

H. F. BURCHFIELD, SR.,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
HOLYOKE MUTUAL FIRE	X	
INSURANCE COMPANY IN	X	
SALEM, INC., a	X	
corporation,	X	AT LAW
Defendant.	X	

COMPLAINT

The Plaintiff claims of the Defendant the sum of Three Thousand Five Hundred Dollars (\$3,500.00), the value of a portion of a dwelling house, which the Defendant on the 26th day of July, 1969, insured against loss or injury by fire, wind and other perils in the policy of insurance mentioned, for the term of three years, which house was damaged by wind on the 17th day of August, 1969, of which the Defendant has had notice. Said policy is the property of the Plaintiff and at all material times said policy was in full force and effect, hence this suit.

CHASON, STONE & CHASON

By: Edward E Ball  
Attorneys for Plaintiff

Defendant may be served by service to the Superintendent of Insurance c/o Department of Insurance Administrative Building Montgomery, Alabama

The Plaintiff respectfully demands a trial by jury of this cause.

CHASON, STONE & CHASON

By: Edward E Ball  
Attorneys for Plaintiff

**FILED**

FEB 26 1971

EUNICE B. BLACKMON  
CIRCUIT CLERK

# 9716

H. F. BURCHFIELD, SR.,

Plaintiff,

vs.

HOLYOKE MUTUAL FIRE INSURANCE  
COMPANY IN SALEM, INC., a  
corporation,

Defendant.

\* \* \* \* \*

COMPLAINT

\* \* \* \* \*

CHASON, STONE & CHASON  
ATTORNEYS AT LAW  
P. O. Box 120  
BAY MINETTE, ALABAMA

SUMMONS AND COMPLAINT

**THE STATE OF ALABAMA**  
**BALDWIN COUNTY**

Circuit Court, Baldwin County

No. 9716

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Holyoke Mutual Fire Insurance Company In Salem,  
Inc. a corporation.

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint  
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette against.....

Holyoke Mutual Fire Insurance Company In Salem, Inc. a corp. ...., Defendant.....

by H. F. Burchfield, Sr. ....

....., Plaintiff.....

Witness my hand this 26th day of February 19 71

*Eunice D. Blackner* Clerk

**THE STATE OF ALABAMA**  
**BALDWIN COUNTY**

**CIRCUIT COURT**

H. F. BURCHFIELD, SR.

Plaintiffs

vs.

HOLYOKE MUTUAL FIRE INSURANCE

Com. In Salem, Inc. a corp. Defendants

**SUMMONS AND COMPLAINT**

Filed Feb. 26, 1971

Eunice B. Blackmon

Clerk

M. S. Butler, Sheriff of Montgomery

County, Alabama, Claim \$1.50 each for

serving 1 process(es) and \$1.00

travel expense on each of 1

process(es) or a total of \$2.50

W. D. Mason  
 CHASON, STONE & CHASON Sheriff

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

MAR 3 1971

Received In Office

MAR 4 1971

M. S. BUTLER, Sheriff

19.....

Sheriff

I have executed this summons

this 19.....

by leaving a copy with

Executed by serving 2 copies of

the within on *James B. Blackmon*

Superintendent

of Insurance, State of Alabama

This The 5 day of Mar. 1971

Sheriff of Montgomery County

M. S. Butler

By *W. D. Mason* D. S.

Deputy Sheriff

STATE OF ALABAMA  
DEPARTMENT OF INSURANCE

I, the undersigned as Superintendent of Insurance for the State of Alabama,  
hereby certify that on the 5th day of March, 1971, I  
sent by registered mail in an envelope as follows:

Holyoke Mutual Fire Insurance Company in Salem  
39 Norman Street  
Salem, Massachusetts 01971

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

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

H. F. Burchfield, Sr., Plaintiff

in the Circuit Court of Baldwin County


VERSUS

\_\_\_\_\_  
(Name of Court)

Holyoke Mutual Fire Insurance Co. in Salem Defendant

And that on the 15th day of March, 1971, I received  
the return card showing receipt by the designated addressee of said envelope on  
the 11th day of March, 1971.

Witness my hand and official seal this the 15th day of March,  
1971.

