

5-29-2008

BLI v. Dixson Irrevocable Trust Clerk's Record v. 1 Dckt. 34873

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

CROSS CLAIMANT-RESPONDENT,

vs.

TAMMIE SUE DIXSON,

CROSS DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

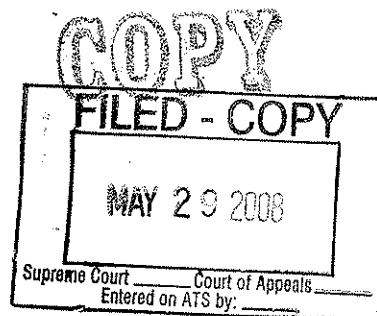
Hon THOMAS F. NEVILLE, District Judge

MICHELLE R. FINCH

Attorney for Appellant

THOMAS G. WALKER

Attorney for Respondent



IN THE SUPREME COURT OF THE STATE OF IDAHO

BANNER LIFE INSURANCE COMPANY,
Plaintiff,
vs.
THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and
TAMMIE SUE DIXSON, individually,
Defendants.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,
Cross Claimant-Respondent,
vs.
TAMMIE SUE DIXSON,
Cross Defendant-Appellant.

TAMMIE SUE DIXSON,
Third Party Plaintiff,
vs.
ROBERT and JACKIE YOUNG,
Third Party Defendants.

Supreme Court Case No. 34873

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE THOMAS F. NEVILLE

MICHELLE R. FINCH
ATTORNEY FOR APPELLANT
BOISE, IDAHO

THOMAS G. WALKER
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

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Banner Life Insurance Company vs. The Mark Wallace Dixon Irrevocable Trust, Tammie Sue Dixon, Robert Young, Jackie Young

Date	Code	User		Judge
1/23/2007	NCOC	CCBLACJE	New Case Filed - Other Claims	Thomas F. Neville
	COMP	CCBLACJE	Complaint Filed	Thomas F. Neville
	SMFI	CCBLACJE	Summons Filed (2)	Thomas F. Neville
2/1/2007	ANSW	CCHEATJL	Answer To Complaint For Interpleader & Crossclaim Against Tammie Sue Dixon (T Walker For Defendant The Mark Dixon Irrevocable Trust)	Thomas F. Neville
	ACCP	CCBARCCR	Acceptance Of Service 1/31/07	Thomas F. Neville
2/7/2007	ACCP	CCBARCCR	Acceptance Of Service 1/31/07	Thomas F. Neville
3/2/2007	ANSW	CCBLACJE	Answer, Answer to Cross-Claim, and Third Party Complaint (Finch for Tammie Sue Dixon)	Thomas F. Neville
3/5/2007	MOTN	CCWRIGRM	Motion to Allow Deposit of Funds	Thomas F. Neville
3/6/2007	RPLY	CCTEELAL	Reply to Third Party Complaint (Walker for Youngs)	Thomas F. Neville
3/7/2007	NOTC	CCNAVATA	Defendant Mark Wallace Dixon Irrevocable Trust's Notice of Non-opposition to Plaintiff's Motion to Allow Deposit of Funds	Thomas F. Neville
3/8/2007	NOTS	CCBARCCR	Notice Of Service	Thomas F. Neville
3/9/2007	NOTC	CCDWONCP	Defendant Tammie Sue Dixon's Notice of Non-Opposition to Plaintiff's Motion to Allow Deposit of Funds	Thomas F. Neville
3/12/2007	STIP	CCNAVATA	Stipulation for Dismissal of Banner Life Insurance Company	Thomas F. Neville
	ORDR	DCELLISJ	Order Allowing Deposit of Funds	Thomas F. Neville
	CDIS	DCELLISJ	Civil Disposition entered for: Dixon, Tammie Sue, Defendant; The Mark Wallace Dixon Irrevocable Trust,, Defendant; Young, Jackie, Defendant; Young, Robert, Defendant; Banner Life Insurance Company,, Plaintiff. order date: 3/12/2007	Thomas F. Neville
	MISC	DCELLISJ	Traveler's Casualty & Surety Co. Bond Exonerated bond #104429703 \$10,000	Thomas F. Neville
	DSAT	DCELLISJ	Dismissal During/after Trial Or Hearing Order for Dismissal With prejudice	Thomas F. Neville
3/14/2007	MOTN	CCHEATJL	Motion For Summary Judgment By The Mark Wallace Dixon Irrevocable Trust	Thomas F. Neville
	AFFD	CCHEATJL	Affidavit Of Jackie E Young	Thomas F. Neville
	AFFD	CCHEATJL	Affidavit Of Louise M Schlickman MD	Thomas F. Neville
	AFFD	CCHEATJL	Affidavit Of Kaye Baker	Thomas F. Neville
	AFFD	CCHEATJL	Affidavit Of Cory Armstrong	Thomas F. Neville
	AFFD	CCHEATJL	Affidavit Of Robert Young	Thomas F. Neville
	MEMO	CCHEATJL	Memorandum In Support Of Motion For Summary Judgment By The Mark Wallace Dixon Irrevocable Trust	Thomas F. Neville

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Banner Life Insurance Company vs. The Mark Wallace Dixson Irrevocable Trust, etal.

Banner Life Insurance Company vs. The Mark Wallace Dixson Irrevocable Trust, Tammie Sue Dixson, Robert Young, Jackie Young

Date	Code	User		Judge
3/14/2007	NOHG	CCHEATJL	Notice Of Hearing	Thomas F. Neville
	HRSC	CCHEATJL	Hearing Scheduled (Motion for Summary Judgment 05/18/2007 09:00 AM) Motion	Thomas F. Neville
3/22/2007	AFFD	CCTEELAL	Affidavit of Thomas G Walker	Thomas F. Neville
4/5/2007	NOTS	CCCHILER	Notice Of Service	Thomas F. Neville
4/6/2007	ORDR	DCELLISJ	Order Dismissing Banner Life Insurance Company	Thomas F. Neville
4/23/2007	NOTS	CCEARLJD	Notice Of Service	Thomas F. Neville
	NOTS	CCDWONCP	Notice Of Service of Discovery	Thomas F. Neville
5/7/2007	HRSC	CCNAVATA	Hearing Scheduled (Motion for Summary Judgment 06/15/2007 10:30 AM)	Thomas F. Neville
5/16/2007	MOTN	CCEARLJD	Motion for Summary Judgment	Thomas F. Neville
	MEMO	CCEARLJD	Memorandum in Support of Motion for Summary Judgment	Thomas F. Neville
	AFFD	CCEARLJD	Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment	Thomas F. Neville
	NOTC	CCEARLJD	Notice of Hearing re Motion for Summary Judgment (06.15.07@10:30am)	Thomas F. Neville
5/18/2007	STIP	CCWATSCL	Stipulation to Vacate and Re-Set Hearing for Cross Motions for Summary Judgment (06/15/07@10:30am)	Thomas F. Neville
5/25/2007	AFFD	CCPRICDL	Tammie Sue Dixson's Response to Third Party Defendant's Requests for Production of Documents	Thomas F. Neville
	NOTS	CCPRICDL	Notice Of Service	Thomas F. Neville
5/29/2007	MOTN	CCCHILER	Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment	Thomas F. Neville
	MEMO	CCCHILER	Memorandum in Support of Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment	Thomas F. Neville
	MEMO	CCCHILER	Reply Memorandum in Support of the Motion for Summary Judgment by the Mark Wallace Dixson Trust	Thomas F. Neville
	MEMO	CCCHILER	The Mark Wallace Dixson Irrevocable Trust's Memorandum in Opposition to Tammie Sue Dixson's Cross Motion for Summary Judgment	Thomas F. Neville
	AFFD	CCCHILER	Affidavit of Robert Young Dated May 24, 2007	Thomas F. Neville
	AFFD	CCCHILER	Affidavit of Canyon Barnes Dated May 24, 2007	Thomas F. Neville
	NOHG	CCCHILER	Notice Of Hearing (6/15/07 @ 10:30am)	Thomas F. Neville
6/1/2007	AFFD	CCTEELAL	Affidavit of Michelle Finch in Support of Tammie Sue Dixson's Motion for Summary Judgment and Opposition to Trusts Motion for Summary Judgment	Thomas F. Neville

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Banner Life Insurance Company vs. The Mark Wallace Dixson Irrevocable Trust, etal.

Banner Life Insurance Company vs. The Mark Wallace Dixson Irrevocable Trust, Tammie Sue Dixson, Robert Young, Jackie Young

Date	Code	User	Judge	
6/8/2007	MOTN	CCTEELAL	Motion for Enlargment of Time to File Affidavits in Support of tammie Sue Dixson's Motion for Summary Judgment and in Opposition to the mark Wallace Dixson Trust Motion for Summary Judgment or in the Alternative to Continue the Hearing on Cross Motions for Summary Judgment	Thomas F. Neville
	MOTN	CCTEELAL	Motion for Order Shortening Time	Thomas F. Neville
	MEMO	CCTEELAL	Tammie Sue Dixson's Memorandum in Support of Motion to Strike portions of the Affidavits of Robert Young, Jackie E young, Kaye Baker, Cory Armstrong and Canyon Barnes in Opposition to Motion for Summary Judgment in Support of the Mark Wallace Dixson Irrevocable trust's Motion for Summary Judgment and in Opposition to tammie Sue Dixson's Motion for Summary Judgment	Thomas F. Neville
	MEMO	CCTEELAL	Reply Memorandum in opposition to the Mark Wallace Dixson's Motion for Summary Judgment and in Support of Tammie Sue Dixson's Motion for Summary Judgment	Thomas F. Neville
	AFFD	CCTEELAL	Affidavit of Robert Talboy in Support of Motion to Enlarge Time or in the Alternative Continue Hearing	Thomas F. Neville
	AFFD	CCTEELAL	Affidavit of Michelle R Finch in Support of Motion for Order Shortening Time	Thomas F. Neville
	NOHG	CCTEELAL	Notice Of Hearing on Tammie Sue Dixson's Motion to Strike and Tammie Sue Dixson's Motion for Enlargment of Time to File Affidavits	Thomas F. Neville
6/12/2007	MEMO	CCTOONAL	Memorandum in Opposition to Memorandum in Support of Motion to Strike Portions of the Affidavits	Thomas F. Neville
	MEMO	CCTOONAL	Memorandum in Opposition to Motion for Enlargement of Time to File Affidavits	Thomas F. Neville
6/13/2007	MOTN	CCBARCCR	Motion to Strike Portions of the Affidavits	Thomas F. Neville
6/15/2007	HRHD	DCELLISJ	Hearing result for Motion for Summary Judgment held on 06/15/2007 10:30 AM: Hearing Held	Thomas F. Neville
6/26/2007	AFFD	CCPRICDL	Affidavit of Jana Knowles	Thomas F. Neville
8/2/2007	OBJT	CCBARCCR	Objection to Order RE: 3rd Party Plt's Motion to Strike Portions of the Affidavits of Robert Young, Jackie Young, Kaye Baker, Cory Armstrong and Canyon Barnes	Thomas F. Neville
	AFFD	CCBARCCR	Affidavit of Thomas G Walker	Thomas F. Neville
8/14/2007	ORDR	CCWATSCL	Order Shortening Time	Thomas F. Neville
	ORDR	CCWATSCL	Order Re: Motion to Strike Affidavit of Tammie Sue Dixson	Thomas F. Neville

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Banner Life Insurance Company vs. The Mark Wallace Dixon Irrevocable Trust, etal.

Banner Life Insurance Company vs. The Mark Wallace Dixon Irrevocable Trust, Tammie Sue Dixon, Robert Young, Jackie Young

Date	Code	User	Judge
8/14/2007	ORDR	CCWATSCL	Order Re: Third Paraty Plaintiff's Motion to Strike Portions of Affidavits of Robert Young, Jackie Young, Kaye Baker, Cory Armstrong and Carvin Barnes
11/9/2007	DEOP	DCANDEML	Memo Decision and Order Granting The Mark Wallace Dixon Irrevocable Trust's Motion for Summary Judgment and Denying Tammie Sue Dixon's Motion for Summary Judgment
11/19/2007	MISC	CCWRIGRM	The Mark Wallace Dixon Irrevocable Trusts Memorandum of Costs and Attorneys Fees
	AFFD	CCWRIGRM	Affidavit of Thomas G Walker
	AFFD	CCWRIGRM	Affidavit of MacKenzie E Whatcott
	AFFD	CCWRIGRM	Affidavit of Pamela R Carson
11/30/2007	OBJT	CCDWONCP	Objection to the Mark Wallace Dixon Irrevocable Trust's Memorandum of Costs and Attorneys Fees
12/4/2007	RSPS	CCCHILER	Response to Tammie Sue Dixon's Objection to Memorandum of Costs and Attorneys Fees
	NOHG	CCCHILER	Notice Of Hearing
	HRSC	CCCHILER	Hearing Scheduled (Hearing Scheduled 01/11/2008 09:00 AM)
12/21/2007	APSC	CCTHIEBJ	Appealed To The Supreme Court
	MOTN	CCTHIEBJ	Motion For The Waiver Of Appellate Bond and/or Posting Of Cash Security
	AFFD	CCTHIEBJ	Affidavit Of Tammie Sue Dixon In Support Of Her Motion Requesting A Waiver Of The Appeal Bond and/or Posting Of Cash Security
1/4/2008	RSPN	CCTHIEBJ	Response To Motion For Waiver Of Appellate Bond
1/11/2008	HRHD	DCJOHNSI	Hearing result for Hearing Scheduled held on 01/11/2008 09:00 AM: Hearing Held
1/16/2008	ORDR	DCELLISJ	Findings of Facts Conclusions of Law RE; Award of Costs and Fees to the Mark Wallace Dixon Irrevocable Trust
	JDMT	DCELLISJ	Judgment & Order On Attorney Fees

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ISB #5587

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

vs.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE
SUE DIXSON, individually,

Defendant.

CV OC 07015147

Case No. CV-OC-07-_____

COMPLAINT FOR INTERPLEADER

COMES NOW the Plaintiff, Banner Life Insurance Company, by and through its counsel of record, Elam & Burke, P.A., and files this interpleader action against the Mark Wallace Dixon Irrevocable Trust and Tammie Sue Dixon.

PARTIES

1. Banner Life Insurance Company is a Maryland insurer licensed to do business in the State of Idaho.

NO. _____
A.M. _____ FILED P.M. 2:03
JAN 23 2007
J. DAVID NAVARRO, Clerk
BY J. BLACK
DEPUTY

2. The Mark Wallace Dixson Irrevocable Trust is an Idaho trust created on or about December 15, 2006, and registered in Ada County, Idaho.

3. The principal place of administration of the Mark Wallace Dixson Irrevocable Trust is 836 Wendall Street, Twin Falls, Idaho 83301.

4. Tammie Sue Dixson is a Michigan resident who presently resides in Williamsburg, Michigan.

JURISDICTION AND VENUE

5. Jurisdiction is proper over the Mark Wallace Dixson Irrevocable Trust under Idaho Code § 1-705, and personal jurisdiction over Tammie Sue Dixson is appropriate under Idaho Code § 5-514.

6. The value of the insurance policy benefits at issue in the case is in excess of the jurisdictional minimum of this Court.

7. Venue in Ada County is appropriate under Idaho Code § 5-404.

ALLEGATIONS

8. On April 22, 2003, Banner Life Insurance issued a \$300,000 life insurance policy bearing policy number 17B635069 ("The Policy") insuring the life of Mark Wallace Dixson. A duplicate of the policy insuring Mark Wallace Dixson is attached as Exhibit A.

9. Section B of the application Part I, attached to and made part of the policy, listed Tammie Sue Dixson, who on information and belief was married to Mark Wallace Dixson at the time the policy was issued.

10. Under the terms of The Policy, Mark Wallace Dixson had the right to change the beneficiary of The Policy.

11. On approximately May 2, 2006, Robert Young, through counsel, sent Banner Life Insurance Company a Beneficiary Change Form, changing The Policy beneficiary to Jackie E. Young. The letter from Robert Young's counsel attaching the Beneficiary Change Form, along with the form, is attached as Exhibit B.

12. On information and belief, Mr. Young had the power of attorney from Mark Dixson to change the beneficiary of The Policy.

13. On May 5, 2006, Mark Wallace Dixson died of complications from Amyotrophic Lateral Sclerosis in Boise, Idaho.

14. On or about May 20, 2006, Jackie Young sent Banner Life Insurance Company a Proof of Death/Claimant's Statement.

15. On or about May 23, 2006, Tammy Sue Dixson sent Banner Life Insurance Company a letter indicating her intent to contest the change in beneficiary. A true and correct copy of this letter is attached as Exhibit C.

16. On or about May 23, 2006, a lawyer for Tammy Sue Dixson sent Banner Life Insurance Company a letter demanding payment under the terms of The Policy. A true and correct copy of this letter is attached as Exhibit D.

17. Since late May, 2006, Banner Life Insurance Company has communicated orally and in writing with various interested parties and their lawyers. Based on information and belief, the parties attempted to achieve an informal resolution but could not.

18. Through counsel, Tammie Sue Dixson and Jackie Young have acknowledged that Banner Life Insurance Company must file an interpleader action to resolve their competing claims to the proceeds of The Policy.

19. On or about December 15, 2006, Jackie E. Young created the Mark Wallace Dixon Irrevocable Trust and made herself Trustee.

CLAIMS

I. INTERPLEADER

20. The competing claims of Tammie Sue Dixon and The Mark Wallace Dixon Irrevocable Trust to The Policy proceeds is such that Plaintiff Banner Life Insurance Company may be exposed to double or multiple liability.

21. Accordingly, Banner Life Insurance Company is entitled to interplead The Policy proceeds into this Court so the Defendants can litigate their entitlement to The Policy proceeds.

PRAYER FOR RELIEF

WHEREFORE, Banner Life Insurance Company prays for the following relief:

A. That the Court hold the interpled funds in trust pending resolution of the competing claims by The Mark Wallace Dixon Irrevocable Trust and Tammie Sue Dixon.

B. On payment of the money by Banner Life Insurance Company into the registry of the Court or to such person authorized by the Court, that Plaintiff, Banner Life Insurance Company, be discharged of all liability to the Defendants, Tammie Sue Dixon and The Mark Wallace Dixon Irrevocable Trust, and that the respective rights of the Defendants to the policy proceeds be determined.

C. An award of fees and costs incurred in bringing this interpleader action.

D. Any further relief the Court deems equitable or necessary.

DATED this 23rd day of January, 2007.

ELAM & BURKE, P.A.

By: Joshua S. Evett
Joshua S. Evett, of the firm
Attorneys for Plaintiff


BannerLife® Insurance Company

1701 Research Boulevard
Rockville, MD 20850

RIGHT TO EXAMINE POLICY FOR 20 DAYS. Within 20 days after this policy is received, it may be returned to the agent through whom it was purchased or to our home office. We will pay the Face Amount to the Beneficiary if the Insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

READ YOUR POLICY CAREFULLY - This policy is a legal contract between the policy owner and Banner Life Insurance Company.

In this policy, Banner Life Insurance Company will be referred to as "we", "our" or "us".

We will pay the face amount to the beneficiary if the insured dies while this policy is in force. Such payment will be subject to the provisions of this policy.

All payments are subject to the terms of this policy. The following pages are part of this policy.

This policy is issued in consideration of the application and of the payment of the first premium as provided herein. A copy of the application is attached and is made a part of the policy.

Signed for Banner Life Insurance Company at its home office in Rockville, Maryland, on the policy date.

Bryan R. Newcombe
Secretary

David S. Lenzburg
President

Renewable and Convertible Term Life Insurance

A change of premium provision is applicable subject to guaranteed maximum premiums

This policy is renewable to the expiration date

The face amount is payable at death prior to expiration date

This policy is convertible to the end of the conversion period

Nonlevel premiums are payable as shown in the policy schedule to the expiration date or until the death of the insured

This policy is nonparticipating and no dividends are payable

RT-97

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EXHIBIT A



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Payment of Proceeds.....	7
Payment Options.....	7
Premiums.....	4
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Concluded with:

Riders, benefits, amendments, and endorsements, if any; and copy of applications

PLEASE READ YOUR POLICY CAREFULLY

POLICY SCHEDULE

<u>FORM NUMBER</u>	<u>TYPE OF COVERAGE</u>	<u>EXPIRATION DATE</u>	<u>FACE AMOUNT</u>	<u>*ANNUAL PREMIUM</u>	<u>RATING CLASSIFICATION</u>
RT-97	RENEWABLE AND CONVERTIBLE TERM	04/29/2054	\$300,000	\$345.00	PREFERRED PLUS NONTOBACCO
	POLICY FEE			\$50.00	
			TOTAL	<u>\$395.00</u>	

MAXIMUM ANNUAL PREMIUM: YEAR 1 \$395.00
 YEARS 2+ SEE SCHEDULE PAGE 3A

* PREMIUMS MAY BE CHANGED AS PROVIDED IN THE CHANGE OF PREMIUM PROVISION, BUT THE ANNUAL PREMIUM WILL NOT EXCEED THE MAXIMUM ANNUAL PREMIUM SHOWN.

PREMIUM MODE: ANNUAL
 PREMIUM DUE DATE: 04/29

*PREMIUM MODES AVAILABLE:	ANNUAL	SEMI-ANNUAL	QUARTERLY	PAC
	\$395.00	\$201.45	\$102.70	\$34.56

END OF CONVERSION PERIOD: 04/28/2023

END OF EXCHANGE PERIOD: 04/28/2023

INSURED:	MARK WALLACE DIXSON	TERM PERIOD:	20 YEAR
ISSUE AGE & SEX:	44 MALE	ISSUE DATE:	04/22/2003
OWNER:	MARK WALLACE DIXSON	POLICY DATE:	04/29/2003
		POLICY NUMBER:	17B635069



POLICY SCHEDULE (CONTINUED)

<u>YEAR</u>	<u>MAXIMUM ANNUAL RENEWAL PREMIUM</u>	<u>YEAR</u>	<u>MAXIMUM ANNUAL RENEWAL PREMIUM</u>
2	395.00	27	21,347.00
3	395.00	28	24,563.00
4	395.00	29	27,500.00
5	395.00	30	31,361.00
6	395.00	31	35,771.00
7	395.00	32	40,622.00
8	395.00	33	45,917.00
9	395.00	34	51,632.00
10	395.00	35	57,725.00
11	395.00	36	64,340.00
12	395.00	37	71,708.00
13	395.00	38	80,015.00
14	395.00	39	89,504.00
15	395.00	40	100,319.00
16	395.00	41	112,340.00
17	395.00	42	125,378.00
18	395.00	43	139,244.00
19	395.00	44	153,857.00
20	395.00	45	168,989.00
21	9,749.00	46	184,811.00
22	11,144.00	47	201,524.00
23	12,686.00	48	219,380.00
24	14,402.00	49	238,898.00
25	16,295.00	50	260,816.00
26	18,878.00	51	288,308.00

DEFINITIONS

Home and Administrative Office

Our Home Office and Administrative office is located at 1701 Research Boulevard, Rockville, Maryland 20850.

Policy Date

The Policy Date is shown on the Policy Schedule. This date is used to determine premium due dates, policy anniversaries, years and months. Coverage will be effective on the Policy Date.

Issue Date

The Issue Date is the date we complete the processing of the insured's approved application, and issue to the insured or the owner this life insurance policy. It is shown on the Policy Schedule.

Written Notice/Recording Thereof

Written Notice means a notification or request received from the owner in a form satisfactory to us. Written notices are recorded at our administrative office. We will not be responsible for the validity of any written notice.

Term Period

A Term Period is the period of time that premiums are level. The Term Periods are shown in the Policy Schedule.

Renewal Date

A Renewal Date is the date on which the previous term period ended.

Expiration Date

The Expiration Date is the end of the last term period. The Expiration Date is shown in the Policy Schedule.

Age

Age is shown in the Policy Schedule and is the insured's Age as of the nearest birthday on the Policy Date.

Beneficiary

The person to receive the proceeds payable at the insured's death.

OWNERSHIP

The owner of this policy is shown in the policy schedule unless later changed. During the insured's lifetime, only the owner may exercise all the rights and agree with us as to changes in the policy. If the insured is not the owner and the owner dies, then the insured will become the owner.

All rights of the owner are subject to the rights of any assignee and of any Irrevocable Beneficiary designation we have on record.

Assignment of Policy

This policy may be assigned. We will not be responsible for the validity of an assignment. We will not be liable for any payments made or actions taken before written notice of any assignment is received by us. Payments to any assignee will only be made in a lump sum.

PREMIUMS

Payment of Premiums

The first premium must be paid before any insurance becomes effective. The due date of the first premium is the policy date. Each subsequent premium is due on the premium due date(s) shown in the policy schedule. The owner may change the frequency of the premium payment to any frequency we offer on the date such change is requested. All premiums after the first are payable in advance at our administrative office. A premium receipt signed by one of our officers will be furnished upon request. In no event may premiums be paid beyond the expiration date.

Grace Period

Except for the first premium, we will allow a 31 day grace period after the premium due date to pay each premium. During the grace period, the policy will remain in force. If a premium is not paid before the end of the grace period, the policy will terminate without value. If death occurs during the grace period, the premium required to provide insurance from the premium due date to the end of the policy month in which the insured's death occurs will be deducted from the proceeds.

Reinstatement

A policy which terminates in accordance with the grace period provision may be reinstated if:

1. written request for reinstatement is made within five years after the expiration of the grace period and before the expiration date of the policy. The reinstated policy will be in force from the date we approve the application for Reinstatement and the required premiums are paid;
2. the owner submits a written application;
3. evidence of the insured's insurability is received and approved by us; and
4. all due and unpaid premiums, with interest payable at an annual rate of 6%, are paid.

CHANGE OF PREMIUM

We may change the premium for this policy after the initial term period, exclusive of any riders, subject to the following:

1. the annual premium for this policy will not exceed the maximum annual premium shown in the policy schedule;



2. the premium may not be changed more than once during any 12 month period;
3. we will send the owner, at the address in our records, a written notice of any change in premium at least 30 days before the date on which the change will be effective;
4. any change of premium will be based on our expectations as to future experience for such elements as persistency, expenses, mortality, taxes, and investment earnings;
5. the modal premium will be calculated on the same basis as used on the issue date of this policy; and
6. any change in premium will be on a uniform basis applying to all policies with the same issue age, sex, rating classification, duration, and plan of insurance as this policy. A change of health will not cause a change of premium.
7. will take effect on the policy anniversary date following the date we make the change.

RENEWAL

Renewability

This policy may be renewable for additional term periods. Evidence of the insured's insurability need not be furnished. Renewal will occur only if premiums have been paid to the renewal date. This policy, however, will not continue beyond the expiration date.

Effective Date of Renewal

The renewal premium must be paid within 31 days of the renewal date in order for the renewal to become effective. This policy will be renewed automatically if the insured dies during the 31-day period before the payment of a premium. If the insured dies during this period, the portion of the renewal premium required to provide insurance from the premium due date to the end of the policy month in which the insured's death occurs will be deducted in the calculation of proceeds payable.

Renewal Premiums

The maximum annual renewal premium rates for this policy, including riders and benefits, are shown in the policy schedule.

Automatic Renewal

This policy will be automatically renewed on the renewal date if:

1. it contains a total disability benefit; and
2. premiums are being waived to the renewal date under such disability benefit.

We will waive renewal premiums as long as the insured continues to be totally disabled under such total disability benefit.

CONVERSION

This policy may be converted to a new policy on the insured's life. Evidence of the insured's insurability is not required. The conversion may be made:

1. on any premium due date, but not later than the end of the conversion period shown in the policy schedule;
2. if we receive the owner's written request and application for conversion;
3. the first premium for the new policy is paid; and
4. the owner returns this policy to us.

The new policy will be issued:

1. with the date of exchange as its policy date;
2. at the insured's age on the date of exchange;
3. with the same rating classification as that under this policy;
4. on any permanent life plan which we have available for conversion and, for the amount exchanged, we customarily issue on the date of exchange to applicants with the insured's rating classification;
5. with premiums based on our rates for the rating classification and plan of insurance on the date of exchange;
6. for an amount of insurance not less than our minimum for the plan selected, nor greater than the face amount of this policy on the conversion date. At least one plan of insurance will be available for conversion in an amount equal to the face amount of this policy on the conversion date;
7. the new policy will be issued so that the time limit specified in the Incontestability and Suicide provisions of the new policy will be measured from the Policy Date of this policy; and
8. the new policy will be subject to any assignment of this Policy received at our office.

The new policy will contain a total disability benefit and/or accidental death benefit if:

1. this policy contains such benefit;
2. on the date of exchange, we customarily issue such benefit to applicants with the insured's age, sex, and rating classification; and
3. on the date of exchange, we customarily issue such benefit in conjunction with the plan to which the insured converts.

If more than one type of total disability benefit is available on the date of exchange, the benefit attached to the new policy will be the benefit with the lowest premium.

