

REYNOLDS BROTHERS LUMBER]	IN THE CIRCUIT COURT OF
COMPANY, INC., a corpora-]	BALDWIN COUNTY,
tion,]	ALABAMA
Plaintiff,]	AT LAW
vs.]	
FEDERATED MUTUAL IMPLEMENT]	
AND HARDWARE INSURANCE]	
COMPANY, a corporation,]	
Defendant.]	CASE NO. <u>71,200</u>

COUNT ONE

ACTION FOR DECLARATORY JUDGMENT

Plaintiff avers that, on or about, to-wit, June 14, 1971, a mixer truck (Serial #Y911VJ66559) owned by the plaintiff and insured by the defendant was delivering concrete in Baldwin County, Alabama. During the delivery, said truck hit a mound, causing the truck to bounce, the framework holding the drum to break and the mixer to fall from the truck upon the ground. As a proximate result thereof, there was damage to the truck chassis, truck fenders, mixer frame and pedestal assembly, turn gear box housing, front and rear tires, right angle drive unit, drive motor, drum bearing, retainer and housing, drum roller assembly, discharge chute, mixer hoop, jack screw and adjuster, turn motor mounting, bracket assembly, electrical cable, ladder, hydraulic hose, swivel and adapter, chain guard, chain guard liner, bolts, nuts and washers, and sender and gasket, in the aggregate amount of Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47), and plaintiff lost the use thereof and profit therefrom.

Plaintiff avers further that defendant insured said truck under its policy No. 671536, Endorsements Nos. 13 and 14, a true copy of which is attached, and that said policy of insurance was in full force and effect on the date of the accident described above. The policy afforded maximum coverage for damage to the truck, but not beyond the actual cash value of the truck (which value was no less than the amount of damages herein claimed), less a \$500.00 deductible, due to any "collision or upset" of said truck, as those terms are used in the said policy, and the amount claimed herein was the proximate result of such "collision or upset".

Plaintiff avers further that it gave notice of said loss to defendant and made demand upon the defendant for payment under the policy for all damage caused to the truck (including its drum) by said accident. Notwithstanding the said demand, defendant has denied coverage and had contended and does contend that there is no coverage afforded to plaintiff for said loss (except as to the drum) by its said policy, alleging that there was no "collision or upset" within the meaning of the policy. Hence, a justiciable controversy exists between plaintiff and defendant.

WHEREFORE, the foregoing considered, plaintiff respectfully requests that this Court render a declaratory judgment declaring and defining the rights of plaintiff under said policy as follows:

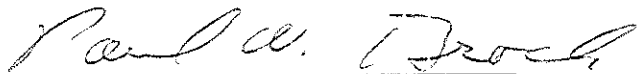
1. That on the date of said accident, to-wit, June 14, 1971, there was a "collision or upset" of plaintiff's said truck within the meaning of said policy, affording coverage to plaintiff for its damages to its truck, as above described;

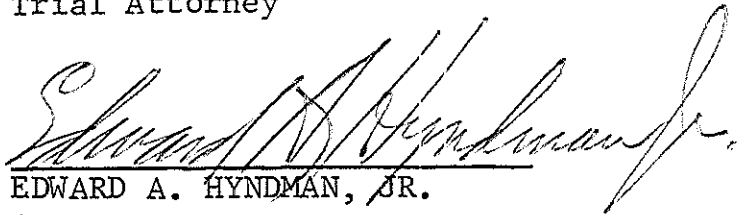
2. That defendant is justly and truly indebted to plaintiff in the sum of Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47);

3. That defendant be required to reimburse plaintiff for its legal fees and other costs and expenses incurred in connection with this declaratory judgment action and otherwise, together with the value of the lost use thereof and profit therefrom, because of the wrongful and vexatious failure and refusal of defendant to comply with the provisions of said policy by paying the full amount of loss thereunder.

COUNT TWO

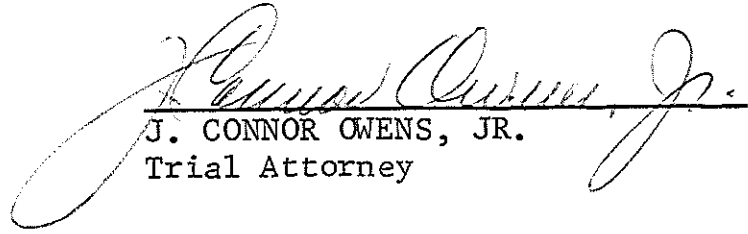
The Plaintiff claims of the defendant Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47), the difference between the value before, and the value after, of a truck (Serial #Y911VJ 66559) which the defendant, on August 13, 1970, insured against loss or injury from collision or upset in the policy of insurance (No. 671536) mentioned, for the term of one year, which truck was damaged by collision or upset on about, to-wit, June 14, 1971, of which defendant has had notice.


PAUL W. BROCK
Trial Attorney


EDWARD A. HYNDMAN, JR.
Attorney

OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
P. O. Box 123
Mobile, Alabama


J. CONNOR OWENS, JR.
Trial Attorney

The defendant may be served as follows:

4021 Meadow Wood Curve
Mobile, Alabama 36609

FILED

JAN 18 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

COMBINATION AUTOMOBILE POLICY

THIS POLICY IS NON-ASSESSABLE
AND PARTICIPATES IN SAVINGS MADE BY THE COMPANY

Federated Mutual

IMPLEMENT AND HARDWARE INSURANCE COMPANY
HOME OFFICE: OWATONNA, MINNESOTA



Fred
342-9691

Issued by

SOUTHERN DIVISION

1400 West Peachtree St., N. W.

Atlanta, Georgia 30309

(A mutual insurance company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I. Coverage A—Bodily Injury Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage B—Property Damage Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage C—Automobile Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1. To or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon or while entering into or alighting from the automobile, provided the automobile is being used by the named insured or his spouse if a resident of the same household, or with the permission of either; or

Division 2. To or for each insured who sustains bodily injury, sickness or disease, caused by accident, while in or upon, or while entering into or alighting from, or through being struck by, an automobile.

Coverage D—Comprehensive Loss of or Damage to the Automobile, except by Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.

Coverage E—Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto.

Coverage F—Fire, Lightning and Transportation: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage G—Theft (Broad Form): To pay for loss of or damage to the automobile, hereinafter called loss, caused by theft, larceny, robbery or pilferage.

Coverage H—Windstorm, Hail, Earthquake or Explosion: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake or explosion, excluding loss or damage caused by rain, snow or sleet, whether or not wind-driven.

Coverage I—Combined Additional Coverage: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to an automobile \$25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage J—Towing and Labor Costs: To pay for towing and labor costs necessitated by the disablement of the automobile, provided the labor is performed at the place of disablement.

II. Defense, Settlement, Supplementary Payments: With respect to such insurance as is afforded by this policy for bodily injury liability and for property damage liability, the company shall:

(a) defend any suit against the insured alleging such injury, sickness, 2001.5 (R-5-1-58)

disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;

(b) (1) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, the cost of bail bonds required of the insured in the event of accident or traffic law violation during the policy period, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request;

and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

III. Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or such spouse or with the permission of either. The insurance with respect to any person or organization other than the named insured or such spouse does not apply:

(1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof, but this provision does not apply to a resident of the same household as the named insured, to a partnership in which such resident or the named insured is a partner, or to any partner, agent or employee of such resident or partnership;

(2) to any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

(b) With respect to the insurance under division 2 of coverage C, the unqualified word "insured" means:

(1) the named insured, if an individual or husband and wife who are residents of the same household, otherwise the person designated in Item 3 of the declarations, and

(2) while residents of the same household as the named insured or such designated person, his spouse and the relatives of either; provided, if such named insured or designated person shall die, this insurance shall cover any person who was an insured at the time of such death.

