

STATE OF ALABAMA)
*
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon The Lincoln National Life Insurance Company to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of Katie L. Smilie.

WITNESS my hand this 21st day of April, 1966.

Alice J. Duck
Clerk

The defendant may be served by serving a copy of the summons and complaint on the Superintendent of Insurance for the State of Alabama, Montgomery, Alabama.

* * * * *

KATIE L. SMILIE,)	
Plaintiff,)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA
THE LINCOLN NATIONAL LIFE)	AT LAW
INSURANCE COMPANY,)	6937
Defendant.)	

C O M P L A I N T

COUNT ONE

The plaintiff claims of the defendant Five Thousand Dollars (\$5,000.00) due on a policy, whereby the defendant on the 10th day of December, 1964, insured the life of Joseph J. Smilie, who died on December 30, 1965, of which the defendant has had notice. Said policy is the property of the plaintiff.

FILED

APR 20 1966

ALICE J. DUCK, CLERK
REGISTER

[Signature]
Attorney for Plaintiff

KATIE L. SMILIE,
Plaintiff,

VS.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

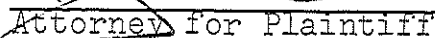
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

INTERROGATORIES PROPOUNDED TO DEFENDANT

Now comes the plaintiff in the above styled cause and propounds the following interrogatories to the defendant in this cause:

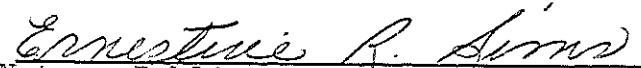
1. On December 10, 1964, did you issue Policy No. G-L8414 to Baldwin Pole & Piling Company, Inc., and Certificate No. 26 in connection with the said policy to Joseph J. Smilie? If your answer to Interrogatory No. 1 is yes, please attach a copy of the said policy and certificate to your answers to these interrogatories.
2. Have you received due proof that the said Joseph J. Smilie, referred to in Interrogatory No. 1 to whom your said insurance policy and certificate were issued, died on December 30, 1965?
3. Have you had notice that the said Joseph J. Smilie, who was insured under your Policy No. G-L8414, and Certificate No. 26 in connection with the said policy, died on December 30, 1965?
4. Have you paid the proceeds of the said policy and certificate referred to in Interrogatory No. 1 to the beneficiary of said policy, Katie L. Smilie?


Attorney for Plaintiff

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn deposes and says: That he is the attorney for the plaintiff in the above styled cause; that the answers to the foregoing interrogatories will be material testimony for the plaintiff in the trial of the said cause.

Sworn to and subscribed before me
on this the 19th day of April, 1966.


Notary Public, Baldwin County, Alabama

322

APR 20 1966

ALICE I. BUCK, CLERK

*Ex. 4-22-66
on 3 separate documents*

2814
RECEIVED IN OFFICE

APR 22 1966

(2) TAYLOR WILKINS
M. S. BUTLER, Sheriff

Executed by serving 3 copies of
the within on Walter S. Hecce
Superintendent
of Insurance, State of Alabama

This The 22 day of April 1966

Sheriff of Montgomery County

M. S. Butler,

By Thomas D. S.

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

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

CASE NO. 6937

KATIE L. SMILIE,

Plaintiff,

vs;

THE LINCOLN NATIONAL LIFE

INSURANCE COMPANY,

Defendant.

1. Summons & Complaint
2. Interrogatories

FILED

APR 20 1966

ALICE J. BARK, CLERK
REGISTER

James R. Owen

STATE OF ALABAMA

DEPARTMENT OF INSURANCE

I, the undersigned as Superintendent of Insurance for the State of Alabama, hereby certify that on the 22nd day of April, 1966, I sent by registered mail in an envelope as follows:

Lincoln National Life Insurance Company
1301-27 South Harrison Street
Fort Wayne, Indiana 46801

REGISTERED MAIL
RETURN RECEIPT REQUESTED

bearing sufficient prepaid postage, a copy of a summons and complaint served upon me by the Sheriff of Montgomery County, Alabama, in a cause styled as follows:

Katie L. Smilie, Plaintiff

in the Circuit Court of Baldwin County

VERSUS

The Lincoln National Life Insurance Company

(Name of Court)

, Defendant

And that on the 29th day of April, 1966, I received the return card showing receipt by the designated addressee of said envelope on the 27th day of April, 1966.

Witness my hand and official seal this the 2nd day of May, 1966.

