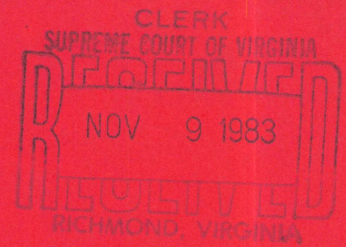


231 Va 197



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 822061

PAMELA GUDNASON,

Appellant,

v.

LIFE INSURANCE COMPANY
OF NORTH AMERICA,

Appellee.

JOINT APPENDIX

Nicholas Sabalos, Esquire
Attorney at Law
8111 West Point Drive
Springfield, Virginia 22153

Counsel for Appellant

Benjamin J. Trichilo, Esquire
William L. Carey, Esquire
4114 Leonard Drive
Post Office Box 22
Fairfax, Virginia 22030

Counsel for Appellee

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MOTION FOR JUDGMENT

FILED
IN CIRCUIT COURT
CLERK'S OFFICE

MAR 29 1982

JAMES E. BOOPAGE
CLERK, FAIRFAX COUNTY, VA.
VINT TAX PAID: \$ 15.00
DEPOSIT: \$ 30.00

Come now the plaintiff, PAMELA GUDNASON, by counsel and moves for judgment against defendant, LIFE INSURANCE COMPANY OF NORTH AMERICA, on grounds and in the amount as hereinafter set forth:

1. Defendant, LIFE INSURANCE COMPANY OF NORTH AMERICA, is a corporation organized under the laws of the State of Pennsylvania, having an office and principal place of business at the Mutual Building, 9th and Main Streets, Richmond, Virginia and is engaged in the business of a life insurance company.

2. On December 1st, 1980, plaintiff and defendant, LIFE INSURANCE COMPANY OF NORTH AMERICA, entered into a contract of insurance, designed Life Insurance Company of North America Policy Number OK-5943, effective December 1, 1980, under which the defendant insured the life of said INGI V. GUDNASON in the amount of One Hundred Thousand Dollars (\$100,000.00). The named beneficiary of said policy of insurance was plaintiff PAMELA GUDNASON. A copy of said policy is attached to this motion for judgment as Exhibit "A" hereof.

3. On August 19, 1981, Plaintiff's husband, INGI V. GUDNASON was killed in a firearm accident in Loudon County, Virginia.

4. On September 21, 1981, PAMELA GUDNASON duly filed her claim for payment of the proceeds of said policy of insurance together with proof of INGI V. GUDNASON'S accidental death, as required by defendant insurance company.

5. On October 5, 1981, defendant insurance company notified plaintiff that her claim was denied and have continued to refuse to remit to her the proceeds of said policy.

WHEREFORE, plaintiff PAMELA GUDNASON demands judgment against defendant, LIFE INSURANCE COMPANY OF NORTH AMERICA in the amount of One Hundred Thousand Dollars (\$100,000.00) with interest at the rate of twelve percent (12%) from August 19, 1981 until paid, and her costs in this behalf expended.

Pamela Gudnason
By Nicholas Sabalos
Nicholas Sabalos
Of Counsel

Nicholas Sabalos
Nicholas Sabalos
8111 West Point Drive
Springfield, Virginia 22153
Attorney for Plaintiff



LIFE INSURANCE COMPANY OF NORTH AMERICA

PHILADELPHIA, PENNSYLVANIA
A STOCK INSURANCE COMPANY
HEREIN CALLED THE COMPANY

CERTIFICATE OF INSURANCE

(Please refer to both Policy Number
and Certificate Number in any com-
munication concerning this insurance.)

APPLICATION

INSURED'S
COPY

LG-9214
Ptd. in U.S.A.

NAME OF POLICYHOLDER	POLICY NUMBER	POLICY AGGREGATE LIMIT IS	Issued Effective
ORI, INC.	81-5943	Waived	12 1 80 MONTH DAY YEAR
For Life Insurance Co. of North America Use Only			
I hereby apply for and authorize the necessary salary deductions for the premium to pay for accident insurance under the terms of the above Master Policy as follows: (please print firmly or type)			
1. Your Full Name <u>PAMELA RODRIGUEZ</u>			Date of Birth <u>3/25/56</u>
2. Address <u>4637-C 5TH AVE</u>		Occupation or Position <u>SALES</u>	
City <u>AUSTIN</u>	State <u>TX</u>	Zip <u>78703</u>	3. Your Social Security Number <u>530-58-3347</u> (becomes your certificate number)
4. Your Beneficiary <u>IRVING V. RODRIGUEZ</u>		5. Relationship <u>HUSBAND</u>	
6. Spouse's Occupation <u>ENGINEER</u>		7. Amount of Principal Sum \$ <u>100,000.00</u> Monthly Premium \$ <u>7.00</u> (i.e. Benefit Amount)	
9. Plan Selection (check one) <input type="checkbox"/> Employee only <input checked="" type="checkbox"/> Family Plan		Amounts of Insurance (Spouse and children covered only if Family Plan checked) Employee <u>100%</u> of Principal Sum; Spouse <u>50%</u> of Principal Sum (if NO children); <u>40%</u> of Principal Sum (if children); Each Child <u>30%</u> of Principal Sum; <u>20%</u> of Principal Sum (if NO Spouse).	
Employee applicant will be spouse's and dependent children's beneficiary unless otherwise stated in writing.			
10. Method of Settlement (Benefit Payment): <input checked="" type="checkbox"/> Lump Sum <input type="checkbox"/> 3 years <input type="checkbox"/> 5 years <input type="checkbox"/> 10 years			
<input type="checkbox"/> DECLINATION—I have been given the opportunity to apply for this insurance, but I do not desire to participate.			
Signature of Applicant <u>[Signature]</u>		Date of Application <u>11/12/80</u>	

THE COMPANY HEREBY CERTIFIES that the person whose application appears above (herein called the Insured) is insured under and subject to the terms, conditions and limits of liability of the policy as above specified, against loss resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force as to the Insured, herein called such injuries.

The insurance described in this certificate terminates on the next following premium due date of the policy if the Insured for any reason other than attainment of age 70 ceases to fall within the Description of Eligible Persons as stated in the policy, or the Policyholder or Company terminates the policy as provided therein, and on the next following renewal date of the policy upon attainment of age 70.

An "Eligible Dependent" for this coverage means and is limited to: (a) the Insured's spouse, and (b) the Insured's unmarried children (which shall include stepchildren, legally adopted children and foster children) over 14 days and under 19 years and unmarried children between the ages of 19 and 23 years provided that they are full-time students in an accredited school, college or university; provided such children are wholly dependent upon the Insured for support and maintenance.

If, upon attainment of the stated maximum age, an Insured's dependent child is mentally or physically incapable of earning his own living on the termination date, coverage shall continue for such child while the policy remains in force and so long as such incapacity continues, provided the Insured has, within thirty-one days of such dependent's attainment of the termination age, submitted to the Company proof of such incapacity.

This certificate replaces any and all certificates previously issued to the Insured with respect to the policy above identified.

DESCRIPTION OF COVERAGE

Loss of Life, Limb or Sight Indemnity: If such injuries shall result in any one of the following specific losses within one year from the date of accident, the Company will pay the benefit specified as applicable thereto, based upon the Principal Sum stated in the Schedule of Insureds; provided, however, that not more than one (the largest) of such benefits shall be paid with respect to injuries resulting from one accident.

Loss of life	The Principal Sum
Loss of two or more members	The Principal Sum
Loss of one member	One-Half The Principal Sum
Loss of thumb and index finger of the same hand	One-Quarter The Principal Sum

"Member" means hand, foot or eye. "Loss" means, with regard to hand or foot, actual severance through or above the wrist or ankle joints; with regard to eye, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints (in South Carolina, loss of four fingers entire of one hand shall constitute the loss of one hand).

If the Family Plan has been selected, the Principal Sum amounts applicable to "Eligible Dependents" shall be as shown on this application above.

EXCLUSIONS

The policy does not cover loss caused by or resulting from any one or more of the following:

- A. Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;
- B. Declared or undeclared war or any act thereof;
- C. Accident occurring while the Insured is serving on full-time active duty in the Armed Forces of any country or international authority (any premium paid to be returned by the Company pro-rata for any such period of full-time active duty);
- D. Illness, disease, pregnancy, childbirth, miscarriage, bodily infirmity or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;
- E. Travel or flight in any vehicle or device for aerial navigation, including boarding or alighting therefrom,
 - (1) while being used for any test or experimental purpose; or
 - (2) while the Insured is operating, learning to operate or serving as a member of the crew thereof; or
 - (3) while being operated by or for or under the direction of any military authority, other than transport type aircraft operated by the Military Airlift Command (MAC) of the United States of America or the similar air transport service of any other country; or
 - (4) any such aircraft or device which is owned or leased by or on behalf of the Policyholder or any subsidiary or affiliate of such Policyholder.

PROVISIONS

Notice of Claim: Written notice of claim must be given to the Company within thirty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the Insured or the beneficiary to the Company at Philadelphia, Pennsylvania, or to any authorized agent of the Company, with information sufficient to identify the Insured, shall be deemed notice to the Company.

Claim Forms: The Company, upon receipt of a notice of claim, will furnish to the claimants such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

Proofs of Loss: Written proof of loss must be furnished to the Company at its said office within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

Time of Payment of Claims: Indemnities payable under the policy will be paid immediately upon receipt of due written proof of such loss.

Payment of Claims: Any payment of accidental loss of life indemnity becoming due hereunder shall be payable to the beneficiary of record, who shall be the beneficiary designated in writing and on file with the Company, unless at the written request of the Policyholder and with the consent of the Company such beneficiary records shall be maintained by the Policyholder.

If the Insured has made prior written election, the amount due, or such portion thereof as may have been requested by the Insured in lieu of a lump sum payment, will be paid in a fixed number of monthly installments as selected by the Insured according to the table set forth below. If the Insured has not elected any such mode of settlement, the beneficiary, after the death of the Insured, may elect in writing that all or any part of the amount payable be paid in a fixed number of monthly installments as selected by the beneficiary according to said table, with the remainder, if any, paid in a lump sum. Any lump sum payment will be made immediately upon receipt at the Home Office of the required proofs of loss. Where installment payments are elected, the first installment will be paid immediately upon receipt of such proofs.

	Number of years during which monthly installments will be paid	Amount of each monthly installment payment, \$10,000 Principal Sum
Payments for	3	\$288.00
Accidental Loss of	5	177.00
Life Indemnity	10	94.00

The amount of each monthly installment for Principal Sum other than \$10,000 will be in proportion to the above amounts, but shall in no case be less than \$90.

If, at the death of the Insured, there is no surviving beneficiary, the accidental loss of life indemnity shall be payable in one sum to the first surviving class of the following classes of beneficiaries, otherwise to the estate of the Insured: The Insured's (1) wife or husband (2) child or children (3) mother or father (4) brothers or sisters.


If monthly installment payments have been elected and the beneficiary shall die before the payment of all of the monthly installments to which entitled, the commuted value of any remaining monthly installments, at the rate of interest used to determine such installments, will be paid in one sum to the estate of the deceased beneficiary, unless the Insured has designated otherwise.

The amounts payable in accordance with the above table are based upon interest at the rate of two and one-half per cent (2½%) per annum. Upon any Renewal Date of the policy the Company may substitute for the above table a comparable table based upon a different rate of interest, which shall in no case be less than 2½% per annum, but such new table shall not be applicable to any claim arising from an accident which occurred prior to the date of such substitution.

All other indemnities will be payable to the Insured.

Legal Actions: No action at law or in equity shall be brought recover on the policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of the policy. No such action shall be brought after the expiration of three years (or the minimum time, if more than three years, permitted by law in the state where the Insured resides) after the time written proof of loss is required to be furnished.

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to any change in beneficiary.


DONALD G. HETH, President

FILED

APR 13 1982

JAMES E. HOFFMAN, JR.
Clerk of the Court
of James County, Va.

ANSWER AND GROUNDS OF DEFENSE

COMES NOW defendant, Life Insurance Company of North America, by counsel, and as its Answer and Grounds of Defense to the Motion for Judgment filed herein states the following:

1. Defendant neither admits nor denies the allegations contained in Paragraph One (1), but where relevant and material to these proceedings, demands strict proof thereof.

2. Defendant denies the allegations contained in Paragraphs Two (2), Three (3) and Four (4), and demands strict proof thereof.

3. With respect to Paragraph (5), defendant admits that it denied the claim of the plaintiff; but denies that it breached any contract or duty to the plaintiff.

4. Defendant states that the policy of insurance was issued to the plaintiff effective December 1, 1980 designating Ingi V. Gudnason as beneficiary; and providing maximum coverage for the accidental death of a spouse in the amount of \$50,000.00.

5. Defendant further states that the plaintiff elected not to renew her policy on or about July 15, 1981; and accordingly, there was no coverage in effect on August 17, 1981.

6. The death of Ingi V. Gudnason did not arise directly and independently of all other causes from bodily injuries caused by accident.


7. Defendant states that it is not indebted to the plaintiff under any policy of insurance issued to her; nor is it indebted to her under any theory of law.

WHEREFORE defendant, Life Insurance Company of North America, moves this Honorable Court to dismiss the Motion for Judgment filed against it and award it costs expended.

LIFE INSURANCE COMPANY OF NORTH
AMERICA


Life Insurance Co. of N. America
By Counsel

LEWIS & TRICHILLO


Benjamin J. Trichilo
Counsel for Defendant
4114 Leonard Drive, P.O. Box 22
Fairfax, Virginia 22030

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer and Grounds of Defense was mailed, postage prepaid, to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia 22153, Counsel for Plaintiff, on this 12th day of April, 1982.


Benjamin J. Trichilo

FILED

MAY 17 1982

CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.

ORDER

Upon motion of counsel for Plaintiff Pamela Gudnason, counsel for Defendant not objecting thereto, it is ORDERED that paragraph 2 and the final Wherefore paragraph of the Complaint be amended to allege the sum of Fifty Thousand Dollars (\$50,000.00) vice the sum of "One Hundred Thousand Dollars (\$100,000.00)" as alleged.

Enter: 5-18-82

Barbara M. Keenan

I ask for this:

Nicholas Sabalos.
Attorney for Plaintiff

Seen:

[Signature]
Attorney for Defendant

FILED

JUN 14 1982

JAMES E. HOOFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

AGREEMENT AND STIPULATION

COME NOW the plaintiff, Pamela Gudnason, and the defendant, Life Insurance Company of North America, by counsel, and hereby stipulate and agree to the following facts and exhibits:

1. That Pamela Gudnason was the wife of Ingi V. Gudnason on August 19, 1981.

2. That Pamela Gudnason was employed by ORI, Inc. during 1981, but terminated her employment on July 15, 1981.

3. That on December 1, 1980, Pamela Gudnason was issued a Certificate of Insurance by the Life Insurance Company of North America for accidental death and dismemberment pursuant to a policy of Group Insurance Agreement between her employer, ORI, Inc. and the Life Insurance Company of North America.

4. Under the terms of the policy, benefits of \$50,000.00 are payable upon the death of Ingi V. Gudnason where no children are covered under the policy; and \$40,000.00 in benefits are payable where children are covered under the policy.

5. That Exhibit 1 (a document of two pages) is a true and accurate copy of the Certificate of Insurance issued by the Life Insurance Company of North America to Pamela Gudnason on December 1, 1980.

6. That Exhibit 2 (a document of eleven pages) is a true and accurate copy of the Group Insurance Agreement between ORI, Inc. and the Life Insurance Company of North America, which was in effect during 1981.

7. That Exhibits 3(A) through 3(H) are true and accurate copies of the Group Premium Reports issued by ORI, Inc. to the Life Insurance Company of North America.

8. That Exhibits 5(A) and 5(B) are true and accurate copies of the Separation Check-Out Sheets signed by Pamela Gudnason on July 15, 1981, the date she terminated her employment with ORI, Inc.

9. That Exhibit 6 is a true and accurate copy of the Proof of Loss filed by Pamela Gudnason with the Life Insurance Company of North America on or about September 19, 1981.

10. That Exhibit 7 (consisting of two pages) is a true and accurate copy of the Report of Investigation by Medical Examiner. With respect to this exhibit, the plaintiff does not stipulate to any admission by the plaintiff as to any opinion or conclusion as to the "cause" or "manner of death" of the deceased.

11. That Exhibit 8 is a true and accurate copy of the Medical Examiner's Certificate prepared following the death of Ingi V. Gudnason on August 19, 1981. With respect to this exhibit, counsel for the plaintiff does not stipulate to any admission by the plaintiff as to any opinion or conclusion as to the "cause" or "manner of death" of the deceased.

12. That Exhibit 9 is a true and accurate copy of the Certificate of Analysis prepared by the Bureau of Forensic Science following the autopsy performed on the body of Ingi V. Gudnason.

13. That Exhibit 10 (a document consisting of four pages) is a true and accurate copy of the Report of Autopsy prepared by James Bayer, M.D. following the death of Ingi V. Gudnason on August 19, 1981.

It is understood and agreed by the parties that any of the facts stated or exhibits listed and attached to this

Agreement and Stipulation may be admitted as evidence either at the trial of this case; or during argument of any pre-trial Motion filed by either of the parties.

SEEN AND AGREED:

PAMELA GUDNASON

Nicholas Sabalos.
By Counsel

Nicholas Sabalos.
Nicholas Sabalos, Esquire
8111 West Point Drive
Springfield, Virginia 22153
Counsel for Pamela Gudnason

LIFE INSURANCE COMPANY OF NORTH
AMERICA

Life Insurance Co. of N. America
By Counsel

LEWIS & TRICHILO

Benjamin J. Trichilo
Benjamin J. Trichilo, Esquire
4114 Leonard Drive
P. O. Box 22
Fairfax, Virginia 22030
Counsel for Life Insurance
Company of North America



LIFE INSURANCE COMPANY OF NORTH AMERICA

PHILADELPHIA, PENNSYLVANIA
A STOCK INSURANCE COMPANY
HEREIN CALLED THE COMPANY

CERTIFICATE OF INSURANCE

(Please refer to both Policy Number
and Certificate Number in any com-
munication concerning this insurance.)

APPLICATION

INSURED'S
COPY

NAME OF POLICYHOLDER	POLICY NUMBER	POLICY AGGREGATE LIMIT IS	Issued Effective
ORI, INC.	OK-5943	Unlimited	12 1 80 MONTH DAY YEAR
For Life Insurance Co. of North America Use Only			
I hereby apply for and authorize the necessary salary deductions for the premium to pay for accident insurance under the terms of the above Master Policy as follows: (please print firmly or type)			
1. Your Full Name	FAMEL (Johnson)		Date of Birth 3 12 56 MONTH DAY YEAR
2. Address	4631 C 5th St		Occupation or Position
City	State	Zip	3. Your Social Security Number 531-58-3347 (becomes your certificate number)
4. Your Beneficiary	Irene V. Johnson		5. Relationship Husband
6. Spouse's Occupation	Carpenter		7. Amount of Principal Sum \$100,000 Monthly Premium \$7.00 (i.e. Benefit Amount)
9. Plan Selection (check one)	<input type="checkbox"/> Employee only <input checked="" type="checkbox"/> Family Plan		Amounts of Insurance (Spouse and children covered only if Family Plan checked)
Employee applicant will be spouse's and dependent children's beneficiary unless otherwise stated in writing.		Employee	100% of Principal Sum;
		Spouse	50% of Principal Sum (if NO children); 40% of Principal Sum (if children);
		Each Child	25% of Principal Sum;
10. Method of Settlement (Benefit Payment):		<input checked="" type="checkbox"/> Lump Sum <input type="checkbox"/> 3 years <input type="checkbox"/> 5 years <input type="checkbox"/> 10 years	75% of Principal Sum (if NO Spouse).
<input type="checkbox"/> DECLINATION—I have been given the opportunity to apply for this insurance, but I do not desire to participate.			
Signature of Applicant		Date of Application 11/15/80	

LG-9214

Ptd. in U.S.A.

