

True
LOUIS DI CHIARA

Plaintiff,

-vs-

TRINITY UNIVERSAL
INSURANCE COMPANY

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
* CASE NO. 3852
*
*

TO: Honorable James A. Brice
Attorney At Law
Foley, Alabama

Please take notice that at 2:00 P. M. on the 24th day of July, 1959, at the office of Louise Dusenbury, Court House, Bay Minette, Alabama, the defendant Trinity Universal Insurance Company will take the deposition of Louis DiChiara whose address is Gulf Shores, Alabama, upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act.No. 375, Regular Session, 1955, approved September 8, 1955, before Louise Dusenbury, an officer authorized to administer oath in the County of Baldwin, State of Alabama, and an official Court Reporter for the Circuit Court of Baldwin County, Alabama, duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

FOREMAN & BROWN

By *Alexander Foreman*
Attorneys for Defendant

LOUIS DI CHIARA

Plaintiff,

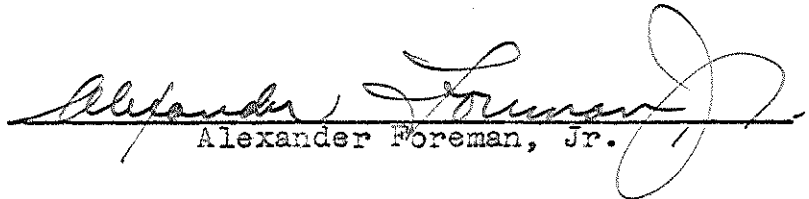
-vs-

TRINITY UNIVERSAL
INSURANCE COMPANY

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
* CASE NO. _____
*
*

I, Alexander Foreman, Jr., one of the attorneys for the defendant in the above styled cause, do hereby certify that I served the attached and foregoing notice to take the deposition upon oral examination of Louis DiChiara by mailing the same to James A. Brice, Foley, Alabama, attorney of record for the plaintiff in said cause on this 16th day of July, 1959.


Alexander Foreman, Jr.

LOUIS DI CHIARA

Plaintiff

- vs -

TRINITY UNIVERSAL INSURANCE
COMPANY

Defendant

*

*

*

*

*

*

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALABAMA

AT LAW

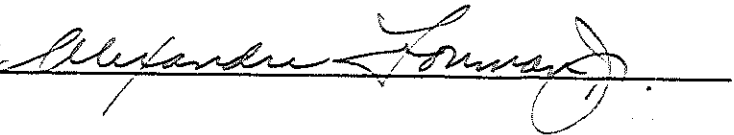
NOTICE OF FILING OF DEPOSITION UPON ORAL
EXAMINATION OF LOUIS DI CHIARA

TO: Honorable James A. Brice
Attorney at Law
Foley, Alabama

You are hereby notified that the deposition taken upon oral examination of Louis DiChiara on July 24, 1959, in the above styled cause was filed with the Clerk of the Circuit Court of Baldwin County, Alabama, on August 11, 1959.

FOREMAN & BROWN

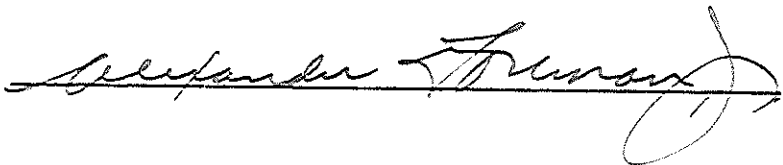
BY



STATE OF ALABAMA:

COUNTY OF MOBILE:

I, Alexander Foreman, Jr., one of the attorneys of record for the defendant in the above styled cause do hereby certify that I have this day mailed a copy of the foregoing notice to Honorable James A. Brice, attorney of record for the plaintiff on this 20th day of August, 1959.



3852

FILED

AUG 22 1957

ALICE J. DICK, CLERK
REGISTER

FOREMAN & BROWN
ATTORNEYS AT LAW
SUITE 214 FIRST NATIONAL BANK ANNEX
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.
ALTON R. BROWN, JR.

