PATRICK FEELY,	*	IN THE CIRCUIT COURT OF
Plaintiff,	) *	BALDWIN COUNTY, ALABAMA
vs	) *	
ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation,	) *	AT LAW
Defendant.	)	CASE NO. 5674

Comes now the Defendant in the above-styled cause, and appeals to the Supreme Court of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on to-wit, 1 June, 1965, and in which cause your Defendant's Motion For New Trial was over-ruled by a judgment of the trial Court on, to-wit, 10 August, 1965.

Kenneth Cooper
Attorney For Defendant

FILED
SEP 9 1965
ALICE L. DUCK, CLERK
REGISTER

PATRICK FEELY,	)	IN THE CIRCUIT COURT OF
	*	
Plaintiff,	)	
	*	BALDWIN COUNTY, ALABAMA
vs	)	
	*	
ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation,	) *	AT LAW
	)	
Defendant.	*	CASE NO. 5674

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledged myself as security for costs of the Appeal taken by the Defendant in this cause.

Kenneth Cooper
Attorney For Plaintiff

Taken and approved
this 9 day of
September, 1965.

Alice L. Duck
Clerk, Circuit Court
Baldwin County, Ala.

_____DIV. NO._____ CERTIFICATE OF APPEAL. (Civil Cases.)

No. 5674

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein Patrick Feely, was plaintiff, and Accident Indemnity Insurance Company, a Corporation was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Accident Indemnity Insurance Co., a corp. did on the 9th day of September 1965, ~~20~~, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Kenneth Cooper, Principal's Attorney, and Fidelity & Deposit Company of Maryland, By: James H. Lindsey as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 10th day of September, 1965

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

PATRICK FEELY,	*	IN THE CIRCUIT COURT OF
	)	
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
	)	
vs	*	AT LAW
	)	
ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation,	*	
	)	
	*	Case No. 5674
Defendant.	)	

AMENDED ANSWER

Comes now the defendant in above styled cause, and amends its ANSWER heretofore filed in this court on the 31st day of January, 1964, by adding the following special pleas:

THREE: The Defendant, for answer to the Complaint, and Amended Complaint, alleges, by this special plea, that the Plaintiff breached his warranty, or representation, that he was in good health at the time he applied for subject policy on 2 January, 1963, whereas, in fact he was not in good health.

FOUR: The Defendant, for further answer to the Complaint, and Amended Complaint, alleges that the Plaintiff knowingly and willfully misrepresented to the Plaintiff when he made application for Insurance on subject policy on 2 January, 1963, that he had never had any disease of the heart, whereas, he did in fact know that he had had a disease of the heart.

FIVE: The Defendant, for further answer to the complaint, and amended Complaint, alleges that the Plaintiff fraudulently, represented that during the five year period immediately prior to surgical advice or treatment other than one appendectomy, in 1955, whereas he had received medical or surgical advice.

SIX: The Defendant for further answer to the complaint, and amended Complaint, alleges that the Plaintiff, by written misrepresentation made with actual intent to deceive in the negotiation of a contract or policy of insurance, or in the application therefor, secured the issuance of a policy of insurance for time lost from the Defendant.

SEVEN: The Defendant's for further answer to the complaint, and the amended complaint, alleges that the Plaintiff, by written

representation, or warranty therein made, misrepresented, on an Application For Insurance, that he had never had a disease of the heart, and that he had received no medical or surgical advice during that 5 year period immediately prior to 2 January, 1963, other than one appendectomy in 1955, whereas such misrepresentations increased the risk of loss on the policy of insurance issued to the Plaintiff by the Defendant which is more fully described in the complaint.

In all other respects, the answer heretofore filed remains unchanged.

Kenneth Cooper
Attorney for Defendant

FILED
MAY 31 1965
ALICE L. DUCK, CLERK
REGISTER

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1965-66

1 Div. 321

Accident Indemnity Insurance Company,
a Corporation

v.

Patrick Feely

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

This is an appeal from a judgment in favor of appellee for $3,150 in a suit on an insurance policy whereby appellee was to be paid if he should become totally and permanently disabled. A motion for a new trial was overruled.

Appellee's complaint was in four counts and appellant pleaded the general issue and special pleas that the allegations in the complaint were untrue; that appellee's warranty that he was in good health was untrue; that he knowingly and willfully misrepresented his state of health to be good when he knew that he had a heart disease; that he falsely represented that he had had no surgical treatment within five years prior to the issuance of the policy; that he misrepresented with intent to deceive in the negotiation of the contract; that he falsely stated that he had no disease of the heart and that he had had no other medical advice or treatment during the five-year period prior to the issuance of the policy, and these misrepresentations increased the risk of loss.

