

1992

# Maureen Stevenson v. First Colony Life Insurance Company: Brief in Opposition to Certiorari

Utah Supreme Court

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CLERK SUPREME COURT  
UTAH

MAUREEN STEVENSON,  
personal representative of  
LAMAR STEVENSON,

Plaintiff/Appellant/  
Cross-Appellee,

**VS.**

FIRST COLONY LIFE INSURANCE  
COMPANY,

**Defendant/Appellee/  
Cross-Appellant.**

**Court of Appeals Case  
No. 910561-CA**

APPELLANT'S OBJECTION TO PETITION FOR WRIT OF CERTIORARI

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

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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 ROGER 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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## OFFICIAL REPORT OF THE COURT OF APPEALS

The official decision of the Utah Court of Appeals (the "Opinion") was issued on March 3, 1992. It was published at 181 Utah Adv. Rep. 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. A copy is attached as Appendix 1.

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, the court of appeals entered its order denying the petition for rehearing. A copy is attached as Appendix 2.

### JURISDICTION

A. On March 3, 1992, the Utah Court of Appeals decision was filed.

B. No orders concerning extensions of time within which to petition for certiorari have been requested or made.

C. The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code. Ann. §§ 78-2-2 (3) (a) and (5) (1992).

### STATEMENT OF THE FACTS

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, and Talbert Corporation, Fleiss's employer. Talbert Corporation and Fleiss

recommended to Stevenson that he seek life insurance through First Colony Life Insurance Company. Opinion at 2.

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. Stevenson tendered a check, dated July 7, 1986, in the amount of \$410.00, payable to First Colony. This check represented the first semiannual premium payment for a \$500,000 life insurance policy. 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 receipt was dated July 7, 1986, and bears the signature of Norman Close. First Colony negotiated Stevenson's premium check shortly thereafter. Opinion at 2. All parties agree that the life insurance policy became effective at that time.

In August of 1986, Maurine Stevenson, LaMar's wife, 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 to an unidentified person in the office, who informed her that First Colony was not going to insure LaMar, because one of his 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. 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. Opinion at 2.

Stevenson sought life insurance coverage with Bankers Life Company in early October 1986. After he completed the necessary information on the application, he gave the application to Norman Close, who disclosed on the application that Stevenson had been declined coverage by First Colony. Norman Close never discussed this addition to the application with the Stevensons. LaMar 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 \$410.00 paid by Stevenson. The premium payment was not tendered to Maurine Stevenson until December, 1986. Opinion at 3.

#### STATEMENT OF THE CASE

The plaintiff, Maurine Stevenson, filed this action against defendants First Colony, Roger Fleiss, and Talbert Corporation, claiming that a valid contract of insurance existed at the time of her husband's death, since no 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.

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.

The trial court granted Maurine Stevenson's motion for summary judgment and denied First Colony's motion. The trial court entered judgment in the amount of \$500,000 for Maurine Stevenson. On March 2, 1990, the trial court vacated its earlier order and entered judgment for Maurine Stevenson in the amount of \$300,00, based on the terms of the conditional receipt.

Both parties appealed. Maurine Stevenson appealed the trial court's determination that the amount of the policy which became effective upon issuance of the conditional receipt was \$300,000, arguing that judgment should be for \$500,000, the face amount of the application.

First Colony appealed the trial court's determination that life insurance coverage was in effect at the time of the Stevenson's death.

The Utah Court of Appeals agreed with the trial court, that the amount of temporary insurance in effect at the time of Stevenson's death was \$300,00, the amount printed on the conditional receipt, and not \$500,000, the amount requested in the application.

The Court of Appeals also held that notice must be clearly and unequivocally communicated to the applicant in an unambiguous manner, and that First Colony did not effectively dispatch notice to Stevenson that his temporary insurance was terminated.

