19 Q. Are you recalling a specific conversation?

20 A. Yes, to the best of my ability to recall back at  
21 that point in time at that month. That would have prompted my  
22 call to Janet, though, immediately.

23 Q. Do you recall specifically talking to Janet?

24 A. Yes.

25 Q. What did you say?

1 Q. (BY MR. BAXTER) As I understand your earlier  
2 testimony, you have never met or talked with Maurine Stevenson  
3 or Lamar Stevenson; is that correct?

4 A. That's correct.

5 Q. In the middle of this exhibit there's a sentence  
6 that starts, "The Denver office changed the ap"--I assume  
7 application--"from \$1,000,000 to \$500,000 after a phone  
8 conversation with Lamar Stevenson, and he decided he could not  
9 afford the \$1,000,000." Would this have been reflected on the  
10 documents we looked at earlier where \$1,000,000 was crossed out  
11 and \$500,000 was put in?

12 A. Yes. I probably think that the phone conversation  
13 was one with Roger and not with me. It may have been with  
14 Chris. That I'm not sure. My supposition is Roger Fleiss.

15 Q. So basically everything you've talked about today  
16 and your information about what went on, as far as Lamar  
17 Stevenson was concerned, would have been relayed to you from  
18 Roger's supposition of what Roger would have done?

19 A. Or what Lamar and Roger had decided to do.

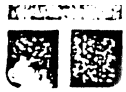
20 Q. And that would be conveyed to you by Roger?

21 A. Yes.

22 Q. So Roger's testimony on that would be more  
23 accurate as to what Lamar said or what Lamar wanted than your  
24 testimony?

25 A. Yes.

**EXHIBIT 9**



## the Talbert corporation

SURETY BONDS AND INSURANCE  
DENVER, COLORADO  
GRAND JUNCTION, COLORADO  
CASPER, WYOMING  
SALT LAKE CITY, UTAH

May 28, 1986

Mr. Lamar Stevenson  
Lamar D. & Sons Construction, Inc.  
960 North 1600 West  
Mapleton, Utah 84663

Dear Mr. Stevenson:

After a long discussion with Roger, we considered the savings of going to a new product for the \$1,000,000, worth of coverage to be more advantageous to you then to continue to pay the premium or reinstate the coverage with Chubb. In this envelope you will find an application for First Colony that you can fill out at your leisure. The savings can be calculated by comparing the annual premium due with First Colony versus the nearly \$1,200.00 currently due to reinstate the Chubb policy.

Please feel free to discuss this with Roger or to call me here in Denver if I can answer any questions for you. This coverage will require a very brief exam that can be done at your office or your home which ever is most convenient for you. Thank you for your time and patience.

Best regards,

Norman R. Close  
Vice President

Enclosure

NRC:cf

cc: Roger Fliess

**EXHIBIT 10**

# First Colony Life Insurance Company

APPLICATION — PART I  
EASE PRINT OR TYPE

P.O. Box 1280  
Lynchburg, Virginia 24505

P.O. Box 2519, Terminal Annex  
Los Angeles, California 90051

No. L 094227

FULL NAME OF PROPOSED INSURED

☒ M ☐ F

(Women, give maiden name.)

LAMAR D STEVENSON

RESIDENCE ADDRESS: Give No., Street, City, State, and Zip Code

960 North 1600 West  
Mapleton, Utah 84663

How long at this address? 7 yrs.

Previous addresses, within past 5 years:

OCCUPATION: OWNER, MANAGER OF COMPANY  
Describe Duties:

Name of Employer: LAMAR D. & Sons Construction, Inc.

Business Address: 960 North 1600 West  
Mapleton Utah 84663

DATE OF BIRTH  
Month Day Year

8-13-39

5. PLACE OF BIRTH

Utah

6. SOC. SECURITY NO.

528-48-9668

PLAN AND AMOUNT (For Life One;™ Indicate whether Option 1 or 2 is applicable.):

Select - 20

\$1,000,000 \$500,000

RIDERS: ☐ WP

☐ ADB \$

☐ Other:

I. RATED CLASS: Issue Rated Class (increased premiums) if applicable? ☐ Yes ☒ No

J. OWNER (If other than Proposed Insured, give full name, address, relationship to Proposed Insured, and S.S. or Employer I.D. No.):

Owner is ☐ Individual

☐ Sole Proprietorship

☐ Corporation

☐ Partnership

☐ Trustee (Give name of trust and date of trust agreement.)

10. BENEFICIARY: Give full name, date of birth, and relationship to Proposed Insured. Right to change Beneficiary is reserved to Owner unless otherwise indicated. (Businesses should include address.)

Primary: Lamar D. Stevenson, Trust  
and Maureen J. Stevenson,  
Trustee, or their successors  
Contingent: Trust under Trust Agreement  
dated 9-25-81

11. LIST ALL INSURANCE IN FORCE ON THE LIFE OF THE PROPOSED INSURED:

Company	Amount	Acc. Death	Issue Year
none			

12. REPLACEMENT: Is this insurance intended to replace or change an existing insurance, including annuities, in any company or society? ☒ Yes ☐ No If "Yes," explain.

13. MODE OF PREMIUM PAYMENT: ☐ Annual ☒ Semiannual ☐ Quarterly ☐ Pre-Authorized Check ☐ Other:

14. AMOUNT REMITTED WITH THIS APPLICATION (in exchange for the Conditional Receipt bearing the same number as this application)  
\$ 410.00

15. SEND PREMIUM NOTICES TO: ☒ Residence ☐ Business ☐ Owner (If other than Proposed Insured). If more than one Owner give name and address of the one Owner who should receive the original notice:

☐ Other:

16. AUTOMATIC PREMIUM LOAN: ☒ Yes ☐ No (Will be effective if applicable unless checked here.)

17. SPECIAL REQUESTS:

I represent that the statements and answers given in this application are true, complete, and correctly recorded to the best of my knowledge and belief and agree that: (1) the entire contract will consist of this application and the policy issued in response to it; (2) no agent of the Company can: (a) make or modify the contract; (b) waive any rights or requirements of the Company; or (c) waive any information requested by the Company; and (3) except as provided in the Conditional Receipt, if issued, with the same number as this application, no insurance will take effect unless: (a) the policy is delivered to the Owner; (b) the first modal premium is paid; and (c) there has been no change since the date of this application in the insurability of all persons proposed for insurance. I acknowledge receipt of the Notice to Proposed Insured.

Signed at Salt Lake City, Utah

this 30<sup>th</sup> day of June, 1986

*[Signature]*  
Witness  
*[Signature]*  
Licensed Resident Agent in States Requiring

*[Signature]*  
Proposed Insured

Owner (If other than Proposed Insured)

This section is to be completed if no medical examination is required. The PROPOSED INSURED should comment on all "Yes" answers in the "Details" section.

