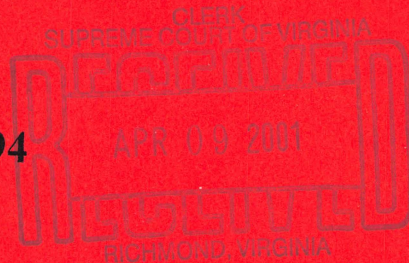


In The  
Supreme Court of Virginia

RECORD NO. 002894



TRANSCONTINENTAL INSURANCE COMPANY,

*Appellant,*

v.

RBMW, Inc., t/a JORDAN POINT YACHT HAVEN, et al.,

*Appellees.*

JOINT APPENDIX

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VSB# 15963  
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*RBMW, Inc.*

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*Counsel for Appellee*  
*Robins Insurance Agency*



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V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE GEORGE COUNTY

RBMW, INC.,  
t/a JORDAN POINT YACHT HAVEN,  
A VIRGINIA CORPORATION

Plaintiff,

v.

CASE NO. \_\_\_\_\_

✓ ROBINS INSURANCE AGENCY, INC.,  
A VIRGINIA CORPORATION,

SERVE: John F. Robins, Registered Agent  
2800 Parham Road  
Post Office Box 71300  
Richmond, Virginia 23294-4409

AND

✓ WILLIAM RALEIGH ROBINS

SERVE: ROBINS INSURANCE AGENCY, INC.  
2800 Parham Road  
Post Office Box 71300  
Richmond, Virginia 23294-4409

AND

✓ TRANSCONTINENTAL INSURANCE COMPANY,  
A NEW YORK CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA,  
A PENNSYLVANIA CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ CONTINENTAL CASUALTY COMPANY,  
AN ILLINOIS CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

Filed in the Clerk's Office the 22nd day of June 19 98  
Ent Tax \$ 25.00 Teste, Burke/ Krott Jr Clerk  
Fee 150.00  
Deposit 400  
Total Paid \$ 310.00 Sally Smith D.C.

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ NATIONAL FIRE INSURANCE COMPANY OF HARTFORD,  
A CONNECTICUT CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ TRANSPORTATION INSURANCE COMPANY,  
A NEW YORK CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

VALLEY FORGE INSURANCE COMPANY,  
A PENNSYLVANIA CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ BOSTON OLD COLONY INSURANCE COMPANY,  
A MASSACHUSETTS CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ THE BUCKEYE UNION INSURANCE COMPANY,  
AN OHIO CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW JERSEY,  
A NEW JERSEY CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ THE CONTINENTAL INSURANCE COMPANY,  
A NEW HAMPSHIRE CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ CONTINENTAL REINSURANCE CORPORATION,  
A CALIFORNIA CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,  
A NEW HAMPSHIRE CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY,  
A NEW JERSEY CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ THE GLENS FALLS INSURANCE COMPANY,  
A DELAWARE CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ KANSAS CITY FIRE AND MARINE INSURANCE COMPANY,  
A MISSOURI CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

AND

✓ NIAGARA FIRE INSURANCE COMPANY,  
A DELAWARE CORPORATION  
DEFENDANT AND A MEMBER OF THE  
CNA INSURANCE GROUP,

SERVE: Edward R. Parker, Registered Agent  
5511 Staples Mill Road  
Richmond, Virginia 23228-0000

Defendants.

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, by counsel, and for its  
Motion for Judgment against the Defendants, states as follows:

1. At all times relevant Plaintiff, RBMW, Inc. ("RBMW"), was a Corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Prince George County, Virginia and mailing address of 101 Jordan Point Road, Hopewell, Virginia. RBMW is engaged in the marina business and trades under the name of Jordan Point Yacht Haven.

2. At all times relevant Defendant, Robins Insurance Agency, Inc. ("Robins"), was a Corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Henrico County, Virginia. Robins is engaged in the business of soliciting, selling, negotiating and effecting insurance as an independent insurance agency.

3. At all times relevant, William Raleigh Robins was a duly licensed Virginia agent, an officer with Robins and represented to the plaintiff that he was an authorized agent as to represent insurers within the CNA Insurance Companies.

4. At all times relevant, Defendant, Transcontinental Insurance Company ("Transcontinental"), a New York Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Transcontinental is a member of the CNA Insurance Companies.

5. At all times relevant, Defendant, American Casualty Company of Reading, Pennsylvania ("American Casualty"), a Pennsylvania Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. American Casualty is a member of the CNA Insurance Companies.



6. At all times relevant, Defendant, Continental Casualty Company ("Continental Casualty"), an Illinois Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Continental Casualty is a member of the CNA Insurance Companies.

7. At all times relevant, Defendant, National Fire Insurance Company of Hartford ("National Fire"), a Connecticut Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. National Fire is a member of the CNA Insurance Companies.

8. At all times relevant, Defendant, Transportation Insurance Company ("Transportation"), an Illinois Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Transportation is a member of the CNA Insurance Companies.

9. At all times relevant, Defendant, Valley Forge Insurance Company ("Valley Forge"), a Pennsylvania Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Valley Forge is a member of the CNA Insurance Companies.

10. At all times relevant, Defendant, Boston Old Colony Insurance Company ("Boston Old Colony"), a Massachusetts Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Boston Old Colony is a member of the CNA Insurance Companies.

11. At all times relevant, Defendant, The Buckeye Union Insurance Company ("Buckeye Union"), an Ohio Corporation,

authorized to do business in Virginia, engaged in the business as an insurance company. Buckeye Union is a member of the CNA Insurance Companies.

12. At all times relevant, Defendant, Commercial Insurance Company of Newark, New Jersey ("Commercial"), a New Jersey Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Commercial is a member of the CNA Insurance Companies.

13. At all times relevant, Defendant, The Continental Insurance Company ("Continental"), a New Hampshire Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Continental is a member of the CNA Insurance Companies.

14. At all times relevant, Defendant, Continental Reinsurance Corporation ("Continental Reinsurance"), a California Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Continental Reinsurance is a member of the CNA Insurance Companies.

15. At all times relevant, Defendant, The Fidelity and Casualty Company of New York ("Fidelity and Casualty"), a New Hampshire Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Fidelity and Casualty is a member of the CNA Insurance Companies.

16. At all times relevant, Defendant, Firemen's Insurance Company of Newark, New Jersey ("Firemen's"), a New Jersey Corporation, authorized to do business in Virginia, engaged in the

business as an insurance company. Firemen's is a member of the CNA Insurance Companies.

17. At all times relevant, Defendant, The Glens Falls Insurance Company ("Glens Falls"), a Delaware Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Glens Falls is a member of the CNA Insurance Companies.

18. At all times relevant, Defendant, Kansas City Fire and Marine Insurance Company ("Kansas City"), a Missouri Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Kansas City is a member of the CNA Insurance Companies.

19. At all times relevant, Defendant, Niagara Fire Insurance Company ("Niagara Fire"), a Delaware Corporation, authorized to do business in Virginia, engaged in the business as an insurance company. Niagara Fire is a member of the CNA Insurance Companies.

20. On or about March 15, 1995, William Raleigh Robins, as a duly licensed Virginia agent and an officer with Robins, was an agent for Robins and insurers within the CNA Insurance Companies, and in such capacity presented a written proposal of insurance to RBMW (a copy of which is attached and labelled as "Exhibit A") stating in the proposal that the insurer would be the CNA Insurance Companies.

21. Prior to delivering the proposal, William Raleigh Robins, on behalf of both Robins and CNA Insurance Companies, physically inspected the RBMW premises and reviewed all the prior insurance

coverages carried by RBMW.

22. Based on the representations contained in the proposal by Robins, Robins review of all prior insurance coverages carried by RBMW, Robins physical examination of RBMW's premises and telephone conversations between Robins and RBMW, subsequently, RBMW was induced to replace its existing insurance policy affording coverage for the marina.

23. On or about March 20, 1995, RBMW relying on the representations, proposal, marketing and materials of Robins, purchased a package policy of insurance (the "Policy") through various CNA Insurance Companies as more particularly described in the declarations pages of each coverage part, to cover its exposures on its business as a marina. The "piers, wharves and docks coverage portion" of the Policy was numbered C133 9920 45, written through Transcontinental, and had a term of coverage from March 20, 1995 to March 20, 1996.

24. On its anniversary the "piers, wharves and docks coverage portion" of the Policy was renewed through Transcontinental with policy number: B133 9920 45, term of coverage from March 20, 1996 to March 20, 1997, along with the other portion of the Policy (the renewal Policy) was written through other CNA Insurance Companies as more particularly identified on each coverage declaration page.

25. RBMW paid \$14,778.00 to Robins as premiums for this renewal Policy through the various CNA Insurance Companies specified in each policy declaration.

26. On or about September 6, 1996, a storm, Hurricane Fran,



severely damaged RBMW's premises, (the "Marina"). The damages to the Marina totalled \$139,712.17<sup>1</sup> as itemized on the attached schedule, labelled as "Exhibit B".

27. The day after the storm William Raleigh Robins after being informed of the storm damage came to the Marina, surveyed the damage and assured the owners that they need not worry that the damage would be covered under their renewal Policy.

28. RBMW, at the request of the CNA Insurance Companies, obtained several proposals from various marine contractors and presented them to the adjuster.

29. The CNA Insurance Companies have since paid \$18,143.80 to RBMW to compensate RBMW for its loss and has denied the rest of the claim of RBMW related to the damage to wharves, piers and docks, along with damage to the boathouse and replacement of a sign.

#### COUNT I

#### BREACH OF CONTRACT

30. The foregoing paragraphs of this Motion for Judgment are incorporated by reference as if fully set forth herein.

31. The renewal Policy, among other things, requires that the CNA Insurance Companies pay validly presented claims.

32. RBMW presented to the CNA Insurance Companies a valid claim for payment as a result of the storm damage.

---

<sup>1</sup> This figure (\$139,712.17) includes the monies that CNA Insurance Companies have paid to RBMW, which totalled \$18,143.80.

33. The renewal Policy afforded coverage for this storm damage yet the CNA Insurance Companies have failed to pay the entire claim, except for \$18,143.80, and the CNA Insurance Companies have denied any obligation for the majority of this claim.

COUNT II

AGENT MATERIALLY MISREPRESENTED THE TERMS OF THE MARINA'S  
COVERAGE

34. The foregoing paragraphs of this Motion For Judgment are incorporated by reference as if fully set forth herein.

35. Robins intentionally or negligently represented to RBMW that as agent he was knowledgeable in the coverages required for a Marina.

36. Robins further represented to RBMW that as agent for CNA Insurance Companies he had the markets to cover the risk exposures of a Marina.

37. Robins never informed RBMW that such storm damage was excluded under either the Policy or the renewal Policy.

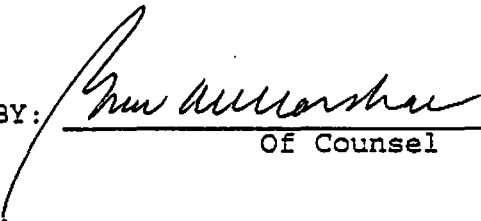
38. In reliance upon these representations by Robins, RBMW purchased both the Policy and the renewal Policy.

39. But for these misrepresentations by Robins, RBMW would never have purchased the Policy or the renewal Policy.

WHEREFORE the Plaintiff, by counsel, demands judgment against the Defendants on all counts, jointly and severally, in the amount

of \$121,568.37, plus prejudgment interest thereon, costs, and attorneys' fees incurred. Trial by jury is demanded.

RBMW, INC., t/a  
JORDAN POINT YACHT HAVEN,

BY:   
Of Counsel

Bruce M. Marshall (VSB 18093)  
Junie L. Bradshaw (VSB 05274)  
JoAnne L. Nolte (VSB 19383)  
Durrette, Irvin & Bradshaw, P.C.  
Twentieth Floor  
Main Street Centre  
600 East Main Street  
Richmond, Virginia 23219  
(804) 775-6900

Counsel for the Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE GEORGE

RBMW, INC.,  
t/a Jordan Point Yacht Haven,

Plaintiff,

v.

Case No. CL98-050

ROBINS INSURANCE AGENCY, INC.,

WILLIAM RALEIGH ROBINS,

TRANSCONTINENTAL INSURANCE COMPANY,

AMERICAN CASUALTY COMPANY OF READING, PA,

CONTINENTAL CASUALTY COMPANY,

NATIONAL LIFE INSURANCE COMPANY OF HARTFORD,

TRANSPORTATION INSURANCE COMPANY,

VALLEY FORGE INSURANCE COMPANY,

BOSTON OLD COLONY INSURANCE COMPANY,

THE BUCKEYE UNION INSURANCE COMPANY,

COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW JERSEY,

THE CONTINENTAL INSURANCE COMPANY,

CONTINENTAL REINSURANCE CORPORATION,

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,

FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY,

THE GLEN FALLS INSURANCE COMPANY,

KANSAS CITY FIRE AND MARINE INSURANCE COMPANY,

AND

NIAGRA FIRE INSURANCE COMPANY,

Defendants.

FILED  
90 JUL 23 PM 3:00  
CIRCUIT COURT OF CLERK'S OFFICE  
PRINCE GEORGE COUNTY, VA.  
BISHOP KROTT, JR., CLERK  
BY Shank D.C.



### GROUND OF DEFENSE

COME NOW the defendants, TRANSCONTINENTAL INSURANCE COMPANY, AMERICAN CASUALTY COMPANY OF READING, PA, CONTINENTAL CASUALTY COMPANY, NATIONAL LIFE INSURANCE COMPANY OF HARTFORD, TRANSPORTATION INSURANCE COMPANY, VALLEY FORGE INSURANCE COMPANY, BOSTON OLD COLONY INSURANCE COMPANY, THE BUCKEYE UNION INSURANCE COMPANY, COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW JERSEY, THE CONTINENTAL INSURANCE COMPANY, CONTINENTAL REINSURANCE CORPORATION, THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, THE GLEN FALLS INSURANCE COMPANY, KANSAS CITY FIRE AND MARINE INSURANCE COMPANY, AND NIAGRA FIRE INSURANCE COMPANY, (hereinafter referred to as "CNA"), by counsel, and for its Grounds of Defense to the Motion for Judgment filed by the plaintiff states the following:

1. CNA admits the following allegations contained in paragraphs 1 through 19.
2. CNA does not know if the facts alleged in paragraphs 20, 21 and 22 exist and would require strict proof of same.
3. In response to paragraph 23, CNA admits that a policy was issued contained the standard piers, wharfs and docks coverage for the period from March 20, 1995 to March 20, 1996. CNA does not know if the remaining facts alleged in paragraph 23 exist and would require strict proof of same. CNA asserts that the piers, wharfs and docks coverage provides a specific exclusion for damage caused by flood and wind driven water.

4. In response to paragraph 24, CNA admits that the piers, wharfs and docks coverage was renewed providing coverage under that provision from March 20, 1996 to March 20, 1997. CNA asserts that the piers, wharfs and docks coverage provides a specific exclusion for damage caused by flood and wind driven water.

5. CNA admits the allegations contained in paragraph 25.

6. In response to paragraph 26, CNA admits that a storm known as Hurricane Fran struck causing damage to various properties. CNA does not know if the remaining facts exist and would require strict proof of same.

