

02-1662-CD
RICHARD D. MCCracken vs. CLFD. CO. GRANGE MUTUAL INS.

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662-CD

COMPLAINT

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

JURY TRIAL DEMANDED

FILED

OCT 23 2002

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

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: CIVIL ACTION - LAW

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: NO. 2002 -

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NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR

PHONE: 814-765-2641 Ext. 5982

CLEARFIELD COUNTY COURTHOUSE, CLEARFIELD, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Plaintiffs
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

RICHARD D. McCracken,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 2002 -
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE COMPANY,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

COMPLAINT

AND NOW, comes the Plaintiff, **RICHARD D. McCracken**, through his legal counsel, Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr and files this Complaint against the Defendant as follows:

1. Plaintiff, **RICHARD D. McCracken**, is an adult individual whose residence address is P.O. Box 281, Madera, Clearfield County, Pennsylvania, 16661.

2. Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, is a mutual insurance company domiciled, licensed, and engaged in the business of writing and issuing insurance policies in Pennsylvania which company is located at Suite 3, 1214 Old Town Road, Clearfield, Clearfield County, Pennsylvania, 16830.

3. At all times relevant hereto, Plaintiff, **RICHARD D. McCracken**, was the owner of real estate and improvements located in Bigler Township, Madera, Clearfield County, Pennsylvania.

4. On or about August 12, 1999, Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, issued Policy No. 32334 insuring Plaintiff's dwelling, garage, and household furniture against loss from fire. Plaintiff is not in possession of a copy of said policy which was, presumably, destroyed, but attached hereto as Exhibit "1" is a copy of the declaration page of said Policy as provided by the Defendant.

5. At all times relevant hereto, Policy No. 32334 issued by the Defendant was in full force and effect with all premiums due and assessed thereunder having been paid in full.

6. On or about July 4, 2002, Plaintiff's dwelling and the contents thereof were destroyed by fire.

7. Plaintiff, **RICHARD D. McCRACKEN**, notified the Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, of the loss and submitted claims for coverage under said Policy.

8. On or about August 14, 2002, at the request of the Defendant, Plaintiff provided a statement under oath to the Defendant's authorized agent, Edward J. Yocum, of E.L. Braid Claim Service, Inc.

9. For several months before the fire, **RICHARD D. McCRACKEN**, had been traveling in a camper trailer in the southwest United States but maintained his residence address as set forth above, maintained his personal property in the subject dwelling, and kept his pets at said property.

10. Approximately one month before the fire, Plaintiff, **RICHARD D. McCRACKEN**, returned to Clearfield County and was camping at a campsite owned by a family member.

11. For approximately one week prior to the subject fire, Plaintiff, **RICHARD D. McCRACKEN**, had been living in the subject dwelling during which time he reinstated electric service to the property and had rebuilt an exterior porch.

12. The cause of the fire was subsequently determined to be arson committed by an individual who had a fight with the Plaintiff on the evening of the fire and subsequently confessed to intentionally burning his home.

13. On or about August 16, 2002, Plaintiff received a letter from the Defendant's authorized agent, E.L. Braid Claim Service, Inc., a true and correct copy of which is attached hereto as Exhibit "2," informing the Plaintiff that the Defendant was denying coverage for loss of the dwelling based upon conditions/restrictions suspending coverage "... for loss occurring: (A) While the hazard is increased by

any means within the control or knowledge of the insured; (B) While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days;”

14. As per Exhibit “2,” although the Defendant denied coverage for loss of the dwelling, the Defendant requested that the Plaintiff complete an inventory of the personal property loss which the Defendant would “review and process” upon receipt.

15. On or about September 18, 2002, Plaintiff, through his legal counsel, demanded payment of the dwelling loss and submitted the completed Personal Property Inventory Schedules which had been provided to him by the Defendant. Attached hereto as Exhibit “3” and incorporated by reference herein is a true and correct copy of said letter.

16. On or about October 8, 2002, Plaintiff received a letter from Defendant’s attorney advising that Defendant was continuing to deny the claims and intended to file an action for declaratory judgment. Attached hereto as Exhibit “4” is a true and correct copy of said letter.

COUNT I
BREACH OF CONTRACT

17. Plaintiff hereby incorporates by reference as if fully set forth at length Paragraphs 1 through 16, inclusive, of this Complaint.

18. On the date of the loss, July 4, 2002, Plaintiff, **RICHARD D. McCRACKEN**, was occupying the subject property such that the conditions/restrictions asserted by the Defendant as relieving said Defendant from liability for payment of the loss have no reasonable basis in fact and no application to this claim.

19. The Plaintiff, at all times relevant hereto, fully complied with all of the terms and conditions of the Policy and all conditions precedent and subsequent in the Policy with respect to his right to recover under the Policy.

20. The Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, in breach of the insurance contract, has failed and refused to pay the Plaintiff, **RICHARD D. McCRACKEN**, the coverage due and owing under Policy No. 32334 up to the total coverage amount of \$56,000.00 together with any additional coverage for cleanup and removal of debris which sums remain due and owing.

21. Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, has informed the Plaintiff, **RICHARD D. McCRACKEN**, that the balance due to the mortgagee, County National Bank, as of the date of the loss was \$15,498.60, which sum the Defendant intended to pay directly to the mortgagee notwithstanding the denial of coverage to the Plaintiff.

22. Following payment of the mortgage balance of \$15,498.60, the Defendant owes to the Plaintiff \$24,501.40, the remaining coverage for loss of the dwelling ($\$40,000.00 - \$15,498.60 = \$24,501.40$), together with coverage on the household furniture of \$15,000.00 for a total sum of \$39,501.40 as well as any additional coverages under the Policy for clean up and debris removal and interest from August 16, 2002.

WHEREFORE, Plaintiff, **RICHARD D. McCRACKEN**, demands judgment against the Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, in the sum of \$39,501.40 together with the costs of clean up and debris removal as well as interest and costs of this action which sum is in excess of the jurisdictional limits for compulsory arbitration in the Court of Common Pleas of Clearfield County, Pennsylvania.

COUNT II
BAD FAITH

23. Plaintiff hereby incorporates by reference as if fully set forth at length Paragraphs 1 through 22, inclusive, of this Complaint.

24. As the Plaintiff's insurer, the Defendant owes fiduciary, contractual, and statutory duties toward the Plaintiff to investigate, adjust and pay his claims in good faith in a prompt, fair and equitable manner.

25. Plaintiff, at all times relevant hereto, fully complied with all of the terms and conditions of the Policy and all conditions precedent and subsequent to his right to recover benefits under the Policy.

26. The Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, had no reasonable basis upon which to assert the right to deny coverage under the Policy and knew or recklessly disregarded its lack of a reasonable basis for denying the claim such that the conduct of said Defendant is in bad faith which conduct includes, but is not limited to the following:

a. The Defendant either conducted an inadequate investigation or disregarded the investigation which it did complete which investigation should have confirmed that the Plaintiff was occupying the subject dwelling on the date of the fire such that the decision to deny coverage is without a reasonable factual foundation;

b. In interpreting the cited conditions/restrictions as applying when the property is unoccupied for a period in excess of 60 days notwithstanding that the property was occupied on the date of the loss which interpretation is clearly contrary to and an unreasonable interpretation of the Policy provision;

c. In utilizing the cited condition/restriction to deny coverage for the loss of the dwelling but requesting that the Plaintiff complete and return the Inventory Schedules so that Defendant could "review and process" the claim for contents coverage in an effort to utilize the same as a negotiating tactic in its dealings with the Plaintiff in reckless disregard of the rights of the Plaintiff and of the Defendant's covenant of good faith and fair dealing;

d. In unilaterally denying Plaintiff's claim for coverage under said Policy based upon the cited conditions/restrictions and then stating its intention to seek a declaratory judgment only after Plaintiff retained counsel to challenge the Defendant's conduct;

e. In denying coverage under said Policy when the facts referred to in the Defendant's denial of coverage fail to provide a reasonable factual foundation;

f. In failing to make a reasonable offer to pay the benefits due under said Policy notwithstanding that there is no reasonable basis for a denial of coverage;

g. In failing to objectively and fairly evaluate the Plaintiff's claim and asserting defenses without reasonable basis in fact.

27. The conduct of the Defendant, includes, without limitation, the following violations of the Pennsylvania Unfair Insurance Practices Act, 40 P.S. §1171.1 et seq:

Section 1171.5(a)(10):

(i) Misrepresenting pertinent facts or policy or contract provisions relating to coverage at issue.

(iv) Refusing to pay claims without conducting a reasonable investigation based upon all available information.

(vi) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which the company's liability under the Policy has become reasonably clear.

(vii) Compelling persons to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due and ultimately recovered in actions brought by such persons.

(viii) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

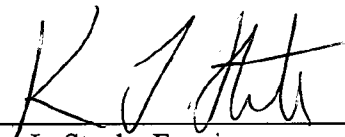
(xiii) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance.

(xiv) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

26. The conduct of the Defendant as set forth herein is in bad faith in violation of 42 Pa.C.S.A §8371 for which the Defendant is liable for interest on the claim from the date the claim was made at the rate of prime plus 3%, court costs, attorney's fees, punitive damages, and such other compensatory and/or consequential damages allowed by law.

WHEREFORE, Plaintiff, **RICHARD D. McCracken**, demands judgment against the Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, for compensatory, consequential, and punitive damages in an amount in excess of \$25,000.00, plus interest, court costs, and attorney's fees, which sum is in excess of the jurisdictional limits for compulsory arbitration in the Court of Common Pleas of Clearfield County.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By 
Karen L. Steele, Esquire
Attorney for Plaintiff
I.D. No. 32707

414 North Logan Boulevard
Altoona, PA 16602

(814) 946-4391

DATED: October 21, 2002

Clearfield County Grange Mutual Fire Insurance Company

THIS IS AN ASSESSABLE POLICY

(See Mutual Provisions Page 3)

1214 OLD TOWN ROAD - SUITE #3, CLEARFIELD, PENNSYLVANIA

Named Insured

Richard McCracken

P.O. Box 281, Madera, PA 16661

Location

Bigler Twp. - N/S Chestnut Street, 500' W of PA 53

Madera,
City or Town

Clearfield Co.,
County

PA
State

Term three Years, Inception

8/12/99

Expiration 8/12/02

Policy No. 32334

Coverage Amount \$56,000
Annual Premium \$196.00

Perils	Coverage	Amount of Insurance	Rate	Estimated annual premium
Fire, Lightning and Extended Coverage	A. Dwelling Fr., 2 story	40,000	.35	140.00
	B. Masonry Garage	1,000	.35	3.50
	C. Household furniture	15,000	.35	52.50
	D. Equipment and livestock			
	E.			
	F.			
	G.			
	H.			

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND THE PAYMENT OF ASSESSMENTS AS PROVIDED BY THE BY-LAWS AND OF the policy fee above specified, this Company, for the term of years specified above from inception date shown above At Noon (Standard Time) to expiration date shown above At Noon (Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified, does insure the insured named above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

Thomas A. Dyer

Secretary

Thomas A. Dyer

President



814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

August 16, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

RICHARD MCCRACKEN
P.O. BOX 281
MADERA PA 16661

Dear Mr. McCracken:

I write in follow up to our meeting on Wednesday August 14th, 2002 at the office of Clearfield County Grange Mutual Fire Insurance Company on Old Town Road, in Clearfield, PA.

As you know at the time of our meeting we discussed in general the insurance claims process and the facts surrounding the loss you had sustained on July 4th, 2002. Shortly thereafter, we secure the recorded statement discussing ownership and occupancy of the dwelling and your recollection of the events took place on the date of loss.

At the end of our meeting we advised that all information would be reviewed in detail and a response would be forthcoming as to coverage that would be provided.

During the course of the review and in particular the review of the recorded statement coverage issue has arisen. The question that has come to light is involving occupancy of the dwelling and the fact that you had confirmed that the property had been vacant for approximately four months just prior to the fire with no utilities connected except electricity that was re-established to the property two or three days prior to July 4th. The electric was set up in the name of your sister. You further confirmed that you and Ms. Vaux were staying at a campsite on the property owned by your father several miles away and that you had only slept in the dwelling three or four nights combined since returning from Colorado.

For your reference we enclose a copy of the recorded statement transcription.

In light of the above stated information we want to bring to your attention and refer you to a copy of the insurance policy provided for the property, which is referred to as a standard fire insurance policy in the State of Pennsylvania specifically lines twenty-five through thirty-two wherein it states:

Conditions suspending or restricting insurance unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

- A. While the hazard is increased by any means within the control or knowledge of the insured:
- B. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or.....

Based upon the facts confirmed during the course of your statement the above stated exclusionary language of the policy, we must with regret deny coverage to you for the dwelling loss above and beyond the mortgage payoff with County National Bank. Meaning, no additional funds will be provided for the structure loss once the mortgage payoff has been confirmed and the payoff processed.

You would be responsible for all costs for clean up and removal of debris including necessary permits and fees charged by the municipality or government agency involved.

In regards to the additional coverages provided under your property policy number 2334, effective 8/12/1999 through 8/12/2002 you have \$15,000.00 coverage for personal property/contents contained within the dwelling at the time of the loss. This coverage is subject to actual cash value terms and conditions all subject to a \$250.00 deductible feature. We would ask that you complete the inventory schedules given to you at the time of our meeting and return them to this writer at the above listed address. Upon receipt we will review and process the inventory but in the meantime we would request that you do not discard any of the items listed on the inventory until such time that the claim has been concluded.

Lastly, Clearfield County Grange Mutual Fire Insurance Company for the above stated reason or reasons and for other reason or reasons which may become known, notifies that the action taken by the company or its authorized representatives to investigate the cause of loss, determine the amount of loss or damage or attempt to adjust any claim arising out of the alleged loss shall not waive any of the terms or conditions of the policy of insurance described above, nor shall such action waive any of your rights under the policy. If we do not hear from you to the contrary, we will assume that it is acceptable for us to continue handling the case on these terms.

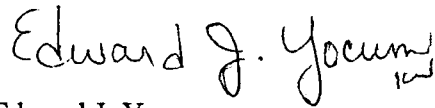
The company does not intend, by this letter, to waive any policy defenses in addition to those stated above but specifically reserves its right to assert such additional policy defenses at any time.

It is important that you have your continued cooperation in our investigation.

If you should have any additional questions please do not hesitate to contact this writer at the above listed numbers at extension 205. Otherwise, we wait your submittal of the requested documentation.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.

A handwritten signature in cursive script that reads "Edward J. Yocum". The signature is written in dark ink and is positioned above the printed name.

Edward J. Yocum

EJY/kjw

Sent Regular and Certified

CC: Clearfield Co. Grange Mutual Fire Insurance Company

CC: R. Denning Gearhart

Clearfield County Grange Mutual Fire Insurance Company

THIS IS AN ASSESSABLE POLICY

(See Mutual Provisions Page 3)

1214 OLD TOWN ROAD - SUITE #3, CLEARFIELD, PENNSYLVANIA

Named Insured

Location

City or Town **County** **State**

Term **Years, Inception** **Expiration**

Policy No.
Coverage Amount
Annual Premium

Perils	Coverage	Amount of Insurance	Rate	Estimated annual premium
Fire, Lightning and Extended Coverage	A. Dwelling	\$	\$	\$
	B.	\$	\$	\$
	C. Household furniture	\$	\$	\$
	D. Equipment and livestock	\$	\$	\$
	E.	\$	\$	\$
	F.	\$	\$	\$
	G.	\$	\$	\$
	H.	\$	\$	\$

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND THE PAYMENT OF ASSESSMENTS AS PROVIDED BY THE BY-LAWS AND OF the policy fee above specified, this Company, for the term of years specified above from inception date shown above At Noon (Standard Time) to expiration date shown above At Noon (Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified, does insure the insured named above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

..... Secretary President

STANDARD FIRE INSURANCE POLICY OF THE STATE OF PENNSYLVANIA

1 **Concealment** This entire policy shall be void if, whether
2 **fraud.** before or after a loss, the insured has wil-
3 fully concealed or misrepresented any ma-
4 terial fact or circumstance concerning this insurance or the
5 subject thereof, or the interest of the insured therein, or in case
6 of any fraud or false swearing by the insured relating thereto.
7 **Uninsurable** This policy shall not cover accounts, bills,
8 **and** currency, deeds, evidences of debt, money of
9 **excepted property.** securities; nor, unless specifically named
10 hereon in writing, bullion or manuscripts.
11 **Perils not** This Company shall not be liable for loss by
12 **included.** fire or other perils insured against in this
13 policy caused, directly or indirectly, by: (a)
14 enemy attack by armed forces, including action taken by mili-
15 tary, naval or air forces in resisting an actual or an immediately
16 impending enemy attack; (b) invasion; (c) insurrection; (d)
17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)
18 order of any civil authority except acts of destruction at the time
19 of and for the purpose of preventing the spread of fire, provided
20 that such fire did not originate from any of the perils excluded
21 by this policy; (i) neglect of the insured to use all reasonable
22 means to save and preserve the property at and after a loss, or
23 when the property is endangered by fire in neighboring prem-
24 ises; (j) nor shall this Company be liable for loss by theft.
25 **Conditions suspending or restricting insurance.** Unless other-
26 wise provided in writing added hereto this Company shall not
27 be liable for loss occurring:
28 (a) while the hazard is increased by any means within the con-
29 trol or knowledge of the insured; or
30 (b) while a described building, whether intended for occupancy
31 by owner or tenant, is vacant or unoccupied beyond a period of
32 sixty consecutive days; or
33 (c) as a result of explosion or riot, unless fire ensue, and in
34 the event for loss by fire only; or
35 **Other insurance.** Other insurance may be prohibited or the
36 amount of insurance may be limited by en-
37 dorsement attached hereto.
38 **Other perils** Any other peril to be insured against or sub-
39 **or subjects.** ject of insurance to be covered in this policy
40 shall be by endorsement in writing hereon or
41 added hereto.
42 **Added provisions.** The extent of the application of insurance
43 under this policy and of the contribution to
44 be made by this Company in case of loss, and any other pro-
45 vision or agreement not inconsistent with the provisions of this
46 policy, may be provided for in writing added hereto, but no pro-
47 vision may be waived except such as by the terms of this policy
48 is subject to change.
49 **Waiver** No permission affecting this insurance shall
50 **provisions.** exist, or waiver of any provision be valid,
51 unless granted herein or expressed in writing
52 added hereto. No provision, stipulation or forfeiture shall be
53 held to be waived by any requirement or proceeding on the part
54 of this Company relating to appraisal or to any examination
55 provided for herein.
56 **Cancellation** This policy shall be cancelled at any time
57 **of policy.** at the request of the insured, in which case
58 this Company shall, upon demand and sur-
59 render of this policy, refund the excess of paid premium above
60 the customary short rates for the expired time. This pol-
61 icy may be cancelled at any time by this Company by giving
62 to the insured a five days' written notice of cancellation with
63 or without tender of the excess of paid premium above the pro-
64 rata premium for the expired time, which excess, if not ten-
65 dered, shall be refunded on demand. Notice of cancellation shall
66 state that said excess premium (if not tendered) will be re-
67 funded on demand.
68 **Mortgagee** If loss hereunder is made payable, in whole
69 **interests and** or in part, to a designated mortgagee not
70 **obligations.** named herein as the insured, such interest in
71 this policy may be cancelled by giving to such
72 mortgagee a ten days' written notice of can-
73 cellation.
74 If the insured fails to render proof of loss such mortgagee, upon
75 notice, shall render proof of loss in the form herein specified
76 within sixty (60) days thereafter and shall be subject to the pro-
77 visions hereof relating to appraisal and time of payment and of
78 bringing suit. If this Company shall claim that no liability ex-
79 isted as to the mortgagor or owner, it shall, to the extent of pay-
80 ment of loss to the mortgagee, be subrogated to all the mort-
81 gagee's rights of recovery, but without impairing mortgagee's
82 right to sue; or it may pay off the mortgage debt and require
83 an assignment thereof and of the mortgage. Other provisions

84 relating to the interests and obligations of such mortgagee may
85 be added hereto by agreement in writing.
86 **Pro rata liability.** This Company shall not be liable for a greater
87 proportion of any loss than the amount
88 hereby insured shall bear to the whole insurance covering the
89 property against the peril involved, whether collectible or not.
90 **Requirements in** The insured shall give immediate written
91 **case loss occurs.** notice to this Company of any loss, protect
92 the property from further damage, forthwith
93 separate the damaged and undamaged personal property, put
94 it in the best possible order, furnish a complete inventory of
95 the destroyed, damaged and undamaged property, showing in
96 detail quantities, costs, actual cash value and amount of loss
97 claimed; and within sixty days after the loss, unless such time
98 is extended in writing by this Company, the insured shall render
99 to this Company a proof of loss, signed and sworn to by the
100 insured, stating the knowledge and belief of the insured as to
101 the following: the time and origin of the loss, the interest of the
102 insured and of all others in the property, the actual cash value of
103 each item thereof and the amount of loss thereto, all econo-
104 mical branches thereon, all other contracts of insurance, whether val-
105 ue or not, covering any of said property, any changes in the title,
106 use, occupation, location, possession or exposures of said prop-
107 erty since the issuing of this policy, by whom and for what
108 purpose any building herein described and the several parts
109 thereof were occupied at the time of loss and whether or not it
110 then stood on leased ground, and shall furnish a copy of all the
111 descriptions and schedules in all policies and, if required, verified
112 plans and specifications of any building, fixtures or machinery
113 destroyed or damaged. The insured, as often as may be reason-
114 ably required, shall exhibit to any person designated by this
115 Company all that remains of any property herein described, and
116 submit to examinations under oath by any person named by this
117 Company, and subscribe the same; and, as often as may be
118 reasonably required, shall produce for examination all books of
119 account, bills, invoices and other vouchers, or certified copies
120 thereof if originals be lost, at such reasonable time and place as
121 may be designated by this Company or its representative, and
122 shall permit extracts and copies thereof to be made.
123 **Appraisal.** In case the insured and this Company shall
124 fail to agree as to the actual cash value or
125 the amount of loss, then, on the written demand of either, each
126 shall select a competent and disinterested appraiser and notify
127 the other of the appraiser selected within twenty days of such
128 demand. The appraisers shall first select a competent and dis-
129 interested umpire; and failing for fifteen days to agree upon
130 such umpire, then, on request of the insured or this Company,
131 such umpire shall be selected by a judge of a court of record in
132 the state in which the property covered is located. The ap-
133 praisers shall then appraise the loss, stating separately actual
134 cash value and loss to each item; and, failing to agree, shall
135 submit their differences, only, to the umpire. An award in writ-
136 ing, so itemized, of any two when filed with this Company shall
137 determine the amount of actual cash value and loss. Each
138 appraiser shall be paid by the party selecting him and the ex-
139 penses of appraisal and umpire shall be paid by the parties
140 equally.
141 **Company's** It shall be optional with this Company to
142 **options.** take all, or any part, of the property at the
143 agreed or appraised value, and also to re-
144 pair, rebuild or replace the property destroyed or damaged with
145 other of like kind and quality within a reasonable time, on giv-
146 ing notice of its intention so to do within thirty days after the
147 receipt of the proof of loss herein required.
148 **Abandonment.** There can be no abandonment to this Com-
149 pany of any property.
150 **When loss** The amount of loss for which this Company
151 **payable.** may be liable shall be payable sixty days
152 after proof of loss, as herein provided, is
153 received by this Company and ascertainment of the loss is made
154 either by agreement between the insured and this Company ex-
155 pressed in writing or by the filing with this Company of an
156 award as herein provided.
157 **Suit.** No suit or action on this policy for the recov-
158 ery of any claim shall be sustainable in any
159 court of law or equity unless all the requirements of this policy
160 shall have been complied with, and unless commenced within
161 twelve months next after inception of the loss.
162 **Subrogation.** This Company may require from the insured
163 an assignment of all right of recovery against
164 any party for loss to the extent that payment therefore is made
165 by this Company.

MUTUAL PROVISIONS

This policy is issued by a Mutual Insurance Corporation organized and existing under the laws of the Commonwealth of Pennsylvania. All persons insuring and continuing insured by this Company shall be members thereof during the period they shall remain so insured.

The annual meeting of the members of the Company shall be held in Clearfield,

Pennsylvania or other designated place at 9:00 A.M. on the second Tuesday of March.

Assessments may be made annually or oftener, if required, provided that additional assessments in any one year shall not exceed the amount of the estimated annual premium.

Contingent Liability: At any time this Company's assets would not be equal to its unearned premium reserve and other liabilities, it (the Company) shall make an assessment upon its members (Policyholders). As a Policyholder, you are liable to contingent (possible) assessment to provide for such deficiency. Before such assessment is levied by the Company, it shall be approved by the Insurance Commissioner.

Amount of Assessments: The Company may not, in any case, assess more than twice the average annual policy cost. When the policy is cancelled prior to being in force for two years, the assessment will be limited to a prorated amount.

Time of Assessments: Procedures for collection of these possible assessments may be initiated up to two years from the date your policy is cancelled or expired. No assessment will be made for losses the Company incurs more than two years prior to the date of the initiation of the assessment procedure.

Non-Applicability of Assessment Provisions: Nothing in these provisions applies to annual or semi-annual (whichever is applicable) assessments made by the Company, whether it be on the anniversary date of the contract, on a common assessment date or at time of cancellation of this contract.

DEDUCTIBLE CLAUSE

The sum of \$250 shall be deducted from the amount of loss to all property covered hereunder in any one occurrence resulting from the perils insured against, except, if this policy covers more than one building or structure this deductible shall apply separately to the amount of loss to each building or structure including property appertaining thereto covered hereunder.

EXTENDED COVERAGE CLAUSE

Perils of Windstorm, Hail, Explosion, Riot, Riot attending a strike, Civil Commotion, Aircraft, Vehicles, Smoke, Except as hereinafter provided.

Subject to provisions and stipulations (hereinafter referred to as "provisions") herein and in the policy to which this Endorsement is attached, including endorsements thereon, the coverage of this policy is extended to include direct loss by Windstorm, Hail, Explosion, Riot, Riot Attending a Strike, Civil Commotion, Aircraft, Vehicles and Smoke.

This endorsement does not increase the amount or amounts of insurance provided in the policy to which it is attached.

If this policy covers two or more items, the provisions of this Endorsement shall apply to each item separately.

SUBSTITUTION OF TERMS: In the application of the provisions of this policy, including endorsements (but not this Endorsement), to the perils insured against by this Extended Coverage Endorsement, wherever the word "fire" appears there shall be substituted therefor the peril involved or the loss caused thereby, as the case requires.

AFFORTIONMENT CLAUSE: This company shall not be liable for a greater proportion of any loss less the amount of deductible, if any, from any peril or perils included in this Endorsement than (1) the amount of insurance under this policy bears to the whole amount of fire insurance covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not, and whether or not such other fire insurance covers against the additional peril or perils insured hereunder, (2) nor for a greater proportion of any loss less the amount of deductible, if any, than the amount hereby insured bears to all insurance whether collectible or not, covering in any manner such loss, or which would have covered such loss except for the existence of this insurance; except if any type of insurance other than fire extended to cover additional perils or windstorm insurance applies to any loss to which this insurance also applies, or would have applied to any such loss except for the existence of this insurance, the limit of liability of each type of insurance for such loss, hereby designated as "joint loss," shall first be determined as if it were the only insurance and this type of insurance shall be liable for no greater proportion of joint loss than the limit of its liability for such loss bears to the sum of all such limits. The liability of this company (under this Endorsement) for such joint loss shall be limited to its proportionate part of the aggregate limit of this and all other insurance of the same type. The words "joint loss," as used in the foregoing, mean that portion of the loss in excess of the highest deductible, if any, to which this Endorsement and other types of insurance above referred to both apply.

WAR RISK EXCLUSION CLAUSE: This company shall not be liable for loss caused directly or indirectly by (a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (1) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (2) by military, naval or air forces; or (3) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion, or use of any weapon of war employing atomic fission or radioactive force shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (b) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.

WAIVER OF POLICY PROVISIONS: A claim for loss from perils included in this Endorsement shall not be barred because of change of occupancy, nor because of vacancy or unoccupancy, except as herein before provided.

PROVISIONS APPLICABLE ONLY TO WINDSTORM AND HAIL: This company shall not be liable (1) for loss caused directly or indirectly by (a) frost or cold weather, or (b) ice (other than hail), sleet, snowstorm, waves, tide, tidal wave, high water, overflow of streams or bodies of water, or spray therefrom, all whether driven by wind or not; (2) for loss to the interior of the building(s) or the property covered therein caused by rain, snow, sand or dust, whether driven by wind or not, unless the building(s) covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then shall be liable for loss to the interior of the building(s) or the property covered therein as may be caused by rain, snow, sand or dust entering the building(s) through openings in the roof or walls made by direct action of wind or hail; (3) for loss to lawns, trees, shrubs and plants, or to out door radio and television antennas and aerials including their lead-in wiring, masts and towers; or (4) for loss by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail.

PROVISIONS REFERRED TO IN AND MADE PART OF THIS CLAUSE

Unless liability therefor is specifically assumed by endorsement to this Extended Coverage Endorsement, this company shall not be liable for damage to the following property; (a) grain, hay, straw or other crops outside of building, or (b) windmills, windpumps or their towers, or (c) crop silos (or their contents).

PROVISIONS APPLICABLE ONLY TO EXPLOSION: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. However, this company shall not be liable for loss by explosion, rupture or bursting of:

- (a) steam boilers, steam pipes, steam turbines or steam engines; or
- (b) rotating parts of machinery caused by centrifugal force; if owned by, leased by or actually operated under the control of the insured.

The following are not explosions within the intent or meaning of these provisions:

- (a) Concussion unless caused by explosion,
- (b) Electrical arcing,
- (c) Water hammer,
- (d) Rupture or bursting of water pipes.

Any other explosion clause made a part of this policy is superseded by this Endorsement.

PROVISIONS APPLICABLE ONLY TO RIOT, RIOT ATTENDING A STRIKE AND CIVIL COMMOTION:

Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or tenant(s) of the described building(s) while occupied by said striking employees and shall also include direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion. Unless specifically endorsed herein in writing this Company shall not be liable, however, for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

PROVISIONS APPLICABLE ONLY TO LOSS BY AIRCRAFT AND VEHICLES The term "vehicles," as used in this Endorsement, means vehicles running on land or tracks but not aircraft. Loss by aircraft or by vehicles shall include only direct loss resulting from actual physical contact of an aircraft or a vehicle with the property covered hereunder or with the building containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom. This company shall not be liable, however, for loss, (a) by any vehicle owned or operated by the insured or by any tenant of the described premises; (b) by any vehicle to fences, driveways, walks or lawns; (c) to any aircraft or vehicle including contents thereof other than stocks of aircraft or vehicles in process of manufacture or for sale.

PROVISIONS APPLICABLE ONLY TO SMOKE: The term "smoke," as used in this Endorsement, means only smoke due to a sudden, unusual and faulty operation of any heating or cooking unit, only when such unit is connected to a chimney by a smoke pipe or by a vent, and while in or on the premises described in this policy, except, however, smoke from fireplaces or industrial apparatus.

Assignment of This Policy Shall Not Be Valid
Except with the Written Consent of This Company

ASSIGNMENT OF POLICY

Upon Actual Sale or Transfer of Title

AN ACTUAL SALE and change of title to the property herein described having taken place, FOR VALUE RECEIVED, ... hereby transfer, assign and set over unto address and assigns, all right, title and interest in this Policy of Insurance, and all benefits and advantages to be derived therefrom; subject, nevertheless, to all terms and conditions therein mentioned and referred to.

WITNESS hand, this day of, 19.....

..... Insured under this policy

Approved, ..., 19.....

..... Secretary

No.....

In communicating with the Company give number of Policy

**Clearfield County
Grange Mutual Fire
Insurance Co.**

Office: 1214 Old Town Rd., Suite #3
Clearfield, PA 16830

To

Amount \$

Annual

Premium, \$

Begins

19.....

Expires

**THIS IS AN
ASSESSABLE POLICY**

Board No. 5105
JULIUS ROSENBERG, INC.
NYC 10013
© 10% P.C.W.

EXHIBIT 3

GOLDSTEIN, HESLOP, STEELE, CLAPPER, OSWALT & STOEHR

ATTORNEYS AT LAW

TERRY M. GOLDSTEIN
JOHN W. HESLOP, JR.
KAREN L. STEELE *
LARRY C. CLAPPER
W. LEE OSWALT, III
DOUGLAS V. STOEHR
MICHAEL J. ADAMS

* CERTIFIED AS A CIVIL TRIAL
ADVOCATE BY THE NATIONAL
BOARD OF TRIAL ADVOCACY

414 N. LOGAN BOULEVARD
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EMANUEL S. LEOPOLD (1906-1996)
BERTRAM B. LEOPOLD (1940-1987)

TYRONE OFFICE
3 EAST TENTH STREET
TYRONE, PA 16688
(814) 684-9457
FAX (814) 684-9459

September 18, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward J. Yocum
E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Clearfield County Grange Mutual Fire Ins. Co.
1214 Old Town Road, Suite 3
Clearfield, PA 16830

Re:	Our Client:	Richard McCracken
	Your Insured:	Richard McCracken
	D/L:	7/04/02
	Policy No:	32334
	Your File No:	J 2291
	Our File No:	14312

Dear Mr. Yocum:

This office has been retained by and will represent your insured, Richard McCracken, regarding the above fire loss. Please direct all future contact regarding this claim to me.

I have reviewed your letter of August 16, 2002, in which you deny coverage for the dwelling loss based upon an alleged violation of policy conditions yet request continuing proof of loss with respect to the personal property/contents insured under the same policy. I have also reviewed the transcript of the recorded statement which you took of Mr. McCracken on or about August 14, 2002. Finally, I have completed my own investigation of certain facts existing as of the date of loss.

It is my opinion that there is no reasonable factual basis for the denial of coverage and that Clearfield County Grange Mutual Fire Insurance Company's decision to do so is in bad faith. The interpretation of the standard policy condition as set forth in your letter of August 16, 2002, completely ignores the clear language of the standard policy condition which requires that the loss must occur while the hazard is increased or while the building is vacant. Because there is absolutely no dispute that Mr. McCracken was occupying the property as of the date of loss, this condition has no application to this claim. Mr. McCracken's statement clearly provides none and a simple telephone call to his neighbors, some of whom I believe you have already interviewed, will confirm that the insured property was occupied by Mr. McCracken at the time of the loss. Although Mr. McCracken was out of state for some time prior to the loss looking for employment, he had returned home before

Edward J. Yocum
Page 2
September 10, 2002

the fire. According to his next door neighbors, Ken Long and Kathie Long, Mr. McCracken had been living in the property for at least one week prior to the fire. He was building a new porch on the property and the electricity had been turned on several days before the fire occurred.

With respect to a suspension of coverage based upon a loss occurring while a hazard is increased, your letter of August 16, 2002, fails to make reference to any facts whatsoever in support of this assertion. To the contrary, as you know, the cause of the loss was arson. I cannot conceive of any facts which would support a position that, under these circumstances, Mr. McCracken's conduct knowingly increased the hazard at the time of the loss.

As per your request, I am enclosing herein copies of the Personal Property Inventory Schedule which Mr. McCracken has completed and signed. The replacement cost of several items is confirmed by separate documentation. There are at least two items which are not included in the inventory pending location of receipts and/or additional information regarding value. These items include a Chevy engine which Mr. McCracken was rebuilding and for which he had already incurred machine shop expenses of approximately \$650.00. The other item is a large, professional Husqvarna chainsaw. By my calculations, the replacement cost of the items inventoried totals \$32,938.00.

We are awaiting receipt of an estimate for the cleanup of the property and removal of debris which I will submit under separate cover. I am assuming that the policy provides for payment of the same. Please provide a complete copy of the actual policy as issued to Mr. McCracken.

Because the denial of coverage is so completely without reasonable foundation that Mr. McCracken should never have been required to consult counsel to obtain what is owed to him under the policy, I am hereby demanding that Clearfield County Grange Mutual Fire Insurance Company reimburse counsel fees to date of \$1,000.00 in addition to accepting liability for payment on the loss of the dwelling up to the policy limit after deducting the mortgage payoff and the policy limit on the contents after applying the deductible. Additionally, as you know, any delay in payment beyond 60 days results in the insured being entitled to interest.

I am sure you are aware of Mr. McCracken's personal circumstances, including his unemployment and financial hardships. The receipt of your letter informing him that Clearfield County Grange Mutual Fire Insurance Company was not going to pay his claim for the loss of his house was devastating to him. Nevertheless, Mr. McCracken simply desires to obtain reimbursement for his losses much more than a lawsuit. Therefore, if Clearfield County Grange Mutual Fire Insurance Company is willing to resolve this matter on the terms set forth above, Mr. McCracken remains willing to release Clearfield County Grange Mutual Fire Insurance Company from any additional liability, including any possible bad faith claim. If not, I will be most happy to represent Mr. McCracken in pursuing claims against Clearfield County Grange Mutual Fire Insurance Company for the contract damages as well as a claim for punitive damages, interest, and all counsel fees incurred as a result of the bad faith conduct in attempting to take advantage of Mr. McCracken's relative unsophistication regarding the processing of his insurance claim.

Edward J. Yocum
Page 3
September 10, 2002

I have diaried my file for ten (10) days and would appreciate the receipt of a response within that period.

Sincerely,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR



Karen L. Steele

KLS/dab

Enclosure

cc: Mr. Richard McCracken

bcc: Beverly Huff

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl sales tax)	Office Use Only			
			New	Used		Depreciation	A. C. V.		
1	Craftsman socket set 3/4 drive	7yr	✓		199	49			
1	3/4 in drive Ingersoll-Rand Impact wrench - Air	1yr	✓		345	00			
1	Grandfather curio clock	3 1/4 yr	✓		3,720	00			
1	Whirlpool 6 cycles washer	3yr	✓		339	00			
1	Whirlpool refrigerator	7yr		✓	190	00			
1	Sears deep freezer	9yr		✓	150	00			
#	~~Various tools & equipment~~	4yr	✓		~~899~~	89			
1	2 1/2 ton cylinder typ truck	3yr	✓		45	00			
1	Spray paint gun for cars	2yr	✓		45	00			
1	General Electric stove	3yr	✓		749	00			
1	General Electric Dryer	5yr	✓		300	00			
3	Phones all had caller I.D. around \$50 ea pc.	4yr	✓		150	00			

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Michael J. C. C. C.

Insured Signature: _____

Personal Property Inventory Schedule

Date of Loss:

Page:

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. Y.
1	Couch	4 yrs	✓		405.00		
1	Rocker + Swivel Chair	4 1/2 yrs	✓		115.00		
1	21"th TV 48 inch screen P.C. Pic Sound. Sound.	4 1/2 yrs	✓		1899.99		
1	Mac-11 Semi Automatic Hand Gun	3 yr	✓		350.00		
	OLD Coins			✓	125.00		
2	OLD Fishing Reels 1-2 Piece Spin Rod 1850's 1-3 Piece octagon Fly Rod 70's			✓	255.00		
1	Silverware + utensils	3 yrs	✓		100.00		
1	35 mm Camera	1 year	✓		89.00		
1	Wittbeach	2 yrs	✓		50.00		
1	set of Whites	2 yrs	✓		85.00		
1	Punching Bag	4 yr	✓		45.00		
1	Queen Size Water Bed	2 yrs		✓	120.00		
1	Vacuum Cleaner (Electrolux Canister)	4 yrs	✓		110.00		
2	Shop Vac's 1 Regal 30.00 1 15 gal 30.00	3 yrs	✓		60.00		
	Set of 10 Childrens Movies Famil Feather	3 yrs	✓		85.00		
1	Box Fan	2 yrs	✓		15.00		
	Collection of Play Boy Magz's 70's 90's 80's 2000		✓	✓	100.00		
	Blankets / sheets / Comforters / Pillows	4 yrs	✓		700.00		
	Curtains and Blinds	3 1/2 yrs	✓		470.00		
	Pioneer 3 disc AM-FM Cassett	2 yrs	✓		400.00		
	C.D's around 45	2 yrs	✓		585.00		
Totals					7613.00		

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Insured Signature Richard M. V. Tschu

Insured Signature _____

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
	Ski do winter Coat	4 yrs	✓		350.00		
	Levis Jacket	4 yrs	✓		80.00		
	Addidas Coat	2 yrs	✓		90.00		
4	Addidas Shirts 20.00 Each	1 yr	✓		80.00		
5	Nickie Shirts 38.00 Each	2 1/2	✓		140.00		
	Addidas Hood	1 yr	✓		45.00		
3	Nickies Silk Shirts 48.00 Each	2 yrs	✓		144.00		
2	Nickie Hood's 50.00 Each	1 yr	✓		100.00		
2	Addidas Hats 20.00 Each	1 1/2	✓		40.00		
1	Dackers Lamb Coat	1 yr	✓		330.00		
10	Levis Pants 44.00 Each	1 yr	✓		240.00		
4	A.P.C. Co. Pants 40.00 Each	1 yr	✓		160.00		
1	Heatseek Orange Hunting Suit	1 1/2	✓		154.00		
1	Cachet Coat	3 yr	✓		96.00		
1	Geaactech Coat	2 yr	✓		219.00		
1	Danner Boots	1 yr	✓		237.00		
1	Game Hide Hunting Vest	1 yr	✓		32.00		
3	Hacley Shirts 30.00 Each	1 1/2	✓		90.00		
	Ammo (12 gauge 20 gauge 270 gauge 282 gauge 28 gauge 24 gauge)	2 yr	✓		100.00		
9	Wranglers Pants 15.00 Each	4 yrs	✓		135.00		
4	FTD Underwear	6 mo	✓		20.00		
Totals					2082.00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEPRAND ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITTS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard A. Leach

Insured Signature _____

Personal Property Inventory Schedule

Date of Loss:

Page:

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
1	Sears / Craftsman - molder - Plane 12"	3 1/2	✓		600.00		
1	Craftsman 10" Table Saw	3 1/2	✓		700.00		
1	Huskmawana Production Chain Saw	7 yr	✓				
1	DeWalt Combo Sawsall / Neill Battery Pack	2 yr	✓		385.00		
1	Milwaukee Hand Grinder	1 yr	✓		100.00		
1	Wood Estate	2 yr	✓		100.00		
1	Black and Decker Jig Saw	3 yrs	✓		35.00		
1	Black and Decker Router	5 yrs	✓		70.00		
1	Black and Decker Body Grinder	5 yrs	✓		89.00		
1	Set of Cutting Tools	5 yrs	✓	✓	200.00		
2	Tool Belts Leather	1 yr	✓		40.00		
1	Climbing Hooks and Belt and Safety Strap	2 yr	✓		570.00		
1	Vice			✓	40.00		
1	Ammo Box Winchester	3 yr	✓		25.00		
	Mistalinos Nutis Bolts nails screws ~~knives~~						
	Washers exc.	4 yrs	✓		130.00		
	Cable Prep Tools	2 yrs	✓		90.00		
1	Elec. Meter for washer.	3 yrs	✓		30.00		
1	Dish metalwork. Satalite and Montior	3 yrs	✓		150.00		
	Oak Lumber for Wood Shop	1 yr	✓		100.00		
	Garbard Cove Hall's	8 mo	✓		97.00		
Totals					3471.00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard M. C. C.

Insured Signature

Page: 2

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement		Office Use Only	
			New	Used	Cost (incl. sales tax)	Depreciation	A. C. V.	
	Antiques Items							
1	Large Oak Roll Top Desk			✓	1175	00		
8	Kerosene Lamps (Avg Price 17.00)			✓	136	00		
1	Water Fall Desk Kneeshole			✓	60	00		
1	Fancy Walnut Dresser, Carved Bases, Queen Ann legs, Refinished + upholster Victorian style.			✓	185	00		
1	Walnut Chair New upholstered			✓	45	00		
	Matching set of Oak bedroom Dresser + wash stand Plain feet lots of Ginger Bread org. Patina			✓	Ores 582 750 Wash Stan 400	00		
1	Oak Dresser Wardrobe Combo w/Beeled Glass mirror w/org. Skillion Key			✓	800	00		
1	Oak Dresser Flat Drawers w/Fancy Finger Beam Beeled Glass Mirror			✓	575	00		
1	Victorian End Table Hand Painted Green			✓	10	00		
1	Wall Mirror			✓	35	00		
1	Kalmazoo 1922 British Enamel Apt size Kitchen Cook Stove			✓	600	00		
1	Starwar 1 AT-AT Starwars Spaceship Dalcin				Acob's Cars 1900	00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL, THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard J. E. Sullivan

Insured Signature

Personal Property Inventory Schedule

Date of Loss:

Page: 1

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
	<i>Antiques Items</i>						
1	Cast Iron Bug Boat Tack		✓		50.00		
1	Walnut China Cabinet Buffet		✓		780.00		
1	Clawfoot Mahogany End Table		✓		80.00		
1	Clawfoot Mahogany Coffee Table		✓		60.00		
1	1930's Eico Glass Feather Chandelier		✓		300.00		
1	Wheat Designed Lead Stained Glass Cathedral Chandelier		✓		325.00		
1	Two Man Saw		✓		110.00		
3	Hand made Patch Quilts (avg price)		✓		10500.00		
1	Fancy Oak Side Board		✓		1485.00		
1	Antique Oak Seating		✓		1800.00		
1	Walnut Gurgyle Small Table		✓		325.00		
1	Fancy Carved Oak Parlor Table		✓		275.00		
1	Oak Beveled Glass Mirror Comb Case		✓		125.00		
1	Fancy oak + Plaster Picture of Old Lady		✓		165.00		
1	Charcoal sketched (size 18 x 24)		✓		95.00		
1	Cold Plaster Coated Wood Frame + Picture		✓		504.00		
4	Flow Blue Dinner Plates (121.00 Each)		✓		80.00		
2	Phoenix Bird Dinner Plates (40.00 Each)		✓		35.00		
1	Phoenix Bird Tea Pot		✓		35.00		
1	Coal Bolt Blue Oil Lamp		✓		7529.00		
Totals							

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITTS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard Whitlock

Insured Signature _____

3/26/2002
5:13 PM

REX TV

PAGE: 1

INSURANCE ESTIMATES

REX TV - ALTOONA
415 K ORCHARD AVE.
ALTOONA, PA 16601
(814) 942-2600

SALESMAN 5026 - DAVID GEISLER JR

THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE

SKU Number	Qty	Suggested Retail	Extended Retail
50PP9202	1	1,899.99	1,899.99
		Total ---->	1,899.99

* * * DISCLAIMER * * *

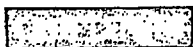
Suggested retail (Price) subject to change. Price good up to 15 days from date of this document.
Sales tax not included. Quote does not constitute a sales agreement or contract. Price subject to
available quantities at the time of purchase. Terms and conditions on back of invoice.

MAKES ANYTHING POSSIBLE

customer service where to buy request a catalog  view sears.com cart home

keyword

Product Summary



 View larger image
Product images may differ from
actual product appearance.

Craftsman 16 pc. Socket Set, 12 pt.

16 pc. socket wrench set in blow molded case.
Fourteen 12 pt. sockets (7/8, 15/16, 1, 1-1/16, 1-1/8, 1-1/4, 1-3/4, 1-5/16, 1-3/8, 1-7/16, 1-1/2, 1-5/8, and 1-7/8 in).

Plus quick release ratchet and 8 in. extension bar.
Guaranteed forever.

[See Detailed Product Specifications](#)

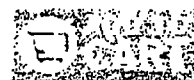
Availability & Options

- Typically ships within 3-5 business days. Calculate arrival time and shipping cost. [Learn more about our shipping methods and policies.](#)
- This item is Store Pick-up Eligible. About Store Pick-up. To find a store near you, enter a Zip code below:

Enter ZIP Code:

Price:

\$199.99



- Only \$10 per month on your Sears Card™.
- Learn more about the Sears Card™.

Learn More

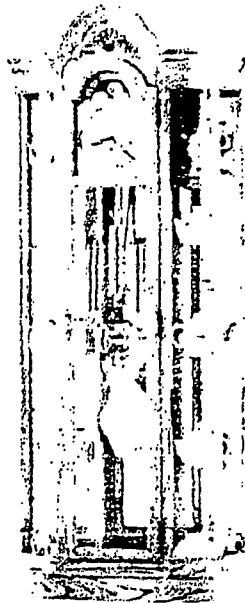
- [See detailed product specifications.](#)
- [If you would like any applicable Warranty information, please click here.](#)
- [For research and advice about this item see our Buying Guide](#)
- [See other Craftsman Three-Quarter Inch Drive Sockets & Ratchets like this one](#)
- [Satisfaction guaranteed, or your money back. Learn about our return policy.](#)

Sears Item #00946304000
Mfr. Model #46304

Not all products are available in every Sears store.
Online prices and promotions are for the continental
U.S. only.



- This curio floor clock features full length curved glass to further enhance your collectibles.
 - An embossed shell and floral design delicately accents the arched bonnet.
 - An astrological, blue moon phase accents the polished brass dial which offers a silver chapter ring and etched corner spandrels and center disc.
 - Eight glass shelves and two base shelves are illuminated by two lights.
 - Beveled glass appears on the lower door.
 - Polished brass lyre pendulum features a decorative center disc.
 - Finished in Golden Oak on select hardwoods and veneers.
 - Free brass heirloom plate. Engraved with your family name and a special date.
 - Illuminated case or dial.
 - Locking door.
 - Cable-driven, triple chime Kieninger movement with chime silence option.
-
- Height: 85" (216 cm)
 - Width: 36" (91 cm)
 - Depth: 14" (36 cm)



Availability: Usually ships in 3-4 business days.

