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Record No. 5277

FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN SCOTT CARTER, ET AL., ETC.

v.

WILLIS SCOTT CARTER, INDIVIDUALLY AND AS ADMINISTRATOR, ETC.

FROM THE CIRCUIT COURT OF NELSON COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5277

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 23rd day of November, 1960.

JOHN SCOTT CARTER, ET AL., ETC., Appellants,

against

WILLIS SCOTT CARTER, INDIVIDUALLY AND AS ADMINISTRATOR, ETC., Appellee.

From the Circuit Court of Nelson County.

Upon the petition of John Scott Carter and Francis C. Carter, infants, by Robert L. Marshall, their guardian *ad litem,* an appeal is awarded them from a decree entered by the Circuit Court of Nelson County on the 8th day of July, 1960, in a certain chancery cause then therein depending wherein Indemnity Insurance Company of North America was plaintiff and Willis Scott Carter, the petitioners and others were defendants; no bond being required.

RECORD

* * * * *

page 12 }

* * * * *

ANSWER OF WILLIS SCOTT CARTER.

The answer of Willis Scott Carter to a proceeding of interpleader instituted against her and others in the Circuit Court of Nelson County by Indemnity Insurance Company:

For answer to the said bill of complaint the respondent, Willis Scott Carter, says:

1. This respondent is the widow of John Shadrach Carter (hereinafter referred to as the decedent) to whom she was married in the year 1942 and with whom she has lived until his death on October 30, 1959. Two sons were born of this marriage, John Scott Carter in the year 1943 and Francis Coleman Carter in the year 1953, both of whom are now living, residing with this respondent on their home place known as Drawbars Farm in Nelson County, near Piney River. Except for a period of residence in a Company house near the Cyanamid plant respondent and her late husband lived on the said Drawbars Farm where said husband had lived all his prior life. Said farm had belonged to J. F. Carter, father of John Shadrach Carter who had died intestate in the year 1912 survived by his widow, Aurelia I. Carter, and six daughters and a son, John.

page 13 } 2. In the year 1943 this respondent and her said husband were then living in the dwelling house on the Drawbars Farm and arranged for the purchase of the other interests in said farm, which was accomplished by deed of conveyance dated January 14, 1944, recorded in Nelson County Clerk's Office in Deed Book 72, page 425, whereby five of the sisters, together with their mother, Aurelia I. Carter conveyed all of their right, title and interest in the said farm to this respondent and her husband jointly. This purchase, made for a cash consideration paid to each of the parties, was jointly financed by this respondent and her husband, respondent using for her contribution sums derived from her own family or earned by her activity in teaching school. The interest of the sixth sister, Frances Carter, was acquired, likewise for a cash consideration, by deed dated

December 30, 1957, recorded in said Clerk's Office in Deed Book 91, page 490.

3. About the year 1957 respondent and her husband made plans for the reconstruction and improvement of the dwelling on the said Drawbars Farm, a venture entailing the expenditure of larger sums than were originally anticipated and requiring the utilization of all available resources and a final borrowing of $15,000 to meet the costs of the improvement program. This sum was borrowed from The First National Bank of Nelson County and was evidenced by the joint obligation of this respondent and her husband, one-half of which respondent believes she owes and is due to pay. The present balance of $ is payable in monthly installments, to include accrued interest with a principal curtail of the page 14 } balance.

4. The decedent, John Shadrach Carter, was always mindful of his family obligations and was a devoted and loyal husband. In the year 1940, prior to his marriage with this respondent he purchased a life insurance policy from the Atlantic Life Insurance Company for the amount of $1,000, and immediately upon his marriage to the respondent in the year 1942 he named this respondent as beneficiary therein. Following the birth of his son, John, in 1943 the said decedent took out an insurance policy of $5,000 on his own life, designed to provide funds for the education of his said son and for a like purpose he purchased an endowment policy on the life of his said son. Following the birth of his second son in the year 1953 decedent named him as joint beneficiary in the said policy of $5,000 upon the life of the decedent and likewise purchased an endowment policy on the life of the second son, designed likewise to provide him with funds for a college education when he reached the proper age for acquiring it. In the year 1958 when the expenses of the residence reconstruction program were found to be unexpectedly large, the decedent's financial resources were strained to a point where he found that some curtailment of his expenditures was necessary. He thereupon decided to cancel the endowment policy taken out for his second son, Francis, then five years of age, concluding that there remained sufficient time before the son reached college age in which to prepare for the expense of his college education. Accordingly this policy was cancelled and the cash surrender value of the same, then amounting to $793.66 was recovered from the insurance company and used to defray in part the cost of the page 15 } building program. However the endowment policy on the life of the older son, then 15 years of age,

was retained in order to provide educational funds seen to be needed within the nearer future.

5. For some years following the marriage of John Shadrach Carter to the respondent, his mother, Aurelia I. Carter, made her home with her son who furnished her support, until the year 1950 when the said Aurelia I. Carter ceased to make her permanent home there and began living with each of her five daughters in turn, returning to her son's home for a periodical stay about equal in length to her stay with each daughter. During the intervening years when Aurelia I. Carter stayed with each of her children in succession her relations with her children, especially with her son, were cordial and pleasant, her son making regular monthly financial contribution to her support and having her in turn as a guest in his home. Your respondent believes that his filial regard for his mother prompted him to make what he deemed to be an appropriate recognition of his affection for her and of her limited needs, by designating her as beneficiary of his insurance coverage to the extent of $2,000.00, while recognizing and discharging his higher duty, as he saw it, of providing a fund for the education of his two infant sons.