7. CNA does not know if the facts alleged in paragraph 27 exist and would require strict proof of same.

8. CNA admits the allegations contained in paragraphs 28 and 29.

#### COUNT ONE

#### BREACH OF CONTRACT

9. In response to paragraph 30, CNA repleads and reasserts its responses to paragraphs 1 through 29 in the Motion for Judgment as if fully set forth herein.

10. In response to paragraph 31, CNA asserts that the language of the policy is clear and unambiguous. The terms and conditions of the policies' set forth the coverage provided. To the extent paragraph 31 does not accurately state the terms of the policies, paragraph 31 is denied.

11. CNA denies the allegations contained in paragraph 32 and 33 of the Motion for Judgment.

#### COUNT TWO

12. In response to paragraph 34, CNA repleads and reasserts its responses to paragraphs 1 through 33 in the Motion for Judgment as if fully set forth herein.

13. CNA does not know if the allegations contained in paragraphs 35, 36, 37, 38 and 39 exist and would require strict proof of same.

#### **AFFIRMATIVE DEFENSES**

14. The plaintiffs' claims are barred by the applicable Statute of Limitations and/or the Doctrine of Laches.

15. The plaintiffs' recovery is barred by their own negligence.

16. The plaintiffs' recovery is barred by the failure to fulfill their own obligations under the CNA policy.

17. The plaintiffs' injuries, if any, were due to perils not covered or specifically excluded by their CNA Insurance policy.

18. The plaintiffs have failed to mitigate their damages.

19. CNA pleads accord and satisfaction of the claims giving rise to the instant action.

20. CNA affirmatively pleads that the only policy of insurance in question in this action was issued by the Transcontinental Insurance Company. Though the other companies are CNA insurance companies, they have not issued any of the policies in question in this case.

Transcontinental Insurance Company is the only proper defendant for the claims asserted by the plaintiffs in this action.

WHEREFORE, CNA prays that the plaintiffs' action would be dismissed and it would be awarded the costs of these proceedings, including reasonable attorney fees.

TRANSCONTINENTAL INSURANCE COMPANY,  
AMERICAN CASUALTY COMPANY OF READING, PA,  
CONTINENTAL CASUALTY COMPANY,  
NATIONAL LIFE INSURANCE COMPANY OF HARTFORD,  
TRANSPORTATION INSURANCE COMPANY,  
VALLEY FORGE INSURANCE COMPANY,  
BOSTON OLD COLONY INSURANCE COMPANY,

THE BUCKEYE UNION INSURANCE COMPANY,  
COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW  
JERSEY,  
THE CONTINENTAL INSURANCE COMPANY,  
CONTINENTAL REINSURANCE CORPORATION,  
THE FIDELITY AND CASUALTY COMPANY OF NEW  
YORK,  
FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW  
JERSEY,  
THE GLEN FALLS INSURANCE COMPANY,  
KANSAS CITY FIRE AND MARINE INSURANCE COMPANY,  
AND  
NIAGRA FIRE INSURANCE COMPANY,

BY: \_\_\_\_\_

Of Counsel

W. Joseph Owen, III  
VSB# 15963  
COWAN & OWEN, P.C.  
P. O. Box 35655  
1930 Huguenot Road  
Richmond, Virginia 23235-0655  
(804) 320-9100

**CERTIFICATE OF MAILING**

I hereby certify that a true and exact copy of the foregoing Grounds of Defense was  
mailed this 23 day of July, 1998 to Bruce M. Marshall, DURRETTE, IRVIN &  
BRADSHAW, Twentieth Floor, Main Street Centre, 600 East Main Street, Richmond, Virginia  
23219, counsel for the plaintiffs, and John F. Robins, Registered Agent, ROBINS INSURANCE  
AGENCY, INC., 2800 Parham Road, P. O. Box 71300, Richmond, Virginia 23294-4409.

\_\_\_\_\_  
W. Joseph Owen, III



VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE GEORGE COUNTY

RBMW, INC., )  
t/a JORDAN POINT YACHT HAVEN, )

Plaintiff, )

v. )

CASE NO. CL98-050

ROBINS INSURANCE AGENCY, INC., )

WILLIAM RALEIGH ROBINS, )

TRANSCONTINENTAL INSURANCE )  
COMPANY, )

AMERICAN CASUALTY COMPANY OF )  
READING, PENNSYLVANIA, )

CONTINENTAL CASUALTY COMPANY, )

NATIONAL FIRE INSURANCE )  
COMPANY OF HARTFORD, )

TRANSPORTATION INSURANCE )  
COMPANY, )

VALLEY FORGE INSURANCE )  
COMPANY, )

BOSTON OLD COLONY INSURANCE )  
COMPANY, )

THE BUCKEYE UNION INSURANCE )  
COMPANY, )

COMMERCIAL INSURANCE COMPANY )  
OF NEWARK, NEW JERSEY, )

THE CONTINENTAL INSURANCE )  
COMPANY, )

CONTINENTAL REINSURANCE )  
CORPORATION, )

THE FIDELITY AND CASUALTY	)
COMPANY OF NEW YORK,	)
	)
FIREMEN'S INSURANCE COMPANY OF	)
NEWARK, NEW JERSEY,	)
	)
THE GLENS FALLS INSURANCE	)
COMPANY,	)
	)
KANSAS CITY FIRE AND MARINE	)
INSURANCE COMPANY,	)
	)
AND	)
	)
NIAGARA FIRE INSURANCE COMPANY,	)
	)
Defendants.	)

**STIPULATION AND ORDER**

THIS CAME the parties, by counsel, and stipulated as follows:

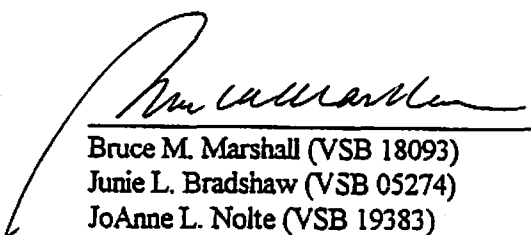
1. Transcontinental Insurance Company (Transcontinental) agrees that it underwrote the only policy of insurance in question in this action and is the sole insurer on that policy of insurance.
2. This Stipulation is intended to eliminate the need to continue this litigation against those additional insurance company defendants, American Casualty Company Of Reading, Pennsylvania, Continental Casualty Company, National Fire Insurance Company Of Hartford, Transportation Insurance Company, Valley Forge Insurance Company, Boston Old Colony Insurance Company, The Buckeye Union Insurance Company, Commercial Insurance Company Of Newark, New Jersey, The Continental Insurance Company, Continental Reinsurance Corporation, The Fidelity and Casualty Company Of New York, Firemen's Insurance Company Of Newark, New Jersey, The Glens Falls Insurance Company, Kansas City Fire And Marine Insurance Company, Niagara Fire Insurance Company.

3. Based on this Stipulation of the parties it is ORDERED that those named insurance company defendants, American Casualty Company Of Reading, Pennsylvania, Continental Casualty Company, National Fire Insurance Company Of Hartford, Transportation Insurance Company, Valley Forge Insurance Company, Boston Old Colony Insurance Company, The Buckeye Union Insurance Company, Commercial Insurance Company Of Newark, New Jersey, The Continental Insurance Company, Continental Reinsurance Corporation, The Fidelity And Casualty Company Of New York, Firemen's Insurance Company Of Newark, New Jersey, The Glens Falls Insurance Company, Kansas City Fire And Marine Insurance Company, Niagara Fire Insurance Company, are dismissed as party defendants, without prejudice.

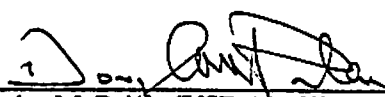
ENTER: 11/12/98

  
Judge

We ask for this:


  
Bruce M. Marshall (VSB 18093)  
Junie L. Bradshaw (VSB 05274)  
JoAnne L. Nolte (VSB 19383)  
DURRETTE, IRVIN & BRADSHAW, P.C.  
Twentieth Floor, Main Street Centre  
600 East Main Street  
Richmond, Virginia 23219  
(804) 775-6900  
Counsel for Plaintiff,  
RBMW, Inc. t/a Jordan Point Yacht Haven

RBMW, Inc. v.  
Robins Insurance Agency, et al.  
Stipulation and Order



---

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Counsel for Defendants,  
Robins Insurance Agency, Inc.  
William Raleigh Robins.



---

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American Casualty Company of Reading, PA  
Continental Casualty Company  
National Life Insurance Company of Hartford  
Transportation Insurance Company  
Valley Forge Insurance Company  
Boston Old Colony Insurance Company  
The Buckeye Union Insurance Company  
Commercial Insurance Company of Newark, New Jersey  
The Continental Insurance Company  
Continental Reinsurance Corporation  
The Fidelity and Casualty Company of New York  
Fireman's Insurance Company of Newark, New Jersey  
The Glen Falls Insurance Company  
Kansas City Fire and Marine Insurance Company  
Niagra Fire Insurance Company.

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1 VIRGINIA :

2 IN THE CIRCUIT COURT OF PRINCE GEORGE COUNTY CLERK  
3 SUPREME COURT OF VIRGINIA

4 RBMW, INC., :  
5 d/b/a :  
6 JORDAN POINT YACHT HAVEN, :

7 Plaintiff, :

8 v. :

Case No. CL98-050

9 ROBINS INSURANCE AGENCY, INC., :  
10 and :  
11 WILLIAM RALEIGH ROBINS, et al., :

12 Defendants. :

13  
14 A TRIAL BEFORE THE HONORABLE JAMES A. LUKE

15  
16 May 1, 2000

17 Prince George, Virginia

18 9:05 a.m.

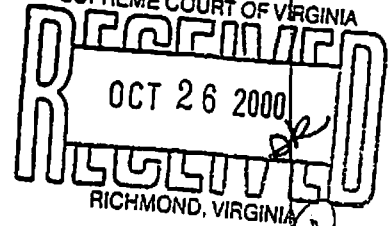
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## 1 APPEARANCES:

2 For the Plaintiff:3 Bruce M. Marshall, Esquire  
4 Durette, Irvin & Bradshaw5 JoAnne Lewis Nolte, Attorney at Law  
6 Penn Stuart7 For the Defendants:8 W. Joseph Owen, III, Esquire  
9 Cowan & Owen10 Scott C. Ford, Esquire  
11 Douglas M. Palais, Esquire  
12 Mezzullo & McCandlish13 C O N T E N T S

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## PROCEEDINGS

(The court reporter was sworn.)

THE COURT: Good morning. Mr. Owen's request is moot.

MR. MARSHALL: Yes, sir.

MR. OWEN: Yes, sir. It is.

THE COURT: We can lay that aside.

Any other preliminary matters?

MR. PALAIS: Your Honor, one small housekeeping matter. Doug Palais on behalf of Raleigh Robins and the Robins Agency. May I please file with the court the original transcript of the deposition of Michael Winn?

THE COURT: Yes, sir.

MR. PALAIS: Thank you, Your Honor.

THE COURT: There's no objection?

MR. MARSHALL: Certainly not, Your Honor.

Your Honor, based on the court's remarks moments ago, I'm a little unclear as to if the court would want to take up the issue of the contract, using the court's words, but the policy, the 3-page policy in question, on the front end, as opposed to the back end, to sort of see where this thing is going.

I don't have any wisdom on that. I'm

1 asking. And because I don't think that there is as  
2 large a dispute as to how the damages occurred as the  
3 defense thinks there is, I think the question becomes,  
4 as far as CNA is concerned, an interpretation of the  
5 policy itself.

6 That does not get to the issue we have  
7 with the Robins Agency and Mr. Robins, but it does get  
8 to the issue with CNA. And I'm sort of flailing  
9 around here trying to figure out how the court wants  
10 to proceed on that issue, or if it does. Or if  
11 counsel --

12 THE COURT: We had some pretrial  
13 hearings on this thing quite some time ago and none  
14 recent. I took it home Thursday, Friday some time, and  
15 went through it. And in going through it, those things  
16 that I just talked about occurred to me, and I felt  
17 like I was hindered because nowhere in all of this is  
18 the insurance policy. The court has never seen that  
19 document.

20 MR. OWEN: Would the court like one  
21 now?

22 THE COURT: Sooner or later I think it  
23 will drift up this way.

24 MR. MARSHALL: The court will be seeing  
25 one very shortly. I'll assure you that.



1 THE COURT: I think that since -- I  
2 think it's pretty clear that no one else had thought  
3 about it, except that you said you thought about asking  
4 to bifurcate it at some point, which I think would have  
5 to be agreed by everyone or you couldn't do it.

6 MR. MARSHALL: Absolutely.

7 THE COURT: I think the best thing to do  
8 is forget my comments. Because I think it struck  
9 everyone by surprise and caused more problem than it  
10 would good at this point. I simply think you should  
11 proceed as you planned.

12 MR. PALAIS: Your Honor, if it's of any  
13 help to the court, I would think that we can all  
14 stipulate to what constitutes the policy. I don't  
15 think there's any dispute among any party, if that  
16 helps to simplify things.

17 MR. MARSHALL: I think so too.

18 THE COURT: Well, it would help.  
19 Because in a cursory reading of all the papers that  
20 were filed, and some knowledge of insurance policies, I  
21 could see the possible argument as to what was covered  
22 and whether the contract covered these damages and  
23 whether it's either by water or wind-driven water, and  
24 all those sorts of things. I didn't have any of  
25 that.

1 MR. MARSHALL: Your Honor, I would be  
2 happy -- I have copies. Not that everybody needs  
3 copies of the policy. The only thing I've done with  
4 the copies is marked pages where the coverage issues  
5 are raised and just because it's a thick policy.

6 But the very last mark, the yellow one,  
7 has the -- the piers, wharves, and docks coverage form  
8 on it with the yellow tab on it. And that's the one at  
9 issue. And if counsel doesn't mind, I'll give it to  
10 the court. That's not --

11 MR. PALAIS: That's fine with us.

12 THE COURT: Wait until you get going to  
13 see whether it's even relevant or not.

14 MR. PALAIS: This is more than their own  
15 policy though.

16 MR. MARSHALL: That's the whole thing.

17 MR. OWEN: Yes. That's the whole thing,  
18 including worker's comp.

19 MR. MARSHALL: It includes all sorts of  
20 stuff.

21 THE COURT: One section of it is the  
22 only thing involved.

23 MR. MARSHALL: The very last section,  
24 the section marked in yellow, Your Honor. And perhaps  
25 it would benefit the court, if you want to look at it

1 for a few moments before we get going. You can have  
2 the thing that you didn't have this weekend.

3 MR. PALAIS: I'm sure I'm speaking for  
4 everyone when I say we apologize that you didn't have  
5 it.

6 THE COURT: Had I realized it sooner, I  
7 would have. But I just looked in here, and the  
8 proposal had been filed, and I didn't realize it  
9 wasn't. I didn't have the points of the policy in  
10 here.

11 MR. PALAIS: Happily, despite the  
12 thickness of what Mr. Marshall just gave me, Your  
13 Honor, what we're really talking about here is a total  
14 of 3 pages.

