

Record No. 5695

In the
Supreme Court of Appeals of Virginia
at Richmond

THE NORTH RIVER INSURANCE
COMPANY OF NEW YORK

v.

MAURY G. GOURDINE, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 5695

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 6th day of June, 1963.

THE NORTH RIVER INSURANCE COMPANY OF NEW
YORK, Plaintiff in Error,

against

MAURY G. GOURDINE, IRVING L. GONINAN, MARY
L. GONINAN, R. H. JENKINS TRANSFER, INC.,
AND MARY N. MASON, Defendants in Error.

From the Circuit Court of the City of Norfolk
Thomas M. Johnston, Judge

Upon the petition of The North River Insurance Company of New York a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of the City of Norfolk on the 21st day of January, 1963, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Maury G. Gourdine and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed Mar. 14, 1963.

T. A. W. GRAY, D. C.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Now comes the plaintiff, The North River Insurance Company of New York, pursuant to the provision of Rule 5:1, Section 4 of the Rules of Court, and states that it hereby notes an appeal from the final judgment of the Circuit Court of the City of Norfolk, Virginia, entered on the 21st day of January, 1963, rendered in the above-styled action in favor of the defendants against the plaintiff, and that plaintiff to that end will prepare and present its petition for a Writ of Error and the record in this action to a Justice of the Supreme Court of Appeals of Virginia.

For its Assignments of Error, plaintiff says that the Trial Court erred as follows:

1. The Trial Court erred in failing to find as a matter of law that the failure of the defendant, Maury G. Gourdine, to forward or deliver to plaintiff certain suit papers served upon him, until after judgment was entered against him, was a substantial and material failure to comply with the conditions of the insurance policy issued by plaintiff to said defendant.

2. The Trial Court erred in failing to find as a matter of law that prejudice resulted to plaintiff therefrom and that the policy of insurance was vitiated or forfeited thereby.

3. The Trial Court erred in holding and declaring that the policy of insurance issued to defendant, Maury G. Gourdine, by plaintiff, was and is in full force and effect as to all parties to the action.

page 2 } 4. The Trial Court erred in entering the final judgment order of January 21, 1963, in favor of the defendants.

THE NORTH RIVER IN-
SURANCE COMPANY OF
NEW YORK

By H. LEE ADDISON, III
Of Counsel.

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MOTION FOR DECLARATORY JUDGMENT.

1. The plaintiff, The North River Insurance Company of New York, hereby moves the Circuit Court of the City of Norfolk, Virginia, for a declaratory judgment pursuant to Section 8-578, *et seq.*, of the Code of Virginia of 1950, as amended, construing a certain written standard Virginia policy of automobile liability insurance, Policy #FCA-677422, issued by plaintiff in the name of Maury G. Gourdine, and purporting to insure Maury G. Gourdine and others, pursuant to its terms, more fully hereinafter set out, said policy being in effect at the time of the accident mentioned herein, and further construing and determining whether the insured, Maury G. Gourdine, did, by his conduct subsequent to the accident in failing to perform certain conditions in the policy, breach the aforesaid policy thereby making it inoperative, null and void as to all parties who may claim under it subsequent to the breach.

page 4 } 2. That an actual controversy under said policy, a photostat of a policy which has the identical provisions of the aforesaid policy is attached and made a part hereof, has arisen between the parties herein, as hereinafter set forth.

3. That on the 26th day of March, 1962, an accident occurred in the City of Norfolk, Virginia, at or near the intersection of Military Highway and Johnson Road, involving motor vehicles owned and operated by the defendant, Maury G. Gourdine, the plaintiff's insured; a vehicle owned by the defendant, Irving H. Goninan, and operated by the defendant, Mary L. Goninan, and, in which the defendant, Mary N. Mason, was a passenger; and, a truck operated by one James E. Wilson, and owned by the defendant, R. H. Jenkins Transfer, Inc.

