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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760239

JAMES DICKERSON, et al.,

Appellant

v.

RONALD D. CONKLIN

Appellee

APPENDIX

Norman F. Slenker, Esquire
SLENKER, BRANDT, JENNINGS & O'NEAL
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Arlington, Virginia 22201

Counsel for Appellant

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MOTION FOR DECLARATORY JUDGMENT

COMES NOW the Complainant, RONALD D. CONKLIN, pursuant to Section 8-578 of the 1950 Code of Virginia, as amended, and prays that this Court grant relief in the form of a declaratory judgment for the reasons that follow:

1. Complainant, a resident of Fairfax County, Virginia, invited Defendant DICKERSON to his home to discuss, among other things, insurance coverage for Complainant's automobiles.

2. Defendant DICKERSON is an agent of Defendant AMERICAN COMMERCIAL INSURANCE AGENCY, INC., a Maryland Corporation, which agency acts as a broker of insurance.

3. On or about November 9, 1973, in Complainant's home in Fairfax County, Virginia, Complainant and Defendant DICKERSON entered into an agreement whereby defendants would obtain insurance for Complainant's cars. Defendants in this transaction were acting as brokers and, therefore, were the agents of Complainant in obtaining this coverage. Defendant DICKERSON stated that the insurance coverage would be effective immediately.

4. On or about November 16, 1973, Complainant was involved in an automobile accident and a suit has been filed against Complainant for alleged negligence in the accident (Suit filed in Fairfax County At Law No. 31762).

5. DICKERSON and AMERICAN COMMERCIAL INSURANCE AGENCY, INC., because of their negligence, failed to write a policy of automobile insurance, covering CONKLIN, with any insurance company.

6. As a result of Defendants' negligence Complainant is in a position of personally defending the suit filed against him and stands to be personally liable for any damages awarded in favor of the third party accident victim.

7. It is necessary to avoid extended litigation to have this Court adjudicate the controversy between the parties herein, to determine who is liable for any possible damages to the third party in the automobile accident case.

WHEREFORE, Complainant prays that this Court declare that Defendants, as a result of their negligence, are liable to Complainant for any damages to the third party as a result of the automobile accident.

Respectfully submitted,

RONALD D. CONKLIN
By Counsel

DUVALL, TATE, BYWATER & DAVIS, LTD.

DOUGLAS E. BYWATER
10560 Main Street
Fairfax, Virginia 22030
591-4900
Counsel for Complainant

ANSWER AND GROUNDS OF DEFENSE

COME NOW the defendants, by counsel, and without prejudice to the foregoing Motion to Quash Service of Process respond to the allegations in the Motion for Declaratory Judgment by saying:

1. The allegations appearing in paragraphs numbered one and two will be admitted.

2. The allegations appearing in the paragraph numbered 3 will be denied.

3. These defendants are without sufficient information to respond to the allegations in the fourth numbered paragraph and thus will neither admit nor deny them and call upon the plaintiff for strict proof thereof.

4. The allegations appearing in paragraphs numbered 5, 6, and 7 will all be denied.

WHEREFORE the premises considered these defendants move for the dismissal of the action and for costs in their behalf expended.

JAMES DICKERSON
AMERICAN COMMERCIAL INSURANCE AGENCY, INC.

By /s/ Norman F. Slenker
Their attorney

SLENKER, BRANDT, JENNINGS & O'NEAL

By /s/ Norman F. Slenker
Norman F. Slenker, attorney
for defendants

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing has been mailed, postage prepaid, to Douglas E. Bywater, Esq., counsel for plaintiff, 10560 Main St., Fairfax, Va. 22030, this 21st day of October 1974.

/s/ Norman F. Slenker

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& JENNINGS
4012 North Utah St.
Arlington, Virginia 22201
[illegible]

RONALD D. CONKLIN, Complainant

vs.

JAMES DICKERSON, et al,
Defendants

In Chancery No. 43921

OPINION

This case presents a grievous situation where the testimony of the parties is diametrically opposed.

The plaintiff testified that, at a meeting in his home arranged by an insurance agent named Ash for the purpose of discussing the issuance of a $1,000,000.00 building contract performance bond, the defendant, Dickerson, orally agreed to issue a liability insurance policy on his two automobiles, and assured plaintiff that he was presently "covered."

Dickerson denied that he ever undertook to issue such a policy and that he ever stated that the automobiles were "covered."

The evidence is clear that the primary purpose of the meeting was to discuss the possibility of the issuance of the bond. However, both agree that it was in their minds that Dickerson would expect to carry all of plaintiff's insurance in the event that he was successful in procuring the bond.

Plaintiff had recently acquire title to the two automobiles from a corporation of which he was a major stockholder and, only a few days previously, had been notified that the automobile policies had been cancelled by the former owner. He decided to wait until he met with Dickerson before obtaining insurance on the vehicles.

At the meeting, attended by Ash, there was a

prolonged discussion as to plaintiff's experience and financial status for the purpose of the performance bond, Dickerson taking notes on a yellow scratch-pad in order that he might present the facts to the Casualty Company for its decision as to the issuance of the bond. It was necessary for plaintiff's wife to bring certain papers from his files in another room to supply the needed information.

Dickerson informed plaintiff that he would expect to carry all of his insurance in the event the bonds were issued to which plaintiff agreed.

Here the testimony becomes altogether contradictory.

Plaintiff said that he informed Dickerson that his vehicles were uninsured and requested that Dickerson insure them immediately. He, therefore, had his wife procure the titles from the other room and Dickerson jotted down therefrom the serial numbers of the vehicles and other data. He mentioned $100,000 - $300,000 liability but nothing was said about collision or comprehensive coverage. The premium cost was not discussed, but he offered Dickerson a down-payment. Dickerson said this would not be necessary; he would bill him later. Then plaintiff asked Dickerson if he was covered and Dickerson said that he was. Later when Dickerson was departing he again assured plaintiff that he was "covered."

Dickerson denied that plaintiff told him that the cars were uninsured and that he ever told plaintiff that he was covered. He merely took down a discription of the cars to list them among plaintiff's assets for the bond application. While he expected to carry the automobile insurance if he

obtained the bond there was never any undertaking on his part to insure the cars in praesenti. He said that he had application forms in his brief case and would have been glad to issue a binder had plaintiff requested it.

The witness Ash corroborated plaintiff's testimony in every material detail.

An oral contract of insurance may be enforceable, either at law or in equity, if all essential elements are proven by "clear and convincing evidence." Walker and Aetna Casualty Co. v. Lucas, 215 Va. 535, Crouch on Ins. 2d Sec. 14:21.

If plaintiff's testimony is to be believed there was a complete meeting of the minds between himself and an insurance agent authorized to issue a liability policy. He told the agent that his cars were uninsured and that he desired immediate coverage. The facts that all details of the policy were not mentioned is not fatal. The crucial questions, in my opinion, are whether Dickerson was informed that plaintiff was uninsured and then told him that he was covered. It is true that customarily the applicant must supply some detailed information concerning his driving record, the members of his family who would drive the cars, and other facts, but these are not absolutely essential to the creation of a binding contract.

"Evidence showing that the insurer's agent assured an applicant for automobile collision insurance that his automobile was 'fully' covered renders the amount of the insurance sufficiently definite for the purposes of an oral contract,

since it is reasonable to imply that the company thereby bound itself at least in a reasonable amount."

Crouch on Ins. 14:21 p. 600 c/f Sou. Cas. Co. v. Flowers; (Tex.) 23 S.W.2d 507.

In my opinion the plaintiff's testimony, if uncontradicted, would satisfy the burden of proof by "clear and convincing evidence."

However, if it were not for the testimony of Ash the contradictions by Dickerson would, at least, muddy the waters and shake the conviction to a great extent. Ash, a retired army colonel, was totally unshakened on cross-examination and was unimpeached. It was not demonstrated that he had any interest in the case. If his testimony was untrue he is guilty of perjury. Under the circumstances, I cannot disbelieve his testimony.

It could be that Dickerson was so preoccupied in anticipation of a million dollar bond that he forgot what took place. I hope that this is the case.

I must find for the plaintiff against Dickerson who shall be bound under a usual collision insurance policy of $100,000.00 - $300,000.00 coverage.

There seems to be no denial that Dickerson was an agent of American Commercial Insurance Agency, Inc., acting within the scope of his authority and judgment will likewise be entered against the principal.

Emiliano Martinez

Judge.

September 16, 1975.

RONALD D. CONKLIN, :

Complainant :

v. : IN CHANCERY NO. 43920 and IN CHANCERY NO. 43921

JAMES DICKERSON, et al :

Defendants :

JUDGMENT ORDER

THIS CAUSE came before the Court for trial on the merits, ore tenus, on September 11, 1975 and prior to the taking of test mony it was brought to the attention of the court that Chancery No. 43920, a companion case being styled in the same manner as Chancery No. 43921, had not, in fact, been answered, and that such cause was virtually verbatim with the bill of complaint in Chancery No. 43921 except that it requested declaratory judgment on a contract theory. Upon motion made by the defendants, to which there was no objection, the answer filed in Chancery No. 43921 was adopted as the defendant's responsive pleadings in Chancery No. 43920 and that case was therefore brought to issue in the same manner as Chancery No. 43921. Thereafter, on motion made by counsel for the complainant, to which there was no objection, the cases were then consolidated for trial and the parties there after began presentation of evidence and proof.

The complainant produced all of his evidence and thereafter the defendants, by and through counsel, moved the court to strik the evidence and to enter Summary Judgment in favor of both defendants in both cases then being heard. After argument and due consideration, the court denied the motions, to which action

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the defendants, by and through their attorney, duly noted exceptions. Thereafter, the defendants produced their evidence and rested and renewed the motions to strike and for Summary Judgment These motions, after argument and due consideration, were denied by the Court, to which action the defendants, by and through counsel duly and timely saved exception. The parties then proceeded, through counsel, to argue the case and upon completion thereof the Court took the matter under advisement indicating that in due course of time it would issue its findings of fact and conclusions of law in an opinion.

The Chancellor did, by opinion dated September 16, 1975, issue and declare his judgment to be in favor of the complainant whereupon

IT APPEARING TO THE COURT that Chancery No. 43920 ought to be considered at issue by the defendants being permitted to adopt their answer previously filed in Chancery No. 43921; and that the two cases ought to be consolidated for trial and hearin ore tenus; it is therefore

ADJUDGED, ORDERED AND DECREED that Chancery No. 43920 ought be, and it is hereby, considered at issue by the adoption of the defendants' answer previously filed in Chancery No. 43921; and it is further

ADJUDGED, ORDERED AND DECREED that the two cases, Chancery No. 43920 and 43921 ought to be, and they are hereby, consolidat for purposes of hearing, ore tenus; and

THE COURT having heard the evidence of the parties and considered findings of fact and conclusions of law, does therefore conclude that the complainant should receive its declaratory judgment and so announced in a written opinion dated September 16, 1975; and it is further

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ADJUDGED, ORDERED AND DECREED that the defendant, James Dickerson, acting personally and as an authorized agent, servant and employee of American Commercial Insurance Agency, Inc., did enter into an oral contract of insurance covering the automobiles of the Complainant under a usual automobile liability insurance policy with limits of $100,00/$300,000 coverage during the specific period of time from November 2, 1973, through and including November 16, 1973. It is therefore

ADJUDGED, ORDERED AND DECREED that the Complainant ought to have, and is herewith awarded, a declaratory judgment in accordance with the above opinion of the Court and as expressed in the opinion by the Court dated September 16, 1975, which is expressly incorporated herein.

Signed and entered this 30th day of October, 1975.

Elliot Marshall

Elliot Marshall, Judge

WE ASK FOR THIS:

CHESS, DURRETTE & ROEDER

By: _____
Wyatt B. Durrette, Jr.
Counsel to Complainant

SEEN AND EXCEPTED TO:

SLENKER, BRANDT, JENNINGS & O'NEAL

By: Norman F. Slenker
Norman F. Slenker
Counsel for Defendants

A COPY TESTE:
JAMES E. HOOFNAGLE, CLERK
By: Catherine Lock
Deputy Clerk

RONALD D. CONKLIN, :

Complainant :

v. :

JAMES DICKERSON, et al :

Defendants :

IN CHANCERY NO. 43920
and
IN CHANCERY NO. 43921

NOTICE OF APPEAL

COME NOW the defendants, by counsel, in both of these cases which were consolidated for trial, heard together by the court, ore tenus, and both decided in a written opinion by the court, and note their appeal to the Supreme Court of Virginia from the final Judgment Orders entered in both cases on the 30th day of October 1975, and declare the following as and for their

ASSIGNMENTS OF ERROR

1. The Judgment of the court and the findings upon which such judgment is based is contrary to the law and the evidence in the following specific instances:

a) in finding the complainant's testimony corroborated in every material detail by the testimony of witness Ash;

b) in finding an oral contract of insurance to have been created and therefore in existence when many, if not all, of the essential elements requisite to such finding were not proved by the complainant in accordance with any standard of proof;

c) in finding that an oral contract of insurance was created and thereby existing when all or many of the essential elements of complainant's cause were not proved by "clear and convincing evidence;"

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d) in finding a complete meeting of the minds between the complainant and the agent authorizing and giving rise to the creation and existence of a liability policy of insurance covering complainant's vehicles;

e) in finding that the policy of insurance was created and came into existence when the details of such contract and the essential elements thereof were not even mentioned in the conversation of the parties;

f) in finding that a liability policy of insurance was created and came into existence merely by a statement attributable to the individual defendant that the complainant was covered by insurance;

g) in finding and holding for the complainant, the trial court established the defendants as an insurance company when such is not and cannot be permitted under the substantive laws of the Commonwealth of Virginia;

h) in finding for the complainant and declaring insurance coverage to exist in the absence of proof that the defendants were acting as agent, servant or employees for an insurance company authorized to do business in Virginia by the issuance of liability insurance policies on vehicles;

i) in finding and holding that complainant's testimony was uncontradicted and thus satisfied the burden of proof of "clear and convincing evidence" as to all issues in the case;

j) in finding and holding that the policy found to exist and so held by the court was "a usual collision insurance policy . . ." when there was no such issue in the case and collision coverage not even claimed by the complainant.

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2. The judgment of the Court, as expressed in the final Order is without evidence, credible or otherwise, to support it and ought to be set aside.

3. The judgment of the court is against the weight of the evidence and contrary to law in that material probative and substantive elements of the complainant's case were not proved and, in fact, the record is silent with respect to any evidence on such essential elements.

4. The court erred in admitting into evidence portions of a pretrial discovery deposition from another case containing complainant's testimony under oath when the complainant was present in court and testified, the admissibility of such evidence in deposition form not being authorized by any rule of law, substantively or procedurally, with such excerpt being merely self serving to the complainant and was taken at a time and place when the defendants were not present and had no standing to be present.

As to each and all of the errors herein complained of and assigned, the defendants duly noted and saved their objections and exceptions in the manner and form prescribed by law.

Signed this 11th day of November 1975

James Dickerson

James Dickerson, by counsel

AMERICAN COMMERCIAL INSURANCE AGENCY, INC.

By Norman F. Slenker

Its attorney

SLENKER, BRANDT, JENNINGS & O'NEAL

By Norman F. Slenker

Norman F. Slenker, attorney for defendants

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CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal has been mailed, postage prepaid, to Wyatt B. Durrette, Jr., Esq., counsel to complainant, 4085 Chain Bridge Road, Fairfax, Virginia 22030, this 11th day of November 1975.

Norman F. Slenker

THE COURT: Very well. You can bring him up to-date when he arrives as to what has occurred.

MR. SLENKER: I certainly will and I apologize to Your Honor for not being in the courtroom when you arrived.

MR. DURRETTE: We have two preliminary matters. One which we just -- which we just realized this morning. Mr. Conklin was represented by another law firm when this was originally filed. At the same time that the suit that is before the Court this morning, which is Chancery 43921, was filed, Chancery 43920 was filed also. A motion for declaratory judgment, same facts, the only difference being that the prayer in 43921, which is the one Your Honor has, was for negligence in failing to procure insurance after having agreed to do so, and the prayer in 43920 was for the breach of the agreement to procure insurance. When we acquired the file in August and came into the case, we didn't examine, I guess, the pleadings filed, carefully enough, and we didn't realize that only 43921 had been responded to with Answer and Grounds of Defense and that only 43921 had gone forward on the Court's docket and we had assumed up until this morning that both cases were before the Court, the cases having been consolidated and set for trial. It appears from the Court jacket that there

* * * *

Whereupon,

RONALD D. CONKLIN,

was called as a witness for and in his own behalf, and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURRETTE:

Q Would you state your full name please sir?

A Ronald Dale Conklin.

Q Mr. Conklin, what is your current employment?

A With Barkley Construction and Dale Investment.

Q Did you form these corporations?

A Yes sir.

Q And approximately when did you do this?

A In '73, approximately in November of '73.

Q And I ask you now to speak up just a little bit louder so the Court and counsel can hear. So you formed these companies in early November, 1973?

A Yes sir.

THE COURT: I'm sorry. Can you hear the witness?

MR. SLENKER: Yes sir.

BY MR. DURRETTE:

Q Prior to that time Mr. Conklin, by whom had you

been employed; immediately prior to that, by whom had you been employed?

A Dale Construction Corporation.

Q What was your capacity with Dale Construction?

A I was the president of the Corporation.

Q Did there come a time when you separated from Dale Construction Corporation?

A Yes sir.

Q Approximately when was this?

A Around the end of October of '73.

Q Now, as part of that separation from Dale Construction Corporation, was there any agreement made with respect to motor vehicles?

A Yes sir.

Q And what was that agreement?

A When I left the Corporation, they gave me two vehicles. It was a 1971 Buick and an El Camino.

Q And by whom had these vehicles been owned prior to your separation from Dale Construction?

A They had been owned by the Corporation, Dale Construction.

Q And was ownership transferred to you at the time of your separation?

A Yes sir.

Q Did you receive the titles to the vehicles at that time?

A Yes sir.

Q When you received ownership of the vehicles, were the vehicles to the best of your knowledge insured?

A No sir.

Q Had they previously been insured and by that I mean automobile liability insurance with Dale Construction Company?

A Yes sir.

Q Had you been the primary operator of those vehicles?

A Yes sir.

Q All right, now, you indicated that after the separation from Dale Construction Company, you formed the corporation that you are now with, is that correct?

A Yes sir.

Q Did there come a time when you were concerned to acquire certain types of insurance with respect to your Corporation and your automobiles?

A Yes sir.

Q All right, and approximately when was that?

A The first part of November.

Q Of what year?

A Of '73.

Q Immediately after your separation from Dale Construction?

A Yes sir.

Q What types of insurance did you want?

MR. SLENKER: I object to this if Your Honor please, because I think the issue here is what the relationship is between this man and Mr. Dickerson. Whatever he may have wanted might be fine evidence but I don't believe it is material or relevant to the issue here. I think there has to be more showing than just what this man may have contemplated at a time prior to the meeting.

MR. DURRETTE: That almost goes without saying. The type of insurance he wanted obviously leads to the steps he took to procure the insurance and how the meeting came about with Mr. Dickerson.

THE COURT: It is entirely subjective. I think the relevant thing in the case is the conversation that took place between the parties.

MR. DURRETTE: There is no question about that, Your Honor, but if I may, if we may approach the bench, I will make a proffer.

THE COURT: You don't have to approach the bench,

there is no jury.

MR. DURRETTE: I know. I didn't know whether Mr. Slenker would object to the witness hearing my proffer.

MR. SLENKER: I don't object.

THE COURT: I don't think it is relevant unless he made known his desire to the other party.

MR. DURRETTE: If I may proffer Your Honor, Mr. Ash, it has been mentioned by Mr. Slenker, is the gentleman who arranged the meeting with Mr. Dickerson and Mr. Conklin made his desires known to Mr. Ash. Mr. Ash's testimony will be he made it known to Mr. Dickerson and the purpose of the meeting will be for the purchase of the insurance.

MR. SLENKER: That would be hearsay so far as this man and Ash is concerned, in the absence of Mr. Dickerson.

THE COURT: If he made his wishes known to Mr. Ash and instructed him to make them known to the other party, the objection is overruled.

MR. SLENKER: May I have an exception please?

BY MR. DURRETTE:

Q What type of insurance did you wish to procure, Mr. Conklin?

THE COURT: Oh no, objection sustained as to that. What did he tell Mr. Ash?

BY MR. DURRETTE:

Q Did there come a time when you made a contact or sought assistance from an individual in obtaining insurance?

A I had asked Mr. Ash if he could recommend somebody for bonding and liability insurance and Mr. Ash had recommended Mr. Dickerson.

Q Did you know Mr. Dickerson prior to that time?

A No sir.

Q How did you know Mr. Ash?

A I had known Mr. Ash through other business arrangements. He had written some life insurance policies for us in previous years.

Q Following your request of Mr. Ash and his recommendation of Mr. Dickerson, did there come a time when a meeting took place between you and Mr. Dickerson?

A Yes sir.

Q Who arranged this meeting?

A Mr. Ash.

Q Where did the meeting take place?

A At my residence in our kitchen.

Q Where was your residence?

A 10508 Wickens Road, Oakton, Virginia.

Q Now, approximately when did this meeting take place?

A In the morning.

Q Approximately what time of the month or year?

A Around the first part of November.

Q Do you remember, of your own personal knowledge, the precise date?

A No sir.

Q But you do know it was early November?

A Yes sir.

Q You say the meeting took place in the kitchen of your home?

A Yes sir.

Q Who was present at the meeting?

A Mr. Dickerson, Mr. Ash and my wife.

Q Did your wife participate in the discussions?

A No sir.

Q And where was your wife during the course of the meeting?

A In the kitchen area, right in the area that we were meeting.

Q And the three of you were seated around the kitchen table?

A Yes sir.

Q To your own personal knowledge, that is your own

recollection and your own knowledge, excluding what you have been told by others, was anyone else present in your home that morning?

A No sir.

Q Have you subsequently learned that others were there?

A Yes sir.

Q When did you first learn that someone else was present in your home?

MR. SLENKER: I object to the materiality of that if Your Honor please.

THE COURT: What is the relevance of that?

MR. DURRETTE: Well Your Honor, it may not have any relevance pending on what arguments Mr. Slenker might make.

THE COURT: Save it for rebuttals, perhaps it wont be necessary.

MR. DURRETTE: All right sir.

BY MR. DURRETTE:

Q Now, during the course of this meeting, did you discuss with Mr. Dickerson the subject of insurance?

A Yes sir.

Q What type or types of insurance were discussed

with Mr. Dickerson?

A We discussed bonding first and then liability insurance second.

Q Sir, in connection with your discussion of bonding insurance, would you summarize for the Court please the substance of that discussion?

MR. SLENKER: I object to that if Your Honor please. I don't think we are interested in summarizations of testimony here. I think that the defendant has a right to expect the evidence to be the words, if he remembers what they are.

THE COURT: So far as possible, that is exactly what we want, so far as possible.

BY MR. DURRETTE:

Q So far as you remember Mr. Conklin, would you relate to the Court the conversation that took place between you and Mr. Dickerson regarding bonding insurance; to the best of your recollection, what was said?

A Mr. Dickerson asked me to get the necessary papers so that he could examine them for my bonding insurance problems. I had my wife get financial statements, resume and I believe, the financial statements of me personally and financial statements on the Corporation and the resumes and

I handed them to Mr. Dickerson. Mr. Dickerson reviewed them and found that they were satisfactory; in fact, he was enthused.

MR. SLENKER: If Your Honor please, I object to this.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q What did Mr. Dickerson tell you, as best you recall, after he reviewed these?

A Mr. Dickerson reviewed those and told me that what I was trying to achieve in bonding that I could do it with the information that I had gave him.

Q All right sir. Approximately what was your net worth at that time?

A Approximately $300,000.

Q Was this reflected on the financial statements you gave to Mr. Dickerson?

A Yes sir.

Q Now, you indicated in response to an earlier question that you talked about bonding and automobile liability insurance?

A Yes sir.

Q Did there come a time then when the conversation

turned to automobile liability insurance?

A Yes sir.

Q When was that?

A Right after we had concluded our conversation regarding the bonding, I told Mr. Dickerson that because of the importance of the bonding in relation to our business and what it meant, that I knew from past experience that whoever would write the bonding insurance would want all the other types of insurance that would go with our business including liability insurance on our car, our vehicles, and I asked him then if he would like to -- if he wanted this type of business along with it. He said he would. I said that I did not have insurance on my car and I had been deeply concerned about it and I would like to be covered right now. He asked me then to get the information on the vehicles at which time my wife again when into the file cabinet and got the information that he requested on the vehicles.

Q Which was?

A Title and registration cards.

Q Now, did Mr. Dickerson take these documents?

A Yes sir.

Q Did he write down certain information from then?

A Yes sir.

Q Did you have specific discussions with Mr. Dickerson about the amount of coverage?

A Yes sir, we talked about the amount and we talked about the payment. The amount was in the neighborhood of 300 and 100.

Q 300 and 100 what?

A 300, 100,000.

Q Did you ask Mr. Dickerson anything about payment?

A Yes, I asked him if he wanted a check now or what and he said no, he did not need any payment now that when he put it together, he would send me a bill.

Q All right, sir, was there any discussion between you and Mr. Dickerson regarding the time at which the insurance would become effective?

A Yes.

Q Would you relate that conversation as nearly as you can recall, verbatim, for the Court?

A When Mr. Dickerson had finished writing the information down that he needed on the vehicles, I asked Mr. Dickerson, am I covered as of right now? Mr. Dickerson said to me, as of right now you are covered and I said, with a sigh relief that I'm greatly relieved that this is over

with. I have been deeply concerned about not having insurance and I said, are you sure I'm covered as of right now and he said, yes.

Q All right. Was there any other discussion between the two of you regarding the time of coverage?

A Later on.

Q On the same day, at the same meeting?

A Yes sir.

Q Would you relate that to the Court?

A We had finished the conversation at the table and as we got up to go and went to the front door, I stood in the doorway and Mr. Dickerson and Mr. Ash left and as they were to leave, I said to Mr. Dickerson, now, you're sure I'm covered as of right now? He said, yes you are.

Q All right sir, you indicated that you were deeply concerned about not having liability insurance; why had you not placed automobile liability insurance on your car prior to this meeting of November 2nd?

MR. SLENKER: I object to that if Your Honor please.

THE COURT: Objection sustained, that would be proper cross examination.

MR. DURRETTE: May I ask why it is not relevant on

direct?

THE COURT: I don't think it is relevant.

