

STATE OF ALABAMA
BALDWIN COUNTY

1386

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon the Fidelity Phenix Fire Insurance Company of New York, a Corporation, to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Della Rayford.

WITNESS my hand this 9th day of August, 1949.

Alfred J. Hester
Clerk of the Circuit Court.

: : : : : : : : :

COMPLAINT

DELLA RAYFORD,

Plaintiff,

VS.

FIDELITY PHENIX FIRE INSUR-
ANCE COMPANY OF NEW YORK, A
Corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW.

1. The Plaintiff claims of the Defendant Twelve Hundred Dollars (\$1200.00), the value of a wharf, boat house, sleeping porch, fishing shed and two bath houses, which the Defendant, on the 7th day of April, 1948, insured against loss or injury by windstorm and other perils in the policy of insurance mentioned for the term of one year, which property was wholly destroyed by windstorm on the 4th day of September, 1948, of which the Defendant has had notice.

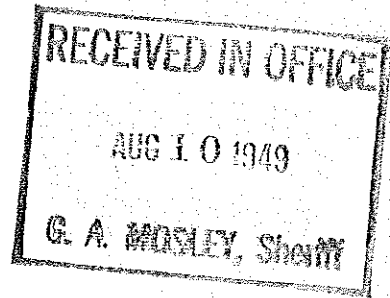
2. The Plaintiff claims of the Defendant the further sum of One Hundred Twenty-five Dollars (\$125.00), the value of three (3) innertubes, one (1) net, four (4) quilts, four (4) pillows, nine (9) chairs and one (1) table, which the defendant, on the 7th day of April, 1948, insured against loss or injury by windstorm and other perils in the policy of insurance mentioned for the term of one

year, which property was wholly destroyed by windstorm on the 4th day of September, 1948, of which the Defendant has had notice.

J. B. Blachurn
Attorney for Plaintiff.

Plaintiff demands a trial by jury
in this cause.

J. B. Blachurn
Attorney for Plaintiff.



SUMMONS AND COMPLAINT

DELLA RAYFORD,

Plaintiff,

VS.

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK,

Defendant.

EXECUTED BY DELIVERING

A copy of the within

To L. L. Gwaltney
Sgt. of Insurance
OF THE State of Ala.
AND SAID L. L. Gwaltney
WAS SUCH WHEN SO SERVED

This the 8-10 1949

G. A. Mosley
Sheriff Montgomery County
By Goodman
Deputy Sheriff

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

Filed
8-9-49
Alvin S. Black
Clerk

DELLA RAYFORD,

Plaintiff,

v.

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK, a Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

DEMURRER TO MOTION TO TRANSFER CAUSE TO EQUITY

NOW comes the defendant in the above-styled cause and files the following demurrer to the motion to transfer this cause to equity, and as grounds for said demurrer sets down and assigns the following separately and severally:

1. Sufficient facts are not averred to show any right to transfer this cause to equity.

2. Sufficient facts are not averred to show any right to reform said policy.

3. It does not appear that there was any mutual mistake in the issuance of said policy.

4. It does not sufficiently appear wherein there was any mutual mistake in issuing said policy.

5. For that the allegations that the property was incorrectly described through the inadvertence or mistake of the scrivener is a mere conclusion of the pleader, and is not supported by any facts alleged.

6. For that the allegation that the plaintiff has an equitable right is a mere conclusion, and is not supported by any facts alleged.

7. For aught that appears, said insurance policy insured the property mentioned in said motion.

8. It does not sufficiently appear wherein said policy does not insure said property.

9. For aught that appears, said policy, as issued, does cover said property.

10. It does not appear what perils were insured by said policy.

11. It does not appear that said property was damaged or destroyed by the perils insured against.

12. It does not appear how said property was incorrectly

described in said policy.

13. For that the allegation that the insured property was incorrectly described as agreed to and understood by the said Frank Rayford, agent of the plaintiff, and Carl L. Bloxham, agent for the defendant, is a mere conclusion, and is not supported by any facts which are alleged in said motion.

14. For aught that appears said mistake was due wholly to the mistake of the plaintiff in this cause.

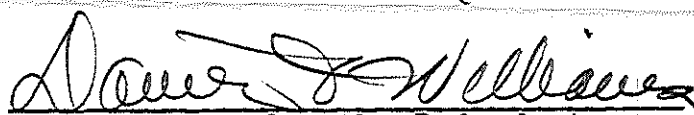
15. For aught that appears said mistake was the result of gross negligence on the part of the plaintiff.

