

CALLA MAI BELL TANNER,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
vs.	:	AT LAW
BALDWIN MUTUAL INSURANCE	:	NO. 1596
COMPANY, INC.,	:	
Defendant.	:	

INTERROGATORIES PROPOUNDED TO THE PLAINTIFF BY DEFENDANT

Comes now the defendant in the above styled cause and propounds the following separate and several interrogatories to the plaintiff:

1. Please state your correct name, age and address.
 - (a) Where were you born? (b) Where were you reared ?
 - (c) State the month and year you moved to Baldwin County, Alabama. (d) Are you married? If so, state the name of your husband. (e) Were you ever married before? If so, state the name and address of your previous husband or husbands. (f) Are you a divorced woman? If so, from what husband or husbands have you ever been divorced and where was said divorce or divorces obtained?
2. Where were you dwelling and residing on the 12th day of May, 1950, the date you claim a fire damaged a 2 story frame building? (a) Were you dwelling and residing on the 12th day of May, 1950, in said 2 story frame building which you claim in your complaint was damaged by a fire on said date? (b) How long had it been on May 12, 1950, since you had dwelled and resided in said building? (c) Had you sold or agreed to sell such building to any one on or prior to May 12, 1950? If so, who had you sold or agreed to sell the same to? (d) Was said agreement or sale evidenced by an instrument in writing? If so, attach to your answers to these interrogatories a copy of said instrument in writing. (e) If said agreement was verbal, state the terms and conditions thereof, whether or not and on what date the purchaser went into possession of said property under the terms

of said agreement, and whether any part, and if so, how much, of the consideration was paid by the purchaser. (f) State whether or not said agreement to sell said property has been set aside by any court decree and whether or not, if the same has been set aside, it was set aside on the grounds of fraud on your part or that of an agent of yours, and attach a copy of said decree duly certified by the clerk of such court. (g) Was any one actually occupying the said 2 story frame building on the 12th day of May, 1950? If so, who was so occupying the same? (h) Did you sell or agree to sell said 2 story frame building to William C. McClure prior to May 12, 1950? If so, when did you sell or agree to sell the same to him? (i) Did William C. McClure ever occupy said building? If so, when? (j) Did you deliver the keys of said house to said William C. McClure? If so, approximately when did you deliver said keys to him? (k) When did said William C. McClure cease residing in and occupying said house? (l) Did it remain unoccupied thereafter? (m) Was it unoccupied on May 12, 1950, the date you say a fire occurred therein? (n) If it was not occupied at said time, please state how long it had been unoccupied and who had the keys to said house. (o) Had it been occupied since the month of September, 1949? (p) When did William C. McClure cease to dwell in and occupy said 2 story frame dwelling? (q) Was it locked up at the time of said fire on May 12, 1950? (r) Did any one occupy it after William C. McClure ceased to occupy it? If so, who? (s) Was any one occupying it at the time of said fire? If so, whom, and for how long had he or she been occupying the house?

3. Where were you during the time the fire was burning said 2 story frame building on the 12th day of May, 1950? (a) What time of the day did said fire occur? (b) State what you were doing for three (3) hours immediately prior to said fire. (c) Who was with you, if anyone, during the period of three (3) hours immediately prior to said fire? (d) When did you first know of said fire? (e) Where were you when you received notice of said fire? (f) Who notified you of the said fire? (g) Did you go immediately to the

point of said fire? (h) How long did it take for you to go to the point of said fire from where you were when you first learned of said fire? (i) What efforts were made by you to save said 2 story frame building or the contents therein? (j) What was the time and origin of said fire.

4. Did you have a key on May 12, 1950, to an entrance door to said 2 story frame building damaged by fire on May 12, 1950, in which the personal property, furniture, and equipment you allege in your complaint was contained? If so, where did you get said key? (a) From whom did you get said key? (b) How long had you had it? (c) Did you deliver the keys of said house to William C. McClure at the time you sold or agreed to sell the same to him? (d) Did you retain a key to said 2 story frame building? (e) Did you have a key or keys to any part of said 2 story frame building damaged by fire on the 12th day of May, 1950? If so, what part or parts of said premises were said keys to ?

5. Where were you dwelling and residing at the time that said fire occurred on May 12, 1950, in the 2 story frame building mentioned in your complaint? (a) If you answer that you were dwelling and residing in a cottage near said 2 story frame building on May 12, 1950, please advise what cottage it was. (b) Was it the cottage next to said 2 story frame building, or was it a different cottage? (c) Were there any buildings or cottages between the cottage in which you dwelt and resided on May 12, 1950, and said 2 story frame building damaged by fire on said date? (d) Was the cottage in which you dwelt and resided on said date numbered? If so, what was the number of said cottage? (e) Did you own the cottage in which you dwelt and resided on May 12, 1950? (f) Did you own any other cottage near said 2 story frame building damaged by fire on May 12, 1950, on said date? If so, state the numbers and their locations. (g) How long had you been dwelling and residing in said cottage which you were occupying on May 12, 1950? (h) Did you move into said cottage at the time you sold or agreed to sell the 2 story frame building to said William C. McClure? (i) If not, how long

after you sold or agreed to sell said 2 story frame building was it before you moved into said cottage? (j) From what house, building or dwelling did you move to said cottage ?

6. Were you the owner of any personal property, furniture and equipment located and contained in the 2 story frame building which was damaged by fire on the 12th day of May, 1950, in Baldwin County, Alabama? (a) Please state and describe each piece of personal property, furniture and equipment that you did so own and which was located in and contained in said building at the time of said fire on the 12th day of May, 1950, and indicate the amount of damage to each piece of such personal property. (b) Please state from whom you purchased each item of said personal property, furniture and equipment, the date you so acquired it and the cost of each item and whether you paid for the same. (c) Please state the actual cash value of each item of said property so located in said 2 story frame building on the 12th day of May, 1950. (d) Please state as of May 12, 1950, the amount which it would cost to replace each item of said property so located in said two story frame building on the 12th day of May, 1950, with like kind and quality. (e) Please state as of May 12, 1950, and presently, your interest and the interest of any others in said property, any encumbrances thereon, and whether or not your claim of title thereto was under a conditional sale or lease sale agreement.

7. Did you at any time since May 12, 1950, render to this defendant a proof of loss under the policy sued on, signed and sworn to by you? If so, to whom was it rendered, when was it rendered, and attach a copy thereof to your answers to these interrogatories. (a) Please state exactly what said proof of loss contained. (b) Have you done this? (c) Please state whether within sixty (60) days after said fire of May 12, 1950, you rendered to this company a proof of loss under the policy sued on, signed and sworn to by you, stating your knowledge and belief as to the time and origin of the loss, your interest and the interest

of any others in the property so lost, the actual cash value of each item of such property and the amount of the loss thereto, the encumbrances upon said property, each contract of insurance which you had thereon and for what purpose the building described in the policy was occupied at the time of the loss. If you answer yes, please state the date on which you rendered said sworn proof of loss, the person to whom you delivered the same, and attach a copy thereof to your answers to these interrogatories. (d) Have you done this? (e) If your answer to Interrogatory 7 (c) is in the affirmative, please state the date of delivery of such sworn proof of loss and the manner and place of delivery of same.