6. At the time of his death on October 30, 1959, decedent was in the employ of American Cyanamid Company, operating the Piney River plant in which decedent was the manager and the responsible head. Decedent had been working for American Cyanamid Company for a long period of time
page 16 } commencing about the year 1938. In the year 1949 the American Cyanamid Company inaugurated a system of employee insurance. It procured from the Prudential Insurance Company of America a policy of Group Life Insurance to cover also personal hospital expense insurance, medical expense insurance and surgical expense insurance under group policy No. G-9300, insuring certain employees of the Company. On that date there was issued to John S. Carter Certificate No. 3-93 effective on February 1, 1949, showing as the beneficiary for death benefits Willis S. Carter, wife of the insured, and providing the sum of $2,000 of non-contributory life insurance and $12,000 of contributory life insurance (Exhibit 1). Along with a certificate showing the amount of life insurance there was issued to the decedent an additional certificate showing sick benefits in a stated amount (Exhibit 2) and a certificate bearing the same date setting forth certain hospital benefits (Exhibit 3). Likewise there was issued to him an identification card hearing his name and showing that the above insurance had been issued to him (Exhibit 4).

7. On January 1, 1950, there was issued to him an ad-

ditional certificate for increased medical and surgical benefits (Exhibit 5) and on November 1, 1951, an additional rider was issued to him showing the life insurance increased to the sum of $16,000 (Exhibit 6.). On September 1, 1953, a similar certificate was issued to him showing life insurance again increased to the amount of $22,000, (Exhibit 7) and on January 1, 1957, a similar certificate was issued to him showing the amount of life insurance to be increased to $26,000 (Exhibit 8).

page 17 } 8. Under the terms of the originial certificate issued on February 1, 1949, the employee was given the right to change the beneficiary. The policy provides that

"the employee may from time to time and without the consent of the Beneficiary, change the Beneficiary by filing written notice of the change through the employer on a form furnished by or satisfactory to the insurance company, whereupon an acknowledgment of the change will be furnished the employee for attachment to this certificate. The new designation shall take effect on the date the notice was signed, whether or not the employee is living when the acknowledgment of the change is furnished, but without prejudice to the insurance company on account of any payment made by it before acknowledgment of the change."

On January 12, 1951, a rider was issued by the insurance company, bearing No. 3-93, issued under Group Policy No. G-9300 on the life of John S. Carter (Exhibit 9) and apparently issued upon his application. This rider contained a beneficiary provision that if the policy of insurance matures by death the proceeds shall be paid (a) $2,000 or the proceeds if less, to Aurelia I. Carter, beneficiary, mother of the insured, if living, otherwise to John S. Carter, beneficiary, son of the insured, if living, otherwise to the executors or administrators of the insured; and (b) the remaining portion, if any, of the proceeds to said son if living, otherwise to the executors or administrators of the insured. This certificate bears the stamped notation "Rendered Inoperative by Subsequent Change."

9. Under date of June 4, 1954, J. S. Carter signed a "Request for Change" under certificate No. 3-93 is-
page 18 } sued under Group Policy G-9300 (Exhibit 10) requesting to change the certificate governing beneficiary provision to provide that:

"if the insurance matures by death the proceeds shall then

be payable (a) $2,000 to Aurelia I. Carter, beneficiary, mother of the insured, if living, otherwise to such of John S. Carter and Francis C. Carter, sons of the insured, as may be living, in equal shares or to the survivor and (b) the remaining portion, if any, of the proceeds to such of said sons that may be living in equal shares or to the survivor of them, if any, otherwise to the executors or administrators of the insured.

"It is agreed that the proceeds referred to above are the proceeds of the life insurance portion of this certificate only."

This form was apparently submitted to the insurance company as it bears ink and type notations which reflect recordation or approval by it. Accordingly a certificate was issued dated June 7, 1954, (Exhibit 11) bearing the above numbers of certificate of policy and containing a beneficiary provision in the identical language quoted above. It is to be noted that both of these documents are still in the possession of the decedent and attached to his policy, though naturally the request for change should have been lodged with the insurance company and retained by it. Copy of the foregoing documents are herewith filed as exhibits numbered 1 to 11 inclusive.

10. According to the information coming to this respondent since the death of John S. Carter, American Cyanamid Company provided insurance and additional coverage over and above the amount covered by the Group Life Insurance policy aforesaid. As of August 31, 1950, American Cyanamid Company procured from Indemnity Insurance

page 19 } Company of North America insurance coverage known as Blanket Accident policy affording coverage to its then employee, the decedent, in the amount of $28,000 in the event of his death as a result of accident while in the employ of the Company. To what extent the employees were notified of the existence of this coverage is not known to this respondent, but respondent never heard it mentioned by her decedent and believes that no publicity nor official or formal notice whatever was given to the covered employees of the existence of this additional insurance. According to information coming to this respondent since the death of the decedent as aforesaid the first and only official information that the Company issued with respect to the coverage created by the Blanket Accident policy was in the form of a memorandum dated April 11, 1955, found in the files of the decedent after his death. A copy of said document is herewith filed as Exhibit 12. In this memorandum in the form of interoffice correspondence, dated April 11, 1955, the information was addressed to the division and department executives, plant and office managers and all holders of air

travel cards concerning the subject of travel insurance for employees. It states that insurance is now provided for all employees of American Cyanamid Company while traveling anywhere in the world on Company business by air or by any other public conveyance and that this additional insurance coverage, provided under a blanket policy arranged for by the Company

"is intended as a complement to its other group insurance for employees and to broaden the scope of any
page 20 } individual insurance carried by an employee which may be restricted against travel by air or other methods of public transportation in and among foreign countries. In making this coverage available without cost to the employee it is contemplated that no additional insurance of this type will be provided at company expense."

The policy further provides under the heading "Coverage" that death benefits are based on the rate of the employee's regular fixed compensation and provides that employees whose total monthly salary is $750 or over have a coverage of $40,000.

The memorandum then provides under paragraph VI Benefit Payments as follows:

"Indemnity for loss of life of the insured employee is payable to the beneficiary designated by the insured employee under the Company's Employees Group Insurance Plan, or in the event no beneficiary has been designated thereunder payment shall be made to the estate of the insured employee. All other indemnities under this policy are payable to the insured employee."

11. Respondent believes and therefore avers that the subject matter of this office memorandum is insufficient to notify an employee of the creation of $40,000 of additional coverage payable to his beneficiaries in the event of his accidental death or that it creates any impression upon an employee covered by the group life policy beyond the fact that his existing insurance has been increased from the $24,000, the amount provided for this employee as of April 1955, to the sum of $40,000 as set forth as the maximum benefit in the memorandum aforesaid.