16. For that it appears that said mistake is merely a mistake of law.

17. For that said motion does not set out the particulars which it is claimed constituted said mistake.

18. For that the facts constituting said mistake are not set out with particularity.

19. For that the facts alleged do not show any mutual mistake.


Attorneys for the Defendant

RECORDED

NO. 1386

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA -- AT LAW

* * * * *

DELLA RAYFORD,

Plaintiff,

v.

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK, A Corpora-
tion,

Defendant.

* * * * *

DEMURRER TO MOTION TO TRANSFER
CAUSE TO EQUITY

* * * * *

DAVIES & WILLIAMS
Attorneys for Defendant
508 Watts Bldg.
Birmingham, Ala.

FILED

JUL 15 1950

ALICE J. DUCK, Clerk

DELLA RAYFORD,

Plaintiff,

vs.

FIDELITY PHENIX FIRE
INSURANCE COMPANY OF
NEW YORK, a corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

NOW comes the defendant and propounds the following
interrogatories to the plaintiff:

1. Please state your full name, age, address, and
occupation.

2. When and how did you acquire said insured
property?

b. What was the purchase price of the insured
property?

c. Please attach to your answers to these
interrogatories a copy of the deed, contract, or agree-
ment whereby you acquired said property.

d. Did anyone else have any interest in, or
title to the insured property, and if so, state who such
person was and state what interest or title such other
person had in the insured property?

e. State whether or not there was any mortgage
or other encumbrance on said property and if so, who held
said mortgage, the amount secured thereby, and when said
mortgage was executed.

3. From whom did you procure the policy of insurance
sued upon?

b. Did you procure the policy yourself, or
was it procured by someone else?

c. State each and everything that was said at
the time said policy was procured by the agent of this
defendant, and each and everything said by you, or your
agent, at said time.

4. Did you build or construct any of the buildings
which you claim were damaged or destroyed by said wind-
storm? If so, when did you build them?

b. Please state the costs thereof, stating
separately the cost as to each of said buildings.

5. How long had each of said buildings been
constructed or built at the time of said loss?

6. How did said loss occur?

b. Were you present when said loss occurred?

7. Did you see said buildings when they were damaged
by windstorm?

b. State specifically and in detail exactly
what damage was done by windstorm and how said damage occurred.

c. Were any of said buildings blown down by said
windstorm?

8. State whether or not said buildings were damaged by water.

9. State whether or not said buildings were damaged by waves, and if so, what damage was done to each of said buildings by waves.

10. State as to whether or not the water from the Gulf, or elsewhere, got up, into and around the buildings and damaged said buildings.

b. How high did said water get up into, and around said buildings?

c. State as to whether or not said buildings collapsed because of waves or high water. If this is not a fact, then state the true facts with reference thereto.

d. State whether or not any waves beat against said buildings prior to the time they were damaged.

e. State as to whether or not said buildings collapsed because of waves, or high water. If this is not a fact, then state the true facts with reference thereto.

f. State as to whether or not it is a fact that said buildings or some of them were damaged or destroyed by waves and high water during said alleged storm. If this is not a fact, then state the facts with reference thereto.

g. State which of said buildings, if any, were damaged or destroyed by tidal waves, or high water, and the extent of damage to each of said buildings.

11. State as to whether or not you were present on the premises at the time said alleged loss and damage occurred.

b. Where were you at the time of said loss and damage?

12. State as to whether or not any of said buildings were damaged by the direct force of the wind, and if so, what damage was done to each of said buildings by the direct force of the wind.

13. State as to whether or not any of said buildings were damaged by water or waves or high water being driven by wind against, around and in said buildings, and if so, what damage was done to each of said buildings by water or waves when so driven by the wind, and the extent of the damage to each of said buildings.

14. When did you first see the buildings after said damage occurred?

b. What was the condition of the buildings when you first saw them?

15. State as to whether or not said buildings were damaged by any debris that was floating in the water and which was thrown against said buildings by said alleged windstorm.

16. State as to whether or not there was any damage to the main dwelling house mentioned in said policy sued upon by the force of wind or said windstorm, and if so, what damage was actually done to said dwelling house by windstorm at the time of said loss.

17. If you have not already done so, please describe specifically and in detail how and in what manner the damage was done to each of said buildings, and the amount of damage thereto, and state whether or not said damage was caused by the direct force of wind or by water or waves, specifying which one and the extent of damage done by each.

18. Where was said personal property located at the time of said loss and damage?

19. What was the cost of each of said items of personal property claimed in said Count 2 of the complaint?

20. When, where, and from whom did you acquire each of said articles claimed in Count 2 of the complaint, and state the cost of each of said articles.

