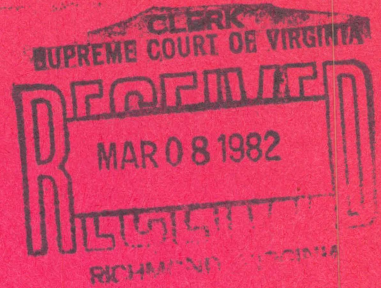


226 VA482



IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 810546

THOMAS B. HAYMAN, II,

Appellant

v.

PATIO PRODUCTS, INC.

and

G. C. MURPHY COMPANY,

Appellees

APPENDIX

Robert E. Long
MONTAGUE, MONTAGUE AND LONG, LTD.
1 East Queen's Way
Hampton, Virginia 23669

Counsel for:
THOMAS B. HAYMAN, II

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MOTION FOR JUDGMENT
(At Law No. 1683)

Filed August 29, 1977

CHARLES E. KING, JR., Clerk

TO THE HONORABLE JUDGE OF SAID COURT:

Your plaintiff, Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, asks and moves this Honorable Court for judgment for damages in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), together with the costs of this suit and interest from the date of judgment from George C. Stein, Sr., Dawn Stein, Stephen Simpson, an infant, and Timothy H. Morgan, an infant, jointly and severally, hereinafter referred to as "defendants", based upon the following, to-wit:

1. That the plaintiff herein was a guest at the home owned by the defendant herein, George C. Stein, Sr., at Gloucester Point, Virginia during the evening of June 10, 1977, and the early morning hours of June 11, 1977. On the evening and morning aforesaid, George C. Stein, Sr. and his daughter, Dawn Stein, a defendant herein, gave a high school graduation party and invited a large number of teen age young people to attend. Shortly after midnight on June 11, 1977, a firefly garden torch was knocked over and spilled its contents of flaming fluid on the plaintiff herein, Thomas B. Hayman, II, causing severe burn injuries.

2. That Hazel A. Morgan, mother of the defendant herein, Timothy H. Morgan, purchased two packages of firefly garden

torches on May 14, 1977 from the Murphy's Mart, a store owned and operated by G. C. Murphy Company, in downtown Gloucester, Virginia. Timothy H. Morgan, with the consent of his mother, Hazel A. Morgan, loaned to the Stein family the firefly garden torches mentioned aforesaid for use at the Stein graduation party where the plaintiff received his severe burn injuries.

3. That the firefly garden torches were distributed by Patio Products, Inc. to G. C. Murphy Company.

4. That the defendant herein, George C. Stein, Sr., is guilty of negligence, which negligence was a direct and proximate cause of the plaintiff's injuries in that the defendant, George C. Stein, Sr., negligently allowed a party composed of teen age young people to be held at his home without providing adequate supervision; negligently allowed the use of the firefly garden torch in question; negligently allowed the continued use of the firefly garden torch which caused the plaintiff's injuries after a garden torch started a fire in the front yard of the Stein house, which said mishap gave the defendant herein actual knowledge of the hazardous condition posed by said firefly garden torch; negligently allowed teen age young people to consume large quantities of beer and other alcoholic beverages on his premises during the party; and negligently consumed multiple alcoholic beverages while supposedly supervising the activities of the party.

5. That the defendant herein, Dawn Stein, is guilty of negligence which said negligence was a direct and proximate cause of the plaintiff's injuries in that the defendant, Dawn

Stein, negligently erected the firefly garden torch that caused the plaintiff's injuries; negligently failed to provide adequate supervision of guests at her party; negligently allowed some of said guests to become intoxicated and become boisterous and unruly in the vicinity of the firefly garden torch; and negligently allowed the fire in the torch to continue burning after she had actual knowledge that the stake holding the torch had become loose in the ground.

6. That the defendant herein, Stephen Simpson, is guilty of negligence which said negligence was a direct and proximate cause of the plaintiff's injuries in that the defendant, Stephen Simpson, was intoxicated and while in his intoxicated state, brushed against the firefly garden torch in question, knocking the top off of said torch, and in brushing against the torch, negligently caused the torch stake to become loose in the ground; that the defendant, Stephen Simpson, negligently attempted to replace the top of the firefly garden torch and burned his own hand in the process. Following the burn to his own hand, Stephen Simpson negligently left the fluid in the firefly garden torch burning with the top off.