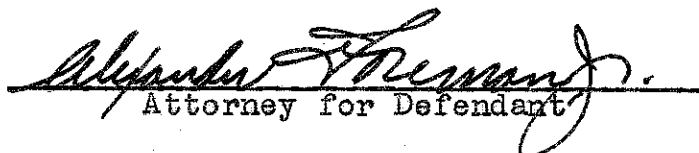
8. Did you have any fire insurance on the building mentioned in the complaint as a 2 story frame building which you claim was damaged by fire on May 12, 1950? If you answer yes, please give the name of each company in which you had a policy of insurance covering said building, the date each said policy was issued, the term of insurance covered, the amount of each policy of insurance and whether each said policy was in force and effect at the time of the fire on May 12, 1950. (a) Have you done this? (b) Did you have any insurance against fire on the personal property, furniture and equipment located and contained in the 2 story frame building damaged by fire on the 12th day of May, 1950, suit for which you have brought in this case? If so, please state the name of each company in which you had on May 12, 1950, a policy of insurance against fire, the date said policy was issued, the term thereof, the amount of each policy of insurance, the number of each said policy, and whether it was in force and effect on May 12, 1950. (c) What was the total amount of insurance against fire existing on said personal property, furniture and equipment, the loss for which you are suing in this case, on May 12, 1950? (d) Give the name of each fire insurance company in which you had a policy thereon on May 12, 1950, the amount of fire insurance covered by each said policy, the number of the policy, the date it was issued, the term it covered, and whether it was in force and effect at the time of the fire on May 12, 1950. (e) Please

attach to your answers a copy of the insurance policy or policies sued on in your complaint, together with a copy of each policy of fire insurance covering, on May 12, 1950, the personal property located in the two story frame building referred to in your complaint, and a copy of each policy of fire insurance covering, on May 12, 1950, said two story frame building referred to in your complaint.

9. (a) Please state the actual cash value of the two story frame building which you alleged was damaged by fire on the 12th day of May, 1950, in Baldwin County, Alabama. (b) Please state whether or not said building was a total loss. (c) Please state the amount which it would have cost on May 12, 1950, to replace said two story frame building with like kind and quality. (d) Please describe the foundation of said two story frame building on May 12, 1950. (e) Please state what type floor said two story frame building had on the first story, how many porches and rooms there were on said first floor, and describe each of the same, giving dimensions, how many square feet of area the first floor of the building itself consisted of and how many square feet of area the first floor porch or porches consisted of, respectively, as of May 12, 1950. (f) Please describe the overhead ceiling and walls of the rooms and porches on the first floor of said two-story frame building, on May 12, 1950. (g) State how many rooms and baths there were in said building on the second floor thereof on May 12, 1950, and describe each of the same, giving the dimensions thereof, the type floors therein, as well as the type of ceiling and side walls thereof, respectively. (h) State the number of square feet that were on the second floor of said building on May 12, 1950. (i) State how many rooms and baths there were in said building on the third floor thereof on May 12, 1950, and describe each of the same, giving the dimensions thereof, the type floors therein, as well as the type of ceiling and side walls thereof, respectively. (j) State the number of square feet that were on the third floor of said building on May 12, 1950. (k) What type roof was there on said two story frame building on May 12, 1950? (l) State the age of said two story

frame building, and if you do not know the age thereof, state when you purchased the same and how many years you owned same prior to the alleged fire on May 12, 1950, and whether or not said two story frame building was on the premises when you purchased the same. (m) Describe the condition of said two story frame building on May 12, 1950, and if you state that you do not know the same as of that date, describe the condition thereof on the last date known to you. (n) Please state as of May 12, 1950, and presently, your interest and the interest of any others in the said two story frame building which you alleged was damaged by fire on May 12, 1950, in Baldwin County, Alabama, any encumbrances thereon, and state the type of ownership which you claim to have had therein on said date and which you claim to now have.

10. Have you ever been convicted of receiving stolen property or of any other crime? If so, give the date of each such conviction, the crimes of which you were convicted, the court or courts in which you were convicted, the sentence pronounced upon you by the judgment of each conviction; and attach to your answers to these interrogatories a copy of each indictment or complaint under which you were tried and convicted.


Attorney for Defendant

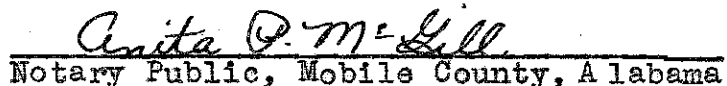
STATE OF ALABAMA :

COUNTY OF MOBILE :

Beforeme, Anita P. McGill, the undersigned authority, personally appeared Alexander Foreman, Jr., who, being by me first duly sworn, on oath deposes and says: That he is attorney for the defendant in the above styled cause, and that the answers to the preceding interrogatories propounded by the defendant to the plaintiff, if truthfully and fully answered, will be material testimony for defendant in said cause.



Subscribed and sworn to beforeme,
this 15th day of May, 1951.


Notary Public, Mobile County, Alabama

Received in Sheriff's Office
this 17 day of May 1951
TAYLOR WILLIAM Sheriff

OK
1701596

to the amount on
your check direct
mailed, etc.

2/3/51
O. H. Holcombe

Received 21 Day at May 1951
and on 23 Day of June 1951
I served a copy of the within
on Arthur J. Kelly
by service on _____
W. H. HOLCOMBE, Sheriff
By M. B. Smith D.A.

FILED
MAY 17 1951
ALICE L. DICK, Register

CALLA MAI TANNER,
Plaintiff

vs.

BALDWIN MUTUAL
INSURANCE COMPANY,
Defendant

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

AT LAW, NO. 1596

INTERROGATORIES PROPOUNDED TO THE DEFENDANT BY THE PLAINTIFF

Comes now the Plaintiff in the above entitled cause and propounds the following separate and several interrogatories to the Defendant:-

1. Please state whether or not one George W. Sergeant represented your company as an adjuster in connection with the loss sued on.

2. If your answer to the foregoing interrogatory was in the affirmative, please state whether or not the said George W. Sergeant, as such adjuster, made any examination or investigation of the loss sued on within sixty (60) days from the date thereof, that is, May 12, 1950.

3. Please state the name and address of the agent by whom the policy sued on was issued.

4. Please state whether or not the policy sued on was solicited by a sub-agent of the agent named by you in your answer to the foregoing interrogatory and, if your answer is in the affirmative, state the name and address of such sub-agent.

5. If you have not already done so in your answers to the foregoing interrogatories, state the name and address of the person who collected from the Plaintiff the premiums on the policy sued on and the name and address of the person who delivered to the Plaintiff the policy sued on.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

BY


Member Appearing

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, Gertrude McCorquodale, a Notary Public in and for said State and County, personally appeared Henri M. Aldridge, who, having been by me first duly sworn, deposes and says that he is attorney of record for the Plaintiff in the above entitled cause and that the answers to the foregoing interrogatories propounded by the Plaintiff to the Defendant, if truthfully and fully answered, will be material testimony for the Plaintiff in said cause.


HENRI M. ALDRIDGE

Subscribed and sworn to before me
this the 29th day of October, 1953.


NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

Received in Sheriff's Office
this 3 day of Nov 1953
TAYLOR WILKINS, Sheriff

EXCQUITED

FILED 9 day of Nov 1953

BY SERVING A COPY OF THE RETURN ON

Deborah Williams

W. H. TROTTMAN, Sheriff
MOBILE COUNTY, ALA.

BY: M. Burnett

NOV 15 96

ST

CV 44
Calla Mae Lanner

VS

Deborah Williams
Insurance Co. a Corp.

Service

Wm. Williams, Jr. serving
mobile, Ala.

97

FILED

NOV 2 1953

MADE 1 PM

MADE 1 PM

ALEXANDER FOREMAN, JR.
ATTORNEY AT LAW
SUITE 417 FIRST NATIONAL BANK BUILDING
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.
GEORGE K. WILLIAMS, JR.

January 31, 1951

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

Re: Calla Mai Bell Tanner vs.
Baldwin Mutual Insurance
Company, Inc., No. 1596

Dear Mrs. Duck:

Enclosed herewith you will please find, in duplicate, defendant's plea in abatement in the above styled cause, which I shall appreciate your causing to be filed.

Please acknowledge receipt of this plea.

Yours very truly,


ALEXANDER FOREMAN, JR.

AF/am
Encl.

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE
SUITE 631-636 - FIRST NATIONAL BANK BLDG.
P. O. BOX 47
MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

JACK W. SPRINKLE

Oct.
8th
1951

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

RE: Calla Mai Tanner vs Baldwin Mutual Ins. Co., Inc.
Law No. 1596.