21. State as to whether or not it is a fact that the damage to each of said buildings was done or caused by wave wash. If said damage was not caused by wave wash, then state what it was caused by.

22. State as to whether or not you or any other person to your knowledge was present at the time of said alleged loss and damage and if so, state who such other person was other than yourself, if you were not present yourself.

23. State as to whether or not you have ever filed any proof of loss with this defendant and if so, to whom it was filed and when it was filed. If you state that you have filed a proof of loss, please attach a copy to your answers to these interrogatories and mark it so that it may be identified.

24. State what said buildings were used for at the time of said alleged loss.

25. State whether or not said buildings were leased or rented, and whether or not they were used by you for your own personal use.

26. State as to whether or not the insured property was occupied at the time of said loss, and if so, by whom it was occupied or used.

STATE OF ALABAMA)
JEFFERSON COUNTY)

Davies & Williams
Attorneys for Defendant

Personally appeared before me, the undersigned authority, a Notary Public in and for said County, in said State, F. W. Davies, who is known to me and who being by me first duly sworn, on oath deposes and says: that he is of counsel for the defendant in this cause; that the plaintiff's answers to the foregoing interrogatories, when well and truly made, will be material evidence for the defendant on the trial of this cause.

F. W. Davies

Sworn to and subscribed before me, on this the 14 day of September, 1949.

Vivian L. Headley
Notary Public.

DELLA RAYFORD,

Plaintiff

vs.

FIDELITY PHENIX FIRE
INSURANCE COMPANY OF
NEW YORK, a corporation,

Defendant.

INTERROGATORIES TO PLAINTIFF

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW FILED

SEP 16 1949

ALICE J. DUCK, Clerk

Davies & Williams
Attorneys for Defendant.

accepted service Sept 17, 1949

*J.B. Blackburn
by J.P. Murphy*

DELLA RAYFORD,

Plaintiff,

VS.

FIDELITY PHENIX FIRE INSUR-
ANCE COMPANY OF NEW YORK,
A Corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW.

ANSWER TO INTERROGATORIES

Now comes the Plaintiff and for answer to the interrogatories heretofore propounded by the Defendant to the Plaintiff in this cause, says:

Answer to First Interrogatory: My name is Della Rayford. I am seventy-one years of age, reside at Daphne, in Baldwin County, Alabama and my occupation is a housewife.

Answer to Second Interrogatory: I bought the land on which the insured property was situated about six years ago.

B. \$1750.00.

C. A copy of the deed under which I acquired the property is hereto attached.

D. No.

E. No.

Answer to Third Interrogatory: Carl L. Bloxham Agency, Fairhope, Alabama.

B. I did not handle the transaction myself, but it was handled for me by my husband, Frank Rayford.

C. I was not present at the time my husband ordered the policy and have no personal knowledge of what was said at the time.

Answer to Fourth Interrogatory: Yes, about one year after I bought the property.

B. The cost of labor and material in erecting the buildings was approximately as follows:

One 6 x 16 boat house attached to wharf	\$100.00
One 12 x 18 sleeping porch attached to wharf	600.00
Two bath houses, approximately 6 x 6 in size, a total of \$250.00, or \$125.00 each	250.00
One open fishing shed, approximately 6 x 12 feet in size,	50.00
One 200 foot wharf destroyed for approximate- ly 36 feet	75.00

Answer to Fifth Interrogatory: The above described buildings had been constructed approximately five years at the time of the loss, but were in as good condition as when built at the time they were destroyed.

Answer to Sixth Interrogatory: I was not present at the time the buildings which were insured were destroyed and am, therefore, unable to answer this question of my own personal knowledge.

B. No.

Answer to Seventh Interrogatory: No.

B. The above described buildings were totally destroyed.

C. My husband, who was present at the time the buildings were destroyed, told me that they were destroyed by wind and not by water, but as I was not present, I cannot answer this interrogatory of my own personal knowledge.

Answer to Eighth Interrogatory: According to my information, by windstorm.

Answer to Ninth Interrogatory: According to my information, No.

Answer to Tenth Interrogatory: According to my information, no.

B. According to my information, the buildings were destroyed by wind before the water got into or around them.

C. According to my information, no.

D. According to my information, no.

E. According to my information, the buildings were not damaged or collapsed because of waves or high water, but, as stated above, according to the information given to me by my husband, who was present, they were destroyed by windstorm before water reached them.

F. Answered by foregoing interrogatory.

G. The wharf, which was approximately 200 feet in length, was damaged when the above described buildings were blown away and before the water became high enough to destroy it.

Answer to Eleventh Interrogatory: No.