7. That the defendant herein, Timothy H. Morgan, is guilty of negligence and his negligence was a direct and proximate consequence of the plaintiff's injuries in that the defendant, Timothy H. Morgan, consumed large quantities of alcoholic beverages; became boisterous and unruly; and fell against the firefly garden torch in question, knocking it over and spilling the flaming, combustible fluid contained therein

on the plaintiff herein, catching the plaintiff's clothing and skin on fire and causing the plaintiff serious burn injuries.

8. That the defendant herein, Timothy H. Morgan, negligently fled from the scene of the accident and left the plaintiff herein burning. This negligence was a direct and proximate cause of further aggravation and worsening of the plaintiff's injuries.

9. That the injuries suffered by the plaintiff herein are permanent and progressive in nature; that they have caused disfigurement to the plaintiff's body, and that the plaintiff has suffered and will continue to suffer in the future extensive pain and suffering and permanent disability, including impairment of ability to play musical instruments, and permanent scarring as a direct and proximate result of the defendants' negligence.

10. That the plaintiff has incurred medical expenses in the past and will continue to incur medical expenses in the future; has lost earnings in the past and will continue to lose earnings in the future; has suffered in the past and will continue to suffer in the future extensive mental anguish; and has missed and will continue to miss time from school, all of which are a direct and proximate result of the defendants' negligence.

NOW, THEREFORE, your plaintiff, Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, asks for judgment against the defendants herein, both jointly and severally, the sum of ONE MILLION AND

00/100 DOLLARS (\$1,000,000.00), together with the costs of this suit and interest from the date of judgment.

THOMAS B. HAYMAN, II

MARY BELLE HAYMAN, Mother
and Next Friend of Thomas
B. Hayman, II

ROBERT E. LONG
Of Counsel

MOTION FOR JUDGMENT
(At Law No. 1684)

Filed August 29, 1977

CHARLES E. KING, JR., Clerk

TO THE HONORABLE JUDGE OF SAID COURT:

Your plaintiff, Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, asks and moves this Honorable Court for judgment for damages in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), together with the costs of this suit and interest from the date of judgment from Patio Products, Inc. and G. C. Murphy Company, jointly and severally, hereinafter referred to as "defendants", based upon the following, to-wit:

1. That the plaintiff herein was a guest at the home owned by George C. Stein, Sr. at Gloucester Point, Virginia during the evening of June 10, 1977 and the early morning hours of June 11, 1977. On the evening and morning aforesaid, George C. Stein, Sr. and his daughter, Dawn Stein, gave a high school graduation party and invited a large number of teenage young

people to attend. Shortly after midnight on June 11, 1977, a firefly garden torch was knocked over and spilled its contents of flaming fluid on the plaintiff herein, Thomas B. Hayman, II, causing severe burn injuries.

2. That Hazel A. Morgan, mother of Timothy H. Morgan, purchased two packages of firefly garden torches on May 14, 1977 from the Murphy's Mart, a store owned and operated by the defendant herein, G. C. Murphy Company, in downtown Gloucester, Virginia. Timothy H. Morgan, with the consent of his mother, Hazel A. Morgan, loaned to the Stein family the firefly garden torches mentioned aforesaid for use at the Stein graduation party where the plaintiff received his severe burn injuries.

3. That the firefly garden torches were distributed by the defendant herein, Patio Products, Inc. to G. C. Murphy Company.

4. That the firefly garden torches in question were negligently and defectively designed in that the lid thereon could not be fastened securely onto the torch and that the use of the torch created a hidden and unreasonably dangerous condition unknown to the user thereof in that the torch top, when bumped, could easily come off and spill flaming, highly combustible fluid on those in the vicinity of the torch. The defendants, G. C. Murphy Company and Patio Products, Inc., were negligent in that they knew, or should have known, of the defective design mentioned aforesaid, and proceeded to sell said product irrespective of said defective design, which said negligence was a direct and proximate cause of the

plaintiff's injuries.