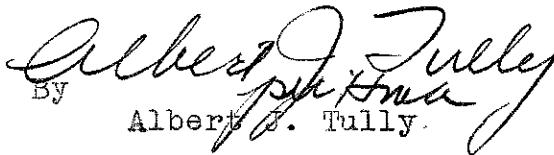
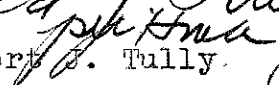
Dear Mrs. Duck:

Enclosed herewith I am handing to you Plaintiff's answers to interrogatories propounded by the Defendant in the above entitled cause, which answers I shall be glad if you will file in this matter.

A copy of this letter, together with a copy of the answers to interrogatories, is also forwarded herewith to Mr. Alexander Foreman, Jr., attorney for the Defendant.

Very sincerely yours,

HOLBERG, TULLY & ALDRIDGE


By 
Albert J. Tully

AJT/s

C. C. Mr. Alexander Foreman, Jr.
Attorney at Law
First National Bank Bldg.
Mobile, Alabama

ALEXANDER FOREMAN, JR.
ATTORNEY AT LAW
SUITE 417 FIRST NATIONAL BANK BUILDING
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.
JOSEPH M. HOCKLANDER

March 7, 1952

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

Re: Calla Mai Bell Tanner vs Baldwin Mutual
Insurance Co., Inc. At Law No. 1596

Dear Mrs. Duck:

Enclosed herewith you will please find the
defendant's demurrer to the plaintiffs replications
to pleas filed by the defendant in the above styled
cause, which demurrer I shall appreciate your causing
to be filed in this matter.

A copy of this letter, together with a signed
copy of the demurrer, is also forwarded herewith to
Messrs. Holberg, Tully & Aldridge, attorneys for the
plaintiff.

Yours very truly,


ALEXANDER FOREMAN, JR.

AF/jt

cc. Holberg, Tully & Aldridge
P. O. Box 47
Mobile, Alabama

ALEXANDER FOREMAN, JR.
ATTORNEY AT LAW
SUITE 417 FIRST NATIONAL BANK BUILDING
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.
GEORGE K. WILLIAMS, JR.

September 19, 1951

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

Re: Calla Mai Bell Tanner vs.
Baldwin Mutual Insurance
Company, Inc., No. 1596

Dear Mrs. Duck:

Enclosed herewith you will please find motion to require interrogatories to be answered by the plaintiff, which I shall appreciate your filing in the above styled cause.

It will be appreciated if you will note on the bottom of this letter that the same have been received and filed, and return same to me.

Yours very truly,


ALEXANDER FOREMAN, JR.

AF/am
Encl.

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE

SUITE 631-636 - FIRST NATIONAL BANK BLDG.

P. O. BOX 47

MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

MITCHELL G. LATTOF

February
6th,
1953

Mrs. Alice J. Duck
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama

RE:- Tanner vs Baldwin Mutual Insurance Company.
Law No. 1596.

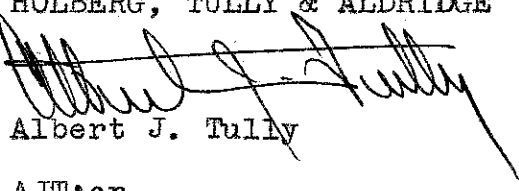
Dear Mrs. Duck:

Enclosed herewith we are handing to you the original
and a copy of an additional replication to be filed
by the Plaintiff in the above entitled cause.

We shall be grateful if you will attend to the filing
of this replication.

Very sincerely yours,

HOLBERG, TULLY & ALDRIDGE



Albert J. Tully

AJT:cr

Enc.

HOLBERG, TULLY AND ALDRIDGE

SUITE 631-636 - FIRST NATIONAL BANK BLDG.

P. O. BOX 47

MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

Feb.
29,
1952

Mrs. Alice J. Duck
Clerk of the Circuit Court
Baldwin County Court House
Bay Minette, Alabama

RE: Calla Mai Tanner vs. Baldwin Mutual Ins. Co., Inc.
Law No. 1596.

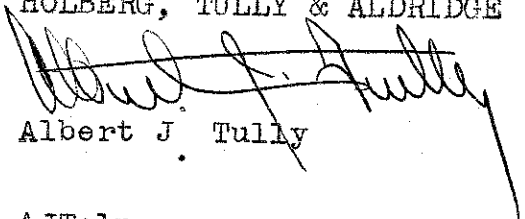
Dear Mrs. Duck:

Enclosed herewith I am handing to you Plaintiff's replications to pleas filed by Defendant in the above entitled cause, which replications I shall be glad if you will file in this matter.

A copy of this letter, together with an executed copy of the replications, is also forwarded herewith to Mr. Alexander Foreman, Jr., attorney for the Defendant.

Very sincerely yours,

HOLBERG, TULLY & ALDRIDGE


Albert J. Tully

AJT:lp

ENCL:1

cc: Mr. Alexander Foreman, Jr.
Attorney at Law
First National Bank Bldg.
Mobile, Alabama.

STATE OF ALABAMA

BALDWIN COUNTY

THIS CONTRACT AND AGREEMENT, made and entered into, in duplicate, on this the 17th day of June, 1948, by and between CALLA MAI TANNER WATKINS, formerly Calla Mai Tanner, and HOWARD C. WATKINS, her husband, hereinafter referred to as "Sellers", and ADDIE BRINEX, a widow, and WILLIAM C. McCLUNE and ELIZABETH McCLUNE, husband and wife, hereinafter referred to as "Purchasers", WITNESSETH:-

That for and in consideration of the sum of One Thousand Dollars (\$1,000.00) and other valuable considerations in hand paid by the Purchasers to the Sellers, receipt whereof is hereby acknowledged and of the further sums to be paid as hereinafter set out and of the mutual covenants herein contained, Sellers do hereby agree to sell to the Purchasers and the Purchasers do hereby agree to purchase from the Sellers the following described real and personal property situated in the County of Baldwin, State of Alabama, viz:-

Beginning fifty (50) feet from the regular high tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point at the Southeast corner or East line of Lot No. four (4) known as the Julia Hudson lot running thence in a northern direction parallel along said lot 306 feet; thence North 65° 30' East 236 feet; thence South 306 feet running in the same degrees as the aforesaid 306 foot line to the 50 foot avenue on Bay Oronoca; thence West 236 feet to the point of beginning, it being the intention of the parties to describe the West 236 feet of that certain property purchased by the Seller by Warranty Deed recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 71 MS, page 197-8.

The 50 foot avenue from high tide line was reserved in a prior conveyance and is to be maintained as a public drive.

There is included in this transfer all furniture, fixtures and equipment located in the building on the above described premises, a more detailed list of which is attached hereto and made a part hereof.

The Purchasers hereby agree to pay the Sellers the further and additional sum of Forty-nine Thousand Four Hundred and Eighteen Dollars (\$49,418.00) with interest at the rate of five per cent (5%) per annum, computed monthly, payable as follows; viz: One Hundred Fifty Dollars (\$150) on July 1st, 1948, with interest computed as

of the date of payment and the additional sum of One Hundred Fifty Dollars (\$150.00), with interest computed monthly paid in addition thereto, on the first day of each successive month thereafter until the full principal sum of Forty-nine Thousand Four Hundred and Eighteen Dollars (\$49,418.00), with all interest due, has been paid in full; said payments to be made at the State Bank of Elberta, Elberta, Alabama.

IT IS UNDERSTOOD AND AGREED between the parties hereto that the Purchasers shall immediately go into possession of the property hereinabove described and pay all State and County taxes due on or levied against said lands. Purchasers further agree to take out and carry insurance, both fire and windstorm, in some reliable insurance company in an amount not less than the balance due on this contract with a loss payable clause to the Sellers as their interest may appear. Should the said Purchasers fail to pay the taxes on this property or should they fail to take out and carry insurance as they have agreed to do, then in that event, Sellers may, at their option, do so, but a payment by the Sellers will not be construed as a waiver of the breach of this agreement until full payment has been made by the Purchasers to the Sellers of all money expended in the payment of such taxes and other charges and which has been accepted by the Sellers.