12. Following the death of John S. Carter as hereinafter set forth on October 30, 1959, respondent has learned
page 21 } that as of December 30, 1958, the death benefits payable to an employee of the salary scale of John

S. Carter would amount to about the sum of $118,000 in the event of his accidental death while traveling on the business of the Company, and upon a later salary increase, was increased to the sum of $126,000. This respondent is informed that American Cyanamid, following the increase of the Blanket Accident policy benefits from the sum of $40,000 to $126,000 gave no notice whatever to the employees covered thereby as a result of which this respondent avers that in the year 1959 her decedent was entirely unaware of the Blanket Accident coverage in the amount of $126,000 and was equally unaware of the existence of any Blanket Accident coverage whatever, being under the impression that the sum total of the coverage benefits under the Group Life policy issued by the Company as set forth above amounted to $40,000.

13. On October 30, 1959, John S. Carter was attending a conference of American Cyanamid Company officials in the City of New York and there took passage on the airplane belonging to Piedmont Airlines from New York to Lynchburg, Virginia. While the plane was preparing to land at Charlottesville, Virginia, for some reason not now known to this respondent the plane crashed into the mountain and John S. Carter was immediately killed. Following his death this respondent learned from American Cyanamid Company that her decedent was covered under the Group Life policy in the amount of $32,000, the benefits being payable in accordance with his beneficiary designation of June 4, 1954, and that he was likewise covered to the extent of $126,000, coverage under the Blanket Accident policy, available to page 22 } those beneficiaries designated by him under the Company's Employees Group Insurance Plan. For reasons set forth in its petition the Indemnity Insurance Company, complainant in the present action has found it necessary to seek the advice and guidance of this Court with respect to the parties entitled to the coverage and to the proceeds payable under the Blanket Accident policy aforesaid.

14. Respondent is advised and believes, under the facts and circumstances coming to her attention, that her decedent John S. Carter was never officially notified of the existence of the Blanket Accident coverage and that its existence never came to his knowledge and attention. Likewise respondent believes and therefore charges that the memorandum of April 11, 1955, did not put her decedent upon notice of the existence of the Blanket Accident coverage, or of the necessity of making a designation of beneficiary, or of the applicability of the provision that the designation of beneficiary under the Group Life policy would become effective likewise to make the coverage benefits under the Blanket Accident policy pay-

able to the mother and two sons of the decedent, to the entire exclusion of his wife. Respondent therefore believes and avers that no beneficiary has been designated by her decedent under the Blanket Accident policy aforesaid and therefore that according to its provisions the payment of the benefits of $126,000 should be made to the estate of her said decedent.

15. In order that the Court in this cause may have before it all pertinent facts for the adjudication of the ques-
page 23 } tions propounded to it by the complainant in this proceeding respondent further says that as her said decedent was leaving Lynchburg on October 26, 1959, by airplane for New York he purchased at the airport a policy of insurance upon his life in the amount of $25,000, the evidence of which he mailed at once in the customary manner to this respondent, his wife, who was named in the certificate as the beneficiary thereof. Similarly as the said decedent was about to leave New York by airplane flight to Lynchburg on October 30, 1959, her said decedent purchased at the airport in New York City a similar policy in the amount of $25,000 wherein this respondent was designated as beneficiary.

16. Respondent believes and therefore charges that her said decedent was fully aware of his obligation to make proper provision for his widow, surviving him in the event of his unexpected death as well as provision for his two sons and fully realized that this respondent would have the responsibility and obligation for the care and direction and education and maintenance of his two sons in the event of his death. Respondent therefore regards it as highly improbable, if not unbelievable, that her said decedent should knowingly have directed insurance benefits in the amount of $158,000, partially for the benefit of his mother and principally for the benefit of his two sons, both of whom are infants, while entirely excluding his wife from participation in the benefits arising from these policies in the event of his accidental and untimely death. Respondent avers and therefore charges that her said decedent never became aware of the existence of the Blanket Accident policy benefits and was never
page 24 } notified or ever learned of the necessity for designating a beneficiary for the same and never knew or intended that his designation of beneficiary under the Group Life policy, disposing of insurance in the amount of $32,000, would likewise operate to make similar disposition of Blanket Accident policy coverage benefits in the amount of $126,000, to the entire exclusion of his wife, surviving him as his widow and obligated with him jointly for the unpaid balance of the indebtedness aforesaid.

17. Respondent therefore prays that in the proper inter-

pretation of the facts before this Honorable Court this Court will award the sum of $32,000, the Group Life Policy benefit to be paid in the sum of $2,000 to Mrs. Aurelia I. Carter, mother of the decedent and the balance to the guardian of her two said infant sons in equal sums, and that the sum of $126,000 death benefits payable under the Blanket Accident policy be decreed to be payable to the estate of the employee, the decedent, John S. Carter.

Respectfully,

WILLIS SCOTT CARTER
By S. H. WILLIAMS
Counsel.

* * * * *

page 25 }

* * * * *

Filed in the Clerk's Office the 11th day of April, 1960.

LUCY S. BARNETT Deputy Clerk.

* * * * *

page 35 } EXHIBIT "10."

cm 6

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

a mutual life insurance company

Request for Change under Certificate No. 3-93, Issued under Group Policy No. G9300

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA is hereby requested to change the above numbered Certificate which evidences insurance on the life of John S. Carter, as follows:

BENEFICIARY PROVISION

If the insurance evidenced by this Certificate matures by death, the proceeds then payable shall, subject to any facility of payment provision which may apply, be payable in one sum as follows:

(a) $2,000, or the proceeds if less, to Aurelia I. Carter, Beneficiary, mother of the Insured, if living, otherwise to such of John S. Carter and Francis C. Carter, sons of the Insured, as may be living, Beneficiaries, in equal shares or to the survivor of them, if any, otherwise to the executors or administrators of the Insured; and

(b) The remaining portion, if any, of the proceeds to such of said sons as may be living, in equal shares or to the survivor of them, if any, otherwise to the executors or administrators of the Insured.