THE COMPANY HEREBY CERTIFIES that the person whose application appears above (herein called the Insured) is insured under and subject to the terms, conditions and limits of liability of the policy as above specified, against loss resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force as to the Insured, herein called such injuries.

The insurance described in this certificate terminates on the next following premium due date of the policy if the Insured for any reason other than attainment of age 70 ceases to fall within the Description of Eligible Persons as stated in the policy, or the Policyholder or Company terminates the policy as provided therein, and on the next following renewal date of the policy upon attainment of age 70.

An "Eligible Dependent" for this coverage means and is limited to: (a) the Insured's spouse, and (b) the Insured's unmarried children (which shall include stepchildren, legally adopted children and foster children) over 14 days and under 19 years and unmarried children between the ages of 19 and 23 years provided that they are full-time students in an accredited school, college or university; provided such children are wholly dependent upon the Insured for support and maintenance.

If, upon attainment of the stated maximum age, an Insured's dependent child is mentally or physically incapable of earning his own living on the termination date, coverage shall continue for such child while the policy remains in force and so long as such incapacity continues, provided the Insured has, within thirty-one days of such dependent's attainment of the termination age, submitted to the Company proof of such incapacity.

This certificate replaces any and all certificates previously issued to the Insured with respect to the policy above identified.

DESCRIPTION OF COVERAGE

Loss of Life, Limb or Sight Indemnity: If such injuries shall result in any one of the following specific losses within one year from the date of accident, the Company will pay the benefit specified as applicable thereto, based upon the Principal Sum stated in the Schedule of Insureds; provided, however, that not more than one (the largest) of such benefits shall be paid with respect to injuries resulting from one accident.

Loss of life	The Principal Sum
Loss of two or more members	The Principal Sum
Loss of one member	One-Half The Principal Sum
Loss of thumb and index finger of the same hand	One-Quarter The Principal Sum

EXHIBIT

1

"Member" means hand, foot or eye. "Loss" means, with regard to hand or foot, actual severance through or above the wrist or ankle joints; with regard to eye, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints (in South Carolina, loss of four fingers entire of one hand shall constitute the loss of one hand).

If the Family Plan has been selected, the Principal Sum amounts applicable to "Eligible Dependents" shall be as shown on this application above.

EXCLUSIONS

The policy does not cover loss caused by or resulting from any one or more of the following:

- A. Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;
- B. Declared or undeclared war or any act thereof;
- C. Accident occurring while the Insured is serving on full-time active duty in the Armed Forces of any country or international authority (any premium paid to be returned by the Company pro-rata for any such period of full-time active duty);
- D. Illness, disease, pregnancy, childbirth, miscarriage, bodily infirmity or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;
- E. Travel or flight in any vehicle or device for aerial navigation, including boarding or alighting therefrom,
 - (1) while being used for any test or experimental purpose; or
 - (2) while the Insured is operating, learning to operate or serving as a member of the crew thereof; or
 - (3) while being operated by or for or under the direction of any military authority, other than transport type aircraft operated by the Military Airlift Command (MAC) of the United States of America or the similar air transport service of any other country; or
 - (4) any such aircraft or device which is owned or leased by or on behalf of the Policyholder or any subsidiary or affiliate of such Policyholder.

PROVISIONS

Notice of Claim: Written notice of claim must be given to the Company within thirty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the Insured or the beneficiary to the Company at Philadelphia, Pennsylvania, or to any authorized agent of the Company, with information sufficient to identify the Insured, shall be deemed notice to the Company.

Claim Forms: The Company, upon receipt of a notice of claim, will furnish to the claimants such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

Proofs of Loss: Written proof of loss must be furnished to the Company at its said office within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

Time of Payment of Claims: Indemnities payable under the policy will be paid immediately upon receipt of due written proof of such loss.

Payment of Claims: Any payment of accidental loss of life indemnity becoming due hereunder shall be payable to the beneficiary of record, who shall be the beneficiary designated in writing and on file with the Company, unless at the written request of the Policyholder and with the consent of the Company such beneficiary records shall be maintained by the Policyholder.

If the Insured has made prior written election, the amount due, or such portion thereof as may have been requested by the Insured in lieu of a lump sum payment, will be paid in a fixed number of monthly installments as selected by the Insured according to the table set forth below. If the Insured has not elected any such mode of settlement, the beneficiary, after the death of the Insured, may elect in writing that all or any part of the amount payable be paid in a fixed number of monthly installments as selected by the beneficiary according to said table, with the remainder, if any, paid in a lump sum. Any lump sum payment will be made immediately upon receipt at the Home Office of the required proofs of loss. Where installment payments are elected, the first installment will be paid immediately upon receipt of such proofs.

	Number of years during which monthly installments will be paid	Amount of each monthly installment payment, \$10,000 Principal Sum
Payments for	3	\$288.00
Accidental Loss of	5	177.00
Life Indemnity	10	94.00

The amount of each monthly installment for Principal Sum other than \$10,000 will be in proportion to the above amounts, but shall in no case be less than \$90.

If, at the death of the Insured, there is no surviving beneficiary, the accidental loss of life indemnity shall be payable in one sum to the first surviving class of the following classes of beneficiaries, otherwise to the estate of the Insured: The Insured's (1) wife or husband (2) child or children (3) mother or father (4) brothers or sisters.

If monthly installment payments have been elected and the beneficiary shall die before the payment of all of the monthly installments to which entitled, the commuted value of any remaining monthly installments, at the rate of interest used to determine such installments, will be paid in one sum to the estate of the deceased beneficiary, unless the Insured has designated otherwise.

The amounts payable in accordance with the above table are based upon interest at the rate of two and one-half per cent (2½%) per annum. Upon any Renewal Date of the policy the Company may substitute for the above table a comparable table based upon a different rate of interest, which shall in no case be less than 2½% per annum, but such new table shall not be applicable to any claim arising from an accident which occurred prior to the date of such substitution.

All other indemnities will be payable to the Insured.

Legal Actions: No action at law or in equity shall be brought to recover on the policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of the policy. No such action shall be brought after the expiration of three years (or the minimum time, if more than three years, permitted by law in the state where the Insured resides) after the time written proof of loss is required to be furnished.

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to any change in beneficiary.



DONALD G. HETH, President

REGISTER		INDEX	UNDERWRITER A. JOVAL	REVIEW OR IN LIEU OF		SERVICE OFFICE	AGENCY NO.
				NEW		Washington, D.C.	
EX. CODE	COMPANY			INS.	TRANS.	#500	EXHIBIT
9	6	MO. & YR. ENT-PK NO.-ENTRY NO.		1	0		2
LINE						AGENT OR BROKER	
69						Mason Associates	
EFFECTIVE DATE: December 1, 1980							

Name and Address
of Organization:

ORI, INC.

1400 Spring Street
Silver Spring, Maryland 20910

Forms attached to and forming part of this policy on its date of issue are:

Form #	Description
LG-4229	Application
DCE-5067	Supplement to Master Application
LG-4234	Description of Coverage
LG-4222	Policy Provisions
LG-6155a	Conversion Privilege
LG4271	List of Insureds

DIARY CARD

DIARY DATE			FILE NO. OR TITLE
MONTH	DAY	YEAR	
4	8	81	AK 5943
			AKI
			DELIVER TO: (w.c.)
			FILE COPY
			REMARKS: Item done

ATTACH COPY

CC-2267 9-74 Printed in U.S.A.

PRODUCING SERVICE OFFICE COPY

OK 5943

APPLICATION TO

LIFE INSURANCE COMPANY OF NORTH AMERICA

Application is hereby made for a policy of insurance on form **LG-4219** based on the following statements and representations.

Policy Number **OK 59 43**

Service Office **Washington, D.C. #5**

Agent or Broker **Mason Associates**

1. Name of Organization? **ORI, Inc.**

Address? **1400 Spring Street, Silver Spring, Maryland 20910**

Type of Business or Organization? **Research and Analyses**

2. Persons eligible to become insured under this policy shall be all those described below, for whom written application is made, including any who become eligible during the term of the policy. With respect to applications received on or before the policy effective date, individual insurance begins on the policy effective date.

After the policy effective date, newly eligible persons may apply within 31 days after they become eligible, and individual insurance will become effective on the first day of the month next following the date the application is received. Eligible persons who do not apply either during the initial enrollment period or within 31 days after becoming eligible may thereafter apply, but individual insurance shall not become effective until the first day of the month next following the date the application is approved by the Company after submission of satisfactory evidence of insurability.

If the eligible person for whom written application is made is not regularly performing the duties of his occupation on the effective date of insurance as described in the preceding paragraphs, then the effective date of insurance with respect to such person shall be the first day of the month following the date of return to the regular performance of his duties.

Eligibility shall cease automatically (i) upon attainment of age 70, or (ii) upon entry on full-time active duty for more than 30 days service in the Armed Forces of any country or international authority, or (iii) on the date the person ceases to meet the eligibility requirements described below. If the Insured is the dependent of an eligible employee (or the dependent of an eligible member) also insured hereunder, the dependent's eligibility shall cease automatically and concurrently with the eligibility of the employee (or member).

Coverage for any Insured who ceases to be an eligible person for any reason shall terminate on the premium due date next following the date such eligibility ceases.

<u>Class</u>	<u>Description of Eligible Persons</u>	<u>Number of Eligible Persons</u>
I	All Fulltime Employees	500
II	See Supplement to Master Application	---
III	See Supplement to Master Application	---

3. Applicable coverage and amount of Principal Sum per person (amount of Principal Sum must be in multiples of \$5,000 and not less than \$10,000).

<u>Class</u>	<u>Applicable Coverage</u>	<u>Applicable Principal Sum</u>
I	Accidental Death and Dismemberment	\$10,000 to \$250,000 as selected
II	Accidental Death and Dismemberment	See Supplement to Master Application
III	Accidental Death and Dismemberment	See Supplement to Master Application

4. The aggregate limit of liability per **Accident** shall be **\$1,000,000**.

The Company shall not be liable for any amount in excess of the aggregate limit stated above.

If the aggregate amount of all indemnities otherwise payable by reason of coverage provided under the policy exceeds such aggregate limit of liability, the Company shall not be liable as respects each Insured for a greater proportion of the indemnity otherwise payable than the aggregate limit of liability bears to the aggregate amount of all such indemnities.

5. Premium shall be determined at an annual rate per Insured per \$5,000 Principal Sum Benefit as follows:

\$3.00 Class I

\$4.20 Class II and III

In computing the premium, no charge or credit will be made for fractional parts of a policy month with respect to additions, deletions and change in classification of Insureds.

6. The mode of premium payment under this policy shall be **monthly** in advance.

7. The Organization, or the Transmittal Agent appointed by the Organization and whose name appears below shall submit to the Company (i) an initial listing of eligible persons covered on the effective date of the policy, and (ii) at monthly intervals thereafter, a listing of eligible persons added for coverage and Insureds whose coverage terminated, together with the applicable premium therefor within 45 days after the effective date of the policy or the effective date of such additions or terminations.

8. The Transmittal Agent appointed by the Organization is: (if none appointed, state "None")

None

9. The policy shall become effective..... December 1, 1980..... For the Organization:

Signed: *Howard Eisner*.....

Title:..Executive Vice President.....

DESCRIPTION OF COVERAGE

Loss of Life, Limb or Sight Indemnity:

If such injuries shall result in any one of the following specific losses within one year from the date of accident, the Company will pay the benefit specified as applicable thereto, based upon the Principal Sum stated in the Policy Schedule; provided, however, that not more than one (the largest) of such benefits shall be paid with respect to injuries resulting from one accident.

Loss of life	The Principal Sum
Loss of two or more members	The Principal Sum
Loss of one member	One-Half The Principal Sum
Loss of thumb and index finger of the same hand	One-Quarter The Principal Sum

"Member" means hand, foot or eye. "Loss" means, with regard to hand or foot, actual severance through or above the wrist or ankle joints; with regard to eye, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints (in South Carolina, loss of four fingers entire of one hand shall constitute the loss of one hand).

SUPPLEMENT TO THE MASTER APPLICATION

In consideration of the terms and conditions under which this policy is issued, it is understood and agreed that Item #2 and Item #3 on the Master Application (LG-4229) shall read as follows:

2. CLASS DESCRIPTION OF ELIGIBLE PERSONS

II Spouse of eligible employees

III Dependent children of eligible employees who are 14 days but less than 19 years of age and such dependent children between the ages of 19 and 23 years provided that they are full time students in an accredited school, college or university.

3. If the Family Plan has been selected, the Principal Sum amounts applicable to "Eligible Dependents" shall be as follows:

SPOUSE	50% of Principal Sum (if NO children); 40% of Principal Sum (if children);
EACH CHILD	10% of Principal Sum 15% of Principal Sum (if NO spouse);

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date	December 1, 1980	at the hour specified in the policy.	Part of Policy No. OK - 59 43
Issued to	ORI, INC.		

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the
LIFE INSURANCE COMPANY OF NORTH AMERICA


THOMAS F. CAFFNEY, President



EXTENDED COVERAGE RIDER

This rider amends the policy or the certificate to which it is attached and takes effect and expires concurrently with such policy or certificate.

It is hereby understood and agreed that the Description of Coverage for Loss of Life, Limb or Sight Indemnity is extended to include the following:

Loss of Speech and Hearing.....	The Principal Sum
Loss of Speech or Hearing.....	One-Half the Principal Sum

Loss shall mean with regard to speech, irrecoverable loss of speech which does not allow audible communication in any degree; with regard to hearing, irrecoverable loss of hearing which cannot be corrected by any hearing aid or device.

Nothing herein contained shall vary, alter or extend any provision of the certificate other than as above stated.

LIFE INSURANCE COMPANY OF NORTH AMERICA


President

LM-8260

Printed in U.S.A.

Reorder by LM-1B81

PROVISIONS

Attached to and forming a part of policy form LG-4219

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. A copy of the application of the Organization shall be attached to the policy when issued. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

Statements: In the absence of fraud, all statements made by the Organization or by any Insured shall be deemed representations and not warranties, and no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits, unless contained in a written application signed by the Organization or the Insured, a copy of which has been furnished to such Organization or to such Insured or his beneficiary.

Grace Period: Unless not less than thirty days prior to the premium due date the Company has delivered to the Organization or has mailed to his last address as shown by the records of the Company written notice of its intention not to renew this policy beyond the period for which the premium has been accepted, a grace period of thirty-one days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force, subject to the right of the Company to terminate in accordance with the termination provision hereof.

Addition of New Members: All persons added to the groups or classes described in the Organization's application shall be eligible to become insured under this policy.

Notice of Claim: Written notice of claim must be given to the Company within thirty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the Insured or the beneficiary to the Company, at Philadelphia, Pennsylvania, or to any authorized agent of the Company, with information sufficient to identify the Insured, shall be deemed notice to the Company.

Claim Forms: The Company, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

Proofs of Loss: Written proof of loss must be furnished to the Company at its said office within ninety days

after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

Time of Payment of Claims: Indemnities payable under this policy will be paid immediately upon receipt of due written proof of such loss.

Payment of Claims: Indemnity for accidental loss of life will be payable in a lump sum to the beneficiary of record. If the Insured has made prior written election, the amount due, or such portion thereof as may have been requested by the Insured in lieu of a lump sum payment, will be paid in a fixed number of monthly installments as selected by the Insured according to the table set forth below. If the Insured has not elected any such mode of settlement, the beneficiary, after the death of the Insured, may elect in writing that all or any part of the amount payable be paid in a fixed number of monthly installments as selected by the beneficiary according to said table, with the remainder, if any, paid in a lump sum. Any lump sum payment will be made immediately upon receipt at the Home Office of the required proofs of claim. Where installment payments are elected, the first installment will be paid immediately upon receipt of such proofs.

	Number of years during which monthly installments will be paid	Amount of each monthly installment payment \$10,000 Principal Sum
PAYMENTS FOR	3	\$288.00
ACCIDENTAL LOSS OF	5	177.00
LIFE INDEMNITY	10	94.00

The amount of each monthly installment for Principal Sum other than \$10,000 will be in proportion to the above amounts, but may in no case be less than \$90.

If, at the death of the Insured, there is no surviving beneficiary, the accidental loss of life indemnity shall be payable in one sum to the first surviving class of the following classes of beneficiaries, otherwise to the estate of the Insured: wife, husband, child or children, father, mother, brothers or sisters.

If the Insured has elected monthly installment payments and the beneficiary shall die before the payment of all the monthly installments to which entitled, the commuted value of any remaining monthly installments, at the rate of interest used to determine such installments, will be paid in one sum to the estate of the deceased beneficiary, unless the Insured has designated otherwise. The amounts payable in accordance with the above table are based upon interest at the rate of two and one-half per cent (2 ½ %) per annum.

Upon any Anniversary Date of this policy the Company may substitute for the above table a comparable table based upon a different rate of interest, which shall in no case be less than 2 1/2 %, but such new table shall not be applicable to any claim resulting from an accident which occurred prior to the date of such substitution.

All other indemnities will be payable to the Insured.

Physical Examinations and Autopsy: The Company at its own expense shall have the right and opportunity to examine the person of the Insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to any change in beneficiary.

Policy Termination by the Organization or the Company: This policy may be terminated by the Organization on the first anniversary date, or at any time thereafter, by mailing or delivering to the Company at its Home Office, Philadelphia, Pennsylvania, written notice of such termination, effective on receipt or on such

later date as may be specified in such notice. In the event of such termination at a date other than the anniversary date, the earned premium shall be computed, and the Company will return promptly the unearned portion of any premium paid.

This policy may be terminated by the Company as of any anniversary date by mailing or delivering to the Organization, at the last address shown on the records of the Company written notice stating when, not less than 31 days thereafter, such termination shall be effective.

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

Workmen's Compensation Insurance: This policy is not in lieu of and does not affect any requirements for coverage by Workmen's Compensation Insurance.

Examination of Records: The Company shall be permitted to examine the Organization's records relating to this policy at any reasonable time, and from time to time until two years after the expiration of this policy or until final adjustment and settlement of all claims hereunder, whichever is the later.

Certificates: The Company will issue to the Organization, for delivery to each Insured, a certificate containing the benefits, limitations and conditions of the master policy and stating to whom benefits are payable and a summary of the provisions principally affecting the Insured.

IN WITNESS WHEREOF, the LIFE INSURANCE COMPANY OF NORTH AMERICA has caused this policy to be signed by its President and Secretary in the City of Philadelphia, Pennsylvania, but shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

Countersigned: Licensed Resident Agent

Leopold Stengel

Secretary

Madison Grant Jr.

President

Conversion Privilege

In the event that the insurance provided by Plan A of the policy to which this rider is attached (hereinafter referred to as "this policy") should terminate for any of the following reasons:

- (a) termination of employment or membership; or
- (b) termination of eligibility for any reason, except age or termination of the group or blanket policy or plan;

the Insured/Owner, if under age 70, shall, subject to the conditions hereinafter stated, be entitled to have issued to him, without evidence of insurability, a policy of insurance (hereinafter referred to as "the converted policy") by making written application therefor within 31 days after such termination of insurance and by paying the first premium applicable to the class of risk to which the Insured belongs, to the Insured's attained age, and to the form and amount of insurance provided. The converted policy shall take effect on the date of such termination of insurance or on the date of application for the converted policy, whichever is later.

The converted policy shall provide indemnity for accidental death and dismemberment in an amount as applied for by the Insured/Owner (in \$1,000 increments) but not less than \$25,000 nor more than the amount of Plan A insurance applicable to the Insured.

The converted policy may provide that it shall be renewable on any anniversary with the consent of the Company subject to a maximum age limit.

The converted policy may exclude any condition or hazard applicable to the Insured at the time of termination of previous insurance under this policy. Any benefit otherwise payable under the converted policy shall be reduced by the amount of any such benefit payable under this policy after the termination of such insurance.