Time is of the essence of this Contract.

The Purchasers agree to keep the property in good order and repair and to maintain it in a clean, healthful and neat manner. Purchasers also agree not to do or permit to be done any act whereby the value of the property would be lessened, ordinary wear and tear excepted.

IT IS FURTHER AGREED between the parties hereto that the Sellers shall have the right of use of the garage located on the above described premises, of the store room in the attic and of the benedix washing machine until such time as a house is constructed by the Sellers. The Sellers shall also have full right and power to continue the storage of lumber on the premises and Purchasers agree that the lumber now stored or later stored on the premises will not be disturbed by them.

The Sellers do, for themselves, their heirs, executors and

administrators, hereby agree to execute and deliver to the Purchasers a warranty deed conveying the above described property to them or their heirs as soon as the full purchase price of said land as above set out has been paid to them by the Purchasers but should the purchasers fail to pay any installment as the same becomes due or should they fail to pay the interest which is due monthly in addition to the installments or should they fail to pay the taxes due on said property or fail to pay the premiums on the insurance or should they breach any of the other conditions of this Contract, then in any of said events, all rights of the Purchasers, both real and personal, shall cease, determine and be void and they shall immediately vacate said property and redeliver possession to the Sellers and all payments made by them to the Sellers shall be retained by Sellers as rent and liquidated damages.

WITNESS the hands and seals of the parties hereto on this the day and year first above written.

(Sgd) Calla Mai Tanner Watkins SEAL

(Sgd) Howard O. Watkins SEAL

Sellers

(Sgd) William McClure SEAL

(Sgd) Elizabeth McClure SEAL

(Sgd) Addie Briney SEAL

Purchasers

STATE OF ALABAMA

BALDWIN COUNTY

I, Cecil G. Chason, a Notary Public in and for said County in said State, hereby certify that Howard O. Watkins and Calla Mai Tanner Watkins, husband and wife, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and Notarial Seal hereto affixed by me on this 17th day of June, 1948.

(Sgd) Cecil G. Chason
Notary Public, Baldwin County
State of Alabama

Notary Seal

STATE OF ALABAMA

BALDWIN COUNTY

I, Cecil G. Chason, a Notary Public in and for said County in said State, hereby certify that on the 17th day of June, 1948, came before me the within named Callie Mai Tanner Watkins, known to me to be the wife of the within named Howard C. Watkins, who, being examined separate and apart from her husband, touching her signature to the within instrument, acknowledged that she executed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

Given under my hand and Notarial Seal hereto affixed by me on this 17th day of June, 1948.

Notary Seal

(Sgd) Cecil G. Chason
Notary Public, Baldwin County
State of Alabama

STATE OF ALABAMA

BALDWIN COUNTY

I, Cecil G. Chason, a Notary Public in and for said County in said State, hereby certify that Addie Brinay, a widow, and William McClure and Elizabeth McClure, husband and wife, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and Notarial Seal hereto affixed by me on this 17th day of June, 1948.

Notary Seal

(Sgd) Cecil G. Chason
Notary Public, Baldwin County
State of Alabama

CALLA MAI BELL TANNER,	1	IN THE CIRCUIT COURT
Plaintiff	1	OF
vs.	1	BALDWIN COUNTY, ALABAMA
BALDWIN MUTUAL INSURANCE	1	AT LAW. NO. _____
COMPANY, INC.,	1	
Defendant.	1	

Comes now the Plaintiff in the above entitled cause and for answer to the interrogatories propounded to this Plaintiff by the Defendant, says as follows:-

1. My correct name is Calla Mai Tanner. I am fifty-six years of age. My address is Orange Beach, Alabama.

(a), (b), (c), (d), (e) and (f). Upon advice of counsel, Plaintiff declines to answer for that the question asked is impertinent, irrelevant and immaterial.

2. On May 12, 1950, I was dwelling and residing at my property on Bear Point, Orange Beach, Alabama, known as Bear Point Lodge. The property consisted of the large frame building and five cottages. At that time, I was living in No. Five cottage, which is the first cottage as you enter the property from the East. I had previously occupied the large frame building until May 30, 1948, at which time I then changed over to the Number Five cottage where I was residing on May 12, 1950.

(a) Already answered.

(b) Already answered.

(c) Yes. Addie Briney, William McClure and Elizabeth McClure. (d) Yes. The copy is attached hereto and marked exhibit "A".

(e) Already answered.

(f) This contract was the subject of the litigation in the case of William C. McClure, Elizabeth McClure & Addie Briney, Complainants, vs. Callie Mae Tanner, Equity Suit No. 2187 in the Circuit Court of Baldwin County, Alabama. The last decree entered in that case was on December 8, 1950, and my appeal from that decree is now pending in the Supreme Court of Alabama. I do not have

a certified copy of the decree.

(g) To the best of my knowledge, no one was actually in the house on May 12, 1950.

(h) Already answered.

(i) Yes. About June 1, 1948.

(j) Yes. About June 1, 1948.

(k) To the best of my knowledge, William C. McClure left the house about November 1, 1948.

(l) To the best of my knowledge, either William McClure or Elizabeth McClure, or one or both of them, came back to the house on more than one occasion after November 1, 1948, but I do not know the exact date when they came back.

(m) Already answered.

(n) I do not know of my own knowledge.

(o) To the best of my knowledge, either William McClure or Elizabeth McClure or both of them, were in the house on one or more occasions after November 1, 1948, but I do not know the exact dates.

(p) Already answered.

(q) To the best of my knowledge, the house was locked up.

(r) To the best of my knowledge, no one other than William C. McClure or Elizabeth McClure occupied the house.

(s) Not to my knowledge.

3. When I first heard of the fire, I was at my property at Orange Beach, Alabama, about three miles from the frame building. The fire was still burning when I got back to the building.

(a) I do not know.

(b) I do not know when the fire started. However, on that day, after lunch, Judge and Mrs. Robert Woodruff of Benton, Alabama, came to the house and visited with me and I talked with them for awhile. Then I went to the pasture and fed my chickens, following which I came back to the house, got a truck and drove around to my place at Orange Beach, about three miles from the frame building, for the purpose of getting some pine straw to put on my flower beds. I was there at this other place, raking up pine straw, when I received word that the house was on fire.

(c) Origin Holmes and Don Morrison.

(d) I was just leaving my place at Orange Beach with a load of straw on the truck when Oscar Callaway told me that my house was burning up.

(e) State Highway 160, just East of Mrs. Smith's store at the entrance to my Orange Beach property.

(f) Oscar Callaway.

(g) Yes. I immediately drove to the end of the highway and ran the rest of the way in to my place.

(h) I don't know, I drove and ran as fast as I could.

(i) When I got to my place, the fire had burned down into the second story and the roof had fallen in. I had already asked Oscar Callaway to call the fire department and there was nothing else that I could do. I did try to save the cottages.

(j) I do not know.

4. No.

(a) Answered.

(b) Answered.

(c) Yes.

(d) No.

(e) No.

5. Already answered.

(a) Already answered.

(b) Already answered.

(c) Yes.

(d) Already answered.

(e) Yes.

(f) Yes. Cottages 1, 2, 3 and 4, located between Cottage No. 5 and the large frame building.

(g) Already answered.

(h) Already answered.

(i) Already answered.

(j) Already answered.

6. Yes.

(a) Each and every piece of personal property located in the

building when it burned on May 12, 1950, was completely destroyed by fire. I cannot now describe each and every piece of this personal property, furniture and equipment, although I did give a complete description to the adjuster who contacted me for the insurance company after the fire.

(b) I do not remember from whom each item of personal property, furniture and equipment was purchased, nor the date when each item was acquired, nor the costs of each and every item. I am sure that every item that was purchased by me was paid for.

