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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. ~~741024~~ 741024

ROBERT E. BEAM,

Appellant,

v.

ROGER DE LA BURDE AND BRIDGETTE DE LA BURDE,

Appellees.

JOINT APPENDIX

JOINT APPENDIX

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MOTION FOR JUDGMENT (R. pp. 1-4)

Filed March 20, 1972

Now Comes plaintiffs, Dr. Roger de la Burde and Dr. Brigette de la Burde, by counsel, and move this Court for judgment against the defendants herein, jointly and severally, in the amount of $10,000 plus interest.

(1) That plaintiffs are individuals residing in Powhatan County, Virginia.

(2) That defendants are individuals doing business as Beam-Williams Insurance Co., Insurance Brokers.

(3) On or about the 24th day of September, 1969, plaintiff's entered into a contract with defendants whereby defendants promised to procure, as agents for plaintiffs, an "All Risk Fine Arts Floater" insurance policy, said policy to insure against loss or damage to that part of plaintiffs' fine art collection located at their home in Powhatan County, Virginia, and at 623 D Westover Hills Boulevard, Richmond, Virginia. Plaintiffs advised defendants that the insurance must not be subject to any deductible.

(4) In January 1970, plaintiffs agreed to accept insurance from the Underwriters at Lloyd's, London (Lloyd's) in the form of a binder procured through defendants. A copy of the binder evidencing such insurance is attached as Exhibit A and is incorporated as part of this pleading.

(5) Said binder was substantially correct on its face in that there was no deductible and the face amount (or liability limit) was precisely in accord with submitted inventory totals.

(6) In March 1970, Lloyd's certificate of insurance L 4726, effected through Atlas Underwriters, Ltd., was issued to plaintiff Dr. Roger de la Burde, said insurance being for all risks, including fire, in the amount of $147,480.00 (the value of the insured collection being $184,350.00 and coverage being 80% of said value), for the period January 19, 1970, to January 19, 1971. A copy of said certificate is attached hereto as Exhibit B and incorporated as part of this pleading.

(7) Said certificate of insurance was, on its face, inconsistent with

insured loss, and in accepting $86,000.00 in settlement, were damaged to the extent of $10,000.00 because of the applicability of two (2) deductibles.

(14) Plaintiffs reasonably relied upon defendants to procure a certificate of insurance to conform with their instructions, and to perform any and all other functions in representing plaintiffs' interest in connection with said insurance, and it was represented and warranted by defendants to plaintiffs that said policy did or would so conform, specifically with respect to the certificate's not being subject to any deductible.

(15) In not procuring the promised coverage without a deductible clause, defendants breached their contract, waranties and representations to plaintiffs, said breach being the proximate cause of plaintiffs' being required to accept a lesser sum from Lloyd's and then resulting in a $10,000 loss to plaintiffs.

(16) Because of defendants' failure to deliver the amended deductible clause to plaintiffs, plaintiffs were thereby prohibited from learning that said certificate of insurance did contain a $5,000 deductible clause, and therefore such failure on defendants' behalf breached the said contract, representations and warranties.

(17) As proximate and direct failure of defendants' breach of contract, representations and warranties to obtain insurance as contracted and to otherwise perform those duties owed plaintiffs by defendants, plaintiffs have sustained a loss of $10,000 for which plaintiffs seek recovery against defendants with interest from July 31, 1970.

Wherefore, plaintiffs respectfully request that judgment be entered against defendants, jointly and severally, in the amount of $10,000, plus interest and the costs of this action.

* * *

ORDER OF CIRCUIT COURT, CITY OF RICHMOND, DIVISION II (R. pp. 136-137)

Entered May 23, 1974

This day came the plaintiffs, in person and by counsel, and also came the defendant Robert E. Beam, in person and by counsel, and

made at the conclusion of the plaintiffs' evidence on the ground that plaintiffs had failed to bear the burden of proof requisite to recovery.

2. The Court erred in failing to strike the plaintiffs' evidence and to enter final judgment for the defendant on motion of the defendant made at the conclusion of all the evidence on the ground that plaintiffs had failed to bear the burden of proof prerequisite to recovery the evidence supporting plaintiffs' position and that supporting the defendant's position being in exact equipoise.

3. That the Court was in error and clearly abused its discretion in finding the defendant liable to the plaintiffs in any amount the defendant having testified to facts in support of his position relative to a telephone conversation with the plaintiff, Dr. Roger de la Burde, the occurrence of which and the contents of which plaintiff failed to deny.

4. That the Court erred in finding the defendant liable to the plaintiffs in any amount in that all the evidence concerning damages, etc., was clearly speculative and not proven by a preponderance of the evidence.

5. That the Court erred in finding against the defendant in the amount of $10,000 with interest at 6% from June 28, 1974 in that there is no evidence to support the same and in the alternative that the maximum amount that defendant could be liable to the plaintiffs under any theory would be $5,000 the plaintiffs having failed to prove that two fires occurred which would invoke two deductible amounts or that the settlement accepted by the plaintiffs was as a result of any failure or neglect on the part of the defendant.

6. That a transcript will be hereafter filed.

* * *

EXCERPTS FROM REPORTER'S TRANSCRIPT

[12] * * *

Dr. Roger de la Burde,

a plaintiff, was sworn and testified in his own behalf, as follows: (Transcript pages 12-58)

Q Dr. Burde, I show you a letter dated November 10, 1969, and ask you if you can identify it? A Yes, I can.

Q Would you, please, explain its significance to the Court? [15] A This is the letter following my initial conversations with Mr. Beam, which, upon the completion of evaluation of objects, was written in order to procure the insurance.

Q Did you make a request of Mr. Beam by way of that letter for insurance on the fine arts collection? A I did.

[16] * * *

(A letter to Robert E. Beam from Roger de la Burde, dated November 10, 1969, was received in evidence.)

By Mr. Witthoefft:

Q Dr. Burde, did you have any subsequent conversations with Mr. Beam concerning the fine arts collection following the date of this letter? A Yes, I received shortly thereafter a call from Mr. Beam telling me that Lloyds of London would be willing to insure the collection, and subsequently to it, we arranged for a meeting at Philip Morris cafeteria in which Mr. Beam presented three potential alternatives for insurance with varying rates of payments for the premiums, one of which was payment for 100 percent insurance, another was for 80 percent insurance, and another was for insurance with 5,000 deductible.

No decision concerning the kind of coverage which I wanted was reached during that meeting. I told Mr. Beam that within a few days I would call him and tell him which of the coverages I would like in order to evaluate the premium that was the kind of coverage I would like to obtain. And finally, two days later, maybe two, three days later, I called Mr. Beam and requested the coverage which was a compromise between the least expensive and most expensive, the coverage being 80 percent of the value, with no deductible applied.

[17] Q What was Mr. Beam's response to your indication on your part? A Mr. Beam indicated that he would refer this to the insurance company. He gave me a binder over the telephone.

Q Dr. Burde, I show you a copy of a document and ask you if you can identify it? A Yes, I can.

plaining the inconsistencies in the policy, particularly emphasizing the sudden unexpected appearances of $5,000.00 deductible.

Q While you have that policy in your hands, Dr. Burde, does it, on the face of the certificate, make reference to the amount of premium for this coverage? A Yes, it does.

Q What is the amount of that premium? A $1,368.63, this being the yearly premium.

Q Was this for Coverage of one year? A For one year.

Mr. Witthoefft: May we have this entered as [22] Plaintiffs' Exhibit 3, please?

