

AYRES LITTLE,

Plaintiff,

VS.

THE JEFFERSON MUTUALS, an
Association Composed of
LITITZ MUTUAL INSURANCE
COMPANY, and IMPLEMENT
DEALERS MUTUAL INSURANCE
COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

Now comes the Plaintiff in the above styled cause and propounds to the defendants the following interrogatories to be answered under oath by the defendants as in such cases by law provided:

1. State your names and the State, or States, where you were incorporated.
2. Are you qualified to do business in the State of Alabama?
3. If the answer to Interrogatory No. "2" is "Yes", state the name and address of your General Agent in the State of Alabama?
4. Do you have a local agent in the City of Bay Minette, Alabama?
5. Did you issue a Policy of Fire Insurance, No. 67687, to Ayres Little, the plaintiff, on June 29, 1953?
6. Sometime in the early part of 1954, were you notified that there had been a loss on the Fire Insurance Policy issued to Mr. Little? If so, what was the date that your notice was given to you. Attach to your answer a copy of the notice which you received.
7. If your answer to the preceding question was "no", please state whether or not your General Agents in the State of Alabama were notified of such a loss. State the date of such notice and attach to your answers a copy of the notice received by your General Agents.
8. Did Mr. H. I. West of Bay Minette, Alabama, notify you or your General Agents that there had been a loss under this policy? If so, please attach to your answers a copy of the notice he gave you.
9. Did you, or your General Agents, at any time notify the Plaintiff, Ayres Little, or your local agent, Mr. H. I. West, that Mr. Little had no fire insurance policy. If so, what was the date such notice was given? Please attach to your answer a copy of said

notice.

10. Did you collect the premiums due on your Fire Insurance Policy Number 67687, issued to Ayres Little?

11. Have you paid any amount to Ayres Little, under your Policy Number 67687, for loss incurred by him when his house, near Bay Minette, Alabama, burned on the 14th day of January, 1954?

12. Attach to your answers copies of all correspondence, concerning the claim for loss by the plaintiff herein, between you and your General Agents and Local Agent, and between your General Agents in the State of Alabama and your Local Agent in Bay Minette, Alabama.

Telfair J. Mashburn, Jr.
Telfair J. Mashburn, Jr.
Attorney for Plaintiff.

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Telfair J. Mashburn, Jr., who is known to me and who, being by me first duly sworn, on oath, deposes and says: "That he is of counsel for the plaintiff in this cause; that he has full authority to make this affidavit; and that the plaintiff's answers to the foregoing interrogatories, when well and truly made, will be material evidence for the plaintiff on the trial of this cause.

Telfair J. Mashburn, Jr.

Sworn to and subscribed before
me on this the 26th day of
August, 1955.

Mary Lou Blackburn
Notary Public, Baldwin County,
Alabama.

AYRES LITTLE,

Plaintiff,

Vs.

THE JEFFERSON MUTUALS, an
Association Composed of
LITITZ MUTUAL INSURANCE
COMPANY, and IMPLEMENT DEALERS
MUTUAL INSURANCE COMPANY

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 2491

Now cometh the Defendants in the above styled cause and for
answers to the Interrogatories heretofore propounded to them by
the Plaintiff in this cause say:

1. Lititz Mutual, Lititz Pennsylvania, and Implement Dealers
Mutual Insurance Company, Grand Forks, North Dakota.

2. Yes.

3. W.J. Perryman & Company, 2211 Magnolia Avenue, South,
Birmingham 5, Alabama.

4. No

5. Yes.

6. The Defendants have not received any written notice of
proof of loss as required under the terms of the policy of
insurance in question.

7. The Defendants have received no notice of proof of loss
from the assured as required by the terms of the policy sued on.
On or about the last day of March, 1954, more than two and one-
half (2 1/2) months after the alleged fire loss, W.J. Perryman & Company,
Birmingham, Alabama, received a letter dated March 29, 1954, from H.I. West,
a copy of which is hereto attached marked Exhibit 1.