Automatic Conversion

This policy will be converted to a permanent life plan selected by us at the end of the conversion period if:

1. this policy contains a total disability benefit;
2. the insured is totally disabled under the terms of the disability benefit at the end of the conversion period; and
3. such disability continued during the 6 months prior to the end of the conversion period.

The new policy's premiums will be based on the insured's age on the date this policy is converted. The new policy will be issued for an amount equal to the face amount of this policy on the conversion date. Any premium falling due while the insured continues to be totally disabled will be waived.

EXCHANGE OF POLICY FOR SAME PLAN

This policy may be exchanged for a new policy on the insured's life. Evidence of the insured's insurability satisfactory to us is required. The exchange may be made at any time during the exchange period. The exchange period expires as indicated in the policy schedule.

To make the exchange:

- (1) we must receive a new application for the exchange before the end of the exchange period while this policy is in force; and
- (2) all premiums due on this policy must be paid to the exchange date.

The new policy will be issued:

- (1) on the same plan of insurance as this policy; and
- (2) for a face amount not less than the minimum for this plan nor greater than the face amount of this policy on the exchange date.

Premiums for the new policy will be at the rates in effect for the insured's attained age on the exchange date. The new policy will be subject to our rules on frequency of premium payment and minimum premium in effect on the exchange date.

The issue date of the new policy will be the exchange date. The first premium for the new policy must be paid before coverage under the new policy begins. Coverage under this policy will end when coverage under the new policy begins.

The suicide provision in the new policy will be waived.

The new policy may contain any rider(s) included in this policy, subject to our rules and at the premium rates in effect on the exchange date.

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GENERAL PROVISIONS

Contract

This policy, attached riders, amendments, benefits, and the application form the entire contract. Only the President, a Vice President, or the Secretary of Banner Life Insurance Company may change or waive any provision of this contract. Any changes or waivers must be in writing.

We may not change or amend this policy without the owner's consent except as expressly provided in the policy. However, we may change or amend the policy if such change or amendment is necessary for it to comply with any state or federal law, rule, or regulation.

Incontestability

Statements in the application are considered representations, not warranties. Statements may be used to contest the validity of this policy or in defense of a claim only if they are contained in the application or in an endorsement or amendment, and a copy of that application, endorsement, or amendment is attached to the policy at issue or is made part of the policy when a change becomes effective.

We will not contest this policy after it has been in force during the Insured's lifetime for two years from the Issue Date, except for failure to pay premiums. If this policy is reinstated, it will be incontestable after it has been in force during the insured's lifetime for two years from the effective date of the Reinstatement. The Incontestability period will be based on the most recent applications.

Misstatement of Age and Sex

If the insured's age or sex has been misstated, we will pay the amount of insurance that the premiums paid would have purchased at the correct age and sex.

Suicide

The benefits payable are limited if the insured commits suicide, while sane or insane, within two years from the Issue Date. In such case, our liability will be limited to a refund of all premiums paid to us.

Non-participating

This policy is non-participating and the owner will not share in Banner Life Insurance Company's profits or surplus. No dividends are payable on this policy.

AMOUNT OF PROCEEDS

The life insurance proceeds payable at the insured's death will be (1) plus (2) plus (3) minus (4) where:

- (1) is the face amount of this policy, shown in the policy schedule;
- (2) is any insurance on the insured's life provided by riders;
- (3) is the portion of any premium paid for a period beyond the policy month in which the insured's death occurs; and
- (4) is any premium which is due and unpaid for a period from the premium due date to the end of the policy month in which the insured's death occurs.

We reserve the right to require the return of the policy at time of settlement.

BENEFICIARY PROVISIONS

Beneficiary

Unless otherwise provided by written notice to us, the beneficiaries are named in the application.

Change in Beneficiary

During the insured's lifetime, the owner may change the beneficiary designation unless he or she has waived the right to do so. No beneficiary change will take effect until a written notice is received at our administrative office. Such changes will become effective on the date written notice is received by us. All changes will be subject to any payment made by us before notice was received.

Death of a Beneficiary

Unless otherwise provided in the beneficiary designation:

- 1. the interest of any beneficiary who dies before the insured will pass to any surviving beneficiaries according to their respective interests; or
- 2. if no beneficiary survives the insured, the proceeds will be paid in one sum to the owner, if living; otherwise, to the owner's estate.

PAYMENT OF PROCEEDS

Any amount payable under this contract will be paid in one sum unless otherwise provided. All or part of this sum may be applied to any payment option. However, options will not be available if:

- 1. the net proceeds are less than \$2,500;
- 2. the amount of each payment is less than \$50; or
- 3. in the case of payment option 1, 2 or 3, the payee is not a natural person receiving payment in his or her own right.

Proceeds left with us may be withdrawn by written notice where such right is given. The payment of any withdrawal may be postponed for as long as six months from the date we receive written notice.

We may require evidence of the survival of any Payee before any settlement payment payable to the payee is made.

ELECTION OF PAYMENT OPTIONS

By Owner

During the insured's lifetime, the owner may elect any payment option and may change such election if he or she has reserved the right to do so.

If the owner elects a payment option for the beneficiary, the beneficiary may not:

- 1. change or cancel the election;
- 2. assign or transfer the amount held by us; or
- 3. withdraw any future installments or unpaid interest installments unless these rights are granted in the election.

By Beneficiary

If the owner does not elect a payment option, the beneficiary may do so after the insured's death.

Such election by the Beneficiary:

- 1. must be made before the payment of any Policy Proceeds has been made; and
- 2. shall be effective as of the date of the Insured's death.

Conditions for Election

Any election or change must be made by written notice to us. No election or change will be effective until we record it.

PAYMENT OPTIONS

The following sections describe the payment options available under this policy.

Option 1 - Life Income

We will make equal monthly payments during the payee's lifetime. Payments will end with the last monthly payment before his or her death. The amount of each payment, per \$1,000 of Policy Proceeds, will not be less than that shown in the Option 1 table.

Option 2 - Life Income With Period Certain

We will make equal monthly payments during the payee's lifetime, with a minimum period guaranteed (60, 120, 180 or 240 months). The amount of each payment, per \$1,000 of Policy Proceeds, will not be less than that shown in the Option 2 table. At the Payee's death, we will continue to pay the balance of the unpaid payments, if any, to the Payee's Beneficiary for the balance of the guaranteed period.

Option 3 - Joint Life Income

We will make payments for as long as either of two designated persons live. The amount of each payment, per \$1,000 of Policy Proceeds, will not be less than that shown in the Option 3 table.

Option 4 - Payments for a Fixed Period

We will make payments for a fixed period. The amount of each payment, per \$1,000 of Policy Proceeds, will not be less than that shown in the Option 4 table. At the Payee's death, we will continue to pay the balance of the unpaid payments to the Payee's Beneficiary.

Option 5 - At Interest

The proceeds may be left with us to draw interest. Interest may be paid annually, semi-annually, quarterly, or monthly. The first payment will be made at the end of the interest frequency period chosen. The guaranteed interest rate is 3% a year, compounded yearly. Interest shall not be paid beyond the lifetime of one Payee except with our consent.

Evidence of Survival

We have the right to require satisfactory proof of any payee's age. The right to change options is not available after payments commence under this option.

Automatic Payment Option

If settlement of the proceeds of this policy is delayed over 30 days, option 5 will be applied automatically. Interest will be paid yearly and the person(s) entitled to the proceeds has the right to withdraw the proceeds or elect any payment option permitted by this policy. The legal rate indicated by the state will be used if it is higher than our declared rate.

Basis of Values

The payment option tables are based on 3% interest compounded yearly. For options involving lifetime income, rates in the tables are based on Table "a" mortality rates. We may offer more favorable rates than those determined on this basis.

Additional Options

Any proceeds payable under this policy may be paid under any other method of payment agreed to by us at the time of settlement.



ANNUITY TABLES
Monthly Income per \$1,000 of proceeds

Age	OPTION 1 LIFE ONLY		OPTION 2 LIFE WITH PERIOD CERTAIN							
	MALE	FEMALE	60 MONTHS		120 MONTHS		180 MONTHS		240 MONTHS	
			MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
50	4.30	3.94	4.29	3.93	4.26	3.92	4.20	3.89	4.11	3.85
51	4.38	4.00	4.37	3.99	4.33	3.98	4.27	3.95	4.17	3.90
52	4.47	4.07	4.45	4.06	4.41	4.04	4.34	4.01	4.23	3.96
53	4.56	4.14	4.54	4.13	4.49	4.11	4.41	4.07	4.29	4.02
54	4.65	4.21	4.63	4.21	4.58	4.18	4.49	4.14	4.35	4.07
55	4.75	4.29	4.73	4.29	4.67	4.26	4.57	4.21	4.42	4.14
56	4.86	4.38	4.83	4.37	4.77	4.34	4.65	4.28	4.48	4.20
57	4.97	4.47	4.94	4.46	4.87	4.42	4.74	4.36	4.55	4.26
58	5.09	4.56	5.06	4.55	4.97	4.51	4.82	4.44	4.61	4.33
59	5.22	4.67	5.18	4.65	5.09	4.61	4.92	4.52	4.68	4.40
60	5.35	4.77	5.32	4.76	5.20	4.71	5.01	4.61	4.74	4.47
61	5.50	4.89	5.46	4.87	5.33	4.81	5.11	4.70	4.81	4.54
62	5.65	5.01	5.61	4.99	5.46	4.92	5.20	4.80	4.87	4.61
63	5.82	5.14	5.77	5.12	5.59	5.04	5.31	4.90	4.93	4.69
64	6.00	5.28	5.94	5.25	5.73	5.16	6.41	5.00	4.99	4.76
65	6.19	5.43	6.12	5.40	5.88	5.29	5.51	5.10	5.05	4.83
66	6.40	5.59	6.31	5.55	6.04	5.43	5.61	5.21	5.11	4.90
67	6.61	5.76	6.51	5.71	6.19	5.57	5.71	5.32	5.16	4.97
68	6.85	5.94	6.72	5.89	6.36	5.72	5.81	5.43	5.20	5.03
69	7.10	6.14	6.95	6.08	6.52	5.88	5.91	5.54	5.25	5.09
70	7.36	6.36	7.19	6.28	6.70	6.05	6.01	5.66	5.29	5.15
71	7.65	6.59	7.44	6.50	6.87	6.22	6.10	5.77	5.32	5.20
72	7.95	6.84	7.71	6.73	7.05	6.40	6.19	5.88	5.35	5.25
73	8.28	7.11	7.99	6.98	7.23	6.59	6.27	5.99	5.38	5.30
74	8.63	7.41	8.29	7.25	7.40	6.79	6.34	6.09	5.41	5.34
75	9.00	7.72	8.60	7.54	7.58	6.98	6.42	6.19	5.43	5.37
76	9.41	8.07	8.92	7.84	7.75	7.19	6.48	6.28	5.45	5.40
77	9.84	8.44	9.26	8.17	7.93	7.39	6.54	6.37	5.46	5.42
78	10.30	8.85	9.61	8.51	8.09	7.59	6.59	6.45	5.47	5.44
79	10.79	9.29	9.98	8.87	8.25	7.79	6.64	6.52	5.48	5.46
80	11.32	9.77	10.35	9.26	8.40	7.98	6.68	6.58	5.49	5.47
81	11.88	10.29	10.73	9.66	8.54	8.17	6.72	6.63	5.50	5.48
82	12.48	10.85	11.12	10.08	8.67	8.34	6.75	6.68	5.50	5.49
83	13.12	11.46	11.51	10.51	8.80	8.51	6.77	6.72	5.51	5.50
84	13.79	12.11	11.91	10.96	8.91	8.66	6.80	6.75	5.51	5.50
85	14.50	12.82	12.30	11.41	9.01	8.80	6.81	6.78	5.51	5.51
86	15.24	13.58	12.69	11.86	9.11	8.92	6.83	6.80	5.51	5.51
87	16.03	14.39	13.08	12.32	9.19	9.03	6.84	6.82	5.51	5.51
88	16.86	15.26	13.46	12.76	9.26	9.13	6.85	6.83	5.51	5.51
89	17.75	16.17	13.83	13.19	9.33	9.22	6.86	6.84	5.51	5.51
90	18.70	17.13	14.20	13.60	9.39	9.29	6.86	6.85	5.51	5.51
91	19.71	18.12	14.57	14.00	9.44	9.35	6.86	6.86	5.51	5.51
92	20.79	19.16	14.92	14.38	9.48	9.41	6.87	6.86	5.51	5.51
93	21.96	20.24	15.26	14.73	9.51	9.45	6.87	6.87	5.51	5.51
94	23.22	21.37	15.59	15.07	9.54	9.49	6.87	6.87	5.51	5.51
95	24.59	22.55	15.91	15.40	9.56	9.53	6.87	6.87	5.51	5.51

ANNUITY TABLES
Monthly Income per \$1,000 of proceeds

AGE OF FEMALE	OPTION 3 JOINT LIFE INCOME									
	AGE OF MALE									
	50	55	60	65	70	75	80	85	90	95
50	3.63	3.71	3.78	3.84	3.87	3.90	3.91	3.92	3.93	3.93
55	3.77	3.91	4.02	4.11	4.18	4.22	4.25	4.27	4.28	4.29
60	3.91	4.10	4.28	4.43	4.55	4.64	4.69	4.73	4.75	4.76
65	4.02	4.28	4.54	4.78	4.99	5.15	5.26	5.33	5.37	5.40
70	4.12	4.43	4.77	5.14	5.48	5.77	5.99	6.14	6.23	6.29
75	4.19	4.55	4.97	5.47	5.99	6.49	6.90	7.21	7.42	7.56
80	4.23	4.63	5.12	5.74	6.45	7.21	7.94	8.54	9.00	9.32
85	4.26	4.68	5.22	5.93	6.80	7.84	8.95	10.01	10.91	11.63
90	4.28	4.71	5.28	6.04	7.04	8.29	9.78	11.36	12.87	14.24
95	4.29	4.73	5.31	6.11	7.18	8.58	10.35	12.40	14.54	16.71

Income Payments for ages not shown furnished upon request.



ANNUITY TABLES

Monthly Income per \$1,000 of proceeds

OPTION 4 ANNUITY CERTAIN	
YEAR	INCOME
5	17.91
6	15.14
7	13.16
8	11.68
9	10.53
10	9.61
11	8.86
12	8.24
13	7.71
14	7.26
15	6.87
16	6.53
17	6.23
18	5.96
19	5.73
20	5.51
21	5.32
22	5.15
23	4.99
24	4.84
25	4.71
26	4.59
27	4.47
28	4.37
29	4.27
30	4.18

SECTION A PROPOSED INSURED

1. Full Name (Include maiden name in parentheses) M F **Mark Wallace Dixon** 2. Date of Birth [Redacted] 3. State of Birth **Michigan** 4. Social Security Number [Redacted]

5. Home Address: Give No., Street, City, State, and Zip Code **2231 S. Bristol Mesa, AZ 85212** How Long? **3 yrs**

6. Previous Addresses within past 5 years **4471 18th Street Dorr, MI 49323** [Redacted]

8. Phone Numbers Home **(480) 380-9873** Work **(480) 924-8191** 9. Marital Status M S W D 10. Occupation (Include company name) **Furniture Sales**

11. Employer's Name and Address and Nature of Business? **JC Penney Home Store 6555 E. Southern Ave Mesa, AZ 85206** How Long Employed? **3 yrs**

12. Proposed Insured Internet E-mail Address **mwdixon@Juno.com**

SECTION B BENEFICIARY

13. Primary: (Full Name)	Address	Birthdate	SSN or TIN	Rel. to Prop. Ins.	% Share
Tammy Sue Dixon	2231 S. Bristol Mesa, AZ 85212	4-25-66	371-80-1440	Wife	100%
14. Contingent: (Full Name)	Address	Birthdate	SSN or TIN	Rel. to Prop. Ins.	% Share

If percentage shares are not given, they will be equal.

SECTION C OWNER
 (Complete only if the Owner is to be other than the Proposed Insured.)

15. Owner is Individual Sole Proprietorship Partnership Corporation Trust

16. Full Name (If trust, give full name of trust and date of trust agreement) _____ 17. Date of Birth Mo. Day Yr. _____ 18. SSN or Tax ID No. _____

19. Address: Give No., Street, City, State, and Zip Code _____

20. Relationship to Proposed Insured _____ 21. Internet E-mail Address _____

SECTION D PAYOR

22. Amount remitted with Conditional Receipt (with same number as the Application - Part 1) \$ _____

23. Frequency of Premium Payment: Single Annual Semi-annual Quarterly Pre-authorized Check (PAC)

24. If premium notices are to be sent to someone other than the Owner, give full name, address, and relationship to Owner below.
 Name _____ Address _____
 Relationship _____

SECTION E INSURANCE APPLIED FOR

25. Amount and Plan of Insurance: Amount \$ **300,000** Plan **20 yr Level Term**

26. Death Benefit Option (if available with Plan): Increasing Death Benefit Level Death Benefit

27. If our underwriting indicates that we cannot give you the lowest rate for the Plan of Insurance, will you consider a higher rate? Yes No

Additional Benefits (if available) ? _____

28. Waiver of Premium Other (description and amount) _____



SECTION F OTHER INSURANCE

29. List all of the Proposed Insured's existing life and disability insurance. If None, state NONE.

Full Name of Company	Amount	ADB	Waiver	Issue Yr.	Name of Beneficiary
Banner Life	\$ 300,000	\$	<input type="checkbox"/> Yes ¹ <input type="checkbox"/> No	2000	Tammy Dixon
	\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No		

30. Will you, or are you likely to, replace, end, or change existing insurance or annuity in any company or society with the insurance for which you are applying? (If "Yes", the broker may be required to provide additional forms for your review and signature.) Yes No
31. Have you ever applied for life, health, or disability insurance and been turned down, asked to pay a higher premium, or issued a reduced face amount? (If "Yes", explain in the Remarks section.) Yes No
32. Do you have an application or informal inquiry for life, health, or disability insurance pending in any other company or society, or have you ever withdrawn such application or informal inquiry? (If "Yes", explain in the Remarks section.) Yes No

SECTION G TOBACCO USE

33. Has the proposed insured ever used any form of tobacco or nicotine-based products? Yes No
 If "Yes", when did the proposed insured last use tobacco or nicotine-based products? _____
 (month/year)

Type _____ Quantity _____

SECTION H GENERAL QUESTIONS

(Explain all "Yes" answers in the Remarks section.)

34. Have you ever requested or received a Worker's Compensation, Social Security, or disability income payment? Yes No
35. Have you ever been convicted of a misdemeanor (other than a minor traffic violation) or a felony? Yes No
36. In the past 5 years, have you had your license suspended or had 2 or more moving violations or accidents? Yes No
37. In the past 5 years, have you been convicted of, or plead guilty or no contest to, driving under the influence of alcohol or drugs? Yes No
38. Are you a member, or do you intend to become a member, of the armed forces, including the reserves? Yes No
39. Are you a citizen of the United States? Yes No
 If "NO", provide country, type of visa, and expiration date in the remarks section.

SECTION I OTHER ACTIVITIES

40. Have you in the past 5 years flown, or do you intend to fly, other than as a passenger? (If "Yes", complete Aviation Supplement.) Yes No
41. Have you in the past 2 years engaged in, or do you intend to engage in, any hazardous activities or sports such as hang gliding, hot-air ballooning, ultra-light flying, mountain or rock climbing, motor vehicle or boat racing, or scuba or sky diving? (If "Yes", complete Hazardous Activities Supplement.) Yes No
42. Have you in the past 5 years traveled or resided, or do you intend to travel or reside, outside of the continental United States for more than 4 consecutive weeks? (If "Yes", explain in the Remarks section.) Yes No

REMARKS

43. (Use this section for explanations and special requests. Identify applicable Question numbers.)

*34 I was off work for 6 weeks for recovery after arthroscopic knee surgery (left knee) in 1984.

44. Home Office Corrections (Not for use for policies issued in MD, KY, PA and WV.)

AUTHORIZATION TO COLLECT AND DISCLOSE INFORMATION

Source Each of the following may be a source of information: care provider; treatment facility; insurer; reinsurer; MIB; consumer reporting agency; financial source; and employer. **Care provider** includes: physicians; chiropractors; physical therapists; psychologists; and drug, alcohol, or mental health counselors. **Treatment facility** includes: hospitals; clinics; drug or alcohol treatment or consultation facilities; nursing homes; mental health facilities; ambulatory care centers; and those facilities or offices staffed or run by care providers.

Information Information means facts about my: mental or physical health; other insurance coverage; hazardous activities; character; general reputation; mode of living; finances; vocation; and other personal traits.

I understand that the following parties may need to collect information in regard to proposed coverage: Banner Life Insurance Company (the Company) and its reinsurers; the Medical Information Bureau, Inc. (MIB); a consumer reporting agency; and all persons authorized to represent these parties. I therefore authorize each source to give information when this Authorization to Collect and Disclose Information (Authorization) is presented. A copy of this Authorization will be as valid as the original. The Company will use the information to decide if I am insurable. The broker may use it to help update and improve my insurance program. Those parties that may need to collect information may disclose the information they collect to: other insurers to which I have applied or may apply; reinsurers; MIB; or those persons who perform business, professional, or insurance tasks for them. They may disclose the information as allowed by law. MIB and consumer reporting agencies may disclose the information only as set forth in a contract with a member company or organization.

This Authorization will be valid for two years after the date I sign the Application - Part I. I understand that I or my authorized representative may ask to receive a copy of this Authorization. I have received the Notice to Proposed Insured.

These statements are made by the Proposed Insured or the person authorized to act on behalf of the Proposed Insured. If an investigative consumer report is prepared, I elect to be interviewed: yes no.

IN CONNECTION WITH THIS APPLICATION FOR INSURANCE, IT IS UNDERSTOOD AND AGREED THAT:

The statements contained here and in Part II of this application and any supplements thereto, copies of which shall be attached to and made a part of any policy to be issued, are true to the best of my (our) knowledge and belief and are made to induce the Company to issue an insurance policy. I agree to notify the Company of any changes to the statements and answers given in any part of the application before accepting delivery of any policy.

No agent or other person has power to make, modify, or discharge any contract of insurance or to bind the Company by making promises respecting benefits upon any policy to be issued. No information as to any matter made a subject of inquiry here and in Part II of this application and any supplements thereto, copies of which shall be attached to and made part of any policy to be issued, shall be considered known by the Company unless set out in writing on this application. No broker is authorized to: (a) make or modify contracts; (b) waive any Company rights or requirements; or (c) waive any information the Company requests.

Except as may be provided in a duly issued Conditional Receipt, no insurance shall take effect unless and until the policy has been physically delivered and the first full premium paid during the lifetime of the insured(s) and then only if the person(s) to be insured is (are) actually in the state of health and insurability represented in Parts I and II of this application and any supplements thereto, copies of which shall be attached to and made part of any policy to be issued.

Changes or corrections made by the Company and noted in Part I, Question 44 above are ratified by the Owner upon acceptance of a contract containing this application with the noted changes or corrections. In those states where written consent is required by statute or State Insurance Department regulation for amendments as to plan, amount, classification, age at issue, or benefits, such changes will be made only with the Owner's written consent.

DECLARATION

I (We) have carefully read the receipt and understand and agree to the terms thereof including the conditions under which a limited amount of insurance may become effective prior to policy delivery. I (We) understand that all premium checks are to be made payable to Banner Life Insurance Company; checks are not to be made payable to the agent or the payee left blank. I (We) have received the MIB Disclosure and Fair Credit Reporting Act.

Mark Wallace Dixon Signed at Mesa, AZ on 03/31/2003
Signature of Proposed Insured City/State

Owner (if other than Proposed Insured) Signed at _____ on _____
City/State

By Paul D Workman
Signature and Title (if applicable)

Paul D Workman Signed at Minnetonka, MN on 04/05/2003
Signature of Broker City/State



BannerLife[®] Insurance Company

1701 Research Boulevard
Rockville, Maryland 20850-3191
(301) 279-4800

CONDITIONAL RECEIPT

NOTICE TO PROPOSED INSURED AND OWNER. No coverage will become effective prior to delivery of the policy applied for unless and until all the conditions of this receipt are met. No agent or broker has the authority to alter the terms or conditions of this receipt. This receipt shall be void if altered or modified.

No payment may be accepted with the application if, within the last 24 months, any person proposed for coverage has been treated for or diagnosed by a member of the medical profession as having: AIDS or any other immunological disorder; heart trouble; stroke; cancer; alcoholism; drug dependency; insulin dependent diabetes; or any blood pressure condition requiring medication.

CONDITIONS WHICH MUST BE MET BEFORE INSURANCE MAY BECOME EFFECTIVE PRIOR TO DELIVERY OF THE POLICY:

1. An amount equal to the modal premium indicated on the application must be submitted; the mode must be either annual, semi-annual, quarterly or pre-authorized check plan (two months' premium required); and
2. All medical examinations, test, x-rays and electrocardiograms initially required by the Company's published rules with regard to age and amount requested must be completed within ninety (90) days from the date of this receipt; and
3. The proposed insureds are, on the Effective Date indicated below, risks acceptable for insurance exactly as applied for on a standard premium basis according to the Company's rules and practices, without modification of plan, premium rate or amount; and
4. On the Effective Date the state of health and all factors affecting the insurability of each person proposed for coverage must be as stated in applications required by the Company, and;
5. Any check or money order given in payment is honored when first presented.

EFFECTIVE DATE. If all the conditions above are met, then insurance, subject to all the terms and conditions of the policy applied for and as if the policy applied for had already been issued and delivered, will become effective on the latest of: (a) the date of application; (b) the date of application - part II; (c) the date of completion of all underwriting requirements stated in (2) above; or (d) the special policy date requested in the application, if any.

MAXIMUM AMOUNT. The total amount of life insurance available under this receipt shall be the amount shown in Part 1, Question 25 of the application. This amount, together with any insurance now applied for or pending issue with the Company, including Accidental Death Benefits, shall not exceed \$500,000 to issue age seventy (70).

There is no coverage beyond age seventy (70); there is no coverage for any Last Survivor product applied for.

RETURN OF MONEY. If any of the above conditions is not met, the liability of the Company will be limited to the return of the amount remitted with this receipt. All returns will be made without interest to or for the benefit of the owner.

AGREEMENT. I agree that: (1) the limited amount of insurance that may begin prior to policy delivery will not exceed the Maximum Amount as defined above; (2) this limited amount of insurance will not begin unless all of the CONDITIONS listed above are first met exactly; (3) this receipt will be void if the application or this receipt contains any material misrepresentation or the Proposed Insured dies by suicide; and (4) this receipt will be of no legal effect on and after the earliest of the following: (a) the date the entire amount remitted with this receipt is returned, or (b) the date a policy is delivered to the Owner; and I further agree to any remaining terms, limits, and conditions of the Conditional Receipt and the Agreement in the Application.

Signature of Proposed Insured

_____/_____/_____
Date of this Receipt

Signature of Owner (if other than Proposed Insured)

BROKER STATEMENT.

Amount Remitted: \$ _____ Person from whom Received: _____

On the Date of this Receipt, I received the amount indicated above in exchange for this receipt. This receipt bears the same date as the Application - Part 1. I have accurately represented the terms and conditions of this receipt to the Proposed Insured and Owner. I know of no reason why any person to be covered may not be eligible for insurance.

Signature of Broker

AZOL # 30A-82-2235

BannerLife

Medical Examiner's Report
Part II of Application to
Banner Life Insurance Company

Agent Number _____
GA Number Ju

1701 Research Boulevard
Rockville, MD 20850-3191

100 Quentin Roosevelt Boulevard
Garden City, NY 11530-9641

Proposed Insured's Name (First, M.I., Last)

Mark W. Dixon

All questions pertain to proposed insured unless otherwise indicated.
All YES answers require full details.

1. Do you have a personal physician? (If YES, complete the following.) Yes No

Name, Address and Telephone Number of Personal Physician	Date last visited, reason, results
<u>Kent Hatfield, MD</u>	<u>3-26-03 for sinus infection given RX Cloro. full recovery</u>

2. Have you had any weight gain or loss in the last year? (If YES, complete the following.) Yes No

Weight Gain (lbs.)	Weight Loss (lbs.)	Reason for Gain or Loss

3. Within the past 10 years, have you been treated or diagnosed by a member of the medical profession as having: (If YES, circle applicable condition.)