(Certificate of Insurance L 4726, effective date January 19, 1970, was received in evidence as Plaintiffs' Exhibit No. 3.)

By Mr. Witthoefft:

Q Dr. Burde, you have in your hand another document, and I would ask if you would identify it, or ask you if you can identify it? A This is the letter which I wrote to Mr. Beam informing him that the $5,000.00 deductible which appeared on the—

Mr. Bowles: Again, Your Honor, the letter speaks for itself.

The Court: Well, he can say what it is, to just identify it, and then I will read it, of course.

A (Continuing) Which emphasizes the $5,000.00 deductible was unexpectedly put on, and that this is not in agreement with the binder or previous arrangement.

Q What is the date of this letter? A April 6, '70.

Q Can you recall how shortly after your review of the Certificate of Insurance that you sent this letter to Mr. Beam? A Within a few days.

[23] Mr. Witthoefft: May we have this entered as Plaintiffs' Exhibit 4, please, Your Honor.

(A letter, dated April 6, 1970 to Robert E. Beam from Roger de la Burde was received in evidence as Plaintiffs' Exhibit No. 4.)

By Mr. Witthoefft:

Q Dr. Burde, what was the response of Mr. Beam to your

applies to standard policy but is not applicable in this case, I took that was a mistake in the main offices that was not applicable here.

Q Did you ever receive a copy at any time prior to July 31, 1970, of any changes in this policy? A I have not.

Q Did it ever occur to you to call Mr. Beam and ask to see copies of any changes in the policy? A I am not too familiar with the insurance procedures, and because of my lasting relationship with Mr. Beam as my agent, I relied on whatever is needed would be forwarded to me and did not question.

The Court: Your question was any such changes or endorsement received prior to 7-31, and that's the date of the fire?

Mr. Witthoefft: Yes, sir.

Q Dr. Burde, had you known prior to the date of the fire at your residence that a policy was in existence that contained a $5,000.00 deductible, would this have been acceptable to you? A No, it would not have been.

Q Now, tell us, if you will, about the fire at your [26] premises in July of 1970, as it relates, of course, to the fine arts collection. A In the evening of July 31 a fire was noted on the premises in the cottage of a tenant farmer, and the cottage contained a major portion of the art collection, or half of the art collection. It was moved up there because of the reconstruction of the main dwelling.

The fire companies came and extinguished the fire. The objects were damaged to the extent specified on the subsequent inventory taken.

The next morning, when I woke up, the fire was still ablaze. It must have been around 5 o'clock in the morning. The other fire was extinguished maybe at about 12 o'clock at night, and this was the time in which the fire companies departed from the scene.

The Court: Was one fire out and it extinguished at midnight and the fire companies leave; and when you wake up the next morning, there is another fire going in the same cottage?

The Witness: In the same cottage.

Mr. Witthoefft:

Q Let's see if you can identify this document. A Yes, I can.

[29] * * *

Q Dr. Burde, why was it that the settlement figure was accepted by you? I don't believe you mentioned the amount of that figure, if you would, for the record. A It was $86,000.00. The reason why I accepted this is because I recognized the unexpected appearance of the 5,000 deductible, and multiplied by two, it made 10,000 less that the insurance company would be liable under the kind of [30] policy that they issued, and the settlement was only $3,000.00 loss, what we say pay out of pocket.

Q The objection you made with respect to the deductible, did you feel it necessary to pursue the matter further with Mr. Beam to the extent of seeing an actual changed endorsement or anything to the policy? A No, I did not. I relied on Mr. Beam as my agent, and I was sure he did all the necessary things in order to protect my interests.

Mr. Witthoefft: I have no further questions.

Cross Examination

By Mr. Bowles:

Q Doctor, I believe you made some inquiry of people other than Mr. Beam concerning obtaining this insurance coverage for your collection? A Yes, I have.

Q And would you tell me who they were? A I can recall an agent by the name of Woodward. I also called Allstate Insurance and several others, maybe three, four others, agencies.

Q And you didn't get anywhere with them? A Mr. Beam was the first one to come with a complete proposal of insurance.

[31] Q Now, your letter, Plaintiffs' Exhibit No. 1, the letter of November 10, 1969—

Mr. Bowles: Could that be exhibited to him, Your Honor?

Q (Continuing)—the first portion of that, the first sentence to Mr. Beam, you said, "I am enclosing herewith the appraisals based on my inventory of art, which have been requested by you to secure the art floater under my home owners policy." What you were trying to add was a fine arts floater to the home owners policy which you had with Aetna Insurance? A Correct. And to the best of my recollection, I had the insurance on the farm, the main dwelling and other dwellings

[35] * * *

Q I hand you a copy of the draft that was paid you and ask you if the date on that is not 12-12-69, or December 12 of '69? A Yes, it is 12-12-69. This is one month later after this letter. So your chronology was correct.

[36] * * *

Q Now, also at the time as you were, as you say, talking with Mr. Beam, you talked directly with Aetna to attempt to obtain this coverage, did you not? A I spoke to several insurers.

Q But you talked directly with the people at Aetna Life & Casualty to obtain this coverage? A This is quite probable.

Q And as it ultimately turned out, Aetna would not undertake the coverage, is that correct? First they said they would; then they said they wouldn't? A I have no recollection of that specific, but it could well be the case.

Q Well, do you recall talking with a Mrs. Scott at Aetna, Nadine Scott? A The name Scott sounds familiar.

Q I hand you a letter, dated November 20, 1969, in which I believe, you enclosed some more information, which is a letter from Associate Professor of History of Art at Virginia Commonwealth University, in which you, in effect, say that in Mr. Beam's absence you have pursued this matter directly with Aetna. A This was still the same case, with Mr. Beam [37] representing me. The only question was of the follow-up of obtaining this coverage. You see, having the other fire on my premises. I suddenly became quite edgy about having this value uninsured, and I was trying to prompt action from the insurers, and in this case, Mr. Beam could not have—was not reached on the telephone over a period of two days, and Mrs. Scott was contacted concerning the floater. This is still under the original agreement—not agreement—request placed with Mr. Beam.

Q And in further consideration? A Yes.

Q Which you had injected yourself directly with the insurance company, so you were not relying just on Mr. Beam to do this, you were doing a good part of it yourself? A Only to the extent where Mr. Beam could not have been reached have I contacted the Aetna

ment to Lloyds' policy, is that correct? A The question is whether the proof of loss signatures are the same as on the policy?

Q Yes. A I mean the policy binder, you mean?

Q No, not the policy binder. A The policy, certificate?

Q Correct. A The policy certificate—I have to examine that.

Q No, I'm talking about the endorsement on the Certificate of Insurance. What I want to know is how did you know that your wife had been added as a named insured? A Well, Mr. Beam informed me in his letter that it would be added, and I assumed that this is correct.

Q You are talking now about the letter of April 21, 1970, is that correct, Plaintiffs' Exhibit 5? A Yes, that's the one.

Mr. Bowles: May I come around?

The Court: Yes.

By Mr. Bowles:

Q Referring to Plaintiffs' Exhibit 5, it says, "Endorsements will be forthcoming from Atlas Underwriters adding your wife as a named insured to the enclosed fine arts [42] policy and changing the wording on the deductible endorsement as it is a standard form but certainly does not fit this particular policy." A That's what it says.

Q And you interpreted that as removing any reference to a deductible clause? A In accordance to everything else prior to this letter, I found this to confirm.

