

4695

THE CONTINENTAL INSURANCE COMPANY, a corporation,	⌘	IN THE CIRCUIT COURT OF
	⌘	
Complainant,	⌘	BALDWIN COUNTY, ALABAMA
	⌘	
vs.	⌘	
	⌘	IN EQUITY NO. 4695
CHARLES N. TAYLOR, ET AL.,	⌘	
	⌘	
Respondents.	⌘	

FINAL DECREE

This cause coming on to be heard was submitted on behalf of The Continental Insurance Company, a corporation, on the complaint filed by it in this cause on September 1, 1959, motion for Decree Pro Confesso against the Respondent W. B. Thompson, the Answer of Sumner G. Whittier as Administrator of Veterans Affairs, an officer of the United States of America; and on behalf of the Respondent Charles N. Taylor on his Answer, Decree Pro Confesso against the Respondent W. B. Thompson, the Answer of Sumner G. Whittier, as Administrator of Veterans Affairs, an officer of the United States of America, the Motion filed by the Respondent Charles N. Taylor on May 27, 1960, and the Decree dated May 31, 1960, granting said motion and ordering payment to Sumner G. Whittier, aforesaid, of the sum of \$6,106.83; and on behalf of all parties on the testimony taken ore tenus by the Court. It appears to the Court that the Complainant, acting by and through its duly authorized agent, the Robertsdale Insurance Agency, did issue its standard fire insurance policy #143 to and in the name of the Respondent Charles N. Taylor, which said policy insured a one-story masonry building occupied as a dwelling and fruit stand located #700 E/S Loxley Road, Robertsdale, in Baldwin County, Alabama, against fire, lightning and other perils in the amount of \$7,700.00, a true and correct copy of which fire insurance policy is now in evidence in this cause, and there was attached to said policy and made a part thereof a mortgagee clause in favor of H. V. Higley, as Administrator of Veterans Affairs and his successors in office as such, and W. B. Thompson, Robertsdale, Alabama (the Respondent Sumner G. Whittier being the successor in office of the said H. V. Higley). That the property described and insured by said policy of insurance was damaged or destroyed by fire on March 25, 1959, at which time said policy was in full force and effect, and the damage to the prop-

erty as a result of said fire amounted to more than \$7,700.00. That said mortgagee clause in favor of H. V. Higley as Administrator of Veterans Affairs and W. B. Thompson was attached to and made a part of said policy of insurance \$143 by the Agent of the Complainant without the knowledge or consent of the Respondent Charles N. Taylor and he had no knowledge that said mortgagee clause was attached thereto until after the loss on March 25, 1959; but he did have knowledge of the original mortgagee clause attached to and made a part of the policy in favor of the Administrator of Veterans Affairs at the time of the issuance of said policy. That the Respondent W. B. Thompson had no right, title, interest, claim, equity or demand in said property or said policy of insurance on March 25, 1959, and the only persons who were entitled to the proceeds of said policy of insurance as a result of said loss on said date were Sumner G. Whittier as Administrator of Veterans Affairs and Charles N. Taylor. That the Complainant did, at the time of the filing of the complaint in this cause, pay into the Register of this Court the sum of \$7,500.00 and the Administrator of Veterans Affairs has, under and by virtue of the decree of this Court dated May 31, 1960, been paid the full amount due him as shown by his answer filed in this cause on October 6, 1959, and the only person therefore who is now interested in the proceeds of said policy of insurance is the Respondent Charles N. Taylor. It appears from the complaint and the answer of the Respondent Charles N. Taylor that there is a dispute between said parties as to the amount for which the Complainant is liable under the terms of said policy of insurance as a result of said loss of March 25, 1959. The Complainant contends that it entered into an agreement with the Respondent Charles N. Taylor in settlement of such controversy whereby it would pay to the Respondent Charles N. Taylor, the Administrator of Veterans Affairs and W. B. Thompson, and pursuant to such agreement, did issue its draft in the amount of \$7,500.00 and that the only reason that such agreement was not concluded was that one of the payees on said draft, W. B. Thompson, refused to endorse the same. The Respondent Charles N. Taylor contends that he did agree to settle such loss with the Complainant for \$7,500.00 provided said sum was payable to himself and the Administrator of Veterans Affairs; and that at no time did he agree that W. B. Thompson was entitled to any of the proceeds of such policy

as a result of said loss. The Court finds that there was never any agreement between the Complainant and the Respondent Charles N. Taylor as to the actual amount of the damage to the property covered by said policy of insurance as a result of said fire but that the Respondent Charles N. Taylor did agree to settle his claim under said policy for the amount of \$7,500.00 upon the condition that said sum would be payable to himself and Sumner G. Whittier as Administrator of Veterans Affairs; and at no time did he agree that W. B. Thompson was entitled to any of the proceeds of said policy of insurance or that any amount paid by the Complainant on account of such loss would be payable to himself, the Administrator of Veterans Affairs and W. B. Thompson. The Court further finds that the Complainant is liable for the full amount of said policy or \$7,700.00, together with interest as hereinafter set forth and the Respondent Charles N. Taylor is entitled to receive all of said proceeds over and above the amount heretofore paid to the Administrator of Veterans Affairs. The Court further finds that in view of all of the circumstances and in particular in view of the fact that the Complainant contends that it is liable for an amount less than that claimed by the Respondent Charles N. Taylor and less than the actual damages to said property as a result of a loss covered thereby that it is not entitled to the payment of any attorneys' fees out of the proceeds of said policy. And the Court having considered all of the above, it is, therefore

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, In Equity, as follows:

1. That the Complainant is liable under the terms of its policy of insurance aforesaid for the payment of \$7,700.00 for and on account of the loss which occurred to the property covered by said policy of insurance on March 25, 1959; and that it pay to the Register of this Court in discharge of such liability the sum of \$200.00, the sum of \$7,500.00 having been heretofore paid into this Court on September 1, 1959.