The application for insurance was signed by appellee on January 2, 1963, when he was 57 years of age. In it, he stated that he had had no medical or surgical advice or treatment in the preceding five years, and that he had never had any disease of the heart.

It is undisputed that he had received medical attention in the five preceding years but the main question of fact was whether he had a history of heart trouble. This was important because appellee did have a heart attack on February 12, 1963, less than two months after applying for the insurance.

Appellee testified that he had chest pains at age 39 but, after having his tonsils removed and he quit smoking,

the pain "went away" but returned the previous three or four years when he started smoking again. The specialist to whom appellee was referred after his heart attack testified that appellee told him that he had had angina since he was 39 years of age, but appellee denied this and there was other evidence that appellee's trouble was not diagnosed as coronary insufficiency with angina pectoris until after his heart attack in February, 1963. Appellee's attending physician, who had treated him for many small ailments, testified that he never suspected that appellee might have heart trouble prior to February 12, 1963, and that the ailment could "come on a person with a snap of the finger." A jury question was made on the question of the heart disease and this presumably was resolved in favor of the appellee.

All the evidence surrounding the taking of the application was given by appellee. He said the agent asked him some questions and the agent put down the answers. He said he told the agent that he had had arthritis and had gone to the doctor every month or two, but the agent told him if it had not been within the past two years, "I won't even put it in the application." When the agent finished writing on the application, he handed it to appellee, who said that he glanced at it and signed his name to it. Appellee testified that he never had any idea that he had heart trouble until the doctor told him in February, 1963.

Appellant has listed twenty-four assignments of error and has argued all of them.

Appellee contends that appellant has argued groups of assignments of error together and proceeds to show where one in the group is without merit; and, since they are unrelated, insists that we should not consider any of them. We cannot agree because each assignment of error is listed separately in brief but, in several instances, the same argument is adopted for a listed assignment as was used for a prior assignment of error. This is permissible, especially in view of amended Supreme Court Rule 8, which limits the number of pages in briefs. If the same argument can be used for two unrelated assignments of error, there is no need to repeat the argument just because the two assignments should not have been argued together.

Assignment of error 1 charges that the court erred in overruling the motion for a new trial because the appellee had not proved his case. But appellee showed that a policy, in force at the time, had been issued to him by appellant; that he was totally disabled to work; that appellant had notice of the claim and that appellant had refused to pay the claim. This made out a prima facie case, and the assignment of error is without merit.

Assignment 3 reads: "The verdict of the jury is not supported by the evidence in the case." This assignment of error is not sufficient. Vickers v. Vickers, 273 Ala. 645, 144 So. 2d 8[9]; Life & Casualty Ins. Co. of Tennessee v. Womack, 228 Ala. 70, 151 So. 880.

Assignments of error 4, 5, 6, 8, 9, 10 and 11 are without merit because they point out evidence favorable to

appellant and contend that the verdict and judgment were not supported because of such evidence. But there was conflicting evidence, and the credibility of conflicting testimony is for the jury. Phillips v. Long, 266 Ala. 621, 97 So. 2d 795; Self v. Baker, 266 Ala. 572, 98 So. 2d 10. The jury evidently chose to believe the testimony offered by appellee. These assignments present no reversible error.

Assignments of error 7 and 12 charge that the total disability of appellee was not proved. Dr. Michaelson testified: "I would classify him (appellee) as being totally disabled to pursue any activity that required any amount of physical effort." This is adequate answer to this assignment.

Assignment 2 charges error in the admission of the deposition of Dr. Michaelson in evidence "after the same had already been read to the jury." In the stipulation concerning the deposition it was agreed that it was taken "pursuant to the provisions of Section 474(1-18), Title 7, Code of Alabama" and that it could be used for any purpose provided by the statute. The deposition was taken as required by the statute and was a legal document, susceptible to have been read in whole or in part to the jury, and to be received in evidence.

The word "deposition" in legal terminology is the testimony of a witness, taken in writing, under oath or affirmation, before some judicial officer, in answer to questions or interrogatories, State ex rel. Nichols v. Killoren, Mo. App., 285 S. W. 2d 38; and being a generic

term, embracing all evidence verified by oath, it thus includes affidavits. Baker v. Magrath, 106 Ga. 419, 32 S. E. 370. But as used in our statutes on procuring testimony by deposition, the word "deposition" does not include ordinary affidavits.

