

APR 21 2004

For The Northern Mariana Islands  
By J  
(Deputy Clerk)

- For Publication on Web Site -

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

JUNG KYU HUH,

Plaintiff

v.

MIDLAND NATIONAL LIFE  
INSURANCE COMPANY;  
MIDLAND INSURANCE  
UNDERWRITERS, INC.; and,  
SEVEN-TWELVE ENTERPRISES,  
INC.,

Defendants

Civil Action No. 02-0048

ORDER:

- 1) DENYING MOTION FOR  
JURY TRIAL;
- 2) DENYING MOTIONS TO  
STRIKE AFFIDAVITS;
- 3) GRANTING MOTION FOR  
SUMMARY JUDGMENT; and,
- 4) GRANTING MOTION FOR  
JUDGMENT ON THE  
PLEADINGS

THIS MATTER came before the court on Thursday, April 15, 2004, for  
hearing of plaintiff's motion for a jury trial, cross-motions to strike certain  
affidavits, defendants' motion for summary judgment, and defendants' motion

1 for judgment on the pleadings.<sup>1</sup> Plaintiff appeared by and through her attorney,  
2 A. Alexander Gorman; all defendants appeared by and through their attorney,  
3 David G. Banes.  
4

5 THE COURT, having carefully considered all matters submitted in  
6 support of and opposition to the various motions, and having heard the oral  
7 arguments of the parties, rules as follows.  
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10 Jury Trial

11 Plaintiff's motion for a jury trial is denied. Plaintiff has waived her right  
12 to a jury trial by not demanding a jury within ten days of defendants' answer.  
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14 Although the court is afforded a limited amount of discretion to permit a tardy  
15 demand for a jury, in the Ninth Circuit such relief cannot be granted where the  
16 untimely demand resulted from oversight, inadvertence, or lack of familiarity  
17 with the Federal Rules of Civil Procedure. See Pacific Fisheries Corp. v. HIH  
18 Cas. & Gen. Ins., Ltd., 239 F.3d 1000, 1002 (9th Cir. 2001). If plaintiff can give  
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23 By stipulation of the parties dated April 12, 2004, defendant Midland  
24 Insurance Underwriters, Inc. was dismissed as a party defendant.

25 By stipulation of the parties dated April 13, 2004, defendant Seven-Twelve  
26 Enterprises, Inc. was dismissed from counts I and II of plaintiff's first amended  
complaint.

1 a reasonable explanation for her untimely demand, other factors which the  
2 court may consider in deciding whether to allow the late demand for a jury trial  
3 include: whether the case involves issues best tried to a jury, whether granting  
4 the motion would disrupt the court or opposing party's schedules, the degree of  
5 prejudice to the opposing party, and the length of delay in demanding the jury  
6 trial.  
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9 The initial complaint was filed December 4, 2002. No jury was  
10 demanded. Defendants answered on December 31, 2002. A case management  
11 conference was held January 24, 2003. That same day the court issued a case  
12 management order setting certain dates, including the trial date. On July 11,  
13 2003, plaintiff filed her first amended complaint. No jury was demanded.  
14 Defendants answered on July 23, 2003. On January 21, 2004, the court held a  
15 status conference. That same day, after the conference, the court issued an  
16 amended case management order, extending certain discovery dates and re-  
17 setting the trial for May 10, 2004. On February 11, 2004, approximately  
18 fourteen months after filing her original complaint, plaintiff moved for a jury  
19 trial. Hearing on the motion was set for March 11, 2004, but the parties  
20 stipulated to having it heard on April 15, 2004, approximately three weeks  
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1 before trial.

2 The only explanation offered by plaintiff's counsel for the failure to  
3 request a jury trial was that there was a problem with the interpreter he used to  
4 communicate with his client and plaintiff's counsel thought that his client had  
5 indicated she did not want to have a jury trial. The miscommunication was not  
6 discovered until some time in January of this year and counsel filed this motion  
7 on February 11, 2004. Counsel submitted a declaration in support of the  
8 motion, but neither his client nor the interpreter submitted a declaration.  
9