IV. Automobile Defined, Trailers, Private Passenger Automobile, Two or More Automobiles:

(a) **Automobile.** Except with respect to division 2 of coverage C and except where stated to the contrary, the word "automobile" means:

(1) **Described Automobile**—the motor vehicle or trailer described in this policy;

(2) **Trailer**—under coverages A, B and division 1 of coverage C, a trailer not described in this policy, if designed for use with a private passenger automobile, if not being used for business purposes with another type automobile, and under division 1 of coverage C if not a home, office, store, display or passenger trailer;

a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance;

(p) under coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

1. Notice of Accident—Coverages A, B and C: When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

2. Notice of Claim or Suit—Coverages A and B: If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

3. Limits of Liability—Coverage A: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

4. Limit of Liability—Coverage B: The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

5. Limit of Liability—Coverage C: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

6. Severability of Interests—Coverages A and B: The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

7. Action Against Company—Coverages A and B: No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor shall the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

8. Action Against Company—Coverage C: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

9. Financial Responsibility Laws—Coverages A and B: When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

10. Assault and Battery—Coverages A and B: Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

11. Medical Reports; Proof and Payment of Claim—Coverage C: As soon as practicable the injured person or someone on his behalf shall furnish to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

(q) under coverages D, E, F, G, H, I and J, to loss due to confiscation by duly constituted governmental or civil authority;

(r) under coverages D, E, F, G, H, I and J to loss due to radioactive contamination.

CONDITIONS

12. Named Insured's Duties When Loss Occurs—Coverages D, E, F, G, H, I and J: When loss occurs, the named insured shall:

- protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;
- give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;
- file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.

Upon the company's request, the named insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

13. Appraisal—Coverages D, E, F, G, H, I and J: If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Limit of Liability; Settlement Options; No Abandonment—Coverages D, E, F, G, H and I: The limit of the company's liability for loss shall not exceed either (1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or (2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or (3) the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

15. Automatic Reinstatement—Coverages D, E, F, G, H and I: When the automobile is damaged, whether or not such damage is covered under this policy, the liability of the company shall be reduced by the amount of such damage until repairs have been completed, but shall then attach as originally written without additional premium.

16. Payment for Loss; Action Against Company—Coverages D, E, F, G, H, I and J: Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

17. No Benefit to Bailee—Coverages D, E, F, G, H, I and J: The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

18. Assistance and Cooperation of the Insured—Coverages A, B, D, E, F, G, H, I and J: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

19. Subrogation—Coverages A, B, D, E, F, G, H, I and J: In the event of any payment under this policy, the company shall be subrogated to

all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

20. Other Insurance—Coverages A, B, D, E, F, G, H, I and J: If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, under coverages A and B the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

21. Other Insurance—Coverage C: Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

22. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

23. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such

legal representative; provided that notice of cancellation addressed to the insured named in Item 1 of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancellation of this policy.

24. Cancellation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

25. Purposes of Use: (a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in the declarations, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

26. Terms of Policy Conformed to Statute: Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

27. Declarations: By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

MUTUAL POLICY CONDITIONS: (Applicable only when this policy is issued in the state of Texas)

TEXAS-MUTUALS—MEMBERSHIP AND VOTING NOTICE

The insured is notified that by virtue of this policy, he is a member of the Federated Mutual Implement and Hardware Insurance Company of Owatonna, Minnesota, and is entitled to vote either in person or by proxy at any and all meetings of said Company. The Annual Meeting: held in its Home Office in Owatonna, Minnesota, on the third Tuesday of April, in each year, at ten o'clock A.M.

TEXAS-MUTUALS—PARTICIPATION CLAUSE WITHOUT CONTINGENT LIABILITY

No Contingent Liability: This policy is non-assessable. The policyholder is a member of the company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with the provisions of law, in the distribution of dividends so fixed and determined.

MUTUAL POLICY CONDITIONS: (Applicable in all states except those specifically provided for)

This policy is non-assessable and the named insured's liability is limited to the payment of the premium as herein provided. By acceptance of this policy the named insured becomes a member of the company and shall, upon termination of this policy, participate in the distribution of dividends as fixed and determined by the Board of Directors of the company in accordance with the provisions of law.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.

James B. Hamilton
Secretary

Chas. A. [Signature]
President

NOTICE OF ANNUAL MEETING

The insured named herein is hereby notified that while this policy is in force he is by virtue thereof a member of the Federated Mutual Implement and Hardware Insurance Company, Owatonna, Minnesota, and that the annual meeting of said Company is held at its home office in Owatonna, Minnesota, on the third Tuesday of April of each year at ten o'clock A. M.

It is hereby understood and agreed that in all policies issued in the following states and in those states only, the special clause as shown for each state is made a part of this policy.

KANSAS SPECIAL PROVISION—Conditions No. 12 (a) and No. 13 of this policy are hereby amended as follows, all other terms and conditions remaining unchanged:

Condition No. 12 (a)—Substitute the following for the entire paragraph: (a) use every reasonable means to protect the automobile covered by this policy from any further loss; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request.

Condition No. 13—The words "made within thirty days after receipt of proof of loss by the company" are substituted for the words "made within sixty days after receipt of proof of loss by the company" as they appear in this Condition. All other provisions of Condition No. 13 remain unchanged.

NORTH CAROLINA SPECIAL PROVISION—If this policy is written in the state of North Carolina, Condition 12 (c) of this policy is hereby amended as follows, all other terms and conditions remaining unchanged:

Condition 12 (c)—The failure of the Insured to furnish proofs of loss as required by the terms of this Policy shall not debar him from recovery hereunder unless within fifteen (15) days after receipt of notice of loss the Company or its representatives shall provide the Insured with a blank or blanks in duplicate, to be used for the purpose of making such proofs of loss.

(3) **Temporary Substitute Automobile**—under coverages A, B and division 1 of coverage C, an automobile not owned by the named insured or his spouse if a resident of the same household, while temporarily used as a substitute for the described automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household, if (i) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (ii) the named insured or such spouse notifies the company within thirty days following such delivery date; but such notice is not required under coverages A, B and division 1 of coverage C if the newly acquired automobile replaces an owned automobile covered by this policy. The insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured or such spouse has other valid and collectible insurance. Under coverages D, E, F, G, H and I, when a limit of liability is expressed in the declarations as a stated amount, such limit as to the newly acquired automobile shall be replaced by the actual cash value. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under coverages D, E, F, G, H and I its equipment and other equipment permanently attached thereto.

Under division 2 of coverage C, the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler-treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

(b) **Private Passenger Automobile.** The term "private passenger automobile" means a private passenger, station wagon or jeep type automobile, and also includes under coverages A, B and division 1 of coverage C any automobile the purposes of use of which are stated in the declarations as "pleasure and business."

(c) **Semitrailer.** The word "trailer" includes semitrailer.

(d) **Two or More Automobiles.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under coverages A and B and separate automobiles as respects limits of liability, including any deductible provisions, under coverages D, E, F, G, H, I and J.