2. That the Complainant is further liable for the payment of interest on \$1,593.17 (the difference between the amount for which it is liable under said policy and the amount (\$6,106.83) heretofore paid by the Register of this Court under the decree in this

cause dated May 31, 1960) at six per cent (6%) per annum from December 9, 1959, or \$95.59.

3. That upon the payment of said amounts into this Court by the Complainant that the Register of this Court forthwith pay the same to the Respondent Charles N. Taylor together with any amount now in her hands remaining from the amount paid by the Complainant on September 1, 1959.

4. That the Respondent Charles N. Taylor is now, by virtue of the Administrator of Veterans Affairs having been paid the amount due him, the only person entitled to receive any of the proceeds of said policy of insurance, aforesaid; and that upon the payment by the Complainant of all of the amounts herein decreed to be paid by it that it will be relieved of any and all further liability under its policy of insurance, aforesaid.

5. That the Complainant be, and it is hereby, taxed with the cost of this proceeding.

Done this 9th day of December, 1960.

*Hubert M. Galt*  
Circuit Judge

FILED

DEC 14 1960

ALICE J. DUCK, CLERK  
REGISTER



5. The Court abused its discretion in failing to tax the costs of this proceeding against the fund which had been paid into the registry of this court by the complainant.

WHEREFORE, complainant moves the Court to tax the costs of this proceeding against the fund which the complainant heretofore paid into court in this cause. Complainant further moves the Court for such other, further and general relief as it may be equitably entitled to, the premises considered.

Respectfully submitted,

  
Solicitor for Complainant

3/2/61 The Court after a few comments  
of the above motion is of the  
opinion that it should be and  
is hereby - movement and  
done - Hubert M. [unclear]  
[unclear]

MOTION TO RETAX COSTS

THE CONTINENTAL INSURANCE COMPANY,  
a corporation,

Complainant,

VS.

CHARLES N. TAYLOR, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 4695

FILED  
FEB 1 1961  
ALICE L. DUCK, CLERK  
REGISTER

1/16  
1/16

CONTINENTAL INSURANCE COMPANY,		
Petitioner,		IN THE CIRCUIT COURT OF
vs.		
		BALDWIN COUNTY, ALABAMA
CHARLES N. TAYLOR, ET AL.,		
		IN EQUITY
Respondents.		<del>4695</del>

This day came Charles N. Taylor, one of the Respondents in the above styled cause, by his attorneys, and filed his motion, in writing, to have this cause set down for hearing for submission for final decree, the same having been called to the attention of the Court and the Court having considered the same, is of the opinion that this cause should be set down for hearing for submission for final decree and that notice of the same should be given to Continental Insurance Company and to the Administrator of Veterans Affairs at the Regional Office of the Veterans Administration at 400 Lee Street, Montgomery, Alabama; it is, therefore

ORDERED by the Circuit Court of Baldwin County, Alabama, In Equity, that this cause be, and the same is hereby, set down for hearing and for submission for final decree on the 22 day of June, 1960, and that notice thereof be given to Continental Insurance Company by the Register of this Court by mailing a copy of this order to J. B. Blackburn, the attorney of record for said insurance company, and to the Administrator of Veterans Affairs by mailing a copy of this order to the Regional Office, Veterans Administration, 400 Lee Street, Montgomery, Alabama.

Done this the 24 day of May, 1960.

**FILED**

MAY 24 1960

ALICE I. DUCK, CLERK  
REGISTER

*Robert M. Stone*  
Circuit Judge



THE CONTINENTAL INSURANCE  
COMPANY, a corporation,

Complainant,

VS.

CHARLES N. TAYLOR, ET AL.,

Respondents.)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

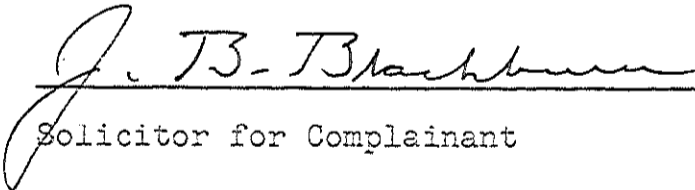
IN EQUITY

NO. 4695

DEMURRER TO MOTION

Now comes the complainant and demurs to the motion filed in this cause by the respondent, Charles N. Taylor, in which he is seeking an order or decree requesting the Register of this Court to pay the Administrator of Veterans Affairs the amount due on the mortgage described in the motion from the funds that have been deposited by the complainant in this cause, and as grounds of such demurrer assigns, separately and severally, the following:

1. There is no equity in the motion.
2. No facts are alleged on which the relief sought can be granted.
3. No facts are alleged to show that this Court has any authority to order payment of the amount due on the said mortgage at this time.

  
Solicitor for Complainant

DEMURRER TO MOTION

THE CONTINENTAL INSURANCE COMPANY,  
a corporation,

VS. Complainant,

CHARLES N. TAYLOR, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 4695

*Filed May 30, 1963*  
*J. V. ...*  
*J. V. ...*

THE CONTINENTAL INSURANCE	⌘	
COMPANY, A CORPORATION,		IN THE CIRCUIT COURT OF
	⌘	
Complainant,		BALDWIN COUNTY, ALABAMA
	⌘	
vs.		IN EQUITY
	⌘	
CHARLES N. TAYLOR, ET AL.,		
	⌘	
Respondents.		