## ARGUMENT

### **I. THE DEFENDANT SHOULD NOT BE GRANTED CERTIORARI SINCE THE APPELLATE COURT DID NOT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS .**

Rule 46 of the Utah Rules of Appellate Procedure (1991) governs the consideration for Review by Writ of Certiorari. Review by Writ of Certiorari is not a matter of right. Rule 46 (c) discusses those decisions rendered by the Court of Appeals that depart from the accepted and usual course of judicial proceedings. The defendant relies solely on Rule 46 (c) in its attempt to obtain a Writ of Certiorari. See Defendant's Petition for Writ of Certiorari, p. 2. Rule 46 (c) requires a showing that "a panel of the Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision." Although the defendant states 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 the Supreme Court's power of supervision, the record is devoid of any issue which might depart from the usual course of judicial proceedings. In fact, the Defendant's brief is a desperate attempt to get this Court to revisit the factual issues of this case for the third time. First Colony's brief argues that the Court of Appeals misapprehended the facts, and failed to view them from the record in the light most favorable to First Colony. Plaintiffs submit that the Court of Appeals did not misapprehend the facts, nor did they fail to view them in the light most

favorable to First Colony. Contrary to defendant's present contentions, the Appellate Court adopted the legal arguments and factual background forwarded by the defendant.

In reaching its ruling, the Court of Appeals cited in a footnote sections of the Utah Insurance Code, as instructional to the issue of how insurance policies, other than temporary life insurance, may be cancelled. "...[C]ancellation of insurance is effective only after the delivery of a first class mailing of a written notice to the policy holder." Utah Code Ann. § 31A-21-303 (1) (a). However, the Court did not adopt the plaintiff's argument that written notice should be required in all cases. Instead, the court adopted the defendants position that "adequate notice" is all that is required. The Court of Appeals relied upon 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."); Transamerican Ins. Co. v. Bank of Mantee, 241 So. 2d 822, 825 (Miss. 1970) (cancellation must be definite, clear and unequivocal); Colorado Life Co. v. Teaque, 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.").

The plaintiff argued to the Court of Appeals that adequate notice of rejection requires written notice and the return of premium. The Court of

Appeals disagreed with that position and agreed with defendant that Utah law establishes that a contract of temporary insurance is effectively terminated when notice is clearly and unequivocally communicated to the applicant in an unambiguous manner, (Opinion at 8). However, the court found that clear and unambiguous notice was not given. In addition, the court held that no effective date of termination of the temporary insurance was given and there was no indication when the premium payment would be returned.(Opinion at 8). In so ruling, the Appellate Court did not depart from the accepted and usual course of judicial proceedings.

The undisputed fact in this case is that the defendant First Colony never notified either of the Stevensons personally, nor by any form of written notice, that they intended to decline coverage on LaMar Stevenson. (Opinion at 2) Since there was no written or verbal communication by the defendant First Colony, it rests its "clear, unequivocal, and unambiguous" notice argument on an undocumented phone conversation between Mrs. Stevenson (not the insured) and "long time agent" Fleiss, of Talbert Corporation in Salt Lake. In a response to a deposition question about whether she understood, after a phone conversation with Mr. Fleiss, that "First Colony wouldn't cover you", she responded, "probably". See deposition of Maurine Stevenson at 105, attached hereto as Appendix 3. On three occasions in his deposition, agent Fleiss denies ever talking to either of the Stevensons about any First Colony rejection, and stated, (Fleiss deposition, pages 55, 69, 104) "That would have been handled in Denver."(Fleiss deposition at 69). See deposition of Roger Fleiss, pages 55, 69, and 104, attached hereto as Appendix 4.

The Appellate Court acknowledged the conversation, but found that such a phone call was not 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." (Opinion page 8.)

