218 Va. 216

CLERK
SUPREME COURT OF VIRGINIA
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JAN 28 1977
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760609

CITIZENS HOME INSURANCE COMPANY, INC.,

Appellant

v.

MABLE NELSON

Appellee

MATTIE C. TAYLOR

Appellee

APPENDIX

Thomas A. Mickler
109 North Fairfax Street
Alexandria, Virginia

Counsel for Appellant

Gwendolyn Jo. M. Carlberg
117 North Fairfax Street
Alexandria, Virginia

Counsel for Appellee

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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MAR 28 1975

GENERAL DISTRICT

~~MUNICIPAL~~ COURT

CIVIL WARRANT

Docket No. 75-1465

Commonwealth of Virginia
City of Alexandria

TO THE SHERIFF OR ANY DEPUTY SHERIFF:

You are hereby commanded to summon
CITIZENS HOME INSURANCE COMPANY, INCORPORATED
Serve: A. H. Ware, Jr., Registered Agent
2601 Floyd Avenue
Richmond, Virginia

to appear before The ~~Municipal~~ GENERAL DISTRICT Court of Alexandria, Va., Room 224, City Hall, at 11 o'clock a.m. on the 17th day of April 19 75, to answer the complaint of MATTIE CAROLYN TAYLOR, 92 Ellsworth Street, Alexandria, Virginia

For non-payment of $ 3,250.00, with interest from July 22, 1974, due by debt by reason of non-payment of life insurance policy No. 71210461.

(If Affidavit Served Herewith, Defendants Must File Counter-Affidavit to Defend This Suit)

Given under my hand this 27th day of March, 19 75

Gwendolyn Jo M. Carlberg
Attorney for Plaintiff
Gwendolyn Jo M. Carlberg
117 No. Fairfax St., Alex., Va.
549-5551

F. F. JACKSON
Clerk, Municipal Court

By: ECK
Deputy Clerk

JUDGMENT is granted the Plaintiff for the sum of $ _____ with interest thereon from the _____ day of _____ 19 ____, and _____ costs.

Given under my hand this _____ day of _____ 19 _____

Appeal noted by _____

Bond $ _____

Judge

Judge

WRIT OF FIERI FACIAS

Commonwealth of Virginia
City of Alexandria, to-wit:
To the Sheriff of the City aforesaid - Greeting:

You are hereby commanded, that of the goods and chattels of above named DEFENDANT you cause to be made the money in the amount of the judgment entered this day for the above named PLAINTIFF against said DEFENDANT; and have said sum and costs before this Court within 60 days and have then and there this writ.

Entered:

Judge

UD71

In the GENERAL DISTRICT Court of ALEXANDRIA, Virginia

MATTIE CAROLYN TAYLOR

— Plaintiff

— vs. —

CITIZENS HOME INSURANCE COMPANY, INCORPORATED

— Defendant(s)

CIVIL No. .....

AFFIDAVIT

State of Virginia
~~County of~~ City of Alexandria, to wit:

This day there personally appeared before me, the undersigned Notary Public, in and for the State and County aforesaid, Gwendolyn Jo M. Carlberg

who, after being duly sworn according to law, states as follows:

1. That, CITIZENS HOME INSURANCE COMPANY, INCORPORATED

the defendant(s) in the above styled case ~~is~~/are justly indebted unto your plaintiff in the amount of $3,250.00, with interest from July 22, 1974, representing the balance due on life insurance policy No. 71210461

; and

2. That the whole of said amount is now due and owing, and that your plaintiff has a just right to recover the same from the defendant(s) exclusive of all setoffs and just grounds of defense besides costs incident to this proceeding; and

3. That the defendant(s) ~~is~~/are not a member(s) of the armed forces of the United States of America.

Gwendolyn Jo M. Carlberg
Affiant Gwendolyn Jo M. Carlberg
Attorney and Agent for Plaintiff

Subscribed and sworn before me this: March 17, 1975

My commission expires: 12-20-77

Diana Norris
Notary Public

~~XXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXX~~

2

GROUNDS OF DEFENSE

Comes now the defendant, Citizens Home Insurance Co., Inc., a Virginia corporation, by its agent and attorney, Thomas A. Mickler, and for its answer and grounds of defense to the civil warrant outstanding against it and says:

1. That it has a substantial defense to the action.

2. That it does not owe the plaintiff any sum whatsoever and is not indebted to the plaintiff whatsoever.

3. That the defendant is preparing discovery directed to the plaintiff and that after its discovery is completed, the defendant reserves the right to answer more fully and completely.

WHEREFORE, the defendant prays that the civil warrant be dismissed and that the plaintiff recover nothing of the defendant; that the defendant be awarded its just costs herein expended.

Respectfully

Citizens Home Insurance Co., Inc.,
A Virginia Corporation

By Thomas A. Mickler
Its agent and Attorney

Thomas A. Mickler
Attorney at Law
109 North Fairfax Street
Alexandria, Virginia 22314
Code 703 KIng 8-1344

Subscribed and sworn to before me this 17th day of April, 1975, at Alexandria, Virginia.

Notary Public

My Commission Expires: _____.

I certify that copy of foregoing was sent to counsel of record.
T. Mickler APR 17 1975
T. Mickler .....

KNOW ALL MEN by these presents that we, Citizen's Home Insurance Company, Inc., principal, and Fidelity and Deposit Company of Maryland, surety, are held and firmly bound unto Mattie Carolyn Taylor in the just and full sum of $4,000.00 to be paid to the said Mattie Carolyn Taylor to which payment we bind ourselves, our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation.

The condition of the above obligation is such that whereas on the 22nd day of May, 1975, in the ~~Municipal~~ General District Court of Alexandria, Virginia, a judgment was rendered in favor of Mattie Carolyn Taylor against Citizens Home Insurance Company, Inc. in the sum of $3,250.00, with interest from the 22nd day of July 1974, and $5.50 costs, and whereas, the said Citizens Home Insurance Co., Inc. has prayed an appeal from the decision of the said Court, to the ~~Corporation Court~~ Circuit Court of Alexandria, Virginia, and has tendered the said Fidelity and Deposit Company, of Maryland as surety, for the payment of such judgment as may be rendered on appeal, if perfected, and for all costs and damages which may accrue to the said Mattie Carolyn Taylor by reason of the said appeal, and if not so perfected then to satisfy the said judgment.

Now, therefore, if the aforesaid obligors, or either of them, shall pay such judgment, damages and costs as may be awarded against the said Citizens Home Insurance Co., Inc. in said ~~Corporation Court~~ Circuit Court, if therein perfected and if not so perfected then to satisfy the said judgment in the said Alexandria Municipal Court, then the above bond to be void, otherwise to remain in full force and virtue.

Given under our hands and seal this 29th day of May 1974

CITIZENS HOME INSURANCE CO., INC.

By A. H. Ware Jr. (seal)
A. H. Ware, Jr., President

ATTEST: H. A. McConaghy
H. A. McConaghy, Secretary

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By (seal)
Attorney-in-fact

GWENDOLYN JO M. CARLBERG, ATTORNEY AT LAW ALEXANDRIA, VIRGINIA

ORDER

THIS CAUSE came on to be heard on the 12th day of December, 1975, and the plaintiff appearing in person and being represented by Gwendolyn Jo M. Carlberg, and the defendant being represented by Thomas A. Mickler, and the case having been heard and decided by a jury and the jury having returned with a verdict in favor of the plaintiff herein, MATTIE C. TAYLOR, and

Counsel for the defendant, Thomas A. Mickler, having made a Motion to Set Aside the Verdict as being contrary to the evidence and said Motion having been denied on December 12, 1975, but said Motion having been reconsidered and a hearing having been held on January 6, 1976, before the Honorable Wiley R. Wright, Judge of the Circuit Court of the City of Alexandria, and Gwendolyn Jo M. Carlberg, counsel for plaintiff, and was again denied.

Thomas A. Mickler, counsel for defendant, having been present, and argument having been presented by both counsel, and

IT APPEARING TO THE COURT that a supersedeas bond should be set pursuant to §8-477 of the 1950 Code of Virginia, as amended, and

IT FURTHER APPEARING TO THE COURT that an Order should be entered in favor of the plaintiff, it is

ADJUDGED, ORDERED and DECREED that the supersedeas bond in this cause be, and the same hereby is, set at $1,500.00 with surety; and it is further

ADJUDGED, ORDERED and DECREED that judgment be, and the same hereby is entered in favor of the plaintiff herein, MATTIE C. TAYLOR, in the amount of Three Thousand Two Hundred Fifty Dollars ($3,250.00) with interest at the rate of 8% from October 15, 1974, to date of the entry of this Order pursuant to §6.1-330-10 of the 1950 Code of Virginia as amended and 10% interest from the date of entry of this Order pursuant to 16.1-113 of the

1950 Code of Virginia, as amended.

ENTERED this 14th day of January, 1976.

/s/ Wiley Wright, Jr.
Circuit Court Judge

I ASK FOR THIS:

/s/
Gwendolyn Jo M. Carlberg
Counsel for Plaintiff

SEEN:

Thos. A. Mickler
Thomas A. Mickler
Counsel for Defendant

GWENDOLYN JO M. CARLBERG ATTORNEY AT LAW ALEXANDRIA, VIRGINIA

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To the Clerk of the Circuit Court of
the City of Alexandria, Virginia:

Counsel for the defendant in the above styled cause, hereby gives Notice of Appeal and the Assignment of Errors from a final judgment entered herein on January 14, 1976.

The defendant in the above styled suit will apply to the Supreme Court of Appeals of Virginia for a writ of error and supercedeas to the aforesaid judgment, and herewith sets forth his assignment of errors as follows:

1. The trial court erred in granting Instruction Three (3). This instruction was re-written by the Court.

2. The Court erred in not granting the defendant's motion for a judgment N.O.V. as the judgment was contrary to the law and the evidence.

A transcript of the testimony and other incidents of this case will be filed hereafter.

DATED: February 11, 1976, at Alexandria, Virginia.

Respectfully,

CITIZENS HOME INSURANCE CO.

By Thos. C. Muehlen
Its Agent and Counsel

CERTIFICATE

I hereby certify that a copy of the foregoing notice of

appeal and the assignment of errors was mailed, postage prepaid, to Ms. Gwendolyn Jo Carlberg, Counsel for the plaintiff, 117 North Fairfax Street, Alexandria, Virginia 22314 on the 11th day of February, 1976.

Thos. C. Mueller

Counsel for Defendant

MAR 28 1975

GENERAL DISTRICT
~~MUNICIPAL~~ COURT

CIVIL WARRANT

Commonwealth of Virginia
City of Alexandria

Docket No. 75-1466

TO THE SHERIFF OR ANY DEPUTY SHERIFF:

You are hereby commanded to summon

CITIZENS HOME INSURANCE COMPANY, INCORPORATED
Serve: A. H. Ware, Jr., Registered Agent
2601 Floyd Avenue
Richmond, Virginia

to appear before The ~~Municipal~~ GENERAL DISTRICT Court of Alexandria, Va., Room 224, City Hall, at 11 o'clock a.m. on the 17th **day of** April **19** 75**, to answer the complaint of**
MABLE NELSON, 1009 Madison Street, Alexandria, Virginia

For non-payment of $ 2,000.00**, with interest from** July 22**,** 1974**, due by debt**

by reason of non-payment of life insurance policy No. 74190294

(If Affidavit Served Herewith, Defendants Must File Counter-Affidavit to Defend This Suit)

Given under my hand this _____ **day of** _____**, 19** ____

Gwendolyn Jo M. Carlberg
Attorney for Plaintiff
Gwendolyn Jo M. Carlberg
117 North Fairfax Street
Alexandria, Virginia 549-5551

F. F. JACKSON
Clerk, Municipal Court

By: _____
Deputy Clerk

JUDGMENT is granted the Plaintiff for the sum of $ _____ **with interest thereon from the** _____ **day of** _____ **19** ____**, and** _____ _____ _____ **costs.**

Given under my hand this _____ **day of** _____ **19** ____

Appeal noted by _____

Bond $ _____

_____
Judge

_____
Judge

WRIT OF FIERI FACIAS

Commonwealth of Virginia
City of Alexandria, to-wit:
To the Sheriff of the City aforesaid - Greeting:

You are hereby commanded, that of the goods and chattels of above named DEFENDANT you cause to be made the money in the amount of the judgment entered this day for the above named PLAINTIFF against said DEFENDANT; and have said sum and costs before this Court within 60 days and have then and there this writ.

Entered:

_____
Judge

UD71

In the GENERAL DISTRICT Court of ALEXANDRIA, Virginia

MABLE NELSON — Plaintiff

— vs. —

CITIZENS HOME INSURANCE COMPANY, INCORPORATED — Defendant(s)

CIVIL No. .....

AFFIDAVIT

State of Virginia
~~County of~~ City of Alexandria, to wit:

This day there personally appeared before me, the undersigned Notary Public, in and for the State and County aforesaid, Gwendolyn Jo M. Carlberg

who, after being duly sworn according to law, states as follows:

1. That, CITIZENS HOME INSURANCE COMPANY, INCORPORATED

the defendant(s) in the above styled case ~~is~~/are justly indebted unto your plaintiff in the amount of $2,000.00, with interest from July 22, 1974, representing the balance due on life insurance policy No. 74190294

; and

2. That the whole of said amount is now due and owing, and that your plaintiff has a just right to recover the same from the defendant(s) exclusive of all setoffs and just grounds of defense besides costs incident to this proceeding; and

3. That the defendant(s) ~~is~~/are not ~~a~~ member(s) of the armed forces of the United States of America.

Gwendolyn Jo M. Carlberg
Affiant Gwendolyn Jo M. Carlberg
Attorney and Agent for Plaintiff

Subscribed and sworn before me this: March 17, 1975

My commission expires: 12-20-77

Diana Jarvis
Notary Public

GROUNDS OF DEFENSE

Comes now the defendant, Citizens Home Insurance Co., Inc., a Virginia Corporation, by its agent and attorney, Thomas A. Mickler, and for its answer and grounds of defense to the civil warrant outstanding against it and says:

1. That it has a substantial defense to the action.

2. That it does not owe the plaintiff any sum whatsoever and is not indebted to the plaintiff whatsoever.

3. That the defendant is preparing discovery directed to the plaintiff and that after its discovery is completed, the defendant reserves the right to answer more fully and completely.

WHEREFORE, ~~the~~ defendant prays that the civil warrant be dismissed and that the plaintiff recover nothing of the defendants; that the defendant be awarded its just costs herein expended.

Respectfully,

Thomas A. Mickler
Attorney at Law
109 North Fairfax Street
Alexandria, Virginia 22314
Code 703 - KIng 8-1544

Citizens Home Insurance Co., Inc.
A Virginia Corporation

By Thos. A. Mickler
Its agent and attorney

Subscribed and sworn to before me this 17th day of April 1975, at Alexandria, Virginia.

Notary Public

My Commission Expires: _____.

I certify that copy of foregoing was sent to counsel of record.

T. Mickler APR 17 1975

KNOW ALL MEN by these presents that we, Citizens Home Insurance Company, Inc., principal, and Fidelity and Deposit Company of Maryland, surety, are held and firmly bound unto Mable Nelson in the just and full sum of $1,500.00 to be paid to the said Mable Nelson to which payment we bind ourselves, our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation.

The condition of the above obligation is such that whereas on the 22nd day of May, 1975, in the ~~Municipal~~ General District Court of Alexandria, Virginia, a judgment was rendered in favor of Mable Nelson against Citizens Home Insurance Company, Inc. in the sum of $1,000.00, with interest from the 22nd day of July 1974, and $5.50 costs, and whereas, the said Citizen's Home ~~Life~~ Insurance Co. Inc has prayed an appeal from the decision of the said Court, to the ~~Corporation Court~~ Circuit Court of Alexandria, Virginia, and has tendered the said Fidelity and Deposit Company of Maryland as surety, for the payment of such judgment as may be rendered on appeal, if perfected, and for all costs and damages which may accrue to the said Mable Nelson by reason of the said appeal, and if not so perfected then to satisfy the said judgment.

Now, therefore, if the aforesaid obligors, or either of them, shall pay such judgment, damages and costs as may be awarded against the said Citizen's Home Insurance Co., Inc. in said ~~Corporation Court~~ Circuit Court, if therein perfected and if not so perfected then to satisfy the said judgment in the said Alexandria Municipal Court, then the above bond to be void, otherwise to remain in full force and virtue.

Given under our hands and seal this 29th day of May 1975

ATTEST:

H. A. McConaghy, Secretary.

CITIZENS HOME LIFE INSURANCE COMPANY

By (seal)

A. H. Ware, Jr., President

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By (seal)

Attorney-in-fact

GWENDOLYN JO M. CARLBERG, ATTORNEY AT LAW ALEXANDRIA, VIRGINIA

ORDER

THIS CAUSE came on to be heard on the 12th day of December, 1975, and the plaintiff appearing in person and being represented by Gwendolyn Jo M. Carlberg, and the defendant being represented by Thomas A. Mickler, and the case having been heard and decided by a jury and the jury having returned with a verdict in favor of the plaintiff herein, MABEL NELSON, and

Counsel for the defendant, Thomas A. Mickler, having made a Motion to Set Aside the Verdict as being contrary to the evidence and said Motion having been denied on December 12, 1975, but said Motion having been reconsidered and a hearing having been held on January 6, 1976, before the Honorable Wiley R. Wright, Judge of the Circuit Court of the City of Alexandria, and Gwendolyn Jo M. Carlberg, counsel for the plaintiff, and Thomas A. Mickler, counsel for the defendant, having been present, and was again denied.

IT APPEARING TO THE COURT that a supersedeas bond should be set pursuant to §8-477 of the 1950 Code of Virginia, as amended, and

IT FURTHER APPEARING TO THE COURT that an Order should be entered in favor of the plaintiff, it is

ADJUDGED, ORDERED and DECREED that the supersedeas bond in this cause be, and the same hereby is, set at $500.00 with surety; and it is further

ADJUDGED, ORDERED and DECREED that judgment be, and the same hereby is entered in favor of the plaintiff herein, MABEL NELSON, in the amount of One Thousand Dollars ($1,000.00) with interest at the rate of 8% from October 15, 1974, to date of the entry of this Order pursuant to §6.1-330.10 of the 1950 Code of Virginia, as amended, and 10% interest from the date of entry of this Order pursuant to 16.1-113 of the 1950 Code of Virginia as amended.

GWENDOLYN JO M. CARLBERG, ATTORNEY AT LAW ALEXANDRIA, VIRGINIA

ORDER

THIS CAUSE came on to be heard on the 12th day of December, 1975, and the plaintiff appearing in person and being represented by Gwendolyn Jo M. Carlberg, and the defendant being represented by Thomas A. Mickler, and the case having been heard and decided by a jury and the jury having returned with a verdict in favor of the plaintiff herein, MABEL NELSON, and

Counsel for the defendant, Thomas A. Mickler, having made a Motion to Set Aside the Verdict as being contrary to the evidence and said Motion having been denied on December 12, 1975, but said Motion having been reconsidered and a hearing having been held on January 6, 1976, before the Honorable Wiley R. Wright, Judge of the Circuit Court of the City of Alexandria, and Gwendolyn Jo M. Carlberg, counsel for the plaintiff, and Thomas A. Mickler, counsel for the defendant, having been present, and was again denied.

IT APPEARING TO THE COURT that a supersedeas bond should be set pursuant to §8-477 of the 1950 Code of Virginia, as amended, and

IT FURTHER APPEARING TO THE COURT that an Order should be entered in favor of the plaintiff, it is

ADJUDGED, ORDERED and DECREED that the supersedeas bond in this cause be, and the same hereby is, set at $500.00 with surety; and it is further

ADJUDGED, ORDERED and DECREED that judgment be, and the same hereby is entered in favor of the plaintiff herein, MABEL NELSON, in the amount of One Thousand Dollars ($1,000.00) with interest at the rate of 8% from October 15, 1974, to date of the entry of this Order pursuant to §6.1-330.10 of the 1950 Code of Virginia, as amended, and 10% interest from the date of entry of this Order pursuant to 16.1-113 of the 1950 Code of Virginia as amended.

ENTERED this _____ day of _____, 19___.

_____
Circuit Court Judge

I ASK FOR THIS:

_____
Gwendolyn Jo M. Carlberg
Counsel for Plaintiff

SEEN:

Thos. A. Mickler
_____
Thomas A. Mickler
Counsel for Defendant

GWENDOLYN JO M. CARLBERG, ATTORNEY AT LAW ALEXANDRIA, VIRGINIA

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To the Clerk of the Circuit Court of
the City of Alexandria, Virginia:

Counsel for the defendant in the above styled cause, hereby gives Notice of Appeal and the Assignment of Errors from a final judgment entered herein on January 14, 1976.

The defendant in the above styled suit will apply to the Supreme Court of Appeals of Virginia for a writ of error and supercedeas to the aforesaid judgment, and herewith sets forth his assignment of errors as follows:

1. The Trial Court erred in granting Instruction Three (3). This instruction was re-written by the Court.

2. The Court erred in not granting the defendant's motion for a judgment N.O.V. as the judgment was contrary to the law and the evidence.