10 The court finds that plaintiff has not met her burden of persuasion. The  
11 issue of a jury, particularly on the facts of this case, would normally have been  
12 the subject of a lengthy discussion between counsel and his client and it is  
13 difficult for the court to accept that there was a miscommunication. However,  
14 even accepting that assertion as true, granting the motion at this juncture would  
15 disrupt the court's schedule (since it would have to summon prospective jurors  
16 and allow greater time for the trial) and defendants' schedule (because allowing a  
17 jury this soon before trial would require defendants to prepare jury *voir dire*,  
18 trial exhibits for the jurors, jury instructions, and opening and closing  
19 arguments pitched to a different audience). Simply put, the *gestalt* of a jury trial  
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1 is entirely different than that of a bench trial, and the prejudice to defendants by  
2 having to re-work their case presentation this close to trial is great. Finally, for  
3 whatever reason the delay, it still took plaintiff an inordinately long time to  
4 demand a jury.  
5

#### 6 Cross-Motions to Strike Sworn Statements

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8 Plaintiff moved to strike the second affidavit of Greg De Torres and the  
9 second declaration of Hakshon Kang, both filed on April 9, 2004, and  
10 defendants moved to strike the April 13, 2004, declaration of L. Carl Peterson.  
11 The court denies both motions. By the time these motions were filed, the court  
12 had read all three submissions. None contained information which was relied  
13 upon by the court in reaching its decision on the substantive motions.  
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#### 16 Substantive Motions

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18 The court now turns to defendants' motions for summary judgment and  
19 judgment on the pleadings.  
20

#### 21 Motions Standards

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23 Rule 12(c) of the Federal Rules of Civil Procedure provides that a party  
24 may move for judgment on the pleadings. Such a motion is properly granted  
25 when, taking all the allegations in the pleading as true, the moving party is  
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1 entitled to judgment as a matter of law. *See e.g. Owens v. Kaiser Found. Health*  
2 *Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001).

3  
4 Rule 56 of the Federal Rules of Civil Procedure states, in part, that  
5 judgment “shall be rendered forthwith if the pleadings, depositions, answers to  
6 interrogatories, and admissions on file, together with the affidavits, if any, show  
7 that there is no genuine issue as to any material fact and that the moving party  
8 is entitled to judgment as a matter of law.”  
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11 The party seeking summary judgment always bears the initial  
12 responsibility of informing the court of the basis for its motion and identifying  
13 those portions of the matters on record which it believes demonstrates the  
14 absence of a genuine issue of material fact. *Celotex Corporation v. Catrett*, 477  
15 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986).  
16  
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18 The non-moving party must set forth by affidavit or as otherwise  
19 provided in Rule 56 specific facts showing that there is a genuine issue of  
20 material fact for trial. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793  
21 F.2d 1100, 1103-1104 (9th Cir.), *cert. denied*, 107 S.Ct. 435 (1986).  
22  
23

24 The court must view the evidence in the light most favorable to the non-  
25 moving party; if direct evidence from both parties conflicts, summary judgment  
26

1 must be denied. Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio  
2 Corp., 106 S.Ct. 1348, 1356 (1986). All inferences are drawn in favor of the  
3 non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct.  
4 993, 8 L.Ed.2d 176 (1962).

### 5 Findings of Fact<sup>2</sup>

6 The following material facts are not disputed:

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14 The district court is not required to make findings of fact and conclusions  
15 of law on a motion for summary judgment, but such findings and conclusions  
16 are helpful to the reviewing court. *See e.g. Underwager v. Channel 9 Australia*,  
17 69 F.3d 361, 366 n.4 (9th Cir. 1995) *citing* Gaines v. Haughton, 645 F.2d 761, 768  
18 n.13 (9th Cir. 1981), *cert. denied*, 454 U.S. 1145, 102 S.Ct. 1006 (1982). Of  
19 course, “findings of fact” on a summary judgment are not findings in the strict  
20 sense that the trial judge has weighed the evidence and resolved disputed factual  
21 issues; rather, they perform the narrow function of pinpointing for the  
22 reviewing court those facts which are undisputed and indicate the basis for  
23 summary judgment. All Hawaii Tours Corp. v. Polynesian Cultural Center,  
24 116 F.R.D. 645 (D.Haw. 1987), *reversed on other grounds*, 855 F.2d 860 (9th Cir.  
25 1988). *But see* Taybron v. City and County of San Francisco, 341 F.3d 957 (9th  
26 Cir. 2003), which says that findings of fact should be eschewed in determining  
whether summary judgment should be granted. Citing Anderson v. Liberty  
Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), the Taybron  
court stated there is no requirement that the trial judge make findings of fact in  
ruling on a motion for summary judgment under Rule 56(c).