If the converted policy made available hereunder in the jurisdiction where this policy was issued cannot be lawfully issued to an applicant for conversion under the applicable laws and regulations of (1) the jurisdiction where application for conversion is made, or (2) the jurisdiction where he resides when his application for conversion is made, then he shall have the option of converting to a policy on such other form as the Company is then offering for conversion of insurance hereunder in the jurisdiction where he resides.

Coverage for dependents, if any, may be converted on the same basis if the covered dependent ceases to be eligible for any reason other than age.

Unless prohibited by statute or regulation in the state having jurisdiction, absolute assignment of all rights, privileges and interests under this policy, including the right to apply for such conversion, is hereby expressly permitted.

DEFINITION OF PRINCIPAL SUM

"Principal Sum" as used herein shall mean the total amount of accidental death insurance applicable to the person insured under either or both of the following plans:

Plan A—the stated amount of Principal Sum or \$100,000, whichever is less.

Plan B—the amount of Principal Sum in excess of Plan A, if any.

ELIGIBILITY PROVISION

If an individual policy providing accidental death insurance converted by a person from any previous group, blanket or franchise accidental death insurance under this policy remains in force at the time such person would otherwise become eligible for any group, blanket or franchise accidental death insurance under this policy, such eligibility shall be deferred until such person shall furnish, without expense to the Company, evidence of insurability satisfactory to the Company.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, provisions or limitations of this policy other than as above stated.

LIFE INSURANCE COMPANY OF NORTH AMERICA

AMENDATORY RIDER

This rider amends the policy or certificate to which it is attached and expires concurrently with such policy or certificate.

In consideration of the premium, the policy or certificate, that Item #2 Description of Eligible Persons Class III shall be:

Dependent children of eligible employees from birth but less than 19 years of age and such dependent children between the ages of 19 and 23 years provided that they are full time students in an accredited school, college or university.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date	December 1, 1980	at the hour specified in the policy.	Part of Policy No.	OK - 59 43
Issued to	ORI, INC.			

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the
LIFE INSURANCE COMPANY OF NORTH AMERICA

Thomas J. Gaffney
THOMAS J. GAFFNEY, President

LG 5134 A

COMPANY UNDERWRITING COPY

PTD 14 U S A

SCHEDULE OF INSUREDS

Name of Organization: ORI, Inc.

Policy No: OK 5943

<u>Cert. #</u>	<u>Name of Insured</u>	<u>Principal Sum</u>	<u>Coverage Effective</u>	<u>Coverage Terminated</u>
----------------	------------------------	--------------------------	-------------------------------	--------------------------------

As on file with the Policyholder



INITIAL PREMIUM STATEMENT

TO: ☒ Life Insurance Company of North America ☐ INA Life Insurance Company of New York ☐ INA Life Insurance CompanyFROM: Name of
Policyholder... ORI, Inc.

Policy Number OK-5943 Policy effective date December 1, 1981

Policy calls for payment of

☒ Monthly Premiums☐ Annual Premiums

Statement prepared by .

Applications for Eligible

Persons listed below are attached. Insurance for each person begins on policy effective date. Signed payroll deduction authorizations and other necessary forms for these persons are on file with the Policyholder.

FULL NAME	Amount of Insurance	Premium
As on file with the Policyholder.		

TOTAL PREMIUM

(Use as item 1 on your first Periodic Premium Statement)

\$ 1,629.60

If space above is not sufficient, use this form as a summary and attach supporting lists.



☐ INSURANCE COMPANY OF NORTH AMERICA
☐ INA LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY

EXHIBIT

RECEIVED

APR 06 1981

POLICYHOLDER ORI, Inc.

3 A

POLICY NUMBER OK-5943
LINA GROUP DEPT.
WASHINGTON S/O

PREMIUM DUE DATE January 1, 1981

MONTH DAY YEAR

PREMIUM DUE FOR PERIOD FROM January 1, 1981 TO January 31, 1981

MONTH DAY YEAR MONTH DAY YEAR

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder, - Single 6 - Family 20		245,000 2,175,000		12.25 152.25	12.25 152.25
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 164.50	B 164.50

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C -0-	D -0-

- Premium shown on line 4 of previous months premium report. \$ 1606.35
- Add premium which represents payment for the current month for new insureds (item A above). + 164.50
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - -0-
- Total premium on Due Date (lines 1 + 2 - 3) = 1770.85
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + 164.50
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 1,935.35

MAKE CHECK PAYABLE TO I N A

SIGNATURE OF POLICYHOLDERS REPRESENTATIVE

TITLE

DATE



- ☐ INSURANCE COMPANY OF NORTH AMERICA
☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ INA LIFE INSURANCE COMPANY

EXHIBIT

RECEIVED

NOV 10 1981

OK 5943
LIFE GROUP DEPT.
WASHINGTON SIO

POLICYHOLDER ORI, Inc. 3 B POLICY NUMBER OK 5943

PREMIUM DUE DATE February, 1981

PREMIUM DUE FOR PERIOD FROM 2/1/81 TO 2/28/81

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	2/1/81				
- Single 2		150,000		7.50	
- Family 11		1,725,000		120.75	
TOTAL PREMIUM CHARGES FOR ADDITIONS				^A 128.25	^B -0-

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
PROGAR, Louis	2/1	25,000 (S)		1.25	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				^C 1.25	^D -0-

- Premium shown on line 4 of previous months premium report. \$ 1770.85
- Add premium which represents payment for the current month for new insureds (item A above). + 128.25
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 1.25
- Total premium on Due Date (lines 1 + 2 - 3) = 1897.85
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 1897.85

\$ 1897.85

MAKE CHECK PAYABLE TO I N A

S.A. Johnson

Sr. Personnel Administrator

SIGNATURE OF POLICYHOLDERS REPRESENTATIVE

TITLE

DATE

10-9106 DECEMBER 10, 1980 & AFTER



☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY
EXHIBIT

RECEIVED

10,40
APR 06 1981

POLICYHOLDER ORI, Inc.

3c

POLICY NUMBER OK 5943
LINA GROUP DEPT.
WASHINGTON S/O

PREMIUM DUE DATE March 1981

MONTH DAY YEAR

PREMIUM DUE FOR PERIOD FROM March 1, 1981 TO March 31, 1981

MONTH DAY YEAR MONTH DAY YEAR

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy holder	3/1/81				
- Single		310,000		15.50	-0-
- Family		450,000		31.50	-0-
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 47.00	B -0-

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
GRAHAM, D.	3/1/81	25,000	F	1.75	
SCHREIBER, L.	3/1/81	25,000	S	1.25	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C	D

- Premium shown on line 4 of previous months premium report. \$ 1897.85
- Add premium which represents payment for the current month for new insureds (item A above). + 47.00
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - -0-
- Total premium on Due Date (lines 1 + 2 - 3) = 1944.85
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 1944.85

MAKE CHECK PAYABLE TO I N A

SIGNATURE OF POLICYHOLDERS REPRESENTATIVE

1G-9496 REPLACES 1G-7165 & AS440

DATE



☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY

EXHIBIT

MAY 15 1981

POLICYHOLDER ORI, Inc.

3 D

POLICY NUMBER 1111111111 DEPT. WASHINGTON

PREMIUM DUE DATE April 1981

PREMIUM DUE FOR PERIOD FROM April 1 1981 TO April 30 1981

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	4-1-81				
- Single		50,000		2.50	-0-
- Family		850,000		59.50	-0-
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 62.00	B -0-

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
Saunders, K.	4-1-81	100,000	F	7.00	
Weisman, T.	4-1-81	50,000	S	2.50	
Newton, M.	4-1-81	10,000	S	.50	
Kumar, N.	4-1-81	250,000	F	17.50	
Stoessl, L.	4-1-81	100,000	F	7.00	
Majors, R.	4-1-81	50,000	F	3.50	
McGregor, D.	4-1-81	250,000	F	17.50	
Thoma, J.	4-1-81	50,000	F	3.50	
Savage, P.	4-1-81	100,000	F	7.00	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C 66.00	D -0-

- Premium shown on line 4 of previous months premium report. \$ 1944.85
- Add premium which represents payment for the current month for new insureds (item A above). + 62.00
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 3.00*
66.00
- Total premium on Due Date (lines 1 + 2 - 3) = 1940.85
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 1940.85

*Indicated on March invoice but not deducted.

Sr. Personnel Administrator

MAKE CHECK PAYABLE TO I N A
April, 1981

SIGNATURE OF POLICYHOLDERS REPRESENTATIVE
LG-9496 REPLACES LG-7165 & AS440

DATE

☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY

EXHIBIT

POLICYHOLDER ORI, Inc. 3 E POLICY NUMBER OK 5943

PREMIUM DUE DATE May 1981

PREMIUM DUE FOR PERIOD FROM May 1, 1981 TO May 31, 1981

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	5/1/81				
- Single		10,000		.50	-0-
- Family		1,275,000		89.25	-0-
TOTAL PREMIUM CHARGES FOR ADDITIONS				^A 89.75	^B -0-

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
Johnson, M.		50,000		2.50	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				^C 2.50	^D -0-

- Premium: shown on line 4 of previous months premium report. \$ 1,940.85
- Add premium which represents payment for the current month for new insureds (item A above). + 89.75
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 2.50
- Total premium on Due Date (lines 1 + 2 - 3) = 2,028.10
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 2,028.10

MAKE CHECK PAYABLE TO I N A

[Signature]
SIGNATURE OF POLICYHOLDERS REPRESENTATIVE
LG-9495 REPLACE LG-7165 & AS440

TITLE

DATE



☐ LIFE INSURANCE COMPANY OF NORTH AMERICA
☒ LIFE INSURANCE COMPANY OF NEW YORK
☐ LIFE INSURANCE COMPANY

EXHIBIT

3 F

POLICYHOLDER ORI, Inc.

POLICY NUMBER OK 5943

PREMIUM DUE DATE June 1981

PREMIUM DUE FOR PERIOD FROM June 1, 1981 TO June 30, 1981

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	6/1/81				
- Single		150,000		75.00	
- Family		750,000		52.50	
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 127.50	B

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
Murphy, K		25,000	S	1.25	
Eberhardinger, M.		50,000	S	2.50	
Felder, J.		75,000	F	5.25	
Prince, R.		100,000	S	5.00	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C 14.00	D

- Premium shown on line 4 of previous months premium report. \$ 2,028.10
- Add premium which represents payment for the current month for new insureds (item A above). + 127.50
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 14.00
- Total premium on Due Date (lines 1 + 2 - 3) = 2,141.60
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 2,141.60

MAKE CHECK PAYABLE TO I N A

Shirley Johnson
 SIGNATURE OF POLICYHOLDER'S REPRESENTATIVE

TITLE

DATE

LG-9496 REPLACES LG-7165 AS440

1. HOME OFFICE COPY.

28

POLICYHOLDER ORI, Inc.

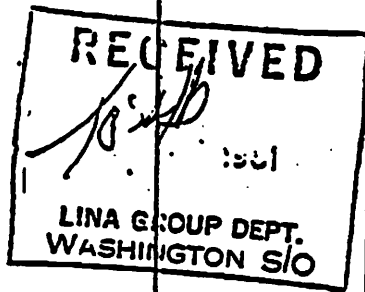
POLICY NUMBER OK 5943

PREMIUM DUE DATE July 1981

PREMIUM DUE FOR PERIOD FROM July 1, 1981 TO July 31, 1981

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	7/1/81				
- Single		385,000		19.25	
- Family		985,000		68.95	
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 88.20	B

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
Fritz, J.		100,000	S	5.00	
Wilcher, M.		50,000	S	2.50	
Townshend, T. M.		50,000	S	2.50	
Marchant, T.		50,000	S	2.50	
Christolon, W.		100,000	F	7.00	
Felton, S.		25,000	S	1.25	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C 20.75	D



- Premium shown on line 4 of previous months premium report. \$ 2,141.60
- Add premium which represents payment for the current month for new insureds (item A above). + 88.20
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 20.75
- Total premium on Due Date (lines 1 + 2 - 3) = 2,209.05
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). + -0-
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). - -0-
- Total Premium Due (lines 4 + 5 - 6) \$ 2,209.05

MAKE CHECK PAYABLE TO I N A

Shirley Johnson
SIGNATURE OF POLICYHOLDERS REPRESENTATIVE

TITLE

DATE

LG-9496 REPLACES LG-7165 & 45440

1. HOME OFFICE COPY.



☐ LINA LIFE INSURANCE COMPANY OF NEW YORK
☒ LIFE INSURANCE COMPANY

EXHIBIT

3 H

POLICYHOLDER ORI, Inc. POLICY NUMBER OK 5943

PREMIUM DUE DATE August 1981
MONTH DAY YEAR

PREMIUM DUE FOR PERIOD FROM August 1, 1981 TO August 31, 1981
MONTH DAY YEAR MONTH DAY YEAR

ADDITIONS—Insurance is effective 1st day of month following application FULL NAME	EFFECTIVE DATE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CHARGE	PREVIOUS MONTH(S) CHARGE
As on file with the Policy Holder	8/1/81				
--Single		225,000		11.25	
--Family		325,000		22.75	
TOTAL PREMIUM CHARGES FOR ADDITIONS				A 34.00	B

SEP 1 1 1981
 LINA GROUP DEPT.
 WASHINGTON S/O

TERMINATIONS—Insurance continues to last day of month following termination of employment FULL NAME	TERMINATION DATE OF INSURANCE	AMOUNT OF INSURANCE	EMPLOYEE (E) OR FAMILY (F) OR NAMED DEPENDENT (D)	CURRENT MONTH PREMIUM CREDIT	PREVIOUS MONTH(S) CREDIT
Mattingly, V.R.		25,000	S	1.25	
Libster, R.J.		100,000	S	5.00	
Schroeder, T.G.		200,000	F	14.00	
Gudnason, P.		100,000	F	7.00	
Holmes, S.		200,000	F	14.00	
Buckon, W.E.		100,000	F	7.00	
TOTAL PREMIUM CREDITS FOR TERMINATIONS				C \$48.25	D

- Premium shown on line 4 of previous months premium report. \$ 2,209.05
- Add premium which represents payment for the current month for new insureds (item A above). + 34.00
- Deduct premium which represents credit for the current month for terminated insureds (item C above). - 48.25
- Total premium on Due Date (lines 1 + 2 - 3) = 2,194.80
- Add back premium charge which represents payment for prior month(s) for new insureds (item B above). +
- Deduct back premium credit which represents credit for prior month(s) for terminated insureds (item D above). -
- Total Premium Due (lines 4 + 5 - 6) \$ 2,194.80

Shirley Johnson
 SIGNATURE OF POLICYHOLDERS REPRESENTATIVE
 LG-9496 REPLACES LG-1465 & 15440

Manager, Benefits & Administration August 1981
 TITLE DATE

MAKE CHECK PAYABLE TO LINA

FICA SICK 41.00 HRS.
 FICA SICK 394.49 DOL.
 (REDUCTION = 6.65% OF SICK FROM 12/16/80)

001608

Period Ending			Regular Hours	OT Hours	Regular Gross	OT Gross	Other Gross		Total Gross		
Mo.	Day	Year									
7	15	81	88.00	0.0	833.51	721.60			1555.10		
State Tax			F.I.C.A.	Federal Tax		State Insur. Tax		Total Misc. Deductions		Net	
78.69			103.41	388.25		0.0		0.0		984.75	
Miscellaneous Deductions											
Code	Amount		Code	Amount		Code	Amount		Code	Amount	
1	0.0		2	0.0		3	0.0		4	0.0	
Miscellaneous Deductions											
Code	Amount		Code	Amount		Code	Amount		Code	Amount	
7	0.0		8	0.0		9	0.0		10	0.0	
Year to Date											
Gross			F.I.C.A.		Federal Tax		State Tax		State Insur. Tax		
12390.60			797.76		2290.43		562.29		0.0		0.0

Deduction Codes

1. Group Hospitalization
- 2.
3. Bonds
4. Calculator
5. UGF
6. Expense Accounts
7. Long Term Disability
8. AD & D Insurance
- 9.
10. Miscellaneous
11. Miscellaneous
12. Miscellaneous

VAC BAL 75.01 HRS

ORI

Inc. 1400 Spring Street, Silver Spring, Maryland 20910

PAYROLL CHECK

001608

15.3
540

7	22	81
Month	Day	Year

Employee No. 1989

PAY
EXACTLY

\$	***984	75
----	--------	----

ORI, Inc.
PAYROLL ACCOUNT

Pay to the order of

P GUDNASON
726

NOT NEGOTIABLE

THE RIGGS NATIONAL BANK
WASHINGTON, D.C.

SEPARATION CHECK-OUT (HEET)

Name GUDNASON, PamelaDivision PublicationsSeparation Date 7/15/81

To comply with administrative procedures and security regulations, please have Part I of this form completed by the ORI offices indicated: Part II is for your completion and signature.

PART I

DIVISION DIRECTOR: Signature _____ Date _____

All Company Materials Returned ☒ 7/15/81MAIL ROOM: Signature _____ Date 7.15.81Complete Change of Address Card ☐PURCHASING: Signature Paul K... Date 7/15/81Company Property Returned ☐ACCOUNTING: Signature Elizabeth T. ... Date 7/15/81Employee Accounts ☒ Air Travel Card ☐Time Card ☒ Telephone Credit Card ☐Relocation expense repaid ☐ Auto Rental Card ☐Stock Refund ☒ Calculator ☐Profit-Sharing Plan ☒DOCUMENT CONTROL: Signature Pamela Woods Date 15 July 81Classified documents accounted for ☒ Nos. of safe(s) cleared ☒Unclassified documents accounted for ☒Classified inventory conducted by ✓ on ✓SECURITY: Signature Margaret Larocasi Date 15 July 81Oral Debriefing ☒ ORI Badge No. 309 ☐Special Access Debriefing(s) N/A ORI Key(s) No. B1-E1 ☐

Non ORI Badges

N/ATermination and Debriefing Statement(s) Signed by Employee: Yes ☒ No ☐

SEPARATION CHECK-OUT SHEET (2)

PERSONNEL:

Signature [Signature]Date 1-15-01

Medical Insurance

()

Life Insurance

()


PART II

Permanent Forwarding Address:

Theresa S. [Signature]
454 - 5 2nd St
Highland, CA 92341

I have returned, or accounted for, all ORI documents and property in my possession or custody, and by my signature below, I acknowledge my understanding of the current ORI employee agreement, and agree to adhere to its provisions. I have repaid, or accounted for, all cash advances I have received from ORI. I understand that personal mail addressed to me will be forwarded for a period of sixty (60) days. I also understand that it is my responsibility to take necessary action concerning my change of address.

Employee Signature [Signature]Date 1-15-01

 I have been made aware of my right to convert Life and Health Insurances to individual policies and hereby decline this offer.

