CLERK
SUPREME COURT OF VIRGINIA
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JAN 26 1981
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800714

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Appellant

v.

ERIE INSURANCE EXCHANGE

Appellee

JOINT APPENDIX

Waller T. Dudley, Esquire
BOOTHE, PRICHARD & DUDLEY
4103 Chain Bridge Road
Fairfax, Virginia 22030

Counsel for Appellant

Norman A. West, Esquire
Attorney at Law
10511 Jones Street
Fairfax, Virginia 22030

Counsel for Appellee

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

TABLE OF CONTENTS

	Appendix Page
Motion for Judgment filed 1-2-79	1
Letter Opinion of Judge Percy Thornton, Jr. dated 10-3-79	4
Letter from Mr. Dudley to Judge Percy Thornton, Jr. dated 10-10-79	6
Letter Opinion of Judge Percy Thornton, Jr. dated 10-17-79	8
Final Order dated 2-14-80	9
Assignment of Error #1	11
Excerpt of Transcript of Trial Proceedings Heard 10-3-79	
Testimony of John W. Pennington	14
Testimony of Glen William Pennington	22
Exhibits	
Plaintiff's	
Exh. 1 - GEICO Policy No. 827-65-25	31
Exh. 2 - Letter from G. A. Anderson to John W Pennington	36

MOTION FOR JUDGMENT

COMES NOW the plaintiff, Erie Insurance Exchange, and files this motion for a declaratory judgment and states as follows:

1. Erie Insurance Exchange (Erie) is a reciprocal insurance exchange engaged in the sale and issuance of insurance policies in the State of Virginia.

2. In the course of this business, it caused to be issued a Virginia Family Automobile Insurance Policy Number V11-21-02031R to James Hastings and Polly Hastings, 6156 Gothwaite Drive, Centreville, Virginia, covering the period November 21, 1976, to November 21, 1977, on a 1972 Chevrolet and a 1970 MG. This policy provided insurance coverage to James Hastings for personal injuries and other damages caused by an uninsured motorist as required by Title 38.1-381, et seq, Code of Virginia, in all such policies.

3. On May 25, 1977, James W. Hastings, while operating the 1970 MG automobile insured under the Erie policy, collided with a 1976 Ford Pinto with Virginia license plates, 1977 Virginia, JVW 690, operated by John W. Pennington and alleged to have been owned by Glen W. Pennington. This accident took place on Route 234 in Prince William County, Virginia.

4. On or about March 14, 1978, James W. Hastings filed a suit in the Circuit Court of Prince William County, Virginia, being At Law No. 8923, for personal injuries arising out of this

collision alleging negligence on the part of the said John W. Pennington and Glen W. Pennington. A copy of this motion for judgment is attached hereto.

5. Government Employees Insurance Company (GEICO) is a corporation engaged in the sale and issuance of automobile insurance policies in the State of Virginia.

6. In the course of this business, GEICO issued a Virginia Family Automobile Policy, believed to be Policy Number 827-65-25, to Glen R. Pennington, providing automobile liability insurance to Glen R. Pennington, father of the said John W. Pennington and Glen W. Pennington, providing this coverage to relatives of the named insured who are residents of the same household while operating an "owned" or "non-owned" automobile, all of which is more particularly set forth therein. This policy was in full force and effect at the time of the motor vehicle accident referenced hereinabove.

7. John W. Pennington, son of Glen R. Pennington, was a resident of the same household as Glen R. Pennington on May 25, 1977.

8. GEICO has denied that John W. Pennington and Glen W. Pennington are entitled to automobile liability insurance coverage for the accident which is the subject of the described pending litigation.

9. The plaintiff verily believes that John W. Pennington and Glen W. Pennington are entitled to coverage under the GEICO policy.

10. In the event John W. Pennington and Glen W. Pennington are not afforded coverage under the GEICO policy, your

plaintiff will be required to pay any judgment rendered in favor of James W. Hastings in At Law 8923 against Glen W. Pennington and John W. Pennington. Erie denies it should be required to afford uninsured motorist coverage for the accident which is the subject of this litigation.

11. There is a justifiable controversy between Erie and GEICO as to their obligations under their respective policies that should be determined by the court.

WHEREFORE, the plaintiff prays that a declaration of the respective rights and duties of Erie Insurance Exchange and Government Employees Insurance Company as well as the other parties hereto with respect, one to another, under and by virtue of the said contracts of insurance and the claim asserted and denied by the said carriers, be made and for such other relief as to the court may seem proper.

ERIE INSURANCE EXCHANGE

By: Robert L. Pendl
Claims Supervisor

Norman A. West
Attorney for Erie Insurance Exchange
10511 Jones Street
Fairfax, Virginia 22030

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OCT - 9 1979
BOOTHE, PRICHARD & DUDLEY

THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

October 3, 1979

ARTHUR W. SINCLAIR
PERCY THORNTON, JR.
JUDGES

CIRCUIT COURT CHAMBERS
9302 PEABODY STREET
MANASSAS, VIRGINIA 22110

NORMAN A. WEST, Esquire
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PETER K. McCRARY, Esquire
Attorney at Law
9014 Church Street
Manassas, Virginia 22110

RE: Erie Insurance Company
vs.
John W. Pennington, et al
Law No. 9539

Gentlemen:

After due consideration of the evidence and arguments in the subject case, I am of the opinion that the Family Combination Automobile Policy (No. 827-65-25) issued by Government Employees Insurance Company to Glenn R. Pennington affords coverage of John W. Pennington in the accident on May 25, 1977 with James W. Hastings.

In reaching this decision, Part 1 - LIABILITY of the subject policy is considered in its entirety and not merely the definition of a "non-owned automobile". It is clear that John W. Pennington falls within "Persons Insured" under the policy; he was a member of the named insurered's household; a relative operating a private passenger automobile with the implied consent of the owner thereof at the time of the accident. The issue then becomes whether or not that such automobile was a "non-owned automobile" under the subject policy.