B. I was at my home on Randall Avenue in Daphne, Alabama.

Answer to Twelfth Interrogatory: According to my information, the buildings were destroyed by the direct force of the wind.

Answer to the Thirteenth Interrogatory: As stated above at several points in my answer to these interrogatories, the buildings were not damaged or destroyed by water, but were destroyed by wind. As further stated, I was not present and my answer to this interrogatory is based on information given to me by my husband, who was present.

Answer to Fourteenth Interrogatory: The day after the buildings were destroyed.

B. They had been destroyed.

Answer to Fifteenth Interrogatory: According to my information, the buildings were not damaged by debris that was floating in the water and which was thrown against the buildings by the alleged windstorm.

Answer to Sixteenth Interrogatory: No.

Answer to Seventeenth Interrogatory: The information as to damage called for in this interrogatory has been answered in Interrogatory numbered 4. None of the damage as described to the said buildings was done by water or waves, but was all done by the direct force of the wind before the water or waves became high enough to reach them.

Answer to Eighteenth Interrogatory: In the buildings on or attached to the wharf.

Answer to Nineteenth Interrogatory: I did not purchase each item of the personal property for which I claim damage in Count Two of the Complaint that was filed in this cause. These articles were purchased by my husband and, according to the information which he gave me, the cost was approximately as follows:

3 innertubes, \$ <u>1.00</u> each, or a total of \$	3.00
1 shrimp net	45.00
4 quilts	20.00
4 pillows	15.00
9 chairs at \$2.25 each	20.25
1 table	4.00
4 cots at \$4.00 each	16.00

Answer to Twentieth Interrogatory: I cannot answer this

interrogatory on facts within my own personal knowledge; as stated above, the said articles were purchased by my husband at various times and places which are not known to me.

Answer to Twenty-first Interrogatory: As stated above, damage to each of the buildings was not done or caused by wave wash, but by the direct force of the wind before the waves or water was high enough to reach the buildings.

Answer to Twenty-second Interrogatory: As stated above, I was not present at the time the buildings were destroyed. My husband, Frank Rayford, was there and he was accompanied by Dave Penn.

Answer to Twenty-third Interrogatory: Insofar as I know, no proof of loss was filed directly with the Defendant. I did, through my husband, immediately notify the Carl L. Bloxham Agency, Fairhope, Alabama, the agent who wrote the policy, that the property had been destroyed and, according to my information, it gave the Defendant the company's usual notice of loss on the company's form, which is dated September 7, 1948, the original of which I am sure is in the files of the Defendant company. I have obtained a copy of this instrument from the Bloxham Agency and it is hereto attached. I am also enclosing a copy of the Defendant's letter to the Bloxham Agency acknowledging receipt of notice of loss under the policy on which this suit is brought, a copy of which is hereto attached.

Answer to Twenty-fourth Interrogatory: My family and I use the property as a summer residence and the property was used by us for this purpose at the time it was destroyed.

Answer to Twenty-fifth Interrogatory: The buildings were ^{or} not leased, rented but were used by my family and me for the purpose stated in the answer to the foregoing interrogatory.

Answer to Twenty-sixth Interrogatory: Yes. The property was occupied at the time of the loss by members of my family and by me.

Dated on this the 15th day of November, 1949.

Della Rayford

STATE OF ALABAMA)
BALDWIN COUNTY)

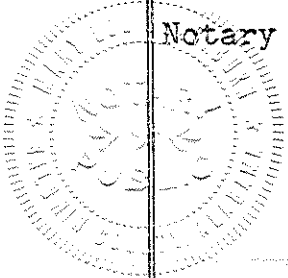
Before me, the undersigned authority, within and for said County in said State, personally appeared Della Rayford, who, after being by me first duly and legally sworn, deposes and says: That she is the person who signed the foregoing instrument and that the facts stated therein are true.

Della Rayford

Sworn to and subscribed before me on
this the 15th day of November, 1949.

Mary Lou Blackburn

Notary Public.



WARRANTY DEED

STATE OF ALABAMA,)
BALDWIN COUNTY.)

THIS INDENTURE, made and entered into on this the 14th day of August, 1944, by and between Russell D. Ridgeway, unmarried, hereinafter referred to as the party of the first part, and Della Rayford, hereinafter referred to as the party of the second part, WITNESSETH:

The party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to him this day in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto the said party of the second part the following described property situated in Baldwin County, Alabama, to-wit:

Lots Five (5) in Block Two (2) of Jacksons Oak Subdivision as per plat of the same made by Durant Engineering Company on July 25, 1944; and recorded in the Probate Court of Baldwin County on August 2nd, 1944.

Together with all the rights and appurtenances to said described premises in anywise belonging.

