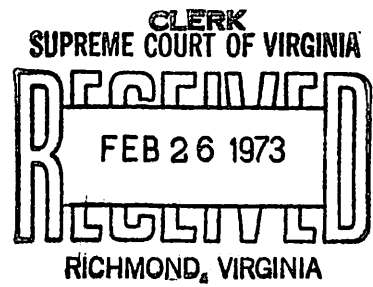


214 VA 134



34
IN THE
SUPREME COURT OF APPEALS
OF VIRGINIA
AT RICHMOND

RECORD NO. 8158

34
RALPH GREGORY, APPELLANT,

V

PROVIDENCE WASHINGTON INSURANCE COMPANY,
APPELLEE.

APPENDIX FOR THE APPELLANT

W. V. Rennie
Union Trust Building
Petersburg, Virginia
Counsel for Appellant

William F. Binford, Jr.
Prince George
Virginia
Counsel for the Appellant

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CERTIFICATE

I hereby certify that I have this 23rd day of February, 1973, mailed post-paid, a true 25 copies of the following and annexed appendix to the Clerk of the Supreme Court of Virginia and 3 true copies to Lanier Thurmond, Esquire, Seaboard Building, Richmond, Virginia, Counsel of Record for the defendant.



W. V. Rennie

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SUSSEX

RALPH GREGORY

PLAINTIFF

V

PROVIDENCE WASHINGTON INSURANCE COMPANY
 Providence
 Rhode Island

DEFENDANT

Serve on Charles W. Syndor
 100 Jackson Avenue
 Sandston, Virginia, as registered agent for
 Providence Washington Insurance Company

MOTION FOR JUDGMENT

Comes now the plaintiff and moves this Honorable Court for judgment against the defendant in the amount of TEN THOUSAND DOLLARS (\$10,000.00), plus costs and interest from the 24th day of August, 1968 until paid, which the plaintiff asserts is due and owing to him of and from the defendant by reason of the following to-wit:

1. That on or about the 24th day of August, 1968, the plaintiff was injured as a result of the negligent operation of a motor car in the County of Sussex, Virginia, by one James Edward Goode.
2. That thereafter the plaintiff obtained judgment in this Court in the amount of TEN THOUSAND DOLLARS (\$10,000.00) as compensation for injuries sustained by him as a result of the negligence of the operator of the said motor vehicle then and there being operated by the said James Edward Goode.
3. Execution was issued on the said judgment in the Clerk's Office of the Circuit Court of the County of Sussex on July 13, 1971 and returned by the sheriff of the said county on July 14, 1971, marked, "no effects".
4. That at the time aforesaid and at all times pertinent to this action, the said James Edward Goode was an insured under the terms of an automobile liability insurance policy numbered ACF 77-44-73 issued by the Providence Washington Insurance Company, the defendant in this cause, and which policy provided automobile liability insurance coverage on the said James Edward Goode and the motor vehicle operated at the time of the said injuries sustained by the plaintiff, which injuries gave rise to the aforesaid judgment.
5. That no part of the aforesaid judgment has been paid by the defendant or any other person.
6. That there is and was a duty on the defendant to pay under the terms of the aforesaid policy of insurance the aforesaid judgment.

WHEREFORE judgment is asked as aforesaid.

W. V. Rennie, pq
 Union Trust Bldg
 Petersburg, Virginia

RALPH GREGORY

By: W. V. Rennie

Counsel

William F. Binford, Jr., pq
 Prince George
 Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SUSSEX

RALPH GREGORY,

PLAINTIFF

V

PROVIDENCE WASHINGTON INSURANCE COMPANY

DEFENDANT

STIPULATION OF THE PARTIES

The parties hereto, by counsel, agree to the following stipulations relative to trial of the captioned case:

(1) All testimony reflected by the Court Reporter's Transcript in the case of Catherine Richardson, an infant, etc. v Providence Washington Insurance Company heard in this Court on January 15, 1971 shall be the testimony of the witnesses for the parties hereto just the same as if such witnesses appeared and gave the same in this case with leave to the parties to file a copy thereof to constitute a part of the record herein.