Full Name of Proposed Insured Lanier D. Stevenson Date of Birth 8/13/39 S.S. No. 528-41

1. a. Name and address of your personal physician (if none, so state) Dr. James Nance

b. Date and reason for last consultation \_\_\_\_\_

c. What treatment was given or medication prescribed? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DETAILS of "Yes" answers. (IDENTIFY QUESTION NUMBER, CIRCLE APPLICABLE ITEMS: diagnoses, dates, duration, and names and addresses of all attending physicians and facilities.)

2. Have you ever been treated for or ever had any known indication of:
- |  | Yes                                 | No                                  |
|--|-------------------------------------|-------------------------------------|
| a. Disorder of eyes, ears, nose, or throat?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b. Dizziness, fainting, convulsions, head injury, headaches, speech defect, paralysis or stroke, tremor, muscle weakness, depression, other mental or nervous disorder?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c. Shortness of breath, persistent hoarseness or cough, blood spitting, bronchitis, pleurisy, asthma, emphysema, tuberculosis, or chronic respiratory disorder?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d. Chest pain, palpitation, high blood pressure, rheumatic fever or other severe infection, heart murmur, heart attack, varicose veins, phlebitis, or other disorder of the heart or blood vessels?                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e. Jaundice, intestinal bleeding, ulcer, hernia, appendicitis, colitis, diverticulitis, hemorrhoids, recurrent indigestion, or other disorder of the stomach, intestines, liver, gallbladder, pancreas, or spleen? | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| f. Sugar, albumin, blood or pus in urine, venereal disease, stone or other disorder of kidney, bladder, prostate, or reproductive organs?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g. Diabetes, goiter, thyroid, or other endocrine disorders?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h. Neuralgia, neuritis, sciatica, rheumatism, arthritis, gout, or disorder of the muscles or bones, including the spine, back and joints?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| i. Deformity, lameness, or amputation?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| j. Disorder of skin or lymph glands, cyst, tumor, or cancer?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| k. Allergies, anemia, bleeding tendency, or other disorder of the blood?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

3. Other than above, have you within the past 5 years:
- |   |                                     |                                     |
|---|-------------------------------------|-------------------------------------|
| a. Had any mental or physical disorder not listed above?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b. Had a checkup, consultation, illness, injury, surgery?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| c. Been a patient in a hospital, clinic, sanatorium, or other medical facility?                   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| d. Had EKG, X-ray, other diagnostic test?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| e. Been advised to have any diagnostic test, hospitalization, or surgery which was not completed? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

4. Are you now under observation or taking treatment or medication? ☐ Yes ☒ No

5. Have you had any change in weight in the past year? ☐ Yes ☒ No  
 a. If "Yes," how much? Gain \_\_\_\_\_ lbs., Loss \_\_\_\_\_ lbs.  
 b. Give present height 5 ft. 5 in., weight 160 lbs.

6. Have you ever:
- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| a. Smoked cigarettes? If "Yes," how many daily? _____   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |
| b. Used alcoholic beverages? If "Yes," how often and how many ounces? _____   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |
| c. Used narcotics, stimulants, sedatives, hallucinogenics, or any other drugs not prescribed by a physician? If "Yes," what kind and what frequency and amount? _____ | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |

8. Has any physical or mental condition ever resulted in time lost from performing your duties in connection with your employment or military service?

☐

☒

NUMBER, CIRCLE APPLICABLE  
diagnoses, dates, duration, addresses of all attending physical facilities.)

9. Have you ever requested or received a pension, benefits, or payment because of an injury, sickness, or disability?

☐

☒

10. Has any company or society declined to issue, reinstate, or renew a policy; offered a rated or modified policy, or postponed or cancelled any insurance on your life?

☐

☒

11. Is any application or informal inquiry for insurance on your life or health pending in any other company or society, or have you ever withdrawn such an application or informal inquiry?

☐

☒

12. Do you intend to fly other than as a passenger or have you flown other than as a passenger during the past 2 years? (If "Yes," complete Aviation Questionnaire.)

☒

☐

13. Have you in the past 2 years engaged in, or do you expect to engage in, racing (automobile, go-kart, cycle, boat, snowmobile) or diving (skin, scuba, sky)? (If "Yes," complete Hazardous Activity Questionnaire.)

☐

☒

14. Family History: Is there a history of tuberculosis, diabetes, cancer, high blood pressure, heart or kidney disease, mental illness, or suicide?

☐

☒

	Age if Living	Age at Death	Cause of Death
Father		62	Helicopter Accid.
Mother	65		
Brothers and Sisters	No. Living 2	No. Dead	

15. Answer if applicable:

Yes

No

a. Have you ever had any disorder of menstruation, pregnancy, or of the female organs or breasts?

☐

☐

b. To the best of your knowledge and belief are you now pregnant?

☐

☐

represent that the statements and answers given above are true, complete, and correctly recorded to the best of my knowledge and belief.

Signed at

Salt Lake City, Utah

this

30

day of

June

1986

Agent

Proposed Insured



Complete if MEDICAL EXAMINATION is required. The MEDICAL EXAMINER is asked to comment on all "Yes" answers in the "Details" section.

Name of Proposed Insured Lamar D. Stevenson Date of Birth 8/13/39 S.S. No 528-48-96

a. Name and address of your personal physician (If none, so state) none

b. Date and reason for last consultation \_\_\_\_\_

c. What treatment was given or medication prescribed? \_\_\_\_\_

DETAILS of "Yes" answers. (IDENTIFY SUBJECT NUMBER, CIRCLE APPLICABLE ITEMS: Include diagnoses, dates, duration, and names and addresses of all attending physicians and medical facilities.)

- | Have you ever been treated for or ever had any known indication of:  | Yes                                 | No                                  |
|--|-------------------------------------|-------------------------------------|
| a. Disorder of eyes, ears, nose, or throat?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b. Dizziness, fainting, convulsions, head injury, headaches, speech defect, paralysis or stroke, tremor, muscle weakness, depression, other mental or nervous disorder?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c. Shortness of breath, persistent hoarseness or cough, blood spitting, bronchitis, pleurisy, asthma, emphysema, tuberculosis, or chronic respiratory disorder?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d. Chest pain, palpitation, high blood pressure, rheumatic fever or other severe infection, heart murmur, heart attack, varicose veins, phlebitis, or other disorder of the heart or blood vessels?                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e. Jaundice, intestinal bleeding, ulcer, hernia, appendicitis, colitis, diverticulitis, hemorrhoids, recurrent indigestion, or other disorder of the stomach, intestines, liver, gallbladder, pancreas, or spleen? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f. Sugar, albumin, blood or pus in urine, venereal disease, stone or other disorder of kidney, bladder, prostate, or reproductive organs?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| g. Diabetes, goiter, thyroid, or other endocrine disorders?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h. Neuralgia, neuritis, sciatica, rheumatism, arthritis, gout, or disorder of the muscles or bones, including the spine, back and joints?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| i. Deformity, lameness, or amputation?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| j. Disorder of skin or lymph glands, cyst, tumor, or cancer?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| k. Allergies, anemia, bleeding tendency, or other disorder of the blood?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

Other than above, have you within the past 5 years:

- |   |                                     |                                     |
|---|-------------------------------------|-------------------------------------|
| a. Had any mental or physical disorder not listed above?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b. Had a checkup, consultation, illness, injury, surgery?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| c. Been a patient in a hospital, clinic, sanatorium, or other medical facility?                   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d. Had EKG, X-ray, other diagnostic test?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| e. Been advised to have any diagnostic test, hospitalization, or surgery which was not completed? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

Are you now under observation or taking treatment or medication? ☐ ☒

Have you had any change in weight in the past year? ☐ ☒

- a. If "Yes," how much? Gain \_\_\_\_\_ lbs., Loss \_\_\_\_\_ lbs.  
b. Give present height \_\_\_\_\_ ft. \_\_\_\_\_ in., weight \_\_\_\_\_ lbs.