Definitions under Part 1 states, to-wit: "Non-owned automobile" means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than

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CHARLES S. PERRY, Esquire

October 3, 1979

a temporary substitute automobile.

I find no ambiguity in the definition; "any relative" as used therein relates to the Persons Insured and in context with remainder of the statement means that such automobile cannot be regularly used by the relative, an insured under the Persons Insured.

The fact that the subject automobile was owned by Glenn R. Pennington, a brother, relative and resident of the same household of the operator, John W. Pennington, does not afford any grounds for denial of coverage to John W. Pennington; the latter clearly comes within the Persons Insured and such automobile was not owned by the named insured, Glenn R. Pennington, nor regularly used by John W. Pennington and accordingly comes within the definition of a "non-owned automobile".

Mr. West is requested to prepare an order in accordance with the above decision.

Sincerely yours,

PERCY THORNTON, JR.

PTJr.:dra

October 10, 1979

Honorable Percy Thornton, Jr.
Judge, Prince William County Circuit Court
9302 Peabody Street
Manassas, Virginia 22110

Re: Erie Insurance v. John W. Pennington, et al.
Law No. 9539

Dear Judge Thornton:

I am in receipt of your opinion letter of October 3, 1979 in which you found that Geico Insurance Company Policy #827-65-25 afforded coverage of John Pennington in the May 25, 1977 accident with Mr. Hastings. I do not wish to inconvenience the Court by filing a motion to reconsider, however, I would ask that you treat this letter as the same and give consideration to the points I wish to make.

We are all in agreement that the driver of the car, John R. Pennington, was an insured under the policy. Our next question is necessarily whether he was covered while driving the particular car in question, a 1976 Pinto owned by his brother, Glenn W. Pennington. I trust that the Court will agree that the Pinto must come within the definition of "non-owned automobile" in order to be covered by the Geico policy.

I sincerely believe that our only disagreement is over the construction of that definition, which as your Honor states is any automobile "...not owned by or furnished for the regular use of either the named insured or any relative..." (emphasis added). My point is simply this: the only proper construction of that sentence indicates that a car owned by any relative does not come under the definition. I believe that your Honor has focused on the issue of regular use while not giving effect to the first part of the definition: "not owned by or..." With all due respect, I would point out that plaintiff's counsel avoided addressing the effect of this language at trial.

I respectfully submit that four situations are excluded from coverage by the definition. They are:

1) an auto owned by the named insured,
2) an auto owned by any relative,
3) an auto furnished for the regular use of the named insured, and
4) an auto furnished for the regular use of any relative.

I would agree that the auto in question was not furnished for the regular use of any relative, but urge the Court to recognize that the use of the first "or" in the definition we are concerned with requires the Court to look also at whether the Pinto was owned by a relative. Glenn W. Pennington was a relative owner and that is determinative.

Finally, I request your Honor to review the Aler case which I submitted, in particular the Court's discussion of this exact issue on p. 623 of the opinion.

I regret taking the Court's extra time on a matter concerning only one sentence, but I must do so because I am convinced that the correct result has not been reached.

Sincerely,

Waller T. Dudley

WTD/ghp

cc: Norman A. West, Esq.
J. Edward Flournoy, Esq.
Peter K. McCrary, Esquire

THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

October 17, 1979

ARTHUR W. SINCLAIR
PERCY THORNTON, JR.
JUDGES

CIRCUIT COURT CHAMBERS
9302 PEABODY STREET
MANASSAS, VIRGINIA 22110

MR. WALLER T. DUDLEY
Attorney at Law
Post Office Box 338
Fairfax, Virginia 22030

RE: Erie Insurance v. John W. Pennington, et al
Law No. 9539

Dear Mr. Dudley:

This will acknowledge receipt of your letter of October 10, 1979 with attachments requesting that same be reviewed as a motion to reconsider my opinion of October 3, 1979.

Under definitions of the policy, "relative" means a relative of the named insured who is a resident of the same household; such "relative" refers to the persons insured, and with respect to non-owned automobile, means that such automobile cannot be owned by the "relative" insured or furnished for the regular use of the "relative" insured.

The Aler decision was based on the fact that subject "non-owned vehicle" owned by the mother-in-law, a resident of the insured's household, and furnished for the regular use of the insured and clearly fell within the exception; such decision does not apply to the facts in this case.

Accordingly, your motion to reconsider is denied.

Sincerely yours,

PERCY THORNTON, JR.

PTJr.:dra
cc: Norman A. West, Esquire
J. Edward Flournoy, Esquire
Peter K. McCrary, Esquire

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BOOTHE, PRICHARD & DUDLEY

O R D E R

THIS MATTER came to be heard on October 3, 1979, upon the pleadings and evidence introduced and the Court did take the matter under advisement, and

The Court subsequently issued a letter opinion dated October 3, 1979, in which it found that the defendant, John W. Pennington, was entitled to coverage under Government Employees Insurance Company's policy number 827-65-25, for the reasons stated therein; it is therefore,

ADJUDGED, ORDERED AND DECREED that John W. Pennington is entitled to coverage under Government Employees Insurance Company's policy number 827-65-25, and therefore is not an uninsured motorist.

To the ruling of the Court, counsel for the defendant Government Employees Insurance Company, have noted their exception.

The transcript of the trial is hereby made a part of the court record.

ENTERED this 14th day of February, 1980.

