

STATE OF OKLAHOMA,                    SS.    IN THE SUPERIOR COURT.  
COUNTY OF SEMINOLE.

George D. Peebles . . . . . Plaintiff.

VS.

NO. 653.

The Kansas Life Insurance Company,  
a corporation . . . . . Defendant.

MOTION TO STRIKE.

Comes now the defendant, and moves the court as follows:

I.

To strike that part of the "Second" paragraph of plaintiff's reply herein to defendant's answer herein, as follows:

"Plaintiff further states that after the disability as set out in his petition that he personally appeared before one C. W. Fowler, who at that time was the designated agent for defendant in the State of Oklahoma with full power and authority to bind the defendant by all his acts and doing the same as though it had been done by the defendant or its other officers, and then and there he was informed by the said C. W. Fowler that his injury was recognized and approved, but that payments of disability benefits under the terms of the policy could not commence before the expiration of six months and that therefore under the terms of the policy further payment of any premium due was waived."

for the reason that the allegations thereof are at variance with the allegations contained in plaintiff's petition herein and are a departure therefrom.

II.

To strike that part of the "Third" paragraph of plaintiff's reply herein to defendant's answer herein, as follows:

"and that they took no steps under the terms of the policy to have him examined and took advantage of any terms of the policy and thereafter never notified him of any premium due and that such acts of the defendant together with the acts and doings of the said C. W. Fowler as above set out constituted a waiver of the further payment of any premium to become due on said policy."

for the reason that the allegations thereof are at variance with the allegations contained in plaintiff's petition herein and are a departure therefrom.

III.

To strike that part of the "Fourth" paragraph of plaintiff's reply herein to defendant's answer herein, as follows:

"but states that he appeared personally before their State Agent C. W. Fowler and exhibited to him his injury and notified him by word of mouth of his disability and that he claimed compensation under the terms and provisions of the policy."

for the reason that the allegations thereof are at variance with the allegations contained in plaintiff's petition herein and are a departure therefrom.

IV.

To strike the "Fifth" paragraph of plaintiff's reply herein to defendant's answer herein, as follows:

"Plaintiff states by reason of the acts and conduct of defendant and its agent as set out in paragraphs two, three and four herein, that defendant is estopped to deny liability on its policy or that due notice was not given or that any premium due thereon was not paid or waived."

for the reason that the allegations thereof are at variance with the allegations contained in plaintiff's petition herein and are a departure therefrom.

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Attorney for Defendant.

State of Oklahoma,  
County of Seminole.

IN THE SUPERIOR COURT.

George D. Peebles,  
Plaintiff.

VS.

No. 652.

The Kansas Life Insurance Company,  
a corporation,  
Defendant.

R E P L Y .

Comes now the above named plaintiff and for his reply to the answer of the defendant filed herein alleges and states:

First: He denies each and every material allegation therein contained except those hereinafter specifically admitted.

Second: Plaintiff specifically denies that he ever at any time failed or refused to pay any premiums due by him to defendant under the terms of the policy herein sued on and avers that at the time of the disability complained of in his petition that premium was fully paid up. Plaintiff further states that there is a specific provision contained in said policy which provides for a waiver of any further premiums due on said policy after the occurrence of disability such as the plaintiff is herein suing for. Reference is hereby made to the policy attached to plaintiff's petition filed herein. Plaintiff further states that after the disability as set out in his petition that he personally appeared before one C. W. Fowler, who at that time was the designated agent for defendant in the State of Oklahoma with full power and authority to bind the defendant by all his acts and doing the same as though it had been done by the defendant or its other officers, and then and there he was informed by the said C. W. Fowler that his injury was recognized and approved, but that payments of disability benefits under the terms of the policy could not commence before the expiration of six months and that therefore under the terms of the policy further payment of any premium due was waived.

Third: Plaintiff states that he served written notice of his disability on the Home office of defendant and that they took no steps under the terms of the policy to have him examined and took advantage of any terms of the policy and thereafter never notified him of any premium due and that such acts of the defendant together with the acts and doings of the said C. W. Fowler as above set out constituted a waiver of the further payment of any premium to become due on said policy.

