

**IN THE COURT OF APPEALS 03/12/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00347 COA**

**UNITED COMPANIES LIFE INSURANCE COMPANY**

**APPELLANT**

**v.**

**MILDRED B. CLIFTON**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. RICHARD WAYNE MCKENZIE

COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

JAMES C. PITTMAN, JR.

JOHN L. LOW, IV

ATTORNEYS FOR APPELLEE:

PENNY JONES ALEXANDER

WILLIAM H. JONES

NATURE OF THE CASE: INSURANCE-CREDIT LIFE CONTRACT

TRIAL COURT DISPOSITION: FINAL JUDGMENT IN FAVOR OF MILDRED CLIFTON IN  
THE AMOUNT OF \$392,077.02

BEFORE FRAISER, C.J., BARBER, AND McMILLIN, JJ.

BARBER, J., FOR THE COURT:

In this case we are asked to review a jury verdict and resulting judgment against United Companies Life Insurance Companies (United Life) in favor of Mildred Clifton. The jury awarded damages of \$363,872.56, and the trial court added an additional sum of \$28,204.46 in attorney's fees for a total verdict of \$392,077.02. The claim was based upon United Life's allegedly wrongful denial of death benefits in the amount of \$13,872.56 on a credit life insurance policy on the life of Mrs. Clifton's deceased husband.

United Life appeals on a number of grounds, which claim essentially that the evidence is insufficient to support the verdict and that United Life was entitled to judgment in its favor as a matter of law. Finding this assertion to be without merit and for the reasons hereafter stated, we determine that this case is affirmed.

## I. FACTS

Travis and Mildred Clifton applied and were approved for a loan from United Companies Mortgage of Mississippi, Inc. (United Mortgage). The loan was to be secured by a deed of trust on the couple's personal residence. The primary purpose of the loan was to refinance an existing loan with another lender under more favorable terms. The Cliftons indicated a desire to purchase a credit life insurance policy from United Life that would provide death benefits calculated to coincide roughly with the projected declining balance of the loan.

This insurance was made available by United Mortgage through a group policy issued by United Life to United Mortgage. All documents connected with the loan arrangement, including the promissory note, the deed of trust, and a disbursement authorization were duly executed by the Cliftons. At that time, the Cliftons were given copies of all documents and were also issued a certificate evidencing the credit life policy.

However, since the loan involved refinancing the Cliftons' principal dwelling, federal law mandated a three-business-day rescission right in favor of the Cliftons. 15 U.S.C.S. § 1635(a) (Law. Co-op. 1995). The Cliftons were given the required documents explaining their rescission right and the procedure to exercise that right, should they subsequently elect to do so. No loan proceeds were disbursed at the document signing event, either directly to the Cliftons or indirectly to defray any of the loan expenses authorized by the Cliftons for payment from loan proceeds.

Under the terms of the disbursement authorization signed by the Cliftons, the bulk of the loan proceeds were to be disbursed in a check payable jointly to Mr. Clifton and to Ronald Doleac, the closing attorney. The purpose of that disbursement was to retire the prior loan secured by the residence in order that the new deed of trust given in favor of United Mortgage would be a first priority encumbrance of the property. After satisfaction of the existing indebtedness and the payment of the remaining loan costs as authorized by the Cliftons, there was a balance of \$200.00 which was to be disbursed in a check payable directly to the Cliftons. Among the disbursements authorized by

the Cliftons out of loan proceeds was the sum of \$776.86 to United Life as a one-time premium for credit life coverage.

The evidence indicates that the plan was for the borrowers to return to the loan company at the end of the rescission period where Mr. Clifton would endorse the check for the payoff of the prior loan so that it could be delivered to Mr. Doleac. Doleac would be responsible for paying off the loan and obtaining the necessary release of the deed of trust. It was also contemplated that, at the time the borrowers returned, the \$200.00 check would be physically delivered to the Cliftons and the loan company would disburse the remaining funds authorized by the disbursement sheet. These funds included the payment to United Life of the credit life insurance premium.

The rescission period expired at midnight, September 10, 1990. On September 11, Mr. Clifton fell ill, and he died the next day at approximately 5:00 p.m. Neither Mr. Clifton nor Mrs. Clifton had any contact with United Mortgage on September 11 or September 12, the date of Mr. Clifton's death.