/s/ Percy Thornton, Jr.
JUDGE

I ASK FOR THIS:

NORMAN A. WEST.
Counsel for Plaintiff

A COPY - TESTE:
C. E. GNADT, CLERK
By: Virginia G. Hiatt
Deputy Clerk

J. EDWARD FLOURNOY
Counsel for Defendants Pennington

SEEN & EXCEPTED TO:

PETER K. McCRARY
Counsel for Defendant Hastings

A. ALBERT BALAVAGE
Counsel for Defendant
Hastings

WALLER T. DUDLEY
Counsel for Defendant GEICO

CHARLES S. PERRY
Counsel for Defendant GEICO

ASSIGNMENT OF ERROR

GEICO assigns the following ruling of the trial court as error:

1. The trial court's ruling that the 1976 Pinto was a "non-owned automobile" as defined in the GEICO policy.

V I R G I N I A

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

ERIE INSURANCE EXCHANGE Plaintiff, V. JOHN W. PENNINGTON AND GLEN R. PENNINGTON AND GLEN W. PENNINGTON AND GOVERNMENT EMPLOYEES INSURANCE COMPANY AND JAMES HASTINGS Defendants.	At Law No. 9539

Manassas, Virginia

Wednesday, October 3, 1979

The trial commenced at 10:00 o'clock a.m.

BEFORE:

THE HONORABLE PERCY THORNTON, JR.

APPEARANCES:

For the Plaintiff:

NORMAN A. WEST, ESQ.
10511 Jones Street
Fairfax, Virginia 22030

1 For the Defendants John W. Pennington,
Glen R. Pennington and Glen W. Pennington:
2
J. EDWARD FLOURNOY, ESQ.
3 9113 W. Church Street
Manassas, Virginia 22110
4
For the Defendant Government
5 Employees Insurance Company:
6 WALTER T. DUDLEY, ESQ. and
CHARLES S. PERRY
7 Boothe, Prichard & Dudley
4103 Chain Bridge Road
8 Fairfax, Virginia 22030
9 For the Defendant James Hastings:
10 PETER K. McCRARY, ESQ.
9113 Church Street
11 Manassas, Virginia 22110
12 - - -
13 C O N T E N T S
14
15

WITNESSES	DIRECT	CROSS	REDIRECT
16 John W. Pennington	8	14	-
17 Glen W. Pennington	16	20	23

18 - - -
19 E X H I B I T S
20

PLAINTIFF'S	FOR IDENT.	IN EVID.
21 No. 1 (Cpy of ins. policy)	5	5
22 No. 2 (Ltr to Pennington from Mr. Anderson)	14	14

23 - - -
24
25

1 presented fairly.

2 THE COURT: All right, Mr. West, you may call your first

3 witness.

4 MR. WEST: Your Honor, I call John W. Pennington.

5 Thereupon,

6 JOHN WAYNE PENNINGTON,

7 was called as a witness by and on behalf of the plaintiff, and,

8 having been previously duly sworn, was examined and testified

9 as follows:

10 DIRECT EXAMINATION

11 BY MR. WEST:

12 Q. Would you state your name for the Court, please,

13 sir?

14 A. John Wayne Pennington.

15 Q. And where do you presently reside, sir?

16 A. 9245 Taney Road, Manassas.

17 Q. And how long have you lived at that address?

18 A. 14 years.

19 Q. And with whom do you reside there today?

20 A. With my father, Glen Pennington.

21 Q. Directing your attention to May of 1977, at that

22 time did you live at that address?

23 A. Yes, I did.

24 Q. Did you live there the entire month of May, 1977?

25 A. Yes, I did.

1 Q With whom did you reside at that address -- excuse
2 me. Did you reside with your father at that address at that
3 time?
4 A Yes, my father and mother.
5 Q Did there come a time on the 25th of May when you
6 received a call from your brother?
7 A Yes, there was.
8 Q What is your brother's name?
9 A Glen W. Pennington, known as "Bill."
10 Q Is that the gentleman sitting here?
11 A Yes, it is.
12 Q And at that time where was Bill employed or
13 stationed?
14 A Quantico Marine Base.
15 Q Would you tell the Court what occurred when he
16 called you?
17 A On that date, I guess it was about 3:00, 3:35,
18 maybe 3:45, I received a call and he told me to come and get
19 him. So I asked my mother, could I take her car -- she just
20 got a new Chevrolet -- and she said, "No, take the Pinto."
21 So I thought to myself, "Well, I'm going to get Bill, so I'll
22 take his Pinto." So I got his keys off the key ring which is
23 at the back of our house, okay, towards the back door, and
24 every car that's in the family, there's an extra set of keys
25 back there. Okay, because just in case somebody locks their

1 keys in the car or somebody loses their key, there's always an
2 extra set of keys. Bill had the original set, so I was using
3 his extra set of keys. So, on the way down to pick him up,
4 the accident did occur.
5 Q. Now, how did you happen to use this car as opposed
6 to the other cars in the family?
7 A. I only drove the car on two occasions before.
8 Q. I asked you how did you -- on this occasion, how
9 did you happen to use his car as opposed to the other cars in
10 the family?
11 A. Well, I was going to pick up Bill, so I figured,
12 you know, "I'm going to pick him up, I'll just go on and use
13 his car."
14 Q. Now, how often had you -- excuse me, had you had
15 full use of this car previously?
16 A. No, I hadn't.
17 Q. How often previously had you driven that car?
18 A. Twice.
19 Q. And what were those occasions?
20 A. Once when the car was brand new, exactly two days
21 old I drove it just because, you know, we had a new car in
22 the family, and the next occasion was I happened to be working
23 at an Exxon station and he asked me -- on his request, he
24 asked me to take it up and grease it for him, which I did.
25 Q. And the third occasion?

1 A. When the accident occurred.

2 Q. And normally in the family what cars did you use?

3 A. Usually Dad's Pinto or Mom's Chevrolet.

4 Q. And can you state for the Court that these were

5 the only times you've used this vehicle?

6 A. Yes, it is.

7 Q. Did you have general or regular use of his vehicle

8 in any way?

