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IN THE

Supreme Court of Virginia

AT RICHMOND

Rec. No. 731022 & 731025

AETNA CASUALTY & SURETY COMPANY
and
FRED C. WALKER AGENCY, INC.

Appellants

V.

CLARENCE E. LUCAS
and
MILDRED D. LUCAS

Appellees

APPENDIX TO APPELLANTS' BRIEF

Henry H. Whiting
KUYKENDALL, WHITING & COSTELLO
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Counsel for Appellants

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IN THE

SUPREME COURT OF VIRGINIA

AETNA CASUALTY & SURETY COMPANY
and
FRED C. WALKER AGENCY, INC.

Appellants

v. Record No. 731022

CLARENCE E. LUCAS
and
MILDRED D. LUCAS

Appellees

[1] MOTION FOR JUDGMENT

The undersigned hereby moves the Circuit Court of Page County, Virginia for a judgment against you in the sum of Twelve Thousand Eight Hundred Twenty Nine Dollars and Forty Cents ($12,829.40) together with interest thereon from November 17, 1971 and the cost of this action, all of which is justly due from you to the undersigned because of a breach of contract by you and your failure to insure as follows, to-wit:

That heretofore, the undersigned had a Homeowners Insurance Policy (Policy No. 53 HP 575533 PG) with the Aetna Casualty & Surety Company through the Fred C. Walker Agency, Inc., General Agent for said Company, said policy dated October 9, 1968 and which as of October 6, 1971 was to expire October 9, 1971, said policy provided the following coverage:

A. Dwelling $10,000.00

B. Appurtenant Private Structures $1,000.00

C. Unscheduled Personal Property $4,000.00

D. Additional Living Expense $2,000.00, a copy of which said policy is filed herewith to be treated as a part hereof, marked "Exhibit A" for Plaintiffs.

That on October 6, 1971, in a telephone conversation with an authorized agent of the Fred C. Walker Agency, Inc., the undersigned requested that the Aetna Homeowners Policy be renewed, the said agent aforesaid agreed to a renewal of said policy and the undersigned was requested to mail to the said Walker Agency a sufficient sum for the payment of the renewal premium on said policy for one year. That a United States Postal Money Order for the sum of $48.40 was, on the 6th day of October, 1971, mailed to the Fred C. Walker Agency, Inc., by the undersigned as agreed, and said money order was, on October 9, 1971 deposited to the account of the Fred C. Walker Agency, Inc., and which will appear from a copy of said United States Postal Money Order attached hereto and to be treated as a part hereof, marked "Exhibit B" for Plaintiffs.

That on November 19, 1971 the dwelling owned by the undersigned and to be covered by said renewal policy, was damaged by fire to the extent of $7,240.00; the personal property in said dwelling was totally destroyed in the amount of $4,571.90; and in addition thereto the undersigned has suffered a loss of living expense as of

this date (five months) to the extent of $1,017.50 for a total of $12,829.40; and said living expense loss continues at the rate of $200.00 per month.

The undersigned immediately reported the fire loss to the Fred C. Walker Agency, Inc., at Luray, Virginia, and was told that the Aetna Casualty & Surety Company Policy had not been renewed in accordance with the renewal agreement of October 6, 1971, and which renewal premium was paid for one year by the undersigned as aforesaid.

WHEREOF judgment against you in the sum of Twelve Thousand Eight Hundred Twenty Nine Dollars and Forty Cents ($12,829.40) plus ($200.00 per month for each month from this date until paid) together with interest from November 19, 1971 and the cost is asked because of your breach of contract and your failure to insure as aforesaid.

CLARENCE E. LUCAS

MILDRED D. LUCAS

By: I. Randolph Dovel
Counsel

[Filed April 24, 1973]

* * *

[6] GROUNDS OF DEFENSE

For grounds of defense to the motion for judgment filed against it, Defendant, the Aetna Casualty & Surety Company answers and says:

1. It denies it owes Plaintiff any sum of money as set forth in the first un-numbered paragraph or that it

was guilty of any breach of contract for failure to insure as set forth in said paragraph.

2. It admits the allegations of the second un-numbered paragraph.

3. It denies the allegations of un-numbered paragraph insofar as any agreement to renew the homeowners policy as alleged, but on the contrary, alleges that the sums paid were paid upon a previously due balance for automobile insurance and the payment was applied by the Defendant, Walker Agency, to that balance, no designation being made upon the money order sent as to how the balance should be applied and the insured, Mildred D. Lucas and Defendant, Walker Agency, agreed that these funds would be applied to the payment of the first installment due on the automobile insurance policy due April 5, 1971 in the sum of $48.40.

4. Defendant is not advised as to the nature and extent of the loss set forth in the fourth un-numbered paragraph and, therefore, calls for strict proof thereof.

5. Defendant admits that the loss was reported and Plaintiff was again told the policy had not been renewed and Defendant again denies that the renewal premium was paid for a year by the Plaintiff as claimed in the fifth un-numbered paragraph.

6. Defendant denies that Plaintiff is entitled to a judgment against it in any sum.

AETNA CASUALTY & SURETY
COMPANY

By: Henry H. Whiting
Counsel

[9]

GROUNDS OF DEFENSE

For Grounds of Defense to the Motion for Judgment filed against it, the defendant, Fred C. Walker Agency, Inc. answers and says as follows:

1. Fred C. Walker Agency, Inc. admits that it is a valid and subsisting Virginia Corporation.

2. The defendant, Fred C. Walker Agency, Inc., denies that it owes the plaintiffs any sum or sums of money as set forth in the plaintiffs' Motion for Judgment.

3. The defendant, Fred C. Walker Agency, Inc., did notify the plaintiff, Mildred D. Lucas, by letter dated September 24, 1971, dispatched through the U. S. Postal system, of its intention not to renew the Homeowners policy upon its expiration date of October 9, 1971.

4. The defendant, Fred C. Walker Agency, Inc. denies that there was in existence a contract of insurance on the dwelling of the plaintiffs on November 19, 1971.

5. The defendant, Fred C. Walker Agency, Inc. denies that there was an oral contract between the plaintiffs and an employee of the defendant to renew the Aetna Casualty & Surety Company Homeowners Policy No. 53 HO 575553 PC, as alleged in the plaintiffs' Motion for Judgment.

6. The defendant, Fred C. Walker Agency, Inc. denies it was under a duty towards the plaintiffs to issue a renewal policy as alleged in the plaintiffs' Motion for Judgment.

7. The defendant, Fred C. Walker Agency, Inc., admits receipt of the sum of $48.40 from the plaintiff and further admits applying it to the overdue automobile insurance premium, the only account due at that time, all as shown on the declaration page of the automobile insurance policy.

8. Defendant denies therefore that the amount of $48.40 had any relationship to a renewal premium for an Aetna Casualty & Surety Company Homeowners policy for one year as alleged by the plaintiffs.

9. The defendant, Fred C. Walker Agency, Inc. admits that plaintiff orally reported the fire loss on the same day it occurred, i. e., on November 19, 1971, during a visit to the office of Fred C. Walker Agency, Inc. in Luray, Virginia, on which occasion the plaintiff also paid the final installment on her automobile insurance policy in the amount of $36.30.

10. That the defendant, Fred C. Walker Agency, Inc., denying it owes the plaintiffs any sum or sums of money whatsoever, further states that it is not aware of the following and calls for strict proof thereof:

a. Title to the real estate involved in this litigation, and if liens encumbering same are in existence; and

b. The nature and extent of the loss claimed by plaintiffs.

* * *

[29] AMENDED GROUNDS OF DEFENSE

For Grounds of Defense to the Motion for Judgment filed against it, the defendant, Fred C. Walker Agency, Inc., answers and says as follows:

1. This defendant denies that the Agency agreement now existing between Fred C. Walker Agency, Inc., and Aetna Casualty & Surety Company, is written and should be interpreted in accordance with the cross-claims allegations as continued in paragraph two of said cross-claim.

2. Defendant, Walker Agency, Inc. denies that there were any limitations on its riding of binders for fire insurance, either oral or written, in accordance with the interpretation put upon said Agency agreement by Aetna Casualty.

3. Walker Agency, Inc. denies that it is liable to the co-defendant, Aetna Casualty by reason of any failure to give notification as alleged in paragraph three of said cross-claim and as set forth in paragraph two of said Agency agreement.

4. The notification to the company as required by said Agency agreement contained in paragraph two of said agreement is not an invalidating requirement, but is read and to be interpreted only as a good business practice, and in no manner, shape or form would invalidate any binder written by the agent, either oral or written, which would permit Aetna Casualty to escape its liability.

5. The defendant, Fred C. Walker Agency, Inc. denies that it is liable to Aetna Casualty and Surety

Company in any manner, shape or form, whatsoever, as alleged in the said cross-claim.

6. That it states the provision alleged by the defendant, Aetna Casualty is void insofar as the three days is concerned for Va. Code Ann. Section 38.1-371 provides that oral binders for insurance may be made and used for a period not exceeding sixty days pending the issuance of the policy; and where the contract between Walker and Aetna are in conflict with the State Code, the State Code must prevail; therefore, it follows that where the loss occurred within sixty days of the date the plaintiff alleged the oral binder was made, i.e. October 6, 1971, then the defendant, Fred C. Walker Agency, Inc., is protected by the provisions of said Code insofar as there could be, will be, or might be, a finding by a court or jury that such an oral binding contract was made and if so, Aetna Casualty & Surety Company should provide the coverage as alleged made by said oral agreement.

7. As heretofore alleged, Fred C. Walker Agency, Inc. was acting as the agent for Aetna Casualty & Surety Company and on the usual principles of agency, the principle is liable for the acts of the agents and all the rights and duties that flow from the said agency.

FRED C. WALKER AGENCY,
INC.

By: Talmage N. Cooley
Counsel

[Filed January 5, 1973]

* * *

[32] GROUNDS OF MOTION TO

SET ASIDE VERDICT - AETNA

1. The verdict was contrary to the law and the evidence and without evidence to support it because:

(a) The evidence showed Mrs. Lucas was to be insured only when she paid the three past-due automobile insurance premiums but the uncontradicted evidence shows that she had not done so prior to the loss and therefore, even under her statement of the contract, it was not yet in force.

(b) The contradictory evidence and the inconsistent positions taken by the Plaintiff prior to the loss cast doubt upon her claim and reasonable men could not have found that the oral contract for insurance was sufficiently proved as required by law.

AETNA CASUALTY & SURETY COMPANY

By: Henry H. Whiting
Counsel

[Filed March 1, 1973]

* * *

[36] GROUNDS OF MOTION TO

SET ASIDE VERDICT - WALKER

The defendant, Fred C. Walker Agency, Inc., by Counsel, heretofore moved to set aside the jury verdict on the grounds same was contrary to the law and the evidence and without evidence to support it and now says in support of same the following:

1. The evidence given in support of the plaintiff by herself and her witnesses is so contradictory and manifestly false as to be unbelievable by reasonable men, and could not form the basis of a jury award.

2. Viewed in a light most favorable to the plaintiff, her evidence provides only the basis for a jury finding of an oral executory contract of insurance renewal; therefore, under Virginia law the contract was not binding and therefore could not be the basis for a jury award.

FRED C. WALKER AGENCY, INC.

By: Talmage N. Cooley
Counsel

[Filed March 7, 1973]

* * *

[40] TRIAL ORDER

On January 16, 1973 came the parties and their respective counsel and also came a civil panel pursuant to the venire facias heretofore issued. The venire was duly sworn, examined, and two venire men being bound subject to objection, two additional venire men added to the panel who were thereupon duly sworn, examined, and men added to panel and the thirteen veniremen were then found free from exception. Whereupon counsel for the plaintiffs and the defendants jointly alternately struck three from the panel leaving seven veniremen who were thereupon duly sworn to well and truly try the issues joined between the parties and a true verdict to render according to the law and evidence.

After the opening statements of counsel, the evidence of plaintiffs was heard and completed; counsel for the defendant, Aetna Casualty & Surety Company, moved to strike the evidence because the evidence of the plaintiffs showed, as a matter of law, that the agreement plaintiff, Mildred Lucas, had to renew the fire insurance policy was conditioned upon her paying the three past due automobile premiums prior to the time the renewal was effective and the evidence showed she had not done so prior to the loss. This motion was duly considered by the Court and overruled and the defendant, Aetna, duly objected and excepted. Thereupon, the defendants introduced their evidence and rested and the jury was discharged for the night after proper admonition by the Court.

Whereupon the Court and counsel retired to Chambers and the Court heard the argument upon instructions granting some, amending some, and refusing some with the objections and exceptions of the respective parties duly noted in the record.

On January 17, 1973 again came the same jury, parties, and counsel as before and after the Court instructed the jury, counsel for the parties made their closing arguments, and the jury retired from the courtroom to consider its verdict.

After some time the jury returned to the courtroom with the verdict in the following language:

January 17, 1973

"We, the jury, find for the plaintiff's and fix their damages as follows:

Dwelling	$ 7,240.00
Personal Property	$ 4,000.00
Living Expense	$ 150.00
	$11,390.00

/s/
A. Lee Hoffman

This verdict was amended by the Court in the following form:

January 17, 1973

"We, the jury, find for the plaintiffs against both defendants and fix their damages as follows:

Dwelling	$ 7,240.00
Personal Property	$ 4,000.00
Living Expense	$ 150.00
	$11,390.00

/s/
A. Lee Hoffman

It was unanimously adopted by the jury as their verdict. The amended verdict was ordered to be recorded as the verdict of the jury and counsel for both defendants moved the Court to set aside the verdict as contrary to the law and the evidence and without evidence to support it and counsel for Aetna Casualty & Surety Company also moved the Court to set aside the verdict for error in granting and refusing certain instructions and amending other instructions and for error in refusing to sustain the motions to strike.

ENTER:

Hamilton Haas(Retired)
Designated Judge

SEEN:

Roby G. Janney

I. Randolph Dovel

T. N. Cooley

Henry H. Whiting

[Filed January 29, 1973]

* * *

[58] OPINION LETTER

Gentlemen:

Lucas v. Walker Agency & Aetna

On the too long considered motion to set aside the verdict of Jan. 17th, it is the judgment of the court that the issue of whether or not an agreement was made by the Walker Agency to renew the plaintiff's fire insurance policy with Aetna was a factual finding for the jury's determination. While I was not personally persuaded by Mrs. Lucas's testimony, neither can I hold her story completely incredible.

Although holding some concern in the beginning over the propriety of joining the insurer and agent as joint defendants, there was no demurrer to plaintiff's motion for judgment, nor any defense motion to require plaintiff's election. At this late stage, after an adverse verdict, it would not seem right to sustain either defendant's motion and thus force plaintiff into a new trial. Hence, both motions will be overruled and judgment entered on the verdict, with interest from its date. An order can be drawn accordingly.

Very truly yours,

Hamilton Haas
Designated Judge

[Filed January 17, 1973]

* * *

[59] FINAL ORDER

After argument and upon mature consideration, the Court is of the opinion for the reasons set forth in its letter of July 17, 1973, hereby directed to be filed and made a part of the record, that the defendants' motions to set aside the verdict should be overruled and judgment should be entered upon the verdict.

It is accordingly ADJUDGED and ORDERED that said motions be and they are overruled and plaintiff shall have and recover a judgment against both defendants in the sum of Eleven Thousand Three Hundred Ninety Dollars ($11,390.00), with interest from the 17th day of January, 1973, to all of which both defendants duly objected and excepted.

The court having received the transcripts of the evidence and arguments as set forth in the trial proceedings taken on January 16 and January 17, 1973 doth hereby direct that said transcripts prepared by Lane's Court Reporters and Brenda Bradley be and they are hereby made a part of the record pursuant to the provisions of Rule 5:9.

Defendants having indicated their intentions to apply to the Supreme Court for a writ of error and

supersedeas, execution upon said judgment is suspended for a period of sixty (60) days and thereafter until the Supreme Court acts upon said appeal, provided each defendant or someone for them shall post an appeal bond within twenty-one (21) days with supersedeas provisions conditioned according to law in the penalty of Thirteen Thousand Dollars ($13,000.00) with approved corporate surety.

Hamilton Haas
Designated Judge

SEEN:

I. Randolph Dovel

Roby G. Janney

Talmage N. Cooley

Henry H. Whiting

* * *

[61] NOTICE OF APPEAL

This is to give you notice of the intention of the Aetna Casualty and Surety Company to appeal the Final Order of the Court in this case entered on the 6th day of August, 1973.

ASSIGNMENTS OF ERROR

The Court erred in:

8. Failing to set aside the verdict upon motion by this Defendant.

AETNA CASUALTY & SURETY
COMPANY

By: Henry H. Whiting
Counsel

[Filed August 17, 1973]

* * *

[63] NOTICE OF APPEAL (Rule 5:6)

Fred C. Walker Agency, Inc. hereby gives notice of its intention to appeal to the Supreme Court of Virginia from the final judgment in this case entered on August 6, 1973.

ASSIGNMENTS OF ERROR (Rule 5:6)

The trial court erred in the following:

1. Refusing to set aside the jury verdict as contrary to the law and the evidence upon motion of this defendant, which motion stated the following.

A. The evidence given in support of the plaintiff by herself and her witnesses was so contradictory and manifestly false as to be unbelievable by reasonable men, and did not, therefore, satisfy the high standard of "clear and convincing" evidence required to uphold a jury verdict for the plaintiff.

FRED C. WALKER AGENCY,
INC.

By: Talmage N. Cooley
Counsel

[Filed August 24, 1973]

Q And you didn't overlook or skip any items?

A Not as I know of sir.

Q I see. That's all.

(The witness was excused.)

MRS. MILDRED D. LUCAS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Dovel:

Q Will you state your name please?

A Mildred D. Lucas.

Q And where do you live Mrs. Lucas, or where did you live in 1971?

A 611 6th Street, Shenandoah.

Q And are you married?

A Yes sir.

Q And your husband is Clarence Lucas?

A Yes sir.

Q Are you and your husband living together?

A No sir.

Q Where does he live?

A Washington, D. C.

Q And where is he in Washington?

A He's at the Soldier's Home.

1 Q Your address in Shenandoah is 611. . .

2 A Sixth Street.

3 Q Sixth Street. What kind of a dwelling did you have

4 on your property?

5 A I had six rooms and a bath.

6 Q Was it a one story structure or was it a one story

7 or two story?

8 A One story.

9 Q And who all resided there?

10 A Myself. . .

11 Q In '71?

12 A Myself and four children.

13 Q Well how old the - what ages were the children in

14 November, 1971?

15 A Let's see the youngest one would be 12, the next

16 one would be 14, 16 and 18.

17 Q Were those children all living with you in November,

18 1971?

19 A Yes sir.

20 Q Mrs. Lucas, would you identify this?

21 A This is an insurance policy made to Clarence E.

22 Lucas and Mildred D. Lucas.

23 Q When was it to expire?

24 A The 10th month, the 9th day,year '71.

25 Q Your Honor, that's already been stipulated as

1 Exhibit A.

2

3 Plaintiff's Exhibit Number A was received into evidence

4 and marked by the court reporter.

5

6 Q Read these items right there?

7 A It's a dwelling, $10,000.00, is that what you mean?

8 Q Yes.

9 A Private structure, $1,000.00, personal property,

10 $4,000.00, additional living expenses, $2,000.00.

11 Q All right. Mrs. Lucas, during '71 were you employed?

12 A Yes sir.

13 Q Where did you work?

14 A At the Luray Textile.

15 Q Did you own an automobile?

16 A Yes sir I did, but it was in the garage.

17 Q Well who -did you have automobile insurance?

18 A Yes sir.

19 Q With whom did you have your automobile insured?

20 A With Mr. Fred Walker.

21 Q Now, you stated that your policy was to expire on

22 November the 9th - October, well whenever it is there. I can't

23 remember.

24 JANNEY: October the 9th.

25 Q October the 9th, were you up on your payments with

Walker Agency, your insura ce payments, or were you behind?

A I was behind on my car insurance payments.

Q Did you owe anything on your fire insurance policy?

A No sir.

Q Did you in November receive any communication from the Walker Agency in connection with your insurance account?

A Yes sir, I believe I did.

JANNEY: September.

Q Would you identify that letter please?

A I'm not sure I received a letter like this. I don't remember.