610745 Regularly: \$3,720.00

R. Denning Gearhart

Attorney & Counselor at Law

215 E. Locust Street
Clearfield, PA 16830

814-765-1581

(fax) 814-765-6745
<http://www.dgearhartpalaw.com>

October 8, 2002

Karen I. Steele, Esquire
GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602-1749

RE:	Your Client:	Richard McCracken
	My Client:	Clearfield County Grange Mutual Fire Insurance Company
	Date of Loss:	July 4, 2002
	Policy No.:	32334
	Your File No.:	14312

Dear Ms. Steele:

Please be advised that I am the attorney for Clearfield County Grange Mutual Fire Insurance Company. As such, I was given a letter dated September 18, 2002 sent to Ed Yocum of EL Braid Claim Service, Inc. regarding the above.

I understand the claims made in your letter, though I disagree with them. This situation, and your client, can lead reasonable minds to believe that Mr. McCracken has forfeited his coverage because, under a lease, the property lay vacant for a period in excess of the contracted sixty days. Your claim that he had moved back into the premises is simply not supported by the facts.

Grange Mutual Insurance intends to meet their legal obligations. It does not feel that this legal obligation includes an obligation to cover your client's alleged loss due to the July 4, 2002 fire. In any event, they have authorized me to file an action for declaratory relief, asking that the court in Clearfield County decide that they do not need to cover your client's loss. If we are wrong, and the court rules otherwise, Grange Mutual will not act in bad faith and will provide the coverage, however, they are entitled to a finding that they are responsible and they are entitled to be heard on their arguments that they are not.

I am drafting the Complaint for Declaratory Relief. I expect to have it done the week of October 7-11th. I will send a courtesy copy of the Complaint, which I will serve on your client.

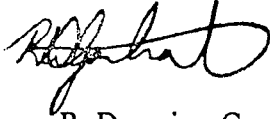
Karen L. Steel, Esquire

Page 2

October 8, 2002

I look forward to working with you on this case.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Denning Gearhart". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

R. Denning Gearhart

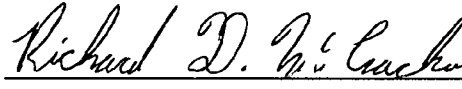
RDG/jam

cc: Randall Guthrie, Grange Mutual Fire Insurance
Ed Yocum, E.L. Braid Claims Service

V:\02FILES\GRANGEMU.INS\GR-MCCRA.RIC\CORRESPO\STEELE.KAR\10062002.WPD

VERIFICATION OF INDIVIDUAL/S

I, **RICHARD D. McCracken**, hereby certify that I have read the foregoing Complaint. The averments of fact made therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to penalty of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Richard D. McCracken

Dated: 10/21/02

FILED

OCT 11:04 AM
OCT 23 2002

William A. Shaw
Prothonotary

Atty ad.

80.00

1 cc ~~Shes~~
~~Shes~~
~~Shes~~
~~Shes~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCracken,	:	
Plaintiff	:	
VS.	:	NO. 2002-1662-CD
	:	
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE	:	
COMPANY,	:	
Defendant	:	

CASE NUMBER: 2002-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO COUNTERCLAIM and NEW MATTER

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

DEC 13 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCracken,

Plaintiff

VS.

NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE

MUTUAL FIRE INSURANCE

COMPANY,

Defendant

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

:
:
:
:
:
:
:
:
:

No. 2002-1662-CD

ANSWER TO COUNTERCLAIM

AND NOW COMES the Defendant, Clearfield County Grange Mutual Fire Insurance Company, by and through their attorney, R. Denning Gearhart, who Answers the Complaint filed in the above-captioned as follows:

1. Denied. Plaintiff's Averment is not within the knowledge of the Defendant, and therefore no answer is required and strict proof is required at trial.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied for reasons set forth in the Answer below and also for reasons set forth in the averments stated in Defendant's New Matter. Summarizing, however, Defendant believes, and therefore answers and avers in its New Matter that the Plaintiff has breached, and continues to breach the Policy in question, therefore rendering coverage under the policy non-existent, or the Plaintiff's entitlement to recovery under that policy canceled. Plaintiff had vacated the premises for a period in excess of four months, while the policy in question provided that coverage shall be suspended when the described building is vacant for more than

sixty (60) days. Further, Defendant hindered the investigation of the arson, by actions including, but not limited to, advising a suspect to refrain from talking to the State Police Fire Marshall.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. Plaintiff's Averment is not within the knowledge of the Defendant, and therefore no answer is required and strict proof is required at trial.

10. Denied. Plaintiff's Averment is not within the knowledge of the Defendant, and therefore no answer is required and strict proof is required at trial.

11. Denied. Plaintiff's Averment is not within the knowledge of the Defendant, and therefore no answer is required and strict proof is required at trial. Further, in his statement given to Edward J. Yocum, Plaintiff indicated that he had not been living in the dwelling, had the electric service installed in his sister's name, did not have any other utilities installed, and was, in fact, remodeling the premises for purposes of renting them to a third person – that person being Pamela Vaux, the person now accused of burning and destroying the premises.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

COUNT I
BREACH OF CONTRACT

17. No answer required.

18. The Plaintiff's occupation of the premises is denied in that Averment contradicts the statement given to Edward Yocum, the agent of the Defendant.

19. Admitted that the Defendant has refused to pay the Plaintiff. Otherwise, Defendant believes, and therefore answers and avers in its New Matter that the Plaintiff has breached, and continues to breach the Policy in question, therefore rendering coverage under the policy non-existent, or the Plaintiff's entitlement to recovery under that policy canceled. After investigation, Defendant reasonably concluded (and continues to believe) that Plaintiff had vacated the premises for a period in excess of four months, while the policy in question provided that coverage shall be suspended when the described building is vacant for more than sixty (60) days. Further Defendant hindered the investigation of the arson, by actions including, but not limited to, advising a suspect to refrain from talking to the State Police Fire Marshall.

20. Admitted that the Defendant has not paid the Plaintiff, but denied, for reasons set forth above, that it is in breach of the terms contract.

21. Admitted.

22. Denied that the Defendant owes the Plaintiff anything.

COUNT II
BAD FAITH

23. No answer required.

24. Admitted.

25. Denied. Defendant believes, and therefore answers and avers in its New Matter that the Plaintiff has breached, and continues to breach the Policy in question, therefore rendering coverage under the policy non-existent, or the Plaintiff's entitlement to recovery under that policy canceled. After investigation, Defendant reasonably concluded (and continues to believe) that Plaintiff had vacated the premises for a period in excess of four months, while the policy in question provided that coverage shall be suspended when the described building is vacant for more than sixty (60) days. Further Defendant hindered the investigation of the arson, by actions including, but not limited to, advising a suspect to refrain from talking to the State Police Fire Marshall.

26. Denied for all other reasons set forth herein and also set forth in the Complaint for Declaratory Judgment attached as Defendant's Exhibit A. In way of further answer, Defendant did conduct a thorough and complete investigation. As a result of that thorough and complete investigation, Defendant reasonably believes, and has reasonably concluded that the Plaintiff has breached, and continues to breach the Policy in question, therefore rendering coverage under the policy non-existent, or the Plaintiff's entitlement to recovery under that policy canceled. After investigation, Defendant reasonably concluded (and continues to believe) that Plaintiff had vacated the premises for a period in excess of four months, while the policy in question provided that coverage shall be suspended when the described building is vacant for more than sixty (60) days. Further Defendant hindered the investigation of the arson, by actions including, but not limited to, advising a suspect to refrain from talking to the State Police Fire Marshall.

27. Denied that the Defendant violated the Pennsylvania Unfair Insurance Practices Act, specifically as follows:

i) Denied that any pertinent facts or policy was misrepresented.

iv) Denied that it did not conduct a reasonable investigation.

vi) Denied that it did not attempt in good faith to effectuate a prompt, fair and equitable settlement. The facts of the case make it clear that any offer to settle or to pay anything would have been improper under the facts of the case.

vii) Denied for reasons that the Defendant had good reason to deny the Plaintiff's claim.

viii) Denied in that Defendant had a good reason to deny the Plaintiff's claim.

xiii) Denied in that Defendant had a good reason to deny the Plaintiff's claim.

iv) Denied. Defendant put forth a full explanation for the basis of the denial of the Plaintiff's claim.

28. Denied that Defendant violated any laws of the Commonwealth and is therefore liable for any expenses and costs.

NEW MATTER

29. Paragraphs 1 through 28 of the Plaintiff's Complaint and of the Defendant's Answers hereto are hereby incorporated as if fully averred herein.

30. Plaintiff had abandoned the premises on or about February, 2002, when he left the area to avoid criminal prosecution and/or other legal obligations. At that time, he began

to travel in a camper together with Pamela Vaux who apparently is/was his girlfriend.

31. They returned to the Clearfield County, Pennsylvania, area on or about June, 2002.

32. At that time he began to live in a camper on the grounds owned by his father, Dick McCracken. While during that period (between his return to the area after his 4-month hiatus and the date of the fire) he did occasionally enter the premises in question, and did have the electricity turned on under his sister's name, he did not bother to turn on any other utilities, was not able to get any other utility coverage, and while he may have stayed under the roof of the premises for a day or two, he did not take steps to move back to the premises.

33. That the Plaintiff has stated that his intention was to remodel the premises for purposes of renting it to his girlfriend Pamela Vaux so that she could receive public subsidies through the Commonwealth of Pennsylvania, and/or the United States of America, Department of Housing and Urban Development.

34. That on or about July 4, 2002, he did have a disagreement with Pamela Vaux who proceeded to destroy the premises in question through arson.

35. Since that time, the parties have reconciled to the extent that Pamela Vaux provides Plaintiff with transportation, including providing him with transportation to make his recorded statement to Edward Yocum of E.L. Braid Claims Service, Inc., acting as the Defendant's agent at the Defendant's office. Further, the Plaintiff advised Pamela Vaux against speaking to Tpr. Michael McCracken, P.S.P., in his capacity as Fire Marshall investigating the incident in question.

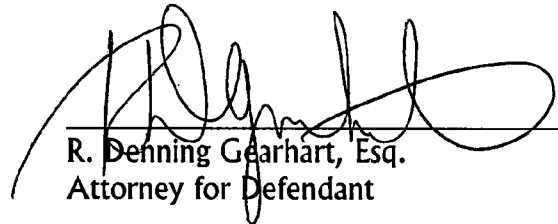
36. That because of the facts set forth above, as explained in the statement given to Edward Yocum, the agent of the Defendant, a copy of that statement being attached to Exhibit A, the Defendant denied coverage.

37. The Defendant further advised counsel for Plaintiff that they were denying coverage and indicated they were seeking guidance from the Court, through a Complaint for Declaratory Judgment, on whether or not coverage should be provided.

38. In so doing, the Defendant was acting to enforce its rights and asking for a judicial determination as to whether or not it was responsible to the Plaintiff.

WHEREFORE Defendant prays Your Honorable Court to enter judgment for Defendant and against Plaintiff.

Respectfully submitted,



R. Denning Gearhart, Esq.
Attorney for Defendant

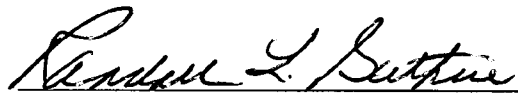
V:\KAR\GRANGEAN.WPD

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF CLEARFIELD :

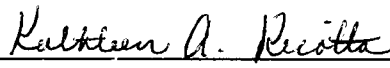
Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared RANDALL L. GUTHRIE, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Answer to Counterclaim and New Matter are true and correct to the best of his knowledge, information and belief.


RANDALL L. GUTHRIE

Sworn to and subscribed

before me, this 12

day of December, 2002.


Notary Public

NOTARIAL SEAL
KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires June 7, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,
Plaintiff

VS.

RICHARD D. McCRACKEN,
ALLSTATE INSURANCE CO.,
Defendants

NO. 02-1687 -CD

CASE NUMBER: 02- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT FOR DECLARATORY JUDGMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,
Plaintiff

VS.

RICHARD D. McCRACKEN,
ALLSTATE INSURANCE CO.,
Defendants

:
:
:
NO. 02- -CD
:
:
:
:

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,
Plaintiff

VS.

RICHARD D. McCRACKEN,
ALLSTATE INSURANCE CO.,
Defendants

:
:
:
: NO. 02- -CD
:
:
:
:

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Clearfield County Grange Mutual Fire Insurance Company, by and through its attorney, R. Denning Gearhart, who petitions your Honorable Court for declaratory judgment and relief, and in support thereof avers as follows:

1. Plaintiff is an insurance company, providing insurance coverage providing insurance protection from casualty, fire, liability claims. Their principal office is at 1214 Old Town Road, Suite 3, Clearfield, PA 16830.

2. Defendant, Richard D. McCracken is an adult individual who is believed to have an address of P.O. Box 281, Madera, Clearfield County, Pennsylvania 16661. He is, and has been at all times relevant to this action, the titled owner to a piece of real estate located in Bigler Township, Clearfield County.

3. The Defendant had contracted with the Plaintiff for insurance protection against several occurrences, including fire damage. A copy of that insurance contract is attached as Exhibit A.

4. That on July 4, 2002 the above-referenced premises was destroyed by fire, causing certain damage (an exact description which is not relevant here) to property – real and personal – titled in the name of the Defendant.

5. That absent extenuating circumstances, the premises and the loss thereto, would be covered by the insurance policy referenced in Exhibit A.

6. However, there are extenuating circumstances, which are described below, which Plaintiff argues absolves it from any responsibility under said policy.

7. The cause of the fire has been ruled arson, with the primary suspect being the Defendant's girlfriend, Pamela Vaux. Said policy provides as follows: "Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring:...(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days."

8. That on August 14, 2002, the Defendant did give a statement to Ed Yocum of E.L. Braid Claims Services, a copy of which is attached as Exhibit B. On page 10 of said statement stated that, because of a pending incarceration, he left for the State of Arizona and then Colorado, where he resided.

9. That the Defendant therefore was out of the state from February, 2002, and continued until he returned to the Commonwealth of Pennsylvania on or "at least a month, month and maybe a couple weeks" (page 10 - Exhibit 'B') before the fire. That upon his return, he states that he and his girlfriend did reside in a camper upon his father's property.

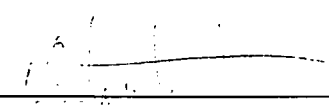
10. He advises that while all the utilities had been shut off, he did make arrangements shortly before the fire to have the electric turned on, with the bill coming under his sister's name.

11. Then on pages 12 and 13, he indicates that he was in the process of making the premises habitable, with his intention to rent it ostensibly to his girlfriend, Pamela Vaux, with her receiving funds from the U.S. Department of Housing and Urban Development. That while he states that he did reside at the premises for three or four nights, such is not enough to establish residency in the premises and the premises remained vacant.

12. Because of said vacancy, the Plaintiff is not responsible to the Defendant for the damages done on July 4, 2002.

WHEREFORE, Plaintiff prays your Honorable Court to find that they are not responsible under the terms of the policy, dated August 12, 1999, and can deny the claim of the Defendant.

Respectfully submitted,



R. Denning Gearhart, Esquire

COMMONWEALTH OF PENNSYLVANIA

:

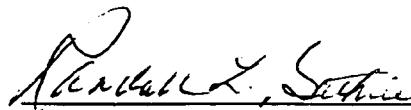
: SS:

COUNTY OF CLEARFIELD

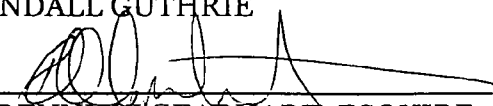
:

AFFIDAVIT

Before me, the undersigned officer, personally appeared, RANDALL GUTHRIE and R. DENNING GEARHART, ESQUIRE who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information, and belief.



RANDALL GUTHRIE

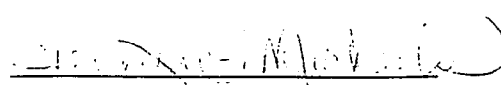


R. DENNING GEARHART, ESQUIRE

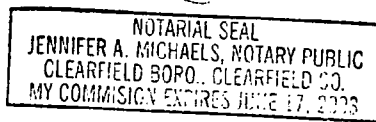
Sworn to and subscribed

before me this 24th day

of July 2, 2002.



Notary Public



DIRECTIONS TO LOCATE PROPERTY:

N. 5th & Clearfield St.
500' West of R. 53

INSTRUCTIONS TO AGENTS

Read Carefully

Where there is more than one building insured,
 draw a sketch showing distance from one building to the
 other



QUESTIONS TO BE ANSWERED BY AGENTS

1. Have you insured the property on which insurance is asked? Yes
2. If not, on what if you have your approval? _____
3. Is it in bad repair for any cause? No
4. Are valuations fair or excessive? fair
5. Has any other company rejected it? No
6. If so, why? _____
7. Are all the facts material to the case made known? Yes
8. Do you fully understand the risk? Yes
9. Are all the answers of the applicant correct as far as you can discern? Yes

Address _____

No applicant will be accepted unless the above questions are answered and signed by the Agent.

No. 32334

APPLICATION OF

Richard J. Pickett

P. O. Box 281

Madison, Pa. 17441

- 10 -

**Clearfield County Grange
Mutual Fire Insurance Co.**

Amount \$ 50,000

Premiums \$ 3. 196.00

Begin Aug 12, 1999
 Expires Aug 12, 2002

Policy to be sent to _____

P. O. _____

Agent J. Pickett (L.A.S.)

U. S. Form No. 2 Rev. (10-57)

7/2
7/4/02
7/5/02

FIRE

DBJ

Clearfield County Grange Mutual Fire Insurance Company.

THIS IS AN ASSESSABLE POLICY

(See Mutual Provisions Page 3)

1214 OLD TOWN ROAD - SUITE #3, CLEARFIELD, PENNSYLVANIA

1
1

20

Policy No.

Coverage Amount

Annual
Premium

City or Town

County

State

Years, Inception

Expiration

Perils	Coverage	Amount of Insurance	Rate	Estimated annual premium
Lightning and vandalism	A. Dwelling	\$	\$	\$
	B.	\$	\$	\$
	C. Household furniture	\$	\$	\$
	D. Equipment and livestock	\$	\$	\$
	E.	\$	\$	\$
	F.	\$	\$	\$
	G.	\$	\$	\$
	H.	\$	\$	\$

CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO
THE PAYMENT OF ASSESSMENTS AS PROVIDED BY THE BY-LAWS AND OF the policy fee above specified, this Company, for the
years specified above from inception date shown above At Noon (Standard Time) to expiration date shown above At Noon (Standard
at location of property involved, to an amount not exceeding the amount(s) above specified, does insure the insured named above and legal
representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to
replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased
repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting
interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE,
THUNDER AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT
HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five
each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy,
t elsewhere.

ment of this policy shall not be valid except with the written consent of this Company.

policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part
policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned
a duly authorized Agent of this Company at the agency hereinbefore mentioned.

Secretary

President

MUTUAL PROVISIONS

policy is issued by a Mutual Insurance Corporation organized and existing under the laws of the Commonwealth of Pennsylvania. All persons insuring and being insured by this Company shall be members thereof during the period of their insurance. The annual meeting of the members of the Company shall be held in Clearfield.

Pennsylvania or other designated place at 9:00 A.M. on the second Tuesday of March.

Assessments may be made annually or oftener, if required, provided that additional assessments in any one year shall not exceed the amount of the estimated annual premium.

ingent Liability: At any time this Company's assets would not be equal to its unearned premium reserve and other liabilities, it (the Company) make an assessment upon its members (Policyholders). As a Policyholder, you are liable to contingent (possible) assessment to provide for such ency. Before such assessment is levied by the Company, it shall be approved by the Insurance Commissioner.

Limit of Assessments: The Company may not, in any case, assess more than twice the average annual policy cost. When the policy is cancelled or being in force for two years, the assessment will be limited to a prorated amount.

Assessments: Procedures for collection of these possible assessments may be initiated up to two years from the date your policy is cancelled or terminated. No assessment will be made for losses the Company incurs more than two years prior to the date of the initiation of the assessment procedure.

Applicability of Assessment Provisions: Nothing in these provisions applies to annual or semi-annual (whichever is applicable) assessments by the Company, whether it be on the anniversary date of the contract, on a common assessment date or at time of cancellation of this contract.

DEDUCTIBLE CLAUSE

The sum of \$250 shall be deducted from the amount of loss to all property covered hereunder in any one occurrence resulting from the perils insured against, except, if this policy covers more than one building or structure this deductible shall apply separately to the amount of loss to each building or structure including property appertaining thereto covered hereunder.

EXTENDED COVERAGE CLAUSE

of Windstorm, Hail, Explosion, Riot, Riot attending a strike, Civil Commotion, Aircraft, Vehicles, Smoke, Except as hereinafter provided.

ject to provisions and stipulations (hereinafter referred to as "provisions") and in the policy to which this Endorsement is attached, including endorsement thereon, the coverage of this policy is extended to include direct loss by storm, hail, explosion, riot, riot attending a strike, civil commotion, riot, Vehicles and Smoke.

endorsement does not increase the amount or amounts of insurance provided in the policy to which it is attached.

if this policy covers on two or more items, the provisions of this Endorsement apply to each item separately.

EXTENSION OF TERMS: In the application of the provisions of this policy, including endorsements (but not this Endorsement), to the perils insured against by Extended Coverage Endorsement, wherever the word "fire" appears there is substituted therefor the peril involved or the loss caused thereby, as the requires.

PORTIONMENT CLAUSE: This company shall not be liable for a greater portion of any loss less the amount of deductible, if any, from any peril or included in this Endorsement than (1) the amount of insurance under this policy bears to the whole amount of fire insurance covering the property, or which it have covered the property except for the existence of this insurance, whether collectible or not, and whether or not such other fire insurance covers against the same peril or perils insured hereunder, (2) nor for a greater proportion of any loss less the amount of deductible, if any, than the amount hereby insured under all insurance whether collectible or not, covering in any manner such loss, which would have covered such loss except for the existence of this insurance; and if any type of insurance other than fire extended to cover additional perils insured hereunder, or if any loss to which this insurance also applies, or if any insurance other than fire insurance applies to any such loss except for the existence of this insurance, then the proportion of any such loss to which this insurance applies shall be the proportion of liability of each type of insurance for such loss, hereby designated as "joint loss," shall first be determined as if it were the only insurance and this type of insurance shall be liable for no greater proportion of joint loss than the limit of liability for such loss bears to the sum of all such limits. The liability of this insurance (under this Endorsement) for such joint loss shall be limited to its proportionate part of the aggregate limit of this and all other insurance of the same type. The words "joint loss," as used in the foregoing, mean that portion of the loss in any one occurrence of the highest deductible, if any, to which this Endorsement and other types of insurance above referred to both apply.

[illegible]

WAIVER OF POLICY PROVISIONS: A claim for loss from perils included in a policy shall not be barred because of change of occupancy, nor because of vacancy or unoccupancy, except as herein before provided.

PROVISIONS APPLICABLE ONLY TO WINDSTORM AND HAIL. This company shall not be liable (1) for loss caused directly or indirectly by (a) frost or cold weather, or (b) ice (other than hail), sleet, snowstorm, waves, tides, tidal waves, high water, overflow of streams or bodies of water, or spray therefrom, all whether driven by wind or not; (2) for loss to the interior of the building(s) or the property covered therein caused by rain, snow, sand or dust, whether driven by wind or not, unless the building(s) covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then shall be liable for loss to the interior of the building(s) or the property covered therein as may be caused by rain, snow, sand or dust entering the building(s) through openings in the roof or walls made by direct action of wind or hail; (3) for loss to lawns, trees, shrubs and plants, or to out door radio and television antennas and aerials including their lead-in wires, masts and towers; or (4) for loss by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail.

PROVISIONS REFERRED TO IN AND MADE PART OF THIS CLAUSE

Unless liability therefor is specifically assumed by endorsement to this Extended Coverage Endorsement, this company shall not be liable for damage to the following property: (a) grain, hay, straw or other crops outside of building, or (b) windmills, windmowers or their towers, or (c) crop silos (or their contents).

PROVISIONS APPLICABLE ONLY TO EXPLOSION: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. However, this company shall not be liable for loss by explosion, rupture or bursting of:

- (b) rotating parts of machinery caused by centrifugal force; if owned by, leased by or actually operated under the control of the insured.

The following are not explosions within the intent or meaning of these provisions:

(a) Concussion unless caused by explosion,

- (b) Electrical arcing.
- (c) Water hammer.
- (d) Rupture or bursting of water pipes.

Any other explosion clause made a part of this policy is superseded by this Endorsement.

Endorsement.
PROVISIONS APPLICABLE ONLY TO RIOT, RIOT ATTENDING A STRIKE
AND CIVIL COMMOTION:

AND CIVIL COMMOPTION:
Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or tenant(s) of the described building(s) while occupied by said striking employees and shall also include direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion. Unless specifically endorsed hereon in writing this Company shall not be liable, however, for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

PROVISIONS APPLICABLE ONLY TO LOSS BY AIRCRAFT AND VEHICLES
The Term "vehicles," as used in this Endorsement, means vehicles running on land or tracts but not aircraft. Loss by aircraft or by vehicles shall include only direct loss resulting from actual physical contact of an aircraft or a vehicle with the property covered hereunder or with the building containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom. This company shall not be liable, however, for loss, (a) by any vehicle owned or operated by the insured or by any tenant of the described premises; (b) by any vehicle to fences, driveways, walks or lawns; (c) to any aircraft or vehicles including contents thereof other than stocks of aircraft or vehicles in process of manufacture or for sale.

PROVISIONS AFFICABLE ONLY TO SMOKE: The term "smoke," as used in this Endorsement, means only smoke due to a sudden, unusual and faulty operation of any heating or cooking unit, only when such unit is connected to a chimney by a smoke pipe or by a vent, and while in or on the premises described in this policy, excluding, however, smoke from fireplaces or industrial apparatus.

Assignment of This Policy Shall Not Be Valid
Except with the Written Consent of This Company

ASSIGNMENT OF POLICY

Upon Actual Sale or Transfer of Title

AN ACTUAL SALE and change of title to the property herein described having taken place, FOR VALUE RECEIVED, ... hereby transfer, assign and set over unto
..... and assigns, all
..... right, title and interest in this Policy of Insurance, and all benefits and advantages to be derived therefrom;
..... nevertheless, to all terms and conditions therein mentioned and referred to.

WITNESS hand, this day of, 19.....

.....
Insured under this policy

.....
proved, ..., 19.....

..... Secretary

No.

In communicating with the Company give number of Policy

**Clearfield County
Grange Mutual Fire
Insurance Co.**

Office: 1214 Old Town Rd., Suite #3
Clearfield, PA 16830

To

Amount \$

Annual
Premium, \$

Begins

19.....

Expires

**THIS IS AN
ASSESSABLE POLICY**

This is Ed Yocum taking the recorded statement of Richard Duane McCracken at the office of Clearfield County Grange Mutual Insurance Company located along Old Town Road in Clearfield, PA. This statement is being recorded on Wednesday, August 14, 2002 at approximately 4:30pm and concerns a fire at the McCracken residence taking place on July 4, 2002.

QUESTION: Um, Mr. McCracken, do you realize I'm recording this statement?

ANSWER: Yeh

QUESTION: And, may I have your permission to record this statement?

ANSWER: Yeh

QUESTION: Could you state your full name for me please?

ANSWER: Richard Duane McCracken

QUESTION: And, your age and date of birth.

ANSWER: Uh, it's 5/3/74. I'm 28

QUESTION: Social Security number, if you know it.

ANSWER: Uh, 199-60-8041

QUESTION: Married or Single

ANSWER: Single

QUESTION: Currently employed?

ANSWER: No

QUESTION: What type of work do you do?

ANSWER: Uh, construction

QUESTION: When's the last time that you were gainfully employed by anyone in particular?

ANSWER: Uh,

QUESTION: Approximately

ANSWER: It'd been last summer up till probably October.

QUESTION: And, who were you working for then?

ANSWER: Uh, Dana Catalone

QUESTION: Out of Weedville, is that right?

ANSWER: Yeh

QUESTION: What is your current, where are you currently residing at? I know, I know the fire took place at your residence and that's been destroyed by fire, not occupiable. Um, where are you staying at now?

ANSWER: Um, three people's houses.

QUESTION: Allright, so you're just, uh, moving amongst friends and family?

ANSWER: Yeh

QUESTION: Okay. What is a number that you can be at currently?

ANSWER: Uh

QUESTION: A telephone number

ANSWER: Probably Ken Long's. It's, uh, 378-6284, I think the number is.

QUESTION: And, he was the next-door neighbor to the home.

ANSWER: Yeh

QUESTION: Okay. Well, we're today taking your statement... we've had a lengthy discussion prior to taking this statement about what we need to do here today. And, there was, um, some concern on your part because of what had happened in this, uh, scenario of the fire and a girlfriend being alleged to have been the party involved. And, I say alleged because she's not being convicted in a court setting or, uh, charges been filed that she, um, confessed it. I believe she has talked to the State Police and has confessed to the, the fire. But, again, we're going to say alleged until that has all been

ANSWER: Okay

QUESTION: concreted down I should say. Um, her name is Pamela Vaux,

ANSWER: Yeh

QUESTION: is that correct? How long have you been, um, dating or, um, been associated with Pamela?

ANSWER: Uh, probably, oh, around October or September last year.

QUESTION: Of 2001?

ANSWER: Yeh

QUESTION: So, we're looking at maybe six months to eight months somewhere in that vicinity, maybe a little longer?

ANSWER: I thought it was around nine or ten, I'm not real

QUESTION: Goinn'

ANSWER: sure

QUESTION: on a year maybe now, I guess.

ANSWER: Pretty close,

QUESTION: Okay

ANSWER: probably

QUESTION: Um, how old is Pamela, approximately?

ANSWER: Forty-two or Forty-three

QUESTION: Is she

ANSWER: Born in 59

QUESTION: Okay. Is she currently employed?

ANSWER: Yeh, she just started in a week or two ago.

QUESTION: Where at is it she works?

ANSWER: Snow Shoe Truckstop

QUESTION: Okay. Where is she currently residing?

ANSWER: At her parents

QUESTION: Okay. Where do they live?

ANSWER: Kylertown

QUESTION: Okay. Is there a number that she can be reached at?

ANSWER: Uh

QUESTION: If you know it.

ANSWER: Uh, 345-

QUESTION: Um, hum

ANSWER: 6892

QUESTION: I'd like to, first, cover, um, a little history of the home itself and then we'll go into information about the fire and, and what's taken place since then.

ANSWER: Okay

QUESTION: Um, could you tell me, first, um, approximately how long ago you bought it and what arrangements were made when you purchased it.

ANSWER: Uh, I'm not sure what year it was. It was four to five years ago. I'm not sure what year. Think it was around May, I'm not, four to five years ago.

QUESTION: Okay

ANSWER: And, uh, me and my neighbor bought it.

QUESTION: And that's Ken Long.

ANSWER: Yeh, me and Ken Long bought it at an auction. We were gonna fix it up to sell it and make a profit. But, uh, at the time I was stayin', think I was around 21 - 22 somewhere in there, and I was livin' with my dad in Brisbin. And, I just knew it was time to, you know, get out on my own and the bank gave me a first-time homeowners thing. And, uh, the monthly payment was pretty cheep, so I just talked to Ken and, you know, bought him out and kept the place for myself.

QUESTION: What was the purchase price, when you got it from the auction, approximately?

ANSWER: \$18,000.00

QUESTION: Okay. But, after you bought it, you and Ken were fixing it up. Uh, I think you associated with Ken because you worked together at one time.

ANSWER: Yeh

QUESTION: Is that right?

ANSWER: Yeh

QUESTION: Is that how you, you came about to be partners in buying the home?

ANSWER: Yeh

QUESTION: Okay

ANSWER: Yeh, we was workin' together

QUESTION: Um, after you bought it, do you have any idea approximately how much money you put into the renovations, or maybe you could tell me what type of work and improvements you made to the property.

ANSWER: Yeh, I'm not real sure on even what stuff costs. This stuff, you know, now. But, uh, when we bought it had not bathroom in it. And, uh, I did all the plumbing work, you know, just like right where it comes through the foundation couple inches. I tapped onto that, cause he only had cold water goin' to the, I think, to the furnace and up to the kitchen. And, uh, I'd put all new plumbing onto the copper in there and.

QUESTION: So, you really, really plumbed the house?

ANSWER: Yeh, I did. There was no plumbing at all in it.

QUESTION: One bathroom and, then uh

ANSWER: Yeh, one bathroom

QUESTION: kitchen appliances, kitchen sink and things like that?

ANSWER: Yeh, yeh, it had a brand new kitchen. I bought all the cabinets and stuff down here at Lezzer's and, uh, you know, put a bathroom in and then me and Ken, we put that, uh, three ton air air conditioner in there.

QUESTION: Central air

ANSWER: Central air

QUESTION: What type of heat source did you have?

ANSWER: Uh, coal. It was a boiler

QUESTION: It was there when you bought the home?

ANSWER: Yeh

QUESTION: Um, you put a new kitchen in, put a bathroom in, um, what other type of renovations did you make to it?

ANSWER: Um, it was all that lath and plaster. And, uh, I dry walled the whole downstairs, the stairway, the hallway upstairs and a bedroom and a half. And, there was two other bedrooms, you know, that weren't, you know, just left alone. Oh, and the bathroom was all new drywall.

QUESTION: And, painting of course.

ANSWER: Yeh, painting and

QUESTION: Carpeting

ANSWER: Yeh, in all the whole down, well no not the whole downstairs, the living room and the I don't know what other room you'd call it with them stairs in it.

QUESTION: Okay

ANSWER: And, carpeting up the stairs and in that hallway upstairs and one bedroom had carpeting in it.

QUESTION: What about the roof or outside work. Did you put windows, siding, anything like that to it?

ANSWER: Uh, no, no siding yet. Uh, the windows I just had to replace, you know, some, glass. They were just them single panes.

QUESTION: What about the roof?

ANSWER: Uh

QUESTION: Do you know how old it was, or

ANSWER: No, huh, uh. No

QUESTION: Shingles or rolled roofing.

ANSWER: No, it's shingles

QUESTION: Shingles

ANSWER: Yeh

QUESTION: Okay. You didn't ren, you didn't change that or upgrade that at all?

ANSWER: No, huh,uh

QUESTION: Okay

ANSWER: I'm lucky. I almost did this year.

QUESTION: Did you have to put a septic system in then, or

ANSWER: Uh

QUESTION: was there one there

ANSWER: Uh

QUESTION: that

ANSWER: Yeh, there's one there

QUESTION: Okay. So, you just tied into it

ANSWER: Yeh

QUESTION: for the new bathroom

ANSWER: Yeh. Well, there was one toilet in the basement in the corner and there's a toilet there today. I left one in there. And, I sawed the floor across and then run a pipe up the one wall. It's, that's where my drains was.

QUESTION: Okay. Any idea, approximately maybe in so far as costs or money that you invested into the home you and Ken after you bought it. You have any idea

ANSWER: Oh

QUESTION: how much you

ANSWER: I had, like, I had a, you know, alota papers and stuff on all the stuff I got from Lezzer's. And, uh,

QUESTION: Ever take time to add that up to see what kind of money you had in it?

ANSWER: No, I never, never did.

QUESTION: What was the arrangements when you, um, I take it you did all this work and then before you were ready to rent it you decided, then, that you were going to occupy it as your own place.

ANSWER: Uh, no, me and Ken had it and, uh, we were just we haven't done nothin' to it. We just started puttin' the central air in, cause that's what he does for a living. And, we were just startin' that. That was our first project, then. And, that's when I, you know, made him an offer on, you know, just, you know

QUESTION: What was the cost for you to purchase it now?

ANSWER: Uh, At the auction, we had to go \$900.00 apiece. And, then, whatever the, the, uh, air conditioner and stuff was, which I'm not even sure. I'd have to ask him.

QUESTION: So, you wrote him, you paid him back \$900.00, plus whatever the cost of the air conditioning unit was?

ANSWER: Yeh

QUESTION: Maybe some little miscellaneous money probably too?

ANSWER: Yeh,

QUESTION: Okay

ANSWER: and then, uh, the rest of it I just, you know, put into it myself.

QUESTION: Did you do most of that work, then, yourself, or?

ANSWER: Yeh, except the carpeting.

QUESTION: Okay. Who did the carpeting for ya?

ANSWER: Uh, Lowes

QUESTION: Okay

ANSWER: Out of State College. And, then, I don't have this guy's name or number anymore, uh, but I, when I hung all the drywall, I had a guy from Sandy Ridge come up and he did all the muddin' and then did the

QUESTION: Sprial, swirled ceilings

ANSWER: Yeh, yeh, he did that stuff.

QUESTION: Okay

ANSWER: I can get his name, you know, I can, you know, give it to you, cause he

QUESTION: Okay. Now, you, then, took occupancy and you lived there.

ANSWER: Yeh

QUESTION: Up until when did you live there before you ventured out west for a little while? Did you live there continuously through that period of time, or

ANSWER: Um, there was four months a couple years ago that I didn't live there. That I moved to Kentucky for a while. And, then, uh,

QUESTION: Did anyone live in the home during that time?

ANSWER: No, huh, uh. No, that's when I boarded it all up. And, then, well, I never took the boards off. I just stayed the next couple years. And, then, uh, it was the end of February or beginning of March is when I went out west and

QUESTION: Of this year, current year, 2002?

ANSWER: Yeh, I guess, guess so.

QUESTION: And you'd be just this, this year

ANSWER: Yeh

QUESTION: Okay.

ANSWER: Yeh. And, uh, was out there till, I think we spent four months out there

QUESTION: And, I believe, you told me before we took this statement that yourself, your father, and his name is

ANSWER: Uh, Dick McCracken

QUESTION: Dick McCracken and Pamela.

ANSWER: Yeh

QUESTION: The three of you went out west.

ANSWER: Yeh

QUESTION: And, I'm not gonna go into a lot of history. But, uh, somethings that prompted you to go out there was you had uh, uh, you were caught driving with a suspended license from a previous DUI and you failed to attend a court

ANSWER: Yeh, show up at the hearing

QUESTION: hearing.

ANSWER: Yeh

QUESTION: Thinking that, well, this, you weren't gonna deal with that then. You decided to go out west. We'll leave it at that.

ANSWER: Okay

QUESTION: Is that correct, though?

ANSWER: Yeh

QUESTION: Okay. So, you went out there trying to find work.

ANSWER: Yeh

QUESTION: Um, you were first in Arizona

ANSWER: Yeh, Arizona

QUESTION: Nothing panned out there

ANSWER: No, huh, uh. No, we was there for about three months and then moved to Colorado Springs

QUESTION: And, you had family or some relationship out there that

ANSWER: Yeh, a great aunt. And, uh, we stayed in her front yard. She had some hookups for a trailer. And, we stayed there for about a month. And, nothin' panned out there and, then, decided to come home cause couldn't afford it out there and

QUESTION: Do you know what date you returned back to home?

ANSWER: No, huh, uh, I can't even remember

QUESTION: How long before the 4th of July? Was it a week, or days, months?

ANSWER: It woulda been at least a month, month and maybe a couple weeks.

QUESTION: Okay. When you came back and the month or several weeks before the fire, where did you stay, then?

ANSWER: Uh, we stayed out at, uh, around Kerrmore, Gasam, out there at that property. Uh, it's like a campin' spot there.

QUESTION: Okay. Who owns that land or property?

ANSWER: Uh, my dad does.

QUESTION: Okay. Cause, I think, you said Pamela's family or someone had a motor home. Is that what you lived in out there?

ANSWER: Yeh, yeh. The first week we had a tent and then, uh, we left it set up. Used it for like storage and we, you know, just moved into her camper, her mother's camper and, uh, we were there somewhere around a month. And, you know, we started doin' a little bit a, well not very much, but a little bit of work to the house to try to get it, you know, presentable or whatever for rentin'. It needed a front porch and I started puttin' the front porch on it. That's about all the farther I go right there.

QUESTION: Okay. So, let me try to clarify some things.

ANSWER: Okay

QUESTION: When you went out west, for the approximately four months,

ANSWER: Yeh

QUESTION: and came back home to the local vicinity of Madera

ANSWER: Yeh

QUESTION: let's say. The home was boarded up, power, utilities, all shut off

ANSWER: Yeh

QUESTION: Allright.

ANSWER: Yep

QUESTION: Um, no one was in the home staying at all. There was nobody in the property.

ANSWER: No, huh, uh

QUESTION: Okay. When you moved back here, temporarily set up living arrangements at the, with the, campground space that's, um, you dad's.

ANSWER: Yeh

QUESTION: And, where in the process of making some repairs or renovations to the house to get it ready to live back into, um, now, we, we talked about, and there's nothing illegal about what you were intending to do,

ANSWER: Yeh

QUESTION: But, um, because you and Pamela aren't married and not related by blood, you were going to fix it up and actually rent it to her through what program?

ANSWER: Uh, I was lookin' into that HUD

QUESTION: HUD.

ANSWER: Yeh

QUESTION: So, she could get subsidized for, um, HUD approval and you'd be able to rent it, make the payment and, and

ANSWER: Yeh

QUESTION: work it out there. Would you have stayed there, as well, probably?

ANSWER: Uh, no

QUESTION: You would of stayed at the campground or would, do you know where you would have stayed if she would have rented the property.

ANSWER: Uh, no not really, you know.

QUESTION: You didn't have any arrangements made.

ANSWER: No, huh, uh. Cause, I mean, I'd just started workin' on the house, you know, getting' it

QUESTION: really processed with HUD or anything like that yet?

ANSWER: No, huh, uh. I just got paperwork on what specs a home should be.

QUESTION: Um, hum

ANSWER: And, I just, just started and I knew it would take me a while, cause, you know, with no money it's, you know, it's. So, I just started into it and, you know, never really planned yet where I was gonna stay.

QUESTION: Okay

ANSWER: You know I

QUESTION: Was there any, um, utilities hooked back up when you moved back to the house? Or, when you came back west from the west and, and the actual house that burned down. Did any of the, where any of the utilities connected back up.

ANSWER: Uh, the electric, is that what

QUESTION: Electric

ANSWER: Yeh, just

QUESTION: or water

ANSWER: Yeh, water I haven't had there for quite a while and, uh, for because of a back bill. But, the electric I got turned on through my sister's name. She called and had it hooked up.

QUESTION: Okay. Other than that, that's the only utilities it would be?

ANSWER: Yeh

QUESTION: Cause you had coal, coal furnace

ANSWER: Yeh

QUESTION: Okay. Uh, any telephone hookup there?

ANSWER: Yeh, there's a telephone hookup, but it wasn't hooked up

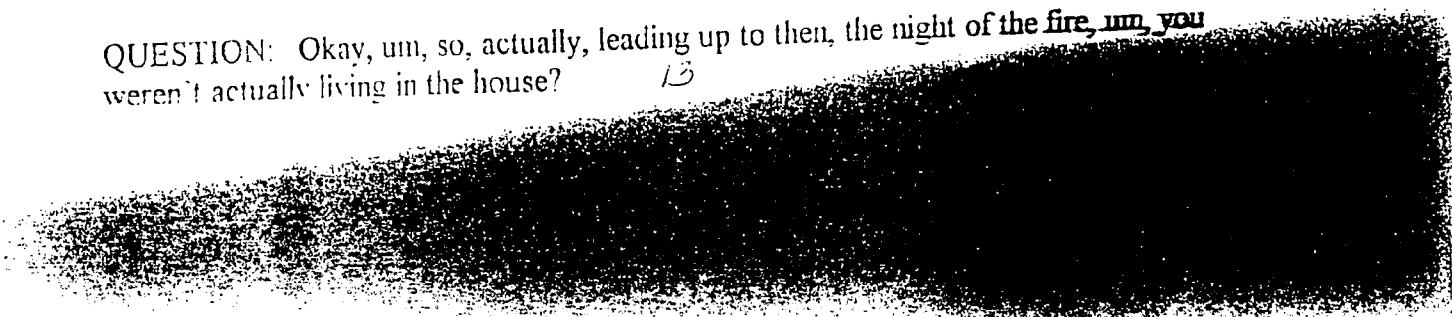
QUESTION: Right, you didn't have the connection,

ANSWER: No

QUESTION: there's no phone number to the home.

ANSWER: No, I just

QUESTION: Okay, um, so, actually, leading up to then, the night of the fire, um, you weren't actually living in the house? 13



ANSWER: Uh, we did stay there probably two to three nights, you know, right before the 4th of July.

QUESTION: Hum, hum

ANSWER: You know, cause we're still at that campsite and, you know, it's getting' a little old.

QUESTION: Right

ANSWER: Cause we was in a camper the whole time out west and, you know, we stayed there a couple nights and, uh, even with no electricity we, you know, was usin' them kerosene lamps and then having the power turned on.

QUESTION: When was the power turned on? Do you know approximately how many days before the 4th?

ANSWER: I did, but now I don't. It's, I'm guessing two to three days.

QUESTION: Okay

ANSWER: Before the 4th, I'm not real sure.

QUESTION: So, the electric was turned back on. And, that was in then in your sister's name.

ANSWER: Yeh

QUESTION: Okay.

ANSWER: Yep, cause I have a bad bill with them too.

QUESTION: The, um, yeh, you got a lot a

ANSWER: Yeh

QUESTION: things hiddin' in the woodwork, uh, I'll put it that way. Um, in regards then to the fire,

ANSWER: Okay

QUESTION: Uh, where were you and Pamela at the night of the 4th?

ANSWER: Uh, yeh, that, well, it started with like that day, she went off to do her family thing with her family. And, then, I went over to my cousins and did my family

thing. And, then, we were gonna meet at my friends house in Sanborn at Allen Lutz's house

QUESTION: Okay

ANSWER: Jr. So, we met there. I'm not sure what time. It was still daylight. And, he had food and drinks and stuff. We stayed there and, uh, his cousin put off a bunch of fireworks. And, I'm guessin', it was somewhere around midnight, what happened, that ice

QUESTION: This is the midnight of the 4th.

ANSWER: Yeh, the midnight of the 4th, yeh and, uh, what happened we're all just havin' fun and drinkin' and stuff and I started pickin' on my friend Allen, Jr. and I don't know, you know, I still don't even understand it today. She took it as, for some, somehow I was pickin' on her and makin' fun. Because, she blew up, off, you know, she just blew up, you know, was in some type of fightin' mood or, you know, I wasn't sure why, cause I knew I was just, you know, was nothin' dirty, no, no nothin'. I's just pickin on my friend. She blew up and, uh, she said that, you know, we were leavin'. And, I followed her down to the car and I filled up a beer and I took it down there to the car to leave and she threw it and, uh, then she went up and was yellin' for my dad, cause he was there, tellin' him, you know, to hurry up, cause we're leavin'. And, then, we just had a couple words there at the car. And, I, you know, got outta the car and said I wasn't goin' or somthin' like that. And, I just slammed the door and she took off. And, I figured she'd just go to the house and go to sleep or somethin'. So, there was a girl there, Kerry Phillips, she was gettin' on my case for havin' a fight with her and stuff. So, me and Allen decided it was a good idea to pick her some flowers. (Laughs) So, we cut some of his flowers down and, uh, about a half hour to forty minutes, somewhere in there, that Kerry Phillips and her boyfriend, Rick, gave me and dad a ride. And, we took him to Brisbin and dropped him off. And, then, we're goin' to Madera and thats when we were comin' down past the VFW and the Quick Chek we seen the smoke and we seen that the road was blocked up there and, uh, you know, I knew it was right in the area of my house. (Laughs) And, uh, we got up there and they dropped me off, probably just down the street from Ken Long's. I went walkin' up to the they were fillin' up that swimmin' pool type thing with the trucks. And, uh, the one, the one fire guy he told me to get outta there cause I wasn't, you know, a member or whatever in the fire company. And, I was like well, I said "This is my house". So, he's like "oh, you better get down there". Cause I guess that they were, I was told later that they thought somebody was in the house. So, I walked down there and, uh, you know, and then they started puttin' the water to the fire and, and that was that was about it for that night. And, then, uh, you know, we just stood around hung around for a few hours till they got it pretty much out. And, then, uh, Ken mentioned a couple times that we should go out to Gasam. And, I was like "na" I's like "she's probably on her way to Jersey or, you know

QUESTION: Did you assume,

ANSWER: out of state or something"

QUESTION: Did you assume, right then, that she did the fire or caused the fire?

ANSWER: Yeh, cause she, you know, bein' mad that night and havin' no idea what for cause it was, it wasn't a normal fight at all. It was, you know, like I said I'd could see if there was any kind of cheatin' or

QUESTION: Would you classify yourself and her more than just, um, casually drinking? Was it heavy drinking? Would you

ANSWER: Uh, I would say it was, well, it mighta hit pretty hard, cause the whole time out west we didn't drink but maybe twice. And, uh, you know, we did it like every weekend. And, we went a long time without and, then, Allen just had that party and he's like "you're gonna, you know drink". I don't know how much he had, you know, I was, I was allright cause I was at the fire. I wasn't stagerin' and fallin' around, you know.
(Laughs)

QUESTION: Was she drinking before, was she, at her family's gathering? Do you know?