Assignments 13, 16 and 23 charge error in certain portions of the court's oral charge, but no exceptions were made to any of them. The oral charge, although made a part of the record by statute, will not be reviewed unless an exception is reserved, and no exception having been reserved, nothing is presented for review. Boles v. Bonner, 267 Ala. 342, 101 So. 2d 544; Scroggins v. Alabama Gas Corporation, 275 Ala. 650, 158 So. 2d 90.

In assignments 14, 15 and 17, appellant argues that the jury failed to follow two different portions of the court's oral charge and one written charge. All three were based upon evidentiary contentions of appellant, and it is logical to conclude that the jury did not agree with appellant as to the weight to be given its deductions from the evidence. All of these charges dealt with alleged misrepresentations in the application and required that the jury find that appellee had knowingly made false statements to conceal material facts about his health from appellant. If the insured answered honestly and in good faith his opinion and, in fact, was unaware that any seriousness attached to his former illness, and considered it a matter of trivial importance, then there was no fraudulent misrepresentations,

for an honest but erroneous expression of opinion or belief is not fraud. American Nat. Ins. Co. v. Walstrom, 226 Ala. 402, 147 So. 595; United Ins. Co. of America v. Ray, 271 Ala. 543, 125 So. 2d 704.

The argument assigned to assignment 18 is the same as made to assignment 14, and not being apt, it presents nothing for review.

Assignment 19 charges error in the refusal of requested charge 5. The charge is elliptical because it includes the purported word "vitilate." There is no such word. We think the word should have been "vitiate." The charge was properly refused.

Assignments 20 and 21 deal with the court's refusal to give requested charges 6 and 7. Charge 6 reads more like a headnote and is not complete, and charge 7 contains the same vice as charge 5, discussed supra.

Refused charge 9, the subject of assignment 22, was properly refused because it was adequately covered in the court's oral charge.

Assignment 24 charges that the verdict and judgment cannot stand because the appellee did not prove that the claim upon which this suit was based was not paid. There is direct evidence in the record that appellee's claim was refused by appellant.

We find no reversible error.

AFFIRMED.

Livingston, C. J., Simpson and Harwood, JJ., concur.

PATRICK FEELY,	)	
Plaintiff,	)	
Vs.	)	IN THE CIRCUIT COURT OF
ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation,	)	BALDWIN COUNTY, ALABAMA
	)	AT LAW
Defendant.	)	

1.

The Plaintiff claims of the Defendant the sum of $625.00 due on a policy, whereby the Defendant, on the 2nd day of January, 1963, insured for a term of one year, and from year to year thereafter so long as the annual premium was paid, against the Plaintiff's total and permanent disability. Plaintiff avers he suffered a heart attack on February 12, 1963, totally and permanently disabling him and causing him a total loss of time for the rest of his life, of which the Defendant has had notice. Plaintiff avers at the time of the illness said premium on said policy had been paid to and accepted by the Defendant up to February 1, 1964, and said policy was in full force and effect on and including said February 12, 1963, when said illness was suffered by the Plaintiff.

2.

The Plaintiff claims of the Defendant the sum of $625.00 due on a policy of insurance whereby the Defendant, on to-wit: January 2, 1963, agreed to indemnify the Plaintiff against total and permanent disability with a weekly indemnity for total disability of $25.00 a week, and Plaintiff avers that he was totally disabled following his usual avocation and Plaintiff avers that on the 12th day of February, 1963, and while said policy was in full force and effect, Plaintiff while engaged in his avocation as a farmer suffered a heart attack resulting in his total disability and while Plaintiff has made due and legal proof of his said damage to said Defendant, said Defendant has failed and re-

fused to pay said sum claimed, hence this suit.

3.

The Plaintiff claims of the Defendant the sum of $625.00 due on a policy, whereby the Defendant, on the 2nd day of January, 1963, insured for a term of one year, and from year to year thereafter so long as the annual premium was paid, against the Plaintiff's total and permanent disability. Plaintiff avers he suffered an Angina pectoris on February 12, 1963, totally and permanently disablish him and causing him a total loss of time for the rest of his life, of which the Defendant has had notice. Plaintiff avers at the time of the illness said premium on said policy had been paid to and accepted by the Defendant up to February 1, 1964, and said policy was in full force and effect on and including said February 12, 1963, when said illness was suffered by the Plaintiff.