MR. DURRETTE: You just don't think it is relevant?

THE COURT: No, I don't; on cross examination it would be in order to attack the credibility.

BY MR. DURRETTE:

Q Following the meeting of November 2nd, did you make any attempts to procure automobile liability insurance?

MR. SLENKER: I object to the relevancy of that.

THE COURT: Objection overruled.

THE WITNESS: No sir.

BY MR. DURRETTE:

Q Why not?

A Because I knew --

MR. SLENKER: (Interposing) I object to that.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q Subsequent to the meeting of November 2nd, were you involved in an automobile accident?

A Yes sir.

Q Were you the operator?

THE COURT: There is no issue to that, is there?

MR. DURRETTE: Is there no issue to that?

THE COURT: No issue to that.

MR. DURRETTE: Would that also apply to the existence of the lawsuit and potential damages, everything stemming from the accident?

MR. SLENKER: It refers to the existence of the lawsuit; I don't think it has any reference to any damages. They have not been established in the lawsuit.

MR. DURRETTE: Other than attorneys' fees expended, there is no problem with that.

MR. SLENKER: I understand the case.

THE COURT: Does the answer deny that?

MR. SLENKER: Yes, the answer denied the damage aspect.

THE COURT: Denied it, you deny there is a lawsuit?

MR. SLENKER: No I don't deny that.

MR. DURRETTE: What I am concerned with, is there any possible question whether or not there is a judicial issue and a conflict of anything before the Court; if there is no problem on that.

THE COURT: There is no problem unless he denied it in the answer and I assume he didn't.

MR. DURRETTE: That was not denied as far as I know.

THE COURT: All right.

BY MR. DURRETTE:

Q Following the accident of November 16th, 1973, did you have a conversation with the husband of the lady who was injured in the accident?

A Yes, I did.

Q And approximately when was that?

A Several days, right after the accident, Mr. McDaniel, the husband of the wife, called me and asked me --

MR. SLENKER: (Interposing) Objection if Your Honor please.

MR. DURRETTE: Your Honor, I anticipated this objection. The purpose of this question is to establish the fact that we know, as Mr. Slenker has represented to the Court in opening statement and on the basis of Mr. Dickerson's deposition, what his testimony is going to be. That is that there were not any discussions about automobile liability insurance. We have, in addition to Mr. Ash, who was present at the conversation, we have two witnesses who are going to testify to that and one of those is Mr. McDaniel. That is the only one relevant here. Mr. Dickerson made prior inconsistent statements to him in a telephone conversation. I need to establish Mr. McDaniel had the name and

telephone number of Mr. Dickerson and made the call and had the contact.

THE COURT: Objection overruled.

MR. SLENKER: If Your Honor please, I don't object to him saying yes we had a conversation, but I do object to the hearsay of what McDaniel said to him in those conversations.

THE COURT: He hasn't asked that.

MR. SLENKER: He was about to tell us whether he was asked or not.

THE COURT: Don't tell us what the conversation was. Don't relate the conversation.

BY MR. DURRETTE:

Q Well, let me ask you this question then. In the course of that conversation, did you tell Mr. McDaniel that you had automobile liability insurance?

A Yes, I did.

Q And did you give him the name and the telephone number of an agent to contact?

A Yes.

MR. SLENKER: I object to this. It is purely self-serving so far as this man is concerned outside of the hearing of Mr. Dickerson.

THE COURT: I think it is a verbal act; I think it is an exception to the hearsay rule. Objection overruled.

MR. SLENKER: Please note my exception.

THE COURT: Exception noted.

MR. SLENKER: Thank you.

BY MR. DURRETTE:

Q Did you relate the name of an agent and telephone number?

A Yes sir.

Q What did you give Mr. McDaniel?

A I gave him Mr. Dickerson's telephone number and name.

MR. DURRETTE: All right. May I have just a moment Your Honor and check my notes. I think that is all I have.

BY MR. DURRETTE:

Q One other question. The discussion with regard to automobile liability insurance applied to which vehicles?

A To the Buick and the El Camino.

Q Neither one of them had been insured as of November 2nd?

A No sir.

MR. SLENKER: If Your Honor please, excuse me Mr.

Durrette; this is Mr. Dickerson, the defendant in the case.

THE COURT: Have a seat.

MR. DURRETTE: Okay. I just have two more questions.

BY MR. DURRETTE:

Q The discussions with regard to the insurance at the meeting, in the meeting in early November you testified to, related to the two vehicles that you acquired from Dale Construction Company, both vehicles, is that right?

A Yes sir.

Q Prior to November 16th, 1973, did Mr. Dickerson ever communicate to you that he had been unable to obtain insurance or didn't obtain insurance or make any communication to you on that subject at all?

A No sir.

MR. DURRETTE: That is all I have, Your Honor.

CROSS EXAMINATION

BY MR. SLENKER:

Q Mr. Conklin, it is true, is it not, that when you left the Government in '65 you went into the various construction corporations that I mentioned in opening statement?

MR. DURRETTE: I want to object to this question. I didn't object to Mr. Slenker's opening statement but I

don't see the relevance of anything Mr. Conklin did prior to the time --

THE COURT: (Interposing) What is the relevancy?

MR. SLENKER: It shows he was experience in the construction industry if Your Honor please. It shows the progression of what he hoped for in the corporation from residential development and construction to a million and a half Norman Temple job as being the basis upon which he first made contact with Mr. Dickerson through Mr. Ash for the bond, not for any liability insurance on automobiles; that he is experienced in these matters and in the construction field.

THE COURT: Objection overruled.

BY MR. SLENKER:

Q It is true, is it not Mr. Conklin, as I presented in opening statement, that you had been through those corporations that I enumerated in the opening statement?

A Yes sir.

Q Now, two of those had just simply dissolved; you let them go; that being the Kendall ultimately and the Lee High; they just simply dissolved themselves because you abandoned them when you got into Dale.

MR. DURRETTE: I object to the question. I don't

see the possible relevance it has.

THE COURT: I'm not sure I do either. I think he is entitled to show if he is accustomed to getting bonds.

MR. DURRETTE: We will stipulate he was experienced in the construction industry.

THE COURT: Does that satisfy you?

MR. SLENKER: Yes.

BY MR. SLENKER:

Q Incidently, was there a written agreement that established the separation of you from Dale Construction Corporation?

A Yes sir, at a later date.

Q I ask you to look at this copy of the document and ask you if that is it?

A Yes sir.

Q What is the date of that?

A October of '73.

Q What day in October?

A First day of October.

Q That is typed at the very top of this instrument, is it not?

A Yes sir.

Q Go to the last page and see when it was signed?

A I can't make that out.

Q Isn't that the first of October?

A Yes sir.

Q That is when you signed it?

A No sir.

Q You didn't sign it on the first?

A No sir, I don't believe so.

Q Can you tell the Court when you did sign it?

A No sir.

MR. SLENKER: I would ask this be marked and admitted into evidence if Your Honor please.

THE COURT: Have you seen it?

MR. SLENKER: I got it from him. They gave it to us.

MR. DURRETTE: No objection.

THE COURT: Without objection, admitted in evidence, Defendant's Exhibit No. 1.

(The document previously referred to was marked Defendant's Exhibit No. 1 for identification and received in evidence.)

MR. SLENKER: Can I complete what I need from him

before it is tendered for marking?

THE COURT: Yes.

BY MR. SLENKER:

Q Would you read to His Honor paragraph no. 5?

THE COURT: Can't you read it; why don't you read it?

MR. SLENKER: You want me to read it. Paragraph 5:

"Dale has previously transferred to Conklin clear title to a 1970 El Camino pickup truck and a 1971 Buick Electra now in Conklin's possession."

All I would seek would be that paragraph which shows the transfer of the vehicles.

BY MR. SLENKER:

Q Now, do I understand your testimony to be Mr. Conklin, that when you first contacted Ash you were looking for an agent; that you were looking for somebody that he could recommend that would give you bonding capacity as well as other liability coverage on your vehicles?

A Yes sir.

Q Have you ever testified differently in that respect?

A No sir.

Q Are you quite sure?

A Yes sir.

Q Do you have a copy of your deposition that was taken January 23rd, 1975?

A Not with me sir.

Q I would like to refer you to page 27, starting line 19, if you will, on page 26, which shows that the interrogation at that time was with reference to the contact that you had with Mr. Ash. Now this deposition was taken in your then attorney Douglas Bywater's office, was it not?

A Yes sir.

Q You were under oath, the same as you are under oath today, were you not?

A Yes sir.

Q And in your testimony you testified truthfully, did you not Mr. Conklin?

A Yes sir.

Q All right. It is true that on that occasion I asked you about contact with Mr. Ash?

A Yes sir.

Q You responded, I asked you if you could give the date; you said, I could not but it was prior to the meeting with Dickerson. You acknowledged that it was in November of

'73. Then I asked you what type of contact was it. You recall your answer made on that occasion? I had asked him if he could remember anybody that would be interested in giving me bond for commercial work, bonding our corporation company for commercial work. You remember that?

A Yes sir.

Q You didn't say a single word under oath on that occasion about automobile liability coverage, did you Mr. Conklin?

A No sir.

Q On page 34 Mr. Conklin, line 8, question: "Would it be a fair characterization to say that at the meeting you were interested in accomplishing the million and a half bond that you knew would be required for the Morman church job?" Answer: "Yes." Do you remember making that statement?

A Yes sir.

Q You didn't say a single word on that occasion or in that answer with reference to liability insurance on vehicles, did you?

A No sir.

Q Now, as a matter of fact, do you recall what day of the week the 2nd of November was?

A No sir.

Q As a matter of fact, when you took this deposition, I asked you when it was that the meeting took place and you said you didn't really know but it was November 9th, you remember that?

A Yes sir.

Q Do you remember how you settled on November 9th as the date to which you testified to on that occasion?

A No sir.

Q You don't remember having the piece of paper that Douglas Bywater, your attorney, gave you with November 9th on it?

A Yes sir.

Q And you testified under oath on that occasion that the meeting was the 9th of November, right?

A Yes sir.

Q Now you tell His Honor that it wasn't the 9th, right?

A Yes sir.

Q Do you really know when it was?

A Yes sir.

Q When was it?

A It was on November 2nd.

Q Why did you testify under oath previously it was

the 9th?

A Because I couldn't recall.

Q But you relied on the note given to you by your lawyer, is that right?

A Yes sir.

Q All right sir. Incidently, in your discussions with Mr. Dickerson, tell the Court if any insurance company name was mentioned, any name at all?

A I didn't -- I didn't understand what you said sir.

Q Tell His Honor if, during this meeting with Dickerson, the name of any insurance company was mentioned?

A Yes sir.

Q Which company?

A The company that he was representing.

Q Which one was that?

A I don't remember.

Q You don't remember what the name of that company was?

A No sir.

Q Well, did he give you the name of more than one company?

A No sir.

Q Did you ascertain from him whether or not he

represented more than one company?

A Yes sir.

Q How?

A He told me he did.

Q What companies were those?

A I don't know sir.

Q Didn't you write them down?

A No sir.

Q Tell His Honor which company was your coverage on the automobiles to be in if that was the case?

A I don't know.

Q He didn't tell you, did he?

A No sir.

Q No sir, not a single name of a company was disclosed with reference to auto liability insurance, was it Mr. Conklin?

A I don't remember.

Q All right. Do you remember any discussion at all with Mr. Dickerson, as a matter of fact Mr. Conklin, with reference to how long this insurance coverage was to last?

A To how long?

Q Yes.

A There was no discussion to how long it was to last.

Q No discussion at all about that, was there?

A No sir.

Q So you didn't know whether or not your insurance was going to be for one year, for two years, for three years, or five years, or at all, did you?

A No sir.

Q All right. How much were you going to pay for the insurance on the liability on your vehicles that you have testified to Mr. Conklin, tell His Honor that?

A We didn't discuss the liability payments.

Q You didn't know?

A The monthly payments.

Q You didn't know whether it was going to be monthly payments, yearly payments or semi-annual payments, did you, because it wasn't discussed was it?

A Indirectly, it was discussed.

Q Tell the Court what was said in that respect then.

A He told me when he concluded all the information together he would get back with me at a later date and let me know.

Q Let you know what?

A What everything was as far as the payments, the bonding, etc.

Q Do you remember if you were asked that same question at the time of the deposition?

A No sir.

Q You don't remember whether you were or you weren't, right?

A No sir.

Q Do you still have your deposition there? How about page 63, line 21?

MR. DURRETTE: I'm sorry, page --?

MR. SLENKER: 63.

BY MR. SLENKER:

Q When Mr. Dickerson left --

MR. DURRETTE: (Interposing) Excuse me, page 63 in my book stops at line 11.

MR. SLENKER: I beg your pardon; 62.

BY MR. SLENKER:

Q "Question: When Mr. Dickerson left your house, was there any understanding as to when he would get back to you?"

"Answer: Within a week or two weeks."

"Question: And was it defined as to what he would get back to you about?"

"Answer: Yes sir. He would let me know the amount

of money that I would be able to be bonded for."

Do you remember that Mr. Conklin?

A Yes sir.

Q Didn't say a thing to me under oath on that occasion about what the price or cost of liability insurance on vehicles was, did you?

A No sir.

Q Sir?

A No sir.

Q All right, do you remember me asking you the further question, anything else, anything else, do you remember that?

A No sir.

Q Take a look at it. Do you see it there?

A Yes sir.

Q In line 5, what was your answer?

A No sir.

Q Not a word about automobile liability insurance, isn't that correct?

A Yes sir.

Q Okay. Now you indeed were interested in bidding on this Morman Temple job, weren't you?

A Yes sir.

Q That was a million and a half job, wasn't it?

A Yes sir.

Q You had to submit your bid documents at the time you submitted your bid, did you not?

A Yes sir.

Q Were you bidding to be the general contractor on that job?

A Yes sir.

Q So you had to show a bond of a million and a half, didn't you?

A Yes sir.

Q Had you ever gotten a bond in the past in any respect for you personally that even came close to a million and a half?

A For me personally sir?

Q Yes sir.

A No sir.

Q Had you ever sought one?

A Yes sir. Me personally?

Q Yes.

A Not personally.

Q Not personally?

A No sir.

Q All right. In your business, had you previously attempted to obtain bonds?

A Yes sir.

Q Not anywhere close to a million and a half though, were they?

A Yes sir.

Q They were?

A I believe so, yes sir.

Q Did you get them?

A Yes sir.

Q You did?

A Yes sir.

Q When, prior to 1973, would the last one have been Mr. Conklin?

A I don't recall sir.

Q You can't tell His Honor that?

A Prior to '73?

Q Yes sir.

A Two, two years.

Q And that was when you were with Dale?

A Yes sir.

Q Well now, you didn't even handle the bonds so far as Dale Construction Company was concerned?

A No sir.

Q Didn't Mr. Barnes handle it?

A Yes sir.

Q So you didn't have anything to do with that?

A No sir.

Q Barnes did?

A Yes sir.

Q Okay. Now, at the time you met with Mr. Dickerson were you dealing with him as Ronald Conklin, individual; were you dealing with him as Ronald Conklin, President of Barkley Construction Company?

A Barkley Construction Company.

Q All right. Were these automobiles that you got from Dale Construction Company going to be in the Barkley organization?

A Yes sir.

Q Both of them were?

A Yes sir.

Q Now, were they titled and registered in your personal name at the time you met with Mr. Dickerson?

A Yes sir.

Q But they were supposed to be in Barkley's name, is that what you are saying?

A Yes sir, they would have been.

Q From the time you got the registration and the titles from Dale, did you have them transferred into your name?

A They did that themselves, yes sir.

Q Dale did that?

A Yes sir.

Q Dale didn't simply sign the title and the registration and give it over to you?

A Yes sir.

Q Well, which is it now?

A I am -- I don't know. I am just -- I'm confused in titles and so forth. All I know is that Dale Construction turned it over to me personally. I don't know what the mechanics of it was.

Q Let's see if we can get at it. Maybe we can refresh your recollection a bit. Was the title signed over by Dale to you?

A Yes sir.

Q It was physically given to you, was it, or did Dale send it down for transfer?

A I believe it was physically given to me.

Q Did you send that down to the DMV for transfer?

A No sir.

Q Why not?

A I -- I don't know.

Q You don't know why?

A No.

Q You know you are supposed to do that within a short period of time after the title is transferred, don't you Mr. Conklin, like five days?

A No sir, I'm not aware of that.

Q You didn't know that?

A No sir.

Q How about the registration card, the document you carry in your pocket? Did Dale sign that over to you or hand that to you?

A That was in the vehicles, I assume.

Q You assume?

A Yes sir.

Q Did it stay in the vehicle all the time?

A No sir, I don't believe so.

Q When was it taken out of the vehicle?

A Well, during this course of time of leaving Dale and starting Barkley and putting documents together and forming everything, I was using my home as an office and at

which time I would accumulate data and so forth and keep them there in a filing cabinet and at a desk that I had and I just can't recall everything that I did and why I did it.

Q Do you have any recollection at all as to when or why you took the registration to the vehicle out of the glove compartment?

A No sir.

Q Do you recall, as a matter of fact Mr. Conklin, when indeed you got a title to the Buick automobile?

A No sir.

Q From the Division of Motor Vehicles? Let me show you this document and see if that doesn't refresh your recollection sir?

A No, it doesn't.

Q It doesn't refresh your recollection?

A No sir.

Q Barkley Construction Inc., is the registered owner, right?

A Yes sir.

Q The address, 1014 South Ironwood Drive, Sterling, Virginia?

A Yes sir.

Q That is the address of Barkley Construction Inc.,

isn't it?

A Yes sir.

Q We are talking about a 1971 Buick, 4-door hardtop, are we not?

A Yes sir.

Q Isn't that what this document refers to?

A Yes sir.

Q Do you still have the car?

A Yes sir.

Q Do you have the registration to it?

A Yes sir.

Q Do you have the title to it?

A Yes sir.

Q You didn't tell your attorney recently that you threw the registration and title away on this particular vehicle, very recently?

A Oh, I have the title and registration to the car at the present date but I was assuming that he wanted the title and registration to the car back in -- at the time of the accident.

Q Well, isn't this the first title you got after Dale Construction Company turned it over to you in accordance with that agreement?

A If you say so.

Q That was in April of 1974, wasn't it?

A Yes sir.

Q Do you have any question but what this is the title to your car, this '71 Buick we are talking about?

A That is the Buick.

MR. SLENKER: May I have this admitted into evidence if Your Honor please.

THE COURT: Without objection?

MR. DURRETTE: No objection.

THE COURT: Exhibit No. 2 for the defendant.

(The document previously referred to was marked Defendant's Exhibit No. 2 for identification and received in evidence.)

BY MR. SLENKER:

Q Can you tell the Court, as a matter of fact Mr. Conklin, as of the 2nd of November or even the 9th of November, whose name actually the Buick was registered in?

A I can tell you whose name it was supposed to be registered in.

Q Well can you tell him who it was registered in if

it was registered at all?

A Not -- to be honest and say definitely, no sir.

Q Let me show you this document and see if you can identify it. There is the front side of it but that has got some other documents in it so we can't tell who the name is but you tell the Court, is that your writing?

A Yes sir.

Q You wrote that?

A Yes sir.

Q Is it not a fact that you wrote that on a piece of paper and sent that to the Division of Motor Vehicles April 9th, 1974, when you sent the title to the '71 Buick down for a new title?

A I don't remember this; the second -- I mean I just -- I don't remember.

Q You don't remember whether that occurred or whether it didn't?

A No sir.

Q Right. Okay. Now, let me show you a copy of the back of this title. Do you see your name on there and do you see your signature on there?

A My signature and my name?

Q Down here.

A Yes sir.

Q Ronald Conklin. But it says Barkley Construction Inc., by Ronald Conklin, right?

A Yes sir.

Q Do you see your name anyplace else on that title?

A Up here.

Q Up here, where? And that is under section C where that is the purchaser's application for a new certificate of title, right?

A Um-hum.

Q You signed that for what purpose?

A I don't understand this, if I may say.

Q I understand you may not understand it, but you knew that you signed that and you knew, did you not, from reading the thing? You had been in this business, had you not, for a number of years? You knew that when you signed purchaser's application for new certification to title, you were asking the Commonwealth to issue to you a new title to the Buick, didn't you?

A If that is what it says, I did. I usually -- I follow a secretary's advice or take it to the Division of Motor Vehicles and they tell me what to do and I do it.

Q Isn't that what it says, in fact?

A Yes sir.

Q And you signed that, asking the Commonwealth to issue you a new title?

A Yes sir.

Q Now then, when Dale gave you these vehicles, according to that agreement before the first of October, they had previously given them to you and you had them, right? They executed the top part here, didn't they? Do you recognize these signatures here as being --

A Yes sir.

Q They are the people, the principals in Dale Construction, are they not?

A Yes sir.

Q You recognize those signatures, do you not?

A Yes sir.

Q All right and who was supposedly transferred to up here in the first line? Do you see underneath where it is striken out, what is the name that appears in there?

A Ronald D. Conklin.

Q That is you, isn't it?

A Yes sir.

Q Tell the Court who it was that struck out Ronald D. Conklin and put in Barkley Construction, Inc.

A I don't know.

Q Did you do it?

A I don't know.

Q Can you tell the Court if it was done prior to the time that you signed it down here?

A No sir.

Q You don't know when it was done?

A No sir.

Q Or by whom?

A No sir.

Q You don't even know whether that was on there when you signed it, is that correct?

A No sir.

Q What is the date of this transfer up here?

A October the 30th, 1973.

Q So that is 30 days after this document that you signed, right?

A What document?

Q The document separating you from Dale?

A Yes sir.

Q Now then, here we have your application for a title, do we not? Do you find your name on that document?

A Yes sir.

Q Right over here, that is your signature, is it not?

A Yes sir.

Q The date of that is April 9th, 1974, isn't it?

A Yes sir.

Q That is the '71 Buick, is it not?

A Yes sir.

Q Four-door hardtop?

A Yes sir.

Q The same automobile we are talking about right along, right?

A Yes sir.

Q And what did you certify to the insurance people down in Richmond about coverage on your vehicle?

MR. DURRETTE: As of when?

MR. SLENKER: As of April 9th, by that document right there?

MR. DURRETTE: 1974?

MR. SLENKER: Yes sir.

THE WITNESS: I don't understand.

BY MR. SLENKER:

Q He wants to know if you have got insurance and didn't you put an X or a check mark in the yes box?

A Yes sir.

Q Tell His Honor where you got the coverage. I thought you testified that you made no attempt to get any coverage thereafter?

MR. DURRETTE: I object. That is not a fair characterization of his testimony. I asked him prior to the accident of November 16th.

THE COURT: He said prior to the accident.

BY MR. SLENKER:

Q Just in that one week or 14 day period, did you have insurance on the 9th?

A Of '73?

Q '74, that is when you got it transferred?

A Yes sir, I had insurance.

MR. SLENKER: Your Honor, I would ask that these be admitted into evidence.

THE COURT: Without objection, as a package, No. 3 for the defendant.

(The documents previously referred to were marked Defendant's Exhibit No. 3 for identification and received in evidence.)

BY MR. SLENKER:

Q As a matter of fact Mr. Conklin, you didn't even have a registration or a title to this Buick automobile that you could exhibit to Mr. Dickerson if we take your testimony as being accurate, that showed you owned a car, did you?

A I don't know sir.

Q You don't know but in any event if you did it would have been, is it your testimony that it was in your name personally?

A Yes, to my best recollection it was in my name personally.

Q Now, you previously told us that you were dealing with Mr. Dickerson on behalf of Barkley Construction Company. Why would you show him a registration, if you did, of a vehicle owned by you personally if you were interested in getting liability insurance from Jim Dickerson on your corporation? Tell the Court why you would submit your personal document on the car?

A I was just in the process of forming a new business and in this -- at this time I was -- I was gonna transfer the vehicles into the corporation. They have always basically been in a corporation and I was at that time gonna transfer it into the corporation as soon as I could get coverage.

MR. SLENKER: Would Your Honor bear with me just one minute, if you please sir.

BY MR. SLENKER:

Q You told His Honor a minute ago that you were operating out of your home and you have an office in your home. Where did you have your office in the home?

A I didn't have an office per se. I had a telephone, a little desk, a filing cabinet.

Q Where did you keep your documents with reference to your business?

A In the filing cabinet.

Q Where was that?

A In -- I had what I call a pool room; in the pool room.

Q The rooms in the basement?

A No sir.

Q On the first floor?

A Yes sir.

Q Is that the place where you say you went and got the documents to give to Mr. Dickerson?

A No sir. My wife got them and gave them to me.

Q Are you sure that your wife went and got them?

A Yes sir.

Q You say your wife went and got them?

A Yes sir.

Q No question in your mind about the validity of that testimony, Mr. Conklin?

A No sir.

Q Maybe you best refer to your deposition.

MR. DURRETTE: What page?

MR. SLENKER: Forty-nine, line six.

BY MR. SLENKER:

Q I asked you what else you gave him, if anything. Your answer was, I gave him the information on the registration card and so forth of the vehicles that he was to insure. You remember that?

A Yes sir.

Q You remember I asked you how did you do that? You said, I gave him the registration cards. Remember that?

A Yes sir.

Q "Question: Well, how did it happen mechanically?" You remember my asking you that?

A Yes sir.

Q Read your answer.

A "I walked over to the desk, picked them up and physically gave them to him. He put them in his one hand,

in the other hand he had a pen or a pencil and proceeded to take the information off of that and apply it to the paper."

Q You say you got them and gave them to him, right?

A Okay.

Q Well, excuse me, when did you come to the determination Mr. Conklin, that you didn't in fact give them to him but your wife did?

A Well, there is quite a bit of information that was given to him; my wife primarily got all of the information.

Q I understand that. My question is --

MR. DURRETTE: (Interposing) Your Honor, the witness has a chance to explain his answer.

MR. SLENKER: He is not responding to my question.

THE COURT: I think he is.

BY MR. SLENKER:

Q Very well, go ahead.

THE COURT: Objection sustained.

THE WITNESS: This was quite a bit of information Mr. Dickerson had asked for that day. My wife was in the kitchen at the time. Most of that information, and I do not know what information in particular, but most of that

information my wife got. My wife went to the filing cabinet in the pool room and secured information there. I went to the desk and got the registration cards, I believe, and my wife even tells me later and I didn't --

MR. SLENKER: (Interposing) That is what I object to, if Your Honor please.

THE COURT: Objection sustained.