4. That the defendants Mary L. Goninan and Mary N. Mason, allegedly received personal injuries as a result of the aforesaid accident; that the defendants Irving L. Goninan and R. H. Jenkins Transfer, Inc., allegedly suffered damages to their vehicles; and, that the driver of the Jenkins vehicle, James E. Wilson, allegedly sustained personal injuries, the claim for which has been settled by the said James E. Wilson

and the plaintiff insurance company prior to the breach mentioned hereinafter.

5. That all of the aforementioned defendants allege and claim that the sole proximate cause of said accident was the negligence of the defendant, Maury G. Gourdine, and which the said Maury G. Gourdine specifically denies.

6. That on the 23rd day of June, 1962, a notice of motion for judgment was served upon the defendant, Maury G. Gourdine, by posting a copy thereof on the front door of his usual place of abode, the style of the action being, to-wit: Irving L. Goninan *v.* Maury G. Gourdine, and made returnable to the Civil Justice Court of the City of Norfolk, Virginia, on Thursday, July 12th, 1962, at 10:00 A. M.

7. That the defendant, Maury G. Gourdine, read the aforesaid notice and failed to notify his insurer, the plaintiff, of the pending action without just cause or legal excuse.

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8. That the plaintiff, The North River Insurance Company of New York, on July 24th, 1962, received a copy of a letter from Attorney, Jack K. Moulton, addressed to the defendant, Maury G. Gourdine, advising that the aforesaid action had been continued from July 12th, 1962 until July 23rd, 1962, and on the latter date, judgment entered against said defendant, Maury G. Gourdine, in the sum of One Thousand Four Hundred Fifteen (\$1,415.00) Dollars, for alleged property damage arising out of the accident of March 26th, 1962.

9. That the aforesaid letter, received after judgment had been entered, was the first knowledge obtained by any representative of the plaintiff insurance company that any legal action had been instituted against their insured, Maury G. Gourdine.

10. That on July 30th, 1962, Hubert Baldwin, an authorized representative of the plaintiff insurance company notified the insured that due to his failure to promptly and properly give notice of the suit brought against him, he had failed to comply with the terms of the policy, the compliance with which are conditions precedent (or conditions subsequent) to liability and obligation on the part of the plaintiff; that the plaintiff did consider the policy breached as a result of the failure to give notice and that the plaintiff would henceforth treat said policy as being null and void.

11. That the aforesaid representative of the plaintiff advised the insured that the plaintiff was refusing to pay the default judgment, would not note an appeal to a court of record for reasons stated hereinabove, and that the insured should take whatever action necessary to protect his interest in view of the outstanding judgment.

12. That on the same day, all of the foregoing was confirmed in writing to the defendant, Maury G. Gourdine, by certified mail, to his usual place of abode.

13. That said letter dated July 30th, 1962, addressed to the defendant, Maury G. Gourdine, was returned marked, "Unclaimed and Box Down", and a subsequent letter was sent special delivery, certified mail return receipt registered, together with the original letter, confirming the conversation aforesaid and this time was received by the defendant, Maury G. Gourdine.

14. That the asserted controversy between the plaintiff and the defendants concerns the issue of whether the insured has failed to cooperate; whether Condition #3 on Page 4 of the attached policy has been breached in that the insured failed to immediately forward to the company the notice of motion for judgment aforesaid, which as stated in Condition #6 on the same page is a condition precedent to the company's liability, and if the policy has been breached and become null and void, whether it becomes null and void as to all parties who may thereafter claim under it, to-wit: defendants, Irving L. Goninan, Mary L. Goninan, R. H. Jenkins Transfer, Inc. and Mary N. Mason.