A transcript of the testimony and other incidents of this case will be filed hereafter.

DATED: February 11, 1976, at Alexandria, Virginia.

Respectfully,

CITIZENS HOME INSURANCE CO.

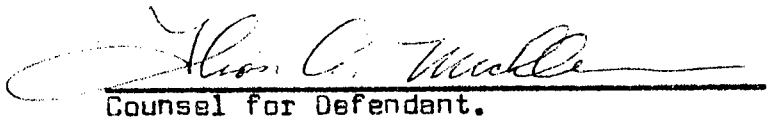
By Thos. C. Wickline
Its Agent and Counsel

CERTIFICATE

I hereby certify that a copy of the foregoing notice of

(continued) Mabel Nelson vs. Citizens Home Insurance Co.

appeal and the assignment of errors was mailed, postage prepaid, to Ms. Gwendolyn Jo Carlberg, Counsel for the plaintiff, 117 North Fairfax Street, Alexandria, Virginia 22314, on the 11th day of February, 1976.



Counsel for Defendant.

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

CITIZENS HOME INSURANCE CO., INC.

Appellant

v.

MABEL NELSON AND MATTIE TAYLOR

Appellees

BRIEF IN OPPOSITION

TO

PETITION FOR APPEAL

Received 7-15-76

Gwendolyn Jo M. Carlberg
Counsel for Appellees
117 North Fairfax Street
Alexandria, Virginia 22314

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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

CITIZENS HOME INSURANCE CO., INC.

Appellant

v.

MABEL NELSON and
MATTIE TAYLOR

Appellees

BRIEF IN OPPOSITION TO PETITION FOR APPEAL

TO THE HONORABLE JUSTICES OF THE SAID COURT:

Mabel Nelson and Mattie Taylor, Appellees, file this Brief in Opposition to the Petition for Appeal of Citizens Home Insurance Co., Inc. from the final order entered by the Circuit Court of the City of Alexandria, Virginia on the 14th day of January, 1976.

Appellees pray that Appellant's Petition be dismissed and the order of the Circuit Court in favor of the Appellees be sustained.

MATERIAL PROCEEDINGS BELOW

The plaintiff's, Mattie Taylor and Mabel Nelson, each filed separate civil warrants against the defendant, Citizens Home Insurance Company, Inc. in the General District Court for the City of Alexandria, Virginia.

After a trial on the issues (during which time defendant called the same witnesses who subsequently testified in the Circuit Court of the City of Alexandria, Virginia), the Judge found for the plaintiffs in both cases.

The defendant filed its appeal to the Circuit Court of the City of Alexandria, Virginia.

At the trial in the Circuit Court for the City of Alexandria, Virginia, the plaintiffs' requested a trial by jury. The cases were consolidated as the issues were the same in both.

The defendant called the same witnesses to testify who had testified in the lower Court.

At a recess, the Judge and counsel for plaitniffs and defendant discussed the jury instructions. It was agreed by counsel for both plaintiff and defendant that the sole issue in the case was whether or not the death of the decedent resulted from any violence intentionally inflicted by another person. Instruction No. 3 was drafted by counsel for the plaintiff and defendant.

It is as follows:

> The Court instructs the jury that the sole issue in this case is whether or not the death of the decedent resulted from any violence intentionally inflicted by another person, and

> unless you find by clear and satisfactory evidence that such was the case, you shall return your verdict in favor of the plaintiff.

Defendant objected only to the part of the instruction as to the burden of proof. He stated that it was a "preponderance of the evidence" and not by "clear and satisfactory evidence". (T. 3, 4, 5, 7, 8).

The Court permitted argument from both plaintiffs and defendant as to the burden of proof and ruled that the burden would be "clear and satisfactory evidence".

The jury, after being instructed, retired. After due consideration, the jury returned and found for the plaintiffs.

The defendant made a motion to set aside the verdict as contrary to the evidence but said motion was denied. Defendant did not make a motion regarding an objection to Jury Instruction No. 3.

Later, the Court permitted further argument as to defendant's motion to set aside the verdict, but the motion was again denied.

Judgment was entered in favor of the plaintiffs in both cases on January 14, 1976.

Defendant appealed these judgments.

STATEMENT OF FACTS

George Huff purchased two life insurance policies from Citizens Home Insurance Company, Inc.

One of the policies had, as the named beneficiary, his daughter, Mabel Nelson. This policy was in the sum of One Thousand Dollars with the additional provision that an additional One Thousand Dollars would be paid if the death of the insured, George Huff, was by accidental means.

The Exclusions and Limitations Section of this policy stated in part that "The loss of life by accident and loss of sight or limb benefits referred to above shall not be payable if the loss of life by accident or loss of sight or limb is caused or contributed to, directly or indirectly, wholly or partially by: . . . (2) violence, intentionally inflicted by another person". (Exhibit No. 2, T. 6, 7).

Citizens paid the One Thousand Dollars life insurance, but refused to pay the One Thousand Dollars under the accidental death provision.

The second life insurance policy had as the named beneficiary the insured's daughter, Mattie Taylor. This was an accident death policy in the amount of Three Thousand Two Hundred Fifty Dollars. This policy had an Exclusions and Limitations Section that stated in part: "This policy does not cover any loss of life or limb or eye sight which results, directly or indirectly, from any violence intentionally inflicted". (Exhibit No. 1, T. 6, 7).

On July 27, 1974, George Huff, the insured, received a gunshot

wound in the head and died as a result thereof. (See autopsy report, Exhibits 3 and 4, T. 10).

Plaintiff beneficiaries requested payment claiming the death was accidental, but Citizens Home Insurance Company refused to pay and gave as its reason therefor, the aforementioned exclusionary clauses.

The evidence at the trial showed that on July 22, 1974, between 2:00 and 2:30 A. M., George Huff received a gunshot wound in the head while in the parking lot of a carry-out food shop located in the city limits of Alexandria, Virginia. (T. 15, 16, 21).

Although there were many people there, no one could testify as to the identity of the man who was near Mr. Huff, that the gunshot wounds from which he died came from the gun in the hands of the other man or that the other man knew George Huff. No one could show that the man intentionally meant to shoot George Huff. In fact, under questioning, one of the witnesses could not say whether or not Mr. Huff was being robbed and was shot accidentally, or whether the shots came from another person elsewhere. There is no showing of intent. There has been no arrest of any persons charged with shooting Mr. Huff.

ARGUMENT

It is clear from the transcript that the defendant agreed to Instruction No. 3 except for the burden of proof of "clear and satisfactory evidence". However, the law in Virginia as stated in the case of Life and Casualty Co. of Tennessee v. Daniel, 209 Va. 332, 163 S.E.2d 557, 580, is that:

> Where circumstantial evidence is relied upon to establish suicide as a defense to an action on a life insurance policy, the law presumes that death results from a natural cause and the burden is upon the insurer to establish suicide by clear and satisfactory evidence to the exclusion of any reasonable hypothesis consistent with death from natural or accidental causes.

In that case, as here, there was nothing to show that the decedent had committed suicide, just as there is no evidence to show that there was an intentional act of violence perpetrated against the decedent.

In the Life and Casualty Co. case, supra, the Court went on to say that:

> The Courts and commentators are in agreement that when death by external and violent means is proven, a presumption arises in favor of the beneficiary that the death was accidental and the jury is required to find for the beneficiary unless there is evidence sufficient to justify a conclusion of suicide.

Here, this same presumption arises in favor of the beneficiaries that the death was accidental and the jury was correct in finding for plaintiffs. There is not one scintilla of evidence sufficient to justify the conclusion of intent on the part of anyone to kill George Huff.

The Court took judicial notice that death was by the external and violent means as shown by the autopsy report.

At the close of the case, defendant made a motion to strike on the basis that the verdict was contrary to the evidence. However, it is important to note that defendant did not, in its motion to strike, raise any objection to Instruction No. 3. It failed to make this its basis for a motion to strike.

In the case of Standard Dredging Co. v. Barnalla, 163 S.E. 367 (1932), the Court stated that the instruction was given without objection and became the law of the case. Here the law of the case is that:

> The sole issue is whether or not the death of the decedent resulted from any violence intentionally inflicted by another person.

The jury found that death was not violence intentionally inflicted by rendering a verdict in favor of the plaintiffs.

It has been the decision of this Court in Forbes & Co. v. Southern Cotton Oil Co., 130 Va. 245, 108 S.E. 15 that

> If there is conflict of testimony on a material point, or if reasonably fair-minded men may differ as to the conclusions of fact to be drawn from the evidence, or if the conclusion is dependent upon the weight to be given the testimony, in all such cases the verdict of the jury is final and conclusive, and cannot be disturbed either by the trial court or by the Supreme Court of Appeals, . . .

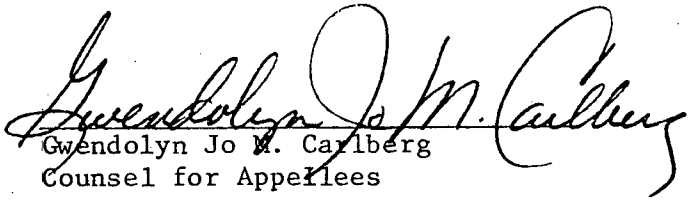
In this case, defendant has not shown any reason to overturn the decision made by fair-minded men and women of a jury.

PRAYER

The verdict of the jury is supported by the evidence that there was not violence intentionally inflicted toward George Huff.

Wherefore, Appellees pray that the Appellant's Petition for Appeal be dismissed.

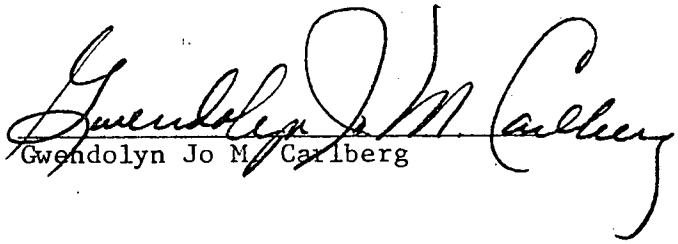
MABEL NELSON
MATTIE TAYLOR
By Counsel



Gwendolyn Jo M. Carlberg
Counsel for Appellees

CERTIFICATE

I certify that this 15th day of July, 1976, I have hand-carried a copy of this Brief in Opposition to Thomas A. Mickler, Esquire, 109 North Fairfax Street, Alexandria, Virginia 22314, Counsel for Appellant.



Gwendolyn Jo M. Carlberg

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1 the Plaintiff's case.

2 TESTIMONY OF OFFICER R. A. PRICE

3 DIRECT EXAMINATION

4 BY MR. MICKLER:

5 Q. Sir, will you please state your name and address?

6 A. Officer R. A. Price, Alexandria Police, 400 North

7 Pitt.

8 Q. Alexandria, Virginia?

9 A. Yes, sir.

10 Q. Okay, Officer, now how long have you been on the

11 Police Department before today?

12 A. Approximately 16 1/2 years.

13 Q. Were you on duty the night of July 22, 1974?

14 A. I was.

15 Q. Now, on that night, did anything around midnight

16 unusual happen?

17 A. Yes.

18 Q. What happened?

19 A. There was a report of a shooting.

20 Q. And where were you?

21 A. I was on special detail, 1219 First Street.

22 Q. Did you respond to the report of the shooting?

23 A. Yes.

1 Q. And where was the shooting?

2 A. 501 North Henry Street.

3 Q. Is that in the City of Alexandria?

4 A. Yes.

5 Q. Is there a business establishment nearby there that

6 one could pin it down a little better for the Jury?

7 A. Phil's Carry-out.

8 Q. Now, when you got there, did you see anybody injured

9 or on the ground or anybody injured, period?

10 A. Yes.

11 Q. Who was it?

12 A. George Edward Huff, Senior.

13 Q. Do you know the man?

14 A. Yes, sir.

15 Q. And where was he shot or what was the matter with

16 him. Let me put it that way.

17 A. What appeared to be a gunshot wound over the forehead.

18 Q. Was any blood on him?

19 A. Yes.

20 Q. Where was the blood?

21 A. To the right side of the face down over the eye.

22 Q. Did any of it get over his clothing or any part of

23 him that you noticed?

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1 A. I cannot remember.

2 Q. What else did you see that night or know about that

3 night?

4 A. I heard --

5 MS. CARLBERG: I object to anything the officer heard.

6 THE COURT: Sustained.

7 BY MR. MICKLER:

8 Q. Did you take part in any further part of that

9 investigation of that case?

10 A. I stopped two people that were leaving the lot in

11 an automobile along with Officer Beale to check them out --

12 to obtain any information from them if they were involved

13 or if they knew who may have did the shooting.

14 Q. I see. What type of business is that Phil's Carry

15 Out Shop?

16 A. It's a sandwhich carry-out food business.

17 Q. How late at night does it stay open?

18 A. Most of the time 24 hours.

19 Q. Were there other people mingling around when you

20 got there?

21 A. When I arrived, one woman in the kitchen and a man

22 and woman was leaving the lot in an automobile. That's the

23 only people that I observed.

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1 Q. I see. Did you see a Randy Shepard there or did
2 you notice a Randy Shepard?
3 A. I did not notice.
4 Q. And was anybody over near the body of Mr. Huff when
5 you got there?
6 A. I don't remember if anybody was there when I arrived.
7 I don't believe so, but shortly after, there was a crowd.
8 Q. Okay. And what happened to the body after that?
9 A. I don't know.
10 Q. I see. What other Officer was on the scene with
11 you?
12 A. Officer Beale.
13 Q. Is he here today?
14 A. Yes, he is here. There were several other officers
15 who responded. I don't know who all they were.
16 Q. Did they find a gun on the scene or did you find a
17 gun or see a gun?
18 A. I did not.
19 Q. Where was Mr. Huff's body in relation to the carry-
20 out shop?
21 A. It was in front of the carry-out, near the driveway
22 that goes into the carwash. That's on the west side of the
23 carry-out lot.

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Q. Were there any cars near him?

A. There was one.

Q. Or was he near a car?

A. There was one, possibly two vehicles there.

Q. Was anyone in the vehicles beside Mr. Huff when you observed him?

A. I don't know, no.

THE COURT: What was that last question. Was anybody in the automobile beside Mr. Huff?

BY MR. MICKLER:

Q. Maybe I misphrased it wrong. Was anybody near Mr. Huff while he was laying on the ground?

A. Not to my recollection. I don't remember anyone being there.

Q. Did you see anyone in the vehicles?

A. No. I don't remember anyone in the vehicles.

Q. Now, who was the woman in the carry-out shop? I believe you said there was a woman in the carry-out shop.

A. Fada Hylton, to the best of my memory.

Q. What does she look like?

A. White female, heavy, dark hair, medium complexion.

Q. What was her job there if you know?

A. At that time, she was an employee. I think she was

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1 manager or something.

2 Q. I see.

3 MR. MICKLER: I believe that's all of the witness.

4 THE COURT: You may cross examine.

5 CROSS EXAMINATION

6 BY MS. CARLBERG:

7 Q. Officer Beale, how --

8 A. Officer Price.

9 Q. Officer Price, how many shots were fired that night?

10 A. I don't have any idea.

11 Q. And you stated that you knew George Huff?

12 A. Yes.

13 Q. How long had you known him?

14 A. Approximately 10 to 12 years.

15 Q. Now, did you question anybody at the scene of the

16 incident?

17 A. Two people.

18 Q. What were their names?

19 A. A subject by the name of Ferguson and, well, a black

20 male by the name of Ferguson. I believe it was Richard

21 Ferguson, and a black female by the name of Barbara Rikout.

22 They were the two people leaving the lot in the vehicle.

23 Q. Okay. Now, did either of these people see the

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1 incident? Did they report to you they had seen it?

2 A. They stated they did not.

3 Q. Did they state that they saw other people or did

4 they identify anyone else?

5 MR. MICKLER: This would be hearsay.

6 THE COURT: Objection sustained.

7 BY MS. CARLBERG:

8 Q. Now, you have indicated -- is that Oronoco Street

9 that intersects Henry Street there?

10 A. Yes, it is.

11 Q. Now, we have got Phil's carry-out on the corner of

12 Oronoco and Henry Street -- to the south of Henry Street

13 right on that southern corner?

14 A. No. Phil's carry-out is 501 North Henry and it's

15 on the Northwest corner.

16 Q. Northwest?

17 A. Yes.

18 Q. All right. Towards the Masonic Temple as opposed

19 towards us in the City Hall today?

20 A. Yes.

21 Q. Now, on Oronoco, there is Phil's carry-out and then

22 is there a driveway or parking lot between Phil's carry-out

23 and the parking lot?

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A. Yes.

Q. And your testimony was that his car was located in the parking lot between Phil's carry-out and the carwash?

A. Yes.

Q. Okay. Now, how far was Mr. Huff from his car?

A. It would be an estimate, and I would say to the best of my memory, be 10 to 15 feet.

Q. Did he have anything in his hands?

A. I don't remember.

Q. Now, to your knowledge, has anyone in the police department found the weapon that might have been the weapon that caused this?

A. Not to my knowledge.

Q. To your knowledge, has anyone in the police department served a warrant or on a person who has been accused of causing the death of Mr. Huff?

A. Not to my knowledge.

Q. Now, is the police department, at the present time, conducting an investigation in this matter?

A. I can't answer that. I am not one -- I am a tactical officer and we do the initial investigation, whoever is on the scene first. Then it is turned over to the Investigation Bureau and I have no idea what they have done. I know that

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1 the case is assigned and the disposition or the point of
2 the investigation, I do not know.
3 Q. All right. Do you ever keep up with cases once
4 somebody -- I mean, do you feel that you would have knowledge
5 if someone had been arrested or served a warrant in this
6 instance?
7 A. I could have, but it's possible that I wouldn't
8 have known.
9 Q. Do you ever work with Detective LeVesque?
10 A. Yes.
11 Q. Do you know whether or not he is assigned to this
12 case?
13 A. Yes, he is.
14 Q. Have you discussed this case with him recently?
15 A. No.
16 Q. Okay. Now, what is the lighting like there at
17 Phil's carry-out, right there where you indicated that Mr.
18 Huff's body was found?
19 A. I would say it's good. The lighting is good.
20 Q. Are there street lights all around it?
21 A. There are street lights on Oronoco and Henry. I
22 would say there are at least three street lights within half
23 a block.

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1 Q. Okay. When you questioned the other witnesses, did
2 you ever find out the number of gunshots that might have
3 taken place?
4 A. I did not find out the number, no.
5 Q. Did the two people that you talked with, did they
6 indicate that they had heard gunshots?
7 A. No.
8 Q. Had they talked with Mr. Huff that evening?
9 A. I don't know if they had or not. I didn't ask that
10 question.
11 Q. Do you know whether or not they knew Mr. Huff?
12 A. They did. They indicated they did.
13 Q. They did know Mr. Huff?
14 A. Yes.
15 Q. To your knowledge then, the people that you knew
16 that were there were Richard Ferguson, Barbara Rickout,
17 and Fada Hylton? Did you talk with her?
18 A. I did not.
19 Q. Do you know who did?
20 A. No, I don't.
21 Q. Do you know whether there was a George Thompson
22 there?
23 A. I don't know.

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1 Q. John Thomas?

2 A. I don't remember seeing either one of them.

3 Q. Do you know those persons?

4 A. I know John Thomas.

5 Q. Who is he?

6 A. The owner of Phil's carry-out.

7 Q. Did you see him there that night?

8 A. I don't remember seeing him that night.

9 Q. Do you know Robert Lee Sylvester?

10 A. Yes.

11 Q. Was he there that night?

12 Q. I didn't see him. I don't remember seeing him.

13 Like I said before, after I was there a couple of minutes,

14 there was a crowd and there could have been several people.

15 MS. CARLBERG: No further questions, Officer Price.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. MICKLER:

19 Q. Officer Price, you say the lighting there on the lot

20 was good?

21 A. Yes.

22 Q. Does the light shine out of the carry-out shop onto

23 the premises?

A. Yes.

Q. Is there anything obstructing anyone's view between the carry-out and where you found the body of George Huff?

A. There is no permanent fixture or building that would block the view.

Q. I see. Is the lot itself lighted?

A. Yes.

Q. The lot itself is lighted?

A. Yes.

MR. MICKLER: I believe that's all.

THE COURT: Thank you, officer.

MS. CARLBERG: I have a couple more questions, Your Honor.

RECROSS EXAMINATION

BY MS. CARLBERG:

Q. Would you please tell me, did you find George Huff's body on the sidewalk or in the parking lot area off the sidewalk?

