

1992

# Maurine Stevenson, personal representative of Lamar Stevenson v. First Colony Life Insurance Company: Petition for Writ of Certiorari

Utah Supreme Court

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Denton M. Hatch; Roger R. Fairbanks; Christensen, Jensen & Powell; Attorneys for Appellee.

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MAURINE STEVENSON,  
personal representative of  
LAMAR STEVENSON,

Plaintiff/Appellant/  
Cross-Appellee,

vs.

FIRST COLONY LIFE INSURANCE  
COMPANY,

Defendant/Appellee/  
Cross-Appellant.

920290  
Certiorari Docket No.

Court of Appeals Case  
No. 910561-CA

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APPELLEE'S PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF UTAH

---

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

---

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MAURINE STEVENSON,	)	
personal representative of	)	
LAMAR STEVENSON,	)	
	)	
Plaintiff/Appellant/	)	
Cross-Appellee,	)	
	)	Certiorari Docket No.
vs.	)	
	)	
FIRST COLONY LIFE INSURANCE	)	Court of Appeals Case
COMPANY,	)	No. 910561-CA
	)	
Defendant/Appellee/	)	
Cross-Appellant.	)	
	)	

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LIST OF ALL PARTIES

Plaintiff

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

Defendants

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

Third-Party Defendant

UNITED UNDERWRITERS\*

\*United Underwriters accepted First Colony's tender of defense  
rendering the third-party complaint unnecessary.

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### QUESTIONS PRESENTED FOR REVIEW

This petition for a writ of certiorari presents for review the following questions:

1. Did the court of appeals overlook and misapprehended the facts in the record and fail to apply the appropriate standard of review requiring it to view the facts and inferences to be drawn therefrom in the light most favorable to First Colony, the losing party below?

2. Did the court of appeals err in determining from the record in this case that Stevensons did not receive adequate notice of the rejection of LaMar Stevenson's application for life insurance?

### REFERENCE TO REPORTS OF THE COURT OF APPEALS

The opinion of the court of appeals is reported in the Utah Advance Reports as Stevenson v. First Colony Life Insurance Company, 181 U.A.R. 65 (Utah App. 1992). The opinion was filed March 3, 1992. The court of appeals Case No. is 910561-CA. The opinion was authored by Norman H. Jackson, Appellate Court Judge, and concurred in by the two other judges on the panel, Judith M. Billings and Leonard H. Russon.

On March 17, 1992, appellee First Colony filed a petition for rehearing. On April 17, 1992, pursuant to request from the Court of Appeals, appellant filed a response to the petition for rehearing.

On May 22, 1992, the court of appeals entered its order

denying the petition for rehearing. Judge Leonard H. Russon dissented.

#### JURISDICTION OF THE SUPREME COURT

The date of entry of the decision sought to be reviewed is March 3, 1992. As stated above, appellee filed a petition for rehearing which was ultimately denied by order of the court of appeals entered May 22, 1992.

#### JURISDICTIONAL STATEMENT

This court originally had jurisdiction over this appeal by virtue of the provisions of Utah Code Annotated § 78-2-2(3)(i) in that this appeal was originally taken from an order of the Fourth Judicial District Court for Utah County over which the Utah Court of Appeals does not have original appellate jurisdiction. The defendant/appellee/cross-appellant, First Colony Life Insurance Company, was entitled to its appeal as a matter of right by virtue of the order of the trial court entered on April 30, 1990, pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

This court should exercise its judicial discretion to grant a writ of certiorari pursuant to Rule 46(c) of the Utah Rules of Appellate Procedure on the ground that the court of appeals has rendered a decision that has so far departed from the excepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision. Specifically, the Utah Court of Appeals overlooked and misapprehended the facts in the record and failed to apply the appropriate standard of

review. In determining whether the trial court correctly found that there was no genuine issue of material fact, the court of appeals was required to "view the facts and inferences to be drawn therefrom in the light most favorable to the losing party." Ron Case Roofing and Asphalt v. Blomquist, 773 P.2d 1382 (Utah 1989); Atlas Corp. v. Clovis National Bank, 737 P.2d 225, 229 (Utah 1987); Beck v. Farmers Insurance Exchange, 701 P.2d 795, 802 (Utah 1985). As will be argued below, the Utah Court of Appeals failed to do so.

#### STATEMENT OF THE CASE

##### A. NATURE OF THE CASE

LaMar Stevenson was killed in an automobile accident on October 16, 1986. The plaintiff and appellee, Maurine Stevenson, filed this action against First Colony Insurance Company and others, claiming, among other things, that a valid temporary contract of insurance existed at the time of her husband's death.

Defendant and appellant First Colony Life Insurance Company filed a motion for summary judgment arguing that the temporary contract of insurance created by the conditional receipt was terminated by First Colony's rejection of LaMar Stevenson's insurance application and notification to Mr. Stevenson of that rejection. The plaintiff countered with a motion for summary judgment arguing that the contract remained in force as a result of the failure of defendant to give written notice of the rejection and failure to return the premium prior

to LaMar Stevenson's death.

Without oral argument, the trial court granted plaintiff's motion for summary judgment and denied First Colony's motion for summary judgment, relying upon the authority of the California Supreme Court case of Smith v. Westland Life Insurance Company, 539 P.2d 433 (Cal. 1975), and holding that "because there was not adequate notice that plaintiff's temporary insurance had been cancelled, and because the premium was not returned timely, the contract was in full force and effect at the time of Mr. Stevenson's death." R. 296-297. After objections and oral argument over the amount of the coverage, the court untimely entered judgment in the amount of \$300,000 plus interest.

On April 30, 1990, the court entered an order for Rule 54(b) certification. R. 487-488.

Defendant/appellee and cross-appellant First Colony filed its notice of appeal with this court on May 16, 1990, appealing the order granting plaintiff summary judgment and denying the motion of First Colony Life Insurance Company for summary judgment.

After briefing, this court assigned the appeal to the Utah Court of Appeals and the Utah Court of Appeals ultimately entered its opinion on March 3, 1992, as set forth above. First Colony's petition for rehearing filed March 17, 1992, was denied by order of the Court of Appeals entered on May 22, 1992.

B. STATEMENT OF FACTS

In May of 1986, Roger Fleiss, LaMar Stevenson's insurance agent employed by Talbert Agency, recommended to LaMar Stevenson that he obtain a life insurance policy with First Colony Life Insurance Company. R. 124, 144-147. On June 30, 1986, LaMar Stevenson filled out and signed an application for life insurance with First Colony and on July 7, 1986, he gave his agent a check payable to First Colony in the amount of \$410 as an initial premium payment. R. 124, 149-150. The check for \$410 was forwarded to United Underwriters, the general agent in the State of Utah for First Colony Life Insurance Company. United Underwriters negotiated the check.

On that same date, July 7, 1986, Norman Close, another agent of LaMar Stevenson and employee of the Talbert Agency, issued, on behalf of First Colony Life Insurance Company, a conditional receipt stating that coverage was dependent upon the insurer's determination of whether or not the applicant was insurable. R. 124, 152.

At the time the conditional receipt was issued on July 7, 1986, it was standard practice in the life insurance industry that a conditional receipt not be issued for more than \$250,000, a practice which was followed by First Colony Life Insurance Company. Affidavit of Leonard Reynolds, R. 349-350. First Colony Life Insurance Company intended to issue the conditional receipt for the amount of \$250,000, a sum which is \$50,000 less

than the \$300,000 amount which the conditional receipt specifically establishes as an amount which cannot be exceeded. Affidavit of Loretta Stacey and attached exhibit, R. 351-353.

Upon receipt of LaMar Stevenson's insurance application, United Underwriters informed the Talbert office that First Colony would not bind coverage under a conditional receipt for more than \$250,000. Exhibit A to Affidavit of Loretta Stacey, R. 353. Talbert, in turn, informed the Stevensons and it was agreed that the amount of insurance effective under the conditional receipt was \$250,000. R. 353. Norman Close testified that Exhibit A of the Loretta Stacey affidavit was accurate in stating that Mr. Stevenson agreed to temporary coverage under the conditional receipt being limited to \$250,000. Transcript of Norman Close Deposition pp. 93-94, 98.

In August of 1986, First Colony Life Insurance Company notified Talbert Corporation that the life insurance application of LaMar Stevenson had been rejected and defendants Roger Fleiss and Talbert Corporation notified the Stevensons that First Colony had rejected the life insurance application. R. 154-158, 161. Plaintiff Maurine Stevenson specifically acknowledged in her deposition testimony that she was told that First Colony had declined coverage on LaMar. Maurine Stevenson deposition, pp. 46-48, 105 and 106, R. 154-158; see also Plaintiff's Answers to Interrogatories at p. 3, R. 161. As of August, 1986, the Stevensons knew that First Colony Life Insurance Company had

denied LaMar Stevenson's application and that insurance was not in force. R. 154-158. One month later, on October 1, 1986, LaMar Stevenson signed and submitted an application for life insurance with Banker's Life Insurance Company which specifically disclosed that he had been declined by First Colony due to the Chapter 11 bankruptcy status of his business. R. 168. On September 29, 1986, United Underwriters, the general agent for First Colony, advised Mr. Stevenson's agents, Roger Fleiss and Talbert Corporation, that First Colony was closing its file and would return the premium within ten days. R. 256, para. 7; see also R. 284, Entry for 9-29-86. At no time did First Colony or United Underwriters ever refuse to refund Stevenson's premium deposit; Maurine Stevenson testified that she knew First Colony had denied the application, but understood that the premium would be returned to the agent and used to apply with another company. R. 342-343. She was not disturbed by the fact that the premium was not returned. R. 343.

LaMar Stevenson was killed in an automobile accident on October 16, 1986, before Banker's Life had finished processing his insurance application. R. 125, 170. Due to oversight on the part of employees of United Underwriters, the premium deposit of \$410 was not returned until after Mr. Stevenson's death, on December 4, 1986. R. 125, 172-173.