Q This is your interpretation of that language. What is your quarrel with the deductible endorsement which appears on Plaintiffs' Exhibit 3, the fact that the form is improper and would require you to actually pay out of pocket $5,000.00 before you would be entitled to collect any proceeds on a loss? A This was on the original certificate issued, and I assume this to be an extension of it on Page No. 1.

Q Did you read Page 2? A Yes, I did.

Q And you did not like the idea you would have to pay money in order to get money back, did you? A I did not like the idea of having suddenly $5,000.00 deductible.

And then you've got the shorter letter from the agent of April 21, obviously in response to some communication, and it looks like maybe we're getting out here trying to defend several insurance companies and raise [45] questions that would be proper for uninsurability and all those kind of things. Now, maybe I'm wrong, and I'm willing to be corrected.

Mr. Bowles: Well, Your Honor, there are several reasons why I go into that. The short letter you refer to which says enclosed is the policy at that point, or the corrected policy. And my purpose of going into this, of course, from the legal standpoint is at the point the policy is issued and delivered, the binder goes totally out the window unless the loss occurred prior to the receipt of the policy. The binder has nothing to do with this situation.

The Court: That's got nothing to do with what we've got here.

Mr. Bowles: I think as the evidence comes in from the other witnesses—and I can't get it in all through one—

The Court: I understand that.

Mr. Bowles: —will be that Atlas Underwriter girl, in issuing the binder, neglected to put in the line about the $5,000.00 deductible, and that's where all of this starts.

The Court: All right.

Mr. Bowles: And that's my purpose for wanting [46] to go into this.

The Court: Let's hold it to those items as well as we can.

Mr. Witthoefft: It's suggested in the April 21, 1970, letter that the endorsements were sent along with this letter.

Robert Beam: That was the original policy.

The Court: Let your lawyer answer, please, sir.

Mr. Witthoefft: It says, "Endorsements will be forthcoming from Atlas Underwriters. . ." It does not suggest this was a cover letter for the—

Mr. Bowles: —original policy.

The Court: I read it.

The Court: The answer is no recollection. That's neither yes nor no.

Mr. Witthoefft: I think he testified precisely on this point earlier in the testimony. I think Mr. Bowles is being argumentative now to bring it up again.

The Court: When one says he has no recollection doesn't mean you deny it. You don't admit it either is the other side of that coin.

Mr. Bowles: I'd like to introduce that in evidence at this point, Your Honor, Defendants' Exhibit No. 3.

* * *

[49] (A rider to amend coverage and the named insured, dated April 30, 1970, was received in evidence as Defendants' Exhibit No. 3.)

By Mr. Bowles:

Q Now, Doctor, also in resolving this loss that was ultimately settled for $86,000.00, I believe you submitted a statement to Lloyds as to exactly what had occurred, and what have you? A Yes.

Q And I hand you a photocopy of your statement, dated August 12, 1970. A Yes, that's the statement.

Q And there is your signature on the second page, I believe? A Yes.

Q And it contains a recital of what occurred on Friday the 31st of July and the following morning? A Correct.

Q And in that statement it says, "My wife and several cars arrived in the interim period, then the Fire Department." This is in regard to what occurred around 8 o'clock in the evening. "After the fire seemed to be put out I looked over the content of the room and it appeared that everything was destroyed." So what you're saying is that at [50] that point that the collection that was in there was gone? A Since—I mean, I spoke quite specifically it appeared to me since I did not walk into the burned room and some of the objects were in the trunk, the general appearance of the room was that everything was destroyed; however, some objects subsequently were rescued.

Q Of course, you made no claim for the rescued objects? A I made the claim to the extent of the damage.

The Court: And this would be Defendants' 4.

Mr. Witthoefft: Your Honor, I renew my objection as to the relevancy. I think the only issue before the Court is the agreement between the parties and whether or not it was breached.

The Court: Again, if we had a jury in the box—the Court is sitting alone and will receive or discard it on the further argument on what is correct, and in either event we can make our record, as I have suggested [53] before. I think we're trying somebody else's lawsuit instead of the one before the Court.

Mr. Bowles: Well, Your Honor, my purpose for introducing that is simply to show that he maintained to the insurance carrier that there is one fire, not two fires, and that in electing to compromise his claim at the $$86,000.00 figure, he voluntarily submitted to their assertion of defense that he says was asserted of two fires, when he himself did not agree with that. My position being, Your Honor, you can't have your cake and eat it, too.

* * *

[54] (A typewritten statement, dated August 12, 1970, signed by Roger de la Burde, was received in evidence as Defendants' Exhibit No. 4.)

By Mr. Bowles:

Q Now, Doctor, do you recall receiving a letter from Mr. Beam in April of 1970, or May of 1970? I don't have the originals, but I have a copy. I ask you to take a look at this. A No, I have not seen it.

Q You have never seen that before? A No.

Mr. Bowles: That puts me in a strange position to get it in at this point. I'll put it through the defendants.

Q And it is your position that you did not know that there was a deductible applicable to this policy until suit was instituted? A Correct.

Q Are you familiar with Complaints that were filed in the United States District Court? A The suit against Atlas?

Q Yes. A Yes.

By Mr. Bowles:

Q Is there any writing directed by you to Mr. Beam quarreling with him as to why he didn't provide what you say [57] that you asked him to provide? Did you write him any letter setting out your position prior to the institution to sue against him? A No.

Q Did you make any claim by phone to him as to why he didn't do this? A Why he didn't do this?

Q What you claim that he didn't do. A No.

Q As a matter of fact, all through and up until the point that Aetna's policy expired and they refused to renew it and the floater of the fine arts policy expired and they refused to renew it, you made no mention of any failure of Mr. Beam to do anything, did you? A See, this was a period under which the case against Aetna's underwriter was in progress, and not being knowledgeable on separate occasions of the deductible, I didn't know whether my binder was incorrect or the insurance, final policy, and I didn't know until the matter of Atlas Underwriters was resolved.

Q Now, other issues were raised in the negotiations of the settlement besides deductible interests, were there not? A (No response.)

Q By the insurance company, were not other issues [58] raised by them? A Could you specify, or become more specific?

Q Well, you have testified that you took into consideration the claim that two deductibles were applied by the insurance company and that the three thousand or so odd dollars difference wasn't worth fighting over, so you settled for $86,000.00. As a matter of fact, the resistance by Lloyds in paying you was due to other considerations, was it not? A It might have been, too.

Q Did those considerations involve assertions that perhaps some of the collection that burned wasn't there? A Not to my knowledge.

Q You have no knowledge that that was the position that Lloyds took in finally adjusting a settlement with you on this? A I was never informed of that position by anybody.

Mr. Bowles: I have nothing else of this witness.

Mr. Witthoefft: I have no further questions, Your Honor. That's the plaintiffs' case, Your Honor.

Plaintiffs' 4 of April 6, 1970, addressed to Mr. Beam, by Dr. Burde, you have this language:

"Per your request I have reveiwed the forwarded policy on fine arts and noted the following inconsistencies:

"1. The policy contains a $5,000.00 deductible" (sic) "clause. On rechecking the policy binder once more, I found no indication that my payment was for a [61] policy with that clause."

Following Plaintiffs' 4 of April 6, 1970, is Plaintiffs' 5 of April 21, 1970, addressed to Dr. Burde, signed by Mr. Beam, saying, "Mrs. Garrison of Atlas Underwriters called April 20th to let me know that London has acknowledged the changes in the location of your art collection.

