

USDC SCAN INDEX SHEET



DYM

PROVIDENT LIFE

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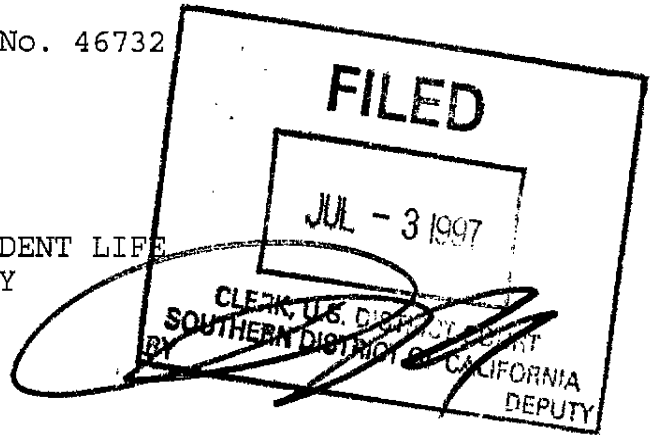
3:97-CV-01267

\*1\*

\*NTCREM.\*

1 GALTON & HELM  
STEPHEN H. GALTON, State Bar No. 46732  
2 500 South Grand Avenue  
Suite 1200  
3 Los Angeles, CA 90071-2624  
(213) 629-8800

4 Attorneys for Defendant PROVIDENT LIFE  
5 AND ACCIDENT INSURANCE COMPANY



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 JACK H. DYM, M.D., )  
12 Plaintiff, )  
13 v. )  
14 PROVIDENT LIFE AND ACCIDENT )  
INSURANCE COMPANY and DOES I )  
15 through XX, Inclusive, )  
16 Defendants. )

Case No. '97 CV 1267 JM (AJB)  
NOTICE OF REMOVAL OF CIVIL  
ACTION  
[Diversity Jurisdiction -  
28 U.S.C. § 1332(a)]

17

18 TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

19

20 Defendant Provident Life and Accident Insurance Company  
21 ("Provident") hereby serves notice of its removal of the above-  
22 entitled action to the United States District Court for the  
23 Southern District of California, from the Superior Court of the  
24 State of California for the County of San Diego, and respectfully  
25 alleges:

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PLEADINGS AND PROCEEDINGS TO DATE

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1. Provident is a Defendant in a civil action filed by Plaintiff Jack H. Dym, M.D. ("Dym") on May 28, 1997, in the Superior Court of the State of California, in and for the County of San Diego, Case No. 710986. Attached hereto as Exhibit "A" are true copies of the Summons and Complaint in said action, a Notice of Case Assignment, and a Statement of Damages. Said pleadings are the only pleadings filed with the court as of this date. No responsive pleadings have as yet been filed by any Defendants.

CITIZENSHIP OF THE PARTIES

2. Defendant Provident was and now is a corporation duly organized and existing under the laws of the State of Tennessee, with its principal place of business located in the City of Chattanooga, State of Tennessee.

3. Provident alleges on the basis of information and belief that Plaintiff Dym is an individual who was and now is a citizen of the State of California, residing in San Diego County, California.

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GROUNDS FOR REMOVAL

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4. This is a suit of a wholly civil nature brought in a California court. The action is pending in San Diego County, California, and accordingly, under 28 U.S.C. § 84(d) and 1441(a), the United States District Court for the Southern District of California is the proper form for removal.

5. The matter in controversy is in excess of \$75,000, inclusive of interests and costs. In a Statement of Damages filed in this action, Dym alleges that he is entitled to general damages of \$750,000, economic damages of \$750,000, and punitive damages of \$7.5 million.

6. The Complaint names as additional Defendants Does I through XX, inclusive. Said fictitious Defendants have not been served with Summons and Complaint in this action, and by reason of the provisions of 28 U.S.C. § 1441(a), said fictitious Defendants are to be disregarded for purposes of removal.

TIMELINESS OF REMOVAL

7. A copy of the Summons and Complaint herein was first received by Provident on June 10, 1997. This Notice of Removal is filed within thirty days of said date, and within one year of the date of commencement of the action. This removal is therefore timely under 28 U.S.C. § 1446(b).

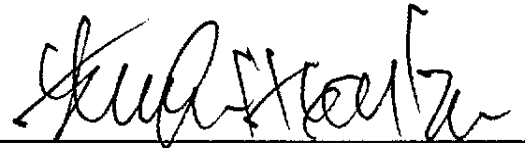
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1           WHEREFORE, Defendant Provident hereby notifies Dym and his  
2 attorneys that the above entitled action, formerly pending in the  
3 Superior Court of the State of California for the County of San  
4 Diego, Case No. 710986, has been removed from that court to this  
5 United States District Court, Southern District of California.

6  
7 DATED: July 3, 1997

GALTON & HELM  
STEPHEN H. GALTON

8  
9  
10 By



STEPHEN H. GALTON

11 Attorneys For Defendant PROVIDENT  
12 LIFE AND ACCIDENT INSURANCE  
13 COMPANY  
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INDEPENDENT CALENDAR CLERK

330 W. Broadway  
 San Diego, CA 92101

TO:

GUY A. RICCIARDULLI  
 ATTORNEY AT LAW  
 1650 HOTEL CIRCLE N #115  
 SAN DIEGO, CA 92108

JACK H. DYM MD

Plaintiff(s)

Case No.: 710986

**NOTICE OF CASE ASSIGNMENT**

vs.

PROVIDENT LIFE AND ACCIDENT INSURANC  
 Defendant(s)

Judge: VINCENT P. DI FIGLIA

Department: 42

Phone: 619-685-6018

COMPLAINT FILED 05/28/97

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH LOCAL RULES OF COURT WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Appeals from the lower court, small claims appeals and petitions.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SUPCT CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document. (Rule 1.4)

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.) (Rule 1.5)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (Rule 1.5)

**CASE MANAGEMENT CONFERENCE:** A Case Management Conference will be set within 150 days of filing the complaint.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT THROUGH SAN DIEGO MEDIATION CENTER 619-238-2400. THERE IS NO CHARGE FOR THE FIRST FOUR HOUR SESSION. MEDIATION SERVICES ARE ALSO AVAILABLE THROUGH OTHER ORGANIZATIONS FOR A FEE.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN MEDIATION OR ARBITRATION PURSUANT TO CCP 1775 OR 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE \$150 FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND STIPULATE TO AN AVAILABLE MEDIATOR/ARBITRATOR ON THE COURT'S LISTS OF PROVIDERS LOCATED IN THE ARBITRATION DEPARTMENT AT EACH COURT LOCATION. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SUPCT CIV-357 OR 358 AT LEAST 10 DAYS PRIOR TO THAT HEARING.

CERTIFICATE OF SERVICE

I, KENNETH E. MARTONE, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at SAN DIEGO California.

Dated: 05/29/97

KENNETH E. MARTONE Clerk of the Superior Court

by DEBRA JONES, Deputy Clerk

1 GUY A. RICCIARDULLI, SB #116128  
ATTORNEY AT LAW  
2 1650 HOTEL CIRCLE NORTH, #115  
SAN DIEGO, CALIFORNIA 92108  
3 9619) 293-7313  
4 ATTORNEY FOR PLAINTIFF

JUN 10 1997  
hand delivered  
no envelope

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

12 JACK H. DYM, M.D. ) CASE NO. 710986  
13 )  
13 PLAINTIFF, )  
14 )  
14 V. )  
15 )  
15 PROVIDENT LIFE AND ACCIDENT, )  
INSURANCE COMPANY and DOES I )  
16 Through XX, Inclusive, )  
17 DEFENDANTS. ) IC JUDGE: VINCENT P. DI FIGLIA  
DEPT: 42

18  
19 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:  
20 Plaintiffs submit the following Statement of Damages:  
21 1. General Damages \$750,000.00  
22 2. Economic Damages \$750,000.00  
23 3. Punitive Damages \$7,500,000.00  
24

25  
26 Dated: MAY 28, 1997

  
\_\_\_\_\_  
GUY A. RICCIARDULLI  
ATTORNEY FOR PLAINTIFFS

27  
28



# SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT: (Aviso a Acusado)**  
PROVIDENT LIFE AND ACCIDENT INSURANCE  
COMPANY and DOES I Through XX, Inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:**  
*(A Ud. le está demandando)*

JACK H. DYM, M.D.



You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

*Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.*

*Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.*

*Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.*

*Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).*

The name and address of the court is: *(El nombre y dirección de la corte es)*

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

CASE NUMBER. (Número del Caso)

**00710986**

- CENTRAL COURT, 220 W. BROADWAY, SAN DIEGO, CA 92101-3409
- FAMILY COURT, 1501-55 SIXTH, SAN DIEGO, CA 92101-1946
- NORTH COUNTY BRANCH, 325 S. MELROSE, VISTA, CA 92083-6627
- EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913
- SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694
- JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)*

GUY A. RICCIARDULLI (619) 293-7313

ATTORNEY AT LAW

1650 Hotel Circle North, #115

San Diego, Ca 92108 State Bar #116128

KENNETH E. MARTONE  
CLERK OF THE SUPERIOR COURT

Date: **MAY 26 1997**

*(Fecha)*

by *[Signature]*, Deputy  
*(Actuario)* *(Delegado)*

**DIANNE**

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of *(specify)*:
3.  on behalf of *(specify)*: **PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY**  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (individual)  
 other:
4.  by personal delivery on *(date)*:

(SEAL)

**7**

1 GUY A. RICCIARDULLI, SB #116128  
ATTORNEY AT LAW  
2 1650 HOTEL CIRCLE NORTH, #115  
SAN DIEGO, CALIFORNIA 92108  
3 (619) 293-7313

4 ANDREW J. EDENBAUM, SB #89475  
12780 HIGH BLUFF DRIVE, #100  
5 SAN DIEGO, CA 92122  
(619) 259-8778

6 ATTORNEYS FOR PLAINTIFF  
7

F *[Signature]* D  
Clerk of the Superior Court

MAY 28 1997

By: *[Signature]* Deputy

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 JACK H. DYM, M.D. )  
11 PLAINTIFF, )  
12 V. )  
13 PROVIDENT LIFE AND ACCIDENT, )  
INSURANCE COMPANY and DOES I )  
14 Through XX, Inclusive, )  
15 DEFENDANTS. )

CASE NO. **00710986**  
COMPLAINT TORTIOUS BREACH OF  
INSURANCE CONTRACT, FRAUD AND  
INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS

17 FIRST CAUSE OF ACTION

18 TORTIOUS BREACH OF INSURANCE CONTRACT

19 COMES NOW the Plaintiff, JACK DYM, M.D., and for a first cause  
20 of action against the Defendants, and each of them, complains and  
21 alleges as follows:

22 1. Plaintiff is informed and believes and thereon alleges that  
23 at all times herein mentioned Defendant PROVIDENT LIFE AND ACCIDENT  
24 INSURANCE COMPANY was, and is, a Tennessee corporation authorized to  
25 transact, and transacting, business in California as a life, accident  
26 and disability insurer.

27 2. On or about December 14, 1987, and again on October 9,  
28 1988, in San Diego County, Defendant executed, issued, and

1 delivered to Plaintiff, as the named insured, its written policies  
2 of disability insurance, numbers 6-335-806486 and 6-335-816358,  
3 hereinafter referred to as "the policies," in consideration of  
4 initial premiums of \$2,021.80 and \$2,340.51, which premiums were  
5 paid by plaintiff to and accepted by Defendant as consideration for  
6 the execution, issuance, and delivery of the policies, and in  
7 further consideration of the payment to Defendant of annual  
8 premiums which increased in each ensuing year. (Copies of the  
9 disability insurance policies are attached hereto as Exhibits A and  
10 B and made a part hereof as though fully set forth.)

11 3. Each policy provided that if Plaintiff should sustain  
12 accidental bodily injuries while the policy was in full force and  
13 effect and if such injuries should result in disability which would  
14 continuously prevent Plaintiff from performing the substantial and  
15 material duties pertaining to his occupation as an obstetrical and  
16 gynecological physician/surgeon, Defendant would pay Plaintiff the  
17 sums of \$2,000 and \$3,000 per month for the period of each such  
18 total disability, commencing on the first day after the elimination  
19 period of such total disability, but not beyond the maximum benefit  
20 period.

21 4. At the time the policies were issued, to and including the  
22 time Plaintiff sustained accidental bodily injuries as herein  
23 alleged, Plaintiff was employed as an obstetrical and gynecological  
24 physician/surgeon.

25 5. On or about January 13, 1996, while the policies were in  
26 full force and effect, Plaintiff was injured in an automobile  
27 accident, hereinafter referred to as "the accident," and as a  
28 result of which Plaintiff sustained a herniated cervical disc and

1 spinal cord contusion/compression.

2 6. These injuries proximately resulted in Plaintiff's total  
3 disability, as defined by the insurance contracts, in that  
4 Plaintiff, as a proximate result of his injuries as herein alleged,  
5 has been, and continues to be, prevented from performing the  
6 substantial and material duties of his occupation.

7 7. On or about February 29, 1996, Plaintiff furnished  
8 Defendant written notice of his claim and proof of loss and has  
9 otherwise performed all the terms and conditions of the policies on  
10 his part to be performed.

11 8. Defendant, pursuant to its contractual obligations and  
12 Plaintiff's proof of loss, made total disability payments to  
13 Plaintiff from April 20, 1996 until January 20, 1997. Thereafter,  
14 Defendant, without justification, terminated Plaintiff's payments.

15 9. There is, under the terms of the insurance contracts, now  
16 past due and owing to Plaintiff from Defendant the sum of  
17 \$20,000.00. Plaintiff has demanded payment of this sum from  
18 Defendant, but Defendant, without justification, has failed and  
19 refused, and continues to fail and refuse, to pay that sum or any  
20 part thereof.

21 10. As a proximate result of Defendant's failure and refusal  
22 as herein alleged, Plaintiff has been damaged in the sum of  
23 \$20,000.00 and continuing monthly, together with interest thereon  
24 at the legal rate from the date payment should have been made under  
25 the terms of the policies until it is paid.

26 11. Defendant, despite its express knowledge that Plaintiff,  
27 as a proximate result of the accident, is totally disabled as  
28 defined in the insurance contracts, willfully and maliciously

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1 withheld, and continues to withhold, payment of said benefits to  
2 Plaintiff.

3 12. Notwithstanding Defendant's knowledge of its obligation  
4 to pay the full benefits and, after significant delay, Defendant  
5 offered Plaintiff only payment under the residual disability  
6 benefits provisions.

7 13. For the sole purpose of compelling Plaintiff to accept  
8 the lesser payment, under the residual disability provisions, in  
9 settlement of his claim, or if he persisted in seeking payment  
10 under the total disability provisions, to incur substantial  
11 detriment, delay, and additional expenditures in pursuing  
12 enforcement of his claim, all during which time Defendant would  
13 retain use of the policy benefit money, Defendant, in breach of the  
14 implied covenant of good faith and fair dealing, intentionally,  
15 maliciously, and oppressively refused and failed to pay Plaintiff  
16 in accordance with the terms of the insurance contract.

17 14. As a further direct and proximate result of Defendant's  
18 wrongful conduct as herein alleged, Plaintiff suffered the loss of  
19 use of the monthly benefits from the date they should have been  
20 paid and continuing until they are paid in full. Further,  
21 Plaintiff has been required to hire attorneys and pursue litigation  
22 in order to obtain his bargained for insurance benefits, all to his  
23 damage in an amount within the jurisdiction of this Court and  
24 according to proof.

25 15. As a further direct and proximate result of Defendant's  
26 wrongful conduct as herein alleged, Plaintiff sustained severe  
27 emotional and mental distress and anguish, embarrassment,  
28 mortification, humiliation, and indignity all to his general damage

1 in an additional sum within the jurisdiction of this Court and  
2 according to proof.

3 16. Defendant's wrongful conduct as herein alleged was done  
4 intentionally and was malicious, oppressive and fraudulent in  
5 nature, and Plaintiff is therefore entitled to recover punitive  
6 damages in an amount within the jurisdiction of this Court and  
7 according to proof at the time of trial herein.

8 SECOND CAUSE OF ACTION

9 FRAUD

10 COMES NOW the Plaintiff and for a second and separate cause of  
11 action against the Defendants, and each of them, complains and  
12 alleges as follows:

13 17. Plaintiff hereby realleges and incorporates herein by  
14 reference each and every allegation contained in paragraphs one (1)  
15 through sixteen (16) of his first cause of action as though fully  
16 set forth herein.

17 18. Prior to issuance of the subject insurance policies,  
18 Plaintiff was solicited by, and had conversations with, Defendant  
19 insurer's agent. These conversations were conducted for the  
20 purpose of soliciting Plaintiff as a policy holder with Defendant  
21 insurer. During the course of these conversations, and in their  
22 public advertisements, Defendant insurer, and its agent, falsely  
23 and fraudulently represented to Plaintiff that should a claim  
24 arise, Defendant would provide prompt and fair service and timely  
25 pay benefits.

26 19. Defendant's above stated representations were false and  
27 fraudulent in that Defendant never intended to pay a sum equal to  
28 its monthly benefits in settlement of a claim under the total

1 disability provisions of the policies, but instead, had, and still  
2 has, a fixed and firm policy of contesting such claims. At the  
3 time Defendant entered into the subject insurance contracts with  
4 Plaintiff, Defendant willfully concealed the above facts, all for  
5 the purpose of defrauding and deceiving Plaintiff and inducing him  
6 to purchase said policies.

7 20. Plaintiff, at the time the representations were made,  
8 believed them to be true and in reliance on them was induced to,  
9 and did, enter into the insurance contracts with Defendant. The  
10 true facts were that Defendant insurer did not intend to pay the  
11 full contractual benefits due under Plaintiff's policies, and  
12 further, the Defendant insurer intended to deal with Plaintiff and  
13 other insureds in bad faith and with the intention of using any  
14 methods at its disposal to avoid legitimate payments under the  
15 policies. Had Plaintiff known the true facts, he would not have  
16 purchased the policies.

17 21. As a direct and proximate result of Defendant insurer's  
18 false representations and its subsequent failure to pay benefits  
19 due under the policies, Plaintiff was forced to employ the services  
20 of attorneys in an attempt to secure payment to which he was  
21 entitled, all to his detriment in an amount within the jurisdiction  
22 of this Court and according to proof.

23 22. At all times material, Defendant insurer was, and now is,  
24 aware that it was and is obligated to pay the bargained for  
25 benefits to Plaintiff. The conduct of Defendant insurer as herein  
26 alleged has been malicious and oppressive to Plaintiff. As a  
27 result of this fraudulent, malicious and oppressive conduct,  
28 Plaintiff has suffered great mental anguish, mortification,

1 humiliation, and shame, and has become sick and ill, all to his  
2 general damage in an amount within the jurisdiction of this Court  
3 and according to proof.

4 23. The conduct of the Defendant insurer in this action has  
5 been intentionally and wrongfully performed and has been  
6 fraudulent, malicious and oppressive in nature and Plaintiff is  
7 therefore entitled to recover punitive damages.

8 THIRD CAUSE OF ACTION

9 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

10 COMES NOW the Plaintiff and for a third and separate cause of  
11 action against the Defendants, and each of them, complains and  
12 alleges as follows:

13 24. Plaintiff hereby realleges and incorporates herein by  
14 reference each and every allegation contained in paragraphs one (1)  
15 through sixteen (16) of his first cause of action and paragraphs  
16 seventeen (17) through twenty-three (23) of his second cause of  
17 action as though fully set forth herein.

18 25. Defendant, despite its express knowledge of its  
19 contractual obligation to pay Plaintiff the bargained for  
20 benefits, willfully and maliciously withheld payment of the monthly  
21 total disability benefits from Plaintiff.

22 26. Defendant's conduct was intentional, malicious and done  
23 for the purpose of causing Plaintiff to suffer humiliation, mental  
24 anguish, and emotional and physical pain and suffering, and was  
25 done with knowledge that Plaintiff's emotional and physical  
26 distress would thereby increase, and was done with wanton and  
27 reckless disregard of the consequences to Plaintiff. Further,  
28 Defendant undertook this course of conduct at a time when it knew



1 that Plaintiff was financially most vulnerable secondary to his  
2 total disability.

3 27. As the proximate result of the aforementioned acts,  
4 Plaintiff suffered humiliation, mental anguish, and emotional and  
5 physical distress, and has been injured in mind and body, all to  
6 Plaintiff's damage in an amount within the jurisdiction of this  
7 court and according to proof.

8 28. The aforementioned acts of the Defendant were willful,  
9 wanton, malicious, and oppressive and justify the awarding of  
10 punitive damages in an amount according to proof.

11 WHEREFORE, Plaintiff prays judgment against the Defendants,  
12 and each of them, as follows:

13 First Cause of Action

- 14 1. For a sum according to proof as general damages;
- 15 2. For a sum compensating Plaintiff for attorneys fees and  
16 legal costs incurred in the pursuit of the claim.
- 17 3. For interest at the legal rate on the sum of the policy  
18 benefits from the date each installment should have been paid to  
19 the present and continuing to the date it is finally paid.
- 20 4. For exemplary and punitive damages in a sum according to  
21 proof;
- 22 5. For costs of suit herein incurred;
- 23 6. For such other and further relief as the court may deem  
24 just and proper.

25 Second Cause of Action

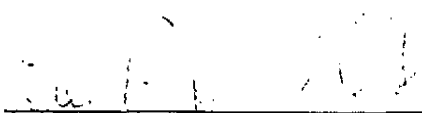
- 26 1. For general damages in a sum according to proof;
- 27 2. For punitive damages in a sum according to proof;
- 28 3. For costs of suit herein incurred;

1 4. For such other and further relief as the Court may deem  
2 just and proper.

3 Third Cause of Action

- 4 1. For general damages in a sum according to proof;  
5 2. For punitive damages in a sum according to proof;  
6 3. For cots of suit herein incurred;  
7 4. For such other and further relief as the Court may deem  
8 just and proper.

9  
10 DATED: May 21, 1997

  
GUY A. RICCIARDULLI  
ATTORNEY FOR Plaintiff

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In this policy, the words "you" and "your" mean you, the Insured named below; "we," "our" and "us" mean Provident Life and Accident Insurance Company.

We will pay benefits for covered loss resulting from Injuries or Sickness subject to all of the provisions of this policy. Loss must begin while the policy is in force.

This policy is a legal contract between you and us. It is issued in consideration of the payment in advance of the required premium and of your statements and representations in the application. A copy of your application is attached and made a part of the policy.

**NON-CANCELLABLE AND GUARANTEED CONTINUABLE TO AGE 65 AT GUARANTEED PREMIUMS:** You can continue this policy to age 65 by paying premiums on time. The premiums shown in the Policy Schedule on Page 3 are guaranteed to age 65.

**CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED:** You can renew this policy as long as you are actively and gainfully working full time; there is no age limit. You must pay premiums on time at our premium rates then in effect at time of renewals. (For further conditions, see the page titled "Premiums and Renewals." See Page 7 for the benefit provisions that will be included in the continued policy.)

**D I S A B I L I T Y   I N C O M E   P O L I C Y**

JACK H DYH MD, the Insured  
Policy Number 6-335-806486

10 day right to examine your policy - We want you to fully understand and be entirely satisfied with your policy. If you are not satisfied for any reason, you may return the policy to us, or to the agent through whom it was purchased, within 10 days of its receipt. We will refund any premiums you have paid within 10 days after we receive your notice of cancellation and the policy. It will be considered never to have been issued.

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## GUIDE TO POLICY PROVISIONS

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Renewal Conditions	1
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READ YOUR POLICY CAREFULLY

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P O L I C Y S C H E D U L E

Insured - JACK H DYM MD Policy Number - 6-335-806486  
 Effective Date - October 1, 1987 First Renewal Date - October 1, 1988  
 Issue Date - October 9, 1987 Renewal Term - Twelve Months

Annual Policy Premium payable from October 1, 1987 until the first UPDATE Increase Date (see Page 3 (cont.)) is \$2,021.80 on a non smoking premium basis.

Other Premium Paying Methods:  
 \$1,031.12 Semi-Annually  
 525.67 Quarterly  
 171.85 Monthly (Preauthorized Bank Draft Only)

-----MONTHLY BENEFIT FOR TOTAL DISABILITY-----

\$2,000.00

-----ELIMINATION PERIOD-----

60 days of Total and/or Residual Disability

An Elimination Period starting after age 65 must consist entirely of days of Total Disability

-----MAXIMUM BENEFIT PERIODS-----

Injuries:

Total Disability starting before age 65 .....	for Life
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Sickness:

Total Disability starting before age 60 .....	for Life
Total Disability starting at age 60 but before age 61 .....	to age 65
Total Disability starting at age 61 but before age 62 .....	48 months
Total Disability starting at age 62 but before age 63 .....	42 months
Total Disability starting at age 63 but before age 64 .....	36 months
Total Disability starting at age 64 but before age 65 .....	30 months
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Rehabilitation Expense ..... \$6,000.00 Maximum Amount

Treatment of Injuries (Payable if disability benefits not paid) ..... \$1,000.00 Maximum Amount

-----ADDITIONAL BENEFITS-----

(The premium shown for each benefit is included in the Policy Premium shown above.)