4.

The Plaintiff claims of the Defendant the sum of $625.00 due on a policy of insurance whereby the Defendant, on to-wit: January 2, 1963, agreed to indemnify the Plaintiff against total and permanent disability with a weekly indemnity for total disability of $25.00 a week, and Plaintiff avers that he was totally disabled following his usual avocation and Plaintiff avers that on the 12th day of February, 1963, and while said policy was in full force and effect, Plaintiff while engaged in his avocation as a farmer suffered an Angina pectoris resulting in his total disability and while Plaintiff has made due and legal proof of his said damage to said Defendant, said Defendant has failed and refused to pay said claim, hence this suit.

WILTERS, BRANTLEY & NESBIT

BY: Phyllis S. Nesbit
Attorney for Plaintiff

FILED
AUG 15 1963
ALICE I. DUCK, CLERK
CIRCUIT COURT REGISTER

Service may be had upon Robert E. McLendon,
as Agent for Accident Indemnity Insurance Co., Inc.
in ~~Elberta~~, Alabama.
2552 Skylark Blvd.
Mobile Ala

EXECUTED BY SERVING A
COPY OF THE WITHIN on
Ralph Smith, Attorney
and agent for service
Accident & Indemnity
Insurance Company

This the 23 day of Sept 1963

M. S. BUTLER
Sheriff Montgomery County

By J. H. Miller
Deputy Sheriff

The Sheriff claims 2
miles at 10c per mile for a total
of $ .20

M. S. Butler, Sheriff
Montgomery County, Ala.

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No._____

_____TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon Accident Indemnity Insurance Company, a Corporation

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against Accident Indemnity Insurance Company, a corporation, Defendant

by Patrick Feely, Plaintiff

Witness my hand this 15 day of August 19 63.

Alice D. Duck, Clerk

Ex-9-5-63
Ex-9-22-63

No. 5624 Page 3833

STATE of ALABAMA
Baldwin County

CIRCUIT COURT

Patrick Kelly

Plaintiffs

vs.

Indemnity Acc. & Portland Co.

Defendants

Summons and Complaint

Filed _____ 19____

_____ Clerk

_____ Plaintiff's Attorney

_____ Defendant's Attorney

7468

1835

Defendant lives at

8-15-, 1963

Sheriff.

I have executed this summons

this _____ 19____

Returned ~~by leaving a copy with~~ Aug 22 1963

Not found in my county after diligent search and inquiry.

Taylor Wilkins, Sheriff

By _____ Deputy Sheriff

Executed 9-5-63 by serving a copy on Robert E McLendon as agent for Accident Indemnity Insurance Co. Inc.

Ray D Bridges
Sheriff.

B. F. Harris
Deputy Sheriff.

(RETURN INSIDE)