July 16, 1959

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

Re: Louis DiChiara vs.
Trinity Universal Insurance
Company

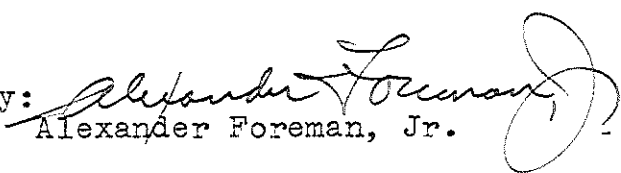
Dear Mrs. Duck:

Enclosed herewith you will please find the notice of the taking of the deposition of Louis DiChiara which notice we shall appreciate your causing to be filed in said cause.

Please issue a subpoena to Louis DiChiara at Gulf Shores, Alabama, requiring him to be present at the office of Louise Dusenbury at 2:00 P.M. on July 24, 1959, in accordance with the notice.

Yours very truly,

FOREMAN & BROWN

By: 
Alexander Foreman, Jr.

AFJr/bd
Enclosure

*subpoena
issued
7-18-59
E.B.*

LOUIS DI CHIARA

Plaintiff,

-vs-

TRINITY UNIVERSAL
INSURANCE COMPANY

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
* CASE NO. _____
*
*

TO: Honorable James A. Brice
Attorney At Law
Foley, Alabama

Please take notice that at 2:00 P. M. on the 24th day of July, 1959, at the office of Louise Dusenbury, Court House, Bay Minette, Alabama, the defendant Trinity Universal Insurance Company will take the deposition of Louis DiChiara whose address is Gulf Shores, Alabama, upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act.No. 375, Regular Session, 1955, approved September 8, 1955, before Louise Dusenbury, an officer authorized to administer oath in the County of Baldwin, State of Alabama, and an official Court Reporter for the Circuit Court of Baldwin County, Alabama, duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

FOREMAN & BROWN

ALICE J. DUCK, Clerk
JUL 18 1959

FILED

JUL 18 1959
ALICE J. DUCK, Clerk

By Alexander Foreman
Attorneys for Defendant

LOUIS DI CHIARA

Plaintiff,

-vs-

TRINITY UNIVERSAL
INSURANCE COMPANY

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
* CASE NO. _____
*
*

I, Alexander Foreman, Jr., one of the attorneys for the defendant in the above styled cause, do hereby certify that I served the attached and foregoing notice to take the deposition upon oral examination of Louis DiChiara by mailing the same to James A. Brice, Foley, Alabama, attorney of record for the plaintiff in said cause on this 16th day of July, 1959.

FILED
JUL 18 1959

ALICE J. DUCK, Clerk


Alexander Foreman, Jr.

JAMES A. BRICE
ATTORNEY AT LAW
FOLEY, ALABAMA

POST OFFICE BOX 298

WHITEHALL 3-3601

June 4, 1959

Mrs. Alice J. Duck
Circuit Clerk
Bay Minette, Alabama

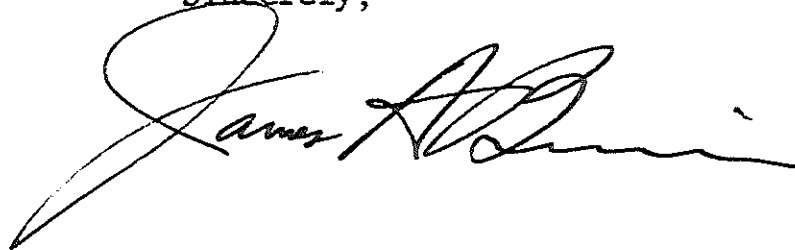
Dear Mrs. Duck:

I enclose in quadruplicate summons and complaint on behalf of Louis DiChiara against Trinity Universal Insurance Company, a foreign corporation.