"Endorsements will be forthcoming from Atlas Underwriters adding your wife as a named insured to the enclosed fine arts policy and changing the wording on the deductible endorsement as it is a standard form but certainly does not fit this particular policy."

Any normal policy buyer, relying upon his agent, and in view of Exhibit 4 of April 6, would have a right to believe that his main contentions that he was not buying a policy with deductible were what was going to be corrected, even though the language, I might say, is typical insurance legalise and might we say might be subject to several interpretations. But following the familiar rule, the language would be more strongly construed against the writer in the event of any inconsistencies.

I think the doctor, by that letter, was led to believe he was going to have two things done. He was [62] going to have the $5,000 deductible clause eliminated, and that he was going to have his wife added as a co-insured—excuse me—as an additional named insured.

The motion is overruled, and exception will be noted, of course.

Why don't we go to lunch now?

Mr. Bowles: May I point out one thing to the Court, that it's obvious from looking at Plaintiffs' Exhibit 4 and the April 21 letter, Plaintiffs' Exhibit 5, the 21 letter precedes the 6th letter.

Mr. Witthoefft: Your Honor, I would suggest this is a contention made by the defendant, that it be brought out during their case and not on the basis of some contention at this point.

The Court: I'm not going to—that may be, and it may be true, but

that occurred in October, I believe, of '69 on that policy? A Right, that's correct.

Q And you heard the Doctor's testimony that in September he approached you concerning procuring fine arts coverage for his African art exhibit, is that correct? A He actually approached me after the loss because a considerable amount, as I remember, of his African art work was stored in one of his rooms and was destroyed.

Q In the farm? A Yes, I saw it myself.

Q Can you tell the Court when he approached you what he asked you to obtain for him, if you could? A The original request was for a fine arts policy [65] to cover his African art works, some paintings and tapestries, as I remember, and then somewhere along the line the tapestries and paintings got put aside, and it was strictly on the African art work and some rugs.

[66] * * *

Q What specifically, with regard to type of coverage, had Dr. de la Burde asked you to secure for him? A You mean in the way of a fine arts policy?

Q Yes, with regard to a fine arts policy? A Originally, he just asked me for a fine arts policy without making any stipulation as to what type or anything like that.

[67] * * *

Q Now, when did you first get involved with Atlas Underwriters? A I would say that was probably around October, somewhere around in there. I don't remember.

* * *

Q And, I believe, there came a time when you advised the Doctor that it would be necessary to obtain an inventory of the collection and an appraisal of the collection? A Right. At the time he didn't have any values on it since he had bought some of it in Africa, and I believe some of it was handed down, and we were somewhat at a loss to find out originally who to get to evaluate it, and I believe I called the Virginia Museum. They said they didn't do it, and Dr. Burde came up with some people to make the appraisal.

with a $5,000.00 deductible, and the co-insurance could be used with or without the deductible.

Q Independent of one another? A Yes.

Q Was any rate ever quoted to Dr. de la Burde or requested of Atlas Underwriters only for the 80 per cent co-insurance? A No.

Q After you had communicated the information on the .9 per cent rate, $5,000.00 deductible and 80 per cent co-insurance to the plaintiff, what did he tell you to do? A He told me that he would take the one with the deductible and the co-insurance.

Q All right, what is the next thing that happened in the chronology? A Well, next Atlas issued the binder, and I took it to Dr. Burde, and I believe he gave me a check at that time.

Q Did you, by chance, examine the binder? A No.

Q I take it you wished that you had now? A Very strongly.

Q And after the binder arrives and has been delivered, does a certificate of insurance come through? A Yes, the insurance policy finally came through. [71] I noticed on the certificate it was typed March the 16th, and there are some cross notes from Atlas that says that they mailed it on March the 16th; and on March the 19th, which logically would be the date that I received it and examined it, I wrote Atlas back immediately upon receiving the policy and saying that they had used the wrong form deductible, that what they did was used a property damage form deductible whereby Burde would have to pay the deductible to Atlas before they settled the claim; and if they didn't do so, that they would refuse to pay the loss.

Q Well, on Plaintiffs' Exhibit, I believe it is 3, the Certificate of Insurance from Atlas Underwriters, Limited, on the second page thereof, the endorsement that appears thereon, is what you are saying is the form of that endorsement is not the type of deductible endorsement that is used with a fine arts policy? A Yes, that's an automobile property damage deductible.

Q In other words, somebody had put the wrong form in making up the policy page? A Yes.

Q Now, did you catch this yourself? A Yes.

The Court: Are you referring to this language here, "Check on that ded."?

The Witness: Yes, sir, deductible endorsement.

The Court: I see. D-e-d, deductible endorsement. "It does not fit this policy."

The Witness: Yes, sir, we had already discussed it over the phone, so I was just—

The Court: All right.

Mr. Bowles: I would like to introduce—I think it would be easy to do it as one exhibit, Defendants' 9, since they came together.

The Court: Let me read this; it's a little longer.

Have you got any answer for why you have to shake up the company on 4-6 as to why they have not already complied with your memo of 3-19?

The Witness: I thought it was just a simple endorsement change, that they had just used the wrong form, and I wanted to send the policy on out to him; that I didn't realize that they wanted specific wording as to the co-insurance, which was the holdup.

[75] They held it up for quite a while to the point where I finally went ahead and sent the policy and enclosed a note to the insured that we were changing the deductible.

The Court: They never bothered to tell you that; you had to go after them to obtain this information some—

The Witness: About a month or so later.

The Court: Well, not quite a month, from March 19 to April the 6th.

The Witness: Yes.

The Court: They didn't tell you anything?

The Witness: No, sir.

(Two items of correspondence with dates of 4-6-70 and 3-27-70 were received in evidence as Defendants' Exhibit No. 9.)

Q And I believe that has been introduced into evidence here? A Yes.

Q Now, did you, in fact, after you received that, mail that endorsement? A Yes, I mailed it myself.

Q On to Dr. de la Burde? A Yes.

Q And did that endorsement correctly reflect the wording of the $5,000.00 deductible and in addition name Mrs. de la Burde as a named insured? A Correct.

Q I hand you a piece of paper titled "From the desk of Bob Beam"—and I assume that's you—and ask you if that is a copy of what you utilized to forward the corrected endorsement to Dr. de la Burde? A Yes.

Mr. Bowles: I'd like to introduce that as Defendants' Exhibit 12, Your Honor.

[81] (A handwritten note to Dr. Burde from Bob Beam, dated 4-70 was received in evidence as Defendants' Exhibit No. 12.)

By Mr. Bowles:

Q Now, Mr. Beam, after having forwarded the endorsement, and your telephone conversation, which, you say the plaintiff said, "Yes, that's right," or "I remember," or something to that effect, did you hear anybody make any suggestion that you had failed to provide the insurance coverage as requested until you were sued in this matter? A No. Dr. Burde, after the loss, prior to the suit, never mentioned it.

Q And during the course of the prosecution of his claim against Lloyds of London, was any mention made of this, the deductible aspect of it? A Yes. I don't really remember when it was. In about December or January we were having considerable amount of problem getting Aetna to handle the claim, or for Lloyds to handle it because of some questions that came up on it, and Dr. Burde had obtained an attorney—it was Everette Allen, and Mr. Allen called me and asked me if I would come down and go over it with him; and I went down, talked to him, and he was very, very friendly.

We went over all the information. I showed him [82] my file, and he photostated several pieces of the information that was in it, and I told him then that I felt if we could get the attorneys for Lloyds and Allen together, we could get this claim settled in very short time.

coverage with the $5,000.00 deductible? A 1.2 times the full amount as opposed to a 90 cent [84] times it.