Q Well it's addressed to you isn't it?

A But I received one October the 6th.

Q But you. . .

A Similar to this.

Q Did you receive that?

A Yes, I probably did.

Q Well would you read it - read it to the Jury.

A I have your letter that you have been retained to represent the above captioned, concerning her recent fire loss. . .

Q Let me see your letter.

A You have the wrong one I think.

Q Yes I do. I'm sorry. Did you receive that letter from. . .

A This is more like it, yes sir. We will be unable

to renew your Homeowner's Policy which expires October 9, 1971, due to the past due account. It must be paid in full. Sincerely, Fred Walker Agency.

Q Your Honor, may that be received in evidence marked Exhibit D.

COURT: Be so received.

Plaintiff's Exhibit Number D was received into evidence and marked by the court reporter.

Q Did you get another letter from the Walker Agency other than that one?

A Yes sir I did.

Q Do you recall the date you got that?

A Yes sir.

Q What was in that letter?

A The same as this one.

Q Something similar. . .

A They said they would be unable to renew my fire insurance on my home unless the amount was paid in full.

Q Do you have that letter?

A No sir, I thought you had it.

Q No I don't have it. . .

A Of October 6th.

Q No.

A Well, it probably burn up.

Q Well, what did you do after you got that letter Mrs. Lucas?

A I called Mr. Fred Walker's Insurance Agency Company. And I spoke to Mrs. Emerson.

Q Now, why did you call to talk to someone there?

A Well, one thing I couldn't afford to send in the full amount. I had been sick and off from work. And my main concern at that time was the fire insurance on my home. Not my car. Because it was in the garage and had been there since July. And this was the conversation that I had with Mrs. Emerson on the phone. And we made arrangements that if I sent $48.40 with the $33.00 going on the fire insurance on my home,the rest remaining to go over on the car insurance which I would catch up later. She said if I could arrange it like that, that would be fine. Now if she had a told me no, I can't renew your fire insurance on your home, I would have taken my money and bought insurance somewhere else.

Q Well how are you able to fix the date absolutely.

A Because I received a letter from Mr. Walker's office that same day.

Q Did you mail anything to the Walker Agency that same day?

A That same day, yes sir.

Q What did you send them?

A A money order.

Q Did you send it yourself?

A No sir, I got my daughter to mail it, because like I said, I was sick.

Q Did you see the money order yourself before it was mailed to the Walker Agency?

A Did I see it? No sir.

Q Would you identify this item please?

A Yes sir, this is the money order. This is the duplicate.

Q Whose names appear on the money order?

A It's Mildred D. Lucas.

Q And what other name is on it?

A It's made to Fred Walker Insurance Agency.

Q And how much is it for?

A It is for $48.40.

Q And on the photostatic copy on the back, whose name is stamped on it?

A Mr. Fred Walker.

Q And what date was that mailed to the Walker Agency?

A October the 6th.

Q Your Honor, it was stipulated that this would be received as our Exhibit B.

Plaintiff's Exhibit Number B was received into evidence

and marked by the court reporter.

Q Now, what was the conversation you had with Mrs. Emerson with reference to the insurance policies?

A Well I called and told her that I had been sick and I was unable to send the full amount, but if I sent $48.40 to let the $33.00 which was the fire insurance on the home renew my policy on my fire insurance on my home, with the remaining to go over on my car insurance and which I would catch up later. If that was agreeable. And she said that would be fine. I said otherwise I'll just cancel the car insurance. She's says no, if you can arrange it like that, that'll be just fine. And I repeated several times that I was concerned about the fire insurance on my home, not the car, because it was in the garage and had been there since July.

Q You didn't get a renewal though of your policy did you?

A No sir. Mrs. Emerson forgot to send me the renewal so she stated to me.

Q What happened to your home on late evening of November the 19th? 18th?

A 18th, well I was at work, but it burnt.

Q What, were you summons to come home?

A Yes sir, I was called from home.

Q Do you know what time it was - do you remember about

what time it was about you received the call?

A I can't remember exactly, but it was something, maybe quarter to 9:00, maybe 10 to 9:00, something like that. I can't remember exactly.

Q How much of - can you tell the Jury about what portion of the home was destroyed by fire?

A Well it's $7,440.00 damage to it.

JANNEY: $7,240.00. . .

A $240.00.

Q You had the damage appraised by a competent. . .

A By Mr. Emory Cubbage. $7,240.00 damage, that was a year ago.

Q But by Cubbage Construction Company appraised that for you?

A Yes sir, Mr. Emory Cubbage.

Q May it be received in evidence marked for identification Your Honor?

COURT: Any objection to it.

WHITING: No.

COURT: All right.

Plaintiff's Exhibit Number E was received into evidence and marked by the court reporter.

Q Mrs. Lucas, what did you do the next day in connec-

tion with your fire loss?

A I called Fred Walker's Insurance Agency.

Q To whom did you speak?

A To Mrs. Emerson.

Q What was - as near as you can would you tell the Jury what was said by each of you?

A I told her that my house had burnt. She says, oh good. And I said I beg your pardon. She said I said oh good. And I said well what's good about it. She said well Mr. Walker or she mentioned another gentleman there at the office wasn't in but as soon as they came in they would send one of them up to my house.

Q What time of morning did that conversation take place?

A That was probably, maybe a quarter to 10:00.

Q Did anyone come on up there?

A No sir, I waited and waited and no one ever did come.

Q What did you do then?

A I came down to Mr. Walker's office.

Q What time of day was it you got there?

A It was before lunch, but I had to wait until after lunch before I could see him, because he was out for lunch.

Q Did you have a conversation with him after lunch?

A Yes sir I did.

1 Q Would you tell us what the conversation was, what
2 each of you had to say?
3 A Well I went in his office, he told me he had bad
4 news for me. And I said well what is it. He said your fire
5 insurance on your home has been cancelled. I said well I don't
6 understand it, that's not the agreement that Mrs. Emerson and
7 I had on the phone. He said well I didn't know you and Mrs.
8 Emerson had a conversation on the phone. I said well we did.
9 And he said he was terribly sorry.
10 Q At that time did you tell Mr. Walker what the conver-
11 sation was that you had had with Mrs. Emerson?
12 A Yes sir. I told him that I had called Mrs. Emerson
13 on the phone and that I had sent the money and the first payment
14 was suppose to go on the fire insurance on my home, which he
15 didn't know anything about. I mean, the way he reacted to me.
16 Q Did he summons Mrs. Emerson in your presence to
17 talk to her about it?
18 A No sir he never.
19 Q Did you talk to Mrs. Emerson about it?
20 A Yes sir, later I did, at her home.
21 Q And what did she have to say about the policy at
22 that time?
23 A She said that she had forgot to send my renewal
24 policy on my home and that Mr. Walker had her in his office and
25 give her the third degree about our conversation on the phone. And

she didn't have any notes of it, but she was trying to explain to him about our conversation and all of sudden she was off on some other conversation, because there was so many phone calls and so many people in and out that she just couldn't remember it all.

Q Where did this conversation take place that you're speaking of you had with Mrs. Emerson?

A Mrs. Emerson's home.

Q Was that the same day you were down after the fire or was that at another time?

A It was a few days after the fire, I don't remember the exact date.

Q Was there anyone there with you at the time that happened?

A Yes sir.

Q Who was present?

A Loretta Lucas and James Sly.

Q And you say Mrs. Emerson told you at that time she had forgotten to renew your policy?

A She forgot to send me the renewal on my home policy. And when I asked her about the conversation on the phone, the purpose that I sent the money, she said she couldn't remember word for word and she'd be a fool to say that she did, that she could remember.

Q How long have you been dealing with the Walker Agency

A I believe I taken out insurance with them in 1968, but I'm not sure.

Q Who has been the person that you've always dealt with when you had a business to transact with them there?

A Mrs. Emerson.

Q Mrs. Lucas, other than personal property that Mr. Owens talked to you about, did you have other items of personal property that was damaged or destroyed in the fire?

A Yes sir.

Q Would you identify that list for me Mrs. Lucas?

A That's $600.00.

Q What is the list?

A Oh, you mean call off the items?

Q What are those items?

A A sewing machine. . .

Q Were they property in your house before the fire?

A Yes sir.

Q Belonged to you?

A Yes sir.

Q Well what are the items, just go down - you don't have to read every - all the figures, just what are some of the items going down?

A Well a set of china dishes, a black robe, sewing machine, cooking ware, serving trays, blinds for 9 windows, carpets for 5 rooms, scatter rugs, hanging pictures and a set

CROSS EXAMINATION

By: Mr. Cooley:

Q Now, Mrs. Lucas, as I understand your testimony you called the Walker Agency the day you got the letter?

A October 6th.

Q The day you got the letter?

A Yes sir.

Q Then you were concerned about this?

A Yes sir.

Q The letter said your fire insurance was not going to be renewed?

A No, I believe it said that unless it was paid in full that it wouldn't be renewed.

Q Now, . . .

JANNEY: She's referring to a letter that she received on October 6th.

DOVEL: How about the letter that Mr. Walker wrote that was destroyed in the fire, do you have a copy of that?

Q May I go ahead Judge please sir.

COURT: Yes sir.

Q Now Mrs. Lucas, I hand you this marked as your Exhibit D, is that the letter you called in response to?

A It probably is. It was worded something like this, but it doesn't say that it's going to be cancelled definitely, just said unless it's paid in full. The past due account.

1 Q Yes. Well I mean you did receive this letter and
2 it was put into evidence and it's your exhibit?
3 A Yes sir. That was the conversation with Mrs.
4 Emerson.
5 Q And following this then you made the telephone call
6 to Mrs. Emerson?
7 A Yes sir.
8 Q Now, this letter does say Mrs. Lucas, doesn't it,
9 that we will be unable to renew your Homeowner's Policy, now
10 there's no question about what that means is it?
11 A No sir.
12 Q Renew now, not cancel, renew, right?
13 A Yes sir.
14 Q You'd paid your Homeowner's Policy in full?
15 A Yes sir.
16 Q Right. Expires October the 9th due to the past due
17 account. Now what did you owe there at that time?
18 A Car insurance.
19 Q You hadn't paid anything for the entire year?
20 A Oh yes.
21 Q Oh yes?
22 A Oh yes sir.
23 Q Oh, you had?
24 A Yes sir I had.
25 Q Yes, now which one - what payment had you made?

A The renewal on the car insurance which was due in April, which I paid towards the last of March.

Q You're telling this Court and Jury that on March of 1971 you paid some automobile insurance premiums?

A Yes sir I certainly am.

Q All right and what was the amount of that?

A It was $48.40 I believe.

Q $48.40. Would you have any evidence of that, was that a check or money order?

A No, I paid that in cash.

Q I see. Did you come yourself to the Walker Agency?

A I was on my way to work and stopped by and paid it, yes sir.

Q And that was at their office in Luray?

A Yes sir.

Q And what was the approximate date?

A It was due in April and I paid it towards the last of March, but I don't remember the exact date.

Q Now, if you recall, did you not make a $48.40 payment later on the same year?

A Yes sir.

Q And do you know the approximate date of that?

A October 6th.

Q October the 6th. And why did you select $48.40?

A That's all I could afford at the time.

1 Q I see. You normally wouldn't send a $48.00 check
2 you'd send a $48.40?
3 A That's all I could afford. I had been off sick.
4 Q You hadn't worked on the 6th?
5 A No sir, I was off sick.
6 Q How long had you been off work then?
7 A Probably several weeks because I had bronchial
8 pneumonia in one lung.
9 Q Now, would it make any difference to your testimony
10 if I suggested to you that the Walker Agency don't show that
11 March payment?
12 A I might not make any difference to you, but it does
13 to me. Because it's a fact, because I did pay it.
14 Q Now how old is the little girl that you sent to
15 the post office?
16 A She's 17.
17 Q Oh, she's 17? She in high school?
18 A Yes sir.
19 Q What was her name?
20 A Loretta.
21 Q And this is Loretta that went to the post office
22 for you?
23 A Yes sir and also the other one, Jackie.
24 Q Both of them went together?
25 A Yes sir.

Q And how old is Jackie?

A She's 15, she's going to be 16 the 26th of this month.

Q And you gave them some money to go to the post office?

A Yes sir.

Q And they had come home from school this day?

A Jackie had came home from school, Loretta was sick.

Q Loretta was out of school that day?

A She was out that day, yes sir.

Q And she was home with you then?

A Yes sir.

Q I see. So that actually the little girl that came home from school that you've previously testified went to the post office, now Loretta went with her?

A They both went together. I sent them together.

Q I see. And the reason you didn't go was because you were sick?

A Yes sir.

Q Well let's see, the second girl was 15, what's her name?

A Jacqueline.

Q Jacqueline, you call her Jackie?

A Yes sir.

Q And what time did she get home from school?

A Oh, approximately quarter after 3:00.

Q What school does she go to?

A She goes to Page County High now.

Q Well at that time where did she go?

A She was at that time in the seventh grade at the Elementary.

Q Page County Elementary?

A Yes.

Q Where is that located?

A Shenandoah.

Q In the City of Shenandoah? Town of Shenandoah?

A Yes sir, in the City.

Q So that she came home - how long would it take her to get home from school?

A Approximately 5 minutes.

Q Very close by?

A Yes sir.

Q Now let's see, when you normally go to work,you would normally go at 2:30 in the afternoon?

A That's when I go to work.

Q Yes, when you go to work, when you're on?

A But I leave - beg your pardon?

Q When you work?

A Yes sir, I go to work at 2:30 on the job.

Q Right. And you work until 10:30 at night?

1 A 10:30 at night, yes sir.

2 Q Now you received this letter that's Plaintiff's

3 Exhibit D, shortly after the date of it I would assume, which

4 is the 24th of September?

5 A I really can't say. I can't remember the dates.

6 Q You can't remember. . .

7 A On that one.

8 Q And if you were concerned would you have normally

9 called shortly after receiving the letter?

10 A I was concerned, but I had been to Larry Breeden's

11 Garage several times trying to get the transmission put in my

12 car. And that's why I prolonged this. And which I had paid

13 my insurance before this way. I've never beat Fred Walker out

14 of a penny. I've always paid. Sometimes I was behind and

15 sometimes I was ahead and sometimes I paid my insurance right on

16 time.

17 Q Yes, it's a fact is it not that the previous year

18 Mr. Walker gave you credit for some insurance that you didn't

19 use?

20 A I overpaid, yes. I overpaid it.

21 Q Well you had two cars but you said you didn't use

22 but one, isn't that right?

23 A Well when one was running the other one was broke

24 down so. . .

25 Q So actually he - you had bought insurance for two

1 cars and sometime later told him you weren't using but one and
2 he gave you some credit didn't he?
3 A Well yes, because I cancelled it.
4 Q Now you don't mean you cancelled your whole policy?
5 You mean you cancelled. . .
6 A On one of the cars I did.
7 Q Yes, fine. And that was actually after you'd used
8 the premium?
9 A No, it was actually still in force and the car
10 broke down and I cancelled it. And at this particular time both
11 cars was broke down.
12 Q And in October of '71 then your Ford and your Pontiac
13 both were not operating?
14 A True.
15 Q So you didn't have any way to get around at all?
16 A No sir.
17 Q Now, you did not call the Agency as soon as you got
18 this letter or a day or two following?
19 A I don't remember.
20 Q Couldn't you have called on the 29th of September?
21 A Like I said I don't remember.
22 Q I see. But you could have then and you just don't
23 remember what date it was?
24 A It's a possibility.
25 Q So that the date of October the 6th then becomes just

1 the date that you think you might have called but you're not
2 sure?
3 A Oh no, I'm positive I called.
4 Q Oh, oh, that date you are positive about?
5 A October 6th.
6 Q You are. . .
7 A That's when I sent the money order. That's when
8 I had the conversation with Mrs. Emerson.
9 Q I see.
10 A She's the one that clarified all this, otherwise
11 I wouldn't have sent the money in. I could have taken care of
12 this car insurance later.
13 Q I see. You were six months behind in your car
14 insurance at this time were you not?
15 A I was $72.60 behind. No, not at the time of the
16 fire, no. I had sent $36.00 in, in November, but I don't remember
17 the precise date.
18 Q Well you did make a payment on 11/17, isn't that
19 correct?
20 A I don't remember the exact dates.
21 Q But approximately then - and did you not make a
22 payment in October as well?
23 A Yes, with the remaining of the $48.40, with $33.00
24 of it going on my fire insurance on my home, with the $15.40
25 going over on my car insurance. That was the agreement between

1 myself and Mrs. Emerson.

2 Q Oh I see. So then what you're telling us here

3 today Mrs. Lucas is that you wanted $15.40 applied to your

4 automobile policy and that then you were going to come in here

5 and pay two more payments of $36.30?

6 A No, I didn't owe them the last $36.30. Actually

7 I owed - only owed them $20.90, but I had just lost everything

8 in my home and I was upset and I wasn't thinking.

9 Q I could appreciate that Mrs. Lucas. Now let me

10 go back over what I was asking you. The Jury wants to know

11 when you paid the two $36.30 payments after you claimed to pay

12 $15.00, why would you have done that?

13 A I was back working then.

14 Q But did you owe it?

15 A I owed the last payment that I owed when my house

16 burnt was $20.90, but when I went into the office the lady said

17 $36.30 and I paid it.

18 Q Oh, you just went ahead and paid it. . .

19 A I was upset.

20 Q You didn't want to. . .

21 A I had just lost everything I had worked for.

22 Q Right. And so when you paid that, knowing really

23 you didn't owe it, but you went ahead and paid it because you

24 didn't feel well, did you also talk to her about your automobile

25 insurance?

1 A I transferred it from the GTO to the Ford which
2 still wasn't in operation but Larry Breeden was working on it.
3 Q So it wasn't going to be - you thought shortly. .
4 A It wasn't until after Christmas, December before
5 it was even running on the road.
6 Q Well you figured that it was important on the day
7 that you went in there to pay this final premiums transferred
8 from the Pontiac to the Ford?
9 A Well Mr. Breeden told me he had the parts to fix
10 the Ford. And I needed a car. I needed transportation.
11 Q It wouldn't have occurred to you I suppose back in
12 July if you weren't running any cars to call Mr. Walker and ask
13 him to drop your coverage until you got your cars back on the
14 road would it?
15 A Well now, yes it occurred to me, but I went to Mr.
16 Breeden and he said he could get a transmission for it. So I
17 was waiting for him to get the transmission.
18 Q Well you waited nearly six months then?
19 A Yes I did.
20 Q Now, following receipt of this letter dated the
21 24th of September, and you called, you said you could have called
22 the 29th, you're certain you called on the 6th, is it possible
23 that Mrs. Emerson said words to the effect that we won't be able
24 to until you bring your account in balance?
25 A No sir, if she had of said that I would have taken

1 my money and bought my fire insurance somewhere else.

2 Q But they wrote you a letter saying that didn't they?

3 A Yes sir, but she changed it around in conversations

4 on the phones.

5 Q Oh, she did?

6 A Yes. She give me the impression that to go ahead

7 and send the money, that would renew my fire insurance on my

8 home, that's why I sent it.

9 Q It wouldn't have been possible that she meant what

10 the letter said, that if you paid your automobile insurance

11 premiums that were back due then your account would be current

12 and they would issue you your fire policy?

13 A That wasn't, no that wasn't what she said.

14 Q She just wouldn't have said that?

15 A I explained to her my situation that I had been

16 sick and that I was behind on my car insurance and the agreement

17 that we made she said would be fine if you can arrange it like

18 that. Now I taken her word for it. I trusted her. I sent the

19 money. They didn't send my money back.

20 Q Well what you owed them - that's what the policy. . .

21 A No I didn't owe them this much.

22 Q You didn't?

23 A I owed them $72.60 - no not quite that much.

24 Q So then following this telephone conversation and

25 your understanding that you were going to be covered immediately,

1 nothing happened. You never received any policy and approximately
2 let's see, the 29th of September somewhere along in there up
3 until the 18th of November which is a month and 18 days, 19 days
4 . . .
5 A It wasn't due until the 9th of October.
6 Q Well all right, assuming that your policy didn't
7 expire until October the 9th, you didn't send your payment in
8 until the 7th, did you ever hear from the Company again?
9 A I sent it in on the 6th - I sent it the 6th of
10 October. It was due the 9th.
11 Q Did you ever hear from the Company again?
12 A No sir, I never.
13 Q And you never received any renewal policy in the
14 mail?
15 A No sir, I never. I thought it was all taken care
16 of and I trusted them.
17 Q Your policy had expires on October the 9th, right?
18 A It would have if I hadn't sent the money.
19 Q Well, let me ask you this, you were getting a new
20 policy were you not?
21 A I guess I was suppose to.
22 Q So that when the policy expired, it expired, that
23 was the end of that contract with the Company?
24 A Not according to Mrs. Emerson's conversation that
25 we had on the phone. It was to be renewed. That's why I sent

1 the money.