Employee Signature [Signature]Date 1-15-01



INSURANCE COMPANY OF NORTH AMERICA
LIFE INSURANCE COMPANY OF NORTH AMERICA
INA LIFE INSURANCE COMPANY

EXHIBIT

6

DEATH CLAIM
PROOF OF LOSS
(ACCIDENT)

I, Pamela Gudnason, CLAIMANT'S STATEMENT Arlington
residing at 4639-C South 28th Street, state of Va.
state that I am twenty-five years of age; that in my capacity as beneficiary
of Ingi Gudnason, deceased, under policy #OK-5943 (State whether beneficiary, executor or administrator) Life Ins. Co
to Pamela Gudnason (policyholder), I hereby make claim for the sum of \$50,000.00 and that I make
(Name Insurance company) of America

the following answers as a part of the proof of loss required by the policy, and warrant the answers to be true without reservation:

1. Name of Deceased?	<u>Ingi Gudnason</u>	Date of Birth <u>Feb. 9, 1955</u>
2. Residence of deceased.	<u>4639-C South 28th St., Arlington, Va.</u>	
3. Deceased's Occupation.	<u>Architect</u>	
4. Date and hour when accident occurred.	<u>see below</u> day of <u> </u> , 19 <u> </u> , at <u> </u> o'clock <u>M.</u>	
5. Place of accident.	<u> </u>	
6. How did the accident happen? (Describe fully)	<u> </u>	
7. If deceased was passenger in an aircraft, give name of owner of aircraft.	<u>N/A</u>	
8. Date of death.	<u>19th</u> day of <u>August</u> , 19 <u>81</u> , at <u>7</u> o'clock <u>A.</u> M.	
9. Place of death.	<u>At Loudoun County, Va.</u>	
10. Cause of death.	<u>Gunshot wound</u>	
11. In what companies did the deceased have Life Insurance? (Give names and amounts.)	<u>Prudential Ins. Co. of America</u> <u>Group Policy G-34584 & GO-34584</u> <u>\$10,000 Term & \$10,000 Accidental Death</u>	
12. In what companies did the deceased have Accident Insurance? (Give names and amounts.)	<u>same as No. 11</u>	
13. What diseases, illnesses, or injuries had the deceased during the last six years?	<u>none</u>	
14. Was he afflicted with any disease, illness, or infirmary at the time of the accident? (If so, give full particulars and name of physician.)	<u>no</u>	

By furnishing this blank and other blanks for filing proof of loss, or by investigating the claim, the Company shall not be held to admit the validity of any claim or to waive the breach of any condition of the policy or of the application therefor.

AUTHORIZATION TO RELEASE INFORMATION:

I hereby authorize any hospital, physician or other person who has examined or attended

Ingi Gudnason

(print name of deceased)

to furnish to Insurance Company of North America, Life Insurance Company of North America or INA Life Insurance Company, or a representative thereof, any and all information with respect to any illness, medical history, consultation, prescriptions or treatment, and copies of all hospital or medical records. A photostatic copy of this authorization shall be considered as effective and valid as the original.

Date <u>9/19/81</u>	Signature <u>Pamela Gudnason</u>	RECEIVED SEP 23 1981
---------------------	----------------------------------	-------------------------

A CERTIFIED COPY OF DEATH CERTIFICATE MUST ACCOMPANY THIS FORM.

LINA CLAIMS
WASHINGTON

EXHIBIT

7

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF EXAMINER
NORTHERN VA. DISTRICT
THE FAIRFAX HOSPITAL
3300 GALLOWES RD.
FALLS CHURCH, VIRGINIA 22046
PHONE (703) 560-7910

RECEIVED

SEP 31

OFFICE OF THE
MEDICAL EXAMINER
NO. VA. DISTRICT

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT Regi Valdemar Pedersen AGE 76 RACE Cauc SEX male
First name Middle name Last name
ADDRESS 4637 C South 28th St M W S D OCCUPATION: architect
Number and Street
Arlington 22206 SSN --- EMPLOYER Long Miller
City or County Zip Code

PE OF DEATH: (Check one only)

Sudden in apparent health ☐Unattended by physician ☐In prison, jail, or police custody ☐Suspicious ☐Unusual ☐Violent or Unnatural ☒

Means:

gunshot wound - head

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified	
DATE	8-16-81	8-19-81	8-19-81	8-19-81	8-19-81	8-19-81	If Motor Vehicle Accident Check One Of The Following
TIME	6 PM	7:00 AM	7:00 AM	1:15 PM	1:45 PM	1:10 PM	DRIVER <input type="checkbox"/> PASSENGER <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/>

NOTIFICATION BY: Shirley J. Pedersen OFFICIAL TITLE ...
Address ...

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
INJURY OR ONSET OF DISEASE	<u>Rt # 7</u>	<u>Loudoun</u>	<u>creek</u>
DATE	"	"	"
VIEWING OF BODY BY MEDICAL EXAMINER	"	"	"

DESCRIPTION OF BODY	NOSE	MOUTH	EARS	RIGOR	LIVOR	NON FATAL WOUNDS
Unclothed <input type="checkbox"/> Partly Clothed <input type="checkbox"/> Color <u>---</u> Beard <u>---</u> Mustache <u>---</u> R <u>---</u> L <u>---</u> Eyes Color <u>---</u> Hair <u>---</u> Scars, Tattoos, etc. <u>---</u>	Blood <u>---</u> Froth <u>---</u> Other <u>---</u>	<u>---</u>	<u>---</u>	Jaw <input type="checkbox"/> Neck <input type="checkbox"/> Arm <input type="checkbox"/> Legs <input type="checkbox"/> Complete <input type="checkbox"/>	Color <u>---</u> Anterior <input type="checkbox"/> Posterior <input type="checkbox"/> Lateral <input type="checkbox"/> Regional <input type="checkbox"/>	Abrasion <input type="checkbox"/> Burn <input type="checkbox"/> Contusion <input type="checkbox"/> Stab <input type="checkbox"/> Gunshot <input type="checkbox"/> Incision <input type="checkbox"/> Laceration <input type="checkbox"/> Fracture <input type="checkbox"/> DISTRIBUTION Scalp <input type="checkbox"/> Chest <input type="checkbox"/> Neck <input type="checkbox"/> Arms <input type="checkbox"/> Abdomen <input type="checkbox"/>
WEIGHT <u>---</u> LENGTH <u>---</u>	<u>autopsy report</u>					

FATAL WOUNDS (GUNSHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION
<u>no autopsy report</u>				
FOR PROFESSIONAL USE ONLY CONTENTS NOT TO BE DUPLICATED				

USE OF DEATH: <u>gunshot wound - head</u>	MANNER OF DEATH: (Check one only) Accident <input type="checkbox"/> Suicide <input checked="" type="checkbox"/> Homicide <input type="checkbox"/> Natural <input type="checkbox"/> Undetermined <input type="checkbox"/> Pending <input type="checkbox"/>	AUTOPSY: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> AUTHORIZED BY: <u>...</u> Pathologist <u>...</u> Autopsy No. <u>---</u>
---	---	---

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with the Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

8-27-81
Date

Loudoun
City or County of Appointment

George T. Hake
Signature of Medical Examiner
A COPY (TESTER) SEP 14 1981

LOCAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE:

NAME OF PHYSICIAN OR INSTITUTION	ADDRESS	DIAGNOSIS	DATE

CIRCUMSTANCES OF DEATH:

	NAME	Official Title or Relationship to Decedent	ADDRESS
IND DEAD BY	Robert Phillips	-	896 Holman St. Stirling
WHEN ALIVE BY	Pamela Gudmundson	wife	Stirling, Va.
WITNESSES TO DEATH	James		

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

The deceased left his estranged wife on 8-16 stating he would probably kill himself.

On 8-19 his body was discovered floating in a canal of Fox Creek by a fisherman, Robert Phillips -
He was lying on the boat, shotgun over the body.

EXHIBIT

8

CERTIFIED COPY OF DEATH REC'D

COMMONWEALTH OF VIRGINIA—CERTIFICATE OF DEATH

DEPARTMENT OF HEALTH—BUREAU OF VITAL RECORDS AND HEALTH STATISTICS—RICHMOND

FOR BUREAU OF VITAL STATISTICS	REGISTRATION AREA NUMBER 153	CERTIFICATE NUMBER 180	MEDICAL EXAMINER'S CERTIFICATE		STATE FILE NUMBER
DECEDENT	1. FULL NAME OF DECEASED (first) (middle) (last) Ingi Gudnason			2. SEX male <input checked="" type="checkbox"/> female <input type="checkbox"/>	3. RACE Caucasian
	4. DATE OF DEATH (mo.) (day) (year) Aug. 19, 1981	5. AGE 26	6. IF UNDER 1 YEAR IF UNDER 1 DAY IF UNDER 1 HOUR IF UNDER 1 MINUTE	7. DATE OF BIRTH (mo.) (day) (year) Feb. 9, 1955	8. WAS DECEDENT EVER IN U.S. ARMY OR NAVY? <input type="checkbox"/>
PLACE OF DEATH	9. NAME OF HOSPITAL OR INSTITUTION OF DEATH (if name, no state) Loudoun Memorial Hospital			10. COUNTY OF DEATH (if independent city, leave blank) Loudoun	
	11. CITY OR TOWN OF DEATH (include city or town (state)) Leesburg			12. STREET ADDRESS OR RT. NO. OF PLACE OF DEATH 70 W. Cornwall St.	
USUAL RESIDENCE OF DECEDENT	13. STATE (OR FOREIGN COUNTRY) OF DECEASED'S RESIDENCE Virginia			14. COUNTY OF DECEASED'S RESIDENCE (if independent city, leave blank) Arlington	
	15. CITY OR TOWN OF RESIDENCE (include city or town (state)) Leesburg			16. STREET ADDRESS OR RT. NO. OF RESIDENCE 4639C. South 28th St. 22206	
PERSONAL DATA OF DECEDENT	17. NAME OF FATHER OF DECEASED Hallor Gudnason			18. MAIDEN NAME OF MOTHER OF DECEASED Druhn Markusdottir	
	19. CITIZEN OF WHAT COUNTRY Iceland	20. BIRTHPLACE (state or country) Iceland	21. NEVER MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> MARRIED <input checked="" type="checkbox"/> WIDOWED <input type="checkbox"/>	22. IF MARRIED OR WIDOWED, NAME OF SPOUSE (if divorced leave blank) Pamela Gudnason	
	23. SOCIAL SECURITY NUMBER 229-00-6258	24. USUAL OR LAST OCCUPATION Architect	25. KIND OF BUSINESS OR INDUSTRY Long & Miller	26. INFORMANT OR SOURCE OF INFORMATION Nicholas Sabalos	
TO MEDICAL EXAMINER:	27. CAUSE OF DEATH (if cause only was cause per time for (A), (B), and (C)) PART I. DEATH WAS CAUSED BY: IMMEDIATE CAUSE (A) <i>Spontaneous - heart</i> DUE TO (B) _____ DUE TO (C) _____ PART II. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE TERMINAL DISEASE CONDITION GIVEN IN PART I (A) 28a. IF FEMALE, WAS THERE A PREGNANCY IN PAST 3 MONTHS? YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN <input type="checkbox"/> 28b. IF EXTERNAL CAUSE, IT WAS PRIMARY <input type="checkbox"/> OR CONTRIBUTORY <input type="checkbox"/> TO CAUSE OF DEATH 28c. DESCRIBE HOW INJURY RELATION TO DEATH OCCURRED <i>sub. fractured quads</i> 28d. TIME OF INJURY (mo.) (day) (year) 7:00 AM 8-19-81 28e. INJURY OCCURRED WHILE AT WORK <input type="checkbox"/> NOT WHILE AT WORK <input checked="" type="checkbox"/> 28f. PLACE OF INJURY (home, farm, factory, street, office Bldg., etc.) <i>street</i> 28g. CITY OR TOWN (state) <i>Leesburg Va</i> 28h. I CERTIFY THAT I took charge of the remains described above, viewed the body, made inquiry and in my opinion death resulted as or about 7:00 (AM) (PM) from: NATURAL CAUSES <input type="checkbox"/> ACCIDENT <input type="checkbox"/> SUICIDE <input type="checkbox"/> HOMICIDE <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> PENDING <input type="checkbox"/> ACTUAL SIGNATURE <i>George T. Hocker</i> DATE SIGNED: 8-31-81 NAME OF MEDICAL EXAMINER: George T. Hocker, M.D. ADDRESS OF MEDICAL EXAMINER: 65 Gibson Street, Leesburg, Va. 220				
FUNERAL DIRECTOR	29. BURIAL REMOVAL CREMATION <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		30. PLACE OF BURIAL REMOVAL, ETC. (name of cemetery or crematory) (city or county) Ivy Hill Cemetery Alex. Va.		
	31. Signature of funeral director or person legally filing this certificate <i>W. F. Davis</i>		32. NAME OF FUNERAL HOME AND ADDRESS: Everly-Wheatley Funeral Home 1500 W. Braddock Rd. Alex. Va.		
REGISTRAR	33. Signature of registrar <i>Melvin D. Thomas</i>		DATE RECORD FILED: 9/1/81		

This is to certify that this is a true and correct reproduction of the original record filed with the Loudoun County Health Department, Leesburg, Virginia.

Date Issued

9/1/81

Registrar or Deputy

RECEIVED

SEP 23 1981

(seal)

ANY REPRODUCTION OF THIS DOCUMENT IS PROHIBITED BY STATUTE.

DO NOT ACCEPT UNLESS IT BEARS THE IMPRESSED SEAL OF THE LOUDOUN COUNTY DEPARTMENT OF HEALTH CLEARLY AFFIXED.

Section 32-353.27, Code of Virginia, as Amended.



Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE

EXHIBIT

9

CERTIFICATE OF ANALYSIS
8/31/81

Northern Laboratory
2714 Dorr Avenue
P. O. Box 486
Merrifield, Virginia 22111
Tel. No. (703) 573-8636

To: Dr. James C. Beyer
Medical Examiner
1300 Gallows Rd.
Falls Church, Va. 22046

cc: Dr. Hocker

re: Suicide

For Case #

FS Lab # 81N-129

Accused: GUDNASON, Ingi Valdimar

Examiner: Marina Stojic

Date of ()

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CONTENTS NOT TO BE DUPLICATED

Date Received 8/20/81

Specimens Submitted By Dr. Beyer

One sealed vial blood for alcohol, one container blood for drug screen, one sealed vial urine, one sealed vial bile, one sealed vial vitreous humor for alcohol, one container liver for submission.

RESULTS OF EXAMINATION:

BLOOD (SEALED VIAL): Ethanol, 0.25% weight/volume.

BILE (SEALED VIAL): Ethanol, 0.18% weight/volume.

VITREOUS HUMOR (SEALED VIAL): Ethanol, 0.14% weight/volume.

URINE (SEALED VIAL): Ethanol, 0.24% weight/volume; salicylates, phenothiazines, ethchlorvynol, antihistamines, amphetamines, benzodiazepines, tricyclic antidepressants, synthetic narcotics and analgesics - NONE DETECTED.

Marina Stojic
TOXICOLOGIST

MS:jmp

IN ORDER TO CORRESPONDENCE REVENUE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE

A COPY TESTED

SEP 14 1981

38

EXHIBIT

10

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH

RECEIVED

OFFICE OF THE CHIEF MEDICAL EXAMINER

Autopsy No NV-601-81
Date 8-20-81
Time 0930NORTHERN VA. DISTRICT
THE FAIRFAX HOSPITAL
3300 GALLOWES RD.
FALLS CHURCH, VIRGINIA 22046

AUG 31 1981

OFFICE OF THE
CHIEF MEDICAL EXAMINER
FALLS CHURCH, VA

REPORT OF AUTOPSY

DECEDENT INGI VALDIMAR GUDNASON
First Middle LastAutopsy Authorized by: Dr. George Hocker - Loudoun CountyBody Identified by: Tag, 8/19/81

Persons Present at Autopsy:

Dr. Beyer & Lt. Sheldon,
Loudoun Co. Sheriff's
Dept.Rigor: complete Disappeared jaw neck arms legs
Livor: color Pale red distribution: Posterior
Age 26 Race W Sex M Length est. 70" Weight est. 160 Eyes Blue Pupils: R L RRF
Hair Brown Mustache Beard Circumcised Yes Body Heat Cool

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:

See attached sheet.

PATHOLOGICAL DIAGNOSES:

CARDIOVASCULAR SYSTEM: Heart, no evidence of hypertrophy, valvular or congenital abnormalities. Coronary arteries, no significant alteration, all segments. Myocardium, no evidence of trauma, fibrosis or inflammation. Aorta, no significant alteration.

RESPIRATORY SYSTEM: Larynx, trachea and bronchi, no evidence of trauma or obstruction. Lungs, no evidence of trauma, inflammation or pulmonary artery emboli.

LIVER: No evidence of trauma.

SPLEEN: No evidence of trauma.

PANCREAS, ADRENAL AND THYROID GLANDS: No significant alteration.

G.I. TRACT: No evidence of trauma, hemorrhage or ulceration.

GENITOURINARY TRACT: Kidneys, no evidence of trauma or inflammation.

HEAD: Open perforating shotgun wound: apparent entrance in right frontal area with wound track extending backward, upward and to the left. Extensive laceration of scalp with comminution of skull and avulsion of brain.

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Cause of Death:

Shotgun wound to the head.Provisional Report Final Report ✓

The facts stated herein are true and correct to the best of my knowledge and belief.

8/29/81
Date SignedFairfax Hospital
Place of AutopsyJames Beyer, M.D.
Signature of Pathologist

A COPY TESTED:

James Beyer, M.D.
Assistant Chief Medical Examiner

GROSS DESCRIPTION

SKIN:

SEROUS CAVITIES:

PLEURA: Intact, smooth and glistening.

PERITONEUM: Intact, smooth and glistening.

PERICARDIUM: Intact, smooth and glistening.

HEART: 365 gm. No valvular or congenital abnormalities. Coronary arteries, no significant alteration, all segments. Right ventricle, 3 mm.; left, 13 mm. No evidence of trauma, fibrosis or inflammation. Aorta, no significant alteration.

LUNGS: Right, 475 gm.; left, 435 gm. Larynx, trachea and bronchi intact and free of trauma or obstruction. Lungs are intact with no evidence of trauma, inflammation or pulmonary artery emboli.

LIVER: 1325 gm. Capsule intact and smooth and on section there is no evidence of trauma, fibrosis or nodularity.

GALLBLADDER: No significant alteration.

SPLEEN: 140 gm. Capsule intact.

PANCREAS: No significant alteration.

ADRENAL GLANDS: No significant alteration.

G.I. TRACT: No evidence of trauma, hemorrhage or ulceration. Stomach empty.

KIDNEYS: 135 gm. each. Capsules strip with ease to reveal an intact, pale, smooth surface.

BLADDER: Intact; urine clear.

GENITALIA: No significant alteration.

REPRODUCTIVE ORGANS: No evidence of trauma.

WOUNDS: Open perforating shotgun wound: large, gaping wound occupying the anterior aspect of the head with extension into face. There are large scalp flaps with complete comminution of the skull with partial loss of skull bone and complete avulsion of the brain with only the distal brainstem still in place. Examination of the skin edges and bone fragments reveals a semi-circular ring of right frontal bone with powder debris on the outer table. Apparent wound track extends backward, upward and to the left. Four pellets are recovered within the scalp and skull fragments. No powder debris can be identified on scalp fragments.

HISTOLOGIC: Sections reveal postmortem alteration. Sections from the scalp and periosteum of the skull at the apparent entrance site are positive for powder debris.

