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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 770895

EAST AUGUSTA MUTUAL FIRE
INSURANCE COMPANY OF VIRGINIA,
A Corporation

v.

RICHARD Q. HITE, JR.

JOINT APPENDIX

Richard F. McPherson, Esq.
Victor M. Santos, Esq.
NELSON, McPHERSON, SUMMERS,
WOOD & BISHOP
12 North New Street
Staunton, Virginia 24401

Counsel for Appellant

Richard S. Tilley, Esq.
Attorney at Law
410 Elm Avenue, S. W.
Roanoke, Virginia 24016

Counsel for Appellee

TABLE OF CONTENTS

	Appendix Page
Amended Motion for Judgment filed November 11, 1976	1
Grounds of Defense filed December 8, 1976	5
Excerpts of Hearing Held Before the Honorable F. L. Hoback on March 1, 1977	
Testimony of Richard Q. Hite	7
Testimony of John B. Pendleton	38
Testimony of James L. Phillips	46
Testimony of Naomi M. Ayers	57
Testimony of William A. Sweeker	71
Testimony of Boyd C. Ayers	84
Testimony of Judy S. Painter	86
Opinion of Honorable F. L. Hoback	88
Final Order entered March 21, 1977	90
Notice of Appeal and Assignments of Error filed April 19, 1977	92

EXHIBITS

Plaintiff's Exhibit 1 - Homeowner's Policy	94
Plaintiff's Exhibit 6 - Closing Statement	106
Defendant's Exhibit A - Real Estate Contract	108
Defendant's Exhibit C - Endorsement to Homeowner's Policy	109

RICHARD Q. HITE, JR.,	*	
	*	
Plaintiff	*	
	*	AMENDED
vs	*	
	*	MOTION FOR JUDGMENT
EAST AUGUSTA MUTUAL FIRE INSURANCE COMPANY, a Virginia corporation C/O W. S. Swecker, Registered Agent Staunton Plaza Shopping Center Route 11 1357 Greenville Avenue Staunton, Virginia 24401	*	
	*	
Defendant	*	

TO THE HONORABLE JUDGES OF SAID COURT:

Now comes the plaintiff, Richard Q. Hite, Jr., by counsel, pursuant to leave of Court to file his amended Motion for Judgment, and moves the Court for Judgment in the amount of TWELVE THOUSAND DOLLARS ($12,000.00) with interest from the 21st day of April, 1976 and costs against the defendant, East Augusta Mutual Fire Insurance Company, and in support thereof would represent unto the Court the following facts and circumstances:

1. That on the 19th day of November, 1974, the defendant, East Augusta Mutual Fire Insurance Company through its agent, Boyd Ayers, t/a Daleville Insurance Agency issued to the plaintiff, Richard Q. Hite, Jr., its policy No: 56641 designated therein as an "HO-2" policy and purporting to insure among other things under Section 1, "Coverages", therein, Subsection C "Unscheduled Personal Property" in the amount of $12,000.00. That the premium was in the amount of $90.00 per annum and that said premium was paid and the policy was in effect on the 25th day of February, 1976, the date of the loss hereinafter described.

2. That on the 25th day of February, 1976, the plaintiff suffered a loss as a result of a fire which destroyed a portion of the property located one mile from Hanging Rock on Route 311, north of its intersection with Route 419 west of Salem at Erma Springs in Roanoke County, Virginia, the insured premises. That the loss exceeded $12,000.00, the limit of liability for unscheduled personal property being insured under said policy.

3. That the plaintiff furnished to the Company, as required by the policy, his proof of loss on the 3rd day of March, 1976 and that more than sixty (60) days has elapsed since the proof of loss was tendered and that the defendant company has failed to abide by the provisions of said policy in that it has not compensated the plaintiff for his loss pursuant to the terms of said policy, and has denied that it is liable for the loss.

4. That the said policy was in full force and effect on the date of loss and had not been cancelled as required by Section 38.1-371.1, 1950 Code of Virginia as amended.

5. That the plaintiff had performed all the conditions and terms of the policy and had not violated any of its prohibitions.

6. That even though the policy of insurance above referred to had not been cancelled as to the plaintiff at the date of loss, if the Court should find, as the defendant has represented, that the policy had been legally and properly transferred to the purchaser of the property, John Pendleton, Jr., under the terms of the policy the defendant would still be liable to the plaintiff in the amount above set out as the property for which the plaintiff demands compensation was located on the premises with the approval and consent of the said John Pendleton, Jr. and therefore insured under the above numbered policy if the Court should find the defendant did have the right to transfer said policy without formal cancellation as required in the policy and

under the Section 38 1-371.1, 1950 Code of Virginia as amended.

7. That should the Court find that John Pendleton, Jr. was the proper and lawful owner and insured under the policy number 58641, East Augusta Mutual Fire Insurance Company, defendant, would be indebted to the plaintiff, Richard Q. White, Jr., in the amount of $12,000.00.

8. That the plaintiff, Richard Q. White, Jr. is the insured under the policy of insurance No: 58641 and that the loss suffered by the plaintiff is a loss insured by said policy of insurance.

9. That Boyd Ayers, t/a Daleville Insurance Agency, as agent for the defendant, East Augusta Mutual Fire Insurance Company, and within the scope of his agency, did prior to November 19, 1974, sell to the plaintiff Richard Q. White, Jr., a policy of insurance designated as policy No: 58641 and described as an "HO-2" policy; and that at the place contained in said policy for insertion of the "expiration" there appears the word "continuous". That said policy purported to insure among other things the unscheduled personal property of the plaintiff in the amount of $12,000.00. That at no time has the defendant delivered to the plaintiff a written cancellation of said policy nor had he at any time prior to the loss described herein advised the plaintiff that his property was no longer insured by East Augusta Mutual Fire Insurance Company.

WHEREFORE the undersigned respectfully requests that judgment in the amount of $12,000.00 with interest thereon from the 21st day of April, 1976 and costs be awarded against the defendant.

RICHARD Q. WHITE, JR.

Richard S. Tilley
410 Elm Avenue, S.W.
Roanoke, Virginia 24016
Counsel for the Plaintiff

By [signature]
Of Counsel

CERTIFICATE OF MAILING

I, Richard S. Tilley, do hereby certify that a copy of the foregoing Amended Motion for Judgment was mailed, first class, postage prepaid, this 17th day of November, 1976, to Joseph F. Cunningham, Esquire, 330 "A" Street, Southeast, Washington, D. C. 20003, Gregory Brett Smith, Esquire, 2910 South Glebe Road, #305, Arlington, Virginia 22206, George W. Wooten, Esquire, Seven-O-Seven Building, Roanoke, Virginia 24024 and Richard F. McPherson, Esquire, P. O. Box 1287, 12 North New Street, Staunton, Virginia 24401.

Richard S. Tilley

Richard Q. Hite, Jr.

v. GROUNDS OF DEFENSE

East Augusta Mutual Fire Insurance Company

For Grounds of Defense to an Amended Motion for Judgment filed against it by Richard Q. Hite, Jr., East Augusta Mutual Fire Insurance Company answers and says as follows:

1. That it is true that Richard Q. Hite, Jr. owned certain real estate at Route 4, Salem, Virginia and that fire insurance policy #58641 was issued to Richard Q. Hite, Jr. by the defendant insuring certain improvements on the real estate and certain personal property thereon.

2. That by deed dated February 19, 1976 and recorded on February 24, 1976 Richard Q. Hite, Jr. sold the above described real estate to John B. Pendleton, Jr. and on that same date the aforesaid policy of fire insurance was transferred from Richard Q. Hite, Jr. to John B. Pendleton, Jr.

3. As a result of the aforesaid transfer Richard Q. Hite, Jr. was no longer an insured under said policy on the date of loss which was February 25, 1976 and accordingly the defendant is not in any way obligated to the plaintiff.

4. That on February 25, 1976 John B. Pendleton, Jr. was the insured on the aforesaid policy, same having been legally and properly transferred to him. On February 25, 1976 at the time of the fire, John B. Pendleton, Jr. had not occupied the improvements on the aforesaid real estate and inasmuch as said premises were not occupied exclusively by John B. Pendleton, Jr., there was no coverage, under the terms of the policy, for

any personal property belonging to the plaintiff which was still on the premises. Accordingly the defendant is not in any way obligated to the plaintiff.

5. That the plaintiff has not been damaged to the amount and extent alleged in its Amended Motion for Judgment.

Respectfully submitted,

EAST AUGUSTA MUTUAL FIRE INSURANCE COMPANY

By Counsel

Nelson, McPherson, Summers, Wood & Bishop

By _____
12 North New Street, P. O. Box 1287
Staunton, Virginia 24401

I certify that a copy of the foregoing Grounds of Defense was mailed to Richard S. Tilley, Esquire, counsel for plaintiff, this 6th day of December, 1976.

1 [10:00 A.M.]

2 [THE REPORTER WAS SWORN]

3 THE COURT: *Richard Q. Hite*, plaintiff, v.

4 *East Augusta Mutual Fire Insurance Company of Virginia*, a

5 corporation, defendant. Is the plaintiff ready to proceed?

6 MR. TILLEY: Plaintiff is ready, Your Honor.

7 THE COURT: Is the defendant ready?

8 MR. McPHERSON: Defendant is ready.

9 THE COURT: The Court understands that the

10 parties are waiving trial by jury and submitting all matters

11 of fact and law to the Court without the intervention of a

12 jury. Is that correct?

13 MR. McPHERSON: Yes, Your Honor.

14 [THE WITNESSES WERE SWORN]

15 THE COURT: Do you gentlemen wish to make

16 opening statements?

17 MR. TILLEY: Yes, Your Honor, I do.

18 [MR. TILLEY MADE AN OPENING STATEMENT ON BEHALF OF

19 THE PLAINTIFF. MR. McPHERSON MADE AN OPENING STATEMENT ON

20 BEHALF OF THE DEFENDANT]

21

22 RICHARD Q. HITE,

23 plaintiff, called as a witness in his own behalf, being

24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. TILLEY:

2 Q Would you state your name, please.

3 A Richard Quentin Hite, Jr.

4 Q And, Mr. Hite, you are the plaintiff in this

5 action, is that correct?

6 A Yes, sir.

7 Q What's your occupation?

8 A I'm a real estate broker.

9 Q Did you have occasion to purchase policies of

10 insurance from East Augusta Mutual Fire Insurance Company?

11 A Yes, sir.

12 Q I show you this policy indicated as Policy

13 Number 102598, designated as Fire Insurance Policy. Is

14 this one of the policies you purchased from East Augusta?

15 A Yes.

16 MR. TILLEY: Your Honor, I'd like to offer

17 this policy as plaintiff's exhibit A.

18 MR. McPHERSON: Your Honor, we would object

19 to the introduction of this policy, which I understand was

20 on another dwelling on the property, not the one that burned,

21 and is not germane to the issues in this case.

22 MR. TILLEY: I offered this policy merely to

23 show that the plaintiff had more than one policy with this

24 insurance company.

25 THE COURT: What materiality does that have?

"Mag Card"

1 I'm concerned with the policy on the property that was
2 destroyed by fire, not any other place.
3 MR. TILLEY: Because there will be conflict
4 in the evidence, Your Honor, as to whether or not a premium
5 was returned and whether or not returned in such a way as
6 to clearly indicate to the defendant that they considered
7 his policy no longer in effect.
8 THE COURT: Well, at that time you may tender
9 it again. But as of now, I'd rather deal with the policy
10 that was on the property in question.
11 Q All right. I show you this policy: East
12 Augusta Mutual Fire Insurance Company, designated as 58641,
13 Homeowner's Policy. Is this the policy of insurance you
14 had with East Augusta Mutual Insurance Company?
15 A Yes, sir.
16 Q Now at the time of your loss had you paid the
17 premium on this policy?
18 A Yes.
19 MR. TILLEY: I want to introduce this, then,
20 as Plaintiff's Exhibit A. [DOCUMENT SHOWN TO COUNSEL]
21 MR. McPHERSON: We have no objection to this
22 being entered in evidence, Your Honor.
23 THE COURT: Plaintiff's Exhibit 1.
24 Is that the homeowner's policy referring to --
25 MR. TILLEY: Yes.

1 [PLAINTIFF'S EXHIBIT 1 MARKED FOR IDENTIFICATION AND
2 RECEIVED IN EVIDENCE]
3 Q Mr. Hite, does this policy purport to insure
4 you against loss for personal property contained on these
5 premises as indicated in the policy?
6 A To my understanding that's what it is, yes.
7 Q In what amount?
8 A The house -- the fire policy was for twenty-five
9 thousand, and the contents was for twelve thousand.
10 Q Did you suffer a loss to the contents of the
11 property?
12 A Yes, I did.
13 Q And what date did that occur?
14 A The 25th.
15 Q And what occasioned the loss?
16 A There was a fire.
17 Q Were you occupying the premises at that time?
18 A Yes, I was.
19 Q Had the property been transferred to a new
20 purchaser, a Mr. Pendleton?
21 A Yes, it had been.
22 Q When had it been transferred?
23 THE COURT: Let's get down one thing now.
24 You're talking about property, you're talking about real
25 estate or personal property, or both, or what? Let's get

1 down to which one you're talking about.

2 Q Had the real estate been transferred to a

3 new owner?

4 THE COURT: Now let's keep the two separate.

5 You're dealing with personal property for your lawsuit.

6 Q Had the real estate been transferred to a

7 new owner at the time of the fire?

8 A Yes, the real estate had been transferred,

9 yes, sir.

10 THE COURT: The real estate, all right.

11 Q Did you still own the personal property that

12 was on the premises?

13 A Yes, I did. I hadn't moved out.

14 Q And had you complied with all the conditions

15 of this policy?

16 A Yes.

17 MR. McPHERSON: If Your Honor please, I would

18 object to that. There were many conditions in the policy.

19 THE COURT: Well, that's his assertion. I

20 don't think that would be -- you could contradict it, of

21 course. You have the right to question it.

22 MR. McPHERSON: All right.

23 Q Subsequent to the loss did you present a

24 statement of the loss itemized and notarized to a repre-

25 sentative of the insurance company?

1 A Yes, to the adjuster, Crawford & Company.
2 Q Is this a copy of that statement?
3 A Yes.
4 Q How was this statement prepared? How did
5 the number of items in here -- how was that determined?
6 A We went to the house after the fire and we
7 counted all the items, physically counted all the items.
8 Q When you say "we," who is that?
9 A Steve Roberts.
10 MR. TILLEY: Your Honor, I wish to introduce
11 this as Plaintiff's Exhibit 2.
12 MR. McPHERSON: If Your Honor please, I have
13 no objection to it being introduced as a list of items that
14 the plaintiff alleges were destroyed or damaged in the fire.
15 He does have a number of figures beside these
16 items. I would object to those figures being introduced
17 without evidence from the plaintiff as to how they were
18 arrived at -- these figures having to do with values.
19 THE COURT: Do you wish to go into the figures
20 now?
21 MR. TILLEY: Your Honor, we have two lists.
22 I thought I'd go into how he arrived at this on the second
23 list because this is the list we rely on for our damages.
24 THE COURT: It is admitted as Exhibit 2
25 insofar as the list of items is concerned, but not as to

1 value.

2 [PLAINTIFF'S EXHIBIT 2 MARKED FOR IDENTIFICATION AND

3 RECEIVED IN EVIDENCE]

4 Q Was this list, Exhibit 2, given to a repre-

5 sentative of the insurance company?

6 A Yes, it was.

7 Q Given to whom?

8 A It was mailed to Crawford & Company.

9 Q What capacity were they representing the

10 insurance company?

11 A They were the claims adjusters, I presume.

12 Q Had they been in touch with you?

13 A Yes.

14 Q Now I show you another list. Does this list

15 contain the same number of items as the list indicated as

16 Plaintiff's Exhibit 2?

17 A Yes, as far as I know, it does.

18 Q But are the amounts different?

19 A Yes.

20 Q How did you arrive at the amounts on this

21 list?

22 A Well, of course, I made up this list right

23 after the fire, right after I did -- everything had been

24 destroyed and that was submitted. And then after I

25 went around I checked to see whether I was going to have

1 to pay for things for replacement, I realized that I was
2 going to have to adjust the list because it wasn't a true
3 reflection of what my losses were.
4 Q What formula as such did you use to value
5 the items on this list?
6 A I took what I was going to have to pay for
7 something and I came up with the figure of about -- some of
8 the things I had used, I had had for some time; some of them
9 you couldn't put a value on because of sentimental value.
10 But as far as clothes and standard household items, I
11 took a figure, a retail figure, and I depreciated or tried
12 to depreciate about twenty-five percent, twenty-five or
13 thirty percent, to arrive at a figure.
14 Q All right. And are the figures on this list,
15 which I'll ask to be introduced as Plaintiff's Exhibit 3,
16 the figures that you're claiming as your actual loss?
17 A Yes.
18 MR. TILLEY: I wish to introduce this as
19 Plaintiff's Exhibit 3.
20 THE COURT: Any objection?
21 MR. McPHERSON: No, sir.
22 THE COURT: That list is being introduced as
23 to values, is that correct?
24 MR. TILLEY: Yes, Your Honor.
25 [PLAINTIFF'S EXHIBIT 3 MARKED FOR IDENTIFICATION AND

1 RECEIVED IN EVIDENCE]

2 Q When you compiled this list, were you accom-
3 panied by anyone else?

4 A Yes, when I made the list, yes. Steve Roberts
5 was with me.

6 Q Did he assist you in counting the items or did
7 he observe you count the items?

8 A Yes, we did it together.

9 Q And the items on this list, were they on the
10 premises when the adjuster representing the insurance company
11 inspected the premises?

12 A Some of them were and some weren't. I was in
13 the process of moving and I had -- the morning after the fire
14 -- well, the night before the fire I had a truck lined up and
15 a crew lined up to move, and I came there the next morning.

16 I was there that night and everything was
17 black. I couldn't see anything. And I had made these
18 preparations. And so the only -- like I said, the only
19 clothes I had was what I had on my back. So I picked up
20 my crew the next morning and came back to the house and
21 went through the house.