First Colony denied coverage for the death of LaMar Stevenson because it had effectively terminated the temporary

insurance contract in question by rejecting the application and providing notice of the rejection to the Stevensons over one and one-half months prior to LaMar Stevenson's accidental death on October 16, 1986.

#### ARGUMENT

THE UTAH COURT OF APPEALS OVERLOOKED AND MISAPPREHENDED FACTS IN THE RECORD OF THIS CASE AND FAILED TO APPLY THE APPROPRIATE STANDARD OF REVIEW, WHICH REQUIRED THAT IT VIEW THE FACTS AND INFERENCES TO BE DRAWN THEREFROM IN THE LIGHT MOST FAVORABLE TO FIRST COLONY. CORRECT APPLICATION OF THAT STANDARD OF REVIEW REQUIRED THE COURT OF APPEALS TO FIND AS A MATTER OF LAW THAT FIRST COLONY LIFE INSURANCE COMPANY EFFECTIVELY TERMINATED ITS TEMPORARY CONTRACT OF LIFE INSURANCE BY REJECTING THE APPLICATION OF LAMAR STEVENSON AND COMMUNICATING NOTICE OF THAT REJECTION TO HIM PRIOR TO HIS DEATH.

On page 68 of the opinion in the Utah Advance Reports, the Court of Appeals summarizes its holding and the facts as follows:

. . . To be sufficient, the notice must be definite and certain, and leave no doubt in the mind of the recipient that the rejection of insurance is effective upon receipt of the notice. . . We disagree with First Colony's contention that a phone call made by an unidentified agent of First Colony, to an unidentified person other than Stevenson, the applicant, which allegedly communicated First Colony's decision to decline Stevenson's application, was adequate notice. In addition, there is no evidence in the record concerning the contents of the communication. No effective date of termination of the temporary insurance was given and there was no indication when the premium payment would be returned.

In sum, we hold that notice must be clearly and unequivocally communicated to the applicant in an unambiguous manner. In the case before us, we cannot say that First Colony effectively dispatched notice to Stevenson that his temporary insurance was terminated.

In reaching its ruling, the Court of Appeals misapprehended the facts, failing to view them from the record in the light most favorable to First Colony.

First, although the record shows Maurine Stevenson called "an unidentified" person, notice involved much more. Confirming notice was later received from Stevensons' long-time agent, and communications regarding other options took place for two months after the initial notice on August 12, 1986 and before LaMar Stevenson's death on October 16, 1986. The following is what happened. Maurine Stevenson's husband reminded her that they had ". . .not received that policy yet, and I said no, that's true, so then I initiated a call to Roger's office." Maurine Stevenson Deposition at 45, a copy is attached as Exhibit C to this petition. Roger (Fleiss) worked for Talbert corporation and was Stevensons' insurance agent beginning in 1982. Roger Fleiss was in Denver when she called, so she talked to an unidentified person and was told, after that person checked the file, that "First Colony had declined coverage on LaMar" because his company filed Chapter 11 bankruptcy. Maurine Stevenson Deposition at 45-47, copy attached as Exhibit A.

Roger Fleiss called her the next "day or so" and told her

that First Colony had declined coverage on LaMar. He further said that he "didn't see any problem because he could get LaMar right into another company . . ." Stevenson Deposition at 47, attached as Exhibit C. She said:

Q. What sticks in your mind was that Roger confirmed yes, First Colony won't issue the policy and we'll just try to get you some where else?

A. Yes.

Q. Is that what it was?

A. Yes.

Stevenson Deposition at 48, attached as Exhibit A. Fleiss said other things discussed below, but on the issue of identification it is clear that in Mrs. Stevenson's mind Roger Fleiss gave notice of termination.

Additionally on the issue of identification, the chain of notice can be traced back to a person named Cindy at United Underwriters, First Colony's agent, using Talbert Corporations log of events, entry dated 8-12-86. Roger Fleiss Deposition at 104, Exhibits 19 and 23, copies attached as Exhibit D.

Second, the court states that the notice was given to someone "other than [Mr.] Stevenson." It is true that the communication was made to Mrs. Stevenson, but it is also clear that Mr. Stevenson got notice. On page 96 of her deposition, Maurine Stevenson says "basically at that point that we found out First Colony wouldn't cover . . . [Fleiss said] we would just go with another company." Stevenson Deposition at 95-96, copy

attached as Exhibit E. She uses the plural, "we" indicating that her husband was included. But even if the court thinks there is a question, it should be construed in favor of the losing party and remanded to the lower court for a finding.<sup>1</sup>

In addition to Maurine Stevenson's references to her husband, there are other evidences in the record that Mr. Stevenson was given notice. For example, Mr. Stevenson followed his agent's advice and applied for another policy. After First Colony had declined the application for term insurance, First Colony Life One, a sister company to First Colony, sent proposals for a universal life policy to Roger Fleiss. These were given to Stevenson with an application for Banker's Life term insurance. Letter dated August 28, 1986, to Roger Fleiss, copy attached as Exhibit F; log of events, 9-27-86, Exhibit D. But universal or whole life policies were too expensive for Stevensons. High premium is why Stevensons let their Chubb policy lapse the prior spring leaving them uninsured. Stevenson Deposition at 32-33, copy attached as Exhibit G. The universal policy proposals showed annual premiums of \$4500 to \$5000 annually. Maurine Stevenson Deposition Exhibits 11-13, copies attached as Exhibit H

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<sup>1</sup>It was natural for Maurine Stevenson to receive the notice. Not only had she made the initial phone call after being prompted by her husband to check on the status of the application, but she expected to enjoy the benefits of the policy. She was a trustee, with her husband, of the trust that was the beneficiary of the policy as shown on the applications. See Exhibits G and I. She also wrote the premium check and gave it to Fleiss to hold while First Colony considered the application.

to this petition. Thus, Stevensons did not apply for the First Colony Life One universal policy, but instead applied for the Banker's Life term policy with a lower premium on October 1, 1986, one month later. Copy of application to Banker's Life attached as Exhibit I. Receipt of the universal life proposal after declination of the term policy, was written evidence that First Colony declined the term policy. What other explanation is there when the facts are viewed as a whole?

Not only did Mr. Stevenson apply to Banker's life, but he and his wife completed the Banker's Life application, stating in answer to question 30 that he had previously been declined. He then signed the application. The application was then sent to Talbert Corporation. Maurine Stevenson Deposition at 98, copy attached as Exhibit J; log of events, entries 9-27-86 and 10-1-86, copy attached as Exhibit D. In his earlier application to First Colony Mr. Stevenson stated he had never been declined. Stevenson Deposition, Exhibit 15, part II, question 10, copy attached as Exhibit K. Thus, it is clear that the declination referred to in his Banker's Life application referred to First Colony.<sup>2</sup> This is the second clear written evidence that Mr.

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<sup>2</sup>The opinion says at pages 2-3 that Norman Close added a comment to the application that the declination was "First Colony declination due to a business owned filed chapter 11. . . ", but never discussed with Mr. Stevenson what he added. The added comment was not an attempt to hide something, nor did it. The obvious reason he did not discuss it with Stevenson was because it was a clarification which Mr. Stevenson understood. First Colony was Mr. Stevenson's only declination as shown by both First Colony and Banker's Life applications. If there were prior declinations,

Stevenson understood he was terminated. At least, when viewed in a light most favorable to First Colony, it raises a question of fact.

The expectation of no possible coverage is also consistent with the reason given for declination. Mr. Stevenson's business filed Chapter 11 bankruptcy. This problem could not reasonably be expected to be cured in the near future, and thus there was no reasonable expectation that First Colony would change its position and reconsider the application. There is not one scintilla of evidence that First Colony reconsidered, or could reasonably be expected to reconsider, its declination based on bankruptcy. On the contrary, Roger Fleiss spent the next two months talking about and working on getting other insurance for Stevensons.

Finally, there was evidence that the content of the communication was adequate. The appellate court opinion says there was "no effective date of termination" given, and "no indication when the premium would be returned." The date of termination of the policy Mrs. Stevenson understood by her own admission to be the date of Roger Fleiss' phone call. On page 105 she states that she understood she had coverage from the time she wrote the premium check up to the time that Roger Fleiss

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First Colony would probably not have issued a conditional receipt for temporary coverage while the application was considered, and First Colony's declination was the reason that Stevensons could not get temporary coverage while Banker's Life considered their application.

called her and said that "First Colony wouldn't cover you." She said:

Q. It was your understanding, I believe you said, that when you wrote the check, Exhibit 17, you understood that you had coverage with First Colony?

A. Yeah.

Q. But you understood that that existed up to, I think you said earlier, a certain point that you had discussed, and I assume you meant by that statement when you were notified by Roger Fleiss that First Colony wouldn't cover you?

A. That's correct.

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

A. Probably.

This reference to the date of termination is not isolated testimony, but is found in other places in her deposition. For example, see pages 45-48 attached as Exhibit C, and page 94 attached as Exhibit L. With regard to the return of premium, Stevensons' agent was also told that the premium would be returned within 10 days. Exhibit D, entry dated 9-29-86. But more importantly, Stevensons were not worried about return of the premium. At page 105 she says that she did not expect to receive the premium back. She said:

Q. When you wrote the premium and you gave it to Roger or Talbert Corporation, and when they started to look for another policy for you, it was

you understanding, wasn't it, that you would not receive the premium back --

A. Yes.

Q. --the refund back?

A. That's correct.

Q. You knew that First Colony had denied your application, but you understood that the premium would be returned to Roger or his company and that they would reuse it, reapply it in-house to a new policy; is that correct?

A. Yes.

It is clear from plaintiff's own testimony that there was adequate communication on the issue of return of premium. Clearly Stevensons were not wondering if the policy had been canceled because the premium had not been returned.