15. That until such time as the controversy over the liability, duties or obligations of the plaintiff under the aforesaid policy and the rights of the several parties thereto are resolved and determined, the plaintiff is faced with the inequitable choice of affording a defense to any actions that may be filed as a result of the aforesaid accident against Maury G. Gourdine, or allowing any actions at law instituted for personal injuries or property damage as a result of the aforesaid accident to proceed to judgment and then further be forced to defend separate actions against the plaintiff on any judgment or judgments, and in addition, plaintiff is required by law to carry material amounts of money in reserve against its liability, with respect to the claims already asserted against it as hereinabove set out.

16. That the plaintiff respectfully represents it is vital to the interests of the parties involved in this controversy that there be a prompt determination of the rights of the parties pursuant to this proceeding.

17. That neither plaintiff nor defendants nor any other person have sought relief by any other legal action to adjudicate their rights as a result of said accident except as hereinabove set out.

WHEREFORE, the undersigned plaintiff requests this Court to set this matter down for hearing with respect to the

subject matter herein contained and enter its order
 page 7 } construing the aforesaid policy and the rights and
 obligations of the plaintiff and the various defend-
 ants with respect thereto.

THE NORTH RIVER IN-
 SURANCE COMPANY OF
 NEW YORK

By H. LEE ADDISON, III
 Of Counsel.

Filed in the Clerk's Office the 5th day of Sept., 1962.

Teste:

W. R. HANCKEL, Clerk
 VIRGINIA MANNING, D. C.

page 11 }

Filed Sept. 12, 1962.

T. A. W., GRAY, D. C.

ANSWER.

NOW COMES your defendants, MARY L. GONINAN, and her infant daughter, MARY N. MASON, and as answer to the plaintiff's Motion for Declaratory Judgment, comes and says as follows:

1. The defendants neither admit nor deny the material allegations as set forth in the plaintiff's Motion for Declaratory Judgment, but call for strict proof thereof.

2. That the defendants are insured under a certain liability insurance policy issued by the Maryland Casualty Company to Mr. Irving L. Goninan, such policy affording uninsured motorist protection to your defendants, permitting claim to be made against the aforesaid Maryland Casualty Company, if coverage is denied by the liability insurance company for Maury G. Gourdine.

WHEREFORE, the undersigned defendants, Mary L.

Goninan and Mary N. Mason, request this Court to enter an Order to determine the rights and obligations of the defendants, Mary L. Goninan and Mary N. Mason, with respect to the policies issued by The North River Insurance Company of New York, to Maury G. Gourdine, and the policy issued by the Maryland Casualty Company to Irving L. Goninan.

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MARY L. GONINAN AND
MARY N. MASON
By ROBERT S. COHEN
Of Counsel.

* * * * *

page 13 }

* * * * *

Filed Sept. 14, 1962.

T. A. W. GRAY, D. C.

GROUND'S OF DEFENSE.

Comes now Maury G. Gourdine, by counsel, and for answer to a certain Motion for Declaratory Judgment exhibited against him in this Court and briefly styled as above, sets forth the following:

(1) This defendant admits the existance of the liability insurance contract mentioned in paragraph 1. of the Motion for Judgment but denies that he has by his conduct, or otherwise, breached the terms of the aforesaid policy.

(2) The allegations of paragraph 2. of the Motion for Judgment are admitted.

(3) The allegations of paragraph 3. are admitted.

(4) The authenticity of the allegations contained in paragraph 4. of the Motion for Judgment is not known to this defendant who, therefore, denies the same.

(5) The allegations of paragraph 5. of the Motion for Judgment are admitted.

(6) The allegations of paragraphs 6., 7., 8. and 9 of the Motion for Judgment are denied.

(7) With respect to paragraphs 10., 11., 12. and 13. of the Motion for Judgment, this defendant admits receiving notice from the plaintiff that it considered the said liability insurance policy breached, the date of the receiving of said notice,

or notices, not being definitely known by this defendant who calls for strict proof thereof.

(8) With respect to paragraphs 14., 15., 16. and 17. of the Motion for Judgment, this defendant again denies that he has breached the terms of the said liability insurance policy involved, but he concurs with the plaintiff as to the issue or issues which should be determined by this Court.