5. That G. C. Murphy Company and Patio Products, Inc., both defendants herein, impliedly warranted that the firefly garden torch aforesaid was fit for the purpose for which it had been designed, i.e., providing safe illumination at outside parties, and that it was a safe and suitable product to be used in the vicinity of the plaintiff herein, to be used at ourdoor (sic) parties, and to withstand the bumps, scrapes, and other physical contacts that could reasonably be expected at an outside patio party, without the fear or expectation of injury, and that said product was fit and suitable for that purpose. That in reliance upon the skill and judgment of G. C. Murphy Company and Patio Products, Inc., and the implied warranties of fitness for the purpose, the Steins erected the firefly garden torch in their backyard and invited the plaintiff herein to a party in the vicinity of said torch.

6. That the firefly garden torch in question was, in fact, not fit for its intended purposes and as a direct and proximate result of the breach of said warranty of fitness, the plaintiff sustained injuries and damages as set forth herein.

7. That G. C. Murphy Company and Patio Products, Inc. impliedly warranted that the firefly garden torch was of merchantable quality, fit, safe and in proper condition for the ordinary use for which garden torches are designed and used.

8. That the firefly garden torch was not of merchantable quality and was unfit, unsafe and unusable for the purpose for

which it was intended.

9. That the defendant herein, Patio Products, Inc. sold the firefly garden torch to the defendant herein, G. C. Murphy Company, and at the time of said sale, the product was in a defective condition unreasonably dangerous to the users thereof.

10. That no change in said defective condition occurred between the time of the sale of the product from Patio Products, Inc. to G. C. Murphy Company, nor did any change in the defective condition occur between the time of the sale of the firefly garden torch from G. C. Murphy Company to Hazel A. Morgan, nor did any change occur through the time the firefly garden torch was used at the Stein home, causing the plaintiff's injuries, subject of this suit, and that the defective condition was a direct and proximate cause of the plaintiff's injuries for which the defendants, Patio Products, Inc. and G. C. Murphy Company, are strictly liable.

11. That the plaintiff, within a reasonable time after suffering the injuries aforesaid, and on or about the 19th day of August, 1977, gave due notice to the defendant, Patio Products, Inc., and the defendant, G. C. Murphy Company, of its breach of warranties as alleged herein.

12. That the plaintiff was one of that class of persons whom G. C. Murphy Company and Patio Products, Inc. might reasonably have expected to use or be affected by the firefly garden torch in question.

13. That the defendant, Patio Products, Inc., is a foreign corporation whose acts bring it within the purview of

the Virginia "Long Arm Statute", Section 8.81-2 of the Code of Virginia, 1950, as amended, in that Patio Products, Inc.

- A. Contracted to supply firefly garden torches to G. C. Murphy Company in the State of Virginia;
- B. Caused tortious injury to the plaintiff by said defendants' acts or omissions outside of the State of Virginia while said defendant derived substantial revenue from goods used or consumed or sold in the State of Virginia and while said defendant solicited the sale of the firefly garden torches to be sold in the State of Virginia by G. C. Murphy Company; and,
- C. Caused injury to the plaintiff in the State of Virginia by breach of implied warranties of fitness and merchantability made in the sale of goods outside this state when said defendant might reasonably have expected the plaintiff to use, consume and be affected by the firefly garden torches in the State of Virginia. The defendant regularly does and solicits business in the State of Virginia and derives substantial revenue from the sale of the firefly garden torches in the State of Virginia.

14. That the injuries suffered by the plaintiff herein are permanent and progressive in nature; that they have caused disfigurement to the plaintiff's body; and that the plaintiff has suffered and will continue to suffer in the future extensive pain and suffering and permanent disability, including impairment of ability to play musical instruments, and permanent scarring as a direct and proximate result of the defendants' negligence and breach of warranties.

15. That the plaintiff has incurred medical expenses in the past and will continue to incur medical expenses in the future; has lost earnings in the past and will continue to lose earnings in the future; has suffered in the past and will continue to suffer in the future extensive mental anguish; and has missed and will continue to miss time from school, all of

which are a direct and proximate result of the defendants' negligence and breach of warranties.

NOW, THEREFORE, your plaintiff, Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, asks for judgment against the defendants herein, both jointly and severally, the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), together with the costs of this suit and interest from the date of judgment.