While it is true that written notice giving a date of termination and returning the premium would have been proper, it is also true that it would not have made the finality and reality of the termination any clearer in Stevensons' minds than the notice they got. Stevensons' expectation is the important determination, and admission is the best evidence of that -- even better than written notice. It is conclusive. Even if not conclusive, it raises a question of fact when one views the facts and inferences to be drawn therefrom in the light most favorable to the losing party.

#### CONCLUSION

It is difficult to imagine stronger evidence of

termination than the evidence found in this case, because it comes from the plaintiff. Therefore, based on the above, this court should grant the petition for a writ of certiorari and determine as a matter of law that the Court of Appeals misapprehended the facts and failed to apply the appropriate standard of review, pursuant to which it would have to have concluded that the Stevensons received adequate notice. In the alternative, this court should view the facts in a light most favorable to Appellee and remand to the district court for findings of fact.

DATED this 22nd day of June, 1992.

CHRISTENSEN, JENSEN & POWELL, P.C.

By: Roger R. Fairbanks

Denton M. Hatch

Roger R. Fairbanks

Attorneys for Appellees

## APPENDIX

- A. Opinion Court of Appeals
- B. Order Denying Petition for Rehearing
- C. Maurine Stevenson Deposition pp. 45-48
- D. Roger Fleiss Deposition p. 104, Exhibits 19 and 23
- E. Maurine Stevenson Deposition pp. 95-96
- F. Letter to Roger Fleiss dated August 28, 1986
- G. Maurine Stevenson Deposition pp. 32-33
- H. Maurine Stevenson Deposition Exhibits 11-13
- I. Bankers Life Application signed by LaMar Stevenson
- J. Maurine Stevenson Deposition p. 98
- K. First Colony Life Application
- L. Maurine Stevenson Deposition p. 94

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing APPELLEE'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH was sent by U.S. Postal Service, postage prepaid, this 22nd day of June, 1992, to:

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Reger Fairbank

Tab A

FILED

This opinion is subject to revision before  
publication in the Pacific Reporter.

MAR 3 1992

IN THE UTAH COURT OF APPEALS

*Mary Thomas*  
Mary Thomas  
Clerk of Court  
Utah Court

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Maurine Stevenson, as personal )  
representative of LaMar )  
Stevenson, and as trustee of )  
LaMar D. Stevenson Trust, )  
 )  
Plaintiff, Appellant, and )  
Cross-Appellee, )  
 )  
v. )  
 )  
First Colony Life Insurance )  
Company; Talbert Corporation; )  
and Roger Fleiss, )  
 )  
Defendants, Appellee, and )  
Cross-Appellant. )

OPINION  
(For Publication)

Case No. 910561-CA

F I L E D  
(March 3, 1992)

-----

Fourth District, Utah County  
The Honorable Ray M. Harding

Attorneys: Allen K. Young and Douglas A. Baxter, Springville,  
for Appellant  
Denton M. Hatch and Roger R. Fairbanks, Salt Lake  
City, for Appellee

-----

Before Judges Billings, Jackson, and Russon.

JACKSON, Judge:

In May of 1986, LaMar Stevenson, having been delinquent on several premiums due on a life insurance policy with Chubb Life American, was cancelled by Chubb. Stevenson then sought new life insurance coverage on himself through Roger Fleiss, an insurance salesman, and Talbert Corporation,<sup>1</sup> Fleiss's employer at all

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1. Talbert Corporation has offices in Salt Lake City, Utah and Denver, Colorado. Roger Fleiss was affiliated with the Salt Lake City office at all times relevant to this case, and Norman Close was affiliated with the Denver office. "Talbert Corporation," for purposes of this opinion, refers to the corporation, and no particular office, unless otherwise designated.

times relevant to this case. Talbert Corporation and Fleiss recommended to Stevenson that he seek life insurance through First Colony Life Insurance Company.

Stevenson filled out and signed an application provided by Talbert Corporation through Fleiss for life insurance with First Colony in June 1986. The application was signed by Stevenson as the proposed insured, by Roger Fleiss as witness, and by Norman Close of the Denver office of Talbert Corporation as licensed registered agent. Someone wrote on the original application that it was for \$1,000,000 coverage. That figure was crossed out and \$500,000 written in its place. All parties agree that Stevenson applied for \$500,000 in the life insurance application. Stevenson tendered a check payable to First Colony in the amount of \$410 shortly after the application was completed. The check was dated July 7, 1986 and represented the first semiannual premium payment. A conditional receipt was issued to Stevenson by First Colony which set forth the conditions under which conditional coverage would become effective prior to policy delivery. The conditional receipt was referred to in two separate paragraphs on the application, and was attached to the application as the last page. The receipt was dated July 7, 1986, and bears only the signature of Norman Close. The conditional receipt further stated that the total amount of life insurance which may become effective prior to policy delivery could not exceed \$300,000. First Colony introduced evidence which indicated that Stevenson was aware the conditional policy was for \$300,000, and that he further agreed in a telephone conversation with a First Colony representative to lower the amount of coverage provided in the conditional receipt to \$250,000. First Colony negotiated Stevenson's premium check shortly thereafter.

In August 1986, Stevenson's wife, Maurine Stevenson, contacted the Salt Lake office of Talbert Corporation to ask why her husband had not received a policy from First Colony. The record indicates that she spoke with an unidentified person in that office, who informed her that First Colony was not going to insure Stevenson. The reason given to her was that one of Stevenson's companies was in bankruptcy. Neither Stevenson nor his wife received notice of declination from First Colony. The parties do not dispute that First Colony did not notify either of the Stevensons personally or by any form of written notice. In addition, nothing in the record indicates First Colony sent written notice to Talbert Corporation, and the record is unclear as to how someone at Talbert Corporation became aware that First Colony had declined Stevenson's application.

Stevenson sought life insurance coverage with Bankers Life Company in early October 1986. After Stevenson completed the necessary information on the application, he gave the application to Norman Close, who added a comment to the application,

disclosing that Stevenson had been declined coverage by First Colony. Norman Close never discussed with the Stevensons what he had added to the application. Stevenson was killed in an accident on October 18, 1986. At the time of his death, neither United Underwriters nor First Colony had returned the premium of \$410 paid by Stevenson. The premium payment was not tendered to Maurine Stevenson until December 1986.

The plaintiff, Maurine Stevenson, filed this action against defendants First Colony, Roger Fleiss, and Talbert Corporation, claiming, among other things, that a valid contract of insurance existed at the time of her husband's death. This contention was based upon the fact that no written notice of rejection of the life insurance application was given by First Colony and the premium payment was not returned until months after Stevenson's death. The original complaint stated the life insurance in effect at the time of Stevenson's death was for \$250,000. The complaint was amended to reflect an amount of \$500,000.

On October 19, 1989, First Colony filed a motion for summary judgment, contending that the temporary contract of insurance created by the conditional receipt terminated with First Colony's rejection of Stevenson's insurance application and oral notification to the Stevensons, through Fleiss or Talbert Corporation. Maurine Stevenson countered with a motion for summary judgment, arguing that a valid contract of insurance remained in force as a result of the failure of First Colony to give notice of rejection and to return the premium.

After considering the motions for summary judgment without oral argument, the trial court granted Maurine Stevenson's motion for summary judgment and denied First Colony's motion. The trial court then entered judgment in the amount of \$500,000 for Maurine Stevenson. On March 2, 1990, after oral argument on the amount of the judgment, the trial court vacated its earlier order and entered judgment for Maurine Stevenson in the amount of \$300,000, based on only the terms of the conditional receipt, and not the face amount of the application. We affirm.

### ISSUES

Both parties appeal. Maurine Stevenson appeals the trial court's determination that the amount of the policy which became effective upon issuance of the conditional receipt was \$300,000. In arguing that judgment should be for \$500,000, she claims there was a reasonable expectation of full and immediate coverage in the amount of \$500,000; that the conditional receipt cannot be construed to limit the amount of that liability; that the policy must be considered together with the receipt; that if an ambiguity exists, it should be resolved in favor of the insured; that a handwritten provision prevails over a printed limitation;

and that this court should impose full liability on First Colony in view of First Colony's delay in notifying the Stevensons of rejection and in returning the premium paid by the Stevensons.

First Colony appeals the trial court's determination that life insurance coverage was in effect at the time of Stevenson's death. Specifically, First Colony challenges the trial court's determination that First Colony did not effectively terminate the temporary insurance contract; that the Stevensons did not receive adequate notice that First Colony had rejected Stevenson's application for life insurance; and that written notice and return of premium payment was required to terminate the temporary insurance contract. In the alternative, First Colony claims that if its life insurance coverage was in effect at the time of Stevenson's death, the judgment should have been for \$250,000.

#### STANDARD OF REVIEW

This court has recently articulated its settled standard of review for summary judgment: "Summary judgment can be granted when no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." Silcox v. Skaggs Alpha Beta, Inc., 814 P.2d 623, 623 (Utah App. 1991) (citations omitted). "Inasmuch as a challenge to summary judgment presents for review conclusions of law only, because, by definition, summary judgments do not resolve factual issues, this Court reviews those conclusions for correctness, without according deference to the trial court's legal conclusions." Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989) (citation omitted). As for the trial court's determination on the amount of damages, the trial court interpreted the insurance contract as a matter of law and therefore we review its construction under a correctness standard. See Seashores Inc. v. Hancey, 738 P.2d 645, 647 (Utah App. 1987).

While we would normally address those issues raised in the direct appeal first and then address the cross-appeal issues, in this case we first address cross-appellant First Colony's challenge to the summary judgment. If we find that summary judgment was improperly granted, we need not reach the other issues raised by either party.