Have you ever:

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| a. Smoked cigarettes? If "Yes," how many daily? _____   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |
| b. Used alcoholic beverages? If "Yes," how often and how many ounces? _____   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |
| c. Used narcotics, stimulants, sedatives, hallucinogenics, or any other drugs not prescribed by a physician? If "Yes," what kind and what frequency and amount? _____ | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has use been discontinued? If "Yes," explain.   | <input type="checkbox"/> | <input type="checkbox"/>            |

2f. Kidney stone removed 1983 at Utah Valley Regional Medical Center. Dr. Arms 930 N. 500 W Provo, Utah 84601

3b. P.E. for Pilot's License Oct. 14, 1985

Enoch A. Ludlow, Jr. 325 W. Center Spanish Fork, UT. 84601

2h. Arthritis in @ hand for 20 yrs. Has gone to see a Dr. Luis Carr P.O. Box 374 Calexico, Ca.

3d. EKG done at Mtn. View Hospital Payson, Ut. (Dr. Hall - nurse, 1000 E. Hwy 6 Payson, Ut. 84651

Have you ever requested or received a pension, benefits, or payment because of an injury, sickness, or disability?

9. Have you ever requested or received a pension, benefits, or payment because of an injury, sickness, or disability?

10. Has any company or society declined to issue, reinstate, or renew a policy; offered a rated or modified policy; or postponed or cancelled any insurance on your life?

11. Is any application or informal inquiry for insurance on your life or health pending in any other company or society, or have you ever withdrawn such an application or informal inquiry?

12. Do you intend to fly other than as a passenger or have you flown other than as a passenger during the past 2 years? (If "Yes," complete Aviation Questionnaire.)

13. Have you in the past 2 years engaged in, or do you expect to engage in, racing (automobile, go-kart, cycle, boat, snowmobile) or diving (skin, scuba, sky)? (If "Yes," complete Hazardous Activity Questionnaire.)

14. Family History: Is there a history of tuberculosis, diabetes, cancer, high blood pressure, heart or kidney disease, mental illness, or suicide?

	Age if Living	Age at Death	Cause of Death
Father		62	helicopter accident
Mother	65		
Brothers and Sisters	No. Living 2	48, 35	
	No. Dead 0		

15. Answer if applicable:  
a. Have you ever had any disorder of menstruation, pregnancy, or of the female organs or breasts?  
b. To the best of your knowledge and belief are you now pregnant?

diagnoses, dates, duration, and names of all attending physicians and facilities.)

12. Has a pilots license may fly in the future but not sure; the last he flew was 1 1/2 yrs

I represent that the statements and answers given above are true, complete, and correctly recorded to the best of my knowledge and belief.

Signed at Mapleton, Utah this 16 day of June, 1988  
Barbara Guernsey Examiner X [Signature] Proposed Insured

Has any physical or mental condition ever resulted in time lost from performing your duties in connection with your employment or military service? ☐ ☒ (Diagnoses, dates, duration, and addresses of all attending physicians and facilities.)

---

Have you ever requested or received a pension, benefits, or payment because of an injury, sickness, or disability? ☐ ☒

---

Has any company or society declined to issue, reinstate, or renew a policy; offered a rated or modified policy; or postponed or cancelled any insurance on your life? ☐ ☒

---

Is any application or informal inquiry for insurance on your life or health pending in any other company or society, or have you ever withdrawn such an application or informal inquiry? ☐ ☒

---

2. Do you intend to fly other than as a passenger or have you flown other than as a passenger during the past 2 years? (If "Yes," complete Aviation Questionnaire.) ☒ ☐

---

3. Have you in the past 2 years engaged in, or do you expect to engage in, racing (automobile, go-kart, cycle, boat, snowmobile) or diving (skin, scuba, sky)? (If "Yes," complete Hazardous Activity Questionnaire.) ☐ ☒

---

4. Family History: Is there a history of tuberculosis, diabetes, cancer, high blood pressure, heart or kidney disease, mental illness, or suicide? ☐ ☒

	Age if Living	Age at Death	Cause of Death
Father		62	Helicopter Accident
Mother	65		
Brothers and Sisters	No. Living 2 No. Dead		

---

5. Answer if applicable:

	Yes	No
a. Have you ever had any disorder of menstruation, pregnancy, or of the female organs or breasts?	<input type="checkbox"/>	<input type="checkbox"/>
b. To the best of your knowledge and belief are you now pregnant?	<input type="checkbox"/>	<input type="checkbox"/>

I represent that the statements and answers given above are true, complete, and correctly recorded to the best of my knowledge and belief.

Signed at Salt Lake City, Utah this 30 day of June, 1958  
John D. Harrison Agent  
John D. Harrison Proposed Insured

...earnings will premiums be paid?  
If Pre-Authorized Check, have authorization cards been obtained? ☐ Yes No ☐  
If Government Allotment basis, has allotment been filed? ☐ Yes No ☐  
If Pre-Authorized Check or Government Allotment basis, have 2 monthly premiums been collected? ☐ Yes No ☐  
If "No," explain:

2. If Proposed Insured is not the major income earner, how much insurance does the spouse have? \$\_\_\_\_\_ If spouse is not insured, give reason:

3. Who is the Beneficiary of the spouse's insurance?

4. What is the purpose of this insurance?

5. If Owner is a corporation or partnership, are the officers or partners insured for the benefit of the firm? ☐ Yes No ☐  
If "No," explain:

6. If the plan applied for is Life One, give mode and amount of periodic premiums. Attach proposal.

7. To the best of your knowledge and belief is replacement? ☐ Yes No ☐ If "Yes," attach a full explanation of replacement, including a copy of the comparison form you prepared. Proposed Insured and any other special forms required by the plan to which the application was signed.