22 And I took some things out of the house, and
23 we took them down to the place where I'm living. And they
24 were -- they were charred and everything. There was no
25 way that I could use them. There were several pieces that

1 I've had to use, all of them in a charred condition, but
2 I've used them. But the bulk of it I just had to destroy
3 them.
4 Q All right. Did the insurance representative
5 ask you to preserve any of these items for salvage?
6 A No.
7 Q Were you asked to have any appraisal made
8 of any of the items?
9 A No.
10 Q Were you furnished with forms on which to
11 make your loss?
12 A They sent me forms. And I was assured that
13 everything was okay. They sent me the forms. And it was
14 not until the 18th of March that I got a letter from Craw-
15 ford & Company stating that East Augusta wasn't going to
16 pay a cent, that they didn't feel like they were liable.
17 This was after I had sent the list in.
18 Q Did they explain to you why they felt they
19 weren't liable?
20 A No.
21 Q Have you --
22 A Just that I didn't have an insurable interest.
23 That's about what it amounted to.
24 Q Had you paid the premium on this policy?
25 A Yes.

1 Q All right. Then, have you ever received a
2 notice of cancellation from East Augusta Mutual Insurance
3 Company mailed to you as certified mail?
4 A No, sir, nothing, absolutely nothing.
5 Q Did you ever authorize anyone on your behalf
6 to transfer any policies of insurance that you had with
7 East Augusta?
8 A No, sir, at no time.
9 Q At the time you made this list, who did you
10 send it to?
11 A Crawford & Company.
12 Q All right. Did you ever contact a Mr. Ayers,
13 Boyd C. Ayers?
14 A Well, my secretary -- the day that I moved,
15 which was the day after the fire, the fire occurred at
16 night -- my secretary called their office and I believe I
17 talked to Miss Ayers maybe several days after that. But
18 initially my secretary talked to them, talked to -- because,
19 you know, I didn't know which end was up at the time. But
20 she did contact them.
21 Q Did they indicate to you that you'd be
22 covered?
23 A They certainly did, they certainly did.
24 They mentioned something about a grace period. And I
25 felt everything was perfectly all right. And when I got --

1 the adjusters moved into the picture, I felt confident that
2 everything was going to be okay.
3 Q I show you a letter dated April 16, 1976,
4 signed -- purportedly signed by "W. S. Swecker, Secretary,"
5 and on the letterhead of East Augusta Mutual Fire Insurance
6 Company. Did you receive this letter through the mail?
7 A Yes, I did.
8 Q Would you read this letter, please.
9 A "Dear Mr. Hite: As I stated in my letter of
10 April 14, 1976, Mr. Boyd Ayers sent us a request to transfer
11 your policy to John B. Pendleton, Jr., effective February 24th,
12 1976. It is my understanding you gave Mr. Pendleton the name
13 of Mr. Ayers as your agent, and Mr. Phillips, of Phillips
14 Realty, suggested he keep the same insurance that you had
15 since it was already set up with the Colonial-American Bank
16 in the escrow account. It is also my understanding that the
17 deed was transferred from you to Mr. Pendleton on February 24th,
18 1976, at 9:54 a.m. Sincerely, W. S. Swecker, Secretary."
19 Q Did you authorize Boyd C. Ayers to transfer
20 your policy?
21 A No.
22 Q Did you authorize Mr. Pendleton to advise Mr.
23 Ayers to transfer your policy?
24 A No, sir.
25 MR. TILLEY: I wish to introduce this as

1 Plaintiff's Exhibit 4.

2 [PLAINTIFF'S EXHIBIT 4 MARKED FOR IDENTIFICATION

3 AND RECEIVED IN EVIDENCE]

4 Q I show you a letter signed by Mr. J. Elmer

5 Brown, Assistant Vice-President, on the Colonial-American

6 National Bank letterhead. Did you receive this letter?

7 A Yes.

8 [LETTER SHOWN TO COUNSEL]

9 Q All right. Would you read that letter, please.

10 A Yes.

11 "Dear Mr. Hite: Regarding the above-captioned

12 property our records indicate that this property was conveyed

13 to Mr. John B. Pendleton on February 19, 1976, by a deed

14 of assumption. Upon receipt of this deed we requested that

15 the insured on homeowner policy number 58641 with East Augusta

16 Mutual Fire Insurance Company, Staunton, Virginia, be transferred

17 to Mr. Pendleton. We received the above endorsement on

18 March 3, 1976, which had an effective date of February 24,

19 1976. If you should need additional information, please

20 do not hesitate to contact us. Yours truly, J. Elmer Brown,

21 Assistant Vice-President."

22 He's got a P.S. here: "We also received an

23 endorsement changing the name of the insured to Mr. Pendleton

24 on policy number 102598 with East Augusta."

25 Q Did you authorize Mr. Brown or anyone connected

with Colonial-American Bank to transfer this policy of insurance?

A I never had any conversation at all with the bank, no.

MR. TILLEY: I wish to introduce this as Plaintiff's Exhibit 5.

[PLAINTIFF'S EXHIBIT 5 MARKED FOR IDENTIFICATION AND RECEIVED IN EVIDENCE]

Q I show you what purports to be a closing statement, the seller listed as Richard Q. Hite, buyer listed as John B. Pendleton. Is this a -- and it is two pages dated February 23rd -- is this the closing statement you received?

A I received the seller's statement, not the buyer's statement. Yes, I received the seller's statement.

Q When did you receive this?

A I received it -- I believe it was on the 24th that I received this, by mail.

[LETTER SHOWN TO COUNSEL]

MR. TILLEY: Your Honor, I wish to introduce this. It was used in the depositions and marked Defendant's Exhibit A. I now wish to use it as my exhibit. So may we cross out that "defendant's exhibit"?

[PLAINTIFF'S EXHIBIT 6 MARKED FOR IDENTIFICATION AND RECEIVED IN EVIDENCE]

1 Q Now how was this delivered to you?
2 A By mail.
3 Q And when did you first see it?
4 A When did I first see it?
5 Q Mm-hmm.
6 A I don't recall when I first saw it.
7 Q Well, in the framework of --
8 A I would assume I saw it on the 24th.
9 Q In there I notice an item "insurance credit
10 $80.10."
11 A That's right.
12 Q From that credit can you tell which policy --
13 A No, I would assume it was --
14 Q -- that you received a credit on?
15 A No, I can't tell from that. But I assume
16 it would be on the fire policy.
17 Q And to this date, Mr. Hite, has your claim
18 for coverage under this policy been honored by the company?
19 A No.
20 Q Now I show you the fire insurance policy which
21 I showed you earlier describing a frame dwelling, 20 x 20,
22 one mile from Hanging Rock on Route 311, looks like west-
23 south-north intersection 419, Erma Springs, Roanoke, Virginia.
24 Is that a description of the property where you lived?
25 A There were two buildings on the property.

"Mag Card"

1 This was the rental building. There were two cabins. I
2 occupied one; the other was leased.
3 MR. TILLEY: Your Honor, since the closing
4 statement does not indicate what policy he's receiving pro
5 rata reimbursement for, I wish to introduce this policy
6 to show that it would be reasonable for there to be confusion
7 concerning that item on the closing statement.
8 THE COURT: Do you object?
9 MR. McPHERSON: I have no objection.
10 [PLAINTIFF'S EXHIBIT 7 MARKED FOR IDENTIFICATION AND
11 RECEIVED IN EVIDENCE]
12 THE COURT: Do I understand that this was
13 on the rental property?
14 THE WITNESS: Judge, there were two pieces
15 of property.
16 THE COURT: Did you sell both of them?
17 THE WITNESS: Yes, I sold both of them --
18 parcels.
19 MR. TILLEY: That's all the questions I have
20 of this witness.
21 CROSS-EXAMINATION
22 BY MR. McPHERSON:
23 Q Mr. Hite, how long have you been in the real
24 estate business?
25 A I received a salesman's license in 1957,

1 broker's license in 1969.

2 Q You are a broker at this time?

3 A Correct.

4 Q Where is your office?

5 A 410 Elm Avenue, Southwest, Roanoke.

6 Q How many people do you have working in your

7 office?

8 A I have four licensed and myself.

9 Q And I believe that in the depositions you

10 said that you had had a larger number at one time?

11 A I've had up to ten, yeah.

12 Q You've had up to ten salesmen under you?

13 A Yes. Well, ten licensed. It's questionable

14 how many of them are salesmen, but ten of them are licensed.

15 Q They were licensed as salesmen?

16 A Yes.

17 Q So you've had quite a bit of experience in

18 the real estate business?

19 A Yes.

20 Q Now in the sale that you made here, who was

21 the selling agent?

22 A The selling agent was Jim Phillips.

23 Q You had the property listed with Mr. Phillips?

24 A No.

25 Q Mr. Phillips got in touch with you --

1 A He knew that I -- he found out that I had it
2 for sale. And Jimmy came to me and asked me could he
3 represent me in the sale of the property and I said yes,
4 if he wanted to sell it for me, he had my permission.
5 Q He asked if *you* could represent *him* in the
6 sale of the property and you told him yes?
7 A Correct.
8 Q And then he came up with the Pendleton
9 contract?
10 A That's correct.
11 Q Do you have the contract?
12 A No, I don't have it.
13 Q Do you have it in your papers that you brought
14 today?
15 A I don't know.
16 MR. TILLEY: I don't believe so.
17 Q Mr. Phillips is in the courtroom and he says
18 that he has a copy of it. Would you look at this and see
19 if it is a copy of the policy?--excuse me, a copy of the
20 contract of sale.
21 A Yes, that's right. This is it.
22 MR. McPHERSON: Your Honor, we wish to offer
23 this as Defendant's Exhibit A.
24 Could I have just a moment, Your Honor. I
25 have not seen this before.

1 [DEFENDANT'S EXHIBIT A MARKED FOR IDENTIFICATION AND
2 RECEIVED IN EVIDENCE]
3 Q Mr. Hite, this policy -- this contract called
4 for you to sell by deed of assumption, is that correct?
5 A Correct.
6 Q And you had a loan on the property with what
7 organization?
8 A Colonial-American.
9 Q And Mr. Pendleton was to assume the balance
10 due on that?
11 A That's right.
12 Q And how did you pay for your insurance and
13 your real estate?
14 A It was escrowed -- monthly proration.
15 Q Your monthly payments to the bank included
16 enough to pay the insurance?
17 A Taxes and insurance, correct.
18 Q Taxes --
19 BY THE COURT:
20 Q Now was that fire insurance, homeowner's,
21 or both?
22 A It would be everything.
23 Q Both policies?
24 A Yes, sir.
25 Q Of course, as I understood there were two

1 policies -- one which you call fire insurance. That was
2 on the rental property as well as the dwelling, is that right?
3 A That would have been separate from the one
4 on my dwelling. I would have had a homeowner policy on
5 the dwelling I was living in.
6 Q That would have included personal property
7 and real estate both?
8 A Yes.
9 Q And that was escrowed at the Colonial Bank?
10 A Yes, sir.
11 BY MR. McPHERSON:
12 Q Would East Augusta ever bill you for the
13 premium?
14 A No, the bank.
15 Q That would go directly to the bank, and the
16 bank would pay it out of your funds that they had accumu-
17 lated, is that correct?
18 A That's correct.
19 Q So the bank handled all payments of the
20 premiums?
21 A Yes.
22 Q And I assume that the bank held the original
23 policies, and you held copies?
24 A I assume that's so.
25 Q Now in the sales contract with Mr. Pendleton,

1 would you read here what is stated about rents, interest,
2 taxes, and insurance, and so forth.
3 MR. TILLEY: Your Honor, may I see this?
4 I haven't seen it before either.
5 [DOCUMENT SHOWN TO COUNSEL]
6 Excuse me, Your Honor, but it's a right long
7 contract. I have no objection.
8 Q Mr. Hite, the question was to read the pro-
9 vision in the contract concerning prorations of insurance
10 and other matters.
11 A "All rents, interest, taxes, insurance,
12 and FHA or a similar escrow deposits if any shall be
13 prorated as of settlement date."
14 Q What was the settlement date, Mr. Hite?
15 A I don't recall. It was the 23rd, I believe,
16 is that correct?
17 Q I'll hand you your Plaintiff's Exhibit 6,
18 which is the settlement statement. And what is the date
19 on the settlement statement?
20 A The 23rd.
21 Q February 23, 1976?
22 A Mm-hmm.
23 Q And would you look on Plaintiff's Exhibit 7,
24 which is, I believe, the policy on the rental building,
25 is that correct?

1 A Yes, sir.
2 Q What is the annual premium on that?
3 A Where's it at? Well, it's eighteen dollars.
4 Q Eighteen dollars?
5 A Mm-hmm.
6 Q And I hand you Exhibit 1, which is the home-
7 owner's policy and ask you what the annual premium on
8 that is?
9 A It's ninety dollars.
10 Q Would you tell the Court what the amount of
11 the escrow -- or the amount of the insurance refund was on the
12 settlement statement?
13 A It was $80.10, but that could have been an
14 overage of taxes in the escrow. That wouldn't tell me
15 anything. You see, I could have an overage of taxes
16 in there and that would be reimbursed to me.
17 Q Isn't there a separate item and a separate
18 settlement statement for taxes?
19 A Yeah, there is.
20 Q $26.58, and that's a debit?
21 A That's a debit under that.
22 Q And the insurance shows a credit of of $82.48,
23 is that correct?
24 A That's correct.
25 Q So the insurance is by itself on the closing

1 statement?

2 A The insurance is by itself. That's correct.

3 Q Mr. Hite, did you attend the closing?

4 A No.

5 Q Is it customary in this area for the seller

6 to attend the closing?

7 A No.

8 Q And who was to look after your interest at

9 the closing?

10 A The real estate part of it was to be looked

11 after by Mr. Phillips, and the insurance part of it was to

12 be looked after by my insurance agent.

13 Q Who wrote the deed for you, do you recall?

14 A I don't recall.

15 Q Did you attorney attend the closing?

16 A I don't know. I wasn't at the closing.

17 Q So you don't know who your attorney was who

18 wrote the deed?

19 A I don't remember who I got to write the

20 deed.

21 Q Had you and Mr. Phillips, the selling agent,

22 discussed what company you had fire insurance with?

23 A No, I didn't know who they had insurance

24 with until after the fire. I had been called a week, I'd

25 say, a week prior to closing. Either Jimmy or John called

me a week prior to closing and said, "Who do you have your insurance with?" And I told him.

But I did not know who John had his insurance with until I called him up the next morning and told him the house was burning. He was very upset, because he says, "My gosh, I don't think the transfer has been made" -- the insurance transfer has been made. And that was the first I knew that East Augusta had the insurance on John Pendleton.

Q "John" is John Pendleton and "Jimmy" is---?

A Jimmy Phillips.

Q The agent?

A That's correct.

Q And one of them called you a week or so before the closing and asked who your insurance policy was with?

A Correct. Asked who it was.

Q And was that for the purpose of prorating it and getting it transferred?

A No, it's customary in many cases that you will leave the same insurance on the property. The new owner will pick up the insurance that was on the property.

Q That's what was done here?

A That's what I found out the morning after the fire is what happened, yes.

Q And that is the customary procedure?

1 A Well, it can be. You can get insurance with
2 whoever you want to. But this is where the insurance agent
3 comes in to help the real estate man in his transaction.
4 Q And was Mr. Pendleton to occupy the premises
5 that he bought from you?
6 A As well as I remember from the contract, I
7 had about two weeks to vacate the property.
8 Q Mr. Pendleton, then, was not living there at
9 the time of the fire?
10 A No.
11 Q And it had been a couple of weeks before he
12 would be expected to be living there?
13 A Yes.
14 Q When were you moving?
15 A Well, I moved -- I was moving the 26th. I
16 had made arrangements to move the 26th.
17 Q Had you started moving on the 25th, the day
18 of the fire?
19 A I had started packing. I had moved out small
20 stuff like glassware and things of that sort, small stuff.
21 But nothing -- no furniture had been moved at that time.
22 Q Were you moving to an apartment somewhere?
23 A No, sir, a house I was renting.
24 Q And you had moved some of your smaller items,
25 but not your larger items?

1 A That's correct.

2 Q Do you know what date the deed is dated, Mr.

3 Hite?

4 A No. You mean the transfer?

5 Q The deed from you to Mr. Pendleton.

6 A No, I don't know what date it was.

7 MR. TILLEY: We'll stipulate the deed was

8 dated February 19th if that's what you wish to show.

9 THE COURT: What date was the acknowledgement

10 delivered? That's much more important.

11 MR. TILLEY: We'll also stipulate, Your Honor,

12 it was recorded on the 24th of February.

13 MR. McPHERSON: And acknowledged on February

14 19th. Will you stipulate that?

15 MR. TILLEY: Yes.

16 THE COURT: Recorded on the 24th?

17 MR. McPHERSON: Yes.

18 Q After you signed and acknowledged this deed,

19 to whom did you give it?

20 A Normally, I'd either give it to the attorney or

21 to the agent that, you know, is closing the case so he can

22 give it to the attorney so he can record it.

23 Q Did you give it to Mr. Phillips in this

24 instance?

25 A I'm sure I did.

1 Q What time was the fire?

2 A The fire was about -- the tenants were down

3 at the house. I believe the fire was about eleven-thirty -

4 quarter till twelve.

5 THE COURT: What date?

6 THE WITNESS: I think they used that as the

7 -- let's see, I moved on Thursday. It would have been on

8 a Wednesday. That would have been the 24th that it actually

9 started, I believe. The fire report, I don't --

10 MR. McPHERSON: Mr. Tilley, all of my records

11 indicate it was February 25th. If yours indicate the same

12 we could stipulate the date.

13 MR. TILLEY: No, I won't stipulate the to that,

14 Your Honor, if the witness's best recollection is that it

15 was the 24th.

16 THE WITNESS: Do you have a fire report or

17 something?

18 THE COURT: Your motion for judgment says

19 it was in effect on the 25th of February, that on the

20 25th of February 1976 the plaintiff suffered a loss in

21 a fire. So now I'd like to get the correct date. You've

22 pleaded the 25th.

23 MR. TILLEY: I think I would be bound by my

24 witness's testimony that it's the 24th.