#### SUMMARY JUDGMENT IN FAVOR OF MAURINE STEVENSON

First Colony alleges that Maurine Stevenson's own admissions during discovery establish that First Colony declined to insure her husband, that the Stevensons were aware of the declination, and that First Colony therefore unconditionally terminated the temporary contract of insurance prior to Stevenson's death. The trial court disagreed, finding that "because there was not

adequate notice that plaintiff's temporary insurance had been cancelled, and because the premium was not returned timely, the contract was in full force and effect at the time of Mr. Stevenson's death." Therefore, we must determine whether the notice to Talbert Corporation that Stevenson's application for life insurance had been declined by First Colony was adequate notice to Stevenson to terminate the temporary contract of insurance, and whether return of the premium by First Colony to Stevenson was a condition precedent to unilateral termination.<sup>2</sup>

The trial court explicitly relied upon Smith v. Westland Life Ins. Co., 539 P.2d 433 (Cal. 1975), in reaching its decision that the policy was in effect at the time of Stevenson's death. In that case, the supreme court of California held that when an insurer has received an application for life insurance together with payment of the first premium, a provisional contract granting temporary insurance is created. That contract is not terminated, according to the California court, until the insurer has nullified the two factors that gave rise to the applicant's expectation that he or she was covered: "his signing of the application and his payment of the premium." Id. at 442.

In Smith, the applicant signed an application for life insurance and tendered the first month's premium. The insurance agent provided the applicant with a conditional receipt, similar to the receipt issued in the case at bar. After the insurance company processed the application, the agent delivered to the applicant a policy which modified some of the terms originally agreed upon. The applicant refused to accept or sign the modified policy. After several unsuccessful attempts to persuade the applicant to accept the policy as modified, the agent told the applicant his premium would be refunded. The following day the applicant died. The issue on appeal was whether, prior to the applicant's death, the insurance company effectuated a termination of the temporary insurance.

The court found that the applicant had not received written notice of termination of his temporary insurance and "[o]ral communications between Smith and Westland's agents were generally shrouded in terms of his acceptance of a policy with minor modifications." Id. at 444. Further, the applicant never received a refund of his premium before his fatal accident. The

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2. Both First Colony and Maurine Stevenson attempt to frame the issue in this case as one of "is written notice required?" However, the trial court, while stating the issue as "whether written notice and return of the premium is required to terminate a temporary life insurance contract," held that "because there was not adequate notice . . . and because the premium was not returned timely, the contract was in full force and effect at the time of Mr. Stevenson's death."

court's rationale rested upon the principle of effectuating the expectations of the ordinary applicant. Id. at 441. The court concluded that an insurer does not terminate temporary coverage 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." Id. at 440. The trial court in the instant case quoted this language from Smith and held that the First Colony temporary insurance contract had not been terminated.

Relying on Winger v. Gem State Mut., 22 Utah 2d 132, 449 P.2d 982 (1969) and Long v. United Benefit Life Ins. Co., 29 Utah 2d 204, 507 P.2d 375 (1973), First Colony argues that it effectively terminated its obligations under the temporary life insurance contract by rejection of the application and notice of the rejection to Talbert Corporation. In Winger, the insurance company which had issued conditional life insurance coverage to an applicant determined that the applicant was not insurable. The company sent written notice of rejection to its agent with instructions to notify the applicant that his application had been declined. The applicant died before the insurance company's agent was able to contact him. The court held no contract of insurance existed at the time of death because the insurance company "acted with reasonable dispatch in attempting to communicate to [the applicant] its action declining his application." Winger, 449 P.2d at 983. In Long, the Utah Supreme Court first determined that a conditional receipt "created temporary insurance coverage until such time as the insurers had considered the application and determined to issue a policy or reject the risk." Long, 507 P.2d at 379. The Long court further held that "the insurer cannot terminate the risk so assumed unless the insured is notified during his lifetime that the application was rejected." Id.

We agree with First Colony that Utah law establishes that a contract of temporary insurance is effectively terminated when the application is rejected and the applicant is given adequate notice of that rejection.<sup>3</sup> However, none of the cases cited by First Colony reach the issue of what is "adequate notice." In

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3. See also Prince v. Western Empire Life Ins. Co., 19 Utah 2d 174, 428 P.2d 163, 167 (1967) (no notice of rejection to insured and no return of premium meant policy in effect at time of death). The Smith case, relied upon by the trial court, also articulated this general rule: "the most frequently stated rule appears to be that a temporary contract of insurance is terminated by rejection of the application and notice thereof to the insured," 539 P.2d at 439 (citing 9 Couch on Insurance, § 39:207, at 653 (2d ed. 1962)).

the absence of express contractual or statutory provisions,<sup>4</sup> we must identify what constitutes adequate notice to terminate a temporary life insurance contract.

"From the standpoint of content, all that is required of a notice of cancellation is that it be sufficiently specific to manifest an intent to cancel, and to identify the policy in question." 17 Couch on Insurance 2d, § 67:138 at 599 (rev. ed. 1985); see also Quindlen v. Prudential Ins. Co., 482 F.2d 876, 879 (5th Cir. 1973) (rejection of application requires communication from company to applicant, as whole purpose of prepayment receipt is to assure an applicant that he is insured until company acts--not that he is insured if the company acts); Northern Ins. Co. v. Mabry, 4 Ariz. App. 217, 419 P.2d 347, 349 (1966) ("[t]hough mutual consent to cancel may be expressed or implied from the circumstances . . . such presupposes some communication from the insured to the mind of the insurer."); Transamerica Ins. Co. v. Bank of Mantee, 241 So. 2d 822, 825 (Miss. 1970) (cancellation must be definite, clear and unequivocal); Colorado Life Co. v. Teague, 117 S.W.2d 849, 856 (Tx. Civ. App. 1938) ("[i]nsurer cannot terminate the risk so assumed otherwise than by notice brought home to the insured in his lifetime that his application was rejected."). See generally 45 C.J.S., Insurance, § 450 p. 86 (1946) (in absence of contractual or statutory provision as to form of notice, all that is required is that notice is definite and unequivocally shows

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4. Various sections of the Utah Insurance Code, for example, are instructional in determining how insurance policies other than temporary life insurance contracts may be cancelled by the insurer or the insured. Termination of many insurance policies is governed by Utah Code Ann. § 31A-21-303 (Supp. 1991). That section provides that cancellation is effective only after the delivery or first class mailing of a written notice to the policy holder. Utah Code Ann. § 31A-21-303(2)(b) (Supp. 1991) (explicitly excluding applicability to life and disability insurance, see, e.g., § 31A-21-303(1)(a)).

Similarly, under § 31A-22-423 (1991), the section that deals with examination periods for life insurance policies, the policy owner may return the policy within ten days after its delivery. "Return" is explicitly defined in that section to mean "delivery to the insurer or its agent, or mailing the policy to either, properly addressed and stamped for first class handling, with a written statement on the policy or an accompanying writing that it is being returned for termination of coverage. See also Martin J. McMahon, Annotation, Actual Receipt of Cancellation Notice Mailed by Insurer as Prerequisite to Cancellation of Insurance, 40 A.L.R. 4th 867, 876-77 (1985) (overview of methods by which insurance policies can be effectively cancelled).

cancellation will take effect at the expiration of prescribed period).

The above cited sources reveal that a declination or cancellation notice must be communicated clearly enough to the insured or applicant so that he or she understands that the insurance coverage is no longer effective. To be sufficient, the notice must be definite and certain, and leave no doubt in the mind of the recipient that the rejection of insurance is effective upon receipt of the notice. The only evidence First Colony puts forth concerning the manner of communicating declination is Maurine Stevenson's deposition and her responses to interrogatories. This evidence reveals only that someone at Talbert Corporation informed Maurine Stevenson orally over the telephone that First Colony had declined the application. The phone call was initiated by Maurine Stevenson, who was concerned that her husband had not received the policy. Neither of the Stevensons ever spoke directly to anyone from First Colony. First Colony does not claim to know who from their office made the communication, or to whom at Talbert Corporation it was made. We disagree with First Colony's contention that a phone call made by an unidentified agent of First Colony, to an unidentified person other than Stevenson, the applicant, which allegedly communicated First Colony's decision to decline Stevenson's application, was adequate notice. In addition, there is no evidence in the record concerning the contents of the communication. No effective date of termination of the temporary insurance was given and there was no indication when the premium payment would be returned.

In sum, we hold that notice must be clearly and unequivocally communicated to the applicant in an unambiguous manner. In the case before us, we cannot say that First Colony effectively dispatched notice to Stevenson that his temporary insurance was terminated.

#### AMOUNT OF JUDGMENT

Both parties have claimed error in the amount of damages awarded to Maurine Stevenson. Maurine Stevenson appeals the trial court's entry of judgment for \$300,000, claiming it was too low; First Colony appeals, claiming the amount was too high.

Maurine Stevenson urges us to hold as a matter of law that the life insurance application and conditional receipt are ambiguous, and that any uncertainty or ambiguity in the terms should be construed in favor of the insured. While this is true, it is also true that in determining the intent of this contract, we examine the language of the contract itself first, "and unless there is some ambiguity or uncertainty, there is no justification for attempting to vary it by extrinsic or parol evidence."

Williams v. First Colony Life Ins. Co., 593 P.2d 534, 536 (Utah 1979). The trial court did not find the insurance contract to be ambiguous and neither do we.<sup>5</sup> See id. (supreme court finds similar contract to be unambiguous).

We agree with the trial court, that as a matter of law the amount of temporary insurance in effect at the time of Stevenson's death was \$300,000, the amount printed on the conditional receipt, and not \$500,000, the amount requested in the application.

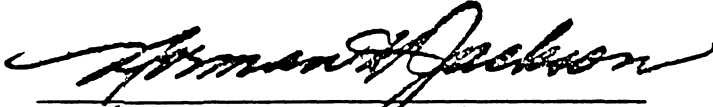
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5. First Colony argues that the trial court failed to take into consideration factual evidence which indicated that the amount of insurance created by the issuance of the conditional receipt was limited to \$250,000. The evidence upon which First Colony relies is contained in two affidavits. The affidavit of Leonard Reynolds, Executive Vice President of United Underwriters states that it is the standard practice of the insurance industry not to issue a conditional receipt for an amount exceeding \$250,000. An exhibit attached to the affidavit of Loretta Stacey, an employee of First Colony, indicates that United Underwriters advised Talbert Corporation that coverage could not exceed \$250,000, and that Stevenson agreed to drop the amount of conditional coverage to \$250,000. This exhibit, a memo to the file of Stevenson, was prepared on May 5, 1987, seven months after Stevenson died, and eleven months after the insurance policy application had been completed. Nowhere else in the record is there any evidence supporting these contentions. No evidence has been produced which indicates who spoke with Stevenson regarding any aspect of the conditional receipt, let alone the limitation on the amount of coverage.