BY MR. SLENKER:

Q Just tell the Court at what point in your mind or in the pendency of this case, after this deposition, January of this year, did you come to the conclusion that your wife had given Mr. Dickerson these registration cards and titles and so forth?

A I don't know if I pinned it down to registration cards and titles and so forth.

Q Tell the Court why you would testify under oath in January that you got them and handed them to Dickerson and he took information off of them and today in this Court you say, my wife went and got them and gave them to Dickerson.

MR. DURRETTE: Your Honor, I object to the question only because the phraselogy today and the questions today have been related to registration cards and titles.

THE COURT: The question in the deposition is only registration cards; registration cards and so forth? Objection overruled.

THE WITNESS: Okay. I went to the desk and got the registration cards.

BY MR. SLENKER:

Q I understand that. I want you to tell this Court --

MR. DURRETTE: (Interposing) I would just like to call the Court's attention to look at the two questions in the book. The answer to the question on line seven says, I gave him the information on the registration cards and so forth, of the vehicles he was to insure. Then Mr. Slenker said, how did you do that? Answer: I gave him the registration cards. Mr. Slenker asked, How did it happen mechanically? I walked over to the desk and picked them up. That has reference to the registration cards. I think it is important for the questions to be asked precisely if there is going to be an attempt to impeach him on the deposition.

BY MR. SLENKER:

Q Tell this Court, if you would Mr. Conklin, why you would testify under oath in January that you gave these documents to Mr. Dickerson and now today, in Court, you say

my wife gave them these documents, if indeed --

THE COURT: (Interposing) He didn't say she gave them to him. He said she got them. I think you are misquoting.

MR. SLENKER: I stand corrected as to that.

BY MR. SLENKER:

Q But today, in this Court -- well, in the deposition you said you went and got them mechanically. In this Court today, you said your wife went and got them. Why?

THE COURT: Just a minute. Where did he say he went and got them in the deposition?

MR. SLENKER: When I asked him mechanically how that happened, Your Honor; page 49, line 12. I walked over to the desk, picked them up and physically gave them to him. That is what he testified to in this deposition. Today he testified his wife went and got them and gave them to Dickerson.

MR. DURRETTE: Your Honor, I guess we are going to have to have the reporter play it back. I don't recall the witness saying his wife gave them to Dickerson. I recall him saying --

THE COURT: (Interposing) I believe he said she went and got them. I don't know that he told us where she

got them; I think that is what he said.

MR. SLENKER: I understood he said she went to the desk and got them.

THE COURT: I don't think he said that. I think he said she got them; I was under the impression she went out of the room to get them. That is just an impression. You may inquire.

BY MR. SLENKER:

Q Did she go out of the room to get them?

A What are we talking about, get what?

Q We are talking about titles, registrations?

A Okay. She went out of the room.

Q And the other information, whatever it might consist of, the so forth you testified to?

MR. DURRETTE: Your Honor, I object.

THE COURT: Objection overruled. I think that is a proper question.

THE WITNESS: She went out of the room and got titles because they were kept in the filing cabinet. I went to the desk and got the registration cards.

BY MR. SLENKER:

Q Were the titles kept in the filing cabinet in the basement?

A No sir, in the pool room.

Q In the pool room on the first floor?

A Yes sir.

Q The registrations are kept someplace else?

A They were on the desk.

Q They were on the desk?

A Yes.

Q You say registrations, were there two of them?

A Yes sir.

Q For the El Camino pickup truck and the Buick?

A Yes sir.

Q Now, the pickup truck was never to be yours alone and personally, that was always in the corporate structure, was it not?

A No sir.

Q Oh, it was not?

A No sir.

Q All right. It is true, is it not Mr. Conklin, that there was no discussion at all about who was going to drive the Buick automobile in your conversation with Mr. Dickerson?

A I don't remember sir.

Q You don't remember whether there was or there

wasn't, or are you saying that there was no such conversation?

A About who was to drive the vehicles?

Q Yes sir.

A I don't remember sir.

Q You don't remember anything in that regard?

A No sir.

Q You don't remember whether or not there were drivers -- male drivers under 21 or under 25, do you?

A No sir.

Q You don't remember whether there were female drivers under 20 or 25?

MR. DURRETTE: If Your Honor please, he has testified he doesn't remember whether there was any discussion about who was going to drive the cars.

BY MR. SLENKER:

Q You didn't talk about that at all, did you?

A No sir, I don't remember.

Q Pardon?

A I don't remember sir.

Q You don't remember?

A No sir.

Q Okay. There was no discussion either with

reference to the amount and the rate of the supposed coverage, was there?

A There was reference to the amount, but not to the --

Q (Interposing) The amount?

A Yes sir.

Q That is 100 - 300, right?

A Yes sir.

Q That was discussed?

A Yes sir.

Q And did you ask how much that was going to cost?

A No sir.

Q Did you inquire about the cost of any other types of coverage in excess of the 100 - 300?

A No sir.

Q And your previous testimony is, no discussion at all about any amounts of premiums?

A No sir.

Q All right. Would you tell His Honor, was the vehicle to have medical pay coverage?

A I don't remember sir.

Q Well, did you have any discussion? Can you tell the Court if there was any discussion about whether this policy that you say Dickerson was going to give you was to

include medical pay or wasn't it?

A I don't remember sir.

Q You don't remember?

A No sir.

Q Was it to have application to collision coverage?

A I don't remember sir.

Q Was it to have application to comprehensive coverage?

A I don't remember.

Q There wasn't any discussion of any of these things, was there Mr. Conklin?

A Yes sir.

Q You can remember it, that is what you are now saying to the Court?

A I can remember we talked about liability insurance and a figure of 300,000 - 100,000 was mentioned. That is what I remember.

Q 300 - 100. Do you remember that?

A Yes sir.

Q Did this have to do Mr. Conklin, did all this information that you say was discussed, indeed, did that occur early in the conversation you had with Mr. Dickerson or late?

A Involving the insurance on the automobiles, liability insurance?

Q Yeah.

A It happened after we talked about bonding insurance.

Q Well, there isn't any question, is there, in your mind, that the primary reason that Dickerson was there and had been brought there was in order to see about getting bonds?

A No sir. He was there for bonding and liability insurance.

Q I see. I suppose we have been through what you have testified to on deposition. Let me ask you to look at your deposition, page 38, beginning line three, and your answer there when I asked you what was said about car insurance. You didn't say anything in that answer about 300 - 100, did you?

A No sir.

Q Sir?

A No sir.

Q And then when I asked you further about it on page 40, beginning at line three, I believe you testified there that Mr. Dickerson said he couldn't cover you,

isn't that what you said?

MR. DURRETTE: Your Honor, the answer is here and I suggest that we read the answer and not rely on Mr. Slenker's characterization of it.

MR. SLENKER: I agree. I agree. I agree with that fully and I think the Court is reading along with us.

MR. DURRETTE: Page 40?

THE COURT: I am on 40, what line?

MR. SLENKER: Line three.

BY MR. SLENKER:

Q As I understand your testimony today Mr. Conklin, there was something other than what you have related here in this answer that was told to you by Dickerson on the occasion of that meeting, is that you are saying to this Court?

A I don't understand the question.

Q Well, in other words, what appears on page 40, line three through twelve, you told me what he had to say on the top?

A Yes sir.

Q He didn't say anything else about 300 - 100, did he?

MR. DURRETTE: I object. There is nothing in that question -- that characterization is exclusive.

BY MR. SLENKER:

Q You didn't say anything in that answer about 300 - 100, did you?

A It is my impression you didn't ask me.

Q I understand that, but does your answer say anything about it?

A No sir.

Q All right then, I asked you the further question in line 13, anything else he said or have you told me all of it? You said, that is in essence the general conversation.

A Yes sir.

Q Right?

A Yes sir.

Q Do I understand now that that answer was not correct?

A No sir, that is correct.

Q That is correct?

A That answer is correct.

Q Incidently Mr. Conklin, did you indeed have the titles and the registrations to both the El Camino pickup truck and the '71 Buick hardtop when your deposition was taken in January of this year?

A Did I have it with me?

Q No, did you have them?

A I had -- I had them; I had the current ones. I don't know if I had the ones that dated back then.

Q You said you had them on the time and the occasion of the deposition but you had them at home, right?

A Yes sir.

Q Didn't have them with you?

A Yes sir.

Q You were going to provide us with those?

A Yes sir.

Q Did your attorney ask you to obtain those from that period of time and give them to him so he could give them to us?

A At that meeting, that was discussed. It was not -- I was not reminded of it after that and I didn't realize that it was needed until my attorney told me the other day and I looked for them and got what I could find.

Q And you indeed, I think, transmitted to your attorney who transmitted it to us, that you had destroyed them and thrown them away?

A No sir. I don't think I said that.

Q Oh, you didn't say that?

A I don't know that I did or didn't.

Q Now, is it once again your testimony that when Mr. Dickerson, as I understood, you told His Honor that Dickerson told you the last thing that you were covered but didn't know any of the specific details of it?

A Yes sir.

Q And he was to get back to you in a week or so?

A Yes sir.

Q Do I understand that he was to get back in touch with you in a week or so about automobile liability coverage?

A Yes sir. -- No, about bonding, about bonding.

Q About bonding?

A Yes sir.

Q He wasn't to get back in touch with you with regard to anything that had to do with liability coverage?

A No, he was supposed to send me whatever payments or whatever financial arrangements was deemed necessary.

Q It is a fact you didn't give him any money, you didn't pay him any premium?

A No sir.

Q He didn't ask you for any ?

A No sir.

Q You didn't sign anything, did you?

A No sir.

Q He didn't sign anything and give anything to you, did he?

A No sir.

Q All right, but you apparently asked him if he needed a deposit?

A Yes sir.

Q Is that your testimony?

A Yes sir.

Q All right, and he said he didn't?

A Yes sir.

Q That he would write it up and get back in touch with you?

A Yes sir.

Q That is what you say he told you, right?

A Yes sir.

Q Do you remember in line 16, I asked you did you ask him why he was going to get back in touch with you; do you remember your answer?

A Yes sir.

Q He had to let me know about the commercial bonding, remember saying that?

A Yes sir.

Q Not a word about automobile liability insurance,

is there?

A No sir.

Q Then you remember my asking you, did he say anything else to you and you remember your answer?

A No sir.

Q Obviously yes, but I don't know what; so you don't remember?

A No sir.

Q But you remembered him saying about bonding?

A Yes sir.

Q All right. Now, when he left there, did he tell you at all that you were bound on the bond?

A No sir.

Q He did not?

A No sir.

Q Okay. Did Mr. Dickerson make any telephone calls while he was in your presence?

A I don't remember sir.

Q You don't know?

A I don't believe so, but I don't remember.

Q Okay, you didn't really know, as a matter of fact Mr. Conklin, whether or not he had the power or the authority to give you any liability insurance, did you?

A Only by what he represented himself as an insurance agent able to do it, yes sir.

Q Well, did he say he was able to do it or was that even discussed?

A I don't remember.

Q You don't remember?

A No sir.

Q Well, when he said to you, as you have testified, you are covered, --

A (Interposing) Yes, he did.

Q Did he say, right now you are covered?

A Yes sir.

Q Did you say to him, do you have the power to do that?

A No sir.

Q You didn't ask him anything about it, did you?

A No sir.

Q All right, thank you. As a matter of fact, there wasn't any discussion between you and Mr. Dickerson, was there Mr. Conklin, about whether or not you had had any prior accidents, was there?

A I don't remember.

Q As a matter of fact there wasn't any conversation

between you and Mr. Dickerson as to whether or not any of your employees or the employees of Barkley Construction Company had had any accidents either, was there?

A I don't remember that either.

Q There wasn't any discussion between you and Mr. Dickerson about your driving record, was there?

A I don't remember that.

Q There wasn't any discussion between you and Mr. Dickerson about Mrs. Conklin's driving record, was there?

A I don't remember.

Q There wasn't any conversation between you and Mr. Dickerson about any of your childrens' driving records either, was there?

A I don't remember that either.

Q Now, do the members of your family normally drive commercial vehicles such as this was to be, the Barkley Construction Company vehicles?

A On occasion my wife drives.

Q Now Mr. Conklin, another area I would like to explore with you if I might, wasn't it indeed your practice in prior years, if you could get bonding capability let's say, or if you got some type of consideration from an insurance agent or an insurance company, that you made it a

practice to give them all of your insurance?

A Yes sir.

Q That had been the practice you personally and your corporations, those in which you had an interest, had generally pursued that procedure and that policy, had they not?

A Yes sir.

Q Now, if this man, Dickerson, bound you that very day as you say, and you didn't know whether you were going to get the bond or not, --

A (Interposing) Yes sir.

Q -- (Continuing) If you didn't get the bond for sure, he wasn't going to keep the other coverage, was he?

A Yes sir.

Q You were going to take that away?

A No sir.

Q You were going to leave it with him?

A Yes sir.

Q Isn't that the very reason you previously, with reference to Bob Howard and the Cobb Insurance Agency, why you hadn't transferred the insurance immediately to him, because 30 days thereafter you might have to pull it away from him and give it to somebody else?

A Yes sir, but that was different.

Q That is different. Are you telling the Judge then since Dickerson gave you this liability insurance, it didn't make any difference whether you got the bond or not; is that what you are saying?

A Yes sir.

Q You didn't get the bonding, did you?

A Yes sir.

Q Sir?

A Yes, not with Mr. Dickerson, but I did with another company.

Q Right, but you didn't get it from Mr. Dickerson?

A No sir.

Q How long was it after the meeting with Mr. Dickerson before you called him to find out whether you were going to get the bond or not?

A I never called Mr. Dickerson after the meeting to see if I was going to get the bond or not.

Q Why not?

A Because he didn't have time to reply to me, I felt.

Q What do you mean he didn't have time to reply to you; you hadn't even submitted the bid on the Morman Temple as of November, had you?

A No, the bid was cancelled.

Q Well, when was it cancelled Mr. Conklin?

A I don't recall; it was cancelled three or four times. We didn't bid on it until I guess a year later.

Q But it wasn't cancelled or in a state of cancellation as of November of 1973, was it?

A I don't remember.

Q As a matter of fact, the bond bids were to be submitted, according to your testimony under oath, around the 1st of the year of 1974?

A Yes sir, that is right.

Q That is why you were getting bonding from Dickerson so you would have your ducks in a row -- your bid in a row and could submit it, right?

A Yes sir, yes sir.

Q Now then, you didn't make any inquiry of Mr. Dickerson later on, as I understand from your testimony, about whether you got the bond or whether you didn't?

A That is right.

Q Why not?

A It normally takes at least a week to two weeks before you can -- before a person like Mr. Dickerson could get back to me to find out if this is workable and this is

the time that he had set forth to let me know and the two weeks had not expired yet and I had not taken the time to call him back on it.

Q Well, the two weeks then transpired, then you had this accident, right?

A Yes sir.

Q After the accident, did you call him about the bond?

A No sir.

Q The accident wouldn't have anything to do with the bond, would it?

A It had a lot to do with my feelings about him as a person and as a representative of an insurance agent.

Q How about answering my question; the accident didn't have anything to do with the bonding coverage you wanted Mr. Dickerson to give you in the first instance, did it?

A I don't know how to answer that. It did but I don't -- I apparently see an answer different to your question.

Q Just give -- can you answer my question?

A Yes sir.

Q Go ahead and answer it.

A It did.

Q The accident had an influence on the bonding?

A Yes sir.

Q Now you have been a businessman for several years; you appreciate, do you not, need for things to be in writing?

A Yes sir.

Q Don't you try to conduct your affairs in such a manner as you have got some written memorandum or something like that?

A Yes sir.

Q And whenever a fellow says he is going to pay you money or something, don't you like to have something written down?

A Yes sir.

Q In your business you strive to get that, don't you?

A Yes sir.

Q Did you ask Mr. Dickerson to give you anything in writing about any kind of auto liability coverage?

A I believe I did sir.

Q Oh, you believe you did?

A Yes sir.

Q Well now, you didn't tell me that in your deposition,

did you sir?

A I don't know sir.

Q What did you ask him to give you?

A I don't know.

MR. SLENKER: I have no further questions, Your Honor.

MR. DURRETTE: May I go into redirect now, Your Honor?

THE COURT: Yes sir.

REDIRECT EXAMINATION

BY MR. DURRETTE:

Q Now Mr. Conklin, is thereany doubt in your mind whatsoever that the discussion and the content of the discussion that you have related to this Court regarding automobile liability insurance took place on the -- the meeting with Mr. Dickerson and Mr. Ash took place --

MR. SLENKER: I object.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q Let's go back Mr. Conklin, to the transfer to you of the automobiles from Dale Construction Company. I believe you testified, did you not, that the automobiles were transferred to you near the end of October, 1973, is that right?

A Yes sir.

Q And on this exhibit, which is Defendant's Exhibit No. 3, under subsection A, Assignment of Title by Registered Owner, in which your name appears and is striken, would you testify as to the date in the upper right-hand corner of that portion of the instrument?

A October 30th, 1973.

Q Now, prior to the meeting of November 2nd of 1973, Mr. Conklin, would you tell the Court please why you did not seek to place your automobile liability insurance with some insurance company through some insurance agent?

MR. SLENKER: If Your Honor please, I think that is immaterial and irrelavant to the issue here whether he tried to put it with somebody else or some other agency at any given point in time; I don't think is material or relevant.

THE COURT: Is this subsequent to November 2nd?

MR. DURRETTE: No sir, prior to November 2nd; the reason why it is relevant, if the Court will recall, I attempted to ask that question on direct and the Court said it was not proper direct. Mr. Slenker attempted on cross examination to tie in the liability insurance with the bonding and intimate that because it was Mr. Conklin's

business practice in the past to place his bonding and liability insurance with one company --

THE COURT: (Interposing) Objection overruled.

BY MR. DURRETTE:

Q Do you need the question restated?

A Yes sir.

Q You want me to restate the question?

A Yes sir.

Q Prior to the meeting of November 2nd, 1973, did you attempt to place your automobile liability insurance with any company?

A No sir.

Q Would you tell the Court why please?

A Because when I -- I knew that I was gonna go for commercial bonding which I had to have to operate the business and I knew when whoever was to write commercial bonding would want all the other insurance. Consequently, I had to put it all together with one company before I made a move.

Q Before what, I didn't hear the last part of that?

A I had to get one company that would take it all.

Q All right sir. Now, with that purpose in mind, you met with Mr. Dickerson on November 2nd?

A Yes sir.

MR. SLENKER: I object to that and ask it be striken.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q Mr. Slenker asked you on cross examination whether or not you would have left your automobile insurance with Mr. Dickerson and the company that he placed it with had he not been able to get your bonding. Do you recall that question?

A Yes sir.

Q You answered that you would?

A Yes sir.

Q And yet obviously you would have had to place your bonding somewhere else?

A Yes sir.

Q Would you explain to the Court please why originally it had been your desire to place them both with one company and yet your testimony today is that you would have left the liability with Mr. Dickerson had he not been able to get the bonding? Would you explain that to the Court please?

MR. SLENKER: I object; I don't think it is

material or relevant as to whether or not the defendant agreed to cover him, get him insurance, or try to get him insurance; what is in the man's mind is something we don't know about.

THE COURT: Objection sustained.

MR. DURRETTE: Would Your Honor allow me to comment? Mr. Slenker asked the question I rephrased. He said, would you have left your liability insurance coverage with Mr. Dickerson had he not been able to provide bonding.

THE COURT: He answered yes.

MR. DURRETTE: And I think --

THE COURT: (Interposing) You want him to repeat it?

MR. DURRETTE: I don't want him to repeat the answer. I think the reason for that is relevant if, as I anticipate, there is going to be argument that is terribly inconsistent with his previous practice.

THE COURT: Objection overruled.

MR. SLENKER: May I have an exception please?

THE COURT: Exception noted.

THE WITNESS: Could you rephrase the question?

BY MR. DURRETTE:

Q The question is: why?

THE COURT: Why would you have left the insurance with them if you didn't get the bond?

THE WITNESS: Okay, can I go at the very beginning and explain this?

THE COURT: Do you think it is necessary?

MR. SLENKER: Well Your Honor, I object to that. We don't know what this witness is going to say.

THE COURT: I think it is a subjective question and rhetorical. Objection sustained.

MR. DURRETTE: To any question about that, Your Honor?

THE COURT: Sir?

MR. DURRETTE: To any question about why he would have left this insurance?

THE COURT: Yes, I don't think it's relevant. The objection is sustained.

MR. DURRETTE: Note my exception please.

THE COURT: Exception noted.

BY MR. DURRETTE:

Q Now Mr. Conklin, was there a discussion with Mr. Dickerson as to how long, I believe you testified in response to Mr. Slenker's question, there was no discussion with Mr. Dickerson that you recall about how long the

liability insurance coverage was to remain in effect?

A I don't remember, no.

Q One year, two years, anytime like that?

A Yes sir.

Q Did you, however, understand -- did you know in your own mind, how long that insurance coverage was to be in effect?

MR. SLENKER: Objection.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q Was there any doubt in your mind Mr. Conklin, that the coverage was in effect from that moment until sometime?

MR. SLENKER: Objection.

THE COURT: Objection sustained. He has already said that; he is not permitted to repeat what he said previously.

BY MR. DURRETTE:

Q Now, do the documents that you gave to Mr. Dickerson, the title and the registration card, relate to the two vehicles you have testified to here this morning?

A Yes sir.

Q Not to two other vehicles?

A No sir.

Q You were talking with Mr. Dickerson about automobile liability insurance for those two vehicles?

A Yes sir.

Q Isn't that correct?

THE COURT: He has said that repeatedly, yes. Life is too short and the day is too long. Don't repeat if you please.

MR. DURRETTE: I apologize Your Honor because of the nature of the cross examination I thought it was important to because of dates.

THE COURT: You don't have to repeat anything, please.

MR. DURRETTE: May I have just one moment Your Honor?

BY MR. DURRETTE:

Q Mr. Conklin, you testified in response to Mr. Slenker's question that there was no discussion regarding the rate or the cost of the insurance, is that correct?

A Yes sir.

Q Why not; why didn't you ask about the cost?

MR. SLENKER: I object to this if Your Honor please. I don't know how he would know why or if there is a particular reason.

MR. DURRETTE: He knows why he didn't ask about the cost.

THE COURT: Objection overruled.

MR. SLENKER: Exception.

THE COURT: Exception noted.

THE WITNESS: In this type of insurance I have found it is normal --

MR. SLENKER: (Interposing) Wait a minute. This is why I made the objection; he is now going to say whatever he cares to say about this, which is nothing that was said back at the time he was with Mr. Dickerson. It is subjective thing that comes right out of his mind. This is self-serving.

MR. DURRETTE: No matter where it comes from, isn't he entitled to say why he didn't ask about rates?

THE COURT: The objection is overruled.

BY MR. DURRETTE:

Q The question is: why didn't you ask about the cost of the rates for the automobile liability insurance?

A Because normally the rates are competitive in the insurance business and they are regulated and I know it has to be a reasonable rate. Also, that I know that normally in this type of insurance it is normal to be asked for

coverage and to be covered without the necessary paperwork.

THE COURT: Any further questions?

MR. DURRETTE: I don't think so Your Honor.

MR. SLENKER: May I Your Honor?

THE COURT: Yes sir.

RECROSS EXAMINATION

BY MR. SLENKER:

Q Mr. Conklin, will you tell His Honor these cars were previously transferred to you by the terms of the separation agreement with Dale as of the first of October; you signed that agreement; the agreement carries the date of October 1st; will you tell the Court why it is you didn't seek any liability insurance on the vehicles for over a month?

MR. DURRETTE: Your Honor, I object to that. That is not Mr. Conklin's testimony. The agreement purports to reflect that but Mr. Conklin has testified that it was at the end of October and the date on the title certificate when they were transferred is October 30th, 1973.

THE COURT: I understand that but the contract says Dale had previously transferred these automobiles. I think he can ask him why. I understand your situation. Then he can ask him why it is that he signed the agreement setting

forth that he already had the title since October the 1st.

BY MR. SLENKER:

Q Why did you wait over 30 days to make any attempt whatever to get coverage?

MR. DURRETTE: Your Honor, I object.

THE COURT: Objection sustained. The question is, why would you sign a contract in which is stated that you had previously received the clear title of these vehicles.

THE WITNESS: Sir, the vehicles in that contract are one of several things in there and it is hard to explain my former partner's ability to work things but I think that he has done this in the past, is to backdate contracts or date things according to what would necessarily work as far as interest and things like this are concerned and he was probably trying to establish a date of when to make everything, interest rates and this sort of thing, work out in accordance, but it wasn't until the end of October when I left the Company is when I got the vehicles and this type of thing.

BY MR. SLENKER:

Q Then Mr. Conklin, have you told the Court everything that there is to be known and that you recall about your conversation about this insurance with Mr. Dickerson?

MR. DURRETTE: I object to the question, Your Honor.

THE COURT: Objection sustained.

BY MR. SLENKER:

Q You haven't mentioned in your testimony any place Mr. Conklin, about workmen's compensation or --

MR. DURRETTE: (Interposing) I object to that. That exceeds the scope of Redirect Examination.

THE COURT: Objection sustained.

MR. SLENKER: May I have an exception noted?

THE COURT: Exception noted. I just have several questions.

Mr. Conklin, this agreement not only purports to have been signed on the first day of October, but the Notary Public certified it was acknowledged on the first day of October; have you seen that?

THE WITNESS: Yes sir, I saw that and I wasn't aware of it sir and I just -- I guess I can't -- I would have to go back to my partner and the CPA and the Notary and find out exactly what has happened.

THE COURT: Who is Dorothy C. J. Harley, Notary?

THE WITNESS: It is Mr. Sabrisky's secretary.

THE COURT: Are you saying that that is incorrect;

that her certificate is incorrect?

MR. DURRETTE: No sir, if I may interject; I don't think his testimony --

MR. SLENKER: (Interposing) Let's hear from the witness.

THE WITNESS: I just couldn't answer that sir. I don't know; I just don't know.

THE COURT: Well you don't know whether you signed it on October 1st?

THE WITNESS: No sir, I don't know whether I signed it on October 1st.

MR. DURRETTE: That is the point I wanted to make Your Honor.

THE COURT: Well now, you say, Associate Enterprises, Inc., that was a partnership?

THE WITNESS: Yeah, I think.

THE COURT: It was called a corporation but just two people were in it?

THE WITNESS: Yes sir, Mr. Barnes and myself.

THE COURT: You all owned these two vehicles?

THE WITNESS: Yes sir.

