

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court Of Common Pleas

S.C. Supreme Court

Roger L. Couch, Circuit Court Judge

Case Number: 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the
Estate of Stephen F. Ney, a/k/a Steve F. Ney, ... Petitioner,

v.

Liberty Life Insurance Company, ... Respondent.

CORRECTED APPENDIX

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the
Estate of Stephen F. Ney, a/k/a Steve F. Ney, ... Respondent,

v.

Liberty Life Insurance Company, ... Appellant.

RECORD ON APPEAL

Respectfully submitted,


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April 8, 2010

APPX. 0001

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Shannon Hutchinson, Personal)
Representative of the Estate of Stephen)
F. Ney, a/k/a Steve F. Ney)

Plaintiff,)

v.)

Liberty Life Insurance Company)

Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action Number:2008-CP-42-0835

ORDER GRANTING
SUMMARY JUDGMENT

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MARC KITCHENS

This motion comes before the Court on Motion of the Plaintiff seeking Summary Judgment. At the time scheduled for hearing, attorneys for the parties appeared and presented arguments and evidence.

FINDINGS OF FACT

1. I find that this Court has jurisdiction of the facts and subject matter of this action.
2. This case arises out of the death of Stephen F. Ney and the efforts of his daughter, the Plaintiff, to collect the proceeds of an accidental death-benefit policy issued by the Defendant. —
3. I find that the Defendant issued a Basic Decreasing Accidental Death Benefit policy, certificate number 0044573294S, to Stephen F. Ney. This policy was intended to pay the balance outstanding on the mortgage on the home of Mr. Ney at the time of his death, referred to in the policy as the Eligible Loan Balance. The policy also provided an additional Accidental Death Benefit equal to twenty (20%) per cent of the eligible loan balance paid.

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p1

4. I find that South Carolina allows certain exclusions to be included in an accident insurance policy. These exclusions are found in Section 38-71-370 of the South Carolina Code of Laws, 1976, as amended. One of these exclusions is as follows:

The company is not liable for any loss resulting from the insured being drunk or under the influence of any narcotic unless taken under the advice of a physician.

This section further provides:

The insurer may, at its option, use in lieu of these provisions a corresponding provision of different wording approved by the director or designee which is not less favorable in any respect to the insured or the beneficiary.

5. I find that the Defendant did include in the policy issued to Mr. Ney a corresponding provision of different wording as follows:

A benefit will not be payable under this certificate if your accidental death results directly or indirectly from: (g) injury as a result of the insured being under the influence of alcohol; (h) injury as a result of the insured being under the influence of any narcotic unless administered on the advice of the physician and taken in the dosage prescribed.

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MARC KITCHENS

6. I find that Stephen F. Ney died October 3, 2006 at or about the hour of 9:35 p. m. with the cause of death being due to traumatic blunt chest injuries sustained in a crash and the manner of death being an accident, all as found in the Coroner's Inquest No. 2006-058 in Effingham County, Illinois. The Medical Examiner's - Coroner's Certificate of Death listed the cause of death as "blunt chest trauma due to or as a consequence of motor vehicle crash." Listed as "other significant conditions contributing to death but not resulting in the underlying cause" on the Certificate of Death was "methamphetamine use". The toxicology report shows that the blood of Mr. Ney tested positive for methamphetamines and negative for narcotics.

7. I find that Plaintiff filed her claim for payment under the policy with the Defendant on or about January 26, 2007.

8. I find that the defendant denied the claim by letter dated February 4, 2008, citing "the drugs exclusion of the certificate." This lawsuit resulted.

9. I find that methamphetamine is not a narcotic. The Affidavit submitted by Plaintiff's expert, Donald O. Allan, PhD., former chair of the Pharmacology at the School of Medicine at the University of South Carolina so states. Dr. Allan goes on to explain that the word "narcotic" comes from words relating to sleep, and narcotic drugs are drugs which induce pain relief, drowsiness, sleep and similar states of stupor. He states that methamphetamine is classed as a stimulant, the exact opposite of a narcotic, and is a drug that induces wakefulness, alertness, focus and a heightened sense of awareness. The Affidavits from the Defendant's experts nowhere opine that methamphetamine is a narcotic. To the contrary, both refer to methamphetamine as a stimulant.

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NOW, THEREFORE, I CONCLUDE AND IT IS ORDERED that exclusion (h) of the policy, cited by the Defendant, does not apply and there is coverage under the policy. Hence, the Motion of the Plaintiff for Summary Judgment is granted.

While Section 38-71-370 of The South Carolina Code of Laws, 1976, as amended, allows an insurer to vary somewhat from the language of the exclusions allowed by that section, when the insurer chooses to do so, as here, the language becomes that of the insurer and is construed strictly against the drafter. Further, rules of construction require clauses of exclusion to be narrowly interpreted and clauses of inclusion to be broadly construed. This rule of construction inures to the benefit of the insured. McPherson v. Michigan Mutual, 310 SC 316, 426 SE 2d 770 (1993).

The only evidence before the Court is that while there was methamphetamine in the system of Mr. Ney at the time of his death, there were no narcotics in his system. Further, the only expert testimony presented indicates that methamphetamine is not and cannot be considered a narcotic, but rather is a stimulant. The policy makes no exclusion for stimulants, nor would the law allow for such an exclusion.

The Defendant argues that the word "narcotic" should be interpreted to include any mood or behavior altering drug, whether obtained illegally or obtained by prescription and taken in excess of the prescribed dose. The Court declines to interpret "narcotic" so broadly. Terms in an insurance policy must be construed strictly against an insurer. McCracken v. GEICO, 284 SC 66, 325 SE 2d 62 (1985). Exclusions by definition are intended to be narrow.

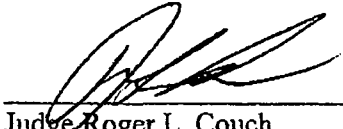
The Defendant had no right to deny coverage, as no exclusion applied. Therefore it is ordered that the Defendant pay the Eligible Loan Balance at the time of the death of Mr. Ney, along with the twenty (20%) per cent Additional Death Benefit. This is a liquidated sum and hence

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MARC HITCHENS

pre-judgment interest at the legal rate from the time of the Plaintiff's application should be paid;
the policy also provides for interest on benefits which are not paid within 30 days.

AND IT IS SO ORDERED this 14th day August, 2009.



Judge Roger L. Couch
Judge Seventh Circuit Court of Common Pleas

Spartanburg, South Carolina

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MARC KITCHENS

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Shannon Hutchinson, Personal
Representative of the Estate of Stephen F.
Ney, a/k/a Steve F. Ney

Plaintiff,

v.

Liberty Life Insurance Company

Defendant.

IN THE COURT OF COMMON PLEAS

C. A. No.: 2008-CP-42- 0835

COMPLAINT

JURY TRIAL DEMANDED

The Plaintiff would respectfully show into this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is the duly appointed Personal Representative of the Estate of Stephen F. Ney, a/k/a Steve F. Ney, who died October 3, 2006.
2. Defendant is an insurance company doing business in Spartanburg County, South Carolina.
3. Prior to his death, Stephen F. Ney gave a mortgage on property he owned at 125 Birchwood Estates Drive, Inman, South Carolina to Greenpoint Mortgage Funding, Inc. As part of this transaction, he purchased life insurance from the Defendant which was to pay the mortgage in full, in the event of his death.
4. On January 26, 2007, a claim was made against the Defendant for payment of life insurance proceeds. Though sixteen (16) months have elapsed since claim was made, Defendant has failed and refused to make payment under the policy, and the Plaintiff has now lost the home.

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SHANNON HUTCHINSON

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APPX. 0008

5. Plaintiff is informed and believes that she is entitled to judgment against the Defendant for all proceeds payable under the policy of the Defendant.

FOR A SECOND CAUSE OF ACTION

6. Plaintiff reiterates and realleges all of the allegations contained in the First Cause of Action as fully as though set forth verbatim.

7. The actions of the Defendant in failing to process and pay the claim of the Plaintiff constitutes bad faith.

8. Plaintiff is entitled to judgment against the Defendant for such actual and punitive damages as the jury may determine.

FOR A FIRST THIRD OF ACTION

9. Plaintiff reiterates and realleges all of the allegations contained in the First Cause of Action as fully as though set forth verbatim.

10. The actions of the Defendant violate the South Carolina Claims Practices Act, Section 38-59-10, et. seq.

11. Plaintiff is entitled to all relief, including attorney fees, provided by the South Carolina Claims Practices Act.

WHEREFORE, Plaintiffs prays judgment against the Defendant for the proceeds of the life insurance policy, for actual and punitive damages, attorney fees, all relief under the South Carolina Claims Practices Act, and such other and further relief as may seem just and proper.

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MARIE KITCHENS

2008 FEB 22 AM 9:58

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ATTORNEY FOR PLAINTIFF

Jury Trial Demanded

KATP
Kenneth C. Anthony, Jr.

February 15, 2008

Spartanburg, SC

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MARCO MITCHEMS

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APPX. 0010

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Shannon Hutchinson, Personal
Representative of the Estate of
Stephen F. Ney, a/k/a Steve F. Ney,

Plaintiff,

v.

Liberty Life Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-42-0835

ANSWER

The Defendant, Liberty Life Insurance Company ("Liberty") answers Plaintiff's
Complaint as follows:

For a First Defense

1. All allegations not specifically admitted are denied.
2. Paragraph 1 is admitted upon information and belief.
3. Paragraph 2 is admitted.
4. Answering Paragraph 3, Liberty admits only that it issued a Mortgage Accidental Death Policy with number 004573294S ("the Policy") on October 1, 2006 on the life of Stephen Ney ("the Insured") and that Greenpoint Mortgage was the primary beneficiary of the Policy. Any remaining allegations are denied.
5. Answering Paragraph 4, Liberty admits only that Plaintiff made a claim for benefits under the Policy and Liberty denied the same after an investigation revealed that Insured's illegal drug use contributed to his death. No benefits were payable

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MARC KITCHENS

because of certain policy exclusions including, but not limited to, the Insured's illegal drug use. Any remaining allegations are denied.

6. Paragraph 5 is denied.

7. Answering the incorporated allegations of Paragraph 6, Liberty incorporates the preceding admissions and denials as if fully restated.

8. Paragraph 7 is denied.

9. Paragraph 8 is denied.

10. Answering the incorporated allegations of Paragraph 9, Liberty incorporates the preceding admissions and denials as if fully restated herein.

11. Paragraphs 10 and 11 are denied.

For a Second Defense
(Affirmative Defense: Lack of Standing)

12. The primary beneficiary of the Policy proceeds was Greenpoint Mortgage, who has made no claim for the same.

13. Upon information and belief, Plaintiff lacks standing to pursue all or some of her claims.

For a Third Defense—Failure to State Actionable SCCPA Claim

14. The South Carolina Claims Practices Act, S.C. Code Ann. § 38-590-10, et seq., does not create privately actionable claims practices standards.

15. To the extent Plaintiff's third cause of action is based on any provision of the Claims Practice Act other than S.C. Code Ann. § 38-59-40, or to the extent such claim seeks any relief other than an award of attorneys' fees, Plaintiff's third cause of action fails to state facts sufficient to constitute a cause of action.

WHEREFORE, Defendant prays that: (a) the Complaint be dismissed; (b) the Court declare that Defendant has discharged all of its obligations in connection with the policy; (c) the costs of this action be taxed against Plaintiff; and (d) the Court grants such additional relief it deems just and proper.



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Counsel for Defendant

March 28 2008

MARC KITCHENS

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Shannon Hutchinson, Personal
Representative of the Estate of Stephen F.
Ney, a/k/a Steve F. Ney

Plaintiff,

v.

Liberty Life Insurance Company

Defendant.

IN THE COURT OF COMMON PLEAS

C. A. No.:2007-CP-42-0835

MOTION FOR SUMMARY JUDGMENT

**TO: REBECCA A. ROSER AND KEVIN K. BELL., ATTORNEYS FOR
DEFENDANT:**

You will please take notice that the Plaintiff, by and through her undersigned attorney, will move, ten days hereafter or as soon thereafter as counsel may be heard, for an Order granting summary judgment as to the liability of the Defendant for payment of the policy in this case, as to the bad faith handling of this claim by the Defendant, as to violation of the Unfair Claims Practices Act by the Defendant, as to the damages payable under the policy, for treble damages under the Unfair Claims Practices Act, and for attorney's fees and costs, leaving for the jury only the amount of punitive damages. This Motion will be based on documents produced in discovery, Responses to Requests for Admissions from the Defendant, and such affidavits as may served upon you at or before said hearing.

May 4, 2009
Spartanburg, SC

THE ANTHONY LAW FIRM, P.A.

By: KATHA
Kenneth C. Anthony, Jr.
Attorney for Plaintiff

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CLERK OF COURT
SPARTANBURG COUNTY

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APPX. 0014

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 SHANNON HUTCHINSON, PERSONAL)
5 REPRESENTATIVE OF THE ESTATE OF) TRANSCRIPT
6 STEPHEN F. NEY, A/K/A STEVE) OF
F. NEY,)
7 PLAINTIFF,) RECORD
8 VS.)
9 LIBERTY LIFE INSURANCE COMPANY,) 08-CP-42-835
10 DEFENDANT.)

11
12 June 16th, 2009
13 Spartanburg, South Carolina

14
15 B E F O R E :

16 THE HONORABLE ROGER L. COUCH, Judge.

17 A P P E A R A N C E S :

18 KENNETH C. ANTHONY, JR.
19 ESQ.
Attorney for the Plaintiff

20 KEVIN BELL
21 ESQ.
22 Attorney for the Defendant

23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(There were no exhibits marked during this hearing.)

1 PROCEEDINGS

2
3 THE COURT: All right. We're on the record in the case
4 of Shannon Hutchinson, personal representative of the Estate
5 of Steven F. Ney, against Liberty Life Insurance. I see a
6 motion to amend the scheduling order and also a motion for
7 summary judgment.

8 which ones are we taking up today?

9 MR. BELL: I think we'll just be taking up the summary
10 judgment motion, Your Honor, which is actually Mr. Anthony's
11 motion.

12 THE COURT: All right.

13 MR. BELL: The other scheduling motion has been
14 handled.

15 THE COURT: Thank you.

16 Be happy to hear from you, Mr. Anthony.

17 MR. ANTHONY: Thank you, Your Honor.

18 I took the liberty of placing a notebook up there on
19 your bench---

20 THE COURT: All right. Okay.

21 MR. ANTHONY: ---Your Honor, which I'd like to refer
22 to, and it's not, it's not as many pages as we're gonna look
23 at as it looks like. But I copied a little more rather than
24 less.

25 Your Honor, this case arises out of an insurance policy

1 on Mr. Stephen -- I don't know how you say his name, Ney or
2 Ney. He is -- he had a home here in Spartanburg where he
3 lived with his daughter, Shannon Hutchinson, her husband,
4 and child, and he was a long distance truck driver.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. ANTHONY: And he purchased what I commonly call as
7 a mortgage insurance policy. But this is called a basic
8 decreasing term policy. It would pay off the mortgage on
9 the home if he were to die on accident. Well -- and that
10 policy is under Tab 1, Your Honor, and---

11 THE COURT: All right.

12 MR. ANTHONY: And on Page Number 2 of that policy is
13 provided the exclusions where payment will not be paid. A
14 benefit will not be payable under this certificate if your
15 accidental death results directly or indirectly from, and
16 the one we'll be talking about today is H, injury as a
17 result of the insured being under the influence of any
18 narcotics unless administered on the advice of a physician
19 and taken in the dosage required.

20 That exclusion, Your Honor, is actually provided by
21 South Carolina statute. That statute is under Tab 22 and
22 provides what exclusions can be provided in an accidental
23 death policy, and the, the very last one or the very last
24 page, and I've provided highlighting to skip over the
25 irrelevant portions, the last one, it had language very

1 similar to the exclusion that we just looked at. The
2 company is not liable for any loss resulting from the
3 insured being drunk or under the influence of any narcotics
4 unless taken on the advice of a physician.

5 So, that is a, an exclusion that is allowed to be
6 included in an accident policy by an insurance company by
7 statute. But the wording must be that or very similar to
8 the exclusion by statute.

9 Well, Mr. Ney died October 3, 2006, in a wreck. He was
10 driving his rig up in Effington County Illinois and went off
11 the road and struck a bridge abutment and died. The
12 coroner's inquest is under Tab 2 where the coroner ruled
13 that the deceased came to his death on the 3rd day of
14 October, 2006, at or about 9:35 p.m. with the cause of death
15 due to traumatic blunt chest injuries sustained in a crash.
16 We believe the manner of his death to be an accident.

17 The next page, Your Honor, is the certificate of death
18 in, from Illinois and you will see under Part 1 that the
19 cause of death as listed first as blunt chest trauma.
20 Second as motor vehicle crash. But in Part 2, and that fine
21 print is very difficult for me to read, it says other
22 significant conditions contributing to death, but not
23 resulting in underlying cause given in Part 1, and there
24 listed is methamphetamine use.

25 The toxicology report follows on the next page. And as

1 the Court will see, Mr. Ney's blood did show positive for
2 amphetamines and methamphetamine. But of note, further down
3 the page he tested negative for narcotics. Consequently,
4 our argument is going to be, Your Honor, that that exclusion
5 does not apply, that he was not under the influence of
6 narcotics, and that is the specific exclusion that was
7 allowed in that policy.

8 Following is some correspondents back and forth, mostly
9 forth, me writing Liberty Life and saying why aren't you
10 paying, why aren't you paying, the house is gonna be
11 foreclosed and sold, and, in fact, that's what happened.
12 The house was foreclosed and sold and Mrs. Hutchinson, the
13 daughter and personal representative, lost her home.
14 There's, there's also a secondary benefit under the policy
15 which she should of collected, been able to collect twenty
16 percent of the balance over and above.

17 The -- we filed our lawsuit, which is under Tab 14.
18 The insurance company answered at Tab 15. And
19 interestingly, in the answer, uses the phrase not narcotics,
20 but says that his, they deny coverage because of his
21 "illegal drug use." Illegal drug use we respectfully submit
22 is not an exclusion allowed by the policy. It must be a
23 narcotic drug.

24 That -- this is a real distinction, Your Honor, as
25 borne out by the affidavit of, of Donald O. Allen, which is

1 under Tab 16. I sent this affidavit, Your Honor, to
2 defendant's counsel right after---

3 THE COURT: Tab Number 18 you said?

4 MR. ANTHONY: That's under 16.

5 THE COURT: 16. I'm sorry.

6 Go ahead.

7 MR. ANTHONY: But I'm told this morning they, they do
8 not believe they received it. So, that's my, my fault I
9 suppose if that's the case, Your Honor. But I, I do tell
10 the Court that we, we sent it timely. So, why it didn't
11 arrive, I've only -- I've already apologized.

12 But the affidavit of Doctor Allen, who is the former
13 chair of the Department of Pharmacology at, at MUSC, states
14 very clearly that methamphetamine is not a narcotic drug.
15 In fact, he goes on to, to elaborate and the Court probably
16 is aware of this, but not, not to belabor it too much, but
17 narcotic, by its definition, has something to do with sleep.
18 That's sort of the word that it comes from, and it has to do
19 with drugs that are derived from the opiates, from the poppy
20 plant, from opiates such as heroins, morphine, things that
21 put you to sleep, things that are used as anesthetics,
22 things that kill pain and sedate.

23 Methamphetamine is the exact opposite of that. It is a
24 stimulant. It's an upper. It, it makes you wakeful. It
25 makes you attentive. And, in fact, one of the only

1 prescribed uses for methamphetamine is to treat narcolepsy,
2 the, the involuntary falling asleep, is to keep you awake.
3 So, to say that methamphetamine is a narcotic would be the
4 same as in a DUI case, for instance, if the, if the driver
5 were under the influence of too much caffeine of saying oh,
6 well, alcohol just covers caffeine too. So, they're,
7 they're polar opposites and it would be the worse stretch
8 of, of interpretation to try to say that methamphetamine is
9 a narcotic.

10 I have included, not that it really needs more
11 elaboration than Doctor Allen's affidavit, but I've included
12 some definitions from several dictionaries. Under Tab 17 is
13 from the dictionary. Narcotic is an addictive drug such as
14 opium and usually induces sleep or stupor. The next tab is
15 yourdictionary.com. Narcotic is a drug as opium or any of
16 its derivatives used to relieve pain and induce sleep. Now
17 included at 19, the U.S. Drug Enforcement Administration's
18 definition. The term narcotic derived from the Greek word
19 for stupor. Originally referred to a variety of symptoms
20 such as to dull the senses and relieve pain.

21 Today the term's used in a number of ways. It mentions
22 some individuals define narcotics as those that bind opiate
23 preceptors while others refer to any elicit substance as a
24 narcotic. In a legal context, narcotic refers to opium,
25 opium derivatives, and their semi-synthetic substitute.

1 Again, some other random documents. Under Tab 20 is
2 the international list of narcotic drugs under international
3 control. Methamphetamine is not listed there anywhere as a
4 narcotic drug.

5 At Tab 22, I have the National Institute of Drug
6 Abuse's definition of methamphetamine. It's a very
7 addictive stimulant that affects central nervous system.
8 Taking even small amounts of methamphetamine can result in
9 increased wakefulness. Again, the exact opposite.

10 Now, from defendant's brief, Your Honor, I think the
11 argument is going to be oh, well, the Legislature didn't
12 mean to define it so narrowly. The Legislature intended for
13 a narcotic to include any illegal drug. That's just simply
14 not the case, Your Honor. I've, I've been through the
15 entire code. Every time that narcotic, the word narcotic is
16 used, it is never used in any such broad a sense if it would
17 not stand scrutiny, for instance, under any of the criminal
18 statutes to charge somebody who had methamphetamine under
19 the narcotic statute. That case wouldn't, wouldn't pass
20 muster.

21 And I've, I've pulled these examples that, to, that
22 show that every time the word narcotic is used that they
23 mean something. To include something more, they
24 specifically include it.

25 At Tab 23, for instance, that lists narcotics and

1 notice that the title is narcotics and controlled
2 substances. Not just narcotics. And if we turn to the
3 third page, and I'm under Tab 23.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. ANTHONY: Your Honor, if we turn to the third page
6 of that statute, you'll notice at the bottom of the page
7 that methamphetamine and narcotic drug are defined
8 separately right, one right after the other. So, if
9 methamphetamine were meant to be included in narcotic drug,
10 there would be no need to define it separately. And again,
11 the definition in this statute of narcotic drug is exactly
12 what we've seen elsewhere.

13 Over on Page 4, it includes opium, cocaine, opiates, a
14 compound coming from opiates. But that's as far as it goes.
15 Methamphetamine is defined separately in other sections that
16 really have nothing to do with insurance, but, but
17 nevertheless are places that the Legislature has used the
18 word narcotic, under Tab 44, 24, is Section 44-53-210.
19 Again, the title narcotics and controlled substances.

20 Tab 25, again, has a title narcotics and controlled
21 substances. Tab 26 talks about financial transaction
22 involving drugs makes that a crime, and, again, in the
23 language there, prohibits financial transaction or activity
24 relating to narcotic drugs or controlled substances, and
25 that's twice there to show that narcotic doesn't include

1 every controlled substance or illegal drug.

2 At Tab 27, again, a title narcotics and controlled
3 substances talking about subsequent offenses provides a
4 stronger penalty for somebody if they have a prior
5 conviction for narcotic drugs, marijuana, depressants,
6 stimulants, or hallucinogenic drugs. That's in Paragraph 1
7 and 2 where they specifically mention stimulants separately
8 from narcotic drugs.

9 Under Tab 28, we have another criminal statute,
10 possession, manufacturing, trafficking. Down in
11 Subparagraph B-2 it mentions narcotic drugs and stimulants
12 separately. Same way in Paragraph 3, narcotic drugs and
13 stimulant.

14 Under 29, which is talking about somebody who can get a
15 license to put in alarm systems, you can't get one of those
16 if you've been convicted of a crime involving sale,
17 manufacturing, transportation of a controlled substance,
18 drug, or narcotic, and showing their separate things.

19 Under Tab 30, we have 17-13-140 which allows search
20 warrants to be issued searching for any narcotic drugs,
21 barbiturates, amphetamines, or other drugs. Still a
22 separate denomination and they want to include amphetamines
23 as listed separately.

24 Now, I looked for cases to see if this issues come up
25 elsewhere and there's been Courts that have somehow defined

1 narcotics to include methamphetamine. The only one I can
2 find is under Tab, Tab 31. It's a case out of New Mexico.
3 Fairly recent case. Ortez versus Overland Express arose in
4 a Worker's Compensation setting where a drug, a employee had
5 been using amphetamines at the time that he was injured and
6 there was a penalty for that in the law. Prohibition
7 against collection that was caused by the use of narcotic
8 drugs. The single commissioner apparently bought defense
9 counsel's argument and said narcotic includes amphetamine.
10 Here's the Supreme Court of or the Court of Appeals in
11 New Mexico on Page 3 of the opinion. We now look to whether
12 the definition of a "narcotic drug" in the Controlled
13 Substances Act includes methamphetamine or amphetamine,
14 which would bring that Code Section into play. Next
15 sentence, neither methamphetamine nor amphetamine has ever
16 been included in the definition of narcotic drug.
17 On the next page, they opine, reading methamphetamine
18 and amphetamine into these statutes requires us to engage in
19 impermissibly broad construction, and they reverse the
20 finding that this worker should be penalized for using,
21 having used a narcotic drug.
22 Even the affidavits which have been provided by two
23 experts to the defense, which I've put them to the last,
24 under tab, I believe that's 32 and 33, one is a Doctor Demi
25 Garvin from Little Mountain, South Carolina. No where in

1 her affidavit does she opine that amphetamine is a narcotic
2 drug. In fact, she refers to it, and, and mentions that
3 it -- she, she refers to it as a potent CNS stimulating
4 effects and notes that methamphetamine is currently
5 indicated for the treatment of obesity, narcolepsy, and
6 Attention Deficit Hyperactivity Disorders. So, nowhere does
7 she refer to it as narcotic or make an argument that it is.
8 She identifies it as, as it is, a stimulant.

9 And Doctor Barry Logan, who I think is from Washington
10 and purports to be an expert on the affects of amphetamines,
11 and both of these experts opine that the amphetamine caused
12 his death, but he mentions specifically in his Paragraph
13 Number 7, methamphetamine is a central nervous system
14 stimulant drug. It is not metabolized in the body to
15 amphetamine, which is the central nervous system stimulant
16 drug.

17 Methamphetamine is prescribed for narcolepsy and
18 refractory ADHD. So, nowhere in his affidavit does he argue
19 that it is a narcotic. It is always referred to as a
20 stimulant.

21 So, Your Honor, I feel like I've gone over it in more
22 length than I should to belabor the obvious. But
23 methamphetamine is simply, can not be characterized as a
24 narcotic. Nowhere in the literature is it characterized as
25 a narcotic. And to think that the Legislature was so loose

1 with its words that it would use a term, specific term such
2 as that defined in medicine, defined in the law, to cover
3 just all, any drug out there, is, as the New Mexico Court
4 says, that's an impermissibly broad construction.

5 So, that, that brings us to the conclusion that this
6 was a covered loss. And then if the Court agrees, we would
7 then invite the Court to look at the correspondents, which I
8 sort of skipped over, but notice that the claimant, she
9 filed her claim January 26th of 2007. The denial didn't
10 come until February 4, 2008. Why it took a year, if they
11 were gonna deny the policy, why they couldn't have denied it
12 early on, and -- but we, we think not only is the denial
13 improper, but the, there's been bad faith in, in processing
14 the claim in general, and this company should, should not be
15 allowed to, shouldn't deny it in the first place and not,
16 should of handled the claim more properly and we believe
17 that the Court should rule in our favor on both of those
18 issues, and the only issue that would be left to the jury
19 would be the amount of punitive damages, if any, to be
20 awarded.