9 A. No, I didn't.

10 Q. At this time -- you say you were operating the

11 motor vehicle when you were involved in an automobile accident?

12 A. Yes, I was.

13 Q. Where did that accident take place?

14 A. Right in front of Propps Store out on 234.

15 Q. Did you have any insurance in your own name at

16 that time?

17 A. No, I didn't.

18 Q. Was there any other insurance in the family?

19 A. No, not -- just GEICO, that's the only one.

20 Q. Now, would you describe the cars for me as to who

21 owned which car?

22 A. Well, Mom owns a '77 Chevrolet. Bill owns a '76

23 Pinto which was silver blue in color; Dad owned a '72 Ford

24 Pinto which was baby blue in color.

25 Q. Do I understand from what you said there were two

1 Pintos?

2 A. Yes, there was.

3 Q. And one was owned by whom?

4 A. One was owned by Glen W., and one was owned by

5 Glen R.

6 Q. Okay. Well, let's use Bill for your brother's

7 name.

8 A. Bill, okay. Bill, and one was owned by Glen.

9 Q. And Bill is Glen W.?

10 A. Yes.

11 Q. Now, why did you not take your parent's car?

12 A. Well, Mom said to take the Pinto, so on that I

13 figured I was going to pick up Bill, that I should use his

14 Pinto because, see, Dad works late at night, and he usually

15 leaves about 6:00 o'clock, which I didn't know if I would be

16 back by 6:00 o'clock or not with his car. So I just decided

17 upon myself to take Bill's car.

18 Q. I believe you stated that the only policy in the

19 family was the policy with GEICO, is that correct?

20 A. That's all that I know.

21 Q. Subsequent to the accident, did there come a time

22 when you or someone on your behalf filed a claim with GEICO?

23 A. Yes, there was.

24 Q. Did you at that time ask for coverage for this

25 accident under the GEICO policy?

1 A. Yes, we did.

2 Q. And did there come a time when indication was

3 given to you by GEICO as to whether or not they would grant

4 you insurance under their policy?

5 A. It was denied.

6 Q. Coverage for the policy was denied?

7 A. Yes.

8 Q. Excuse me a second.

9 I show you a letter and ask you if you received the

10 original of that?

11 A. Yes, I did.

12 Q. Was this received by you in response to your request

13 for insurance coverage?

14 A. Yes.

15 MR. WEST: Your Honor, at this time I'd like to offer

16 this. I understand GEICO's counsel objects to the tendering

17 of the document.

18 MR. DUDLEY: We do, Your Honor, on one ground, really.

19 There's no question that we denied coverage. We have some

20 question -- the letter is rather inartfully worded and hard

21 to understand and we will be glad to admit that we denied

22 coverage, nor is it the best evidence. Mr. Anderson who wrote

23 that letter is not here and is in fact no longer even with the

24 company.

25 We would object to it on those two grounds.

1 THE COURT: What difference does it make if he admits
2 for the record that he denied coverage?
3 MR. WEST: Well, Your Honor, this is the correspondence
4 from the defendant's agent employee to us, and I think it's
5 proper evidence for their denial of coverage and why they
6 did not cover.
7 THE COURT: All right, sir. The objection will be
8 denied. It will be allowed to come in as Plaintiff's Exhibit
9 2.
10 (The document previously referred
11 to was marked Plaintiff's Exhibit
12 No. 2 for identification and
13 received into evidence.)
14 MR. WEST: Thank you, Your Honor.
15 THE COURT: All right.
16 MR. WEST: I have no further questions of this witness
17 at this time, Your Honor.
18 MR. DUDLEY: Note my exception to the Court's ruling.
19 THE COURT: You may cross-examine.
20 CROSS-EXAMINATION
21 BY MR. DUDLEY:
22 Q Joh, you've said that you have lived at your
23 father's house for 14 years, is that right?
24 A Yes.
25 Q That's an uninterrupted period? You've lived there

1 all of that time?

2 A. Yes.

3 Q. Okay. Did your brother, Bill, live there with you

4 as well during that time?

5 A. Not all 14 years.

6 Q. Not all 14 years?

7 A. See, he was -- he joined the Marines, which he

8 was married at one time.

9 Q. All right. Let's back up a minute. The accident,

10 I believe, took place on May 25th, 1977, is that right?

11 A. Correct.

12 Q. Was your brother, Bill, living at the house with

13 you at that time?

14 A. Yes, he was.

15 Q. And did he spend the night at that house at that

16 time, is that right?

17 A. Not that -- well, like I said a week before now

18 he was in the field, which was his duties as a Marine. Okay?

19 But any time that he could come home, he was there.

20 Q. So, with the exception of the one week prior to

21 the date this accident occurred, he was living at the house

22 with you, is that right?

23 A. Yes, correct.

24 MR. DUDLEY: I have nothing further, Your Honor.

25 THE COURT: Does anyone have any further questions?

1 MR. FLOURNOY: No, sir.

2 THE COURT: You may stand aside, sir. Thank you.

3 Call your next witness.

4 MR. WEST: I'd like to call Bill, please, Your Honor.

5 THE COURT: All right. Take the stand, please, sir.

6 Thereupon,

7 GLEN WILLIAM PENNINGTON,

8 was called as a witness by and on behalf of the plaintiff, and,

9 having been previously duly sworn, was examined and testified

10 as follows:

11 DIRECT EXAMINATION

12 BY MR. WEST:

13 Q. Would you state your name for the Court, please,

14 sir?

15 A. Glen William Pennington.

16 Q. Directing your attention to May 25, 1977, did you

17 become aware of the fact that on that day your brother was

18 involved in an automobile accident?

19 A. Yes, I called the house for him to come and pick

20 me up, and that was about an hour and a half prior. When I

21 called the second time, Mom said she just got notified John

22 was in an accident and had wrecked my car.

