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IN THE SUPREME COURT OF VIRGINIA

At Richmond

UNITED STATES LIFE
INSURANCE COMPANY,

Appellant

v.

Record No. 8260

STARR S. MASON,

Appellee

APPENDIX

AYRES AND HARTNETT
Court Green
Accomac, Virginia 23301

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday, the 4th Day of June, 1973.

United States Life Insurance Company, Plaintiff in error,
against Record No. 8260
Starr S. Mason, Defendant in error.

From the Circuit Court of Accomack County

Upon the petition of United States Life Insurance Company, a New York corporation, a writ of error and supersedeas is awarded it to a judgment rendered by the Circuit Court of Accomack County on the 4th day of December, 1972, in a certain motion for judgment then therein depending, wherein Starr S. Mason was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said court below in the penalty of \$6,000, with condition as the law directs.

A Copy,

Teste:

H. G. Turner

Clerk

MOTION FOR JUDGMENT

Starr S. Mason moves the Circuit Court of Accomack County, Virginia, for a judgment in her favor against The United States Life Insurance Company, a New York corporation, for Five Thousand Dollars (\$5,000.00) with interest from June 25, 1970 for the following:

1. That The United States Life Insurance Company, a New York corporation, issued to Glick & Son, Inc. a Group Policy No. G-14, 213-L and G-14, 213-D effective March 1, 1969, which policy was in effect on June 25, 1970; and

2. That as a part of said policy it issued Certificate No. Four (4) to Vernon H. Mason, which certificate and policy insured the life of Vernon H. Mason in the amount of Five Thousand Dollars (\$5,000.00) and in addition insured the said Vernon H. Mason against accidental death and dismemberment in the amount of Five Thousand Dollars (\$5,000.00) and which certificate was in force on June 25, 1970 and applicable to Vernon H. Mason; and

3. That the Beneficiary in said policy and certificate, designated by Vernon H. Mason, and filed at the home office of The United States Life Insurance Company, a New York corporation, was his wife, Starr S. Mason; and

4. That Vernon H. Mason was killed as a result of an automobile accident which happened on June 25, 1970; and

5. That due proof of the accidental death of Vernon H. Mason was furnished to The United States Life Insurance Company, a New York corporation, and payment was made to Starr S. Mason

of the Five Thousand Dollars (\$5,000.00) life insurance but no payment was made of the additional Five Thousand Dollars (\$5,000.00) due for accidental death; and

6. That The United States Life Insurance Company, a New York corporation, has refused to make the payment of Five Thousand Dollars (\$5,000.00) due Starr S. Mason for the accidental death of her husband.

WHEREFORE, judgment will be asked by Starr S. Mason against The United States Life Insurance Company, a New York corporation, for the said sum of Five Thousand Dollars (\$5,000.00) with interest from June 25, 1970.

STARR S. MASON

By: E. Almer Ames, Jr.
Of Ames & Ames, Her Attorneys

Ames & Ames, p.q.
Ames Bldg.
Onancock, Virginia 23417

Filed in the Clerk's Office the 12th day of May, 1972.

ANSWER AND GROUNDS OF DEFENSE

Now comes the defendant, The United States Life Insurance Company, by its attorneys, Ayres and Hartnett, and for answer and grounds of defense to the motion for judgment herein filed says:

1. That it admits the matters alleged in paragraph numbered 1 of the plaintiff's motion for judgment.

2. That it admits the matters alleged in paragraph numbered 2 of the plaintiff's motion for judgment.

3. That it admits the matters alleged in paragraph numbered 3 of the plaintiff's motion for judgment.

4. That it admits that the decedent, Vernon H. Mason, was killed as the result of an accident which occurred on the 25th day of June, 1970, as alleged in paragraph numbered 4 of the plaintiff's motion for judgment, but here states that the circumstances of such accidental death exclude any and all recovery by virtue of such accidental death under the aforesaid policy of insurance.