The defendant argues that there was a clear intent to return the premium even though no document in writing and no conversation with the Stevensons is found until almost two months after Mr. Stevenson's death. In its Petition for Writ Of Certiorari, the defendant argues that there was an intent evidenced to return the premium. See defendant's Petition, page 7. What the defendant does not say in its Petition for a Writ of Certiorari is that this clear intent to return the premium was in fact a hearsay note, never seen by either LaMar or Maurine Stevenson, dated September 29, 1986, 48 days after the alleged clear and unambiguous notice of declination. Cindy at United Underwriters included this note as part of a document prepared on November 21, 1986, more than a month after the death of LaMar Stevenson. See November 21 document, attached hereto as Appendix 5. It is undisputed that there was never a written notice or attempt to return the premium (due to a "slight oversight," defendant's Petition, page 7) until almost two months after Mr. Stevenson's death. Two different courts have found that these dubious facts do not impart the requisite clear and unequivocal notice and intent to return the premium required by law.

Finally, the defendant argues that the Bankers Life application is proof that LaMar Stevenson had clear notice of the declination of the First Colony policy for two reasons: 1) he marked "yes" in the space after question No. 30, "Have you ever had life or health insurance rated, declined, modified or cancelled?" , and 2) because he signed the application

with a note filled in at number 30, regarding his business filing chapter 11 bankruptcy. Of course LaMar Stevenson would have answered "yes" to Number 30. His Chubb policy had just been cancelled for non payment of premium. After Stevenson completed the application, he gave the application to Norman Close, who only then added the comment to the application, disclosing that Stevenson had been declined Coverage by First Colony. Norman Close never discussed with the Stevensons what he had made additions to the application. Opinion at 3. See, also, Bankers Life application, attached hereto as Appendix 6.

The Appellate Court ruled that there was "no effective date of termination" given, and the fact is, there was not. Still, First Colony requests that this Court revisit these same issues for the third time. Defendant argues that the two lower courts have so far departed from the accepted and usual course of judicial proceedings that this Court's supervision is required. The plaintiff believes that the decision is well within the mainstream of current Utah judicial thought as evidenced by the cases which the Appellate Court cites.


When the Supreme Court has ruled on an issue and the Appellate Court is faithful in following the Court's decision, the Appellate Court cannot be said to have departed from the accepted norm.

### CONCLUSION

The defendant states no persuasive reason for granting a Writ of Certiorari. Along with a long settled question of law, in absence of conflicting court decisions, or a total misapprehension of the facts before it, the plaintiffs believe that Supreme Court consideration of these issues is unnecessary. Defendant's denials, delays and appeals have denied Maurine

Stevenson justice for more than five years. Defendant's Petition for Writ of Certiorari should be denied.

DATED this 23 day of July, 1992.

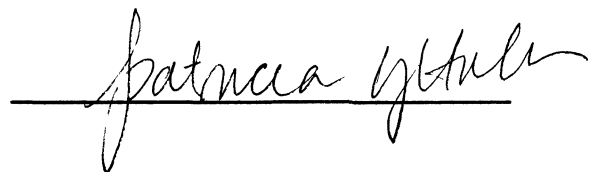
  
\_\_\_\_\_  
ALLEN R. YOUNG  
Attorney for Plaintiff

### MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Appellant's Objection to Appellee's Petition For Writ of Certiorari to the Supreme Court of Utah was sent by U.S. Postal Service, postage prepaid, this 23 day of July, 1992, to:

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\_\_\_\_\_  
Patricia G. Hulse



## APPENDIX

1. Opinion Court of Appeals
2. Order Denying Petition for Rehearing
3. Maurine Stevenson Deposition, p. 105
4. Roger Fleiss Deposition, pp. 55, 69, 104
5. Roger Fleiss Deposition Exhibits 19 and 23
6. Bankers Life Application

Tab 1

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

MAR 3 1992

IN THE UTAH COURT OF APPEALS

*Sally Thomas*  
Sally F. Thomas  
Clerk of the  
Utah Court of Appeals

-----ooOoo-----

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)

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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 if 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 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, the 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 the 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 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 policy or reject the risk." Long, 507 P.2d at 379. The Long court further held that "the insurer cannot terminate the risk 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."

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3. See also Prince v. Western Empire Life Ins. Co., 19 Utah 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)).