- a. Nervous or mental disorder, paralysis, epilepsy, loss of consciousness, stroke, recurring dizziness, or chronic headaches? Yes No
- b. Asthma, pleurisy, bronchitis, emphysema, tuberculosis, spitting blood, or chronic cough? Yes No
- c. Heart attack, heart disease, palpitations, angina or pain in the chest, heart murmur, rheumatic fever, or high blood pressure? Yes No
- d. Ulcer of stomach or duodenum, colitis, disease of liver or gall bladder, or gallstones? Yes No
- e. Kidney disease, kidney stone, or renal colic? Yes No
- f. Blood, albumin, sugar or pus in the urine? Yes No
- g. Diabetes, venereal disease, goiter, or hernia? Yes No
- h. Anemia, or any disease of the blood or lymph glands? Yes No
- i. Eye or ear disease, loss of sight or hearing? Yes No
- j. Any disease of the breasts or pelvic organs? Yes No
- k. Any bone or joint disease, arthritis, gout, backache, sciatica, loss of extremity or deformity? Yes No
- l. Any thyroid or other endocrine disorder? Yes No
- m. Any cyst, cancer or tumor? Yes No
- n. Any immune deficiency disorder, AIDS, or AIDS Related Complex (ARC) or positive test results indicating the presence of the AIDS virus? Yes No
- o. Any other illness, disease or injury? Yes No

4. Within the past 10 years, have you:
- a. Had any treatment for, or been advised to have treatment for or to refrain from, the use of alcohol or any drug? Yes No
 - b. Used amphetamines, barbiturates, cocaine, heroin, sedatives or any controlled substance not prescribed by a physician? Yes No
 - c. Had or been advised to have any surgery? Yes No
 - d. Been treated or been advised to have treatment in or at any hospital, clinic or similar institution? Yes No

5. Within the past 5 years, have you:
- a. Had a physical examination? Yes No
 - b. Had any X-rays, electrocardiograms, blood tests or any other medical tests? Yes No
 - c. Taken any medication? Yes No
 - d. Been disabled? Yes No

6. Are you:
- a. Now being treated by a physician or other licensed medical practitioner? Yes No
 - b. Now pregnant? (If YES, expected date of delivery N/A) Yes No

7. Has any immediate family member had any history of cancer, high blood pressure, heart or kidney disease, tuberculosis, epilepsy, diabetes, mental illness or attempted suicide? Yes No

LU-1034(2/97)



00028

Mark Dixon

SS # 364-82-2235

Part II (Continued)

DOB 3-1-59

AZDL # 001016074

(All questions pertain to proposed insured unless otherwise indicated.)

Details in connection with questions 3-7. (Attach Additional Details Supplement to Application if more space needed):

Question No. Give full details for each question answered YES, including date, nature of illness or injury, number of attacks, duration, severity, treatment, results, name, address and telephone number of doctors, hospitals or clinics involved.

5a June 02 Dr. Hatfield for Annual Physical, no additional test performed.

5c Taken Cipro for Sinus Infection see #1

8. Family History:	Name of Family Member	Age	If Living		If Deceased	
			State of Health	Age	Cause of Death	
	Father			100		Alzheimer's Dis.
	Mother	64	Good			
	Brothers	41	Excellent			
	2 Sisters	13, 31	Good			

To the best of my knowledge and belief, the answers recorded herein are true and complete.

(Please DO NOT Use Felt Tip Pen for Signatures.)

Signed at Mesa Az 85212 on April 9, 03
City State Zip Date (month/day/year)

Mark Dixon Linda Maire
Proposed Insured (or parent or legal guardian if Proposed Insured is a minor) Medical Examiner

AUTHORIZATION. I authorize any physician, medical practitioner, hospital, clinic or other medical or medically-related facility, insurance company, employer, consumer reporting agency, the Medical Information Bureau, and any other organization, institution or person having any information (including diagnosis, treatment or prognosis) about my physical or mental condition or any other information about me or my health, to give to Banner Life Insurance Company, its authorized representatives and its reinsurers any such information. I understand that this information will be used by Banner Life Insurance Company or its reinsurers to determine my eligibility for insurance or my eligibility for benefits under an insurance policy.

This authorization shall be valid for 30 months from the date below. A photostatic copy of this authorization shall be as valid as the original. I understand that I am entitled to receive a copy of this authorization.

Signed at Mesa Az 85212 on April 9, 03
City State Zip Date (month/day/year)

Mark Dixon Linda Maire
Proposed Insured (or parent or legal guardian if Proposed Insured is a minor) Medical Examiner

PERSONAL INFORMATION STATEMENT

COMPLETE ON ALL BUSINESS CASES AND IF REQUIRED ON NON-BUSINESS CASES
(REFER TO CURRENT UNDERWRITING REQUIREMENTS CHART)

1. a. Personal Finances for each person proposed for insurance:

Name of Proposed Insured	Total Assets	Total Liabilities	Net Worth	Earned Income	Unearned Income
Mark Dixon	350,000	173,000	177,000	39,000 yr	0

b. Has any person proposed for insurance ever filed for bankruptcy? Yes No
If "Yes," provide details below.

2. What is the purpose of this insurance? (i.e., Keyman, Stock Redemption, Buy and Sell, Creditor, Estate Liquidity, Other):

Financial security for my wife and children.

3. How was the face amount determined? Same amount as my initial policy.
Financial responsibilities and income have increased since then.

4. Business Finances (Complete only if this is business insurance):

a. Total Assets \$ N/A b. Total Liabilities \$ _____ c. Net Worth \$ _____

d. Net Profit After Taxes for Past Two Years: Last Year \$ _____ Previous Year \$ _____

e. Is the business a Corporation, Partnership, or Proprietorship? (circle one)

f. How long has the business been established? _____

g. What is the nature of the business? _____

h. What is the percentage ownership of this firm? _____

i. Is there business insurance applied for or in force on other key members of this firm? Yes No
If "Yes," provide details below.

j. Has the proposed insured's company ever filed for bankruptcy? Yes No
If "Yes," provide details below.

5. Are there any special considerations of circumstances relevant to this case? No

6. Details: Pending divorce forced personal bankruptcy in 1995,
Perfect credit every since.

The statements contained in this PERSONAL INFORMATION STATEMENT, a copy of which shall be attached to and made part of any policy to be issued, are true to the best of my knowledge and belief and are made to induce the company to issue an insurance policy.

Bruce D. Workman
Signature of Witness

03-31-2003
Date

Mark Wallace Dixon
Signature of Proposed Insured

Signature of Other Proposed Insured

Signature of Other Proposed Insured

Signature of Other Proposed Insured



BannerLife[®] Insurance Company

1701 Research Boulevard
Rockville, MD 20850

Renewable and Convertible Term Life Insurance

**A change of premium provision is applicable
subject to guaranteed maximum premiums**

**The face amount is payable at death prior to
expiration date**

**Nonlevel premiums are payable as shown in
the policy schedule to the expiration date or
until the death of the insured**

This policy is renewable to the expiration date

**This policy is convertible to the end of the
conversion period**

**This policy is non-participating and no dividends
are payable**

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STATEMENT OF POLICY COST AND BENEFIT INFORMATION FOR POLICY 17B635069

ANY CORRESPONDENCE REGARDING THIS POLICY SUMMARY MAY BE FORWARDED EITHER TO OUR HOME OFFICE OR TO THE AGENT LISTED BELOW:

PREPARED BY:

AGENT:

BANNER LIFE INSURANCE COMPANY
1701 RESEARCH BOULEVARD
ROCKVILLE, MD 20850

CONSUMERQUOTE USA

THIS POLICY SUMMARY WAS PREPARED ON APRIL 29, 2003 FOR THE LIFE OF
MARK WALLACE DIXSON (MALE) ISSUE AGE 44.

YOUR COVERAGE CONSISTS OF A RENEWABLE AND CONVERTIBLE TERM POLICY WITH CHANGE OF PREMIUM AND EXCHANGE PROVISIONS. THE TOTAL ANNUAL PREMIUM WILL INCLUDE THE COST FOR WAIVER OF PREMIUM BENEFIT, ACCIDENTAL DEATH BENEFIT, OR RATED EXTRAS IF ISSUED IN YOUR POLICY.

AGE	YEAR	ANNUAL PREMIUMS	CUMULATIVE PREMIUMS	FACE AMOUNT OF INSURANCE
		GUAR MAX	GUAR MAX	
44	1	395.00	395.00	300,000
45	2	395.00	790.00	300,000
46	3	395.00	1,185.00	300,000
47	4	395.00	1,580.00	300,000
48	5	395.00	1,975.00	300,000
49	6	395.00	2,370.00	300,000
50	7	395.00	2,765.00	300,000
51	8	395.00	3,160.00	300,000
52	9	395.00	3,555.00	300,000
53	10	395.00	3,950.00	300,000
54	11	395.00	4,345.00	300,000
55	12	395.00	4,740.00	300,000
56	13	395.00	5,135.00	300,000
57	14	395.00	5,530.00	300,000
58	15	395.00	5,925.00	300,000
59	16	395.00	6,320.00	300,000
60	17	395.00	6,715.00	300,000
61	18	395.00	7,110.00	300,000
62	19	395.00	7,505.00	300,000
63	20	395.00	7,900.00	300,000
64	21	9,749.00	17,649.00	300,000
65	22	11,144.00	28,793.00	300,000
66	23	12,686.00	41,479.00	300,000
67	24	14,402.00	55,881.00	300,000
68	25	16,295.00	72,176.00	300,000
70	27	21,347.00	112,401.00	300,000

LIFE INSURANCE COST INDICES:	GUARANTEED PREMIUM	
	10 YEAR	20 YEAR
SURRENDER COST INDEX	1.32	1.32
NET PAYMENT INDEX	1.32	1.32

AN EXPLANATION OF THE INTENDED USE OF THESE INDICES IS PROVIDED IN THE LIFE INSURANCE BUYER'S GUIDE. THESE INDICES ARE USEFUL ONLY FOR THE COMPARISON OF RELATIVE COSTS OF TWO OR MORE SIMILAR POLICIES.



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1701 Research Boulevard
Rockville, Maryland 20850
(301) 279-4800

Privacy Policy

Our corporate policy

Your privacy is important to us. At Banner Life Insurance Company, we understand that the information you provide to us or we collect about you is private.

This privacy policy is provided to you so that you will understand what Banner Life does with the personal information you provide to us and the measures we take to protect your privacy.

Who has access to customer information?

The information that you provide to us is used for Banner Life purposes only. Banner Life employees and independent agents have access to your information, and are authorized to review it, only for the purpose of carrying out their official duties and responsibilities. Banner Life employees and independent agents are required to keep customer information confidential.

Why does Banner Life collect and maintain information?

As a regulated insurance carrier, Banner Life is required by state laws and regulations to collect and maintain certain information about its customers. The information we collect also enables us to provide you with services and products that meet your individual needs and to provide you with the high level of customer care that you have come to expect from Banner Life.

What type of information does Banner Life collect and maintain?

Banner Life Collects and maintains various types of information about its customers. The types of information we collect and maintain about you may include:

- Information that you submit to us, such as your name, address, telephone number, and Social Security Number.
- Information about your transactions with Banner Life, such as payment history and account balance.
- Information from non-affiliated third parties about your medical, employment and income history; your assets and liabilities and your driving record.
- Information from consumer reporting agencies about your credit history.
- Information about you that may be derived from your visits to Banner Life's websites.

Does Banner Life disclose customer information to, or share customer information with, outsiders?

Banner life does not disclose any non-public personal financial or any non-public personal medical information about our customers or former customers to anyone except as permitted or required by law.

It is Banner Life's current policy not to disclose customer information to, or share customer information with, other businesses for marketing purposes.

If this policy should change, Banner Life will notify you by mail, and you will be given an opportunity to request that your information not be disclosed to, or shared with other businesses for marketing purposes.

LU1236 (8/01)



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How can I contact Banner Life if I have privacy questions?

If you have any question about the privacy of your information, you can contact the Customer Service Department by:

Mail: Customer Service Department
Banner Life Insurance Department
1701 Research Boulevard
Rockville, MD 20850

or

E-mail: Banner_Customerservice@LGAmerica.com

or

Phone: 1-800-638-8428

LIFE INSURANCE BUYER'S GUIDE

This guide can show you how to save money when you shop for life insurance.

IT HELPS YOU TO:



Buy life insurance



Decide how much you need



Find a low cost policy



Things to remember

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Prepared by the National Association of Insurance Commissioners.
Reprinted by . . .



00035 .





Buying Life Insurance

When you buy life insurance, you want coverage that fits your needs and doesn't cost too much.

First, decide how much you need -- and for how long -- and what you can afford to pay.

Next, find out what kinds of policies are available to meet your needs and pick the one that best suits you.

Then, find out what different companies charge for that kind of policy -- for the amount of insurance you want. You can find important cost differences between life insurance policies by using cost comparison indexes as described in this guide.

It makes good sense to ask a life insurance agent or company to help you. An agent can be particularly useful in reviewing your insurance needs and in giving you information about the kinds of policies that are available. If one kind doesn't seem to fit your needs, ask about others.

This guide provides only basic information. You can get more facts from a life insurance agent or company or at your public library.

What About Your Present Policy?

Think twice before dropping a life insurance policy you already have to buy a new one.

- It can be costly because much of what you paid in the early years of the policy you now have was used for the company's expense of selling and issuing the policy. This expense will be incurred again for a new policy.
- If you are older or your health has changed, premiums for the new policy will often be higher.
- You may have valuable rights and benefits in your present policy that are not in the new one.
- You might be able to change your present policy or even add to it to get the coverage or benefits you now want.

Check with the agent or company that issued your present policy -- get both sides of the story. In any case, don't give up your present policy until you are covered by a new one.



How Much Do You Need?

To decide how much life insurance you need, figure out what your dependents would have if you were to die now, and what they would *actually* need. *Your new policy should come as close to making up the difference as you can afford.*

In figuring what you **have**, count your present insurance - including any group insurance where you work, social security or veteran's insurance. Add other assets you have -- savings, investments, real estate, and personal property.

In figuring what you **need**, think of income for your dependents -- for family living expenses, educational costs and any other future needs. Think also of cash needs -- for the expenses of a final illness and for paying taxes, mortgages or other debts.



What Is The Right Kind?

All life insurance policies agree to pay an amount of money when you die. But all policies are not the same. Some provide permanent coverage and others temporary coverage. Some build up cash values and others do not. Some policies combine different kinds of insurance, and others let you change from one kind of insurance to another. Your choice should be based on your needs and what you can afford.

A wide variety of plans is being offered today. Here is a brief description of two basic kinds -- term and whole life -- and some combinations and variations. You can get detailed information from a life insurance agent or company.

Term Insurance covers you for a *term* of one or more years. It pays a death benefit only if you die in that term. Term insurance generally provides the largest immediate death protection for your premium dollar.

Most term insurance policies are *renewable* for one or more additional terms, even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. Check the premiums at older ages and how long the policy can be continued.

Many term insurance policies can be traded before the end of a conversion period for a whole life policy -- even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance covers you for as long as you live. The most common type is called *straight life* or *ordinary life* insurance -- you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay at first for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Whole life policies develop cash values. If you stop paying premiums, you can take the cash - or you can use the cash value to buy continuing insurance protection for a limited time or a reduced amount. (Some term policies that provide coverage for a long period also have cash values.)

You may borrow against the cash values by taking a policy loan. Any loan and interest on the loan that you do not pay back will be deducted from the benefits if you die, or from the cash value if you stop paying premiums.

Combinations and Variations

You can combine different kinds of insurance. For example, you can buy whole life insurance for lifetime coverage and add term insurance for the period of your greatest insurance need. Usually the term insurance is on your life -- but it can also be bought for your spouse or children.

Endowment insurance policies pay a sum or income to you if you live to a certain age. If you die before then, the death benefit is paid to the person you named as beneficiary.

Other policies may have special features which allow flexibility as to premiums and coverage. Some let you choose the death benefit you want and the premium amount you can pay. The kind of insurance and coverage period are determined by these choices.

One kind of flexible premium policy, often called universal/life, lets you vary your premium payments every year, and even skip a payment if you wish. The premiums you pay (less expense charges) go into a policy account that earns interest, and charges for the insurance are deducted from the account. Here, insurance continues as long as there is enough money in the account to pay the insurance charges.

Variable life is a special kind of insurance where the death benefits and cash values depend upon investment performance of one or more separate accounts. Be sure to get the prospectus provided by the company when buying this kind of policy. The method of cost comparison outlined in this Guide does not apply to policies of this kind.



Life Insurance Illustrations

You may be thinking of buying a policy where cash values, death benefits or premiums may vary based on events or situations the company does not guarantee (such as interest rates). If so, you may get an illustration from the agent or company that helps explain how the policy works. The illustration will show how the benefits that are not guaranteed will change as interest rates and other factors change. The illustration will show you what the company guarantees. It will show you what could happen in the future. Remember that nobody knows what will happen in the future. You should be ready to adjust your financial plans if the cash value does not increase as quickly as shown in the illustration.



Finding a Low Cost Policy

After you have decided which kind of life insurance is best for you, compare similar policies from different companies to find which one is likely to give you the best value for your money. A simple comparison of the premiums is not enough. There are other things to consider. For example:



- Do premiums or benefits vary from year to year?
- How much cash value builds up under the policy?
- What part of the premiums or benefits is not guaranteed?
- What is the effect of interest on money paid and received at different times on the policy?

Cost Comparison Index numbers, which you get from life insurance agents or companies, take these sorts of items into account and can point the way to better buys.

Cost Comparison Indexes

There are two types of cost comparison index numbers. Both assume you will live and pay premiums for the next 10 or 20 years.

1. *The Surrender Cost Comparison Index* helps you compare costs over a 10 or 20 year period assuming you give up (surrender) the policy and take its cash value at the end of the period. It is useful if you consider the level of cash values to be of special importance to you.
2. *The Net Payment Cost Comparison Index* helps you compare costs over a 10 or 20 year period assuming you will continue to pay premiums on your policy and do not take its cash value. It is useful if your main concern is the benefits that are to be paid at your death.

The two index numbers are the same for a policy without cash values.

Guaranteed and Illustrated Figures

Many policies provide benefits on a more favorable basis than the minimum guaranteed basis in the policy. They may do this by paying dividends, or by charging less than the maximum premium specified. Or they may do this in other ways, such as by providing higher cash values or death benefits than the minimums guaranteed in the policy. In these cases the index numbers are shown on both a guaranteed and currently illustrated basis. The currently illustrated basis reflects the company's current scale of dividends, premiums or benefits. These scales can be changed after the policy is issued, so that the actual dividends, premiums or benefits over the years can be higher or lower than those assumed in the indexes on the currently illustrated basis.

Some policies are sold only on a guaranteed or fixed cost basis. These policies do not pay dividends; the premiums and benefits are fixed at the time you buy the policy and will not change.

Using Cost Companions Indexes

The most important thing to remember is that a policy with smaller index numbers is generally a better buy than a similar policy with larger index numbers.

Compare index numbers only for similar policies -those which provide essentially the same benefits, with premiums payable for the same length of time. Make sure they are for your age, and for the kind of policy and amount you intend to buy. Remember that no one company offers the lowest cost at all ages for all kinds and amounts of insurance.

Small differences in index numbers should be disregarded, particularly where there are dividends or nonguaranteed premiums or benefits. Also, small differences could easily be offset by other policy features, or differences in the quality of service from the agent or company. When you find small differences in the indexes, your choice should be based on something other than cost.

Finally, keep in mind that index numbers cannot tell you the whole story. You should also consider.

- The pattern of policy benefits. Some policies have low cash values in the early years that build rapidly later on. Other policies have a more level cash value build-up. A year-by-year display of values and benefits can be very helpful. (The agent or company will give you a Policy Summary that will show benefits and premiums for selected years.)
- Any special policy features may be particularly suited to your needs.
- The methods by which nonguaranteed values are calculated. For example, interest rates are an important factor in determining policy dividends. In some companies dividends reflect the average interest earnings on all policies whenever issued. In others, the dividends for policies issued in a recent year, or a group of years, reflect the interest earnings on those policies; in this case, dividends are likely to change more rapidly when interest rates change.



Things To Remember

- Review your particular insurance needs and circumstances. Choose the kind of policy with benefits that most closely fit your needs. Ask an agent or company to help you.
- Be sure that the premiums are within your ability to pay. Don't look only at the initial premium, but take account of any later premium increase.
- Ask about cost comparison index numbers and check several companies which offer similar policies. Remember, smaller index numbers generally represent a better buy.
- Don't buy life insurance unless you intend to stick with it. It can be very costly if you quit during the early years of the policy.
- Read your policy carefully. Ask your agent or company about anything that is not clear to you.
- Review your life insurance program with your agent or company every few years to keep up with changes in your income and your needs.



JAMES E. RISCH
DAVID D. GOSS
R. JOHN INSINGER
MATTHEW J. GUSTAVEL
GEOFFREY E. GOSS
JASON S. RISCH

LAW OFFICES
RISCH + GOSS + INSINGER + GUSTAVEL
407 WEST JEFFERSON STREET
BOISE, IDAHO 83702

TELEPHONE
(208) 345-9974
TELEFAX
(208) 345-9982

May 2, 2006

Via Facsimile Only (301-294-6960)

Banner Life Insurance Company
1701 Research Boulevard
Rockville, MD 20850

Re: Insured: Mark Wallace Dixon
Policy No.: 17B635069
Beneficiary Change Form

Dear Customer Service:

Enclosed herewith is a revised Beneficiary Change Form on behalf of my client, Mark Wallace Dixon. I am also enclosing the Durable Power of Attorney which grants Robert Young the ability to sign on his behalf. Mr. Robert Young's signature has been signed on April 27, 2006 as the signature of the policy owner on behalf of Mr. Mark Wallace Dixon. Please have this Beneficiary Change Form completed immediately.

If questions arise, please do not hesitate to contact me.

Very truly yours,

*Dictated by Mr. Goss and sent
without signature to avoid delay.*

GEOFFREY E. GOSS

GEG/sac
Enclosure
cc/enc: Mark Dixon

EXHIBIT B
00040

BENEFICIARY CHANGE FORM

Mail completed form to:
 Banner Life Insurance Company
 1701 Research Blvd.
 Rockville, MD 20850
 1-800-636-8428



Insured: MARK WALLACE DIXSON
 Policy Number: 178635069

I. The proceeds of this life insurance policy will be paid to the beneficiary as shown below:

PRIMARY BENEFICIARY

Name (First, MI, Last)	Address (street, city, state, zip)	SSN	Relationship	Percent
JACKIE E. YOUNG	836 WENDELL ST TWIN FALLS ID 83301	382-40-9707	MOTHER	100

CONTINGENT BENEFICIARY

Name (First, MI, Last)	Address (street, city, state, zip)	SSN	Relationship	Percent
ELIZABETH J. DIXSON	P.O. BOX 67	370-04-1740	DAU	17.0
CHRISTINA M DIXSON	WILLIAMSBURG	369-04-8688	DAU	16.6
BRENDA M DIXSON	MI 49690	382-11-5218	DAU	16.6
CHERI N. DIXSON		382-11-5220	DAU	16.6
MICHAEL J. DIXSON		382-11-5221	SON	16.6
ANDREA S. DIXSON		382-11-5217	DAU	16.6

Any prior designations, if any, of beneficiaries and contingent beneficiaries are hereby revoked.

I. Required Signatures:

Policy Owner Name: MARK WALLACE DIXSON
 Address: 836 WENDELL ST
 Address: _____
 Address: _____
 City / State: TWIN FALLS IDAHO 83301

Telephone Number: (208) 735-8054
 Email Address: GRAMPL636@yahoo.com

RESIDENCE:
 LIFE CARE CENTER OF TREASURE VALLEY
 502 N. KIMBALL PL
 BOISE, ID 83704

Witness Signature: [Signature]
 Date: 05/02/06

Signature of Policy Owner: [Signature] PDA
 Date: 4-27-06

**The following states require a spousal signature: AZ, CA, ID, NV, NM, TX, WA, WI, and Puerto Rico. If the spouse is deceased, please enclose a copy of the death certificate. If divorced, please enclose a copy of the divorce decree.

III. To process your request without delay, please make sure the following have been completed:

- Did the Policy owner(s) sign and date the form?
- Do the percent totals equal 100%?
- Did you include the spousal signature if applicable?
- Did witness sign and date the form and an additional signature if applicable?
- Did you enclose the title page and signature page of the trust if listed as a beneficiary?

May 23, 2006

To: Banner Life Claims Department

Policy Owner: Mark Dixson
Policy Number: 17 B635069

To whom it may concern.

I am sending this letter to contest the change of beneficiary that was done when my husband Mark Dixson was hospitalized and was incapacitated due to ALS. I had no knowledge of Jackie Youngs change of beneficiary. I have no knowledge of any power of attorney for my husband.

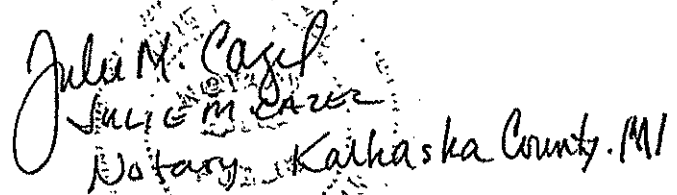
I WILL BE CONTESTING ANY CHANGE OF BENEFICIARY

Tammy Dixson



State of Michigan
County of Kalkaska

On May 24th, 2006, Tammy Dixson appeared before me and signed this document.



Julie M. Cazal
Notary, Kalkaska County, MI

JULIE M. CAZAL
Notary Public, State of Michigan, County of Kalkaska
My Commission Expires March 31, 2008
Acting in the County of Kalkaska

EXHIBIT C

00042

STROTHER LAW OFFICE

JEFFREY A. STROTHER
jstrother@strotherlawidaho.com

PAUL E. RIGGINS
paul@strotherlawidaho.com

200 N. FOURTH, SUITE 30
BOISE, IDAHO 83702

TELEPHONE
208-342-2425

FACSIMILE
208-342-2429

May 23, 2006

Jana Knowles
Claims Department
Banner Life Insurance Company
1701 Research Blvd.
Rockville, MD 20850

VIA FACSIMILE: (301) 294-6960

Re: Policy No.: 17B635069
Claim No.: LC62404
Insured: Mark Wallace Dixon

Dear Ms. Knowles:

I am an attorney practicing in Boise, Idaho and represent Tammy Sue Dixon. As you are aware, the policy proceeds from the insurance policy on the life of Mark Wallace Dixon are in dispute. It is my understanding that my client, Tammy Sue Dixon, has been the named beneficiary on the policy for the entire life of the policy until approximately April 27, 2006. I further understand that you received a "Beneficiary Change Form" from a Jackie Young, who claimed to be Mr. Dixon's attorney in fact pursuant to a Power of Attorney.

Based upon my understanding of Idaho community property law, this change cannot occur without my client's signature and approval. Pursuant to Idaho community property law, it is our position that unless and until my client agrees to remove her name from the policy or otherwise legally signs away her right to be beneficiary, that the request for the change of beneficiary is void and inconsistent with Idaho law. Additionally, as you may already be aware, Mr. Dixon was unable to move or operate his limbs in any way at the time of the alleged "signing" of the documents provided to you. Based thereon, it would have been impossible for Mr. Dixon to have actually signed these documents, and someone else would have had to have signed them. I am concerned that there may be possible forgery or fraud involved with the signing of said documents.

00043 .

EXHIBIT D

Regardless, my client makes full claim to the proceeds of the insurance policy pursuant to the community property laws of the state of Idaho. Based thereon, we look forward to your prompt disbursement of the insurance policy proceeds to my client. Please feel free to contact me if you have any questions or concerns regarding this matter.

Very truly yours,



Paul E. Riggins

PER:rmb
cc: Tammy Dixon

ORIGINAL

FEB 01 2007

CLERK
COURT

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
COSHO HUMPHREY, LLP
800 Park Blvd., Suite 790
P. O. Box 9518
Boise, Idaho 83707-9518
Direct Phone: (208) 639-5607
Cell Phone: (208) 869-1508
Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

ANSWER TO COMPLAINT FOR
INTERPLEADER AND CROSS CLAIM
AGAINST TAMMIE SUE DIXSON

Jackie E. Young, trustee of The Mark Wallace Dixon Irrevocable Trust ("Dixon Trust" or "Trust"), by and through its attorneys of record Cosho Humphrey, LLP, in response to Banner Life Insurance Company' Complaint for Interpleader ("Complaint") admits, denies and affirmatively alleges as follows:

FIRST DEFENSE

The Dixson Trust asserts that Plaintiff Banner Life Insurance Company ("Banner Life") should be dismissed from this case upon its deposit of the death benefit proceeds ("Funds") with the Court. Such dismissal is in the interests of justice, judicial economy and protecting the Funds from depletion by fees and costs Banner Life will incur by participating in this litigation. Once the Funds are deposited, Banner Life will not have any further interest in these proceedings because the dispute over the Funds will be between the Dixson Trust and Tammie Sue Dixson.

SECOND DEFENSE

In response to each allegation of the Complaint, the Dixson Trust admits or denies the allegations as more fully set forth below. To the extent that any particular allegation of the Complaint is neither specifically admitted nor specifically denied, said allegation or allegations shall be deemed denied.