(c) I cannot now state the actual cash value of each and every item of property located in the building at the time of the fire. I tried to give this information to the adjuster, to the best of my ability, immediately after the fire.

(d) I cannot now state the exact cost of replacement of each and every item of personal property located in the building, but to the best of my knowledge, the information which I gave to the adjuster is still true and correct.

(e) As of May 12, 1950, my interest in the property was that of owner, subject to a decree of the Circuit Court of Baldwin County, Alabama, in the litigation already mentioned.

7. I do not remember the exact day but, within sixty days after the fire on May 12, 1950, I talked with Mr. Paul Kaiser, who was then or had been connected with this insurance company as its president. I also talked with Mr. George Sargent, the insurance adjuster for this company and I also talked with Mr. George Holk Secretary-Treasurer of this company. In fact, I believe that I talked with Mr. Sargent on two or three occasions. I asked Mr. Holk about proofs of loss and he said that I did not need them. Mr. Sargent asked me for a list of the personal things that were in the house and I gave him a list of these things, room by room. Mr. Holk wrote down the list and itemized it and then sent it back to me to put the prices on it. I did this and then gave the list to Mr. Sargent. This is the only paper that they ever asked me to sign or fill out or do anything about, to the best of my knowledge. They did not give me a copy of this list and I do not now have it but I know that one copy was furnished to Mr. Sargent and, to the

best of my recollection, Mr. George Holk had a copy of the list. At that time, I gave them all of the information that they asked for and that I had. Outside of the list of the personal property, and the prices or values, I do not know whatelse they wrote down, on this statement because no copy of it was ever left with me.

(a) Already answered.

(b) Have I done what?

(c) Already answered.

(d) Have I done what?

(e) Already answered.

8. Yes. I had Standard Policy No. 8161 of the Commercial Union Fire Insurance Company of New York, issued January 11, 1950, for a term of one year, in the sum of \$3,000.00. The next was Standard Policy of the New Hampshire Fire Insurance Company, Policy No. 0C55459, issued March 15, 1950, for a term of one year, in the sum of \$3,000.00. Another policy was Policy No. 525065, the Pennsylvania Fire Insurance Co., issued April 21, 1950, in the amount of \$5,000.00 as to the large frame building. Another policy was that Aetna Insurance Co., Standard Policy No. 1160, issued April 21, 1950, for a term of one year, in the amount of \$5,000.00 as to the large frame building. Another policy was that of Baldwin Mutual Insurance Company, Policy No. 16057, issued June 14, 1946, with annual renewals from year to year, in the sum of \$4,500.00 as to the large frame building. The next was Policy No. 289 of the Milwaukee Mechanics Insurance Co., issued January 10, 1950, for a term of one year, in the sum of \$5,500.00. To the best of my knowledge, all of this insurance was in force and effect at the time of the fire.

(a) Have I done what?

(b) Yes. There was Standard Policy No. 1367 of the Bankers' Fire and Marine Insurance Company issued January 11, 1950 for a term of one year, in the sum of Two Thousand Dollars. There was Policy No. S P22825 of the Pacific National Fire Insurance Company, issued July 24, 1948, for a term of three years, in the sum of \$3,000.00. Also, the policy of the Baldwin Mutual Insurance Company, referred to in Paragraph 8 hereinabove, covered personal property in the sum of \$3,000.00. To the best of my knowledge, all of this insurance

was in force and effect on May 12, 1950.

(c) \$8,000.00.

(d) As nearly as I can tell from the form of this question, it is already answered.

(e) Upon advice of counsel Plaintiff declines to answer for the question asked is impertinent, irrelevant and immaterial.

9. (a) To the best of my judgment, the actual cash value of the building would be about \$35,000.00, or more.

(b) The building was a total loss.

(c) I do not have at this time any detailed estimate but, to the best of my judgment, the replacement costs would have been approximately \$50,000.00.

(d). It was a concrete foundation solid under the entire building.

(e), (f), (g), (h), (i), (j), (k), (l), and (m). Upon advice of counsel, Plaintiff declines to answer for that the questions asked are impertinent, irrelevant and immaterial, said objection being made to each and every one of said questions, separately and severally.

(n) Already answered.

10. Upon advice of counsel, Plaintiff declines to answer for that the question asked is impertinent, irrelevant and immaterial.

Calla Mai Tanner.

STATE OF ALABAMA)
COUNTY OF MOBILE)

Before me, the undersigned authority in and for said state and county, personally appeared Calla Mai Tanner, made known to me and who, having been by me first duly sworn, deposes and says that she has read the foregoing answers to interrogatories propounded to the Plaintiff by the Defendant and that the same are true and correct according to the best of her knowledge, information and belief.

Calla Mai Tanner.

Subscribed and sworn to before me

this the 8 day of October, 1951.

Howe C. C. C. C.
Notary Public, Mobile County, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 1596

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Baldwin Mutual Insurance Company, Inc

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 _____
Baldwin Mutual Insurance Company, Inc, Defendant

by _____
Calla Mai Tanner, Plaintiff.....

Witness my hand this 4th day of January 19 51.....

_____, Clerk

RECORDED

No. 1596 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

CALLA MAI TANNER

Plaintiffs

vs.

BALDWIN MUTUAL INSURANCE COMPANY, INC

Defendants

SUMMONS and COMPLAINT

Filed 1-4, 1951

Amie J. Smith Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

1-4, 1951
John W. Allen Sheriff

I have executed this summons

this 5th Jan, 1951

by leaving a copy with

Mr. George Hale
Sec & Ira, Foley Ala

John W. Allen Sheriff
D. J. Jackson Deputy Sheriff

CALLA MAI TANNER,
Plaintiff
vs
BALDWIN MUTUAL
INSURANCE COMPANY,
Defendant

IN THE CIRCUIT COURT
OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 1596

Now comes the Plaintiff in the above-entitled cause and amends the replications therein filed to the special plea filed by the defendant by adding REPLICATION TWENTY-ONE in words and figures as follows:

REPLICATION TWENTY-ONE

That, within 60 days after the fire and loss in controversy and before this suit, the Defendant sent to the scene of the fire and loss its duly authorized agent, with full power and authority to make examinations, investigations and adjustment of the loss and damage under the policy in suit in this cause; that said agent, acting within the line and scope of his employment, did then and there make such an examination and investigation as to the fire and loss, and after being fully informed as to how and when, in every particular, the Plaintiff had violated the terms and conditions of the policy, if she had violated them at all, recognized and treated the policy as valid and binding, and caused the plaintiff to furnish to said agent a list of the personal properties destroyed by said fire, together with the value of each item of said personal properties and the value of the real properties destroyed by said fire, and did cause the Plaintiff to further furnish to said agent all other information requested by said agent and known to this Plaintiff pertaining to said fire and to said loss.

Calla Mai Tanner
Calla Mai Tanner, Plaintiff

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before the undersigned authority in and for said state and county, personally appeared Calla Mai Tanner, made known to me and who, having been by me first duly sworn, deposes and says that she is the plaintiff in the above styled cause and that she has read the foregoing replications and that the matters contained therein are true and correct.

Calla Mai Tanner
Calla Mai Tanner, Plaintiff

Subscribed and sworn to before me
this the 3rd day of February, 1953.

[Signature]
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

CALLA MAI BELL TANNER,	Ø	IN THE CIRCUIT COURT
Plaintiff,	Ø	OF
VS.	Ø	BALDWIN COUNTY,
	Ø	ALABAMA
BALDWIN MUTUAL	Ø	
INSURANCE COMPANY, INC.,	Ø	
Defendant.	Ø	AT LAW NO. _____

COUNT ONE

The Plaintiff claims of the Defendant Four Thousand Five Hundred and No/100 (\$4,500.00) Dollars, the value of a two-story frame boarding house which the Defendant, on the 21st day of September, 1949, insured against loss or injury by fire and other perils in the policy mentioned, for the term of one year, which house was wholly destroyed by fire on the 12th day of May, 1950, of which the Defendant has had notice.