THOMAS B. HAYMAN, II

MARY BELLE HAYMAN, Mother
and Next Friend of
Thomas B. Hayman, II

ROBERT E. LONG
Of Counsel

NOTICE

(At Law No. 1684)

TO: G. C. Murphy Company
c/o G. Kenneth Miller, its attorney
May, Miller and Parsons
700 Building, Suite 800
Richmond, Virginia 23219

TAKE NOTICE that the plaintiff will, on the 19th day of October, 1979, at 9:00 A.M., in the Circuit Court of the County of Gloucester, Virginia, move that the Covenant Not to Sue and Final Order, copies of which are attached hereto, be approved by the Court and that the plaintiff be allowed to proceed in accordance with Section 8.01-35.1 of the Code of Virginia, 1950, as amended, with the trial of the case entitled, "Thomas

B. Hayman, II, an infant, etc. vs. Patio Products, Inc. and
G. C. Murphy Company, At Law No. 1684-9/29/77".

TAKE DUE NOTICE HEREOF and govern yourself accordingly.

THOMAS B. HAYMAN, II
By Robert E. Long
Counsel

CERTIFICATE

This is to certify that on the 12 day of October, 1979,
I mailed a true and correct copy of the foregoing Notice to
all counsel of record.

ROBERT E. LONG
Counsel

FINAL ORDER

(At Law No. 1683)

This day came the plaintiff, Thomas B. Hayman, II, an
infant, and his mother, Mary Belle Hayman, and his counsel;
also came the defendants, George C. Stein, Sr., Dawn Stein,
Stephen Simpson, Timothy H. Morgan, by counsel, and advised
the Court that the parties hereto have entered into a covenant
not to sue, which covenant is attached to this Order, pur-
suant to Section 8.01-35.1 of the Code of Virginia, to which
the court has given due consideration.

NOW, THEREFORE, it is ADJUDGED, ORDERED, and DECREED that the covenant not to sue entered into by and between the parties under the provisions of Section 8.01-35.1 is in the best interests of the infant plaintiff; now, therefore, said covenant is hereby ratified by this Court and is incorporated into and made a part of this, the final order of dismissal, as fully as if fully set forth herein, and the sum of \$43,500.00 being paid by the defendants into the Court,

NOW, THEREFORE, it is further ADJUDGED, ORDERED, and DECREED that said payments do hereby discharge the said George C. Stein, Sr., Dawn Stein, Stephen Simpson, and Timothy H. Morgan from all liability to the plaintiff and for his mother and next friend and for all liability for contribution to any other tortfeasor; provided, however, that nothing herein contained shall limit or prejudice the right of the plaintiff under the conditions prescribed in Section 8.01-35.1, as aforesaid, to prosecute a judgment of that certain case now pending in this Court and styled "Thomas B. Hayman, II, an infant, etc. vs. Patio Products, Inc. and G. C. Murphy Company, At Law No. 1684 - 9/29/77".

It is further ORDERED that of the said \$43,500.00 paid into the Court, the Clerk of this Court shall disburse said funds as follows:

To Robert Long, Attorney - Attorney's fee	\$14,500.00
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To Robert Long, Attorney - Reimbursement of costs	681.12
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To be invested in interest bearing account for the benefit of Thomas B. Hayman, II	28,318.88
	<hr/>
	\$43,500.00

We request approval of this settlement:

Thomas B. Hayman, II, an infant

Mary Belle Hayman, mother and next friend

We ask for this:

Robert E. Long
Counsel for Thomas B. Hayman, II

C. F. Hicks
Counsel for George C. Stein, Sr.
and Dawn Stein

Fred W. Bateman
Counsel for Stephen Simpson

Enter this October 19, 1979.

JOHN E. DeHARDIT
Judge

COVENANT NOT TO SUE

(At Law No. 1683)

Now comes the plaintiff herein, Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, by counsel; George C. Stein, Sr. and Dawn Stein, by counsel; Stephen Simpson, an infant, by counsel; and Timothy H. Morgan, an infant, by counsel, and represent that, by agreement of the parties aforesaid, the parties have agreed to enter into this Covenant Not to Sue based upon the following terms and conditions:

1. This Covenant Not to Sue is entered into in conformity with the provisions of Section 8.01-35.1 of the Code of Virginia of 1950, as amended.

2. That the defendants herein, George C. Stein, Sr., Dawn Stein, Stephen Simpson and Timothy H. Morgan, will pay unto the said Mary Belle Hayman, mother of the plaintiff herein, Thomas B. Hayman, II, and his attorneys, Montague, Montague and Long, Ltd., or as ordered by the Court pursuant to Section 8.01-424 of the Code of Virginia of 1950, as amended, the sum of Forty-Three Thousand, Five Hundred and 00/100 Dollars (\$43,500.00).