21 Thank you, Your Honor.

22 THE COURT: Hear from the defense.

23 MR. BELL: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 MR. BELL: It's a memo we---

1 THE COURT: Thank you.

2 MR. BELL: ---submitted by email I believe. It's
3 marked yesterday. But there's an in person hard copy.

4 THE COURT: All right.

5 MR. BELL: And I believe we agree with a great deal of
6 what Mr. Anthony said about the underlying way the accident
7 happened. I mean there's no question that Mr. Ney was under
8 the influence of methamphetamines. So, I don't think I have
9 to review it. His level was ten times the level at which
10 impairment is triggered, ten times the peak level achieved
11 for therapeutic uses, and, in fact, both experts said it was
12 in the toxic to lethal range, and the symptoms that go along
13 with that are very important, which are euphoria, excitation,
14 reduced fatigue, or drowsiness, increased alertness,
15 hallucinations, rapid speech, delusions, and psychosis.
16 Those are all things which impact your psycho-motor skills.
17 They impact your ability to safely pilot a vehicle.

18 The question then becomes what did the Legislature mean
19 when, in the Insurance Code, it adopted the term, the phrase
20 under the influence of any narcotic. That phrase has been
21 used, that was promulgated by the National Association of
22 Insurance Commissioners. It is simplified language because
23 the language is directed at lay persons who get insurance
24 policies. It is not directed at doctors. It is not
25 directed to the niceties of the penal code, which

1 differentiates between all manners of drugs for purposes of
2 sentencing and classifying of crimes.

3 It is what does a lay person understand that term to
4 mean, and the phrase under the influence of any narcotic has
5 found its way into the insurance codes I believe in at least
6 33 states that we located and we cited those. We thought,
7 with all due respect to freedictionary.com, we put in the
8 definition of the term narcotic from Oxford University
9 publication, the Oxford Dictionary of American English, and
10 it's -- we have quoted the definition in our brief exactly
11 as it appears, which is the first definition introduced by
12 the sideways triangle, which is a drug or other substance
13 affecting mood or behavior and sold for nonmedical purposes
14 especially in the legal realm.

15 That is the first definition. No doubt
16 methamphetamines affect mood or behavior based on the expert
17 opinion in this case. And after that, it has an italicized
18 reference that is preceded by a little colored square that
19 says medicine, in italics, a drug that relieves pain and
20 induces drowsiness, stupor, or sensibility. That would be
21 the medical side of things.

22 The first definition introduced by the sideways
23 triangle is the, is what the -- this is the introduction to
24 the dictionary, it explains how to use the dictionary, that
25 is the core sense, which is defined to be the core meaning.

1 It's the one that represents the most literal sense that the
2 word has in ordinary modern American usage. It is the
3 meaning accepted by native speakers as the one that is most
4 established as literal and central. And I read, ordinary
5 modern American usage, and that is the goal when looking at
6 the Insurance Code provision drafted by the Legislature,
7 Legislature is we're suppose to give that word narcotic an
8 ordinary usage.

9 And we would submit, Your Honor, that for purposes of
10 construing the insurance code, the ordinary usage is any
11 drug, any illegal drug or a drug that is used illegally. It
12 could of been a prescription drug that was abused in excess
13 of the prescription itself.

14 We have also cited -- I'll distinguish the New Mexico
15 case in a moment. Well, I'll distinguish it now. The New
16 Mexico case, worker's compensation benefits under their
17 statutory scheme made specific reference to the penal code
18 and, and, yes, methamphetamines have been removed from the
19 specific portion of the penal code that they were looking
20 at. So, that is correct. I mean the New Mexico case was
21 direct.

22 We have cited the District Court case of Jane Doe,
23 which is a, out of the Eastern District of Missouri, which
24 is an ordinary insurance policy case. It involves cocaine
25 use. Cocaine, and I think Mr. Anthony would agree, cocaine

1 is in the same general category as methamphetamine. It's on
2 the upper side of things. And there was an exclusion for
3 narcotics. And here's what the Court said.

4 It would be improper and unfair to allow experts to
5 define terms that were specifically written for and targeted
6 towards lay persons. The terms should be afforded their
7 ordinary and not specialized meanings. Consequently, this
8 Court need not be concerned with cocaine pharmacological
9 similarities or dissimilarities with narcotics,
10 hallucinogens, barbiturates, marijuana, or amphetamine.
11 What the Court must be concerned with is what the ordinary
12 person understands cocaine to be, and how that understanding
13 relates to the cause in question. The Court then goes on to
14 conclude the Court finds that cocaine is commonly understood
15 by the layman to be a narcotic that is not used for
16 medicinal purposes, and the Court concluded that cocaine was
17 within the exclusion for narcotics.

18 I would submit, Your Honor, that that is exactly the
19 analysis that tracks South Carolina rules of statutory
20 construction. You're trying to determine what the
21 Legislature was thinking, and within, in this case, in
22 passing 38-71-370, the Legislature is suggesting language
23 for contract to be given to lay persons.

24 If you accept the proposition or if you follow the
25 proposition that the Legislature intended that exclusionary

1 language that they and 32 other states passed was targeted
2 at opiates or downers only, then you have to accept the
3 proposition that the Legislature thinks it is perfectly
4 appropriate to exclude accidental death benefits for death
5 resulting from the use of like heroin, but that it would be
6 affirmatively prohibited to exclude benefits for death
7 resulting from crack, methamphetamine, or cocaine, which
8 are equal scourges on society and are equal by increase,
9 equally increase the risk associated with the policy.

10 And we would suggest that that is, in the, in the
11 parlance of, of the cases about statutory construction,
12 that's an absurd result. And even if -- the cases say even
13 if one sense of the word, which is, may uniquely common, the
14 medical sense in this case, would produce a certain result,
15 if that result is absurd, then the Court must reject it, and
16 we would submit that that certainly applies here and that
17 the common and ordinary usage of the term, which is any
18 illegal drug or drug used illegally and those are mood or
19 behavior altering drugs is what should be controlled.

20 That is our argument, Your Honor, on the, on the
21 exclusion itself. I would suggest that's the only issue
22 that's properly before you. The notebook that was handed
23 up, all of that is the first we have seen of any support for
24 the plaintiff's motion. All that we received previously on
25 May 6th was a motion saying we're gonna move for summary

1 judgment based on anything that we hand up at the hearing,
2 and, of course, that's not the procedure of Rule 56.

3 I don't think there's any question that we have
4 overcome the standard on causation. We have two forensic
5 toxicologist who have identified the connection between
6 methamphetamine, methamphetamine abuse and driving and the
7 impairment. Happy to go into any of that if Your Honor
8 would like.

9 THE COURT: No, it would seem to me though that, that,
10 in just skimming your expert's reports, that if we're
11 talking medically, and medically speaking, speak, the, the
12 phrase narcotics would not include methamphetamine. You,
13 you're conceding that I think. You're saying---

14 MR. BELL: I think we've conceded that in the first
15 sentence in the argument.

16 THE COURT: Okay.

17 MR. BELL: We concede that a strict technical or
18 medical sense that it would not be within the normal usage
19 of, of---

20 THE COURT: But your position is because there are
21 definitions that indicate that it, the ordinary use of the
22 word, that the definition is broad enough to include
23 methamphetamine?

24 MR. BELL: That's right. If we go out into the lobby
25 of this courtroom and start asking people if methamphetamine

1 is meth, is a narcotic, that, that we'll, we'll come up yes
2 a lot, a lot.

3 THE COURT: All right. Anything further from the
4 defense?

5 MR. BELL: Only -- and this is in our brief. But in
6 addition to the Oxford dictionary, which I would suggest is
7 a very authoritative publication, we've also cited
8 wikipedia.com, the people's encyclopedia, that says the use
9 of the word narcotic refers to an, illegal or unlawfully
10 possesd drug including marijuana and cocaine is common world
11 wide although these substances are not considered narcotics
12 in the national context, and that's, again, what we are
13 saying. And what they note on that, which is that the
14 United Nations, they have a drug, a worldwide drug policy
15 making body, and it is called the Commission on Narcotic
16 Drug, Drugs, and its authority extends well past opiates and
17 heroin.

18 We also cited a Kansas City Missouri, an AP story that
19 ran about a week after this case was filed, and it was about
20 cuts in funding for methamphetamine police work. It says a
21 common fear is sweeping through the Midwest drug enforcement
22 community that methamphetamine, the narcotic scourge that
23 has wounded middle America as no drug ever before, is about
24 to surge again, and we would suggest, Your Honor, that the
25 District Court in Jane Doe got it right, that you look at it

1 from a lay person's standpoint.

2 THE COURT: All right. well, I'll take a look at it
3 and issue an order.

4 Anything further, Mr. Anthony?

5 It's your motion. I'll give you the last bite at the
6 apple.

7 MR. ANTHONY: well, if you'll indulge me just for one
8 moment.

9 THE COURT: Yes, sir.

10 MR. ANTHONY: That is that I think this Jane Doe case,
11 which I had not found before, is completely consistent with,
12 with our argument. If you notice that they're construing
13 whether cocaine is considered a narcotic, and what we
14 included under Tab 19 from the U.S. Drug Enforcement
15 Administration agrees. It says cocaine and coca leaf, which
16 is also classified as narcotics in the Controlled Substance
17 Act, because they produce a stupor. They produce the same
18 sort of dulling, for purposes of this discussion, the term
19 narcotics refers to drugs that produce morphine like
20 effects.

21 And you'll note also in the Jane Doe case that the
22 exclusion that is being attempted to be utilized there was
23 at the top of the Page 9 of the brief is triggered by
24 "injury or sickness" arising out of the use of A, narcotics,
25 B, hallucinogens, C, barbiturates, D, marijuana, E,

1 amphetamine or similar drugs or substances. So, that
2 Legislature didn't think that amphetamine was a narcotic or
3 it would of, wouldn't have named it separately. So, this
4 Court is, is reaching a result that's perfectly consistent
5 with, with our argument.

6 THE COURT: Okay. I'll read those cases carefully.

7 All right. Anything further?

8 I see you chomping at the bit. So, I'll let you have
9 one more, one more bite.

10 MR. BELL: I, I apologize. I just wanted to point out
11 the policy at issue in Jane Doe was not promulgated by the
12 Legislature. It was a, it was a policy written by a private
13 carrier without reference to the statutory language.

14 THE COURT: Oh, I understand. Thank you very much.

15 MR. BELL: Thank you.

16 THE COURT: All right.

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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25

Rebecca A. Roser

From: Couch, Roger L. Law Clerk (Amanda Morris) [rcouchlc@sccourts.org]
Sent: Wednesday, July 22, 2009 3:54 PM
To: 'kanthony@anthonylaw.com'; Kevin K. Bell; Rebecca A. Roser
Subject: Shannon Hutchinson v. Liberty Life Insurance

After reviewing the above referenced case, Judge Couch has GRANTED the Plaintiff's Motion for Summary Judgment. The Court determined that the statute allows the variation of language if the drafter of the contract so desires. Here, the language of the statute was changed and therefore, the Court interpreted the contract strictly against the drafter.

Judge Couch asks that the attorney for the Plaintiff prepare and submit an Order for the Court's consideration. Thank you for your assistance.

Amanda M. Gallivan
Law Clerk
180 Magnolia Street
Spartanburg, SC 29304
Tel: (864) 562-4235
Fax: (864) 562-4234

CERTIFICATION OF VITAL RECORD EFFINGHAM COUNTY, ILLINOIS

☒ PERMANENT CERTIFICATE ☐ TEMPORARY CERTIFICATE	REGISTRATION DISTRICT NO. 25.0 REGISTERED NUMBER 368	STATE OF ILLINOIS MEDICAL EXAMINER'S - CORONER'S CERTIFICATE OF DEATH		STATE FILE NUMBER
DECEASED: NAME FIRST MIDDLE LAST SEX DATE OF DEATH (MONTH, DAY, YEAR) 1. Stephen Francis Ney Male October 3, 2006				
COUNTY OF DEATH AGE LAST BIRTH-DAY (MONTH, DAY, YEAR) DATE OF BIRTH (MONTH, DAY, YEAR) 4. Effingham 44 May 13, 1962				
CITY, TOWN, TWP. OR ROAD DISTRICT NUMBER HOSPITAL OR OTHER INSTITUTION - NAME IF NOT IN OTHER, GIVE STREET AND NUMBER IF HOME OR RPT. INDICATE D.O.A. OR OTHER FOR DEPARTMENT (PARTICULAR) 5. Effingham 10. Interstate #57 Mile Marker #168				
BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY) MARRIED NEVER MARRIED WIDOWED DIVORCED (SPECIFY) NAME OF SURVIVING SPOUSE (GIVEN NAME, P. 1967) 6. Newport RI 11. Divorced 12. N/A 13. No				
SOCIAL SECURITY NUMBER LOCAL OCCUPATION KIND OF BUSINESS OR INDUSTRY EDUCATION (HIGHEST GRADE COMPLETED) 10. 038-40-3607 11. Over the Road 11a. Trucking 12. 12				
RESIDENCE (STREET AND NUMBER) CITY, TOWN, TWP. OR ROAD DISTRICT NO. INSIDE CITY (YES) COUNTY 13. 125 Birchwood Estate Drive 14. Inman 15. Yes Sparsenburg				
STATE ZIP CODE RACE (WHITE, BLACK, AMERICAN INDIAN, ASIAN, PACIFIC ISLANDER) OF HISPANIC ORIGIN (YES) IF YES, SPECIFY (GIVE CITY AND STATE) 13a. SC 13b. 29349 14a. White 15a. No				
FATHER'S NAME FIRST MIDDLE LAST MOTHER'S NAME FIRST MIDDLE LAST (MARRIED) LAST 16. George 17. Ney 18. Marie 19. Peters				
INFORMANT'S NAME (NAME OF NEAR) RELATIONSHIP MAILING ADDRESS (STREET AND NO. OR R.F.D., CITY OR TOWN, STATE, ZIP) 17a. Shannon Hutchinson 17b. Daughter 17c. 125 Birchwood Estate Drive Inman, SC 29349				
18. PART I Enter the diagnosis, external or internal, that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or fatal injury. List only one cause per death.				
(a) Blunt chest trauma (b) Motor vehicle crash (c)				
19. PART II Enter the diagnosis, external or internal, that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or fatal injury. List only one cause per death.				
(a) Heroin use (b) Heroin use (c)				
20. Accidents, injuries, or violence (SPECIFY) DATE OF INJURY (MONTH, DAY, YEAR) HOUR DATE OF DEATH (MONTH, DAY, YEAR) HOW INJURY OCCURRED (GIVE NATURE OF INJURY RESPONDED BY PART I OR PART II, ITEM 18) 20a. Accident 20b. 10-3-06 20c. 10:11 20d. 10-03-06				
21. PLACE OF INJURY (AT HOME, PARK, STREET, FACTORY, OFFICE BUILDING, ETC.) LOCATION (CITY, VIL. OR TOWN, OR TWP. OR RD. DIST. NO., COUNTY, STATE) IF FEMALE, WERE THERE A FETAL ARREST DURING PREGNANCY? 21a. Yes 21b. Interstate 21c. I-57 MP #168 21d. No				
22. CERTIFY THAT IN MY OFFICIAL CAPACITY AS MEDICAL EXAMINER OR CORONER, I HAVE INVESTIGATED AND AM SATISFIED THAT THE DEATH OCCURRED ON THE DATE, AT THE PLACE AND DUE TO THE CAUSE(S) STATED, AND THAT... 22a. 10-03-06 22b. 9:55 P.M.				
23. CORONER'S MEDICAL EXAMINER'S SIGNATURE DATE SIGNED (MONTH, DAY, YEAR) 23a. Leigh Hammer, RA 23b. 12-06-06				
24. CORONER'S MEDICAL EXAMINER'S NAME (GIVEN AND MIDDLE) DATE SIGNED (MONTH, DAY, YEAR) 24a. Leigh Hammer 24b. 12-06-06				
25. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY) LOCATION (CITY OR TOWN) STATE DATE (MONTH, DAY, YEAR) 25a. Effingham, Illinois 25b. Effingham, Illinois 25c. 10/04/2006				
26. BURIAL (CITY AND STATE OR FOREIGN COUNTRY) LOCATION (CITY OR TOWN) STATE DATE (MONTH, DAY, YEAR) 26a. Burial 26b. St. Columbs Cemetery 26c. Middletown RI 26d. 10/04/2006				
27. FUNERAL HOME STREET AND NUMBER OR R.F.D. CITY OR TOWN STATE 27a. Kull Funeral Chapel, 114 West Washington Avenue, Altamont, Illinois, 62411-0111				
28. FUNERAL DIRECTOR'S SIGNATURE PHONE NUMBER (AREA CODE, NUMBER) 28a. Lynn A. Kull 28b. 034-018822				
29. LOCAL REGISTRAR'S SIGNATURE DATE FILED BY LOCAL REGISTRAR (MONTH, DAY, YEAR) 29a. Kerry J. Hertz 29b. Dec. 6, 2006				

CERTIFIED COPY OR ABSTRACT OF VITAL RECORDS

STATE OF ILLINOIS } SS
COUNTY OF EFFINGHAM

I, Kerry J. Hertz, Effingham County Clerk, do hereby certify that this document is a true and correct copy or abstract of the original record which is on file in the office of the County Clerk, Effingham County, Effingham, Illinois.

Kerry J. Hertz

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

Issue Date: 12/07/2008

LLIC 0026



STATE OF ILLINOIS

STATE FILE
NUMBER

MEDICAL EXAMINER'S - CORONER'S CERTIFICATE OF DEATH

☐ PERMANENT
CERTIFICATE

☐ TEMPORARY
CERTIFICATE

REGISTRATION
DISTRICT NO.

REGISTERED
NUMBER

Type, or Print in
PERMANENT INK
See Coroner's
or Funeral Directors
Handbook for
INSTRUCTIONS

A
DECEASED

B

C

D

E

DECEASED-NAME FIRST MIDDLE LAST		SEX	DATE OF DEATH (MONTH, DAY, YEAR)	
1. COUNTY OF DEATH		2. AGE-LAST BIRTHDAY (YRS)	3. DATE OF BIRTH (MONTH, DAY, YEAR)	
4. CITY, TOWN, TWP, OR ROAD DISTRICT NUMBER		5a. UNDER 1 YEAR	5b. UNDER 1 DAY	5c. DATE OF BIRTH (MONTH, DAY, YEAR)
6a. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY)		6b. HOSPITAL OR OTHER INSTITUTION-NAME (IF NOT IN EITHER, GIVE STREET AND NUMBER)		6c. IF HOSP. OR INST. INDICATED O.A., OPWEMER, HIA, INPATIENT (SPECIFY)
7. SOCIAL SECURITY NUMBER		8. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (SPECIFY)		9. NAME OF SURVIVING SPOUSE (MAIDEN NAME, IF WIFE)
10. RESIDENCE (STREET AND NUMBER)		11. USUAL OCCUPATION		12. EDUCATION (SPECIFY ONLY HIGHEST GRADE COMPLETED)
13a. STATE		13b. CITY, TOWN, TWP, OR ROAD DISTRICT NO.		13c. INSIDE CITY (YES/NO)
13e. ZIP CODE		14a. RACE (WHITE, BLACK, AMERICAN INDIAN, ETC.) (SPECIFY)		14b. OF HISPANIC ORIGIN? (SPECIFY NO OR YES-IF YES, SPECIFY CUBAN, MEXICAN, PUERTO RICAN, ETC.)
15. FATHER-NAME FIRST MIDDLE LAST		16. MOTHER-NAME FIRST MIDDLE (MAIDEN) LAST		17. MAILING ADDRESS (STREET AND NO. OR R.F.D., CITY OR TOWN, STATE, ZIP)

PARENTS

18. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.	19a. AUTOPSY (YES/NO)	19b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? (YES/NO)
---	-----------------------	--

CAUSE

18. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.	19a. AUTOPSY (YES/NO)	19b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? (YES/NO)
---	-----------------------	--

N

P

H.G.

RIF

UNK

PART II. (Other significant conditions contributing to death but not resulting in the underlying cause given in PART I.)		20a. NATURAL, ACCIDENT, HOMICIDE, SUICIDE, UNDETERMINED, (SPECIFY)	20b. DATE OF INJURY (MONTH, DAY, YEAR)	20c. HOUR	20d. HOW INJURY OCCURRED (ENTER NATURE OF INJURY MENTIONED IN PART I OR PART II, ITEM 18)
20e. INJURY AT WORK (YES/NO)		20f. PLACE OF INJURY (AT HOME, FARM, STREET, FACTORY, OFFICE BUILDING, ETC.) (SPECIFY)		20g. LOCATION (CITY, VIL. OR TOWN; OR TWP.; OR RD. DIST. NO., COUNTY, STATE)	
20h. IF FEMALE, WAS THERE A PREGNANCY IN PAST THREE MONTHS? YES ☐ NO ☐					

CERTIFIER

21a. I CERTIFY THAT IN MY OPINION BASED UPON MY INVESTIGATION AND/OR THE INQUISITION, THIS DEATH OCCURRED ON THE DATE, AT THE PLACE AND DUE TO THE CAUSE(S) STATED, AND THAT		21b. THE DECEDENT WAS PRONOUNCED DEAD ON MONTH DAY YEAR		21c. AT M.
22a. CORONER'S - MEDICAL EXAMINER'S SIGNATURE		22b. DATE SIGNED		22c. (MONTH, DAY, YEAR)
23a. CORONER'S PHYSICIAN'S NAME (Type or Print)		23b. DATE SIGNED		23c. (MONTH, DAY, YEAR)

DISPOSITION

24a. BURIAL, CREMATION, REMOVAL (SPECIFY)	24b. CEMETERY OR CREMATORY-NAME	24c. LOCATION	24d. CITY OR TOWN	24e. STATE	24f. DATE (MONTH, DAY, YEAR)
25a. FUNERAL HOME		25b. FUNERAL DIRECTOR'S SIGNATURE		25c. FUNERAL DIRECTOR'S ILLINOIS LICENSE NUMBER	
26a. LOCAL REGISTRAR'S SIGNATURE		26b. DATE FILED BY LOCAL REGISTRAR (MONTH, DAY, YEAR)			

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Shannon Hutchinson, Personal	)	Case No.: 2008-CP-42-0835
Representative of the Estate of Stephen F.	)	
Ney, a/k/a Steve F. Ney,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Liberty Life Insurance Company,	)	
	)	
Defendant.	)	

I Barry K Logan PhD, DABFT, being duly sworn do testify as follows:

1. I am a forensic toxicologist with over 25 years of experience. I am employed as Director of Toxicological and Forensic Services at NMS Labs, inc, in Willow Grove, Pennsylvania. I have a PhD in forensic toxicology from the University of Glasgow in Scotland. I have been Board certified by the American Board of Forensic Toxicology since 1991. I have over eighty publications in the field of forensic toxicology. I am a member of various professional organizations in forensic sciences including the Society of Forensic Toxicologists, the International Council on Alcohol, Drugs and Traffic Safety, the International Association of Forensic Toxicologists, and the American Academy of Forensic Sciences, of which I am Vice President. My CV is attached to this affidavit.

2. I have conducted research on the topic of drugs and their effects on driving. I have authored publications in the peer reviewed scientific literature on that topic, details are in my curriculum vitae which is attached. I have served on national and international committees on the topic of drug effects on driving. I serve as a consultant to the National Highway Transportation Safety Administration (NHTSA) on drug impaired driving policy issues.

Since 2002, I have been Executive Director of the Center for Studies of Law in Action at Indiana University, where I oversee an annual course on "Drugs and their Effects on Human Performance and Behavior". I have been qualified as an expert in toxicology in courts in eight states, in municipal, district, circuit, superior and federal courts.

3. I have made a particular study of the effects of methamphetamine and other stimulant drugs on driving behavior, and have published in the scientific and medical literature on this topic. I have lectured extensively on this topic at professional meetings and conferences. In 2004 I coauthored a publication for the Federal Government entitled "Drugs and Human Performance Fact Sheets", which included a feature on amphetamines and their effects on driving. I recently wrote a book chapter entitled "Stimulants: Interpretive Toxicology Strategies in Impaired Driving Cases" in "Interpretive Toxicology and Drug Impaired Driving: A DUID Case Study Approach." (S Kerrigan, M Spirk Eds. Humana Press), currently in press.

4. I have been consulted by Ms Rebecca Rosen of the Robinson McFadden Law Firm, to give opinions about the toxicology results obtained by AIT Laboratories on analysis of a blood sample taken from Mr. Steven Ney, and to review the circumstances of a collision that resulted in his death on October 3rd, 2006.

5. A traffic collision investigation report prepared by Trooper Bruce Waggoner of the Illinois State Police indicates that Mr Ney was driving northbound on Interstate 57, in Effingham County, Illinois, on the evening of October 3rd, 2006, at approximately 9:00pm. The report notes that the tractor-trailer combination driven by Mr Ney drove off the roadway, onto the median and then drove into a concrete bridge support. The vehicle then caught fire. Mr Ney was the only occupant of the truck and he was pronounced dead at the scene. At the time of the collision the weather was clear and dry, and it was determined that no weather conditions contributed to this

crash. There was no evidence of braking on the roadway or on the median, prior to the point of impact. From a review of the accident reconstruction report diagram it appears that Mr. Ney drove his truck for 200-240 feet on the median before striking the bridge support without taking any evasive action or braking.

5. An autopsy was conducted on Mr Ney's remains, and the Medical examiners report indicates that Mr. Ney died as a result of traumatic blunt chest injury sustained in a motor vehicle crash, and that the manner of death was an accident. His body was badly burned. In the course of the autopsy a subclavical (sic) blood sample was collected and sent to AIT Laboratories for analysis for drugs and carbon monoxide. The AIT report indicates that blood was positive for carbon monoxide at a concentration of 5% total hemoglobin. Blood was also positive for methamphetamine at a concentration of 2,715ng/mL, and for amphetamine at a concentration of 210ng/mL. Blood was also positive for cotinine (nicotine metabolite) and caffeine.

6. Carbon monoxide is a product of incomplete combustion of organic materials, and is also present in tobacco smoke. The carbon monoxide concentration of 5% is low, and is consistent with concentrations normally present in the blood of smokers (Baselt, 2008)¹. The presence of the nicotine metabolite, cotinine, in Mr Ney's blood suggests that he was a smoker. There is no soot in Mr. Ney's airways suggesting that he was not breathing at the time of the fire. This supports an opinion that he had died prior to the truck catching fire.

7. Methamphetamine is a central nervous system (CNS) stimulant drug. It is metabolized in the body to amphetamine, which is also a CNS stimulant drug. Methamphetamine is prescribed for narcolepsy and refractory ADHD, however it is most prominent as a drug of abuse.

¹ Baselt RC, Disposition of Toxic Drugs and Chemicals in Man. Biomedical Press, Foster City CA, Eighth Edition, 2008.

Methamphetamine causes excitation of the CNS, resulting in both physiological and psychological changes. Physiologically the drug increases heart rate and blood pressure, pupillary dilation, and motor restlessness. Psychologically the drug causes an initial pattern of symptoms which can include euphoria, excitation, reduced fatigue or drowsiness, increased alertness, heightened sense of well being, rapid speech, insomnia, and with more intense use, hallucinations, delusions, psychosis, feelings of increased physical strength, and poor impulse control. Once the effects of the drug begin to wear off, the user experiences a withdrawal syndrome characterized by dysphoria, extreme fatigue, uncontrollable sleepiness, restlessness, agitation, irritability, nervousness, and paranoia. These effects disturb the normal equilibrium of cognitive performance and psychomotor control, required for safe driving.

8. Several reports in the medical and scientific literature have established a link between methamphetamine use and driving impairment. Crouch et al, 1993,² reported on the prevalence of drug use in fatally injured truck drivers, and found amphetamine or methamphetamine in 7% of cases. Lund et al, 1988³ surveyed drug use by tractor-trailer drivers and found rates of amphetamine use to be less than rates in the fatally injured population suggesting a causative link. My own research (Logan, 1996⁴) described the relationship between the psychological effects of methamphetamine and the involvement of drivers in crashes, including the effects of individuals withdrawing from methamphetamine being involved in drive-off-the-road type crashes.

Recently Gustavsen et al , 2006⁵ reported a quantitative relationship between amphetamine and

² Crouch DJ, Birky NLM, Gust SW, Rollins DE, Walsh JM, Moulden JV, Quinlan KE, Beckel RW. The prevalence of drugs and alcohol in fatally injured truck drivers. J Forensic Sci 1993;38(6):1342-53.