ANSWER OF RESPONDENT CHARLES N. TAYLOR

Comes now, the Respondent Charles N. Taylor, and for answer to the Bill of Complaint heretofore filed in this cause, says as follows:

1. The Respondent admits the allegations of paragraph "1" of the Bill of Complaint except that he is informed and believes and upon such information and belief alleges that the Respondent W. B. Thompson is now a resident of Prichard, Mobile County, Alabama.
2. The Respondent admits the allegations of paragraph "2" of the Bill of Complaint.
3. The Respondent admits that there was attached to and made a part of the policy referred to in paragraph "3" of the Bill of Complaint a mortgagee clause (New York Standard) a copy of which is attached to the Bill of Complaint and the Respondent alleges that in addition thereto there was an endorsement attached to the policy, a copy of which is attached to this answer and marked "EXHIBIT I" and by reference made a part hereof. The Respondent further alleges, however, that even though such mortgagee clause and endorsement were attached to his contract of insurance with the Complainant that said mortgagee clause was attached by Robertsdale Insurance Agency, the agent of the Complainant, acting by and through Grady P. Gilbert, Jr., as its agent, and said endorsement was made by said Robertsdale Insurance Agency, the agent of the Complainant, acting by and through Grady P. Gilbert, Jr., as its agent, without the knowledge of or consent of this Respondent and this Respondent had no notice of either the attachment of said mortgagee clause or of the endorsement until after the loss of March 25, 1959, referred to in the Bill of Complaint and neither said mortgagee clause nor endorsement constitute a part of the contract of insurance which this Respondent had with the Complainant, the same having been made by the Complainant without any

consent of, knowledge of or ratification by this Respondent; but in law and fact constitutes a separate and distinct contract between the Complainant, the Administrator of Veterans Affairs and W. B. Thompson. That the attachment of said mortgagee clause and the endorsement of said insurance policy were done by the Robertsdale Insurance Agency as the agent of the Complainant, acting within the line and scope of its agency, and do not constitute a part of the contract of insurance between this Respondent and the Complainant. This Respondent admits that H. V. Higley, as Administrator of Veterans Affairs, and his successors in office as such, is the owner of a first mortgage on the property covered by the contract of insurance numbered 143 entered into by and between this Respondent and the Complainant and that the said mortgagee is entitled to receive the amount due under its mortgage out of the proceeds of said policy of insurance under and by virtue of a mortgagee clause (New York Standard) dated January 8, 1957. The Respondent denies that W. B. Thompson, one of the Respondents herein, also known as Wade B. Thompson, is the owner of or holder of a second mortgage on said property or is the trustee under any deed of trust covering said property, or is in any way or manner interested in the same, or is entitled to receive any of the proceeds of said policy of insurance.

4. The Respondent admits that the property described in and insured by said policy of insurance was destroyed by fire on, to-wit: March 25, 1959, and the Respondent further admits that the Complainant did issue its draft for Seven Thousand Five Hundred Dollars (\$7,500.00) payable to this Respondent, the Administrator of Veterans Affairs and W. B. Thompson and the Respondent admits that the same was not presented for payment because W. B. Thompson refused to endorse said draft and for the reason that said draft was issued pursuant to an agreement of settlement between this Respondent and the Complainant with the understanding that this Respondent would agree to accept Seven Thousand Five Hundred Dollars (\$7,500.00) if it were paid immediately to himself and the Administrator of Veterans Affairs as provided in his contract of insurance. The Respondent denies that the amount of said loss was Seven Thousand Five Hundred Dollars (\$7,500.00) and for further answer alleges that the property covered by said policy of insurance was destroyed by fire and that the actual

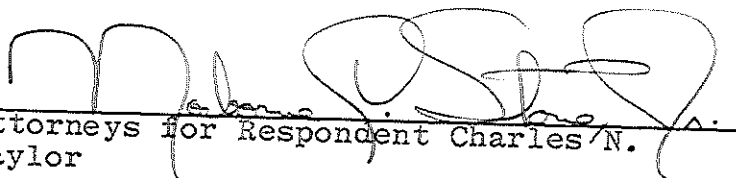
cash value of the property at the time of the loss was in excess of Seven Thousand Seven Hundred Dollars (\$7,700.00) and that the amount due under said policy to this Respondent and the Administrator of Veterans Affairs on account of said loss is the sum of Seven Thousand Seven Hundred Dollars (\$7,700.00).

5. The Respondent neither admits nor denies the allegations of paragraph "5" of the Bill of Complaint and specifically alleges that the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) will not and does not discharge the liability of the Complainant under its policy of insurance.

6. The Respondent neither admits nor denies that it was necessary for the Complainant to employ an attorney to file the Bill of Complaint and for further answer to the allegations of paragraph "6" alleges that if it was necessary that the Complainant employ an attorney it was through no fault of this Respondent and was a direct result of the Complainant, acting by and through the Robertsdale Insurance Agency, as its agency, in making an endorsement to said policy of insurance and attaching a mortgagee clause thereto without any authority from, notice to, knowledge of or ratification by this Respondent and the Respondent further alleges that he and the Administrator of Veterans Affairs are entitled to the full sum of Seven Thousand Seven Hundred Dollars (\$7,700.00) jointly, as provided in said policy of insurance.

Respectfully submitted,

CHASON & STONE

By:   
Attorneys for Respondent Charles N. Taylor

ENDORSEMENT

No. 280  
 Ala.-Fla.  
 Ga.-S. C.  
 (Edition 10-57)

IMPORTANT—Please fill out blanks to avoid correction notice because of insufficient information to check.



Attached to and forming part of Policy No. 215 of the  
 The Continental Insurance Company

issued at its Robertsdale, Alabama Agency: CONTINENTAL INSURANCE AGENCY

Date of Endorsement March 6, 1957  
 Name of Insured Charles H. Taylor Agent.

Old Location of property (St. and No.) \_\_\_\_\_  
 New Location of property (St. and No.) \_\_\_\_\_

Town Robertsdale, Alabama Shr. No. \_\_\_\_\_ Blk. No. \_\_\_\_\_

Date of Policy 1/8/57 Expiration 1/8/62 Form No. \_\_\_\_\_ & date \_\_\_\_\_

Kind of policy, check one;  Cash;  Annual Renewal.

Property Covered Dwelling and Fruit Stand  
 (State whether building, machinery, stock, etc.)

