1972

Ida Long And Ida Long, Administratrix of the EState of Harry W. Long v. Glenn Mckensie, John Hulick, Mutual of Omaha Insurance Company, Life Insurance Affiliate of United of Omaha; United Benefit Insurance Company : Reply Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

IDA LONG and IDA LONG, ADMINISTRATRIX OF THE ESTATE OF HARRY W. LONG,
Plaintiff and Appellant,

vs.

GLENN McKENSIE, JOHN HULICK, MUTUAL OF OMAHA INSURANCE COMPANY, Life Insurance affiliate of United of Omaha; UNITED BENEFIT INSURANCE COMPANY,
Defendants and Respondents.

Case No. 12844

REPLY BRIEF OF APPELLANT

Appeal from Judgment of District Court of Salt Lake County, State of Utah, Ernest F. Baldwin, Jr., Judge

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PRELIMINARY STATEMENT

Defendant insurance company commits error in stating in its brief on page 3 under Statement of Facts:

> "The regular insurance investigation was made at the request of the home office by local office of American Service Bureau, an investigating firm."

This is a complete deviation from the record facts. At no time was there any evidence of any type or nature introduced at the trial of this cause which would warrant the Defendant, Insurance Company, to set forth such a statement in their brief. Such a remark is unfair and should be disregarded in its entirety as there is no evidence of any type or nature in the record of this allegation.

EXHIBIT "11-D" IS PURE HERESAY

The Defendant, Insurance Company, commits further error in basing their entire case on Exhibit "11-d", a Notice of Termination of Application, which was wholly and totally heresay and no more entitled to be received in evidence than mere verbal statements. The document was never authenticated and its contents should be rejected. It is the established law in this Court that:

> "Statements in the form of letters are no more entitled to be received in evidence than are mere verbal statements and, unless they are competent under the hearsay exception or the general rule of evidence, they should be rejected."

Accordingly, this Court has held that unanswered, self-serving letters are inadmissable, nor are letters which have been exchanged between principal and agent admisable against a third person.

See: Section 632 of Jones, on Evidence, page 1202.

It is the established law in this Court that prior to receiving such a document in evidence,

> "proof must be made preliminary that the proffered writing is authentic and that the person against whom it is offered is in some way connected with it having, for example, written or received it, or acted pursuant to its contents. Such proof must be made either by direct or circumstantial evidence. The mere fact that a letter was received by mail is not enough if the signature is not proved."

In this case, the signature was never proved. In fact, there was no proof whatsoever of the identity of the person who supposedly was identified to be the writer, nor was any part of the letter authenticated.

> "As a general rule, a letter which is alleged to have been written by the party producing it to the other party and which does not appear to have been answered by the latter, **IS NOT COMPETENT EVIDENCE**, nor may a letter be introduced against the recipient where the evidence shows it was not invited, acknowledged, or answered and was not part of a mutual correspondence."

The Defendant, Insurance Company, failed to produce the person who supposedly wrote the letter, failed to produce the person who supposedly stamped July 2, 1970, on the letter and, it is readily admitted that the only witnesses produced by the Defendant Insurance Company, were those who readily admitted that they never saw or knew of any rejection notice until after the death of Mr. Long. All of the foregoing

is substantiated by the fact that the Court submitted to the Jury in Interrogatory Number 3, the question:

> "Did the Defendant, United Benefit Insurance Company, reject the application for insurance by Harry W. Long, and send the Notice of Termination or Rejection upon the applicant to its Salt Lake General Agent, the William B. Toohey Agency, prior to the death of Harry A. Long?"

The Jury found, under the Court's instructions, no preponderance of the evidence and that the Defendant, Insurance Company, completely failed in their proof in this regard. The Jury's findings on this point should be final and place at rest, for once and for all, the Defendant's claim under Exhibit ((11-D).

CONCLUSION

It is respectfully urged that the Jury's findings be sustained and Judgment rendered accordingly, in favor of the Plaintiff.

Respectfully submitted,

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