THE COURT: You had liability insurance on them before, didn't you?

THE WITNESS: Yes sir.

THE COURT: When did this expire?

THE WITNESS: When I took possession of the vehicles, which was at the end of -- when I took possession. When I left the corporation officially and took possession of the vehicles, they cancelled my insurance. Dale Construction did, which was at the end of October.

THE COURT: They?

THE WITNESS: Yes sir.

THE COURT: They cancelled the policy?

THE WITNESS: Yes sir.

THE COURT: Why didn't you just let it go?

THE WITNESS: Sir because I --

THE COURT: (Interposing) You knew that you were uninsured?

THE WITNESS: Yes sir, at the time.

THE COURT: Regardless, do you remember whether or not you drove the vehicles during the month of October?

THE WITNESS: Yes sir, I worked out of the El Camino; I continued driving the vehicles. I still have them.

THE COURT: During the month of October 1973?

THE WITNESS: Yes sir.

THE COURT: And knowing that they were uninsured, is that correct?

THE WITNESS: Well, I see the documents you have there but it is my knowledge when I left at the end of October, I sort of officially left and we had been talking about splitting, about me leaving for sometime and when I officially left our comptroller, which at that time we had a comptroller, had the titles and necessary papers at his desk and asked me to sign them and that they would be my vehicles at that time and that day --

THE COURT: (Interposing) Is he here today?

THE WITNESS: No sir; he could probably be reached.

THE COURT: Well, when you were talking to Mr. Dickerson, just what did you say about the status of the insurance on these vehicles; just what was your language?

THE WITNESS: I told Mr. Dickerson after we got through talking about bonding, then we went right into liability insurance on cars and I told him I didn't have any insurance and I was very concerned about it but I had been driving without insurance and I said I had to do something. I told him -- if I may talk to you about this?

THE COURT: No, that is enough. Who was present at that time?

THE WITNESS: Mr. Ash and my wife was in the room.

THE COURT: How far was Mr. Dickerson from you?

THE WITNESS: We were sitting in a round table.

THE COURT: You have applied for insurance before, haven't you, for liability insurance on vehicles before?

THE WITNESS: Yes sir, but it has been a period of years. I personally normally -- yes sir, I have. I haven't personally; I usually had a secretary do it, this type of thing which I am trying to say, I am not familiar with this type of thing as I should be and --

THE COURT: (Interposing) Did you ever fill out an application form?

THE WITNESS: For insurance?

THE COURT: For liability insurance?

THE WITNESS: I might say that I don't believe so sir; I believe like normally if I have gone anywhere I have always dealth with Cobb Insurance; I would go in and say Bob, I have got a vehicle I want to cover. He would fill out the papers and I would sign it.

THE COURT: You would sign the application without reading it?

THE WITNESS: Yes sir, when a representative like him would fill it out I felt secure he was qualified in his

field.

THE COURT: He wouldn't ask you whether or not --

THE WITNESS: (Interposing) We would talk at the time and he would tell me what the coverage was.

THE COURT: Wouldn't he ask you whether or not you had been in any accidents or whether you had been caught speeding or anything of that sort?

THE WITNESS: So long as I have worked with an insurance agent on insurance, I don't remember these questions. If they would or didn't, I don't believe they have ever asked me about particularities and things like that and I don't recall Mr. Dickerson and I talking about it.

THE COURT: I think that is all. Do you gentlemen desire to inquire any further?

MR. SLENKER: I have no questions.

MR. DURRETTE: No questions.

THE COURT: This Court will now recess for about five minutes.

(Whereupon, there was a brief recess.)

Whereupon,

LAWRENCE W. ASH,

was called as a witness by and on behalf of the Complainant, and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURRETTE:

Q Would you state your full name please sir?

A Lawrence W. Ash, A-S-H.

Q Where do you reside Mr. Ash?

A 9112 Old Mt. Vernon Road, Alexandria.

Q What is your professional occupation?

A Lt. Colonel, United States Army, Retired.

Q Do you have another job?

A I did at the time of this.

Q You do not now?

A No.

Q Let me direct your attention then to on or about November 2nd, 1973, and ask if you had other employment at that time?

A Yes.

Q What was it?

A Piedmont Capital Corporation.

Q What is that?

A Insurance and investment company.

Q You were what for Piedmont Capital?

A I handled insurance and investment.

Q All right sir. Do you or did you at that time know Mr. Ronald Conklin?

A Yes I did.

Q Would you indicate if he is in the courtroom?

(Whereupon, the witness indicated.)

BY MR. DURRETTE:

Q Did you at that time know Mr. James Dickerson?

A Yes.

Q Would you indicate if he is in the courtroom?

(Whereupon, the witness indicated.)

BY MR. DURRETTE:

Q He is the gentleman at the end of the table?

A Right.

Q Did there come a time when Mr. Conklin contacted you with regard to some insurance need he had at this particular point in time?

A Yes he did.

Q Would you tell the Court please when he came to you and what he told you regarding the insurance?

MR. SLENKER: Your Honor, what he told him is hearsay and I would object to that.

THE COURT: Objection overruled.

THE WITNESS: He gave me a requirement for bonding and casualty insurance.

BY MR. DURRETTE:

Q All right sir. By casualty insurance, we mean what?

A Automobile casualty, other types of casualty insurance, bonding and so forth.

Q All right sir. Does that include automobile liability insurance?

A Yes.

Q All right sir. Did he make any further requests of you?

A He asked me if I could provide it and I told him that I was licensed in these areas but did not currently write that type of insurance but that I could provide an outlet for him.

Q And did you subsequently arrange for him to meet with someone in that regard?

A Yes I did.

Q Who was that individual that you arranged for him

to meet with?

A Mr. Dickerson.

Q Did you attend this meeting?

A Yes.

Q Can you tell me when that meeting took place?

A The morning of the 2nd of November, 1973.

Q And can you tell me how you are certain of that day?

A I have it in my appointment book.

Q Your appointment book for that year?

A Right.

Q And you have looked at your appointment book and you had it written in there when you looked?

A Yes.

Q And you attended this meeting?

A Yes.

Q Where did the meeting take place?

A At Mr. Conklin's home, Wilkins Road.

Q Who else was present?

A Mr. Dickerson and at various times during the meeting, Mrs. Conklin.

Q Physically within Mr. Conklin's home, where did the meeting occur?

A In the breakfast area, at a table in the breakfast room.

Q Were you seated around this table?

A Yes.

Q Now did the conversation, tell me, if you would, what subjects, just subjects of insurance, the conversation concerned; areas of insurance the conversation concerned?

A Fidelity, bonding and casualty insurance, automobile insurance.

Q All right sir. Were they discussed together or were they discussed in some sort of order, if you recall?

A Separately.

Q Separately; which was discussed first?

A Well, we initially started talking about the bonding and then went to auto insurance but then back to bonding again after that I mean.

Q All right, with regard to the automobile liability insurance, did Mr. Conklin furnish to Mr. Dickerson any information, any documents relating to automobiles?

A Yes he did.

Q What documents were furnished?

A Registration documents on the vehicles and I don't remember whether it was title, title documents or some other

documents, in addition to the actual registration.

Q Were these given to Mr. Dickerson?

A Right.

Q Do you remember by whom they were given to him, if you recall by whom they were given to Mr. Dickerson?

A I think Mr. Conklin gave them to Mr. Dickerson, but I think Mrs. Conklin had gone out and gotten some of them to give to Mr. Conklin.

Q All right sir. Did Mr. Dickerson write down anything based upon those documents?

A Yes he did.

Q He made some notes on pieces of paper?

A Right.

Q Now, if you recall, during that discussion on automobile liability insurance, did Mr. Conklin say anything regarding the effective date of that coverage?

A Yes. He asked a question as to whether he was covered, could consider himself covered at the time. I don't remember the exact words, but something to that effect.

Q All right sir, as to whether he would be covered at that time?

A Right.

Q Do you remember Mr. Dickerson's response?

A Again, I don't remember the actual words, but it was in the affirmative.

Q All right sir. Now, do you remember any discussions regarding the amount of the coverage?

A No.

Q You don't recall that?

A No.

Q Do you have any recollection as to any other facets of that conversation about automobile liability insurance; anything else that was discussed?

A Well I know there were two vehicles discussed and the details pertaining to the two vehicles.

Q There was some series of questions asked and answered but you don't remember what they were?

A No.

Q All right, now based upon that conversation Mr. Ash and your observation of the people involved, did you reach a conclusion as to whether or not insurance coverage had been implemented and effective on that date?

MR. COLEMAN: Your Honor, I would object.

THE COURT: Objection sustained.

MR. DURRETTE: If I may address the Court on this point. We have done a substantial amount of research on this

question knowing there would be an objection and it is our contention Your Honor he has expertise in this area and I will be glad to give the Court --

THE COURT: (Interposing) He is testifying as an expert; you say he is testifying as an expert?

MR. DURRETTE: I am saying Your Honor, that in Virginia and in most jurisdictions, this particular case, he has more expertise on this subject than a typical witness would because he is in the insurance business but that is not necessarily what is important. It is not a violation of the hearsay rule Your Honor and this is our research, a Virginia case on it. For a witness who observes individuals involved, hears the statements that they make, the questions and answers that are exchanged, observes their demeanor; it is admissible to state an opinion of his as to the result of that conversation or as a result of those facts and I will be glad --

THE COURT: (Interposing) Give me just one case directly on point, if you have it.

MR. DURRETTE: Not directly on point but analogous.

MR. COLEMAN: If I may respond to that, it is the ultimate issue in this case.

THE COURT: It is perfectly obvious what your

answer is. When I was in law school there wouldn't have been any question about it but that has been a long time ago.

MR. DURRETTE: There is a bunch of it here, Your Honor.

THE COURT: The Commonwealth of Virginia won't even let an officer testify whether or not he thought a man was drunk.

MR. COLEMAN: That is right.

THE COURT: You say we have a Virginia case that says he can express an opinion in this instance? I shall be amazed.

MR. DURRETTE: Just a moment, Your Honor. This is the case, footnote number 12.

THE COURT: Objection sustained. Exception noted.

MR. DURRETTE: May I show the Court one other thing if I might and that is some material from Mr. Wigmore on this particular evidentiary rule?

THE COURT: Exception noted.

MR. DURRETTE: Yes sir.

BY MR. DURRETTE:

Q Mr. Ash, subsequent to the meeting of November 2nd, 1973, did Mr. Dickerson make any contact with you regarding the subject of bonding insurance or the liability insurance?

A Yes sir, he did.

Q And approximately when did that contact take place?

A That was on or about the 23rd of November.

Q Why are you certain of that day?

A Because in my appointment book I made an appointment for Mr. Conklin and myself and another casualty insurance agent to attempt to get the bond and the other arrangements made.

Q All right sir. Prior to November 23, 1973, you heard nothing from Mr. Dickerson?

A Right.

MR. DURRETTE: That is all the questions I have Your Honor.

CROSS EXAMINATION

BY MR. COLEMAN:

Q Mr. Ash, I believe you testified that you arranged this meeting between Mr. Dickerson and Mr. Conklin?

A Right.

Q Had you ever met Mr. Dickerson prior to this meeting?

A Just prior to the meeting.

Q Just prior, what do you mean, in your office?

A I don't recall,but I met him prior to the meeting.

I don't remember where that meeting was, whether it was at a restaurant or someplace, just the day of the meeting.

Q Did you have any business dealings with Mr. Dickerson prior to the day of this meeting?

A No.

Q Never had any business dealings at all?

A No.

Q On the day of this meeting, you said it was November 2nd, is that correct?

A Right.

Q What time of day was this meeting held?

A Mid-morning.

Q How long did this meeting last?

A Oh, two hours or so.

Q Two hours. I believe you testified that Mr. Dickerson took down some information from Mr. Conklin's auto registration, is that correct?

A Yeah.

Q Did he take this down on the application form?

A No, on a scratch pad.

Q Scratch pad?

A As I recall.

Q Did Mr. Dickerson ever produce any application

forms, fill out any application forms for auto insurance?

A No.

Q Was there ever any money?

A Not at that meeting.

Q Not at that meeting, while you were present, was there ever any money changed hands?

A No.

Q No discussion of premium or the amount?

A No.

Q There was no discussion as to how long this insurance was to be effective either, was there?

A No.

Q No discussion as to who was driving these vehicles?

A No.

Q No discussion as to the record of either Mr. Conklin, the other drivers, any possible employees of Barkely Construction Company?

A No, not that I recall.

Q No information on auto accidents, anything like that?

A No.

Q How about discussion as to the specific types of

insurance; did Mr. Dickerson agree to furnish medical pay insurance or medical coverage, uninsured motorist?

A No, that wasn't discussed either.

Q That wasn't discussed at all? Now, when did Mr. Dickerson ever indicate to Mr. Conklin that he was agreeing to provide the bond that there was this meeting for; was there ever any agreement Mr. Dickerson would definitely be providing this bond?

A That he would attempt to procure.

Q He would attempt?

A Such a bond.

Q Was there ever discussion what would happen with this automobile insurance if the bond fell through?

A No.

Q There was no discussion as to how long this insurance would remain in effect?

A No.

Q To your memory, there was no discussion as to the amount of insurance involved, is that correct?

A Yes.

Q At the time you arranged this meeting, Mr. Conklin had been a client of yours, had he not?

A Right.

Q Is he still a client of yours?

A No.

Q You are out of the life insurance business all together?

A Yes.

Q How about the investment business, are you out of that?

A Yes.

Q Have you ever had a chance to read Mr. Conklin's deposition?

A No.

Q Was anyone else in the house to your knowledge other than yourself, Mr. Conklin, Mr. Dickerson and Mr. Conklin's wife passing through the room?

A I don't -- I can't testify to that. They're the only ones I saw. I know the children are there and his folks, but I didn't see them.

MR. COLEMAN: May I have the Court's indulgence one moment?

BY MR. COLEMAN:

Q Do you remember, after this meeting, going to the bank with Mr. Dickerson or Mr. Conklin to get further information regarding Mr. Conklin's financial status?

A Yes, I do remember having gone to a bank with Mr. Conklin. I don't remember whether it was on the same day or not.

Q Were any documents given to Mr. Dickerson at the time of this meeting from Mr. Conklin?

A Yes, I think that a resume and financial statement and brochure was in the making.

Q This was information in connection with the bond, is that correct?

A Right.

Q When there was this discussion of automobile insurance, was there an agreement as to what corporation, what insurance company this insurance would be placed with?

A No.

Q There was no agreement at all; no discussion at all?

A No.

MR. COLEMAN: That is all I have Your Honor.

REDIRECT EXAMINATION

BY MR. DURRETTE:

Q Mr. Ash, you indicated in response to Mr. Coleman's questions that he asked you, a series of questions about things that were discussed, who was going to drive the

vehicles, conviction, traffic records, so forth, and you responded to the best of your knowledge those things were not discussed?

A Right.

Q Now, is that answer -- are you testifying that they were not discussed or you don't recall whether they were discussed or not?

A I don't recall whether they were discussed or not.

Q Did Mr. Dickerson make any representations that you recall regarding whether or not he expected to be able to provide the bonding insurance?

A He indicated that he thought he could, yes.

MR. DURRETTE: That is all I have, Your Honor.

MR. COLEMAN: No other questions, Your Honor.

THE COURT: I just have a few.

Did you arrange this meeting with Mr. Dickerson?

THE WITNESS: Yes.

THE COURT: Did you tell him the full purpose of it?

THE WITNESS: Yes.

THE COURT: Did you tell him that you would discuss automobile insurance as well as bonding, the bond?

THE WITNESS: Yes, but not initially. The initial

contact I made was primarily for the purpose of getting these bonds.

THE COURT: When was it you first mentioned --

THE WITNESS: (Interposing) Mr. Dickerson mentioned to me that if, when he went into provide this service for a client, he normally would expect to write all of his casualty business; not only auto insurance, but other types of casualty business that a construction company normally becomes involved with.

THE COURT: Well did you say anything to him about automobile insurance; do you recall?

THE WITNESS: Prior to the meeting?

THE COURT: Yes.

THE WITNESS: No.

THE COURT: I wonder if you would just repeat, as well as you can, the conversation that took place about the coverage at the time -- I believe, well, let's start out, you say you talked about the bond first?

THE WITNESS: Right.

THE COURT: Now, you hadn't talked about -- nobody had said anything about automobile insurance prior to the time you talked about the bond, is that correct?

THE WITNESS: As I recall.

THE COURT: Well, who first said anything about the insurance, the car insurance?

THE WITNESS: That is a good question.

THE COURT: If you remember?

THE WITNESS: I don't remember who brought it up first; I don't remember who -- who initiated the conversation but there was a lengthy discussion -- lengthy conversation about auto insurance, no question about that.

THE COURT: Do you recall whether or not Mr. Dickerson inquired whether the automobiles were insured at that time?

THE WITNESS: Yes, I believe he did and I believe, to the best of my recollection, Mr. Conklin said they were not presently insured.

THE COURT: You are not certain of that?

THE WITNESS: I am not certain as to the exact conversation that took place but in essence, yes.

THE COURT: In other words you are certain Mr. Conklin said that they were not insured at that time?

THE WITNESS: To the best of my recollection, yes sir.

THE COURT: Now, just what is the conversation, as closely as you can recall, between Mr. Conklin and Mr.

Dickerson as to whether or not there was present coverage?

THE WITNESS: Well, he went into whether there was present coverage.

THE COURT: No. Whether or not Mr. Dickerson was covering the vehicles?

THE WITNESS: Well, there were details on make, model, registration numbers, license numbers, the information that is normally found on a registration.

THE COURT: No. I think you misunderstand. As I understand you, you said at one point in the conversation Mr. Dickerson said that he was covered at that time, that he was covering -- his insurance company was covering Mr. Conklin's cars?

THE WITNESS: Right.

THE COURT: Would you repeat as close as you can what was said then?

THE WITNESS: Well, as close as I can remember, words to this effect. Mr. Conklin asked the question, that if he was covered and Mr. Dickerson replied in the affirmative. I don't remember whether he said yes, you are covered or exactly what his words were but it was certainly in the affirmative to the point where I definitely got the opinion that he was covered as of then, as is normal in a lot of

cases of this nature.

THE COURT: Do you recall what was said immediately before Mr. Dickerson's departure? Do you recall any statement that he made?

THE WITNESS: Immediately before the departure?

THE COURT: As he was going out the door?

THE WITNESS: Not specifically, no.

THE COURT: Do you recall anything?

THE WITNESS: I know they were talking as we went -- as he took us to the door, but I don't remember any specific things that were said during that time.

THE COURT: Do you recall whether or not the question of whether he was -- whether Mr. Conklin was covered, whether or not that was discussed more than once?

THE WITNESS: I seem to recall that they were discussing that but I -- I wasn't, I don't know whether I was not right there as we walked to the door or not, but I don't recall anything specific about it.

THE COURT: Do you recall whether or not Mr. Dickerson told Mr. Conklin that he was covered more than one time?

THE WITNESS: No, not specifically.

THE COURT: You don't. I think that is all.

MR. DURRETTE: Your Honor, your questions raised one more I would like to ask. May I have the Court's permission?

THE COURT: Yes.

FURTHER REDIRECT EXAMINATION

BY MR. DURRETTE:

Q You mentioned in response to the Court's question you said Mr. Dickerson mentioned to you that when he wrote the bonding, he would normally expect to write all casualty coverage; when did that coversation with Mr. Dickerson take place?

A At some time prior to the meeting.

Q All right. Did you say anything when Mr. Dickerson made that representation to you? Did you say anything to him regarding whether or not Mr. Conklin would place the insurance in that fashion?

A Yes, very definitely.

Q What did you tell Mr. Dickerson?

A I told him yes Mr. Conklin would be perfectly amenable to giving him all of his casualty business which includes the auto insurance of course.

MR. DURRETTE: Thank you.

MR. COLEMAN: May I ask one further question?

RECROSS EXAMINATION

BY MR. COLEMAN:

Q The statement you just made, Mr. Conklin would be amenable to giving him all of his casualty business, that would be if Mr. Dickerson provided the bond, is that not true?

A Well, that is a difficult question to answer but I think that he would have been able to write the casualty in any event.

Q There was no conversation about him writing casualty though; the conversation prior to that was him taking the other insurance if he was going to write the bond, is that correct?

A Eventually yes.

THE COURT: Do you want to excuse this witness?

MR. DURRETTE: Yes sir.

THE COURT: Any objection?

MR. COLEMAN: No.

THE COURT: You are excused from further attendance upon the Court.

MR. DURRETTE: Sherry Conklin.

Whereupon,

SHERRY ANNE CONKLIN,

was called as a witness by and on behalf of the complainant, and after having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURRETTE:

Q Would you state your name, please, ma'am.

A Sherry Anne Conklin.

Q And are you related to one of the parties in this lawsuit?

A Yes,

Q Is this your father?

A Yes, it is.

Q How old are you, Sherry?

A 18.

Q When is your birthday?

A August 26.

Q Now, do you know Mr. Larry Ash?

A Yes, I do.

Q Have you known him for some time?

A About a couple years, I guess.

Q Couple years. Okay.

Now, do you have any recollection of a meeting that took place in your home between Mr. Ash and your father and another gentleman?

A Yes, I do.

Q Do you remember approximately when that meeting was?

A I don't know.

Q Can you give me -- was it last month or last year or a couple years, four years ago?

A A couple years ago.

Q How long?

A A couple years ago.

Q Where were you in the home when the meeting took place?

A I was sitting in the family room.

Q And is the family room -- is the kitchen visible from the family room?

A Yes, it is.

Q Were you able to see the individuals who were involved in the meeting?

A I could see Mr. Dickerson and part of the table and some hands and things. That is all.

Q Had you seen Mr. Dickerson prior to that day?

A No, I haven't.

Q Prior to that day, had you ever seen Mr. Dickerson?

A No.

Q Is Mr. Dickerson present in the Courtroom?

A I don't know. I don't remember.

Q You don't know. How do you know Mr. Dickerson was at that meeting?

A I saw him.

Q But how did you know his name was Dickerson?

A I found out later.

Q So you didn't know as of that time?

A No.

Q Have you been present for any other meetings that took place in your home with your father and Mr. Ash present in your kitchen?

A Just those two?

Q No. Other than this one you have told me about, were you present at home for any other meetings in your kitchen between your father and Mr. Ash and another gentleman?

A No.

Q So this is the only one?

A Um-hum.

Q All right. Did you overhear any of the conversations

that were involved in that meeting?

A I overheard part of it.

Q Part of it. And do you know from what you overheard what the subject matter of the portion that you overheard involved?

MR. SLENKER: I object to this, if Your Honor please. Until there is some identification if the witness can give it as to who made it it purely hearsay so far as Ash is concerned.

MR. DURRETTE: Yes, sir. My questions to her, she will identify who said it and precisely what they said.

THE COURT: That is all right. You may inquire.

BY MR. DURRETTE:

Q From what you heard, are you aware of the subject matter of the conversation that was taking place?

A Yes.

Q What was that?

A They were -- I don't remember what the first part was. But I know they talked about auto insurance towards the end.

Q Towards the end of the meeting?

A Um-hum.

Q Did you hear any specific conversations by any of the three gentlemen sitting at the table on that subject?

Did you first?

A Yes.

Q Would you tell the Court please who said what as nearly as you can remember in precise words.

A I heard my father mention auto insurance, but I don't remember what he said about it. But then I heard him say "Am I covered as of right now" and Mr. Dickerson said "Yes, you are covered right now." And then my father said "Right this minute?" And he said "Yes, right this minute."

Q That was Mr. Dickerson who said those two statements and your father who said those two statements?

A Yes.

Q Could you see Mr. Dickerson from where you were sitting?

A Yes, I could.

Q And did you see him when he was making those statements?

A Yes.

Q Could you see Mr. Ash from where you were sitting?

A No, I couldn't.

Q But you could see the third person, Mr. Dickerson?

A Um-hum.

Q You are confident you heard those two statements

made?

A Yes.

Q Is there anything else specifically you recall about that conversation?

A No, I don't.

Q All right. Now, Sherry, when did you first inform your mother or your father that you heard this conversation?

A Tuesday night.

Q Tuesday night. When did you first talk to me?

A Wednesday afternoon.

Q Yesterday?

A Um-hum.

MR. DURRETTE: That is all I have, Your Honor.

CROSS EXAMINATION

BY MR. SLENKER:

Q When did you first learn there was any kind of a lawsuit pending with reference to insurance?

A I don't remember.

Q Pardon?

A I don't remember.

Q Well, wasn't it within the last two weeks?

A I don't think so.

Q Pardon?

A I don't think so.

Q Isn't it a fact you got into this case within the last week by virtue of the fact of statments made to you by your mother?

A I got into it Tuesday when she was talking about it.

Q When she was talking about it?

A Um-hum.

Q Now, on Monday she and your father had been down to Mr. Durrette's office, had they not?

A Yes.

Q They had gone all over the case, right?

A Yes.

Q And I believe it is true, is it not, that as of that time nobody knew anything about what you had to say about the case at all?

A No.

Q And you got into it on Tuesday at some point when your momma came to you or happened to mention there at the house about what had taken place the day before on Monday down at the lawyer's office, isn't that true?

A Yes.

Q Up to that time you hadn't said anything to anybody about where you were on the day of the meeting, had you?

A No.

Q You hadn't said anything to anybody about what you heard, if anything?

A No.

Q Had you incidentally, this happened, say, in November of 1973. You were in school then, weren't you?

A Not that day.

Q Not what day?

A Not whenever the meeting took place.

Q Well, if you don't know when the meeting took place, Sherry, how can you tell the Court whether you were in school or whether you weren't in school?

MR. DURRETTE: That is obvious. She has testified she was physically present.

BY MR. SLENKER:

Q Were you in school that day prior or at that time?

MR. DURRETTE: It sounds like the same question, Your Honor.

THE COURT: Objection sustained.

What was the day -- what day of the week was it?

MR. SLENKER: Friday.

THE COURT: Friday.

BY MR. SLENKER:

Q Friday is a school day?

A Yes.

Q You went to school during the morning hours, did you not?

A No -- well, normally. Not that day.

Q Were you in school in 1973?

A Yes.

Q What school?

A Oakton.

Q Oakton High School?

A Yes.

Q What year were you in?

A Sophomore.

Q Sophomore?

A Right.

Q And you are how old now?

A 18.

Q You were 16 at the time?

A Yes.

Q You were a sophomore?

A Yes.

Q Did you ride the bus to school?

A No.

Q How did you get to school?