8. The fire loss in question is alleged to have occurred
on January 14, 1954. H.I. West of Bay Minette, Alabama, wrote
W.J. Perryman & Company, under date of March 29, 1954, that the
loss had occurred. A copy of this letter from H.I. West has already been
attached hereto marked as Exhibit 1.

9. No. The Defendants, however, deny liability under any alleged

policy of the Jefferson Mutuals. Defendants do not believe that any written denial has been given the Plaintiff.

10. According to Defendants information no policy contract was entered into between Plaintiff and Defendants.

11. As stated, Defendants deny any policy contract with Plaintiff and received no notice from Plaintiff such contract.

12. Defendants object to this Interrogatory on the ground that the same calls for documents which are prima facie, inadmissible as exparte, hearsay statements, and the Interrogatory therefore is not pertinent, and on the further ground that said Interrogatory calls for irrelevant, incompetent and immaterial evidence and is too general in its scope.

John T. McCall & John T. McCall
Attorneys for the Defendants.

State of Alabama §

COUNTY OF JEFFERSON §

Before me, a Notary Public in and for said County in such State, Personally appeared W.H. Perryman, upon being first duly sworn on oath deposes and says that he is the agent of the Defendants who is cognisant of the facts inquired about and that the above and foregoing answers are true and correct.

W.H. Perryman
W.H. Perryman.

Sworn to and subscribed
before me on this 8 day
of February, 1956.

Marguerite S. Price
Notary Public, Jefferson County,
Alabama.

AYRES LITTLE,

Plaintiff,

vs.

THE JEFFERSON MUTUALS, an
Association Composed of
LITITZ MUTUAL INSURANCE COMPANY,
and IMPLEMENT DEALERS MUTUAL
INSURANCE COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

NO. _____

Come the defendants, appearing specially and solely
for the purpose of this plea and none other, and say that
in and by the policy sued on, it is provided as follows:

"The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, and changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies

thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made. * * *

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss."

And these defendants aver that the plaintiff herein did not file with the defendants, or either of them, nor an agent of theirs, within sixty (60) days from the date of said loss a detailed proof of loss, signed and sworn to by the plaintiff; WHEREFORE, the defendants say that the plaintiff ought not to have and maintain this action, and that the same should be abated.

John T. McCall, Jr.
Attorneys for Defendants

STATE OF ALABAMA I

COUNTY OF MOBILE I

Before me, the undersigned authority in and for said county in said state, personally appeared DAN T. McCALL, JR., who, being by me duly sworn, on oath, deposes and says that he is one of the attorneys for the defendants in the foregoing action, and that he is informed and believes, and upon such information and belief says that the facts stated in the foregoing plea in abatement are true as therein set forth.

Dan T. McCall, Jr.

Subscribed and sworn to before me
this 24th day of January, 1955.

Laura G. Litch
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

AYRES LITTLE,

Plaintiff,

vs.

THE JEFFERSON MUTUALS, an
Association composed of
LITITZ MUTUAL INSURANCE
COMPANY and IMPLEMENT DEA-
LERS MUTUAL INSURANCE
COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____.

Come now the defendants in the above entitled cause and demur separately and severally to each of the separate and several replications filed by the plaintiff to the special plea filed by the defendants in said cause upon the following separate and several grounds, viz:

1. Said replication is no answer to said plea.
2. Said replication neither confesses nor avoids the matters and things set up in said plea.
3. Said replication confesses but does not avoid the matters and things set up in said plea.
4. Said replication fails to traverse said plea.
5. The matters and things set up in said replication furnish no excuse for the failure of the plaintiff to furnish the defendants with a sworn proof of loss as provided in said policy.
6. Said replication is a departure from the complaint.
7. For aught appearing in said replication the defendants denied liability on the grounds set forth in said plea.
8. For that said plea neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
9. For that said plea contains conclusion of the pleader without the averment of sufficient facts upon which to base such conclusion.