After Mr. Clifton's death, Mrs. Clifton returned to the loan company on a number of occasions. There is conflicting evidence as to what transpired at these various meetings. It is not disputed, however, that the loan proceeds were never disbursed. It is also uncontroverted that Mrs. Clifton never requested or demanded the disbursement of the loan proceeds after her husband's death. Later, she did visit the loan office in the company of her minister, when she requested that the proceeds of the credit life insurance policy be paid to her. After eight months, United Life ultimately declined to pay the life insurance benefits. The insurance company's letter asserted that the premium was never paid and there was, therefore, a failure of consideration. Further, this letter stated that:

The fundamental principal [sic] of credit insurance is that there must be a loan. In the event of a loss, benefits are payable to a creditor. If there is no loan there is no creditor-debtor relationship and consequently no coverage. Mr. Clifton did not owe the mortgage company at the time of his death.

This litigation ensued.

## II. DISCUSSION OF THE LAW

Credit life insurance has been recognized to be something different than the normal policy of life insurance. Generally, a policy of life insurance is a stand-alone contract whose purpose is to provide a sum of money to the named beneficiary upon the death of the listed insured. A credit life insurance policy, on the other hand, is an integral part of a financial transaction involving a loan, consumer financing arrangement, or other form of credit obligation, with repayment of the anticipated obligation typically extending over a number of months or years. As a part of the transaction, a policy of life insurance is arranged on the life of the debtor with the creditor named as beneficiary. The purpose of the policy is to retire the balance of the debt should the debtor die prior to the end of the contemplated repayment period. The court in *Parnell v. First Savings & Loan Ass'n*, 336 So. 2d 764,

767-68 (Miss. 1976) held that "the inclusion of credit life insurance in a lender-borrower transaction is not for the sole benefit of, nor at the option of the lender." The *Parnell* case further holds that under Mississippi law, "credit life insurance is also a very important and vital part of the transaction to the borrower because it offers absolute protection to his estate for the unpaid balance of the debt in the event of his death before payment in full." *Id.* The distinct nature of credit life insurance has been recognized by the Mississippi legislature, which has enacted separate insurance legislation regulating such contracts. *See* Miss. Code Ann. §§ 83-53-1 *et seq.* (Rev. 1991).

The Mississippi statute defines credit life insurance as "insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transactions . . ." Miss. Code Ann. § 83-53-3(2)(b) (Rev. 1991). The statute further provides that the policy must "state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness," and then mandates the distribution of any surplus after the debt is extinguished. *Id.* § 83-53-13(2). The clear language of the Mississippi Code empowered Mrs. Clifton to collect the proceeds of the credit life insurance policy: "[t]he term of any credit life insurance . . . insurance shall commence *on the date when the debtor becomes obligated to the creditor*, or the date the debtor applies for such insurance, whichever is *later* . . ." *Id.* § 83-53-9 (emphasis added).

It is against this backdrop of fact and statutory law that this case must be decided. We must begin with the uncontradicted fact that the loan proceeds were never disbursed. Mrs. Clifton advances the proposition that, at some point in time prior to Mr. Clifton's death, the lending company became legally entitled to disburse the loan proceeds, and that this legal entitlement was sufficient to create the debtor-creditor relationship which, in turn, created the right to the credit life insurance coverage. Mrs. Clifton argues that the fact that loan proceeds were not actually disbursed is not relevant to the matter of insurance coverage. In order to assess the merit of that argument, we must determine at what point Mr. and Mrs. Clifton became "obligated" to the lender, United Mortgage, within the meaning of section 83-53-9 of the Mississippi Code of 1972. The applicable state statute mandates that coverage arises at such time as the borrowers become "obligated" to the lender, without reference to whether the premium has actually been tendered to the insurance company. *See* Miss. Code Ann. § 83-53-9 (Rev. 1991).

Federal law precludes the finding of the necessary "obligation" at the time the loan documents were signed, despite the fact that a certificate of insurance was issued to the Cliftons as a part of the transaction. Section 1635(a) of Title 15 of the United States Code creates the three-day rescission right that affects this case.

[I]n the case of any consumer credit transaction . . . in which a security interest, . . . is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until *midnight of the third business day following the consummation of the transaction* . . .

15 U.S.C.S. § 1635(a) (Law. Co-op. 1995) (emphasis added).

The regulations issued to implement this requirement, commonly known as Regulation Z, make quite

clear that during the rescission period *and for a certain indeterminate period thereafter*, it is illegal to make disbursement of any portion of the loan proceeds except into escrow.