TO HAVE AND TO HOLD the same forever. And Russell D. Ridgeway for him and his heirs, the said described premises and appurtenances, will forever Warrant and Defend unto the said party of the second part, her heirs and assigns, against the lawful claims of all persons whatsoever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) RUSSELL D. RIDGEWAY (SEAL)

STATE OF ALABAMA,)
BALDWIN COUNTY. }

I, Kathleen Sirmon, a Notary Public, within and for said State and County, hereby certify that Russell D. Ridgeway, unmarried, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this the 14th day of August, 1944.

(Signed) KATHLEEN SIRMON

SEAL

STATE OF ALABAMA,)
BALDWIN COUNTY.)

Filed August 16, 1944 at 10:30 A.M. and recorded in Deed Book 85 at page 543, I certify that \$2.00 Deed Tax has been paid as required by law.

(Signed) G. W. ROBERTSON,
Judge of Probate.

NOTICE OF LOSS
TO THE

Fidelity - Phenix Fire Insurance Co.

Atlanta, Georgia.

(Agent's Copy)

INSTRUCTIONS TO AGENTS

REPORT IMMEDIATELY (DO NOT TELEGRAPH) ALL LOSSES,
LARGE OR SMALL. USE A SEPARATE BLANK FOR EACH POLICY.

DO NOT COMMIT THE COMPANY TO ANY CLAIM OR LINE OF
ACTION, UNLESS SPECIALLY INSTRUCTED TO DO SO. DO NOT UNDER ANY
CIRCUMSTANCES MAKE ANY CHANGE OR ENTRY ON A POLICY AFTER A LOSS

DATE: September 9, 1948

Agency at Fairhope, Alabama

Date of Loss: 4th day of September 1948, 4:00 O'clock P. M.

Policy No.: 785, Amount \$2050.00, Expiration April 7, 1949.

Name of Assured: Della Rayford.

Number Street Eastern Shore Mobile Bay,
Location of Risk: 1½ miles North of Daphne.

City or Town Daphne, State, Alabama.

Probable Amount of Entire Loss: \$1200.00

Probable Amount of Loss under this Policy: \$

Item or Items Involved: Wharf and three bath houses.

Kind of Loss: Windstorm. Did it originate on Assured's Premises
(State whether Fire, Windstorm, Explosion,) No.

If Fire or Explosion, state origin:

HAVE CO. AND FIELDMAN OR GEN, AGT. BEEN NOTIFIED? No

Other Insurance (Give names of Companies and amt. each)

REMARKS: During the tail end of the New Orleans hurricane the
wind shifted out of the east and came out of the southwest, which
gave the 75 miles wind an unobstructed approach to Mrs. Rayford's
wharf and three bath houses located on top of the piling. The
terrific wind, in shaking, tore the roof from the three houses,
which allowed the walls to collapse and in turn the flooring was
all loosed and blown into the water. All the decking on the
wharf was wrenched loose and blown over a forty acre field.

Jno. S. Huffman, AGENT.

FIDELITY - PHENIX
FIRE INSURANCE COMPANY
OF NEW YORK
SOUTHERN DEPARTMENT
P.O. BOX 1680 - 10 PRYOR
STREET, S. W.
ATLANTA, GEORGIA .

CAUSE OF LOSS: Windstorm

ASSURED: Della Rayford

Mortgagees:

Agency: Carl L. Bloxham,
Fairhope, Alabama

S 785
POLICY NO.

Fairhope
AGENCY

Alabama
STATE

ADJUSTMENT REFERRED TO:
S/A Harris

DATE: 9/16/48

2050

1 YR.

4/7/49

9/4/48

1200

We have your notice of loss under the policy issued to the above assured. The claim has been referred to the adjuster whose name appears above. Should you not hear from the adjuster reasonably soon, you may communicate with him or this office direct, preferably the former.

Very truly yours,

/s/ JOHN T. NESBITT,

General Adjuster.

ANSWER TO INTERROGATORIES
DELLA RAYFORD,

Plaintiff,
VS.

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK, A Corporation,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW.

*Filed 1-6-50
A. J. French
Reg.*

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

DELLA RAYFORD,

Plaintiff,

VS.

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK, a Corpora-
tion,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

MOTION TO TRANSFER CAUSE TO EQUITY SIDE.

