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Record No. 4963

In the Supreme Court of Appeals of Virginia at Richmond

HARLEYSVILLE MUTUAL INSURANCE COMPANY

v.

ETHEL O. DOLLINS

FROM THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4963

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 28th day of November, 1958.

HARLEYSVILLE MUTUAL INSURANCE COMPANY,
Plaintiff in Error,

against

ETHEL O. DOLLINS, Defendant in Error.

From the Corporation Court of the City of Charlottesville

Upon the petition of Harleysville Mutual Insurance Company a writ of error and *supersedeas* is awarded it to a judgment rendered by the Corporation Court of the City of Charlottesville on the 23rd day of June, 1958, in a certain motion for judgment then therein depending wherein Ethel O. Dollins was plaintiff and the petitioner was defendant;

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of two thousand dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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* * * * *

ADDITIONAL GROUNDS OF DEFENSE.

Comes now the defendant herein, by counsel, and for additional grounds of defense in this cause, says:

(1) That the husband of Ethel O. Dollins was one of the "insureds" under the insurance policy in question, and that he had actual notice of the cancellation of the policy before the accident of August 29, 1957;

(2) That William Curtis Dollins, son of the plaintiff herein, was the actual owner of the automobile involved in this cause, and the real beneficiary under the insurance policy herein involved, and that said William Curtis Dollins had actual notice of the cancellation of the contract of insurance herein involved before the accident of August 29, 1957.

Now having answered and reserving to itself the right to assert such other defenses as may become necessary and proper, this defendant prays to be hence dismissed.

Respectfully,

HARLEYSVILLE MUTUAL
INSURANCE COMPANY
By Counsel.

Filed June 19th 1958.

C. E. MORAN, Clerk.

* * * * *

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* * * * *

MOTION TO DISMISS ADDITIONAL GROUNDS OF DEFENSE.

Now comes the plaintiff, by counsel, and moves the Court to dismiss the defendant's Additional Grounds of Defense for the following reasons:

(1) The plaintiff's Motion for Judgment was filed on April 3, 1958, and the defendant responded thereto on June 18, 1958, and that the defendant's Additional Grounds of Defense were not timely filed and the Court in its discretion should not grant the defendant leave to amend his original *Grouds* of Defense.

(2) That the matters raised in the Additional Grounds of Defense are not germane to the issues of the case, since neither the plaintiff's husband or son was the insured either under the provisions of the insurance policy in question or under the applicable statutes, and that therefore notice to them, if any, is irrelevant to the case before the Court.

Respectfully submitted,

ETHEL O. DOLLINS,
By Counsel.

Filed June 23rd 1958.

C. E. MORAN, Clerk.

WILLARD I. WALKER, p. q.

* * * * *

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* * * * *

ORDER—MONDAY, JUNE 23rd, 1958.

On this the 23rd day of June, 1958, came the plaintiff in the above styled action, in person and by her attorneys, and likewise came the defendant corporation, Harleysville Mutual Insurance Company, by its attorney.

Thereupon Mrs. Eleanor M. Christian, a competent and qualified court reporter, was duly sworn to take down and

transcribe the proceedings in this case faithfully and accurately to the best of her ability, as provided by law.

Thereupon counsel for said defendant moved the Court for leave to file its Additional Grounds of Defense, which motion is granted and the same is accordingly filed; to which action and ruling of the Court the plaintiff, by counsel, excepts and moves the Court to dismiss said Additional Grounds of defense upon the grounds set forth in writing and this day filed with the clerk of this court.

And the Court, having fully heard argument of counsel upon said motion, doth overrule the same as to ground Number One which alleges that such Additional Grounds were not timely filed, but doth eliminate therefrom said motion to dismiss, but doth allow to be properly filed ground Number Two which alleges that the matters raised therein are not germane to the issue in this case, since neither the plaintiff's husband nor son was the insured either under the provisions of the insurance policy in question or under the applicable statutes, and that therefore notice to them, if any, is irrelevant to this case; to which action and ruling of the Court counsel for both plaintiff and defendant except on behalf of their respective clients.

Counsel for said plaintiff thereupon moved the Court to strike said defendant's Additional Grounds of Defense as set forth in paragraph Number 2 upon the grounds set forth in her original motion to dismiss the same.

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And the Court, having fully heard argument of counsel upon said motion and having maturely considered of the same, doth sustain said motion and doth eliminate said Additional Grounds of Defense from consideration by the jury; to which action and ruling of the Court the defendant, by counsel, excepts.

And all proper and necessary pleadings herein having been heretofore duly filed and issue joined, there came the following jury of seven, the same being a portion of the panel of veniremen summoned for the trial of civil causes during the current term, namely: John Rimel, Horace G. Winstead, John T. Ayers, John E. Bevilaqua, M. Erskine Wheat, Winston L. Armentrout and James Earl Barnett who, being first duly sworn, were selected, tried and sworn according to law.

Thereupon at the conclusion of the introduction of all the evidence in this case, counsel for said defendant moved the Court to strike the plaintiff's evidence upon the ground that the Charlottesville Motors was at the time the policy of

insurance in question was issued and up to and including the day the accident occurred the agent of the said plaintiff and as such had due notice of the cancellation of said policy and acquiesed in said cancellation at least three weeks prior to the accident, which notice was duly communicated to said plaintiff by mailing to her at her home address a plain postal card advising her of such cancellation, which notice was given to her by her son who received the card soon thereafter and before the accident occurred.

But the Court, being of opinion that said motion is not well taken, doth overrule the same and doth decline to strike the plaintiff's evidence; to which action and ruling of the Court the defendant, by counsel, excepts.

Whereupon counsel for said plaintiff moved the Court to strike the defendant's evidence upon the ground that the same wholly fails to establish agency on the part of the page 13 } Charlottesville Motors and that any notice of the cancellation of the policy in question given by it was not in accordance with the statute providing the manner in which such notice must be given and further moved the Court to enter a summary judgment in favor of the plaintiff for the amount claimed in her motion for judgment which counsel for both parties have agreed by stipulation is the correct amount of damages sustained by said plaintiff.

And the Court, having heard arguments of counsel upon said motion of plaintiff to strike the defendant's evidence and that summary judgment be entered in her favor and having maturely considered of the same, being of opinion that the statute in such cases made and provided, namely, Section 38.1-381.1 of the Code of Virginia, has not been complied with as is required thereby, doth sustain said motion and, there being no evidence on behalf of said defendant to refute said plaintiff's evidence, the jury was accordingly discharged and the Court doth therefore accordingly order that a summary judgment be entered on behalf of said plaintiff against said defendant. To which action and ruling of the Court the defendant, by counsel, excepts, upon the grounds (1) that the evidence conclusively showed that Charlottesville Motors was the authorized agent of the plaintiff and acquiesced in the policy cancellation before the accident, and (2) that the jury should consider whether the plaintiff herself had actual and timely notice of cancellation and acquiesced therein.