Defendant has no registered agent for service of process so I will appreciate your serving the Superintendant of Insurance for the State of Alabama.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "James A. Brice". The signature is written in dark ink and is positioned below the word "Sincerely,".

tbh

FOREMAN & BROWN
ATTORNEYS AT LAW
SUITE 214 FIRST NATIONAL BANK ANNEX
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.
ALTON R. BROWN, JR.
KEENER T. BLACKMARR

December 17, 1959

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

Re: Louis DiChiara vs. Trinity
Universal Insurance Company


Dear Mrs. Duck:

Enclosed herewith you will please find a demurrer
which we shall appreciate your causing to be filed in
the above referred to case.

Your courtesy in this regard will be appreciated.

Yours very truly,

FOREMAN & McNALLY

By: 
Alexander Foreman, Jr.

AFJr/bd
Enclosure

LOUIS DI CHIARA,)	IN THE CIRCUIT COURT OF
PLAINTIFF)	BALDWIN COUNTY, ALABAMA
VS.)	AT LAW.
TRINITY UNIVERSAL INSURANCE)	
COMPANY,)	
DEFENDANT.)	

Comes now the Plaintiff in the above styled cause and amends special replication two (2) heretofore filed to the plea in Abatement filed by said defendant, as follows:

(2)

That J. E. Davidson represented himself to the Plaintiff as being the duly authorized agent of said Defendant.

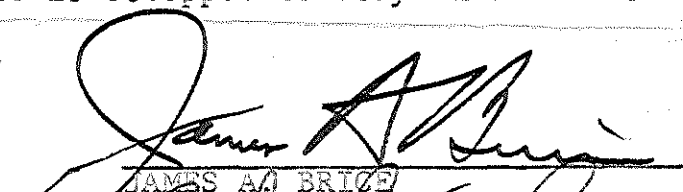
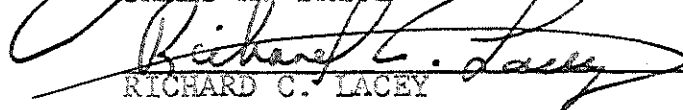
That the said J. E. Davidson on or about ten (10) days after the fire which destroyed Plaintiff's building and contents on December 3, 1958, obtained a list of merchandise and articles destroyed in said fire from the said Plaintiff.

That the said J. E. Davidson told the Plaintiff that it was not necessary that the Plaintiff submit a formal proof of loss, and made the same statement to George S. Salley, a disinterested party.

That in reliance upon the statement by the said J. E. Davidson that no formal proof of loss was necessary to be submitted to the Defendant, the Plaintiff took no further action.

That the defendant, by its agent, the said J. E. Davidson, has received proof of loss within the time provided for in that policy of insurance carried by the said defendant.

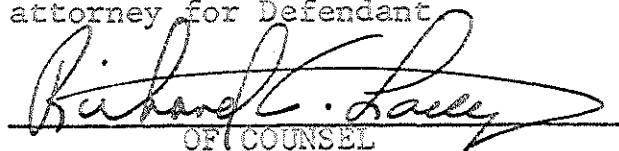
That the defendant is estopped to deny that it has received no proof of loss.


 JAMES A. BRICE

 RICHARD C. LACEY
 ATTORNEYS FOR PLAINTIFF

I hereby certify that a copy of this pleading has been sent Alexander Foreman, Jr., attorney for Defendant.

Filed
 12-15-59

138


 OF COUNSEL

SUMMONS

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to summons the Trinity Universal Insurance Company to appear before the Circuit Court, to be held for said county at the place of holding same, within thirty (30) days from service of this process, then and there to answer the complaint of Mr. Louis Di Chiara.

Witness my hand this 5 day of June 1959.