Unless a consumer waives the right of rescission under [a subsequent paragraph dealing with financial emergencies], no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

*Truth in Lending*, Regulation Z 12 C.F.R. § 226.23(c) (1995).

The testimony at trial showed that Mr. and Mrs. Clifton were solicited by United Mortgage to refinance their home loan at a lower interest rate. They applied and were approved for a loan at United Mortgage. On September 5, 1990, the Cliftons executed a promissory note, a deed of trust securing the loan with their homestead, a truth in lending statement, and an application for credit life insurance on the life of Mr. Clifton. Mr. and Mrs. Clifton were given copies of the loan documents, the credit life insurance certificate, and the notice of right to cancel.

The loan documents authorized United Mortgage to disburse the proceeds to pay off their existing mortgage at Loans Inc., pay the appraiser and the closing attorney, collect a \$50.00 non-refundable loan fee, and pay the hazard insurance and credit life insurance out of the loan proceeds. Mr. Clifton was also to receive \$200.00. The notice of right to cancel dated September 5, 1990, gave Mr. and Mrs. Clifton three days to cancel the loan. The Cliftons, therefore, had until midnight on September 8, 1990, to cancel. This they did not do. Mr. Clifton was busy on September 9, became ill on September 10, and died on September 12 without canceling the policy.

United Companies Life argues that because the loan proceeds were never disbursed, the Cliftons never became obligated within the meaning of section 83-53-9 of the Mississippi Code. We disagree.

Promissory notes are negotiable instruments. They can be bought, sold, and transferred. By law, United Mortgage could have discharged the Cliftons from their obligation to repay the loan by intentionally canceling the instrument by destruction or mutilation or by striking out their signature, by renouncing its rights in writing, signed and delivered, or by simply surrendering the instrument to the Cliftons. Miss. Code Ann. § 75-3-605 (1972). None of these things were done. Neither cancellation nor renunciation without surrender of the instrument affects title to a negotiable instrument. *Id.* § 75-3-605(2).

Mr. and Mrs. Clifton could have canceled the mortgage loan in writing within the three days allowed under Regulation Z. After these three days had expired, the only way to satisfy the indebtedness was to pay it, unless United Mortgage canceled the note by tearing it up, marking it paid, or by renouncing its rights to the note in writing. Again, none of these things were ever done. Thus, the Cliftons were indeed obligated on the note. The manager of United Mortgage, who coincidentally was also an agent with United Life, admitted that the promissory note and deed of trust were never surrendered or returned, and that the credit life insurance company never inquired about the status of

the indebtedness.

United Mortgage argues that because they never disbursed the funds, no debt was incurred. The truth in lending statement executed by the Cliftons on September 5, 1990, however, authorized all disbursements. Some were to be disbursed by computer entry, such as the premium for hazard insurance, credit life insurance, and the loan fee. Other payments were to be made directly to the appraiser and the closing attorney. It was the policy of United Mortgage to have the borrowers endorse two of the checks--the check to pay the prior mortgage and the check for \$200.00 made payable to Clifton.

According to Mrs. Clifton's testimony, she and her husband went back to United Mortgage on Thursday, September 6, to sign the checks but knew that they could not pick up the \$200.00 until the following week. The fact that the Cliftons had not picked up their check at the time of Mr. Clifton's death on September 12, is insufficient to change his status as debtor or Mrs. Clifton's status as co-debtor. Therefore, they were obligated on the note. In fact, the manager of United Life testified that he could have disbursed the funds without any further consent from Mrs. Clifton. Mr. and Mrs. Clifton authorized United Mortgage to make the listed disbursements. The three days of the rescission period had passed. United Mortgage had not canceled the loan. Therefore, Mrs. Clifton was clearly entitled to receive the check she requested for \$200.00 out of \$7,777.00 authorized in disbursements.

United Mortgage claims that Mr. Clifton's estate could not be compelled to repay the indebtedness. It was not necessarily Mr. Clifton's estate, however, which was to pay anything. It was the co-debtor, Mrs. Clifton, and she was completely without funds. Mr. Nobles, manager of United Mortgage, in fact testified that United Mortgage did not return the loan documents to Mrs. Clifton and that they could have forced her to repay the loan.