A. Parking lot area.

Q. And if I were standing in Phil's carry-out looking out the door, could I see his body?

A. I would say that it would be in view of the front window or the carry-out window. I can't say how good your

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1 vision, my vision, or anybody elses vision is, but it's in front
2 of the carry-out and it is possible that his body could have
3 been seen.
4 Q. Now, let me ask you this. If there was a car parked
5 there on that side next to the building, could you have seen
6 his body?
7 A. I can't answer that.
8 Q. Was there a car parked there that night?
9 A. Not to my knowledge.
10 Q. Do you know where the car that Barbara Rickout and
11 Mr. Ferguson were in at the time that Mr. Huff fell to the
12 ground? Do you know where their car was?
13 A. I do not.
14 Q. Is it your testimony that they were driving out of
15 the carry-out?
16 A. Yes.
17 Q. Were they between Mr. Huff's body and the carwash or
18 Mr. Huff's body and Phil's carry-out?
19 A. They were on the north side of 501 North Henry
20 entering -- they were exiting Phil's carry-out lot onto
21 Henry Street on the north side going south on Henry.
22 The vehicle was stopped by me on Oronoco and Henry.
23 The car was still in the block of North Henry headed south at

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1 the traffic light.

2 Q. Did you or anyone of your department, to your

3 knowledge, impound an automobile of Mr. Huff's that evening?

4 A. I'm not sure.

5 MS. CARLBERG: No further questions.

6 MR. ADAMS: (A Juror) Your Honor, may I ask a

7 question? Was Mr. Huff in possession of his wallet?

8 MR. MICKLER: I didn't hear that.

9 THE COURT: Was Mr. Huff in possession of his wallet?

10 THE WITNESS: I can't answer that. I don't know.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. MICKLER:

13 Q. One last question from me anyhow. What time of night

14 or day did this happen?

15 A. It was sometime after midnight. I would estimate

16 somewhere around 2:00 to 2:15 a.m.

17 MR. MICKLER: Thank you.

18 THE COURT: Any further questions?

19 MS. CARLBERG: No, Your Honor.

20 THE COURT: Thank you, officer. You are excused and

21 free to go.

22

23

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1 TESTIMONY OF FADA HYLTON

2 DIRECT EXAMINATION

3 BY MR. MICKLER:

4 Q. Ma'am, will you please tell us your name?

5 A. Fada Hylton.

6 Q. Where do you work, Fada?

7 A. Phil's carry-out.

8 Q. Did you work there on July 22, 1974?

9 A. Yes.

10 Q. What time did you go on your shift on July 22, '74?

11 A. Ten o'clock.

12 Q. What time did you get off?

13 A. About 6:00 the next morning.

14 Q. I see. So, you -- did you go to work on July 22 or

15 was it July 21?

16 A. Well, it's a mixture of both.

17 Q. And you were on duty then on the night of July 22,

18 1974. Is that correct?

19 A. Right.

20 Q. What did you do for Phil's carry-out?

21 A. I was the night manager.

22 Q. I see. And describe what Phil's carry-out shop looks

23 like?

A. It's a two room carry-out shop. We make sandwiches. It's a grill.

Q. Does it have windows around it?

A. The whole front has windows in it.

Q. I see. And can you see out through the back and the sides if you look?

A. No. Just out into the parking lot.

Q. Just into the parking lot, okay. Now, directing your attention to about 2:00 - 2:30 that night, did anything unusual happen?

A. That't the night George Huff got shot.

Q. Do you know George Huff?

A. Yes, I do.

Q. How do you know George?

A. He was a regular customer.

Q. Did you see him the night of July 22?

A. Yes.

Q. What -- how did you happen to see him?

A. He came to the window for a cup of coffee.

Q. Did you see anything or hear anything after that concerning George Huff?

A. Well, we were busy. He came to the window. I waited on him and he went on out to the parking lot. I assume he was

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1 going to his car and we waited on the rest of the customers
2 and we heard what I thought was fire crackers going off and
3 I said to the guy working with me, somebody is putting fire
4 crackers off. He said no, they're not. Two guys are shooting
5 at each other and I looked out. George and one other guy was
6 there.
7 Q. Was anybody between them?
8 A. No.
9 Q. Was anybody standing around them like I am here?
10 A. No.
11 Q. They were standing by themselves?
12 A. Right.
13 Q. What did you see?
14 A. One guy had his back to me and George was facing me
15 and this was looking from the window and the guy that had his
16 back to me had a gun pointed at George and he was shooting it.
17 Q. He was continually shooting while you saw it?
18 A. Well, I seen it. He had a gun and was shooting. I
19 turned around and went to the back and called the police.
20 Q. Is that all you know about the incident?
21 A. Yes.
22 Q. How many shots do you think you heard from beginning
23 to end?

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A. There was three before I called the police and then there is some more, but I don't know how many.

Q. Did you go out and look at George?

A. No.

Q. You stayed right in the carry-out shop?

A. Yes.

Q. You called the police and that was all you had to do with it?

A. I called the owner and he came down.

MR. MICKLER: I see. All right. I believe that's all. You may inquire.

CROSS EXAMINATION

BY MS. CARLBERG:

Q. Did you hear anything other than shots?

A. No.

Q. Did you see a gun?

A. Yes.

Q. In whose hand?

A. It was in the other guys hand. I don't know who he was.

Q. In what hand?

A. In his left hand, I believe.

Q. In his left hand?

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A. Um huh.

Q. Was this man Caucasian or Negro?

A. He was Negro.

Q. And how tall was he?

A. I would say he was 6 foot.

Q. And what did he have on?

A. I don't know. I didn't pay that much attention.

Q. Did you know him?

A. No.

Q. Had you ever seen him before?

A. No.

Q. Did he come to the window with Mr. Huff?

A. No. Mr. Huff was by himself or he appeared to be by himself when he came to the window.

Q. So, you don't have any knowledge as to why --

A. No.

Q. There was a shooting?

A. No.

Q. You don't have any knowledge as to whether it was an accidental shooting or not, do you?

A. Well, no, but --

Q. To your knowledge?

A. No, but he was shooting at him and they were the only

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1 two there.

2 Q. They were the only two there?

3 A. Right.

4 Q. Do you know whether or not Mr. Huff had a wallet on

5 him?

6 A. No, I don't.

7 Q. To your knowledge, has anyone been accused or served

8 a warrant concerning this shooting of Mr. Huff?

9 A. Not that I know of.

10 Q. Did you make a report to the police and give the

11 police the testimony that you have given here?

12 A. Just what questions they asked me the night he was

13 shot.

14 Q. Okay. At the time you talked with the police, did

15 you also tell them how many shots you had heard?

16 A. Yes.

17 Q. Okay. Did you see Mr. Huff's wounds?

18 A. No.

19 Q. So, you don't know whether or not those shots that

20 came from the gun you saw in that unknown male's hand actually

21 hit Mr. Huff? From what you saw?

22 A. I didn't see Mr. Huff, no, because when the boss

23 came, he went outside and told me to stay inside.

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1 Q. All right. So you don't know where any of the shots
2 went?
3 A. No.
4 Q. He could have missed entirely as far as your knowledge
5 goes?
6 A. As far as I know, he could have.
7 Q. Okay. Did you say that you knew George Huff?
8 A. Yes.
9 Q. How long have you known him?
10 A. I would say approximately two years -- ever since
11 I was working for Mr. Thomas.
12 Q. Now, Mrs. Hylton, where are the windows in Phil's
13 carry-out?
14 A. Right in front.
15 Q. Now, where is the front of the building? Is it on
16 the street facing the parking lot?
17 A. No. It faces the parking lot.
18 Q. So, the Members of the Jury have an idea, you have
19 a building that's on the corner of Oronoco and Henry and then
20 you have a parking lot that runs on the side. In other words,
21 two sides of Phil's carry-out -- one side on Oronoco Street
22 and one side on Henry Street and the other two sides have
23 a parking lot on it?

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A. Well, the back of the building is on Henry Street. The parking lot would really be on Oronoco Street and the front of the building facing the parking lot.

Q. And the front of the building -- is the front of the building facing the carwash or is the front of the building facing the other part of the parking lot?

A. Facing the carwash.

Q. It's facing the carwash?

A. Um huh.

Q. And is it your testimony there are windows there?

A. Yes.

Q. How large are these windows?

A. Well, from the ceiling about half way down, all the way across.

Q. Now, let me ask you, how well is that area lighted?

A. At that time, we had the lights that we have now and there were two flood lights on a pole beside the telephone which is right at the corner of the parking lot.

Q. All right. And would you describe it as being fair, good, or excellent as far as the lighting goes?

A. I would say good.

Q. At the time you heard three shots, were you standing there looking at the direction of George Huff?

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1 A. No. I was working at the register. I was running
2 the register and I heard the three shots and I looked up,
3 well, I didn't pay attention to them at first. I thought it
4 was some of the kids putting off fire crackers or something
5 and I mentioned it to the guy working there and he said no,
6 it's not. It's two guys out there shooting.
7 I looked out and they had guns.
8 Q. Now, at the time you saw the man, was there anyone
9 else with George? Was there anyone else there?
10 A. Just George and the man.
11 Q. And was the man pointing the gun at George?
12 A. Yes.
13 Q. And at the time you saw him pointing the gun at him,
14 was this before or after you heard the shots?
15 A. After.
16 Q. All right. And was it before or after you heard
17 other shots?
18 A. It was before.
19 Q. Okay. Let me ask you, was there anyone else
20 wounded that night?
21 A. Not that I know of.
22 Q. But there could have been?
23 A. There could have been, but I didn't know.

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1 Q. All right. Is it your testimony that the man who
2 you saw with the gun in the hand was unknown to you?
3 A. I didn't recognize him. He may have come up to the
4 window. As far as his name or describing him, I can't do it.
5 Q. So, you don't know whether or not he was a friend
6 of George or not?
7 A. No, I don't.
8 Q. And you don't know whether he was robbing George
9 or what?
10 A. No, I don't.
11 MS. CARLBERG: No further questions.
12 REDIRECT EXAMINATION
13 BY MR. MICKLER:
14 Q. Now, as I understand your testimony, you heard a
15 couple of shots -- two or three?
16 A. Right.
17 Q. You thought it was fire crackers and you discussed
18 it with somebody in the carry-out shop?
19 A. The guy working there.
20 Q. Then, he said, no, they are shooting and you went
21 over to the window and looked out?
22 A. No. We were at the window, but I was busy with
23 the cash register when he said, no, they are shooting. I

1 looked up.

2 Q. I see. And was George standing when you looked up

3 at this point?

4 A. Yes.

5 Q. Then did you see George fall?

6 A. I didn't see him fall, but I did see him laying on

7 the ground.

8 Q. You did see him laying on the ground. How long have

9 you worked there, Fada?

10 A. It's going on four years.

11 Q. Are you still working there?

12 A. Yes.

13 Q. Are you working there today, right now?

14 A. Yes.

15 Q. I see. Okay. So you know what the building looks

16 like completely?

17 A. Yes.

18 Q. You are very familiar with it?

19 A. Yes.

20 MR. MICKLER: Nothing else.

21 THE COURT: Any further questions?

22 MS. CARLBERG: No further questions.

23 THE COURT: Thank you. You are excused and free to go.

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1 TESTIMONY OF OFFICER ROBERT BEALE

2 DIRECT EXAMINATION

3 BY MR. MICKLER:

4 Q. Sir, will you give us your name and business address?

5 A. My name is Jessie Robert Beale, Officer, Alexandria

6 Police Department, 400 North Pitt.

7 Q. Before today, how long have you been on the police

8 department?

9 A. Two years.

10 Q. And were you on the Department on July 22, 1974?

11 A. Yes, sir.

12 Q. And were you on duty -- what was your duty hours

13 on that day?

14 A. I was working on 1 to 9 -- 1:00 a.m. to 9 a.m.

15 Q. I see. Did you have a call around 2:00 - 2:30 for

16 Phil's carry-out shop?

17 A. Yes, sir. I received a call approximately 2:00 --

18 I think about 2:30 a.m.

19 Q. I see. Did you know George Huff?

20 A. Only as the victim of the shooting that occurred.

21 Q. You didn't know him personally?

22 A. No, sir.

23 Q. You never saw him before that particular day?

1 A. No, sir.

2 Q. Now, did you go to that scene at Phil's carry-out

3 on that day in time?

4 A. Yes, sir, I did.

5 Q. What do you know about that if anything?

6 A. I arrived on the scene and observed Officer Price

7 at that location with a suspect. I assisted him. We released

8 that suspect. I can't remember his name. I think it was

9 Ferguson or something. I then proceeded over to where Mr.

10 Huff was lying. He had been shot in the head above the eye.

11 I can't remember which eye it was.

12 At that time, I called for assistance and then I

13 called for an ambulance and setting up for my report, made

14 a preliminary investigation.

15 MR. ADAMS: (A Juror) Your Honor, we can't hear.

16 THE COURT: Speak a little louder.

17 BY MR. MICKLER:

18 Q. And you set up your report for the preliminary

19 investigation?

20 A. Yes, sir.

21 Q. Now, did you interview or see any witnesses on the

22 scene?

23 A. There was three or four witnesses that were on the

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1 scene. There was a witness inside Phil's carry-out, a Mrs.
2 Hylton. There was another gentleman, I can't remember. He
3 was an older gentleman. Mr. Shepard was on the scene.
4 Q. Mr. Randy Shepard?
5 A. Randy Shepard.
6 Q. Is he here today?
7 A. Yes, sir.
8 Q. Was he back in the witness room with you?
9 A. Yes, sir.
10 Q. Could we have the Sheriff bring Mr. Shepard to the
11 door and see if you can identify him.
12 Did you see that gentleman there in the doorway?
13 A. Yes, sir.
14 Q. Is that the same gentleman up there that night the
15 time Mr. Huff demised?
16 A. Yes, sir.
17 Q. Did you take his name and address at that time?
18 A. Yes, sir, I did.
19 Q. Okay. And a Mrs. Hylton was on the scene also?
20 A. Yes, sir.
21 Q. Where was she?
22 A. She was working inside. She was employed there at
23 Phil's carry-out. I don't know what her duties were or

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1 anything like that.

2 Q. What does she look like roughly?

3 A. Short, about 5'3 or 4, real heavy set, white female,

4 I guess about 24, 25, something like that.

5 Q. And she worked inside the carry-out shop?

6 A. Yes, sir.

7 MR. MICKLER: I believe that's all of the witness.

8 CROSS EXAMINATION

9 BY MS. CARLBERG:

10 Q. Officer Beale, did you talk with Randy Shepard that

11 night?

12 A. Yes, ma'am, I did.

13 Q. So, you took down all the information that he had

14 concerning the incident?

15 A. No, ma'am. I did not. When a policeman takes a

16 report -- officer or patrolman takes a report, his job is to

17 take the preliminaries to obtain names of witnesses and so

18 forth. At that time, he turns it over to an investigator

19 that takes care of interviewing witnesses, obtaining state-

20 ments and so forth.

21 Q. Now, at the time you talked with Mr. Shepard, did you

22 ask him what he had seen?

23 A. I can't remember if I did or not.

1 Q. Why would you talk to him if he hadn't seen anything?
2 A. I am sure I asked him what he saw and that's why
3 I put his name on the report because he had been on the scene.
4 Q. He was on the scene. Does your report contain
5 any information that he knew and could identify the male who
6 was there in the parking lot with Mr. Huff?
7 A. My report doesn't contain that.
8 Q. Did you ask him that?
9 A. I am not exactly sure I did. But I believe I did
10 ask him if he could identify him and he stated that he wasn't
11 sure if he could identify the person that shot Mr. Huff.
12 Q. Is this case still under investigation?
13 A. I am not sure.
14 Q. When was the last time you looked into what was
15 going on with this case with regard to the department?
16 A. Once I turn in my report and it's turned over to
17 a detective, then my business with that report is at an end.
18 Q. Just as a matter of curiosity or just as a matter
19 with being with the detectives and knowing the detectives,
20 do you have any other information about the case that you have
21 gotten after you handed in your report?
22 A. Information that I obtained?
23 Q. No, not that you obtained, but information concerning--

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1 do you know anything else since you were there that night
2 with regard to the incident?
3 A. Other than what happened, nothing other than what
4 happened that night.
5 Q. Do you know whether or not Detective LeVesque is
6 presently or was the detective on the case?
7 A. He is presently the detective at this time.
8 Q. Now, you say presently the detective at this time.
9 Is he still investigating the matter?
10 A. I would imagine. I saw him this morning and he
11 still had the jacket on it, so I imagine he is still working
12 on the case.
13 Q. Does that indicate that you have not arrested any-
14 one?
15 A. Doesn't indicate that I haven't.
16 Q. I am talking about the police department in
17 Alexandria. My question to you is, after your investigation
18 by the police department, the officer who came to this
19 scene that night and also combined with the efforts of the
20 detective, which includes Detective LeVesque, have you all
21 issued or has there been a warrant issued or has a person
22 been found that was there that night that has been accused
23 and served a warrant or accused of inflicting a wound on

1 Mr. Huff?

2 A. I am not sure. I don't know if they have or not.

3 Q. When you talked with Detective LeVesque today, did

4 you ask him what the status of the case was?

5 A. No, ma'am. He wasn't there when I looked at the

6 report.

7 Q. And when you looked at the report, what was the

8 last thing you saw in that report?

9 A. The only thing I looked at was a copy of my original

10 report that I took.

11 Q. Doesn't it show on the very front of that, that

12 it's still an open case?

13 A. I really didn't pay attention to it.

14 Q. Let me ask you, do you know whether or not it's an

15 open case?

16 A. No, I don't.

17 Q. Would you think that if he had the file, it's still

18 an open case?

19 A. Yes, ma'am.

20 Q. Now, that night when you talked with Randy Shepard

21 did he describe the assailant of George Huff's?

22 A. I believe the information that he gave me was that it

23 occurred by a Negro male.

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1 Q. Let me ask you this. Did he give you any information
2 as to his -- what he saw? In other words, I want to ask you,
3 Officer Beale, did he tell you he saw this take place?
4 A. Yes, ma'am.
5 Q. He saw it take place?
6 A. I believe he did. I am almost certain.
7 Q. You are believing and you think you are almost
8 certain. I want to know.
9 MR. MICKLER: Your Honor, I want to make one point
10 clear before Ms. Carlberg goes further in the matter. This
11 exceeded the direct examination. I think she is now going
12 into other matters and I think she should have to make him
13 her witness and be bound by what he said.
14 THE COURT: Didn't you ask him who the witnesses
15 were on the scene and he said one of the witnesses was Randy
16 Shepard?
17 MR. MICKLER: Yes, indeed.
18 THE COURT: She may inquire what, if anything,
19 Randy Shepard can reveal.
20 MR. MICKLER: Very well.
21 THE COURT: If that is the basis for your objection.
22 You may proceed.
23 BY MS. CARLBERG:

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1 Q. Did Randy Shepard tell you that night that he saw
2 a Negro male shoot at George Huff?
3 A. I believe he told me that they were --
4 Q. You can answer that yes or no. I want to know for
5 certain. I don't want any believes or uncertainties, Officer
6 Beale. This is very important.
7 I want to know if that night, and please take your
8 time, did Randy Shepard tell you that night, I mean, you are
9 on the scene, he is right there --
10 MR. MICKLER: Just ask the question, please.
11 BY MS. CARLBERG:
12 Q. Did he tell you that night that he saw a Negro male
13 shoot at George Huff?
14 A. He stated to me that he saw the shooting.
15 Q. Did he say what the shooting was about?
16 A. I believe he was just -- he was there to make a
17 purchase and he didn't know the person that was being shot or
18 the person that was shooting. He was just on the scene and
19 he observed it as it was taking place.
20 Q. Did he say how far he was away from the two people?
21 A. He didn't give me any particular distance, but I
22 can tell you the distance he was.
23 Q. Approximate.

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1 A. Approximately from, I would say, less than 20 feet --
2 well, from here to the last window over there. (Indicating)
3 Q. And you went -- it's your testimony that he told you
4 that night he did not know the person shooting or the person
5 being shot at?
6 A. Yes, ma'am.
7 Q. Let me ask you, did he ever tell you that he saw the
8 man shooting, actually wounded the man who was wounded?
9 A. I don't recollect.
10 Q. All right. Did he tell you how many shots he heard?
11 A. He said several shots, you know, three or four shots,
12 something like that.
13 Q. Now, did you investigate to see if there were any
14 shots on George Huff?
15 A. Yes, ma'am.
16 Q. And how many wounds were there?
17 A. The wounds that I observed, I only observed one
18 wound. Seems as if he was shot someplace else. I can't
19 remember. I am not sure. But, I did observe one wound that
20 he had above the eye.
21 Q. Did Randy Shepard indicate to you that he saw more
22 than one wound?
23 A. No, ma'am.

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1 Q. Did he ever indicate to you that he saw any wound
2 at all?
3 A. No, ma'am. I don't believe he went up to the
4 individual.
5 Q. At the time the shooting took place, did he say he
6 turned around and actually saw it take place at the time the
7 shots were being fired?
8 A. I don't recollect that.
9 Q. Now, have you all ever found or did you investigate
10 and find a gun?
11 A. I didn't.
12 Q. Okay. To your knowledge, has the department found
13 a gun?
14 A. I am unsure about that. I don't know.
15 Q. Did you look to see if there were any other traces
16 of gunshot wounds other than in the decedent, George Huff?
17 A. I don't believe I did. I think I called right away
18 for an ambulance to get him out of there because he was still
19 alive and get him to the hospital for treatment as soon as
20 possible.
21 Q. Let me ask you something else. Where was Mr. Huff's
22 body at the time that you went over -- the time you arrived?
23 A. See, there is a telephone booth there that I would

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1 have to draw you a diagram of it.