2 Q I see. So that you sent $48.40 and $15.00 was to

3 apply to your automobile premium?

4 A With the 40 cents going over, yes sir.

5 Q 40 cents?

6 A Yes sir.

7 Q And then you paid the two $36.30 premiums after

8 that?

9 A Yes sir.

10 Q And then why did you select this amount of money

11 that was to be paid to your fire policy, $33.00?

12 A That was the amount that it was supposed to have

13 been.

14 Q And Mrs. Emerson told you that?

15 A Yes sir.

16 Q It was also - didn't it happen to be the premium

17 on your previous policy?

18 A I think it is.

19 Q That was made out in 1968?

20 A Of course it varies now, it varies from year to

21 year, it increases.

22 Q Well, it's not too important I'm sure, but your

23 policy premium was $95.00 and $33.00 a year for three years,

24 isn't that right?

25 A The policy was supposed to be $33.00.

1 Q Yes. That's a year is it not?

2 A Yes sir.

3 Q And so fire policies are written for three years

4 and this policy premium is $95.00, isn't that right?

5 A Let's see. Yes sir, $95.00.

6 Q So what you are telling us is that she told you what

7 figure, $33.00?

8 A Yes sir.

9 Q And what would that be for?

10 A That would be to renew my policy.

11 Q So that would be then according to this figure,

12 $33.00 would have been what it was previously?

13 A Well I was taking her word for it.

14 Q Yes I see. Now, is this not the only letter you

15 got before you called Mrs. Emerson?

16 A What date is that?

17 Q September 24th?

18 A I received one October 6th.

19 Q You received one dated October the 6th?

20 A Yes sir.

21 Q Or was it received on the 6th and dated some other

22 day?

23 A I received it October the 6th.

24 Q What was the date of the letter?

25 A I don't know, I received it October 6th.

1 Q And who was it from?

2 A Fred Walker's Insurance Agency.

3 Q Was it sort of like this letter or what?

4 A I would think so, yes.

5 Q I see. And what did it tell you in the letter?

6 A Similar to that.

7 Q Similar to that?

8 A Yes.

9 Q Do you know whether it was dated the first of

10 October, the 2nd or 3rd or. . .

11 A Well since I mailed my money order the 6th and he

12 got it the 7th, I would say it was mailed the 5th and I got it

13 the 6th.

14 Q In other words it just takes one day to come to you?

15 A I would think so.

16 Q Right. And that there was a second letter sent out

17 to you then and in regards to your Homeowner's Policy renewal?

18 A You mean October 6th?

19 Q Yes or approximately then?

20 A Yes.

21 Q Do you have any reason why they would send you a

22 letter of, you know, like a week and a half later and having

23 sent you the one of the 24th?

24 A I wouldn't know, you'd have to ask them.

25 Q But following the receipt of the first letter you

1 didn't call them?

2 A Just like I stated before, I don't remember.

3 Q But you do remember very well the one on the 6th?

4 A Yes sir.

5 Q The one that might have occurred on the 29th, just

6 vaguely remember?

7 A Yes sir.

8 Q All right. You don't know that you called and it

9 might very well have been that you and Mrs. Emerson had a con-

10 versation on the 29th different from what you reported happened

11 on the 6th?

12 A No, I don't think so.

13 Q You don't?

14 A No sir.

15 Q But might have been?

16 A Not likely.

17 Q Not likely.

18 A Or I would have remembered.

19 Q Oh, I see. You would have remembered that part?

20 A Oh sure.

21 Q Just one final question or two, when you went by

22 the Agency the day after this fire occurred, you did make a

23 $36.30 payment in cash did you not?

24 A Yes sir I did.

25 Q You didn't send a money order like you'd done

1 previously or sent a check?

2 A No sir.

3 Q You thought it was kind of important to get down

4 there and make this payment did you not?

5 A No sir.

6 Q No. You just happened to be going down there and

7 wanted to make a cash payment that day?

8 A I had the money and I figured while I was there

9 why not pay it.

10 Q So it had no significance in your mind to get in there

11 and make this final payment that day did it?

12 A No, because if that had been the case I would have

13 went down there early the next morning when I called and said

14 my house had burnt, if that would be the . . .

15 Q Well what time did you get in there?

16 A I was there about quarter to 12:00.

17 Q Well you said you waited for the adjustor to come

18 and he didn't show up?

19 A That's right. I called about 9:30 at my house.

20 Q And talked to who?

21 A Mrs. Emerson.

22 Q So you did come right on down promptly did you not?

23 A Oh no, Oh no I waited.

24 Q But you - you waited for the man to come who

25 didn't come?

A Yes sir, I did.

Q And when you came in you saw who?

A It was a girl in the outer office, I don't remember her name.

Q Did you talk to somebody about your automobile insurance?

A I believe I asked the lady how much did I owe.

Q And you paid it?

A Yes sir.

Q And didn't you talk to Mrs. Emerson about the fire insurance?

A No sir.

Q She was there wasn't she?

A No, I believe her and Mr. Walker was out for lunch.

Q Out for lunch. Just didn't have a chance to see her?

A No I didn't.

Q But you came back and talked to Mr. Walker afterward?

A I certainly did.

Q Mrs. Emerson not there?

A She probably was.

Q But you didn't talk to her?

A No sir.

Q Well Mrs. Lucas, during the course of the years that you dealt with the Agency about your automobile insurance did they

1 not send you any bills?

2 A Probably so, yes sir.

3 Q Probably so, and you probably received them?

4 A Yes sir.

5 Q Well did you, you know, pay any attention to them?

6 A Oh yes sir. I've always paid them.

7 Q Now, the first premium on this automobile install-

8 ment plan was due in April?

9 A Yes.

10 Q Right?

11 A Yes sir.

12 Q And are you telling us that you paid that in March?

13 A Yes sir, I am telling you because that is a fact.

14 Q All right. And then the June bill sent out to you,

15 follow-up . . .

16 A Was due in July.

17 Q . . .fact is the premium of $48.40 was still due is

18 a mistake?

19 A The next payment was due in July.

20 Q Yes, the bill sent was a week or so before, right,

21 in late June? And you get a bill due in July and it says your

22 $48.40 is still owing, now is that a mistake?

23 A I don't recall that.

24 Q You don't recall it?

25 A No sir I don't. If it's so, they didn't give me

1 credit then for the $48.00 that I paid to renew the car insurance.

2 Q And then you came in - and October the 7th and paid

3 $48.40, but that wasn't your overdue automobile insurance?

4 A No, I didn't come in, I sent a money order in.

5 Q Right. And you paid the $48.40 in October, but

6 that was not for your April premium that was due on your automo-

7 bile insurance?

8 A I had already paid that.

9 Q And then you came in on the 17th and paid $36.30

10 . . .

11 A No sir, I sent a money order.

12 Q A money order?

13 A That's November you say?

14 Q Yes?

15 A Money order.

16 Q All right. And then both of those money orders

17 and then you came in on the 19th, right?

18 A Yes sir.

19 Q And paid cash?

20 A Yes sir.

21 Q And that was $36.30 but you didn't owe that?

22 A No sir.

23 Q So all the records of the Agency, if they were to

24 show that you owed the full premium and that you didn't pay the

25 $48.40 but you came in and finally paid it in October and then

1 you paid the final two payments of $36.30, those are all mistakes
2 and errors?
3 A They must be on somebody's part, they're certainly
4 not on mine.
5 Q Thank you, that's all.
6
7 Questions By: Mr. Whiting:
8 Q Mrs. Lucas, when you got this bill in June and
9 showed you hadn't paid the first installment of the automobile
10 insurance, did you call them up and object to it?
11 A No sir. I don't think I did.
12 Q Why not?
13 A Because my car was broke down and in the garage.
14 Q But do I understand you to say you had already paid
15 the first installment of $48.20?
16 A Sure.
17 Q $48.40 I mean?
18 A Yes.
19 Q There's only one bill, we're only talking about one
20 $48.40?
21 A That was paid in April.
22 Q All right. So when you got this bill, now I want
23 to introduce this - copy of this bill as Defendant's Exhibit
24 Number 1. The bill dated June the 21st, 1971.
25 REPORTER: Will that be received.

DOVEL: I'd like to see a copy of it Your Honor before . . .

COURT: Certainly.

Defendant's Exhibit Number 1 was received into evidence and marked by the court reporter.

Q All right now, when you got the bill of June 21st, 1971, did you call the Walker Agency and tell them you'd already paid the first installment?

A Rephrase that question again please.

Q When you got the bill, Defendant's Exhibit 1, the June 21st bill, that showed you still owed that $48.40, the first installment, did you call the Walker Agency and say I've already paid the first installment?

A I don't remember.

Q You don't remember?

A No sir.

Q Then you got another bill dated November the 1st, 1971 and that showed the second two installments of $36.20 due, isn't that correct?

A According to this statement,yes.

Q Well you got the original of that didn't you Mrs. Lucas?

A I couldn't swear to it.

1 Q Well you do remember getting some bills from the
2 Walker Agency. . .
3 A Oh I probably have, but I can't swear that I
4 received one like this.
5 Q All right. We'd ask that be exhibited as Defendant's
6 Exhibit Number 2.
7
8 Defendant's Exhibit Number 2 was received into evidence
9 and marked by the court reported.
10
11 Q Now the automobile policy does have three premiums
12 does it not? The first one is $48.40 and the other two are
13 $36.30?
14 A That's probably for the year 1971, it varies, it
15 wasn't that amount when I first taken it out.
16 Q Yes ma'am, that's what I mean. During the year
17 1971?
18 A Well probably so, yes sir.
19 Q Now then, Mrs. Lucas, you say that the - this
20 Pontiac car was kind of a maroon GTO wasn't it?
21 A Yes sir.
22 Q And you say it was broken down, it and the Ford one,
23 the other car you had?
24 A Yes sir.
25 Q Both the cars were broken down during the summer

of 1971?

A Yes sir.

Q All right. Now, so you were not operating any car?

A No sir.

Q Did you have tags on either car?

A I did the GTO.

Q You had tags on that?

A Yes sir.

Q Now, I believe you said - when did the GTO break down?

A In July.

Q In July. And the transmission went out on it?

A Yes sir.

Q You had not previously had any trouble with it had you?

A Oh yes.

Q You had?

A Yes sir, I had lots of trouble with it.

Q All right. Now, when the transmission went out it was at Mr. Larry Breeden's Garage wasn't it?

A Yes sir.

Q And it stayed there from July until when?

A Until I let the bank have it back.

Q I see. Now, did you make the installment payments

on the car during this period of time?

A I made a December payment. I mean - just what do you mean?

Q Did you make the monthly installment payments on the car during this period of time?

A When the transmission went out on it I went into the bank and told Mr. Crowder that I couldn't afford this car it was costing me too much money, he could have it back.

Q All right. So you made no more payments after July?

A No, after December I made no more payments.

Q After December?

A Right.

Q Of 1971?

A Yes.

Q So you did pay the payments all through 1971?

A Yes, I was trying to get the car fixed, yes sir.

Q Why was it the car sat for six months before being repaired?

A Because he couldn't find a transmission to fit it.

Q He could not find a transmission...

A It had to be precisely one that came out of it to go back in it.

Q And that was the reason he told you?

A He couldn't find a transmission for it.

Q Yeah, I say that was the reason he told you that he

1 couldn't repair it because he couldn't find a transmission to
2 fit it?
3 A No, he told me he would keep looking and try to
4 find one for me.
5 Q Well isn't it a fact that he told you that he
6 couldn't put the transmission in unless you advanced him a
7 hundred dollars?
8 A No sir, he did not.
9 Q That's not true then?
10 A No sir.
11 Q It isn't true that he told you that he wanted to
12 be paid cash for that?
13 A I had paid him cash for all up until then. He put
14 a rear end in it that cost me ninety some dollars and I paid him
15 cash for that. He put two clutches in it. I paid him cash for
16 that, plus several times it was in the garage with pinion gears
17 and I paid him cash for that.
18 Q You've always paid him cash for everything?
19 A No, except right now I owe him some money.
20 Q How much?
21 A That's on the Ford.
22 Q How much?
23 A That's approximately $141.00.
24 Q How long have you owed him that?
25 A Approximately since, I think December.

Q Which year?

A Approximately a year.

Q December of what year?

A Of '71.

Q Right. December of '71 he did a repair job on the Ford?

A Yes, he repaired it so when you put it in park you go backwards.

Q Is that why you haven't paid him?

A No, that's why I traded it off, but I went in and talked to him about that too.

Q Now, you say that you - normally when you go to work your shift is from 10:30 until - excuse me, 2:30 in the afternoon until 10:00 at night?

A 10:30 at night.

Q 10:30, all right. Now where do you work Mrs. Lucas?

A I worked at the Luray Textile.

Q Luray Textile. How long does it take you to drive to work from Shenandoah?

A Well we allow ourself about 30 or 40 minutes.

Q 30 or 40 minutes. So normally you leave home about 10 minutes of 2:00?

A That's about right.

Q Do I understand you to say now that there were two letters? One letter was September the 24th and there was another

one later that got burned up in the fire from Mr. Walker regarding renewal of your Homeowner's Policy?

A October 6th, I'm sure of that, yes sir.

Q October what?

A The 6th.

Q 6th, is the second letter?

A Probably, I'm not sure.

Q What is it you aren't sure about?

A I'm not sure of when I received that.

Q Now which?

A This one you have right here of . . .

Q This letter here?

A . . . of September the 24th?

Q Yes.

A I can't remember.

Q Well you do remember as soon as you got the letter you called didn't you?

A I don't remember that, I don't think so.

Q What was it that made you call on the 6th?

A Because of my fire insurance on my home is what I was concerned about.

Q Yes ma'am.

A The car was nothing but junk.

Q I see. But this letter of September the 24th tells you that your fire insurance will expire on October the 9th,

1 doesn't it?

2 A Yes. But that was why I called Mrs. Emerson and

3 we had the conversation.

4 Q Yes ma'am.

5 A She changed all that. That's why I sent the money.

6 Q Yes ma'am. And so you called her just after you

7 got this letter didn't you?

8 A I called her I know October 6th, I am positive of

9 that.

10 Q Why are you so positive it was on the 6th?

11 A Because that's when I mailed the money.

12 Q But what was it - I understand that, you mailed

13 the money later on that day, the money order?

14 A No I didn't mail it, my daughters mailed it.

15 Q I understand that. But what was it that fired you

16 up to call her on the 6th, what was it that stirred you up to

17 call her that particular day?

18 A The letter I received.

19 Q The letter. Now, are you saying you got this letter

20 on the 6th?

21 A I got one similar to that on the 6th.

22 Q But you're not saying you got this letter on the

23 6th?

24 A Well is it dated the 6th? No, that's the 24th,

25 that's the one I'm not positive of, I can't swear to this.

1 Q You can't swear to what on this?

2 A I can't swear that I received a letter like this

3 on the 24th.

4 Q Well this letter came from your files didn't it,

5 you gave it to Mr. Dovel here didn't you?

6 A Maybe so, but I can not swear to it right now.

7 Q Well where did - you do say you got this letter

8 don't you?

9 A I'll say I probably got the letter.

10 Q You don't know how else Mr. Dovel could have got

11 it do you?

12 A I probably did receive the letter, but I can't say

13 precisely.

14 Q You can't say precisely what?

15 A That I received the letter of September 24th.

16 Q All right. In other words, you're not even sure

17 you got this letter - ever got this letter of September the 24th?

18 A No, that's been a long time, I can't - I don't have -

19 I'm not a mastermind.

20 Q All right. But you are sure that when you got a

21 letter from the Walker Agency on October 6th or 5th, that was

22 the thing that fired you up or generated your calling the Agency

23 is that correct?

24 A When I sent my money, yes sir, I remember the date.

25 Q Well I understand you remember the date you sent

1 the money, but what I'm trying to find out is what was it -
2 what document or what conversation or what notice was it that
3 gave you the idea of calling the Walker Agency?
4 A Because I didn't want my fire insurance cancelled
5 on my home. That was my main concern.
6 Q Yes ma'am. What was it that brought it to your
7 attention?
8 A The letter.
9 Q Then that's the letter that the Jury now has, isn't
10 that so?
11 A I'm not sure. I received on October the 6th, same
12 thing.
13 Q Pardon?
14 A I received one October 6th, probably worded about
15 the same way.
16 Q About the same way?
17 A I'd say probably.
18 Q Probably. But you don't know any reason why they
19 would have written two letters with the same language do you?
20 A I wouldn't know.
21 Q I understand now that whenever the Walker Agency
22 renews your car insurance they send you bills don't they?
23 A You mean a renewal policy?
24 Q Yes ma'am?
25 A They're supposed to.

Q Right. They do 'on't they?

A No, they haven't.

Q They have not?

A No, they did not.

Q They have not followed the policy - I want to get it straight - they don't follow a policy of billing you after they renew these policies?

A Wait a minute, rephrase your question?

Q Yes ma'am, I need to better on that. Do I understand you to say that when the Walker Agency renews your automobile or Homeowner's Policies, that they do not send you bills on the renewal dates?

A Oh yes.

Q Yes they do?

A (Shakes head yes.)

Q They do ordinarily send bills and you expect to receive them?

A Of course.

Q And you have previously received them haven't you?

A Yes I have.

Q Right.

A Some.

Q And when a policy is renewed ordinarily they send the policy too don't they, the renewal policy?

A They did up until 1971.

1 Q Right. But never - previous to that they always
2 sent you the policy?
3 A I suppose so.
4 Q All right. Now, they didn't keep your policies
5 in their safe did they?
6 A I don't even know whether they did or not.
7 Q Well you never had any understanding with them that
8 they would keep them for you did you?
9 A Well no.
10 Q They always sent it out to you didn't they?
11 A I suppose so.
12 Q All right. Now, when the policy - I believe you
13 mentioned - you mentioned to Mrs. Emerson several times on the
14 phone that you were anxious that your fire insurance policy be
15 renewed?
16 A Yes sir.
17 Q You were quite concerned about that weren't you?
18 A Oh yes.
19 Q Now, when October 9th came around and you didn't
20 have the renewal policy in your house, it hadn't been mailed
21 to you and you hadn't gotten a bill for a premium, did that
22 concern you?
23 A Well no, I trusted them. After the conversation
24 I had with Mrs. Emerson I trusted them, I thought probably it
25 would come sooner or later, they were probably a little busy

at the office and it was taking a little time.

Q But you never. . .

A But I was expecting it.

Q Yes ma'am. You never called them from October 9th until the day of the fire, November 17th or 18th to ask them where your policy was?

A Well at that time I was back working, sometimes 7 days a week, so it probably skipped my mind.

Q Skipped your mind. And you never called them to ask them for a bill either did you? For the policy?

A What do you mean a bill?

Q A bill or a bill for the premium or a receipt showing that you had paid the bill?

A Well you see, the money order was my receipt.

Q All right, thank you.

JANNEY: May we rest for lunch Your Honor?

COURT: I think it will be an appropriate time. You want a full hour?

DOVEL: Yes sir, if you please Your Honor.

COURT: Let the Court stand in recess until 1 o'clock. That's a little short of an hour and the Court admonishes the Jury to be careful to refrain from exposing yourselves to any kind of outside influence concerning the controversy in trial. You will not discuss it with others, nor will you permit anybody else to discuss it in your presence. With that we will separate

1 and go for a luncheon break and come back at 1 o'clock.