(2) All exhibits, as enumerated in said Court Reporter's Transcript at page 2 thereof and as in turn reflected in actual Exhibit form via the Court file in the said case of Catherine Richardson, an infant, etc. v Providence Washington Insurance Company shall constitute the exhibits in this case, with leave to the parties to file photostated copies thereof to be made a part of the record herein.

(3) Atlas Underwriters, Ltd., at the time of the issuance of the policy contract at issue herein, and at all time material herein, was the general agent of the Providence Washington Insurance Company and was clothed with full authority to issue policy contracts of automobile liability insurance and do all things necessary or incidental to the operation of the business of Providence Washington Insurance Company in the State of Virginia, including specifically the authority to cancel policy contracts of automobile liability insurance.

(4) The only issue for the Court to decide in this case is the validity of the cancellation of the policy contract of automobile liability insurance as evidenced by the notice of cancellation designated as Defendant's Exhibit 3 on page 2 of the aforesaid Court Reporter's Transcript, the policy contract relating thereto being designated as Plaintiff's Exhibit 1 on page 2 of the aforesaid Court Reporter's Transcript.

(signed) W. V. Fennie _____ p. q.

(signed) Lanier Thurmond _____ p. d.

May 12, 1972

(3)

Mr. Lanier Thurmond, Esq.
Thurmond, Beaver, Bostwick
Attorneys at Law
3600 W. Broad St.
Richmond, Virginia 23230

Mr. W. V. Rennie, Esq.
Attorney at Law
Union Trust Building
Petersburg, Va.

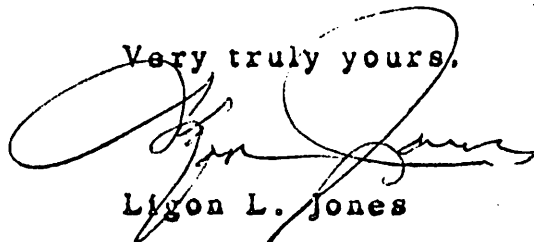
Re: Ralph Gregory v.
Providence Washington Ins. Co.

Gentlemen:

After mature consideration of the evidence and exhibits filed in the above styled matter, the Court is of the opinion that the Policy # ACF 77-44-73 issued by the defendant was effectively canceled on the 26th day of July 1968 and for that reason this cause will be dismissed at the cost of plaintiff.

Attorney for the defendant will prepare an order to this effect submitting same to the attorney for the plaintiff for endorsement.

Very truly yours,



Ligon L. Jones

LLJ/cpm

(4)

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF SUSSEX

RALPH GREGORY,

Plaintiff,

vs.

PROVIDENCE WASHINGTON INSURANCE COMPANY,

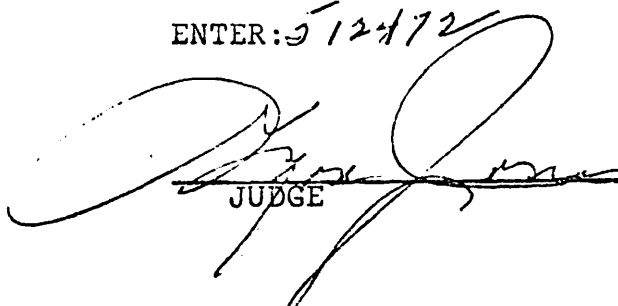
Defendant.

JUDGMENT ORDER

This day came again the parties, by counsel, and the Court having maturely considered the evidence and the exhibits filed herein, doth find that the Policy No. ACF 77-44-73 issued by the defendant was effectively canceled on July 26, 1968.


Wherefore, it is hereby ORDERED that the plaintiff recover nothing of the defendant, and this case is hereby dismissed at the cost of the plaintiff, to all of which action of the Court the plaintiff, by counsel, objects and excepts.

ENTER: 5/24/72



JUDGE

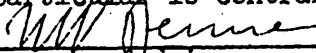
Requested:



p.d.

Seen, objected and excepted to:

On the grounds that it is contrary to the law and evidence in this case, and in particular is contrary to Section 38.1-381.1 of the Code of Virginia



p.q.
of 1950 as amended is respect to the defination and use of the term " certificate"

1252

COMPANY COPY

NOTICE OF CANCELLATION

Place RICHMOND, VIRGINIA

Providence Washington Insurance Co.