In summation, United Mortgage and United Life admitted that the loan had been closed, that the Cliftons had not rescinded before it had closed, that disbursement was authorized, that they had not canceled the loan or returned the documents to her, and that they could have forced her to take the loan if they had wanted. This reinforces the Appellee's position that, given these events, the Cliftons were in fact obligated on the note, and United Companies was obligated on the credit life policy.

Unfortunately, when Mrs. Clifton and her minister returned to United Mortgage to collect the proceeds of the policy, United Mortgage placed conditions on the disbursement in an attempt to either confuse or discourage Mrs. Clifton from demanding the proceeds of the loan and the credit life policy. Witnesses at trial testified that the manager of United Mortgage told Mrs. Clifton that she could get the best lawyers in the country and still would not get any money. After reviewing the record, we are left with little doubt that the actions of the employees of both United Mortgage and United Credit Life were made in an effort to try to take advantage of Mrs. Clifton's misfortune and lack of education with the ultimate purpose to avoid payment on the credit life policy. It is impossible to ignore the apparent conflict of interest that exists in this situation where the ownership of the mortgage company and the credit life insurance company is the same. It appears more than merely fortuitous that Mrs. Clifton did not receive the proceeds of the loan which, in United Life's estimation, was the triggering event for the credit life policy.

It is also our opinion that the extra-contractual damages awarded in this case were appropriate.

Mississippi law imposed a duty upon the insurance company to investigate promptly and fully any claim before denying it. *Life & Casualty Ins. Co. v. Bristow*, 529 So. 2d 620, 623 (Miss. 1988), *cert. denied*, 488 U.S. 1009 (1989). The insurer must at a minimum (1) check to see if the provision relied upon for denial has been invalidated by a state or federal court, (2) interview its agents and employees to determine if they have knowledge relevant to the claim in question, and (3) when the claim is related to the insured's health, make a reasonable effort to secure all medical records relevant to the claim. *Eichenseer v. Reserve Life Ins. Co.*, 682 F. Supp. 1355, 1366 (N.D. Miss. 1988), *aff'd*, 881 F.2d 1355 (5th Cir. 1989).

Without first contacting its agents or employees who closed the loan, United Life declared that the loan had been rescinded before it closed. Assuming this defense was even arguable, in *Pitts v. American Security Life Insurance Co.*, 931 F.2d 351, 358 (5th Cir. 1991), where the federal court found that even if a policy was voidable, a claimant's benefits under the policy were vested since it had been in full force at the time he was injured.

The Mississippi Supreme Court has held:

Applying the familiar tort law principle that one is liable for her . . . actions, it is entirely foreseeable by an insurer that the failure to pay a valid claim through the negligence of its employees should cause some adverse result to the one entitled to payment. Some anxiety and emotional distress would ordinarily follow, especially in the area of life insurance where the loss of a loved one is exacerbated by the attendant financial effects of that loss. Additional inconvenience and expense, attorneys fees and the like should be expected in an effort to have the oversight corrected. *It is no more than just that the injured party be compensated for these injuries.*

*Universal Life Ins. Co. v. Veasley*, 610 So. 2d 290, 295 (Miss. 1992) (emphasis added). *Veasley* expressly permits a jury to award extra-contractual damages to the plaintiff even when the lower court does not find willful or grossly negligent conduct.

Mrs. Clifton's damages were entirely foreseeable. The employees at United Mortgage knew she had no income and that she was afraid she was going to lose her home. The existence of an arguable reason to deny a claim is nothing more than an expression indicating that acts of the alleged tortfeasor do not rise to the heightened level of an independent tort. *Veasly*, 610 So. 2d at 293 (citing *Pioneer Life Ins. Co. v. Moss*, 513 So. 2d 927, 930 (Miss. 1987)). An arguable reason, assuming arguendo that one exists, does not foreclose an award of extra-contractual damages under Mississippi law.

While Mrs. Clifton contends that the inaction and overt acts of United Life and its agents rose to the level of wilful and gross misconduct, the lower court decided not to allow the issue of punitive damages to be submitted to the jury. Nonetheless, under the facts of the case at bar and the decision in *Veasly*, the judge had the authority to allow the jury to consider extra-contractual damages instead. Therefore, those damages awarded to Mrs. Clifton should not be disturbed. This case is affirmed.