Type of Insurance, check one;  Specific;  Blanket;  Reporting.

Amount each Item { Fire Bldg. \$ 7700.00  
 { Conts. \_\_\_\_\_  
 { Wind\* Bldg. \_\_\_\_\_  
 { Conts. \_\_\_\_\_

\*Do not fill in when written subject to Extended Coverage

PERIL	OLD RATE	NEW RATE	ADDITIONAL AMOUNT	ADDITIONAL PREMIUM	AMOUNT CANCELLED	RETURN PREMIUM	PER CENT CO-JNS.	DEDUCTIBLE CLAUSE	CODE
Fire									
E. C. E.			XXXXX		XXXXXX				
V. & M. M.			XXXXXX		XXXXXX				
Wind.									
FULL COPY OF ENDORSEMENT.					--TOTAL(S)--				

Effective this date Mortgage Clause dated January 8, 1957 is hereby deleted and Mortgage Clause dated March 6, 1957 is hereby attached.

In all other respects policy remains as written.

EXHIBIT I

THE CONTINENTAL INSURANCE  
COMPANY, A Corporation,

Complainant,

vs.

CHARLES N. TAYLOR, ET AL.,  
Respondents.

X  
X  
X  
X  
X  
X  
X

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

MOTION

Comes now Charles N. Taylor, one of the Respondents in the above styled cause, by his attorneys, and respectfully represents and shows unto this Honorable Court as follows:

That this proceeding was instituted by the Complainant on September 1, 1959 against this Respondent; Sumner G. Whittier, as Administrator of Veterans Affairs, and his successors in office as such; and W. B. Thompson. That a decree pro confesso was rendered against the Respondent W. B. Thompson by the Register of this Court on May 13, 1960; the Respondent Sumner G. Whittier as Administrator of Veterans Affairs filed his answer to the complaint on October 6, 1959 and this Respondent filed his answer to the complaint on January 19, 1960, reference to all of which pleadings is hereby made as though they were each incorporated herein. The Complainant alleges that it issued a policy of fire insurance covering certain property located near Robertsdale, Alabama and it further alleges and contends that under the terms of that policy there is due to be paid the sum of \$7,500.00 but this Respondent claims there is due the amount of \$7,700.00, the amount of said policy. The Respondent Sumner G. Whittier as Administrator of Veterans Affairs in and by the terms of its answer alleges that it is entitled to be paid first out of the proceeds of said insurance policy the amount due it under the terms of a direct loan made by the Administrator of Veterans Affairs to this Respondent and that, on September 30, 1959, there was a balance due under said loan to the Administrator of Veterans Affairs of \$5,942.79, which sum has increased at the rate of \$.6723 per day. This Respondent admits that said amount is due to the Veterans Administration and that he is indebted to the Veterans Administration in said amount under the terms

of his loan dated March 10, 1952 as set forth in the answer of the Administrator of Veterans Affairs and the Complainant alleges that there is a mortgagee clause attached to and forming a part of said policy of insurance in and by the terms of which the Administrator of Veterans Affairs is entitled to such priority of payment. That the amount due under said loan is less than the amount due under the policy of insurance issued by the Complainant whether this Honorable Court decrees that the amount due thereunder is \$7,500.00 as contended by the Complainant or \$7,700.00 as contended by the Respondent.

WHEREFORE, the premises considered, this Respondent respectfully moves this Honorable Court to enter an order or decree directing the Register of this Honorable Court to pay to Sumner G. Whittier as Administrator of Veterans Affairs due him under the loan hereinabove referred to and as set forth in his answer to the Bill of Complaint out of the funds now in her hands as such and which were deposited in this Court by the Complainant at the time of the filing of its Bill of Complaint on September 1, 1959.

Respectfully submitted,

CHASON & STONE

By:   
Attorneys for Respondent, Charles N. Taylor.



CONTINENTAL INSURANCE COMPANY,	§		
		IN THE CIRCUIT COURT OF	
Petitioner,	§		
		BALDWIN COUNTY, ALABAMA	
vs.	§		
		IN EQUITY	NO. 4695
CHARLES N. TAYLOR, ET AL.,	§		
Respondents.	§		

DECREE OVERRULING DEMURRER TO MOTION AND GRANTING  
MOTION TO PAY ADMINISTRATOR OF VETERANS AFFAIRS

This cause coming on to be heard was submitted upon the motion of Charles N. Taylor heretofore filed in this cause to pay the Administrator of Veterans Affairs the amount due on the mortgage described in said motion from the funds that have been heretofore deposited by the Complainant in this cause and the demurrer of the Complainant to said motion; now comes the Respondent Charles N. Taylor and Norborne C. Stone, Jr., one of his attorneys, and also comes the Complainant and J. B. Blackburn, its attorney, and the Court having considered the motion and the demurrer thereto is of the opinion that the demurrer to the motion should be overuled and the motion of the Respondent should be granted; it is, therefore

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, In Equity, as follows:

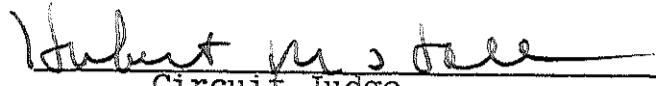
1. That the demurrer of the Complainant, the Continental Insurance Company, a corporation, to the motion of the Respondent Charles N. Taylor hereinabove referred to be, and the same is hereby, overuled.

2. That Alice J. Duck, the Register of this Court, pay out of the proceeds of the money heretofore deposited with her as such by the Complainant to Sumner G. Whittier, as Administrator of Veterans Affairs, the sum of Six Thousand One Hundred and Six Dollars and Eighty-three Cents (\$6,106.83), the amount due such Administrator of Veterans Affairs on the date hereof under the loan made by the Veterans Administration under and pursuant to the Servicemen's Re-adjustment Act of 1944, as amended, as shown by the answer of such Administrator filed in this cause on October 6, 1959.