LABORATORY PROCEDURES:

TOXICOLOGY ☒ BACTERIOLOGY ☐ DENTAL CHART ☐ X-RAY ☐ FINGER PRINT ☐
 PHOTOGRAPHY ☐ SEROLOGY ☐ FORENSIC SCIENCE ☐

POSITION OF EVIDENCE

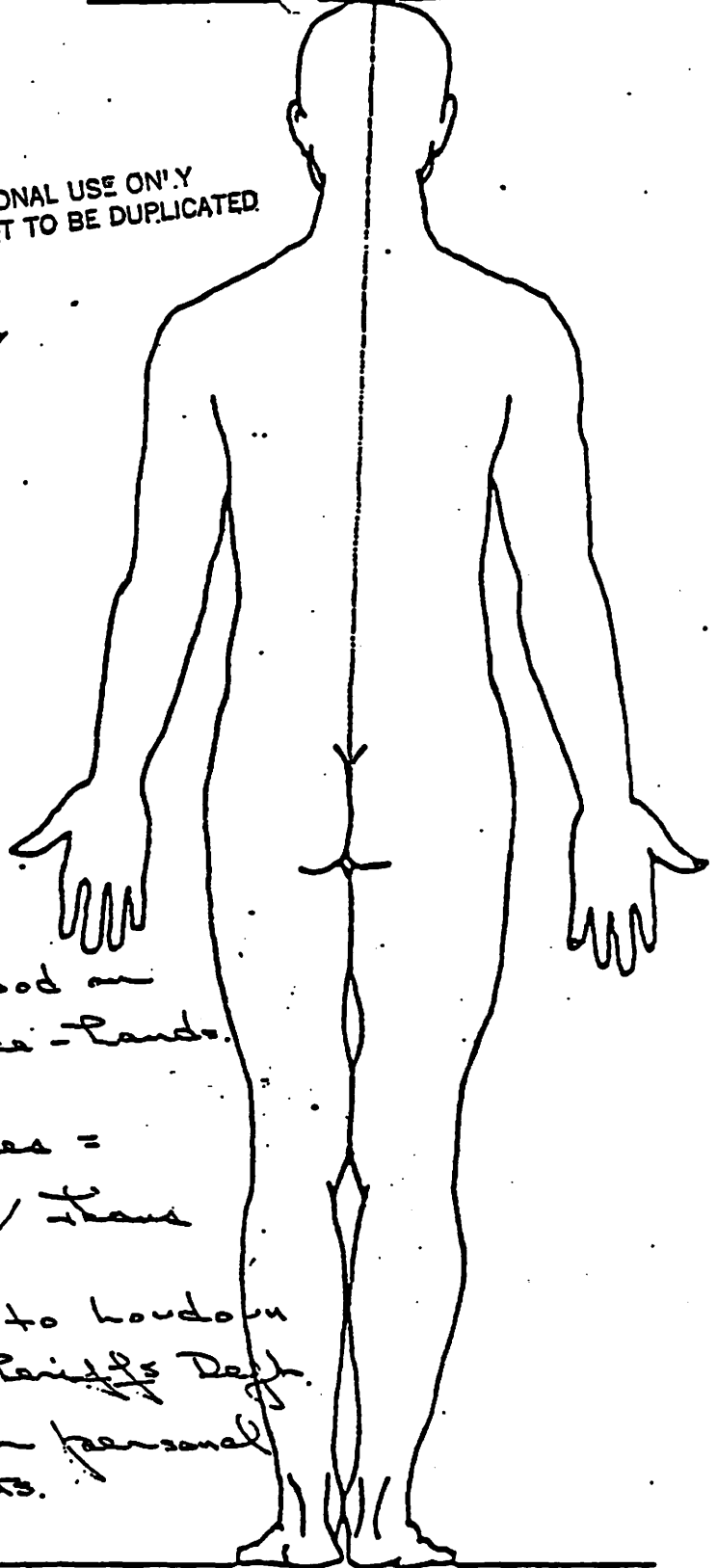
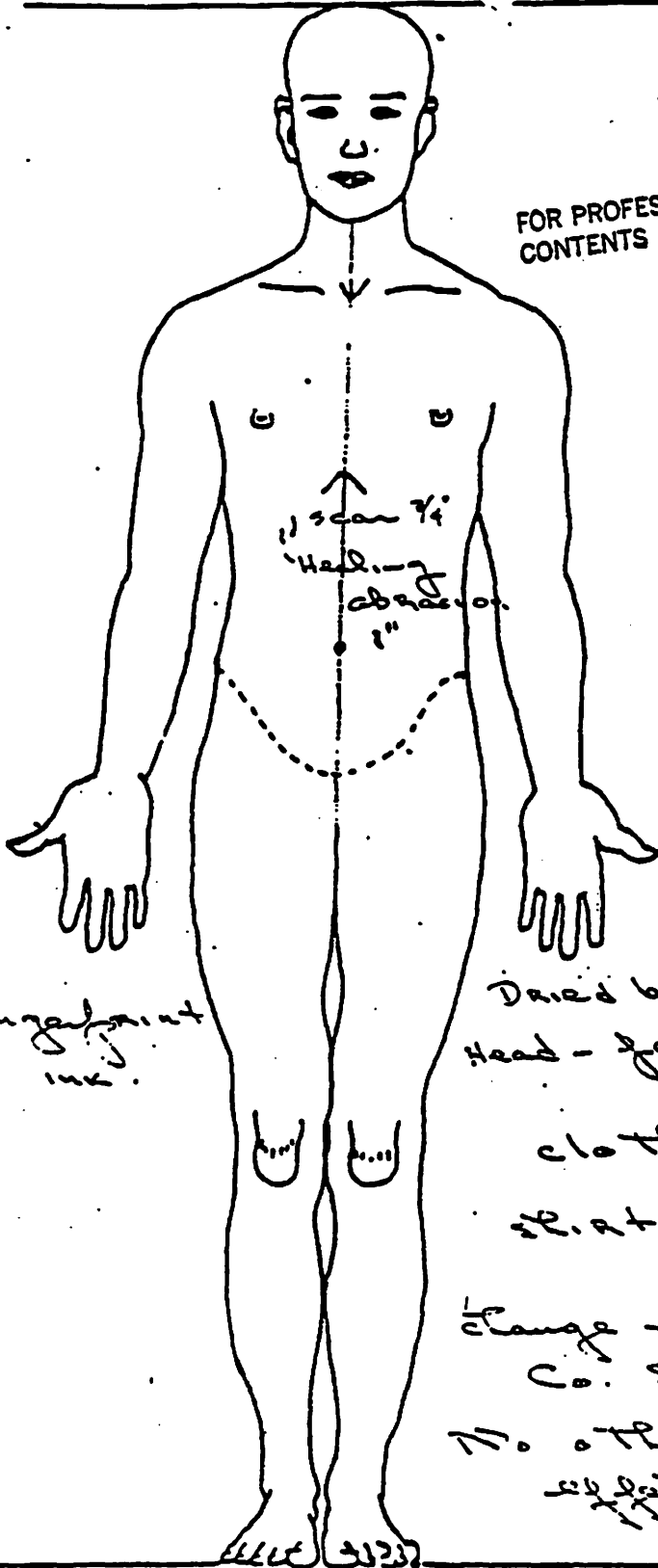
TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
Sealed tube of heart blood;				
blood, urine, bile, liver and				
creous humor.				

BODY DIAGRAM

Front

Back

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Dried blood on
Head - face - hands.

clothes =
shirt / pants

Change - to loudon
Co. Sheriff's Dept.

No other personal
effects.

Decedent's ^{est.}
Height 70 inches

Name Ingi V. Gudnason
Examined by
By H. C. Rayer Date 8/20/81

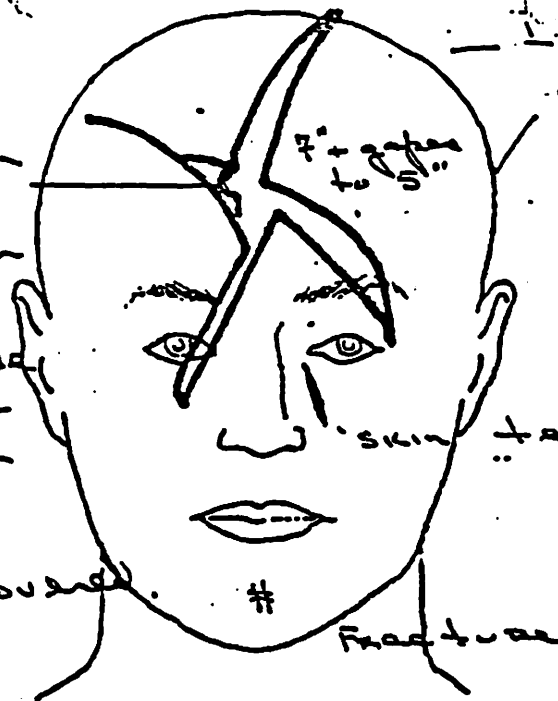
COMMONWEALTH OF VIRGINIA

OFFICE OF THE CHIEF MEDICAL EXAMINER

CME Form-181

BODY DIAGRAM-HEAD

Semicircular
ring of frontal
bone with powder
debris on outer
table - considerable
loss of scalp &
skull from left
back of head.
x4 pellets recovered.



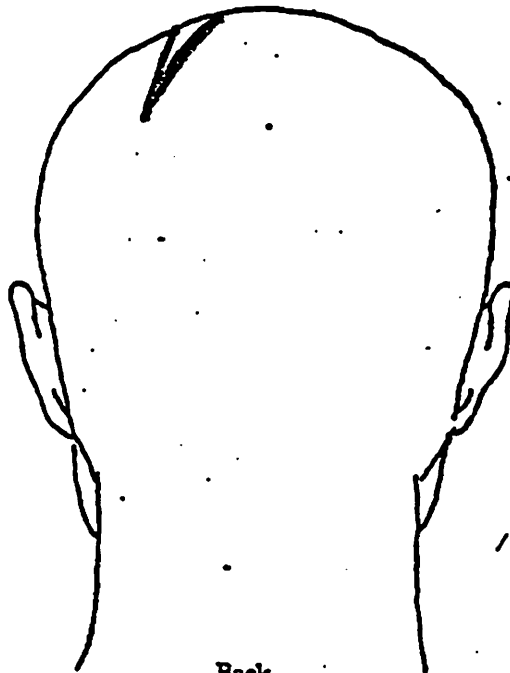
Jagged gash
wound with flaps - comminuted
skull with
collapse - rivet
of brain.

skin tear 1 1/2"

Fracture

Front

FOR PROFESSIONAL USE ONLY
CONTENTS NOT TO BE DUPLICATED



Back

Perforating
shotgun wound
of back w. the
incubation of
head & upper
face.

Decedent's Name Engi V. Gudriason

Examined J.C. Rayer

By J.C. Rayer Date 8/20/81

FILED

JUN 21 1982

CLERK OF CIRCUIT COURT
OF FAIRFAX COUNTY, VA.

NOTICE AND MOTION

TO: PAMELA GUDNASON
c/o Nicholas Sabalos, Esquire
8111 West Point Drive
Springfield, Virginia 22153

PLEASE TAKE NOTICE that on Friday, July 2, 1982, at 10:00 a.m., or as soon thereafter as counsel may be heard, Life Insurance Company of North America, by counsel, will move this Honorable Court for entry of an Order awarding it Summary Judgment and dismissing the above case with prejudice from the Court Docket. In support of this Motion, defendant states the following:

1. The parties have filed an Agreement and Stipulation relating to all material facts pertaining to this Motion.

2. On the date of the decedent's death (August 19, 1981), there was no policy of insurance in effect insuring the life of the decedent, Ingi V. Gudnason.

3. The stipulated exhibits conclusively establish that the plaintiff, Pamela Gudnason, was no longer insured under the policy issued by her employer, ORI, Inc., upon her termination of employment with that employer on July 15, 1981; and by her affirmative written election not to convert the insurance policy to individual coverage (Exhibits 5A and 5B).


4. The policy of group life insurance issued by this defendant to the plaintiff, Pamela Gudnason, had been properly terminated on July 15, 1981; and accordingly, there was no coverage in effect on the date of the decedent's death.

WHEREFORE defendant, Life Insurance Company of North America, moves this Honorable Court for entry of an Order awarding it Summary Judgment and dismissing this case with prejudice on the grounds that there was no insurance coverage for the loss alleged in the Motion for Judgment.

LIFE INSURANCE COMPANY OF NORTH AMERICA


Life Insurance Co. of N. America
By Counsel

LEWIS & TRICHILLO


Benjamin J. Trichilo
Counsel for Defendant
4114 Leonard Drive, P.O. Box 22
Fairfax, Virginia 22030

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice and Motion was mailed, postage prepaid, to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia, 22153, Counsel for Plaintiff, on this 21st day of June, 1982.


Benjamin J. Trichilo

PLAINTIFF'S REPLY TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

FILED
JUN 29 1982
CLERK OF COURT
OF FAIRFAX COUNTY, VA.

The Plaintiff, Pamela Gudnason, by counsel, hereby replies to the Defendant's (Life Insurance Company of North America) Motion for Summary Judgment and

* * *

4. The insurance policy further provides:

"CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes" (Exhibit 2 of Agreement and Stipulation).

5. The policy of insurance, by the very provision contained therein, is made subject to Sections 38.1-428.1 and 38.1-428.3 of the Code of Virginia in that the insured and the beneficiary both resided in the Commonwealth of Virginia on its effective date.

6. The statutory law squarely applicable in this case is contained in Sections 38.1-428.1 and 38.1-428.3 of the Code of Virginia. Section 38.1-428.1 of the Code of Virginia provides:

RIGHT TO INDIVIDUAL POLICY UPON TERMINATION OF EMPLOYMENT OR MEMBERSHIP. In each such policy there shall be a provision that if the insurance, or any portion of it, on a person covered under the policy, other than a child of an employee insured pursuant to Sec. 38.1-472.1, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy,

such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination...

Section 38.1-428.3 of the Code of Virginia provides:

DEATH AFTER TERMINATION OF GROUP INSURANCE AND BEFORE ISSUANCE OF INDIVIDUAL POLICY. In each such policy there shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with Sec. 38.1-428.1 or 38.1-428.2 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. (1960, c. 273.)

FILED

JUL 2 1989

JAMES E. HUGHES
Clerk of the Circuit Court
of Eastern District, VA

MEMORANDUM OF LAW

COMES NOW defendant, Life Insurance Company of North America, and submits this Memorandum of Law in rebuttal to the Memorandum submitted by counsel for the plaintiff in this case.

I. FACTS.

The plaintiff, Pamela Gudnason, was insured under an accidental death and dismemberment policy issued by defendant, Life Insurance Company of North America (INA). The policy provided death and disability benefits to the insured and to "eligible dependents." As defined in the policy, an "eligible dependent" includes the insured's spouse.

Under the master policy issued by INA to the plaintiff's employer, ORI, Inc., each member of the insured group was given the right to convert the group policy to an individual policy within 31 days after termination of employment. The relevant provision of the master policy states the following:

In the event that the insurance provided by Plan A of the policy to which this rider is attached (hereinafter referred to as "this policy") should terminate for any of the following reasons:

- (a) termination of employment or membership; or
- (b) termination of eligibility for any reason, except age or termination of the group or blanket policy or plan;

the Insured/Owner, if under age 70, shall, subject to the conditions hereinafter stated be entitled to have issued to him, without evidence of insurability, a policy of insurance (hereinafter referred to as "the converted policy") by making written application therefor within 31 days after such termination of insurance and by paying the first premium applicable to the class of risk to which the Insured belongs, to the Insured's attained age, and to the form and amount of insurance provided. [Emphasis added].

Where a member of the insured group terminates employment, then the eligibility for that person ceases on the next "premium due date." See, "Application to Life Insurance Company of North America", included with Exhibit 2. Pursuant to the terms of the application, when the plaintiff terminated her employment on July 15, 1981, her coverage continued until the next premium due date, August 1, 1981.

The evidence is uncontradicted that following the plaintiff's termination of employment, she never applied for an individual policy; and on the date of her termination signed a written statement confirming that she did not wish to exercise her right to convert her group policy to an individual policy.

II. ISSUE PRESENTED.

Whether the policy issued to the plaintiff was in effect on August 19, 1981, the date of death of the plaintiff's husband, Ingi V. Gudnason.

III. PRINCIPLES OF LAW AND ARGUMENT.

The terms of the master policy between ORI, Inc. and INA provide group disability and death coverage to employees during the period of their employment with ORI, Inc. However, coverage ceases when a member of the group terminates full time employment with ORI, Inc. The application submitted by ORI, Inc. to INA specifically provides:

Coverage for any Insured who ceases to be an eligible person for any reason shall terminate on the premium due date next following the date such eligibility ceases. [Exhibit 2].

When the plaintiff terminated her employment on July 15, 1981, her group coverage continued until August 1, 1981. (See Exhibit 3H). Under the terms of the policy and pursuant to Va. Code §38.1-428.1, the plaintiff was entitled to convert the policy to an individual policy "provided application for the individual policy shall be made, and the first premium paid to the Insurer, within 31 days (thirty-one) after such termination"

Counsel for the plaintiff misconstrues Va. Code §38.1-428.1. That section confers upon an insured the conditional right to convert a group policy to an individual policy by making application with the insurer; and by paying the first premium within 31 days following the termination of the group insurance.

In this case, the plaintiff had a right to convert her policy on or before August 31, 1981. However, she did not apply for an individual policy and never tendered the first premium payment. In fact, the plaintiff consciously elected not to convert the policy when she terminated her employment on July 15, 1981. On that date, she acknowledged that:

I have been made aware of my right to convert Life and Health Insurances to individual policies and hereby decline this offer.

There is no contention or evidence that the plaintiff attempted to convert the policy after terminating her employment on July 15, 1981. Va. Code §38.1-428.1 428.1 imposes upon the plaintiff the affirmative duty to file an application to convert the policy. No such application was made. The statement signed by the insured on July 15, 1981 confirms that the plaintiff was aware of her right to convert the policy and elected not to

exercise it. It is therefore unnecessary for this Court to decide whether the plaintiff's failure to convert the policy on July 15, 1981 constituted a waiver which precluded her from exercising the conversion right at a later date.

It is respectfully submitted that Va. Code §38.1-428.3 has no applicability in this case. That section applies only where:

A person insured under the group policy dies during the period within which he would have been entitled to an individual policy issued to him in accordance with §38.1-428.1 or §38.1-428.2 and before such an individual policy shall have become effective . . . [Emphasis added].

Va. Code §38.1-428.3 applies only to those situations where an individual has filed an application to convert a group policy to individual coverage in accordance with Va. Code §38.1-428.1. The code section protects such individuals by providing that coverage will be provided even if the individual dies while the application is pending and before an individual policy has been issued by the insurer. The section has absolutely no applicability to individuals who have not applied for individual policies under the terms of Va. Code §38.1-428.1.

Under the rules of construction urged by the plaintiff, an insured would be automatically covered for 31 days following the termination of a group policy even if the insured failed to apply for conversion of the policy. This interpretation is contrary to Va. Code §38.1-428.1 and would render that section a nullity.

The uncontradicted facts establish that the plaintiff terminated her employment with ORI, Inc. on July 15, 1981; that she ceased to be an eligible member of the insured group on that date; that she never made application for an individual policy; that no premiums were paid to INA after July 31, 1981; and that she acknowledged, in writing, her intention not to convert her group policy on the date that she terminated her employment. The

plaintiff did not follow either the statutory or policy procedure for converting her policy. Since the coverage terminated no later than August 1, 1981; and the plaintiff did not file a timely application for conversion, it is manifest that the policy was not in effect when the plaintiff's husband died on August 19, 1981.


IV. CONCLUSION.

For the reasons stated defendant, Life Insurance Company of North America, respectfully moves this Honorable Court to enter an Order sustaining the Motion for Summary Judgment filed by this defendant; and further order that this case be dismissed from the docket with prejudice.

LIFE INSURANCE COMPANY OF
NORTH AMERICA

Life Insurance Co. of N. America
By Counsel


LEWIS & TRICHILLO



Benjamin J. Trichilo
Counsel for Defendant
4114 Leonard Drive, P.O. Box 22
Fairfax, Virginia 22030

CERTIFICATE

I hereby certify that a true copy of the foregoing Memorandum of Law was hand delivered to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia, 22153, Counsel for Plaintiff, on this 2nd day of July, 1982.



Benjamin J. Trichilo

FILED

JUL 10 1982

AGREEMENT AND STIPULATION

COME NOW the plaintiff, Pamela Gudnason, and the defendant, Life Insurance Company of North America, by counsel, and hereby stipulate and agree to the following facts in addition to those contained in the Agreement and Stipulation previously filed with this Court:

1. That coverage for the plaintiff, Pamela Gudnason, *AND THE INSURED INGV. GUDNASON* under the policy issued by defendant, Life Insurance Company of North America, terminated effective August 1, 1981 as the result of her termination of employment with ORI, Inc. on July 15, 1981.