³ Lund AK, Preusser DF, Blomberg RD, Williams AF. Drug use by tractor trailer drivers. J Forensic Sci 1988;33(3):648-61.

⁴ Logan BK. Methamphetamine and driving impairment. J Forensic Sci. 1996 May;41(3):457-64.

⁵ Gustavsen I, Mørland J, Bramness JG. Impairment related to blood amphetamine and/or methamphetamine concentrations in suspected drugged drivers. Accid Anal Prev. 2006 May;38(3):490-5.

methamphetamine use and driving impairment, with a statistically significant effect on driver performance at blood concentrations above 0.27mg/L.

9. The methamphetamine concentration in Mr Ney's blood sample reflects a concentration substantially in excess of what would be considered an effective therapeutic dose. Narcoleptic patients taking up to 60mg of methamphetamine a day, achieved peak blood methamphetamine concentrations of no more than 0.2mg/L – one tenth of the concentration in Mr Ney's blood (Logan, 1996). His blood concentration is also ten times greater than the threshold for impairment identified by Gustavsen et al (2006). Bailey and Shaw, 1989⁶ reported median blood methamphetamine concentrations in homicide victims (n = 25) of 0.490 mg/L (range: 0.030–7.100 mg/L). Logan et al.(1998)⁷ reported a median blood methamphetamine concentration of 0.550 mg/L (range: 0.030–9.300 mg/L) in 39 homicide victims. In fatally injured drivers, the same study reported mean blood methamphetamine concentrations of 0.350 mg/L (range: 0.050–2.600 mg/L). By any standard Mr Ney's blood methamphetamine concentration is very high, and is in the toxic to potentially lethal range.

10. Based on the above considerations, it is my opinion to a high degree of medical certainty, that Mr Ney was under the influence of methamphetamine when he was driving his truck on October 3rd, 2006, and when he drove his truck off the highway, onto the median and struck a bridge support, resulting in his death.

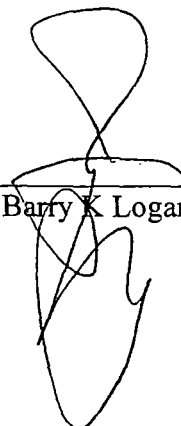
⁶ Bailey DN, Shaw RF: Cocaine and methamphetamine related deaths in San Diego County (1987): Homicides and accidental overdoses; J Forensic Sci 34:407; 1989.

⁷ Logan BK, Fligner CL, Haddix T: Cause and manner of death in fatalities involving methamphetamine; J Forensic Sci 43:26; 1998.

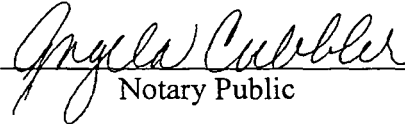
Further affiant sayeth naught.

DATED:.

By


Barry K Logan PhD, DABFT

SUBSCRIBED and SWORN to before me this 10th day of June, 2009.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Angela Cubbler, Notary Public
Upper Moreland Twp., Montgomery County
My Commission Expires April 18, 2012
Member, Pennsylvania Association of Notaries

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June 8, 2009

Ms. Rebecca Roser
Robinson McFadden & Moore, P.C.
1901 Main Street, Suite 1200
Columbia, South Carolina 29202

**RE: Shannon Hutchinson, Personal Representative of the Estate of
Stephen F. Ney, a/k/a Steve F. Ney, Plaintiff, v. Liberty Life
Insurance Company, Defendant; Case No.: 2008-CP-42-0835**

Dear Ms. Roser:

I appreciate the opportunity to review the above-referenced file and to render an opinion on the circumstances surrounding the death of Mr. Stephen Ney. It is my understanding that this report will be furnished to interested parties associated with the case and may be used in future court proceedings. Per your request, I am submitting this document in order to set forth my opinions regarding the toxicological investigation of this death. These opinions are based on my review of newspaper accounts of the accident; Mr. Ney's death certificate; a traffic crash investigation/reconstruction report; the autopsy and postmortem toxicology reports; the coroner's inquest of December 6, 2006; pertinent peer-reviewed forensic literature; and over twenty years experience as a clinical and forensic pharmacologist/toxicologist and drug chemist. I have been a licensed clinical pharmacist in the state of South Carolina since 1987. I am board-certified in forensic toxicology by the Forensic Toxicologist Certification Board (FTCB). My qualifications as a clinical pharmacologist/toxicologist require that I: a) provide recommendations in the selection of appropriate drug therapy, b) conduct patient monitoring (e.g. clinical laboratory data, patient signs and symptoms) of said pharmacotherapy, and c) recommend treatment modalities in the event of adverse drug reactions, drug-drug interactions and other toxic insults (e.g. overdoses). My qualifications as a forensic toxicologist require that I: a) analyze body fluids and tissues for the presence of drugs, alcohols and other poisons, b) interpret said results in a court of law as required, and c) provide analytical and consultative support in the determination of cause and manner of death wherein a toxic insult is believed to exist. Such expertise also includes a knowledge and recognition of a patient's underlying disease state(s) and/or clinical condition(s) and how these might affect drug selection, patient monitoring, and the potential for toxicity and death. My qualifications as a drug chemist require that I: a) analyze pills, powders, potions and paraphernalia submitted for qualitative and quantitative analyses during narcotics and death investigations. I have been qualified as a medical and forensic expert in the fields of clinical and forensic pharmacology/toxicology, and drug chemistry at all levels of the court (excepting international) in both criminal and civil matters in excess of two hundred times.

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I am familiar with the analytical methodologies, reporting, and interpretation associated with methamphetamine and amphetamine when they are identified in postmortem specimens. I have knowledge of the adverse effect mechanisms and associated toxic sequelae following methamphetamine and amphetamine administration. I have provided opinions to the court as an expert witness (i.e. pharmacology, toxicology, drug chemistry) in cases of impairment or intoxication involving both compounds in DUI and drug-related death investigations as well as in cases of controlled substances possession and the clandestine manufacture of methamphetamine.

History

Stephen Francis Ney (SN), a 44 year old male, was killed on October 3, 2006 at approximately 9:21 PM while operating as the driver of a white 1998 International semi truck with trailer on Interstate 57, in Effingham, Illinois. Mr. Ney was hauling empty dog food bags to the Kal Kan factory in Maltoon, Illinois, with a scheduled delivery of 7:00 PM that same evening. Witnesses observed the truck to veer out of the northbound lanes, enter the grassy median, and subsequently strike the center pier of the overpass support where 167 5th Street passes over Interstate 57. The truck then burst into flames. Emergency personnel responded, extinguished the fire, and recovered one body from inside the vehicle. The Effingham County Coroner pronounced the driver to be deceased on scene and ordered that an autopsy be performed. An investigation into, and reconstruction of this accident, revealed that weather conditions did not contribute to the crash. The post-crash scene investigation also determined that there was no attempt by the driver to brake the vehicle at any time prior to the crash impact. Illinois State Trooper Bruce Waggoner opined that the driver was in violation of improper lane usage and Driving Under the Influence-Drugs, as described in Illinois Statutes 625 ILCS 5/11-709(a) and ILCS5/11-501(a)(4), respectively.

Postmortem Synopsis

An autopsy (A06-283) was conducted on October 4, 2006 at approximately 3:00 PM in Evansville, Indiana by forensic pathologist Mark M. Levaughn, M.D. Primary anatomic diagnoses were blunt chest injury, motor vehicle collision as evidenced by an avulsion laceration of the posterior mediastinum which resulted in a left hemothorax and exsanguination in association with rib fractures of the left 1st and 4th, posteriorly. Secondary findings were a post-impact fire with severe total body thermal injury. No aspiration of soot in the victim's airway and no cherry-red discoloration of body tissues were described, supporting a lack of toxic exposure to carbon monoxide. Subclavian blood was collected for postmortem toxicology testing by AIT Laboratories in

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Indianapolis, Indiana. Positive quantitative findings were reported as five percent (5%) carboxyhemoglobin, 2715 ng/ml methamphetamine and 210 ng/ml d-amphetamine. Cotinine (nicotine metabolite) and caffeine were qualitatively identified. Note that the reported carboxyhemoglobin concentration is consistent with that measured in smokers and does not reflect appreciable carbon monoxide toxicity.

The cause of death was described as blunt chest trauma secondary to a motor vehicle collision with methamphetamine as a contributing factor. The manner of death was listed as accident.

Pharmacology/Toxicology of Methamphetamine/Amphetamine

The postmortem toxicology report reflects the presence of methamphetamine and amphetamine in the subclavian blood obtained from the body of Stephen Ney at autopsy. At issue is: a) whether the reported toxicological results may be used in conjunction with other factors for purposes of determining the likelihood of impairment or intoxication and, b) whether such impairment or intoxication contributed to the death of Mr. Ney.

Methamphetamine and amphetamine are relatively simple molecules, a fact which accounts for their potent central nervous system activity as sympathomimetic amines. Methamphetamine is in fact, a derivative of amphetamine, and both substances belong to the general pharmacologic class of amphetamines, which includes both licit and illicit compounds. Methamphetamine exists in two isomeric forms, dextro (d) and levo (l). These forms refer to the drug's dextrorotatory or levorotatory properties with respect to plane polarized light. The determination of the enantiomeric ratio assists in the determination of the "source" of methamphetamine, specifically whether the drug is a legitimate pharmaceutical (either non-prescription or DEA Schedule II) or whether it has been clandestinely manufactured as the illicit form of the drug. Note that clandestinely manufactured methamphetamine is also a DEA Schedule II controlled substance, with a high potential for abuse, behavioral and physical dependency, and no legitimate medical indication.

When present as the prescription dosage form, methamphetamine is d-methamphetamine. In the United States, d-methamphetamine is currently indicated in the treatment of obesity, narcolepsy, and Attention Deficit Hyperactivity Disorder (ADHD), with the requirement that a bona fide patient-physician relationship exist so that a legitimate prescription will be issued for its use. Either the racemic (d, l mixture) or pure d-methamphetamine may be identified in clandestinely manufactured methamphetamine; illicit methamphetamine is typically distributed for abuse of its potent CNS stimulating

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effects. Finally, l-methamphetamine is associated with the Vicks[®] Inhaler, available as an over-the-counter agent, without prescription, for the treatment of nasal congestion. Methamphetamine is metabolized by n-demethylation to its primary active metabolite amphetamine during Phase I metabolism. Amphetamine is then subsequently metabolized to a number of other compounds not typically identified during postmortem toxicology testing.

At elevated doses or after prolonged administration ("bingeing") of methamphetamine, users have reported feelings of exhilaration, euphoria, great physical strength (symptoms often referred to as the "upside") to be followed by the development of hallucinations, delusions, perceptual distortion, and aggressive behavior. In addition, decrements in concentration, inability to divide attention, and errors in judgment and perception have also been reported with methamphetamine use in the context of driving performance.

As methamphetamine intoxication progresses, symptoms of agitation, decreased concentration, "pseudo-hallucinations", confusion, irritability, paranoia, and increased fatigue may develop (often referred to as the "downside"). As a result, users may experience uncontrollable sleepiness with an increased risk of "microsleeps" (lasting a few seconds to several minutes) which then leads to disorientation and a significant risk of psychomotor and driving performance impairment.

Previously published epidemiological reports on the prevalence of drug use in fatally injured truck drivers have implicated methamphetamine and amphetamine in up to 7% of cases. In 1992, the National Highway Traffic Safety Administration (NHTSA) published its review of drug use in fatalities of drivers and found that the most frequent type of accident in drivers who tested positive for amphetamines was "non collision" or drive-off-the-road type accidents. Logan (1996) developed a detailed model for methamphetamine-impaired driving and concluded that while neither the degree of impairment nor the phase of intoxication may be predicted from blood methamphetamine concentrations, drug abuse may be distinguished from therapeutic administration when blood methamphetamine concentrations exceed 200 ng/ml. Logan, et al. (1998) reported that 14 out of 17 motor vehicle fatalities studied resulted from drive-off-the-road type accidents, suggesting a withdrawal-induced impairment.

Opinion

It is my opinion within a reasonable degree of medical and forensic probability, that the methamphetamine found in the postmortem blood taken from Stephen Ney is attributable to antemortem exogenous administration of either the prescription-only

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pharmaceutical or clandestinely manufactured form of the drug. As no documentation has been provided to substantiate a legitimate prescription and medical indication for the victim's use of the prescription pharmaceutical, diversion of this dosage form or use of a clandestinely manufactured methamphetamine product, are the only possible explanations for the presence of methamphetamine in the postmortem blood. Furthermore, the significantly elevated blood methamphetamine concentration (above that associated with therapeutic administration) also underscores the likelihood of drug abuse. It should be noted that this postmortem methamphetamine concentration does in fact fall within the range of those reported in cases of methamphetamine overdose. Note also that the analytical procedures used to identify and report the presence of methamphetamine (and its pharmacologically active metabolite amphetamine) appear to exclude the probability of a "false positive" or analytical reporting error for these compounds.

The likelihood of a toxicologic contribution to the manner of death is further strengthened by the post-crash investigation and reconstruction evidence (i.e. lack of weather-related factors, lack of braking) and observations by witnesses who describe the truck as veering from the highway in an off-the-road manner with no attempt to avert the crash. The misuse of amphetamines by long distance truck drivers and the drugs' negative correlation with driving performance are well documented in the peer-reviewed scientific literature. The nationwide prevalence of amphetamines use is the reason for their inclusion in the test panel for those employees subject to federal workplace drug testing, to include the trucking industry.

It is further my opinion that as a result of Mr. Ney's antemortem abuse of methamphetamine, cognitive and/or motor impairment rendered him unable to safely and effectively operate the tractor trailer which culminated in the fatal crash and catastrophic fire.

I reserve the right to amend this report based on review of any additional information made available to me.

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Yours very truly,

Demi Garvin

10 June 2009

Demi Garvin, B. S., Pharm. D., R. Ph., D-FTCB
Diplomate, Forensic Toxicologist Certification Board
Registered Pharmacist, State of South Carolina (#6799)

Date

Sworn before me this 10th day of June, 2009

Carol C. Ewing

Notary Public for South Carolina

My commission expires: 2/14/2010

References

Baselt, R. Disposition of Toxic Drugs and Chemicals In Man, Eighth Edition, 2008.

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NAIC Model Laws

NAIC MODEL LAWS, REGULATIONS AND GUIDELINES...ACCIDENT AND HEALTH INSURANCE RATE AND POLICY STANDARDS...Restatement of the NAIC Uniform Individual Accident and Sickness Policy Provision Law In Simplified Language (Model 185)

Model 185

Restatement of the NAIC Uniform Individual Accident and Sickness Policy Provision Law in Simplified Language

PURPOSE:

This restatement of the required and most often used optional provisions of the Uniform Policy Provision Law in simplified language is intended as a guideline for the submission and approval of individual accident and sickness policies written in simplified language. Although it is intended specifically for use in those states that adopt the NAIC Model Life and Health Insurance Policy Language Simplification Act, its use as a guide for approval of policies voluntarily written in simplified language is encouraged.

The restated provisions are intended to most accurately reflect the original intent of the Uniform Policy Provision Law and to duplicate its substantive requirements. The rights and obligations of both the insured and insurer or any case law interpreting the uniform provisions are not intended to be affected. They are intended as a uniform "safe harbor" for companies relying upon them. The restatements are no less favorable to the insured or beneficiary and their use is sanctioned under the authority granted by Section 3A of the Uniform Policy Provision Law.

The drafting notes accompanying these restated provisions are in addition to those found in the model law.

Although the provisions are stated in the "insured and insurer" format, rather than the personal "we and you" so as to conform more closely to the style of the model, the use of the personal pronoun format or the substitution of other descriptive terms where appropriate is encouraged. Minor grammatical changes may result from the personal pronoun format.

Section 3. Accident and Sickness Policy Provisions

A. Required Provisions.

(1) Entire Contract; Changes: This policy [with the application and attached papers] is the entire contract between the Insured and the Company. No change in this policy will be effective until approved by a company officer. This approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

Note: Bracketed material used when appropriate if application or other papers attached.

FLESCH SCORE without bracketed material -- 64.626

FLESCH SCORE with bracketed material -- 64.585

(2) Time Limit on Certain Defenses:

052

(a) Misstatements in the Application:

After three years from the issue date only fraudulent misstatements in the application may be used to void the policy or deny any claim for loss incurred or disability that starts after the three-year period.

Note: A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision.

Incontestable:

(a) Misstatements in the Application:

After this policy has been in force for three years during the insured's lifetime (excluding any period during which the insured is disabled), the company cannot contest the statements in the application.

(b) Preexisting Conditions:

No claim for loss incurred or disability that starts after three years from the issue date will be reduced or denied because a sickness or physical condition not excluded by name or specific description before the date of loss had existed before the effective date of coverage.

Note: The restated provision used the reference to loss incurred or disability that starts. If the policy provides coverage for hospital or medical benefits only or for disability benefits only, then one or the other may be inappropriate and companies are encouraged to delete the inappropriate phrase. The three-year period is based on the model, thus, in those states that have reduced the period to a lesser time; the lesser time period should be inserted. The captions "Misstatements in the Application" and "Preexisting Conditions" are an integral part of the provision and must be read in conjunction therewith. The restatement is not intended to have any affect upon or be a bar to any other defenses under the policy.

FLESCH SCORE - Paragraphs (a) and (b)

With Required Provision -- 36.285

With Optional Provision -- 36.913

(3) 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 following 31 days. The grace period will not apply if, at least 30 days before the premium due date, the company has delivered or mailed to the insured's last address shown in the company's records written notice of the company's intent not to renew this policy. During the grace period, the policy will stay in force.

Note: The above is for those under which the insurer reserves the right to refuse renewal.

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 following 31 days. During the grace period the policy will stay in force.

Note: The above is for those under which the insurer does not reserve the right to refuse renewal. Insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies.

053

FLESH SCORE where insurer reserves right to refuse renewal -- 62.681

FLESH SCORE where insurer does not reserve right to refuse renewal -- 67.531

(4) Reinstatement: If the renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by the company (or by an agent authorized to accept payment) without requiring an application for reinstatement will reinstate this policy.

If the company or its agent requires an application, the insured will be given a conditional receipt for the premium. If the application is approved, the policy will be reinstated as of the approval date. Lacking approval, the policy will be reinstated on the 45th day after the date of the conditional receipt unless the company has previously written the insured of its disapproval.

The reinstated policy will cover only loss that results from an injury sustained after the date of reinstatement or sickness that starts more than 10 days after that date. In all other respects the rights of the insured and the company will remain the same, subject to any provisions noted on or attached to the reinstated policy.

Any premiums the company accepts for a reinstatement will be applied to a period for which premiums have not been paid. No premiums will be applied to any period more than 60 days before the reinstatement date.

Note: The last paragraph of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.

FLESH SCORE -- 42.421

(5) 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 the company at its home office, or to the company's agent. Notice should include the name of the Insured and the policy number.

FLESH SCORE -- 68.536

[Optional Paragraph:] If the insured has a disability for which benefits may be payable for at least two years, at least once every six months after the insured has given notice of claim, the insured must give the company notice that the disability has continued. The insured need not do this if legally incapacitated. The first six months after any filing of proof by the insured or any payment or denial of a claim by the company will not be counted in applying this provision.

If the insured delays in giving this notice, the insured's right to any benefits for the six months before the date when the Insured gives notice will not be impaired.

FLESH SCORE -- 65.644

(6) Claim Forms: When the company receives the notice of claim, it will send the claimant forms for filing proof of loss. If these forms are not given to the claimant within 15 days, the claimant will meet the proof of loss requirements by giving the company a written statement of the nature and extent of the loss within the time limit stated in the proofs of loss section.

FLESH SCORE -- 62.007

054

(7) Proofs of Loss: If the policy provides for periodic payment for a continuing loss, written proof of loss must be given the company within 90 days after the end of each period for which the company is liable. For any other loss, written proof must be given within 90 days after the loss. If it was not reasonably possible to give written proof in the time required, the company shall 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 given no later than one year from the time specified unless the claimant was legally incapacitated.

FLESCH SCORE -- 49.846

(8) Time of Payment of Claims: After receiving written proof of loss, the company will pay [monthly] all benefits then due for _____. Benefits for any other loss covered by this policy will be paid as soon as the company receives proper written proof.

Note: Delete or change "monthly" to reflect, if necessary, the period stated in the policy and insert applicable term for type of benefits.

FLESCH SCORE -- 66.403

(9) Payment of Claims: Benefits will be paid to the insured. Loss of life benefits are payable in accordance with the beneficiary designation in effect at the time of payment. If none is then in effect, the benefits will be paid to the insured's estate. Any other benefits unpaid at death may be paid, at the company's option, either to the insured's beneficiary or estate.

FLESCH SCORE -- 60.278

[Optional Paragraph:] If benefits are payable to the insured's estate or a beneficiary who cannot execute a valid release, the company can pay benefits up to \$1,000 to someone related to the insured or beneficiary by blood or marriage whom the company considers to be entitled to the benefits. The company will be discharged to the extent of any such payment made in good faith.

FLESCH SCORE -- 40.290

[Optional Paragraph:] The company may pay all or a portion of any indemnities provided for health care services to the provider, unless the insured directs otherwise in writing by the time proofs of loss are filed. The company cannot require that the services be rendered by a particular provider.

FLESCH SCORE -- 51.853

(10) Physical Examinations & Autopsy: The company, at its expense, has the right to have the insured examined as often as reasonably necessary while a claim is pending. It may also have an autopsy made unless prohibited by law.

Note: If no right to an autopsy is desired or is not appropriate for the type of coverage, the second sentence of the provision and the caption reference to autopsy should be deleted.

FLESCH SCORE with the right of autopsy -- 42.173

FLESCH SCORE without the right of autopsy -- 67.333

(11) Legal Actions: No legal action may be brought to recover on this policy within 60 days after written proof of loss has been given as required by this policy. No action may be brought after

055

three years from the time written proof of loss is required to be given.

FLESCH SCORE -- 60.863

(12) Change of Beneficiary: The insured can change the beneficiary at any time by giving the company written notice. The beneficiary's consent is not required for this or any other change in the policy, unless the designation of the beneficiary is irrevocable.

FLESCH SCORE -- 38.166

B. Other Provisions:

(2) Misstatements of Age: If the insured's age has been misstated, the benefits will be those the premium paid would have purchased at the correct age.

FLESCH SCORE -- 68.692

(3) Other Insurance In This Insurer: If the insured has more than one policy, only one policy chosen by the insured will be effective. The company will refund all premiums paid for all the other policies.

Note: Insert designation for limitation, i.e., form type.

FLESCH SCORE -- 64.626

Optional Paragraph: If the insured has more than one policy with this company providing a total indemnity for [] of more than [\$] the excess insurance shall be void. The premiums paid for the excess shall be returned to the insured.

Note: Insert type of coverage or coverages and insert maximum limit of indemnity or indemnities.

FLESCH SCORE -- 67.672

(7) Unpaid Premiums: When a claim is paid, any premium due and unpaid may be deducted from the claim payment

FLESCH SCORE -- 70.145

(8) 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 the insured resides on that date is amended to conform to the minimum requirements of these laws.

FLESCH SCORE -- 45.849

(9) Illegal Occupation: The company will not be liable for any loss that results from the insured committing or attempting to commit a felony or from the insured engaging in an illegal occupation.

FLESCH SCORE -- 38.487

(10) Intoxicants and Narcotics: The company will not be liable for a loss resulting from the insured being drunk or under the influence of any narcotic unless taken on the advice of a physician.

055

Note: Appropriate language reflecting an applicable statutory definition of drunk or intoxicated may be substituted.

FLESCH SCORE -- 48.494

Note: The provisions were graded under the terms and conditions of the NAIC Model Life and Health Insurance Policy Language Simplification Act. As such, captions are not scored and it is assumed that the words "insured," "insurer" and "disability" are defined in the policy.

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***** END DOCUMENT *****

057

Liberty Life Insurance Company
PO Box 789, Greenville, SC 29602-0789

COPY



Insured(s): STEPHEN F NEY

Effective Date: OCTOBER 01, 2006

Basic Decreasing Accidental Death Benefit (Initial): \$ 70,849

Certificate Number: 0045732945

Liberty Life Insurance Company will pay the proceeds of this Certificate to the Beneficiary when we receive, at our Home Office, due Proof of Loss which occurred after the Effective Date of this Certificate, while this Certificate was in Full Force and as a result of a Covered Accident.

This Certificate is not the insurance contract, but merely a summary of insurance coverage provided under the Group Policy. This Certificate does not constitute part of the Group Policy, nor does it change, modify or invalidate any of the terms or conditions of the Group Policy.

31-DAY RIGHT TO EXAMINE CERTIFICATE – It is important that you understand the coverage described in this Certificate and are satisfied with it. You should read this Certificate carefully. If you have any questions, you should contact us. If you are not satisfied with this coverage, you may cancel it within 31 days after receipt by returning the Certificate to us at our Home Office or to our agent. If returned, we will refund all premiums paid and this coverage will be void from the Effective Date.

We have issued this coverage at our Home Office as of the Effective Date based on your enrollment form and the payment of premiums. This coverage is subject to the provisions and conditions in this Certificate and the Group Policy.

Secretary

President

DEFINITIONS

"We", "Us", "Our" refer to Liberty Life Insurance Company.

The **Insured**, also referred to as "You" and "Your", is the Eligible Borrower (or borrowers, if joint coverage) who becomes insured under this Certificate. Insured refers to one person insured as a Single Insured or to two persons insured as Joint Insureds.

Eligible Borrower is a person between ages 18 and 69 who becomes indebted to the Lender under an Eligible Loan. Two borrowers under the same Eligible Loan may apply for joint coverage if the older borrower is under age 69. A borrower will not be eligible if the insurance is intended to cover the indebtedness of a corporation or partnership.

Eligible Loan means an indebtedness: (1) owed to or serviced by the Lender; (2) repayable within not less than 10 years or more than 30 years; and (3) is

secured by a lien on real property.

Eligible Loan Balance means the unpaid loan balance as determined by the security instruments (amortization schedule) for the Eligible Loan. The unpaid loan balance does not include defaults in scheduled payment of either interest or principle, any penalties or late charges, real estate taxes or unpaid insurance premiums.

Age means the age last birthday of the Insured, or of the older Insured, if joint coverage.

A **Covered Accident** means an accident, subject to Exclusions, which occurs after the Effective Date shown in the Certificate Schedule and while this Certificate is in Full Force.

Policy means the Group Master Policy, any master application, any attached enrollment forms, riders, or endorsements issued to the Policyholder.

This is a Certificate for Group Decreasing Accidental Death Insurance
with Provision for Additional Accidental Death Benefit
Available for Single or Joint Coverage Payable at the Accidental Death,
or First Accidental Death, if Joint Coverage, During the Term Period
This is Nonparticipating and Nonconvertible Coverage.

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DEFINITIONS - Continued

Policyholder means the Lender, which is the mortgage lending institution or financial institution.

Full Force means that no premium is more than 31 days past due.

Home Office means our office at 2000 Wade Hampton Boulevard, Greenville, SC 29615 (Mailing Address: PO Box 19036, Greenville, SC 29602-9840).

Written Notice means notification by you on forms furnished by or satisfactory to us, and received at our Home Office.

COPY

EXCLUSIONS

A Benefit will not be payable under this Certificate if your Accidental Death results directly or indirectly from:

- (a) disease, illness or infirmity of the body or mind;
- (b) intentional self-inflicted injury while sane, or self-inflicted injury while insane;
- (c) participating in a riot or insurrection;
- (d) war or act of war, whether or not it is declared; or injuries sustained while in the service of any armed force engaged in conflict with another armed force;
- (e) participating in or attempting to commit an assault or a felony;
- (f) travel or flight in or descent from or with any kind of aircraft, unless you have no duties with respect to such travel, flight or descent, and are being transported solely as a passenger in an aircraft that is not maintained or operated for military or naval purposes;
- (g) injury as a result of the Insured being under the influence of alcohol;
- (h) injury as a result of the Insured being under the influence of any narcotic unless administered on the advice of a physician and taken in the dosage prescribed;
- (i) voluntary gas inhalation, or poison voluntarily taken, administered, absorbed, inhaled or injected; or
- (j) riding or driving in any kind of race.