  
SUPERINTENDENT OF INSURANCE

**FILED**

MAR 16 1971

EVOL

68 PAGE 558

EUNICE B. BLACKMON  
CIRCUIT  
CLERK

H. F. BURCHFIELD, SR.,	*	IN THE CIRCUIT COURT OF
	*	
Plaintiff,	*	
	*	BALDWIN COUNTY, ALABAMA
VS.	*	
	*	
HOLYOKE MUTUAL FIRE	*	AT LAW
INSURANCE COMPANY IN	*	
SALEM, INC., a	*	
corporation,	*	
	*	
Defendant.	*	CASE NO. 9716

PLEA IN ABATEMENT

Now comes the Defendant, HOLYOKE MUTUAL FIRE INSURANCE COMPANY IN SALEM, and files the following separate and several pleas in abatement to the complaint herein, and represents and shows unto the Court as follows:

1. Defendant avers that the Plaintiff cannot now maintain this suit for that the policy of insurance which is the foundation of Plaintiff's suit provides that no suit or action on said policy for the recovery of any claim shall be sustainable in any court of law or equity unless all of the requirements of said policy shall have been complied with, and the policy requires the filing of a sworn proof of loss within sixty (60) days after the loss, signed and sworn to by the insured, "...stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of 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 this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of the loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged...", and no such signed and sworn

proof of loss has been filed by the Plaintiff or insured under said policy; wherefore, this suit should be abated; and Defendant further avers and alleges that it has not by act or words waived the provisions requiring filing of proof of loss, and that it has not by act or conduct waived the provisions of said clause.

2. The Defendant avers and alleges that Plaintiff cannot now maintain this suit for that the policy of insurance which is the foundation thereof provides that no suit or action on said policy for the recovery of any claim shall be sustained in any court of law or equity unless all of the requirements of the policy shall have been complied with, and that said policy provides that in case the insured and the company shall fail to agree as to the actual cash value of the amount of the loss, then the claim shall be submitted for appraisal and arbitration, and no such appraisal and arbitration has been undertaken; wherefore, said suit is due to be abated; and Defendant further avers and alleges that it has not by act or words waived the provisions of the policy requiring submission to appraisal and arbitration in the event the insured and the company failed to agree upon the actual cash value of the amount of the loss; and that it has not by acts or conduct waived said policy requirement.


HOWELL, JOHNSTON, LANGFORD & FINKBOHNER  
Attorneys for the Defendant

By: Thomas A. Johnston III  
Thomas A. Johnston, III

STATE OF ALABAMA     )

COUNTY OF MOBILE     )

Before me, the undersigned authority in and for said State and County, personally appeared THOMAS A. JOHNSTON, III, who is known to me, and who being by me first duly sworn, deposes and says on oath that he is informed and believes, and upon the basis of such information and belief, states that the facts contained in the foregoing plea in abatement are true and correct.

  
THOMAS A. JOHNSTON, III

Subscribed and sworn to before  
me this 31<sup>st</sup> day of March, 1971.

  
NOTARY PUBLIC, STATE OF ALABAMA AT LARGE


**FILED**

APR 2 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE ON  
THIS 31<sup>st</sup> DAY OF March,  
1971, SERVED A COPY OF THE FOREGOING  
PLEADING ON COUNSEL FOR ALL PARTIES TO  
THIS PROCEEDING BY MAILING THE SAME BY  
UNITED STATES MAIL, PROPERLY ADDRESSED  
AND FIRST CLASS POSTAGE PREPAID.

  
\_\_\_\_\_



H. F. BURCHFIELD, SR.,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
HOLYOKE MUTUAL FIRE	X	
INSURANCE COMPANY IN	X	
SALEM, INC., a	X	AT LAW
corporation.,	X	CASE NO. 9716
Defendant.	X	

ORDER

This day came the Plaintiff in the above styled cause, by and through his attorneys of record, and moved that the above styled cause be dismissed, and the Court having considered the same is of the opinion that the said Motion should be granted. It is, therefore,

ORDERED, ADJUDGED and DECREED that the said cause be dismissed with prejudice and that the Plaintiff be taxed with the costs of Court for which let execution issue.

Dated this 14th day of September, 1971.

James A. Marshall  
Circuit Judge

*Filed*  
*9-21-71*  
*Junice B. Blackman*  
*Clerk*

H. F. BURCHFIELD, SR.,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
HOLYOKE MUTUAL FIRE	X	
INSURANCE COMPANY IN	X	
SALEM, INC., A	X	AT LAW CASE NO. 9716
Corporation,	X	
Defendant.		

DEMURRER TO PLEAS

Comes now the Plaintiff in the above styled cause, H. F. Burchfield, Sr., by and through his attorneys of record, and demurs to the Pleas contained in the Answer heretofore filed by the Defendant in this cause and to each paragraph or section thereof, separately and severally, and for grounds therefore assigns the following, separately and severally:

1. The said Pleas fail to state a defense to the Plaintiff's cause of action.
2. The matters alleged in said Pleas are mere conclusions of the Pleader.
3. The allegations of said Pleas are vague, indefinite and uncertain.

Respectfully submitted,

CHASON, STONE & CHASON

BY: *Edward E. Ball*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 7 day of JULY, 1971.

*Edward E. Ball*

**FILED**

JUL 1 1971

EUNICE B. BLACKMON CIRCUIT CLERK

H. F. BURCHFIELD, SR.,

Plaintiff,

vs.

HOLYOKE MUTUAL FIRE  
INSURANCE COMPANY IN  
SALEM, INC., A  
Corporation,

Defendant.