15 MR. OWEN: I'm sorry I made all my  
16 copies.

17 THE COURT: What did you say?

18 MR. OWEN: I said you have to be  
19 prepared. I'm sorry I made 4 copies of it myself.

20 (Discussion off the record.)

21 THE COURT: I don't think we need to  
22 wait while I read it at the moment.

23 MR. MARSHALL: That's fine, Your  
24 Honor.

25 THE COURT: You may proceed. If you

1 think you need opening statements, fine. If you don't  
2 think you need them, then just jump right in.

3 Go ahead.

4 MR. MARSHALL: I do want to make an  
5 opening statement, Your Honor, to sort of put this  
6 thing in context.

7 Your Honor, with me is JoAnne Nolte, who  
8 is co-counsel with me, and Mike Winn, who is the  
9 general manager of RBMW, Inc., also known as Jordan  
10 Point Yacht Haven.

11 And I will refer to the Yacht Haven as  
12 Jordan Point for purposes of ease as opposed to trying  
13 to get through all the initials and doing them wrong.

14 THE COURT: All right. And good morning  
15 to you all.

16 MR. MARSHALL: We are here this morning,  
17 Your Honor, regarding the marina policy. Specifically,  
18 that add-on provision to that policy known as the  
19 piers, wharves, and docks coverage form.

20 As the court can see, this particular  
21 add-on is a part of a larger policy that was sold or  
22 that was created by CNA -- Transcontinental -- which is  
23 a division of CNA. And it includes such things as  
24 worker's comp, automobile, property, general liability,  
25 and that sort of thing.

1                   But the specific provision of that  
2 policy is the add-on coverage that you have before you  
3 called the piers, wharves, and docks coverage form.

4                   Now, that form is CNA's form. The  
5 entity and the person that solicited, negotiated, and  
6 sold that policy to Mr. Winn at Jordan Point is Raleigh  
7 Robins, and his firm is Robins Insurance Agency.

8                   Now, the facts or the evidence  
9 concerning the storm itself aren't terribly  
10 complicated. On September 6, 1996, Hurricane Fran blew  
11 through the Hopewell area and caused significant damage  
12 to the Jordan Point Marina to the tune of \$139,712.17  
13 of damage that we believe should have been covered by  
14 the policy. There was additional damage to the  
15 bulkhead and the seawalls that was not covered by the  
16 policy, and we're not making any argument concerning  
17 that.

18                   I don't believe, Your Honor, that the  
19 damages themselves are hotly contested; whether they're  
20 reasonable or not and whether they result from  
21 Hurricane Fran or not. And I don't believe, while I  
22 think it's just been stated, that the policy itself was  
23 in full force and effect at the time of the loss. So I  
24 don't think we have an issue as to whether there was a  
25 policy in existence.

1           Now, what is in dispute, Your Honor, is  
2   that CNA determined that it was only responsible for  
3   \$18,143.17 of that damage. And the sole reason -- the  
4   sole reason -- on which CNA relies in limiting its  
5   liability to that is the exclusion in the piers,  
6   wharves, and docks endorsement, which is known as the  
7   water inclusion or B1E4. It's easier just to say it  
8   starts at the bottom left-hand corner of the first page  
9   and goes to item 4, which is the right-hand corner of  
10   the second page.

11           Your Honor, that is what CNA has  
12   maintained since this loss was adjusted -- and I use  
13   that term loosely -- that that exclusion precludes it  
14   from having to pay any more of the damages at Jordan  
15   Point of those piers, wharves, and docks that were just  
16   decimated by this storm because they believe that the  
17   damage was caused by water or wave action.

18           The water exclusion on which CNA relies  
19   is, Your Honor, a standard flood insurance exclusion  
20   that's found on policy -- business and personal  
21   property policies all across the United States. It's  
22   not an unusual exclusion. I have a question as to why  
23   in the world it appears on piers, wharves, and docks  
24   riders. And that's one of the questions I'm going to  
25   get to. But it's not an unusual exclusion.

1           Mr. Turner, who is here at the end of  
2 this table right here, is the CNA senior adjuster who  
3 adjusted this claim; down at the end of counsel table.  
4 And he's going to say, under his reading of that  
5 policy, that we're not entitled to any more money.

6           Now, we will submit to the court, and I  
7 think the evidence will be, that what caused the  
8 destruction of the piers, wharves, and docks and to the  
9 marina itself was a combination of things. It was a  
10 hurricane, Your Honor. You have strong wind blowing  
11 through the marina. You have a full marina. It was  
12 full of boats at the time. Those boats were tied up to  
13 the docks and the piers and the pilings. And they were  
14 being rocked around by the wind, by the waves.

15           There was debris that was being blown  
16 off of the boats and off the piers and wharves that  
17 were in the water. The boats were banging against each  
18 other. The boats were yanking on the piers. The boats  
19 were yanking on the wharves. The boats were banging  
20 into each other. You had waves that were hitting the  
21 piers, wharves and docks. We don't dispute that. It  
22 is the soup, that ugly soup, all mixed together that  
23 caused the damage to this marina.

24           And I will show the court a video at  
25 some point in time this morning that was taken the

1 evening -- the night of the storm and the next morning  
2 that shows all this activity boiling together. And  
3 that was taken at that time.

4 Before I go any further talking about  
5 that, let me set the stage as to how the policy came  
6 about being.

7 In December of 1994, Raleigh Robins made  
8 a cold-call to Mike Winn about selling him marina  
9 coverage for Jordan Point. Mr. Winn said at that point  
10 in time that for Mr. Robins to call him back the first  
11 part of the year and they would discuss it then.  
12 Indeed, Mr. Robins did call him the first part of the  
13 year and they began talking about what product he  
14 wanted to sell them from CNA.

15 Now, Mr. Robins is not a novice in  
16 selling marine insurance policies. He had been doing  
17 it a couple years beforehand. And he was licensed by  
18 CNA of a special license by CNA to sell this package.  
19 He was fairly active in trying to sell these packages  
20 to various marinas all around the State of Virginia or  
21 close-by to him.

22 So when he shows up in January of 1994  
23 -- excuse me -- 1995, he starts talking to Mr. Winn  
24 about this product. And he tells Mr. Winn that this  
25 product is a bunch of different policies loaded into a



1 master policy -- what the court has in front of it --  
2 including the other things that aren't at issue here,  
3 such as worker's comp, automobile, property, and other  
4 things. But it also has the piers, wharves, and docks  
5 provision, which is a specialty provision, obviously,  
6 for piers, wharves, and docks.

7 He told Mr. Winn that his agency was a  
8 family agency. It had been in business for some years,  
9 had a lot of stability. He was very familiar with the  
10 boating industry. They had a lot of common friends in  
11 the boating business. And that the CNA package had  
12 been endorsed by the Virginia Marine Institute, which  
13 is a boaters' association which Mr. Winn's father had  
14 previously been president of, ironically.

15 At the time, Mr. Winn had coverage with  
16 somebody else, with Commercial Union, and he was  
17 frustrated with his agent because his agent was in the  
18 process of changing agencies and there was a squabble  
19 between who he was going to deal with and who he wasn't  
20 going to deal with. He had had some problems with the  
21 Commercial Union coverage because it specifically  
22 excluded wind damage -- specifically excluded wind  
23 damage -- and he had had some wind losses.

24 So he listened to Mr. Robins, and he was  
25 interested in what Mr. Robins had to say. And Mr.

1 Robins took pictures of the marina. He wandered  
2 around. They -- Mr. Robins looked at his existing  
3 insurance policies, saw the value, saw what was  
4 covered, and took an application from Mr. Winn to see  
5 what kind of proposal CNA could make. And, indeed, in  
6 March 15, 1995, a proposal was made. A written  
7 proposal was made by Mr. Robins to Mr. Winn and Jordan  
8 Point listing what it was they proposed to sell him;  
9 the cost of each, the highlights of each type of  
10 coverage, the makeup, the big exclusions, and that sort  
11 of thing.

12 Now, at that time, Mr. Winn again was  
13 concerned about this wind damage that he suffered  
14 before, and he talked to Mr. Robins about that. And  
15 he was also concerned about storm damage because the  
16 back end of his marina opens up to the northeast and  
17 he was concerned about a nor-easter coming through  
18 there and tearing him up. And so they talked about  
19 that, and he was assured that he would be covered for  
20 that.

21 Based on all these meetings and this  
22 sort of thing, Mr. Winn thought about that, and,  
23 shortly thereafter, talked to Mr. Robins and accepted  
24 the coverage. And part of that coverage he accepted --  
25 roughly 30 percent of the premium -- was for piers,

1 wharves, and docks -- the piers, wharves, and docks  
2 endorsement itself -- because he was very concerned if  
3 his piers, wharves, and docks were torn down, he didn't  
4 have a whole lot to sell at the marina.

5 Now, during the first year of that  
6 policy, '95 to '96, spring of '95 to '96, there was one  
7 minor claim he made; an ice-related claim. He called  
8 Mr. Robins' agency, reported the ice damage. It was  
9 taken care of. The adjuster didn't show there. The  
10 Robins Agency took care of it wonderfully.

11 The anniversary of the policy came up,  
12 and we're down to the spring of 1995. And because Mr.  
13 Winn liked how he had been treated, liked dealing with  
14 the Robins people, he renewed the policy. And the  
15 renewal policy is that which you have in front of you,  
16 Your Honor. And the renewal policy, as far as any of  
17 the issues we're talking about today, was the same as  
18 the existing policy. There was nothing exchanged. And  
19 that's not in dispute, Your Honor.

20 And then in September of 1996, Hurricane  
21 Fran struck. Now, Mike Winn spent the night on -- most  
22 of the night on September 6 doing what he could do to  
23 save his marina and save his customers' boats and try  
24 to protect his livelihood. And it was all collapsing  
25 around him.

1                   And by daybreak and as the tide starting  
2 coming back in, he lost 2 of his major docks. His boat  
3 houses had been knocked off kilter. The roofs of his  
4 boat house were torn asunder. There were pilings that  
5 had been sheered off and lying over in the water.  
6 There were boats that sunk being tied up to the docks.  
7 There were boats that were wandering around. There  
8 were people still on boats that couldn't even get back  
9 across.

10                   The electricity out to all these boats  
11 was knocked out because the lines went along these  
12 docks. The water to all these boats was out because  
13 the line went along with all these docks.

14                   In the end, he sat there helplessly and  
15 watched his marina start floating up and up and up  
16 towards his parking lot as the tide came in. And a lot  
17 of it ended up in his parking lot because they had --  
18 with all that water blown out and coming back in and  
19 with the tide coming to high tide later that morning --  
20 it was an enormously high tide -- and his marina, a lot  
21 of it, was sitting in his parking lot.

22                   His wife, June, who you will hear from  
23 today -- she's primarily here to talk about the damages  
24 -- called the Robins Agency that morning on a cell  
25 phone as soon as she figured someone would be in

1 there. Mr. Robins was in Philadelphia getting his  
2 marriage license that morning so, obviously, he  
3 couldn't be there that morning. He had a bigger fish  
4 to fry. And it wasn't until the next day or a couple  
5 days after -- I'm not sure which -- that Mr. Robins was  
6 able to come down to the marina.

7 And he came down to the marina and he  
8 walked around with Mike Winn and surveyed the damage.  
9 And then he went into the office, the marina office,  
10 with Mike; his wife, June; and his father, Bo, who  
11 you'll also hear from today, and he started flipping  
12 through the policy. And Mike -- and he was nodding and  
13 giving Mike the impression and June the impression and  
14 Bo the impression that things were going to be all  
15 right, that the insurance company would take care of  
16 them.

17 And Mike got up and left the room to go  
18 back out to work on the marina some more, and June was  
19 starting to make notes about what she had to do. She  
20 was going to get estimates and she was supposed to keep  
21 careful measure of all the time they spent fixing the  
22 place back up because all this had to be presented to  
23 the insurance company.

24 And the testimony from Bo Winn will be  
25 that Raleigh Robins told him don't worry about it.

1 You're covered. You're covered. They're going to take  
2 care of you and fix this place back up. So the Winn  
3 family felt pretty good at that point in time and they  
4 went about putting their lives and their marina back  
5 together.

6 And they got a little frustrated because  
7 someone from CNA -- they were told someone from CNA was  
8 coming, and someone from CNA didn't come fast enough.  
9 So Bo Winn called to raise hell with the Robins Agency  
10 about getting someone down there. And, indeed, shortly  
11 thereafter, John Fitzpatrick, who will be testifying  
12 today, came in and appeared to adjust the claim.

13 And Mr. Fitzpatrick indicated to Mr.  
14 Winn that he was there for the duration. He was there  
15 to help them. He was there to get it straight. And he  
16 told him that he hired an engineer and that the  
17 engineer was going to help them figure out the  
18 structural issues, what really needed to be fixed and  
19 how it needed to be fixed and that sort of thing.

20 And then Mr. Fitzpatrick was coming.  
21 Mr. Fitzpatrick is the senior gentleman from CNA. He  
22 was going to come at some point in time as well.  
23 Mr. Turner. I did say Mr. Turner. Okay. I'm looking  
24 at my notes. So I'm --

25 Now, things were moving along. And one

1 day or a few days later after Mr. Turner and Mr.  
2 Fitzpatrick were there, Mr. Robins came back to the  
3 marina and he went over and talked to either Mr.  
4 Fitzpatrick or Mr. Turner and, for the first time, he  
5 gave Mike Winn pause. He said, have they told you what  
6 caused this damage. Mike said no, they haven't said  
7 anything to me about that. Mr. Robins said well, let's  
8 wait and see what happens. Let's wait and see what  
9 happens.

10 Well, what happened is a couple days  
11 thereafter, Mr. Fitzpatrick shows up in the office with  
12 a torn piece of notebook paper and puts it's under  
13 Mr. Bo Winn's nose and it says \$18,143.17. That's all  
14 we're prepared to pay you at this point in time based  
15 on the estimates you've give me and based on what we've  
16 seen.

17 Well, the Winns were absolutely  
18 shocked. They had submitted at that point in time  
19 about \$90,000 worth of estimates. And they just didn't  
20 understand what was going on. So they asked to get  
21 something in writing that explained to them why it was  
22 that only 18,000 on 130 some thousand dollars was to be  
23 covered -- be paid.

24 And they got a letter from Mr. Turner  
25 that set it out in the way Mr. Turner wanted to set it

1 out. And they called the Robins Agency and they said  
2 guys, we don't understand what's happening to us. Mr.  
3 Robins and Mr. Robins' father said we'll come down  
4 there and meet with the CNA people and we'll get it  
5 straight for you or we'll try to get it straight for  
6 you.

7 And again, the Winns were thinking well,  
8 this is going to work out now, because they respected  
9 the Robins. And, indeed, on October 14, there was a  
10 meeting. And at that meeting were Mr. Turner, Mr.  
11 Fitzpatrick, Mr. Robins, Mr. Robins' father -- Hugo  
12 Raleigh (phonetic) -- Mr. Winn and his father and Mrs.  
13 Winn.