(9) While steadfastly denying any breach of the terms of the aforesaid liability insurance policy, this defendant states that even if the same have been breached in any page 14 } respect, no rights of the plaintiff have either been lost or prejudiced thereby and that therefore the plaintiff should not be allowed to escape its contractual liability under this policy to this defendant or to the other named defendants who may hereafter claim under and through said policy.

(10) This defendant reserves the right to plead and rely upon any other defenses which may develop prior to or during the trial of this case.

MAURY G. GOURDINE
By F. E. CLARK
Of Counsel.

* * * * *

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* * * * *

ORDER.

On December 21, 1962, came The North River Insurance Company of New York, by its attorney, and also came the defendants, Maury G. Gourdine, Irving L. Goninan, Mary L. Goninan and Mary N. Mason, by their attorneys, the defendant, R. H. Jenkins Transfer, Inc., having failed to plead or appear herein, and the parties having waived a trial by jury all matters of law and fact were submitted to the Court for determination, and

Upon consideration of all of the evidence adduced in open Court, the Court doth find as a matter of fact and law that the failure of the defendant, Maury G. Gourdine, to forward or deliver to the plaintiff, The North River Insurance Company of New York, the Notice of Motion for Judgment served upon him on June 23, 1962, in the case of Irving L. Goninan v. Maury G. Gourdine, returnable to the Civil Justice Court

of the City of Norfolk, Virginia, on July 12, 1962, until July 26, 1962, was not a substantial and material failure to comply with the conditions of the insurance policy number FCA-677422 issued by the plaintiff to the defendant, Maury G. Gourdine; that no prejudice resulted to the plaintiff therefrom and that the said policy of insurance was not otherwise vitiated or forfeited thereby and by reason thereof the Court doth

ADJUDGE, ORDER and DECLARE that the policy of insurance number FCA-677422 issued by the North River Insurance Company of New York to Maury G. Gourdine was not breached by the defendant Maury G. Gourdine page 16 } because of the matters alleged in the Motion for a Declaratory Judgment and that the said policy of insurance be and the same hereby is declared to be in full force and effect as to all parties herein, and it is further

ORDERED that this action be dismissed with costs recoverable by the defendants, to which action of the Court the plaintiff, North River Insurance Company of New York, duly objected and excepted.

Enter 1-21-63.

T. M. J.

We ask for this:

F. E. CLARK
BERRYMAN GREEN, IV
Attorneys for Maury G. Gourdine.

Seen:

ROBERT S. COHEN
Attorney for Irving L. Goninan,
Mary L. Goninan and Mary
N. Mason.

Seen, Objected and Excepted To:

H. LEE ADDISON, III
Attorney for The North River
Insurance Company of New York.

• • • • •

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled cause in said court on December 21, 1962, before the Honorable Thomas M. Johnston, Judge of said Court.

Appearances: Pender, Coward, McDuffie & Addison, Esqs., Attorneys for the Plaintiff by H. Lee Addison, III, Esq., of Counsel.

Francis Clark, Esq. and Breeden, Howard & MacMillan, Esqs., Attorneys for the Defendant by Berryman Green, IV, Esq., of Counsel.

page 3 } (The Court convened at 11:00 a. m.)

(The reporter was duly sworn.)

The Court: Gentlemen, this is the case of North River Insurance Company of New York against Gourdine.

Mr. Addison: Yes, sir.

The Court: Let me ask you gentlemen, to start off with, is it the intention of all the parties that this hearing shall finally conclude and terminate all the issues between them as raised in the motion for declaratory judgment?

Mr. Addison: Yes, Your Honor.

Mr. Clark: Yes, sir.

The Court: Is that correct?

Mr. Green: Yes, sir.

The Court: All right, sir. I believe you are the moving party, Mr. Addison.

