

MODEL APPELLANT'S BRIEF

This model brief conforms to the Rules of the Arkansas Supreme Court and Court of Appeals, and the Arkansas Rules of Appellate Procedure—Civil, in effect in January 2015.

The model was created in 2003 from the appellant's brief filed several years before in *St. Paul Fire & Marine Insurance Company v. Griffin Construction Company*, 338 Ark. 289, 993 S.W.2d 485 (1999). The model was updated in 2008 with the assistance of Kathryn H. Henry, in 2010 with the assistance of Barrett Moore, and in 2015 with the assistance of Kyle Burton, to conform the abstract, brief, and addendum to amended court rules.

DPM JR
January 2015

**IN THE
SUPREME COURT OF ARKANSAS**

**ST. PAUL FIRE & MARINE
INSURANCE COMPANY**

APPELLANT

v.

No. CV 98-990

GRIFFIN CONSTRUCTION COMPANY

APPELLEE

**ON APPEAL FROM THE CIRCUIT COURT
OF SEBASTIAN COUNTY**

THE HONORABLE JOHN G. HOLLAND, CIRCUIT JUDGE

ST. PAUL'S ABSTRACT, APPELLANT'S BRIEF, AND ADDENDUM

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I.

INFORMATIONAL STATEMENT

I. ANY RELATED OR PRIOR APPEAL? None

II. BASIS OF SUPREME COURT JURISDICTION? See Section V.

() Check here if no basis for Supreme Court Jurisdiction is being asserted, or check below all applicable grounds on which Supreme Court Jurisdiction is asserted.

- (1) Construction of Constitution of Arkansas
- (2) Death penalty, life imprisonment
- (3) Extraordinary writs
- (4) Elections and election procedures
- (5) Discipline of attorneys
- (6) Discipline and disability of judges
- (7) Previous appeal in Supreme Court
- (8) Appeal to Supreme Court by law

III. NATURE OF APPEAL?

- (1) Administration or regulatory action
- (2) Rule 37
- (3) Rule on Clerk
- (4) Interlocutory appeal
- (5) Usury
- (6) Products liability
- (7) Oil, gas, or mineral rights
- (8) Torts
- (9) Construction of deed or will
- (10) Contract
- (11) Criminal

A few months after Griffin Construction started renovating the historic Josiah Foster building in Fort Smith, the building burned down. Griffin had insured its financial interest in the renovation project with a builder's risk policy issued by St. Paul. The building was owned by another entity. After the fire, St. Paul paid Griffin almost three hundred thousand dollars for everything from earplugs to lost profits. But the parties disagreed over coverage for a custom elevator and staircase that were not destroyed by the fire, and Griffin filed this lawsuit seeking about \$60,000.00 for that custom equipment.

Griffin eventually abandoned that claim, however, and asserted a right to \$1.5 million—its estimate of the completed value of the Josiah Foster renovations. Griffin stood this claim on Arkansas's valued policy law. Ark. Code Ann. § 23-88-101. That statute liquidates damages, in cases of a total loss of real property by fire, at the full amount stated in a fire insurance policy. The Circuit Court rejected St. Paul's arguments that an estimated premium and floating coverage made this builder's risk policy open, not valued, and entered the Judgment that Griffin sought. St. Paul appeals.

IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT? No.

V. EXTRAORDINARY ISSUES?

- appeal presents issue of first impression,
- appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- appeal involves federal constitutional interpretation,
- appeal is of substantial public interest,
- appeal involves significant issue needing clarification or development of the law, or overruling of precedent,
- appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

VI. CONFIDENTIAL INFORMATION

(1) Does this appeal involve confidential information as defined by Section III (A)(11) and VII (A) of Administrative Order 19?

Yes No

(2) If the answer is “yes”, then does this brief comply with Rule 4-1(d)?

Yes No

II.

JURISDICTIONAL STATEMENT

1. Arkansas's valued policy law liquidates damages at "the full amount stated in the policy . . ." after a total loss of insured real property by fire. Ark. Code Ann. § 23-88-101. St. Paul issued its builder's risk policy to Griffin Construction for an estimated premium which, in turn, was based on the contractor's estimate of the total value of the planned renovations to the Josiah Foster building. Griffin Construction did not own the building. The policy limited coverage to Griffin's actual loss from a fire or another peril. Griffin had paid its estimated premium, and the contractor's partly completed renovations were totally destroyed in the fire. Does Arkansas's valued policy law embrace the builder's risk insurance that Griffin bought from St. Paul, entitling the contractor to recover the estimated value of the completed project?

2. I express a belief, based on a reasoned and studied professional judgment, that the one question in this appeal is jurisdictionally significant.

The case presents an issue of first impression: no Arkansas appellate court has ever applied our valued policy statute to a builder's risk policy like the one Griffin Construction bought from St. Paul. Several other states have confronted this issue. And contrary to the judgment in this case, all other

jurisdictions agree that this kind of statute does not control this kind of policy. The Arkansas Supreme Court needs to answer this question for our state.

Other Rule 1-2(b) factors also weigh in favor of our Supreme Court taking jurisdiction. This case turns on the construction of Ark. Code Ann. § 23-88-101. Our state's valued-policy jurisprudence needs to be clarified with a decision interpreting the reach of that statute. The potential extension of our valued policy law to builder's risk policies is of substantial public interest: this case is important to all the insurers who sell these policies, all the contractors who buy them, and the wider public who ends up paying for this expense of doing business.

For all these reasons, the Supreme Court should hear and decide this case.

By _____
Attorneys for Appellant St. Paul

III.

POINTS ON APPEAL AND PRINCIPAL AUTHORITIES

A. Does The Valued Policy Law Control Griffin Construction's Insurance With St. Paul?

1. Did Griffin Buy A Valued Fire Insurance Policy?

American General Fire & Cas. Co. v. Buford, 716 S.W.2d 86 (Tex. App. 1986, writ ref'd n.r.e.)

Jones v. State Farm Fire & Casualty Co., 740 S.W.2d 708 (Mo. App. 1987)

2. Will Applying The Valued Policy Statute To Open Builder's Risk Policies Defeat The Statute's Purposes?

Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955)

Farmers' Home Mut. Fire Ass'n. v. McAlister, 171 Ark. 574, 285 S.W. 5 (1926)

3. Was The Uncompleted Part Of The Renovation Project Real Property Covered By The Statute?

Farm Bureau Mut. Ins. Co. v. Barnes, 228 Ark. 68, 305 S.W.2d 673 (1957)

Farmers Union Mut. Ins. Co. v. Denniston, 237 Ark. 768, 376 S.W.2d 252 (1964)

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6 J. Appleman, INSURANCE LAW AND PRACTICE § 3827 (1972 and 1993 Supp.)	Arg 6–7
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1 L. R. Russ & T. F. Segalla, COUCH ON INSURANCE
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V.

ABSTRACT

A. Deposition

1. Excerpt From The Deposition Of Ida C. Hunter

[Abstractor's Note: This excerpt, **Record ("R") 185**, was Exhibit A to St. Paul's Response to Griffin's Counter-Motion for Summary Judgment, **R 182**. St. Paul's Response is at **Addendum ("Add") 59.**]

Griffin Construction did not own the building at 222 Garrison when it was destroyed by fire. **R 192**. As the chief financial officer of Griffin Construction, I also handle insurance for the Griffin Family Trust and Richard Griffin. Two policies of insurance covered 222 Garrison. One was the St. Paul policy, and the other was through the Maryland Companies. The Maryland policy was our package policy. **R 193**. I turned in a loss for \$500,000.00 to the Maryland Companies when the building on Garrison burned. It was my understanding that the Maryland policy covered the shell of the building. **R 194**.

The Maryland Companies paid \$505,000 pursuant to its policy. **R 194–95**. I don't remember who the check was made payable to. **R 195**. I have the check stub somewhere at my office, and I will provide that to my attorneys so that they can give it to you. **R 196**.

The Maryland Companies covered all of our properties for lots of things. There is an auto policy in there, there is a contents policy; that's our package policy. It insured all our risk. **R 197.**

Before this lawsuit, I never made a claim to St. Paul for the value of the shell of the building. **R 198.** The Maryland Companies paid \$505,000 for the building. We didn't submit anything to them. They paid the value of the building on their policy. We asked them to insure the building for that much. **R 199.** That's what we felt like the building was worth. We submitted them a figure and they accepted it. They had seen the building. **R 200.**

It is my understanding that Griffin Construction only made a claim against St. Paul in its initial complaint for the stairwell, elevator, and accessories. We did not make a claim for the building. **R 201.**

B. Hearing On Cross Motions For Summary Judgment

The Court: I'm going to deny both Motions for Summary Judgment. **R 605.**

C. Hearing On Pre-Trial Motions

1. St. Paul's Motion To Amend Its Responses For Requests For Admission

The Court: St. Paul has moved to amend its responses to requests for admissions.

Mr. DeLay: Griffin objects. Nothing has changed since St. Paul denied this was a builder's risk policy.

The Court: Does this prejudice you any? **R 608.**

Mr. Nebben: The title St. Paul uses for this kind of policy is a contractor's and property owner's protection policy. It is described generically in the insurance industry as a builder's risk policy. **R 609.**

The Court: I don't see what difference St. Paul calls the policy makes to Griffin if they are still claiming it is not a fire policy. **R 610.**

Mr. Rush: St. Paul plans to argue that this is just a builder's risk policy and that therefore it is not a valued stated policy and that connotation might prejudice Griffin. **R 610–11.**

The Court: I'm going to allow the amended responses to come in.

2. Griffin's Motions In Limine

Mr. Nebben: The jury needs to know various positions that Griffin has taken in this case. This did not start out as a valued policy case. It started out as a disputed claim over an elevator and a stairwell. **R 613.**

Mr. DeLay: We amended our complaint when St. Paul denied it was a builder's risk policy. I should not have to testify as a witness and have to explain to the jury why we made the decision to amend. **R 614.**

Mr. Nebben: I think the questioning goes like this with my adjustor: "In your dealings with Ida Hunter of Griffin Construction, did they ever make the claim for the building prior to the lawsuit being filed? No."

The Court: Is that relevant?

Mr. Nebben: Yes, sir, because if there's going to be dispute over what this policy means, St. Paul can say that Griffin knew that the policy did not cover the building, they thought it was just a property owners or builder's risk policy. And we believe that a builder's risk policy does not come under the valued policy law.

Mr. DeLay: My clients had never heard of the valued policy law before they came to our office. And we can amend our theory of the case at any time. **R 616.**

The Court: I'm going to sustain Griffin's motion in limine on previous complaints and previous claims. **R 618.**

Mr. DeLay: Second, we have moved the Court to prevent any evidence about other policies of insurance. The cases say that other insurance does not affect liability on a value-stated policy. So the other insurance is irrelevant, and it would only prejudice the jury. **R 618–19.**

Mr. Nebben: All the previous cases deal with *pro rata* causes. This policy has an other insurance clause. That issue has never been decided by the Arkansas Supreme Court and we're entitled to bring it up. **R 619.**

The Court: Griffin's second motion in limine about the other insurance policy is granted.

Mr. DeLay: Third, we moved in limine to prevent evidence or testimony about the value of the property. **R 620.**

The Court: Well, according to St. Paul's theory of law they are entitled to do that. And according to your theory, they are not. The

question is whether it is a valued policy or not. I think St. Paul is entitled to show what the property is valued so I overrule Griffin's third motion in limine. **R 621–22.**

D. Trial

1. Griffin's Case

- **Direct Examination of Richard B. Griffin**

I'm a building contractor and real estate developer. I am the president of Griffin Construction. We have restored buildings, built schools, churches, shopping centers, and service stations. In the last ten years we've built nursing homes. **R 672.**

The project at 222 Garrison Avenue involved renovating the Josiah Foster building. It was built prior to the turn of the century and was one of the few buildings in Fort Smith on the National Historic Register. It was a four story building with a basement in excellent condition. We were restoring it to an office building. We had just completed the restoration of another old building on Garrison Street. **R 672–73.**

Ida Hunter handles getting insurance for Griffin Construction. **R 673.** She is our chief financial officer and comptroller. She got the insurance from St. Paul. She negotiated all the terms. Ida would have done everything but

signing the check. My wife, my son Rick, and I are the shareholders in Griffin Construction.

The Josiah Foster building is owned by the Griffin Family Trust. It wasn't owned by the construction company. **R 674.** My wife and I created the trust a few years ago to make things easier at our deaths. We transferred a lot of property, including the Josiah Foster building, into the trust.

The Josiah Foster building burned to the ground in the middle of the night on 20 December 1996. A few bricks were left standing, and we just knocked them down. **R 675.** It was a big fire because of the size of the building and there was a lot of wood inside it. We had to remove all the debris; everything just fell down in the basement. **R 676.**

It was Ms. Hunter's responsibility to inform St. Paul that we had a total loss. She kept me posted on developments. St. Paul made a partial payment of \$286,573.67. **R 677.**

Griffin put up a premium deposit of \$4,000.00. The policy value for the Josiah Foster building project was \$1.5 million. That's what my company reported to St. Paul. I recognize the document that has been marked as Plaintiff's Exhibit No. 1. That's the reporting form we filled out. It has a valuation or contract price of \$1.5 million for the renovation of the building at 222 Garrison Avenue. It also contains a formula with the rate per thousand.

R 678. That shows that our quarterly premium for this project was \$938.00. That was for the quarter between September and December 1996. We paid a premium deposit of \$4,000.00 because we expected to have other projects going. **R 678–79.** After this premium payment was deducted, we still had about \$3,000.00 on deposit for premiums. **R 679.**

Plaintiff's Exhibit No. 1, **Add 118**, was admitted without objection. **R 680.**

I recognize the document marked as Plaintiff's Exhibit No. 2. **Add 4.** That is the insurance policy issued by St. Paul that covered the building at 222 Garrison Avenue. Plaintiff's Exhibit No. 2, **Add 4**, was admitted without objection. **R 681.**

I am asking the jury to award us the value of the policy, what we paid the premium on. That would be \$1.5 million less whatever St. Paul has already paid. The exact figure is \$1,213,426.33. **R 707.**

- **Cross Examination of Richard B. Griffin**

The tornado in the Spring of 1996 damaged this building. **R 707.** It kind of took the lid off and a lot of masonry, and of course the windows. It damaged the masonry structure, the roof structure of the building, and peeled the roof off.

Griffin Construction Company was renovating this building for the Griffin Family Trust. **R 708.** I don't know if there was a written contract or not. We ascertained the value of the renovation project and that is what we bought the policy on. The construction company was to be paid by the trust for the work. It would have been paid its costs plus overhead of at least 10%. **R 709.** I agree that on a construction project, every day you do more work and add more materials and put more overhead into it. You spend more energy every day. That certainly includes payroll costs for Griffin Construction employees. It certainly includes materials. It certainly includes materials that aren't put in the building such as propane, ice for water coolers, and various city and state fees.

The Griffin Family Trust chose not to rebuild the building. **R 710–11.** I was privy to the claim Griffin Construction made with St. Paul but I delegated the details to Ms. Hunter. This \$1.5 million policy was to cover the entire construction project. **R 711.** The policy covers the Josiah Foster building project. **R 711–12.**

We paid a premium for one quarter on this project. The fire happened before the end of that period. We had other projects under this policy. And we pay premiums on those as long as we were working on them. Once we finished those projects, and turned them over to the owner, then Griffin

Construction is off and there is no longer a premium paid. During this time period, Griffin was also doing projects for persons other than the Griffin Family Trust. **R 712.** It would have been anywhere from three to five projects, primarily nursing homes. **R 713.**

- **Direct Examination of Ida C. Hunter**

I've worked for Griffin Construction since June of 1978. As chief financial officer, I supervise the accounting department, preparation of financial statements, tax returns, and purchase insurance. I purchased the insurance involved in this case from St. Paul. **R 714.**

Here is how we came to buy that policy. Mr. Griffin had arranged for financing with First National Bank. We were going to restore the Josiah Foster building. I asked our insurance agent, Bill Plegge, to issue a policy to cover the improvements. He is an insurance salesman for Cashion Company. Ever since I've been at Griffin Construction, he has been our insurance man. After I called him, Mr. Plegge sent me a binder saying we had insurance. About a month later, we got a policy. About two months after that, the building burned. **R 715.**

I recognize the document, **Add 119**, you have marked as Exhibit No. 3: that is the binder I got from Mr. Plegge on the 222 Garrison project. **R 716.**

Plaintiff's Exhibit No. 3, **Add 119**, was admitted without objection. **R 717**. I believed we paid a deposit of \$4,000.00 in October. The premium for the first quarter was \$937.50. **R 720**.

The Court: It is stipulated the premium has been paid. **R 721**.

Plaintiff's Exhibit No. 1, **Add 118**, is the quarterly reporting form I helped turn in to St. Paul. The buildings that are being insured under the policy are listed as well as their value times the rate. That equals what we're billed for. That is deducted from the premium deposit until it is used up. Then we start paying extra. **R 722**.

The value Griffin Construction reported to St. Paul on the project was \$1.5 million. I have been to 222 Garrison Avenue since the fire. All that is left is a big hole. **R 723**.

- **Cross Examination of Ida C. Hunter**

It's true that if you need to know something about Griffin Construction Company you should ask me. **R 723–24**. There was no written contract between Griffin Construction and the Griffin Family Trust for this work. I know how the \$1.5 million figure was arrived at: Griffin Construction did an estimate based on materials plus overhead. Sometimes we hit those estimates on the nose, sometimes we don't. Sometimes we go under, and a lot of times

we go over. That is the construction industry. Griffin Construction's actual agreement with the Trust was for whatever the project cost plus 10% overhead.

R 724.

I recognize that document as a spread sheet as prepared by Ken Custer of St. Paul which recaps the bills and information I supplied to him when Griffin Construction made this claim. The payroll amount, \$104,000.00, is what Griffin spent on its employees. **R 725.** That materials amount, \$112,030.00, is what Griffin spent on materials. **R 725–26.** The materials include things that actually went into the project and other materials that were used on the job such as propane. We use a lot of propane in area heaters. Materials would include our engineering costs for the project. We paid the city for a water or building permit. Burroughs and Associates is an engineering fee. **R 726.** Electricity is in there too, as well as expendable tools such as pliers, screwdrivers, and saw blades used up during the project. Those aren't in the building, but they're used. **R 726–27.**

Mr. Nebben: On behalf of Griffin Construction, while you were working with Mr. Custer of St. Paul, you never made a claim for the value of the contract, did you?

Mr. DeLay: Objection, your Honor. I think that is why we are here today.

The Court: Sustained.

I headed up Griffin Construction's claim process. **R 727.**

There were at least three construction projects on St. Paul's policy during the time it was in force. Griffin would estimate the value and would send that figure in. And we would send in a premium estimate. St. Paul gave us the rate, and we knew how to calculate the premiums. **R 728.** I don't know how the rate that St. Paul gave us was made up. **R 728–29.** I don't know how that rate compares with the rate on a fire policy. When we finished the other projects covered by the policy, we took them off of the policy. We did that when the projects were turned over to the building owner. **R 729.**

- **Direct Examination of David Loveless**

I am the underwriter for St. Paul who handled the Griffin Construction policy. **R 731.** That policy did not cover the building located at 222 Garrison. St. Paul covered a project at that location. Griffin paid a deposit premium for starting the jobs that they would do that year which they would then report to us. When Griffin undertook a project, they reported a value to us. **R 731–32.**

St. Paul then charged a premium based on the dollar value of the project reported to us by the contractor. **R 732–33.** Griffin reported a value of \$1.5 million for the project on Garrison Street. The quarterly premium on that project was \$938.00. That premium did not buy Griffin up to \$1.5 million in coverage. It depends on how much they had going at the time of the loss. If Griffin had put \$1.5 million into the project at the time of the loss, then the policy would have covered \$1.5 million. **R 733.** I did testify during my deposition that each project that was reported had coverage up to \$1.5 million if at the time of the loss they had that much in the project. **R 734.** As far as St. Paul is concerned, the building at 222 Garrison was a total loss. **R 735.**

This was not a policy of insurance on real property unless you define real property as buildings. **R 737.** The policy could have picked that up if it was part of the project. This was an insurance policy on a renovation project on a building located at 222 Garrison. **R 738.**

- **Cross Examination of David Loveless**

I've been an insurance underwriter for twenty-two years. I have worked for St. Paul for approximately two years. I am familiar with the term "fire insurance policy." **R 738.** It is possible now days to buy a fire insurance policy. But nobody really wants to. It is not a very good product. People buy

packages of different coverage forms. A typical commercial package would have property insurance and liability insurance. A package brings several coverage forms into one package. The consumer pays one premium and it's simpler. Fire insurance comes under Section 1 of most general commercial packages. It is property insurance.

In the insurance industry, a peril is something that causes a loss. **R 739.** Examples of perils are theft, fire, and lightning. Coverage is the contractual agreement to cover particular perils. There are many different kinds of insurance, for example life insurance, disability insurance, and property insurance. Fire could be a peril for purposes of all of those things. **R 740.** Fire can also be a peril for inland marine insurance. **R 740–41.**

Inland marine coverages are for things that are not stable or static. They move and grow. You can't put a finger on what the value is going to be today or tomorrow.

A fire insurance policy is a named-peril policy that covers a specific building and specific contents in a building. The cornerstone is that it always starts out with a fire peril. Then you can add an extended coverage for lightning or falling objects. **R 741.** I am familiar with the New York Standard fire insurance policy. It was the initial model that fire insurance policies were modeled on across the nation. **R 741–42.** It is still the basic

model for fire insurance, but it has evolved to where companies can broaden it. Most companies have what they call a "all other perils endorsement" or a "extended perils endorsement" that expands coverage into a broader contract. That is the package concept again, and a fire policy is often in with the other liability coverages or automobile coverages.

Homeowner's insurance, for example, is a package of coverages. It covers fire perils, physical damage perils, along with liability exposure. So you are covered if someone trips over your sprinkler while walking across your front yard. **R 742**. And you're also covered if you borrow your neighbor's lawnmower. **R 742-43**.

The policy Griffin bought from St. Paul is a inland marine policy. A builder's risk under the inland marine policy is an "all other perils" contract. It is an all-risk contract. It does not specify what perils are covered. It just says what is excluded. As long as the perils or the loss that occurred are not an excluded peril, there is coverage. This kind of policy is not regulated or required to be submitted to the Department of Insurance through various states. And the rates are negotiable between the company and their agents and the insured.

A fire policy is not an all-inclusive policy. It's just the opposite, in that only the perils listed in the policy are covered. St. Paul's policy is not a fire policy. **R 743.**

Some insurance policies are open and others are closed. An open policy means that when the insurer enters into the contract, it has no idea what perils or risks are going to come for that insured during that year. The insurer has accepted that uncertainty as long as the insured works on jobs at or under the project limit. The company accepts coverage without any further underwriting. That would be an open policy. A closed policy is where the insurer knows it is covering one location. It underwrites that location and there will be no additions or subtractions from it. **R 744.** The original New York Fire Insurance Policy for example was a closed policy. **R 744-45.** The St. Paul policy in this case is an open policy.

St. Paul's policy is a combined builder's risk, renovation, and installation risk policy. Those are generally three separate types of inland marine policies. We brought them together so there would be no confusion as to which contract we should offer or what would be best. St. Paul's policy is generic and will fit all those situations. We have those three types of coverages. Builder's risk is covered. Inland marine is not the form, it's the division of insurance. **R 745.** Builder's risk written on inland marine is an open, unregulated policy.

222 Garrison Avenue is not mentioned on the policy St. Paul issued to Griffin. **R 746.** St. Paul knew about the project there only because Griffin reported to us each quarter what jobs they had in progress. **R 746-47.** That is part of the open feature of this policy. Griffin could submit a \$5 million project on the policy, but we would have to revise the policy before we would cover it because that is over the project limit. St. Paul would accept anything under \$3 million with no question.

Under the heading "Description Of Location Of Risk", the policy says "Various-Open Builder's Risk." Various describes the location. The location is wherever they report work to us for that quarter. The policy is not specific to any one location. **R 747.** The policy has different annual rates for frame construction jobs versus renovations. The project limit is the amount St. Paul would accept without question or without any underwriting. The policy also calls for "completed value reporting" and that box is checked. It means that Griffin will make quarterly reports of the completed value of any project. Griffin will tell us the amount of the project and on that we will calculate our quarterly rate. **R 748.** The number of projects fluctuate.

St. Paul divides the rate it charges for builder's risk coverage in half. We do that because at the beginning of the builder's risk, the contractor will have nothing but a vacant lot. There will be no risk there whatsoever. At the end of

the project, you will have a finished project or a finished building. It would be unfair to charge the contractor the rate we would charge on a completed building from the beginning because it isn't there. The contractor is beginning now with a vacant lot. So we anticipate charging a rate at the mid-point or average of the construction job. At the beginning, therefore, when you just have the basic foundation, the contractor might be paying a little more, but after the project goes past the mid-point, he is actually paying less for the exposure he has in front of him. That is our way of balancing out the exposure. **R 749.**

This policy covers other property too. It covers the contractor's office trailer on the site. It covers overhead and labor. The policy will cover the building contract for as long as the contractor is reporting to us. **R 750.** Page 3 of the policy specifies when coverage ends. It says "will cover from the time the property is at your risk and continue until testing is completed. Coverage ends when the contract purchaser takes control of the property, when your interest in the property ends, or this policy expires or is canceled whichever happens first."

When St. Paul receives notice from a contractor that there is going to be a new project, it cannot go out and inspect the project. There is nothing there. We could go out three weeks or so later and inspect. But we won't see much.

There'll be very little more there. I've been an underwriter for twenty-two years. In my opinion, a construction project must be about 70% complete before an insurer can make a legitimate inspection and put a value on the property. **R 751.**

Griffin Construction paid an estimated premium. It is not an actual premium. It is estimated because there is no guarantee at the beginning of the project that, when everything is said and done, the project will end up at the value reported. The project limit on this policy was \$3 million. On the 222 Garrison job, Griffin Construction reported a project limit to us of \$1.5 million. That was their estimated limit. **R 752.**

The policy specifies the amount St. Paul will pay if there is a claim. The policy says "the project limit is based on your estimate. We estimate your premium based on what you tell us the completed value of your project will be. The estimated amount becomes the project limit." Here the estimate was the \$1.5 million that Griffin Construction reported to us. **R 752–53.** Now back to the policy. It states "however, the amount we will pay is not the project limit. The amount we will pay is determined by the actual costs of the labor and materials you have expended, plus your profits as determined at the time of the loss. So the actual limit of coverage on any date will be a percentage of the estimated value." The risk changes every day.

This policy allows the adjustment of premiums. St. Paul is allowed to audit each project at the end of the year. **R 753.** We come to a final premium in the situation like this at the end of the year. We look over all the amounts reported to us. It's like balancing the checkbook. St. Paul goes back and calculates the premiums against the rate. If we find that the contractor didn't do enough jobs to get to the deposit premium, St. Paul refunds the amount of money left under the deposit premium. If it's more than that, St. Paul charges an additional premium.

The insured can always add to their coverage when they are close to the project limit. For example, if Griffin had been close to the \$1.5 million and the job was 80% complete, we could have increased the limits to \$2 million. But then St. Paul would have gone back to the very first period that Griffin Construction reported the job and adjusted those periods for \$2 million of coverage. I don't know why a contractor would have an incentive to increase their premium. I guess if the project value had exceeded the coverage limit, they would have an incentive to increase their coverage. **R 754.**

It is also possible that the premium will be reduced at the end of the project. I've had one instance of that. The contractor was building a Wal-Mart store. Initially they reported to us that they got both the building job and the site and driveway and parking lot job. It turned out that the contractor did not

get the building job, so I reduced the project limit to cover the part of the project they got. St. Paul went back to the inception and returned some of their premium. **R 755.**

- **Bench Conference On Other Insurance**

Mr. Nebben: Your Honor, because Griffin asked Mr. Loveless about whether this policy covered the building, I think that raises the other insurance. I don't want to ask whether there was another insurance policy in this case. But I do want to ask the witness about the clause in this policy about other insurance. Because if the building is covered by other insurance, then St. Paul gets to back out that amount.