It is agreed that the proceeds referred to above are the proceeds of the Life Insurance portion of this Certificate only.

Dated at Piney River, Va., this 4th day of June, 1954.

Witness .....

J. S. CARTER
Personal Signature of Insured.

6/2/54.

D. M.

* * * * *

page 37 } EXHIBIT "12."

New York Office — April 11, 1955 Date

TO: DIVISION AND DEPARTMENT EXECUTIVES PLANT AND OFFICE MANAGERS ALL HOLDERS OF AIR TRAVEL CARDS

ATT'N. OF:

COPY TO:

SUBJECT: TRAVEL INSURANCE FOR EMPLOYEES (Supersedes Mr. R. C. Gaugler's Memo of June 5, 1951)

REFERENCE:

Insurance is now provided for all employees of:

American Cyanamid Co.
Arizona Chemical Co.
Chemical Construction Corp.
Cyanamid Inter-American Corp.
Davis & Geck, Inc.
Falco Metal Products, Inc.
North American Cyanamid Ltd.
Cyanamid de Mexico, S. A.
Laboratorios Lederle, S. A.
Chemical Construction (Inter-American) Ltd.
Lederle Belge, S. A.
Lederle G. M. B. H.
Lederle (Japan) Ltd.
Lederle Laboratories Co.
Lederle Laboratories (India) Ltd.
Lederle Laboratories (Pakistan) Ltd.
Productos Lederle, Inc.
South African Cyanamid (Pty.) Ltd.
Titan (Pty) Ltd.

while traveling anywhere in the world on Company business by air, or by any other public conveyance furnished by a common carrier, or by any conveyance furnished by the military or the United Nations, and while located temporarily outside the country of permanent assignment.

This additional insurance coverage, which is provided under a blanket policy arranged for by the Company, is intended as a complement to its other Group Insurance for employees and to broaden the scope of any individual insurance carried by an employee which may be restricted against travel by air or by other methods of public transportation in and among foreign countries. In making this coverage available without cost to the employee it is contemplated that no additional insurance of this type will be provided at Company expense.

An outline of the coverage is set forth below:

I. COVERAGE

Death benefits and special indemnities for loss of limbs or eyesight are based on the rate of the employee's regular fixed compensation in the form of salary or wages, which will not include any compensation for overtime, special remuneration or bonus, except that extra compensation customarily paid to full time salesman, based on sales, will be considered as part of regular compensation. The scale of benefits is as follows:

Employees Total Monthly Salary	Male Employees	Female Employees
$125.00 and less	$ 6,000.00	$ 4,000.00
125.01 to 150.00	7,000.00	4,000.00
150.01 to 170.00	8,000.00	4,000.00
170.01 to 210.00	10,000.00	4,000.00
210.01 to 250.00	12,000.00	6,000.00
250.01 to 290.00	14,000.00	7,000.00
290.01 to 330.00	16,000.00	8,000.00
330.01 to 370.00	18,000.00	9,000.00
370.01 to 410.00	20,000.00	10,000.00
410.01 to 500.00	24,000.00	12,000.00
500.01 to 580.00	28,000.00	16,000.00
580.01 to 670.00	32,000.00	20,000.00
670.01 to 750.00	36,000.00	24,000.00
750.01 and over	40,000.00	34,000.00

Sum equal to the death benefit for: loss of life, loss of both hands, or both feet, sight of both eyes, loss of one hand and one foot, loss of either hand or foot and sight of one eye.

Sum equal to half the death benefit: for loss of either hand or foot or sight of one eye.

Because of overlaps with other forms of insurance this policy does not include Medical Expenses and Weekly Indemnities.

II. HAZARDS COVERED—WORLD WIDE

1. While riding as a passenger in, or boarding or alighting from any previously tried, tested and approved aircraft.
2. Falling from or making a parachute jump from such aircraft for the purpose of saving his life.
3. Being struck by an aircraft.
4. While riding as a passenger in, or boarding or alighting from any conveyance provided by the military or the United Nations, or any public conveyance provided by a common carrier, and
5. Any life saving attempts after an accident covered by this policy.

III. HAZARDS COVERED—OUTSIDE THE COUNTRY OF PERMANENT ASSIGNMENT

1. All hazards to which the employee is exposed, arising

out of and in the course of business, outside his country of permanent assignment, on a 24 hour basis.

2. Coverage commences at the actual start of trip (place of employment, home or other location) and coverage ends upon his return to his home or place of employment, whichever shall occur first.

Note #1—The insurance provided herein will apply to personal trips when such personal trips are incidental to and part of a Company business trip.

page 39 } Note #2—The policy covers employees using the Company plane, or any other NC or N Standard certified aircraft owned by ACCO or operated by our pilots (William Edward Shaughnessy, Jr. or J. P. Ripley) or qualified substitute, within territorial limits defined as follows:

North America
Central America
South America
Hawaiian Islands
Bermuda
West Indies (Greater & Lesser Antilles)
Greenland
All other islands and waters within
1000 miles of the above.

Note #3—A flat coverage of $25,000 per person has been provided for guests using the aircraft referred to in Note #2

IV. EXCLUSIONS

The insurance carried by this policy will not cover death, disability or other loss caused directly or indirectly, wholly or partly:

(a) by commutation travel,

(b) while serving in the armed forces of any country or any international authority at war, whether declared or not;

(c) by suicide,

(d) while the insured employee is a passenger in any aircraft owned or operated by the employee, by any member of the employee's household or by the employer other than the aircraft referred to in Note #2 above.

V. NOTICE OF ACCIDENT

All accidents should be reported to A. L. Scott, Employee

Benefits Dept., or American Cyanamid Company, Room 5749, 30 Rockefeller Plaza, New York 20, New York within twenty days.