3. That the Register of this Court retain the balance of said funds deposited by the Complainant for further orders of this

Court.

Done this 31st day of May, 1960.

  
Circuit Judge

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and W. B. Thompson to appear within thirty days from the service of this writ in the Circuit Court to be held for said county, Equity Side, at the place of holding same, then and there to answer the bill of complaint of The Continental Insurance Company, a corporation.

WITNESS my hand and seal on this the 1st day of September, 1959.

  
Register

Respondent Charles N. Taylor  
resides at Robertsdale, Alabama.

Respondent W. B. Thompson re-  
sides at Robertsdale, Alabama.

Respondent Sumner G. Whittier's  
address is: Administrator of  
Veterans Affairs, Washington, D. C.

THE CONTINENTAL INSURANCE COMPANY,  
a corporation,

VS.

Complainant,

CHARLES N. TAYLOR, SUMNER G.  
WHITTIER, as Administrator of  
Veterans Affairs, and his succes-  
sors in office as such, and W. B.  
THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY NO. \_\_\_\_\_

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

The Continental Insurance Company, a corporation, as complainant, presents this bill of complaint against Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and his successors in office as such, and W. B. Thompson, as respondents, and, thereupon, complainant complains and shows unto the court and your Honor as follows:

1. The complainant is a New York corporation, which is qualified to do business and which is now doing business in the State of Alabama.

The respondent, Charles N. Taylor, is over twenty-one years of age and a resident of Baldwin County, Alabama.

Sumner G. Whittier is Administrator of Veterans Affairs, is a non-resident of the State of Alabama, whose residence and post office address is Washington, D. C, and is over twenty-one years of age.

The respondent, W. B. Thompson, is over twenty-one years of age and a resident of Baldwin County, Alabama.

2. On, to-wit, December 28, 1956, the complainant, acting by and through its duly authorized agent, the Robertsdale Insurance Agency, issued its standard fire insurance policy No. 143 to the respondent, Charles N. Taylor, which insured the one story masonry building occupied as a dwelling and fruit stand located #700 on E/S Loxley Road, Robertsdale, Alabama, in Baldwin County, Alabama, against fire, lightning and other perils as provided in the said policy, in the amount of Seventy-seven Hundred Dollars (\$7700.00) for the period of five years which commenced at noon on January 8, 1957, and ended at noon on January 8, 1962.

3. Attached to and made a part of the said policy was a mortgage clause, a copy of which is hereto attached, marked Exhibit A, and by reference made a part hereof, which provided that loss or damage, if any, under the said policy shall be payable to H. V. Higley, as Administrator of Veterans Affairs, and his successors in office as such, first mortgagee, and to W. B. Thompson, Roberts-dale, Alabama, second mortgagee. Sumner G. Whittier is the successor in office of H. V. Higley, as Administrator of Veterans Affairs.

4. The property described in and insured by the said policy of insurance was damaged or destroyed by fire on, to-wit, March 25, 1959, because of which said loss or damage the sum of Seventy-five Hundred Dollars (\$7500.00) is now due under the said policy of insurance. The complainant heretofore prepared a draft for \$7500.00 to cover the amount of the said loss, payable to Charles N. Taylor, the Administrator of Veterans Affairs and W. B. Thompson, which draft has not been presented for payment because the payees named therein, or some of them, have refused to endorse the said draft.

5. The complainant has in its possession the said sum of \$7500.00, the amount due under the said policy of insurance, which said sum is claimed by the respondents Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and W. B. Thompson. The complainant, pursuant to the provisions of Equity Rule 36, hereby pays the said sum of \$7500.00 into court in discharge of its liability under the said policy of insurance.

6. It has been necessary for the complainant to employ J. B. Blackburn, an Attorney at Law practicing in Baldwin County, Alabama, to file this bill of complaint and prosecute this proceeding on its behalf.

#### PRAYER FOR PROCESS

Complainant prays that the usual process of this Honorable Court will forthwith issue to the respondents requiring them to appear and plead, answer or demur to this bill of complaint within the time required by law.

PRAYER FOR RELIEF

Complainant prays for the following separate and several relief:

A. That a decree be rendered discharging the complainant from all other and further liability under the said policy of insurance.

B. That a reasonable attorney's fee be fixed, allowed and ordered paid to the complainant's said attorney for the services rendered by him, payable out of the said sum of \$7500.00.

C. That the said sum of \$7500.00, after payment of costs and a reasonable attorney's fee for complainant's said attorney, be ordered distributed to the rightful owners who are the respondents or some of the respondents named in this proceeding.

D. Complainant further prays for such other, further and general relief as it may be equitably entitled to, the premises considered.

  
Solicitor for complainant

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

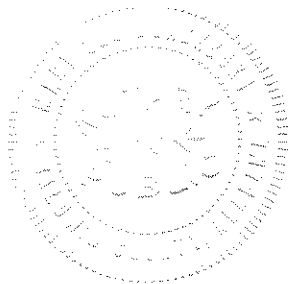
Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says: That he is solicitor for the complainant in the above entitled cause, and is informed and believes and on such information and belief states the fact to be that the allegations contained in the above and foregoing bill of complaint are true.

J. B. Blackburn

Sworn to and subscribed before me on  
this the 1st day of September, 1959.

Mary Lou Blackburn

Notary Public, Baldwin County, Alabama



## EXHIBIT A

No. 630

## MORTGAGEE CLAUSE

(N. Y. Standard)

Loss or damage, if any, under this policy, shall be payable to H. V. Higley, as Administrator of Veterans Affairs, and his Successors in office as such, Washington, D. C., first mortgagee (or trustee), and to W. B. Thompson, Robertsdale, Alabama second mortgagee (or trustee), as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, That the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon, and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but, in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owners, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of his, her or their claim.