25 THE COURT: I think you'd be bound by the

1 pleading, too. That's the basis for your motion for judg-
2 ment. I think -- let's get at it one way or the other.
3 You have alleged the 25th, and that's what the defendant
4 is answering here today.
5 MR. TILLEY: Your Honor, the information
6 I had at the time I prepared the motion for judgment --
7 MR. McPHERSON: This is the amended motion
8 for judgment.
9 MR. TILLEY: The amended motion for judgment.
10 My understanding was the 25th. Now if the witness's
11 recollection now is the 24th, I should think that would
12 take precedence over the motion for judgment.
13 THE COURT: I don't know about that. But
14 I'd like to get the correct date. It ought to be certainly
15 ascertainable -- when the fire was.
16 THE WITNESS: Judge, the fire report, as I
17 understand, is on the 25th. I can't be sure of the date
18 because the fire actually started eleven-thirty. And I
19 don't know whether that would be the 25th or the 24th.
20 I just don't know.
21 THE COURT: Well, you are the plaintiff.
22 I don't know either. I'd like to get the correct date,
23 whenever it was.
24 Do you-all wish to have a recess?
25 MR. TILLEY: Yeah, I think the witness is

1 a little bit confused. I believe with a recess I could
2 explain the question to him.
3 THE COURT: Suppose we have a recess and
4 let's get the correct date. Certainly that ought to be
5 an item that we could have established definitely.
6 [RECESS]
7 BY MR. McPHERSON:
8 Q Mr. Hite, we've had a recess and you have
9 conferred with your attorney. I assume you've looked in
10 your notes and whatnot. Did you come up with anything
11 definite on the date of the fire?
12 A Yes, sir, it was the night of the 25th. I
13 was confused. It was the night of the --
14 Q It would be late on the evening of February
15 25, 1976?
16 A Yes, sir, about eleven-thirty.
17 Q You were not an employee of Mr. Pendleton
18 in any way at that time, were you, on February 25, 1976?
19 A No, sir.
20 Q Mr. Hite, I want to go over the values on
21 your revised list dated July 15, 1976. First of all I
22 want to discuss with you how you arrived at these values.
23 You say you went around to different stores and saw what
24 the replacement cost was?
25 A Correct.

1 In addition, the insurance company's adjuster
2 went to the premises and inspected the property. And there
3 is no evidence that he asked to make an appraisal or that
4 he suggested any formula for valuing the property. In lieu
5 of that the plaintiff had to take the most equitable formula
6 he could figure, which he has done.
7 THE COURT: Motion is overruled. The plain-
8 tiff as the owner of the property has the right to state
9 the value that he placed on the property which, of course,
10 can be contradicted or opposed by the defendant. So your
11 motion is overruled.
12 And you except to the rule of the Court.
13 MR. McPHERSON: Yes, sir, for the record I
14 will except. That's all.
15 MR. TILLEY: May I have this witness on
16 redirect, Your Honor, for a moment?
17 THE COURT: Yes.
18 REDIRECT EXAMINATION
19 BY MR. TILLEY:
20 Q Mr. Hite, I believe you stated that Mr. Phillips
21 contacted you -- Mr. Phillips being a real estate agent
22 contacted you, is that correct, about selling your property?
23 A Yes.
24 Q Did he indicate to you at that time that he
25 had a potential purchaser for the property?

1 A That's right.

2 Q That he had a known person interested in it?

3 A That's right.

4 Q Now the contract for the sale of real estate

5 designated here as Defendant's Exhibit A, does this contract

6 purport to sell or transfer title to any of the items you've

7 listed in your claim of loss?

8 A It's only concerned with the real estate. It

9 has nothing to do with the items.

10 Q This credit for insurance proration, did you

11 receive a check from East Augusta Mutual Insurance Company

12 for unearned premiums?

13 A No.

14 Q And did the adjuster when he examined the

15 fire loss suggest any formula for valuing the property

16 to you?

17 A I never saw the adjuster. I was never con-

18 tacted, never had seen -- or anything.

19 MR. TILLEY: Those are all the questions I

20 have.

21 BY THE COURT:

22 Q Mr. Hite, you've referred to Exhibit 3 as

23 the list of items and the values, but I do not have the

24 total. Do you have the total on that list? What is it?

25 A Fourteen thousand one hundred sixty-four.

are you familiar with that?

A Yes, sir.

Q Why are you familiar with that?

A I installed that in Mr. Hite's home after he had had two burglaries.

Q Is that the correct amount for that system there?

A Yes, sir, that is the correct amount that Mr. Hite paid me. That's approximately two months before the fire, if I recall correctly.

MR. TILLEY: That's all the questions I have.

CROSS-EXAMINATION

BY MR. McPHERSON:

Q Are you an expert on the values of personal property, Mr. Roberts?

A No, sir, I did not place the values on the items. All I did was make a list of what was actually in there. I didn't have anything to do with --

MR. McPHERSON: All right. That's all.

[WITNESS EXCUSED]

JOHN B. PENDLETON,

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

DIRECT EXAMINATION

1 BY MR. TILLEY:

2 Q Would you state your name, please.

3 A John B. Pendleton.

4 Q Where are you employed, Mr. Pendleton?

5 A I'm a planning engineer with C & P Telephone.

6 Q What's your address?

7 A Route 4, Box 94, Salem.

8 Q Is that the address of this property in

9 Defendant's Exhibit A of the contract of sale of real

10 estate?

11 A Yes.

12 Q You live there?

13 A Yes.

14 Q Did you have any agreement with the plaintiff,

15 Mr. Hite, as to whether or not he could remain on the premises

16 with your permission after the title was transferred to you?

17 A Yes.

18 Q What was that agreement?

19 A It was in the contract. I believe it was two

20 weeks after closing date. Let's see, it would have been

21 around March 1st or thereabouts, which would have given

22 him time to remove all his personal effects, and some clean-up

23 work that he was going to do out there, and so forth.

24 Q Did you obtain insurance on this property?

25 A Yes, I did.

1 Q From whom?

2 A From East Augusta Mutual. I called Mrs. Ayers

3 and talked to her about it.

4 Q Mrs. Ayers?

5 A Yes.

6 Q Who is Mrs. Ayers?

7 A She was the agent representing East Augusta

8 Mutual.

9 Q All right. When did you talk to her?

10 A Let's see, we closed on the morning of the

11 23rd. I called her the morning of the 23rd, I would say,

12 around eleven in the morning.

13 Q All right. And have you been paid for any

14 loss as a result of this fire?

15 A Yes, I have.

16 Q What sort of insurance did you purchase?

17 A Let me see, it was the policy that Mr. Hite

18 had. It was homeowner's coverage, fire coverage. I believe

19 it was wind damage, various things. In other words, it was

20 a complete homeowner's policy and a fire policy.

21 Q Do you have it with you?

22 A Yes.

23 BY THE COURT:

24 Q Now is that the policy you obtained? Or was

25 it your policy you're talking about?

1 A This is a copy that I obtained from Mrs.
2 Ayers. She had this sent to me.
3 Q Well, was it Mr. Hite's policy transferred
4 to you? Or was it your own policy?
5 A It's Mr. Hite's policy transferred to me.
6 MR. TILLEY: May I see it?
7 A And this is the rider right here that actually
8 transferred the policy.
9 Q What was the date of the rider?
10 A 2-24-76.
11 BY MR. TILLEY:
12 Q You say you called Mrs. Ayers, is that correct?
13 A Yes, sir.
14 Q Did you receive any authority from Mr. Hite
15 to cancel any of his insurance?
16 A Not directly. Do you want me to go into
17 details of this?
18 Q I think you've answered the question. Then,
19 was Mr. Hite's property on your premises with your per-
20 mission?
21 A Yes, sir.
22 MR. TILLEY: That's all the questions I have
23 of this witness.
24 CROSS-EXAMINATION
25 BY MR. McPHERSON:

1 Q Mr. Pendleton, you were just asked if you
2 had received any authority from Mr. Hite to transfer and
3 you said not directly. And you wanted to go into it
4 further. I'd like to go into it further.
5 A All right. We agreed -- I don't remember
6 exactly when -- but the three of us, Mr. Hite, Mr. Phillips,
7 and I agreed that I would assume his mortgage and insurance
8 policies associated with that mortgage. At that time --
9 I'm sure, as I said, that was the agreement made.
10 When we closed on the morning of the 23rd,
11 Mr. Phillips recommended that I call the insurance agent
12 immediately, which I did that morning. I called Mrs. Ayers
13 at that time and asked her to transfer the policy, effective
14 the 24th, which was the date Mr. Phillips expected to record
15 the deed.
16 Q Where were the three of you when you discussed
17 your assumption of the policy, Mr. Pendleton?
18 A I believe we were out at the property in
19 question. I can't say for certain.
20 Q But anyway Mr. Hite, Mr. Phillips, and you
21 were present?
22 A Yes.
23 Q Then you called on February 23rd and asked
24 Mrs. Ayers to transfer it effective February 24th?
25 A Yes.

1 Q And who suggested you call?

2 A Mr. Phillips suggested I call at that time

3 rather than wait. I was going to wait a couple of days,

4 you know, when I got around to it.

5 Q Was the closing held on February 23rd?

6 A Yes.

7 Q Who was present?

8 A Myself and Mr. Phillips and one of his

9 salesmen to notarize the contracts.

10 Q When did you plan to move onto this property?

11 A Around March 1st. I had not set a real

12 definite date yet.

13 Q In any event, you had not moved to the pro-

14 perty on February 25, 1976, the date of the fire?

15 A I hadn't planned to move there that early,

16 no. He said he needed about two weeks to get everything

17 off of the property.

18 MR. McPHERSON: That's all.

19 REDIRECT EXAMINATION

20 BY MR. TILLEY:

21 Q Excuse me just a minute, Mr. Pendleton. Were

22 you aware at the time this conversation took place that there

23 was a fire insurance policy on the rental property, a fire

24 insurance policy on the property that you were to occupy, and

25 a fire -- and coverage on personal property of Mr. Hite that

"Mag Card"

1 was to remain in there? Did you-all discuss that?
2 A No, we just talked about insurance, the total
3 insurance package. I don't believe there was ever any
4 differentiation made on the fact there was any more than
5 one policy.
6 Q Was it ever your intent to cancel any
7 coverage Mr. Hite might have had on his property?
8 A No.
9 Q Was it your intent to obtain coverage on
10 your property?
11 A Yes.
12 MR. TILLEY: That's all.
13 RECROSS EXAMINATION
14 BY MR. McPHERSON:
15 Q Mr. Pendleton, you-all discussed how you
16 would get that coverage, is that not correct?
17 A Well, I discussed that I would assume the policy
18 from Mr. Hite. That was all that was said with Mr. Hite.
19 Mr. Phillips and I discussed the actual mechanics of it.
20 MR. McPHERSON: That's all.
21 By THE COURT:
22 Q Mr. Pendleton, did you look at the policy
23 to see that it covered personal property as well as real
24 estate?
25 A I did not get a copy of the policy till approximately

1 a month after the fire.

2 Q You did not see it at the time then you were

3 discussing assuming the policy?

4 A No, sir.

5 THE COURT: All right.

6 [WITNESS EXCUSED]

7 JUDY S. PAINTER,

8 called as a witness by the plaintiff, being first duly

9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. TILLEY:

12 Q Would you state your name, please.

13 A Judy S. Painter.

14 Q Where are you employed Ms. Painter?

15 A At the present time I'm employed by Dr. John

16 E. Gardner, Jr., oral surgeon.

17 Q Did you previously work for Mr. Hite?

18 A Yes, sir, I did.

19 Q In what capacity?

20 A As his secretary.

21 Q Were you the only secretary he had at the

22 time?

23 A Yes, sir.

24 Q Did you have occasion in your duties as his

25 secretary to Mr. Hite to contact the Boyd C. Ayers Insurance

1 cancelled. Certainly, the homeowner's -- excuse me, had
2 been transferred. Certainly, the homeowner's had to be
3 transferred because it was a ninety-odd-dollar premium as
4 I recall, and the rental premium was very minor.
5 THE COURT: The motion is denied. There is
6 no evidence before the Court that the transaction of the
7 sale involved the personal property in any particular. It
8 was solely related to real estate. There is no compliance
9 apparently with the standard provision required to be made
10 in Section 338.1 - 365, to the effect that assignment of
11 the policy should not be valid except with the written con-
12 sent of the company. I have not any such consent before
13 the Court.
14 Mr. Pendleton stated he did not purchase any
15 of the personal property, but it was there with his per-
16 mission. As to whether or not the premium rebated covered
17 personal property or not was a question which the company
18 should certainly have called to the attention of the policy
19 owner and the one who assumed it. Motion is denied.
20 MR. McPHERSON: We except for the record,
21 Your Honor.
22 JAMES L. PHILLIPS,
23 called as a witness by the defendant, being first duly sworn,
24 testified as follows:
25 DIRECT EXAMINATION

1 BY MR. McPHERSON:

2 Q Mr. Phillips, would you state your full name.

3 A James L. Phillips.

4 Q What is your occupation, Mr. Phillips?

5 A Real estate broker.

6 Q How long have you been engaged in the real

7 estate business?

8 A Since 1972.

9 Q Where's your office?

10 A 1435 Apperson Drive, Salem.

11 Q Mr. Phillips, did you have occasion to be

12 the selling agent in this Hite-to-Pendleton transaction?

13 A I did.

14 Q And would you tell the Court how you came

15 into the picture?

16 A Well, I understood Mr. Hite had listed his

17 property for sale. I contacted him to obtain permission

18 to work the property.

19 Q And did you find a purchaser?

20 A I did.

21 Q That was Mr. Pendleton?

22 A Mr. Pendleton.

23 Q Now would you tell the Court what was said,

24 if anything, prior to closing about fire insurance?

25 A Well, as I recall, I called Mr. Hite to ask

"Mag Card"

him who his policy was with. And we had a piece of property here that may have been difficult to reinsure. So I considered it in my client's best interest to transfer the existing policy.

I called Mr. Hite to ask him who the policy was with. He advised me -- honestly, I don't even remember who now. But I did contact that particular company and had Mr. Pendleton contact that company to transfer the coverage effective on the date of recordation.

Q Who were you representing at the closing, Mr. Phillips?

A The seller.

Q That's Mr. Hite?

A Right.

Q And you say you got in touch with the Ayers Insurance Agency?

A Right.

Q And what did you tell them?

A Well, I obtained -- when I talked to them, my main purpose of contacting them was to obtain the premium cost per year and the date of expiration of the policy so I could prorate accordingly, which I did.

Q This was the deed of assumption?

A Right.

Q And there was an escrow account?

1 A Correct.

2 Q What is customary in this area when there is

3 sale under a date of assumption with an escrow account as

4 far as the escrow account itself is concerned?

5 MR. TILLEY: Your Honor, I object to intro-

6 duction of the custom in the trade at this time. We have

7 specific evidence as to what the agreement was.

8 THE COURT: I'll limit it to this particular

9 case, as to what you did do with the understanding of both

10 seller and buyer.

11 A Well, it was the understanding based on the

12 contract that the escrow account would be prorated and all

13 insurance, taxes, et cetera, prorated as of the date of

14 closing.

15 Q Now what did you do to see that that was

16 carried out?

17 A I contacted the insurance company for an

18 expiration-date premium amount, contacted the bank to make

19 sure that it had been paid out of the escrow account,

20 prorated the insurance premium, gave Mr. Hite credit for

21 the excess and gave him credit for the balance in the

22 escrow account as of date of closing.

23 Q Who actually got in touch with the Ayers

24 Insurance Agency to effect the transfer?

25 A I think Mr. Pendleton did. I don't really

1 recall. Mr. Pendleton and I were both in the office this
2 date of closing. And, of course, I advised him that the
3 insurance company would need information from him and he
4 should contact them immediately. I did not want the deed
5 recorded without transferring the policy to him.
6 Q And one of the two of you got in touch with
7 Ayers?
8 A Correct, I believe he did.
9 Q At your suggestion?
10 A Right, at my office as I recall.
11 Q And you suggested he call?
12 A Mm-hmm.
13 Q Mr. Phillips, were you authorized by Mr. Hite
14 to make any arrangements about this insurance transfer?
15 A Well, I just spoke with Mr. Hite about, you
16 know, a transfer of the policy. And, you know, I don't
17 recall the limit of conversation or the context or whatever.
18 In this particular case it was discussed. I don't even
19 recall where. But I did transfer it.
20 Q You discussed the transfer of the policy with
21 Mr. Hite?
22 A Oh, yes.
23 Q What did Mr. Hite tell you?
24 A I don't recall. I don't recall any of the
25 conversation nor where it took place.

"Mag Card"

1 Q You don't recall the conversation. But after
2 the conversation you did transfer the policy?
3 A Oh, yes.
4 Q What was the date of settlement?
5 A 23rd of February '76.
6 Q And did you give Mr. Hite a check in conformity
7 with the closing statement that is in evidence here dated
8 February 23rd, 1976?
9 A I did after recordation of the deed.
10 Q Was that check cashed by Mr. Hite?
11 A I'm sure it was. I don't have any record
12 indicating so. I would at the office.
13 MR. McPHERSON: That's all.
14 CROSS-EXAMINATION
15 BY MR. TILLEY:
16 Q Mr. Phillips, when you first approached Mr.
17 Hite for permission to sell this property, you had Mr.
18 Pendleton as a potential purchaser at that time, did you
19 not?
20 A As I recall, I did.
21 Q He had given you instructions as to what
22 sort of property he'd be interested in?
23 A Correct.
24 Q And did Hite's property fit that description?
25 A It did.