Residual Disability Benefit .....Page 8 Premium \$302.80

(Policy Schedule is continued on next page.)

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POLICY SCHEDULE (continued)

Cost of Living Adjustments (COLA) with Guaranteed  
Percentage Increase (GPI) Option .....Page 12

Maximum COLA Percentage .....	4%	Premium	\$220.00
Available GPI .....	8%	Premium	\$44.00
Total COLA/GPI Premium			\$264.00

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(Policy Schedule is continued on next page.)

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## POLICY SCHEDULE (Continued)

## -----UPDATE-----

The benefits and premium named below will be automatically increased without evidence of insurability, as follows:

UPDATE Increase Date	New Monthly Benefit for Total Disability	New Maximum Amount for Rehabilitation Expense	New Maximum Amount for Treatment of Injuries	New Annual Premium for this Policy
10/01/88	\$2,140.00	\$6,420.00	\$1,070.00	\$2,174.50
10/01/89	\$2,290.00	\$6,870.00	\$1,145.00	\$2,345.44
10/01/90	\$2,460.00	\$7,380.00	\$1,230.00	\$2,547.28
10/01/91	\$2,640.00	\$7,920.00	\$1,320.00	\$2,769.78
10/01/92	\$2,830.00	\$8,490.00	\$1,415.00	\$3,013.83

UPDATE Benefit increases are effective on the UPDATE Increase Dates shown. If an UPDATE Increase Date shown does not coincide with a renewal date for this policy, the increase will be effective on the next renewal date.

An UPDATE Benefit increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability. If the premium for the policy is being waived on the effective date of the increase, the premium for the increase will also be waived. When you resume paying premiums for the policy, you must also start paying the premium for the increase.

You are entitled to UPDATE Benefit increases on the dates shown above. If you do not accept an increase, your refusal:

1. forfeits your right on that UPDATE Increase Date to the UPDATE Benefit increase;
2. postpones the schedule of benefit increases to the next UPDATE Increase Date, if any;
3. adjusts the premiums for the remaining increases, if any, since such premiums are based on your attained age at the time of an UPDATE Benefit increase; and
4. in no way extends the last UPDATE Increase Date shown above.

Each refusal of an UPDATE Benefit increase reduces the number of UPDATE Benefit increases to which you were entitled by one.

If you are under age 59 on the last UPDATE Increase Date, you may apply for an amendment providing additional UPDATE Benefit increases. You can do this by making formal application within the period of 60 days prior to and 31 days after the last UPDATE Increase Date. Approval will be subject to our underwriting guidelines then in effect.

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## DEFINITIONS

Injuries means accidental bodily injuries occurring while your policy is in force.

Sickness means sickness or disease which is first manifested while your policy is in force.

age, when used before a number, such as in "age 65", means the ending date of the policy term in which you attain that age. A policy term is described on the page titled "Premiums and Renewals."

Physician means any person other than you who is licensed by law, and is acting within the scope of the license, to treat Injuries or Sickness which results in covered loss.

Total Disability or totally disabled means that due to Injuries or Sickness:

1. you are not able to perform the substantial and material duties of your occupation; and
2. you are receiving care by a Physician which is appropriate for the condition causing the disability.

your occupation means the occupation (or occupations, if more than one) in which you are regularly engaged at the time you become disabled. If your occupation is limited to a recognized specialty within the scope of your degree or license, we will deem your specialty to be your occupation.

period of disability means a period of disability starting while this policy is in force. Successive periods will be deemed to be the same period unless the later period:

1. is due to a different or unrelated cause, or
2. starts more than twelve months after the end of the previous period;

in which event, the later period will be a new or separate period of disability. A new Elimination Period must then be met. And, a new Maximum Benefit Period will apply.

Elimination Period means the number of days of disability that must elapse in a period of disability before benefits become payable. The number of days is shown on Page 3. These days need not be consecutive; they can be accumulated during a period of disability to satisfy an Elimination Period. Benefits are not payable, nor do they accrue, during an Elimination Period.

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#### EXCLUSION

We will not pay benefits for loss caused by war or any act of war, whether war is declared or not.

Additional exclusions, if any, appear in the Policy Schedule.

#### PRE-EXISTING CONDITION LIMITATION

We will not pay benefits for loss starting within two years of the Effective Date of this policy which is caused by a Pre-existing Condition. A claim for benefits for loss starting thereafter will not be reduced or denied on the ground it is caused by a Pre-existing Condition unless the condition is excluded by name or specific description. Pre-existing Condition means a physical impairment, deformity or a medical condition that was not disclosed, or that was misrepresented, in answer to a question in the application for this policy. A medical condition means a sickness or physical condition which either: 1) resulted in your receiving medical advice or treatment; or 2) caused symptoms for which an ordinarily prudent person would seek medical advice or treatment.

#### BENEFITS

##### TOTAL DISABILITY

We will pay the Monthly Benefit for Total Disability shown on Page 3 as follows:

1. Benefits start on the day of Total Disability following the Elimination Period.
2. Benefits will continue while you are totally disabled during the period of disability but not beyond the Maximum Benefit Period.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

**PRESUMPTIVE TOTAL DISABILITY - LOSS OF SPEECH, HEARING, SIGHT OR THE USE OF TWO LIMBS**  
You will be presumed totally disabled if Injuries or Sickness results in the entire and permanent loss of:

1. speech;
2. hearing in both ears;
3. the sight of both eyes; or
4. the use of both hands, or of both feet or of one hand and one foot.

You must present satisfactory proof of your loss. Your ability to work will not matter. Further medical care will not be required. Benefits will be paid according to the Total Disability provisions of this policy. But, benefits will start on the date of loss if earlier than the day benefits start as shown on Page 3. If loss occurs before you attain age 65, the Monthly Benefit for Total Disability will be paid as long as you live regardless of the Maximum Benefit Period shown on Page 3.

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#### TRANSPLANT SURGERY

You might be disabled from the transplant of part of your body to another person. If so, we will consider it to be the result of a Sickness.

#### COSMETIC SURGERY

You might be disabled from surgery to improve your appearance or to correct disfigurement. If so, we will consider it to be the result of a Sickness.

#### PREGNANCY

You might be disabled from pregnancy or childbirth. If so, we will consider it to be the result of a Sickness.

#### WAIVER OF PREMIUM

After you have been totally disabled for 90 days during a period of disability, we will:

1. refund any premiums which became due and were paid while you were totally disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep this policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability.

#### REHABILITATION

Total Disability - Your participation in a program of occupational rehabilitation will not of itself be considered a recovery from Total Disability.

Expense - If, during a period of Total Disability, you participate in a program of occupational rehabilitation which we approve, we will pay for certain expenses you incur. That is, we will pay for the reasonable cost of training and education which is not otherwise covered under health care insurance, workers' compensation or any public fund or program. But, we will not pay more than the Maximum Amount for Rehabilitation Expense shown on Page 3.

A program of occupational rehabilitation must be designed to help you return to work and be:

1. a formal program of rehabilitation at an accredited graduate school, college or business school, or at a licensed vocational school;
2. a recognized program operated by the federal or a state government; or
3. any other professionally planned rehabilitation program of training or education.

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TREATMENT OF INJURIES (PAYABLE IF DISABILITY BENEFITS NOT PAID.)

If Injuries require medical treatment prescribed by a Physician, we will pay your expenses for the treatment. But, we will not pay more than the Maximum Amount for Treatment of Injuries shown on Page 3 as a result of any one accident.

If you qualify for payment under this provision and also under a disability provision of this policy because of the same accident, payment will be made under the provision which provides the greater benefit.

BENEFITS WHEN POLICY RENEWED AFTER AGE 65

If this policy is continued in accordance with the "Conditional Right to Renew After Age 65" on Page 1, all of the benefit provisions on Pages 5, 6 and 7 will be included in the continued policy. (Any additional benefit provision contained in this policy will not be included unless it is named on Page 3 as one that will be included in the continued policy.) The Maximum Benefit Period starting while this policy is so continued is shown on Page 3. The Monthly Benefit for Total Disability will not change unless you choose to renew with a lesser amount.

PAYMENT FOR PART OF MONTH

If any payment under this policy is for part of a month, the daily rate will be 1/30th of the payment which would have been made if disability had continued for the whole month.

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RESIDUAL DISABILITY BENEFITS

with Recovery Benefits and with Cost of Living Indexing of Prior Monthly Income (Nothing in this provision limits the policy definition of "Total Disability.")

DEFINITIONS

Monthly Income means your monthly income from salary, wages, bonuses, commissions, fees or other payments for services which you render or your business provides. Normal and usual business expenses are to be deducted; income taxes are not. Monthly Income must be earned. It does not include dividends, interest, rents, royalties, annuities, sick pay or benefits received for disability under a formal wage or salary continuation plan or other forms of unearned income.

Monthly Income can be credited to the period in which it is actually received or to the period in which it is earned. We allow either the cash or accrual accounting method. But, the same method must be used to determine the Prior Monthly Income and the Current Monthly Income during a period of disability. If you elect the cash accounting method, we will not include income received for services rendered prior to the start of a period of disability in your Current Monthly Income.

Prior Monthly Income means the greatest of:

1. your average Monthly Income for the 12 months just prior to the start of the period of disability for which claim is made;
2. your average Monthly Income for the year with the highest earnings of the last two years prior to the start of such period of disability; or
3. your highest average Monthly Income for any two successive years of the last five years prior to the start of such period of disability.

Current Monthly Income means your Monthly Income in your occupation for each month of Residual Disability being claimed.

Loss of Monthly Income means the difference between Prior Monthly Income and Current Monthly Income. Loss of Monthly Income must be caused by the Residual Disability for which claim is made. The amount of the loss must be at least 20% of Prior Monthly Income to be deemed Loss of Monthly Income. If your loss is more than 75% of Prior Monthly Income, we will deem the loss to be 100%.

Residual Disability or residually disabled, during the Elimination Period, means that due to Injuries or Sickness:

1. you are not able to do one or more of your substantial and material daily business duties or you are not able to do your usual daily business duties for as much time as it would normally take you to do them;
2. you have a Loss of Monthly Income in your occupation of at least 20%; and
3. you are receiving care by a Physician which is appropriate for the condition causing disability.

After the Elimination Period has been satisfied, you are no longer required to have a loss of duties or time. Residual Disability or residually disabled then means that as a result of the same Injuries or Sickness:

1. you have a Loss of Monthly Income in your occupation of at least 20%; and
2. you are receiving care by a Physician which is appropriate for the condition causing the Loss of Monthly Income.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by certain other benefit provisions if they are included in your policy and are applicable. If included, they are titled "Cost of Living Adjustments of Monthly Benefits" and "Social Insurance Substitute Benefit.")

Residual Disability Monthly Benefit is the benefit payable under this provision. It is determined monthly by this formula. Each month, it equals:

$$\frac{\text{Loss of Monthly Income}}{\text{Prior Monthly Income}} \times \text{Monthly Benefit for Total Disability}$$

RESIDUAL DISABILITY BENEFITS

We will pay Residual Disability Monthly Benefits as follows:

1. Benefits start on the day of Residual Disability following the Elimination Period or, if later, after the end of compensable Total Disability during the same period of disability.
2. Benefits will continue while you are residually disabled during a period of disability but the combined period for which benefits for Total and Residual Disability are payable can not exceed the Maximum Benefit Period. And, benefits will not be payable after you attain age 65.
3. The first six monthly payments for Residual Disability will be the greater of:
  - a. 50% of the Monthly Benefit for Total Disability; or
  - b. the Residual Disability Monthly Benefit determined for each month.

Residual Disability benefits will not be paid for any days for which Total Disability benefits are paid.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

We can require any proof which we consider necessary to determine your Current Monthly Income and Prior Monthly Income. Also, we or an independent accountant retained by us shall have the right to examine your financial records as often as we may reasonably require.

RECOVERY BENEFITS

(Nothing in this provision limits the policy definition of "Residual Disability.")

If you are under age 65 and return to gainful full-time work at the end of a period for which we have paid Total and/or Residual Disability benefits, we will:

1. while you are so engaged in gainful full-time work; and
2. while you are having a Loss of Monthly Income in your occupation of at least 20% due to the same Injuries or Sickness;

pay benefits under this back to work provision as though the same period of disability is continuing. You do not have to be receiving care by a Physician while Recovery Benefits are being paid. Payments will be made for each month, up to 3 months, in which (1) and (2) exist. For the first such month, we will pay a benefit based on the greater of:

- a. the monthly rate computed by the Residual Disability Benefit formula for that month; or
- b. 100% of the actual claim payment made for the 30 days preceding your return to work full time.

The monthly benefit for the second and third months will be computed as in (a) and (b) above; except that, instead of using 100% in (b), 75% will apply for the second month. And, 50% will apply for the third month.

These recovery benefits will not be paid for any days for which Total and/or Residual Disability benefits are paid. And, they will not be paid for more than 3 months in connection with a period of disability.

#### COST OF LIVING INDEXING OF PRIOR MONTHLY INCOME

(Applicable to benefits paid after the 12th month of a period of disability)

#### Definitions

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Index Factor is used by us to determine your adjusted Prior Monthly Income for each Review Period. We will compute this factor by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability.

#### Adjusted Prior Monthly Income

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date for Residual Disability Benefits. Monthly benefits which thereafter accrue during that period of disability will be adjusted by indexing your Prior Monthly Income as follows:

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1. On each Review Date, your Prior Monthly Income will be multiplied by your Index Factor. The result is your adjusted Prior Monthly Income. It will be used to figure your Loss of Monthly Income during the Review Period that follows. It will also be used in the formula to compute each Residual Disability Monthly Benefit payable during that Review Period.

An increase in your Prior Monthly Income can cause your Loss of Monthly Income to be greater. This in turn can result in an increase in your Residual Disability Monthly Benefit. Other than your Index Factor (which is computed by using actual CPI-U values), there is no limit on the percent of increase in your Prior Monthly Income for a Review Period. If the CPI-U should go down, your adjusted Prior Monthly Income can decrease. But, it can never reduce below your Prior Monthly Income at the start of the period of disability.

2. Indexing of your Prior Monthly Income will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of a or b above, disability benefits which can be paid for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

#### WAIVER OF PREMIUM

For periods of disability which start before age 65, the Waiver of Premium provision on Page 6 is replaced by the following:

#### "WAIVER OF PREMIUM - TOTAL DISABILITY AND RESIDUAL DISABILITY

If, during a period of disability, Injuries or Sickness results in more than 90 days of Total and/or Residual Disability, we will:

1. refund any premiums which became due and were paid while you were so disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep your policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability except as respects Recovery Benefits."

NOTE: All portions of this Residual Disability Benefit expire when you attain age 65 even though the policy may be renewed after you attain age 65. No further premiums for it will be due.

COST OF LIVING ADJUSTMENTS WITH GUARANTEED PERCENTAGE INCREASE OPTION  
(Applies to benefits payable after the 12th month of a period of disability)

#### DEFINITIONS

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Benefit Factor is determined by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability. It will apply to the Review Period that follows.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by a "Social Insurance Substitute (SIS) Benefit" if it is included in your policy and when it is applicable).

Adjusted Monthly Benefit for Total Disability is the Monthly Benefit for Total Disability multiplied by the Benefit Factor for a Review Period. But, an Adjusted Monthly Benefit for Total Disability can not:

1. exceed the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by the percentage shown on Page 3 as the Maximum COLA Percentage; or
2. be less than the amount of the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by 4%.

#### BENEFITS

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date. Monthly benefits which thereafter accrue during that period of disability will be adjusted as follows:

1. On each Review Date, we will compute the Benefit Factor and the Adjusted Monthly Benefit for Total Disability for the Review Period that follows.
2. For any Monthly Benefit for Total Disability that accrues during a Review Period, we will pay instead the Adjusted Monthly Benefit for Total Disability.

3. We will adjust any Residual Disability Monthly Benefit which accrues during a Review Period. To do this, we will use the Adjusted Monthly Benefit for Total Disability in the formula to determine each Residual Disability Monthly Benefit that is to be paid during that Review Period. It will be used in the formula instead of the Monthly Benefit for Total Disability.
4. Computations of Cost of Living Adjustments will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of (a) or (b) above, benefit amounts will revert to those shown on Page 3. Benefits payable for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

If the computations end because of (c) above and if any disability benefits continue to be payable after you attain age 65 for a period of disability that started before you became age 64, we will apply to those benefits the Benefit Factor that last applied before you became age 65.

We will compute a Benefit Factor on the first Review Date for a period of disability that starts between your 64th and 65th birthdays. This factor will continue to apply to any benefits paid during that period of disability.

#### QUALIFIED RIGHT TO INCREASE MONTHLY BENEFIT TO ADJUSTED AMOUNT

When you return to active and gainful full-time work after the end of a period of disability during which Cost of Living Adjustments were made, you may elect to increase the amount of the Monthly Benefit for Total Disability shown on Page 3. You may increase it to the amount of the Adjusted Monthly Benefit for Total Disability (less any SIS Benefit if included) which was used to determine the last monthly claim payment, if:

1. you have not reached your 60th birthday on the date you elect the increase; and
2. within 90 days after the period of disability ends, you make application to us on a form which we will furnish you upon request. On this form, you must confirm that you are actively and gainfully employed full time. Other evidence of insurability will not be required.

The effective date of the increase will be the first of the month after we approve your application for the increase. The required additional premium must be paid within 31 days of that date. Later premiums for the increase must be paid as part of the renewal premiums for the policy.

The premium for the increase will be based on your attained age at the time of the increase. It will also be based on our table of premium rates then in effect.

The increase in benefits will apply to new periods of disability which start after the effective date of the increase.

If you do not elect and obtain this increase, the Monthly Benefit for Total Disability will revert to the amount shown on Page 3 for new periods of disability.



GUARANTEED PERCENTAGE INCREASE OPTION

Definitions

Option Date means each anniversary of the Effective Date of the policy starting with the first and ending with the anniversary which falls on or next follows your 60th birthday. If an Option Date does not coincide with a renewal date for this policy, it will change to coincide with the next renewal date thereafter.

Option Period means the period which begins 60 days before and ends 31 days after an Option Date.

Exercising Increase Option

You have the right to increase the Maximum COLA Percentage shown on Page 3 by the Available Guaranteed Percentage Increase (Available GPI) also shown on Page 3. You may do this, without submitting evidence of insurability, by following the rules set forth below.

An increase can be for the Available GPI or for part of it in increments of 2%.

The request for an increase must be made within an Option Period. It must be a dated written request signed by you. An increase will be effective: (a) on the Option Date if your request is made before that date; or (b) on the date of your request if it is made within 31 days after the Option Date.

You can request an increase during any Option Period even if you are disabled, but the increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability (see Page 4).

The first premium for an increase must be paid within 31 days after the effective date of the increase. Later premiums must be paid as part of the Policy Premium. If the premium for the policy is being waived (see Waiver of Premium provision) on the effective date of the increase, you will not have to start paying the premium for the increase until the premium for your policy becomes payable again.

The premium for each increase of the Maximum COLA Percentage will be based on your attained age at the time of each increase. It will also be based on:

1. our premium rates in effect at the time of the increase or on the Effective Date of the policy, whichever is less; and
2. your occupational class at the time of the increase or on the Effective Date of the policy, whichever will produce the lower premium.

When the Maximum COLA Percentage is increased, the premium for this GPI Option is reduced by the charge that was being made for the GPI percentage which was exercised. The reduced premium will be based on the Available GPI remaining, if any.

Option Expiration Date

This GPI Option will expire, and no further premiums for it will be due, on the earlier of: (a) the date when the full Available GPI has been exercised; or (b) the date when the Option Period ends for the age 60 Option Date described above.

NOTE: The GPI portion of this benefit provision and its premium will cease as stated above. The COLA portion continues until you attain age 65 when it and the premium for it will terminate, even though the policy may be renewed after you attain age 65.

## PREMIUMS AND RENEWALS

### POLICY TERM

The first term of this policy starts on the Effective Date shown on Page 3. It ends on the First Renewal Date also shown. Later terms will be the periods for which you pay renewal premiums when due. All terms will begin and end at 12:01 A.M., Standard Time, at your home. The renewal premium for each term will be due on the day the preceding term ends, subject to the grace period.

### GRACE PERIOD

This policy has a 31 day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the next 31 days. During the grace period, the policy will stay in force.

### CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED

(Continued from Page 1)

You can renew this policy as long as you are actively and gainfully working full time. From time to time, we can require proof that you are actively and gainfully working full time. If you stop working, (except by reason of Total Disability), this policy will terminate; except that coverage will continue to the end of any period for which premium has been accepted.

Premiums must be paid on time. They will be based on our table of rates by attained age in effect at time of renewals for persons in your same rate class who are insured under policies of this form. Other than your attained age, the factors used to determine your rate class will be the same as those that applied to you on the Effective Date of this policy.

The benefit provisions which will be included in this policy, if it is continued after you attain age 65, are described on Page 7.

### REINSTATEMENT

If a renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by us or by our agent authorized to accept payment without requiring an application for reinstatement will reinstate this policy.

If we or our agent require an application, you will be given a conditional receipt for the premium tendered. If the application is approved, the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the 45th day after the date of the conditional receipt unless we have previously written you of our disapproval.

The reinstated policy will cover only loss that results from Injuries which occur after the date of reinstatement or Sickness which is first manifested more than 10 days after such date. In all other respects, your rights and ours will remain the same, subject to any provisions noted on or attached to the reinstated policy.



#### SUSPENSION DURING MILITARY SERVICE

If you enter full-time active duty in the military (land, sea or air) service of any nation or international authority, you may suspend your policy. But, you may not suspend the policy during active duty for training lasting 3 months or less. The policy will not be in force while it is suspended, and you will not be required to pay premiums. Upon receipt of your written request to suspend the policy, we will refund the pro-rata portion of any premium paid for a period beyond the date we receive your request.

If your full-time active duty in military service ends before age 65, you may place this policy back in force without evidence of insurability. Your coverage will start again when:

1. we have received your written request to place the policy back in force; and
2. you have paid the required pro-rata premium for coverage until the next premium due date.

However, your request and premium payment must be received by us within 90 days after the date your active duty in the military service ends. Premiums will be at the same rate that they would have been had your policy remained in force. The policy will not cover any loss due to Injuries which occur or Sickness which is first manifested while the policy is suspended. In all other respects you and we will have the same rights under the policy as before it was suspended.

#### PREMIUM ADJUSTMENT AT DEATH

Any premium paid for a period beyond the date of your death will be refunded to your estate.

### CLAIMS

#### NOTICE OF CLAIM

Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to us at our home office, Chattanooga, Tennessee, or to our agent. Notice should include your name and the policy number.

#### CLAIM FORMS

When we receive your notice of claim, we will send you claim forms for filing proof of loss. If these forms are not given to you within 15 days, you will meet the proof of loss requirements by giving us a written statement of the nature and extent of your loss. You must give us this proof within the time set forth in the Proof of Loss section.

#### PROOF OF LOSS

If the policy provides for periodic payment for a continuing loss, you must give us written proof of loss within 90 days after the end of each period for which we are liable. For any other loss, written proof must be given within 90 days after such loss.

If it was not reasonably possible for you to give written proof in the time required, we will not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be furnished no later than one year after the 90 days unless you are legally unable to do so.



#### TIME OF PAYMENT OF CLAIMS

After we receive written proof of loss, we will pay monthly all benefits then due you for disability. Benefits for any other loss covered by this policy will be paid as soon as we receive proper written proof.

#### PAYMENT OF CLAIMS

Benefits will be paid to you. Any benefits unpaid at death will be paid to your estate.

If benefits are payable to your estate, we can pay benefits up to \$1000 to someone related to you by blood or marriage whom we consider to be entitled to the benefits. We will be discharged to the extent of any such payment made in good faith.

#### PHYSICAL EXAMINATIONS

We, at our expense, have the right to have you examined as often as is reasonable while a claim is pending.

#### MISSTATEMENT OF AGE

If your age has been misstated, the benefits will be those the premium paid would have bought at the correct age.

#### LEGAL ACTIONS

You may not start a legal action to recover on this policy within 60 days after you give us required proof of loss. You may not start such action after three years from the time proof of loss is required.

### GENERAL PROVISIONS

#### ENTIRE CONTRACT

This policy with the application and attached papers is the entire contract between you and us. No change in this policy will be effective until approved by one of our officers. This approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

#### INCONTESTABLE

1. After this policy has been in force for two years during your lifetime, we cannot contest the statements in the application.
2. No claim for loss incurred or disability that starts after two years from the Effective Date of this policy will be reduced or denied on the ground that a sickness or physical condition not excluded by name or specific description had existed before the Effective Date of this policy.

#### CONFORMITY WITH STATE STATUTES

Any provision of this policy which, on its effective date, is in conflict with the laws of the state in which you reside on that date is changed to conform to the minimum requirements of those laws.

#### ASSIGNMENT

No assignment of interest in this policy will be binding on us until a copy is on file with us. We are not responsible for the validity of any assignment.

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THIRD PARTY PREMIUM PAYMENT

In consideration of an Agreement between the San Diego County Medical Association and us, we agree to accept Policy Premiums as billed.