1           1. On February 25, 2002 (Saipan date<sup>3</sup>), plaintiff and her husband signed  
2 applications to purchase life insurance from Midland National Life Insurance  
3 Company ("Midland National").<sup>4</sup> A check drawn on their corporate account  
4 was tendered to the local insurance agent that day. There were sufficient funds  
5 in the corporate account to cover the amount of the check on the day it was  
6 drawn.  
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9           2. The "General Purpose Life Application," with the handwritten  
10 notation "02467354-3," signed by Mr. Huh contained the following relevant  
11 language:  
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14           IT IS AGREED (1) that any waiver or modification of this  
15 application will not be effective under this application unless in  
16 writing and signed by the President, a Vice President, the Secretary,  
17 or an Assistant Secretary; (2) that no insurance shall be in effect  
18 under this application (except as may be provided in the receipt  
19 bearing the same date as this application) unless and until the

20           3

21           Because the island of Saipan, U.S. Commonwealth of the Northern  
22 Mariana Islands, lies west of the International Dateline, it is many hours ahead  
23 of the mainland United States. During the relevant times herein, Saipan was 16  
24 hours ahead of South Dakota, such that when it was Tuesday morning at 9:00  
a.m. on Saipan, it was Monday at 5:00 p.m. in South Dakota.

25           4

26           The entire five-member Huh family intended to apply for life insurance  
policies and the corporate check tendered was to pay the initial premiums for all  
five policies. See footnote 5, *infra*.



1 application has been approved and accepted by the Company at its  
2 Home Office and the policy delivered to and accepted by the  
3 Owner and the full first premium has been paid while each person  
4 proposed for insurance is alive and while the state of health and  
5 other conditions affecting insurability are as stated in this  
6 application and examination, if required.

7 3. The receipt given to plaintiff's husband upon submission of the  
8 application referred to above was detached from the application itself and  
9 contained the following relevant language:

10 Unless every condition specified in this receipt is fulfilled exactly,  
11 no insurance shall be considered in effect unless and until the  
12 application has been approved and accepted by the Company and  
13 the policy delivered to and accepted by the Owner, and the full first  
14 premium has been paid while each person proposed for insurance is  
15 alive and while the state of health and other conditions affecting  
16 insurability are as stated in this application or examination, if  
17 required. This receipt will be void if any acknowledged  
18 authorization is canceled before payment or if any check or draft is  
19 not honored when presented.

20 4. On March 5, 2002 (Saipan date), the insurance application was faxed  
21 and mailed by local agent Seven-Twelve to Midland National in South Dakota.  
22 The Huh's corporate check for the initial premiums was included with the  
23 mailed application.

24 5. Because Mr. Huh's policy was potentially for an amount in excess of  
25 \$500,000, Midland National required an independent medical examination.  
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1           6. On March 11, 2002 (mainland date), Midland National received Mr.  
2 Huh's medical examination report.  
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4           7. On March 14, 2002 (mainland date), Midland National received the  
5 Huh's check in the mail, along with the applications which had been mailed.  
6

7           8. On March 21, 2002 (mainland date), Midland National's review of the  
8 applications was completed and the company started to process the Huh's check  
9 for the initial premiums.  
10

11           9. On March 22, 2002 (mainland date), Midland National completed its  
12 in-house processing and the Huh's check was cleared to be deposited with  
13 Midland's bank. However, because it was late on a Friday, the check was not  
14 presented to Midland's bank until the following Monday, March 25, 2002  
15 (mainland date).  
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17           10. Also on March 25, 2002 (mainland date), the prospective life  
18 insurance policy was mailed to Midland Insurance Underwriters ("MIU"),  
19 Midland National's general agent on Saipan. The policy was placed in the mail  
20 between 5:30 p.m. and 6:00 p.m., mainland time.  
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22           11. About an hour before the policy was placed in the mail, Mr. Huh was  
23 killed on Saipan (Saipan date and time: March 26th, between 8:00 and 9:00 a.m.).  
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1           12. On March 27, 2002 (mainland time), Midland National was informed  
2 of Mr. Huh's death by a telephone call from Saipan-based agent Greg De  
3 Torres.  
4

5           13. On or about March 29, 2002 (mainland date), the Bank of Guam, Mr.  
6 Huh's bank on Saipan, returned the Huh's corporate check to Midland  
7 National's bank because it had been dishonored for insufficient funds in the  
8 corporate account. On the same day, in keeping with its bank policy and  
9 unbeknownst to Midland National, Midland National's bank re-submitted the  
10 check to the Huh's bank on Saipan.  
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14           14. On April 15, 2002 (mainland date), the Huh's bank again dishonored  
15 their check due to insufficient funds in the corporate account and it was again  
16 returned to Midland National's bank. The same day, Midland National Life  
17 Insurance learned for the first time that the Huh's check had twice been  
18 dishonored and that Mrs. Huh had not yet received the policies which had been  
19 placed in the mail on March 25th (mainland time).  
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23           15. On April 30, 2002 (mainland time), Midland National Life Insurance  
24 Company officially rejected Mrs. Huh's claim for the proceeds of her husband's  
25 life insurance policy.  
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1 incurring liability particularly where the insurer accepted a check  
2 which was subsequently dishonored by the bank due to insufficient  
3 funds.