1. The Dixson Trust admits the allegations contained in paragraphs 1 through 11.
2. With regard to the allegations contained in paragraph 12, the Dixson Trust alleges that Robert Young held a valid and fully effective and enforceable Durable Power of Attorney on the date he executed the Change of Beneficiary form in accordance with specific instructions from Mark Wallace Dixson.
3. The Dixson Trust admits the allegation contained in paragraphs 13 and 14.
4. The Dixson Trust is without sufficient information or knowledge at this time to either admit or deny the allegation contained in paragraph 15 and therefore denies the allegations.

5. The Dixson Trust is without sufficient information or knowledge at this time to either admit or deny the allegation contained in paragraph 16 and therefore denies the allegations; provided, however, that the Dixson Trust admits that a letter from a lawyer claiming to represent Tammie Sue Dixson is attached to the Complaint for Interpleader as Exhibit D. The Dixson Trust alleges that the letter attached as Exhibit D speaks for itself, although the claims with regard to applicable law are erroneous.

6. The Dixson Trust admits the allegation contained in paragraphs 17 through 21.

PRAYER

7. The Dixson Trust having fully answered Banner Life's Complaint for Interpleader asks:

7.1 That Banner Life be dismissed from this case upon its deposit of the Funds with the Court because such dismissal is in the interests of justice, judicial economy and protecting the Funds from depletion by fees and costs Banner Life will incur by participating in this litigation;¹

7.2 For such other and further relief as the Court may deem just and proper.

CROSS-CLAIM AGAINST TAMMIE SUE DIXSON

8. The Dixson Trust reaffirms the allegations made by it in paragraphs 1 through 7 above for purposes of this Cross-Claim.

9. The Dixson Trust alleges that the claim by Tammie Sue Dixson ("Tammie") to any interest in Banner Life Insurance Company Policy No. 17B6365069 ("Policy") and the

¹ As noted above, once the Funds are deposited, Banner Life will not have any further interest in these proceedings because the dispute over the Funds will be between the Dixson Trust and Tammie Sue Dixson.

Funds is without merit because the premiums for 2005 and 2006 were paid by Cory Armstrong as a gift to the insured, Mark Wallace Dixson ("Mark"), as his sole and separate property.

10. The Policy is a term insurance policy.

11. As a term insurance policy the characterization of the Policy as a community or separate asset depends on the source of funding of the premium for the *final* term of the Policy.

12. Because there is no cash value in the Policy and because the final premium was paid with a separate property gift to Mark, then there is no property interest in the Policy arising for the benefit of the community estate or Tammie upon Mark's death.

13. Consequently, the death benefit proceeds must be paid to the Dixson Trust, the assignee of Jackie E. Young, the designated beneficiary for the benefit of Mark's children as follows:

NAME	ADDRESS	DATE OF BIRTH	TRUST SHARE
Elizabeth J. Dixson	1693 May Lane #203, Traverse City, MI 49686	10/27/82	17.00%
Christina M. Dixson	207 N. Oak Street, Traverse City, MI 49686	12/25/83	16.60%
Brenda Mae Dixson	5919 Linderleaf Lane, Williamsburg, MI 49690	3/20/85	16.60%
Cheri N. Dixson	2520 Crossing Cr. #B117, Traverse City, MI 49684	8/19/86	16.60%
Michael J. Dixson	5919 Linderleaf Lane, Williamsburg, MI 49690	11/21/87	16.60%
Andrea S. Dixson	5919 Linderleaf Lane, Williamsburg, MI 49690	6/23/89	16.60%
			100.00%

PRAYER

14. The Dixson Trust having fully answered Banner Life's Complaint for Interpleader asks:

14.1 That the Court award the entirety of the Funds, with interest from the date of Mark's death, to the Dixson Trust.

14.2 That Tammie's claim and each cause of action stated therein be dismissed, with prejudice, with Tammie taking nothing thereby;

14.3 That upon dismissal of Tammie's claim, the Dixson Trust be awarded its costs and attorney's fees in pursuing the defense of the Complaint for Interpleader and prosecuting this Cross-Claim pursuant to *Idaho Code* §§12-120(3), 12-121, 12-123 and Rule 54 of the Idaho Rules of Civil Procedure.

14.4 For such other and further relief as the Court may deem just and proper.

DATED: February 1, 2007.

COSHO HUMPHREY, LLP

By: 

THOMAS G. WALKER

Attorneys for The Dixson Trust

CERTIFICATE OF SERVICE

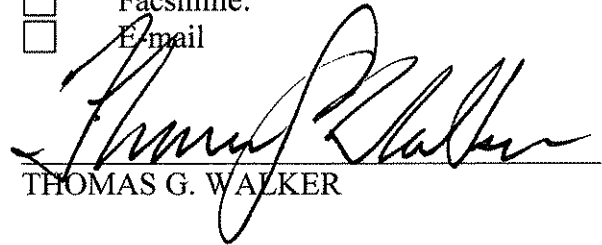
I HEREBY CERTIFY That on the 1st day of February, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Joshua S. Evett, Esq.
Elam & Burke, P.A.
251 East Front Street, Ste. 300
P.O. Box 1539
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

NO. _____ FILED _____
A.M. _____ P.M. 5

MAR 02 2007

J. DAVID NAVARRO, Clerk
By J BLACK
DEPUTY

FINCH & ASSOCIATES LAW OFFICE, P.A.

Michelle R. Finch, ISB No. 3382

103 W. Idaho

P.O. Box 1296

Boise, ID 83701

Telephone: (208) 385-0800

Facsimile: (208) 389-2186

contactus@familylegalsolutions.com

Robert W. Talboy

ELLSWORTH, KALLAS, TALBOY & DEFranCO, P.L.L.C.

1031 E. Park Blvd

Boise, ID 83712

Telephone: (208) 336-1843

Facsimile: (208) 345-8945

Idaho State Bar No. 3603

Attorneys for Defendant, Cross-Claimant, Third-Party Plaintiff, Tammie Sue Dixson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,)	
)	
Plaintiff,	)	CASE NO. CV OC 0701514
)	
vs.)	
	)	ANSWER TO COMPLAINT FOR
	)	INTERPLEADER, ANSWER TO
THE MARK WALLACE DIXSON	)	CROSS-CLAIM, AND THIRD
IRREVOCABLE TRUST; and TAMMIE SUE	)	PARTY COMPLAINT
DIXSON, INDIVIDUALLY)	
)	
Defendants.)	
)	
)	
)	
)	

ANSWER TO COMPLAINT FOR INTERPLEADER, ANSWER TO CROSS-CLAIM,
AGAINST THE MARK WALLACE DIXSON IRREVOCABLE TRUST, AND THIRD
PARTY COMPLAINT - 1

THE MARK WALLACE DIXSON IRREVOCABLE TRUST)
Cross-Claimant,)
v.)
TAMMIE SUE DIXSON,)
Cross-Defendant.)
TAMMIE SUE DIXSON,)
Third-Party Plaintiff,)
v.)
ROBERT AND JACKIE YOUNG,)
Third-Party Defendant.)

ANSWER TO COMPLAINT FOR INTERPLEADER

COMES NOW, Defendant, Tammie Sue Dixon, by and through her counsel of record, Michelle R. Finch, the firm of Finch & Associates Law Office, P.A., and Robert Talboy, and the firm of Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C., and as and for her Answer to Plaintiff's Complaint for Interpleader admits, denies and affirmatively alleges as follows:

1. That Defendant, Tammie Sue Dixon (hereinafter referred to as "Defendant Dixon"), denies each and every allegation of Plaintiff's Complaint for Interpleader not specifically admitted herein. That Defendant Dixon admits the allegations contained in

ANSWER TO COMPLAINT FOR INTERPLEADER, ANSWER TO CROSS-CLAIM,
AGAINST THE MARK WALLACE DIXSON IRREVOCABLE TRUST, AND THIRD
PARTY COMPLAINT - 2

Paragraphs 4, 5, 6, 7, 13, 15, 16, 17, and 21 of Plaintiff's Complaint for Interpleader.

2. That Defendant Dixson upon information and belief, admits the allegations contained in Paragraph 1 of Plaintiff's Complaint for Interpleader.

3. That with regard to Paragraph 8 of Plaintiff's Complaint for Interpleader, Defendant Dixson admits that Banner Life Insurance issued life insurance policy number 17B635069, with a face value of \$300,000, insuring the life of Mark Wallace Dixson (hereinafter the "Policy"), but is without information to admit or deny that Exhibit A attached to the Complaint for Interpleader is a true, correct and complete copy of the Application for Insurance and the Policy insuring Mark Wallace Dixson and therefore denies the same.

4. That Defendant Dixson admits the allegations contained in Paragraph 18 of Plaintiff's Complaint for Interpleader, but only to the extent Defendant Dixson acknowledges that an interpleader action is required to resolve the issue of beneficiary.

5. That Defendant Dixson admits that Defendant Dixson was married to Mark Wallace Dixson at the time the Policy was issued and was named as the primary beneficiary of the Policy under Section B of the application Part I.

6. That Defendant Dixson denies the allegations contained in Paragraphs 10 and 12 of Plaintiff's Complaint to Interpleader.

7. That Defendant Dixson is without information to admit or deny the allegations contained in Paragraphs 2, 3, 11, 14, 19 and 20 of Plaintiff's Complaint for Interpleader and therefore denies the same.

AFFIRMATIVE DEFENSES TO COMPLAINT FOR INTERPLEADER

Defendant Dixon, as and for her Affirmative Defenses to Plaintiff's Complaint for Interpleader alleges as follows:

8. That Banner Life Insurance Company ("Banner Life") Complaint for Interpleader should be dismissed from the case upon its deposit of the death benefit proceeds with the Court. Such dismissal is in the interests of justice, judicial economy and protecting the death benefit proceeds from depletion by the fees and costs incurred by Banner Life Insurance Company. Once the funds are deposited, Banner Life Insurance Company will not have any further interest in these proceedings because the dispute over the death benefits proceeds will be between the Dixon Trust and Tammie Sue Dixon.

**PRAYER REGARDING
COMPLAINT FOR INTERPLEADER**

That Defendant Dixon, having fully answered Banner Life's Complaint for Interpleader prays for judgment as follows:

9. That Banner Life be dismissed from this case upon its deposit of the Funds with the Court because such dismissal is in the interests of justice, judicial economy and protecting the Funds from depletion of fees and costs Banner Life will incur by participating in the litigation.
10. For such other and further relief as the Court deems just and equitable in the premises.

TAMMIE SUE DIXSON'S ANSWER TO CROSS-CLAIM

Cross-Defendant Tammie Sue Dixon, as and for her Answer to the Cross-Complaint

ANSWER TO COMPLAINT FOR INTERPLEADER, ANSWER TO CROSS-CLAIM;
AGAINST THE MARK WALLACE DIXSON IRREVOCABLE TRUST, AND THIRD
PARTY COMPLAINT - 4

filed by the Mark Wallace Dixson Irrevocable Trust (hereinafter "Dixson Trust"), admits, denies and affirmatively alleges as follows:

11. That Cross-Defendant Tammie Sue Dixson denies each and every allegation of the Cross-Complaint not specifically admitted herein.
12. That Cross-Defendant Tammie Sue Dixson admits the allegations contained in Paragraph 10 of the Cross-Complaint.
13. That Cross-Defendant Tammie Sue Dixson denies the allegations contained in Paragraphs 9, 11, 12 and 13 of the Cross-Complaint.
14. That Cross-Defendant Tammie Sue Dixson has been required to retain the services of Finch & Associates Law Office, PA and Robert Talboy of Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C. to defend the Cross-Claim and has incurred attorney fees and costs in defending such Cross-Claim and is entitled to recover her reasonable attorneys fees and costs from the Cross-Claimant.

TAMMIE SUE DIXSON'S AFFIRMATIVE DEFENSES TO CROSS-CLAIM

15. That Cross-Claimant, the Dixson Trust, is not the real party in interest in the action and therefore is without standing to bring said action and such Cross-Claim is properly dismissed.
16. That the Cross-Claim fails to state a cause of action upon which relief can be granted and the same is therefore properly dismissed.
17. That pursuant to Idaho Code Section 41-1830 the life insurance policy purchased

by Mark Wallace Dixson was and the proceeds therefrom are the separate property of Tammie Sue Dixson.

18. That the Change of Beneficiary form dated January 31, 2005, allegedly executed by Mark Wallace Dixson is invalid as a matter of law as it was not signed by Tammie Sue Dixson who was married to Mark Wallace Dixson.

PRAYER REGARDING CROSS-CLAIM

Tammie Sue Dixson, having fully answered the Cross-Claim, prays for judgment as follows:

19. That the Cross-Claim be dismissed and the Cross-Claimant, the Mark Wallace Dixson Irrevocable Trust, take nothing thereby.
20. That the Cross-Defendant, Tammie Sue Dixson, be awarded reasonable attorneys fees and costs against the Cross-Claimant.
21. For such other and further relief that the Court deems just and equitable in the premises.

TAMMIE SUE DIXSON'S THIRD PARTY COMPLAINT AGAINST ROBERT YOUNG AND JACKIE YOUNG

Comes now, Tammie Sue Dixson, and as and for her Third-Party Complaint against Robert Young and Jackie Young, alleges and states as follows:

22. That the Third-Party Plaintiff, Tammie Sue Dixson (hereinafter referred to as "Tammie Sue Dixson"), and Mark Wallace Dixson were married on January 1, 2000, at Wyoming, Michigan and at all times relevant hereto, were husband and wife.

23. That Third-Party Defendants, Robert Young and Jackie Young (hereinafter collectively referred to as “the Youngs”) are, and at all times relevant to the captioned matter, the step-father and mother of Mark Wallace Dixson.
24. That Mark Wallace Dixson applied for a life insurance policy from Banner Life Insurance Company on April 22, 2003 and was issued Policy Number 17B635069 on April 29, 2003 (hereinafter the “Policy”)
25. That on or about January 31, 2005, Mark Wallace Dixson purportedly executed a Beneficiary Change Form changing the primary beneficiary form does not contain the signature of Tammie Sue Dixson who was married to Mark Wallace Dixson.
26. That Mark Wallace Dixson identified “ Tammy Sue Dixson” as his “wife” and primary beneficiary of the policy under Part I, Section B of the Policy Application.
27. That Mark Wallace Dixson was diagnosed with Amyotrophic Lateral Sclerosis (commonly known as ALS or Lou Gehrig’s Disease) and required skilled nursing care for approximately twelve (12) months prior to his death on May 5, 2006 from respiratory failure due to ALS.
28. That on or about January 31, 2005, the Youngs caused to have drafted a power of attorney, naming Robert Young as the attorney-in-fact for Mark Wallace Dixson.
29. That Mark Wallace Dixson was incapacitated at the time the power of attorney was allegedly initialed by Mark Wallace Dixson
30. That the purported power of attorney did not grant the attorney-in-fact, Robert

Young, authority to change the beneficiary of any life insurance policy, including the Policy.

31. That on or about April 27, 2006, Robert Young executed a change of beneficiary form, changing the beneficiary of the Policy from Tammie Sue Dixson, the spouse of Mark Wallace Dixson, to Jackie Young, the wife of Robert Young and the mother of Mark Wallace Dixson. Robert Young named himself as contingent beneficiary.
32. That on May 2, 2006, a revised Beneficiary Change Form dated April 27, 2006, was sent to Banner Life, naming Jackie E. Young as the primary beneficiary and a number of Mark Wallace Dixson's children as contingent beneficiaries.
33. That Robert Young breached his fiduciary duty under the power of attorney and the fiduciary duties owed by an agent to his principal upon changing the beneficiary of the Policy.
34. That Robert Young breached his fiduciary duty to act solely for the benefit of the principal, Mark Wallace Dixson and further violated the prohibition of self-dealing by a fiduciary.
35. That Robert Young breached the duty of loyalty to the principal by executing a change of beneficiary form which benefited Robert Young's wife, Jackie Young.
36. That Mark Wallace Dixson resided in a skilled nursing facility on April 27, 2006, and lacked the capacity to consent to the change in beneficiary executed by Robert Young.

37. That Tammie Sue Dixson, the spouse of Mark Wallace Dixson, did not consent to the change of beneficiary in violation of the terms of the Policy and Idaho law and did not sign the change of beneficiary form as required.
38. That the breach of fiduciary duty by Robert Young damaged the Third-Party Plaintiff, Tammie Sue Dixson, by depriving her of the benefit of the life insurance Policy proceeds in the amount of \$300,000 at the date of her spouse's death.
39. That the breach of the fiduciary duty by Robert Young was the proximate cause of damages suffered by Tammie Sue Dixson for which Tammie Sue Dixson is entitled to recover from Robert Young, the exact amount of which will be proven at trial.
40. That Tammie Sue Dixson has been required to retain Finch & Associates Law Office, P.A. and Ellsworth, Kallas, Talboy & Defranco, P.L.L.C. to prosecute her Third-Party Complaint and has incurred attorney fees and costs in prosecuting such Third-Party Complaint and is entitled to recover her reasonable attorneys fees and costs from the Third-Party Defendants.

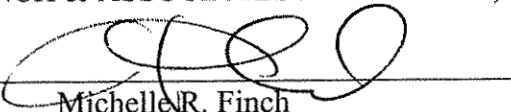
PRAYER REGARDING THIRD-PARTY COMPLAINT

41. For judgment against Robert Young and Jackie Young for damages in an amount to be proven at trial.
42. For an award of attorneys fees and costs against Robert Young and Jackie Young.
43. For such other and further relief that the Court deems just and equitable in the premises.

DATED this 2nd day of March, 2007.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By

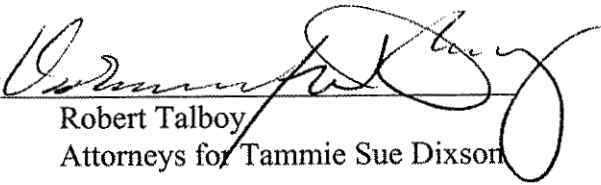


Michelle R. Finch

Attorneys for Tammie Sue Dixson

ELLSWORTH, KALLAS, TALBOY & DEFranco, P.L.L.C.

By



Robert Talboy

Attorneys for Tammie Sue Dixson

CERTIFICATE OF MAILING

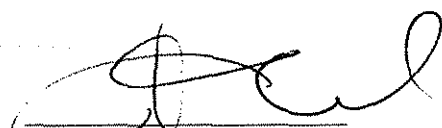
I hereby certify that on the 2nd day of March, 2007, a true and correct copy of the within and foregoing ANSWER TO COMPLAINT FOR INTERPLEADER, ANSWER TO CROSS-CLAIM, AND THIRD PARTY COMPLAINT was transmitted via facsimile to the following persons:

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 384-5844

Thomas G. Walker
Erika K. Klein
Coshu Humphrey, LLP
800 Park Blvd., Ste., 790
PO Box 9518
Boise, ID 83707-9518

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 384-5844

Joshua S. Evett
ELAM & BURKE, P.A.
251 E. Front Street
Ste. 300
PO Box 1539
Boise, ID 83701



Michelle R. Finch

ORIGINAL

NO. _____
FILED 406
A.M. _____ P.M.
MAR 06 2007
J. DAVID NAVARRO, Clerk
By ABBY TEEL
DEPUTY

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
COSHO HUMPHREY, LLP
800 Park Blvd., Suite 790
P. O. Box 9518
Boise, Idaho 83707-9518
Direct Phone: (208) 639-5607
Cell Phone: (208) 869-1508
Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE
SUE DIXSON, individually,

Defendants

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST

Cross-Claimant,

v.

TAMMIE SUE DIXSON,
Cross-Defendant.

Case No. CV-OC 0701514

REPLY TO THIRD PARTY COMPLAINT

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Robert Young (“Robert”) and Jackie Young (“Jackie”) (collectively referred to as the “Youngs”), Third-Party Defendants, by and through their attorneys of record Cosho Humphrey, LLP, in response to Tammie Sue Dixson’s Third Party Complaint, admit, deny and affirmatively allege as follows:

FIRST DEFENSE

The Youngs asserts that Third Party Complaint and each claim and/or cause of action stated therein, fails to state a claim upon which relief can be granted and should therefore be dismissed with prejudice.

SECOND DEFENSE

In response to each allegation of the Third Party Complaint, the Youngs admit or deny the allegations as more fully set forth below. To the extent that any particular allegation of the Third Party Complaint is neither specifically admitted nor specifically denied, said allegation or allegations shall be deemed denied.

1. The Youngs admit that the Third-Party Plaintiff, Tammie Sue Dixson and Mark Wallace Dixson were married on January 1, 2000 at Wyoming, Michigan, but deny the remaining allegations contained in paragraph 22.

2. The Youngs admit the allegations contained in paragraphs 23, 24 and 27.

3. The Youngs admit that the Change of Beneficiary Form was executed on or about April 26, 2006, and that it was not signed by Tammie, but they affirmatively allege that Tammie's signature was not required because the Policy was Mark's separate property on the date the Change of Beneficiary Form was executed.

4. With regard to the allegations contained in paragraph 26, the Youngs state that the Policy speaks for itself and to the extent the allegations in paragraph 26 are inconsistent with this document, the Youngs deny the same.

5. With regard to the allegations contained in paragraph 28, the Youngs assert that they caused the power of attorney to be prepared at Mark's express direction; that Mark executed the power of attorney of his own free will, without the application of influence or duress by any one; that he understood what he was doing; and that he was cognitively intact and able to make decisions about his care and property.

6. The Youngs deny the allegations contained in paragraphs 29 and 30.

7. With regard to paragraph 31, the Youngs admit that Robert executed the Change of Beneficiary Form on or about April 27, 2006 upon Mark's direction and with his full consent, and further that the document speaks for itself and to the extent the allegations in paragraph 31 are inconsistent with this document, the Youngs deny the same.

8. The Youngs admit that the Beneficiary Change Form was faxed to Banner Life Insurance Company on April 28, 2006 and further that the document speaks for itself and to the extent the allegations in paragraph 32 are inconsistent with this document, the Youngs deny the same.

9. The Youngs deny the allegations contained in paragraphs 33, 34 and 35.

10. With regard to the allegations contained in paragraph 36, the Youngs admit that Mark resided at Life Care Center of Treasure Valley, Boise, Idaho on April 27, 2006, but deny that Mark lacked the capacity to consent to the change of beneficiary executed by Robert.

11. With regard to the allegations contained in paragraph 37, the Youngs admit that Tammie did not sign the change of beneficiary form, but deny that the change of beneficiary violated the terms of the Policy or Idaho law. The Youngs affirmatively allege that Tammie's signature was not required because the Policy was Mark's separate property on the date the Change of Beneficiary Form was executed.

12. The Youngs deny the allegations contained in paragraphs 38 and 39.

13. The Youngs admit that Tammie has been required to retain counsel, but deny that she is entitled to recover her attorneys' fees and costs from the Youngs or the Mark Wallace Dixson Irrevocable Trust.

AFFIRMATIVE DEFENSES

14. That the Third Party Complaint fails to state a cause of action against the Youngs upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

15. That the Tammie has failed to act reasonably or to otherwise mitigate her damages, if any.

16. That Tammie lacks standing to assert the claims of breach of fiduciary duty because neither of the Youngs owed Tammie any duty whatsoever.

17. The relief as prayed for in the Third Party Complaint is barred by the doctrine of unclean hands.

18. The Third Party Complaint, and all claims and or causes of actions contained therein are barred by the doctrines of waiver and/or estoppel.

19. As of the date of this answer and without the benefit of further discovery, the Youngs are unable to fully state in complete detail all of the affirmative defenses that may exist with respect to the Third Party Complaint. Therefore, consistent with Rule 11 of the Idaho Rules of Civil Procedure, the Youngs have asserted the affirmative defenses that are presently known to them and believed to be applicable, but they expressly reserve the right to assert additional affirmative defenses if discovery reveals other defenses are available.

RULE 11

20. The claims alleged in the Third Party Complaint are brought frivolously and unreasonably and are not well-grounded in fact or law and the Youngs are entitled to sanctions against her pursuant to Rule 11 of the Idaho Rules of Civil Procedure.

PRAYER

21. The Youngs having fully answered the Third Party Complaint and asserted known affirmative defenses, asks:

21.1 That the Third Party Complaint be dismissed, with prejudice;

21.2 That upon dismissal of the Third Party Third Party Complaint, the Youngs be awarded their costs and attorney's fees in defending against the claims raised in the Third Party Complaint pursuant to *Idaho Code* §§12-120(3), 12-121, 12-123 and Rule 54 of the Idaho Rules of Civil Procedure; and

21.3 That the Youngs be awarded post-judgment costs and fees incurred in attempting to enforce their judgment as allowed by Idaho Code § 12-120(5); and

21.4 For such other and further relief as the Court may deem just and proper.

DATED: March 5, 2007.

COSHO HUMPHREY, LLP

By: 

THOMAS G. WALKER

Attorneys for Robert and Jackie Young

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 5th day of March 2007, a true and correct copy of the within and foregoing instrument was served upon:

Joshua S. Evett
Elam & Burke, P.A.
251 East Front Street, Ste. 300
P.O. Box 1539
Boise, Idaho 83701


- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

FINCH & ASSOCIATES LAW OFFICE, P.A.
 Michelle R. Finch, ISB No. 3382
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contactus@familylegalsolutions.com

NO. _____ FILED _____
 A.M. 9:35 P.M.
ORIGINAL
MAY 16 2007
J. DAVID NAVARRO, Clerk
 By A TOONE
 DEPUTY

Robert W. Talboy
 ELLSWORTH, KALLAS, TALBOY & DEFRANCO, P.L.L.C.
 1031 E. Park Blvd
 Boise, ID 83712
 Telephone: (208) 336-1843
 Facsimile: (208) 345-8945
 Idaho State Bar No. 3603

Attorneys for Defendant, Cross-Defendant, Third-Party Plaintiff, Tammie Sue Dixson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,)	
)	
Plaintiff,	)	CASE NO. CV OC 0701514
)	
vs.	)	TAMMIE SUE DIXSON'S MOTION
	)	FOR SUMMARY JUDGMENT
THE MARK WALLACE DIXSON)	
IRREVOCABLE TRUST; and TAMMIE SUE)	
DIXSON, INDIVIDUALLY)	
)	
Defendants.)	
)	
)	
)	
)	
)	

7

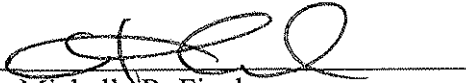
THE MARK WALLACE DIXSON)
IRREVOCABLE TRUST)
)
Cross-Claimant,)
)
v.)
)
TAMMIE SUE DIXSON,)
)
Cross-Defendant.)
)
)
)
TAMMIE SUE DIXSON,)
)
Third-Party Plaintiff,)
)
v.)
)
ROBERT AND JACKIE YOUNG,)
)
Third-Party Defendant.)

COMES NOW, Cross-Defendant, Tammie Sue Dixson, by and through her counsel of record, Michelle R. Finch, the firm of Finch & Associates Law Office, P.A., Robert Talboy, and the firm of Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C., and pursuant to Idaho Rule of Civil Procedure Rule 56 moves this Court for its order granting Tammie Sue Dixson summary judgment in the captioned matter.

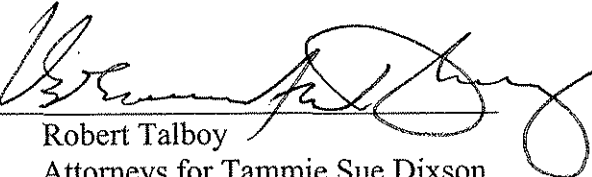
This Motion is based upon the Affidavit of Tammie Sue Dixson, Memorandum in Support of Tammie Sue Dixson's Motion for Summary Judgment and in Opposition to the Mark Wallace Dixson's Motion for Summary Judgment filed contemporaneously herewith, and the record herein.

DATED this 16 day of May, 2007.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By 
Michelle R. Finch
Attorneys for Tammie Sue Dixson

ELLSWORTH, KALLAS, TALBOY & DEFRANCO,
P.L.L.C.

By 
Robert Talby
Attorneys for Tammie Sue Dixson

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of May, 2007, a true and correct copy of the within and foregoing TAMMIE SUE DIXSON'S MOTION FOR SUMMARY JUDGMENT was transmitted via facsimile to the following persons:

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 384-5844

Thomas G. Walker
Erika K. Klein
Cosho Humphrey, LLP
800 Park Blvd., Ste., 790
PO Box 9518
Boise, ID 83707-9518


Michelle R. Finch

ORIGINAL

NO. _____ FILED 3:50
A.M. _____ P.M.