V. Use of Other Automobiles: If the named insured is an individual or husband and wife and if during the policy period such named insured, or the spouse of such individual if a resident of the same household, owns a private passenger automobile covered by this policy, such insurance as is afforded by this policy under coverages A, B, division 1 of coverage C and coverage E with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured and spouse, and (2) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III does not apply to this

insurance.

(b) Under division 1 of coverage C, this insurance applies only if the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by a private chauffeur or domestic servant of such named insured or spouse, or from the occupancy of said automobile by such named insured or spouse.

(c) Under coverage E, this insurance applies only with respect to a private passenger automobile while being operated or used by such named insured or spouse. Exclusion (k) does not apply to this insuring agreement.

(d) This insuring agreement does not apply:

(1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household other than a private chauffeur or domestic servant of such named insured or spouse;

(2) to any accident arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place;

(3) under coverages A, B or division 1 of coverage C, to any automobile while used in a business or occupation of such named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, private chauffeur or domestic servant;

(4) under coverage E, to any loss when there is any other insurance which would apply thereto in the absence of this insuring agreement, whether such other insurance covers the interest of the named insured or spouse, the owner of the automobile or any other person or organization.

VI. Loss of Use by Theft—Rental Reimbursement: The company, following a theft covered under this policy of the entire automobile, shall reimburse the named insured for expense not exceeding \$5 for any one day nor totaling more than \$150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs. Such reimbursement is payable by the company in addition to the applicable limit of liability of this policy.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the named insured or the company or on such earlier date as the company makes or tenders settlement for such theft.

Such reimbursement shall be made only if the stolen automobile was a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.

VII. General Average and Salvage Charges: The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the named insured becomes legally liable.

VIII. Policy Period, Territory, Purposes of Use: This policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof and, if a "described automobile" under Insuring Agreement IV, is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

This policy does not apply:

(a) except under division 2 of coverage C, while the automobile is used as a public or livery conveyance, unless such use is specifically declared and described in this policy;

(b) under coverages A and B, to liability assumed by the insured under any contract or agreement;

(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

(d) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(e) under coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(f) under coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(g) under division 1 of coverage C, to bodily injury to or sickness, disease or death of any employee of the named insured or spouse arising out of and in the course of (1) domestic employment by the named insured or spouse, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's com-

pensation law, or (2) other employment by the named insured or spouse;

(h) under coverage C, to bodily injury to or sickness, disease or death of any person who is an employee of an automobile sales agency, repair shop, service station, storage garage or public parking place, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(i) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(j) to injury, sickness, disease, death or loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, (1) with respect to expenses under Insuring Agreement II (b) (3) or under coverage C, or (2) under coverages D, E, F, G, H, I and J;

(k) under coverages D, E, F, G, H, I and J, if the automobile is or at any time becomes subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance not specifically declared and described in this policy;

(l) under coverages D, E, F, G, H, I and J, to any damage to the automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(m) under coverages D, E, F, G, H, I and J, to robes, wearing apparel or personal effects;

(n) under coverages D, E, F, G, H, I and J, to tires unless damaged by fire or stolen or unless such loss be coincident with and from the same cause as other loss covered by this policy;

(o) under coverages D and G, to loss due to conversion, embezzlement or secretion by any person in possession of the automobile under

CHANGE OF AUTOMOBILE OR COVERAGE ENDORSEMENT

REYNOLDS BROTHERS LUMBER COMPANY, INC
FOLLY, ALABAMA 36535

Endorsement Effective Date 8 13 70 Car No. 23 Endorsement No. 13 Attached to Policy No. 671536

IN CONSIDERATION OF THE PREMIUM SHOWN BELOW (IF ANY), IT IS AGREED THAT AS OF THE ABOVE EFFECTIVE DATE:

- 1.
2. The name and/or address of the Insured is changed to:

The automobile will be principally garaged as above, unless noted below:

3. The policy ceases to cover the following described automobile:

Car No.	Yr.	Trade Name	Body Style	Motor, Serial, or L.D. No.

4. The policy shall cover the following described automobile:

Car No.	Yr.	Trade Name	Model	No. Cyl.	Body Style	Motor, Serial, or L.D. No.	BI-PD Class	Coll. Symb. & Class	Actual Cost When Purchased	Purchased Mo. Yr. New Used
23	70	FORD			LTS 9000 WITH 12 YD CHALLENGER MIXER	559			33,500	8 70 N

5. This policy is amended to afford the coverages as indicated by an "X" in Column 1 with limits of liability as shown.

Col. 1	Limits of Liability		Insurance Coverages
	each person	each accident *	Bodily Injury Liability
	\$ 000	\$ 000	
	\$ 000	each accident *	Property Damage Liability
	\$	each person	Medical Payments
	Actual Cash Value (unless otherwise stated herein)		(1) Comprehensive-Excluding Collision
	\$ 100		(2) Personal Effects (Family Automobile Policy Only)
X	Actual Cash Value less deductible \$ 500		Collision or Upset
X	\$ ACV		Fire, Lightning and Transportation
X	\$ ACV		Theft (Broad Form)
	\$		Windstorm, Etc.
	\$		Combined Additional Coverage
	\$ each disablement		Towing and Labor Costs
	each person	each accident *	Family Protection Against
	\$ 000	\$ 000	Uninsured Motorist

* If attached to a Family Combination Automobile Policy, "each accident" shall read "each occurrence".

\$ _____ Net Return Premium
M. \$ 105.00 Net Additional Premium
☐ Premium Subject to Audit
☐ No Change in Premium

Federated Mutual

IMPLEMENT AND HARDWARE INSURANCE COMPANY
Home Office: Owatonna, Minnesota

James B. Hamilton Secretary
C. J. Burdette President

All other conditions and provisions remain unchanged.

LOSS PAYABLE CLAUSE AND CERTIFICATE

Endorsement Effective

Date 8 13 70

Endorsement

Car No. 23

Attached to

No. 14

Policy No. 671536

THIS IS TO CERTIFY THAT THE AUTOMOBILE DESCRIBED BELOW IS INSURED BY THIS COMPANY FOR THE COVERAGES INDICATED BELOW:

AUTOMOBILE

Year	Trade Name and Model	Type of Body	Motor, Serial or Identification Number
70	FORD	LTS 9000 WITH 12 YD CHALLENGER MIXER	559

INSURED

REYNOLDS BROTHERS LUMBER COMPANY, INC
803 SOUTH MCKINZIE STREET
FOLEY, ALABAMA 36535

POLICY PERIOD

FROM 12 1 69 TO 12 1 70
(mo. day year) (mo. day year)

COVERAGES — as indicated by an 'X' in Column 1 with Limits of Liability as shown.

Col. 1	Limits of Liability	Insurance Coverages
	Actual Cash Value (unless otherwise stated herein) \$	Comprehensive
X	Actual Cash Value less \$ 500 deductible	Collision or Upset

Col. 1	Limits of Liability	Insurance Coverages
X	\$ ACV	Fire, Lightning and Transportation
X	\$ ACV	Theft (Broad Form)
	\$	Windstorm, Etc.
	\$	Combined Additional Coverage

If cancellation or change occurs during the term of such policy in such manner to affect this Certificate, TEN days written notice will be given to the Lienholder named below. Notice by regular mail addressed to the Lienholder's address given below shall be sufficient compliance with this provision.