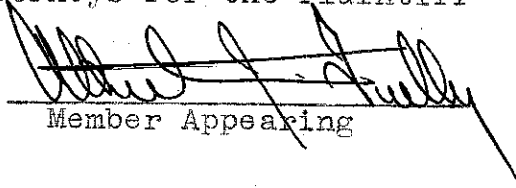
COUNT TWO

The Plaintiff claims of the Defendant the further and additional sum of Three Thousand and No/100 (\$3,000.00) Dollars, the value of household and kitchen furniture of every description, useful and ornamental, family wearing apparel and material for same, traveling equipment, books, musical instruments and music, pictures and engravings and their frames, and such other articles as are generally used in housekeeping, pertaining to the occupancy of and contained in the two story frame building of the Plaintiff, which the Defendant, on the 21st day of September, 1949, insured against loss or injury by fire and other perils in the policy of insurance mentioned, for the term of one year, which household and kitchen furniture, family wearing apparel and material for same, traveling equipment, books,

musical instruments and music, pictures and engravings and their frames, and such other articles as are generally used in housekeeping ~~was~~^{are} wholly destroyed by fire on the 12th day of May, 1950, of which the Defendant has had notice.

HOLBERG, TULLY & ALDRIDGE
Attorneys for the Plaintiff

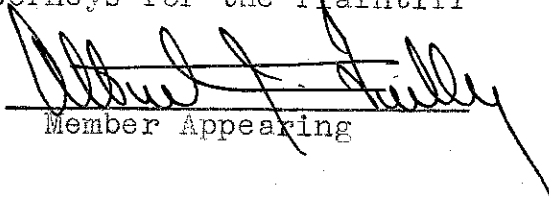
By


Member Appearing

Plaintiff demands a trial by jury.

HOLBERG, TULLY & ALDRIDGE
Attorneys for the Plaintiff

By


Member Appearing

Service may be had upon
Mr. George Holk,
Secretary-Treasurer
Foley, Alabama

CALLA MAI BELL TANNER,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
vs.	:	AT LAW
BALDWIN MUTUAL INSURANCE	:	NO. 1596
COMPANY, INC.,	:	
Defendant.	:	

Comes now the defendant in the above styled cause, and appearing specially and only for the purpose of the separate and several pleas in abatement, files, separately and severally, to the complaint, and to Count One and Count Two of the complaint, separately and severally, the following separate and several pleas in abatement:

PLEA ONE

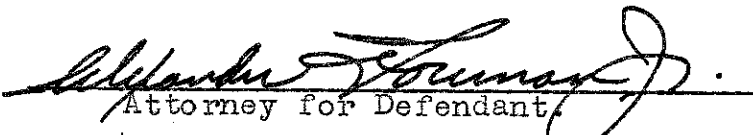
The defendant alleges that the contract of insurance upon which the complaint and the separate and several Count One and Count Two thereof heretofore filed in this cause, is based, provides:

That when a loss occurs, within sixty days after the loss, unless such time is extended in writing by the company, the insured shall render to the company a proof of loss signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the loss, the interest of the insured, and all others in the property, the actual cash value of each item thereof, and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of the policy, by whom and for what purpose any building described in the policy and the several parts thereof were occupied at the time of the loss, and whether or not it then stood on leased ground; and that no suit or action on the policy for the recovery of any claim, shall be sustainable in any court of law or equity unless all requirements of the policy shall have been complied with.

And the defendant further alleges that the plaintiff did not, within sixty days after the loss alleged in complaint and the separate

and several Count One and Count Two thereof, render to the defendant company a proof of loss signed and sworn to by the insured stating the knowledge and belief of the insured as to the time and origin of the loss, the interest of the insured and all others in the property, the actual cash value of each item thereof, and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any change in the title, use, occupation, location, possession, or exposures of said property since the issuing of the policy, by whom and for what purpose any building described in the policy and the several parts thereof were occupied at the time of the loss, and whether or not it then stood on leased ground.

WHEREFORE, defendant says that this cause of action should be abated by this court and should not be allowed to proceed.


Attorney for Defendant
417 First National Bank Bldg.
Mobile, Alabama

STATE OF ALABAMA :
COUNTY OF MOBILE :

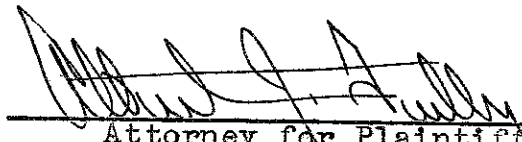
Before me, Anita P. McGill, a Notary Public in and for said county in said state, personally appeared Alexander Foreman, Jr., known to me, who, being by me first duly sworn, on oath deposes and says that he is attorney for the defendant in the above styled cause; that he has read the foregoing separate and several pleas in abatement, and that the matters set forth therein are true and correct, and he is authorized to make this affidavit.


Alexander Foreman, Jr.

Subscribed and sworn to before me,
this 31st day of January, 1951.


Notary Public, Mobile County, Alabama

Service of a copy of the foregoing plea in abatement is acknowledged this 31st day of January, 1951.


Attorney for Plaintiff

CALLA MAI BELL TANNER,	Ø	IN THE CIRCUIT COURT
Plaintiff	Ø	OF
vs.	Ø	BALDWIN COUNTY, ALABAMA
BALDWIN MUTUAL INSURANCE COMPANY, INC.,	Ø	AT LAW. NO.1596
Defendant.	Ø	
	Ø	

Comes now the Plaintiff in the above entitled cause and for replication to the special plea filed by the Defendant in said cause, says as follows, separately and severally:-

REPLICATION ONE

That one George Sargent, on the occasion hereinafter referred to, was an adjustor of the Defendant insurance company, with full power to make examinations, investigations, and adjustments of the loss sued upon, and that said George Sargent did, within a few days after said fire had occurred, enter upon an investigation of said loss, and did secure from the Plaintiff an itemized list of all personal properties destroyed by said fire, and did in all respects treat said insurance policy as valid and subsisting.

REPLICATION TWO

That one George Sargent, on the occasion hereinafter referred to, was an adjustor of the Defendant insurance company, with full power to make examinations, investigations and adjustments of the loss sued upon, and that said George Sargent did, within a few days after said fire, enter upon an investigation of said loss, and did secure from this Plaintiff all information requested by said adjustor, and did in all respects treat said insurance policy as valid and subsisting.

REPLICATION THREE

That, within sixty days after said fire had occurred, the said Defendant, through its agent and adjustor, to-wit, one George Sargent, took notice of said claim and did proceed to pass upon the same, all without objection on the part of said Defendant to the lack of said proof of loss.

REPLICATION FOUR

That Plaintiff was excused from the filing of said proof of loss in this, that one George Sargent, on the occasion hereinafter referred to, was an adjustor of the Defendant insurance company, with full power to make examinations, investigations and adjustments of the loss sued upon, and that said George Sargent did, within a few days after said fire has occurred, enter upon an investigation of said loss, and while acting for the Defendant and within the line and scope of his authority, informed the Plaintiff that all it was necessary for the Plaintiff to do was to prepare and furnish a list of the furniture destroyed by said fire, together with the value of each item of said furniture, and Plaintiff, a few days thereafter and within less than sixty days after the date of said fire, did furnish said list.

REPLICATION FIVE

That Defendant waived the filing of said proof of loss in this, that one George Sargent, on the occasion hereinafter referred to, was an adjustor of the Defendant insurance company, with full power to make examinations, investigations and adjustments of the loss sued upon, and that said George Sargent did, within a few days after said fire had occurred, enter upon an investigation of said loss, and while acting within the line and scope of his authority, informed the Plaintiff that all it was necessary for the Plaintiff to do was to prepare and furnish a list of the furniture destroyed by the fire, together with the value of each item of said furniture, and Plaintiff, a few days thereafter and within less than sixty days after the date of said fire, did furnish said list.