* * *

Q What was your answer to that question, Mr. Beam? Was there a premium quoted to you on the basis of 80 per cent co-insurance with no deductible? A I'd have to see the proposal on it. Do you have one? They had a quote form, which, I believe, I gave one, a copy of it to Dr. Burde, and I don't remember right offhand.

Mr. Bowles: May I hand him the file, Your Honor.

By Mr. Witthoefft:

Q Who proposed the idea of 80 per cent co-insurance without the deductible? A Dr. Burde—not without. I believe that was if there was one. Hold on; let me find the proposal, and I can tell you exactly. "Rate 1.2 per cent or 90 cents with a $5,000.00 deductible. If 80 per cent coverage only is required, the remaining 20 per cent uninsured at the Assured's own risk, the rate will be based on the sum insured hereunder."

Q What document is that you are reading from, [85] Mr. Beam? A This is one of Atlas' correspondence.

Q May I see it, please?

This correspondence was received by Atlas? A Yes.

Q Do you have any idea what prompted this letter from Lloyds to Atlas? A Dr. Burde's request for it.

Q Well, certainly he didn't make it directly; it was made by some intermediary on his behalf? A He asked me, I asked Atlas, Atlas asked Lloyds, which is Lionel Sage, I believe.

Q Do you have any note of the correspondence through which you asked Atlas to convey this message to Lloyds? A No.

Q Do you have a copy of any correspondence by which Atlas conveyed the request to Lloyds concerning premium quotation? A What's the date on that?

Q January the 8th, 1970. A Here is one. These are all from Atlas' file.

"Rate 1.2% or 90¢ with $5,000 deductible.

"If 80% coverage only is required, the remaining 20% uninsured at the Assured's own risk, the rate will be based on the sum insured hereunder."

Q It's your testimony that it was the initiative of Lloyds of London to make the reference to the 80 per cent co-insurance? A Yes.

[88] The Court: I believe you want to offer it?

Mr. Bowles: Yes, that's Defendants' 13, I believe.

(A letter from Lionel Sage & Co. Ltd. to Atlas Underwriters Ltd., dated January 8, 1970, was received in evidence as Defendants' Exhibit No. 13.)

By Mr. Witthoefft:

Q If you will, Mr. Beam, explain to the Court the significance of this document, dated February 27, 1970. A All right, now, here is one, 27 February '70, again from Lionel Sage & Company to Atlas, "In accordance with your instructions we have effected the following insurance: All risks fine arts insurance, 80 per cent of $184,350 on Fine Arts being 147,480.00 with a $5,000 deductible each and every loss."

Q Do you have any idea what prompted this correspondence from Lloyds? A I'm sure it was Dr. Burde accepting it with the $5,000.00 deductible on the 80 per cent co-insurance basis that I related that to Atlas. Atlas, in turn, wrote Lionel Sage, and they agreed to it and said that it had been placed, and they gave a breakdown of the various underwriters and their percentages of what they were writing on each one. Apparently, this is technical detail for Atlas on the way it was to be [89] wrote.

Q This is in conjunction with that other letter that was just admitted as a defendants' exhibit? A It's hard to remember what in the heck happened four years ago, but apparently Mrs. Garrison at Atlas didn't understand the deductible, or the proposal very well, as she has "On January 13 . . . I called Mr. Beam and advised him that I had the alternate quote that Dr. de la Burde wanted on the 80 per cent co-insurance and $5,000.00 deductible."

Q You said that there may have been some confusion on Mrs. Garrison's part? A I do not remember there being but two options;

Q Did he respond to your request? A Yes.

Q Did he do everything that was necessary for him to do in order to insure his collection? A Yes.

Q Did you ever have a meeting with Dr. Burde at Philip Morris to discuss the insurance? A I went over the first time, and we went downstairs in the cafeteria and had coffee and discussed it. I don't remember what we decided at that point, whether he gave me a check, what happened; I haven't the faintest idea. I vaguely also remember going back over there and, I believe, meeting him in the foyer.

Q So you recall nothing— A What happened, I have no idea.

Q Do you recall any firm conclusions that were [92] reached on the basis of this meeting at Philip Morris? A No.

Q So you simply presented to him the proposal? A I have no idea.

* * *

Q I think I had asked you if you had any notes about any of these conversations you had had with Dr. Burde. A I don't believe so other than if Dr. Burde asked me something, I would relate it to one of the insurance companies, and there were various things, like, he would say, well, you know, increase such and such or add something, or [93] change this on his farm owners, and various things like that.

Q Now, I make reference to an earlier exhibit; I believe it was Exhibit 5, 4 or 5. Mr. Beam, I show you a document that was previously entered as Plaintiffs' Exhibit 4 and ask you if you can identify it? A Yes.

Q Did you receive this letter? A Yes.

Mr. Bowles: That was 4, Your Honor?

The Court: Yes.

By Mr. Witthoefft:

Q Now, Mr. Beam, you stated that you received that letter, and in the first paragraph of that letter Dr. Burde objected to the deductible as he found it in the Certificate of Insurance? A He merely commented that it wasn't shown on the binder, I believe.

after the fire loss itself? A Oh, yes, quite a few times. We talked back and forth, plus Dr. Burde wrote me several times, and we made several changes on his farm owners, as well as on his fine arts policy, on up until his policy expired by—through Lloyds in January. When his policy was canceled by Aetna, he asked me to try and obtain insurance elsewhere, which I was unable to do. When the fine arts policy expired, I tried to place it elsewhere and was unable to do so.

I believe he purchased the coverage through Farm [96] Bureau, I believe he told me. So that we had a very cordial relationship at that time.

Q And it's your recollection that you had this discussion with him concerning the existence of the deductible on the Certificate of Insurance shortly after you received the letter, dated March 6, 1970, in which he objected to the existence of the deductible? A It was, I believe—his was dated April the 6th, I believe.

Q Well, whenever it was received. A Yes, whenever I received it, we talked about it certainly within two or three days of it.

Q And you never had any further discussions? A No, before the loss or after the loss.

Mr. Witthoefft: I have no further questions.

Redirect Examination

By Mr. Bowles:

Q It's your testimony, Mr. Beam, that Plaintiffs' Exhibit 4, the letter dated April 6, 1970, was, in fact, received much later than that and is in response to your letter of April 21, 1970, Plaintiffs' Exhibit 5? A Yes, I held the policy for a while because I couldn't understand—I didn't want to send it out with the [97] wrong deductible endorsement on it.

Q When you say "the wrong deductible," you mean the— A Wrong form.

Q Wrong form. A And finally I went ahead and sent the policy out, and since it was on the wrong form, I made note of it, and Dr. Burde obviously responded after that. Obviously, his has the wrong date.

Mr. Bowles: I have nothing else of this witness.

say that you kept the other policy for some months because you weren't satisfied with it?

[99] The Witness: That's correct.

The Court: But the binder that was to put the insurance in effect, you weren't concerned about it?

The Witness: Your Honor, it would have been far to my advantage—

The Court: I'm not asking you to explain to me you would have gotten more premium the other way, and nobody is accusing you of dishonesty. Nothing in here suggests that you are a dishonest man.

The Witness: I would have been delighted to change it.

The Court: Your suggestion is that you made a mistake, and I am trying to reconcile those two points, which at this point stand out like twin peaks in my mind. All right.