The conditions of this rider are:

1. The policy will not continue in force beyond the time in which the premium is paid, subject to the grace period.
2. This rider will be void if:
  - a. your membership in the Association ends; or
  - b. the Agreement between the Association and us is terminated.
3. If this rider is voided, premiums will be due and payable as required in the policy.



65115

191-04497

File # 478430

I hereby apply to Provident Life and Accident Insurance Company for insurance based on the following representations

1. (a) Full name? JACK H. DY M MD (b) Sex?  M  F  
 (c) Height? ft. 5 in. 8 (d) Weight? lbs 170 (e) Date of Birth? 9-8-37 (f) Birthplace? Pittsburgh, Pa

2. (a) Residence Address? 13701 PINE NEEDLES DEL MAR CA 92014 Send Notices  Residence  Business  
 (b) Business Address? 1662 E MAIN ST. EL CAJON CA 92021

3. (a) Occupation: PHYSICIAN (b) Employer: SELF  
 (c) Exact duties: GIN (d) Social Security No. 174 28 0246  
 (e) Are you actively at work fulltime in the above occupation? Yes  No  (f) Length of Employment 20 yrs

4. (a) Annual Earned Income From Your Occupation for Federal Tax Purposes (After Business Expenses, if any):  
 Current Annual Rate of Earned Income \$ 200,000 Actual Prior Calendar Year \$ SAME Actual Year Prior Last Calendar Year \$ SAME  
 Other (Describe) \$ 0 \$ 0 \$ 0  
 (b) Unearned Income Prior 2 Years (Interest, Dividends, etc.) \$ 15,000 \$ SAME

5. (a) Do you have or are you applying for other: (1) Individual, (2) Association, (3) Group, or (4) Employer Sick Pay disability income coverage; or (5) Overhead Expense disability coverage? Yes  No  (If "Yes" give details below)

Company or Source	Type (1, 2, 3, 4 or 5)	Monthly Disability Amount	Benefit Period Accident	Sickness
<u>MONARCH</u>	<u>1</u>	<u>3000.00</u>		

(b) Do you have Social Security substitute coverage? Yes  No  Amount \$ \_\_\_\_\_ Company \_\_\_\_\_  
 (c) Is any coverage to be replaced by the coverage applied for? Yes  No  If "Yes", complete Form 1335-Q5.  
 (d) What is the total personal non-group life insurance in force or applied for on your life? 1,350,000  
 (e) Does your net worth exceed \$4,000,000? Yes  No  If "Yes" complete Form 1335-NW.  
 (f) Have you smoked cigarettes within the last 12 months? Yes  No

(Q6-8 need not be answered if a Provident Medical Exam, dated on or after the date of this application, is being furnished)

6. Have you ever been treated for or ever had any known indication of:  
 (a) High blood pressure, diabetes, cancer, arthritis, asthma, emphysema, or emotional, nervous or mental disorder, or disease or disorder of the eyes, ears or speech? Yes  No   
 (b) Disease or disorder of the neck, back, spine, heart, lungs, breasts, or the circulatory, digestive, urinary or reproductive systems? Yes  No   
 7. Other than above, have you, within the past 5 years, had medical or surgical advice or treatment, had a physical examination, or been under observation for any disease or disorder? Yes  No   
 8. Do you have a physical impairment or deformity, or take any type of prescribed medication? Yes  No

(Give details of "Yes" answers to Q6-8. Include diagnoses, dates, physicians and addresses)  
 (a) Fred A. Baughman Jr. 5565 Grossmont (La. Dr) La Mesa, Ca 92041  
 (b) John F. Alksne, MD 225 Dickinson St. San Diego, Ca  
 (c) Bruce M. B... 5555 Grossmont (La. Dr) San Diego, Ca

1) Treatment by Alksne for bronchitis  
 b) History lumbar disc treated with rest 1982  
 b) Surgery cervical disc 1984 (2° auto accident)  
 2) Ventolin inhaler as necessary for bronchitis

9. (a) Will your employer pay for all disability coverage to be carried by you with no portion of the premium to be included in your taxable income? Yes  No  (b) How much premium is paid with this application? None

To the best of my knowledge and belief, all of the foregoing statements and all of those in Part II, if any, of this Application are true, complete, and correctly stated. They are offered to Provident Life and Accident Insurance Company as the basis for any insurance issued on this Application. I have received a disclosure concerning: (1) the Medical Information Bureau; and (2) an investigative consumer report which may be made for use with this Application.

I authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organizations, institution or person that has any records or knowledge of me or my health, to give to Provident Life and Accident Insurance Company and/or its reinsurers any such information I authorize all said sources, except the Medical Information Bureau, to give such records or knowledge to Equifax, Inc. This agency is employed by Provident Life and Accident Insurance Company to collect and send such information

A copy of this authorization shall be as valid as the original  
 Signed at Del Mar Ca City Del Mar State Ca  
 this 13 day of Aug 19 87  
 Signature of Proposed Insured Jack H. Dym  
 I certify that I have truly and accurately recorded on this application the information supplied by the Proposed Insured



In this policy, the words "you" and "your" mean you, the Insured named below; "we," "our" and "us" mean Provident Life and Accident Insurance Company.

We will pay benefits for covered loss resulting from Injuries or Sickness subject to all of the provisions of this policy. Loss must begin while the policy is in force.

This policy is a legal contract between you and us. It is issued in consideration of the payment in advance of the required premium and of your statements and representations in the application. A copy of your application is attached and made a part of the policy.

NON-CANCELIABLE AND GUARANTEED CONTINUABLE TO AGE 65 AT GUARANTEED PREMIUMS: You can continue this policy to age 65 by paying premiums on time. The premiums shown in the Policy Schedule on Page 3 are guaranteed to age 65.

CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED: You can renew this policy as long as you are actively and gainfully working full time; there is no age limit. You must pay premiums on time at our premium rates then in effect at time of renewals. (For further conditions, see the page titled "Premiums and Renewals." See Page 7 for the benefit provisions that will be included in the continued policy.)

#### DISABILITY INCOME POLICY

JACK H DYM MD, the Insured  
Policy Number 6-335-816358

10 day right to examine your policy - We want you to fully understand and be entirely satisfied with your policy. If you are not satisfied for any reason, you may return the policy to us, or to the agent through whom it was purchased, within 10 days of its receipt. We will refund any premiums you have paid within 10 days after we receive your notice of cancellation and the policy. It will be considered never to have been issued.

## GUIDE TO POLICY PROVISIONS

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READ YOUR POLICY CAREFULLY

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P O L I C Y S C H E D U L E

Insured - JACK H DYM MD Policy Number - 6-335-816358  
 Effective Date - January 1, 1988 First Renewal Date - January 1, 1989  
 Issue Date - December 14, 1987 Renewal Term - Twelve Months

Annual Policy Premium payable from January 1, 1988 until the first UPDATE Increase Date (see Page 3 (cont.)) is \$2,341.52 on a non smoking premium basis.

Other Premium Paying Methods:  
 \$1,194.18 Semi-Annually  
 608.80 Quarterly  
 199.03 Monthly (Preauthorized Bank Draft Only)

-----MONTHLY BENEFIT FOR TOTAL DISABILITY-----  
 \$3,000.00

-----ELIMINATION PERIOD-----  
 90 days of Total and/or Residual Disability  
 An Elimination Period starting after age 65 must consist entirely of days of Total Disability

-----MAXIMUM BENEFIT PERIODS-----

Injuries:  
 Total Disability starting before age 65 ..... for Life  
 Total Disability starting at age 65 but before age 75 ..... 24 months  
 Total Disability starting at or after age 75 ..... 12 months

Sickness:  
 Total Disability starting before age 61 ..... to age 65  
 Total Disability starting at age 61 but before age 62 ..... 48 months  
 Total Disability starting at age 62 but before age 63 ..... 42 months  
 Total Disability starting at age 63 but before age 64 ..... 36 months  
 Total Disability starting at age 64 but before age 65 ..... 30 months  
 Total Disability starting at age 65 but before age 75 ..... 24 months  
 Total Disability starting at or after age 75 ..... 12 months

Rehabilitation Expense ..... \$9,000.00 Maximum Amount  
 Treatment of Injuries (Payable if disability benefits not paid) ..... \$1,500.00 Maximum Amount

-----ADDITIONAL BENEFITS-----  
 (The premium shown for each benefit is included in the Policy Premium shown above.)

Residual Disability Benefit .....Page 8 Premium \$461.40

(Policy Schedule is continued on next page.)

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POLICY SCHEDULE (continued)

Cost of Living Adjustments (COLA) with Guaranteed  
Percentage Increase (GPI) Option .....Page 12

Maximum COLA Percentage .....	4%	Premium	\$225.60
Available GPI .....	8%	Premium	\$45.12
Total COLA/GPI Premium			\$270.72

-----

(Policy Schedule is continued on next page.)

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## POLICY SCHEDULE (Continued)

## -----UPDATE-----

The benefits and premium named below will be automatically increased without evidence of insurability, as follows:

UPDATE Increase Date	New Monthly Benefit for Total Disability	New Maximum Amount for Rehabilitation Expense	New Maximum Amount for Treatment of Injuries	New Annual Premium for this Policy
01/01/89	\$3,210.00	\$9,630.00	\$1,605.00	\$2,509.25
01/01/90	\$3,440.00	\$10,320.00	\$1,720.00	\$2,698.60
01/01/91	\$3,690.00	\$11,070.00	\$1,845.00	\$2,910.53
01/01/92	\$3,950.00	\$11,850.00	\$1,975.00	\$3,137.29
01/01/93	\$4,230.00	\$12,690.00	\$2,115.00	\$3,388.47

UPDATE Benefit increases are effective on the UPDATE Increase Dates shown. If an UPDATE Increase Date shown does not coincide with a renewal date for this policy, the increase will be effective on the next renewal date.

An UPDATE Benefit increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability. If the premium for the policy is being waived on the effective date of the increase, the premium for the increase will also be waived. When you resume paying premiums for the policy, you must also start paying the premium for the increase.

You are entitled to UPDATE Benefit increases on the dates shown above. If you do not accept an increase, your refusal:

1. forfeits your right on that UPDATE Increase Date to the UPDATE Benefit increase;
2. postpones the schedule of benefit increases to the next UPDATE Increase Date, if any;
3. adjusts the premiums for the remaining increases, if any, since such premiums are based on your attained age at the time of an UPDATE Benefit increase; and
4. in no way extends the last UPDATE Increase Date shown above.

Each refusal of an UPDATE Benefit increase reduces the number of UPDATE Benefit increases to which you were entitled by one.

If you are under age 59 on the last UPDATE Increase Date, you may apply for an amendment providing additional UPDATE Benefit increases. You can do this by making formal application within the period of 60 days prior to and 31 days after the last UPDATE Increase Date. Approval will be subject to our underwriting guidelines then in effect.

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## DEFINITIONS

Injuries means accidental bodily injuries occurring while your policy is in force.

Sickness means sickness or disease which is first manifested while your policy is in force.

age, when used before a number, such as in "age 65", means the ending date of the policy term in which you attain that age. A policy term is described on the page titled "Premiums and Renewals."

Physician means any person other than you who is licensed by law, and is acting within the scope of the license, to treat Injuries or Sickness which results in covered loss.

Total Disability or totally disabled means that due to Injuries or Sickness:

1. you are not able to perform the substantial and material duties of your occupation; and
2. you are receiving care by a Physician which is appropriate for the condition causing the disability.

your occupation means the occupation (or occupations, if more than one) in which you are regularly engaged at the time you become disabled. If your occupation is limited to a recognized specialty within the scope of your degree or license, we will deem your specialty to be your occupation.

period of disability means a period of disability starting while this policy is in force. Successive periods will be deemed to be the same period unless the later period:

1. is due to a different or unrelated cause, or
2. starts more than twelve months after the end of the previous period;

in which event, the later period will be a new or separate period of disability. A new Elimination Period must then be met. And, a new Maximum Benefit Period will apply.

Elimination Period means the number of days of disability that must elapse in a period of disability before benefits become payable. The number of days is shown on Page 3. These days need not be consecutive; they can be accumulated during a period of disability to satisfy an Elimination Period. Benefits are not payable, nor do they accrue, during an Elimination Period.

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#### EXCLUSION

We will not pay benefits for loss caused by war or any act of war, whether war is declared or not.

Additional exclusions, if any, appear in the Policy Schedule.

#### PRE-EXISTING CONDITION LIMITATION

We will not pay benefits for loss starting within two years of the Effective Date of this policy which is caused by a Pre-existing Condition. A claim for benefits for loss starting thereafter will not be reduced or denied on the ground it is caused by a Pre-existing Condition unless the condition is excluded by name or specific description. Pre-existing Condition means a physical impairment, deformity or a medical condition that was not disclosed, or that was misrepresented, in answer to a question in the application for this policy. A medical condition means a sickness or physical condition which either: 1) resulted in your receiving medical advice or treatment; or 2) caused symptoms for which an ordinarily prudent person would seek medical advice or treatment.

#### BENEFITS

##### TOTAL DISABILITY

We will pay the Monthly Benefit for Total Disability shown on Page 3 as follows:

1. Benefits start on the day of Total Disability following the Elimination Period.
2. Benefits will continue while you are totally disabled during the period of disability but not beyond the Maximum Benefit Period.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

**PRESUMPTIVE TOTAL DISABILITY - LOSS OF SPEECH, HEARING, SIGHT OR THE USE OF TWO LIMBS**  
You will be presumed totally disabled if Injuries or Sickness results in the entire and permanent loss of:

1. speech;
2. hearing in both ears;
3. the sight of both eyes; or
4. the use of both hands, or of both feet or of one hand and one foot.

You must present satisfactory proof of your loss. Your ability to work will not matter. Further medical care will not be required. Benefits will be paid according to the Total Disability provisions of this policy. But, benefits will start on the date of loss if earlier than the day benefits start as shown on Page 3. If loss occurs before you attain age 65, the Monthly Benefit for Total Disability will be paid as long as you live regardless of the Maximum Benefit Period shown on Page 3.

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#### TRANSPLANT SURGERY

You might be disabled from the transplant of part of your body to another person. If so, we will consider it to be the result of a Sickness.

#### COSMETIC SURGERY

You might be disabled from surgery to improve your appearance or to correct disfigurement. If so, we will consider it to be the result of a Sickness.

#### PREGNANCY

You might be disabled from pregnancy or childbirth. If so, we will consider it to be the result of a Sickness.

#### WAIVER OF PREMIUM

After you have been totally disabled for 90 days during a period of disability, we will:

1. refund any premiums which became due and were paid while you were totally disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep this policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability.

#### REHABILITATION

Total Disability - Your participation in a program of occupational rehabilitation will not of itself be considered a recovery from Total Disability.

Expense - If, during a period of Total Disability, you participate in a program of occupational rehabilitation which we approve, we will pay for certain expenses you incur. That is, we will pay for the reasonable cost of training and education which is not otherwise covered under health care insurance, workers' compensation or any public fund or program. But, we will not pay more than the Maximum Amount for Rehabilitation Expense shown on Page 3.

A program of occupational rehabilitation must be designed to help you return to work and be:

1. a formal program of rehabilitation at an accredited graduate school, college or business school, or at a licensed vocational school;
2. a recognized program operated by the federal or a state government; or
3. any other professionally planned rehabilitation program of training or education.

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TREATMENT OF INJURIES (PAYABLE IF DISABILITY BENEFITS NOT PAID.)

If Injuries require medical treatment prescribed by a Physician, we will pay your expenses for the treatment. But, we will not pay more than the Maximum Amount for Treatment of Injuries shown on Page 3 as a result of any one accident.

If you qualify for payment under this provision and also under a disability provision of this policy because of the same accident, payment will be made under the provision which provides the greater benefit.

BENEFITS WHEN POLICY RENEWED AFTER AGE 65

If this policy is continued in accordance with the "Conditional Right to Renew After Age 65" on Page 1, all of the benefit provisions on Pages 5, 6 and 7 will be included in the continued policy. (Any additional benefit provision contained in this policy will not be included unless it is named on Page 3 as one that will be included in the continued policy.) The Maximum Benefit Period starting while this policy is so continued is shown on Page 3. The Monthly Benefit for Total Disability will not change unless you choose to renew with a lesser amount.

PAYMENT FOR PART OF MONTH

If any payment under this policy is for part of a month, the daily rate will be 1/30th of the payment which would have been made if disability had continued for the whole month.

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RESIDUAL DISABILITY BENEFITS

with Recovery Benefits and with Cost of Living Indexing of Prior Monthly Income (Nothing in this provision limits the policy definition of "Total Disability.")

DEFINITIONS

Monthly Income means your monthly income from salary, wages, bonuses, commissions, fees or other payments for services which you render or your business provides. Normal and usual business expenses are to be deducted; income taxes are not. Monthly Income must be earned. It does not include dividends, interest, rents, royalties, annuities, sick pay or benefits received for disability under a formal wage or salary continuation plan or other forms of unearned income.

Monthly Income can be credited to the period in which it is actually received or to the period in which it is earned. We allow either the cash or accrual accounting method. But, the same method must be used to determine the Prior Monthly Income and the Current Monthly Income during a period of disability. If you elect the cash accounting method, we will not include income received for services rendered prior to the start of a period of disability in your Current Monthly Income.

Prior Monthly Income means the greatest of:

1. your average Monthly Income for the 12 months just prior to the start of the period of disability for which claim is made;
2. your average Monthly Income for the year with the highest earnings of the last two years prior to the start of such period of disability; or
3. your highest average Monthly Income for any two successive years of the last five years prior to the start of such period of disability.

Current Monthly Income means your Monthly Income in your occupation for each month of Residual Disability being claimed.

Loss of Monthly Income means the difference between Prior Monthly Income and Current Monthly Income. Loss of Monthly Income must be caused by the Residual Disability for which claim is made. The amount of the loss must be at least 20% of Prior Monthly Income to be deemed Loss of Monthly Income. If your loss is more than 75% of Prior Monthly Income, we will deem the loss to be 100%.

Residual Disability or residually disabled, during the Elimination Period, means that due to Injuries or Sickness:

1. you are not able to do one or more of your substantial and material daily business duties or you are not able to do your usual daily business duties for as much time as it would normally take you to do them;
2. you have a Loss of Monthly Income in your occupation of at least 20%; and
3. you are receiving care by a Physician which is appropriate for the condition causing disability.

After the Elimination Period has been satisfied, you are no longer required to have a loss of duties or time. Residual Disability or residually disabled then means that as a result of the same Injuries or Sickness:

1. you have a Loss of Monthly Income in your occupation of at least 20%; and
2. you are receiving care by a Physician which is appropriate for the condition causing the Loss of Monthly Income.



Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by certain other benefit provisions if they are included in your policy and are applicable. If included, they are titled "Cost of Living Adjustments of Monthly Benefits" and "Social Insurance Substitute Benefit.")

Residual Disability Monthly Benefit is the benefit payable under this provision. It is determined monthly by this formula. Each month, it equals:

$$\frac{\text{Loss of Monthly Income}}{\text{Prior Monthly Income}} \times \text{Monthly Benefit for Total Disability}$$

RESIDUAL DISABILITY BENEFITS

We will pay Residual Disability Monthly Benefits as follows:

1. Benefits start on the day of Residual Disability following the Elimination Period or, if later, after the end of compensable Total Disability during the same period of disability.
2. Benefits will continue while you are residually disabled during a period of disability but the combined period for which benefits for Total and Residual Disability are payable can not exceed the Maximum Benefit Period. And, benefits will not be payable after you attain age 65.
3. The first six monthly payments for Residual Disability will be the greater of:
  - a. 50% of the Monthly Benefit for Total Disability; or
  - b. the Residual Disability Monthly Benefit determined for each month.

Residual Disability benefits will not be paid for any days for which Total Disability benefits are paid.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

We can require any proof which we consider necessary to determine your Current Monthly Income and Prior Monthly Income. Also, we or an independent accountant retained by us shall have the right to examine your financial records as often as we may reasonably require.

RECOVERY BENEFITS

(Nothing in this provision limits the policy definition of "Residual Disability.")

If you are under age 65 and return to gainful full-time work at the end of a period for which we have paid Total and/or Residual Disability benefits, we will:

1. while you are so engaged in gainful full-time work; and
2. while you are having a Loss of Monthly Income in your occupation of at least 20% due to the same Injuries or Sickness;

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pay benefits under this back to work provision as though the same period of disability is continuing. You do not have to be receiving care by a Physician while Recovery Benefits are being paid. Payments will be made for each month, up to 3 months, in which (1) and (2) exist. For the first such month, we will pay a benefit based on the greater of:

- a. the monthly rate computed by the Residual Disability Benefit formula for that month; or
- b. 100% of the actual claim payment made for the 30 days preceding your return to work full time.

The monthly benefit for the second and third months will be computed as in (a) and (b) above; except that, instead of using 100% in (b), 75% will apply for the second month. And, 50% will apply for the third month.

These recovery benefits will not be paid for any days for which Total and/or Residual Disability benefits are paid. And, they will not be paid for more than 3 months in connection with a period of disability.

#### COST OF LIVING INDEXING OF PRIOR MONTHLY INCOME

(Applicable to benefits paid after the 12th month of a period of disability)

#### Definitions

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Index Factor is used by us to determine your adjusted Prior Monthly Income for each Review Period. We will compute this factor by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability.

#### Adjusted Prior Monthly Income

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date for Residual Disability Benefits. Monthly benefits which thereafter accrue during that period of disability will be adjusted by indexing your Prior Monthly Income as follows:

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1. On each Review Date, your Prior Monthly Income will be multiplied by your Index Factor. The result is your adjusted Prior Monthly Income. It will be used to figure your Loss of Monthly Income during the Review Period that follows. It will also be used in the formula to compute each Residual Disability Monthly Benefit payable during that Review Period.

An increase in your Prior Monthly Income can cause your Loss of Monthly Income to be greater. This in turn can result in an increase in your Residual Disability Monthly Benefit. Other than your Index Factor (which is computed by using actual CPI-U values), there is no limit on the percent of increase in your Prior Monthly Income for a Review Period. If the CPI-U should go down, your adjusted Prior Monthly Income can decrease. But, it can never reduce below your Prior Monthly Income at the start of the period of disability.

2. Indexing of your Prior Monthly Income will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of a or b above, disability benefits which can be paid for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

#### WAIVER OF PREMIUM

For periods of disability which start before age 65, the Waiver of Premium provision on Page 6 is replaced by the following:

#### "WAIVER OF PREMIUM - TOTAL DISABILITY AND RESIDUAL DISABILITY

If, during a period of disability, Injuries or Sickness results in more than 90 days of Total and/or Residual Disability, we will:

1. refund any premiums which became due and were paid while you were so disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep your policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability except as respects Recovery Benefits."

NOTE: All portions of this Residual Disability Benefit expire when you attain age 65 even though the policy may be renewed after you attain age 65. No further premiums for it will be due.

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COST OF LIVING ADJUSTMENTS WITH GUARANTEED PERCENTAGE INCREASE OPTION  
(Applies to benefits payable after the 12th month of a period of disability)

#### DEFINITIONS

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Benefit Factor is determined by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability. It will apply to the Review Period that follows.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by a "Social Insurance Substitute (SIS) Benefit" if it is included in your policy and when it is applicable).

Adjusted Monthly Benefit for Total Disability is the Monthly Benefit for Total Disability multiplied by the Benefit Factor for a Review Period. But, an Adjusted Monthly Benefit for Total Disability can not:

1. exceed the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by the percentage shown on Page 3 as the Maximum COLA Percentage; or
2. be less than the amount of the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by 4%.

#### BENEFITS

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date. Monthly benefits which thereafter accrue during that period of disability will be adjusted as follows:

1. On each Review Date, we will compute the Benefit Factor and the Adjusted Monthly Benefit for Total Disability for the Review Period that follows.
2. For any Monthly Benefit for Total Disability that accrues during a Review Period, we will pay instead the Adjusted Monthly Benefit for Total Disability.



3. We will adjust any Residual Disability Monthly Benefit which accrues during a Review Period. To do this, we will use the Adjusted Monthly Benefit for Total Disability in the formula to determine each Residual Disability Monthly Benefit that is to be paid during that Review Period. It will be used in the formula instead of the Monthly Benefit for Total Disability.
4. Computations of Cost of Living Adjustments will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of (a) or (b) above, benefit amounts will revert to those shown on Page 3. Benefits payable for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

If the computations end because of (c) above and if any disability benefits continue to be payable after you attain age 65 for a period of disability that started before you became age 64, we will apply to those benefits the Benefit Factor that last applied before you became age 65.

We will compute a Benefit Factor on the first Review Date for a period of disability that starts between your 64th and 65th birthdays. This factor will continue to apply to any benefits paid during that period of disability.

#### QUALIFIED RIGHT TO INCREASE MONTHLY BENEFIT TO ADJUSTED AMOUNT

When you return to active and gainful full-time work after the end of a period of disability during which Cost of Living Adjustments were made, you may elect to increase the amount of the Monthly Benefit for Total Disability shown on Page 3. You may increase it to the amount of the Adjusted Monthly Benefit for Total Disability (less any SIS Benefit if included) which was used to determine the last monthly claim payment, if:

1. you have not reached your 60th birthday on the date you elect the increase; and
2. within 90 days after the period of disability ends, you make application to us on a form which we will furnish you upon request. On this form, you must confirm that you are actively and gainfully employed full time. Other evidence of insurability will not be required.