Patrick Feely
D Sw
Recident Ord

JURY LIST - MAY 31, 1965

1. Anacker, Walter R., Farmer, Fairhope
2. Beaty, Raymond, Laborer, Fairhope
3. Beck, John, Mechanic, Foley
4. Broughton, Joe N., Merchant, Cross Roads
5. Bryhn, Vernon A., Farmer, Elberta
6. Carlisle, D.E., Newport, Bay Minette
7. Carlisle, Otis A., Newport, Bay Minette
8. Corley, Horace W., Brookley Field, Bay Minette
9. Crook, Prince, Laborer, Bay Minette
10. Drinkard, Everette E., Farmer, Bay Minette
11. Dusek, Frank J., Jr., Civil Service, Lillian
12. Ebert, Charles J., Jr., Ins. Agt., Foley
13. Emmons, Floyd, Post Office Clerk, Bay Minette
14. Fell, Frank, Mechanic, Elberta
15. Fell, Neal J., Farmer, Lillian
16. Frank, George, Farmer, Elberta
17. Gilbert, B.B., Mechanic, Bay Minette
18. Gilbert, Jimmy, Insurance, Robertsdale
19. Hall, Gerald B., Jr., Newport, Bay Minette
20. Hall, Origen, Club Operator, Bay Minette
21. Hamilton, Percy, Town of Bay Minette, Bay Minette
22. Harrison, Joseph M., Farmer, Fairhope
23. Henderson, James M., Farmer, Fairhope
24. Hobbs, William G., Merchant, Bay Minette
25. Hodges, Willie Lee, Sawmill, Bay Minette
26. Homes, Pierce B., Electrician, Stockton
27. Keuler, Albert, Salesman, Loxley
28. Keuler, Jake W., Farmer, Loxley
29. King, Horace E., Farmer, Mag. Spgs.
30. McCarthy, James G., Merchant, Bay Minette
31. Meszaros, Michael A., Retired, Elberta
32. Morse, Wilson W., Civil Service, Foley
33. Nix, B. Coles, Ag. Teacher, Foley Coleg B. Nix
34. Palmer, James J., Farmer, Robertsdale
35. Pridgen, J. Phillip, Farm Adm., Bay Minette
36. Ryan, Robert, Newport, Bay Minette
37. Seaburn, James, Farmer, Foley
38. Sirmon, Gordon, Farmer, Daphne
39. Stimpson, Carl, Clay Products, Fairhope
40. Toler, Johnnie G., Electrician, Foley
41. Trawick, Walter, Laborer, Bay Minette
42. Underwood, Hilary H., Farmer, Foley
43. Vasut, Charles F., T.V. Repair, Robertsdale
44. Weekley, Willard A., Newport, Bay Minette
45. Wilson, John R., Auto. Dealer, Bay Minette
46. Young, William Berton, Post Office, Bay Minette
47. Mikkelson, Roy, Farmer, Summerdale
48. Stuart, Harold, Cleaners, Bay Minette
49. David Fuller Motel Spanish Fort

49
+
3
52
3

P XXXXX XXXXX XXXXX X

D XXXXX XXXXX XXXXX XX (1)

PATRICK FEELY, Plaintiff, Vs ACCIDENT INDEMNITY INSURANCE COMPANY, a Corporation, Defendant.	))))))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. Case No. 5674

DEMURRER

Comes now the Defendant in above styled cause, and files this its demurrer to the Complaint heretofore filed in this cause, and to each and every count thereof, separately and severally, to-wit:

1. The complaint does not state a cause of action.

2. The complaint does not sufficiently describe the policy on which this suit is brought.

3. The complaint does not sufficiently describe the cause of the alleged permanent disability.

4. The complaint does not sufficiently describe the kind of alleged heart attack suffered.

5. The complaint does not allege that the disability suffered was covered under the terms of any policy issued by the Defendant..

6. The complaint does not sufficiently describe the policy under which the alleged disability was covered.

7. The complaint does not sufficiently advise the Defendant the nature of the cause of this suit.

Kenneth Cooper
Attorney for Defendant

Defendant demands a trial
by jury in this cause.

Kenneth Cooper
Attorney for Defendant.

ATTORNEY OF RECORD FOR PLAINTIFF:
Wilters, Brantley & Nesbit
Attorneys at Law
Bay Minette, Alabama

FILED
OCT 26 1983
ALICE J. DUCK, CLERK
REGISTER

PATRICK FEELY, Plaintiff, Vs ACCIDENT INDEMNITY INSURANCE COMPANY, a Corporation, Defendant.	))))))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. Case No. 5674

ANSWER:

ONE:

The Defendant, for answer to the Complaint saith that he is not guilty of the matters alleged therein.

TWO:

The Defendant, for answer to the Complaint, saith that the allegations of the Complaint are untrue.

Kenneth Cooper
Attorney For Defendant

Attorney of Record
For Plaintiff:
Hon Tolbert M. Brantley
Attorney at Law
Bay Minette, Ala.

FILED
JAN 31 1964
ALICE J. DUCK, CLERK
REGISTER

PATRICK FEELY,	)	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
VS	)	AT LAW
ACCIDENT INDEMNITY INSURANCE COMPANY, a Corporation,	)	
	)	
DEFENDANT	)	NO. 5674
	)	

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and amends his Complaint by striking the first line of Count One and substitutes therefore: The Plaintiff claims of the Defendant the sum of $3,150.00, and by striking line one of Count Two and substituting therefore; the Plaintiff claims of the Defendant the sum of $3,150.00, and by striking line one of Count Three and substituting therefore; the Plaintiff claims of the Defendant the sum of $3,150.00, and by striking line one from Count Four and substituting therefore; the Plaintiff claims of the Defendant the sum of $3,150.00.