[100] * * *

Edward A. Marks, Jr.,

was sworn and testified in behalf of the defendants, as follows: (Tr. 100-127)

Direct Examination

By Mr. Bowles:

Q Would you state your name, please, sir? A Edward A. Marks, Jr.

Q And your occupation, Mr. Marks? A I practice law in Richmond.

Mr. Bowles: Would the Court require that I go further and qualify Mr. Marks?

The Court: No.

By Mr. Bowles:

Q Mr. Marks, I believe that you represented Atlas Underwriters and Lloyds of London in the defense of a suit brought in the United States District Court of the Eastern District of Virginia, Richmond

Mr. Bowles: The Court already has the Court papers filed from the District Court.

The Court: Yes.

A (Continuing) The second count was denied in full, and told the Court that we had 60 days after receipt thereof; same was not sufficient for purposes of the company. Their defense—rather, the second defense as to the whole rested upon the failure of the plaintiff to perform the obligations of the plaintiff of the terms and policies of insurance, and we charged the insured with having neglected to use reasonable means to preserve the property after the occurrence of fire based upon certain facts that were therein set forth, and we alleged had proper care been taken by the insureds to save the property, there would have been considerably less loss than was actually suffered.

[103] The third defense to the whole was as to amount, and we questioned—

The Court: Will you tell me, please, Mr. Bowles—I frankly see no relevance in all of this. The suit against the only defendant here is based upon his act of negligence in the deductibility of the policy, and I've heard at least a half dozen times today what went on between the plaintiff and the various companies, none of whom are before this Court, the sole question being did the defendant—and I guess as I have just explained to him, nobody has accused him of being dishonest—did he neglect to get the kind of insurance that the plaintiff claims he ordered him to get, and which, strangely, a premium for which was quoted initially by Lloyds without having ever been requested to do so according to the defendant. And we keep going back.

And I want to let you have your record, but it seems to me that we have tried to track down—we have tried to try a case all day long between Lloyds and the plaintiff and between the company this lady is with out here and the plaintiff.

There is one question before the Court, one simple question. Now, if you think evidence of what happened and what did you intend to do, what they did [104] do—we know the policy had the deductibles in it; we know that the policy had a deductible for each occurrence. We know there were two fires, and we know that the only claim that's being made here is that those deductibles should not have been.

What other considerations moved the plaintiff to accept 3,000 less, I don't know. He is not asking you for that. You are not defending

we're talking about a different thing. When he settles his case and his reasons and inducements for settling it are highly material to this claim here—

The Court: Well, that's for me to decide after I hear all the evidence. Go on and make your record.

By Mr. Bowles:

Q Mr. Marks, besides the defenses that you have asserted, was some question raised as to whether the goods insured under the policy were actually, in fact, destroyed by the fire? A Yes, sir, that's a part of the defenses that I mentioned a while ago. There was information in the files to the effect that a large part of these things had been in a locker or crate of some kind, or a trunk, in the building, and that no visible damage had been done to that container, and that they disappeared after the Fire Department left the first time. That's what my file disclosed.

Q And had you tried the case to conclusion, we would have— [107] A We would have established the verity of that fact, yes, sir. And we also believed, according to the investigation that the adjuster had put in my file, that the damage in the first fire had been a great deal less than the second.

Cross Examination

By Mr. Witthoefft:

Q Was it not the position of the insurance company in defending this action in the District Court that there were two separate fires? A We took the position, Mr. Witthoefft, that we thought we could show two separate fires, yes, sir.

Mr. Witthoefft: I have no further questions.

The Witness: That was only a part of our defense, though, and I will say this: In view of the questions, that when I discovered what I considered to be the greater weight of the evidence in the case, mitigated against the position of my client, I was interested to buy out for the cheapest possible dollar, and that's what I did.

proposal form. I received this information, and I submitted it to our broker in London.

Q And what transpired as a result of this? A When they received this information, they first Telexed back and gave an indicated rate of $1.20 per 100 of value, with no deductible, and on their Telex they gave a 90-cent rate for a $50,000.00 deductible.

The Court: How much?

The Witness: It was a typographical error, saying they were in error and made it a $5,000.00 deductible. When I received this letter from London, Mr. Beam called and had an appointment, I believe, with the insured, and he needed this information right away.

So he came down to my office, picked up a copy of this letter and took it with him. And in this letter, London gave a rate of $1.20 or a 90-cent with a $5,000.00 deductible.

And to back up, when I gave Mr. Beam this dollar rate originally, he came back and asked me to get a quotation with a deductible of 5,000, plus to see if London would insure this property with 80 per cent of value. This is my basis of going and asking for this quotation.

[111] By Mr. Bowles:

Q Now, can you tell the Court what transpired next in your relationship between Mr. Beam and Lionel Sage? A After Mr. Beam received this letter, he came back and requested that we bind the coverage on a 90-cent rate and 80 per cent value.

Q With or without the deductible? A Well, the 90-cent rate indicates the 5,000 deductible.

Q What was done at that point? A At that point I contacted Lionel Sage for them to go to the market and place the coverage at the $5,000.00 deductible.

Q 80 per cent co-insurance? A Yes, sir.

Q And what transpired following that? A Then London, after going to the market, they Telexed that they had placed the coverage at that point, and then we—

Q And what did you do as a result of the information you received from London? A Then we issued a binding certificate.

Q All right, when did you receive the phone call from Mr. Beam? A On March the 19th.

Q And at that point, did he also request that Mrs. de la Burde be added as a named insured as well? [114] A Yes, he did.

Q So at that point you were going back to Lionel Sage to request that they add her as an additional named insured, and include in the policy the correct form of $5,000.00 deductible? A Right.

Q What happened next in the chain of events? A Okay. On or about April the 9th we received from Beam and Williams a request to change the location—this policy was written on a named location—and with this, I believe, Mr. Beam sent me a letter, a copy of the letter from Dr. Burde, dated March 27, requesting permission to transfer his art collection located at the main location to the Secon Cottage, and also seven objects loaned to a Miss Roache were on loan to the Valentine Museum, so I had to go back to London to request these changes. And on April the 9th, I wrote to Lionel Sage, attaching a copy of Dr. Burde's March 27 letter, and requested that they make whatever changes that were necessary.

Q And, I take it, that was done? A And on April the 20th, 1970, we received a letter from Lionel Sage, dated April the 15th, outlining Underwriters had noted that seven of the objects are on loan at the Valentine Museum and that an Epa mask will be exhibited at the Virginia [115] Museum. And on transferring the art collection to the Secon Cottage, the Underwriters wanted additional information, and they wanted to know if the premises were permanently occupied.

Q And did you make inquiry as to whether the premises were permanently occupied? A Yes, on April the 20th, I called Mr. Beam and requested information that London desired.

Q Right. And then what happened next? A Okay, let's see. No, April the 20th, I wrote London and gave them the information requested, and—let's see.

Mr. Witthoefft: Your Honor, while Mrs. Garrison is pausing, I, once again, renew my objection to the relevancy. I don't think the existence of the deductible is in question, nor that the policy was amended to insure Dr. and Mrs. Burde.

80 per cent co-insurance, $5,000.00 deductible, at the rate of .9 per cent? A Yes, this is what he requested.

* * *

Recross Examination

By Mr. Witthoefft:

Q Mrs. Garrison, could you, please, make reference to the exhibit we were just discussing. Can you tell me the date that Mr. Beam or anyone from Beam-Williams first contacted you or Atlas Underwriters about approaching Lloyds for a quotation on an 80 per cent co-insured coverage with a $5,000.00 deductible? A It was on or about December the 29th, because this is the date that I wrote London outlining the information that they had requested, and in this letter I also asked them to get me a quote for $5,000.00 deductible and an 80 per cent [123] of value.