The effective date of the increase will be the first of the month after we approve your application for the increase. The required additional premium must be paid within 31 days of that date. Later premiums for the increase must be paid as part of the renewal premiums for the policy.

The premium for the increase will be based on your attained age at the time of the increase. It will also be based on our table of premium rates then in effect.

The increase in benefits will apply to new periods of disability which start after the effective date of the increase.

If you do not elect and obtain this increase, the Monthly Benefit for Total Disability will revert to the amount shown on Page 3 for new periods of disability.

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## GUARANTEED PERCENTAGE INCREASE OPTION

### Definitions

Option Date means each anniversary of the Effective Date of the policy starting with the first and ending with the anniversary which falls on or next follows your 60th birthday. If an Option Date does not coincide with a renewal date for this policy, it will change to coincide with the next renewal date thereafter.

Option Period means the period which begins 60 days before and ends 31 days after an Option Date.

### Exercising Increase Option

You have the right to increase the Maximum COLA Percentage shown on Page 3 by the Available Guaranteed Percentage Increase (Available GPI) also shown on Page 3. You may do this, without submitting evidence of insurability, by following the rules set forth below.

An increase can be for the Available GPI or for part of it in increments of 2%.

The request for an increase must be made within an Option Period. It must be a dated written request signed by you. An increase will be effective: (a) on the Option Date if your request is made before that date; or (b) on the date of your request if it is made within 31 days after the Option Date.

You can request an increase during any Option Period even if you are disabled, but the increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability (see Page 4).

The first premium for an increase must be paid within 31 days after the effective date of the increase. Later premiums must be paid as part of the Policy Premium. If the premium for the policy is being waived (see Waiver of Premium provision) on the effective date of the increase, you will not have to start paying the premium for the increase until the premium for your policy becomes payable again.

The premium for each increase of the Maximum COLA Percentage will be based on your attained age at the time of each increase. It will also be based on:

1. our premium rates in effect at the time of the increase or on the Effective Date of the policy, whichever is less; and
2. your occupational class at the time of the increase or on the Effective Date of the policy, whichever will produce the lower premium.

When the Maximum COLA Percentage is increased, the premium for this GPI Option is reduced by the charge that was being made for the GPI percentage which was exercised. The reduced premium will be based on the Available GPI remaining, if any.

### Option Expiration Date

This GPI Option will expire, and no further premiums for it will be due, on the earlier of: (a) the date when the full Available GPI has been exercised; or (b) the date when the Option Period ends for the age 60 Option Date described above.

NOTE: The GPI portion of this benefit provision and its premium will cease as stated above. The COLA portion continues until you attain age 65 when it and the premium for it will terminate, even though the policy may be renewed after you attain age 65.

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## PREMIUMS AND RENEWALS

### POLICY TERM

The first term of this policy starts on the Effective Date shown on Page 3. It ends on the First Renewal Date also shown. Later terms will be the periods for which you pay renewal premiums when due. All terms will begin and end at 12:01 A.M., Standard Time, at your home. The renewal premium for each term will be due on the day the preceding term ends, subject to the grace period.

### GRACE PERIOD

This policy has a 31 day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the next 31 days. During the grace period, the policy will stay in force.

### CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED

(Continued from Page 1)

You can renew this policy as long as you are actively and gainfully working full time. From time to time, we can require proof that you are actively and gainfully working full time. If you stop working, (except by reason of Total Disability), this policy will terminate; except that coverage will continue to the end of any period for which premium has been accepted.

Premiums must be paid on time. They will be based on our table of rates by attained age in effect at time of renewals for persons in your same rate class who are insured under policies of this form. Other than your attained age, the factors used to determine your rate class will be the same as those that applied to you on the Effective Date of this policy.

The benefit provisions which will be included in this policy, if it is continued after you attain age 65, are described on Page 7.

### REINSTATEMENT

If a renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by us or by our agent authorized to accept payment without requiring an application for reinstatement will reinstate this policy.

If we or our agent require an application, you will be given a conditional receipt for the premium tendered. If the application is approved, the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the 45th day after the date of the conditional receipt unless we have previously written you of our disapproval.

The reinstated policy will cover only loss that results from Injuries which occur after the date of reinstatement or Sickness which is first manifested more than 10 days after such date. In all other respects; your rights and ours will remain the same, subject to any provisions noted on or attached to the reinstated policy.

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#### SUSPENSION DURING MILITARY SERVICE

If you enter full-time active duty in the military (land, sea or air) service of any nation or international authority, you may suspend your policy. But, you may not suspend the policy during active duty for training lasting 3 months or less. The policy will not be in force while it is suspended, and you will not be required to pay premiums. Upon receipt of your written request to suspend the policy, we will refund the pro-rata portion of any premium paid for a period beyond the date we receive your request.

If your full-time active duty in military service ends before age 65, you may place this policy back in force without evidence of insurability. Your coverage will start again when:

1. we have received your written request to place the policy back in force; and
2. you have paid the required pro-rata premium for coverage until the next premium due date.

However, your request and premium payment must be received by us within 90 days after the date your active duty in the military service ends. Premiums will be at the same rate that they would have been had your policy remained in force. The policy will not cover any loss due to Injuries which occur or Sickness which is first manifested while the policy is suspended. In all other respects you and we will have the same rights under the policy as before it was suspended.

#### PREMIUM ADJUSTMENT AT DEATH

Any premium paid for a period beyond the date of your death will be refunded to your estate.

### CLAIMS

#### NOTICE OF CLAIM

Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to us at our home office, Chattanooga, Tennessee, or to our agent. Notice should include your name and the policy number.

#### CLAIM FORMS

When we receive your notice of claim, we will send you claim forms for filing proof of loss. If these forms are not given to you within 15 days, you will meet the proof of loss requirements by giving us a written statement of the nature and extent of your loss. You must give us this proof within the time set forth in the Proof of Loss section.

#### PROOF OF LOSS

If the policy provides for periodic payment for a continuing loss, you must give us written proof of loss within 90 days after the end of each period for which we are liable. For any other loss, written proof must be given within 90 days after such loss.

If it was not reasonably possible for you to give written proof in the time required, we will not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be furnished no later than one year after the 90 days unless you are legally unable to do so.

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#### TIME OF PAYMENT OF CLAIMS

After we receive written proof of loss, we will pay monthly all benefits then due you for disability. Benefits for any other loss covered by this policy will be paid as soon as we receive proper written proof.

#### PAYMENT OF CLAIMS

Benefits will be paid to you. Any benefits unpaid at death will be paid to your estate.

If benefits are payable to your estate, we can pay benefits up to \$1000 to someone related to you by blood or marriage whom we consider to be entitled to the benefits. We will be discharged to the extent of any such payment made in good faith.

#### PHYSICAL EXAMINATIONS

We, at our expense, have the right to have you examined as often as is reasonable while a claim is pending.

#### MISSTATEMENT OF AGE

If your age has been misstated, the benefits will be those the premium paid would have bought at the correct age.

#### LEGAL ACTIONS

You may not start a legal action to recover on this policy within 60 days after you give us required proof of loss. You may not start such action after three years from the time proof of loss is required.

### GENERAL PROVISIONS

#### ENTIRE CONTRACT

This policy with the application and attached papers is the entire contract between you and us. No change in this policy will be effective until approved by one of our officers. This approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

#### INCONTESTABLE

1. After this policy has been in force for two years during your lifetime, we cannot contest the statements in the application.
2. No claim for loss incurred or disability that starts after two years from the Effective Date of this policy will be reduced or denied on the ground that a sickness or physical condition not excluded by name or specific description had existed before the Effective Date of this policy.

#### CONFORMITY WITH STATE STATUTES

Any provision of this policy which, on its effective date, is in conflict with the laws of the state in which you reside on that date is changed to conform to the minimum requirements of those laws.

#### ASSIGNMENT

No assignment of interest in this policy will be binding on us until a copy is on file with us. We are not responsible for the validity of any assignment.

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PREMIUM PAYMENT RIDER

In consideration of the Premium Payment Agreement between the Association and us, we agree to accept Policy Premiums as billed you.

The conditions of this rider are:

1. The policy will not continue in force beyond the time for which the premium is paid, subject to the grace period.
2. This rider will be void if:
  - a. your membership in the Association ends; or
  - b. the Premium Payment Agreement is terminated.
3. If this rider is voided, premiums will be due and payable as required in the policy.

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191/01/97  
No 4782110

I hereby apply to Provident Life and Accident Insurance Company for insurance based on the following representations

1. (a) Full name? (Print) Jack H. DYM M.D. (b) Sex? Male FL

(c) Height? ft. 5 in. 8 (d) Weight? lbs. 190 (e) Date of Birth? 9-8-37 (f) Birthplace? Pittsburgh

2. (a) Residence Address? 13701 Pine Needles Del Mar, Ca. 92014 Send Notices  
(Print) Street and No. (or P.O. Box No.) City, State, Zip Code  Residence  
(b) Business Address? 1662 E. Main St. El Cajon Ca. 92021  Business

3. (a) Occupation: Gynecologist (b) Employer: SELF  
(c) Exact duties: Surgeon (d) Social Security No. 174 28 0246  
(e) Are you actively at work fulltime in the above occupation? Yes  No  (f) Length of Employment: 20 yrs.

4. (a) Annual Earned Income From Your Occupation for Fed- Current Annual Rate Actual Prior Actual Year Prior to  
eral Tax Purposes (After Business Expenses, if any): of Earned Income Calendar Year Last Calendar Year  
Salary ..... \$ 200,000 \$ SAME \$ SAME  
Other (Describe) ..... \$ 0 \$ 0 \$ 0  
(b) Unearned Income Prior 2 Years (Interest, Dividends, etc.) ..... \$ 15,000 \$ SAME

5. (a) Do you have or are you applying for other: (1) Individual, (2) Association, (3) Group, or (4) Employer Sick Pay disability income coverage; or (5) Overhead Expense disability coverage? Yes  No  (If "Yes" give details below)

Company or Source	Type (1, 2, 3, 4 or 5)	Monthly Disability Amount	Benefit Period	
			Accident	Sickness
<u>MONARCH</u>	<u>1</u>	<u>3,000.00</u>	<u>65</u>	<u>65</u>
<u>Provident</u>	<u>1</u>	<u>2,000.00</u>	<u>1/1/66</u>	

(b) Do you have Social Security substitute coverage? Yes  No  Amount \$ \_\_\_\_\_ Company \_\_\_\_\_  
(c) Is any coverage to be replaced by the coverage applied for? Yes  No . If "Yes", complete Form 1335-Q5.  
(d) What is the total personal non-group life insurance in force or applied for on your life? 4350,000  
(e) Does your net worth exceed \$4,000,000? Yes  No . If "Yes" complete Form 1335-NW.  
(f) Have you smoked cigarettes within the last 12 months? Yes  No

(Q6-8 need not be answered if a Provident Medical Exam, dated on or after the date of this application, is being furnished)

6. Have you ever been treated for or ever had any known indication of:

(a) High blood pressure, diabetes, cancer, arthritis, asthma, emphysema, or emotional, nervous or mental disorder, or disease or disorder of the eyes, ears or speech? .....	Yes	No
.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Disease or disorder of the neck, back, spine, heart, lungs, breasts, or the circulatory, digestive, urinary or reproductive systems? .....	Yes	No
.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>

7. Other than above, have you, within the past 5 years, had medical or surgical advice or treatment, had a physical examination, or been under observation for any disease or disorder? .....

8. Do you have a physical impairment or deformity, or take any type of prescribed medication? .....

(Give details of "Yes" answers to Q6-8. Include diagnoses, dates, physicians and addresses)

6b. History - Lumbar Disk 1982 Treated with Rest -> Fred A. Baughman Jr. M.D.  
1984 Surgery Cervical disk (2° auto accident) 5565 Grossmont Center Dr. La Mesa, Ca. 92041  
 7. Treatment by Allergist for Bronchitis -> John F. Aleksne, M.D.  
225 Dickinson St. San Diego, Ca. 92103  
 8. Yantdin inhaler as necessary for Bronchitis  
 -> Bruce M. Prens 5555 Reservoir Dr. San Diego, Ca. 92120

9. (a) Will your employer pay for all disability coverage to be carried by you with no portion of the premium to be included in your taxable income? Yes  No  (b) How much premium is paid with this application? None

To the best of my knowledge and belief, all of the foregoing statements and all of those in Part II, if any, of this Application are true, complete, and correctly stated. They are offered to Provident Life and Accident Insurance Company as the basis for any insurance issued on this Application. I have received a disclosure concerning: (1) the Medical Information Bureau; and (2) an investigative consumer report which may be made for use with this Application.

I authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organizations, institution or person that has any records or knowledge of me or my health, to give to Provident Life and Accident Insurance Company and/or its reinsurers any such information.

I authorize all said sources, except the Medical Information Bureau, to give such records or knowledge to Equifax, Inc. This agency is employed by Provident Life and Accident Insurance Company to collect and send such information

A copy of this authorization shall be as valid as the original

Signed at San Diego Ca. State  
 City State  
 this 23<sup>rd</sup> day of OCTOBER 1987  
 Field Office

Signature of Proposed Insured X. Jack Dym  
 I certify that I have fully and accurately recorded on this application the information supplied by the Proposed Insured

If existing coverage is to be replaced the Provident coverage applied for, have proposed insured complete and sign this form.

Supplement to Question No. 5 of My Application  
to Provident Life and Accident Insurance Company

If insurance is issued pursuant to this application I will, within 30 days of the issue date or effective date of the coverage whichever is later, permanently cancel the coverage listed below.

Company or Source	Monthly Disability Amount
<u>Monarch</u>	<u>\$3000/mo</u>

Date \_\_\_\_\_ Signature of Proposed Insured X \_\_\_\_\_  
Form 1335-Q5

Net Worth Supplement to Question 5

*DIS Amend*

Cash, Savings, Stocks & Bonds \$ \_\_\_\_\_ Personal Property \$ \_\_\_\_\_ Business \$ \_\_\_\_\_  
Personal Residence \$ \_\_\_\_\_ Other Real Estate \$ \_\_\_\_\_ Other \$ \_\_\_\_\_  
Form 1335-NW (Note: Show Current Value Less Indebtedness)

COVERAGE AND PREMIUM SECTION

Form Applied For 335 Injuries or Sickness Benefit starts 9/85 Day \_\_\_\_\_ Basic Monthly Benefit \$ 3000  
Age Last Birthday 52 for as long as \_\_\_\_\_ for Injuries  
Class P for as long as \_\_\_\_\_ for Sickness  
(If Lifetime Sickness . . .  L-L/60 or  L-L/55)

OPTIONAL BENEFITS

(Applicable Where Available) SIS Monthly Benefit  
 Social Insurance Substitute (SIS) Benefit starting \_\_\_\_\_ day . . . . . \$ \_\_\_\_\_  
 Residual\*  
 COLA/GPI:  4% COLA-8% GPI  8% COLA-4% GPI  12% COLA-0% GPI  
 6% COLA-6% GPI  10% COLA-2% GPI  
 Cost of Living Adjustment (COLA) 7% Compounded  
 UPDATE<sup>SM</sup> (Automatic Benefit Increase) Monthly Benefit  
 Guaranteed Physical Insurability Option (GPI) . . . . . \$ \_\_\_\_\_  
 Preliminary Term Benefit (PTB) Starting on \_\_\_\_\_ day . . . . . \$ \_\_\_\_\_  
 Business Value Protector (BVP) Benefit Period (Months)  12  6  3 . . . . . \$ \_\_\_\_\_

TERM PREMIUM

Annual  Quarterly Total Annual Premium \$ \_\_\_\_\_ Term Premium \$ \_\_\_\_\_  
 Semi-Annual  INSUREmatic (including Policy Fee)  
Salary Allotment (See Below)  
 Monthly  Semi-Annual  
 Quarterly  Annual  INSUREmatic Salary Allotment Premium \$ 211.86

Insurance Offer: (Check appropriate Insurance Offer and describe coverage)

Additional  Alternate  BOE

PERSONAL HISTORY INTERVIEW TELEPHONE INFORMATION

PROPOSED INSURED Jack H. Dym MO. Date 10/23/87  
(Please Print)

Since the Proposed Insured may be contacted by the Provident Home Office, what is the most convenient time frame (between 8:00 A.M. and 7:00 P.M. EASTERN TIME) when he/she may be reached by phone?

Telephone Number Home (Area) 619 (Number) 695-0618 (Time) Aftn. 6PM  
Business (Area) \_\_\_\_\_ (Number) 442-3335 (Time) 8-5  
(Extension) \_\_\_\_\_

Has the Proposed Insured been informed that he/she may be contacted by phone?  Yes  No

COMMENTS:

Soliciting Agent or Broker Steven L. Dix **62**



**ANSWERS MADE TO EXAMINER**

IN CONTINUATION OF AND FURNISHING PART OF APPLICATION FOR INSURANCE TO  
**PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Chattanooga, Tennessee 37402.**

Full Name of Person Examined (Last) JY M (First) JACK (Middle) H Date of Birth 4-8-37 Occupation Physician

1 a. Name and address of your personal physician (If none,  Check) Fred Baughman MD  
5505 Government Center Drive, La Mesa, CA 92041

b. Date and reason last consulted? 1986 - follow-up on cervical disc

c. What treatment was given or medication prescribed? no

- 2 Have you ever been treated for or ever had any known indication of:
- a. Disorder of eyes, ears, nose, or throat?  Yes  No
  - b. Dizziness, fainting, convulsions, headache; speech defect, paralysis or stroke; mental or nervous disorder?  Yes  No
  - c. Shortness of breath, persistent hoarseness or cough, blood spitting; bronchitis, pleurisy, asthma, emphysema, tuberculosis or chronic respiratory disorder?  Yes  No
  - d. Chest pain, palpitation, high blood pressure, rheumatic fever, heart murmur, heart attack or other disorder of the heart or blood vessels?  Yes  No
  - e. Jaundice, intestinal bleeding, ulcer, hernia, appendicitis, colitis, diverticulitis, hemorrhoids, recurrent indigestion, or other disorder of the stomach, intestines, liver or gallbladder?  Yes  No
  - f. Sugar, albumin, blood or pus in urine; venereal disease; stone or other disorder of kidney, bladder, prostate or reproductive organs?  Yes  No
  - g. Diabetes; thyroid or other endocrine disorders?  Yes  No
  - h. Neuritis, sciatica, rheumatism, arthritis, gout, or disorder of the muscles or bones, including the spine, back or joints?  Yes  No
  - i. Deformity, lameness or amputation?  Yes  No
  - j. Disorder of skin, lymph glands, cyst, tumor, or cancer?  Yes  No
  - k. Allergies; anemia, hemophilia or leukemia?  Yes  No

DETAILS of "Yes" answers. (IDENTIFY QUESTION NUMBER, CIRCLE APPLICABLE ITEMS: Include diagnoses, dates, duration and names and addresses of all attending physicians and medical facilities.)

otitis externa & x 2 yrs  
Dr Marty Levin, 169 d E Main, El Centro, CA 92527  
antibiotics, no residue  
a new prescriber of glasses  
myopia & pres byopia, 2/87  
Tel Al ages, no residue  
hx chronic allergies, bothers  
let 15 yrs. Secuity Bruce Pinger  
6640 Alvarado Rd, San Diego, CA 92121  
problem mostly during winter months  
no current problem or tx.  
1982 - L2-3 disc herniation  
tx 2 test, Dr Fred Baughman  
not bothersome at this time  
cervical disc x 3 yr - 2  
to auto accident, surgery  
Dr John Alksne 225 Dickens St  
San Diego CA 92103 - 5540  
disc above on all 4's  
ECG - EKG for insurance  
physical - Monarch (disability insurance) 3-4 months ago.

3. Are you now under observation or taking treatment?  Yes  No
4. Have you had any change in weight in the past year?  Yes  No
5. Other than above, have you within the past 5 years:
- a. Had any mental or physical disorder not listed above?  Yes  No
  - b. Had a checkup, consultation, illness, injury, surgery?  Yes  No
  - c. Been a patient in a hospital, clinic, sanatorium, or other medical facility?  Yes  No
  - d. Had electrocardiogram, X-ray, other diagnostic test?  Yes  No
  - e. Been advised to have any diagnostic test, hospitalization, or surgery which was not completed?  Yes  No
6. Have you ever used barbiturates, narcotics, excitants or hallucinogens or ever sought treatment or been arrested for their use?  Yes  No
7. Have you ever sought help or treatment for alcohol use?  Yes  No
8. a. Have you ever had any disorder of menstruation, pregnancy or of the reproductive organs or breasts?  Yes  No
- b. To the best of your knowledge and belief, are you now pregnant?  Yes  No
9. Have you ever had military service deferment, rejection or discharge because of a physical or mental condition?  Yes  No
10. Have you ever requested or received a pension, benefits, or payment because of an injury, sickness or disability?  Yes  No

11 Family History: (Father, Mother, Brothers, Sisters) Tuberculosis, diabetes, cancer, high blood pressure, heart or kidney disease, mental illness or suicide?  Yes  No

a	Age if Living?	Age at Death?	Cause of Death?	b	Number Living?	Number Dead?	Age if Living?	Age at Death?	Cause of Death?
Father		18	heart disease	Brothers					
Mother		74	heart disease	Sisters					

The foregoing statements are full, complete, and true to the best of my knowledge and belief. Dated at 11/12/97

PARAMEDICAL ORGANIZATION (Please stamp or type below) this 12 day of November 1997  
 (X) Jack H. [Signature]  
 Signature of person examined **63**

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 500 South Grand Avenue, Suite 1200, Los Angeles, California 90071.

On July 2, 1997, I served the foregoing document described as **NOTICE OF REMOVAL OF CIVIL ACTION** the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Guy A. Ricciardulli  
Attorney at Law  
1650 Hotel Circle North, #115  
San Diego, California 92108  
(619) 293-7313

/X/ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

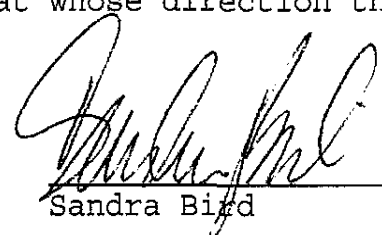
Executed on July 2, 1997, at Los Angeles, California.

// (BY PERSONAL SERVICE) I delivered such envelope by hand to the office of the addressee.

Executed on \_\_\_\_\_ at Los Angeles, California.

// State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/X/ Federal: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
\_\_\_\_\_  
Sandra Bird

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Jack H. Dym, M.D.

DEFENDANTS

Provident Life and Accident Insurance Insurance Company and DOES I through XX, Inclusive

Hamilton County,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Tennessee  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

**97 cv 1267 JM (AJB)**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Guy A. Ricciardulli (619) 293-7313  
Attorney at Law  
1650 Hotel Circle North, #115  
San Diego, California 92108

ATTORNEYS (IF KNOWN)

Stephen H. Galton (213) 629-8800  
GALTON & HELM  
500 South Grand Avenue, Suite 1200  
Los Angeles, California 90071

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- |                                       |                                     |                          |   |                          |                                     |
|---------------------------------------|-------------------------------------|--------------------------|---|--------------------------|-------------------------------------|
|                                       | PT                                  | DEF                      |   | PT                       | DEF                                 |
| Citizen of This State                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> | <input type="checkbox"/>            |
| Citizen of Another State              | <input type="checkbox"/>            | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Citizen or Subject of Foreign Country | <input type="checkbox"/>            | <input type="checkbox"/> | Foreign Nation  | <input type="checkbox"/> | <input type="checkbox"/>            |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Removal under 28 U.S.C. Section 1332(a)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	PROPERTY RIGHTS	SOCIAL SECURITY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property, 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWP (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights				

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUEST FOR COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE None

Docket Number

DATE July 3, 1997

SIGNATURE OF ATTORNEY OF RECORD By: *[Signature]*

Stephen H. Galton  
Attorney for Defendant  
Provident Life and Accident  
Insurance Company

31216 150 - 7/3/97

**FILED**  
JUL 3 1997  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

USDC SCAN INDEX SHEET



DYM

PROVIDENT LIFE

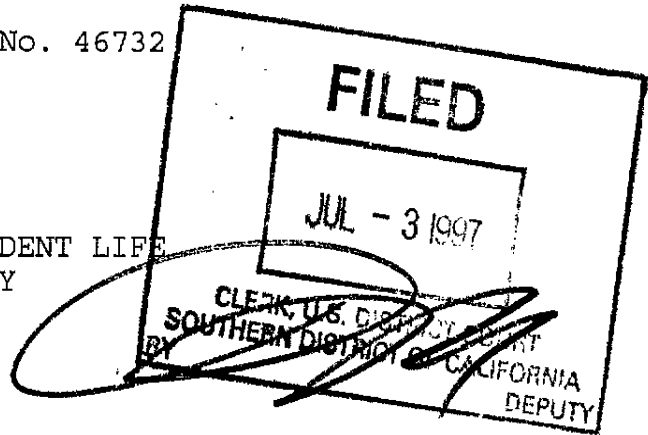
RCM 7/3/97 16:05

3:97-CV-01267

\*1\*

\*NTCREM.\*

1 GALTON & HELM  
STEPHEN H. GALTON, State Bar No. 46732  
2 500 South Grand Avenue  
Suite 1200  
3 Los Angeles, CA 90071-2624  
(213) 629-8800  
4 Attorneys for Defendant PROVIDENT LIFE  
5 AND ACCIDENT INSURANCE COMPANY



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 JACK H. DYM, M.D., )  
12 Plaintiff, )  
13 v. )  
14 PROVIDENT LIFE AND ACCIDENT )  
INSURANCE COMPANY and DOES I )  
15 through XX, Inclusive, )  
16 Defendants. )

Case No. '97 CV 1267 JM (AJB)  
NOTICE OF REMOVAL OF CIVIL  
ACTION  
[Diversity Jurisdiction -  
28 U.S.C. § 1332(a)]

17

18 TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

19

20 Defendant Provident Life and Accident Insurance Company  
21 ("Provident") hereby serves notice of its removal of the above-  
22 entitled action to the United States District Court for the  
23 Southern District of California, from the Superior Court of the  
24 State of California for the County of San Diego, and respectfully  
25 alleges:

26 ///  
27 ///  
28 ///

1 PLEADINGS AND PROCEEDINGS TO DATE

2  
3 1. Provident is a Defendant in a civil action filed by  
4 Plaintiff Jack H. Dym, M.D. ("Dym") on May 28, 1997, in the  
5 Superior Court of the State of California, in and for the County  
6 of San Diego, Case No. 710986. Attached hereto as Exhibit "A"  
7 are true copies of the Summons and Complaint in said action, a  
8 Notice of Case Assignment, and a Statement of Damages. Said  
9 pleadings are the only pleadings filed with the court as of this  
10 date. No responsive pleadings have as yet been filed by any  
11 Defendants.  
12

13 CITIZENSHIP OF THE PARTIES

14  
15 2. Defendant Provident was and now is a corporation duly  
16 organized and existing under the laws of the State of Tennessee,  
17 with its principal place of business located in the City of  
18 Chattanooga, State of Tennessee.  
19

20 3. Provident alleges on the basis of information and  
21 belief that Plaintiff Dym is an individual who was and now is a  
22 citizen of the State of California, residing in San Diego County,  
23 California.