Ex 6-9-59

Deirdre J. Duck
Clerk

COMPLAINT

Louis DiChiara,)
Plaintiff)
VS.
Trinity Universal)
Insurance)
Company, Defendant)

The Plaintiff claims of the defendant Six Thousand Five Hundred Dollars (\$6,500.00), the value of the contents, including stock and fixtures of the one-story, concrete block, approved roof building, occupied as a grocery, located at 217 Gulf Boulevard, w/s, Gulf Shores, Baldwin County, Alabama, also the value of the household furniture located in apartment connected to and in the rear of the above described building, which the defendant on the 12th day of November 1958, insured against loss or injury by fire or other perils in the policy of insurance mentioned, for the term of one year, which building with contents was wholly destroyed by fire on the 3rd day of December 1958, of which the defendant has had notice.

James A. Brice
James A. Brice

Richard C. Lacey
Richard C. Lacey

Attorneys for Plaintiff

3852
RECEIVED IN OFFICE
JUN 9 1959
M. S. BUTLER, Sheriff

910

Louis Di Chiara
Plaintiff,

vs.

Trinity Universal Insurance Co.
Defendant

EXECUTED BY SERVING A
COPY OF THE WITHIN

(2 copies)
Edmond L. Resnick
Supt. of Insurance
State of Ala.

This the 9 day of June 1959
M. S. BUTLER
Sheriff Montgomery County
By *R. M. ...*
Deputy Sheriff

The Sheriff claims 2
miles at 10c per mile for a total
of \$ -20
M. S. Butler, Sheriff
Montgomery County, Ala.

FILED

JUN 5 1959

ALICE J. DUCK, CLERK
REGISTER

LOUIS DiCHIAPA

Plaintiff,

-vs-

TRINITY UNIVERSAL
INSURANCE COMPANY

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
* CASE NO. _____
*
*

Comes now the defendant in the above styled cause and, appearing specially and only for the purpose of filing the following separate and several pleas in abatement to the complaint and each count thereof and files the following separate and several pleas:

PLEA ONE

This cause should abate and be dismissed out of this Honorable Court, for that, in the policy of insurance sued on in this cause it is covenanted and agreed that:

"That 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, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of 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; that the amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company; and that 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 the defendant further alleges that the plaintiff did not within sixty days after the loss alleged in the complaint, render to the defendant company a proof of loss signed and sworn to by the assured stating the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and did not furnish a copy of all the descriptions and schedules in all policies.

FOREMAN & McNALLY

By: Alexander Foreman, Jr.
Attorneys for the Defendant

STATE OF ALABAMA:
COUNTY OF MOBILE:

Before me, Betty Davis, a Notary Public in and for the State of Alabama, At Large, personally appeared Alexander Foreman, Jr., known to me, who, being by me first duly sworn, on oath deposes and says that he is one of the attorneys for the defendant in the above styled cause; that he has read the foregoing separate and several pleas in abatement and that the matters set forth therein are true and correct, and he is authorized to make this affidavit.

Alexander Foreman, Jr.
Alexander Foreman, Jr.

Subscribed and sworn to before me
this 13th day of June, 1959.

Betty Davis
Notary Public, State of Alabama, At Large

Filed
6-15-59

LOUIS DI CHIARA -

Plaintiff

-VS-

TRINITY UNIVERSAL INSURANCE
COMPANY -

Defendant

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

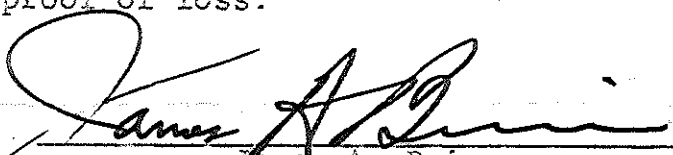
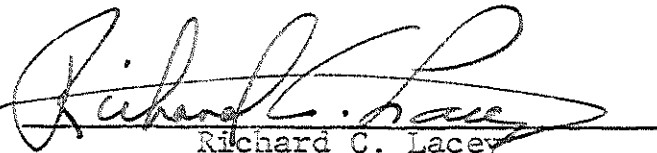
AT LAW