8. Has a medical exam been scheduled? Attached ☒ Yes

9. SPECIAL QUESTIONS FOR AGENTS IN STATES WITH LAWS REGARDING COMMISSIONS ON PERSONAL OR OTHER CONTRACTS: Is the insurance applied for in the category in which payment of commission may be restricted under the laws of your state? ☐ Yes  
If "Yes," are you qualified to receive the commission? ☐ Yes

10. REMARKS:

I represent that: (1) I have personally seen the Proposed Insured; (2) I have truly and accurately recorded on this application the information as submitted by the Owner and the Proposed Insured; (3) to the best of my knowledge and belief there is nothing adversely affecting the insurability of the Proposed Insured other than as indicated in this application; and (4) the written disclosure statement was given on or before the date the application was signed where applicable.

(This report must include each agent's name who has an interest in this application. Unless otherwise indicated, each agent shall have an equal interest.)

\_\_\_\_\_  
Other Soliciting Agent

\_\_\_\_\_  
Date

Tom R. [Signature]  
Soliciting Agent

\_\_\_\_\_  
Other Soliciting Agent

1001 Lincoln St. P.O. Box 9364 Denver Co 802  
Soliciting Agent's Address

PLEASE PRINT

PART IV — GENERAL AGENT'S REPORT

1. General Agent:  
FCL Code No:  
2. Agents Entitled to Receive Commission:

3. Has inspection report been ordered? ☐ Yes  
If "Yes," attach copy of order ticket to application.  
4. Single Case Agreement attached? ☐ Yes

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of General Agent

#### AUTHORIZATION TO OBTAIN AND DISCLOSE INFORMATION

I understand that First Colony Life Insurance Company, its reinsurers, any insurance support organizations, and their authorized representatives may to collect information on me in regard to proposed life insurance coverage.

Therefore, I authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance or reinsu companies, the Medical Information Bureau, Inc., consumer reporting agency, financial sources, and employers to furnish the types of inform specified in this Authorization upon presentation of this Authorization or a photocopy.

The types of information will include information about my mental and physical health, other insurance coverage, participation in hazardous acti character, general reputation, mode of living, finances, occupation, and other personal characteristics.

The information will be used by First Colony Life and its reinsurers to determine insurability and/or by the insurance agent to aid in updating and imp my insurance program.

The information collected may be disclosed to other insurance companies to which I have applied or may apply, reinsurance companies, the Medical mation Bureau, Inc., or other persons or organizations performing business, professional, or insurance functions for First Colony Life or as may be wise legally allowed.

I understand that I may request to receive a copy of this Authorization.

This Authorization will be valid for two years after the date of signing.

Signed at SALT LAKE CITY, UTAH this 30 day of June  
Robert A. Thompson

Proposed Insured or other Authorized Person

# NOTICE TO PROPOSED INSURED — PART I

In connection with your application for insurance, an investigative consumer report may be prepared whereby information is obtained through personal interviews with your family, friends, neighbors, business associates, financial sources, or others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics, and mode of living. If an investigative consumer report is prepared in connection with your application, you may receive a copy of that report upon written request to the Company.

Information regarding your insurability will be treated as confidential. First Colony Life Insurance Company or its reinsurers may, however, make report thereon to the Medical Information Bureau, a non-profit membership organization of life insurance companies, which operates an information change bureau on behalf of its members. If you apply to another Bureau member company for life or health insurance coverage, or a claim for benefits submitted to such a company, the Bureau, upon request, will supply such company with the information it may have in its file.

Upon receipt of request from you, the Bureau will arrange disclosure of any information it may have in your file. NOTE: (Medical information will be disclosed only to your attending physician.) If you question the accuracy of information in the Bureau's file, you may contact the Bureau and seek a correction in accordance with the procedures set forth in the federal Fair Credit Reporting Act. The address of the Bureau's information office is Post Office Box 105, Station, Boston, Massachusetts 02112 Tel. (617) 426-3660.

First Colony Life Insurance Company or its reinsurers may also release information in its file to other life insurance companies to whom you may apply for health insurance, or to whom a claim for benefits may be submitted.

FIRST COLONY LIFE INSURANCE COMPANY, P.O. Box 1280, Lynchburg, Virginia 24505 Tel. (804) 845-0911

## CONDITIONAL RECEIPT

No. L 094227

This receipt is to be issued if payment is made at the time the application is signed; otherwise, it must not be detached.

The conditions specified in Paragraph "FIRST" must be fulfilled exactly if insurance is to become effective prior to policy delivery. Neither the agent nor the medical examiner is authorized to alter or waive these conditions.

I received from Lamar Stevenson, this 7th day of July, 19 86 the sum of \$ 410.00 in connection with this application for life insurance to the Company. This receipt bears the same date and number as the application.

### FIRST. CONDITIONS PRECEDENT UNDER WHICH INSURANCE MAY BECOME EFFECTIVE PRIOR TO POLICY DELIVERY.

IF all the following conditions are fulfilled exactly:

- (1) All medical exams, tests, X-rays, and EKG's required by Company rules must be completed.
- (2) The first modal premium for the amount of insurance which may become effective prior to policy delivery must be received with this application.
- (3) On the date that insurance becomes effective under the terms of this receipt, each person to be covered must be insurable at the class applied for, for the plan and amount applied for, without change and at the rate of premium paid.

THEN insurance as provided by the policy applied for and for an amount not exceeding that specified in Paragraph "SECOND" will become effective on the latest of:

- (1) the date of Part I of this application;
- (2) the date of completion of all medical exams, tests, X-rays, and EKG's required by Company rules; and
- (3) the Date of Issue, if any, requested in the application.

Any alternate or additional insurance applied for will not become effective under this receipt.

### SECOND. LIMITS PROVISION: MAXIMUM AMOUNT OF INSURANCE WHICH MAY BECOME EFFECTIVE PRIOR TO POLICY DELIVERY.

The total amount of life insurance and ADB which may become effective prior to policy delivery cannot exceed \$300,000. This amount includes all insurance and ADB previously issued or applied for in the Company.

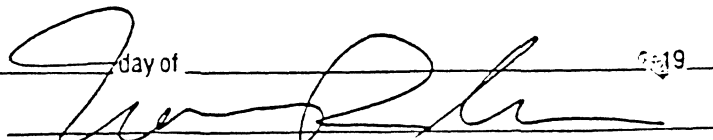
### THIRD. RETURN OF AMOUNT REMITTED.

The sum paid in exchange for this receipt will be returned upon demand and surrender of this receipt if:

- (1) no insurance becomes effective under the terms of this receipt; or
- (2) the Company declines this application.