MAY 29 2007

J. DAVID NAVARRO, Clerk
By ABBY TANK, DEPUTY

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
COSHO HUMPHREY, LLP
800 Park Blvd., Suite 790
P. O. Box 9518
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Direct Phone: (208) 639-5607
Cell Phone: (208) 869-1508
Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

**MOTION TO STRIKE PORTIONS OF
THE AFFIDAVIT OF TAMMIE SUE
DIXSON IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

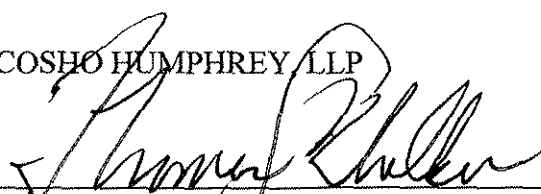
Defendant The Mark Wallace Dixon Irrevocable Trust (hereinafter referred to as "the Trust"), by and through its attorneys of record, Cosho Humphrey, LLP, moves this Court pursuant to Idaho Rule of Civil Procedure 56(e) and Idaho Rules of Evidence 601, 701 and 702 for an order striking portions of the Affidavit of Tammie Sue Dixon dated April 30, 2007 in Opposition to

Motion for Summary Judgment. This motion is supported by the Trust's Memorandum in Support of the Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment filed concurrently herewith. The Trust respectfully requests this Court to strike Paragraphs 10, 14, 15, 16, 19, 22, 25, 30, 31, 32, and 33.

Oral Argument is requested on this motion and is presently scheduled for June 15, 2007 at 10:30 a.m.

DATED this 29th day of May, 2007.

COSHO HUMPHREY LLP



THOMAS G. WALKER
Attorneys for Defendant The Mark Wallace Dixson
Irrevocable Trust

CERTIFICATE OF SERVICE

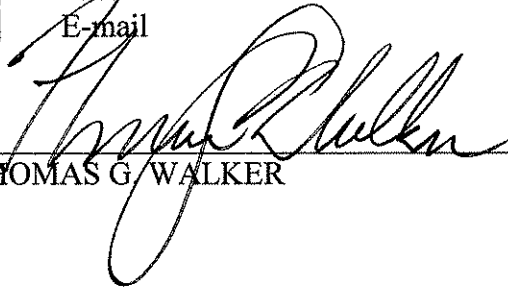
I HEREBY CERTIFY That on the 29th day of May, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Finch
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy
DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

ORIGINAL

NO. _____
A.M. FILED P.M. 2

JUN 13 2007

J. DAVID NAVARRO, Clerk
By KATHY J. BIEHL
DEPUTY

FINCH & ASSOCIATES LAW OFFICE, P.A.
Michelle R. Finch, ISB No. 3382
103 W. Idaho
P.O. Box 1296
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Idaho State Bar No. 3603

Attorneys for Defendant, Cross-Defendant, Third-Party Plaintiff, Tammie Sue Dixon

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,)	
)	
Plaintiff,	)	CASE NO. CV OC 0701514
)	
vs.)	
	)	MOTION TO STRIKE PORTIONS
	)	OF THE AFFIDAVITS OF ROBERT
THE MARK WALLACE DIXSON	)	YOUNG, JACKIE E. YOUNG, KAYE
IRREVOCABLE TRUST; and TAMMIE SUE	)	BAKER, CORY ARMSTRONG AND
DIXSON, INDIVIDUALLY	)	CANYIN BARNES IN OPPOSITION
	)	TO MOTION FOR SUMMARY
Defendants.	)	JUDGMENT
)	
)	
)	
)	

MOTION TO STRIKE PORTIONS OF THE AFFIDAVITS OF ROBERT YOUNG,
JACKIE E. YOUNG, KAYE BAKER, CORY ARMSTRONG AND CANYIN BARNES
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT -1


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THE MARK WALLACE DIXSON)
IRREVOCABLE TRUST)
Cross-Claimant,)
)
v.)
)
TAMMIE SUE DIXSON,)
)
Cross-Defendant.)
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)
TAMMIE SUE DIXSON,)
)
Third-Party Plaintiff,)
)
v.)
)
ROBERT AND JACKIE YOUNG,)
)
Third-Party Defendant.)

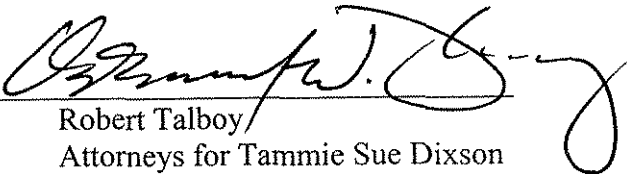
COMES NOW, Cross-Defendant, Tammie Sue Dixson, by and through her counsel of record, Michelle R. Finch, the firm of Finch & Associates Law Office, P.A. and Robert Talboy, and the firm of Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C., and pursuant to Idaho Rule of Civil Procedure Rule 56(E) and Idaho Rules of Evidence 601, 701, and 702 for an Order striking the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes in opposition to Motion for Summary Judgment. This Motion is supported by Tammie Sue Dixson's Memorandum in Support of Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes in Support of the Mark Wallace Dixson Irrevocable Trust's Motion for Summary Judgment and in Opposition to Tammie Sue Dixson's Motion for Summary Judgment filed concurrently herewith.

DATED this 19th day of June, 2007.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By 
Michelle R. Finch
Attorneys for Tammie Sue Dixson

ELLSWORTH, KALLAS, TALBOY & DEFRANCO, P.L.L.C.

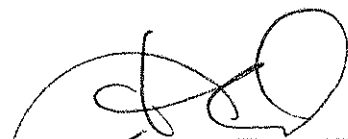
By 
Robert Talboy
Attorneys for Tammie Sue Dixson

CERTIFICATE OF MAILING

I hereby certify that on the ^{13th} day of June, 2007, a true and correct copy of the within and foregoing MOTION TO STRIKE PORTIONS OF THE AFFIDAVITS OF ROBERT YOUNG, JACKIE E. YOUNG, KAYE BAKER, CORY ARMSTRONG AND CANYIN BARNES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT was transmitted via facsimile to the following persons:

____ US Mail
____ Overnight Mail
____ Hand Delivery
____ Facsimile
/ No.: (208) 384-5844

Thomas G. Walker
Erika K. Klein
Cosho Humphrey, LLP
800 Park Blvd., Ste., 790
PO Box 9518
Boise, ID 83707-9518



Michelle R. Finch

ORIGINAL

NO. _____ FILED 4:10
A.M. _____ P.M.

AUG 02 2007

J. DAVID NAVARRO, Clerk
By J. EARLE
DEPUTY

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
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Cell Phone: (208) 869-1508
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E-mail: twalker@cosholaw.com

Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE
SUE DIXSON, individually,

Defendants

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST

Cross-Claimant,

v.

TAMMIE SUE DIXSON,
Cross-Defendant.

Case No. CV-OC 0701514

**OBJECTION TO ORDER RE: THIRD
PARTY PLAINTIFF'S MOTION TO
STRIKE PORTIONS OF THE
AFFIDAVITS OF ROBERT YOUNG,
JACKIE E. YOUNG, KAYE BAKER,
CORY ARMSTRONG AND CANYIN
BARNES**

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

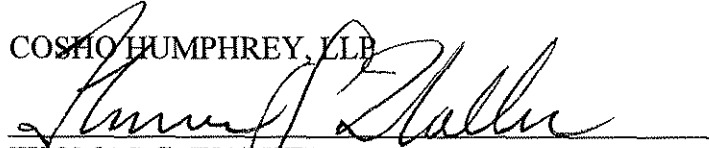
Third-Party Defendants.

Defendant The Mark Wallace Dixson Irrevocable Trust (hereinafter referred to as "the Trust"), by and through its attorneys of record, Cosho Humphrey, LLP, objects to portions of the proposed Order Re: Third Party Plaintiff's Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Jaye Baker, Cory Armstrong and Canyin Barnes lodged with the Court on or about July 31, 2007.

Paragraph 1 of the proposed order incorrectly identifies the portion of paragraph 10 of the *Affidavit of Robert Young*, dated March 14, 2007 which was stricken during the court hearing held on June 15, 2007. The Court only struck the first and second sentences of paragraph 10 which state: "On April 6, 2006, Mark was taken to the hospital emergency room because of depression. He was also suffering from severe anxiety." This motion is supported by the Affidavit of Thomas G. Walker filed concurrently herewith.

DATED this 2nd day of August, 2007.

COSHO HUMPHREY, LLP



THOMAS G. WALKER

Attorneys for Defendant The Mark Wallace Dixson
Irrevocable Trust

CERTIFICATE OF SERVICE

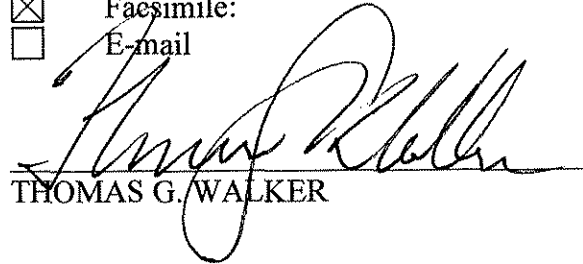
I HEREBY CERTIFY That on the 2nd day of August, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Finch
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talbot, Esq.
Ellsworth, Kallas, Talbot
DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

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THE MARK WALLACE DIXSON)
IRREVOCABLE TRUST)
)
Cross-Claimant,)
)
v.)
)
TAMMIE SUE DIXSON,)
)
Cross-Defendant.)
)
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)
TAMMIE SUE DIXSON,)
)
Third-Party Plaintiff,)
)
v.)
)
ROBERT AND JACKIE YOUNG,)
)
Third-Party Defendant.)

THIS MATTER, having come before the Court for hearing on the 15th day of June, 2007, pursuant to Third Party Plaintiff Tammie Sue Dixson's *Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes*, the Third Party Plaintiff Tammie Sue Dixson appearing by and through her counsel of record, Michelle R. Finch, the firm of Finch & Associates Law Office, P.A. and Robert Talboy, and the firm of Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C., and the Third Party Defendants, Robert and Jackie Young, and the Cross-Claimant, the Mark Wallace Dixson Irrevocable Trust, appearing by and through their counsel of record, Thomas Walker, of Cosho Humphrey, LLP, and the Court having considered the *Motion to Strike*, the *Memorandum in Support of Motion to Strike*, oral argument of the parties, and

the record herein,

ORDERS AND THIS DOES ORDER:

1. That the portion of Paragraph 10 of the *Affidavit of Robert Young*, dated March 14, 2007, which states "~~[a]s Mark's attorney in fact, I prepared and signed the Beneficiary Change Form and it was faxed to the insurance company by our attorney, Geoff Goss~~" is stricken. *On April 26, 2006, Mark was taken to the hospital emergency room because of depression. He was also suffering from severe anxiety.* *The motion to strike the remainder of Paragraph 10 is DENIED.* *JM JM JM JM*
2. That Paragraph 14 of the *Affidavit of Robert Young*, dated May 24, 2007, is stricken in its entirety.
3. That Paragraph 18 of the *Affidavit of Robert Young*, dated May 24, 2007, is stricken in its entirety.
4. That Paragraph 8 of the *Affidavit of Jackie Young*, dated March 6, 2007, is stricken in its entirety.
5. That the portion of Paragraph 14 of the *Affidavit of Jackie Young*, dated March 6, 2007, which reads "[o]n the same day, Mark was taken to the hospital emergency room extremely depressed and suffering from severe anxiety." *is stricken.* *JM*
6. That the portion of Paragraph 18 *Affidavit of Jackie Young*, dated March 6, 2007, which reads "as a gift to Mark" is stricken.
7. That the portion of Paragraph 20 *Affidavit of Jackie Young*, dated March 6, 2007, which reads "in order to accomplish Mark's intention that the death benefit proceeds be used for the benefit of his children" be stricken.
8. That Paragraph 22 *Affidavit of Jackie Young*, dated March 6, 2007, is stricken

in its entirety.

9. That Paragraph 11 of the *Affidavit of Canyin Barnes*, dated May 24, 2007, is

stricken.

JM *All other portions of Tommie Sue Sixson's Motion To Strike is DENIED,*

So Ordered. Dated this 14th day of August, 2007.

Meille
Magistrate DISTRICT JUDGE

JM

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2007, I caused a true and correct copy of the foregoing ORDER RE: THIRD PARTY PLAINTIFF'S MOTION TO STRIKE PORTIONS OF THE AFFIDAVITS OF ROBERT YOUNG, JACKIE E. YOUNG, KAYE BAKER, CORY ARMSTRONG AND CANYIN BARNES to be served by the method indicated below, and addressed to the following:

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 384-5844

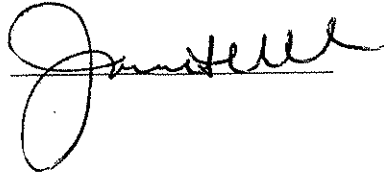
Thomas G. Walker
Erika K. Klein
Coshu Humphrey, LLP
800 Park Blvd., Ste., 790
PO Box 9518
Boise, ID 83707-9518

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 389-2186

Michelle R. Finch
Finch & Associates Law Office, P.A.
PO Box 1296
Boise, ID 83701

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile
No.: (208) 345-8945

Robert Talboy
Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, ID 83712



RECEIVED
JUN 19 2007
Ada County Clerk

Thomas G. Walker (ISB No. 1856)
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NO. _____ FILED _____
A.M. _____ P.M. 309

AUG 14 2007

J. DAVID NAVARRO, Clerk
By *[Signature]* DEPUTY

Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

**ORDER RE: MOTION TO STRIKE
PORTIONS OF THE AFFIDAVIT OF
TAMMIE SUE DIXSON IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

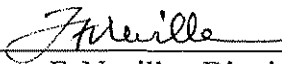
The Motion to Strike Portions of the Affidavit of Tammie Sue Dixon in Opposition to Motion for Summary Judgment, filed by the Plaintiff, having been brought before the Court on oral argument June 15, 2007, and good cause appearing therefore; IT IS HEREBY ORDERED that the motion to strike portions of the Affidavit of Tammie Sue Dixon is granted in part and denied in part as set forth below:

1. The motion to strike Paragraph 10 is DENIED.
2. The motion to strike Paragraph 14 is DENIED.
3. The motion to strike Paragraph 15 is GRANTED.
4. The motion to strike Paragraph 16 is GRANTED.
5. The motion to strike Paragraph 19 is GRANTED.
6. The motion to strike Paragraph 22 is DENIED with regard to the first part that provides, "That Mark Wallace Dixson required assistance with his activities of daily living." The motion to strike is GRANTED pertaining to the remaining portion that provides, "and was unable to communicate his wishes and desires due to the neurological effect of ALS from March, 2005 to his death."
7. The motion to strike Paragraph 25 is GRANTED.
8. The motion to strike Paragraph 30 is GRANTED.
9. The motion to strike Paragraph 31 is GRANTED.
10. The motion to strike Paragraph 32 is DENIED in regard to the first provision that provides, "That Mark Wallace Dixson resided in a skilled nursing facility on April 27, 2006." The motion pertaining to the remaining portion is GRANTED that provides, "and lacked the capacity to consent to the change in beneficiary executed by Robert Young."
11. The motion to strike Paragraph 33 is DENIED in regard to the first part that provides, "That Tammie Sue Dixson, the spouse of Mark Wallace Dixson, did not consent to the change of beneficiary." The motion to strike is GRANTED in regard to the following provision, "in violation of the terms of the policy and

00068T

Idaho law.” The motion is DENIED as it pertains to the following provision,
“and Mrs. Dixson did not sign the change of beneficiary form.” The motion is
GRANTED as it pertains to the remaining portion of the phrase that provides, “as
required.”

Jm
DATED this 14th day of August, 2007.



Thomas F. Neville, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 14 day of June, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Thomas G. Walker, Esq.
Cosho Humphrey, LLP
800 Park Blvd., Suite 790
P.O. Box 9518
Boise, Idaho 83707-9518

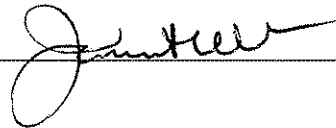
- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

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- E-mail

Robert W. Talbot, Esq.
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1031 E. Park Blvd.
Boise, Idaho 83712

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- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



NOV 09 2007

Melanie Anderson
CLERK DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

vs.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendants.

Case No. CVOC 0701514

MEMORANDUM DECISION
AND ORDER GRANTING
THE MARK WALLACE DIXSON
IRREVOCABLE TRUST'S MOTION
FOR SUMMARY JUDGMENT
AND DENYING TAMMIE SUE
DIXSON'S MOTION FOR
SUMMARY JUDGMENT

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

vs.

TAMMIE SUE DIXSON

Cross-Defendant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

vs.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

1 APPEARANCES:

2 Thomas G. Walker, for Defendant, The Mark Wallace Dixson Irrevocable Trust and Third Party
3 Defendants, Robert and Jackie Young.

4 Robert W. Talboy and Michelle R. Finch, for Defendant/Third Party Plaintiff, Tammie Sue
5 Dixon.

6 This matter came before the Court for oral arguments on June 15, 2007, regarding The Mark
7 Wallace Dixson Irrevocable Trust's Motion for Summary Judgment and Motion to Strike Portions of the
8 Affidavit of Tammie Sue Dixon. Oral arguments were also heard on Tammie Sue Dixon's Motion for
9 Summary Judgment, Motion for Order Shortening Time, Motion for Enlargement or Motion for
10 Continuance, and Motion to Strike. At the hearing, the Court orally ruled granting the Motion to
11 Shorten Time, granting the Motion for Enlargement to file the Affidavit of Jana Knowles but denying
12 the Motion for Continuance to hear the Motions for Summary Judgment, and granting in part the parties'
13 Motions to Strike. Both Motions for Summary Judgment were taken under advisement by the Court and
14 are therefore the subject of this Memorandum Decision and Order granting The Mark Wallace Dixson
15 Irrevocable Trust's Motion for Summary Judgment and denying Tammie Sue Dixon's Motion for
16 Summary Judgment. This Court sincerely regrets the delay in filing this decision and apologizes to the
17 parties and to counsel.

18
19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 The dispute in this case revolves around the beneficiary of a life insurance policy issued by
21 Banner Life Insurance on April 22, 2003, insuring the life of Mark Wallace Dixson in the amount of
22 \$300,000 under policy number 17B635069. Mark Wallace Dixson and Tammie Sue Dixson were
23 married on January 1, 2000, at Wyoming, Michigan, and were still married at the time that Mark
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1 Wallace Dixson applied for the life insurance policy. Mark named his wife, Tammie, as the primary
2 beneficiary of the policy which was issued on April 22, 2003.

3 On or about September 19, 2003, Mark was diagnosed with Amyotrophic Lateral Sclerosis,
4 commonly known as ALS or Lou Gehrig's Disease. Mark required skilled nursing care in December
5 2004 and thereafter resided at the Life Care Center of Treasure Valley. On January 31, 2005, Mark
6 signed a Beneficiary Change Form changing the primary beneficiary to Jackie Young and listing Robert
7 Young, Mark's step father, as the contingent beneficiary. Such Beneficiary Change Form was witnessed
8 by Canyon Barnes, Mark's recreational therapist at the Life Care Center of Treasure Valley. Also on
9 January 31, 2005, Mark executed a Durable Power of Attorney, naming Jackie and Robert Young, and
10 his brother David Dixon, as agents in fact for Mark. Mark sought a divorce from Tammie by filing a
11 Complaint for Divorce on August 18, 2005, and on January 9, 2006, a default divorce decree was
12 entered. On August 18, 2005, the Magistrate issued a Joint Temporary Restraining Order to maintain the
13 status quo. After the default decree was entered, Tammie filed a motion to have the default divorce
14 judgment set aside. The court set aside the judgment on April 26, 2006, finding Tammie had not been
15 personally served. On April 27, 2006, Robert Young executed a second Beneficiary Change Form, with
16 Jackie as the primary beneficiary but replacing Robert as the contingent beneficiary with Mark's six
17 children.
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20 On May 2, 2006, Robert Young, acting through counsel, sent Banner Life Insurance the second
21 Beneficiary Change Form. Shortly thereafter, on May 5, 2006, Mark died of complications from ALS in
22 Boise, Idaho. On or about May 20, 2006, Jackie Young sent Banner Life Insurance a Proof of
23 Death/Claimant's Statement. On or about May 23, 2006, Tammie Sue Dixson sent Banner Life
24 Insurance a letter indicating her intent to contest the change of beneficiary. Also on that date, counsel
25 for Tammie Sue Dixson sent a letter to Banner Life Insurance demanding payment under the terms of the
26

1 policy. The divorce action which was still pending was dismissed by stipulation of the parties on or
2 about June 19, 2006.

3 On or about December 15, 2006, Jackie E. Young created and registered The Mark Wallace
4 Dixson Irrevocable Trust naming herself as both the Grantor and the Trustee, and designating as
5 beneficiaries of the Trust Mark's children: Elizabeth, Christina, Brenda, Cheri, Michael, and Andrea.
6 Jackie Young also executed an Assignment of Death Benefit Proceeds, stating The Mark Wallace
7 Dixson Irrevocable Trust would be funded with the proceeds of Mark's life insurance policy.

8 On January 23, 2007, Banner Life Insurance filed a Complaint for Interpleader, seeking to have
9 resolved the competing claims of Tammie Sue Dixson and The Mark Wallace Dixson Irrevocable Trust
10 to the policy proceeds. On February 1, 2007, Defendant The Mark Wallace Dixson Irrevocable Trust
11 ("Trust") filed an Answer to Complaint for Interpleader and Cross Claim Against Tammie Sue Dixson,
12 as well as an Acceptance of Service. On February 7, 2007, Defendant Tammie Sue Dixson filed an
13 Acceptance of Service. Defendant Tammie Sue Dixson filed an Answer to Complaint for Interpleader,
14 Answer to Cross-Claim, and Third Party Complaint on March 2, 2007.

15
16 Plaintiff Banner Life Insurance filed a Motion to Allow Deposit of Funds on March 5, 2007,
17 seeking to deposit with the Court the policy proceeds of \$300,000, minus costs and fees of \$3,905.07,
18 for a total sum of \$296,094.93. On March 6, 2007, Third Party Defendants Robert and Jackie Young
19 filed a Reply to Third Party Complaint. On March 7, 2007, Defendant Trust filed a Notice of Non-
20 Opposition to Plaintiff's Motion to Allow Deposit of Funds. On March 9, 2007, Defendant Tammie Sue
21 Dixson filed a Notice of Non-Opposition to Plaintiff's Motion to Allow Deposit of Funds. This Court
22 entered an Order Allowing Deposit of Funds on March 12, 2007. The parties also filed a Stipulation for
23 Dismissal of Banner Life Insurance Company on March 12, 2007. Plaintiff Banner Life Insurance
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1 deposited the funds with the Court as evidenced by a receipt dated March 21, 2007. On April 6, 2007,
2 this Court entered an Order Dismissing Banner Life Insurance Company.

3 On March 14, 2007, the Defendant Trust filed a Motion for Summary Judgment, supported by a
4 Memorandum and the Affidavits of Robert Young, Cory Armstrong, Kaye Baker, Louis M. Schlickman,
5 M.D., and Jackie E. Young. The Defendant Tammie Sue Dixson filed a Motion for Summary Judgment
6 in opposition to the Defendant Trust's Motion for Summary Judgment on May 16, 2007, supported by a
7 Memorandum and the Affidavit of Tammie Sue Dixson. On May 29, 2007, the Defendant Trust filed a
8 Memorandum in Opposition to Tammie Sue Dixson's Cross Motion for Summary Judgment, supported
9 by the Affidavits of Canyon Barnes and Robert Young. Defendant Trust filed a Reply Memorandum on
10 May 29, 2007. Defendant Tammie Sue Dixson filed a Reply Memorandum on June 8, 2007.
11

12 The Trust filed a Motion to Strike Portions of the Affidavit of Tammie Sue Dixson on May 29,
13 2007, supported by a Memorandum. Defendant Tammie Sue Dixson filed a Motion to Strike on June 8,
14 2007, supported by a Memorandum. On June 12, 2007, the Defendant Trust filed a Memorandum in
15 Opposition to Tammie Sue Dixson's Motion to Strike.

16 On June 26, 2007, the Plaintiff submitted the Affidavit of Jana Knowles. On August 14, 2007,
17 this Court entered an Order Shortening Time, an Order Re: Motion to Strike Portions of the Affidavit of
18 Tammie Sue Dixson in Opposition to Motion for Summary Judgment, as well as an Order Re: Third
19 Party Plaintiffs' Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye
20 Baker, Cory Armstrong, and Canyon Barnes.
21

22 STANDARD OF REVIEW

23 Idaho Rule of Civil Procedure 56 provides that summary judgment is proper when the court is
24 satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to
25 judgment as a matter of law." I.R.C.P. 56(c). All disputed facts are to be resolved and all reasonable
26

1 inferences drawn in favor of the non-moving party. See *Stafford v. Klosterman*, 134 Idaho 205, 206, 998
2 P.2d 1118, 1119 (2000); *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583,
3 588 (1996). If reasonable persons could reach different findings or draw conflicting inferences from the
4 evidence, the motion must be denied. *Jordan v. Beeks*, 135 Idaho 586, 590, 21 P.3d 908, 912 (2001);
5 *Smith*, 128 Idaho at 718, 918 P.2d at 587.

6 The district court as the trier of fact may draw reasonable inferences based upon the evidence
7 before it and may grant summary judgment despite the possibility of conflicting inferences. *Karterman v.*
8 *Jameson*, 132 Idaho 910, 913, 980 P.2d 574, 577 (Ct. App. 1999) (citing *Cameron v. Neal*, 130 Idaho
9 898, 900, 950 P.2d 1237, 1239 (1997)). See also Idaho Code Ann. § 10-1201 (2005). Where the matter
10 would be tried without a jury, the court is “free to arrive at the most probable inferences to be drawn
11 from uncontroverted evidentiary facts.” *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272,
12 1275 (1991); accord *Steiner v. Ziegler-Tamura Ltd.*, 138 Idaho 238, 241, 61 P.3d 595, 598 (2002).

14 DISCUSSION

15 The Court is essentially being asked to decide two important issues: first, the characterization of
16 the life insurance policy proceeds and second, a determination of the beneficiary of the life insurance
17 policy. No party in this proceeding is seeking a jury trial, rather this matter is set for a court trial.

19 A. Whether the Life Insurance Policy is Community or Separate Property

20 The characterization of the life insurance policy and its proceeds is a threshold issue for the
21 Court to decide for many reasons. During the hearing, the Court indicated that there are unique features
22 in the law with respect to term life insurance policies. There is no dispute that the life insurance policy
23 at issue in this case is in fact an annual renewable term life insurance policy. Although counsel for Mrs.
24 Dixson argue that the Court need not decide this issue until it decides whether the change of beneficiary
25

1 form was valid and effective, the characterization of the life insurance policy is in fact dispositive of the
2 issue to whom the proceeds should be awarded.

3 Generally, the presumption in Idaho regarding property between spouses is that all property
4 acquired after marriage is community property. *Stewart v. Stewart*, 143 Idaho 673, 152 P.3d 544 (2007)
5 (citing *Reed v. Reed*, 137 Idaho 53, 44 P.3d 1108 (2002)). This presumption is rebuttable and the burden
6 of proof rests with the party asserting a separate property interest. *Guy v. Guy*, 98 Idaho 205, 206, 560
7 P.2d 876, 877 (1977). Title 32, chapter 9 of the Idaho Code governs community and separate property
8 of a marital community. Section 32-903 defines separate property as all property owned by a spouse
9 before marriage or that acquired after marriage by “gift, bequest, devise or descent” or property acquired
10 with the proceeds of such separate property which is to remain that spouse’s sole and separate property.
11 Idaho Code Ann. § 32-903 (2006). Furthermore, Idaho Code provides that husbands and wives have
12 control over their own separate property and have the right to manage and control the community
13 property. Idaho Code Ann. §§ 32-904, -912 (2006).

14
15 Specifically, with respect to life insurance policies the Idaho Supreme Court has also held that
16 generally a life insurance policy acquired after marriage and paid with community funds is community
17 property. *United Investors Life Insurance Co. v. Severson*, 143 Idaho 628, 151 P.3d 824 (2007) (citing
18 *Travelers Insurance Co. v. Johnson*, 97 Idaho 336, 544 P.2d 294 (1975)). In *Severson*, the wife applied
19 for a term life insurance policy listing her husband as the primary beneficiary and her mother as the
20 contingent beneficiary. Later the wife changed the primary beneficiary to her mother. The husband was
21 found guilty of murdering his wife and the district court held under Idaho’s slayer statute, he was not
22 entitled to recover a one-half interest.¹ The Idaho Supreme Court affirmed the district court’s grant of
23

24
25
26 ¹ Because the court in *Severson* found that the life insurance policy was community property, the court recognized that “the surviving spouse can void the gift of the proceeds ‘as to his half interest therein.’ Thus, one-half of the proceeds is the

1 summary judgment on alternative grounds holding the husband was not entitled to recover any
2 community share of the estate because such award would have been against the intent of the legislature
3 under the Idaho slayer statute.