23 Q. What kind of car did you have at that time?

24 A. A 1976 silver blue Pinto.

25 Q. And what kind of car did your parents have?

1 A. A 1972 baby blue Pinto, and a 1977 Chevrolet.

2 Q. And on the day and time in question, were you insured

3 with any insurance company as far as the particular automobile

4 you owned?

5 A. No, I wasn't.

6 Q. In other words, you didn't have a policy with any-

7 one naming your car as the named vehicle on an automobile

8 policy?

9 A. I did not have an insurance policy.

10 Q. What were your duties and where were you stationed

11 at this time?

12 A. Okay. I was an 05 Howitzer battery, which is

13 artillery. I was stationed at Quantico Marine Base, training

14 officers.

15 Q. And how long had you been stationed there?

16 A. Approximately a year prior to the accident.

17 Q. What were your duties there at Quantico?

18 A. Training officers in 05.

19 Q. And where did you reside at this time?

20 A. At home whenever I could.

21 Q. Under what circumstances were you at home?

22 A. Okay, batteries -- okay, our barracks was over-

23 crowded. They were remodeling the barracks and everything for

24 more room. So therefore, they gave me a BAQ to live off base.

25 Q. And on the day that this accident happened, had

1 you spent the prior night at home?

2 A. No, sir, I did not.

3 Q. And had you spent the prior week at home?

4 A. No, sir, I did not.

5 Q. Where had you spent the prior week?

6 A. I was out in the field at Quantico Marine Base.

7 Q. How long had you been back in the country after

8 your overseas tour?

9 A. Approximately one year.

10 Q. Did you have any other cars other than the vehicle

11 that was involved in this accident?

12 A. No.

13 Q. And how did it happen that your brother, John, was

14 coming to pick you up?

15 A. I called home and John answered the phone, and I

16 asked John would he come over and pick me up, and then he

17 said he would, so I hung up and was waiting for him to come

18 pick me up.

19 Q. Did you give him any instructions as to what

20 vehicle he was to use?

21 A. No.

22 Q. How often prior to this to your knowledge had he

23 used your vehicle?

24 A. Twice prior to the accident.

25 Q. Twice prior to the accident?

1 A. Right.

2 Q. What were those occasions?

3 A. The first time it was a brand new car. He asked

4 me if he could drive it. I told him "Yes." The second time

5 he was working at an Exxon station across from Manassas Mall,

6 and he told me he would put grease fittings in it if I brought

7 it up to him. I told him just to go ahead and take it.

8 Q. How long had you had the car?

9 A. Approximately one year. I bought it as soon as I

10 got back from Africa.

11 Q. How often was the car normally used during the

12 week?

13 A. I had it all the time -- back and forth to work.

14 Q. Did your brother have any authority to use the

15 vehicle at anytime other than the three times you have

16 indicated to us?

17 A. No.

18 Q. Did he have regular or frequent use of the vehicle?

19 A. No.

20 Q. What vehicles did your brother use?

21 A. He has a Roadrunner, but he blew the engine in

22 that. Whenever something goes wrong with his car he usually

23 borrows one of our parents'.

24 Q. And at this time he was using one of your parents'

25 cars?

1 A. Not at the time of the accident, no.

2 Q. But, aside from this particular occasion.

3 A. Right, all the time.

4 Q. Are you aware of what was said by your mother or

5 your father to him at the time he took your car?

6 A. No, sir, I wasn't there.

7 Q. He mentioned the fact that your keys were somewhere

8 on a board. Are you aware of the place the keys to your car

9 were normally kept?

10 A. Yes, sir, I have an extra set of keys I hang in the

11 back. The original set was with me.

12 Q. Why did you have an extra set?

13 A. In case I lose my keys or they get locked in the

14 car, or whatever.

15 MR. WEST: I have no further questions, Your Honor.

16 THE COURT: You may cross-examine.

17 CROSS-EXAMINATION

18 BY MR. DUDLEY:

19 Q. Bill, if I understand you, you say that at the

20 time you called your brother you had just returned from a one-

21 week field exercise with the Marines. Is that right?

22 A. Yes, sir.

23 Q. Now, aside from that one week, you had been living

24 at home for the full year prior to that week's leave, is that

25 right?

1 A. Yeah -- prior -- unless we had cold weather
2 training, things like this where I had to stay out in the
3 field I was at home.
4 Q. Right, okay. And you say you received BAQ to live
5 off base, is that right?
6 A. Yes, sir.
7 Q. What is BAQ?
8 A. BAQ is where they give you extra money for your
9 own house to live off base.
10 Q. So as far as you were concerned you lived at home
11 with your parents?
12 A. Right.
13 Q. At one time you had insurance on your Pinto, did
14 you not?
15 A. Right.
16 Q. Did you let that insurance lapse?
17 A. Yes, I did.
18 Q. So that at the time this accident occurred it's
19 true that you had no insurance on your car?
20 A. Yes, sir, I did not.
21 Q. And you communicated that fact to your mother, did
22 you not?
23 A. Yes, sir, I did.
24 Q. You told her that, "I don't have any insurance
25 anymore on my car."

1 A. Yes, I did.

2 Q. Okay. And during this year that you were receiving

3 the BAQ pay for living off base I gather that you kept your

4 civilian clothes and your supplies and toothbrushes and

5 pajamas and things like that at home, did you not?

6 A. Yes, sir, I did.

7 MR. DUDLEY: Nothing further, Your Honor.

8 THE COURT: Do you have any further questions?

9 MR. FLOURNOY: No, sir.

10 THE COURT: Did I understand you to say that John owned

11 a vehicle, also?

12 THE WITNESS: Yes, sir, he owned a Roadrunner.

13 THE COURT: He owned a Roadrunner?

14 THE WITNESS: Yes, sir.

15 THE COURT: Well, how many people live in -- live at the

16 Pennington residence?

17 THE WITNESS: I've got two brothers and one sister

18 staying home.