It is hereby stipulated that this clause does not apply to personal property.\*

Attached to and forming part of Policy No. 143 of

The Continental Insurance Company issued at its  
Name of Insurance Company

Robertsdale, Alabama Agency.  
City or Town

Dated March 6, 1957 19  

Robertsdale Insurance Agency Agent.

\*NOTE TO AGENTS - This line (\*) must be voided when clause is made applicable to personal property.





THE CONTINENTAL INSURANCE COMPANY,  
a corporation,

Complainant,

VS.

CHARLES N. TAYLOR, SUMNER G.  
WHITTIER, as Administrator of  
Veterans Affairs, and his succes-  
sors in office as such, and W. B.  
THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. \_\_\_\_\_

Comes Sumner G. Whittier, as Administrator of Veterans' Affairs, an Officer of the United States of America, one of the respondents in the above styled cause, and for answer to the bill of complaint heretofore filed in this cause, says:

1. For answer to paragraph 1 of the bill of complaint, this respondent is without knowledge or information as to which state under whose laws the complainant is incorporated but admits that complainant is qualified to do and is doing business in the State of Alabama. Respondent admits the other averments of paragraph 1 of the bill of complaint.

2. Respondent admits the averments of paragraph 2 of the bill of complaint.

3. Respondent admits the averments of paragraph 3 of the bill of complaint.

4. Respondent admits that the property described in and insured by said policy of insurance was damaged or destroyed by fire on, to-wit, March 25, 1959, but he is without knowledge or information sufficient to admit, deny, or confess and avoid the other averments of said paragraph 4.

5. In answer to paragraph 5 of the bill of complaint, respondent says that said policy of insurance was in the amount of \$7,700.00 and that he is without knowledge or information sufficient to enable him to admit, deny, or confess and avoid the amount due under said policy of insurance. Respondent admits that any sum now due under said policy of insurance resulting from the destruction of the insured property by fire is due him under the terms of the mortgagee clause attached to said policy and made a part thereof which mortgagee clause, a copy thereof, is attached to the complainant's bill of complaint in this cause and by reference is made a part of this respondent's answer to said bill of complaint.

6. In answer to paragraph 6 of the bill of complaint, respondent avers that under said mortgagee clause, this respondent, as first mortgagee, was entitled to be paid first, in preference to any other parties, for any loss resulting from fire to the insured property, and so far as this respondent is concerned, it was not necessary for complainant to employ an attorney at law to file said bill of complaint.

For further answer to said bill of complaint, this respondent avers that on March 10, 1952, he made a direct loan for the amount of \$7,700.00 to the respondent, Charles N. Taylor, under and pursuant to the Servicemen's Readjustment Act of 1944, as amended, which Act is commonly referred to as the G. I. Bill of Rights. Said loan was made for the purpose of enabling the said Charles N. Taylor to purchase the property that has been destroyed by fire and insured by complainant under the terms of said insurance policy.

Said loan is evidenced by a mortgage note dated March 10, 1952, in the amount of \$7,700.00, payable in monthly installments, and by a purchase money mortgage securing said mortgage note in the same amount and of even date with said note, which mortgage covers the property and constitutes a purchase money first mortgage lien on the property insured by said insurance policy and destroyed by said fire.

Respondent avers further that on the date of said fire, said policy of insurance was in force and effect and that the indebtedness evidenced by respondent's said note and mortgage was outstanding and had not been paid. Respondent avers that the unpaid balance of said mortgage indebtedness as of September 30, 1959, amounts to \$5,942.79, and interest accrues on such indebtedness at the daily rate of \$.6723.

Respondent says, therefore, that because he is the holder of a purchase money mortgage on the property destroyed by fire, covered by said insurance policy, and covered by the mortgagee clause attached to and made a part of the bill of complaint filed in this cause, which said mortgagee clause being identified as Exhibit A and which mortgagee clause is by reference made a part of this respondent's answer, he is entitled to so much of the proceeds of said insurance policy that will pay off the unpaid balance of said mortgage indebtedness; and respondent says further that his claim is entitled to preference over all other claims filed or that may be filed in this cause by virtue of the fact that his claim is that of a purchase money first mortgagee as set out in said mortgagee clause.

*Herbert J. Lewis, Jr.*

HERBERT J. LEWIS, JR., Chief Attorney  
Veterans Administration

*Frank N. Savage*

FRANK N. SAVAGE  
400 Lee Street, Montgomery, Alabama

Attorneys for Claimant, Sumner G. Whittier,  
as Administrator of Veterans' Affairs

STATE OF ALABAMA )  
MONTEGOMERY COUNTY )

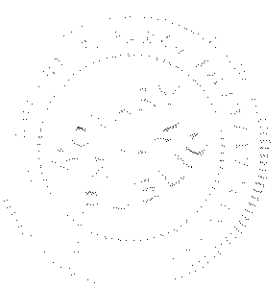
Before me, the undersigned authority, within and for said County in said State, personally appeared Frank N. Savage, who, after being by me first duly and legally sworn, deposes and says: That he is one of the attorneys of record for the respondent, Sumner G. Whittier, in the above entitled cause, and is informed and believes and on such information and belief states the fact to be that the allegations contained in the above and foregoing answer to the bill of complaint are true.

*Frank N. Savage*

Sworn to and subscribed before me on  
this the 30th day of September, 1959.

*Robert F. Park*

Notary Public



FILED  
OCT 6 1959  
ALICE J. DUCK, CLERK REGISTER

THE CONTINENTAL INSURANCE COMPANY,  
A Corporation,

Complainant,

vs.

CHARLES N. TAYLOR, SUMNER G.  
WHITTIER, as Administrator of  
Veterans Affairs, and his  
successors in office as such,  
and W. B. THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

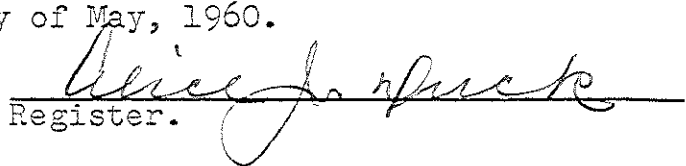
IN EQUITY.