2 Q. We have got a pretty good idea how Oronoco Street

3 and Henry Street and where Phil's carry-out faces in the

4 parking lot.

5 A. Okay.

6 Q. Was Mr. Huff's body between the carwash and Phil's

7 carry-out or Phil's carry-out on the Henry side of the area?

8 A. He was between the carwash and Phil's carry-out.

9 Q. That's Oronoco Street?

10 A. Yes.

11 Q. Now, was it near a car?

12 A. Yes, ma'am.

13 Q. Can you remember what kind of car it was near?

14 A. It was a large car, a dark colored green, light

15 green, I can't remember. I remember it being a large car,

16 Cadillac or Chevrolet or something like that.

17 Q. All right. How close was he to the Cadillac?

18 Strike that.

19 How far was he from the large car?

20 A. I can't remember in feet.

21 Q. As far as I and you are? (Indicating)

22 A. No, it was much closer than that.

23 Q. As far as you and the reporter?

A. Maybe that or maybe just a little, maybe five or six feet. I am not sure.

Q. Did he have anything in his hands?

A. I don't believe he did. I don't believe -- I am not sure.

Q. Did he have a wallet on him?

A. Yes, ma'am. I believe he had a wallet on him.

Q. Did he have a gun on him?

A. No, ma'am.

Q. Now, was Mr. Huff's wallet on him -- on his person or was it nearby on the ground?

A. I think his property was collected there and one of the things was like his glasses and so forth. I am not sure about where the wallet was. There were several other officers there also.

Q. What other officers were there other than Officer Price and yourself?

A. There was Officer Russell. He came on the scene later to process the scene.

Q. Is Officer Russell here today to testify?

A. No, ma'am.

Q. All right.

A. I think Sergeant Uhrig was on the scene. No, I am

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1 not sure if he was on the scene. There were several other
2 officers there. I don't remember their names because I just
3 came on the department myself.
4 MS. CARLBERG: Those are all the questions I have,
5 Your Honor.
6 THE COURT: Any further questions?
7 REDIRECT EXAMINATION
8 BY MR. MICKLER:
9 Q. Officer Beale, what is your job on the Police
10 Department?
11 A. I am a patrolman.
12 Q. You are not an investigator or a detective?
13 A. No, sir.
14 Q. Was it your job to take all these details down that
15 night?
16 A. No, sir. I am just a preliminary to obtain the
17 necessary facts for follow-up investigation.
18 Q. Somebody else does that?
19 A. Yes.
20 Q. Did you take indepth statements from Randy Shepard?
21 A. No, sir.
22 Q. Or Fada Hylton?
23 A. No, sir.

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1 not sure if he was on the scene. There were several other
2 officers there. I don't remember their names because I just
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22 Q. Or Fada Hylton?
23 A. No, sir.

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Q. You just took their names and that's about it?

A. Names and basically what happened, addresses.

MR. MICKLER: Okay. I believe that's all.

THE COURT: Any further questions?

RECROSS EXAMINATION

BY MS. CARLBERG:

Q. Who would have been the person in the Police Department who would have taken that information, Officer Beale?

A. The investigator.

Q. Was that Investigator LeVesque?

A. If he was assigned to the case, yes, ma'am.

MS. CARLBERG: Thank you.

THE COURT: Thank you, Officer. You are excused and free to go.

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Q. You just took their names and that's about it?

A. Names and basically what happened, addresses.

MR. MICKLER: Okay. I believe that's all.

THE COURT: Any further questions?

RECROSS EXAMINATION

BY MS. CARLBERG:

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Q. Was that Investigator LeVesque?

A. If he was assigned to the case, yes, ma'am.

MS. CARLBERG: Thank you.

THE COURT: Thank you, Officer. You are excused and free to go.

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1 TESTIMONY OF RANDY SHEPARD

2 DIRECT EXAMINATION

3 BY MR. MICKLER:

4 Q. Sir, are you Randy Shepard of 414 North West Street

5 of Alexandria, Virginia?

6 A. Yes, sir.

7 Q. Mr. Shepard, you have to speak up. That man in the

8 Jury Box has to hear what you are saying as well as everyone

9 else. Try to get your highest voice.

10 MS. CARLBERG: Could I approach the Bench before

11 Mr. Mickler starts with this witness.

12 (Bench conference off the record.)

13 THE COURT: Court will take a short recess and the

14 Jury will retire to the Jury Room, please.

15 (A short recess was taken.)

16 (The Jury returned to the Courtroom and the following

17 was had within the hearing of the Jury:)

18 BY MR. MICKLER:

19 Q. Speak as loud as you can, Mr. Shepard. But, are

20 you Randy Shepard of 414 North West Street in the City of

21 Alexandria, State of Virginia, is that correct?

22 A. Yes.

23 Q. Okay, Randy. Now, directing your attention to the

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1 night of July 22, 1974, between 2:00 to 2:30 that morning --

2 MS. CARLBERG: Your Honor, I object to counsel

3 leading his witness.

4 THE COURT: Well, it's preliminary. Objection

5 overruled.

6 BY MR. MICKLER:

7 Q. At 2:00 to 2:30 in the morning, in the early morning

8 hours of that day, where were you sir?

9 A. I can't recall.

10 Q. Were you at Phil's carry-out?

11 A. 2:00 to 2:30 that evening?

12 THE COURT: In the morning.

13 BY MR. MICKLER:

14 Q. In the morning, yes.

15 A. Not 2 -- 2:30.

16 Q. Did you see a man get shot?

17 A. Yes, I did.

18 Q. Do you know who the man was?

19 A. No, not personally.

20 Q. Did you -- did the police talk to you?

21 A. Yes.

22 Q. Did that Officer Beale, that was back in the back-

23 room with you, did he talk to you about the shooting?

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A. Yes.

Q. Do you know where Phil's carry-out shop is?

A. Yes.

Q. Do you ever go up there?

A. Yes.

Q. Was the man shot at Phil's carry-out shop or some place else?

A. Phil's carry-out.

Q. Now, what were you doing at Phil's carry-out shop at that time?

A. Buying coffee.

Q. Buying coffee. Now, you tell the gentlemen and lady of the Jury what you saw and heard.

A. Well, first there was a -- we were buying coffee and then we heard like argument in the background. Then I heard like a man said, if you make another move mother fucker, I am going to shoot you.

So, the man, I guess, he started towards him and I heard a shot.

Q. Did you see this Randy?

A. We didn't turn around. We thought it was a cap gun. We thought it was somebody shooting a cap gun. When we turned, we saw a man on the ground and a man running to get

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1 in his car.

2 Q. Okay. And you did hear something going off like a

3 cap gun?

4 A. Right.

5 Q. How many times did that cap gun go off or the sound

6 you heard?

7 A. Four or five times.

8 Q. Did you look at the man on the ground?

9 A. I looked at him, yes.

10 Q. Did you know him?

11 A. No, I didn't.

12 Q. Was he wounded?

13 A. Yes. I seen blood on his stomach.

14 Q. Where else -- anywhere else?

15 A. Up here somewhere. (Indicating.)

16 Q. And he was laying on the ground?

17 A. Yes.

18 Q. And was there anybody near them besides those two

19 men?

20 A. No.

21 Q. And you heard the one say to the other, if you move

22 you mother fucker, I will shoot you?

23 A. Yes.

1 Q. Did you hear any other conversation?

2 A. No, just that, if you move again, I will shoot you.

3 Q. And did the gun go off again? After that?

4 A. Yes, after he told him that.

5 Q. Then the shot went off again?

6 A. Right.

7 Q. Okay. Did you know the man's name or find out his

8 name?

9 A. From what I heard.

10 MS. CARLBERG: Your Honor, I object to anything he has

11 heard. He can't testify as to what he heard.

12 THE COURT: Objection sustained.

13 BY MR. MICKLER:

14 Q. Nobody else was around these two men, is that

15 correct?

16 A. No.

17 Q. And then when the one was laying on the ground, the

18 other one ran away?

19 A. Yes.

20 Q. Did you see a gun?

21 A. No.

22 Q. You did not see a gun and that's about as much as you

23 know about it. Is that correct, Randy?

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1 A. Yes.

2 MR. MICKLER: Okay. You may inquire.

3 CROSS EXAMINATION

4 BY MS. CARLBERG:

5 Q. Mr. Shepard, have you ever testified in this case

6 before?

7 A. Yes.

8 Q. And have you ever been convicted of a felony?

9 A. No.

10 Q. Now, let me ask you, how long have you lived in

11 Alexandria?

12 A. Nine years.

13 Q. Nine years?

14 A. Yes.

15 Q. Now, did you know the man who ran away from the man

16 who fell on the ground and jumped in his car?

17 A. No.

18 Q. Do you know whether or not the man who ran away

19 robbed the man who fell to the ground?

20 A. No.

21 Q. The man who left the scene and got in his car. I

22 was using the word ran because you used it. Is that what he did?

23 A. He ran to his car and got in his car and went down

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1 Oronoco.

2 Q. Did he seem to be in a hurry after this shooting

3 took place?

4 A. Yes.

5 Q. Now, let me ask you, at the time you heard the shots,

6 did you look in the direction of the voices that you had

7 heard?

8 A. Yes.

9 Q. All right. Now, you said that someone said if you

10 move another step, I will shoot you, okay. Did you hear

11 that from the direction of the two men where the shots came

12 from?

13 A. Yes.

14 Q. Were there any other people around there at that

15 time?

16 A. No, just those two.

17 Q. Now, where were you standing?

18 A. Facing the carry-out.

19 Q. You were facing the carry-out. What were you doing?

20 A. Drinking coffee.

21 Q. Can you just stand there and drink coffee?

22 A. Yes.

23 Q. What were you doing there that night?

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1 A. Buying coffee.

2 Q. Of your own knowledge, the man on the ground, did

3 you know him at that time?

4 A. No.

5 Q. Did you hear the other man call his name?

6 A. No.

7 Q. All right. So you don't know whether they knew each

8 other or not?

9 A. No, I don't.

10 Q. And you don't know whether he robbed him or not?

11 A. No, I don't.

12 Q. Now, how many other people were shot that night?

13 A. Well, just the man who was on the ground.

14 Q. Okay. Was there more than one shot?

15 A. Yes.

16 Q. Approximately how many did you hear?

17 A. I can't precisely say how many. I know it was

18 around four or five shots.

19 Q. You say you saw two wounds?

20 A. Two.

21 Q. Would you please tell me again what you saw?

22 A. I saw blood on the stomach.

23 Q. Okay.

A. And here, right here. (Indicating)

Q. And blood on the head?

A. Yes.

Q. Did you give a statement to the police?

A. Yes, name, address, and where I could be reached.

Q. Okay. Now, at the time you gave the police your statement, did you say that you saw the whole thing or did you say what you said today that you heard the shots and then turned around and saw this man jump into his car and pull away and a man fall to the ground?

A. Well, the only thing I told to the policeman was my name, address, and the direction which the man went in and that's it.

Q. That's it and you didn't know the man or know why he was there or why he was shooting at that man?

A. No.

MS. CARLBERG: No further questions, Your Honor.

THE COURT: Any further questions?

REDIRECT EXAMINATION

BY MR. MICKLER:

Q. Did you go over, Randy, after the man was laying on the ground, did you go over and examine him for wounds or pull his clothes or anything?

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1 A. No.

2 Q. How close were these to men? Pick out a spot between

3 there and myself. Was it this far away from the two of them?

4 A. No, closer.

5 Q. Was it this close?

6 A. Closer.

7 THE COURT: How close to each other or to him?

8 BY MR. MICKLER:

9 Q. Well, I'll get to that next. How close was it

10 from myself to that fellow with the plaid jacket?

11 A. Closer.

12 Q. This close?

13 A. Closer.

14 Q. This close?

15 A. Yes, about there.

16 Q. Just about here. Okay. That's where these two men

17 were and you heard him say, you move again you mother fucker,

18 I will shoot you again? Some words to that effect?

19 A. (Nodding in the affirmative.)

20 Q. How far were you from these two men?

21 A. The wall to about here.

22 Q. The wall over. Okay.

23 MR. MICKLER: For the purposes of the record, let

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1 it show that the two men were about a yard and half apart
2 at most and perhaps a yard apart and Randy was from the two
3 men about 20 feet.
4 I believe that's all of the witness.
5 MS. CARLBERG: No further questions, Your Honor.
6 THE COURT: Thank you, Mr. Shepard. You may be
7 excused.
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1 JURY INSTRUCTIONS

2 (The following was had in Chambers, outside the
3 hearing of the Jury.)

4 THE COURT: Let's take the Plaintiffs instructions
5 first.

6 Number 1?

7 MR. MICKLER: That's not quite the law, but I am
8 not going to argue about it.

9 THE COURT: No objection to Number 1?

10 MR. MICKLER: No.

11 THE COURT: All right.

12 Number 2?

13 MR. MICKLER: Two? There is an objection to 2.
14 I don't think this is law unless the Defendant identified the
15 person. I don't think we have to identify the person -- just
16 positively not and show that he acted with such purpose
17 and determination, then you must find for the Plaintiff and
18 the death is clearly erroneous.

19 THE COURT: Where do you get the authority they have
20 to identify the person, Ms. Carlberg?

21 MR. MICKLER: If that was it, I would have conceded
22 it a long time ago.

23 MS. CARLBERG: Well, when I do this, that last part

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1 comes from what I gather, from CJS. The first part comes
2 from a quote directly from the State Farm Mutual Company case
3 where it says intent is --
4 THE COURT: I am not worried about that part of it.
5 I am satisfied they do not have to identify the person so the
6 objection is well taken. Can we modify it, Mr. Mickler, to
7 overcome that objection?
8 MS. CARLBERG: You don't know --
9 THE COURT: Unless the Defendant shows that the
10 person who shot the deceased acted intentionally, then you
11 must find for the Plaintiff or something to that effect or
12 the person that caused the death of the decedent acted
13 intentionally.
14 MR. MICKLER: I guess that would be all right if you
15 do it that way.
16 How's that going to be now?
17 THE COURT: Unless the Defendant proves to the
18 satisfaction of the Jury that the person who caused the death
19 of the deceased acted intentionally.
20 MR. MICKLER: Preponderance.
21 THE COURT: Is it preponderance?
22 MS. CARLBERG: No.
23 MR. MICKLER: I think it's more than preponderance.

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1 I really should have a motion to strike.

2 THE COURT: Well, I don't mean how you assess the

3 evidence. I am talking about the standard.

4 MR. MICKLER: Well, it's preponderance of the evidence.

5 THE COURT: Are you sure?

6 MS. CARLBERG: No, it's clear and convincing

7 according to that case.

8 MR. MICKLER: No. Well, you put that if you wish,

9 but I will take a strong objection.

10 THE COURT: Let me have that case back.

11 Fair and satisfactory evidence to overcome such a

12 presumption must be clear and satisfactory and to the

13 exclusion of any reasonable hypothesis consistent with death

14 from natural or accidental causes. That's having to do with

15 suicide. It seems to me the same thing would hold true when

16 you are talking about an intentionally caused death.

17 MR. MICKLER: I wouldn't agree with Your Honor. I

18 feel that the law is embodied in my Instruction A on this

19 point.

20 THE COURT: Well, that's correct insofar as the

21 Plaintiffs burden is concerned.

22 MR. MICKLER: Well, I don't think a greater weight

23 would be put upon me to prove a fact than upon them. I think

1 it's just the preponderance of the evidence except in the
2 case perhaps of fraud or some such thing as that.
3 THE COURT: Is there anything you would like to say,
4 Ms. Carlberg?
5 MS. CARLBERG: No. I would like to stick, of course,
6 with that case because I think that case is the case in
7 Virginia with regard to once the burden shifts and I think the
8 Court has found that there was violence and external means
9 because accidental defines to both parts of that policy that
10 is in controversy. And, therefore, I believe there has been
11 a shift of the burden of proof to the Defendant.
12 THE COURT: I will phrase the Instruction as clear
13 and satisfactory evidence, Mr. Mickler.
14 MR. MICKLER: Well, we will take exception to that
15 under the authority of Bowman versus First National, 115
16 Virginia 463, and Varner versus White is 149 Virginia 177.
17 We feel it should be the preponderance of the
18 evidence.
19 THE COURT: Let me ask you this, Mr. Mickler. Are
20 you saying that the man may have committed suicide or may have
21 been intentionally killed by someone else? You are not
22 asserting the suicide defense, are you?
23 MR. MICKLER: No.

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1 THE COURT: Because otherwise, I would have to say
2 it goes by clear, common, satisfactory evidence that the
3 deceased either committed suicide or was intentionally killed.
4 But you are not ascerting suicide?
5 MR. MICKLER: No, not at all, Your Honor.
6 THE COURT: All right. The only reason I raised
7 that in the framework, I didn't think she proved her case
8 which was overruled.
9 It will read intent means purpose for determining
10 to act in a certain way or do a certain thing. Intent is
11 formed in a persons own mind. Unless the Defendant proves
12 by clear and satisfactory evidence that the person who caused
13 the death of the decedent acted intentionally, you must find
14 for the Plaintiff.
15 Now, your objection to that would be to clear and
16 satisfactory?
17 MR. MICKLER: Yes.
18 THE COURT: Rather than by a preponderance of the
19 evidence?
20 MR. MICKLER: Yes, sir.
21 THE COURT: Is that your only objection to that?
22 MR. MICKLER: Yes.
23 THE COURT: That's your only objection?

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1 MR. MICKLER: That's my only objection, Your Honor.
2 THE COURT: Then, I will note your exception.
3 (Exception noted.)
4 THE COURT: Number 3?
5 MR. MICKLER: Let me put this in the framework here
6 that I think it should be -- we know there has been a -- under
7 the first part of the policy. I don't know quite how it was
8 phrased but this. It's disqualified now under the evidence on
9 the first part of the policy. I am not arguing about this
10 part of it by violent external and accidental means as
11 evidenced by visible contusions or wounds on the exterior of
12 the body. That's under the policy -- loss of life by accident.
13 I am not arguing about that whatsoever. I think
14 we are well past that and I concede it. What I am talking
15 about now is under part 4.
16 THE COURT: The exclusion?
17 MR. MICKLER: Yes, the exclusion and limitations,
18 part 4 of both policies and it says this. The policy does not
19 cover any loss of life and I am going to go by her underlining
20 because she hit it on the head. The policies does not cover
21 any loss of life which resulted directly or indirectly,
22 subject two of that section, from any violence intentionally
23 inflicted by another person.

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1 THE COURT: That's the case right there.

2 MR. MICKLER: That's the case right there.

3 THE COURT: I really think that last instruction

4 wraps up the case. I think you can get one instruction that

5 tells the Jury the sole issue in this case is whether or not

6 the death of the decedent resulted from any violence intention-

7 ally inflicted by another person.

8 MR. MICKLER: That's the case at this juncture.

9 THE COURT: It's the burden of the Defendant to prove

10 by clear and satisfactory evidence that such occurred and if

11 you do not so find, then you must find for the Plaintiff.

12 It's just that simple.

13 MR. MICKLER: It's just about that simple except

14 clear and satisfactory.

15 THE COURT: Well, I understand that.

16 MR. MICKLER: Okay.

17 THE COURT: I just wonder if we couldn't get it

18 down to that point in one instruction. We can have the usual

19 instructions.

20 MR. MICKLER: Sure. I can't see why we couldn't.

21 THE COURT: Let's see if we can work something out.

22 MR. MICKLER: That would take care of 3 and 4 at

23 least and maybe 5 too and 6.

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1 MS. CARLBERG: I want to discuss my viewpoint on 5.

2 MR. MICKLER: This is just my view.

3 THE COURT: I don't agree with his viewpoint in the

4 case. This is the whole issue.

5 MS. CARLBERG: I do with regard to that, but with

6 regard to going through the rest of my instructions and saying

7 they can be left out, I take exception to that.

8 I agree with what you and Mr. Mickler have said with

9 regard to the sole issue. I think that's been it all along.

10 THE COURT: All right. How's this.

11 The Court instructs the Jury that the sole issue

12 in this case is whether or not the death of the decedent

13 resulted in any violence intentionally inflicted by another

14 person and unless you find by a clear and satisfactory evidence

15 that such was the case, you shall return your verdict in

16 favor of the Plaintiff.

17 MR. MICKLER: Um huh.

18 MS. CARLBERG: Yes.

19 THE COURT: Is that satisfactory?

20 MR. MICKLER: Yes, except for that one part.

21 THE COURT: You would want it to read by a prepon-

22 derance of the evidence?