WILTERS, BRANTLEY & NESBIT

By: [signature]
Attorney for Plaintiff

Filed 5-31-65
[signature]

NO. 5674

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

PATRICK FEELY,

PLAINTIFF

VS

ACCIDENT INDEMNITY INSURANCE COMPANY, a Corporation,

DEFENDANT

AMENDED COMPLAINT

Wilters, Brantley & Nesbit
Robertsdale, Alabama
Plaintiff's attorney

Kenneth Cooper
Bay Minette, Alabama
Defendant's attorney

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 65-66

To the Clerk *of the* Circuit *Court,*

Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court* _____

of said county, in a certain cause lately pending in said Court between

Accident Indemnity Insurance Company, a Corporation, *Appellant*,

and

Patrick Feely, *Appellee*,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 6th *day of* January, *19* 66, *that said* Judgment *of said* Circuit *Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellant*, ~~xxxx~~ Accident Indemnity Insurance Company, a Corporation, and Kenneth Cooper, as Principal's Attorney, and Fidelity & Deposit Company of Maryland, sureties on the supersedeas bond, pay the amount of the judgment of the Circuit Court and 10% damages thereon and interest and

the costs accruing on said appeal in this Court and in the Court below.

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, Richard W. Neal, Deputy ~~Xxxxxxxxxxx~~, *Clerk of the Supreme Court of Alabama, this the* 6th *day of* January, *19*66

Richard W. Neal

Deputy *Clerk of the Supreme Court of Alabama.*

THE SUPREME COURT OF ALABAMA

October Term, 19 65-66

1 Div., No. 321

Accident Indemnity Insurance Company, a Corporation

Appellant,

vs.

Patrick Feely

Appellee.

From Baldwin Circuit *Court*
5674

CERTIFICATE OF AFFIRMANCE

The State of Alabama,
FILED
County. } *Filed*

this _____ *day of* JAN 10 1966 *19* ____

ALICE J. DUCK, CLERK REGISTER

BROWN PRINTING CO., MONTGOMERY 1964

PATRICK FEELY, Plaintiff, vs ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation, Defendant.	*) *) *) *) *)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW Case No. 5674

AMENDED ANSWER

Comes now the defendant in above styled cause, and amends its ANSWER heretofore filed in this court on the 3rd day of January, 1965, by adding the following special pleas:

THREE: The Defendant, for answer to the Complaint, and Amended Complaint, alleges, by this special plea, that the Plaintiff breached his warranty, or representation, that he was in good health at the time he applied for subject policy on 2 January, 1963, whereas, in fact he was not in good health.

FOUR: The Defendant, for further answer to the Complaint, and Amended Complaint, alleges that the Plaintiff knowingly and willfully misrepresented to the Plaintiff when he made application for Insurance on subject policy on 2 January, 1963, that he had never had any disease of the heart, whereas, he did in fact know that he had had a disease of the heart.

FIVE: The Defendant, for further answer to the complaint, and amended Complaint, alleges that the Plaintiff fraudulently, represented that during the five year period immediately prior to surgical advise or treatment other than one appendectomy, in 1955, whereas he had received medical or surgical advise.

SIX: The Defendant for further answer to the complaint, and amended Complaint, alleges that the Plaintiff, by written misrepresentation made with actual intent to deceive in the negotiation of a contract or policy of insurance, or in the application therefor, secured the issuance of a policy of insurance for time lost from the Defendant.

SEVEN: The Defendant's for further answer to the complaint, and the amended complaint, alleges that the Plaintiff, by written

representation, or warranty therein made, misrepresented, on an Application For Insurance, that he had never had a disease of the heart, and that he had received no medical or surgical advice during that 5 year period immediately prior to 2 January, 1963, other than one appendectomy in 1955, whereas such misrepresentations increased the risk of loss on the policy of insurance issued to the Plaintiff by the Defendant which is more fully described in the complaint.

In all other respects, the answer heretofore filed remains unchanged.

Kenneth Cross
Attorney for Defendant

FILED
MAY 31 1965
ALICE L. DUCK, CLERK
REGISTER

representation, or warranty therein made, misrepresented, on an Application for Insurance, that he had never had a disease of the heart, and that he had received no medical or surgical advise during that 5 year period immediately prior to 2 January, 1963, other than one appendectomy in 1952, whereas such misrepresentations increased the risk of loss on the policy of insurance issued to the Plaintiff herein Defendant which is more fully described in the complaint.

In all other respects, the answer heretofore filed remains unchanged.