Walter S. Houscal

SUPERINTENDENT OF INSURANCE

FILED

MAY 4 1966

ALICE J. DICK, CLERK
REGISTERED

KATIE L. SMILIE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
THE LINCOLN NATIONAL LIFE	X	LAW SIDE NO. 6937
INSURANCE COMPANY,	X	
Defendant.	X	

PLEAS

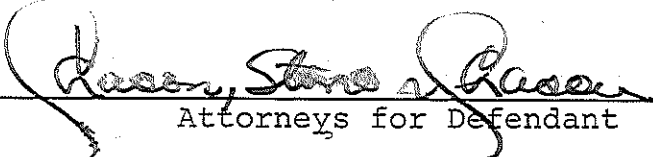
Comes the Defendant in the above styled cause and for plea to the Complaint filed in said cause, separately and severally, says:

1. That the allegations of the Complaint are untrue.
2. Not guilty.
3. That the Plaintiff has entered suit on a life insurance policy which was issued by the Defendant, which said policy had an effective date of December 10, 1964, was dated January 4, 1965, and was actually delivered and accepted February 12, 1965. That such policy was issued in connection with a group insurance policy in which the employer was the Baldwin Pole & Piling Co., Inc., a corporation. That Joseph J. Smilie signed an application for such policy on December 10, 1964, at which time he was over the age of sixty-five years. That such application listed him as a foreman earning Four Hundred Dollars (\$400.00) a month. At the time of the making of such application and at the time of the issuance of such policy, the said Joseph J. Smilie was not a foreman for Baldwin Pole & Piling Co., Inc., and was not earning Four Hundred Dollars (\$400.00) per month. That the group insurance policy which was issued to Baldwin Pole & Piling Co., Inc., specifically stated that each employee covered thereby must be

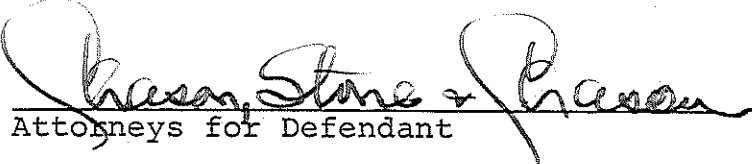
working full time and that an employee working less than an average of thirty hours per week is not a full time employee and was not eligible for insurance. At the time that such application for the policy was made and at the time of the issuance of such policy Joseph J. Smilie was not a full time employee and did not work an average of thirty hours per week in his employ by Baldwin Pole & Piling Co., Inc. That less than two years expired from the issuance of such policy before the death of Joseph J. Smilie during which time such policy was contestable because of erroneous statements in the application, hence the Plaintiff is not entitled to recover in this action.

4. That the policy sued upon was issued by the Defendant as a group insurance policy to Baldwin Pole & Piling Co., Inc. and in the issuance of such policy the Defendant relied upon the truth of an application signed by Joseph J. Smilie on December 10, 1964, in which application it was recited that the said Joseph J. Smilie was a foreman earning Four Hundred Dollars (\$400.00) per month. That the Defendant understood from information given it by employer that Joseph J. Smilie was a foreman earning approximately Four Hundred Dollars (\$400.00) per month. That Joseph J. Smilie died within less than two years from the date of the issuance of such policy, during which period of time the policy is contestable on erroneous statements made in connection with securing such policy. That such policy provided that a foreman over the age of sixty-five years would have coverage on a death claim in the sum of Five Thousand Dollars (\$5,000.00) while a regular employee over sixty-five years of age would have coverage on a death claim of One Thousand Dollars (\$1,000.00). That at the time of the issuance of such policy and at the time of the death of the said Joseph J. Smilie he was not a foreman of Baldwin Pole &

Piling Co., Inc., but was only serving as a Chaplain which would be classified as a regular employee. That the Defendant had no knowledge, during the lifetime of the said Joseph J. Smilie that he was not a foreman, earning Four Hundred Dollars (\$400.00) per month, but was at most a part time employee. That such policy provided that only full time employees, who were working an average of thirty hours per week were covered under such policy. That the Defendant did not have any knowledge, during the lifetime of the said Joseph J. Smilie, as to his hours of working and understood that he was working an average of thirty hours per week, as a foreman, but after his death the Defendant was informed that the duties of Joseph J. Smilie consisted of conducting a devotion- al for about fifteen minutes each working morning and occasionally calling on the sick employees of such company. That the said Joseph J. Smilie did not qualify as a full time employee, nor as a foreman, hence he cannot recover in this suit.

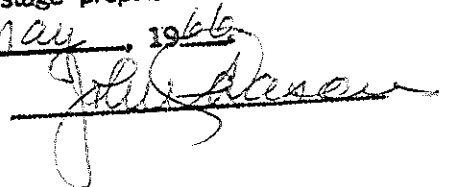

Attorneys for Defendant

Defendant demands trial of this cause
by a jury.


Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 17th day of May, 1966.



FILED

MAY 17 1966

ALICE J. DUCK, CLERK
REGISTER

KATIE L. SMILIE,

Plaintiff,

vs.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

PLEAS

RECEIVED
JAN 10 1934
U.S. DISTRICT COURT
SOUTHERD DISTRICT OF NEW YORK
CLERK OF COURT
JAN 10 1934