4 In *Travelers Insurance Co. v. Johnson*, 97 Idaho 336, 544 P.2d 294 (1975), after receiving a
5 divorce from his wife, the former husband applied for and received a group term life insurance policy
6 through his employer. The former husband named his ex-wife as the primary beneficiary. Soon
7 thereafter, both former spouses married other people. The former husband eventually died never having
8 changed the beneficiary on his life insurance policy. Both his current wife and his ex-wife submitted
9 claims for the insurance proceeds. The Idaho Supreme Court stated that the general rule in Idaho is that
10 “a life insurance policy, insuring the life of either spouse, acquired after marriage and upon which the
11 premiums are paid with community funds, is community property.” *Id.* at 340, 544 P.2d at 298 (quoting
12 *Anderson v. Idaho Mutual Benefit Ass’n*, 77 Idaho 373, 377-80, 292 P.2d 760, 762 (1956)). Any change
13 of beneficiary is therefore an attempt to make a gift of the community property interest and is voidable as
14 to the surviving spouse’s one-half interest. *Id.* There is “no policy to be served in prohibiting a spouse
15 from giving away an amount which can be no more than half of property accumulated during marriage
16 through the medium of life insurance when we permit him to do so through the law of descent and
17 distribution.” *Id.*

18
19
20 As in *Severson*, the spouses in the underlying case, Mark and Tammie, were married at the time
21 Mark applied for and received a life insurance policy from Banner Life Insurance, and it is presumed that
22 such life insurance premiums were paid from community property. In fact, Tammie states in her
23 affidavit that she and Mark paid the policy premiums in 2003 and 2004, which is not in dispute. The
24

25
26 surviving spouse’s own community property interest and the one-half that goes to the beneficiary is the interest of the
decedent spouse.” *Severson*, 143 Idaho at 632, 151 P.3d at 828 (citations omitted).

1 issue therefore becomes whether the community nature of the life insurance policy was changed by
2 payment of premiums during 2005 and 2006 by Cory Armstrong.

3 **1. Whether the Payment of the Last Two Years Premiums by Cory Armstrong was a Gift or a**
4 **Loan Changing the Nature of the Life Insurance Policy**

5 The Idaho Court of Appeals has held that “[a]n asset’s character as community or separate
6 property depends upon the date of its acquisition and the source from which it was acquired.” *Estate of*
7 *Hull v. Williams*, 126 Idaho 437, 440, 885 P.2d 1153, 1156 (Ct. App. 1994). However, term life
8 insurance presents a unique situation in characterizing such as community or separate property. The
9 Idaho Supreme Court, in discussing the unique nature of a group term disability policy, compared term
10 life insurance with disability insurance in *Guy v. Guy*, 98 Idaho 205, 207, 560 P.2d 876, 878 (1977).
11 Noting the similarities between disability and life insurance policies, the Court described such policies as
12 a series of unilateral contracts, each beginning with the payment of a premium for a specified period and
13 terminating at the expiration of such period. *Id.*

14
15 Protection for the coming year depends exclusively upon payment of an advance
16 premium. The length of time the insured has had the policy and the number of
17 premiums previously paid are irrelevant. If the term passes without the insured’s death,
18 the protection purchased expires without loss. The insured has had the benefit of
19 protection for the year and it has been “used up.” He must pay another premium to
20 enjoy further protection.

21 “The risk payment doctrine correctly treats term insurance as a series of
22 unilateral contracts rather than as one bilateral contract . . . [E]ach premium payment is
23 both a condition precedent to and a consideration necessary for the insurance
24 company’s promise to pay a benefit upon the death of the insured.”

25 *Id.* (quoting *Comment, Community and Separate Property Interests in Life Insurance Proceeds: A Fresh*
26 *Look*, 51 Wash.L.Rev. 351, 353, 374 (1976)).

In *Johnson*, the Idaho Supreme Court acknowledged the fact that a term life insurance policy has
no value except upon the death of the insured. *Johnson*, 97 Idaho at 340, 544 P.2d at 298; *see also*

1 *Severson*, 143 Idaho at 632, 151 P.3d at 828. In other words, a property interest becomes vested only
2 when the insured dies. See *Johnson*, 97 Idaho at 340, 544 P.2d at 298; *Severson*, 143 Idaho at 632, 151
3 P.3d at 828. The doctrine generally applied to term life insurance is called the risk payment doctrine.
4 The Supreme Court of Washington discussed the risk payment doctrine in *Aetna Life Insurance Co. v.*
5 *Wadsworth*, 689 P.2d 46 (1984), holding that with respect to term life insurance policies, “the character
6 of funds used to pay for the most recent term should determine the character of a term life insurance
7 policy.” *Id.* at 50. Due to the unique nature of term life insurance policies, recognized by both the Idaho
8 and Washington Supreme Courts, the parties do not have to prove transmutation because the last
9 premium payment controls the characterization of the property. Therefore, at the death of the insured the
10 interest becomes vested and the characterization of the property is determined by the last premium
11 payment made. See *Minnesota Mutual Life Ins. Co. v. Ensley*, 174 F.3d 977, 983 (9th Cir. 1999) (“If the
12 insurance policy provided term coverage, characterization of the policy as a community or separate asset
13 will depend on the source of funding of the premium for the final term of the policy.”).

14
15 There is no dispute that the premium payments for the policy in 2005 and 2006 were made by
16 Cory Armstrong. Therefore, the issue becomes whether the final payment constituted a gift to the
17 community, a gift of separate property to Mark, or whether such payment was not a gift at all but rather a
18 loan. A gift occurs when a grantor delivers property to another with a manifested intent to make a gift of
19 the property. *Estate of Hull*, 126 Idaho at 443, 885 P.2d 1159 (citing *Matter of Estate of Lewis*, 97 Idaho
20 299, 302, 543 P.2d 852, 855 (1975)). Delivery is accomplished when the grantor relinquishes all present
21 and future dominion over the property. *Id.* An intent to make a gift may be proven by direct evidence,
22 such as statements of donative intent, or may be inferred from the circumstances, including the
23 relationship of the donor and donee. *Id.* at 443-44, 885 P.2d at 1159-60.

24
25 In the Affidavit of Cory Armstrong, he states that:
26

1 My relationship to Mark Wallace Dixon ("Mark") was as a good friend and as
his Home Teacher as a member of the Church of Jesus Christ of Latter Day Saints. Prior
2 to his death, I was acquainted with Mark for approximately 3 years.

3 I personally paid the annual premium payments of \$395 on Banner Life Insurance
Policy bearing policy number 17B635069 ("the Policy") to Banner Life Insurance
Company for the years 2005 and 2006.

4 In 2005, I paid the premium as a gift to my friend Mark as it was my
understanding that Tammie had refused to pay the premium. At that time, all of Mark's
5 mail was being delivered to him at the care center and it was my understanding that
Tammie was not visiting him or taking care of his expenses. This gift to Mark was done
6 with the understanding that Mark wanted to be sure the death benefit proceeds ("Funds")
would be available to care for his six children.

7 I also paid the premium in 2006 as a gift to Mark alone.

8 I did not intend the premium payments to be a gift to Tammie or to their
community estate. My gift was to Mark alone.

9
10 Tammie, on the other hand, stated in her affidavit:

11 That Mark Wallace Dixon was unable to work from approximately July 22,
2003, until his death due to his ALS and, as a result, could not support his family and the
12 marital community which caused financial strain for his family.

13 That Cory Armstrong was the family home teacher from the Church of Jesus
Christ of Latter Saints for Affiant and her spouse, Mark Wallace Dixon, and visited
14 Affiant and Mark Wallace Dixon once per month and sometimes twice per month from
approximately February, 2004 to 2005.

15 That Affiant and her spouse, Mark Wallace Dixon, were financially strapped due
to the toll of Mark Wallace Dixon's terminal illness and sought financial assistance from
16 Mark's mother and step-father, Jackie Young and Robert Young, but Mr. and Mrs. Young
refused to assist their son and daughter-in-law.

17 That Affiant and her spouse, Mark Wallace Dixon, confided in their home
teacher, Corey [sic] Armstrong, and accepted Cory Armstrong's offer to pay the
18 premiums on the life insurance policy in 2005 and 2006, with the understanding that,
when Affiant received the policy proceeds, she would repay Cory Armstrong.

19
20 This Court understands and it is not in dispute that Cory Armstrong was a fellow church member
21 and friend to Mark and had known Mark for approximately three years. As a home teacher, Mr.
22 Armstrong had a very close relationship to Mark and his family, visiting him monthly. This Court
23 understands a "home teacher" to be a relationship of fellowship and teacher of faith within the Church of
24 Jesus Christ of Latter Day Saints. Mr. Armstrong also states that he was aware of Mark's concern that
25 the proceeds of his life insurance policy be available to provide for Mark's children.
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1 Counsel for Tammie points to the fact that in making the payment of the policy premiums, Mr.
2 Armstrong did not write a check directly to Mark, rather he wrote a check payable to Banner Life
3 Insurance. However, this Court finds there is no evidence to suggest that the total payment of \$790 (two
4 annual installments of \$395 each) to Banner Life Insurance on behalf of Mark Wallace Dixson was a
5 loan to Mark and Tammie. Tammie's only argument that such payment was a loan was that it was her
6 "understanding" that she would repay Mr. Armstrong. Furthermore, there is no evidence of any
7 conversation between Mark, Tammie, and Cory Armstrong which would support Tammie's argument
8 that the payment of the life insurance premiums was a loan which she intended to repay. To the
9 contrary, there is strong evidence which demonstrates Cory Armstrong's intent to gift to Mark alone as
10 his separate property based on Armstrong's understanding that Tammie refused to pay the premium.
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12 Although Tammie argues that she and Mark were financially unable to pay the premiums and
13 that they had confided in their home teacher and accepted his offer to pay the premiums, Tammie does
14 not refute the argument that she had refused to pay the premiums. Cory Armstrong quite plainly states
15 that he paid the premiums "as a gift to Mark alone," "with the understanding that Mark wanted to be
16 sure the death benefit proceeds ("Funds") would be available to care for his six children," and that he
17 "did not intend the premium payments to be a gift to Tammie or to their community estate. My gift was
18 to Mark alone."
19

20 The intent of the donor is controlling in determining whether the payments constituted a gift.
21 There are no statements in the record before the Court regarding Armstrong's intent other than that in his
22 Affidavit that he intended the payment to be a gift to Mark alone and not to the community.
23 Additionally, there is no contrary evidence refuting the fact that Cory Armstrong relinquished all present
24 and future dominion and had no expectation of receiving repayment. Furthermore, there is no scintilla of
25 evidence on which the Court could find that such payment was a loan to Mark and Tammie, despite
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1 Tammie's unsupported, self-serving statement that it was her "understanding" that she would repay
2 Cory. Therefore, this Court as the trier of fact can reasonably infer based on the record that the premium
3 payments made by Cory Armstrong were in fact a gift to Mark alone as his separate property.

4 Because an interest in a life insurance policy does not vest until the death of the insured,
5 Tammie's interest, if any, in the policy vests only at such death. From the case law, a term life insurance
6 policy has no cash value until the death of the insured. Had Tammie and Mark failed to pay the
7 premium in 2005, the policy would have lapsed and any property interest would have lapsed. Although
8 initially this term life insurance policy would have been considered community property as it was paid
9 with community assets, Cory Armstrong's payment (of the last two years' premium as a gift to Mark
10 alone) is a gift making the life insurance policy Mark's separate property. The community's interest in
11 the policy lapsed when the community stopped making premium payments. Therefore, this Court
12 concludes that the life insurance policy became the separate property of Mark because the last premium
13 payment was paid as a gift to Mark alone.
14

15 **2. Whether Idaho Code Section 41-1830 Makes a Life Insurance Policy the Separate Property of a**
16 **Married Woman**

17 Despite precedent established by the Idaho Supreme Court in case law dating back to at least
18 1956 and as recent as 2007, Defendant Tammie Sue Dixson argued that a specific Idaho Code section
19 changes the case law in Idaho that a life insurance policy paid for with community assets is community
20 property. Defendant Tammie Sue Dixson relies on Idaho Code Section 41-1830 which provides as
21 follows:
22

23 **Life Policy as Separate Property of Married Woman.** Every policy of life insurance
24 heretofore or hereafter made payable to or for the benefit of a married woman, or after its
25 issue heretofore or hereafter assigned, transferred or in any way made payable to a
26 married woman, or to any person in trust for her or for her benefit, whether procured by
herself, her husband or any other person, and whether the assignment or transfer is made

1 by her husband, or by any other person, shall, unless contrary to the terms of the policy,
2 inure to her separate use and benefit.

3 Idaho Code Ann. § 41-1830 (2006). Certainly the Idaho Legislature wanted to make clear that a life
4 insurance policy made payable or for the benefit of a married woman inure to her “separate use and
5 benefit.” However, this Court is not persuaded that the legislature intended to abrogate the structure of
6 law in Idaho regarding community property governed by case precedent and statutory authority in Title
7 32, discussed *supra*. Based on a cursory search of case law in Idaho, this Court could not find any
8 previously published case decision on the applicability of section 41-1830.

9 Title 41, chapter 18 governs insurance contracts. If the Idaho Legislature intended to carve out a
10 special exception to the law of community property that all property acquired after marriage by either
11 husband or wife is community property, as delineated in Idaho Code Section 32-906, it would make
12 greater sense that it would have made such designation within Title 32 and not Title 41. Rather, section
13 41-1830 is cross-referenced to Idaho Code Section 11-604 which provides an exemption for life
14 insurance proceeds reasonably necessary and payable to a spouse or dependent. Idaho Code Ann. § 11-
15 604(1)(d), (2) (2006). However, such exemptions allowed by section 11-604 are lost immediately upon
16 commingling of any funds or amounts, such as life insurance or death benefits, with other funds. Idaho
17 Code Ann. § 11-604(3) (2006). Perhaps this is why the Idaho Legislature chose to make a special
18 exception for life insurance benefits paid to a married woman which remain for her “separate use and
19 benefit” under section 41-1830. Having decided that Idaho Code Section 41-1830 is not dispositive in
20 determining the nature of these life insurance proceeds, there is no need for this Court to determine the
21 constitutionality of section 41-1830.
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B. The Beneficiary of the Life Insurance Policy

The Court is next presented with the issue of determining the beneficiary of the life insurance policy. Although initially Mark designated the primary beneficiary of his life insurance policy to be his wife, Tammie Sue Dixson, there are two Beneficiary Change Forms before the Court purporting to change the primary beneficiary from Tammie Sue Dixson to the decedent's mother, Jackie Young. Counsel for Tammie Sue Dixson argues that the Beneficiary Change Forms are without effect because her signature as the spouse was required to effect such a change of beneficiary.

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1. Whether the Spouse's Signature is Required to Effect a Change of Beneficiary

Defendant Tammie Sue Dixson argues that under Idaho law, the spouse's consent is required when removing the spouse as the primary beneficiary under a life insurance policy, citing *Anderson v. Idaho Mutual Benefit Ass'n*, 77 Idaho 373, 292 P.2d 760 (1956). In *Anderson*, the Idaho Supreme Court held that "[w]here there is no consideration and the change of beneficiary is purely a gratuity, it is regarded as a gift of community property and, if substantial in amount and done without the wife's consent, is voidable by her." *Id.* at 378. However, in *Travelers Insurance Co. v. Johnson*, 97 Idaho 336, 544 P.2d 294 (1975) (discussing *Anderson*), the Idaho Supreme Court further clarified that if a gift of community property was made without the consent of the other spouse, such gift was not void but merely voidable as to the non-consenting spouse's one-half interest. *Id.* at 340, 544 P.2d at 298.

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Defendant Tammie Sue Dixson argues that the Beneficiary Change Form indicated that the spouse's signature was required. However, the Beneficiary Change Form indicates only that a list of states require a spousal signature, listing Idaho. There is nothing in the language of the insurance policy itself which specifies that a Change of Beneficiary Form requires the spouse's signature. This Court agrees with the Defendant Trust, that the language indicating that the State of Idaho requires a spousal

signature, is an incorrect statement of the law in Idaho. The Idaho Supreme Court in *Johnson* has clearly stated that in Idaho:

It is established that one spouse at death may effectively dispose of his or her share of the community property to persons other than the surviving spouse. Such is undoubtedly based on the rationale that since the community is dissolved each spouse is entitled to have or dispose of their half of community assets. The payment of life insurance proceeds is triggered by the same contingency, death. Proceeds only come into being upon the dissolution of the community and we see no policy to be served in prohibiting a spouse from giving away an amount which can be no more than half of property accumulated during marriage through the medium of life insurance when we permit him to do so through the law of descent and distribution.

Johnson, 97 Idaho at 340, 544 P.2d at 298 (citations omitted). There is nothing cited before this Court which stands for the proposition that before a spouse may change the beneficiary, the signature of the other spouse is required. To the contrary, the Idaho Supreme Court has explicitly recognized the ability of a spouse to gift up to one-half of their interest in a life insurance policy to a third party even though such life insurance policy is paid for with community assets. See *Johnson*, 97 Idaho at 340, 544 P.2d at 298.

Defendant Tammie Sue Dixson also relies on Idaho Code Section 41-1830 to support her argument that the spouse's consent or signature is required in Idaho. However, for the reasons stated above, this Court does not believe that section 41-1830 is determinative of whether a spouse's signature is required to change a beneficiary. If the life insurance policy were community property, the gift to Jackie Young would be voidable up to one-half of such policy representing Tammie's community interest. However, since this Court has found that this life insurance policy became Mark's separate property upon payment of the policy premium through a gift to Mark alone, Mark was not required to obtain the signature of his spouse Tammie in order to change the beneficiary.

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2. The Effect and Validity of the First Beneficiary Change Form

On January 31, 2005, with the assistance of Canyon Barnes, Mark allegedly completed a Beneficiary Change Form, changing the primary insured from his wife Tammie to his mother Jackie Young. Although it is not known whether such form was actually received by Banner Life Insurance, the life insurance policy makes clear that such changes are not effective until a written notice is *received* by the administrative office.

Beneficiary

Unless otherwise provided by written notice to us, the beneficiaries are named in the application.

Change of Beneficiary

During the insured's lifetime, the owner may change the beneficiary designation unless he or she has waived the right to do so. No beneficiary change will take effect until a written notice is received at our administrative office. Such changes will become effective on the date written notice is received by us. All changes will be subject to any payment made by us before notice was received.

Banner Life Insurance Policy Number 17B635069, pg. 7. Although the Trust argues that the change of beneficiary form is effective as of the mailing date under the "Mailbox Rule," the life insurance policy provides that such beneficiary change only takes effect after written notice is received, rather than on the date notice was sent. This Court believes that the plain language of the life insurance policy effectively abrogates the mailbox rule as inapplicable in determining the effective date of a change of beneficiary. The change of beneficiary *only* becomes effective when written notice is received by Banner Life Insurance, not when the change of beneficiary form is mailed under the mailbox rule.

3. The Effect and Validity of the Durable Power of Attorney

On January 31, 2005, Mark executed a Durable Power of Attorney designating Jackie Young, Robert Young, and David Dixson as his attorneys-in-fact. The Durable Power of Attorney was initialed by Mark and notarized by Kaye Baker. Kaye testified in her affidavit that she personally witnessed Mark

1 initial the document as his signature on January 31, 2005. Under Idaho Rule of Evidence 902(8),
2 documents with attached certificates of acknowledgements executed by a notary are self-authenticating.

3 Under the Uniform Durable Power of Attorney Act, a principal may create an agency in another
4 that continues in spite of the principal's later loss of capacity to contract, as long as the durable power
5 contains language showing that the principal intended the agency to remain effective in spite of his or
6 her later incompetency. 3 Am. Jur. 2d *Agency* § 26; Idaho Code Ann. §§ 15-5-501, 15-5-502 (2006).

7 The only evidence offered by a medical specialist in the record before the Court is from Dr.
8 Schlickman, who was Mark's primary care physician. In Dr. Schlickman's affidavit, he swore to his
9 personal knowledge of Mark's medical condition from and after February 2004 through the date of his
10 death. Specifically, Dr. Schlickman stated that "[u]p to the date of his death on May 5, 2006, Mark was
11 still cognitively intact and able to make decisions about his care, but he was significantly hampered due
12 to his limited ability to communicate." Similarly, Canyon Barnes, Mark's recreational therapist, testified
13 that she had personal knowledge of Mark's behaviors based on her own observations and believed
14 Mark's mental capacity to be "keen and sharp," although his motor skills were significantly impaired.
15 Ms. Barnes witnessed Mark signing the Beneficiary Change Form on January 31, 2005, noting he was
16 lucid and competent. While Ms. Barnes cannot testify as an expert as to Mark's mental condition, this
17 Court believes that she can testify in a lay opinion of her own observations of Mark's mental awareness.
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20 Furthermore, Mark's step-father, Robert Young, stated in his affidavit of Mark's ability to
21 communicate through an alphabet board and his personal observations of Mark and his mental ability.
22 Similarly, this Court believes that while Mr. Young cannot testify as an expert as to Mark's mental
23 condition, he can give his lay opinion based on his observations of Mark's ability to communicate and
24 mental awareness. Kaye Baker, an employee of the Life Care Center of Treasure Valley, also stated in
25 her affidavit her observations of Mark's mental awareness. Ms. Baker stated that on January 31, 2005,
26

1 Mark appeared before her in person and initialed the Durable Power of Attorney which she notarized.
2 She also explained that on February 3, 2006, Mark appeared before her again and utilized a rubber stamp
3 to sign the same document, which Ms. Barnes re-notarized. Mark's mother, Jackie Young, also stated in
4 her affidavit of Mark's mental alertness and the various times where he communicated with her.

5 The only testimony offered in contravention to the foregoing to dispute Mark's competency to
6 execute the Durable Power of Attorney is from Tammie Sue Dixson. In Tammie's affidavit she states
7 that on April 24, 2006, and May 1, 2006, Mark was unable to communicate, not being able to use the eye
8 board because of his difficult time blinking. Although Tammie stated that she had visited Mark on April
9 24 and May 1 and that he was unable to communicate, there is no basis or statement of personal
10 knowledge to support her claim that on January 31, 2005, Mark was mentally incompetent or
11 incapacitated and unable to execute a Durable Power of Attorney.
12

13 This Court is unpersuaded that Tammie Sue Dixson's bare, conclusory statements, significantly
14 lacking in foundation, regarding Mark's mental capacity or ability to communicate rise to the level of
15 creating a genuine issue of material fact. Although Mark conceivably may have had periods of great
16 difficulty due to motor skills or even inability to communicate, there is no expert testimony which
17 establishes that at any point Mark was mentally incapacitated. This Court is not aware that Tammie Sue
18 Dixson was even present on January 31, 2005, when Mark executed a Beneficiary Change Form as well
19 as a Durable Power of Attorney. Furthermore, under a Durable Power of Attorney, an attorney-in-fact
20 may continue to make decisions in accordance with the powers granted to him, despite the principal later
21 becoming incompetent. Therefore, this Court cannot find that the Durable Power of Attorney was
22 invalid or without effect.
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4. Effect of the Second Beneficiary Change Form

Defendant Tammie Sue Dixson also argues that even if the Durable Power of Attorney was effective, it did not grant the attorney-in-fact the power to change the beneficiary on Mark's life insurance policy. The Durable Power of Attorney executed by Mark granted the right to "make, receive, sign, endorse, execute, acknowledge, deliver and possess . . . insurance policies." Furthermore, the Durable Power of Attorney provided that the "enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney in fact. This power of attorney shall not be affected by the subsequent disability of the principal." The Idaho Court of Appeals noted in *Noyes v. Noyes*, 106 Idaho 352, 679 P.2d 152 (Ct. App. 1984), that "[w]e find no provision in the Idaho insurance code regulating the method whereby beneficiaries may be changed in group life insurance policies such as the one before us. In the absence of statutory regulation, the method of changing beneficiaries may be prescribed by the insurance policy, charter or bylaws of the insurance company." 106 Idaho at 355-56, 679 P.2d at 155-56.

As the owner of the policy, Mark had the ability to change the beneficiary unless he had elected an irrevocable beneficiary designation. The policy provided that "the owner may change the beneficiary designation unless he or she has waived the right to do so." While the policy was silent whether an attorney-in-fact may exercise the right to change a beneficiary just as the owner could, this Court believes that the Durable Power of Attorney made clear that Mark was giving his attorneys-in-fact a broad grant of power to make decisions for him. Therefore, this Court cannot find, and there is no case law to the contrary in Idaho, that as the attorney-in-fact under the Durable Power of Attorney, Robert Young could not effectuate a Beneficiary Change Form.

1 Defendant Tammie Sue Dixson further argues that Mark or his attorney-in-fact was prevented
2 from changing the beneficiary designation under the Joint Temporary Restraining Order issued in the
3 pending divorce case. The Joint Temporary Restraining Order provides as follows:

4 Therefor, pursuant to I.R.C.P. 65(g), the Plaintiff and Defendant are prohibited from
5 doing the following acts during the pendency of this action without specific written
6 consent of the parties or prior Order of the court:

7 2. Cashing, borrowing against, canceling, transferring, disposing of, or changing the
8 beneficiaries of any insurance or indemnity policy, including without limitation life,
9 health, automobile, and disability insurance, held for the benefit of the parties or their
10 minor children.

11 Unless good cause is shown, upon an application and hearing, this Joint temporary
12 Restraining Order shall become a temporary injunction and shall remain in effect as a
13 temporary injunction until a final order is entered on the Complaint, Petition or Motion,
14 or until further order of the court. No bond shall be required of either party. This order
15 shall be binding on each party, on their servants, employees, attorneys, and on those
16 persons in active concert or participation with them who receive actual notice of this
17 order by personal service or otherwise.

18 **VIOLATION OF THIS ORDER MAY RESULT IN PENALTIES
19 INCLUDING A FINE OF UP TO \$5000, UP TO FIVE DAYS IN JAIL, AN
20 AWARD OF COSTS AND ATTORNEY FEES AGAINST YOU, AND SUCH
21 OTHER SANCTIONS AS THE COURT MAY DEEM APPROPRIATE.**

22 Specifically Tammie argues that by changing the beneficiary designation on the life insurance policy,
23 which she argues violated the permanent injunction under the Joint Temporary Restraining Order, that
24 such change of beneficiary would be void *ab initio*. However, Tammie fails to provide any legal
25 authority that such change should be held void *ab initio*. Instead, the Idaho Supreme Court has held that
26 gifts of community property are voidable up to one-half of such interest. Furthermore, the sanctions
specified by the Magistrate in the Joint Temporary Restraining Order would be for contempt to punish a
party for a engaging in prohibited conduct. Specifically, the Joint Temporary Restraining Order warns
that violation of the order may result in a fine of up to \$5,000, five days in jail, and an award of
attorney's fees. There is nothing in the order which indicates any prohibited conduct by the party would

1 result in such action being deemed void *ab initio*. Rather, the appropriate remedy for an unauthorized
2 gift of community property, as discussed *supra*, is that the gift is voidable as to the non-consenting
3 spouse's one-half interest in the insurance policy proceeds.

4 Furthermore, because the Court has determined that the life insurance policy became the separate
5 property of Mark, the Joint Temporary Restraining Order would not prevent him from making a change
6 of beneficiary with respect to his separate property because it was not being "held for the benefit of the
7 parties"

8 There is no dispute that on May 2, 2006, Banner Life Insurance did in fact receive the second
9 Change of Beneficiary Form signed through the Durable Power of Attorney by Robert Young dated
10 April 27, 2006. The second Change of Beneficiary Form purported to change the primary beneficiary
11 from Tammie Sue Dixson to Jackie Young, adding as contingent beneficiaries Mark's six children from
12 the time prior to his marriage to Tammie Sue Dixson. This Court finds that there is no genuine issue of
13 material fact with respect to whether the second Change of Beneficiary Form is valid; further, as a matter
14 of law, such form was legally executed and effective to make such change.
15

16 On December 15, 2006, the primary beneficiary, Jackie Young, assigned her interest in the
17 policy's death benefits to The Mark Wallace Dixson Irrevocable Trust, also created on December 15,
18 2006. Therefore, the Trust should be awarded the entire net sum of the remaining proceeds from the life
19 insurance policy which have been deposited with the Court.
20

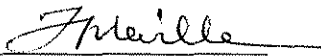
21 CONCLUSION

22 This Court finds that the life insurance policy, the relevant premiums for which were paid as a
23 gift by Cory Armstrong to Mark Wallace Dixson, was Mark's separate property. Furthermore, Idaho
24 Code Section 41-1830 is not dispositive of any issue in this case. This Court also finds that Tammie Sue
25 Dixson has failed to present any competent evidence to establish that Mark was not competent on
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1 January 31, 2005, the date he executed the Durable Power of Attorney or signed the first Beneficiary
2 Change Form. There is no requirement in Idaho law that a spouse's signature or consent is required to
3 change a beneficiary. Furthermore, the Joint Temporary Restraining Order does not invalidate any
4 change of beneficiary under the life insurance policy.