The Court: Overruled. **R 755–56.**

- **Re-direct Examination of David Loveless**

A fire loss was one of the perils covered under this policy. **R 756.** I don't believe I testified that nobody sells fire insurance policies any more. I said they are very seldom used. I understand that this case is about the valued policy

law in Arkansas. A valued policy means that, in the event of a complete loss, the insurer will pay policy limits. **R 757.** If someone purchases a homeowner's policy from St. Paul, it is not called fire insurance policy. **R 757–58.** I don't know whether a homeowner's policy would fall within the valued policy law of Arkansas. I don't know if that issue has ever come up at St. Paul. I work strictly in the commercial and inland marine department. I don't work in personal lines. I don't know if St. Paul sells a product called fire insurance. I have worked in the inland marine underwriting department for two years. I believe St. Paul sells homeowner's insurance in Arkansas, but I'm not sure. We do not write it in Texas. **R 758.** This policy would cover Griffin Construction's financial interest in the building if the building was part of the project.

- **Re-cross Examination of David Loveless**

It would be very rare these days to sell a stand-alone fire insurance policy. **R 759.** Fire insurance is sold as part of packages. In my twenty-two years of experience, I have never seen a policy that covers nothing but fire. They always have other coverages to go with it. **R 760.**

2. Motion Hearing

Mr. DeLay: Your Honor, at this time plaintiff rests. **R 762.** We renew our Motion for Summary Judgment on the basis that this is a value stated policy as a matter of law. We have shown that this is a fire insurance policy, that there was a total loss, that the amount on which premiums was collected was \$1.5 million, and therefore that is what we are entitled to.

The Court: Overruled. **R 762–63.**

Mr. DeLay: That is our motion and we have a directed verdict motion as well.

Mr. Nebben: Your Honor, St. Paul moves its Motion for Summary Judgment and moves for a directed verdict at the close of the plaintiff's case in chief. First, this is not a fire policy. It is an inland marine insurance policy and it is an open policy, not closed. Therefore, the policy is not subject to the valued policy law. Second, Griffin Construction did not lose real property as identified by the statute. Third, the testimony of David Loveless is that this policy involves a weighted premium. The premium is not collected on the entire amount. **R 763.** This is not a valued-policy situation because St. Paul is unable to value the project at the

beginning. That is the intent behind the 1889 law. St. Paul believes that this is not a valued policy and therefore it should be entitled to judgment.

The Court: Overruled. **R 763–64.**

3. St. Paul's Case

- **Direct Examination of Bill Plegge**

I'm an insurance agent with the Cashion Company. I've been an agent for various companies for more than thirty years. I've always handled contractors and construction people. **R 765.** Griffin Construction has been one of my clients on and off for nearly thirty years. **R 765–66.**

I was the agent for the St. Paul policy that Griffin bought. They came to me when they desired coverage on projects they were going to build. This policy is what is called a blanket monthly or quarterly reporting builder's risk policy. It is not a single policy for a single project. **R 766.** The difference between the two is that this policy is designed to pick up work that they get along the way. It's just added on. Whenever they start a project, it's automatically covered by this policy and then reported quarterly to Cashion Company and St. Paul. Otherwise Griffin would have to buy separate policies for each construction job.

This kind of instrument has been around in the industry for a long time. I have dealt with it for many years. This kind of policy has advantages for Griffin. When they pick up a new project, all they have to do is notify us and it's automatically covered. The premiums for this kind of policy are very competitive compared to individual policies. Another advantage is the way we do the deposit premium. Once that is paid, we draw against it and thereafter the insured makes quarterly payments. That enhances a contractor's working capital position where they don't have to put out a lot of money up front on each and every project that they start. **R 767.** I'm not familiar with the term "open policy." **R 767-68.**

I know Richard Griffin and Ida Hunter. I have dealt with them in the past. Ms. Hunter is a very astute business woman. I have dealt with her for as long as she has been at Griffin, more than fifteen years.

The premium on a builder's risk policy is weighted. It is different from an automobile policy or fire policy or package policy. It is weighted because the insurance company recognizes that in the early stages of construction there is very little risk. As the project nears completion, the full policy amount becomes at risk. So the premium is weighted with that knowledge, knowing that early on there is not as much risk as there is at the end. **R 768.**

When you have a construction project on a builder's risk, the agent can go out and look at the project on day one but there's nothing there. So the value is zero. It would change daily from then on, depending on how much work and materials that the contractor put into it. I've never seen a construction project that would be levelized, or move up in a perfect scale.

I'm familiar with the term "package" in the insurance industry. A package policy is like a homeowner's in that it covers a multitude of risks. **R 769.** In a homeowner's package you would find a fire policy in the property coverage. The St. Paul policy in front of me is a builder's risk policy. **Add 4.** It includes fire coverage, it includes the peril of fire. There is a distinction between perils and coverages. Coverages remind me of liability, property, equipment, that type of thing. **R 770.**

- **Cross Examination of Bill Plegge**

St. Paul's policy covered fire loss. **R 770.** The building at 222 Garrison was in existence when the policy was entered into. I don't know whether homeowner's insurance comes within Arkansas's valued policy law. My understanding of the valued policy law is that if an insurance company writes a fire-type policy on a piece of property, and accepts the premium for that coverage, and there is a total loss, the insurance company pays the policy

amount. I'm not an expert in that line of policies. **R 771.** I would assume that a homeowner could come within this particular law if their home was destroyed. I have been selling insurance for more than thirty years, and I have never seen a straight fire insurance policy. **R 772.**

- **Re-direct Examination of Bill Plegge**

I deal with other companies beside St. Paul. **R 772.** I handle insurance with a construction-type business. So there are other lines, such as homeowner's, that I don't get involved in. I don't know much more about those than my own policy. **R 772–73.**

- **Direct Examination of Kenneth Custer**

I'm a claim representative for St. Paul. I've been a claim representative for eleven years. I handle every line of insurance except worker's compensation. I investigated Griffin Construction's claim, evaluated the damages and coverages, and resolved the claim. I dealt with Ida Hunter at Griffin. **R 774.** As part of my handling of this claim, I met with Mr. Griffin and Ms. Hunter at their office in Fort Smith and asked for all of their documents about the project. I followed up with a letter, and they gave me everything. **R 775.** I understood that their documentation was Griffin

Construction's loss at that time. **R 775–76.** This is a spread sheet I prepared compiling all the invoices and other documents that Ms. Hunter gave me. I gave a copy of this document to them. Griffin supplied me invoices and documentation covering \$268,602.21 of items. We denied some items, approximately \$70,000.00 to \$80,000.00 worth. **R 776.** St. Paul then paid Griffin Construction \$286,573.67. That included materials that went directly into the job, Griffin's overhead for the job, and labor for the job. We paid for gas for the supervisor's vehicle. We paid for fuel for generators, and various fees. **R 776–77.** We paid architects' fees, state fees, city fees, and engineering fees. We also paid for expendable tools like drill bits and saw blades that are used up on the job. We probably paid for materials that were on the job site damaged but weren't actually in the building. If Griffin gave us an invoice for a box of nails, we paid for it. We even paid for ice to cool the workers down. That is part of overhead. **R 778.** We paid for propane, and debris removal. We paid for lots of things: scaffolding, ear plugs, a telephone, porta lite hookups, oil, light stands. I don't believe I ever got any receipts beyond the \$267,0000.00 worth from Ms. Hunter. **R 779.** The only things we didn't pay for were rejected because coverage was excluded under the policy. **R 779–80.** St. Paul's payment included a 10% overhead factor on the amount of the invoices and materials we got. We paid 10% as overhead on everything else

that we paid. **R 780.**

I handled personal insurance lines when I worked in Tulsa. **R 780–81.** I saw the original fire insurance policy as a trainee. Now what we have are derivatives of that original fire policy. They are on specific buildings, specific sites, and they are insured for a specific value. This policy covers many sites. When Griffin bought it, they did not have all of those sites. St. Paul did not have specific value. St. Paul can't have specific values on a policy like this because it changes every day. As the contractor is working, it changes continually as the labor charges go into the amount of what the contractor has for the building. **R 780.** Griffin never made a claim for the building through St. Paul. **R 781–82.**

- **Cross Examination of Kenneth Custer**

Part of homeowner's insurance is certainly fire loss protection. If somebody wanted to purchase a St. Paul homeowner's insurance policy they wouldn't ask for a St. Paul fire policy. If there is a total loss by fire of a home insured by a homeowner's policy, the insured gets the amount stated in the policy on which premiums are paid. This fire was a total loss. **R 782.** The policy that is the subject of this lawsuit protects against the perils of fire, but it is not a fire policy. **R 783.**

- **Re-direct Examination of Kenneth Custer**

This is not a fire policy, but it protects against perils including fire.

Inland marine and builder's risk coverages are derivatives of ocean marine insurance. They are considered marine insurance because these kind of coverages originally started in the transient nature of the marine business.

Inland marine is considered transient because the values are changing continually. It is like cargo running up and down the highway. On a fire policy, as in a homeowner's policy, that comes from the original fire policy.

R 783. It's a derivative of that policy which is on a stated place, building or contents, with a stated value. The value that St. Paul insures doesn't change, subject of course to cost of living adjustments that are made on the policy itself.

R 783–84. If a commercial entity like Griffin Construction wanted a package of coverages to protect buildings from fire, St. Paul has a product for them. It is called the St. Paul property protection. That would insure the building itself.

There are several other parts of it, but basically what we have is property protection for the building itself. This inland marine police is not for a building. This is for a project.

4. Motion Hearing

Mr. Nebben: The defense rests. **R 784.**

Mr. DeLay: At this time Griffin renews its Motion for Summary Judgment and directed verdict for the reasons previously stated.

The Court: Overruled.

Mr. Nebben: St. Paul renews its Motion for Summary Judgment and directed verdict. This statute deals with a fire insurance policy. It is not a situation where a fire risk is involved. **R 785.** The first question for the Court is: is there a fire policy. Considering the case of *Bennett v. Allstate*, the Court must look at whether there is an open or closed policy in this situation. This policy is conclusively an open policy. There is no evidence to the contrary. **R 785–86.** Second, the Court should look at the character of the policy. The valued policy statute is limited to real property considering the real character of the property. The character of the policy is related to the need for inspection of the property. It deals with whether the insurer can inspect the property before accepting the risk. It cannot do so in a builder's risk policy.

The Court: I thought you stated in opening statement that you could inspect.

Mr. Nebben: St. Paul could go out there, but there's nothing to inspect. As the witness has said, on day one there is zero there. **R 786.** The Court should also consider what the premium is calculated on. This is a weighted premium. It is not calculated on fire insurance principles. It is calculated on the fact that every day there is going to be a different risk. There is no way that St. Paul's policy covers this risk. This is not a closed-value situation. It is an open-value situation.

The Court: Overruled. **R 787.**

5. Jury Instructions

NO. 6

In determining the type of policy that was issued by the defendant, St. Paul Fire & Marine Insurance Company, you are entitled to consider the manner in which the premium was computed and its amount as circumstances to be considered in determining the character of the risk which the plaintiff, Griffin Construction Company, intended the defendant to assume. **R 795.**

NO. 7

In order for Griffin Construction to recover proceeds from St. Paul, it must have an insurable interest in the building located at 222 Garrison Avenue. Griffin had an insurable interest in the property if it would profit by or gain some advantage by its continued existence and suffer some loss or disadvantage by its destruction. If it would sustain such loss, it is immaterial whether it has, or has not, any title in, or possession of the property itself. **R 796.**

NO. 8

There was in force in the State of Arkansas at the time the contract of insurance was entered into between Griffin Construction Company and St. Paul Fire & Marine Insurance Company, a statute, which provided:

(a) A fire insurance policy, in case of a total loss by fire of the property insured, shall be held and considered to be a liquidated demand and against the company taking the risk, for the full amount stated in the policy, or the full amount upon which the company charges, collects, or received a premium.

Griffin Construction Company claims damages from St. Paul Fire & Marine Insurance Company pursuant to this statute and has the burden of proving each of three essential elements:

First, that there was a fire insurance policy in force on December 20, 1996, which insured its real property located at 222 Garrison Avenue in Fort Smith, Arkansas.

Second, that there was a total loss by fire to the insured building, and

Third, that St. Paul failed to pay Griffin Construction Company the full amount stated in the policy, or the amount the company received and collected a premium on.

If you find from the evidence in this case that each of these propositions has been proved, then your verdict should be for Griffin Construction Company. **R 797.**

NO. 9

The valued policy statute is a part of every policy of insurance on real property in this State, the same as if it were actually written in the policy.

Real property means land and all things contained thereon, including buildings, structures, fixtures, and improvements. **R 798.**

NO. 10

Marine insurance is defined to include insurance against any and all kinds of loss or damage to personal property in connection with or

appertaining to a marine, inland marine, transit, or transportation insurance, including liability for, loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance. **R 799.**

NO. 11

In interpreting a policy of insurance, you are instructed to use a common sense approach fairly and reasonably to ascertain and carry out the intent of the parties and generally, the words employed in the policy are to be construed in their ordinary sense. **R 800.**

NO. 12

If you find that a term or clause of the St. Paul policy is ambiguous it must be construed in favor of Griffin Construction Company. To be ambiguous a term or phrase must be susceptible to more than one reasonable interpretation. **R 801.**

NO. 13

Under Arkansas law, insurance coverages may come within the definitions of two (2) or more kinds of insurance. Inclusion of coverage within

one (1) definition of insurance shall not exclude it as to any other kind of insurance within the definition of which that coverage is reasonably includable.

R 802.

NO. 14

A fire policy is a form of property insurance wherein an insurance company agrees to indemnify another party in whole or in part up to a specified amount for loss or damage to designated property, either real or personal, by fire.

A fire policy is a "valued" or "closed" policy which means the parties have agreed upon the value of the property at the time of entering into the insurance contract in the event of future loss. **R 803.**

NO. 15

"Property insurance" is insurance on real or personal property of every kind and of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause and against loss consequential upon the loss or damage, other than noncontractual legal liability for the loss or damage. **R 804.**

NO. 16

When I use the phrase liquidated demand I mean a demand the amount of which has been ascertained or settled by agreement of the parties. **R 805.**

NO. 17

If you decide for Griffin Construction Company on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate it for the damage it sustained.

If the St. Paul policy attempts to limit its liability for a total loss in any respect, such a clause is void as a matter of law. St. Paul must pay the total amount stated in the policy, or the full amount premiums were received and collected on, less what has already been paid to Griffin Construction Company. **R 806.**

The Court: I'm going to give you these instructions to take with you and two verdict forms. One says "We the jury find in favor of the plaintiff, Griffin Construction Company, and award it damages in the amount of _____ dollars." The other form says "We the jury find in favor of the defendant, St. Paul Fire & Marine Insurance Company." You will just use one of those. I'll give you the exhibits, and if you will follow the

bailiff, please, begin your deliberations now. **R 826.**

[Abstractor's Note: The jury retired to deliberate at 3:45 p.m.]

The Court: We discussed instructions and objections were made before I instructed the jury. For the sake of time, the Court allowed the parties to make their objections on the record after the jury retired to deliberate. **R 827.**

Mr. Nebben: St. Paul objects to the Court's failure to give proffered Instruction No. 1. **R 833.** The instruction is based on *Farm Bureau Mutual Insurance Company v. Barnes*. It explains that the valued property statute only covers real property, which is property of a permanent nature readily opened to inspection and susceptible to reasonable accurate valuation. That promotes the statutory purpose of not over valuing property. In this situation, the property could not be inspected because it is a building project which grows every day. **R 833–34.**

St. Paul also objects to the Court's refusal to give proffered Instruction No. 2. It is an accurate rendition of Arkansas law about the construction of policies that should have been

given. **R 834.**

St. Paul's Proffered Instruction No. 1

The valued policy statute that you discussed in the preceding instruction is a part of every policy of fire insurance on real property in this state. The same as if it were actually written in the policy.

For purposes of this statute real property is:

1. of a permanent nature;
2. if readily open to inspection; and
3. is susceptible of reasonably accurate valuation by the insurer.

Authority: *Farm Bureau Mutual Insurance Company v. Barnes*, 305 S.W.2d 673 (Ark. 1957). **R 835.**

St. Paul's Proffered Instruction No. 2

The plaintiff, Griffin Construction Company, has the burden of proving by a preponderance of the evidence that the policy of insurance provides coverage for those items claimed by the plaintiff, Griffin Construction Company. When interpreting a specific clause in an insurance policy, consideration is to be to the entire policy as a whole, with an effort being made to harmonize all provisions in a policy.

Authority: *J. B. Kramer Grocery Company, Inc. v. Glen Falls Insurance Company*, 356 F. Supp. 771 (E.D. Ark. 1973); *Silverball Amusement, Inc. v. Utah Home Fire Insurance Company*, 842 F. Supp. 1151 (W.D. Ark. 1994); and *Continental Casualty Company v. Didier*, 301 Ark. 159, 783 S.W.2d 29 (1990). **R 836.**

Mr. Nebben: St. Paul objects to Instruction No. 9 given by the Court which defines real property. Our proffered Instruction No. 1 is a more accurate definition of real property for purposes of the Arkansas valued policy statute.

The Court: Denied.

Mr. Nebben: St. Paul also objects to Instruction No. 12 about an ambiguity in the policy. The Court has to decide first if there is an ambiguity. It has not done so, so the instruction is error.

The Court: Overruled. **R 837.**

Mr. Nebben: St. Paul objects to Instruction No. 13 about insurance coverages coming within the definition of two or more kinds of insurance. That instruction is an accurate rendition of Ark. Code Ann. § 23-62-101. But the testimony at trial by Mr. Loveless and Mr. Plegge was that there is no crossover between the fire type policy and the builder's risk inland marine policy we have in this case.

The Court: Overruled. **R 837–38.**

[Abstractor's Note: The jury returned to the Courtroom at 4:38 p.m.]

The Court: Do you have a verdict? **R 838.**

Foreperson

Walker: Yes. We the jury find in favor of the plaintiff, Griffin
Construction Company, and award damages in the amount
of \$1,213,426.33. **R 838–39.**

The Court: Court is adjourned. **R 839.**

VI.

STATEMENT OF THE CASE

A fire during the early stage of a construction project, and a particular kind of insurance, call into question the reach of Arkansas's valued insurance policy statute. The Griffin Family Trust owned the Josiah Foster building, an historic structure at 222 Garrison Street in Fort Smith. **Abstract ("Ab") 6–7; Addendum ("Add") 64–66.** The four-story shell remained of this nineteenth-century building when the Trust decided to renovate it and create an office building. **Ab 6.** The Trust hired Griffin Construction Company, Inc., to do the renovations. **Ab 9, 11.** Richard B. Griffin was one of the Trust settlors, and he is the president of the construction company. **Ab 6; Add 64–68.**

Griffin Construction called its insurance agent of many years and bought a St. Paul policy to cover this renovation project. **Ab 10, 23–24.** St. Paul labels this contract a "Contractor's and Owner's Property Protection" policy combining builder's risk, renovation, and installation risk coverages. **Ab 17; Add 8–9.** This kind of policy is known in the industry as a builder's risk policy. **Ab 17, 24–25; Add 69.** This policy covered Griffin's "financial interest in insured building and installation projects and structures[.]" **Add 19.**

The policy was a creature of estimates. Griffin agreed to tell St. Paul

"what you know to be the full estimated value of the project so that [St. Paul] can estimate your premium. We estimate your premium because the final completed value of a project may differ from the original estimate of the project costs." **Add 25.** The parties agreed that the actual premium would be determined when the project was done. "When coverage under this agreement ends, [St. Paul will] figure the premium we've actually earned based on the length of time this agreement was in effect and the actual completed value of the project. If this final premium is more than you've paid, you'll owe us the difference. If it's less, we'll return the difference." **Add 25.**

The policy limited coverage to Griffin's actual loss in the event of a covered peril. "The amount [St. Paul will] pay is determined by the actual cost of the labor and materials [Griffin] expended, plus your profits, as determined at the time of the loss. So the actual limit of coverage on any date will be a percentage of the estimated cost." **Add 24.** Fire was one of the perils covered by St. Paul's builder's risk policy. **Ab 27.**

Griffin estimated the value of its renovation project at the Josiah Foster building at \$1.5 million, and provided that estimate to St. Paul. St. Paul did not inspect the renovation project it was insuring—it could not, because nothing was there except the shell of the old building. Based on the contractor's estimated value of the completed project, St. Paul estimated the

premium for the policy at \$4,000.00. **Ab 7, 14, 19–20; Add 25.** Griffin paid a "premium deposit" in that amount. **Ab 7, 9–10.** The parties agreed that St. Paul would draw an estimated premium of \$938 each quarter from this deposit until the project was finished or the deposit was used up. **Ab 7–8, 11.**

Griffin started but never finished the renovation. Early in the project, a fire destroyed the Josiah Foster building and all of the renovations completed so far. Griffin was about four months into its work; it had completed about one-fifth of the renovations. **Add 1–2, 118.**

After the fire, Griffin made a claim to St. Paul. The contractor did not ask St. Paul to pay it the \$1.5 million estimated value of the completed project. Griffin sought only what it had lost in the fire. **Ab 1–2, 11, 29.** St. Paul paid the contractor \$286,573.67 on that claim: among other things, St. Paul paid for (1) all of the materials that Griffin had used so far in the renovations and that burned up; (2) tools such as drill bits and saw blades that were used up in the construction; (3) propane used in heaters for the workers; (4) ice for the workers; and (5) various local and state fees related to the renovation. St. Paul also paid Griffin a 10% overhead figure for the profits it lost on the part of the project that had been completed. **Ab 11–12, 29–30; Add 77–79.**

St. Paul declined to pay for a custom elevator and staircase and related accessories. **Add 2.** Griffin bought these items for the building, but had not

installed them when the building burned. St. Paul believed those items were not covered by this policy because they were not in the building and were not damaged. Griffin, however, believed these custom fixtures were damaged under the terms of the policy because it could not reuse or resell them. That disagreement was the seed of this lawsuit. **Add 1–2.**

Griffin had other insurance on the Josiah Foster building. It was listed, along with many other properties, on a policy issued by the Maryland Companies. **Ab 1–2; Add 96–111.** Among other coverages, the Maryland policy provided commercial property coverage for this old building to the contractor. **Add 96, 99, 105–06.** The contractor valued the Josiah Foster building at \$500,000.00. **Ab 1–2.** The Maryland Companies had inspected the structure, and accepted that valuation. The policy provided "actual value" and "replacement cost" coverages for this building. **Add 105–11.** After the fire, Griffin sought coverage for the building under this other policy, and the Maryland Companies paid the contractor \$505,000.00 for its loss: \$500,000.00 for the building and \$5,000.00 for debris removal. **Ab 1–2; Add 94–95.**

Griffin sued St. Paul over the elevator and staircase. It sought approximately \$60,000.00 in damages for the cost of those custom fixtures, plus an attorney's fee and the statutory penalty. **Add 1–2.** In due course, St. Paul moved for summary judgment. **Add 38–41.** Three weeks before trial

Griffin amended its Complaint and alleged alternative theories: it was either entitled to \$3,000,000.00 (the overall policy limit for all projects) under the valued policy statute, or to the value of the elevator and stairwell. **Add 49–51.** Griffin moved for summary judgment too. **Add 44–45.** The Circuit Court continued the trial in response to Griffin's new theory under the valued policy statute. **Add 54.** After more discovery, briefing, and a hearing, the Court denied both motions for summary judgment. **Add 114.**

On the eve of trial, Griffin amended its Complaint again. It abandoned its original claim for the custom elevator and stairwell, and revised its claim under the valued policy statute. Griffin sought \$1,213,426.33—the \$1.5 million estimated total value of the Josiah Foster building renovation project, less the \$286,573.67 that St. Paul had paid on its original claim. **Add 77–79.**

The case proceeded to trial. At the end of Griffin's case and again at the end of St. Paul's case, both parties moved the Court to rule for them, as a matter of law, under the valued policy statute. Without giving any reasons, the Circuit Court denied all those motions. **Ab 23–24, 32–33.** After deliberating less than an hour, the jury returned the \$1.2 million verdict sought by Griffin. **Ab 27, 40.** St. Paul's post-trial motions failed to convince the Court that it had erred in applying the valued policy statute to this builder's risk policy. **Add 90–93, 114.** St. Paul's timely appeal followed. **Add 115.**

VII.

ARGUMENT

A. A Summary Of St. Paul's Argument

As this Court's *de novo* review will reveal, saying "valued policy statute" cannot turn an open builder's risk policy into a valued policy. *Seiz Co v. Ark. St. Highway and Transp. Dep't*, 2009 Ark. 361, at 3, 2009 WL 1740251, at *1 (standard of review). Through a creative but confused reading of Arkansas's valued policy law, Griffin Construction seeks to recover five times the amount of the partial loss it suffered when the Josiah Foster building burned. Griffin had just begun renovating that structure when the fire occurred. Misapplying the statute, the Circuit Court gave the contractor that windfall.

Griffin hangs its claim on:

Ark. Code Ann. § 23-88-101 Valued Policy Law.

(a) A fire insurance policy, in case of a total loss by fire of the property insured, shall be held and considered to be a liquidated demand and against the company taking the risk, for the full amount stated in the policy, or the full amount upon which the company charges, collects, or receives a premium.

(b) However, the provisions of this section shall not apply to personal property.

The value policy statute controls cases where the insured and the insurer:

(1) fix a specific amount of coverage on existing improvements to land, (2) fix

a premium that does not change, and (3) then face a total loss by fire of the property insured. This Court has applied the statute in the many factual variations on those general principles. *E.g.*, *Minneapolis Fire & Marine Mut. Ins. Co. v. Fultz*, 72 Ark. 365, 80 S.W. 576 (1904); *Farmers' Home Mut. Fire Ass'n. v. McAlister*, 171 Ark. 574, 285 S.W. 5 (1926); *Tedford v. Security State Fire Ins. Co.*, 224 Ark. 1047, 278 S.W.2d 89 (1955); *Sphere Drake Ins. Co. v. Bank of Wilson*, 312 Ark. 540, 851 S.W.2d 430 (1993); *see generally*, Note, "Problems Arising Under Valued Policy Insurance Statutes," 12 Ark. L. Rev. 184, 194 (1958).

This Court, however, has never held or suggested that our valued policy law applies to a builder's risk policy like the one St. Paul issued to Griffin Construction. The statute does not apply. No valued policy exists where the improvements are planned but not completed, where only one of the parties—the contractor—has estimated their expected value, where the parties have not fixed the amount of coverage, and where the insurer has estimated the premium pending completion of the construction.

Though it covered the peril of fire, this builder's risk policy was not, in the words of the statute, "[a] fire insurance policy[.]" As St. Paul's underwriter testified, all kinds of insurance cover the peril of fire—automobile insurance, life insurance, and builder's risk insurance. **Ab 14–18**. But coverage for that peril, does not, in and of itself, create a valued policy. 1 L. R. Russ & T. F.

Segalla, COUCH ON INSURANCE § 1.5 at p. 1–10 and § 1.37 at p. 1–53 (3d ed. 1997) (comparing open and valued policies and describing fire insurance policies).

No reported decision supports the Circuit Court's erroneous judgment. Instead, every other state confronting a modern builder's risk policy and a similar valued policy statute has held that the policy is open and the statute does not apply. *E.g.*, *American General Fire & Cas. Co. v. Buford*, 716 S.W.2d 86, 89 (Tex. App. 1986, writ ref'd n.r.e.) (construing Tex. Ins. Code Ann. art. 6.13, which provides—in words identical to Arkansas's statute—that "[a] fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered a liquidated demand against the company for the full amount of such policy . . .", and holding that the statute did not apply to a partial loss insured by builder's risk coverage); *Jones v. State Farm Fire & Casualty Co.*, 740 S.W.2d 708, 709–10 (Mo. App. 1987) (construing Mo. Ann. Stat. § 379.140, which provides that "in the case of total loss of the property insured, the measure of damage shall be the amount of the [property] was insured . . ." less depreciation, and holding that it did not apply to a partial loss insured by builder's risk coverage).

Arkansas's valued policy law does not control the open builder's risk

policy that Griffin Construction bought from St. Paul. The policy was "open" in several ways: the number of projects could vary, and the value of each project varied too. Griffin did not pay a fixed premium. Instead, St. Paul estimated the contractor's premium, and the parties agreed that the premium would not be fixed until the project was completed. The parties did not fix an amount of coverage for projects. Instead, Griffin gave St. Paul an estimate—nothing more—of the expected value of the renovations it planned for the Josiah Foster building. That was the project limit. And the parties agreed that St. Paul would provide coverage for the contractor's actual loss, not the project limit:

[T]he amount we'll pay is not the project limit. The amount we'll pay is determined by the actual cost of the labor and materials you've expended, plus your profits, as determined at the time of the loss. So the actual limit of coverage on any date will be a percentage of the estimated value.