24 ///

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1   G  R  O  U  N  D  S  F  O  R  R  E  M  O  V  A  L    
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3                 4.     This is a suit of a wholly civil nature brought in a  
4 California court. The action is pending in San Diego County,  
5 California, and accordingly, under 28 U.S.C. § 84(d) and 1441(a),  
6 the United States District Court for the Southern District of  
7 California is the proper form for removal.  
8

9                 5.     The matter in controversy is in excess of \$75,000,  
10 inclusive of interests and costs. In a Statement of Damages  
11 filed in this action, Dym alleges that he is entitled to general  
12 damages of \$750,000, economic damages of \$750,000, and punitive  
13 damages of \$7.5 million.  
14

15                 6.     The Complaint names as additional Defendants Does I  
16 through XX, inclusive. Said fictitious Defendants have not been  
17 served with Summons and Complaint in this action, and by reason  
18 of the provisions of 28 U.S.C. § 1441(a), said fictitious  
19 Defendants are to be disregarded for purposes of removal.  
20

21   T  I  M  E  L  I  N  E  S  S  O  F  R  E  M  O  V  A  L    
22

23                 7.     A copy of the Summons and Complaint herein was first  
24 received by Provident on June 10, 1997. This Notice of Removal  
25 is filed within thirty days of said date, and within one year of  
26 the date of commencement of the action. This removal is  
27 therefore timely under 28 U.S.C. § 1446(b).  
28

28     ///

1           WHEREFORE, Defendant Provident hereby notifies Dym and his  
2 attorneys that the above entitled action, formerly pending in the  
3 Superior Court of the State of California for the County of San  
4 Diego, Case No. 710986, has been removed from that court to this  
5 United States District Court, Southern District of California.

6  
7 DATED: July 3, 1997

GALTON & HELM  
STEPHEN H. GALTON

8  
9  
10 By 

STEPHEN H. GALTON

11 Attorneys For Defendant PROVIDENT  
12 LIFE AND ACCIDENT INSURANCE  
13 COMPANY  
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INDEPENDENT CALENDAR CLERK

330 W. Broadway  
San Diego, CA 92101

TO:

GUY A. RICCIARDULLI  
ATTORNEY AT LAW  
1650 HOTEL CIRCLE N #115  
SAN DIEGO, CA 92108

JACK H. DYM MD

Plaintiff(s)

Case No.: 710986

**NOTICE OF CASE ASSIGNMENT**

vs.

PROVIDENT LIFE AND ACCIDENT INSURANC  
Defendant(s)

Judge: VINCENT P. DI FIGLIA  
Department: 42  
Phone: 619-685-6018

COMPLAINT FILED 05/28/97

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH LOCAL RULES OF COURT WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Appeals from the lower court, small claims appeals and petitions.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SUPCT CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document. (Rule 1.4)

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.) (Rule 1.5)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (Rule 1.5)

**CASE MANAGEMENT CONFERENCE:** A Case Management Conference will be set within 150 days of filing the complaint.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT THROUGH SAN DIEGO MEDIATION CENTER 619-238-2400. THERE IS NO CHARGE FOR THE FIRST FOUR HOUR SESSION. MEDIATION SERVICES ARE ALSO AVAILABLE THROUGH OTHER ORGANIZATIONS FOR A FEE.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN MEDIATION OR ARBITRATION PURSUANT TO CCP 1775 OR 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE \$150 FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND STIPULATE TO AN AVAILABLE MEDIATOR/ARBITRATOR ON THE COURT'S LISTS OF PROVIDERS LOCATED IN THE ARBITRATION DEPARTMENT AT EACH COURT LOCATION. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SUPCT CIV-357 OR 358 AT LEAST 10 DAYS PRIOR TO THAT HEARING.

**CERTIFICATE OF SERVICE**

I, KENNETH E. MARTONE, certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by placing a true copy in a separate envelope, addressed as shown; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at SAN DIEGO California.

Dated: 05/29/97

KENNETH E. MARTONE Clerk of the Superior Court  
by DEBRA JONES, Deputy Clerk

1 GUY A. RICCIARDULLI, SB #116128  
ATTORNEY AT LAW  
2 1650 HOTEL CIRCLE NORTH, #115  
SAN DIEGO, CALIFORNIA 92108  
3 9619) 293-7313  
4 ATTORNEY FOR PLAINTIFF

JUN 10 1997  
hand delivered  
no envelope


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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

JACK H. DYM, M.D. ) CASE NO. 710986  
)  
PLAINTIFF, )  
)  
V. )  
)  
PROVIDENT LIFE AND ACCIDENT, )  
INSURANCE COMPANY and DOES I )  
Through XX, Inclusive, )  
)  
DEFENDANTS. ) IC JUDGE: VINCENT P. DI FIGLIA  
DEPT: 42

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:  
Plaintiffs submit the following Statement of Damages:  
1. General Damages \$750,000.00  
2. Economic Damages \$750,000.00  
3. Punitive Damages \$7,500,000.00



Dated: MAY 28, 1997

  
GUY A. RICCIARDULLI  
ATTORNEY FOR PLAINTIFFS

# SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT: (Aviso a Acusado)**  
PROVIDENT LIFE AND ACCIDENT INSURANCE  
COMPANY and DOES I Through XX, Inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:**  
*(A Ud. le está demandando)*  
JACK H. DYM, M.D.

<p>You have <b>30 CALENDAR DAYS</b> after this summons is served on you to file a typewritten response at this court.</p> <p>A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.</p> <p>If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.</p> <p>There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).</p>	<p><i>Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.</i></p> <p><i>Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.</i></p> <p><i>Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.</i></p> <p><i>Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).</i></p>
---	---

The name and address of the court is: *(El nombre y dirección de la corte es)*  
**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

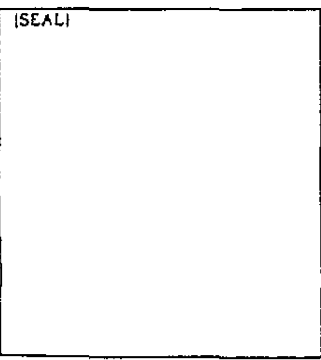
CASE NUMBER. (Número del Caso)  
**00710986**

- CENTRAL COURT, 220 W. BROADWAY, SAN DIEGO, CA 92101-3409
- FAMILY COURT, 1501-55 SIXTH, SAN DIEGO, CA 92101-1946
- NORTH COUNTY BRANCH, 325 S. MELROSE, VISTA, CA 92083-6627
- EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913
- SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694
- JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)*  
**GUY A. RICCIARDULLI (619) 293-7313**  
 ATTORNEY AT LAW  
 1650 Hotel Circle North, #115  
 San Diego, Ca 92108 State Bar #116128

Date: MAY 26 1997  
*(Fecha)*

**KENNETH E. MARTONE**  
 CLERK OF THE SUPERIOR COURT  
 by *DIANNE SMITH*, Deputy  
*(Actuario)* *(Delegado)*



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of *(specify)*:
3.  on behalf of *(specify)*: **PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY**  
 under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (individual)  
 other:
4.  by personal delivery on *(date)*:

7

1 GUY A. RICCIARDULLI, SB #116128  
ATTORNEY AT LAW  
2 1650 HOTEL CIRCLE NORTH, #115  
SAN DIEGO, CALIFORNIA 92108  
3 (619) 293-7313

4 ANDREW J. EDENBAUM, SB #89475  
12780 HIGH BLUFF DRIVE, #100  
5 SAN DIEGO, CA 92122  
(619) 259-8778

6 ATTORNEYS FOR PLAINTIFF  
7

F  
Clerk of the Superior Court

MAY 28 1997

By:  Deputy

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 JACK H. DYM, M.D. )

CASE NO.

00710986

11 PLAINTIFF, )

COMPLAINT TORTIOUS BREACH OF  
INSURANCE CONTRACT, FRAUD AND  
12 V. ) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS

13

13 PROVIDENT LIFE AND ACCIDENT, )  
INSURANCE COMPANY and DOES I )  
14 Through XX, Inclusive, )

15 DEFENDANTS. )  
16

17 FIRST CAUSE OF ACTION

18 TORTIOUS BREACH OF INSURANCE CONTRACT

19 COMES NOW the Plaintiff, JACK DYM, M.D., and for a first cause  
20 of action against the Defendants, and each of them, complains and  
21 alleges as follows:

22 1. Plaintiff is informed and believes and thereon alleges that  
23 at all times herein mentioned Defendant PROVIDENT LIFE AND ACCIDENT  
24 INSURANCE COMPANY was, and is, a Tennessee corporation authorized to  
25 transact, and transacting, business in California as a life, accident  
26 and disability insurer.

27 2. On or about December 14, 1987, and again on October 9,  
28 1988, in San Diego County, Defendant executed, issued, and

1 delivered to Plaintiff, as the named insured, its written policies  
2 of disability insurance, numbers 6-335-806486 and 6-335-816358,  
3 hereinafter referred to as "the policies," in consideration of  
4 initial premiums of \$2,021.80 and \$2,340.51, which premiums were  
5 paid by plaintiff to and accepted by Defendant as consideration for  
6 the execution, issuance, and delivery of the policies, and in  
7 further consideration of the payment to Defendant of annual  
8 premiums which increased in each ensuing year. (Copies of the  
9 disability insurance policies are attached hereto as Exhibits A and  
10 B and made a part hereof as though fully set forth.)

11 3. Each policy provided that if Plaintiff should sustain  
12 accidental bodily injuries while the policy was in full force and  
13 effect and if such injuries should result in disability which would  
14 continuously prevent Plaintiff from performing the substantial and  
15 material duties pertaining to his occupation as an obstetrical and  
16 gynecological physician/surgeon, Defendant would pay Plaintiff the  
17 sums of \$2,000 and \$3,000 per month for the period of each such  
18 total disability, commencing on the first day after the elimination  
19 period of such total disability, but not beyond the maximum benefit  
20 period.

21 4. At the time the policies were issued, to and including the  
22 time Plaintiff sustained accidental bodily injuries as herein  
23 alleged, Plaintiff was employed as an obstetrical and gynecological  
24 physician/surgeon.

25 5. On or about January 13, 1996, while the policies were in  
26 full force and effect, Plaintiff was injured in an automobile  
27 accident, hereinafter referred to as "the accident," and as a  
28 result of which Plaintiff sustained a herniated cervical disc and

1 spinal cord contusion/compression.

2 6. These injuries proximately resulted in Plaintiff's total  
3 disability, as defined by the insurance contracts, in that  
4 Plaintiff, as a proximate result of his injuries as herein alleged,  
5 has been, and continues to be, prevented from performing the  
6 substantial and material duties of his occupation.

7 7. On or about February 29, 1996, Plaintiff furnished  
8 Defendant written notice of his claim and proof of loss and has  
9 otherwise performed all the terms and conditions of the policies on  
10 his part to be performed.

11 8. Defendant, pursuant to its contractual obligations and  
12 Plaintiff's proof of loss, made total disability payments to  
13 Plaintiff from April 20, 1996 until January 20, 1997. Thereafter,  
14 Defendant, without justification, terminated Plaintiff's payments.

15 9. There is, under the terms of the insurance contracts, now  
16 past due and owing to Plaintiff from Defendant the sum of  
17 \$20,000.00. Plaintiff has demanded payment of this sum from  
18 Defendant, but Defendant, without justification, has failed and  
19 refused, and continues to fail and refuse, to pay that sum or any  
20 part thereof.

21 10. As a proximate result of Defendant's failure and refusal  
22 as herein alleged, Plaintiff has been damaged in the sum of  
23 \$20,000.00 and continuing monthly, together with interest thereon  
24 at the legal rate from the date payment should have been made under  
25 the terms of the policies until it is paid.

26 11. Defendant, despite its express knowledge that Plaintiff,  
27 as a proximate result of the accident, is totally disabled as  
28 defined in the insurance contracts, willfully and maliciously

1 withheld, and continues to withhold, payment of said benefits to  
2 Plaintiff.

3 12. Notwithstanding Defendant's knowledge of its obligation  
4 to pay the full benefits and, after significant delay, Defendant  
5 offered Plaintiff only payment under the residual disability  
6 benefits provisions.

7 13. For the sole purpose of compelling Plaintiff to accept  
8 the lesser payment, under the residual disability provisions, in  
9 settlement of his claim, or if he persisted in seeking payment  
10 under the total disability provisions, to incur substantial  
11 detriment, delay, and additional expenditures in pursuing  
12 enforcement of his claim, all during which time Defendant would  
13 retain use of the policy benefit money, Defendant, in breach of the  
14 implied covenant of good faith and fair dealing, intentionally,  
15 maliciously, and oppressively refused and failed to pay Plaintiff  
16 in accordance with the terms of the insurance contract.

17 14. As a further direct and proximate result of Defendant's  
18 wrongful conduct as herein alleged, Plaintiff suffered the loss of  
19 use of the monthly benefits from the date they should have been  
20 paid and continuing until they are paid in full. Further,  
21 Plaintiff has been required to hire attorneys and pursue litigation  
22 in order to obtain his bargained for insurance benefits, all to his  
23 damage in an amount within the jurisdiction of this Court and  
24 according to proof.

25 15. As a further direct and proximate result of Defendant's  
26 wrongful conduct as herein alleged, Plaintiff sustained severe  
27 emotional and mental distress and anguish, embarrassment,  
28 mortification, humiliation, and indignity all to his general damage



1 in an additional sum within the jurisdiction of this Court and  
2 according to proof.

3 16. Defendant's wrongful conduct as herein alleged was done  
4 intentionally and was malicious, oppressive and fraudulent in  
5 nature, and Plaintiff is therefore entitled to recover punitive  
6 damages in an amount within the jurisdiction of this Court and  
7 according to proof at the time of trial herein.

8 SECOND CAUSE OF ACTION

9 FRAUD

10 COMES NOW the Plaintiff and for a second and separate cause of  
11 action against the Defendants, and each of them, complains and  
12 alleges as follows:

13 17. Plaintiff hereby realleges and incorporates herein by  
14 reference each and every allegation contained in paragraphs one (1)  
15 through sixteen (16) of his first cause of action as though fully  
16 set forth herein.

17 18. Prior to issuance of the subject insurance policies,  
18 Plaintiff was solicited by, and had conversations with, Defendant  
19 insurer's agent. These conversations were conducted for the  
20 purpose of soliciting Plaintiff as a policy holder with Defendant  
21 insurer. During the course of these conversations, and in their  
22 public advertisements, Defendant insurer, and its agent, falsely  
23 and fraudulently represented to Plaintiff that should a claim  
24 arise, Defendant would provide prompt and fair service and timely  
25 pay benefits.

26 19. Defendant's above stated representations were false and  
27 fraudulent in that Defendant never intended to pay a sum equal to  
28 its monthly benefits in settlement of a claim under the total

1 disability provisions of the policies, but instead, had, and still  
2 has, a fixed and firm policy of contesting such claims. At the  
3 time Defendant entered into the subject insurance contracts with  
4 Plaintiff, Defendant willfully concealed the above facts, all for  
5 the purpose of defrauding and deceiving Plaintiff and inducing him  
6 to purchase said policies.

7 20. Plaintiff, at the time the representations were made,  
8 believed them to be true and in reliance on them was induced to,  
9 and did, enter into the insurance contracts with Defendant. The  
10 true facts were that Defendant insurer did not intend to pay the  
11 full contractual benefits due under Plaintiff's policies, and  
12 further, the Defendant insurer intended to deal with Plaintiff and  
13 other insureds in bad faith and with the intention of using any  
14 methods at its disposal to avoid legitimate payments under the  
15 policies. Had Plaintiff known the true facts, he would not have  
16 purchased the policies.

17 21. As a direct and proximate result of Defendant insurer's  
18 false representations and its subsequent failure to pay benefits  
19 due under the policies, Plaintiff was forced to employ the services  
20 of attorneys in an attempt to secure payment to which he was  
21 entitled, all to his detriment in an amount within the jurisdiction  
22 of this Court and according to proof.

23 22. At all times material, Defendant insurer was, and now is,  
24 aware that it was and is obligated to pay the bargained for  
25 benefits to Plaintiff. The conduct of Defendant insurer as herein  
26 alleged has been malicious and oppressive to Plaintiff. As a  
27 result of this fraudulent, malicious and oppressive conduct,  
28 Plaintiff has suffered great mental anguish, mortification,

1 humiliation, and shame, and has become sick and ill, all to his  
2 general damage in an amount within the jurisdiction of this Court  
3 and according to proof.

4 23. The conduct of the Defendant insurer in this action has  
5 been intentionally and wrongfully performed and has been  
6 fraudulent, malicious and oppressive in nature and Plaintiff is  
7 therefore entitled to recover punitive damages.

8 THIRD CAUSE OF ACTION

9 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

10 COMES NOW the Plaintiff and for a third and separate cause of  
11 action against the Defendants, and each of them, complains and  
12 alleges as follows:

13 24. Plaintiff hereby realleges and incorporates herein by  
14 reference each and every allegation contained in paragraphs one (1)  
15 through sixteen (16) of his first cause of action and paragraphs  
16 seventeen (17) through twenty-three (23) of his second cause of  
17 action as though fully set forth herein.

18 25. Defendant, despite its express knowledge of its  
19 contractual obligation to pay Plaintiff the bargained for  
20 benefits, willfully and maliciously withheld payment of the monthly  
21 total disability benefits from Plaintiff.

22 26. Defendant's conduct was intentional, malicious and done  
23 for the purpose of causing Plaintiff to suffer humiliation, mental  
24 anguish, and emotional and physical pain and suffering, and was  
25 done with knowledge that Plaintiff's emotional and physical  
26 distress would thereby increase, and was done with wanton and  
27 reckless disregard of the consequences to Plaintiff. Further,  
28 Defendant undertook this course of conduct at a time when it knew

1 that Plaintiff was financially most vulnerable secondary to his  
2 total disability.

3 27. As the proximate result of the aforementioned acts,  
4 Plaintiff suffered humiliation, mental anguish, and emotional and  
5 physical distress, and has been injured in mind and body, all to  
6 Plaintiff's damage in an amount within the jurisdiction of this  
7 court and according to proof.

8 28. The aforementioned acts of the Defendant were willful,  
9 wanton, malicious, and oppressive and justify the awarding of  
10 punitive damages in an amount according to proof.

11 WHEREFORE, Plaintiff prays judgment against the Defendants,  
12 and each of them, as follows:

13 First Cause of Action

- 14 1. For a sum according to proof as general damages;
- 15 2. For a sum compensating Plaintiff for attorneys fees and  
16 legal costs incurred in the pursuit of the claim.
- 17 3. For interest at the legal rate on the sum of the policy  
18 benefits from the date each installment should have been paid to  
19 the present and continuing to the date it is finally paid.
- 20 4. For exemplary and punitive damages in a sum according to  
21 proof;
- 22 5. For costs of suit herein incurred;
- 23 6. For such other and further relief as the court may deem  
24 just and proper.

25 Second Cause of Action

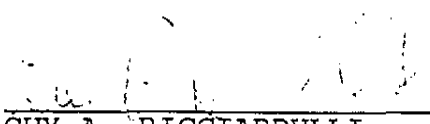
- 26 1. For general damages in a sum according to proof;
- 27 2. For punitive damages in a sum according to proof;
- 28 3. For costs of suit herein incurred;

1 4. For such other and further relief as the Court may deem  
2 just and proper.

3 Third Cause of Action

- 4 1. For general damages in a sum according to proof;  
5 2. For punitive damages in a sum according to proof;  
6 3. For cots of suit herein incurred;  
7 4. For such other and further relief as the Court may deem  
8 just and proper.

9  
10 DATED: May 21, 1997

  
GUY A. RICCIARDULLI  
ATTORNEY FOR Plaintiff

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In this policy, the words "you" and "your" mean you, the Insured named below; "we," "our" and "us" mean Provident Life and Accident Insurance Company.

We will pay benefits for covered loss resulting from Injuries or Sickness subject to all of the provisions of this policy. Loss must begin while the policy is in force.

This policy is a legal contract between you and us. It is issued in consideration of the payment in advance of the required premium and of your statements and representations in the application. A copy of your application is attached and made a part of the policy.

**NON-CANCELLABLE AND GUARANTEED CONTINUABLE TO AGE 65 AT GUARANTEED PREMIUMS:** You can continue this policy to age 65 by paying premiums on time. The premiums shown in the Policy Schedule on Page 3 are guaranteed to age 65.

**CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED:** You can renew this policy as long as you are actively and gainfully working full time; there is no age limit. You must pay premiums on time at our premium rates then in effect at time of renewals. (For further conditions, see the page titled "Premiums and Renewals." See Page 7 for the benefit provisions that will be included in the continued policy.)

## DISABILITY INCOME POLICY

JACK H DYH MD, the Insured  
Policy Number 6-335-806486

10 day right to examine your policy - We want you to fully understand and be entirely satisfied with your policy. If you are not satisfied for any reason, you may return the policy to us, or to the agent through whom it was purchased, within 10 days of its receipt. We will refund any premiums you have paid within 10 days after we receive your notice of cancellation and the policy. It will be considered never to have been issued.

17

## GUIDE TO POLICY PROVISIONS

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READ YOUR POLICY CAREFULLY

18







P O L I C Y S C H E D U L E

Insured - JACK H DYM MD Policy Number - 6-335-806486  
 Effective Date - October 1, 1987 First Renewal Date - October 1, 1988  
 Issue Date - October 9, 1987 Renewal Term - Twelve Months

Annual Policy Premium payable from October 1, 1987 until the first UPDATE Increase Date (see Page 3 (cont.)) is \$2,021.80 on a non smoking premium basis.

Other Premium Paying Methods:  
 \$1,031.12 Semi-Annually  
 525.67 Quarterly  
 171.85 Monthly (Preauthorized Bank Draft Only)

-----MONTHLY BENEFIT FOR TOTAL DISABILITY-----

\$2,000.00

-----ELIMINATION PERIOD-----

60 days of Total and/or Residual Disability

An Elimination Period starting after age 65 must consist entirely of days of Total Disability

-----MAXIMUM BENEFIT PERIODS-----

Injuries:

Total Disability starting before age 65 .....	for Life
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Sickness:

Total Disability starting before age 60 .....	for Life
Total Disability starting at age 60 but before age 61 .....	to age 65
Total Disability starting at age 61 but before age 62 .....	48 months
Total Disability starting at age 62 but before age 63 .....	42 months
Total Disability starting at age 63 but before age 64 .....	36 months
Total Disability starting at age 64 but before age 65 .....	30 months
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Rehabilitation Expense ..... \$6,000.00 Maximum Amount

Treatment of Injuries (Payable if disability benefits not paid) ..... \$1,000.00 Maximum Amount

-----ADDITIONAL BENEFITS-----

(The premium shown for each benefit is included in the Policy Premium shown above.)

Residual Disability Benefit .....Page 8 Premium \$302.80

(Policy Schedule is continued on next page.)