23 MR. MICKLER: Yes.

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1 THE COURT: But with that exception, you agree
2 that is a proper statement?
3 MR. MICKLER: That's a good statement.
4 THE COURT: I really think that's the case in one
5 instruction. Why don't I have it typed up.
6 MR. MICKLER: That really is the works.
7 THE COURT: All right. In light of that, let's go
8 on and see if we need -- how many of the instructions we need.
9 MS. CARLBERG: That was typed over for number 2?
10 That's included now.
11 THE COURT: That's included in the one you just
12 wrote.
13 I suppose you can still be entitled to an instruction
14 as to what intentional means, but do you really think you
15 need to tell the Jury what intentional is?
16 MR. MICKLER: I really don't think so.
17 THE COURT: If you want to, I will, but it's like
18 telling them what reasonable is almost.
19 MS. CARLBERG: Yes. The more you tell them, the
20 more confused they get. Just like preponderance or reasonable.
21 THE COURT: If you want me to, I will, but --
22 MS. CARLBERG: No.
23 THE COURT: Well, I will make the one we just talked

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1 about number 1 then and do you have any others you want to have
2 given, Ms. Carlberg? I haven't looked at the rest of them.
3 MS. CARLBERG: I think what I might do is have you
4 give that definition of intent with the purpose to act in a
5 certain way or do a certain thing.
6 THE COURT: Is that all right, Mr. Mickler?
7 MR. MICKLER: Yes.
8 MS. CARLBERG: How about intent is formed in a
9 person's own mind?
10 MR. MICKLER: I guess that's the only place it could
11 be formed. It has to be in somebody's mind.
12 MS. CARLBERG: And Number 1 we still have in?
13 THE COURT: No. What's Number 1?
14 MS. CARLBERG: With regard to contracts.
15 THE COURT: All right.
16 MR. MICKLER: You know, with that Number 1, I would
17 like to, even though I went along with it, the more I think
18 of it, the thing construed strongly against -- the most
19 strongly against the Company, I think.
20 MS. CARLBERG: That's a direct quote.
21 THE COURT: Direct quote, but there is no question
22 about what this policy means.
23 MR. MICKLER: But is it most strongly?

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1 THE COURT: I think he may have had most.

2 MS. CARLBERG: That's direct.

3 THE COURT: It's true if you are having trouble

4 understanding what the policy is. They are going to question

5 what this policy means.

6 MR. MICKLER: Not at all really.

7 MS. CARLBERG: How can you have a directly or

8 indirectly intentionally inflicted by another person?

9 THE COURT: You think that's difficult of under-

10 standing?

11 MS. CARLBERG: One of the policies.

12 THE COURT: One of them says directly or indirectly.

13 MS. CARLBERG: They both do.

14 MR. MICKLER: I think they do too somewhere up in

15 the section we are not arguing about now.

16 MS. CARLBERG: Both of those bottom sections are

17 exactly alike.

18 MS. CARLBERG: So you have got indirectly, intention-

19 ally which are conflicting.

20 THE COURT: Let's see if that first part is an issue

21 in the case. Directly or indirectly. Is there any question

22 about that? He was killed by the gunshot wound, nothing else.

23 That's not an issue in this case. That's direct. It's about

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1 as direct as you can get.

2 MR. MICKLER: I think the instruction 1 though, I

3 think that's most strongly against the company. I think it

4 should be construed against the company.

5 MS. CARLBERG: I will take out most.

6 THE COURT: Well, the issue in the case from which

7 you extract that statement, in the first place, it wasn't an

8 instruction. It's a general statement of principle of law and

9 it's to be applied when you find difficulty in determining the

10 meaning of the policy, right. You construe it against the

11 company as much as they are the authority of the language when

12 there is no question what it means.

13 Why is it necessary to give it?

14 MS. CARLBERG: Well, it says there are conditions

15 there in which it tends to cause a forfeiture. We are not

16 talking about proceeds that are in conflict.

17 THE COURT: We have told them the proceeds causing

18 a forfeiture, they have got to show by clear and satisfactory

19 evidence that such was the case. That has to do with how you

20 construe the meaning of the policy. There is no problem what

21 this policy means. It's what occurred.

22 MS. CARLBERG: Judge, I think this talks about a

23 forfeiture clause in that case. I have got the case with me.

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1 THE COURT: I understand that.

2 MS. CARLBERG: That's what we have got here.

3 THE COURT: I understand that and when you try to
4 determine what the forfeiture clause means, then you construe
5 the policy is against the company. But we are not trying to
6 determine what it means. We are trying to determine what
7 happened and there is a difference and we have already said
8 to the Jury that it's up to them to prove by clear and
9 convincing evidence this is what happened. Do you see what
10 I am saying?

11 MS. CARLBERG: I do.

12 THE COURT: That's a rule of construction. I am
13 going to refuse number 1.

14 MS. CARLBERG: Do you think the Plaintiff is
15 entitled to have any instructions at all with regard to when
16 forfeitures are involved?

17 THE COURT: I think you got it in one.

18 MS. CARLBERG: Could I note my exception then?

19 THE COURT: I am not going to rule as to any
20 instructions at all. If you want an instruction, I will rule
21 on it.

22 MS. CARLBERG: Well, with regard to one, I object
23 to it being stricken entirely because I would like to have an

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1 instruction with regard to something, letting the Jury know
2 that when you are talking about a forfeiture because of some-
3 thing that happened. It's not as if we were talking about
4 the insured being the aggressor which is what you find in these
5 cases in Virginia. I can see not having an instruction with
6 regard to that.
7 But here you have got an Insurance Company that
8 wants to make a forfeiture and the events are entirely outside
9 of what the insured did other than walk across the street.
10 THE COURT: That's why we said we have got to prove
11 it by clear and convincing evidence.
12 One is refused. I will have to retype it with that
13 last part taken off.
14 Now, we want to make the one we discussed Number 3.
15 We will make that Number 3. And you have already noted your
16 exception to the use of clear and satisfactory, Mr. Mickler.
17 MR. MICKLER: Yes, indeed, Your Honor.
18 MS. CARLBERG: So, right now, all we have in is one
19 instruction and that's Number 3?
20 THE COURT: Well, we have 2 -- what intentional is.
21 That's being retyped.
22 MS. CARLBERG: Okay.
23 THE COURT: Now, do we need 3 when he has conceded it

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1 was accidental? Within the meaning of your initial burden?

2 MS. CARLBERG: No, I guess not.

3 THE COURT: Okay. It's the same thing with 4. He has

4 conceded that too, hasn't he?

5 MR. MICKLER: That's right.

6 MS. CARLBERG: I don't think to the Jury he has,

7 Your Honor. I believe that they have got -- well, if they

8 don't understand clear and satisfactory.

9 THE COURT: Clear and convincing.

10 MS. CARLBERG: No. I think you said clear and

11 satisfactory. I said convincing and it's clear and satisfactory

12 evidence on Number 3.

13 MS. MICKLER: Clear and satisfactory evidence.

14 THE COURT: Let me make sure that's correct.

15 Well, when we tell the Jury that the only issue in

16 the case is whether or not this is it, I don't know how they

17 can be confused by that.

18 MR. MICKLER: They're not exactly fools, at least

19 the Jurors around here.

20 MS. CARLBERG: This is a tough Jury I understand --

21 this Jury that's been impaneled.

22 THE COURT: Clear and satisfactory is correct.

23 Three is withdrawn, four is withdrawn, five is with-

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1 drawn.

2 MS. CARLBERG: Did you do 5 rather than -- in other

3 words, you are going to take it out because it is concerning

4 accidental?

5 THE COURT: He says that's no longer an issue.

6 MS. CARLBERG: Does the Jury know that?

7 THE COURT: I will get ready to tell them that the

8 only issue in the case is whether or not it resulted so and so.

9 I don't know how you can make it any clearer than that.

10 MS. CARLBERG: But, Your Honor, we have here the two

11 words -- all right. They are going to decide whether it was

12 intentional or not.

13 THE COURT: That's right.

14 MS. CARLBERG: The or not is accidental?

15 THE COURT: What does that instruct. The Court

16 instructs the Jury that the sole issue in this case is whether

17 or not the death of the decedent resulted in any violence

18 intentionally inflicted by another person and unless you find

19 by clear and satisfactory evidence that such was the case, you

20 shall return your verdict in favor of the Plaintiff.

21 Now, that means to me unless they find out, you win.

22 MS. CARLBERG: I like that instruction. I agree

23 with that except that we have talked about accidental and we

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1 have talked about external and violence and I am just wondering
2 with only that one instruction, if the Jury is going to forget
3 about those other terms and just talk about that, because if
4 it's not intentional, it's got to be accidental.
5 MR. MICKLER: That's why you win.
6 THE COURT: That's the point.
7 MS. CARLBERG: Do they know that?
8 MR. MICKLER: They don't know anything other than
9 that because they never heard the conversations between the
10 three of us on the argument of the law.
11 THE COURT: That's right. They never heard all that
12 static.
13 Well, we can go ahead and say that it's your burden
14 to prove that it was violent external and accidental and that
15 if you prove it's violent and external, then there is a
16 presumption that it was accidental. We can go through all
17 that and you have to prove that by a preponderance of the ev-
18 idence.
19 Mr. Mickler is saying that he is willing to concede
20 that and say that it comes down to whether or not he has made
21 out his affirmative defense. If he hasn't made it out, the
22 case is over.
23 MR. MICKLER: See, what I am saying to you is this.

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1 A gunshot wound is rather direct and to the point depending
2 where it hit you. But regardless, it's very direct. It's
3 external.
4 THE COURT: It's violent.
5 MR. MICKLER: It's violent and because of these three
6 facts, it's now considered accidental by a presumption.
7 THE COURT: That's right.
8 MR. MICKLER: Now, I cannot go further than that.
9 That came out very clearly on the motion and I concede one
10 hundred percent. I am now over just to this one little
11 section here, was it, the violence intentionally inflicted
12 by another person.
13 Now, that's my defense at this point.
14 MS. CARLBERG: I agree with it.
15 THE COURT: Do you feel like you are being trapped?
16 MS. CARLBERG: No, I don't feel like I'm being
17 railroaded. I would like to reserve my right to come back
18 with regard to Number 5 depending on what other instructions
19 we come up with because I think, in other words --
20 THE COURT: I don't think you need to in light of
21 the instructions we agreed on. I don't think you need 3, 4,
22 5, or 6, but if you want them, I will give them, but I will
23 have to change the instruction we agreed on because if I give

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1 those, then there is another issue in the case.

2 MS. CARLBERG: I understand that.

3 THE COURT: Then there are two issues. One is whether

4 or not it was violent external and accidental and two, whether

5 it was an intentionally inflicted wound.

6 MS. CARLBERG: My point was that if they find it was

7 intentional, then they are going to find it was not accidental.

8 THE COURT: If they find it's intentionally inflicted,

9 that's the end of it because that's an affirmative defense.

10 What we have done is, say you don't even have to

11 prove your case. If they don't accept his defense, then you

12 win.

13 MS. CARLBERG: I know that. I understand that.

14 THE COURT: Does that make you uneasy?

15 MS. CARLBERG: Okay. Let's go on. What are you

16 going to do with Number 7?

17 MR. MICKLER: What about 6. That should be out too,

18 I mean on the same basis. I don't care.

19 MS. CARLBERG: Yes, okay.

20 THE COURT: Okay. Seven. Do you object?

21 MR. MICKLER: No objection to 7. I mean, it's a

22 general instruction. Failure to produce a material witness.

23 I don't know who he is.

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1 MS. CARLBERG: I don't know either. Nobody does.

2 THE COURT: Why do you want 7. Have you read the

3 recent case. If you both ask me to give it, I don't think

4 it's appropriate to this case.

5 MS. CARLBERG: I think we have an unknown here.

6 THE COURT: Who is the missing witness?

7 MS. CARLBERG: The man who did it.

8 THE COURT: Who gets the benefit of the presumption,

9 you or him?

10 MR. MICKLER: It's good for me, but okay.

11 THE COURT: Whose burden is it to produce the missing

12 man?

13 MS. CARLBERG: I think it's his.

14 MR. MICKLER: Okay with me if you want to give it.

15 THE COURT: All right, okay.

16 Well, I can see what you are saying, okay. I will

17 be very surprised if he can find anybody to come in and say

18 I shot him.

19 MR. MICKLER: Yes, I waive the 5th.

20 MS. CARLBERG: We have been unsuccessful in this

21 case in who knows the man who shot him.

22 THE COURT: How about 8. You don't need 8, do you?

23 MS. CARLBERG: No.

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1 THE COURT: I knew we would boil this thing down.

2 MR. MICKLER: I am upset because I am usually easy

3 to get along with.

4 THE COURT: It's really -- there's just one issue

5 in this case.

6 MR. MICKLER: Really. That's how I looked at it

7 from the beginning.

8 MS. CARLBERG: So, we just have 3 and 7.

9 THE COURT: 2, 3, and 7.

10 Intent means with the purpose or determination to

11 act in a certain way or do a certain thing.

12 MS. CARLBERG: What are we going to do with yours?

13 MR. MICKLER: We haven't got to that point yet.

14 THE COURT: All right. You don't need A. You

15 have already conceded that.

16 MR. MICKLER: Withdrawn.

17 THE COURT: B. You are entitled to B.

18 MR. MICKLER: Okay. That one I do want.

19 THE COURT: Any objection to B?

20 MS. CARLBERG: No.

21 THE COURT: Okay. What does C say.

22 MS. CARLBERG: I don't know what it means.

23 THE COURT: We don't want to go into that question

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1 of wisdom of law.

2 MR. MICKLER: Well, I don't want them to. This one

3 is in, isn't it or this is.

4 THE COURT: B is in. A is withdrawn.

5 I will give D but I won't give C.

6 MR. MICKLER: Okay. I just didn't want them to go

7 bouncing around the question. If I was drawing that policy,

8 I would do it this way or if I was the lawyer, the Judge, I

9 certainly wouldn't buy that.

10 THE COURT: I will give D. Do you have any objection

11 to D Ms. Carlberg?

12 MS. CARLBERG: No objection.

13 E is out because of our agreement with regard to

14 accidental and everything else?

15 MR. MICKLER: No. This one will stay in because you

16 have to give effect to every provision of it.

17 THE COURT: Oh, no. If you put that in there, I

18 will have to give hers. We embodied the provision. That's

19 an issue in the instruction.

20 MR. MICKLER: All right, sir.

21 THE COURT: In other words, you could suggest by

22 that --

23 MR. MICKLER: Withdrawn.

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1 MS. CARLBERG: I think F is incl

2 MR. MICKLER: F should go out.

3 THE COURT: Okay. G is refused.

4 MR. MICKLER: G is refused.

5 THE COURT: Do you want me to make it

6 MR. MICKLER: Yes, I object to it.

7 THE COURT: All right. Did you obj

8 Carlberg?

9 MS. CARLBERG: Yes, I did. Is G

10 THE COURT: Refused.

11 H, now that's got that indirectly

12 MS. CARLBERG: I think --

13 MR. MICKLER: That is embodied in th

14 instruction.

15 THE COURT: Okay. We are home free.

16 MR. MICKLER: Okay. Let's see what

17 THE COURT: For the Plaintiff, I ha

18 Numbers 2, 3 and 7. For the Defense, I have B

19 Are there any other instructions you

20 now. We agreed, did we not, that the verdict fo

21 include the amount in controversy so we don't

22 instruction?

23 MR. MICKLER: That's correct.

1 MS. CARLBERG: Yes.

2 THE COURT: All right.

3 MR. MICKLER: 2, 3, and 7 --

4 MS. CARLBERG: And B, D.

5 MR. MICKLER: B and D. Okay.

6 (Recess for lunch)

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INSTRUCTION NO. 1

As insurance contracts are prepared by the insurance company, conditions therein intended to cause a forfeiture are to be construed most strongly against the company.

Standard Accident Ins. Co. v. Walker, 102 S.E. 585

INSTRUCTION NO. 2

"Intentionally" means with a purpose or determination to act in a certain way or to do a certain thing. Intent is formed in a person's own mind.

INSTRUCTION NO. 2

"Intentionally" means with a purpose or determination to act in a certain way or to do a certain thing. It is formed in a person's own mind. Unless the defendant identifies the person and shows that he acted with such purpose of determination, then you must find for the plaintiff.

State Farm Mutual Automobile Ins. Co. v. Miller, 194 Va. 589, 74 S.E.2d 145 (1953)
46 C.J.S. 1107

INSTRUCTION NO. 3

The Court instructs the jury that an accident is "an event that takes place without one's foresight or expectation; an undesigned, sudden and unexpected event; chance; contingency, often; an undesigned and unforeseen occurrence of an afflicted or unfortunate character, casualty, mishap; as, to die by accident".

Wooden v. John Hancock Mutual Life Ins. Co., 205 Va. 750, 139 S.E.2d 801 (1965)

INSTRUCTION NO. 3 New

The Court instructs the jury that the sole issue in this case is whether or not the death of the decedent resulted from any violence intentionally inflicted by another person, and unless you find by clear and satisfactory evidence that such was the case, you shall return your verdict in favor of the plaintiff.

INSTRUCTION NO. 4

When death by external and violent means is proven, presumption arises in favor of the beneficiary of an accident policy that death was accidental and the jury is required to find for the beneficiary unless there is evidence sufficient to justify another conclusion.

Life & Casualty Ins. Company of Tennessee v. Daniel, 209 Va. 332, 163 S.E.2d 577 (1968)

INSTRUCTION NO. 5

Whether or not the occurrence is accidental is to be viewed from the viewpoint of the insured, George Huff, and you must find in favor of the beneficiaries unless there is evidence to show that it was within his reasonable anticipation and foresight to have been shot.

Farm Bureau Mutual Automobile Ins. Co. v. Hammer, et al, 177 F.2d 793 (1949)
Wooden v. John Hancock Mutual Life Ins. Co., 205 Va. 750, 139 S.E.2d 801 (1965)

INSTRUCTION NO. 6

A killing is an accidental killing by violence for which the company is liable under its policy. In the absence of any provision in the policy relieving it in such a case, the company is clearly liable by the great weight of authority.

Excepted accidents or injuries must be definite and capable of being identified as in the excepted class.

Standard Accident Ins. Co. v. Walker, 127 Va. 140, 102 S.E. 585 (1920)
Blunt v. Fidelity & Casualty Co., 145 Cal. 268, 78 P. 729

INSTRUCTION NO. 7

The unexplained failure of a party to produce a material witness raises a presumption that the testimony of such witness would have been adverse to the party thus failing to produce him. The presumption may be rebutted by the party explaining the absence of the witness and showing that he has been unsuccessful in procuring his presence despite diligent efforts made in good faith to produce the witness.

Doubles, 10.10; Failure to Produce Material Witness

INSTRUCTION NO. 8

The term "preponderance of the evidence" does not necessarily mean the greater number of witnesses, but means the greater weight of all the evidence. It is that evidence which is most convincing and satisfactory to the minds of the jury. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

Doubles, 11.01; Preponderance of the Evidence

INSTRUCTION NO. A

The Court instructs the jury that the burden of proof is on the plaintiff to make out and prove to the satisfaction of the jury, by the preponderance of the evidence, every material fact necessary to place upon the defendant liability under the insurance policy, and if the jury, after considering all the evidence in the case both for the plaintiffs and the defendant, believe that the plaintiffs have failed to do this, then they must find a verdict for the defendant.

Bowman vs 1st National
115 Va.463, 475
80 SE 95

Warner vs White
149 Va. 177, 191
140 SE 128

INSTRUCTION NO. B

The Court instructs the jury that your verdict must not be based in whole or in part upon surmise, conjecture or sympathy for either of the parties, but must be based solely upon the evidence and the instructions of the court.

Bangley vs. Virginia Ry. Co.
195 Va. 340, 348
78 SE 2d 696, 701

INSTRUCTION NO. C

The Court instructs the jury that they are not to question the wisdom of the law as embodied in the Court instructions to you, and you are instructed to follow the law as setforth in the instructions in weighing the evidence and arriving at your verdict.

88 C.J.S. Trial 297, Page 808

INSTRUCTION NO. D.

The court instructs the jury that it is the function of the jury to determine the facts from the evidence and to reach a verdict by applying thereto the law as it is contained in the instructions of the court. It is the duty of the jury to consider the instructions of the court as a whole and in the light of the evidence applicable to the issues presented.

Wests' Virginia Jury Instructions Ø 10.01

INSTRUCTION NO. E

The court instructs the jury that the plaintiffs in these actions can recover only upon the contract as evidenced by the policies of insurance introduced into evidence in this cause, and you must give effect to each and every provision and stipulation thereof, and you have no right to disregard any part of the policies upon any theory or opinion of yours that it ought to have been different from what it is.

81-109 Michie Va. & W.Va. Instructions.

INSTRUCTION NO. F

The Court instructs the jury that where the beneficiaries of an accident life insurance policy seek to recover on the policy, they have the burden of bringing themselves with in the terms of the policy.