X

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

# 9716

DEMURRER TO PLEA IN ABATEMENT

Comes now the Plaintiff in the above styled cause,  
H. F. Burchfield, Sr., by and through his Attorneys of Record,  
and demurs to the Plea in Abatement heretofore filed by the  
Defendant in this cause and to each paragraph or section thereof,  
separately and severally, and for grounds therefor, assigns the  
following separately and severally:

1. For that it affirmatively appears from the face  
of the said Plea in Abatement that the matters alleged therein,  
if true, are not in abatement but rather attempt to allege an  
affirmative defense.

2. For that the matters alleged in said Plea in  
Abatement heretofore filed state no grounds requiring the  
abatement of this action.

Respectfully submitted,

CHASON, STONE & CHASON

CERTIFICATE OF SERVICE

By: Charles E Ball

I certify that a copy of the foregoing  
pleading has been served upon counsel  
for all parties to this proceeding, by  
mailing the same to each by First Class  
United States Mail, properly addressed  
and postage prepaid on this 14th day

of April 19 71

Charles E Ball

**FILED**

APR 7 1971

RONICE B. BLACKMON CIRCUIT  
CLERK

H. F. BURCHFIELD, SR.,	)	IN THE CIRCUIT COURT OF
	)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
	)	
VS.	)	
	)	
HOLYOKE MUTUAL FIRE	)	AT LAW
INSURANCE COMPANY IN	)	
SALEM, INC., a corporation,	)	
	)	
Defendant.	)	CASE NO. 9716

A N S W E R

NOW COMES the Defendant in the above styled cause and for answer to the Complaint heretofore filed against it in said cause assigns the following pleas, separately and severally, thereto:

1. Not guilty.
2. The material allegations of said Complaint are untrue.
3. For further answer to the Complaint, Defendant avers that the Plaintiff cannot now maintain this suit for that the policy of insurance which is the foundation of Plaintiff's suit provides that no suit or action on said policy for the recovery of any claim shall be sustainable in any court of law or equity unless all of the requirements of said policy shall have been complied with, and the policy requires the filing of a sworn proof of loss within sixty (60) days after the loss, signed and sworn to by the insured, " . . . stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of 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 this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of the loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged . . .", and no such

signed and sworn proof of loss has been filed by the Plaintiff or insured under said policy.

4. For further answer to the Complaint, Defendant avers and alleges that Plaintiff cannot now maintain this suit for that the policy of insurance which is the foundation thereof provides that no suit or action on said policy for the recovery of any claim shall be sustained in any court of law or equity unless all of the requirements of the policy shall have been complied with, and that said policy provides that in case the insured and the company shall fail to agree as to the actual cash value of the amount of the loss, then the claim shall be submitted for appraisal and arbitration, and no such appraisal and arbitration has been undertaken; wherefore, said Plaintiff cannot recover; and Defendant further avers and alleges that it has not by act or words waived the provisions of the policy requiring submission to appraisal and arbitration in the event the insured and the company failed to agree upon the actual cash value of the amount of the loss; and that it has not by acts or conduct waived said policy requirement.

HOWELL, JOHNSTON, LANGFORD & FINKBOHNER  
Attorneys for the Defendant

By: 

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE ON  
THIS 21 DAY OF May,  
1971, SERVED A COPY OF THE FOREGOING  
PLEADING ON COUNSEL FOR ALL PARTIES TO  
THIS PROCEEDING BY MAILING THE SAME BY  
UNITED STATES MAIL, PROPERLY ADDRESSED  
AND FIRST CLASS POSTAGE PREPAID.

FILED

MAY 31 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

LAW OFFICES OF  
HOWELL, JOHNSTON, LANGFORD & FINKBOHNER  
NINTH FLOOR, E. A. ROBERTS BUILDING  
P. O. BOX 1643  
MOBILE, ALABAMA  
36601

THOMAS O. HOWELL, JR.  
THOMAS A. JOHNSTON, III  
IRVIN J. LANGFORD  
GEORGE W. FINKBOHNER, JR.  
JOHN L. LAWLER

AREA CODE 205  
TELEPHONE 432-2677

March 31, 1971

Mrs. Eunice B. Blackmon, Clerk  
Circuit Court of Baldwin County  
Baldwin County Court House  
Bay Minette, Alabama

Re: H.F. Burchfield, Sr. v. Holyoke Mutual  
Fre Insurance Company in Salem, Inc.  
Case No. 9716

Dear Mrs. Blackmon:

Enclosed please find Plea In Abatement in  
the above-styled cause. Please file this for us  
and acknowledge receipt of same.

Thanking you, we remain

Very sincerely yours,

*Thomas A. Johnston, III*  
FOR THE FIRM

TAJIII/mmt  
Enclosure

*You forgot to get same  
signed by Notary Public*