BENEFITS PROVISION

Basic Accidental Death Benefit: We will pay an Accidental Death Benefit to the Beneficiary, subject to Exclusions, as soon as possible after receiving at our Home Office due proof that your death occurred:

- (a) while this Certificate is in Full Force; and
- (b) as the direct and sole result of injuries sustained in a Covered Accident; and
- (c) within 90 days from the date of that Covered Accident.

Amount of Basic Accidental Death Benefit: The Basic Accidental Death Benefit Amount will be the unpaid Eligible Loan Balance at the time of your accidental death. The total amount payable will never exceed the lesser of the unpaid Eligible Loan Balance or the Basic Accidental Death Benefit as shown on the Certificate Schedule. To calculate the benefit amount payable, we pay the unpaid Eligible Loan Balance, then add the part of any premium paid for a period beyond the Certificate month of your death, or subtract any unpaid premium for coverage through the Certificate month of your death. This applies only to loans which have not been refinanced.

Additional Accidental Death Benefit: We will pay an Additional Accidental Death Benefit to the Secondary Beneficiary as named on the Certificate Schedule, if the Basic Accidental Death Benefit is paid. The amount of the Additional Accidental Death Benefit is equal to 20% of the Eligible Loan Balance paid.

Coverage for Refinanced Loans: You may reapply for more coverage under the Group Policy if your loan is refinanced. By refinanced loan, we mean any Eligible Loan that is increased in amount or term for any reason other than the normal contractual accrual of interest. If the application is approved, a new Certificate will be issued. Premium rates will be based on your age (or the older Insured's Age, if joint coverage) at the time of issue of the new Certificate.

If your loan is refinanced but you do not reapply for coverage, the term of the insurance will remain as stated in the Certificate. Also, the Amount of the Death Benefit will be calculated in accordance with the interest rate indicated in the security instrument in effect when this Certificate was issued.

Insured's Death: In case of joint insurance, the proceeds will be paid at the death of the first joint Insured as explained under Basic Accidental Death Benefit and Additional Accidental Death Benefit. In the event that joint Insureds die simultaneously, we will pay the benefits as if the older Insured died first. Only one Basic Accidental Death Benefit and Additional Accidental Death Benefit will be paid under each Certificate.

PREMIUM PROVISIONS

Premium Payments: Monthly premiums are due on the Effective Date and on the same day of each following month during the Term Period. The amount of the premium payment is shown on the Certificate Schedule. Premium payments may be made up to one year in advance with permission of the Company.

COPY

Coroner's Inquest

State Of Illinois, }
Effingham County } SS.

No. 2006- 058

An inquisition , taken for the People of the State of Illinois, at Effingham County Office Building in Douglas Township, Effingham County, on the 6th day of december, 2006, before Leigh Hammer, RN, Coroner of the County aforesaid, on the view of the body of STEPHEN F. NEY then and there lying dead.

We, the Jury of six good and lawful men of Effingham County, duly chosen and sworn, and charged diligently to inquire into all the circumstances attending the death of the said

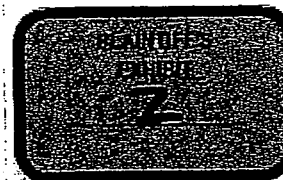
STEPHEN F. NEY and true presentment make, how, and in what manner, and by whom or what the said dead body came to its death, do say: That the said deceased came to his death on the 3rd day of October, 2006 at or about the hour of 9:35 P.M. with the cause of death due to traumatic blunt chest injuries sustained in a crash. We believe the manner of this death to be an accident.

In Witness Where of, the said jurors have to this Inquisition set their hands and seals, on the day of the date of this Inquisition.

John A. Wiedman Foreman
Clarence H. Dase
Barbara Melle
Larry R. Curran
Patsy A. Baker
Michael K. Storz

The foregoing verdict was made up and signed this 6th day of December
A.D. 2006.

Leigh Hammer, RN (Seal)
Coroner





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Michael Evans, Ph.D., Andrea Terrell, Ph.D., DABCC

Robert Foery, Ph.D., DABCC/DABTC

LABORATORY CASE NUMBER: 185427		Subject's Name: NEY, STEPHEN	
Client Account: 10053 / EFCC01 Physician: Report To: EFFINGHAM COUNTY CORONER-IL ATTN: Leigh Hammer 908 North Parkview Street Effingham, IL 62401 Fx: 1-217-342-4681		Agency Case #: A06-283 Date Of Death: 10/03/2006 Test Reason: Other Investigator: Date Received: 10/10/2006 Date Reported: 10/19/2006	
Laboratory Specimen No: 40017950 Container(s) Received: 01: Tube Blood, SUBCLAVICAL 02: Tube Blood, SUBCLAVICAL		Date Collected: 10/04/2006 Test(s) Requested: 70510 Comprehensive Drug Panel (550B) 44060 Carbon Monoxide (1660COR)	

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
CARBON MONOXIDE	POSITIVE				
CO,Quant		5	% Total Hb	0-5	
AMPHETAMINES	POSITIVE				
Methamphetamine	POSITIVE				
Methamphetamine, Quant		2715	ng/mL		
d-Amphetamine	POSITIVE				
d-Amphetamine, Quant		210	ng/mL	10-100	
BARBITURATES	Negative				
BENZODIAZEPINES	Negative				
CANNABINOIDS	Negative				
COCAINE/METABOLITES	Negative				
FENTANYL	Negative				
METHADONE	Negative				
OPIATES	Negative				
OXYCODONE/METABOLITE	Negative				
PHENCYCLIDINE	Negative				
PROPOXYPHENE	Negative				
SALICYLATES	Negative				
TRICYCLIC ANTIDEPRESSANTS	Negative				
ALCOHOLS	Negative				
STIMULANTS	POSITIVE				
Cotinine	POSITIVE				
Caffeine	POSITIVE				
NARCOTICS	Negative				
SEDATIVES/HYPNOTICS	Negative				
ANTIDEPRESSANTS	Negative				
ANALGESICS	Negative				

The Specimen identified by this Laboratory Specimen Number has been handled and analyzed in accordance with all applicable requirements.

NEY, STEPHEN

Laboratory Case #: 185427

Print Date/Time: 10/19/2006, 14:27:41

061

Page: 1 of 3

APPX. 0062



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Robert Foery, Ph.D., DABCC/DABTC

Laboratory Specimen No: 40017950 Continued...

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
ANESTHETICS	Negative				
CARDIOVASCULAR AGENTS	Negative				
ANTIHISTAMINES	Negative				
ANTICONVULSANTS	Negative				
ANTIPSYCHOTICS	Negative				

The Specimen identified by this Laboratory Specimen Number has been handled and analyzed in accordance with all applicable requirements.

NEY, STEPHEN

Laboratory Case #: 185427

Print Date/Time: 10/19/2006, 14:27:41

062

Page: 2 of 3

APPX. 0063



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Michael Evans, Ph.D., Andrea Terrell, Ph.D., DABCC

Robert Foery, Ph.D., DABCC/DABTC

Laboratory Specimen No: 40017951

Date Collected: 10/04/2006

Container(s) Received:

01: Red Top Bottle Blood, AUTOPSY

Test(s) Requested:

49900

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
< No Testing Performed	>				

The Specimen identified by this Laboratory Specimen Number has been handled and analyzed in accordance with all applicable requirements.

NEY, STEPHEN

Laboratory Case #: 185427

Print Date/Time: 10/19/2006, 14:27:41

Foery, Robert

Signature of Certifying Scientist

063

Page: 3 of 3

APPX. 0064

Pharmacology Consultant, LLC

Donald O. Allen, Ph.D.

316 Overlook Drive

Blythewood, SC 29016

STATE OF SOUTH CAROLINA

-)

AFFIDAVIT OF DONALD O. ALLEN

COUNTY OF RICHLAND

)

I am Donald O. Allen, Ph.D. I was formerly Chair of the Department of Pharmacology, School of Medicine at the University of South Carolina. My complete Curriculum Vita is attached.

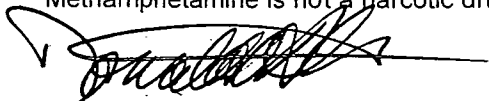
I have been asked to render an opinion as to whether methamphetamine is a narcotic drug.

Methamphetamine is emphatically not a narcotic drug.

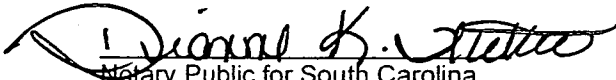
The word "narcotic" comes from words relating to sleep, and narcotic drugs are drugs which induce pain relief, drowsiness, sleep, and similar states of stupor.

The exact opposite of a narcotic drug is a stimulant. Stimulants, as the name implies, induce wakefulness, alertness, focus and a heightened sense of awareness. Methamphetamine is a stimulant. Two of the medically approved uses of methamphetamine are to treat attention deficit hyperactivity disorder, and narcolepsy. Narcolepsy is the tendency to fall asleep too easily and often. So methamphetamine has exactly the opposite effect as would a narcotic.

Methamphetamine is not a narcotic drug.


Donald O. Allen, Ph.D.

Sworn to before me this 19 day
May, 2009
of May, 2009.


Notary Public for South Carolina

My commission expires: 2/12/2012

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narcotic

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[Printer friendly](#)[Cite / link](#)[Email](#)[Feedback](#)[Add definition](#)nar·cot·ic  (nār-kōt'ik)

n.

1. An addictive drug, such as opium, that reduces pain, alters mood and behavior, and usually induces sleep or stupor. Natural and synthetic narcotics are used in medicine to control pain.
2. A soothing, numbing agent or thing: *"There was the blessed narcotic of bridge, at the Colony or at the home of friends"* Louis Auchincloss.

adj.

1. Inducing sleep or stupor; causing narcosis.
2. Of or relating to narcotics, their effects, or their use.
3. Of, relating to, or intended for one addicted to a narcotic.

[Middle English *narcotik*, from Old French *narcotique*, from Medieval Latin *narcoticum*, from Greek *narkōtikos*, from neuter of *narkōtikos*, *numbing*, from *narkōsis*, *a numbing*; see *narcosis*.]

nar·cot'i-cal-ly adv.

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narcotic

Noun

a drug, such as opium or morphine, that produces numbness and drowsiness, used medicinally but addictive

Adjective

of narcotics or narcosis [Greek *narkē* numbness]

Collins Essential English Dictionary 2nd Edition 2006 © HarperCollins Publishers 2004, 2006

narcotic  (nār-kōt'ik)

Any of a group of highly addictive analgesic drugs derived from opium or opiumlike compounds. Narcotics can cause drowsiness and significant alterations of mood and behavior.

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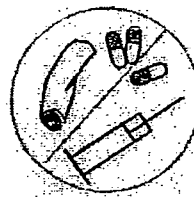
Noun 1.

narcotic - a drug that produces numbness or stupor; often taken for pleasure or to reduce pain; extensive use can lead to addiction

drug - a substance that is used as a medicine or narcotic

hard drug - a narcotic that is considered relatively strong and likely to cause addiction

Demerol, meperidine, meperidine hydrochloride - a synthetic narcotic drug (trade name Demerol) used to treat pain

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065

methadon, methadone, methadone hydrochloride, synthetic heroin, dolophine hydrochloride, fixer - synthetic narcotic drug similar to morphine but less habit-forming; used in narcotic detoxification and maintenance of heroin addiction

opiate - a narcotic drug that contains opium or an opium derivative

opium - an addictive narcotic extracted from seed capsules of the opium poppy

recreational drug - a narcotic drug that is used only occasionally and is claimed to be nonaddictive

soft drug - a drug of abuse that is considered relatively mild and not likely to cause addiction

connection - a supplier (especially of narcotics)

space cadet - someone who seems unable to respond appropriately to reality (as if under the influence of some narcotic drug)

addiction, dependance, habituation, dependence, dependency - being abnormally tolerant to and dependent on something that is psychologically or physically habit-forming (especially alcohol or narcotic drugs)

drug addiction, white plague - an addiction to a drug (especially a narcotic drug)

Adj. 1. narcotic - of or relating to or designating narcotics; "narcotic addicts"; "narcotic stupor"



2. narcotic - inducing stupor or narcosis; "narcotic drugs"

narcotising, narcotizing

depressant - capable of depressing physiological or psychological activity or response by a chemical agent

3. narcotic - inducing mental lethargy; "a narcotic speech"

soporiferous, soporific

uninteresting - arousing no interest or attention or curiosity or excitement; "a very uninteresting account of her trip"

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narcotic

noun 1. **DRUG, anaesthetic, painkiller, sedative, opiate, tranquilizer, anodyne, analgesic**

adjective 2. **SEDATIVE, calming, dulling, numbing, hypnotic, analgesic, stupefying, soporific, painkilling**

Collins Essential Thesaurus 2nd Edition 2006 © HarperCollins Publishers 2005, 2006

Translations

Select a language: _____

narcotic

n narcotic [na:'kɒtɪk]

a type of drug that stops pain or makes one sleep, often addictive when taken in large doses.

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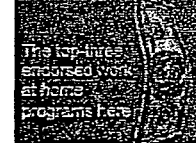
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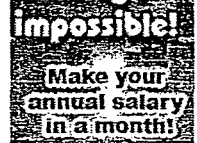
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narcotic ↗

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narcotic definition

nar·cotic (när kät'ik)

noun

1. a drug, as opium or any of its derivatives (morphine, heroin, codeine, etc.), used to relieve pain and induce sleep: narcotics are often addictive and in excessive doses can cause stupor, coma, or death
2. anything that has a soothing, lulling, or dulling effect

Etymology: ME *narcotyke* < OFr *narcotique*, orig. adj. < ML *narcoticus* < Gr *narkoun*, to benumb < *narkē*, numbness, stupor < IE **nerk-* < base **(s)ner-*, to twist, entwine > snare, narrow

adjective

1. of, like, or capable of producing narcosis
2. of, by, or for narcotic addicts

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Alternate definitions:

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narcotic synonyms

narcotic

modif.

opiate, soporific, anodyne, calming, deadening, numbing, dulling, analgesic, anesthetic, stupefying.

narcotic

n.

stupefacient, anodyne, opiate; see drug 2.

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narcotic usage examples

067

converse of object

- combine: If you have severe and prolonged pain, then the pain may require narcotics often combined with antidepressants.

adjective modifier

- illegal: The truth spoken was that the Central Intelligence Agency had engaged in the wholesale distribution of illegal narcotics.

modifies a noun

- analgesic: The cognitive effects of the administration of narcotic analgesics in patients with cancer pain.

modifying another word

- mildly: Even the root, which possesses mildly narcotic properties, is sometimes chewed.

narcotic usage examples (more)

The word usage examples above have been gathered from various sources to reflect current and historical usage. They do not represent the opinions of YourDictionary.com.

Link to this page:

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The New Oxford American Dictionary

SECOND EDITION

FIRST EDITION

Elizabeth J. Jewell
Frank Abate

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Erin McKean

OXFORD
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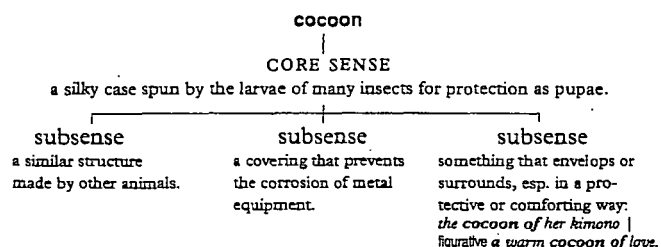
APPX. 0070

Introduction

The *New Oxford American Dictionary* has been compiled according to principles that are quite different from those of traditional American dictionaries. New types of evidence are now available in sufficient quantity to allow lexicographers to construct a picture of the language that is more accurate than has been possible before. The approach to structuring and organizing within individual dictionary entries has been rethought, as has the approach to the selection and presentation of information in every aspect of the dictionary: definitions, choice of examples, grammar, word histories, and every other category. New approaches have been adopted in response to a reappraisal of the workings of language in general and its relationship to the presentation of information in a dictionary in particular. The aim of this introduction is to give the reader background information for using this dictionary and to explain some of the thinking behind these new approaches.

Structure: Core Sense and Subsense

The first part of speech is the primary one for that word: thus, for **bag** and **balloon** the senses of the noun are given before those for the verb, while for **babble** and **bake** the senses of the verb are given before those of the noun.



Within each part of speech, the first definition given is the **core sense**. The general principle on which the senses in the *New Oxford American Dictionary* are organized is that each word has at least one core meaning, to which a number of subsenses may be attached. If there is more than one core sense (see following page), this is introduced by a bold sense number. Core meanings represent typical, central uses of the word in question in modern standard English, as established by research on and analysis of American and World English through corpora (language databanks) and citation databases. The core meaning is the one that represents the most literal sense that the word has in ordinary modern American usage. This is not necessarily the same as the oldest meaning, because word meanings change over time. Nor is it necessarily the most frequent meaning, because figurative senses are sometimes the most frequent. It is the meaning accepted by native speakers as the one that is most established as literal and central.

The core sense also acts as a gateway to other, related subsenses. These subsenses are grouped under the core sense, each one being introduced by a solid square symbol.

	co-coon
CORE SENSE	a silky case spun by the larvae of many insects for protection as pupae.
subsense	■ a similar structure made by other animals. ■ a covering that prevents the corrosion of metal equipment. ■ something that envelops or surrounds, esp. in a protective or comforting way: <i>the cocoon of her kimono</i> figurative a warm cocoon of love.

There is a logical relationship between each subsense and the core sense under which it appears. The organization of senses according to this logical relationship is designed to help the user, not only in being able to navigate the entry more easily and find relevant senses more readily, but also in building up an understanding of how senses in the language relate to one another and how the language is constructed on this model. The main types of relationship of core sense to subsense are as follows:

(a) figurative extension of the core sense, e.g.,

	back-bone
CORE SENSE	the series of vertebrae extending from the skull to the pelvis; the spine.
subsense	■ figurative the chief support of a system or organization; the mainstay: <i>these firms are the backbone of our industrial sector.</i>
	bank-rupt
CORE SENSE	(of a person or organization) declared in law unable to pay outstanding debts: <i>the company was declared bankrupt</i>
subsense	■ figurative completely lacking in a particular quality or value: <i>their cause is morally bankrupt.</i>

(b) specialized case of the core sense, e.g.,

	zone
CORE SENSE	[usu. with <i>adj.</i>] an area or stretch of land having a particular characteristic, purpose, or use, or subject to particular restrictions: <i>a pedestrian zone</i>
subsense	■ <i>Geography</i> a well-defined region extending around the earth between definite limits, esp. between two parallels of latitude: <i>a zone of easterly winds.</i>
subsense	■ <i>Sports</i> In basketball, football, and hockey, a specific area of the court, field, or rink, esp. one to be defended by a particular player, or the mode of defensive play using this system.
	de-mand
CORE SENSE	an insistent and peremptory request, made as if by right: <i>a series of demands for far-reaching reforms.</i>
subsense	■ <i>Economics</i> the desire of purchasers, consumers, clients, employers, etc., for a particular commodity, service, or other item: <i>a recent slump in demand</i> <i>a demand for specialists.</i>

(c) other extension or shift in meaning, retaining one or more elements of the core sense, e.g.,

	bam-boo
CORE SENSE	a giant woody grass that grows chiefly in the tropics, where it is widely cultivated.
subsense	■ the hollow jointed stem of this plant, used as a cane or to make furniture and implements: [as <i>adj.</i>] a bamboo serving tray.
	man-agement
CORE SENSE	the process of dealing with or controlling things or people: the management of elk herds.
subsense	■ <i>Medicine & Psychiatry</i> the treatment or control of diseases, injuries, or disorders, or the care of patients who suffer from them: the use of combination chemotherapy in the management of breast cancer.
	man-da-ri-n
CORE SENSE	an official in any of the nine top grades of the former imperial Chinese civil service.
subsense	■ a powerful official or senior bureaucrat, esp. one perceived as reactionary and secretive: a civil service mandarin.

Many entries have just one core sense. However some entries are more complex and have different strands of meaning, each constituting a core sense. In this case, each core sense is introduced by a bold sense number, and each potentially has its own block of sub-senses relating to it.

	belt
CORE SENSE	1 a strip of leather or other material worn around the waist or across the chest, esp. in order to support clothes or carry weapons: a sword belt [as <i>adj.</i>] a belt buckle.
subsenses	■ short for SEAT BELT. ■ a belt worn as a sign of rank or achievement: he was awarded the victor's belt. ■ a belt of a specified color, marking the attainment of a particular level in judo, karate, or similar sports: [as <i>adj.</i>] brown-belt level. ■ a person who has reached such a level: I am a karate black belt. ■ (the belt) the punishment of being struck with a belt.
CORE SENSE	2 a strip of material used in various technical applications, in particular:
subsenses	■ a continuous band of material used in machinery for transferring motion from one wheel to another. ■ a conveyor belt. ■ a flexible strip carrying machine-gun cartridges.
CORE SENSE	3 a strip or encircling band of something having a specified nature or composition that is different from its surroundings: the asteroid belt a belt of trees.
CORE SENSE	4 a heavy blow: she ran in to administer a good belt with her stick.
CORE SENSE	5 informal a gulp or shot of liquor: they could probably use a few belts.

Specialist Vocabulary

One of the most important uses of a dictionary is to provide explanations of terms in specialized fields that are unfamiliar to a general reader. Yet in many traditional dictionaries, the definitions have been written by specialists as if for other specialists, and as a result the definitions are often opaque and difficult for the general reader to understand.

One of the primary aims of the *New Oxford American Dictionary* has been to break down the barriers to understanding specialist vocabulary. The challenge has been, on the one hand, to give information that is comprehensible, relevant, and readable, suitable for the general reader, while on the other hand maintaining the high level of technical information and accuracy suitable for the more specialist reader.

This has been achieved in some cases, notably entries for plants and animals and chemical substances, by separating technical information from the rest of the definition:

	A-mer-i-can croc-o-dile
DEFINITION	a crocodile with a long tapering head, occurring from southernmost Florida to Ecuador.
technical information	• <i>Crocodylus acutus</i> , family Crocodylidae.
	ben-zo-py-rene
DEFINITION	<i>Chemistry</i> a compound that is the major carcinogen present in cigarette smoke. It also occurs in coal tar.
technical information	• A polycyclic aromatic hydrocarbon; chem. formula: C ₂₀ H ₁₂ .

In other cases, it is achieved by giving additional explanatory information within the definition itself:

	curl-ing
DEFINITION	a game played on ice, esp. in Scotland and Canada, in which large, round, flat stones are slid across the surface toward a mark. Members of a team use brooms to sweep the surface of the ice in the path of the stone to control its speed and direction.
additional information	
	al-che-my
DEFINITION	the medieval forerunner of chemistry, based on the supposed transformation of matter. It was concerned particularly with attempts to convert base metals into gold or to find a universal elixir.
additional information	■ <i>figurative</i> a process by which paradoxical results are achieved or incompatible elements combined with no obvious rational explanation: his conducting managed by some alchemy to give a sense of fire and ice.

As elsewhere, the purpose is to give information that is relevant and interesting, aiming not just to define the word but also to describe and explain its context in the real world. Additional information of this type, where it is substantial, is given in the form of separate boxed features:

	earth
CORE SENSE	(also Earth) the planet on which we live; the world: the diversity of life on earth.
additional boxed information	The earth is the third planet from the sun in the solar system, orbiting between Venus and Mars at an average distance of 90 million miles (149.6 million km) from the sun, and has one natural satellite, the moon. It has an equatorial diameter of 7,654 miles (12,756 km), an average density 5.5 times that of water, and is believed to have formed about 4,600 million years ago. The earth, which is three-quarters covered by oceans and has a dense atmosphere of nitrogen and oxygen, is the only planet known to support life.
	Eo-cene
CORE SENSE	<i>Geology</i> of, relating to, or denoting the second epoch of the Tertiary period, between the Paleocene and Oligocene epochs.
subsense	■ [as <i>n.</i>] (the Eocene) the Eocene epoch or the system of rocks deposited during it.
additional boxed information	The Eocene epoch lasted from 56.5 million to 35.4 million years ago. It was a time of rising temperatures, and there was an abundance of mammals, including the first horses, bats, and whales.

An especially important feature of the *New Oxford American Dictionary* is the coverage of American animals and plants. In-depth research and a thorough review have been carried out for animals and plants in the Americas and throughout the world and, as a result, a large number of entries have been included that have never before been included in general American dictionaries. The style and presentation of these entries follow the general principles for specialist vocabulary in the *New Oxford American Dictionary*: the entries not only give the technical information, but also describe, in everyday English, the appearance and other characteristics (of behavior, medicinal or culinary use, mythological significance, reason for the name, etc.) and the typical habitat and distribution:

of an overthrust or folding. ▶late 19th cent.: from French *nappe* 'tablecloth.'

napped ¹ /napt/ ▶adj. [usu. in combination] (of a textile) having a nap, usually of a specified kind: a long-napped paint roller.

napped ² ▶adj. (of food) served in a sauce or other liquid: mushrooms napped with melted butter. ▶1970s: from French *napper* 'coat with (a sauce)', from *nappe* 'cloth,' figuratively 'pool of liquid,' + -ED.

nappy ¹ /'napē/ ▶n. (pl. -pies) Brit. a baby's diaper. ▶early 20th cent.: abbreviation of NAPPY.

nappy ² ▶adj. informal (of a black person's hair) frizzy. ▶late 15th cent. (in the sense 'shaggy'): from Middle Dutch *noppigh*, Middle Low German *noppich*, from *noppe* (see NAPP). The current sense dates from the early 20th cent.

na-prox-en /'nə'prəksən/ ▶n. *Medicine* a synthetic compound used as an anti-inflammatory drug, esp. in the treatment of headache and arthritis. • *Chem.* formula: $C_{14}H_{14}O_3$. ▶1970s: from *nap(h)thyl* + *pr(o)tic* + *ox(y)-*, + -en on the pattern of words such as *ta-moxifen*.

Nara /'nārā/ a city in central Japan, on the island of Honshu; pop. 349,000. It was the first capital of Japan (710–784) and an important center of Japanese Buddhism.

Nara-yan /'nə'riən/, R. K. (1906–2001), Indian novelist and short-story writer; full name *Rasipuram Krishnaswamy Narayan*. Many of his novels are set in Malgudi, an imaginary small Indian town. Notable works: *Swami and Friends* (1935), *The Man-Eater of Malgudi* (1961), and *The Painter of Signs* (1977).

Nara-yan-gan /'nə'riyəŋ,ɡən/ a river port in Bangladesh, on the Ganges delta southeast of Dhaka; pop. 406,000.

narc /'nɑrk/ (also **nark**) ▶n. informal a federal agent or police officer who enforces the laws regarding illicit sale or use of drugs and narcotics. ▶1960s: abbreviation of NARCOTIC.

narcis-sism /'nɑrsə,sizəm/ ▶n. excessive or erotic interest in oneself and one's physical appearance. ■ *Psychology* extreme selfishness, with a grandiose view of one's own talents and a craving for admiration, as characterizing a personality type. See note at *egotism*. ■ *Psychoanalysis* self-centeredness arising from failure to distinguish the self from external objects, either in very young babies or as a feature of mental disorder. ▶early 19th cent.: via Latin from the Greek name *Narkissos* (see NARCISUS) + -ISM. —**narcis-sist** /'nɑrsəsəst/ n. —**narcis-sis-tic** /'nɑrsə'sistɪk/ adj. —**narcis-sis-tic-ally** /'nɑrsə'sistɪk(ə)li/ adv.