When the trial court determined that the written documents were clear and unambiguous regarding the amount of coverage then in force, it did not need to consider evidence which was extrinsic to the writings. First Colony argues that the \$300,000 limitation of the conditional receipt is clear and unambiguous and we agree. Because we agree with First Colony's contention on this point, we are not persuaded by their argument that this written limitation of \$300,000 was orally modified by a phone call that allegedly took place between an unknown representative of United Underwriters or Talbert Corporation and Stevenson.

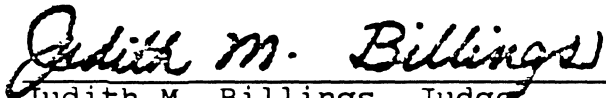
CONCLUSION

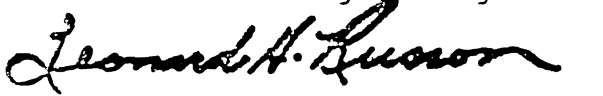
We affirm the trial court's summary judgment in favor of Maurine Stevenson, and the judgment for \$300,000.

  
\_\_\_\_\_  
Norman H. Jackson, Judge

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WE CONCUR:

  
\_\_\_\_\_  
Judith M. Billings, Judge

  
\_\_\_\_\_  
Leonard H. Russon, Judge

Tab B

IN THE UTAH COURT OF APPEALS

MAY 21 1992

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MAY 22 1992

Maurine Stevenson, as personal )  
representative of LaMar )  
Stevenson, and as trustee of )  
LaMar D. Stevenson Trust, )

Plaintiff, Appellant, )  
and Cross-Appellee, )

v. )

First Colony Life Insurance )  
Company; Talbert Corporation; )  
and Roger Fleiss, )

Defendants, Appellee, )  
and Cross-Appellant. )

ORDER DENYING <sup>F. Noonan</sup>  
PETITION FOR REHEARING <sup>of the Court</sup>  
<sup>Utah Court of Appeals</sup>

Case No. 910561-CA

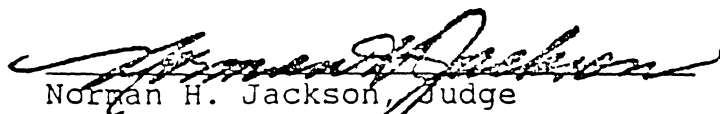
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THIS MATTER having come before the Court upon appellee and cross-appellant's Petition for Rehearing, filed March 17, 1992, and appellant and cross-appellee's Response to Petition for Rehearing, filed April 17, 1992,

IT IS HEREBY ORDERED that the appellee and cross-appellant's Petition for Rehearing is denied.


Dated this 20th day of May, 1992.

BY THE COURT:

  
Norman H. Jackson, Judge

  
Judith M. Billings, Judge

I DISSENT:

  
Leonard H. Rusk, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of May, 1992, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

Allen K. Young  
Douglas A. Baxter  
Young & Kester  
Attorneys at Law  
101 East 200 South  
Springville, UT 84663

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

D. Gary Christian  
Kipp & Christian, P.C.  
Attorneys at Law  
175 East 400 South, #330  
Salt Lake City, UT 84111

Dated this 21st day of May, 1992.

By *Devi Houghton*  
Deputy Clerk

Tab C

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 Roger give you any more explanation or talked  
2 about the Chapter 11 or suicide that this other fellow was  
3 talking about?

4           A       I don't recall if we got really into that. I  
5 suppose we did. I don't remember anything specifically.

6           Q       What sticks in your mind was that Roger confirmed  
7 yes, First Colony won't issue the policy and we'll just try to  
8 get you somewhere else?

9           A       Yes.

10          Q       Is that what it was?

11          A       Yes.

12          Q       Any more discussion than that?

13          A       He just said that it had been so recent since Lamar  
14 had had a physical and all of the other things was in place  
15 that all that would be required would be an updated urine  
16 specimen and that he would have a kit sent to us to accomplish  
17 that.

18          Q       About when did this conversation take place, Mrs.  
19 Stevenson?

20          A       This was at the end of August.

21          Q       Who did you talk to next?

22          A       Roger himself.

23          Q       How much longer?

24          A       Within a week or two weeks.

25          Q       Was that a call you initiated?

Tab D

1 is written that says we are not going to insure this man.

2 A That would go through our Denver office.

3 Q Have you ever seen anything?

4 MR. CHRISTIAN: His question is have you ever  
5 seen such a document.

6 A No.

7 MR. CHRISTIAN: We understand we have the  
8 complete Denver file, but I can't swear to that either.

9 Q (by Mr. Young) I show you what has been marked  
10 as Deposition Exhibit Number 19. You received a copy of  
11 that letter after Mr. Stevenson's death?

12 A Yes, I would have.

13 Q And it says that she typed the sequence of  
14 events, and I show you what has been marked as Exhibit 23  
15 and ask you if that would have been the attachment to that  
16 letter?

17 A It would have been.

18 Q So you have had that in your file since November?

19 A That would be correct.

20 Q Did you, meaning Roger Fleiss, ever contact LaMar  
21 Stevenson or Maurine Stevenson and say that First Colony had  
22 rejected the application for insurance in any way?

23 A No.

24 Q Do you know if anyone did?

25 A No.



# the Talbert corporation

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

November 21, 1986

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

Dear Roger:

Enclosed in this envelope are copies of First Colony and Bankers Life applications, underwriting requirements submitted to the companies, and notes from our files for the insured Lamar Stevenson.

After reviewing the file, I typed a sequence of events and have enclosed a copy of this for your records. Should you have any questions or need further information please give us a call.

Thank you.

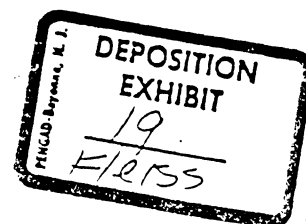
Yours very truly,

Christine Fresquez  
Account Assistant/Norman R. Close

Enclosure

P S. Excuse my typo's. "Oh well"!  
Have a nice day!

Christine



LAMAR STEVENSON  
ORDER OF EVENTS

1-13-86                      Advised Roger lapse of Chubb Life America policy.

1-30-86                      Client has sent premium in to Chubb 1-17-86. Contacted Chubb, they have premium but need reinstatement form.

2-5-86                      Sent client reinstatement forms to be mailed directly to company.

3-20-86                      Sent client copy of reinstatement to have unanswered questions completed.

4-8-86                      Received form from client

4-25-86                      Advised company of info. but company requires date client was in the hospital. Contacted Roger. Roger called back with date. Company closed.

4-28-86                      Contact Chubb with date of hospital date.

5-1-86                      Reinstatement in process per Chubb.

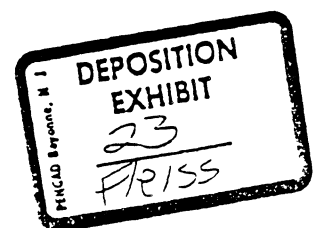
5-9-86                      Recieved notice of cancel of reinstatement from Chubb due to time delay of info. and form too old to use. Can reopen reinstatement with three ¼ premiums and new form. Advised Roger.

5-19-86                      Contact Chubb to get exact amount due or min prem. Darlene A. to call back with info. Need \$1,147.46

5-28-86                      Sent client other company illustrations cc: to Roger

6-10-86                      Sent Roger First Colony applicatio, Lamar had advised Roger this is the product they want to go with. for a face amount of \$500,000.

7-1-86                      Had client examd



LAMAR STEVENSON  
ORDER OF EVENTS CONTINUED

7-14-86	Sent application and aviation questionnaire to client.
7-21-86	Received and forward application and aviation questionnaire to company, First Colony, with $\frac{1}{4}$ prem.
7-30-86	First Colony requested alcohol questionnaire as underwriting requirement.
8-4-86	Cindy/United Underwriters to contact First Colony as to "why" the alcohol questionnaire. Due to inspection report.
8-7-86	Sent insured alcohol questionnaire.
8-12-86	Cindy/United Underwriters has advised us First Colony cannot place coverage to financial information obtained from inspection report. However, First Colony will submit to reinsurer as First Colony One. (Universal Life product)
8-13-86	Received alcohol questionnaire from client.
8-28-86	Sent Roger First Colony Life One illustration and Bankers Life 1 YRT illustration.
9-27-86	Per Norm send Lamar The Bankers Life application and aviation questionnaire. Bankers to use First Colony exam. Sent application and questionnaire to client.
9-29-86	Per United Underwriters First Colony closed file 9-26-86, refund of premium submitted with application within the next ten days.
10-1-86	Submitted Bankers Life application and requirements to company.

Tab E

1 covered?

2 A Initiating the check was in my mind a coverage.

3 Q When you paid the check, you thought that you were  
4 covered?

5 A Yes.

6 Q But my question is you said you were disappointed  
7 in Roger, and I want to understand why you were disappointed  
8 in Roger, and you said because he had from January until  
9 October to get you insurance. Now I want to ask you what was  
10 in your mind.

11 Was it your understanding that Roger would be the  
12 one that would decide whether a company would give you  
13 coverage rather than the company? Did you decide Roger would  
14 say to a company you'll insure these people?

15 A No.

16 Q What did you decide it was Roger should do?

17 A That within his realm he would be able to secure a  
18 company, and we had total confidence in his ability in that  
19 area.