This receipt is not valid unless signed by the agent who receives payment. THE PREMIUM MUST BE PAID BY CHECK OR MONEY ORDER MADE PAYABLE TO THE COMPANY. DO NOT MAKE CHECK OR MONEY ORDER PAYABLE TO THE AGENT OR LEAVE THE PAYEE BLANK. Any check or money order given in payment of this premium must be honored on the first presentation for payment. If you do not hear from the Company regarding the proposed insurance within 60 days, notify the Company at its home office in Lynchburg, Virginia. Give the name of the agent, date and amount paid, and the number of this receipt.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1986

  
Licensed Resident Agent

a. Height (In Shoes) 5 ft. 5 in.	Weight (Clothed) 162 lbs.	Chest (Full Inspiration) 41 in.	Chest (Forced Expiration) 38 in.	Abdomen, at Umbilicus 35 in.
--	---------------------------------	---------------------------------------	--	------------------------------------

DETAILS of "Yes" answers. (Identify item.)

b. Did you weigh? ☒ Yes No ☐ Did you measure? ☒ Yes No ☐

c. How did you identify the applicant?

Secretary - introduced him

d. Is appearance unhealthy or older than stated age? ☐ Yes No ☒

e. Are you related to the Proposed Insured? ☐ Yes No ☒

f. Have you seen the Proposed Insured professionally before this exam? ☐ Yes No ☒

Blood Pressure (Record ALL readings)

(Include additional readings if above 140/90.)

Systolic	130		
Diastolic 5th phase	62		

Pulse:	At Rest	After Exercise	3 Minutes Later
Rate	80		
Irregularities per minute	none		

Heart: Is there any:

Enlargement ☐ Yes No ☐ Dyspnea ☐ Yes No ☐

Murmur(s) ☐ Yes No ☐ Edema ☐ Yes No ☐

(Describe murmur(s) below—if more than one, describe separately)

Location		
----------	--	--

Constant	<input type="checkbox"/>	<input type="checkbox"/>
Transmitted	<input type="checkbox"/>	<input type="checkbox"/>
Localized	<input type="checkbox"/>	<input type="checkbox"/>
Systolic	<input type="checkbox"/>	<input type="checkbox"/>
Presystolic	<input type="checkbox"/>	<input type="checkbox"/>
Diastolic	<input type="checkbox"/>	<input type="checkbox"/>
Soft (Gr. 1-2)	<input type="checkbox"/>	<input type="checkbox"/>
Mod. (Gr. 3-4)	<input type="checkbox"/>	<input type="checkbox"/>
Loud (Gr. 5-6)	<input type="checkbox"/>	<input type="checkbox"/>

Indicate:

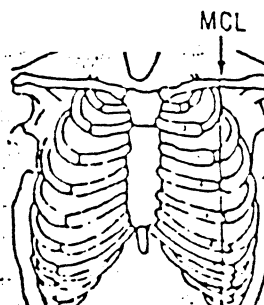
Apex by X

Murmur area by ○

Point of greatest

intensity by ○

Transmission by →



After Exercise:

Increased	<input type="checkbox"/>	<input type="checkbox"/>
Decreased	<input type="checkbox"/>	<input type="checkbox"/>
Unchanged	<input type="checkbox"/>	<input type="checkbox"/>

For comments and your impression or diagnosis.

Is there on examination any abnormality of the following:  
(Circle applicable items and give details.)

Yes No

a. Eyes, ears, nose, mouth, pharynx?

☐ ☐

b. Skin (include scars), lymph nodes, varicose veins or peripheral arteries?

☐ ☐

c. Nervous system (include reflexes, gait, paralysis)?

☐ ☐

d. Respiratory system?

☐ ☐

e. Abdomen (include liver, spleen, and scars)?

☐ ☐

f. Genitourinary system (include prostate)?

☐ ☐

g. Endocrine system (include thyroid and breasts)? ☐ ☐

h. Musculoskeletal system (include spine, joints, amputations, deformities)? ☐ ☐

3. a. Are there any hernias? ☐ ☐

b. Any hemorrhoids? ☐ ☐

7. Urinalysis:

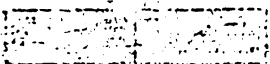
a. Specific Gravity	b. Albumin	c. Sugar
ONS	neg	neg

d. Is specimen being sent to the home office? ☒ Yes ☐ No

8. Are you aware of additional medical history? ☐ Yes ☒ No  
(A confidential report may be sent to the Medical Director)

performed this examination at ☒ A.M. ☐ P.M. on the 16 day of June, 1981

Examination made at ☒ my office ☐ individual's office ☐ individual's home ☐ other \_\_\_\_\_



Examiner's signature Barbara Sullivan

Examiner's address 8000 E. GLORIA #411 - DENVER CO 80231

PLEASE PRINT MEDICAL FEE VOUCHER DO NOT DE

The Company will pay a reasonable and customary fee for this insurance exam. Payment of your fee will be made from this voucher within 30 days. No additional billing will be necessary.