REPLICATION SIX

That one George Sargent, on the occasions hereinafter referred to, was an adjustor of the Defendant insurance company, with full power to make examinations, investigations and adjustments of the loss sued upon and did, within a few days after said fire had occurred

enter upon an investigation of said loss. That, while acting for the Defendant and within the line and scope of his authority, the said George Sargent secured from the Plaintiff an itemized list of all personal properties destroyed by said fire, and a description of the real property destroyed by said fire, together with other information concerning said fire; that Plaintiff did furnish to the said George Sargent a list of the personal properties destroyed by the said fire, together with the value of each item of said personal properties, and did furnish to the said George Sargent all other information requested by him and known to this plaintiff pertaining to said loss; that said adjustor did in all respects and at all times treat said insurance policy and the claim thereon as valid and subsisting, and did take notice of said claim and proceed to act thereon, all without objection on the part of said adjustor to the lack of said proof of loss but that, on the contrary, said adjustor never at any time asked or required of the plaintiff the filing of a formal notice of claim and proof of loss. That, by said acts and conduct on the part of said adjustor, all done by said adjustor while acting within the line and scope of his authority as such, this Plaintiff was induced to believe that Defendant was satisfied and did not desire formal notice and proof of loss.

REPLICATION SEVEN

That after the occurrence of the fire involved in this suit, and prior to the bringing of this suit, the Defendant sent or caused to be sent an adjustor, George Sargent, with full authority to bind Defendant, to investigate the said loss and to adjust the same, and said adjustor, while acting within the line and scope of his authority as such, made a full investigation of said loss and the matters pertaining thereto, and questioned the Plaintiff with reference to said loss and the matters pertaining thereto and with reference to the claim of the Plaintiff under said policy. Plaintiff avers that said adjustor, acting within the line and scope of his authority as such, secured from the Plaintiff all information with reference to said loss and to this claim, and the matters pertaining thereto, including an itemized list of the personal property destroyed by said fire, and the value of each item of such property;

that said adjustor never furnished or offered to furnish to the Plaintiff the usual and required form for proof of loss nor ever requested or required of the Plaintiff the filing of any formal proof of loss but, on the contrary, represented unto the Plaintiff that no formal proof of loss would be required of the Plaintiff. Plaintiff avers that she relied upon said representation of said adjustor and filed no proof of loss or other matters as set up in said plea in abatement. Hence, Plaintiff avers that said Defendant waived the provisions of said policy as set out in said plea of abatement prior to the commencement of this suit.

REPLICATION EIGHT

That within sixty days after the fire involved in this suit, and prior to the commencement of this suit and before the expiration of the time of making proof of loss, the Defendant declined and refused to pay the damages claimed under the terms of said policy, and denied that Defendant was liable to Plaintiff under the terms of said policy, and thereby waived compliance by Plaintiff of the stipulations of said policy as set out in said plea in abatement.

REPLICATION NINE

That the Defendant waived compliance by the Plaintiff of the stipulations of said policy as set out in said plea in abatement in that the Defendant denied liability under the terms of said policy on the ground that the policy sued on did not cover a willful or fraudulent fire caused by the insured or for her benefit.

REPLICATION TEN

That, after the alleged breach of the stipulations in said insurance policy as averred by the Defendant in its plea in abatement, and before the commencement of the suit, the Defendant company, acting by its duly authorized agent and adjustor, acting within the line and scope of their authority, and with knowledge of Plaintiff's claim under said policy, denied all liability on the policy sued on upon the ground that said policy did not cover a willful or fraudulent fire caused by the insured or for her benefit.

REPLICATION ELEVEN

That, before the commencement of this suit and after said fire, the Defendant company, acting by its duly authorized agent and adjustor, acting within the line and scope of his employment and with knowledge or notice of said fire and of plaintiff's loss thereby, denied any and all liability under said policy, making it unnecessary for the Plaintiff to furnish proof of loss as provided by said policy.

REPLICATION TWELVE

That the Defendant company, acting by and through its duly authorized agents, who were acting within the line and scope of their employment and authority, informed the Plaintiff that it would not be necessary for her to file formal proof of loss, making it unnecessary for the Plaintiff to furnish proof of loss as provided by said policy.

REPLICATION THIRTEEN

That, within sixty days after the fire involved in this suit, and prior to the bringing of this suit, the Defendant company, acting by and through its duly authorized agents, acting within the line and scope of their employment, took notice of this claim and proceeded to pass upon the same, making a full investigation of said loss and the matters pertaining thereto and the cause of said fire, and did represent unto the Plaintiff that the Defendant company denied any and all liability under said policy on the ground that the fire had been willfully or fraudulently caused for the benefit of Plaintiff so that no formal proof of loss would be required of the Plaintiff. Plaintiff avers that she relied upon said representation and filed no proof of loss or other matters as set up in said plea in abatement, hence Plaintiff avers that said Defendant, acting through its duly authorized agents as aforesaid, waived the provisions of said policy as set out in said plea in abatement, prior to the commencement of this suit.

REPLICATION FOURTEEN

That, immediately after the fire and loss in controversy and

before this suit, the Defendant sent to the scene of the fire and loss its duly authorized agent, with full power and authority to make examinations, investigations and adjustment of the loss and damage under the policy in suit in this cause; that said agent, acting within the line and scope of his employment, did then and there make such an examination and investigation as to the fire and loss, and after being fully informed as to how and when, in every particular, the Plaintiff had violated the terms and conditions of the policy, if she had violated them at all, recognized and treated the policy as valid and binding, and caused the Plaintiff to furnish to said agent a list of the personal properties destroyed by said fire, together with the value of each item of said personal property and discussed with the Plaintiff the value of said personal properties and the value of the real properties destroyed by said fire, and did cause the Plaintiff to further furnish to said agent all other information requested by said agent and known to this Plaintiff pertaining to said fire and to said loss; and that finally, thereafter and before this suit, said agent, acting within the line and scope of his employment, declined and refused to make any settlement or adjustment on said claim on the sole ground that said fire had been willfully or fraudulently caused for the benefit of this plaintiff.

REPLICATION FIFTEEN

That, within a few days after said fire had occurred, one George Holk, the Secretary-Treasurer of the Defendant, who had the authority to solicit and receive applications for said insurance, to issue policies of insurance and collect the premium thereon, all for the Defendant, and while acting for the Defendant and within the line and scope of his authority, informed the Plaintiff that it was not necessary for the Plaintiff to make proof of loss under the policy, but that all it was necessary for the Plaintiff to do was to prepare and furnish a list of the furniture destroyed by said fire, together with the value of each item of said furniture, and Plaintiff, a few days thereafter, and within less than sixty days after the date of said fire, did furnish such list.

REPLICATION SIXTEEN

That one George Holk, who on the occasion hereinafter referred to, was the Secretary-Treasurer of the Defendant insurance company, with full power to solicit and receive applications for said insurance, to issue policies of insurance and to collect the premiums thereon, all for the Defendant, did, within a few days after said fire had occurred, enter upon an investigation of said loss, and did secure from this Plaintiff all information requested by said Secretary-Treasurer, and did in all respects treat said insurance policy as valid and subsisting.

REPLICATION SEVENTEEN

That, within sixty days after said fire had occurred, the said defendant company, through its Secretary-Treasurer, to-wit, one George Holk, took notice of said claim and did proceed to pass upon the same, all without objection upon the part of said Defendant to the lack of said proof of loss.

REPLICATION EIGHTEEN

That, within a few days after said fire had occurred, one Paul Kaiser, the President of the Defendant insurance company, who had the authority to solicit and receive applications for said insurance, to issue policies of insurance and collect the premium thereon, all for the Defendant, and while acting for the Defendant and within the line and scope of his authority, informed the Plaintiff that it was not necessary for the Plaintiff to make proof of loss under the policy, but that all it was necessary for the Plaintiff to do was to prepare and furnish a list of the furniture destroyed by said fire, together with the value of each item of said furniture, and Plaintiff, a few days afterwards, and within less than sixty days after the date of said fire, did furnish said list.