SEEN AND AGREED:

PAMELA GUDNASON

Nicholas Sabalos
By Counsel

Nicholas Sabalos
Nicholas Sabalos
Counsel for Pamela Gudnason
8111 West Point Drive
Springfield, Virginia 22153

LIFE INSURANCE COMPANY OF NORTH AMERICA

Life Ins. Co. of North America
By Counsel

LEWIS & TRICHILO
4114 Leonard Drive
P.O. Box 22
Fairfax, Virginia 22030

By: *[Signature]*
Benjamin J. Trichilo
Counsel for Life Insurance Company
of North America

FILED

JUL 19 1982

JAMES E. ROOPER, JR.
Clerk of the Court
of Federal Claims, Inc.

MEMORANDUM OF LAW

TO: THE HONORABLE BARBARA M. KEENAN

I. PRELIMINARY STATEMENT.

Argument on the Motion for Summary Judgment filed by defendant, Life Insurance Company of North America, was heard by this Honorable Court on July 2, 1982. During the course of argument, certain questions were raised by the Court which had not been briefed by the parties.

At the request of counsel and with the concurrence of the Court, argument was continued to July 16, 1982 at 10:00 a.m.; and supplemental briefs were to be submitted by the parties on or before 4:00 p.m. on July 13, 1982.

II. ISSUES PRESENTED.

1. Whether the policy issued by the defendant is classified as insurance for "accident and sickness"; or as "group life insurance."

2. If the policy qualifies as "group life insurance" under the Virginia Code, whether the extended coverage rights provided in Virginia Code §38.1-428.1 begin to run from the date of the termination of eligibility; or from the date of cessation of coverage.

III. PRINCIPLES OF LAW AND ARGUMENT.

A. The policy issued to the plaintiff qualifies as insurance for "accident and sickness" and is not "group life insurance" within the meaning of the Virginia Code.

The provisions of Virginia Code §§38.1-428.1 and 428.3 apply only to policies of "group life insurance"; and have no applicability to insurance policies providing coverage for "accident and sickness." Since the policy in question is properly classified as an "accident and sickness" policy, it is respectfully submitted that the provisions of Virginia Code §§38.1-428.1 and 428.3 are inapplicable.

The various types of insurance have been classified and defined in Virginia Code §§38.1-2 et seq. Under Virginia Code §38.1-3, the following definition is given:

Life insurance means and includes every insurance upon the lives of human beings and every insurance appertaining thereto payable and fixed for variable dollar amounts, or both.

On the other hand, "accident and sickness" insurance is defined by Virginia Code §38.1-5 to include "insurance against loss resulting from sickness, or from bodily injury or death by accident or accidental means, or both."

The various definitions and classifications listed in Article 2 of Title 38.1 include other insurance "of the same general nature or character, or of a similar kind"; provided such insurance "may reasonably and properly be included in the definition and is not specifically included in the definition of some other class of insurance. [Emphasis added]." Virginia Code §38.1-24.

The rationale for distinguishing between accident policies and life insurance policies is explained in 1A Appleman, Insurance Law and Practice §392, at page 34 (1965):

The distinction is that in a life policy, the death is the contingency primarily insured against, the accident being an incidental matter, whereas in an accident policy, the accident is the thing insured against, death, perhaps, being one of the contingencies upon which benefits are payable.

The predominant purpose of the policy issued to the plaintiff is to provide coverage for loss arising from accidental injury or death; and not to provide coverage for the death of a named individual, regardless of the cause. The coverage of the policy issued to the plaintiff insures "against loss resulting directly and independently of all other causes from bodily injuries caused by accident" See Exhibit No. 1.

The statutory requirements for accident and sickness insurance are governed by Virginia Code §§38.1-347 through 362. The general provisions applicable to life insurance policies are covered in Virginia Code §§38.1-431 through 443.1. The applicable sections pertaining to group life insurance are contained in Virginia Code §§38.1-424 through 430. However, the term "group life insurance" is not separately defined or classified in Article 2 of Title 38.1.

In order for this Court to hold that Virginia Code §§38.1-428.1 and 428.3 are applicable to the policy in question, a threshold determination must first be made that the policy may properly be classified as "life insurance" within the meaning of Virginia Code §38.1-3. When confronted with a similar issue, the Maryland Court of Appeals recently held that an insurance policy providing coverage for death and other injuries arising from accidental injuries was "health insurance" and not "life insurance" within the meaning of the Maryland Code. Insurance Co. of North America v. Aufenkamp, (435 A. 2d 774 (Md. 1981)).

The insurance policy in the Aufenkamp case provided for payment of specified benefits where the insured sustained "bodily

injury resulting directly and independently of all other causes from an accident" The plaintiff was the husband of the insured who had died from injuries sustained in a fall from her second story bedroom window. The insurer denied coverage on the grounds that the insured's death resulted from suicide and therefore included within a policy exclusion.

The plaintiff was granted Summary Judgment by the Trial Court on the grounds that the insurer had admitted that the policy in question was "life insurance"; and that under the Maryland Code exclusions for suicide are unenforceable where the policy had been in effect more than two years. Since the parties had stipulated that the policy had been in effect for more than two years, the Trial Court found no material issue of fact to be in dispute.

The insurer appealed on the grounds that its admission that it had issued a "life insurance" policy to the plaintiff did not constitute a legally binding determination that the policy was subject to the statutory provisions relating to life insurance; and on the further grounds that the policy should be classified as "health insurance" under the Maryland Code, and therefore, would not be subject to the statute voiding suicide exclusion clauses in life insurance policies.

The Maryland Court of Appeals sustained the insurer's appeal on both grounds and reversed the ruling of the Trial Court. Preliminarily, the Court held that the insurer's admission that it had issued a "life insurance" policy to the plaintiff did not preclude it from arguing that the policy should not be classified as "life insurance" within the meaning of the Maryland Code. The Court then noted that the Maryland Code had defined separate categories of insurance including "life insurance" and "health insurance." While it acknowledged that one policy may cover various risks, it stated that:

What we determine is that under an insurance policy covering various risks, each risk assumed will normally constitute a kind of insurance encompassed by only one statutory definition, and governed by the regulations applicable to that category alone. 435 A. 2d at 780.

The Court held that the policy in question should be classified as "health insurance" because coverage was contingent on the happening of an accident. On the other hand, where an insurer issues a life insurance policy, it "undertakes an absolute risk of loss and the insured acquires an immediate estate which at his death is transferred in accordance with the terms of the contract." 435 A. 2d at 782. Since the policy under consideration could not be classified as "life insurance" under the Maryland Code, it was not subject to the statutory prohibition barring exclusions for death by suicide after the policy had been in force more than two years. It is significant to note that the statutory provisions discussed in the Aufenkamp holding parallel the provisions in Title 38.1 of the Virginia Code. For example, the Virginia Code classifies and defines certain types of insurance in Article 2 of Title 38.1, and includes separate definitions for "life insurance" and "accident and sickness" insurance. Under the Maryland Code however, the term "health insurance" is utilized in place of "accident and sickness" insurance. However, the definition applied in each code are nearly identical.

In addition, each code has substantially similar sections relating to life insurance and accident insurance. See, e.g., Va. Code §§38.1-347 through 362; and Va. Code §§38.1-431 through 443.1.

Finally, Virginia Code §38.1-437 contains the identical prohibition as the Maryland Code with respect to suicide clauses and life insurance policies.

It is respectfully submitted that the reasoning of the Court in Aufenkamp is persuasive and should be controlling here.

As noted in that decision, there are different policy considerations for protecting beneficiaries insured under life insurance as distinguished from accident policies. 435 A. 2d at 782-83. The purpose of life insurance is to insure against death irrespective of the cause. Accident insurance however, provides coverage for bodily injuries and death but only when arising from an accident, i.e. an unexpected and unforeseeable event. Under an accident policy, the insurer has assumed an entirely different risk because death is covered only when caused by accidental means.

Had the General Assembly intended to extend the statutory requirements for life insurance policies to accident and sickness policies, then it would have incorporated such requirements as part of the mandatory coverage for accident and sickness policies (Virginia Code §§38.1-437 through 362). See also, Simmons v. Continental Casualty Co., 410 F. 2d 881 (8th Cir. 1969) (Holding that insurance policy providing coverage for "bodily injury caused by accident" could not be classified as group life insurance policy under either Nebraska or Illinois statutory definitions).

By definition, Virginia Code §§38.1-428.1 and 428.3 extend only to policies of "group life insurance." The predominant purpose of the policy under consideration is to provide coverage for losses arising from bodily injuries caused by accident. Accordingly, the policy falls within the definition of "accident and sickness" insurance contained in Virginia Code §38.1-5; and should accordingly, be subject to the statutory requirements relating to that classification of insurance.

B. Even if the Court classifies the policy in question as "life insurance", then the conversion rights provided by Virginia Code §38.1-428.1 begin to run from the date of the insured's termination of eligibility in the covered class; and not from the date that coverage ceases.

The plaintiff ceased to be a member of the eligible class upon her termination of employment on July 15, 1981; and coverage under the group policy terminated effective August 1, 1981. Assuming, arguendo, that the policy in question is subject to the rules pertaining to group life insurance policies, it is nevertheless apparent that the right of conversion conferred by Virginia Code §38.1-428.1 runs from 31 days following the date of the insured's termination of employment; and not from the date that coverage ceases. The applicable language in Virginia Code §38.1-428.1 is as follows:

In each such policy there shall be a provision that if the insurance, or any portion of it, on a person covered under the policy, other than a child of an employee insured pursuant to §38.1-472.1, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, in the first premium paid to the insurer within thirty-one days after such termination . . . [Emphasis added].

The "Conversion Privilege" section of the policy (Exhibit No. 2), provides that the insurance terminates upon "termination of employment or membership." On that date, the insured is no longer an eligible member of the covered group although coverage continues until "the next following premium due date of the policy."

The policy language parallels that contained in Virginia Code §38.1-428.1. Under the Code section, the conversion privilege may be exercised "within thirty-one days after such termination."

In the preceding portion of the statute, the right of conversion may be exercised where a person covered under the policy "ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy."

The statute uses the word "ceases" with respect to coverage; but uses the word "termination" when referring to employment or membership in the class. Accordingly, the thirty-one day period begins to run from the date of termination of employment or membership in the eligible class; and not from the date that coverage ceases. Had the General Assembly intended otherwise, it would have used the phrase "within thirty-one days after such coverage ceases", instead of the language actually employed.

In the case at bar, the plaintiff ceased on August 1, 1981 because the plaintiff terminated her employment and membership in the eligible class on July 15, 1981. Her right to convert extended for thirty-one days following her termination of employment (i.e. to August 15, 1981). Since the plaintiff's husband died on August 19, 1981, the date of death occurred more than thirty-one days following the date of the plaintiff's termination of employment and eligibility.

Under Virginia Code §38.1-428.3, coverage under the group policy is extended where "a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with §38.1-428.1 . . . [Emphasis added]." Since the date of death of the plaintiff's decedent occurred more than thirty-one days from the date of the plaintiff's termination of employment and eligibility, she was not entitled to convert the policy under Virginia Code §38.1-428.1; and accordingly, the plaintiff is not entitled to recover benefits under Virginia Code §38.1-428.3.

III. CONCLUSION.

For the reasons stated, defendant, Life Insurance Company of North America, respectfully moves this Honorable Court to enter an Order sustaining the Motion for Summary Judgment filed by it; and to further order that this case be dismissed from the docket with prejudice.

LIFE INSURANCE COMPANY OF NORTH
AMERICA
By Counsel


LEWIS & TRICHILLO
4114 Leonard Drive
P.O. Box 22
Fairfax, Virginia 22030

By: 

Benjamin J. Trichilo
Counsel for Defendant

CERTIFICATE

I hereby certify that a true copy of the foregoing Memorandum of Law was mailed, postage prepaid, to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia, 22153, Counsel for Plaintiff, on this 13th day of July, 1982.


Benjamin J. Trichilo

FILED

JUL 23 1982

JAMES E. HOOFNAGLE
CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.


NOTICE AND MOTION

TO: PAMELA GUDNASON
Nicholas Sabalos, Esquire
8111 West Point Drive
Springfield, Virginia 22153

PLEASE TAKE NOTICE that on Friday, August 6, 1982 at 10:00 a.m. or as soon thereafter as counsel may be heard, Life Insurance Company of North America, by counsel, will move this Honorable Court for entry of the attached Order pursuant to the ruling by the Honorable Barbara M. Keenan on July 16, 1982.

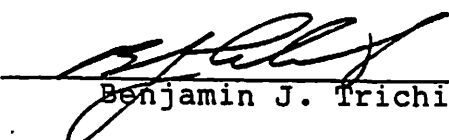
LIFE INSURANCE COMPANY OF
NORTH AMERICA
By Counsel

LEWIS & TRICHILO
4114 Leonard Drive
P. O. Box 22
Fairfax, Virginia 22030


Benjamin J. Trichilo, Esquire
Counsel for Life Insurance
Company of North America

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice and Motion was mailed, postage prepaid to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia 22153, Counsel for Pamela Gudnason, on this 23rd day of July, 1982.


Benjamin J. Trichilo

O R D E R

THIS CASE came to be heard upon Motion of the defendant, Life Insurance Company of North America, for Summary Judgment; and

IT APPEARING to the Court, after hearing argument by counsel and reviewing the Memoranda submitted on behalf of the parties, that said Motion is proper and should be granted for the reasons stated in the Court's ruling from the Bench on July 16, 1982; and

IT FURTHER APPEARING to the Court that the insurance policy in question is not a policy of "life insurance" within the meaning of Virginia Code §38.1-3; and that the policy was therefore not in effect on August 19, 1981, the date of death of the decedent, Ingi V. Gudnason; it is hereby

ORDERED AND ADJUDGED that the Motion of the defendant, Life Insurance Company of North America, for Summary Judgment be and hereby is granted for the reasons stated in the Court's ruling from the Bench on July 16, 1982; and this case be and hereby is dismissed with prejudice from the Court Docket; and

THIS ORDER IS FINAL.

ENTERED this _____ day of _____, 1982.

Judge Barbara M. Keenan

REQUESTED BY:

LEWIS & TRICHILO
4114 Leonard Drive
P.O. Box 22
Fairfax, Virginia 22030

By: _____

Benjamin J. Trichilo
Counsel for Insurance Company of
North America

SEEN AND OBJECTED TO:

Nicholas Sabalos
Counsel for Pamela Gudnason
8111 West Point Drive
Springfield, Virginia 22153

FILED

JUL 27 1982

JAMES E. HODENAGLE
CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.

NOTICE OF MOTION

TO: Benjamin J. Trichilo, Esq.
Lewis & Trichilo
4114 Leonard Drive, P.O. Box 22
Fairfax, Virginia 22030

Counsel for Defendant

PLEASE TAKE NOTICE that the Plaintiff, Pamela Gudnason, by counsel, will, on the 6th day of August, 1982, at 10:00 a.m., or as soon thereafter as counsel may be heard, move this Court for reconsideration of the granting of Defendant's Motion for Summary Judgment granted on July 16, 1982.

PAMELA GUDNASON

By

Nicholas Sabalos.
Of Counsel

Nicholas Sabalos
8111 West Point Drive
Springfield, Virginia 22153

Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing NOTICE OF MOTION via first-class mail, postage prepaid, to Benjamin J. Trichilo, Esquire, 4114 Leonard Drive, P.O. Box 22, Fairfax, Virginia 22030, counsel of record for Defendant, on this 25th day of July, 1982.

Nicholas Sabalos.

FILED

JUL 27 1982

CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.

MOTION FOR RECONSIDERATION
OF THE COURT'S GRANTING OF SUMMARY
JUDGMENT TO THE DEFENDANT

The Court, on July 16, 1982, granted Defendant's Motion for Summary Judgment. The Court is requested to reconsider the granting of Defendant's Motion on the basis:

- I. That the Defendant has admitted to each and every allegation necessary to prove Plaintiff's case as a matter of law.
- II. That the granting of Defendant's Motion was contrary to both the facts and law pertaining to the issues in this case.

BACKGROUND

The Defendant brought a Motion for Summary Judgment alleging in its pleadings:

- a. "On the date of decedent's death (August 19, 1981) there was no policy of insurance in effect insuring the life of the decedent."
- b. "The policy of group life insurance issued by this defendant to the plaintiff..... had been properly terminated on July 15, 1981 and accordingly there was no coverage in effect on the date of decedent's death."

The Plaintiff made Reply in its pleadings to the Court alleging:

- a. "The statutory law squarely applicable in this case is contained in Sections 38.1-428.1 and 38.1-428.3 of the Code of Virginia." (quoting both the statutes)

- b. "The statute is explicit in affording policyholders under group life insurance policies the absolute right to conversion of their policies within 'thirty-one days after such termination.'"
- c. "Section 38.1-428.3 of the Code of Virginia provided further that during this convertible period, in the event of death of the insured, the proceeds of the group policy are payable to the beneficiary."

Thereupon, the Defendant submitted a rebuttal to Plaintiff's reply by alleging in its pleadings:

- a. "Under the terms of the policy and pursuant to Va. Code Sec. 38.1-428.1 the Plaintiff was entitled to convert the policy to an individual policy 'provided application for the individual policy shall be made, and the first premium paid to the Insurer within 31 days (thirty one) after such termination.....'"
- b. "In this case, the Plaintiff had a right to convert her policy on or before August 31, 1981."
- c. "Va. Code 38.1-428.3 applies only to those situations where an individual has filed an application to convert a group policy to individual coverage in accordance with Va. Code Sec. 38.1-428.1. The code section protects such individuals by providing that coverage will be provided even if the individual dies while the application is pending and before an individual policy has been issued by the insurer."
- d. The Defendant further alleged that Sect. 38.1-428.3 had "absolutely no applicability to individuals who have not applied for individual policies under the terms of Va. Code Sec. 38.1-428.1."

As it turned out, Sec. 38.1-428.3 specifically provided that the payment of "the proceeds were payable during the 31 day convertibility period whether or not application for the individual policy or the payment of the first premium therefor has been made."

This recitation is made to support Plaintiff's contention; that the insurer admitted to the fact that the policy was a group life insurance policy and that it was convertible and that the proceeds were payable if the requisite statutory conditions were met.

ARGUMENT

I

The Defendant admits in its pleadings the essential elements of Plaintiff's case. "Motions in writing are pleadings." Rule 3:16 (a) Virginia Rules of Practice and Procedure. It was held that a written motion to reject appellees motion for summary judgment is a pleading. Algernon Blair, Inc. v. Housing Authority, 200 Va. 815, 108 S.E. 2d 259 (1959).

Friend, in the Laws of Evidence in Virginia (Sec. 263) states:

"Judicial Admissions - Admissions in Pleadings in final pleadings which define the issues in the case and upon which the case goes to trial - Any admission of fact is a 'judicial admission.' It conclusively establishes the fact for purposes of the instant litigation. No explanation or rebuttal is allowed, and no other proof of the fact is necessary." (citing Lackey v. Price 142 Va. 789, 128 S.E. 268)

Michie's Jurisprudence Virginia and West Virginia states: "It may be stated as a general rule that a direct and specific admission of fact in a pleading is binding and

conclusive on the party making it."

"A party cannot take successive inconsistent positions concerning the same fact or state of facts or where pleading in effect changes a fundamental fact in the case." (Sect. 69, page 242)

It has also been stated by Friend in the Laws of Evidence in Virginia, I d, that:

"when the defendant comes in and admits facts stated by plaintiff to be true and sets up matter in avoidance, he is the party who asserts the truth of the matter thus set up and the burden is upon him to establish the facts on which that matter is predicated."

"A client is usually bound by judicial admissions made by his attorney."

"As to judicial admissions, it appears that the attorney has implied actual authority to make such admissions on behalf of the client." Thus, the client will suffer the consequences of formal admissions or stipulations made by the attorney during the course of litigation."

It was held in Harris v. Diamond Construction Co., 184 Va. 711, 36 S.E. 2d 573 that:

"an attorney at law, by virtue of this employment,..... has full authority to act on behalf of his client in the conduct of litigation before the Court and by virtue of such authority he may make admissions of or stipulations as to facts, the effect of which is to dispense with the proof of such facts."