Narcis-sus /'nɑr'sisəs/ *Greek Mythology* a beautiful youth who rejected the nymph Echo and fell in love with his own reflection in a pool. He pined away and was changed into the flower that bears his name. **narcis-sus** /'nɑr'sisəs/ ▶n. (pl. same, -cis-si /'sɪsɪ-, -sē/, or -cissuses) a bulbous Eurasian plant of a genus that includes the daffodil, esp. (in gardening) one with flowers that have white or pale outer petals and a shallow orange or yellow cup in the center. • *Genus* *Narcissus*, family Liliaceae (or Amaryllidaceae); many species and varieties, in particular *N. poeticus*. ▶via Latin from Greek *narkissos*, perhaps from *narkē* 'numbness,' with reference to its narcotic effects.

narc ² /'nɑrkō/ ▶n. (pl. -cos) informal short for NARCOTIC. ■ a dealer in drugs. ■ a narcotics officer.

narco- ▶comb. form relating to a state of insensibility: *narcoplexy*. ■ relating to narcotic drugs or their use: *narcoterrorism*. ▶from Greek *narkē* 'numbness.'

narc-o-lep-sy /'nɑrkə,lepsē/ ▶n. *Medicine* a condition characterized by an extreme tendency to fall asleep whenever in relaxing surroundings. ▶late 19th cent.: from Greek *narkē* 'numbness,' on the pattern of *epilepsy*. —**narc-o-lep-tic** /'nɑrkə'leptɪk/ adj. & n.

narc-o-sis /'nɑrkōsɪs/ ▶n. *Medicine* a state of stupor, drowsiness, or unconsciousness produced by drugs. See also NITROGEN NARCOSIS. ▶late 17th cent.: from Greek *narkōsis*, from *narkoun* 'make numb.'

narc-o-ter-ror-ism /'nɑrkō'terə,rɪzəm/ ▶n. terrorism associated with trade in illicit drugs. ▶1980s: from NARCO- 'relating to illegal narcotics' + *terrorism* (see TERRORISM). —**narc-o-ter-ror-ist** n.

narc-otic /'nɑrkə'tɪk/ ▶n. a drug or other substance affecting mood or behavior and sold for nonmedical purposes, esp. an illegal one. ■ *Medicine* a drug that relieves pain and induces drowsiness, stupor, or insensibility.

▶adj. relating to or denoting narcotics or their effects or use: the substance has a mild narcotic effect. ▶late

Middle English: from Old French *narcotique*, via medieval Latin from Greek *narkōtikos*, from *narkoun* 'make numb.' —**narc-ot-i-cal-ly** /-tɪk(ə)li/ adv. —**narc-ot-ism** /'nɑrkə,tɪzəm/ n.

narc-o-tize /'nɑrkə,tɪz/ ▶v. [trans.] stupefy with or as if with a drug. ■ make (something) have a soporific or narcotic effect: the essence of apple blossom narcotizes the air. —**narc-o-ti-za-tion** /'nɑrkə'tɪzə'shun/ n.

nard /'nɑrd/ ▶n. the Himalayan spikenard. ▶late Old English, via Latin from Greek *nardos*; related to Sanskrit *nalada*, *narada*.

nar-es /'ne(ə)rɪz/ ▶plural n. (sing. *nar-is* /'ne(ə)rɪs/) *Anatomy & Zoology* the nostrils. ▶late 17th cent.: plural of Latin *naris* 'nostril, nose.' —**nar-i-al** /-ēəl/ adj.

nar-gi-le /'nɑrgələ/ (also **nar-gi-leh**) ▶n. an oriental tobacco pipe with a long tube that draws the smoke through water, a hookah. ▶mid 18th cent.: from Persian *nārgil* 'coconut, hookah,' from Sanskrit *nārikela* 'coconut.'

nar-is /'ne(ə)rɪs/ ▶singular form of NARES.

nark /'nɑrk/ informal ▶n. 1 variant spelling of NARC. 2 chiefly Brit. a police informer. 3 Austral./NZ an annoying person or thing.

▶v. [trans.] (usu. be narked) chiefly Brit. annoy or exasperate: I was narked at being pushed around. ▶mid 19th cent.: from Romyan *nāk* 'nose.'

▶PHRASE □ chiefly Brit. nark it! stop that!

Nar-ma-da /'nɑr'mədə/ a river that rises in Madhya Pradesh, central India, and flows west for 778 miles (1,245 km) to the Gulf of Cambay. Hindus consider it a sacred river.

Nar-ran-gan-sett /'nɑrə'ɡənsɪt/ (also **Nar-ran-gan-set**) ▶n. (pl. same or -setts) 1 a member of an American Indian people originally of Rhode Island. They came into conflict with the New England colonists in the 17th century, and few now remain. 2 the Algonquian language of this people. ▶the name in Narragansett, literally 'people of the promontory.' **Nar-ran-gan-sett Bay** an inlet of the Atlantic Ocean in southeastern Rhode Island.

nar-rate /'nɑr,æt/ ▶v. [trans.] (often be narrated) give a spoken or written account of: the voyages, festivities, and intrigues are narrated with unflagging gusto | the tough-but-sensitive former bouncer narrates much of the story. ■ provide a spoken commentary to accompany (a movie, broadcast, piece of music, etc.). ▶mid 17th cent.: from Latin *narrat-* 'related, told,' from the verb *narrare* (from *gnarus* 'knowing'). —**nar-rat-a-ble** adj. —**nar-rat-ion** /'nɑr'æʃən/ n.

nar-rative /'nɑrətɪv/ ▶n. a spoken or written account of connected events; a story: the hero of his modest narrative. ■ the narrated part or parts of a literary work, as distinct from dialogue. ■ the practice or art of narration: traditions of oral narrative.

▶adj. in the form of or concerned with narration: a narrative poem | narrative technique. ▶late Middle English (as an adjective): from French *narratif*, -ive, from late Latin *narrativus* 'telling a story,' from the verb *narrare* (see NARRATE). —**nar-rat-ive-ly** adv.

nar-ra-tiv-ity /'nɑrə'tɪvətē/ ▶n. the quality or condition of presenting a narrative: music has developed a narrativity that lends it the character of language. ▶1970s: from French *narrativité*.

nar-ra-tiv-ize /'nɑrətɪv,ɪz/ ▶v. [trans.] present or interpret (something such as experience or theory) in the form of a story or narrative.

nar-ra-tol-o-gy /'nɑrə'tələʒi/ ▶n. the branch of knowledge or literary criticism that deals with the structure and function of narrative and its themes, conventions, and symbols. —**nar-ra-to-log-i-cal** /'nɑrətəl'ɒjɪkəl/ adj. —**nar-ra-tol-o-gist** /-jɪst/ n.

nar-ra-tor /'nɑrətər/ ▶n. a person who narrates something, esp. a character who recounts the events of a novel or narrative poem. ■ a person who delivers a commentary accompanying a movie, broadcast, piece of music, etc. —**nar-ra-tor-i-al** /'nɑrə'tɔəriəl/ adj.

nar-row /'nɑrō/ ▶adj. (-row-er, -row-est) 1 (esp. of something that is considerably longer or higher than it is wide) of small width: he made his way down the narrow road. 2 limited in extent, amount, or scope: restricted: his ability to get good results within narrow constraints of money and manpower. ■ (of a person's attitude or beliefs) limited in range and lacking willingness or ability to appreciate alternative views: companies fail through their narrow view of what contributes to profit. ■ precise or strict in meaning: some of the narrower definitions of democracy. ■ (of a phonetic transcription) showing fine details of accent. ■ *Phonetics* denoting a vowel pronounced with the root of the tongue drawn back so as to narrow

the pharynx. 3 (esp. of a victory, defeat, or escape) with only a small margin; barely achieved.

▶v. 1 become or make less wide: [intrans.] the road narrowed and crossed an old bridge | [trans.] the embankment was built to narrow the river. ■ [intrans.] (of a person's eyes) almost closed so as to focus on something or someone, or to indicate anger, suspicion, or other emotion: Jake's eyes had narrowed to pinpoints. ■ [trans.] (of a person) cause (one's eyes) to do this: she narrowed her eyes at him suspiciously. 2 become or make more limited or restricted in extent or scope: [intrans.] their trade surplus narrowed to \$70 million in January | [trans.] New England had narrowed Denver's lead from 13 points to 4.

▶phrasal v. □ narrow something down reduce the number of possibilities or options of something: the company has narrowed down the candidates for the job to two.

▶n. (narrows) a narrow channel connecting two larger areas of water: a basaltic fang rising from the narrows of the Upper Missouri. ▶Old English *nearu*, of Germanic origin; related to Dutch *naar* 'dismal, unpleasant' and German *Narbe* 'scar.' Early senses in English included 'constricted' and 'miserly.' —**nar-row-ish** adj. —**nar-row-ness** n.

▶PHRASE □ narrow circumstances poverty.

nar-row-band /'nɑrō,bænd/ ▶adj. of or involving signals over a narrow range of frequencies.

nar-row-boat /'nɑrō,bōt/ ▶n. Brit. a canal boat less than 7 feet (2.1 m) wide with a maximum length of 70 feet (21.3 m) and steered with a tiller rather than a wheel.

nar-row-cast /'nɑrō,kast/ ▶v. (past and past part. -cast or -casted) [intrans.] transmit a television program, esp. by cable, or otherwise disseminate information, to a comparatively small audience defined by special interest or geographical location: the channel is licensed to narrowcast only to noncommercial outlets | [as n.] (narrowcasting) one journal has avoided the narrowcasting that seems to enslave so many mainstream magazines.

▶n. transmission or dissemination in this way: Colorado women's volleyball narrowcasts | [as adj.] narrowcast specialty channels. ▶1930s: back-formation from narrowcasting, on the pattern of broadcasting. —**nar-row-caster** n.

nar-row gauge ▶n. a railroad gauge that is narrower than the standard gauge of 56.5 inches (143.5 cm).

nar-row-ly /'nerōli/ ▶adv. 1 by only a small margin; barely: he narrowly defeated Anderson to win a 12th term in office. 2 closely or carefully: he was looking at her narrowly. 3 in a limited or restricted way: narrowly defined tasks.

nar-row-mind-ed ▶adj. not willing to listen to or tolerate other people's views; prejudiced. —**nar-row-mind-ed-ly** adv. —**nar-row-mind-ed-ness** n.

nar-row mon-ey ▶n. *Economics* money in forms that can be used as a medium of exchange, generally banknotes, coins, and certain balances held by banks.

Nar-rows /'nɑrōz/ (the Narrows) a strait about 2 miles (3.2 km) long connecting upper and lower New York Bay, between Staten Island and Brooklyn.

nar-thex /'nɑrθeks/ ▶n. an antechamber, porch, or distinct area at the western entrance of some early Christian churches, separated off by a railing and used by catechumens, penitents, etc. ■ an antechamber or large porch in a modern church. ▶late 17th cent.: via Latin from Greek *narthēx*.

nar-whal /'nɑrwəl/ ▶n. a small Arctic whale, the male of which has a long forward-pointing spirally twisted tusk developed from one of its teeth. See WHALE. • *Monodon monoceros*, family Monodontidae. ▶mid 17th cent.: from Dutch *narwal*, Danish *narval*, based on Old Norse *nár* 'corpse,' with reference to skin color.

nar-y /'ne(ə)rē/ ▶adj. informal or dialect form of NARY: nary a murmur or complaint. ▶mid 18th cent.: from the phrase *ne'er a*.

NASA /'nasə/ ▶abbr. National Aeronautics and Space Administration.

na-sal /'nəzəl/ ▶adj. 1 of, for, or relating to the nose: the nasal passages | a nasal spray. 2 (of a speech sound) pronounced by the voice resonating in the nose, e.g., m, n, ŋ. Compare with ORAL (sense 2). ■ (of the voice or speech) produced or characterized by resonating in the nose as well as the mouth.

Pronunciation Key a ago; ər over; 'ə or, 'ə up; 'ər or, 'ər fur; a hat; à rate; á car; ǝ chew; e let; é see; e(ə) air; í fit; í by; í(e) ear; ŋg sing; ŋ go; ŋ for; oí boy; ō good; ōō goo; ou out; SH she; TH thin; TH then; (h)w why; ZH vision

The Herald Bulletin

ONLINE

9:50 a.m.: Officials fear meth surge

The Associated Press

March 05, 2008 09:49 am

— KANSAS CITY, Mo. — A common fear is sweeping through the Midwest's drug-enforcement community: that methamphetamine, the narcotic scourge that has wounded middle America as no drug ever before, is about to surge again because of extreme federal slashes in police funding. In Iowa, Missouri, Illinois, Indiana, Kansas and Nebraska, the story is the same. Just as statistics show that anti-meth task forces may be beginning to gain an upper hand on those who manufacture, deal and use the highly addictive and destructive drug, the source of the majority of these states' drug-enforcement funding is slated to disappear overnight.

"It couldn't come at a worse time," said Terry Lemming, the statewide drug-enforcement coordinator for the Illinois State Police. "After all the success we've started to have, this could set the Midwest back a good 20 years in our fight against this drug."

President Bush, whose administration has long expressed the opinion that federal dollars should not be the primary means of funding state and local law enforcement, has dramatically cut funding in the 2009 budget for the Edward Byrne Memorial Justice Assistance Grant, the primary program used to finance drug enforcement in nearly every state. The proposed cut would trim \$170 million, virtually the entire Byrne program for drug enforcement.

Although Congress has signaled it will fight to restore funding to the drug-enforcement program, those on both sides of the political aisle have acknowledged they very likely could fail; the war on terrorism and the wars in Iraq and Afghanistan, they say, have trumped the nation's war on drugs at home. Other sources of funding include money from state and local government, but it is often a smaller percentage of the total.

The ramifications for the ongoing battle against methamphetamine in the Midwest could be enormous:

In Iowa, where Mexican drug cartels have gained control over the bulk of meth distribution, officials say they face losing nearly three-quarters of their drug-enforcement budget.

In Illinois, where meth continues to make inroads into rural communities, addicting youth and adults alike, drug-enforcement officials say they would have to eliminate more than half of the state's meth-fighting task forces.

In Missouri, where a startling 20 percent of the nation's meth arrests are made, officials grimly predict they will have to start laying off a significant number of their already overwhelmed drug-enforcement officers.

"I don't think anyone is yet fully appreciating what this is going to mean for the rates of people getting addicted to this drug as well as to overall public safety," said Gary Kendall, director of the Iowa Office of Drug Control Policy.

State legislatures in Iowa, Illinois and Missouri are trying to replace the lost federal funds with money from state coffers, but drug-enforcement officials worry that will prove difficult or impossible during the current economic downturn.

"We're preparing for the worst," Lemming said. "And if that comes to pass, it will be devastating."

Indeed, methamphetamine statistics show how much is at stake. In Illinois, for example, law-enforcement officials say they have been so successful that they halved the number of labs operating from 2003 to 2007. Lemming said that is the result of nearly two decades of building up 23 multicounty task forces that specialize — quite successfully — in fighting meth.

He cited a 2005 study by the Illinois Criminal Justice Authority that showed in areas where anti-drug task forces were at work, violent crime had been significantly reduced.

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"If we cannot at least keep the current level of federal funding, we will have to dissolve 12 of our 23 task forces," Lemming said. "The people of Illinois will see a dramatic change in violence and drug use as a result."

Iowa officials cite the same worries about closing the lion's share of their anti-meth task forces. But they have other fears too. Since the state has been so successful at cutting down in-state meth productions — lab busts have plummeted from more than 1,300 in 2004 to less than 200 last year, an indication their numbers are drastically down — the state has seen an influx of meth from drug cartels.

"First we zoned in on the labs, and the numbers show how well we did," said Kendall. "Now we are poised to really start having a real impact on the Mexican drug cartels that are now bringing in the meth. But if we have to eliminate more than half of our task forces, we won't stand a chance at that."

Like officials in virtually every state in the Midwest, Kendall said, local police and sheriff's departments have neither the staff, resources nor training to effectively fight the war on meth.

(EDITORS: BEGIN OPTIONAL TRIM)

"Without the work of our task forces, Missouri could find itself in the position where everything that's been done in the last 5 to 10 years is virtually undone," said Capt. Tim Forney, the operating chief for the Northeast Missouri Narcotics Task Force.

Forney said that federal funds for task forces like his have been decreasing for the past several years. In the past two years, he said, his task force had more than \$70,000 in funding cuts and had to lay off one officer.

"Less personnel means less enforcement," he said.

(END OPTIONAL TRIM)

Missouri will certainly feel the federal slashes as much as any state in the Midwest. Because one-fifth of the nation's meth arrests occur in the state, it has been heavily funded by the Byrne assistance grant, a program named for a New York City police officer killed by drug dealers in 1988. Missouri currently gets about \$9 million from the federal fund.

"In Missouri, we especially understand what's at stake," said Forney, noting that the state still had about 1,200 meth lab busts in 2007.

Liz Rehmer, a Missouri mother whose son began using meth in his early 20s and is now in prison for drug-related offenses, has watched the debate over Byrne funding with shock. She lives in a county where the anti-meth task force is 100 percent funded by Byrne money, and she fears what will result from the dismantling of such law-enforcement efforts.

"The Midwest will see more and more addicts, more and more children in foster care, and the prisons will be full to the point that they are bursting," she said. "Crime will go up. The number of addicts will be shocking. It won't even take five years for it to be a full-blown epidemic."

So many states are worried about the slashes to federal funding that drug-enforcement officials representing 45 states traveled last week to Washington to lobby Congress to restore Byrne funding. Lemming said the sense was of bipartisan support among members of Congress, but that financial realities during this time of war might prevent the money from being appropriated.

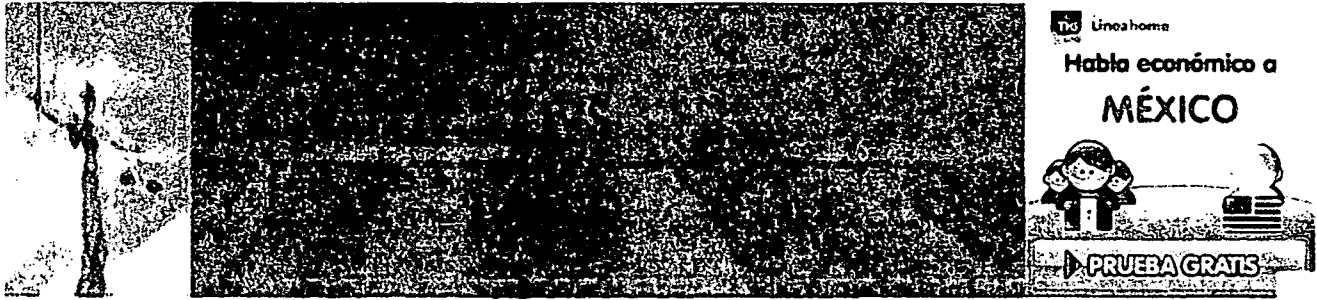
"What I fear is that we're about to dismantle everything we've been doing for a decade to fight meth in the Midwest," he said. "I think citizens and politicians will very quickly discover what a disaster that is for drug use rates and public safety, and then we'll want to go back to what we were doing."

"But if we tear down the infrastructure that we've spent all this time building, it will be very difficult to restore a year or two from now. We may not be able to fix what we've broken."

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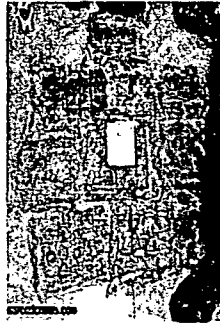
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Narcotic

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The term **narcotic** (*ναρκωτικός*) is believed to have been coined by the Greek physician Galen to refer to agents that benumb or deaden, causing loss of feeling or paralysis. It is based on the Greek word *ναρκωσις* (narcosis), the term used by Hippocrates for the process of numbing or the numbed state. Galen listed mandrake root, altercus (eclata)^[1] seeds, and poppy juice (opium) as the chief examples.^{[2][3]}

Use of the word "narcotic" to refer to any illegal or unlawfully possessed drug including marijuana and cocaine is common worldwide, although these substances are not considered narcotics in a medical context. The central drug policy making body with in the United Nations, for instance, is the Commission on Narcotic Drugs, although the United Nations officially defines a narcotic drug to be "any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961"^[4]



In U.S. legal context, the term "narcotic" specifically refers to opium, opium derivatives, and their semi-synthetic or fully synthetic substitutes as well as cocaine and coca leaves.

Because the term is often used so broadly or pejoratively outside of medical contexts, most medical professionals advocate the use of more precise terms such as "opioid" and "opioid analgesic" to refer to the natural, semi-synthetic, and synthetic substances that behave pharmacologically like morphine and are used primarily for their pain-relieving qualities.^[5] The use of the term "narcotic" in various nonclinical contexts is not of educational or of informative value. The decision to term all illegal drugs as narcotics is often used as a shorthand way to politicize and demonize any illegal drug.

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- 1 Effects
- 2 Hazards
- 3 Tolerance and dependence
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- 5 Overdose
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- 7 References
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Effects

Drug effects depends heavily on the dose, route of administration, previous exposure to the drug, and the expectation of the user. Aside from their clinical use in the treatment of pain, cough, and acute diarrhea, narcotics produce a general sense of well-being, *euphoria*, and can reduce tension, anxiety, and aggression. These effects are helpful in a therapeutic setting and contribute to their popularity as recreational drugs, as well as helping to produce dependency. It should be noted that these effects may not be experienced all at once, or at all by some users.

Narcotic use is associated with a variety of side effects including drowsiness, itching, sleeplessness, inability to concentrate, apathy, lessened physical activity, drastically reduced attention-span, constriction of the pupils, dilation of the subcutaneous blood vessels causing flushing of the face and neck, constipation, nausea, vomiting, difficulty with urination, and respiratory depression. Reported, subjective, mental and physical effects also include a sense of pleasure, ranging from mild relaxation and freedom from irritation and worry, to wild euphoria and imperviousness to physical pain. As the dose is increased, the subjective, analgesic, and toxic effects become more pronounced. Except in cases of acute intoxication, there is only minor loss of motor coordination or slurred speech, as occurs with many depressants such as alcohol or barbiturates.

Hazards

Among the hazards of careless or excessive drug use are the increasing risk of infection, disease and overdose. Medical complications common among recreational narcotic users arise primarily from the non-sterile practices of injecting. Skin, lung and brain abscesses, endocarditis, hepatitis and HIV/AIDS are commonly found among persons with narcotic dependencies who share syringes or inhale the drug. There has been much discussion about the dangers related to the adulterants/diluents found in street drugs, such as heroin, where rumours abound about what is used to "cut" street drugs, e.g., ground glass, talcum powder, rat poison, domestic cleaning powders, and other cutting agents. Recent evidence shows that this kind of "dangerous adulteration" is largely mythical and that far less cutting of drugs than is normally assumed actually takes place^[citation needed]. However, since there is no simple way to determine the purity of a drug that is sold on the street, the effects of using street narcotics are unpredictable. It remains the case that the greatest risk presented by most illicit drugs relates to the drugs themselves and how they are used, e.g., in conjunction with other drugs (alcohol is a particularly risky drug to use whilst also using other street drugs), in excess (most recreational and non-excessive drug use does not result in harm), and how a drug is administered (such as the sharing of needles)^[citation needed]. HIV and hepatitis infection rates drop among opioid injectors who do not share injectors. Some agencies have attempted to provide clean syringes in order to lessen injector sharing.

Tolerance and dependence

With repeated use of narcotics, tolerance and dependence develop. The development of tolerance is characterized by a shortened duration and a decreased intensity of analgesia, euphoria and sedation, which creates the need to administer progressively larger doses to attain the desired effect. Tolerance does not develop uniformly for all actions of these drugs, giving rise to a number of toxic effects. Although the lethal dose is increased significantly in tolerant users, there is always a dose at which death can occur from respiratory depression. It is clear, however, that tolerance and dependence, both part of the conventional idea of addiction, are insufficient to explain in totality what addiction is^[citation needed]. Addiction is a broader behavioural phenomenon that also encapsulates nonsubstance based activity (such as excessive and compulsive gambling, excessive and compulsive eating, and a range of other

excessive and compulsive behaviours) that has many of the same characteristics that substance based dependency displays. Moreover, it is not always the case that those with a physical dependency to opiates find it too difficult to get over their "addiction," because so-called medical addicts (those that become physically dependent on opiates given for pain relief after treatment) only have to "give-up" the physical symptoms - they do not also have the all-important psychological and life-style attachment to the drug which goes to make up the all-encompassing "addiction."

Physical dependence refers to an alteration of normal body functions that necessitates the continued presence of a drug in order to prevent the withdrawal or abstinence syndrome. The intensity and character of the physical symptoms experienced during withdrawal are directly related to the particular drug in use, the total daily dose, the interval between doses, the duration of use and the health and personality of the user. In general, narcotics with shorter durations of action tend to produce shorter, more intense withdrawal symptoms, while drugs that produce longer narcotic effects have prolonged symptoms that tend to be less severe.

The withdrawal symptoms experienced from opioid addiction are usually first felt shortly before the time of the next scheduled dose. Early symptoms include watery eyes, runny nose, yawning and sweating. Restlessness, irritability, loss of appetite, tremors and severe sneezing appear as the syndrome progresses. Severe depression and vomiting are not uncommon. The rate and blood pressure are elevated. Chills alternating with flushing and excessive sweating are also characteristic symptoms. Pains in the bones and muscles of the back and extremities occur as do muscle spasms and kicking movements, which may be the source of the expression "kicking the habit." At any point during this process, a suitable dose of any opioid can be administered that will dramatically reverse the withdrawal symptoms. Without intervention, the syndrome will run its course and most of the overt physical symptoms will disappear within 5 to 15 days, depending on the opioid used.

The psychological dependence that is associated with narcotic addiction is complex and protracted. Long after the physical need for the drug has passed, the addict may continue to think and talk about the use of drugs. There is a high probability that relapse will occur after narcotic withdrawal when neither the physical environment nor the behavioral motivators that contributed to the abuse have been altered.

There are two major patterns of narcotic dependence seen in the United States. One involves individuals whose drug use was initiated within the context of medical treatment who escalate their dose through "doctor shopping" or branch out to illicit drugs.

The other common pattern of non-medical use is initiated outside the therapeutic setting with experimental or recreational use of narcotics. The majority of individuals in this category may use narcotics sporadically for months or even years. These occasional users are called "chippers." Although they are neither tolerant of nor dependent on narcotics, the social, medical and legal consequences of their behavior can be very serious. Some experimental users will escalate their narcotic use and will eventually become dependent, both physically and psychologically. The earlier drug use begins, the more likely it is to progress to dependence. Heroin use among males in inner cities is generally initiated in adolescence, and dependence often develops in about 1 or 2 years.

Examples

Opium and opium preparations such as laudanum and paregoric.

Natural Opiates such as morphine and codeine.

Semi-Synthetic Opiates such as diacetylmorphine (heroin), hydrocodone, and oxycodone.

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Synthetic Opioids such as fentanyl, and methadone.

Coca Leaves/Cocaine and coca containing preparations such as coca wine.

Overdose

Main article: Opioid overdose

Signs and symptoms of narcotic/opioid **overdose** include the following: euphoria, arousable somnolence ("nodding"), nausea, pinpoint pupils (except with Pethidine/Meperidine [*Demerol*]), hypoxia, or in combination with other types of drugs, coma, and seizures.

See also

- Addiction
- Hard and soft drugs
- Narc (Narcotics)
- Narcotics Anonymous
- Narcoterrorism
- Opioid
- Opium

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3. ^ "De Furore, cap VI" (in Latin). <http://www.chez.com/asklepios/areteus/>.
4. ^ Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Article I: Definitions
5. ^ *Mangione MP, Crowley-Matoka M. "Improving pain management communication: how patients understand the terms 'opioid' and 'narcotic'." Journal of General Internal Medicine. 2008 Sep;23(9):1336-8. PMID 18516649*

External links

- Pharmer.org A non-profit site providing detailed descriptions of most narcotic analgesics
- List of drugs, some of which are classified as "narcotics," in the U.S. Controlled Substances Act (CSA). Not all of the classified ones are chemically narcotic, as described on the top of this page
- Drugtext.org *How Often Does the Adulteration/Dilution of Heroin Actually Occur?*
- Heroinhelper.com A glossary of heroin related terms
- Erowid.com A complete list of drugs
- Geopium: Geopolitics of illicit drugs in Asia
- Antonio Escohotado: Theory and Practice about Drugs

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Narcotic

From Wikipedia, the free encyclopedia

The term **narcotic** (*när-kōt'ik*) strictly refers to any psychoactive compound with morphine-like effects.