Add 24. A close look at the policy and the parties' dealings shows that this builder's risk policy was open, not valued. Therefore, Ark. Code Ann. § 23-88-101 does not control this insurance.

The Circuit Court's misapplication of the valued policy law in this case creates several perverse results. First, it frustrates the statute's purposes: this judgment encourages over insurance by contractors on their projects, compromises insurers' rights to inspect property before fixing the premium,

and replaces an agreed value with the contractor's estimated value of what it plans to build. Second, the judgment misapplies the statute to personal property: the contractor's expectation interest in the materials, labor, and profit from a building project not yet built. That violates the statute's explicit limitation to real property only. Third, the Circuit Court error gives Griffin an unconscionable windfall. This contractor has already been made whole—several times over—for what it lost in the fire. Pretending that this open builder's risk policy is a valued policy hands Griffin Construction an unjustified jackpot.

The record leaves no doubt: the Circuit Court erred in failing to enter judgment as a matter of law for St. Paul on this open insurance policy. This Court should correct that error, reject Griffin's confused reading of the valued policy law, and reverse this judgment.

B. The Valued Policy Law Does Not Control Griffin Construction's Insurance With St. Paul

1. Griffin Did Not Buy A Valued Fire Insurance Policy

Griffin Construction's lawsuit, as finally amended, rests on a novel theory. No reported decision of the Arkansas Supreme Court or Court of Appeals applies our valued policy statute to an insurance policy like St. Paul's.

Four other jurisdictions have recently considered similar builder's risk policies in light of similar valued policy statutes. The conclusion is unanimous: modern builder's risk policies are open, not valued; and when a construction project burns before it is completed, a contractor is entitled to recover only what it actually lost in the fire, not the total expected value of the project when completed. *White v. New Hampshire Ins. Co.*, 390 N.W.2d 313 (Minn. App. 1986); *American General Fire & Cas. Co. v. Buford*, *supra*; *Jones v. State Farm Fire & Cas. Co.*, *supra*; *American Family Mut. Ins. Co. v. Doug Rose, Inc.*, 841 S.W.2d 698 (Mo. App. 1992); *Averill v. Preferred Mut. Ins. Co.*, 441 S.E.2d 632 (S.C. 1994).

This Court should follow those persuasive authorities. There is no "rhyme or reason for [St. Paul] to be liable for the face amount of the policy before . . ." Griffin completed its work at the Josiah Foster building. *Jones*, 740 S.W.2d at 710.

(a) St. Paul's Open Builder's Risk Policy

Griffin's policy of insurance with St. Paul was open, not valued. A leading commentator explains why. "A valued policy is one in which the measure of the property insured is agreed upon by both parties to the contract, so that in case of a total loss it is not necessary to prove the actual value. Indeed, it has been stated that it is the uncertainty of the amount which

distinguishes an open from a valued policy." 6 J. Appleman, INSURANCE LAW AND PRACTICE § 3827 at pp. 245–46 (1972 and 1993 Supp.); *see also*, *Buford*, 716 S.W.2d at 89–91 (applying this rule, concluding that a builder's risk policy was not a valued policy, and holding that the contractor was only entitled to coverage for his actual loss); 1 L. R. Russ & T. F. Segalla, COUCH ON INSURANCE § 1.5 p. 1–10 (3d ed. 1997).

This Court's decisions under our valued policy law show the principled distinction between "open" and "valued" policies in action. Every reported case involves a structure on which the insured and the insurer fixed a specific amount of coverage and thus an agreed value. *E.g.*, *E. O. Barnett Bros. v. Western Assur. Co.*, 143 Ark. 358, 359, 220 S.W. 465, 466 (1920) (fixed coverage for one-story home of \$600.00); *Phoenix Assur. Co., Ltd. v. Loetscher*, 215 Ark. 23, 24, 219 S.W.2d 629, 630 (1949) (fixed coverage for a commercial garage at \$12,000.00). No fixed amount of coverage, which would in turn establish an agreed value, appears in this case.

St. Paul repeatedly argued the distinction between open and valued policies to the Circuit Court. **Ab 32; Add 57, 75, 85–86, 90–91**. The Court also heard undisputed testimony from St. Paul's underwriter and its adjuster about the difference between these two kinds of policies. **Ab 17, 30–31**. The Court below, however, refused to hold that this builder's risk insurance was an

open policy to which Ark. Code Ann. § 23-88-101 did not apply. **Ab 3, 24–25, 32–33.** This is the error of law permeating this record. Construing this statute is the Court's work; it is a matter of law. *Seiz Co.*, 2009 Ark. 361, at 1, 2009 WL 1740251, at *1; *Rogers v. Tudor Ins. Co.*, 325 Ark. 226, 232–35, 925 S.W.2d 395, 398–400 (1996). And as this Court's plenary review will show, Griffin did not buy a valued policy.

- **The Policy's Varying Coverage**

The record proclaims from beginning to end that Griffin Construction's policy was open in every material respect. How much coverage existed for the Josiah Foster project? It varied. The policy undermines any argument that the parties agreed on the value of Griffin's work. Under the "Rules for Loss Adjustment" section, St. Paul's policy explained the floating nature of its coverage.

Limits of Coverage. The most we'll pay for a covered loss is the applicable limit of coverage shown in the Coverage Summary. The project limit and the catastrophe limit are explained below.

The project limit is based on your estimate. We estimate your premium based on what you tell us the full completed value of your project will be. This estimated amount becomes the project limit.

However, the amount we'll pay is not the project limit. The amount we'll pay is determined by the actual cost of the labor and materials you've expended, plus your profits, as determined at the time of the loss. So the actual limit of coverage on any date will be

a percentage of the estimated value.

Add 24.

Griffin bought this policy through its agent of almost twenty years, Bill Plegge. The binder Plegge issued to Griffin did not fix a value of the property insured. Under the category of "Limits of Liability or Amount of Insurance," the binder stated:

3,000,000	Project Limit
300,000	Transit Limit
300,000	Temporary Location Limit.

Add 119. Thus, the parties began this relationship with "limits" or ceilings for coverage, not fixed amounts of coverage or agreed values.

St. Paul's policy was open in another way: it covered multiple construction projects, so long as Griffin reported each one to the insurer. **Ab 13, 24–25.** The coverage summary gave the location of covered projects as "various." **Add 13.** David Loveless, St. Paul's underwriter for this policy, linked the "various" feature of the policy to the reporting form. When Griffin sent St. Paul the form for the Josiah Foster project on Garrison Street in Fort Smith, the project became covered under the policy. **Ab 18.** This feature saved the contractor time and money; it did not have to buy a new policy for each new project. **Ab 25–26.** Griffin took advantage of this flexibility, insuring at least three other projects besides the Josiah Foster renovation under this

policy. **Ab 13.**

St. Paul's policy was open on the particulars of each project it covered, including the Josiah Foster renovation. Griffin triggered coverage by sending St. Paul a reporting form that listed the "contract price" for this project as "\$1,500,000.00." **Add 118.** That figure was Griffin's estimate of the value of all the renovations once they were completed. As the trial testimony and the terms of this insurance policy make plain, that figure was neither an agreed value nor a fixed amount of coverage. It was an upper limit of coverage for the Josiah Foster renovations.

Ida Hunter is the comptroller for Griffin Construction. She handled insurance in general, and the St. Paul policy in particular, for the contractor. **Ab 6–7, 10.** According to Hunter, the \$1.5 million contract figure did not come from a written contract. No such agreement existed between the Griffin Family Trust and the contractor. **Ab 11–12.** She testified:

I know how the \$1.5 million figure was arrived at: Griffin Construction did an estimate based on materials plus overhead. Sometimes we hit those estimates on the nose, sometimes we don't. Sometimes we go under, and a lot of times we go over. That is the construction industry. Griffin Construction's actual agreement with the Trust was for whatever the project cost plus 10% overhead.

Ab 11–12.

As St. Paul's policy made clear, the extent of coverage for a particular

project was provisional, not fixed. The "Coverage Summary" St. Paul gave to Griffin contained no agreed values. Echoing the binder, it specified "Limits of Coverage." **Add 8.** The policy then explained the coverage Griffin Construction paid for. Under the "Property Covered" section, the policy provided: "We'll cover your financial interest in insured building and installation projects and structures at the location shown in the coverage summary." **Add 19.** The policy did not say it covered Griffin's *expected* financial interest in its building projects. As Ms. Hunter testified, Griffin bought this "policy to cover the improvements[,] and the building was not improved until the work was actually done. **Ab 10.**

Instead, Griffin and St. Paul agreed that the amount of coverage depended on the extent of the work completed on the date of a loss. "[T]he amount [St. Paul will] pay is not the project limit. The amount we'll pay is determined by the actual cost of the labor and materials [Griffin Construction has] expended, plus your profits, as determined at the time of the loss. So the actual limit of coverage on any date will be a percentage of the estimated value." **Add 24.** There is nothing novel in that understanding. It fits with the nature of a construction project: its value changes every day because the materials expended and the labor costs incurred change every day.

As Ken Custer, St. Paul's adjuster on this loss, explained, "St. Paul did

not have a specified value[]" for which it insured on the Josiah Foster renovation work. "St. Paul can't have specific values on a policy like this because it changes every day. As the contractor is working it changes continually as the labor charges go into the amount the contractor has for the building." **Ab 29–30**. Richard Griffin, the president of Griffin Construction, concurred. According to the contractor, every day the value of his company's labor, material, and other expenses relating to the project changed. **Ab 9**.

- **Griffin's Original Claim**

Griffin Construction's original claim to St. Paul after the fire exemplifies the open nature of this coverage. Griffin submitted invoices and documentation for \$268,602.21 of items. **Ab 29**. St. Paul paid for every item submitted except \$61,793.77 for the custom elevator and staircase (the parties' disagreement over which started this case). **Ab 29–30; Add 2, 77–79**. St. Paul paid for Griffin's:

labor costs	fuel for generators
scaffolding	propane
ear plugs	gasoline for vehicles
a telephone	architects' fees
porta-light hookups	city and state fees
oil	engineering fees
light stands	expendable tools
ice	building materials

Ab 11–12, 28–29. As Ken Custer, St. Paul's adjuster put it, "[i]f Griffin gave us

an invoice for a box of nails, we paid for it." **Ab 29**.

Pursuant to the policy, and the handshake agreement between the Griffin Family Trust and Griffin Construction, St. Paul then calculated and paid the profit Griffin Construction lost on the destroyed part of the project: St. Paul paid the contractor 10% overhead on all the materials used and expenses incurred. **Ab 30**. In sum, St. Paul paid Griffin Construction \$286,573.67 for all these things pursuant to this open policy. **Ab 29**.

Not one of the items for which St. Paul paid Griffin was valued in this policy. Listing them shows why: as everyone agreed, on a construction project the value of materials, expenses, labor, and overhead expended by a contractor changes every day. **Ab 9, 28–29**. Their value cannot be fixed in advance, hence this creature called an open builder's risk policy.

- **Guidance From Other Jurisdictions**

The cases from other jurisdictions reject Griffin's novel theory based on this understanding of construction projects and builder's risk policies. In *Buford*, for example, the policy recited only "an estimated completion cost[]" for the project. No specific amount of coverage was agreed upon. The Texas Court of Appeals therefore rejected a contractor's effort—like Griffin's effort in this case—to recover more than it actually lost in the fire by standing on a valued policy statute almost identical to ours. *Buford*, 716 S.W.2d at 89–91, 93

(considering Tex. Ins. Code Ann. art. 6.13 and a builder's risk endorsement, holding that the policy was not valued, and remanding for a determination of the value of the improvements actually destroyed); *see also White*, 390 N.W.2d at 315–16 (rejecting contractor's attempt to recover the estimated value of the completed project under Minn. Stat. Ann. § 65A.08, Minnesota's valued policy law, when the project was destroyed before completion where the policy limit was "provisional" and the policy limited coverage to the "actual value" of the loss).

This record contains a valued insurance policy, a policy that fixes a specific amount of coverage and thus an agreed value. But it is not St. Paul's policy; it is Griffin Construction's policy with the Maryland Companies. **Ab 1; Add 96–111.** Griffin Construction and that insurer agreed to value the Josiah Foster building itself at \$500,000.00. **Ab 2.** That insurer inspected the old structure and fixed coverage at the actual value and replacement cost of the building for a total loss by fire. **Add 105–11.** And the Maryland Companies paid Griffin Construction's claim for \$500,000.00 (plus \$5,000.00 for debris removal) when the building burned. **Add 94–95.** Fixed coverage = a valued policy.

Just like the policies in *Buford* and *White*, and unlike the Maryland

policy, St. Paul's policy contained no agreed value that fixed a certain amount of coverage for Griffin Construction's interest in the renovations. An agreed value fixing the specific amount of coverage is the essential condition for a valued policy. Because that condition was absent from St. Paul's policy, and indeed is directly contrary to the nature of this coverage, Griffin did not buy a valued policy from St. Paul.

(b) Griffin's Estimated Premium

The kind of premium Griffin Construction paid for this policy confirms that it was open, not valued. Griffin paid an estimated premium, not a fixed premium. That undisputed fact makes this case different from any prior decision of this Court under our valued policy law. And that fact, along with the estimated value of the project and the terms of this policy, entitles St. Paul to a judgment as a matter of law.

- **The Policy Terms**

The record speaks with one voice about Griffin's estimated premium. Consider the documents first. In the section entitled "Your Premium," St. Paul's policy explained how Griffin paid for this floating builder's risk coverage:

You agree to tell us, at the starting date of this agreement, what

you know to be the full estimated value of the project so that we can estimate your premium. We estimate your premium because the final completed value of a project may differ from the original estimate of the project costs.

When coverage under this agreement ends, we'll figure the premium we've actually earned based on the length of time this agreement was in effect and the actual completed value of the project. If this final premium is more than you've paid, you'll owe us the difference. If it's less, we'll return the difference.

Add 25. There you have it: the parties agreed, in unambiguous terms, that Griffin Construction's premium was but an estimate.

Every other part of the policy that mentioned the premium confirmed that it was not fixed. **Add 7** (the "Introduction" stated that the premium for one year is \$4,000.00, then referred the contractor to the "Premiums" section to see how the final premium was calculated); **Add 7, 10** (the "General Rules" provision stated that Griffin Construction's "actual premium" would be figured at the end of the policy); **Add 8** (the "Coverage Summary" showed an "Estimated Premium" of \$4,000.00 and a minimum premium of \$1,500.00); **Add 27** (the premium endorsement stated that the initial premium was just a deposit). The binder, with which the parties began this coverage, likewise does not fix a premium. **Add 119–20.** All these writings make plain that Griffin's premium was estimated and would not be fixed until coverage ended.

- **The Testimony**

The testimony tracked the documents. The parties stipulated that Griffin Construction had paid all the premiums due at the time of the fire. **Ab 10–11** (trial stipulation announced by the Court); **Add 42** (agreed facts). What, however, was the nature of the premium that Griffin paid? It was only an estimate, drawn from Griffin's \$4,000 premium deposit. **Add 25**. That was confirmed by Ida Hunter, **Ab 13**, and Richard Griffin. **Ab 7–8**. Griffin's estimated premium "did not buy Griffin up to \$1.5 million in coverage." **Ab 14**.

St. Paul's witnesses explained the undisputed nature of the premium. David Loveless, the underwriter, testified that "Griffin Construction paid an estimated premium. It is not an actual premium. It is estimated because there is no guarantee at the beginning of the project that, when everything is said and done, the project will end up at the value recorded." **Ab 20**. As Ms. Hunter had acknowledged, the contractor's estimates of the value of a project often miss the mark. **Ab 11–12**. This policy, Loveless continued, allowed for "the adjustment of premiums." **Ab 20–21**. The final premium goes up or down depending upon what actually happened on the project. Loveless gave an example from his experience: when a contractor lost part of a job building a Wal-Mart, St. Paul "went back to the inception [date of the policy] and

returned their premium." **Ab 22.**

Not only was Griffin's premium estimated, it was estimated at a reduced rate. Loveless told the Circuit Court why: "St. Paul divides the rate it charges for builder's risk coverage in half. We do that because at the beginning of the builder's risk, the contractor will have nothing but a vacant lot. There will be no risk whatsoever. At the end of the project, you will have a finished project or a finished building. It would be unfair to charge the contractor the rate we would charge on a completed building from the beginning because it isn't there So we anticipate charging a rate at the mid-point or average of the construction job That is our way of balancing out the exposure." **Ab 18–19.** Griffin's longtime insurance agent, Bill Plegge, confirmed that "[t]he premium on a builder's risk policy is weighted. It is different from an automobile policy or fire policy or package policy." **Ab 26.**

The estimated premium paid by Griffin Construction dooms its claim under the valued policy law. In every case decided under that statute this Court has confronted a fixed premium. *E.g., E. O. Barnett Bros.*, 143 Ark. at 359, 361, 220 S.W. at 465–66 (premium fixed at \$15.00 for \$600.00 of fire coverage for three years on a house); *Tedford*, 224 Ark. at 1048, 278 S.W.2d at 90 (premium fixed at \$71.50 for the first year and \$55.77 for the next four years for \$4,500.00 of fire insurance coverage on a house and barn). Not here.

- **Guidance From Other Jurisdictions**

The cases on point from other jurisdictions make the effect of Griffin's estimated premium plain. In general, builder's risk coverage contemplates an estimated and reduced premium. That signifies the openness of this kind of coverage. *E.g.*, *Buford*, 716 S.W.2d at 91–92 (describing the reduced premium required under Texas law for builder's risk). In *Jones*, as in this case, "[t]he premium paid for the policy was a reduced premium wherein the rate was based on the average amount of liability during the period of construction." *Jones*, 740 S.W.2d at 709. In light of the premium, "[t]here is no rhyme or reason for [the insurer] to be liable for the face amount of the policy before the building was completed." *Jones*, 740 S.W.2d at 710.

A handful of old cases dealing with a total loss by fire during a construction project also support reversal. *Loetscher*, 215 Ark. 23, 219 S.W.2d 629 (1949); *American Cent. Ins. Co. v. Antram*, 38 So. 626 (Miss. 1905); *King v. Phoenix Ins. Co.*, 92 S.W. 892 (Mo. 1906). Each of these cases involved a valued policy, not a modern open builder's risk policy. In each of these cases, the parties fixed—rather than estimated—the premium. And in each of these cases, the parties fixed a specific amount of coverage—rather than agreeing to floating coverage as work progressed. *Loetscher*, 215 Ark. at 24, 219 S.W.2d at 630; *Antram*, 38 So. at 626; *King*, 92 S.W. at 893. Moreover, the Missouri

Court of Appeals expressly distinguished *King* on this basis when it rejected a claim like the one Griffin Construction makes in this case. *Jones*, 740 S.W.2d at 710–11.

- **Griffin's Maryland Policy**

Consider, again, Griffin Construction's insurance with the Maryland Companies. Griffin paid a fixed premium for each kind of coverage:

COMMERCIAL PROPERTY COVERAGE PART	\$ 15,820.00
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$ 17,513.00
COMMERCIAL CRIME COVERAGE PART	\$ 179.00
COMMERCIAL INLAND MARINE COVERAGE PART	<u>\$ 2,705.00</u>
TOTAL	\$ 36,217.00

Add 96. The Maryland Companies reserved the right to "adjust" these premiums, and did so by an endorsement extending coverage, but these premiums were fixed rather than estimated. **Add 96, 98–99.** A fixed premium + a fixed coverage amount = a valued policy.

St. Paul argued repeatedly to the Circuit Court that the estimated and reduced premium paid by Griffin Construction showed that it did not have a valued policy. **Ab 24–25, 32–33; Add 90.** The Circuit Court refused to see the

reason in St. Paul's position. **Ab 25, 33.** The judgment awarding Griffin five times more coverage than it paid for was the bad result of that error.

This was not a valued fire insurance policy. It was an open builder's risk policy. Common sense, the lack of a fixed amount of coverage, the estimated premium, the clear terms of this policy, and the recent cases from other states on this identical issue, all light this Court's way to the correct decision: our valued policy statute does not apply to the open insurance Griffin Construction bought from St. Paul.

2. Applying The Valued Policy Statute To Open Builder's Risk Policies Will Defeat The Statute's Purposes

The purposes of the valued policy statute do not apply to the bargain between Griffin Construction and St. Paul. As the cases teach, the statute has four goals:

- avoiding the uncertainty of establishing value after a fire;
- guarding against over insurance;
- protecting the insurer's right to inspect the property before fixing the premium; and
- protecting the parties' valuation set before the loss.

McAlister, 171 Ark. at 575, 285 S.W. at 5; *Tedford*, 224 Ark. at 1049–51, 278

S.W.2d 90–92; *Bank of Wilson*, 312 Ark. at 542–43, 851 S.W.2d at 431–42. The judgment achieves none of those purposes. Moreover, applying the valued policy statute to Griffin's open builder's risk policy frustrates the statute's goals.

"Statutes of this sort are passed for the purpose of avoiding the uncertainty of determining the value after the fire." *Tedford*, 224 Ark. at 1049, 278 S.W.2d at 91. There are no uncertainties in this case. There will almost never be any uncertainties about value in any case involving a builder's risk policy such as this one. When a fire happens in the middle of a project, contractors like Griffin will have at hand a complete record of their work and materials expended. The timing of the event makes this contemporaneous record a near certainty.

In this case, for example, Griffin Construction documented its actual loss easily. It had records of everything it put into the project from earplugs to ice to labor to overhead. Those records formed the basis for the contractor's original claim to St. Paul. And they formed the basis of St. Paul's \$286,573.67 payment to Griffin Construction. **Ab 12, 28–29.**

Griffin and St. Paul disagreed about whether the \$61,793.77 custom elevator and staircase should be considered part of that loss, and that dispute started this suit. **Ab 1–2.** But Griffin knew to the penny what it lost. The facts of this case make the point: there is no work for the valued policy statute to do

in disputes over builder's risk policies.

"The manifest policy of the statute is to guard against over-insurance of the property." *Tedford*, 224 Ark. at 1049, 278 S.W.2d at 91. Letting this judgment stand, however, promotes over insurance. Contractors like Griffin—who are in sole control of the estimated costs of their projects—can inflate those estimates easily. Insurance companies like St. Paul might be inclined to accept such over-valuations, and then accept higher premiums to cover the unforeseen risks made real by this case.

This judgment sends two clear messages. To contractors, the word is, "Inflate your project estimates, and buy as much insurance as you can to increase the chances of a windfall after a fire." To insurance companies, the word is: "Accept over-valuations and inflated premiums on builder's risk policies to cover the windfalls to contractors when a partially completed project burns up." Neither message keeps faith with the statute. This judgment promotes over-insurance, rather than preventing it.

For policies covered by the valued policy law, "[t]he agents of the company have the opportunity to inspect the property fully before taking the insurance and fixing the amount of the premium." *Tedford*, 224 Ark. at 1049, 278 S.W.2d at 91. No. Not in this case, and not ever in a builder's risk situation. There was nothing for St. Paul or its agent to inspect. **Ab 19, 27.**

Griffin Construction's "property" was not the building. The Josiah Foster building belonged to another entity, the Griffin Family Trust. **Ab 7**. The contractor's "property" was the renovation project. It was all the materials, the elevator, the staircase, and the potential profit from the related labor.

St. Paul had no opportunity to inspect Griffin Construction's property before it issued this policy. **Ab 19, 27**. *Compare, e.g., E. O. Barnett Bros.*, 143 Ark. at 361, 220 S.W. at 466 ("[T]he agent soliciting the application for the policy stated that she had inspected the property; that the building was complete; and that she had charged the regular rate . . ."). The testimony at trial showed St. Paul's complete reliance on Griffin Construction: the total expected value of the project when done was an estimate made by Griffin alone. **Ab 7–8, 11–12, 19–20**.

Where the insured property does not yet exist, an insurance company such as St. Paul is at the insured's mercy in determining value. St. Paul never had the inspection opportunity on which the valued policy statute is premised. No company will on an open builder's risk policy; that is the nature of this insurance: it covers contractors' growing financial interest in a project during their work building that project. As St. Paul's underwriter testified, a project must be at least 70% complete before it can be valued accurately. **Ab 20**. This judgment, therefore, does not serve the third purpose of the valued policy

statute—promoting inspections before the insurance begins.

The valued policy statute's fourth and last purpose is to protect "the valuation fixed in advance by the parties by way of liquidated damages . . . [incurred] without fault of the insured." *Tedford*, 224 Ark. at 1049, 278 S.W.2d at 91. No such purpose appears in this case.

This was an "Open Builder's Risk" policy. **Add 8.** Valuation was not closed or settled. The parties fixed no valuation in advance. Griffin Construction estimated the total value of its planned renovation of the Josiah Foster building. But the policy provided, and all the parties knew, that the project's final value would vary. In builder's risk policy cases—where an actual, agreed value of the insured interest is missing—the statutory purpose of fixing a valuation before a loss cannot be served.

This Court is "duty bound to reject any interpretation of a statute that results in absurdity or injustice, leads to contradiction, or defeats the plain purpose of the law." *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 690, 934 S.W.2d 211, 214 (1996). The open builder's risk policy St. Paul issued to Griffin Construction is not a valued policy covered by the statute. No other conclusion achieves the purposes of Arkansas law. This Court should reverse the judgment to reflect that legal truth.

3. The Uncompleted Part Of The Renovation Project Was Not Real Property Covered By The Statute

The valued policy law "shall not apply to personal property." Ark. Code Ann. § 23-88-101(b). Those are the plain, unambiguous words of the statute. The cases so hold. *E.g.*, *Farmers Union Mut. Ins. Co. v. Denniston*, 237 Ark. 768, 776–77, 376 S.W.2d 252, 256–57 (1964); *Farm Bureau Mut. Ins. Co. v. Barnes*, 228 Ark. 68, 69–70, 305 S.W.2d 673, 673–74 (1957). The Circuit Court's rulings and the Judgment, however, offend that settled rule. Because Griffin Construction seeks coverage for what is, at best, personal property, the valued policy law does not apply.

Griffin Construction did not lose \$1,500,000.00 of real property. St. Paul made Griffin whole for the fixtures—the actual improvements the contractor made in the building—lost in the fire. **Add 78.** St. Paul also paid the contractor for non-fixtures—for example, profit, labor, ice, and gasoline—covered by the policy. But the contractor wants more. Griffin wants \$1,213,426.33 more from St. Paul. That figure represents the balance of contractor's estimate of the total value of the completed project, less what St. Paul paid for the completed improvements. It is an estimate of the total materials and labor the contractor would have used, and the total profit it would have made, on the finished job. The statutory difficulty for Griffin is

this: the "more" it wants is personal property not covered by the valued policy statute.

"The legislature undoubtedly had a reason for excluding personal property from the operation of the valued policy law. Why was that distinction made?" *Barnes*, 228 Ark. at 70, 305 S.W.2d at 674. Speaking for a unanimous Court, Justice George Rose Smith answered that question later in the *Barnes* decision: the legislature excluded personal property to promote pre-loss inspections and pre-loss agreements on the value of the property insured. "The valued policy law was limited to real property because that type of property is of a permanent nature, is readily open to inspection, and is susceptible of a reasonably accurate valuation by the insurer." *Barnes*, 228 Ark. at 70, 305 S.W.2d at 674.

Personal property is different. "[P]ersonal property, such as a stock of merchandise, often varies in quantity and in value and may be so scattered and so packaged that the prospective insurer cannot determine its worth by inspection." *Barnes*, 228 Ark. at 70, 305 S.W.2d at 674. The "real character" of the property insured therefore controls whether it is covered by the valued policy law. *Denniston*, 237 Ark. at 776–77, 376 S.W.2d at 256–57.