5. That it admits the matters alleged in paragraph numbered 5 of the plaintiff's motion for judgment, but here states that no payment in respect to accidental death is due under the aforesaid policy of insurance by virtue of certain exclusions contained therein.

6. That it admits the matters alleged in paragraph numbered 6 of the plaintiff's motion for judgment, and here states that such refusal is in accordance with the exclusion contained in the aforesaid policy.

7. That it denies that the plaintiff is entitled to recover any sum of money from it.

WHEREFORE, the defendant demands that the motion for judgment herein filed be dismissed at the plaintiff's costs.

THE UNITED STATES LIFE INSURANCE
COMPANY, a New York Corporation

By Counsel

AYRES AND HARTNETT

By _____

Court Green
Accomac, Virginia 23301

CERTIFICATE

This is to certify that on the 31st day of May, 1972, I mailed a true copy of the foregoing Answer and Grounds of Defense to Ames & Ames, Onancock, Virginia 23417, counsel of record for the plaintiff.

Of Counsel

MOTION FOR AMPLIFICATION OF GROUNDS OF DEFENSE

Now comes the Plaintiff, Starr S. Mason, by her Attorneys, Ames & Ames, and moves the Court to require Defendant to amplify its grounds of defense heretofore filed herein in the following respects:

1. That it be required to state the circumstances of accidental death alleged to exclude any and all recovery by virtue of the accidental death of Vernon H. Mason under its policy of insurance referred to in Paragraph 4 of its answer and grounds of defense.

2. That it be required to state the exclusions in the policy of insurance referred to in Paragraph 5 of its answer and grounds of defense relied upon to relieve it from payment under said policy for the accidental death of Vernon H. Mason.

Starr S. Mason

By Counsel

v.

Ames & Ames

By: E. Almer Ames, Jr.
Onancock, Va. 23417

CERTIFICATE

This is to certify that on the 26 day of September, 1972, I mailed a true copy of the foregoing motion to Ayres & Hartnett, Accomac, Virginia 23301, Counsel of Record for the Defendant.

E. Almer Ames, Jr.
Of Counsel.

INTERROGATORIES

Now comes the Plaintiff, Starr S. Mason, and pursuant to the provisions of Rule 4:8 of the Rules of the Supreme Court of Virginia, propounds the following Interrogatories to the Defendant to be answered under oath within twenty-one (21) days from the date of service hereof.

1. What circumstances of the accidental death of Vernon H. Mason exclude any and all recovery under the policy of insurance referred to in Paragraphs 1 and 2 of the Motion for Judgment in this proceeding?

2. What are the names and addresses of all persons who will be relied upon to testify to any such circumstances?

3. What written evidence, if any, does Defendant or its counsel have in its possession to prove any such circumstances?

4. If it has any such written evidence, state:

- a. Where and from whom was it obtained.
- b. The contents of same.
- c. Furnish a copy of same or produce same for

copying.

5. State the name and addresses of each and every witness from whom the Defendant, and/or anyone acting on Defendant's behalf, has received information of or who may have any knowledge whatsoever of the circumstances and occurrences relating to and/or bearing upon Defendant's claim of circumstances relieving them from payment of Plaintiff's claim.

6. State the names and addresses of each and every witness whom the Defendant intends to call as a witness to testify and/or to give evidence in this case.

Starr S. Mason

By Counsel

Ames & Ames

By: E. Almer Ames, Jr.
Onancock, Va. 23417

CERTIFICATE

This is to certify that on the 26 day of September, 1972, I mailed a true copy of the foregoing Interrogatories to Ayres & Hartnett, Accomac, Virginia 23301, counsel of Record for the Defendant.

E. Almer Ames, Jr.
Of Counsel.

BILL OF PARTICULARS

Now comes the defendant, The United States Life Insurance Company, a New York corporation, by its attorney, Ayres and Hartnett, and for answer to the Motion for Amplification of Grounds of Defense and Bill of Particulars, answers and says:

1. That the circumstance relied on by the defendant to exclude recovery under the policy of insurance under which Vernon H. Mason was covered is that of intoxication at the time of the accident.