**THE JUDGMENT OF THE CIRCUIT COURT OF FORREST COUNTY IS AFFIRMED.**

**ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**BRIDGES, P.J., COLEMAN, DIAZ, KING AND PAYNE, JJ., CONCUR. MCMILLIN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY FRAISER, C.J., THOMAS, P.J. AND SOUTHWICK, J.**

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**McMILLIN, J., DISSENTING:**

Today, the majority has sustained a verdict of \$392,077.02, based upon a supposed breach of a proposed contract of life insurance with death benefits of something less than \$14,000.00. The contract of insurance, under applicable federal consumer protection law, could not possibly have been in effect at the time the insured's death occurred, in my opinion. Aside from that basic defect in the judgment, affirmance of the judgment allows an award of \$350,000 in extra-contractual damages for mental anguish and inconvenience to stand, based upon proof that, in its most favorable light, cannot be said to rationally support such an extravagant award. To say that I have grave reservations with this result is an understatement, and I must respectfully dissent.

As the majority has correctly stated, the federal statute provided the Cliftons with a three-day right of

rescission which expired, not necessarily upon the expiration of three calendar days, but ran until "midnight of the third *business day* following consummation of the transaction." 15 U.S.C.S. § 1635(a) (Law Co-op. 1995) (emphasis added). I am interpreting the majority's lengthy discussion of the impact of the three-day rescission period to indicate that this Court would agree with the decision reached by the Alabama Supreme Court that a death occurring during the three-day rescission period cannot be subject to credit life coverage since federal law prohibits the disbursement of the insurance premium until the period has expired. *Badie v. First Capital Mortgage Corp.*, 576 So. 2d 191, 193 (Ala. 1991). That decision and the rationale supporting it seem correct, beyond doubt.

The majority's opinion recites the document signing date of September 5, 1990, and then states that "[t]he Cliftons, therefore, had until midnight on September 8, 1990, to cancel." However, September 8, 1990, was a Saturday, and, though federal regulations permit Saturday to be counted as a business day, the record in this case clearly shows that it was not. The rescission notice given to the Cliftons on September 5 specifically stated upon its face that "you must send the notice [of rescission] no later than midnight of September 10, 1990 . . . ."

The statute, setting out the rescission period, standing alone, is insufficient to fully assess the respective rights of the parties. This is true because the statute has been expanded by the applicable federal regulations implementing the statute. These regulations have come to be commonly known as "Regulation Z." The pertinent part of the regulation was quoted by the majority, however, its impact was not properly assessed. The regulation provides that "no money shall be disbursed other than in escrow . . . until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded." , Truth in Lending, (Regulation Z) 12 C.F.R. § 226.23(c) (1995). This provision, which on first reading appears to define a readily ascertainable limit on disbursement, actually imposes a two-part limitation on the lender. Not only may it not disburse (a) until after expiration of the rescission period, it must also refrain from disbursement, (b) until it "is reasonably satisfied that the consumer has not rescinded." *Id.*

It is undisputed that the rescission period in this case, pursuant to written notice given the Cliftons, expired at midnight on September 10. It is also undisputed that Mr. Clifton died at approximately 5:00 p.m. on September 12. If the insurance was to be in effect on September 12, it had to be the result of some event occurring after midnight of September 10 and prior to the afternoon of September 12 that would have authorized United Mortgage to make the various disbursements of the loan proceeds, including the payment of the credit life policy. I am at a loss to discover such an event.

The federal law relating to cancellation permits prospective borrowers to exercise their rescission right by mailing the notice at any time prior to the expiration of the rescission period.

To exercise the right to rescind, the consumer shall notify the creditor of the rescission *by mail*, telegram or other means of written communication. *Notice is considered given when mailed . . . .*

*Id.*, 12 C.F.R. § 226.23(a)(2) (emphasis supplied).

Therefore, in this case, the Cliftons could have elected to rescind the loan contract by simply mailing the appropriate notice from any United States Post Office as late as 11:59 p.m. on September 10. In the event a borrower exercises such a means of rescission, it is impossible for the lender to determine for some time after the rescission period has expired whether the borrowers have rescinded or not. This consideration was clearly the driving force behind the additional restriction on disbursement contained in 12 C.F.R. § 226.23(c) to extend the prohibition for an additional period until the lender "is reasonably satisfied that the consumer has not rescinded." *Id.*

What possible event could have occurred after midnight on September 10 and prior to 5:00 p.m. on September 12 to offer any "reasonable satisfaction" to United Mortgage that the Cliftons had not elected to rescind the loan contract? The evidence is uncontradicted that the Cliftons made absolutely no contact with United Mortgage on either September 11 or September 12. Since the loan transaction specifically contemplated the Cliftons returning to the lender's offices after the end of the rescission period to endorse the loan payoff check and to pick up their \$200.00 check, the most logical interpretation of the failure of the Cliftons to return was that they had elected to rescind and that the notice simply had not arrived by mail. Of course, hindsight has revealed this not to be the case, but the majority's opinion has the effect of charging United Life with knowledge of facts it could not have possibly possessed at the critical time. Certainly, had the Cliftons mailed a notice near midnight on September 10, it must be seen as almost a foregone conclusion that it would not have been delivered to United Mortgage the next day, September 11.