Mr. Addison: If Your Honor please, I represent the North River Insurance Company of New York. Mr. Green and Mr. Clark represent Maury G. Gourdine individually. The other defendants, the Goninans and Mary Mason, are represented by Mr.—

Mr. Green: Cohen.

Mr. Addison: —Robert Cohen of Amato, Babalas, Breit & Cohen. The other defendant, although served, did not file any pleadings. The facts of the case—I think predominantly we will be able to stipulate to all but a very few—are these: that the North River Insurance Company is the insurer of Maury G. Gourdine on a standard automobile liability policy, a copy of which is attached to the motion for judgment.

The Court: Attached?

Mr. Addison: Yes, sir. I believe all the parties will stipulate that that copy had the identical provisions with the policy as issued to Mr. Gourdine by North River.

On March 26th of this year in the City of Norfolk, Mr. Gourdine was involved in an automobile accident wherein there were three persons injured and there were two claims for property damage. Now, between March 26th and the 1st of July of this year one of the property damage cases was settled. I believe it was the Jenkins' insurer who had settled the case and subsequently wrote a subrogation letter to Mr. Gourdine. I will get into that in a moment. The accident was reported by Maury Gourdine to the North River Insurance Company, and on April 4th Hubert Baldwin, the adjustor for the General Accident Bureau—

page 5 } The Court: Just a moment. The North River Insurance Company, your client, was the insurer of Maury G. Gourdine; is that right—

Mr. Addison: Yes, sir.

The Court: —or for Maury G. Gourdine, and an accident was had on March 26th in the City of Norfolk, and on April 4th of the same year—that's March 26th of '62—

Mr. Addison: Yes, sir.

The Court:—on April 4, '62 Gourdine reported the accident to—

Mr. Addison: Well, it probably was reported sometime before that, Judge.

Mr. Clark: There is no argument about reporting the accident.

Mr. Addison: No argument about this at all. We just want to show the man actually reported the accident to the company. He reported it, and Hubert Baldwin, on the 4th, went out and interviewed him. On the 6th, two days thereafter, Mr. Gourdine brought the two passengers who were in his vehicle at the time of the accident into Mr. Baldwin's office in Suffolk.

The evidence will further be—and I think it's stipulated—that Gourdine was in Mr. Baldwin's office on two
page 6 } or three other occasions about that time, so that he did, in fact, know where Mr. Baldwin's office was, and this, I believe, will be disputed in some of the evidence that will be taken.

The Court: Baldwin, is he the representative of—

Mr. Addison: He is the insurance adjustor for North River.

The Court: North River Insurance?

Mr. Addison: That's right, sir. On or about June 23rd, which was a Saturday—and this is verified—a sheriff served a notice of motion for judgment on Mr. Gourdine by attaching it to his door at 412 Madison Street in Franklin. The evidence is—and I believe we can stipulate—that Mr. Gour-

dine was at home in bed at the time and he had a friend with him. The friend looked out the window; he saw—

Mr. Clark: Wait a minute now. I didn't stipulate to that.

The Court: All right, sir.

Mr. Clark: I think the return shows that the service was substituted.

Mr. Addison: I will show it in the evidence, if you desire.

The Court: All right, suppose you state now page 7 } what your case is supposed to be.

Mr. Addison: Well, it is to the effect that the man looked out the window; he saw it was someone from the insurance office. Mr. Gourdine, within an hour thereafter, took the notice of motion that was posted from his door. He read it. The evidence will be that although he did not understand it completely, he did, in fact, know that it pertained to court and that it was such that he had to be in court in the City of Norfolk on July 12th of this year. The notice of motion was brought by Attorney Jack Moulton and, as I say, was returnable for July 12th in the Civil Justice Court.

The facts will show—and this is stipulated definitely—that he did know of the motion and that he did not notify the North River Insurance Company at all about it. Apparently—and I think we agree upon this also—Mr. Moulton, on the 12th, had the case continued and I believe he—this is on the supposition that no one appeared—he had it continued until July 23rd. On July 23rd the judgment was entered, and upon returning to his office, he wrote a letter to Mr. Robert Biggs who is the manager for the local Crum & Forster page 8 } office in the Royster Building in the City of Norfolk.