14 And at that meeting, the Robins  
15 presented an argument saying, in effect, that CNA was  
16 misconstruing its own policy and it wasn't right. This  
17 should be covered damages. And they disputed  
18 Mr. Turner's interpretation of his own policy.  
19 Mr. Turner listened to them. Mr. Turner said that he  
20 thought that all that's covered was water damage -- I  
21 mean wind damage.

22 They showed Mr. Turner a video, the  
23 video I'm going to show you today. They gave  
24 Mr. Turner some more estimates of damages, some 20,000  
25 -- \$25,000 more worth of damages. And Mr. Turner left



1 that meeting saying he would think about it.

2 At the conclusion of that meeting, Bo  
3 Winn went to Mr. Robins, Sr., and said I've got this  
4 check for \$18,147 or whatever; can I take it and use  
5 it. And there was no endorsement on the back of it.  
6 And so Mr. Robins said go ahead. Endorse it. Put it  
7 in the bank and start working on getting this marina  
8 set up.

9 Well, a few days later on the 29th of  
10 October, another letter came from Mr. Turner. In that  
11 letter, Mr. Turner said I've considered everything else  
12 you said. I considered what I saw. I considered your  
13 arguments. I haven't changed my mind. All you're  
14 getting is \$18,000.

15 Well, again, the Winns called the Robins  
16 and said what do we do now. The Robins said well, they  
17 would try to take it up the marketing side and see if  
18 they could politically get this thing undone. And they  
19 made an effort to do that. Nothing happened. Nothing  
20 happened. CNA never changes its position.

21 Now, that brings us to where we are  
22 today. And, Your Honor, it is our position that the  
23 exclusion that CNA relies on does not apply to the  
24 damage to that marina. If it does apply, then we  
25 think, on a worse case basis, to be -- the policy is

1 ambiguous and that the coverage would then be there.

2 And finally, Your Honor, if the court  
3 agreed somehow with Mr. Turner's interpretation of his  
4 own policy, then we think we're entitled to be  
5 compensated by somebody who sold us the policy, never  
6 explaining to us what -- the piers, wharves, and docks  
7 coverage is not going to protect us from storm damage;  
8 as a matter of fact, telling us the opposite. They  
9 either should have known or they did know and sold  
10 something that didn't warrant it.

11 That's why we're here, and that's our  
12 position, Your Honor.

13 THE COURT: Thank you.

14 MR. FORD: Your Honor, I'm Scott Ford,  
15 and along with my colleague, Doug Palais, we represent  
16 Robins Insurance Agency and Raleigh Robins. My  
17 comments to you, Judge, will be brief.

18 Robins Insurance has been selling  
19 insurance here in the Commonwealth of Virginia for the  
20 last 40 years. Mr. Robins, who is seated at counsel  
21 table, has been selling insurance for the last 13 years  
22 for Robins Insurance and is vice president of Robins  
23 Insurance.

24 Judge, as to Robins Insurance and Mr.  
25 Robins, there has been but one cause of action pled,

1 and that is fraud. Our position in this case, Judge,  
2 is very simple. The facts will reveal that this, plain  
3 and simply, is not a fraud case but rather is a policy  
4 dispute involving the court's determination on the  
5 standard exclusion that Mr. Marshall described as a  
6 standard exclusion.

7 Specifically, whether CNA -- and I use  
8 -- refer to the defendant, Transcontinental Insurance,  
9 Judge, occasionally as CNA interchangeably. And like  
10 Mr. Marshall, I'll refer to the plaintiff as Jordan  
11 Point for ease of communication.

12 But, Your Honor, it involves a policy  
13 dispute. Specifically, whether the standard exclusion,  
14 B1E4, in this policy was properly relied upon by CNA  
15 and denied coverage as a result of Hurricane Fran, at  
16 least in part. CNA did pay a portion that they  
17 considered related to wind damage.

18 Very simply, Judge, there will not be a  
19 single piece of evidence presented by Jordan Point in  
20 this case supporting fraud against Mr. Robins and  
21 Robins Insurance. On that question, Judge, there are 2  
22 witnesses and only 2 witnesses that are relevant to  
23 that determination. They are Mike Winn and Raleigh  
24 Robins. And I said that because those are the only 2  
25 gentleman, Your Honor, that had any interaction

1    whatsoever before Hurricane Fran on matters related to  
2    insurance for Jordan Point.

3                    You'll hear from Bo Winn and you'll hear  
4    from June Winn, but they both will testify that they  
5    had absolutely no communication with Mr. Robins before  
6    Hurricane Fran.

7                    I won't belabor the communications. Mr.  
8    Marshall has gone through them and I think has  
9    accurately laid the time line out.

10                   There was a meeting in January of '95  
11   when Mr. Robins met with Mr. Winn. Judge, at that  
12   time, the only peril that Mike Winn discussed that he  
13   wanted coverage for was wind damage. And, in fact,  
14   Transcontinental's policy, CNA's policy, did cover wind  
15   damage.

16                   There was absolutely no discussion, Your  
17   Honor, at that meeting or any other meeting, for that  
18   matter, that there was any type of request for flood  
19   and/or wave damage to piers, wharves, and docks; the  
20   substance of this exclusion. Moreover, there was never  
21   any assurance by Mr. Robins in a general sense that  
22   they would be covered for, quote, storm damage.

23                   The next meeting, Your Honor, occurred  
24   in March of '95. That's when Mr. Robins again met with  
25   Mr. Winn with the proposal to -- to discuss purchase of

1 the product, the insurance policy of CNA. And you'll  
2 hear evidence that this was an easy sale because Mike  
3 Winn was particularly enamored with this product  
4 because CNA had its stamp of approval on  
5 Transcontinental's policy because it was endorsed by  
6 the Virginia Association of Marine Industries.

7 And you'll hear evidence in this case  
8 that that was particularly important to the plaintiff  
9 because Mr. Winn's dad, Bo Winn, was the former  
10 president of that association that reviewed this policy  
11 and placed its stamp of approval on the policy.

12 The next meeting, Your Honor, was in  
13 March of '95; the actual delivery of the first policy.  
14 And the evidence will reveal that Mr. Robins actually  
15 personally delivered the policy, which included this  
16 standard exclusion. That Mike Winn obtained the policy  
17 at the time -- it was handed to him -- reviewed it at  
18 that time.

19 Mr. Winn will acknowledge that and will  
20 testify that he reviewed it. And Mr. Winn will also  
21 acknowledge and testify that he had no communications  
22 with Mr. Robins at that March of '95 meeting about the  
23 issue of coverages whatsoever.

24 The fourth and final meeting, Your  
25 Honor, before the hurricane, was March of '96. That's

1 when this policy re-uped, renewed, for year number 2.  
2 And as Mr. Marshall said in his opening, and I think  
3 the parties agree, that policy was identical to year  
4 number 2.

5 Same testimony, Judge. Mr. Robins again  
6 personally hand-delivered the policy. Mike Winn  
7 received the policy, read the policy again. And at  
8 that time, Mr. Winn will acknowledge that he had  
9 absolutely no questions about coverage issues. That  
10 policy that was in place of Hurricane Fran remained at  
11 the marina. And the evidence you'll see is that they  
12 maintained the policy up until Hurricane Fran.

13 Very simply, Judge, this is not a fraud  
14 case. We're going to prove from Mr. Winn that he was  
15 never told he would have coverage for flood or wave  
16 damage to his piers, wharves, and docks, the type of  
17 damage that occurred in this case.

18 Mr. Robins will concur and he'll testify  
19 to the court that he never told Mr. Winn that he would  
20 be covered for flood or wave damage to his piers,  
21 wharves, and docks. He'll also testify he never  
22 discussed, in any general sense, don't worry, you'll be  
23 covered for storm damage.

24 And most importantly, Judge, from Mr.  
25 Winn, Mr. Winn will testify that there was no single

1 statement ever made -- ever made -- by Mr. Robins that  
2 in any way misled him as to what was going to be  
3 contained in the policy that was actually issued by  
4 CNA.

5 Judge, this is not a fraud case. It's a  
6 dispute that properly should be between Jordan Point  
7 and CNA. And that will be our case. Thank you,  
8 Judge.

9 THE COURT: Mr. Owen.

10 MR. OWEN: Morning, Your Honor.

11 Your Honor, I don't think there is a  
12 clearer exclusion in any policy of insurance around  
13 anywhere. Mr. Marshall has already conceded that it is  
14 a standard exclusion used all over the country. It's  
15 not unusual. It's not an unusual exclusion.

16 And when you look at that exclusion  
17 carefully, it says we will not pay for a loss caused  
18 directly or indirectly by any of the following. Such  
19 loss is excluded regardless of any other causes or  
20 event that contributes concurrently or in any sequence  
21 to the loss. That's the preamble to the exclusions.

22 And under water, it says flood, surface  
23 water, waves, tides, tidal waves, overflowing of any  
24 body of water, or their spray, all weather driven by  
25 wind or not.

1           In Mr. Marshall's own opening statement,  
2 he acknowledged that the damage that occurred was a  
3 combination of things. But most prevalent in his  
4 opening statement -- and the evidence will support this  
5 -- most prevalent was the wind-driven waves, the wave  
6 action on the docks and the boats.

7           You will see the video. We want the  
8 court to see the video -- in fact, we'll probably show  
9 the long version rather than the short version.  
10 There's 2 versions of it -- that were taken the night  
11 of the storm by tenants of the marina. And this --  
12 we've never had a case in CNA like this where we had  
13 the storm being filmed to show why our exclusion  
14 applied.

15           In that, you'll see the waves rocking  
16 these boats, banging them up against the piers -- the  
17 things holding the roof up -- banging them up against  
18 the docks. You'll see -- and this is very important --  
19 Mr. Honeycutt, who is of Seacrest Marina who did most  
20 of the repair, he describes the phenomenon of wind  
21 waves. This is what he calls wind waves. He's been  
22 doing marina work for over 30 years. And you'll see it  
23 on the video. Because the way he describes these docks  
24 being broken up -- these were fixed docks. They're  
25 about 3 feet off the maximum high tide.



1 Well, because of the storm, that water  
2 was up, in some cases, covering it, but up in it. And  
3 you'll see the waves come along and hit underneath that  
4 dock, just roll all along hitting underneath it.  
5 You'll see the spray coming out between the dock  
6 boards.

7 What Mr. Honeycutt told us in his  
8 deposition -- he's here today to testify -- is that's  
9 just like taking a hammer and beating that thing from  
10 the underside and breaking it up. It is a specifically  
11 excluded event; these waves.

12 Also, the waves pitching. He says that  
13 the roof in the inside of these boat houses had to be  
14 repaired because the boats were pitching and knocking  
15 back and forth and those support pilings that held the  
16 roof up were knocked out of alignment and had to be  
17 repaired -- that's another major thing -- the  
18 electrical, the water; all of that. When the waves  
19 broke up the dock, or the boats being driven by the  
20 waves broke up the docks, it caused the damage.

21 Well, Your Honor, this exclusion is  
22 clear as it can be. That whether it's a combination or  
23 just the waves themselves or a combination with  
24 anything else, weather driven by wind or not, couldn't  
25 be any clearer. It's excluded. It's not part of the

1 policy.

2                   What's important to note too, Judge, Mr.  
3 Winn, in his deposition, which has already been filed,  
4 at pages 69 and 70, testified that he and Mr. Robins  
5 discussed whether or not flood coverage would be a part  
6 of this. And he said he didn't need it. The James  
7 River out here was a big, wide place and they didn't  
8 have a flood problem.

9                   Well, he got the standard flood  
10 exclusion that not only is in the piers, docks, and  
11 wharves section but under the special cause of loss  
12 form, under any property form, that's part of this  
13 policy. It's both places. It's both places.

14                   So when you get the flood, which is the  
15 standard flood exclusion throughout the country that  
16 Mr. Marshall has already agreed, that's what he got.  
17 That's what he got.

18                   Now, it's also important too, Judge, to  
19 keep in mind that he did have a conversation -- he  
20 testified about a conversation -- and this is pages 21  
21 and 22 of the deposition -- he wanted to make sure that  
22 if wind blew the roof off his boat shed, it would be  
23 covered under this piers, docks, and wharves.

24                   Well, Judge, we took the position that  
25 when we came in and Mr. Turner and Mr. Fitzpatrick

1 adjusted this claim, they looked at the wind that had  
2 blown off portions of the roof on the boat sheds. Said  
3 fine. We owe that. We paid for that. We covered  
4 that. The things that he specifically was concerned  
5 with and that he wanted to buy as parts of this  
6 coverage we paid for.

7 What we didn't pay for and won't pay  
8 for, unless the court tells us we have to -- but we  
9 submit that it's not required under the policy -- is  
10 the flood.

11 And the definition of flood is clear.  
12 The wind -- the waves driven by the wind that are  
13 moving the boats around that are beating up the dock  
14 itself, when you talk about that ugly soup of damage to  
15 the marina, it's exactly what -- under the exclusion  
16 where it says directly or indirectly whether  
17 contributes concurrently or in sequence to the loss,  
18 that's exactly what that says. It couldn't be any  
19 clearer.

20 When you have the soup and everything  
21 mashing at one time, the exclusion applies. And that's  
22 our position, Judge. And we submit to you when you see  
23 the evidence, there's going be no question.  
24 Particularly, the video. And there's a number of  
25 photographs that show exactly how all this was.

1                   And, in fact, as Mr. Marshall talked  
2 about all of the pieces of these docks and the marina,  
3 and it shows the marina docks were floated up in the  
4 parking lot of the marina. The flood washed them up in  
5 the parking lot. The flood did all this damage,  
6 Judge. And it's defined what the flood means.

7                   And under the terms of this policy,  
8 there was no coverage. There's coverage for a lot of  
9 other things with this piers, docks, and wharves. The  
10 wind. If there had been a fire. If the gas tank --  
11 there's gas pumps right out there -- if they had  
12 exploded, that would have been covered. But all of  
13 these other things were not covered, or the flood was  
14 not covered. And they talked about it. That's what's  
15 so important. They talked about it. And Mr. Winn  
16 specifically said I don't need flood.

17                   And so we would submit, Your Honor, that  
18 the policy is clear. It is an exclusion that Mr.  
19 Marshall acknowledges that's used all over the  
20 country. And in this case, unfortunately for Mr. Winn,  
21 he did not purchase that coverage. He chose to reject  
22 it. And so here we are.

23                   THE COURT: Thank you. Are you ready  
24 for your first witness?

25                   MR. MARSHALL: Yes, Your Honor. The

1 first witness is Mike Winn.

2 Your Honor, does the court have an easel  
3 of some sort?

4 THE COURT: Do we have an easel of some  
5 sort?

6 THE BAILIFF: Yes, sir. I believe  
7 there's one in here.

8 THE COURT: It's somewhere.

9 (Witness sworn.)

10 MR. MARSHALL: Your Honor, for purposes  
11 of ease, this is an overhead shot of the Jordan Point  
12 Marina before the storm hit. And it has the various  
13 structures that were involved. And when people are  
14 talking about various things, perhaps this can be used  
15 to point out what's what as opposed to try to figure  
16 out where the hell B-dock is.