Proposed Insured's Name Lamar D. Stevenson Date of Birth 8/13/13

Examiner's Name and Address MEDICAL INTERNATIONAL

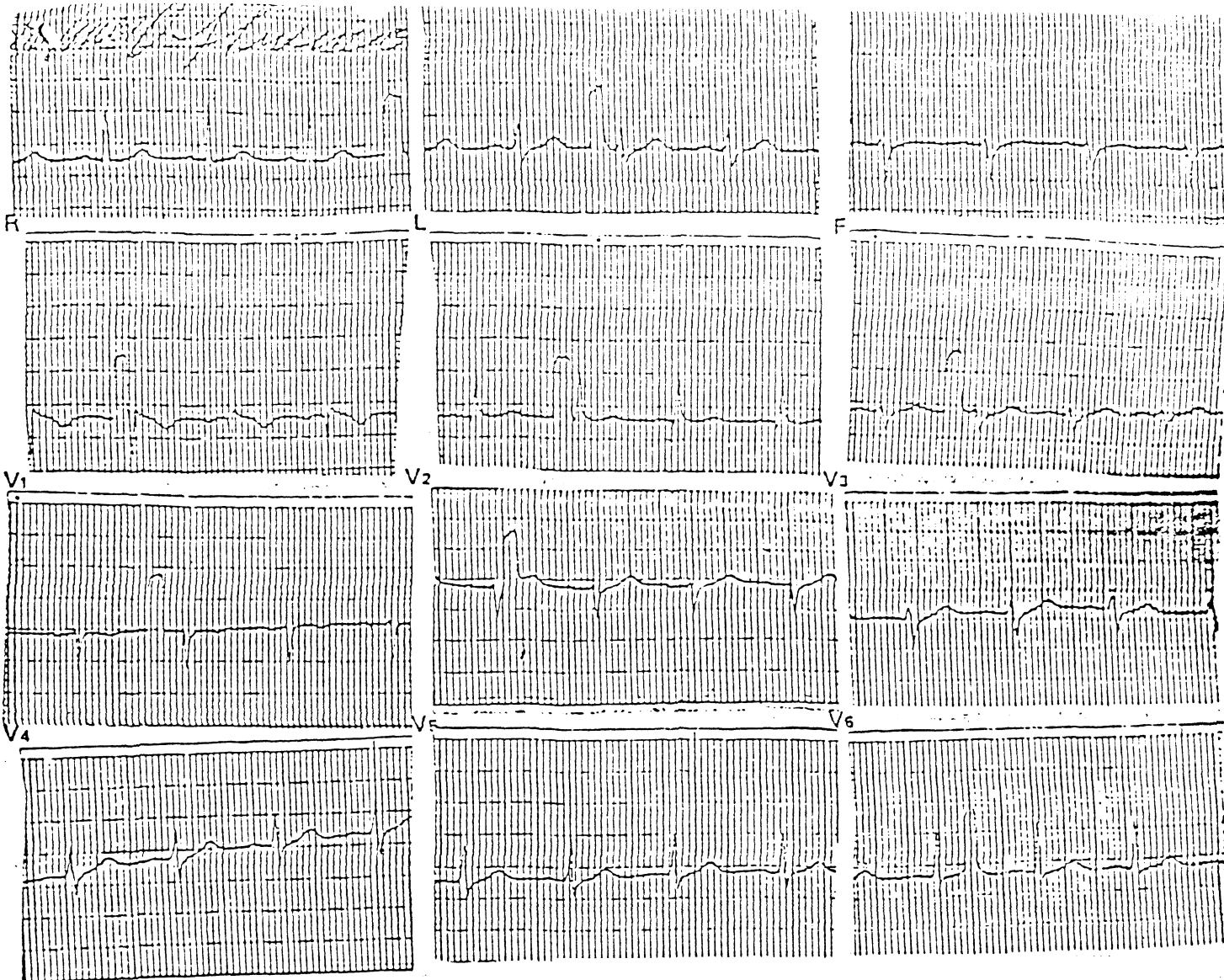
8000 E. GLORIA #411 - DENVER CO 80231

Examiner's S.S. No. or employer's D. No. 84-078528 Amount of fee for this insurance exam \$ 79.00 EXAM + EKG

HOME OFFICE USE: AMOUNT \$ \_\_\_\_\_ CODE # \_\_\_\_\_ METHOD \_\_\_\_\_

DATE \_\_\_\_\_ PAID BY \_\_\_\_\_





100120  
PRINTED IN U.S.A. 308

PREV ECG: YES ☐ NO ☐ AMB. ☐ BED. ☐  
CLIN DIAG:

#### ELECTROCARDIOGRAPH REQUEST

EMERG. ☐ DIG. ☐ MIN. ☐

AGE 46 SEX M B.P. 130/62  
ORDERED BY

DATE 6/16/86  
M.D.

#### ELECTROCARDIOGRAPH REPORT

RHYTHM: SINUS ☐ OTHER

RATES

ATR.

VENTR.

INTERVALS:

P-R

QRS

QTc

AXIS:

DESCRIPTION:

LIMB LEADS

P

QRS

S-T

T U.

PRECARDIAL LEADS

PATIENT IDENTIFICATION

Lamar D. Stevenson  
First Colony Life

INTERPRETATION

DATE

INTERPRETED BY

M.D.

ORIGINAL SUBMISSION:

INSURED(S)

1. Lamar Stevenson DOB 08 / 13 / 39, NS/S
2. \_\_\_\_\_ DOB \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, NS/S
3. \_\_\_\_\_ DOB \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, NS/S
4. \_\_\_\_\_ DOB \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, NS/S
5. \_\_\_\_\_ DOB \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, NS/S

PURPOSE

1. THEME - Family Security, Income and Liquidity.
2. NEED - \$50,000+
3. TYPE OF COVERAGE - Term for conversion to Adjustable Life

OPINION

1. MEDICAL VIEW - Very good. Must keep up the  
FHA requirements and standards
2. NON-MEDICAL VIEW - Independent businessman,  
strong character and very much a family-  
oriented person.

ORIGINAL SUBMISSION

FINANCES

1. PERSONAL INSURANCE

INCOME: Business is being reorganized.

WORTH: \_\_\_\_\_

UNEARNED INCOME: none

WORK: Contractor

DUTIES: Executive, Estimating, Financial Management

JUSTIFICATION: Lost coverage in company <sup>due to financial struggles</sup> for keyman -  
liquidation purposes - needs to replace as personal  
coverage to his family.

2. BUSINESS INSURANCE

FIRM: \_\_\_\_\_

BUSINESS FIRM: \_\_\_\_\_

INDUSTRY: \_\_\_\_\_

WORTH: \_\_\_\_\_

INCOME: \_\_\_\_\_

THEME: \_\_\_\_\_

JUSTIFICATION: \_\_\_\_\_

\_\_\_\_\_

OTHER

COMPETITION? None

FUTURE SALES? conversion and increase to \$1,000,000

OLD INSURANCES? none

ENCLOSURES: Review. Print outs. Financial Statements. Buy-Sell. Work Papers.  
Spread Sheets.

**EXHIBIT 11**

# First Colony Life Insurance Company

APPLICATION — PART I  
PLEASE PRINT OR TYPE

P.O. Box 1280  
Lynchburg, Virginia 24505

P.O. Box 2619, Terminal Annex  
Los Angeles, California 90051

No. L 094227

1. FULL NAME OF PROPOSED INSURED ☒ M ☐ F  
(Women, give maiden name.)

LAMAR D STEVENSON

2. RESIDENCE ADDRESS: Give No., Street, City, State, and Zip Code

How long at this address? 7 yrs.  
Previous addresses, within past 5 years:

3. OCCUPATION:  
Describe Duties:

Name of Employer:

Business Address:

4. DATE OF BIRTH Month Day Year 5. PLACE OF BIRTH 6. SOC. SECURITY NO.

8-13-39 Utah 528-48-9668

7. PLAN AND AMOUNT (For Life One,™ indicate whether Option 1 or 2 is applicable.):

Select - 20  
\$1,000,000

RIDERS: ☐ WP ☐ ADB \$           
☐ Other:

8. RATED CLASS: Issue Rated Class (Increased premiums) if applicable? ☐ Yes ☒ No

9. OWNER (If other than Proposed Insured, give full name, address, relationship to Proposed Insured, and S.S. or Employer I.D. No.):

Owner is ☐ Individual ☐ Sole Proprietorship  
☐ Corporation ☐ Partnership  
☐ Trustee (Give name of trust and date of trust agreement.)

10. BENEFICIARY: Give full name, date of birth, and relationship to Proposed Insured. Right to change Beneficiary is reserved to Owner unless otherwise indicated. (Businesses should include address)

Primary: Lamar D. Stevenson, Trust  
and Maureen J. Stevenson,  
Trustee, or their successor  
Contingent: Trust under Trust Agreement  
dated 9-25-81

11. LIST ALL INSURANCE IN FORCE ON THE LIFE OF THE PROPOSED INSURED:

Company	Amount	Acc. Death	Issue
<u>none</u>			

12. REPLACEMENT: Is this insurance intended to replace or change existing insurance, including annuities, in any company or society?  
☒ Yes ☐ No ☐ If "Yes," explain.