Metropolitan Life Ins. Co. vs. Krupel
165 Va. 602
183 SE 241
West Va-W. Va Digest Key 646

INSTRUCTION NO. G

The Court instructs the jury that where evidence was presented and where no evidence was presented contrary thereto, that upon the undisputed facts the jury is instructed not to theorize as to what the law would be, if the facts were different.

Maryland Casualty Vs Hoge
153 Va. 204, 209
149 SE 448,449

INSTRUCTION NO. H

The Court instructs the jury that if, from all of the evidence presented in this cause, you believe that the deceased, George Huff, died, directly or indirectly, from violence intentionally inflicted by another person, then you must find your verdict in favor of the defendant, Citizens Home Insurance Company.

PLAINTIFF'S EXHIBIT NO. 1
12-12-75
WRW

CITIZENS HOME INSURANCE COMPANY INCORPORATED

HOME OFFICE — RICHMOND VIRGINIA

SEVENTH WONDER — NATURAL BRIDGE, VA.

INDUSTRIAL INSURANCE—NON-PARTICIPATING—REGULAR PREMIUM CLASS

WHOLE LIFE POLICY—PREMIUMS PAYABLE FOR LIFE—INSURANCE PAYABLE AT DEATH

LOSS OF SIGHT OR LIMB BENEFIT—LOSS OF LIFE BY ACCIDENT BENEFIT

419

SCHEDULE REFERRED TO IN THIS POLICY

POLICY NUMBER	DATE OF ISSUE MO. DAY YR.	WEEKLY PREMIUM	AMOUNT OF INSURANCE	DIST.	DEBIT
74190294	5/13/74	1.74	$1,000.00	6	242
NAME OF INSURED: HUFF GEORGE 4-14-19		AGE NEXT BIRTHDAY: 56	DAILY HOSPITAL BENEFIT: NONE	APPLICABLE ONLY AS A PART OF PLAN NO. 01	
NAME OF BENEFICIARY: NELSON MABLE		AGE: 26	WEEKLY BENEFIT: NONE		

01

Paid face Value of 1000.00

THE CITIZENS HOME INSURANCE COMPANY, INCORPORATED, WILL PAY at the death of the Insured the amount due hereunder, subject to all the conditions, provisions, and privileges set forth in this Policy; provided, however, that no liability under any provision of this Policy is assumed by the Company prior to its Date of Issue, nor until the initial premium on this Policy is duly paid, nor unless on the Date of Issue of this Policy and its delivery to the Insured, the Insured is alive and in sound health.

PAYMENT OF THE CLAIM will be made to the Beneficiary promptly upon the receipt at the Home Office of due proofs of the death of the Insured made in the manner of, to the extent of, and upon the blanks furnished by the Company, said proofs to be accompanied by this Policy while in force and the Receipt Book belonging hereto.

FACILITY OF PAYMENT: If the Beneficiary does not surrender this Policy and the Receipt Book belonging hereto, with due proof of the death of the Insured, within sixty days after such death, or if the Beneficiary is the estate of the Insured, or is a minor, or dies before the Insured, or is not legally competent to give a valid release, the Company may make payment of the proceeds of this Policy to the Insured's executor or administrator or to any relative by blood or connection by marriage of the Insured, or to any person appearing to the Company to be equitably entitled thereto by reason of having inourred expenses for the maintenance, medical attention or burial of the Insured.

PAYMENT OF PREMIUM: The consideration for this Policy is the payment of the premium stated in the Schedule on the front page hereof which it is agreed shall be paid in advance to the Company or to its authorized representative on or before each Monday during the continuance of this contract. If for any reason the Agent shall not call for the premium when due, it shall be the duty of the Policyholder to bring or send said premium to the Home Office or District Office of the Company.

GRACE PERIOD: A Grace Period of four weeks (28 days) shall be granted for the payment of every premium after the first, during which time this Policy shall remain in force subject to its terms; but should any premium remain unpaid after noon of the 28th day of said period of grace this Policy shall lapse and become of no value except for the non-forfeiture benefits.

ENTIRE CONTRACT: This Policy, including all matter printed or endorsed on this and the following pages, and the application for same contain the entire contract between the parties. Its terms cannot be waived by any agent and cannot be changed except by endorsement hereon signed by the President or Secretary.

IN WITNESS WHEREOF, the said Citizens Home Insurance Company, Inc., has by its President and Secretary executed this contract on the date named in the Schedule.

CITIZENS HOME INSURANCE CO. INC. VIRGINIA 1915

W. A. McCaughey — SECRETARY

T. H. [illegible] — PRESIDENT

FORM WL-[illegible]

CCIDENTAL DEA TH AND DISABILITY BENEFITS:

ART 1—LOSS OF LIFE BY ACCIDENT BENEFIT. If the Insured, fter attaining age 10 and prior to attaining age 60, sustains bodily jury solely through external, violent, and accidental means, resulting rectly and independently of all other causes in the death of the Inred within sixty days of the date of such bodily injury, the Company, pon receipt of due proof thereof, will pay in addition to the Amount of nsurance due under this Policy and subject to the provisions of this olicy, a Loss of Life by Accident Benefit equal to the Amount of Inrance which would otherwise be payable under this Policy, except s provided below under Part 3—Exclusions and Limitations.

ART 2—LOSS OF SIGHT OR LIMB BENEFIT. The Company all pay to the Insured an amount equal to the Amount of Insurance as ated in the Schedule hereon, subject to the Exclusions and Limitations et forth below, upon receipt at its Home Office of due proof showing hat, prior to attaining age 60, the Insured has lost totally and permaently the sight of both eyes, or has sustained the loss of both hands by everance at or above the wrists, or both feet by severance at or above e ankles, or one hand by severance at or above the wrist and one foot y severance at or above the ankle. The Company shall pay an amount qual to one-half the Amount of Insurance, subject to the same condiions, if the Insured has sustained the loss of one hand by severance bove the wrist or the loss of one foot by severance above the ankle. In ther event, no further premiums shall be required after receipt of ich proof and this Policy shall be endorsed by the Company as a Paidp Policy under its terms and provisions, excluding the benefits for oss of Life by Accident and Loss of Sight or Limb.

ART 3—EXCLUSIONS AND LIMITATIONS. The Company shall ot be liable for payment under Part 1—Loss of Life by Accident if the remiums on this Policy are in default beyond the Grace Period, nor if is Policy is not in full force at the time of the accident and at the me of said death otherwise than by virtue of any Non-forfeiture Proision or Paid-Up Insurance by virtue of the Loss of Sight or Limb enefit. Nor does this Loss of Life by Accident Benefit (Part 1) cover ss of life caused or contributed to by: (1) bodily or mental infirmities disease in any form or medical or surgical treatment thereof; or (2) n-stroke or infection; or (3) the inhalation of gas, voluntarily or herwise; or (4) the taking of any kind of poison, drug, or sedative, oluntarily or otherwise.

The Company shall not be liable for the payment under Part 2—oss of Sight or Limb if (1) any part of such loss occurred either prior the Date of Issue of this Policy or as a result of disease contracted injury sustained prior to said date; (2) nor if the premiums on this licy are in default beyond the Grace Period; (3) nor if the Insured es not survive such loss by thirty days.

The Loss of Life by Accident and Loss of Sight or Limb Benefits rered to above shall not be payable if the Loss of Life by Accident or s of Sight or Limb is caused by or contributed to, directly or indicly, wholly or partially by: (1) self inflicted injury or self destrucon, whether sane or insane, or any attempt thereat; (2) violence tentionally inflicted by another person, or from any violation of crimal law by the Insured; (3) operating or riding in or descending from kind of aircraft if the Insured is a pilot, officer, or member of the w of such aircraft or is giving or receiving any kind of training or struction or has duties aboard such aircraft or duties requiring descent refrom; (4) riot, insurrection or war, declared or undeclared, or any attributable thereto, whether or not the Insured is in Military, Naval, Air Service. (5) Nor do these Benefits cover any loss of life or limb eyesight sustained in consequence of the Insured's being intoxicated under the influence of any narcotic unless administered on the advice a physician.

NCONTESTABILITY: This Policy shall be incontestable except as herwise expressly provided by law after it has been in force during e lifetime of the Insured for two years from its Date of Issue except r non-payment of premiums, and except as to the conditions set forth the provisions entitled "Loss of Life by Accident Benefit" and "Loss Sight or Limb Benefit."

HANGE OF BENEFICIARY: With the consent of the Company nd while this Policy is in force, the Beneficiary hereunder may be anged by executing the Company's prescr form therefor and forarding same, with this Policy, to the Ho Office of the Company. ch change shall be binding only when endorsed on this Policy by the mpany.

PREVIOUS INSURANCE: The Company assumes no risk under this Policy if there is in force on the date hereof previous insurance in this Company on the life of the Insured unless the existence of such previous insurance is admitted in the Application herefor or endorsed on this Policy by the Company. Should such previous insurance exist, the Company will return the premiums paid on this Policy.

WAR: Death of the Insured as the result of war, declared or undeclared, or any act attributable thereto, or death resulting from the special hazards incident to service in the Military, Naval, Merchant Marine, or Air Forces of any country if the cause of death occurs while the Insured is in such service and such death occurs either while in such service or within six months after termination of same, are risks not assumed under this Policy. If death occur under such conditions, the liability hereunder shall be limited to an amount equal to the premiums paid hereon.

WHEN POLICY IS VOIDABLE: Subject to the incontestability provision, if within two years prior to the Date of Issue of this Policy, the Insured has received institutional, hospital, medical, or surgical treatment or attention, and the Insured or any claimant under the Policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk; or if prior to such Date of Issue the Insured has been rejected for life insurance by this or any other insurer, if shown by the Company that knowledge of such rejection would have led to a refusal by the Company to issue this policy; then, in any such case, this policy shall be voidable by the Company unless reference to such institutional, hospital, medical or surgical treatment or attention, or such prior rejection is endorsed on this Policy by the Company; provided, however, that this Policy shall not be voidable because of absence of endorsement referring to any information which was disclosed in a written application for this Policy. If this Policy does not take effect or is voided by the Company, the premiums paid hereon will be returned.

LIMITATIONS OF INSURANCE: Subject to the provision entitled "Incontestability," the coverage provided by this Policy is limited to one-half of the amount otherwise payable should the Insured die from any pulmonary, bronchial, tubercular, kidney, liver, or heart disease, hypertension, apoplexy, epilepsy, diabetes, alcoholism, cancer, or cerebral hemorrhage if such disease or ailment existed during the first year following the Date of Issue.

If the Insured dies by his own hands, whether sane or insane, or at the hands of the Beneficiary, or dies as the result of fighting, or as the result of any violation of the laws of the land, or as a result of being under the influence of alcohol, or from insanity, or from venereal disease, however incurred, the liability of the Company, subject to the provision entitled "Incontestability", is limited to an amount equal to the premiums paid on this Policy; as death from any such cause is a risk not assumed hereunder by the Company.

(Non-Forfeiture Provisions are on Page 4)

TABLE B

CASH SURRENDER VALUES PER $100 OF INSURANCE

Age at Issue	End of 5 years	End of 6 years	End of 7 years	End of 8 years	End of 9 years	End of 10 years	End of 11 years	End of 12 years	End of 13 years	End of 14 years	End of 15 years	End of 16 years	End of 17 years	End of 18 years	End of 19 years	End of 20 years
	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1				.06	.59	1.14	1.71	2.29	2.89	3.50	4.13	4.77	5.43	6.10	6.[illegible]	7.50
2		.07	.58	1.10	1.65	2.22	2.80	3.39	4.00	4.63	5.27	5.92	6.59	7.27	7.[illegible]	8.70
3		.29	.82	1.37	1.94	2.52	3.12	3.73	4.36	5.00	5.65	6.33	7.01	7.72	8.[illegible]	9.19
4		.44	.99	1.56	2.15	2.75	3.36	3.99	4.63	5.29	5.96	6.65	7.36	8.09	8.[illegible]	9.62
5	.03	.68	1.15	1.74	2.34	2.96	3.59	4.24	4.90	5.57	6.26	6.97	7.71	8.46	9.[illegible]	10.04
6	.14	.91	1.30	1.90	2.52	3.16	3.81	4.47	5.15	5.84	6.56	7.29	8.[illegible]	8.[illegible]	9.[illegible]	10.40
7	.24	.04	1.44	2.06	2.70	3.35	4.02	4.70	5.40	6.13	6.86	7.62	8.[illegible]	9.21	10.[illegible]	10.93
8	.34	.95	1.58	2.22	2.87	3.54	4.23	4.94	5.65	6.39	7.16	7.95	8.[illegible]	9.61	10.49	11.37
9	.43	1.06	1.71	2.37	3.04	3.73	4.43	5.16	5.90	6.67	7.47	8.29	9.[illegible]	10.01	10.91	11.84
10	.52	1.17	1.83	2.51	3.20	3.91	4.64	5.39	6.16	6.96	7.78	8.64	9.[illegible]	10.42	11.36	12.32
11	.60	1.27	1.95	2.65	3.36	4.09	4.85	5.62	6.43	7.26	8.11	9.00	9.[illegible]	10.85	11.82	12.82
12	.68	1.37	2.07	2.79	3.52	4.28	5.06	5.87	6.71	7.57	8.46	9.38	10.[illegible]	11.30	12.[illegible]	13.33
13	.76	1.47	2.19	2.93	3.69	4.48	5.29	6.13	7.00	7.90	8.82	9.77	10.[illegible]	11.76	12.[illegible]	13.85
14	.84	1.57	2.31	3.06	3.87	4.69	5.54	6.41	7.31	8.24	9.20	10.19	11.[illegible]	12.24	13.[illegible]	14.41
16	.92	1.60	2.45	3.24	4.07	4.92	5.80	6.70	7.64	8.60	9.60	10.62	11.[illegible]	12.79	13.[illegible]	14.98
16	1.01	1.79	2.59	3.42	4.28	5.16	6.06	7.02	7.99	8.99	10.02	11.07	12.[illegible]	13.27	14.[illegible]	15.57
17	1.11	1.92	2.75	3.62	4.51	5.43	6.37	7.35	8.36	9.39	10.46	11.55	12.[illegible]	13.81	14.[illegible]	16.19
18	1.22	2.06	2.93	3.82	4.75	5.71	6.69	7.71	8.75	9.82	10.92	12.04	13.[illegible]	14.38	15.[illegible]	16.82
19	1.34	2.21	3.12	4.05	5.01	6.00	7.03	8.08	9.16	10.26	11.40	12.56	13.[illegible]	14.97	16.[illegible]	17.47
20	1.47	2.38	3.32	4.29	5.29	6.32	7.38	8.47	9.58	10.72	11.90	13.10	14.[illegible]	15.57	16.14	18.14
21	1.61	2.56	3.54	4.55	5.58	6.65	7.75	8.87	10.02	11.20	12.41	13.65	14.[illegible]	16.19	17.[illegible]	18.82
22	1.77	2.75	3.77	4.81	5.89	6.99	8.13	9.29	10.48	11.70	12.94	14.21	15.51	16.82	18.[illegible]	19.52
23	1.93	2.95	4.01	5.09	6.20	7.35	8.52	9.72	10.95	12.20	13.49	14.79	16.12	17.47	18.[illegible]	20.23
24	2.09	3.16	4.25	5.[illegible]	6.53	7.71	8.92	10.16	11.43	12.72	14.04	15.38	16.74	18.12	19.[illegible]	20.99
26	2.27	3.37	4.50	5.[illegible]	6.86	8.08	9.33	10.61	11.92	13.25	14.60	15.97	17.37	18.78	20.[illegible]	21.67
26	2.[illegible]	3.59	4.76	5.9[illegible]	7.20	8.46	9.75	11.07	12.41	13.76	15.16	16.57	18.00	19.45	20.[illegible]	22.40
27	2.[illegible]	3.81	5.02	6.27	7.[illegible]	8.85	10.18	11.53	12.91	14.[illegible]	15.74	17.18	18.65	20.14	21.[illegible]	23.14
28	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
29	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

ve been duly paid, and a payment of all arrears, provided evidence f the insurability of the Insured, satisfactory to the Company, be furished; but such reinstatement shall not take effect unless the Insured alive and in sound health at the time of revival. Such reinstated olicy shall be contestable on account of fraud or misrepresentation of aterial facts pertaining to the reinstatement for the same period after einstatement as provided with respect to the original issue.

LIMITATION OF ACTION: No suit or action at law or in equity hall be maintainable hereon if begun before the expiration of sixty ays or subsequent to the expiration of twelve months after filing proofs f claim.

MISSTATEMENT OF AGE: If the age of the Insured has been misated, the benefits payable hereunder shall be such as the paid preiums would have purchased at the correct age at the time the Policy as issued. However, the Company insures no risks over age seventy ext birthday at Date of Issue under this Policy, and therefore assumes o liability other than return of premiums in event the true age next irthday at Date of Issue is more than seventy.

ASSIGNMENT: Any assignment of this Policy or any of the benefits ereunder shall be void and of no effect.

37	4.39	6.18	7.84	9.[illegible]	11.22	12.91	15.67	16.[illegible]	17.[illegible]	19.98	21.15	21.78	23.60	25.43	27.27	29.[illegible]	30.[illegible]														
38	4.74	6.43	8.13	9.66	11.60	13.36	15.14	16.94	18.76	20.58	22.43	24.29	26.16	28.04	29.[illegible]	31.64															
39	4.94	6.67	8.43	10.20	11.99	13.80	15.62	17.47	19.32	21.20	23.09	24.99	26.90	28.82	30.[illegible]	32.70															
40	5.14	6.92	8.72	10.54	12.38	14.24	16.11	18.00	19.91	21.82	23.76	25.70	27.65	29.62	31.[illegible]	33.57															
41	5.34	7.17	9.03	10.90	12.78	14.69	16.61	18.55	20.50	22.46	24.44	26.43	28.42	30.43	32.[illegible]	34.47															
42	5.55	7.43	9.33	11.26	13.19	15.15	17.12	19.10	21.10	23.11	25.14	27.17	29.21	31.26	33.[illegible]	35.38															
43	5.76	7.69	9.65	11.62	13.61	15.62	17.64	19.67	21.72	23.78	25.85	27.93	30.02	32.11	34.[illegible]	36.31															
44	5.97	7.96	9.97	12.00	14.04	16.10	18.17	20.26	22.36	24.46	26.58	28.71	30.84	32.98	35.[illegible]	37.25															
45	6.18	8.23	10.30	12.38	14.48	16.59	18.72	20.86	23.01	25.17	27.33	29.51	31.69	33.87	36.[illegible]	38.20															
46	6.41	8.51	10.64	12.78	14.93	17.10	19.28	21.47	23.68	25.89	28.10	30.33	32.55	34.77	36.[illegible]	39.14															
47	6.63	8.80	10.99	13.19	15.40	17.62	19.86	22.11	24.36	26.63	28.90	31.17	33.43	35.67	37.[illegible]	40.09															
48	6.87	9.10	11.35	13.60	15.88	18.16	20.46	22.76	25.07	27.39	29.71	32.02	34.31	36.58	38.[illegible]	41.05															
49	7.11	9.40	11.71	14.04	16.37	18.71	21.07	23.43	25.80	28.17	30.53	32.87	35.19	37.48	39.[illegible]	42.00															
50	7.36	9.72	12.09	14.48	16.88	19.28	21.70	24.12	26.54	28.96	31.35	33.72	36.07	38.39	40.[illegible]	42.96															
51	7.61	10.04	12.48	14.94	17.40	19.87	22.35	24.83	27.30	29.75	32.18	34.58	36.96	39.31	41.[illegible]	43.91															
52	7.87	10.37	12.89	15.41	17.94	20.48	23.02	25.55	28.06	30.54	33.00	35.44	37.84	40.22	42.[illegible]	44.87															
53	8.14	10.72	13.30	15.90	18.50	21.10	23.69	26.26	28.81	31.33	33.83	36.29	38.73	41.13	43.[illegible]	45.83															
54	8.47	11.12	13.78	16.45	19.12	21.77	24.41	27.02	29.61	32.16	34.69	37.19	39.65	42.08	44.[illegible]	46.83															
55	8.87	11.60	14.33	17.07	19.79	22.49	25.17	27.82	30.45	33.04	35.60	38.12	40.61	43.07	45.[illegible]	47.86															
56	9.29	12.09	14.90	17.69	20.47	23.22	25.94	28.63	31.29	33.91	36.50	39.06	41.58	44.06	46.[illegible]	48.89															
57	9.72	12.60	15.47	18.32	21.14	23.93	26.70	29.43	32.13	34.79	37.41	40.00	42.54	45.05	47.[illegible]	49.92															
58	10.16	13.11	16.04	18.94	21.81	24.65	27.46	30.23	32.97	35.66	38.32	40.94	43.52	46.05	48.[illegible]	50.95															
59	10.60	13.62	16.60	19.56	22.46	25.37	28.22	31.03	33.81	36.54	39.24	41.89	44.49	47.04	49.[illegible]	51.96															
60	11.04	14.11	17.16	20.17	23.14	26.08	28.98	31.83	34.65	37.42	40.15	42.83	45.46	48.03	50.[illegible]	53.95															
61	11.47	14.60	17.70	20.77	23.80	26.79	29.73	32.63	35.49	38.31	41.07	43.78	46.42	49.00	51.[illegible]	53.91															
62	11.88	15.08	18.24	21.37	24.45	27.49	30.48	33.44	36.34	39.19	41.98	44.71	47.37	49.95	52.[illegible]	54.84															
63	12.28	15.55	18.77	21.96	25.10	28.19	31.24	34.24	37.18	40.07	42.89	45.63	48.30	50.87	53.[illegible]	55.74															
64	12.68	16.02	19.31	22.55	25.75	28.91	32.01	35.05	38.04	40.95	43.79	46.54	49.20	51.77	54.[illegible]	56.60															
65	13.09	16.49	19.85	23.16	26.43	29.63	32.79	35.87	38.89	41.83	44.68	47.43	50.09	52.64	55.[illegible]	57.41															
66	13.51	16.98	[illegible].41	23.79	27.1[illegible]	30.38	33.58	36.70	39.74	42.70	45.55	48.30	50.94	53.47	55.[illegible]	58.20															
67	13.94	17.49	[illegible].99	24.44	27.8[illegible]	31.14	34.38	37.53	40.59	43.55	46.40	49.14	51.77	54.27	56.[illegible]	58.95															
68	14.38	18.02	[illegible].59	25.10	28.5[illegible]	31.90	35.18	38.35	41.42	44.38	47.23	49.95	52.55	55.03	57.[illegible]	59.67															
69	14.84	18.56	[illegible].20	25.78	29.2[illegible]	32.67	35.97	39.16	42.23	45.18	48.01	50.71	53.29	55.75	58.[illegible]	60.40															
70	15.32	19.11	[illegible].83	26.46	29.9[illegible]	33.42	36.74	39.93	43.00	45.94	48.75	51.43	53.99	56.45	58.[illegible]	61.17															