Q And when did they respond to your request, and how did they respond? A They responded originally with a Telex. As I said before, they wanted a rate of $1.20 for full coverage and a 90-cent rate for $50,000.00 deductible, and then they corrected this with a letter, and their letter was dated—their letter was dated January the 8th.

Q Mrs. Garrison, I show you this document and ask if you can identify it? A Yes, sir.

Q Would you tell the Court what it is, please? A This is a document that I wrote to London.

Q Does your language employed make any reference at all to the existence of a deductible? A No, it doesn't, but the rate indicates to me and to London the deductible, because with the January the 8th letter, with no deductible, the rate is $1.20, and with a deductible it's 90 cents.

Q So the fact that there is no reference to a deductible in this document would not be significant in your mind? A No, it would not.

Q Incidentally, Mrs. Garrison, how was it that [124] Mr. Beam requested that you obtain this quotation, this premium quotation on 80 per cent co-insurance, 5,000 deductible policy? Did he contact you by phone, or by letter? A Yes, he did, he contacted me by telephone.

Q What did you mean by those first two sentences? [126] "On the above-captioned insured I put the following deductible wording." Was there an attachment along with this, an enclosure? A Yes, I attached the wording that—

Q You said, "May I eliminate the deductible wording?" A Yes, because this deductible wording required the insured to pay at loss the $5,000.00 should there be a loss.

Q If you eliminate that deductible wording, you, in effect, eliminate the deductible, don't you? A No.

Q Did you propose to Lloyds that another deductible be replaced? A I left this to their discretion as to what wording they would desire to use.

Q How did it come to your attention that Dr. Burde was not satisfied with the deductible wording? A It was transferred to my office.

Q Who transferred that to your office? A Mr. Beam.

Mr. Witthoefft: That's all the questions I have.

The Court: I want to ask you one question. You said Mr. Beam did ask you to get an 80 per cent quote on 80 per cent coverage without deductibles?

[127] The Witness: He asked for a quote with no deductible and he asked for a quote with a $5,000.00 deductible.

The Court: And you did ask for both of those?

The Witness: And I asked if Lionel Sage or London would allow him to insure it 80 per cent of value rather than the full, and then he would have 20 per cent of it uninsured.

The Court: I understand, but the main thing I'm getting at is this request came from Mr. Beam to you?

The Witness: Yes, sir, we deal directly with the agent, not the customer.

The Court: All right.

Mr. Bowles: Your Honor, in view of the cross examination—I

record the defendant rests, and also I make [130] the motion I made previously at the close of the plaintiffs' evidence. Since there is no requirement at the end of rebuttal evidence, I have to do it at the close of all the evidence as well.

The Court: Motion is overruled; and I didn't mean to anticipate you would. I did, when I asked that he have any rebuttal, and he said he did not, so I take it that this is the evidence in the case.

Mr. Bowles: Yes, sir.

The Court: If we can get back reasonably soon, I don't believe we will need the record written up.

* * *

PLAINTIFF'S EXHIBIT NO. 2—DEFENDANT'S EXHIBIT NO. 1

Exhibit A With Motion For Judgment (R. p. 5, Tr. 17-20)

Box 5271—415 Franklin St.
Richmond, Virginia 23220
Cable Address: Atlund

Atlas Underwriters, Ltd.

Lloyds, London Correspondents—Underwriting General Agents
Binding Certificate

This is to certify that Atlas Underwriters, Ltd., 415 W. Franklin Street, Richmond, Va. 23220 has effected the following insurance with Underwriters at Lloyds hereinafter referred to as "Underwriters":
Assured Dr. Roger DeLa Burde

Covernote No. L-4726 from 1-27-70 to 1-27-71

Both days at 12:01 AM Standard Time at Place of Issure, insuring said Assured for:

All Risk Fine Arts Floater

Located at home "Windsor Estates—Powhatan, Va." and 623D Westover Hills Blvd., Richmond, Va.

Subject to climatic conditions clause.

The limits of liability are as follows:

$147,480.00 80% of total of $184,350.00 on fine arts. The remainder 20% uninsured at assurd's own risk.

Your permanent insurance policy will be forwarded as seen as the original insuring documents are received from Underwriters. Meanwhile, this certificate serves as your evidence of insurance.

Certificate for:

In favor of Dr. Roger DeLa Burde
Windsor Estates
Powhatan, Virginia

Min. 50% earned if cancelled other than by Insurance Company

	Amount	*Rate*	*Premium*
Assured.	$147,480.00		$1,327.00

address: Locations covered: Windsor Estates, Powhatan, Va. and 623D Westover Hills Blvd, Richmond, Va.

type of coverage: All Risk Fine Arts Floater 80% of $184,350.00 on Fine Arts being in the amount of $147,480.00 remaining 20% uninsured and at Assured's own risk, plus $5,000. Ded. each and every loss.
Hereon 100% of the amount and premium stated herein.
Beginning at 12:01 A.M. on the 19th day of January, 1970

% Federal Tax	
2¾% State Tax	
% Stamping Fee	
Policy Fee	$ 36.63
	$ 5.00
Total	$1,368.63

and ending at 12:01 A.M. on the 19th day of January, 1971

standard time at the place of location of risks insured and in accordance Va. C/S End., $5,000.00 Deductible with the terms and conditions of the form(s) attached. Warranty End., NMA 1191, NMA 361, Personal Articles Floater, Policy Stipulations & Provis

Warranty: See attached endorsement.

1. It is specifically understood that the names of the Assurers hereunder are on file in the office of our Lloyd's Brokers in London, England and will be on file in the office of the undersigned, upon being forwarded to them by our Lloyd's Brokers.

2. It is expressly understood and agreed by the Assured by accepting this instrument that the undersigned is not one of the Underwriters or Assurers hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatever, as an Assurer, but the Assurers hereunder are only those Underwriters whose names are on file as hereinbefore set forth.

3. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims thereunder shall be forfeited.

3. In the event of failure of the insured to pay the deductible within 10 days as herein above set forth, Underwriters shall exercise its cancellation rights as provided in the policy.

4. The request for payment, as set forth in paragraph one, shall be sent to the insured by ordinary mail addressed to the insured at the address listed in the policy; the ten days shall begin to run from the date of the postmark of the letter bearing such request.

All other terms and conditions remaind unchanged.

* * *

PLAINTIFF'S EXHIBIT NO. 4

Letter Dated April 6, 1970, Dr. de la Burde to Beam (Tr. p. 23, Exhibit C with Motion for Judgment, R. p. 12)

April 6, 1970

Mr. Robert E. Beam
Beam-Williams Insurance Co.
3805 Cutshaw Avenue
Richmond, Virginia

Dear Mr. Beam,

Per your request I have reviewed the forwarded policy on fine arts and noted the following inconsistencies:

1. The policy contains a $5,000.00 deductable clause. On re-checking the policy binder once more, I found no indication that my payment was for a policy with that clause.

2. Present alarm system in the house is not a "wired in" system, and thus does not contain a bell. I have specified that the unit is a self-contained one with a freon propelled horn.

Complete burgler and fire alarm system are being installed in the new addition to the house and at the few central points of the existing house. I trust that this investment will be reflected in the lowering of the insurance rates in the years to come.