21

POLICY SCHEDULE (continued)

Cost of Living Adjustments (COLA) with Guaranteed  
Percentage Increase (GPI) Option .....Page 12

Maximum COLA Percentage .....	4%	Premium	\$220.00
Available GPI .....	8%	Premium	\$44.00
Total COLA/GPI Premium			\$264.00

(Policy Schedule is continued on next page.)

*22*

## POLICY SCHEDULE (Continued)

## -----UPDATE-----

The benefits and premium named below will be automatically increased without evidence of insurability, as follows:

UPDATE Increase Date	New Monthly Benefit for Total Disability	New Maximum Amount for Rehabilitation Expense	New Maximum Amount for Treatment of Injuries	New Annual Premium for this Policy
10/01/88	\$2,140.00	\$6,420.00	\$1,070.00	\$2,174.50
10/01/89	\$2,290.00	\$6,870.00	\$1,145.00	\$2,345.44
10/01/90	\$2,460.00	\$7,380.00	\$1,230.00	\$2,547.28
10/01/91	\$2,640.00	\$7,920.00	\$1,320.00	\$2,769.78
10/01/92	\$2,830.00	\$8,490.00	\$1,415.00	\$3,013.83

UPDATE Benefit increases are effective on the UPDATE Increase Dates shown. If an UPDATE Increase Date shown does not coincide with a renewal date for this policy, the increase will be effective on the next renewal date.

An UPDATE Benefit increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability. If the premium for the policy is being waived on the effective date of the increase, the premium for the increase will also be waived. When you resume paying premiums for the policy, you must also start paying the premium for the increase.

You are entitled to UPDATE Benefit increases on the dates shown above. If you do not accept an increase, your refusal:

1. forfeits your right on that UPDATE Increase Date to the UPDATE Benefit increase;
2. postpones the schedule of benefit increases to the next UPDATE Increase Date, if any;
3. adjusts the premiums for the remaining increases, if any, since such premiums are based on your attained age at the time of an UPDATE Benefit increase; and
4. in no way extends the last UPDATE Increase Date shown above.

Each refusal of an UPDATE Benefit increase reduces the number of UPDATE Benefit increases to which you were entitled by one.

If you are under age 59 on the last UPDATE Increase Date, you may apply for an amendment providing additional UPDATE Benefit increases. You can do this by making formal application within the period of 60 days prior to and 31 days after the last UPDATE Increase Date. Approval will be subject to our underwriting guidelines then in effect.

23

## DEFINITIONS

Injuries means accidental bodily injuries occurring while your policy is in force.

Sickness means sickness or disease which is first manifested while your policy is in force.

age, when used before a number, such as in "age 65", means the ending date of the policy term in which you attain that age. A policy term is described on the page titled "Premiums and Renewals."

Physician means any person other than you who is licensed by law, and is acting within the scope of the license, to treat Injuries or Sickness which results in covered loss.

Total Disability or totally disabled means that due to Injuries or Sickness:

1. you are not able to perform the substantial and material duties of your occupation; and
2. you are receiving care by a Physician which is appropriate for the condition causing the disability.

your occupation means the occupation (or occupations, if more than one) in which you are regularly engaged at the time you become disabled. If your occupation is limited to a recognized specialty within the scope of your degree or license, we will deem your specialty to be your occupation.

period of disability means a period of disability starting while this policy is in force. Successive periods will be deemed to be the same period unless the later period:

1. is due to a different or unrelated cause, or
2. starts more than twelve months after the end of the previous period;

in which event, the later period will be a new or separate period of disability. A new Elimination Period must then be met. And, a new Maximum Benefit Period will apply.

Elimination Period means the number of days of disability that must elapse in a period of disability before benefits become payable. The number of days is shown on Page 3. These days need not be consecutive; they can be accumulated during a period of disability to satisfy an Elimination Period. Benefits are not payable, nor do they accrue, during an Elimination Period.

24

#### EXCLUSION

We will not pay benefits for loss caused by war or any act of war, whether war is declared or not.

Additional exclusions, if any, appear in the Policy Schedule.

#### PRE-EXISTING CONDITION LIMITATION

We will not pay benefits for loss starting within two years of the Effective Date of this policy which is caused by a Pre-existing Condition. A claim for benefits for loss starting thereafter will not be reduced or denied on the ground it is caused by a Pre-existing Condition unless the condition is excluded by name or specific description. Pre-existing Condition means a physical impairment, deformity or a medical condition that was not disclosed, or that was misrepresented, in answer to a question in the application for this policy. A medical condition means a sickness or physical condition which either: 1) resulted in your receiving medical advice or treatment; or 2) caused symptoms for which an ordinarily prudent person would seek medical advice or treatment.

#### BENEFITS

##### TOTAL DISABILITY

We will pay the Monthly Benefit for Total Disability shown on Page 3 as follows:

1. Benefits start on the day of Total Disability following the Elimination Period.
2. Benefits will continue while you are totally disabled during the period of disability but not beyond the Maximum Benefit Period.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

**PRESUMPTIVE TOTAL DISABILITY - LOSS OF SPEECH, HEARING, SIGHT OR THE USE OF TWO LIMBS**  
You will be presumed totally disabled if Injuries or Sickness results in the entire and permanent loss of:

1. speech;
2. hearing in both ears;
3. the sight of both eyes; or
4. the use of both hands, or of both feet or of one hand and one foot.

You must present satisfactory proof of your loss. Your ability to work will not matter. Further medical care will not be required. Benefits will be paid according to the Total Disability provisions of this policy. But, benefits will start on the date of loss if earlier than the day benefits start as shown on Page 3. If loss occurs before you attain age 65, the Monthly Benefit for Total Disability will be paid as long as you live regardless of the Maximum Benefit Period shown on Page 3.

25

#### TRANSPLANT SURGERY

You might be disabled from the transplant of part of your body to another person. If so, we will consider it to be the result of a Sickness.

#### COSMETIC SURGERY

You might be disabled from surgery to improve your appearance or to correct disfigurement. If so, we will consider it to be the result of a Sickness.

#### PREGNANCY

You might be disabled from pregnancy or childbirth. If so, we will consider it to be the result of a Sickness.

#### WAIVER OF PREMIUM

After you have been totally disabled for 90 days during a period of disability, we will:

1. refund any premiums which became due and were paid while you were totally disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep this policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability.

#### REHABILITATION

Total Disability - Your participation in a program of occupational rehabilitation will not of itself be considered a recovery from Total Disability.

Expense - If, during a period of Total Disability, you participate in a program of occupational rehabilitation which we approve, we will pay for certain expenses you incur. That is, we will pay for the reasonable cost of training and education which is not otherwise covered under health care insurance, workers' compensation or any public fund or program. But, we will not pay more than the Maximum Amount for Rehabilitation Expense shown on Page 3.

A program of occupational rehabilitation must be designed to help you return to work and be:

1. a formal program of rehabilitation at an accredited graduate school, college or business school, or at a licensed vocational school;
2. a recognized program operated by the federal or a state government; or
3. any other professionally planned rehabilitation program of training or education.

26

TREATMENT OF INJURIES (PAYABLE IF DISABILITY BENEFITS NOT PAID.)

If Injuries require medical treatment prescribed by a Physician, we will pay your expenses for the treatment. But, we will not pay more than the Maximum Amount for Treatment of Injuries shown on Page 3 as a result of any one accident.

If you qualify for payment under this provision and also under a disability provision of this policy because of the same accident, payment will be made under the provision which provides the greater benefit.

BENEFITS WHEN POLICY RENEWED AFTER AGE 65

If this policy is continued in accordance with the "Conditional Right to Renew After Age 65" on Page 1, all of the benefit provisions on Pages 5, 6 and 7 will be included in the continued policy. (Any additional benefit provision contained in this policy will not be included unless it is named on Page 3 as one that will be included in the continued policy.) The Maximum Benefit Period starting while this policy is so continued is shown on Page 3. The Monthly Benefit for Total Disability will not change unless you choose to renew with a lesser amount.

PAYMENT FOR PART OF MONTH

If any payment under this policy is for part of a month, the daily rate will be 1/30th of the payment which would have been made if disability had continued for the whole month.

27



RESIDUAL DISABILITY BENEFITS

with Recovery Benefits and with Cost of Living Indexing of Prior Monthly Income (Nothing in this provision limits the policy definition of "Total Disability.")

DEFINITIONS

Monthly Income means your monthly income from salary, wages, bonuses, commissions, fees or other payments for services which you render or your business provides. Normal and usual business expenses are to be deducted; income taxes are not. Monthly Income must be earned. It does not include dividends, interest, rents, royalties, annuities, sick pay or benefits received for disability under a formal wage or salary continuation plan or other forms of unearned income.

Monthly Income can be credited to the period in which it is actually received or to the period in which it is earned. We allow either the cash or accrual accounting method. But, the same method must be used to determine the Prior Monthly Income and the Current Monthly Income during a period of disability. If you elect the cash accounting method, we will not include income received for services rendered prior to the start of a period of disability in your Current Monthly Income.

Prior Monthly Income means the greatest of:

1. your average Monthly Income for the 12 months just prior to the start of the period of disability for which claim is made;
2. your average Monthly Income for the year with the highest earnings of the last two years prior to the start of such period of disability; or
3. your highest average Monthly Income for any two successive years of the last five years prior to the start of such period of disability.

Current Monthly Income means your Monthly Income in your occupation for each month of Residual Disability being claimed.

Loss of Monthly Income means the difference between Prior Monthly Income and Current Monthly Income. Loss of Monthly Income must be caused by the Residual Disability for which claim is made. The amount of the loss must be at least 20% of Prior Monthly Income to be deemed Loss of Monthly Income. If your loss is more than 75% of Prior Monthly Income, we will deem the loss to be 100%.

Residual Disability or residually disabled, during the Elimination Period, means that due to Injuries or Sickness:

1. you are not able to do one or more of your substantial and material daily business duties or you are not able to do your usual daily business duties for as much time as it would normally take you to do them;
2. you have a Loss of Monthly Income in your occupation of at least 20%; and
3. you are receiving care by a Physician which is appropriate for the condition causing disability.

After the Elimination Period has been satisfied, you are no longer required to have a loss of duties or time. Residual Disability or residually disabled then means that as a result of the same Injuries or Sickness:

1. you have a Loss of Monthly Income in your occupation of at least 20%; and
2. you are receiving care by a Physician which is appropriate for the condition causing the Loss of Monthly Income.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by certain other benefit provisions if they are included in your policy and are applicable. If included, they are titled "Cost of Living Adjustments of Monthly Benefits" and "Social Insurance Substitute Benefit.")

Residual Disability Monthly Benefit is the benefit payable under this provision. It is determined monthly by this formula. Each month, it equals:

$$\frac{\text{Loss of Monthly Income}}{\text{Prior Monthly Income}} \times \text{Monthly Benefit for Total Disability}$$

RESIDUAL DISABILITY BENEFITS

We will pay Residual Disability Monthly Benefits as follows:

1. Benefits start on the day of Residual Disability following the Elimination Period or, if later, after the end of compensable Total Disability during the same period of disability.
2. Benefits will continue while you are residually disabled during a period of disability but the combined period for which benefits for Total and Residual Disability are payable can not exceed the Maximum Benefit Period. And, benefits will not be payable after you attain age 65.
3. The first six monthly payments for Residual Disability will be the greater of:
  - a. 50% of the Monthly Benefit for Total Disability; or
  - b. the Residual Disability Monthly Benefit determined for each month.

Residual Disability benefits will not be paid for any days for which Total Disability benefits are paid.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

We can require any proof which we consider necessary to determine your Current Monthly Income and Prior Monthly Income. Also, we or an independent accountant retained by us shall have the right to examine your financial records as often as we may reasonably require.

RECOVERY BENEFITS

(Nothing in this provision limits the policy definition of "Residual Disability.")

If you are under age 65 and return to gainful full-time work at the end of a period for which we have paid Total and/or Residual Disability benefits, we will:

1. while you are so engaged in gainful full-time work; and
2. while you are having a Loss of Monthly Income in your occupation of at least 20% due to the same Injuries or Sickness;

pay benefits under this back to work provision as though the same period of disability is continuing. You do not have to be receiving care by a Physician while Recovery Benefits are being paid. Payments will be made for each month, up to 3 months, in which (1) and (2) exist. For the first such month, we will pay a benefit based on the greater of:

- a. the monthly rate computed by the Residual Disability Benefit formula for that month; or
- b. 100% of the actual claim payment made for the 30 days preceding your return to work full time.

The monthly benefit for the second and third months will be computed as in (a) and (b) above; except that, instead of using 100% in (b), 75% will apply for the second month. And, 50% will apply for the third month.

These recovery benefits will not be paid for any days for which Total and/or Residual Disability benefits are paid. And, they will not be paid for more than 3 months in connection with a period of disability.

#### COST OF LIVING INDEXING OF PRIOR MONTHLY INCOME

(Applicable to benefits paid after the 12th month of a period of disability)

#### Definitions

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Index Factor is used by us to determine your adjusted Prior Monthly Income for each Review Period. We will compute this factor by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability.

#### Adjusted Prior Monthly Income

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date for Residual Disability Benefits. Monthly benefits which thereafter accrue during that period of disability will be adjusted by indexing your Prior Monthly Income as follows:

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1. On each Review Date, your Prior Monthly Income will be multiplied by your Index Factor. The result is your adjusted Prior Monthly Income. It will be used to figure your Loss of Monthly Income during the Review Period that follows. It will also be used in the formula to compute each Residual Disability Monthly Benefit payable during that Review Period.

An increase in your Prior Monthly Income can cause your Loss of Monthly Income to be greater. This in turn can result in an increase in your Residual Disability Monthly Benefit. Other than your Index Factor (which is computed by using actual CPI-U values), there is no limit on the percent of increase in your Prior Monthly Income for a Review Period. If the CPI-U should go down, your adjusted Prior Monthly Income can decrease. But, it can never reduce below your Prior Monthly Income at the start of the period of disability.

2. Indexing of your Prior Monthly Income will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of a or b above, disability benefits which can be paid for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

#### WAIVER OF PREMIUM

For periods of disability which start before age 65, the Waiver of Premium provision on Page 6 is replaced by the following:

#### "WAIVER OF PREMIUM - TOTAL DISABILITY AND RESIDUAL DISABILITY

If, during a period of disability, Injuries or Sickness results in more than 90 days of Total and/or Residual Disability, we will:

1. refund any premiums which became due and were paid while you were so disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep your policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability except as respects Recovery Benefits."

NOTE: All portions of this Residual Disability Benefit expire when you attain age 65 even though the policy may be renewed after you attain age 65. No further premiums for it will be due.

COST OF LIVING ADJUSTMENTS WITH GUARANTEED PERCENTAGE INCREASE OPTION  
(Applies to benefits payable after the 12th month of a period of disability)

#### DEFINITIONS

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Benefit Factor is determined by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability. It will apply to the Review Period that follows.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by a "Social Insurance Substitute (SIS) Benefit" if it is included in your policy and when it is applicable).

Adjusted Monthly Benefit for Total Disability is the Monthly Benefit for Total Disability multiplied by the Benefit Factor for a Review Period. But, an Adjusted Monthly Benefit for Total Disability can not:

1. exceed the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by the percentage shown on Page 3 as the Maximum COLA Percentage; or
2. be less than the amount of the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by 4%.

#### BENEFITS

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date. Monthly benefits which thereafter accrue during that period of disability will be adjusted as follows:

1. On each Review Date, we will compute the Benefit Factor and the Adjusted Monthly Benefit for Total Disability for the Review Period that follows.
2. For any Monthly Benefit for Total Disability that accrues during a Review Period, we will pay instead the Adjusted Monthly Benefit for Total Disability.

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3. We will adjust any Residual Disability Monthly Benefit which accrues during a Review Period. To do this, we will use the Adjusted Monthly Benefit for Total Disability in the formula to determine each Residual Disability Monthly Benefit that is to be paid during that Review Period. It will be used in the formula instead of the Monthly Benefit for Total Disability.
4. Computations of Cost of Living Adjustments will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of (a) or (b) above, benefit amounts will revert to those shown on Page 3. Benefits payable for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

If the computations end because of (c) above and if any disability benefits continue to be payable after you attain age 65 for a period of disability that started before you became age 64, we will apply to those benefits the Benefit Factor that last applied before you became age 65.

We will compute a Benefit Factor on the first Review Date for a period of disability that starts between your 64th and 65th birthdays. This factor will continue to apply to any benefits paid during that period of disability.

#### QUALIFIED RIGHT TO INCREASE MONTHLY BENEFIT TO ADJUSTED AMOUNT

When you return to active and gainful full-time work after the end of a period of disability during which Cost of Living Adjustments were made, you may elect to increase the amount of the Monthly Benefit for Total Disability shown on Page 3. You may increase it to the amount of the Adjusted Monthly Benefit for Total Disability (less any SIS Benefit if included) which was used to determine the last monthly claim payment, if:

1. you have not reached your 60th birthday on the date you elect the increase; and
2. within 90 days after the period of disability ends, you make application to us on a form which we will furnish you upon request. On this form, you must confirm that you are actively and gainfully employed full time. Other evidence of insurability will not be required.

The effective date of the increase will be the first of the month after we approve your application for the increase. The required additional premium must be paid within 31 days of that date. Later premiums for the increase must be paid as part of the renewal premiums for the policy.

The premium for the increase will be based on your attained age at the time of the increase. It will also be based on our table of premium rates then in effect.

The increase in benefits will apply to new periods of disability which start after the effective date of the increase.

If you do not elect and obtain this increase, the Monthly Benefit for Total Disability will revert to the amount shown on Page 3 for new periods of disability.

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GUARANTEED PERCENTAGE INCREASE OPTION

Definitions

Option Date means each anniversary of the Effective Date of the policy starting with the first and ending with the anniversary which falls on or next follows your 60th birthday. If an Option Date does not coincide with a renewal date for this policy, it will change to coincide with the next renewal date thereafter.

Option Period means the period which begins 60 days before and ends 31 days after an Option Date.

Exercising Increase Option

You have the right to increase the Maximum COLA Percentage shown on Page 3 by the Available Guaranteed Percentage Increase (Available GPI) also shown on Page 3. You may do this, without submitting evidence of insurability, by following the rules set forth below.

An increase can be for the Available GPI or for part of it in increments of 2%.

The request for an increase must be made within an Option Period. It must be a dated written request signed by you. An increase will be effective: (a) on the Option Date if your request is made before that date; or (b) on the date of your request if it is made within 31 days after the Option Date.

You can request an increase during any Option Period even if you are disabled, but the increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability (see Page 4).

The first premium for an increase must be paid within 31 days after the effective date of the increase. Later premiums must be paid as part of the Policy Premium. If the premium for the policy is being waived (see Waiver of Premium provision) on the effective date of the increase, you will not have to start paying the premium for the increase until the premium for your policy becomes payable again.

The premium for each increase of the Maximum COLA Percentage will be based on your attained age at the time of each increase. It will also be based on:

1. our premium rates in effect at the time of the increase or on the Effective Date of the policy, whichever is less; and
2. your occupational class at the time of the increase or on the Effective Date of the policy, whichever will produce the lower premium.

When the Maximum COLA Percentage is increased, the premium for this GPI Option is reduced by the charge that was being made for the GPI percentage which was exercised. The reduced premium will be based on the Available GPI remaining, if any.

Option Expiration Date

This GPI Option will expire, and no further premiums for it will be due, on the earlier of: (a) the date when the full Available GPI has been exercised; or (b) the date when the Option Period ends for the age 60 Option Date described above.

NOTE: The GPI portion of this benefit provision and its premium will cease as stated above. The COLA portion continues until you attain age 65 when it and the premium for it will terminate, even though the policy may be renewed after you attain age 65.

## PREMIUMS AND RENEWALS

### POLICY TERM

The first term of this policy starts on the Effective Date shown on Page 3. It ends on the First Renewal Date also shown. Later terms will be the periods for which you pay renewal premiums when due. All terms will begin and end at 12:01 A.M., Standard Time, at your home. The renewal premium for each term will be due on the day the preceding term ends, subject to the grace period.

### GRACE PERIOD

This policy has a 31 day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the next 31 days. During the grace period, the policy will stay in force.

### CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED (Continued from Page 1)

You can renew this policy as long as you are actively and gainfully working full time. From time to time, we can require proof that you are actively and gainfully working full time. If you stop working, (except by reason of Total Disability), this policy will terminate; except that coverage will continue to the end of any period for which premium has been accepted.

Premiums must be paid on time. They will be based on our table of rates by attained age in effect at time of renewals for persons in your same rate class who are insured under policies of this form. Other than your attained age, the factors used to determine your rate class will be the same as those that applied to you on the Effective Date of this policy.

The benefit provisions which will be included in this policy, if it is continued after you attain age 65, are described on Page 7.

### REINSTATEMENT

If a renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by us or by our agent authorized to accept payment without requiring an application for reinstatement will reinstate this policy.

If we or our agent require an application, you will be given a conditional receipt for the premium tendered. If the application is approved, the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the 45th day after the date of the conditional receipt unless we have previously written you of our disapproval.

The reinstated policy will cover only loss that results from Injuries which occur after the date of reinstatement or Sickness which is first manifested more than 10 days after such date. In all other respects, your rights and ours will remain the same, subject to any provisions noted on or attached to the reinstated policy.



#### SUSPENSION DURING MILITARY SERVICE

If you enter full-time active duty in the military (land, sea or air) service of any nation or international authority, you may suspend your policy. But, you may not suspend the policy during active duty for training lasting 3 months or less. The policy will not be in force while it is suspended, and you will not be required to pay premiums. Upon receipt of your written request to suspend the policy, we will refund the pro-rata portion of any premium paid for a period beyond the date we receive your request.

If your full-time active duty in military service ends before age 65, you may place this policy back in force without evidence of insurability. Your coverage will start again when:

1. we have received your written request to place the policy back in force; and
2. you have paid the required pro-rata premium for coverage until the next premium due date.

However, your request and premium payment must be received by us within 90 days after the date your active duty in the military service ends. Premiums will be at the same rate that they would have been had your policy remained in force. The policy will not cover any loss due to Injuries which occur or Sickness which is first manifested while the policy is suspended. In all other respects you and we will have the same rights under the policy as before it was suspended.

#### PREMIUM ADJUSTMENT AT DEATH

Any premium paid for a period beyond the date of your death will be refunded to your estate.

### CLAIMS

#### NOTICE OF CLAIM

Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to us at our home office, Chattanooga, Tennessee, or to our agent. Notice should include your name and the policy number.

#### CLAIM FORMS

When we receive your notice of claim, we will send you claim forms for filing proof of loss. If these forms are not given to you within 15 days, you will meet the proof of loss requirements by giving us a written statement of the nature and extent of your loss. You must give us this proof within the time set forth in the Proof of Loss section.

#### PROOF OF LOSS

If the policy provides for periodic payment for a continuing loss, you must give us written proof of loss within 90 days after the end of each period for which we are liable. For any other loss, written proof must be given within 90 days after such loss.

If it was not reasonably possible for you to give written proof in the time required, we will not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be furnished no later than one year after the 90 days unless you are legally unable to do so.



#### TIME OF PAYMENT OF CLAIMS

After we receive written proof of loss, we will pay monthly all benefits then due you for disability. Benefits for any other loss covered by this policy will be paid as soon as we receive proper written proof.

#### PAYMENT OF CLAIMS

Benefits will be paid to you. Any benefits unpaid at death will be paid to your estate.

If benefits are payable to your estate, we can pay benefits up to \$1000 to someone related to you by blood or marriage whom we consider to be entitled to the benefits. We will be discharged to the extent of any such payment made in good faith.

#### PHYSICAL EXAMINATIONS

We, at our expense, have the right to have you examined as often as is reasonable while a claim is pending.

#### MISSTATEMENT OF AGE

If your age has been misstated, the benefits will be those the premium paid would have bought at the correct age.

#### LEGAL ACTIONS

You may not start a legal action to recover on this policy within 60 days after you give us required proof of loss. You may not start such action after three years from the time proof of loss is required.

### GENERAL PROVISIONS

#### ENTIRE CONTRACT

This policy with the application and attached papers is the entire contract between you and us. No change in this policy will be effective until approved by one of our officers. This approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

#### INCONTESTABLE

1. After this policy has been in force for two years during your lifetime, we cannot contest the statements in the application.
2. No claim for loss incurred or disability that starts after two years from the Effective Date of this policy will be reduced or denied on the ground that a sickness or physical condition not excluded by name or specific description had existed before the Effective Date of this policy.

#### CONFORMITY WITH STATE STATUTES

Any provision of this policy which, on its effective date, is in conflict with the laws of the state in which you reside on that date is changed to conform to the minimum requirements of those laws.

#### ASSIGNMENT

No assignment of interest in this policy will be binding on us until a copy is on file with us. We are not responsible for the validity of any assignment.

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THIRD PARTY PREMIUM PAYMENT

In consideration of an Agreement between the San Diego County Medical Association and us, we agree to accept Policy Premiums as billed.