Now comes the Plaintiff in the above styled cause and shows unto the Court that an equitable right is claimed by her in the above entitled matter, and that the said cause presents an equitable question, the decision of which would dispose of the case, and which cannot be disposed of on the law side of the court, which said equitable right Plaintiff claims and presents by this her motion to transfer said cause to the Equity Side of the docket, the substance of the said equitable right be as follows:

1. On to-wit, the 7th day of April, 1948, the Plaintiff, through her agent, Frank Rayford, who was then and there acting within the line and scope of his authority, secured a Perils Insurance Policy from the Defendant, to-wit, Number S 785, in the amount of Twelve Hundred Dollars (\$1200.00) on all buildings, and Eight Hundred Fifty Dollars (\$850.00) on household and personal property, through its agent, to-wit, Carl L. Bloxham Agency, who was then and there acting within the line and scope of his authority.

2. That it was the intention of the Defendant, acting through the said Carl L. Bloxham Agency, agent of the Defendant, and Frank Rayford, agent of the Plaintiff, that said insurance policy cover the following described property, to-wit:

One main dwelling, one story, frame, composition,
owner occupancy.
One 200 ft. wharf and the following houses attached
thereto:
One 6' x 16' frame metal clad boat house.
One 12' x 18' frame metal clad sleeping porch.
Two 6' x 6' frame metal clad bath houses, and
One 6' x 12' open fishing shed,

located on the Eastern shore of Mobile Bay about one and one-half miles North of Daphne.

3. That through the inadvertence or mistake of the scrivener, Carl L. Bloxham Agency, the agent, servant, or employee of the Defendant, while acting within the line and scope of his authority, the insured property was incorrectly described as agreed to and understood by the aforesaid Frank Rayford, agent of the Plaintiff, and the Carl L. Bloxham Agency, agent of the Defendant.

4. That the mistake by the said scrivener, Carl L. Bloxham Agency, agent of the Defendant, was not discovered until subsequent to damages of a part of the insured property suffered by the Plaintiff at which time the Carl L. Bloxham Agency issued a correct description of the insured property to said Policy Number S 785 in the form of an Endorsement, Form Number 280.

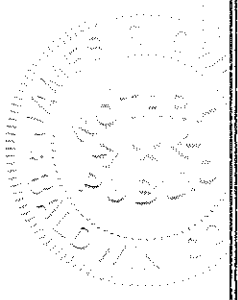
5. That a court of law is without authority to reform said insurance contract so as to conform with the intention of the aforesaid agent of the Plaintiff, and the aforesaid agent, servant, or employee of the Defendant.

WHEREFORE, the Plaintiff prays that an order be made by this court transferring said cause to the Equity Side of the Docket in said court, and that the same may be presented there so that the Defendant by bill and other appropriate proceedings may present the said equitable right above referred to as aforesaid.

J. B. Blackburn
Attorney for Plaintiff.

Sworn to and subscribed before me
on this the 10th day of July, 1950.

James R. Allen
Notary Public, Baldwin County, Ala.



MOTION TO TRANSFER CAUSE TO EQUITY
SIDE.

RECORDED

DELLA RAYFORD,
VS. Plaintiff,

FIDELITY PHENIX FIRE INSURANCE
COMPANY OF NEW YORK, a Corpora-
tion, Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.

FILED
JUL 10 1950
ALICE L. DUCK, Register

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

DAVIES & WILLIAMS

ATTORNEYS AT LAW

FRANK W. DAVIES
MARVIN WILLIAMS, JR.
JOE R. WALLACE
JOHN W. COOPER

September 14, 1949

SUITE 508-513
WATTS BUILDING
BIRMINGHAM 3, ALA.

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

Re: Della Rayford, Plaintiff vs.
Fidelity Phenix Fire Insurance
Company of N. Y., a corporation,
Defendant

Dear Madam:

Enclosed please find original and one copy of
interrogatories to the plaintiff in the above case
which we would appreciate your filing, and serving
the copy of interrogatories on the plaintiff, or his
attorney, and returning the receipt showing the date
they were filed.

Very truly yours,



F. W. DAVIES

/vh

Enc.

Della Rayford
Plaintiff.

vs.
Fidelity Phenix
Fire Insurance
Company,
New York,
a corporation
Defendant

in the Circuit Court
of Baldwin County,
Alabama,
at Law.

Demurrer

Now come the Plaintiff and
demurs to the Defendant Pleas
numbered 2, 3, 4, 5 and 6, each
separately and severally and
as grounds therefor, assigns
separately and severally, the
following:

1. The said pleas do not
set up any valid defense
to either count of the Complaint.
2. The said pleas do not set up
any valid defense to either
count of the Complaint and
raise immaterial issues.

J. D. Blackburn
Attorney for the
Plaintiff.

Hemmer
to
Plea, **RECORDED**
Rayford

vs.
Fidelity Phoenix
Fire Insurance
Co.

1386.