ANSWER: That I, I don't know. I'm not sure.

QUESTION: What time did she arrive to the party where you were at?

ANSWER: Uh, boy, I'm not, I'm not really sure.

QUESTION: Approximately. Was she there an hour or two or more than that or less than that?

ANSWER: I'm thinkin' I probably got there, I don't know, around 6:00, I'm just, you know, kinda guessin'. And, uh, she showed up probably twenty minutes to a half hour later.

QUESTION: Allright, so she was there most of the time you were there.

ANSWER: Yeh

QUESTION: And, up until the point, then, for whatever reason she, you know, went off in a tangent.

ANSWER: Yeh

QUESTION: Okay. Um, so, then, after you arrived there and found that the house was on fire, um, and they battled the blaze. Um, when was the fire put out or when did they the fire departments leave? Do you have any idea? Was it

ANSWER: Oh, I, they were startin' to pack up, I think, somewhere around 4:00 - 4:30, because, uh, Ken, he finally talked me into goin' out to Gasam and we went out there and everything was already burnt and, you know, pretty much burnt completely out except for a little flame on the gas tank. And, uh, well, we blew it out and then we got back to Madera and, I think, it was right around 5:00 in the morning. We got back to Madera and there was still some fire, you know, firemen around.

QUESTION: Was there any fire departments at the campsite?

ANSWER: No, huh uh, no

QUESTION: Hadn't been turned into anybody there, apparently, then. No fire department was notified.

ANSWER: Oh, no, huh uh, no

QUESTION: Okay. Um, when, then, did you have additional conversation with Pamela?

ANSWER: Um, probably

QUESTION: When's the next time you talked to her.

ANSWER: Probably, close to a week went by before I went out there.

QUESTION: How, how did you come to the realization that she set the fires. I mean, how, did you just assume that, because of the argument and the fight

ANSWER: Yeh

QUESTION: Or, did somebody come to you and say something?

ANSWER: Oh, well, I mean, just pullin' up there and seein' that my house is on fire, I, you know just figured, you know, because of that fight and then, uh

QUESTION: I was wondering if the police or the fire department said to you that was arson at the scene or did they suspect that a furnace malfunctioned or anything like that or electrical, you didn't, or did you just assume.

ANSWER: Yeh, I just, I just assumed

QUESTION: Okay

ANSWER: that, you know. And, then, uh, Carol Pernanski, my neighbor, she said that she was out in her pool that night and she's like "oh, yeh, she pulled right in and was

in there for a few minutes, or somethin' like that, and then left" and then a little bit later on she seen the flames.

QUESTION: So, it was kinda' of a just connecting the dots.

ANSWER: Yeh

QUESTION: as far, Okay.

ANSWER: Yep

QUESTION: I don't mean to put words in your mouth but

ANSWER: Yeh

QUESTION: that's, that's what I, uh, I'm gathering from what you're trying to

ANSWER: Yes

QUESTION: tell me. And, what we've known to this point.

ANSWER: Yeh

QUESTION: Uh, have learned to this point. Um, now, um, other than that fight, is there any other reason a fire would have taken place or she would have set fire to the house that you know of?

ANSWER: No, nothin', I mean, even, you know, close to a year of datin' we never had maybe two fights, you know, and it just doesn't seem.

QUESTION: Nothing to that degree, or

ANSWER: Yeh, nothing, you know

QUESTION: No physical contact or anything like that?

ANSWER: No, huh, uh, no we never, never got physical.

QUESTION: And, in, answer this question we have to ask. Do you have any involvement in this fire?

ANSWER: No, huh uh, no

QUESTION: Was the mortgage pretty much current? I think you were up to approximately the right, up to July paid. Is that right?

ANSWER: Um, I'm not real sure.

QUESTION: I know you're poor on paperwork

ANSWER: Yeh

QUESTION: I know we've talked about that already. But, you were, you, there weren't any notices of foreclosure or anything like that?

ANSWER: Oh, no, huh uh. No

QUESTION: I now you had financial problems, cause not of no employment

ANSWER: Um, hum

QUESTION: Um, and you've got some outstanding debts, be it fines what have you. Uh, but, um, you know, those are some issues that draw some concern.

ANSWER: Yes

QUESTION: An insured might have a hand in a fire. But, you're stating that you have no knowledge or involvement of this fire.

ANSWER: No, huh, uh like my house payment's only close to \$150.00. It'll get two three months and that's not a lot, you know. I could see maybe if I was, I don't know, back years or somethin' (Laughs), you know, she'd burn somethin' down. Wasn't in that bad a shape.

QUESTION: Um, now, it, the more sensitive issue, uh, was your delay in responding to us. Um, we had sent an appointment to meet at the property. Uh, you didn't attend. Uh, multiple calls where made to numbers that you might have been able to be reached. Left numbers, messages, not only myself, but your neighbor Ken Long did as well. Um, and we've sent you multiple correspondences. In fact, a letter went out to you on Friday, the 12th, or excuse me, Monday, the 12th, which, actually you didn't even see that letter yet in your mail.

ANSWER: No, huh uh.

QUESTION: You just read it here today

ANSWER: Yeh

QUESTION: We talked about why your delay was in in contacting us. Could you just tell me briefly why that was?

ANSWER: Uh, I'm

QUESTION: I mean you can just be frank and honest.

ANSWER: Yeh

QUESTION: I mean, There's no, I'm not

ANSWER: I'm, you know, just not that great with paperwork and I just steer away from it and, uh, I just showed up today cause I was tryin' to think of what that one letter was sayin' about.

QUESTION: The duties of an insured.

ANSWER: Yeh, yeh, you know, and I had that letter for a day or two and my mail it's scattered between everybody's houses. And, when I finally do get it, and, uh, I can't couldn't find it so I come in today to see what my duties where.

QUESTION: And,,I think, to, I mean, we, we've discussed in length here today maybe some, initially some thought was , I mean, you are still with Pam, as of right now, I mean, in fact, she's in the parking lot. She brought you here today because you don't have a vehicle or license.

ANSWER: Yeh

QUESTION: Some thought was maybe, and this is what I was thinking and I think you concurred a little bit, was that, um, this is gonna be difficult on her alone with criminal charges that are probably pending and, and, um, ultimately, coming forward, uh, but the economic loss. I think, maybe, you hesitated on making a claim thinking that trying to help her out to some degree. Is that a good?

ANSWER: No, I didn't really think, you know, think a lot about that..... I don't know. (Laughs) I.

QUESTION: It just, do, I, I know you also talked to family and friends and, uh, we were to meet that first day and we were gonna get your statement and someone suggested to you that's not proper procedure, which, of course, I've told you that is standard procedure in any fire loss. Um, that, is that more of what caused your delay

ANSWER: Yeh

QUESTION: then anything to do with the financial end of your relationship with Pam?

ANSWER: It really wasn't anything really to do with her just, you know, listening to advise from family and friends and it just spooked me and I'm pretty easy spooked. I just try to stay away from everything.

QUESTION: Um, so right now your intentions are to proceed forward with the claim, um, and to recover your loss of dwelling and contents. Is that correct?

ANSWER: Yeh, I guess.

QUESTION: Um, I think, you know I, I, I've tried to address every issue here today, uh, as best as I can gather. Unless you feel there would be something you'd like to add. Uh, not only about the fire itself, but the home, your relationship with Pam, what have you. Is there anything that you would, uh, like to add about the whole scenario?

ANSWER: No, not nothin' I can really think of.

QUESTION: Have you understood all of my questions today?

ANSWER: What's that?

QUESTION: Have you understood all of my questions today?

ANSWER: Yes

QUESTION: And, finally, has this recording been done with your permission?

ANSWER: Oh, yeh, yeh, it was easier than I thought.

I'd like to conclude the recorded statement of Richard Duane McCracken at approximately 5:15pm on Wednesday, August 14, 2002.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2002-1662-CD

RICHARD D. MCCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE MUTUAL
FIRE INSURANCE COMPANY,
Defendant

ANSWER TO COUNTERCLAIM AND
NEW MATTER

FILED
DEC 13 2002
019:38
Atty Gearhart

William A. Shaw
Prothonotary

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

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No. 2002-1662-CD

CASE NUMBER:

No. 2002-1662-CD

TYPE OF CASE:

Civil

TYPE OF PLEADING:

CERTIFICATE OF SERVICE

FILED ON BEHALF OF:

Defendant

COUNSEL OF RECORD FOR THIS PARTY:

R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

DEC 13 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

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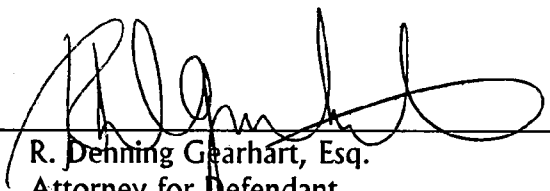
No.2002-1662-CD

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Answer to Counterclaim and New Matter filed in the above captioned matter on the Plaintiff through Plaintiff's attorney by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Karen L. Steele, Esq.
GOLDSTEIN, HESLOP, STEELE, CLAPPER, OSWALT & STOEHR, ESQS.
414 N. Logan Boulevard
Altoona, PA 16602-1749

By: _____


R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: December 13, 2002

(13)

FILED

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DEC 13 2002

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

**NOTICE OF DEPOSITION OF EDWARD
J. YOCUM**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

FILED

DEC 17 2002

William A. Shaw
Prothonotary

RICHARD D. McCRACKEN,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

:
: JURY TRIAL DEMANDED

NOTICE OF DEPOSITION

TO: Edward J. Yocum
c/o R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

Please take notice that the deposition upon oral examination will be taken of Edward J. Yocum on the 7th day of January, 2003, at 1:00 p.m. at the offices of Sargents Court Reporting Service, 106 North Second Street, Clearfield, Pennsylvania, 16830, at which time you are required to attend pursuant to the Pennsylvania Rules of Civil Procedure, Rule 4001 et seq., as amended.

You are to bring with you to the deposition, the original investigative file regarding the fire loss which is the subject of the above-captioned lawsuit.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Plaintiff
I.D. No. 32707
414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

DATED: Dec. 16, 2002

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

:
: JURY TRIAL DEMANDED

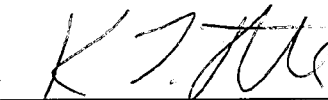
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, served a copy of the Notice of Deposition of
Edward J. Yocum on the 16 day of December, 2002, via First Class United States Mail,
postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Defendant
I.D. No. 32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED

NOV 10 20 18
DEC 17 2002

NOV 10 20 18
DEC 17 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCracken,	:	
Plaintiff	:	
VS.	:	NO. 2002-1662-CD
	:	
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE	:	
COMPANY,	:	
Defendant	:	

CASE NUMBER: 2002-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO INTERROGATORIES/REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO
DEFENDANT, CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

DEC 19 2002

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662-CD

**INTERROGATORIES/REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED
TO DEFENDANT, CLEARFIELD COUNTY
GRANGE MUTUAL FIRE INSURANCE
COMPANY - FIRST SET**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

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: NO. 2002 -

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: JURY TRIAL DEMANDED

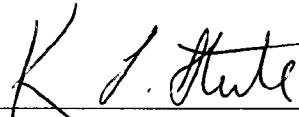
**INTERROGATORIES/REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT, CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY - FIRST SET**

TO: Clearfield County Grange Mutual Insurance Fire Insurance Company
Suite 3
1214 Old Town Road
Clearfield, PA 16830

TAKE NOTICE that you are hereby required, pursuant to the PENNSYLVANIA RULES OF CIVIL PROCEDURE, Rule 4005 and 4006, to serve upon the undersigned, within thirty (30) days after service of these INTERROGATORIES, your full and complete Answers under oath. Failure to provide the requested information and/or documents or make objections within the term specified may subject you to sanctions under Rule 4019 of the Pennsylvania Rules of Civil Procedure.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

BY


Attorneys for Plaintiff
414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

INSTRUCTIONS FOR ANSWERING INTERROGATORIES

A. In accordance with Pa.R.C.P. Rule 4005, the original of these written Interrogatories have been served upon you to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. In accordance with Pa.R.C.P. Rule 4006, written Answers shall be inserted in the spaces provided in the Interrogatories. If there is insufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

C. In accordance with Pa.R.C.P. Rule 4006(b), where the answer to an Interrogatory may be derived or ascertained from the records of the party upon whom the Interrogatory has been served or from an examination, audit or inspection of the party's records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer would be substantially the same for the party serving the Interrogatory as for the party served, a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained and to afford the party serving the Interrogatory reasonable opportunity to examine, audit or inspect those records and to make copies, compilations, abstracts or summaries, provided that a copy of any compilations, abstracts or summaries so made shall forthwith be furnished to the party producing the records.

D. Please return to our office the original Interrogatories with inserted Answers and executed verification of Answers, and one copy for our file.

E. For purposes of these Interrogatories, the following definitions shall apply:

1. "Document" means any written, recorded or graphic matter, however produced or reproduced.

2. "Identify" or "identification" when used in reference to an individual person means to state his name, present or last known address, present or last known position and business affiliation and his position and business affiliations at all times during the period covered by the Complaint.

3. "Describe" or "identify" when used in reference to a document means to state the type of document (for example, letter, memorandum, telegram, chart, etc.), the date, author, addresses, title file and identifying number and symbol, and the name and address of its custodian. If any such documents are no longer in your possession or subject to your control, state what disposition was made of it and the date thereof.

F. These Interrogatories are intended as continuing Interrogatories requiring you to answer by Supplemental Answer, setting forth any information within the scope of these Interrogatories as may be acquired by you, your agents, attorneys, or representatives following your original Answers. Pursuant to Pennsylvania Rule of Civil Procedure 4007.4:

1. The parties are under a duty to seasonably supplement their responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify and the substance of his testimony as provided in Rule 4003.5(a)(1);

2. The parties or any expert witnesses are under a duty to seasonably amend a prior response if they obtain information upon the basis of which:

(a) They know that the response was incorrect when made; or,

(b) They know that the response, though correct when made, is not longer true.

G. In accordance with Pa.R.C.P. 4006(a)(2), each Interrogatory shall be answered fully and completely unless objected to, in which event the reasons for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney making them. The statement of an objection shall not excuse the answering party from answering all remaining Interrogatories to which no objection is stated. The answering party shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the Interrogatories. The party submitting the Interrogatories may move the Court to dismiss an objection and direct that the Interrogatory be answered.

1. State the full name, address, and telephone number of your company and its home office.

ANSWER:

Clearfield County Grange Mutual Fire Insurance Co.
1214 Old Town Road, Suite 3
Clearfield, PA 16830
814-765-3223

2. In which states does the Defendant issue policies of insurance?

ANSWER:

Pennsylvania

3. State whether the Defendant is a corporation and, if so, provide the state of incorporation and the year in which it was incorporated.

ANSWER:

Yes, Pennsylvania - 1910

4. If the Defendant is not a corporation, please identify the Defendant's form of legal entity.

ANSWER:

Not applicable

5. State the date on which the Defendant was first licensed to conduct business in Pennsylvania.

ANSWER:

1910

6. List the names, titles, and business addresses of all the officers of the Defendant.

ANSWER:

Thomas A. Dixon - President
Robert K. Bradford - Vice-President
Randall L. Guthrie - Secretary/Treasurer
Howard G. Harkleroad - Executive Committee at Large
Joseph P. Lemmon - Executive Committee at Large

7. List the name, address, and telephone number of all agents and/or employees of the Defendant that in any manner handled, investigated, evaluated or processed the Plaintiff's claim.

ANSWER:

Randall L. Guthrie and E. L. Braid Claims Services/Ed Yocum

8. For each of the individuals named above, please list the following:

(a) The job title or classification held by the individual at the time that individual handled, investigated, evaluated or processed the claim;

ANSWER:

Randall L. Guthrie

(b) The current title or job classification held by that individual; and

ANSWER:

Secretary/Treasurer

(c) If any individual no longer works for your company, please state his or her name, last position with your company, last known address, and last known telephone number.

ANSWER:

Not applicable

(d) Describe the educational background, claims experience, and training of each person which the Defendant has identified as handling, investigating, evaluating and/or reviewing Plaintiff's claim.

ANSWER:

(a) Randall L. Guthrie - High school, 13 years experience, New York Life training program; Prudential Training program; 25 years Agent experience

(b) Ed Yocum - Resume requested

9. Please state the names and addresses of the individuals who accepted, processed and/or approved the Plaintiff's application for insurance (excepting clerical personnel).

ANSWER:

Randall L. Guthrie and Executive committee

10. For each individual named above, please provide the following:

(a) The job title or classification held by such individual; and

ANSWER:

Already answered

(b) The relationship of such individual with the Defendant, specifically, whether said individual was acting as an agent or employee of the Defendant.

ANSWER:

Already answered

11. Please state the names, positions and addresses of all individuals who participated in the decision to deny Plaintiff's fire insurance claim.

ANSWER:

- (a) Randall L. Guthrie
- (b) Edward Yocum - E. L. Braid Claims Services
- (c) R. Denning Gearhart, Esq.

12. Please state whether the Defendant obtained an opinion from an attorney regarding the denial of Plaintiff's claim on or before August 16, 2002, and, if so, provide the name and address of all such attorneys.

ANSWER:

Yes
R. Denning Gearhart, Esq.
215 E. Locust Street
Clearfield, PA 16830
814-765-1581

13. With respect to Insurance Policy No. 32334 which was issued by Defendant to Plaintiff, please state:

(a) The date of inception of the policy;

ANSWER:

August 12, 1999 to August 12, 2002

(b) The total premium;

ANSWER:

\$196.00 annual

(c) Whether the premium was paid prior to the subject loss; and

ANSWER:

Yes, Paid \$196.00 on 7/19/2001

(d) You are hereby requested to produce a complete copy of all parts of Policy No. 32334 including, but not limited to, the application, premium assessments, the policy and all endorsements thereto, and any and all appraisals relating to the insurance policy as well as all inter-office memoranda or notes and any and all written communications or statements made between the Defendant and other individuals/entities pertaining to the issuance of the subject insurance policy.

ANSWER:

Copy of Policy attached

14. You are hereby requested to produce a complete copy of all documentation, including, but not limited to, all inter-office memoranda, e-mails, notes and/or correspondence regarding the investigation and processing of the Plaintiff's claim.

ANSWER:

Copy attached

15. Please state the name, last known address, and last known telephone number of all individuals interviewed by the Defendant, directly, or through an agent, servant, or employee, regarding the Plaintiff's claim.

ANSWER:

Complete report from E. L. Braid Claims Services is attached. Therein is the information requested.

16. You are hereby requested to produce a complete copy of any and all notes, memos, and/or summaries regarding individuals interviewed by or on behalf of the Defendant regarding Plaintiff's claim.

ANSWER:

See #15

17. You are hereby requested to produce a complete copy of all statements obtained by the Defendant as defined by Pa.R.C.P. No. 4003.4.

ANSWER:

See #15

18. You are hereby requested to produce a complete copy of all investigative reports obtained by or in the possession of the Defendant concerning Plaintiff's claim.

ANSWER:

See #15

19. You are hereby requested to produce a true and correct copy of all written communication between the Defendant and any third party concerning the investigation, processing and/or denial of the Plaintiff's claim.

ANSWER:

See #15

20. State whether the Defendant has any photographs or videotapes of the subject property and, if so, state the approximate date on which such photographs/films were made, the individual taking the same, and the individual currently in possession of the same.

ANSWER:

See #15

22. If the answer to the proceeding Interrogatory was in the affirmative, you are hereby requested to produce a duplicate of all photographs and/or videotapes, the expense of which will be reimbursed to the Defendant by the Plaintiff.

ANSWER:

Enclosed under separate cover.

23. You are hereby requested to produce a true and correct copy of any and all inventories, appraisals, and/or damage estimates of any kind regarding the property which is the basis for Plaintiff's claim.

ANSWER:

See #15

24. You are hereby requested to produce a complete copy of all documentation relating to the mortgage held by County National Bank against the subject property including all claims, checks, receipts, correspondence, or documentation of any kind relating to payment by the Defendant of the mortgage balance due at the time of the subject loss.

ANSWER:

See #15

25. If any expert conducted any examination, inspection or testing at the scene of this incident or in connection with the incident on behalf of any Defendant in this action, state:

(a) The name and address, employer and job title, position or capacity of each such expert;

ANSWER:

See #15

(b) The date/s of each such examination, inspection or testing;

ANSWER:

(c) The nature of each such examination, inspection or testing; and

ANSWER:

(d) The results of each such examination, inspection or testing.

ANSWER:

26. State the name and present address of each person/s you expect to call as an expert witness at the trial of this action.

ANSWER:

Edward Yocum
E. L. Braid Claims Services
P. O. Box 946
Clearfield, PA 16830

Tpr. Michael McCracken
Penna. State Police
Woodland Barracks
Woodland, PA 16881

Tsikalas Investigations
3423 William Penn Ave.
Johnstown, PA 15909

27. As to each person named in answer to the preceding interrogatory, state:

(a) The background, training, experience, and other qualifications of each such person;

ANSWER:

Attached hereto.

(b) The substance of each fact to which he or she is expected to testify;

ANSWER:

(c) The substance of each opinion to which he or she is expected to testify;

ANSWER:

(d) A summary of the grounds for each opinion; and

ANSWER:

(e) Pursuant to Rule 4003.5 of the Pennsylvania Rules of Civil Procedure, please have each such expert affix his/her signature to the Answer to this Interrogatory; or, in the alternative, attach to your Answers to these Interrogatories a report signed by each such expert, incorporating the information contained in (b) through (d).

ANSWER:

28. Did Defendant conduct any investigations concerning Plaintiff's claim?

ANSWER:

Report attached

29. If the answer to the preceding Interrogatory is "yes," for each investigation state:

(a) The name and address of the person who made the investigation;

ANSWER:

Report attached

(b) The date on which the investigation was made;

ANSWER:

(c) Whether any reports were made as a result of the investigation and the name and address of the person who has custody of each such report; and

ANSWER:

(d) You are hereby requested to produce a complete copy of each investigative report identified in your Answer to this Interrogatory.

ANSWER:

30. Please identify all written policies, claims manuals, or other written communications setting forth the Defendant's practices, procedures, and policies regarding the handling of fire insurance claims.

ANSWER:

Report attached

31. Please attach to your Answers to these Interrogatories a complete copy of all materials identified in your response to the preceding Interrogatory.

ANSWER:

Report attached

32. Please state whether the Defendant has denied other claims of its insureds based upon the conditions/restrictions of:

(a) While the hazard is increased by any means within the control or knowledge of the insurance: or

(b) While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; within the past five years and, if so, provide a general summary of each such denial, the year of such denial, and state whether the claim was litigated.

ANSWER:

No

33. Please attach to your Answers to these Interrogatories a copy of all educational materials used in the training of the Defendant's employees, agents, and other personnel who were involved in the handling of Plaintiff's claim for a period of five years prior to the subject loss.

ANSWER:

Within the knowledge of E. L. Braid Claims Services, Inc., an independent contractor

34. During the past five years has the Defendant ever had its license to do business either suspended or revoked in any state?

ANSWER:

No

35. If your answer to the preceding Interrogatory is in the affirmative, indicate each state in which your license was revoked or suspended and the date of each suspension or revocation.

ANSWER:

Not applicable

36. In the past five years, has the Defendant ever been disciplined by or signed any consent orders with any Insurance Department in any state? If so, please provide the details of each such consent order and/or disciplinary action.

ANSWER:

No

37. You are hereby requested to produce a complete copy of the claims file maintained by the Defendant in any way pertaining to Plaintiff's claim including, but not limited to, all correspondence, e-mail, notes, memoranda, correspondence, all inter-office memoranda or statements or other written forms of written communication of any employee or agent of Defendant relating to the initial and continued processing of Plaintiff's claim, all file folders or file jackets and adjacent related exhibit folders in which any documents or other items described above are filed or maintained, all written communication between Defendant and any third party concerning the processing, acceptance, or denial of Plaintiff's claim, and any and all investigative reports of Defendant concerning Plaintiff in any way relating to the processing or denial of Plaintiff's claim..

ANSWER:

Provided

38. To the extent not previously produced, you are hereby requested to produce a complete copy of all notes, memos, logs, correspondence, or documentation of any kind relating to communications between the Plaintiff and the Defendant.

ANSWER:

Not applicable

39. You are hereby requested to produce a complete copy of all documents relied upon by the Defendant in denying the Plaintiff's claim.

ANSWER:

Redundant

40. You are hereby requested to produce a complete copy of any claim activity log or report with respect to the Plaintiff's claim.

ANSWER:

Redundant

41. Please state all facts upon which the Defendant relied in denying coverage based upon loss occurring "while the hazard is increased by any means within the control or knowledge of the insured."

ANSWER:

Responses contained in responsive pleading

42. Please state all facts upon which the Defendant relied in denying coverage based upon loss occurring "while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days."

ANSWER:

Responses contained in responsive pleading

43. You are hereby requested to produce a complete copy of any and all reports or documentation of any kind regarding the subject claim to reinsurers or other third parties.

ANSWER:

All reports and notes are being provided herewith

44. You are hereby requested to produce a complete copy of any and all training manuals, underwriting manuals, or similar documents that relate to the Defendant's interpretation of the policy provisions relied upon to deny coverage of the Plaintiff's claim.

ANSWER:

Defendant relied on policy language and advice of counsel.

45. State whether the Defendant has entered any information regarding this claim in a computer and, if so, you are hereby requested to print and provide a complete copy of all such data.

ANSWER:

Information al loss register included in the limitations provided herewith

46. State whether any information regarding this claim has been entered into a computer which information is unavailable or for any reason has not been printed and produced in response to the preceding request for production. If so, you are hereby requested to describe such information and state the reason why such information is not available in printed form.

ANSWER:

No

47. You are hereby requested to produce a complete copy of all documentation by and between Clearfield County Grange Mutual Fire Insurance Company and E.L. Braid Claim Service, Inc.

ANSWER:

Included

48. You are hereby requested to produce a complete copy of the entire investigative file and reports of E.L. Braid Claim Service, Inc., and the investigative file and reports of every other investigator including, but not limited to, all reports and interviews taken or made by each such investigator.

ANSWER:

Included

49. Please state the name, job title, and business address of each person who prepared or assisted in the preparation of any answers to the preceding Interrogatories/Request for Production of Documents.

ANSWER:

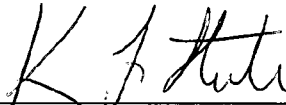
R. Denning Gearhart, Esq.
215 E. Locust Street
Clearfield, PA 16830
Attorney

Randall L. Guthrie
Address previously listed

Kathleen A. Ricotta
215 E. Locust Street
Clearfield, PA 16830
Secretary to Attorney

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Plaintiff
I.D. No. 32707

414 North Logan Boulevard
Altoona, PA 16602

(814) 946-4391

DATED: October 22, 2002

VERIFICATION OF ANSWERING PARTY

I certify that I am RANDALL L. GUTHRIE of Clearfield, Pennsylvania,
and am the authorized agent of CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE
COMPANY for the purposes of answering the Interrogatories/Request for Production of Documents
Directed to Defendant, Clearfield County Grange Mutual Fire Insurance Company - First Set served
upon the Defendant in this action. I am authorized to sign this verification.

I have read the foregoing answers to Interrogatories/Request for Production of Documents and
certify that the answers and statements made by me on behalf of myself and the said Defendant are true.
I am aware that false statements herein made are subject to the penalties of 18 Pa.C.S.A. §4904 relating
to unsworn falsification to authorities.

DATE: 12/17/02

Randall L. Guthrie

Authorized Corporate Officer of
Clearfield County Grange Mutual Fire Insurance
Company

Address:

1214 Old Town Rd. Suite 3
Clearfield, PA 16830

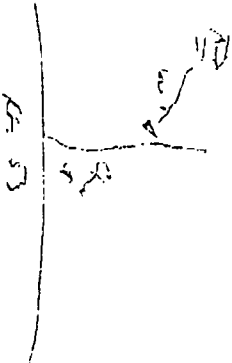
**DIRECTIONS TO LOCATE
PROPERTY:**

11511 - 1st St.
Sec 1, T12N, R10E, S3

INSTRUCTIONS TO AGENTS

Read Carefully

Where there is more than one building insured,
draw a line giving reference from one building to the
other.



**QUESTIONS TO BE
ANSWERED BY AGENTS**

1. Have you examined the property on which insurance
is made? Yes
2. If not, on what do you base your approval?
3. Is it in bad repair for any cause? No
4. Are valuations fair or excessive? Not
5. Has any other company rejected it? No
6. If so, why?
7. Are all the facts material to the case made known?
8. Do you fully recommend the risk? Yes
9. Are all the assets of the applicant covered as far as
you can direct? Yes

Address 11511 - 1st St. Agent Thompson (11511)

No applicant will be accepted unless the above
questions are answered and signed by the Agent

No. 38334

APPLICATION OF

Richard Thompson

P.O. Box 211

Traders, Ark. 1911

-10-

**Clearfield County Grange
Mutual Fire Insurance Co.**

Amount - \$ 50.00
Premium - \$ 1.00

Begin Aug 12, 1911
Expires Aug 12, 1912

Policy to be sent to

P.O. Thompson (11511)
Agent Thompson (11511)

DB 11511

TIME

7/4/12 7/5/12

THIS IS AN ASSESSABLE POLICY

1214 OLD TOWN ROAD - SUITE #3, CLEARFIELD, PENNSYLVANIA

108

Annual
Premium

State

Expiration

CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO
THE PAYMENT OF ASSESSMENTS AS PROVIDED BY THE BY-LAWS AND OF the policy fee above specified, this Company, for the
f years specified above from inception date shown above At Noon (Standard Time) to expiration date shown above At Noon (Standard
at location of property involved, to an amount not exceeding the amount(s) above specified, does insure the insured named above and legal
entatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to
or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased
repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting
interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE,
TUNG AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT
HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five
at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy,
ot elsewhere.

ment of this policy shall not be valid except with the written consent of this Company.

ment of this policy shall not be valid except with the written consent of this Company.

policy is made and accepted subject to the foregoing provisions and stipulations of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy. IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by its duly authorized Agent of this Company at the agency hereinbefore mentioned.

Secretary

President

STANDARD FIRE INSURANCE POLICY OF THE STATE OF PENNSYLVANIA

Concealment fraud.

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property.

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money of securities; nor, unless specifically named hereon in writing, bullion or manuscripts. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (n) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (h) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Perils not included.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing provision, stipulation or forfeiture shall be provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

Notice. If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability exists as to the mortgagee or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions

84 relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

85 Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

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

87 Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

88 Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

89 Abandonment. There can be no abandonment to this Company of any property. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

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

91 Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefore is made by this Company.

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

93 Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefore is made by this Company.

94

95

MUTUAL PROVISIONS

policy is issued by a Mutual Insurance Corporation organized and existing under the laws of the Commonwealth of Pennsylvania. All persons insuring and being insured by this Company shall be members thereof during the period of the policy and shall remain so insured. The annual meeting of the members of the Company shall be held in Clearfield.

Pennsylvania or other designated place at 9:00 A.M. on the second Tuesday of March.

Assessments may be made annually or oftener, if required, provided that additional assessments in any one year shall not exceed the amount of the estimated annual premium.

Contingent Liability: At any time this Company's assets would not be equal to its unearned premium reserve and other liabilities, it (the Company) shall make an assessment upon its members (Policyholders). As a Policyholder, you are liable to contingent (possible) assessment to provide for such contingency. Before such assessment is levied by the Company, it shall be approved by the Insurance Commissioner.

Limit of Assessments: The Company may not, in any case, assess more than twice the average annual policy cost. When the policy is cancelled or terminated, the assessment will be limited to a prorated amount.

Use of Assessments: Procedures for collection of these possible assessments may be initiated up to two years from the date your policy is cancelled or terminated. No assessment will be made for losses the Company incurs more than two years prior to the date of the initiation of the assessment procedure.

Applicability of Assessment Provisions: Nothing in these provisions applies to annual or semi-annual (whichever is applicable) assessments levied by the Company, whether it be on the anniversary date of the contract, on a common assessment date or at time of cancellation of this contract.

DEDUCTIBLE CLAUSE

The sum of \$250 shall be deducted from the amount of loss to all property covered hereunder in any one occurrence resulting from the perils insured against, except, if this policy covers more than one building or structure this deductible shall apply separately to the amount of loss to each building or structure including property appertaining thereto covered hereunder.

EXTENDED COVERAGE CLAUSE

of Windstorm, Hail, Explosion, Riot, Riot attending a strike, Civil Commotion, Aircraft, Vehicles, Smoke. Except as hereinafter provided.

Subject to provisions and stipulations (hereinafter referred to as "provisions") in and in the policy to which this Endorsement is attached, including endorsements thereon, the coverage of this policy is extended to include direct loss by Windstorm, Hail, Explosion, Riot, Riot Attending a Strike, Civil Commotion, Aircraft, Vehicles and Smoke.

This endorsement does not increase the amount or amounts of insurance provided in the policy to which it is attached.

This policy covers on two or more items, the provisions of this Endorsement apply to each item separately.

SUBSTITUTION OF TERMS: In the application of the provisions of this policy, including endorsements (but not this Endorsement), to the perils insured against in this Extended Coverage Endorsement, wherever the word "fire" appears there shall be substituted therefor the peril involved or the loss caused thereby, as the circumstances require.

PROPORTIONMENT CLAUSE: This company shall not be liable for a greater portion of any loss less the amount of deductible, if any, from any peril or loss included in this Endorsement than (1) the amount of insurance under this policy bears to the whole amount of fire insurance covering the property, or which it has covered the property except for the existence of this insurance, whether deductible or not, and whether or not such other fire insurance covers against the identical peril or perils insured hereunder, (2) nor for a greater proportion of loss less the amount of deductible, if any, than the amount hereby insured in all insurance whether collectible or not, covering in any manner such loss, which would have covered such loss except for the existence of this insurance; except if any type of insurance other than fire extended to cover additional perils, or windstorm insurance applies to any loss to which this insurance also applies, or if it had been applied to any such loss except for the existence of this insurance, the amount of liability of each type of insurance for such loss, hereby designated as "joint loss," shall first be determined as if it were the only insurance and this type of loss shall be liable for no greater proportion of joint loss than the limit of insurance shall be liable for no greater proportion of joint loss than the limit of insurance for such loss bears to the sum of all such limits. The liability of this company (under this Endorsement) for such joint loss shall be limited to its proportionate part of the aggregate limit of this and all other insurance of the same type. The words "joint loss," as used in the foregoing, mean that portion of the loss in excess of the highest deductible, if any, to which this Endorsement and other types of insurance above referred to both apply.

WAR RISK EXCLUSION CLAUSE: This company shall not be liable for loss caused directly or indirectly by (a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, imminent or expected attack, (1) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (2) by military, naval or air forces; or (3) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion, or use of any weapon of war employing atomic fission or radioactive force shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (b) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.

WAIVER OF POLICY PROVISIONS: A claim for loss from perils included in this Endorsement shall not be barred because of change of occupancy, nor because of vacancy or unoccupancy, except as herein before provided.

PROVISIONS APPLICABLE ONLY TO WINDSTORM AND HAIL: This company shall not be liable (1) for loss caused directly or indirectly by (a) frost or cold weather, or (b) ice (other than hail), sleet, snowstorm, waves, tide, tidal wave, high water, overflow of streams or bodies of water, or spray therefrom, all whether driven by wind or not; (2) for loss to the interior of the building(s) or the property covered therein caused by rain, snow, sand or dust, whether driven by wind or not, unless the building(s) covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then shall be liable for loss to the interior of the building(s) or the property covered therein as may be caused by rain, snow, sand or dust entering the building(s) through openings in the roof or walls made by direct action of wind or hail; (3) for loss to lawns, trees, shrubs and plants, or to out door radio and television antennas and aerials including their lead-in wiring, masts and towers; or (4) for loss by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail.

PROVISIONS REFERRED TO IN AND MADE PART OF THIS CLAUSE Unless liability therefor is specifically assumed by endorsement to this Extended Coverage Endorsement, this company shall not be liable for damage to the following property: (a) grain, hay, straw or other crops outside of building, or (b) windmills, windpumps or their towers, or (c) crop allies (or their contents).

PROVISIONS APPLICABLE ONLY TO EXPLOSION: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or uncombusted fuel within the furnace (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. However, this company shall not be liable for loss by explosion, rupture or bursting of:

- (a) steam boilers, steam pipes, steam turbines or steam engines; or
- (b) rotating parts of machinery caused by centrifugal force; if owned by, leased by or actually operated under the control of the insured.

The following are not explosions within the intent or meaning of these provisions:

- (a) Concussion unless caused by explosion,
- (b) Electrical arcing,
- (c) Water hammer,
- (d) Rupture or bursting of water pipes.

Any other explosion clause made a part of this policy is superseded by this Endorsement.

PROVISIONS APPLICABLE ONLY TO RIOT, RIOT ATTENDING A STRIKE AND CIVIL COMMOTION:

Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or tenant(s) of the described building(s) while occupied by said striking employees and shall also include direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion. Unless specifically endorsed hereon in writing this Company shall not be liable, however, for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

PROVISIONS APPLICABLE ONLY TO LOSS BY AIRCRAFT AND VEHICLES The term "vehicles," as used in this Endorsement, means vehicles running on land or tracks but not aircraft. Loss by aircraft or by vehicles shall include only direct loss resulting from actual physical contact of an aircraft or a vehicle with the property covered hereunder or with the building containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom. This company shall not be liable, however, for loss, (a) by any vehicle owned or operated by the insured or by any tenant of the described premises; (b) by any vehicle to fences, driveways, walks or lawns; (c) to any aircraft or vehicle including contents thereof other than stocks of aircraft or vehicles in process of manufacture or for sale.

PROVISIONS APPLICABLE ONLY TO SMOKE: The term "smoke," as used in this Endorsement, means only smoke due to a sudden, unusual and faulty operation of any heating or cooking unit, only when such unit is connected to a chimney by a smoke pipe or by a vent, and while in or on the premises described in this policy, excluding, however, smoke from fireplaces or industrial apparatus.

Assignment ☐ This Policy Shall Not Be Valid
Except with the Written Consent of This Company ☐

ASSIGNMENT OF POLICY

Upon Actual Sale or Transfer of Title

AN ACTUAL SALE and change of title to the property herein described having taken place, FOR VALUE RECEIVED, ... hereby transfer, assign and set over unto
..... and assigns, all
..... right, title and interest in this Policy of Insurance, and all benefits and advantages to be derived therefrom;
except, nevertheless, to all terms and conditions therein mentioned and referred to.

WITNESS hand, this day of, 19.....

.....
Insured under this policy

..... Secretary

proved, ..., 19.....

No.

In communicating with the Company give number of Policy

**Clearfield County
Grange Mutual Fire
Insurance Co.**

Office: 1214 Old Town Rd., Suite #3
Clearfield, PA 16830

To

Amount \$

Annual
Premium, \$

Begins

Expires

19.....

**THIS IS AN
ASSESSABLE POLICY**

This is Ed Yocum taking the recorded statement of Richard Duane McCracken at the office of Clearfield County Grange Mutual Insurance Company located along Old Town Road in Clearfield, PA. This statement is being recorded on Wednesday, August 14, 2002 at approximately 4:30pm and concerns a fire at the McCracken residence taking place on July 4, 2002.

QUESTION: Um, Mr. McCracken, do you realize I'm recording this statement?

ANSWER: Yeh

QUESTION: And, may I have your permission to record this statement?

ANSWER: Yeh

QUESTION: Could you state your full name for me please?

ANSWER: Richard Duane McCracken

QUESTION: And, your age and date of birth.

ANSWER: Uh, it's 5/3/74. I'm 28

QUESTION: Social Security number, if you know it.

ANSWER: Uh, 199-60-8041

QUESTION: Married or Single

ANSWER: Single

QUESTION: Currently employed?

ANSWER: No

QUESTION: What type of work do you do?

ANSWER: Uh, construction

QUESTION: When's the last time that you were gainfully employed by anyone in particular?

ANSWER: Uh,

QUESTION: Approximately

ANSWER: It'd been last summer up till probably October.

QUESTION: And, who were you working for then?

ANSWER: Uh, Dana Catalone

QUESTION: Out of Weedville, is that right?

ANSWER: Yeh

QUESTION: What is your current, where are you currently residing at? I know, I know the fire took place at your residence and that's been destroyed by fire, not occupiable. Um, where are you staying at now?

ANSWER: Um, three people's houses.

QUESTION: Alright, so you're just, uh, moving amongst friends and family?

ANSWER: Yeh

QUESTION: Okay. What is a number that you can be at currently?

ANSWER: Uh

QUESTION: A telephone number

ANSWER: Probably Ken Long's. It's, uh, 378-6284, I think the number is.

QUESTION: And, he was the next-door neighbor to the home.

ANSWER: Yeh

QUESTION: Okay. Well, we're today taking your statement... we've had a lengthy discussion prior to taking this statement about what we need to do here today. And, there was, um, some concern on your part because of what had happened in this, uh, scenario of the fire and a girlfriend being alleged to have been the party involved. And, I say alleged because she's not being convicted in a court setting or, uh, charges been filed that she, um, confessed it. I believe she has talked to the State Police and has confessed to the, the fire. But, again, we're going to say alleged until that has all been

ANSWER: Okay

QUESTION: concreted down I should say. Um, her name is Pamela Vaux,

ANSWER: Yeh

QUESTION: is that correct? How long have you been, um, dating or, um, been associated with Pamela?

ANSWER: Uh, probably, oh, around October or September last year.

QUESTION: Of 2001?

ANSWER: Yeh

QUESTION: So, we're looking at maybe six months to eight months somewhere in that vicinity, maybe a little longer?

ANSWER: I thought it was around nine or ten, I'm not real

QUESTION: Goinn'

ANSWER: sure

QUESTION: on a year maybe now, I guess.

ANSWER: Pretty close,

QUESTION: Okay

ANSWER: probably

QUESTION: Um, how old is Pamela, approximately?

ANSWER: Forty-two or Forty-three

QUESTION: Is she

ANSWER: Born in 59

QUESTION: Okay. Is she currently employed?

ANSWER: Yeh, she just started in a week or two ago.

QUESTION: Where at is it she works?

ANSWER: Snow Shoe Truckstop

QUESTION: Okay. Where is she currently residing?

ANSWER: At her parents

QUESTION: Okay. Where do they live?

ANSWER: Kylertown

QUESTION: Okay. Is there a number that she can be reached at?

ANSWER: Uh

QUESTION: If you know it.

ANSWER: Uh, 345-

QUESTION: Um, hum

ANSWER: 6892

QUESTION: I'd like to, first, cover, um, a little history of the home itself and then we'll go into information about the fire and, and what's taken place since then.

ANSWER: Okay

QUESTION: Um, could you tell me, first, um, approximately how long ago you bought it and what arrangements were made when you purchased it.

ANSWER: Uh, I'm not sure what year it was. It was four to five years ago. I'm not sure what year. Think it was around May, I'm not, four to five years ago.

QUESTION: Okay

ANSWER: And, uh, me and my neighbor bought it.

QUESTION: And that's Ken Long.

ANSWER: Yeh, me and Ken Long bought it at an auction. We were gonna fix it up to sell it and make a profit. But, uh, at the time I was stayin', think I was around 21 - 22 somewhere in there, and I was livin' with my dad in Brisbin. And, I just knew it was time to, you know, get out on my own and the bank gave me a first-time homeowners thing. And, uh, the monthly payment was pretty cheap, so I just talked to Ken and, you know, bought him out and kept the place for myself.

QUESTION: What was the purchase price, when you got it from the auction, approximately?

ANSWER: \$18,000.00

QUESTION: Okay. But, after you bought it, you and Ken were fixing it up. Uh, I think you associated with Ken because you worked together at one time.

ANSWER: Yeh

QUESTION: Is that right?

ANSWER: Yeh

QUESTION: Is that how you, you came about to be partners in buying the home?

ANSWER: Yeh

QUESTION: Okay

ANSWER: Yeh, we was workin' together

QUESTION: Um, after you bought it, do you have any idea approximately how much money you put into the renovations, or maybe you could tell me what type of work and improvements you made to the property.

ANSWER: Yeh, I'm not real sure on even what stuff costs. This stuff, you know, now. But, uh, when we bought it had not bathroom in it. And, uh, I did all the plumbing work, you know, just like right where it comes through the foundation couple inches. I tapped onto that, cause he only had cold water goin' to the, I think, to the furnace and up to the kitchen. And, uh, I'd put all new plumbing onto the copper in there and.

QUESTION: So, you really, really plumbed the house?

ANSWER: Yeh, I did. There was no plumbing at all in it.

QUESTION: One bathroom and, then uh

ANSWER: Yeh, one bathroom

QUESTION: kitchen appliances, kitchen sink and things like that?

ANSWER: Yeh, yeh, it had a brand new kitchen. I bought all the cabinets and stuff down here at Lezzer's and, uh, you know, put a bathroom in and then me and Ken, we put that, uh, three ton air air conditioner in there.

QUESTION: Central air

ANSWER: Central air

QUESTION: What type of heat source did you have?

ANSWER: Uh, coal. It was a boiler

QUESTION: It was there when you bought the home?

ANSWER: Yeh

QUESTION: Um, you put a new kitchen in, put a bathroom in, um, what other type of renovations did you make to it?

ANSWER: Um, it was all that lath and plaster. And, uh, I dry walled the whole downstairs, the stairway, the hallway upstairs and a bedroom and a half. And, there was two other bedrooms, you know, that weren't, you know, just left alone. Oh, and the bathroom was all new drywall.

QUESTION: And, painting of course.

ANSWER: Yeh, painting and

QUESTION: Carpeting

ANSWER: Yeh, in all the whole down, well no not the whole downstairs, the living room and the I don't know what other room you'd call it with them stairs in it.

QUESTION: Okay

ANSWER: And, carpeting up the stairs and in that hallway upstairs and one bedroom had carpeting in it.

QUESTION: What about the roof or outside work. Did you put windows, siding, anything like that to it?

ANSWER: Uh, no, no siding yet. Uh, the windows I just had to replace, you know, some, glass. They were just them single panes.

QUESTION: What about the roof?

ANSWER: Uhh

QUESTION: Do you know how old it was, or

ANSWER: No, huh, uh. No

QUESTION: Shingles or rolled roofing.

ANSWER: No, it's shingles

QUESTION: Shingles

ANSWER: Yeh

QUESTION: Okay. You didn't ren, you didn't change that or upgrade that at all?

ANSWER: No, huh,uh

QUESTION: Okay

ANSWER: I'm lucky. I almost did this year.

QUESTION: Did you have to put a septic system in then, or

ANSWER: Uh

QUESTION: was there one there

ANSWER: Uh

QUESTION: that

ANSWER: Yeh, there's one there

QUESTION: Okay. So, you just tied into it

ANSWER: Yeh

QUESTION: for the new bathroom

ANSWER: Yeh. Well, there was one toilet in the basement in the corner and there's a toilet there today. I left one in there. And, I sawed the floor across and then run a pipe up the one wall. It's, that's where my drains was.

QUESTION: Okay. Any idea, approximately maybe in so far as costs or money that you invested into the home you and Ken after you bought it. You have any idea

ANSWER: Oh

QUESTION: how much you

ANSWER: I had, like, I had a, you know, alota papers and stuff on all the stuff I got from Lezzer's. And, uh,

QUESTION: Ever take time to add that up to see what kind of money you had in it?

ANSWER: No, I never, never did.

QUESTION: What was the arrangements when you, um, I take it you did all this work and then before you were ready to rent it you decided, then, that you were going to occupy it as your own place.

ANSWER: Uh, no, me and Ken had it and, uh, we were just we haven't done nothin' to it. We just started puttin' the central air in, cause that's what he does for a living. And, we were just startin' that. That was our first project, then. And, that's when I, you know, made him an offer on, you know, just, you know

QUESTION: What was the cost for you to purchase it now?

ANSWER: Uh, At the auction, we had to go \$900.00 apiece. And, then, whatever the, the, uh, air conditioner and stuff was, which I'm not even sure. I'd have to ask him.

QUESTION: So, you wrote him, you paid him back \$900.00, plus whatever the cost of the air conditioning unit was?

ANSWER: Yeh

QUESTION: Maybe some little miscellaneous money probably too?

ANSWER: Yeh,

QUESTION: Okay

ANSWER: and then, uh, the rest of it I just, you know, put into it myself.

QUESTION: Did you do most of that work, then, yourself, or?

ANSWER: Yeh, except the carpeting.

QUESTION: Okay. Who did the carpeting for ya?

ANSWER: Uh, Lowes

QUESTION: Okay

ANSWER: Out of State College. And, then, I don't have this guy's name or number anymore, uh, but I, when I hung all the drywall, I had a guy from Sandy Ridge come up and he did all the muddin' and then did the

QUESTION: Sprial, swirled ceilings

ANSWER: Yeh, yeh, he did that stuff.

QUESTION: Okay

ANSWER: I can get his name, you know, I can, you know, give it to you, cause he

QUESTION: Okay. Now, you, then, took occupancy and you lived there.