It would appear that the Defendant in this case has admitted in its own pleadings, in support of its own motion:

- a. that the policy in question was a "group life insurance policy"

- b. the Plaintiff had a right to convert her policy on or before August 31, 1981 under the policy and Sect.

38.1-428.1

- c. and by inference, that if such right to convert existed on the date of the death of the insured (August 19, 1981) the proceeds were payable under Sec. 38.1-428.3.

Subsequent to the pleadings in Reply of Plaintiff and Defendant's Rebuttal thereto, the Defendant submitted a new argument, heretofore not made, that the policy was not a "group life insurance" policy but an "accident and health" policy.

In this new argument Defendant alluded to the case of Insurance Co. of North America v. Aufenkamp, (435 A. 2d 774 MD 1981) regarding an admission in that case made by the defendant in reply to interrogatories that the policy was a "life insurance policy". Defendant attempts to sustain its argument; that the admission made in this case did not preclude argument that the policy was other than a life insurance policy.

A close reading of "Aufenkamp" reveals that the Maryland Court's reasoning was based on different facts and principles as compared to the case before this Court.

The Maryland Court held that the admission was in response to interrogatories of the plaintiff; that the interrogatories and the response language ("life insurance") were "general references" at discovery; that it was a procedure to "bind the unwary" to admissions; and that the questions of plaintiff was a "beartrap under the leaves."

The admissions made by the Defendant in this case were made under totally different circumstances in that:

- a. The admissions were voluntarily made by the Defendant.
- b. Were made in pleadings raising a matter of avoidance.
- c. Were not in response to questions propounded by Plaintiff.

- d. Were admissions to support Defendant's motion for summary judgment.
- e. Were specific in nature as to the material issue in the case.
- f. The Defendant specifically admitted that it was a "group life" insurance policy.
- g. That the Defendant admitted that it was convertible under the specific statute relied on and cited by the Plaintiff.
- h. Defendant was placed on notice by Plaintiff in its reply that it was relying on specific quoted statutes to support its case.
- i. The Aufenkamp case cited by the Defendant placed the Defendant (the same insurer) on notice that there was an issue as to the characterization of policies of this type and that admissions of the insurer was one of the issues.

The Defendant in this case is bound by its admissions in its pleadings. It cannot be heard to say that it was misled by Plaintiff. On the contrary the Plaintiff plainly alleged the very core of and substance of its case in a clear and unambiguous manner in its pleadings. The Defendant in its pleadings responded by admitting to the allegations of the Plaintiff. There were no hidden "beartraps under the leaves" or attempts at subtle subterfuge by the Plaintiff to mislead the Defendant. The Plaintiff is entitled to rely on the allegations and admissions in Defendant's pleadings, in presenting its case where they involve a critical issue that may have been in dispute.

Jones on Evidence Fifth Edition states:

"Sec. 370. Admissions in Pleadings -

Where a party has alleged matter of fact in his pleadings,

the pleadings are evidence against him as an admission of fact so alleged. Under familiar rules, the pleadings in a pending case are more than admissions. They are conclusive upon the parties filing them."

II

The Plaintiff filed a Motion for Judgment under a Certificate of Insurance, issued to Plaintiff by her employer, under a group master contract issued to her employer by the Defendant.

Plaintiff alleged in her action that the policy of insurance and Section 38.1-428.1 of the Virginia Code provided for entitlement of the insured-deceased to convert the group policy to an individual policy within thirty-one days from the date of termination of the policy. The deceased insured died by accident within thirty-one days from the date of termination of the policy. Plaintiff further alleged that the proceeds of the policy were payable, notwithstanding that the insured-deceased did not apply for a converted policy or pay the first premium thereon, under the provisions of Section 38.1-428.3.

After admitting in its pleadings that the policy was a "group life insurance policy issued by defendant" and admitting that the policy was convertible (by the Plaintiff) under Section 38.1-428.1 of the Va. Code and the policy, the Defendant then argued that the policy was not a "life insurance" policy but an "accidental health" policy and therefor not within the meaning of Sec. 38.1-428.1 of the Va. Code.

Assuming, arguendo, that the Defendant may impeach his own admissions in pleadings, the following is submitted to the Court for consideration.

The Definitions in Va. Code Secs. 38.1-3 and 38.1-5 Define Companies Not Policies

The issue at first blush seems to turn on the definitions of the types of policies contained in the Code of Virginia which

provide:

Sec. 38.1-3. Life - Life insurance means and includes every insurance upon the lives of human beings and every insurance appertaining thereto payable in fixed or variable dollar amounts, or both. The business of life insurance shall be deemed to include the granting of endowment benefits; additional benefits in the event of death; dismemberment or loss of sight by accident or accidental means; additional benefits operating to safeguard the contract from lapse. or to provide a special surrender value, special benefit or an annuity, in the event of total and permanent disability of the insured; and optional modes of settlement of proceeds. (1952, c. 317; 1976, c. 562.)

Sec. 38.1-5. Accident and sickness. - Accident and sickness insurance means and includes insurance against loss resulting from sickness, or from bodily injury or death by accident or accidental means, or both. (1952, c. 317.)

In Volume 1, Sec. 16, Appleman, Insurance Law and Practice, 1965, Professor Appleman, states:

"There is naturally some overlapping between policies of accident and policies of life insurance. Some policies, termed accident policies, provide that in the event of death from accidental injuries a stipulated benefit will be paid to a person designated by the insured. When such a provision is contained in the contract, that portion of it has been stated to be life insurance rather than accident insurance." (emphasis supplied)

Why do the Virginia statutes overlap in providing for "death by accident and accidental means" under two different titles, as "Life" and as "Accident and Sickness," and thus creating ambiguity and confusion?

The answer may be found within the pertinent statutes themselves and other related statutes and in the opinions of the Courts on the question.

The differentiation in the wording of the two Sections is significant in that 31.1-3 speaks of insurance "upon the lives of human beings" and 31.1-5 speaks to "losses resulting from injury or death." Under life insurance coverage, the benefit is payable in whatever amount is provided in the contract notwithstanding what loss may have actually occurred. Under the accident and sickness provisions the loss is determined by the provisions of the contract and is payable in varying and restrictive amounts depending on the extent of the injury.

It is submitted, that the intent of the Assembly in Virginia and in other jurisdictions having similar provisions in their statutes, intended to define the business of insurance rather than the nature of the policy itself. In defining the "business" of insurance the statutory provisions regarding the regulation of insurance companies (e.g. licensing, sales, contract provisions, restrictions, etc.) the definitions become clear as to their applicability.

A reading of Sect. 38.1-3 of the Va. Code uses the terms "The business of life insurance shall be deemed to include....."

Section 38.1-5 of the Va. Code uses the specific terms of "and includes insurance against loss resulting from death by accident or accidental means."

It becomes apparent that the Assembly meant to define the nature of the insurance company (life, casualty, health, fire, etc.) for the purpose of applying the regulatory provisions contained in other related statutes and not to define the nature of the policy as such.

A reading of Sect. 38.1-431 makes this perfectly clear:

Section 38.1-431. Scope of chapter. - Except as otherwise specifically provided the provisions of this chapter apply to insurance companies in the transaction of life insurance and the granting of annuities, and to life insurance and annuities as defined in Sections 38.1-3 and 38.1-4 of this title. (1952, c. 317.) (emphasis supplied)

This statute leaves no doubt as to the intent of the legislators in that it makes it apparent that the definitions were intended to define the types of insurance companies and not the nature of the insurance policy itself. The ambiguity or overlap in definitions then poses no dilemma or problem to the interpreter, and such ambiguities or overlaps cease to be such, and their meaning becomes apparent.

Sect. 38.1-431 of the Va. Code was designed to provide specific requirements or restrictions in life policies including "accident or accidental" death under Sections 38.1-3 and 38.1-4 of the Va. Code.

If Sections 38.1-3 and 38.1-5 are mutually exclusive they are contradictory. They make sense, if the definitions apply to the type of companies rather than type of insurance intended to be defined. Unless such interpretation is made the definitions themselves are by the very nature conflicting, overlapping and impossible of definition.

The statutes of Virginia concerning the rights of insured under a group policy all start with the premise:

"In each such policy there shall be a provision that...

....." (Sections 38.1-428.1, 428.2, 428.3, 428.4, 429.)

These are regulatory provisions requiring insurers to incorporate the requirements of the statute in its policies. They are directed toward the insurance company. Should the insurance company not provide the requisite coverage in the policy, the

statute provides such coverage to the insured policyholder.

Sections 38.1-428.1 and 428.3 provide such direction to the issuer of a policy in Virginia:

Sect. 38.1-428.1. Right to individual policy upon termination of employment or membership. - In each such policy there shall be a provision that if the insurance, or any portion of it, on a person covered under the policy, other than a child of an employee insured pursuant to Section 38.1-472.1, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that..
....."

"Section 38.1-428.3. Death after termination of group insurance and before issuance of individual policy. -

In each such policy there shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with Sections 38.1-428.1 or 38.1-428.2 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first

premium therefor has been made. (1960, c. 273.)"

The Defendant insurer in fact did comply with Sect. 38.1-428.1 of the Va. Code by providing in its policy on the life of the insured that the:

"Insured/Owner.....shall.....be entitled to have issued to him, without evidence of insurability, a policy of insurance.....by making written application therefor within 31 days after such termination of insurance... .."

It is interesting to note that Sect. 38.1-437 of the Va. Code (the defense of suicide exclusion) does not direct that such provision be included in the policy, but provides, if it is not contained in the policy, the insurer cannot defend on the basis of suicide under a life insurance policy. This highlights the difference between statutes designed to define and regulate insurance companies, and issuance of policies, as compared to providing a rule of law apart from what may or may not be included in the policy itself.

Placing this construction on the definitions provided in Sections 38.1-3 and 38.1-5, one can proceed to the intrinsic question of whether the policy in question is in fact a "life" insurance policy or an "accident and health" policy.

It was held in Cosmopolitan Life Ins. Ass'n. v. Koegel, 52 S.E. 166, 104 Va. 619, that:

"We shall find, as we proceed further to discuss the questions concerning the contracts and liability of benefit societies, that many of the principles of the law of life insurance are applied to these societies because they are in some respects simply life insurance companies doing business on a plan only partially different from that of regular life insurance organizations." (citing authorities)

"The rule sanctioned by the foregoing authorities in defining what is a life insurance policy.....is that a contract by which a company or association agrees to pay a certain sum of money on the death of a member, in consideration of the payment by the member of fixed sums at fixed periods, is a life insurance policy, by whatever name it may be called; and measured by this rule, the certificate filed with the complaint in this cause is clearly a policy of insurance....."

In the case of Logan v. Fidelity and Casualty Company, 146 Mo. 114, suit was brought on an accident policy that contained a suicide exclusion clause. The question before the Court was whether a statute which made suicide exclusion clauses unenforceable for "life insurance" applied to "accident policies."

"The real object of the section, as the clear terms of its language express, is to affect all policies of insurance on life, from whatever class, department or line of insurance, the policy may be issued, or by whatever name or designation the company may be known.....where a policy covers loss of life from external, violence and accidental means alone, why is it not insurance on life? Thus a provision incorporated in a life insurance policy, admittedly would be insurance on life; then, why less insurance on life, because not coupled with provisions covering loss of life from usual or natural causes as well? the mere addition of one or more features of elements in a contract of insurance on a life, that may serve to give the policy or contract a particular designation in the business or insurance world, will not in the least divest the policy or contract of its chief character of insurance on life, or make the contract other than life

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insurance." (emphasis supplied)

The Logan rationale, was heavily relied on by the Supreme Court of the United States in Whitfield v. Aetna Life Insurance Company, 205 U.S. 489 (1907), where the Supreme Court of the United States was asked to rule upon whether a Missouri statute concerning suicide exclusion clauses in life insurance policies would be applied to an "accident policy." The Missouri statute stated that:

"In all suits upon policies of insurance on life herein-after issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy and any stipulation in the policy to the contrary shall be void." Rev. Stat. Missouri, 1879, Section 5982, 1b, Section 5855; 1b. 1899 Section 7896.

The U. S. Supreme Court in Whitfield, 205 US at 499, endorsed the rationale of Logan and held that the above-stated statute applied to "accident policies" as well as "life Insurance policies."

In the case of Miccolis Mutual Ben. Health and Accident Association, 115 f.2d 579, 582 (7th Cir. 1940), the Indiana Court held that where an accident policy covered both death losses and disability losses, the Indiana statute providing for incontestability after two years with respect to life policies was applicable so as to bar the insurer from contesting the policy upon which the beneficiary sought to recover for death losses. The Court based this holding on the theory that the accident policy was in effect two distinct contracts, one which related to the death obligation and subject to statutory incontestability pro-

visions, and the other which related to disability obligations.

According to Keeton, (Insurance Law-Basic Text 1971 - Sect. 6.3a):

"Life insurance, as one of the three main classes, includes personal accident and health insurance and annuity contracts, in addition to life insurance in the narrower sense of contracts providing for payment of specified benefits upon death of the person whose life is insured."

With the rationale of these cases, and the views of the commentators in mind, we turn to the policy in this case. It provides:

"against loss resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force as to the Insured."

The insured in this case died as a result of a gunshot wound independently of any other cause.

"If such injuries shall result in any one of the specific losses within one year from the date of the accident, the Company will pay the benefit specified as applicable thereto

LOSS OF LIFE.....THE PRINCIPAL SUM"

The insured died immediately from the gunshot wound.

The "group life insurance policy issued to the Plaintiff by the Defendant" is a life policy of insurance contemplated by the Sect. 38.1-428.1 of the Va. Code under the definition in Sections 38.1-3 or 38.1-5. The general accepted, understood expectation of the purchaser is to purchase insurance on his life, and ancillary benefits for disability, in the event of accident. These are plain simple terms. The artful argument of the insurer that it is "not really life insurance," in reliance on definitions,

not intended to apply, attempts to defeat the benefits payable under a policy. The understanding and expectations of the parties to a contract of insurance are the key elements as to the meaning and extent of the coverage of the insured by the insurer.

"The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Keeton Insurance Law-Basic Text (West Publishing Co. 1971, page 351, Sect. 6.3a).

The insured in this case had every reasonable expectation that the policy in question insured against his accidental death during the life of the policy and during the conversion entitlement period. The insured had every reasonable right to expect that he had life insurance during this period.

Keeton (1d.) continues saying that:

"as an ideal this principle incorporates the proposition that policy language will be construed as laymen would understand it and not according to the interpretation of sophisticated underwriters."

In this case the Defendant alleged that it was a "group life insurance policy issued by this Defendant." If the insurer believed it to be the case, the insured layman must have every reason to believe and rely on it, as a life insurance policy.

CONCLUSIONS

1. The Defendant in his own pleadings, in support of its own motion, having admitted the two material issues namely, that "it was a group life insurance policy issued by Defendant to Plaintiff" and that the policy was "convertible by the Plaintiff under the policy and Sect. 38.1-428.1", is bound by such admissions.
2. That the insurance policy was in fact, and under the law, a

life insurance policy subject to the provisions of Sect. 38.1-428.1."

3. Defendant's Motion for Summary Judgment should be reconsidered and denied.

PAMELA GUDNASON

Nicholas Sabala.
Of Counsel

MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO RECONSIDER

FILED

TO: THE HONORABLE BARBARA M. KEENAN

AUG 06 1982

I. STATEMENT OF THE CASE

JAMES E. HOOFNAGLE

Clerk of the Circuit Court

207 T. 1st Fairfax County, Va.

This is an action for breach of an insurance contract brought by Pamela Gudnason against Life Insurance Company of North America (INA).

The plaintiff was insured under an accidental death and dismemberment policy issued by INA, providing death and disability benefits to the insured and to "eligible dependents." As defined in the policy, an "eligible dependent" included the insured's spouse. Plaintiff's spouse died on August 19, 1981.

Under the master policy issued by INA to the plaintiff's employer, ORI, Inc., each member of the insured group was given the right to convert the group policy to an individual policy within thirty-one days after termination of employment.

When a member of the insured group terminates employment, the coverage of that person ceases on the "premium due date."

(Application to Life Insurance Company of North America, Ex. 2).

Plaintiff terminated her employment with ORI, Inc. on July 15, 1981. Her coverage thus continued until the next premium due date, August 1, 1981.

Following her termination of employment, plaintiff never applied for an individual policy. On the date of her termination, she signed a written statement confirming that she did not wish to exercise her right to convert her group policy to an individual policy.

Under these facts as established in a Stipulation of Facts agreed to by the parties, the defendant filed a Motion for

Summary Judgment on the ground that the policy in question was not in effect when the plaintiff's husband died on August 19, 1981.

The argument of defendant's counsel centered upon the applicability of Virginia Code §38.1-428.1 and §38.1-428.3, which provide certain rights of extended coverage to persons insured under group life insurance policies .

During the course of argument on defendant's Motion for Summary Judgment on July 2, 1982, certain questions were raised by the Court which had not been brief by the parties. At the request of counsel and with the concurrence of the Court, argument was continued to July 16, 1982, at which time the Court determined that the policy in question was an "accident and sickness" policy to which the conversion privileges contained in Virginia Code §38.1-428.1 and §38.1-428.3 did not apply. Accordingly, the Court entered summary judgment in favor of the defendant.

Plaintiff has now moved this Court to reconsider its ruling.

II. ISSUES PRESENTED

1. Whether the defendant's characterization of the policy as "group life insurance" in its Notice and Motion for Summary Judgment is a binding admission of fact.
2. Whether the policy issued by the defendant is classified as insurance for "accident and sickness" or as "group life insurance."
3. If the policy qualifies as "group life insurance" under the Virginia Code, whether the extended coverage rights provided in Virginia Code §38.1-428.1 begin to run from the date of termination of eligibility or from the date of cessation of coverage.

III. PRINCIPLES OF LAW AND ARGUMENT

A. The inadvertent characterization of the policy as "group life insurance" is not a binding admission of fact.

In its Notice and Motion for Summary Judgment filed on

or about June 21, 1982, defendant stated at Paragraph 4:

The policy of group life insurance issued by the defendant to the plaintiff, Pamela Gudnason, has been properly terminated on July 15, 1981; and accordingly, there was no coverage in effect on the date of decedent's death. (Emphasis added.)

Plaintiff attempts to make of this statement a binding admission of fact, precluding the Court from determining on its own the nature of the policy in question. While it is true, as a general rule, that parties to an action are judicially concluded by allegations or admissions of fact contained in their pleadings and cannot subsequently take a position contrary or inconsistent with those pleadings, see 71 C.J.S. "Pleading", §59 et seq., this rule "must not be carried to the extent that 'substance is sacrificed to form.'" Boyd v. Maxwell, 190 S.C. 103, 2 S.E.2d 395, 399 (1939).

Notwithstanding allegations to the contrary in his pleading, a party, where the opposite party has not been misled to his prejudice, is not precluded from showing the facts to be as they really are, whether his allegations are due to an honest mistake, or ignorance, not due to gross negligence as to the facts. Also he is not bound where they are...inadvertently made, or are made by an attorney without the knowledge or consent of the party, or by the attorney's mistake. This is especially true where the real facts were within the knowledge of the adverse party.

71 C.J.S. "Pleading," §59(f). The doctrine is further qualified at 71 C.J.S., "Pleading," §59(d):

Except on principles of estoppel, a party is not bound by admissions or averments of legal conclusions in his pleadings, as, for example, by an admission as to the legal effect of a written instrument by the name given it.

Thus in St. Joseph & St. L.R.Co. v. St. Louis, I.M.&S. Railway Co., 135 Mo. 173, 36 S.W.602 (1896), the case turned on whether a certain document was a lease, as the parties assumed, or whether it was, as the court eventually determined, merely an operating contract which created no privity of estate between

the plaintiff and the defendant. The court held that the defendant was not concluded by the admission in its answer that the document was a lease, "since the admission was accompanied by profert of the instrument on which its admission was based. Such an admission cannot "in the smallest degree alter or effect the tenor of such instrument.' This could no more be done than could the jurisdiction of a court be defeated by a failure to deny the charge that no jurisdiction existed." 36 S.W. at 604.