It is therefore adjudged and ordered that the said Ethel O. Dollins recover and have judgment against the said Harleysville Mutual Insurance Company for the sum of One

Thousand Four Hundred and Fifty Dollars ($1,450.00), the amount of damages claimed by said plaintiff in her said Motion for Judgment, with interest thereon from this the 23rd day of June, 1958, together with her costs about her action herein expended and incurred.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

To the Clerk of the Corporation Court of the City of Charlottesville:

You are hereby notified that Harleysville Mutual Insurance Company intends to appeal the decision of the Court in the above styled cause rendered on June 23, 1958, giving judgment for $1,450.00 in favor of Ethel O. Dollins against Harleysville Mutual Insurance Company, and this defendant assigns error on the part of the Court as follows:

(1) The Court erred in sustaining the plaintiff's motion to dismiss the defendant's ADDITIONAL GROUNDS OF DEFENSE, which was filed on the day of trial, and withholding same from the jury,,

(2) The Court erred in overruling the defendant's motion to strike the plaintiff's evidence, and

(3) The Court erred in sustaining the plaintiff's motion to strike the defendant's evidence, and in granting summary judgment for the plaintiff.

Respectfully submitted,

HARLEYSVILLE MUTUAL
INSURANCE COMPANY
By Counsel.

Filed August 7th 1958.

C. E. MORAN, Clerk.

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MRS. ETHEL O. DOLLINS,
the first witness for the plaintiff, being first duly sworn, was examined and testified as follows:

* * * * *

Q. Will you state your name and address,
page 25 } please?

A. My name is Ethel Dollins and I live at Keswick, Virginia, Albemarle County.

Q. Did you, on or about April 12, 1957 purchase from Charlottesville Motors a 1956 Ford Fairlane Victoria?

A. I did.

Q. Who signed the contract for the purchase of the automobile, Mrs. Dollins?

A. I did.

Q. Now, we don't want to mislead anyone or confuse the Jury. Who was the car purchased for actually?

A. The car was purchased for my son for the use of the whole family.

Q. But you yourself signed the contract?

A. I signed the contract.

Q. Can you drive a car?

A. Yes, I can.

Q. Did you ever drive this car?

A. No, I didn't.

Q. What was done about insurance?

A. The agent that sold us the car said that Charlottesville Motors would secure the insurance for the first year, not liability, but collision. And after the first year it would be up to us to secure the insurance, at which time they charged us $88.00 for insurance. That was on the contract.

Q. Was that in the bill?

page 26 } A. That was in the bill of sale, $88.00.

Q. You financed the car, didn't you? I mean, you didn't pay for it in cash?

A. No, $700.00 down and, I think, $52.86 or $52.96—I don't remember.

Q. Who signed the note?

A. I did.

Ethel O. Dollins.

Q. Now, after you bought the car—who did you say drove the automobile?

A. First, Sam Johnson, a boy that lived near us, drove it and then Bill.

Q. That is Bill, your son?

A. Yes. My nephew drove it some.

Q. There was an accident involving this automobile on August 29, 1957, was there not?

A. That's right.

Q. Who was driving the automobile at that time?

A. Bill was driving, my son, William Curtis Dollins.

Q. Did you know, or have any reason to believe, from the date you purchased that automobile until the day or after the day of the accident that there was no insurance, collision insurance, on the vehicle?

A. No, I did not. I knew that there was no liability insurance, but I did not know that there was no collision insurance.

Q. Had you received any cards or—

page 27 } A. I had received no notice whatsoever of any cancelation of insurance.

Q. When did you first discover that there was no insurance?

A. The morning after the accident.

Q. Has any premium been refunded to you, Mrs. Dollins?

A. No.

Q. You stated earlier that in the contract price there was included $88.00, I believe, for collision insurance?

A. Yes.

Q. To this date has any of that amount been refunded to you?

A. No.

Q. Do you know, Mrs. Dollins, whether or not the monthly payments you had to make under this conditional sales contract included a portion of the insurance premium that was charged you?

A. No, I do not know.

Q. Is this a copy of the contract that you signed?

A. Yes. And this is the statement on there, "No liability."

Q. Insurance?

A. Insurance.

page 28 } Mr. Barrick: I don't believe, Mr. Belt, that the premium for the insurance was included in the total contract price and, therefore, the monthly payments

that were made did include prorata portion of the insurance premium.

Q. Let me ask you this, Mrs. Dollins; whether or not you had any notice, actual, constructive, by word of mouth, by written communication, or by any other means that you did not have any collision insurance on that vehicle until after the accident occurred?

A. I did not, because if I had the car would have been put up until insurance was obtained. I would not have allowed anyone to drive it until insurance was obtained, not only for my protection, but for the protection of Charlottesville Motors.

The Court: Are you introducing that paper, Mr. Barrick?

Mr. Barrick: No, sir, I am not. I just wanted to refresh Mrs. Dollins' memory as to whether or not the insurance premium was included in the total contract price.

Your witness, Mr. Belt.

CROSS EXAMINATION.

By Mr. Belt:

Q. Mrs. Dollins, I understand that you and your son went to the Charlottesville Motors to make this pur-
page 29 } chase together?

A. Yes.

Q. Had he gone before you and then had to bring you there to sign?

A. Yes.

Q. And you say you signed the contract?

A. Yes.

Q. He did too, didn't he?

A. Yes.

Q. There is here, I believe, a certificate which says, "I certify I am twenty-one years of age or over and that the car I am trading you is free from all encumbrances whatsoever. William Curtis Dollins."

Mr. Walker: Your Honor, I object to that. She is not charged with any act of her son, if he did or did not certify to that. I think it is obvious to the Jury that the plaintiff is over twenty-one years of age.

Mr. Belt: She admits they acted together, Sir.

The Court: I don't see that it is relevant, Mr. Belt. Would you enlighten the Court as to its relevancy?

Ethel O. Dollins.

Mr. Belt: I just want to show that it was an act by both of them, referring to the automobile.

The Court: All right, Sir, but I don't know about the relevancy of that statement on the part of the son. Rephrase your question, Mr. Belt.

Q. At the time this agreement was signed was your son, William Curtis Dollins, over twenty-one years of age?

Mr. Walker: I object, Your Honor; I see no relevancy. I object to that question. I don't see any relevancy except an attempt to cloud the issue or bring in some besmirchment against this plaintiff because her son may or may not have made a false statement on an affidavit.

Mr. Belt: I think I can show, Your Honor, that the actual owner of the automobile was William C. Dollins, and that his mother simply signed as a technicality.

The Court: I think it has been brought out in the testimony that he went in first and that she had to come in to get it signed.

I don't see the real purpose in showing this, Mr. Belt. I don't think there is any relevancy.

Mr. Belt: Is there a reason why it can't come page 31 } in?

The Court: Well, I'll let it come in for that purpose, but not . . .

Mr. Belt: I think this, Your Honor, that this Jury has to decide whether prior to the accident she actually did receive notice.

The Court: I don't think that question is relevant, however, I will let the question get in.

Q. How old was your son at that time, Mrs. Dollins?

A. Seventeen.

Q. Seventeen?

A. Yes.

Q. This indicates that there was a cash payment of $700.00, is that correct?

A. That's correct.

Q. And your son made it?

A. Yes, he made it.

Q. Have you paid any of the payments on the automobile?

A. Only one.

Q. And that was when?

A. I think that was the September payment; we let him have the money to pay it.

Ethel O. Dollins.