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.

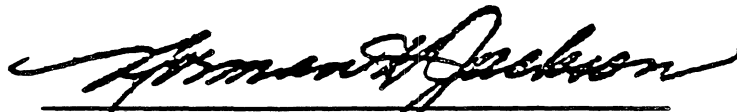
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5. First Colony argues that the trial court failed to take into consideration factual evidence which indicated that the amount of insurance created by the issuance of the conditional receipt was limited to \$250,000. The evidence upon which First Colony 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.

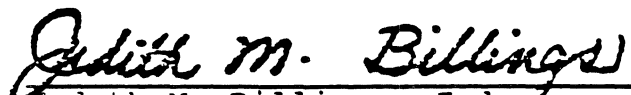
CONCLUSION

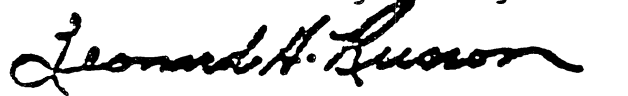
We affirm the trial court's summary judgment in favor of Maurine Stevenson, and the judgment for \$300,000.

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

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WE CONCUR:

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

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

Tab 2

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, 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 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 unambiguous, 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."

IN THE UTAH COURT OF APPEALS

MAY 21 1992

-----oo0oo-----

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  
PETITION FOR REHEARING  
of the Court  
Utah Court of Appeals

Case No. 910561-CA

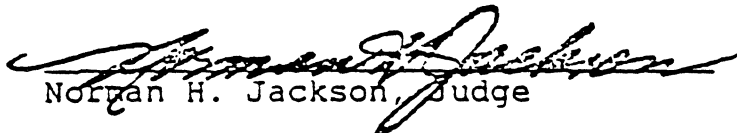
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THIS MATTER having come before the Court upon appellee and cross-appellant's Petition for Rehearing, filed March 17, 1992, and appellant and cross-appellee's Response to Petition for Rehearing, filed April 17, 1992,

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

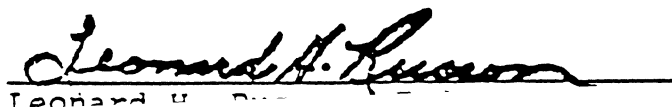
Dated this 20th day of May, 1992.

BY THE COURT:

  
Norman H. Jackson, Judge

  
Judith M. Billings, Judge

I DISSENT:

  
Leonard H. Jackson, 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  
Christensen, Jensen & Powell, P.C.  
Attorneys at Law  
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

*Debi Houghton*  
Deputy Clerk

Tab 3



1           Q       You may or may not have received it, but you don't  
2 recall it?

3           A       That's correct.

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

7           A       Yeah.

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

12          A       That's correct.

13          Q       From the point that Roger Fleiss notified you or  
14 United Underwriters, whichever it was first, you understood  
15 that you didn't have coverage with First Colony Life; is that  
16 correct?

17          A       Probably.

18          Q       When you wrote the premium and you gave it to Roger  
19 or Talbert Corporation, and when they started to look for  
20 another policy for you, it was your understanding, wasn't it,  
21 that you would not receive the premium back --

22          A       Yes.

23          Q       -- the refund back?

24          A       That's correct.

25          Q       You knew that First Colony had denied your

Tab 4

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

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

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

9 A The file would indicate that.

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

2 A Nothing.

3 MR. CHRISTIAN: Let him finish his question,  
4 Roger.

5 Q Did you have any conversations with Mrs.  
6 Stevenson --

7 A Restate the question.

8 Q -- that you recall? Sure. Did you have any  
9 independent conversations with Mrs. Stevenson about getting  
0 that money back?

1 A No.

2 Q Did you have any conversations about why or why  
3 not? Did you ever advise Mrs. Stevenson that First Colony  
4 had rejected them?

5 A No.

1 that means?