Mr. Moulton, at the time, thought that the Hartford Insurance Company was the insurer of Gourdine, and he wrote him to advise that the judgment had been entered and he expected the Hartford Insurance Company to pay it. There was various correspondence between Hartford, advising Mr. Moulton that they did not know anything about this, but on the 26th, which was two days after receipt of the letter, Mr. Hubert Baldwin was notified by Mr. Biggs that he was to go out and contact Mr. Gourdine and obtain a statement as to how this particular situation occurred, since North River had not been advised of the suit, and I believe that Mr. Clark intends to have Mr. Gourdine testify as to the circumstances surrounding this particular incident.

The Court: Baldwin was the adjustor—

Mr. Addison: He's the adjustor—

The Court: —for the North River in both instances? In other words—

Mr. Addison: Yes, sir, that's right.

The Court: —on April 4, '62, the accident was reported to Baldwin, and so on, and then various other things went on, and on July 26th Baldwin was notified that a judgment had been entered?

page 9 } Mr. Addison: Yes.

The Court: I see. Anything else?

Mr. Addison: On July 30th Mr. Baldwin orally advised Gourdine that he had failed to give notice to the company. We considered the contract breached; that we did not intend to appeal this suit and that he was to obtain his own attorney if he desired to proceed any further in it; that we would not be responsible for it.

The Court: All right.

Mr. Addison: Now, I might add this, Judge: This suit was an action for property damage. The style of it was Irving L. Goninan, which is one of the defendants, against Maury G. Gourdine. It was for property damage in the sum of \$1,415.00, I believe.

The Court: How do you spell that name of the plaintiff?

Mr. Addison: G-O—

The Court: G-O-N-I—

Mr. Addison: G-O-N-I-N-A-N, I believe.

The Court: Well, there are several Goninans listed here—Irving L. Goninan and Mary L. Goninan. The style of that case in which judgment was entered was—

page 10 } Mr. Addison: Irving L.

The Court: —Irving L. Goninan *versus* Gourdine?

Mr. Addison: Yes, sir.

The Court: And what was the amount of the judgment?

Mr. Addison: \$1,415.00. Now, the same day Mr. Coward sent a letter to—

The Court: By the "same day," you mean July 30th?

Mr. Addison: July 30th, yes, sir, sent a letter to Gourdine at this 412 Madison Street address in Franklin, special delivery, certified mail, return receipt requested, putting in writing what Adjustor Baldwin had told him. This was returned to our office on August 8th, with the notation that the mailbox was down, unclaimed and was being returned, and it was dated July 31, 1962.

The Court: All right.

Mr. Addison: On August 20th Adjustor Baldwin—and a copy went to Mr. Biggs of Crum & Forster—to the effect that Gourdine was advised three or four days prior to the period wherein he had to appeal that North River did not intend to defend him and that, to quote the letter, in effect,

that he was on his own as far as this suit was con-
page 11 } cerned. Nothing was done and the judgment be-
came final, unquote. This is from Mr. Corward's
letter.

The Court: That's two or three days before the expira-
tion date of the appeal as a matter of right from the Civil
Justice Court?

Mr. Addison: That's right, sir. On August 23rd Mr.
Biggs received a letter from Attorney Moulton, advising
him that the judgment entered on July 23rd had been vacated
and was reset for trial September 18th.

The Court: All right, go ahead.

Mr. Addison: Now, I do not know that all these various
letters are necessary, but I think it should be brought to the
Court's attention. On September 10th Mr. Biggs sent a letter
to Mr. Clark, advising that the plaintiff's position had not
changed; that we did not intend to defend the suit that had
been reset for September 18th. There was a reply of Sep-
tember 12th by Mr. Clark that he still considered us to be re-
sponsible and were required to defend it. On September 14th
I sent a letter to Mr. Gourdine, which was a reservation of
rights letter, stating that we would not defend the suit set in
the Civil Justice Court, which was in accordance
page 12 } with the word he had previously received; and,
second, that we would defend the subsequent claims
for personal injury, reserving our right to ultimately deny
liability.