VI. BENEFIT PAYMENTS

Indemnity for loss of life of the insured employee is payable to the beneficiary designated by the insured employee under the Company's Employees Group Insurance Plan, or in the event no beneficiary has been designated thereunder payment shall be made to the estate of the insured employee. All other indemnities under this policy are payable to the insured employee.

The Company reserves the right to modify or discontinue this insurance after appropriate notice, if conditions in the future make such action advisable.

Further details will be furnished on request to your division hear or to Mr. C. H. Martin at 30 Rockefeller Plaza.

Filed in the Clerk's Office the 11th day of April, 1960.

LUCY S. BARNETT, Deputy Clerk.

* * * * *

Dep.
page 43 } The witness,

DUNCAN EDWARDS,

having first been duly sworn, on examination deposes, as follows:

DIRECT EXAMINATION.

By Mr. Williams:

* * * * *

Dep.
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* * * * *

Duncan Edwards.

Q. When was coverage under the indemnity insurance company policy first taken out by Cyanamid?

A. Travel accident coverage was first furnished under blanket accident policy on August 31, 1950. The reason I state that in the way I do is that this is a policy different in number from the policy presently in existence. I have a record here of the policies we first provided, blanket accident coverage August 31, 1950, and have continually provided such coverage since that date. We have, however, had four separate policies during that period.

Q. As of the initiation of this plan which John S. Carter was first covered with, what was the amount of his coverage under that policy?

A. $28,000.00.

Q. Please state for the record the dates and the amounts of the increases of coverage under this policy.

A. At its inception the policy provided roughly two times the group term life insurance to a maximum of $40,000.00. April 20, 1956, the coverage was increased to a maximum of $80,000.00. So, as of that date, Mr. Carter's coverage under the blanket accident policy was $52,000.00. On the 30th of December, 1958, the basic life benefits provided by the blanket accident policy increased to eight times annual salary, maximum of $150,000. As of that date, based on his then salary, his coverage was $118,000.00. That is the last increase we have in the life benefits provdided by this policy.

Dep. page 49

Q. I believe the allegation of the petition is that the coverage at the time of his death was $126,000.00, is that correct?

A. At the time of his death the coverage provided by this policy was $126,000.00.

Q. To what extent was Mr. Carter advised of the several increases in the amounts of coverage under this policy?

A. Well, sir,—

Q. According to the records of the Company?

A. The records of the company would indicate that the only formal advice Mr. Carter had of the benefits provided by our blanket accident policy was in the form of a memorandum dated April 11, 1955, entitled "Travel Insurance for Employees," which was distributed to division and department executives, plant and office managers, and all holders of air travel cards. This memorandum described the benefits then provided by our blanket accident policy, published in the New York office and distributed to the addresses above noted.

Dep. page 50

Duncan Edwards.

Q. I will ask you if the memorandum that you refer to is the document which was filed in evidence as "Exhibit No. 12," with the answer of Mrs. Carter.

A. That is the document I refer to.

Q. Please state whether any corresponding or equivalent memorandum was issued in connection with the increase in benefits that you speak of as accruing as of December 30, 1958.

A. No formal announcement was made to covered employees with respect to increases in blanket accident coverage made effective April 20, 1956, or on December 30, 1958.

Q. There is also filed with Mrs. Carter's answer as "Exhibit No. 10" a designation of beneficiary under the Prudential Company policy, dated June 4, 1954, whereby J. S. Carter, who signed the document, designates $2,000.00 of the proceeds to Aurelia Carter, beneficiary, mother of the insured, if living, otherwise to John S. Carter and Francis C. Carter, sons, and the remaining portion of the proceeds to such of the said sons as may be living in equal shares or to the surviving son. At the time of his execution of this document of June 4, 1954, what was his coverage under the blanket accident policy?

Dep. page 51

A. Benefits provided beneficiary by reason of the death of Mr. Carter under our blanket accident policy on June 4, 1954, $40,000.00.

Q. Insofar as you have been able to ascertain, I believe you have already stated that the increase in benefit of December 30, 1958, was not covered by any official memorandum from the company to Mr. Carter or employees of equal status.

A. I stated no formal announcement of this increase of benefits was made to covered employees.

Q. The question before the Court here, Mr. Edwards, as you can appreciate, is the extent, if at all, to which John Carter knew at the time of his death that he had blanket accident coverage of $126,000.00. Insofar as the official memoranda of the company are concerned, are you in a position to state whether or not he knew that he was so covered?

A. I am in a position to state that the records of the company fail to indicate that any announcemnt of the benefits then available under the policy were communicated to him.

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CROSS EXAMINATION.

By Mr. Goad:

Duncan Edwards.

Q. Filed as "Exhibit 12" with the answer of Mrs. Carter is the memorandum you have referred to, dated April 11, 1955, which you say was mailed to Mr. Carter.

A. I believe it was.

Q. It was directed to be mailed to Mr. Carter and all other plant managers?

A. Yes, this memorandum was furnished by our insurance manager to our correspondence department or circularizing department.

Q. As of that dated, April 11, 1955, according to that memorandum, what was his coverage under the blanket accident policy in case of his death?

A. $40,000.00.

Q. Then it was increased to $52,000.00 as of April 20, 1956, is that correct?

A. Yes, it was.

Q. Then it was increased to $118,000.00 as of December 30, 1958?

A. Yes, it was.

Q. When was it increased to $126,000.00?

A. It was increased to $126,000.00 on July 1, 1959, at which time Mr. Carter's annual salary was increased to $15,000.00, or rather $15,750.00.

Dep. page 53 } Q. Now, when this blanket accident policy was first taken out by American Cyanamid August 31, 1950, you say no formal announcement was made to the employees benefitted at that time.

A. That's correct.

Q. I believe you sent me with your letter copy of this memorandum from your New York office, dated June 5, 1951, which was the first formal announcement made by the company.

A. That was the first formal announcement with respect to travel accident coverage.

Q. Will you see if that is a true copy of that (handing paper to witness)?

A. Yes.

Q. Memorandum or announcement of June 5, 1951.

A. The document you have handed me is a photostatic copy of the June 5, 1951, memorandum, addressed to the executives of the several divisions, entitled "Air and Foreign Travel Insurance for Employees," which described the benefits of the blanket accident policy then in effect.