Loss or damage, if any, under the policy designated above shall be payable as interest may appear to the Insured and the LIENHOLDER NAMED BELOW and this insurance as to the interest of the Bailment Lessor, Conditional Vendor, Mortgagee or other secured party or Assignee of Bailment Lessor, Conditional Vendor, Mortgagee or other secured party (herein called the lienholder) shall not be invalidated by any act or neglect of the Lessee, Mortgagor, Owner of the within described automobile or other Debtor nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the Lessee, Mortgagor, Purchaser or other Debtor in possession of the property insured under a bailment lease, conditional sale, mortgage or other security agreement is not covered under such policy, unless specifically insured against and premium paid therefor; and provided, also, that in case the Lessee, Mortgagor, Owner or other Debtor shall neglect to pay any premium due under such policy the Lienholder shall, on demand, pay the same.

Provided also, that the Lienholder shall notify the company of any change of ownership or increase of hazard which shall come to the knowledge of said Lienholder and, unless permitted by such policy, it shall be noted thereon and the Lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise such policy shall be null and void.

The company reserves the right to cancel such policy at any time as provided by its terms, but in such case the company shall notify the Lienholder when not less than ten days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the company shall have the right, on like notice, to cancel this agreement.

If the insured fails to render proof of loss within the time granted in the policy conditions, such Lienholder shall do so within sixty days thereafter, in form and manner as provided by the policy, and further, shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

Whenever the company shall pay the Lienholder any sum for loss or damage under such policy and shall claim that, as to the Lessee, Mortgagor, Owner or other Debtor, no liability therefor existed, the company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lienholder the whole principal due or to grow due on the mortgage or other security agreement with interest, and shall thereupon receive a full assignment and transfer of the mortgage or other security agreement and of all such other securities; but no subrogation shall impair the right of the Lienholder to recover the full amount of its claim.

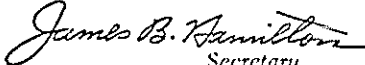
Whenever a payment of any nature becomes due under the policy, separate payment may be made to each party at interest provided the company protects the equity of all parties.

LIENHOLDER

SOUTH BALDWIN BANK
SOUTH MCKINZIE ST
FOLEY, ALA 36535

FEDERATED MUTUAL IMPLEMENT AND HARDWARE INSURANCE COMPANY


President


Secretary

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No.

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon ..FEDERATED MUTUAL IMPLEMENT AND.....
..HARDWARE INSURANCE COMPANY, a corporation, 4021 Meadow Wood Curve..
Mobile, Alabama 36609

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.....
Federated Mutual Implement and Hardware Insurance Company, Defendant.....

by ..REYNOLDS BROTHERS LUMBER COMPANY, INC., a corporation.....
....., Plaintiff.....

Witness my hand this.....18th.....day of.....January..... 19.....72

Ernie B. Blackman Clerk

Ex 1-19-72

VOL

69 PAGE 45

No. 10,200

Page.....

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

REYNOLDS BROTHERS LUMBER COM-
PANY, INC., a corporation,

Plaintiffs

0194 Fred Harris Di. Wg.
vs.
FEDERATED MUTUAL IMPLEMENT AND
HARDWARE INSURANCE COMPANY,
a corporation,

Defendants

SUMMONS AND COMPLAINT

Filed January 18 19..72

Eunice B. Blackmon Clerk

JAN 18 1972

HAND, ARENDALL, BEDSOLD, GREAVES
& JOHNSTON
-and-

J. CONNOR OWENS, JR.

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at P.T.

4021 Meadow Wood Curve

Mobile, Alabama 36609

Received In Office

19.....

Sheriff

I have executed this summons

this 19.....

by leaving a copy with

Moore Printing Co. - Bay Minette, Ala.

REYNOLDS BROTHERS LUMBER)	IN THE CIRCUIT COURT OF
COMPANY, INC., a corporation,)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	
)	AT LAW
vs.)	
FEDERATED MUTUAL IMPLEMENT)	
AND HARDWARE INSURANCE)	
COMPANY, a corporation)	
Defendant.)	CASE NO. 10, 200

MOTION TO STRIKE TO AMENDED COMPLAINT

Comes now the Defendant, Federated Mutual Implement and Hardware Insurance Company, a corporation, and moves this Honorable Court to strike the following portion of the Plaintiff's Complaint as last amended, separately and severally, on the grounds that the same are unnecessarily prolix, irrelevant, inappropriate, frivolous, or not supported by the Laws of the State of Alabama:

1. That portion of the Complaint styled Paragraph 2 under COUNT ONE wherein the Plaintiff avers "[t]hat defendant is justly and truly indebted to plaintiff in the sum of Six Thousand, Nine Hundred Forth-Nine Dollars and 47/100 (\$6,949.47)."

2. That portion of the Plaintiff's Complaint styled Paragraph 3 under COUNT ONE wherein the Plaintiff avers "[t]hat defendant be required to reimburse plaintiff for its legal fees and other costs and expenses incurred in connection with this declaratory judgment action and otherwise, together with the value of the lost use thereof and profit therefrom, because of the wrongful and vexatious failure and refusal of defendant to comply with the provisions of said policy by paying the full amount of loss thereunder."

3. That portion of the Plaintiff's Complaint styled COUNT TWO wherein the Plaintiff avers "[t]he Plaintiff claims of the defendant Six

Thousand, Nine Hundred Forth-Nine Dollars and 47/100 (\$6,949.47),
the difference between the value before, and the value after, of a truck
(Serial #Y911VJ 66559) which the defendant, on December 1, 1970,
insured against loss or injury from collision or upset in the policy of
insurance (No. 671536) mentioned, for the term of one year, which truck
was damaged by collision or upset on about, to-wit, June 14, 1971, of
which defendant has had notice."

ARMBRECHT, JACKSON & DeMOUY

By W. Boyd Reeves
W. BOYD REEVES
Duly Designated Trial Counsel

By Norman E. Waldrop, Jr.
NORMAN E. WALDROP, JR.

FILED

FEB 29 1972

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 28th day of
February, 1972, 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.

Norman E. Waldrop, Jr.

EUNICE B. BLACKMON CIRCUIT
CLERK

REYNOLDS BROTHERS LUMBER COM-)	IN THE CIRCUIT COURT OF
PANY, INC., a corporation,)
Plaintiff,	BALDWIN COUNTY, ALABAMA
)
vs.	AT LAW
)
FEDERATED MUTUAL IMPLEMENT)
AND HARDWARE INSURANCE)
COMPANY, a corporation,)
Defendant.	CASE NO. 10, 200

DEMURRER TO AMENDED COMPLAINT

Comes now the Defendant, Federated Mutual Implement and Hardware Insurance Company, a corporation, in the above styled cause, and demurs to the complaint as last amended, and to each and every count thereof, separately and severally, and as grounds therefor reassigns separately and severally, the separate and several grounds heretofore filed by the Defendant, Federated Mutual Implement and Hardware Insurance Company, separately and severally.

ARMBRECHT, JACKSON & DeMOUY

By W. Boyd Reeves
W. BOYD REEVES
Duly Designated Trial Counsel

By Norman E. Waldrop, Jr.
NORMAN E. WALDROP, JR.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 28th day of February, 1972, 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.

Norman E. Waldrop, Jr.

FILED

FEB 29 1972

EUNICE B. BLACKMON CIRCUIT CLERK

REYNOLDS BROTHERS LUMBER
COMPANY, INC., a corporation,

Plaintiff,

vs.