2 COURT RECESSES FOR LUNCH.

3 COURT RECONVENES AFTER LUNCH AND THE JURY IS RETURED

4 TO THE JURY BOX.

5

6 COURT: All right gentlemen, are you ready to resume?

7 Counsel all indicate yes.

8

9

10 THOMAS E. BERRY, having first been duly sworn, testified

11 as follows:

12 DIRECT EXAMINATION

13 By: Mr. Dovel:

14 Q Your name is Thomas E. Berry?

15 A That's right.

16 Q Mr. Berry what is your business?

17 A Retail furniture business.

18 Q And where is it located?

19 A In Luray, Downey's Furniture Store in Luray.

20 Q How long have you been in the furniture business?

21 A Twenty-three years.

22 Q Mr. Berry, were you asked to go to the home of

23 Mildred Lucas and view certain property that had been destroyed

24 in a fire?

25 A That's right.

1 Q That's all.

2 COOLEY: We have no questions.

3 JANNEY: That's all Mr. Berry.

4 COURT: Stand aside.

5 TRANSCRIPT, DELDEE EMERSON

6

7 MRS. DELDEE EMERSON, having first been duly sworn,

8 testified as follows:

9 DIRECT EXAMINATION

10 By: Mr. Dovel:

11 Q Would you state your name please?

12 A Deldee Emerson.

13 Q And your age?

14 A 38.

15 Q And by whom are you employed?

16 A Fred Walker Agency, Incorporated.

17 Q In Luray?

18 A Yes sir.

19 Q How long have you been so employed?

20 A Will be 10 years April the 1st.

21 Q What is your position in connection with the

22 Walker Agency?

23 A Secretary and bookkeeper, licensed registered agent.

24 Q I'm sorry I didn't hear the last question?

25 WHITING: Licensed registered agent did you say?

A Yes sir.

Q And you issue policies, counter-sign policies, is that correct?

A Yes sir.

Q Both fire insurance policies and automobile insurance policies?

A Yes sir.

Q Are you - did you say you were also the bookkeeper?

A Yes sir.

Q Are you - you're acquainted with Mrs. Mildred Lucas aren't you?

A Yes sir.

Q She was one of your policy holders or was in 1971?

A Yes sir.

Q What kind of insurance did you have with her?

A We had a Homeowner's policy on her dwelling and had her automobile insurance.

Q You had an automobile and a fire policy?

A Yes sir.

Q The Agency is a corporation isn't it?

A Yes sir.

Q Are you a director or a stockholder in the corporation?

A No sir.

Q You hold any - just the position that you've just

1 mentioned?

2 A No sir, just what I have mentioned.

3 Q Do you have the dates, the fire policy and the

4 automobile policy that Mrs. - that was in effect in 1971 on

5 Mrs. Lucas' property?

6 A I believe her fire policy ran from October of '68

7 until October of '71. The automobile became effective April

8 the 5th of '71.

9 Q Is this the policy on the - the fire policy?

10 A I believe so, yes sir.

11 Q The expiration date on that was 10/9/71?

12 A Yes sir.

13 Q October 9, 1971?

14 A Yes sir.

15 Q Of course you - at that time Mr. Brouney issued that

16 but you could have, couldn't you?

17 A Yes sir.

18 Q And the maximum coverage that was on those items,

19 would you read them please?

20 A On the dwelling it was $10,000.00, appurtenant

21 private structures, $1,000.00, unscheduled personal property,

22 $4,000.00, additional living expense, $2,000.00.

23 Q Do you have your records with you as to whether

24 anything was owing on that policy?

25 A Yes sir, we have our recording.

1 Q Was this policy paid up?

2 A Yes sir that one was.

3 Q There was a balance was it on the automobile policy?

4 A Yes sir.

5 Q Do you know what the balance was as of November

6 the 1st of 1971?

7 A No sir I don't really.

8 Q Do you have the records with you?

9 A Yes sir.

10 Q You want to get your records? What was the balance

11 on that automobile policy?

12 A As of November the 1st?

13 Q Yes?

14 A The balance was $36.30. Oh, excuse me, no sir,

15 it was $72.60, I'm sorry.

16 Q Well how was that premium paid?

17 A It was paid in three installments.

18 Q 40 percent and 30 percent and 30 percent?

19 A Yes sir.

20 Q $48.40 had been paid?

21 A Yes sir.

22 Q Then as of November the 1st there was two install-

23 ments due on the car policy of $36.30?

24 A Yes sir.

25 Q And everything had been paid on the fire insurance

policy?

A It had been paid up to October the 9th '71.

Q Are you familiar with the letter that left the Walker office on September the - Fred Walker didn't sign that, do you know which of - who in the office signed his name to that letter?

A Mrs. Betty Fox.

Q Are you familiar with that letter going out?

A Yes sir.

Q Did any other information go to Mrs. Lucas in connection with her policies subsequent to this and before you received a money order?

A Well just statements on her automobile balance.

Q Do you recall talking to Mrs. Lucas on the telephone?

A Yes sir.

Q What - do you recall the date you talked to her?

A Yes sir.

Q What was the date?

A September the 29th of '71.

Q Did you talk to her on November the 6th. . .

JANNEY: October. . .

Q . . . October the 6th, I mean?

A No sir.

Q The date the money order was dated?

A No sir.

1 Q Do you - can you from your records, when did you
2 receive the money order?
3 A On October the 7th.
4 Q October - that was 2 days before the fire insurance
5 policy expired?
6 A Yes sir.
7 Q Now, and Mrs. Lucas didn't talk to you on October
8 the 6th on the telephone about that payment going in?
9 A No sir.
10 Q Did Mrs. Lucas call you and talk to you on the
11 telephone the morning after the fire?
12 A Yes sir.
13 Q Did you tell her you were sending someone up there?
14 A Yes sir.
15 Q Did anyone go up there from your office?
16 A No sir, no one came in to go.
17 Q No one came in to go?
18 A No, not immediately.
19 Q Did Mrs. Lucas then later come into the office?
20 A Yes sir.
21 Q Did you talk to her when she came to the office or
22 . . .
23 A No sir.
24 Q Who did she talk to if you know?
25 A I believe she talked to Mrs. Ramey and with Mr. Walker.

1 Q Mr. Walker?

2 A Yes.

3 Q Were you present when she talked with Mr. Walker?

4 A I wasn't in the room, no. I was in the office.

5 Q Did you hear any of the conversation?

6 A No sir.

7 Q How long was Mrs. Lucas there at this time?

8 A I have no idea.

9 Q Did you see her when she left?

10 A Yes sir.

11 Q How did she appear to you emotionally?

12 A Angry.

13 Q Beg your pardon?

14 A Angry.

15 Q Angry?

16 A Yes sir.

17 Q When you talked with Mrs. Lucas on the, I believe

18 you said the 29th you said she called you on the telephone?

19 A Yes sir.

20 Q What did she call you about?

21 A She called me about her account.

22 Q Well what was the conversation?

23 A She asked me if she could make payments on her

24 account and have therefore a balance paid by November the 1st?

25 Q What'd you tell her?

A I told her that would be all right.

Q Did she tell you she was going to send you a money order?

A Yes sir, she did.

Q And did you get a money order from her?

A Yes sir.

Q Now she was talking about the total account when she talked to you?

A She didn't specify any type.

Q Did you specify any particular account?

A No sir. She only had the one account.

Q The account on your ledger sheet is for both of those policies isn't it?

A No sir, not in '71.

Q Well of course the fire insurance policy was paid up before you got to '71 wasn't it?

A Yes sir, it was paid up until October. . .

Q So you hadn't made an entry on that yet had you?

A No sir.

Q That's what you call a double-entry system isn't it?

A Yes sir.

Q Now when you talked to Mrs. Lucas, she told you about the fire insurance policy expiring didn't she?

A No sir.

Q Isn't that what she talked about?

A No sir.

Q Didn't-you talked to Mrs. Lucas then just a few nights later didn't you, at your home?

A I don't know exactly how long it was but she did come by my house.

Q Was she alone when she was at your home?

A No sir.

Q You live right around - within the Corporation, but it's on 340 going South out of Luray to Staunton isn't it?

A Yes sir.

Q But it's in the Corp Limits, just quite, isn't it?

A Yes sir.

Q She had a couple youngsters with her when she was there?

A Yes sir.

Q She was still upset as you say?

A Yes sir.

Q And what did she talk to you about then, about the fire insurance policy?

A Yes sir, she did.

Q Did you tell her that you had forgotten it?

A No sir.

Q You didn't tell her that?

A No sir.

Q That you had forgotten to send her, her renewal

policy?

A No sir.

Q At this conversation on the 29th, it was with reference to the account period. . .

A Yes sir.

Q . . . that's all? And you claim there wasn't any mention made by Mrs. Lucas about the fire insurance policy at that time being renewed?

A No sir.

Q Even though it was to expire within three days?

A She did not mention it to me.

Q When Mrs. Lucas talked to you on the telephone and at your home didn't she tell you that her main concern was her fire insurance on her house?

A At my home she did, but not on the telephone.

Q Not on the telephone?

A No sir.

Q And she didn't tell you that at all Mrs. Emerson?

A No sir.

Q Well you wouldn't - you told Mrs. Lucas at your home that,I wouldn't swear that you didn't say something to me about it, the fire insurance policy, do you remember telling her that?

A No sir, I don't.

Q Did you tell Mrs. Lucas that Mr. Walker had given

1 you the third degree about the telephone conversation?

2 A No sir, not in those words, I told her he had asked

3 me about it.

4 Q You didn't mention third degree?

5 A No sir.

6 Q But he had asked - when Mr. Walker asked you/it was about

7 it right after Mrs. Lucas left when she came to the office the

8 day after the fire?

9 A No sir,I told Mr. Walker as soon as I saw him the

10 day of the phone conversation that I had talked with Mrs. Lucas.

11 Q And you didn't mention the fire insurance policy

12 to Mr. Walker?

13 A I don't recall.

14 Q You don't recall?

15 A No sir.

16 Q Could you have mentioned it to him and forgot it?

17 A No sir, not likely, we discussed her past due

18 account.

19 Q You did tell Mrs. Lucas that you had many, many

20 telephone calls and things to do all day and you couldn't remember

21 everything that had happened, didn't you tell her that?

22 A I told her that we had quite a few things going on,

23 yes.

24 Q And yet you couldn't remember everything that had

25 happened?

A I can't remember everything that happens no. But I recall the conversation.

Q You didn't tell her that you'd forgotten to send her the renewal as she says?

A No sir.

Q In the telephone conversation do you remember this, that Mrs. Lucas said the car was in the garage and that it hadn't been used for four months and she wasn't concerned about that?

A I recall her saying her car was not in running order.

Q And that she wasn't concerned about the insurance on that at all?

A No sir, I do not recall that.

Q When Mr. Walker isn't in the office are you in charge?

A Yes sir.

Q You have accepted binders over the telephone haven't you?

A Yes sir.

Q Now putting it in - in other words in case the Jury doesn't understand what I'm - you have agreed to place insurance on property over the telephone?

A Yes sir.

Q For the Agency?

A Right.

Q You stated that Mrs.Lucas when she left, came out

of Mr. Walker's office, I assume she was in a private office with him when they had the conversation?

A Yes sir.

Q You said when she came out she was angry?

A Yes sir.

Q Appeared to be angry and upset, did you hear anything that would cause you to know why she was angry or upset?

A No sir.

Q I have one more letter I want to ask you about, here it is. Mrs. Emerson, would you be familiar with a letter that I wrote to the Walker Agency on the date of November the 25th, I'll show you my copy of it and see if you recall seeing the original when the Agency received it? You remember it?

A Yes sir.

Q Did - since you remember it, would you read it please?

COOLEY: If it please the Court, if counsel is going to interject himself into this case I'd at least like to know what it's all about. This is a letter that he's apparently written. I think that's rather unusual for counsel to read a letter in the case before the Jury that he himself has written. And if the Court will permit us I'd like to know, perhaps outside the hearing of the Jury what it is and what it purports to be about.

COURT: I would suggest that Mr. Dovel supply you

1 with a copy that he's referring to and if you want to be heard
2 on it, the Court will entertain it.
3 Q You certainly want to read it and you thought. . .
4 COURT: I didn't anticipate that there would be any
5 problem.
6 Q The letter I want to get into evidence is this one.
7 The reason - if she knew nothing about it, of course she couldn't
8 testify to it. But she said she's familiar with it.
9 WHITING: Couldn't the letter be for evidence itself
10 Your Honor, why not put the letter in and let the Jury read it?
11 COOLEY: That makes sense.
12 DOVEL: Well that was what I was getting to but we
13 had to do it. . .
14 COOLEY: That's all right, put the letter in.
15 COURT: Are you familiar with this letter Mrs. Emerson?
16 A I knew a letter was being written, I didn't know
17 the contents entirely.
18 Q You knew a letter - such a letter was being written
19 but you are familiar with - you were not familiar with the contents
20 of it until now?
21 A Only that with this portion of it, I knew that we
22 were going to advise you that she was not covered with insurance.
23 Q Well, would you mind reading it please?
24 A Dear Mr. Dovel: I have your letter that you have
25 been retained to represent the above captioned concerning her

recent fire loss. I also wish to advise you that we are not obligated to Mrs. Lucas for any claim. With this in mind I thought you might prefer to get the correct information before you proceed further. Yours truly, Fred C. Walker Agency, Incorporated, by Fred C. Walker.

Q Your Honor for the purpose of identification may I have this marked and offered into evidence as Plaintiff's Exhibit. . .

REPORTER: J.

COURT: Yes sir.

Plaintiff's Exhibit Number J was received into evidence and marked by the court reporter.

Q That's all Your Honor.

COOLEY: Your Honor please may I consult with Mr. Whiting for one moment about this.

COURT: Yes.

COOLEY: Your Honor please, we'll just wait and call Mrs. Emerson as our own witness.

DOVEL: If Your Honor pleases, may I ask the witness just a couple more questions?

COURT: All right.

CONTINUING DIRECT EXAMINATION

By: Mr. Dovel:

Q Was that automobile policy - when was that renewed. I want to get - I just overlooked one thing on that. When was it renewed?

A April the 5th '71.

Q When was the payment - the 40 percent would have been the first payment, wouldn't it?

A Yes sir.

Q And how long was that policy carried?

A We carried it until her first payment, October the 7th when she started making her payments. We had already carried it from April the 5th to October the 7th.

Q Let's see April the 5th to the 7th. That would be April, May, June, July, August, September, and you carried that - you carried the policy six months then with no payment?

A Right.

Q And there was nothing owing on the fire insurance policy?

A No sir.

Q But you weren't willing to carry that for three days?

A We weren't asked to carry it for three days.

Q You didn't cancel the automobile policy did you?

A Not at that time, no sir.

Q But you - in that letter you - even though it wasn't

anything owing on it you were going to cancel that, isn't that right?

A No sir, it was to be non-renewed.

Q Well it's the same thing, not renewed?

A No sir, it's a little different.

Q Is that your signature Mrs. Emerson?

A Yes sir.

Q On all these policies?

A Yes sir.

Q I think that's all gentlemen.

COURT: I guess the witness may stand aside, the defense indicated that they'd wait to examine her when they call her as their own witness. So you may stand aside please.

TRANSCRIPT, LORETTA DARLENE LUCAS

LORETTA DARLENE LUCAS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Dovel:

Q Would you state your name young lady?

A It's Loretta Darlene Lucas.

Q I didn't. . .

A Loretta Darlene Lucas.

Q How old are you?

A 17.

1 Q And where do you live?

2 A At the present I live at Route 2, Elkton.

3 Q Where did you live in 1971?

4 A 611 Sixth Street, Shenandoah.

5 Q Is your mother Mildred Lucas?

6 A Yes she is.

7 Q Were you making your home with your mother, of

8 course, in October and November of 1971?

9 A Was I what?

10 Q Were you living with your mother in your home in

11 1971?

12 A Yes I was.

13 Q Directing your attention to - did your mother

14 along about October or November - let's see, did you have

15 occasion to go to the post office for her?

16 A Yes I did.

17 Q What did you go to do?

18 A To make the payment for our fire insurance to Fred

19 C. Walker.

20 Q You'll have to move a little closer and I won't

21 have to do it over.

22 A To make the payment of our fire insurance to Fred

23 C. Walker.

24 Q What did you get at the post office?

25 A A money order.

Q A money order?

A Yes.

Q Do you remember the amount of it?

A $48.40.

Q Before you - were you at home on that day in question?

A Yes I was.

Q All day?

A Yes I was.

Q Anything wrong with you?

A I'd been sick and I hadn't went to school that day.

Q You didn't go to school.

A No.

Q Did you hear a conversation that your mother had with Mrs. Emerson?

A Yes I heard what my mother talked to her about.

Q Where were you when it took place?

A In the same room laying on the couch.

Q Would you tell the Court and the Jury just what you remember about the conversation on - the one end of it?

A Well I heard Mama keep repeating to her that she wasn't concerned about her car insurance at the time, that the car was in the garage and she hadn't been using it and that what she was concerned about at that time was our fire insurance on the home. On our home.

1 Q And it was after that conversation that you went
2 to the post office?
3 A As soon as my sister came home from school we both
4 walked down to the post office.
5 Q As soon as who came home from school?
6 A My sister.
7 Q And the two of you went to the post office?
8 A Yes.
9 Q Did you mail the money order or did you bring it
10 back home to your mother for her to mail it?
11 A I mailed it myself because my mother had been sick.
12 Q Your witness.
13
14
15 CROSS EXAMINATION
16 By: Mr. Whiting:
17 Q Loretta, what time did you go down to the post
18 office?
19 A It was as soon as my sister got home from school.
20 Q About what time was it?
21 A It was about - I imagine we left about 5 or 10
22 minutes after 3:00.
23 Q 5 or 10 after 3:00?
24 A That's right, yes sir.
25 Q Had your mother already gone off to work?

1 A No, my mother was sick.

2 Q Your mother was sick that day?

3 A Yes.

4 Q She didn't go to work at all that day did she?

5 A I really don't remember whether she did or not,

6 but she had been sick.

7 Q Was that the only day she was sick?

8 A No, I believe she'd been sick - she'd been sick

9 right much there lately, she'd had a few different things wrong

10 with her, at that time.

11 Q She had what?

12 A At that time she had been - different things wrong

13 with her.

14 Q What was wrong with her?

15 A One time she had the pleurisy in one lung - I mean

16 pluerisy and then she had pneumonia in one lung at one time.

17 Q How long was she off work?

18 A I don't remember, it's been too long.

19 Q Was this during this Fall of 1971?

20 A Yes, somewhere along that line.

21 Q Pardon?

22 A Somewhere along that line.

23 Q Somewhere along then. Now, when your mother gave

24 you the money, gave it to you in cash did she?

25 A Yes she did.

1 Q And did she count out exactly $48.40?

2 A No, she gave me some extra to pay for the money

3 order. I don't remember exactly how much it was, but it was

4 some extra to pay for the money order.

5 Q And did she tell you to be sure that the money order

6 was $48.40?

7 A She wrote it down on the envelope.

8 Q Pardon?

9 A She wrote it down on the envelope.

10 Q She wrote it down on the envelope for you to take in

11 $48.40 is that right?

12 A Yes she did.

13 Q Did you bring her back any change?

14 A Yes, it was some.

15 Q Pardon?

16 A Yes it was some.

17 Q You brought her back some change?

18 A Yes.

19 Q Now, you said that - what did you say the payment

20 was?

21 A $48.40.

22 Q Yes,What did you say it was for?

23 A The fire insurance.

24 Q How'd you know that?

25 A Because when mama got the letter that day she went

1 right straight and called down there.

2 Q Oh, she did?

3 A Yes.

4 Q In other words she got a letter that morning, is

5 that right?

6 A I don't remember exactly when she got it but I

7 remember when she got it she made a telephone call.

8 Q Right, soon as she got the letter she made the

9 telephone call?

10 A Yes she did.

11 Q And then right after she made the phone call -

12 what time did she make the phone call?

13 A I don't remember now.

14 Q Was it before or after lunch?

15 A I don't remember that either.

16 Q You don't remember that?

17 A No, it's been too long.

18 Q She showed you the letter didn't she?

19 A I don't remember now whether she did or not.

20 Q Pardon?

21 A I don't remember now whether she did or not?

22 Q You don't?

23 A I don't.

24 Q Do you know what was in the letter?

25 A Not exactly no, I remember. . .

Q What did your mother say was in the letter?

A Well she didn't say much to me about it, she just went and made that phone call. She said it was important.

Q She said what?

A She said it was important.

Q She said it was important but didn't say why it was important?