20 Q That he would be able to get a company to cover  
21 you?

22 A Yes. Of course, we had no idea that there would be  
23 any problem whatsoever at the early point.

24 Q And if Roger was unable to get coverage because  
25 some company wouldn't take you, what was it in your mind that

1 Roger should do?

2 A Well, basically at that point that we found out  
3 First Colony wouldn't cover, then it was his words and total  
4 come across to me that there was no problem, we would just go  
5 with another company.

6 Q Do you know what efforts Roger was making in  
7 attempting to get a policy with any other companies other than  
8 First Colony?

9 A Well, just what he had related in the conversation.

10 Q What efforts he was making with other companies?

11 A Yes.

12 Q What efforts did he relate that he was making with  
13 other companies?

14 A I don't know what efforts he made. All I know is  
15 that he said he could go through the second company that we've  
16 mentioned, Bankers whatever, and he foresaw no problem with  
17 that.

18 Q I didn't ask you what efforts he was making. I was  
19 asking you do you know what he told you what efforts he was  
20 making?

21 A Just that conversation is the only thing I know.

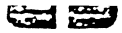
22 Q Now, aside from what he said, you don't know what  
23 efforts he was making with any other companies?

24 A No, I do not.

25 MR. CHRISTIAN: I think that's all I have.

EC  
P-45-46

Tab F



# the Talbert corporation

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

August 23, 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 Fresquet  
Account Assistant

Enclosure

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

**RECEIVED SEP 02 1986**

Tab G

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.

Tab H

POLICY  
PREPARED FOR- MR. STEVENSON  
AGE- 47 MALE

L I F E O N E - P L U S

AGENT- TALBERT CORP.  
G/A- UU

FIRST COLONY LIFE  
LYNCHBURG, VIRGINIA  
09/12/1986

CLASSIFICATION-STANDARD

PREF NOTSMOKE

EARNED PERIODIC PREMIUMS

FIRST YEAR 4,468.04 (ANNUAL)

THEREAFTER SEE PAGE 2

ALLOCATED AMOUNT- 500,000

OPTION 1 SPECIFIED AMOUNT INCLUDES ACCOUNT VALUE

OTHER INSURED RIDER- 0,000 ( )

CURRENT INTEREST RATE CREDITED TO THE ACCOUNT VALUE IS 9.75 PERCENT. GUARANTEED RATE IS 4.00 PERCENT. INTEREST AND COST OF INSURANCE RATES ARE SUBJECT TO CHANGE AT ANY TIME. THE INTEREST RATE CREDITED TO THE AMOUNT OF ANY POLICY LOAN WILL BE TWO PERCENTAGE POINTS LESS THAN THE EFFECTIVE POLICY LOAN INTEREST RATE FOR THE POLICY YEAR BUT IN NO EVENT LESS THAN THE GUARANTEED RATE. ANNUAL POLICY LOAN INTEREST RATE AS OF THE DATE OF THIS PROPOSAL IS 10.47 PERCENT, PAYABLE IN ADVANCE. ANNUAL EFFECTIVE POLICY LOAN INTEREST RATE IS 11.69 PERCENT. MAXIMUM EFFECTIVE POLICY LOAN INTEREST RATE AS OF THIS DATE IS 11.69 PERCENT. THESE RATES ARE SUBJECT TO CHANGE EACH YEAR ON THE POLICY ANNIVERSARY IN ACCORDANCE WITH POLICY PROVISIONS. THE VALUES PRESENTED IN THIS PROPOSAL ARE ILLUSTRATIVE ONLY AND ARE NOT GUARANTEED. THEY ARE BASED ON THE FOLLOWING ASSUMPTIONS-

- 1) PLANNED PERIODIC PREMIUMS ARE MADE AND RECEIVED ON THE PREMIUM DUE DATE.
- 2) NO POLICY LOANS OR PARTIAL SURRENDERS ARE MADE OTHER THAN ILLUSTRATED.
- 3) DEATH BENEFITS SHOWN BELOW APPLY ONLY TO THE BASE.
- 4) NO CHANGES IN SPECIFIED AMOUNT OR OPTION OTHER THAN ILLUSTRATED.
- 5) CURRENT NON-GUARANTEED COST OF INSURANCE AND INTEREST RATES REMAIN UNCHANGED.

S U M M A R Y O F E N D O F Y E A R V A L U E S  
G U A R A N T E E D A S S U M E D C U R R E N T  
4.00 PERCENT INTEREST 8.00 PERCENT INTEREST 9.75 PERCENT INTEREST

YEAR	TOTAL PREMIUMS*	SURRENDER VALUE	DEATH BENEFIT	ACCOUNT VALUE	SURRENDER VALUE	DEATH BENEFIT	ACCOUNT VALUE	SURRENDER VALUE	DEATH BENEFIT
5	22940		500,000	19,287	6,214	500,000	20,295	6,963	500,000
10	44680			42,185	32,377	500,000	47,269	36,547	500,000
15	67020			66,366	62,251	500,000	80,628	76,513	500,000
20	89360			88,202	86,202	500,000	119,020	119,020	500,000
30-65	80424			79,076	77,426	500,000	102,952	101,302	500,000

PERCENT INTEREST ADJUSTED INDICES

10 YEAR NET PAYMENT	8.94
10 YEAR NET SURRENDER	4.03
20 YEAR NET PAYMENT	8.94
20 YEAR NET SURRENDER	8.97

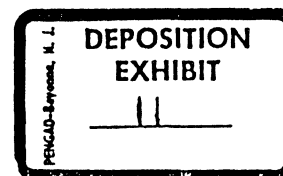


Exhibit F

T A B L E O F E N D O F Y E A R V A L U E S

YEAR	G U A R A N T E E D		A S S U M E D		C U R R E N T		
	TOTAL PREMIUMS*	4.00 PERCENT INTEREST	DEATH BENEFIT	ACCOUNT VALUE	3.00 PERCENT INTEREST	DEATH BENEFIT	ACCOUNT VALUE
1	4408	0	500,000	3,512	0	500,000	3,528
2	4408	0	500,000	7,313	0	500,000	7,511
3	4408	0	500,000	11,181	0	500,000	11,591
4	4408	0	500,000	15,188	2,208	500,000	15,897
5	4408	0	500,000	19,237	6,214	500,000	20,895
6	4408	**	**	23,551	11,140	500,000	25,108
7	4408			27,995	16,245	500,000	30,247
8	4408			32,580	21,479	500,000	35,609
9	4408			37,323	26,871	500,000	41,290
10	4408			42,185	32,377	500,000	47,209
11	4408			47,068	37,896	500,000	53,473
12	4408			51,984	43,452	500,000	59,937
13	4408			56,888	49,091	500,000	66,644
14	4408			61,784	54,479	500,000	73,531
15	4408			66,366	60,251	500,000	80,628
16	4408			70,777	67,482	500,000	87,818
17	4408			75,067	72,597	500,000	95,293
18	4408			79,076	77,426	500,000	102,952
19	4408			82,844	82,019	500,000	110,891
20	4408			86,202	86,202	500,000	119,020
21	4408					500,000	127,844
22	4408					500,000	137,365
23	4408					500,000	147,600
24	4408					500,000	158,563
25	4408					500,000	170,267
26	4408					500,000	182,823
27	4408					500,000	196,244
28	4408					500,000	210,547
29	4408					500,000	225,747
30	4408					500,000	241,867

GUIDELINE LEVEL PREMIUM- 12,027.66

GUIDELINE SINGLE PREMIUM- 132,217.87

\* THESE ARE ANNUALIZED PREMIUMS NET OF PARTIAL SURRENDERS.

CURRENT COST OF INSURANCE

06.1478.  
PREPARED FOR- MR. STEVENSON  
AGE- 47 MALE

L I F E O N E  
FIRST COLONY LIFE  
LYNCHBURG, VIRGINIA  
08/12/1986

AGENT- TALBERT CORP.  
674- 00

CLASSIFICATION-STANDARD

PREF NONSUCCEED

PROGRAMMED PREMIUMS  
FIRST YEAR 5,014.98 (ANNUAL)  
THREAEFTER SEE PAGE 2  
SPECIFIED AMOUNT- 500,000

OPTION 1 SPECIFIED AMOUNT INCLUDES CASH VALUE

THE CURRENT INTEREST RATE CREDITED TO THE CASH VALUE IS 5.5 PERCENT ON THE FIRST 500 AND 9.75 PERCENT ON THE BALANCE. GUARANTEED RATE IS 4 PERCENT. CURRENT INTEREST AND COST OF INSURANCE RATES ARE SUBJECT TO CHANGE. EXCESS INTEREST IS NOT CREDITED TO THE AMOUNT OF POLICY LOAN. THE POLICY LOAN INTEREST RATE IS 5.55 PERCENT PAYABLE IN ADVANCE.

THE VALUES PRESENTED IN THIS PROPOSAL ARE ILLUSTRATIVE ONLY AND ARE NOT GUARANTEED. THEY ARE BASED ON THE FOLLOWING ASSUMPTIONS-

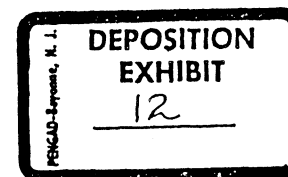
- 1) PROGRAMMED PREMIUMS ARE MADE AND RECEIVED ON THE PREMIUM DUE DATE
- 2) NO POLICY LOANS OR PARTIAL SURRENDERS ARE MADE OTHER THAN ILLUSTRATED
- 3) NO CHANGES IN SPECIFIED AMOUNT OR OPTION OTHER THAN ILLUSTRATED
- 4) CURRENT NON-GUARANTEED COST OF INSURANCE AND INTEREST RATES REMAIN UNCHANGED.