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- 2 Law
 - 2.1 United Nations
 - 2.2 United States
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History

Narcotics are any drugs that causes CNS effects and have a high abuse potentials. As noted above, Narcotics may have morpine like qualities to them but some do not. The term Narcotic often refers to a drug that is illegal in nature and is often used in recreational use. It is believed to have been coined by the Greek physician Galen to refer to agents that numb or deaden, causing loss of feeling or paralysis. It is based on the Greek word *ναρκωσις* (narcosis), the term used by Hippocrates for the process of numbing or the numbed state. Galen listed mandrake root, altercus (eclata)^[1] seeds, and poppy juice (opium) as the chief examples.^{[2][3]} "Narcotic" is a term derived from the Greek word for stupor. It originally referred to a variety of substances that relieved pain and dulled the senses. Now, the term is used in a number of ways. Some people define narcotics as substances that bind at opiate receptors (cellular membrane proteins activated by substances like heroin or morphine) while others refer to any illicit substance as a narcotic. From a legal perspective, narcotic refers to opium, opium derivatives, and their semi-synthetic substitutes.^[4]

Law

United Nations

A looser usage of the word "narcotic" to refer to any illegal or unlawfully possessed drug including marijuana and cocaine is common worldwide, although these substances are not considered narcotics in a medical or scientific context. The central drug policy making body within the United Nations, for instance, is the Commission on Narcotic Drugs, although the United Nations officially defines a narcotic drug to be "any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961"^[5] Used in this manner the word "narcotic" is a useful if not wholly accurate label to denote any drug that is subject to the U.S. Controlled Substances Act, or similar legislation elsewhere.

United States



In a U.S. legal context, the term "narcotic" specifically refers to opium, opium derivatives, and their semi-synthetic or fully synthetic substitutes, as well as cocaine and coca leaves.

Because the term is often used so broadly or pejoratively outside of medical contexts, most medical professionals advocate the use of more precise terms such as "opioids" and "opioid analgesics" to refer to the natural, semi-synthetic, and synthetic substances that behave pharmacologically like morphine and are used primarily for their pain-relieving qualities.^[6]

See also

- Opioid
- Narc
- Narcotics Anonymous
- Narcoterrorism

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4. ^ http://drug-rehab-referral.org/drug_rehab_narcotics.html
5. ^ Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Article I: Definitions
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the Estate of
Stephen F. Ney, a/k/a Steve F. Ney, ... Respondent

v.

Liberty Life Insurance Company, ... Appellant.

Certification for Record on Appeal

Appellant's counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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Shannon Hutchinson, Personal Representative of the
Estate of Stephen F. Ney, a/k/a Steve F. Ney, ... Respondent,

v.

Liberty Life Insurance Company, ... Appellant.

PROOF OF SERVICE

I certify that I served the RECORD ON APPEAL to Respondent by depositing a copy of
it in the United States Mail, postage prepaid, on April 8 2010, addressed to her attorney of
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SC Court of Appeals

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I. STATEMENT OF ISSUES ON APPEAL

Respondent's decedent was killed as a result of driving his tractor-trailer on an interstate highway while under the influence of a toxic to lethal level of illegal methamphetamines. Appellant, which issued an accidental death insurance policy to the decedent, denied Respondent's claim for benefits because of an exclusion for injury resulting from the insured being "under the influence of any narcotic," which language is taken directly from the South Carolina Insurance Code. In granting summary judgment to Respondent, the trial court declined to apply the ordinary meaning of the term narcotic as understood by laypersons, which includes methamphetamines, and instead adopted Respondent's argument based on a specialized medical definition in order to hold that methamphetamines are not a narcotic for purposes of the phrase "under the influence of any narcotic" as drafted by the Legislature. This appeal presents the following issues directed both to the standard of construction applied by the lower court and its rejection of the ordinary meaning of narcotic which should have applied under any standard of construction:

- A. Did the lower court err in applying the rule of strict construction against the insurer where the operative language in the exclusion—"under the influence of any narcotic"—was taken verbatim from the South Carolina Insurance Code?
- B. Did the lower court err in granting summary judgment based on a specialized medical usage of the term "narcotic," which is inconsistent with the legislative intent for the statutory language "under the influence of any narcotic" and which is inconsistent with traditional rules of insurance policy construction requiring words to be given a plain and ordinary meaning as understood by lay people?

II. STATEMENT OF THE CASE

Respondent filed this action on February 15, 2008, to recover life insurance proceeds under a mortgage protection life insurance policy ("Policy") issued by Appellant. The Policy provided benefits in the event of the insured's accidental death, subject to applicable exclusions. The benefits of the Policy are measured by the insured's mortgage loan balance plus 20%.

The insured died in a vehicle wreck in which the tractor-trailer rig he was driving crashed into a bridge abutment on an interstate highway. Because toxicology reports were positive for the presence of methamphetamines, and because Illinois officials concluded the Insured's use of methamphetamines was a significant contributing cause of his death, Appellant denied Respondent's claim for benefits pursuant to the policy exclusion for death resulting from the insured being under the influence of any narcotic. The exclusionary language relied upon by Appellant is taken from a provision of the South Carolina Insurance Code setting forth permissible exclusions in an accidental death policy.

On May 6, 2009, Respondent moved for summary judgment on all causes of action. Respondent's motion did not present any statement of Respondent's legal theory, and it was not accompanied by any affidavits, exhibits, or other supporting materials. (R. p. 13). Prior to the hearing, Appellant filed a memorandum opposing summary judgment on the grounds that the motion did not comply with Rule 56, SCRCF, but acknowledging that one legal issue presented by Respondent's motion warranted a substantive ruling by the Court. That legal issue was the applicability of the narcotics exclusion to death resulting from the insured being under the influence of methamphetamines. Appellant submitted affidavits from two forensic toxicologists who opined that the insured was under the influence of a very high level of methamphetamines,

which resulted in his death. (R. pp. 40-51). Appellant also submitted various exhibits bearing on the popular meaning of the word “narcotic.” (R. pp. 69-81).

A motion hearing was held on June 16, 2009. At the hearing, Respondent presented a notebook of various exhibits, including an affidavit of a medical school professor opining that methamphetamines are not a narcotic. After argument by both parties on the legislative intent for the term “narcotic” as used in S.C. CODE ANN. § 38-71-370(9), the lower court took the matter under advisement. On July 22, 2009, the court advised the parties by email that it was interpreting the contract strictly against Appellant because Appellant had changed the language of the statutory provision from which the exclusion was taken. (R. p. 37). A formal order granting summary judgment on the breach of contract claim was entered on August 18, 2009, and received by Appellant on August 20, 2009. (R. pp. 2-6). The order included a description of the liquidated damages to be awarded (i.e. loan balance plus 20% and prejudgment interest), but did not identify a specific dollar figure. (R. p. 5). Appellant filed and served the notice of appeal on September 18, 2009.

III. STATEMENT OF FACTS

- A. The Insurer denied Respondent’s claim based on the exclusion for death resulting from the Insured “being under the influence of any narcotic,” which exclusionary language is taken verbatim from the South Carolina Insurance Code.**

The Policy issued to Respondent’s decedent, Stephen Ney (“Insured”), contains several exclusions, including an exclusion for “injury as a result of the Insured being under the influence of any narcotic unless administered on the advice of a physician and taken in the dosage prescribed.” (R. p. 59). This exclusion was the basis for Appellant’s denial of Respondent’s claim and its defense of this lawsuit. *Answer* ¶ 5 (R. pp. 10-11). The operative language at issue in this appeal—“under the influence of any narcotic”—is taken verbatim from the South

Carolina Insurance Code's specification of exclusions permissible in individual accidental death policies. S.C. CODE ANN. § 38-71-370(9) (2002).

B. Illinois officials concluded the Insured's methamphetamine use was a significant contributing cause of his fatal tractor-trailer crash on an interstate highway.¹

The Insured's occupation was that of a commercial truck driver. The Insured died on October 3, 2006 when he crashed his tractor-trailer into a bridge support on the median of a northbound Illinois interstate shortly after 9:00 p.m. The investigating trooper's report reflects that the weather was clear and the roadway was dry. There was no evidence of braking on the roadway, and the rolling tire imprints leading from the left shoulder to the final resting place of the truck indicate that the Insured did not apply the brakes after drifting off the interstate and entering the center grassy median. Instead, the Insured's truck simply drifted off the road and crashed into the bridge.

There were three eye witnesses, all of whom stated there were no visible causes of the crash. Two of the eye witnesses were traveling on the opposite side of the interstate; the other was about 1/8 mile behind the Insured in the northbound lane. The witnesses all stated that no other vehicles were around the Insured's truck.

Post-mortem toxicology testing revealed the presence of methamphetamine in Insured's blood at the time of his death. (R. p. 61). The official Illinois death certificate contains two sections relating to cause of death. Part one identifies "diseases, injuries, or complications that caused the death." Under this section the coroner identified "Blunt chest trauma" and "Motor vehicle crash." (R. pp. 38-39). Part two identifies "other significant conditions contributing to

¹ These facts are presented to give context to the application of the exclusion for the insured being under the influence of narcotics at the time of his death. These facts are set forth in more detail in the materials reviewed and set forth by the expert witnesses discussed in Section III.C. below.

death but not resulting in the underlying cause given in PART 1.” Under this section the coroner identified “Methamphetamine use” as the only other “significant condition contributing to death.”² *Id.* Likewise, the trooper concluded that the Insured was in violation of ILCS 5/11-501(a)(4) for driving under the influence of drugs. (R. p. 47).

C. Expert testimony confirmed the Insured’s death resulted from driving while under the influence of a toxic to lethal level of illegal methamphetamines.

Insurer presented affidavits of two experts, Dr. Demi Garvin and Dr. Barry Logan, both of whom are board certified by the American Board of Forensic Toxicologists in the area of forensic toxicology. Both experts reviewed crash investigation records, the autopsy records, the coroner’s inquest, and the toxicology records. Dr. Logan noted that the level of methamphetamine in the Insured’s system was more than 10 times the level correlating to impairment, and that it was also 10 times the peak level achieved in therapeutic use of the legal form of drug. Logan ¶ 9 (R. p. 44). Logan stated that “by any standard” the concentration of methamphetamine in Mr. Ney’s blood was “very high” and “in the toxic to potentially lethal range.” *Id.* Garvin also noted that the level of methamphetamine present in Mr. Ney’s blood was “within the range of those reported in cases of methamphetamine overdose.” Garvin p. 5 (R. p. 50).

Both experts set forth the well-documented connection between methamphetamine use and driving impairment due to symptoms ranging from initial feelings of euphoria, hallucinations, delusions, psychosis, and poor impulse control to after effects including dysphoria, extreme fatigue, and uncontrollable sleepiness, all of which affect the cognitive and psychomotor control necessary for driving. Logan ¶ 7 (R. p. 43); Garvin p. 4 (R. p. 49). Also

² Because the headings for Parts 1 and 2 of the death certificate are difficult to read, also included in the record is a blank death certificate form from Illinois with legible headings. (R. p. 39).

relevant to the Insured's death, both experts noted the prevalence of methamphetamine use in the commercial trucking industry, where amphetamines have been found in 7% of fatal commercial truck wrecks. Logan ¶ 8 (R. p. 43); Garvin p. 4 (R. p. 49). Both noted that the type of wreck here—crashing after drifting or driving off the roadway with a lack of braking—is well documented in the scientific literature addressing the connection between methamphetamine impairment and driving. *Id.* Garvin concludes that “Mr. Ney’s antemortem abuse of methamphetamine, cognitive and/or motor impairment rendered him unable to safely and effectively operate the tractor trailer which culminated in the fatal crash and catastrophic fire.” Garvin p. 5 (R. p. 50). Similarly, Logan concludes that “it is my opinion to a high degree of medical certainty, that Mr. Ney was under the influence of methamphetamine when he was driving his truck on October 3, 2006, and when he drove his truck off the highway, onto the median and struck a bridge support, resulting in his death.” Logan ¶ 10 (R. p. 44).

IV. ARGUMENT

In construing the narcotics exclusion, the lower court erred both in its selection of the applicable legal standard and in its application of that standard. Under the circumstances of this case, the lower court should have sought to determine the legislative intent for the phrase “under the influence of any narcotic” which is taken verbatim from the South Carolina Insurance Code. However, even under the traditional contract principles the court did apply, the court erred in adopting a specialized medical definition of the word narcotic for purposes of construing an insurance policy written for laypersons.

Had the court applied the correct standard of construction (determination of legislative intent) or correctly applied traditional rules of insurance policy construction by adopting the ordinary usage of the word narcotic by laypersons, the court would have denied Respondent’s

motion for summary judgment. Ordinary use of the word narcotic is not limited to opiates or downers, but includes other mood or behavior altering drugs such as cocaine, crack, and the methamphetamines that killed the Insured, and therefore the lower court erred in concluding that methamphetamines are not a narcotic for purposes of the exclusionary language adopted by the Legislature. Each of these issues is addressed separately below.

A. THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT APPELLANT'S ADAPTATION OF THE STATUTORY LANGUAGE MANDATED THE RULE OF STRICT CONSTRUCTION.

1. The operative exclusionary language was taken verbatim from exclusionary language adopted by the Legislature in the South Carolina Insurance Code.

The exclusion in the insured's policy states as follows: "A benefit will not be payable under this Certificate if your Accidental Death results directly or indirectly from: . . . (h) *injury as a result of the Insured being under the influence of any narcotic* unless administered on the advice of a physician and taken in the dosage prescribed." The operative language concerning narcotics in this exclusion was taken directly from S.C. CODE ANN. § 38-71-370, which includes permissible exclusions for individual accidental death policies:

INTOXICANTS AND NARCOTICS: The company is not liable for *any loss resulting from the insured being drunk or under the influence of any narcotic* unless taken on the advice of a physician.

S.C. CODE ANN. § 38-71-370(9) (emphasis added). This language in the South Carolina Insurance Code is part of model language promulgated by the National Association of Insurance Commissioners ("NAIC"), of which South Carolina is a member. Model 185, "NAIC Uniform Individual Accident and Sickness Policy Provision Law in Simplified Language" (R. p. 52); *also*, Model 180, "NAIC Uniform Individual Accident and Sickness Policy Provision Law." As set forth in the preface to NAIC Model 185, the simplified provisions are "intended to be a uniform 'safe harbor' for companies relying upon them." *Id.*

The exclusionary language from the NAIC Model Acts has been widely adopted. The specific language directed to injury resulting from an insured “being under the influence of any narcotic” is currently part of the required, standard, and/or optional policy provisions set forth in the insurance codes regulating accident, health, life, and disability insurance in at least 33 states.³ While the Insured’s certificate is considered group accidental death coverage, there is no separate provision of the South Carolina Insurance Code relating to exclusions for group accidental death. As such, insurers issuing individual certificates under a group accidental death policy rely, in part, upon the “safe harbor” of the exclusionary language approved by the Legislature for individual accidental death policies because this language is already approved for use.

2. Exclusionary language adopted by the Legislature should be construed by determining legislative intent, not by strictly construing the language against insurers using the statutory language.

Because the operative exclusionary language “under the influence of any narcotic” is taken directly from the language adopted by the Legislature for use in an accidental death insurance policy, the lower court’s interpretation of the narcotics exclusion should have been guided by familiar rules of statutory construction. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are

³ ALA. CODE § 27-19-26 (2009), ALASKA STAT. ANN. § 21.51.260 (2009), ARIZ. REV. STAT. ANN. § 20-1368 (2009), ARK. CODE ANN. § 23-85-126 (2009), CAL. INS. CODE § 10369.12 (2009), DEL. CODE ANN. tit. 18, § 3325 (2009), FLA. STAT. ANN. § 627.629 (2009), GA. CODE ANN. §33-29-4 (2009), HAW. REV. STAT. ANN. §431:10A-106 (2009), IDAHO CODE ANN. § 41-2127 (2009), IOWA CODE ANN. § 514A.3 (2009), KAN. STAT. ANN. § 40-2203 (2009), KY. REV. STAT. ANN. § 304.17-290 (2009), LA. REV. STAT. ANN § 22:213 (2009), MISS. CODE ANN. § 83-9-5 (2009), MO. ANN. STAT. § 376.777 (2009), MONT. CODE ANN. § 33-22-231 (2009), NEB. REV. STAT § 44-710.04 (2009), N.J. STAT. ANN. § 17B:26-27 (2009), N.Y. INS. LAW § 3216 (2009), N.C. GEN. STAT. ANN. § 58-51-16 (2009), OKLA. STAT. ANN. tit. 36 § 4405 (2009), PA. CONS. STAT. ANN. 40 § 753 (2009), P.R. LAWS ANN. tit. 26, § 1628 (2009), R.I. GEN. LAWS ANN. §27-18-4 (2009), S.C. CODE ANN. § 38-71-370 (2009), TENN. CODE ANN. §56-26-109 (2009), TEX. INS. CODE ANN. § 1201.227 (2009), V.I. CODE ANN. tit. 22, § 878 (2008), VA. CODE ANN. § 38.2-3504 (2009), W.VA. CODE ANN. § 33-15-5 (2009), WYO. STAT. ANN. § 26-18-126 (2009); 2009 N.D. LAWS H.B. 1204 (effective August 1, 2009).

subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute.” *Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 549-550, 619 S.E.2d 1, 3 (Ct. App. 2005) (internal citations omitted). “[W]ords must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” *Moon v. City of Greer*, 348 S.C. 184, 188, 558 S.E.2d 527, 529 (Ct. App. 2002). In seeking to determine legislative intent, courts will “reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

3. **Because the Insurer made no substantive change to the language of the statute and made no change at all to the operative phrase “under the influence of any narcotic,” the lower court erred in holding that Insurer’s adaptation of the statutory language automatically required application of the rule of strict construction.**

At the hearing before the lower court, Respondent did not argue that the rule of strict construction against the drafter should be applied to the phrase “under the influence of any narcotic.” Instead, Respondent presented her arguments based on Respondent’s view of the legislative intent for the word narcotic as used in S.C. CODE ANN. § 38-71-370(9). The lower court, too, recognized that the language in Insurer’s policy was derived from this statute, but concluded that the rule of strict construction should be applied because the Insurer had changed the statutory language: “While Section 38-71-370 of the South Carolina Code of Laws, 1976, as amended, allows an insurer to vary somewhat from the language of the exclusions in that section, when the insurer chooses to do so, as here, the language becomes that of the insurer and is

construed strictly against the insurer.” Order at p. 4 (R. p. 5); *see also* July 22, 2009 email to counsel (R. p. 37); *compare* S.C. CODE ANN. § 38-71-370 (“the insurer may, at its option, use in lieu of these provisions a corresponding provision of different wording approved by the director or his designee which is not less favorable in any respect to the insured or the beneficiary”). Implicit in the lower court’s explanation of its ruling is that it would not have applied the rule of strict construction had the Insurer not varied from the exact text of S.C. CODE ANN. § 38-71-370(9), but would have instead sought to determine the legislative intent as had been argued by both parties at the hearing.

The lower court was correct that S.C. CODE ANN. § 38-71-370 expressly permits insurers to use different wording that is approved by the Director, and the lower court was also correct that the Insurer’s adaptation of S.C. CODE ANN. § 38-71-370(9) included such changes in the presentation of the statutory language. *Compare* Policy at p. 2 (R. p. 59) to S.C. CODE ANN. § 38-71-370(9). The Insurer separated the combined intoxication and drug use portions of the statutory language into subparts, and the Insurer included non-substantive changes to the words surrounding the operative phrase “under the influence of any narcotic.” *Id.* For example, the introductory phrase “any loss resulting from the insured being” was changed to “injury as a result of the insured being . . .” *Id.* In ruling that these approved variations from the statute automatically dictated a different rule of construction, the lower court made no finding that that the Insurer’s adaptation altered the intent of the statutory language in any way, which it did not. Even more to the point of this appeal, the operative phrase “under the influence of any narcotic,” which was the only phrase under consideration by the lower court, was not changed at all from the statutory language.

Had the Insurer made substantive changes to the statutory language that could reasonably be viewed as more favorable to the Insured, the lower court's approach may have been appropriate. Here, however, there was no substantive change at all to the narcotics portion of the exclusion, and the operative phrase "under the influence of any narcotic" is verbatim the statutory language. As such, the lower court should have sought to determine and apply legislative intent for the phrase "under the influence of any narcotic," and the lower court erred when it concluded that Insurer's non-substantive changes to the statutory language automatically triggered the rule of strict construction as to the entire exclusion, including the statutory language at issue that was not changed in any respect.

B. WHETHER VIEWED IN TERMS OF LEGISLATIVE INTENT OR TRADITIONAL RULES OF POLICY CONSTRUCTION, THE TRIAL COURT ERRED IN ADOPTING A SPECIALIZED MEDICAL DEFINITION OF "NARCOTIC" IN THE CONTEXT OF AN INSURANCE POLICY WRITTEN FOR LAYPERSONS.

In addition to inappropriately concluding that the rule of strict construction applied to the phrase "under the influence of any narcotic," the lower court also erred in its application of traditional rules of policy construction, which require words to be given a plain and ordinary meaning as understood by ordinary persons. In adopting the meaning of narcotic as used in the specialized medical context, the lower court misapplied these traditional rules of policy construction and erroneously concluded that the Insured's abuse of illegal methamphetamines was not within the scope of the exclusion for injury resulting from the Insured being "under the influence of any narcotic."

Had the court followed the correct legal standard (determination of legislative intent) or had it correctly applied traditional contract interpretation standards, the result would have been the same because the plain and ordinary meaning of narcotic is not limited to opiates and downers, but includes other mood or behavior altering drugs such as crack, cocaine, and

methamphetamines. In order to demonstrate the error in the lower court's interpretation of the term "narcotic," Appellant will first discuss the evidence showing that the plain and ordinary understanding of narcotic includes methamphetamines, and will then discuss how this plain and ordinary usage should have been applied under both the strict construction standard and the legislative intent standard.

1. **The ordinary definition of narcotic is not limited to opiates or downers, but extends to other mood and behavior altering drugs such as cocaine, crack, and methamphetamines.**

The New Oxford American Dictionary defines narcotic as follows: "**narcotic** ► a drug or other substance affecting mood or behavior and sold for nonmedical purposes, esp. an illegal one. ■ *Medicine* a drug that relieves pain and induces drowsiness, stupor, or insensibility." The New Oxford American Dictionary, Oxford University Press (2nd Ed. 2005) (pronunciation omitted) ("Oxford Am. Dictionary") (R. p: 72). The Oxford American Dictionary's usage guide explains that the first definition following the symbol "►" is the "core sense" of the word "narcotic," which is the typical usage of this word by Americans:

Core meanings represent typical, central uses of the word in question in modern standard English, as established by research on analysis of American and World English through corpora (language databanks) and citation databases. The core meaning is the one that represents the most literal sense that the word has in ordinary modern American usage. This is not necessarily the same as the oldest meaning because word meanings change over time. Nor is it necessarily the most frequent meaning, because figurative senses are sometimes the most frequent. It is the meaning accepted by native speakers as the one that is most established as literal and central.

Id., "Introduction" pp. xiiiv-xiv (emphasis added) (R. pp. 70-71). By contrast, the symbol ■ followed by the italicized "*Medicine*" presents a specialized "subsense" of narcotic, indicating usage in a particular setting, in this case the specialized field of medicine. *Id.*

The broader scope of this typical, ordinary meaning of narcotic compared to the specialized medical definition is well documented. www.wikipedia.com, “Narcotic” (R. p. 77) (“Use of the word ‘narcotic’ to refer to any illegal or unlawfully possessed drug including marijuana and cocaine is common worldwide, although these substances are not considered narcotics in a medical context.”). Notably, the United Nations drug policy-making body is the Commission on Narcotic Drugs even though many of the drugs under its authority are not officially classified as narcotics using medical protocols and schedules. *Id.*

That the ordinary American usage of the word narcotic includes methamphetamines is also well documented. For instance, the drug information website www.narcoticsnews.com has as its stated purpose “[b]ringing you the news about Cocaine, Marijuana, Heroin, Methamphetamine, Ecstasy and other dangerous drugs.” www.narcoticsnews.com (R. p. 75). Similarly, less than a month after this lawsuit was filed, the Associated Press ran an article detailing cuts in drug enforcement funding related to methamphetamines under the following headline and lead paragraph:

Officials fear meth surge

KANSAS CITY, Mo. — A common fear is sweeping through the Midwest’s drug-enforcement community: that *methamphetamine, the narcotic scourge that has wounded middle America as no drug ever before*, is about to surge again because of extreme federal slashes in police funding.

www.heraldbulletin.com (R. p. 73) (March 5, 2008 9:50 a.m.) (emphasis added). Each of these examples from publications directed to ordinary people is consistent with the typical and “ordinary modern American usage” of narcotic. Oxford Am. Dictionary, “Introduction” pp. xiiv-xiv (R. pp. 70-71).

2. Traditional rules of insurance policy construction require the word narcotic to be given its ordinary and usual meaning as understood by an ordinary person, and the lower court erred in adopting the specialized medical definition urged by Respondent.

In holding the term narcotic did not include methamphetamines, the trial court adopted almost verbatim the specialized medical “subsense” set forth in the Oxford American Dictionary quoted in Section B.1, which required Respondent and the trial court to resort to expert medical testimony from a pharmacology professor. *Compare* Oxford Am. Dictionary (R. p. 72) to Order at p. 3 (R. p. 4) (quoting Dr. Donald O. Allen for statement that “narcotic drugs are drugs which induce pain relief, drowsiness, sleep, and similar states of stupor.”). Adopting this specialized medical terminology as opposed to the ordinary meaning of narcotic was error, even under the traditional rules of insurance policy construction that the trial court intended to apply.

South Carolina’s appellate courts have consistently recognized that the words used in an insurance policy cannot be strained either to defeat coverage that was intended or to extend coverage that was never intended. *E.g.*, *Diamond State Ins. Co. v. Homestead Ind.*, 318 S.C. 231, 456 S.E.2d 912 (1995); *Torrington Co. v. Aetna Casualty and Sur. Co.*, 264 S.C. 636, 216 S.E.2d 547 (1975). Instead, words in the policy must be given their plain, ordinary, and popular meaning. *E.g.*, *Diamond State*, 318 S.C. at 236, 456 S.E.2d at 915.

Even more specific to the circumstances of this case, it is the ordinary meaning as understood by an ordinary person that controls: “In the absence of a prescribed definition in the policy, the term should be defined according to the ordinary and usual understanding of the term’s significance to the ordinary person.” *USAA Property and Cas. Ins. Co. v. Rowland*, 312 S.C. 536, 539, 435 S.E.2d 879, 881-882 (Ct. App. 1993) (citing *Green v. United Ins. Co. of America*, 254 S.C. 202, 174 S.E.2d 400 (1970)); *Sunex Intl. v. Travelers Indemnity Co. of Ill.*, 185 F.Supp.2d 614 (D.S.C. 2001) (applying South Carolina law).

The ordinary meaning of narcotic accepted by native speakers of American English is not confined to opiates or downers, but is instead understood to include drugs or other substances that affect mood or behavior, especially those used illegally or for a non-medical purpose. Section B.2, *supra*. Applying this ordinary understanding of the word narcotic to the exclusion in an accidental death insurance policy makes imminent sense as ordinary people understand that illegal drug use—including abuse of prescription drugs—is dangerous and increases the risk of death. An insurance company insuring against accidental death has no more intention of providing coverage for death resulting from driving under the influence of illegal mood altering drugs such as methamphetamines than it has of providing coverage for death resulting from drunk driving. Both are unreasonably dangerous and illegal activities, and both are excluded. Policy at 2 (R. p. 59); S.C. CODE ANN. § 38-71-370(9).