3. That upon payment of the said Forty-Three Thousand, Five Hundred and 00/100 Dollars (\$43,500.00) and pursuant to Section 8.01-35.1, *supra*, said payments shall discharge the said George C. Stein, Sr., Dawn Stein, Stephen Simpson and Timothy H. Morgan from all liability to the plaintiff and from all liability for contribution to any other tortfeasor.

4. As provided in Section 8.01-35.1 mentioned aforesaid,

this Covenant Not to Sue shall not in anywise limit the plaintiff's right to proceed with that suit currently pending before this Court under the style of "Thomas B. Hayman, II, an infant, etc. vs. Patio Products, Inc. and G. C. Murphy Company, At Law No. 1684 - 9/29/77".

WITNESS the following signatures and seals.

ROBERT E. LONG
Counsel for Thomas B.
Hayman, II, an infant

FRED W. BATEMAN
Counsel for Stephen
Simpson, an infant

C. F. HICKS
Counsel for George C.
Stein, Sr. and Dawn Stein

PHILLIPS M. DOWDING
Counsel for Timothy H.
Morgan, an infant

ORDER

(At Law No. 1684)

On January 6, 1981, the defendant, G. C. Murphy Company came by counsel and the plaintiff came by counsel upon the said defendant's Motion for Summary Judgment on the ground that the plaintiff had compromised his claim for the injuries received in the accident giving rise to the claims asserted in the Motion for Judgment in this case with joint tortfeasors George C. Stein, Sr. and others, who the plaintiff sued for the said injuries in the case of Thomas B. Hayman, II, an infant, who sues by and through his Mother and next friend, Mary Belle Hayman v. George C. Stein, Sr., Dawn Stein, Stephen Simpson, an infant, and Timothy H. Morgan, an infant, in the Circuit Court for the County of Gloucester, Virginia.

The Court upon motion of the defendant Murphy made the pleadings, records and orders, in the aforesaid case of Thomas B. Hayman, II, an infant, v. George C. Stein, Sr., et al. part of the record in this case. The Court upon a review of the record of this case and the aforesaid companion case does find that the plaintiff brought separate actions against different parties for the same injuries sustained by him on June 11, 1977, and that on October 19, 1979, the plaintiff entered into an agreement with the defendants in the said case of Thomas B. Hayman, II v. George C. Stein, Sr., et al, called a "Covenant Not To Sue." The Court having considered said agreement finds that it does not comply with the terms and requirements of Section 8.01-35.1 of the Code of Virginia in effect at the time of the agreement, and the Court does find that the discharge of those defendants was the discharge of joint tortfeasers with G. C. Murphy, and thus any liability of the defendant, G. C. Murphy for the injuries in this case is discharged. The Court accordingly sustained the motion of the defendant, G. C. Murphy Company and continued the matter for the presentation of an Order.

This day came the parties and upon consideration of the evidence and argument of counsel, it is ORDERED that the defendant G. C. Murphy's Motion for Summary Judgment be sustained and this action be and it is hereby dismissed as to the defendant G. C. Murphy, to which action of the Court the plaintiff objected.

Enter this January 14, 1981.

RUSSELL M. CARNEAL
Judge

We ask for this:

G. KENNETH MILLER
Counsel for defendant
G. C. Murphy Company

Seen and Objected to:

ROBERT E. LONG
Counsel for plaintiff

WRITTEN STATEMENT OF FACTS

(At Law No. 1684)

This case involves an accident that occurred on the evening of June 10, 1977 and/or in the early morning hours of June 11, 1977. George C. Stein, Sr. was given a graduation (sic) for his daughter, Dawn Stein. In attendance at this party was a large number of teen-aged young people and during the course of the party a number of these young people began to consume beer and other alcoholic beverages. One of the invited guests was an infant by the name of Thomas B. Hayman, II, the plaintiff in the instant action. During the course of the party someone knocked over a firefly garden torch containing a flammable fluid. This torch spilled the flammable fluid on or about the clothing of Thomas B. Hayman, II, igniting the plaintiff's clothing and skin and causing him severe burn

injuries.