2. That the exclusion relied upon to relieve the defendant from payment under said policy is as follows and is found on page 4(b) of said policy:

"No payment shall be made under this Policy for any loss resulting from or caused directly or indirectly, wholly or partially by:

- (e) the employee's being intoxicated or under the influence of any narcotics unless administered on the advice of a physician."

THE UNITED STATES LIFE INSURANCE
COMPANY, a New York corporation

BY COUNSEL

Ayres and Hartnett

By _____

Court Green
Accomac, Virginia 23301

Of Counsel

CERTIFICATE

This is to certify that on the 29th day of September, 1972,
I mailed a true copy of the foregoing Bill of Particulars to

E. Almer Ames, Jr., Esquire, Ames and Ames, Onancock, Virginia 23417, Counsel of Record for the Plaintiff.

Of Counsel

ANSWER TO INTERROGATORIES

The answer of The United States Life Insurance Company, a New York corporation, by its attorneys, Ayres and Hartnett, to the interrogatories formerly propounded herein, and for such answer says:

1. The circumstance that Vernon H. Mason was intoxicated at the time of the accident.
2. Dr. Ramon A. Morano, State Toxicologist, and any other persons which we may discover having such knowledge prior to the time of trial of this matter.
3. Laboratory report.
4. (a) Office of the Chief Medical Examiner, Tidewater Division; obtained from Dr. Ramon A. Morano, State Toxicologist.
(b) Show blood alcohol content of 0.23% for Vernon H. Mason.
(c) Copy attached hereto.
5. Same as 2 above.
6. Same as 2 above.

THE UNITED STATES LIFE INSURANCE
COMPANY, a New York corporation by
its attorney, Daniel Hartnett

Daniel Hartnett

Subscribed and sworn to before me in said County of
Accomack and State of Virginia this ____ day of _____,
1972.

My commission expires on the ____ day of _____, 19__.

Given under my hand this ____ day of _____, 19__.

Notary Public

AYRES AND HARTNETT

By _____

Court Green
Accomac, Virginia 23301

COUNSEL

CERTIFICATE

This is to certify that on the ____ day of _____,
19__, I mailed a true copy of the foregoing Answer to Interroga-
tories to E. Almer Ames, Jr., Esquire, Ames & Ames, Onancock,
Virginia 23417, Counsel of record for the plaintiff.

Of Counsel

LABORATORY REPORT

June 29, 1970
Date of Report

1278

NAME MASON, Vernon Medical Examiner

Material submitted: Blood (10cc) for alcohol

SUBMITTED BY: Dr. E. M. Henderson DATE RECEIVED

6/29/70

RESULTS:

Blood: 0.23% alcohol.

Ramon A. Morano, M.Sc.
State Toxicologist

ORDER ON PRE-TRIAL CONFERENCE

This day came the Plaintiff by Ames & Ames, her counsel, and the Defendant by Henry P. Custis, Jr. of Ayres & Hartnett, its Attorneys.

1. The Court finds that all allegations of fact made by the Plaintiff in the Motion for Judgment are admitted by the Defendant.

2. The Court finds that the Defendant claims it is not liable to the Plaintiff because the policy sued on in this proceeding provides

"no payment shall be made under this Policy for any loss, resulting from or caused directly or indirectly, wholly or partially, by:

(e) The employees being intoxicated or under the influence of any narcotics unless administered on the advice of a physician."

and that the insured violated this provisions of the policy thus relieving Defendant from any liability in this suit.