A No, see I'd been sick and she was too. . .

Q I'm sorry I'm a little deaf. . .

A I had been sick and she was too and I reckon, you know, she didn't go into detail with me, to me.

Q Now what times does you mail come in the morning? Or does it come in the morning?

A I believe it comes around dinner time or after.

Q Comes after dinner?

A I think so, I mean I couldn't swear to it, I don't know for sure.

Q But when the mail came she got this letter and opened it, is that right?

A Yes, I think she did.

Q And then afterwards she called the insurance company is that right?

A Yes.

Q And where did you say you were when she called?

A I was in the same room on the couch. I had been

1 sick.

2 Q In the living room on the couch?

3 A Un huh.

4 Q And do you know who she was talking to at the

5 insurance company?

6 A Mrs. Emerson.

7 Q How'd you know that?

8 A Because she repeated her name.

9 Q Repeated her name?

10 A Un huh, she did.

11 Q Now just tell us in your own words what you

12 remember your mother saying? What did she say to Mrs. Emerson?

13 A Well I remember her saying that she didn't - she

14 wasn't concerned about the car insurance, because the car had

15 been in the garage. And that she was not concerned about that,

16 what she was concerned about was her fire insurance and she

17 wanted to make sure she, you know, had all that straight. And

18 I couldn't say what Mrs. Emerson said, but it had to do with

19 so much money that mama had to send. And so that's what -

20 talked on the phone.

21 Q And when Mrs. Emerson told her how much money owed,

22 or she made the remark, did your mother write down on an envelope

23 how much money she had to send?

24 A She did when I went down to the post office so

25 she'd make sure I sent the right amount.

1 Q I see. Well when she was talking to Mrs. Emerson
2 did she write down the amount of money she was supposed to send?
3 A I think she wrote it down then.
4 Q You think she did?
5 A Yes.
6 Q Was that the same figure, $48.20?
7 A And .40.
8 Q .40, is that the figure your mother wrote down?
9 A I think it is.
10 Q You think it is?
11 A Because that's what she told me to send.
12 Q All right. Is that the first time that you know of
13 that day, is that the first time you know of that your mother
14 got a letter from the company about the policy?
15 A No, I believe she got one before or after. . .
16 Q She had got one before?
17 A (Shakes head yes.)
18 Q I see. And she discussed that with you too didn't
19 she?
20 A No, not in detail. I couldn't tell you what was
21 in it.
22 Q Well how do you know she got it? How'd you know
23 she got one before?
24 A Well, sometimes we check the mail and we see them
25 or else we see them laying around the house.

1 Q I see. So then you remember distinctly there
2 were two different letters, is that right?
3 A I don't remember distinctly, but I think there were.
4 Q You think there were two?
5 A Yes.
6 Q How long before the letter of October 6th did she
7 get the first letter?
8 A I couldn't . . .
9 Q You can't remember?
10 A No, it's been too long, I can't remember.
11 Q Was it a month?
12 A I couldn't remember.
13 Q Well what did your mother say when she got the
14 first letter? How do you know whether it was a letter? Could
15 it have been a bill?
16 A No I don't think so.
17 Q You don't think so. Did your mother ever get any
18 bills from the insurance company for insurance premiums due?
19 A I couldn't say that either.
20 Q You can't say that? Well I thought you said you
21 occasionally got the mail and saw it?
22 A I do.
23 Q Pardon?
24 A I do.
25 Q You do? Well how do you know what was in the mail?

A Well I don't just open it right there, I take it and give it to my mother. I mean, I don't, you know, notice it really, it's not that. . .

Q Well, this first - the letter that you're talking about, what I'm trying to find out is how did you know what it was, whether it was a letter or a bill or a Christmas card or what?

A Which one are you talking about, the one that she got when she called Mrs. Emerson?

Q No ma'am, I mean the one before that?

A Now what was the question.

Q The question was how do you know what was in the first envelope? You said it was a letter, how do you know that?

A Well you can tell a letter from, you know, a card of something, unless you take it out.

Q You can? A letter from a card. About a bill that's enclosed in a folded envelope?

A Yes sir.

Q Well, would have been in a different size?

A Usually there is.

Q Well now this envelope then was a longer envelope than a bill envelope is that correct?

A Yes, I think it was. I guess it was.

Q Then as far as you know you never saw any short envelopes that would be envelopes with bills in them, is that

correct?

A Well I'm not for sure everything that mama got, I mean I know about that letter she got. . .

Q I mean from the Walker Agency, of course?

A Well I don't know about everything that she got from them.

Q You don't.

A (Shakes head no.)

Q All right. Well now when this thing that you surmised was a letter came, did your mother make any remarks about it or say anything to you? This is the first letter I'm talking about?

A She might have, but I - it's been so long now I couldn't remember and I wouldn't want to say anything unless I was for sure and I. . .

Q All right. Is it possible that she mentioned then they were telling her she hadn't paid the insurance?

A No, I think I would have remembered it.

Q You would have remembered that?

A I don't know.

Q Pardon?

A I really don't know what it was.

Q You don't know? The only thing you do know is that on the 6th she got a letter and then she made a phone call? Is that right?

A Yes.

Q And you're for sure it was on the 6th aren't you?

A Yes, I believe it was on the 6th.

Q Pardon?

A I believe it was on the 6th.

Q Well the thing you're sure of it was the same day now, I don't want to make any mistake, it was the same day as the money order, is that correct?

A The day that she made the phone call to Mrs. Emerson...

Q Yes.

A . . . is the day that we went and had that money order mailed.

Q Right. And it's also the day she got the letter?

A I think so.

Q That's all.

Questions By: Mr. Cooley:

Q May I ask her one question. Loretta, when you went to the post office, did anyone go with you?

A My sister did.

Q And what time did you go down?

A Right after my sister got off from school.

Q Did your mother give you the money at that time?

A Yes she did.

1 Q And when you came back did you give her the change?

2 A Yes sir.

3 Q Did you fill in the card yourself?

4 A Yes I did.

5 Q Is that your handwriting on the back?

6 A Yes it is.

7 Q Thank you.

8 DOVEL: Your Honor, we want to call this witness back

9 possibly as a rebuttal witness, but for the moment she may be

10 excused.

11 COURT: All right, stand aside.

12 DOVEL: James Sly Sheriff.

13 TRANSCRIPT, JAMES SLY

14

15 JAMES SLY, having first been duly sworn, testified

16 as follows:

17 DIRECT EXAMINATION

18 By: Mr. Dovel:

19 Q Your name is James Sly?

20 A Yes sir.

21 Q How old are you James?

22 A 20.

23 Q And where do you live?

24 A Elkton, Virginia.

25 Q Are you acquainted with Mrs. Mildred Lucas?

1 A Yes sir.

2 Q Are you related to Mrs. Mildred Lucas?

3 A No sir.

4 Q Do you know Mrs. Deldee Emerson here in Luray?

5 A Yes sir.

6 Q Were you with Mrs. Lucas sometime in the latter

7 part of November. . .

8 A Yes sir.

9 Q . . . and go to her home?

10 A Yes sir.

11 Q Were you present when Mrs. Lucas talked to Mrs.

12 Emerson?

13 A Yes sir.

14 Q Do you recall what was said in connection with the

15 fire insurance policy?

16 A Yes sir.

17 Q By Mrs. Emerson I mean. What was said about it?

18 A Well Mildred Lucas went to Mrs. Emerson's home and

19 she asked her - they had a phone conversation over the phone

20 and she was concerned about her fire insurance and she asked

21 her if she remembered it and Mrs. Emerson said she couldn't

22 remember exactly word for word what the conversation was about.

23 And Mrs.Lucas asked her if she remembered that she wanted her

24 fire insurance kept up, that she wasn't worried about her car

25 insurance because the car was in the garage. And . . .

Q Did Mrs. Emerson remember that conversation?

A She didn't remember it for word for word, but Mrs. Lucas asked her if she ever got behind on her fire insurance and she said no you haven't.

Q Was any - what did Mrs. Emerson say about the insurance policy, fire insurance policy?

A She said that she failed to send her a renewal of her fire insurance.

Q Did she mention why she had failed to send it?

A She said it had been so many people in and out and calling on the telephone and then Mr. Walker give her the third degree she said like a Philadelphia lawyer about the conversation between her and Mrs. Lucas on the telephone.

Q That's all.

CROSS EXAMINATION

By: Mr. Whiting:

Q How did you happen to be going in there with Mrs. Lucas?

A I go with her daughter, Loretta Lucas.

Q Well how - did she ask you to come in to be a witness?

A No sir.

Q She didn't? Well why did she ask you to come in

Mrs. Emerson's house?

A Because they went into the house and wasn't nobody else out in the car with me, so I went on in.

Q Well the two of you went in with Mrs. Lucas, is that right?

A Yes sir.

Q She didn't ask you to come in and witness what was said?

A No sir.

Q She didn't. So you weren't paying any particular attention were you?

A Well yes sir, I was right there standing and listening to them.

Q All right. Well you knew she was going to Mrs. Emerson's house for a specific purpose didn't you?

A Yes sir.

Q You did. What was that purpose?

A To see if she remembered about her fire insurance.

Q Well did she tell you that Mrs. -she hadn't previously talked to Mrs. Emerson?

A No sir.

Q Did you know whether or not she had previously talked to Mrs. Emerson?

A No sir.

Q Didn't she tell you what Mrs. Emerson had previously

1 told her?

2 A No sir.

3 Q She didn't tell you what the previous conversations

4 were at all with Mrs. Emerson?

5 A No sir.

6 Q But she did tell you she just wanted to see her to

7 see if she remembered . . .

8 A No she. . .

9 Q . . .Mrs. Emerson remembered renewing the fire

10 insurance?

11 A No she didn't tell me that.

12 Q What did she tell you she was going to see her for?

13 A Well she didn't tell me what she was going to see

14 her for. I was along with her when she went to see her.

15 Q But you didn't know why she wanted to see this

16 lady at all?

17 A No sir.

18 Q That's all.

19

20

21 REDIRECT EXAMINATION

22 By: Mr. Dovel:

23 Q How did you get to - what was their mode of trans-

24 portation getting to Mrs. Emerson's home?

25 A Went in Mildred Lucas' car.

Q Who was driving?

A No, went in my car and I was driving.

Q Did Mrs. Lucas have a car at that time?

A No sir, her car had been giving her a lot of trouble.

Q Is that why you happened to be along?

A Yes sir.

DOVEL: We rest Your Honor, we rest if they're through with you.

WHITING: Let me ask him something.

RECROSS EXAMINATION

By: Mr. Whiting:

Q What kind of a car did Mrs. Lucas have then?

A It was a '64 or about a '65 Ford.

Q '64 or '65 Ford, where was it?

A It was in Larry Breeden's Garage.

Q It was. That was the only car she had was it?

A She had a GTO, but that was in the garage too.

Q Where was that?

A Larry Breeden's.

Q Now, when was this she went there?

A To Mrs. Emerson's?

Q Yes sir?

1 A It was November 23rd.

2 Q November the 23rd. How do you remember that date?

3 A Because it happened 5 days after she called in

4 to check on. . .

5 Q Pardon?

6 A She called in - it was five days after the fire

7 and it was around the 23rd or 24th, one of them days. I believe

8 for sure it was the 23rd though.

9 Q How would you know it was five days after she

10 called in?

11 A Because I know it was - I believe it was on a

12 Monday or something like that and I took her down on the weekend.

13 Q Took her on the weekend. What time of day was it?

14 A It was late in the evening.

15 Q Late in the evening. But you don't know why she

16 was going down there?

17 A No sir.

18 Q But you do know it was five days after the fire?

19 A I think it was about five days, yes.

20 Q When was it you were first asked what you remembered

21 about this conversation?

22 A I can't recall right off.

23 Q Well approximately when, can you tell me within a

24 month or two months of it?

25 A Within a month I reckon.

Q Within a month of now or within a month of the conversation?

A Yes.

Q Pardon?

A Yes sir.

Q Yes sir to what now, was it. . .

A It was within a month.

Q Within a month of what?

A The conversation.

Q Of the conversation, all right. Who asked you about it?

A Her lawyer, Mr. Dovel.

Q And that was within a month of the conversation in late November is that correct?

A Yes sir.

Q All right, that's all.

REDIRECT EXAMINATION

By: Mr. Dovel:

Q You came to my office when you told me about it didn't you?

A Yes sir.

Q I asked you to come there didn't I?

A Yes sir.

Q And you related to me what had transpired, isn't that correct?

A Yes sir.

Q That's all.

JANNEY: We rest Your Honor.

COURT: You may stand aside.

WHITING: If the Court please, may we have a minute to consider this?

COURT: Let's take a recess, a ten minute recess.

COURT RECESSES.

COURT RECONVENES AND THE JURY IS IN THE BOX.

TRANSCRIPT, GORDON TILLEY

GORDON TILLEY, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Cooley:

Q State your name please sir?

A Gordon Tilley.

Q And your occupation?

A Personnel Manager at Luray Textile.

Q And in that capacity do you know Mildred Lucas as an employee?

A She was an employee, yes.

Q And referring you to the records of your company,

1 do you keep the personnel attendance records?

2 A Yes sir.

3 Q Kept in your office?

4 A Yes sir.

5 Q Under your supervision and control?

6 A That's right.

7 Q Do you have the attendance record for a work record

8 for Mildred Lucas for the week of - last week of September and

9 first week of October, 1971?

10 A I have.

11 Q Will you read that attendance record into the

12 record please?

13 A The dates are from September 26th through October

14 10th. The - Mildred Lucas was in attendance September 26th,

15 September 27th, September 28th, September 29, September 30th,

16 October 1st, October 5th, October 6th, October 7th.

17 Q If it please the Court this is an important record

18 to this company, but we would like to introduce this as Defendant's

19 Exhibit Number 3, and would ask that at the end of the day we

20 be able to withdraw it by leaving a copy in the record after the

21 Jury has . . .

22 COURT: I would think that we could take it to the

23 Clerk's office and have it done right now. Now is the accepted

24 time.

25 Q Yes sir. He has a copy, it just isn't very good.

1 COURT: Well, if you'd rather we could use either one
2 or the other. If you'd rather have a print made of it, that
3 could be done.
4 WHITING: If the Court please, what we'd like to do
5 is to have one of the girls - neither one of the copies are too
6 clear. We had the Clerk. . .
7 COURT: Well, how about this yellow card that was
8 first . . .
9 WHITING: Well that's the original record. If we
10 could have one of the deputies make it clear and then have the
11 Clerk attest it that would solve it, so anyone could read it.
12 You see Your Honor, the machine won't pick it up too well.
13 Q It's a purple ink. . .
14 WHITING: We tried the Clerk's machine . . .
15 COURT: You mean for this card it didn't. . .
16 WHITING: Yes sir, yes sir.
17 Q You see the clock prints in purple or dark blue
18 ink and it doesn't . . .
19 WHITING: I'm going to suggest that one of the deputies
20 type in the things that are indistinct and then have - be prepared
21 and certified, two copies of this.
22 COURT: I don't see what difference it makes how it
23 is done just so the Clerk makes duplicate copies of the exhibit
24 that you want put in the record.
25 WHITING: All right sir, we can do that.

1 COURT: Have they tried it here on this machine?

2 WHITING: Yes sir, one of those is one of them.

3 COURT: Well, just forget about it for the present

4 Mr. Cabe. You'll be able to withdraw the original by leaving

5 a legible copy.

6

7 Defendant's Exhibit Number 3 was received into evidence

8 and marked by the court reporter.

9

10 Q This is the original record?

11 A That's right.

12 Q I might just ask you for purposes of elucidation

13 how are the numbers stamped in those blanks on the days?

14 A With a Simplex Time Clock.

15 Q In other words. . .

16 COURT: It's a time clock card isn't it?

17 A That's right, it's a time clock card. The only

18 thing that's not original here, I wrote in the dates to - just

19 for clarification.

20 Q And the employee comes in and sticks it in the. .

21 A That's right.

22 Q All right.

23

24 Questions By: Mr. Whiting:

25 Q I'd like to ask just one question. I notice on

1 day one, what day of the week would that be? On the top of
2 the card?
3 A That is Monday.
4 Q Monday, September the 26th?
5 A That's right.
6 Q And the rest of them follow in that sequence, do
7 they not?
8 A That's right.
9 Q All right sir.
10 A So that October 10th falls on a Sunday, the last
11 day of the period.
12 Q Yes sir.
13 DOVEL: Do you have a copy of that.
14 Q Yes, we're going to furnish it to you.
15 JANNEY: Are you through with the witness.
16 Q Yes I am.
17
18
19 CROSS EXAMINATION
20 By: Mr. Janney:
21 Q Were you in the employment of Luray Textile in
22 October of 1971?
23 A Yes.
24 Q Were you the bookkeeper at the time?
25 A I was Division Controller.

1 Q You were what?

2 A Division Controller.

3 Q You had nothing to do with personnel?

4 A Not as such, no.

5 Q Mr. Ralph Flannagan had personnel. . .

6 A Ray Flannagan.

7 Q Ray Flannagan. And are you personally acquainted

8 with Mrs. Lucas here?

9 A I know her to see her, yes.

10 Q Now, were you acquainted with her on the dates

11 that you have shown here?

12 A Not specifically, no.

13 Q And did you. . .

14 A I mean I knew her on those dates, yes, but. . .

15 Q All right.

16 A Had no reason to. . .

17 Q Now, isn't a fact that at that time she was working

18 the night shift?

19 A She was working the second shift, from 2:30 in the

20 afternoon until 10:30 at night.

21 Q She was working that shift at that time?

22 A Yes.

23 Q Then when this says she checked in at 10:30 this

24 couldn't be right could it?

25 A This - this causes a little confusion. The clock

1 because it's used both for in and out at the same time. . .

2 Q Yes.

3 A . . . it punches out at 2:30 when actually she

4 came in at that time. That's just a peculiarity of the Clock.

5 Q All right. So this merely shows that she was

6 working but when it says she came in at 10:30 that is not

7 correct is it?

8 A That's right, it is not correct.

9 Q And she actually came in at 2:30 on those dates?

10 A That's right.

11 Q We would object to the introduction of this card

12 since on the face of it, it's obviously wrong and misleading.

13 And the card shows or recites that she reported in at 10:30

14 when the witness now testifies that she actually reported in

15 at 2:30 on those dates, so we would object the introduction of

16 this evidence.

17 COOLEY: If it please the Court, there are several

18 grounds to overrule that motion. First the exhibit has been

19 properly introduced and agreed to without objection by counsel

20 and marked by the stenographer at the Court's direction after

21 examination. Secondly, the witness has explained to a reasonable

22 person's complete satisfaction why the Clock works in a peculiar

23 fashion at this place. I must remark that counsel is agile a

24 foot to - for an exhibit of this sort with what it imports to

25 come up with some objection of this sort, but to me it's completely

1 groundless and should be properly overruled. And as I say I
2 think to the merits the witness has completely explained why
3 the in and out part should be the way it is. It has the dates
4 and it has the hours that she was in, if it please the Court
5 the in, out; in,out business, the out is actually the time she
6 went in. It says on the 29th she went in at 2:29. She's due
7 there at 2:30. The out column it says she went out at 10:30 at
8 night. Now, could there be any possible confusion in anybody's
9 mind whatsoever about that kind of a diagram card.
10 COURT: The Court doesn't see fit to sustain the
11 objection. He may argue to the Jury the lack of the probative
12 value of the card or the significance of it. I'm, frankly I'm
13 not quite persuaded myself or enlightened as to why the card
14 doesn't mean what it says.
15 Q Our objection to it Your Honor is. . .
16 COURT: I don't know why - let me ask the witness this.
17 I can't quite grasp the reason that you undertook to give as to
18 why the out and in hours would be transposed or reversed.
19 A There's a little slide mechanism on the Clock that
20 moves from one position to the other as the hour changes. This
21 particular card is used for people who are punching out at 2:30.
22 In other words it would read correctly for someone who was on
23 the first shift punching in at 6:30 and out at 2:30. But the
24 Clock does not change when somebody punches in at 2:30, it's
25 still on the out position. It can't be refined any further than

that.

COURT: I'll leave it to counsel to argue the probative value of the Exhibit, but the admission of it is received over the objection of the Plaintiff.