ANSWER: Yeh

QUESTION: Up until when did you live there before you ventured out west for a little while? Did you live there continuously through that period of time, or

ANSWER: Um, there was four months a couple years ago that I didn't live there. That I moved to Kentucky for a while. And, then, uh,

QUESTION: Did anyone live in the home during that time?

ANSWER: No, huh, uh. No, that's when I boarded it all up. And, then, well, I never took the boards off. I just stayed the next couple years. And, then, uh, it was the end of February or beginning of March is when I went out west and

QUESTION: Of this year, current year, 2002?

ANSWER: Yeh, I guess, guess so.

QUESTION: And you'd be just this, this year

ANSWER: Yeh

QUESTION: Okay.

ANSWER: Yeh. And, uh, was out there till, I think we spent four months out there

QUESTION: And, I believe, you told me before we took this statement that yourself, your father, and his name is

ANSWER: Uh, Dick McCracken

QUESTION: Dick McCracken and Pamela.

ANSWER: Yeh

QUESTION: The three of you went out west.

ANSWER: Yeh

QUESTION: And, I'm not gonna go into a lot of history. But, uh, somethings that prompted you to go out there was you had uh, uh, you were caught driving with a suspended license from a previous DUI and you failed to attend a court

ANSWER: Yeh, show up at the hearing

QUESTION: hearing.

ANSWER: Yeh

QUESTION: Thinking that, well, this, you weren't gonna deal with that then. You decided to go out west. We'll leave it at that.

ANSWER: Okay

QUESTION: Is that correct, though?

ANSWER: Yeh

QUESTION: Okay. So, you went out there trying to find work.

ANSWER: Yeh

QUESTION: Um, you were first in Arizona

ANSWER: Yeh, Arizona

QUESTION: Nothing panned out there

ANSWER: No, huh, uh. No, we was there for about three months and then moved to Colorado Springs

QUESTION: And, you had family or some relationship out there that

ANSWER: Yeh, a great aunt. And, uh, we stayed in her front yard. She had some hookups for a trailer. And, we stayed there for about a month. And, nothin' panned out there and, then, decided to come home cause couldn't afford it out there and

QUESTION: Do you know what date you returned back to home?

ANSWER: No, huh, uh, I can't even remember

QUESTION: How long before the 4th of July? Was it a week, or days, months?

ANSWER: It woulda been at least a month, month and maybe a couple weeks.

QUESTION: Okay. When you came back and the month or several weeks before the fire, where did you stay, then?

ANSWER: Uh, we stayed out at, uh, around Kermore, Gasam, out there at that property. Uh, it's like a campin' spot there.

QUESTION: Okay. Who owns that land or property?

ANSWER: Uh, my dad does.

QUESTION: Okay. Cause, I think, you said Pamela's family or someone had a motor home. Is that what you lived in out there?

ANSWER: Yeh, yeh. The first week we had a tent and then, uh, we left it set up. Used it for like storage and we, you know, just moved into her camper, her mother's camper and, uh, we were there somewhere around a month. And, you know, we started doin' a little bit a, well not very much, but a little bit of work to the house to try to get it, you know, presentable or whatever for rentin'. It needed a front porch and I started puttin' the front porch on it. That's about all the farther I go right there.

QUESTION: Okay. So, let me try to clarify some things.

ANSWER: Okay

QUESTION: When you went out west, for the approximately four months,

ANSWER: Yeh

QUESTION: and came back home to the local vicinity of Madera

ANSWER: Yeh

QUESTION: let's say. The home was boarded up, power, utilities, all shut off

ANSWER: Yeh

QUESTION: Allright.

ANSWER: Yep

QUESTION: Um, no one was in the home staying at all. There was nobody in the property.

ANSWER: No, huh, uh

QUESTION: Okay. When you moved back here, temporarily set up living arrangements at the, with the, campground space that's, um, you dad's.

ANSWER: Yeh

QUESTION: And, where in the process of making some repairs or renovations to the house to get it ready to live back into, um, now, we, we talked about, and there's nothing illegal about what you were intending to do,

ANSWER: Yeh

QUESTION: But, um, because you and Pamela aren't married and not related by blood, you were going to fix it up and actually rent it to her through what program?

ANSWER: Uh, I was lookin' into that HUD

QUESTION: HUD.

ANSWER: Yeh

QUESTION: So, she could get subsidized for, um, HUD approval and you'd be able to rent it, make the payment and, and

ANSWER: Yeh

QUESTION: work it out there. Would you have stayed there, as well, probably?

ANSWER: Uh, no

QUESTION: You would of stayed at the campground or would, do you know where you would have stayed if she would have rented the property.

ANSWER: Uh, no not really, you know.

QUESTION: You didn't have any arrangements made.

ANSWER: No, huh, uh. Cause, I mean, I'd just started workin' on the house, you know, getting' it

QUESTION: really processed with HUD or anything like that yet?

ANSWER: No, huh, uh. I just got paperwork on what specs a home should be.

QUESTION: Um, hum

ANSWER: And, I just, just started and I knew it would take me a while, cause, you know, with no money it's, you know, it's. So, I just started into it and, you know, never really planned yet where I was gonna stay.

QUESTION: Okay

ANSWER: You know I

QUESTION: Was there any, um, utilities hooked back up when you moved back to the house? Or, when you came back west from the west and, and the actual house that burned down. Did any of the, where any of the utilities connected back up.

ANSWER: Uh, the electric, is that what

QUESTION: Electric

ANSWER: Yeh, just

QUESTION: or water

ANSWER: Yeh, water I haven't had there for quite a while and, uh, for because of a back bill. But, the electric I got turned on through my sister's name. She called and had it hooked up.

QUESTION: Okay. Other than that, that's the only utilities it would be?

ANSWER: Yeh

QUESTION: Cause you had coal, coal furnace

ANSWER: Yeh

QUESTION: Okay. Uh, any telephone hookup there?

ANSWER: Yeh, there's a telephone hookup, but it wasn't hooked up

QUESTION: Right, you didn't have the connection,

ANSWER: No

QUESTION: there's no phone number to the home.

ANSWER: No, I just

QUESTION: Okay, um, so, actually, leading up to then, the night of the fire, um, you weren't actually living in the house? 13

ANSWER: Uh, we did stay there probably two to three nights, you know, right before the 4th of July.

QUESTION: Hum, hum

ANSWER: You know, cause we're still at that campsite and, you know, it's getting' a little old.

QUESTION: Right

ANSWER: Cause we was in a camper the whole time out west and, you know, we stayed there a couple nights and, uh, even with no electricity we, you know, was usin' them kerosene lamps and then having the power turned on.

QUESTION: When was the power turned on? Do you know approximately how many days before the 4th?

ANSWER: I did, but now I don't. It's, I'm guessing two to three days.

QUESTION: Okay

ANSWER: Before the 4th I'm not real sure.

QUESTION: So, the electric was turned back on. And, that was in then in your sister's name.

ANSWER: Yeh

QUESTION: Okay.

ANSWER: Yep, cause I have a bad bill with them too.

QUESTION: The, um, yeh, you got a lot a

ANSWER: Yeh

QUESTION: things hidin' in the woodwork, uh, I'll put it that way. Um, in regards then to the fire,

ANSWER: Okay

QUESTION: Uh, where were you and Pamela at the night of the 4th?

ANSWER: Uh, yeh, that, well, it started with like that day, she went off to do her family thing with her family. And, then, I went over to my cousins and did my family

thing. And, then, we were gonna meet at my friends house in Sanborn at Allen Lutz's house

QUESTION: Okay

ANSWER: Jr. So, we met there. I'm not sure what time. It was still daylight. And, he had food and drinks and stuff. We stayed there and, uh, his cousin put off a bunch of fireworks. And, I'm guessin', it was somewhere around midnight, what happened, that ice

QUESTION: This is the midnight of the 4th.

ANSWER: Yeh, the midnight of the 4th, yeh and, uh, what happened we're all just havin' fun and drinkin' and stuff and I started pickin' on my friend Allen, Jr. and I don't know, you know, I still don't even understand it today. She took it as, for some, somehow I was pickin' on her and makin' fun. Because, she blew up, off, you know, she just blew up, you know, was in some type of fightin' mood or, you know, I wasn't sure why, cause I knew I was just, you know, was nothin' dirty, no, no nothin'. I's just pickin on my friend. She blew up and, uh, she said that, you know, we were leavin'. And, I followed her down to the car and I filled up a beer and I took it down there to the car to leave and she threw it and, uh, then she went up and was yellin' for my dad, cause he was there, tellin' him, you know, to hurry up, cause we're leavin'. And, then, we just had a couple words there at the car. And, I, you know, got outta the car and said I wasn't goin' or somthin' like that. And, I just slammed the door and she took off. And, I figured she'd just go to the house and go to sleep or somethin'. So, there was a girl there, Kerry Phillips, she was gettin' on my case for havin' a fight with her and stuff. So, me and Allen decided it was a good idea to pick her some flowers. (Laughs) So, we cut some of his flowers down and, uh, about a half hour to forty minutes, somewhere in there, that Kerry Phillips and her boyfriend, Rick, gave me and dad a ride. And, we took him to Brisbin and dropped him off. And, then, we're goin' to Madera and thats when we were comin' down past the VFW and the Quick Chek we seen the smoke and we seen that the road was blocked up there and, uh, you know, I knew it was right in the area of my house. (Laughs) And, uh, we got up there and they dropped me off, probably just down the street from Ken Long's. I went walkin' up to the they were fillin' up that swimmin' pool type thing with the trucks. And, uh, the one, the one fire guy he told me to get outta there cause I wasn't, you know, a member or whatever in the fire company. And, I was like well, I said "This is my house". So, he's like "oh, you better get down there". Cause I guess that they were, I was told later that they thought somebody was in the house. So, I walked down there and, uh, you know, and then they started puttin' the water to the fire and, and that was that was about it for that night. And, then, uh, you know, we just stood around hung around for a few hours till they got it pretty much out. And, then, uh, Ken mentioned a couple times that we should go out to Gasam. And, I was like "na" I's like "she's probably on her way to Jersey or, you know

QUESTION: Did you assume,

ANSWER: out of state or something"

QUESTION: Did you assume, right then, that she did the fire or caused the fire?

ANSWER: Yeh, cause she, you know, bein' mad that night and havin' no idea what for cause it was, it wasn't a normal fight at all. It was, you know, like I said I'd could see if there was any kind of cheatin' or

QUESTION: Would you classify yourself and her more than just, um, casually drinking? Was it heavy drinking? Would you

ANSWER: Uh, I would say it was, well, it mighta hit pretty hard, cause the whole time out west we didn't drink but maybe twice. And, uh, you know, we did it like every weekend. And, we went a long time without and, then, Allen just had that party and he's like "you're gonna, you know drink". I don't know how much he had, you know, I was, I was allright cause I was at the fire. I wasn't stagerin' and fallin' around, you know.
(Laughs)

QUESTION: Was she drinking before, was she, at her family's gathering? Do you know?

ANSWER: That I, I don't know. I'm not sure.

QUESTION: What time did she arrive to the party where you were at?

ANSWER: Uh, boy, I'm not, I'm not really sure.

QUESTION: Approximately. Was she there an hour or two or more than that or less than that?

ANSWER: I'm thinkin' I probably got there, I don't know, around 6:00, I'm just, you know, kinda guessin'. And, uh, she showed up probably twenty minutes to a half hour later.

QUESTION: Alright, so she was there most of the time you were there.

ANSWER: Yeh

QUESTION: And, up until the point, then, for whatever reason she, you know, went off in a tangent.

ANSWER: Yeh

QUESTION: Okay. Um, so, then, after you arrived there and found that the house was on fire, um, and they battled the blaze. Um, when was the fire put out or when did they the fire departments leave? Do you have any idea? Was it

ANSWER: Oh, I, they were startin' to pack up, I think, somewhere around 4:00 – 4:30, because, uh, Ken, he finally talked me into goin' out to Gasam and we went out there and everything was already burnt and, you know, pretty much burnt completely out except for a little flame on the gas tank. And, uh, well, we blew it out and then we got back to Madera and, I think, it was right around 5:00 in the morning. We got back to Madera and there was still some fire, you know, firemen around.

QUESTION: Was there any fire departments at the campsite?

ANSWER: No, huh uh, no

QUESTION: Hadn't been turned into anybody there, apparently, then. No fire department was notified.

ANSWER: Oh, no, huh uh, no

QUESTION: Okay. Um, when, then, did you have additional conversation with Pamela?

ANSWER: Um, probably

QUESTION: When's the next time you talked to her.

ANSWER: Probably, close to a week went by before I went out there.

QUESTION: How, how did you come to the realization that she set the fires. I mean, how, did you just assume that, because of the argument and the fight

ANSWER: Yeh

QUESTION: Or, did somebody come to you and say something?

ANSWER: Oh, well, I mean, just pullin' up there and seein' that my house is on fire, I, you know just figured, you know, because of that fight and then, uh

QUESTION: I was wondering if the police or the fire department said to you that was arson at the scene or did they suspect that a furnace malfunctioned or anything like that or electrical, you didn't, or did you just assume.

ANSWER: Yeh, I just, I just assumed

QUESTION: Okay

ANSWER: that, you know. And, then, uh, Carol Pernanski, my neighbor, she said that she was out in her pool that night and she's like "oh, yeh, she pulled right in and was

in there for a few minutes, or somethin' like that, and then left" and then a little bit later on she seen the flames.

QUESTION: So, it was kinda' of a just connecting the dots.

ANSWER: Yeh

QUESTION: as far, Okay.

ANSWER: Yep

QUESTION: I don't mean to put words in your mouth but

ANSWER: Yeh

QUESTION: that's, that's what I, uh, I'm gathering from what you're trying to

ANSWER: Yes

QUESTION: tell me. And, what we've known to this point.

ANSWER: Yeh

QUESTION: Uh, have learned to this point. Um, now, um, other than that fight, is there any other reason a fire would have taken place or she would have set fire to the house that you know of?

ANSWER: No, nothin', I mean, even, you know, close to a year of datin' we never had maybe two fights, you know, and it just doesn't seem.

QUESTION: Nothing to that degree, or

ANSWER: Yeh, nothing, you know

QUESTION: No physical contact or anything like that?

ANSWER: No, huh, uh, no we never, never got physical.

QUESTION: And, in, answer this question we have to ask. Do you have any involvement in this fire?

ANSWER: No, huh uh, no

QUESTION: Was the mortgage pretty much current? I think you were up to approximately the right, up to July paid. Is that right?

ANSWER: Um, I'm not real sure.

QUESTION: I know you're poor on paperwork

ANSWER: Yeh

QUESTION: I know we've talked about that already. But, you were, you, there weren't any notices of foreclosure or anything like that?

ANSWER: Oh, no, huh uh. No

QUESTION: I now you had financial problems, cause not of no employment

ANSWER: Um, hum

QUESTION: Um, and you've got some outstanding debts, be it fines what have you. Uh, but, um, you know, those are some issues that draw some concern.

ANSWER: Yes

QUESTION: An insured might have a a hand in a fire. But, you're stating that you have no knowledge or involvement of this fire.

ANSWER: No, huh, uh like my house payment's only close to \$150.00. It'll get two three months and that's not a lot, you know. I could see maybe if I was, I don't know, back years or somethin' (Laughs), you know, she'd burn somethin' down. Wasn't in that bad a shape.

QUESTION: Um, now, it, the more sensitive issue, uh, was your delay in responding to us. Um, we had sent an appointment to meet at the property. Uh, you didn't attend. Uh, multiple calls where made to numbers that you might have been able to be reached. Left numbers, messages, not only myself, but your neighbor Ken Long did as well. Um, and we've sent you multiple correspondences. In fact, a letter went out to you on Friday, the 12th, or excuse me, Monday, the 12th, which, actually you didn't even see that letter yet in your mail.

ANSWER: No, huh uh.

QUESTION: You just read it here today

ANSWER: Yeh

QUESTION: We talked about why your delay was in in contacting us. Could you just tell me briefly why that was?

ANSWER: Uh, I'm

QUESTION: I mean you can just be frank and honest.

ANSWER: Yeh

QUESTION: I mean, There's no, I'm not

ANSWER: I'm, you know, just not that great with paperwork and I just steer away from it and, uh, I just showed up today cause I was tryin' to think of what that one letter was sayin' about.

QUESTION: The duties of an insured.

ANSWER: Yeh, yeh, you know, and I had that letter for a day or two and my mail it's scattered between everybody's houses. And, when I finally do get it, and, uh, I can't couldn't find it so I come in today to see what my duties where.

QUESTION: And, I think, to, I mean, we, we've discussed in length here today maybe some, initially some thought was, I mean, you are still with Pam, as of right now, I mean, in fact, she's in the parking lot. She brought you here today because you don't have a vehicle or license.

ANSWER: Yeh

QUESTION: Some thought was maybe, and this is what I was thinking and I think you concurred a little bit, was that, um, this is gonna be difficult on her alone with criminal charges that are probably pending and, and, um, ultimately, coming forward, uh, but the economic loss. I think, maybe, you hesitated on making a claim thinking that trying to help her out to some degree. Is that a good?

ANSWER: No, I didn't really think, you know, think a lot about that..... I don't know.
(Laughs) I.

QUESTION: It just, do, I, I know you also talked to family and friends and, uh, we were to meet that first day and we were gonna get your statement and someone suggested to you that's not proper procedure, which, of course, I've told you that is standard procedure in any fire loss. Um, that, is that more of what caused your delay

ANSWER: Yeh

QUESTION: then anything to do with the financial end of your relationship with Pam?

ANSWER: It really wasn't anything really to do with her just, you know, listening to advise from family and friends and it just spooked me and I'm pretty easy spooked. I just try to stay away from everything.

QUESTION: Um, so right now your intentions are to proceed forward with the claim, um, and to recover your loss of dwelling and contents. Is that correct?

ANSWER: Yeh, I guess.

QUESTION: Um, I think, you know I, I, I've tried to address every issue here today, uh, as best as I can gather. Unless you feel there would be something you'd like to add. Uh, not only about the fire itself, but the home, your relationship with Pam, what have you. Is there anything that you would, uh, like to add about the whole scenario?

ANSWER: No, not nothin' I can really think of.

QUESTION: Have you understood all of my questions today?

ANSWER: What's that?

QUESTION: Have you understood all of my questions today?

ANSWER: Yes

QUESTION: And, finally, has this recording been done with your permission?

ANSWER: Oh, yeh, yeh, it was easier than I thought.

I'd like to conclude the recorded statement of Richard Duane McCracken at approximately 5:15pm on Wednesday, August 14, 2002.

INTERVIEW WITH:

Carol Posanskey Neighbor

ADDRESS AND LOCATION OF INTERVIEW:

P.O. Box 437, Chestnut St., Clearfield, PA

DATE / TIME:

7-5-02 @ 1615 hours

Q: Is it okay if I tape your interview?

A: *Oh, yes, of course.*

Q: May I have your name, please?

A: *Carol Posanskey.*

Q: How do you spell that?

A: *P-o-s-a-n-s-k-e-y.*

Q: What is your address?

A: *P.O. Box 437, Chestnut St. Yeah, um, as I was saying, I was in the pool and the lights on that red truck were on and they were facing back my way and I kept thinking my motion light was kicking on. You know, I kept thinking "what in the heck is that light doing on?". So, what I did was, I thought, well, I'm going to swim a little bit and I saw a car, the car left and the lights were still on in the truck. I thought, "well, he must still be there and she dropped him off" (the girlfriend).*

Q: Was there a car also?

A: *Um hum, yeah, the car was there when I came home.*

Q: Do you know what kind of car that was?

A: *It was an older car. It was like a blue, blue.....*

Q: I know that the insured's name is Rick McCracken. Does he live at that home? Does he live alone? Does the girlfriend live there?

A: *Yeah, and well, they left here awhile ago, about three months ago. They left three months ago and then he just recently in the last two weeks, he's been coming back and forth. They like, hauled out a furnace the other day and he's been hauling stuff out of the house but then he put a little porch on, you know, just to go in and out and the lights were just kicked on two days ago.*

Q: Did he just get electricity a couple of days ago?

A: *Yes, he was running from bills and stuff like that (inaudible). But, um.....*

Q: Do you know who he lives with?

A: *Pam Vaux, V-A-U-X, from down Tylertown way. She's a lot older than him but, I don't know, I've only talked to her once or twice.*

Q: Was that her blue car?

A: *Yeah, I think so. I'm not sure because both of them have driven it but I heard that she had wrecked it so.....*

A: Were you in the pool?

A: No, I'm just swimming around. I lit all of the Tiki torches and everything and I just had my underwear and bathing suit top on because nobody bothers us around here, but I'm thinking "I'm going to see what he's burning" because the car left and the truck lights were on. Usually, on the 4th of July, he's out there hootin' and hollerin', really, drunk, shooting his guns, fireworks and everything. So I was wondering "why isn't he making a lot of noise but he's burning brush there" is what I was thinking. So I get up and get out of the pool and I go over and I'm looking, and I said "Wow, he's burning that awful close to the house!" and then I looked again and thought, "Wait a minute! There's smoke coming out from under the roof!" I thought, I'm going to wake up my husband". He don't get up until 3:00 in the morning and I thought he'd kill me or whatever, so I go in and I said, "Rick, I know I had a couple drinks tonight but tell me if I'm imagining this or not". So, I get him up out of bed and he comes out and looks and he said, "Yeah, I think it's on fire, Carol!" and that's when I told him to call 911 and I was running around and calling for Rick (McCracken) because I thought he was still there. My husband's name is Rick, too. I went over to the neighbor's and the heat was just so hot and we moved our vehicles up here but we were yelling for Rick McCracken because we thought he was there. Sometimes, he's been known to drink and fall asleep in the house, you know, with the radio blasting, and we were afraid maybe he might have been in there.

Q: How much time was there from the time the car left until you noticed the fire?

A: It wasn't, no, it wasn't very much time at all. It had to be about 15 - 20 minutes. Yeah, it wasn't very much.

Q: Was it around 11:30?

A: I got home about a quarter after, got in the pool about 11:30, it was around a quarter till, ten till 12:00 because I found that odd. I thought "why isn't she staying with him?". Sometimes she did and sometimes she didn't.

END OF INTERVIEW

INTERVIEW WITH:

Robert Evans / Friend of Insured

ADDRESS AND LOCATION OF INTERVIEW:

Address: P.O. Box 163, Madera, PA.

DATE / TIME:

7-5-02 @ 1700 hours

Q: May I have your name, Sir?

A: Robert Evans.

Q: What is your address?

A: P.O. Box 163, Madera, PA.

Q: Is that in this area?

A: Yep, just right down the road.

Q: Do you have a phone number?

A: 378-5861.

Q: Can you tell me what you know about the fire?

A: I, my girlfriend lives in the house right over there.

Q: Is that the one we can see right through the yard up at that corner?

A: Yeah. Uh, I was sittin' in her driveway last night and it was probably about 12:30 and she ran in the house to get somethin' and I looked over here and I could see flames. I ran over and that corner over there that I told the Fire Police guy, I said "When I come over, it was pourin' out that window back there and it was up through the roof back in the corner!". I ran back over to tell her dad that it was on fire.

Q: Was that over on this side in the middle?

A: Yeah, and by the time I come back over, the whole, you know, the roof was on fire and it was already on top there, the whole thing was on fire.

Q: You think that was around midnight, correct?

A: Yeah, yeah.

Q: What is your girlfriend's name?

A: Laura Long.

Q: Is that the Long's residence?

A: Yeah.

END OF INTERVIEW

INTERVIEW WITH:

Rick McCracken (nsured)

ADDRESS AND LOCATION OF INTERVIEW:

P.O. Box 281, Madera, PA 16661

DATE / TIME:

7-5-02 @**1835 HOURS HOURS****Q: Mr. McCracken, what is your address?****A: P.O. Box 281, Madera, PA 16661.****Q: Is this Chestnut Street?****A: Chestnut Street, yeah.****Q: Does the mail come here or do you have to go to the Post Office?****A: Go to, yeah.****Q: Is it okay if I tape your interview?****A: Uh, sounds good.**

Q: I'm working for National Grange Mutual Insurance and I am the origin and cause investigator. I have all of my photographs, went inside and took photos in there. It looked like there was a furnace that was moved out. I saw there was a furnace.....there's a coal fired furnace in there. Was there another furnace moved out?

A: Um hum, yeah. Temporary, it's down there in that chicken coop 'cause my boiler down there, it's so old and it got a crack in it, wouldn't hold water. It was dead of winter so I took it from the garage in there and fired it....it's just a wood furnace, so I pulled it out then because I wanted to get rid of it and I was tryin' to get the house, you know.....

Q: How old are you now, Rick?**A: 28.****Q: What is your date of birth?****A: 5-3-74.****Q: What is your Social Security number?****A: 199-60-8041.****Q: How long have you lived here? How did you acquire the place?**

A: Um, me and my neighbor, Ken Long, bought it in an auction and then a few weeks later, maybe a month later, I decided to take it over on my own and live here.

Q: How long have you been here?

A: I guess, we were sayin' over there, four, these guys all say close to five years.

Q: Did you have insurance on it the whole time?

A: I.....I can't remember when I paid insurance. Actually, I was down here. I thought I didn't, apparently I do, I don't know.

Q: I'm sure you do. Can you tell me what the circumstances were before the fire? Were you here?

A: Yeah, I was. I was puttin' the hand railing on the porch. I wanted to try to fix it up to try to get.... I had a book on how to make it on certain rules or whatever for HUD 'cause I thought maybe I could rent it and I didn't know about how to go about it and I got papers and it said all this stuff. So, we started on it. I put that porch on it and it just had the two concrete steps there and we was puttin' hand railings on it and I was gonna put a roof on it. That's what I was doin' for the past two days, wasn't i

Q: Have you been living in the house?

A: Well, I was out West for like, close to five months and I moved back.....

Q: Was that in South Dakota?

A: Uh, Arizona and Colorado and then I moved up here to Kerrmore, me and her in a camper trailer.

Q: Who is "her"?

A: This is the "Pam".

Q: I don't know Pam. What is her name?

A: Pam Vaux.

Q: Vaux?

A: Yeah, from Tylertown.

Q: How would you spell that?

A: V-a-u-x.

Q: How old is Pam?

A: 42 or 43.

Q: Do you know her date of birth?

A: No.

Q: What would you give as a description of her?

A: Um, blonde hair, 125 lbs.

Unknown man speaks: There's a picture of her over there, Rick.

Q: Were you out West with Pam?

A: Yeah, we were out there and then we came home.

Q: Is Pam your fiancée?

A: She's a girlfriend.

Q: Do you date other girls also?

A: No.

Q: I have to ask that question because we have to find out what's going on here. When did you come back from out West?

A: *It's been right around a month ago and I was stayin' at this property over near Kerrmore. That's where the Harley's at, my tent and we had her parents'*

Q: You have a Harley and a tent over there, correct?

A: *Yep.*

Q: Do you have other personal belongings over there?

A: *Yep.*

Q: Is that her house?

A: *No, there's no house there at all. It's just a campground and we had her camper there, her parents', and we stayed in it and we just got electric turned on here on the 3rd and we stayed here for three to four nights, like a couple days before we got the electric. The day we got the electric, we stayed here.*

Q: Once the electric was hooked up, what did you have powered in because I didn't notice anything in the fridge?

A: *No, it was still unplugged. The only thing, we had the lights and we were running the air conditioner yet this year. I plugged in the T.V. to make sure it worked and that was it, just kinda lighting for the basement so I could pack. I was packing all my stuff out. That's why it's all in boxes.*

Q: What about the furnace? Is it running?

A: *The original?*

Q: No, what is mean is, did you have anything running in there for heat?

A: *No, not this time of year.*

Q: Did you have your electric hot water heater running?

A: *No, 'cause I haven't had water here in probably a year.*

Q: Basically, you had the electric hooked up and you were just using the lights, is that correct?

A: *Yeah, because we're movin' all my property out of here to get a renter.....*

Q: What about the outside light on the porch? Was the motion detector working?

A: *Oh yeah, yeah.*

Unknown man speaks: The water heater's propane.

Insured speaks: *Yeah, that was gas.*

Q: Is that Mitchell Gas?

A: Yeah.

Q: What did you and Pam do that day in the house?

A: I'm thinkin' we probably got up around 10:00 and started workin' on the porch and did that probably for just a few hours, workin' on the porch. Like I said, I didn't even have my power tools down here, I was just using the battery operated hand saw and we got the porch pretty much done except for the roof.

Q: Was she helping you?

A: Yeah, she was standing on boards while I cut 'em.

Q: Were either of you drinking alcohol at the time?

A: No, huh uh, no. We did that and then I went to go do my family thing for the 4th of July and she went off to do her's.

Q: What time did you split up?

A: I'm thinkin'.....what time did it.....it must have been around 12:00 I got to your place?

Unknown man speaks: Around 12:00, 12:30, right around there.

Insured speaks: So right around between.....

Q: Was it lunchtime?

A: Yep, 11:30, 12:00, yeah.

Q: Did you stay at Mr. Long's house, or....what is your name, Sir?

A: Shay.

Insured speaks: I went to Shay's right in Houtzdale. It's only like a mile away. I went there and then got rides with family to go to do the family thing there for the 4th and before we left, she's like "What about the keys?" because we were both splittin' up that day and we didn't know who was going to get back to the house first so that's when I stuck the key ring with all my lock and door locks in the Ford Ranger in the ashtray and uh, you know, so either one of us could open the doors when we get home. But, then, instead, when I got a ride back from doin' the family thing, I got dropped off in Sandburn, at my friend's house and then she showed up about 10 minutes later and that was around.....what time?

Mr. Shay speaks: It was probably a little bit after 5:00 when we got there.

Insured speaks: That was about probably a little after 5:00 and so we were both there. We were there, did the fireworks there, all the way up till probably 11:00. I don't know when it was, between 11:00 and 12:00.

Mr. Shay speaks: The fireworks lasted until right around 12:00. I think they started at 10:30 and they went the whole way until around 12:00.

Q: Were you with Pam then at the time? Was she still in Kerrville or wherever?

A: Yeah, I haven't seen her since.....

Q: When you two split up at lunchtime, you didn't see her for the rest of the day, is that correct?

A: We met at his (Shay's) house in Sandburn.

Unknown man speaks: Around 5:00.

Insured speaks: He said around 5:00.

Q: What is his name?

A: Alan Lutz. So we did that and we were at his place till dark and stuff, lit all the fireworks, and then she got, jealous, or somethin'. There was a couple other girls showed up and they was a lot younger. I'd mentioned a few wrong words and stuff towards my friend Alan here and uh,.....

Q: Was anybody drinking at the time?

A: Yeah, it was a typical 4th of July and she got all real excited and she was to take me and my dad here home and she got all real bent out of shape and yelled and screamed down by the road and she took off.

Q: Was she mad?

A: Oh, yeah.

Q: When you guys split up, did she take her vehicle?

A: Yeah.

Q: What kind of vehicle is that?

A: It was a light blue Thunderbird. I don't know what year it is but it's her parents' vehicle.

Q: What did you take?

A: Um, we didn't have any wheels but then, we hung out there for awhile.....

Unknown man speaks: Probably about 45 minutes.

Insured speaks: He thought it was a good idea for me to pick her flowers for suckin' up so we got the flowers and, uh, his friend, Carrie Phillips, gave me and my dad a ride. We went from Sandburn to Brisbin, dropped him off and then we went from Brisbin to Madera and that's when we were comin' up through town and we seen all the fire trucks and stuff and I'm like, well,

that's when I got out of.....they dropped me off.

Q: What did you think when you saw the fire trucks? Did anything strike you funny?

A: *Oh, I knew because we were only.....*

Q: Did she say anything to you?

A: *No, she was doin' that screamin' and I couldn't get a word in so I just kinda told her off and slammed the car door and she took off. You know, there was no threats and she never seemed like the type I would think could do this.*

Q: What time did you two split then?

A: *That was.....*

Unknown man speaks: It was like 11:30 or 12:00. It must have been around that area.

Insured speaks: *Yeah, it's in that area. I'm not real sure.*

Q: Was it before midnight?

A: *Personally, I don't know.*

Q: What time was it that you saw the fire trucks?

A: *I'm not real sure. It only takes like five minutes to get.....it's only like six, seven miles away, I'm not.....*

Q: What happened to Pam with respect to her wrecking the car?

A: *I heard about that the next morning.*

Q: Was the wreck on the 4th of July?

A: *Yeah.*

Unknown man speaks: It was the same night.

Q: Was that after you guys left?

A: *Yeah.*

Q: What happened?

A: *From what I could tell.....we were 35 minutes to an hour..... I'm not real sure 'cause everybody wanted me to cool down and stay out there and they got me to the flower thing. So, anyway, I was, we were anywhere from 35 minutes to 40 minutes or so behind her and that's when I got dropped off here and we were here for awhile and they got the fire out and stuff and my neighbor said it was probably a good idea to go out and check, like the camper stuff. The camper was gone. Her dad took it out a few days ago. I just had a tent and the Harley and we pulled in and the tent and the Harley were all burned.*

Q: What kind of Harley did you have?

A: A Sportster, '89, 1200.

Q: What color?

A: Yellow. And then supposedly, by talking to the officer there that she probably left Kerrmore because that's about when Gazzman's at, and then probably, looks like, got into the accident which I didn't hear about that till this morning that she totaled the car.

Q: Did you see her after the fire? Did she come back?

A: No, I've never seen her since, not at all.

Q: How far is Kerrmore?

A: I think it's nine miles from here to where that camper, that campsite.....

Q: What I'd like to do is photograph that Harley. Is that okay with you?

A: Oh, yeah.

Unknown man speaks: I told him not to touch anything.

Insured speaks: Yeah, he said not to touch anything.

Q: We measured the "V" patterns over there. We had 13' coming in and 8'7" and 17 on one edge. Was there a platform on top of those two air conditioners?

A: Oh, no. No, it was just them 2 air conditioning units and the one, the 3-ton unit, the one I was actually usin' was boxed in with them railroad ties and the other Ken just give me, it was a 4-ton heat pump and it was not hooked up.

Q: Did you have anything piled up on this side of the house where the "V" pattern is?

A: No, huh uh. It was all clear there. The steps weren't even there, just the two side step things that didn't actually have the steppers on. It was rotted.

Q: How would I get in touch with you, Rick, if I had to? Do you have a phone number?

A: Yeah, call Ken Long. It's 378-6284.

END OF INTERVIEW

INTERVIEW WITH:**Alan Lutz (friend)****ADDRESS AND LOCATION OF INTERVIEW:****Residence RR 1, Box 684, Osceola Mills, PA 16666.****DATE / TIME:****7-5-02 @ 1915 HOURS**

Q: What is your name, Sir?

A: Alan Lutz.

Q: Is that L-U-T-Z?

A: Yes.

Q: What is your address?

A: RR 1, Box 684, Osceola Mills, PA 16666.

Q: Were you with Rick also?

A: He was at my house. We were having that barbeque. That was where he was at right before my friends gave him a ride home here.

Q: Were you there when Pam came up?

A: Yeah, him and Pam were up there and I was there when she left.

Q: Can you tell me what happened there?

A: She just, just about what Rick said. I come down from the fire and fireworks there and my girlfriend was sittin' there and Rick and Pam and, uh, Carrie and another Ricky, and I was out her and my brother, he's younger, and his friends and some girls were over there. My girlfriend was over there and they were checking them out wonderin' who they were and Rick, who had been drinkin', and he's like "Watch out Alan! You're in a danger zone!" and I was like, I didn't know what he was talkin' about then and well, that's when I come over and I still didn't know what went on and Pam walked down to the car and Rick went down to talk to her. They were down there for a minute and they argued for about 20-30 seconds and she tore off up the road and Rick come up and he was kinda wound up for about a minute and then he calmed down and he said he was gonna come down here.....he felt bad.

Q: Did some kind of an argument take place?

A: Yeah. I didn't hear it so.....

END OF INTERVIEW

INTERVIEW WITH:

Shay Manahan (friend)

ADDRESS AND LOCATION OF INTERVIEW:

Residence 702 MacAteer Village, Houtzdale, PA

DATE / TIME:

7-5-02 @ 1920 HOURS

Q: What is your name, Sir?

A: My name is Shay Manahan.

Q: What is your address?

A: 702 MacAteer Village.

Q: Where is that located?

A: It's in Houtzdale.

Q: Was Rick with you?

A: Yes.

END OF INTERVIEW

CLAIM POLICY #	NAME	TYPE	REPORTED DATE	LOSS DATE OF	NUMBER CHECK	EST AMT	PAID AMOUNT	AGENT
04 02334	MCCRACKEN, RICHAR	10	07/05/02	07/04/02			15,967.20	MAR

EDWARD J. YOCUM
620 TYLER AVENUE
CLEARFIELD PA

(814-765-1163)

EXPERIENCE: 09/97 To Present E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

Claims manager of multi-line independent insurance adjusting firm that investigates insurance claims for various insurance companies throughout our service territory.

07/92 to 9/97 Penn National Insurance Company
Harrisburg PA 17105

Field claim representative handling insurance claims in five Counties including investigating, estimating damages and settling claims.

12/89 to 07/92 E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield PA 16830

Insurance adjuster for multi-line independent insurance adjusting firm after serving one-year apprenticeship.

EDUCATION: 1995 - Certificate from Vale National Training Center, Mechanicsburg Pennsylvania, signifying completion of Casualty Adjusting Course.

1990 to present - Licensed motor vehicle physical damage appraiser, Commonwealth of Pennsylvania.

1990 to present - Numerous seminars, training courses, etc. of various topics relating to investigation, adjusting, settling, etc. of insurance claims.



TSIKALAS INVESTIGATIONS

3423 William Penn Avenue Johnstown Pennsylvania 15909

PAGER: 888-519-5553 ♦ PHONE: 814-322-4909 ♦ CELLULAR: 814-659-2771

♦ 24 HOUR FAX: 814-322-3310 ♦

WEB-SITE: <http://tsikalas.com> ♦ E-MAIL: fire@tsikalas.com

July 10, 2002

Ed Yocum
E.L. Braid Claim Service
R.D. 3, Box 276
Clearfield, PA 16830

RE: Policy # 32334
Insured: Richard McCracken
Subject: Incendiary Residential Structure Fire

Dear Mr. Yocum:

Enclosed please find the invoice and the full and complete investigation as assigned on July 5, 2002 regarding the McCracken property. A complete file will be maintained in this office.

As documented in the report, the fire is classified as "Incendiary" and "Arson / Spite revenge Fire".

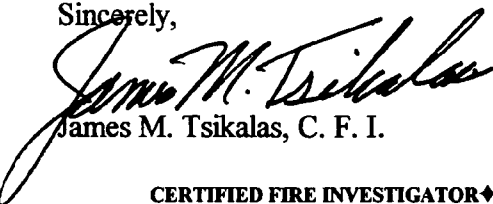
Ed, if you have any questions concerning this investigation, please feel free to call my office at anytime.

Ed, Clearfield County Grange Mutual fire Insurance Company will be receiving an (Arson Immunity Letter) as the PSP Fire Marshal requested a copy of the fire investigation. The colored copy is attached. Charges are expected to soon be implemented relative Pamela Jo Vaux, insured's girlfriend.

The evidence is being sent for Analysis.

Thank you for the opportunity to serve the Clearfield County Grange Mutual fire Insurance Company and E.L. Braid Claim Service.

Sincerely,



James M. Tsikalas, C. F. I.

CERTIFIED FIRE INVESTIGATOR ♦ ♦ ♦ ♦ ♦ LICENSED ♦ ♦ ♦ ♦ ♦ BONDED ♦ ♦ ♦ ♦ ♦ INSURED

July 12, 2002

Re: Insured: MCCRACKEN, RICHARD D.
Policy: 32334
D/L: 7/4/02
Our File: J-2291

RICHARD D. MCCRACKEN
P.O. BOX 281
MADERA, PA 16661

Dear Mr. McCracken:

As you are aware, we represent Clearfield County Grange Mutual Fire Insurance Company in reference to the above-captioned claim involving the total loss of your dwelling and contents within. This will confirm our most recent telephone conversation of Wednesday, July 10, at which time we had set an appointment to meet with you at the residence Thursday, July 11 at 2:00pm.

The purpose of this correspondence is to inquire as to the reasons you did not keep or attend that meeting as we waited for nearly one and one-half (1 ½) hours awaiting your arrival. During that course of time, we discussed with your nearby neighbor, Ken Long, a brief history of the property. Mr. Long was gracious enough to assist this writer in attempting to reach you by telephone at various friends and family with no success. We left the premises after leaving telephone numbers with Mr. Long and a message asking you to contact this writer as soon as possible, which, as of the time of dictating this correspondence, we've had no further contact with you.

Please be advised that the insured has duties to assist and cooperate with the insurance company in obtaining the necessary information needed to investigate not only the cause and origin of loss, but to establish damages.

I refer you to your policy providing coverage for the dwelling and contents, which is referred to as a Standard Fire Insurance Policy of the State of Pennsylvania and specifically Lines 90 through 122 wherein it states:

Requirements In Case Loss Occurs:

The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and the amount of loss claimed; and within 60 days after loss, unless such time is extended in writing by this company, the insured shall render to this company a Proof of Loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following:

The time and origin of the loss, the interest of the insured and of the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verify plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of the property herein described, and submit to examinations under oath by any person named by this company, and subscribed the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made.

Taking into consideration all of the above, we ask that upon receipt of this correspondence you immediately contact this writer at the above-listed numbers at extension 205 so that we may then reset an appointment to meet with you to obtain the necessary information and documentation. We now await your reply.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum

EJY/bl

cc: Randy Guthrie, Clearfield Co. Grange ✓

Sent Regular & Certified

B.P.S.

Dear Mr. Guthrie:

In confirming our telephone conversations of Thursday, July 11 and Friday, July 12, you will note that we have yet to receive a call back from the insured to determine the reasons he did not meet us at the property on Friday and, due to these initial problems, we thought it best to put him on notice of his duties and obligations set forth within the Standard Fire Policy Form.

In addition to the above, we had the opportunity to further discuss the investigation of the Pennsylvania State Police Fire Marshall's department and their investigator, Trooper Michael McCracken, of the Clearfield Barracks. Although, Trooper McCracken was off on Friday, July 12, we were able to reach him via his cell phone and informed him of the insureds "no show". Trooper McCracken has indicated that he now has sufficient information and documentation to warrant the arrest of the insured's girlfriend, Pamela Vaux. It will, simply, come down to him completing the necessary paperwork and proceeding to the alleged perpetrator's residence to complete the arrest process. He hopes to have that task completed within the next several days and we, of course, will follow-up with him to determine what information he will require from us to pursue the responsible party for restitution. This of course all hinges upon the insured's cooperation and whether or not any additional investigation would reveal the insured had any part in this arson loss.

Lastly, we are attempting to learn the current status of the mortgage the insured has with County National Bank and upon confirmation of the mortgage status we will notify you of that information. If in the interim, you should have any questions or concerns please contact this writer at the above listed numbers at extension 205.

Very truly yours,

Edward J. Yocum
Edward J. Yocum

EJY/kjw

B.P.S.: Dear Mr. Guthrie:

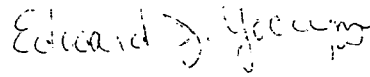
As you note we have not had any further contact from the insured but we have confirmed as per the certified mail delivery card, the insured picked up our July 12th, 2002 correspondence on July 19th, 2002. Again he has failed to contact this writer thus, our reason for sending the attached.

In addition to the correspondence to the insured you will note that we have written to Trooper Michael McCracken advising him of our problems getting the insured's cooperation.

In my last telephone conversation with Trooper McCracken he advised that an arrest of the alleged responsible party, Pamela Vaux would happen shortly and if he had the opportunity to discuss the claim with the insured he would inform him that he has an obligation and duty to assist the insurance company in processing the claim.

If you should have any questions or concerns upon receipt of this status, please contact this writer at the above listed numbers at extension 205. Otherwise, our additional reporting will soon follow.

Very truly yours,

A handwritten signature in cursive script that reads "Edward J. Yocum".

Edward J. Yocum

EJY/kjw
Enclosure

July 22, 2002

Clearfield County Grange Mutual Insurance Company
1214 South Second St.
Clearfield Pa 16830

Mr. Randy GUTHRIE,

Your insurance company has been named as the insurer of a fire loss presently being investigated by a member of this Department.

In accordance with the provisions of the Pennsylvania Arson Reporting Immunity Act, 1980-85, please provide us with the pertinent policy information and other relevant information, reports, photographs, evidence or material in your possession or in the possession of underwriting agents, adjusters and investigators which relates to any previous fires and the fire loss indicated below:

PSP Incident No.: C03-0712205
Policy/Claim Number: Policy # 32334
Date & Time of Fire: 07/05/02 at 00:15 A.M.
Location of Fire Loss: North side of Chestnut St. 300 Ft. east of SR53
Bigler Twp. Clearfield County. Pennsylvania

Name of Policy Holder(s): Rick McCracken
P.O. Box 281 Madera, Pa 16661

Investigator, Address & Telephone Number: Trooper Michael S. McCracken
Pennsylvania State Police
R.D. 2 Box 314
Woodland, Pa. 16881
(814) 857-3800

It is requested the information be furnished **DIRECTLY to the investigator** identified in this correspondence.

In the event our investigation reveals specific facts which would preclude the initial notice to the policyholder about whom the information furnished pertains, we shall advise your company accordingly.

Sincerely, *Tpr. Michael S. McCracken*

Tpr. Michael S. MCCRACKEN
Deputy Fire Marshal
Troop C Punxsutawney
Clearfield Barracks
Fire Marshal Unit

July 24, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

MR. RICHARD MCCRACKEN
P.O. BOX 281
MADERA PA 16661

Dear Mr. McCracken:

I write to you in reference to the above captioned claim, which has come up on our diary system and will also follow our July 12th, 2002 correspondence.

The purpose of this correspondence is to determine your intentions in this matter as we note and confirm that you have received our July 12th, 2002 correspondence outlining the duties of an insured when a claim has been submitted.

It is imperative that you contact this writer to discuss the claim in general and your intentions as well. I can be reached at the above listed numbers at extension 205 and if I am not in please leave a detailed message on my voice mail or follow the instructions to reach my secretary and she can immediately reach me so that I may return your call and move this claim process forward. We now await your reply.

Very truly yours,

Edward J. Yocum

EJY/kjw

CC: Clearfield Co. Grange Mutual Fire Insurance Company ✓

July 24, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

TROOPER MICHAEL MCCRACKEN
PA STATE POLICE
CLEARFIELD BARRACKS
R.D.#1 BOX 314
WOODLAND PA 16881-9723

Dear Trooper McCracken:

I write to you in reference to the above captioned claim, which we are handling on behalf of our principal, Clearfield County Grange Mutual Fire Insurance Company.

As discussed in our most recent telephone conversation of July 17th, we still have had no cooperation from the insured, Richard McCracken.

As previously discussed we had set an initial appointment to meet with Mr. McCracken at the residence on July 11th, and he failed to show on that date and since that date we have been unable to reach him by telephone but do have confirmation that he received our July 12th, 2002 correspondence sent certified returned receipt. We confirm that Mr. McCracken picked up our correspondence on July 19th, 2002 and again has failed to contact this writer regarding his intentions. We have once again written to him advising that it is his obligation to cooperate and his failure to do so could ultimately jeopardize coverage.

We have learned from his nearby neighbor, Ken Long that apparently Mr. McCracken is notorious for procrastination and honoring his word and commitment. This combined with the fact that this loss is alleged to be an arson case involving Mr. McCracken's girlfriend, Pamela Vaux may explain some delay if indeed he is in fact intending on continuing that relationship.

We are asking by copy of this correspondence that should you have any direct contact with Mr. McCracken that you notify him of our attempts to reach him and strongly urge to him

that it is very important that at the very least he gives this writer a call so we may discuss the claim process in general and what his intentions may be for the claim that has been submitted.

We take this opportunity to thank you in advance for your anticipated cooperation in this matter and should you have any additional questions please contact this writer at the above listed numbers at extension 205.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum

EJY/kjw

CC: Clearfield Co. Grange Mutual Fire Ins. Company ✓

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

August 12, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

RICHARD MCCRACKEN
P.O. BOX 281
MADERA PA 16661

Dear Mr. McCracken:

Once again we write to you in reference to the above captioned claim to inquire as to your intentions. You have failed to respond to our two previous correspondences shortly after you failed to attend the meeting that we had scheduled on July 11th, 2002.

Please be advised that we are moving forward to secure the payoff of the mortgage with County National Bank and will request payment be issued to the bank to satisfy that mortgage in within the policy limits provided for the property. Once that task is completed we will notify the Pennsylvania State Police and the District Attorney's Office of Clearfield County so that they may protect our principal's interest in this matter against the alleged responsible party, Pamela Vaux.

If we do not receive a reply from you within thirty days of receipt of this correspondence we will assume that you are making no additional claims against the policy and at that time we will retire our file. Thus, if you intend to present a claim please contact this writer at the above listed numbers immediately so we can then discuss what information is necessary for the claims process. We now await your reply.

Very truly yours,

Edward J. Yocum
Edward J. Yocum

EJY/kjw
CC: Clearfield Co. Grange
Sent Regular and certified

August 12, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

COUNTY NATIONAL BANK
216 SPRING STREET
HOUTZDALE PA 16651

Attention: Branch Manager

To Whom It May Concern:

Please be advised that we represent Clearfield County Grange Mutual Fire Insurance Company who insures the property of Richard McCracken destroyed by fire July 4th, 2002.