19 THE COURT: How many of you own automobiles?

20 THE WITNESS: Now, or at the time of the accident?

21 THE COURT: At the time of the accident.

22 THE WITNESS: Just two of us.

23 THE COURT: Two of you owned automobiles?

24 THE WITNESS: Uh huh.

25 THE COURT: John owned one, a Roadrunner; you owned a

1 Pinto?

2 THE WITNESS: Right.

3 THE COURT: And your mother and father had a Pinto and

4 a Chevy?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right, sir. You may stand aside. Thank

7 you.

8 MR. WEST: Just one question.

9 THE COURT: You may.

10 REDIRECT EXAMINATION

11 BY MR. WEST:

12 Q. You mentioned a Roadrunner. That car was not

13 being used at this time, was it?

14 A. No, sir. It had a blown engine.

15 Q. Was it up on blocks or something?

16 A. Yes, sir, it was.

17 Q. How long had it been since it had been used?

18 A. I don't know.

19 Q. Are we talking about a day or two or a long period

20 of time?

21 A. It's been -- it was a long period of time.

22 MR. WEST: I have no further questions. Thank you.

23 THE COURT: All right, sir.

24 You may stand aside, sir. Thank you.

25 Call your next witness.

1 MR. WEST: I have Mr. Pennington, Sr., here to call but I
2 don't see any purpose in calling him. He's the named insured
3 and I think counsel will agree that he's the named insured on
4 the policy, and I see no reason to call him unless you object.
5 MR. DUDLEY: No.
6 MR. WEST: That's the Petitioner's case, Your Honor.
7 THE COURT: All right. Anyone else have any evidence
8 they wish to present in the matter?
9 MR. DUDLEY: No.
10 THE COURT: All right, Mr. West, do you have argument
11 you wish to make?
12 MR. WEST: Your Honor, this case arises out of a
13 situation that has occurred as a result of an incidental use
14 of an automobile which is not the named vehicle under an
15 insurance policy. What has occurred is, according to the
16 testimony which is uncontroverted, is that this young man who
17 was driving the car on this occasion was a casual or inci-
18 dental user of the vehicle. He's not an individual who had
19 regular use or frequent use or repeated use of the motor
20 vehicle which was uninsured. The reason why I direct the
21 Court's attention to that is because the policy issued by
22 GEICO provides insurance coverage to the named insured which
23 the policy clearly indicates is Glen R. Pennington, who is
24 the father, by agreement of counsel, and by the testimony also
25 of the witness. In addition to that, the policy insures with

FAMILY COMBINATION AUTOMOBILE POLICY

Government Employees Insurance Company

A PUBLICLY OWNED COMPANY
HEREIN CALLED THE COMPANY
Not Affiliated with the United States Government

INCORPORATED UNDER THE LAWS
OF THE DISTRICT OF COLUMBIA

AGREES with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy:

PART I — LIABILITY

Coverage A — Bodily Injury Liability;

Coverage B — Property Damage Liability:

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

Supplementary Payments: To pay, in addition to the applicable limits of liability:

(a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments 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 an automobile insured hereunder, not to exceed $100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

Persons Insured: The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

(2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer,

provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

—The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

Definitions: Under Part I:

"named insured" means the individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household;

"insured" means a person or organization described under "Persons insured";

"relative" means a relative of the named insured who is a resident of the same household;

"owned automobile" means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,

(b) a trailer owned by the named insured,

(c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above or

(2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

(d) a temporary substitute automobile;

"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

"non-owned automobile" means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile;

"private passenger automobile" means a four wheel private passenger, station wagon or jeep type automobile;

"farm automobile" means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;

"utility automobile" means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;

"automobile business" means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

"use" of an automobile includes the loading and unloading thereof;

"war" means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions: This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

PLAINTIFF'S EXH. 1

(c) to bodily injury or property damage with respect to which an 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;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership.

(h) to a non owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the insured or of any other person or organization,

(2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile.

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws: When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph

Limits of Liability: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence, the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

Other Insurance: If the insured has other insurance against a loss covered by Part I of this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

PART II — EXPENSES FOR MEDICAL SERVICES

Coverage C—Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

Division 1. To or for the named insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", caused by accident.

(a) while occupying the owned automobile,

(b) while occupying a non-owned automobile, but only if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or

(c) through being struck by an automobile or by a trailer of any type;

Division 2. To or for any other person who sustains bodily injury, caused by accident, while occupying

(a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or

(b) a non owned automobile, if the bodily injury results from

(1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

Definitions: The definitions under Part I apply to Part II, and under Part II:

"**occupying**" means in or upon or entering into or alighting from.

Exclusions: This policy does not apply under Part II to bodily injury:

(a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;

(b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads.

(c) sustained by any person other than the named insured or a relative,

(1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or

(2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or

(3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

(d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law,

(e) due to war.

Limit of Liability: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

Other Insurance: If there is other automobile medical payments insurance against a loss covered by Part II of this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical payments insurance.

PART III — PHYSICAL DAMAGE

Coverage D(1) — Fire, Lightning and Transportation: To pay for loss to the owned automobile or a non-owned automobile, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage D(2) — Theft: To pay for loss to the owned automobile or to a non-owned automobile caused by theft or larceny.

Coverage D(3) — Combined Additional Coverage: To pay for loss to the owned automobile or a non owned automobile caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to each automobile $25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage E — Collision: To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto. The deductible amount shall not apply to loss caused by a collision with another automobile insured by the company.

Coverage H(1) — Comprehensive (excluding Collision); Personal Effects:

1) To pay for loss caused other than by collision to owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.
2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

Coverage I—Towing and Labor Costs: To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non owned automobile, provided the labor is performed at the place of disablement.