Q The Court understood that the grounds of my objection is that the witness' own testimony contradicts the Exhibit, and therefore the Exhibit should be - the Jury should be instructed to disregard it, ignore it.

REDIRECT EXAMINATION

By: Mr. Cooley:

Q Let me ask you a question Mr. Tilley about the mechanics of this card. If you had different cards for different shifts then you could conceivably work this arrangement as I understand it?

A Precisely.

Q You stick the card in as you're going out of the first shift and the machine stamps it 2:30 in the out column. When somebody comes on the second shift like Mildred Lucas and sticks her card in for in she gets the 2:29 in the out column?

A Right.

Q Either you've got to have two machines or two sets of cards. You all choose to do neither but to use the same set of cards with the same machine?

A That's right.

Q So that as the shifts change they're in different blocks but the time is the actual time is that not right?

A That is correct.

Q Just for the record, the out column on - this is Mildred Lucas' card identified number, Mildred Lucas 173 October the 10th '71, that's the ending of a period?

A Right.

Q In the out column which is actually the second one over the machine doesn't even print anything in the in column, the first column of the card?

A That's right because she's on the second shift.

Q She's on the second shift. Right, so when the machine says 2:29 in the out column on the second shift that means what to you?

A 2:29 in.

Q And when it reads 10:30 in the in column the third one over on the second shift what does that mean?

A 10:30 out on the same day.

Q Any question in your mind about that?

A None whatsoever.

Q Is this true just of Mildred Lucas or the whole second shift?

A It's true of everybody on the second shift.

RECROSS EXAMINATION

By: Mr. Janney:

Q I again ask you the card says that she reported in at 10:30 doesn't it? The card says that?

A That's right.

Q All right sir, thank you.

COURT: What you're really doing if I grasp the point, I mean your company is saving the expense of an extra clock?

A That's right, it just - as far as I know everybody who uses a time clock like this has this particular problem. And it's added bookkeeping knowledge to decipher it.

DOVEL: Your Honor I submit that everyone's confused about now including me.

COURT: The Court's already ruled on it, it's in.

COOLEY: That's all we have.

(The witness is excused.)

TRANSCRIPT, FRED WALKER

FRED WALKER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Cooley:

Q State your name please sir?

A Fred Walker.

Q And your occupation?

1 A Insurance agent.

2 Q You run the Fred C. Walker Agency, Inc.?

3 A Yes.

4 Q By the title Fred C. Walker Agency, Inc., is that

5 your business?

6 A It's my business, yes.

7 Q It is a corporation?

8 A It is a corporation.

9 Q Are you the chief executive officer?

10 A Yes.

11 Q And are there on a day to day basis?

12 A Day to day basis.

13 Q I think really the one thing I'd like to ask you

14 today is just recount to the Court and Jury what occurred between

15 you and Mildred Lucas when she came in to see you the morning

16 of November the 19th?

17 A As I recall she came into the front office and

18 perhaps asked to see me because she was sent on back. And then

19 she came in and we had a very short conversation. I told her

20 that her insurance was not in force, had not been renewed and that she

21 /therefore did not have any coverage.

22 Q Did you go into a long argument, fuss or anything?

23 A No.

24 Q Did she show any reaction to this?

25 A Well she showed reaction but we didn't have any

1 big argument or anything like that over it.

2 Q One other question, there's been certain intimations

3 here about your third degreeing one of your employees, did that

4 occur?

5 A Never has occurred, anyone of my employees. I've

6 ask them questions but never third degreed them.

7 Q Did you and Mrs. Emerson have a conversation about

8 Mrs. Lucas' situation?

9 A Yes, we talked about it. And she called me and

10 talked on the telephone about it.

11 Q And when was that?

12 A The night that she visited Mrs. Emerson.

13 Q She called. . .

14 A She called after that, yes.

15 Q She called you the same evening?

16 A Yes.

17 Q At home?

18 A Yes.

19 Q And what did she . . .

20 JANNEY: Your Honor that would not be proper to go

21 into what his own employee called him and told him out of the

22 presence of the Plaintiff.

23 Q I'm sorry, I had understood him to say Mrs. Lucas

24 had. . .

25 JANNEY: No, he said Deldee. . .

A No, I said Mrs. Emerson, I'm. . .

Q That's all right, I'm not interested in inquiring along that line. Have you had any other contact with Mrs. Lucas about this affair?

A No.

Q At no time did - in October or November of 1971, did Mrs. Lucas contact you and inquire about the existence. . .

A No.

Q . . . or non-existence of any insurance?

A No.

Q You had no contact with her during that period of time?

A No.

Q Just the one contact?

A Just the one time.

Q That's all.

Questions By: Mr. Whiting:

Q Mr. Walker, during that conversation, the short conversation you said you had with Mrs. Lucas, did Mrs. Lucas claim to you that Mrs. Emerson had agreed to renew her fire policy?

A I don't recall that she said anything at all about that.

Q All right. And if she had said it you would recall it wouldn't you?

A Yes.

Q That's all.

DOVEL: No questions.

JANNEY: That's all Mr. Walker.

COOLEY: If it please the Court, we have two witnesses, one will be on for just about two minutes and then a fairly long one and if the Court would indulge us she's on her way here. Could we wait just a minute until the short witness - who will be on the stand for just a short moment arrives?

COURT: You can't call anybody else.

COOLEY: Well the longer witness. . .

JANNEY: We could probably stipulate what that witness would say.

COOLEY: . . . will be on for some time and I just hoped to get it in a little bit of order and let the other person leave. And she will be here in about a minute or two.

COURT: All right, let's take another recess if anybody wants to leave the box. Take a brief recess, say five minutes.

COURT RECESSES.

COURT RECONVENES AND THE JURY IS IN THE JURY BOX.

1 BARBARA RAMEY, having first been duly sworn, testified
2 as follows:
3 DIRECT EXAMINATION
4 By: Mr. Cooley:
5 Q State your name please?
6 A Barbara Ramey.
7 Q And your employment?
8 A Fred C. Walker Agency.
9 Q And how long have you been with them Barbara?
10 A A little over three years.
11 Q Do you remember in October, November of '71 having
12 any dealings with Mildred Lucas?
13 A Yes I do.
14 Q Can you refresh your memory and tell the Court and
15 Jury what dealings you had with her?
16 A She changed vehicles on her automobile insurance
17 policy and she paid her premium that she had due on her automobile
18 insurance.
19 Q Now, just as a general rule what are your duties
20 composed of at the Agency?
21 A Well in this case I would order the endorsement
22 for the change of vehicles and write the receipt.
23 Q And did you do that in this case?
24 A Yes I did.
25 Q Now, I'll first hand you a little piece of paper

and ask you to identify that if you will please?

A That is my handwriting and that's the endorsement that I ordered on her policy.

Q And the date of that paper?

A November the 19th.

Q And what year?

A '71.

Q And you say this little note is in your handwriting made at the time?

A Yes sir.

Q If there be no objection from counsel may we have this marked as Defendant's Exhibit Number 4.

Defendant's Exhibit Number 4 was received into evidence and marked by the court reporter.

Q Barbara do you recognize this red book?

A Yes I do.

Q Would you tell us what it is?

A A receipt book.

Q And where is it kept?

A At the office.

Q That being the Walker Agency?

A That's right.

Q Now, would you examine this page and see if your

name and handwriting are on there?

A Yes it is. It is on the receipt I wrote for Mrs. Lucas on the 19th for the change, well for the balance she had on her automobile insurance.

Q And what is the number of that receipt?

A 6083.

Q And that was filled out by you?

A Yes sir.

Q And the name of the party received from was whom?

A Mrs. Mildred D. Lucas.

Q And it was paid how?

A Paid in cash.

Q Does - did you actually receive the money from her personally?

A Yes.

Q And she was there in your office?

A Yes.

Q And so as a result of the conversation between the two of you, you made up that little notation?

A Yes.

Q Did she at any time discuss with you, request as to whether or not you had any fire insurance on her house?

A To my knowledge no.

Q Not with you?

A No.

Q At - do you remember what time of day she was in talking to you?

A I believe it was in the morning. I can't completely remember too well.

Q Before lunch or. . .

A Yeah, un huh, I think so.

Q If it please the Court, may we offer this as Defendant's Exhibit Number 5?

COURT: Yes sir.

Defendant's Exhibit Number 5 was received into evidence and marked by the court reporter.

Q Now Barbara did - how much was that receipt for?

A Well it was for $36.30, thirty six dollars and thirty cents.

Q What's the significance of that amount?

A Well I believe she paid her insurance on installments and I think this would be one of the installments.

Q Did you have a card or something you'd go to to find out how much she owed or did she. . .

A Well, she would have had a bill and - where we keep our bills or our billing.

Q Do you know whether on this occasion she had a bill with her or do you recall whether or not she had one?

1 A I can not recall

2 Q Did she ask you to look it up and tell her how

3 much she owed?

4 A No, I don't think so.

5 Q How did you know to charge her $36.30 then?

6 A Well that was on the bill.

7 Q So, would you have looked in your own company records?

8 A Well we would have gone to the bill box and pulled

9 the bill.

10 Q Now when you say bill, would you have meant one

11 of these or. . .

12 A (Shakes head yes.)

13 Q Defendant's Exhibit Number 2 is a yellow page,

14 that says paid 11/19/71, is that your handwriting?

15 A This one right here. It looks like it, yes.

16 Q Would you have pulled that card at the time you

17 wrote the receipt for cash?

18 A Yes.

19 Q And so that in keeping the records of the Agency

20 you are very careful apparently to not only mark the bills but

21 to make the receipts?

22 A That's right.

23 Q And you made receipts for checks and money orders

24 as well as cash?

25 A That's right.

Q Is it fair to say that you do that for monies coming in?

A Yes.

Q And you marked this bill marked paid on 11/19/71?

A Yes.

Q And what is the bill for?

A Well this is on her automobile insurance and it's the rest of the installments I believe. According to the bill the second installments and the third installments were due and she made a partial payment on the 17th and the rest on the 19th.

Q That's all I have.

WHITING: No questions.

CROSS EXAMINATION

By: Mr. Janney:

Q Barbara, what time did you say Mrs. Lucas came there on the 19th of November?

A Well I can't recall but I believe it was in the morning.

Q Wasn't it just about lunch time and Mr. Walker and Mrs. Emerson was out?

A I really don't know what time of day it was. I mean I think it was in the morning.

Q Is it fair to say that you do that for monies coming in?

A Yes.

Q And you marked this bill marked paid on 11/19/71?

A Yes.

Q And what is the bill for?

A Well this is on her automobile insurance and it's the rest of the installments I believe. According to the bill the second installments and the third installments were due and she made a partial payment on the 17th and the rest on the 19th.

Q That's all I have.

WHITING: No questions.

CROSS EXAMINATION

By: Mr. Janney:

Q Barbara, what time did you say Mrs. Lucas came there on the 19th of November?

A Well I can't recall but I believe it was in the morning.

Q Wasn't it just about lunch time and Mr. Walker and Mrs. Emerson was out?

A I really don't know what time of day it was. I mean I think it was in the morning.

1 Q Don't you recall she came there to see Mr. Walker
2 and she was told she'd have to come back later, wasn't she?
3 A I don't remember hearing that conversation.
4 Q Well. . .
5 A I didn't hear that.
6 Q Well didn't she come back later?
7 A Not to my knowledge. That's the only time I saw
8 her in the office and talked to her.
9 Q Well you weren't there then at 1 o'clock when Mr.
10 Walker and Mrs. Emerson came back from lunch were you?
11 A No I go to lunch from - well I go to lunch from
12 12:00 to 1:00 and they leave at 1:00 to 2:00. So if she was
13 in between lunch I wouldn't have seen her.
14 Q And you don't recall that when she paid you this
15 she wanted to see Mr. Walker at that time?
16 A No sir.
17 Q Are you saying she didn't ask or you just don't
18 remember?
19 A If she did ask anything about - to see Mr. Walker
20 we would have told her you know, to come back. But to my
21 knowledge I can't remember her asking.
22 Q And you don't know whether she came back or not?
23 A No, I don't know.
24 Q I believe that's all.
25 (The witness is excused.)

- pretty close - about five and a half months.

Q That would be five and a half calendar months?

A That's right. Working days with holidays off of it.

Q Yes sir. That's all.

CROSS EXAMINATION

By: Mr. Janney:

Q You're assuming that you could get the laborers and material aren't you?

A Oh yeah, you could get them for that.

Q Are you retired now Mr. Yates?

A Yes sir, partly.

Q You haven't built a house in a number of years have you?

A Well I work on them and remodel them and odd jobs.

Q That's all sir.

(The witness is excused.)

TRANSCRIPT, DELDEE EMERSON

DELDEE EMERSON, having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

By: Mr. Cooley:

Q Mrs. Emerson you were here a few moments ago and I'd like to go back and review and maybe introduce some new things

that the Jury might like to have before them today. Now the first I would like to do is to present you with this white card and ask you to identify it please?

A It's Mrs. Lucas' personal account card.

Q Now is this record kept under your control?

A Yes sir.

Q Are those entries all there in your handwriting?

A Yes sir.

Q Is this the original of the record?

A Yes sir.

Q Now if it please the Court - do you have an objection to the entry of this?

DOVEL: No.

Q May we have this marked as Defendant's Exhibit 6?

Defendant's Exhibit Number 6 was received into evidence and marked by the court reporter.

Q Now, Mrs. Emerson would you take the record please. Let me ask you first, how long have you and the Walker Agency been working with Mrs. Lucas, Mildred Lucas?

A Since April of '68.

Q And when did you - what occasioned your first business dealings?

A She came to us for automobile insurance.

1 Q Did you write her a policy?

2 A Yes sir.

3 Q And what was the date of that?

4 A April the 5th '68.

5 Q So that starting with April the 5th '68, that was

6 the anniversary date of her automobile insurance?

7 A Yes sir.

8 Q Did you then subsequent to that date enter into an

9 arrangement for fire insurance?

10 A Yes sir.

11 Q And what was the date of that?

12 A October the 9th '68.

13 Q And how did - are there any differences between

14 the periods of time for which you write fire policies and auto-

15 mobile insurance policies?

16 A Yes sir, you can write a fire policy for three years.

17 Q And in this case how did you write that?

18 A Three years with annual payments on the premium.

19 Q And in that event it's - the premium is slightly

20 more?

21 A I believe at the time it was.

22 Q This is a memorandum copy of - or this is the

23 original of the Homeowner's Policy, what was the premium for

24 three years in that case?

25 A Three years was $95.00.

1 Q And what was the annual premium?

2 A $33.00.

3 Q So it was a little bit more?

4 A Yes sir.

5 Q That's common in the industry I understand.

6 A At that time.

7 Q Now, if you had rewritten the policy in 10/9/71

8 how would you find out what the premium was? Or would have been?

9 A You would look for the annual rate.

10 Q And what was - how do you explain that to us.

11 A The policy rates are shown on an annual basis. To

12 get the three year basis you just multiply your annual rate by

13 three.

14 Q And would the premium have necessarily been the

15 same?

16 A No sir.

17 Q How do you find this out?

18 A We have a Rating Bureau Manual.

19 Q So that if it - did you check your Rating Bureau

20 Manual for renewal of this premium in '71?

21 A No sir, I didn't.

22 Q Why didn't you do that?

23 A Because we weren't going to renew it.

24 Q So that any statement to the effect you told her

25 $33.00 would be the premium is incorrect?

1 A Right.

2 Q Now in - what was the status of this acount as

3 1971 unfold?

4 A Her automobile insurance was six months in arrears.

5 Q And how do you arrive at the figures here?

6 A From your effective date until the - you mean the

7 dates of the policy?

8 Q Yes.

9 A From the effective date of the policy until the

10 expiration, whatever the premium is if it's past due, her's

11 would have been from April the 5th until October.

12 Q Now, will you identify this piece of paper?

13 A It's a copy of her automobile insurance policy.

14 Q Would you have that in your records at the Agency?

15 A Yes sir.

16 Q And what does it call for on it as far as payments

17 are concerned?

18 A It calls for three payments. One at the inception

19 date of April the 5th, one July the 5th and one October the 5th.

20 Q And what are those precise payments that were

21 broken down?

22 A April the 5th payment was $48.40. July 5th, $36.30

23 and October the 5th, $36.30.

24 Q And how do you calculate those, $48.40 for example?

25 A The $48.40 is 40 percent of the annual premium.

Q So when you write these bills up do you show on there this or is there some place that says 40,30,30?

A No sir, just the payment schedule on the policy is the 40,30,30.

Q That's how you calculate it?

A Yes sir.

Q So this would have to be - how much is the annual premium?

A $121.00.

Q If it was $150,00 you'd just use the 40 percent again. . .

A Yes sir.

Q . . . you'd come up with a different figure? But it would nevertheless be 40 percent of the total premium?

A Right.

Q Is this the only record you have of the policy in force at the time of her automobile?

A Yes sir.

Q Is this a copy from your records at the Agency?

A Yes sir.

Q Subject to your objection I'd like to enter that.

JANNEY: We have no objection.

Q No objection by counsel we'd introduce this as Exhibit 7.

1 Defendant's Exhibit Number 7 was received into evidence
2 and marked by the court reporter.
3
4 Q Now, on this policy what was the period of the
5 coverage?
6 A For a year.
7 Q And it ran from what date to what date?
8 A April the 5th'71 to April 5th '72.
9 Q And you are the - not only the secretary but the
10 bookkeeper of the Agency I understand?
11 A Yes sir.
12 Q And in your capacity as bookkeeper would you know
13 whether or not Mrs. Lucas had made a payment of $48.40 in March
14 of '71?
15 A Yes sir I would.
16 Q Do you have any personal knowledge of whether or
17 not she made such a payment?
18 A No sir.
19 Q I don't think you understood my question. Do you
20 have personal knowledge of whether or not it was made?
21 A I would know if she had made it, yes.
22 Q All right, was it or was it not made?
23 A Not in March, no sir.
24 Q When was the first payment. . .
25 DOVEL: Your Honor, I'm sorry, what payment on what?

1 Q On her account at the Agency. The first payment
2 in 1971, bar none, was when?
3 A October the 7th.
4 Q Made no payments previous to that date?
5 A No sir.
6 Q No $48.40 payment in March?
7 A No sir.
8 Q Was there any question of what the $48.40 applied to?
9 A No sir.
10 Q Did - and she owed nothing, of course, on her fire
11 insurance at that time?
12 A No sir.
13 Q Are you the one that suggested that this letter
14 be mailed to her or prepared and mailed from the Agency on
15 September the 24th?
16 A Yes sir.
17 Q Handing you Plaintiff's Exhibit D, that was mailed
18 from your Agency?
19 A Yes sir.
20 Q And what was the occasion for mailing it?
21 A Because her automobile account was past due.
22 Q How much past due?
23 A Six months.
24 Q Been no payments on it?
25 A No sir.

1 Q Now, do you recall having a telephone conversation
2 with Mrs. Lucas about this matter, the subject of the letter?
3 A No sir, not the subject of the letter.
4 Q When did she - did you have a telephone conversation
5 with her?
6 A On September the 29th.
7 Q And how do you fix the date?
8 A Because I made a notation of it at the time of the
9 conversation.
10 Q Is this little paper the notation?
11 A Yes sir.
12 Q Is that in your handwriting?
13 A Yes sir.
14 Q Was that made at the time or just after you made
15 the telephone conversation?
16 A No sir, it was made at the time I was talking with
17 her on the phone.
18 Q At the very time?
19 A Yes sir.
20 Q Did you - subject to your objection I'd like to
21 offer that in evidence.
22 DOVEL: I would object to it Your Honor. There isn't
23 a thing in the world about it that would indicate that it was
24 done at any particular time. And the figures - it doesn't look
25 to be the same to me. The dates doesn't look to be the same.

COURT: The witness has already testified that it was a memorandum made by her at the time of the transaction. You, of course, can attack it in your argument and contend for a different interpretation to be put on it, but it's certainly admissible.

JANNEY: Yes sir, we have our right to cross examine her later on it.

COURT: Why sure you do.

JANNEY: On those. . .

COURT: Sure you do.

JANNEY: . . . as to whether it was done at the same time.

COURT: The objection is overruled.

Defendant's Exhibit Number 8 was received into evidence and marked by the court reporter.