What was the real character of Griffin Construction's interest in the unfinished part of the renovation project? That interest was not something

permanent. The final value of the improvements, Griffin has always acknowledged, was an estimate about something that did not exist. **Ab 11–12.** The contractor's "property" was not readily open to inspection. **Ab 27.** And that "property" was not susceptible to a reasonably accurate valuation. **Ab 19.** Instead, like the stock of merchandise described by the *Barnes* Court, a contractor's interest in an uncompleted building project is elusive. Its value changes daily. **Ab 18–19.** The materials to be used will be scattered and packaged so that the insurer cannot determine value by inspection. 228 Ark. at 70, 305 S.W.2d at 674. In one sense a building project is even more elusive than merchandise: when coverage begins, there is often nothing there to inspect. That was true here.

Griffin Construction's interest in the uncompleted construction project was personal, not real, property. That is its "real character . . ." *Barnes*, 228 Ark. at 70, 305 S.W.2d at 674. Our valued policy statute, therefore, does not apply to it. Ark. Code Ann. § 23-88-101(b); *Denniston*, 237 Ark. at 776–77, 376 S.W.2d at 256–57.

VIII.
CONCLUSION

Griffin Construction's theory of recovery is creative, but it is not the law in Arkansas. Our valued policy statute does not embrace open builder's risk insurance policies. No Arkansas precedent supports the contractor's claim to recover what it did not lose. The persuasive cases from other states support St. Paul. Our statute cannot apply here without undermining the purposes for which it stands. It cannot apply, moreover, unless a contractor's expectation interest in completing a project is real property.

Griffin has already received what it deserved from St. Paul: the value of everything the contractor lost in the fire, including its expected profit. Griffin has also recovered the value of the Josiah Foster building itself, a building the contractor did not even own, from another insurance policy. Griffin is not entitled to any more.

Respectfully submitted,

Curtis L. Nebben (80106)
BASSETT LAW FIRM

D. P. Marshall Jr. (90087)
BARRETT & DEACON

By _____
Attorneys for Appellant St. Paul

IX.

CERTIFICATE OF SERVICE

I hereby certify that I served St. Paul Fire & Marine Insurance Company's Abstract, Appellant's Brief, and Addendum by mailing a copy of it to R. Gunner DeLay, RUSH, RUSH & COOK, 1713 South D Street, Fort Smith, Arkansas 72901, and Hon. John G. Holland, Sebastian County Courthouse, 35 S. 6th Street, Fort Smith, Arkansas 72901, on this ____ day of November, _____.

D. P. Marshall Jr. (90087)

X.

Case Name: St. Paul Fire & Marine Insurance Company v. Griffin
Construction Company
Docket Number: CV-98-990
Title of Brief: Appellant's brief

CERTIFICATE OF COMPLIANCE

I have submitted and served on opposing counsel (except for incarcerated pro se litigants) an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.

Identification of paper documents not in PDF format:

The following original paper documents are not in PDF format and are not included in the PDF document(s):

None

(Signature of filing party)

D. P. Marshall Jr.
(Printed name)

BARRETT & DEACON
(Firm)

(Date)

XI.

ADDENDUM

A. Pleadings

1.	Griffin's First Amended Complaint, Record ("R") 5	Add 1
	• Exhibit - St. Paul's Builder's Risk Policy, R 9	Add 4
2.	St. Paul's Answer To First Amended Complaint, R 37	Add 28
3.	St. Paul's Responses To Griffin's Requests For Admission, R 51	Add 31
4.	St. Paul's Responses To Griffin's Interrogatories And Requests For Production (Excerpt), R 55	Add 35
5.	St. Paul's Motion For Summary Judgment, R 91	Add 38
	• Exhibit B - Statement Of Agreed Facts, R 118	Add 42
6.	Griffin's Counter-Motion For Summary Judgment And Response To St. Paul's Motion For Summary Judgment, R 129	Add 44
	• Exhibit - Affidavit Of Ida C. Hunter, R 132	Add 47
7.	Griffin's Second Amended Complaint, R 144	Add 49

8.	St. Paul's Motion To Strike Second Amended Complaint Or For A Continuance, R 155	Add 52
9.	Trial Setting, R 163	Add 54
10.	St. Paul's Answer To Second Amended Complaint, R 173	Add 55
11.	St. Paul's Response To Griffin's Counter-Motion For Summary Judgment, R 182	Add 59
	<ul style="list-style-type: none"> • Exhibit "A" - Excerpt From The Deposition of Ida. C. Hunter, R 185 (abstracted at Ab 1 and not included in the addendum) • Exhibit "B" - Hunter Memorandum, Check Stubs, And Deed, R 206 	 Add 61 Add 62
12.	St. Paul's Amended Responses To Requests For Admission, R 219	Add 69
13.	St. Paul's Amended Responses To Interrogatories And Requests For Production Of Documents, R 222	Add 72
14.	Griffin's Third Amended Complaint, R 231	Add 77
15.	Griffin's Motions In Limine, R 234	Add 80
16.	St. Paul's Motion to Amend Responses To Requests For Admission, R 242	Add 82
17.	St. Paul's Answer To Third Amended Complaint, R 254	Add 84

18.	Verdict Form, R 257	Add 87
19.	Judgment, R 280	Add 88
20.	St. Paul's Post-Trial Motions, R 304	Add 90
	• Exhibit A - Maryland Co. Check Stubs, R 308	Add 94
	• Exhibit B - Maryland Co. Policy (Excerpt), R 310	Add 96
21.	Griffin's Response To Post-Trial Motions And Motion To Strike, R 551	Add 112
22.	Order Denying Post-Trial Motions, R 578	Add 114
23.	St. Paul's Notice Of Appeal, R 579	Add 115
24.	Supersedeas, R 588	Add 117

B. Trial Exhibits

1.	Plaintiff's Exhibit No. 1 - Reporting Form, R 680	Add 118
2.	Plaintiff's Exhibit No. 3 - Binder, R 718	Add 119

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

V.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

AMENDED COMPLAINT

Comes now the Plaintiff, Griffin Construction Company by and through its attorney, Mr. R. Gunner Delay, and for its Complaint filed herein hereby states:

I.

The Plaintiff is an Arkansas corporation, with its principal place of business in Fort Smith, Sebastian County, Arkansas. The Defendant is a corporation, duly licensed and registered to do business in the State of Arkansas. The contract for insurance, which is the subject of this action, was entered into in Fort Smith, Sebastian County, Arkansas. Therefore, this court has jurisdiction over the subject matter hereto and venue is proper in this county.

II.

On or around September 9, 1996, the Plaintiff obtained a builder's risk policy from the Defendant. Among other things the policy of insurance provided that the Defendant would protect the insured property against "risk of direct physical loss or damage" and that the Defendant "would cover the Plaintiff's financial interest in the insured building."

(Attached hereto is a copy of the Defendant's policy.)

SH & COOK
1TH "D" ST.
H, AR. 72901
'85-4466
) 785-4484

FT. SMITH DISTRICT
JUN 16 1997
9 44
C. GUNNER DELAY

III.

On or around December 20, 1996, the property which was covered by the Defendant's policy of insurance was destroyed by fire. Coverage was provided by the Defendant for all claims submitted by the Plaintiff, except for two elevator carriages, elevator parts and accessories, fabricated iron staircase components, and hand railings. These items were not destroyed by the fire but have no value to the Plaintiff, or any other party, because they were custom made for the building which was completely destroyed by fire.

IV.

The Defendant's failure to provide coverage for the items listed above constitutes a breach of contract and entitles the Plaintiff to recover damages from the Defendant in the amount of \$61,793.77.

V.

The Plaintiff is also entitled to the statutory penalty of 12% against the Defendant, together with prejudgment interest, attorney's fees and costs.

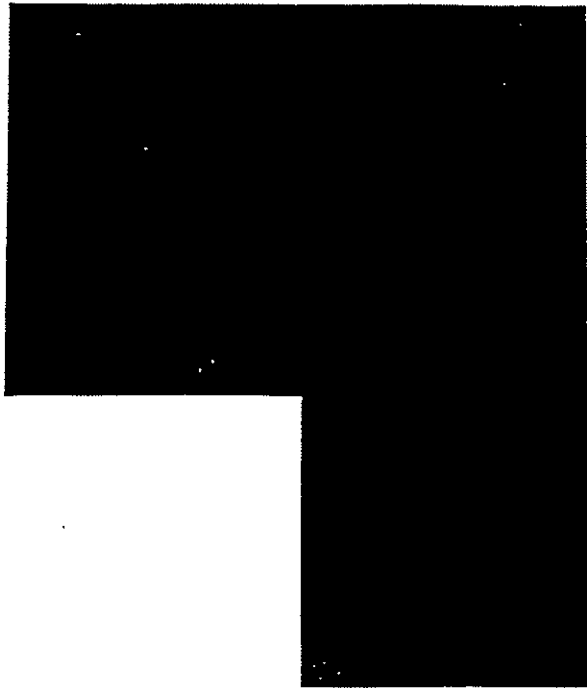
VI.

WHEREFORE, Plaintiff prays that it be awarded judgment against the Defendant in amount of \$61,793.77 together with the 12% penalty, prejudgment interest, attorney's fees and costs, and all other relief to which it may be entitled.

RUSH, RUSH & COOK
Attorneys at Law
1713 South "D" Street
Fort Smith, AR 72901
Phone: (501) 785-4466
Fax: (501) 785-4484

BY: R. Gunner DeLay
R. Gunner DeLay
ABN: 88091

ISH & COOK
JTH "D" ST.
FH. AR. 72901
785-4466
1) 785-4484



*Inland
Marine*

FILED
JUL 30 AM 11 21
ORR. CLERK. SEB. CO.

Contents

We've designed your policy so it can be tailored to fit your individual insurance needs. Because each policy may be different, the pages aren't numbered consecutively. Here's a list of commonly referred to items that appear in your policy.

Introduction Page

Name and mailing address of insured
Name and location of insurance company
Policy dates
Former policy number
Your premium
Name and address of our authorized representative

Policy Forms List

The Policy Forms List shows all forms included in your policy when it begins.

General Rules

The General Rules show certain conditions that apply to your policy.

What To Do If You Have A Loss

Coverage Summary

The Coverage Summary shows the variable information that affects your coverage.

Insuring Agreements

Each type of coverage included in your policy is provided by a separate form called an insuring agreement.

Endorsements

Endorsements may be added to change your policy.

Company: ST. PAUL FIRE & MARINE INSURANCE COMPANY

J
S
J GRIFFIN CONSTRUCTION COMPANY
P. O. BOX 2207S
FORT SMITH AR 72902-2207
J

Policy Inception/Effective Date: 09/09/96
Agency Number: 0303236
Transaction Type:
POLICY IS NEW
Transaction number: 001
Processing date: 09/17/96 09:15
Policy Number: IM09101516

A THE CASHION COMPANY INC
P.O. BOX 550
LITTLE ROCK AR 72203
J

Policy Number	Description	Amount	Surtax/Surcharge
65	INLAND MARINE POLICY	\$4,000.00	

Add 6

INTRODUCTION

This policy protects against a variety of losses. There are also some restrictions. We've written this policy in plain, easy-to-understand English. We encourage you to read it carefully to determine what is and what is not covered, as well as the rights and duties of those protected.

Policy Number: IM09101516

DALLAS
BROOKHOLLOW ONE
2301 EAST LAMAR BLVD., STE. 400
ARLINGTON TX 76006-7472

In return for your premium, we'll provide the protection stated in this policy.

Your policy is composed of General Rules, an explanation of What To Do If You Have A Loss, one or more Coverage Summaries, and one or more Insuring Agreements explaining your coverage. It may also include one or more endorsements. Endorsements are documents that change your policy. The Policy Forms List shows all the forms included when this policy begins.

We, us, our and ours mean **St. Paul Fire and Marine Insurance Company**. We're a capital stock company located in St. Paul, Minnesota.

One of our authorized representatives will also countersign the policy.

The words you, your and yours mean the insured named here, which is a **CORPORATION**
GRIFFIN CONSTRUCTION COMPANY
P. O. BOX 2207S
FORT SMITH AR 72902-2207

This policy will begin on 09/09/96
and will continue until 09/09/97
Your former policy number is automatically replaced: NEW

Your premium for the policy period shown is: \$4,000.00
However, please refer to the Premiums section of the General Rules to see how final premiums are determined.

Our authorized representative is:
1303236
THE CASHION COMPANY INC
P.O. BOX 550
LITTLE ROCK AR 72203

Oliver S. Herdabe
President
John D. Ockberg
Secretary

Authorized Representative Date
Ken A. Pfeiffer MB *10/17/96*

Processing Date 09/17/96 09:15 001

CONTRACTOR'S AND OWNER'S PROTECTION COVERAGE SUMMARY

The **St Paul**

This Coverage Summary describes the covered construction project and shows other information that affects your insurance.

Coverage only applies where a limit of coverage is shown.

Description And Location Of Covered Project	Name And Mailing Address Of Contractor
Various - Open Builders Risk 35 Annual Rate for Frame 25 Annual Rate for Renovations	

Limits Of Coverage	Mortgage Holder:
Project limit \$ 3,000,000	First National Bank ATTN: Mont Echols P. O. Box 7 Ft. Smith, AR 72902
Temporary location \$ 300,000	
Property in transit \$ 300,000	Deductible
Each flood \$ N/A	Each occurrence 1,000
Each earthquake \$ N/A	Each flood N/A
Catastrophe limit \$ 3,000,000	Each earthquake N/A

Reporting Rates and Premiums

I agree to pay your premium in the manner indicated below:

- Non-Reporting - subject to final adjustment
- Actual value reporting
- Completed value reporting

Quarterly Rate	Estimated Premium	Minimum Premium
See below	\$ 4,000.00	\$ 1,500.00
Quarterly Rates:	.0875 (Frame)	
	.0625 (renovations)	

Name of Insured FIN CONSTRUCTION COMPANY	Policy Number IM09101516 Processing Date 09/17/96 09:15 001	Effective Date 09/09/96
---	--	-------------------------

Add 8

POLICY FORM LIST

Here's a list of all forms included in your policy, on the date shown below. These forms are listed in the same order as they appear in your policy.

Title	Form Number	Edition Date
Introduction - St. Paul Fire And Marine Insurance Company	40800	05-87
Policy Form List	40705	05-84
General Rules	40701	05-84
Arkansas Required Endorsement	40516	08-94
What To Do If You Have A Loss	40814	11-91
Contractor's And Owner's Protection Coverage Summary	42646	08-90
Contractor's And Owner's Property Protection	42642	08-90
REPORTING	40502	01-80

Name of Insured	Policy Number IM09101516	Effective Date 09/09/96
GRIFFIN CONSTRUCTION COMPANY	Processing Date 09/17/96	09:15 001

GENERAL RULES

These rules apply to the entire policy unless you're notified otherwise.

Special Rights And Duties Of The First Named Insured

You agree that when more than one insured is named in the introduction, the first named insured has special rights and duties. These rights and duties are explained in the following General Rules:

- Premiums.
- Cancellation.
- Policy Changes.

Your Policy Period

Insuring agreements in this policy begin at 12:01 a.m., standard time, on the effective date. If this policy replaces policies ending at noon, other than 12:01 a.m., coverage begins at noon when the old policy ends.

Insuring agreements added to this policy after its effective date begin on the effective date of the added agreement.

Coverage ends at 12:01 a.m., standard time, on the expiration date. If all or part of this policy is cancelled for any reason before that date, that coverage will end at 12:01 a.m., standard time, on the cancellation date.

Premiums

We compute the premium you pay for this policy using information available at the time. So, all or part of your premium may be based on estimates. If estimates are used, we'll compute your actual premium when complete information is available at the end of the policy period. If it's more than you've paid, you'll owe us the difference. If it's less, we'll return the difference. But you won't pay less than any minimum annual premium agreed on. The first named insured is responsible for paying all premiums and will be the one to whom we'll pay any return premiums.

You must keep accurate records of the information we'll need to compute your premium. Your

agent can explain the type of records we'll need. The first named insured agrees to send copies of these records at the end of each policy period - or any other time we request them.

Our Right To Inspect And Audit

You agree to let us inspect your property and business operations during normal business hours while this policy is in force. We're not, however, required to make inspections. Nor will we guarantee that your property or operations are safe, or that they conform to any laws, codes, standards or regulations. This rule also applies to any organization which makes insurance inspections, surveys, reports or recommendations for us.

You also agree to let us examine and audit your financial books and records that relate to this insurance at any time up to 3 years after this policy ends.

Policy Changes

This policy contains all the agreements between you and us concerning this insurance. The first named insured is authorized to make changes in this policy with our consent. This policy can only be changed by a written form included as part of the policy. This form must be signed by one of our authorized representatives.

We make changes in our standard insurance policy forms from time to time. These changes must conform to state law and are filed with insurance supervisory authorities for approval. While your coverage is in force we can make any change in the form of this policy that broadens or extends your coverage. If we do, and the change can be added to your policy without increasing the premium, you'll automatically receive the benefit of the extended or broadened coverage on the day the change is effective in your state.

Assignment And Transfers

Neither you nor anyone else covered under this policy can assign or turn over your interest in it without our written consent attached to the policy.

However, there is one exception. If you are an individual named insured and you die, your rights and duties will be transferred to your legal representative; but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties concerning that property.

Cancellation

The first named insured can cancel this policy in whole or part at any time.

To cancel, the first named insured must deliver the policy or the part to be cancelled to us or to any of our authorized agents. If this isn't possible notify us by mail and include the date coverage is to end. We'll refund the unused premium to the first named insured, less a charge for early cancellation.

If we cancel this policy, we'll mail or deliver a cancellation notice to the first named insured at least 30 days before coverage will end: 10 days if we're cancelling for nonpayment of premium. If notice is mailed, proof of mailing to the first named insured's last mailing address known to us will be considered proof you were notified. Any unused premium will be refunded to the first named insured as soon as possible. However, the cancellation will be effective whether or not we've made or offered a refund.

Recovering Damages From A Third Party

Any person protected under this policy may be able to recover all or part of a loss from someone other than us. Because of this, each protected person must do all that's possible after a loss to preserve any right of recovery available. If we make a payment under this policy that right of recovery will belong to us.

If we recover more than we've paid, the excess will belong to the person who had the loss. But we'll deduct our recovery expenses first.

Fraud And Misrepresentation

This policy is void if you or any other protected person hide any important information from us, mislead us, or attempt to defraud or lie to us about any matter concerning this insurance - either before or after a loss. Of course, everyone makes mistakes. Unintentional errors or omissions won't affect your rights under this policy.

Appraisal Of Property Disputes

If your policy includes property insurance and agreement can't be reached on the amount of a property loss or the value of the property, the following procedure will be used:

1. One of us will make a written demand for an appraisal.
2. Each will select a competent and impartial appraiser and notify the other of the selection within 30 days of the demand.
3. The appraisers will select a competent and impartial umpire. If they can't agree on an umpire, either may ask that one be selected by a judge of a court having jurisdiction.
4. The appraisers will state separately the amount of the loss and the value of the property. If they don't agree, they'll submit their appraisals to the umpire. Agreement of two out of three will be binding.

You'll pay your appraiser and we'll pay ours. Other costs of the appraisal and the umpire will be shared equally by you and us.

If we submit to an appraisal, we'll still retain our right to deny the claim.

How State Law Affects This Policy

Any part of this policy that conflicts with state law is automatically changed to conform to the law.

Lawsuits Against Us

No one can sue us to recover under this policy unless all of its terms have been lived up to.

If your policy includes property insurance. Any lawsuit to recover on a property claim must begin within 2 years after the date on which the direct physical loss or damage occurred. State law gives you more time for property located in these states:

- North Dakota, North Carolina, Maryland - 3 years;
- Wyoming - 4 years; and
- Kansas, Nebraska - 5 years.

If your policy includes liability insurance. No one can sue us on a liability claim until the amount of the protected person's liability has been finally decided either by a trial or by a written agreement signed by the protected person, by us and by the party making this claim. Once

liability has been determined by judgment or by written agreement, the party making the claim may be able to recover under this policy, up to the limits of coverage that apply. But that party can't sue us directly or join us in a suit against the protected person until liability has been so determined.

If the protected person or his or her estate goes bankrupt or becomes insolvent, we'll still be obligated under this policy.

Provision Required By Law

"This policy is issued under and in pursuance of the laws of the State of Minnesota, relating to Guaranty Surplus and Special Reserve Funds." Chapter 437, General Laws of 1909. (This provision applies only if this policy is issued in the St. Paul Fire and Marine Insurance Company.)

This endorsement changes your policy to comply with Arkansas law.

Information Disclosure

If fire loss occurs, we are required by state law to furnish relevant information relating to the loss to any state or federal law enforcement or other agency which has responsibility for investigation of fires if:

- the agency requests the information, or
- after investigating the fire, we have reason to believe it was not of accidental origin.

If we provide information to a fire investigation agency, we will:

- notify you of that action within 30 days; and
- send you a copy of the report.

Claim Information

The following is added to the General Rules if your policy includes any of the following coverage parts:

- Commercial General Liability - Claims Made;
 - Liquor Liability - Claims Made; or
 - Products And Completed Work - Claims Made.
- But only for these coverage parts.

We will provide the first Named Insured the following information relating to this and any preceding liability claims-made coverage part we have issued to you during the previous three years:

- The date and description of the event on closed claims including the amount of payment, if any.
- The date and description of the event on open claims including the amount of payments and reserves, if any. Amounts reserved are based on our judgement. They are subject to change and should not be regarded as ultimate settlement values.
- The date and description of each event you reported to us for which no amounts have been paid or reserved.

If we cancel or elect not to renew these Liability - Claims Made coverage parts, we'll provide this information within 15 days of when we

send our cancellation or non-renewal notice. Otherwise, we will provide this information only if we receive a request from the first Named Insured no later than 60 days after the end of the policy period. In this case, we will provide this information within 30 days of receipt of the request.

We collect this information for our own business purposes. We do so as carefully and accurately as we can. In giving this information to the first named insured, we don't make any warranties or promises to anyone that this information has no errors. Any cancellation or non-renewal will take effect even if we accidentally provide incorrect information.

If Your Building Is Mortgaged

Your policy may include a Property Protection Agreement which contains an If Your Building Is Mortgaged section. If it does, that section is replaced by the following.

If the Coverage Summary identifies a mortgage holder, this section applies. We'll make payments for losses to you and any mortgage holder based on the interest each has in the covered property.

Rights of a mortgage holder. A mortgage holder's right to receive payment won't be affected by any of the following:

- your actions or inactions, or those of the building's owner;
- foreclosure or other similar proceedings;
- changes in title; or
- use of the building for a more hazardous purpose than allowed by this agreement.

If you fail to make a claim for your loss to your building, your mortgage holder can make a claim by submitting a "Proof Of Loss Statement". The same rules and conditions that apply to you will apply to the mortgage holder.

Duties of a mortgage holder. Your mortgage holder must notify us upon learning that the

insured building is being used for a purpose that increases the risk of damage. Your mortgage holder must also inform us upon learning that the building is being sold or that there's a change in occupancy.

If you fail to pay any premium under this agreement, we can request payment from the mortgage holder. We may also ask your mortgage holder to pay any extra premiums we require because the building is being used for more hazardous activities. If the mortgage holder chooses not to pay this extra premium, coverage will end.

Transfer of mortgage holder's rights to us. If we make a payment to your mortgage holder for loss or damage that we claim isn't covered by this agreement, the mortgage holder's rights to recover that amount from you will then belong to us. But that won't affect your mortgage holder's rights to recover the remaining amount of the mortgage debt from you.

We also have the right to pay off the mortgage debt. If we do, we'll take over the mortgage holder's right to be repaid by you.

Cancellation notice to mortgage holder. We'll cover our mortgage holder's interest in your property for 30 days from the time we give the mortgage holder notice of cancellation of this agreement - 10 days if we're cancelling for non-payment of premium.

Punitive Damages Exclusions

Our policy may include an agreement that contains a Punitive Damages Exclusion. If it does, that exclusion is replaced by the following.

Punitive damages. We won't cover claims for punitive damages. Punitive damages are damages imposed to punish a wrongdoer and deter others from similar conduct.

Cancellation

The Cancellation section of the General Rules is replaced by the following.

The first named insured can cancel this policy in whole or part at any time.

To cancel, the first named insured must deliver the policy, or the part to be cancelled, to us or to any of our authorized agents. If this isn't possible, notify us by mail and include the date the coverage is to end. The first named insured will get a refund for the unused premium, less a charge for early cancellation. We'll figure your refund in that case by following our customary short rate schedule in effect. However, we'll keep at least \$100 as a minimum charge. If the policy premium is \$100 or less, no refund will be made.

How we can cancel policies in effect 60 days or less If your policy has been in effect 60 days or less, we can cancel for any reason during this period. If we do, we'll mail or deliver a notice of cancellation to the first named insured at least 30 days before coverage will end.

How we can cancel policies in effect more than 60 days. If your policy has been in effect more than 60 days, or is a continuation policy, we can cancel only for the following reasons.

1. *Nonpayment of premium.*
2. *Fraud or misrepresentation.* We can cancel if we discover that in obtaining this policy, or presenting a claim under this policy, you or your representative have committed fraud or made a material misrepresentation.
3. *Change in the risk.* We can cancel if, after we have issued or renewed your policy, a material change occurs in the risk we're protecting that increases the hazard we're insuring against.
4. *Violation of local law.* We can cancel if you violate any local fire, health, safety, or building regulation that involves covered property. But only if doing so increases any hazard you're insured against.
5. *Nonpayment of membership dues.* We can cancel if you fail to pay required membership dues to an organization where our laws require that you are a member to have this insurance.
6. *Breaking the rules of this policy.* We can cancel this policy if you violate any of this policy's rules.

If we cancel for any of these reasons, we'll mail or deliver a notice to the first named insured. If we cancel for nonpayment of premium, we'll send the notice at least 10 days before coverage will end. If we cancel for any other reason, we'll send the notice at least 30 days before coverage will end. The notice will state the reason for cancellation.

Special rule for contractors. If your policy includes Contractors Commercial General Liability Protection or Contractors Umbrella Excess Liability Protection, the following applies:

If we cancel this policy, we'll mail or deliver a cancellation notice to the first named insured at least:

- 10 days before coverage will end if we cancel for nonpayment of premium if the policy has been in effect less than 60 days; 30 days before coverage will end if the policy has been in effect 60 days or more; or
- 90 days before coverage will end if we cancel for any other reason we explain above no matter how long the policy has been in effect.

Policies issued for more than one year. We may issue this policy for a period of more than 12 months with the premium adjusted each year using our rates and rules in effect that year.

Uninsured premium. If this policy is cancelled, we'll send any premium refund that's due to the first named insured. We'll figure the premium on a pro-rata basis if:

- we cancel the policy;
- we cancel the policy, but re-issue the policy under another member company of the St. Paul Group;
- the policy is cancelled because you no longer have an insurable interest in the property or business operation that's being insured; or
- the policy is cancelled after the first year of a policy that was prepaid and written for a period of more than one year.

Cancellation will take effect regardless of whether or not we've made or offered a refund.

Special premium refund rules – the minimum amounts we'll keep. If the first named insured cancels the policy for a reason other than we have just described, we'll refund 90% of the earned premium figured on a pro-rata basis.

But you'll never pay less than the minimum premium that is shown in the Introduction. We'll keep at least \$100 of the unused premium in most cases if the first named insured decides to cancel. The following are exceptions:

- We'll keep at least \$250 of any unused premium for Boiler and Machinery or Systems/Equipment Breakdown Protection;
- We'll keep the minimum premium we figured for any annual period for the Premises/Operations Coverage and the Products/Completed Operations Coverage, of any Commercial General Liability Protection.
- If Commercial Auto Protection covers only snowmobiles or golfmobiles, we'll keep \$100 or the whole premium we figured for this Commercial Auto Protection; and
- If Commercial Auto Protection covers an auto with an attached amusement device, we'll keep the whole premium we figured for the amusement device and at least \$100 for the auto that the device was attached to.

Liability Protection

If your policy includes Liability Protection, it may include a definition of the word "suit." If so, the following replaces that definition:

Suit means a civil proceeding in which damages are alleged. Also, it includes an arbitration proceeding for such damages to which you may consent or may submit with our consent.

Extended Reporting Period Premium Factors

If your policy includes any of the following claims-made insuring agreements, the paragraph shown below is added to the When This Agreement Covers Section of that agreement:

- Commercial General Liability Protection - Claims Made;
- Liquor Liability - Claims Made; or
- Products And Completed Work Protection - Claims Made,

In determining the additional premium for the Extended Reporting Period Endorsement, we may take into account:

- the exposures insured;
- previous types and amounts of insurance;

the limits of coverage available under your agreement for future payment of damages; and other related factors.