Filed: October 26, 1949.

Jeffery J. Maschurys
Judge.

DELLA RAYFORD,
Plaintiff,

vs.

FIDELITY PHENIX FIRE
INSURANCE COMPANY OF
NEW YORK, a corporation,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

#1386

NOW comes the defendant and for plea and answer to each count of the complaint, separately and severally, says the following, separately and severally:

1. The allegations of said count are untrue.
2. In the policy of insurance sued upon, it is expressly provided as follows:

"Provisions Applicable Only to Windstorm and Hail: This Company shall not be liable for loss caused directly or indirectly by (a) frost or cold weather or (b) snow storm, tidal wave, high water or overflow, whether driven by wind or not."

Defendant further avers that said alleged loss was the proximate consequence of and was caused by tidal wave, high water, or overflow. Wherefore, defendant avers that plaintiff ought not to recover.

3. For further plea and answer to Count 1 of the complaint, defendant avers that the policy of insurance sued upon, which was originally issued to the plaintiff on, to-wit, April 7, 1948, for the term of one year, and which was in force and effect at the time of said alleged loss, expressly provided that it insured the plaintiff against loss in the amount of \$1200.00 under item I of the policy on a one-story frame composition roof building occupied by owner as a one family dwelling, including building equipment and fixtures and outdoor equipment pertaining to the service of the premises (if the property of the owner of the dwelling), while located on the above described premises, but not trees, shrubs, plants or lawns. It is also expressly provided in said policy as follows:

"The Insured may apply up to ten per cent (10%) of the amount specified for Item I to cover private structures appertaining to the above described premises and located thereon, but not structures used for mercantile, manufacturing or farming purposes."

Defendant avers that said building insured under Item I of said policy was not damaged by said alleged windstorm. Defendant further avers that the buildings which plaintiff claims were damaged by said alleged windstorm were only insured in said policy at the time of said loss up to ten per cent (10%) of said \$1200.00, or \$120.00. Wherefore, defendant avers that plaintiff cannot recover for loss of said buildings as set out in Count 1 of the complaint in excess of \$120.00, with interest thereon.

4. For further plea and answer to Count 1 of the complaint, defendant avers that in the original policy of insurance issued to plaintiff, and which was in force and effect at the time of said alleged windstorm, it was expressly provided as follows:

"The policy covers the following described property, all situated Eastern Shore Mobile Bay $1\frac{1}{2}$ miles north of Daphne, City or Town of Daphne, State of Alabama.

1. \$1200.00 On the one story, frame composition roof building occupied by owner as one family dwelling, including building equipment and fixtures and outdoor equipment pertaining to the service of the premises (if the property of the owner of the dwelling), while located on the above described premises, but not trees, shrubs, plants or lawns.

"The Insured may apply up to ten per cent (10%) of the amount specified for Item 1 to cover private structures appertaining to the above described premises and located thereon, but not structures used for mercantile, manufacturing or farming purposes."

Defendant further avers that said one-story frame composition roof building occupied by owner as a family dwelling was not damaged or destroyed by said windstorm. Defendant further avers that said buildings, which it is claimed in said count, were damaged or destroyed by said windstorm were only insured in the amount of ten per cent (10%) of \$1200.00, or \$120.00. Wherefore, defendant avers that plaintiff cannot recover more than said sum of \$120.00 for said alleged loss claimed in said count.

5. For plea and answer to Count 2 of the Complaint, the defendant avers that at the time of said alleged loss, there was in force and effect a policy of insurance issued by the defendant to the plaintiff, which said policy provided as follows:

"The policy covers the following described property, all situated Eastern Shore Mobile Bay $1\frac{1}{2}$ Miles north of Daphne, City or Town of Daphne, State of Alabama

1. \$1200.00 On the one story frame composition roof building occupied by owner as one family dwelling, including building equipment and fixtures and outdoor equipment pertaining to the service of the premises (if the property of the owner of the dwelling), while located on the above described premises, but not trees, shrubs, plants or lawns.

"The Insured may apply up to ten per cent (10%) of the amount specified for Item 1 to cover private structures appertaining to the above described premises and located thereon, but not structures used for mercantile, manufacturing or farming purposes."

"The insured may apply up to ten per cent (10%) of the amount specified for Item 1 to cover rental value as defined in Item 5, but not exceeding one-twelfth (1/12) of said ten per cent (10%) for each month the above described dwelling or appurtenant private structures (except those used for mercantile, manufacturing or farming purposes) or parts thereof are untenable.