17 THE COURT: I'm as familiar with it as  
18 one crossing the Harrison Bridge and glancing to his  
19 right can be.

20 MR. MARSHALL: That's the one.

21 (Discussion off the record.)

22 WILLIAM MICHAEL WINN,  
23 a witness, was sworn and examined, as follows:

24 DIRECT EXAMINATION

25 BY MR. MARSHALL:

1 Q Would you please state your name?

2 A My full name is William Michael Winn. Mike  
3 Winn is what everybody calls me.

4 Q And what is your current position with Jordan  
5 Point?

6 A I'm president of the corporation that runs  
7 the marina; general manager. There's just a few of  
8 us. It's strictly family. I pretty much wear all the  
9 hats.

10 Q And in 1990 -- late 1994, early 1995, what  
11 was your role at that point in time?

12 A The same.

13 Q Now, I've taped -- hopefully, this picture is  
14 going to stay up there. Is this a picture that depicts  
15 your marina before --

16 A Yes, sir.

17 Q -- the hurricane?

18 A Yes.

19 MR. MARSHALL: Judge, can you see that  
20 from there?

21 THE COURT: I can see it.

22 MR. MARSHALL: Would you mind if I ask  
23 the witness to go up and point out what's what and sort  
24 of --

25 THE COURT: That's fine.

1                   MR. PALAIS: Your Honor, would you mind  
2 if I stood up over here?

3                   THE COURT: Move wherever you need to,  
4 to see it. That's fine.

5                   (Discussion off the record.)

6                   MR. MARSHALL: What I would like to do,  
7 Your Honor, is have him walk through what's there and  
8 what was damaged at this point in time just to give you  
9 a feel for that.

10 BY MR. MARSHALL:

11               Q     Can you do that for me, Mike, or for the  
12 court?

13               A     Sure. The aerial photo of the marina here  
14 was taken before the storm. We've got the western end  
15 of the marina this way. Eastern here. The Ben  
16 Harrison Bridge runs north and south.

17                   We've got a travel lift, a service area,  
18 over here on the far western end with a couple of  
19 slips. At the time, we were renting these 2 to  
20 customers instead of using them for service. These 2  
21 were damaged, along with the walkways on each side of  
22 the travel lift, which is a machine that runs out over  
23 top of the water and we pick the larger boats up out of  
24 the water and set them on blocks here in the boat  
25 yard.

1 THE COURT: Let me interrupt you for a  
2 second to orient myself. I'm looking at it with Route  
3 156 on the far side of it?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Go ahead.

6 THE WITNESS: 156 is the approach up to  
7 the bridge here.

8 THE COURT: That's fine. Okay.

9 THE WITNESS: We have a land-side boat  
10 house with a crosswalk going to an outboard, or  
11 riverside boat house right here. The land side is a  
12 little larger -- 50-foot length as opposed to 40-foot  
13 length on the riverside.

14 We had damage inside the shed here from  
15 the boats hitting the poles and knocking the  
16 underpinnings out from underneath roof. Lost ten of  
17 the imperilings off of this roof also. This boat house  
18 here, it didn't sustain a tremendous amount of --  
19 called tin damage.

20 Probably the biggest problem here right  
21 in the middle, I had a 38-foot boat sink and pull the  
22 entire walkway that goes behind this or behind the wall  
23 here -- how you get to the outside -- the boat pulled  
24 the walkway down into the water. So when you're  
25 standing here and looking at it, it did an S-curve



1 right into the water.

2 This section of dock, the front end back  
3 here, is B-dock. It consists of approximately 6 larger  
4 slips. We can accommodate up to about a 35-foot boat.  
5 The balance of the slips, anywhere from a 20- to a 24-  
6 or 25-foot boat. And they're back to back with a  
7 walkway that connects the -- that goes right down  
8 through it and just ends here at the end.

9 This small stretch of dock coming out  
10 which is not attached to any of the other out here is  
11 our C-dock, and it consists of a -- slips facing  
12 towards the crosswalk in here which is a dead-end up in  
13 the marina basin itself. And there's also a slip on  
14 the backside of that also which really faced the  
15 bridge. And you got onto that by this little gravel  
16 area walking down the walkway here.

17 This entire dock was essentially  
18 destroyed. Again, this boat house, the major damage  
19 here was the walkway that had gotten banged into the  
20 river. C-dock was destroyed also. We had some -- a  
21 fueling dock out front here with a few slips that we  
22 designate as A. We sustained damage with finger piers  
23 and broken holes in there also.

24 The entire property really from the boat  
25 ramp, which is over here on this corner, and coming all

1 the way across just on the other side of the travel  
2 lift has a timber sheet-pile bulkhead. The way the  
3 marina was dug out, at low tide, you visually see sand  
4 and rock and gravel with the water not being up to the  
5 bulkhead. At high tide, that's all covered with  
6 water.

7 The other damage which I knew was not  
8 covered consisted of several holes broken through the  
9 bulkhead in and along this entire section. And it  
10 caved in. We had some large holes.

11 Underneath my 2-story office building,  
12 there's an office apartment upstairs, a ship store down  
13 below. This is also the ship storage which was an  
14 original building built in the late '60s. No damage  
15 was done to these buildings other than the bulkhead  
16 that faced underneath here was essentially completely  
17 destroyed.

18 This is one of the reasons the county  
19 condemned my facility. They were afraid that this here  
20 would topple into the river.

21 We had, after the brunt of the storm, an  
22 incoming tide essentially from dawn up until  
23 approximately before lunchtime. And that did bring  
24 water up behind the property and actually breached from  
25 this direction going up this way and also from where

1 this home is here on the point on the other side of the  
2 bridge coming along this way.

3 We really never had water over top of  
4 this middle section of the bulkhead. The property has  
5 got a slight crown to it and goes down like this. So  
6 we had the water infusion coming around from the  
7 backside. Never had any water in my store. The carpet  
8 was never wet.

9 But the docks and the boat house and out  
10 here, which are actually lower than the ones in here,  
11 they were -- at approximately 10:30 that morning, that  
12 was under water. But by then, the river looked like  
13 this picture. It was like a millpond. The wind had  
14 subsided.

15 THE COURT: Thank you.

16 BY MR. MARSHALL:

17 Q Thank you, Mr. Winn.

18 Mr. Winn, I want to talk to you about,  
19 or have you tell the court to explain how this policy  
20 came to be. And I want to ask you when is the first  
21 time you ever heard of or from Mr. Robins?

22 A It was a sales call Mr. Robins made to -- to  
23 myself at the marina for the purpose of seeing if I  
24 would be interested in getting insurance coverage with  
25 his firm, being CNA.

1 Q Do you remember when that occurred?

2 A I had thought the dates were around February  
3 when we initially came up with contact between the  
4 cold-call and getting the meetings together. That's  
5 when I remember it.

6 Q But you remember the cold-call was the end  
7 of --

8 A Mr. Marshall, I thought the cold-call was  
9 actually in January sometime; the end of January.

10 Q And he called you to see if you were  
11 interested in buying some insurance?

12 A Yes, sir.

13 Q And what did you do?

14 A I was in the process of trying to renew with  
15 my existing company, Commercial Union. I was having  
16 some problems with what I felt like the agent was  
17 dragging his feet in getting me the renewals. So I  
18 said yeah, sure. I'll talk to you. Let's sit down and  
19 see what you have to go through. And, you know, so we  
20 made an appointment for him to come to the marina.

21 Q And he came to the marina sometime in  
22 February, March?

23 A I thought it was February, March sometime.

24 Q And what happened when he came to the  
25 marina?

1           A     Came down, introduced himself. We had some  
2 casual small talk that -- you know, essentially telling  
3 me who he was. I didn't know him from anybody. I had  
4 actually never heard of the Robins Agency so -- that he  
5 was representing this CNA policy. That they were a  
6 family-owned business, been in business for 40 years.

7                     And I felt like I had -- I was -- I  
8 liked to listen to that because I had been back and  
9 forth between 2 other agents I was trying to get prices  
10 on and they just wanted to squabble about agents and  
11 stealing business from each other. And I was really  
12 frustrated because this is one of the largest expenses  
13 I have at the marina is insurance. And Raleigh made me  
14 feel comfortable.

15                    We went on to talk about my business  
16 some, some revenue numbers from different sources,  
17 individual values on the store building, piers. I have  
18 a little upholstery shop that we rent out. It was an  
19 overview that I was used to going over with other  
20 insurance agencies in the past with trying to get the  
21 right dollar amount of coverages on different parts of  
22 the marina.

23                    I felt very confident with Raleigh  
24 after he left there. And he told me that he had -- we  
25 had a couple of mutual friends in -- that fooled around

1 with boats, and that with this CNA policy, he insured  
2 some other marinas also. So that made me feel  
3 confident.

4 Q So did you discuss anything about the  
5 specific coverages at that early meeting or did you  
6 just discuss things in general?

7 A We just discussed essentially things in  
8 general. No specifics.

9 Q What happened after that as far as Mr. Robins  
10 was concerned?

11 A I'm a little confused on how many meetings we  
12 had up to when the policy was since it was several  
13 years ago. I was under the impression that after this  
14 initial meeting, we had actually another meeting where  
15 he brought a proposal to me with some numbers on it  
16 with the actual values of different items at the  
17 marina.

18 MR. MARSHALL: May I approach the  
19 witness, Your Honor?

20 THE COURT: Yes.

21 BY MR. MARSHALL:

22 Q I'll put a document in front of you and see  
23 if that's the proposal that you're talking about?

24 A Yes, sir. It is.

25 Q That's a proposal Mr. Robins gave to you at a

1 subsequent meeting?

2 A Right.

3 Q And did you discuss that proposal at that  
4 point?

5 A We went over it really page by page on what  
6 was going to be in the policy. Excuse me. You know,  
7 as you can see, it was -- it's several pages long. And  
8 we went over it page by page on what was involved in  
9 this proposal.

10 Q Did you talk about the various types of  
11 coverages that were in the proposal?

12 A Well, we talked about what was in this  
13 proposal right here. And it was not a discussion as to  
14 if a UFO falls on the marina, you're not covered, or  
15 that type of thing. So it was just strictly page by  
16 page on this right here.

17 Q Did you talk about any of the types of  
18 coverages that you were interested in having for your  
19 marina?

20 A At one of the meetings -- and, again, I'm  
21 sorry. I can't -- I'm a little foggy on which one it  
22 was. My previous policy with Commercial Union had  
23 excluded wind damage. And it was a blank piece of 8  
24 and half by 11 paper with the very middle of it, you  
25 are not covered if the wind blows the roof off of the

1 building. So that was something that I just really  
2 couldn't afford not to have. I needed to have the  
3 coverage for the roofs on the building like that.

4 At either that meeting or one of the  
5 others, we also touched on what I refer to as storm  
6 damage.

7 Q When you say you refer to it, what do you  
8 mean by that?

9 A Well, we -- Raleigh didn't come up with any  
10 kind of -- any type of comment like well, you are  
11 covered for this; you aren't covered for that. But by  
12 storm damage, I've got the roofs and I need to get the  
13 roofs covered on this. And also, we talked about the  
14 northeast exposure to the marina right here.

15 Q Which direction -- show the court which  
16 direction is northeast.

17 A This is almost -- the airplane was in the  
18 northeast position. You have essentially this  
19 direction right here coming up right on this corner.

20 Q So you were concerned about -- I interrupted  
21 you. Go ahead.

22 A That's all right. Concerned about a pretty  
23 vulnerable northeast exposure to the marina. And if I  
24 -- if that would be taken care of.

25 Q And his response was?



1           A     Sure. I mean it was -- it wasn't a matter of  
2 no, Mike, there's something in here that is not going  
3 to be covered. It's everything we talked about. We  
4 did talk about flood damage. But it was a mutual  
5 conversation on the flood damage, not a one-sided from  
6 me where, you know, here is this. You know, do you  
7 want it or not. It didn't happen like that.

8                     We touched on the fact that some of the  
9 marina is farther up river where the river is thinner,  
10 overflows its banks and goes over top of everything  
11 down there. I never incurred that type of damage here  
12 at the marina before. The river is so wide right  
13 here.

14                    I did not know in conjunction with the  
15 flood and in conjunction with wind is really what that  
16 had to do with. But as a mutual decision, that no,  
17 hey, you've never had that kind of problem. Flooding  
18 isn't a problem here. We don't need it.

19           Q     Okay. Now, you eventually did get a policy  
20 from Mr. Robins; didn't you?

21           A     Yes, sir.

22                   MR. MARSHALL: And, Your Honor, that  
23 policy -- I've already handed the copy up to the  
24 court. But I don't think it's in dispute that that's  
25 the policy he got. I would like to label the exhibit

1 in front of Mr. Winn as exhibit number one and the  
2 exhibit in the court's hand as exhibit number 2, if  
3 that's all right.

4 THE COURT: The proposal you want as  
5 one.

6 MR. MARSHALL: The proposal number one.  
7 The policy exhibit 2, Your Honor.

8 THE COURT: The proposal is in the court  
9 file. I'll mark it as your exhibit one today. And the  
10 policy itself you want to be 2. I believe we've  
11 already done that; haven't we?

12 THE CLERK: We marked it number one.

13 MR. MARSHALL: That's fine. If you want  
14 the policy exhibit one and the proposal number 2,  
15 that's fine.

16 THE COURT: I'll change it. I'll do  
17 that. Okay. They're admitted. And this is admitted  
18 without objection.

19 MR. OWEN: Yes, sir.

20 (Plaintiff's Exhibit Nos. 1 and 2 were marked  
21 for identification and received in evidence.)

22 BY MR. MARSHALL:

23 Q When Mr. Robins brought you the policy  
24 itself, which is exhibit 2 --

25 MR. MARSHALL: Is that right, Your

1 Honor? I think we ended up with that as exhibit 2.

2 THE COURT: The policy is one and the  
3 proposal is 2.

4 BY MR. MARSHALL:

5 Q -- number one. When Mr. Robins brought you  
6 exhibit number 1, did he go over what was in that  
7 binder?

8 A We matched the proposal and the amounts in  
9 here with the policy -- all policies I've had through  
10 the years, they have a computer-generated sheet in  
11 front of essentially each section. And we matched the  
12 proposal to the computer-generated sheets in the policy  
13 as we were going through it.

14 Q And they matched up?

15 A Right.

16 Q And you had a policy then?

17 A Right.

18 Q And that policy -- did you have any claims  
19 during that first year?

20 A Yes. I did. We had a bit of ice damage.  
21 The river froze up that year. We had an incoming  
22 tide. And if I can show you here on the corner, we had  
23 -- this section here was crushed from some ice damage  
24 coming up here in the corner.

25 Q And what did you do?

1           A     Called Raleigh.

2           Q     What happened?

3           A     Johnny on the spot; get an estimate. Marine  
4 Construction. It's not like there's everybody who does  
5 it. So I had a guy that I had done -- had worked with  
6 me before. Called him and he came down, gave me an  
7 estimate. I submitted it to Raleigh and it was taken  
8 care of. I don't even remember an adjuster showing up;  
9 although, one could have. But I don't remember.