NO. 4695.

DECREE PRO CONFESSO:

In this cause it being made to appear to the Register of this Court that the Summons and Bill of Complaint in this cause was served on the Respondent, W. B. Thompson on March 23, 1960, and that said Respondent, W. B. Thompson, has failed to plead, answer or demur to the said Bill of Complaint to the date hereof, it is, therefore, on motion of the Complainant, ordered that said Bill of Complaint be and it is hereby taken as confessed by the Register against the Respondent, W. B. Thompson.

Done this 13 day of May, 1960.

  
Register.

DECREE PRO CONFESSO

THE CONTINENTAL INSURANCE  
COMPANY, a corporation,

Complainant,

vs.

CHARLES N. TAYLOR, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 4695.

FILED

MAY 13 1960

ALICE J. DUCK, CLERK  
REGISTER

THE CONTINENTAL INSURANCE COMPANY,  
A Corporation,

Complainant,

vs.

CHARLES N. TAYLOR, SUMNER G.  
WHITTIER, as Administrator of  
Veterans Affairs, and his  
successors in office as such,  
and W. B. THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 4695.

MOTION FOR DECREE PRO CONFESSO:

Now comes the Complainant, by its Solicitor, and shows unto the Court that a copy of the summons and bill of complaint in this cause was served on the Respondent, W. B. Thompson, on March 23, 1960, and that said Respondent, W. B. Thompson has failed to plead, answer or demur to said Bill of Complaint to the date hereof;

WHEREFORE, Complainant moves that the Register enter a decree pro confesso against the said Respondent, W. B. Thompson.

Dated this 13<sup>th</sup> day of May, 1960.

  
Solicitor for Complainant.

FILED

MAY 13 1960

AMERICAN CLEAR REGISTER



VETERANS ADMINISTRATION

REGIONAL OFFICE  
400 LEE STREET  
MONTGOMERY 4, ALABAMA

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

September 29, 1959

YOUR FILE REFERENCE:

Mrs. Alice J. Duck  
Register, Circuit Court  
Baldwin County  
Bay Minette, Alabama

IN REPLY REFER TO:

3022/275  
DL 1115 Ala 1  
TAYLOR, Charles N.

Dear Mrs. Duck:

Attached is the answer of Sumner G. Whittier, as Administrator of Veterans' Affairs, which please file in the case of THE CONTINENTAL INSURANCE COMPANY, a corporation, Complainant, VS. CHARLES N. TAYLOR, SUMNER G. WHITTIER, As Administrator of Veterans Affairs, and W. B. THOMPSON, now pending in the Circuit Court of Baldwin County, In Equity. We are not aware of the number of this case since it is not shown on the copy of the bill of complaint served by mail on the Administrator.

Service was had on the Administrator of Veterans' Affairs by certified mail, and the matter was referred to this office for handling. It appears that the Administrator of Veterans' Affairs received the certified mail, consisting of the bill of complaint, on September 8, 1959.

It will be greatly appreciated if you will notify me as soon as this case is set for hearing.

Very truly yours,

Frank N. Savage  
Loan Guaranty Attorney

FOR: HERBERT J. LEWIS, JR.  
Chief Attorney

Encl:  
Answer



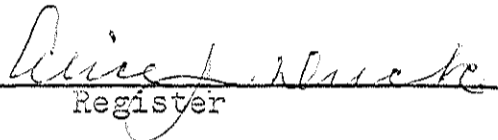


STATE OF ALABAMA )  
                          \*  
BALDWIN COUNTY    )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and W. B. Thompson to appear within thirty days from the service of this writ in the Circuit Court to be held for said county, Equity Side, at the place of holding same, then and there to answer the bill of complaint of The Continental Insurance Company, a corporation.

WITNESS my hand and seal on this the   1   day of September, 1959.

  
\_\_\_\_\_  
Register

Respondent Charles N. Taylor  
resides at Robertsdale, Alabama.

Respondent W. B. Thompson re-  
sides at Robertsdale, Alabama.

Respondent Sumner G. Whittier's  
address is: Administrator of  
Veterans Affairs, Washington, D. C.

THE CONTINENTAL INSURANCE COMPANY, )  
a corporation, )

VS. Complainant, )

CHARLES N. TAYLOR, SUMNER G. )  
WHITTIER, as Administrator of )  
Veterans Affairs, and his succes- )  
sors in office as such, and W. B. )  
THOMPSON, )

Respondents. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY NO. \_\_\_\_\_

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

The Continental Insurance Company, a corporation, as complainant, presents this bill of complaint against Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and his successors in office as such, and W. B. Thompson, as respondents, and, thereupon, complainant complains and shows unto the court and your Honor as follows:

1. The complainant is a New York corporation, which is qualified to do business and which is now doing business in the State of Alabama.

The respondent, Charles N. Taylor, is over twenty-one years of age and a resident of Baldwin County, Alabama.

Sumner G. Whittier is Administrator of Veterans Affairs, is a non-resident of the State of Alabama, whose residence and post office address is Washington, D. C, and is over twenty-one years of age.

The respondent, W. B. Thompson, is over twenty-one years of age and a resident of Baldwin County, Alabama.

2. On, to-wit, December 28, 1956, the complainant, acting by and through its duly authorized agent, the Robertsdale Insurance Agency, issued its standard fire insurance policy No. 143 to the respondent, Charles N. Taylor, which insured the one story masonry building occupied as a dwelling and fruit stand located #700 on E/S Loxley Road, Robertsdale, Alabama, in Baldwin County, Alabama, against fire, lightning and other perils as provided in the said policy, in the amount of Seventy-seven Hundred Dollars (\$7700.00) for the period of five years which commenced at noon on January 8, 1957, and ended at noon on January 8, 1962.