4 5 Holmes' Appleman on Insurance § 24.10, p. 72 (1998).

5 The prevailing rule is that if the policy's first premium is unpaid on  
6 the death of the insured, no recovery can be had on a policy. The  
7 main exception is waiver, that is, recovery on the policy is available  
8 provided payment was waived by the insurer.

9 5 Holmes' Appleman on Insurance § 24.10, p. 68 (1998) [*See infra* for discussion  
10 of waiver].

11 Of course, the company may expressly provide that a policy shall  
12 not take effect unless the policy is delivered to the insured and the  
13 first premium paid during the good health of the insured, and such  
14 a provision is valid. Where a provision in an application for life  
15 insurance provides that if payment of premium is not made when  
16 application is signed, the policy will take effect as of date of issue  
17 only if policy is delivered to and received by applicant and first  
18 premium is actually paid while that applicant is alive and in sound  
19 health. That provision is not against public policy. In the face of  
20 such a provision, payment of the first premium during the good  
21 health of the insured is a condition precedent to any liability on the  
22 part of the company, unless compliance therewith has been excused  
23 or waived, or the company's right to raise the defense restricted by  
24 some other provision of the policy.

25 5 Holmes' Appleman on Insurance § 24.10, p. 70 (1998).

26 As a general rule, the giving of a worthless check in payment of  
premium obligations can not constitute the consideration necessary  
to support a contract of insurance. Clearly, if the policy states that  
no insurance will be in effect unless prepayment is made and the  
insured tenders a check which is dishonored, no coverage was ever

1 placed into effect. If the policy does not state that the check would  
2 be unconditionally accepted, the insurer's receipt of the soon to be  
3 dishonored check does not satisfy the prepayment condition  
4 precedent to coverage.

5 5 Holmes' Appleman on Insurance § 27.11, p. 308 (1998).

6 Finally, and most important here, the fact that uncollected items in  
7 plaintiff's corporate checking account would have made the balance sufficient to  
8 cover the check drawn on the account at the time it was presented does not  
9 make the bank's dishonor wrongful (or the presentment late) when the actual  
10 balance was not sufficient to honor the check when it was presented. *See e.g.*  
11 Check Reporting Services, Inc. v. Michigan National Bank - Lansing, 478  
12 N.W.2d 893 (1990), appeal denied, 487 N.W.2d 469 (1991).

13 No Acts by Defendants Justify a Finding of Estoppel or Waiver

14 a. No Unreasonable Delay in Processing the Application

15 There was no unreasonable delay in processing Mr. Huh's life insurance  
16 application. Mr. Huh completed his application on February 25, 2002. His  
17 application was sent by facsimile to Midland National Life Insurance's main  
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1 office in South Dakota on March 5, 2002.<sup>5</sup> The original of the application and  
2 the check for the premium was mailed this same day. On March 11, 2002  
3 (mainland date), Midland National received Mr. Huh's medical examination  
4 report. On March 14, 2002 (mainland date), Midland National received the  
5 Huh's check in the mail, along with the applications which had been mailed.  
6  
7 On March 21, 2002 (mainland date), Midland National's review of his  
8 application was completed and the company started to process the Huh's check  
9 for the initial premiums. On Friday, March 22, 2002 (mainland date), Midland  
10 National completed its in-house processing and the check was cleared to be  
11 deposited with Midland's bank. The check was presented to Midland's bank the  
12 following Monday, March 25, 2002 (mainland date).  
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17 By the express terms of the application, issuance of the life insurance  
18 policy was conditioned upon approval and acceptance of the policy by Midland  
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21 The parties disagree as to why Mr. Huh's application and check were not  
22 sent on or near February 25, 2002. Defendants maintain that because five  
23 members of the Huh family (two of whom were on the U.S. mainland and  
24 mailed their applications directly to Midland National Life) were to obtain  
25 policies and because one of Mr. Huh's sons was in South Korea on February 25,  
26 2002, Mr. and Mrs. Huh asked the agent to hold their applications until the son  
had returned to Saipan to sign his application. For the reasons given *infra*, the  
court finds that this fact disagreement does not present a genuine issue of  
material fact which would preclude summary judgment.