FEDERATED MUTUAL IMPLEMENT
AND HARDWARE INSURANCE
COMPANY, a corporation,

Defendant.

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA

)
) AT LAW

)

)

CASE NO. 10,200

DEMURRER

Comes now the Defendant, FEDERATED MUTUAL IMPLEMENT AND
HARDWARE INSURANCE COMPANY, a corporation, in the above styled cause,
separately and severally, and demurs to Plaintiff's Complaint as a whole, and
to each and every count thereof, separately and severally, upon the following
separate and several grounds:

1. Said count wholly fails to state a cause of action.
2. The allegations contained in said count are vague, uncertain and
indefinite.
3. The allegations in said count are vague, misleading and confusing
and do not apprise this Defendant of what he is called upon to defend.
4. For aught that appears from the allegations of said count, there
was no breach of any legal duty owing from this Defendant to said Plaintiff.
5. Said count does not aver sufficient facts to state a cause of action.
6. For that there is a misjoinder of causes of action.
7. For that said count is duplicitous.
8. For that said count fails to aver sufficient facts to state a cause of
action against this Defendant.
9. For that there is not a justiciable controversy existing between the
named Plaintiff and this Defendant.

10. For that it affirmatively appears from the face of the Complaint that the named truck made the basis of this Complaint was not damaged nor involved in a "collision or upset" as contemplated under the Defendant's policy No. 671536, Endorsements Nos. 13 and 14.

11. For that as a matter of law, the facts averred by the Plaintiff do not constitute a "collision or upset" as contemplated or defined in the said Defendant's insurance policy issued to the Plaintiff.

12. For that the averment "during the delivery, said truck hit a mound, causing the truck to bounce, the framework holding the drum to break and the mixer to fall from the truck upon the ground" is a mere conclusion by the pleader without sufficient facts alleged in support thereof.

13. For that it affirmatively appears from the contract of insurance attached as an exhibit by the Plaintiff that the contract of insurance was not in force "on or about, to-wit, June 14, 1971" the date that the Plaintiff alleges that the said truck was damaged.

14. For that as a matter of law the facts alleged by the Plaintiff depicting the said damage to the mixer truck do not constitute a "collision or upset" as those terms are normally defined because of Defendant's policy of insurance that reads "to pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto."

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of February, 1972, 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.

Norman E. Waldrop, Jr.

Defendant desires oral argument.

ARMBRECHT, JACKSON & DeMOUY

By W. Boyd Reeves
W. BOYD REEVES
Duly Designated Trial Counsel

By Norman E. Waldrop, Jr.
NORMAN E. WALDROP, JR.

FILED

FEB 17 1972

EUNICE B. BLACKMON
CLERK

REYNOLDS BROTHERS LUMBER
COMPANY, INC., a corporation,

Plaintiff,

vs.

FEDERATED MUTUAL IMPLEMENT
AND HARDWARE INSURANCE
COMPANY, a corporation,

Defendant.

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA

)
) AT LAW

)
)

)

CASE NO. 10,200

MOTION TO STRIKE

Comes now the Defendant, FEDERATED MUTUAL IMPLEMENT AND
HARDWARE INSURANCE COMPANY, a corporation, and moves this Honorable
Court to strike the following portion of the Plaintiff's Complaint, separately
and severally, on the grounds that the same are unnecessarily prolix, irrele-
vant, inappropriate, frivolous, or not supported by the Laws of the State of
Alabama:

1. That portion of the Complaint styled Paragraph 2 under COUNT ONE
wherein the Plaintiff avers "[t]hat defendant is justly and truly indebted to
plaintiff in the sum of Six Thousand, Nine Hundred Forty-Nine Dollars and
47/100 (\$6,949.47)."

2. That portion of the Plaintiff's Complaint styled Paragraph 3 under
COUNT ONE wherein the Plaintiff avers "[t]hat defendant be required to
reimburse plaintiff for its legal fees and other costs and expenses incurred
in connection with this declaratory judgment action and otherwise, together
with the value of the lost use thereof and profit therefrom, because of the
wrongful and vexatious failure and refusal of defendant to comply with the
provisions of said policy by paying the full amount of loss thereunder."

3. That portion of the Plaintiff's Complaint styled COUNT TWO
wherein the Plaintiff avers "[t]he Plaintiff claims of the defendant Six Thousand,
Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47), the difference between

the value before, and the value after, of a truck (Serial #Y911VJ 66559) which the defendant, on August 13, 1970, insured against loss or injury from collision or upset in the policy of insurance (No. 671536) mentioned, for the term of one year, which truck was damaged by collision or upset on about, to-wit, June 14, 1971, of which defendant has had notice."

ARMBRECHT, JACKSON & DeMOUY

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of February, 197 2, 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.

Norman E. Waldrop, Jr.

By W. Boyd Reeves
W. BOYD REEVES
Duly Designated Trial Counsel

By Norman E. Waldrop, Jr.
NORMAN E. WALDROP, JR.

Defendant desires oral argument.

FILED

FEB 17 1972

EUNICE B. BLACKMON CIRCUIT CLERK

REYNOLDS BROTHERS LUMBER	:	IN THE CIRCUIT COURT OF
COMPANY, INC., a corpora-	:	BALDWIN COUNTY, ALABAMA
tion,	:	
Plaintiff,	:	AT LAW
vs.	:	
FEDERATED MUTUAL IMPLEMENT	:	
AND HARDWARD INSURANCE	:	
COMPANY, a corporation,	:	
Defendant.	:	CASE NO. 10,200

AMENDED COMPLAINT

Comes now the plaintiff and amends its complaint heretofore filed, to read as follows:

COUNT ONE

ACTION FOR DECLARATORY JUDGMENT

Plaintiff avers that, on or about, to-wit, June 14, 1971, a mixer truck (Serial #Y911VJ66559) owned by the plaintiff and insured by the defendant was delivering concrete in Baldwin County, Alabama. During the delivery, said truck hit a mound, causing the truck to bounce, the framework holding the drum to break and the mixer to fall from the truck upon the ground. As a proximate result thereof, there was damage to the truck chassis, truck fenders, mixer frame and pedestal assembly, turn gear box housing, front and rear tires, right angle drive unit, drive motor, drum bearing, retainer and housing, drum roller assembly, discharge chute, mixer hoop, jack screw and adjuster, turn motor mounting, bracket assembly, electrical cable, ladder, hydraulic hose, swivel and adapter, chain guard, chain guard liner, bolts, nuts and washers, and sender and gasket, in the aggregate amount of Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47), and plaintiff lost the use thereof and profit therefrom.

Plaintiff avers further that defendant insured said truck under its policy No. 686937, Endorsements No. 9, a true copy of which is attached, and that said policy of insurance was in full force and effect on the date of the accident described above. The policy afforded maximum coverage from damage to the truck, but not beyond the actual cash value of the truck (which value was no less than the amount of damages herein claimed), less a \$500.00 deductible, due to any "collision or upset" of said truck, as those terms are used in the said policy, and the amount claimed herein was the proximate result of such "collision or upset".

Plaintiff avers further that it gave notice of said loss to defendant and made demand upon the defendant for payment under the policy for all damage caused to the truck (including its drum) by said accident. Notwithstanding the said demand, defendant has denied coverage and had contended and does contend that there is no coverage afforded to plaintiff for said loss (except as to the drum) by its said policy, alleging that there was no "collision or upset" within the meaning of the policy. Hence, a justiciable controversy exists between plaintiff and defendant.