Q. That was after the accident?

A. Yes.

page 32 } Q. Up until that time he had made all the payments that were made?

A. Yes.

Q. And you say you let him have the money to pay them?

A. Yes.

Q. So, he actually paid but you loaned him the money?

A. We gave it to him. We paid it, we just gave it to him.

Q. And since the accident he has been making payments on the note that you owe up there, isn't that correct?

A. Correct.

Q. You haven't?

A. No.

Q. So you didn't at the time of the accident or since have any money invested in the automobile at all, did you?

A. Only the $52.00 one month.

Q. But at the time of the accident you didn't, did you?

A. No.

Q. Now, the proceeds of the insurance if the car were wrecked were to go to whom?

A. To me. The car was technically mine until page 33 } Bill was twenty-one years old.

Q. And you would have paid off this note?

A. I would have to.

Q. Did he live with you?

A. He sure did.

Q. At Keswick?

A. Yes.

Q. Prior to the accident?

A. Yes.

Q. When did he move to town?

A. After the accident.

Q. Your husband lived down there with you, too?

A. Uh, huh.

Q. Mrs. Dollins, you said that when you bought this car the agent told you that he was charging you $88.00 for insurance premiums? Is that what the $88.00 was for?

A. They told me that they would get the insurance and it would be a premium of $88.00. That had to be paid that day; they would secure it for one year, and that at the end of that year which would be April of this year, it would be up to us to secure insurance.

Q. You didn't actually pay the $88.00 that day, did you?

Ethel O. Dollins.

A. Sure did.

Q. According to your counsel and this statement page 34 } it was included in the purchase price?

A. It wasn't supposed to be. They were supposed to have taken the $88.00—The $700.00 down payment was to include $88.00 for insurance.

Q. And you relied on them to do just exactly what they said they would do?

A. I trusted them to get the insurance.

Q. And you didn't tell them any insurance company you wanted it in?

A. They didn't ask me and I didn't tell them.

Q. And they were getting it, you stated, for your benefit in case the automobile were damaged?

A. Yes.

Q. And you relied on Charlottesville Motors to take care of this matter for you?

A. I sure did.

Q. And to keep the automobile insured for a year?

A. For one year.

Q. Your husband's name is Charles T. Dollins?

A. That's right.

Q. Do you know anything about your husband and your son coming in to Charlottesville Motors during the early part of August, 1957, to make arrangements for payment of this note or security on the note?

A. The two of them have never been in there page 35 } together.

A. Never been in Charlottesville Motors place together?

A. Not together, no.

Q. Well, did you know about them coming in separately for that purpose?

A. I knew that my husband was supposed to go up there. Now, I don't know whether it was August, July, or when.

Q. It was before the adcident?

A. Yes. To get liability insurance with the same company that we had the collision with because I personally sent him up there. I wasn't able to go myself and I wanted liability insurance, and I sent him up there to get it.

Q. Did he say anything to you about having to secure this note on the automobile by deed of trust on the property or some other method?

A. Nothing has ever been said to either of us about getting a deed of trust on the property.

Q. Well, you can't testify about what has been said to him, but I want to know what he said to you. Did he tell you—

A. Nothing to me.

Q. —that he was going up there for the purpose of securing this note?

A. No.

Q. He was going up there simply to get liability
page 36 } insurance?

A. He went up to get liability insurance.

Q. Why didn't you send your son?

A. My son is a minor.

Q. I know, but he can purchase insurance, can't he?

A. No.

Q. He can't?

A. No.

Q. In your name?

A. No, not a minor I don't think.

Q. What?

A. Not a minor I wouldn't think.

Q. Your son was living at home then?

A. Yes.

Q. He didn't tell you anything about receiving a card from Charlottesville Motors in regard to cancelation of insurance?

A. He did not.

Q. You all had no discussion about that whatsoever?

A. No, sir.

Q. How long was he living there—When did he move to town, do you remember?

A. He moved the 29th of August.

Q. The day of the accident?

A. The day after—the day of the accident, yes.

page 37 } Q. He had just moved into town when the accident happened?

A. Yes. He moved in to live with my daughter.

Q. And your husband had been living with you, of course, at Keswick, and he continued to do so?

A. That's right.

Q. Mrs. Dollins, did your husband or your son or you do anything about getting collision insurance on this automobile, or was the whole thing left up to Charlottesville Motors?

A. Charlottesville Motors promised to get the insurance and carry it for one year.

Ethel O. Dollins.

Q. You understood that they were going to get it from some insurance company?

A. I didn't even know it was canceled. I didn't know I even had any insurance except for what I paid for. I knew I paid for it.

Q. You didn't get any notice of insurance?

A. Never got a policy or a card or anything from any insurance company stating that there was insurance.

Q. Did you get any notice from Charlottesville Motors that insurance was effective?

A. No, I never got any notice.

Q. Well, since you would have been so careful had you known it was canceled and not drive the car, did
page 38 } you take any care not to let your son drive before you found out that they had gotten insurance?

A. I just took it for granted they had insurance.

Q. You relied completely on Charlottesville Motors?

A. Charlottesville Motors, uh, huh.

Q. And you did know that they weren't going to carry the insurance themselves, that they were going to get it written by some insurance company, did you not?

A. No, I didn't know what the technicalities were.

Q. Well, why did you send your husband up there to get liability insurance with the same company you had collision with if you didn't know that?

A. To get liability with the same company.

Q. That's what I say. You did know that Charlottesville Motors was going to get some insurance company to issue a policy on the automobile?

A. Oh, I knew that, yes, that they had to have an insurance company. They couldn't just sell insurance theirself.

Q. And you never heard anything more from them?

A. No.

Q. You left it up to them for the first year to take care it?

A. For the first year.

Q. For collision coverage?
page 39 } A. For collision coverage.
Q. They were representing you?

A. That's right.

Mr. Belt: That is all.

Ethel O. Dollins.

RE-DIRECT EXAMINATION.

By Mr. Barrick:

Q. Mrs. Dollins, Mr. Belt on one occasion referred to "his note" meaning Bill, your son's. Didn't you testify that you signed the note to finance the automobile?

A. Yes.

Q. Did Bill sign it?

A. Yes.

Q. Bill signed the note?

A. Uh, huh. Just the bill of sale.

Q. I am talking about—wasn't there another paper?

A. I think it was just one. I am not sure.

Q. You also said that you made a payment in September '57, I believe?

A. Yes.

Q. Did you continue to pay for this automobile after the accident?

A. My son did. I think he paid on up until January and then he got behind.

Q. Let's go through it again. You never—

page 40 } Mr. Belt: I object to that, Your Honor.

The Court: I don't think you should go through that again.

Mr. Barrick: I don't mean to, Your Honor. I am just trying to establish one or two points that perhaps would apply to the case.