S U M M A R Y O F E N D O F Y E A R V A L U E S

YEAR	PREMIUMS <sup>4</sup>	G U A R A N T E E D 4.00 PERCENT INTEREST		A S S U M E D 8.00 PERCENT INTEREST +		C U R R E N T 9.75 PERCENT INTEREST +	
		CASH VALUE	DEATH BENEFIT	CASH VALUE	DEATH BENEFIT	CASH VALUE	DEATH BENEFIT
5	25,075	3,284	500,000	14,077	500,000	14,741	500,000
10	50,150			34,738	500,000	38,433	500,000
15	75,225			57,719	500,000	63,782	500,000
20	100,300			78,552	500,000	104,814	500,000
AGE-55	90,270			70,869	500,000	89,784	500,000

5 PERCENT INTEREST ADJUSTED INDICES

10 YEAR NET PAYMENT	10.03
10 YEAR NET SURRENDER	4.77
20 YEAR NET PAYMENT	10.03
20 YEAR NET SURRENDER	5.50



10.03  
4.21  
10.03  
5.99

<sup>4</sup> THESE ARE ANNUALIZED PREMIUMS NET OF PARTIAL SURRENDERS.

+ 5.5 PCT INT ON FIRST 500.

T A B L E O F E N D O F Y E A R V A L U E S

AGE	PREMIUM	G U A R A N T E E D		A C C U M U L A T E D		C U R R E N T	
		4.00 PERCENT INTEREST	DEATH BENEFIT	8.00 PERCENT INTEREST	DEATH BENEFIT	9.75 PERCENT INTEREST	DEATH BENEFIT
		CASH VALUE		CASH VALUE		CASH VALUE	
1	5,015	349	500,000	355	500,000	356	500,000
2	5,015	1,540	500,000	3,551	500,000	3,625	500,000
3	5,015	2,459	500,000	6,917	500,000	7,103	500,000
4	5,015	3,057	500,000	10,413	500,000	10,805	500,000
5	5,015	3,234	500,000	14,077	500,000	14,741	500,000
6	5,015	3,093	500,000	17,004	500,000	18,937	500,000
7	5,015	2,420	500,000	21,093	500,000	23,403	500,000
8	5,015	1,199	500,000	26,048	500,000	28,145	500,000
9	5,015	**	**	30,339	500,000	33,160	500,000
10	5,015			34,733	500,000	38,433	500,000
11	5,015			39,244	500,000	43,933	500,000
12	5,015			43,830	500,000	49,307	500,000
13	5,015			48,472	500,000	55,891	500,000
14	5,015			53,115	500,000	62,221	500,000
15	5,015			57,719	500,000	69,792	500,000
16	5,015			62,249	500,000	75,571	500,000
17	5,015			66,647	500,000	82,573	500,000
18	5,015			70,869	500,000	89,734	500,000
19	5,015			74,862	500,000	97,202	500,000
20	5,015			78,552	500,000	104,314	500,000

GUIDELINE LEVEL PREMIUM- 14,145.00  
 GUIDELINE SINGLE PREMIUM- 149,135.00

\* THESE ARE ANNUALIZED PREMIUMS NET OF PARTIAL SURRENDERS.

+ 5.5 PCT INT ON FIRST 500,000.  
 CURRENT COST OF INSURANCE.

1. THE POLICY WILL LAPSE AT THIS TIME UNLESS A HIGHER PREMIUM IS PAID.

## LIFE ONE - SELECT

AGENT- TALBERT CORP

WED FOR- MR. STEVENSON

6/A- UU

47 MALE

FIRST COLONY LIFE

LYNCHBURG, VIRGINIA

CLASSIFICATION-STANDARD

PREF NONSMOKER

08/12/1986

## PROGRAMMED PREMIUMS

FIRST YEAR 4,569.19 (ANNUAL)

THEREAFTER SEE PAGE 2

FIED AMOUNT- 500,000

1 SPECIFIED AMOUNT INCLUDES ACCOUNT VALUE

CURRENT INTEREST RATE CREDITED TO THE ACCOUNT VALUE IS 9.50 PERCENT. GUARANTEED RATE IS 4.00 PERCENT.  
 NET INTEREST AND COST OF INSURANCE RATES ARE SUBJECT TO CHANGE. EXCESS INTEREST IS NOT CREDITED  
 THE AMOUNT OF POLICY LOAN. THE POLICY LOAN INTEREST RATE IS 5.66 PERCENT PAYABLE IN ADVANCE.

VALUES PRESENTED IN THIS PROPOSAL ARE ILLUSTRATIVE ONLY AND ARE NOT GUARANTEED. THEY ARE BASED  
 ON THE FOLLOWING ASSUMPTIONS-

- 1) PROGRAMMED PREMIUMS ARE MADE AND RECEIVED ON THE PREMIUM DUE DATE
- 2) NO POLICY LOANS OR PARTIAL WITHDRAWALS ARE MADE
- 3) NO CHANGES IN SPECIFIED AMOUNT OR OPTION OTHER THAN ILLUSTRATED
- 4) CURRENT NON-GUARANTEED COST OF INSURANCE AND INTEREST RATES REMAIN UNCHANGED.

## SUMMARY OF END OF YEAR VALUES

	GUARANTEED			ASSUMED			CURRENT		
	4.00 PERCENT INTEREST			8.00 PERCENT INTEREST			9.50 PERCENT INTEREST		
	TOTAL	SURRENDER	DEATH	ACCOUNT	SURRENDER	DEATH	ACCOUNT	SURRENDER	DEATH
PREMIUMS	VALUE	VALUE	BENEFIT	VALUE	VALUE	BENEFIT	VALUE	VALUE	BENEFIT
5	22845	7,721	500,000	20,435	18,880	500,000	21,437	19,882	500,000
10	45691	9,316	500,000	44,807	44,807	500,000	49,386	49,386	500,000
15	68537			71,291	71,291	500,000	84,106	84,106	500,000
20	91383			94,928	94,928	500,000	124,392	124,392	500,000
25	114224			118,639	118,639	500,000	157,478	157,478	500,000

## CURRENT INTEREST ADJUSTED INDICES

10 YEAR NET PAYMENT	9.14	9.14	9.14
10 YEAR NET SURRENDER	7.73	2.35	1.66
20 YEAR NET PAYMENT	9.14	9.14	9.14
20 YEAR NET SURRENDER	3.67	3.67	1.97

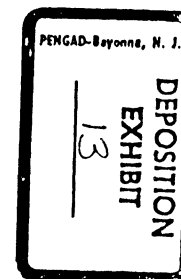


TABLE OF END OF YEAR VALUES

AS PREMIUMS	GUARANTEED		ASSUMED		CURRENT	
	4.00 PERCENT INTEREST	DEATH BENEFIT	ACCOUNT VALUE	8.00 PERCENT INTEREST	ACCOUNT VALUE	9.50 PERCENT INTEREST
1	4569	2,136	500,000	2,849	2,294	3,908
2	4569	3,607	500,000	7,828	6,273	8,009
3	4569	5,215	500,000	11,890	10,335	12,263
4	4569	6,637	500,000	16,107	14,352	16,751
5	4569	7,721	500,000	20,435	18,880	21,437
6	4569	8,528	500,000	24,946	23,391	26,407
7	4569	9,311	500,000	29,659	28,415	31,692
8	4569	9,683	500,000	34,537	33,604	37,270
9	4569	9,764	500,000	39,598	39,131	43,173
10	4569	9,316	500,000	44,807	44,807	49,386
11	4569	7,642	500,000	50,070	50,070	55,835
12	4569	5,730	500,000	55,400	55,400	62,556
13	4569	2,896	500,000	60,760	60,760	69,533
14	4569	88	500,000	66,107	66,107	76,755
15	4569	88	500,000	71,291	71,291	84,106
16	4569	88	500,000	76,314	76,314	91,622
17	4569	88	500,000	81,279	81,279	99,444
18	4569	88	500,000	86,039	86,039	107,478
19	4569	88	500,000	90,640	90,640	115,822
20	4569	88	500,000	94,928	94,928	124,392

THE POLICY WILL LAPSE AT THIS TIME UNLESS A HIGHER PREMIUM IS PAID.