3. The Court finds that the Defendant to prove this violation of the policy provision will rely upon the evidence of Dr. Ramon A. Morano, State Toxicologist, Office of the Chief Medical Examiner of Virginia, Tidewater Division, who will be asked to testify to the information contained in the

MOTION FOR SUMMARY JUDGMENT

Comes now Ames & Ames, Attorneys for the Plaintiff, and moves the Court to enter a summary judgment in this proceeding for the amount sued for, as it appears from the pleadings, and interrogatories and the answers thereto filed herein, the order made at the pre-trial conference and the admissions of the Defendant that the Plaintiff is entitled to judgment for five thousand dollars (\$5,000.00), with interest from June 25, 1970 until paid.

CERTIFICATE

This is to certify that on the 13 day of October, 1972, I mailed a true copy of the foregoing motion to Henry P. Custis, Jr., Esquire, Ayres & Hartnett, Accomac, Virginia 23301, Counsel of record for the Defendant.

E. Almer Ames, Jr.
Of Counsel

JUDGMENT

This day came the parties, Starr S. Mason, by E. Almer Ames, Jr. of Ames & Ames, her counsel, and The United States Life Insurance Company, a New York corporation, by _____ of Ayres & Hartnett, its counsel.

Then this cause came on this day to be heard upon the Plaintiff's motion for judgment, process returned duly executed, the answer and grounds of defense of the defendant, motion for amplification of grounds of defense, bill of particulars,

interrogatories propounded by plaintiff, the answer to the interrogatories, the order and admissions on the pre-trial conference and the motion for summary judgment filed by plaintiff.

On consideration whereof the Court finds that the evidence of Dr. Ramon A. Morano, State Toxicologist, Office of the Chief Medical Examiner of Virginia, Tidewater Division, as to information contained in the report made to the Office of the Chief Medical Examiner of any discernible physical or mental condition of Vernon H. Mason which may have contributed to his death in the traffic accident and also as to his identity, is inadmissible in this proceeding and such information is to be used solely in research of the causes of traffic accident, in accordance with the provisions of Section 19.1-42 of the 1950 Code of Virginia, as amended.

To this ruling the defendant by counsel excepted.

The Court further finds that the plaintiff is entitled to judgment against the defendant for Five Thousand Dollars (\$5,000.00) with interest on same from June 25, 1970 and the costs of this proceeding, and judgment is entered accordingly. Said judgment shall be docketed in the Clerk's Office of this Court and execution shall issue forthwith.

To said ruling and the entry of said judgment defendant by counsel excepted.

We ask for this.

Of Ames & Ames, Attorneys for plaintiff

SEEN.

Of Ayres & Hartnett, Attorneys for defendant

Enter this Order December _____, 1972.

Judge of the Circuit Court of Accomack
County, Virginia

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To J. Fulton Ayres, Clerk of the Circuit Court for the
County of Accomack.

Counsel for The United States Life Insurance Company, de-
fendant in the above styled cause in the Circuit Court for the
County of Accomack, hereby files notice of appeal from the order
entered herein on the 4th day of December, 1972, said order
having been entered in the Circuit Court for the County of
Accomack, Virginia.

The said The United States Life Insurance Company,
defendant in the above styled caused, hereby files and sets
forth its assignment of error, which is as follows, to wit:

1. That the Court erred in ruling that the testimony of
Dr. Ramon A. Morano, State Toxicologist, Office of the Chief
Medical Examiner of Virginia, Tidewater Division, as to the
information contained in the report made to the Office of the
Chief Medical examiner pursuant to Va. Code Ann. § 19.1-42

(Cum Supp. 1972) was inadmissible and thereafter further erred in entering summary judgment for the plaintiff.

No transcript or statement of facts, or testimony or other incidents of this case is to be hereafter filed.

THE UNITED STATES LIFE INSURANCE
COMPANY, a New York corporation

By Counsel

AYRES AND HARTNETT

By _____

Court Green
Accomac, Virginia 23301

COUNSEL

CERTIFICATE

This is to certify that on the ____ day of _____, 1972, I mailed a true copy of the foregoing Notice of Appeal and Assignment of Error to Ames & Ames, Onancock, Virginia 23417, counsel of record for the plaintiff.

Of Counsel