Q. Who had the ultimate responsibility for paying for that car, Mrs. Dollins?

A. I did. My son was supposed to pay for it, but if he failed to pay for it then it would have been up to me.

Q. Did you say that you never received any insurance policy?

A. No insurance policy. That's why I couldn't understand when they said they picked the policy up. They didn't pick it up from me because I never had one.

RE-CROSS EXAMINATION.

By Mr. Belt:

Q. Mrs. Dollins, I understood you to tell Mr. Barrick that you made some payments after the car was wrecked and made one in September. I thought you told me that you gave

the money to your son for the September payment. You said it, isn't that correct?

A. That's what I mean when I said I made the payment. I gave him the money. I did not go myself.

page 41 } Q. You never made any payments?

A. I never personally went in to Charlottesville Motors after the day of the purchase of the car until now.

Q. You never made any payments yourself either before or after the accident?

A. No.

Q. Was there any discussion between you and Charlottesville Motors as to whether they would keep the policy, or whether they would send it on to you?

A. No.

Q. They were just supposed to represent you through that first year and keep the insurance on it?

Mr. Walker: Your Honor, I object. I don't see anything in the re-direct that would give rise to re-cross examination of the nature of these last questions.

Mr. Belt: What?

The Court: He is objecting to the improper re-cross examination. I think that a statement was made on the re-direct about keeping the policy and so forth. I think that was a proper question.

Mr. Belt: No further questions.

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* * * * *

G. BENTON PATTERSON,

a witness called by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Belt:

Q. You are Mr. G. Benton Patterson?

A. That is correct.

Q. And in April, 1957, I believe you ran the

page 43 } Benton Patterson Insurance Service?

A. Yes.

G. Benton Patterson.

Q. And represented, among other companies, the Harleysville Mutual Insurance Company?

A. That's correct.

Q. Did you place a collision insurance policy in force about the 12th of April, 1957 on an automobile with the title in the name of Ethel O. Dollins?

A. I did. That's correct.

Q. At whose request did you place this insurance?

A. The call came from the Charlottesville Motors, which is usual in case—for an automobile dealer sometimes to place the insurance, collision insurance.

Q. Did you have any contact with Mrs. Ethel O. Dollins?

A. A. Not that I could ever recollect. I don't believe I ever had with this insurance.

Q. Would you turn around and look at the lady in the aisle here and see if you know her?

A. I don't believe I know Mrs. Dollins.

Q. Did you ever have any contact with anyone with regard to insuring the Dollins' automobile except Charlottesville Motors?

A. Repeat that again—I am sorry.

Q. Did you ever have any contact with Mrs.
page 44 } Dollins or any of her family or anyone else except
Charlottesville Motors—

A. No, I don't believe so.

Q. —Wait just a second.—with regard to the collision insurance on the Dollins' automobile?

A. No, I don't believe so. Charlottesville Motors is all.

Q. Tell the Court and the Jury, Mr. Patterson what happened when you notified your company that you had placed a collision policy on this automobile.

A. When I first placed the insurance policy in Ethel O. Dollins' name the insurance company requested cancelation. That was the first policy we put in force on April 12, 1957.

Q. That was with Harleysville Mutual Insurance Company?

A. That was Harleysville Mutual Insurance Company.

Q. When they requested cancelation did you notify anyone that it had been canceled?

A. Yes, we went, as is our usual procedure, to the Charlottesville Motors to pick up the policy, or to at least notify them that it was going to be canceled, since they had called us to place the insurance we knew of their interest.

Q. Did you notify Charlottesville Motors that their policy

G. Benton Patterson.

had been canceled and pick it up?

page 45 } A. Yes, and the company also sent notice and it was picked up and canceled.

Q. They sent notice to whom?

A. Written in to Ethel O. Dollins.

Q. They sent notice to Ethel O. Dollins?

A. Yes.

Q. You are looking at your file, I believe?

A. That's correct.

Q. When was that notice sent?

A. April—May 13th.

Q. To what address?

A. It was sent to Charlottesville Motors—one was sent to Charlottesville Motors and the other copy to Ethel O. Dollins.

Q. What address did they send the notice to Ethel O. Dollins?

A. According to this, Mr. Belt, we have the name of the insured and the policy number, which is a copy, and of course it doesn't have her address here on this.

Q. You don't know then to what address they sent it?

A. No, I can only assume.

Q. Had your company ever been advised of any other address of Ethel O. Dollins than Keswick, Virginia?

A. None that I know of, no.

Q. So they wouldn't have any other address to

page 46 } which to send it?

A. No, sir.

Q. Now, Mr. Patterson, when you advised Charlottesville Motors that you had to cancel out the policy of Harleysville what did they ask you to do?

A. Well, we have at times, which is customary, when we try sometimes to place with another company, which we did. They asked us to try to place it, or hold on to the insurance.

Q. Did you try to do that?

A. I did.

Q. With what company?

A. American Fire and Casualty.

Q. What happened to that policy?

A. Well, they canceled it, too.

Q. Did you so notify Charlottesville Motors?

A. Yes, we went through the same procedure as we did on the first policy.

Q. Did you pick up the policy.

G. Benton Patterson.

A. Picked up the policy and returned it to the insurance company.

Q. Did they make any request to you at that time to try to place the insurance somewhere else?

A. Yes, along about that time I was moving and moved into my new office, and I can't recall—it seems to me it was a year ago—we either talked on the telephone or it
page 47 } was conversation at the time when I was up there, just to try to place it in another company. Of course, at that time I had forgotten that we have previously had it in Harleysville in the beginning and that that had been canceled.

Q. So, did you replace it with Harleysville?

A. Yes, I did.

Q. Is that the policy being sued on here?

A. That's right. That is the policy that is in question.

Q. What date was that policy put in force?

A. That policy was put in force on July 15, 1957.

Q. And I believe you stated that was at the request of Charlottesville Motors?

A. Well, I would say that because when I say request, they wanted to try to hold on to the coverage and I in turn tried to.

Q. They didn't specify what company but they did ask you to place the insurance coverage?

A. No, they didn't request any particular company, no. They don't usually do that.

Q. But they did ask you to place the coverage?

A. If we could continue or place it somewhere.

Q. Now, Mr. Patterson, what happened when the company was notified that they had again been subjected to this business?

page 48 } A. They wrote us a letter and said that would call our attention to the fact that the policy had once been in Harleysville and they called the policy back for spoilization, in other words, it was being spoiled or voided.

Q. What did you do then?

A. Well, we again picked up the policy and clipped it to the notices that the company had given us and attached it to the letter and sent it back to the company.

By The Court:

Q. What was the approximate date when they wrote that

they had previously insured this automobile and wanted to cancel this one?

A. I am going to have to try to say that, as well as my memory is—that was a year ago. That was approximately, as far as I can recall—I should have kept the letter they sent me but, in turn, being a spoiled policy, I clipped it to the notice they sent and sent that back, so I didn't have the exact date, you know, for my own records, but I would say sometime between July 15th when it was put in force and very soon after that they wrote us a letter saying it was spoiled, which was the 1st of August or thereabouts. I couldn't say exactly.

Mr. Belt: I think I can clear that up for the Court.

By Mr. Belt: (Continuing)

Q. Mr. Patterson, did you receive the original page 49 } of this which is a photostatic copy?

A. Yes, that's correct, that's the copy of the letter which I received from the insurance company.

Q. And is that the letter which instructed you to cancel the policy and to pick it up as soon as possible?

A. That's correct.

Q. What is the date on it, please?

A. July 26th.

Q. What year?

A. 1957.

Mr. Belt: I don't care to put this in evidence, but if the Court would like to see it—

Q. Now, when you got this letter did you advise Charlottesville Motors that the Dollins' policy was being canceled again?

A. Yes, and in canceling this policy I knew that the policy with American Fire and Casualty had been canceled and I didn't attempt to place it anywhere else and I told them that there wouldn't be any coverage.

Q. What I am asking you is about this particular policy that you wrote on July 15th. When the company wrote you on the 26th to spoil it did you notify Charlottesville Motors that the Dollins' insurance policy was being canceled?

A. Yes, we notified them that there was going to be no coverage, that the Harleysville Casualty was going page 50 } to pick up the policy.

Q. Did you pick up the policy?

G. Benton Patterson.

A. The policy was picked up.

Q. Who had it?

A. That one was also at the Charlottesville Motors Company.

Q. Did they relinquish it to you without objecting or what?

A. As well as I recall—Oh, yes, they gave it to me without any objection. I can't recall whether they put it in the mail or I picked it up because sometimes I pick up policies and sometimes the companies just mail them to me. I couldn't recall how it was done, but it was picked up.

Q. Mr. Patterson, did Harleysville Mutual Insurance Company ever receive any premium, any part of a premium, or any payment for either one of these policies?

A. As well as I can remember, we had never, of course, collected a premium for the first policy which was canceled—

Q. Did or did not collect on the policies?

A. I am going back—because actually what it is, that first check that Charlottesville Motors had was the same money for premium which we still hadn't returned because then we placed with American Fire. We still held on to the premium trying to place it.

page 51 } By The Court:

Q. You did collect the premium originally?

A. That's correct, that's right. And it wasn't returned and then they paid us another premium for the American Fire—the same premium was held, which is usually customary. And then after the American Fire and Casualty Company policy was canceled we in turn sent the check back to Charlotestville Motors.

By Mr. Belt: (Continuing)

Q. I believe we are a little bit confused. Who paid you the premium originally?

A. Charlottesville Motors.

Q. On the first policy of Harleysville Mutual Insurance Company?

A. That's correct.

Q. Was that ever sent to Harleysville Mutual Insurance Company?

A. No, because that policy, as I recall, was canceled flat.

Q. Your agency then canceled the first Harleysville Policy?

A. Yes.

Q. When they canceled the second policy with Harleysville

G. Benton Patterson.

Mutual Insurance Company what did you do with the premium you then had in hand to apply to insurance?

page 52 } A. Then I sent it back to Charlottesville Motors Company.

Q. You sent it back to Charlottesville Motors?

A. Yes, sure.

Q. Did your agency get any benefit out of either one of the policies that you wrote for Harleysville Mutual Insurance Company?

A. Not for Harleysville Mutual, no.

Q. Did Harleysville Mutual themselves ever get any benefit whatsoever out of it?

A. I would assume not, because we still had the premium which was written for American Fire.

Q. You didn't send them any money on either of the policies?

A. No.

Q. And you just got your money from Charlottesville Motors and you returned the premium to Charlottesville Motors?

A. That's correct.

Q. When you notified Charlottesville Motors that this last policy was canceled and got it back in your possession or picked it up, can you give us the date of that, the approximate date?

A. Of the Harleysville policy?

Q. No, the date when you notified Charlottesville Motors that the Harleysville policy on the Dollins' car had

page 53 } been canceled?

A. Well, from memory I'll try to say it must have been approximately after this letter from the company, because they request cancelation or, in this case they said spoiled policy—of course, I am liable to the company—I would have to figure it out—

Q. Well, just approximate.

A. I couldn't say exactly what day it was.

Q. Can you tell us approximately what day it was you notified them?

A. I would say it was between the date we wrote it and approximately the first part of August.

Q. Would you be able to say with certainty or not that it was before the 29th of August?

A. Yes, I am quite sure it was before the 29th of August.

Q. Can you say whether it was before the 15th of August?

G. Benton Patterson.

A. I recall the first part of August, but it is difficult to actually say.

Q. Do your records show when the policy was received by the insurance company, Harleysville Mutual, after you returned it to them?

A. I believe it was August 13th. That is written here in pencil on the daily.

page 54 } Mr. Walker: What was the question, Your Honor, for which that answer was given?

Mr. Belt: The question was, do his records show when the Harleysville Mutual received the policy when he picked it up and sent it back to them.

Mr. Walker: The answer was August 13th?

Mr. Belt: August 13th.

A. It is here in pencil in my secretary's writing, August 13th.

Q. '57?

A. '57.

Mr. Belt: Your witness, Mr. Walker.

CROSS EXAMINATION.

By Mr. Walker:

Q. Mr. Patterson, you have been engaged in the insurance business here in Charlottesville for how long?

A. Since 1946, January.

Q. I think your agency has another name now from what it did at this time, does it not?

A. That's correct.

Q. It is Patterson-Hjorth Company now.

A. Yes.

page 55 } Q. Mr. Patterson, you are familiar with the insurance business from the standpoint of a licensed agent, license of insurance?

A. Yes.

Q. When does a policy of insurance become effective as far as coverage is concerned, when you write it or when the company approves it?

A. It becomes effective when we write it, that is, an agent of the company.

Q. And it remains in effect until what period, sir?

G. Benton Patterson.

A. Well, until the insured cancels or until the insurance company cancels the policy.

Q. I take it that being familiar with the insurance business that you mean cancelation as provided by law, is that correct?

A. Well, I assume I have to say that is correct, yes, sir.

Q. Now, Mr. Patterson, you testified, of course, that there were three separate insurance policies put in force by you and on all three the companies did not want to take the risk and took steps to cancel the policies. Now, I take it, that on none of these three did you ever personally contact Mrs. Ethel O. Dollins?

A. Not that I can recall, to be honest, that I can remember.

Q. In other words, you stated earlier that you
page 56 } had had no personal contact with her, isn't that correct?

A. That is correct, as far as I can remember.

Q. Now, on each of these occasion, however, I believe you did contact Charlottesville Motors?

A. Yes, my relations were with the Charlottesville Motors.

Q. Now, do you know whether this was done in writing on each occasion, or by person, or by telephone, or in what manner?

A. Do you mean on the first cancelation, or on all three?

Q. On the first cancelation, how was that contact made?

A. Well now, I usually do this, and I assume that this—I usually always try to call the motor companies and tell them that the policy will probably be canceled, or is in the process of being canceled, and they can either plan to replace, you know—This one was the first one and it was canceled by notice to the Charlottesville Motors, according to this copy, and also a copy to the insured, canceled flat.

Q. That was sent by the cmpany?

A. That's correct.

Q. What action did you take at that time—any particular action? Did you yourself contact Charlottesville Motors?

A. Yes, I was in contact with them as far as
page 57 } this policy is concerned. I either went up there or telephoned them. I either used to go up and deliver the policy, or sometime pick up the policies—which we have done on other occasions.

Q. Now, in this connection, the papers in your file which you have used to refer to to refresh your memory, that is not something that you wrote?

A. No.

G. Benton Patterson.

Q. It is a copy of something that was written to you—is it an original of a letter written to you or a copy of a letter written to you?

A. These are all copies of letters written by the insurance company.

Q. And does your file indicate that the insurance company did write a letter to Ethel O. Dollins, as well as to Charlottesville Motors on this first policy?

A. On this first policy.

Q. Did you receive copies on the second policy?

A. The second policy I picked up and we have a copy of that letter whereby they requested me to pick up the policy. They would rather do that than try to cancel, sometimes. So, I picked up the second policy and we have that copy of our letter where we returned the copy. Of course, the Charlottesville Motors is aware of that policy, which is the
page 58 } American Fire and Casualty.

Q. But there is no copy of any letter addressed to Mrs. Ethel O. Dollins, either written by you or by the company, is there, in relation to the second policy of Harleysville Mutual?

A. No, there is not—not that I have here in the file.

Q. As far as your records are concerned then the only direct contact that Harleysville Mutual Insurance Company had with Charlottesville Motors pertaining to the first contract? On the second contract you went there yourself and the company didn't write a letter?

A. That is correct. I just picked up the policy rather than have a cancelation on it.

Q. And on the American Fire and Casualty Company policy you also contacted Charlottesville Motors either in writing, or in person, or by telephone?

A. I am sorry, I thought that's what you were talking about—the second policy. I am referring to the American Fire and Cascalty.

Q. I am talking about the second policy of Harleysville Mutual.

A. I beg your pardon.

Q. You also picked up that policy yourself, did you not?

A. The Harleysville Mutual Policy? The sec-
page 59 } ond one?

Q. Yes.

A. That was picked up at the request of the Harleysville Insurance Company.

G. Benton Patterson.

Q. But do you have any copies in your file similar to those copies you originally referred to indicating that they had sent notice to Mrs. Dollins or to Charlottesville Motors?

A. No, the only thing that I have, which I regret that I did not keep—I clipped the original but the copy—

Q. Well, we have seen that. That is all right. But as far as the second Harleysville Mutual policy is concerned, you have no knowledge that any direct communication was had between the company and either Charlottesville Motors or the insured?

A. No, due to the fact that they deemed legally by that that the policy was spoiled and void.

Q. That was their opinion on the law, I presume?

A. That's right.

Q. Now, Mr. Patterson, the point that I wanted to make clear to you is, that on each of these three policies, whether it be Harleysville or American Fire, at some time or other in the proceedings you did contact Charlottesville Motors?

A. Yes, I had been contacting Charlottesville Motors ever since it started—I mean, when they originally

page 60 } placed the insurance.

Q. Now, you stated on direct examination that your records would indicate that the second Harleysville policy was probably returned to the insurance company somewhere around the 13th of August, is that correct?

A. That would have to be the only way that I can recollect, due to the fact that there is penciled writing here and due to the fact that the company had deemed the policy void and we clipped the policy to the original letter and sent it back; and then we always try to write on the—for our records in a case like that—the date that it was sent in.

Q. Well then, I take it it would be accurate to state that the contact that you had with Charlottesville Motors as to that second Harleysville policy, that is, informing them of the cancelation, must have occurred between July 15th and August 13th?

A. I would assume that is correct, because it was sent back on August 13th.

Q. It is not unlikely, I take it, Mr. Patterson, that that contact could have happened—I am not saying it did—but that contact could have happened with Charlottesville Motors on the 12th of August, or the 11th, or it could have happened earlier than that, of course?

A. I can't say, to be honest, because I can't re-
page 61 } member back one year, you know.
Q. It is possible, isn't it?
A. It is possible, yes.
Q. It is highly improbable, of course, that it occurred after the 13th of August?
A. Not according to our records.
Q. Do your records indicate, Mr. Patterson, as to the first Harleysville policy, the one placed in force on April 12th, that you received a letter from the insurance company around the 2nd of May—
A. Uh, huh.
Q. —to to the effect that they would not able to accept this risk?
A. Yes.
Q. And also there is a copy in your files of a letter you sent to the company on the 9th of May, whereby you returned the policy?
A. That's correct.
Q. Now, where did you obtain this policy to return it, from the Charlottesville Motors?
A. Yes, from Charlottesville Motors. There was a lien on the policy, the original policy.
Q. But then it wasn't until May 13th that you had the letter written by the insurance company—you have copies
indicating that they wrote notices on May 13th
page 62 } addressed to Charlottesville Motors and to Ethel
O. Dollins?
A. May 13th, right.

* * * * *

THELMA DEARBORN,
a witness called by and on behalf of the defendant, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Belt:
Q. Will you state your name?
A. Thelma Dearborn.
Q. Do you work for Charlottesville Motors?
A. Yes, I do.
Q. What is your position?
A. Office manager.

Thelma Dearborn.

Q. How long have you had the position of office manager with Charlottesville Motors, Mrs. Dearborn?
A. Approximately three years.
Q. You were working there then in April of 1957?
A. Yes, sir.
Q. Still working there?
A. Yes, sir.
page 63 } Q. Do you know William Curtis Dollins?
A. Yes.
Q. Do you know his father?
A. I have seen him on occasions.
Q. Do you know Ethel O. Dollins?
A. No.
Q. Mrs. Dearborn, did you have any part in the sale of the automobile by Charlottesville Motors to Mrs. Ethel O. Dollins and William C. Dollins on the 12th of April, 1957?
A. You said, did I have any part?
Q. Yes, did you know anything about it?
A. No, sir, nothing but billing. I do not close the deals myself.
Q. Do you know anything about Charlottesville Motors getting Benton Patterson Insurance Agency to put collision coverage on the Dollins' automobile?
A. Yes.
Q. They did do that?
A. Yes.
Q. Charlottesville Motors?
A. Yes.
Q. And do you know anything about the *cancelation* of the first policy, the second policy, and so forth?
A. I don't recall dates now. I just know that some policies were canceled.
page 64 } Q. Do you know anything about the policy that was written in Harleysville Mutual Insurance Company on the 15th of July?
A. Nothing other than we received the policy.
Q. You received the policy?
A. Yes.
Q. Can you tell the Jury anything about the cancelation of that particular policy?
A. A lady from Benton Patterson's office called Charlottesville Motors saying that the policy was being canceled; and then I wrote a postcard to Mrs. Ethel O. Dollins as lien holder, to protect the insured, Mrs. Dollins, and also to protect us as lien holder, asking her to come in as we had been

notified that the policy was being canceled and to come in and make arrangements.

Q. Was that card mailed to Mrs. Dollins?

A. Yes.

Q. To Mrs. Ethel O. Dollins?

A. Yes.

Q. To what address, Mrs. Dearborn?

A. Box 133, Keswick.

Q. And on what date?

A. 8/1/57.

Q. You sent that card yourself?

A. Yes, sir.

page 65 } Q. On August 1st, 1957?

A. Yes, sir.

Q. Mrs. Dearborn, had Benton Patterson picked up the policy at that time?

A. No.

Q. When did he pick it up?

A. I do not remember. I know it was a couple or a few days in between there. I don't remember the date.

Q. Do you know when the accident happened?

A. No, sir.

Q. Would you say that he picked up the policy prior to the 29th of August, 1957?

A. I just can't say about dates. I don't remember incidents too long.

Q. But Charlottesville Motors had been notified of the cancelation of the policy and that is the reason you wrote that card to Mrs. Dollins, isn't that correct?

A. Yes. We were called, saying that the policy was being canceled, and I wrote the card.

Q. Did Mrs. Dollins come in in answer to that card and to see what had to be done about it?

A. No, sir.

Q. Did William Curtis Dollins come in in answer to the card?

A. Yes.

page 66 } Q. Did his father come with him?

A. Not the first time. The boy came in first and talked to us, Mr. Gilmer and myself; and then we asked him—

Q. Just a minute. When he was talking to you at that time—this was before the accident?

A. Yes.

Thelma Dearborn.

Q. Did he state that he had seen the card that was sent to his mother?

A. Yes, and he had come in to see about the insurance, to see what he could do about it.

Q. Did he say where he saw the card?

A. No.

Q. Did he say whether his mother had seen it?

A. No.

Q. It had, however, been delivered, according to him?

A. Yes.

Q. How about the father? Did he say anything about him having seen it?

A. No.

Q. The first time the boy came in he didn't have his father with him?

A. No.

Q. What did you advise him at that time?

page 67 } A. To bring his father with him and to make some arrangement about the insurance policy. And they were supposed to come in at a later date.

Q. Did he, in response to that information, bring his father with him later?

A. Yes.

Q. Was that before the accident?

A. Yes.

Q. Were any arrangements made by the father and son?

A. No, he came in and he asked to speak to Mr. Gilmer on a Saturday morning and Mr. Gilmer was out of town.

Mr. Walker: Your Honor, much as I would like to cooperate and let this witness tell all she knows, the law against hearsay evidence is certainly involved here and I don't believe that the discussions of Mr. Dollins and Bill Dollins with Mr. Gilmer or other representatives of the Charlottesville Motor Company ought to come in through this witness. I think that violates the hearsay rule.

Mr. Belt: Your Honor, I think it is entirely relevant for two reasons: first, Mrs. Dollins stated definitely that her son and husband had never been in Charlottesville Motors together. This, of course, is in contradiction of that statement.

page 68 } Also, we are necessarily relying on circumstantial evidence that she received the card which was sent to her; and if members of her household saw it and in response to it came in to do something about it, it is

perfectly logical and perfectly proper for this Jury to consider that fact and determine whether or not she actually did have notice of this insurance being canceled.

The Court: Mr. Belt, as to her testimony about the father and the son coming in, I think that is perfectly admissible, and I overrule Mr. Walker's objection on that point.

As to the statements made by the father or son, that is certainly hearsay evidence, and unless counsel can point out some exceptions to the hearsay rule—

Mr. Belt: Your Honor, I understand exactly what you mean but we, as you know, have the burden of showing that the actual notice was delivered to the residence of Mrs. Dollins. Now, if the son was living there with her and if he saw the card, naturally it was delivered to her residence because it was addressed there, so he places the card

page 69 } at her residence.

And I think it quite proper for the Jury to consider whether or not she had actual notice, rather than coming in and denying it now, sir. Anything that we can do to place that card within her household I think is perfectly sufficient evidence.

The Court: I don't think we can violate the hearsay rule, regardless of what your burden is, unless you can point out some exceptions, Mr. Belt. It seems to me that that is a statement of this witness as to what the Dollins boy said, and it would be hearsay evidence unless you can point out an exception, and I don't see any exception.

Mr. Belt: All right, sir.

The Court: I will sustain Mr. Walker's objection to that part of the testimony.

Mr. Belt: I note an exception to the Court's ruling.

Q. I believe that is all, Mrs. Dearborn.

CROSS EXAMINATION.

By Mr. Barrick:

Q. Mrs. Dearborn, are you familiar with the fact

page 70 } that there were two other insurance policies written on this automobile?

A. I knew there were some written, but I don't know the number.

Q. Were you or your office or your company ever notified that other insurance policies had been canceled?

A. We are always called and just told that a policy has

been canceled and that they are writing it with another company. I don't follow that through.

Q. Do you know if Mr. Patterson called your office with respect to any insurance policies on the Dollins' automobile prior to the last Harleysville policy?

A. Yes, I know that some had been canceled.

Q. He notified your office that the insurance policy, prior to the one that Mr. Belt was asking you about, had been canceled by the company?

A. Yes.

Q. What was your procedure with respect to those previous policies?

A. None, because they tell us—he told us then, or the girl that called told us that they were taking care of it by writing with another company, so I didn't do anything.

Q. You stated, I believe, in response to Mr. Belt's question that you sent a card to Mrs. Dollins?

A. That's right.

page 71 } Q. Was it a 2c postcard?

A. Yes.

Q. What kind of record do you have that you sent that, Mrs. Dearborn?

A. A notation in my handwriting on the note sheet, note payment sheet.

Q. Were you present, Mrs. Dearborn,—you stated that Bill Dollins and his father came in to the shop?

A. Yes, sir.

Q. Were you present at that time?

A. Yes, sir. I helped them.

Q. That is all.

RE-DIRECT EXAMINATION.

By Mr. Belt:

Q. Mrs. Dearborn, I don't believe that you all ever had more than one policy at a time on this particular car, did you?

A. No.

Q. And when one was canceled Mr. Patterson would pick it up and later get another one?

A. That's right.

Q. And after the one that you are talking about was canceled there were no more?

A. That's right.
page 72 } Q. No more written?
A. That's right.

* * * * *

MRS. ETHEL O. DOLLINS,
having been previously sworn, called as a rebuttal witness, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Walker:

Q. Mrs. Dollins, I believe that you stated on your direct examination when you were on the stand before, that prior to the accident you never received any notice of any kind from anybody about not having any collision insurance on your automobile?

A. I did not, absolutely not. I did not receive any letter from anybody or any postal card.

Q. Now, I also understand from your direct testimony—as a matter of fact, cross examination by Mr. Belt, that you did learn after the accident—

Mr. Belt: If Your Honor please, we have been
page 73 } over this once or twice—

Mr. Walker: I am trying to lay the groundwork for a question, Your Honor. I will show the Court that it is material. And I am not going ask any more after this question, Your Honor.

The Court: I think Mr. Belt's objection is well taken at this point, Mr. Walker, but on your vouching the record that it is leading up to a proper question I will—

Mr. Belt: The groundwork has been laid, Your Honor. The same thing has been testified to.

Mr. Walker: Well, I won't lay any more grounds, Mr. Belt.

By Mr. Walker: (Continuing)

Q. Mrs. Dollins, how did you come about to learn for the first time that there had been an attempt by the insurance company to cancel your insurance?

A. The first time that I knew that the insurance company was attempting to cancel was the morning after the accident I told Bill to notify the insurance company; and I went to see

a lawyer to find out, to get him to find out what company had our insurance.

Q. And how did you learn that there was some
page 74 } question about—

A. He called up Charlottesville Motors—the lawyer called up Charlottesville Motors and they called back and said the policy had been canceled, and that was the first that I knew.

Q. That was the first that you—

A. And then Bill told me that a postal card was received while I was in the hospital, while I was a hospital patient, but he did not show it to me. I never saw it. Never saw any notification of cancelation whatsoever, and I was under the impression that I was fully insured for collision until the morning after the accident.

Q. Thank you, Mrs. Dollins.

A. Could I say something more? The Court doesn't object?

By the Court:

Q. I couldn't hear you.

A. I say, could I make one statement?

Q. All right, go ahead.

A. I noticed that the witness from Charlottesville Motors said that my husband came in on a Saturday morning. My husband has not been off on Saturday morning since he has been at his present job for three years. It was a Saturday afternoon that I sent him to get liability insurance and he said that the girl was off and there was only one
page 75 } man in there, and—

Mr. Belt: Your Honor, I object to that as hearsay.

By the Court:

Q. Mrs. Dollins, you must not quote what your husband told you.

A. I just mean it was a Saturday afternoon that he went—

Q. That is all right, but you cannot tell what he told you about the girl not being there and so forth.

Mr. Walker: Your witness, Mr. Belt.

Ethel O. Dollins.

CROSS EXAMINATION.

By Mr. Belt:

Q. Mrs. Dollins, where did your husband work during the last three years?

A. He works for L. R. Massie.

Q. Where?

A. Keswick.

Q. Were you on the job with him?

A. No.

Q. You just assume that he was working?

A. He left every morning at 7:00 and was brought back at 12:00 on Saturdays.

Q. In the meanwhile you don't know where he
page 76 } was?

A. No.

Q. So you don't know that he didn't go there on Saturday morning, but I think that is irrelevant.

Tell me this. On the morning after the accident when you heard about it, the first thing that Bill told you when you mentioned insurance was that it had been canceled, wasn't it?

A. Yes, Bill did.

Q. So he knew it before the accident?

A. He probably did, yes.

Q. And he told you that you had received a card at your home then, saying that the insurance had been canceled, from Charlottesville Motors?

A. He got the card, but I did not receive it, I did not see it.

Q. It was addressed to you, wasn't it?

A. It was addressed to me I imagine. All the mail we get from Charlottesville Motors—

Q. What did your son do with it?

A. He put it in the car pocket, I think—I don't know what he did with it. But all the mail that comes to us from Charlottesville Motors is addressed to W. C. and Ethel Dollins—all of the bills and all of the mail that has ever been there from Charlottesville Motors is addressed to W. C. and Ethel Dollins.

page 77 } Q. W. C. is your son?

A. That's right.

Q. Did he tell you how long before the accident happened that he saw that card?

Ethel O. Dollins.

A. He told me that he got that card the 1st of July, sometime during the first of July.

Q. Before the policy was written?

Mr. Walker: I object to that, Your Honor. That is a very misleading question to the witness. Mr. Belt knows that there were two policies of insurance in force here. It is a very misleading question.

Mr. Belt: We are talking about the policy we are being sued on, and that policy was written on July 15th.

The Court: I overrule the objection. I think it is a proper question. Mr. Walker, you may have an opportunity to ask some other questions.

By Mr. Belt: (Continuing)

Q. This policy wasn't written the first of July, Mrs. Dollins. Do you remember when he told you the card came?

A. If the card had of come between the 23rd of July and the 4th of August I would have received it myself, because I go to the mail box and get the mail. I was

page 78 } home from the 23rd of July until the 4th of August.

Q. The 4th of August?

A. Yes.

Q. Did you go to the hospital then?

A. I was in the hospital from the first day of June until the 23rd of July, and my son said that card definitely came while I was in the hospital. And he didn't tell me about it because I was in the hospital.

Q. It was some time before the accident that you came home?

A. Yes, it was before the accident.

Q. That is all. Thank you, Mrs. Dollins.

Mr. Walker: No questions.

* * * * *

page 105 }

* * * * *

Mr. Walker, can we stipulate that a copy of the policy be put in the record? Certainly, you will need it to sustain

your contention on cancelation. I think it would be much clearer to the Court of Appeals.

Mr. Walker: I think it probably ought to go in the record. I wouldn't have stipulated it going in for the Jury because I don't know that they could have seen through it,
page 106 } but I believe from the standpoint of the record that it ought to be a part of the record.

Mr. Belt: Will the Court agree to that?

The Court: Yes, the Court will be happy to agree to that upon stipulation of counsel, that the policy is a part of the record.

Mr. Belt: Counsel for the defendant offers in evidence for the record a sample, or *speciman,* policy of Harleysville Mutual Insurance Company, which it is agreed is identical with the policy issued to Mrs. Ethel O. Dollins on July 15, 1957, with the exception that her name, address, and the general coverage is not herein included, nor the date.

* * * * *

The Court: I think, Gentlemen, if you have the original policy available—I think you have a rather incomplete thing here because this Item I of the Declarations—

Mr. Walker: We don't have that, Your Honor. I think it ought to go in, also, but I don't know who has it.
page 107 } Mr. Belt: We can get the original policy if you think it would be well to do so, and substitute it for the specimen policy in the record. Does that meet with the Court's approval?

The Court: Is that all right with you, Mr. Walker?

Mr. Walker: I think we could save a whole lot of trouble there by simply putting that in, stipulated as we have, that it is the same as the original; and then stipulate further for the record at this time that Ethel O. Dollins was the insured named in Item I of the Declarations. No other question about the Declarations has been raised except as to who was the named insured. The copy that they had showed that.

The Court: I don't know whether it was stipulated, but certainly the representation of both counsel to the Court was that she was the only person who was named in Item I of the Declarations.

Mr. Walker: I think that would make the record complete without going to all that trouble.

The Court: I have initialed it as Defendant's
page 108 } Exhibit No. 1.

Mr. Belt: We are assuming, Your Honor, that the sheet that Mr. Patterson called the Daily was the

Declaration. That I did not notice particularly whether it was so designated in the Declarations, but certainly hers was the only name that I saw that appeared on the policy there.

The Court: In consideration of the original question the Court understood that both counsel stated that the only person named in Item I of the Declarations accompanying the original policy was Mrs. Ethel O. Dollins.

Mr. Belt: That was the only name I saw, but as I said, I didn't look to see if that was specifically designated as Declarations. I don't know that we are calling it by its right name.

The Court: It is up to you Gentlemen, but I don't know that there is any reason to actually put that in, but that was certainly the basis on which the Court considered that preliminary question; and I think that both counsel said that that was the only name in there.

The only thing that the Court can make clear
page 109 } for the record again is that in consideration of
the preliminary question it was with the understanding reached by the Court—that is, he understood from the representation of both counsel for both sides that that was the only name in Item I of the Declarations.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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