WHEREFORE, the foregoing considered, plaintiff respectfully requests that this Court render a declaratory judgment declaring and defining the rights of plaintiff under said policy as follows:

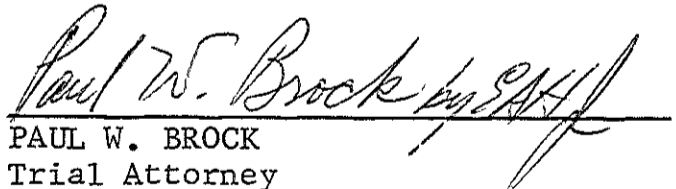
1. That on the date of said accident, to-wit, June 14, 1971, there was a "collision or upset" of plaintiff's said truck within the meaning of said policy, affording coverage to plaintiff for its damages to its truck, as above described;

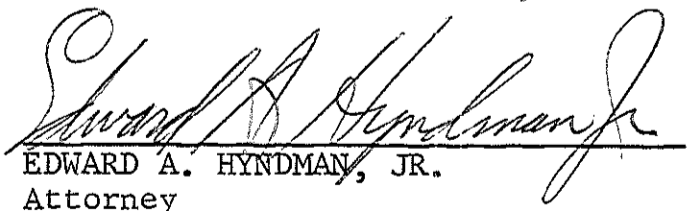
2. That defendant is justly and truly indebted to plaintiff in the sum of Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47);

3. That defendant be required to reimburse plaintiff for its legal fees and other costs and expenses incurred in connection with this declaratory judgment action and otherwise, together with the value of the lost use thereof and profit therefrom, because of the wrongful and vexatious failure and refusal of defendant to comply with the provisions of said policy by paying the full amount of loss thereunder.

COUNT TWO

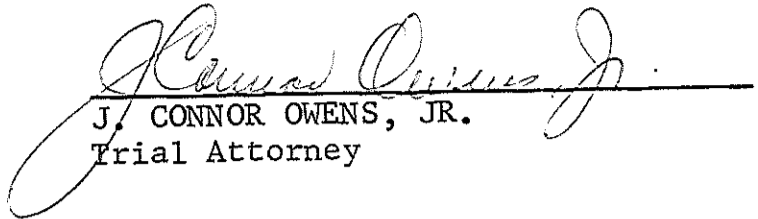
The Plaintiff claims of the defendant Six Thousand, Nine Hundred Forty-Nine Dollars and 47/100 (\$6,949.47), the difference between the value before, and the value after, of a truck (Serial #Y911VJ66559) which the defendant, on December 1, 1970, insured against loss or injury from collision or upset in the policy of insurance (No. 686937) mentioned, for the term of one year, which truck was damaged by collision or upset on about, to-wit, June 14, 1971, of which defendant has had notice.


PAUL W. BROCK
Trial Attorney


EDWARD A. HYNDMAN, JR.
Attorney

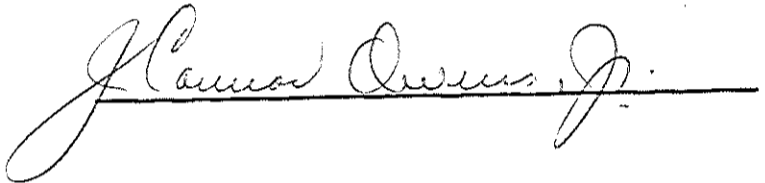
OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
P. O. Box 123
Mobile, Alabama


J. CONNOR OWENS, JR.
Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Pleading to W. Boyd Reeves, Esquire, by depositing a copy of same in the United States Mail, postage prepaid, addressed to Mr. Reeves at his office in Mobile, Alabama, on this 25 day of February, 1972.



FILED

FEB 25 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

COMBINATION AUTOMOBILE POLICY

"This Policy does not provide bodily injury and property damage liability insurance or any other coverage for which a specific premium charge is not made and does not contain any financial responsibility law."



THIS POLICY IS NON-ASSESSABLE
AND PARTICIPATES IN SAVINGS MADE BY THE COMPANY

Issued by
SOUTHERN DIVISION
1400 West Peachtree St., N. W.
Atlanta, Georgia 30309

(A mutual insurance company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I. Coverage A—Bodily Injury Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage B—Property Damage Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage C—Automobile Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1. To or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon or while entering into or alighting from the automobile, provided the automobile is being used by the named insured or his spouse if a resident of the same household, or with the permission of either; or

Division 2. To or for each insured who sustains bodily injury, sickness or disease, caused by accident, while in or upon, or while entering into or alighting from, or through being struck by, an automobile.

Coverage D—Comprehensive Loss of or Damage to the Automobile, except by Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.

Coverage E—Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto.

Coverage F—Fire, Lightning and Transportation: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage G—Theft (Broad Form): To pay for loss of or damage to the automobile, hereinafter called loss, caused by theft, larceny, robbery or pilferage.

Coverage H—Windstorm, Hail, Earthquake or Explosion: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake or explosion, excluding loss or damage caused by rain, snow or sleet, whether or not wind-driven.

Coverage I—Combined Additional Coverage: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to the automobile \$25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage J—Towing and Labor Costs: To pay for towing and labor costs necessitated by the disablement of the automobile, provided the labor is performed at the place of disablement.

II. Defense, Settlement, Supplementary Payments: With respect to such insurance as is afforded by this policy for bodily injury liability and for property damage liability, the company shall:

(a) defend any suit against the insured alleging such injury, sickness,

disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;

(b) (1) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, the cost of bail bonds required of the insured in the event of accident or traffic law violation during the policy period, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request;

and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

III. Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or such spouse or with the permission of either. The insurance with respect to any person or organization other than the named insured or such spouse does not apply:

(1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof, but this provision does not apply to a resident of the same household as the named insured, to a partnership in which such resident or the named insured is a partner, or to any partner, agent or employee of such resident or partnership;

(2) to any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

(b) With respect to the insurance under division 2 of coverage C, the unqualified word "insured" means:

(1) the named insured, if an individual or husband and wife who are residents of the same household, otherwise the person designated in Item 3 of the declarations, and

(2) while residents of the same household as the named insured or such designated person, his spouse and the relatives of either; provided, if such named insured or designated person shall die, this insurance shall cover any person who was an insured at the time of such death.

IV. Automobile Defined, Trailers, Private Passenger Automobile, Two or More Automobiles:

(a) **Automobile.** Except with respect to division 2 of coverage C and except where stated to the contrary, the word "automobile" means:

(1) **Described Automobile**—the motor vehicle or trailer described in this policy;

(2) **Trailer**—under coverages A, B and division 1 of coverage C, a trailer not described in this policy, if designed for use with a private passenger automobile, if not being used for business purposes with another type automobile, and under division 1 of coverage C if not a home, office, store, display or passenger trailer;

(3) **Temporary Substitute Automobile**—under coverages A, B and division 1 of coverage C, an automobile not owned by the named insured or his spouse if a resident of the same household, while temporarily used as a substitute for the described automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household, if (i) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (ii) the named insured or such spouse notifies the company within thirty days following such delivery date; but such notice is not required under coverages A, B and division 1 of coverage C if the newly acquired automobile replaces an owned automobile covered by this policy. The insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured or such spouse has other valid and collectible insurance. Under coverages D, E, F, G, H and I, when a limit of liability is expressed in the declarations as a stated amount, such limit as to the newly acquired automobile shall be replaced by the actual cash value. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under coverages D, E, F, G, H and I its equipment and other equipment permanently attached thereto.