10. For aught appearing from the allegations of said plea, the defendants merely made their investigation of the loss on their own account and for their own satisfaction.

11. For aught appearing from the allegations of said plea, the agent alleged to have made the alleged investigation had authority only to investigate and report.

12. It is not alleged in said plea that the defendants admitted liability.

13. It is not alleged in said plea that the plaintiff filed with the defendants a sworn proof of loss as provided for in said policy.

14. For that it is not alleged in said plea that the plaintiff relied upon the alleged representations made by the defendants' alleged agent, servant or employee.

15. For that it is not alleged in said plea that the plaintiff was injured by a reliance upon the representations made by the defendants' agent, servant or employee.

16. For aught appearing no agent, servant or employee of the defendants was acting within the line and scope of his authority in waiving the provision of the policy requiring the filing of a sworn proof of loss by the plaintiff.

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

18. For aught appearing the plaintiff was not prejudiced nor caused to suffer a loss by a reliance upon the representations alleged to have been made by the defendants' agent, servant or employee.

19. For aught appearing the defendants were under no duty to point out any failure to file a proof of loss by the plaintiff.

20. For that a waiver cannot be inferred from mere silence on the part of the defendants.

21. For that said replication contains no allegations of an affirmative act, conduct or declaration of the defendants evidencing the intention of the defendants to waive the provisions of the policy requiring the filing of a sworn proof of loss by the plaintiff.

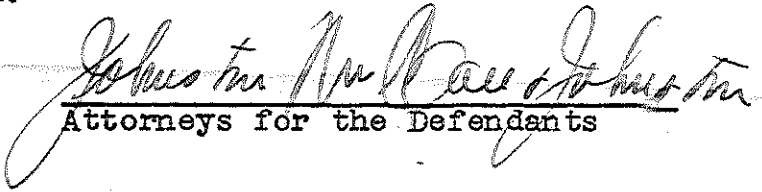
22. For that the allegation in said plea that the defendants waived the requirement of the filing of a sworn proof of loss by the plaintiff in accordance with the provisions of said policy of insurance is but a conclusion of the pleader without the allegation of sufficient facts to base such conclusions as a matter of law.

23. For that the allegation that the defendants denied liability under the terms of said policy is but a conclusion of the pleader without the averment of sufficient facts upon which to base such conclusion as a matter of law.

24. For aught appearing from the allegations of said replication, the defendants are not estopped from asserting the defense of the failure of the plaintiff to furnish a sworn proof of loss.

25. For that there was no duty on the part of the defendants to object to the lack of the filing of a sworn proof of loss by the plaintiff.

26. There are no facts pleaded from which a waiver or an estoppel may be inferred.


Attorneys for the Defendants

AYRES LITTLE,

Plaintiff,

VS.

THE JEFFERSON MUTUALS, an
Association composed of
LITITZ MUTUAL INSURANCE
COMPANY and IMPLEMENT DEA-
LERS MUTUAL INSURANCE
COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

R E P L I C A T I O N S

Comes AYRES LITTLE, the plaintiff in the above styled cause, and, for answer to the plea in abatement heretofore filed in said cause, sets down and assigns, separately and severally, the following:

1. The plaintiff avers that defendants had waived the defense attempted to be set up in said plea in abatement in this: That prior to the time this suit was filed the defendants, with full knowledge that the plaintiff had not filed the detailed proof of loss, signed and sworn to by himself, as required by the fire insurance policy which is the basis of this suit, informed the plaintiff that the defendants were denying liability on the sole and only ground that there was no contract of insurance between the plaintiff and the said defendants.

2. The plaintiff avers that defendants had waived the defense attempted to be set up in their said plea in abatement in this: That prior to the time this suit was filed, on, to-wit: the 15th day of June, 1954, the defendants, acting by and through W. J. PERRYMAN & CO., INC., who were the agents, servants or employees of the defendants, acting within the line and scope of their employment as such, and with full knowledge of all of the facts set up in said plea, informed the plaintiff that the said defendants were denying liability on the ground that there was no contract between the said defendants and the plaintiff; and that neither at that time, nor prior to that time, was any objection made on the part of the defendants to the fact that plaintiff had failed to file a detailed, verified proof of loss.