Technology Errors And Omissions Protection - Claims-Made

If your policy includes Technology Errors And Omissions Liability Protection - Claims-Made, the following replaces the "How the limits of coverage apply to the limited and extended reporting periods" part of the Limits Of Coverage section.

The limits of coverage that apply for the limited and extended reporting period will be at least: the amount of the limit of coverage that is left as of the ending date of this agreement; or 50% of the limit of coverage that applied on the beginning date of this agreement, whichever is more, for claims or suits first made or brought during the limited reporting period or extended reporting period, if it applies.

Appraisal Of Property Disputes

The following replaces the Appraisal Of Property Disputes section in the General Rules.

If your policy includes property insurance and an agreement can't be reached on the amount of a property loss or the value of the property, the following procedure may be used. This procedure is voluntary.

One of us will make a written request for an appraisal.

Each will select a competent and impartial appraiser and notify the other of the selection within 30 days of the request.

The appraisers will select a competent and impartial umpire. If they can't agree on an umpire, either may ask that one be selected by a judge of a court having jurisdiction.

The appraisers will state separately the actual cash value and amount of loss. If they don't agree, they'll submit their appraisals to the umpire.

You'll pay your appraiser and we'll pay ours. Other costs of the appraisal and the umpire will be shared equally by you and us.

If we submit to an appraisal, we'll still retain our right to deny the claim.

An appraisal decision won't affect your right to sue us.

Lawsuits Against Us

The following replaces the If your policy includes property insurance part of the Lawsuits Against Us General Rule.

If your policy includes property insurance. Any lawsuit to recover on a property claim must begin within the period of time required by law.

Non-Profit Organization Management Liability

If your policy includes Non-Profit Organization Management Liability Protection, the following replaces the "How the limit of coverage applies to the limited and extended reporting periods" section of your agreement.

If the Extended reporting period is added by endorsement, the limit of coverage that applies will be the greater of the amount of coverage remaining in the expiring policy or fifty percent (50%) of the limit of coverage for the most recent policy year.

Arbitration

If your policy includes any agreement that contains a section that refers to arbitration, that section is replaced by the following.

We can choose either to repair or replace the property or to pay its actual cash value. In case of disagreement between us on the actual cash value or the cost of repair or replacement, the matter will be decided by arbitration.

Either party may make a written request for arbitration. However, arbitration will take place only if you and we agree voluntarily to have the value or cost of the property arbitrated. An arbitration decision won't be binding on either party. However, even if there is arbitration, we'll still retain our right to deny the claim.

Other Terms

All other terms of your policy remain the same.

WHAT TO DO IF YOU HAVE A LOSS

You or other protected persons are required to perform the duties described below when a property loss that may be covered under this policy happens or an accident or incident happens that could result in liability damages covered under this policy. Failure to comply

could affect coverage. The insuring agreements contained in this policy determine what is covered. As a result, you should read them carefully to understand the extent of the coverage provided.

When This Policy Provides Property Protection

If there is a property loss that may be covered by property protection provided in this policy you must:

1. Notify the police if a law may have been broken.
2. Tell us or our agent what happened as soon as possible. Include the time and place of the event, a description of the property and the names and addresses of any witnesses.
3. Do what is reasonable and necessary to protect covered property from further damage. Keep a record of your expenses for consideration in your claim.
4. If feasible, separate the damaged property from the undamaged and make an inventory of the damaged items.
5. Cooperate with us in the investigation and settlement of the claim. Permit us to inspect the damaged property and any records pertaining to your loss as many times as may be required. Permit us to take samples of damaged and undamaged property for testing and analysis.
6. Allow us to examine you or any other insured under oath while not in the presence of any other insured. We may do this whenever reasonably required about any matter relating to this insurance or the claim. Any insured we examine must sign a copy of their answers.
7. Send us a signed, sworn proof of loss containing the information we need to resolve the claim. You must do this within 60 days after our request. We'll supply the forms. We'll pay within 30 days after we reach agreement with you.

When This Policy Provides Liability Protection

If an accident or incident happens that may involve liability protection provided in this policy, you or any other protected person involved must:

1. Notify the police if a law may have been broken.
2. Tell us or our agent what happened as soon as possible. Do this even though no demand for damages has been made against you or any other protected person, but you or another protected person is aware of having done something that may later result in a demand for damages. This notice should include all of the following:
 - The time and place of the accident or incident;
 - The protected person involved;
 - The specific nature of the accident or incident including the type of demand for damages that may result; and
 - The names and addresses of any witnesses and injured people.
3. Send us a copy of all written demands. Also send us a copy of all legal documents if someone starts a lawsuit.
4. Cooperate and assist us in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses.
5. Not assume any financial obligation or pay out any money without our consent. But this rule doesn't apply to first aid given to others at the time of an accident.

Important Notice For Health Care Providers

If your policy includes one of our claims-made medical professional liability protection insuring agreements, you should also read the When This Agreement Covers Section of that agreement. We won't consider a "Patient Incident Report," "Variance Report," or any other report made for loss prevention purposes to be your report of a claim. This applies even if you send it to us or one of our agents.

We've designed this agreement to protect construction projects and the materials and equipment used in their completion.

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Other Rules For This Agreement	6	We'll insure loss or damage to covered property that results when you're forced to remove it from a location endangered by a covered cause of loss. We'll cover the property while it's being moved to a safe place and continue your insurance for 10 days at each place where it's kept. But the total amount of insurance for all locations combined won't exceed the limit of coverage at the original location. We'll also cover this property while it's being returned to the insured location.
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What This Agreement Covers		

We'll protect insured property against risks of direct physical loss or damage except as excluded in the Exclusions-Losses We Won't Cover section of this agreement.

Property Covered

We'll cover your financial interest in insured building and installation projects and structures at the location shown in the Coverage Summary. Your insured installation projects include the cost of:

excavation, grading or filling; and

Debris Removal Coverage

If your insured property is damaged by a covered cause of loss we'll pay a limited amount for the cost of removing debris of damaged insured property from the location described in the Coverage Summary.

We'll pay up to 25% of the amount paid for direct physical loss or damage. The amount paid for direct physical loss includes any deductibles you pay. If debris removal costs exceed the 25%, or if the total amount of loss paid and debris removal costs combined exceed the limit of coverage that applies, we'll also

pay up to an additional \$5,000 for debris removal per location in each event.

We won't pay for any undamaged property which must be removed because the enforcement of any ordinance, regulation or law that requires you or anyone else to: test for, monitor, clean-up; remove, contain, treat, detoxify or neutralize; or in any way respond to, or assess the effects of pollutants.

And we won't pay for the debris removal of property which is a pollutant and which must be removed from water or from below the surface of the ground. Limited coverage for Pollution clean-up and removal is provided under Additional Benefits.

We'll only pay debris removal expenses that are reported to us within 180 days of the earlier of: the date of direct physical loss or damage; or the end of the policy period.

Property Not Covered

We won't cover:

land, land value and land restoration.

water, other than that in a swimming pool.

money, securities, deeds, accounts, bills, notes and other evidences of debt.

contractor's machinery, tools, equipment or property of similar kind which will not become permanent part of the building or structure.

grass, plants, shrubbery or trees other than that indicated under Additional Benefit for outdoor trees, shrubs and plants.

automobiles, trucks, trailers, aircraft, watercraft and any other vehicle whether or not it needs to be licensed. But we'll cover office trailers temporarily at the insured location.

Additional Benefits

The following benefits are in addition to the limits of coverage shown in the Coverage Summary. No deductible will apply to them. All of the other terms in this agreement apply to these Additional Benefits.

Pollution clean up and removal. We'll pay your expenses to extract pollutants from land or water at the location described in the Coverage Summary if the release, discharge or dispersal of the pollutants is caused by or results from a covered cause of loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- the date of direct physical loss; or
- the end of the policy period.

The most we will pay under this Additional Benefit is \$10,000 for the sum of all such expenses arising out of covered causes of loss occurring during each separate 12 month period of this policy.

Temporary location. We'll pay up to \$25,000 for direct physical loss to covered property while temporarily held in storage at a location not shown in the Coverage Summary. A higher limit may be provided if so indicated in the Coverage Summary.

This additional benefit is provided for a maximum of 60 days while at any temporary location.

Property in transit. We'll pay up to \$25,000 for direct physical loss to covered property while in transit. A higher limit may be provided if so indicated in the Coverage Summary.

Fire department service charge. When the fire department is called to protect your insured property from a covered cause of loss, we'll pay up to \$25,000 for charges you've agreed to pay by contract or agreement prior to loss or as required by law.

Valuable records research coverage. We'll pay up to \$25,000 for research and other expenses necessary to reproduce, replace or restore valu-

ble records. This benefit only applies if the records are damaged by a covered cause of loss while at the insured location. Valuable records include blueprints, plans, account books, manuscripts, abstracts, drawings, card index systems and data processing materials.

Extra expense to continue the project. After a covered loss occurs, we'll pay up to \$25,000 to help you maintain normal project operations. We'll cover necessary expenses that are over and above what it would normally cost you to continue the project had no damage occurred. The expenses must be directly related to the loss.

We'll cover you from the date of the damage or as long as it should reasonably take to rebuild, repair, or replace your damaged property, regardless of when this agreement ends.

This benefit will also cover any expense above the normal cost for repairing or replacing covered property if that above-normal expense reduces the total extra expenses of restoring your project operations. But we won't pay more for above-normal expenses than the amount by which they reduce the total extra expenses.

Outdoor trees, shrubs and plants. We'll pay up to 25,000 to cover loss to outdoor trees, shrubs and plants at the insured location when loss is caused by fire, lightning, explosion, aircraft, civil disturbance or riot.

Where And When We Cover

We'll cover losses that occur anywhere the property is located within the United States of America and Canada while this agreement is in effect.

When Coverage Ends

We'll cover from the time the property is at our risk and continue until testing is completed. Coverage ends when the contract purchaser takes control of the property, when

your interest in the property ends, or this policy expires or is cancelled, whichever happens first.

Exclusions—Losses We Won't Cover

When we use the word "loss" in this section we also mean damage.

War. We won't cover loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

- war (declared or undeclared);
- warlike action by a military force, including anything done to hinder or defend against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;
- invasion or insurrection;
- rebellion, revolution or civil war;
- seizure of power; or
- anything done to hinder or defend against these actions.

Nuclear activity. We won't cover loss caused directly or indirectly by nuclear reaction, nuclear radiation, or radioactive contamination. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But if loss or damage by fire results, we'll pay for that resulting loss or damage, if it would otherwise be covered under this agreement.

Government action. We won't cover loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

- seizure or destruction of property under quarantine or customs regulation; or
- confiscation by any government or public authority.

But we will cover acts of destruction that are ordered by a government authority at the time of a fire to prevent it's spreading, if the fire is a covered cause of loss.

Ordinances, regulations or laws. We won't cover loss caused directly or indirectly by the enforcement of any ordinance, regulation or law governing the use, construction, repair or demolition of buildings or other structures, including removal of debris. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion won't apply to property destroyed by a civil authority in order to stop the actual spread of fire. For example, to establish a fire break.

Weather conditions. We won't cover loss caused by weather conditions. This exclusion only applies if weather conditions contribute in any way with a cause or event not covered because of the Ordinances, regulations or laws exclusion.

Acts or decisions of people. We won't cover loss caused by any act or decision or by the failure to act or decide, of any person, group, organization or unit of government. But if a loss not otherwise excluded results, we'll pay for that resulting loss.

Planning, design, materials, maintenance. We won't cover loss caused by faulty, inadequate or ineffective:
planning, zoning, development, surveying, siting;
design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
materials used in repair, construction, renovation or remodeling; or
maintenance.

But if a loss not otherwise excluded results, we'll pay for that resulting loss.

Earthquake. Unless an earthquake limit is shown in the Coverage Summary, we won't cover loss or damage caused by earthquake, landslide, or mudslide. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

But, we'll cover loss or damage from fire or explosion which occurs during or results from an earthquake.

If you have earthquake coverage, we'll consider each loss caused by earthquake as a single

claim. Any earthquake shock or series of earthquake shocks that occur within a 168 hour period will be considered a single earthquake.

Flood. Unless a flood limit is shown in the Coverage Summary, we won't cover loss caused directly or indirectly by flood. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

Flood means waves, tides or tidal water, including the rising of bodies of water and streams, and the overflowing or breaking of their boundaries, whether driven by wind or not.

But, we'll cover loss or damage from fire or explosion which occurs during or results from a flood.

This exclusion doesn't apply to coverage provided under Property in transit.

Delay - loss of market. We won't cover loss caused by delay, loss of market, loss of use, or any indirect loss.

Wear - tear - deterioration - animals. We won't cover loss caused or made worse by:
•wear and tear, marring or scratching;

•deterioration, mold, wet or dry rot, rust or corrosion;

•contamination, shrinkage, evaporation, loss of weight; or

•the inherent nature of the property.

Inherent nature means a latent defect or any quality in the property that causes it to deteriorate or destroy itself.

•changes in flavor, color, texture or finish.

•animal and insect pests, including birds, mice, rats and termites.

If a loss that would otherwise be covered results from one of these causes, we'll pay for direct loss that results.

Dishonesty. We won't cover loss caused by any fraudulent, dishonest or criminal act committed by:

you or by a partner, director, officer, trustee, agent or employee of yours;

anyone else with an interest in the property or their employees; or

anyone else to whom the property is entrusted except carriers for hire.

But this exclusion won't apply to acts of destruction by an employee of yours other than theft.

Disappearance - inventory loss. We won't cover loss of property that just disappears or that you find missing when you take inventory.

Illegal transportation or trade. We won't cover loss caused directly or indirectly by illegal transportation or trade. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Electrical equipment. We won't cover loss to electrical equipment, including wiring, caused by electricity other than lightning. But if a covered cause of loss results, we'll pay for the resulting damage.

Mechanical breakdown. We won't cover loss to covered property caused or made worse by mechanical breakdown.

But if a loss not otherwise excluded results from one of these causes, we'll pay for the loss that results directly from the covered cause.

Freezing. We won't cover loss caused by water that leaks or flows from plumbing, heating, air conditioning or other equipment caused by or resulting from freezing, unless:

- you use reasonable care to see that the adequate heat is maintained in the building or structure; or
- you drain the equipment and shut off the water supply if adequate heat is not maintained.

This exclusion doesn't apply to fire protective systems.

Settling - temperature. We won't cover loss caused or made worse by:

- changes or extremes in temperature or humidity; or

- settling, shrinking, expansion or earth movement underneath or next to foundations, footings or structures. However, this exclusion does not apply to loss caused by sudden sinking or collapse into a sinkhole of the earth supporting the property.

Sinkholes are underground empty spaces created by the action of water on limestone or dolomite.

But we won't cover any of the following due to the loss from sinkhole collapse:

- loss for the value of land;
- the cost of filling sinkholes;
- loss of use or any other indirect loss; or
- subsidence of man-made underground cavities.

But if a loss not otherwise excluded results, we'll pay for that resulting loss.

Property in the open. We won't cover loss caused by rain, snow or sleet to property in the open which isn't a permanent part of the structure. This exclusion doesn't apply to property in the custody or hired transportation carriers.

Landscaping. We won't cover loss caused by rain, sleet or snow to landscaping or landscaping features including lawns, shrubs, trees or other plants.

Pollution. We won't cover loss that results from pollution or waste pollutants. Nor will we pay for costs associated with the enforcement of any ordinance, regulation or law which requires any insured or others to:

- test for, monitor, clean-up, remove,
- contain, treat, detoxify or neutralize,
- or in any way respond to, or assess the effects of pollutants or waste pollutants.

Pollution means the actual, alleged or threatened discharge, dispersal, release, leakage, seepage, migration or escape of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including: smoke, vapor, soot, fumes; acids, alkalis, chemicals; and waste.

Waste includes materials to be recycled, reconditioned or reclaimed.

Waste pollutants mean those pollutants which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any other person or organization for whom you're legally responsible.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Rules For Loss Adjustment

When a loss occurs, we'll consider the following factors in determining what we'll pay:

the limit of coverage;

whether the loss occurred to new construction or renovation work;

whether reasonable profits and overhead are included in the limit of coverage;

the deductible;

whether the damage occurred to part of an item made up of several parts; and

other insurance.

The following sections explain how these factors affect the actual amount we'll pay.

Limits of coverage. The most we'll pay for a covered loss is the applicable limit of coverage shown in the Coverage Summary. The project limit and the catastrophe limit are explained below.

The project limit is based on your estimate. We estimate your premium based on what you tell us the full completed value of your project

will be. This estimated amount becomes the project limit.

However, the amount we'll pay is not the project limit. The amount we'll pay is determined by the actual cost of the labor and materials you've expended, plus your profits, as determined at the time of the loss. So the actual limit of coverage on any date will be a percentage of the estimated value.

The catastrophe limit is the most we'll pay for all losses from any one event no matter how many protected persons, property owners or financial interests are involved. This limit applies to all losses, expenses and salvage charges combined.

New construction. If there's a covered loss to new construction, we'll pay the actual cost of repairing, replacing or rebuilding the property with materials of similar kind and quality.

Renovation work. If there's a covered loss to a structure that existed before an insured project began, we'll figure what we'll pay based on the actual cash value of the existing structure at the time of the loss after the cost of improvements, including labor, is added. After renovation of such property, we'll cover it as explained above under "New construction".

Profits and overhead. If reasonable profits and overhead are included in the limit of coverage, we'll include these items in what we pay for a covered loss.

Deductibles. Your deductibles are shown in the Coverage Summary. You'll be responsible for the amounts that apply in each event. We'll pay the rest of your covered loss up to the applicable limit of coverage.

Items with several parts. If a part of an item made up of several parts is lost or damaged, we'll only pay for that part.

Other insurance. Other insurance may be available to cover a loss. If so, we'll pay the amount of your covered loss that's left after the other insurance has been used up, less the deductible. But we won't pay more than the applicable limit of coverage under this agreement.

Other Rules For This Agreement

Our Premium

You agree to tell us, at the starting date of this agreement, what you know to be the full estimated value of the project so that we can estimate your premium. We estimate your premium because the final completed value of a project may differ from the original estimate of the project costs.

When coverage under this agreement ends, we'll figure the premium we've actually earned based on the length of time this agreement was in effect and the actual completed value of the project. If this final premium is more than you've paid, you'll owe us the difference. If it's less, we'll return the difference.

Occupying The Building

If this agreement covers a building under construction, you agree that no one will occupy the building without our written consent and the proper rate adjustment. But you may, without our consent, set up machinery for testing purposes.

Reserving your rights. You must do all you can to preserve any rights you have to recover your losses from others. If you do anything to impair these rights, we won't pay for your loss.

Before a loss occurs, you can give anyone a written release from any responsibility for losses to property. You can also accept ordinary bills of lading from a shipper, even if they limit the carrier's liability for losses. But after a loss you can release only:

- another person covered under this agreement;
- any firm or organization that you own or control or that owns or controls you.

Insurance For Your Benefit

This insurance is for your benefit. No third party having temporary possession of the property, such as a transportation company, can

benefit directly or indirectly from it. If you, as owner, have named a mortgage holder or someone else to receive benefits, it will be shown in the Coverage Summary.

Expenses For Reducing Loss

When a covered loss occurs, you must do everything possible to protect the property from further damage. Keep a record of your expenses. We'll pay our share of reasonable and necessary expenses incurred to reduce the loss or protect covered property from further damage. We'll figure our share and your share of these expenses in the same proportion as each of us will benefit from them.

If Your Building Is Mortgaged

If the Coverage Summary identifies a mortgage holder, this section applies. We'll consider trustees to have the same rights and duties as mortgage holders.

Rights and duties of mortgage holders. We'll make payments for losses to you and any mortgage holder based on the interest each has in the covered property.

A mortgage holder's right to receive payment won't be affected by foreclosure or other similar proceedings.

If we deny your claim because of your acts or because you haven't complied with the terms of this agreement, the mortgage holder will still have the right to receive loss payments if the mortgage holder:

- pays any premium when due at our request when you fail to do so.
- submits a "Proof Of Loss Statement" when you fail to do so.
- notifies us when aware of any change in ownership, occupancy or risk.

The same rules and conditions that apply to you will then apply to the mortgage holder.

Transfer of mortgage holder's right to us. If we pay your mortgage holder for loss or damage that we claim isn't covered by this agreement, we'll transfer the mortgage holder's rights to recover that

amount from you will then belong to us. But that won't affect your mortgage holder's rights to recover the remaining amount of the mortgage debt from you.

We also have the right to pay off the mortgage debt. If we do, we'll take over the mortgage holder's right to be repaid by you.

Cancellation notice to mortgage holder. If we cancel this agreement, we'll mail or deliver a cancellation notice to your mortgage holder at least 30 days before the coverage ends - 10 days if we cancel for non-payment of premium.

REPORTING

Your Premium:

The Your Premium section of your Reporting Endorsement is replaced by the following:

Your initial premium is shown on the Introduction. This amount will be a deposit premium. Each quarter you will send in a report that will reduce the deposit premium by the amount you owe us. The amount you owe us for each quarterly report will be based on the rates shown in the Coverage Summary and values you report. After the deposit premium has been depleted, you will pay quarterly premium based on the same rates shown on the Coverage Summary and values you report.

Name of Insured
GRIFFIN CONSTRUCTION COMPANY

Policy Number IM09101516

Effective Date 09/09/96

Processing Date 09/17/96 09:15 001

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

FILED
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CLERK
CIVIL DIST.

ANSWER TO AMENDED COMPLAINT

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and its Answer to the Amended Complaint of the plaintiff, states as follows, to-wit:

1. That the defendant denies each and every material and relevant allegation as contained and set forth in the Amended Complaint of the plaintiff except as may be specifically admitted herein.

2. That the defendant admits Paragraph I of the Amended Complaint.

3. That the defendant admits that it sold the plaintiff a policy of insurance, Policy No. IM09101516, and this policy became effective on September 9, 1996. The defendant denies the remainder of the allegations contained in Paragraph II of the Amended Complaint.

4. That the defendant admits that a fire occurred at the location described in the coverage summary of the policy numbered IM09101516, namely the property located at 222 Garrison Avenue in Fort Smith, Arkansas, on or about December 20, 1996. The defendant further admits that coverage was denied under the policy for elevator carriages, parts and accessories associated with the

elevators, fabricated iron staircase components, and hand railings, as these items were not directly damaged by the fire which occurred on or about December 20, 1996, nor were these items located on the premises where the fire occurred. The defendant denies the remainder of the allegations contained in Paragraph III of the Amended Complaint.

5. That the defendant denies the allegations contained in Paragraphs IV, V and VI of the Amended Complaint.

6. That the defendant states affirmatively that the policy purchased by the plaintiff contains, in part, the following three clauses:

WHAT THIS AGREEMENT COVERS

We'll protect insured property against risks of direct physical loss or damage except as excluded in the Exclusion-Losses We Won't Cover section of this agreement.

PROPERTY COVERED

We'll cover your financial interest in insured building and installation projects and structures at the location shown in the Coverage Summary. Your insured installation projects include the cost of:

Materials and equipment you own or have in your care that are destined to become a permanent part of the project; and . . .

ADDITIONAL BENEFITS

Temporary location. We'll pay up to \$25,000.00 for direct physical loss to covered property while temporarily held in storage at a location not shown in the coverage summary. A higher limit may be provided if so indicated in the coverage summary . . .

7. That the defendant states further and in the affirmative

that the items for which the plaintiff seeks recovery were not physically damaged, nor were they located at 222 Garrison Avenue in Fort Smith, Arkansas at the time of the fire and therefore the plaintiff is not entitled to coverage pursuant to the policy.

8. That the defendant reserves the right to amend the pleadings in this case.

WHEREFORE, PREMISES CONSIDERED, the defendant prays that the Amended Complaint of the plaintiff will be dismissed with costs, and further prays for any and all other relief to which it may be lawfully entitled including, but not limited to, trial by jury.

ST. PAUL FIRE & MARINE INS. CO.

By:

Curtis L. Nebben
CURTIS L. NEBBEN (#80106)
JAMES M. GRAVES (#95172)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing in the United States mail a copy properly addressed with adequate postage thereon.

This 17 day of *July*, 1997.

Curtis L. Nebben

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

RESPONSES TO
REQUEST FOR ADMISSIONS

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its responses to Request for Admission, states:

REQUEST NO. 1: Admit that the document attached to plaintiff's Amended Complaint is the complete contract of insurance that was in existence and in force between the parties on December 20, 1996.

RESPONSE: Denied. The respondent admits that the copy of the certified copy of the insurance contract between the plaintiff and defendant pursuant to Request for Production No. 2 propounded by the plaintiff is the complete contract of insurance which was in existence and force between the parties on December 20, 1996.

REQUEST NO. 2: Admit that the plaintiff's premiums were paid in full on December 20, 1996.

RESPONSE: Admitted.

REQUEST NO. 3: Admit that plaintiff's policy of insurance was a builder's risk policy.

RESPONSE: Denied.

REQUEST NO. 4: Admit that the contract attached to the plaintiff's Amended Complaint was a binding and effective contract

between the parties on December 20, 1997.

RESPONSE: Denied. The defendant admits that the copy of the certified copy of the contract provided to the plaintiff pursuant to Request for Production No. 2 was a binding and effective contract between the parties on December 20, 1996.

REQUEST NO. 5: Admit that the plaintiff made a demand on the defendant for payment for the financial loss the plaintiff suffered as a result of being unable to use: 1) a custom made elevator carriage and accessory parts and 2) an iron staircase and railings.

RESPONSE: Admitted.

REQUEST NO. 6: Admit that the plaintiff's demand for payment was in compliance with the parties' insurance contract.

RESPONSE: Admitted.

REQUEST NO. 7: Admit that the defendant denied coverage for the plaintiff's financial loss related to the elevator and accessory parts, as well as the staircase and railings.

RESPONSE: Denied. The defendant will admit that it denied coverage for the plaintiff's estimated cost related to the elevator and accessory parts, as well as the stair case and railing.

REQUEST NO. 8: Admit that the elevator and accessory parts and staircase and railings, which the plaintiff made claim for, were custom made for the plaintiff's building, located at 222 Garrison Avenue.

RESPONSE: Denied.

REQUEST NO. 9: Admit that the plaintiff supplied the defendant with documentation showing it's [sic] financial loss in the elevator

and accessory parts, and staircase and railings.

RESPONSE: The defendant admits that the plaintiff supplied the defendant a letter from Mark Mainer of Mainer Iron Works, Inc., showing a value of prefabricated components located at Mainer Iron Works as of December 20, 1996, in the amount of \$10,476.77. The remainder of Request No. 9 is denied.

REQUEST NO. 10: Admit that the plaintiff paid \$10,476.77 to Mainer Iron Works for a staircase and railings it never used.

RESPONSE: Denied.

REQUEST NO. 11: Admit that the plaintiff paid \$51,317.00 to Dover Elevator for an elevator carriage it never used.

RESPONSE: Denied.

REQUEST NO. 12: Admit that the policy of insurance attached to the plaintiff's Amended Complaint covered the plaintiff's building located at 222 Garrison Avenue, known as the Josiah Foster Building.

RESPONSE: Admitted.


REQUEST NO. 13: Admit that the plaintiff cannot resale the elevator carriage and accessory parts that it purchased from Dover Elevator for the same amount that it paid for those items.

RESPONSE: Denied.

REQUEST NO. 14: Admit that the plaintiff cannot resale the staircase and railings that it purchased from Mainer Iron Works for the same amount that it paid for those items.

RESPONSE: Denied.

ST. PAUL FIRE & MARINE INS. CO.

By: 
CURTIS L. NEBBEN (#80106)
JAMES M. GRAVES (#95172)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to R. Gunner DeLay, 1713 South "D" Street, Fort Smith, Arkansas 72901, this 7 day of November, 1997.



IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

RESPONSES TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its responses to Interrogatories and Request for Production of Documents, states:

INTERROGATORY NO. 1: Please give the name, address and telephone number of the person answering these interrogatories.

RESPONSE: Ken Custer, Senior Claims Representative, St. Paul Fire and Marine Insurance Company.