The purpose of this correspondence is to inquire as to the current mortgage balance and pay off so that we can request that payment to satisfy the mortgage as soon as possible.

As you are most likely aware this fire was ruled as an act of arson and Clearfield County Grange Mutual Fire Insurance Company intends to pursue the responsible party once charges are filed against the alleged perpetrator. In addition, please be advised that we are requesting this payment information from you directly as we have had no cooperation from Mr. McCracken who has failed to respond to this writer's many requests.

I would ask that once you have had the opportunity to review this correspondence that you contact this writer at the above listed numbers at extension 205. I take this opportunity to thank you in advance for your anticipated cooperation and we now await your reply.

Very truly yours,

Edward J. Yocum

EJY/kjw

CC: Clearfield Co. Grange Mutual Fire Insurance Co.✓

August 16, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

RICHARD MCCRACKEN
P.O. BOX 281
MADERA PA 16661

Dear Mr. McCracken:

I write in follow up to our meeting on Wednesday August 14th, 2002 at the office of Clearfield County Grange Mutual Fire Insurance Company on Old Town Road, in Clearfield, PA.

As you know at the time of our meeting we discussed in general the insurance claims process and the facts surrounding the loss you had sustained on July 4th, 2002. Shortly thereafter, we secure the recorded statement discussing ownership and occupancy of the dwelling and your recollection of the events took place on the date of loss.

At the end of our meeting we advised that all information would be reviewed in detail and a response would be forthcoming as to coverage that would be provided.

During the course of the review and in particular the review of the recorded statement coverage issue has arisen. The question that has come to light is involving occupancy of the dwelling and the fact that you had confirmed that the property had been vacant for approximately four months just prior to the fire with no utilities connected except electricity that was re-established to the property two or three days prior to July 4th. The electric was set up in the name of your sister. You further confirmed that you and Ms. Vaux were staying at a campsite on the property owned by your father several miles away and that you had only slept in the dwelling three or four nights combined since returning from Colorado.

For your reference we enclose a copy of the recorded statement transcription.

In light of the above stated information we want to bring to your attention and refer you to a copy of the insurance policy provided for the property, which is referred to as a standard fire insurance policy in the State of Pennsylvania specifically lines twenty-five through thirty-two wherein it states:

Conditions suspending or restricting insurance unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

- A. While the hazard is increased by any means within the control or knowledge of the insured:
- B. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or.....

Based upon the facts confirmed during the course of your statement the above stated exclusionary language of the policy, we must with regret deny coverage to you for the dwelling loss above and beyond the mortgage payoff with County National Bank. Meaning, no additional funds will be provided for the structure loss once the mortgage payoff has been confirmed and the payoff processed.

You would be responsible for all costs for clean up and removal of debris including necessary permits and fees charged by the municipality or government agency involved.

In regards to the additional coverages provided under your property policy number 2334, effective 8/12/1999 through 8/12/2002 you have \$15,000.00 coverage for personal property/contents contained within the dwelling at the time of the loss. This coverage is subject to actual cash value terms and conditions all subject to a \$250.00 deductible feature. We would ask that you complete the inventory schedules given to you at the time of our meeting and return them to this writer at the above listed address. Upon receipt we will review and process the inventory but in the meantime we would request that you do not discard any of the items listed on the inventory until such time that the claim has been concluded.

Lastly, Clearfield County Grange Mutual Fire Insurance Company for the above stated reason or reasons and for other reason or reasons which may become known, notifies that the action taken by the company or its authorized representatives to investigate the cause of loss, determine the amount of loss or damage or attempt to adjust any claim arising out of the alleged loss shall not waive any of the terms or conditions of the policy of insurance described above, nor shall such action waive any of your rights under the policy. If we do not hear from you to the contrary, we will assume that it is acceptable for us to continue handling the case on these terms.

The company does not intend, by this letter, to waive any policy defenses in addition to those stated above but specifically reserves its right to assert such additional policy defenses at any time.

It is important that you have your continued cooperation in our investigation.

If you should have any additional questions please do not hesitate to contact this writer at the above listed numbers at extension 205. Otherwise, we wait your submittal of the requested documentation.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum

EJY/kjw

Sent Regular and Certified

CC: Clearfield Co. Grange Mutual Fire Insurance Company ✓

CC: R. Denning Gearhart

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

August 30, 2002

Re: Insured: MCCracken, RICHARD D.
Policy: 32334
D/L: 7/4/02
Our File: J-2291

COUNTY NATIONAL BANK
216 SPRING STREET
HOUTZDALE, PA 16651

Attn: Branch Manager

To Whom It May Concern:

I write in follow-up to our August 12, 2002 correspondence relative to the above-captioned claim, which we are handling on behalf of our principle, Clearfield County Grange Mutual Fire Insurance Company.

As indicated previously, we are asking for a current payoff of the existing mortgage for the property located along Chestnut Street, P.O. Box 281, Madera, PA 16661, destroyed by fire on July 4, 2002.

As of this date, we have yet to receive a reply from you as to our request for a current payoff and, until such time, we cannot issue payment to satisfy the mortgage. Thus, I would ask that, upon receipt of this correspondence, you please contact this writer at the above-listed numbers at extension 205 so we may finalize the mortgage payoff numbers and relay that information onto our principle for draft issuance. I take this opportunity to thank you, in advance, for your anticipated cooperation in this matter and we now await your reply.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum *bjl*
Edward J. Yocum

EJY/bl

cc: Clearfield Co. Grange Mutual Ins. Co.

B.P.S.: Dear Mr. Guthrie:

In follow up to our most recent telephone conversation of Thursday August 15th, you will note that we have advised the insured that no coverage would be provided for the dwelling except for the payoff of the existing mortgage with County National Bank. This decision was based upon the fact that the insured, during the course of our meeting and obtaining his statement on August 14th, revealed that the property had been vacant for approximately four months shortly prior to the date of loss. This new information brought into play exclusionary language under the policy wherein it states that if a home or dwelling is unoccupied or vacant for sixty consecutive days the company would not be liable for damages to the structure.

With the above in mind this writer met with local attorney, R. Denning Gearhart who performs the defense and legal work on behalf of your company. We met with Attorney Gearhart on Thursday August 15th, to review the coverage issues described above and he was in agreement that we had a basis to deny coverage to the insured for the structure loss but that we would still be obligated to the mortgagee for the mortgage payoff within the policy limits. In addition, Attorney Gearhart did not feel that we had any basis to deny coverage to the insured for the contents contained within the dwelling even though it was unoccupied or vacant. The policy was in effect and premium was received for content coverage thus, coverage has been extended to the insured for his contents loss.

Lastly, you will note that we have reserved your rights under the policy should anything come to light that would change your company's position on coverage that has been extended. At this present time we are awaiting a response from County National Bank and we now await the insured's submittal of the requested documentation. We will diary our file ahead fifteen days and our additional reporting will soon follow. If in the interim you should have any additional questions or concerns please contact this writer at the above listed numbers at extension 205.

Very truly yours,

Edward J. Yocum
Edward J. Yocum

EJY/kjw
Enclosure

○ ○
=== COVER PAGE ===

TO: _____

FAX: 18147689410

FROM: JAMES TSIKALAS

FAX: 8143223310

TEL: 8143224909

COMMENT:

FAX

Date 7-8-02

Number of pages including cover sheet 3

TO:	ED YOCUM
Phone	
Fax Phone	

FROM:	James M. Tsikalas
	Tsikalas Investigations
	3423 William Penn Avenue
	Johnstown, PA. 15909
Phone	1-814-322-4909
Fax Phone	1-814-322-3310

NOTE:

OVERALL FINDINGS/CONCLUSION
MCCRAKON

OVERALL FINDINGS AND CONCLUSION:

After conducting the scene examination, reviewing the scene photographs and conducting witness interviews, together with the education and experience of this investigator, it is my professional opinion, within a reasonable degree of scientific certainty, that the fire that occurred on July 05, 2002 at 0041 hours to the insured Richard McCracken's two story structure along Chestnut Street, in the Village of Madera, Township of Bigler, County of Clearfield, Commonwealth of Pennsylvania was *Incendiary* in nature as the fire was intentionally set. This fire is classified as an "*Arson -Spite Revenge Fire*" and due to the gathered information the perpetrator of this crime is the insured's girlfriend, one Pamela Jo Vaux, W-F-43, D.O.B. 3-11-59 of P.O. Box 98, Kylertown, PA 16847. Vaux drove to the insured's residence in a light blue Ford Thunderbird, parked on Chestnut Street and proceeded to the insured's Ford Ranger bearing PA Registration YDD6243. Vaux took the insured's car keys that were in the ashtray. She also turned on the headlights as the bright lights were observed by the neighbor, Carol Posanskey who resides across the street. A short time later, Vaux got in her vehicle and spun the tires leaving the scene as a rapid pace. Carol Posanskey stated that from the time that the blue Thunderbird had left the scene, it was less than a matter of ten minutes when Posanskey called in the fire.

The insured and his girlfriend were staying at a camp-site approximately 9 miles from the fire scene and when this investigator went to the camp site, Pamela Jo Vaux was not present however the insured's Harley Davidson Motorcycle, tent, opened suitcase with the insured's clothing inside and camping equipment was burned. Also it was learned that Pamela Vaux had wrecked her blue colored Thunderbird into a guardrail along PA Rte 729 waking up a nearby resident, Melvin Barrett, Phone # 814-236-2898. The accident site is approximately 2 to 2 1/2 miles from the camping area on Gazzam Road. The accident occurred on Jul 5, 2002 at approx., 1:45 A.M. The accident had not been reported to the State Police and it is a "hit and run" accident.

It is also the opinion of this investigator, within a reasonable degree of scientific certainty, the fire originated at the at the exterior South side of the house against the lap siding with the use of a liquid accelerants.

POINT OF ORIGIN INDICATORS:

- ① Distinct "V" pattern at the South side of the ballooned framed structure.
- ② No Arcing, beading and dark discoloration to the electrical wiring
- ③ The presence of more thermal exposure at the area of origin.
- ④ Significantly more fire damage at the exterior South side as contrasted to the other sectors at the residence.

- Truncated cone effect above the point of origin

ELIMINATION FACTORS:

- ① Elimination of lightening strikes and all other natural fire causes.
- Elimination of the aerial electrical service entrance as a fire cause.
- Elimination of the electrical service panel as a fire cause.
- ① Elimination of the interior electrical wiring as a fire cause.
- Elimination of the coal / wood hot water boiler as a fire cause.
- ① Elimination of spontaneous combustion.

FILED

302

Atty General

DEC 19 2002

[Signature]

William A. Shaw
Proprietary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

**NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

JURY TRIAL DEMANDED

FILED

DEC 24 2002

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

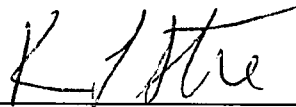
Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. 2002 - 1662 CD
:
:
: JURY TRIAL DEMANDED

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By 
Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

Date: Dec. 23, 2002

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard D. McCracken
Plaintiff(s)

*

Vs.

*

No. 2002-01662-CD

Clearfield County Grange Mutual Fire Insurance
Co.
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Paul Evanko, Commissioner, Pennsylvania State Police

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things: Fire Marshall's report and any other investigative reports relating to the fire loss which occurred on or about July 4, 2002, at the residence of Richard D. McCracken, Bigler Township, Madera, Clearfield County, Pennsylvania, 16661.
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Karen L. Steele, Esq.

ADDRESS: 414 N. Logan Boulevard
Altoona, PA 16602

TELEPHONE: (814) 946-4391

SUPREME COURT ID # 32707

ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, December 19, 2002

Seal of the Court



Deputy

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

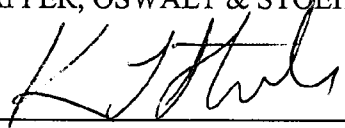
:
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 on the 23 day of December, 2002, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By 

Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED

NO
CC

M10:25 BY

DEC 24 2002

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William A. Shaw
Prothonotary

RICHARD D. McCRACKEN,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

REPLY TO NEW MATTER

Filed on behalf of Plaintiff, Richard D.
McCracken

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

JURY TRIAL DEMANDED

FILED

JAN 15 2013

William A. Shaw
Prothonotary

RICHARD D. McCracken,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 2002 - 1662 CD
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE COMPANY,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, **RICHARD D. McCracken**, through his legal counsel, Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr, and files this Reply to the New Matter of the Defendant as follows:

29. Paragraphs 1 through 28 of the Plaintiff's Complaint are incorporated by reference herein.

30. The allegations in Paragraph 30 are denied. Specifically, it is denied that the Plaintiff abandoned the subject premises at any time. To the contrary, the Plaintiff, at all times relevant hereto, considered the subject premises to be his permanent residence which he maintained as his mailing address. The Plaintiff's personal property was not removed from the premises. The allegations in Paragraph 30 alleging that the Plaintiff left the area to avoid criminal prosecution and/or other legal obligations is objected to as being scandalous, impertinent, and irrelevant.

31. It is admitted that the Plaintiff returned to Clearfield County in or about June 2002.

32. Admitted in part and denied in part. It is admitted that the Plaintiff initially lived in a camper prior to returning to the subject property approximately one week prior to the fire. It is admitted that the Plaintiff had the electricity turned on prior to the fire. Plaintiff can neither admit nor deny the allegation that "... he did not bother to turn on any other utilities, was not able to get any other utility coverage" as said allegation fails to state what utility coverage is being referred to. By way of further answer, the Plaintiff did not require any additional utilities to maintain his residence in the subject dwelling but had resided in the premises even without electricity through the use of kerosene lamps. The allegation that the

Plaintiff "may have stayed under the roof of the premises for a day or two, he did not take steps to move back to the premises" is denied. To the contrary, the Plaintiff had never moved from the subject premises and had been living exclusively in the subject premises for approximately one week prior to the fire.

33. It is admitted that the Plaintiff was remodeling the premises at the time of the fire and had rebuilt an exterior porch for the purpose of qualifying the property as a rental unit under the Section 8 Program administered by the Department of Housing & Urban Development. By way of further answer, the allegation in Paragraph 33 is completely irrelevant to the issues raised herein.

34. Admitted in part and denied in part. It is admitted that Pamela Vaux was angry with the Plaintiff and destroyed the subject premises owned by the Plaintiff.

35. The allegations in Paragraph 35 are completely irrelevant to the issues raised in this action. By way of further answer, it is denied that the Plaintiff advised or needed to advise Ms. Vaux with respect to being interviewed by Trooper McCracken inasmuch as Ms. Vaux was the subject of an arson investigation in which she was the primary suspect.

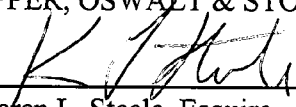
36. The allegations in Paragraph 36 constitute conclusions of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure. Therefore, said allegations are denied and proof thereof demanded at the trial of this action. By way of further answer, the sole basis upon which the Defendant denied coverage of Plaintiff's claim is set forth in the letter of August 16, 2002, from E.L. Braid Claim Service, Inc. attached as Exhibit "2" to the Complaint and incorporated by reference herein.

37. Admitted in part and denied in part. It is admitted that the Defendant, after denying the Plaintiff's claim by letter of August 16, 2002, and after receiving correspondence from the Plaintiff's attorney, stated its intention to file a declaratory judgment action by October 11, 2002. Plaintiff's counsel did not receive a copy of the Defendant's Complaint for Declaratory Judgment until October 30, 2002, by which date the Plaintiff had already filed the subject Complaint against the Defendant.

38. The allegation in Paragraph 38 constitutes a conclusion of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure. Therefore, said allegation is denied and proof thereof demanded at the trial of this action. By way of further answer, it is averred that the undisputed facts do not support the Defendant's denial of coverage under the policy.

WHEREFORE, Plaintiff demands judgment against the Defendant as set forth in his Complaint.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By 
Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

Date: Dec. 19, 2002

VERIFICATION OF INDIVIDUAL

I, **RICHARD D. McCRACKEN**, hereby certify that I have read the foregoing Reply to New Matter. The averments of fact made therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to penalty of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


Richard D. McCracken

Dated: 1/8/03

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

:
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Reply to New Matter on the 14 day of Jan., 2002, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
Attorney for Defendant
Attorney I.D. #26540

215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By Karen L. Steele

Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED

NO
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JAN 15 2003

cc
E
6/25/03

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

**CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO RULE 4009.22**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

JURY TRIAL DEMANDED

FILED

JAN 17 2003

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

:
: JURY TRIAL DEMANDED

**CERTIFICATE PREREQUISITE TO SERVICE OF
A SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22,
Defendants, certify that:

(1) A Notice of Intent to Serve the Subpoena with a copy of the Subpoena attached thereto was
mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought
to be served;

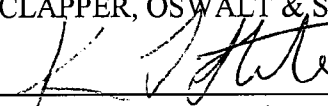
(2) A copy of the Notice of Intent, including the proposed Subpoena, is attached to this Certificate.

(3) No objection to the Subpoena has been received; and

(4) The Subpoena which will be served is identical to the Subpoena which is attached to the Notice
of Intent to Serve the Subpoena.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By


Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

Date:

Jan. 15, 2003

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

**NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

JURY TRIAL DEMANDED

FILED

10-25
DEC 24 2002

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

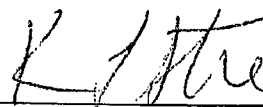
:
: JURY TRIAL DEMANDED

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

Date:

Dec. 23, 2002

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Richard D. McCracken
Plaintiff(s)

Vs.

Clearfield County Grange Mutual Fire Insurance
Co.
Defendant(s)

No. 2002-01662-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Paul Evanko, Commissioner, Pennsylvania State Police

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things: Fire Marshall's report and any other investigative reports relating to the fire loss which occurred on or about July 4, 2002, at the residence of Richard D. McCracken, Bigler Township, Madera, Clearfield County, Pennsylvania, 16661.
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Karen L. Steele, Esq.
ADDRESS: 414 N. Logan Boulevard
Altoona, PA 16602
TELEPHONE: (814) 946-4391
SUPREME COURT ID # 32707
ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw
Prothonotary/~~Clerk~~, Civil Division

DATE: Thursday, December 19, 2002
Seal of the Court


Deputy

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. 2002 - 1662 CD
:
: JURY TRIAL DEMANDED

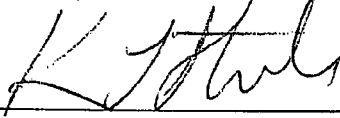
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 on the 23 day of December, 2002, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

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: NO. 2002 - 1662 CD

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: JURY TRIAL DEMANDED

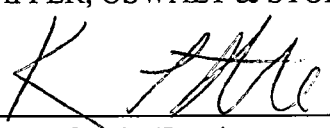
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 on the 16 day of Jan., 2003, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR

By


Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED NO
m 11:06 AM
JAN 17 2003
cc
E
Attest
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13214

MCCRACKEN, RICHARD D.

02-1662-CD

VS.

CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY

COMPLAINT & INTERROGATORIES/REQUEST FOR PRODUCTION OF DOCUMENTS

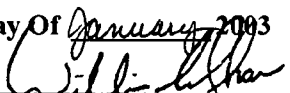
SHERIFF RETURNS

NOW NOVEMBER 4, 2002 AT 10:38 AM EST SERVED THE WITHIN COMPLAINT & INTERROGATORIES/REQUEST FOR PRODUCTION OF DOCUMENTS ON CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY, DEFENDANT AT EMPLOYMENT, 1214 OLD TOWN ROAD, SUITE 3, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RANDALL GUTHRIE, SEC./TREAS.(P.I.C.), A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & INTERROGATORIES AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

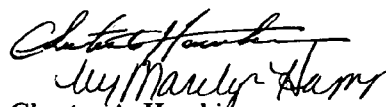
Return Costs

Cost	Description
20.37	SHFF. HAWKINS PD. BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

23 Day Of January 2003


So Answers,


Chester A. Hawkins
Sheriff

FILED

 JAN 23 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCRACKEN,
Plaintiff

VS.

NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

CASE NUMBER: 2002-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: Notice of Taking Deposition of Tpr. Michael S. McCracken
on Oral Examination under Rule 4007.1

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. No. 26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

DEC 04 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCracken
Plaintiff

VS.

NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

NOTICE OF TAKING DEPOSITION ON ORAL
EXAMINATION UNDER RULE 4007.1

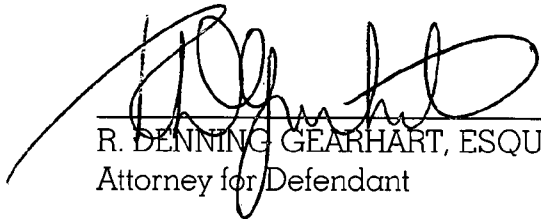
TO: Tpr. Michael S. McCracken
Fire Marshall
PA State Police
Woodland Barracks
R. R. #2, Box 314
Woodland, PA 16881

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoehr, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602

Sargent's Court Reporting
106 North Second Street
Clearfield, PA 16830

Notice is given herewith that, Pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, the deposition of TPR. MICHAEL S. McCracken, will be taken on oral examination at the offices of Sargent's Court Reporting, 106 North Second Street, Clearfield, PA 16830, on December 18, 2003, at 1:00 o'clock P.M., and at any and all adjournments thereof.

Said witnesses should bring with them to the deposition any and all documents relevant to this legal action.


R. DENNING GEARHART, ESQUIRE
Attorney for Defendant

Date: 12/4/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCRACKEN
Plaintiff

VS.

NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than 18 years of age and that on the 4 day of December 2003, I served a copy of the within Notice of Taking Depositions on Oral Examination under Rule 4007.1 filed in this proceeding, by First Class Mail, postage prepaid on the following:

Tpr. Michael S. McCracken
Fire Marshall
PA State Police
Woodland Barracks
R. R. #2, Box 314
Woodland, PA 16881

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoehr, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602

Sargent's Court Reporting
106 North Second Street
Clearfield, PA 16830

Executed on 12/4/03


R. Denning Gearhart, Esquire
215 E. Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

① 10:06 11th Nov 2003

DEC 04 2003

Ret

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCRACKEN,

Plaintiff

VS.

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NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

CASE NUMBER: 2002-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: Notice of Taking Deposition of Pamela Jo Vaux
on Oral Examination under Rule 4007.1

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY:

R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. No. 26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

DEC 04 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCracken
Plaintiff

VS.

:
:
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NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

NOTICE OF TAKING DEPOSITION ON ORAL
EXAMINATION UNDER RULE 4007.1

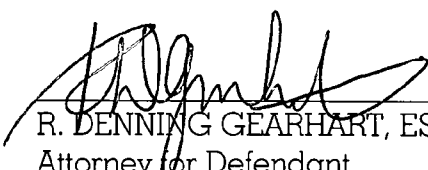
TO: Pamela Jo Vaux
P. O. Box 98
Kylertown, PA 16847

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoehr, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602

Sargent's Court Reporting
106 North Second Street
Clearfield, PA 16830

Notice is given herewith that, Pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, the deposition of PAMELA JO VAUX, will be taken on oral examination at the offices of Sargent's Court Reporting, 106 North Second Street, Clearfield, PA 16830, on December 18, 2003, at 2:00 o'clock P.M., and at any and all adjournments thereof.

Said witnesses should bring with them to the deposition any and all documents relevant to this legal action.


R. DENNING GEARHART, ESQUIRE
Attorney for Defendant

Date: 12/4/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

RICHARD D. McCRACKEN
Plaintiff

VS.

NO. 2002-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

CERTIFICATE OF SERVICE

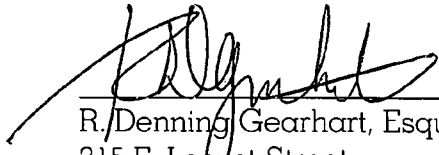
I certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than 18 years of age and that on the 4 day of December 2003, I served a copy of the within Notice of Taking Depositions on Oral Examination under Rule 4007.1 filed in this proceeding, by First Class Mail, postage prepaid on the following:

Pamela Jo Vaux
P. O. Box 98
Kylertown, PA 16847

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoehr, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602

Sargent's Court Reporting
106 North Second Street
Clearfield, PA 16830

Executed on 12/4/03


R. Denning Gearhart, Esquire
215 E. Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED
O 10-06 SA Noelle
DEC 04 2003 *RA*

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

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No. 2002-1662-CD

CASE NUMBER: 2002-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: MOTION FOR PARTIAL SUMMARY JUDGMENT
and MOTION TO CONSOLIDATE CASES

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 08 2004

William A. Shaw
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCRACKEN,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

:
:
:
: No. 2002-1662-CD
:
:
:
:
:

MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes Clearfield County Grange Mutual Fire Insurance Company, by and through its attorney, R. Denning Gearhart, Esq., who avers as follows:

1. The fire occurred on July 4, 2002, in Bigler Township, Clearfield County, Pennsylvania, causing damages to premises titled in the name of Richard D. McCracken.
2. Upon the investigation of the Pennsylvania State Police, as well as a private third party investigating on behalf of Clearfield County Grange Mutual Fire Insurance Company, it is determined that the fire was started through an act of arson.
3. Through the investigation of the Pennsylvania State Police, it is determined that the arson was committed by Pamela Jo Vaux, who is the girlfriend of Richard D. McCracken. That she was charged and entered a guilty plea.
4. That Clearfield County Grange Mutual Fire Insurance Company paid a sum of money to County National Bank, the Mortgagee.
5. In addition, a claim for further damage was made by Richard D. McCracken.

6. That immediately prior to the fire, Mr. McCracken and Ms. Vaux were in Colorado and Arizona for several months, prompted by a bench warrant being issued for Mr. McCracken's arrest. Upon their return, they lived in a camper on property owned by Mr. McCracken's father. A day or two before the fire, they had the electricity to the premises turned on under Mr. McCracken's sister's name. No other utilities were turned on, although they did (according to a statement given by Richard D. McCracken) intend to fix the premises so that Ms. Vaux—with the benefit of government assistance to the Department of Housing and Urban Development—could rent the premises from Mr. McCracken (who would then live with her while accepting rent from the government). They claimed to have slept in the house two nights before the fire.

7. The insurance policy provided that in the event of a vacancy or unoccupancy for more than sixty (60) days, the coverage under the policy would be void.

8. Because of the uncertainties created by the fact situation, Clearfield County Grange Mutual Fire Insurance Company had a legitimate question as to whether or not there was coverage.

9. In addition, because Ms. Vaux, who committed the arson, was providing transportation for Mr. McCracken when he attended the office of Clearfield County Grange Mutual Fire Insurance Company, and because he advised her not to talk to the police until she had a lawyer, Clearfield County Grange Mutual Fire Insurance Company again had a question as to whether or not it is responsible to compensate Mr. McCracken.

10. Counsel for Clearfield County Grange Mutual Fire Insurance Company wrote to counsel that had been retained by Mr. McCracken and explained that it wished to ask the Court of Common Pleas of Clearfield County to declare the extent of their

responsibility to Mr. McCracken. Counsel advised that he intended to file a Complaint seeking Declaratory Judgment. That Complaint was filed to the caption of: "Clearfield County Grange Mutual Fire Insurance Company, Plaintiff, vs. Richard D. McCracken, Defendant - No. 02-1687-CD".

11. Counsel for Richard D. McCracken filed her own suit, suing Clearfield County Grange Mutual Fire Insurance Company for damages. The damages included not only the amount that it alleges it is owed to Mr. McCracken through insurance coverage, but also punitive damages based on "bad faith".

12. The record does not show that Clearfield County Grange Mutual Fire Insurance Company acted in bad faith.

WHEREFORE, Clearfield County Grange Mutual Fire Insurance Company prays your Honorable Court to grant it summary judgment on the claim by Richard D. McCracken for bad faith.

COUNT II

MOTION TO CONSOLIDATE CASES

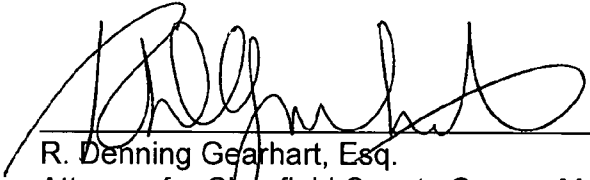
13. Clearfield County Grange Mutual Fire Insurance Company commenced a lawsuit to the caption of "Clearfield County Grange Mutual Fire Insurance Company, Plaintiff, vs. Richard D. McCracken, Defendant, No. 02-1687-CD, seeking Declaratory Judgment addressing its responsibilities to Richard D. McCracken, who is or was one of its insured.

14. That Richard D. McCracken commenced an action against Clearfield County Grange Mutual Fire Insurance Company seeking coverage for the loss suffered on July 4, 2002, under the above caption and Clearfield County Civil Action No. 2002-1662.

15. The fact situation is the same.

WHEREFORE, Clearfield County Grange Mutual Fire Insurance Company
prays your Honorable Court to consolidate both cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Denning Gearhart", is written over a horizontal line.

R. Denning Gearhart, Esq.
Attorney for Clearfield County Grange Mutual
Fire Insurance Company

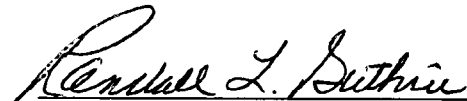
COMMONWEALTH OF PENNSYLVANIA

:
:
:

SS.

COUNTY OF CLEARFIELD

Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared RANDALL GUTHRIE, on behalf of Clearfield County Grange Mutual Fire Insurance Company, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief.

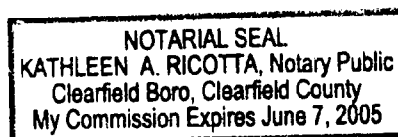

RANDALL GUTHRIE

Sworn to and subscribed

before me, this 5

day of April, 2004.


Notary Public



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD D. MCCRACKEN

vs.

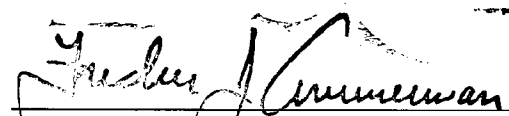
No. 02-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY

ORDER

NOW, this 14th day of April, 2004, it is the ORDER of the Court that argument on Defendant's Motion for Partial Summary Judgment and Motion to Consolidate Cases in the above matter has been scheduled for the 10 day of May, 2004, at 10:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

APR 15 2004

William A. Shaw
Prothonotary Clerk of Courts

APR 15 2004
of 11:00 AM
APR 15 2004
Amy Gearhart

61 Amy Gearhart

34

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCRACKEN,
Plaintiff

vs.

No. 02-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

CASE NUMBER: No. 02-1662-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: CERTIFICATE OF SERVICE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

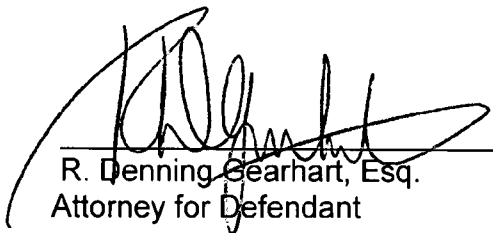
No. 02-1662-CD

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Motion for Partial Summary Judgment and Motion to Consolidate Cases and Order dated April 14, 2004, of the Honorable Fredric J. Ammerman filed in the above captioned matter on the Plaintiff through Plaintiff's attorney by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoehr, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602


R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: April 20, 2004

FILED

APR 21 2004

William A. Shaw
Prothonotary/Clerk of Courts



RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002-1662-CD

**PLAINTIFF'S ANSWER TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

JURY TRIAL DEMANDED

FILED

APR 28 2004

William F. Snow
Prothonotary, Clearfield County

RICHARD D. McCracken,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 2002-1662-CD
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE COMPANY,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**PLAINTIFF'S ANSWER TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, **RICHARD D. McCracken**, through his legal counsel, Goldstein, Heslop, Steele, Clapper & Oswalt and files his Answer as follows to the Defendant's Motion for Partial Summary Judgment:

1. Admitted. By way of further answer, both the dwelling and the contents were a total loss and Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, ("Grange Mutual") has admitted that the loss of the dwelling exceeds the applicable limit of coverage under Grange Mutual's fire insurance policy of \$40,000.00 and that the loss of the contents exceeds the limit of coverage of \$15,000.00 under said policy. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.146-149; Exhibit "1").

2. Admitted.

3. Admitted. By way of further answer and denial, upon the recommendation of the investigating Fire Marshall, Trooper Michael McCracken, Grange Mutual retained a cause and origin expert on July 5, 2002, to investigate the fire. After obtaining witness statements and a recorded statement from the Plaintiff, **RICHARD D. McCracken**, as per letter of July 10, 2002, from Tsikalas Investigations to Grange Mutual's claims adjuster, Ed Yocum, and enclosed expert report, the fire was determined to be an "arson-spite revenge fire" and the perpetrator of the crime was the girlfriend of the insured, Pamela J.

Vaux.

Criminal charges were filed shortly thereafter against Pamela J. Vaux. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Exhibit "2").

4. Admitted. It is admitted that the balance due on the mortgage held by County National Bank against the Plaintiff's dwelling in the total sum of \$15,967.20 was paid by Grange Mutual to County National Bank.

5. Admitted. By way of further answer, by letter of August 16, 2002, Mr. McCracken was informed that Grange Mutual was denying coverage on the dwelling based upon the vacancy clause in the standard fire policy stating:

The question that has come to light is involving occupancy of the dwelling and the fact that you had confirmed that the property had been vacant for approximately four months **just prior to the fire** with no utilities connected except electricity that was re-established to the property two or three days prior to July 4th. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Exhibit "3").

Although the letter informed Mr. McCracken that his dwelling loss was being denied, he was requested to submit inventory schedules with regard to the contents coverage for review and processing by the claims adjuster. Thereafter, by letter of September 18, 2002, from Plaintiff's attorney to Edward J. Yocum, Mr. McCracken submitted the completed Personal Property Inventory Schedule. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Exhibit "4"). Plaintiff McCracken received no specific response to his claim for contents loss notwithstanding that he had been requested to submit the inventory. The only response thereafter received was a letter dated October 8, 2002, from R. Denning Gearhart, counsel for Grange Mutual, indicating that there would be no payment on the loss and that a declaratory judgment action would be filed. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Exhibit "5").

6. Admitted in part and denied in part. It is admitted that Mr. McCracken and Ms. Vaux had been in Colorado and Arizona for several months. The Defendant's assertion that this was a result of a bench warrant having been issued for Mr. McCracken's arrest is totally outrageous, unreasonable, not part of the

record, and otherwise totally irrelevant to the issues raised herein. It is admitted that Mr. McCracken and Pamela Vaux returned to live in the insured dwelling several days before the fire and that the electricity had been turned on. To the extent that the allegation that no other utilities were turned on implies that the property was not otherwise habitable, said allegation is denied as the record shows that Mr. McCracken had previously lived in the property without additional utility service. It is admitted that Mr. McCracken was performing repairs on the property with the intention of having it approved by HUD for use as a rental property. The allegation with respect to Ms. Vaux receiving the benefit of government assistance while Mr. McCracken then lived with her is completely outrageous, unreasonable, unsupported by the record, and totally irrelevant to the legal issues raised herein. The allegations in Paragraph 6 with respect to the bench warrant and intention to defraud the government simply serve to support Plaintiff's claim of bad faith with respect to Grange Mutual's adjustment of Plaintiff's fire loss. By way of further answer, Grange Mutual, through its claims representative, Edward Yocum, admitted that Grange Mutual did not dispute that Mr. McCracken may have stayed in the property for several days prior to the fire but that coverage was being denied on the basis that the property had been vacant for a period in excess of 60 days before Mr. McCracken returned to the home and **before** the fire loss occurred. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.115-116; 122-123; Exhibit "1").

7. Denied. The policy issued by Grange Mutual to the Plaintiff was a standard fire policy including the mandatory provisions required under 40 P.S. §636. The occupancy provision is found under the heading "Condition Suspending or Restricting Insurance" and does not render the policy void. The provision states as follows:

Conditions Suspending or Restricting Insurance. Unless other-wise provided in writing added hereto this Company shall not be liable for the loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or

8. Denied. Grange Mutual denied Plaintiff's claim solely on the basis of the vacancy clause in the Standard Fire Policy notwithstanding that its own investigation confirmed that Mr. McCracken was living in the property on the date of the loss. Grange Mutual's interpretation of the vacancy provision has, from the outset, been without a reasonable basis in fact or in law and has recklessly disregarded such lack of reasonable basis for a period of one (1) year and nine (9) months during which time the Plaintiff has been unable to rebuild and occupy his home.

By way of further answer, Grange Mutual's adjustment of Plaintiff's fire loss claim has not only been in bad faith but inconsistent and frivolous as follows:

(a) Grange Mutual denied Plaintiff's claim for dwelling loss under the policy yet requested that he complete and submit a claim for loss of the contents. After completing and submitting the claim for loss of contents, Grange Mutual never specifically responded to the same. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.123-132; Exhibit "1").

(b) In his letter of October 8, 2002, directed to Plaintiff's attorney, Grange Mutual's attorney stated: "This situation, and your client, can lead reasonable minds to believe that Mr. McCracken has forfeited his coverage because, **under a lease**, the property lay vacant for a period in excess of the contracted 60 days." (emphasis added). This letter was copied to Randall Guthrie at Grange Mutual and Ed Yocum of E. L. Braid Claim Service. In fact, the Plaintiff's property was not under a lease. Mr. Yocum admitted that this appeared to be a factual mistake as there was no lease on the property as of the date of loss. Yet Mr. Yocum never contacted Attorney Gearhart to question him regarding the same or point out the mistake. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.140-142; Exhibit "1").

(c) Grange Mutual admitted that it did not dispute that Mr. McCracken was living in the property on the date of loss. Mr. Yocum testified as follows:

- Q. Okay. But you've agreed with me previously, I think, that you had no information, no facts to dispute his claim that he had been living in the property on the date of the fire and for several days before that; correct?
- A. That's correct, but I think our direction is **its not an issue of him staying in the property one or two days or three days or four days prior, but he was out of the property for an extended period of time**. And that's why we felt, because of the language of the policy, to have counsel review it.

(Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.122-123; Exhibit "1", emphasis added).

Although Grange Mutual then consulted with its attorney regarding the interpretation of the vacancy clause, at no time prior to the denial of coverage did Grange Mutual ever request or obtain a written opinion from counsel supported by legal authority. (Record in Opposition to Defendant's Motion for Partial Summary Judgment, Deposition Transcript of Edward J. Yocum, pp.123-124; Exhibit "1").

(d) The Defendant denied coverage solely on the basis of the vacancy clause in the Standard Fire Policy and has never expressly denied coverage on the basis of Plaintiff allegedly participating in arson. However, during the pendency of this action, Grange Mutual has delayed the Court's resolution of the legal issue with respect to the occupancy provision by insisting that it needed to take the deposition of the Fire Marshall, Trooper McCracken, and Pamela J. Vaux notwithstanding that Grange Mutual had already been fully informed by Trooper McCracken as to the results of his investigation including the fact that there was no evidence that Mr. McCracken was involved in or had any prior knowledge of Ms. Vaux's intention to burn his house.

9. Admitted in part and denied in part. The allegations in Paragraph 9 support the Plaintiff's assertion of bad faith on the part of the Defendant. While Defendant, Grange Mutual, has at no time ever denied Plaintiff's claims on the basis of arson, Grange Mutual continues to assert "questions" as to its responsibility for payment of the claims based upon innuendos which do not constitute a reasonable basis upon which to deny Plaintiff's claims. Plaintiff's obtaining transportation from Pamela J. Vaux and suggesting that she retain counsel before speaking with the police do not, singularly or together, provide a reasonable basis upon which to deny Plaintiff's claim.

10. Admitted in part and denied in part. It is admitted that counsel for Grange Mutual responded to Plaintiff's counsel by letter of October 8, 2002, a copy of which is attached hereto as Exhibit "5". It is further admitted that, when Plaintiff's counsel had not been served with a copy of a complaint in declaratory judgment as indicated in said letter, Plaintiff initiated this action seeking contract damages as well as damages for bad faith.

11. Admitted. By way of further answer, the record in this proceeding as well as the records submitted in the companion action filed to No. 02-1687-CD which is incorporated by reference herein, shows that the Defendant, **GRANGE MUTUAL**, had no reasonable basis upon which to deny Plaintiff's

claim prior to or during the pendency of this action but has refused and delayed payment without a reasonable basis upon which to do so in violation of 42 Pa. C.S.A. §8371 and in violation of the Unfair Insurance Practices Act, 40 P.S. §1171, et seq.

12. Denied. The record in these actions includes sufficient evidence of facts supporting a cause of action for bad faith such that the issues must be submitted to the trier of fact.

WHEREFORE, Plaintiff, **RICHARD D. McCracken**, respectfully requests that the Motion for Partial Summary Judgment of the Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, be denied.

COUNT II

MOTION TO CONSOLIDATE CASES

13. Admitted.

14. Admitted.

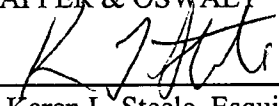
15. It is admitted that both actions involve the same operative facts and legal issues.

WHEREFORE, Plaintiff, **RICHARD D. McCracken**, has no objection to and joins in the Motion of the Defendant, **CLEARFIELD COUNTY GRANGE MUTUAL FIRE INSURANCE COMPANY**, that said actions be consolidated.

Respectfully submitted,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

Date: April 27, 2004

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002-1662-CD

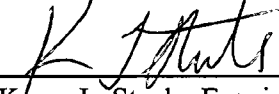
:
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Plaintiff's Answer to Defendant's Motion for Partial Summary Judgment on the 27 day of April, 2004, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
Attorney for Defendant
Attorney I.D. #26540
215 E. Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By 
Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED

NO
CC

APR 28 2004

Q
P

William A. Shaw
Prothonotary, Clerk of Courts

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002-1662-CD

**PLAINTIFF'S RECORD IN OPPOSITION TO
DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Filed on behalf of Plaintiff

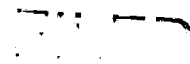
Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

JURY TRIAL DEMANDED



APR 28 2004

William J. ...
Prothonotary Clerk of Courts

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. 2002-1662-CD
:
:
: JURY TRIAL DEMANDED

**PLAINTIFF'S RECORD IN OPPOSITION TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, **RICHARD D. McCracken**, through his legal counsel, Goldstein, Heslop, Steele, Clapper & Oswalt, and, pursuant to Pa.R.C.P. No. 1035.1, files the following documents of record in opposition to the Defendant's Motion for Partial Summary Judgment.

1. Attached hereto as Exhibit "1" are pertinent parts of the deposition transcript of Edward J. Yocum taken on January 7, 2003, a complete copy of which has previously been filed of record in the companion action filed to No. 02-1687-CD.

2. Attached hereto as Exhibit "2" is a copy of the cover letter and report of Tsikalas Investigations dated July 10, 2002.

3. Attached hereto as Exhibit "3" is a true and correct copy of the letter from Edward J. Yocum to Richard McCracken dated August 16, 2002.

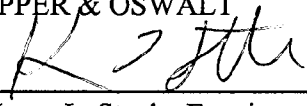
4. Attached hereto as Exhibit "4" is a true and correct copy of the letter from counsel for Richard McCracken to Edward D. Yocum dated September 18, 2002.

5. Attached hereto as Exhibit "5" is a true and correct copy of the letter of R. Denning Gearhart, Esquire, directed to counsel for Mr. McCracken dated October 8, 2002.

Respectfully submitted,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

Date: Apr 27, 2004

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

Record No. 5105
JULIUS BLUMBERG, INC.
NYC 10013
© 10% P.C.W.

Exhibit 11

1 IN THE COURT OF COMMON PLEAS OF
2 CLEARFIELD COUNTY, PA
3 CIVIL DIVISION

4 * * * * *

5 RICHARD D. *
6 MCCRACKEN, * No.
7 Plaintiff * 2002-1662 CD
8 vs. *
9 CLEARFIELD COUNTY *
10 GRANGE MUTUAL FIRE *
11 INSURANCE COMPANY, *
12 Defendant *

13 * * * * *

14
15 DEPOSITION OF
16 EDWARD J. YOCUM
17 JANUARY 7, 2003

18
19 **ORIGINAL**

20
21 Any reproduction of this transcript
22 is prohibited without authorization
23 by the certifying agency
24
25

1 indicate that you advise the insured
2 that no coverage would be provided.

3 In the beginning of the next
4 sentence states, this decision was
5 based upon the fact that the insured
6 --- when you use the term this
7 decision, who made the decision to
8 which you're referring to there?

9 A. That would be at the
10 advice of counsel, the
11 recommendation of counsel.

12 Q. And at the end of that
13 sentence, you indicate that the
14 decision was based upon the fact
15 that the insured revealed that the
16 property had been vacant for
17 approximately four months, shortly
18 prior to the day of loss; is that
19 correct?

20 A. Yes, dealing with the
21 statement that he had been out west
22 and that the property had been
23 vacant.

24 Q. Shortly prior to the date
25 of loss is the language which you

1 use; correct?

2 A. That's the language I
3 used, yes.

4 Q. Were you aware as of that
5 time, of the existence of any facts
6 or any witnesses who would testify
7 or could testify that the property
8 was not occupied on the date of the
9 loss?

10 A. Do we have any information
11 to confirm that?

12 Q. Yes.

13 A. No, not from any
14 witnesses.

15 Q. You refer to the
16 information in that same paragraph
17 as being new information; is that
18 correct, this new information
19 brought into play exclusionary
20 language?

21 A. Brought about by his
22 statement.

23 Q. But wouldn't you agree
24 with me, Mr. Yocum, that this same
25 information had been given by Mr.

1 when he was in and when he was out
2 of the property. That was all
3 developed in my statement of Mr.
4 McCracken. I'm sorry your question
5 was exactly ---?

6 Q. Whether or not you told
7 him that Mr. McCracken was living in
8 the property on the date of the
9 loss?

10 A. I informed him that he
11 claimed to be living there, that he
12 stated that in his statement, but
13 also that he was staying at a camp
14 site. And so there was a very
15 clouded issue, if that was
16 considered him really residing in
17 the property or was he just stopping
18 by to fix on the property but his
19 primary residence was the
20 campground.

21 Q. Okay. But you've agreed
22 with me previously, I think, that
23 you had no information, no facts to
24 dispute his claim that he had been
25 living in the property on the date

1 of the fire and for several days
2 before that; correct?

3 A. That's correct, but I
4 think our direction is it's not an
5 issue of him staying in the property
6 one or two days or three days or
7 four days prior, but he was out of
8 the property for an extended period
9 of time. And that's why we felt,
10 because of the language of the
11 policy, to have counsel review it.

12 Q. And did Attorney Gearhart
13 provide you with an opinion as to
14 whether or not coverage should be
15 denied on that basis?

16 A. Yes. And that's the
17 purpose and the basis of our denial.

18 Q. Did you ever get any
19 written opinion from Attorney
20 Gearhart to that effect?

21 A. No, I don't believe. I
22 don't have any knowledge or
23 recollection of any written opinion.

24 Q. Do you recall whether
25 during your meeting with Attorney

1 Gearhart there was any effort to do
2 any research on this issue or did
3 you simply discuss it verbally and
4 then come to a decision?

5 A. We discussed it verbally
6 and then we dictated the letter that
7 you identified as Exhibit 15.

8 Q. And so this letter that is
9 identified as Exhibit 15 was
10 actually dictated in Attorney
11 Gearhart's office?

12 A. No, I would have returned
13 to the office and dictated it. It
14 may have been dictated later that
15 same day, but as you know it was
16 mailed that following day. I think
17 we met on the 15th.

18 Q. And did you at any later
19 time ever receive any written
20 opinion letter from an attorney
21 regarding coverage of the claim?

22 A. No.

23 Q. In reference to the blind
24 postscript again in Exhibit 15,
25 paragraph two, you refer there to a

1 statement that, in addition,
2 Attorney Gearhart did not feel that
3 we had any basis to deny coverage
4 for the insured for the contents
5 contained within the dwelling even
6 though it was unoccupied or vacant.
7 The policy was in effect and premium
8 was received for content coverage,
9 thus coverage has been extended to
10 the insured for his contents loss.
11 Have I read that correctly?

12 A. Yes.

13 Q. And can you tell me where
14 in the policy or the restriction set
15 forth in the policy is there a ---
16 is there any distinction between
17 coverage on the structure and
18 coverage on the contents with
19 respect to the issue of occupancy?

20 A. I can't tell you that,
21 that was again at the direction of
22 counsel.

23 Q. All right. But ---.

24 A. That was his
25 interpretation in reading of the

1 policy language.

2 Q. So as of this date, the
3 date of this letter, you were still
4 --- you were extending coverage on
5 the contents even though you were
6 denying coverage of the structure?

7 A. At the advice of counsel,
8 yes.

9 Q. Looking at the content of
10 the letter itself, page two, first
11 paragraph, subparagraph A, in
12 addition to making reference to the
13 provision of the policy with regard
14 to occupancy, you also make
15 reference to a quote from the
16 standard policy with regard to
17 increase in the hazard, under
18 subparagraph A?

19 A. Yes.

20 Q. And my question to you is
21 on what facts were you relying to
22 assert a restriction in coverage
23 based upon increase in the hazard?

24 A. Well, that's --- whenever
25 I quote from policy, I quote that

1 entire section even though some
2 parts may apply and some may not
3 apply.