"2. \$850.00 On household and personal property usual or incidental to the occupancy of the premises as a dwelling (except aircraft, motor vehicles and boats other than rowboats and canoes), including household and personal property purchased under an installment plan and usual or incidental to a dwelling, belonging to the Insured or for which the Insured may be liable or, at the option of the Insured belonging to a member of the family of the Insured or to a servant thereof, while contained in the above described dwelling or appurtenant private structures or while on the above described premises.

"The Insured may apply up to ten per cent (10%) of the amount specified for Item 2 to cover property described therein and insured thereby (except rowboats, canoes, animals and pets) belonging to the Insured or any member of the family of, and residing with the Insured, while elsewhere than on the described premises but within the limits of that part of Continental North America included within the United States of America, Alaska, the Dominion of Canada and Newfoundland; however, it is warranted by the Insured that such extension of this insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

"The insured (if not the owner of the described premises) may apply up to ten per cent (10%) of the amount specified for Item 2 to cover improvements, alterations or additions to the above described dwelling and private structures appertaining thereto (except those used for mercantile, manufacturing or farming purposes.

"Loss, if any, under Item 2 shall be adjusted with the Insured specifically named and shall be payable to him unless other payee is specifically named hereunder."

Defendant avers that said alleged personal property claimed to have been damaged or destroyed by said windstorm was not usual or incidental to the occupancy of the premises as a dwelling, and were not contained in the described dwelling or appurtenant private structures, or on the above described premises. Wherefore, defendant avers that plaintiff ought not to recover.

6. For further plea and answer to Count 2 of the complaint, the defendant avers in the policy of insurance issued by the defendant to the plaintiff, and which was in force at the time of said alleged loss, it is expressly provided as follows:

"This Company shall not be liable for loss to the interior of the building or the insured property therein caused, (a) by rain, snow, sand or dust, whether driven by wind or not, unless the building insured or containing the property insured shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then shall be liable for loss to the interior of the building or the insured property therein as may be caused by rain, snow, sand, or dust entering the building through openings in the roof or walls made by direct action or wind or hail or (b) by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail."

Defendant further avers that the building insured under said policy, or containing said alleged property which plaintiff alleges was insured, did not first sustain an actual damage to the roof or walls by the direct force of wind, and said insured property was not damaged by rain entering the building through the openings in the roof or walls made by the direct force of wind. Wherefore, defendant avers that plaintiff ought not to recover under said Count.

Donna F. Williams
atty for Defendant

#1386
Della Rayford

RECORDED

Fidelity Mining
Inc. vs. CV.

Plea

Filed: October 26, 1949.

Julius J. Madison
Judge.

Received by
Miss M. J. Madison
for the defendant.

DELLA RAYFORD,	§	IN THE CIRCUIT COURT OF
Plaintiff,	§	BALDWIN COUNTY, ALABAMA.
vs.	§	AT LAW
FIDELITY PHENIX FIRE	§	
INSURANCE COMPANY OF	§	
NEW YORK, a corporation,	§	
Defendant.	§	

NOW comes the defendant in the above styled cause and demurs to each count of the complaint, separately and severally, and as grounds for said demurrer, sets down and assigns the following, separately and severally:

1. Said count does not state a cause of action.
2. It does not appear that said policy was in full force and effect at the time of the windstorm.
3. It does not appear what the terms of said policy were.
4. It does not appear what hazard was insured against by said contract of insurance.
5. It does not sufficiently appear that said property was damaged or lost by the hazard insured against.
6. It does not sufficiently appear as to what the terms and provisions of said contract of insurance were.
7. It does not appear whether said contract of insurance was written or verbal.
8. It does not sufficiently appear what the consideration for said contract of insurance was.
9. It does not sufficiently appear as to what property was covered by said contract of insurance.
10. It does not sufficiently appear who was insured by said contract of insurance.
11. It does not sufficiently appear to whom said policy was issued.
12. It does not appear what insurable interest, if any, the plaintiff had in said insured property.
13. It does not appear as to what the amount of loss or damage to said insured property was by reason of the peril insured against.
14. It does not appear as to when said policy expired or terminated.

15. It does not sufficiently appear as to whether said property was merely damaged, or whether it was wholly destroyed by the perils insured against.

16. For that it does not sufficiently appear that said policy covered damage to all of the items claimed in said count.

Robert T. Williams
Attorneys for Defendant.

1386
RECORDED

DELLA RAYFORD,

Plaintiff,

vs.

FIDELITY PHENIX FIRE
INSURANCE COMPANY OF
NEW YORK, a corporation,

Defendant.

DE M U R R E R

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

FILED
AUG 25 1949
ALICE J. DUCK, Clerk

Davies & Williams
Attorneys for Defendant.