INTERROGATORY NO. 2: Please give the name, address and telephone number of all persons who will testify on behalf of the defendant and give a brief summary of the facts about which they will testify.

RESPONSE: The defendant does not know who it will call as a witness to testify at the trial of this lawsuit at the present time, and such a decision cannot be made until the conclusion of the plaintiff's case in chief. However, the defendant does not anticipate calling any person to testify on its behalf. If the defendant decides to call any witnesses at the trial of this lawsuit, counsel for the plaintiff will be informed in sufficient

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lawsuit. If the defendant decides to call an expert witness, counsel for the plaintiff will be notified in sufficient time prior to trial.

REQUEST FOR PRODUCTION NO. 2: Please provide a complete copy of the contract the defendant asserts was in force between the parties on December 20, 1996, including any riders thereto.

RESPONSE: Attached.

INTERROGATORY NO. 6: If you denied Request for Admissions No. 1, please explain in these interrogatories why the contract attached to the plaintiff's Amended Complaint is not complete.

RESPONSE: Please refer to Request for Production No. 2. The defendant contends this is an accurate copy of the contract between the parties.

INTERROGATORY NO. 7: If you denied Request for Admission No. 2, please state which premiums were not paid in accordance with the parties' contract.

RESPONSE: Not applicable.

INTERROGATORY NO. 8: If you denied Request for Admission No. 3, please describe what type of insurance policy the plaintiff purchased from the defendant.

RESPONSE: The policy in question is a contractor's and owner's property protection policy.

INTERROGATORY NO. 9: If you denied Request for Admission No. 4, please explain why the contract of insurance attached to the plaintiff's Amended Complaint was not in force between the parties.

RESPONSE: The defendant is not relying on any exclusions to deny coverage. The defendant contends that the policy language does not provide coverage.

ST. PAUL FIRE & MARINE INS. CO.


By: 

CURTIS L. NEBBEN (#80106)
JAMES M. GRAVES (#95172)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to R. Gunner DeLay, 1713 South "D" Street, Fort Smith, Arkansas 72901, this 7 day of November, 1997.



IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

vs.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its Motion for Summary Judgment, pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, states as follows, to-wit:

1. That the plaintiff, Griffin Construction Company, filed its Amended Complaint alleging that the Contractors and Owners Property Protection Policy it purchased from the defendant, St. Paul Fire and Marine Insurance Company, Policy No. IM09101516, provided coverage for its costs of an elevator and accessory parts and stair case and railings which was manufactured for a structure located at 222 Garrison Avenue in Fort Smith, Arkansas, which was destroyed by fire on or about December 20, 1996.

2. That the plaintiff alleges that the defendant has breached the aforesaid insurance policy by the defendant's refusal to provide coverage for alleged financial loss the plaintiff incurred to those custom manufactured items, which were not located on or in the property, structures or premises which were

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destroyed by the aforesaid fire. The plaintiff argues that it now has no use for the items of property for which it claims benefits under the policy because those items were manufactured especially for inclusion in the destroyed structure.

3. That the defendant did issue a policy of insurance to the plaintiff, policy number IMO9101516, which became effective on or about September 9, 1996, and a fire did occur at the location described in the coverage summary of that policy, namely at property located at 222 Garrison Avenue in Fort Smith, Arkansas, on or about December 20, 1996.

4. That the items of property for which the plaintiff claims a loss under the policy consisted of elevator carriages, parts and accessories associated with the elevators, fabricated iron staircase components and a hand railing, for which the defendant did deny coverage under the policy.

5. That the items of property described above and claimed for by the plaintiff were not located on the premises where the fire occurred and which were described in the coverage summary of the policy, nor were they physically touched or marked by the fire.

6. That the policy contains, in part, the following three clauses:

WHAT THIS AGREEMENT COVERS

We'll protect insured property against risks of direct physical loss or damage except as excluded in the Exclusion-Losses We Won't Cover section of this agreement.

PROPERTY COVERED

We'll cover your financial interest in insured building and installation projects and structures at the location shown in the Coverage Summary. Your insured installation projects include the cost of:

Materials and equipment you own or have in your care that are destined to become a permanent part of the project; and . . .

ADDITIONAL BENEFITS

Temporary location. We'll pay up to \$25,000.00 for direct physical loss to covered property while temporarily held in storage at a location not shown in the coverage summary. A higher limit may be provided if so indicated in the coverage summary . . .

7. That the items of property for which the plaintiff seeks recovery were not physically damaged, nor were they located at 222 Garrison Avenue in Fort Smith, Arkansas at the time of the fire, and therefore, the plaintiff is not entitled to coverage pursuant to the policy.

8. As its exhibits to this motion, the defendant incorporates by reference the Amended Complaint, Answer, and defendant's responses to Requests for Admissions propounded by the plaintiff. As Exhibit "A", the defendant attaches a certified copy of the policy which is the subject of this lawsuit. As Exhibit "B", the defendant attaches a Statement of Facts agreed to by the parties.


9. That the pleadings filed in this case along with the certified copy of the policy and the Statement of Facts demonstrate that there is no genuine issue of material fact and that the

defendant is entitled to judgment as a matter of law pursuant to Rule 56 of the Arkansas Rules of Civil Procedure.

10. A brief in support of this motion is attached hereto.

WHEREFORE, PREMISES CONSIDERED, the defendant, Saint Paul Fire and Marine Insurance Company, prays that this Court will grant its Motion for Summary Judgment and further prays for any and all other relief to which it may be entitled.

ST. PAUL FIRE & MARINE INS. CO.

BY: 
CURTIS L. NEBBEN (#80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing in the United States mail a copy properly addressed with adequate postage thereon.

This 19 day of November, 1997.


Curtis L. Nebben

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

STATEMENT OF FACTS

Come now the parties, Griffin Construction Company and St. Paul Fire and Marine Insurance Company, and enter into the following agreed facts:

1. The defendant, St. Paul Fire and Marine Insurance Company, issued its Contractors and Owners Property Protection Policy, No. IM09101516, to the plaintiff, Griffin Construction Company, which became effective on September 9, 1996.

2. Said policy covered the property located at 222 Garrison Avenue in Fort Smith, Arkansas.

3. On December 20, 1996, a fire occurred at the building located at 222 Garrison Avenue in Fort Smith, Arkansas, and covered by Policy No. IM09101516.

4. A copy of a certified copy of Policy No. IM09101516 is attached hereto as Exhibit "A".

5. The plaintiff, Griffin Construction Company, paid its premiums in full as of December 20, 1996.

6. The plaintiff, Griffin Construction Company, made a timely demand for payment and coverage in compliance with the insurance contract.

EXHIBIT B

7. The plaintiff, Griffin Construction Company, has made claim in the amount of \$51,317.00 for an elevator carriage and accessory parts it ordered from Dover Elevator Company.

8. The plaintiff, Griffin Construction Company, made claim for a stair case and railings it ordered from Mainer Iron Works, Inc., in the amount of \$10,476.77.

9. At the time of the fire on December 20, 1996, the elevator and accessory parts, and stair case and railings, which are the subject of this lawsuit, were not on the premises at 222 Garrison Avenue, Fort Smith, Arkansas.

10. The elevator and accessory parts, and stair case and railings, which are the subject of this lawsuit, were not physically injured by the fire which occurred at the building located at 222 Garrison Avenue, Fort Smith, Arkansas, on December 20, 1996.

11. Counsel for the defendant is authorized to state that counsel for the plaintiff has reviewed this Statement of Facts and is in agreement with said statement.

FILED
FORT SMITH DIST.
Rebecca Meeks PC
DEC 1 1996

CIR. CLERK, SEC. CO.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION CO., INC. PLAINTIFF

V. CASE NO. CIV 97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO. DEFENDANT

COUNTER-MOTION FOR SUMMARY JUDGMENT AND RESPONSE
TO MOTION FOR SUMMARY JUDGMENT

Comes now the Plaintiff, Griffin Construction Co., by and through it's attorney, Mr. R. Gunner DeLay, and for its Counter-Motion for Summary Judgment and Response to Motion For Summary Judgment hereby states:

I.

There is no question of fact that the policy of insurance that the plaintiff obtained a policy of insurance from the defendant which is a "fire insurance" policy.

II.

There is no question of fact that the plaintiff paid the premium in full to the defendant and the amount of coverage in the policy was Three Million Dollars (\$3,000,000.00).

III.

There is no question of fact that the Plaintiff's building, located at 222 Garrison Avenue in Fort Smith, Arkansas, suffered a total loss due to fire on December 20, 1996.

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5-4466
184-4066
484-0518

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IV.

There is no question of fact that an elevator and staircase purchased by the Plaintiff for use at its building located at 222 Garrison Avenue in Fort Smith, Arkansas, were damaged since they cannot be resold or used by a third party.

V.

Therefore, the Plaintiff is entitled to judgment as a matter of law for the full amount of coverage stated in its insurance policy, or in the alternative, for the amount the elevator and staircase have been damaged.

VI.

In the alternative, there is ambiguity in the Plaintiff's insurance policy which creates a question of fact to be determined by a jury.

WHEREFORE, Plaintiff prays that this Court grant summary judgment in its favor for the amount prayed for in its Complaint, or in the alternative that the Defendant's Motion for Summary Judgment be denied on the basis that there is ambiguity in the policy of insurance, creating a question of fact.

RUSH, RUSH & COOK
Attorneys at Law
1713 South "D" Street
Fort Smith, AR 72901
PHONE: (501) 785-4466
FAX: (501) 785-4484

BY: 

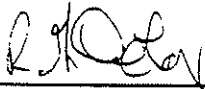
R. Gunner DeLay
ABN #88091

RUSH & COOK
1713 "D" ST.
FORT SMITH, AR 72901
484-4066
484-0518

CERTIFICATE OF SERVICE

I, R. Gunner DeLay, hereby certify that on the 1st day
of December, 1997, mailed a true and correct copy of
the above and foregoing instrument, with proper postage to:

Mr. Curtis Nebben
Attorney at Law
P.O. Box 3618
Fayetteville, AR 72702-3618



R. Gunner DeLay
AR# 88091

H & COOK
H'D' ST.
AR 72901
5-4466
84-4066
184-0518

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION COMPANY

PLAINTIFF

V.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

DEFENDANT

AFFIDAVIT OF IDA C. HUNTER

Comes now Ida C. Hunter and being duly sworn under oath,
hereby

states:

1. My name is Ida C. Hunter and I am the chief financial officer for Griffin Construction Company (hereinafter "Griffin")

2. On September 9, 1996, Griffin entered into a policy of insurance with St. Paul Fire and Marine Insurance Company. (hereinafter "St. Paul") The policy called for an premium of deposit of \$4000.00 and the limit on coverage was \$3,000,000.00. The policy covered a building owned by Griffin located at 222 Garrison Avenue in Fort Smith, Arkansas.

3. On December 20, 1996, the building located at 222 Garrison Avenue was destroyed by fire. The only thing left standing was a portion of a wall, which had to be torn down because of the safety hazard it presented. Griffin considered the building to be a total loss.

4. After the fire, Griffin made demand on St. Paul for coverage and it paid a total of \$286,573.67.

5. Griffin made claims for an elevator and accessory parts, and an exterior staircase with hand railings. St. Paul refused to cover these items. The amount claimed for each was:

elevator with parts - \$51,317.00

staircase with hand railings - \$10,476.77

Attached hereto is the documentation showing the amount of damage sustained by Griffin.

6. Griffin made efforts to sell both the elevator and staircase after the fire, but was unable to do so because these items were custom made for Griffin's building and they cannot be used anywhere else. Griffin considers both of these items to be completely worthless.

Further affiant sayeth not.



Ida C. Hunter

STATE OF ARKANSAS)

COUNTY OF SEBASTIAN)

In witness whereof, I hereunto set my hand and official seal on this 1 day of December, 1997.



Notary Public

My Commission Expires:

10.18.01

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY,
FORT SMITH DISTRICT

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Rebecca Meeks AC
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CIR. CLERK, SEB. CO.

GRIFFIN CONSTRUCTION CO., INC.

PLAINTIFF

V.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

DEFENDANT

SECOND AMENDED COMPLAINT

Comes now the Plaintiff, Griffin Construction Company by and through its attorney, Mr. R. Gunner DeLay, and for its Second Amended Complaint filed herein, hereby states:

I.

The Plaintiff is an Arkansas corporation, with its principal place of business in Fort Smith, Sebastian County, Arkansas. The Defendant is a corporation, duly licensed and registered to do business in the state of Arkansas. The contract for insurance, which is the subject of this action, was entered into in Fort Smith, Sebastian County, Arkansas. Therefore, this court has jurisdiction over the subject matter herein and venue is proper in this county.

II.

On or around September 9, 1996, the Plaintiff obtained a policy of insurance from the Defendant to protect its building located at 222 Garrison Avenue in Fort Smith, Arkansas. Among other things the policy provided that the plaintiff was to pay a premium of \$4000.00 for a coverage limit of three million (\$3,000,000.00). It also provided that the defendant would protect the plaintiff from the "risk of direct physical loss or damage" and

that it would cover the plaintiff's "financial interest" in the insured building. (a copy of the policy is attached to the plaintiff's amended Complaint)

III.

On or around December 20, 1996, the plaintiff's building located at 222 Garrison Avenue was completely destroyed by fire. All that remained was a portion of a wall which had to be demolished because it presented a safety hazard. The defendant paid partial benefits to the plaintiff in the amount of \$286,573.67. It did not pay the plaintiff the balance of the amount stated in the policy, nor did it pay for an elevator and accessory parts, or a staircase with hand railings, which totalled \$61,7193.77. These items were not destroyed by the fire but were rendered worthless because they were custom made for the plaintiff's building and cannot be resold or used elsewhere.

IV.

The defendant's failure to pay the plaintiff the full amount of its insurance policy constitutes a breach of contract, for which the plaintiff is entitled to recover the sum of \$2,713,426.37.

V.

In the alternative, the defendant's failure to pay the plaintiff the value of the elevator and staircase, along with the accessory parts constitutes a breach of contract, for which the plaintiff is entitled to recover the sum of \$61,793.77.

VI.

The plaintiff is also entitled to the statutory penalty of 12% against the defendant, together with prejudgment interest,

attorney's fees and costs.

WHEREFORE, plaintiff prays that it be awarded judgment against the defendant for the sum of \$2,713,426.37, or in the alternative, for \$61,793.77, together with a 12% penalty, attorney's fee, and costs.

Rush, Rush, & Cook
1713 S. D Street
Fort Smith, AR 72901
(501) 785-4466



Gunner DeLay
ABA 88091

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing it in the US mail a copy properly addressed with adequate postage.

This 1st day of December, 1997.



Gunner DeLay

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

MOTION TO STRIKE
SECOND AMENDED COMPLAINT OR,
IN THE ALTERNATION, MOTION FOR CONTINUANCE

FILED
FT SMITH DIS.
1997 DEC. 8. PM 10:20
CIRKLER SEB. CO.

Comes now the defendant, St. Paul Fire & Marine Insurance Company, and for its motion to strike the second amended complaint, pursuant to Rule 15 of the Arkansas Rules of Civil Procedure or, in the alternative, for a motion for continuance, states:

1. The plaintiff filed its amended complaint in this matter on or about June 18, 1996.

2. This case is scheduled for a trial by jury on December 17, 1997. In its amended complaint, the plaintiff sought coverage pursuant to a policy of insurance issued by the defendant for items totalling \$61,793.77.

3. On December 1, 1997, the plaintiff filed its second amended complaint. This was received by counsel for the defendant on December 3, 1997.

4. The second amended complaint seeks damages in excess of \$2,000,000.00.

5. The defendant contends the second amended complaint materially alters the complexion of this lawsuit, is untimely, and would cause the defendant prejudice to proceed to trial on December

MTA
Judge by letter

17, 1997, on the issues raised in the second amended complaint.

6. Therefore, the defendant requests that the second amended complaint be stricken as untimely.


7. In the alternative, the defendant requests that the trial date of December 17, 1997, be continued and rescheduled to allow for sufficient time for discovery on the new issues raised by the plaintiff in its second amended complaint.

8. A brief in support is attached hereto.

WHEREFORE, the defendant prays that the second amended complaint of the plaintiff be stricken or, in the alternative, that the trial date of December 17, 1997, be continued, and for its costs expended herein, and for all other relief.

ST. PAUL FIRE & MARINE INSURANCE CO.


BY:


CURTIS L. NEBBEN (AR #80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
501.521.9996

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to Gunner Delay, attorney for the plaintiff, this 5 day of December, 1997.


Curtis L. Nebben



35 SOUTH 6TH STREET
 SEBASTIAN COUNTY COURTHOUSE
 FORT SMITH, ARKANSAS 72901
 TELEPHONE: (501) 783-1103
 FACSIMILE: (501) 784-1527

JOHN G. HOLLAND
 CIRCUIT JUDGE
 TWELFTH JUDICIAL CIRCUIT
 December 12, 1997

BARBARA WALKER
 COURT REPORTER
 JANET SMITH
 CASE COORDINATOR

Mr. R. Gunner DeLay
 Attorney at Law
 1713 South "D"
 Fort Smith, Arkansas 72902

Mr. Curtis Nebben
 Attorney at Law
 P. O. Box 3618
 Fayetteville, Arkansas 72702

RE: CIV-97-434 (II) Griffin Construction Company
 vs. St. Paul Fire and Marine Insurance
 Company

Gentlemen:

This letter will confirm that the above-styled case was continued from the
December 17, 1997, trial setting based upon the Defendant's
Motion for Continuance.

Please be advised that this case is rescheduled for Jury Trial on

MONDAY, MARCH 9, 1998, AT 9:00 A.M.,

in the Garrison Court Complex, 523 Garrison - Circuit
Courtroom - 2nd Floor.

This case is in FIRST POSITION for trial.

One (1) day (s) will be allowed for this trial unless the Court is advised that
 additional time is needed. Proposed jury instructions should be submitted to the Court
 three (3) business days prior to the trial date.

Sincerely,

Janet Smith
 Case Coordinator

cc: Hon. John G. Holland, Circuit Judge
 Hon. Nancy Brewer, Circuit Clerk

FILED
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 '97 DEC 15 PM 3:25
 Amy Brewer
 CIR. CLERK SEB. CO.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION COMPANY

PLAINTIFF

VS.

CASE NO. CIV 97-434 (II)

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY

DEFENDANT

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CIR. CLERK SEB. CO.

ANSWER TO SECOND AMENDED COMPLAINT

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its Answer to the Second Amended Complaint, states as follows:

(1) The defendant denies each and every material allegation as contained and set forth in the Complaint, Amended Complaint and Second Amended Complaint of the plaintiff except those allegations specifically admitted herein.

(2) The defendant admits the allegations of Paragraph One of the Second Amended Complaint.

(3) The defendant admits that it sold the plaintiff a policy of insurance, Policy Number IM09101516, and this policy became effective on September 9, 1996. The defendant denies the remaining allegations of Paragraph Two of the Second Amended Complaint.

(4) The defendant admits that a fire occurred at the location described as 222 Garrison Avenue in Fort Smith, Arkansas on or about December 20, 1996. The defendant admits that it paid benefits to the plaintiff in excess of \$200,000. The defendant further admits coverage was denied under the policy for the elevator carriages, parts and accessories associated with the elevators,

HTA

fabricated iron staircase components, and handrails, as these items were not directly damaged by the fire which occurred on or about December 20, 1996, nor were these items located on the premises where the fire occurred. The defendant denies that the plaintiff is entitled to any other proceeds pursuant to said policy. The defendant denies the remaining allegations of Paragraph Three of the Second Amended Complaint.

(5) The defendant denies the allegations of Paragraphs 4, 5, and 6 of the Second Amended Complaint.

(6) The defendant specifically denies that Griffin Construction Company, Inc. owned the building which was located at 222 Garrison Avenue in Fort Smith, Arkansas.

(7) The defendant states affirmatively that the policy purchased by the plaintiff contains in part, the following three clauses:

WHAT THIS AGREEMENT COVERS

We'll protect insured property against risks of direct physical loss or damage except as excluded in the Exclusion-Losses We Won't Cover section of this agreement.

PROPERTY COVERED

We'll cover your financial interest in insured building and installation projects and structures at the location shown in the Coverage Summary. Your insured installation projects include the cost of:

Materials and equipment you own or have in your care that are destined to become a permanent part of the project; and . . .

ADDITIONAL BENEFITS

Temporary location. We'll pay up to \$25,000.00 for direct physical loss to covered

property while temporarily held in storage at a location not shown in the coverage summary. A higher limit may be provided if so indicated in the coverage summary . . .


(8) The defendant states further and in the affirmative that the items for which the plaintiff seeks recovery were not physically damaged, nor where they located at 222 Garrison Avenue in Fort Smith, Arkansas at the time of the fire and therefore the plaintiffs are not entitled to coverage pursuant to the policy.

(9) The defendant states affirmatively that its policy of insurance is not a fire insurance policy and does not come within the Valued Policy Law of Arkansas found in Ark. Code Ann. § 23-88-101. Said policy is a policy for contractors and owners property protection "...designed...to protect construction projects and the materials and equipment used in their completion." Said policy, attached to Defendant's Responses to Request for Admissions and Motion for Summary Judgment is incorporated by reference line for line and word for word. Said policy only covers the plaintiff's financial interest in insured buildings and installation projects and structures and will only pay the amount of the covered loss that is remaining after other insurance available to cover the loss has paid its proceeds. The defendant states affirmatively that the plaintiff has received reimbursement for the building in question from another insurance company.

(10) The defendant reserves the right to amend its Answer to the Second Amended Complaint and file other pleadings as allowed by the Arkansas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, the defendant prays that the Complaint, Amended Complaint and Second Amended Complaint of the plaintiff be dismissed with prejudice, for its costs expended herein and for all other relief to which it may be entitled.

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY

BY: 
CURTIS L. NEBBEN (AR BAR #80106)
BASSETT LAW FIRM
Attorneys at Law
P. O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing in the United States mail a copy properly addressed with adequate postage thereon.

Dated this 22 day of December, 1997.



IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

FILED
DISTRICT
M. B. Bell
'88 JUN 23 PM 2 14
PLAINTIFF
ST. PAUL FIRE AND MARINE INSURANCE CO.

GRIFFIN CONSTRUCTION CO.

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

DEFENDANT'S RESPONSE TO
PLAINTIFF'S COUNTER-MOTION
FOR SUMMARY JUDGMENT

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its response to the plaintiff's Counter-Motion for Summary Judgment, states:

1. There is no question of fact that the policy of insurance which is the subject of this lawsuit is not a fire insurance policy and not subject to Ark. Code Ann. § 23-88-101. Therefore, the plaintiff is not entitled to the policy limits of \$3,000,000.

2. There is no issue of fact that the plaintiff was the only named insured on the policy issued by the defendant.

3. There is no issue of fact that the building which is the subject of this lawsuit, located at 222 Garrison Avenue, Fort Smith, Arkansas, was owned by the Griffin Family Trust, dated August 30, 1991, Richard B. Griffin, Trustee. Therefore, the plaintiff had no financial interest or insurable interest in the building which is the subject of this lawsuit.

4. There is no issue of fact that the policy of insurance issued by the defendant did not cover the building in question.

5. As stated in its Motion for Summary Judgment, the defendant contends there is no genuine issue of fact that the

elevator and stair case purchased by the plaintiff are not covered by its policy as a matter of law. The defendant specifically denies that the plaintiff is entitled to judgment as a matter of law pursuant to the policy. In the alternative, there is an ambiguity in the insurance policy which creates a question of fact to be determined by a jury.

6. Portions of the deposition of Ida Hunter, Chief Financial Officer of Griffin Construction, including Exhibit "1" of that deposition, are attached as Exhibit "A",


7. A Memorandum from Ida Hunter which supplements her deposition testimony is attached as Exhibit "B".

8. A brief in support is attached hereto.

WHEREFORE, the defendant prays that the plaintiff's Counter-Motion for Summary Judgment be denied, for its costs expended herein, and for any and all other relief to which it is entitled.

ST. PAUL FIRE & MARINE INS. CO.

By:


CURTIS L. NEBBEN (#80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to all counsel of record, this 23 day of January, 1998.



Curtis L. Nebben

[Addendum Maker's Note: Exhibit "A" to St. Paul's Response to Griffin's Counter-Motion For Summary Judgment was an Excerpt from Ida C. Hunter's deposition.
R 185. The Excerpt is abstracted at **Ab 1.**]

M E M O R A N D U M

To: Gunner DeLay
From: Ida C Hunter
Subject: Items requested
Date: January 16, 1998

Attached are copies of the Maryland Casualty checks. They are made payable to Griffin Construction Company because Griffin Construction Company is the name on all insurance policies. Richard B. Griffin is listed as an additional insured. All of Richards (and the Trust) properties are insured on this policy.

If this is not clear give me a call on Monday and I will try to explain it more clearly.

EXHIBIT B

206

Add 62

P O BOX 1778
BALTIMORE

MO 21203



31570
GRIFFIN CONSTRUCTION COMPANY
PO BOX 2207
FT. SMITH AR 72902

Check or Draft number 3743308 in the amount of \$500,000.00 is attached.
Please call me at (410) 366-1000 if you have any questions about this claim or this payment.

Thank You
RICHARD L. CARTER

Claim Number 45M-920984	Co Code 07	Policy Number EPA20406964	Accident or Loss Date 12/20/96
Producing Agent THE CASHION COMPANY, INC.		Underwriting Office OKLAHOMA	Date Issued 01/21/97
Insured GRIFFIN CONSTRUCTION0419			
This payment issued for: DAMAGE TO BUILDING			



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BOOK 550 PAGE 1769

WARRANTY DEED

CIT. CLERK SEB. CO.

KNOW ALL MEN BY THESE PRESENTS:

That we, RICHARD B. GRIFFIN and JAUNICE J. GRIFFIN, husband and wife, hereinafter called Grantors, for and in consideration of the sum of TEN DOLLARS (\$10) and other good and valuable considerations to us in hand paid by RICHARD B. GRIFFIN, TRUSTEE OF THE GRIFFIN FAMILY TRUST DATED AUGUST 30, 1991, hereinafter called Grantee, have Granted, Bargained and Sold, and do hereby Grant, Bargain, Sell and Convey unto the said Grantee, and unto his successors and assigns, forever, the following described Real Estate lying in the County of Sebastian, State of Arkansas, to wit:

A part of the East half of the SE/4 of Sec. 17, T-8-N, R-32-W, as follows: Beginning at a point 291½ ft. South of the North line of the SE/4 of Sec. 17, T-9-N, R-32-W, on the West line of Towson Avenue, Fort Smith, AR; thence South 157.5 ft.; thence West 415 ft.; thence North 157.5 ft.; thence East 415 ft. to the point of beginning. Known locally as 600 Towson Avenue, Fort Smith, Arkansas. [D-1]

One-half acre of ground in the Southeast Quarter of Section 17, Township 8 North, Range 32 West, in the City of Fort Smith, Arkansas, more particularly described as follows: Beginning at a point on the Western boundary line of Towson Avenue and the intersection of South "D" Street, being the Northeast corner of the SE/4 of Section 17, Township 8 North, Range 32 West, thence South along said Western boundary line of Towson Avenue, 449 feet to the point of beginning; thence South 52½ feet; thence West 415 feet; thence North 52½ feet;

BION GREENWOOD - P. O. Box 10203
FORT SMITH, AR 72917-0203

thence East 415 feet to the point of beginning. Known locally as 610 Towson Avenue, Fort Smith, Arkansas. [D-2]

Lots 1, 2, 3, 4, 5 and 6 of Moran Addition to the City of Fort Smith, Arkansas. Known locally as 624 Towson Avenue, Fort Smith, Arkansas. [D-4]

A part of Lot "W", South side of Garrison Avenue and a part of Lot 8 in Block 506, Reserve Addition to Fort Smith, Arkansas, as follows: Beginning at a point on the South line of Garrison Avenue 9 feet in a southeasterly direction from the point where the line between Lots "V" and "W" intersects the South line of said Garrison Avenue; thence along said South line of Garrison Avenue in a southeasterly direction 39 feet 10 inches, more or less; thence at right angles in a southwesterly direction to the alley in Block 506, Reserve Addition; thence in a northwesterly direction along said alley and parallel to Garrison Avenue 39 feet 10 inches, more or less; thence northeasterly to the point of beginning. Being a part of the Southeast Quarter of Section 8, Township 8 North of Range 32 West.