TABLE A—PAID-UP TERM INSURANCE VALUES

The period extended is the same for any amount of insurance

Age at Issue	End of 2 Years Yrs. Days	End of 3 Years Yrs. Days	End of 4 Years Yrs. Days	End of 5 Years Yrs. Days	End of 6 Years Yrs. Days	End of 7 Years Yrs. Days	End of 8 Years Yrs. Days	End of 9 Years Yrs. Days	End of 10 Years Yrs. Days	End of 11 Years Yrs. Days	End of 12 Years Yrs. Days	End of 13 Years Yrs. Days	End of 14 Years Yrs. Days	End of 15 Years Yrs. Days	End of 16 Years Yrs. Days	End of 17 Years Yrs. Days	End of 18 Years Yrs. Days	End of 19 Years Yrs. Days	End of 20 Years Yrs. Days
1	.....	.....	.....	.....	.....	.....	100	3 41	5 343	8 223	11 114	14 76	17 54	19 286	21 359	23 370	25 51	26 92	27 54
2	.....	.....	.....	.....	122	3 29	5 339	8 226	11 99	14 37	17 18	19 284	22 [illegible]	23 353	25 163	26 330	27 212	28 125	28 349
3	.....	.....	.....	.....	1 195	4 148	7 61	9 297	12 208	15 185	18 134	20 316	22 333	24 196	25 305	26 18	27 256	28 135	28 331
4	.....	.....	.....	.....	2 118	5 67	7 321	10 205	13 155	16 141	19 39	21 144	23 87	24 256	25 317	26 293	27 203	28 59	28 234
5	.....	.....	.....	40	3 0	5 292	8 173	11 85	14 67	17 33	19 233	21 268	23 146	24 266	25 288	26 234	27 120	27 321	28 114
6	.....	.....	.....	216	3 209	6 115	9 0	11 315	14 313	17 236	20 9	21 342	23 165	24 242	25 231	26 151	27 17	27 199	27 343
7	.....	.....	.....	1 69	4 19	6 277	9 186	12 168	15 157	18 30	20 99	22 9	23 150	24 191	25 152	26 50	26 261	27 63	27 193
8	.....	.....	.....	1 236	4 166	7 58	9 364	13 6	15 330	18 143	20 151	22 9	23 110	24 118	25 55	25 298	26 126	26 280	27 34
9	.....	.....	.....	2 10	4 289	7 194	10 170	13 182	16 99	18 218	20 169	21 345	23 46	24 27	24 307	25 166	25 346	26 121	26 229
10	.....	.....	.....	2 125	5 31	7 327	10 332	13 330	16 198	18 258	20 157	21 293	22 328	23 284	24 179	25 24	25 189	25 319	26 52
11	.....	.....	.....	2 222	5 131	8 94	11 119	14 86	16 265	18 270	20 122	21 221	22 229	23 164	24 43	24 236	25 26	25 145	25 234
12	.....	.....	14	2 309	5 233	8 229	11 259	14 185	16 308	18 259	20 71	21 137	22 120	23 37	23 262	24 79	24 221	24 332	25 50
13	.....	.....	104	3 28	5 342	9 2	12 18	14 261	16 328	18 230	20 5	21 42	22 3	22 265	23 112	23 281	24 49	24 151	24 228
14	.....	.....	187	3 114	6 96	9 141	12 125	14 317	16 330	18 187	19 291	20 303	21 242	22 123	22 322	23 115	23 239	23 336	24 41
15	.....	.....	268	3 210	6 225	9 275	12 218	14 355	16 315	18 131	19 204	20 191	21 112	21 344	22 164	22 313	23 65	23 154	23 218
16	.....	.....	351	3 318	6 363	10 35	12 296	15 10	16 286	18 66	19 109	20 75	20 344	21 195	22 6	22 145	22 255	22 338	23 33
17	.....	.....	1 74	4 75	7 142	10 147	12 355	15 14	16 244	17 356	19 9	19 319	20 206	21 46	21 211	21 343	22 81	22 157	22 212
18	.....	.....	1 173	4 209	7 282	10 246	13 32	15 3	16 192	17 272	18 265	19 192	20 68	20 260	21 52	21 175	21 271	21 344	22 29
19	.....	.....	1 284	4 352	8 47	10 327	13 55	14 342	16 129	17 180	18 153	19 64	19 249	20 108	20 256	21 8	21 98	21 164	21 210
20	.....	.....	2 42	5 134	8 162	11 24	13 61	14 303	16 57	17 82	18 37	18 298	19 146	19 320	20 95	20 205	20 290	20 352	21 29
21	.....	.....	2 173	5 272	8 260	11 64	13 49	14 250	15 340	16 344	17 280	18 162	19 [illegible]	19 165	19 298	20 37	20 116	20 174	20 212
22	.....	.....	2 308	6 32	8 337	11 84	13 21	14 185	15 248	16 233	17 154	18 25	18 247	19 10	19 135	19 233	19 308	19 362	20 32
23	.....	.....	3 77	6 137	9 26	11 83	12 343	14 110	15 150	16 117	17 25	17 248	18 67	18 216	18 336	19 64	19 134	19 185	19 216
24	.....	67	3 197	6 220	9 54	11 62	12 284	14 26	15 45	15 360	16 254	17 103	17 271	18 56	18 170	18 258	18 325	19 7	19 35
25	.....	176	3 301	6 280	9 61	11 26	12 213	13 295	14 296	15 231	16 115	16 320	17 123	17 259	18 3	18 87	18 150	18 194	18 218
26	.....	282	4 22	6 319	9 50	10 340	12 132	13 192	14 176	15 99	15 338	16 169	16 3[illegible]	17 96	17 200	17 281	17 341	18 15	18 36
27	.....	1 15	4 90	6 339	9 24	10 276	12 44	13 83	14 53	14 329	15 192	16 17	16 1[illegible]	16 298	17 33	17 109	17 165	17 202	17 219
28	.....	1 102	4 141	6 341	8 348	10 202	11 311	12 335	13 289	14 190	15 46	15 227	16 [illegible]	16 133	16 229	16 303	16 356	17 23	17 37
29	.....	1 178	4 176	6 329	8 295	10 121	11 208	12 215	13 158	14 50	14 262	15 73	15 2[illegible]	15 334	16 61	16 131	16 180	16 209	16 220
30	.....	1 244	4 197	6 302	8 233	10 34	11 101	12 93	13 26	13 273	14 113	14 284	15 [illegible]	15 170	15 259	15 326	16 6	16 32	16 39
31	.....	1 300	4 204	6 266	8 163	9 306	10 357	11 336	12 257	13 131	13 330	14 129	14 264	15 8	15 93	15 156	15 197	15 219	15 223
32	.....	1 345	4 200	6 321	8 89	9 209	10 244	11 210	12 123	12 355	13 181	13 341	14 107	14 211	14 293	14 352	15 25	15 43	15 45
33	.....	2 14	4 186	6 [illegible]9	8 11	9 110	10 130	11 86	11 355	12 213	13 35	13 189	13 315	14 52	14 129	14 184	14 218	14 233	14 232
34	.....	2 37	4 163	6 312	7 293	9 11	10 17	10 326	11 220	12 73	12 254	13 39	13 161	13 258	13 331	14 17	14 47	14 59	14 56
35	.....	2 50	4 134	6 50	7 207	8 273	9 267	10 201	11 88	11 299	12 109	12 254	13 8	13 101	13 169	13 216	13 243	13 253	13 248
36	.....	2 56	4 98	5 151	7 122	8 171	9 152	10 78	10 322	11 161	11 332	12 107	12 221	12 310	13 9	13 52	13 75	13 83	13 76
37	.....	2 55	4 59	5 243	7 36	8 71	9 41	9 322	10 193	11 27	11 191	11 328	12 72	12 156	12 215	12 254	12 275	12 280	12 272
38	.....	2 49	4 18	5 215	6 315	7 336	8 295	9 202	10 66	10 258	11 54	11 185	11 240	12 3	12 58	12 94	12 112	12 115	12 105
39	.....	2 39	3 339	5 148	6 229	7 237	8 185	9 85	9 307	10 128	10 284	11 45	11 144	11 217	11 268	11 300	11 316	11 317	11 306
40	.....	2 25	3 293	5 82	6 146	7 141	8 79	8 335	9 185	10 1	10 151	10 272	11 0	11 68	11 116	11 145	11 158	11 158	11 145
41	.....	2 9	3 248	5 16	6 65	7 48	7 341	8 223	9 67	9 242	10 21	10 136	10 2[illegible]	10 287	10 330	10 357	11 3	11 0	10 351
42	8	1 356	3 203	5 116	5 351	6 321	7 239	8 114	8 316	9 120	9 258	10 2	10 [illegible]3	10 143	10 183	10 207	10 216	10 213	10 198
43	25	1 338	3 160	4 253	5 273	6 232	7 141	8 9	8 204	9 2	9 132	9 234	9 311	10 1	10 38	10 60	10 67	10 62	10 46
44	33	1 318	3 117	4 193	5 198	6 146	7 47	7 271	8 94	8 249	9 9	9 104	9 176	9 228	9 262	9 281	9 286	9 280	9 264
45	50	1 300	3 76	4 134	5 126	6 63	6 319	7 171	7 352	8 135	8 251	8 341	9 44	9 92	9 123	9 140	9 144	9 138	9 121
46	60	1 281	3 36	4 78	5 57	5 348	6 230	7 74	7 247	8 22	8 131	8 216	8 279	8 324	8 352	9 2	9 4	8 362	8 345
47	68	1 261	2 362	4 23	4 355	5 270	6 143	6 344	7 144	2 275	8 13	8 93	8 152	8 194	8 221	8 234	8 236	8 228	8 212
48	75	1 243	2 324	3 335	4 289	5 195	6 59	6 251	7 42	7 165	7 263	7 337	8 [illegible]	8 67	8 91	8 104	8 105	8 97	8 79
49	80	1 224	2 257	3 284	4 225	5 122	5 342	6 159	6 306	7 57	7 149	7 220	7 272	7 308	7 331	7 341	7 342	7 333	7 315
50	84	1 206	2 251	3 234	4 164	5 51	5 261	6 68	6 206	6 316	7 38	7 105	7 154	7 189	7 210	7 220	7 220	7 210	7 191
51	87	1 168	2 216	3 186	4 105	4 346	5 181	5 343	6 108	6 213	6 295	6 357	7 [illegible]	7 72	7 92	7 101	7 99	7 88	7 67
52	89	1 170	2 183	3 139	4 48	4 277	5 101	5 254	6 12	6 111	6 189	6 249	6 2[illegible]	6 323	6 341	6 348	6 345	6 333	6 313
53	91	1 153	2 150	3 94	3 356	4 209	5 22	5 166	5 283	6 12	6 86	6 143	6 146	6 214	6 231	6 237	6 233	6 220	6 198
54	101	1 144	2 126	3 57	3 306	4 146	4 313	5 85	5 196	5 285	5 354	6 43	6 [illegible]	6 110	6 126	6 130	6 124	6 109	6 84
55	120	1 144	2 110	3 27	3 261	4 68	4 246	5 9	5 115	5 199	5 265	6 315	5 351	6 10	6 23	6 25	6 16	5 363	5 339
56	136	1 143	2 94	2 360	3 215	4 30	4 179	4 301	5 35	5 115	5 178	5 225	5 269	5 281	5 291	5 290	5 281	5 262	5 237
57	151	1 140	2 76	2 326	3 167	3 338	4 113	4 229	4 322	5 32	5 92	5 137	5 168	5 187	5 195	5 193	5 181	5 161	5 134
58	164	1 136	2 55	2 290	3 120	3 281	4 48	4 158	4 247	4 317	5 7	5 49	5 78	5 95	5 100	5 95	5 81	5 59	5 29
59	175	1 130	2 32	2 253	3 72	3 224	3 350	4 89	4 173	4 241	4 292	4 329	4 353	5 1	5 4	4 361	4 347	4 325	4 298
60	184	1 121	2 7	2 216	3 24	3 169	3 288	4 20	4 101	4 165	4 213	4 248	4 269	4 280	4 280	4 272	4 256	4 234	4 205
61	190	1 110	1 346	2 78	2 311	3 114	3 227	3 319	4 29	4 90	4 136	4 167	4 195	4 194	4 193	4 183	4 169	4 141	4 111
62	194	1 [illegible]	1 318	2 139	2 265	3 59	3 167	3 265	3 325	4 15	4 67	4 86	4 102	4 109	4 104	4 93	4 73	4 47	4 16
63	194	1 [illegible]	1 290	2 [illegible]	2 249	3 6	3 109	3 193	3 [illegible]	3 300	3 345	4 4	4 14	4 21	4 15	4 1	3 [illegible]	3 [illegible]	3 [illegible]
64	191	1 [illegible]	1 262	2 64	2 204	2 [illegible]	3 [illegible]	3 [illegible]	3 194	3 241	3 274	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]
65	189	1 47	1 236	2 28	2 163	2 272	2 361	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]
66	186	1 [illegible]	1 [illegible]	[illegible]	2 [illegible]	2 [illegible]	2 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]
67	[illegible]	[illegible]	[illegible]	[illegible]	2 [illegible]	2 [illegible]	2 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]
68	[illegible]	[illegible]	[illegible]	[illegible]	2 [illegible]	2 [illegible]	2 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]	3 [illegible]
69	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

CASH SURRENDER VALUE: After this Policy has been in force with all due premiums paid for at least five full years from the Date of Issue, it may be surrendered for a cash value in accordance with Table B, provided written application and surrender of this Policy and the last Receipt Book belonging hereto are made within sixty days after the due date of the first premium in default. Payment of any cash value may be deferred at the discretion of the Company for a period not to exceed six months. All liability of the Company hereunder shall cease upon the payment of any cash surrender value.

PAID-UP TERM INSURANCE (AUTOMATIC OPTION): In the event of default beyond the Grace Period in any premium payment after premiums have been paid for the minimum period specified in the Table of Paid-Up Term Insurance Values, the amount insured shall be automatically continued in force without the Loss of Eyesight or Limbs Benefit, and Loss of Life by Accident Benefit, effective as of the due date of the first premium in default, and continuing for the term stated in the Table of Paid-Up Term Insurance Values, at the expiration of which period, unless the death of the Insured has occurred therein, all liability of the Company shall cease.

BASIS OF CALCULATION OF NON-FORFEITURE VALUES: The values used in determining benefits shown in the tables are calculated by the Standard Non-Forfeiture Value Method on the basis of the following assumptions: (1) Mortality according to the Commissioners 1961 Standard Industrial Mortality Table except that the rates of mortality assumed in calculating any extended term insurance are according to the Commissioners 1961 Industrial Extended Insurance Table; (2) Interest rate at 3½% per annum; and (3) Deaths during any policy year occur at the end of that year. The Non-Forfeiture Values under this policy are equal or greater than the minimum required by the Standard Non-Forfeiture Law.

Values shown in the tables are for completed policy years, and proportionate allowance will be made for premiums paid for fractional part of a year. Values for policy years beyond those shown will be furnished upon request.

The Benefit for Loss of Eyesight or Limb provision and the Loss of Life by Accident Benefit provision do not affect the values used in determining the Non-Forfeiture Benefits and do not apply to any insurance provided under the Non-Forfeiture Provisions.

If application for cash surrender is made later than 60 days after the date of default and while this policy is continued as Paid-Up Term Insurance, the amount of the Cash Surrender Value shall be the net single premium at the date of surrender for such Term Insurance; provided, however, that the amount of the Cash Surrender Value within thirty (30) days after any policy anniversary shall be the net single premium on such anniversary for any existing Paid-Up Term Insurance.

ENDORSEMENTS

PLAINTIFF'S EXHIBIT NO. 2
12-12-75
WRW

CITIZENS HOME INSURANCE COMPANY INCORPORATED

HOME OFFICE — RICHMOND VIRGINIA

SEVENTH WONDER NATURAL BRIDGE VA.

INCORPORATED IN 1915 UNDER THE LAWS OF VIRGINIA

HEREBY INSURES the person named as the Insured in the Policy Schedule, subject to all the provisions, conditions, exclusions and limitations of this Policy, against (Part 1) loss of life through accidental means, against (Part 2) loss of sight or limb from injury or disease, and (Part 3) the Company will pay an additional benefit for injuries received while riding as a fare-paying passenger on a public conveyance.

CONSIDERATION, DATE OF ISSUE, PERIOD

THE CONSIDERATION for this Policy is the payment in advance of the Premium specified in the Policy Schedule, and of the representations in the application herefor. The date of issue shown in the Schedule is the effective date of this Policy, and the Company assumes no liability prior to said date, nor unless on its date and delivery the Insured is alive, in sound health and free from bodily injury or disease. This Policy is issued for a period of one week to commence on the date of issue, beginning and ending at twelve o'clock noon, standard time, of the place where the Insured resides.

GUARANTEED RENEWABLE AND NON-CANCELLABLE TO AGE 65 OR PRIOR CLAIM

THE INSURED shall have the right to continue this Policy in force until the policy anniversary immediately following his sixty-fourth birthday by the timely payment of each weekly premium shown in the Policy Schedule, except where a loss occurs as herein provided.

PREMIUMS PAYABLE WEEKLY

THE PREMIUM specified in the Policy Schedule is due on Monday of each week and shall be paid in advance to the Company, or to its authorized representative, on or before each Monday during the continuance of this contract. If any premium shall remain unpaid at the expiration of the Grace Period hereinafter provided, this Policy shall automatically lapse and all premiums paid shall be forfeited to the Company.

GRACE PERIOD

A GRACE PERIOD of four weeks (28 days) will be granted for the payment of each premium falling due after the first premium, during which Grace Period the Policy shall continue in force, subject to its terms. If any premium be not called for when due, the Policyholder shall bring or send said premium to the Company's Home Office or one of its District Offices. If loss of life, limb or eyesight occurs within the Grace Period any overdue premium will be deducted from the amount payable.

IN WITNESS WHEREOF, the said Citizens Home Insurance Company, Inc., has by its President and Secretary executed this contract on the date named in the Schedule.

CITIZENS HOME INSURANCE CO. INC. VIRGINIA 1915

H. A. McConaghy
SECRETARY.

A. H. Harris Jr.
PRESIDENT.

INCREASING PRINCIPAL SUM INDEMNITY FOR DEATH BY ACCIDENTAL MEANS, FOR LOSS OF LIMBS AND SIGHT, AND DOUBLE INDEMNITY FOR SAID LOSSES WHEN DUE TO SPECIFIED TRAVEL ACCIDENT, ALL AS DEFINED AND LIMITED HEREIN.

FORM A-ED. 10-61

BENEFIT PROVISIONS

ART 1—LOSS OF LIFE BY ACCIDENT. The Citizens ome Insurance Company, Inc., will pay to the Beneficiary, if ving, the principal sum specified on the fourth page hereof, mmediately upon receipt of due proof of the death of the nsured as a result of drowning or bodily injury effected solely y violent, external and accidental means as evidenced by a sible contusion or wound on the exterior of the body, except the case of drowning or internal injuries revealed by an utopsy, and if such drowning or bodily injury of the Insured a direct, independent and proximate cause of the death of e Insured within ninety days from the date of the injury.