This ordinary understanding of the word narcotic has been applied in the insurance context under circumstances which are directly applicable here. In *Jane Doe v. General American Life Ins. Co.*, 815 F.Supp. 1281 (E.D.Mo. 1993), the court confronted the question of whether cocaine was included within an exclusion triggered by “injury or sickness arising out of the use of a) narcotics; b) hallucinogens; c) barbiturates; d) marijuana; e) amphetamines; or similar drugs or substances,” unless the drug or substance was prescribed by a doctor and taken in the amount prescribed. *Id.* at 1283. Because the policy did not specifically reference cocaine, the court found the policy was ambiguous on this point, but the court held this ambiguity could be “readily resolved” by examining the language of the exclusion from the perspective of an ordinary person as opposed to a medical expert:

“[i]t would be improper and unfair to allow experts to define terms that were specifically written for and targeted toward laypersons ... the terms should be accorded their ordinary, and not specialized, meanings.” Consequently, *this Court need not be concerned with cocaine's “pharmacological” similarities or*

dissimilarities with narcotics, hallucinogens, barbiturates, marijuana, or amphetamines. What the Court must be concerned with is what the ordinary person understands cocaine to be and how that understanding relates to the clause in question.

Cocaine is a drug that is illegal to buy, sell, or possess in this country. In legal terms, it is referred to as a “controlled substance”. The drug categories listed in the exclusion clause are all broad categories of drugs commonly considered to contain specific drugs that are illegal to buy, sell, or possess. However, the exclusion clause does recognize that within these categories are some specific drugs that although may be considered to be a “controlled substance” still can be legally prescribed. *Of all the categories, “narcotics” is the broadest category since the term narcotic has come to have a generic meaning for drugs considered to be illegal. . . . This Court finds that cocaine is commonly understood by laymen to be a narcotic that is not used for medicinal purposes. As such, this Court finds that plaintiff’s treatment for cocaine abuse falls within the exclusionary language of the Local 88 health plan.*

Id. at 1285 (emphasis added, internal citation omitted).

The highlighted portions of the court’s analysis in *Jane Doe* are directly analogous to the applicable rules of policy interpretation under South Carolina law—“the term should be defined according to the ordinary and usual understanding of the term’s significance to the ordinary person”—and it highlights the error of the trial court in adopting a specialized medical definition based on the expert affidavit from a pharmacology professor. *USAA Property and Cas.*, 312 S.C. at 539, 435 S.E.2d at 8881-8882; *see also Sunex*, 185 F.Supp.2d at 621 (rejecting plaintiff’s interpretation of “infringement of title” to refer to a formal property right where ordinary person would understand it to mean the title of a work or a name).

3. **Rules of statutory construction require the word narcotic to be given its popular and ordinary meaning, and interpretations such as the specialized medical definition urged by Respondent must be rejected because it creates the absurd result that the South Carolina Legislature intended to give preferential insurance treatment for death resulting from abuse of drugs such as cocaine, crack, and methamphetamines.**

As set forth above, the trial court should have undertaken to determine and apply the legislative intent for the phrase “under the influence of any narcotic” as used in the South

Carolina Insurance Code and in the Policy. “[L]egislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute.” *Collins Music Co.*, 365 S.C. at 549-550, 619 S.E.2d at 3. “[W]ords must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.” *Moon*, 348 S.C. at 188, 558 S.E.2d at 529. Relevant to this appeal, this Court has also stated that it “will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” *Unisun Ins. Co.*, 339 S.C. at 368, 529 S.E.2d at 283.

Under these rules of statutory construction, the trial court should have applied the ordinary meaning of narcotic as understood by laypersons, which includes drugs such as cocaine, crack, and methamphetamines. Not only is that usage required because it is the plain and ordinary meaning of the word narcotic, but it is also required to avoid an absurd result that would flow from applying the specialized medical definition of narcotic to S.C. CODE ANN. § 38-71-370, as urged by Respondent.

Under the provisions of S.C. CODE ANN. § 38-71-370, “the insurer may, at its option, use in lieu of these provisions a corresponding provision of different wording approved by the director or his designee which is not less favorable in any respect to the insured or the beneficiary.” S.C. CODE ANN. § 38-71-370. It necessarily follows that insurers may not expand the scope of the statutory exclusions because such an expansion would be less favorable to the insured. Therefore, accepting Respondent’s argument would require this Court to conclude that: (1) in adopting S.C. CODE ANN. § 38-71-370, the Legislature only condoned the exclusion of

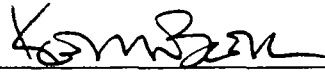
insurance benefits when death results of the insured being under the influence of illegally used opiates or downers; and (2) the Legislature affirmatively prohibited the exclusion of benefits where the insured's death results from the insured being under the influence of other illegal and/or dangerous drugs such as cocaine, crack, or methamphetamines. The conclusion that the Legislature intended to give preferential life insurance treatment for insureds who abuse crack and methamphetamines as compared to those who abuse opiates is an absurd result that must be rejected by this Court because it could not have been intended by the Legislature. *E.g. Unisun*, 339 S.C. at 368, 529 S.E.2d at 283.

The function of the lower court was to further legislative intent. The plain intent of the statutory language is to exclude liability for death resulting from the insured being under the influence of behavior and mood altering drugs, unless used as prescribed by a doctor, because such illicit and uncontrolled drug use is dangerous, and it artificially increases the risk of injury or death. This legislative intent is only achieved by employing the ordinary meaning of the word "narcotic," and this intent is defeated by applying the specialized medical definition urged by Respondent and accepted by the lower court.

V. CONCLUSION

The trial court erred in granting summary judgment to the Respondent based on a specialized medical definition of the term narcotic. The lower court's order should be reversed with instructions for the trial court to deny Respondent's motion and to proceed with the case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case Number: 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the Estate of
Stephen F. Key, a/k/a Steve F. Key, ... Respondent

v.

Liberty Life Insurance Company, ... Appellant.

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April 23, 2010
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case Number: 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the Estate of
Stephen F. Ney, a/k/a Steve F. Ney, ... Respondent

vs.

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April 23, 2010
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STATEMENT OF ISSUES ON APPEAL

- I. IF THE LEGISLATURE SAYS "ALCOHOL," DOES THAT INCLUDE COFFEE?**
- II. DOES THE FACT THAT APPELLANT ATTEMPTED TO INCORPORATE A STATUTORY EXCLUSION IN ITS POLICY ALTER THE LEGAL PRINCIPLE THAT THE LANGUAGE OF THE POLICY MUST BE CONSTRUED STRICTLY AGAINST APPELLANT IN FAVOR OF COVERAGE?**
- III. IS THERE ANY EVIDENCE OF LEGISLATIVE INTENT TO SUPPORT APPELLANT'S ARGUMENT?**
- IV. IF THE LEGISLATURE INTENDED "NARCOTIC" TO INCLUDE METHAMPHETAMINE IN SECTION 38-71-370, WHY DID IT MENTION METHAMPHETAMINE OR STIMULANTS SEPARATELY EVERY OTHER TIME A STATUTE WAS TO APPLY TO SUCH STIMULANTS AS WELL?**
- V. IF THIS EXCLUSION IS TO BE INTERPRETED AS BROADLY AS APPELLANT SUGGESTS, WHY HAS NO COURT IN THE OTHER 32 STATES WHICH HAVE ADOPTED IT DONE SO?**

STATEMENT OF THE CASE

Respondent does not disagree with the facts as set forth in Section III B of Appellant's brief. Respondent does not disagree with the procedural history of the case, but does not agree that Appellant had any right to deny coverage. Respondent will not agree or disagree with the conclusions of Appellant's experts as set forth in their affidavits and cited by Appellant, as these are irrelevant to whether Appellant had a right to deny coverage.

ARGUMENT

I. IF THE LEGISLATURE SAYS "ALCOHOL," DOES THAT INCLUDE COFFEE?

As shown by the affidavit of Dr. Donald O. Allen, former chair of the Department of Pharmacology of the School of Medicine at the University of South Carolina, there could not be a more stark difference between a narcotic and a stimulant. (R. p. 64) They are polar opposites, just like alcohol and caffeine. Narcotics are taken to relieve pain, stress, produce relaxation and sleep. Stimulants such as methamphetamine are taken by users, whether prescribed or not, to combat sleep, produce wakefulness and alertness and allow one to perform.

Appellant relies on a carefully chosen definition, from the New Oxford American Dictionary, in support of its position that "narcotic" includes methamphetamine. (R. pp. 69-72) From the countless dictionaries available, Appellant selects a particular entry which gives, as *one* definition of "narcotic":

any drug or other substance affecting mood or behavior and sold for nonmedical purposes

Such a broad definition would, in fact, include coffee, tea, Mountain Dew, tobacco, perhaps even scented candles or a hot bath, each of which is a “substance affecting mood or behavior and sold for nonmedical purposes.” Adoption of such a definition would give insurers grounds to deny every claim. It can hardly be argued, as Appellant attempts to do, that our legislature intended such an all-encompassing definition of “narcotic.”

If the parties are to shop for definitions of “narcotic,” many more can be found to support Respondent’s position than Appellant’s. TheFreeDictionary defines “narcotic” as

An addictive drug, such as opium, that reduces pain, alters mood and behavior and usually induces sleep or stupor. (R. pp. 65-66)

YourDictionary defines “narcotic” as

1. a drug, as opium or any of its derivatives (morphine, heroin, codeine, etc.) used to relieve pain and induce sleep: narcotics are often addictive and in excessive doses can cause stupor, coma, or death
2. Anything that has a soothing, lulling, or dulling effect (R. pp. 67-68)

Even Appellant’s experts do not support such a definition. Both refer to methamphetamine as a stimulant. (R. p. 41, lines 5-12; p. 42, line 19-p. 43, line 10) Neither, under oath, ever refers to methamphetamine as a narcotic, as they both know this would be incorrect. Nor do either opine that this is a commonly understood or used definition.

The other place Appellant looks for support is to a publication known as “narcoticsnews.” (R. pp. 75-76) Just because others may use terms loosely does not mean our legislature intended to do so.

II. DOES THE FACT THAT APPELLANT ATTEMPTED TO INCORPORATE A STATUTORY EXCLUSION IN ITS POLICY ALTER THE LEGAL PRINCIPLE THAT THE LANGUAGE OF THE POLICY MUST BE CONSTRUED STRICTLY AGAINST APPELLANT IN FAVOR OF COVERAGE?

Appellant complains that the lower court construed the language of its policy strictly against Appellant and seems to advance the argument that since it attempted to incorporate a statutorily provided exclusion into its policy, such strict construction is improper. It cites no legal support for this position, however.

Neither can Respondent find any support for this position. To the contrary, South Carolina case law, without exception, provides that language in an insurance policy is to be strictly construed against the insurer. Spinx Oil Co., Inc. v. Federated Mutual Insurance Co., 310 SC 477, 427 SE 2d 649 (1993); State Auto Property and Casualty Co., v. Brannon, 310 SC 388, 426 SE 2d 810 (1992); Kraft v. Hartford Insurance Companies, 279 SC 257, 305 SE 2d 243 (1983); Whittington v. Ranger Insurance Co., 261 SC 582, 201 Se 2d 620 (1973); Smith v. Sovereign Camp Woodmen of the World, 204 SC 193, 28 SE 2d 808 (1943); Orenstein v. New Jersey Insurance Co., 131 SC 500, 127 SE 570 (1925). Respondent has found no exception to this rule regardless from whence the language of the exclusion comes. The unwavering rule is that where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. Edens v. SC Farm Bureau, 279 SC 377, 308 se 2D 670 (1983). An examination of many of our decisions, too numerous to cite, will disclose that our Court has made it the almost universal rule to construe any clause of an insurance policy against

the insurer, where there existed the least doubt as to the meaning of the language employed.

Beckett v. Jefferson Standard Life Insurance Co., 165 SC 481, 164 SE 130 (1932).

It is not argued here that the insured negotiated, nor had the right to negotiate, any term of this policy. As stated in Smith v. Sovereign Camp Woodmen of the World, 204 SC 193, 28 SE 2d 808 (1943),

this policy was issued on a printed form prepared by experts, and should be strictly construed against the insurance company, who prepares the contract, when there is a fair and reasonable doubt as to the meaning of the provisions before the Court. This is the South Carolina rule.

Appellant cites Torrington Co. v. Aetna Casualty and Sur. Co., 264 SC 636, 216 SE 2D 547 (1975) for the proposition that the language of a statute should be given its plain meaning and not tortured. Respondent agrees Torrington also stands for the proposition that the contract must be interpreted in the light of the whole agreement in such a way as to carry out the intentions of the parties. Appellant attempts to read the mind of the legislature to say that its intent was to deny coverage if an insured used methamphetamine. If we are to engage in such ESP, it can just as forcefully be argued that insureds would not intend such a result.

Appellant contends that the lower court erred in construing the language of the policy strictly in favor of coverage, basing such ruling in part on the fact that Appellant varied from the statutorily allowed exclusion. As shown above, if this was error it was harmless, in that no such exception from the rule of strict construction exists. It should be noted, in addition, that Appellant did attempt to create an exclusion more expansive than allowed by S.C. CODE ANN. § Section 38-71-370 by adding the phrase "and taken in the dosage prescribed".

III. WHERE IS THE EVIDENCE OF LEGISLATIVE INTENT?

Appellant repeatedly asserts that construction of the policy in favor of coverage would thwart or frustrate the intention of the legislature. Appellant presents no proof or history of legislative intent, however. Appellant seems to somehow try to read the mind or channel the spirit of the legislature by repeatedly averring, that the legislature could not have intended this particular result. Such a conclusion is far from inevitable. The legislature makes distinctions and choices in writing and passing legislation constantly, as is seen in the various other statutes referring to narcotics and stimulants cited below. It is reasonable to assume that the legislature may have perceived, particularly at the time this statute was enacted, that the abuse of narcotics, drugs which depress the nervous system and induce drowsiness and even death, were on a par with alcohol, the other substance mentioned in the exclusion, equally dangerous and of greater danger than all other substances not mentioned.

It is also reasonable to assume that the public, the insureds and potential insureds, did not perceive methamphetamine as posing the same danger and risk as opiates. Narcotics are known to produce drowsiness and stupor. Stimulants, including methamphetamine, to the contrary are known by users to produce a heightened state of awareness. They are taken to keep one up, to study or to drive longer than one could otherwise. To the extent that an insured understood and agreed to the language in the policy, the user of methamphetamine would not recognize that the use of such substance might trigger the exclusion in the policy as so worded.

Appellant is correct that words in a statute should be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Moon v. City of Greer, 348 SC 184, 558 SE 2d 527 (Ct. App. 2002). Neither the

Appellant nor the court should infer legislative intent where not necessary. If a statute's language is plain and unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning. King v. American General Finance, Opinion 26710, filed December 21, 2009; Binney v. State, 384 SC 539, 683 SE 2d 478 (2009).

IV. IF THE LEGISLATURE INTENDED "NARCOTIC" TO INCLUDE METHAMPHETAMINE IN S.C. CODE ANN. § SECTION 38-71-370, WHY DID IT MENTION METHAMPHETAMINE OR STIMULANTS SEPARATELY EVERY OTHER TIME A STATUTE WAS TO APPLY TO SUCH STIMULANTS AS WELL?

If the legislature, in S.C. CODE ANN. § Section 38-71-370(9), meant for "narcotic" to include methamphetamine, why did it bother to list methamphetamine separately at all other places in the Code where narcotics are mentioned?

S.C. CODE ANN. § Section 44-53-110 defines "Poison, Drugs and Other Controlled Substances," and contains this definition:

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (a) opium, coca leaves, and opiates:
- (b) a compound, manufacture, salt, derivative or preparation of opium, coca leaves, or opiates:
- (c) a substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subitem (a) or (b). This term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

Immediately prior to this definition, since the definitions are in alphabetical order, is the following:

“Methamphetamine” includes any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine. Methamphetamine is commonly referred to as “crank”, “ice”, or “crystal meth”.

S.C. CODE ANN. § Section 44-53-210 contains an Article 3 entitled “Narcotics and Controlled Substances.” The title itself makes clear that Narcotics are one thing and other Controlled Substances another. Subsection (b) defines what are considered narcotic drugs and the definition is, as one would expect, very similar to that contained in S.C. CODE ANN. § Section 44-53-110. Included are opium and opiate, any salt, compound, isomer, derivative or preparation which is chemically equivalent or identical therewith, opium poppy or poppy straw and coca leaves. Separately listed in Subsection (d)2, as a Controlled Substance “*having a stimulant effect on the central nervous system,*” (emphasis added) is “methamphetamine, its salts, and salts of isomers.”

S.C. CODE ANN. § Section 44-53-190 contains an Article 3 entitled “Narcotics and Controlled Substances.” Subsection (b) defines the narcotics as “the following opiates,” which are then listed and which list does not include methamphetamine. Subsection (c) lists “opium derivatives.” Subsection (d) lists hallucinogens. Subsection (e) lists depressants. Subsection (f) then separately lists “Stimulants” as “substances having a stimulant effect on the central nervous system ...”

S.C. CODE ANN. § Section 44-53-475 makes illegal financial transactions involving “narcotics and controlled substances.” Both in Subsection (A)(1) and in Subsection ((A)(3)(a), the statute refers to “narcotic drugs and controlled substances,” again making clear that these are two different things. If the legislature intended for the term “narcotic” or “narcotic drug” to

include any illegal or unprescribed drug, as Appellant contends, there would be no need for this reference to “narcotic drugs *and/or* controlled substances” (emphasis added) throughout the Code. The legislature, had it so intended, could have defined “narcotic” so broadly once and been done with it, without the need for these repeated references to “narcotic drugs and controlled substances.”

S.C. CODE ANN. § Section 44-53-470 defines what is considered a second or subsequent drug offense. Both subsections (1) and (2) make clear that a previous offense involving either “narcotic drugs” or “stimulants” (among other drugs) makes a subsequent offense involving either a second drug offense, yet another recognition that narcotics and stimulants are to be distinguished.

Similarly, S.C. CODE ANN. § Section 44-53-375 deals with subsequent offenses for trafficking in illegal substances. Both Subsections (B)(2) and (3) provide that offenses relating to narcotic drugs *or* (emphasis added) a stimulant (among other things) are to be considered prior offenses for sentencing purposes.

S.C. CODE ANN. § Section 40-79-130, providing grounds for denial of a license to operate an alarm company, includes conviction “of a crime involving the sale, manufacture, distribution, or transportation of *a controlled substance, drug, or narcotic* (emphasis added) in the last ten years,” once again recognizing that there is a distinction between a narcotic and other drugs or controlled substances.

Finally, S.C. CODE ANN. § Section 17-13-140 provides that a judge may issue a warrant to search for and seize, among other things,

any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed,

controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by S.C. CODE ANN. § Section 44-53-520.

In this most important of contexts, the legislature saw the need for a comprehensive listing of what substances would give rise to the issuance of a search warrant and the resultant invasion of privacy and rights and did not believe that a court would adopt some loose, inexact definition of "narcotic drugs" to include every illegal or unprescribed substance known to man.

V. IF THIS EXCLUSION IS TO BE INTERPRETED AS BROADLY AS APPELLANT SUGGESTS, WHY HAS NO COURT IN THE OTHER 32 STATES WHICH HAVE ADOPTED IT DONE SO?

Appellant makes note that the exclusion allowed by S.C. CODE ANN. § Section 38-71-370(9) is derived from Model 185, "NAIC Uniform Individual Accident and Sickness Policy Provision Law in Simplified Language," and that such an exclusion has been adopted by 33 states. In spite of this widespread adoption of this exclusion and its presumed presence, therefore, in countless insurance policies in 33 states over these many years, Appellant is able to cite not a single case where a court has construed "narcotic" or "narcotic drug" to include methamphetamine. The case cited by Appellant, Doe v. General American Life Insurance Co., 815 F. Supp. 1281 (E.D. Mo., 1993) deals with cocaine, not methamphetamine, a drug which is recognized to have effects similar to those of opiates and which our legislature has included in the same general category as opiates in at least one statute. S.C. CODE ANN. § Section of 44-53-210(b), South Carolina Code of Laws, 1976, as amended. It should also be noted that the exclusion in the policy in Doe was much broader than in this case, excluding "injury or sickness arising out of the use of a) narcotics (b) hallucinogens c) barbiturates d) marijuana e) *amphetamines; or similar drugs or substances* (emphasis added). It should also be

noted that the exclusion itself, in Doe, distinguished between narcotics and methamphetamines, as well as the other substances, listing them separately and not relying on some supposed slang use of the word “narcotic” to include any illegal drug

To the contrary, the only case found by Respondent where a court has ever considered the argument that methamphetamine should be included within the definition of “narcotics” is Ortiz v. Overland Express, 2009 NMCA 041, 207 P. 3d 1147 (2009). In that case, factually quite similar to the one before the Court, a worker was on the job, driving his employer’s delivery van. Worker had a full-time day job as a construction worker and a part-time evening job with this employer. On the day in question, he worked all day, came home, had dinner, spent time with his family and slept for an undetermined number of hours before going to work driving the van sometime between 10 p.m. and midnight. He drove all night. At about 7 a.m., he had an accident. The toxicology report revealed that worker’s blood contained amphetamine, methamphetamine and morphine.

Worker’s widow filed a workers compensation claim. The workers compensation judge denied the claim, finding that worker’s accident “was occasioned solely by Worker’s use of methamphetamine and amphetamine,” that these were “narcotic drugs” and “the use of [those narcotic] drug[s] was the exclusive proximate cause of the accident,” an exclusion provided by statute.

The Court of Appeals for New Mexico reversed the workers compensation judge, finding that the definition of “narcotic drug” in New Mexico’s Controlled Substances Act did not include methamphetamine or amphetamine. The Court went further, finding that the legislative history of the Controlled Substances Act reveals that neither methamphetamine nor amphetamine

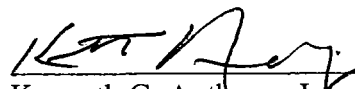
had ever been included in its definition of "narcotic drug." Rejecting the same argument made in this case, the Court responded,

Reading methamphetamine and amphetamine into these statutes requires us to engage in impermissibly broad construction. ... We have considered the arguments made by Employer to somehow construe the statutes to include methamphetamine and amphetamine use in the provisions of Sections 52-1-12 and 52-1-12.1, but we conclude we cannot do so without ourselves acting as the legislature. Ortiz v. Overland Express, 2009 NMCA 041, 207 P. 3d 1147 at 1151 (2009).

IV. CONCLUSION

Appellant cannot change stimulants into narcotics any more than coffee can be changed into alcohol or the ancient alchemists could turn base metals into gold. If the legislature had intended to effect such transmutation, it could have done so by statutory definition. It did not do so and, in fact, indicates repeatedly throughout the Code that it recognizes the difference between narcotics and stimulants. Nothing has changed the long-established legal principle that the language of the policy must be construed strictly against the insurer and that the construction most favorable to the insured must be adopted.

Jesus is reported to have turned water into wine. There is no report that even he ever attempted to turn coffee into wine. Respondent respectfully submits that the lower court was correct in not attempting to do so either.



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April 23, 2010
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2008-CP-42-0835

Shannon Hutchinson, Personal Representative of the Estate of
Stephen F. Ney, a/k/a Steve F. Ney, ... Respondent,

v.

Liberty Life Insurance Company, ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

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I. SUMMARY OF REPLY

Whether viewed in terms of legislative intent or traditional rules of insurance policy construction, the ultimate question before this Court is whether an ordinary person would understand the phrase “being under the influence of any narcotic” to include being under the influence of a lethal dose of illegal methamphetamines, which are widely recognized as the most dangerous drug in America. Rather than address this question directly from the perspective of ordinary laypersons, the majority of Respondent’s argument would have this Court look for guidance in criminal codes, controlled substances acts, and expert medical testimony about chemical distinctions between opiates and methamphetamines, none of which inform the understanding of an ordinary person. In keeping with this approach, Respondent argues that this Court should ignore on-point authority decided under the common law which held that the word narcotics in an insurance policy exclusion must be interpreted based on its common usage by ordinary laypersons, which includes all illegal drugs without regard to a particular illegal drug’s pharmacological properties that are known to and understood only by experts. Instead, Respondent argues that this Court should follow authority holding that methamphetamines were not within a statutory limitation on workers’ compensation benefits because the statutory limitation incorporated specific portions of the state’s controlled substance act.

In the one argument in which Respondent does address the ultimate issue before this Court, Respondent suggests that alcohol and opiates pose a greater danger than methamphetamines because alcohol and opiates are depressants that induce drowsiness while methamphetamines are stimulants that allow one to study or drive longer. As such, Respondent argues that the legislature did not intend, and a user of methamphetamine would not understand, the phrase “under the influence of any narcotic” to include illegal methamphetamines. This

additional argument, which was not adopted by the lower court, does not withstand scrutiny and is directly contradicted by the expert testimony of two board certified forensic toxicologists who testified that methamphetamine use produces hallucinations, delusions, psychosis, poor impulse control, dysphoria, extreme fatigue, and uncontrollable sleepiness.

In sum, Respondent has not advanced any legally sustainable basis for affirming the trial court's interpretation of the insurance policy based on a scientific medical definition of narcotic that is contrary to the popular understanding of that term by ordinary laypersons.

II. ARGUMENT

A. AN UNDEFINED TERM IN AN INSURANCE STATUTE OR AN INSURANCE POLICY IS NOT CONSTRUED BASED UPON SPECIALIZED TECHNICAL DEFINITIONS OR CRIMINAL STATUTES THAT ARE CONTRARY TO THE POPULAR MEANING OF THE WORD AND WHICH LEAD TO UNREASONABLE OR ABSURD RESULTS.

Medicine is a technical and precise discipline, and it is not surprising that the terminology used by medical professionals includes nuanced, technical distinctions that are not part of ordinary language or the understanding of laypersons. Equally so, criminal statutes and controlled substances acts categorize the vast array of drugs into any number of categories based on fine distinctions that are tailored to defining different crimes, enhancing sentences, imposing regulations, and addressing other legal issues that have no application to the day to day existence or understanding of ordinary laypersons. Yet these medical definitions and criminal statutes are exactly what Respondent is asking this Court to rely upon in construing the phrase "under the influence of any narcotic" as found in an insurance code provision setting forth language to be included in an ordinary insurance policy written for lay persons. This approach by Respondent is contrary to the applicable rule of statutory construction that "[w]ords must be given their plain and ordinary meaning without resorting to subtle or forced construction" and to the rule of

insurance policy construction that terms in an insurance policy “should be defined according to the ordinary and usual understanding of the term’s significance to the ordinary person.” *Moon v. City of Greer*, 348 S.C. 184, 188, 558 S.E.2d 527, 529 (Ct. App. 2002) (statutory construction); *USAA Property and Cas. Ins. Co. v. Rowland*, 312 S.C. 536, 539, 435 S.E.2d 879,882 (Ct. App. 1993) (insurance policy construction) (citing *Green v. United Ins. Co. of America*, 254 S.C. 202, 174 S.E.2d 400 (1970)).

It is not surprising that Respondent’s approach has been universally rejected by commentators and courts applying rules of construction analogous to those required in South Carolina. For instance, Appleman’s Insurance Law and Practice states:

§ 7384. Controlling Force of Terms Used in Policy

An insurance contract is to be construed according to the sense or meaning of the words which are used in the contract....

... Ordinarily, nice distinctions and refinements are not favored. *It is not a dictionary definition which is desired, nor the technical, philosophical, or scientific meanings of the terms, nor a restricted meaning acquired in legal usage. It is, rather, the meaning which would be attached by an ordinary person of average understanding if purchasing insurance.* An insurance policy should be read as a layman would read it and not as it might be analyzed by an attorney- or insurance expert.

Appleman, Insurance Law and Practice, Rev.Vol. 13, §§ 7383, 7384, pp. 30-103 (1976) (emphasis added) (as quoted in *Liggans RV Center v. John Deere Ins. Co.*, 575 So.2d 567, 571 (Ala. 1991) (also noting that “[w]hile definitions under the criminal law are some authority and can serve as a guide to interpretation, such definitions are not controlling for the purposes of construing the language found in an insurance policy.”)). Couch on Insurance is to the same effect:

The ordinary legal and literal meaning of the words will be given effect where it is possible to do so without destroying the substantial purpose and effect of the contract. Neither the literal nor technical meaning, however, will prevail where it

appears unreasonable from the standpoint of arriving at the real intent of the parties as expressed in the contract. *Technical constructions are not favored, and a literal meaning should not be allowed to do violence to common sense or produce a result which is absurd, unusual, and extraordinary, or against public policy.*

Russ & Segalla, Couch on Insurance § 22:39 “Words Given Ordinary and Popular Meaning—Literal and Technical Meaning” (3rd Ed. 2009) (emphasis added).