4 Q. Okay. But isn't there a
5 subparagraph C to that section also,
6 I believe? But in any event, your
7 answer would be that even if A
8 didn't necessarily apply, since it
9 was part of the same policy
10 provision, that's why you were
11 quoting from it there?

12 A. Right. Correct.

13 Q. And the basic intent was
14 to inform the insured that you were
15 denying coverage based upon
16 occupancy?

17 A. I say the majority of our
18 basis and again, which we discussed
19 with counsel, was on the occupancy
20 issue.

21 Q. Was there any other basis?

22 A. I can't recall if there
23 was any other basis. I think we
24 would have addressed that.

25 Q. So in other words, if

1 there was another basis, it would
2 have been included within this
3 letter?

4 A. I typically make
5 everything that would come into play
6 part of that reason for denial. But
7 also come along the bottom, some
8 other reasons that may become known,
9 they kind of put that catch-all
10 phrase ---.

11 Q. Which is a typical
12 reservation of rights?

13 A. Right.

14 Q. Before confronting this
15 issue in connection with this claim,
16 have you ever had an occasion in
17 adjusting any prior fire loss claim
18 to utilize or interpret the
19 occupancy language in the standard
20 fire policy?

21 A. I cannot think of any
22 other occurrence or any other claim
23 that I handled that had these same
24 circumstances, no, especially
25 involved in the standard fire

1 policy.

2 Q. And would you agree with
3 me that the language which you
4 quoted from the standard fire policy
5 refers to this condition as being
6 one which suspends or restricts
7 coverage as opposed to say a
8 termination or a cancellation of
9 coverage?

10 A. Yes, it says that, a
11 condition suspending or restricting
12 insurance.

13 Q. Now, you indicate in this
14 letter to Mr. McCracken that upon
15 receipt of his inventory schedule,
16 which you had given to him at the
17 time of your meeting ---

18 A. Yes.

19 Q. --- that you would review
20 and process the inventory with
21 regard to the contents claim; is
22 that right?

23 A. That's correct.

24 Q. And when you refer to your
25 meeting, were you referring to the

1 meeting which you had with him at
2 which time you took the statement?

3 A. The only meeting I had
4 with him.

5 Q. So you gave him the
6 inventory schedules at that time?

7 A. I gave that to him when we
8 sat down. And that's a typical,
9 again, process that I undergo,
10 regardless of if we're under
11 reservation of rights letter or a
12 non-waiver agreement, or any other
13 fire loss or water damage claim
14 involving contents loss. I gave
15 those documents to the insured
16 initially so that they have them and
17 we discuss them. And then it's just
18 provided to them as part of the
19 claims process.

20 Q. The next document I'd like
21 marked as Exhibit 16.

22 (Exhibit 16 marked
23 for identification.)

24 BY ATTORNEY STEELE:

25 Q. Take your time and look

1 through it if you need to, but I
2 believe you will agree with me that
3 Exhibit 16 is a copy of my letter to
4 you and to Clearfield County Grange
5 dated September 18, 2002, enclosing
6 the inventory schedules. And the
7 very first sheet is a copy of the
8 receipts for the certified mail; is
9 that right?

10 A. That's correct.

11 Q. Would you agree that my
12 letter of September 18 did enclose
13 the personal property inventory
14 schedules, which had been completed
15 and signed by Mr. McCracken?

16 A. Yes.

17 Q. And would you also agree
18 with me that to date there has never
19 been any response in connection with
20 the processing of the contents
21 claim?

22 A. I believe you've been ---
23 the responses come from counsel, not
24 from us, no. There has been no
25 response from us or Grange through

1 us.

2 Q. Okay. So even though Mr.
3 McCracken was told that coverage on
4 the structure was denied, but that
5 his content claim would be
6 processed, after the content claim
7 and the inventories were actually
8 received, you have never done any
9 further work in connection with
10 processing that claim?

11 A. Exactly. We retired our
12 file to inactive status because the
13 claim had then been transferred to
14 the attention of Attorney Gearhart.

15 Q. But you've never been
16 requested by Clearfield County
17 Grange to take any action with
18 regard to evaluating the inventory?

19 A. No. We've discussed the
20 inventory and the contents, you
21 know, description of that, but we've
22 not been requested to evaluate it
23 and process it.

24 Q. And when you say we've
25 discussed, who are we?

1 look at it.

2 WITNESS REVIEWS SAME

3 BY ATTORNEY STEELE:

4 Q. Would you agree with me
5 that Exhibit 18 is a two-page letter
6 dated October 8th, 2002, directed to
7 me by Attorney Gearhart?

8 A. Yes.

9 Q. And you were copied with
10 this letter, as was Mr. Guthrie?

11 A. Correct.

12 Q. And directing your
13 attention to paragraph two of page
14 one, would you agree with me that
15 the second sentence there indicates
16 that this situation and your client
17 can lead reasonable minds to believe
18 that Mr. McCracken has forfeited his
19 coverage because under a lease, the
20 property lay vacant for a period in
21 excess of the contracted 60 days,
22 your claim that he had moved back
23 into the premises is simply not
24 supported by the facts?

25 A. Is what it says, yes.

1 Q. That's what it says. Now,
2 are you aware of any lease, as is
3 referred to in that sentence, of the
4 property being under a lease?

5 A. I'm not sure what he's
6 referring to in that term of the
7 word, what it's intended to mean. I
8 was not aware of a lease of any
9 sort. When you speak of a lease,
10 you think of leasing a property or
11 an apartment or a car. No, I'm not
12 aware of anything like that.

13 Q. Do you recall reviewing
14 this letter when you received a
15 copy?

16 A. Yes, that's when I ---
17 well, I reviewed that and then six
18 days later on October 14th closed
19 our file because I informed Mr.
20 Guthrie that Attorney Gearhart was
21 handling the file.

22 Q. Did you ever contact
23 Attorney Gearhart after you received
24 your copy of this letter to question
25 him as to what he was referring to

1 in that paragraph with regard to a
2 lease?

3 A. No. I'm not an attorney
4 and that's not my job.

5 Q. But looking at that now,
6 doesn't it appear to be a factual
7 mistake? I mean, there was no lease
8 on this property as of the date of
9 loss; was there?

10 A. I agree with that, but
11 again, I did not take note of that
12 and that did not --- I mean, I
13 didn't really address that issue. I
14 assumed that Attorney Gearhart knew
15 what he was mentioning and maybe I
16 thought that he was, you know,
17 staying under a lease for some legal
18 reason, but I'm not sure. I mean, I
19 didn't call him about it or bring it
20 to his attention about a lease. I
21 didn't question him about that, no.

22 Q. I previously had made
23 reference to the discovery that I
24 had served on the Grange,
25 Interrogatories and a request

1 Q. Looking at the documents
2 that you were originally provided by
3 the Grange regarding coverage on the
4 property, would you agree with me
5 that the coverage on the structure
6 itself was \$40,000?

7 A. \$40,000, yes.

8 Q. And I think there was an
9 additional \$1,000 on a garage?

10 A. That's correct.

11 Q. And would you also agree,
12 and this refers back to, I think
13 your first letter to Mr. McCracken,
14 that you did consider, based upon
15 your observations, that the damage
16 to the structure exceeded the
17 coverage of \$40,000?

18 A. Yes, based upon the square
19 footage and the replacement cost of
20 a dwelling that size. It's nothing
21 to do with market value.

22 Q. Yes. Okay.

23 A. That could be a different
24 argument.

25 Q. Yes, I'm aware of that.

1 In any event, with regard to the
2 contents, the policy provides for
3 \$15,000; is that right?

4 A. Yes. Uh-huh (yes).

5 Q. And again, based upon your
6 prior testimony, I believe you
7 agreed from your observations, that
8 the content loss appeared to exceed
9 the coverage on the property?

10 A. Based upon too, his
11 statement and him telling me what he
12 had in the property, not in the
13 contents but what renovations and
14 additions he made to it after he and
15 Mr. Long had first purchased it, I
16 think those improvements and what he
17 stated was in the property at the
18 time. Granted, a lot of things were
19 destroyed. We couldn't see the
20 remains of anything in certain
21 areas.

22 Q. You never obtained any
23 appraisal of the structure or of the
24 contents?

25 A. No, because everything

1 developed to the point that, you
2 know, we got counsel and then we
3 didn't go any further from there,
4 establishing total damages on the
5 building. We typically would do an
6 estimate of repair or replacement of
7 a structure upon depreciation
8 factors, which is an actual cash
9 value policy, and determine its
10 actual cash value, which a house
11 that size, just off the top of my
12 head, you know, is \$85,000 to
13 \$95,000 to replace. Take 50 percent
14 and you're still over \$40,000, but
15 that structure he could have sold it
16 and got \$40,000, most likely not
17 when he bought it for \$18,000 or
18 whatever the price was. I think he
19 told us --- so that is why I say the
20 market value and actual cash value
21 don't really coincide. But I agree
22 that the limits were exhaustive
23 based on replacement costs and
24 actual cash value.

25 Q. Okay. And you've

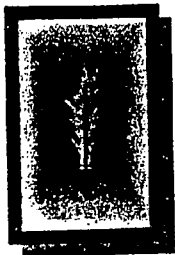
1 previously told me that there was no
2 other coverage provided other than
3 the coverage on the contents and the
4 structures?

5 A. Right. The same with the
6 fire policy, states exactly what
7 policy coverage there is. You buy
8 those coverages, where on the
9 homeowner's policy it's an automatic
10 percentage of coverage A and you buy
11 out of ---.

12 Q. So there is no debris
13 removal or anything like that?

14 A. No, no additional living
15 expense, nothing like that, no
16 liability coverages. You just have
17 a liability policy.

18 Q. I have been provided with
19 several copies of a dec sheet and
20 the policy, the standard buyer
21 policy, including the copy that you
22 provided to Mr. McCracken, a copy
23 that was attached to the complaint.
24 But the only copy that I was
25 provided that actually was filled in



TSIKALAS INVESTIGATIONS

3423 William Penn Avenue Johnstown Pennsylvania 15909

PAGER: 888-519-5553 ♦ PHONE: 814-322-4909 ♦ CELLULAR: 814-659-2771

♦ 24 HOUR FAX: 814-322-3310 ♦

WEB-SITE: <http://tsikalas.com> ♦ E-MAIL: fire@tsikalas.com

July 10, 2002

Ed Yocum
E.L. Braid Claim Service
R.D. 3, Box 276
Clearfield, PA 16830

RE: Policy # 32334
Insured: Richard McCracken
Subject: Incendiary Residential Structure Fire

Dear Mr. Yocum:

Enclosed please find the invoice and the full and complete investigation as assigned on July 5, 2002 regarding the McCracken property. A complete file will be maintained in this office.

As documented in the report, the fire is classified as "Incendiary" and "Arson / Spite revenge Fire".

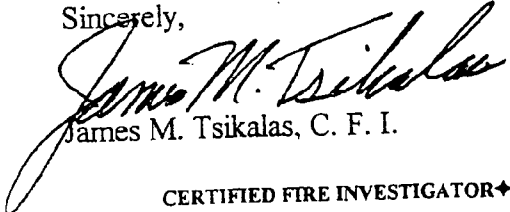
Ed, if you have any questions concerning this investigation, please feel free to call my office at anytime.

Ed, Clearfield County Grange Mutual fire Insurance Company will be receiving an (Arson Immunity Letter) as the PSP Fire Marshal requested a copy of the fire investigation. The colored copy is attached. Charges are expected to soon be implemented relative Pamela Jo Vaux, insured's girlfriend.

The evidence is being sent for Analysis.

Thank you for the opportunity to serve the Clearfield County Grange Mutual fire Insurance Company and E.L. Braid Claim Service.

Sincerely,


James M. Tsikalas, C. F. I.

CERTIFIED FIRE INVESTIGATOR ♦ ♦ ♦ ♦ ♦ LICENSED ♦ ♦ ♦ ♦ ♦ BONDED ♦ ♦ ♦ ♦ ♦ INSURED

3

FAX

Date 7-8-02

Number of pages including cover sheet 3

TO:	ED YOCUM
Phone	
Fax Phone	

FROM:	James M. Tsikalas
	Tsikalas Investigations
	3423 William Penn Avenue
	Johnstown, PA. 15909
Phone	1-814-322-4909
Fax Phone	1-814-322-3310

NOTE

OVERALL FINDINGS/CONCLUSION
MCCREACKON

OVERALL FINDINGS AND CONCLUSION:

After conducting the scene examination, reviewing the scene photographs and conducting witness interviews, together with the education and experience of this investigator, it is my professional opinion, within a reasonable degree of scientific certainty, that the fire that occurred on July 05, 2002 at 0041 hours to the insured Richard McCracken's two story structure along Chestnut Street, in the Village of Madera, Township of Bigler, County of Clearfield, Commonwealth of Pennsylvania was *incendiary* in nature as the fire was intentionally set. This fire is classified as an "*Arson -Spite Revenge Fire*" and due to the gathered information the perpetrator of this crime is the insured's girlfriend, one Pamela Jo Vaux, W-F-43, D.O.B. 3-11-59 of P.O. Box 98, Kylertown, PA 16847. Vaux drove to the insured's residence in a light blue Ford Thunderbird, parked on Chestnut Street and proceeded to the insured's Ford Ranger bearing PA Registration registration YDD6243. Vaux took the insured's car keys that were in the ashtray. She also turned on the headlights as the bright lights were observed by the neighbor, Carol Posanskey who resides across the street. A short time later, Vaux got in her vehicle and spun the tires leaving the scene as a rapid pace. Carol Posanskey stated that from the time that the blue Thunderbird had left the scene, it was less than a matter of ten minutes when Posanskey called in the fire.

The insured and his girlfriend were staying at a camp-site approximately 9 miles from the fire scene and when this investigator went to the camp site, Pamela Jo Vaux was not present however the insured's Harley Davidson Motorcycle, tent, opened suitcase with the insured's clothing inside and camping equipment was burned. Also it was learned that Pamela Vaux had wrecked her blue colored Thunderbird into a guardrail along PA Rte 729 waking up a nearby resident, Melvin Barrett, Phone # 814-236-2898. The accident site is approximately 2 to 2 ½ miles from the camping area on Gazzam Road. The accident occurred on Jul 5, 2002 at approx., 1:45 A.M. The accident had not been reported to the State Police and it is a "hit and run" accident.

It is also the opinion of this investigator, within a reasonable degree of scientific certainty, the fire originated at the at the exterior South side of the house against the lap siding with the use of a liquid accelerants.

POINT OF ORIGIN INDICATORS:

- ① Distinct "V" pattern at the South side of the ballooned framed structure.
- ② No Arcing, beading and dark discoloration to the electrical wiring
- ③ The presence of more thermal exposure at the area of origin.
- ④ Significantly more fire damage at the exterior South side as contrasted to the other sectors at the residence.

- Truncated cone effect above the point of origin

ELIMINATION FACTORS:

- Elimination of lightening strikes and all other natural fire causes.
- Elimination of the aerial electrical service entrance as a fire cause.
- Elimination of the electrical service panel as a fire cause.
- Elimination of the interior electrical wiring as a fire cause.
- Elimination of the coal / wood hot water boiler as a fire cause.
- Elimination of spontaneous combustion.

August 16, 2002

Re: Insured: MCCRACKEN, RICHARD
Policy: 32334
D/L: 7/04/02
Our File: J 2291

RICHARD MCCRACKEN
P.O. BOX 281
MADERA PA 16661

Dear Mr. McCracken:

I write in follow up to our meeting on Wednesday August 14th, 2002 at the office of Clearfield County Grange Mutual Fire Insurance Company on Old Town Road, in Clearfield, PA.

As you know at the time of our meeting we discussed in general the insurance claims process and the facts surrounding the loss you had sustained on July 4th, 2002. Shortly thereafter, we secure the recorded statement discussing ownership and occupancy of the dwelling and your recollection of the events took place on the date of loss.

At the end of our meeting we advised that all information would be reviewed in detail and a response would be forthcoming as to coverage that would be provided.

During the course of the review and in particular the review of the recorded statement coverage issue has arisen. The question that has come to light is involving occupancy of the dwelling and the fact that you had confirmed that the property had been vacant for approximately four months just prior to the fire with no utilities connected except electricity that was re-established to the property two or three days prior to July 4th. The electric was set up in the name of your sister. You further confirmed that you and Ms. Vaux were staying at a campsite on the property owned by your father several miles away and that you had only slept in the dwelling three or four nights combined since returning from Colorado.

For your reference we enclose a copy of the recorded statement transcription.

In light of the above stated information we want to bring to your attention and refer you to a copy of the insurance policy provided for the property, which is referred to as a standard fire insurance policy in the State of Pennsylvania specifically lines twenty-five through thirty-two wherein it states:

(15)

Conditions suspending or restricting insurance unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

- A. While the hazard is increased by any means within the control or knowledge of the insured:
- B. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or.....

Based upon the facts confirmed during the course of your statement the above stated exclusionary language of the policy, we must with regret deny coverage to you for the dwelling loss above and beyond the mortgage payoff with County National Bank. Meaning, no additional funds will be provided for the structure loss once the mortgage payoff has been confirmed and the payoff processed.

You would be responsible for all costs for clean up and removal of debris including necessary permits and fees charged by the municipality or government agency involved.

In regards to the additional coverages provided under your property policy number 2334, effective 8/12/1999 through 8/12/2002 you have \$15,000.00 coverage for personal property/contents contained within the dwelling at the time of the loss. This coverage is subject to actual cash value terms and conditions all subject to a \$250.00 deductible feature. We would ask that you complete the inventory schedules given to you at the time of our meeting and return them to this writer at the above listed address. Upon receipt we will review and process the inventory but in the meantime we would request that you do not discard any of the items listed on the inventory until such time that the claim has been concluded.

Lastly, Clearfield County Grange Mutual Fire Insurance Company for the above stated reason or reasons and for other reason or reasons which may become known, notifies that the action taken by the company or its authorized representatives to investigate the cause of loss, determine the amount of loss or damage or attempt to adjust any claim arising out of the alleged loss shall not waive any of the terms or conditions of the policy of insurance described above, nor shall such action waive any of your rights under the policy. If we do not hear from you to the contrary, we will assume that it is acceptable for us to continue handling the case on these terms.

The company does not intend, by this letter, to waive any policy defenses in addition to those stated above but specifically reserves its right to assert such additional policy defenses at any time.

It is important that you have your continued cooperation in our investigation.

If you should have any additional questions please do not hesitate to contact this writer at the above listed numbers at extension 205. Otherwise, we wait your submittal of the requested documentation.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum

EJY/kjw

Sent Regular and Certified

CC: Clearfield Co. Grange Mutual Fire Insurance Company ✓

CC: R. Denning Gearhart

B.P.S.: Dear Mr. Guthrie:

In follow up to our most recent telephone conversation of Thursday August 15th, you will note that we have advised the insured that no coverage would be provided for the dwelling except for the payoff of the existing mortgage with County National Bank. This decision was based upon the fact that the insured, during the course of our meeting and obtaining his statement on August 14th, revealed that the property had been vacant for approximately four months shortly prior to the date of loss. This new information brought into play exclusionary language under the policy wherein it states that if a home or dwelling is unoccupied or vacant for sixty consecutive days the company would not be liable for damages to the structure.

With the above in mind this writer met with local attorney, R. Denning Gearhart who performs the defense and legal work on behalf of your company. We met with Attorney Gearhart on Thursday August 15th, to review the coverage issues described above and he was in agreement that we had a basis to deny coverage to the insured for the structure loss but that we would still be obligated to the mortgagee for the mortgage payoff within the policy limits. In addition, Attorney Gearhart did not feel that we had any basis to deny coverage to the insured for the contents contained within the dwelling even though it was unoccupied or vacant. The policy was in effect and premium was received for content coverage thus, coverage has been extended to the insured for his contents loss.

Lastly, you will note that we have reserved your rights under the policy should anything come to light that would change your company's position on coverage that has been extended. At this present time we are awaiting a response from County National Bank and we now await the insured's submittal of the requested documentation. We will diary our file ahead fifteen days and our additional reporting will soon follow. If in the interim you should have any additional questions or concerns please contact this writer at the above listed numbers at extension 205.

Very truly yours,

Edward J. Yocum

Edward J. Yocum

EJY/kjw
Enclosure

GOLDSTEIN, HESLOP, STEELE, CLAPPER, OSWALT & STOEHR
ATTORNEYS AT LAW

TERRY M. GOLDSTEIN
JOHN W. HESLOP, JR.
KAREN L. STEELE *
LARRY C. CLAPPER
W. LEE OSWALT, III
DOUGLAS V. STOEHR
MICHAEL J. ADAMS

* CERTIFIED AS A CIVIL TRIAL
ADVOCATE BY THE NATIONAL
BOARD OF TRIAL ADVOCACY

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EMANUEL S. LEOPOLD (1906-1996)
BERTRAM B. LEOPOLD (1940-1987)

TYRONE OFFICE
3 EAST TENTH STREET
TYRONE, PA 16686
(814) 684-9457
FAX (814) 684-9459

September 18, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward J. Yocum
E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Clearfield County Grange Mutual Fire Ins. Co.
1214 Old Town Road, Suite 3
Clearfield, PA 16830

Re: Our Client: Richard McCracken
Your Insured: Richard McCracken
D/L: 7/04/02
Policy No: 32334
Your File No: J 2291
Our File No: 14312

Dear Mr. Yocum:

This office has been retained by and will represent your insured, Richard McCracken, regarding the above fire loss. Please direct all future contact regarding this claim to me.

I have reviewed your letter of August 16, 2002, in which you deny coverage for the dwelling loss based upon an alleged violation of policy conditions yet request continuing proof of loss with respect to the personal property/contents insured under the same policy. I have also reviewed the transcript of the recorded statement which you took of Mr. McCracken on or about August 14, 2002. Finally, I have completed my own investigation of certain facts existing as of the date of loss.

It is my opinion that there is no reasonable factual basis for the denial of coverage and that Clearfield County Grange Mutual Fire Insurance Company's decision to do so is in bad faith. The interpretation of the standard policy condition as set forth in your letter of August 16, 2002, completely ignores the clear language of the standard policy condition which requires that the loss must occur while the hazard is increased or while the building is vacant. Because there is absolutely no dispute that Mr. McCracken was occupying the property as of the date of loss, this condition has no application to this claim. Mr. McCracken's statement clearly provides none and a simple telephone call to his neighbors, some of whom I believe you have already interviewed, will confirm that the insured property was occupied by Mr. McCracken at the time of the loss. Although Mr. McCracken was out of state for some time prior to the loss looking for employment, he had returned home before

Edward J. Yocum
Page 2
September 10, 2002

the fire. According to his next door neighbors, Ken Long and Kathie Long, Mr. McCracken had been living in the property for at least one week prior to the fire. He was building a new porch on the property and the electricity had been turned on several days before the fire occurred.

With respect to a suspension of coverage based upon a loss occurring while a hazard is increased, your letter of August 16, 2002, fails to make reference to any facts whatsoever in support of this assertion. To the contrary, as you know, the cause of the loss was arson. I cannot conceive of any facts which would support a position that, under these circumstances, Mr. McCracken's conduct knowingly increased the hazard at the time of the loss.

As per your request, I am enclosing herein copies of the Personal Property Inventory Schedule which Mr. McCracken has completed and signed. The replacement cost of several items is confirmed by separate documentation. There are at least two items which are not included in the inventory pending location of receipts and/or additional information regarding value. These items include a Chevy engine which Mr. McCracken was rebuilding and for which he had already incurred machine shop expenses of approximately \$650.00. The other item is a large, professional Husqvarna chainsaw. By my calculations, the replacement cost of the items inventoried totals \$32,938.00.

We are awaiting receipt of an estimate for the cleanup of the property and removal of debris which I will submit under separate cover. I am assuming that the policy provides for payment of the same. Please provide a complete copy of the actual policy as issued to Mr. McCracken.

Because the denial of coverage is so completely without reasonable foundation that Mr. McCracken should never have been required to consult counsel to obtain what is owed to him under the policy, I am hereby demanding that Clearfield County Grange Mutual Fire Insurance Company reimburse counsel fees to date of \$1,000.00 in addition to accepting liability for payment on the loss of the dwelling up to the policy limit after deducting the mortgage payoff and the policy limit on the contents after applying the deductible. Additionally, as you know, any delay in payment beyond 60 days results in the insured being entitled to interest.

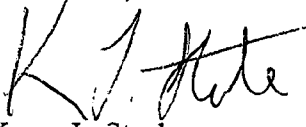
I am sure you are aware of Mr. McCracken's personal circumstances, including his unemployment and financial hardships. The receipt of your letter informing him that Clearfield County Grange Mutual Fire Insurance Company was not going to pay his claim for the loss of his house was devastating to him. Nevertheless, Mr. McCracken simply desires to obtain reimbursement for his losses much more than a lawsuit. Therefore, if Clearfield County Grange Mutual Fire Insurance Company is willing to resolve this matter on the terms set forth above, Mr. McCracken remains willing to release Clearfield County Grange Mutual Fire Insurance Company from any additional liability, including any possible bad faith claim. If not, I will be most happy to represent Mr. McCracken in pursuing claims against Clearfield County Grange Mutual Fire Insurance Company for the contract damages as well as a claim for punitive damages, interest, and all counsel fees incurred as a result of the bad faith conduct in attempting to take advantage of Mr. McCracken's relative unsophistication regarding the processing of his insurance claim.

Edward J. Yocum
Page 3
September 10, 2002

I have diaried my file for ten (10) days and would appreciate the receipt of a response within that period.

Sincerely,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR



Karen L. Steele

KLS/dab

Enclosure

cc: Mr. Richard McCracken

bcc: Beverly Huff

Page:

Totals

Insured Signature

Insured Signature Richard W. C. C. C.

Personal Property Inventory Schedule

Date of Loss:

Page:

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. Y.
1	Couch	4 yrs	✓		425.00		
1	Rocker + swivel Chair	4 1/2 yrs	✓		115.00		
1	21" inch screen Pic Pic Sound Sund.	4 1/2 yrs	✓		1,899.99		
1	Mac - 11 Simi Automatic Hand Gun	3 yrs	✓		350.00		
	OLD Coins			✓	125.00		
2	OLD Fishing Poles 1-2 Piece spin Rod 185¢ 1-3 Piece ostenogen Fly Rod 70¢			✓	255.00		
	Silverware + utensils	3 yrs	✓		100.00		
1	35 mm Camera	1 year	✓		89.00		
1	Widitbeach	2 yrs	✓		50.00		
1	Set of Whites	2 yrs	✓		85.00		
1	Punching Bag	1 yr	✓		45.00		
1	Queen Size Water Bed	1 yrs		✓	60.00		
1	Vacuum Cleaner (Electrolux Canster)	4 yrs	✓		1100.00		
2	ShopVacs 1 8gal 30.00 1 15gal 30.00	3 yrs	✓		60.00		
	Set of 10 Childrens Movies Famil Feathr	3 yrs	✓		85.00		
1	Box Fan	2 yrs	✓		15.00		
	Collection of PlayBoy Magz's 70's 90's 80's 2000		✓	✓	600.00		
	Blankets / sheets / Comforters / Pillows	4 yrs	✓		700.00		
	Curtains and Blinds	3 1/2 yrs	✓		470.00		
	Pioneer 5 disc AM-EM Cassett	2 yrs	✓		400.00		
	C.D'S around 45	2 yrs	✓		585.00		
Totals					7613.00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard M. C. C. C.

Insured Signature

Personal Property Inventory Schedule

Date of Loss: _____ Page: _____

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
	Skido Winter Coat	4yrs	✓		350 ⁰⁰		
	Levi's Jacket	4yrs	✓		80 ⁰⁰		
	Addidas Coat	2yrs	✓		90 ⁰⁰		
4	Addidas Shirts 20.00 Each	1yr	✓		80 ⁰⁰		
5	Nickie Shirts 28.00 Each	2 1/2	✓		140 ⁰⁰		
	Addidas Hood	1yr	✓		45 ⁰⁰		
3	Nickies Silk Shirts 48.00 Each	2yrs	✓		144 ⁰⁰		
2	Nickie Hood's 50.00 Each	1yr	✓		100 ⁰⁰		
2	Addidas Hat's 20.00 Each	1 1/2	✓		40 ⁰⁰		
1	Dackers Lamb Coat	1yr	✓		330 ⁰⁰		
10	Levi's Pants 44.00 Each	1yr	✓		240 ⁰⁰		
4	A.P. Co. Pants 40.00 Each	1yr	✓		160 ⁰⁰		
1	Heatseek Orange Hunting Suit	1 1/2	✓		154 ⁰⁰		
1	Cachart Coat	3yr	✓		96 ⁰⁰		
1	Geoartech Coat	2yr	✓		219 ⁰⁰		
1	Danner Boots	1yr	✓		237 ⁰⁰		
1	Game Hide Hunting Vest	1yr	✓		32 ⁰⁰		
3	Hacley Shirts 30.00 Each	1 1/2	✓		90 ⁰⁰		
	Ammo (12 gage 20 gage 270 gage 232 gage 229 gage)	2yr	✓		100 ⁰⁰		
9	Wranger Pants 15.00 Each	4yrs	✓		135 ⁰⁰		
4	FTD Underware	6 mo	✓		20 ⁰⁰		
Totals					7082 ⁰⁰		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard M. Couch Insured Signature _____

Personal Property Inventory Schedule

Date of Loss:

Page:

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
1	Sears / Craftsman - Malbec - Planer 12 in.	3 1/2	✓		600.00		
1	Craftsman 10 in Table Saw	3 1/2	✓		700.00		
1	Husqvarna Production Chain Saw	7 yr	✓				
1	DeWalt Combo Sawzall / Deill Battery Pack	2 yr	✓		385.00		
1	Millwalkie Hand Grinder	1 yr	✓		100.00		
1	Wood Enter	2 yr	✓		100.00		
1	Black and Decker Jig Saw	3 yrs	✓		35.00		
1	Black and Decker Router	5 yrs	✓		70.00		
1	Black and Decker Body Grinder	5 yrs	✓		89.00		
1	Set of Cutting Tools	5 yrs	✓	✓	200.00		
2	Tool Belts Leather	1 yr	✓		40.00		
1	Climbing Hooks and Belt and Safety Strap	2 yr	✓		570.00		
1	Vice			✓	40.00		
1	Ammo Box Winchester	3 yr	✓		25.00		
	Mislaions Nut's Bolts nails screws fasteners						
	Washers - exc.	4 yrs	✓		130.00		
	Cable Prep Tools	2 yrs	✓		90.00		
1	Elec. notes for washer	3 yrs	✓		30.00		
1	Dish network - Setelite and Montier	3 yrs	✓		150.00		
	Oak Lumber for Wood Shop	1 yr	✓		100.00		
	Carhard Cover Hall's	8 mo	✓		97.00		
Totals					3471.00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMIMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature

Richard M. Lush

Insured Signature

Page: 2

Totals

Insured Signature

Insured Signature

Personal Property Inventory Schedule

Date of Loss:

Page: 1

Quantity	Item Description (include model, brand, etc.)	Age	Purchased		Replacement Cost (incl. sales tax)	Office Use Only	
			New	Used		Depreciation	A. C. V.
	<i>Antiques Items</i>						
1	Cast Iron Bug Boot Tack			✓	50 00		
1	Walnut China Cabinet Buffet			✓	780 00		
1	Clawfoot Mahogany End Table			✓	80 00		
1	Clawfoot Mahogany Coffee Table			✓	60 00		
1	1930's Elec. Glass Feather Chandelier			✓	300 00		
1	Wheat Designed Lead Stained Glass Cathedral Chandelier			✓	325 00		
1	Two Man Saw			✓	110 00		
3	Hand made Patch Quilts (avg price)			✓	1500 00		
1	Fancy Oak Side Board			✓	1485 00		
1	Antique Oak Secretary			✓	1200 00		
1	Walnut Gurgyle Small Table			✓	325 00		
1	Fancy Carved Oak Picture Table			✓	275 00		
1	Oak Beveled Glass Microw Comb Case			✓	125 00		
1	Fancy oak + Plaster Picture of Old Lady			✓	165 00		
1	Charcoal Skenched (size 18 x 24)						
1	Cold Plaster Coated Wood Frame + Picture			✓	95 00		
4	Flow Blue Dinner Plates (12.00 Each)			✓	504 00		
2	Phoenix Bird Dinner Plates (40.00 Each)			✓	80 00		
1	Phoenix Bird Tea Pot			✓	35 00		
1	Coal Bolt Blue Oil Lamp			✓	35 00		
Totals					7529 00		

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL, THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES."

Insured Signature Richard McEach Insured Signature _____

08/26/2002
6:13 PM

REX TV

PAGE: 1

INSURANCE ESTIMATES

REX TV - ALTOONA
415 K ORCHARD AVE.
ALTOONA, PA 16601
(814) 942-2600

SALESMAN 5026 - DAVID GEISLER JR

THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE - THIS IS NOT AN INVOICE

Sku Number	Qty	Suggested Retail	Extended Retail
50PP9202	1	1,899.99	1,899.99
		Total ---->	1,899.99

* * * DISCLAIMER * * *

Suggested retail (Price) subject to change. Price good up to 15 days from date of this document.
Sales tax not included. Quote does not constitute a sales agreement or contract. Price subject to
available quantities at the time of purchase. Terms and conditions on back of invoice.

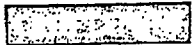
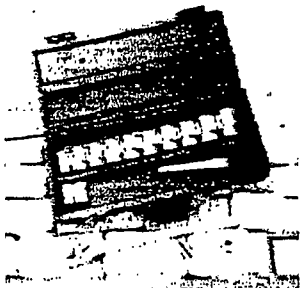
Home |

MAKES ANYTHING POSSIBLE

customer service where to buy request a catalog view sears.com cart home

keyword

Product Summary



View larger image
Product images may differ from
actual product appearance.

Craftsman 16 pc. Socket Set, 12 pt.

16 pc. socket wrench set in blow molded case.
Fourteen 12 pt. sockets (7/8, 15/16, 1, 1-1/16, 1-1/8, 1-1/4, 1-3/4, 1-5/16, 1-3/8, 1-7/16, 1-1/2, 1-5/8, and 1-7/8 in).

Plus quick release ratchet and 8 in. extension bar.
Guaranteed forever.

See Detailed Product Specifications

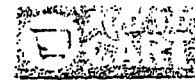
Availability & Options

- Typically ships within 3-5 business days. Calculate arrival time and shipping cost. Learn more about our shipping methods and policies.
- This item is Store Pick-up Eligible. About Store Pick-up. To find a store near you, enter a Zip code below:

Enter ZIP Code:

Price:

\$199.99



Use your
Sears Card™
for convenient
online shopping

- Only \$10 per month on your Sears Card™.
- Learn more about the Sears Card™.

Learn More

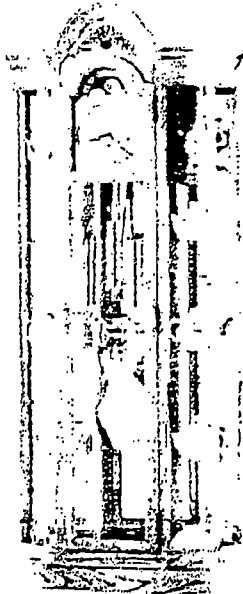
- See detailed product specifications.
- If you would like any applicable Warranty information, please click here.
- For research and advice about this item see our Buying Guide
- See other Craftsman Three-Quarter Inch Drive Sockets & Ratchets like this one
- Satisfaction guaranteed, or your money back. Learn about our return policy.

Sears Item #00946304000
Mfr. Model #46304

Not all products are available in every Sears store.
Online prices and promotions are for the continental
U.S. only.



- This curio floor clock features full length curved glass to further enhance your collectibles.
 - An embossed shell and floral design delicately accents the arched bonnet.
 - An astrological, blue moon phase accents the polished brass dial which offers a silver chapter ring and etched corner spandrels and center disc.
 - Eight glass shelves and two base shelves are illuminated by two lights.
 - Beveled glass appears on the lower door.
 - Polished brass lyre pendulum features a decorative center disc.
 - Finished in Golden Oak on select hardwoods and veneers.
 - Free brass heirloom plate. Engraved with your family name and a special date.
 - Illuminated case or dial.
 - Locking door.
 - Cable-driven, triple chime Kieninger movement with chime silence option.
-
- Height: 85" (216 cm)
 - Width: 36" (91 cm)
 - Depth: 14" (36 cm)



Availability: Usually ships in 3-4 business days.

610745 Regularly: \$3,720.00

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2; and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edward J. Yocum
E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Kathy J. Wilson* ☐ Agent ☐ Addressee

B. Received by (Printed Name)

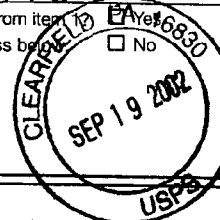
Kathy J. Wilson

C. Date of Delivery

C. Is delivery address different from item 1?

If YES, enter delivery address below

☒ Yes ☐ No



3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7002 0460 0001 3385 2069

PS Form 3811, August 2001

Domestic Return Receipt

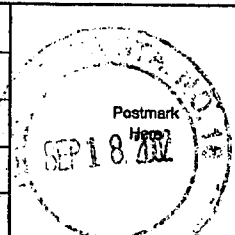
102595-02-M-1540

U.S. Postal Service**CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88

**Sent To**

Edward J. Yocum

Street, Apt. No.,**or PO Box No.****City, State, ZIP+4****PS Form 3800, January 2001****See Reverse for Instructions****Postmark Here****Postage & Fees****Return Receipt Fee****Restricted Delivery Fee****Total Postage & Fees****Sent To****Street, Apt. No.,****or PO Box No.****City, State, ZIP+4****PS Form 3800, January 2001****See Reverse for Instructions****Postmark Here****Postage & Fees****Return Receipt Fee****Restricted Delivery Fee****Total Postage & Fees****Sent To****Street, Apt. No.,****or PO Box No.****City, State, ZIP+4****PS Form 3800, January 2001****See Reverse for Instructions****Postmark Here****Postage & Fees****Return Receipt Fee****Restricted Delivery Fee****Total Postage & Fees****Sent To****Street, Apt. No.,****or PO Box No.****City, State, ZIP+4****PS Form 3800, January 2001****See Reverse for Instructions****Postmark Here****Postage & Fees****Return Receipt Fee****Restricted Delivery Fee****Total Postage & Fees****Sent To****Street, Apt. 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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clearfield Co. Grange
Mutual Fire Insurance Co.
1214 Old Town Road, Suite 3
Clearfield, PA 16830

2. Article Number

(Transfer from service label)

7002 0460 0001 3385 2090

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Randall L. Guthrie* ☒ Agent ☐ Addressee

B. Received by (Printed Name)

Randall L. Guthrie SEP 19 2002

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only. No Insurance Coverage Provided.)

OFFICIAL USE

Postage

\$.83

Certified Fee

2.30

Return Receipt Fee
(Endorsement Required)

1.75

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 4.88

SEP 18 2002
Postmark
Here

Sent To

Clearfield Co. Grange Mutual Fire
Insurance Co.
Street, Apt. No.,
or PO Box No. 1214 Old Town Road, Suite 3
City, State, ZIP+4 Clearfield, PA 16830

PS Form 3800, January 2001

See Reverse for Instructions

Reorder No. 5105
JULIUS BLUMBERG, INC.
NYC 10013
© 1985 P.C.W.

R. Denning Gearhart

Attorney & Counselor at Law

215 E. Locust Street
Clearfield, PA 16830

814-765-1581

(fax) 814-765-6745
<http://www.dgearhartpalaw.com>

October 8, 2002

Karen I. Steele, Esquire
GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR
414 N. Logan Boulevard
Altoona, PA 16602-1749

RE: Your Client: Richard McCracken
 My Client: Clearfield County Grange Mutual Fire Insurance
 Company
 Date of Loss: July 4, 2002
 Policy No.: 32334
 Your File No.: 14312

Dear Ms. Steele:

Please be advised that I am the attorney for Clearfield County Grange Mutual Fire Insurance Company. As such, I was given a letter dated September 18, 2002 sent to Ed Yocum of EL Braid Claim Service, Inc. regarding the above.

I understand the claims made in your letter, though I disagree with them. This situation, and your client, can lead reasonable minds to believe that Mr. McCracken has forfeited his coverage because, under a lease, the property lay vacant for a period in excess of the contracted sixty days. Your claim that he had moved back into the premises is simply not supported by the facts.

Grange Mutual Insurance intends to meet their legal obligations. It does not feel that this legal obligation includes an obligation to cover your client's alleged loss due to the July 4, 2002 fire. In any event, they have authorized me to file an action for declaratory relief, asking that the court in Clearfield County decide that they do not need to cover your client's loss. If we are wrong, and the court rules otherwise, Grange Mutual will not act in bad faith and will provide the coverage, however, they are entitled to a finding that they are responsible and they are entitled to be heard on their arguments that they are not.

I am drafting the Complaint for Declaratory Relief. I expect to have it done the week of October 7-11th. I will send a courtesy copy of the Complaint, which I will serve on your client.

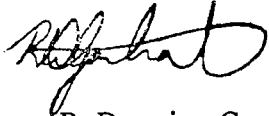
Karen L. Steel, Esquire

Page 2

October 8, 2002

I look forward to working with you on this case.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Denning Gearhart". The signature is fluid and cursive, with a large, stylized "R" and "G".

R. Denning Gearhart

RDG/jam

cc: Randall Guthrie, Grange Mutual Fire Insurance
Ed Yocum, E.L. Braid Claims Service

V:\02FILES\GRANGEMU.INS\GR-MCCRA.RIC\CORRESPO\STEELE.KAR\10062002.WPD

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002-1662-CD

:
: JURY TRIAL DEMANDED

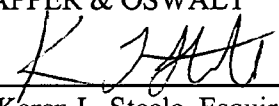
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Plaintiff's Record in
Opposition to Defendant's Motion for Partial Summary Judgment on the 27 day of April, 2004,
via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
Attorney for Defendant
Attorney I.D. #26540
215 E. Locust Street
Clearfield, PA 16830

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

FILED
MAY 11 1968
FBI
No
cc
Kia

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. MCCRACKEN :
VS. : NO. 02-1662-CD
CLEARFIELD COUNTY GRANGE :
MUTUAL FIRE INSURANCE COMPANY :
and
CLEARFIELD COUNTY GRANGE :
MUTUAL FIRE INSURANCE COMPANY :
VS. : NO. 02-1687-CD
RICHARD D. MCCRACKEN :

O R D E R

NOW, this 10th day of May, 2004, following argument on the cross Motions for Summary Judgment, it is the ORDER of this Court that counsel for Clearfield County Grange Mutual Fire Insurance Company have no more than ten (10) days from this date in which to submit appropriate brief to the Court. Counsel for Richard D. McCracken shall have no more than five (5) days following receipt of the insurance company's brief to respond.

BY THE COURT,



President Judge

FILED

MAY 11 2004
8:19 AM

William A. Shaw
Prothonotary/Clerk of Courts

CFM to ATTY STEER
↓
GEARHART

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. MCCRACKEN :
VS. : NO. 02-1662-CD
CLEARFIELD COUNTY GRANGE :
MUTUAL FIRE INSURANCE COMPANY :
and
CLEARFIELD COUNTY GRANGE :
MUTUAL FIRE INSURANCE COMPANY :
VS. : NO. 02-1687-CD
RICHARD D. MCCRACKEN :

O R D E R

NOW, this 10th day of May, 2004, this being the date set for argument on the Motion to Consolidate Cases; with both parties being in agreement that the same should be accomplished, it is the ORDER of this Court that the motion is hereby granted. The cases are hereby consolidated.

All future filings shall be to the case with Richard D. McCracken as Plaintiff, bearing No. 02-1662-CD.

BY THE COURT,

Jackie J. Krumm

President Judge

FILED

MAY 11 2004
01/11/04
William A. Shaw
Prothonotary/Clerk of Courts
Sent to Art STEWART
GEARMAN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,
Defendant

:
:
:
: No. 02-1662-CD
:
:
:
:

CASE NUMBER: No. 02-1662-CD
TYPE OF CASE: Civil
TYPE OF PLEADING: CERTIFICATE OF SERVICE
FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
207 East Market Street
Clearfield, PA 16830
(814) 765-1581

FILED

JUN 08 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. McCracken,
Plaintiff

vs.

: No. 02-1662-CD

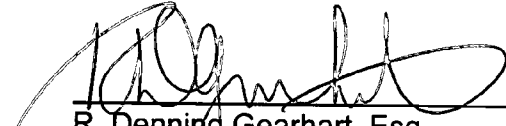
CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE
COMPANY,

Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the BRIEF filed in the above captioned matter on the Plaintiff, through Plaintiff's attorney by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Karen L. Steele, Esq.
Goldstein, Heslop, Steele, Clapper,
Oswalt & Stoeher, Esqs.
414 N. Logan Boulevard
Altoona, PA 16602


R. Denning Gearhart, Esq.
Attorney for Defendant

Dated: June 8, 2004

FILED

JUN 08 2004

0/3:34

William A. Shaw
Prothonotary

EA

no oo

Date: 07/28/2004

Time: 09:20 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: ASELFRIDGE

Case: 2002-01662-CD

Current Judge: Fredric Joseph Ammerman

Richard D. McCracken vs. Clearfield County Grange Mutual Fire Insurance Co.