1 National's home office. Midland received the application on March 5th, the  
2 medical report on March 11th, completed its in-house processing on March  
3 22nd, and submitted the check to its bank on March 25th. Midland could not  
4 continue its review of the application until receipt of the medical report on  
5 March 11th. No evidence was presented that any defendant delayed the  
6 submission of plaintiff's medical report to Midland National Life Insurance and  
7 the medical report was a condition precedent to issuance of the policy.  
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11 The court finds as a matter of law that Midland National could not  
12 complete its review of Mr. Huh's life insurance application until it received his  
13 medical report, a condition precedent to issuance of the life insurance policy.  
14 The court further finds, as a matter of Commonwealth law, that the fourteen  
15 days between receipt of the report and submission of Mr. Huh's premium check  
16 to defendant's bank (March 11-25) was not an unreasonable length of time to  
17 process the application. 5 N.Mar.I. Code § 3503(2) (less than 30 days presumed  
18 reasonable).  
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23 Moreover, when issuance of a policy is dependent, as here, upon  
24 fulfillment of *all* conditions precedent, delay in processing the insurance  
25 application does not constitute actual or implied acceptance. *See e.g. Gladney v.*  
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1 Paul Revere Life Ins. Co., 895 F.2d 238 (5th Cir. (Miss.) 1990) (Under  
2 Mississippi law, where preconditions not met, delays in processing insurance  
3 applications do not constitute actual or implied acceptance); MacLauchlan v.  
4 Prudential Ins. Co. of America, 970 F.2d 357 (7th Cir. (Ind.) 1992); Lamarque v.  
5 Massachusetts Indem. & Life Ins. Co., 794 F.2d 194 (5th Cir. (La.) 1986).  
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8 Even where an insurance contract has been determined to have been  
9 formed there is no breach by the alleged slow processing of the application  
10 where the policy did not provide a time frame for processing and there was no  
11 evidence that the insured relied on the insurer's assurance of a time frame  
12 during which the application would be processed. Willard v. Valley Forge Life  
13 Ins. Co., 218 F.Supp.2d 1197 (C.D.Cal. 2002).  
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17 b. No Unreasonable Delay in Presenting Mr. Huh's Check to the Bank

18 There was no unreasonable delay in presenting Mr. Huh's premium  
19 check to his bank. Defendant Midland National Life Insurance could not  
20 complete its review of Mr. Huh's application until it received his medical  
21 report. As noted above, that report was received on March 11, 2002, and  
22 Midland deposited his premium check and mailed the conditional policy to him  
23 on March 25, 2002. Mr. Huh was killed in the morning on Saipan on March 26,  
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1 2002, which was late in the business day on March 25th in South Dakota.

2       Given the distance between the island of Saipan and the State of South  
3  
4 Dakota, and the fact that defendant Midland National Life did not receive Mr.  
5 Huh's medical report until March 11th, combined with the lack of any evidence  
6 that the medical report would have arrived earlier in South Dakota even had the  
7 application been sent on February 25, 2002, instead of March 5, 2002, the court  
8 finds as a matter of law that the fourteen days between receipt of the medical  
9 report (which enabled Midland National to complete its review of Mr. Huh's  
10 application) and deposit of his premium check was not unreasonable. Further,  
11 any alleged delay in presentment of the check was due to Midland National Life  
12 Insurance not receiving Mr. Huh's medical examination report until March 11,  
13 2002, a circumstance beyond its control, after receipt of which Midland  
14 National exercised reasonable diligence in presenting the check after the cause  
15 of the delay ceased to operate. Title 5 N.Mar.I. Code § 3511(1).  
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1 Because neither the processing of the application nor the presentment<sup>6</sup> of  
2 Mr. Huh's check were unreasonable under the undisputed material facts of this  
3 case, plaintiff cannot estop defendants from denying coverage.  
4

5 c. No Waiver of Any Condition Precedent by Defendants  
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7 The general rule is that a policy provision for the payment of the  
8 first premium is a condition precedent to the formation of the  
9 insurance contract for the insurer's benefit, and the insurer may  
10 waive that condition precedent.