A My mother took me.

Q Your mother took you?

A Um-hum.

Q And did your mother come and get you?

A Yes.

Q At about what time?

A Quarter after 2:00.

Q Pardon?

A Quarter after 2:00.

Q Quarter after 2:00. Now, you went to school from about 8:00 o'clock in the morning until what, 2:10?

A Yes.

Q Is when you got out and your mother took you to and from everyday or did your daddy take you some days?

A They changed around.

Q They changed around. Now, do you recognize Mr. Dickerson at all in this Courtroom?

A No, I don't.

Q And yet you told the Court you were seated in the family room, I believe, it was; that you could hear what was said and you told the Court what presumably Mr. Dickerson

said on that day?

A Yes.

Q Right?

A Yes.

Q How did you know his name was Dickerson on that day? Had you been introduced to him?

A I didn't know it on that day.

Q Pardon?

A I didn't know what his name was then.

Q You didn't know what his name was that day?

A No.

Q When did you finally learn what his name was?

A Wednesday.

Q This past Wednesday?

A Yes.

Q Who told you, your father or your mother or Mr. Durrette?

A I believe Mr. Durrette did.

Q The lawyer?

A Yes.

Q Okay. When you went to the lawyer's office, did your mother and father go with you?

A My mother did.

Q Your mother did. Did you read your father's deposition that had previously been taken by me?

A No, I didn't.

Q Did anybody give you any information from that deposition?

A No, they didntt.

Q Up to that point, had your mother or your father said anything to you about what had taken place at that meeting?

A The first time I heard about it was Tuesday night.

Q That is the first you heard about anything about this case?

A About their meeting.

Q About their meeting was Tuesday night?

A Um-hum.

Q If you would have been home that day, the day of the meeting whenever it was, wouldn't your daddy have known it?

A Yes.

Q He would have known you were around, wouldn't he?

A Not necessarily in that place, but he would have known I was home.

Q He would have known you were in the house certainly,

wouldn't he?

A Yes.

Q But he wouldn't necessarily know where in the house you were?

A Yes.

Q Do you have your own room in the house?

A Yes.

Q But you weren't in that room that day at the time of this meeting?

A No.

Q Do you recall if you weren't in school, let's pursue that for a moment, can you tell the Court whether you were sick?

A I don't remember.

Q You don't know whether that is why you were home?

A No. I don't know.

Q Do you know, as a matter of fact, whether or not there was school on that Friday the 2nd of November?

A No, I don't.

Q Do you know if there was school, in fact, on the 9th of November?

A No, I don't.

Q You have a pool room in your house?

A Yes.

Q Where is that with reference to the breakfast room?

A It is right beside it.

Q Right beside it?

A Sort of, yeah.

Q While you were there in the family room, did you ever see anybody pass through the family room?

A Through it?

Q Pardon?

A I don't remember.

Q You don't remember. Now, if your daddy had passed through that room, you would have known it, wouldn't you?

A Yeah.

MR. DURRETTE: Objection, Your Honor.

THE COURT: Objection sustained.

BY MR. SLENKER:

Q During the time -- were you there in the family room during the entire time the meeting was taking place?

A Yes, I was.

Q How long approximately did the meeting take?

A A couple hours, an hour.

Q During that time, did your mother come into the family room?

A I don't remember.

Q You don't remember. Did you hear any other items of conversation other than what Mr. Durrette asked you about?

A I don't remember what it was. I heard them talking, but it's nothing I understood.

Q Nothing you understood. But could you tell the Court what it was that you heard, whether you understood it or not?

A No, I can't remember.

Q The only thing you remember is what you have already told us?

A Yes.

Q About the coverage thing?

A Yes.

MR. SLENKER: Will the Court indulge us just one minute, please.

BY MR. SLENKER:

Q So we have it clear in the record, Sherry, is it your testimony the first time you knew your father was suing Mr. Dickerson was Wednesday of this week?

A No.

Q When was the first time?

A I don't remember when it was.

Q Well, was it since you went to see the lawyer, Mr. Durrette?

A It was before then.

Q How long before then?

A I don't know.

MR. SLENKER: You don't have any way of knowing.

That is all, Your Honor.

REDIRECT EXAMINATION

BY MR. DURRETTE:

Q You knew it before your conversation with your mother on Tuesday night?

A Yes.

Q How did the conversation with your mother on Tuesday night come up?

A She came home and she said she was nervous.

MR. SLENKER: I object to the hearsay, if Your Honor please.

THE COURT: I didn't hear what you said.

THE WITNESS: I said she came home Tuesday night and said that she was nervous.

THE COURT: Will you repeat that? I couldn't hear.

MR. SLENKER: I can't hear.

THE COURT: Could you talk just a little louder.

THE WITNESS: She came home Tuesday night and she was telling me what went on in the office and that they were going to go to Court and everything.

MR. DURRETTE: Okay. I don't think that is hearsay. I am not offering it for the truth of the matter stated, but the fact.

THE COURT: Objection overruled.

BY MR. DURRETTE:

Q Did your mother relate to you then anything she knew about the conversation between Mr. Dickerson and your father? Did she tell you anything that was said?

A Yes.

Q What did she tell you?

MR. SLENKER: I object to that, if Your Honor please. I think first of all it exceeds the scope of cross examination. It is hearsay, too.

THE COURT: It exceeds the scope of cross examination.

MR. DURRETTE: May I represent to the Court Mr. Slenker, as the Court knows, brought up the conversation of her mother. I am not offering it for the truth, but I am attempting to show the mother did not suggest.

THE COURT: I think you have a right to.

MR. DURRETTE: I don't want it left her mother

suggesting this testimony.

MR. SLENKER: I think whatever the mother said to her it is hearsay twice removed so far as Dickerson is concerned.

THE COURT: Yes. But the intimation is her mother might have influenced her testimony.

MR. SLENKER: I didn't ask her about what her mother said to her for purposes of influence or otherwise. I said you got knowledge of the lawsuit from your mother.

THE COURT: The objection is overruled.

MR. SLENKER: May I have an exception please.

THE COURT: Exception noted.

BY MR. DURRETTE:

Q Will you tell us then what your mother said to you about that conversation.

A I don't remember exactly what she said, but she mentioned that.

Q Well, was it anything your mother said that caused you to tell your mother on Tuesday night what you overheard in that conversation?

A Yes.

Q What was that?

A She said that everbody had heard Mr. Dickerson --

MR. SLENKER: (Interposing) I object to that and ask it be stricken, if Your Honor please. That is the part of the testimony from the part of the mother. It is hearsay so far as Mr. Dickerson is concerned when the mother said everybody overheard what. That is not the thrust of this witness's testimony.

THE COURT: Objection overruled. Exception noted.

MR. SLENKER: Thank you, sir.

BY MR. DURRETTE:

Q Can you tell us what it was your mother said that prompted you to tell her about what you overheard?

A She didn't remember. She said that nobody remembered Mr. Dickerson answering whether or not my father was covered with insurance and I said that I heard it, remembered it.

Q So it was your mother telling you others didn't remember the conversation that prompted you to say that you did hear it?

A Yes, sir.

Q That is when you told your mother what you heard?

A Yes.

Q Prior to that time had there been any suggestion, any conversation, that would have caused you to bring this information forward?

A No. There wasn't.

MR. SLENKER: May I inquire on that?

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. SLENKER:

Q Your mother told you on Tuesday of this week?

A Yes.

Q That nobody involved in this case could remember Mr. Dickerson saying what you heard him say? Is that it?

MR. DURRETTE: I object to the question.

THE COURT: Objection overruled.

MR. DURRETTE: May I say Sherry did not say no one involved in this case. That was Mr. Slenker's words.

THE COURT: Objection overruled. Exception noted.

BY MR. SLENKER:

Q Isn't it true that your testimony is that in the Tuesday conversation with your mother she said to you that nobody in this case could remember hearing Mr. Dickerson say the words that you remembered him saying? Is that your testimony from your mother?

A At the time she said that nobody -- she said nobody could remember then.

Q As of Tuesday of this week?

A Um-hum.

MR. SLENKER: Thank you, Sherry. Thank you very much.

THE COURT: Any further questions?

MR. DURRETTE: I have one, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. DURRETTE:

Q Do you know, Sherry, whether or not your mother in the characterization of nobody included your father?

A No. She meant --

MR. SLENKER: (Interposing) I object to what she meant.

THE COURT: Objection sustained.

BY MR. DURRETTE:

Q Do you know whether or not your mother included your father in that categorization?

MR. SLENKER: Objection.

THE COURT: Objection sustained. She can tell what she said and nothing else, Mr. Durrette. I will note your exception.

MR. DURRETTE: May I say if there are other facets of that conversation that caused her to know.

THE COURT: Anything her mother said you may inquire

as to that.

BY MR. DURRETTE:

Q Is there anything that your mother said that gave you -- is there anything your mother said with regard to whether or not your father recalled Mr. Dickerson's statements?

A Yes. She said that he knew and that she heard --

MR. SLENKER: (Interposing) I object to this, Your Honor.

THE COURT: Objection overruled.

THE WITNESS: She said that --

MR. SLENKER: (Interposing) Exception?

THE COURT: Exception noted.

THE WITNESS: My father knew what he had said. And she had heard generally what was going on, but she didn't know exactly.

THE COURT: Would you talk just a little louder.

THE WITNESS: She said she knew that my father knew what was said; and that she knew generally what was said, but know exactly.

BY MR. DURRETTE:

Q That is what prompted you to supply what you have testified to today?

A Yes.

MR. DURRETTE: That is all I have, Your Honor.

MR. SLENKER: No further questions, Your Honor.

THE COURT: What time of day was this meeting?

THE WITNESS: I don't know.

THE COURT: Do you know whether it was morning or afternoon?

THE WITNESS: No, I don't.

THE COURT: Was it dark?

THE WITNESS: I don't remember. I was in the family room. I couldn't -- I don't remember.

THE COURT: You don't remember whether you had had supper, dinner or breakfast?

THE WITNESS: No, I don't.

THE COURT: You have no idea what time of day?

THE WITNESS: No.

THE COURT: Do you have any brothers or sisters?

THE WITNESS: A brother.

THE COURT: Was he with you at the time?

THE WITNESS: Yes, he was.

THE COURT: In the same room with you?

THE WITNESS: Yes.

THE COURT: Now, did you know when your father had an automobile wreck, automobile accident?

THE WITNESS: Yes. I knew he had one.

THE COURT: You knew about that?

THE WITNESS: Yes.

THE COURT: When was that?

THE WITNESS: The accident?

THE COURT: Yes.

THE WITNESS: A couple years ago.

THE COURT: A couple years ago. Well, did you hear any discussions about the accident at that time between your mother and your father?

THE WITNESS: They talked about it.

THE COURT: You don't remember whether they talked about insurance or not?

THE WITNESS: No, I don't remember.

THE COURT: That is all.

You want to excuse this witness?

MR. SLEMKER: As far as we are concerned, yes.

MR. DURRETTE: Yes, sir.

THE COURT: You are excused from further attendance on the Court.

* * * *

(Witness excused.)

THE COURT: It is 1:00 o'clock.

MR. DURRETTE: Yes, sir. I was going to suggest

THE COURT: I would think so.

DIRECT EXAMINATION

BY MR. DURRETTE:

Q Would you state your name, please, sir.

A Douglas Bywater.

Q What is your profession?

A I am a lawyer.

MR. DURRETTE: To save questioning, Your Honor, can we stipulate that he represented Mr. Conklin in both of the pending declaratory judgments and the personal injury case that is pending? Do you have knowledge of that?

MR. SLENKER: I don't know whether he did or not. We will stipulate on the declaratory judgment action.

BY MR. DURRETTE:

Q Did you also at one time represent Mr. Conklin in the personal injury case pending?

A Yes. The McDaniel's case.

Q Did you withdraw from that case at the same time you withdrew from the other two?

A Yes, I did.

Q Now, was there a time in the McDaniel v. Conklin case when a deposition was taken of Mr. Conklin?

A Yes, there was.

Q And did you represent Mr. Conklin at that time?

A I did.

Q Approximately when was that deposition taken, if you recall?

A It was last fall, about a year ago.

Q Do you remember the month?

A I think October.

Q Of 1974?

A Correct.

Q Were you present at the deposition?

A Yes, I was.

Q Do you recall Mr. Conklin being questioned at that deposition regarding the conversation that he had where Mr. Dickerson and Mr. Ash present on November 2nd, 1973?

MR. SLENKER: I object to this line of questioning. I don't see how that could be influential so far as Mr. Dickerson is concerned in this declaratory judgment action.

THE COURT: I assume that these are statements that he made that corroborat what he said today.

MR. SLENKER: I don't know what statements.

THE COURT: As I understand it you claim he made contradictory statements.

MR. SLENKER: In the deposition taken here in these

proceedings here as I distinguished from his testimony given from the witness stand here.

THE COURT: Doesn't that open up the door for them to show any corroborstory statements that he might have made previously?

MR. SLENKER: No, sir. Not so far as this defendant is concerned.

THE COURT: Is that the contention?

MR. DURRETTE: Yes, sir. It is prior consistent statements.

THE COURT: Objection overruled.

MR. SLENKER: May I have an exception?

THE COURT: Exception noted.

THE WITNESS: Would you state the question again.

BY MR. DURRETTE:

Q Was there testimony given during that deposition regarding the conversation between Mr. Conklin and Mr. Dickerson at Mr. Conklin's home on November 2nd, 1973?

A Yes. There were some questions asked and some answers given.

Q Specifically was there a question asked regarding whether or not the amounts of coverage would be provided were discussed at that November 2nd meeting?

MR. SLENKER: I object to this, if Your Honor please. It sounds to me like the testimony of this witness is impeaching other witnesses that the plaintiff called before the Court to testify today on the facts and circumstances relating to another time.

THE COURT: But I understood that you offered contradictory statements on this subject in order to impeach the witness. Now, when you do that, as I understand the rules, he is permitted to show statements that he has made to corroborate what he says.

MR. SLENKER: But he isn't talking about that now. He is talking about this evidence being corroborative of Ash, conversations about Ash. But here we are talking about --

THE COURT: (Interposing) I misunderstood it.

MR. SLENKER: Here we are talking about a deposition taken in this case where Dickerson was present in this proceeding, not in the proceeding about the personal injury case.

THE COURT: I don't think that makes any difference. I think if you made statements previously that tend to corroborate what he said today they are admissible. They wouldn't have been admissible unless you had opened the door by attempting to show contradictory statements. When you show a contradictory statement, as I understand the law, you open

up the door to show any statement that he made that might corroborate what he said today.

MR. SLENKER: Outside of the hearing of the defendant in this proceeding?

THE COURT: Yes, sir.

MR. SLENKER: I do not pursue that to be the law.

THE COURT: I think it is. Objection overruled.

MR. SLENKER: I will except.

THE COURT: Exception noted.

BY MR. DURRETTE:

Q There was testimony, questions asked and testimony given, regarding --

THE COURT: (Interposing) The best evidence is the deposition if it is available.

MR. DURRETTE: I have it. I don't know whether that file is here for the Court or not, but if it is I will direct the Court to page 37 of that deposition.

THE COURT: What case is that?

MR. DURRETTE: That is McDaniel v. Conklin. I don't know if we had that jacket brought up or not. I have my copy of the deposition. I will be glad to read those questions and answers into evidence.

THE COURT: I don't think you can do it that way.

Incidentally, Mr. Slenker didn't object to this on the question of the best evidence rule. You don't object to the questioning of him on the grounds his recollection is not the best evidence?

MR. SLENKER: No. Because he isn't testifying to his recollection.

THE COURT: I understood he was.

MR. SLENKER: No. He is testifying simply to what is in the deposition, what transpired at the deposition.

THE COURT: His recollection of what transpired at the taking of the deposition?

MR. DURRETTE: Couldn't we solve the problem by using this copy of the deposition?

THE COURT: I suggest you show it to Mr. Slenker.

MR. SLENKER: That was involved in my objection to him testifying, if Your Honor please, with reference to what a witness said in another lawsuit. I thought the issue here was what transpired between Conklin and Dickerson and that this witness was going to testify or seek to testify with regard to what transpired at the time of the meeting. Actually all he is going to do is testify cumulative with what the defendant has said. He is going to tell you once again what this defendant said some place else at another time.

THE COURT: Right. I think you can show it when you show he makes one inconsistent statement. I think you can show he made 20 which tend to corroborate what he said today. I think it opens the door for all of it, as I understand. I think that is the law. I have been wrong before.

MR. DURRETTE: Your Honor, we have from witnesses which concerns Your Honor's understanding of the law.

THE COURT: I am familiar with it. Never cite authorities when the Court agrees with you.

MR. DURRETTE: Do you want me to just read these questions and answers into evidence?

MR. SLENKER: You have overruled my objection. I have noted exception.

BY MR. DURRETTE:

Q I will read the series of questions and answers on this subject, page 37 of the deposition Mr. Bywater was taking. And this is the deposition of Mr. Conklin and the date of the deposition is October 9th, 1974 in Law No. 31762. The questions are by Mr. Corson.

"Question: Now, when did Mr. Dickerson confirm coverage to you?"

"Answer: He confirmed coverage to me in my home about a week prior to the accident. He was there with another

insurance man, Larry Ash."

"Question: What insurance coverage did you request?"

"Answer: I asked at the time that the maximum which is around 300,000, what is it 301?"

"Question: I suppose there is a 100, 300 and there is also 300, 300."

"Answer: No, it wasn't 300, 300."

"Question: You requested 100, 300?"

"Answer: Right."

That is all the testimony that I wanted to get from Mr. Bywater at this time. He is subject to recall for the possibility of rebuttal.

CROSS EXAMINATION

BY MR. SLENKER:

Q Mr. Bywater, weren't you present with Mr. Conklin in your office in Vienna, January 23rd, 1973 when you took Mr. Dickerson's deposition and when I took your client's deposition?

A Yes, I was.

Q You do remember that testimony given by your client, Mr. Conklin, don't you?

A Generally, yes.

Q Do you recall and can you tell the Court not a single

MR. COLEMAN: May we have an exception?

THE COURT: Exception noted.

MR. COLEMAN: We call Mr. Dickerson. I don't believe he has been sworn, Your Honor.

Whereupon,

JAMES DICKERSON,

defendant, was called as a witness by and in his own behalf, and after having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q State your name.

A James Dickerson.

Q Mr. Dickerson, where do you live?

A In Arnold, Maryland.

Q Where are you employed, Mr. Dickerson?

A At the American Commercial Insurance Agency.

Q Where is that located?

A Hyattsville, Maryland.

Q How long have you been employed with the American Commercial Insurance Agency?

A For four years.

Q What is your capacity with the American Commercial

Insurance Agency?

A I am the President.

Q How long have you been President there?

A Since its inception.

Q What type of business is the American Commercial Insurance Agency engaged in?

A All types of commercial and personal lines of insurance and property and casualty and life insurance and group insurance.

Q Mr. Dickerson, are you licensed as an agent, insurance agent in Virginia?

A Yes, I am, as a non-resident broker.

Q Your primary business is where?

A In the State of Maryland.

Q I would like to direct your attention to November of 1973, a meeting that you had with Mr. Ash and Mr. Conklin. Do you remember that meeting?

A Yes, sir.

Q How was that meeting arranged?

A It was arranged by Mr. Ash.

Q How did Mr. Ash get in touch with you?

A Mr. Ash had been referred to me by Mr. Bob Caldwell who is general agent for Banker's Life of Nebraska in Virginia,

and he referred me to Mr. Ash as an agent who could perhaps help him with the type of insurance he was looking for for his client.

Q Do you remember when Mr. Ash got in touch with you?

A It was several days before we had the appointment with Mr. Conklin.

Q Do you have any independent recollection of the day that this meeting was held, the meeting with Mr. Conklin and Mr. Ash?

A No, I don't, sir.

Q What did Mr. Ash indicate to you that Mr. Conklin was looking for when you spoke to him?

A He informed me that he had a client who was interested in obtaining payment and performance and bid bonds for contracts for construction.

Q And was any meeting arranged?

A Yes, sir.

Q Who arranged that meeting?

A Mr. Ash arranged it with Mr. Conklin.

Q Did you ever speak to Mr. Conklin prior to the day of that meeting?

A No, sir. No.

Q Now, on the day of that meeting, where was the

meeting held and how did you get to that meeting?

A It was held in Mr. Conklin's house. I picked Mr. Ash up at his office in Rosslyn, Virginia and then he directed me to Mr. Conklin's house.

Q In other words, you drove together with Mr. Ash?

A Yes.

Q Do you remember what time of day this was?

A It was in the morning. I don't know exactly what time it was.

Q How long was this meeting held out at Mr. Conklin's house?

A How long were we there?

Q Yes.

A As I recollect it was about 45 minutes.

Q Where in Mr. Conklin's house was this meeting held?

A It was held in either a living room or a family room.

Q Not in a kitchen or a breakfast room around a table?

A No.

Q Where were you seated and where were the other parties to this meeting seated?

A I was seated on a sofa; Mr. Ash was seated on the sofa to my right and Mr. Conklin was seated across from us

in a chair.

Q Was anyone else present in the house at this time?

A I saw Mrs. Conklin who came through the room and that is the only person I saw.

Q Did she participate in this conversation?

A No.

Q Did you ever see Mr. Conklin's daughter, I think it was, Sherry?

A No, I didn't.

Q You never saw her at all, did you?

A No, sir.

Q What was Mr. Conklin requesting of you at that meeting? What did he ask of you?

A He was requesting me to see if I could provide bonding authorization with the company.

Q Bond in regard to what?

A In regard to construction.

Q Was this for construction of a particular project or just a general --

A (Interposing) Not at that time. He had two or three specific jobs that he mentioned were future possibilities, but at that time we were just seeing what his bonding capacity would be.

Q Was there any mention about the specific project he was involved in?

A There were some -- there was some mention of possible future jobs upon which we might request bonds if we were successful in getting authorization for bonding.

Q How much authorization was Mr. Conklin looking for?

A He said he was looking for between 1,000,000 and 1,000,000 and a half dollars.

Q What type of information did you take from Mr. Conklin? What type of information did you need in a situation such as that?

A I took down information on some of the possible jobs that he might be considering in the future. I took down some information on experience; some of the jobs he had been involved in; the types of jobs he had been involved in and then I requested from him financial statements on himself and the corporation and on his either partner or co-officer in the corporation.

Q These are documents that he gave to you?

A Yes. He had them there available.

Q At the time of this meeting, what, if any, authority did you have in regard to committing a bond, committing bond capacity for Mr. Conklin?

A None at all.

Q What would your role there be?

A Strictly as an agent.

Q An agent for what corporation? What corporation would you be dealing with for a bond? What insurance corporation?

A I applied to Maryland Casualty Company.

Q During this conversation regarding the bond, was Mr. Ash present the whole time?

A Yes.

Q Was Mrs. Conklin, she never participated in any of this discussion?

A The only thing I recall her saying is pleased to meet you or something like this, when we were introduced as she came through the room. And then at a later time during the day, she brought us a cup of coffee which she served on the coffee table in this either family or living room, whichever it was.

Q Now, did you ever indicate to Mr. Conklin that Maryland Casualty would be providing a bond or that he would be able to get a bond for the amount he was requesting?

A No. I said -- at first glance his statements looked reasonably good and I would submit them to the company and

they, of course, had the final answer.

Q Did you indicate how long it would be before you would get back with him?

A I said on bonds it would probably take at least a week.

Q When you took down information on Mr. Conklin's financial status, did you have any forms you were using or how were you taking this information down?

A I didn't take it on his financial status. The only information I took was on a yellow legal sized pad that I carry in my brief case when I am not filling out an application. I took down information mostly on his previous experience and on what types of jobs he would be expecting to bid on.

Q Did you have your brief case with you that day?

A Yes, sir.

Q Now, did the conversation ever turn to automobile insurance, specifically?

A No.

Q Did you ever discuss automobile insurance in any way?

A Just in the most general of terms.

Q In what sense do you mean?

A Well, I asked about the rest of his business.

Q At what point in the conversation was this?

A I would say after we had discussed the bonds.

Q Go on. You asked about his general --

A (Interposing) I asked what about the rest of his business insurance and he indicated to me at that time that I shouldn't worry about that. If I could provide the bonding, I would get everything.

Q Were those his specific words?

A I can't say it is word for word, but as near as I can remember.

Q As near as you can recall?

A Yes, sir.

Q Did you ever take any information at this time regarding Mr. Conklin's automobiles?

A No, sir.

Q The two automobiles?

A No.

Q You never saw his registration, his title?

A No.

Q Did you ever agree to insure Mr. Conklin?

A Pardon me?

Q Did you ever agree to insure Mr. Conklin or his construction company?

A No.

Q For liability?

A No.

Q Did you ever indicate to Mr. Conklin he was covered as of this moment?

A No.

Q In regard to automobile coverage?

A In regard to nothing.

Q You were going to get back with him or he was going to get back with you, is that correct?

A I was to get back in touch with him when I got an answer on the request for bonding authorization.

Q Mr. Dickerson, what type of authority do you have to write automobile policies?

A I have binding authority with Maryland Casualty Company.

Q To write what kind of policies?

A To write all types of policies.

Q Commercial and family, personal?

A Commercial and family.

Q That is automobile?

A Yes, sir.

Q Now, when you are writing commercial or family,

what type of information is required in order to complete a policy?

A Well, there is a good many things that are on an application; the type of vehicle; how it is to be used; who is to use it; where they live; how far they go to and from work; who else in the family is going to drive it.

Q Are there any special forms that you do use in completing insurance policies?

A Yes, sir, for both personal and commercial accounts.

Q I show you this form that is headed "Personal Automobile Application." Could you identify that form?

A Yes. This is the form from the Maryland Casualty Company for personal family automobile coverage.

Q What is that form used for?

A That is used to take an application for an insurance policy.

Q Now, when you were at Mr. Conklin's house, did you have those forms with you in your brief case?

A Yes, I did.

Q Did you ever take those forms out and complete any information on those forms?

A No, I did not.

MR. COLEMAN: I would like to have this document

marked and introduced into evidence as Defendant's Exhibit No. 4.

MR. DURRETTE: Your Honor, I object to the use of the document. I don't recall that we contend that an application was filled out. If he had applications with him or didn't have the application with him, I don't think there is any evidence an application was utilized and whether he did it or didn't do it in other cases, it seems to me is irrelevant. Certainly the form, Maryland Casualty, there is no contention Maryland Casualty ought to be bound. It doesn't have any relevancy to the issues litigated here.