10          Q     The policy came up for renewal. Did you get  
11 another policy?

12          A     Yes, sir. Same thick notebook. You know,  
13 again, Raleigh gave me a call. Hey, it's renewal  
14 time. I was happy with the coverage we had had to this  
15 point. Didn't have any reason to change it. He -- we  
16 did have some -- changed a few things with some  
17 computer equipment and files on it. But everything  
18 else was exactly the same.

19          Q     Tell me about Hurricane Fran. How did you  
20 first know what was going on?

21          A     We had been watching the Weather Channel.  
22 Had really no inkling that I was going to have any kind  
23 of major catastrophe like we had. Business as usual on  
24 the day of the 4th and 5th. I had some customers that  
25 were aware, asking me what I thought. I can't legally

1 make somebody leave the marina, to vacate the premises  
2 so they can leave.

3 The consensus among all the people in  
4 the marina was we're going to dodge the bullet and this  
5 wasn't going to be a problem. So I had a full house.

6 I went home that night about 7 o'clock  
7 after work on the 5th. Got a phone call at the house  
8 about 11, 11:30 from one of my tenants. Mike, you  
9 better get down here. We're having some -- we're  
10 having some big problems. You know, I -- I missed the  
11 6 o'clock news but had seen nothing about a major  
12 weather warning at all.

13 Drove down to the marina. My wife  
14 didn't want me to go because we could see the wind was  
15 blowing pretty heavy outside. She was a little  
16 concerned. The lights had flickered at our house  
17 some. I really didn't know what to expect. Drove into  
18 the marina and just had boats bouncing around  
19 willy-nilly. Wind and rain.

20 I've never been in a hurricane. But it  
21 was bad. I mean the wind was blowing hard. The rain  
22 was pouring down. The boats were bouncing around. I  
23 had some people that lived on their boats really  
24 concerned that their property was getting smashed all  
25 up. I was concerned that my property was getting

1       messed up. But we were at the point of no return.

2                       You -- it was so rough we couldn't get  
3       in the boats and actually take off to get them out of  
4       the marina. And by that time also, the way the tide  
5       was working, we essentially had a high tide at about 11  
6       o'clock. And by that time, some of these larger boats,  
7       the way the roof eaves comes down on them, they  
8       couldn't get out from underneath the roof if they  
9       wanted to anyway.

10                      I had several boats on the C-dock over  
11       here that had become untied and just were swinging  
12       around everywhere, running into other boats, running  
13       into docks. But -- and it just wasn't worth somebody  
14       getting hurt to try to -- you can fix the boat or do  
15       whatever. But we had a couple guys trying to do what I  
16       felt like were some stupid things to lasso boats and  
17       get them on.

18                      I didn't want to see anybody get messed  
19       -- I actually had people stay on their boats through  
20       all this thing.

21                      So I really rode the storm out for the  
22       next -- essentially, all night long. I stayed up to  
23       try to go through the boats we could get to re-tie and  
24       try to help some of the boat owners keep their property  
25       from getting all messed up. And it went on really

1 until about 6 or 7 o'clock in the morning, and we got  
2 daylight.

3 By then, we had -- several people had  
4 heard from one way or the other -- I hadn't been on the  
5 phone yet calling customers to tell them that if they  
6 weren't there that hey, you better get down here, your  
7 boat is getting all messed up.

8 About that 7 o'clock in the morning  
9 period, that's when my wife came down a little later  
10 that morning. My father came down. Then we tried to  
11 get on the phone with some of our boat customers to  
12 tell them what happened using the phone in my truck.  
13 We had the electricity gone out. We had no phone  
14 service.

15 The -- the water, as the morning tide  
16 dropped out and then the tide kept coming back in at  
17 about approximately ten or so the next morning. Then  
18 our bathroom stopped working because my septic tank got  
19 filled from the backside with water coming across  
20 there.

21 That's kind of it in a nutshell.

22 Q At dawn the next morning, it was light enough  
23 to see?

24 A Right.

25 Q What was the status of your piers, wharves,

1 and docks at that point in time?

2 A The open stuff was in total disarray. The  
3 shed on the river side, we had a 38-foot performance  
4 boat had sunk and it was still tied to the pier. We  
5 crossed the stern lines. And he was in the middle of  
6 that boat shed there with the back of the walkway still  
7 tied to his boat, and that was pulled away from the  
8 wall.

9 You could walk to the end of it but you  
10 had to really put all your weight on the handrail. You  
11 were essentially walking on the edge of the handrail  
12 instead of the dock itself.

13 I still had a couple, believe it or not,  
14 on a boat on C-dock -- B-dock -- excuse me -- that had  
15 rode the storm out. Their boat was completely  
16 battered. Had 2 boats that knocked a hole in the side  
17 of theirs. It didn't sink. But they couldn't get back  
18 because they were tied to a pole, and that was what was  
19 left. There was no walkway or anything they could get  
20 back in.

21 I had a work boat actually in the second  
22 slip in the covered shed in here. Rode the storm out.  
23 And we cranked that up and went around and picked these  
24 people off. Then I tried to start getting the large  
25 pieces of dock that were floating around to keep them



1 from running into any more boats. Pulled those around  
2 to the boat ramp so we could make some semblance of  
3 getting everything straight without doing any more  
4 damage.

5 Q So was the damage to the docks done in  
6 daylight? That's my question.

7 A Yes. Sure.

8 MR. MARSHALL: Your Honor, at this point  
9 in time, I think it would be appropriate to see the  
10 famous video; the long version even that Mr. Owen wants  
11 to show you. So I'll go ahead and show you the long  
12 version so you don't have to see it again.

13 THE COURT: Thank you.

14 Mr. Winn, return to your seat.

15 So he doesn't have his back to it.

16 Does it have to be there?

17 (Discussion off the record.)

18 MR. PALAIS: Your Honor, just to confirm  
19 with counsel, I personally haven't seen the video. I  
20 thought the court might want to know it's an hour  
21 long.

22 MR. MARSHALL: It's a fairly long video,  
23 Your Honor.

24 THE COURT: Okay. Well, the court  
25 reporter can take the time off, I think. We don't need

1 to record that.

2 MR. MARSHALL: Absolutely.

3 THE COURT: If it's going to be that  
4 long, why don't we take a short break while you set it  
5 up.

6 MR. MARSHALL: That's fine, Your  
7 Honor.

8 (Break taken.)

9 MR. MARSHALL: Your Honor, just for --  
10 although it will be self-evident in the tape, this is a  
11 compilation of different tapes different people took  
12 that night. Some of it is not in order. But it's  
13 clear when it's day and clear when it's night. And  
14 there's some conversation that you can figure along  
15 about what time it is, if that's helpful.

16 THE COURT: And the reporter may  
17 relax.

18 (Videotape played.)

19 MR. MARSHALL: Your Honor, I don't know  
20 if Mr. Owen is interested in doing this or not, but I  
21 think -- we have the unusual situation where you have  
22 the picture of it all happening, and then I don't think  
23 anybody is coming in and explaining any more than that  
24 who is going to give you a better picture of what  
25 happened than the video. And if Mr. Owen is interested

1 in it, I'd be willing to argue the application of the  
2 exclusion at this point in time and maybe shorten this  
3 thing up a whole lot.

4 MR. OWEN: Your Honor, the only -- I do  
5 have a couple questions for Mr. Winn. The only thing I  
6 would want to clarify, and I don't mind doing that, is  
7 the fact that, as I understood from Mr. Winn, when he  
8 got there around 11, 12 o'clock at night, that the high  
9 tide was up and it was a high water episode and then it  
10 went down and came back up again. And I think that's  
11 what he testified.

12 With that -- and that's when most of the  
13 stuff washed away is that first rush in through there.  
14 But as long as that's clear from -- that's what I  
15 understood from Mr. Winn's testimony, is that it was at  
16 high tide around 11 when he first got there. It went  
17 down, and then started going back up.

18 MR. WINN: It was the second one. When  
19 all that water you saw --

20 THE COURT: Do you want to put Mr. Winn  
21 back on the stand?

22 MR. MARSHALL: Yes. Please. If you  
23 want to get that clarified, go ahead and do it.

24 THE COURT: I understand. We'll see  
25 where that goes after he --

1 MR. PALAIS: Forgive me, Your Honor.  
2 The only thing I would also want to point out to the  
3 court is that on behalf of the agent and the agency, we  
4 certainly have some cross-examination from Mr. Winn as  
5 well.

6 THE COURT: Yours is different.

7 MR. PALAIS: Okay.

8 MR. MARSHALL: And I'm not saying Joe's  
9 going to ask you questions and then --

10 MR. PALAIS: Okay. Thank you, Your  
11 Honor.

12 MR. MARSHALL: I have some more  
13 testimony from him too but relevant to what the policy  
14 applies to that storm. That's where I am at this  
15 point.

16 CROSS-EXAMINATION

17 BY MR. OWEN:

18 Q Mr. Winn, as I understood in your direct that  
19 you -- that around 11 p.m. when you first got down  
20 there was when the tide was at its worst? It was a  
21 higher tide?

22 A It was high. It wasn't higher than the  
23 second series of high tide.

24 Q But it was a high tide?

25 A Yes, sir.

1 Q And the water was up at the docks?

2 A Right.

3 Q And similar to what we saw in the video with  
4 it pounding up underneath and moving the boats and they  
5 were all bouncing and that type of thing?

6 A Yes. Right.

7 Q And as I understand too, the boat out here  
8 that we saw sunk that was sticking straight up like  
9 that, what happened was the water rolling through there  
10 had gone over the back of it, filled it up with water,  
11 and sank it?

12 A Right.

13 Q And also, as I understand from your  
14 deposition, the waves or the wave action on the boat  
15 did most of the damage to what occurred to the docks  
16 and to the boat house?

17 A That was my opinion.

18 MR. OWEN: That's all I have.

19 MR. MARSHALL: Your Honor, if Mr. Owen  
20 is willing to do it, I know this is sort of unorthodox,  
21 but I think it's just appropriate at this point in time  
22 to argue the exclusion issue.

23 MR. OWEN: Yes. I'm comfortable with  
24 that, Judge. I was tempted to make a motion to strike  
25 at the end of his opening but -- which is appropriate.

1                   THE COURT: Well, and with the  
2 understanding that we are excluding from this your  
3 claim against Robins.

4                   MR. MARSHALL: Absolutely, Your Honor.  
5 This goes --

6                   THE COURT: Is it -- so Mr. Ford and Mr.  
7 Palais will relax, they won't be worried they're taken  
8 along in this fight.

9                   MR. MARSHALL: I don't think they have a  
10 dog in this fight, this particular fight.

11                   THE COURT: Not in this particular one.  
12 I was trying to make them comfortable with what you  
13 were proposing.

14                   MR. PALAIS: And we appreciate it, Your  
15 Honor.

16                   MR. OWEN: Judge, and I'm not sure -- I  
17 guess I'm the moving one since -- I don't know. I'm  
18 not sure who --

19                   THE COURT: Who goes first?

20                   THE COURT: I think Mr. Winn can go back  
21 to his seat.

22                   MR. MARSHALL: I can go first. Your  
23 Honor, I suppose -- and I hate to say this. I hate to  
24 admit anything sometimes -- but I suppose technically,  
25 at this point in time, we have made a claim for that

1 which is covered property. And Mr. Owen would stand up  
2 and say here is why the exclusion applies, and then I  
3 would rebut that. I think that's where we are.

4 THE COURT: I think so. And Mr. Owen  
5 agrees. He's already said. So it's your go.

6 MR. OWEN: Yes, sir.

7 Your Honor, very rarely in a case do we  
8 have a film of what was going on and what actually  
9 caused the damage. And I don't think that anyone will  
10 disagree. Mr. Winn even acknowledged that waves and  
11 wave action on the boats caused the damage to his  
12 marina.

13 Well, assuming that -- and we saw the  
14 video. The video was -- it couldn't have been  
15 clearer. We see the -- you could see the waves beating  
16 up underneath the docks. You could see -- in fact,  
17 there's one shot in there where you can see where the  
18 boards had been knocked up as the wave action is coming  
19 up underneath. You could see the action on the boats  
20 beating them back and forth, raising them up to the  
21 ceiling.

22 Even the incident where the walkway was  
23 pulled and the outer boat, it was because the water had  
24 flooded into this boat and sank it, pulling it down,  
25 putting the pressure on it.

1           The -- there couldn't be any clearer  
2 evidence that what occurred and what caused the damage  
3 was waves, surface water, flood, the tides. And then  
4 the exclusion is very clear of any body of water, all  
5 weather driven by wind or not.

6           Now, the wind was making these waves and  
7 making this whole process a lot worse and causing the  
8 water to be higher. But the way this exclusion is  
9 written, and it was acknowledged by Mr. Marshall in his  
10 opening that it is a very standard exclusion, and the  
11 -- it's not unusual for it to be in the policies. And  
12 what we see is this exclusion exactly fits clearly what  
13 occurred and what caused the damage.

14           I can't imagine it being any clearer  
15 than we saw in the video, Mr. Winn's testimony, and the  
16 words right here -- there's no ambiguity here -- this  
17 is -- we will not pay for a loss caused directly or  
18 indirectly by any of the following. It's excluded  
19 regardless of any other cause or event that contributes  
20 concurrently or in any sequence of the loss. That's  
21 right under B1. That's the preamble for this. Very,  
22 very clear.

23           Then we have the combination, basically,  
24 of the wave action, certainly driven by the wind, that  
25 acted on these docks and on the boats so that it was



1 causing them to move and batter this around.

2           Your Honor, I don't see how it could get  
3 any clearer than that. And I would submit to the court  
4 that this exclusion is not ambiguous. It is clear and  
5 directly, and the fact that the damages that were  
6 suffered there at the marina were caused by the  
7 excluded -- by the excluded event. In fact, that one  
8 fellow was talking about the piers being washed away  
9 and the docks washed away. Well, that's a flood.  
10 That's what happened. The waves took them out.

11           And so I think it's excluded clearly  
12 under the policy. And we submit that.

13           THE COURT: Mr. Marshall.

14           MR. MARSHALL: Your Honor, in all  
15 deference to Mr. Owen, I don't think it's clear at  
16 all. Not a surprise.

17           Your Honor, the way you have to look at  
18 this policy -- and I think for purpose of this  
19 argument, and I think Mr. Owen can concede -- all the  
20 damages that were claimed, or a great part of them,  
21 rise and fall on this particular rider. Some of them  
22 are -- some of them specifically talked about in this  
23 rider such as item 1C, covers all the electrical wiring  
24 and plumbing that were fixed to the docks. Item B,  
25 debris removal. Those things are the elements of

1 damages we're talking about.

2 But let's go back and look at this rider  
3 in its entirety, Your Honor, because that's where I  
4 think this case comes from. First of all, you start in  
5 the beginning. Mr. Owen didn't want to start in the  
6 beginning. He wanted to go right to the exclusion.  
7 But what is it excluding?

8 Paragraph A says we will pay for loss to  
9 covered property from any of the covered causes of  
10 loss. We will pay -- and loss is defined on the very  
11 last page as accidental damage -- accidental loss or  
12 damage. What we have here is accidental loss or  
13 damage. Two, floating or fixed piers, wharves, and  
14 docks. That is covered property. So you start off  
15 with the proposition before anything else, covered  
16 property, that that has been damaged. So at that point  
17 in time, you're not into any exclusions. You have this  
18 is a covered loss.