11 5 Holmes' Appleman on Insurance § 29.1, p. 415 (1998).

12 Where a life policy provides that it will not become operative until  
13 the initial premium is actually paid, its payment is a condition  
14 precedent to operation of policy of insurance[.]

15 5 Holmes' Appleman on Insurance § 24.6, p. 49 (1998).

16 A waiver requires that the insurer have knowledge of all relevant  
17 facts which constitute the forfeiture of the insurance policy.  
18 Consequently, the doctrine of waiver requires that the insurer take  
19 a volitionally voluntary and unequivocal act that recognizes the  
20 continuation of the insured's insurance policy.

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22 In the Commonwealth, a "reasonable time for presentment is determined  
23 by the nature of the instrument, any usage of banking or trade and the facts of  
24 the particular case. In the case of an uncertified check which is drawn and  
25 payable within the United States...the following are presumed to be reasonable  
26 periods within which to present for payment or to initiate bank collection: (a)  
with respect to the liability of the drawer, 30 days after date or issue, whichever  
is later[.]" 5 N.Mar.I. Code § 3503(2).

1 5 Holmes' Appleman on Insurance § 28.1, p. 319 (1998).

2 Some of the acts constituting waiver include: an unconditional delivery of  
3 the policy, extending credit to the applicant (explicitly or implicitly), making  
4 partial payment, and accepting merchandise or services *in lieu* of cash payment.  
5  
6 *See generally* 5 Holmes' Appleman on Insurance Chap. 29 (1998). None of  
7 those acts occurred her. The application specifically required fulfillment of  
8 certain conditions precedent---one of which was payment of the initial  
9 premium---before it would take effect, and there is no genuine issue of material  
10 fact that none of those conditions was ever waived, expressly or impliedly, by  
11 any defendant.  
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15 Defendants Acted in Good Faith and Dealt Fairly

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17 Because no contract of insurance was ever formed, defendants owed no  
18 special and fiduciary duties to plaintiff as a policyholder. Further, there was no  
19 genuine issue of material fact presented that defendants ever acted in bad faith  
20 or did not deal fairly with plaintiff. Summary judgment on plaintiff's second  
21 claim for relief is granted.  
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1                                    Judgment on the Pleadings - Negligence

2                    Judgment on the pleadings is granted as to plaintiff's third claim for relief,  
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4 negligence. The Commonwealth has adopted the "economic loss" rule, which  
5 prohibits the elevation of a breach of contract claim into a tort absent evidence  
6 of personal injury or property damage. Lee v. TAC International Contractors,  
7 Inc., Commonwealth Superior Court Civil No. 96-349 (July 2, 1997). This  
8 court has recognized adoption of the rule. Aviation Industry Reporting System,  
9 Inc. v. CNMI Travel Agency Inc., Civil No. 03-0039, Order of Jan. 6, 2004 at 4.  
10  
11 Because the Commonwealth has not done so, the court specifically declines to  
12 adopt the disfavored tort of "negligent delay." No such tort appears in the  
13 Restatement (Second) of Torts, which provides decisional law in the  
14 Commonwealth. In any event, as noted above, absent an agreement that Mr.  
15 Huh's policy would be processed within a specific time frame, there could be no  
16 "negligent delay" by defendants.

17                                    Judgment on the Pleadings - Consumer Protection Act

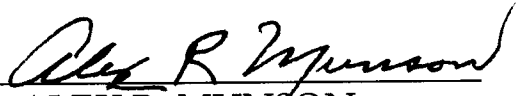
18                    Judgment on the pleadings is granted as to plaintiff's fourth claim for  
19 relief, violation of the Commonwealth's Consumer Protection Act, 4 N.Mar.I.  
20 Code § 5105. There is no disputed material fact before the court which would  
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1 support plaintiff's claim that defendants engaged in any act or practice which  
2 was unfair or deceptive to plaintiff. 4 N.Mar.I. Code § 5105(m).  
3

4 FOR THE FOREGOING REASONS, plaintiff's motion for a jury trial  
5 is denied. The cross-motions to strike declarations are denied as the court did  
6 not rely on any challenged declaration in arriving at its decision. Defendants'  
7 motions for summary judgment and judgment on the pleadings are granted in  
8 their entirety and judgment shall enter accordingly. The trial presently set to  
9 begin on May 10, 2004, is taken off-calendar.  
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12 IT IS SO ORDERED.

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14 DATED this 21<sup>ST</sup> day of April, 2004.  
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19 ALEX R. MUNSON

20 Judge  
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