Date July 15, 1968

hereby gives you written notice in accordance with the Policy conditions of the cancellation of its Policy No. ADP 77 44 73 issued through its RICHMOND, VIRGINIA Agency to James Edward Goode

By virtue of this notice, as issued to you, the Policy will be cancelled and all liability of this Company under said Policy will cease at and from midnight standard time, without further notice.

July 26, 1968

If the premium has been paid, the excess of paid premium above the pro rata premium for the expired term, if not tendered to you herein, will be refunded on demand.

If the premium has not been paid, a bill for the premium earned to the time of cancellation will be forwarded in due course.

THIS NOTICE IS TO:

Please return the Policy and oblige,
Yours very truly,

James Edward Goode

ATLAS UNDERWRITERS, LTD.

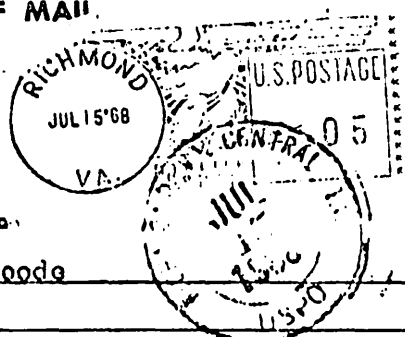
1416 Stark St.

Petersburg, Va.

By Alfred J. Curran
Agent

POST OFFICE DEPARTMENT
CERTIFICATE OF MAIL

Received From:



On a piece of ordinary mail or

James Edward Goode

1416 Stark St.

Petersburg, Va.

MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE. - POSTMASTER

J. E. Oliver, hereby certify that on the 15 day of July, 1968 I personally mailed in the U. S. Post Office at RICHMOND, VIRGINIA

a note of cancellation, an exact carbon copy of which appears above, and at said time received from the U. S. Post Office the receipt (Form 3817) hereto attached.

Signed at RICHMOND, VIRGINIA

This 15 day of July 1968

Signature

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MR. THURMOND: I do not know.
I am just reserving the right.

WITNESS STOOD ASIDE.

MR. THURMOND: I call Mr. E. M. Boltz.

E. M. BOLTE, called at the instance of
counsel for the defendant, first being duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. THURMOND:

Q Mr. Boltz, state your name.
A Ernest M. Boltz.
Q Where do you reside?
A 7401 Birchwood Road, Richmond.

1 A Mrs. Oliver handled all automobile
2 cancellations.

3 THE COURT: What was her capacity with
4 your firm?

5 THE WITNESS: She was an underwriter.

6 MR. THURMOND: would that include specifically
7 cancellations based upon non-payment of premium?

8 THE WITNESS: Yes, sir.

9 MR. RENNIE: I object to that as certainly
10 being leading. I haven't been objecting to leading
11 questions, but that certainly is.

12 THE COURT: I would sustain the objection
13 but he will have to get it one way or the other.

14 MR. RENNIE: I will withdraw it.

15 MR. THURMOND: Answer Mr. Rennie's questions.

16

17

18 CROSS EXAMINATION

19 BY MR. RENNIE:

20 Q How many employees did you have in your
21 place of business, Mr. Boltz, in July, 1968?

22 A Approximately 15.

23 Q And how many underwriters?

24 A In 1968, in July I think we had two
25 automobile underwriters and two others.

1
2
3 BETTY OLIVER, called at the instance of
4 counsel for the defendant, first being duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION:

7 BY MR. THURMOND:

8 Q State your full name, please.

9 A Betty Oliver.

10 Q And by whom are you employed?

11 A Atlas Underwriters, Ltd.

12 Q And do you work under Mr. E. M. Boltz
13 there?

14 A Yes, I do.

15 Q How long have you been with Atlas Underwriters,
16 Ltd.?

17 A Since September, 1967.

18 Q Now commencing with May, 1968 through July,
19 1968, what was your job with Atlas Underwriters?

20 A I was underwriter of new business,
21 cancellations, endorsements, and the only underwriter on the
22 cancellations.