Fourth: Plaintiff specifically denies that he failed to give defendant notice of his disability but states that he appeared personally before their State Agent C. W. Fowler and exhibited to his his injury and notified him by word of mouth of his disability and that he claimed compensation under the terms and provisions of the policy. Plaintiff states that he served a written notice of his total disability of the defendant at its home office in Topeka, Kansas by depositing said written notice, properly addressed, in the United States, Post office at Wewoka, Okla. with postage fully prepaid with plain-

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tiffs return address and that the same was never returned to plaintiff.

Fifth: Plaintiff states by reason of the acts and conduct of defendant and its agent as set out in paragraph two, three and four herein, that defendant is estopped to deny liability on its policy or that due notice was not given or that any premium due thereon was not paid or waived.

Wherefore having fully replied to plaintiffs answer filed herein plaintiff prays judgment in accordance with the prayer of his original petition filed herein.

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Attorney for Plaintiff.

STATE OF OKLAHOMA,  
SEMINOLE COUNTYK

SS. IN THE SUPERIOR COURT THEREOF.

George D. Peebles,

Plaintiff.

VS.

NO. 652.

The Kansas Life Insurance Company,  
a corporation,

Defendant.

A N S W E R .

Comes now The Kansas Life Insurance Company, a corporation, defendant herein, and for its answer to the petition of the plaintiff herein, alleges and states:

I.

That it denies generally and specifically each and every allegation contained in said petition, except such as are hereinafter specifically admitted.

II.

That it admits: That the plaintiff is a resident of Seminole County, Oklahoma; and that the defendant is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and is now and was on the dates hereinafter mentioned, duly licensed and authorized to carry on and transact business in the State of Oklahoma under the laws thereof.

III.

That it admits that it made, executed and delivered to one George D. Peebles, plaintiff herein, a certain policy of insurance, dated and effective on the 7th day of December, 1927. Defendant further alleges: That said policy was a twenty-payment life, non-participating, policy in the sum of \$2500.00, and had attached thereto as a part thereof certain provisions, commonly known as a "disability clause" and described thereon as its form No. 289; that the term "said policy" as used herein includes said disability clause; that said policy is its policy No. 25690; that said policy is the policy sued on and alleged in plaintiff's petition as his Exhibit "A" thereto attached; and that said policy is hereby referred to and made a part hereof as fully and completely and with the same legal effect as if copied at length herein. Defendant admits that the initial premium of \$66.50, as provided in said policy, was paid, but alleges that this premium was for the year beginning on the 7th day of December, 1927.

IV.

That it specifically denies that the said George D. Peebles, plaintiff herein, on the 28th day of February, 1928, became and has ever since been totally and permanently disabled within the provisions of said policy.

V.

That it alleges that the said George D. Peebles, plaintiff herein, failed to pay the annual premium due under the terms and provisions of said policy on the 7th day of December, 1928, and that the same has never been paid and has never been received by this defendant, and that by reason thereof and under the terms and provisions of said policy, said policy lapsed and became null and void and of no effect on the 7th day of January, 1929, and that the same has never been renewed or reinstated.

VI.

That it specifically denies that the said George D. Peebles, plaintiff herein, before default in the payment of the premium due as alleged in paragraph V hereof, furnished the defendant with due proof of the said alleged total and permanent disability, and that by reason thereof and under the terms and provisions of said policy, the defendant is not indebted to said plaintiff upon said policy in any sum or amount whatsoever.

VII.

Wherefore, having fully answered, defendant prays: That the plaintiff take nothing by reason of his said petition herein and his alleged cause of action therein; that the defendant have and recover judgment against the plaintiff for cost; and that the defendant have such other and further relief to which it may be entitled herein in law or equity.

\_\_\_\_\_  
Attorney for Defendant.

State of \_\_\_\_\_.

County of \_\_\_\_\_ ss. Verification.

\_\_\_\_\_, of lawful age, after being first duly sworn, upon oath deposes and says: That he is \_\_\_\_\_ for the defendant in the above entitled case; that the defendant herein is a corporation; that he has read the above and foregoing answer of the defendant herein, and is familiar with the contents thereof; and that the matters therein set forth are true and correct as he verily believes.