Q This has been received by the Court as Defendant's Exhibit Number 8, now will you tell the Court and Jury just what this little note is?

A It's a memorandum telling how Mrs. Lucas would like to have made payments on her account to pay it in full. She was to send a money order for the $48.40 on Monday, October the 4th, then make one payment of $36.30 in two weeks and have the final payment of $36.30 by November the 1st.

Q This little note is in your handwriting?

A Yes sir.

Q And it was made while you were talking to her on the phone?

A Yes sir.

Q Now, just how did you happen to come to keep this little note?

A We usually keep all notes made.

Q Well what did you do with it following the telephone conversation?

A Well I left it on a little spindle on my desk so I could follow up on it.

Q And use it for a follow up record?

A Yes sir.

Q And then what do you do with it?

A Well if the payments aren't made by schedule we take the next step which is usually cancellation.

Q Now, in this instance this conversation with Mrs. Lucas on the telephone was that on that date, 29th of September?

A Yes sir.

Q What did you all discuss at that time?

A Her past due account.

Q Did she mention receiving the letter or do you recall?

A No sir, she did not.

Q She didn't know her account was past due?

1 A She knew it was past due because she'd gotten
2 statements.
3 Q And what was the substance of your conversation
4 on this occasion about making these payments?
5 A She wanted to know if her insurance would be all
6 right if she made the payments as she stated.
7 Q And so if she made these payments would her insurance
8 be okay, was that. . .
9 A Her automobile insurance would not have been
10 cancelled.
11 Q It had not been?
12 A It would not have been if she had paid it.
13 Q Now, you had this understanding about making these
14 payments on the three dates mentioned?
15 A Yes sir.
16 Q Did she comply with this?
17 A No sir.
18 Q What do your records show when she made the payments?
19 A She made the first payment of $48.40 on October
20 the 7th, the second payment of $36.30 on November the 17th and
21 the third payment of $36.30 on November the 19th.
22 Q Did you do anything after November the 1st when
23 you hadn't gotten the bottom two payments?
24 A Yes sir I did. We requested that the company issue
25 cancellation notice on the automobile insurance.

1 Q What - did you d anything subsequent to that time?

2 A Sent a - all she would have gotten was a notice,

3 probably she got it the first part of November.

4 Q Well you - by the 19th you credited. . .

5 A Yes.

6 Q . . .according to your records you'd been paid in

7 full?

8 A On the 19th, yes.

9 Q 19th, did you then - what did you do following

10 that?

11 A Following the 19th, we wrote for reinstatement of

12 the automobile insurance.

13 Q Wrote for reinstatement. I'd like to have you

14 look at that piece of paper and identify it for us please?

15 A It's a copy of our memorandum to the Washington

16 Branch Office of The Aetna requesting reinstatement of her

17 automobile insurance.

18 Q Now what's the date of that letter?

19 A November th 23rd.

20 Q What year?

21 A '71.

22 Q Do you know whether or not any actual cancellation

23 was ever issued?

24 A Yes sir, cancellation was issued.

25 Q Was it mailed do you know?

1 A Yes sir.

2 Q To her?

3 A Yes sir.

4 Q Did she ever discuss it with you or ask you about

5 it?

6 A No sir.

7 DOVEL: I would object to that but, of course, for

8 the same reason, it's absolutely nothing there to indicate,

9 except her testimony that that - that could have been written

10 anytime, anywhere on that particular typewriter. Nothing to

11 indicate that it was - pin it down absolutely.

12 Q Well it's - if it please the Court I assume that

13 all evidence would be subject to the same sort of attack. It's

14 a carbon copy dated and sent from the Agency and kept here under

15 their jurisdictional control. And it's admissible hopefully

16 under the shop-book rule and if there be any problem about this

17 I'd like to discuss it further.

18 COURT: Your objection is overruled.

19

20 Defendant's Exhibit Number 9 was received into evidence

21 and marked by the court reporter.

22

23 Q Now, Mrs. Emerson, in your capacity as secretary

24 and bookkeeper how many conversations with Mrs. Lucas did you

25 have at the Agency about the insurance?

1 A The one . . .

2 Q She called you the one morning and discussed these

3 payments?

4 A Yes sir.

5 Q Did she call 2, 3, 4, 5, days later?

6 A No sir.

7 Q Did she ever call you again at the office about

8 that?

9 A No sir, not about that.

10 Q Now, did she call you following the fire loss?

11 A Yes sir.

12 Q So that between the end of September you had one

13 conversation and then none until October - I mean until after

14 the fire?

15 A After the fire.

16 Q She never communicated with you by letter or tele-

17 phone or any. . .

18 A No sir.

19 Q . . .other way?

20 A Other than to come by my house.

21 Q That was in sometime in November or anyway that

22 was after the fire loss?

23 A No, that was - yeah, that was after the fire loss.

24 Between November and December sometime.

25 Q Right. But, between the mailing of the letter and

1 the fire loss you just had on contact with her?

2 A Right.

3 Q Now, you send these bills out and whether - do you

4 put anything particular on these bills about notice of payment

5 due or anything of this sort?

6 A Yes sir we do.

7 Q What would that be?

8 A We have several different types but mostly I use

9 the final notice on the bill, which tells them that it has to

10 be paid or we will cancel.

11 Q And was that done in this case?

12 A She was sent the final notice, yes.

13 Q How do you actually do that mechanically? When

14 you send out a notice do you - what do you do to flag it?

15 A By just the time on it involved mostly.

16 Q All right do you - how does the customer who gets

17 it in the mail know that this is actually serious? Is there

18 something on it?

19 A Yes sir, it's a bright red color on it for instance

20 and the notice itself explains the situation.

21 Q What does the notice say?

22 A I don't know the words, not word for word, it's

23 just telling them it's the final notice and final is written

24 in large letters.

25 Q Is that a little sticker?

A Yes sir.

Q And following the mailing of these what do you normally - what do you do in your Agency?

A We hold off several days before we do anything to see if they're going to pay. If they do not pay we go ahead and order a cancellation notice from the companies.

Q And in this case you requested cancellation on November . . .

A After November the 1st.

Q Mr. Dovel asked you about making oral binders on the telephone and you do do this?

A Yes sir.

Q How long do you let these things ride?

A In most cases not very long. We usually wait two weeks at the most.

Q And what do you thereafter do?

A We request a written binder from the company, or write the policy one or the other.

Q And following your conversation with Mrs. Lucas you never issued any fire policy did you?

A No sir.

Q Never sent her a bill for premiums?

A No sir.

Q And you didn't have any further contact with her then until the morning after the fire?

A Right.

Q Just so the Jury doesn't misunderstand here you - she says you said good, indicating I'm sure misinterpretation, what did you actually respond to Mrs. Lucas when she informed you?

A When she told me her house had burned, I said, oh that's great, you know, it was terrible. It was an exclamation.

Q Now let me ask you just one final question, would there have been any possible reason to apply $15.40 to anything at the Agency as Mrs. Lucas has said?

A No sir.

Q At the time that that money was received $48.40, what was the account owing at that time?

A It was owing the April payment, $48.40 and the July payment of $36.30.

Q And these payments are owed because you go and after the expiration of time and then you debit the next payment?

A Right.

Q That's all I have now.

Questions By: Mr. Whiting:

Q Let me just ask a couple of questions. Mrs. Emerson the bill that was sent to Mrs. Lucas, Defendant's Exhibit 1, dated June 21, 1971, shows the two automobile installments that were due does it not?

A Yes sir.

Q That was sent in the ordinary course of business to her address?

A Yes sir.

Q And similarly does the bill of November 1st, Defendant's Exhibit Number 2 also sent to her. . .

A Yes sir.

Q . . . and does that likewise show the amounts due. . .

A Yes sir.

Q . . . on the two automobile policies? All right. Similarly the letter, Plaintiff's Exhibit Number D, dated September the 24th, 1971, was sent by the Walker Agency to Mrs. Lucas was it not?

A Yes sir.

Q And that was the letter in which it was stated we will be unable to renew your Homeowner's policy which expires on October 9, 1971 due to the past due account. It must be paid in full. That was the letter that was sent was it not?

A Yes sir.

Q Was there any other letter sent between September the 24th and October the 7th, regarding this past due account?

A No sir.

Q If any such letter had been sent it would have been in the files would it not?

A Yes sir.

Q And I believe you are in charge of policing collections are you not?

A Yes sir.

Q And if the letter had been written it would have been instituted at your direction would it not?

A Yes sir.

Q You're satisfied no such letter was ever written?

A No sir.

Q You say no sir what?

A No letter other than that one.

Q Okay. Read it two ways. This Agency, your Agency, the Fred C. Walker Agency writes insurance for - fire insurance for a number of companies does it not?

A Yes sir.

Q What are those companies or were those companies in September of '71 and October?

A I'm not sure I can name all of them. I can name most of them I think.

Q All right.

A USF&G, United States Fidelity and Guaranty Company, Travelers Indemnity Company, Virginia Mutual Insurance Company, Pennsylvania Lumbermen's Mutual, Insurance Company of North America.

Q All right, thank you, that's all.

CROSS EXAMINATION

By: Mr. Duval:

Q Everything mostly that you've testified to has to do with the insurance on the automobile hasn't it?

A Yes sir.

Q You said the fire insurance policy was issued on October the 9th, 1968 and that's a three year policy?

A Yes sir.

Q Paid annually?

A Yes sir.

Q The auto policy is only issued for one year at a time?

A Yes sir.

Q Your records go back along to that time on this particular card?

A Yes sir.

Q Mrs. Lucas' payment record through '68 and '69 and '70 looks very good on the card doesn't it?

A She did very well up until '70, it was very slow in '70.

Q In other words she did real well until she told you she was sick and so on, isn't that correct?

A No sir.

Q Let's see right here for 19 - this would be 1969?

A Yes sir.

1 Q Now what was the date that her account balanced
2 there?
3 A She had a balance of $33.70, that was as of July
4 the 5th of '69.
5 Q Well there's nothing wrong with that payment record
6 was it?
7 A No sir.
8 Q Now where's it revolve in here, let's see?
9 A Down at the bottom.
10 Q '70, where do we balance here for '70?
11 A On the top of this side.
12 Q When did the '70 account balance out?
13 A She didn't finish that out until December the 10th.
14 Q Of 1970?
15 A Of 1970.
16 Q Well that wasn't bad either was it?
17 A Well it had been running since April 5th of '70.
18 Q That's right. Now, that policy was issued on
19 that car - of course she at that time as of April, I mean October
20 the 9th, 1971, the fire policy was paid wasn't it?
21 A Up to October the 9th of '71.
22 Q Through October the 9th, 1971 it was paid?
23 A Yes sir.
24 Q Now the auto policy that you were talking about,
25 that was renewed April the 5th, 1971?

A Yes sir.

Q But it was up - there was a payment due on that the 5th of April and, of course, 1971, wasn't it?

A Yes sir.

Q And that's the payment you were six months late getting?

A Yes sir.

Q And you didn't cancel that policy down there all that time?

A No sir.

Q Her credit was real good, that's why you didn't cancel it, isn't it?

A Well she had paid before, yes.

Q Beg your pardon?

A She had paid her account in the past. It took her a while but she paid it.

Q You weren't worrying about it were you?

A Some, yes sir.

Q Because she had kept her accounts up?

A She had paid them eventually, yes.

Q This statement, Mrs. Lucas says that she called you and you told her if you go ahead and send that $48.00 and your fire insurance and what not will be renewed and so on?

A No sir, that's not it exactly.

Q But it isn't anything on that memo that would

1 indicate that you told her otherwise, is it?

2 A No sir, she had gotten final notice on her state-

3 ment to tell her otherwise. I told her that that would not be

4 enforced if she paid according to schedule.

5 Q But it doesn't say here that it's to be applied

6 only to her automobile does it or anything of that sort?

7 A That's the only thing she owed on.

8 Q But her automobile was in the garage, she wasn't

9 interested in that and she said she told you that?

10 A I don't recall her telling me that.

11 Q But she could have and you just don't remember it?

12 A That's possible.

13 Q It isn't anything wrong with that, had she told

14 you that, you could have handled it that way for her couldn't

15 you?

16 A Well not really - I could have handled it that way

17 but her insurance was in force on the automobile.

18 Q Well now, for your bookkeeping records - the Agency

19 when she - when a person doesn't pay their premium you have to

20 pay the company?

21 A Yes sir.

22 Q The Agency pays the company in advance. You have

23 plenty of customers that don't pay promptly that you have to

24 pay the company don't you?

25 A Yes sir.

1 Q And now you could have done that with this account
2 couldn't you?
3 A Yes sir.
4 Q You don't have to - just because she paid $48.40
5 it isn't imperative that you credit that account to her auto-
6 mobile policy you could have put it on anything couldn't you?
7 A No sir, because the automobile policy was the only
8 thing charged on it.
9 Q Well you could have credited her account and when
10 the policy was issued for the fire insurance policy, reissued
11 or renewed whatever you want to call it, it would have been
12 another debit on your ledger wouldn't it?
13 A Had it been issued, yes.
14 Q And you would have credited her account with whatever
15 money she sent wouldn't you?
16 A Yes sir.
17 Q Does she have an auto policy in force at the moment?
18 A No sir.
19 Q And did she drop it after this matter arose?
20 A I assume so, yes sir.
21 Q Well she paid the premium for a year on it?
22 A After the year was up it wasn't renewed.
23 Q Mrs. Emerson, can you give any explanation for
24 carrying the automobile policy that was more than the fire
25 insurance policy, a whole lot more, the fire insurance policy

1 was how much for one year? 40 percent for . . .

2 A No sir, I don't know what the renewal premium

3 would have been on her Homeowner's policy.

4 Q Well you the. . .

5 A The previous. . .

6 Q . . .automobile insurance policy there. The auto

7 policy is a whole lot more than the fire insurance policy per

8 year isn't it?

9 A Yes sir.

10 Q But I can't understand why you were willing to

11 carry her for six months or longer with nothing paid on the

12 auto premium and not at all on the fire insurance premium?

13 WHITING: Now if the Court please I'm going to object

14 to this. This is arguing with the witness. I don't think it's

15 proper.

16 Q I'm asking for an explanation Your Honor, why the

17 fire insurance premium - she runs the office as she's indicated

18 - why would she cancel the fire insurance premium before it even

19 expires and carry the auto policy for six months?

20 WHITING: She hasn't stated. . .

21 COURT: There isn't any evidence here about cancellation

22 of the policy. It is a case of. . .

23 Q Didn't renew it?

24 COURT: . . . expiring, the policy reached the expira-

25 tion date and they said they would not renew it, unless she paid

1 these back items.

2 Q Well did you put an interim fire binder on the

3 fire policy?

4 A No sir.

5 Q Well, it took you four days to reinstate the auto

6 policy didn't it? You said you were paid on the 19th and it

7 was reinstated on the 23rd, is that right?

8 A That's the date that it was requested, yes.

9 Q Do you - these the notices that you're talking

10 about that went out. Now this notice here was dated November

11 the 1st of '71?

12 A Yes sir.

13 Q Was that in an envelope and mailed to Mrs. Lucas?

14 A Yes sir.

15 Q She said - well is that what she could have gotten

16 and called you on the 6th as a result of that notice?

17 A She wouldn't have gotten that. That was. . .

18 WHITING: If the Court please I'm going to object to

19 that. His own client's testimony is that she called on October

20 the 6th, not November the 6th.

21 Q October the 6th, oh, I beg your pardon. I was

22 looking at the wrong date here. I'm sorry. But she said she

23 had gotten something on October - the day she called, I'm

24 looking for your bill that went out on that - the 1st of October,

25 that is what I wanted?

WHITING: Well, where is your copy, if you have one?

Q Where is your copy?

WHITING: They've already testified that none was sent.

Q What would have been the interim binder on her fire insurance policy has you issued it on - on the 9th of - let me be sure I've got the dates right - on the 9th of October of 1971? Would you know without looking at your book?

A Would you ask me that again please. I didn't understand the question.

Q What would have been the premium on - to bind the fire insurance - interim binder on the policy?

A I have no idea what it would have been without looking it up.

Q Does that fluctuate every year?

A It changes - the Bureau changes the rates and it could have been under the same premium as it was before.

Q You weren't in the office when this money was paid on the 19th were you?

A I was in the office but I didn't receive the money personally.

Q You didn't see Mrs. Lucas on that day in question except when she came out after having talked with Mr. Walker?

A That's right.

Q Do you know when the money was paid, what time of day?

A Only by looking at our records.

Q Well you know this date, I'm talking about the hour, were you in the office when she came in?

A I was in the office but I don't know what time it was.

Q I think that's all, just a moment Your Honor. That's all.

COURT: Anything further.

WHITING: No, no questions.

COOLEY: No sir.

COURT: Stand aside. Next witness.

WHITING: We rest, I do. How about you Talmage?

COOLEY: Yes.

COURT: Any rebuttal evidence.

DOVEL: No rebuttal.

COURT RECESSES;

COURT AND COUNSEL RETIRE TO CHAMBERS TO GO OVER THE INSTRUCTIONS.

COURT RECONVENES:

THE COURT EXCUSES THE JURY UNTIL 9:30 THURSDAY, January 17, 1973.

COURT ADJOURNS.

Ætna & CASUALTY

DECLARATIONS

HOMEOWNERS POLICY

☒ **THE ÆTNA CASUALTY AND SURETY COMPANY**
Hartford, Connecticut 06115, A Stock Insurance Company

☐ **THE STANDARD FIRE INSURANCE COMPANY**
Hartford, Connecticut 06115, A Stock Insurance Company

This Declarations Page, the Forms and Endorsements issued to form a part of the policy, and the provisions contained on Pages 2 through 7, complete the below numbered Homeowners Policy

Named Insured and Address (Number, Street, Town, County, State)	Policy Term	Policy Number
CLARENCE E. LUCAS and MILDRED D. LUCAS 611 - 6th Street [illegible], VIRGINIA	3 Years	53 HO 575553 PC
	Policy Period: 10-9-68 Inception	10-9-71 Expiration

described premises covered hereunder are located at the above address, unless otherwise stated herein: (Number, Street, Town, County, State)

rance is provided only with respect to those of the following coverages which are indicated by a specific limit of liability applicable thereto.

Coverages	Limit of Liability
A. Dwelling	$ 10,000.00
B. Appurtenant Private Structures	$ 1,000.00
C. Unscheduled Personal Property	$ 4,000.00
D. Additional Living Expense	$ 2,000.00
E. Personal Liability (Bodily Injury and Property Damage)	$ 25,000 Each Occurrence
F. Personal Medical Payments	$ 500. Each Person $25,000. Each Accident
G. Physical Damage to Property of Others	$ 250. Each Occurrence

Premium		Supplemental Personal Articles Floater Policy
Basic Policy Premium	$ 95.00	
Additional Premium	$	
Total Policy Premium	$	
Credit, if any, for existing insurance	$	
Net Prepaid Premium	$ 66.00	$
Total Premium if paid in installments	$ 99.00	$
Payable: At Inception (and)	$ 33.00	$
At each subsequent anniversary	$ 33.00	$

ject to the following Forms and Endorsements (Insert No. and Edition Date)
[illegible]

e described dwelling of ☒ Frame ☐ Brick, Stone or Masonry Veneer ☐ Brick, Stone or Masonry ☐ Fire Resistive
☐ Aluminum or Plastic Siding over Frame is occupied by ☒ 1 ☐ 2 ☐ 3 ☐ 4 families and not more than two roomers or boarders
r family. Roof: ☒ Approved ☐ Unapproved

Protection Class	Zone	Premium Group	Not more than	Not more than	Applicable when only Form 4 is attached to this policy: Annual fire and extended coverage contents rate ____, number of apartments in building ____
[illegible]	1	5	500 feet from Hydrant	1 miles from Fire Dept.	

described dwelling is not seasonal and no business pursuits are conducted at the premises thereof, Exceptions if any:

Business of Named Insured:	
[illegible] Clinic Court	**Loss Deductible Clause No. 1**—Loss by windstorm or hail is applicable. **Loss Deductible Clause No. 2**—Loss by other perils is applicable.

cal provisions applicable only in State(s) indicated:

Southern States: South Carolina—Valuation Clause—$	N.Y. Co-insurance Clause Applies:	N.Y. Fire District
☐ Inside Protected Suburban Area ☐ Inside Fire District ☐ Inside City Limits	☐ Yes ☐ No	

tion II Only: (a) The described premises are the only premises where the Named Insured or spouse maintains a residence other than business property and ns, (b) Insured employs not more than two full-time residence employees, (c) The Insured owns no outboard motors of more than 24 horsepower for which erage is desired. Exceptions, if any, to (a), (b) or (c):

st Mortgagee: (Name and address)

FRED C. WALKER AGENCY, INC.

untersignature Date [illegible]

Agency at Luray, Va.