23 Q The only underwriter on the cancellations.
24 What experience as an underwriter had you had in the
25 insurance field before you became associated with Atlas?

1 A Travellers, Hardware Mutual, Century & Life
2 and Robert L. Taylor Insurance Agency. Although at Hardware
3 Mutual I was not an underwriter.

4 MR. RENNIE: Mrs. Oliver, can you speak
5 up.

6 Q When you worked with Travellers what did
7 you work as?

8 A Supervisor of Assigned Risk Department,
9 plus head underwriter, except that Travellers does not
10 recognize women as underwriters so I was called a rater
11 and supervisor.

12 Q Mrs. Oliver, in your capacity as underwriter
13 for Atlas Underwriters, charged with handling cancellation
14 of automobile liability insurance policies, did you have
15 occasion to handle one relating to a James Edward Goode?

16 A Yes, I did.

17 MR. THURMOND: Your Honor, we would like
18 to make this carbon copy of Notice of Cancellation
19 Defendant's Exhibit No. 3.

20 THE COURT: Has Mr. Rennie seen it?

21 MR. THURMOND: Yes.

22 MR. RENNIE: Yes, I have seen it.

23
24 NOTE: The above referred to carbon copy
25 of Notice of Cancellation is marked and filed by

Oliver - Direct

(10)

CC.

1 the Court as Defendant's Exhibit No. 3.

2
3 BY MR. THURMOND: (Continuing)

4 Q Now directing your attention to this
5 document which has been designated as Defendant's Exhibit
6 No. 3, did you personally handle that transaction?

7 A Yes, I did. I prepared all of this.

8 Q What was the basis for mailing out that
9 Notice of Cancellation, Mrs. Oliver?

10 A We had written for an additional premium
11 of \$46.00 due in order to process the policy.

12 MR. RENNIE: Just a moment. I object to
13 the "We" writing. I think this witness can testify
14 to anything she did.

15 A I did.

16 Q What did your underwriter file reflect
17 you were dealing with when you made the decision to effect
18 this cancellation?

19 A We had received the application based on
20 the classification of 1-B, on which it indicated the insured
21 had no driving convictions or accidents. We also order the
22 driver's record. This driver's record revealed that the
23 insured did have convictions.

24 MR. RENNIE: Objection.

25 Q Based upon your recalculation of the premium,

H. JAMES EDWARDS AND ASSOCIATES
COURT REPORTERS
1108 EAST MAIN STREET
RICHMOND, VIRGINIA
PHONE 648-2801

(11)

Oliver - Direct

65.

1 been paid?

2 A It disclosed it had not been paid.

3 Q What action did you take in keeping with
4 your duties as underwriter?

5 A I therefore prepared the cancellation
6 figures in its entirety and then directed my typist to type
7 this form.

8 Q Was your typist present there with you?

9 A Yes, sir.

10 Q Did she hand it back to you after she put
11 the typing on it?

12 A Yes, sir.

13 Q Then what did you do?

14 A As normal procedure I gave this to Mr.
15 Boltz, our Manager, to take to the Post Office and bring
16 the receipt back. I then attached it to the company copy
17 and mailed it to the company, which was Providence Washington
18 Insurance Company.

19 Q Is this the Post Office receipt attached
20 to this Notice of Cancellation which was obtained from the
21 Post Office?

22 A Yes, sir, it is.

23 Q Did you personally put it on this company
24 copy of the Notice of Cancellation?

25 A Yes, sir.

1 Q And when did this Notice of Cancellation
2 advise Mr. Goode that his policy was cancelled. What was
3 the effective date?

4 A The effective date of cancellation was
5 July 26, 1968.

6 Q What is the policy number referred to?

7 A ACF 774473.

8 Q What is the date of cancellation or date
9 of notice?

10 A July 15, 1968.

11 Q What is the date stamped on it by the
12 Post Office?

13 A July 15, 1968.

14 Q Did you at that time direct the preparation
15 of what may be called an endorsement -- I, B. Oliver --

16 A Yes, sir.

17 Q Do you today from this witness stand
18 affirm that this instrument is a true copy of the Notice
19 that went to Mr. Goode at the address specified in it?