1 Q So then you went to Mr. Hite on behalf of
2 Mr. Pendleton, is that correct?
3 A Not exactly. An agent always represents the
4 seller.
5 Q Where do you get that from, that the agent
6 always represents the seller? Is that something they
7 taught you in your real estate course?
8 A Well, no. That's part of Virginia law. In
9 real estate --
10 THE COURT: That's not correct, Mr. Phillips.
11 An agent can represent both parties, buyer or seller. There
12 isn't any law to that effect that I know of.
13 THE WITNESS: No, sir, I've always --
14 MR. TILLEY: It's a common misconception, I
15 think. You're not the only one.
16 THE WITNESS: I represent the buyer and seller
17 in various cases. But a real estate agent has the obligation
18 to look after the interest of the seller first because he
19 is the property owner. The other person does not own the
20 property at that point.
21 THE COURT: I'm glad to have your interpre-
22 tation of it, but I don't agree with it. Go ahead.
23 MR. TILLEY: By being mute I don't want you to
24 think I agree with you either.
25 Q So you had Mr. Pendleton as a purchaser and

1 you were seeking property for him?
2 A Yes.
3 Q So Mr. Pendleton being your client, I believe
4 you said that you were out to protect your client's best
5 interest, is that correct?
6 A Right.
7 Q In other words, you wanted to see that every-
8 thing ran smoothly for Mr. Pendleton and that he got proper
9 title to property and that sort of thing?
10 A [AFFIRMATIVE]
11 Q When you called Hite to find out who his insurance
12 company was, he gave it to you, and then you called the
13 insurance company?
14 A Correct.
15 Q And your conversation with the insurance
16 company evolved around what?
17 A Well, my main conversation as I recall was
18 to ascertain the premium and expiration date of the policy
19 so I could prorate accordingly.
20 Q The policy or policies?
21 A I didn't know what was what. All I was aware
22 of was there was insurance coverage on the entire property
23 that I had contracted with Mr. Hite and Mr. Pendleton.
24 Q Okay. So the type of coverage was not broken
25 down to you, is that correct?

"Mag Card"

1 A No. That's correct.

2 Q Did you ever know what kind of insurance Hite

3 had?

4 A Well, I knew there was a homeowner's policy,

5 but -- and, of course, I knew there was coverage on the

6 buildings because I remember asking. So I knew there was

7 coverage on both properties. The exact type of coverage

8 I was not aware of.

9 Q I believe you stated that you advised Mr.

10 Pendleton to also call the Ayers Insurance Company, is

11 that correct?

12 A Mm-hmm.

13 Q Was that for his protection, Mr. Pendleton's

14 protection?

15 A I knew the insurance company would need infor-

16 mation from him that I just felt was easier for him to give

17 himself than second-hand information.

18 Q So then after this was done, did you at any

19 time call Hite up and say, "We've transferred your policy"?

20 A Not that I recall.

21 Q I believe you said you gave Hite a check, when

22 in actuality you mailed the check?

23 A As I recall, it was mailed.

24 Q Did plaintiff Dick Hite at any time expressly

25 and unequivocably authorize you to cancel the insurance on

his property, his personal property?

A Not to cancel.

MR. TILLEY: No questions.

REDIRECT EXAMINATION

BY MR. McPHERSON:

Q Did you transfer the policy?

A Yes, I did.

Q Did you cancel the policy?

A No, I did not.

Q Who paid you for your services?

A The seller.

Q Mr. Hite?

A Mr. Hite.

Q Did Mr. Hite authorize you to transfer the policy?

A As I recall, he did.

MR. McPHERSON: That's all.

RECROSS-EXAMINATION

BY MR. TILLEY:

Q Mr. Phillips, are you saying unequivocably that Dick Hite authorized you to transfer the policy?

A I said as I recall. I earlier stated that I do not recall the context of the conversation. It was a conversation that at the end of the conversation I did this, which would be the normal procedure, so it would be

1 -- I won't say assumption, because I did it, okay.
2 Q If I asked you to testify what Dick Hite
3 said, would you say "I could not recall"?
4 A I cannot recall.
5 MR. TILLEY: That's all the questions I
6 have.
7 REDIRECT EXAMINATION
8 BY MR. McPHERSON:
9 Q And you mean by that you cannot recall his
10 exact words?
11 A His exact words.
12 Q But you know what you did after you talked
13 to him?
14 A I know what I did.
15 MR. McPHERSON: That's all.
16 BY THE COURT:
17 Q Mr. Phillips, in prorating the premium, did
18 you undertake to differentiate between real estate and
19 personal property?
20 A No, I did not. It was strictly a premium,
21 Your Honor. I was not aware of the differential of any of --
22 Q Did you have anything to do with the personal
23 property?
24 A No, I did not.
25 Q It was strictly on the real estate?

1 A Strictly.

2 Q And the proration then was done by you and

3 not by the company?

4 A Correct.

5 THE COURT: All right.

6 [WITNESS EXCUSED]

7 MR. McPHERSON: Could I look at that Code

8 section that the Court was citing to me?

9 THE COURT: Yes. It's a standard provision

10 required to be in all policies. I assume it's in this one.

11 I haven't checked.

12 [OFF THE RECORD]

13 NAOMI M. AYERS,

14 called as a witness by the defendant, being first duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McPHERSON:

18 Q Mrs. Ayers, what's your full name?

19 A Naomi M. Ayers.

20 Q What is your occupation?

21 A I'm agent and secretary for Ayers Insurance

22 Agency.

23 Q Is that the business of you and your husband?

24 A My husband and I.

25 Q Where do you live?

1 A I live in Botetourt County, Route 3,
2 Troutville.
3 Q How long have you been in the insurance
4 business?
5 A Approximately four and a half years.
6 Q Do you deal with more than one insurance
7 company in your agency?
8 A Yes, sir, we have two companies.
9 Q Is East Augusta Mutual one of the companies?
10 A That's right.
11 Q And did Mr. Hite have two policies with your
12 company?
13 A Yes, sir, he did.
14 Q And were these policies transferred?
15 A Yes, to John B. Pendleton, Jr.
16 Q Would you tell the Court what happened to
17 bring about the transfer. Who got in touch with whom?
18 A Mr. Pendleton called me, I believe it was
19 the 23rd, and said he had purchased the property of Mr.
20 Hite, that it consisted of two buildings, two houses, one
21 that he lived in and one that he rented; and would I get
22 the policies and check the numbers and the amount that was
23 on them and the premium for him, which I did.
24 He also said Mr. Phillips was handling the
25 transaction and that he would be contacting me -- or he gave

me his number to contact him. And the next day I did talk to Mr. Phillips to verify that he had purchased the property and that it had been recorded or the date it was going to be recorded.

Q All right. Mr. Pendleton called you on February 23rd and you called Mr. Phillips the next day to verify the information given you by Mr. Pendleton?

A That's right.

Q Did he verify that information?

A Yes, he did.

Q What did you do concerning the policy?

A Then I called Mr. Swecker at the home office.

Q Is that Mr. William Swecker that sits next to me?

A That's right.

Q What's his position with the home company?

A I believe he's secretary and manager there at the home office.

Q What date did you call him?

A I believe I called him on the 23rd, the day that Mr. Pendleton called me.

Q What was the purpose of that call?

A Well, then we established that it was important to find -- to be sure and have the exact date that the deed was recorded in Mr. Pendleton's name.

1 Q What was your purpose in calling Mr. Swecker?
2 A To see if it was all right to transfer the
3 policy.
4 Q And did you transfer the policy?
5 A Yes, we did.
6 Q On what date?
7 A Well, the effective date, I believe, was the
8 24th.
9 Q Of February?
10 A [AFFIRMATIVE]
11 Q What was the mechanics of the transfer? What
12 did you actually do?
13 A Well, it's our custom when it's -- the property
14 is purchased in this manner, especially if it has a mortgage
15 and it's set up under an escrow account, to transfer it in
16 this manner by calling the home office and then sending in
17 writing a memo stating that the property has been purchased
18 and who purchased it and what date.
19 Q Did you send the memo to the home office?
20 A Yes, I did.
21 Q Do you have a copy of that with you?
22 A I believe my husband has it.
23 Q Mrs. Ayers, here's a paper dated February
24 24, 1976, addressed to East Augusta, showing insured Richard
25 Q. Hite, Jr., policy number 58641 and 102598. Who wrote

1 that?

2 A I did.

3 Q And at the end it says "Thanks, Boyd," but

4 there's no signature on it. Is this your office copy of the

5 letter?

6 A Yes, that's our office copy.

7 Q Who is Boyd?

8 A That's my husband. He's the other agent.

9 Q And was this memo rr letter sent to Mr.

10 Swecker?

11 A Yes, sir.

12 Q And this was pursuant to the telephone call

13 you made to him the day before?

14 A That's right.

15 MR. McPHERSON: We offer this as Defendant's

16 Exhibit B.

17 THE COURT: All right.

18 [DEFENDANT'S EXHIBIT B MARKED FOR IDENTIFICATION AND

19 RECEIVED IN EVIDENCE]

20 Q Mrs. Ayers, would you read what that letter

21 states.

22 A The whole thing?

23 Q The body of it.

24 A [READING FROM LETTER] "Please change the

25 name of insured to John B. Pendleton, Jr., as he has pur-

1 chased the property as of this date. Colonial-American
2 National Bank is still mortgagee and will escrow for the
3 premium; therefore, please send all future premium notices
4 to them. The new owner will send us his mailing address as
5 soon as possible. In all other respects the policy shall
6 remain the same."
7 Q After that, did you receive any documentation
8 from Mr. Swecker concerning this policy?
9 A Yes, we received the proper endorsement
10 changing the name.
11 Q Do you have that with you?
12 A Yes. That's also in the file.
13 [OFF THE RECORD]
14 MR. TILLEY: You were going to offer these?
15 MR. McPHERSON: Yes, sir.
16 MR. TILLEY: I would object to the introduc-
17 tion of these two typed papers purporting to be a transfer
18 of policy. They are neither of them signed; there are
19 neither of them dated as to when they were issued; and I
20 think they have no probative value in this case.
21 THE COURT: Well, if they are not executed,
22 I would have to sustain the objection.
23 THE WITNESS: The copy Mr. Pendelton has is
24 signed.
25 THE COURT: Well, I don't know that. I'm just

1 here now.

2 MR. McPHERSON: No, sir. We're just going to

3 show that both of them were transferred on the same day.

4 THE COURT: I don't care when it was transferred

5 if it was not involved in this transaction.

6 MR. McPHERSON: All right, sir. We would make an

7 offer of proof and ask that the court reporter put it into the

8 record.

9 THE COURT: Mark it tendered and refused. It's

10 not material to the issue.

11 MR. McPHERSON: And except for the record,

12 [DEFENDANT'S EXHIBIT C MARKED FOR IDENTIFICATION FOR

13 RECORD ONLY AND NOT ADMITTED INTO EVIDENCE]

14 BY MR. McPHERSON:

15 Q All right. Mrs. Ayers, after you called Mr.

16 Swecker and wrote Mr. Swecker, what happened then?

17 A Then we received these transfers -- endorse-

18 ment and transfer clause transferring it to Mr. Pendleton's

19 name.

20 Q Talking about both policies?

21 A Both policies were handled at the same time,

22 because I understand he bought the property at the same time.

23 And it was recorded here at this very courthouse at the very

24 same date and the same time.

25 MR. McPHERSON: Your witness.

1 CROSS-EXAMINATION

2 BY MR. TILLEY:

3 Q Mrs. Ayers, I believe you said Mr. Pendleton

4 first called you concerning this policy, is that correct?

5 A Yes.

6 Q What day was that?

7 A The 23rd of February.

8 Q All right. And then what did you do?

9 A Then I called Mr. Swecker that afternoon.

10 Q And what was the gist of that conversation?

11 A Well, I just asked him -- told him that the

12 property had been purchased by Mr. Pendleton that we now

13 had insured in the name of Richard Q. Hite, Jr., and that

14 I understood Mr. Phillips told me that it was understood

15 between Mr. Pendleton and Mr. Hite and Mr. Phillips that

16 they transfer it to his name since it was set up in an escrow

17 account. And I told him all this and asked him --

18 Q Why did you call Mr. Swecker?

19 A Well, this is general procedure if it's to be

20 done like the next day or --

21 Q Where is your office?

22 A My office is at Troutville in Botetourt County.

23 Q Botetourt County? Where is Mr. Swecker's office?

24 A His office is in Staunton.

25 Q Do you call for authority on every homeowner's

1 policy?

2 A Not every one, but many of them I do.

3 Q Is that your company policy that you must

4 call in order for a policy to be transferred?

5 A No, it isn't.

6 Q I believe you said you called Mr. Swecker and

7 then you followed up with a letter?

8 A That's right.

9 Q When did you write the letter?

10 A I believe the letter was written -- I believe

11 it was dated the 23rd or the 24th.

12 Q Did you do anything on the 24th? You say it

13 may have been the 24th you wrote the letter?

14 A I believe the memo we have here was dated the

15 24th.

16 Q Was there a letter to Mr. Swecker mailed on

17 the 24th?

18 A Yes, sir.

19 Q What was the purpose of this letter?

20 A Well, this was dated -- it was just a memo.

21 This is the usual procedure to have a written record for our

22 record and for his records.

23 Q Is it a requirement of your company that you

24 send this memo to Mr. Swecker in such a situation as this?

25 A Yes.

1 Q And that was mailed on the 24th?
2 A Mm-hmm.
3 Q Then what happens after Mr. Swecker receives
4 your memo? What is the procedure then?
5 A Then he immediately sends the transfer slip
6 endorsement.
7 Q Is this sent by certified mail?
8 A No. It's just sent regular mail.
9 Q Does regular mail -- is that logged into
10 your office? That is, is the date it's received noted
11 in any papers in your office?
12 A Well, not necessarily.
13 Q Just put in a file, right?
14 A [AFFIRMATIVE]
15 Q Can you say with certainty when you received
16 this memo?
17 A No, sir, I couldn't say exactly.
18 Q But it was certainly not before the 24th
19 because that's the day you wrote Mr. Swecker, is that correct?
20 A That's right.
21 Q So it would have been sometime after the 24th
22 he received it?
23 A Yes.
24 Q How long does it usually take your correspondence
25 to reach Mr. Swecker?

1 A Well, usually he gets it the next day after
2 it's mailed.
3 Q Then if he writes you a letter, how long does
4 it usually take you to get it?
5 A We get it the next day under normal
6 circumstances.
7 Q Are you authorized then to transfer the policy
8 after you receive this reply from Mr. Swecker?
9 A Yes. I mean, I was authorized to change it. It
10 was my understanding that I'm authorized to -- or rather,
11 to write the note recommending the change, which it was
12 officially made at the home office.
13 Q It has to be approved.
14 So then if you wrote to Mr. Swecker on the
15 24th and he received it on the 25th and mailed a reply to
16 you that same day, the earliest you could have received
17 that would have been the 26th, would it not?
18 A Probably.
19 Q Is that the day the transfer takes place,
20 when you get the approval?
21 A It was my understanding that the day that is
22 posted on this slip, the effective date of the endorsement.
23 Q Well, that's backdated, isn't it?
24 A But, you see, it's my understanding that the
25 deed was recorded in Mr. Pendleton's name. And I don't

1 know of any law -- and it is also my understanding -- that
2 you can't have insurance on property if it doesn't belong
3 to you. So the property was in Mr. Pendleton's name.
4 Q Well, the property we're concerned here
5 with is the personal property. You're not saying that
6 was in Mr. Pendleton's name?
7 A No.
8 Q The endorsement in writing, then, could not
9 have been received by you prior to the 26th, is that
10 correct?
11 A I don't believe so.
12 Q And the effective date that would show on
13 that paper would really have to have been backdated, would
14 ir not? If Mr. Swecker had signed it stating the 24th,
15 that could not be the correct date because you didn't
16 write your letter until the 24th?
17 A No, but I said on there that the property
18 had been recorded this date.
19 Q I say, you are wishing to bind Mr. Pendleton
20 as of the date the property is recorded, is that correct?
21 That was your intent?
22 A That's correct.
23 Q Was it ever your intent to deprive Mr. Hite
24 of insurance on his personal property?
25 A No, sir.

1 MR. TILLEY: That's all the questions I have
2 of this witness.
3 REDIRECT EXAMINATION
4 BY MR. McPHERSON:
5 Q You called Mr. Swecker February 23rd?
6 A Right.
7 MR. McPHERSON: That's all.
8 BY THE COURT:
9 Q Mrs. Ayers, let me ask you a question. In
10 the policy, the homeowner's policy that we're talking about,
11 the basic premium annually is $90. But in computing that
12 premium I presume you, as the agent who wrote it, put $24,000
13 on the dwelling, $2400 on appurtenant structures, $12,000
14 on unscheduled personal property, and additional living
15 expense $4800, personal liability $25,000, and medical payments
16 to others of $500. Don't all those items go into the determi-
17 nation of the premium?
18 A Yes, I believe it does.
19 Q Including the unscheduled personal property.
20 Now, then, was it your understanding that Mr. Pendleton
21 bought the personal property as well as the real estate?
22 When they called about the premium, did you
23 undertake to differentiate what was on the real estate and
24 what was on personal and what was liability?
25 A No, sir, because I wasn't asked to break it

down that way.

Q No, but you were informed that the real estate was sold. You didn't understand the personal property was sold, did you?

A No, sir.

THE COURT: All right. Thank you, ma'am.

~~[WITNESS EXCUSED]~~

WILLIAM A. SWECKER,

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

DIRECT EXAMINATION

BY MR. McPHERSON:

Q Where do you live, Mr. Swecker?

A I live in Stuart's Draft, Virginia.

Q Is that in Augusta County?

A Yes, sir.

Q What is your occupation?

A I'm the general manager of East Augusta Mutual Fire Insurance Company.

Q How long have you held that position?

A Eleven years.

Q Would you state to the Court when something first came to your attention about the transfer of the Hite policy to Pendleton?

A Mrs. Ayers called me on Monday the 23rd and asked me if it was all right with the company if we transferred Mr. Hite's policy to Mr. Pendleton.

I asked her a series of questions, such as did they want to increase their coverage; or were they going to transfer it and leave the escrow; was he buying the escrow account at the bank; or if they weren't buying the escrow account, to find out from the bank if there was a refund; if we owed a refund, if we owed it to Mr. Hite

1 or who we owed it to or to the bank.

2 This was normal procedure in this type of

3 transaction. The mortgagee always lets us know if the policy

4 is not in force who to pay the premium -- who to pay the

5 unearned premium to.