3. Attached to and made a part of the said policy was a mortgage clause, a copy of which is hereto attached, marked Exhibit A, and by reference made a part hereof, which provided that loss or damage, if any, under the said policy shall be payable to H. V. Higley, as Administrator of Veterans Affairs, and his successors in office as such, first mortgagee, and to W. B. Thompson, Roberts-dale, Alabama, second mortgagee. Sumner G. Whittier is the successor in office of H. V. Higley, as Administrator of Veterans Affairs.

4. The property described in and insured by the said policy of insurance was damaged or destroyed by fire on, to-wit, March 25, 1959, because of which said loss or damage the sum of Seventy-five Hundred Dollars (\$7500.00) is now due under the said policy of insurance. The complainant heretofore prepared a draft for \$7500.00 to cover the amount of the said loss, payable to Charles N. Taylor, the Administrator of Veterans Affairs and W. B. Thompson, which draft has not been presented for payment because the payees named therein, or some of them, have refused to endorse the said draft.

5. The complainant has in its possession the said sum of \$7500.00, the amount due under the said policy of insurance, which said sum is claimed by the respondents Charles N. Taylor, Sumner G. Whittier, as Administrator of Veterans Affairs, and W. B. Thompson. The complainant, pursuant to the provisions of Equity Rule 36, hereby pays the said sum of \$7500.00 into court in discharge of its liability under the said policy of insurance.

6. It has been necessary for the complainant to employ J. B. Blackburn, an Attorney at Law practicing in Baldwin County, Alabama, to file this bill of complaint and prosecute this proceeding on its behalf.

#### PRAYER FOR PROCESS

Complainant prays that the usual process of this Honorable Court will forthwith issue to the respondents requiring them to appear and plead, answer or demur to this bill of complaint within the time required by law.

PRAYER FOR RELIEF

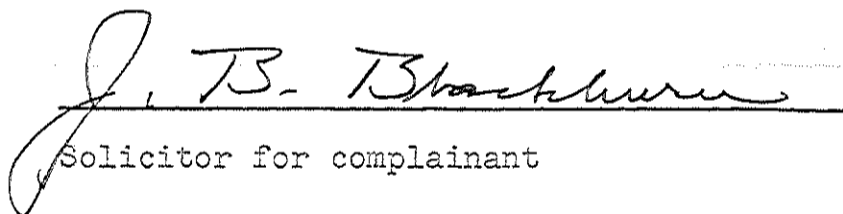
Complainant prays for the following separate and several relief:

A. That a decree be rendered discharging the complainant from all other and further liability under the said policy of insurance.

B. That a reasonable attorney's fee be fixed, allowed and ordered paid to the complainant's said attorney for the services rendered by him, payable out of the said sum of \$7500.00.

C. That the said sum of \$7500.00, after payment of costs and a reasonable attorney's fee for complainant's said attorney, be ordered distributed to the rightful owners who are the respondents or some of the respondents named in this proceeding.

D. Complainant further prays for such other, further and general relief as it may be equitably entitled to, the premises considered.

  
Solicitor for complainant

STATE OF ALABAMA )  
                                  \*  
BALDWIN COUNTY    )

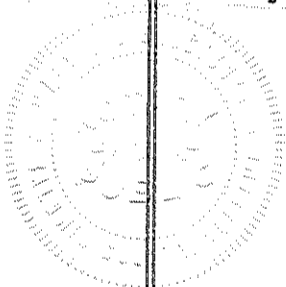
Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says: That he is solicitor for the complainant in the above entitled cause, and is informed and believes and on such information and belief states the fact to be that the allegations contained in the above and foregoing bill of complaint are true.

J. B. Blackburn

Sworn to and subscribed before me on  
this the 1st day of September, 1959.

Mary Lou Blackburn

Notary Public, Baldwin County, Alabama



## EXHIBIT A

No. 630

## MORTGAGEE CLAUSE

(N. Y. Standard)

Loss or damage, if any, under this policy, shall be payable to H. V. Higley, as Administrator of Veterans Affairs, and his Successors in office as such, Washington, D. C., first mortgagee (or trustee), and to W. B. Thompson, Robertsdale, Alabama second mortgagee (or trustee), as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, That the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon, and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but, in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

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It is hereby stipulated that this clause does not apply to personal property.\*

Attached to and forming part of Policy No. 143 of

The Continental Insurance Company issued at its  
Name of Insurance Company

Robertsdale, Alabama Agency.  
City or Town

Dated March 6, 1957 19    

Robertsdale Insurance Agency Agent.

\*NOTE TO AGENTS - This line (\*) must be voided when clause is made applicable to personal property.

4695

#1 - INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY to addressee

Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

*James B. Whiston*

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SEP 4 1959

MAIL UNIT, AAA

VA MAIL

DATE DELIVERED

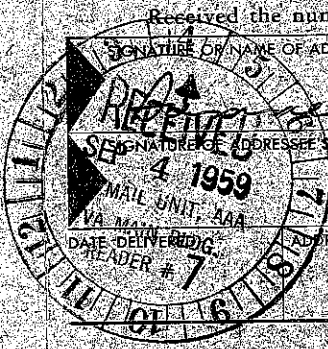
LEADER # 7

ADDRESS WHERE DELIVERED (only if registered in item # 1)

REGISTERED MAIL

1959

RECEIVED



POSTMARK OF  
DELIVERING OFFICE

INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

← RETURN  
TO

POD Form 3811 Jan. 1958

REGISTERED NO.	NAME OF SENDER
	Alice J. Duck, Register
CERTIFIED NO.	STREET AND NO. OR P. O. BOX
194712	Box 239
INSURED NO.	CITY, ZONE AND STATE
	Bay Minette, Alabama