Under division 2 of coverage C, the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler-treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

(b) **Private Passenger Automobile**. The term "private passenger automobile" means a private passenger, station wagon or jeep type automobile, and also includes under coverages A, B and division 1 of coverage C any automobile the purposes of use of which are stated in the declarations as "pleasure and business."

(c) **Semitrailer**. The word "trailer" includes semitrailer.

(d) **Two or More Automobiles**. When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under coverages A and B and separate automobiles as respects limits of liability, including any deductible provisions, under coverages D, E, F, G, H, I and J.

V. Use of Other Automobiles: If the named insured is an individual or husband and wife and if during the policy period such named insured, or the spouse of such individual if a resident of the same household, owns a private passenger automobile covered by this policy, such insurance as is afforded by this policy under coverages A, B, division 1 of coverage C and coverage E with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured and spouse, and (2) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III does not apply to this

This policy does not apply:

(a) except under division 2 of coverage C, while the automobile is used as a public or livery conveyance, unless such use is specifically declared and described in this policy;

(b) under coverages A and B, to liability assumed by the insured under any contract or agreement;

(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

(d) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(e) under coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(f) under coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(g) under division 1 of coverage C, to bodily injury to or sickness, disease or death of any employee of the named insured or spouse arising out of and in the course of (1) domestic employment by the named insured or spouse, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's com-

insurance.

(b) Under division 1 of coverage C; this insurance applies only if the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by a private chauffeur or domestic servant of such named insured or spouse, or from the occupancy of said automobile by such named insured or spouse.

(c) Under coverage E, this insurance applies only with respect to a private passenger automobile while being operated or used by such named insured or spouse. Exclusion (k) does not apply to this insuring agreement.

(d) This insuring agreement does not apply:

(1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household other than a private chauffeur or domestic servant of such named insured or spouse;

(2) to any accident arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place;

(3) under coverages A, B or division 1 of coverage C, to any automobile while used in a business or occupation of such named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, private chauffeur or domestic servant;

(4) under coverage E, to any loss when there is any other insurance which would apply thereto in the absence of this insuring agreement, whether such other insurance covers the interest of the named insured or spouse, the owner of the automobile or any other person or organization.

VI. Loss of Use by Theft—Rental Reimbursement: The company, following a theft covered under this policy of the entire automobile, shall reimburse the named insured for expense not exceeding \$5 for any one day nor totaling more than \$150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs. Such reimbursement is payable by the company in addition to the applicable limit of liability of this policy.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the named insured or the company or on such earlier date as the company makes or tenders settlement for such theft.

Such reimbursement shall be made only if the stolen automobile is a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.

VII. General Average and Salvage Charges: The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the named insured becomes legally liable.

VIII. Policy Period, Territory, Purposes of Use: This policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof and, if a "described automobile" under Insuring Agreement IV, is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

pensation law, or (2) other employment by the named insured or spouse;

(h) under coverage C, to bodily injury to or sickness, disease or death of any person who is an employee of an automobile sales agency, repair shop, service station, storage garage or public parking place, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(i) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(j) to injury, sickness, disease or loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, (1) with respect to expenses under Insuring Agreement II (b) (3) or under coverage C, or (2) under coverages D, E, F, G, H, I and J;

(k) under coverages D, E, F, G, H, I and J, if the automobile is or at any time becomes subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance not specifically declared and described in this policy;

(l) under coverages D, E, F, G, H, I and J, to any damage to the automobile which is due and confined to wear and tear, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(m) under coverages D, E, F, G, H, I and J, to robes, wearing apparel or personal effects;

(n) under coverages D, E, F, G, H, I and J, to tires unless damaged by fire or stolen or unless such loss be coincident with and from the same cause as other loss covered by this policy;

(o) under coverages D and G, to loss due to conversion, embezzlement or secretion by any person in possession of the automobile under

LOSS PAYABLE CLAUSE AND CERTIFICATE

680007

Endorsement Effective
Date 12 1 70

Endorsement
Car No. 18-2, 20, 21, 22-15
No. 9

Attached to
Policy No.

THIS IS TO CERTIFY THAT THE AUTOMOBILE DESCRIBED BELOW IS INSURED BY THIS COMPANY FOR THE COVERAGES INDICATED BELOW:

AUTOMOBILE

Year	Trade Name and Model	Type of Body	Motor, Serial or Identification Number
69	FORD	1 1/2 TON CHASSIS AND CAB	383
69	PONT	G T O JUDGE	914
69	INT	F230D MIXER	052
70	FORD	LTS 9000 WITH 12 YD CHALLENGER MIXER	559

INSURED

REYNOLDS BROTHERS LUMBER CO, INC
803 S MCKINZIE ST
FOLEY ALA 36535

POLICY PERIOD

FROM 12 1 70 TO 12 1 71
(mo. day year) (mo. day year)

COVERAGES — as indicated by an 'X' in Column 1 with Limits of Liability as shown.

Col. 1	Limits of Liability	Insurance Coverages
	Actual Cash Value (unless otherwise stated herein)	Comprehensive
	\$	
X	Actual Cash Value less \$ 500 deductible	Collision or Upset

Col. 1	Limits of Liability	Insurance Coverages
	\$	Fire, Lightning and Transportation
	\$	Theft (Broad Form)
	\$	Windstorm, Etc.
	\$	Combined Additional Coverage

If cancellation or change occurs during the term of such policy in such manner to affect this Certificate, TEN days written notice will be given to the Lienholder named below. Notice by regular mail addressed to the Lienholder's address given below shall be sufficient compliance with this provision.

Loss or damage, if any, under the policy designated above shall be payable as interest may appear to the Insured and the Lienholder NAMED BELOW and this insurance as to the interest of the Bailment Lessor, Conditional Vendor, Mortgagee or other secured party or Assignee of Bailment Lessor, Conditional Vendor, Mortgagee or other secured party (herein called the lienholder) shall not be invalidated by any act or neglect of the Lessee, Mortgagor, Owner of the within described automobile or other Debtor nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the Lessee, Mortgagor, Purchaser or other Debtor in possession of the property insured under a bailment lease, conditional sale, mortgage or other security agreement is not covered under such policy, unless specifically insured against and premium paid therefor; and provided, also, that in case the Lessee, Mortgagor, Owner or other Debtor shall neglect to pay any premium due under such policy the Lienholder shall, on demand, pay the same.

Provided also, that the Lienholder shall notify the company of any change of ownership or increase of hazard which shall come to the knowledge of said Lienholder and, unless permitted by such policy, it shall be noted thereon and the Lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise such policy shall be null and void.

The company reserves the right to cancel such policy at any time as provided by its terms, but in such case the company shall notify the Lienholder when not less than ten days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the company shall have the right, on like notice, to cancel this agreement.

If the insured fails to render proof of loss within the time granted in the policy conditions, such Lienholder shall do so within sixty days thereafter, in form and manner as provided by the policy, and further, shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

Whenever the company shall pay the Lienholder any sum for loss or damage under such policy and shall claim that, as to the Lessee, Mortgagor, Owner or other Debtor, no liability therefor existed, the company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lienholder the whole principal due or to grow due on the mortgage or other security agreement with interest, and shall thereupon receive a full assignment and transfer of the mortgage or other security agreement and of all such other securities; but no subrogation shall impair the right of the Lienholder to recover the full amount of its claim.