Part of Lots "V" and "W" on the Southwest side of Garrison Avenue and of Lots 7 and 8 in Block 506, Reserve Addition to the City of Fort Smith, Arkansas, as follows; Commencing at a point on the Southwest side of Garrison Avenue where the Southeast line of Third Street intersects the Southwest line of Garrison Avenue; thence in a southeasterly direction along said line of Garrison Avenue 92 feet 3½ inches; thence southwesterly and parallel with said Third Street to the alley in said Block 506; thence northwesterly along said alley to said Third Street; thence northeasterly along said Third Street to the place of beginning.

The two above-described tracts known locally as 300 Garrison Avenue, Fort Smith, Arkansas. [D-6]

Part of Lot "V" on southwesterly line of Garrison Avenue and part of Lot 8 in Block 507, Reserve Addition to the City of Fort Smith, Arkansas, as follows: Beginning at the intersection of the southwesterly line of Garrison Avenue with the northwesterly line of Third Street; thence running

northwesterly along the line of Garrison Avenue 60 feet $1\frac{1}{2}$ inches to a point; thence southwesterly at right angles to Garrison Avenue and parallel with Third Street 140 feet to an alley; thence southeasterly along said alley 60 feet ($1\frac{1}{2}$) inches to Third Street; thence northeasterly along Third Street 140 feet to beginning. Known locally as 222 Garrison Avenue, Fort Smith, Arkansas. [D-5]

The Northwest part of Lot 1 in Block 8, City of Fort Smith, Arkansas, as follows: A certain tract of land situated on the corner of Garrison Avenue and North First Street described as 23 and $5/12$ by 100 feet of Lot 1 in Block 8, City of Fort Smith, Ark. fronting $23-5/12$ feet on Garrison Avenue and 100 feet on North First Street, and subject to an easement of 4 feet in rear of said lot. Known as a strip under Garrison Avenue Bridge, Fort Smith, Arkansas. [D-7]

Lot 1, Block 506 in Reserve Addition to the City of Fort Smith, Arkansas, being a part of the Southeast Quarter of Section 8, Township 8 North, Range 32 West. Known locally as 323 Rogers Avenue, Fort Smith, Arkansas. [D-8]

A part of the Northeast Quarter of the Southeast Quarter of Section 17, Township 8 North of Range 32 West, as follows: Beginning at the intersection of the North line of Neville Street with the East line of the right of way of the Fort Smith and Western Railroad; thence in an easterly direction along said North line of Neville Street 200 feet 3 inches to an iron stake on the line of the Moran property; thence North along the line between the J.G. Miller and Moran and other properties a distance of 471 feet to an iron stake; thence West $16\frac{1}{2}$ feet to the right of way of the Fort Smith and Western Railroad; thence in a southwesterly directly along the East line of said right of way $485\frac{1}{2}$ feet to the place of beginning. Known locally as 1015 Neville Street, Fort Smith, Arkansas. [D-9]

Lot 5 in Block 20, City of Fort Smith, Arkansas, and the Northeast 42 feet of Lot 4 in Block 20, Original City of Fort Smith, Arkansas. (Located at North Fourth and D Streets, Fort Smith, Arkansas) [D-10]

Lot 6 and the adjoining one half of Lot 5 in Block 16, City of Fort Smith, Arkansas. (Located at the Southeast corner of North Third and A Streets, Fort Smith, Arkansas) [D-11]

Lots One (1) and Two (2), Block "F", Original City of Fort Smith, Arkansas. Being a part of the Northeast Quarter (NE/4) of Southeast Quarter (SE/4) of Section Eight (8), Township Eight (8) N., Range Thirty-two (32) West, Fort Smith District, Sebastian County, Arkansas. [D-3]

Lot Three (3) in Block "F", Original City of Fort Smith, Arkansas; Lot Four (4) and the South Half of the Southwest Half of Lot Five (5) in Block "F", Original City of Fort Smith, Arkansas; and Lot 5 in Block 20, City of Fort Smith, Arkansas, being a part of the Southeast Quarter of Section 8, Township 8 North, Range 32 West. [D-3]

Lots 7, 8, 9 and 10, Block "F", Original City of Fort Smith, Arkansas, being a part of the Southeast Quarter (SE/4) of Section Eight (8) North, Range Thirty-two (32) West, Fort Smith District, Sebastian County, Arkansas. [D-12]

Lot Eleven (11), Block "F", Original City of Fort Smith, Arkansas, being a part of the Southeast Quarter (SE/4) of Section Eight (8), Township Eight (8) North, Range Thirty-two (32) West, Fort Smith District, Sebastian County, Arkansas. [D-12]

The Northwest or West Eighty-five (85) feet of Lot 12 in Block "F", being all of said lot except the East or Southeast 55 feet, being a part of the Southeast Quarter of Section Eight (8) North of Range Thirty-two (32) West. [D-12]

The East Fifty-five (55) feet of Lot Twelve (12) in Block "F" in the City of Fort Smith Addition to the City of Fort Smith, Arkansas. [D-12]

Lots Five (5) and Six (6) in Block Five Hundred and Five, Reserve Addition to the City of Fort Smith, Sebastian County, Arkansas, and the buildings and improvements located thereon. Known locally as 19 South Fourth Street, Fort Smith, Arkansas. [D-13]

TO HAVE AND TO HOLD the same unto the said RICHARD B. GRIFFIN, TRUSTEE OF THE GRIFFIN FAMILY TRUST DATED August 30, 1991, and unto his successors and assigns forever, with all privileges and appurtenances thereunto belonging.

And we, the said Grantors, for ourselves, our heirs, personal representatives and assigns, hereby covenant with the said Grantee, his successors and assigns, that we are lawfully seized in fee of the aforegranted premises; that they are free from all encumbrances; that we have good right to sell and convey the same to the said Grantee as aforesaid, and that we will, and our personal representatives shall, forever warrant and defend the title to said real estate against all lawful claims and demands whatsoever.

And we, the said RICHARD B. GRIFFIN and JAUNICE J. GRIFFIN, for and in consideration of the sum of money, do hereby release and relinquish unto the Grantee all our right of dower, curtesy and homestead in and to the said lands.

WITNESS our hands and seals on this 30th day of August 1991.

Richard B. Griffin
RICHARD B. GRIFFIN

Jaunice J. Griffin
JAUNICE J. GRIFFIN

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

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FT SMITH DIST.
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CHR. STEAK/SEB. CO.

AMENDED
RESPONSES TO
REQUEST FOR ADMISSIONS

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its amended responses, states:

REQUEST NO. 3: Admit that plaintiff's policy of insurance was a builder's risk policy.

AMENDED RESPONSE: The defendant deems this policy an Inland Marine policy, and the specific coverage in question is entitled "Contractor's and Owner's Property Protection." Generically, this is a builder's risk policy.

REQUEST NO. 8: Admit that the elevator and accessory parts and staircase and railings, which the plaintiff made claim for, were custom made for the plaintiff's building, located at 222 Garrison Avenue.

AMENDED RESPONSE: Denied. The defendant will admit that the elevator and accessory parts and staircase and railings were custom made. They will further admit they were custom made for the building project located at 222 Garrison Avenue, which project was being completed by Griffin Construction Company on the building

Handwritten initials

owned by the Griffin Family Trust. The defendant will also admit that the plaintiff made claim for the estimated costs of the staircase and railings.

REQUEST NO. 12: Admit that the policy of insurance attached to the plaintiff's Amended Complaint covered the plaintiff's building located at 222 Garrison Avenue, known as the Josiah Foster Building.

AMENDED RESPONSE: The defendant will admit that the policy of insurance issued by the defendant covered the plaintiff's building project located at 222 Garrison Avenue. The defendant specifically denies that the plaintiff, Griffin Construction Company, owned the building; rather, the Griffin Family Trust owned the building.

REQUEST NO. 13: Admit that the plaintiff cannot resell the elevator carriage and accessory parts that it purchased from Dover Elevator for the same amount that it paid for those items.


AMENDED RESPONSE: Admitted.

REQUEST NO. 14: Admit that the plaintiff cannot resale the staircase and railings that it purchased from Mainer Iron Works for the same amount that it paid for those items.

AMENDED RESPONSE: Admitted.

ST. PAUL FIRE & MARINE INS. CO.

By:


CURTIS L. NEBBEN (#80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to R. Gunner DeLay, 1713 South "D" Street, Fort Smith, Arkansas 72901, this 12 day of February, 1998.

W. L. Hill

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

FT SMITH
98 FEB 13 AM 10 04
CIR. CLERK SEB. CO.

AMENDED RESPONSES
TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its amended responses to Interrogatories and Request for Production of Documents, states:

INTERROGATORY NO. 1: Please give the name, address and telephone number of the person answering these interrogatories.

AMENDED RESPONSE: Ken Custer, Senior Claims Representative, St. Paul Fire and Marine Insurance Company. Additional information was obtained through David Lovelace, Underwriter, St. Paul Fire & Marine Insurance Company, Arlington, Texas, and Bill Plegge, Cashion & Company, Little Rock, Arkansas.

INTERROGATORY NO. 2: Please give the name, address and telephone number of all persons who will testify on behalf of the defendant and give a brief summary of the facts about which they will testify.

AMENDED RESPONSE: The defendant does not know who it will call as a witness to testify at the trial of this lawsuit. Such decision cannot be made until the conclusion of the plaintiff's case in chief. However, the defendants reserve the right to call Ken

C. A. A.

has no insurable interest in the building.

INTERROGATORY NO. 5: Give the name, address and telephone number of any and all expert witnesses who will be called to testify on behalf of the defendant, and briefly summarize the subject matter he or she will testify to.

AMENDED RESPONSE: Bill Plegge and David Lovelace have specialized knowledge as to the insurance industry and it is possible that their testimony may be characterized as that of expert witnesses.

INTERROGATORY NO. 8: If you denied Request for Admission No. 3, please describe what type of insurance policy the plaintiff purchased from the defendant.

AMENDED RESPONSE: The policy in question is an inland marine policy, which the defendant formally entitles a "Contractor's and Owner's Property Protection Policy." Generically, in the industry, this is known as a builder's risk policy.

INTERROGATORY NO. 10: If you denied Request for Admission No. 5, please explain the reason for your denial.

AMENDED RESPONSE: The defendant admits that the plaintiff made a demand for its alleged cost for a custom-made elevator carriage and accessory parts and iron staircase and railings. However, the plaintiff never submitted any type of documentation for the alleged cost of the elevator and accessory parts which are at issue.

INTERROGATORY NO. 13: If you denied Request for Admission No. 8, please explain your reason for denial.

AMENDED RESPONSE: The defendant denies that the plaintiff owned the building at 222 Garrison Avenue. The defendant admits that the plaintiff was performing a renovation project at this location and that the elevator and staircase were custom-made for the project.

INTERROGATORY NO. 17: If you denied Request for Admission No. 12, please explain your reason for denial.

AMENDED RESPONSE: Pursuant to the documentation provided by Ida Hunter, the building was owned by the Griffin Family Trust. The defendant admits that the policy at issue covered the plaintiff's building project at 222 Garrison Avenue.

INTERROGATORY NO. 18: Does the defendant have any information that the plaintiff could sell the elevator carriage and accessory parts, and stair case railings, to any other party? If so, what does the defendant contend the plaintiff could receive for each such item.

AMENDED RESPONSE: No.

INTERROGATORY NO. 19: If you denied Request for Admission No. 14, please explain your reason for denial.

AMENDED RESPONSE: Not applicable.

INTERROGATORY NO. 20: Do you agree that the defendant was obligated to cover plaintiff's financial interest in it's [sic] property located at 222 Garrison Avenue, Fort Smith, Arkansas? If not, why not?


AMENDED RESPONSE: The defendant agrees that its policy of insurance attached hereto pursuant to Request for Production No. 2

covered the building project located at 222 Garrison Avenue, Fort Smith, Arkansas, pursuant to the terms and conditions, coverage, and exclusions of said policy.

INTERROGATORY NO. 22: Please state what, if any, exclusions apply to the plaintiff's claim.

AMENDED RESPONSE: Please see answer to Second Amended Complaint. The defendant contends that the policy language does not provide coverage for the staircase and elevator. The defendant further contends that this policy is not a fire policy and, therefore, not a stated value policy pursuant to Arkansas law. The defendant further contends that the plaintiff did not own the building located at 222 Garrison Avenue. The defendant contends that the policy covered the plaintiff's building project at 222 Garrison Avenue, and other construction projects of the plaintiff, pursuant to the terms and conditions of the policy. In addition, the defendant contends that if the plaintiff is entitled to coverage for the building, this coverage has already been paid by Maryland Casualty Company; therefore, the "other insurance" clause of the defendant's policy takes effect. Also, Griffin Family Trust, the owner of the building, is not a named insured and therefore not entitled to coverage.

ST. PAUL FIRE & MARINE INS. CO.

By: 
CURTIS L. NEBBEN (#80106)
JAMES M. GRAVES (#95172)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to R. Gunner DeLay, 1713 South "D" Street, Fort Smith, Arkansas 72901, this 12 day of February, 1998.



'98 MAR 6 AM 9 43
Recky Walker
CIR CLERK SEB CO

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION CO., INC. PLAINTIFF

V. CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY DEFENDANT

THIRD AMENDED COMPLAINT

Comes now the Plaintiff, Griffin Construction Company by and through its attorney, Mr. R. Gunner DeLay, and for its Second Amended Complaint filed herein, hereby states:

I.

The Plaintiff is an Arkansas corporation, with its principal place of business in Fort Smith, Sebastian County, Arkansas. The Defendant is a corporation, duly licensed and registered to do business in the state of Arkansas. The contract for insurance, which is the subject of this action, was entered into in Fort Smith, Sebastian County, Arkansas. Therefore, this court has jurisdiction over the subject matter herein and venue is proper in this county.

II.

On or around September 9, 1996, the Plaintiff obtained a policy of insurance from the Defendant to protect its building projects. The policy provided that the plaintiff was to pay a premium deposit of \$4000.00 for a coverage limit of three million (\$3,000,000.00). Under the policy, several of the

plaintiff's properties were covered and the premiums for each project were deducted from the premium deposit. One of the properties covered under the policy was 222 Garrison Avenue in Fort Smith, Arkansas. The amount of the project reported by the plaintiff to the defendant was 1.5 million dollars and premiums were paid on that amount. (a copy of the policy has been previously attached to the plaintiff's amended Complaint)

III.

On or around December 20, 1996, the plaintiff's building located at 222 Garrison Avenue was completely destroyed by fire. All that remained was a portion of a wall which had to be demolished because it presented a safety hazard. The defendant paid partial benefits to the plaintiff in the amount of \$286,573.67. It did not pay the plaintiff the balance of the 1.5 million dollars upon which premiums were paid.

IV.

The defendant's failure to pay the plaintiff the full amount of its insurance policy constitutes a breach of contract, for which the plaintiff is entitled to recover the sum of \$1,213,426.33.


V.

The plaintiff is also entitled to the statutory penalty of 12% against the defendant, together with prejudgment

interest, attorney's fees and costs.

WHEREFORE, plaintiff prays that it be awarded judgment against the defendant for the sum of \$1,213,426.33, together with a 12% penalty, attorney's fee, and costs.

Rush, Rush, & Cook
1713 S. D Street
Fort Smith, AR 72901
(501) 785-4466



Gunner DeLay
ABA 88091

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing it in the US mail a copy properly addressed with adequate postage.

This 6 day of March, 1998.

Mr. Curt Nebbin
P.O. Box 3618
Fayetteville, AR 72702-3618



Gunner DeLay

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

FILED
ST. SMITH DIST
Becky Wack
'98 MAR 6 AM 9
PLAINTIFF
CIR CLERK SEB CO

GRIFFIN CONSTRUCTION CO., INC.

V. CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

DEFENDANT

MOTION IN LIMINE

Comes now the Plaintiff, Griffin Construction Company by and through its attorney, Mr. R. Gunner DeLay, and for its Motion in Limine filed herein, hereby states:

1. The defendant should be barred from referencing or introducing any previous complaints filed by the plaintiff in this matter.

2. The defendant should be barred from introducing or referencing any other policies of insurance the plaintiff had on 222 Garrison Avenue in Fort Smith.

3. The defendant should be barred from introducing any testimony or evidence concerning the value of the property insured.

WHEREFORE, the plaintiff prays that the court grant its Motion in Limine and for all other relief to which it may be entitled.

Griffin Construction Co.

Rush, Rush, & Cook
1713 South D
Fort Smith, AR 72901
(501) 785-4466

By: *R. Gunner DeLay*
Gunner-DeLay
88091

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of this pleading by depositing it in the US mail a copy properly addressed with adequate postage.

This 6 day of March, 1998.

Mr. Curt Nebbin
P.O. Box 3618
Fayetteville, AR 72702-3618

R. J. DeLay
Gunner DeLay

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION CO.

PLAINTIFF

v.

CASE NO. CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

MOTION TO AMEND RESPONSES
TO REQUESTS FOR ADMISSIONS

1998 MAR 6 AM 10 41
CIR. CLERK SEB. CO.

Comes now the defendant, St. Paul Fire & Marine Insurance Company, pursuant to Rule 36(b) of the Arkansas Rules of Civil Procedure, and for its motion to amend its responses to Requests for Admissions, states:

1. On November 10, 1997, the defendant filed its response to the Requests for Admissions, a copy of which is attached hereto as Exhibit "A".

2. On or about December 1, 1997, the plaintiff amended its complaint, claiming that the policy of insurance issued by the defendant was a fire policy and, pursuant to Ark. Code Ann. § 23-88-101, the plaintiff was entitled to \$3,000,000.

3. On or about February 12, the defendant amended its responses to Requests for Admissions, a copy of which is attached hereto as Exhibit "B".


4. The amendment of the Requests for Admissions will not prejudice the plaintiff in maintaining its action on the merits.

5. A brief in support is attached hereto.

J. H. H.
Judge

WHEREFORE, the defendant, St. Paul Fire & Marine Insurance Company, prays that its previous admissions of November 10 are amended pursuant to its subsequent amendment of February 13, and for all other relief to which it may be entitled.

ST. PAUL FIRE & MARINE INSURANCE CO.

BY: 
CURTIS L. NEBBEN (AR #80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
501.521.9996

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by regular U.S. Mail, postage prepaid, to Gunner Delay, attorney for the plaintiff, this 5 day of March, 1998.


Curtis L. Nebben

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

FILED
SMITH DIST.
Amy Ballard
'98 MAR 9 AM 10 38

GRIFFIN CONSTRUCTION CO.

v.

CASE NO. CIV-97-434

CIR. CLERK SEB. CO.
(II)

PLAINTIFF

ST. PAUL FIRE AND MARINE INSURANCE CO.

DEFENDANT

ANSWER TO THIRD AMENDED COMPLAINT

Comes now the defendant, St. Paul Fire and Marine Insurance Company, and for its Answer to the Third Amended Complaint of the plaintiff, states as follows:

1. The defendant denies each and every material allegation not herein specifically admitted.
2. The defendant admits the allegations of paragraph 1 of the Third Amended Complaint.
3. The defendant admits that on or about September 9, 1996, the plaintiff obtained a policy of insurance from the defendant and said policy provides coverages for, among other things, building and installation projects. Said coverages are provided pursuant to the policy which is incorporated herein by reference line for line and word for word. The defendant admits that the policy provided that the plaintiff was to pay a premium deposit of \$4,000. The defendant admits that various projects of the plaintiff was covered, including the project performed for the owner of the building, the Griffin Family Trust, at 222 Garrison Avenue. The defendant denies the remaining allegations of paragraph 2 of the Third Amended Complaint.

[Handwritten signature]
3-9-98

3. The defendant admits that on or about December 20, 1996, a fire occurred at 222 Garrison Avenue. The defendant further admits that it paid benefits to the plaintiff in excess of \$200,000 for the claim submitted at that time. The defendant states affirmatively that no claim was made for \$1.5 million until March 6, 1998. In addition, no claim was made for any item other than an elevator and stairwell prior to December 1, 1997. The defendant denies the remaining allegations of paragraph 3 of the Third Amended Complaint.

4. The defendant denies the allegations of paragraphs 4 and 5 of the Third Amended Complaint.

5. The defendant states affirmatively that the plaintiff is not entitled to any of the relief requested.

6. The defendant states affirmatively that its policy of insurance is not a fire insurance policy and does not come within the valued policy law of Arkansas, found at Ark. Code Ann. § 23-88-101. Said policy is a policy for contractor's and owner's protection " . . . designed . . . to protection construction projects and the materials and equipment used in their completion." Said policy, attached to defendant's responses to requests for admissions and motion for summary judgment, is incorporated by reference line for line and word for word. Said policy only covers the plaintiff's financial interest in insured buildings and installation projects and structures and will only pay the amount of the covered loss as set out in the policy that is remaining after other insurance available to cover the loss has paid its

proceeds.


7. The defendant states affirmatively that the plaintiff has received reimbursement for the building in the amount of \$500,000 from another insurance company for which it is entitled to a credit.

8. The defendant states affirmatively that Ark. Code Ann. § 23-88-101 does not govern the provisions of the policy issued by the defendant to the plaintiff which is the subject of this lawsuit.

WHEREFORE, the defendant prays that the plaintiff's Third Amended Complaint, and all prior complaints, be dismissed with prejudiced, and for their costs expended herein, any for all other relief to which it is entitled.

ST. PAUL FIRE & MARINE INS. CO.


BY:


CURTIS L. NEBBEN (#80106)
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702
(501) 521-9996

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand delivered to Gunner Delay, attorney for plaintiff, on March 9, 1998.


Curtis L. Nebben

CV 40727
Griffin vs St. Paul

VERDICT FORM

We the jury find in favor of the plaintiff, Griffin Construction Company, and award it damages in the amount of \$ 1,213,426.33.

Foreperson Rynn Walker

FILED
FT. SMITH DIST.
'98 MAR 9 AM 5:00
CIR. CLERK SED. CO.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS FILED
 FORT SMITH DISTRICT

FT. SMITH DIST.
AMY BILLO
 '98 APR 7 PM 3 40

GRIFFIN CONSTRUCTION COMPANY

CIR. PLAINTIFF CO.

V. CASE NO. CIV-97-434 (I)

ST. PAUL FIRE & MARINE INSURANCE COMPANY

DEFENDANT

JUDGMENT

Now on this 10th day of March, 1998, this cause came on to be heard, the plaintiff, appearing in person and by and through its attorney, is Rush, Rush and Cook, Mr. R. Gunner DeLay, and Mr. David L. Rush of the firm, and the defendant, appearing in person, by and through its attorney, Mr. Curt Nebbin, and all parties being prepared for trial, a jury composed of twelve members of the regular panel of petite jurors of this court was selected, empaneled, and sworn according to law, to try the issues of fact arising in this case. After hearing all the evidence introduced, the instructions of the Court and the arguments of counsel, the jury retired to consider its verdict, and after deliberating thereon, returned the following unanimous verdict:

1. "We the jury, find in favor of the plaintiff, Griffin Construction Company, and award it damages in the amount of \$1,213,426.33."

Signed: Aynn Walker
 Foreperson

-026-772

280

Add 88

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the plaintiff, Griffin Construction Company, have and recover of and from the defendant, St. Paul Fire & Marine Insurance Company, the sum of \$1,213,426.33, together with prejudgment interest in the amount of \$76,595.89 , a statutory 12% penalty in the amount of \$145,611.15, an attorney's fee in the amount of \$ 16,515.00 , and costs in the sum of \$135.00, all bearing interest at the rate of 10% per annum, for all of which execution may issue.


Hon. John G. Holland, Circuit Judge

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION COMPANY, INC.

PLAINTIFF

v.

No. CIV-97-434-II

ST. PAUL FIRE & MARINE
INSURANCE COMPANY

DEFENDANT

ST. PAUL'S POST-TRIAL MOTIONS

Pursuant to ARCP 50(b) and ARCP 59(a)(1), (5), (6), and (8), The St. Paul Fire & Marine Insurance Company ("St. Paul") moves this Court for judgment notwithstanding the verdict, or for a new trial, and states:

1. St. Paul is entitled to judgment notwithstanding the jury's verdict because the Builder's Risk policy that St. Paul issued to Griffin Construction Company is not a fire insurance policy within the meaning of A. C. A. § 23-88-101. At most, therefore, Griffin Construction is entitled to recover the actual value of the company's covered loss under the policy. Plaintiff is not entitled to the full value of its uncompleted construction project. This Court should amend its Judgment accordingly.

2. In the alternative, even if Arkansas' valued policy statute applies, Griffin is not entitled to the windfall recovery awarded by the jury. The statute liquidates damages at the "full amount stated in the policy, *or the full amount upon which the company charges, collects, or receives a premium.*" A.C.A. § 23-88-101 (emphasis added). The latter provision controls. The testimony established that St. Paul collected a weighted premium from Griffin Construction. That premium reflected the lower risk, and thus lower coverage, in the early stages of the construction project. The risk

increased as the project progressed, but St. Paul's premium did not. Under the statute, therefore, Griffin Construction can only collect "the full amount" it actually lost because that is the risk covered by the weighted premium St. Paul actually charged, collected, and received.

3. In the alternative, even if Arkansas' valued policy statute applies to the policy, Griffin Construction is not entitled to the windfall recovery awarded by the jury from another reason. Almost all the property Griffin Construction allegedly "lost" was personal property. The statute does not include personal property within its mandate. It only covers real property. The statute only covers the actual improvements to the building because they became fixtures on the real property. Griffin Construction is therefore only entitled to the actual value of those fixtures.

4. In the alternative, St. Paul is entitled to judgment notwithstanding the verdict because Griffin Construction has already collected \$500,000.00 in proceeds from other insurance on this loss insured by a company in the Maryland Insurance Group. Exhibit "A". St. Paul's policy was excess coverage. Because Griffin Construction's actual loss did not exceed the Maryland Group policy, St. Paul owes nothing.

5. In the alternative, to prevent a double recovery to Griffin Construction, even if this Court holds that both policies are embraced by Arkansas' value policy statute, then this Court should reduce Griffin's recovery. Either the judgment against St. Paul should be reduced by the amount collected from the Maryland Group policy, or

the loss should be spread between St. Paul and the Maryland Group. The judgment should be amended accordingly:

6. When this Court amends the Judgment for one of the reasons given above, it should not award the statutory penalty, attorney's fees, or pre-judgment to Griffin Construction. The Company will have failed to recover 80% of its 1.2 million dollar plus prayer for relief. Therefore, it will not be entitled to fees or the penalty under A. C. A. § 23-79-208(d). And because its damages were uncertain, pre-judgment interest will also be inappropriate.

7. If this Court does not amend the Judgment, then St. Paul is entitled to a new trial. Supplementing its proffer at trial, St. Paul attaches the Maryland Casualty policy as Exhibit "B" to this Motion. If St. Paul's policy is covered by Arkansas' Value Policy Statute, then St. Paul should have been allowed to tell the jury about Griffin's recovery under the Maryland Group policy and cross examine the witnesses at trial about the Maryland policy, which is a true fire insurance policy covered by the statute.

8. St. Paul submits Exhibit "C", a copy of its Builder's Risk policy, and a Brief in further support of its Motions.

9. St. Paul also moves the Court to stay its Judgment pending its decision on these post-trial Motions.


WHEREFORE, The St. Paul Fire and Marine Insurance Company requests that this Court (1) grant its motion for judgment notwithstanding the verdict, or a new trial,

(2) stay its Judgment pending a decision on those motions, and (3) grant St. Paul all other relief to which it is entitled.

Respectfully submitted,


Curtis L. Nebben (80106)
BASSETT LAW FIRM
P. O. Box 3618
Fayetteville, AR 72702-3618
(501) 521-9996

D. P. Marshall Jr. (90087)
BARRETT & DEACON
A Professional Association
P. O. Box 1700
Jonesboro, AR 72403
(501) 931-1700

By 
Attorneys for Defendant, The St. Paul Fire &
Marine Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that service of this St. Paul's Post-Trial Motions was made by mailing a copy of it to R. Gunner DeLay, RUSH, RUSH & COOK, 1713 South D Street, Fort Smith, Arkansas 72901, on this 20th day of April, 1998.


