

AMERICAN PIONEER LIFE INSURANCE  
COMPANY *v.* MRS. LAWRENCE E. SMITH

73-199

504 S.W. 2d 356

Opinion delivered January 28, 1974

INSURANCE—LIABILITY ON CREDIT LIFE POLICY—GROUNDS OF AVOIDANCE.  
—Insurer was not liable upon a credit life policy where insured's statement "I am now in good health" in his application was incorrect as a matter of law, proof as to materiality of the incorrect statement undisputed, and the autopsy report showed insured's immediate cause of death was congestive heart failure.

Appeal from Pulaski Circuit Court, Second Division,  
*Warren E. Wood*, Judge; reversed.

*Davidson, Plastiras & Horne, Ltd.*, by: *Cyril Hollingsworth*, for appellant.

*Wright, Lindsey & Jennings*, by: *Ronald A. May*, for appellee.

CONLEY BYRD, Justice. Appellant American Pioneer Life Insurance Company seeks to avoid its liability upon a credit life insurance policy issued to Lawrence E. Smith upon the basis that his statement in the application that "I am now in good health" was incorrect within the meaning of Ark. Stat. Ann. § 66-3208 (Repl. 1966). It is admitted that the insured suffered from diabetes mellitus, having been hospitalized in 1956, and that he remained on medication therefore until his death. It is also admitted that he suffered a heart attack in 1968, which resulted in his receiving a disability retirement and that he continued to make regular visits to his doctor and to take three different types of medication therefor until the time of his death on September 23, 1971. The trial court held in favor of the beneficiaries.

For the reasons set forth in *Dopson v. Metropolitan Life Ins. Co.*, 244 Ark. 659, 432 S.W. 2d 410 (1968), *Life & Casualty Ins. Co. v. Smith*, 245 Ark. 934, 436 S.W. 2d 97 and *Union Life Insurance Company v. Davis, Adm'x.*, 247 Ark. 1054, 449 S.W. 2d 192 (1970), we reverse. Upon the admitted facts, we deem the statement "I am

now in good health'' to be an incorrect statement as a matter of law. Furthermore, we deem the proof as to materiality of the incorrect statement to be undisputed. Not only did the expert testify that the policy would not have been issued had the true facts been correctly stated but the autopsy reports shows the immediate cause of death as congestive heart failure.

Reversed.

HARRIS, C.J., not participating.

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