Similarly, in Guthrie v. The First Huntington National Bank, 184 S.E.2d 628 (W.Va. 1971), the court stated that while it is true that a party cannot take successive inconsistent positions concerning the same fact or state of facts, "unless some principle of estoppel is involved which is not present here, a party is not bound by admission or averments of legal conclusions in the pleadings." Id. at 637.

The exception to the doctrine discussed above clearly applies in this case. At the same time that defendant made the statement quoted above in its Notice and Motion for Summary Judgment, it submitted to the Court the insurance policy itself. Further, it submitted an Agreement and Stipulation that stated at Paragraph 3:

That on December 1, 1980, Pamela Gudnason was issued a certificate of insurance by the Life Insurance Company of North America for accidental death and dismemberment pursuant to a policy of group insurance agreement between her employer, ORI, Inc. and the Life Insurance Company of North America. [Emphasis added.]

Finally, even plaintiff, in her latest reply to defendant's Motion for Summary Judgment, admits that whether the policy was a group life insurance policy within the meaning of §38.1-428.1 of the Virginia Code is a question of law for the Court to decide.

Plaintiff's assertion that the defendant is "changing

horses in midstream" is a mischaracterization of the position that the defendant has taken throughout. The defendant has consistently maintained that the plaintiff is entitled to no recovery under the terms of the insurance policy. This is not a case in which the defendant has taken inconsistent positions with respect to a factual issue. Rather, it is simply a case in which defendant has developed in the course of legal research alternative grounds in support of its Motion for Summary Judgment. Counsel, for defendant was originally proceeding upon the assumption that, even if the policy in question was one for life insurance, the extended coverage provisions of §38.1-428.1 and §38.1-428.3 did not apply. This position is still being maintained. (See Section III C infra.) Defendant also maintains, however, that the policy in question was one for "accident and sickness" to which §38.1-428.1 and §38.1-428.3 do not apply. (See Section II B infra.) Surely there is nothing in the law that prevents a party to an action from asserting in a timely manner all available grounds in support of his position. Plaintiff's attempt to bind the defendant to one asserted theory to the exclusion of all others, apart from being inapplicable under the very doctrine upon which the plaintiff relies, would also have the effect of shackling the Court in its attempt to apply statutory law to the facts of this case.

That the result urged by plaintiff is not intended to apply in Virginia is shown by Rule 4:11 covering requests for admission. The Rule states in Paragraph B:

Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 4:13, governing amendment of a pre-trial Order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby, and the party who obtained the admission fails to satisfy the court that the withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. [Emphasis added.]

This Rule, although not applicable in this case since defendant has made no admission covered by the Rule, nevertheless evinces an intention on the part of the General Assembly not to bind parties unnecessarily to inadvertent admissions at the expense of all reason and justice. Naturally in a situation where alternative bases for summary judgment are asserted, it is proper to allow the other party an opportunity to counter the alternative theory, or to further develop the record in the case. See *Bowell v. Marquette Cas. Co.*, 125 So.2d 168, 171 (La.App. 1960). That has been done in this case. As is evident from the extensive argument presented by the plaintiff, both before the court and in briefs, plaintiff has had ample opportunity to argue the issue.

Accordingly, because the defendant has made no "admission" falling within the doctrine cited by the plaintiff, and because the plaintiff has suffered no prejudice due to the present posture of the case, it is respectfully requested that the Court deny the plaintiff's Motion for Reconsideration on this ground.

B. The policy issued to the plaintiff qualifies as insurance for "accident and sickness" and is not "group life insurance" within the meaning of the Virginia Code.

The provision of Virginia Code §38.1-428.1 and §38.1-428.3 apply only to policies of "group life insurance" and have no applicability to insurance policies providing coverage for "accident and sickness." Since the policy in question is properly classified as an "accident and sickness" and not a "life insurance" policy, it is respectfully submitted that the provisions of Virginia Code §§38.1-428.1 and 428.3 do not apply.

The distinction between the two types of policies is explained in 1A Appleman Insurance Law and Practice, §392 at page 34 (1965):

The distinction is that in a life policy, the death is the contingency primarily insured against, the accident being an incidental matter, whereas in an accident policy, the accident is the thing insured against, death, perhaps, being one of the contingencies upon which benefits are payable.

The distinction is more fully explained in an often quoted statement by the Ohio Court of Appeals:

Life insurance generally includes the occurrence of death by accident as one of the conditions which call for payment by the company, as well as death from other causes. Accidental death policies include only injuries by accident causing death. And to that extent they each provide insurance for life. Yet, neither of these two kinds of policies is for the reason brought within the same class of policy. In other words, in a policy of life insurance, death is the contingency insured against; and if it be the result of an accident, the accident is but an incidental factor; while in an accidental death policy, the accident causing death is the thing insured against, and the death is but one of the incidents which creates liability.

Oglesby-Barnitz Bank and Trust Co. v. Clark, 112 Ohio App. 31 15 Ohio Ops 2d 415, 174 N.E.2d 98, 103 (1959). See also Insurance Co. of North America v. Aufenkamp, 435 A.2d 774, 782 (Md. 1981); Culbreth v. Prudence Life Ins. Co., 241 S.C. 46, 127 S.E.2d 132, 135-35 (1962).

The cases cited the plaintiff are inapposite to the facts of this case. Cosmopolitan Life Ins. Assn. v. Keogel, 104 Va. 619, 52 S.E. 166 (1905) did indeed state that a "contract by which on the death of a member, in consideration of payment by the member of fixed sums at fixed periods, is life insurance by whatever name it may be called;..." 52 S.E. at 169. But the issue in that case was whether a certificate of membership in a fraternal mutual benefit society, which provided that on the death of the member a specified sum will be paid to his wife out of the mortuary fund on condition of payment by the member of fixed sums at fixed periods, was a life insurance policy for the purposes of §3251 and §3252 of the Virginia Code of 1904. Those sections

governed the sufficiency of a declaration in an action on a policy.. The terms of the "certificate of membership" clearly showed it to be an insurance policy upon the life of the member, and the Court so held. That holding has no application to the facts of this case, where the policy in question clearly reveals itself to be one of "accident and sickness" coverage.

The case of Logan v. Fidelity & Cas. Co., 146 Mo. 114, 47 S.W. 948 (1898), which plaintiff musters in support of her position is admittedly more on point. The issue in that case was whether a statute making a suicide exclusion clause unenforceable for "life insurance" applied to "accident policies." The Court stated that, "Where a policy covers loss of life from external violence, and accidental means alone, why is it not insurance on life?" This broad language provides plaintiff some support; but the Court in Logan was not confronted, as this court is, with the comprehensive insurance code evidencing an intent on the part of the General Assembly to define and classify insurance policies. It was on this basis that the court in Insurance Co. of North America v. Aufenkamp, 435 A2d 774, 784 (Md. 1981) distinguished the Logan decision. It is respectfully submitted that the rationale in Aufenkamp applies also to the Virginia statutory scheme.

Finally, the decision of the United States Supreme Court in Whitfield v. Aetna Life Ins. Co., 205 U.S. 489 (1907), which endorsed the rationale of Logan, has been characterized by the Supreme Court of Missouri as the "utterance of a great court, unfamiliar, however, with many of the intricacies of our local statutes and rulings thereon." Brunswick v. Standard Accident Ins. Co., 278 Mo. 154, 213 S.W. 45, 49 (1919). It also has no application to the facts of this case.

The Aufenkamp case, on the other hand, is directly on

point. Defendant does not intend to repeat in detail the arguments addressed in its previous Memorandum of Law and heard by this Court on July 16, 1982. The gist of defendant's argument was that the General Assembly, in undertaking a comprehensive revision of the insurance code in 1952, intended to define various types of insurance policies regulated by statute.

In addition to Aufenkamp and the cases cited therein, upon which defendant primarily relies, it would also point out to the Court the recent decision in Gipson v. Life Ins. Co. of North America, 529 F.Supp. 244 (Ed. Mich. 1981). In that case the decedent made the fatal error of attempting to rob a hotel hosting a convention of the local police force. Plaintiff filed the timely proof of her husband's death, and INA denied the claim. Plaintiff filed suit, and the defendant moved for summary judgment on the ground that the claim was barred by the three year limitation on legal actions contained in the policy. Plaintiff responded that Michigan Code §500.4046 (2) applied. That section stated:

No policy of life insurance other than industrial life insurance shall be issued or delivered in this state that contains any of the following provisions:

(2) Limitations of actions. A provision limiting the time within which any action at law or in equity may be commenced to less than six years after the cause of action shall accrue.

The Court held, without elaborate discussion, that the definition section of the Michigan Insurance Code classified the insurance policy in question as one for "disability insurance." Michigan Code §500.3400 stated:

The term "policy of disability insurance" as used in this chapter includes any policy or contract of insurance against loss resulting from sickness or from bodily injury or death by accident, or both....

The policy in question covered the insured against loss "from bodily injuries caused by accident" and "from loss of life, limb, or sight."

The Court accordingly held that the three year limitation on legal action contained in the policy did not contravene Michigan Code §500.4046 (2).

It is respectfully submitted that the result reached in the Aufenkamp and Gipson cases apply in the case at bar. The intent of the General Assembly to classify and define various types of insurance policies should be given effect by this court.

"Life insurance" is defined by Virginia Code §38.1-3 as follows:

Life insurance means and includes every insurance upon the lives of human beings and every insurance apertaining thereto payable and fixed for variable dollar amounts, or both.

"Accident and sickness insurance" is defined by Virginia Code §38.1-5:

Accident and sickness insurance means and includes insurance against loss resulting from sickness, or from bodily injury or death by accident or accidental means, or both.

Virginia Code #8.1-24 states:

The definition of any kind or class of insurance enumerated in this article shall include insurance against other loss, damage or liability of the same general nature or character, or of a similar kind, if such insurance may reasonably and properly be included in the definition that is not specifically included in the definition of some other class of insurance.

The plaintiff argues that the classification scheme above is actually intended by the General Assembly to define the business of insurance, rather than the nature of the policy itself. The short answer to this is found in Virginia Code §38.1-2 entitled "Classification of insurance".

Insurance is classified and defined as set out in the subsequent sections of this article.

Had the General Assembly intended to define the business of insurance, surely it would have evidenced that intention in a less ambiguous manner than contained in the provision quoted above. In fact, it is clear that the General Assembly, having

undertaken a comprehensive revision of the insurance code, intended to set forth at the beginning of that Code definitions of the various types of insurance to which the varying provisions of the insurance code that followed would apply. It intended, accordingly, to have the provisions relating to "group life insurance" apply only to life insurance policies as defined in Virginia Code §38.1-3 and not to accident and sickness policies as defined in §38.1-5.

The insurance policy in question here clearly is of the "accident and sickness" type. It provided insurance "against loss resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force...." (Certificate of Insurance, page 1).

Under the "Description of Coverage," the policy specified that benefits shall be paid with respect to: (1) loss of life; (2) loss of two or more members; (3) loss of one member; and (4) loss of thumb and index finger of the same hand.

Under "Exclusions" the policy specified that it would not cover, among other things, "illness, disease, pregnancy, childbirth, miscarriage, bodily infirmity, or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound."

It is clear that a policy containing the provisions outlined above is one for "accident and sickness" under §38.1-5 and not one for "life insurance" under §38.1-3. Accordingly, the provisions relating to group life insurance policies contained in the Virginia Code are inapplicable, and the Court's entry of summary judgment in this case was proper.

C. Even if the Court classifies the policy in question as "life insurance", then the conversion rights provided by Virginia Code §38.1-428.1 begin to run from the date of the

insured's termination of eligibility in the covered class;
and not from the date that coverage ceases.

The plaintiff ceased to be a member of the eligible class upon her termination of employment on July 15, 1981; and coverage under the group policy terminated effective August 1, 1981. Assuming, arguendo, that the policy in question is subject to the rules pertaining to group life insurance policies, it is nevertheless apparent that the right of conversion conferred by Virginia Code §38.1-428.1 runs from 31 days following the date of the insured's termination of employment; and not from the date that coverage ceases. The applicable language in Virginia Code §38.1-428.1 is as follows:

In each such policy there shall be a provision that if the insurance, or any portion of it, on a person covered under the policy, other than a child of an employee insured pursuant to §38.1-472.1, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, in the first premium paid to the insurer within thirty-one days after such termination . . . [Emphasis added]. -

The "Conversion Privilege" section of the policy (Exhibit No. 2), provides that the insurance terminates upon "termination of employment or membership." On that date, the insured is no longer an eligible member of the covered group although coverage continues until "the next following premium due date of the policy."

The policy language parallels that contained in Virginia Code §38.1-428.1. Under the Code section, the conversion privilege may be exercised "within thirty-one days after such termination." In the preceding portion of the statute, the right of conversion may be exercised where a person covered under the policy "ceases because of termination of employment or of membership in the class

or classes eligible for coverage under the policy."

The statute uses the word "ceases" with respect to coverage; but uses the word "termination" when referring to employment or membership in the class. Accordingly, the thirty-one day period begins to run from the date of termination of employment or membership in the eligible class; and not from the date that coverage ceases. Had the General Assembly intended otherwise, it would have used the phrase "within thirty-one days after such coverage ceases", instead of the language actually employed.

In the case at bar, the plaintiff ceased on August 1, 1981 because the plaintiff terminated her employment and membership in the eligible class on July 15, 1981. Her right to convert extended for thirty-one days following her termination of employment (i.e. to August 15, 1981). Since the plaintiff's husband died on August 19, 1981, the date of death occurred more than thirty-one days following the date of the plaintiff's termination of employment and eligibility.

Under Virginia Code §38.1-428.3, coverage under the group policy is extended where "a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with §38.1-428.1 . . . [Emphasis added]." Since the date of death of the plaintiff's decedent occurred more than thirty-one days from the date of the plaintiff's termination of employment and eligibility, she was not entitled to convert the policy under Virginia Code §38.1-428.1; and accordingly, the plaintiff is not entitled to recover benefits under Virginia Code §38.1-428.3.


IV. CONCLUSION

For the reasons stated, defendant, Life Insurance Company

of North America, respectfully moves this Honorable Court
to deny plaintiff's Motion for Reconsideration.

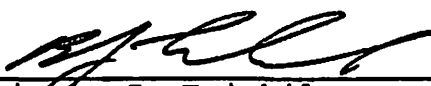
LIFE INSURANCE COMPANY OF
NORTH AMERICA
By Counsel

LEWIS & TRICHILO
4114 Leonard Drive
P. O. Box 22
Fairfax, Virginia 22030

By: 
Benjamin J. Trichilo
Counsel for Defendant

CERTIFICATE

I hereby certify that a true copy of the foregoing
Memorandum of Law was mailed, postage prepaid, to Nicholas
Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia
22153, counsel for plaintiff, on this 4th day of August, 1982.


Benjamin J. Trichilo

FILED

AUG -9 1982

CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.


NOTICE AND MOTION

TO: PAMELA GUDNASON
c/o Nicholas Sabalos, Esquire
8111 West Point Drive
Springfield, Virginia 22153

PLEASE TAKE NOTICE that on Friday, August 13, 1982, at 10:00 a.m. or as soon thereafter as counsel may be heard, Life Insurance Company of North America, by counsel, will move this Honorable Court for entry of the attached Order pursuant to its rulings on July 16, 1982 and August 6, 1982.

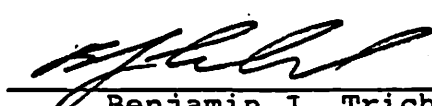
LIFE INSURANCE COMPANY OF
NORTH AMERICA

LEWIS & TRICHILO
4114 Leonard Drive
P. O. Box 22
Fairfax, Virginia 22030


Benjamin J. Trichilo, Esquire
Counsel for Life Insurance
Company of North America

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice and Motion was mailed, postage prepaid, to Nicholas Sabalos, Esquire, 8111 West Point Drive, Springfield, Virginia 22153, Counsel for Pamela Gudnason, on this 9th day of August, 1982.


Benjamin J. Trichilo

O R D E R

THIS CASE came to be heard on July 16, 1982 upon the Motion of the defendant, Life Insurance Company of North America, for Summary Judgment; and

IT APPEARING TO THE COURT after hearing argument by counsel and reviewing the Memoranda submitted on behalf of the parties, that said Motion is proper and should be granted for the reasons stated in the Court's ruling from the Bench on July 16, 1982; and

IT FURTHER APPEARING to the Court that the insurance policy in question is not a policy of "life insurance" within the meaning of Virginia Code §38.1-3; and accordingly, Virginia Code §§38.1-428.1 and 428.3 do not apply; and that the policy was therefore not in effect on August 19, 1981, the date of death of the decedent, Ingi V. Gudnason; and

UPON FURTHER RECONSIDERATION of this matter on August 6, 1982, pursuant to the Motion for Reconsideration filed by counsel for the plaintiff, it is the opinion of the Court that the plaintiff's Motion for Reconsideration should be denied; and the Motion for Summary Judgment should be granted for the reasons stated in the rulings by the Court on July 16, 1982 and August 6, 1982; it is hereby

ORDERED that the Motion for Summary Judgment of the defendant, Life Insurance Company of North America, be and hereby is granted for the reasons stated by the Court

in its rulings from the Bench on July 16, 1982 and August 6, 1982; and it is further

ORDERED that this case be and hereby is dismissed with prejudice from the Court Docket; and

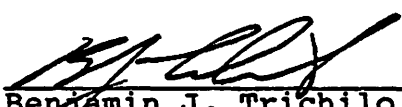
THIS ORDER IS FINAL.

ENTERED this 23 day of August, 1982.



Barbara M. Keenan, Judge

REQUESTED BY:

LEWIS & TRICHILO
4114 Leonard Drive
P. O. Box 22
Fairfax, Virginia


Benjamin J. Trichilo, Esquire
Counsel for Life Insurance
Company of North America

SEEN AND OBJECTED TO:


Nicholas Sabalos, Esquire
8111 West Point Drive
Springfield, Virginia 22153
Counsel for Pamela Gudnason

FILED

AUG 30 1982

NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

JAMES E. HOOFNAGLE
CLERK OF THE CIRCUIT COURT
OF FAIRFAX COUNTY, VA.

TO THE CLERK OF THE CIRCUIT COURT OF FAIRFAX COUNTY:

Counsel for Pamela Gudnason, the Plaintiff in the above styled case in the Circuit Court of Fairfax County, Virginia, hereby gives Notice of Appeal from the Order entered in this case on the 23rd day of August, 1982, granting Defendant's Motion for Summary Judgment, and sets forth the following Assignments of Error:

1. The court erred in holding that the admissions contained in the Defendant's Pleadings, to wit: The Policy issued was a "group life insurance policy issued by the insurer to the beneficiary, and that the beneficiary was entitled to convert the policy under Section 38.1-428.1" of the Code of Virginia, were not binding on Defendant.
2. The court erred, in granting Defendant's Motion for Summary Judgment, based on its ruling that the insurance policy in question in this case was not a life insurance policy under Section 38.1-3 of the Code of Virginia, and therefor the provisions of Sections 38.1-428.1 and 38.1-428.3 of the Virginia Code, were not applicable to make such policy payable on the death of the insured.

Counsel for Plaintiff will file a written statement on this appeal.

Nicholas Sabalos.

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing PLAINTIFF'S NOTICE OF APPEAL AND ASSIGNMENT OF ERROR via first-class mail, postage prepaid, to Benjamin J. Trichilo, Esquire, LEWIS & TRICHILO, 4114 Leonard Drive, P. O. Box 22, Fairfax, Virginia 22030, counsel of record for defendant, on this the 30th day of August, 1982.



NICHOLAS SABALOS