As a result of those injuries, the plaintiff filed two separate motions for judgment. One motion for judgment was styled "Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, plaintiff, v. George C. Stein, Sr., Dawn Stein, Stephen Simpson, an infant, and Timothy H. Morgan, an infant, defendants." This lawsuit against certain individuals in attendance at the party alleged negligence on the part of each defendant and that the negligence of each was a proximate cause of the plaintiff's injuries. This suit was given case number 1683.

The other motion for judgment filed by the plaintiff was styled "Thomas B. Hayman, II, an infant, who sues by and through his mother and next friend, Mary Belle Hayman, plaintiff v. Patio Products, Inc. and G. C. Murphy Company, defendants." This motion for judgment alleged that the defendants, Patio Products and G. C. Murphy Company, were negligent in that they knew or should have known of the defective design of the firefly garden torch, that said defective design was a proximate cause of the plaintiff's injuries, and that with knowledge of said defective design the defendants proceeded to sell said product. Plaintiff further alleged that G. C. Murphy Company and Patio Products, Inc. breached their implied warranty of fitness for the purpose for which the torch had been designed, breached the implied warranty of merchantability, and knew or should have known that the torch

was sold in a defective condition. Further, the plaintiff alleged that the negligence and breach of warranties by the two defendant cooperations (sic) were a proximate cause of the plaintiff's injuries. This suit was given case number 1684.

The plaintiff and the defendants in case number 1683 entered into an alleged covenant not to sue. A copy of the alleged covenant not to sue is attached hereto and made a part of this Written Statement of Facts as Appendix A. As a result of the aforesaid covenant not to sue, the Court entered a final order in case number 1683 on October 19, 1979, a copy of which is attached hereto as Appendix B and the defendants therein paid the sum of FORTY-THREE THOUSAND FIVE HUNDRED DOLLARS (\$43,500.00) as directed. Defendant G. C. Murphy Company was given notice of the hearing on the aforesaid settlement, but upon appearance and objection counsel for G. C. Murphy Company were advised by the Court that their client was not a party to the action and they were advised to leave.

Defendant G. C. Murphy Company, by counsel, had previously filed a motion for summary judgment based on a number of grounds, one such ground being that the plaintiff had compromised his claim for the injuries and been paid pursuant to the compromise which released G. C. Murphy Company. The Court heard argument upon the defendant's motion, after making the record in Hayman v. George C. Stein, Sr. a part of the record in this case and reviewing the same. The Court, upon argument, sustained the motion of the defendant G. C. Murphy Company and

continued the matter for the presentation of an order. That order was entered on January 14, 1981 and it is from this order that the plaintiff now appeals. See Appendix D.

ROBERT E. LONG
Counsel for Thomas B.
Hayman, II, an infant

G. KENNETH MILLER
Counsel for G. C. Murphy
Company

Filed March 18, 1981

RUSSELL M. CARNEAL
Judge

APPENDIX
TO
WRITTEN STATEMENT OF FACTS

Appendix A - Covenant Not To Sue (At Law No. 1684),
see Page 14 of this Appendix.

Appendix B - Final Order (At Law No. 1683) entered by the
Honorable John E. DeHardit, Judge, Circuit Court for the
County of Gloucester, Virginia, dated October 19, 1979,
see Page 11 of this Appendix.

Appendix C - Notice (At Law No. 1684)
see Page 10 of this Appendix.

Appendix D - Order (At Law No. 1684) entered by the Honorable
Russell M. Carneal, Judge, Circuit Court for the County of
Gloucester, Virginia, dated January 14, 1981,
see page 15 of this Appendix.

ASSIGNMENT OF ERROR

The trial court erred in sustaining the Motion for
Summary Judgment filed by the Appellee, G. C. Murphy Company.

QUESTIONS PRESENTED

1. WAS THE COVENANT NOT TO SUE ENTERED INTO BY THE
APPELLANT AND THE INDIVIDUAL ADVERSE PARTIES IN LAW CASE
NUMBER 1683 IN CONFORMITY WITH SECTION 8.01-35.1 OF THE CODE

OF VIRGINIA, 1950, AS AMENDED?

2. DID THE TRIAL COURT ERR IN SUSTAINING THE MOTION FOR SUMMARY JUDGMENT FILED BY THE APPELLEE, G. C. MURPHY COMPANY?