ART 2—LOSS OF SIGHT OR LIMB. The Company ill pay to the Insured if he has suffered any losses set forth elow solely as a direct and proximate result of disease con- acted after or injury sustained after the effective date of this olicy, upon surrender of this Policy while in force and the ceipt book belonging hereto, the sum set opposite such loss s follows:

Loss of Both Eyes	The Principal Sum
Loss of Both Hands	The Principal Sum
Loss of Both Feet	The Principal Sum
Loss of One Hand and One Foot	The Principal Sum
Loss of One Eye and One Hand	The Principal Sum
Loss of One Eye and One Foot	The Principal Sum
Loss of One Hand	One-half of the Principal Sum
Loss of One Foot	One-half of the Principal Sum
Loss of One Eye	One-half of the Principal Sum

The loss of hand or foot means the loss by severance of such mb at or above the wrist or ankle joint. The loss of an eye or yes means the permanent loss of the sight thereof. No phy- cal impairment existing prior to the date of this Policy shall e taken into account in determining whether the Insured is ntitled to a benefit for loss of sight or limb herein provided.

Upon the occurrence of any of the above losses, the Policy hall expire. Only one of the amounts so specified, the largest, ill be paid for loss of life, limb, and sight resulting from one ccident and upon the payment of the amount provided herein r such loss the Company's liability hereunder shall be fully scharged.

PART 3—ADDITIONAL BENEFIT FOR INJURIES RECEIVED ON COMMON CARRIERS. In addition the Company will pay an amount equal to the amount otherwise payable for such loss if the loss of sight or limb or the loss of life by accidental means, as above provided, is a direct result of an injury received while the Insured is riding as a fare-paying passenger inside of a taxicab, streetcar, bus, train, or airplane (or other vehicle), operated by a common carrier as a public conveyance and if such loss occurs within ninety days from receiving such injury.

PART 4—EXCLUSIONS AND LIMITATIONS This Policy does not cover loss of life caused or contributed to by: (1) bodily or mental infirmities or disease in any form or medical or surgical treatment thereof; or (2) sunstroke or infection; or (3) the inhalation of gas, voluntarily or otherwise; or (4) the taking of any kind of poison, voluntarily or otherwise.

This Policy does not cover any loss of life, or limb, or eyesight, which results, directly or indirectly, (1) from self destruction, whether sane or insane, or any attempt thereat, (2) from any violence intentionally inflicted by another person, or from any violation of criminal law by the Insured, (3) from operating or riding in or descending from any kind of aircraft if the Insured is a pilot, officer, or member of the crew of such aircraft or is giving or receiving any kind of training or instruction or has any duties aboard such aircraft or duties requiring descent therefrom, (4) from riot, insurrection or war, declared or undeclared, or any act attributable thereto, whether or not the Insured is in Military, Naval or Air Service, except that where the loss or injury occurs on land and within the continental boundaries of the United States of America and not on a boat, ship or other watercraft, wherever located, there shall be paid one-fifth of the amount of the applicable benefit stipulated on this Policy. (5) Nor does this Policy cover any loss of life or limb or eyesight sustained in consequence of the Insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

REQUIRED PROVISIONS

1. ENTIRE CONTRACT; CHANGES. This Policy, cluding the endorsements and the attached papers, if any, onstitutes the entire contract of insurance. No change in this olicy shall be valid until approved by an executive officer of e Company and unless such approval be endorsed hereon or ttached hereto. No agent has authority to change this Policy r waive any of its provisions.

2. TIME LIMIT ON CERTAIN DEFENSES. After wo years from the date of issue of this Policy no misstate- ents, except fraudulent misstatements, made by the appli- ant in the application for such Policy shall be used to avoid e Policy or to deny a claim for loss incurred or disability (as efined in the Policy) commencing after the expiration of such

notice the claimant shall be deemed to have complied with the requirements of this Policy as to proof of loss upon submitting, within the time fixed in the Policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

6. PROOFS OF LOSS. Written proof of loss must be furnished to the Company at its said office within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later [illegible] of is otherwise requir[illegible]

No claim for loss incurred or disability (as defined in the licy) commencing after two years from the date of issue of s Policy shall be reduced or denied on the ground that a ease or physical condition not excluded from coverage by me or specific description effective on the date of loss had sted prior to the effective date of coverage of this Policy.

3. REINSTATEMENT. If any renewal premium be not id within the time granted the Insured for payment, a subquent acceptance of premium by the Company or by any ent duly authorized by the Company to accept such premn, without requiring in connection therewith an application reinstatement shall reinstate the Policy; provided hower, that if the Company or such agent requires an applicaon for reinstatement and issues a conditional receipt for the emium tendered, the Policy will be reinstated upon approval such application by the Company or, lacking such approval, on the forty-fifth day following the date of such conditional eipt unless the Company has previously notified the Inred in writing of its disapproval of such application. The nstated Policy shall cover only loss resulting from such cidental injury as may be sustained after the date of reinatement and loss due to such sickness as may begin more an ten days after such date. In all other respects the Inred and the Company shall have the same rights thereunder they had under the Policy immediately before the due date the defaulted premium, subject to any provisions endorsed reon or attached hereto in connection with the reinstateent.

4. NOTICE OF CLAIM. Written notice of claim must given to the Company within twenty days after the occurnce or commencement of any loss covered by the Policy, or soon thereafter as is reasonably possible. Notice given by or behalf of the Insured or the Beneficiary to the Company at Home Office in Richmond, Virginia, or to any authorized ent of the Company, with information sufficient to identify e Insured, shall be deemed notice to the Company.

5. CLAIM FORMS. The Company, upon receipt of a tice of claim will furnish to the claimant such forms as are ually furnished by it for filing proofs of loss. If such forms e not furnished within fifteen days after the giving of such

7. TIME OF PAYMENT OF CLAIMS. Indemnities payable under this Policy will be paid immediately upon receipt of due written proof of loss.

8. PAYMENT OF CLAIMS. Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the Insured. Any other accrued indemnities unpaid at the Insured's death may, at the option of the Company, be paid either to such Beneficiary or to such estate. All other indemnities will be payable to the Insured.

If any indemnity of this Policy shall be payable to the estate of the Insured or to an Insured or Beneficiary who is a minor or otherwise not competent to give a valid release, the Company may pay such indemnity up to an amount not exceeding $1,000 to any relative by blood or connection by marriage of the Insured or Beneficiary who is deemed by the Company to be equitably entitled thereto. Any payment made by the Company in good faith pursuant to this provision shall fully discharge the Company to the extent of such payment.

9. PHYSICAL EXAMINATIONS AND AUTOPSY. The Company at its own expense shall have the right and opportunity to examine the person of the Insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

10. LEGAL ACTIONS. No action at law or in equity shall be brought to recover on this Policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this Policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

11. CHANGE OF BENEFICIARY. The right to change of Beneficiary is reserved to the Insured and the consent of the Beneficiary or Beneficiaries shall not be requisite to surrender or assignment of this Policy or to any change of Beneficiary or Beneficiaries, or to any other changes in this Policy.

OTHER PROVISIONS

1. CHANGE OF OCCUPATION. No reduction shall made in any indemnity herein provided by reason of ange in the occupation of the Insured or by reason of his ing any act or thing pertaining to any other occupation.

2. OTHER INSURANCE IN THIS COMPANY. If ike Policy previously issued by this Company to the Insured in force concurrently herewith, making the aggregate inmnity for accidental loss of life, loss of sight or dismemberent in excess of $5,000. of Ultimate Amount of Principal m the excess insurance shall be void and all premiums paid such excess shall be returned to the Insured or his estate.

3. ASSIGNMENT. The death benefit hereunder shall not subject to any order, agreement to assign or assignment by e Beneficiary, nor shall the Company be bound thereby uns it consents thereto.

4. AGE LIMITS. This Policy and all insurance herein provided shall terminate on the anniversary of this Policy next after the Insured shall have passed the age of Sixty-four Years. Any premium paid to the Company for any period not covered by this Policy will be returned upon request.

5. CONFORMITY WITH STATE STATUTES. Any provision of this Policy which, on its effective date, is in conflict with the statues of the State in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

6. NON-PARTICIPATING. This Policy is issued at non-participating rates and therefore does not participate in any surplus of the Company.

CITIZENS HOME INSURANCE COMPANY INCORPORATED

SEVENTH WONDER NATURAL BRIDGE, VA.

INCORPORATED IN 1915

HOME OFFICE:
RICHMOND, VIRGINIA

☆

INCREASING PRINCIPAL SUM INDEMNITY FOR DEATH BY ACCIDENTAL MEANS, AND FOR LOSS OF LIMBS AND SIGHT, AND DOUBLE INDEMNITY FOR SAID LOSSES WHEN DUE TO SPECIFIED TRAVEL ACCIDENT, ALL AS DEFINED AND LIMITED HEREIN.

NON-PARTICIPATING, WEEKLY PREMIUM POLICY
NON-CANCELLABLE
GUARANTEED RENEWABLE TO AGE 65,
OR PRIOR CLAIM

☆

RIGHT TO RETURN POLICY WITHIN 10 DAYS.

If for any reason you are not satisfied with your policy, you may return it to the Company within ten days of the date you receive it and the premium you paid will be promptly refunded.

READ YOUR POLICY

Plan 39

SCHEDULE REFERRED TO IN THIS POLICY

POLICY NUMBER	DATE OF ISSUE MO. DAY YR.	WEEKLY PREMIUM	AMOUNT OF INSURANCE	DIST.	DEBIT
71210461	5/24/71	.25	$2,500.	6	242

NAME OF INSURED	AGE NEXT BIRTHDAY	DAILY HOSPITAL BENEFIT	APPLICABLE ONLY AS A PART OF PLAN NO. 39
Huff George	53	None	
NAME OF BENEFICIARY	**AGE**	**WEEKLY BENEFIT**	
Taylor Carolyn	20	None	

39

TABLE OF INCREASING PRINCIPAL SUMS

loss occurring during a policy year the principal sum be the amount specified in the table for such policy year. er the tenth anniversary of this Policy the principal sum be the ultimate amount shown in the table for the re- der of the term of this Policy.

icy years shall be determined from the Policy Date of and shall begin and end at 12 o'clock noon, standard at the place where the Insured resides.

★ ONLY that column below of Principal Sums which shows the same amount of Principal Sum First Policy Year as that above shall apply.

First Policy Year	$1,000★	$1,500★	$2,500★
Second Policy Year	1,100	1,650	2,750
Third Policy Year	1,200	1,800	3,000
Fourth Policy Year	1,300	1,950	3,250
Fifth Policy Year	1,400	2,100	3,500
Sixth Policy Year	1,500	2,250	3,750
Seventh Policy Year	1,600	2,400	4,000
Eighth Policy Year	1,700	2,550	4,250
Ninth Policy Year	1,800	2,700	4,500
Tenth Policy Year	1,900	2,850	4,750
Ultimate Amount After Tenth Policy Year	2,000	3,000	5,000

CITIZENS HOME INSURANCE COMPANY INCORPORATED

SEVENTH WONDER NATURAL BRIDGE, VA.

INCORPORATED IN 1915

HOME OFFICE:
RICHMOND, VIRGINIA

☆

INCREASING PRINCIPAL SUM INDEMNITY FOR DEATH BY ACCIDENTAL MEANS, AND FOR LOSS OF LIMBS AND SIGHT, AND DOUBLE INDEMNITY FOR SAID LOSSES WHEN DUE TO SPECIFIED TRAVEL ACCIDENT, ALL AS DEFINED AND LIMITED HEREIN.

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Ultimate Amount After Tenth Policy Year	2,000	3,000	5,000

AUG 29 1974

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042
Phone (703) 560-7910

RECEIVED 29 JUL 1974 NORTHERN VA. DIVISION OFFICE OF CHIEF MEDICAL EXAMINER

☒ Resident
☐ Non-resident

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

CEDENT: George Huff (First name / Middle name / Last name) AGE: 55 SEX: M RACE: B

DDRESS: 220 N. Payne St (Number and Street) (M) W S D OCCUPATION: —

Alexandria Va (City or County / Zip Code) SSN: ____ EMPLOYER: —

PE OF DEATH: (Check one only)
- Sudden in apparent health ☐
- Unattended by physician ☐
- In prison, jail, or police custody ☐
- Suspicious ☐
- Unusual ☐
- Operating Room Death ☐
- Violent or Unnatural ☒ Means: Gun Shot

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified
DATE	7/22/74	7/22/74	7/22/74	7/22/74	7/23/74	7/22/74
TIME	9:30 pm	2:30 Am	9:30 pm	10:23 pm	8:30 Am	

If Motor Vehicle Accident Check One Of The Following
DRIVER ☐
PASSENGER ☐
PEDESTRIAN ☐

TIFICATION BY: Alexandria Police Dept OFFICIAL TITLE ____
Address: Alexandria Va

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
URY OR ONSET OF NESS	Rear 500 N. Henry St	Alex Va	Yard
ATH	Alexandria Hosp. (S)	"	Hospital
EWING OF BODY BY DICAL EXAMINER	"	"	"

DESCRIPTION OF BODY
- thed ☐ Unclothed ☒ Partly Clothed ☐
- r Color: Black Beard ____ Mustache ____
- ils: R ____ L ____ Eyes: Color: Brown
- y Heat: present Scars, Tattoos, etc. ____

	NOSE	MOUTH	EARS
Blood			
Froth			
Other (Sand, dirt water, etc.)			

WEIGHT: 150 LENGTH: 70"

RIGOR: Jaw ☐ Neck ☐ Arms ☐ Legs ☐ Complete ☐

LIVOR: Color ____ Anterior ☐ Posterior ☐ Lateral ☐ Regional ____

NON FATAL WOUNDS: Abrasion ☐ Burn ☐ Contusion ☐ Stab ☐ Gunshot ☐ Incised ☐ Laceration ☐ Fracture ☐
DISTRIBUTION: Scalp ☐ Face ☐ Neck ☐ Chest ☐ Back ☐ Abdomen ☐ Arms ☐ Legs ☐

ATAL WOUNDS (GUNSHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION
Single Gun shot	Rt. mid forehead		entrance	

ROBABLE CAUSE OF DEATH: Gun Shot to head with brain damage

MANNER OF DEATH: (Check one only)
- Accident ☐
- Suicide ☐
- Homicide ☒
- Natural ☐
- Undetermined ☐
- Pending ☐

AUTOPSY: Yes ☒ No ☐
AUTHORIZED BY: ME
Pathologist: J. Beyer MD

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in ordance with Section 19.1-42, Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge d belief.

7/23/74 — Date
Alexandria Va — City or County of Appointment
Alfred Thamsen MD — Signature of Medical Examiner

A COPY TESTE: AUG 9 1974
J. E. Beyer
Assistant Chief Medical Examiner

OR V.S. CODING
1 .....

NV 04703

128

PL

UG 29 1974

RECEIVED 2 AUG 1974 Autopsy Division Office of Chief Medical Examiner

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DIVISION
THE FAIRFAX HOSPITAL
P. O. BOX 2256
FALLS CHURCH, VIRGINIA 22042

REPORT OF AUTOPSY

DECEDENT: George (First name) Huff (Middle name) (Last name) Autopsy authorized by: Dr. A. Abramson (Name) Alexandria City (Official Title)

PE OF DEATH: ident or Unnatural XX

ns: Gunshot wound.

Unattended by a physician ☐
Sudden in apparent health ☐
Unusual ☐ In prison ☐
Suspicious ☐

Rigor		Livor	
Jaw ☐	Arms ☐	Color	Reddish-Purple
Neck ☐	Chest ☐	Anterior	☐
Back ☐	Abdomen ☐	Posterior	XX
Legs ☐		Lateral	☐
Generalized		Regional	

Body Identified by: Seminary Hosp. Body Tag.

Persons Present At Autopsy: James C. Beyer, M.D.

est. 55 Race Black Sex Male Length 72 1/2" Weight 210# Eyes Brown Pupils: R. rre Opacities, Etc.
Grey Beard — Mustache Yes Circumcised No Body Heat None L. rre

NON FATAL WOUNDS, SCARS, TATTOOING, ABRASION, CONTUSION, BURNS, SEXUAL ASSAULT, LACERATION, DECOMPOSITION, POST-MORTEM INJURIES

Body unclothed. Hospital ID tag on right wrist. No external evidence of trauma except for gunshot wound of the head, see attached sheet.

PATHOLOGICAL DIAGNOSIS

RDIOVASCULAR SYSTEM: Heart, cardiac hypertrophy, 460 gms.; Rt. ventricle, 3 mm.; Lt. 17 mm.; no valvular or congenital abnormalities. Rt. coronary artery, large caliber with concentric thickening, 25% narrowing. Lt. AD artery, multiple small branches with up to 60% narrowing and focal calcification. Circumflex artery, equal caliber to right with focal calcification. Myocardium, no evidence of trauma, fibrosis or inflammation. Abdominal aorta, calcific arteriosclerosis.

SPIRATORY SYSTEM: Larynx, trachea and bronchi, no evidence of trauma or obstruction. Lungs, marked pulmonary congestion and edema; no evidence of trauma.

VER: No evidence of trauma; fatty metamorphosis.

LEEN: No evidence of trauma.

NCREAS, ADRENAL & THYROID GLANDS: No significant alteration.

STRO-INTESTINAL TRACT: No evidence of trauma, hemorrhage or ulceration.

NITO-URINARY TRACT: Kidneys, arteriolarnephrosclerosis; simple cysts.

AD: Penetrating gunshot wound: Entrance wound in right frontal area with missile track involving perforation of right cerebral hemisphere; bullet fragments found near entrance site in skull and in subdural space near exit from brain.

Probable cause of death: PENETRATING GUNSHOT WOUND OF THE HEAD.

PROVISIONAL REPORT ☐
FINAL REPORT XX

NV-380-74

A true copy: J C Beyer — Assistant Chief Medical Examiner

AUG 9 1974 — Date

The facts stated herein are true and correct to the best of my knowledge and belief.

James C. Beyer — Signature of Pathologist

7/23/74 4:20 p.m. — Date and time of autopsy

Fairfax Hospital — Place of autopsy

GROSS and MICROSCOPIC DESCRIPTION

SEROUS CAVITIES:

PLEURA: Intact, smooth and glistening.

PERITONEUM: Intact, smooth and glistening.

PERICARDIUM: Intact, smooth and glistening.

HEART: 460 gms. Epi- and endocardial surfaces, thin and transparent; no valvular or congenital abnormalities. Rt. coronary artery, large caliber; concentric thickening; 25%. Lt. AD artery, multiple small branches with up to 60%. Circumflex artery, equal caliber to right with focal calcification. Rt. ventricle, 3 mm.; Lt 17 mm. No evidence of trauma, fibrosis or inflammation. Abdominal aorta, calcifi arteriosclerosis.

LUNGS: Rt. lung, 1050 gms.; Lt. 950 gms. Larynx, trachea and bronchi, free of trauma or obstruction. All lobes of both lungs are extremely wet and flabby and on section a large amount of bloody frothy fluid is released. No evidence of trauma or pulmonary artery emboli.

LIVER: 1900 gms. Capsular surface, intact and smooth and free edges are slightly rounded On section there is no evidence of fibrosis or nodularity but the parenchyma appear yellow-tan in color.

SPLEEN: 75 gms. Capsular surface, intact.

PANCREAS: No significant alteration.

ADRENAL GLANDS: No significant alteration.

G. I. TRACT: Stomach, empty. No evidence of trauma, hemorrhage or ulceration.

KIDNEYS: 180 gms. each. Capsules strip with some difficulty to reveal a finely granular surface and on section there are bilateral simple cysts measuring up to 2 cm.

BLADDER: Intact and empty.

INTERNAL GENITALIA: No significant alteration.

NECK ORGANS: No evidence of trauma.

RAIN AND MENINGES: 1490 gms. Penetrating gunshot wound: Entrance wound, right frontal area at a point 1 1/2" from the top of the head and 1 1/2" to the right of the anterior midline. Wound measures 3/16" in diameter and has round regular margins with no identifiable powder debris. Reflection of the scalp reveals 2 fragments of bullet material present near the entrance site on the underlying inner table. Wound track continues upward, backward and to the left with entrance through the frontalpole of the right cerebral hemisphere, perforation of the frontal and parietal lobes and exit on the superior surface of the right cerebral hemisphere near the midline. Covering the exit site there is a considerable subdural hematoma and in this blood clot there is a fragment of bullet core recovered. Scalp exhibits considerable edema but no evidence of contusions or lacerations.

SKULL:

VERTEBRAE:

RIBS:

PELVIS:

THER LABORATORY PROCEDURES: TOXICOLOGY ☒ BACTERIOLOGY ☐ DENTAL CHART ☐ X-RAY ☐ FINGER-PRIN'S ☐ PHOTOGRAPHY ☐

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
HEART BLOOD FOR ALCOHOL; BLOOD FOR TYPING.				