Supplementary Payments: In addition to the applicable limit of liability:

(a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of $10 per day or totaling more than $300.
(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

Definitions: The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war", and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

"**insured**" means:

(a) with respect to an owned automobile,
  (1) the named insured, and
  (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the permission of the named insured and within the scope of such permission;
(b) with respect to a non owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

"**non-owned automobile**" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him.

"**loss**" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"**collision**" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"**trailer**" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, and if not a home, office, store, display or passenger trailer.

Exclusions: This policy does not apply under Part III:

(a) to any automobile while used as a public or livery conveyance;
(b) to loss due to war;
(c) to loss to a non owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
(d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;
(e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
(f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
(g) to loss due to radioactive contamination;
(h) under coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded.

Limit of Liability: The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality, nor, with respect to an owned automobile described in this policy, the applicable limit of liability stated in the declarations; provided, however, the limit of the company's liability (a) for loss to personal effects arising out of any one occurrence is $100, and (b) for loss to any trailer not owned by the named insured is $500.

Other Insurance: If the insured has other insurance against a loss covered by Part III of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

PART IV — PROTECTION AGAINST UNINSURED MOTORISTS

Coverage J—Uninsured Motorists (Damages for Bodily Injury): To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," sustained by the insured caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive, as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

Definitions: The definitions under Part I, except the definition of "insured," apply to Part IV, and under Part IV:

"**insured**" means:

(a) the named insured and any relative;
(b) any other person while occupying an insured automobile; and
(c) any person, with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above.

The insurance afforded under Part IV applies separately to each insured, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

"**insured automobile**" means:

(a) an automobile described in the policy for which a specific premium charge indicates that coverage is afforded,
(b) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided
  (1) it replaces an insured automobile as defined in (a) above, or
  (2) the company insures under this Coverage all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make the Liability and Uninsured Motorists Coverages under this and no other policy issued by the company applicable to such automobile,
(c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and
(d) a non-owned automobile while being operated by the named insured; and the term "insured automobile" includes a trailer while being used with an automobile described in (a), (b), (c) or (d) above, but shall not include:
  (1) any automobile or trailer owned by a resident of the same household as the named insured,
  (2) any automobile while used as a public or livery conveyance, or
  (3) any automobile while being used without the permission of the owner.

"**uninsured automobile**" includes a trailer of any type and means:

(a) an automobile or trailer with respect to the ownership, maintenance or use of which there is, in at least the amounts specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder or
(b) a hit-and-run automobile;

but the term "uninsured automobile" shall not include:

  (1) an insured automobile or an automobile furnished for the regular use of the named insured or a relative,
  (2) an automobile or trailer owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law,
  (3) an automobile or trailer owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing,
  (4) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle, or
  (5) a farm type tractor or equipment designed for use principally off public roads except while actually upon public roads.

"**hit-and-run automobile**" means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided: (a) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile"; (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (c) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

"**occupying**" means in or upon or entering into or alighting from.

"**state**" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

Exclusions: This policy does not apply under Part IV:

(a) to bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by the named insured or a relative, or through being struck by such an automobile;
(b) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
(c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

Limits of Liability:

(a) The limit of liability for uninsured motorists coverage stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.
(b) Any amount payable under the terms of this Part because of bodily injury sustained

in an accident by a person who is an insured under this Part shall be reduced by

(1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury including all sums paid under Coverage A, and

(2) the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law.

) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under Coverage A.

-) The company shall not be obligated to pay under this Coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable under Part II.

ther Insurance: With respect to bodily injury to an insured while occupying an automobile it owned by the named insured, the insurance under Part IV shall apply only as excess surance over any other similar insurance available to such insured and applicable to such tomobile as primary insurance, and this insurance shall then apply only in the amount which the limit of liability for this coverage exceeds the applicable limit of liability of ch other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar in- rance available to him and applicable to the accident, the damages shall be deemed not exceed the higher of the applicable limits of liability of this insurance and such other surance, and the company shall not be liable for a greater proportion of any loss to which is Coverage applies than the limit of liability hereunder bears to the sum of the applicable nits of liability of this insurance and such other insurance.

rbitration: If any person making claim hereunder and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this Part, then, upon written demand of either, the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and the company each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this Part.

Trust Agreement: In the event of payment to any person under this Part:

(a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;

(b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this Part;

(c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(d) if requested in writing by the company, such person shall take, through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

(e) such person shall execute and deliver to the company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the company established by this provision.

CONDITIONS

Conditions 1, 2, 3, 5, 14, 15, 16 and 18 apply to all Parts. Conditions 4 and 5, 7 through 13 and 17, apply only to the Parts noted thereunder.

Policy Period, Territory: This policy applies only to accidents, occurrences and ss during the policy period while the automobile is within the United States of America, s territories or possessions, or Canada, or is being transported between ports thereof.

Premium: If the named insured disposes of, acquires ownership of, or replaces private passenger, farm or utility automobile or, with respect to Part III, a trailer, any emium adjustment necessary shall be made as of the date of such change in accordance ith the manuals in use by the company. The named insured shall, upon request, furnish asonable proof of the number of such automobiles or trailers and a description thereof.

Notice: In the event of an accident, occurrence or loss, written notice containing rticulars sufficient to identify the insured and also reasonably obtainable information th respect to the time, place and circumstances thereof, and the names and addresses the injured and of available witnesses, shall be given by or for the insured to the company any of its authorized agents as soon as practicable. In the event of theft the insured all also promptly notify the police. If claim is made or suit is brought against the insured, shall immediately forward to the company every demand, notice, summons or other cess received by him or his representative.

If, before the company makes payment of loss under Part IV, the insured or his legal presentative shall institute any legal action for bodily injury against any person or organiza- n legally responsible for the use of an automobile involved in the accident, a copy of the mmons and complaint or other process served in connection with such legal action shall be rwarded immediately to the company by the insured or his legal representative.