AGENT: Fred Bunny Jr

Consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Above Specified (or specified in endorsement attached hereto), Stock Insurance Company indicated above by ☒, herein called "This Company," for the term **shown above** from **Inception date shown above** (At on Standard Time) to **expiration date shown above** (At Noon Standard Time) at location of property involved, to an amount not exceeding the amount(s) a specified, does insure **the Insured named in the declarations above** and legal representatives, to the extent of the actual cash value of the property at time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable e after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the Insured, against all ECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY INCLUDING REMOVAL FROM PREMISES ENDANGERED THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the is insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this icy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

resulting from freezing while the described building(s) is vacant [illegible] supplies thereto until completed and ready for occupancy.

(OVER)

Plaintiff's Exhibit A

Plaintiff's Exhibit B

FRED C. WALKER AGENCY
P. O. Box 431
Luray, Virginia 22835
Telephone: RIverside 3-5990

Aetna
LIFE & CASUALTY

PLAINTIFF'S EXHIBIT
D
1/12/73 HA

September 24th
of our 33rd
year 1971

Mrs. Mildred D. Lucas
611 - 6th Street
Shenandoah, Va., 22849

Dear Mrs. Lucas:

We will be unable to renew your homeowners policy, which expires October 9, 1971 due to the past due account. It must be paid in full.

Sincerely,

FRED C. WALKER AGENCY, INC.

BY: Fred C. Walker
Fred C. Walker

FCW:bf

Plaintiff's Exhibit D

P.S.

TELEPHONES: 743-4990
743-5151

NOTARY PUBLIC

PLEASE MAKE CHECK PAYABLE TO

FRED C. WALKER AGENCY, INC.

GENERAL INSURANCE

57 E. MAIN STREET LURAY, VIRGINIA 22835

To Mrs. Hildred D. Lucas
611 Sixth St.
Shenandoah, Va., 22849

Date June 21, 1971

	Number of Policy	Company	Amount Insured	Premium
-15-71	53SF432503PCA	Aetna-1st Installment on Auto Ins.	20/30-10	[illegible]
- 5-71	53SF432503PCA	Aetna-2nd Installment on Auto Ins.	20/30-10	[illegible]
			Amt. Due 10/7/71	[illegible] 48.40 36.3[illegible]

DEFENDANT'S EXHIBIT

Defendant's Exhibit 1

TELEPHONES: 743-5990
743-5131

NOTARY PUBLIC

PLEASE MAKE CHECK PAYABLE TO

FRED C. WALKER AGENCY, INC.

GENERAL INSURANCE

57 E. MAIN STREET LURAY, VIRGINIA 22835

To Mrs. Mildred D. Lucas
611 Sixth St.
Shenandoah, Va., 22849

Date Nov. 1, 1971

Date of Policy	Number of Policy	Company	Amount Insured	Premium
7-15-71	53SF432508PCA	Aetna-2nd Installment on Auto Ins.	20/30-10	36.30
10-15-71	53SF432508PCA	Aetna-3rd Installment on Auto Ins.	20/30-10	36.30
			Amt. Due	$72.60
			11/17/71	36.30
				36.30

Paid 11/17/71

PAID
NOV 19 1971
FRED C. WALKER AGENCY, INC.
BY

DEFENDANT'S EXHIBIT 3

Defendant's Exhibit 2

WEEK ENDING 41 OCT 10 1971 19 2

No. 173

NAME Mildred Lucas

	IN	OUT	IN	OUT	IN	OUT	Daily Totals
Days 1	9/26						8
2	9/27						8
3	9/28						8
4	9/29						8
5	9/30						8
6	10/1					4 8	8
7	10/2					8	
8	10/4	Sick Paid Time					-
9	10/5						8
10	10/6						8
11	10/7						
12	10/8						
13	10/9					24	
14	10/10						

85230 SIMPLEX TIME RECORDER CO. Gardner, Mass. Printed in U.S.A.		HOURS	RATE	AMOUNT
	REGULAR	72		
	OVERTIME	8		
DAYS WORKED	TOTAL HOURS		GROSS EARNINGS	

A Copy, Teste:

Jerrard Campbell, Clerk.

DEFENDANT'S EXHIBIT 3

Defendant's Exhibit 3

PENNSYLVANIA LUMBERMENS MUTUAL
INSURANCE COMPANY
HOME OFFICE · PHILADELPHIA

personal little memo

11/19/71

Mildred D. Lucas

Off - 1966 Pontiac

Add - 1965 Ford Galaxie
4dr. Sedan

S# 5N62X112635

Fire Coverage
ACV + $100 ded

Ordered 11/19/71

BRANCH OFFIC
NEW YORK, CHARLO

DEFENDANT'S EXHIBIT 4

Defendant's Exhibit 4

FRED C. WALKER AGENCY, INC.
Complete Insurance Service
LURAY, VIRGINIA 22835

0001

DATE Nov. 19 19 71

RECEIVED FROM Ansell Campbell

Fifteen and Ten DOLLARS $ 15.00

FOR

AMOUNT OF ACCOUNT			PAID CASH	
AMOUNT PAID			CHECK	
BALANCE DUE			MONEY ORD.	

THANK YOU

FRED C. WALKER AGENCY, INC.

BY Bessie Hall

RE-304

FRED C. WALKER AGENCY, INC.
Complete Insurance Service
LURAY, VIRGINIA 22835

6082

DATE Nov. 19 19 71

RECEIVED FROM Leo Davis

Twelve Dollars and Zero DOLLARS $ 12.00

FOR

AMOUNT OF ACCOUNT			PAID CASH	
AMOUNT PAID			CHECK	
BALANCE DUE			MONEY ORD.	

THANK YOU

FRED C. WALKER AGENCY, INC.

BY Bessie Hall

RE-304

FRED C. WALKER AGENCY, INC.
Complete Insurance Service
LURAY, VIRGINIA 22835

6083

DATE Nov. 19 19 71

RECEIVED FROM Mr. Medford H. Lucas

Thirty Dollars and 30/100 DOLLARS $ 30.30

FOR

AMOUNT OF ACCOUNT			PAID CASH	
AMOUNT PAID			CHECK	
BALANCE DUE			MONEY ORD.	

THANK YOU

FRED C. WALKER AGENCY, INC.

BY Barbara K. Farris

RE-304

FRED C. WALKER AGENCY, INC.
Complete Insurance Service
LURAY, VIRGINIA 22835

End Acct. 11-19-71

6084

DATE Nov. 19 19 71

RECEIVED FROM Raymond D. Whitten

Twenty and Zero DOLLARS $ 20.00

FOR

AMOUNT OF ACCOUNT			PAID CASH	
AMOUNT PAID			CHECK	
BALANCE DUE			MONEY ORD.	

THANK YOU

FRED C. WALKER AGENCY, INC.

BY Bessie Hall

RE-304

Defendant's Exhibit 5

DEFENDANT'S EXHIBIT

Ledger-Line Card No. 300
White System-Box 5126-Richmond, Va.

L. FRED BRUNEY, JR. - Homeowners

Name Mildred D. Lucas & Clarence E. Lucas
Address 611 Sixth St. Shenandoah, Va.

Company	Policy No.	Description — Location of Property	Expiration Mo.	Expiration Day	Expiration Year	R. C. or Rate	Amount	Premium Debits	Date 1968 Mo.	Date 1968 Day	Cash Page No.	Return Premiums Company	Return Premiums Pol. No.	Credits	Balance
IA	53 FA162674PC	56 Plymouth 40/30/30	4	5	69		15/50-5	25 20	4	5	Cash			25 20	25 20
IA	53 FA162674PC	56 Plymouth 40/30/30	4	5	69		15/30-5	18 90	7	8	Cash			18 90	18 90
IA	53 FA162674PC	56 Plymouth 40/30/30	4	5	69		15/30-5	18 90	10	5	CB			18 90	18 90
IA	53 HO575553	Homeowners DPP *	10	9	71		10 000 -	33 00	10	21	Cash			20 00	33 00
															13 00
A	53 FA162674PC	Add. prem. Cy endt. - 65 Ford						22 00	11	11	Cash			7 00	35 00
									2/8/69		m.o.			10 00	28 00
									4	9	m.o.			10 00	18 00
															8 00
IA	53 FA162674PC	65 Ford 40/30/30	4	5	70		ACV-100 20/30-5	40 40							48 40
IA	53 FA162674PC	Add. prem. - SR22 Filing						5 00	5	27	m.o.			10 00	53 40
									5	29	Cash			20 00	43 40
									6	13	Cash			20 00	23 40
															3 40
IA	53 FA162674PC	65 Ford 40/30/30	4	5	70		ACV-100 20/30-5	30 30	8	21	CB			33 70	33 70
IA	53 FA162674PC	65 Ford 40/30/30	4	5	70		ACV-100 20/30-5	30 30							30 30
IA	53 HO575553PC	Homeowners DPP	10	9	71		10000 —	33 00	12	10	Cash			63 30	63 30
IA	53 FA162674PC	Add. prem. - 66 Pontiac						24 00	12	10	Cash			50 00	24 00
IA	53 FA162674PC	Add. prem. - SR22 Filing						2 00						Cr 25 00	2 00
														Cr 24 00	
									19	70					
IA	53 FA162674PC	Vehicles 40/30/30	4	5	71		ACV-100 20/30-5	76 80							52 80
A	53 FA162674PC	R.P. of $5.00 Cy endt.												5 00	
															47 80
IA	53 FA162674PC	Vehicles 40/30/30	4	5	71		ACV-100 20/30-5	57 60							105 40
IA	53 HO575553	Homeowners DPP	10	9	71		10000 -	33 00							138 40
IA	53 FA162674PC	Vehicles 40/30/30	4	5	71		ACV-100 20/30-5	57 60							196 00

When policy is renewed insert "R" in column after expiration, "C" when cancelled, or use for rate.

WHITE SYSTEM

Ledger-Line Card No. 300

White System-Box 5126-Richmond, Va.

Name Mildred D. Lucas & Clarence E. Lucas

611 Sixth St.

Address Shenandoah, Va., 22849

any	Policy No.	Description — Location of Property	Expiration Mo.	Expiration Day	Expiration Year	R. C. or Rate	Amount	Premium Debits	Date 1970 Mo.	Date 1970 Day	Cash Page No.	Return Premiums Company	Return Premiums Pol. No.	Credits	Balance
	53														
4	FA162674PC	B.P. of 73rd Cyclone of 4/5/70												73 00	196 00
									11	27	Cash			63 00	133 00
									12	10	Cash			60 00	60 00
									19	71					
1A	535F 432508PCA	66 Pontiac 40/30/30	4	5	72		RCV-100 30/30-10	49 40							49 40
1A	535F 432508PCA	66 Pontiac 40/30/30	4	5	72		RCV-100 30/30-10	36 30	10	7	M.O.			49 40	85 70
															36 30
1A	535F 432508PCA	66 Pontiac 40/30/30	4	5	72		RCV-100 30/30-10	36 30	11	19	Cash			36 30	72 60
									11	17	Ck			36 30	36 30

DEFENDANT'S EXHIBIT

Defendant's Exhibit 6

When policy is renewed insert "R" in column after expiration. "C" when cancelled [illegible] rate

	C/S COMM.	C/S OFFICE	C/S AGENCY	BILL NO. OR TYPE CLAIMS	SHORT NAME	STATE CODE	RATE FORM.

FAMILY AUTOMOBILE POLICY

THE ÆTNA CASUALTY AND SURETY COMPANY

SECTION 2 — This Declarations Page, with "Policy Provisions — Section 1," Form completes the below numbered policy. If a date appears in the Amended Date Block these declarations, as of such date, void and replace all previously issued Declarations bearing the same policy number.

POLICY NUMBER	DECL. NO.	AMENDED DATE
2. POLICY PERIOD: From To 12:01 A.M., Standard Time at the address shown.		

The insurance afforded is only with respect to such of the following coverages as are indicated by a specific full term premium charge below. With respect to each described automobile the limit of the Company's liability under each such coverage shall be as stated herein; and with respect to such other insurance as is afforded under each such coverage, the limit of the Company's liability shall be the highest limit stated below for any described automobile to which such coverage applies; subject to all the terms of the policy having reference thereto.

COVERAGES AND LIMITS OF LIABILITY

PART I		PART II	PART III			PART IV	
A. Bodily Injury Thousand Dollars Each Person / Each Occurrence	B. Property Damage Thousand Dollars Each Occurrence	C. Medical Payments Dollars Each Person	D. (1) Comprehensive ACV = Actual Cash Value (2) Pers. Effects $100.	E. Collision Actual Cash Value Less Stated Deductible	F. Towing and Labor Costs Dollars Per Disablement	G. Family Protection Thousand Dollars Each Person	Each Accident

FULL TERM PREMIUM CHARGES

PREMIUM CHARGES OR CREDITS FOR THIS TRANSACTION

ENDORSEMENT NUMBER AND PREMIUM

PREM:

S. PREM:

DESCRIPTION OF OWNED AUTOMOBILE Year, Trade Name, Body Type, Model, Identification Number, Symbol	Rating Class	5. PREMIUM PAYMENT SCHEDULE

USED INFORMATION Name	Date of Birth	PERCENTAGE OF USE CAR 1	CAR 2	CAR 3	CAR 4	PAYMENT DATE	AMOUNT

DEFENDANT'S EXHIBIT 7

NOTE. The motor vehicle is unencumbered unless otherwise stated herein: (Car No., Name & Address of Lienholder, Date Date)

Defendant's Exhibit 7

The following answers relate to Declaration 8.

Owned automobile will be principally garaged in the town designated in item 1 above, unless otherwise stated below:

PENNSYLVANIA LUMBERMENS MUTUAL
INSURANCE COMPANY
HOME OFFICE - PHILADELPHIA

personal little memo

9-29-71

Mildred Lucas —

Will send M.O. for
48.40 on Mon. 10/4/71
then make 1 pay. of
$36.30 in 2 wks. &
have final payment
of $36.30 by 11/1/71 —

DEFENDANT'S EXHIBIT

BRANCH OFFICES:
NEW YORK, CHARLOTTE, N.C.

Defendant's Exhibit 8

Safari Dept. - Washington, D. C.
Fred C. Walker Agency, Inc.
11-23-71
Mildred D Lucas - Pol. # 53 SF 432508 PCA

Please have the above captioned policy reinstated as account has been paid.

Thank you.

FRED C. WALKER AGENCY, INC.

Defendant's Exhibit 9

POLICY CHANGE REQUEST (PLEASE COMPLETE THIS BLOCK ON ALL POLICY CHANGES)

TRANSACTOR	SHORT NAME	POLICY SERIAL NUMBER	POLICY CHANGE EFFECTIVE DATE	DECL. NO.	FORM	FORM	ALTERNATE OFFICE CODE
170			— —				

NAME OF INSURED 35

AGENT INSTRUCTIONS

4-Show a change in Rating [illegible] Driver or Vehicle Information.
5-[illegible]

CITY	STATE	ZIP CODE	STATE	CITY	
10		5	2	2	2

DRIVER INFORMATION

CHANGE ELIMINATE

TYPE: D—Driver; N—Non-Driver; S—Driver not rated

IMPAIR. Any driver who has any mental or physical impairments including heart or diabetic conditions. (If yes, explain in detail in Remarks)

YOUTHFUL DRIVERS: Stu. Away. (If yes, give name of school in Remarks.) Good Stu. (If yes, attach certification.) Dr. Trng. (If yes, attach certification.)

TYPE	DRIVER NAME (First, Middle Initial, Last)	BIRTH DATE	SEX	MARRIED	IMPAIR.	SOCIAL SECURITY NUMBER
	30	— —	M F	Y N	Y N	11

DRIVER LICENSE NUMBER	CAR 1	CAR 2	CAR 3	DATE LIC. (If Less than 3 yrs.)	YOUTHFUL DRIVERS	STU. AWAY	GOOD STU. DR. TRNG.
20	3	3	3	mo. — yr.	Y N	Y N	Y N

TYPE	DRIVER NAME (First, Middle Initial, Last)	BIRTH DATE	SEX	MARRIED	IMPAIR.	SOCIAL SECURITY NUMBER
		— —	M F	Y N	Y N	

DRIVER LICENSE NUMBER	CAR 1	CAR 2	CAR 3	DATE LIC. (If Less than 3 yrs.)	YOUTHFUL DRIVERS	STU. AWAY	GOOD STU. DR. TRNG.
				mo. — yr.	Y N	Y N	

(Show points that results from either vehicle or driver changes. See reverse side for present co.)

ACT	DRIVER	CAR 1	CAR 2	CAR 3	ACT	DRIVER	CAR 1	CAR 2	CAR 3	ACT	DRIVER	CAR 1	CAR 2	CAR 3
		3	3	3			3	3	3			3	2	3

VEHICLE INFORMATION

ADD CHANGE ELIMINATE

BODY TYPE: 1-Sedan 2 Dr. 5-Conv. 2-Sedan 4 Dr. 6-Sta. Wag. 3-Hardtop 2 Dr. 7-Other 4-Hardtop 4 Dr.

CAR TYPE: 1-Compact 5-Pickup 2-Mobile Home W/Camp. 3-Util. Trailer 6 Antique 4-Pickup 8-Recreational

CAR USE: 1-Used in Business or Occupation 2-Driven to Work or School Under 3 Miles One Way 3-Driven to Work or School Under 10 Miles But Over 3 Miles One Way

CAR	YEAR	TRADE NAME	BODY TYPE	IDENTIFICATION NUMBER	MODEL	CAR TYPE	CAR USE	ANNUAL MILES	PRI.	
1	2	6		14	6			5	3	3
2										
3										

ONLY COMPLETE FOR CARS OVER $10,000, MOBILE HOMES AND PICKUPS.

CAR	ORIGINAL COST NEW	PURCH. DATE	NEW-USED	LINE	CAR	ORIGINAL COST NEW	PURCH. DATE	NEW-USED
	5	mo. — yr.	N U	204		5	mo. — yr.	N U

LOSS PAYEE INFORMATION

ADD CHANGE ELIMINATE

CAR	NAME OF LOSS PAYEE	NUMBER AND STREET	FINAL PAYMENT DATE	CITY OR TOWN AND STATE	ZIP CODE
	30	20	— —	20	5

ALTERNATE GARAGING INFORMATION

ADD CHANGE ELIMINATE

LINE	ACT	CAR	NUMBER AND STREET	CITY OR TOWN	COUNTY	STATE	ZIP CODE
200			30	20		10	5
201							
202							
203							

STATE	CITY	COUNTY	RATE	TAX DISTRICT
2	2	2	2	4

COVERAGES: [illegible] ADDITIONS OR CHANGES AS YOU WISH THE POLICY COVERAGES TO APPEAR ON THE MINEOLA DECLARATIONS. (INSERT SYMBOLS WHERE COVERAGES ARE TO BE ELIMINATED.)

	BODILY INJURY Thousand Dollars Each Person	BODILY INJURY Thousand Dollars Each Occurrence	PROPERTY DAMAGE Thousand Dollars Each Occurrence	MEDICAL PAYMENTS Dollars Each Person	FAMILY PROTECTION Thousand Dollars Each Person	FAMILY PROTECTION Thousand Dollars Each Accident	Rejection	Act	COMPREHENSIVE (Show ACV for Actual Cash Value or Dollar Amount)	COLLISION Actual Cash Value or Deductible Stated Herein	TOWING AND LABOR (If Desired Insert 25)
1	4	4	4	5	3	3	Y N		5	4	2
2							Y N				
3							Y N				

Defendant's Exhibit 10

[illegible] INFORMATION

[illegible] OF INSTALLMENTS
1-[illegible]
3-Three Installments

UNDERWRITING APPROVAL

NAME OF INSURED (Last, First Initial) 20

DATE — —

REMARKS