6 And I asked her to find out the exact date of

7 the transaction and the exact name of the person who it

8 would be transacted to.

9 Q All right. What happened next?

10 A Well, she said she would. And she understood

11 from the people she was talking to --

12 MR. TILLEY: I object, Your Honor, to any

13 reference to conversations that took place between Mrs.

14 Ayers and some third party as being hearsay.

15 THE COURT: That would be objectionable. That

16 would be inadmissible.

17 Q All right. In accordance with what Mrs. Ayers

18 told you, what did you do, Mr. Swecker?

19 A I had one of the girls in my office to pull the

20 file on Mr. Hite and give it to me. And I marked on it that

21 it was to be transferred the next day as Mrs. Ayers had

22 given me, and the name that she had given me at that time,

23 and said that she would mail me a memo with the exact times

24 and dates and names on the thing, which we received in

25 the mail on the 25th, stating that the policy was to be

1 transferred to Mr. Pendleton effective the 24th.

2 Q What date were the change endorsements typed?

3 A They were typed that day, the 25th.

4 Q And effective as of what date?

5 A The 24th.

6 Q They were typed on the --

7 MR. TILLEY: Object, Your Honor. The witness

8 has answered the question.

9 Q They were typed at what time on the 25th?

10 A I wouldn't have the slightest idea. Sometime

11 during the day of the 25th.

12 Q Would it be during ordinary business hours

13 or after ordinary business hours?

14 A No, between eight and five.

15 Q All right. And when did you sign the endorse-

16 ments?

17 A I signed them that day, the 25th.

18 Q Is this the endorsement that you signed for

19 the homeowner's policy? Number 58641.

20 A That's an endorsement. Mr. Pendleton did

21 not have a copy of his policy, and that's the endorsement.

22 We made a copy of the exact policy that we had issued

23 to Mr. Hite and sent it, and that's the endorsement changing

24 the name from Mr. Hite to Mr. Pendleton.

25 And that's the endorsement I signed.

1 Q When did you sign it?

2 A On the 25th.

3 MR. McPHERSON: Your Honor, we offer this

4 as Defendant's Exhibit C.

5 THE WITNESS: I also signed the endorsement

6 the same date -- a copy of that same endorsement, which I

7 sent to Mrs. Ayers to be sent to the Colonial-American

8 National Bank, transferring the policy from Mr. Hite to

9 Mr. Pendleton. There was also probably was an unsigned

10 copy in there that I sent to Mrs. Ayers for their records.

11 And we have an unsigned copy in our office.

12 [DEFENDANT'S EXHIBIT C MARKED FOR IDENTIFICATION AND

13 RECEIVED IN EVIDENCE]

14 Q What was the effective date of the transfer?

15 A February 24, 1976.

16 Q Mr. Swecker, awhile ago the Court had some

17 questions of Mrs. Ayers concerning what amount of premiums

18 would be allocated to what coverage, as I understood it.

19 How is the premium determined?

20 A The premium is an indivisible premium. The

21 policy is an indivisible policy. The determining factor on

22 the policy is Coverage A on the dwelling. This is known in

23 the trade as a broad form or HO2. And you determine

24 the factor of what you want on the real estate, and then

25 ten percent of it applies to the appurtenant private

1 structures. It's an automatic coverage. Fifty percent of
2 Coverage A applies to unscheduled personal property and
3 twenty percent of it applies to additional living expense.
4 And you have an automatic $25,000 liability
5 plus a $500 medical. This can be raised at the request of
6 the insured to any amount that he wants with an extra
7 charge. This is a standard policy that's used in the
8 insurance industry today.
9 Q Can a man keep a homeowner's policy after
10 he's sold the real estate, keep the other coverage on
11 that same policy?
12 A No, sir, he has to be issued a new policy
13 to be covered.
14 MR. McPHERSON: That's all.
15 CROSS-EXAMINATION
16 BY MR. TILLEY:
17 Q Mr. Swecker, how many policies would you say
18 your company has in effect?
19 A We have twenty -- as of December 31st, we
20 had 20,401 policies in effect.
21 Q And it would be fair to say that with real
22 estate constantly changing, you're constantly having requests
23 to change the policies?
24 A Well, this is done in the office at least ten
25 times a day.

1 Q Ten times a day.

2 And you did this in February of 1976. So a

3 year later you've done these ten times a day. But you remem-

4 ber this one specifically, do you not?

5 A Well, I happened to have a file on the thing

6 because of the circumstances of the case.

7 Q At the time you did it you noted in the file

8 when you signed this?

9 A Yes.

10 Q You wrote it down, "Signed the endorsement

11 this 25th day"?

12 A Oh, yes.

13 Q Do you do this in every file that you have?

14 A We have a policy register -- and every policy

15 that we write -- with the name of the insured and date we

16 did it goes in the policy register. Every time we write an

17 endorsement it goes in the policy register -- to change

18 the name. And we have policy registers yea-big.

19 Q You've got a column in there for when you

20 signed this endorsement? It says, "Signed endorsement,"

21 and under that the date, is that correct?

22 A No, sir.

23 Q Is it not usual sometimes for a big company like

24 yours that you will dictate or request the girl type

25 something and sign it the day after she types it when it's

1 put on your desk for review?

2 A It is common practice in the insurance

3 industry that the effective date is the overriding factor.

4 I could have the girl write a letter today and sign it

5 tommorrow. But I can also say in that letter that we're

6 going to do something on that yesterday. And I'm sure

7 you've done the same thing.

8 Q I understand. You say your responsibility

9 is from the effective date?

10 A Right.

11 Q That's the date where you become liable?

12 A Right.

13 Q But it's not uncommon then for the girl to

14 do her typing and for you to sign it the following day?

15 A Right.

16 Q Or the next day?

17 A Right. Or the next day.

18 Q So this could have been signed on the 26th

19 or 27th?

20 A Yes, sir. By the same token, if I may say so,

21 sir, the policy is not dated the day I signed it either. So

22 maybe the policy isn't effective.

23 Q Well, I guess you know what you mean. You

24 lost me right there, Mr. Swecker. But I don't think it's

25 important.

1 Now you sent a copy of this to Ayers, right?
2 A Right.
3 Q To Pendleton, right?
4 A Right. I sent all of it to Ayers and they --
5 Q They sent it to Pendleton and the bank?
6 A The bank, and keep a copy themselves.
7 Q And all these people -- but do you ever send a
8 copy to the guy whose insurance is being cancelled?
9 A We didn't cancel the insurance on Mr. Hite.
10 We transferred Mr. Hite's insurance.
11 Q And he called you and specifically requested
12 you to transfer his insurance, is that correct?
13 A We operate under an agency system in the
14 state. We have agents. We have policyholders. We do
15 business with banks. We do business with lawyers. We do
16 business with about everybody under the sun. And people
17 call us and tell us to do these things. We confirm most
18 of it in writing. We do some of it over the telephone,
19 and it's effective that day.
20 We take policies over the telephone and write
21 them that day effective and don't get the information until
22 the next day. And this is normal procedure.
23 Q Well, did Mr. Hite ever call you up and ask
24 you to transfer his policy?
25 A No, sir. I didn't know Mr. Hite.

1 Q All right.

2 A He didn't call me and ask me to write the

3 insurance either.

4 Q Is Mrs. Ayers or Mr. Ayers or anyone who works

5 with them authorized by your company to transfer policies of

6 insurance?

7 A Mr. and Mrs. Ayers have binding authority from

8 us and they can -- if they write and it meets our

9 underwriting approval, underwriting rules, they can transfer

10 -- they can initiate a transfer of a policy.

11 Q But it must be with your approval, must it not?

12 A In a lot of cases, it's with my approval

13 and in a lot of cases it's not.

14 Q Let me show you a photocopy of the policy that

15 the Judge has that I think you'll recognize. It's your

16 policy. And I've indicated right here by this paragraph a

17 number. This is your policy, your standard policy?

18 A Right.

19 Q Would you read that, please, sir.

20 A [READING] "Assignment of this policy shall

21 not be valid except with the written consent of this company."

22 Q Does that mean what it says?

23 A I gave Mrs. Ayers consent, verbal consent,

24 over the phone, and written consent is this endorsement that

25 we issued on the policy, transferring it to Mr. Pendleton.

1 Q So the written consent must be had, is that
2 correct?
3 A Yes, sir, it's -- I think it says -- may I
4 read this, sir?
5 Q Sure.
6 A It says, "It is hereby understood and agreed
7 the name of the insured be changed to read John B. Pendleton."
8 And that's what we take in the trade to be written consent.
9 Q All right, sir. And you said that could have
10 been signed by you on the 26th, is that correct?
11 A Right.
12 Q So that the policy may have been transferred on
13 the 26th, the day after the loss occurred?
14 A The endorsement for this went out of our office
15 before I was even notified of the loss.
16 Q But you have to give them authority in writing
17 before a policy can be transferred, do you not -- or assigned?
18 A I don't quite follow you.
19 Q All right. This sentence you read here,
20 "Assignment of this policy shall not be valid except with
21 the written consent of this company."
22 And you are authorized to give that written
23 consent, are you not?
24 A Yes, sir.
25 Q And you did so in this case, did you not?

1 A Yes.

2 Q But you cannot testify, can you, that it was

3 not on February 26 that you gave this written consent?

4 A Now, let's see. I gave verbal consent to

5 transfer it on the 24th. I received the information -- I

6 mean on the 23rd. On the 24th I received the memo from

7 Mrs. Ayers.

8 Q No, sir, you could not have. It wasn't mailed

9 to you till the 24th.

10 A I'm sorry. I'm getting the days confused. On

11 the 25th I received it and issued it effective the 24th.

12 Q So you cannot say with certainty whether you

13 signed this on the 25th or 26th, can you?

14 Would you like to go back and read your

15 previous statement?

16 A I'm pretty sure that I signed this on the

17 25th because it was issued the day we got it.

18 Q Twenty thousand policies with those transfers

19 and you remember you signed this on the 25th instead of the

20 26th, is that correct?

21 A Well, the reason I'm sure we did, because we

22 mail -- our normal mail run -- we collect Monday and Tuesday

23 and mail Tuesday. And we collect Wednesday and Thursday and

24 mail Friday.

25 Q It could have been the 26th, you said earlier?

1 A Oh, yes, it could have been the next week.
2 Q Well, that's possible, too. I'm not even
3 sure -- maybe the 26th was on the other weekend. But you can't
4 say that you endorsed this on the 25th for sure? That's all
5 I'm trying to get at.
6 A No.
7 Q All right. Now you referred to an
8 indivisible policy. Is it not true that you arrive at the
9 total premium by assigning certain values to the risk to
10 be insured in that policy? And if it's a multiple risk
11 policy, you must have some sort of manual that gives you
12 the premium for each one of those risks, do you not?
13 A We have a premium -- our premium is predicated
14 on Coverage A, which is the dwelling. And we adjust -- and
15 if we change rates, it is changed on that. No, we don't --
16 we don't have -- the overriding factor in making the rates
17 is Coverage A because we know what percentage is on Coverage B
18 and C and D and E.
19 Q Right. So if I said -- if you had your books
20 with you and your computers, or whatever it is you need
21 to get to this, if I said how much of this premium was
22 attributable to the unscheduled personal property, you
23 could tell me, could you not?
24 A No, sir.
25 Q Isn't that what you just said? That you have

1 to add up all these things?

2 A No, I didn't say that. I said the overriding

3 factor in computing this premium is Coverage A, which is on

4 the dwelling. And the rest of the premium, if there is any-

5 thing divisible in it, in the rest of the premium, it is the

6 liability premium. Because we have a factor that we take

7 out if somebody doesn't want liability. But the rest of

8 the premium is considered -- we lump the whole amount of

9 coverage. I believe he has $24,000, which gives him

10 $24,000 on the house and twelve is thirty-six and four is

11 forty and twenty-four is forty-four thousand four hundred,

12 I believe, if you add those figures.

13 Q So you have to have the twelve added in

14 there to arrive at the total?

15 A We have used the factor of forty-four thousand.

16 Q And that twelve has a ratio to the total amount

17 that can be determined so that a percentage of the premium

18 can be attributed to the $12,000, can it not?

19 My little daughter in the second grade could

20 figure this thing out now.

21 A A, B, C, and D are added up to give us our

22 maximum exposure on this risk. And then the premium is

23 computed as on those four factors.

24 Q What if I had a policy of insurance with you,

25 sir, and I called my agent and I said $12,000 is just not

enough for what I got in this property. I need to increase it to $20,000. Would my premium remain the same?

A No, sir.

Q Would it go up?

A Yes, sir.

Q How would you determine how much it would go up?

A We have a rate schedule that shows Coverage A starts at $9,000 and goes up to $35,000, and each one of those have a dollar amount beside each one of them.

Q So you could, by figuring it up, tell us how much of that premium is attributable to the $12,000 unscheduled personal property?

A No, sir, I couldn't.

MR. TILLEY: That's all. Thank you very much.

MR. McPHERSON: That's all.

[~~WITNESS EXCUSED~~]

BOYD C. AYERS,

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

DIRECT EXAMINATION

BY MR. McPHERSON:

Q You are Mr. Boyd Ayers?

A Yes.

1 Q Are you the husband of the lady who testified
2 earlier?
3 A That's right.
4 Q Mr. Ayers, as I recall, Mr. Hite made a comment
5 in his direct examination about calling you after this loss
6 and telling you about the loss. And then he quoted what
7 you said to him in response.
8 A That's right. Mr. Hite called me and said
9 he had a fire and he had lost most of his clothing and part
10 of his personal -- I mean, you know, household furniture
11 and this type. And he wanted to know if he was covered.
12 And I told Mr. Hite that I didn't know for sure whether he
13 was covered or not, that I would have to call the company,
14 which is the usual procedure, that I'm not an adjuster,
15 that whenever I get these calls that I immediately -- this
16 was at night, so it would be the next day -- we notify
17 the company as to his loss. And that is what I had done.
18 Q Did you ever tell him that he was covered?
19 A No, sir, I didn't tell him he was covered
20 or he wasn't covered. I told him I did not know because,
21 like I say, I'm not the adjuster.
22 MR. McPHERSON: That's all.
23 MR. TILLEY: No questions.
24 ~~[WITNESS EXCUSED]~~
25

1 THE COURT: Is everybody finished?

2 MR. McPHERSON: We rest, Your Honor.

3 MR. TILLEY: I have one witness I wish to call

4 in rebuttal.

5 JUDY S. PAINTER,

6 called as a witness in rebuttal by the plaintiff, being

7 previously duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TILLEY:

10 Q Your name, please.

11 A Judy S. Painter.

12 Q Mrs. Painter, I believe it's been established

13 by prior testimony that you were Mr. Hite's secretary at the

14 time of this loss, is that correct?

15 A Yes, sir.

16 Q I want to show you Defendant's Exhibit B

17 dated February 24, 1976, to East Augusta, signed, "Thanks,

18 Boyd." It also has handwriting on there. Would you read

19 the handwriting, please?

20 A It says, "I talked to Dick Hite's secretary.

21 She said he had sold the house. He received the check this

22 morning." And it's dated 2-26-76.

23 Q All right. Were you his secretary at that

24 time?

25 A Yes, sir.

1 Q Did you talk to Mrs. Boyd at time concerning
2 this loss?
3 A No, sir.
4 MR. TILLEY: That's all the questions.
5 MR. McPHERSON: No questions.
6 [WITNESS EXCUSED]
7 THE COURT: Both sides finished?
8 MR. TILLEY: Yes, Your Honor.
9 MR. McPHERSON: [AFFIRMATIVE]
10 THE COURT: No further evidence? Anything
11 you gentlemen care to say by way of argument?
12
13 [CONTINUED PAGE 106]
14
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25

1 [AFTER ARGUMENT OF COUNSEL, THE COURT RENDERED THE
2 FOLLOWING DECISION]
3 THE COURT: The chief difficulty arising in
4 this particular case was due to what is known as a home-
5 owner's policy. It is inconceivable that the rate on the
6 insurance policy is not based on the coverage. The coverage
7 in the instant case is not only real estate improvements,
8 such as the dwelling, but it's also included on a schedule
9 of personal property. And all of the evidence is clear from
10 both the plaintiff and the defendant that the personal
11 property was not involved in this particular transaction.
12 As far as any rebate of premium, the rebate
13 did not come from the insurance company, but it came from
14 the purchaser who paid for whatever amount of the premium
15 he was taking over that still had yet to be run under the
16 policy. The company didn't rebate anything. The company
17 was paid the full premium at the outset and was the insurer
18 of the items listed in the homeowner's policy, which
19 included unscheduled personal property, which everybody
20 concedes was not involved in this particular transaction.
21 Now the policy was not cancelled as counsel
22 has pointed out. It was simply transferred. The evidence
23 is not clear as to the exact date of the transfer. Parties
24 are rather vague as to the actual date. They made it
25 effective February 24th, but the date that it took place

1 is when the transfer was authorized or assigned.

2 Under one theory the Court would hold that

3 the schedule of the personal property was not involved in

4 the transaction, and, therefore, the plaintiff was still

5 insured as to these items of property.

6 Also the contract of sale in this particular

7 instance specifically provided for the seller to retain

8 possession for the period stated in the policy, which is

9 beyond the date of the fire. Consequently, the company is

10 bound by the transaction of the sale which has brought

11 about the whole situation and necessarily must be bound

12 by the right of the seller to occupy the premises.

13 Under that theory the Court would hold that

14 the said Schedule C was still in effect. On the other

15 hand, if you take the position that the whole policy had been

16 transferred, then the seller and his personal property were

17 still on the premises with the consent of the then named

18 insured, Mr. Pendleton.

19 So under both theories, or either theory

20 you care to take, the Court rules that the plaintiff was

21 still insured as to the items of personal property listed

22 in the homeowner's policy.

23 When you come to the items of valuation,

24 Mr. Hite quite frankly admitted that he sort of estimated

25 some of them. He had values based on his theory of his

RICHARD Q. HITE, JR.,

Plaintiff

VS ORDER

EAST AUGUSTA MUTUAL FIRE INSURANCE CO.,

Defendant

March 1, 1977

This day came the parties, in person and by counsel, and having heretofore announced ready for trial this day and having agreed to submit all questions of law and fact to the Court without the intervention of a jury as provided by law, issue is joined.

