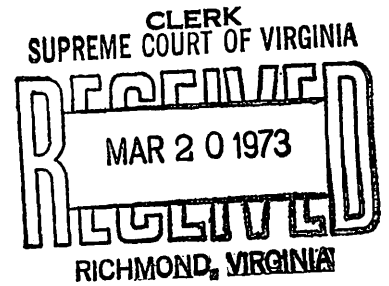


214 VA 13A



SUPREME COURT OF VIRGINIA AT RICHMOND

RALPH GREGORY,

Appellant,

vs.

RECORD NO. 8158

PROVIDENCE WASHINGTON INSURANCE COMPANY,

Appellee.

APPENDIX FOR THE APPELLEE --
COVERING ADDITIONAL PARTS OF
THE RECORD OMITTED IN WHOLE
OR IN PART IN THE APPENDIX
OF THE APPELLANT

Lanier Thurmond
Counsel for Appellee.

Thurmond, Beaver & Bostwick
495 Seaboard Building
3600 West Broad Street
Richmond, Virginia 23230

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Excerpts from the Testimony of E. M. Boltz,

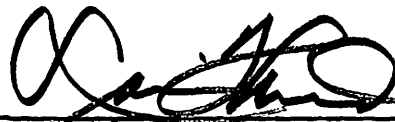
TR. pgs. 54, 55, 56 and 75.

Excerpts from the Testimony of Betty Oliver,

TR. pgs. 58, 59, 60, 65, 66, 67, 68, 72, 73 and 78.

Certificate

I hereby certify that twenty-five (25) true copies of the following and annexed Appendix for the Appellee have been filed with the Clerk of the Supreme Court of Virginia at Richmond, Virginia, and three (3) true copies thereof have been mailed, postage prepaid, to W. V. Rennie, Esquire, Union Trust Building, Petersburg, Virginia, counsel of record for the plaintiff-appellant, this 20th day of March, 1973.



Lanier Thurmond

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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. BOLTZ, 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.

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

Boltz - Direct

55.

1 Q What is your occupation?

2 A Assistant Secretary of Atlas Underwriters,
3 Ltd.

4 Q That would be an officer with Atlas
5 Underwriters?

6 A Yes, sir.

7 Q For how long?

8 A Three years.

9 Q Was that your position with Atlas Under-
10 writers, Ltd. in May, 1968?

11 A Yes, sir.

12 Q And more specifically July, 1968?

13 A Yes, sir.

14 Q Now did Atlas Underwriters, Ltd., in the
15 course of handling business for the Providence Washington
16 Insurance Company, in turn have an employee under you who
17 was what you might call your underwriter?

18 A Yes, we did.

19 Q Who was that individual at that time?

20 A Mrs. Betty Oliver.

21 Q Was she the only underwriter that your
22 general agency had?

23 A No, we had others.

24 Q Was Mrs. Oliver, or who was responsible
25 for the handling of cancellations?

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?

Oliver - Direct

59.

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

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

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.

Oliver - Direct

66.

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

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. Bolts?

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.

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2
3 E. M. BOLTZ, resuming the witness stand,
4 having previously been duly sworn, testified further as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. THURMOND:

8 Q Mr. Boltz, directing your attention to
9 Defendant's Exhibit No. 3, will you tell His Honor who
10 actually performed the mechanics of carrying the mail,
11 and specifically the original of this item and the envelope
12 in which it was contained to the U. S. Post Office on
13 that date, sir?

14 A I not only took the Notice of Cancellation
15 for Mr. James Edward Goode, I take them all to the Post
16 Office every time they go. I did in 1968. I transported
17 every cancellation we had to the Post Office and had this
18 stamp put on by the Postmaster and brought it back to Mrs.
19 Oliver, who in turn attached it to the Notice of Cancellation,
20 copy.

21 MR. THURMOND: Answer Mr. Rennie.

22
23 CROSS EXAMINATION

24 BY MR. RENNIE:
25

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?