Comes the Plaintiff and for replication to each plea of the
Defendant says:

1. That it joins issue thereon.

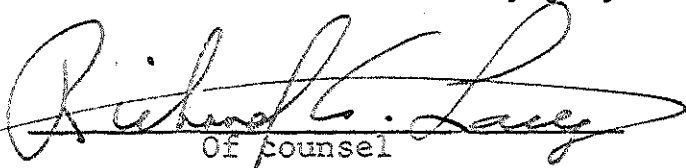
And for special replication Plaintiff states as follows:

2. That the Defendant was duly notified by its agent,
J. E. Davidson, of said loss; and that by the conduct of the
Defendant since being notified, the Defendant is estopped to
deny that it has received no proof of loss.


James A. Brice

Richard C. Lacey
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury


Of counsel

FILED

AUG 1 1958

ALICE J. DUCK, CLERK
REGISTER

LOUIS DI CHIARA

Plaintiff,

-vs-

TRINITY UNIVERSAL INSURANCE
COMPANY,

Defendant.

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

Comes now the defendant in the above styled cause and demurs to the separate and several replication 2 filed by the plaintiff to the special plea filed by the defendant in said cause and for grounds therefor, assigns the following, separately and severally:

1. That 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 does not traverse said plea.
4. Said replication confesses but does not avoid the matters and things set up in said plea.
5. That said replication does not answer each and every matter alleged in said plea.
6. Said replication is a departure from the complaint.
7. That said replication neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
8. That said replication contains conclusions of the pleader with the averment of sufficient facts upon which to base such conclusion.
9. That the averment in said replication "that by the conduct of the Defendant since being notified, the Defendant is estopped to deny that it has received no proof of loss" is a conclusion of the pleader without the averment of sufficient facts upon which to base such conclusion.

FOREMAN & BROWN

By:

Alexander L. Foreman
Attorney for the Defendant

FILED
AUG 7 1959
ALICE I. DUCK, CLERK
REGISTER

LOUIS DI CHIARA

Plaintiff,

-vs-

TRINITY UNIVERSAL INSURANCE
COMPANY,

Defendant.

* IN THE CIRCUIT COURT

* OF BALDWIN COUNTY

* ALABAMA

* AT LAW

* NO. _____

*

Comes now the defendant in the above styled cause and demurs to the separate and several replication 2, as last amended, and filed by the plaintiff to the special plea filed by the defendant in said cause, and for grounds therefor, assigns the following, separately and severally:

1. That 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 does not traverse said plea.
4. Said replication confesses but does not avoid the matters and things set up in said plea.
5. That said replication does not answer each and every matter alleged in said plea.
6. Said replication is a departure from the complaint.
7. That said replication neither traverses nor confesses and avoids the matter pleaded nor presents matter of estoppel.
8. That said replication contains conclusions of the pleader with the averment of sufficient facts upon which to base such conclusion.
9. For aught appearing J. E. Davidson was not acting within the line and scope of his employment as an agent, servant or employee of the defendant in representing himself as being a duly authorized agent of said defendant.
10. For aught appearing said J. E. Davidson was not acting within the line and scope of his employment as an agent, servant or employee of the defendant in obtaining a list of merchandise and articles destroyed in said fire from the said plaintiff.
11. For aught appearing said J. E. Davidson was not acting within the line and scope of his employment as an agent, servant or employee of the defendant in telling the plaintiff that it

was not necessary that the plaintiff submit a formal proof of loss.

12. For aught appearing the said J. E. Davidson was not an agent, servant or employee of the defendant and was not acting within the line and scope of his employment as an agent, servant or employee of the defendant at the time and on the instances referred to in said plea.

13. For that said plea was not sworn to.

FOREMAN & BROWN

By: Alexander Foreman
Attorney for the Defendant

I hereby certify that a copy of this pleading has been sent James A. Brice and Richard C. Lacey, attorneys for the Plaintiff.

Alexander Foreman
Of Counsel