D. P. Marshall Jr.

P. O. BOX 1238
BALTIMORE

MD 21203

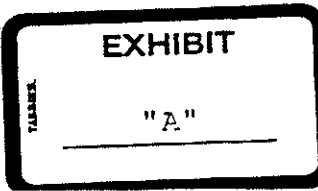


29940
GRIFFIN CONSTRUCTION COMPANY
PO BOX 2207
FT. SMITH AR 72902

Check or Draft number 3850063 in the amount of \$5,000.00 is attached.
Please call me at (410) 356-1000 if you have any questions about this claim or this payment.

Thank You
RICHARD L. CARTER

Claim Number 45M-920984	Co Code 07	Policy Number EPA20406964	Accident or Loss Date 12/20/96
Producing Agent THE CASHION COMPANY, INC.		Underwriting Office OKLAHOMA	Date Issued 03/11/97
Insured GRIFFIN CONSTRUCTION0419			
This payment issued for:			
ADDRESS BROUGHT FORWARD			



P.O. BOX 1228
BALTIMORE

MD 21102



31570
GRIFFIN CONSTRUCTION COMPANY
PO BOX 2207
FT. SMITH AR 72902

Check or Draft number 3743308 in the amount of \$500,000.00 is attached.
Please call me at (410) 366-1000 if you have any questions about this claim or this payment.

Thank You
RICHARD L. CARTER

Claim Number 45M-920984	Co Code 07	Policy Number EPA20406964	Accident or Loss Date 12/20/96
Producing Agent TMS CASHION COMPANY, INC.		02021392	Date Issued 01/21/97
Insured GRIFFIN CONSTRUCTION0419		Underwriting Office OKLAHOMA	
This payment issued for: DAMAGE TO BUILDING			



POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	PA
20406964	02021392	000259103900100000	000000095-004

OKLAHOMA CITY RENEWAL OF: EPA204069640000000

NORTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038
 AUDIT CODE: 4

CONCRETE CONTRACTORS COMMON POLICY DECLARATION

THIS COMMON POLICY DECLARATION WITH COVERAGE PARTS AND ENDORSEMENTS, IF ANY, WHEN ADDED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED COMMERCIAL INSURANCE POLICY.

NAMED INSURED AND MAILING ADDRESS:	PRODUCER NAME AND ADDRESS:
WELDON CONSTRUCTION COMPANY	CASHION COMPANY INC
(BE NAMED INSURED ENDT.))	P. O. BOX 550
P. BOX 2207	LITTLE ROCK, AR 72203
SMITH, AR 72902	(501)376-0716

POLICY PERIOD: FROM 12/31/95 TO 12/31/96 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

BUSINESS DESCRIPTION: CONTRACTOR/CONCRETE
 TYPE OF BUSINESS: CORPORATION



RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
COMMERCIAL PROPERTY COVERAGE PART	\$ 15,820.00
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$ 17,513.00
COMMERCIAL CRIME COVERAGE PART	\$ 179.00
COMMERCIAL INLAND MARINE COVERAGE PART	\$ 2,705.00
TAXES/SURCHARGES	\$ 0.00
TOTAL	\$ 36,217.00

PREMIUM IS PAYABLE IN INSTALLMENTS: SEE ENDORSEMENT.

NOT APPLICABLE TO ALL PARTS:

11 00 17 11 05 11 01 70 04 04 46 13 5 07 88 47 54 5
 95 00 04 09 92 99 20 15 02 93

310



POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	PAGE
ADW4000364	02021392	000259103800100000	000000095-004

OKLAHOMA CITY

NORTHERN INSURANCE COMPANY
 NEW YORK
 NEW YORK NY 10038
 STOCK COMPANY

AUDIT CODE: 4

PAYMENT EXTENSION SCHEDULE SUMMARY

INSURED AND MAILING ADDRESS:
 AFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.)
 P. O. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK AR 722030550

SMITH AR 72902

POLICY PERIOD: FROM 12/31/95 TO 12/31/96

TERM EFF DATE: 12/31/95 TERM EXP DATE: 12/31/96

DATE DUE TO COMPANY	AMOUNT
12 31 95	\$3,031.43
01 31 96	\$3,016.87
02 29 96	\$3,016.87
03 31 96	\$3,016.87
04 30 96	\$3,016.87
05 31 96	\$3,016.87
06 30 96	\$3,016.87
07 31 96	\$3,016.87
08 31 96	\$3,016.87
09 30 96	\$3,016.87
10 31 96	\$3,016.87
11 30 96	\$3,016.87

\$36,217.00 TOTAL PAYMENT AMOUNT
 \$36,217.00 TOTAL PREMIUM AMOUNT
 \$0.00 SERVICE CHARGE

PAYMENTS SHOWN ON THIS INSTALLMENT SCHEDULE DIFFER FROM THE BILLING STATEMENT, PAY THE AMOUNT SHOWN ON BILLING STATEMENT.

47545 05 91

04/19/96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

POLICY CHANGES

Policy Term: 12/31/95 to 12/31/96

POLICY NUMBER	POLICY CHANGES EFFECTIVE	COMPANY
20406964	12/31/1995	NORTHERN INSURANCE COMPANY

AMED INSURED	AUTHORIZED REPRESENTATIVE
FFIN CONSTRUCTION COMPANY	THE CASHION COMPANY

COVERAGE PARTS AFFECTED

40N

COMMERCIAL GENERAL LIABILITY COVERAGE IS AMENDED TO INCLUDE
 FOLLOWING COVERAGES:

EMPLOYEE BENEFIT LIABILITY.....	\$258.00	a/p
INCREASED FIRE LEGAL	665.00	a/p
PROPERTY GAP COVERAGE	90.00	a/p

ADDITIONAL PREMIUM DUE\$1013.00

POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	
020406964	02021392	000259103800100000	000000095-004

OKLAHOMA CITY

NORTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038

AUDIT CODE: 4

MANUSCRIPT ENDORSEMENT

INSURED AND MAILING ADDRESS:
 GRIFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.))
 P. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK AR 722030550

J. SMITH AR 72902

DATE OF ISSUE 04/19/96
 POLICY EFF DATE 12/31/95
 TERM EFF DATE 12/31/95

POLICY EXP DATE 12/31/96
 TERM EXP DATE 12/31/96

CLAIM NUMBER 47545
 NAMED INSURED-----PROPERTY

- 1) GRIFFIN CONSTRUCTION COMPANY
- 2) GRIFFIN CONSTRUCTION COMPANY DBA RBG
 CONSTRUCTION COMPANY
- 3) GRIFFBERGER PROPERTIES, A PARTNERSHIP
- 4) GRIFFIN PARTNERSHIP
- 5) ECONOMY MINI STORAGE

POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	
AE0406964	02021392	000259103900100000	000000095-004

OKLAHOMA CITY

NORTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038

AUDIT CODE: 4

MANUSCRIPT ENDORSEMENT

INSURED AND MAILING ADDRESS:
 GRIFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.)
 P. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK AR 722030550

SMITH AR 72902

DATE OF ISSUE 04/19/96
 POLICY EFF DATE 12/31/95
 TERM EFF DATE 12/31/95

POLICY EXP DATE 12/31/96
 TERM EXP DATE 12/31/96

POLICY NUMBER 47545

NAMED INSURED-----COMMERCIAL GENERAL LIABILITY

- 1) GRIFFIN CONSTRUCTION COMPANY
- 2) GRIFFIN CONSTRUCTION COMPANY DBA RBG
 CONSTRUCTION COMPANY
- 3) GRIFFBERGER PROPERTIES, A PARTNERSHIP
- 4) GRIFFIN PARTNERSHIP
- 5) ECONOMY MINI STORAGE
- 6) NOBLE HOUSE OF DIXON, INC.

POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	P
A20406964	02021392	000269103800100000	000000095-004

OKLAHOMA CITY

NORTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038

AUDIT CODE: 4

MANUSCRIPT ENDORSEMENT

MED INSURED AND MAILING ADDRESS:
 GRIFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.))
 P. O. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK AR 722030550

J. SMITH AR 72902

DATE OF ISSUE 04/19/96
 POLICY EFF DATE 12/31/95
 TERM EFF DATE 12/31/95

POLICY EXP DATE 12/31/96
 TERM EXP DATE 12/31/96

ITEM NUMBER 47545

- 7) SILVER POINTE PARTNERSHIP, RICHARD & RICK GRIFFIN & JAMES R. SMITH INC.
- 8) NOBLE HOUSE OF SEYMOUR, INC. NC.
- 9) CHILLICOTHE CARE, INC.
- 10) CURRENT RIVER HEALTH CARE, INC.
- 11) QUALITY LINK-CHATHAM, A PARTNERSHIP
- 12) NOBLE HOUSE OF FREDERICKTOWN, INC.
- 13) SILVER POINTE OF ROWAN, LTD. PARTNERSHIP
- 14) SILEX CARE, INC.
- 15) CARROLLTON CARE, INC.

POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	
PA20406364	02021392	000259103800100000	000000095-004

30 OKLAHOMA CITY

NORTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038

AUDIT CODE: 4

MANUSCRIPT ENDORSEMENT

NAMED INSURED AND MAILING ADDRESS:
 GRIFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.)
 P. O. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK AR 722030550

J. SMITH AR 72902

DATE OF ISSUE 04/19/96
 POLICY EFF DATE 12/31/95
 TERM EFF DATE 12/31/95

POLICY EXP DATE 12/31/96
 TERM EXP DATE 12/31/96

FORM NUMBER 47545

- 16) WHISPERING OAKS SKILLED CARE, INC.
- 17) TCB NURSING FACILITY, INC.
- 18) QUAPAW NURSING CENTER, INC.
- 19) FORSYTH CARE CENTERS, INC.
- 20) CARE MANOR OF CARROLL COUNTY, INC.
- 21) TRINITY COURT, INC.
- 22) RICHARD B. GRIFFIN, INDIVIDUAL
- 23) JAUNICE GRIFFIN, INDIVIDUAL
- 24) RICHARD B. GRIFFIN II, INDIVIDUAL
- 25) ST. CHARLES HEALTH CARE, LLC.

POLICY NUMBER	PRODUCER NUMBER	ACCOUNT NUMBER	
020406964	0202:092	000259103800100000	000000095-004

OKLAHOMA CITY

SOUTHERN INSURANCE COMPANY
 NEW YORK
 STOCK COMPANY
 NEW YORK NY 10038

AUDIT CODE: 4

MANUSCRIPT ENDORSEMENT

MED INSURED AND MAILING ADDRESS:
 GRIFFIN CONSTRUCTION COMPANY
 (SEE NAMED INSURED ENDT.)
 P. O. BOX 2207

PRODUCER NAME AND ADDRESS:
 CASHION COMPANY INC
 P. O. BOX 550
 LITTLE ROCK, AR 722030550

J. SMITH AR 72902

DATE OF ISSUE 04/19/96
 POLICY EFF DATE 12/31/95
 TERM EFF DATE 12/31/95

POLICY EXP DATE 12/31/96
 TERM EXP DATE 12/31/96

FORM NUMBER 47545

- 26) HEMPHILL CARE LLC.
- 27) CARE FIRST, INC.
- 28) GRIFFIN FAMILY TRUST
- 29) RICHARD GRIFFIN, TRUSTEE

THE MARYLAND INSURANCE GROUP
CONTRACTOR'S POLICY

COMMERCIAL PROPERTY

BUILDING AND PERSONAL
PROPERTY COVERAGE FORM

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

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

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

COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations caused by or resulting from any Covered Cause of Loss:

- a. Building**, meaning the building or structure described in the Declarations, including:
- (1) Completed additions;
 - (2) Permanently installed;
 - (a) Fixtures, including attached fences;
 - (b) Machinery; and
 - (c) Equipment
 - (3) Outdoor fixtures;
 - (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;

- (b) Outdoor furniture;
- (c) Floor coverings; and
- (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the building or structure;
 - (b) Materials, equipment, supplies and temporary structures, on or within 1000 feet of the described premises, used for making additions, alterations or repairs to the building or structure.
- b. Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 1000 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separation of Coverage form:
- (1) Furniture and fixtures;
 - (2) Machinery and equipment;
 - (3) "Stock";
 - (4) All other personal property owned by you and used in your business;

The most we will pay for loss or damage under this Extension is 5% of the LIMIT OF INSURANCE for Building shown in the Declarations, but not more than \$25,000 at described premises.

c. Valuable Papers and Records

(1) You may extend the insurance that applies to your Business Personal Property to apply to Valuable Papers and Records that are your property or property of others in your care, custody or control. Valuable Papers and Records means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings forms, maps or mortgages. However, Valuable Papers and Records does not mean:

- (a) money or securities;
- (b) converted data;
- (c) programs or instructions used in your data processing operation, including the materials on which the data is recorded.

(2) You may also extend the insurance that applies to Your Business Personal Property to apply to your costs to research, replace, or restore the lost information on lost or damaged Valuable Papers and Records (including those which exist on electronic or magnetic media) for which duplicates do not exist.

The most we will pay for loss or damage to Valuable Papers and Records is \$10,000 while on the described premises and \$1,000 elsewhere within the Coverage Territory.

EXCLUSIONS

See applicable Causes of Loss Form as shown in the Declarations.

LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$5,000 per sign in any one occurrence.

1. The limits applicable to the following are in addition to the Limits of Insurance:
 - a. Coverage Extensions;
 - b. Fire Department Service Charge Additional Coverage;

- c. Pollutant Clean Up and Removal Additional Coverage;
- d. Arson or Fraud Reward Additional Coverage; or
- e. Installation Additional Coverage.

2. Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

- a. Preservation of Property; or
- b. Debris Removal; but if:
 - (1) The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
 - (2) The debris removal expense exceeds the amount payable under the 50% limitation in the Debris Removal Additional Coverage;

we will pay up to an additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

D. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance condition or the Agreed Value Optional Coverage.

E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage, we will:

- a. Not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (1) Vandalism;
- (2) Sprinkler leakage, unless you have protected the system against freezing;
- (3) Building glass breakage;
- (4) Water damage;
- (5) Theft; or
- (6) Attempted theft.

- b. Reduce the amount we would otherwise pay for the loss or damage by 15%.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

Buildings under construction are not considered vacant.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d., e., g. and h. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

This provision does not apply to the following even when attached to the building:

- (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety glazing material if required by law.
- e. Tenant's Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly;
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.
- f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
- (1) Blank materials for reproducing the records; and
 - (2) Labor to transcribe or copy the records when there is a duplicate.

Example No. 3:

When:

The value of property is:	
Bldg. at Location No. 1	\$75,000
Bldg. at Location No. 2	\$100,000
Personal Property at Location No. 2	<u>\$75,000</u>
	\$250,000

The Coinsurance
percentage for it is 90%

The Limit of Insurance for
Buildings and Personal
Property at Location
Nos. 1 and 2 is \$180,000

The Deductible is \$1,000

The amount of loss is Bldg.
at Location No. 2 \$30,000

Personal Property at
Location No. 2 \$20,000
\$50,000

Step (1): $\$250,000 \times 90\% = \$225,000$
(the minimum amount of insurance to
meet your Coinsurance requirements and
to avoid the penalty shown below)

Step (2): $\$180,000 + \$225,000 = .80$.

Step (3): $\$50,000 \times .80 = \$40,000$.

Step (4): $\$40,000 - \$1,000 = \$39,000$.

We will pay no more than \$39,000. The
remaining \$11,000 is not covered.

2. Mortgage Holders

- a. The term 'mortgage holder' includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:

- (1) Pays any premium due under the Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

G. OPTIONAL COVERAGES

If shown in the Declarations, the following Optional Coverages apply separately to each item.

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year of the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example:

It:

The applicable Limit of Insurance is	\$100,000
The annual percentage increase is	8%
The number of days since the beginning of the policy year (or last policy change) is	146
The amount of increase is	
$\$100,000 \times .08 \times 146 \div 365 =$	\$3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Property of others;
 - (2) Contents of a residence;
 - (3) Manuscripts;
 - (4) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
 - (5) "Stock," unless the Including "Stock" option is shown in the Declarations.
- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

e. We will not pay more for loss or damage on a replacement cost basis than the least of:

- (1) The Limit of Insurance applicable to the lost or damaged property;
- (2) The cost to replace, on the same premises, the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
- (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

H. DEFINITIONS

1. **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
2. **"Stock"** means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

GRIFFIN CONSTRUCTION COMPANY, INC.

PLAINTIFF

V.

CASE NO. CIV 97-434 (II)

ST. PAUL FIRE & MARINE
INSURANCE COMPANY

DEFENDANT

RESPONSE TO POST-TRIAL MOTIONS
AND MOTION TO STRIKE

Comes now the Plaintiff and for its Response to Post-Trial
Motions and Motion to Strike, hereby states:

1. The Defendant has failed to demonstrate to the court that it is entitled to a Judgment Not Withstanding the Verdict.
2. The Defendant has failed to allege sufficient grounds to be granted a new trial in this matter.
3. The extraneous materials submitted by the Defendant with its Motions should be excluded.

RUSH, RUSH & COOK
Attorneys at Law
1713 South D Street
Fort Smith, AR 72901
Phone No. (501)785-4466
Fax No. (501)785-4484

BY:

Gunner DeLay
Gunner DeLay
ABA 88091

FILED
F. SMITH DIST.

'98 MAY 5 PM 1:32
CHR. CEEKIN SED. CO.

CERTIFICATE OF SERVICE

& COOK
"D" ST.
AR 72901
1466
5-4484

I, Gunner DeLay, hereby certify that on the ah day of May, 1998 mailed a true and correct copy of the above and foregoing instrument, with proper postage to:

Mr. D. P. Marshall, Jr.
Attorney at Law

C. D. R.

P. O. Box 1700
Jonesboro, AR 72403

A. Y. DeLay

Gunner DeLay

I & COOK
1100 ST.
AR 72901
-4466
85-4484

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT
SECOND DIVISION

FILED
FT SMITH DIST.
'98 MAY 20 PM 3 12
Sheila Coe
CLERK SEB. CO.

GRIFFIN CONSTRUCTION COMPANY

PLAINTIFF

VS.

CIV-97-434 (II)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

DEFENDANT

ORDER

On this 20th day of May, 1998, comes before the Court the Motion of the Defendant for Judgment Notwithstanding the Verdict or in the Alternative a Motion for New Trial. Both the parties submitted briefs and oral argument was presented on May 18, 1998. The Court being sufficiently advised doth find:

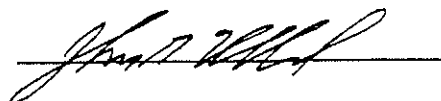
I.

That the Judgment returned by the Jury should stand, and the Motion for Judgment Notwithstanding the Verdict should be denied.

II.

That the Motion for New Trial should be denied.

IT IS, THEREFORE, ORDERED AND DECREED that the Jury Verdict returned herein shall stand, and the Motion for Judgment Notwithstanding the Verdict and the Motion for New Trial filed on behalf of the Defendant are denied.



JOHN G. HOLLAND
CIRCUIT JUDGE

FILED
FT SMITH DIST.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

1998 MAY 26 AM 8 39
CIR. CLERK SEB. CO.

GRIFFIN CONSTRUCTION COMPANY, INC.

PLAINTIFF

v.

No. CIV-97-434-II

ST. PAUL FIRE & MARINE
INSURANCE COMPANY

DEFENDANT

NOTICE OF APPEAL

1. The St. Paul Fire & Marine Insurance Company ("St. Paul") hereby notifies this Court and the other parties that it appeals from the Court's Judgment in favor of Griffin Construction Company, and the Court's Order denying St. Paul's post-trial Motions. The Judgment was filed of record on April 7, 1998. The Order was filed on May 20, 1998.
2. St. Paul has ordered a complete transcript of all proceedings in the case, and made financial arrangements with the court reporter for that transcript.
3. St. Paul designates the complete Circuit Court record, including all the evidence presented at trial and transcripts of all hearings and testimony, as the record on appeal.
4. This appeal should be heard by the Arkansas Supreme Court because it involves the interpretation of an Arkansas statute and involves an issue of major public importance.

Caroline Walker, Court Reporter
WFW
Caroline

Respectfully submitted,

Curtis L. Nebben (80106)
BASSETT LAW FIRM
P. O. Box 3618
Fayetteville, AR 72702-3618
(501) 521-9996

D. P. Marshall Jr. (90087)
BARRETT & DEACON
A Professional Association
P. O. Box 1700
Jonesboro, AR 72403
(501) 931-1700

By *D.P. Marshall Jr.*
Attorneys for Defendant, The St. Paul Fire
& Marine Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that service of this Notice of Appeal was made by mailing a copy of it to R. Gunner DeLay, RUSH, RUSH & COOK, 1713 South D Street, Fort Smith, Arkansas 72901, on this 22nd day of May, 1998.

D.P. Marshall Jr.
D. P. Marshall Jr.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION

GRIFFIN CONSTRUCTION COMPANY, INC.

v.

No. CIV-97-434-II

ST. PAUL FIRE & MARINE
INSURANCE COMPANY

PLAINTIFF

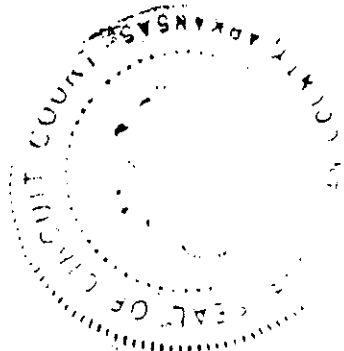
DEFENDANT

1998 MAY 29 11:53 AM 10 11
CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS

SUPERSEDEAS

The undersigned clerk of the Circuit Court of Sebastian County, Arkansas, hereby certifies that an appeal was taken to the Supreme Court of Arkansas from the Judgment filed in this Court on the 7th day of April, 1998, in favor of Griffin Construction Company, Inc. against St. Paul Fire & Marine Insurance Company, jointly and severally in the sum of \$1,452,283.37 plus interest at a rate of 10% and costs. The undersigned clerk further certifies that a Supersedeas Bond, duly executed by St. Paul Fire & Marine Insurance Company, and with sufficient surety, has been received and approved by the Court. All proceedings on the Judgment are, therefore, stayed. And all parties are directed to take notice thereof.

Witness my hand and official seal this 29 day of May, 1998.



By: Nancy Brewer
Nancy Brewer, Circuit Clerk

NO. /

EFFECTIVE: 9/17/96
 COMPANY: ST. PAUL
 POLICY #: IM09101516

9/17 - 12/17/96

FIN CONSTRUCTION COMPANY
 P.O. BOX 2207, FORT SMITH, AR 72902
 BLANKET BUILDERS RISK - REPORT PERIOD:

DESCRIPTION PROJECT/LOCATION/ADDRESS	DATE STARTED	TYPE OF CONSTRUCTION	CONTRACT PRICE	RATE	PREMIUM DUE
222 GARRISON AVE, FT SMITH 4 STORY JM RENOVATION		JOISTED MASONRY	\$ 1,500,000.	.0625	\$ 938.
			\$		\$
			\$		\$
			\$		\$
			\$		\$
AGENT: THE CASHION COMPANY, INC. P.O. BOX 550 LITTLE ROCK, AR 72203 (501) 376-0716					DEPOSIT PREMIUM LESS THIS REPORT \$ 4,000 \$ 938
DEPOSIT PREMIUM REMAINING					\$ 3,062

600

BY: _____ TITLE: _____ DATE: _____

INSURANCE BINDER



ST. PAUL FIRE & MARINE INS.
Insuring Company

INSURANCE AND BONDS

SIXTY (60)
Day Binder

THE INSURING COMPANY DOES HEREBY ACKNOWLEDGE ITSELF BOUND DURING THE PERIOD OF THIS BINDER FOR SUCH COVERAGES LISTED IN ITEM 2 AS INDICATE A LIMIT OF LIABILITY OR AMOUNT OF INSURANCE APPLICABLE THERETO ON THE RISK HEREIN DESCRIBED. SUBJECT TO THE INSURING AGREEMENTS, EXCLUSIONS, CO TIONS, AND OTHER TERMS OF THE POLICY FORM PROVIDED THE COMPANY'S UNDERTAKING HEREUNDER SHALL BE WITH RESPECT ONLY TO SUCH COVERAGES AS AFFORDED BY IT UNDER THE POLICY FORM.

1. GRIFFIN CONSTRUCTION COMPANY NAME OF INSURED

ADDRESS

P. O. BOX 2207S
FORT SMITH, AR 72902-2207

OCCUPATION

2. Type of Coverage

Limits of Liability or Amount of Insurance

REPORTING FORM BUILDERS RISK

\$ 3,000,000 PROJECT LIMIT

COVERAGE

\$ 300,000 TRANSIT LIMIT

SPECIAL INCLUDING THEFT

EXCLUDING FLOOD AND EARTHQUAKE

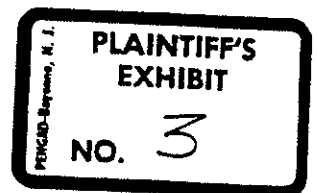
\$ 300,000 TEMPORARY LOCATION LIM

DEDUCTIBLE \$ 1,000

RATES

.35 ANNUAL RATE FOR ALL FRAME
CONSTRUCTION, NEW, ADDITIONS
AND REMODELING

.25 ANNUAL RATE FOR ALL RENOVA-
TION WORK



3. A PREMIUM CHARGE IN ACCORDANCE WITH THE APPLICABLE RULES AND RATES OF THE MANUAL IN USE BY THE COMPANY WHEN THIS BINDER BECOMES EFF TIVE SHALL BE MADE FOR THE PERIOD COVERAGE IS IN EFFECT. ACCEPTANCE BY THE INSURED OF A POLICY IN PLACE HEREOF SHALL RENDER THIS BINDER NI AND VOID AS OF THE EFFECTIVE DATE OF SUCH POLICY. THIS EITHER MAY BE CANCELED BY THE INSURED OR BY THE AGENT BY MAILING TO THE COMPANY WI TEN NOTICE STATING WHEN THEREAFTER SUCH CANCELLATION SHALL BE EFFECTIVE. THIS BINDER MAY BE CANCELED BY THE COMPANY BY MAILING TO T INSURED AT THE ADDRESS SHOWN ABOVE AND TO THE AGENT WRITTEN NOTICE STATING WHEN, NOT BEFORE 12:01 A.M. THE THIRD BUSINESS DAY FOLLOWI THE DATE OF MAILING, SUCH CANCELLATION SHALL BE EFFECTIVE. DELIVERY OF WRITTEN NOTICE SHALL BE EQUIVALENT TO MAILING.

THIS BINDER EFFECTIVE

DATE 9/9/96 HOUR 12:01 A.M.

THIS BINDER ISSUED

DATE 9/10/96 HOUR

718

THE CASHION COMPANY, INC.

By

April L. Dunchfield

321 SCOTT ♦ P. O. BOX 550 ♦ LITTLE ROCK, ARKANSAS ♦ 501-376-0716 ♦ FAX (501) 376-2118

Add 119

PRODUCER

The Cashion Company, Inc.
P.O. Box 550
Little Rock, AR 72203

501-376-0716

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION AND DOES NOT CONFESS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A The St. Paul Fire & Mar

COMPANY B

COMPANY C

COMPANY D

INSURED

Griffin Construction Company
P.O. Box 2207
Fort Smith AR 72902

AVERAGE

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY INT. DATE (MM/DD/YY)	POLICY EXP. DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY <input type="checkbox"/> COMM. GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR PROT				GENERAL AGGREGATE PROD-COMP/OP ACC. FEAR & ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (See First) MED EXP (See First)
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE
CARACKE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY-EA ACCIDENT OTHER THAN AUTO ONLY EACH ACCIDENT AGGREGATE
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE AGGREGATE
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNER/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT DISEASE-POLICY LIMIT DISEASE-EACH EMPL.
OTHER EXISTING BUILDING REPORTING FORM BUILDERS RISK	BIND047159	8/09/96	8/08/97	SPECIAL INCL THEFT; \$1,000 DED

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

COVERING BUILDING AND RENOVATIONS 222 GARRISON AVENUE, FORT SMITH, AR
CERTIFICATE HOLDER IS MORTGAGEE.

CERTIFICATE HOLDER

FIRST NATIONAL BANK
ATTN: MONT ECHOLS
P.O. BOX 7
FORT SMITH, AR 72902

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE

719

April R. Burchfield