2 A Well, I can't really tell from the way it's  
3 written. It looks like E-L-L, but I don't know.

4 Q Would that stand for something in insurance  
5 company terms?

6 A No. Not that I'm aware of anyway.

7 Q Were you ever advised that the insurance with  
8 First Colony -- "you" meaning you, Roger Fleiss, ever  
9 advised that the lifeinsurance policy with First Colony was  
10 declined because of the financial info?

11 MR. CHRISTIAN: Ever? From the time it was  
12 applied for until today?

13 Q (by Mr. Young) No. Thank you, Counsel. Prior  
14 to the death of LaMar D. Stevenson.

15 A Was I ever advised?

16 Q By anyone.

17 A I would have had knowledge through conversation  
18 with Denver.

19 Q Did you have any specific knowledge in talking to  
20 either Mr. or Mrs. Stevenson about that?

21 A No. That would have been handled in Denver.

22 Q Do you know what "submit case to First Colony  
23 One" is? Is First Colony One a different insurance company  
24 than First Colony?

25 A I would guess. A lot of companies have more than

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.

Tab 5

# Talbert corporation

Y BONDS AND INSURANCE  
ER, COLORADO  
D JUNCTION, COLORADO  
.R, WYOMING  
AKE 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*



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 1/2 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 Bar 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.



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 late 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.

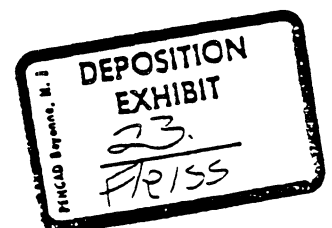
5-9-86                       Recieved notice of cancel of reinstatement from Chubb due to time delay of info. and form too old to use. Can reopen reinstatement with three ¼ premiums and new form. Advised Roger.

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



Tab 6

1. Print full name of Proposed Insured <b>LAMAR D. STEVENSON</b>					Sex: <b>M</b>	Birthdate Mo: <b>8</b> Day: <b>13</b> Yr: <b>39</b>			Age: <b>47</b>	State of Birth: <b>UT</b>	Soc. Sec. No.: <b>528 418 96</b>			
<input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Separated														
2. Home address <b>960 N. 1600 W. Mapleton</b>					City <b>Utah</b>		County <b>Utah</b>		State <b>Utah</b>		Zip <b>84663</b>		Years lived there <b>7</b>	
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														
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 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 <del>AL</del> <b>1 yr</b> (For AL show premium OR plan desired) Amount \$ <b>250,000</b> 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 _____ 8. D.I. mode <input type="checkbox"/> Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/> P 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 Company _____ Life ADB Yr. of Pers amount amount WDB issue or bu									
10. <input type="checkbox"/> APL					14. Will policy applied for replace or change any other 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)														
16. a. Employer <b>Lamar D. &amp; Sons Construction, Inc.</b> Years there _____ b. Type of business _____ c. Address <b>960 North 1600 West Mapleton, Utah 84663</b>					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 <b>Lamar D. Stevenson, Trustee</b> <b>Margaret J. Stevenson Trustee</b> <b>their successors in Trust under</b> <b>Trust Agreement dated 9-2</b> Contingent Beneficiary: _____ <input type="checkbox"/> Proceeds to be left at interest. Beneficiary election and withdrawal rights. Pay interest _____ (freq _____)									

No 306123

INSURANCE APPLICATION

	Yes	No
Do you plan to live or travel (other than vacation) outside of the U.S.?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Have you ever had life or health insurance rated, declined, modified or cancelled?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have you ever requested or received benefits because of injury or sickness?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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"/>
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"/>
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"/>
Are you or do you intend to become a member of a military service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Driver's license number <u>1067074</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"/>
Have you in the last five years been arrested for other than traffic violations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you in a regular exercise program (jogging, swimming, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Any family history of heart or kidney disease, high blood pressure or cancer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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.

First Colony delinquent due to a business owned filed Chapter 11 - Reorganization. Business is currently performing 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 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 application 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 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, I 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 18

*John D. Stevenson*