19 Now, go to item A2, property not  
20 covered. And in the property not covered, there's  
21 seawalls and breakers. And we're not making a claim  
22 for seawalls or breakers. That's not part of the  
23 claim.

24 Item number 3, Your Honor, covered  
25 causes of loss means risks of direct physical loss to

1 covered property. This is direct physical loss to  
2 covered property. This is damage to the piers,  
3 wharves, and docks. Then you go a step further. You  
4 go to paragraph 4A.

5 Paragraph 4A talks about in addition to  
6 direct loss, we will pay the direct loss caused by or  
7 resulting from risk of direct physical loss involving  
8 collapse of all or part of a building or structure  
9 caused by one of the following. Subparagraph one, we  
10 will pay for direct loss caused by or resulting from  
11 risk of direct physical loss involving collapse of all  
12 or part of a building or structure caused by one or  
13 more of the following. And in the one or more of the  
14 following, they talk about windstorms and they talk  
15 about water damage.

16 Now, Your Honor, this loss was not a  
17 tidal wave coming through and knocking everything out.  
18 This loss was those structures being subjected to a  
19 series of forces, waves, boats, wind, other debris --  
20 full house -- yanking and pulling. And I submit to  
21 Your Honor this is either direct loss caused by that  
22 storm or it is collapse of the structures caused by a  
23 windstorm. That's what Hurricane Fran was. It was a  
24 windstorm.

25 So, Your Honor, we think if the policy

1 -- we know. The law is if the policy gives you the  
2 loss, it says you're covered. You can't undo it. And  
3 his attempt to undo it, his company's attempt to undo  
4 it, is applicable because that is damages caused by a  
5 flood.

6 Your Honor, there is -- a flood is  
7 overflowing of a body of water out of its banks causing  
8 damage. These things were not damaged by a flood.  
9 These things were damaged by a windstorm. These things  
10 were damaged by waves and boats and all these things  
11 going on at one time. And that provision, that  
12 provision on which Mr. Owen and his client rely, would  
13 apply if we were making a claim for the store, which is  
14 on dry land, being affected by a flood. But we're not  
15 making that claim. That -- and that's what those cases  
16 are about.

17 The cases that talk about the flood  
18 insurance provision -- and that's what this is -- talks  
19 about -- they talk about what happens when the body of  
20 water overflows and causes damage; overflows from its  
21 banks.

22 Now, Mr. Winn said that he didn't need  
23 flood insurance. And, indeed, he didn't need flood  
24 insurance because flood insurance wouldn't have covered  
25 this either. Flood insurance would say that was a

1 windstorm. That's not what we paid for. The loss that  
2 Jordan Point suffered was a direct physical loss from a  
3 windstorm or the collapse of the structures by the  
4 multiple forces, including the multiple forces of  
5 windstorm and water -- it said it in that covered  
6 provision -- that pulled this place apart. And that's  
7 the issue we're here about today, Your Honor. And  
8 that's the coverage that we're afforded.

9 And, Your Honor, if you would -- you do  
10 have a copy of the proposal in front of you. But if  
11 you look on the summary of premiums in the proposal,  
12 the second single largest coverage -- the second single  
13 largest coverage -- and it's about 4 pages from the  
14 back -- see where it says summary of premiums?

15 THE COURT: I have one. I'm just  
16 looking for one that's not nailed into the -- I have  
17 that.

18 MR. OWEN: I believe it's on the witness  
19 stand, Judge.

20 THE COURT: Yes. Hand me that one,  
21 please. Thank you.

22 MR. MARSHALL: I'm talking about 4 pages  
23 from the back, Your Honor, it says summary of premiums  
24 at the top.

25 THE COURT: I have it. Go ahead.

1 MR. MARSHALL: Look down there about the  
2 fourth line; piers, wharves, and docks, and slip rent.  
3 If you look at that, there's \$4,231 of a total premium  
4 of \$16,837 for piers, wharves, and docks. I submit to  
5 you, Your Honor, I find it incredulous, absolutely  
6 incredulous, that somehow or other flood insurance  
7 would have anything to do with piers, wharves, and  
8 docks sitting out in the water in the first place. But  
9 that's what they're arguing. And I don't think it's  
10 appropriate. And I think this is a covered loss, and  
11 it's clear under the policy it's a covered loss.

12 And if it's not crystal clear under the  
13 policy it's a covered loss, at least there's an  
14 ambiguity in the policy. And the ambiguity -- their  
15 policy -- the ambiguity provides coverage for my  
16 client. I submit to you that's our position and I  
17 think that's what the evidence is.

18 MR. OWEN: I want to respond just very  
19 briefly to that. Number one. Number one has -- I  
20 don't know who the fellow was -- but one of the boat  
21 owners said it was the highest water he's ever seen.  
22 They had been there 4 or 5 years. And that flood just  
23 washed those docks away. It wasn't a collapse. It was  
24 washed away by the flood.

25 And this exclusion is so clear that it

1 says that it doesn't -- it's any one of these or all of  
2 these under B1E4. It's either flood, surface water,  
3 waves, tides, tidal waves, overflowing of any body of  
4 water that's sprayed, all weather driven by wind or  
5 not.

6 I don't see how the language could be  
7 any clearer. I don't see how it could be any clearer,  
8 after looking at the videotape, what occurred. I just  
9 think that this damage is excluded and would submit to  
10 the court that there is no claim under the policy based  
11 on the evidence now before the court.

12 THE COURT: Let's break for lunch and  
13 let me reflect on this and rule on it when we get  
14 back. And it's 5 to 12. Why don't we break until  
15 one. Court is in recess.

16 (Break taken.)

17 THE COURT: We are at a point where the  
18 court is asked to make a ruling on this policy as to  
19 whether the exclusions apply under the piers, wharves,  
20 and docks rider.

21 The beginning of the rider under  
22 coverage, it says we'll pay for loss of covered  
23 property. For many of the covered causes, under  
24 covered causes, we find subsection A to be floating or  
25 fixed piers, wharves, and docks.

1           In section 4 under A dealing with  
2 coverages, we get specific as to collapse, and it  
3 talked about direct loss caused by or resulting from a  
4 risk of direct physical loss, involving collapse of all  
5 or part of a building or structure caused by one or  
6 more of the following: And it lists several things; 2  
7 of which are windstorm and water damage.

8           That gets us to the exclusions section.  
9 In number one under exclusions, it says we will not pay  
10 for a loss caused directly or indirectly by any of the  
11 following: Subsection E there says water.

12           And that gets us to the crux of this  
13 matter where under E4, it excludes flood, surface  
14 water, waves, tides, tidal waves overflowing of any  
15 body of water, or their spray, all weather driven by  
16 wind or not. The first word there is flood.

17           Black's Law Dictionary defines flood as  
18 an inundation of water over land not usually covered by  
19 it. And flood water is defined as water which escapes  
20 from a stream or other body and overflows adjacent  
21 territory.

22           By definition, this ain't a flood.  
23 Because the damage is over water where water not only  
24 flows, over the stream. In this case, the stream is  
25 rather large. It's the James River.



1                   Then we get to waves and tides  
2   overflowing of any body of water. Turning to Black's  
3   again, overflow, the dictionary says, is to flow or  
4   spread beyond the limits. These piers and docks and  
5   wharves were not beyond the limits of the river. They  
6   were in the river. It can't be a flood. Its waves and  
7   tides were not beyond the limit; not up on the beach  
8   somewhere. It's in the river.

9                   So if I were to take waves and tides,  
10   it's not those overflowing of the body of water.

11                  The court rules that the exclusion does  
12   not apply.

13                  MR. OWEN: Judge, may I make a statement  
14   about this idea of waves and respectfully disagree with  
15   the court's analysis on that at this point?

16                  THE COURT: Yes, sir.

17                  MR. OWEN: If you look at each -- these  
18   are each a separate, distinct thing. The overflowing  
19   of any body of water is not -- does not define where  
20   the waves would occur.

21                  And I would submit to you that the  
22   evidence before this court and the direct evidence and  
23   the direct testimony of Mr. Winn was that waves were a  
24   factor in that they knocked the docks up and that the  
25   boats driven by the waves caused damage. And that's

1 whether indirectly or not.

2           And this provision, the way the commas  
3 are situated, each is a separate occurrence. The  
4 flood, I can understand the court when you say it's a  
5 flood over the boundaries, overflowing of any body of  
6 water over the boundaries. But the way this is  
7 written, it is -- if it's a flood, separate, or if it  
8 is surface water, separate, or if it is a wave.

9           Now, that is not -- that is not limited  
10 to waves that overflow. These are waves; period. Same  
11 with the tides, tidal waves, all weather driven by wind  
12 or not. And I would submit to the court that that --  
13 the overflow is not a requirement for the wave to be  
14 excluded, under the clear language of this policy.

15           And I don't know if this is the  
16 appropriate time or not, but rather than be left with  
17 the ruling at that stage in that way, I would like the  
18 opportunity to brief it. Because I just think that  
19 that interpretation is an incorrect one.

20           THE COURT: Do you all remain quiet?

21           MR. MARSHALL: Your Honor, I'm always  
22 afraid to remain quiet. But I adopt what the court  
23 said. I think that's a fair interpretation of it, and  
24 I don't think a briefing by Mr. Owen is going to change  
25 the court's reading as far as that particular

1 phraseology is concerned.

2 I mean what Mr. Owen doesn't address is  
3 that which the court picked up on earlier on, and we  
4 are entitled to damages from a windstorm. And he wants  
5 to ignore that in a windstorm, at a marina with piers,  
6 wharves, and docks, it's going to have water and it's  
7 going to have water damage. And I just don't know  
8 where he's going. So I don't see he can better his  
9 hand by briefing it. He's argued. So I accept the  
10 court's ruling.

11 THE COURT: Mr. Owen, I don't see where  
12 anything is going to be gained by briefing it. This  
13 thing is written with each one of these: Flood,  
14 surface, waves, tides, tidal waves. Comma after each  
15 one. And then saying overflowing of any body of  
16 water.

17 MR. OWEN: That is a separate thing,  
18 Judge. That does not define the rest of it.

19 THE COURT: I disagree with you. And I  
20 see no point in briefing it. That thing just doesn't  
21 stand by itself. That's all. If you look at it in the  
22 first place, it doesn't make any sense, is the way I  
23 see it.

24 MR. OWEN: The reason I say that, Judge,  
25 the reason I say it's separate, where it has all

1 weather driven by wind or not, that's referring to each  
2 separate item of that.

3 THE COURT: I don't wish to get into a  
4 debate.

5 MR. OWEN: Yes, sir. I'm just making  
6 myself clear for the record, Your Honor, please.

7 THE COURT: Yes, sir. I understand  
8 that. That's all. But, as I said, I don't see where  
9 it's going to change. I don't see any reason for you  
10 to brief it. My ruling stands.

11 MR. OWEN: Yes, sir.

12 MR. MARSHALL: I don't want to interrupt  
13 you, Joe.

14 MR. OWEN: I'm not -- no.

15 MR. MARSHALL: Your Honor, I don't think  
16 we have a further cause of action against the agency  
17 based on that ruling, and I suggest that they be  
18 allowed to leave. If the court's ruling is that the  
19 coverage applies, then our allegation to the agency  
20 should have told us it didn't. It's been decided by  
21 the court's opinion.

22 THE COURT: The court is of that  
23 opinion. I anticipated that ruling.

24 MR. PALAIS: Thank you, Your Honor.  
25 Your Honor, may we be excused from the remainder of the

1 proceedings?

2 THE COURT: Yes, sir.

3 MR. PALAIS: Thank you.

4 THE COURT: If you want a recess, you  
5 certainly can have that.

6 MR. OWEN: Yes. I think so.

7 THE COURT: You want that?

8 MR. MARSHALL: Yes.

9 THE COURT: Court is in recess. You go  
10 ahead. We're going to break.

11 (Break taken.)

12 MR. MARSHALL: This stipulation is for  
13 the record without the judge, with the judge's  
14 knowledge.

15 MR. OWEN: And agreement.

16 MR. MARSHALL: And agreement -- with the  
17 judge's agreement -- that this matter is going to be  
18 continued for a period until Friday a week, which is  
19 May 12. At which time, we trust there will be a final  
20 order in this matter.

21 MR. OWEN: And where the judge's -- that  
22 incorporates the judge's rulings on the application of  
23 the exclusion clause and with a stipulation as to the  
24 amount of damages -- a stipulated damage amount for a  
25 final order.

1 MR. MARSHALL: That's correct.

2

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(The trial concluded at 1:54 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND:

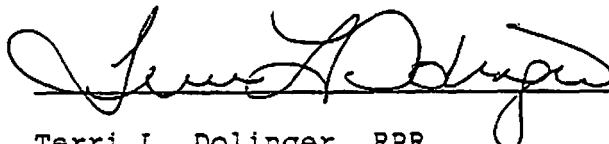
I, Terri L. Dolinger, RPR, a Notary Public in and for the Commonwealth of Virginia at Large, do hereby certify that the foregoing was reported by Stenographic means, which matter was held on the date, and at the time and place set forth on the title page hereof, and that the foregoing transcript constitutes a true and accurate transcript of same to the best of my ability.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

GIVEN under my hand and seal this  
17<sup>th</sup> day of May, 2000.

My commission expires:

July 31, 2001



Terri L. Dolinger, RPR,

Notary Public



For All the Commitments You Make

## PIERS, WHARFS, AND DOCKS COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F-DEFINITIONS.

### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

#### 1. COVERED PROPERTY, as used in this Coverage Form, means:

- a. Floating or fixed piers, wharfs and docks; OK ✓
- b. Anchors and floats used with floating docks;
- c. Covers, awnings, electrical wiring or plumbing which is permanently fixed to the pier, wharf or dock; ✓
- d. Bouys or moorings.

#### 2. PROPERTY NOT COVERED

Covered Property does not include:

- a. Buildings, storage sheds or tackle boxes;
- b. Sea walls or breakers; No Coverage
- c. Fuel pumps or storage tanks; or
- d. Boat lifts, railways, travel lifts or cranes;

whether attached to the pier, wharf or dock, or not.

#### 3. COVERED CAUSES OF LOSS

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL "LOSS" to Covered Property except those causes of "loss" listed in the exclusions.

#### 4. a. ADDITIONAL COVERAGE--COLLAPSE

We will pay for direct "loss" caused by or resulting from risks of direct physical "loss" involving collapse of all or part of a building or structure caused by one or more of the following:

- (1) Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; breakage of glass; falling objects; weight of snow, ice or sleet; water damage; all only as covered in the Coverage Form;

- (2) Hidden decay;
- (3) Hidden insect or vermin damage;
- (4) Weight of people or personal property;
- (5) Weight of rain that collects on a roof;
- (6) Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not pay for loss or damage to the following types of property, if otherwise covered in this Coverage Form, under items (2), (3), (4), (5) and (6) unless the loss or damage is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, mast or towers; awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks; roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion. This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form.