Two or More Automobiles—Parts I, II and III: When two or more automobiles re insured hereunder, the terms of this policy shall apply separately to each, but an tomobile and a trailer attached thereto shall be held to be one automobile as respects mits of liability under Part I of this policy, and separate automobiles under Part III of this olicy, including any deductible provisions applicable thereto.

Assistance and Cooperation of the Insured—Parts I and III: The insured shall ooperate with the company and, upon the company's request, assist in making settlements, the conduct of suits and in enforcing any right of contribution or indemnity against any erson or organization who may be liable to the insured because of bodily injury, property amage or loss with respect to which insurance is afforded under this policy; and the insured hall attend hearings and trials and assist in securing and giving evidence and obtaining he attendance of witnesses. The insured shall not, except at his own cost, voluntarily ake any payment, assume any obligation or incur any expense other than for such imme- ate medical and surgical relief to others as shall be imperative at the time of accident.

art IV—After notice of claim under Part IV, the company may require the insured to ke such action as may be necessary or appropriate to preserve his right to recover damages om any person or organization alleged to be legally responsible for the bodily injury; and in ny action against the company, the company may require the insured to join such person or rganization as a party defendant.

Action Against Company—Part I: No action shall lie against the company unless, s a condition precedent thereto, the insured shall have fully complied with all the terms f this policy, nor until the amount of the insured's obligation to pay shall have been finally etermined either by judgment against the insured after actual trial or by written agreement t the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such dgment or written agreement shall thereafter be entitled to recover under this policy o the extent of the insurance afforded by this policy. No person or organization shall ave any right under this policy to join the company as a party to any action against the nsured to determine the insured's liability, nor shall the company be impleaded by the nsured or his legal representative. Bankruptcy or insolvency of the insured or of the nsured's estate shall not relieve the company of any of its obligations hereunder.

Parts II, III and IV: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

7. Medical Reports; Proof and Payment of Claim—Part II: As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

8. Insured's Duties in Event of Loss—Part III: In the event of loss the insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) file with the company, within 91 days after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property and submit to examination under oath.

9. Proof of Claim; Medical Reports—Part IV: As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. The insured and every other person making claim shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

10. Appraisal—Part III: If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. Payment of Loss—Part III: The company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the company. The company may settle any claim for loss either with the insured or the owner of the property.

Part IV: Any amount due is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due in accordance with division (d) hereof.

12. No Benefit to Bailee—Part III: The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

13. Subrogation—Parts I and III: In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

14. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized representative of the company.

15. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named in Item 1 of the declarations, or his spouse if a resident of the same household, shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under division 1 of Part II any person who was a relative at the time of such death.

16. Cancelation: This policy may be canceled by the insured named in Item 1 of the declarations by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If such insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

17. Cancelation by Company Limited—Part I: After this policy has been in effect for sixty days or, if the policy is a renewal, effective immediately, the Company shall not exercise its right to cancel the insurance afforded under Part I unless:

1. the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or
2. the insurance was obtained through fraudulent misrepresentation; or
3. the insured violates any of the terms and conditions of the policy; or
4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,
   (a) has had his driver's license suspended or revoked during the policy period, or
   (b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his unqualified ability to operate a motor vehicle, or
   (c) is or has been convicted of or forfeits bail, during the 36 months immediately preceding the effective date of the policy or during the policy period, for:
      (1) any felony, or
      (2) criminal negligence resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or
      (3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or
      (4) leaving the scene of an accident without stopping to report, or
      (5) theft of a motor vehicle, or
      (6) making false statements in an application for a driver's license, or
      (7) a third violation, committed within a period of 18 months, of (i) any ordinance or regulation limiting the speed of motor vehicles or (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor, whether or not the violations were repetitions of the same offense or were different offenses.

18. Declarations: By acceptance of this policy, the insured named in Item 1 of the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the Government Employees Insurance Company has caused this policy to be signed by the President and Secretary and countersigned on the Declarations page by a duly authorized representative of the company.

Secretary.

President.

035

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ADDRESSEE ONLY

John W. Pennington
9245 Taney Road
Manassas, VA 22110

CLAIM NO: 17-95866
INSURED Glen R. Pennington
POLICY NO: 827-65-25
DATE OF LOSS: May 25, 1977
CLAIMANT: James W. Hasting

Dear Mr. Pennington:

With respect to the automobile accident occurring on May 25, 1977, the Government Employees Insurance Company will not be handling this claim on your behalf and will deny any and all liability or obligation to you and to others under this policy number 827-65-25, issued to Glen R. Pennington. This disclaimer is made because the vehicle you were driving was owned by a member of your household an owned automobile or a non-owned automobile as defined in the policy and there was no coverage afforded to you under the policy.

The Government Employees Insurance Company will take no further action with respect to any claim which you might have against us or with respect to any claims or suit against you which has arisen, or may arise, out of the said accident and hereby withdraws from the matter entirely.

Very truly yours,

G. A. ANDERSON,
Claims Examiner (Senior)
June 17, 1977
pls

cc: Glen R. Pennington
9245 Tanney Road
Manassas, VA 22110

cc: Glen W. Pennington
9245 Taney Road
Manassas, VA 22110

PLAINTIFF'S EXH. 2

YOUR CLIENT: James W. Hastings

cc: Roy Morris
Attorney At Law
The Regency Club of McLean
1300 Old Meadow Road
Post Office Box 225
McLean, VA 22101

cc: The Harris Agency, Inc.
9117 Center Street
Manassas, VA 22110

cc: J. Edward Flournoy
Attorney At Law
9113 Church Street
Manassas, VA 22110

cc: James W. Hasting
6156 Gothwaite Drive
Centerville, MA