THE COURT: Objection overruled.

(The document previously referred to was marked Defendant's Exhibit No. 4 for identification and received in evidence.)

BY MR. COLEMAN:

Q Now, Mr. Dickerson, what type of information is required in the case of a personal family type of automobile insurance policy? What type of information would you have to get from the party seeking the contract?

A You would have to have --

THE COURT: (Interposing) Doesn't this paper

speak for itself?

MR. COLEMAN: It does, Your Honor, in that sense.

THE COURT: I can read it.

MR. COLEMAN: Although not all these portions may have to be filled out in this case.

THE COURT: Ask him what portion doesn't have to be filled out.

BY MR. COLEMAN:

Q What portion then would not have to be filled out?

A There is no portion on here that doesn't have to be filled out except for the one that says "Is financial responsibility for any operator required?" and there you either write yes or no. If you answer yes, then of course you have to fill in the details.

Q You would have to complete that whole form?

A Yes.

Q In order for an application for personal insurance?

A Yes.

Q Now, in regards to a commercial account such as a construction company, what type of information would you need on a construction company in order to complete an automobile liability policy?

A You would need basically the same information that

you need on personal family automobile in addition to which you would have to submit a list of the drivers and their driving experience, plus all the information on the vehicles and how they are to be used; the types of vehicles, et cetera.

Q You would have to have a complete history of the accidents?

A Yes, sir.

Q And coverage, prior coverage of other parties?

A Yes.

Q That will be driving the car?

A That is right.

Q Mr. Dickerson, I am going to show you these three documents and ask if you can identify these three documents.

A Yes. One is a standard commercial risk application for Maryland Casualty Company which covers most any type of commercial risk. The center portion, including the center portion which is an insert for contractors which has a comprehensive survey going into the details of all the types of work they're involved in and again, their history and so forth. The third form is the form I mentioned previously, a commercial automobile insurance survey along which the named insured would list everyone who would possibly drive one of the vehicles listed in the insured company.

Q Did you have these forms with you on the day that you met with Mr. Conklin and Mr. Ash?

A Yes, sir, I did.

Q They were in your brief case at the time?

A Yes.

Q Did you ever take out this form for commercial automobile insurance policy and complete any of the information there?

A No, I did not.

MR. COLEMAN: Your Honor, I would like to have these documents marked and admitted into evidence as Defendant's, this would be 5,6 and 7.

MR. DURRETTE: Note my objection on the same grounds.

THE COURT: Objection overruled. Admitted over objection and marked accordingly. Exception noted.

(The documents previously referred to were marked Defendant's Exhibit No. 5, 6 and 7 for identification and received in evidence.)

BY MR. COLEMAN:

Q Mr. Dickerson, do you have any authority to issue personal automobile insurance coverage on the spot?

A Yes, I do.

Q You do?

A Yes.

Q How about commercial? What do you have to go through to issue a commercial policy on the spot?

A If I ascertain the information that is given me is correct and that it would fall within the normal underwriting rules of the company, yes, I could bind the coverage.

Q Do you have to check with anyone before you bind coverage, make calls or anything?

A I don't have to, but as a matter of fact, I have never written a commercial account since I have been in business without conferring with the company.

Q And did you on this occasion?

A No, sir.

Q Confer with the company at all?

A No, I did not.

Q Now, if you do bind coverage, automobile coverage, if you tell someone that he is covered as of now, do you have any type of document that you would give him to indicate that he is covered?

A Yes.

Q Any paper that would show him that he was covered?

A Yes.

Q What is that?

A I can use a plain piece of paper, although usually I use a small memo note to indicate the type of coverage, the effective date and the amount that I am covering.

Q I show you this document which is marked "Memo". Is this the document you are referring to?

A Yes, sir.

Q What would be required on that memo? What would you do?

A All I would do would be to indicate the type of coverage that I was binding and the effective date and put a receipt on there for the amount of binder deposit that I received.

Q Did you have these documents with you the day you met with Mr. Conklin and Mr. Ash?

A Yes, sir, I did.

Q You did not complete any of these documents?

A No, sir.

MR. COLEMAN: Your Honor, I would like to have this marked and introduced in evidence as Defendant's Exhibit 8, I believe.

MR. DURRETTE: If the Court please, note my objection on the same grounds.

THE COURT: Objection overruled. Admitted into evidence over objection.

(The document previously referred to was marked Defendant's Exhibit No. 8 for identification and received in evidence.)

BY MR. COLEMAN:

Q Had you ever met Mr. Conklin prior to your meeting of, we don't know exactly the date, but sometime in November of 1973?

A No, I had not.

Q You did not know Mr. Conklin at all?

A No.

Q Had you ever, to your knowledge, met Mr. Ash prior to this meeting?

A Not to my knowledge, although it is possible that I had met him through a company social or something, prior to the morning that he took me out to see Mr. Conklin.

Q Now, what do you mean a company social. You might have met him the morning before you brought him out --

A (Interposing) No. It is the custom of the life insurance companies to occasionally have a social get together for a good many agents or prospective agents and their wives.

And it is -- that is the only possible place I ever could have met Mr. Ash before the morning that I picked him up to go to Mr. Conklin's house.

Q Did you accept any money from Mr. Conklin on the day of this meeting?

A No, sir.

Q Now, when you issue an insurance policy, do you normally accept a binder in terms of dollar amount, accept a check?

MR. DURRETTE: Your Honor, I object to this. I don't think what Mr. Dickerson normally does is relevant to what he did.

THE COURT: I think so too. You can show the usage in the trade. I think this happens.

MR. COLEMAN: They are alleging this man entered into an insurance contract basically.

THE COURT: I understand. I think his habit is inadmissible. If he knows the uses in the trade, I think he can testify to that.

BY MR. COLEMAN:

Q Mr. Dickerson, are you aware of the practice in the trade, in the insurance business, of issuing insurance on the spot to someone you don't know without accepting any type of

check or money?

A Not as far as I am concerned.

Q You have never done that?

A No, sir.

MR. DURRETTE: Your Honor, I object.

THE COURT: Objection sustained. Strike it from the record. The answer is not responsive to the question.

BY MR. COLEMAN:

Q Now, after meeting at Mr. Conklin's house, where did you go next?

A I returned Mr. Ash to his office, but on the way we stopped at -- we followed Mr. Conklin t o his bank where he picked up a letter saying what a great fellow he was.

Q Do you remember what time of day that was?

A No, I don't.

Q After you dropped off Mr. Ash, where did you go from there?

A I went to the Maryland Casualty Company because I went around the beltway and stopped off in Wheaton on the way and left off the financial statement and information as to his experience and his partner's experience.

Q This would be the information for the bond?

A Yes, sir.

Q Now, did there come a time when you heard from Maryland Casualty regarding this bond?

A Yes, heard the next day.

Q The next day. What was their decision on this bond?

A They decided on the basis of his previous experience and his financial statement that he didn't qualify for the bond.

MR. DURRETTE: I didn't object at the beginning --

THE COURT: (Interposing) Objection sustained. Strike it from the record.

BY MR. COLEMAN:

Q Did Maryland Casualty give you authority to grant Mr. Conklin a bond for the amount he was requesting?

A No.

Q Did you call Mr. Conklin and tell him?

A No.

Q Did you ever call Mr. Conklin after your meeting in November, 1973?

A No.

Q Who did you call, if anyone?

A I called Mr. Ash.

Q What did you tell him?

A I told Mr. Ash that Mr. Conklin was unacceptable for

bonding purposes to Maryland Casualty Company. And he said he would be in touch with Mr. Conklin so I sent him the documents and forgot about it.

Q You never heard anything further from Mr. Ash?

A I heard from Mr. Ash a week or two weeks later and he called me up and said "Did you bind automobile coverage for Mr. Conklin?"

Q Your response was?

A I said "Of course not."

Q Mr. Conklin never called you and told you that he was involved in an accident?

A Never.

Q And needed his insurance information?

A He has never called me.

MR. COLEMAN: May I have the Court's indulgence for a minute?

BY MR. COLEMAN:

Q You heard Mr. Conklin testify this morning as to a discussion regarding the automobile insurance and he stated that there was some discussion regarding a 100, 300 limit. Could you tell the Court whether you had any discussion with Mr. Conklin regarding specific sums of automobile insurance?

A None at all.

Q None at all?

A No, sir.

Q Could you tell the Court whether there was any discussion or any comment from you indicating to Mr. Conklin that he was covered for automobile insurance as of that moment?

A There was no indication from me.

MR. COLEMAN: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. DURRETTE:

Q Mr. Dickerson, you heard Mr. Ash's testimony that he had approached you and indicated to you he had someone who was interested in bonding or bonding insurance?

A Yes.

Q You also heard him testify that you inquired of him or you stated to him when you placed bonding insurance you ordinarily wanted to have all of the casualty business of that client?

A That is right.

Q Did you say that to Mr. Ash?

A Yes. I brought the subject up.

Q This was prior to the meeting with Mr. Conklin?

A Yes.

Q All right. Now, what did Mr. Ash inform you when you brought that subject up?

A I can't recall his exact words, but I think he said that if I could provide bonding for Mr. Conklin, that Mr. Conklin would probably, although he didn't know, would probably consider giving me the insurance for his business.

Q And it was your normal practice when you did provide bonding you expected to get the additional insurance?

A Yes, sir.

Q All right, sir. Now, what was your understanding of the entire purpose of this meeting with Mr. Conklin?

A The purpose, entire purpose was to see if I could provide bonding authority for Mr. Conklin.

Q And the need for automobile liability insurance was not, according to your testimony, a purpose of this meeting in addition to bonding?

A That is right.

Q Let me call your attention, if I may, to the pleadings in this case. May I ask you please to read the first paragraph or may I read the Court the first paragraph of the motion for declaratory judgment.

MR. COLEMAN: Which page?

MR. DURRETTE: In 43920.

THE COURT: Why don't you read it.

MR. DURRETTE: May I read it?

THE COURT: Yes, sir.

MR. DURRETTE: It is the identical same paragraph 43920. "Complainant, a resident of Fairfax County, Virginia, invited defendant Dickerson to his home to discuss among other things insurance coverage for complainants automobiles."

And may I call your attention to your answer on grounds of defense filed on your behalf and on behalf of American Commercial Insurance Agency by your attorney, your first paragraph, "The allegation in paragraphs numbered 1 and 2 will be admitted.

MR. SLENKER: If Your Honor please, that is my answer to it. As a matter of fact, I am the one that signed it. I don't think there is any showing that Mr. Dickerson saw the pleadings prior to their being filed or not.

THE COURT: Objection overruled.

BY MR. DURRETTE:

Q Do you understand what I just read to you, Mr. Dickerson?

A Yes. It is the first time that I am aware of it though.

Q There is admission that is one of the purposes in

addition to other things, and the only thing mentioned was automobile liability insurance.

A Did I sign that?

Q I don't suspect you did.

A Then why would I know anything about it?

Q How did Mr. Slenker get the information, Mr. Dickerson, that he utilized to file this answer in grounds of defense?

A How did Mr. Slenker get what?

Q The information. The facts that he utilized to file the answer in grounds of defense.

A I'm not sure I follow your question.

Q You have been interviewed by Mr. Slenker, haven't you?

A Yes.

Q And you have given statements regarding this case to other people, haven't you?

A Yes.

Q And do you know whether or not Mr. Slenker has any personal knowledge of this meeting having taken place? Was he in attendance?

A No.

Q Mr. Slenker then, isn't it fair to say, would have

to rely on you or others to tell him what this meeting was about, what happened and so forth?

A Yes.

MR. SLENKER: I object to that.

THE COURT: Isn't that self-evident? We all know lawyers are sometimes a little careless in preparing pleadings.

MR. SLENKER: There is a great difference, if Your Honor please, between a discussion and a contract.

BY MR. DURRETTE:

Q Were you aware at the time of your meeting of November 2nd that Mr. Conklin was uninsured insofar as automobile liability insurance in concerned?

A No, I was not.

Q That subject and that detail never came up?

A No, sir.

Q Mr. Conklin didn't inform you of it?

A No.

Q Do you recall of your own independent recollection what Mr. Conklin's net worth was at the time?

A I couldn't tell you. It was almost two years ago now.

Q You just don't recall?

A No.

Q But it is your testimony that nothing about automobile liability insurance was discussed at that meeting?

A Not specifically.

Q Now, I want you to stop a moment and think and I want you to tell the Court precisely what, according to your testimony, was discussed with regard to automobile liability insurance.

A There was nothing discussed regarding automobile liability insurance. The only reference to any insurance other than bonds was the fact that I requested what he was going to do with his other insurance and he said "Don't you worry about the other insurance. You can provide me with bonds, you can get everything."

Q And that was the absolute extent of it?

A That was the extent of it.

Q All right, sir. Do you recall having a telephone conversation with Mr. Douglas Bywater?

A Yes.

Q Can you recall approximately when that conversation was?

A He called me twice; once a short time after Mr. Ash called me and by that -- you know, I don't know if it was two days or a week or two weeks. Then he called me sometime after

that.

Q Do you recall telling Mr. Bywater during that conversation that automobile liability insurance was discussed and that you did get some information regarding it?

A No, I don't recall that.

Q You deny having said that to Mr. Bywater or anything similar to that?

A Yes, I do.

Q Do you recall having a telephone conversation with Mr. Richard McDaniel?

A No, I don't.

Q Do you recall having a conversation with an individual who called you to inquire about Mr. Conklin and Mr. Conklin's automobile liability insurance representing himself perhaps to be the husband of a woman who had been involved in a motor vehicle accident?

A No, I don't recall that.

Q You don't recall any telephone conversation with a gentleman approximately two to three weeks after your November 2nd meeting, called to inquire as to whether or not you were Mr. Conklin's insurance agent and discussed automobile liability insurance with you?

A No one other than Mr. Bywater.

Q So it is your testimony that you did not have such a conversation or that you can just not recall whether you had such a conversation?

A I don't recall such a conversation. At that time I had no reason to expect that this was going to lead into anything. It is quite possible someone called me. I get dozens of calls everyday.

Q So would it refresh your recollection that Mr. Richard McDaniel did make such a call and he represented to you Mr. Conklin had told him that you were his insurance agent and given you his name and telephone number in regard to automobile liability insurance covering Mr. Conklin in a motor vehicle accident and wanted to know from you something about the policy? Does that refresh your recollection at all?

A No.

MR. COLEMAN: I'm going to object for him testifying for Mr. McDaniel. If he wants Mr. McDaniel to testify --

THE COURT: (Interposing) He has to lay the foundation. You must lay the foundation.

MR. COLEMAN: He asked him if he remembered. He doesn't remember talking to Mr. McDaniel at all.

THE COURT: This is within the grounds of cross examination. He has to lay the foundation as to the

contradictory statement he made, if he made one. Objection overruled.

BY MR. DURRETTE:

Q I'm sorry. I didn't hear your answer to the question.

A What was the question?

Q All that I related to you. Did that refresh your recollection at all?

A No, it doesn't.

Q You deny having such a conversation?

A No, I don't deny it.

Q You don't recall?

A This is the whole trouble. You fellows are always putting words in my mouth. It is the same way with Bywater. He called up and was doing the same thing. You lawyers are a very slick group, really, you know. I have a great respect for you, but you try to put words into my mouth.

Q Let's get that all out on the table. What did Mr. Bywater do to try to put words in your mouth?

A He just pressed the issue. He came out and he said, he just inferred that I did these things. And I said no, indeed I did not do them. But he pressed it. He keeps pressing and pressing. Very frankly, you fellows have a great ability for this.

Q Well, we appreciate the compliment.

A You're welcome.

Q Let me get back then to precisely what your testimony was with regard to a possible phone call from Mr. McDaniel. You tell me it is your testimony you didn't get the call or you just don't know whether you got the call?

A I don't remember a call from a Mr. McDaniel.

Q All right. How long have you been in the business?

A Oh, about 17 years.

Q All right, sir. You have been selling this type of insurance during that period of time?

A I have only been involved in --

MR. COLEMAN: (Interposing) Excuse me. What type?

BY MR. DURRETTE:

Q Bonding and automobile liability, the type we are concerned with here.

A No. I would say in bonding and auto liability, probably about the last eight years.

Q Eight years. Isn't it a fact, Mr. Dickerson, whether you have ever done this yourself or not, that insurance agents orally bind themselves to coverage?

A Yes.

Q And so that is done in the industry?

A Yes.

Q So it is not necessary for an agent necessarily to do that with a written agreement like you indicated you use?

A That is correct.

Q Do you recall, Mr. Dickerson, whether or not you inquired of Mr. Conklin as to his other insurance; what he had; what he didn't have at the time of the meeting?

A I don't recall specifically. There was a general discussion on the type of business he was in and what he would required

Q Do you recall whether he specifically asked you about automobile liability insurance?

A No.

MR. DURRETTE: That is all we have, Your Honor.

REDIRECT EXAMINATION

BY MR. COLEMAN:

Q Mr. Dickerson, I believe you stated on cross examination in response to the question from Mr. Durrette the fact that an insurance agent can bind orally, is that correct?

A That is correct.

Q Before an insurance agent would bind or can bind a contract orally, it would be necessary for him to have all the information that was necessary to complete a contract, is

that not correct?

A That is correct.

MR. COLEMAN: That is all I have.

MR. DURRETTE: That is all I have, Your Honor.

THE COURT: Mr. Dickerson, I believe you said that this conference took about 45 minutes.

THE WITNESS: To the best of my recollection, Your Honor. I couldn't tell you exactly.

THE COURT: About 45 minutes?

THE WITNESS: Yes, sir.

THE COURT: And that you went by the bank. Was the bank still open?

THE WITNESS: Yes, sir.

THE COURT: Did the bank close at 2:00 o'clock?

THE WITNESS: I don't know when it closed, sir, but we stopped by, we followed Mr. Conklin who was driving in his car, and Mr. Ash and I followed him to the bank and we waited in the car while Mr. Conklin went in and brought out this document telling about his --

THE COURT: (Interposing) You had requested that previously?

THE WITNESS: No. It was something that he thought I ought to have.

THE COURT: Had you had your lunch before that?

THE WITNESS: No, sir.

THE COURT: So that occurred before lunch?

THE WITNESS: Yes, sir.

THE COURT: Well, now, you stayed there about 45 minutes. How long did you talk about the bond, performance bond?

THE WITNESS: I would say for the bulk of the time we were there.

THE COURT: Well, by that you mean 40 minutes?

THE WITNESS: 35, 40 minutes, yes, sir.

THE COURT: And how did the subject of, I believe you said that you brought up the subject about his other insurance?

THE WITNESS: Yes, sir, because I would have been most happy to write it if I could have. That is how I make a living.

THE COURT: Well, did you know how many automobiles he had?

THE WITNESS: No, sir.

THE COURT: Do you recall whether or not Mrs. Conklin brought some papers in from another room?

THE WITNESS: I don't remember that or anything like

that. The only thing I remember Mrs. Conklin doing was bring us some coffee in what I thought was a family room or living room, we were sitting on a couch.

THE COURT: How long was that before you departed?

THE WITNESS: Oh, 15 minutes, I would think. Before half way through the time we were there, she came in with some coffee.

THE COURT: Was that before you had finished talking about the bond or after?

THE WITNESS: I couldn't say, sir.

THE COURT: What was there to talk about about the bond for 30 minutes?

THE WITNESS: Well, mainly it was getting what types of jobs he wanted to do. He told us a good deal about the type of this Mormon Temple or Tabernacle that he hoped to get the job on and he described in quite a bit of detail how they were kind of in the form of a wheel they were building the Temple, and then the ones around them. Then he told us about some of the experience he had had, residential construction work he had been in and small commercial construction, all of which were things that I had to know to submit the bonding information to the company for their consideration.

THE COURT: And during this time you had the yellow

pad out writing on it?

THE WITNESS: Yes, sir.

THE COURT: And you said you were sitting on the sofa?

THE WITNESS: Yes, sir.

THE COURT: You're sure you didn't sit at a table and write on the table?

THE WITNESS: No. There was a coffee table right in front of us.

THE COURT: A coffee table in front of you?

THE WITNESS: Yes, sir. It was quite a big coffee table.

THE COURT: You say you never saw the automobile title or the registration card?

THE WITNESS: No. I would just like to say this about it. I had applications there and I would have been delighted to bind insurance or write anything he had because that is how I make a living and I would have been delighted to fill out an application on automobile insurance. But from a person that I didn't know and who lived in Virginia, whereas my office is in Maryland, I would certainly have asked for a deposit to go with it.

It is true as Mr. Conklin's attorney asked, would I

ever bind over --

THE COURT: (Interposing) I didn't mean to open this up.

THE WITNESS: All right.

THE COURT: Has there ever been anything in your relationship with Mr. Ash that would cause him to be willing to commit perjury?

THE WITNESS: Not that I know of. We have had no words of any kind. We were on a very friendly relationship when we went to Mr. Conklin's and the only other time I've ever talked to him was the time he called me up to ask if I had bound coverage on Mr. Conklin's automobile.

THE COURT: I think that is all.

You gentlemen have any other questions?

MR. DURRETTE: No, sir.

MR. COLEMAN: One second, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. COLEMAN:

Q Mr. Dickerson, did Mr. Ash actively participate in these discussions about a bond?

A No, sir.

Q Was he just there basically along to introduce you?

A Yes.

MR. COLEMAN: That is all.

MR. DURRETTE: Your Honor, may I ask one additional question?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. DURRETTE:

Q As I recall, and I am not trying to put words in your mouth, I am really stating my recollection of your testimony, you told Mr. Coleman that you indicated on the basis of what was presented to you you thought there was reasonable possibility, reasonably good chance you would be able to get the bonding. Is that a fair summarization of your testimony? And if it isn't, correct me.

A I told Mr. Coleman that.

Q You responded to Mr. Coleman's question that that is what you had indicated to Mr. Conklin?

A I said based on the fact from my preliminary looking at the information he provided that I thought he had the possibility of getting bonding.

Q All right, sir. I think I asked you whether you could recall what Mr. Conklin's net worth was and you said you couldn't.

A No, I can't.

Q But based on whatever he gave you it was sufficient to cause you to make that statement?

A Yes. I thought it looked pretty good.

MR. COLEMAN: One other question along that line, if I could, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. COLEMAN:

Q You said Mr. Conklin had possibility of getting a bond. Did he have a possibility of getting a bond for $1,500,000?

A I don't know -- you know. I had never in all honesty run into an application for that large a bond.

MR. COLEMAN: Thank you.

THE COURT: That is all.

(Witness excused)

THE COURT: Next witness please.

MR. COLEMAN: Your Honor, that is all we have.

THE COURT: The defense rests?

MR. COLEMAN: The defense rests.

MR. DURRETTE: Your Honor, we have two brief rebuttal witnesses. I call Mr. Bywater back, please.

Whereupon,

DOUGLAS E. BYWATER,

was recalled as a witness in rebuttal and further testified as follows:

DIRECT EXAMINATION

BY MR. DURRETTE:

Q I'm sure I need not say this, but I suppose I better for the record. You realize you are under oath?

A Yes, sir, I do.

Q Mr. Bywater, during your course of your representation of Mr. Conklin in this case, did you have occasion to have a telephone conversation with Mr. Dickerson?

A Yes, I did.

Q Did you call him?

A Yes.

Q Can you remember approximately when that was?

A It was either a day or two after the accident, within just a couple of days after the accident.

Q Mr. Conklin had come to you?

A He had come to my office which at the time was in Fairfax and informed me generally about the facts of the case.

Q And pursuant to that, you made a telephone call?

A Yes.

Q Did you inquire of Mr. Dickerson during that telephone call as to whether the subject of automobile liability insurance was discussed at the meeting with Mr. Conklin?

A Yes, I did discuss that with him.

Q As near as you can relate it, what was the conversation between you and Mr. Dickerson regarding the question of automobile liability insurance as it relates to that November 2nd meeting?

A I had asked him if they had discussed automobile liability insurance and he said that they had. I asked him -- you know, basically what was said about it and he referred to some notes apparently that he had taken at the time that he had his conversation.

MR. SLEMKER: I object to this, if Your Honor please. I don't know how he would know if he had any notes when they talked by phone.

MR. DURRETTE: The objection is well taken.

BY MR. DURRETTE:

Q How did you determine on the phone conversation that Mr. Dickerson looked at some notes?

A As I began questioning him about the particulars of it, he said "Just a minute. I have my notes that took during that conversation." Then he began to recite a whole lot of

things concerning bonding of certain jobs that Mr. Conklin was interested in getting bonded and then he went right into that there were two automobiles, a Buick and a Chevy, and it went like that.

Q So in the course of this conversation, he informed you that this information was information he had gotten from Mr. Conklin during that meeting?

A That is correct.

Q Is there anything else that you can recall about the conversation with regard to what Mr. Dickerson told you concerning that November 2nd meeting and automobile liability insurance?

A Just that it had been discussed.

Q And he didn't deny it to you it was discussed at all?

A No. No, definitely not.

Q There was no question about that in his responses to you.

That is all I have.

CROSS EXAMINATION

BY MR. SLENKER:

Q He never toldyou he had bound coverage or sold a policy or bound a policy, did he?

A No, he did not.

Q You told the Court he mentioned the automobiles. I ask you to search your recollection and ask you if it isnt a fact Mr. Dickerson mentioned it in connection with the assets of the corporation that was going to be looking for the bond?

A No, he did not.

Q Did he say anything about the vehicles or did he just mention them?

A He mentioned that he had taken down information concerning a Buick and Chevy.

Q Did you ask him why he took the information down?

A I don't recall if I asked him. I knew what I was talking about and I assume he knew what we were talking about.

Q I understand that. Would you tell this Judge how it is you know he told you about the vehicles for purposes of being related to liability automobile insurance as distinguished from assets of a construction corporation that wanted 1,500,000 bond?

A I had merely asked him if he had taken -- if he had discussed with Mr. Conklin liability insurance on his cars. He said that he had discussed liability on his cars; that he had taken down information on a Buick and a Chevy.

Q Did you ask Mr. Dickerson what insurance company he place that automobile liability coverage with?

A At the time I talked to Mr. Dickerson, I didn't really understand precisely what his position was; that being an agent for several companies.

Q Did you ask him that?

A I believe I did and he stated that he was an agent for several companies.

Q That is the first time you ever talked to Jim Dickerson, wasn't it?

A Yes, it was.

Q You called up for purposes of trying to find out if you could if there was a specific insurance company, did you not, that he had written insurance on your client, Conklin?

A I called him to ask if there was insurance coverage for Mr. Conklin.