The conditions of this rider are:

1. The policy will not continue in force beyond the time in which the premium is paid, subject to the grace period.
2. This rider will be void if:
  - a. your membership in the Association ends; or
  - b. the Agreement between the Association and us is terminated.
3. If this rider is voided, premiums will be due and payable as required in the policy.

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65115

191-04497

No 478430

I hereby apply to Provident Life and Accident Insurance Company for insurance based on the following representations

1. (a) Full name? JACK H. DY M MD (b) Sex?  M  F  
 (c) Height? ft. 5 in. 8 (d) Weight? lbs 170 (e) Date of Birth? 9-8-37 (f) Birthplace? Pittsburgh, Pa

2. (a) Residence Address? 13701 PINE NEEDLES DEL MAR CA 92014 Send Notices  Residence  Business  
 (b) Business Address? 1662 E MAIN ST. EL CAJON CA 92021

3. (a) Occupation: PHYSICIAN (b) Employer: SELF  
 (c) Exact duties: GIN (d) Social Security No. 174 28 0246  
 (e) Are you actively at work fulltime in the above occupation? Yes  No  (f) Length of Employment 20 yrs

4. (a) Annual Earned Income From Your Occupation for Federal Tax Purposes (After Business Expenses, if any):  
 Current Annual Rate of Earned Income \$ 200,000 Actual Prior Calendar Year \$ SAME Actual Year Prior Last Calendar Year \$ SAME  
 Other (Describe) \$ 0 \$ 0 \$ 0  
 (b) Unearned Income Prior 2 Years (Interest, Dividends, etc.) \$ 15,000 \$ SAME

5. (a) Do you have or are you applying for other: (1) Individual, (2) Association, (3) Group, or (4) Employer Sick Pay disability income coverage; or (5) Overhead Expense disability coverage? Yes  No  (If "Yes" give details below)

Company or Source	Type (1, 2, 3, 4 or 5)	Monthly Disability Amount	Benefit Period Accident	Sickness
<u>MONARCH</u>	<u>1</u>	<u>3000.00</u>		

(b) Do you have Social Security substitute coverage? Yes  No  Amount \$ \_\_\_\_\_ Company \_\_\_\_\_  
 (c) Is any coverage to be replaced by the coverage applied for? Yes  No  If "Yes", complete Form 1335-Q5.  
 (d) What is the total personal non-group life insurance in force or applied for on your life? 1,350,000  
 (e) Does your net worth exceed \$4,000,000? Yes  No  If "Yes" complete Form 1335-NW.  
 (f) Have you smoked cigarettes within the last 12 months? Yes  No

(Q6-8 need not be answered if a Provident Medical Exam, dated on or after the date of this application, is being furnished)

6. Have you ever been treated for or ever had any known indication of:  
 (a) High blood pressure, diabetes, cancer, arthritis, asthma, emphysema, or emotional, nervous or mental disorder, or disease or disorder of the eyes, ears or speech? Yes  No   
 (b) Disease or disorder of the neck, back, spine, heart, lungs, breasts, or the circulatory, digestive, urinary or reproductive systems? Yes  No   
 7. Other than above, have you, within the past 5 years, had medical or surgical advice or treatment, had a physical examination, or been under observation for any disease or disorder? Yes  No   
 8. Do you have a physical impairment or deformity, or take any type of prescribed medication? Yes  No

(Give details of "Yes" answers to Q6-8. Include diagnoses, dates, physicians and addresses)

1) Treatment by Alleged for bronchitis  
 2) History lumbar disc treated with rest 1982  
 3) Surgery cervical disc 1984 (2° auto accident)  
 4) ventolin inhaler as necessary for bronchitis

9. (a) Will your employer pay for all disability coverage to be carried by you with no portion of the premium to be included in your taxable income? Yes  No  (b) How much premium is paid with this application? None

To the best of my knowledge and belief, all of the foregoing statements and all of those in Part II, if any, of this Application are true, complete, and correctly stated. They are offered to Provident Life and Accident Insurance Company as the basis for any insurance issued on this Application. I have received a disclosure concerning: (1) the Medical Information Bureau; and (2) an investigative consumer report which may be made for use with this Application.

I authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organizations, institution or person that has any records or knowledge of me or my health, to give to Provident Life and Accident Insurance Company and/or its reinsurers any such information I authorize all said sources, except the Medical Information Bureau, to give such records or knowledge to Equifax, Inc. This agency is employed by Provident Life and Accident Insurance Company to collect and send such information

A copy of this authorization shall be as valid as the original  
 Signed at Del Mar Ca City Del Mar State Ca  
 this 13 day of Aug 19 87  
 Signature of Proposed Insured Jack H. Dym  
 I certify that I have truly and accurately recorded on this application the information supplied by the Proposed Insured



In this policy, the words "you" and "your" mean you, the Insured named below; "we," "our" and "us" mean Provident Life and Accident Insurance Company.

We will pay benefits for covered loss resulting from Injuries or Sickness subject to all of the provisions of this policy. Loss must begin while the policy is in force.

This policy is a legal contract between you and us. It is issued in consideration of the payment in advance of the required premium and of your statements and representations in the application. A copy of your application is attached and made a part of the policy.

NON-CANCELIABLE AND GUARANTEED CONTINUABLE TO AGE 65 AT GUARANTEED PREMIUMS: You can continue this policy to age 65 by paying premiums on time. The premiums shown in the Policy Schedule on Page 3 are guaranteed to age 65.

CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED: You can renew this policy as long as you are actively and gainfully working full time; there is no age limit. You must pay premiums on time at our premium rates then in effect at time of renewals. (For further conditions, see the page titled "Premiums and Renewals." See Page 7 for the benefit provisions that will be included in the continued policy.)

D I S A B I L I T Y   I N C O M E   P O L I C Y

JACK H DYM MD, the Insured  
Policy Number 6-335-816358

10 day right to examine your policy - We want you to fully understand and be entirely satisfied with your policy. If you are not satisfied for any reason, you may return the policy to us, or to the agent through whom it was purchased, within 10 days of its receipt. We will refund any premiums you have paid within 10 days after we receive your notice of cancellation and the policy. It will be considered never to have been issued.

GUIDE TO POLICY PROVISIONS

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READ YOUR POLICY CAREFULLY

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P O L I C Y S C H E D U L E

Insured - JACK H DYM MD Policy Number - 6-335-816358  
 Effective Date - January 1, 1988 First Renewal Date - January 1, 1989  
 Issue Date - December 14, 1987 Renewal Term - Twelve Months

Annual Policy Premium payable from January 1, 1988 until the first UPDATE Increase Date (see Page 3 (cont.)) is \$2,341.52 on a non smoking premium basis.

Other Premium Paying Methods:  
 \$1,194.18 Semi-Annually  
 608.80 Quarterly  
 199.03 Monthly (Preauthorized Bank Draft Only)

-----MONTHLY BENEFIT FOR TOTAL DISABILITY-----

\$3,000.00

-----ELIMINATION PERIOD-----

90 days of Total and/or Residual Disability

An Elimination Period starting after age 65 must consist entirely of days of Total Disability

-----MAXIMUM BENEFIT PERIODS-----

Injuries:

Total Disability starting before age 65 .....	for Life
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Sickness:

Total Disability starting before age 61 .....	to age 65
Total Disability starting at age 61 but before age 62 .....	48 months
Total Disability starting at age 62 but before age 63 .....	42 months
Total Disability starting at age 63 but before age 64 .....	36 months
Total Disability starting at age 64 but before age 65 .....	30 months
Total Disability starting at age 65 but before age 75 .....	24 months
Total Disability starting at or after age 75 .....	12 months

Rehabilitation Expense ..... \$9,000.00 Maximum Amount

Treatment of Injuries (Payable if disability benefits not paid) ..... \$1,500.00 Maximum Amount

-----ADDITIONAL BENEFITS-----

(The premium shown for each benefit is included in the Policy Premium shown above.)

Residual Disability Benefit .....Page 8 Premium \$461.40

(Policy Schedule is continued on next page.)

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POLICY SCHEDULE (continued)

Cost of Living Adjustments (COLA) with Guaranteed  
Percentage Increase (GPI) Option .....Page 12

Maximum COLA Percentage .....	4%	Premium	\$225.60
Available GPI .....	8%	Premium	\$45.12
		Total COLA/GPI Premium	\$270.72

(Policy Schedule is continued on next page.)

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## POLICY SCHEDULE (Continued)

## -----UPDATE-----

The benefits and premium named below will be automatically increased without evidence of insurability, as follows:

UPDATE Increase Date	New Monthly Benefit for Total Disability	New Maximum Amount for Rehabilitation Expense	New Maximum Amount for Treatment of Injuries	New Annual Premium for this Policy
01/01/89	\$3,210.00	\$9,630.00	\$1,605.00	\$2,509.25
01/01/90	\$3,440.00	\$10,320.00	\$1,720.00	\$2,698.60
01/01/91	\$3,690.00	\$11,070.00	\$1,845.00	\$2,910.53
01/01/92	\$3,950.00	\$11,850.00	\$1,975.00	\$3,137.29
01/01/93	\$4,230.00	\$12,690.00	\$2,115.00	\$3,388.47

UPDATE Benefit increases are effective on the UPDATE Increase Dates shown. If an UPDATE Increase Date shown does not coincide with a renewal date for this policy, the increase will be effective on the next renewal date.

An UPDATE Benefit increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability. If the premium for the policy is being waived on the effective date of the increase, the premium for the increase will also be waived. When you resume paying premiums for the policy, you must also start paying the premium for the increase.

You are entitled to UPDATE Benefit increases on the dates shown above. If you do not accept an increase, your refusal:

1. forfeits your right on that UPDATE Increase Date to the UPDATE Benefit increase;
2. postpones the schedule of benefit increases to the next UPDATE Increase Date, if any;
3. adjusts the premiums for the remaining increases, if any, since such premiums are based on your attained age at the time of an UPDATE Benefit increase; and
4. in no way extends the last UPDATE Increase Date shown above.

Each refusal of an UPDATE Benefit increase reduces the number of UPDATE Benefit increases to which you were entitled by one.

If you are under age 59 on the last UPDATE Increase Date, you may apply for an amendment providing additional UPDATE Benefit increases. You can do this by making formal application within the period of 60 days prior to and 31 days after the last UPDATE Increase Date. Approval will be subject to our underwriting guidelines then in effect.

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DEFINITIONS

Injuries means accidental bodily injuries occurring while your policy is in force.

Sickness means sickness or disease which is first manifested while your policy is in force.

age, when used before a number, such as in "age 65", means the ending date of the policy term in which you attain that age. A policy term is described on the page titled "Premiums and Renewals."

Physician means any person other than you who is licensed by law, and is acting within the scope of the license, to treat Injuries or Sickness which results in covered loss.

Total Disability or totally disabled means that due to Injuries or Sickness:

1. you are not able to perform the substantial and material duties of your occupation; and
2. you are receiving care by a Physician which is appropriate for the condition causing the disability.

your occupation means the occupation (or occupations, if more than one) in which you are regularly engaged at the time you become disabled. If your occupation is limited to a recognized specialty within the scope of your degree or license, we will deem your specialty to be your occupation.

period of disability means a period of disability starting while this policy is in force. Successive periods will be deemed to be the same period unless the later period:

1. is due to a different or unrelated cause, or
2. starts more than twelve months after the end of the previous period;

in which event, the later period will be a new or separate period of disability. A new Elimination Period must then be met. And, a new Maximum Benefit Period will apply.

Elimination Period means the number of days of disability that must elapse in a period of disability before benefits become payable. The number of days is shown on Page 3. These days need not be consecutive; they can be accumulated during a period of disability to satisfy an Elimination Period. Benefits are not payable, nor do they accrue, during an Elimination Period.

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#### EXCLUSION

We will not pay benefits for loss caused by war or any act of war, whether war is declared or not.

Additional exclusions, if any, appear in the Policy Schedule.

#### PRE-EXISTING CONDITION LIMITATION

We will not pay benefits for loss starting within two years of the Effective Date of this policy which is caused by a Pre-existing Condition. A claim for benefits for loss starting thereafter will not be reduced or denied on the ground it is caused by a Pre-existing Condition unless the condition is excluded by name or specific description. Pre-existing Condition means a physical impairment, deformity or a medical condition that was not disclosed, or that was misrepresented, in answer to a question in the application for this policy. A medical condition means a sickness or physical condition which either: 1) resulted in your receiving medical advice or treatment; or 2) caused symptoms for which an ordinarily prudent person would seek medical advice or treatment.

#### BENEFITS

##### TOTAL DISABILITY

We will pay the Monthly Benefit for Total Disability shown on Page 3 as follows:

1. Benefits start on the day of Total Disability following the Elimination Period.
2. Benefits will continue while you are totally disabled during the period of disability but not beyond the Maximum Benefit Period.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

**PRESUMPTIVE TOTAL DISABILITY - LOSS OF SPEECH, HEARING, SIGHT OR THE USE OF TWO LIMBS**  
You will be presumed totally disabled if Injuries or Sickness results in the entire and permanent loss of:

1. speech;
2. hearing in both ears;
3. the sight of both eyes; or
4. the use of both hands, or of both feet or of one hand and one foot.

You must present satisfactory proof of your loss. Your ability to work will not matter. Further medical care will not be required. Benefits will be paid according to the Total Disability provisions of this policy. But, benefits will start on the date of loss if earlier than the day benefits start as shown on Page 3. If loss occurs before you attain age 65, the Monthly Benefit for Total Disability will be paid as long as you live regardless of the Maximum Benefit Period shown on Page 3.

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#### TRANSPLANT SURGERY

You might be disabled from the transplant of part of your body to another person. If so, we will consider it to be the result of a Sickness.

#### COSMETIC SURGERY

You might be disabled from surgery to improve your appearance or to correct disfigurement. If so, we will consider it to be the result of a Sickness.

#### PREGNANCY

You might be disabled from pregnancy or childbirth. If so, we will consider it to be the result of a Sickness.

#### WAIVER OF PREMIUM

After you have been totally disabled for 90 days during a period of disability, we will:

1. refund any premiums which became due and were paid while you were totally disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep this policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability.

#### REHABILITATION

**Total Disability** - Your participation in a program of occupational rehabilitation will not of itself be considered a recovery from Total Disability.

**Expense** - If, during a period of Total Disability, you participate in a program of occupational rehabilitation which we approve, we will pay for certain expenses you incur. That is, we will pay for the reasonable cost of training and education which is not otherwise covered under health care insurance, workers' compensation or any public fund or program. But, we will not pay more than the Maximum Amount for Rehabilitation Expense shown on Page 3.

A program of occupational rehabilitation must be designed to help you return to work and be:

1. a formal program of rehabilitation at an accredited graduate school, college or business school, or at a licensed vocational school;
2. a recognized program operated by the federal or a state government; or
3. any other professionally planned rehabilitation program of training or education.

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TREATMENT OF INJURIES (PAYABLE IF DISABILITY BENEFITS NOT PAID.)

If Injuries require medical treatment prescribed by a Physician, we will pay your expenses for the treatment. But, we will not pay more than the Maximum Amount for Treatment of Injuries shown on Page 3 as a result of any one accident.

If you qualify for payment under this provision and also under a disability provision of this policy because of the same accident, payment will be made under the provision which provides the greater benefit.

BENEFITS WHEN POLICY RENEWED AFTER AGE 65

If this policy is continued in accordance with the "Conditional Right to Renew After Age 65" on Page 1, all of the benefit provisions on Pages 5, 6 and 7 will be included in the continued policy. (Any additional benefit provision contained in this policy will not be included unless it is named on Page 3 as one that will be included in the continued policy.) The Maximum Benefit Period starting while this policy is so continued is shown on Page 3. The Monthly Benefit for Total Disability will not change unless you choose to renew with a lesser amount.

PAYMENT FOR PART OF MONTH

If any payment under this policy is for part of a month, the daily rate will be 1/30th of the payment which would have been made if disability had continued for the whole month.

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RESIDUAL DISABILITY BENEFITS

with Recovery Benefits and with Cost of Living Indexing of Prior Monthly Income (Nothing in this provision limits the policy definition of "Total Disability.")

DEFINITIONS

Monthly Income means your monthly income from salary, wages, bonuses, commissions, fees or other payments for services which you render or your business provides. Normal and usual business expenses are to be deducted; income taxes are not. Monthly Income must be earned. It does not include dividends, interest, rents, royalties, annuities, sick pay or benefits received for disability under a formal wage or salary continuation plan or other forms of unearned income.

Monthly Income can be credited to the period in which it is actually received or to the period in which it is earned. We allow either the cash or accrual accounting method. But, the same method must be used to determine the Prior Monthly Income and the Current Monthly Income during a period of disability. If you elect the cash accounting method, we will not include income received for services rendered prior to the start of a period of disability in your Current Monthly Income.

Prior Monthly Income means the greatest of:

1. your average Monthly Income for the 12 months just prior to the start of the period of disability for which claim is made;
2. your average Monthly Income for the year with the highest earnings of the last two years prior to the start of such period of disability; or
3. your highest average Monthly Income for any two successive years of the last five years prior to the start of such period of disability.

Current Monthly Income means your Monthly Income in your occupation for each month of Residual Disability being claimed.

Loss of Monthly Income means the difference between Prior Monthly Income and Current Monthly Income. Loss of Monthly Income must be caused by the Residual Disability for which claim is made. The amount of the loss must be at least 20% of Prior Monthly Income to be deemed Loss of Monthly Income. If your loss is more than 75% of Prior Monthly Income, we will deem the loss to be 100%.

Residual Disability or residually disabled, during the Elimination Period, means that due to Injuries or Sickness:

1. you are not able to do one or more of your substantial and material daily business duties or you are not able to do your usual daily business duties for as much time as it would normally take you to do them;
2. you have a Loss of Monthly Income in your occupation of at least 20%; and
3. you are receiving care by a Physician which is appropriate for the condition causing disability.

After the Elimination Period has been satisfied, you are no longer required to have a loss of duties or time. Residual Disability or residually disabled then means that as a result of the same Injuries or Sickness:

1. you have a Loss of Monthly Income in your occupation of at least 20%; and
2. you are receiving care by a Physician which is appropriate for the condition causing the Loss of Monthly Income.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by certain other benefit provisions if they are included in your policy and are applicable. If included, they are titled "Cost of Living Adjustments of Monthly Benefits" and "Social Insurance Substitute Benefit.")

Residual Disability Monthly Benefit is the benefit payable under this provision. It is determined monthly by this formula. Each month, it equals:

$$\frac{\text{Loss of Monthly Income}}{\text{Prior Monthly Income}} \times \text{Monthly Benefit for Total Disability}$$

RESIDUAL DISABILITY BENEFITS

We will pay Residual Disability Monthly Benefits as follows:

1. Benefits start on the day of Residual Disability following the Elimination Period or, if later, after the end of compensable Total Disability during the same period of disability.
2. Benefits will continue while you are residually disabled during a period of disability but the combined period for which benefits for Total and Residual Disability are payable can not exceed the Maximum Benefit Period. And, benefits will not be payable after you attain age 65.
3. The first six monthly payments for Residual Disability will be the greater of:
  - a. 50% of the Monthly Benefit for Total Disability; or
  - b. the Residual Disability Monthly Benefit determined for each month.

Residual Disability benefits will not be paid for any days for which Total Disability benefits are paid.

In no event will you be considered to have more than one disability at the same time. The fact that a disability is caused by more than one Injury or Sickness or from both will not matter. We will pay benefits for the disability which provides the greater benefit.

We can require any proof which we consider necessary to determine your Current Monthly Income and Prior Monthly Income. Also, we or an independent accountant retained by us shall have the right to examine your financial records as often as we may reasonably require.

RECOVERY BENEFITS

(Nothing in this provision limits the policy definition of "Residual Disability.")

If you are under age 65 and return to gainful full-time work at the end of a period for which we have paid Total and/or Residual Disability benefits, we will:

1. while you are so engaged in gainful full-time work; and
2. while you are having a Loss of Monthly Income in your occupation of at least 20% due to the same Injuries or Sickness;

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pay benefits under this back to work provision as though the same period of disability is continuing. You do not have to be receiving care by a Physician while Recovery Benefits are being paid. Payments will be made for each month, up to 3 months, in which (1) and (2) exist. For the first such month, we will pay a benefit based on the greater of:

- a. the monthly rate computed by the Residual Disability Benefit formula for that month; or
- b. 100% of the actual claim payment made for the 30 days preceding your return to work full time.

The monthly benefit for the second and third months will be computed as in (a) and (b) above; except that, instead of using 100% in (b), 75% will apply for the second month. And, 50% will apply for the third month.

These recovery benefits will not be paid for any days for which Total and/or Residual Disability benefits are paid. And, they will not be paid for more than 3 months in connection with a period of disability.

#### COST OF LIVING INDEXING OF PRIOR MONTHLY INCOME

(Applicable to benefits paid after the 12th month of a period of disability)

#### Definitions

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Index Factor is used by us to determine your adjusted Prior Monthly Income for each Review Period. We will compute this factor by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability.

#### Adjusted Prior Monthly Income

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date for Residual Disability Benefits. Monthly benefits which thereafter accrue during that period of disability will be adjusted by indexing your Prior Monthly Income as follows:

1. On each Review Date, your Prior Monthly Income will be multiplied by your Index Factor. The result is your adjusted Prior Monthly Income. It will be used to figure your Loss of Monthly Income during the Review Period that follows. It will also be used in the formula to compute each Residual Disability Monthly Benefit payable during that Review Period.

An increase in your Prior Monthly Income can cause your Loss of Monthly Income to be greater. This in turn can result in an increase in your Residual Disability Monthly Benefit. Other than your Index Factor (which is computed by using actual CPI-U values), there is no limit on the percent of increase in your Prior Monthly Income for a Review Period. If the CPI-U should go down, your adjusted Prior Monthly Income can decrease. But, it can never reduce below your Prior Monthly Income at the start of the period of disability.

2. Indexing of your Prior Monthly Income will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of a or b above, disability benefits which can be paid for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

#### WAIVER OF PREMIUM

For periods of disability which start before age 65, the Waiver of Premium provision on Page 6 is replaced by the following:

#### "WAIVER OF PREMIUM - TOTAL DISABILITY AND RESIDUAL DISABILITY

If, during a period of disability, Injuries or Sickness results in more than 90 days of Total and/or Residual Disability, we will:

1. refund any premiums which became due and were paid while you were so disabled; and
2. waive the payment of each premium which thereafter becomes due for as long as the period of disability lasts. After it ends, to keep your policy in force, you must again pay any premiums which become due.

For premiums to be waived, you must give us satisfactory proof of disability except as respects Recovery Benefits."

NOTE: All portions of this Residual Disability Benefit expire when you attain age 65 even though the policy may be renewed after you attain age 65. No further premiums for it will be due.

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COST OF LIVING ADJUSTMENTS WITH GUARANTEED PERCENTAGE INCREASE OPTION  
(Applies to benefits payable after the 12th month of a period of disability)

#### DEFINITIONS

CPI-U means the Consumer Price Index for All Urban Consumers. It is published by the United States Department of Labor. If the CPI-U is discontinued or if its method of computation is changed, we may use another nationally published index. We will choose an index which is similar in scope and purpose to the CPI-U. The CPI-U will then mean the index which is chosen.

Review Date means each anniversary date of the start of a period of disability.

Review Period means a one year period ending on a Review Date.

Index Month means the calendar month three months prior to a Review Date. But, the first Index Month means the calendar month three months prior to the start of a period of disability. We will measure all changes in the CPI-U from the first Index Month.

Benefit Factor is determined by dividing the CPI-U for the latest Index Month by the CPI-U for the first Index Month. We will compute it on each Review Date during a period of disability. It will apply to the Review Period that follows.

Monthly Benefit for Total Disability is shown on Page 3. (It can be increased by a "Social Insurance Substitute (SIS) Benefit" if it is included in your policy and when it is applicable).

Adjusted Monthly Benefit for Total Disability is the Monthly Benefit for Total Disability multiplied by the Benefit Factor for a Review Period. But, an Adjusted Monthly Benefit for Total Disability can not:

1. exceed the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by the percentage shown on Page 3 as the Maximum COLA Percentage; or
2. be less than the amount of the Monthly Benefit for Total Disability increased by a percentage factor equal to the completed number of Review Periods multiplied by 4%.

#### BENEFITS

If Injuries or Sickness results in a period of disability that lasts at least 12 months, we will compute Cost of Living Adjustments on each Review Date. Monthly benefits which thereafter accrue during that period of disability will be adjusted as follows:

1. On each Review Date, we will compute the Benefit Factor and the Adjusted Monthly Benefit for Total Disability for the Review Period that follows.
2. For any Monthly Benefit for Total Disability that accrues during a Review Period, we will pay instead the Adjusted Monthly Benefit for Total Disability.

3. We will adjust any Residual Disability Monthly Benefit which accrues during a Review Period. To do this, we will use the Adjusted Monthly Benefit for Total Disability in the formula to determine each Residual Disability Monthly Benefit that is to be paid during that Review Period. It will be used in the formula instead of the Monthly Benefit for Total Disability.
4. Computations of Cost of Living Adjustments will end on the earliest of:
  - a. the end of the period of disability (see Page 4);
  - b. the end of a benefit period; or
  - c. the date you attain age 65.