CURRENT COST OF INSURANCE

Tab I

1. Print full name of Proposed Insured <u>LAMAR D. STEVENSON</u> <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Separated					Sex <u>M</u>	Birthdate Mo. <u>8</u> Day <u>13</u> Yr. <u>39</u>	Age <u>47</u>	State of Birth <u>UT</u>	Soc. Sec. No. <u>52848966</u>																											
2. Home address City <u>Mapleton</u> County <u>Utah</u> State <u>Utah</u> Zip <u>84663</u> Years lived there <u>7</u>																																				
3. Premium notices to <input type="checkbox"/> Proposed Insured at home <input type="checkbox"/> Proposed Insured at business <input type="checkbox"/> Owner at address in 1:																																				
4. <input type="checkbox"/> Disability Income plan desired. Complete questions 1-8, 18-40 and D.I. Supplemental Application																																				
5. Disability Income in force (group, state, union, salary continuation or individual)? <input type="checkbox"/> Yes <input type="checkbox"/> No						6. Will policy applied for replace or change any other Disability Income insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No Give details _____																														
Company or Source	Type of Coverage	Amt./ month	Benefit period	Elim. period																																
9. LIFE plan desired <u>ALIFE</u> <u>1 yr +</u> (For AL show premium OR plan desired) Amount \$ <u>250,000</u> Term rider _____ for \$ _____ FIR \$ _____ Mo. Inc. for _____ yrs. <input type="checkbox"/> WDB <input type="checkbox"/> ADB: base amt. \$ _____ term rider \$ _____ <input type="checkbox"/> PAPA _____ Total ann. prem. (Divs. must be add'ns.) <input type="checkbox"/> Change of Insured <input type="checkbox"/> GPO/GIO \$ _____ <input type="checkbox"/> *Spouse Term _____ year benefit for \$ _____ <input type="checkbox"/> *Family OR <input type="checkbox"/> Children Term for _____ units <input type="checkbox"/> *Payor Death or Disability <input type="checkbox"/> *Payor Death *Complete Spouse, Child, Payor Application					7. D.I. Dividends to <input type="checkbox"/> Reduce prem. <input type="checkbox"/> Be paid in cas 8. D.I. mode <input type="checkbox"/> Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/> PAC 12. Life mode <input type="checkbox"/> Annual <input type="checkbox"/> Quarterly <input type="checkbox"/> PAC <input type="checkbox"/> Semi-annual <input type="checkbox"/> Monthly 13. Life Insurance in force? <input type="checkbox"/> Yes <input type="checkbox"/> No <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>Company</th> <th>Life amount</th> <th>ADB amount</th> <th>Yr. of issue</th> <th>Persons or busine</th> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </table>							Company	Life amount	ADB amount	Yr. of issue	Persons or busine																				
Company	Life amount	ADB amount	Yr. of issue	Persons or busine																																
10. <input type="checkbox"/> APL					14. Will policy applied for replace or change any other life annuity insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No Give details _____																															
11. Dividends to <input type="checkbox"/> Reduce prem. <input type="checkbox"/> Purchase add'l ins. <input type="checkbox"/> Accumulate at interest <input type="checkbox"/> Be paid in cash <input type="checkbox"/> EPO - Return CV* <input type="checkbox"/> EPO - return of prem.* *Balance as checked <input type="checkbox"/> Improved policy - AL only					15. If Proposed Insured is under age 15 complete: Applicant (Parent, Guardian, etc.) _____ Applicant's Address _____ Applicant's relationship to child _____ Amt. life ins. on parent or guardian \$ _____ Amount of life ins. on other children \$ _____ Is child in school? <input type="checkbox"/> Yes <input type="checkbox"/> No Grade level _____																															
Answer 16 and 17 on PROPOSED INSURED if age 15 or older, otherwise on the Applicant (Parent, Guardian, etc)																																				
16. a. Employer <u>Lamar D &amp; Sons Construction, Inc.</u> Years there _____ b. Type of business _____ c. Address <u>960 North 1600 West</u> <u>Mapleton, Utah 84663</u>					17. a. Occupation _____ b. Duties _____ c. Annual Earned Income _____ d. Any part time jobs? _____ Duties _____																															
18. Owner _____ Owner's Address _____ Relationship to Proposed Insured _____ Taxpayer ID Number _____ Contingent Owner _____ Unless stated above, owner, while living is (a) Proposed Insured if age 15 or older or (b) Applicant if Proposed Insured is under age 15. This is <input type="checkbox"/> Permanent or <input type="checkbox"/> Temporary to <input type="checkbox"/> age 18 <input type="checkbox"/> age 21 or <input type="checkbox"/> age 25.					19. Beneficiary and relationship to Proposed Insured <u>Lamar D. Stevenson, Trustee, and</u> <u>Margaret J. Stevenson Trustee c.</u> <u>their successors in Trust under</u> <u>Trust Agreement dated 9-25-8</u> Contingent Beneficiary: _____ <input type="checkbox"/> Proceeds to be left at interest. Beneficiary to ha election and withdrawal rights. Pay interest _____ (frequency																															

INSURANCE APPLICATION

123 000123

	Yes	No
29. Do you plan to live or travel (other than vacation) outside of the U.S.?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
30. Have you ever had life or health insurance rated, declined, modified or cancelled?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
31. Have you ever requested or received benefits because of injury or sickness?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
32. Do you have an application for life or disability income insurance pending in any company, or have you within the last three months applied for such insurance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
33. Have you, or do you plan to engage in hang kite gliding, scuba or sky diving, stock, modified, sports car, drag strip, motorcycle, motor boat, snowmobile or other type of racing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
34. Do you plan to fly or have you, within the last five years flown as a pilot, student pilot or crew member?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
35. Are you or do you intend to become a member of a military service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
36. Driver's license number <u>1067924</u> . In the last 2 years have you been charged with:		
(a) 2 or more motor vehicle moving violations or accidents?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) driving while intoxicated?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) suspension or revocation of your license?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
37. Have you in the last five years been arrested for other than traffic violations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
38. Are you in a regular exercise program (jogging, swimming, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
39. Any family history of heart or kidney disease, high blood pressure or cancer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
40. Within the last 5 years have you:		
(a) been treated or counselled or joined an organization for alcohol or drug use?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) used amphetamines, barbiturates, sedatives, LSD, marijuana, cocaine, heroin, or morphine, except as prescribed by a doctor?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

"Yes" answers to 33, 34 and 35 require Sports, Aviation, Military Statement respectively. Explain or give reasons if "Yes" for questions 29 - 32 and 36 - 40.

30 First Colony delinquent due to a business owned filed Chapter 11 - Reorganization. Business is currently restructuring to continue - no personal reorganization.

I represent that all statements in this application are true and complete to the best of my knowledge and belief. I understand they are the basis of any insurance issued. I agree that, except as the Conditional Receipt provides, the Company shall incur no liability unless and until: (1) a policy is issued (2) the policy is received and accepted by the applicant and (3) the first premium is paid. I agree that these three conditions must occur while, as far as the applicant knows, there has been no change since the date of this form in the health or any other factor affecting the insurability of any person proposed for insurance. I agree that only the Home Office is authorized to pass on insurability or to make, change or discharge any contract or waive any of the Company's rights. I agree that the right to change the beneficiary is reserved to the owner unless otherwise provided in question 19. Any change in issue age, amount, class, plan or benefits made by the Company shown under "Amendments" is subject to my written ratification.

I understand the laws of the state listed below shall apply to any policy issued.

☐ This application is COD OR ☐ I have paid \$\_\_\_\_\_ for ☐ Life ☐ Disability Income insurance. If money paid have been given the Conditional Receipt in return. I have read it, and understand and agree to its terms.

Signature of Applicant or Owner (if other than Proposed Insured) If Owner is Corporation, Officer other than Proposed Insured should sign.

*John D. Stevenson*  
Signature of Proposed Insured  
(only if over age 9)

Signature of Parent if Proposed Insured is under age 15

Address: Market 1141 Oct 1 1986  
City State Date

Witness John D. Stevenson  
Agent

Tab J

1 would have cost?

2 A I don't recall any discussions made one way or the  
3 other at that point, or at any point. I don't recall the  
4 differences in this at all.

5 Q But you had decided you could afford approximately  
6 \$410 in premiums twice a year?

7 A Yes.

8 Q For First Colony?

9 A Yes.

10 Q Could you afford more than that?

11 A At that time, probably not.

12 Q So did Roger Fleiss understand that he would have  
13 to get you another policy that would be within that premium  
14 budget?

15 A I don't know how that all came about. I think this  
16 was all discussed between Roger and Lamar, and I'm not aware  
17 of that.

18 Q Do you know what happened to the Bankers Life  
19 application?

20 A It was sent.

21 Q Sent from who to who?

22 A The urine sample was enclosed, and whatever forms I  
23 suppose needed to be filled out was sent to whoever, Roger or  
24 to whoever it was asked to be sent to within the kit itself.  
25 I don't recall.

Tab K

# First Colony Life Insurance Company

APPLICATION — PART I  
PLEASE PRINT OR TYPE

P.O. Box 1280  
Lynchburg, Virginia 24505

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

No. L 0942277

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:

3. OCCUPATION: OWNER, MANAGER OF COMPANY  
Describe Duties:

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

Business Address: 960 North 1600 West  
Mapleton Utah 84663

4. DATE OF BIRTH  
Month Day Year

8-13-39

5. PLACE OF BIRTH

Utah

6. SOC. SECURITY NO.

528-48-9668

7. 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:

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  
☐ Corporation

☐ Sole Proprietorship  
☐ 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, Trustee and Maureen J. Stevenson, Trustee, or their successors in Trust under Trust Agreement dated 9-25-81

Contingent:

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 any existing insurance, including annuities, in any company or society? ☒ Yes ☐ No If "Yes," explain.

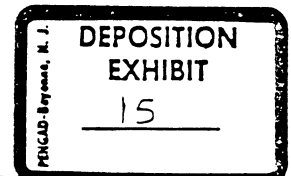
13. MODE OF PREMIUM PAYMENT: ☐ Annual ☒ Semiannual ☐ Quarterly ☐ Pre-Authorized Check ☐ Other:

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. I 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

Exhibit I

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 528-48

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: In diagnoses, dates, duration, and names and addresses of all attending physicians and medical 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, <u>stone</u> or other disorder of <u>kidney</u> , 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?
- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
| a. If "Yes," how much? Gain _____ lbs., Loss _____ lbs.                  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Give present height <u>5</u> ft. <u>5</u> in., weight <u>160</u> 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. Have you ever been injured or disabled in connection with your employment or military service? ☐ ☒ (Glasses or an attending physician's 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:

a. Have you ever had any disorder of menstruation, pregnancy, or of the female organs or breasts? Yes ☐ No ☐

b. To the best of your knowledge and belief are you now pregnant? Yes ☐ No ☐

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 30th day of June, 1958  
[Signature] Agent John D. Peterson Proposed Insured

Tab L

1 THE WITNESS: As being involved in all of this?

2 MR. CHRISTIAN: Yes.

3 THE WITNESS: Just that I felt very let down by  
4 Roger, because he was our agent.

5 Q (BY MR. CHRISTIAN) Why did you feel let down by  
6 Roger?

7 A That he had had from basically January through  
8 until the death, which was clear in October, to secure a  
9 policy, and his not doing so left me in a world that was not  
10 nice.

11 Q So you would think that from January to October  
12 Roger should have gotten a policy of insurance for you?

13 A Yes.

14 Q Do you think he should have gotten it with First  
15 Colony?

16 A Again, that's not in his realm as to what insurance  
17 company would take us or not. I understand that, but --

18 Q That's my point. Was it your understanding that  
19 Roger would decide what insurance companies would cover you or  
20 the insurance companies would decide what insurance companies  
21 would cover you? What was your understanding?

22 A My understanding was that we were covered by First.  
23 Colony up until the time of the conversation that I spoke of  
24 earlier.

25 Q What had transpired to make you think you were