20 A Yes, sir.

21 Q And do you affirm --

22 MR. RENNIE: Just a moment. That is going
23 far beyond the pale of leading questions. I have
24 not been objecting to leading but putting with it
25 affirmation, which calls for a conclusion, in the

1 mouth of this witness I think is entirely beyond
2 all reason of being leading. I object.

3 THE COURT: I think the question is
4 leading but you have to get the information some
5 way.

6 MR. RENNIE: I think it calls for a
7 conclusion whether she affirms or not.

8 THE COURT: She knows whether she sent it
9 out or not. Suppose she was asked the question
10 is this a true copy of what you mailed to him.

11 MR. RENNIE: She already said she didn't
12 mail it, Mr. Boltz mailed it.

13 THE COURT: But she prepared it. Is this
14 an actual copy of what you prepared?

15 THE WITNESS: Yes, sir.

16 THE COURT: I assume you put it in an
17 envelope and Mr. Boltz mailed it. Did you put it
18 in an envelope?

19 THE WITNESS: Yes, sir.

20
21 BY MR. THURMOND: (Continuing)

22 Q In putting it in an envelope did you seal
23 it?

24 A We don't seal it before they go to the Post
25 Office. We have them there so they can inspect it if they

1 so wish. They seal them at the Post Office.

2 Q Did the Post Office give you this mailing
3 receipt?

4 A They gave it to Mr. Boltz to the best of
5 my knowledge.

6 MR. RENNIE: This witness can testify
7 to what she knows.

8 THE COURT: Objection sustained. The
9 witness can't testify the Post Office gave it to
10 Mr. Boltz.

11 THE WITNESS: All I can say is I gave
12 it to Mr. Boltz. He left the office and returned
13 in a matter of a few minutes and gave it back
14 to me.

15 MR. THURMOND: Did you cause this
16 certificate to be placed on here stating in your
17 name that it was a true copy of this cancellation?

18 THE WITNESS: Did I cause it?

19 MR. THURMOND: Yes, or did you put that
20 on this copy?

21 THE WITNESS: This is required to go on
22 all of our cancellations.

23 THE COURT: Did you put it on there?

24 THE WITNESS: Yes, sir.

25 MR. THURMOND: The piece mailed represented

H. JAMES EDWARDS AND ASSOCIATES
COURT REPORTERS
1108 EAST MAIN STREET
RICHMOND, VIRGINIA
PHONE 648-2801

Oliver - Cross

(170) 70.

1 A No, sir.

2 Q Explain that to me.

3 A Well, when I am speaking of preparing
4 I am speaking of actually filling out the date of
5 cancellation, name of the insured, address, and all proper
6 underwriting procedures. And she typed only what I gave
7 her to type.

8 Q Was the whole thing typed by her?

9 A Right.

10 Q What is the lady's name?

11 A I couldn't tell you because I had three
12 or four typists at my convenience because I don't type.

13 Q She typed in the words L. B. Oliver,
14 hereby certify that on the 15th day of July, 1968, I
15 personally mailed at the Post Office this Notice of
16 Cancellation?

17 A Yes, sir.

18 Q That is not correct, is it?

19 A No, sir.

20 Q You didn't mail it?

21 A No, sir, I didn't.

22 Q Your certificate is not true then, is that
23 correct, if you certify you did and you didn't?

24 A This is accepted procedure by insurance
25 companies because it is not practical for one person to send

1 I could verify my signature?

2 THE COURT: What we have here you signed
3 I, B. Oliver, hereby certify that on the 15th day
4 of July, 1968, I personally mailed in the U. S.
5 Post Office at Richmond, Virginia, a Notice of
6 Cancellation, an exact carbon copy of which
7 appears above and at the said time received from
8 the U. S. Post Office the receipt hereto attached.
9 And you signed B. Oliver. And this was delivered
10 to the Post Office by Mr. Boltz?