If the computations end because of (a) or (b) above, benefit amounts will revert to those shown on Page 3. Benefits payable for the first 12 months of a new period of disability will not include a Cost of Living Adjustment. A new first Index Month and Review Date will apply to each new period of disability that lasts more than 12 months.

If the computations end because of (c) above and if any disability benefits continue to be payable after you attain age 65 for a period of disability that started before you became age 64, we will apply to those benefits the Benefit Factor that last applied before you became age 65.

We will compute a Benefit Factor on the first Review Date for a period of disability that starts between your 64th and 65th birthdays. This factor will continue to apply to any benefits paid during that period of disability.

#### QUALIFIED RIGHT TO INCREASE MONTHLY BENEFIT TO ADJUSTED AMOUNT

When you return to active and gainful full-time work after the end of a period of disability during which Cost of Living Adjustments were made, you may elect to increase the amount of the Monthly Benefit for Total Disability shown on Page 3. You may increase it to the amount of the Adjusted Monthly Benefit for Total Disability (less any SIS Benefit if included) which was used to determine the last monthly claim payment, if:

1. you have not reached your 60th birthday on the date you elect the increase; and
2. within 90 days after the period of disability ends, you make application to us on a form which we will furnish you upon request. On this form, you must confirm that you are actively and gainfully employed full time. Other evidence of insurability will not be required.

The effective date of the increase will be the first of the month after we approve your application for the increase. The required additional premium must be paid within 31 days of that date. Later premiums for the increase must be paid as part of the renewal premiums for the policy.

The premium for the increase will be based on your attained age at the time of the increase. It will also be based on our table of premium rates then in effect.

The increase in benefits will apply to new periods of disability which start after the effective date of the increase.

If you do not elect and obtain this increase, the Monthly Benefit for Total Disability will revert to the amount shown on Page 3 for new periods of disability.

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## GUARANTEED PERCENTAGE INCREASE OPTION

### Definitions

Option Date means each anniversary of the Effective Date of the policy starting with the first and ending with the anniversary which falls on or next follows your 60th birthday. If an Option Date does not coincide with a renewal date for this policy, it will change to coincide with the next renewal date thereafter.

Option Period means the period which begins 60 days before and ends 31 days after an Option Date.

### Exercising Increase Option

You have the right to increase the Maximum COLA Percentage shown on Page 3 by the Available Guaranteed Percentage Increase (Available GPI) also shown on Page 3. You may do this, without submitting evidence of insurability, by following the rules set forth below.

An increase can be for the Available GPI or for part of it in increments of 2%.

The request for an increase must be made within an Option Period. It must be a dated written request signed by you. An increase will be effective: (a) on the Option Date if your request is made before that date; or (b) on the date of your request if it is made within 31 days after the Option Date.

You can request an increase during any Option Period even if you are disabled, but the increase will apply only to a period of disability which starts after the effective date of the increase. It must qualify as a separate period of disability (see Page 4).

The first premium for an increase must be paid within 31 days after the effective date of the increase. Later premiums must be paid as part of the Policy Premium. If the premium for the policy is being waived (see Waiver of Premium provision) on the effective date of the increase, you will not have to start paying the premium for the increase until the premium for your policy becomes payable again.

The premium for each increase of the Maximum COLA Percentage will be based on your attained age at the time of each increase. It will also be based on:

1. our premium rates in effect at the time of the increase or on the Effective Date of the policy, whichever is less; and
2. your occupational class at the time of the increase or on the Effective Date of the policy, whichever will produce the lower premium.

When the Maximum COLA Percentage is increased, the premium for this GPI Option is reduced by the charge that was being made for the GPI percentage which was exercised. The reduced premium will be based on the Available GPI remaining, if any.

### Option Expiration Date

This GPI Option will expire, and no further premiums for it will be due, on the earlier of: (a) the date when the full Available GPI has been exercised; or (b) the date when the Option Period ends for the age 60 Option Date described above.

NOTE: The GPI portion of this benefit provision and its premium will cease as stated above. The COLA portion continues until you attain age 65 when it and the premium for it will terminate, even though the policy may be renewed after you attain age 65.

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PREMIUMS AND RENEWALS

POLICY TERM

The first term of this policy starts on the Effective Date shown on Page 3. It ends on the First Renewal Date also shown. Later terms will be the periods for which you pay renewal premiums when due. All terms will begin and end at 12:01 A.M., Standard Time, at your home. The renewal premium for each term will be due on the day the preceding term ends, subject to the grace period.

GRACE PERIOD

This policy has a 31 day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the next 31 days. During the grace period, the policy will stay in force.

CONDITIONAL RIGHT TO RENEW AFTER AGE 65; PREMIUMS ARE NOT GUARANTEED

(Continued from Page 1)

You can renew this policy as long as you are actively and gainfully working full time. From time to time, we can require proof that you are actively and gainfully working full time. If you stop working, (except by reason of Total Disability), this policy will terminate; except that coverage will continue to the end of any period for which premium has been accepted.

Premiums must be paid on time. They will be based on our table of rates by attained age in effect at time of renewals for persons in your same rate class who are insured under policies of this form. Other than your attained age, the factors used to determine your rate class will be the same as those that applied to you on the Effective Date of this policy.

The benefit provisions which will be included in this policy, if it is continued after you attain age 65, are described on Page 7.

REINSTATEMENT

If a renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by us or by our agent authorized to accept payment without requiring an application for reinstatement will reinstate this policy.

If we or our agent require an application, you will be given a conditional receipt for the premium tendered. If the application is approved, the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the 45th day after the date of the conditional receipt unless we have previously written you of our disapproval.

The reinstated policy will cover only loss that results from Injuries which occur after the date of reinstatement or Sickness which is first manifested more than 10 days after such date. In all other respects; your rights and ours will remain the same, subject to any provisions noted on or attached to the reinstated policy.

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#### SUSPENSION DURING MILITARY SERVICE

If you enter full-time active duty in the military (land, sea or air) service of any nation or international authority, you may suspend your policy. But, you may not suspend the policy during active duty for training lasting 3 months or less. The policy will not be in force while it is suspended, and you will not be required to pay premiums. Upon receipt of your written request to suspend the policy, we will refund the pro-rata portion of any premium paid for a period beyond the date we receive your request.

If your full-time active duty in military service ends before age 65, you may place this policy back in force without evidence of insurability. Your coverage will start again when:

1. we have received your written request to place the policy back in force; and
2. you have paid the required pro-rata premium for coverage until the next premium due date.

However, your request and premium payment must be received by us within 90 days after the date your active duty in the military service ends. Premiums will be at the same rate that they would have been had your policy remained in force. The policy will not cover any loss due to Injuries which occur or Sickness which is first manifested while the policy is suspended. In all other respects you and we will have the same rights under the policy as before it was suspended.

#### PREMIUM ADJUSTMENT AT DEATH

Any premium paid for a period beyond the date of your death will be refunded to your estate.

### CLAIMS

#### NOTICE OF CLAIM

Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to us at our home office, Chattanooga, Tennessee, or to our agent. Notice should include your name and the policy number.

#### CLAIM FORMS

When we receive your notice of claim, we will send you claim forms for filing proof of loss. If these forms are not given to you within 15 days, you will meet the proof of loss requirements by giving us a written statement of the nature and extent of your loss. You must give us this proof within the time set forth in the Proof of Loss section.

#### PROOF OF LOSS

If the policy provides for periodic payment for a continuing loss, you must give us written proof of loss within 90 days after the end of each period for which we are liable. For any other loss, written proof must be given within 90 days after such loss.

If it was not reasonably possible for you to give written proof in the time required, we will not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be furnished no later than one year after the 90 days unless you are legally unable to do so.

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#### TIME OF PAYMENT OF CLAIMS

After we receive written proof of loss, we will pay monthly all benefits then due you for disability. Benefits for any other loss covered by this policy will be paid as soon as we receive proper written proof.

#### PAYMENT OF CLAIMS

Benefits will be paid to you. Any benefits unpaid at death will be paid to your estate.

If benefits are payable to your estate, we can pay benefits up to \$1000 to someone related to you by blood or marriage whom we consider to be entitled to the benefits. We will be discharged to the extent of any such payment made in good faith.

#### PHYSICAL EXAMINATIONS

We, at our expense, have the right to have you examined as often as is reasonable while a claim is pending.

#### MISSTATEMENT OF AGE

If your age has been misstated, the benefits will be those the premium paid would have bought at the correct age.

#### LEGAL ACTIONS

You may not start a legal action to recover on this policy within 60 days after you give us required proof of loss. You may not start such action after three years from the time proof of loss is required.

### GENERAL PROVISIONS

#### ENTIRE CONTRACT

This policy with the application and attached papers is the entire contract between you and us. No change in this policy will be effective until approved by one of our officers. This approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

#### INCONTESTABLE

1. After this policy has been in force for two years during your lifetime, we cannot contest the statements in the application.
2. No claim for loss incurred or disability that starts after two years from the Effective Date of this policy will be reduced or denied on the ground that a sickness or physical condition not excluded by name or specific description had existed before the Effective Date of this policy.

#### CONFORMITY WITH STATE STATUTES

Any provision of this policy which, on its effective date, is in conflict with the laws of the state in which you reside on that date is changed to conform to the minimum requirements of those laws.

#### ASSIGNMENT

No assignment of interest in this policy will be binding on us until a copy is on file with us. We are not responsible for the validity of any assignment.

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PREMIUM PAYMENT RIDER

In consideration of the Premium Payment Agreement between the Association and us, we agree to accept Policy Premiums as billed you.

The conditions of this rider are:

1. The policy will not continue in force beyond the time for which the premium is paid, subject to the grace period.
2. This rider will be void if:
  - a. your membership in the Association ends; or
  - b. the Premium Payment Agreement is terminated.
3. If this rider is voided, premiums will be due and payable as required in the policy.

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191/03/97  
No 4782110

I hereby apply to Provident Life and Accident Insurance Company for insurance based on the following representations

1. (a) Full name? (Print) Jack H. DYM M.D. (b) Sex? Male FL  
 (c) Height? ft. 5 in. 8 (d) Weight? lbs. 190 (e) Date of Birth? 9-8-37 (f) Birthplace? Pittsburgh  
 2. (a) Residence Address? 13701 Pine Needles Del Mar, Ca. 92014 Send Notices  
 (Print) Street and No. (or P.O. Box No.) City, State, Zip Code  Residence  
 (b) Business Address? 1662 E. Main St. El Cajon Ca. 92021  Business  
 3. (a) Occupation: Gynecologist (b) Employer: SELF  
 (c) Exact duties: Surgeon (d) Social Security No. 174 28 0246  
 (e) Are you actively at work fulltime in the above occupation? Yes  No  (f) Length of Employment: 20 yrs.  
 4. (a) Annual Earned Income From Your Occupation for Fed- Current Annual Rate Actual Prior Actual Year Prior to  
 eral Tax Purposes (After Business Expenses, if any): of Earned Income Calendar Year Last Calendar Year  
 Salary ..... \$ 200,000 \$ SAME \$ SAME  
 Other (Describe) ..... \$ 0 \$ 0 \$ 0  
 (b) Unearned Income Prior 2 Years (Interest, Dividends, etc.) ..... \$ 15,000 \$ SAME

5. (a) Do you have or are you applying for other: (1) Individual, (2) Association, (3) Group, or (4) Employer Sick Pay disability income coverage; or (5) Overhead Expense disability coverage? Yes  No  (If "Yes" give details below)

Company or Source	Type (1, 2, 3, 4 or 5)	Monthly Disability Amount	Benefit Period	
			Accident	Sickness
<u>MONARCH</u>	<u>1</u>	<u>3,000.00</u>	<u>65</u>	<u>65</u>
<u>Provident</u>	<u>1</u>	<u>2,000.00</u>	<u>1/1/66</u>	

(b) Do you have Social Security substitute coverage? Yes  No  Amount \$ \_\_\_\_\_ Company \_\_\_\_\_  
 (c) Is any coverage to be replaced by the coverage applied for? Yes  No . If "Yes", complete Form 1335-O5.  
 (d) What is the total personal non-group life insurance in force or applied for on your life? 4350,000  
 (e) Does your net worth exceed \$4,000,000? Yes  No . If "Yes" complete Form 1335-NW.  
 (f) Have you smoked cigarettes within the last 12 months? Yes  No

(Q6-8 need not be answered if a Provident Medical Exam, dated on or after the date of this application, is being furnished)

6. Have you ever been treated for or ever had any known indication of:

(a) High blood pressure, diabetes, cancer, arthritis, asthma, emphysema, or emotional, nervous or mental disorder, or disease or disorder of the eyes, ears or speech? .....	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
(b) Disease or disorder of the neck, back, spine, heart, lungs, breasts, or the circulatory, digestive, urinary or reproductive systems? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>

7. Other than above, have you, within the past 5 years, had medical or surgical advice or treatment, had a physical examination, or been under observation for any disease or disorder? .....

8. Do you have a physical impairment or deformity, or take any type of prescribed medication? .....

(Give details of "Yes" answers to Q6-8. Include diagnoses, dates, physicians and addresses)

6b. History - Lumbar Disk 1982 Treated with Rest -> Fred A. Baughman Jr. M.D.  
1984 Surgery Cervical disk (2° auto accident) 5565 Grossmont Center Dr. La Mesa, Ca. 92041  
 7. Treatment by Allergist for Bronchitis -> John F. Aleksne, M.D.  
225 Dickinson St. San Diego, Ca. 92103  
 8. Yantdin inhaler as necessary for Bronchitis  
 -> Bruce M. Prens 5555 Reservoir Dr. San Diego, Ca. 92120

9. (a) Will your employer pay for all disability coverage to be carried by you with no portion of the premium to be included in your taxable income? Yes  No  (b) How much premium is paid with this application? None

To the best of my knowledge and belief, all of the foregoing statements and all of those in Part II, if any, of this Application are true, complete, and correctly stated. They are offered to Provident Life and Accident Insurance Company as the basis for any insurance issued on this Application. I have received a disclosure concerning: (1) the Medical Information Bureau; and (2) an investigative consumer report which may be made for use with this Application.

I authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organizations, institution or person that has any records or knowledge of me or my health, to give to Provident Life and Accident Insurance Company and/or its reinsurers any such information.

I authorize all said sources, except the Medical Information Bureau, to give such records or knowledge to Equifax, Inc. This agency is employed by Provident Life and Accident Insurance Company to collect and send such information

A copy of this authorization shall be as valid as the original

Signed at San Diego Ca. State  
 City State  
 this 23<sup>rd</sup> day of OCTOBER 1987  
 Field Office

Signature of Proposed Insured X. Jack Dym  
 I certify that I have fully and accurately recorded on this application the information supplied by the Proposed Insured

If existing coverage is to be replaced the Provident coverage applied for, have proposed insured complete and sign this form.

Supplement to Question No. 5 of My Application  
to Provident Life and Accident Insurance Company

If insurance is issued pursuant to this application I will, within 30 days of the issue date or effective date of the coverage whichever is later, permanently cancel the coverage listed below.

Company or Source	Monthly Disability Amount
<u>Monarch</u>	<u>\$3000/mo</u>

Date \_\_\_\_\_ Signature of Proposed Insured X \_\_\_\_\_  
Form 1335-Q5

Net Worth Supplement to Question 5

*DIS Amend*

Cash, Savings, Stocks & Bonds \$ \_\_\_\_\_ Personal Property \$ \_\_\_\_\_ Business \$ \_\_\_\_\_  
Personal Residence \$ \_\_\_\_\_ Other Real Estate \$ \_\_\_\_\_ Other \$ \_\_\_\_\_  
Form 1335-NW (Note: Show Current Value Less Indebtedness)

COVERAGE AND PREMIUM SECTION

Form Applied For 335 Injuries or Sickness Benefit starts 9/85 Day \_\_\_\_\_ Basic Monthly Benefit \$ 3000  
Age Last Birthday 52 for as long as \_\_\_\_\_ for Injuries  
Class P for as long as \_\_\_\_\_ for Sickness  
(If Lifetime Sickness . . .  L-L/60 or  L-L/55)

OPTIONAL BENEFITS

(Applicable Where Available) SIS Monthly Benefit  
 Social Insurance Substitute (SIS) Benefit starting \_\_\_\_\_ day . . . . . \$ \_\_\_\_\_  
 Residual\*  
 COLA/GPI:  4% COLA-8% GPI  8% COLA-4% GPI  12% COLA-0% GPI  
 6% COLA-6% GPI  10% COLA-2% GPI  
 Cost of Living Adjustment (COLA) 7% Compounded  
 UPDATE<sup>SM</sup> (Automatic Benefit Increase) Monthly Benefit  
 Guaranteed Physical Insurability Option (GPI) . . . . . \$ \_\_\_\_\_  
 Preliminary Term Benefit (PTB) Starting on \_\_\_\_\_ day . . . . . \$ \_\_\_\_\_  
 Business Value Protector (BVP) Benefit Period (Months)  12  6  3 . . . . . \$ \_\_\_\_\_

TERM PREMIUM

Annual  Quarterly Total Annual Premium \$ \_\_\_\_\_ Term Premium \$ \_\_\_\_\_  
 Semi-Annual  INSUREmatic (including Policy Fee)  
Salary Allotment (See Below)

Monthly  Semi-Annual  
 Quarterly  Annual  INSUREmatic Salary Allotment Premium \$ 211.86

Insurance Offer: (Check appropriate Insurance Offer and describe coverage)

Additional  Alternate  BOE

PERSONAL HISTORY INTERVIEW TELEPHONE INFORMATION

PROPOSED INSURED Jack H. Dym MO. Date 10/23/87  
(Please Print)

Since the Proposed Insured may be contacted by the Provident Home Office, what is the most convenient time frame (between 8:00 A.M. and 7:00 P.M. EASTERN TIME) when he/she may be reached by phone?

Telephone Number Home (Area) 619 (Number) 695-0618 (Time) Aftn. 6PM  
Business (Area) \_\_\_\_\_ (Number) 442-3335 (Time) 8-5  
(Extension) \_\_\_\_\_

Has the Proposed Insured been informed that he/she may be contacted by phone?  Yes  No

COMMENTS:

Soliciting Agent or Broker

Steven L. Dix

**62**

**ANSWERS MADE TO EXAMINER**

IN CONTINUATION OF AND FURNISHING PART OF APPLICATION FOR INSURANCE TO  
**PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Chattanooga, Tennessee 37402.**

Full Name of Person Examined (Last) JY M (First) JACK (Middle) H Date of Birth 4-8-37 Occupation Physician

1 a. Name and address of your personal physician (If none,  Check) Fred Baughman MD  
5505 Government Center Drive, La Mesa, CA 92040-1111

b. Date and reason last consulted? 1986 - follow-up on cervical disc

c. What treatment was given or medication prescribed? no

- 2 Have you ever been treated for or ever had any known indication of:
- a. Disorder of eyes, ears, nose, or throat?  Yes  No
  - b. Dizziness, fainting, convulsions, headache; speech defect, paralysis or stroke; mental or nervous disorder?  Yes  No
  - c. Shortness of breath, persistent hoarseness or cough, blood spitting; bronchitis, pleurisy, asthma, emphysema, tuberculosis or chronic respiratory disorder?  Yes  No
  - d. Chest pain, palpitation, high blood pressure, rheumatic fever, heart murmur, heart attack or other disorder of the heart or blood vessels?  Yes  No
  - e. Jaundice, intestinal bleeding, ulcer, hernia, appendicitis, colitis, diverticulitis, hemorrhoids, recurrent indigestion, or other disorder of the stomach, intestines, liver or gallbladder?  Yes  No
  - f. Sugar, albumin, blood or pus in urine; venereal disease; stone or other disorder of kidney, bladder, prostate or reproductive organs?  Yes  No
  - g. Diabetes; thyroid or other endocrine disorders?  Yes  No
  - h. Neuritis, sciatica, rheumatism, arthritis, gout, or disorder of the muscles or bones, including the spine, back or joints?  Yes  No
  - i. Deformity, lameness or amputation?  Yes  No
  - j. Disorder of skin, lymph glands, cyst, tumor, or cancer?  Yes  No
  - k. Allergies; anemia, hemophilia or leukemia?  Yes  No

DETAILS of "Yes" answers. (IDENTIFY QUESTION NUMBER, CIRCLE APPLICABLE ITEMS: Include diagnoses, dates, duration and names and addresses of all attending physicians and medical facilities.)

otitis externa & x 2 yrs  
Dr Marty Levin, 169 d E Main, El Centro, CA 92526  
antibiotics, no residual  
a new prescrip of glasses  
myopia & pres byopia, 2/87  
Ted Alage, no residue  
hx chronic allergies, bothers  
let 15 yrs. Secby Dr Bruce Prognier  
6640 Alvarado Rd, San Diego, CA 92121  
problem mostly during winter months  
no current problem or tx.  
1982 - L2-3 disc herniation  
tx 2 test, Dr Fred Baughman  
not bothersome at this time  
cervical disc x 3 yr - 2  
to auto accident, surgery  
Dr John Alksne 225 Dickens St  
San Diego CA 92103 - 5540  
disc above on all 4's  
ECG - EKG for insurance  
physical - Monarch (disability  
insurance) 3-4 months ago.

- 3. Are you now under observation or taking treatment?  Yes  No
- 4. Have you had any change in weight in the past year?  Yes  No
- 5. Other than above, have you within the past 5 years:
  - a. Had any mental or physical disorder not listed above?  Yes  No
  - b. Had a checkup, consultation, illness, injury, surgery?  Yes  No
  - c. Been a patient in a hospital, clinic, sanatorium, or other medical facility?  Yes  No
  - d. Had electrocardiogram, X-ray, other diagnostic test?  Yes  No
  - e. Been advised to have any diagnostic test, hospitalization, or surgery which was not completed?  Yes  No
- 6. Have you ever used barbiturates, narcotics, excitants or hallucinogens or ever sought treatment or been arrested for their use?  Yes  No
- 7. Have you ever sought help or treatment for alcohol use?  Yes  No
- 8. a. Have you ever had any disorder of menstruation, pregnancy or of the reproductive organs or breasts?  Yes  No
- b. To the best of your knowledge and belief, are you now pregnant?  Yes  No
- 9. Have you ever had military service deferment, rejection or discharge because of a physical or mental condition?  Yes  No
- 10. Have you ever requested or received a pension, benefits, or payment because of an injury, sickness or disability?  Yes  No

11 Family History: (Father, Mother, Brothers, Sisters) Tuberculosis, diabetes, cancer, high blood pressure, heart or kidney disease, mental illness or suicide?  Yes  No

a	Age if Living?	Age at Death?	Cause of Death?	b	Number Living?	Number Dead?	Age if Living?	Age at Death?	Cause of Death?
Father		18	heart disease	Brothers					
Mother		74	heart disease	Sisters					

The foregoing statements are full, complete, and true to the best of my knowledge and belief. Dated at 11/12/97

PARAMEDICAL ORGANIZATION (Please stamp or type below) this 12 day of November 1997  
 (X) Jack H. M.  
 Signature of person examined **63**

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 500 South Grand Avenue, Suite 1200, Los Angeles, California 90071.

On July 2, 1997, I served the foregoing document described as **NOTICE OF REMOVAL OF CIVIL ACTION** the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Guy A. Ricciardulli  
Attorney at Law  
1650 Hotel Circle North, #115  
San Diego, California 92108  
(619) 293-7313

/X/ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

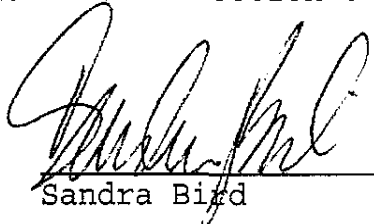
Executed on July 2, 1997, at Los Angeles, California.

// (BY PERSONAL SERVICE) I delivered such envelope by hand to the office of the addressee.

Executed on \_\_\_\_\_ at Los Angeles, California.

// State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/X/ Federal: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
\_\_\_\_\_  
Sandra Bird

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Jack H. Dym, M.D.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Provident Life and Accident Insurance Insurance Company and DOES I through XX, Inclusive  
Hamilton County,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Tennessee  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

97 cv 1267 JM (AJB)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Guy A. Ricciardulli (619) 293-7313  
Attorney at Law  
1650 Hotel Circle North, #115  
San Diego, California 92108

ATTORNEYS (IF KNOWN)

Stephen H. Galton (213) 629-8800  
GALTON & HELM  
500 South Grand Avenue, Suite 1200  
Los Angeles, California 90071

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(For Diversity Cases Only)

- PT DEF Citizen of This State  1  1 Incorporated or Principal Place of Business in This State  4  4
- Citizen of Another State  2  2 Incorporated and Principal Place of Business in Another State  5  5
- Citizen or Subject of Foreign Country  3  3 Foreign Nation  6  6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Removal under 28 U.S.C. Section 1332(a)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	PROPERTY RIGHTS	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property, 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWP (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding  2 Removal from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

VII. REQUEST FOR COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE None

Docket Number

DATE July 3, 1997

SIGNATURE OF ATTORNEY OF RECORD By:

Stephen H. Galton  
Attorney for Defendant  
Provident Life and Accident  
Insurance Company

31216 150-7/3/97

FILED  
JUL 2 1997  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY