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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6393

In the
Supreme Court of Appeals of Virginia
at Richmond

HAWKEYE-SECURITY INSURANCE COMPANY, ASSIGNEE OF WILLIAM HENRY DROUGHN,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6393

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 21st day of April, 1966.

HAWKEYE-SECURITY INSURANCE COMPANY, ASSIGNEE OF WILLIAM HENRY DROUGHN,
Plaintiff in error,

against

GOVERNMENT EMPLOYEES INSURANCE COMPANY,
Defendant in error.

From the Circuit Court of the City of Hampton
Nelson T. Overton, Judge

Upon the petition of Hawkeye-Security Insurance Company, Assignee of William Henry Droughn, a writ of error is awarded it to a judgment rendered by the Circuit Court of the City of Hampton on the 3rd day of November, 1965, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Government Employees Insurance Company was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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ANSWER AND GROUNDS OF DEFENSE

For answer and grounds of defense to the motion for judgment filed against it in this cause, the defendant, Government Employees Insurance Company, sets forth the following:

(1) The defendant is not advised as to the nature and extent of the injuries alleged to have been received by William Henry Droughn; the details with respect to the cause of action alleged to have been brought by William Henry Droughn against Einar Carl Mattson, Jr.; or the judgment alleged to have been awarded in favor of the said William Henry Droughn against Einar Carl Mattson, Jr., and demands strict proof thereof.

(2) The defendant denies the allegations in Paragraphs 4 and 5 of plaintiff's motion for judgment, and affirmatively asserts that the vehicle operated by Einar Carl Mattson, Jr., as alleged in the motion for judgment, was not insured by the defendant.

(3) The defendant denies that the allegations in Paragraph 7 of plaintiff's motion for judgment are correct according to the official records in the Office of the Clerk of this Honorable Court.

(4) The defendant denies the allegation in Paragraph 6 of plaintiff's motion for judgment.

(5) The defendant denies the allegation in Paragraph 8 of plaintiff's motion for judgment.

page 8] (6) The defendant is not advised as to the extent of the damages alleged to have been sustained by the plaintiff and demands strict proof.

(7) The defendant will rely upon any and all defenses which may develop in this case and any and all defenses

which may be assigned at or before trial or be justified by the evidence upon trial.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY
By L. ELDON JAMES
Counsel

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Filed 1965 May 20 PM 1:54

C. M. GIBSON, Clerk
CAROLYN GIBSON

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AMENDED MOTION FOR JUDGMENT

Plaintiff, Hawkeye-Security Insurance Company, Assignee of William Henry Droughn, moves this Honorable Court for judgment against the Defendant, Government Employees Insurance Company, in the sum of TWO THOUSAND AND 00/100 DOLLARS ($2,000.00), which sum is owed to the Plaintiff by the Defendant by reason of the following:

1. That on or about May 18, 1962, William Henry Droughn sustained certain injuries when the vehicle which he was operating collided with a vehicle operated by Einar Carl Mattson, Jr., in the City of Hampton, Virginia.

2. That William Henry Droughn instituted an action at law in the Circuit Court for the City of Hampton, Virginia, against Einar Carl Mattson, Jr., to recover damages for the injuries sustained in the aforesaid accident, alleging negligence on the part of Einar Carl Mattson, Jr.

3. That the aforesaid action at law was subsequently transferred to the Court of Law and Chancery for the City of Hampton, Virginia, and trial of the case on September 22, 1964, resulted in a judgment in favor of William Henry

Droughn against Einar Carl Mattson, Jr., in the sum of $2,000.00.

4. That on May 18, 1962, the vehicle operated by Einar Carl Mattson, Jr. was insured by a certain policy of automobile liability insurance issued by the Defendant to Einar C. Mattson, Sr., the father of Einar Carl Mattson, Jr.

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5. That on May 18, 1962, Einar Carl Mattson, Jr., was operating the aforesaid vehicle with the permission of Einar C. Mattson, Sr., and was therefore an additional insured under the policy issued by the Defendant, and the Defendant is liable to pay any judgment rendered against Einar Carl Mattson, Jr., arising from the operation of the aforesaid vehicle.

6. That the aforesaid judgment has been assigned by William Henry Droughn, for valuable consideration, to the Plaintiff, and the Plaintiff has made demand for payment of said judgment, which demand has been refused by the Defendant.

7. That execution on the aforesaid judgment was issued against Einar Carl Mattson, Jr., and said execution was returned unsatisfied by the City Sergeant for the City of Hampton, Virginia, to the Clerk's Office of the Court of Law and Chancery for the City of Hampton, Virginia, on November 27, 1964.

WHEREFORE, Plaintiff moves this Honorable Court for Judgment against the Defendant in the sum of TWO THOUSAND AND 00/100 DOLLARS ($2,000.00) together with interest thereon at the rate of six percent (6%) from September 22, 1964, and the costs of this action.

HAWKEYE-SECURITY
INSURANCE COMPANY
ASSIGNEE OF WILLIAM
HENRY DROUGN
By PHILLIPS M. DOWDING
Of Counsel

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C. M. GIBSON, Clerk

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This day came the parties to the above entitled action, by their attorneys, to be heard on the merits.

WHEREUPON the parties hereto, both plaintiff and defendant, having waived trial by jury of the issue here enjoined, all matters of law and fact were submitted to the Court for hearing and determination without the intervention of a jury. And the Court having fully heard the evidence and arguments of counsel and having maturely considered of its judgment finds for the defendant.

IT IS THEREFORE ADJUDGED AND ORDERED that the plaintiff recover nothing of the defendant and it is further ADJUDGED and ORDERED that judgment be entered for the defendant against the plaintiff, to which action of the Court the plaintiff by counsel duly excepted.

Enter November 3, 1965
NELSON T. OVERTON
Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Plaintiff, Hawkeye Security Insurance Company, Assignee of William Henry Droughn, hereby gives notice of its intention to appeal the judgment rendered herein by the Circuit Court for the City of Hampton, Virginia, on November 3, 1965, to the Supreme Court of Appeals of Virginia, and makes the following assignments of error:

1. That the judgment of the Circuit Court for the City of Hampton entered herein on November 3, 1965, was contrary to the law and the evidence.

2. That the judgment of the Circuit Court for the City of Hampton entered herein on November 3, 1965, was without evidence to support it.

HAWKEYE SECURITY
INSURANCE COMPANY,
ASSIGNEE OF WILLIAM
HENRY DROUGHN,
By PHILLIPS M. DOWDING
Of Counsel

1965 DEC 28
C. M. GIBSON, Clerk

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Mr. Dowding: All right, if your Honor please, in the interest of time, counsel have agreed upon certain stipulations of facts not in dispute about which no proof will be required. I would like to state those stipulations into the record. It is stipulated and please interrupt me if I am in

page 4] error, as I understand we can agree that on May 18, 1962 William Henry Droughn sustained certain personal injuries when his vehicle was in collision with the vehicle operated by Einar Mattson, Jr. with the permission of the owner, Mr. Mattson, Senior.

Also I understand that thereafter Mr. Droughn filed a motion for judgment in the Circuit Court for the City of Hampton, Virginia against Einar Carl Mattson, Jr., to recover damages for injuries, allegedly due to the negligent operation of this DeSoto driven by Mr. Mattson, Jr. This case was transferred, after the death of Judge Kearney, to the Court of Law and Chancery of this City. It came on for trial on September 22, 1964 and in this action a judgment was obtained in favor of the plaintiff in the case of *Drowghn* vs. *Mattson, Jr.,* in the sum of $2,000.00, together with the cost of the action.

I also understand that we can stipulate that,

page 5] thereafter, judgment was rendered in this case in the amount of $2,000.00 for Mr. Droughn,

which was assigned by him to Hawkeye Security Insurance Company, the plaintiff in this case by written assignment which will be introduced into evidence. Perhaps, to keep the record in chronological order, I should offer it.

Court: Admit the assignment as Plaintiff's Exhibit Number One.

(The assignment was received and marked Plaintiff's Exhibit Number One.)

Mr. Dowding: I understand that we can stipulate that an execution was issued by the Clerk of the Court of Law and Chancery on the judgment; that the execution was returned unsatisfied by the City Sergeant of the City of Hampton to the Clerk's Office of the Court of Law and Chancery on November 26, 1964; and finally, counsel have stipulated, as I understand, a policy of automobile liability insurance was issued by the defendant, Government Employees

page 6] Insurance Company on October 20, 1960 to Einar Carl Mattson, Senior, which policy covered the operation of the DeSoto automobile that was involved in the accident of May 18, 1962, which policy afforded the usual bodily injury and property damage coverage in the limits required by the Code of Virginia and in addition thereto, afforded collision coverage on the 1958 DeSoto automobile. We admit that the defendant maintains that the policy was void. I didn't go beyond those issues.

Court: It is stipulated that the issue involved is the validity of this policy.

Mr. Moore: Yes sir.

Mr. Dowding: All right, sir. I think that is about all we have agreed to.

Court: There are a couple of things I would like to get in the record, after listening to your statement. One is that the case which was tried in the Court of Law and Chancery and resulted in judgment some time in Septem-

page 7] ber, 1964 was transferred from Judge Kearney of the Circuit Court. The record, I think, should show that the Clerk's Office of the Law and Chancery and this Court is the same. This has reference to the statement of execution.

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Einar C. Mattson, Senior

EINAR C. MATTSON, SENIOR,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dowding:

Q. State your name, please?

A. Einar Carl Mattson, Senior.

Q. You are Einar Carl Mattson, Senior, is that correct?

A. Yes sir.

page 8] Q. Your son who operated the — this vehicle when the accident occurred, is Einar Carl Mattson, Junior?

A. Correct.

Q. All right, sir. Now, Mr. Mattson, in October of 1960, did you make application to the Government Employees Insurance Company for a policy of Automobile liability insurance covering the operation of the automobile owned by you?

A. I did.

Q. All right, sir. Where did you obtain the application?

A. Through the mail.

Q. Had you written and requested they send you an application?

A. I got the advertisement from a magazine or I sent an application card to Government Employees Association.

Q. In return, did they send you an application form to complete and return to them?

A. They did.

Q. All right, did you complete and return this?

A. I did.

Q. And subsequently, did they send you, an insurance policy?

A. I received a policy.

page 9] Q. Now, is this the policy sent to you, Mr. Mattson (indicating)?

A. I would say so.

Q. That is the one you turned over to me, is it not?

A. Yes sir.

Q. The only policy you had with Government Employees Insurance Company?

A. Yes sir.

Einar C. Mattson, Senior

Q. We have already agreed this policy was initially issued October 20, 1960. Now, at the time did you pay a premium to the Company?

A. I certainly did.

Q. Now, I hand you next a piece of paper entitled "extension certificate" bearing the name of Government Employees Insurance Company, and ask if this is the renewal certificate or extension certificate which was extended to you by the Company for the period of October 20, 1961 to October 20, 1962?

A. That is correct.

Q. All right, I show you this slip of paper, total premiums, $89.40. Did you pay that premium?

A. I paid installments. I did pay it.

page 10] Q. You say you paid it, all right. Do you recall if you paid the premium when you first obtained it for the first period of one year? If you don't recall —

A. I did pay the premium.

Q. I hand you another piece of paper similar to the one you just identified also entitled the extension certificate bearing Government Employees Insurance Company at the top and ask you if this is the certificate which was sent to you for the policy period of October 20, 1962 to October 20, 1963?

A. It is.

Q. It shows a premium due of $83.35. Did you pay that premium?

A. I did.

Mr. Dowding: If the Court please, I would like to introduce this policy, these two certificates as exhibits.

Court: Any objection?

Mr. Moore: No sir.

Court: All right, gentlemen, the policy will be admitted as Plaintiff's exhibit number two; the extension certificate covering the period of October 20, 1961 to October 20, 1962

page 11] according to notations on its face, admitted as Plaintiff's exhibit number three; and the extension certificate covering from October 20, 1962

to October 20, 1963 is admitted as Plaintiff's exhibit number four. All right.

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By Mr. Dowding:

Q. All right, sir. Now, going back for a moment, Mr. Mattson, to the month of October 1960 when you first applied for this policy. At that time, and during the period thereafter, did any representative of this Government Employees Insurance Company call on you personally or was the application that was submitted to them through the mail the only contact you had with the Company?

A. No sir.

Q. By that you mean the representative did call on you?

A. No sir. No need to.

Q. All right, sir. To sort of clear things up then you had no contact with an agent of Government Employees Insurance Company personally at the time you applied for the policy or any time thereafter, is that correct?

A. Correct.

page 12] Q. Now, in November of 1961, Mr. Mattson, was your vehicle which was covered by this insurance policy involved in an accident?

A. It certainly was.

Q. Where did that accident take place?

A. The main bridge going East in the area of Langley Field.

Q. All right, sir. As a result of that, did you make a claim to the Government Employees Insurance Company for the damages to your automobile under the coverage?

A. Very shortly afterwards.

Q. Was the claim honored by the Company?

A. It was, certainly.

Q. What amount did they pay you for damages to the — your car?

A. Approximately seven hundred some dollars.

Q. Your answer is seven hundred some dollars?

A. Yes sir.

Q. Was the question raised at that time by the company in connection with that claim in regard to the validity of the insurance policy?

Einar C. Mattson, Senior

A. No sir.

Q. Now, after the accident of August 18, 1962, Mr. Mattson, did you make a report of that accident to the Government Employees Insurance Company?

page 13] A. I did.

Q. Now, what person or individual did you contact?

A. The representative, local, Mr. Eldon James.

Q. And do you know whether or not your son also contacted Mr. James?

A. I think he did.

Q. All right, sir. Do you recall approximately how long after the accident that was? Was it a matter of days, weeks or what?

A. That I contacted the representative?

Q. That you contacted Mr. Eldon James, who you have stated was the local representative?

A. I would say in a day or two.

Q. All right, sir. Now, in connection with this August 18, 1962 accident, Mr. Mattson, did you also make a claim to the Government Employees Insurance Company under the collision coverage policy to recover for damages to your automobile?

A. You stated the second wreck my son —

Q. The one of August 18, 1962.

A. I made claim.

Q. Now, what action, if any, did the company take in regard to that claim?

page 14] A. They sent me a check.

Q. All right. Now, do you recall approximately how long after the accident it was that you received this check?

A. I can't quite remember. A period less than ten days.

Q. From whom did you receive that check?

A. Government Employees.

Q. Was it delivered or was it sent through the mail?

A. Sent through the mail.

Q. And did you receive any instructions about the handling of that check at that time?

A. Not immediately.

Einar C. Mattson, Senior

Q. Did you thereafter receive any instructions from the Company?

A. I never got to cash the check.

Q. Yes sir. When was the next time you heard from the Company in connection with this check?

A. I can't quote the exact elapsed time.

Q. Do you recall how you received any instructions about the check?

A. How long after I heard from them I can't tell the elapsed time. I got some matter from them.

Q. Did they come through the mail?

page 15] A. Came through the mail, also a representative too, I think.

Q. Do you recall who that representative was?

A. Mr. James.

Q. How long did you have the check in your possession? It is all right to estimate as to time if you don't know exactly, Mr. Mattson.

A. I'll say a week. According to my memory, I'd say a week.

Q. All right, sir. Just a moment, please. Now, Mr. Mattson, I hand you first a letter bearing date of October 17, 1962 on stationery of Government Employees Insurance Company addressed to you and your son bearing the signature of H. W. Patterson, Claims Examiner, and ask if this is a letter which you received in the regular course of mails? Is that a letter which you received?

A. It is.

Mr. Dowding: All right, we would like to offer this into evidence, if the Court please.

Court: Any objection, gentlemen?

Mr. Moore: No sir.

Court: This letter dated October 17, 1962 is

page 16] admitted as Plaintiff's Exhibit Number Five.

(The letter was received and marked Plaintiff's Exhibit Number Five.)

By Mr. Dowding:

Q. All right, sir. Now, this letter (indicating) in the second paragraph states, "We wish to advise at this time that we

have stopped payment on draft number B740117 payable to E. C. Mattson and Poquoson Motors. Inc. in the amount of $439.46. We ask that you kindly return the original of this draft to the undersigned at this time.'' Did you return this draft referred to in this letter to the Company?

Q. I think I did.

Q. That is the same draft or check that you have previously referred to?

A. Yes sir.

Mr. Dowding: I offer this into evidence.

Court: Any objection to this one? If not, the letter dated November 1, 1962 will be admitted as Plaintiff's Exhibit Number Six.

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By Mr. Dowding:

Q. Now sir, I hand you another letter with the same letterhead bearing date of November 30, 1962 signed by G. T. Jackson, Manager of the Underwriting Department. Is this a letter which you received in the regular course of the mails?

A. It is.

Q. All right, sir.

Mr. Dowding: I would like to offer this one also.

Court: Any objection to this gentlemen? If not, the letter dated November 30, 1962 will be admitted as Plaintiff's Exhibit Number Seven.

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By Mr. Dowding:

Q. Now, I hand you a letter on the same letterhead dated December 7, 1962 bearing the signature of H. W. Patterson, Claims Examiner and again is that a letter which you received in the regular course of the mails?

A. That is correct.
Q. All right, sir.

page 18] Mr. Dowding: I offer this into evidence.

Court: Any objection to this gentlemen? The letted dated December 7, 1962 will be admitted as Plaintiff's Exhibit Number Eight.

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By Mr. Dowding:

Q. Now, Mr. Mattson, one of the letters which was just introduced into evidence, the one dated November 30, 1962, referred to an enclosure being a check for refund of premium which you had paid. Was such a check enclosed with that letter?

A. I think I received a partial premium.

Q. You have a recollection of receiving the check?

A. To the best of my knowledge, yes sir.

Q. Now, Mr. Mattson, do you recall the amount of that check or the approximate amount thereof?

A. I'd say less than a $150.00.

Q. Do you know whether the check equalled or was less than all of the premiums which you have paid —

page 19] which you paid to the Government Employees Insurance Company beginning in October 20, 1960 when you first acquired the policy? Can you say it was more than the premiums paid?

A. It was less, all premiums, all combined.

Q. Just a moment, now. Now sir, until you received the letter — this letter dated October 17, 1962, had you received any communication from this Company or any representative thereof in reference to the validity of the policy or any communication which raised any question about its validity before you received this letter?

A. Which letter is that?

Q. The first letter you received, the one dated October 17th.

A. Well, I think I received a notice from the representative, if I recall.

Q. Which representative are you referring to?

A. Mr. Eldon James.

Einar C. Mattson, Senior

Q. Now, was it by letter or were you contacted by phone or in person?

A. It was in writing.

Q. What was the subject of that letter, if you recall. I take it you do not have it?

A. No sir.

page 20] Q. Let me ask you this, Mr. Mattson. Prior to August 18, 1962, that is the date your son had this accident, had this Company or any representative thereof communicated with you in any way as to the validity of this insurance policy?

A. Immediately after, no.

Q. Before the accident happened?

A. Before my son's accident, no sir.

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CROSS EXAMINATION

By Mr. Moore:

Q. This check that you got sir, was $439.00 and some odd cents?

A. Yes sir.

Q. Do you remember whether or not this came from the office of Eldon James, the agent for the company, or did it come from Washington?

A. I think it came from Eldon James. Which check you talking about? The one of the second accident?

Q. Yes sir.

A. I think —

Mr. Moore: May I see those letters, your Honor?

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By Mr. Moore:

Q. Have you ever had an insurance policy, automobile liability insurance policy with State Farm Mutual Insurance Company?

A. I have.

Q. Purchased from Mr. William J. House, isn't that correct?

A. Correct.

Q. How did the contract with State Farm Insurance Company end?

A. End.

Q. Yes sir.

A. In cancellation; they cancelled.

Q. Did they send written notice?

A. Just sent a notice for no reason.

Q. You never had any reasons. Did they send notice by registered or certified mail the time they would cancel so you could obtain some other insurance?

A. Correct.

Q. After your State Farm Mutual Insurance policy, after this was cancelled, did you take another policy?

A. I had to.

Q. With whom did you take that?

page 22] A. Now —

Q. I will refresh your recollection. Home Indemnity Insurance Company.

A. Yes sir, I got it through Firestone Insurance Company; he was an agent there.

Q. And how did that contract terminate?

A. I think I got insurance with somebody else after I completed paying on the premium.

Q. Then you say you received an application or saw an application and so you made application to Government Employees Insurance Company for automobile liability insurance. Is that correct?

A. Correct.

Q. No representative called on you or anything like that?

A. No sir.

Q. You recall where you got this application?

A. I think I tore it out of a magazine; it comes in a page with perforated lines.

Q. You filled it out; that is done in your own handwriting?

A. Sir?

Q. The application was filled out in your handwriting, was it not?

Einar C. Mattson, Senior

A. Yes sir.

page 23] Q. In that application, do you recall a question as follows: "Has any insurance company including this company ever refused, cancelled, refused to renew or given notice of intention to cancel or refuse any automobile insurance for you or any member of your household?"

Mr. Dowding: Just a moment, before you answer; I object and call for the production of the application. Mr. Moore quoted from the application when actually he was reading from a piece of paper.

Mr. Moore: That is a good copy; if you want that. I can get it.

Mr. Dowding: I assume, your Honor, he's going to introduce both.

Court: I understand he will introduce it.

By Mr. Moore:

Q. At any rate to simplify this, do you remember if such a question was asked?

A. To the preliminary, no such question was on that little card.

Q. After you sent in this little card they mailed you another application; this was a more detailed application was it not?

page 24] A. Correct.

Q. They asked you a number of questions and one of the questions on this detailed application was to the effect has an insurance company ever cancelled your policy before?

A. There was.

Q. No, you just testified State Farm cancelled your policy. Do you recall what year that was, roughly, that State Farm cancelled your policy?

A. I think they say — cancelled; I never did receive a reason.

Court: Do you know what year they cancelled your policy?

A. What year?

Einar C. Mattson, Senior

By Mr. Moore:

Q. What year?

A. I don't recall the year that I applied for State Farm. I carried it approximately, maybe two years I guess, I'm not sure; about the end of two years.

Q. Well, do you have any idea of the time that State Farm cancelled your policy before you applied with the Government Employees Insurance Company? In other words, was it ten years or one year?

A. Well, it was cancelled; gave me no reason. I immediately applied for Government Employees.

page 25] Q. You originally applied with Home Indemnity Insurance Company, didn't you?

A. Maybe it was with Home.

Q. Do you know how long you were with Home Indemnity Insurance Company?

A. One year.

Q. All right, so you then made application for Government Employees Insurance Company?

A. I think there was another before that; wait a minute, you are right.

Q. Roughly a year since the State Farm Insurance policy was cancelled and you took Government Employees?

A. If I can remember; my memory is very poor, I'm sorry.

Q. Getting back to the question on the more detailed application relating to seven, do you recall your answer to that question?

A. No.

Q. You answered that "no." Was that the correct answer?

A. Can I go into detail a little bit?

Court: Yes sir, you can explain the answer.

A. At the time that I made this application, I would say in October, if I remember right, I'm not sure,

page 26] for some reason we had a party around to our house; lots of confusion; I was in the process of making this application and frankly I left it blank for the time being; answered all the other questions and proceeded to sign it. Then, of course, I just said "no" which haste makes waste.

By Mr. Moore:

Q. At any rate, the correct answer would have been "yes?"

A. Correct but —

Q. You knew at that time it should have been "yes?"

Mr. Dowding: Just a minute. You interrupted in the middle of an answer. Answer the last question before you take on this next one.

By Mr. Moore:

Q. You say you debated answering this "no" because you had received a letter of cancellation from State Farm?

A. Simply because State Farm cancelled, State Farm Insurance said so — I wouldn't call it a cancellation. I didn't know why they done it. I would not call it a cancellation.

Q. However, you did get a letter from State Farm stating your insurance was cancelled?

page 27] A. Yes but I didn't have — believe it. I think I should have a reason.

Mr. Moore: I don't have any more questions.

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DOUGLAS R. MAYS,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moore:

Q. State your name, please.

A. Douglas Raymond Mays.

Q. What is your address?

A. Deitrich Plaza, 1717 West 7th Street, Frederick, Maryland.

Douglas R. Mays

Q. And what is your occupation?
A. I'm an underwriter for State Farm Mutual Insurance Company.
page 29] Q. All right, I give you this and ask you —

Mr. Dowding: May I see it?
Mr. Moore: I'm sorry.

(The document was then handed to Mr. Dowding.)

By Mr. Moore:
Q. Is that your signature at the bottom, Douglas Mays, underwriter?
A. Yes sir.
Q. Based on this report can you tell me and tell the Court whether State Farm Mutual Insurance Company issued one E. C. Mattson, or Einar Carl Mattson an insurance policy?
A. Yes sir.
Q. What was the policy number?
A. 2002 - 947 - A26 - 46.

Mr. Dowding: Run through that again.
Mr. Moore: 2002-947-A-26
A. "A" as in "Able"; 46.

By Mr. Moore:
Q. Can you state during what period that policy was in effect?
A. The policy was in effect from January 26, 1959 to August 5, 1959.
page 30] Q. And can you tell whether or not on August 5, 1959, was that policy cancelled?
A. Yes sir.
Q. Was the proper notice given to the insured?
A. Yes, sir.
Q. By what methods was notice given?
A. Registered mail.
Q. And would it be a fair statement to say that the policy was cancelled in writing for general underwriting reasons?
A. Yes sir, it would.

Douglas R. Mays

CROSS EXAMINATION

By Mr. Dowding:

Q. Mr. Mays, I notice you do not have a file with you, is that correct?

A. Yes sir.

Q. I assume that in your capacity as senior underwriter, in the course of a year you have thousands of policies to review?

A. Yes sir.

Q. Do you have an independent personal recollection of this matter other than what is reflected on the document that you have in your hand?

page 31] A. No sir, I do not.

Mr. Dowding: Let me look at that, just a minute. I think that is all I want to ask Mr. Mays.

★ ★ ★ ★ ★

REDIRECT EXAMINATION

By Mr. Moore:

Q. You say you have no independent recollection of this matter?

A. Not other than this paper.

Q. You do handle these files every day?

A. Definitely.

Q. You did make this entry, did you not?

A. Yes sir.

Mr. Moore: Which was made in the normal course of business?

Mr. Dowding: Objection, if the Court please.

page 32] Court: This is your witness and the question is awfully leading.

Mr. Moore: This matter was brought out on Cross Examination. All right. Does the Court have any questions of this witness?

Court: No.

★ ★ ★ ★ ★

GERALD T. JACKSON,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

page 33] By Mr. Moore:
Q. State your name, please.
A. Gerald T. Jackson.

Mr. Dowding: What is the middle initial?
A. "T" as in Thomas.

By Mr. Moore:
Q. Would you give your address?
A. 1109 Old Droveway, Route 2, Baltimore, Maryland.
Q. What is your occupation?
A. Underwriting for Government Employees Insurance Company.
Q. How long have you been with that company?
A. 14 years.
Q. And during those 14 years, could you give us some background as to what work you have done?
A. I started with the underwriting department and then in '55 became assistant underwriting manager and on about 1965 I became the underwriting manager.
Q. And as underwriting manager what are your duties with the company?
A. I'm responsible for the underwriting policies of the company for the respective areas; as manager I have the responsibility in reference to the acceptance of
page 34] new risks and the continued acceptability of policies.
Q. Then your department has the responsibility of deciding whether a person should or should not have a policy issued to them?
A. Yes sir.
Q. Are you familiar with the — a policy that was issued by Government Employees Insurance Company to one Einar

Gerald T. Jackson

Carl Mattson, 334 Chesterfield Road, Hampton, Virginia?
A. Yes sir.
Q. Are you familiar with the application which he filed in that matter?
A. Yes sir.
Q. Do you have a copy of that application in your file?
A. Yes sir, I have.

Mr. Moore: Would you give me the original?

(The document was then handed to Mr. Moore who then handed it to Mr. Dowding for his perusal.)

By Mr. Moore:
Q. Would you read question number seven on that application to the Court?
A. "Has any insurance company, including this
page 35] company ever refused, cancelled, refused to renew or given notice of intention to cancel or refused any automobile insurance for you or any member of your household?"
Q. And what was the answer given to that?
A. "No" sir.
Q. Is there any further writing regarding that number seven?
A. In brackets on that question, ("Give full information on separate sheet.")
Q. Give full information on it?

Mr. Dowding: Was the copy introduced?
Mr. Moore: I'll introduce this later.

By Mr. Moore:
Q. The answer was given to that as "no." Had the answer been "yes" what action would Government Employees Insurance Company have taken on that application?
A. We would have rejected it.

Mr. Dowding: Just a moment, we object to that as too broad as to what general action some one would have taken.

Gerald T. Jackson

By Mr. Moore:

Q. All right, what action would you have
page 36] taken with regard to that application had the answer to that question been "yes" instead of "no?"

A. I would have rejected the application.

Q. You say that had the answer been "yes," that fact would have affected the risk in regards to the insured?

Mr. Dowding: If the Court please —

Court: Mr. Moore, he is your witness. Please phrase your questions so as not to be so leading.

By Mr. Moore:

Q. Why would you have rejected that had the answer been "yes?"

A. Based upon the standards set down and based upon my own experience.

Q. The application would not have met with your standards and the policy would not have been issued?

A. Yes.

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page 37]

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CROSS EXAMINATION

By Mr. Dowding:

Q. You say you have been with the company for 14 or 15 years, Mr. Jackson?

A. Yes sir.

Q. Do you recall if during that period of time of your own knowledge that Government Employees Insurance Company issued anyone a policy of insurance whose policy had been cancelled by another company?

A. Yes sir.

Q. As a matter of fact, Mr. Mattson had
page 38] had two policies with other companies cancelled prior to application with your Company?

Gerald T. Jackson

A. Yes sir.

Q. So the fact of the matter is, Mr. Jackson, the mere fact that an applicant's policy has been cancelled prior to the time he applies to your Company does not determine whether your Company will insure that individual?

A. No sir.

Q. There are many other things that you consider, isn't that true?

A. Yes sir.

Q. Then, as I understood your statement, your answer to the question was if this question had been answered "yes" rather than "no" on the application it would have been rejected, the application, then and there, is that correct?

A. Yes, unless the answer had been elaborated on.

Q. It would have been important as far as you were concerned to determine what that elaboration would entail?

A. The answer and details.

Q. So it is the elaboration if any that determines and acts as a guide as to whether or not you issue the policy rather than the first answer, isn't that true?

page 39] A. Yes sir.

Q. And it is fair to say, Mr. Jackson, there are many reasons as pertain to policies which would have no effect on an insured as a risk, isn't that true?

A. Yes sir.

Q. In this particular case and I want to understand you clearly, you would not have rejected this application simply because the question that you read to the Court was answered "yes." You then go further and look at the reasons if it was so answered?

A. Yes sir.

Q. And you did conduct a further investigation, is that correct?

A. Yes.

Q. So then your statement that you would have rejected the application then and there was not entirely correct, was it?

A. I would assume it would be the case, yes sir.

★ ★ ★ ★ ★

Gerald T. Jackson

REDIRECT EXAMINATION

page 40] By Mr. Moore:

Q. Mr. Jackson, in cases where the answer to the question is "yes," do you all investigate on your own as to whether or not the policy should be issued to the applicant?

A. Yes, and the application then requires an elaboration on this question.

Mr. Dowding: As I understand it, the affirmative answer yes and the elaboration is part of the answer.

By Mr. Moore:

Q. So assuming the answer to the question is "yes" with no elaboration on your application, would the policy, as far as being issued outright, be rejected if the applicant states no reason regarding the reason behind the "yes" answer?

A. Yes.

Q. Assume further that the applicant had a number of insurance policies which had been cancelled, would that not effect the risk?

A. Yes sir, if the applicant did not pay his premium previously many times and his application stated "yes" with an elaboration as to the company, that such and such company cancelled because of non-payment of premium, that would affect the risk.

page 41] Q. Are there any circumstances that you can recall which might have an effect on the policy?

A. If the affirmative answer is based on a cancellation which took place many years ago would not be material at this particular time, this often times is waived; for instance, if the cancellation occurred 15 or 20 years ago.

Q. Then do I assume if within a period of say three to five years there were any cancellations for failure to pay premiums that fact would have an effect on the risk?

A. That would have an effect on the underwriting of a risk and we reject that up to a period of about ten years but actually each case is underwritten on its own merits.

Q. If the company cancelled on the basis of repeated accidents —

A. We would reject such an application of that kind.

Gerald T. Jackson

Q. Have you ever written a policy of that kind?

A. No, that would be a violation of the company policy.

★ ★ ★ ★ ★

page 42] By Mr. Dowding:

Q. Just a few more questions, Mr. Jackson. You didn't mean to suggest to his Honor, did you, that the only policies which you issued in cases where the applicant had previously had cancellation, were in cases where cancellation was due to non payment of premium?

A. No other situations would enter into the issuance of a policy.

Q. Actually, that situation is really an exception, isn't that true?

A. Yes sir.

Q. You stated in an application — the question that we are concerned with, the questions referring to previous cancellation, if that question had been answered "yes" with no elaboration, you could have rejected the application and then you would have questioned the applicant further. In other words, the fact that you have a situation where a policy was cancelled does not automatically mean that your company would refuse to write coverage?

A. That is right.

Q. Isn't it also true, Mr. Jackson, in addition to questioning the applicant further, you sometimes have one of your representatives contact the applicant to investigate on your own, do you not?

A. Yes sir.

page 43] Q. You sometimes use Retail Credit Company for the purpose of conducting an investigation of the application, isn't that correct?

A. Yes sir.

Q. And you put coverage into effect after an investigation of the applicant, in his particular locality, isn't that correct?

A. Yes sir.

★ ★ ★ ★ ★

Gerald T. Jackson

REDIRECT EXAMINATION

By Mr. Moore:

Q. Where there is a "no" answer to question seven, in situations where you received an application, do you make an investigation then or accept it as a "no" answer?

A. It depends on the balance of the application. Where there is no accident, and accident with a no previous cancellation, no violation, then we would not investigate it.

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page 44]

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Court: All right, gentlemen. From the evidence that has been presented, in the form of the answer of Mr. Mattson, the answers of Mr. Mattson in his application for this policy and from the other exhibits submitted, there seems page 45] to be no dispute there was a cancellation of a previous policy and when such fact became known to the defendant, they forwarded a letter to Mr. Mattson, Senior enclosing a full refund of the premium. What happened to that refund I don't know but, at any rate, I find that there was a misrepresentation and that this particular misrepresentation was material and I, therefore, find for the Defendant.

Mr. Dowding: For the record, I wish to note my exception to the ruling of the Court.

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PL. EX. NO. 1

N. T. O., Judge

VIRGINIA: IN THE COURT OF LAW AND CHANCERY FOR THE CITY OF HAMPTON

WILLIAM HENRY DROUGHN, Plaintiff,

v.

EINAR CARL MATTSON, JR., Defendant.

ASSIGNMENT

In consideration of the sum of TWO THOUSAND DOLLARS ($2000.00), cash in hand to me paid by Hawkeye-Security Insurance Company, I hereby assign, setover and transfer to the said Hawkeye-Security Insurance Company all of my right, title and interest in and to a certain judgment rendered in my favor against Einar Carl Mattson, Jr., in the Court of Law and Chancery for the City of Hampton, Virginia, on the 22nd day of September, 1964, in a certain law action then pending in said court under the style of "*William Henry Droughn* v. *Einar Carl Mattson, Jr.*".

GIVEN under my hand this 22nd day of September, 1964.

WILLIAM HENRY DROUGHN

STATE OF VIRGINIA
City of Newport News, to-wit:

SUBSCRIBED and SWORN to before me this 22nd day of September, 1964. My commission expires on the 2nd day of January, 1967.

MIRIAM L. GREEN
Notary Public

PL. EX. NO. 7
N. T. O., Judge

GOVERNMENT EMPLOYEES
Insurance Company
Government Employees Insurance Building
Washington 5, D. C.

Mr. Einar C. Mattson
334 Chesterfield Road
Hampton, Virginia

FILE 4629822

Dear Sir:

The above numbered policy has been referred to the undersigned for attention.

On your application for insurance coverage which you submitted October 19, 1960, you answered "No" to the following question:

"Has any insurance company (including this Company) ever refused, canceled, refused to renew, or given notice of intention to cancel or refuse, any automobile insurance for you or any member of your household?"

Relying on your answer to this question and others on the application, we issued the requested policy.

In the course of our investigation, it has been revealed that State Farm Insurance Company canceled a policy you had with them. In view of this indicated misrepresentation on the application, we hereby declare the captioned policy null and void and of no effect as of its inception date.

Your entire remittance submitted toward the premium payment is enclosed.

Very truly yours,
G. T. JACKSON, Manager
Underwriting Department

GTJ/al
November 30, 1962

POST OFFICE RECEIPT SECURED

★ ★ ★ ★ ★

A Copy — Teste:

H. G. TURNER, Clerk.

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