3. For replication to said plea in abatement plaintiff says that prior to the filing of this suit, and after the occurrence of the fire involved, the defendants sent their adjuster, who had authority to bind the defendants, to investigate the loss, and said adjuster, acting within the line and scope of the business intrusted to him by the defendants, after being fully informed of all conditions touching defendants' liability un the policy, informed the plaintiff that the defendants were not liable to him, on other grounds than that proof of loss was not made. And plaintiff avers that the defendants waived the matter set up in said plea in abatement and the same are of no effect and have no force and application in this cause; and that the defendants are estopped to plead the provisions of said policy as set out in said plea in abatement.

4. For replication to said plea in abatement plaintiff avers that ~~prior to the~~ filing of this suit, and after the occurrence of the fire involved in this suit, after a full and complete investigation, and with full knowledge of all conditions touching their liability under the policy, the defendants, acting by and through their duly authorized agents, servants or employees, who were then and there acting within the line and scope of their employment as such, informed the plaintiff that defendants were not liable to him, on other grounds than that proper proof of loss was not made. Hence plaintiff avers that the defendant waived the matters set up in their said plea of abatement and the same are of no effect and have no force and application in this cause.

5. For replication to said plea in abatement plaintiff says that after the fire involved in this suit, and prior to the commencement of this suit the defendants declined and refused to pay the damages claimed under the terms of said policy, and denied that defendants were liable to plaintiff under the terms of said policy, and thereby waived compliance by plaintiff with the stipulations of said policy as set out in said plea. And plaintiff avers that at the time the said defendants denied liability to the plaintiff under the terms of said policy, they well knew that plaintiff

had not filed with them a detailed, verified, proof of loss as required by the terms of said policy and that their denial was based on other grounds than plaintiff's failure to file said proof of loss.

Ayres Little

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0

Before me, T. J. Mashburn, Jr., a Notary Public in and for said County and State, personally appeared AYRES LITTLE, whose name is signed to the foregoing replications and who is known to me, and who, being by me first duly and legally sworn, deposes and says, on oath, as follows: "My name is Ayres Little. I am the plaintiff in this cause and I have read the above and foregoing replications, numbered from 1 through 5, and the allegations therein contained are true and correct." Further Deponent says not.

Ayres Little

Subscribed and sworn to before me on this the 7th day of March, 1956.

T. J. Mashburn, Jr.
Notary Public, Baldwin County, Ala.

I hereby certify that I have this 7th day of March, 1956, mailed a copy of the above and foregoing to Hon. Sam T. McCall, in a properly addressed and stamped envelope -
T. J. Mashburn, Jr.

AYRES LITTLE,

Plaintiff,

VS.

THE JEFFERSON MUTUALS, an
Association Composed of
LITITZ MUTUAL INSURANCE
COMPANY, and IMPLEMENT DEALERS
MUTUAL INSURANCE COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. _____

MOTION TO STRIKE.

Comes the Plaintiff in the above styled cause and moves this Honorable Court to strike the plea in abatement heretofore filed in said cause by the Defendants, and, for grounds for said motion, says:

1. That the allegations of said plea do not state grounds for abating this cause.
2. That, as a matter of law, the matters and things alleged in said plea in abatement do not constitute grounds for abating this cause.

Jeffrey A. Madbury, Jr.
Attorney for Plaintiff

I hereby certify that I have this day mailed a copy of the foregoing motion to strike to the Honorable Dan McCall, in a postage pre-paid envelope at 804 First National Bank Annex, Mobile, Alabama.

Jeffrey A. Madbury, Jr.