Q And Dickerson told you there was not?

A That is correct.

Q Had you ever seen anything or heard anything up to that point that indicated anything to the contrary to what he represented to you on that occasion?

A Until Mr. Conklin came in a few minutes before the phone call, I had no idea that there was a meeting or anything else.

Q You didn't know what had been discussed either, did

you?

A No, I did not.

Q Mr. Conklin didn't tell you what had been discussed on that occasion, did he?

A Yes. He went through and told me all about the meeting from what he recalled.

Q From what he recalled?

A Yes.

Q I see. And then after you talked with Mr. Dickerson, you knew there was no liability insurance coverage, didn't you?

A I knew Mr. Dickerson had not written a policy.

Q Did you call Mr. Dickerson back?

A No. I believe that is the only conversation I ever had with him.

Q You didn't call him back a second time, Mr. Bywater, and ask him a great number of questions similar to, didn't you as a matter of fact say you were going to get him automobile insurance?

A I believe that was in the first conversation. I believe I only had one conversation with him, Mr. Slenker.

Q Only one conversation?

A Yes.

Q Okay. Did you ask him about if there was insurance,

what company it was with?

A I asked him if he had written insurance, if there was a particular company he would have written it with, and I don't recall his response.

Q Did you ask him if Conklin had asked him, Dickerson, to write liability insurance?

A Did I ask him if Conklin had asked him?

Q Right.

A I'm sure I did. But I don't recall the specific question.

Q Why did you ask him that?

A Repeat the question again, please.

Q Why did you ask him that?

A Ask him what? Whether Conklin had asked him?

Q Yes.

A Repeat the original question for me again, will you please.

Q Did you ask Mr. Dickerson if Mr. Conklin had asked him, Dickerson, to write liability insurance in that conversation?

A I'm sure I did, yes.

Q You're sure you did?

A Yes.

Q Why?

A To find out what his answer was.

Q And he said no, didn't he?

A Yes, he did.

MR. SLEMKER: Thank you, Mr. Bywater.

MR. DURRETTE: I don't have any other questions.

THE COURT: Just a minute. I'm not sure I understand. Just how did he refer to these vehicles, these automobiles? How did he identify them?

THE WITNESS: He identified a Buick and I think he may have mentioned the year, and a Chevy and he may have mentioned, I quite certain he mentioned the year on both of them. I'm sorry, that is probably unresponsive.

THE COURT: He mentioned the year?

THE WITNESS: Yes.

THE COURT: He said the year in each instance?

THE WITNESS: I recall, I'm quite sure he said like a '70 Chevy, although I'm not sure that is the year he said, and a '69 Buick or something of that sort.

THE COURT: That is all.

You want to excuse this witness?

MR. DURRETTE: Yes, sir. But may I ask one question in light of the Court's question?

REDIRECT EXAMINATION

BY MR. DURRETTE:

Q These answers were in response to your question about automobile liability insurance, not to a question on bonding?

A That is correct.

MR. DURRETTE: That is all, Your Honor.

THE COURT: That is all. You are excused from further attendance upon the Court.

(Witness excused)

* * * *

MR. DURRETTE: Mr. McDaniel.

Whereupon,

RICHARD S. MCDANIEL,

was called as a witness in rebuttal by and on behalf of the complainant, and after having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURRETTE:

Q You have been previously sworn, is that right, sir?

A Correct.

Q Would you state your full name.

A Richard S. McDaniel.

Q Where are you employed, Mr. McDaniel?

Court earlier.

THE COURT: Your motion will be denied.

Gentlemen, it is 10 minutes after 4:00. How long do you gentlemen want to argue this case?

MR. DURRETTE: Your Honor, I would hope we could meet until 5:00 o'clock, termination time, maybe a little less.

THE COURT: I had planned to recess at 4:30.

MR. DURRETTE: We will endeavor to meet the 4:30 recess.

THE COURT: That will give you 10 minutes each side. Does that agree?

* * * *

MR. DURRETTE: We have prepared a brief I will give counsel a copy of and a copy to the Court. There are some points in the brief which I want to highlight, but before I do that I would think there is a very, very important and fundamental principle that has to be completely clear; that is we are not suing in this case for the breach of insurance contract. We are suing for the breach of an agreement to procure an insurance contract, effective immediately.

Now, I call the Court's attention to the 1st page of our brief, part way down. "An agent or broker is liable to his principal if by his fault or neglect he fails to procure insurance as he had contracted to do. And as a result

of the want of insurance the principal suffers a loss, such liability exists as one for breach of contract or as a tort in negligently failing to perform a duty imposed by contract."

We do not contend Mr. Dickerson wrote a contract of insurance that filled in all four corners. All that we contend is that which is supported by our evidence; that Mr. Dickerson committed himself to procure an insurance contract covering Mr. Conklin in the amounts of 100 to $300,000. It is unmistakably clear he failed to do so and we contend that either because he negligently failed to fulfill the duty imposed upon him by that promise or simply because he breached that promise, that he is liable.

Now, before I go into the law that supports that contention, I would like to summarize just briefly the facts from our perspective. There is no way, Your Honor, unlike many cases, there is no way, in my judgment, the testimony of the witnesses can be factually reconciled. Somebody from that witness stand didn't tell the truth. I just don't think there is any question about that. And the Court is sitting today without a jury, and so the Court obviously has the burden of judging the credibility of the witnesses and all of the facts and circumstances surrounding this case and reaching a conclusion as to who is telling the truth.

* * * *

Mr. Conklin is a man, I think the testimony is unrebutted, of substantial means, at least as of November 2nd, 1973 he had sufficient resources or at least sufficient information was presented to Mr. Dickerson that Mr. Dickerson entertained the probability or possibility that he could secure bond for Mr. Conklin in an amount larger than any bond he had ever tried to get before. Mr. Conklin knew that he didn't have automobile liability insurance.

Now, Mr.Dickerson tells the Court that the subject of automobile liability insurance except in that one vague reference to other insurance never came up and was never discussed at the meeting of November 2nd. Mr. Conklin says it was and related to the Court the details emphatically.

Mr. Ash,and the Court itself asked the question as to whether or not Mr. Dickerson was aware of any reason why Mr. Ash would be motivated by malice or of any desire to come in here and commit perjury because of any dislike or animosity or bad business dealings or anything else between Mr. Ash and Mr. Dickerson, and the answer was no. And I suggest to the Court there wasn't any reason. Mr. Ash is out of the business. He has nothing to gain and everything to lose by walking into this Courtroom and testifying falsely.

Then there is Sherry Conklin who up until a day and

a half ago had not been brought into this case because it had never come to her attention. And when she did talk with her mother and learn that conversation in those rooms made some difference, she remembered only one thing and she was very candid with the Court and I might say so was Mr. Ash. They didn't come in here and remember every detail about the conversation. There was an awful lot they couldn't remember. There was an awful lot Mr. Conklin couldn't remember and I submit to the Court that that is simply human. It has been two years. It is obvious that there will be enumerable details about a conversation that went either from about 45 minutes to an hour to an hour and a half or two hours that people can't remember. But what do they remember? What is the consistent thread of the complainant's evidence that everyone remembers; and that is automobile liability insurance was discussed. The information was taken; the registration; the title was acquired, gotten into the room; Mr. Dickerson wrote it down; and Mr. Conklin asked "Am I covered now? Am I covered immediately or am I covered as of right now", or words to that effect. And Mr. Dickerson replied in the affirmative "You are covered as of this minute."

Now, Mr. Ash can't remember whether he said it two times or three times. His daughter only heard it one time.

He says he said it two times, maybe three times. That is human. It was at least said once. That is the thread of consistency and the point on which this case turns.

Now, there may be some question in the Court's mind, and I am only going to touch on this briefly. All of the evidence that Mr. Slenker has brought in on cross examination and so forth about the transfer of the vehicles, the Division of Motor Vehicles and the title, all that sort of stuff. I think it is clear there are only two things that need to be clear. One is ownership went out of Dale Construction October 31st, 1973 and went into Ron Conklin. What happened? Whether they went then into Barkley Construction sometime down the road April of 1974; whether the title went into DMV; whether the registration card went into the Division of Motor Vehicles doesn't alter the fact that ownership was transferred, and liability insurance coverage had been cancelled as of October 31st, and Mr. Conklin knew it.

In addition, if the complainant's testimony is believed, I suggest to the Court by every standard it ought to be, Mr. Dickerson bound himself to insure those two vehicles regardless of who owned them. Whatever information he took was information that satisified him. He was going to insure those vehicles in connection with the bonding. He

was going to procure for the Barkley Construction Corporation. Whether they were in Mr. Conklin's name at that moment and subsequently to be transferred to Barkley's name, Mr. Dickerson was satisfied sufficiently so he could issue the bonding insurance. I suggest he did that, Your Honor, because he was reasonably confident he could get the bond and he knew he wanted the other insurance. He knew Mr. Conklin didn't have insurance and that he had to place it somewhere and that if he didn't promise to procure that insurance and make it effective, Mr. Conklin had to place it somewhere else. That is why he did it.

I don't know what his other practices were. He has admitted to this Court that can be done orally. Let me direct the Court's attention, if I may, to --

THE COURT: (Interposing) You have one minute.

MR. DURRETTE: It is not necessary for the client in order to establish a breach of a duty to proffer he laid out for the broker the elements of a contract of insurance. It is sufficient to show he authorized procurement of the insurance needed to cover the risk indicated and that the broker agreed to do so and failed or neglected to perform his duty. He seeks recovery for the loss occasioned by the failure to procure such insurance.

Look specifically at page 7, Your Honor. All of the authorities that follow from the bottom of that page onto the end "An insurance agent has a duty to his client to advise his client if he is not covered by insurance if he is, in fact, not so covered."

And one final thing, Your Honor, down in the middle of the next to the last paragraph on page 8. "To sustain his burden in this case the complainant is only required to prove he had directed the defendant to obtain the necessary liability insurance for him and that the defendant had agreed to do so, but failed or neglected to perform his duty." The case cited there a New Mexico decision. That is consistent with all the authorities cited on this case, Mayo versus American Fire.

[illegible] ever on the contract of insurance, but a failure to procure after committing himself to do so, either negligently or for failure to do so.

THE COURT: You agree the burden of proof is by clear convincing evidence?

MR. DURRETTE: Preponderance of the evidence.

THE COURT: Only preponderance of the evidence?

MR. DURRETTE: Yes, sir.

THE COURT: Apparently they have authority to the contrary.

What time is it?

MR. SLEMKER: If Your Honor please, that case is Walker Agency and Aetna Casualty Surety versus Clarence E. Lucas 215 Virginia 535. I will be glad to hand it up if Your Honor would like to see it.

THE COURT: I think it is rather important in this case.

MR. SLEMKER: It is.

MR. DURRETTE: After Your Honor looks at that, may I see the opinion also?

THE COURT: Gentlemen, I gave you 10 minutes. I think if I had been you I would have argued on the burden of proof at length.

MR. SLEMKER: If Your Honor please, what counsel represents to the Court as being his theory of recovery, being a breach of an agreement to procure his insurance which was effective immediately, then he is proceeding in my estimation on a contract theory. But to me I don't really think it makes any difference under the evidence before Your Honor at this time with reference to the type of relief they ask for in the declaratory judgment.

Essentially what they ask for is that Mr. Dickerson become an insurance company; that he is the one that apparently

THIS AGREEMENT, made this first day of October, 1973, by and between ASSOCIATED ENTERPRISES, INCORPORATED, hereinafter called A.E., and its Subsidiary, DALE CONSTRUCTION COMPANY INCORPORATED, hereinafter called DALE, parties of the first part, and RONALD D. CONKLIN, hereinafter called CONKLIN, party of the second part.

WHEREAS, Conklin desires to retire from A.E. and Dale as of October 1, 1973, and sell all of his stock in these two corporations;

WHEREAS, A.E. and Dale desire to purchase the stock that Conklin owns in these two corporations;

WHEREAS, Conklin is willing to assist in obtaining permit assemblies, as builts and State inspections for streets in Sections I and II of Gunnell Farms Subdivision, and to assist in bringing the corporate books of A.E. and its Subsidiaries up to date as soon as possible.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and of the mutual benefits to be gained by the performance thereof, the parties hereby agree as follows:

1. DALE STOCK

Dale agrees to purchase the 300 shares of Dale Stock that Conklin now holds at book value as of September 30, 1973, which has been calculated at $29.56 per share, or a total of $8,868.00. Conklin agrees to transfer all his rights in these shares of Dale Stock in return for a note from Dale in the amount of $8,868.00 with payment terms, interest rate and security as stated in paragraphs 6, 7 and 8 below.

2. A.E. Stock

A.E. agrees to purchase the 150 shares of A.E. stock Conklin now holds at the par value of $10.00 per share, or a total of $1,500.00. Conklin agrees to transfer all his rights in these shares in return for a note from A.E. in the amount of $1,500.00, together with interest thereon at the rate of Nine (9%) per centum per annum from October 1, 1973. Said Note being all due and payable on or before December 7, 1973.

Def ex #1
Chy #'s 43920 & 43921
Sept. 11, 1975
[illegible]

3. Notes Due

Conklin presently holds notes due from Dale in the amount of $61,525.00 and the accrued interest on these notes through September 20, 1973, is $871.61. It is agreed that these notes are to be re-written to provide for the payment terms, interest rate and security as states in paragraphs 6, 7 and 8 below.

4. Gunnell Farms Bonus

Conklin shall receive, as a bonus, thirty (30%) per cent of any additional realized net after-tax profit from the Gunnell Farms Subdivision (i.e., the remaining eighteen houses for which settlement had not been held as of September 30, 1973.) Said profits shall be calculated in accordance with the accounting principles that A.E., and its Subsidiaries have applied in the past which are in accordance with generally recognized accounting principles. This bonus is to be recognized by Conklin as ordinary income and deducated by the party of the first part as a salary expense. The payment terms, interest rate and security on this note shall be as stated in paragraph 6, 7 and 8 below.

5. Vehicles

Dale has previously transferred to Conklin clear title to a 1970 El Camino pick-up truck and a 1971 Buick Electra, now in Conklin's possession. In consideration for this transfer the total sum of $3,425.00 shall be deducted from the amount due from the Dale notes held by Conklin as states in paragraph 3 above.

6. Notes & Security

The monies due to conklin as stated in paragraphs 1 through 5 above shall be evidenced by Four (4) promissory notes, two of said notes to be executed by Dale, namely Notes 1 and 3 as referenced in paragraph 1 and 3 above, to be secured by a Deed of Trust on the unsold lots in the Oak Dale Woods Subdivision, located in Fairfax County, Virginia. Conklin agrees to subordinate said Deed of Trust and Notes to any loans of whatever nature or kind on these properties, to provide releases in accordance with the Deed of Trust, without charge to Dale, at the time of any sale of said properties, and at the request of Dale to change the security on these notes from time to time so as not to force the necessity

to prepay these notes.

7. Principle Curtailment

These notes shall be payable, sequentially in the order listed below, in monthly installments of $2,000.00 per month which amount includes principle and interest. Specifically, these notes and their order of payment will be as follows:

a. Purchase of Dale Stock, $8,868.00;

b. Payment of existing notes ($61,525.00), plus accrued interest thereon ($871.61), less the two vehicles referenced in paragraph Five (5) above ($3,425.00). Net total of $58,971.61.

c. Bonus on Gunnell Farms profits. The amount of this note shall be determined immediately after the settlement proceeds from the sale of the last house in the subdivison have been received by Dale.

These principle curtailments shall be made on the first of each and every month for a period of 24 months, unless sooner paid, commencing on the first day of January 1974. The 25th payment shall be in the full amount of the outstanding balance at that time, plus any accrued interest.

8. Interest

Interest shall accrue on the notes referenced in paragraph 7, sub-paragraphs a and b from October 1, 1973. Interest on the note defined in paragraph7.c shall be detemined in the following manner: The actual profits derived from the sale of all of the remaining houses in Gunnell Farms Subdivision shall be totaled and divided by 18, the number of houses remaining to be settled as of September 30, 1973. The proportionate share of profit attributable to each house shall then bear interest at the rate of Nine (9%) per cent per annum from the date that the settlement proceeds for that particular house were actually received by Dale Construction Company. Interest rate on all notes shall be a Nine (9%) per cent per annum.

9. Conklin Responsibility

a. Conklin agrees to assist in performing all necessary work to obtain permit assemblies, as builts and State Inspection of the streets in Gunnall Farms Subdivision Sections I and II.

b. Conklin agrees to assist in and expedite bringing the Corporate Books of A.E. and its Subsidiaries up to date.

c. Conklin agrees to indemnify and save harmless A.E. and its Subsidiaries and any of the officers thereof personally, from all his personal debts, obligations or liabilities and any acts of commission or omission prior to November, 1971 and subsequent to October 1, 1973.

d. Conklin agrees that the security for the notes will be changed from time to time as requested by Dale so as not to force the prepayment of the notes as might be required should it become necessary to pay the release price quoted in the Deed of Trust on Oak Dale Woods.

10. A.E. Indemnification

A.E. agrees to indemnify and save harmless Conklin from all debts obligations and liabilities and acts of commission or omission subsequent to October 1, 1973, with the exception of those involved with the Gunnell Farms Subdivision.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 18 day of October, 1973.

ASSOCIATED ENTERPRISES INCORPORATED,
a Virginia Corporation

By _____ (SEAL)

ATTEST

_____
Secretary

DALE CONSTRUCTION COMPANY INCORPORATED,
a Virginia Corporation

BY _____ (SEAL)

ATTEST

_____
Secretary

_____ (SEAL)
Ronald D. Conklin

State of Virginia

County of Fairfax, to-wit:

I, Dortha J. Hartley, a Notary Public in and for the State and County aforesaid, do hereby certify that Charles F. Barnes, Jr., Linwood R. Watson and Ronald D. Conklin, whose names are signed to the foregoing Agreement, bearing date on the 1st day of October, 1973, have acknowledged the same before me in my County and State Aforesaid.

GIVEN under my hand this 1st day of October, 1973.

My Commission expires June 12, 1977.

Dortha J. Hartley
Notary Public

CERTIFICATE OF TITLE OF A MOTOR VEHICLE

DIVISION OF MOTOR VEHICLES

COMMONWEALTH OF VIRGINIA

H2940753

I, VERN L. HILL, Commissioner, do hereby certify, pursuant to the provisions of Chapter 3, Title 46.1 of the Code of Virginia of 1950, as amended, that an application has been made to me, as said laws prescribe, for a certificate of title of a motor vehicle and the recording of the liens thereon, if any. I do further certify, that upon the statement of facts contained in the said application, I am satisfied that the applicant is entitled to have the herein described motor vehicle registered in his name.

Wherefore, I do certify that the below named applicant has been duly registered in my office as the lawful owner of the herein described motor vehicle and that it appears upon the official records of my office that, at the date of issuance of this certificate, said motor vehicle is subject to the liens hereinafter enumerated, if any, and none other.

Witness my hand and the seal of my office the day and year set forth below.

Vernhill

COMMISSIONER, DIVISION OF MOTOR VEHICLES

REGISTERED OWNER(S)

BARKLEY CONSTRUCTION INC
1014 S IRONWOOD DR
STERLING VA 22170

608
F5 LNO

DESCRIPTION OF MOTOR VEHICLE

MAKE	BODY TYPE	IDENTIFICATION NUMBER
BUICK	4D HT	484391Y141525

TITLE NUMBER	WEIGHT(S)	YR. MODEL	ODOMETER
19671664	4583	71	59,000

ISSUED	PRIOR TITLE	SALES TAX PAID	AXLES
04/09/74	17793345	40.00	

RECORDED LIENS

AMOUNT	KIND	DATE	LIENOR

NOTICE OF RELEASE OR SATISFACTION OF A LIEN MUST BE MADE PRIOR TO TRANSFER OF TITLE

AUTO-REV-6/73

219

Def. ex #2
Chy #'s 439209 439211
Sept. 11, 1975 Eric Mandel

A ASSIGNMENT OF TITLE BY REGISTERED OWNER

PURCHASER'S NAME:

FIRST MIDDLE LAST

STREET OR R.F.D. NO.

CITY STATE ZIP

SALE PRICE METHOD OF PAYMENT

DATE OF SALE 19

For value received, I/we hereby sell, assign or transfer the motor vehicle described on the face of this Certificate to the purchaser and I/we hereby warrant the title to said motor vehicle and certify that the sale price is as indicated and certify at the time of delivery that the same is subject to liens or encumbrances indicated in Section C and no other

ODOMETER READING ON DATE OF TRANSFER

SIGNATURE OF SELLER

B RE-ASSIGNMENT OF TITLE BY REGISTERED DEALER

PURCHASER'S NAME:

FIRST MIDDLE LAST

STREET OR R.F.D. NO.

CITY STATE ZIP

SALE PRICE METHOD OF PAYMENT

ODOMETER READING ON DATE OF TRANSFER

DATE OF SALE 19

For value received, I/we hereby sell, assign or transfer the motor vehicle described on the face of this Certificate to the purchaser and I/we hereby warrant the title to said motor vehicle and certify that the sale price is as indicated and certify at the time of delivery that the same is subject to liens or encumbrances indicated in Section C and no other

NAME OF DEALER

DEALER'S LICENSE NO.

BY

C PURCHASER'S APPLICATION FOR NEW CERTIFICATE OF TITLE

SELLER'S NAME:

DATE OF PURCHASE 19

FROM WHOM PURCHASED

SALE PRICE METHOD OF PAYMENT AMOUNT OF LIEN

STREET OR R.F.D. NO.

KIND OF LIEN DATE

CITY STATE ZIP

LIENOR

ODOMETER READING ON DATE OF TRANSFER

LIENOR ADDRESS

NON-RESIDENTS POWER-OF-ATTORNEY ONLY APPLYING TO NON-RESIDENTS AND CORPORATIONS NOT DOMESTICATED IN VIRGINIA

That I/we acting under and pursuant to the provisions of Title 46, Chapter 3, Code of Virginia, as now or hereafter amended, have made, constituted and appointed and under these presents do make, constitute and appoint the Commissioner of the Division of Motor Vehicles of the Commonwealth of Virginia, to be my/our true and legal agent and attorney-in-fact upon whom all legal processes against and notices to me/us may be served in any action or legal proceedings brought as the result of the operation and/or use of all motor vehicles titled or licensed in my/our name in the State of Virginia, and he is hereby authorized to enter an appearance in my/our behalf in any case or proceedings; and I/we hereby stipulate and agree that any lawful process against or notice to me/us which is duly served on said agent and attorney-in-fact shall be of the same legal force and validity as if served on me/us.

The undersigned owner or owners of the vehicle described on the face of this Certificate hereby make application for a Certificate of Title for said vehicle and for that purpose state under oath that I have compared the identification numbers on the face of this Certificate with the identification numbers on the motor vehicle purchased and found that they agree in every particular and further certify the vehicle is subject to the liens indicated in this section and no other.

SIGNATURE OF APPLICANT

SOCIAL SECURITY NO. OF APPLICANT (EMPLOYER'S IDENTIFICATION NO.)

SIGNATURE OF CO-APPLICANT

SOCIAL SECURITY NO. OF CO-APPLICANT (EMPLOYER'S IDENTIFICATION NO.)

STREET OR R.F.D. NO.

CITY STATE ZIP

CITY/COUNTY OF RESIDENCE

FOR DMV USE ONLY

SALE PRICE $

NO TRADE-IN ALLOWANCE

2% TAX $

TITLE FEE 5.00

LIC. FEE

UM FEE

OTHER

TOTAL $

Title + regis

Barkley

APPLICATION FOR NEW CERTIFICATE OF TITLE

APR 9 '74

10-30-73

Dale sold the Buick to Barkley there was no transfer

Serx #3 Chgo 409204 43921

Sept. 11, 1973 Ernest Martinez

Dealer.