As set forth more fully in Appellant’s opening brief, the common and popular understanding of the term “narcotics” is not confined to drugs derived from the poppy plant, but includes other illegal drugs as well. Br. of App. at 12-13. Respondent’s own proffered dictionary, which is quoted only in part in Respondent’s brief, draws this same distinction between the scientific medical usage urged by Respondent and the common usage that controls here:

narcotic

n

1. (Medicine / Pharmacology) any of a group of drugs, such as heroin, morphine, and pethidine, that produce numbness and stupor. They are used medicinally to relieve pain but are sometimes also taken for their pleasant effects; prolonged use may cause addiction
2. anything that relieves pain or induces sleep, mental numbness, etc.
3. any illegal drug

www.thefreedictionary.com (current online version, emphasis added, pronunciation omitted).

The distinction in this definition between the medical/pharmacological usage and the ordinary usage that controls the interpretation of an insurance policy is entirely consistent with the Oxford University definition and other articles cited by Appellant in its opening brief:

narcotic ► a drug or other substance affecting mood or behavior and sold for nonmedical purposes, esp. an illegal one. ■ *Medicine* a drug that relieves pain and induces drowsiness, stupor, or insensibility.

The New Oxford American Dictionary, Oxford University Press (2nd Ed. 2005) (R. pp. 70-72) (pronunciation omitted) (explaining that the first definition is the “core meaning . . . that represents the most literal sense that the word has in ordinary modern American usage . . . [and] is the meaning accepted by native speakers as the one that is most established as literal and central.”); www.wikipedia.com “Narcotic” (R. p. 77) (Nov. 24, 2009) (“Use of the word ‘narcotic’ to refer to any illegal or unlawfully possessed drug including marijuana and cocaine is common worldwide, although these substances are not considered narcotics in a medical context.”)

Not only is Respondent’s position contrary to the applicable rules of construction and the popular usage of the word narcotics, it compels a result which cannot be accepted because it is does violence to common sense and is unreasonable, absurd, and extraordinary. Combining Respondent’s technical interpretation of narcotics with S.C. CODE ANN. § 38-71-370, which prohibits insurers from expanding the scope of the included statutory exclusions, compels the inexplicable result that the Legislature affirmatively condones excluding accidental death insurance benefits when death results from the insured being under the influence of illegally used opiates, and the Legislature affirmatively prohibits the exclusion of benefits where the insured’s death results from being under the influence of other dangerous illegal drugs such as cocaine, crack, and methamphetamines. Appellant respectfully submits this construction of S.C. CODE ANN. § 38-71-370 and the insurance policy at issue does violence to common sense, and it must be rejected because it could not have been intended either by the Legislature or the parties to the contract. Russ & Segalla, Couch on Insurance § 22:39 (“Technical constructions are not favored, and a literal meaning should not be allowed to do violence to common sense or produce a result which is absurd, unusual, and extraordinary, or against public policy.”); *Unisun Ins. Co.*

v. *Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (holding that Court “will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”).

B. UNLIKE DOE V. GENERAL AMERICAN, WHICH CONSTRUED THE TERM “NARCOTIC” IN AN INSURANCE POLICY EXCLUSION USING COMMON LAW PRINCIPLES, THE ORTIZ V. OVERLAND EXPRESS DECISION CITED BY RESPONDENT TURNED SOLELY ON THE CONSTRUCTION OF A CONTROLLED SUBSTANCES STATUTE THAT WAS INCORPORATED BY REFERENCE IN THE WORKERS’ COMPENSATION STATUTE.

The common law rules of construction and the common usage of the word narcotics set forth in the preceding section were the basis for the directly on-point analysis by the court in *Doe v. General American Life Ins. Co.*, 815 F.Supp. 1281 (E.D. Mo. 1993), which concluded that cocaine was a narcotic for purposes of an insurance policy exclusion without regard to cocaine’s pharmacological properties. In seeking to distinguish this authority, Respondent argues two points: (1) cocaine has “effects similar to those of opiates;” and (2) the exclusion in *Doe* was broader because it included a separate reference to amphetamines. These distinctions urged by Respondent do not withstand scrutiny of the actual holding in *Doe*, which was based solely on the understanding of an ordinary layman, and not the scientific pharmacological distinctions understood only by experts. *Id.* at 1285. In this regard, the court found the drug cocaine to be within the exclusion for “narcotics” because “[o]f all the categories, ‘narcotics’ is the broadest category since *the term narcotic has come to have a generic meaning for drugs considered to be illegal.*” *Id.* (emphasis added). Because the court found that “cocaine is commonly understood by laymen to be a narcotic that is not used for medicinal purposes,” the court concluded that “plaintiff’s treatment for cocaine abuse falls within the exclusionary language of the Local 88 health plan.” *Id.*

This analysis in *Doe* is directly on point to the exclusionary language before this Court, and neither distinction urged by Respondent is availing. First, whether cocaine did nor did not have opiate-like effects as suggested by Respondent had no bearing on the court's conclusion because the court specifically stated that "the Court need not be concerned with cocaine's 'pharmacological' similarities or dissimilarities with narcotics, hallucinogens, barbiturates, marijuana, or amphetamines." *Id.* Instead, the court stated that "[w]hat the Court must be concerned with is what the ordinary person understands cocaine to be and how that understanding relates to the clause in question." *Id.* With respect to Respondent's second argument that the exclusion in *Doe* was broader because it referenced amphetamines, the result the court reached in *Doe* as to cocaine would be the same for illegal methamphetamines without regard to the additional reference to amphetamines. Illegal methamphetamines of the type that killed the insured are commonly understood by laypersons to be a narcotic, and they are not used for medicinal purposes. Under the court's analysis in *Doe*, illegal methamphetamines would be squarely within the phrase "under the influence of any narcotic" as used in an ordinary insurance policy.

Unlike *Doe*, which was decided under the same common law principles applicable here, the decision urged as controlling by Respondent involves a statutory limitation under New Mexico's workers' compensation statute, which limitation specifically incorporated other statutory provisions defining the drugs within the exclusion. *Ortiz v. Overland Express*, 207 P.3d 1147 (N.M. Ct. App. 2009). Specifically, *Ortiz* turned on the following limitation that was expressly defined by statutory definitions, not the common understanding of the term "narcotic":

No compensation is payable from any employer under the provisions of the Workers' Compensation Act [this article] if the injury to the person claiming compensation was occasioned solely by the person being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug,

Device and Cosmetic Act or under the influence of a narcotic drug as defined in the Controlled Substances Act.

Id., 207 P.3d at 1150 (emphasis original, citing N.M. Laws § 55-1-12). The court held that “[t]he plain language of Section 52-1-12 requires us to refer to two other statutes to determine whether methamphetamine and amphetamine fall under its provisions.” *Id.* The court first looked to the history of the New Mexico Drug, Device and Cosmetic Act, and determined that it previously contained a definition of “depressant, stimulant or hallucinogenic drug” that included amphetamines, but that the definition had been repealed in a subsequent revision to the Act. The court then looked to the Controlled Substances Act, and concluded that the definition of “narcotic” in that Act did not include methamphetamines. For these reasons, the court held that the statutory limitation did not apply.

As it did not involve an undefined term in either an insurance code or an insurance policy, *Ortiz* offers no guidance in the present case, and nothing in the *Ortiz* analysis refutes the controlling principle that ordinary lay persons understand the word narcotics to include illegal methamphetamines. When the legal analyses followed by the courts in *Doe* and *Ortiz* are compared to the required analysis under South Carolina law, the only conclusion is that the common law analysis in *Doe* is directly applicable and the analysis of a statutory definition of controlled substances in *Ortiz* does not apply.¹

C. RESPONDENT’S ANALYSIS OF THE RELATIVE DANGER POSED BY ALCOHOL AND OPIATES VERSUS METHAMPHETAMINES IS CONTRARY TO THE EXPERT TESTIMONY AND DOES NOT SUPPORT THE DISTINCTION PROPOSED BY RESPONDENT.

While the lower court reached no such conclusions in its order about the relative danger of different drugs, Respondent suggests that the Legislature may have specifically intended to

¹ While the *Ortiz* opinion is not applicable to the case before this Court, the New Mexico Supreme Court granted the writ of certiorari to review the decision of the intermediate appellate court. *Ortiz v. Overland Exp.*, 213 P.3d 792 (N.M. Ct. App. 2009).

limit the insurance exclusion to alcohol and opiates because these substances are depressants that “induce drowsiness and stupor,” and hence pose a “greater danger” than methamphetamines which, according to Respondent, “produce a heightened state of awareness” and are taken “to keep one up, to study or to drive longer than one could otherwise.” Res. Br. at 6. For this reason Respondent suggests that a meth user reading his policy may not understand the exclusion to apply to him because methamphetamines do not pose the same risk as alcohol and opiates. *Id.* As an initial matter, the distorted thought process of a user of illegal methamphetamines does not control the interpretation of an insurance policy under any circumstance, and Respondent’s romanticized description of illegal methamphetamines as a study aid does not begin to capture the debilitating physical and neurological effects of this drug that is widely recognized as the most dangerous drug in America. *E.g.* Newsweek, “America’s Most Dangerous Drug” (August 8, 2005); Prepared Remarks of Attorney General Alberto Gonzalez (July 15, 2005) (noting that “meth is now the most dangerous drug in America.”); www.heraldbulletin.com, “Officials Fear Meth Surge” (R. p. 73) (Associated Press, March 5, 2008) (describing methamphetamine as “the narcotic scourge that has wounded middle America as no drug ever before”).

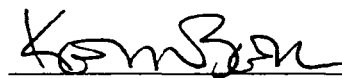
More fundamental to this appeal, Respondent’s unsupported suggestions are directly contradicted by the expert testimony in the record by two board certified forensic toxicologists, who testified that methamphetamine use starts with initial feelings of euphoria, hallucinations, delusions, psychosis, and poor impulse control. Logan ¶ 7 (R. pp. 42-43); *also* Garvin p. 4 (R. p. 49). Presumably these initial delusions, hallucinations, psychosis, and poor impulse control are among the productive stimulant effects which Respondent argues allow one to study and drive longer. These initial effects give way to subsequent effects of dysphoria, extreme fatigue, and uncontrollable sleepiness, all of which affect cognitive and psychomotor control. Logan ¶ 7 (*Id.*);

also Garvin p. 4 (*Id.*) (“As methamphetamine intoxication progresses . . . increased fatigue may develop . . . [and] users may experience uncontrollable sleepiness with an increased risk of ‘microsleeps’ (lasting a few seconds to a few minutes) which then leads to disorientation”). In other words, the expert testimony in the record confirms that methamphetamine use also produces the depressant, disorienting, and sleep inducing effects that Respondent now argues make alcohol and opiates so dangerous. In light of this expert testimony about the documented physical and neurological effects of methamphetamines, the record provides no basis for Respondent’s unsupported suggestion that the legislature concluded that drinking beer poses a greater danger than using illegal methamphetamines because beer induces drowsiness, and that an ordinary person reading his insurance policy would reach the same conclusion.

III. CONCLUSION

For the foregoing reasons and those cited in Appellant’s opening brief, the trial court erred in granting summary judgment to the Respondent based on a specialized medical definition of the term narcotic. The lower court’s order should be reversed with instructions for the trial court to deny Respondent’s motion and to proceed with the case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Shannon Hutchinson, Personal
Representative of the Estate of
Stephen F. Ney, a/k/a Steve F.
Ney,

Respondent,

v.

Liberty Life Insurance
Company,

Appellant.

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Opinion No. 4820
Heard February 8, 2011 – Filed April 20, 2011

REVERSED AND REMANDED

Kevin K. Bell and Rebecca A. Roser, both of
Columbia, for Appellant.

Kenneth C. Anthony, Jr., of Spartanburg, for
Respondent.

PER CURIAM: Liberty Life Insurance Co. (Liberty Life) denied life insurance proceeds to Stephen Ney's beneficiary after toxicology reports reflected the presence of methamphetamines in Ney's blood when he was killed in a single vehicle accident. Shannon Hutchinson, Ney's daughter and beneficiary, sued Liberty Life for the insurance benefits arguing the policy exclusion for injury resulting from an insured being "under the influence of any narcotic" did not apply to Ney's claim because methamphetamine is not a narcotic. The circuit court granted summary judgment to Hutchinson on the ground that methamphetamine is not a narcotic within the definition of the insurance policy exclusion.

On appeal, Liberty Life argues the circuit court erred in granting summary judgment to Hutchinson when (1) the circuit court adopted a specialized medical definition of the term "narcotic" in the context of an insurance policy written for laypersons, as opposed to the plain and ordinary meaning of "narcotic" as understood by laypersons, and (2) the operative language of the Liberty Life policy exclusion providing that benefits will not be payable when the insured is "under the influence of any narcotic" was taken verbatim from the South Carolina Insurance Code. We reverse the grant of summary judgment and remand for further proceedings.

FACTS / PROCEDURAL HISTORY

Ney purchased an accidental death insurance policy from Liberty Life in connection with a mortgage on property he owned in Inman, South Carolina. The policy, effective October 1, 2006, provided it would pay off the balance on Ney's mortgage in the event of Ney's accidental death. Two days after the policy came into effect, on October 3, 2006, Ney was killed as a result of driving his tractor-trailer off an interstate highway directly into a bridge abutment.¹ The death certificate listed the cause of death as blunt

¹ Dr. Barry Logan reviewed the accident reconstruction report and submitted an affidavit noting there was no evidence of braking on the roadway or on the 200+ feet of median Ney traveled before the point of impact with the bridge support.

force trauma to the chest in connection with a motor vehicle crash, but it also listed methamphetamine use under "other significant conditions contributing to death." A coroner's inquest determined the manner of death to be an accident.

In her capacity as personal representative of her father's estate, Hutchinson filed a claim for insurance proceeds (the unpaid balance on the mortgage) after Ney's death. Liberty Life refused to pay any benefits due pursuant to the accidental death policy, and Hutchinson lost Ney's home due to foreclosure. Hutchinson brought suit against Liberty Life for a declaratory judgment that she was entitled to all proceeds payable under the policy, for bad faith, and for violation of the South Carolina Unfair Trade Practices Act.² Liberty Life answered, noting the insurance company denied benefits after an investigation revealed "Insured's illegal drug use contributed to his death" and the policy contained an exclusion for "illegal drug use." Hutchinson moved for summary judgment on all three claims, and the circuit court conducted a hearing on the motion.

During the hearing, Hutchinson presented an affidavit from Dr. Donald O. Allen. Dr. Allen noted narcotic drugs are those drugs that induce pain relief, drowsiness, sleep, and similar states of stupor. In contrast, Dr. Allen stated methamphetamines are stimulants that induce wakefulness, alertness, focus, and a heightened sense of awareness. Therefore, Dr. Allen opined that methamphetamine is not a narcotic drug.

Hutchinson's counsel argued the South Carolina Legislature repeatedly separates narcotics from other controlled substances in our state's code. See, e.g., S.C. Code Ann. §§ 17-13-140, 44-53-210 (2002 & 2003). Hutchinson also relied on a Court of Appeals case from New Mexico (Ortiz v. Overland Express, 207 P.3d 1147, 1150-51 (N.M. Ct. App. 2009)) for the proposition that methamphetamines are not narcotic drugs.³

² S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2010).

³ The Court of Appeals' Ortiz decision was reversed on appeal to the New Mexico Supreme Court subsequent to the summary judgment hearing in this case. 237 P.3d 707, 716 (N.M. 2010).

Liberty Life noted Ney's blood concentration of methamphetamine was ten times greater than the threshold for impairment. Liberty Life submitted affidavits from two medical experts who described Ney's methamphetamine blood concentration as being in the toxic to lethal range. Liberty Life's medical experts reported the symptoms that usually accompany this level of methamphetamine use included euphoria, excitation, rapid speech, insomnia, hallucinations, delusions, psychosis, poor impulse control, perceptual distortion, and aggressive behavior. Withdrawal symptoms included dysphoria, extreme fatigue, uncontrollable sleepiness, restlessness, agitation, irritability, nervousness, and paranoia. In addition, Liberty Life's experts noted a link between methamphetamine use and driving impairment, including reports of decreased ability to concentrate, inability to divide attention, and errors in judgment. Both experts opined Ney was under the influence of methamphetamines when he drove his truck off the highway and struck a bridge support, thereby resulting in his death.

Liberty Life further noted the phrase "under the influence of any narcotic" appears in insurance codes in at least thirty-three states including South Carolina. Liberty Life relied on a case from the Eastern District of Missouri (Doe v. General American Life Insurance Co., 815 F. Supp. 1281, 1285 (E.D. Mo. 1993)), which held that cocaine is commonly understood by lay persons to be a narcotic drug despite the fact that it is technically a stimulant. Therefore, Liberty Life reasoned methamphetamine should also be classified as a narcotic. Liberty Life suggested the court should adopt a definition of narcotic to include any illegal mood or behavior altering drug or controlled substance.

The circuit court issued an order granting summary judgment to Hutchinson on the basis that methamphetamine is not a narcotic within the definition of the policy exclusion. The circuit court found Liberty Life had no right to deny coverage to Ney as the exclusion for injury while under the influence of any narcotic did not apply. The circuit court ordered Liberty Life to pay Hutchinson the balance due on the home at the time of Ney's death, in addition to 20% of the loan balance due in accordance with the additional death benefit provided in the policy, plus pre-judgment interest. This appeal followed.

ISSUES ON APPEAL

(1) Did the circuit court err in adopting a specialized medical definition of the term "narcotic" in the context of an insurance policy which did not define the term, as opposed to adopting the plain and ordinary meaning of "narcotic" as understood by laypersons?

(2) Did the circuit court err in granting summary judgment to Hutchinson when the operative language of the Liberty Life policy exclusion providing that benefits will not be payable when the insured is "under the influence of any narcotic" was taken verbatim from section 38-71-370(9) of the South Carolina Code (2002)?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the circuit court under Rule 56(c), SCRCP. Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRCP, provides summary judgment shall be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

In ascertaining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW / ANALYSIS

I. Definition of the Term "Narcotic"

Liberty Life argues the circuit court erred in adopting a specialized medical definition of the term "narcotic" in the context of an insurance policy written for laypersons, as opposed to the plain and ordinary meaning of "narcotic" as understood by laypersons. We agree.

"Where the words of an insurance policy are capable of two reasonable interpretations, the interpretation most favorable to the insured will be adopted." State Farm Fire & Cas. Co. v. Barrett, 340 S.C. 1, 8, 530 S.E.2d 132, 135 (Ct. App. 2000). "We should not, however, torture the meaning of policy language in order to extend or defeat coverage that was never intended by the parties." Id.

"When a policy does not specifically define a term, the term should be defined according to the usual understanding of the term's significance to the ordinary person." Id. at 8, 530 S.E.2d at 136; USAA Prop. & Cas. Ins. Co. v. Rowland, 312 S.C. 536, 539, 435 S.E.2d 879, 881-82 (Ct. App. 1993) ("In the absence of a prescribed definition in the policy, the term should be defined according to the ordinary and usual understanding of the term's significance to the ordinary person.").

Dictionaries can be useful starting points for interpreting undefined terms in an insurance policy. See S.C. Farm Bureau Mut. Ins. Co. v. Oates, 356 S.C. 378, 382-83, 588 S.E.2d 643, 646 (Ct. App. 2003) (citing Heilker v. Zoning Bd. of Appeals, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct. App. 2001)). One dictionary defines "narcotic" as "a drug or other substance affecting mood or behavior and sold for nonmedical purposes, esp. an illegal one." The New Oxford American Dictionary 1129 (2d ed. 2005). The Oxford dictionary also provides a specialized medical definition of the term "narcotic." The second definition of "narcotic" states "Medicine a drug that relieves pain and induces drowsiness, stupor, or insensibility." Id. at 1129.

Although no South Carolina case law directly addresses the question of whether methamphetamine is commonly understood by ordinary laypersons

to be a narcotic drug, one case from Missouri is analogous to the present case and warrants discussion. In Doe v. General American Life Insurance, Co., 815 F. Supp. 1281 (E.D. Mo. 1993), the Eastern District Court of Missouri interpreted the terms of a health plan exclusion for injury or sickness arising out of the use of "a) narcotics; b) hallucinogens; c) barbiturates; d) marijuana; e) amphetamines; or similar drugs or substances." Id. at 1283. The district court found that the five categories of drugs listed in the health plan were ambiguous, as cocaine was not listed as being covered or excluded. Id. at 1285. To clarify this ambiguity, the district court looked to the ordinary, not specialized, meaning of these terms as a layperson would understand them. Id.

The district court noted "narcotics" were the broadest category because "the term 'narcotic' has come to have a generic meaning for drugs considered to be illegal." Id. The district court concluded that a layperson would commonly understand cocaine to be classified as a narcotic because it is a drug that is illegal to buy, sell, and possess in this country. Id. Therefore, the district court reasoned "this Court need not be concerned with cocaine's 'pharmacological' similarities or dissimilarities with narcotics, hallucinogens, barbiturates, marijuana, or amphetamines." Id.

Other jurisdictions have used the terms "narcotic" and "methamphetamine" interchangeably. See, e.g., United States v. Campos, 306 F.3d 577, 580 (8th Cir. 2002) ("A large quantity of narcotics is indicative of an intent to distribute, and we have previously held that possession of approximately 50 grams of methamphetamine is consistent with an intent to distribute."); United States v. Robinson, No. 4:08CR386(HEA), 2008 WL 4790324, *7 (E.D. Mo. October 29, 2008) (finding a search warrant was not deficient for referring to "certain narcotic drugs" at a residence because "the fact that methamphetamine may technically not be a narcotic is a distinction without a difference," and further finding that the term "narcotics" was used generically as a synonym for "controlled substances"); United States v. Real Property Known as 77 East 3rd Street, 869 F. Supp. 1042, 1058-59, 1064 (S.D.N.Y. 1994) (using the terms narcotic and methamphetamine interchangeably); State v. Carmichael, 53 P.3d 214, 232 (Haw. 2002) (noting although methamphetamine is not a narcotic from a scientific point of view, the term narcotic has evolved to include any addictive drug).

In the case at hand, the circuit court's order adopted the definition of "narcotic" supplied by Dr. Allen. Dr. Allen opined that methamphetamine is not a narcotic drug because narcotic drugs are those drugs that induce pain relief, drowsiness, sleep, and similar states of stupor. Methamphetamines, according to Dr. Allen, are stimulants that induce wakefulness, alertness, focus, and a heightened sense of awareness. The scientific description of the term "narcotic" according to a medical doctor is not representative of the ordinary and usual understanding of the term to an ordinary person. See Rowland, 312 S.C. at 539, 435 S.E.2d at 881-82 ("In the absence of a prescribed definition in the policy, the term should be defined according to the ordinary and usual understanding of the term's significance to the ordinary person."). Therefore, we hold the circuit court erred in adopting the specialized medical definition of "narcotic" supplied by Dr. Allen.

The Liberty Life policy did not define the term "narcotic" to exclude or include methamphetamines. Like the district court in General American Life Insurance, this court need not be concerned with methamphetamine's pharmacological similarities to other narcotic drugs. 815 F. Supp. at 1285. Instead, we look to the usual understanding of the term's significance to an ordinary person. Barrett, 340 S.C. at 8, 530 S.E.2d at 136. Based on its widespread illegal use, we believe a layperson would commonly understand methamphetamine to be a narcotic drug.

Accordingly, we hold the circuit court erred in granting summary judgment to Hutchinson. Because we reverse on the issue of how the circuit court defined the term "narcotic," we need not reach the additional issue raised on appeal. See Whiteside v. Cherokee Cnty. Sch. Dist. No. One, 311 S.C. 335, 340-41, 428 S.E.2d 886, 889 (1993) (holding an appellate court need not address the remaining issue on appeal when the resolution of a prior issue is dispositive).

REVERSED AND REMANDED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

Roger L. Couch, Circuit Court Judge

**Case Number: 2008-CP-42-0835
Opinion No. 4820
Heard February 8, 2011-Filed April 20, 2011**

**Shannon Hutchinson, Personal Representative
of the Estate of Stephen F. Ney, a/k/a Steve F. Ney**

Respondent,

v.

Liberty Life Insurance Company,

Appellant.

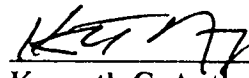
PETITION FOR RE-HEARING

Kevin K. Bell & Rebecca A. Roser, both of Columbia, for Appellant.

Kenneth C. Anthony, Jr., of Spartanburg, for Respondent.

MOTION

Respondent Shannon Hutchinson hereby petitions this court for re-hearing as to the Opinion No. 4820 filed April 20, 2011. Respondent respectfully submits that the court misapprehended the failure of the Appellant to submit any evidence that would be admissible at trial in opposition to Respondent's Motion for Summary Judgment.



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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
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Roger L. Couch, Circuit Court Judge

**Case Number: 2008-CP-42-0835
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Respondent,

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Appellant.

MEMORANDUM IN SUPPORT OF PETITION FOR RE-HEARING

Kevin K. Bell & Rebecca A. Roser, both of Columbia, for Appellant.

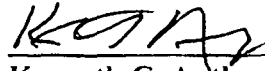
Kenneth C. Anthony, Jr., of Spartanburg, for Respondent.

This matter came to the appellate court on appeal from the grant of a Motion for Summary Judgment in favor of Respondent. In support of its Motion for Summary Judgment, Respondent submitted the Affidavit of Dr. Donald O. Allen, former chair of the pharmacology department of the University of South Carolina, who opined emphatically that methamphetamine was not and is not a narcotic drug. In response, Appellant

submitted the affidavit of two pharmacological experts who opined concerning the effect of methamphetamine on the body, particularly in high doses, but nowhere in these affidavits did either defense expert opine that methamphetamine was a narcotic drug, nor did they either opine that "a layperson would commonly understand methamphetamine to be a narcotic drug," which forms the basis for this court's decision to reverse and remand.

To be used to oppose a Motion for Summary Judgment, the defense must submit evidence that would be admissible at trial. Hansen v. DHL Laboratories, Inc., 316 S.C. 505, 450 S.E.2d 624 (S.C. App. 1994). The dictionary references cited by the Appellant would not, by themselves, be admissible at trial. They would have to form a portion of an expert's opinion. If the two defense experts believed that methamphetamine was generally considered a narcotic by a layperson, they should have so opined. Perhaps the Appellant could have obtained an affidavit from a linguist or an expert on popular word usage or culture who could have opined that a layperson would consider methamphetamine a narcotic, but there was no such affidavit submitted. There was simply no admissible evidence submitted to the trial court to defeat the Appellant's Motion for Summary Judgment and Affidavit. In relying on dictionary references, this court is relying on evidence which would not have been admissible at trial and could not form the basis for defeating Respondent's Motion for Summary Judgment. There is no admissible evidence in the record to support this Court's finding as to what a layperson would consider a narcotic drug, were this even the test.

Appellant respectfully submits that this court should re-hear this matter and issue its Order affirming the lower court.



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The South Carolina Court of Appeals

Shannon Hutchinson, Personal
Representative of the Estate of Stephen
F. Ney, a/k/a Steve F. Ney,

Respondent,

v.

Liberty Life Insurance Company,

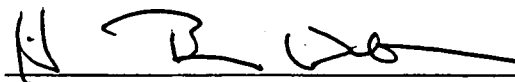
Appellant.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2008-CP-42-00835

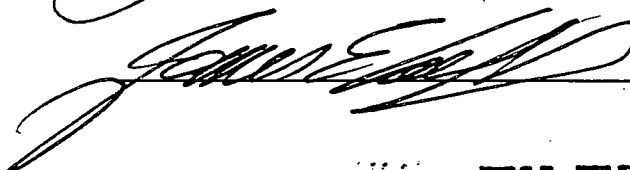
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Williams

 J. Geathers

 J. Lockemy

FILED

MAY 31 2011