Q. Will you file that with your evidence, marked "Exhibit 1, Duncan Edwards, Jr."?

Duncan Edwards.

A. Yes.

(The paper was received in evidence and marked for identification as "Exhibit 1, Duncan Edwards, Jr.")

Dep. page 54 } Q. To whom is the memorandum of June 5th directed?

A. Addressed to executives of the several divisions.

Q. Now, as of that date Mr. John Carter was personnel manager at Piney River Plant?

A. I believe he was.

Q. When this announcement of June 5, 1951, was delivered to the executives, were they directed to acquaint their personnel with the contents of it?

A. It was suggested to them they do so.

Q. Was Mr. Carter travelling then to the extent he would have been covered under this policy?

A. He would have been covered if travelling. I am not in position to state to what extent he was then travelling. Had he travelled on business of the company, he would have been covered under this policy.

Q. He would have had a position at that time so that the then manager of the Piney River Plant, in the usual course of business and according to advice of the New York office, would have acquainted Mr. Carter, you think, with the contents of this announcement and the fact he would have been covered by this insurance if travelling.

A. The June 5, 1951, memorandum was addressed to the executives of the several divisions, presumably managers and assistant managers of those divisions. I cannot say it was any specific direction they notify personnel of the benefits provided by the policy. I believe at that time it was suggested they might do so.

Dep. page 55 }

Q. Did a letter go out to the plant managers suggesting that the managers acquaint their personnel with the new coverage?

A. I have no record of such a letter. I do not believe any such letter was sent.

Q. Read that third paragraph.

A. To the best of my knowledge no such letter went out. However, our June 5th memorandum suggested that the division executives to whom the memorandum was addressed might wish to acquaint their personnel who had occasion to

travel, to explain to them the benefits provided by this policy.

Q. Now the exhibit that I have just filed with your testimony, dated June 5, 1951, the first announcement by the company of the new blanket accident coverage, ends with the statement "Further details will be furnished upon request to Mr. C. H. Martin, 30 Rockefeller Plaza." That is the company's central office?

Dep. page 56 } A. That is the company's New York office.

Q. Where the insurance matters are handled.

A. Yes.

Q. Then "Exhibit 12" filed with Mrs. Carter's answer, the announcement by the company of April 11, 1955, the last statement in that announcement "Further details will be furnished on request to Mr. C. H. Martin, 30 Rockefeller Plaza," is that correct?

A. That is correct.

Q. Mr. John S. Carter was Plant Manager of the Piney River Plant from 1953 until the time of his death?

A. That's correct.

Q. Did he do considerable travelling during those some six years?

A. I believe he did. I am not really in a position to say.

Q. Would you estimate or give us any idea how many times per year he would come to the New York office, 30 Rockefeller Plaza?

A. I would anticipate that the manager of a plant such as Piney River might have occasion to visit New York at least twice a year.

* * * * *

Dep. page 57 } RE-DIRECT EXAMINATION.

By Mr. Williams:

Q. With respect to the document of June 5, 1951, filed as "Exhibit No. 1" with your deposition, can you say, Mr. Edwards, from your knowledge of Mr. Carter's then classification, that a copy of this memorandum was furnished to him or not?

A. Mr. Carter was not at that time included in the group to which this memorandum was addressed, namely, executives of the several divisions. There I would not believe that this document or memorandum was distributed to him.

Mrs. Willis Scott Carter.

Q. In the trips on company business that have been referred to by Mr. Goad's last question, concerning official duties of Mr. Carter to come to New York, are you in a position to say whether he made those trips by rail or air or otherwise?

A. I am not in a position to say how he did travel.

Q. From your examination of the company's files and your conversations with its other officials in the New York office and elsewhere, are you in a position to state that no official notice was ever given to Mr. Carter of his insurance under the blanket accident policy, except the memorandum of April 11, 1955?

Dep. page 58 } A. I feel that I can state that the only official notification of the coverage provided by the blanket accident policy was that provided in April 11, 1955, memorandum, which I believe was distributed to him.

* * * * *

Dep. page 62 } The witness,

MRS. WILLIS SCOTT CARTER,

having first been duly sworn, on examination deposes, as follows:

DIRECT EXAMINATION.

By Mr. Williams:

* * * * *

Dep. page 70 }

* * * * *

Q. Now there was also found—I will ask you what additional documents you found in his safety deposit box. You can use for that purpose Exhibits 9 and 10. I will ask you if you found those documents there.

A. Yes, I did, Mr. Williams. This is John's signature, signed in his handwriting. No one can duplicate that.

* * * * *

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* * * * *

DUNCAN EDWARDS, JR.
EXHIBIT NO. 1.

New York Office — June 5, 1951 Date

COPY TO:

TO:

ATT'N. OF: EXECUTIVES OF THE SEVERAL DIVISIONS

SUBJECT: AIR AND FOREIGN TRAVEL INSURANCE FOR EMPLOYEES

REFERENCE:

Additional insurance is now provided for all employees of

American Cyanamid Company
Chemical Construction Corporation
Davis & Geck, Inc.
North American Cyanamid Limited

while they are traveling on Company business by air in the United States and Canada, or by any public conveyance between the United States and foreign countries, or among foreign countries other than Canada.

This additional insurance coverage, which is provided under a blanket policy arranged for by the Company, is intended as a complement to its other Group Insurance for employees and as an offset to any individual insurance carried by an employee which may be restricted against travel by air or by other methods of public transportation in and among foreign countries. In making this complemental coverage available *without cost to the employee,* it is contemplated that no addi-

tional insurance of this type will be provided at Company expense.