While the probability of delivery on September 12 is admittedly somewhat higher, with all due respect to the United States Postal Service, I fail to see how the mere non-delivery by September 12 of a rescission notice possibly mailed as late as 11:59 p.m. on September 10, coupled with a total lack of personal contact from the prospective borrowers, can be seen to constitute "reasonable satisfaction" to United Mortgage that the Cliftons had not rescinded the loan. In fact, every reasonable inference based upon information available to the company at the time would tend to suggest the opposite. Absent such reasonable satisfaction, United Mortgage was precluded by law from disbursing any portion of the loan proceeds under applicable federal regulations.

Since the credit life premium was to be paid out of loan proceeds, then it follows logically that United Mortgage was specifically prohibited from procuring the credit life policy at the time of Mr. Clifton's unfortunate death. It is at the time of Mr. Clifton's death that the rights of the parties must be measured. Subsequent events, though subject to conflicting testimony and conflicting interpretation, cannot work to change this fact. Either the insurance coverage was in place, under the law, on the afternoon of September 12 or it was not. I am firmly of the opinion that it was not.

The majority asserts that Mr. and Mrs. Clifton were obligated on the note by virtue of the fact that the note they signed was a negotiable instrument. The mere signing of a note, negotiable or otherwise, does not create a legally binding obligation absent the underlying support of the contemplated consideration. A promissory note is nothing more than a particular form of contract. The consideration for Mr. and Mrs. Clifton to execute the note was the loan to them of the amount of money specified in the note. At no time prior to Mr. Clifton's death were the loan proceeds actually disbursed to the Cliftons (or to others in accordance with their instructions), nor was there a time when United Mortgage was authorized under federal law to make such disbursements.

The majority states in its opinion that "we are left with little doubt that the actions of the employees of both United Mortgage and United Credit Life were made in an effort to try to take advantage of Mrs. Clifton's misfortune and lack of education with the ultimate purpose to avoid payment on the credit life policy." There are other statements in the majority opinion that clearly imply some devious purpose on the part of the credit life company. Such statements, in my opinion, have no reasonable basis on a fair reading of the record in this case.

Because I am so firmly of the opinion that this case should be reversed and rendered for the foregoing reasons, I will not unduly belabor the additional point that, in my opinion, the jury's verdict of \$363,872.56 in damages on a breach of contract claim of less than \$14,000.00 is so excessive as to indicate bias, passion, and prejudice on the part of the jury, requiring the verdict to be reversed and remanded. (The trial court added an additional \$28,204.46 in attorney's fees to the verdict.) The trial court specifically denied a requested punitive damage instruction, but permitted an "extra-contractual damage" instruction patterned after the holding of the Mississippi Supreme Court in *Universal Life Insurance Co. v. Veasley*, 610 So. 2d 290, 296 (Miss. 1992). Even the most liberal reading of *Veasley*, which upheld extra-contractual damages of only \$500.00 on a \$3,052.76 insurance claim, does not appear to me to permit such excessive damages. *Veasley* suggests only that extra-contractual damages may be allowed for "[s]ome anxiety and emotional distress, . . . [and] [a]dditional inconvenience and expense, attorneys fees and the like . . . ." *Id.* at 295. It is my opinion that the jury, in effect, awarded exemplary damages in the face of the fact that the trial court specifically determined that a punitive damage jury instruction was not warranted.

I contend that the proper resolution of this case is to reverse and render for the trial court's failure to direct a verdict for United Life. Beyond that, I believe that the size of the verdict clearly indicates bias, prejudice, and passion on the part of the jury that should require, if nothing else, the verdict to be reversed and remanded for retrial on the issue of damages. For either reason, I think it is a grievous error to simply affirm this judgment.

**FRAISER, C.J., THOMAS, P.J., AND SOUTHWICK, J., JOIN THIS DISSENT.**