My name [illegible]

was inadvertently in error

it should be [illegible]

BUICK

1Y141525

54

Alby Constens

114 S. Tennessee

Luray Virginia

MARYLAND CASUALTY CO.
NORTHERN INSURANCE CO. OF N.Y.
OTHERS

№ 174633

PERSONAL AUTOMOBILE APPLICATION

Def Ex 4 Exp of Maduro
9-11-75 21392 to 43926

The Maryland
MARYLAND CASUALTY COMPANIES
BALTIMORE • MEMBERS OF THE AMERICAN GENERAL GROUP

PLEASE PRINT OR TYPE

☐ FAMILY AUTO (COMPANY BILL) ☐ FAMILY AUTO (AGENCY BILL) ☐ AUTOMASTER (ALL COMPANY BILL) ☐ VOLUNTEER (AGENCY BILL)

PRODUCER NUMBER	PRODUCER NAME	POLICY EFFECTIVE 12:01 A.M. (UNLESS OTHERWISE STATED BELOW)	DATE MO / DAY / YEAR	BRANCH OFFICE USE ONLY	TYPE CODE	UND NO	NEXT INSPECTION DATE MO / DAY / YEAR	DB

FIRST NAME(S) AND MIDDLE INITIAL(S) OR NAME(S) OF APPLICANT(S)	LAST NAME	SOCIAL SECURITY NUMBER	STATE CODE	TERR. CODE

HOUSE NUMBER AND STREET	CITY	COUNTY	STATE (ABBREV.)	ZIP CODE	TAX DISTRICT

PRIOR ADDRESS IF LESS THAN 3 YEARS AT ABOVE ADDRESS HOUSE NUMBER AND STREET	CITY, STATE	ZIP CODE

PRIOR PREVIOUS CARRIER	PREVIOUS POLICY NUMBER

CANCELLED OR NON-RENEWED COMPANY ☐ YES, NAME OF COMPANY AND REASON (NOT REQUIRED IF PROHIBITED BY STATUTE) ☐ NO	IF OTHER AUTOS IN APPLICANT'S HOUSEHOLD GIVE OWNER(S) NAME(S) AND CARRIER(S)	VEHICLE(S) IN GOOD CONDITION? ☐ YES ☐ NO
INSURANCE CARRIED BY YOUR OFFICE FOR APPLICANT OR FAMILY GIVE NAME(S) OF COMPANIES AND DATE TO BE TRANSFERRED TO MARYLAND.	IS ANY AUTO NOT INDICATED BELOW LEASED OR FURNISHED FOR REGULAR USE TO APPLICANT OR OR FAMILY? ☐ YES ☐ NO IF YES, EXPLAIN	PARKED OFF STREET WHEN NOT IN USE? ☐ YES ☐ NO

	OPERATOR FIRST NAME (ALSO LAST IF DIFFERENT)	OCCUPATION / PLACE OF EMPLOYMENT OR SCHOOL CITY AND STATE	OPERATORS LICENSE NUMBER	SEX M OR F	BIRTH DATE MO	DAY	YR	MARITAL STATUS *	DRIVER TRAINING Y/N	GOOD STUDENT Y/N	AWAY MILITARY Y/N	STUDENT OVER 100 MILES Y/N	RELATIONSHIP **
1	APPLICANT												
2													
3													
4													
5													

IF AWAY IN MILITARY INDICATE LOCATION, MILES FROM HOME AND DATE OF RETURN:
IF DISCREPANCIES EXPLAIN
OPERATOR
NUMBER

* SHOW S IF SINGLE OR WIDOWED, D IF DIVORCED, M IF MARRIED. INDICATE HOW LONG LIVING APART.
** IF LICENSED 1 YEAR OR MORE, SHOW [illegible]

NON-DRIVING CHILDREN UNDER 12 IN THE HOUSEHOLD?	SEX M/F	BIRTH DATE MO	DAY	YR	SEX M/F	BIRTH DATE MO	DAY	YR	SEX M/F	BIRTH DATE MO	DAY	YR	M/F			

	BODILY INJURY EACH OCCURRENCE		PROPERTY DAMAGE EACH OCCURRENCE	MEDICAL PAYMENTS EACH PERSON	UNINSURED MOTORISTS WAIVED Y/N	REJ.	BODILY INJURY		PROP. DAM.	COMPREHENSIVE DED. $25, 50, 100 OR NONE	COLLISION DED. $25, 50, 100, 250 OR NONE	TOWING & LABOR Y/N	RENTAL REIMB. Y/N
1													
2													
3													
4													

	MODEL	BODY TYPE	MODEL YEAR	VIN (LAST FOUR DIGITS ONLY)	CYL	CUBIC INCHES DISP.	HORSE POWER	DESCRIPTION OF OTHER EQUIPMENT	COST NEW (INCL EQUIP)	ESTIMATED ANNUAL MILEAGE	DISTANCE TO WORK OR SCHOOL (ONE WAY)	SYM	USE **	CLASS ***	[illegible]
1															
2															
3															
4															

1 = PERFORMANCE 2 = PICK UP, PANEL OR SEDAN DELIVERY 4 = INTER 5 = COMPACT 7 = REAR ENGINE 8 = SPORTS CAR

** 1 = PLEASURE 2 = USED TO WORK OR SCHOOL 8 = BUSINESS USE 9 = FARM (UNDER AFE PRIN. PAR. [illegible])

*** SIGNED SPECIAL SUPPLEMENTARY FORM REQUIRED.

**** IF USED TO INCREASE PERFORMANCE.

IF VEHICLE GARAGED AT AN ADDRESS OTHER THAN STATED IN AREA ONE ABOVE, COMPLETE BELOW.

CITY	COUNTY	STATE	BRANCH OFFICE USE ONLY: STATE CODE	TERR. CODE	TAX DISTRICT	

PCU LU 11-75

(OVER)

CONVICTIONS

HAS THE APPLICANT OR ANY OPERATOR BEEN CONVICTED OF ANY OF THE FOLLOWING [illegible] THE PAST 18 MONTHS?

☐ NO ☐ YES IF YES, COMPLETE APPLICABLE ITEMS

		OP NO	DATE	OP NO	DATE	OP NO	DATE
A	DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF DRUGS						
B	FAILURE TO STOP AND REPORT WHEN INVOLVED IN AN ACCIDENT						
C	[illegible] ASSAULT ARISING OUT OF THE OPERATION OF A MOTOR VEHICLE						
D	DRIVING DURING A PERIOD WHILE LICENSE IS SUSPENDED OR REVOKED						
E	[illegible] DRIVING A MOTOR VEHICLE AT AN EXCESSIVE RATE OF SPEED [illegible] INJURY TO PERSON OR PROPERTY [illegible]						
F	[illegible] AS A RESULT OF THE ACCUMULATION [illegible] CONVICTIONS						
G	[illegible] REQUIRED AS A RESULT OF CONVICTION						
H	[illegible] OF A MOVING TRAFFIC VIOLATION RESULTING [illegible] REVOCATION OF LICENSE						
J	[illegible] CONVICTIONS FOR MOVING TRAFFIC VIOLATIONS (DO NOT INCLUDE EXPIRATION OF COURT SET EXCEPT BRACKETS) AND/OR TO DISPLAY PROPER [illegible] OR DISPLAY REGISTRATION CARD OR TO HAVE [illegible] OPERATORS OR CHAUFFEURS LICENSE PROVIDED THERE IS [illegible]						

ANY ACCIDENT CHARGES PENDING? ☐ YES DESCRIBE

ACCIDENTS

HAS THE APPLICANT OR ANY OPERATOR BEEN INVOLVED IN ANY ACCIDENTS AS A [illegible] OWNER OF A PRIVATE PASSENGER MOTOR VEHICLE, DURING THE PAST 18 MONTHS?

☐ NO ☐ YES IF YES, COMPLETE APPLICABLE ITEMS

		OP NO	DATE	OP NO	DATE	OP NO	DATE
K	[illegible] BODILY INJURY OR DEATH						
L	[illegible] DAMAGE TO PROPERTY INCLUDING HIS OWN PROPERTY OR [illegible]						
M	[illegible] DAMAGE TO PROPERTY INCLUDING HIS OWN OR [illegible]						
N	[illegible] LAWFULLY PAID TO ANY AUTOMOBILE RESULTING FROM A PAID [illegible] OR AS A LAWFULLY FILED RECOVERY [illegible] OPERATOR OF THE LAST OPERATOR						
O	[illegible] ON BEHALF OF, PERSON RESPONSIBLE FOR ACCIDENTS [illegible]						
P	[illegible] SUBJECT TO REARLEND AND APPLICANT OR OTHER OPERATOR [illegible] NOT CONVICTED						
Q	[illegible] PERSON INVOLVED IN ACCIDENT WAS CONVICTED APPLICANT OR OTHER [illegible]						
R	[illegible] ACCIDENT AS A RESULT OF RESPONSIBILITY [illegible]						
S	[illegible] PAYMENT OR CLAIM ONLY AND APPLICANT OR OPERATOR NOT AT [illegible] INCLUDED IN THE STATE EXCEPTION PAGES						
T	[illegible] DRIVING DAMAGE BY CONTACT WITH ANIMALS OR FOWL OR PHYSICAL DAMAGE [illegible] AND CAUSED BY FLYING GRAVEL, MISSILES OR FALLING OBJECTS						

★ A private passenger type automobile is (1) a four wheel automobile of the private passenger or station wagon type or (2) an automobile with a pickup body, a delivery sedan or a panel truck, not used for business or commercial purposes other than farming.

FOR ACCIDENTS ENTERED ABOVE, COMPLETE				FOR ACCIDENTS ENTERED ABOVE, COMPLETE			
DATE	ACCIDENT LOCATION	$ AMOUNT OF DAMAGE INSURED	OTHER	DATE	ACCIDENT LOCATION	$ AMOUNT OF DAMAGE INSURED	OTHER

REINSTATEMENT

FINANCIAL RESPONSIBILITY. IS ANY OPERATOR REQUIRED TO HAVE FILING (OTHER THAN MINOR FILINGS)?

☐ NO ☐ YES IF YES, COMPLETE →

OP NO.	DATE OF ORIGINAL FILING	% SUR	STATE	REASON

LIENS

	OP NO	LIENHOLDER NAME	LIENHOLDER ADDRESS: STREET	CITY, STATE, ZIP
1				
2				
3				
4				

Notice Required by Federal Fair Credit Reporting Act Public Law 91-508

As a routine procedure to confirm insurability, an investigation may be made concerning applicant's character, general reputation, personal [illegible] made of [illegible]. Upon timely written request, the company will advise further as to nature and scope of the investigation, if conducted.

I hereby declare to the best of my knowledge and belief that all of the foregoing statements are true and that these statements are offered as an inducement to the company to issue the policy for which I am applying.

I hereby certify to the best of my knowledge and belief that the opposite [illegible] signature is the personal signature of the applicant

Personal Signature of Applicant — DATE

Signature of Agent, Broker or Solicitor

Applicable to VOLUNTEER PLAN only —
Additional Signature of applicant acknowledging consent to rate required.

DO YOU PERSONALLY RECOMMEND THIS RISK? YES ☐ NO ☐	IS RISK NEW TO YOUR AGENCY ☐ YES ☐ NO
HOW MANY TIMES EACH YEAR DO YOU SEE INSURED? ☐	

I hereby certify that I understand the rates for the coverage applied for are higher than the premium for standard risks but I desire coverage on this basis as I have been unable to obtain [illegible] through the normal market. I am aware that coverage is available through the Automobile Insurance Plan available in my State and that such coverage is sufficient to meet the [illegible] Liability Limits required.

X PERSONAL SIGNATURE OF APPLICANT — DATE

Def 5
9-11-
Client Marlee

COMMERCIAL AUTOMOBILE INSURANCE SURVEY

The Maryland
MARYLAND CASUALTY COMPANIES
BALTIMORE • MEMBERS OF THE AMERICAN GENERAL GROUP

Named Insured.....

Full names of all persons who drive the insured vehicles, including any family or personal cars	Driver's License		Date of Birth	During Past Three Years, No. of:		Marital Status M,S,D,U *	If Employee, No. of Years in present position *
	State	Number	Mo. Day Yr.	Accidents	Violations		
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							
14.							
15.							
16.							

*M-married, living in same household S-separated D-divorced U-unmarried

Are any of the above persons permitted to take company cars home? Yes ☐ No ☐
May such cars also be used for personal, family, pleasure purposes? Yes ☐ No ☐
If Yes, describe fully any restrictions as to other licensed drivers in the household or extent and scope of such use.

Does applicant require certificates or other evidence of insurance of all class 1 officers, employees, agents or representatives. Yes ☐ No ☐.
If Yes, what limits are required, if any, for Bodily Injury?.....per person.....per occurrence, for Property Damage? .....per occurrence.

Auto. 1060 ED. 12-70 (Rev. 10-71) **(To be completed along with survey of hazards Lia. 3514)**

Describe extent and use of vehicles:

1. Owned Automobiles

2. Hired Automobiles

3. Non-Owned Automobiles

If prior policy subject to experience or schedule modification, indicate modification for Automobile Liability, Collision and Physical Damage:

Number of accidents during past year and past three years:

Past year .....

Past three years .....

Does expiring policy contain B. I. or P. D. deductible? Yes ☐ No ☐
If Yes, deductible amount is
Explain reason for deductible:

Comments:

Def. 6 9/11/75

CONTRACTOR'S INSERT FOR COMPREHENSIVE SURVEY—FORM 3038

1. Applicant is: General contractor ☐; Sub-contractor ☐
2. Percentage of work usually sublet by applicant: _____ % Describe briefly: _____
3. a. Average annual cost of sublet work: _____
   b. Are Certificates of Insurance required of sub-contractors: ☐ Yes ☐ No Limits required: B. I. _____ P. D. _____
4. Applicant's annual receipts by type of work for years indicated below:

TYPE OF WORK	NEXT YEAR	CURRENT YEAR	PRIOR YEAR
1.			
2.			
3.			

5. Applicant has stable work force: ☐ Yes ☐ No - Approx. % of employees obtained from hiring halls when contracts are awarded: _____
6. a. Check if coverage is required for X ☐C ☐U ☐. Blanket ☐ Specific ☐
   b. By whom will blasting be done: _____
   c. If sublet, will XCU coverage be required of sub-contractor at same limit required of applicant: ☐Yes ☐No
7. a. Describe types of machinery or contractors equipment rented to others: _____
   b. Receipts: With operators: $ _____ without operators: $ _____
8. Broad Form P.D. desired: ☐Yes ☐No. Including completed operations ☐Yes ☐No
9. If increased limits are desired for specific jobs, describe: _____

SCHEDULE	CODE NO.	ESTIMATED TOTAL ANNUAL REMUNERATION	RATES B.I.	RATES P.D.	ADVANCE PREMIUM B.I.	ADVANCE PREMIUM P.D.
BUILDING MATERIAL DEALERS—No second-hand materials including local managers	62111					
CARPENTRY—dwellings not exceeding three stories in height	15145					
CARPENTRY—N.O.C.	17535					
CONCRETE CONSTRUCTION—including foundations, making, setting up or taking down forms, scaffolds, etc	17745					
CONCRETE or CEMENT SIDEWALK—Driveway, Yard, Airport.	16141					
CONTRACTORS—executive supervisors-No direct supervision.	15192					
ELECTRICAL WIRING—within building.	17315					
EXCAVATION—includes borrowing, filling or back filling.	15111xcu					
GRADING OF LAND—includes borrowing, filling or back filling.	07313xcu					
HOD or MATERIAL HOISTS and equipment incidental thereto—operation by construction, erection or other contractors.	17873					
MASONRY	17425					
PAINTING, DECORATING or PAPER HANGING—including shop operations.	17235					
PILE DRIVING—building foundations only. The manufacture of concrete piles at the job location or the pouring of concrete into hollow steel piles shall be rated as 17745 "Concrete Construction"	17805xcu					
PILE DRIVING—including timber wharf building.	16294cu					
PLASTERING.	17445					
PLUMBING—gas, steam, hot water or other pipe fitting—including house connections, shop and retail stores or display rooms.	17185u					
ROOFING of all kinds—including yard employees.	17625					
SEWER CONSTRUCTION—including tunneling at street crossings.	16225xcu					
STREET or ROAD CONSTRUCTION—includes clearing right of way, excavation, filling or grading, bridge or culvert building.	16115xcu					
STREET or ROAD PAVING or REPAIRING, SURFACING or RESURFACING or SCRAPING.	16125xcu					
WATER MAINS or CONNECTIONS CONSTRUCTION—including tunneling at street crossings.	16225xcu					

3039 Ed. 1-74

CONTRACTUAL LIABILITY INSERT
FOR CONSTRUCTION AGREEMENTS

1. Types of contractual agreements usually entered into (describe briefly and attach copy of any current contracts):

2. In what situations does applicant pass on to subcontractors any obligation he must assume under contract:

3. Type of coverage desired: Blanket ☐ Specific ☐

4. If any contract with hold harmless clause is outstanding, advise approximate percentage of total contract now completed:

SCHEDULE	CODE NO.	PREMIUM BASIS	RATES		ADVANCE PREMIUM	
			B. I.	P. D.	BODILY INJURY	PROPERTY DAMAGE
If blanket contractual desired, indicate if broad form ☐ or limited form ☐.		Cost	Per $100 of cost			
If specific, show contract number and date, indemnitee, operation involved and contract cost:						

Def 7 9-11-75 Excel Maryland

The Maryland
MARYLAND CASUALTY COMPANIES
BALTIMORE • MEMBERS OF THE
AMERICAN GENERAL GROUP

SURVEY OF HAZARDS and APPLICATION
Comprehensive General Liability—Automobile Policy

☐ 02 MARYLAND CASUALTY COMPANY
☐ 07 NORTHERN INSURANCE COMPANY OF NEW YORK
☐ 08 ASSURANCE COMPANY OF AMERICA

I. Name of Applicant .....

Name of person to contact for Loss Control Survey

Address ..... Zip # .....

☐ Individual ☐ Partnership ☐ Corporation ☐ Owner ☐ Tenant ☐ Lessee ☐

Policy period desired: From ..... to ..... 12:01 A. M. standard time at the address of the applicant as stated herein.

Business of the applicant is ..... No. of years in this business .....

II. COVERAGES (Check coverage desired)

		LIMITS OF LIABILITY		ADVANCE PREMIUM
		Each occurrence	Aggregate	
☐ Comprehensive General Liability	Bodily Injury Liability	$	$	$
	Property Damage Liability	$	$	$
☐ Contractual Liability	Contractual Bodily Injury Liability	$	XXXXX	$
	Contractual Property Damage Liability	$	$	$
☐ Personal Injury Liability		XXXXX	$	$
☐ Premises Medical Payments		Each person	Each accident	
% of B.I. Premiums — OLT = %, M & C = %		$	$	$
☐ Storekeeper's Liability	Indicate limits desired on schedule of application			$
☐ Comprehensive Personal Insurance	Complete Appliguide - Group 12			$
☐ Farmer's Comprehensive Personal Insurance	Complete Appliguide - Group 13			$
		Each person	Each occurrence	
☐ Comprehensive Automobile Liability / ☐ Basic Automobile Liability	Bodily Injury Liability	$	$	$
	Property Damage Liability	XXXXX	$	$
☐ Automobile Medical Payments		$	XXXXX	$
		Each person	Each accident	
☐ Protection Against Uninsured Motorists	Bodily Injury Liability	$	$	$
	Property Damage Liability	Where applicable		$
☐ Automobile Physical Damage (If Dealers, Complete Insert Form 3040)	Collision	Indicate limits desired in Item VII		$
	Physical Damage-Other than Collision			$
☐ Garage Insurance		Complete Garage Insert Form 3040		$
☐				$

Audit Period: Annual, unless otherwise designated below.
☐ Semi-annually ☐ Quarterly ☐ Monthly

Premium: ☐ 1 yr. ☐ 3 yr. ☐ Prepaid ☐ Installments

Total Advance Premium $

III. Other lines (including Bonds) our Company Now Has, or Can Get

Now has: .....

Can get: .....

IV. GENERAL LIABILITY

A. MISCELLANEOUS HAZARDS - Check block opposite each subdivision when any hazard there listed now exists or is likely to exist at some time during the policy period. Fully describe each such hazard on next page or in memorandum attached and insert class and code if known.

1. On premises owned or occupied by applicant:
   - ☐ Gymnasiums, swimming pools, bathing beaches, grandstands or bleachers.
   - ☐ Locations leased in their entirety or buildings leased in 90% of their area to others who control and operate premises, elevator and boiler. Applicant not in control except for preservation of premises.
   - ☐ Hospital, doctor, nurse, dentist, chiropodist, optometrist, optician, druggist, barber shop, beauty parlor, masseur.
2. Away from premises owned or occupied by applicant:
   - ☐ Vending machines, bicycles, saddle or draft animals, machinery, contractors' or other equipment or other property owned, rented or controlled by applicant and used by applicant or others.
   - ☐ Exhibitions, public entertainments, conventions.
   - ☐ Sponsored sports or other events.
3. Other hazards:
   - ☐ Boats, all kinds.
   - ☐ Coverage for additional insureds. Name and relationship to applicant. If complete coverage not desired give details: .....
   - ☐ Property Damage Liability: Explosion and collapse hazards to be included for manufacturing or contracting operations.
   - ☐ All other hazards desired - describe: .....

Completed By:	Name of Agency:	Date:

3038 Rev. 10-73

4. **Products - If the following is applicable - List and explain origin and end use:**
   - ☐ Is any product volatile, toxic, corrosive or explosive:
   - ☐ Used in aircraft, automobile, or other form of transportation:
   - ☐ Produced by foreign manufacturers:

USE CONTRACTORS INSERT FORM 3039 FOR M & C AND CONTRACTUAL COVERAGES ON ALL CONTRACTORS

V. SCHEDULE

General Liability — Description of Hazards by Location — Code No.	Premium Basis	Rates B. I. Lia.	Rates P. D. Lia.	Advance Premium B. I. Lia.	Advance Premium P. D. Lia.
Premises—Operations (OLT—M&C) (Including structural alterations, etc.)	(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration or other applicable basis	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration or other applicable basis			
Elevators Does applicant desire certificate inspection by the Company? Yes ☐ No ☐ If "Yes", show Number on Premises	Number on Premises	Inspection Charge Per-Elevator			
Escalators Does applicant desire certificate inspection by the Company? Yes ☐ No ☐	Number Insured	Per Landing			
Independent Contractors—(Let or Sublet Work)	Cost	Per $100 of Cost or other applicable basis			
Completed Operations—Products	Sales or Receipts	Per $1000 of Sales or Receipts or other applicable basis			
Personal Injury Liability (Not available to individuals) Indicate Group of Offenses for which coverage is desired: Group A ☐ Group B ☐ Group C ☐ Applicant's participation .....%	.....% of O.L.&T. and/or M.&C.				XXXX
Storekeepers Limits: Stk. Liab.: Each Occurrence $ Stk. Med. Pay.: Each Person $ Each Acc. $	Area	Rate			XXXX
Contractual: (Other than contractors) For written agreements, attach copies of those containing assumed liability clauses.	(a) Number Insured (b) Contract Cost	(a) Per Contract (b) Per $100 of cost			

ADDITIONAL COVERAGES AVAILABLE UNDER SEPARATE COVERAGE PARTS

VI. IMPORTANT

PAST EXPERIENCE	NAME OF CARRIER	MODIFICATION	PREMIUMS	LOSSES PAID	LOSSES RESERVES
Gen. Lia.: Current Yr.:					
1st Prev. Yr.:					
2nd Prev. Yr.:					
3rd Prev. Yr.:					

VII. DESCRIPTION OF HAZARDS

OWNED AUTOMOBILES-LIABILITY INSURANCE — Premium Basis—Per Automobile

No.	Year	Trade Name	Body Type Capacity	Identification Number	Class	Premium B.I.	Premium P.I.P.	Premium P.D.	Premium MED.	Premium U.M.	Garage Location	P/C	Terr. Code
1													
2													
3													
4													
5													

USE: "P" Means Pleasure and Business; "C" Means Commercial — TOTAL PREMIUMS ▷

OWNED AUTOMOBILES-PHYSICAL DAMAGE INSURANCE

No.	Purchased Mo. Yr. New-Used	Cost New or Age-Symbol	Limit Each Vehicle	Collision Deduct	Collision Premium	Comprehensive Rate	Comprehensive Premium	Fire Rate	Fire Premium	Theft Rate	Theft Premium	C.A.C. Rate	C.A.C. Premium	Towing Premium
1														
2														
3														
4														
5														
TOTAL PREMIUMS														

2. HIRED AUTOMOBILES Premium Basis—Cost of Hire

Types Hired	Locations Where Automobiles Will Be Principally Used	Estimated Cost of Hire	Rates per $100 Cost of Hire: Bodily Injury	Rates per $100 Cost of Hire: Property Damage

3. NON-OWNED AUTOMOBILES Premium Basis—Class 1 Persons and Class 2 Employees

Class 1 Persons—Name of Each	Location of Headquarters of Persons Named Herein

Class 2 Employees Estimated Average Number	Location of Headquarters of Class 2 Employees	Rates per Employee: Bodily Injury	Rates per Employee: Property Damage

Minimum Premiums: Divisions 2 and 3	Bodily Injury	Property Damage	TOTAL ADVANCE PREMIUMS ▷
	$	$	

ADVANCE PREMIUMS

Bodily Injury (Incl. P.I.P.)	Property Damage	Medical Payments	Uninsured Motorists
▷			
$	$	$	$

AUTOMOBILE MEDICAL PAYMENTS: DESIGNATION OF AUTOMOBILES

- ☐ Any owned automobile
- ☐ Any hired automobile
- ☐ Any licensed owned private passenger automobile
- ☐ Any non owned automobile
- ☐ Any automobile described in the schedule for which a specific premium charge is made for Medical Payments
- ☐ Other:

PROTECTION AGAINST UNINSURED MOTORISTS: Description of Insured Highway Vehicles

- ☐ Any automobile owned by the applicant.
- ☐ Any private passenger automobile owned by the applicant.
- ☐ Any highway vehicle to which are attached dealer's license plates issued to the applicant.
- ☐ Any mobile equipment owned or leased by and registered in the name of the applicant.
- ☐ Any highway vehicle designated in the schedule for which a specific premium charge is indicated for Uninsured Motorists and a highway vehicle ownership of which is acquired during the policy period by the applicant as a replacement therefor.
- ☐ Other:

VIII. REMARKS: (Radius of operations, optional no-fault coverages and other pertinent data) _____

IX. IF PHYSICAL DAMAGE INSURANCE TO BE PROVIDED ON "FLEET AUTOMATIC" BASIS, COMPLETE LIMITS OF LIABILITY SECTION AND INDICATE BY NUMBER FROM LIST BELOW NEWLY ACQUIRED VEHICLES (OTHER THAN REPLACEMENTS) TO BE COVERED:_____

1= all covered automobiles
2= all registered covered automobiles
3= all covered automobiles of the private passenger type
4= all covered automobiles of the commercial type
5= excluding vehicles leased to the applicant
6= excluding, under Collision Coverage, any vehicle not having an Actual Cash Value of at least $ .....

Fleet Automatic Maximum Limit of Liability		
Any one covered automobile	All covered automobiles at any one location	All covered automobiles
$	$	$

Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the applicant is the sole owner of every covered automobile described in the above schedule, unless otherwise stated herein:

Any loss hereunder is payable as interest may appear to the applicant and:

X. DRIVER INFORMATION: Complete for all policies covering commercial or private passenger vehicles, including garages.

Full names of all persons who drive the insured vehicles, including any family or personal cars (Include First, Middle & Last Name)	Driver's License		Date of Birth	During Past Three Years, No. of:		Marital Status M,S,D,U *	If Employee, No. of Years in present position	
	State	Number	Mo. Day Yr.	Accident	Violations		Position	Yrs.
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

*M-married, living in same household S-separated D-divorced U-unmarried

Are any of the above persons permitted to take company cars home? Yes ☐ No ☐
May such cars also be used for personal, family, pleasure purposes? Yes ☐ No ☐
If Yes, describe fully any restrictions as to other licensed drivers in the household or extent and scope of such use.

Does applicant require certificates or other evidence of insurance of all class 1 officers, employees, agents or representatives? Yes ☐ No ☐.
If Yes, what limits are required, if any, for Bodily Injury? ..... per person ..... per occurrence, for Property Damage? ..... per occurrence.

XI. IMPORTANT

Past Experience	Name of Carrier	Modification	# Units	Premiums	Losses Paid	Losses Reserves
Auto. Lia.-Current Yr.:						
1st Prev. Yr.:						
2nd Prev. Yr.:						
3rd Prev. Yr.:						
Auto. Phys. D.-Current Yr.:						
1st Prev. Yr.:						
2nd Prev. Yr.:						
3rd Prev. Yr.:						

Speed-Memo

Subject

TO

Date

Def Ex 8
9-11-75

Scott Martin
Jr.

American Commercial Insurance Agency, Inc.

GENERAL INSURANCE

P. O. BOX 2487 — HYATTSVILLE, MD. 20784

Phone: 301 - 773-4040

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