13. MODE OF PREMIUM PAYMENT: ☐ Annual ☐ Semiannual  
☐ Quarterly ☐ Pre-Authorized Check ☐ Other:

14. AMOUNT REMITTED WITH THIS APPLICATION (in exchange for Conditional Receipt bearing the same number as this application):  
\$         

15. SEND PREMIUM NOTICES TO: ☐ Residence ☐ Business  
☐ Owner (If other than Proposed Insured). If more than one Owner, give name and address of the one Owner who should receive original notice:

☐ Other:

16. AUTOMATIC PREMIUM LOAN: ☐ Yes ☐ No (Will be effective if applicable unless checked here.)

17. SPECIAL REQUESTS:

I represent that the statements and answers given in this application are true, complete, and correctly recorded to the best of my knowledge and belief; that: (1) the entire contract will consist of this application and the policy issued in response to it; (2) no agent of the Company can: (a) make or modify the contract; (b) waive any rights or requirements of the Company; or (c) waive any information requested by the Company; and (3) except as provided in the Conditional Receipt, if issued, with the same number as this application, no insurance will take effect unless: (a) the policy is delivered to the Owner; (b) the first modal premium is paid; and (c) there has been no change since the date of this application in the insurability of all persons proposed for insurance. I acknowledge receipt of the Notice to Proposed Insured.

Signed at Salt Lake City, Utah this 30<sup>th</sup> day of June, 1986

[Signature]

[Signature]

**EXHIBIT 12**

LAMAR D. OR MAUREEN STEVENSON

960 NORTH 1600 WEST 489-9317

MAPLETON, UTAH 84663

1581

1282

7-7-86

97-32/1243

Pay to the order of First Colony Life Ins. \$ 410.00

Four hundred ten & 00/100



**Central Bank**

SPRINGVILLE OFFICE

202 SOUTH MAIN • SPRINGVILLE, UTAH 84663

First Colony Life Ins. Letter

*Maureen Stevenson*

1:1243003271:41 37189 911 1581

**EXHIBIT 13**





## the Talbert corporation

SURETY BONDS AND INSURANCE  
DENVER, COLORADO  
GRAND JUNCTION, COLORADO  
CASPER, WYOMING  
SALT LAKE CITY, UTAH

July 14, 1986

Mr. Lamar Stevenson  
Lamar D. & Sons Construction  
960 North 1600 West  
Mapleton, Colorado 84663

Dear Mr. Stevenson:

Thank you for the First Colony Life Insurance application for \$500,000 of coverage, made payable to The Trust Agreement dated 9-25-81. However, due to your having a pilots license the company will require the enclosed aviation questionnaire. Please complete all circled questions and sign as proposed insured where indicated on side two.

An self-addressed envelope has been provided for the return of the questionnaire at your earliest convenience. Should you have any questions please contact Norman Close or myself. Thank you.

Yours very truly,

Christine Fresquez  
Account Assistant

**EXHIBIT 14**

# First Colony Life Insurance Company

LYNCHBURG, VIRGINIA 24505

## AVIATION AND/OR HAZARDOUS ACTIVITY QUESTIONNAIRE

(Please Print)

Name of Proposed Insured Lamar D. Stevenson Social Security No. 523-48-9163

### SECTION I - AVIATION

1. Schedule of flying time	Hours as Pilot or Copilot			Hours as Passenger or Crew Member		
	Contemplated Next 12 Months	Past 12 Months	One to Two Years Ago	Contemplated Next 12 Months	Past 12 Months	One to Two Years Ago
Type of Flying						
COMMERCIAL (Flying for pay)						
Scheduled passenger airline						
Employer owned aircraft for employee transportation						
Other freight carrying or passenger service						
Crop dusting or aerial spraying						
Student instruction						
Other (describe below)						
NON-COMMERCIAL (not flying for pay)						
Pleasure	50	15	25			
Personal business transportation	50	15	25			
Instruction as student						
Other (describe below)						
MILITARY						

2. Total number of hours flown as a pilot? 1200 3. Have you ever had an aircraft accident, or been grounded, fined or reprimanded for violation of air regulations? ☒ Yes If "Yes," give full details in DETAILS section. ☐ No

4. Have you flown, or do you intend to fly: (If "Yes," give details in DETAILS section.) (i) a prototype, experimental or personally built or assembled aircraft? ☐ Yes ☒ No (ii) a rotorcraft, balloon, or glider? ☐ Yes ☒ No

5. Complete questions 5a to 5k with respect to CIVILIAN flying.  
a. What type of certificate or license do you now have? ☐ Student If "Student," when did you first obtain a Student Pilot's Certificate? ☒ Private ☐ Commercial ☐ ATR ☐ Other (specify) Mar 1977  
month year

b. Do you have an Instrument Flight Rating (IFR)? ☐ Yes ☒ No c. What other ratings do you have?

d. Class of FAA medical certificate held? e. Date of last FAA medical examination?                       
month year

f. Does your FAA medical certificate specify any operational limitation or any limit on duration? ☐ Yes If "Yes," give full details in DETAILS section. ☒ No

g. What percentage of your flying time is with a qualified copilot?                      %

h. What percentage of your flying time is (i) on single-engine plane?                      % (ii) on multi-engine plane                      %

i. Have you flown, or do you intend to fly outside the United States? ☐ Yes ☒ No If "Yes," give details in DETAILS section.

j. If not a pilot, specify capacity in which you fly, e.g., passenger, photographer.

k. Have you engaged in or do you contemplate engaging in any type of flying not indicated above? ☐ Yes If "Yes," give full details in DETAILS section. ☒ No

6. Complete questions 6a to 6f with respect to MILITARY flying.  
a. To what military organization do you belong? None b. Date of last flight                       
month year

c. In what type of aircraft do you fly? (Specify alphabetic and numeric code and give brief description, e.g., B-58 supersonic jet bomber)

d. How long have you been flying in this type of aircraft? (If less than one year, also specify aircraft previously flown.)

e. Do you ever fly from an aircraft carrier? ☐ Yes ☒ No f. If not a pilot, specify capacity in which you fly, e.g., navigator.