Whenever a payment of any nature becomes due under the policy, separate payment may be made to each party at interest provided the company protects the equity of all parties.

FEDERATED MUTUAL IMPLEMENT AND HARDWARE INSURANCE COMPANY

LIENHOLDER

SOUTH BALDWIN BANK
S MCKINZIE ST
FOLEY ALA 36535

Ch. B. Hamilton
President

James B. Hamilton
Secretary

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

Endorsement Effective
Date *

Endorsement
No. 10

Attached to
Policy No.

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

- (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

- (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

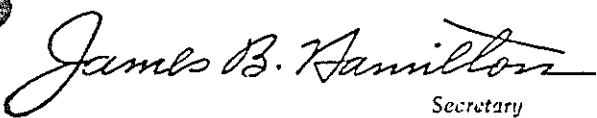
and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

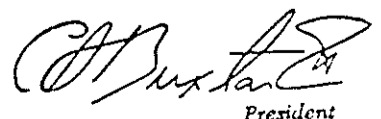
"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

All other conditions and provisions remain unchanged.

FEDERATED MUTUAL INSURANCE COMPANY


Secretary


President

* Absence of Entry means
Same as Policy effective date.

a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance;

(p) under coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

1. Notice of Accident—Coverages A, B and C: When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

2. Notice of Claim or Suit—Coverages A and B: If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

3. Limits of Liability—Coverage A: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

4. Limit of Liability—Coverage B: The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

5. Limit of Liability—Coverage C: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

6. Severability of Interests—Coverages A and B: The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

7. Action Against Company—Coverages A and B: No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

8. Action Against Company—Coverage C: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

9. Financial Responsibility Laws—Coverages A and B: When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

10. Assault and Battery—Coverages A and B: Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

11. Medical Reports; Proof and Payment of Claim—Coverage C: As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

(q) under coverages D, E, F, G, H, I and J, to loss due to contamination by duly constituted governmental or civil authority;

(r) under coverages D, E, F, G, H, I and J to loss due to radioactive contamination.

CONDITIONS

12. Named Insured's Duties When Loss Occurs—Coverages D, E, F, G, H, I and J: When loss occurs, the named insured shall:

- protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;
- give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;
- file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.

Upon the company's request, the named insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

13. Appraisal—Coverages D, E, F, G, H, I and J: If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Limit of Liability; Settlement Options; No Abandonment—Coverages D, E, F, G, H and I: The limit of the company's liability for loss shall not exceed either (1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or (2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or (3) the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

15. Automatic Reinstatement—Coverages D, E, F, G, H and I: When the automobile is damaged, whether or not such damage is covered under this policy, the liability of the company shall be reduced by the amount of such damage until repairs have been completed, but shall then attach as originally written without additional premium.

16. Payment for Loss; Action Against Company—Coverages D, E, F, G, H, I and J: Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

17. No Benefit to Bailee—Coverages D, E, F, G, H, I and J: The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

18. Assistance and Cooperation of the Insured—Coverages A, B, D, E, F, G, H, I and J: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

19. Subrogation—Coverages A, B, D, E, F, G, H, I and J: In the event of any payment under this policy, the company shall be subrogated to

all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

20. Other Insurance—Coverages A, B, D, E, F, G, H, I and J: If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, under coverages A and B the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

21. Other Insurance—Coverage C: Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

22. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

23. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such

legal representative; provided that notice of cancellation addressed to the insured named in Item 1 of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancellation of this policy.

24. Cancellation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

25. Purposes of Use: (a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in the declarations, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

26. Terms of Policy Conformed to Statute: Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

27. Declarations: By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

MUTUAL POLICY CONDITIONS: (Applicable only when this policy is issued in the state of Texas)

TEXAS-MUTUALS—MEMBERSHIP AND VOTING NOTICE

The insured is notified that by virtue of this policy, he is a member of the Federated Mutual Implement and Hardware Insurance Company of Owatonna, Minnesota, and is entitled to vote either in person or by proxy at any and all meetings of said Company. The Annual Meetings are held in its Home Office in Owatonna, Minnesota, on the third Tuesday of April, in each year, at ten o'clock A.M.

TEXAS-MUTUALS—PARTICIPATION CLAUSE WITHOUT CONTINGENT LIABILITY

No Contingent Liability: This policy is non-assessable. The policyholder is a member of the company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with the provisions of law, in the distribution of dividends so fixed and determined.

MUTUAL POLICY CONDITIONS: (Applicable in all states except those specifically provided for)

This policy is non-assessable and the named insured's liability is limited to the payment of the premium as herein provided. By acceptance of this policy the named insured becomes a member of the company and shall, upon termination of this policy, participate in the distribution of dividends as fixed and determined by the Board of Directors of the company in accordance with the provisions of law.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.


Secretary


President

NOTICE OF ANNUAL MEETING

The insured named herein is hereby notified that while this policy is in force he is by virtue thereof a member of the Federated Mutual Implement and Hardware Insurance Company, Owatonna, Minnesota, and that the annual meeting of said Company is held at its home office in Owatonna, Minnesota, on the third Tuesday of April of each year at ten o'clock A. M.

It is hereby understood and agreed that in all policies issued in the following states and in those states only, the special clause as shown for each state is made a part of this policy.

KANSAS SPECIAL PROVISION—Conditions No. 12 (a) and No. 13 of this policy are hereby amended as follows, all other terms and conditions remaining unchanged:

Condition No. 12 (a)—Substitute the following for the entire paragraph: (a) use every reasonable means to protect the automobile covered by this policy from any further loss; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request.

Condition No. 13—The words "made within thirty days after receipt of proof of loss by the company" are substituted for the words "made within sixty days after receipt of proof of loss by the company" as they appear in this Condition. All other provisions of Condition No. 13 remain unchanged.

NORTH CAROLINA SPECIAL PROVISION—If this policy is written in the state of North Carolina, Condition 12 (c) of this policy is hereby amended as follows, all other terms and conditions remaining unchanged:

Condition 12 (c)—The failure of the Insured to furnish proofs of loss as required by the terms of this Policy shall not debar him from recovery hereunder unless within fifteen (15) days after receipt of notice of loss the Company or its representatives shall provide the Insured with a blank or blanks in duplicate, to be used for the purpose of making such proofs of loss.

J. CONNOR OWENS, JR.
ATTORNEY AT LAW
DAHLBERG BUILDING
P. O. BOX 729
BAY MINETTE, ALABAMA 36507

June 14, 1972

TELEPHONE NO. 937-4661

Mrs. Eunice Blackmon
Clerk of Circuit Court
Bay Minette, Alabama 36507

Dear Mrs. Blackmon:

SUBJECT: REYNOLDS BROTHERS LUMBER CO., INC. vs.
FEDERATED MUTUAL IMPLEMENT & HARDWARE
INS. CO. Declaratory Judgment #10,200

Please have the above styled case dismissed with prejudice, and forward the cost bill to Mr. Boyd Reeves, Attorney at Law, P.O. Box 290, Mobile, Alabama, 36601.

Thank you for your aid and consideration in this matter.

Sincerely yours,



J. Connor Owens, Jr.

JCO/abo

cc: Mr. Boyd Reeves
Attorney at Law