REPLICATION NINETEEN

That one Paul Kaiser, who on the occasions hereinafter referred to was President of the Defendant insurance company, with full power to solicit and receive applications for said insurance, to issue policies of insurance and to collect the premiums thereon, all for the Defendant, did, within a few days after said fire had occurred, enter upon an investigation of said loss, and did secure from this Plaintiff all information requested by said President, and

did in all respects treat said insurance policy as valid and subsisting.

REPLICATION TWENTY

That, within sixty days after said fire had occurred, the said Defendant company, through its president, to-wit, one Paul Kaiser, took notice of said claim and did proceed to pass upon the same, all without objection upon the part of said Defendant to the lack of said proof of loss.

Calla Mai Tanner.
Calla Mai Tanner, Plaintiff

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority in and for said state and county, personally appeared Calla Mai Tanner, made known to me and who, having been by me first duly sworn, deposes and says that she is the plaintiff in the above styled cause, that she has read the foregoing replications and that the matters set forth therein are true and correct.

Calla Mai Tanner.
Calla Mai Tanner, Plaintiff

Subscribed and sworn to before me

this the 29th day of February, 1951.

Arthur M. C. [Signature]
Notary Public, Mobile County, Alabama.

1596

RECORDED

FILED
MAR 11 1952
J. H. H. Clark

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1596

MOTION TO REQUIRE INTERROGATORIES TO BE ANSWERED

The defendant in the above styled cause having heretofore appeared specially and only for the purpose of filing sepearate and several pleas in abatement in the above styled cause, and interrogatories therein, comes now the defendant, further appearing specially and only for the purpose of filing this motion to require interrogatories heretofore propounded to the plaintiff to be answered, and shows unto the court that pursuant to law in such cases made and provided, the defendant propounded interrogatories to the plaintiff in the above styled cause, that the same was served as required by law, that the time allowed by law in which to answer said interrogatories has expired, and that said plaintiff has not answered said interrogatories;

WHEREFORE, the defendant moves the court, separately and severally:

1. To require the plaintiff to answer said interrogatories on or before a day certain to be fixed by the court.
2. To impose upon the plaintiff such penalties as are provided by law for his failure to answer said interrogatories.

Attorney for Defendant

Service of a copy of the foregoing motion is acknowledged on the 19th day of September, 1951.

HOLBERG, TULLY & ALDRIDGE
Attorneys for the Plaintiff

BY

Member Appearing

CALLA MAI BELL TANNER,	I	IN THE CIRCUIT COURT
Plaintiff	I	OF
vs.	I	BALDWIN COUNTY, ALABAMA
BALDWIN MUTUAL INSURANCE	I	AT LAW. NO. 1596
COMPANY, INC.,	I	
Defendant.	I	

Comes now the defendant in the above styled cause and demurs separately and severally to the separate and several replications filed by the plaintiff to the special plea filed by the defendant in said cause and for grounds therefor, assigns the following separate and several:

1. Said replication is no answer to said plea.
2. Said replication neither confesses nor avoids the matters and things set up in said plea.
3. Said replication confesses but does not avoid the matters and things set up in said plea.
4. Said replication traverses said plea.
5. The matters and things set up in said replication furnish no excuse for the failure of the Plaintiff to furnish the Defendant with a sworn proof of loss as provided in said policy.
6. Said replication is a departure from the complaint.
7. For ought appearing in said replication the Defendant denied liability on the grounds set forth in said plea.
8. For that said plea neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
9. For ought appearing from the allegations thereof, said plea as filed to said special plea of the Defendant as filed to Count One of the complaint, neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
10. For ought appearing from the allegations thereof, said plea as filed to said special plea of the Defendant as filed to Count Two of the complaint, neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
11. For that said plea contains conclusions of the pleader without the averment of sufficient facts upon which to base such conclusion.

12. For ought appearing from the allegations of said plea, the Defendant merely made its investigation of the loss on its own account and for its own satisfaction.

13. For ought that appears from the allegations of said plea, the agent alleged to have made the alleged investigation had authority only to investigate and report.

14. It is not alleged in said plea that the Defendant admitted liability.

15. It is not alleged in said plea that the Plaintiff filed with the Defendant a sworn proof of loss as provided for in said policy.

16. For that it is not alleged in said plea that the Plaintiff relied upon the alleged representations made by the Defendant's alleged agent, servant or employee.

17. For that it is not alleged in said plea that the Plaintiff was injured by a reliance upon the representations made by the Defendant's agent, servant or employee.

18. For ought appearing no agent, servant or employee of the Defendant was acting within the line and scope of his authority in waiving the provision of the policy requiring the filing of a sworn proof of loss by the Plaintiff.

19. For ought appearing no agent, servant or employee of the Defendant was acting within the line and scope of his authority in estopping the Defendant from setting up the defense of the Plaintiff's failure to file a sworn proof of loss with the Defendant in accordance with the provisions of said policy.

20. For ought appearing the Plaintiff was not prejudiced nor caused to suffer a loss by a reliance upon the representations alleged to have been made by the Defendant's agent, servant or employee.

21. For ought appearing the Defendant was under no duty to point out any defect in the filing of a purported proof of loss by the Plaintiff.

22. For that a waiver cannot be inferred from mere silence on the part of the Defendant.

23. For that said plea contains no allegations of an affirmative act, conduct or declaration of the Defendant evidencing

30. For that the allegation that the Defendant agreed to pay said loss is but a conclusion of the pleader without the averrment of sufficient facts upon which to base such conclusion as a matter of law.

31. For ought appearing from the allegation of said plea the Defendant is not estopped from asserting the defense of the failure of the Plaintiff to furnish a sworn proof of loss.

32. For that there was no duty on the part of the Defendant to object to the lack of the filing of a sworn proof of loss by the Plaintiff.

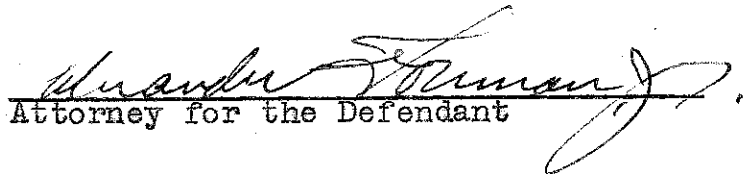
33. For that the allegation that the President of the Defendant insurance company - "informed the Plaintiff that it was not necessary for the Plaintiff to make proof of loss under the policy and that all that was necessary for the Plaintiff to do was to prepare and furnish a list of the furniture destroyed by said fire, together with the value of each item of said furniture", is but a conclusion of the pleader without the averrment of sufficient facts upon which to base such conclusion as a matter of law.

34. For that the allegation that the Secretary-Treasurer of the Defendant insurance company - "did in all respects treat said insurance policy as valid and subsisting", is but a conclusion of the pleader without the averrment of sufficient facts upon which to base such conclusion as a matter of law.

35. For that the allegation that the said Defendant company, through its Secretary-Treasurer, "took notice of said claim and did proceed to pass upon the same, all without objection upon the part of said Defendant to the lack of said proof of loss" is but a conclusion of the pleader without the allegation of sufficient facts upon which to base such conclusion as a matter of law.

36. For that the allegation that the President of the Defendant insurance company "did, within a few days after said fire had occurred, enter upon an investigation of said loss and did secure from this Plaintiff all information requested by said President, and did in all respects treat said insurance policy as valid and subsisting", is but a conclusion of the pleader without the averrment of sufficient facts upon which to base such conclusion as a matter of law.

37. For that the allegation "the said Defendant company, through its president, to-wit, one Paul Kaiser, took notice of said claim and did proceed to pass upon the same all without objection upon the part of said Defendant to the lack of said proof of loss", is but a conclusion of the pleader without the averrment of sufficient facts upon which to base such conclusion as a matter of law.


Attorney for the Defendant

RECORDED

ReFILED
AUG 19 1953
ALICE J. DUCK, Clerk

FILED

MAR 8 1952

ALICE J. DUCK, Clerk

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X