Whereupon, after a portion of the evidence was presented on behalf of the plaintiff, the defendant, by counsel, moved the Court to strike said evidence for reasons contained within the record, which motion was overruled and exception noted. At the conclusion of all of the plaintiff's evidence, the defendant, by counsel, renewed his motion to strike for reasons stated in the record, which motion was overruled and exeeption noted. At the conclusion of all of the evidence and argument of counsel, the Court doth find in favor of the plaintiff in the amount of Eight Thousand Seven Hundred Eighty-Six and 45/100 Dollars ($8,786.45), and it is accordingly ADJUDGED and ORDERED that the plaintiff do have and recover of the defendant a judgment in the amount of Eight Thousand Seven Hundred Eighty-Six and 45/100 Dollars ($8,786.45) with interest from this date March 1, 1977 and his costs by him in this behalf expended, and the Clerk is directed to docket said judgment in the Judgment Lien Docket Book.

And the defendant, by counsel, having signified its intention to appeal to the Supreme Court of Virginia for a Writ of Error and moved the Court for a stay of execution,

F. L. H.

it is ADJUDGED and ORDERED that execution on said judgment be stayed for a period of thirty (30) days and thereafter until the Supreme Court of Virginia has acted upon the appeal for a Writ of Error, upon the condition that the said defendant enter into a suspending bond within ten (10) days from the entry of this Order in the penalty of Twelve Thousand Dollars ($12,000.00) with corporate surety to be approved by the Clerk of this Court conditioned according to law.

Enter: March 21, 1977

F. L. Hoback
JUDGE

Seen

Richard S. Tilley
Consel for Plaintiff

Notice given counsel for the Defendant who excepts to the Entry of this order.

A Copy Teste: _____ Clerk
Circuit Court, Roanoke County, Va
By _____
Deputy Clerk

Richard Q. Hite, Jr.

v.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

East Augusta Mutual Fire
Insurance Company

To: The Clerk of the Circuit Court for the County of Roanoke

Notice is hereby given that East Augusta Mutual Fire Insurance Company, a Virginia corporation, appeals in this case and will apply for an appeal and supersedeas.

ASSIGNMENTS OF ERROR

The following are the errors assigned:

1. The trial court erred in not holding that Plaintiff was no longer an insured under HO-2 Policy #58641 at the time of the fire loss.

2. The trial court erred in not holding that Plaintiff was not covered under the aforesaid policy of insurance at the time of the fire loss because the Plaintiff's personal property was not on a portion of the premises occupied exclusively by the new owner and insured, John B. Pendleton, Jr.

3. That the trial court erred by in effect ruling that the coverage under the aforesaid policy was divisible as to real estate and as to personal property and that the coverage of the Plaintiff for his personal property extended beyond the date of transfer of the aforesaid insurance policy to the new owner of the real estate.

The transcript of the case is to be filed.

EAST AUGUSTA MUTUAL FIRE
INSURANCE COMPANY

By Counsel

Nelson, McPherson, Summers, Wood & Bishop

By _____
12 North New Street, P. O. Box 1287
Staunton, Virginia 24401

I certify that a copy of the above pleading was mailed to Richard S. Tilley, Esquire, counsel for Plaintiff, this 18th day of April, 1977.

_____

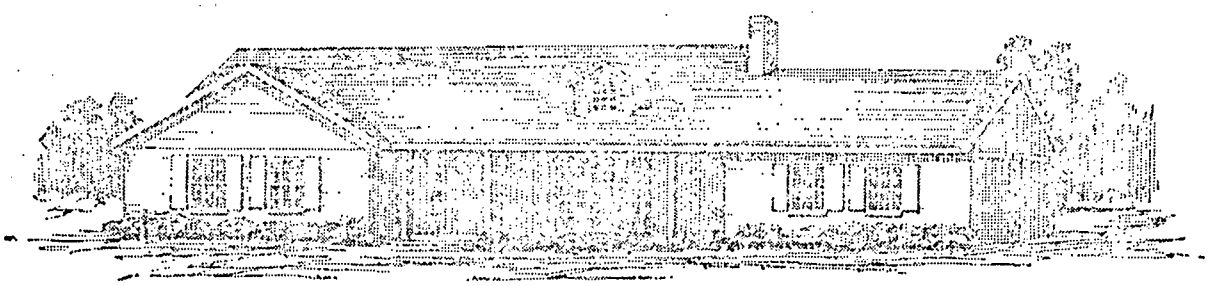
UAL COMPANY

• HOMEOWNERS POLICY •

East Augusta Mutual Fire Insurance Company

Staunton, Virginia

ORGANIZED 1870



PLAINTIFF Exh. # 1

00094

EXTRACTS FROM BY-LAWS

ARTICLE I—Members

2. Insurance shall be effective at Noon of the day the risk is accepted by the President, Vice-President, Secretary, or such other person as may be designated by the Board of Directors, and no agent or representative of the Company shall have the authority to bind the Company or to vary, change, alter, or amend the terms of the printed contract or policy. Each applicant for membership shall submit an application on forms to be provided by the Company. The Company shall have the right to reject any application and cancel any policies and exclude members for any cause deemed sufficient to its duly authorized officers.

3. A member may be excluded from the Company and his policy cancelled upon ten (10) days notice in writing, mailed to his post-office address of record with the Company. Such member shall remain liable for the payment of any assessments made prior to his exclusion, with interest and liquidated damages as are permitted by law.

A member may withdraw from membership at any time by giving thirty (30) days written notice to the Secretary of the Company, paying his share of all claims existing against the Company, and surrendering his policy or policies to the Company.

Any member excluded or withdrawing from the Company shall be entitled to a return of a pro-rated share of any assessment paid in advance, but the Company may calculate the amount to be returned on the short-rate basis.

Provided, however, that if loss is payable to a designated mortgagee named in a policy cancelled for non-payment of assessment, the exclusion of a member, or upon the withdrawal of a member, the said policy shall remain in effect for the protection of the mortgagee in an amount not to exceed the amount then due and owing on the mortgage or the amount of the policy in force, whichever is less, unless and until the mortgagee shall have at least ten (10) days notice of cancellation.

5. The annual meeting of members of the Company shall be held at the principal office of the Company in Staunton, Virginia, or elsewhere in Augusta County, Virginia, as may be designated by the Board of Directors by a notice prominently displayed in the home office for at least one week immediately preceding the termination of such meeting, at 10 o'clock A.M. on the Fourth Monday in February of each year, if not a legal holiday, but if a legal holiday, then at the same hour on the Monday following that is not a legal holiday. Notice of annual meetings shall be printed on the policies of the Company, and shall constitute notice thereof to each member.

ARTICLE II—Directors

12. The Board of Directors are authorized and empowered:

(c) To classify the types of property insured by the Company and to levy assessments on the members of the Company at such times, and in such pro rata amounts, as in their judgment may be necessary or proper for the purpose of paying losses and operating expenses or for paying out any deficit for any preceding year or years, or for the purpose of creating or augmenting a "safety fund" as is permitted by law. Such assessment shall be levied not more than once in six (6) months, either at the commencement or the expiration of a term of insurance. Assessments must be based upon losses actually experienced in a past term or terms, or, if levied at the commencement of a term of insurance, upon an estimate of losses likely for the ensuing term, or, (in the case of a "safety fund" assessment) terms, of insurance in the light of experience, statistics, and the like. The Secretary shall mail to each member at the post office address on the records of the Company, notice of any assessment at least thirty (30) days before the due date of such assessment; a grace period of thirty (30) days will be granted for the payment of assessment. If not paid by end of grace period; cancellation notice shall then be issued as provided in Article I, Paragraph 3 of these By-laws and the Company shall not be liable for any loss occurring after the date of cancellation. Reinstatement of the policy is permitted, however, at any time within thirty (30) days after cancellation, upon payment of the assessment in arrears and such interest and liquidated damages as are permitted by law.

Members agree to pay any and all assessments levied on them; and in the event of default suit may be instituted by the Company to collect an assessment, (together with lawful interest and liquidated damages as permitted by law) and each member, by accepting the policy waives the benefit of his Homestead Exemption as to the obligations of the policy.

HOME OWNERS POLICY — BROAD FORM

SECTION I

DESCRIPTION OF PROPERTY AND INTERESTS COVERED

COVERAGE A — DWELLING

This policy covers the described dwelling building, including additions in contact therewith, occupied principally as a private residence.

This coverage also includes:

1. if the property of the insured and when not otherwise covered, building equipment, fixtures and outdoor equipment all pertaining to the service of the premises and while located thereon or temporarily elsewhere; and
2. materials and supplies located on the premises or adjacent thereto, intended for use in construction, alteration or repair of such dwelling.

COVERAGE B — APPURTENANT STRUCTURES

This policy covers structures (other than the described dwelling building, including additions in contact therewith) appertaining to the premises and located thereon.

This coverage also includes materials and supplies located on the premises or adjacent thereto, intended for use in construction, alteration or repair of such structures.

This coverage excludes:

1. structures used in whole or in part for business purposes; or
2. structures rented or leased in whole or in part or held for such rental or lease (except structures used exclusively for private garage purposes) to other than a tenant of the described dwelling.

COVERAGE C — UNSCHEDULED PERSONAL PROPERTY

This policy covers unscheduled personal property usual or incidental to the occupancy of the premises as a dwelling and owned or used by an insured, while on the described premises and, at the option of the Named insured, owned by others while on the portion of the premises occupied exclusively by the insured.

This coverage also includes such unscheduled personal property while elsewhere than on the described premises, anywhere in the world:

1. owned or used by an insured; or
2. at the option of the Named insured,
   a. owned by a guest while in a residence occupied by an insured; or
   b. owned by a residence employee while actually engaged in the service of an insured and while such property is in the physical custody of such residence employee or in a residence occupied by an insured;
3. but the limit of this Company's liability for the unscheduled personal property away from the premises shall be an additional amount of insurance equal to 10% of the amount specified for Coverage C, but in no event less than $1,000.

This coverage excludes:

1. animals, birds or fish;
2. motorized vehicles, except such vehicles pertaining to the service of the premises and not licensed for road use;
3. aircraft;
4. property of roomers and boarders not related to the insured;
5. property carried or held as samples or for sale or for delivery after sale;
6. property rented or held for rental to others by the insured, except property contained in that portion of the described premises customarily occupied exclusively by the insured and occasionally rented to others or property of the insured in that portion of the described dwelling occupied by roomers or boarders;
7. business property while away from the described premises;
8. any device or instrument for the recording, reproduction or recording and reproduction of sound which may be operated by power from the electrical system of a motor vehicle, or any tape, wire, record disc or other medium for use with any such device or instrument while any of said property is in or upon a motor vehicle; or
9. property which is separately described and specifically insured in whole or in part by this or any other insurance.

COVERAGE D — ADDITIONAL LIVING EXPENSE

If a property loss covered under this policy renders the premises untenantable, this policy covers the necessary increase in living expense incurred by the Named Insured to continue as nearly as practicable the normal standard of living of the Named Insured's household for not exceeding the period of time required:

1. to repair or replace such damaged or destroyed property as soon as possible; or
2. for the Named Insured's household to become settled in permanent quarters; whichever is less.

This coverage also includes:

1. the fair rental value of any portion of the described dwelling or appurtenant structures covered under this policy, as furnished or equipped by the Named Insured, which is rented or held for rental by the Named Insured. The fair rental value shall not include charges and expenses that do not continue during the period of untenantability. Coverage shall be limited to the period of time required to restore, as soon as possible, the rented portion to the same tenantable condition;
2. the period of time, not exceeding two weeks, while access to the premises is prohibited by order of civil authority, as a direct result of damage to neighboring premises by a peril insured against.

The periods described above shall not be limited by the expiration of this policy.

This coverage excludes expense due to cancellation of any lease, or any written or oral agreement.

SUPPLEMENTARY COVERAGES

The following supplementary coverages shall not increase the applicable limit of liability under this policy:

1. **Automatic Removal:** If, during the term of this policy, the Named Insured removes unscheduled personal property covered under Coverage C from the premises to another location within the Continental United States or the State of Hawaii, to be occupied as his principal residence, the limit of liability for Coverage C shall apply at each location in the proportion that the value at each location bears to the total value of all such property covered under Coverage C.

Property in transit shall be subject to the limit of liability for unscheduled personal property away from the premises.

This coverage shall apply only for a period of 30 days from the date removal commences and shall then cease.

2. **Debris Removal:** This policy covers expenses incurred in the removal of all debris of the property covered hereunder, occasioned by loss thereto for which coverage is afforded.

3. **Fire Department Service Charge:** This policy covers for an amount not exceeding $250 the Named Insured's liability, assumed by contract or agreement for fire department charges where fire department is called because of a fire in, on or exposing property insured hereunder, while located on the premises described. This coverage does not cover Named insured's liability, by contract or otherwise, to indemnify either a city, municipality or fire protection district, or any other person, firm or corporation against loss, claim or liability arising by reasons of the movement or functioning of fire apparatus or members of a fire department; or by reason of any accident arising out of the performance of services by any fire department. Coverage afforded under this clause applies only if the property is not located within the limits of the city, municipality or fire protection district furnishing such fire department response.

DEDUCTIBLE

Loss Deductible Clause: With respect to loss covered under this policy, this Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500 this Company shall be liable for 111% of loss in excess of $50 and when loss is $500 or more, this loss deductible clause shall not apply. This loss deductible clause shall not apply to Coverage D—Additional Living Expense or Fire Department Service Charge.

PERILS INSURED AGAINST

This policy insures against direct loss to the property covered by the following perils as defined and limited herein:

1. **Fire or Lightning.**
2. **Removal,** meaning direct loss by removal of the property covered hereunder from premises endangered by the perils insured against. The applicable limit of liability, had the property not been removed, applies pro rata for 30 days at each proper place to which any of the property shall necessarily be removed for preservation from or for repair of damages caused by the perils insured against.
3. **Windstorm or Hail,** excluding loss:
   a. caused directly or indirectly by frost or cold weather or ice (other than hail), snow or sleet, all whether driven by wind or not;
   b. to the interior of the building, or the property covered therein caused by rain, snow, sand or dust, all whether driven by wind or not, unless the building covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then this Company shall be liable for loss to the interior of the building or the property covered therein as may be caused by rain, snow, sand or dust, entering the building through openings in the roof or walls made by direct action of wind or hail; or
   c. to watercraft (except rowboats and canoes on premises) including their trailers, furnishings, equipment and outboard motors while such property is not inside fully enclosed buildings.
   d. to the following property unless liability therefor is assumed by endorsement hereon: (1) awnings including their supports; (2) fences; (3) seawall, property line and similar walls; (4) greenhouses, hothouses, slathouses, trellises, pergolas, cabanas and outdoor equipment pertaining to the service of the premises; (5) wharves, docks, piers, boathouses, bulkheads or other structures located over or partially over water and the property therein or thereon.
4. **Explosion.**
5. **Riot or Civil Commotion,** including direct loss from pillage and looting occurring during and at the immediate place of a riot or civil commotion.
6. **Aircraft,** including self-propelled missiles and spacecraft.
7. **Vehicles,** but excluding loss to fences, driveways and walks caused by any vehicle owned or operated by any occupant of the premises.
8. **Sudden and accidental damage from smoke,** other than smoke from agricultural smudging or industrial operations.
9. **Vandalism or Malicious Mischief,** meaning only the wilful and malicious damage to or destruction of the property covered, but excluding loss if the described dwelling had been vacant beyond a period of 30 consecutive days immediately preceding the loss.
10. **Breakage of glass** constituting a part of the building covered hereunder, including glass in storm doors and storm windows, but excluding loss if the building covered had been vacant beyond a peroid of 30 consecutive days, immediately preceding the loss.
11. **Theft,** meaning any act of stealing or attempt thereat, including loss of property from a known place under circumstances when a probability of theft exists.

Unscheduled personal property contained in any bank, trust or safe deposit company, public warehouse or occupied dwelling not owned or occupied by or rented to an Insured in which the property covered has been placed for safekeeping shall be considered as being on the described premises.

Upon knowledge of loss under this peril or of an occurrence which may give rise to a claim for such loss, the Insured shall give immediate notice to this Company or its authorized agents and also to the police.

a. General Theft Exclusions:

This policy does not apply to loss:

(1) if committed by an Insured;

(2) in or to a dwelling under construction or of materials or supplies therefor until completed and occupied;

(3) arising out of or resulting from the theft of any credit card or loss by forgery or alterations of any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain in money; or

(4) of a precious or semi-precious stone from its setting.

b. Theft Exclusions applicable while the described dwelling is rented to others:

This policy does not apply to loss from the described dwelling while the portion of the described dwelling customarily occupied exclusively by an Insured is rented to others:

(1) of money, bullion, numismatic property or bank notes;

(2) of securities, accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, passports, railroad and other tickets or stamps, including philatelic pro[illegible];

(3) of jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones; articles of gold and platinum; or any article of fur or article containing fur which represents its principal value; or

(4) caused by a tenant, his employees or members of his household while renting the portion of the described dwelling customarily occupied exclusively by an Insured.

c. Theft Exclusions applicable to property away from the described premises:

This policy does not apply to loss away from the described premises of:

(1) property while in any dwelling or premises thereof, owned, rented or occupied by an Insured, except while an Insured is temporarily residing therein;

(2) property while unattended in or on any motor vehicle or trailer, other than a public conveyance, unless the loss is the result of forcible entry into such vehicle while all doors, windows or other openings thereof are closed and locked, provided there are visible marks of forcible entry upon the exterior of such vehicle or the loss is the result of the theft of such vehicle which is not recovered within 30 days, but property shall not be considered unattended when the Insured is required to surrender the keys of such vehicle to a bailee;

(3) property while unattended in or on private watercraft unless the loss is the direct result of forcible entry into a securely locked compartment and provided there are visible marks of forcible entry upon the exterior of such compartment;

(4) watercraft, their furnishings, equipment and outboard motors; or

(5) trailers, whether licensed or not.