S U M M O N S

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0 TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE JEFFERSON MUTUALS, an Association composed of LITITZ MUTUAL INSURANCE COMPANY, LITITZ, PENNSYLVANIA, and IMPLEMENT DEALERS MUTUAL INSURANCE COMPANY, GRAND FORKS, NORTH DAKOTA, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of AYRES LITTLE.

Witness my hand this 23rd day of December, 1954.

Reverie J. Leach
C L E R K.

C O M P L A I N T

AYRES LITTLE,

Plaintiff,

VS.

THE JEFFERSON MUTUALS, an
Association Composed of
LITITZ MUTUAL INSURANCE COMPANY,
and IMPLEMENT DEALERS MUTUAL
INSURANCE COMPANY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 2491

C O U N T O N E.

The plaintiff claims of the defendants TWO THOUSAND (\$2,000.00) DOLLARS, the value of a dwelling house, and household and personal property contained in said dwelling house, which the defendants, on June 29, 1953, insured against loss or injury by fire and other perils in the policy of insurance mentioned, for the term of one (1) year, which house, with the said household and personal property therein contained, was wholly destroyed by fire on the 14th day of January, 1954, of which the defendants have had notice.

Julius H. Madhury Jr.
Attorney for Plaintiff.

Plaintiff requests that this cause be tried by a jury.

Julius H. Madhury Jr.
Attorney for Plaintiff.

RECORDED
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 1491

AYRES LITTLE,
Plaintiff,

VS.

THE JEFFERSON MUTUALS, an
ASSOCIATION, Composed of
LITITZ MUTUAL INSURANCE
COMPANY AND IMPLEMENT
DEALERS MUTUAL INSURANCE
COMPANY,

Defendants.

SUMMONS AND COMPLAINT.

Harry West of Bay Minette,
is Agent for these Companies.

TELFAIR J. MASHBURN
ATTORNEY AT LAW
DANIELS BUILDING
BAY MINETTE, ALABAMA

DEC 23 1954

Alice J. Dock, *clerk*

Received 23 day of Dec 1954
and on 27 day of Dec 1954
served a copy of the within BAL

The Jefferson Mutuals

service on Harry West - Agent
for The Jefferson Mutuals

By J. P. Horn D. S.

JOHNSTON, McCALL & JOHNSTON
LAWYERS
EIGHTH FLOOR FIRST NATIONAL BANK ANNEX
MOBILE, ALABAMA

SAMUEL M. JOHNSTON
DAN T. McCALL, JR.
WILLIAM E. JOHNSTON
SAMUEL M. JOHNSTON, JR.
PERCY W. JOHNSTON, JR.

MAILING ADDRESS:
P. O. BOX 550
MOBILE 4, ALABAMA

January 24, 1955

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

Dear Mrs. Duck:

Please find enclosed herewith the defendants' plea in abatement filed by us in the case of Ayres Little vs. The Jefferson Mutuals, etc., Case Number 2491. I will thank you to mark this plea filed and enter the same on the docket in this cause.

Our firm will represent these defendants, and I will appreciate your keeping me advised of all papers which are filed by the plaintiff's attorney, and of the settings of any matters for hearing.

Very truly yours,


Dan T. McCall, Jr.

DTM, jr/lgf

cc: W. J. Perryman & Co.

TELFAIR J. MASHBURN
ATTORNEY AT LAW
DAHLBERG BUILDING - TELEPHONE 4601
BAY MINETTE, ALABAMA

26 August 1955

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

Re: Ayres Little
Vs: Jefferson Mutuals

Dear Mrs. Duck:

Enclosed herewith you will please find original and two copies of Interrogatories propounded by the plaintiff to the Defendants in the above styled cause.

In accordance with the provisions of Paragraph 478 of Title 7 of the Code of Alabama of 1940, please have the sheriff serve copies of these interrogatories on Hon. Dan McCall, Attorney for the Defendants, at the First National Bank Annex, in Mobile, Alabama.

Yours very truly,

Telfair J. Mashburn, Jr.
Telfair J. Mashburn, Jr.