Attorney for Defendant

FILED

MAY 27 1966

ALICE L. BOOK, CLERK
MARICOPA COUNTY

We find in favor of the Plaintiff and fix his damages at $3,150.00

P. Coles Fitz
Foreman

THE STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS, THAT WE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION OF THE STATE OF MARYLAND, WITH ITS HOME OFFICE IN THE CITY OF BALTIMORE, MARYLAND , U. S. A., AS SURETY ARE HELD AND FIRMLY BOUND UNTO ALICE J. DUCK, CLERK OF CIRCUIT COURT, IN THE JUST AND FULL SUM OF $6,300.00 DOLLARS, FOR THE PAYMENT OF WHICH, WELL AND TRULY TO BE MADE AND DONE, WE BIND OURSELVES, AND EACH OF US, OUR AND EACH OF OUR HEIRS, EXECUTORS AND ADMINISTRATORS, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

SEALED WITH OUR SEALS AND DATED THAT NINTH DAY OF SEPTEMBER, 1965.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, THAT WHEREAS, PATRICK FREELY OBTAINED A DECREE IN THE ABOVE STYLED CAUSE IN THE CIRCUIT COURT IN EQUITY FOR SAID COUNTY, ON THE FIRST DAY OF JUNE 1965, FROM WHICH DECREE THE SAID ACCIDENT INDEMNITY INSURANCE COMPANY, A CORPORATION, CIRCUIT COURT CASE #5674 (LAW SIDE) HAS OBTAINED AN APPEAL RETURNABLE TO THE NEXT TERM OF THE SUPREME COURT OF ALABAMA.

NOW, THEREFORE, IF THE SAID ACCIDENT INDEMNITY INSURANCE COMPANY, A CORPORATION SHALL PROSECUTE THE SAID APPEAL TO EFFECT, AND SATISFY SUCH DECREE AS MAY BE RENDERED AGAINST IT IN SAID CAUSE BY THE SUPREME COURT, THEN THIS OBLIGATION IS TO BE NULL AND VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT.

AND WE, AND EACH OF US, HEREBY WAIVE ALL RIGHTS TO OR CLAIM OF EXEMPTION AS TO PERSONAL PROPERTY WE OR EITHER OF US HAVE NOW OR MAY HEREAFTER HAVE, UNDER THE CONSTITUTION AND LAWS OF ALABAMA, AND WE HEREBY SEVERALLY CERTIFY THAT WE HAVE PROPERTY FREE FROM ALL INCUMBRANCE TO THE FULL AMOUNT OF THE ABOVE BOND.

WITNESS OUR HANDS AND SEALS THIS THE NINTH DAY OF SEPTEMBER, 1965.

Kenneth Cooper (SEAL)
PRINCIPAL'S ATTORNEY

FIDELITY & DEPOSIT COMPANY OF MARYLAND

BY: James K. Lindsey (SEAL)

TAKEN AND APPROVED THIS THE NINTH DAY OF SEPTEMBER, 1965.

Alice J. Duck
Clerk

FILED

SEP 9 1965

ALICE J. DUCK, CLERK
REGISTER

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 1st day of June, 1965 ~~Monday in~~ ....., ~~196x~~, in a certain cause in said Court wherein Patrick Feely Plaintiff, and Accident Indemnity Insurance Company, a Corporation, Defendant, a judgement was rendered against said Accident Indemnity Insurance Company, a Corporation, to reverse which judgment, the said Accident Indemnity Insurance Company, a Corporation, applied for and obtained from this office an APPEAL, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the ..... day of ....., 196.... next, and the necessary bond having been given by the said Kenneth Cooper, Fidelity & Deposit Company of Maryland by: James H. Lindsey ~~with~~ ....., sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Patrick Feely or Wilters, Brantley & Nesbit, ..., attorneys to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 10th day of September, A. D., 1965.

Attest:

Alice J. Duck, Clerk.

eived 10 day of Sept 1965
on 13 day of Sept 1965
erved a copy of the within Citation
Wilters, Brantley & Nesbit
service on Talbert Brantley

TAYLOR WILKINS, Sheriff,
By W A Zelbert D. S.

CASE NO. 5674

CIRCUIT COURT
Baldwin County, Alabama

PATRICK FEELY,

Plaintiff,

Vs. } Citation in Appeal

ACCIDENT INDEMNITY INSURANCE COMPANY, A Corporation,

Defendant.

Issued 10th day of September, 1965,

Serve
Wilters, Brantley & Nesbit.