Civil Other

Date		Judge
10/23/2002	X Filing: Civil Complaint Paid by: Steele, Karen L. Esq (attorney for McCracken, Richard D.) Receipt number: 1850263 Dated: 10/23/2002 Amount: \$80.00 (Check) One CC to Sheriff.	No Judge
12/13/2002	✓ Answer to Counterclaim and New Matter filed by Atty. Gearhart. 3 CC to Atty.	No Judge
	✓ Certificate of Service, filed by Atty. Gearhart Served copy of Answer to Counterclaim and New Matter on Plaintiff's Atty. s/R. Denning Gearhart.	No Judge
12/17/2002	✓ Notice of Deposition of Edward J. Yocum. filed by s/Karen L. Steele, Esquire Certificate of Service no cc	No Judge
12/19/2002	✓ Answer to Interrogatories/Request For Production of Documents Directed to Defendant, Clearfield County Grange Mutual Fire Insurance Company. filed by s/R. Denning Gearhart, Esq. 3 cc Atty Gearhart	No Judge
	Filing: Subpoena Paid by: Steele, Karen L. Esq (attorney for McCracken, Richard D.) Receipt number: 1852863 Dated: 12/19/2002 Amount: \$3.00 (Check)	No Judge
12/24/2002	✓ Notice of Intent To Serve A Subpoena To Produce Documents And Things For Discovery Pursuant To Rule 4009.21. filed by s/Karen L. Steele, Esquire no cc	No Judge
01/15/2003	✓ Reply to New Matter. filed by s/Karen L. Steele, Esquire Verification s/Richard D. McCracken Certificate of Service no cc	No Judge
01/17/2003	✓ Certificate Prerequisite To Service Of A Subpoena Pursuant to Rule 4009.22. filed by s/Karen L. Steele, Esquire Certificate of Service no cc	No Judge
01/23/2003	✓ Sheriff Returns: Now Nov. 4, 2002 served complaint and interrogatories/request to produce documents on clearfield County Grange Mutua Fire Insurance Co. at employment 1214 Old Town Road Suite 3, Clearfield, PA by; handing to Randall Guthrie. Costs: 30.37 Paid by Atty.	No Judge
12/04/2003	✓ Notice of Taking Deposition of Tpr. Michael S. McCracken on Oral Examination under Rule 4007.1. filed by, s/R. Denning Gearhart, Esquire Certificate of Service no cc	No Judge
	Notice of Taking Deposition of Pamela Ja Vaux on Oral Examination under Rule 4007.1. filed by, s/R, Denning Gearhart, Esquire Certificate of Service no cc	No Judge
04/08/2004	X Motion For Partial Summary Judgment and Motion To Consolidate Cases. filed by, s/R. Denning Gearhart, Esquire Verification s/Randall Guthrie 3 cc Atty Gearhart	No Judge
04/15/2004	X ORDER, NOW, this 14th day of April, 2004, re: Argument on Defendant's Motion for Partial Summary Judgment and Motion to Consolidate Cases schedule for May 10, 2004, at 10:30 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Gearhart	Fredric Joseph Ammerman
04/21/2004	✓ Certificate of Service, Motion for Partial Judgment and Motion to Consolidate Cases and Order dated April 14, 2004, upon Karen L. Steele, Esquire. s/R. Denning Gearhart, Esquire	Fredric Joseph Ammerman
04/28/2004	X Plaintiff's Answer to Defendant's Motion for Partial Summary Judgement filed by Atty. Steele. No CC.	Fredric Joseph Ammerman
	✓ Plaintiff's record in Opposition to Defendant's Motion for Partial Summary Judgment filed by Atty. Steele No cc.	Fredric Joseph Ammerman

CONTRACT NUMBER	FILE NUMBER	DATE	LESSEE	LOCATION	PURPOSE
L-57247		12-13-77	Brookville Telephone Company	Dayton, PA	Mine Line/\$25.00 Annual Rent
L-57661-A		04-10-79	Brookville Telephone Company	Rockton, PA	Mine Lines/\$150.00 Annual Rent
L-58399		06-02-78	Brookville Telephone Company	Cam Junction, PA	Mine Line
L-90037		06-27-79	Brookville Telephone Company	North Point, PA	Mine Lines (2)/\$50.00 Annual Rent
L-91067		07-05-83	Brookville Telephone Company	Dayton, PA	Mine L. (3) \$250.00 Annually
L-90341		03-12-87	Brookville Telephone Company	Luthersburg, PA	Mine Line/\$250.00 Annually
L-22446		11-10-09	Buffalo & Susquehanna Coal & Coke	DuBois, PA	Water Pipeline
L-91484		07-12-85	Buffalo Sewer Authority	Lackawanna, NY	Drainage Pipeline
L-50282		05-02-63	Buffalo, City of	Buffalo, NY	R/W - Easement for Water Pipeline
L-22076		02-02-27	Buffum, Wesley	Colden, NY	Mine Lines (2)
L-97716		11-01-84	Burke-Parsons-Boulby Corporation	DuBois, PA	Land Lease/\$2,700.00 Annual Rent
L-97682		11-01-84	Burkett, Homer J. & Grace A.	Punxsutawney, PA	Land Lease/\$50.00 Annually
L-51614		06-01-69	Butler Area Sewer Authority	Butler, PA	Sewer Line
L-57471		09-13-78	Butler Area Sewer Authority	Butler, PA	Sewer Line/\$25.00 Annually
L-57473		09-13-78	Butler Area Sewer Authority	Butler, PA	Sewer Line/\$25.00 Annually
L-57474		09-13-78	Butler Area Sewer Authority	Butler, PA	Sewer Pipeline
L-57475		09-13-78	Butler Area Sewer Authority	East Butler, PA	Sewer Pipeline/\$40.00 Annual Rent
L-57476		09-13-78	Butler Area Sewer Authority	Butler Transfer, PA	Sewer Pipeline/\$40.00 Annual Rent
L-57477		09-12-78	Butler Area Sewer Authority	Butler Transfer, PA	Sewer Pipeline/\$40.00 Annual Rent
L-56515		09-13-78	Butler Area Sewer Authority	Butler, PA	Sewer Line/\$25.00 Annually
L-96289-1		10-06-06	Butler Area Sewer Authority	Butler, PA	Sewer Line
L-96289-2		03-01-25	Butler Area Sewer Authority	Butler, PA	Water Line
L-22652		06-07-27	Butler County Oil Refining Company	Butler, PA	Oil Line
L-22653		10-31-23	Butler County Oil Refining Company	Summit, PA	Oil Pipeline
L-22654		12-01-22	Butler County Oil Refining Company	Summit, PA	Oil Pipeline
L-23255		04-08-22	Butler County Oil Refining Company	Summit, PA	Oil Pipeline
L-22712		12-26-24	Butler Water Company, The	Madison, PA	Mine Line
L-2290-1		03-08-13	Butler Water Company, The	Butler Junction, PA	Footwalk & Stairs under Bridge
L-2290-2		06-10-11	Butler Water Company, The	Butler, PA	Water Pipeline
L-2290-3		04-29-02	Butler Water Company, The	Butler, PA	Water Pipeline
L-37434		12-16-48	Butler Water Company, The	Butler, PA	Water Pipeline
L-39567		03-01-61	Butler Water Company, The	Butler, PA	Water Pipeline
L-46128		04-01-62	Butler Water Company, The	Butler, PA	Water Pipeline/\$8.00 Annual Rent
L-47196		09-01-63	Butler Water Company, The	Butler, PA	Water Line/\$12.00 Annually
L-48530		06-01-65	Butler Water Company, The	Butler, PA	Water Pipeline/\$50.00 Annual Rent
L-50593		09-01-68	Butler Water Company, The	Butler, PA	Water Line/\$12.00 Annually
				Lyndora, PA	Water Line/\$200.00 Per Annum

EXHIBIT-NEWBUFF3-NEUF3QRY

June 1, 1988

Date: 07/28/2004

Clearfield County Court of Common Pleas

User: ASELFRIDGE

Time: 09:20 AM

ROA Report

Page 2 of 2

Case: 2002-01662-CD

Current Judge: Fredric Joseph Ammerman

Richard D. McCracken vs. Clearfield County Grange Mutual Fire Insurance Co.

Civil Other

Date		Judge
05/11/2004	ORDER, NOW, this 10th day of May, 2004, re: Motion For Summary Judgment, counsel for Clearfield County Grange Mutual Fire Insurance Co. to have no more than 10 days from this date in which to submit appropriate Brief to the Court. Counsel for Richard D. McCracken shall have no more than 5 days following receipt of the insurance company's Brief to respond. by the Court, s/FJA, P.J. cc to Atty Steele, Gearhart ORDER, NOW, this 10th day of May, 2004, re: Motion To Consolidate Cases is hereby GRANTED. All future filings shall be to the case with Richard D. McCracken as Plaintiff, bearing No. 02-1662CD. by the Court, s/FJA, P.J. cc Atty Steele, Gearhart	Fredric Joseph Ammerman
06/09/2004	Certificate of Service, Brief, upon: Karen L. Steele, Esq. filed by, s/R. Denning Gearhart, Esq. no cc	Fredric Joseph Ammerman

CON. ACT NUMBER	FILE NUMBER	DATE	LESSEE	LOCATION	PURPOSE
L-21373		01-17-01	Bradford Pressed Brick Company	Bradford, PA	Tunnel Under Track
L-43695		06-17-59	Bradford Sanitary Authority	Bradford, PA	Sewer Pipeline/\$25.00 Annual Rent
L-51522		04-29-69	Bradford T.V. Cable, Div. TeleVision	Foster Brook, PA	Coaxial Cable/\$100.00 Annual Rent
L-22304		03-07-13	Bradford-Hamburg Oil & Gas Company	Orchard Park, NY	Gas Pipeline
L-21601		03-01-32	Bradford, City of	Bradford, PA	Water Pipeline
L-24067		08-15-21	Bradford, City of	Bradford, PA	Water Pipeline
L-24504		11-01-24	Bradford, City of	Bradford, PA	Sewer Pipeline
L-35061		10-16-48	Bradford, City of	Bradford, PA	Water Pipeline/\$12.00 Annual Rent
L-35225		04-16-49	Bradford, City of	Bradford, PA	Water Pipeline
L-35944		12-15-56	Bradford, City of	Bradford, PA	Sewer Pipelines (31)/\$1.00 Annually
L-44591		12-01-59	Bradford, City of	Bradford, PA	Water Pipeline
L-51186		03-01-69	Bradford, City of	Bradford, PA	Sewer Pipeline
L-58106		09-01-77	Bradford, City of	Degolia, PA	Sewer Pipeline/\$10.00 Annual Rent
L-97235		10-05-83	Brady Township Water Association	Bradford, PA	Sewer Pipelines(21)/\$200.00 Annually
L-56835		06-01-75	Brady, Township of	Luthersburg, PA	Water Line
L-36293		09-01-50	Brookway Borough Municipal Auth.	Carl Junction, PA	Water Line
L-23514		02-21-17	Brookway Crystal Water Company	Brookway, PA	Water Pipeline/\$11.00 Annual Rent
L-23517		12-09-24	Brookway Crystal Water Company	Brookwayville, PA	Water Pipeline
L-31030		01-01-73	Brookway Glass Company, Inc.	Brookwayville, PA	Water Pipeline
L-31030-1		09-15-41	Brookway Glass Company, Inc.	Brookway, PA	Land Lease/\$200.00 Annual Rent
L-31030-2		06-01-69	Brookway Glass Company, Inc.	Brookway, PA	Land Lease/\$25.00 Annual Rent
L-23241		02-14-27	Brookway Light, Heat & Power Co.	Brookway, PA	Land Lease
L-29772		03-14-42	Brookway Light, Heat & Power Co.	Snyder, PA	Mine Line
L-34195		04-03-48	Brookway Light, Heat & Power Co.	Brookway, PA	Mine Line
L-23829		05-01-33	Brookway, Borough of	Brookway, PA	Mine Lines (41)/\$6.00 Annual Rent
L-27793		08-29-39	Brookway, Borough of	Brookway, PA	Drainage Pipeline
L-34504		10-16-48	Brookway, Borough of	Brookway, PA	Sewer Pipelines (5)
L-41925		05-01-57	Brookway, Borough of	Brookway, PA	Land Lease/\$1.00 Annual Rent
L-47365		12-01-63	Brookway, Borough of	Brookway, PA	Sewer Pipeline/\$12.00 Annual Rent
L-47396		11-15-63	Brookway, Borough of	Brookway, PA	Private Road Crossing
L-47400		11-15-63	Brookway, Borough of	Brookway, PA	Sewer Pipeline/\$10.00 Annual Rent
L-54451		06-15-73	Brookville Telephone Company	Brookway, PA	Sewer Pipeline/\$30.00 Annual Rent
L-55964		06-01-75	Brookville Telephone Company	Luthersburg, PA	Mine Line, Poles & Guys/\$94 Annual
L-56573		01-02-76	Brookville Telephone Company	Salem, PA	Mine Line
L-57106		07-14-77	Brookville Telephone Company	Salem, PA	Mine Line/\$50.00 Annually
L-57144		09-22-77	Brookville Telephone Company	Dayton, PA	Mine Lines(31)/\$100.00 Annual Rent
				Rockton, PA	Mine Lines/\$149.00 Annually

EX-106B3-NENBUFF3-NBUF3QRY
June 1, 1988

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,
Plaintiff

vs.

RICHARD D. McCRACKEN,
Defendant

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No. 2002-1687-C.D.
No. 2002-1662-C.D.

OPINION and ORDER

FILED ¹²
orig. filed
to 03-1687-C.D.
JUL 29 2004 2cc Atty's
Greashart
Steele
Clerk of Court

Plaintiff, Clearfield County Grange Mutual Fire Insurance Company ("Grange Mutual") commenced a declaratory judgment action to Civil Docket No. 2002-1687-C.D. by filing a Complaint on October 28, 2002. Therein, the Court is requested to declare that the fire insurance policy which Grange Mutual issued to the Defendant, Richard D. McCracken, ("McCracken") does not provide coverage for the fire loss which occurred on July 4, 2002. A copy of the Complaint was thereafter mailed to McCracken's attorney on or about October 28, 2002. However, previously, on October 23, 2002, McCracken filed a Complaint against Grange Mutual to No. 2002-1662-C.D. asserting in Count I thereof breach of the insurance contract and, in Count II, bad faith on the part of Grange Mutual by denying coverage. McCracken filed an Answer, New Matter and Counterclaim in which

he incorporates his Complaint filed against Grange Mutual in the companion action. The Court consolidated the two actions.

After obtaining Answers to Interrogatories/Request for Production of Documents and completing the deposition of the claims adjuster, Edward J. Yocum, on February 10, 2003, McCracken filed a motion for Summary Judgment. Grange Mutual filed no response to the allegations in said Motion but provided a Letter Brief in opposition shortly before oral argument was held on May 20, 2003. In its Brief and at oral argument, Grange Mutual asserted that it was necessary to obtain the depositions of Pamela Vaux, McCracken's girlfriend, who had been charged with arson after admitting to starting the fire following an argument with McCracken, and the investigating Fire Marshall. The Court then entered an Order denying Defendant's Motion for Summary Judgment pending completion of such discovery without prejudice to renewal of the motion. The depositions were completed on December 18, 2003, and copies of the transcripts have been filed of record. McCracken has now filed a Renewed Motion for Summary Judgment. Grange Mutual has also filed a Motion for Partial Summary Judgment, requesting that McCracken's claim for punitive damages based on bad faith be dismissed. The Court will grant both Motions.

In support of his Renewed Motion for Summary Judgment, McCracken makes reference to the record, including the pleadings filed in both actions, and has also submitted copies of all

deposition transcripts taken in the action. The deposition of Edward J. Yocum, the independent adjuster employed by E.L. Braid Claim Service, Inc. and authorized by Grange Mutual to adjust McCracken's claim on its behalf was taken by McCracken and was previously filed of record. Transcripts of the depositions of Pamela Vaux and the investigating Fire Marshall, Trooper Michael S. McCracken, have also been filed by McCracken in support of this Motion, along with copies of the Incident Reports completed by Trooper McCracken.

On or before July 4, 2002, McCracken was the owner of real property and improvements located in Bigler Township, Village of Madera, Clearfield County. (Complaint of Grange Mutual, Par. 2). On July 4, 2002, McCracken's property was covered by a fire insurance policy issued by Grange Mutual providing insurance coverage of up to \$40,000.00 on the dwelling, up to \$15, 000.00 on the contents, and up to \$1,000.00 on an unattached masonry garage. (Complaint of Grange Mutual, Par 3; Complaint of McCracken, Par. 4; Answer of Grange Mutual, Par. 4). On July 4, 2002, the insured property was destroyed by fire. The cause of the fire was determined to be arson committed by the girlfriend of McCracken, which was described by Grange Mutual's investigator as a "spite revenge" fire. (Deposition Transcript ("DT") of Edward J. Yocum, p. 172, Exhibit 3). McCracken promptly reported the fire loss and made a claim under the policy.

Grange Mutual assigned the adjustment of the claim to Edward J. Yocum, an independent adjuster employed by E.L. Braid Claim Service, Inc. (DT Edward J. Yocum, p. 33, 47, Exhibit 9). Grange Mutual also contracted with Tsikalas Investigations to complete a cause and origin investigation of the fire. As part of its investigation, on July 5, 2002, Tsikalas Investigations obtained a recorded statement of McCracken and others. (DT Edward J. Yocum, Exhibit 6). Thereafter, on August 14, 2002, Mr. Yocum also took a recorded statement of McCracken, the transcript of which is 21 page in length. In his statements, McCracken stated that he had gone out west at the end of February or beginning of March, 2002, and spent several months there before returning to Clearfield County approximately one month before the fire. After returning to Clearfield County, McCracken initially stayed with his girlfriend in her parents' camper at a local campground. However, several days before the fire, McCracken returned to live in his home. In his statement of July 5, 2002, McCracken stated:

- Q. Can you tell me what the circumstances were before the fire? Were you here?
- A. Yeah, I was. I was puttin' the hand railing on the porch. I wanted to try to fix it up to try to get...I had a book on how to make it on certain rules or whatever for HUD - cause I thought maybe I could rent it and I didn't know about how to go about it and I got papers and it said all this stuff. So, we started on it. I put that porch on it and it just had the two concrete steps there and we was puttin' hand

railings on it and I was gonna put a roof on it. That's what I was doin' for the past two days, wasn't' I...

Q. I have to ask that question because we have to find out what's going on here. When did you come back from out west?

A. It's been right around a month ago and I was stayin' at this property over near Kerrmoor. That's where the Harley's at, my tent and we had her parents...

Q. You have a Harley and a tent over there, correct?

A. Yeap.

Q. Do you have other personal belongings over there?

A. Yeap.

Q. Is that her house?

A. No, there's no house there at all. It's just a campground and we had her camper there, her parents', and we stayed in it and we just got electric turned on here on the 3rd and we stayed here for three to four nights, like a couple days before we got the electric. The day we got the electric, we stayed here.

...

Q. What did you and Pam do that day in the house? (July 4, 2002).

A. I'm thinkin' we probably got up around 10:00 and started workin' on the porch and did that probably for just a few hours, workin' on the porch. Like I said, I didn't even have my power tools down here, I was just using the battery operated handsaw and we got the porch pretty much done except for the roof.

(DT Edward J. Yocum, Exhibit 6, pp.2-4).

In his statement of August 14, 2002, McCracken made the following statements:

Q. Okay, um, so actually, leading up to then, the night of the fire, um, you weren't actually living in the house?

A. Ah, we did stay there probably two to three nights, you know, right before the 4th of July.

Q. Hum, hum.

A. You know, cause we're still at that campsite and, you know its getting a little old.

Q. Right.

A. Cause we was in a camper the whole time out west and, you know, we stayed there a couple nights and, ah, even with no electricity we, you know, was usin' them kerosene lamps and then having the power turned on.

(DT Edward J. Yocum, Exhibit 14, pp.13-14).

By letter of August 16, 2002, McCracken was informed by Mr. Yocum that Grange Mutual was denying coverage on the loss based upon the information McCracken had provided in his recorded statement as follows:

The question has come to light is involving occupancy of the dwelling and the fact that you had confirmed that the property had been vacant for approximately four months just prior to the fire with no utilities connected except electricity that was re-established to the property two or three days prior to July 4th....

In light of the above-stated information we want to bring to your attention and refer you to a copy of the insurance policy provided for the property, which is referred to as a standard fire insurance policy in the State of Pennsylvania specifically lines twenty-five through thirty-two where it states:

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

A. While the hazard is increased by any means within the control or knowledge of the insured:

B. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or...

Based upon the facts confirmed during the course of your statement the above-stated exclusionary language of the policy, we must with regret deny coverage to you for the dwelling loss above and beyond the mortgage payoff with County National Bank. Meaning, no additional funds will be provided for the structure loss once the mortgage payoff has been confirmed and the payoff processed.

(DT Edward J. Yocum, Exhibit 15, p. 1-2, emphasis added).

In its Complaint, paragraph 11, Grange Mutual makes the following statement: "That while he states that he did reside at the premises for three or four nights, such is not enough to establish residency in the premises and the premises remained vacant."

At his deposition, Edward J. Yocum admitted that Grange Mutual had no evidence to dispute Mr. McCracken's statements that he had been living in the home for several days prior to the fire. Mr. Yocum testified as follows:

Q. Were you aware as of that time [in reference to the letter of August 16, 2002], of the existence of any facts or any witnesses who would testify or who could testify that the property was not occupied on the date of the loss?

A. Do we have any information to confirm that?

Q. Yes.

A. No, not from any witnesses.

Q. ...Okay. But you've agreed with me previously, I think, that you had no information, no facts to dispute his claim that he had been living in the

property on the date of the fire and for several days before that; correct?

A. That's correct, but I think our direction is it's not an issue of him staying in the property one or two days or three days or four days prior, but he was out of the property for an extended period of time. And that's why we felt, because of the language of the policy, to have counsel review it.

Q. To your knowledge, are there any documents or any facts of which you're aware that serve as a basis of the denial of coverage, other than the facts that we've discussed here today and the documents that we've reviewed?

A. No, none that I'm aware of.

(DT Edward J. Yocum, pp. 116, 122-123, p. 168).

Although his letter denying coverage also made reference to Subsection A, "While the hazard is increased by any means within the control or knowledge of the insured", Mr. Yocum testified that he had only made reference to Subsection A because it was part of the section on conditions suspending or restricting insurance and that the denial of coverage of Mr. McCracken's claim was based upon occupancy. (DT Edward J. Yocum, pp. 126-127).

After the denial of coverage to McCracken, Grange Mutual forwarded a check to County National Bank in payment of the balance due on McCracken's mortgage of \$15,967.20. Mr. Yocum testified that there is no dispute that the fire damage to the dwelling exceeds the limit of coverage of \$40,000.00 and that the fire damage to the contents exceeds the policy limit of \$15,000.00. (DT Edward J. Yocum, pp. 146-149). Mr. Yocum agreed that McCracken had not changed his address from 1999 when

he had applied for the policy through the date of loss. (DT Edward J. Yocum, pp. 163-164).

At her deposition on December 18, 2003, Pamela Vaux testified that McCracken had no involvement in, or knowledge of, her burning his home but that she alone had done so fueled by anger and alcohol following an argument with McCracken. Ms. Vaux further confirmed that she and McCracken had been staying in the subject home for a period of several days before the fire during which time McCracken, with her help, was building a porch on the property. She and McCracken had slept in the property the night before the fire.

The Incident Reports completed by Trooper McCracken and his deposition testimony further confirm that both McCracken and Ms. Vaux informed him immediately after the fire that they had been residing in the home for several days before the fire. Trooper McCracken confirmed that his investigation revealed no evidence that McCracken had any involvement whatsoever in the arson. He agreed with the conclusion reached by Grange Mutual's expert, Tsikalas Investigations, that the arson was committed by Pamela Vaux was a "spite revenge - fire." Trooper McCracken also testified that he had been in contact with Grange Mutual's representatives during the course of his investigation and had informed Grange Mutual contemporaneously as to the results of his investigation.

Pursuant to Pa.R.C.P. No. 1035.2, a motion for summary judgment is properly sought when:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

The record in this case shows that there are no material factual disputes. With respect to suspension of coverage based upon the occupancy clause or denial of coverage based upon the defense of arson, the burden of proof remains squarely upon the insurer. Wexler Knitting Mills v. Atlantic Mut. Ins. Co., 382 Pa.Super. 405, 555 A.2d 903 (1989); Fratto v. Northern Ins. Co. of New York, 242 F. Supp. 262 (W.D. Pa. 1965). The Court believes Grange Mutual has failed to produce evidence of facts essential to support its denial of McCracken's claim such that judgment should be entered in favor of McCracken as a matter of law.

With regard to application and construction of the vacancy condition in the standard fire policy issued to McCracken, there are no facts to support the construction and application of this clause by Grange Mutual. Grange Mutual issued a standard fire policy to McCracken including the statutory language required by 40 P.S. Section 636(1) set forth, in pertinent part, as follows:

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto, this Company shall not be liable for loss occurring:

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or...

Additionally, the extended coverage clause added to the policy by Grange Mutual contains the following provision:

WAIVER OF POLICY PROVISIONS: A claim for loss from perils included in this Endorsement shall not be barred because of change of occupancy, nor because of vacancy or unoccupancy, except as herein before provided.

(Complaint, Exhibit "A").

A contract of insurance is generally governed by the same principles of law as any other contract. Summ Pa Jur 2d, Insurance Section 3:2. Words in an insurance contract are to be

construed and applied in their ordinary sense and, when not defined in the policy, the dictionary definition may be considered. Tyler v. Motorists Mut. Ins. Co., 779 A.2d 528 (Pa. Super. 2001) app. den. 567 Pa. 764, 790 A.2d 1018 (2001). Where the language of the contract is clear and unambiguous, the court is required to give effect to the contract language. However, where an ambiguity is found to exist, it must be construed in favor of the insured. The interpretation of the language of an insurance policy is a question of law for the court. Municipality of Mt. Lebanon v. Reliance Ins. Co., 778 A.2d 1228 (Pa. Super. 2001). When the insurance carrier asserts that a covered risk falls within the scope of a coverage exclusion, the burden of proof is on the insurance carrier. Summ Pa Jur 2d, Insurance Section 15:1. The language at issue here is such that a simple reading shows that there is no basis for Grange Mutual's denial of coverage under the facts as established through the discovery. The clause specifically states that coverage is suspended for a loss occurring while a described building is vacant or unoccupied beyond a period of 60 days. If the covered building is not vacant or unoccupied when the loss occurs, the condition suspending coverage has no application. Based upon the unambiguous policy language and the ordinary meaning of the term "unoccupied" and "vacant", there is no basis upon which Grange Mutual can meet its burden of proving that the exclusion applies to the facts presented. Thus, there is no

issue of material fact and Grange Mutual cannot sustain its burden of proving that the insured property was vacant on the date of loss.

With respect to damages, Grange Mutual has admitted that the loss to the structure exceeds the limit of coverage of \$40,000.00 and that the loss of the contents exceeds the limit of coverage of \$15,000.00. Thus, after crediting the mortgage payoff of \$15,967.20, Grange Mutual owes a total principal balance of \$39,032.80 to McCracken. Further, by statute, the policy must provide that a fire loss will be paid within 60 days after the receipt of proof of loss and agreement on the amount of loss. 40 P.S. Section 636(2). However, when the insurer denies liability before the end of the 60 day period, interest is assessed from the date of the fire. Gardner v. Freystown Mutual Fire Insurance Company, 350 Pa. 1, 37 A.2d 535 (1944); Berkley Inn, Inc. v. Centennial Insurance Company, 282 Pa. Super. 207, 422 A.2d 1078 (1980). Thus, interest is due and payable on the principal sum at the legal rate from the date of the fire, July 4, 2002, through the date of payment.

The remaining issue in the case is the Motion for Partial Summary Judgment filed on behalf of Grange Mutual. In this Motion, Grange Mutual asks the Court to dismiss McCracken's claim for punitive damages based upon alleged bad faith in denying the claim.

Courts in the Commonwealth have found that an insurer acts in bad faith if they lack "a reasonable basis for denying coverage and the insurer knew or recklessly disregarded its lack of a reasonable basis for denying coverage." Adamski v. Allstate Insurance Co., 738 A.2d 1033 (Pa.Super. 1999). Mere negligence or bad judgment by an insurer in refusing to pay a claim is not bad faith. O'Donnell ex rel. Mitro v. Allstate Insurance Co., 734 A.2d 901 (Pa.Super. 1999).

In Adamski, the Superior Court further elaborated on an insurer acting in bad faith:

"Bad faith" on the party of insurer is any frivolous or unfounded refusal to pay proceeds of policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Adamski, 738 A.2d at 1036.

In the instant case, from a review of the entire record, the Court agrees as a matter of law that Grange Mutual did not act in bad faith. Following the fire and following the claim by McCracken, Grange Mutual commenced an investigation. The interview of McCracken was conducted by Mr. Yokum at the Insurance Company Office. Before the interview, Mr. Yokum noted that McCracken was driven to the interview by Ms. Vaux, the very

person who was alleged to have committed the arson and burned the house. During the interview McCracken described how he and Ms. Vaux had been out west for a number of months and the house was vacant. As noted, upon their return they lived in a camper with some of Ms. Vaux's relatives. McCracken further stated he was trying to repair the house so he could rent it to Ms. Vaux and obtain a rental subsidy. One could reasonably assume that Mr. McCracken would live there with Ms. Vaux while also enjoying the benefit of the rental subsidy. Mr. Yokum also learned that the house was without any utilities, except for the electricity which McCracken established by using his sister's name with the electrical supplier.

Given the circumstances, there can be no doubt but that Grange Mutual was justified in having significant suspicions concerning the situation. Its actions in denying coverage and proceeding with the filing of the action for declaratory judgment and continuing with its investigation were certainly reasonable when taken in context with these suspicions.

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

vs.

RICHARD D. MCCRACKEN,

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No. 2002-1662-C.D.

No. 2002-1687-C.D.

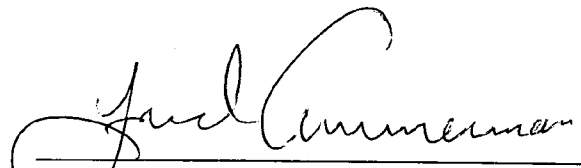
O R D E R

NOW, this 26th day of July, 2004, it is the ORDER of
this Court as follows:

1. The Motion for Summary Judgment filed on behalf of
Richard D. McCracken is hereby granted. Clearfield County
Grange Mutual Fire Insurance Company will make payment on the
insurance claim in the total principle amount of \$39,032.80.
Interest at 6% shall be payable from the date of the fire, being
July 4, 2002.

2. Clearfield County Grange Mutual Fire Insurance
Company's Motion for partial summary judgment is hereby granted.
Richard D. McCracken's request for damages based upon bad faith
as set forth in Count II of his Complaint filed October 23,
2002, is hereby dismissed.

By the Court,



FREDRIC J. AMMERMAN
PRESIDENT JUDGE

RICHARD D. McCRACKEN,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002 - 1662 CD

PRAECIPE FOR DISCONTINUANCE

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

FILED *EBK*
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to atty. Steele
copy to CA
NOV 08 2004

William A. Shaw
Prothonotary

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002 - 1662 CD

:
: JURY TRIAL DEMANDED

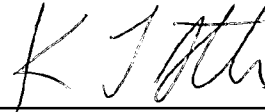
PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Please mark the above-captioned matter as settled, discontinued and ended.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



Karen L. Steele, Esquire
Attorney for Plaintiff

I.D. No. 32707

414 N. Logan Boulevard

Altoona, PA 16602

(814) 946-4391

DATED:

Mar. 5, 2004

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

Richard D. McCracken

Vs.

No. 2002-01662-CD

Clearfield County Grange Mutual Fire Insurance Co.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on November 8, 2004, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$110.37 have been paid in full by Attorney Steele.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 8th day of November A.D. 2004.

William A. Shaw, Prothonotary

R. Denning Gearhart

Attorney & Counselor At Law

207 East Market Street
Clearfield, PA 16830

814-765-1581
fax-814-765-8142

www.dgearhartpalaw.com
dgearhart@dgearhartpalaw.com

June 6, 2004

Hon. Frederic J. Ammerman
President Judge
Clearfield County Courthouse
Clearfield, PA 16830

Re: Richard McCracken v. Clearfield County Grange Mutual Fire Insurance Company, 02-1662-CD (includes consolidated case, Clearfield County Grange Mutual Fire Insurance Company V. Richard D. McCracken, 02-1687-CD)

Dear Judge Ammerman:

Following argument on May 10, 2004, on Cross-Motions for Summary Judgments filed in the above two cases, you allowed me a week to submit a Brief. For health reasons, my Brief has been delayed and I appreciate your's and Attorney Steele's consideration in allowing me to submit this Brief late.

PROCEDURAL HISTORY AND ISSUES *SUB JURIS*

Plaintiff, Richard D. McCracken (henceforth McCracken) alleges that premises owned by him were insured by the Defendant, Clearfield County Grange Mutual Insurance (henceforth, Grange), when they were destroyed by a fire on July 4, 2002. Plaintiff filed a claim for \$25,000, and when Grange did not immediately pay, filed suit for that amount, and for punitive damages alleging Grange acted in "bad faith."

Defendant, Grange, points out that the policy allegedly insuring the premises contained two significant provisions:

The first stated, "Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring: ... (b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days..." As argued on May 10, Grange takes the position that the premises were not occupied for the purpose they had been insured, and had been vacant for several months before the fire.

The second is the requirement that the insured cooperate with the investigation of the claim. Grange argues that the facts show that not only did McCracken not cooperate, but he actively and deliberately **hindered** the investigation.

*Yocum
says he is
NOT aware
of a lease.*

*Grange position = once out of place in
excess of 60 days doesn't matter if he
comes back.*

Because of its belief that coverage did not exist at the time of the fire, and/or that McCracken violated his duties under the terms of the contract, Grange notified McCracken and his counsel of its intention to deny coverage and to file a Complaint for Declaratory Judgment, asking Your Honorable Court to render an opinion as to coverage. Three days before that Complaint was filed (to the above consolidated caption), McCracken filed the primary-captioned suit. Those suits led to the Motions for Summary Judgment that are presently *sub Juris*. The issues before Your Honorable Court are:

- 1) Is there a question of fact that the premises were vacate in a manner and for a time, such that, under the terms of the insurance policy, the policy coverage was suspended? Grange argues, yes.
- 2) Is there a question of fact that McCracken violated the terms of the insurance policy by not cooperating – indeed hindering – the investigation? Again, Grange argues, yes.
- 3) Did Grange act in bad faith by refusing to pay McCracken until it recieved a Declaratory Judgment from the Court? Grange argues, no.

FACTS

Following the fire, and following a claim filed by McCracken, Grange commenced its investigation. That investigation was to include, among other things, an interview with McCracken. That interview was conducted by Ed Yocum of E.L. Braid Claims Service, Inc., an independent claims settlement agency (henceforth: Braid), at the office of the Grange. Before the interview, Yocum noted that Mr. McCracken was driven to that interview by Pamela Vaux – the very person who is alleged to have committed the arson, which burned Mr. McCracken's house. In that interview, Mr. McCracken described that he and Ms. Vaux had been out west for approximately four months, at which time the house was vacant. (Exh. 1 - Deposition Transcript of Edward Yocum, Exh. 6, Page 3) Upon their return, they lived in a camper on the property of some relatives. He stated he was making some repairs to the house to make it habitable. (Exh. 2 - Deposition Transcript of Edward Yocum, Exh. 6, Page 3 & 4) His stated goal was to make it habitable to the degree it would comply with HUD regulations, allowing him to rent the premises to Ms. Vaux – giving him a rent subsidy. (Exh. 3 - Deposition Transcript of Edward Yocum, Exh. 6, Page 3 & 4) The house was without utilities, except for electricity which he eventually established under his sister's name. (Exh. 4 - Deposition Transcript of Edward Yocum, Exh. 6, Page 3) His only reference to staying overnight, is for a couple of nights he and Vaux slept there, but, inasmuch as there was no furniture there (and considering the totality of circumstances at the time), it should be inferred that this was just a continuation of the camping trip. (Exh. 5 - Transcript Deposition of Edward J. Yocum , Exh. 14, Pages 13 & 14)

Later, Yocum was informed by the Pennsylvania State Police that their investigation was hindered as Mr. McCracken had advised Ms. Vaux not to talk to the police investigator until she was represented by counsel. (Exh. 6 - Deposition of Pamela Vaux - Page 17)

On September 18, 2002, Mr. Yocum received a letter from Counselor Steele (Exh. 7). In that letter, she questions the denial of coverage and insists on payment. Present counsel, representing Grange, corresponded with Attorney Steele explaining that Braid Insurance felt it was within its rights to deny coverage, but in any event, wished to further investigate the matter, and would file a Complaint for Declaratory Judgment. Attorney Steele apparently thought it was to Mr. McCracken's advantage for her to file suit first, and she filed McCracken's suit alleging contractual duty to pay the insured, also alleging "bad faith" on behalf of the insurance company.

ARGUMENT - THE PREMISES WERE NOT OCCUPIED

Apparently it is uncontroverted that if the fire had occurred one week earlier there would have been no coverage, as the premises were in fact vacated for the required time. The question is, did McCracken *re-establish* occupancy within the meaning of the insurance contract?

The premises were insured as a residence. While it may not have mattered as to whom the actual resident was, it nevertheless was to be a residence. In the instant case, upon his return from the west, McCracken clearly recognized that much needed to be done to the premises before it would once again be suitable for occupancy as a residence. Not only did he state that certain improvements needed to be made but – except for recently established electricity – there were no other utilities or other amenities and the couple had maintained their residence in the camper on his private property. This stay for the one or two overnights at the premises was obviously nothing more than a spontaneous lark. It is obvious that they did no more than camp there. In any event it is a matter to be decided by a finder of fact.

For guidance, Your Honorable Court should refer to the decision in Kristoff, et ux v. National Liberty Insurance Company of America, 26 D.C. 455 (1936, Dauphin County). There the court found that the owner's overnight visits to the allegedly insured premises, for purposes of catching burglars, did not re-establish occupancy and therefore the insurance policy was not valid. That Court said, " the mere fact that a person sleeps in a building does not make it a private dwelling. It is a matter of common knowledge, of which the court can readily take notice, that an occupied house is less of a fire hazard than a vacant one, and an insurance company might readily refuse to insure a vacant building when it would have no hesitancy in insuring a building occupied as a family residence." at 457. Clearly such a finding can be found in the instant case.

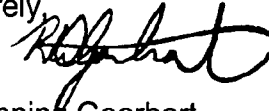
ARGUMENT - THE ALLEGED INSURED BREACHED THE POLICY BY HINDERING THE INVESTIGATION

As stated, the policy provided a provision that the insured would cooperate with the investigation of any claim on the insurance. Though one can only guess why someone would continue a relationship with the person that burned and destroyed his property, any attempts to answer would – unfortunately – be pure speculation. Clearly McCracken continued his relationship with Vaux even after she burned the premises. Not only did she provide him with transportation to Grange to make his statement and file his claim, but, significantly, he advised her not to cooperate with the Pennsylvania State Police as they conducted their arson investigation. Clearly, in advising his girlfriend not to cooperate, he was violating his duties under the contract – as averred on Paragraphs 5, 19, 25, 26 and 35 of Grange's Answer to Counterclaim and New Matter.

ARGUMENT - THE INSURER DID NOT ACT IN BAD FAITH

For all of the reasons set forth above, Grange believes it has no duty to pay under the insurance policy. At the very least, there was a legitimate question so as to justify its request for Court guidance through a Complaint for Declaratory Judgment. Accordingly, it did not act in bad faith and the claim for damages based on bad faith should be dismissed.

Sincerely,



R. Denning Gearhart

RDG/

Enclosure

cc: Karen Steele, Esq.
Randy Guthrie

V:\KAR\grangemccrackenbrief.wpd

Q: Do you date other girls also?

A: No.

Q: I have to ask that question because we have to find out what's going on here. When did you come back from out West?

A: It's been right around a month ago and I was stayin' at this property over near Kerrmore. That's where the Harley's at, my tent and we had her parents'.....

Q: You have a Harley and a tent over there, correct?

A: Yep.

Q: Do you have other personal belongings over there?

A: Yep.

Q: Is that her house?

A: No, there's no house there at all. It's just a campground and we had her camper there, her parents', and we stayed in it and we just got electric turned on here on the 3rd and we stayed here for three to four nights, like a couple days before we got the electric. The day we got the electric, we stayed here.

Q: Once the electric was hooked up, what did you have powered in because I didn't notice anything in the fridge?

A: No, it was still unplugged. The only thing, we had the lights and we were running the air conditioner yet this year. I plugged in the T.V. to make sure it worked and that was it, just kinda lighting for the basement so I could pack. I was packing all my stuff out. That's why it's all in boxes.

Q: What about the furnace? Is it running?

A: The original?

Q: No, what is mean is, did you have anything running in there for heat?

A: No, not this time of year.

Q: Did you have your electric hot water heater running?

A: No, 'cause I haven't had water here in probably a year.

Q: Basically, you had the electric hooked up and you were just using the lights, is that correct?

A: Yeah, because we're movin' all my property out of here to get a renter.....

Q: What about the outside light on the porch? Was the motion detector working?

A: Oh yeah, yeah.

Unknown man speaks: The water heater's propane..

Insured speaks: Yeah, that was gas.

Q: Do you date other girls also?

A: No.

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Q: What about the outside light on the porch? Was the motion detector working?

A: Oh yeah, yeah.

Unknown man speaks: The water heater's propane.

Insured speaks: Yeah, that was gas.

Q: Is that Mitchell Gas?

A: Yeah.

Q: What did you and Pam do that day in the house?

A: I'm thinkin' we probably got up around 10:00 and started workin' on the porch and did that probably for just a few hours, workin' on the porch. Like I said, I didn't even have my power tools down here, I was just using the battery operated hand saw and we got the porch pretty much done except for the roof.

Q: Was she helping you?

A: Yeah, she was standing on boards while I cut 'em.

Q: Were either of you drinking alcohol at the time?

A: No, huh uh, no. We did that and then I went to go do my family thing for the 4th of July and she went off to do her's.

Q: What time did you split up?

A: I'm thinkin'.....what time did it.....it must have been around 12:00 I got to your place?

Unknown man speaks: Around 12:00, 12:30, right around there.

Insured speaks: So right around between.....

Q: Was it lunchtime?

A: Yep, 11:30, 12:00, yeah.

Q: Did you stay at Mr. Long's house, or....what is your name, Sir?

A: Shay.

Insured speaks: I went to Shay's right in Houtzdale. It's only like a mile away. I went there and then got rides with family to go to do the family thing there for the 4th and before we left, she's like "What about the keys?" because we were both splittin' up that day and we didn't know who was going to get back to the house first so that's when I stuck the key ring with all my lock and door locks in the Ford Ranger in the ashtray and uh, you know, so either one of us could open the doors when we get home. But, then, instead, when I got a ride back from doin' the family thing, I got dropped off in Sandburn, at my friend's house and then she showed up about 10 minutes later and that was around.....what time?

Mr. Shay speaks: It was probably a little bit after 5:00 when we got there.

Insured speaks: That was about probably a little after 5:00 and so we were both there. We were there, did the fireworks there, all the way up till probably 11:00. I don't know when it was, between 11:00 and 12:00.

Q: Do you date other girls also?

A: No.

Q: I have to ask that question because we have to find out what's going on here. When did you come back from out West?

A: It's been right around a month ago and I was stayin' at this property over near Kerrmore. That's where the Harley's at, my tent and we had her parents'.....

Q: You have a Harley and a tent over there, correct?

A: Yep.

Q: Do you have other personal belongings over there?

A: Yep.

Q: Is that her house?

A: No, there's no house there at all. It's just a campground and we had her camper there, her parents', and we stayed in it and we just got electric turned on here on the 3rd and we stayed here for three to four nights, like a couple days before we got the electric. The day we got the electric, we stayed here.

Q: Once the electric was hooked up, what did you have powered in because I didn't notice anything in the fridge?

A: No, it was still unplugged. The only thing, we had the lights and we were running the air conditioner yet this year. I plugged in the T.V. to make sure it worked and that was it, just kinda lighting for the basement so I could pack. I was packing all my stuff out. That's why it's all in boxes.

Q: What about the furnace? Is it running?

A: The original?

Q: No, what I mean is, did you have anything running in there for heat?

A: No, not this time of year.

Q: Did you have your electric hot water heater running?

A: No, 'cause I haven't had water here in probably a year.

Q: Basically, you had the electric hooked up and you were just using the lights, is that correct?

A: Yeah, because we're movin' all my property out of here to get a renter.....

Q: What about the outside light on the porch? Was the motion detector working?

A: Oh yeah, yeah.

Unknown man speaks: The water heater's propane.

Insured speaks: Yeah, that was gas.

Q: Is that Mitchell Gas?

A: Yeah.

Q: What did you and Pam do that day in the house?

A: I'm thinkin' we probably got up around 10:00 and started workin' on the porch and did that probably for just a few hours, workin' on the porch. Like I said, I didn't even have my power tools down here, I was just using the battery operated hand saw and we got the porch pretty much done except for the roof.

Q: Was she helping you?

A: Yeah, she was standing on boards while I cut 'em.

Q: Were either of you drinking alcohol at the time?

A: No, huh uh, no. We did that and then I went to go do my family thing for the 4th of July and she went off to do her's.

Q: What time did you split up?

A: I'm thinkin'.....what time did it.....it must have been around 12:00 I got to your place?

Unknown man speaks: Around 12:00, 12:30, right around there.

Insured speaks: So right around between.....

Q: Was it lunchtime?

A: Yep, 11:30, 12:00, yeah.

Q: Did you stay at Mr. Long's house, or....what is your name, Sir?

A: Shay.

Insured speaks: I went to Shay's right in Houtzdale. It's only like a mile away. I went there and then got rides with family to go to do the family thing there for the 4th and before we left, she's like "What about the keys?" because we were both splittin' up that day and we didn't know who was going to get back to the house first so that's when I stuck the key ring with all my lock and door locks in the Ford Ranger in the ashtray and uh, you know, so either one of us could open the doors when we get home. But, then, instead, when I got a ride back from doin' the family thing, I got dropped off in Sandburn, at my friend's house and then she showed up about 10 minutes later and that was around.....what time?

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Q: What about the outside light on the porch? Was the motion detector working?

A: Oh yeah, yeah.

Unknown man speaks: The water heater's propane.

Insured speaks: Yeah, that was gas.

ANSWER: And, I just, just started and I knew it would take me a while, cause, you know, with no money it's, you know, it's. So, I just started into it and, you know, never really planned yet where I was gonna stay.

QUESTION: Okay

ANSWER: You know I

QUESTION: Was there any, um, utilities hooked back up when you moved back to the house? Or, when you came back west from the west and, and the actual house that burned down. Did any of the, where any of the utilities connected back up.

ANSWER: Uh, the electric, is that what

QUESTION: Electric

ANSWER: Yeh, just

QUESTION: or water

ANSWER: Yeh, water I haven't had there for quite a while and, uh, for because of a back bill. But, the electric I got turned on through my sister's name. She called and had it hooked up.

QUESTION: Okay. Other than that, that's the only utilities it would be?

ANSWER: Yeh

QUESTION: Cause you had coal, coal furnace

ANSWER: Yeh

QUESTION: Okay. Uh, any telephone hookup there?

ANSWER: Yeh, there's a telephone hookup, but it wasn't hooked up

QUESTION: Right, you didn't have the connection,

ANSWER: No

QUESTION: there's no phone number to the home.

ANSWER: No, I just

QUESTION: Okay, um, so, actually, leading up to then, the night of the fire, um, you weren't actually living in the house?

ANSWER: Uh, we did stay there probably two to three nights, you know, right before the 4th of July.

QUESTION: Hum, hum

ANSWER: You know, cause we're still at that campsite and, you know, it's getting' a little old.

QUESTION: Right

ANSWER: Cause we was in a camper the whole time out west and, you know, we stayed there a couple nights and, uh, even with no electricity we, you know, was usin' them kerosene lamps and then having the power turned on.

QUESTION: When was the power turned on? Do you know approximately how many days before the 4th?

ANSWER: I did, but now I don't. It's, I'm guessing two to three days.

QUESTION: Okay

ANSWER: Before the 4th, I'm not real sure.

QUESTION: So, the electric was turned back on. And, that was in then in your sister's name.

ANSWER: Yeh

QUESTION: Okay.

ANSWER: Yep, cause I have a bad bill with them too.

QUESTION: The, um, yeh, you got a lot a

ANSWER: Yeh

QUESTION: things hiddin' in the woodwork, uh, I'll put it that way. Um, in regards then to the fire,

ANSWER: Okay

QUESTION: Uh, where were you and Pamela at the night of the 4th?

ANSWER: Uh, yeh, that, well, it started with like that day, she went off to do her family thing with her family. And, then, I went over to my cousins and did my family

1 anybody that was investigating?

2 A. No. He --- I didn't speak to
3 him. The night of the fire I didn't
4 see or speak to him for a while
5 afterwards and I had --- no, I didn't
6 speak to Mr. McCracken.

7 Q. Once the two of you did start
8 talking did he advise you to find an
9 attorney or not?

10 A. Yes.

11 Q. When was that?

12 A. I'm not really sure when he told
13 me that but he did.

14 Q. Before or after he made his
15 statement? Before or after you drove
16 him to the Grange Insurance?

17 A. I believe it was before that.

18 Q. And what was it that he advised
19 you?

20 A. That I should find a female
21 lawyer because they're more against
22 men.

23 Q. Was that the extent of his
24 advice?

25 A. Yes.

GOLDSTEIN, HESLOP, STEELE, CLAPPER, OSWALT & STOEHR
ATTORNEYS AT LAW

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September 18, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward J. Yocum
E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Clearfield County Grange Mutual Fire Ins. Co.
1214 Old Town Road, Suite 3
Clearfield, PA 16830

Re:	Our Client:	Richard McCracken
	Your Insured:	Richard McCracken
	D/L:	7/04/02
	Policy No:	32334
	Your File No:	J 2291
	Our File No:	14312

Dear Mr. Yocum:

This office has been retained by and will represent your insured, Richard McCracken, regarding the above fire loss. Please direct all future contact regarding this claim to me.

I have reviewed your letter of August 16, 2002, in which you deny coverage for the dwelling loss based upon an alleged violation of policy conditions yet request continuing proof of loss with respect to the personal property/contents insured under the same policy. I have also reviewed the transcript of the recorded statement which you took of Mr. McCracken on or about August 14, 2002. Finally, I have completed my own investigation of certain facts existing as of the date of loss.

It is my opinion that there is no reasonable factual basis for the denial of coverage and that Clearfield County Grange Mutual Fire Insurance Company's decision to do so is in bad faith. The interpretation of the standard policy condition as set forth in your letter of August 16, 2002, completely ignores the clear language of the standard policy condition which requires that the loss must occur while the hazard is increased or while the building is vacant. Because there is absolutely no dispute that Mr. McCracken was occupying the property as of the date of loss, this condition has no application to this claim. Mr. McCracken's statement clearly provides none and a simple telephone call to his neighbors, some of whom I believe you have already interviewed, will confirm that the insured property was occupied by Mr. McCracken at the time of the loss. Although Mr. McCracken was out of state for some time prior to the loss looking for employment, he had returned home before

EXHIBIT "7"

WWW.PALAWYERSONLINE.COM/GHSCOSLAW

Edward J. Yocum
Page 2
September 10, 2002

the fire. According to his next door neighbors, Ken Long and Kathie Long, Mr. McCracken had been living in the property for at least one week prior to the fire. He was building a new porch on the property and the electricity had been turned on several days before the fire occurred.

With respect to a suspension of coverage based upon a loss occurring while a hazard is increased, your letter of August 16, 2002, fails to make reference to any facts whatsoever in support of this assertion. To the contrary, as you know, the cause of the loss was arson. I cannot conceive of any facts which would support a position that, under these circumstances, Mr. McCracken's conduct knowingly increased the hazard at the time of the loss.

As per your request, I am enclosing herein copies of the Personal Property Inventory Schedule which Mr. McCracken has completed and signed. The replacement cost of several items is confirmed by separate documentation. There are at least two items which are not included in the inventory pending location of receipts and/or additional information regarding value. These items include a Chevy engine which Mr. McCracken was rebuilding and for which he had already incurred machine shop expenses of approximately \$650.00. The other item is a large, professional Husqvarna chainsaw. By my calculations, the replacement cost of the items inventoried totals \$32,938.00.

We are awaiting receipt of an estimate for the cleanup of the property and removal of debris which I will submit under separate cover. I am assuming that the policy provides for payment of the same. Please provide a complete copy of the actual policy as issued to Mr. McCracken.

Because the denial of coverage is so completely without reasonable foundation that Mr. McCracken should never have been required to consult counsel to obtain what is owed to him under the policy, I am hereby demanding that Clearfield County Grange Mutual Fire Insurance Company reimburse counsel fees to date of \$1,000.00 in addition to accepting liability for payment on the loss of the dwelling up to the policy limit after deducting the mortgage payoff and the policy limit on the contents after applying the deductible. Additionally, as you know, any delay in payment beyond 60 days results in the insured being entitled to interest.