PLAINTIFF'S EXHIBIT NO. 6

Proof of Loss undated (Tr. p. 27, Exhibit E with Motion for Judgment, R. p. 14)

Policy Number L4726
Agency at Beam-Williams, Richmond, Va.
Agent Mr. R. E. Beam
Amount of Policy at Time of Loss $147,480.00
Date Issued 19 January 1970
Date Expires 19 January 1971

To the Drs. Roger and Brigette de la Burde of "Windsor," Powhatan, Va. At time of loss, by the above indicated policy of insurance you insured Fine Arts collection (all risk Fine Arts Floater) against loss by all risks to the property described under Schedule "A," according to the terms and conditions of the said policy and all forms, endorsements, transfer and assignments attached thereto.

1. Time and Origin: A fire loss occurred about the hour of 8:30 o'clock P.M., on the 31 day of July 1970. The cause and origin of the said loss were: cause unknown; probable origin in the kitchen of the bldg. Building was tenant house located on Windsor estate.

2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: Building rented to S. C. Slate, who in turn rented same to his farm help, Bennie Hughes. One room was set aside and locked separately for storage of insured's Fine Art Collection and other personal belongings.

3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was in fee simple absolute. No other person or persons had any interest therein or incumbrance thereon, except: none

4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: Location changed as per 3-27-70 letter; confirmed in letters of 4-15-70 and 4-21-70, all attached hereto.

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, $147,480.00, as

DEFENDANT'S EXHIBITS

DEFENDANT'S EXHIBIT NO. 3

Rider to Amend Coverage Dated April 30, 1970 (Tr. p. 49)

It is understood and agreed that the following deductible clause supersedes the $5,000. deductible clause attached to policy:

> in consideration of the reduced premium which this Insurance is written it is hereby understood and agreed that from the amount of this claim as finally adjusted the sum of $5,000. shall be deducted such amount to be uninsured and at the Assureds own risk. In consideration of the reduced premium at which this insurance is written it is further understood and agreed that after deducting the $5,000. referred to above, this policy is only to pay 80% of the balance of the claim as finally adjusted, the remaining 20% to be uninsured at the Assureds own risk.

It is agreed that the name of the Insured is hereby amended to read as follows in lieu of as originally written:

Dr. Roger DeLa Burde and Brigitte DeLa Burde

Attached to and forming part of Policy Number L 4726 issued to Dr. Roger DeLa Burde, Underwriters at Lloyds, its agency located Richmond, Virginia. Effective date of endorsement January 19, 1970 countersigned this 30th day of April, 1970.

Atlas Underwriters, Ltd.

By .....
Authorized Representative

time, and I asked him to watch at night so that no further damage could occur in this area. He agreed to do so. When the firemen started leaving, my wife and I left for home.

We spent a nervous night, and when I got up for a drink of water in the early morning hours, I saw through a window a fire in the direction of the cottages. I woke up my wife to watch over the home, while I drove to the cottages.

On arrival, I noticed that the fire had restarted and burned part of the back wall which was still standing when we left at night. The roof had fallen down. Mr. Skipper was not at home, so I started alone spraying water to extinguish the fire. Within short periods Mr. S. C. Slate with his helper, then Mr. Combs, the Fire Chief arrived. Mr. Skipper arrived last and assisted me throughout the morning in spraying water.

On Sunday, I reported the fire to the insurance agent Mr. R. E. Beam, who asked me to conduct a survey to determine if any objects could be saved. Prior to doing so, I checked with the Fire Chief, who informed me that preferably, I should not disturbe the property prior to the investigation by the Fire Marshals. I withheld the search until after the fire investigation had been conducted, on Monday.

Going through the remnants revealed the existence of several damaged bronze objects which were removed to the basement of my home.

Roger dela Burde

August 12, 1970

understand wanting to know about being loaned to individual but not a museum. I would appreciate your efforts in having this restriction removed.

Thanks,

Bob Beam

March 27, 1970

Beam and Williams
Mr. Robert E. Beam
3805 Cutshaw Avenue
Richmond, Virginia

Dear Mr. Beam,

I would appreciate it if you would introduce the following changes in our farm policy with Aetna:

1. Due to the addition of several rooms to my existing main dwelling, please add a coverage of $25,000, to be effective as of June 1, at which time the construction should be sufficiently advanced to warrant the coverage.

2. I have started rebuilding the masonary structure which was burned several months ago. The structure will be now approximately ¾ size of the previous building and will have a flat roof. Please add a coverage of $4,000 for it, to be effective as of June 1, 1970.

Please inform the Atlas Underwriters, Ltd, who insure our art collection, of the following changes of location:

1. Seven of the objects loaned to Mis L. E. Roache (three brasses and four woods) are now on loan at the Valentine Museum. The objects are scheduled for display until June, at which time they will be returned by the museum.

2. An Epa mask with two rows of figures will be delivered next week for an exhibit at the Virginia Museum. It is anticipated that the mask will be returned in June of this year.

3. It is my intention to transfer our art collection and some furniture temporarily into the Secon Cottage on the "Windsor" property, until the new addition and restoration of the existing main building is

All Risks Fine Arts Insurance.
12 months policy.
$184,350 on Fine Arts.
Named location only.
Climatic Conditions Clause.
Rate 1.2% or 90¢ with $5,000 deductible.

If 80% coverage only is required, the remaining 20% uninsured at the Assured's own risk, the rate will be based on the sum insured hereunder.

Agreed to cover at these rates the items taken by Miss Roach to College excluding unattended auto and also warranted that these items are taken to and from College personally (we presume that the limit in respect of these items will be in the region of $2,500. Please advise).

Agreed to cover $29,568 (included in $184,350) whilst at 623D Westover Hills Boulevard, Richmond.

Subject signed and dated proposal form. Commission 15%.

We notice that our cable sent to you last night stated that a rate of 90¢ is applicable if a deductible of $50,000 applies. This was incorrect and the correct deductible should, of course, have read *$5,000*. We look forward to your early advices.

Yours faithfully,

Lionel Sage & Co. Ltd.,
M. C. Smith,
North American Dept.

DEFENDANT'S EXHIBIT NO. 16

Letter, Sage to Atlas Dated April 15, 1970 (Tr. p. 129)

Non-Marine/RL/AF 15th April, 1970.

Atlas Underwriters Ltd.
Box 5271,
415, West Franklin Street,
Richmond,
Virginia 23220,
U.S.A.

Dear Sirs,

Dr. R. Dela Burde

We refer to your letter of the 9th April and advise that we have submitted this to Underwriters and confirm that they have noted that seven of the objects are on loan at the Valentine Museum and that an Epa Mask will be exhibited at the Virginia Museum.

However with regard to the third point (transferring the art collection and some furniture temporarily to Secon Cottage) Underwriters require your advices as to whether the premises are permanently occupied. Please advise on this point.

With regard to your deductible clause we have seen Underwriters and the following is the clause that they require on this placement.

> In consideration of the reduced premium which this insurance is written it is hereby understood and agreed that from the amount of the claim as finally adjusted the sum of $5,000 shall be deducted such amount to be uninsured and at the Assured's own risk. In consideration of the reduced premium at which this insurance is written it is further understood and agreed that after deducting the $5,000 referred to above, this policy is only to pay 80% of the balance of the claim as finally adjusted, the remaining 20% to be uninsured at the Assureds own risk.

Please confirm that this is acceptable to your Assured and also advise regarding the transfer of the art collection to other premises.

Yours faithfully,

Lionel Sage & Co. Ltd.
R. A. Liddiard,
North American Dept.