11 THE WITNESS: Yes, sir.

12 THE COURT: Let the record so show.

13 MR. RENNIE: No further questions of this
14 witness.

15
16
17 REDIRECT EXAMINATION

18 BY MR. THURMOND:

19 Q Mrs. Oliver, Mr. Rennie asked if a clerk
20 typist actually typed this instrument. Who told her to do
21 it?

22 A I instructed her to do it.

23 Q When she handed it back what did you do?

24 A She had also typed an envelope. I put it
25 in the envelope-- I put on the certificate of mailing that she had

1 typed on it, and handed it to Mr. Boltz.

2 Q Did you check what she had typed?

3 A Yes, definitely, I always check what
4 they have typed.

5 Q Did you in this instance?

6 A Yes, sir.

7 MR. THURMOND: I have no further
8 questions of Mrs. Oliver.

9
10 BY MR. RENNIE:

11 Q Just one other. I think you gave this
12 Notice of Cancellation to Mr. Boltz in an envelope which
13 was not sealed, is that correct?

14 A We could have sealed it if we had stamped
15 it in our basement, which we often did. If we send it to
16 the Post Office to be mailed I wouldn't have because often
17 times they want to look in to see if it is going to the
18 insured. I do not recall -- I do not know.

19 MR. THURMOND: You say they want to look
20 into it?

21 THE WITNESS: Occasionally.

22 MR. THURMOND: By "they" you mean --

23 THE WITNESS: The Post Office.

24 MR. RENNIE: I am objecting to it.

25 MR. THURMOND: He brought it out.

Boltz - Cross

1 Q Mr. Boltz, did you open that envelope?

2 A I do not recall that I opened the
3 envelope.

4 Q Is it your practice to open the envelope
5 on the way to the Post Office?

6 A No, no indeed.

7 Q So Mrs. Oliver gave you the envelope and
8 you took it to the Post Office?

9 A Right.

10 Q You have no way of knowing what was in it,
11 right?

12 A I didn't see what was in it.

13 Q So you don't know what was in it. You
14 can't state under oath that a copy of this was in it,
15 can you?

16 A I cannot.

17 MR. RENNIE: Now to clarify the record
18 I was saying a copy of this, I was referring, if
19 Your Honor please, to Defendant's Exhibit No. 3,
20 being a Notice of Cancellation, and I think the
21 witness' testimony was that he could not say that
22 a copy of this Notice of Cancellation was in the
23 envelope which he mailed. I have no further
24 questions.

25 MR. THURMOND: Step down, Mr. Boltz.

1
2
3 BETTY OLIVER, upon being recalled to the
4 witness stand, having previously been duly sworn, testified
5 further as follows:

6 DIRECT EXAMINATION

7 BY MR. THURMOND:

8 Q Mrs. Oliver, directing your attention
9 again to Defendant's Exhibit No. 3 was the original of
10 this Notice of Cancellation in the envelope that you gave
11 to Mr. Boltz to take to the Post Office?

12 A Yes, sir.

13 Q Do you check to be sure that those things,
14 or the envelopes going via Mr. Boltz to the Post Office,
15 have in what you expect it to have in it?

16 A Yes, sir.

17 Q Did that one have it in it?

18 A Yes, sir.

19
20
21 CROSS EXAMINATION

22 BY MR. RENNIE:

23 Q You are not undertaking to say, are you
24 Mrs. Oliver, that the original of that certificate was in
25 the envelope when it reached the Post Office?

1 A He didn't ask me that. He said was it in
2 there when I handed it to Mr. Boltz.

3 Q You don't know what happened after you
4 gave it to Mr. Boltz?

5 A I do not know.

6 Q He could have taken it out?

7 A It was not sealed. To my knowledge it was
8 not sealed. It could have been sealed or not sealed.

9 Q You don't know what happened after that,
10 if it was sealed or not sealed?

11 A If it was under seal the Post Office
12 wouldn't have mailed it out.

13 Q That is when they receive it, right?
14 All right. That is all.

15

16

17

18

WITNESS STOOD ASIDE.

19

20

THE COURT: Mr. Thurmond.

21

MR. THURMOND: Just one moment, Judge.

22

THE COURT: Gentlemen, as I understand,

23

at the present time this Court does not have a copy
24 of the policy as an exhibit.

25

MR. RENNIE: Yes, it is Plaintiff's Exhibit