5 For the foregoing reasons, this Court hereby **GRANTS** Defendant Trust's Motion for Summary
6 Judgment, awarding the Trust the proceeds of the policy. Having granted the Trust's Motion, this Court
7 hereby **DENIES** Defendant Tammie Sue Dixson's Motion for Summary Judgment. Counsel for the
8 Trust shall prepare any proposed orders necessary to implement this decision, subject to Tammie's
9 counsel's right to review for form. AND IT IS SO ORDERED.
10

11 Dated this 9th day of November, 2007.

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15 Thomas F. Neville
16 District Judge
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RECEIVED

NOV 13 2007

Ada County Clerk

ORIGINAL

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NO. _____ FILED _____
A.M. 11:26 P.M. _____

NOV 14 2007

J. DAVID NAVARRO, Clerk
By *[Signature]* DEPUTY

Attorneys for Defendant, The Mark Wallace Dixson Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendants.

Case No. CV-OC 0701514

ORDER, JUDGMENT AND DECREE

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

v.

TAMMIE SUE DIXSON

Cross Defendant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Pursuant to the Court's Memorandum Decision and Order Granting the Mark Wallace Dixson Irrevocable Trust's Motion for Summary Judgment and Denying Tammie Sue Dixson's Motion for Summary Judgment entered on November 9, 2007, which is incorporated herein in its entirety;

IT IS HEREBY ORDERED that the funds currently on deposit and being held by the Ada County Clerk on behalf of the Fourth Judicial District Court, shall be released to the Mark Wallace Dixson Irrevocable Trust ("Trust"), including principal of \$296,094.93, and all accrued interest, if any, since the date of deposit.

IT IS FURTHER ORDERED that the check disbursing said funds to the Trust shall be made payable to Jackie E. Young, Trustee of the Mark Wallace Dixson Irrevocable Trust, and delivered by First Class United States Mail to Thomas G. Walker of Cosho Humphrey, LLP, counsel for the Trust.

DATED this 14th day of November, 2007.




THOMAS F. NEVILLE
District Judge

RULE 54(b) CERTIFICATION

With respect to the issues determined by the Court's Memorandum Decision and Order Granting the Mark Wallace Dixson Irrevocable Trust's Motion for Summary Judgment and Denying Tammie Sue Dixson's Motion for Summary Judgment dated November 9, 2007, it is hereby CERTIFIED, in accordance with Rule 54(b) of the *Idaho Rules of Civil Procedure*, that the court has determined that there is no just reason for the delay of the entry of a final judgment, and that the court has and does hereby direct that this Order, Judgment and Decree entered on November 14th, 2007, shall be a final order upon which execution may issue and an appeal may be taken as provided by the *Idaho Appellate Rules*.

DATED This 14th day of November, 2007.



THOMAS F. NEVILLE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 14 day of November, 2007 a true and correct copy of the within and foregoing instrument was served upon:

Thomas G. Walker, Esq.
Cosho Humphrey, LLP
800 Park Blvd., Suite 790
P.O. Box 9518
Boise, Idaho 83707-9518

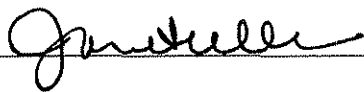
- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

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- Hand Delivery
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- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

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- E-mail



NOV 30 2007

J. DAVID NAVARRO, Clerk
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ORIGINAL

Attorneys for Defendant, Cross-Defendant, Third-Party Plaintiff, Tammie Sue Dixon

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, INDIVIDUALLY,

Defendants.

CASE NO. CV OC 0701514

**OBJECTION TO THE
MARK WALLACE DIXSON
IRREVOCABLE TRUST'S
MEMORANDUM OF COSTS
AND ATTORNEYS FEES**

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

OBJECTION TO THE MARK WALLACE DIXSON IRREVOCABLE TRUST'S MEMORANDUM OF COSTS
AND ATTORNEYS FEES - 1

00096 A

v.

TAMMIE SUE DIXSON,

Cross-Defendant.

TAMMIE SUE DIXSON,

Third Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third Party Defendants.

COMES NOW, TAMMIE SUE DIXSON, by and through her attorneys of record, Michelle R. Finch, and the firm of Finch & Associates Law Office, P.A., and Robert L. Talboy, and the firm Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C., and, pursuant to Idaho Rule of Civil Procedure 56(d)(6) hereby objects to The Mark Wallace Dixson Irrevocable Trust's (hereinafter "Trust") Memorandum of Costs and Attorneys Fees.

This Objection is made and based upon the record herein and for the following reasons:

- A) The underlying cause of action in this matter is not a commercial transaction nor any other action contemplated by Idaho Code §12-120(3) and, therefore no attorney's fees may be granted pursuant thereto;
- B) The attorney's fees award set forth in Idaho Code §15-8-208 is purely discretionary and in this particular case, it would be inequitable to award attorneys fees as against Ms. Dixon;
- C) The fees set forth in the Trust's Memorandum of Fees and Cost are not "reasonable" in light of the issues in this case and should be disallowed on that basis;

OBJECTION TO THE MARK WALLACE DIXSON IRREVOCABLE TRUST'S MEMORANDUM OF COSTS AND ATTORNEYS FEES - 2

00096 3

- D) The discretionary costs set forth in the Memorandum are not exceptional as required pursuant to Idaho Rule of Civil Procedure 54(d)(1)(D); and
- E) Mr. Stan Welsh's attorney's fees must be disallowed as they are not verified as required by 54(e)(5) and *Camp v. Jiminez*, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

For the reasons set forth herein, Ms. Dixon would respectfully request that the Trust's request for Costs and Attorney's Fees against Ms. Dixon be denied.

I. ARGUMENT

A. Idaho Code §12-120(3) is Reserved for Awarding Attorneys Fees and Costs in Specific Enumerated Situations, None of Which are Present Here.

Idaho Code §12-120(3) states:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

Further, as stated in *Edwards v. Edwards*, 122 Idaho 971, 842 P.2d 307 (Ct. App. 1992), attorneys fees may not be awarded pursuant to I.C. § 12-120(3) unless there exists a commercial transaction which constitutes the "gravamen" of the suit. Although in *Edwards* dealt the matter was a declaratory action rather than an interpleader action as in this case, the principle remains the same and is applicable by analogy.

The basis of the instant civil action is clearly not a commercial transaction. No party is seeking to recover on an "open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services." The case at bar is a dispute about the distribution of proceeds of a life insurance policy of the decedent, Mark Wallace Dixon. The facts alleged in this action are not consistent with any of the enumerated causes of action set forth in I.C. §12-120(3). Any claim for an award of attorney's fees and costs pursuant to this statute must be denied.

B. It Would be Inequitable for the Court to Order Ms. Dixon to Pay the Trust's Attorney Fees Pursuant to Idaho Code §15-8-208.

Idaho Code § 15-8-208 sets forth:

COST -- ATTORNEY'S FEES. (1) Either the district court or the court on appeal may, in its discretion, order costs, including reasonable attorney's fees, to be awarded to any party:

- (a) From any party to the proceedings;
- (b) From the assets of the estate or trust involved in the proceedings; or
- (c) From any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent's estates and properties, and guardianship matters. Except as provided in section 12-117, Idaho Code, this section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, unless such statute specifically provides otherwise.

The foregoing statute specifically states that costs, including a reasonable attorney's fee, may be awarded within the Court's discretion. Thus, attorney's fees are not mandatory

under I.C. §15-8-208 unless the Court finds that such an award is particularly appropriate and equitable under the circumstances. Given that Ms. Dixon was unaware that Mark Dixon had purportedly removed her as the beneficiary of his life insurance policy until she was so advised by Banner life after her husband's death, an award of fees and costs against Ms. Dixon for defending her right to the policy proceeds would be inequitable.

Further, Ms. Dixon did not initiate litigation but, rather, was interplead in this action, along with the Trust. The facts and law involved in this action were not clear-cut. In fact, due to the conflict as to the beneficiary designation, Banner Life did not know who the proper beneficiary of the proceeds of the decedent's life insurance was and placed the proceeds with the court. Ms. Dixon was not the cause of the Trust's attorney's fees and even had Ms. Dixon not filed a cross-claim against Robert and Jackie Young, the Trust would have had to pay attorney's fees by virtue of the interpleader action. It is undisputable that this action was necessary in order to determine complex questions of fact and law. Under these circumstances, it would be inequitable to require Ms. Dixon to pay the Trust's attorney's fees and costs.

However, even if the Court concludes that the Trust should be awarded its attorney fees, the Court has the ability to order that such payment be made by any party to the action, or recovered from the "nonprobate asset that is the subject of the proceedings," or the "assets of the trust or estate involved in the proceedings." Thus, equity dictates that the Trust's attorney's fees be paid either out of the insurance proceeds at issue in this case or the decedent's estate.

B. Some of the Fees Set Forth in the Trust Memorandum are Not "Reasonable" in Light of the Issues in this Case and Should be Disallowed.

Idaho Rule of Civil Procedure 54(e)(3) sets forth multiple factors to be considered by the Court to determine the proper amount of fees in the event the Court grants attorney's fees to a party in a civil action:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

In this case, Attorney Thomas Walker's hourly rate of \$250 (pre-June 2006) and \$275 (post-June 2006) is excessive and certainly not a "reasonable fee" in this community. If the Court awards attorney's fees in this matter, a more reasonable hourly rate should be applied.

In addition, for some reason, the Trust Memorandum includes a request for \$610 in attorney's fees incurred on December 13, 2006 and December 14, 2006 for the research, drafting, and finalizing of the actual Mark Wallace Dixson Irrevocable Trust (Exhibit A of The Mark Wallace Dixson Irrevocable Trust's Memorandum of Costs and Attorneys Fees). The fees incurred in drafting the Trust should not be included as any award of "reasonable" attorney's fees

attributable to Ms. Dixon with regard to the litigation of this matter. The creation of a trust was purely the Youngs' decision, and was not required as a part of the litigation.

C. There is no Showing that the Discretionary Costs Set Forth in the Trust's Memorandum are Exceptional and Necessary as Required Pursuant to Idaho Rule of Civil Procedure 54(d)(1)(D).

Pursuant to Idaho Rule of Civil Procedure 54(d)(1)(D), discretionary costs are addressed as follows:

Discretionary Costs. Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and shall make express findings supporting such disallowance.

The Trust's Memorandum concludes that "all items of discretionary costs were necessary and exceptional costs reasonably incurred bringing this action;" but fails to set forth any reasons for such a conclusory statement. For example, it is unclear why a "Release of Health Information" from Meridian Adult Medicine (\$50.00) was necessary to the interpleader action. Further, there is no explanation as to which "Certified Copies of Court Documents" are requested as discretionary costs or why they were necessary and/or exceptional. Finally, there are no reasons set forth which explains why "Computer Generated Research" in excess of \$1000 was necessary and exceptional in this case. The request for discretionary costs is unsupported and, accordingly, the request for such costs should be denied.

D. Mr. Stanley Welsh's Attorney's Fees Must Be Disallowed As They Are Not Verified As Required By 54(E)(5) And *Camp V. Jiminez*, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Rule 54(e)(5) requires the swearing to of a claim for attorney fees and costs. See also, *Camp v. Jiminez*, 107 Idaho 878, 883, 693 P.2d 1080, 1085 (Ct.App. 1984) (failure to verify a memorandum of fees and costs renders it subject to timely objection). Specifically, Idaho Rule of Civil Procedure 54(e)(5) provides that attorney fees are allowed as costs as follows:

Attorney fees, when allowable by statute or contract, shall be deemed as costs in an action and processed in the same manner as costs and included in the memorandum of costs; provided, however, the claim for attorney fees as costs shall be supported by an affidavit of the attorney stating the basis and method of computation of the attorney fees claimed.

Although the Trust's Memorandum sets forth attorney's fees charged by Attorney Stanley Welsh, Mr. Welsh provided no affidavit in support of such fees. Every other attorney who worked on the matter for the Trust provided such an affidavit. Accordingly, the \$500 in fees attributed to Mr. Stanley Welsh from the dates August 26, 2006 through November 2, 2006 must be disallowed.

II.

CONCLUSION

Based upon the reasons set forth above, Ms. Dixon would respectfully request that the Trust's request for Costs and Attorney's Fees as against Ms. Dixon be denied in whole or in part.

Dated this 30 day of November, 2007.

FINCH & ASSOCIATES LAW OFFICE, P.A.

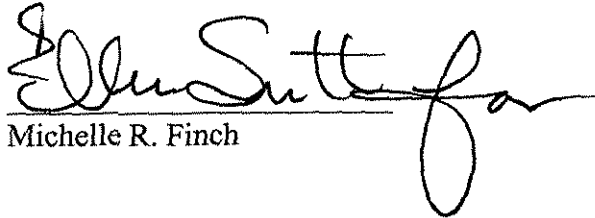
By: 

Michelle R. Finch

CERTIFICATE OF SERVICE

I hereby certify that on the ^{30th} day of November, 2007, a true and correct copy of the within and foregoing Objection to the Mark Wallace Dixson Irrevocable Trust's Memorandum of Costs and Attorneys Fees was served via the method indicated to the following person(s):

Thomas G. Walker
Mackenzie Whatcott
COSHO HUMPHREY, LLP
800 Park Blvd., Ste. 790
P.O. Box 9518
Boise, Idaho 83707
FAX: (208) 338-3290


Michelle R. Finch

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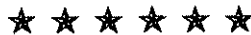
J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

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Mackenzie Whatcott (ISB No. 6774)
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Attorneys for Defendant, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA



BANNER LIFE INSURANCE COMPANY,

Case No. CV-OC 0701514

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

**RESPONSE TO TAMMIE SUE
DIXSON'S OBJECTION TO
MEMORANDUM OF COSTS AND
ATTORNEYS FEES**

Defendants.

000963

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

v.

TAMMIE SUE DIXSON

Cross Defendant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Defendant The Mark Wallace Dixson Irrevocable Trust ("Trust"), by and through its attorneys of record, Cosho Humphrey, LLP, lodges this Reply to Tammie Sue Dixson's Objection to Memorandum of Costs and Attorney Fees.

1. INTRODUCTION

The Trust filed its Memorandum of Costs and Attorney Fees on November 19, 2007. The Cross Defendant/Third Party Plaintiff Tammie Sue Dixson ("Tammie") filed her Objection to the Mark Wallace Dixson Irrevocable Trust's Memorandum of Costs and Attorney Fees ("Objection") on or about November 30, 2007. Tammie sets forth five arguments in support of

her request that the Trust's request for attorney fees and costs be denied. The Trust shall address each of the arguments below.

2. LAW AND ANALYSIS

2.1 Idaho Code Section 12-120(3) is Applicable in This Action.

This action was commenced when Banner Life Insurance Company filed a complaint for interpleader on January 23, 2007. The Trust filed its answer and cross claim against Tammie on February 1, 2007. Tammie filed her answer to the cross claim and third party complaint against the Trust on March 2, 2007. The nature of the case involved the recovery of the \$300,000 life insurance proceeds. The life insurance policy is a contract that was entered into between Mark Wallace Dixson, the deceased, and the Banner Life Insurance Company.

Idaho Code Section 12-120(3) provides:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(emphasis added). Tammie cites to *Edwards v. Edwards*, 122 Idaho 971, 842 P.2d 307 (1992) in support of her argument that there was no commercial transaction. First, as Tammie concedes, the matter in *Edwards* dealt with a declaratory action rather than an interpleader action. As the

Edwards court explained, the first prong of the analysis is whether the case involves “an action to recover on a contract.” *Edwards*, 122 Idaho at 972, 842 P.2d at 308. Tammie does not appear to dispute that this action involved the recovery of a money based upon a contract.

With regard to the commercial transaction argument, the case at hand is distinguishable from *Edwards*. In *Edwards*, the case involved the determination of the nature of a 1964 contractual relationship between a son and his parents and whether it continued to exist after his mother’s written renunciations, and whether by executing the 1977 agreement, the son had breached his duty of loyalty. The parties were merely seeking a declaratory judgment to “ascertain whether there existed a binding, contractual relationship between the parties under each of the two disputed agreements, focusing on the parties’ actions as they affected each of those relationships.” *Id.* This case does involve a commercial transaction because the underlying contract is an insurance policy purchased from an insurer regularly engaged in the business of writing life insurance policies. Idaho Code Section 12-120(3) defines a commercial transaction as, “all transactions except transactions for personal or household purposes.” The recovery of the death benefit proceeds of the life insurance policy was the gravamen of the action which involved a commercial transaction between Mark Wallace Dixson, Banner Life Insurance Policy and the named beneficiaries.

2.2 Idaho Code Section 15-8-208 Provides For an Award of Attorney Fees and Costs.

Idaho Code Section 15-8-208 provides that the district court may award attorney fees and costs to any party in proceedings involving trusts. Tammie argues that it would not be equitable

to award fees and costs because she was not aware that she was removed as the beneficiary until after her husband's death. Tammie was aware of this fact when Banner Life Insurance Company filed its interpleader action. She was also aware of this fact when she filed her Third Party Complaint against the Trust.

While Tammie did not initiate the original action, she did file a Third Party Complaint against the Trust. Furthermore, her statement that she was not the cause of the Trust's attorney fees is false. As set forth in the Memorandum of Attorney Fees and Costs, the majority of the fees incurred related to the Trust's motion for summary judgment and opposition to Tammie's motion for summary judgment; Tammie clearly was the cause of the Trust incurring attorney fees.

Lastly, it would be highly inequitable for the beneficiaries of the Trust, Mark Dixson's children, to receive less than their share of the insurance proceeds because their stepmother attempted to wrongfully usurp the funds from them.

2.3 The Fees Set forth in the Memorandum of Attorney Fees and Costs Are Reasonable and Tammie Has Not Met Her Burden of Establishing That They Are Unreasonable.

Tammie takes issue with Thomas Walker's hourly rate of \$250 (pre-June 2006) and \$275 (post-June 2006) and states that the rate is not a "reasonable fee" in the community. Tammie does not clarify whether the \$250 hourly rate or the \$275 hourly rate, or both are unreasonable. She merely makes the blanket assertion that the fees are not reasonable in this community. More importantly, the Trust put on evidence in the form of sworn affidavits, including the affidavit of Thomas G. Walker in which the following testimony was set forth:

To help us determine the value of services, we require all lawyers, paralegals and secretaries who work on a case to maintain time records. The efforts and time records of those who work on a case are reviewed carefully before bills are sent out. The amount of our billing statement reflects the fair value of the services, taking into account the novelty and difficulty of the matter, the skill needed to perform the services competently, the time limitations imposed by the client or by circumstances, the experience and ability of the people who work on the case, the time expended, and other relevant circumstances. This is the process I employed in this case.¹

* * *

As indicated in **Exhibit A**, the fees are computed on the basis of hourly rates which are commensurate with rates charged by other attorneys and legal assistants providing litigation services in the state of Idaho. In particular, my hourly rate of \$250.00, which was increased to \$275.00 effective July 1, 2007, is reasonable considering my knowledge, skill, experience, training and education.²

The hourly rate charged by my partner, Stanley W. Welsh is fair and reasonable considering his knowledge, skill, experience, training and education.³

The hourly rate of \$150.00 for Mackenzie Dennard Whatcott, an associate in our firm, is fair and reasonable based upon her knowledge, skill, experience, training and education.⁴

The hourly rate of \$85.00 charged for Pamela Carson, the paralegal assigned to this case, is fair and reasonable based upon her knowledge, skill, experience, training and education.⁵

To the best of my knowledge and belief, the itemization of fees set out in **Exhibit A** is true and correctly stated and the fees were necessarily incurred, and are allowable by law.⁶

¹ Affidavit of Thomas G. Walker dated November 19, 2007 at ¶ 9.

² *Id.* at ¶ 14.

³ *Id.* at ¶ 15.

⁴ *Id.* at ¶ 16. The reasonableness of MacKenzie Dennard Whatcott's hourly rate is also supported by her affidavit dated November 14, 2007.

⁵ Affidavit of Thomas G. Walker dated November 19, 2007 at ¶ 17. The reasonableness of Pamela R. Carson's hourly rate is also supported by her affidavit dated November 19, 2007.

⁶ Affidavit of Thomas G. Walker dated November 19, 2007 at ¶ 18.

This affidavit filed by the Trust shifted the burden to Tammie to show that the hourly rates and time spent are unreasonable. Tammie did not file any affidavits in support of her objection. Consequently, the only evidence that this Court has before it is the Trust's evidence. There is no evidence that the hourly rates or time spent were unreasonable considering the factors identified in Rule 54. Furthermore, the prevailing charges for like work is only one factor to be considered under Rule 54(e)(3).

2.4 The Discretionary Costs are Exceptional and Necessary.

The discretionary costs contained in the Memorandum of Attorney Fees and Costs were necessary and exceptional costs. The "Release of Health Information" from Meridian Adult Medicine (\$50.00) was necessary and is the fee charged for processing Dr. Louis Schlickman's affidavit based upon his notes. The affidavit was necessary to support the motion for summary judgment because Dr. Schlickman testified regarding Mark Wallace Dixson's condition. The "Certified Copies of Court Documents" were also necessary to determine the proceedings before the magistrate court regarding Mark and Tammie's divorce. The Trust had to obtain certified records to support its motion for summary judgment. Lastly, the "Computer Generated Research" was necessary. As the Court is aware, there was little Idaho case law addressing a number of the issues before the Court on summary judgment. It was necessary for the Trust to conduct considerable research outside of the jurisdiction of Idaho to prepare for its motion for summary judgment and to respond to Tammie's motion for summary judgment.

2.5 The Memorandum of Attorney Fees and Costs is Verified.

The Memorandum of Attorney Fees and Costs is verified by Thomas Walker. Additionally, Mr. Walker submitted a separate affidavit setting forth the basis and method of computation of the attorney fees claims as required by Idaho Code Section 54(e)(5). There is no requirement, and Tammie cites to no authority, that would require an affidavit from each attorney within the same firm that provided legal services to a client. Tammie's reliance on *Camp v. Jiminez*, 107 Idaho 878, 883, 693 P.2d 1080, 1085 (Ct.App. 1984) is misplaced. In *Camp*, the creditor filed an unverified memorandum of costs and attorney fees and the debtor objected, but did not argue the lack of verification. After a hearing the court granted the creditor additional time to file a memorandum containing a more detailed justification of the attorney fees. The creditor filed a second, verified memorandum. The debtor then belatedly moved to disallow all costs and attorney fees because the original memorandum had not been verified. The court held that the objection to the lack of verification was not timely and further, that because the court had granted additional time to file a more detailed memorandum, the creditor cured the verification defect. Because the Memorandum of Attorney Fees and Costs submitted in this case is verified, Tammie's reliance on *Camp v. Jiminez* is clearly misplaced.

Furthermore, it is within Mr. Walker's personal knowledge what Mr. Welsh's hourly billing rate is and his record of hours logged, as well as his experience. In *Garnett v. Transamerica Ins. Services*, 118 Idaho 769, 800 P.2d 656 (1990), the defendant insurance company argued that the plaintiff's attorney did not provide sufficient documentation to support the award of fees. The documentation of the amount of attorney fees submitted to the district

court was a memorandum of costs submitted by one of the attorneys for the plaintiff "that included the number of hours expended by the attorney and an associate and the hourly rate used to calculate the total fee." The court did not find the memorandum of costs submitted to be improper or unverified.

3. CONCLUSION

Based upon the foregoing, the Trust respectfully requests the Court to enter an award of attorney fees and costs consistent with the Memorandum of Attorney Fees and Costs previously submitted, with the deduction in the amount of \$610 incurred for drafting the trust, which the Trust concedes was inadvertently included in the Memorandum.

DATED: December 4, 2007.

COSHO HUMPHREY, LLP

By: 

THOMAS G. WALKER

Attorneys for the Mark Wallace Dixson
Irrevocable Trust

CERTIFICATE OF SERVICE

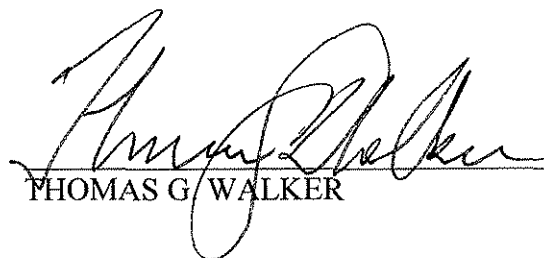
I HEREBY CERTIFY That on the 4th day of December 2007 a true and correct copy of the within and foregoing instrument was served upon:

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy & DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail


THOMAS G WALKER

Respondent,)
)
 v.)
)
 TAMMIE SUE DIXSON,)
)
 Appellant.)
)
)
 TAMMIE SUE DIXSON,)
)
 Third Party Plaintiff,)
)
)
 v.)
)
)
 ROBERT AND JACKIE YOUNG,)
)
)
 Third Party Defendants.)
)
)

TO: THE ABOVE NAMED RESPONDENT(S), THE MARK WILSON DIXSON IRREVOCABLE TRUST THE PARTY'S ATTORNEYS, THOMAS G. WALKER AND THE FIRM COSHO HUMPHREY, LLP, LOCATED AT 800 PARK BLVD., STE. 790, WITH THE MAILING ADDRESS OF P.O. BOX 9518 IN BOISE, IDAHO 83707, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, TAMMIE SUE DIXSON, appeals against the above named respondent to the Idaho Supreme Court from the final judgment, entered in the above entitled action on the 14th day of November, 2007, Honorable Judge Thomas F. Neville presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rules 11(a)(1)

and 11(a)(7) I.A.R.

3. Issues on Appeal.

a. Whether the District Court erred in not applying Idaho Code §41-1803.

b. Whether the District Court erred in determining that the last premium payment controlled the characterization of the subject life insurance policy and, subsequently, the life insurance proceeds.

c. Whether the District Court erred in its legal conclusion that the community's interest in the policy lapsed when the premiums were paid by a third party for two years..

d. Whether the District Court erred in finding that the payment of the insurance premiums in 2005 and 2006 was a gift rather than a loan;

e. In the alternative, if a gift was made, whether the District Court erred in determining the gift was made to Mark Dixson, rather than made to the community.

f. Whether the District Court erred in finding that Mark's attempt to change the insurance policy beneficiary was not void although it was in direct violation of the Court ordered Joint Temporary Restraining Order issued in the divorce matter.

g. Whether the District Court erred in finding that the change of beneficiary without spousal consent or signature did not violate the terms of the insurance policy and Idaho law.

4. No order has been entered sealing any or part of the record or transcript.

5. (a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's

transcript:

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R., supplemented by the following: Hearing on oral argument which took place on June 15, 2007.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b) (1) That the clerk of the district court or administrative agency will be paid the estimated fee for preparation of the reporter's transcript. Messages have been left for the Court Reporter and the estimated amount will immediately be paid upon its receipt.

(c) (1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) (1) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED This 21 day of December, 2007.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By: 

Michelle R. Finch

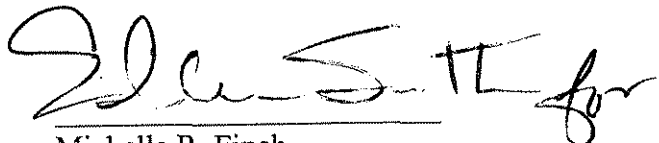
CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of December, 2007, a true and correct copy of the within and foregoing NOTICE OF APPEAL was served via the method indicated to the following person(s):

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Joshua S. Evett
ELAM & BURKE, P.A.
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P.O. Box 1539
Boise, ID 83701
*FAX: 384-5844

Melanie Gorzyca
Ada County Courthouse
Court Reporter for Judge Neville
*Hand Delivery to
Courthouse*


Michelle R. Finch

ORIGINAL

NO. _____ FILED 3:58
A.M. _____ PM

JAN 16 2008

J. DAVID NAVARRO, Clerk
By *[Signature]*
DEPUTY

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Mackenzie Whatcott (ISB No. 6774)
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E-mail: twalker@cosholaw.com

Attorneys for Defendant, The Mark Wallace Dixson Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendants.

Case No. CV-OC 0701514

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW WITH
RESPECT TO AN AWARD OF COSTS
AND FEES TO THE MARK WALLACE
DIXSON IRREVOCABLE TRUST; and
TAMMIE SUE DIXSON**

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

v.

TAMMIE SUE DIXSON

Cross Defendant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

This matter came before the Court on January 11, 2008 upon the Mark Wallace Dixson Irrevocable Trust's Memorandum of Costs and Attorney Fees and Tammie Sue Dixson's Objection thereto. This Court considered all of the papers submitted by the parties and conducted its own research with respect to the legal issues. Having fully considered these matters, the Court hereby issues the following Findings of Fact and Conclusions of Law.

Certain Findings of Fact may also be Conclusion of Law and vice-versa.

1. FINDINGS OF FACT

1.1 The Court finds that the Mark Wallace Dixson Irrevocable Trust ("Trust") is the prevailing party pursuant to Idaho Rule of Civil Procedure 54(d)(1)(B).