I am sure you are aware of Mr. McCracken's personal circumstances, including his unemployment and financial hardships. The receipt of your letter informing him that Clearfield County Grange Mutual Fire Insurance Company was not going to pay his claim for the loss of his house was devastating to him. Nevertheless, Mr. McCracken simply desires to obtain reimbursement for his losses much more than a lawsuit. Therefore, if Clearfield County Grange Mutual Fire Insurance Company is willing to resolve this matter on the terms set forth above, Mr. McCracken remains willing to release Clearfield County Grange Mutual Fire Insurance Company from any additional liability, including any possible bad faith claim. If not, I will be most happy to represent Mr. McCracken in pursuing claims against Clearfield County Grange Mutual Fire Insurance Company for the contract damages as well as a claim for punitive damages, interest, and all counsel fees incurred as a result of the bad faith conduct in attempting to take advantage of Mr. McCracken's relative unsophistication regarding the processing of his insurance claim.

Edward J. Yocum
Page 3
September 10, 2002

I have diaried my file for ten (10) days and would appreciate the receipt of a response within that period.

Sincerely,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER, OSWALT & STOEHR



Karen L. Steele

KLS/dab

Enclosure

cc: Mr. Richard McCracken

bcc: Beverly Huff

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002-1662-CD

**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Filed on behalf of Plaintiff

Counsel of record for this party:

Karen L. Steele, Esquire
Attorney I.D. #32707

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT
414 N. Logan Boulevard
Altoona, PA 16602

(814) 946-4391

JURY TRIAL DEMANDED

RECEIVED

MAY 07 2004

COURT ADMINISTRATOR'S
OFFICE

RICHARD D. McCracken,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 2002-1662-CD
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE COMPANY,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. FACTUAL SUMMARY:

The undisputed facts of record in this action confirm the following. On July 4, 2002, Plaintiff, Richard D. McCracken's, ("Mr. McCracken") home located in Bigler Township, Madera, Clearfield County, Pennsylvania, was destroyed by fire. Since August, 1999, Defendant, Clearfield County Grange Mutual Fire Insurance Company, ("Grange Mutual") insured Mr. McCracken's dwelling, garage and contents against loss from fire. Grange Mutual, through its adjuster, Edward J. Yocum, of E. L. Braid Claim Service, Inc., completed an investigation of the fire loss. Grange Mutual also retained a cause and origin expert, Tsikalas Investigations, to determine the cause of the fire. The report dated July 10, 2002, submitted by Tsikalas Investigations indicated that the fire was determined to be an "arson-spite revenge fire" perpetrated by the girlfriend of Mr. McCracken, Pamela J. Vaux. Grange Mutual also obtained information from the investigating Fire Marshall, Trooper Michael McCracken, regarding the course and results of his investigation. Trooper McCracken also determined that the fire was arson committed by Ms. Vaux following an argument with Mr. McCracken. Criminal charges were filed against Ms. Vaux.

Numerous statements were taken of Mr. McCracken following the fire, including a lengthy recorded statement taken by Mr. Yocum. In his statements, Mr. McCracken stated that he had been out west for several months before returning to Clearfield County approximately one month before the fire.

After living in a camper trailer, Mr. McCracken returned to live in his home several days before the fire. Mr. McCracken and Pamela Vaux had slept overnight in the premises for several nights before the fire occurred. The morning of July 4, 2002, Mr. McCracken had been working on constructing a porch at the property. That evening, while attending a July 4th party and consuming alcohol, Mr. McCracken and Pamela Vaux had an argument. Pamela Vaux left the party in her car and drove to Mr. McCracken's home at which time she set the home on fire.

The policy issued by Grange Mutual to Mr. McCracken was a standard fire policy including the mandatory provisions required under 40 P.S. §636. The Policy includes the following required provision:

Conditions Suspending or Restricting Insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for the loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or

After obtaining the statement of Mr. McCracken, Grange Mutual then consulted with its attorney regarding the interpretation of the vacancy clause. Grange Mutual then authorized Mr. Yocum to forward a letter to Mr. McCracken denying coverage of his claims. The letter of August 16, 2002, quoted the above provision and informed Mr. McCracken that coverage was being denied on the basis that the dwelling had been unoccupied for approximately four months "**just prior to the fire.**" Mr. McCracken was informed that the balance due on the existing mortgage would be paid off as per the provisions of the Policy but that Mr. McCracken's claim for loss of the dwelling would not be paid. Nevertheless, Mr. McCracken was informed that the claim for contents coverage would be processed and that he should complete and return the inventory schedules previously provided to him. The letter was copied to both Clearfield County Grange Mutual Fire Insurance Company and its attorney, R. Denning Gearhart.

After receiving the above letter of denial, Mr. McCracken retained counsel. By letter of September 18, 2002, Mr. McCracken submitted the completed inventories for the loss of contents as requested. The letter further informed Grange Mutual that the occupancy clause had no application as it was undisputed that Mr. McCracken was occupying the dwelling on the date of the fire which fact was already known to Grange Mutual and could easily be verified by contacting the neighbors. By letter of October 8, 2002, Grange Mutual, through its attorney, R. Denning Gearhart, responded by stating: "This situation, and your client, can leave reasonable minds to believe that Mr. McCracken has forfeited his coverage because, **under a lease**, the property lay vacant for a period in excess of the contracted 60 days. Your claim that he had moved back into the premises is simply not supported by the facts." (emphasis added). Attorney Gearhart stated that Grange Mutual intended to file a declaratory judgment action to obtain an interpretation of the occupancy clause which should be filed during the week of October 7, 2002. When Mr. McCracken was not served with a complaint as indicated, on October 23, 2002, Mr. McCracken filed his Complaint in this action asserting claims for breach of contract and bad faith under 42 Pa.C.S.A. §8371. Thereafter, Mr. McCracken's counsel was served with a copy of Grange Mutual's Complaint for Declaratory Judgment filed on or about October 28, 2002. In the Complaint for Declaratory Judgment, the only basis alleged for the denial of coverage was the occupancy clause. Paragraph 11 of the Complaint states, in pertinent part, "That while he states that he did reside at the premises for three or four nights, such is not enough to establish **residency** in the premises and the premises remained vacant." (emphasis added). Paragraph 12 states as follows: "Because of said vacancy, the Plaintiff is not responsible to the Defendant for the damages done on July 4, 2002."

On January 7, 2003, the deposition of Edward J. Yocum was completed. Mr. Yocum testified that the only basis for denial of coverage was the occupancy clause. Mr. Yocum admitted that Grange Mutual had no evidence to dispute Mr. McCracken's claim that he had been living in the property on the date of the fire and for several days before. Mr. Yocum testified as follows:

That's correct, but I think our direction is its not an issue of him staying in the property one or two days or three days or four days prior, but he was out of the property for an extended period of time. And that's why we felt, because of the language of the policy, to have counsel review it.

Thus, although there was no dispute that Mr. McCracken was living in the property on the date of the fire, Grange Mutual, after meeting with counsel, sent the letter denying coverage to Mr. McCracken. Mr. Yocum testified that Grange Mutual never requested or obtained a written opinion from counsel. Mr. Yocum testified that, although Mr. Yocum's letter did not deny coverage of the contents claim and requested submission of an inventory, after receiving the inventory, there was no response by Grange Mutual. Mr. Yocum testified that he received a copy of the letter from Attorney Gearhart which letter stated that Mr. McCracken's coverage was forfeited because ". . . under a lease, the property lay vacant for a period in excess of the contracted 60 days." Mr. Yocum testified that Mr. McCracken's property was not under a lease at the time of loss and that the reference to a lease appeared to be a factual mistake. However, Mr. Yocum never contacted Attorney Gearhart to question him regarding the same. Mr. Yocum testified that Grange Mutual did not dispute that Mr. McCracken's claims for both the dwelling loss and the loss of contents exceeded the applicable coverage under the Policy.

Mr. McCracken filed a Motion for Summary Judgment in the declaratory judgment action seeking a determination by the Court that Grange Mutual's denial of coverage based upon the occupancy clause was in error. Argument on the Motion was held on May 20, 2003. In the Letter Brief submitted by Attorney Gearhart and at oral argument, Grange Mutual asserted, for the first time, that it was necessary for Grange Mutual to obtain the depositions of Pamela Vaux and the investigating Fire Marshall, Trooper McCracken. Grange Mutual asserted that it was unable to complete the deposition of Pamela Vaux due to pending criminal charges and her presumed assertion of the Fifth Amendment privilege. Mr. McCracken's counsel informed the Court that Grange Mutual had made no effort to schedule either deposition as of that date. However, the Court entered an Order denying Mr. McCracken's Motion for Summary Judgment pending completion of the depositions and without prejudice to renewal of the Motion at that time. The

depositions were not completed until December 18, 2003, after Pamela Vaux had been sentenced following her plea of guilty to the criminal charges. The transcripts of the depositions of both Pamela Vaux and Trooper McCracken have been filed of record as part of the Supplemental Record in Support of Defendant's Renewed Motion for Summary Judgment in the declaratory judgment action filed by Grange Mutual. Trooper McCracken's deposition testimony essentially summarized the course and result of his investigation which had been completed prior to filing criminal charges against Pamela Vaux which information had been shared with Grange Mutual at that time. Trooper McCracken testified that he agreed with Tsikalas Investigations that the fire had been set by Pamela Vaux as an act of revenge against Mr. McCracken. Pamela Vaux had made statements both to Trooper McCracken and to her son-in-law admitting that she alone had set the fire. Pamela Vaux never implicated Mr. McCracken and testified during her deposition that Mr. McCracken had no involvement and that she herself had no intent to start the fire until she arrived at Mr. McCracken's home that evening.

Grange Mutual has now filed a Motion for Partial Summary Judgment in this action seeking a determination that judgment should be entered against Mr. McCracken on his claim under the bad faith statute as "The record does not show that Clearfield County Grange Mutual Fire Insurance Company acted in bad faith." (Motion for Partial Summary Judgment, Par. 12). Grange Mutual's Motion for Partial Summary Judgment asserts that coverage was denied based upon the vacancy clause as "The insurance policy provided that in the event of a vacancy or unoccupancy for more than sixty (60) days, the coverage under the policy would be void." (Motion for Partial Summary Judgment, Par. 7). The Motion further asserts that Grange Mutual "had a question" as to whether Mr. McCracken's claim should be paid because Ms. Vaux, who committed the arson, provided transportation to Mr. McCracken to take him to Grange Mutual's office and that Mr. McCracken allegedly informed Ms. Vaux not to talk to the police without counsel. (Motion for Partial Summary Judgment, Par. 9).

II. STATEMENT OF QUESTION INVOLVED:

DO THE FACTS OF RECORD ESTABLISH A PRIMA FACIE CAUSE OF ACTION FOR BAD FAITH SUCH THAT THE DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD BE DENIED?

Suggested Answer: Yes.

III. ARGUMENT:

An insurer's duty of good faith to its insured was codified in 1990 with the enactment of the bad faith statute at 42 Pa. C.S.A. §8371 which provides as follows:

§8371. Actions on Insurance Policies.

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney's fees against the insurer.

In the seminal decision in Terletsky v. Prudential Property and Casualty Insurance Company, 437 Pa. Super. 108, 649 A.2d 680 (1994), the Superior Court defined bad faith with respect to the denial of a claim as requiring the plaintiff to prove that the defendant did not have a reasonable basis for denying benefits under the policy and that the defendant knew or recklessly disregarded its lack of reasonable basis for denying the claim. Mere negligence on the part of the insurance carrier is insufficient to establish bad faith. While the plaintiff is not required to establish that the carrier's conduct was fraudulent, the plaintiff must establish that the insurer acted in reckless disregard of the duty of good faith through a motive of self-interest or ill will.

The standard applicable to an insurer's motion for summary judgment under §8371 is the same as the standard generally applicable, i.e., the court must determine, viewing the evidence in the light most favorable to the insured, whether there is a genuine issue of material fact as to whether the insurer acted in bad faith. Kosierowski v. Allstate Insurance Company, 51 F.Supp. 2d 583 (E.D. Pa. 1999). A genuine issue is one in which the evidence is such that a reasonable fact-finder could return a verdict for the non-moving party. Schubert v. American Independent Insurance Company, 2003 W.L. 21466915 (E.D. Pa.). In Schubert, the court stated as follows:

As discussed above, the reasonableness of the Defendant's refusal to settle the claim and pay the \$15,000.00 benefit under the policy is a jury question. Therefore, summary judgment based on the Defendant's refusal to settle is inappropriate. Id.

The undisputed evidence of record in this action confirms that Mr. McCracken was living in his home on the date of loss. The vacancy provision of the Policy as required by statute clearly states that coverage is suspended when the loss occurs while the building is vacant or unoccupied beyond a period of 60 consecutive days. On the date of loss, Mr. McCracken was occupying his home. Thus, regardless of the period of vacancy which preceded the loss, there is simply no reasonable interpretation of the occupancy condition which would allow a denial of coverage when the loss undisputedly occurred when the dwelling was occupied. In its Complaint for Declaratory Judgment, Grange Mutual avers that Mr. McCracken's residing in the premises for three or four nights is insufficient to establish **residency**. However, the condition suspending coverage on the basis of vacancy nowhere includes, makes reference to nor requires the establishment of residency. In its Motion for Partial Summary Judgment, Grange Mutual avers that the vacancy or unoccupancy of the premises for a period in excess of 60 days renders the policy **void**. To the contrary, the Policy provision and the statute do not state that the policy is void but simply that coverage is suspended during the period of vacancy.

From the outset, Mr. McCracken, through his counsel, has informed Grange Mutual of his position that the application of the vacancy clause has no legal or factual application to this claim. Nevertheless, Grange

Mutual has continued to delay and refuse payment of his claim notwithstanding that Grange Mutual never requested nor obtained a written legal opinion from legal counsel confirming that the interpretation which it seeks to apply to the vacancy clause has any legal support whatsoever. To the contrary, in Estate of Higgins v. Washington Mutual Fire Insurance Company, 838 A.2d 778 (Pa. Super. 2003), it was the insurance carrier who argued that the vacancy clause may be avoided simply by having someone stay overnight at the dwelling every two months. Here, Grange Mutual has taken the outrageous position that the vacancy clause applies even when the property was occupied on the date of loss. In Frog, Switch and Mfg. Co., Inc. v. Travelers Ins. Co., 193 F.3d 742 (Third Cir. 1999), the court held that a refusal to provide a defense or indemnify when the policy provides for coverage may be bad faith and that the insurer's good faith is no defense if in fact there was no good cause for denying coverage. Grange Mutual's initial decision to deny coverage based upon the vacancy clause was without a reasonable basis in fact or in law and its continued delay in payment of Mr. McCracken's claim demonstrates reckless disregard of the interest of its insured.

Grange Mutual's conduct during the course of this litigation may also be considered in determining bad faith. Krisa v. Equitable Life Assur. Soc., 109 F.Supp. 2d 316 (M.D. Pa. 2000). After denying Mr. McCracken's claim solely on the basis of the occupancy clause and filing a Complaint for Declaratory Judgment requesting the Court to deny coverage solely on this basis, Grange Mutual has sought, through innuendo and the express assertion of completely irrelevant facts, to excuse its denial of coverage and the extraordinary delay occasioned as a result thereof on the basis that Mr. McCracken was somehow involved in the arson. In its Motion for Partial Summary Judgment, Grange Mutual asserts as follows:

9. In addition, because Ms. Vaux, who committed the arson, was providing transportation for Mr. McCracken when he attended the office of Clearfield County Grange Mutual Fire Insurance Company, and because he advised her not to talk to the police until she had a lawyer, Clearfield County Grange Mutual Fire Insurance Company again **had a question** as to whether or not it is reasonable to compensate Mr. McCracken. (emphasis added).

Grange Mutual has never denied coverage to Mr. McCracken on the basis of his involvement in arson either in its letter denying coverage or in its Complaint for Declaratory Judgment. Notwithstanding that

there is absolutely no evidence of record supporting such an allegation as reflected by Grange Mutual's failure to expressly assert the same, Grange Mutual had made continuing attacks on Mr. McCracken's character in reckless disregard of the complete lack of evidence of any involvement by Mr. McCracken in the arson. These assertions are completely irrelevant and do not begin to provide a reasonable basis for a denial of coverage based upon the affirmative defense of arson. As such, these assertions should never have been made, are contrary to and in reckless disregard of the interest of its insured, and further provide a basis upon which the fact-finder could determine that Grange Mutual has acted in bad faith. In Sperrazza v. Cambridge Mut. Fire Ins. Co., 459 A.2d 409 (Pa. Super. 1983), the Superior Court addressed the quantum of evidence necessary for an insurance carrier to meet its burden of establishing the affirmative defense of arson. The court stated that the evidence must support a reasonable legitimate inference that the insured burned or caused the building to be burned which inference cannot rest on speculation or conjecture but must be based upon facts proven. In reviewing whether the evidence establishes such a reasonable inference, the fact-finder should consider the combination of evidence regarding the incendiary nature of the fire, a motive by the insured to destroy the property and circumstantial evidence linking the insured to the fire. Here, Pamela Vaux admitted to starting the fire out of anger and entered a guilty plea to criminal charges. She testified that Mr. McCracken had no involvement in the arson. The Fire Marshall testified that there was no evidence of Mr. McCracken's knowledge of or participation in the arson. A neighbor confirmed seeing Ms. Vaux's car at Mr. McCracken's home immediately before she saw the fire and numerous witnesses have confirmed that Mr. McCracken remained at the 4th of July party at the time that Ms. Vaux drove off in anger. Finally, there is absolutely no evidence of motive. There is no evidence that Mr. McCracken was delinquent on his mortgage payments. To the contrary, it is undisputed that Mr. McCracken was making improvements to the property on the very date that the loss occurred.

In Riethmiller v. Bedford County Grange Mutual Insurance Co., 52 D.&C. 4th 190 (2001) (copy attached as Appendix "A"), the Court of Common Pleas of Mercer County required much less evidence than exists in this record to deny the carrier's motion for summary judgment. There, the court held that the insurance carrier's resolute position with respect to the amount of living expenses which it would pay in disregard of the actual expense incurred by its insured could be sufficient to establish an issue of fact as to whether the carrier acted in bad faith. Grange Mutual's conduct in denying coverage based upon the occupancy clause and then delaying this Court's decision as to the application thereof through Grange Mutual's veiled and completely unsubstantiated efforts to implicate Mr. McCracken in arson without ever raising the same as an affirmative defense in this action certainly could support a finding of bad faith.

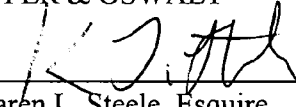
IV. CONCLUSION:

Based on the foregoing, Plaintiff, Richard D. McCracken, pursuant to Pa.R.C.P. No. 1035.2, asserts that the record establishes sufficient evidence of bad faith such that his claim must be submitted to the trier of fact. Further, although discovery has been completed, Plaintiff has not yet obtained an expert report which will further support Plaintiff's claim. Thus, Plaintiff, Richard D. McCracken, respectfully requests that the Motion for Partial Summary Judgment of the Defendant, Clearfield County Grange Mutual Fire Insurance Company, be denied.

Respectfully submitted,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



Karen L. Steele, Esquire
Attorney for Plaintiff
Attorney I.D. #32707

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Date: May 6, 2004

CONCLUSION

In sum, the plaintiffs have no right to relief on any of their claims. Accordingly, this court granted the defendants' motion for a nonsuit and denied the plaintiffs' post-trial motion to remove the nonsuit. For the reasons discussed, this court's orders should be affirmed.

Riethmiller v. Bedford County Grange Mutual Insurance Co.

Insurance law — Bad faith — Fire insurance policy — Additional living expenses — Actual rental expenses

Plaintiffs presented a genuine issue of whether defendant acted in bad faith in investigating and settling their additional living expenses claim, where plaintiffs alleged that defendant failed to take into consideration plaintiff's actual rental expenses in calculating plaintiffs' additional living expenses, and limited the period of plaintiffs' additional living expenses to the four-month period immediately following the fire that destroyed plaintiffs' home. Summary judgment denied.

Plaintiffs' home and its contents were destroyed in a fire on April 10, 1997. At the time of the fire, plaintiffs' home was insured under a fire insurance policy issued by defendant Bedford County Grange Mutual Insurance Co. The policy provided a limit of \$10,000 for additional living expenses.

According to plaintiffs, 20 days after the fire, Bedford adopted a position that it would pay only \$2,200 on plaintiffs' claim for additional living expenses. In November 1997, plaintiffs submitted a list of \$6,147.02 worth of additional living expenses to Bedford. Bedford, however, calculated plaintiffs' additional living expenses to be \$2,700, and therefore tendered only an additional \$500 to plaintiffs.

Plaintiffs brought suit against Bedford asserting claims of breach of contract and bad faith. Bedford moved for summary judgment on the bad faith claim, asserting that its alleged conduct did not rise to the level of bad faith under 42 Pa.C.S. §8371.

The court held that plaintiffs had presented a genuine issue of whether the insurer had acted in bad faith with regard to their claim for additional living expenses. Contrary to Bedford's assertion, the court

determined that a dispute over the value of an additional living expense claim may implicate bad faith. "Indeed, the majority of bad faith claims involve disputes over the valuation insurance claims, a fact reflected in the very definition of 'bad faith,' " the court observed.

Plaintiffs' allegations that Bedford adopted a position 20 days after the fire that it would pay only \$2,200 on plaintiffs' additional living expenses claim, failed to investigate the availability and cost of suitable rental units in plaintiffs' school district, ignored plaintiffs' actual rental expenses in calculating their additional living expenses and limited plaintiffs' additional living expenses to the four-month period following the fire, despite knowledge that it would take at least six months to complete construction on plaintiffs' new home, were sufficient to establish a triable issue of whether Bedford acted with a dishonest purpose and breached a known duty through some motive of self-interest or ill will, the court determined. Thus, the court denied Bedfords' summary judgment motion.

C.P. of Mercer County, no. 1999-1014.

P. Raymond Bartholomew, for plaintiffs.

Charles W. Garbett, for defendant.

FORNELLI, *P.J.*, May 30, 2001—The matter for disposition is defendant's motion for summary judgment. For the reasons set forth hereafter, defendant's motion will be denied.

This matter arises out of a fire that occurred on April 10, 1997 in the home of plaintiffs Harry F. Riethmiller and Judith Ann Riethmiller. The fire caused the total loss of the structure and its contents.¹ At the time of the fire, plaintiffs' home was insured under a fire insurance policy issued by defendant Bedford County Grange Mutual Insurance Company. The policy provided coverage for fire loss up to the following limits: \$50,000 for real property; \$35,000 for unscheduled personal

1. Plaintiffs elected to build a new home to replace the one destroyed in the fire.

property; \$10,000 for additional living expenses;² and \$2,500 for debris removal. (See policy at section I coverages.) Defendant eventually paid the policy limits for plaintiffs' loss of real property, unscheduled personal property and debris removal.

A dispute arose as to plaintiffs' claim for additional living expenses. On April 11, 1997, defendant advanced plaintiffs \$1,000 on the additional living expenses claim. In November 1997, plaintiffs submitted a listing of additional living expenses of \$6,147.02. Defendant has calculated plaintiffs' additional living expense to be \$2,700, and has paid this amount to plaintiffs.

Plaintiffs contend that defendant made its determination and evaluation of the additional living expenses claim without waiting to determine the expenses plaintiffs would actually incur and without waiting to ascertain the time reasonably required to establish plaintiffs in their new home. Specifically, plaintiffs aver that defendants arbitrarily calculated plaintiffs' additional living expenses to be \$2,200 and later \$2,700, without considering that plaintiffs were paying rent of \$625 per month for living quarters for themselves, their three children and the family dog. On April 8, 1999, plaintiffs filed their complaint against defendant, alleging both breach of contract and bad faith. Material to this motion are plaintiffs' allegations of bad faith contained in Count II of the complaint.

2. The policy provides that the insurer will "pay the necessary and reasonable increase in living costs you incur to maintain the normal standard of living of your household if a part of the insured premises is made unfit by an insured loss. We pay only for the period of time reasonably required to make the insured premises fit for use or to settle your household in new quarters, whichever is less. This period is not limited by the policy period." (See policy at coverage D—additional living costs and loss of rent coverage.)

Defendant contends that it calculated plaintiffs' additional living expenses based upon the time necessary to rebuild a home of the same size and kind as that insured under the subject insurance policy. Defendant views the instant matter as a dispute over the amount of benefits to which plaintiffs are entitled. Thus, defendant has filed the instant motion for summary judgment, averring that this matter does not rise to the level of bad faith under section 8371 of the Judicial Code, 42 Pa.C.S. §8371.

A.

The standard to be utilized in addressing defendant's motion for summary judgment is set forth by Pennsylvania Rule of Civil Procedure 1035.2, which provides:

"After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

"(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

"(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

"The moving party has the burden of proving the non-existence of any genuine issue of material fact based upon the pleadings, depositions, answers to interrogatories, admissions on file, affidavits, and reports signed

by an expert that would, if filed, comply with Rule 4003.5(a)(1)." Pa.R.C.P. 1035.1

The "non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Ertel v. Patriot-News Company*, 544 Pa. 93, 101-102, 674 A.2d 1038, 1042 (1996), *cert. denied*, 519 U.S. 1008, 117 S.Ct. 512, 136 L.Ed.2d 401 (1996). The court must "resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law." *Merriweather v. Philadelphia Newspapers Inc.*, 453 Pa. Super. 464, 470-71, 684 A.2d 137, 140 (1996), *allocatur denied*, 548 Pa. 628, 693 A.2d 967 (1997) (citing *Accu-Weather Inc. v. Prospect Communications*, 435 Pa. Super. 93, 98-99, 644 A.2d 1251, 1254 (1994)).

B.

"The Pennsylvania Supreme Court has held that an insurer must act with the 'utmost good faith' toward its insured. *Fedas v. Insurance Company of Pennsylvania*, 300 Pa. 555, 558, 151 A. 285, 286 (1930)," quoted in, *Romano v. Nationwide Mutual Fire Insurance Co.*, 435 Pa. Super. 545, 550, 646 A.2d 1228, 1231 (1994); see also, *Dercoli v. Pennsylvania National Mutual Insurance Co.*, 520 Pa. 471, 554 A.2d 906 (1989); *Cowden v. Aetna Casualty and Surety Co.*, 389 Pa. 459, 134 A.2d 223 (1957). The heightened duty of good

faith is necessitated by the special relationship between an insurer and its insured and by the nature of the insurance contract. *Romano*, 435 Pa. Super. at 550-51, 646 A.2d at 1231. Implied in a policy of fire insurance is a promise by the insurer that it will exercise reasonable care in investigating an insured's claim, and that the claim will not be rejected except for good cause. *Diamon v. Penn Mutual Fire Insurance Co.*, 247 Pa. Super. 534, 550, 372 A.2d 1218, 1226 (1977); see also, *Parasco v. Pacific Indem. Co.*, 920 F. Supp. 647, 656 (E.D. Pa. 1996) ("The duty of fair dealing under Pennsylvania law requires the insurer to conduct its investigation in a fair and objective manner and to deny insured's claim only if good cause exists to do so.").

In Pennsylvania there is no common-law remedy for bad faith on the part of an insurer. Rather, the remedy is purely statutory, *D'Ambrosio v. Pennsylvania National Mutual Insurance Co.*, 494 Pa. 501, 507, 431 A.2d 966, 970 (1981); *Terletsky v. Prudential Property and Casualty Insurance Co.*, 437 Pa. Super. 108, 124, 649 A.2d 680, 688 (1994), *appeal denied*, 540 Pa. 641, 659 A.2d 560 (1995); *Romano*, 435 Pa. Super. at 552, 646 A.2d at 1232. Section 8371 of the Judicial Code provides:

"In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

"(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3 percent.

"(2) Award punitive damages against the insurer.

"(3) Assess court costs and attorney fees against the insurer." 42 Pa. C.S. §8371. There is, however, no statu-

tory definition of bad faith, and the concept has not been addressed by the Supreme Court.

The Superior Court has defined "bad faith" as "any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (*i.e.*, good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith." *Romano*, 435 Pa. Super. at 553, 646 A.2d at 1232 (quoting Black's Law Dictionary 139 (6th ed. 1990)) (citations omitted); *O'Donnell ex rel. Mitro v. Allstate Insurance Co.*, 734 A.2d 901, 904 (Pa. Super. 1999); *MGA Insurance Co. v. Bakos*, 699 A.2d 751, 754 (Pa. Super. 1997); *Terletsky*, 437 Pa. Super. at 124-25, 649 A.2d at 688.

Generally, recovery on a bad faith claim requires clear and convincing evidence³ that the insurer had no reasonable basis for denying benefits under the policy and that the insurer knew of or recklessly disregarded said lack of reasonable basis for denying benefits. *O'Donnell*, 734 A.2d at 906; *Bakos*, 699 A.2d at 754; *Terletsky*, 437 Pa. Super. at 125, 649 A.2d at 688. In evaluating the conduct of an insurer under section 8371, this court may look to: (1) other cases construing the statute and the law of "bad faith" generally; (2) the plain meaning of the terms used in the statute; and (3) other statutes addressing the same or similar subjects. *O'Donnell*, 734 A.2d at 906; *Bakos*, 699 A.2d at 754; *Romano*, 435 Pa.

3. Bad faith must be proven by clear and convincing evidence and not merely insinuated. *Terletsky*, 437 Pa. Super. at 125, 649 A.2d at 688, citing *Cowden*, 389 Pa. at 472, 134 A.2d at 229; see also, *Hall v. Brown*, 363 Pa. Super. 415, 420, 526 A.2d 413, 416 (1987), *appeal denied*, 522 Pa. 624, 564 A.2d 916 (1989).

Super. at 555, 646 A.2d at 1233. Further, conduct that violates the Unfair Insurance Practices Act (UIPA) may also be considered when determining whether an insurer acted in bad faith under section 8371. *O'Donnell*, 734 A.2d at 906; *Romano*, 435 Pa. Super. at 554, 646 A.2d at 1233; see also, 40 P.S. §1171.5.⁴ Additionally, the conduct of an insurer during the pendency of litigation may be considered as evidence of bad faith under section 8371. *O'Donnell*, 734 A.2d at 907, citing *Rottmund v. Continental Assurance Co.*, 813 F. Supp. 1104, 1109-10 (E.D. Pa. 1992). Moreover, an action for bad faith may extend to the insurer's investigative process if the insurer acted in bad faith therein. *Id.*; see also, *Diamon*, 247 Pa. Super. at 550, 372 A.2d at 1226.

Terletsky held that an insurer's low settlement offers to the insureds prior to uninsured motorist arbitration were not indicative of bad faith, so as to support a claim of bad faith refusal to settle, given doubts as to the extent of the insureds' injuries, lack of reference to the injuries in the police report, and lack of serious dam-

4. The UIPA provides, inter alia, that:

"Any of the following acts if committed or performed with such frequency as to indicate a business practice shall constitute unfair claim settlement or compromise practices.

"(i) Misrepresenting pertinent facts or policy or contract provisions relating to coverages at issue . . .

"(iii) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

"(iv) Refusing to pay claims without conducting a reasonable investigation based upon all available information . . .

"(vi) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which the company's liability under the policy has become reasonably clear.

"(vii) Compelling persons to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due and ultimately recovered in actions brought by such persons . . ." 40 P.S. §1171.5(a)(10)(i), (iii-iv), (vi-viii).

age to insureds' vehicle, coupled with insurer's estimate that each driver involved was 50 percent liable for the accident. *Terletsky*, 437 Pa. Super. at 126-27, 649 A.2d at 689. *Bakos* held that, where the insured did not allege that insurer had no reasonable basis for denying benefits under the policy or that insured knowingly or recklessly disregarded its lack of reasonable basis for such denial, the insurer did not act in bad faith by appealing the award of an arbitration panel. *Bakos*, 699 A.2d at 755. Similarly, *O'Donnell* determined that insured's bald assertions that the insurer acted in bad faith by: (1) propounding allegedly frivolous interrogatories; (2) failing to accept or deny the claim after the insured "submitted to a lengthy deposition;" and (3) requesting additional information during the pendency of trial were insufficient to show that the insurer acted in bad faith. *O'Donnell*, 734 A.2d at 907.

C.

In the instant matter, plaintiffs contend that, without determining the additional living expenses actually incurred by plaintiffs during the time period reasonably required to make the insured premises fit for use or to settle plaintiffs' family into new quarters, defendant adopted a position 20 days after the fire, on April 30, 1997, that defendant would pay only \$2,200 on plaintiffs' additional living expenses claim. This amount was increased by \$500 after plaintiffs submitted their total additional living expenses incurred between the date of the fire and the date plaintiffs moved into their new home. Plaintiffs aver that defendant has not provided any verification concerning the availability and cost of *suitable* rental units available at the necessary time and in plaintiffs' school district. Plaintiffs point to the deposition

testimony of defendant's claims adjuster, Keith Leppert in support to their contention that defendant did not conduct an independent investigation of the availability of suitable rental units at the time it became necessary for plaintiffs to relocate. (See deposition of Keith Leppert at 78-79.) Plaintiff Judith Riethmiller's affidavit indicates that by April 28, 1997, she had located five rental properties, which ranged from \$474 to \$1,200 in monthly rent. (Affidavit of Judith Riethmiller at ¶¶3-4.) All of the rentals required a 12-month lease and excluded pets; making said rental units unsuitable for plaintiffs' needs. *Id.* Moreover, only one of the rentals was located in the West Middlesex School District. *Id.* Plaintiffs eventually rented living space from plaintiff Judith Riethmiller's parents for \$625 per month with an addition \$4 per day charge for boarding plaintiffs' dog. Plaintiffs aver that defendant ignored this actual rental expense in calculating plaintiffs' additional living expenses.

As further evidence of defendant's bad faith, plaintiffs point to defendant's alleged efforts to limit the period of plaintiffs' additional living expenses to a four-month period immediately following the fire. The policy provides for the payment of additional living costs incurred within "the period of time reasonably required to make the insured premises fit for use or to settle your household in new quarters, whichever is less." (See policy at coverage D—Additional living costs and loss of rent coverage.) Plaintiffs aver that they could not reasonably replace the residence lost in this period based upon: (1) the one month needed to arrange for bank financing; (2) the one month needed for the contractor to acquire materials and subcontractors; and (3) the four

months necessary for actual construction. (Affidavit of Judith Riethmiller at ¶9.) Plaintiffs aver that defendant was aware of these factors and circumstances and chose to disregard them.

Defendant argues that the instant matter is merely a dispute over the value of plaintiffs' additional living expenses claim and does not rise to the level of bad faith. Defendant contends that it attempted in good faith to arrive at a fair valuation of plaintiffs' additional living expenses and that plaintiffs frustrated such attempts. Further, defendant contends that plaintiffs refused to allow the claims adjuster to work with plaintiffs in their attempt to arrive at such a fair valuation. (Deposition of Gary Miller at 12-19.) Defendant also argues that plaintiffs did not work with the adjuster in attempting to find temporary living quarters, and that plaintiffs negotiated the aforesaid lease agreement with plaintiff Judith Riethmiller's parents without giving defendant the opportunity to negotiate the agreement or to find an alternative. Finally, defendant contends that plaintiffs did not make it aware of the terms of the lease agreement until several months after plaintiffs had begun residing in the leased premises. (*Id.* at 23.) Defendant submits that the foregoing indicates that, as a matter of law, it did not act in bad faith with respect to plaintiffs' additional living expenses claim.

Initially, it must be noted that despite defendant's argument, a dispute over the value of an additional living expense claim may implicate bad faith. Indeed, the majority of bad faith claims involve disputes over the valuation insurance claims, a fact reflected in the very definition of "bad faith" quoted above. *Romano*, 435 Pa. Super. at 553-54, 646 A.2d at 1232. Plaintiffs contend

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that the facts they have set forth are indicative of an unfounded refusal, by defendant, to pay additional living expenses to which plaintiffs are entitled under the policy. As such, there is no merit to defendant's contention that the instant matter cannot implicate bad faith because it is a dispute over the value of plaintiffs' claim.

Further, plaintiffs have alleged specific conduct on the part of the defendant that may constitute bad faith, to wit: (1) adopting a position 20 days after the fire that it would pay only \$2,200 on plaintiffs' additional living expenses claim; (2) not investigating the availability and cost of suitable rental units available at the necessary time and in plaintiffs' school district; (3) ignoring plaintiffs' actual rental expenses in calculating the additional living expenses; and (4) limiting plaintiffs' additional living expenses to a four-month period despite knowledge that it would take at least six months to complete construction of plaintiffs' new home. The above-quoted requirements for bad faith require factual determinations of defendant's state of mind. *Reading Tube Corp. v. Employers Insurance of Wausau*, 944 F. Supp. 398, 403 (E.D. Pa. 1996). Plaintiffs have alleged more than the insinuations and bald assertions of bad faith deemed insufficient by *Bakos* and *O'Donnell*. See *Bakos*, 699 A.2d at 755; *O'Donnell*, 734 A.2d at 907. Rather, plaintiffs' evidence may be considered conduct that imports a dishonest purpose and indicates a breach of a known duty through some motive of self-interest or ill will. See *Romano*, 435 Pa. Super. at 553-54, 646 A.2d at 1232. Thus, a jury could find that defendant acted in bad faith in investigating and settling plaintiffs' additional living expenses claim. See e.g., *Reading Tube*, 944 F. Supp. at 403; see also, *Diamon*, 247 Pa. Super. at 550, 372 A.2d at 1226; 40 P.S. §1171.5(a)(10)(iv).

Defendant's assertions that the dispute in the valuation of plaintiffs' additional living expenses claim resulted from plaintiffs' frustration of defendant's investigation may prove to be correct. However, defendant's assertions are not uncontroverted and this court must, for purposes of summary judgment, view the facts in a light most favorable to plaintiffs, as the nonmoving parties herein. *Marks v. Tasman*, 527 Pa. 132, 135, 589 A.2d 205, 206 (1991). Viewing the facts here in such a light shows the existence of a genuine issue of material fact regarding defendant's actions and motivations in assessing and valuing plaintiffs' additional living expenses claim. Because summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law, *Merriweather*, 453 Pa. Super. at 470-71, 684 A.2d at 140, and because plaintiffs have adduced such material facts to indicate the existence of a genuine issue as to whether defendant acted in bad faith in investigating and settling plaintiffs' additional living expenses claim, defendant's motion will be denied.

Hence, this order:

ORDER

And now, May 30, 2001, it is hereby ordered that defendant's motion for summary judgment is denied.

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. 2002-1662-CD
:
:
: JURY TRIAL DEMANDED

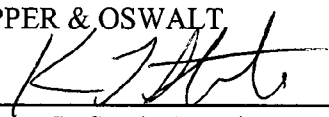
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Plaintiff's Brief in Opposition to Defendant's Motion for Partial Summary Judgment on the 6 day of May, 2004, via First Class United States Mail, postage prepaid and addressed to the following:

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GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By


Karen L. Steele, Esquire
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Attorney I.D. #32707

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COPY

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2002-1662-CD

**PLAINTIFF'S REPLY BRIEF IN SUPPORT
OF PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

Filed on behalf of Plaintiff

Counsel of record for this party:

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JURY TRIAL DEMANDED

RICHARD D. McCracken,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 2002-1662-CD
CLEARFIELD COUNTY GRANGE	:	
MUTUAL FIRE INSURANCE COMPANY,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

ARGUMENT:

There are two issues before the Court; coverage under the fire insurance policy and prima facie bad faith. Plaintiff submits that the clarity of the first compels the result on the second. Denial of coverage by Grange Mutual is so clearly contrary to the undisputed facts, the policy language, and the applicable law that Grange Mutual's initial denial of coverage, its refusal to reconsider its position after being confronted with law to the contrary, its repeatedly raising irrelevant issues and the excessive delay resulting provides sufficient evidence upon which Grange Mutual could be found to have acted in bad faith as alleged by the Plaintiff.

The fire occurred on July 4, 2002. Grange Mutual denied Plaintiff's claims by letter of its claims adjuster, Edward Yocum, dated August 16, 2002. After contact by Plaintiff's counsel, Grange Mutual filed a Complaint for Declaratory Judgment on October 20, 2002. In its Complaint, **the sole basis** for the denial of coverage was the vacancy clause of the standard fire policy which states as follows:

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for the loss occurring:

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or . . .

40 P.S. §636.

It its own Complaint, Grange Mutual did not allege that the premises was vacant on the date of loss. Rather, Grange Mutual stated "That while he states that he did reside at the premises for three or four nights, such is not enough to establish **residency** in the premises and the premises remained vacant." (Complaint, Par.11) (emphasis added).

Plaintiff tried to get a determination on the coverage issue by previously filing a Motion for Summary Judgment. At that time, Grange Mutual raised numerous irrelevant allegations impugning the Plaintiff's character and conduct and implied that Plaintiff was involved in the arson. Grange Mutual insisted that it was necessary to take the depositions of the Fire Marshall and of the arsonist, Pamela Vaux, resulting in additional delay of over one year. It is interesting that Grange Mutual has now filed a Motion for Summary Judgment not requesting a determination on the coverage issue but only requesting summary judgment with respect to Plaintiff's complaint of bad faith.

As to the coverage issue, the evidence overwhelmingly and undisputedly confirms that Plaintiff was living in the home on the date of the fire and for several days prior thereto. Clearly, there was coverage and Plaintiff's claim should have never been denied. Although he had not been living in the home for a period in excess of 60 days before the fire, he had returned to the home several days before the fire occurred and had slept in the premises the night before the fire. A simple reading of the policy language by Grange Mutual, by the claims representative, and/or by counsel should have led, if acting in good faith, to a determination that the suspension provision could not be applied. Grange Mutual inexplicably denied coverage of the dwelling claim yet informed Plaintiff that they would consider his contents claim and requested that he complete an inventory. When the inventory was completed and submitted through counsel, Grange Mutual then failed to reply. Although it is approaching two years from the date of the fire, Grange Mutual has not paid one dime to the Plaintiff although it did pay the mortgagee.

In its Letter Brief, Grange Mutual has apparently backed away from any assertion that Plaintiff was in any way involved in the arson which destroyed his home. There is not now and never was any factual

basis for such an assertion. Grange Mutual now reverts to the initial basis on which it denied the claim, the vacancy clause. Notwithstanding that Mr. McCracken and his girlfriend, Pamela Vaux, were living in the home on the date of the loss, Grange Mutual continues to assert that "occupancy" requires something more. Grange Mutual again refers to the lack of utilities although it is undisputed that the electricity was connected prior to the fire and that Mr. McCracken had previously lived in the home without any utilities other than electricity. Grange Mutual admits that Mr. McCracken was not only living in the home on the date of the fire, but was making improvements to the property. In its Brief, Grange Mutual cavalierly makes the statement that ". . . there was no furniture there", providing absolutely no reference to the record which supports such a claim. To the contrary, the claims representative, Mr. Yocum, who had personally inspected the damage, admitted that there was no question that the loss of contents exceeded the policy limit of \$15,000.00. (Deposition Transcript of Edward J. Yocum, Exhibit 15, pp.83-84, 146-148). In fact, the comprehensive Fire Incident Investigation Report completed by Tsikalas Investigations at the request of Grange Mutual, including the numerous photographs attached thereto, confirms the presence of substantial and valuable items of personal property within the home at the time of loss.

Grange Mutual has, **for the first time ever**, cited authority which it contends supports its position; the 1936 decision of the Court of Common Pleas of Dauphin County in Krstoff, et ux. v. National Liberty Ins. Co., 26 D.&C. 455 (1936). However, Krstoff is not on point as the issue in Krstoff did not concern the vacancy suspension under the standard fire policy issued under 40 P.S. §636. To the contrary, the sole issue in Krstoff was whether the carrier properly denied coverage under its policy which provided that the dwelling was insured against fire ". . . while occupied as a private family residence ". The facts in Krstoff were that the tenant occupying the home as a dwelling house had moved from the property prior to the fire. After the home was vacant, the owner placed furniture in a bedroom on the second floor where he stayed at night for the sole purpose of attempting to catch thieves stealing tools from the property. The court held that the carrier had properly denied coverage as staying in the property overnight for surveillance did not meet the condition of the

policy that the property be "occupied as a private family residence." The court specifically stated that it was not required to and would not reach the issue as to whether the building was "vacant or unoccupied beyond the period of ten days" because the insured did not meet the general condition of coverage that the dwelling be occupied as a private family residence. In fact, although the court did not reach the issue of vacancy, the Pennsylvania case cited by the court as construing this language provides no support to Grange Mutual's position in this case. In Kinneer v. Southwestern Mutual Fire Assn., 118 Pa. Super. 312, 179 A. 800 (1935), the insured and his family left their home to stay with a sick relative, intending to stay less than ten days, and gave notice of the same to the insurance carrier. However, the house was destroyed by fire 13 days after the insured left the home. The trial court held that the loss was covered as the insured had intended to return in less than ten days and had left all the family's furniture and the majority of their personal items in the home. The Superior Court reversed holding that the presence of furniture does not constitute occupancy under a fire insurance policy. The decision was affirmed by the Pennsylvania Supreme Court, 322 Pa. 100, 185 A.194 (1936). The Supreme Court quoted the reference in the Superior Court's opinion stating: "The word 'occupied' . . . as used in a fire policy, providing that it shall become void if the house becomes unoccupied, means that no one lives therein." (citation omitted) 322 Pa. at 104, 185 A. at ____ (1936). The Court discussed the logic behind the occupancy requirement stating: "It is a matter of common knowledge that there is more danger of an unoccupied house being destroyed by fire than of one occupied. The reason that suggests itself is that when human beings occupy a house they are on guard against a fire hazard." 322 Pa. at 104, 185 A. at ____ (1936).

In view of the decision of the Superior Court in Estate of Higgins v. Washington Mutual Fire Insurance Company, 838 A.2d 778 (Pa. Super. 2003), cited by the Plaintiff, Grange Mutual's continuing insistence on its position and refusal to pay the Plaintiff's claims is further evidence of bad faith. In Higgins, the **insurance company** argued and the court agreed that the vacancy clause suspending coverage can be interrupted simply by having someone stay overnight at the dwelling every 60 days.

Grange Mutual's argument in its Letter Brief that coverage is properly denied based upon breach of the policy condition requiring cooperation is completely contrary to the applicable law and the undisputed facts presented here. Initially, Mr. McCracken cooperated in every way requested, providing two recorded statements and an inventory of personal property. Grange Mutual's argument is apparently based in its entirety on Ms. Vaux's testimony that Mr. McCracken suggested that she retain an attorney before talking with the police. Not only does such conduct, even if true, not constitute a failure to cooperate on the part of the insured, but it resulted in absolutely no prejudice whatsoever to the investigation or to Grange Mutual. In reference to Mr. McCracken's suggestion to Pamela Vaux that she consult with an attorney before talking with the police, Trooper McCracken specifically testified as follows:

- Q. According to your testimony, Trooper, that in no way impeded your investigation, did it, because she spoke to you anyway?
- A. Correct. She came in.
- Q. And you've already indicated that Mr. McCracken was cooperative with you, he talked to you?
- A. He was, I remember now, whether it was the 5th or very shortly thereafter, it was an occasion I was up at the scene and he did walk around with me.

(Deposition of Trooper Michael S. McCracken, p.44).

Contrary to Grange Mutual's assertion, there is absolutely no evidence that Mr. McCracken's conduct in any way "hindered" the investigation as evidenced by Grange Mutual's failure to cite any reference in the record. Grange Mutual is certainly aware of the legal requirement that reliance upon the cooperation clause must be accompanied by evidence of substantial prejudice and injury to the insurer as a result thereof.

Paxton National Insurance Company v. Brickajlik, 513 Pa. 627, 522 A.2d 531 (1987).

II. CONCLUSION:

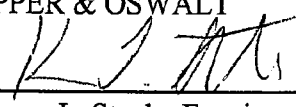
For the reasons set forth herein, Plaintiff respectfully requests this Court to grant summary judgment in his favor on the breach of contract claim declaring that the vacancy clause does not apply to the facts presented here. Plaintiff further requests that the Court deny Grange Mutual's Motion for Summary

Judgment on Plaintiff's bad faith claim as Plaintiff submits that Grange Mutual's denial of coverage contrary to the clear language and reasonable interpretation of the policy provision, its continuing refusal to reconsider its position, and its numerous attacks upon the conduct and character of the Plaintiff by raising irrelevant issues resulting in the inordinate delay of the disposition of this action provide sufficient facts upon which a court could determine that Grange Mutual has acted in bad faith.

Respectfully submitted,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By



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Date:

June 15, 2004

RICHARD D. McCracken,

Plaintiff

vs.

CLEARFIELD COUNTY GRANGE
MUTUAL FIRE INSURANCE COMPANY,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW

:
: NO. 2002-1662-CD

:
: JURY TRIAL DEMANDED

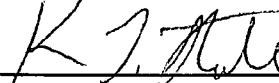
CERTIFICATE OF SERVICE

This is to certify that I, Karen L. Steele, Esquire, served a copy of the Plaintiff's Reply Brief in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment on the 15 day of June, 2004, via First Class United States Mail, postage prepaid and addressed to the following:

R. Denning Gearhart, Esquire
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