#### b. ADDITIONAL COVERAGE--DEBRIS REMOVAL

We will pay for expenses you incur for the removal of debris of the Covered Property, which is occasioned by a "loss" covered by this Coverage Form. This payment shall be in addition to the insurance provided under this Coverage Form, but in no event will we be liable for more than \$50,000 under this Additional Coverage in any one "loss."





## B. EXCLUSIONS

1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss":

### a. GOVERNMENTAL ACTION

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

### b. NUCLEAR HAZARD

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

### c. WAR AND MILITARY ACTION

- (1) War, including undeclared or Civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

### d. BUILDING ORDINANCE

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

### e. WATER

- (1) Water or sewage that backs up from a sewer or drain;

- (2) Water under the ground surface pressing on, or flowing, or seeping through:

- (a) Foundations, walls, floors, or paved surfaces;
- (b) Basements, whether paved or not; or
- (c) Doors, windows or other openings;

- (3) Water that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective system);

- (4) Flood, surface water, waves, tides, tidal waves, overflowing of any body of water, or their spray, all whether driven by wind or not.

But we will pay for direct "loss" caused by resulting fire, explosion or theft if these causes of loss would be covered under this Coverage Form.

This exclusion applies only to property at the described premises.

### F. EARTH MOVEMENT

Earth movement, including but not limited to: earthquake; volcanic eruption; landslide; mudflow; earth sinking, rising or shifting.

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Delay, loss or market, loss of use, loss of income or interruption of business;
- b. Unexplained disappearance;
- c. Dishonest acts by you, anyone else with an interest in the property, your or their employees or authorized representatives or anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the term of their employment. But this exclusion does not apply to a carrier for hire;
- d. Artificially generated current creating a short circuit or other electric disturbance within an article covered under this Coverage Form. But we will pay for direct "loss" caused by resulting fire or explosion, if these causes of loss would be covered under this Coverage Form. This exclusion only applies to "loss" to that article in which the disturbance occurs;

- e. Explosion, rupture or bursting of steam boilers, steam pipes, steam turbines or steam engines;
  - f. Your neglect to use all reasonable means to save and preserve the property at and after any "loss" or when the property is so endangered.
3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for the resulting "loss":
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the "loss";
  - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;
  - c. Collapse except as provided in the Additional Coverage—Collapse section of this Coverage Form.
  - d. Wear and tear, marring, denting or scratching; any quality in the property that causes it to damage or destroy itself, hidden, or latent defect, gradual deterioration, depreciation; mechanical breakdown; insects, vermin, rodents, birds or other animals; corrosion, rust, dampness or dryness, cold or heat; settling, cracking, shrinking or expansion; rain, snow, ice or sleet to property in the open;
  - e. The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Boat Dealers Coverage Form Supplemental Schedule.

#### D. DEDUCTIBLE

We will not pay for "loss" in any one occurrence until the amount of the adjusted "loss" before applying the applicable Limits of Insurance exceeds the Deductible shown in the Boat Dealers Coverage Form Supplemental Schedule. We will then pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance. If no Deductible is shown in the Boat Dealers Coverage Form Supplemental Schedule then the Deductible amount shall be 10% of the Limits of Insurance shown in the Boat Dealers Coverage Form Supplemental Schedule.

#### E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### 1. COVERAGE TERRITORY

We cover insured property while:

- a. It is located at the premises described in the Boat Dealers Coverage Form Supplemental Schedule;
- b. It is in transit to or from the premises described in the Boat Dealers Coverage Form Supplemental Schedule; or
- c. It is temporarily located elsewhere for a period not exceeding 60 days.

##### 2. COINSURANCE

All Covered Property must be insured for 100% of its total value as of the time of "loss" or you will incur a penalty.

The penalty is that we will pay only the proportion of any "loss" that the Limit of Insurance shown in the Boat Dealers Coverage Form Supplemental Schedule for all Covered Property at all locations bears to 100% of the total value of all property at all locations as of the time of "loss."

#### F. DEFINITIONS

"Loss" means accidental loss or damage.

**Exhibit - Video Tape retained in the Clerk's Office of the  
Virginia Supreme Court**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE GEORGE

RBMW, INC.,	)	
t/a JORDAN POINT YACHT HAVEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL98-050
	)	
ROBINS INSURANCE AGENCY, INC.,	)	
WILLIAM RALEIGH ROBINS, <u>et al</u>	)	
	)	
Defendants.	)	

JUDGMENT ORDER

THIS CAUSE CAME on May 1, 2000, and came the plaintiff, RBMW, INC., t/a Jordan Point Yacht Haven ("RBMW"), in person and by counsel and came the defendants, ROBINS INSURANCE AGENCY, INC., WILLIAM RALEIGH ROBINS ("Robins"), and TRANSCONTINENTAL INSURANCE COMPANY ("Transcontinental"), in person and by counsel, on Plaintiff's Motion for Judgment, and none of the parties demanded a jury for the trial of this matter, but agreeing all matters of law and fact might be heard and determined by the Court.

This case concerned storm damage to a marina owned by RBMW occurring on September 6, 1996, during Hurricane Fran. RBMW submitted a claim for this damage to its insurer, Transcontinental, which denied portions of the claim maintaining that a policy exclusion voided coverage for certain damages suffered by RBMW.

WHEREUPON a portion of plaintiff's case was presented. After this presentation of evidence counsel for RBMW and Transcontinental agreed to submit to the Judge the question of whether or not the exclusion on which Transcontinental relied in denying the claims of plaintiff

applied to this case. The evidence presented consisted of the policy of insurance in question, testimony by the president of RIBW, and a videotape showing the effects of the storm on the marina taken during the storm.

The Court has previously ruled following a hearing on May 22, 2000, that RBMW be allowed to suffer a nonsuit as to its action against WILLIAM RALEIGH ROBINS and ROBINS INSURANCE AGENCY, INC., to which WILLIAM RALEIGH ROBINS and ROBINS INSURANCE AGENCY, INC., by counsel, objected both by brief and oral argument.

UPON CONSIDERATION OF SAME for reasons set out in the record the Court finds that the exclusion relied upon by Transcontinental in its policy did not apply. The defendant, TRANSCONTINENTAL, excepted to this ruling of the Court.

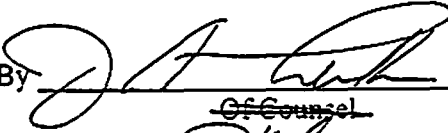

It is stipulated by RBMW and Transcontinental that the amount of damage sustained by the marina in the storm that had not been previously paid for by the defendant Transcontinental was \$111,597.55, and that is the proper judgment amount to be entered if coverage applies as the Court has ruled.

ACCORDINGLY, for all reasons stated in the record the Court finds that the exclusion contained in the Piers, Docks and Wharfs endorsement of the Transcontinental Insurance Company's policy does not apply to the damage done to Plaintiff's marina by the storm on September 6, 1996, and that the damage sustained by the plaintiff is covered by the insurance policy. The damages thereby awarded to Plaintiff are in the amount of \$111,597.55, with interest to be computed at the rate of 9% per annum from the August 1, 1998 until paid and the costs, if any, about this suit on its behalf expended.

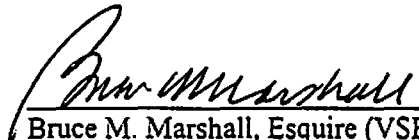
A copy of this Order is this day mailed to counsel of record.

And nothing further remaining to be done herein is ORDERED that this cause be stricken from the docket and filed among the ended causes with this Court.

ENTER: *Sept 11, 2000*

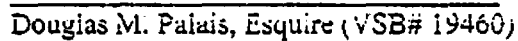
By   
~~Of Counsel~~  


I ASK FOR THIS:

  
Bruce M. Marshall, Esquire (VSB# 18093)  
DURRETTE, IRVIN & BRADSHAW, P.L.C.  
Twentieth Floor, Main Street Centre  
600 East Main Street, 20th Floor  
Richmond, Virginia 23219  
(804) 775-6900  
(804) 775-6911 (Facsimile)


SEEN AND OBJECTED TO:

See Attached

  
Douglas M. Palais, Esquire (VSB# 19460)  
Scott C. Ford, Esquire (VSB# 39078)  
MCCANDLISH KAINE & GRANT  
Post Office Box 796  
Richmond, Virginia 23218  
(804) 775-7202  
(804) 775-3816 (Facsimile)

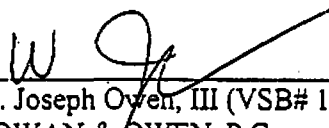
Seen and Objected to on the behalf of Robins Insurance Agency, Inc. ("Robins Insurance") and William Raleigh Robins ("Robins") as to the Court's permitting a nonsuit as to Robins Insurance and Robins for all of the reasons stated in Robins Insurance and Robin's Motion for Entry of Dismissal Order and Memorandum in Support of Motion for Entry of Dismissal Order and In Opposition to Plaintiff's Motion for Entry of Nonsuit and for those reasons stated at the May 22, 2000 hearing including, but not limited to, the following reasons:

1. Plaintiff's attempt to nonsuit Robins Insurance and Robins is in violation of Virginia Code § 8.01-380(A);
2. Plaintiff's attempt to nonsuit Robins Insurance and Robins is untimely and made after the Court reached a determination of the case on the merits;
3. Plaintiff's attempt to nonsuit Robins Insurance and Robins was untimely as plaintiff had already yielded the issues to the Court for consideration and decision.

  
\_\_\_\_\_  
Douglas M. Palais (VSB No. 19460)  
Scott C. Ford (VSB No. 39078)  
McCANDLISH KAINE & GRANT  
1111 East Main Street  
P.O. Box 796  
Richmond, Virginia 23218  
Telephone: (804) 775-3885  
Facsimile: (804) 775-3816

SEEN AND OBJECTED TO BECAUSE:

The Court was in error in ruling that the exclusion for waves, whether driven by wind or not, does not apply because the wave damage must occur at a place outside the normal boundary of the body of water. The defendant asserted that waves are excluded whether within the normal boundaries of the body of water or outside the boundaries of water and that the wave exclusion applies. The Court's ruling have been fully set forth in the record as well as the defendant's objection, all of which are incorporated into this objection, to the Court's ruling by this specific reference.



W. Joseph Owen, III (VSB# 15963)  
COWAN & OWEN, P.C.  
1930 Huguenot Road  
Post Office Box 35655  
Richmond, Virginia 23235-0655  
(804) 320-9100  
(804) 330-3140 (Facsimile)

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE GEORGE

RBMW, INC.,  
t/a Jordan Point Yacht Haven,

Plaintiff,

v.

Case No. CL98-050

ROBINS INSURANCE AGENCY, INC., et al,

Defendants.

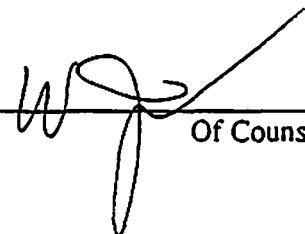
NOTICE OF FILING APPEAL AND FILING TRANSCRIPT

PLEASE TAKE NOTICE, that pursuant to Rule 5:9 of the Rules of the Virginia Supreme Court, Transcontinental Insurance Company, by counsel, does hereby give its Notice of appealing the judgment Order of the Court entered September 11, 2000.

Pursuant to Rule 5:11 Transcontinental Insurance Company, by counsel, does give further notice that on September 25, 2000, the original transcript of the trial was filed with the clerk of this Court the transcript of the trial that took place on May 1, 2000.

TRANSCONTINENTAL INSURANCE COMPANY

BY:



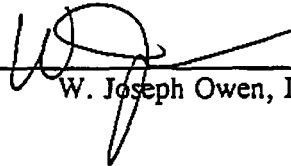
Of Counsel

W. Joseph Owen, III  
VSB# 15963  
COWAN & OWEN, P.C.  
Post Office Box 35655  
1930 Huguenot Road  
Richmond, Virginia 23235  
(804) 320-9100  
(804) 330-3140 (facsimile)

FILED  
00 SEP 25 PM 4:11  
CLERK OF THE COURT  
PRINCE GEORGE COUNTY, VA.  
BY: J. S. Smith D.C.

CERTIFICATE

I hereby certify that on the 25 day of September, 2000, a copy of the foregoing Notice of Filing Transcript was mailed, first class mail, postage prepared to Bruce M. Marshall, Esquire, DURRETTE, IRVIN & BRADSHAW, Twentieth Floor, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, counsel for the plaintiffs, and Scott C. Ford, Esquire MEZZULO & McCANDLISH, P. O. Box 796, Richmond, Virginia 23218, counsel for ROBINS INSURANCE AGENCY, INC. and William Raleigh Robins.

  
W. Joseph Owen, III

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE GEORGE COUNTY

RBMW, INC.,	)	
t/a JORDAN POINT YACHT HAVEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. CL98-050
	)	
ROBINS INSURANCE AGENCY, INC.,	)	
et al.,	)	
	)	
Defendants.	)	

ORDER

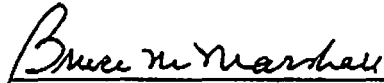
During the bench trial of this matter on May 1, 2000, a videotape showing the effects of Hurricane Fran on the marina owned by plaintiffs was viewed by the Court and all counsel. That videotape was intended to be evidentiary exhibit in the trial of this matter, to which no party posed an objection. By inadvertence, that tape was not marked as exhibit or formally received as such, however, it was evidence considered by the Court in making its findings of fact and its ultimate decision in the case, and should be part of the record in this case.

Accordingly, it is thereby ORDERED *nunc pro tunc* that the videotape accompanying the tender of this stipulated order be added into the trial record of this case, as if it were received in evidence at the time of the trial.

ENTER: 09/25/2000

  
Judge

WE ASK FOR THIS:



Bruce M. Marshall, Esquire, VSB #18093  
DURRETTE, IRVIN & BRADSHAW, P.C.  
Main Street Centre, 20th Floor  
600 East Main Street  
Richmond, Virginia 23219  
(804) 775-6900  
(804) 775-6911 Fax #

*Counsel for Plaintiff*



Douglas M. Palais, Esquire  
Scott C. Ford, Esquire VSB #39078  
MCCANDLISH KAINE & GRANT  
P.O. Box 796  
Richmond, Virginia 23218  
(804) 775-7202  
(804) 775-3816 Fax #

*Counsel for Robins Insurance Agency, Inc. and  
William Raleigh Robins*



W. Joseph Owen, III, VSB# 15963  
COWAN & OWEN, P.C.  
1930 Huguenot Road  
P.O. Box 35655  
Richmond, Virginia 23235-0655  
(804) 320-9100  
(804) 330-3140 Fax #

*Counsel for Transcontinental Insurance Company*

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### ASSIGNMENT OF ERROR

The trial court erred when it ruled that the exclusion set forth in the piers, wharfs and docks endorsement issued to the plaintiff did not apply to the damage caused by waves and the exceptional high tide which resulted from Hurricane Fran.

The trial court erred in holding that there must be a flood for the exclusion of damage caused by waves, tides, and surface water to apply and in this case there was no flood as the damage occurred over water which was within the normal boundaries of the James River.