\_\_\_\_\_  
Subscribed and sworn to before me this the \_\_\_\_\_ day of August, 1932.

\_\_\_\_\_  
Notary Public.

My commission expires:  
\_\_\_\_\_.

IN THE SUPERIOR COURT OF SEMINOLE COUNTY, OKLAHOMA.

George D. Peebles,

Plaintiff

vs.

No. 652

The Kansas Life Insurance  
Company, a corporation,

Defendant

P E T I T I O N

Comes now the above named plaintiff and for his cause of action against the defendant alleges and states;

1st. That plaintiff is a resident of Seminole County, Oklahoma and that the defendant is a foreign corporation organized and existing under and by virtue of the laws of the State of Kansas and legally authorized under the laws of the State of Oklahoma to transact business in the State of Oklahoma.

2nd. That on the 7th day of Dec. 1927 in consideration of the payment by said plaintiff to the said defendant of an annual premium of \$66.50 said defendant made, executed and delivered to said plaintiff its policy of life, accident and health insurance in writing a copy of which policy is hereto attached, made a part of this petition and for identification marked plaintiffs "Exhibit A".

3rd. That on the 28th day of Feb. 1928 while said policy was in full force and effect said plaintiff received a personal injury through, external, violent and accidental means to wit; being shot through the left arm causing the same to become permanently disabled.

4th. That by reason of said injury said plaintiff was permanently disabled and injured and has since said time been prevented from prosecuting his occupation the same being that of an oil field worker or any other gainful occupation.

5 5th. That said plaintiff duly performed all the conditions on his part to be performed and within sixty days after said accident, and before the commencement of this action, gave the said defendant due notice and proof of said accident and disability and demanded the payment of the sum of \$25.00 per month according to the terms of said policy the policy being for the sum of \$2500.00 and defendant agreeing to pay plaintiff one per cent of said amount each and every month in case of permanent total disability.

6th. That said defendant has wholly failed, neglected and refused to pay plaintiff anything under the terms of said policy and that there is now due and owing plaintiff under the terms of said policy the sum of \$1200.00 That plaintiff has often demanded and requested that defendant pay the same but that defendant has wholly neglected, failed and refused to do so.

Wherefore premises considered plaintiff prays judgment against the defendant for the sum of \$1200.00 with any legal interest due thereon all costs of this action and any and all other relief to which plaintiff may be entitled.

J.A. Andrews, Attorney for Plaintiff

Filed Mar. 15, 1932

George Hargrave, Court Clerk

# SUMMONS

State of Oklahoma,  
SEMINOLE COUNTY--SS:

In the Superior Court  
At Seminole, Okla.

The State of Oklahoma to the Sheriff of Oklahoma County, GREETING:

You are hereby commanded to notify The Kansas Life Insurance Company,  
a Corporation

that ~~it~~ has been sued by George D. Peebles

in the Superior Court of Seminole County, at Seminole, State of Oklahoma, and that it must answer  
the petition of said George D. Peebles,

filed against it in the office of said Court on or before the 15th day of April,  
19 32, or petition will be taken as true and judgment rendered accordingly.

You will make due return of this Summons on or before the 25th day of March, 19 32

Given under my hand and seal of said Court this 15th day of March, 19 32

GEORGE HARGRAVE,  
Court Clerk.

By K.C. Higdon, Deputy.

If the Defendant fail to answer judgment will be taken for \$1200.00 of life  
and a accident Insurance Policy

and costs of suit.

GEORGE HARGRAVE,  
Court Clerk.

By K.C. Higdon, Deputy.

## OFFICERS' RETURN

I received this Summons on the 18 day of March, 19 32, at \_\_\_\_\_ o'clock,  
\_\_\_\_\_, M., and executed the same in my County \_\_\_\_\_ by delivering a true  
copy of the above Summons with all the endorsements thereon to The Kansas Life Insurance  
Company, a corporation by Jess G. Read. 24 day of March, 1932

Stanley Rogers

Sheriff.

By Jerry Smith, Deputy.