While this notice is distributed to Division Executives only, it is suggested that they may want to acquaint their personnel who have occasion to travel by air or in foreign countries that this additional insurance protection is in effect while they are traveling on Company business.

page 78 } An outline of the coverage is set forth below:

I. COVERAGE

Death benefits and special indemnities for loss of limbs or eyesight are based upon the rate of the employee's regular fixed compensation in the form of salary or wages, which will not include any compensation for overtime, special remuneration or bonus, except that extra compensation customarily paid to full time salesmen, based on sales, will be considered as part of regular compensation. The scale of death benefits is as follows:

(a) DEATH BENEFITS

Employee's Monthly Salary	Male Employees	Female Employees
$125.00 and less	$ 6,000.00	$ 4,000.00
125.01 to 150.00	7,000.00	4,000.00
150.01 to 170.00	8,000.00	4,000.00
170.01 to 210.00	10,000.00	4,000.00
210.01 to 250.00	12,000.00	6,000.00
250.01 to 290.00	14,000.00	7,000.00
290.01 to 330.00	16,000.00	8,000.00
330.01 to 370.00	18,000.00	9,000.00
370.01 to 410.00	20,000.00	10,000.00
410.01 to 500.00	24,000.00	12,000.00
500.01 to 580.00	28,000.00	16,000.00
580.01 to 670.00	32,000.00	20,000.00
670.01 to 750.00	36,000.00	24,000.00
750.01 and over	40,000.00	34,000.00

(b) DISMEMBERMENT BENEFITS

For Loss of Life ....Sum equal to the death benefit.

For Loss of Both Hands
or Both Feet or Sight
of Both Eyes .....Sum equal to the death benefit.

For Loss of One Hand
and One Foot .....Sum equal to the death benefit.

For Loss of Either Hand
or Foot and Sight of
One Eye .....Sum equal to the death benefit.

For Loss of Either Hand
or Foot or Sight of
One Eye .....Sum equal to half the death benefit.

Because of overlaps with other forms of insurance this policy does not include Medical Expenses and Weekly Indemnities.

page 79 } II. HAZARDS COVERED

(a) *In the United States and Canada*

1. —while riding as a passenger in, or boarding or alighting from any previously tried, tested and approved aircraft.
2—in consequence of falling from or of making a parachute jump from such aircraft for the purpose of saving his life.
3—in consequence of being struck by an aircraft.
4—in consequence of any life saving attempts after an accident covered by the policy.

(b) *Worldwide—Outside the United States and Canada*

1—while riding as a passenger in, or boarding or alighting from any previously tried, tested and approved aircraft.
2—in consequence of falling from or making a parachute jump from such aircraft for the purpose of saving his life.
3—in consequence of being struck by an aircraft.
4—while riding as a passenger in, or boarding or alighting from any public conveyance, other than an aircraft, provided by a common carrier.
5—in consequence of any life saving attempts after an accident covered by the policy.

Note #1—Any insured employee making a trip from the United States or Canada which takes him outside the United States or Canada shall be covered under hazard (b) above the entire trip.
Note #2—The insurance provided herein will apply to personal trips when such personal trips are incidental to and part of a Company business trip.

Note #3—The policy covers employees using the new company plane—or any other NC or N standard certified plane owned by ACCO or operated by our pilots (W. C. Shaughnessy or J. P. Ripley), or qualified substitute,—within territorial limits defined as follows:—

North America
Central America
South America
Hawaiian Islands
Bermuda
West Indies
Greenland
All other islands and waters within 1,000 miles of the above.

Note #4—A flat coverage of $25,000. per person has been provided for guests who use the planes referred to in Note #3.

page 80 } III. EXCLUSIONS

The insurance carried by this policy will not cover death, disability or other loss caused directly or indirectly, wholly or partly

(a) by commutation travel
(b) while in military or naval service
(c) while the insured employee is a passenger in any aircraft owned or operated by the employee, by a member of the employee's household or by the employer other than the planes referred to in Note #3 above, or
(d) by suicide.

IV. NOTICE OF ACCIDENT

All accidents should be reported to the Insurance Department of American Cyanamid Company, 30 Rockefeller Plaza, New York 20, N. Y. within 20 days.

V. BENEFIT PAYMENTS

Indemnity for loss of life of the insured employee is payable to the beneficiary designated by the insured employee under the Company's Employees Group Insurance Plan, or in the event no beneficiary has been designated thereunder payment shall be made to the estate of the insured employee.

All other indemnities under this policy are payable to the insured employee.

The Company reserves the right to modify or discontinue this insurance, after appropriate notice, if conditions in the future make such action advisable.

Further details will be furnished upon request to Mr. C. H. Martin at 30 Rockefeller Plaza.

R. C. GAUGLER.

Depositions and Exhibit filed in the Clerk's Office the 20 day of May, 1960.

LUCY S. BARNETT, Deputy Clerk.

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A review of the evidence, the record, and the argument of Counsel, as well as a memorandum of authorities, discloses a somewhat unusual set of facts.

John S. Carter, deceased, his wife and two children were a closely knit family unit, all working together for the good of the group. The deceased was Manager of the American Cyanimid Company in Nelson County. As such, he was covered by certain insurance including group life insurance and group accident insurance. The policy of accident insurance was made known to Mr. Carter through a memorandum from the New York Office to the effect that the policy then in force amounted to the principal sum of $40,000.00. Thereafter, the insurance plan provided without the knowledge of Mr. Carter with certain increases in the principal sum until at the time of his death, the amount payable under the policy was $126,000.00.

In the original policy, in the amount of $40,000.00, it was provided that the beneficiaries would be the same as those designated in the group life insurance policy; these being the mother of the deceased and his two infant children. It is obvious that the deceased was a busy man and so page 94 } when the memo regarding the accident insurance crossed his desk, he followed the course of least resistance and designated his mother and two children by reference as the beneficiaries. It is absolutely incredible that

Mr. Carter should wish his wife to be excluded from the entire total of the benefits as their relationship was one of mutual love, respect and cooperation. This being true, coupled with the fact that the deceased had no knowledge of the addition to the principal amount of the policy, leads us to the inescapable conclusion that Mr. Carter died intestate as to the principal sum of the policy in excess of $40,000. Any other conclusions would be incredible and contrary to the established family relationship. Counsel is requested to submit an Order carrying out the views herein expressed.