1.2 The Court finds that this case involved a commercial transaction and therefore the Trust is entitled to attorney fees and costs pursuant to Idaho Code Section 12-120(3).

1.3 The Court also finds that the Trust is entitled to attorney fees and costs pursuant to Idaho Code Section 15-8-208. It is not inequitable for the Court to enter an award against Tammie Sue Dixson because she had knowledge of all of the essential facts of this case at the commencement of the proceedings.

1.4 The Court has considered all of the factors enumerated in Idaho Rule of Civil Procedure 54(e)(3), including:

1.4.1 That the time and labor expended on this matter was reasonable considering the difficulty of the issues involved.

1.4.2 That the case contained novel and difficult questions.

1.4.3 That the Trust's counsel possess the skill requisite to perform the legal service properly and that counsel had the experience and ability in the particular field of law.

1.4.4 That the rates charged by the Trust's counsel were reasonable as compared with the prevailing charges for like work.

1.4.5 Since the fees charged were based on time spent and hourly rates, whether the fee was fixed or contingent was considered, but did not impact the Court's analysis.

1.4.6 That the circumstances imposed time limitations on counsel to obtain a result in the shortest possible period of time.

1.4.7 That counsel for the Trust obtained the best possible result for the Trust.

1.4.8 That the case was difficult if not undesirable.

1.4.9 That this was a one time engagement of counsel by the Trust.

1.4.10 Awards in similar cases were considered.

1.4.11 That the cost of automated legal research (Computer Assisted Legal Research) was reasonable considering the paucity of authority in Idaho with respect to the issues in the case.

1.4.12 That that the beneficiaries of the Trust would be prejudiced if the Court did not award attorney fees and costs considering the facts and circumstances of the case.

1.5 The Court finds that the hourly rates charged by the Trust's counsel were reasonable and appropriate and that the claims were well presented. The Court finds that there were no duplicative efforts on the part of the Trust's attorneys and that attorney Stanley W. Welsh's fees were reasonable and appropriate and that attorney Thomas G. Walker had personal knowledge of his work on this case and his hourly rate.

1.6 The Court has also considered the factors contained in *Camp v. Jiminez*, 107 Idaho 878, 693 P.2d 1080 (Ct.App. 1984) and *Garnett v. Transamerica Ins. Services*, 118 Idaho 769, 800 P.2d 656 (1990).

1.7 The Court finds that an award of attorney fees in the amount of \$23,044.50 is reasonable. (This amount reflects the deduction of \$610.00 from the original

amount set forth in the Memorandum of Costs and Fees of \$23,654.50 for the cost incurred in drafting the trust documents.)

1.8 The Court finds that the Trust is entitled to costs as a matter of right under I.R.C.P. 54(d)(1)(C) in the amount of \$72.00 for court filing fees and certified copies.

1.9 The Court finds that because of the novelty of the legal issues involved and the lack of legal authority in Idaho, the Trust is entitled to discretionary costs under I.R.C.P. 54(d)(1)(D) as follows: (a) \$50.00 for the release of health information, (b) \$8.00 for certified copies of court documents and (c) \$1,053.50 for computer generated research.

2. CONCLUSIONS OF LAW

2.1 The Trust is the prevailing party.

2.2 This case involved a commercial transaction and the Trust is entitled to attorney fees and costs pursuant to Idaho Code Section 12-120(3).

2.3 The Trust is also awarded attorney fees and costs in the Court's discretion pursuant to Idaho Code Section 15-8-208. In reaching this decision, the Court (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion and consistent with the legal standards applicable to the specific choices before it; and (3) reached its decision by an exercise of reason. Further, the Court considered the 12 factors outlined in Rule 54(e)(3) in determining the amount of attorney fees to award; it considered the existence and applicability of each factor without placing undue weight or emphasis upon any one element.

2.4 The Trust shall be awarded costs as a matter of right in the amount of \$72.00.

2.5 The Trust shall be awarded discretionary costs in the amount of \$1,111.50.

2.6 The Trust shall be awarded attorney fees in the amount of \$23,044.50.

The total amount of attorney fees and costs awarded to the Trust shall be **\$24,228.00**.

DATED this 16th day of January, 2008.



THOMAS F. NEVILLE, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 16 day of January, 2008 a true and correct copy of the within and foregoing instrument was served upon:

Thomas G. Walker, Esq.
Cosho Humphrey, LLP
800 Park Blvd., Suite 790
P.O. Box 9518
Boise, Idaho 83707-9518

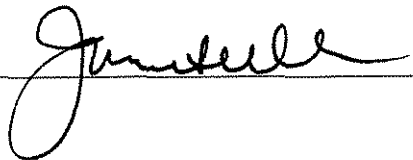
- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Michelle Finch, Esq.
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talbot, Esq.
Ellsworth, Kallas, Talbot & DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,
vs.
THE MARK WALLACE DIXSON IRREVOCABLE
TRUST; and
TAMMIE SUE DIXSON, individually,

Defendants.

THE MARK WALLACE DIXSON IRREVOCABLE
TRUST,

Cross Claimant-Respondent,
vs.
TAMMIE SUE DIXSON,

Cross Defendant-Appellant.

TAMMIE SUE DIXSON,

Third Party Plaintiff,
vs.
ROBERT and JACKIE YOUNG,

Third Party Defendants.

Supreme Court Case No. 34873

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Affidavit Of Jackie E. Young, filed March 14, 2007.
2. Affidavit Of Louis M. Schlickman, M.D., filed March 14, 2007.
3. Affidavit Of Kaye Baker, filed March 14, 2007.

CERTIFICATE OF EXHIBITS

00102

4. Affidavit Of Robert Young, filed March 14, 2007.
5. Affidavit Of Cory Armstrong, filed March 14, 2007.
6. Memorandum In Support Of Motion For Summary Judgment By The Mark Wallace Dixson Irrevocable Trust, filed March 14, 2007.
7. Memorandum In Support Of Tammie Sue Dixson's Motion For Summary Judgment And Tammie Sue Dixson's Memorandum In Opposition To The Mark Wallace Dixson's Motion For Summary Judgment, filed May 16, 2007.
8. Affidavit Of Tammie Sue Dixson In Opposition To Motion For Summary Judgment, filed May 16, 2007.
9. The Mark Wallace Dixson Irrevocable Trust's Memorandum In Opposition To Tammie Sue Dixson's Cross Motion For Summary Judgment, filed May 29, 2007.
10. Affidavit Of Canyon Barnes Dated May 24, 2007, filed May 29, 2007.
11. Affidavit Of Robert Young Dated May 24, 2007, filed May 29, 2007.
12. Reply Memorandum In Support Of The Motion For Summary Judgment By The Mark Wallace Dixson Trust, filed May 29, 2007.
13. Memorandum In Support Of Motion To Strike Portions Of The Affidavit Of Tammie Sue Dixson In Opposition To Motion For Summary Judgment, filed May 29, 2007.
14. Affidavit Of Michelle R. Finch In Support Of Tammie Sue Dixson's Motion For Summary Judgment And Opposition To Trust's Motion For Summary Judgment, filed June 1, 2007.
15. Tammie Sue Dixson's Memorandum In Support Of Motion To Strike Portions Of The Affidavits Of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong And Canyon Barnes In Opposition To Motion For Summary Judgment In Support Of The Mark Wallace Dixson Irrevocable Trust's Motion For Summary Judgment And In Opposition To Tammie Sue Dixson's Motion For Summary Judgment, filed June 8, 2007.
16. Reply Memorandum In Opposition To The Mark Wallace Dixson's Motion For Summary Judgment And In Support Of Tammie Sue Dixson's Motion For Summary Judgment, filed June 8, 2007.
17. Memorandum In Opposition To Tammie Sue Dixson's Memorandum In Support Of Motion To Strike Portions Of The Affidavits Of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong And Canyon Barnes, filed June 12, 2007.

18. Affidavit Of Thomas G. Walker Dated August 2, 2007, filed August 2, 2007.
19. The Mark Wallace Dixson Irrevocable Trust's Memorandum Of Costs And Attorneys Fees, filed November 19, 2007.
20. Affidavit Of Thomas G. Walker Dated November 19, 2007 In Support Of The Mark Wallace Dixson Irrevocable Trust's Memorandum Of Costs And Attorneys Fees, filed November 19, 2007.
21. Affidavit Of Mackenzie E. Whatcott Dated November 14, 2007 In Support Of The Mark Wallace Dixson Irrevocable Trust's Memorandum Of Costs And Attorneys Fees, filed November 19, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 1st day of May, 2008.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

001023

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,
Plaintiff,
vs.
THE MARK WALLACE DIXSON IRREVOCABLE TRUST;
and
TAMMIE SUE DIXSON, individually,
Defendants.

THE MARK WALLACE DIXSON IRREVOCABLE TRUST,
Cross Claimant-Respondent,
vs.
TAMMIE SUE DIXSON,
Cross Defendant-Appellant.

TAMMIE SUE DIXSON,
Third Party Plaintiff,
vs.
ROBERT and JACKIE YOUNG,
Third Party Defendants.

Supreme Court Case No. 34873

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

MICHELLE R. FINCH

ATTORNEY FOR APPELLANT

BOISE, IDAHO

THOMAS G. WALKER

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: FEB 19 2008

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00103

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY, Plaintiff, vs. THE MARK WALLACE DIXSON IRREVOCABLE TRUST; and TAMMIE SUE DIXSON, individually, Defendants.
THE MARK WALLACE DIXSON IRREVOCABLE TRUST, Cross Claimant-Respondent, vs. TAMMIE SUE DIXSON, Cross Defendant-Appellant.
TAMMIE SUE DIXSON, Third Party Plaintiff, vs. ROBERT and JACKIE YOUNG, Third Party Defendants.

Supreme Court Case No. 34873

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 21st day of December, 2007.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

SEAL

CERTIFICATE TO RECORD

00104

ORIGINAL

FILED 4
P.M.
FEB 20 2008
J. L. W. DE LA VAREÑO, Clerk
By L. AMES
Deputy

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
COSH O HUMPHREY, LLP
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E-mail: twalker@cosholaw.com

Attorneys for Respondent, The Mark Wallace Dixon Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA



BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

S.C. Docket No. 34873

**RESPONDENT'S REQUEST FOR
ADDITIONAL CLERK'S RECORD**

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant,

v.

TAMMIE SUE DIXSON

Cross Defendant.

00105

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Counterclaimant/Respondent, The Mark Wallace Dixson Irrevocable Trust ("Dixson Trust") and pursuant to Rule 29(a) of the Idaho Appellate Rules hereby requests the addition of the following documents to the Clerk's Record received on or about February 19, 2008 before final settlement of the Clerk's Record.

Dated Filed	Description
3/14/07	Affidavit of Jackie E. Young
3/14/07	Affidavit of Louis M. Schlickman, M.D.
3/14/07	Affidavit of Kaye Baker
3/14/07	Affidavit of Robert Young
3/14/07	Affidavit of Cory Armstrong
3/14/07	Memorandum in Support of Motion for Summary Judgment by the Mark Wallace Dixson Irrevocable Trust
5/29/07	The Mark Wallace Dixson Irrevocable Trust's Memorandum in Opposition to Tammie Sue Dixson's Cross Motion for Summary Judgment
5/29/07	Affidavit of Canyon Barnes dated May 24, 2007
5/29/07	Affidavit of Robert Young Dated May 24, 2007
5/29/07	Reply Memorandum in Support of the Motion for Summary Judgment by the Mark Wallace Dixson Trust
5/29/07	Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
5/29/07	Memorandum in Support of Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
8/14/07	Order Re: Motion to Strike Portions fo the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
8/14/07	Order Re: Third Party Plaintiff's Motion to Strike Portions of the Affidavits of Robert

	Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes
11/14/07	Order, Judgment and Decree
1/16/08	Findings of Fact and Conclusions of Law with Respect to an Award of Costs and Fees to the Mark Wallace Dixson Irrevocable Trust
1/16/08	Judgment and Order on Attorney Fees

DATED: February 20, 2008.

COSHO HUMPHREY, LLP

By:


 THOMAS G. WALKER

Attorneys for Cross Claimant/Respondent

CERTIFICATE OF SERVICE

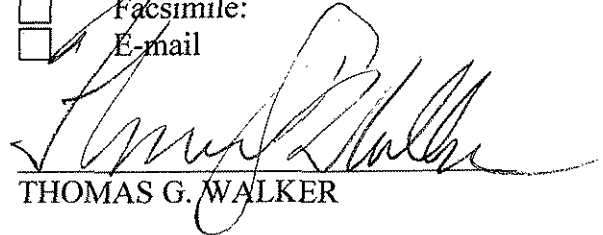
I HEREBY CERTIFY That on the 20th day of February, 2008, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Finch
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

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- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail


THOMAS G. WALKER

NO. _____
FILED P.M. 3:46
A.M. _____

FEB 21 2008

J. DAVID NAVARRO, Clerk
By J. EARLE
DEPUTY

ORIGINAL

FINCH & ASSOCIATES LAW OFFICE, P.A.
Michelle R. Finch, ISB No. 3382
103 W. Idaho
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Boise, ID 83701
Telephone: (208) 385-0800
Facsimile: (208) 389-2186
contactus@familylegalsolutions.com

Robert W. Talboy, Esq., ISB No. 3603
ELLSWORTH, KALLAS, TALBOY & DEFRANCO, P.L.L.C.
1031 E. Park Blvd.
Boise, ID 83712
Telephone: (208) 336-1843
Facsimile: (208) 345-8945

Attorneys for Defendant, Cross-Defendant, Third-Party Plaintiff, Tammie Sue Dixon

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, INDIVIDUALLY,

Defendants.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Respondent,

CASE NO. CV OC 0701514

AMENDED
NOTICE OF APPEAL

v.)
)
 TAMMIE SUE DIXSON,)
)
 Appellant.)
)
)
 TAMMIE SUE DIXSON,)
)
 Third Party Plaintiff,)
)
)
 v.)
)
)
 ROBERT AND JACKIE YOUNG,)
)
)
 Third Party Defendants.)
)

TO: THE ABOVE NAMED RESPONDENT(S), THE MARK WILSON DIXSON IRREVOCABLE TRUST THE PARTY'S ATTORNEYS, THOMAS G. WALKER AND THE FIRM COSHO HUMPHREY, LLP, LOCATED AT 800 PARK BLVD., STE. 790, WITH THE MAILING ADDRESS OF P.O. BOX 9518 IN BOISE, IDAHO 83707, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, TAMMIE SUE DIXSON, appeals against the above named respondent to the Idaho Supreme Court from the final judgment, entered in the above entitled actions on the 14th day of November, 2007 and the 11th day of January, 2008, with the Honorable Judge Thomas F. Neville presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rules 11(a)(1)

and 11(a)(7) I.A.R.

3. Issues on Appeal.

- a. Whether the District Court erred in not applying Idaho Code §41-1803.
- b. Whether the District Court erred in determining that the last premium payment controlled the characterization of the subject life insurance policy and, subsequently, the life insurance proceeds.
- c. Whether the District Court erred in its legal conclusion that the community's interest in the policy lapsed when the premiums were paid by a third party for two years..
- d. Whether the District Court erred in finding that the payment of the insurance premiums in 2005 and 2006 was a gift rather than a loan;
- e. In the alternative, if a gift was made, whether the District Court erred in determining the gift was made to Mark Dixon, rather than made to the community.
- f. Whether the District Court erred in finding that Mark Dixson's attempt to change the insurance policy beneficiary was not void although it was in direct violation of the Court ordered Joint Temporary Restraining Order issued in the divorce matter between Tammie Sue Dixon and Mark Dixon.
- g. Whether the District Court erred in finding that the change of beneficiary without spousal consent or signature did not violate the terms of the insurance policy and Idaho law.
- h. Whether the District Court erred in granting all or some of attorney's fees to the Mark Wallace Dixon Irrevocable Trust.

4. No order has been entered sealing any or part of the record or transcript.
5. (a) Is a reporter's transcript requested? Yes.
- (b) The appellant requests the preparation of the following portions of the reporter's transcript:

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R., supplemented by the following: Hearing on oral argument which took place on June 15, 2007; Hearing on oral argument which took place on January 11, 2008 at approximately 9:00 am.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter.
- (b) (1) That the clerk of the district court or administrative agency will be paid the estimated fee for preparation of the reporter's transcript. Messages have been left for the Court Reporter and the estimated amount will immediately be paid upon its receipt.
- (c) (1) That the estimated fee for preparation of the clerk's or agency's record has been paid.
- (d) (1) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED This 25th day of January, 2008.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By 

Michelle R. Finch

ELLSWORTH, KALLAS, TALBOY &
DEFRANCO, P.L.L.C.

By: 
Robert W. Talboy

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2008, a true and correct copy of the within and foregoing AMENDED NOTICE OF APPEAL was served via the method indicated to the following person(s):

Thomas G. Walker
Mackenzie Whatcott
COSH O H U M P H R E Y , L L P
800 Park Blvd., Ste. 790
P.O. Box 9518
Boise, Idaho 83707
FAX: (208) 338-3290

Joshua S. Evett
ELAM & BURKE, P.A.
251 E. Front St.
P.O. Box 1539
Boise, ID 83701
FAX: 384-5844

Ms. Melanie Gorczyca
2387 S. Chipper Way
Eagle, ID 83616

Hirmer, Jeanne
Boise, ID 83713-0934
Fax: 208-938-1843


Michelle R. Finch

ORIGINAL

NO. _____
A.M. _____ P.M. 3:23

FEB 21 2013

J. DAVID NAVARRO, CLERK
By A. DOONE
CLERK

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
COSH O HUMPHREY, LLP
800 Park Blvd., Suite 790
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Direct Phone: (208) 639-5607
Cell Phone: (208) 869-1508
Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

Attorneys for Respondent, The Mark Wallace Dixson Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant/Respondent,

v.

TAMMIE SUE DIXSON

Cross Defendant/Appellant.

Case No. CV-OC 0701514

S.C. Docket No. 34873

**RESPONDENT'S OBJECTION TO
CLERK'S RECORD**

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Counterclaimant/Respondent, The Mark Wallace Dixson Irrevocable Trust ("Dixson Trust") and pursuant to Rule 29(a) of the Idaho Appellate Rules hereby objects to the Clerk's Record received on or about February 19, 2008 and moves for the addition of the following documents to be included in the Clerk's Record.

Dated Filed	Description
3/14/07	Affidavit of Jackie E. Young
3/14/07	Affidavit of Louis M. Schlickman, M.D.
3/14/07	Affidavit of Kaye Baker
3/14/07	Affidavit of Robert Young
3/14/07	Affidavit of Cory Armstrong
3/14/07	Memorandum in Support of Motion for Summary Judgment by the Mark Wallace Dixson Irrevocable Trust
5/29/07	The Mark Wallace Dixson Irrevocable Trust's Memorandum in Opposition to Tammie Sue Dixson's Cross Motion for Summary Judgment
5/29/07	Affidavit of Canyin Barnes dated May 24, 2007
5/29/07	Affidavit of Robert Young Dated May 24, 2007
5/29/07	Reply Memorandum in Support of the Motion for Summary Judgment by the Mark Wallace Dixson Trust
5/29/07	Motion to Strike Portions of the Affidavit of Tammi9e Sue Dixson in Opposition to Motion for Summary Judgment
5/29/07	Memorandum in Support of Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
8/14/07	Order Re: Motion to Strike Portions fo the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
8/14/07	Order Re: Third Party Plaintiff's Motion to Strike Portions of the Affidavits of Robert

	Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes
11/14/07	Order, Judgment and Decree

DATED: February 21, 2008.

COSHO HUMPHREY, LLP

By: 

THOMAS G. WALKER

Attorneys for Cross Claimant/Respondent

CERTIFICATE OF SERVICE

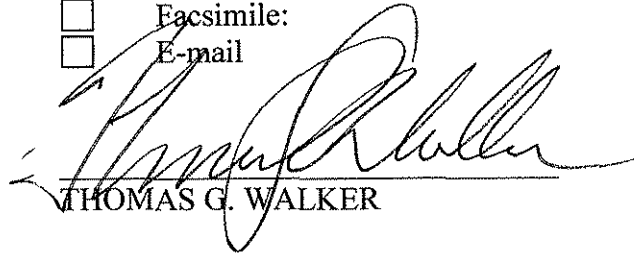
I HEREBY CERTIFY That on the 21st day of February, 2008, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Finch
Finch Broadbent
103 West Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

NO _____
A.M. _____ FILED 3:58 P.M.

MAR 04 2008

J. DAVID NAVARRO, Clerk
By M. STROMER
DEPUTY

ORIGINAL

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
COSH O HUMPHREY, LLP
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Cell Phone: (208) 869-1508
Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

Attorneys for Respondent, The Mark Wallace Dixson Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

S.C. Docket No. 34873

STIPULATION FOR ORDER
ALLOWING AUGMENTATION OF
CLERK'S RECORD

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant/Respondent,

v.

TAMMIE SUE DIXSON

Cross Defendant/Appellant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

Counterclaimant/Respondent, The Mark Wallace Dixson Irrevocable Trust ("Dixson Trust"), by and through its counsel of record, Thomas G. Walker of the firm Cosho Humphrey, LLP, Counterdefendant/Appellant, Tammie Sue Dixson, by and through her counsel of record, Robert W. Talbo, of the firm Ellsworth, Kallas, Talbo DeFranco, P.L.L.C., and Michelle Finch of the firm Finch & Associates Law Offices, P.A., do hereby and herewith stipulate to the augmentation of the Clerk's Record on appeal with the following documents:

Dated Filed	Description
3/14/07	Affidavit of Jackie E. Young
3/14/07	Affidavit of Louis M. Schlickman, M.D.
3/14/07	Affidavit of Kaye Baker
3/14/07	Affidavit of Robert Young
3/14/07	Affidavit of Cory Armstrong
3/14/07	Memorandum in Support of Motion for Summary Judgment by the Mark Wallace Dixson Irrevocable Trust
5/16/07	Tammie Sue Dixson's Motion for Summary Judgment
5/16/07	Memorandum in Support of Tammie Sue Dixson's Motion for Summary Judgment and in Opposition to the Mark Wallace Dixson's Motion for Summary Judgment
5/16/06	Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
5/29/07	The Mark Wallace Dixson Irrevocable Trust's Memorandum in Opposition to Tammie Sue Dixson's Cross Motion for Summary Judgment
5/29/07	Affidavit of Canyon Barnes dated May 24, 2007
5/29/07	Affidavit of Robert Young Dated May 24, 2007
5/29/07	Reply Memorandum in Support of the Motion for Summary Judgment by the Mark Wallace Dixson Trust

5/29/07	Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
5/29/07	Memorandum in Support of Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
6/1/07	Affidavit of Michelle Finch in Support of Tammie Sue Dixson's Motion for Summary Judgment and Opposition to Trusts Motion for Summary Judgment
6/8/07	Tammie Sue Dixson's Memorandum in Support of Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes in Opposition to Tammie Sue Dixson's Motion for Summary Judgment
6/8/07	Reply Memorandum in Opposition to the Mark Wallace Dixson Trust's Motion for Summary Judgment and in Support of Tammie Sue Dixson's Motion for Summary Judgment
6/12/07	Memorandum in Opposition to Memorandum in Support of Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes
6/13/07	Motion to Strike Portions of the Affidavits
8/2/07	Objection to Order Re: 3 rd Party Plaintiff's Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Jaye Baker, Cory Armstrong and Canyon Barnes
8/2/07	Affidavit of Thomas G. Walker
8/14/07	Order Re: Third Party Plaintiff's Motion to Strike Portions of the Affidavits of Robert Young, Jackie E. Young, Kaye Baker, Cory Armstrong and Canyon Barnes
8/14/07	Order Re: Motion to Strike Portions of the Affidavit of Tammie Sue Dixson in Opposition to Motion for Summary Judgment
11/14/07	Order, Judgment and Decree
11/19/07	The Mark Wallace Dixson Irrevocable Trust's Memorandum of Costs and Attorneys Fees
11/19/07	Affidavit of Thomas G. Walker
11/19/07	Affidavit of MacKenzie E. Whatcott
11/30/07	Objection to the Mark Wallace Dixson Irrevocable Trust's Memorandum Costs and Attorney's Fees
12/04/07	Response to Tammie Sue Dixson's Objection to Memorandum of Costs and Attorney's Fees

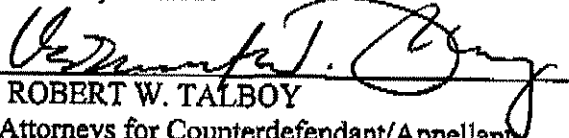
DATED: February 29, 2008.

COSHO HUMPHREY, LLP

By: 
 THOMAS G. WALKER
 Attorneys for Counterclaimant/Respondent

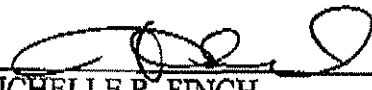
DATED: ~~February~~ ^{March} 4, 2008.

ELLSWORTH, KALLAS, TALBOY
DEFRANCO, P.L.L.C.

By: 
ROBERT W. TALBOY
Attorneys for Counterdefendant/Appellant
Tammie Sue Dixson

DATED: ~~February~~ ^{March} 4, 2008.

FINCH & ASSOCIATES LAW OFFICE, P.A.

By: 
MICHELLE R. FINCH
Attorneys for Counterdefendant/Appellant
Tammie Sue Dixson

CERTIFICATE OF SERVICE

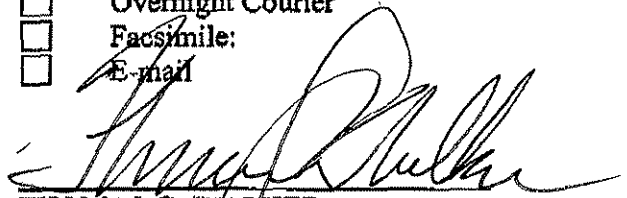
I HEREBY CERTIFY that on the 4th day of March, 2008 a true and correct copy of the foregoing Stipulation was served upon:

Michelle R. Finch
Finch & Associates Law Office, P.A.
103 W. Idaho Street
P.O. Box 1296
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail

Robert W. Talboy, Esq.
Ellsworth, Kallas, Talboy DeFranco, P.L.L.C.
1031 E. Park Blvd.
Boise, Idaho 83712

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Facsimile:
- E-mail



THOMAS G. WALKER

RECEIVED

MAR 05 2008
ADA COUNTY
ORIGINAL

Thomas G. Walker (ISB No. 1856)
Erika K. Klein (ISB No. 5509)
Mackenzie Whatcott (ISB No. 6774)
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Direct Phone: (208) 639-5607
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Direct Facsimile: (208) 639-5609
E-mail: twalker@cosholaw.com

NO. _____
FILED
A.M. _____ P.M. 3:17

MAR 12 2008

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

Attorneys for Respondent, The Mark Wallace Dixson Irrevocable Trust

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

★ ★ ★ ★ ★

BANNER LIFE INSURANCE COMPANY,

Plaintiff,

v.

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST; and TAMMIE SUE
DIXSON, individually,

Defendant.

Case No. CV-OC 0701514

S.C. Docket No. 34873

**ORDER ALLOWING AUGMENTATION
OF CLERK'S RECORD**

THE MARK WALLACE DIXSON
IRREVOCABLE TRUST,

Cross-Claimant/Respondent,

v.

TAMMIE SUE DIXSON

Cross Defendant/Appellant.

TAMMIE SUE DIXSON,

Third-Party Plaintiff,

v.

ROBERT AND JACKIE YOUNG,

Third-Party Defendants.

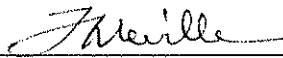
The Court having considered the stipulation for augmentation of the Clerk's Record on appeal, by Counterclaimant/Respondent, by and through its counsel of record Thomas G. Walker of the law firm Cosho Humphrey, LLP, Counterdefendant/Appellant, Tammie Sue Dixson, by and through her counsel of record, Robert W. Talboy, of the firm Ellsworth, Kallas, Talboy DeFranco, P.L.L.C., and Michelle Finch of the firm Finch & Associates Law Offices, P.A., and good cause appearing therefor;

IT IS HEREBY ORDERED that the Clerk's Record be augmented to include those certain additional documents as follows:

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3/14/07	Affidavit of Jackie E. Young
3/14/07	Affidavit of Louis M. Schlickman, M.D.
3/14/07	Affidavit of Kaye Baker
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12/04/07	Response to Tammie Sue Dixson's Objection to Memorandum of Costs and Attorney's Fees

DATED: March 12, 2008.


THOMAS F. NEVILLE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of March, 2008 a true and correct copy of the foregoing Order was served upon:

Thomas G. Walker, Esq.
Cosho Humphrey, LLP
800 Park Blvd., Suite 790
PO Box 9518
Boise, ID 83707-9518

- U.S. Mail
- Hand Delivery
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- E-mail

Michelle R. Finch
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Robert W. Talboy, Esq.
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