12. **Falling objects,** but excluding loss to:
   a. the interior of the building or the property covered therein, caused by falling objects unless the building covered or containing the property covered shall first sustain an actual damage to the exterior of the roof or walls by the falling object; and
   b. outdoor equipment, awnings including their supports and fences.
13. **Weight of ice, snow or sleet** which results in physical damage to the building covered or to property contained in a building and then only if the weight of ice, snow or sleet results in physical damage to such building, but excluding loss to:
   a. outdoor equipment, awnings including their supports and fences; and
   b. fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves or docks when such loss is caused by freezing, thawing or by the pressure or weight of ice or water whether driven by wind or not.
14. **Collapse of buildings or any part thereof** but excluding loss to outdoor equipment, awnings, fences, pavements, patios, swimming pools, underground pipes, flues, drains, cesspools and septic tanks, foundations, retaining walls, bulkheads, piers, wharves, or docks, all except as the direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

15. **Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system or of appliances for heating** water, but not including loss caused by or resulting from freezing.
16. **Accidental discharge or overflow of water or steam** from within a plumbing, heating or air conditioning system or from within a domestic appliance, including the cost of tearing out and replacing any part of the building covered necessary to effect repairs to the system or appliance from which the water or steam escapes, but excluding loss:
   a. to the building caused by continuous or repeated seepage or leakage over a period of weeks, months or years;
   b. if the building covered had been vacant beyond a period of 30 consecutive days immediately preceding the loss;
   c. to the system or appliance from which the water or steam escapes, or
   d. caused by or resulting from freezing.
17. **Freezing of plumbing, heating and air conditioning systems and domestic appliances,** but excluding loss caused by and resulting from freezing while the building covered is vacant or unoccupied, unless the Insured shall have exercised due diligence with respect to maintaining heat in the building, or unless the plumbing and heating systems and domestic appliances had been drained and the water supply shut off during such vacancy or unoccupancy.
18. **Sudden and accidental injury from electrical currents artificially** generated to electrical appliances, devices, fixtures and wiring, except tubes, transistors and s[illegible] electr[illegible]c components.

1. **Replacement Cost — Coverages A and B:**
This condition shall be applicable only to a building structure covered hereunder excluding outdoor radio and television antennas and aerials, carpeting, awnings including their supports, domestic appliances and outdoor equipment, all whether attached to the building structure or not.

a. If at the time of loss the whole amount of insurance applicable to said building structure for the peril causing the loss is 80% or more of the full replacement cost of such building structure, the coverage of this policy applicable to such building structure is extended to include the full cost of repair or replacement (without deduction for depreciation).

b. If at the time of loss the whole amount of insurance applicable to said building structure for the peril causing the loss is less than 80% of the full replacement cost of such building structure, this Company's liability for loss under this policy shall not exceed the larger of the following amounts (1) or (2):

(1) the actual cash value of that part of the building structure damaged or destroyed; or

(2) that proportion of the full cost of repair or replacement without deduction for depreciation of that part of the building structure damaged or destroyed, which the whole amount of insurance applicable to said building structure for the peril causing the loss bears to 80% of the full replacement cost of such building structure.

c. This Company's liability for loss under this policy shall not exceed the smallest of the following amounts (1), (2), or (3):

(1) the limit of liability of this policy applicable to the damaged or destroyed building structure;

(2) the replacement cost of the building structure or any part thereof identical with such building structure on the same premises and intended for the same occupancy and use; or

(3) the amount actually and necessarily expended in repairing or replacing said building structure or any part thereof intended for the same occupancy and use.

d. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said building structure for the peril causing the loss, this Company shall not be liable for any loss under paragraph a. or sub-paragraph (2) of paragraph b. of this condition unless and until actual repair or replacement is completed.

e. In determining if the whole amount of insurance applicable to said building structure is 80% or more of the full replacement cost of such building structure, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

f. The Named Insured may elect to disregard this condition in making claim hereunder, but such election shall not prejudice the Named Insured's right to make further claim within 180 days after loss for any additional liability brought about by this policy condition.

2. **Special Limits of Liability on Certain Property:**

a. This Company shall be liable for loss to trees, shrubs, plants and lawns (except those grown for business purposes) only when the loss is caused by fire, lightning, explosion, riot, civil commotion, vandalism, malicious mischief, theft, aircraft, or vehicles not owned or operated by an occupant of the premises. This Company's liability for loss in any one occurrence under this provision shall not exceed in the aggregate for all such property 5% of the limit of liability of Coverage A, nor more than $250 on any one tree, shrub or plant, including expense incurred for removing debris thereof.

b. Under Coverage C, this Company shall not be liable for loss in any one occurrence with respect to the following property for more than:

(1) $100 in the aggregate on money, bullion, numismatic property and bank notes;

(2) $500 in the aggregate on securities, accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, passports, railroad and other tickets or stamps, including philatelic property;

(3) $1,000 on manuscripts;

(4) $500 in the aggregate for loss by theft of jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, gold, platinum and furs including articles containing fur which represents its principal value;

(5) $500 in the aggregate on watercraft, including their trailers (whether licensed or not), furnishings, equipment and outboard motors; or

(6) $500 on trailers, not otherwise provided for, whether licensed or not.

3. **Loss Clause: (Not applicable in Alabama and South Carolina)**
Loss hereunder shall not reduce the applicable limit of liability under this policy.

4. **Mortgage Clause — Coverages A and B only: (This entire clause is void unless name of mortgagee [or trustee] is inserted in the Declarations):**
Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear, under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.
Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void.
This Company reserves the right to cancel this policy at any time as provided by its terms but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice to cancel this agreement.
Whenever this Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt; or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities: but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

5. **Unearned Premium Clause — (Applicable only in Alabama and South Carolina):** If a loss is paid under this policy, the Named Insured shall be indemnified for loss of the pro rata unearned premium on the amount of such loss payment; however, this Company may elect by written notice within 60 days after time of loss to reinstate this policy in the amount of such loss and, in consideration of such reinstatement, make no payment to the Named Insured as otherwise provided by this clause.

6. **Valuation Clause — (Applicable only in South Carolina):** In so far as coverage against the perils of fire and lightning are concerned, the Insured and Insurer hereby agree that the value of the building(s) described herein is — and hereby fix the amount of insurance to be carried thereon (including this policy) — respectively as the amount inserted in the blank provided on the first page of this policy under this caption. The foregoing agreed values are established for insurance purposes only.

7. **Occupancy Clause:** It is a condition of this policy that if the described dwelling is associated with and in proximity to farming operations (1) the agricultural products produced on the land are incidental to the occupancy of the dwelling and are principally for home consumption, or (2) that the occupants of the dwelling and buildings appurtenant thereto are not engaged in the operation of the farm and said buildings are in addition to a complete set of farm buildings on the farm and are not exposed within 200 feet by any farm building.

SECTION II
COVERAGES

COVERAGE E — PERSONAL LIABILITY

This Company agrees to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury or property damage, to which this insurance applies, caused by an occurrence. This Company shall have the right and duty, at its own expense, to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, but may make such investigation and settlement of any claim or suit as it deems expedient. This Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of this Company's liability has been exhausted by payment of judgments or settlements

ADDITIONAL EXCLUSIONS

This policy does not insure against loss:

1. occasioned directly or indirectly by enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of building(s) or structure(s) unless such liability is otherwise specifically assumed by endorsement hereon;
2. caused by, resulting from, contributed to or aggravated by any earth movement, including but not limited to earthquake, volcanic eruption, landslide, mudflow, earth sinking, rising or shifting; unless loss by fire, explosion or breakage of glass constituting a part of the building(s) covered hereunder, including glass in storm doors and storm windows, ensues, and this Company shall then be liable only for such ensuing loss, but this exclusion does not apply to loss by theft;
3. caused by, resulting from, contributed to or aggravated by any of the following:
   a. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
   b. water which backs up through sewers or drains; or
   c. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

   unless loss by fire or explosion ensues, and this Company shall then be liable only for such ensuing loss, but these exclusions do not apply to loss by theft;
4. caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises, caused by a peril insured against.

COVERA... — MEDICAL PAYMENTS TO OTHERS

This Company agrees to pay all reasonable medical expenses, incurred within one year from the date of the accident, to or for each person who sustains bodily injury to which this insurance applies caused by an accident, while such person is:

1. on an insured premises with the permission of any Insured; or
2. elsewhere, if such bodily injury

immediately adjoining,

b. is caused by the activities of any Insured, or by a residence employee in the course of his employment by any Insured,

c. is caused by an animal owned by or in the care of any Insured, or

d. is sustained by any residence employee and arises out of and in the course of his employment by any Insured.

EXCLUSIONS

This policy does not apply:

1. Under Coverage E — Personal Liability and Coverage F — Medical Payments to Others:

a. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

(1) any aircraft; or

(2) any motor vehicle owned or operated by, or rented or loaned to any Insured; but this subdivision (2) does not apply to bodily injury or property damage occurring on the residence premises if the motor vehicle is not subject to motor vehicle registration because it is used exclusively on the residence premises or kept in dead storage on the residence premises; or

(3) any recreational motor vehicle owned by any Insured, if the bodily injury or property damage occurs away from the residence premises; but this subdivision (3) does not apply to golf carts while used for golfing purposes.

This exclusion does not apply to bodily injury to any residence employee arising out of and in the course of his employment by any Insured except while such employee is engaged in the operation or maintenance of aircraft;

b. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft:

(1) owned by or rented to any Insured if the watercraft has inboard or inboard-outboard motor power of more than 50 horsepower or is a sailing vessel (with or without auxiliary power) 26 feet or more in overall length; or

(2) powered by any outboard motor(s), singly or in combination of more than 25 total horsepower, if such outboard motor(s) is owned by any Insured at the inception of this policy and not endorsed hereon, unless the Insured reports in writing to this Company within 45 days after acquisition his intention to insure the outboard motor or combination of outboard motors, ownership of which was acquired prior to the policy term.

This exclusion does not apply to (a) bodily injury or property damage occurring on the residence premises or (b) bodily injury to any residence employee arising out of and in the course of his employment by any Insured;

c. to bodily injury or property damage arising out of the rendering of or failing to render professional services;

d. to bodily injury or property damage arising out of business pursuits of any Insured except activities therein which are ordinarily incident to non-business pursuits;

e. to bodily injury or property damage arising out of any premises, other than an insured premises, owned, rented or controlled by any Insured; but this exclusion does not apply to bodily injury to any residence employee arising out of and in the course of his employment by any Insured;

f. to bodily injury or property damage which is either expected or intended from the standpoint of the Insured.

2. Under Coverage E — Personal Liability

a. to liability assumed by the Insured under any contract or agreement not in writing or under any contract or agreement in connection with the Insured's business;

b. to bodily injury to any person, including a residence employee, if the Insured has a policy providing workmen's compensation or occupational disease benefits for such bodily injury or if benefits for such bodily injury are in whole or in part either payable or required to be provided by the Insured under any workmen's compensation or occupational disease law;

c. to property damage to property owned by the Insured;

d. to property damage to property occupied or used by the Insured or rented to or in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;

e. to sickness, disease or death resulting therefrom of any residence employee unless written claim is made or suit is brought therefor against the Insured within 36 months after the end of the policy term.

3. Under Coverage F — Medical Payments to Others

a. to bodily injury to any person, including a residence employee, if any person or organization has a policy providing workmen's compensation or occupational disease benefits for such bodily injury or if benefits for such bodily injury are in whole or in part either payable or required to be provided under any workmen's compensation or occupational disease law;

b. to bodily injury to:

(1) any Insured under parts (1) and (2) of the definition of "Insured",

(2) any person, other than a residence employee, regularly residing on any part of the insured premises, or

(3) any person while on the insured premises because a business is conducted or professional services are rendered thereon.

SUPPLEMENTARY COVERAGES

1. **Damage to Property of Others:** This Company will, at its option, either pay for the actual cash value of property damaged or destroyed during the policy period by any Insured, or repair or replace such property with other property of like quality and kind, but in no event shall this Company's limit of liability exceed $250 in any one occurrence.

This coverage does not apply to damage to or destruction of property:

a. caused intentionally by any Insured who has attained the age of 13;

b. owned by or rented to any Insured, any tenant of any Insured or any resident of Named Insured's household;

c. arising out of (1) any act or omission in connection with premises (other than the insured premises) owned, rented or controlled by any Insured, (2) business pursuits or professional services or (3) the ownership, maintenance, operation, use, loading or unloading of any land motor vehicle, trailer or semi-trailer, farm machinery or equipment, aircraft or watercraft;

d. if insurance therefor is provided under Section I of this policy.

2. **Personal Liability Claim Expenses:** This Company will pay:

a. all expenses incurred by this Company and all costs taxed against the insured in any suit defended by this Company;

b. all premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but this Company shall have no obligation to apply for or furnish any such bonds;

c. all interest on the entire amount of any judgment which accrues after entry of the judgment and before this Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of this Company's liability thereon;

d. reasonable expenses incurred by the Insured at this Company's request, including actual loss of earnings (but not loss of other income) not to exceed $25 per day because of his attendance at hearings or trials at such request.

Any expenses incurred by this Company under this provision shall not reduce the applicable limit of liability.

3. **First Aid Expenses:** In addition to this Company's limit of liability this Company will pay expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this insurance applies.

4. **Property in Control of the Insured:** Such insurance as is afforded under Coverage E — Personal Liability, applies to property damage to any insured premises and to house furnishings therein if such property damage arises out of fire, explosion, or smoke or smudge caused by sudden, unusual and faulty operation of any heating or cooking unit. Exclusion 2.d. does not apply to this Supplementary Coverage.

5. **Construction of New Residence:** Such insurance as is afforded under Coverage E — Personal Liability, applies to bodily injury and property damage arising out of any vacant land owned by or rented to any insured on which a one or two family dwelling is being constructed for use by any Insured as a residence. Such insurance as is afforded under Coverage F — Medical Payments to Others, applies to bodily injury sustained by any person while on such vacant land with the permission of any Insured. This coverage does not apply to bodily injury to any employee, other than a residence employee, of any Insured arising out of and in the course of his employment by any Insured. Exclusion 1.e. does not apply to this Supplementary Coverage.

ADDITIONAL DEFINITIONS

The following definitions apply only to coverage afforded under Section II of this policy.

1. **"bodily injury"**: means bodily injury, sickness or disease, including care, loss of services and death resulting therefrom.
2. **"medical expenses"**: means expenses for necessary medical, surgical, x-ray, dental services, including prosthetic devices, ambulance, hospital, professional nursing and funeral services.
3. **"motor vehicle"**: means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto) but does not include, except while being towed by or carried on a motor vehicle, any of the following: utility, boat, camp or home trailer, recreational motor vehicle, crawler or farm type tractor, farm implement or, if not subject to motor vehicle registration, any equipment which is designed for use principally off public roads.
4. **"property damage"**: means injury to or destruction of tangible property, including loss of use thereof.
5. **"occurrence"**: means an accident, including injurious exposure to conditions, which results, during the policy term, in bodily injury or property damage.
6. **"recreational motor vehicle"**: means (1) a golf cart or snowmobile or (2) if not subject to motor vehicle registration, any other land motor vehicle designed for recreational use off public roads.
7. **"residence employee"**: means an employee of any insured whose duties are in connection with the maintenance or use of the insured premises, including the performance of household or domestic services, or who performs elsewhere duties of a similar nature not in connection with any insured's business.

HOMEOWNERS POLICY

Part Two. This Declarations Page with "Policy Provisions-Part One" completes the below numbered

58641	November 19, 1974	Continuous		New
POLICY NUMBER	INCEPTION (Mo. Day Yr.)	EXPIRATION (Mo. Day Yr.)	TERM	RENEWAL OR REPLACEMENT NO.

Insured's Name and Mailing Address: RICHARD Q. HITE, JR.
410 ELM AVENUE, S. W.
ROANOKE, VIRGINIA 24016

Agent or Broker and Mailing Address: DALEVILLE INSURANCE AGENCY
ROUTE 3, BOX 179
TROUTVILLE, VIRGINIA 24175

East Augusta Mutual Fire Insurance Company

Staunton, Virginia

ORGANIZED 1870

The described residence premises covered hereunder is located at the above address, unless otherwise stated herein (No., Street, Town or City, County, State, Zip Code): 1 mile from Hanging Rock on Route 311, N Int. 419 W/S, Erma Springs, Roanoke County, Virginia

Insurance is provided only with respect to the following Coverages for which a limit of liability is specified, subject to all conditions of this policy.

Section I Coverages	Limit of Liability	Premium	
A. Dwelling	$ 24,000.	Basic Policy Premium Annual	$ 90.00
B. Appurtenant Structures	$ 2,400.	Additional Premiums Annual	$
C. Unscheduled Personal Property	$ 12,000.	Total Policy Premium Annual	$ 90.00
D. Additional Living Expense	$ 4,800.	Subject to the following Forms & Endorsements (Insert Number & Edition Date):	
Section II Coverages		HO-2 Ed 9/70	
E. Personal Liability (Bodily Injury and Property Damage) Each occurrence	$ 25,000.		
F. Medical Payments to Others Each person / Each accident	$ 500. / $ 25,000.		

DEDUCTIBLE—SECTION I: Any loss by perils insured against under Section I of this policy is subject to a $ 50. deductible

Section II—Additional residence premises, if any, located: (No., Street, Town or City, County, State, Zip Code)

The described dwelling of Frame construction is occupied by not more than two families and not more than two roomers or boarders per family. Not more than ___ feet from Hydrant Zone ___ Approved Roof X Premium Group No. 16
Not more than 5 miles from Fire Dept. Unapproved Roof ___ Protection Class Country

Described dwelling is not seasonal and no business pursuits are conducted at the premises thereof. Exceptions, if any: Business of Named Insured: Real Estate Broker

Section II Only: (a) The described premises are the only premises where the Named Insured or spouse maintains a residence other than business property and farms; (b) Insured employs not more than two full-time residence employees; (c) the Insured has no outboard motor(s) or watercraft otherwise excluded under this policy for which coverage is desired. Exception, if any, to (a), (b), (c),

First Mortgagee: Colonial American National Bank of Roanoke
Name and Address) P. O. Box 1831
Roanoke, Virginia 24008

Absence of an entry means "no exceptions".