Filed in the Clerk's Office the 20th day of June, 1960.

AUSTIN EMBREY, Clerk.

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FINAL DECREE.

This cause came on this day to be heard upon the bill of interpleader heretofore filed by the plaintiff and upon the answer thereto of Willis Scott Carter in her own right and as administrator of the Estate of John Shadrach Carter, deceased, the joint answer of John Scott Carter and Francis C. Carter, infants, by Robert Whitehead, their guardian *ad litem,* and the answer of Aurelia I. Carter and upon the depositions of witnesses taken on behalf of the defendant, Willis Scott Carter, and upon the order heretofore entered noting the death of Robert Whitehead, guardian *ad litem,* occurring on June 8, 1960, and appointing Robert Marshall, Esq., a discreet and competent attorney at law as
page 97 } his successor, and thereupon the said Robert Marshall, by leave of Court, filed his answer on behalf and as guardian *ad litem* of John Scott Carter and Francis Coleman Carter, the infants aforesaid, and was argued by counsel.

And it appearing to the Court that the decedent John S. Carter was covered by the Blanket Accident Policy of insurance, set forth in the bill filed in this case, in the amount of $126,000 payable in the event of his accidental death and that under a Group Life Insurance policy carried by American Cyanamid Company covering its employee, John S. Carter, the last effective designation of beneficiary, executed

by the said John S. Carter under date of June 4, 1954, directed that in the event of his death $2,000 should be paid to his mother, Aurelia I. Carter, and the remaining portion to his two sons, John Scott Carter and Francis C. Carter; that the said John S. Carter made no designation of beneficiary under the Blanket Accident policy aforesaid and in accordance with its terms, in such an event, the proceeds payable thereunder would be paid to the beneficiaries in the proportions designated by him under the Group Life policy aforesaid;

And it further appearing to the Court from the depositions aforesaid that at the time of the execution of the Beneficiary Designation of June 4, 1954, the coverage carried upon the life of John S. Carter under the Blanket Accident Policy aforesaid amounted to the sum of $40,000 and that thereafter without the knowledge of the said John S. Carter, the amount of such coverage was increased from time to time, as alleged in the answer of the defendant, Willis Scott Carter, filed herein, until at the time of his death October 30, 1959, the coverage thereunder amounted to the sum of $126,000;

page 98 } And the Court being of the opinion that the said John S. Carter did effectively designate his mother, Mrs. Aurelia I. Carter as beneficiary to receive the sum of $2,000 and his sons, John Scott Carter and Francis Coleman Carter as beneficiaries to receive the sum of $19,000 each of the benefits under the Blanket Accident Policy known by him to exist on June 4, 1954, but was unaware of the increase in such benefits over the sum of $40,000 as aforesaid and made no designation as to the payment thereof and must therefore be held to have died intestate as to the principal sum of the policy in excess of $40,000, which facts the Court doth so find;

The Court doth ADJUDGE, ORDER and DECREE that in accordance with the prayer of the bill filed herein, the parties to this proceeding having consented thereto, the plaintiff do forthwith disburse the sum of $126,000, insurance coverage in its hands under the Blanket Accident Policy in the following amounts:

1. To the payment of a fee of $100 to Robert L. Marshall, attorney, covering the services rendered by him and by his predecessor and partner, the late Robert Whitehead, as guardian *ad litem* in this cause and a fee of $200.00 to counsel for plaintiff as a reasonble fee for services rendered herein.

2. To Aurelia I. Carter and Robert C. Goad, her attorney, the sum of $2,000.

3. To the First National Trust and Savings Bank of Lynchburg, Virginia, guardian of John Scott Carter the sum of

$19,000 and as guardian of Francis Coleman Carter a like sum of $19,000.

4. To Willis Scott Carter, administrator of the
page 99 } estate of John Shadrach Carter, deceased, the balance of the fund of $126,000 in its hands, to-wit the sum of $85,700.00.

And it appearing to the Court that the guardian *ad litem* objected and excepted to the distribution of the fund as set out in paragraph 4 in which the estate of John Shadrach Carter, deceased, is to receive the sum of $85,700.00, the balance of the sum of $126,000, and it appearing to the Court that it is proper so to do and by agreement and consent of the parties to this proceeding, the Court doth further ADJUDGE, ORDER AND DECREE that the balance of the sum of $126,000, instead of being paid to Willis Scott Carter, Administrator, as aforesaid, be paid to the Clerk of this Court and the Clerk of this Court shall deposit the same in the First National Trust and Savings Bank of Lynchburg, Virginia, on savings account, the same to be held subject to the further order of this Court.

The Court doth further ADJUDGE, ORDER and DECREE that the payments made pursuant to this order, evidenced by receipts to be filed with the Clerk of this Court by the said plaintiff shall constitute full settlement and satisfaction of all claims, rights, demands, actions and causes of action which the defendants in this proceeding have or may hereafter have against the plaintiff, Indemnity Insurance Company of North America, a corporation, arising out of or in connection with the contract of insurance referred to in this proceeding.

Enter.

C. S. P.

Entered July 8, 1960, Chancery Order Book U Page 512.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To Austin Embrey, Esq., Clerk of the Circuit Court of Nelson County, Virginia:

The defendants, John Scott Carter and Francis C. Carter, infants, acting by Robert L. Marshall their guardian *ad litem* and counsel, hereby give notice, pursuant to the provisions of Section 4 of Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of their appeal from the final decree entered in the above action on July 8, 1960.

The defendants assign as error the action of the Court in ordering that the sum of $85,700.00, balance of
page 108 } benefits under the Blanket Accident Policy of insurance upon the life of their father, John Shadrach Carter, deceased, in the bill and proceedings mentioned be paid to the estate of their father as set out in paragraph 4 of the decree aforesaid, and not to the said infant defendants.

Respectfully,

JOHN SCOTT CARTER &
FRANCIS C CARTER,
By ROBERT L. MARSHALL
Their attorney.

Filed in the Clerk's Office the 26th day of August, 1960.

AUSTIN EMBREY, Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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