### SECTION II - SKY DIVING

1. Do you belong to a club affiliated with the United States Parachute Association? ☐ Yes ☒ No If "Yes," give Name, location

2. How long have you been sky diving? 3. Number of jumps: a. last 12 months b. one to two years ago

4. Do you take part in exhibitions or competitions? ☐ Yes ☒ No If "Yes," give details in DETAILS section.

5. Do you receive remuneration for sky diving activity? ☐ Yes ☒ No If "Yes," give details in DETAILS section.

6. Are you an airplane pilot or do you intend to become one? ☐ Yes ☒ No If "Yes," complete Section I-Aviation.

7. Have you ever had a sky diving accident? ☐ Yes ☒ No If "Yes," give full details in DETAILS section.

**EXHIBIT 15**



# First Colony Life Insurance Company

HOME OFFICE

P O BOX 1280 • 700 MAIN STREET • LYNCHBURG VIRGINIA 24505 • TELEPHONE (804) 845 0911

CLAIMS DEPARTMENT

November 19, 1986

Roger Fleiss  
Talbert Corp.  
Suite 401  
205 West 900 South  
Salt Lake City, Utah 84101

Re: Lamar Stevensen

Dear Roger:

As I told you over the phone, we need complete details regarding the application on Lamar Stevensen. Please provide the following information:

1. When and how was the initial contact made with Mr. Stevensen? Who initiated the contact? *5/23/83 - CONVERSATION - R I FLEISS*
2. When and where was the application taken? *6/23/86 MARELTON UT.* Who was present? *UNKNOWN*  
Was Part I of the application completed in Mr. Stevensen's presence? *NO*
3. Did you ask Mr. Stevensen all of the questions on the Part II Non-medical? *NO* Did you record all answers as given by Mr. Stevensen? *NO*  
Did Mr. Stevensen sign the application Part I and Part II Non-medical in your presence? *NO*
4. What was the amount of insurance on question 7 (Plan and Amount) when Mr. Stevensen signed the application? Who changed the amount *1000*  
\* of insurance on question 7? When and why was it changed? Was *7/21/86*  
Mr. Stevensen present, or was he informed of the change? (copy of application attached) *HE WAS INFORMED OF CHANGE*
5. Did Mr. Stevensen pay the premium on the date the application was taken? If not, what date was the premium paid? Who collected the premium? Was Mr. Stevensen given the conditional receipt? What was he told about the conditional receipt? *YES*
6. Did you schedule Mr. Stevensen for the insurance exam? *NO* When did you make the arrangements? *DENVER MAKE ARRANGEMENTS - C FRESQU*
7. When were you notified that First Colony had declined the application? *8/12/86*  
How were you notified? *Q.L.C.*

*First Colony Life*  
INSURANCE COMPANY

Roger Fleiss  
Page 2  
November 19, 1986

1. MR. STEVENSON WAS NOTIFIED NOT LATE  
BUT BARNES SLC OFFICE PHONED.

8. When did you notify Mr. Stevensen that First Colony had declined? 8/17.  
\* How did you notify Mr. Stevensen? What was said about the premium and  
refund either by you or Mr. or Mrs. Stevensen? REFUND WOULD BE  
MAILED FROM COMPANY
9. Did Mr. Stevensen apply for coverage to another company after  
First Colony declined, name of company and amount applied for, YES  
Did the application show First Colony Life had declined coverage? YES  
Was the application submitted to the other company? YES

As you can see, Roger, we need a complete chronological history of everything  
that transpired in connection with the application. Also, please Federal  
Express a copy of your complete file to us.

We appreciate your cooperation and assistance.

Sincerely,



Doris L. Caldwell, CLU, FLMI, ALHC  
Manager

DLC/ndb

5. PREMIUM WAS OBTAINED IN SLC BY R. FLEISS  
MR. STEVENSON WAS SENT CONDITIONAL RECEIPT FROM  
DENVER ON 7/21/86. CLIENT WAS TOLD THIS  
IS YOUR RECEIPT FOR APPLICATION FOR LIFE  
INSURANCE ONLY.

9. BANKERS LIFE  
\$250,000

4. MR. STEVENSON REQUESTED LOWER AMOUNT WITH  
PREMIUM CHARGE. DENVER CHANGED AMOUNT &  
7

**EXHIBIT 16**



# the Talbert corporation

SURETY BONDS AND INSURANCE  
DENVER, COLORADO  
GRAND JUNCTION, COLORADO  
CASPER, WYOMING  
SALT LAKE CITY, UTAH

A

August 28, 1986

Mr. Roger Fleiss  
The Talbert Corporation  
205 West 700 South  
Salt Lake City, Utah 84101

Dear Roger:

Norm requested I send you the enclosed life insurance illustrations for the proposed insured Lamar Stevenson.

The first three are from First Colony Life One, universal life product that First Colony will offer to Mr. Stevenson in place of the term product they have declined. The illustration show three different premium amounts for \$500,000 of death benefit coverage.

The fourth illustration is from Bankers Life. This is a one year term product, with an increasing premium amount for the \$500,000 of death benefit coverage.

Please review and contact our office with any questions or if we can assist with the underwriting or placement of this case.

Yours very truly,

Chrisitne Fresquez  
Account Assistant

Enclosure

P.S. I hope you had a nice vacation, Welcome Back!

**RECEIVED SEP 02 1986**



**EXHIBIT 17**



## the Talbert corporation

SURETY BONDS AND INSURANCE  
DENVER COLORADO  
GRAND JUNCTION COLORADO  
CASPER WYOMING  
SALT LAKE CITY, UTAH

December 3, 1986

Ms. Maureen Stevenson  
960 North 1600 West  
Mapleton, Utah 84663

Dear Maureen:

Roger has informed us here about Lamar and we too extend our sympathy to you and your family.

First Colony Life Insurance Company through its local representatives, United Underwriters, have sent the enclosed check for \$410.00 on the application they had declined coverage for prior to the application to The Bankers Life for coverage and the accident. Please let Roger know if we can be of service to you in anyway and, again, our sympathy to you and your family.

Best regards,

Norman R. Close  
Vice President

NRC:cf

cc: Roger Fleiss

*Prem.  
Info.  
sent to FC*

<b>UNITED</b> <b>underwriters</b> <small>AGENCIES</small>	555 EAST 2ND SOUTH SALT LAKE CITY, UTAH 84110 (801) 532-6660	No. <b>05139</b> DATE <b>11-28-86</b>	AMOUNT \$ <b>410.00</b>
	SALT LAKE CITY / PORTLAND / DENVER / SEATTLE / PHOENIX / MODESTO		
PAY <b>THE SUM 410 DOLLARS</b>			
TO THE ORDER OF <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">           Maureen Stevenson         </div>		PIONEER BANK 151 SOUTH MAIN SALT LAKE CITY, UTAH 84111 31-218/1240	

⑈0005139⑈ ⑆124002188⑆31 00550 7⑈

REMITTANCE ADVICE

UNITED UNDERWRITERS AGENCIES  
 HOME OFFICE: SALT LAKE CITY, UTAH

DETACH BEFORE DEPOSITING

11-28-86 FC  
 Refund of Premium on LaMar Stevenson

05139

IMMEDIATE CASH REFUND

GENERAL AGENT FOR LIFE & HEALTH INSURANCE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, this 20th day of September, 1990, to the following:

Denton M. Hatch, Esq.  
175 South West Temple #510  
Salt Lake City, UT 84101

D. Gary Christian, Esq.  
175 East 400 South #330  
Salt Lake City, UT 84111

A handwritten signature in cursive script, appearing to read "Denton M. Hatch", written over a horizontal line.