Countersignature Date 11-22-74 Countersigned by Boyd C. Agee
Authorized Agent

Consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Above Specified (or specified in endorsement(s) made a part hereof), this Company, for the term shown above from inception date shown above at noon (Standard Time) to expiration date shown above at noon (Standard Time) at location of property involved, to an amount not exceeding the limit of liability above specified, does insure the Insured named in the Declarations above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the Insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY INCLUDING REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

STANDARD PROVISIONS

Concealment, fraud. This entire policy shall be void if, whether before or after loss, the insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other Insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the rights and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twenty-four months next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

General Provisions—As used in the Standard Provisions hereof, the word "Premium" shall also denote "Fee" or "Assessment" in the event of conflict between the Standard Provisions and the mutual assessment fire insurance laws of Virginia, the latter shall apply.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless signed by the duly authorized Agent of this Company.

President

00103

Secretary

GENERAL CONDITIONS

1. **EXCLUSION OF LOSS BY GOVERNMENTAL ACTION:** Under Section I as respects all perils insured against hereunder (except the perils of fire and lightning which are otherwise provided for on page 2 of this policy), and under Section II, this policy shall not apply to loss, bodily injury or property damage caused directly or indirectly by:

   a. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (1) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (2) by military, naval or air forces; or (3) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such government, power, authority or forces;

   b. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority; or risks of contraband or illegal transportation or trade.

2. **NUCLEAR CLAUSE—SECTION I**—The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy, however, subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

3. **NUCLEAR EXCLUSION—SECTION I**—This policy does not insure against loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke". This cause applies to all perils insured against hereunder except the perils of fire and lightning, which are otherwise provided for in the Nuclear Clause contained above.

4. **NUCLEAR EXCLUSION—SECTION II:** This policy does not apply, under Coverage E—Personal Liability, to bodily injury or property damage with respect to which any insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability.

5. **MODIFICATION OF TERMS:**

   a. The provisions on page 2 of this policy relating to uninsurable and excepted property, the exclusion of loss by theft and suspension of insurance are hereby waived.

   b. The provisions on page 2 of this policy, other than those pertaining to waiver, cancellation, concealment and fraud and subrogation do not apply to Section II of this policy.

   c. The provisions on page 2 of this policy relating to subrogation are not applicable to Coverage F—Medical Payments to Others and Supplementary Coverages—Damage to Property of Others.

   d. The words "five days" in the cancellation provision on page 2 of this policy are deleted and the words "ten days" are substituted therefor.

   e. The terms of this policy which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

6. **APPORTIONMENT—SECTION I:**

   a. **Loss by fire or other perils not provided for in 6 b. below:**
   This Company shall not be liable for a greater proportion of any loss from any peril or perils included in this policy than:

      (1) the amount of insurance under this policy bears to the whole amount of fire insurance covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not, and whether or not such other fire insurance covers against the additional peril or perils insured hereunder; nor

      (2) for a greater proportion of any loss than the amount hereby insured bears to all insurance, whether collectible or not, covering in any manner such loss or which would have covered such loss except for the existence of this insurance.

   b. **Coverage C—Unscheduled Personal Property—Loss by theft or loss of unscheduled personal property covered on an unspecified peril basis:** Insurance under this policy shall apply as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy.

   c. **Deductible:** When loss under this policy is subject to a deductible, this Company shall not be liable for more than its share of such loss in excess of the deductible amount as provided in a. or b. above.

7. **APPORTIONMENT—SECTION II:**

   a. Except as provided in 7 b. below if the Insured has other valid and collectible insurance against a loss covered under Coverage E—Personal Liability, this Company shall not be liable under this policy for a greater proportion of such loss than that stated in the applicable following provision:

      (1) Contribution by Equal Shares;
      If all of such other insurance includes a provision for contribution by equal shares, this Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid. With respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

      (2) Contribution by Limits;
      If any of such other insurance does not include a provision for contribution by equal shares, this Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

   b. With respect to bodily injury or property damage arising out of the ownership, maintenance, operation, use loading or unloading of any motor vehicle, recreational motor vehicle or watercraft to which this policy applies, this insurance under Coverage E—Personal Liability, shall be excess insurance over any other valid and collectible insurance available to the Insured.

8. **DEFINITIONS: (Refer to Section II of the Form made a part of this policy for Additional Definitions).**

When used in this policy the following definitions apply:

   a. "Insured" means

      (1) the Named Insured stated in the Declarations of this policy;

      (2) if residents of the Named Insured's household, his spouse, the relatives of either, and any other person under the age of twenty-one in the care of any Insured; and

      (3) under Coverage E—Personal Liability and Coverage F—Medical Payments to Others:

         (a) with respect to animals or watercraft to which this insurance applies, owned by any Insured, any person or organization legally responsible therefor, except a person or organization using or having custody or possession of any such animal or watercraft in the course of his business or without the permission of the owner; and

         (b) with respect to any vehicle to which this insurance applies, any employee of any Insured while engaged in the employment of the Insured.

   b. "insured premises" means

      (1) the residence premises described in the Declarations of this policy; and

      (2) Under Section II only:
         (a) any other residence premises specifically named in this policy;
         (b) any residence premises acquired by the Named Insured or his spouse during the term of this policy;
         (c) any residence premises which are not owned by any insured but where an insured may be temporarily residing;
         (d) vacant land, other than farm land, owned by or rented to any Insured; and
         (e) individual or family cemetery plots or burial vaults.

   c. "residence premises" means

      (1) a one or two family dwelling building, appurtenant structures; grounds and private approaches thereto; or

      (2) that portion of any other building occupied as a residence;
      provided that such premises is used as a private residence by the Named Insured or his spouse but excluding any portion of the premises used for business purposes.

   d. "business" means

      (1) a trade, profession or occupation, including farming, and the use of any premises or portion of residence premises for any such purposes; and

      (2) the rental or holding for rental of the whole or any portion of the premises by any Insured;

      but business shall not include:

         (a) the occasional rental or holding for rental of the residence premises for dwelling purposes;

(c) the rental or holding for rental of a portion of the residence premises for private garage purposes; or

(d) the rental or holding for rental of a portion of the residence premises as an office, school or studio.

9. **DEATH OF NAMED INSURED:** In the event of death of the Named Insured, the definition of "Insured" is modified as follows:

a. the Named Insured shall mean:

(1) the spouse, if a resident of the household at the time of such death; and

(2) the legal representative but only with respect to the premises and property of the deceased covered under this policy at the time of such death.

this policy or [illegible] of such death, but only [illegible] the insured premises; and

(2) with respect to the property of the Named Insured, the person having proper temporary custody thereof, but only until the appointment and qualification of the legal representative.

10. **LIBERALIZATION CLAUSE:** If within 45 days prior to the inception of this policy, or during the term hereof, this Company adopts any revision of the forms or endorsements made part of this policy which would broaden coverage presently granted hereunder without additional premium charge, such broadened coverage will automatically apply to this policy.

11. **POLICY TERM:** This policy applies only to loss under Section I or bodily injury or property damage under Section II, which occurs during the policy term.

CONDITIONS APPLICABLE ONLY TO SECTION I

1. **PERMISSION GRANTED:**

a. for such use of the premises as is usual or incidental to a dwelling;

b. for the premises to be vacant or unoccupied without limit of time, except as otherwise provided in this policy for certain specified perils; however, a building in the course of construction shall not be deemed vacant.

c. for Named Insured to make alterations, additions and repairs, and to complete structures in course of construction;

d. for Insured, in the event of loss hereunder, to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

2. **OTHER INSURANCE:** Other insurance covering the described dwelling building (except insurance against perils not covered by this policy) is not permitted.

3. **CONTROL OF PROPERTY:** This insurance shall not be prejudiced by any act or neglect of any person, other than an Insured when such act or neglect is not within the control of any Insured.

4. **SUBROGATION:** This insurance shall not be invalidated should the Named Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the property covered herein.

5. **NO BENEFIT TO BAILEE:** This insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

6. **PAIR AND SET CLAUSE:** If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

7. **LOSS PAYABLE CLAUSE:** Loss, if any, shall be adjusted with the Named Insured and shall be payable to him unless other payee is specifically named hereunder.

CONDITIONS APPLICABLE ONLY TO SECTION II

1. **LIMITS OF LIABILITY:**

Regardless of the number of:

a. insureds under this insurance;

b. persons or organizations who sustain bodily injury or property damage;

c. claims made or suits brought on account of bodily injury or property damage;

this Company's liability is limited as follows:

(1) Coverage E—Personal Liability—The limit of liability stated in the Declarations as applicable to "each occurrence" is the total limit of the Company's liability under Coverage E—Personal Liability for all damages as the result of any one occurrence.

(2) Coverage F—Medical Payments to Others—The limit of liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability under Coverage F—Medical Payments to Others for all medical expense for bodily injury to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the Company under Coverage F—Medical Payments to Others for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the Declarations as applicable to "each accident".

2. **SEVERABILITY OF INSURANCE:** The insurance afforded under Section II applies separately to each Insured against whom claim is made or suit is brought except with respect to this Company's limit of liability.

3. **INSURED'S DUTIES IN THE EVENT OF ACCIDENT, OCCURRENCE, CLAIM OR SUIT.**

a. Under Coverage E—Personal Liability and Coverage F—Medical Payments to Others:

(1) in the event of an accident or occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to this Company or any of its authorized agents as soon as practicable.

(2) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to this Company every demand, notice, summons or other process received by him or his representative.

(3) The Insured shall cooperate with this Company and, upon this Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of bodily injury or property damage with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

b. Under Supplementary Coverages—Damage to Property of Others: When loss occurs, the Insured shall given written notice as soon as practicable to this Company or any of its authorized agents and file sworn proof of loss with this Company within sixty days after the occurrence of loss. The Insured shall exhibit the damaged property, if within his control, and cooperate with this Company in all matters pertaining to the loss or claims with respect thereto.

4. **INJURED PARTY'S DUTY IN CASE OF ACCIDENT—UNDER COVERAGE F—MEDICAL PAYMENTS TO OTHERS:** The injured party or someone on his behalf shall:

a. give this Company written proof of claim, under oath if required, as soon as practicable;

b. execute authorizations enabling this Company to obtain copies of medical reports and records, and the injured party shall submit to physical examination by a physician selected by this Company at such times and as often as this Company may reasonably require.

5. **PAYMEN OF CLAIM—COVERAGE F—MEDICAL PAYMENTS TO OTHERS:** This Company may pay the injured person or any person or organization rendering medical services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of any liability by any Insured or this Company.

6. **SUIT AGAINST THIS COMPANY:**

a. No suit or action shall lie against this Company, unless:

(1) as a condition precedent thereto there has been full compliance with all of the provisions and stipulations of this policy, and

(2) the amount of the Insured's obligation to pay has been finally determined:

(a) by judgment against the Insured after actual trial; or

(b) by written agreement of the Insured, the claimant and this Company.

b. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded under this policy.

c. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability. This Company shall not be impleaded.

d. Bankruptcy or insolvency of the Insured or his estate shall not relieve this Company of its obligations under this policy.

IN WITNESS WHEREOF, EAST AUGUSTA MUTUAL FIRE INSURANCE COMPANY has caused this Policy to be signed by its Secretary and attested by its President, but this policy shall not be valid unless completed by the attachment hereto of a Declarations Page designated as Part Two and signed on the aforesaid Declarations Page by a duly authorized Agent of the Company.

J. E. Williams Jr. President

W. S. Sumner Secretary

Office (703) 982-2991

Phillips Realty

2302 Winthrop Avenue, S. W.
Roanoke, Virginia 24015

February 23, 1976

SELLER: Richard Q. Hite
BUYER: John B. Pentleton

SELLER

	DEBIT	CREDIT
Sales Price		24,000.00
Assumption	7,677.92	
Comm.	2,400.00	
Rent	47.67	
Rent	33.83	
Int. to 3/1/76	40.47	
Note	2,500.00	
Note	2,500.00	
Sellers Tax	16.50	
Taxes	26.58	
Escrow Acct.		82.48
Ins.		80.10
Cash	8,919.61	
	24,162.58	24,162.58

J.L.Phillips

Def Ex. A

00106

Plaintiff Ex. 6

Office (703) 982-2991

Phillips

Realty

2302 Winthrop Avenue, S. W.
Roanoke, Virginia 24015

February 23, 1976

SELLER: Richard Q. Hite
BUYER: John B. Pentleton

BUYER

	DEBIT	CREDIT
Sales Price	24,000.00	
Deposit		100.00
Taxes (180.58)		26.58
Title and Prep.	125.00	
Rent on cabin		47.67
Rent		33.83
First Mtg.		7,677.92
Int. to 3/1/76		40.47
Note		2,500.00
Note		2,500.00
Ins.	80.10	
Escrow	82.48	
Recording deed	57.00	
Ass. fee	35.00	
Cash		11,471.11
	24,397.58	24,397.58

J.L.Phillips

BUYER HAS TRANSFERRED FUNDS $100.00 DL TO PHILLIPS CO. ESCROW NO LATER THAN 1/23/76

Office (703) 982-2991

2302 Winthrop Avenue, S. W.
Roanoke, Virginia 24015

Realty

CONTRACT OF SALE

This Contract of Sale made this 20 day of JANUARY 1976 by and between: DICK HITE (hereinafter called SELLER) JOHN D. PENNINGTON (hereinafter called BUYER) and Phillips Realty Real Estate, AGENT, provides that BUYER agrees to purchase and SELLER agrees to sell, through AGENT, the following listed real estate with all improvements thereon located in the (County) (City) of ROANOKE, Virginia:

Lot ____ Block ____ Section ____ Map of ____

Known as 2 ACRES + - + TWO CABINS OFF RTE 311 TO BE FURTHER DESCRIBED IN DEED.

PURCHASE PRICE of the property is TWENTY FOUR THOUSAND 00/100 Dollars ($ 24,000.00), to be paid as follows: 11,000.00 CASH, A NOTE FOR 2,500.00 @ 8% TO BE PAID IN FULL IN 6 MOS. A NOTE FOR 2,500.00 @ 8% INT. ONLY FOR 2 YRS. CAN TO BE ASSUMED. TWO YR. NOTE TO BE PAID IN FULL AFTER THE 3 YR. PERIOD.

BUYER has deposited with the AGENT, the sum of ONE HUNDRED 00/100 Dollars ($ 100.00) ~~(Cash)~~ (Check) which shall be held in escrow by the AGENT until settlement date and then applied to the purchase price or returned to the BUYER if title to the property is not marketable.

SELLER AND BUYER agree that the AGENT was the only procuring cause of this Contract of Sale and SELLER agrees to pay AGENT for services rendered a cash fee of 10 % of the purchase price.

IF SELLER OR BUYER DEFAULTS the defaulting party shall be liable for the cash fee of the AGENT and any costs or charges incurred by either the non-defaulting party or the AGENT. The aforementioned deposit shall be forfeited to the AGENT as a part of the cash fee entitled to him, if BUYER defaults.

BUYER to use his best efforts to obtain an FHA, VA, or Conventional loan as mentioned above; to execute all papers and do all things incident to or necessary to obtain said loan.

SELLER agrees to pay current discount points at time of closing.

SELLER agrees to convey the property to BUYER by General Warranty Deed with the customary English Covenants of Title and free and clear of all encumbrances, tenancies and liens of record.

ALL awnings, shades, curtain rods, venetian blinds, stair carpeting, wall-wall carpeting, screens, screen doors, storm windows and doors, garbage disposail, dishwasher and water heaters of all kinds now on the property to go with the property unless reserved in this Contract.

DEED to be made to the Buyer or any Assignee, he may designate and it is understood that the property will be conveyed subject to such facts as would be disclosed by an accurate survey and inspection of the premises.

SELLER agrees to deliver possession of the property to BUYER on settlement date and to pay the cost of preparing the Deed of Bargain and Sale.

SETTLEMENT to be made on or before MARCH 1, 1976 or as soon thereafter as title can be examined and necessary documents prepared, allowing a reasonable time for SELLER to correct any defects reported by the Title Examiner.

ALL rents, interest, taxes, insurance, and FHA or similar escrow deposits if any, shall be pro-rated as of settlement date.

RISK OF LOSS by fire, or damage to the property by windstorm, casualty, or other cause shall be upon the SELLER until settlement is completed.

THIS SALE IS SUBJECT TO THE FOLLOWING: BUYER HAS $1,000.00 IN HAND THIS DATE TO BEING ABLE TO PERSONALLY OBTAIN 3,000.00 DIFFERENTIAL. SUBJECT TO BUYER SEEING LEASE OR GETTING OWN LEASE ON OTHER CABIN. SELLER TO REMOVE DEBRIS. BUYER ACCEPTS PROPERTY ON THESE TERMS AS IS CONDITION.

BUYER represents that a satisfactory inspection has been made of the property and BUYER agrees to accept the property in its present condition except as may be otherwise provided above.

THIS Contract of Sale contains all the terms and conditions of this sale. It is mutually agreed that any oral representation made by either party prior to the signing of this agreement is null and void.

THIS Contract of Sale shall be interpreted and applied according to the laws of the State of Virginia and shall be binding upon, and inure to, the benefit of the heirs, personal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF the said parties to this Contract hereunto have set their hands and seals the day and year first above written:

Richard R. Hite, Jr. (SEAL) — Seller

(SEAL) — Seller

(SEAL) — Authorized representative Phillips Realty

John D. Pennington (SEAL) — Buyer

Richard R. Hite, Jr. (SEAL) — Buyer

00108

75/25

Defendant Ex. A

TRANSFER CLAUSE

Policy No. _____, issued by the EAST AUGUSTA MUTUAL FIRE INSURANCE COMPANY, in name of _____ has been transferred on the books of the said Company to

_____

Attached to and forming part of Policy No. _____ of the EAST AUGUSTA MUTUAL FIRE INSURANCE COMPANY, Staunton, Virginia.

Dated _____ 19__ _____ Secretary

Def. Ex. C - Tendered and Refused P.L.H.