Three days thereafter Mr. Biggs received a letter from Mr.
Clark acknowledging the fact that he had received—that is,
that Gourdine had received my letter.

So I believe those, basically, are the facts then of the case.

The Court: What you are seeking, then, in this case is an
adjudication of whether or not the plaintiff, North River In-
surance Company of New York, is obligated to pay the judg-
ment in the sum of fourteen hundred and some dollars which
was entered in the Civil Justice Court; is that correct?

Mr. Addison: That, and whether or not we are required
to defend the subsequent—

The Court: Any subsequent action?

Mr. Addison: Yes, sir.

The Court: Although such actions have not yet been in-
stituted.

Mr. Addison: They have been instituted now. I left that
out of my facts. On September 12th—

The Court: Is there any indication or any
page 13 } statement, or do you intend to show that Gourdine
failed to notify the plaintiff or its agents of the
subsequent suits?

Mr. Addison: No, sir.

The Court: In other words, in those cases notice was properly given?

Mr. Addison: Yes, sir.

The Court: All right.

Mr. Addison: But suit was instituted by Mr. Cohen on behalf of the Goninans on September 12th, and in Mr. Clark's letter of September 17th, he forwarded those papers to us.

The Court: There is no judgment in those. The only thing you wish is an adjudication of your right to avoid liability in those cases; is that right?

Mr. Addison: That's right. I want a determination of whether we have to pay the judgment of September 18th and whether we are required, as a matter of law, to defend the actions that are now set in the Court of Law and Chancery in April and May.

The Court: All right.

Mr. Clark: If Your Honor please, I do not know that I
could add anything to what has already been
page 14 } stated. I think the facts have been very well set
forth, except that with respect to the suits, other
than the first suit, the evidence will show that the North River Insurance Company had received one hundred percent cooperation in every respect with respect to those suits. That's the only thing that I know that I could add.

Mr. Green: Your Honor, one thing that I would like to point out is that the property damage suit, which was the only one in which the suit papers weren't turned over, is a situation in which a determination of that suit would not be *res adjudicata* in any of the other suits. In other words, that was a suit by the man who owned the automobile for his property damage and he was not in the car at the time. So a determination in that property damage suit would not be *res adjudicata* as to any of the other personal injury suits which have been brought. In other words, that suit, standing alone, would have nothing in the world to do with the personal injury suits, and in the personal injury suits all of the papers were—the accident was reported in due course; all of the papers were turned over in due course; cooperation has been full and complete.

page 15 } The Court: All right. Who do you have, Mr. Addison?

Mr. Addison: Maury G. Gourdine.

MAURY G. GOURDINE,
called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Addison:

Q. Would you state your name, your age and your occupation?

A. My name is Maury George Gourdine; I am twenty-nine years old; I work at the Naval Supply Center in Norfolk.

Q. Where do you live?

A. I live at 412 Madison Street, Franklin, Virginia.

Q. How long have you lived there?

A. I lived there going on four years.

Q. Do you still live there?

A. Yes, I do.

Q. Did you live there from March 26th through August of this year?

A. Yes.

Q. And through September?

page 16 } A. Yes.

Q. Mr. Gourdine, I show you what purports to be a letter dated June 8th from Royal-Globe Insurance Company.

Mr. Clark: Counsel will stipulate that he received those. I have the originals in my file.

Mr. Addison: I would like to offer those in evidence Judge.

The Court: It is stipulated that both of these letters were received by Gourdine; is that correct, gentlemen?

Mr. Clark: Give me the dates on them.

The Court: One of them, June 8, 1962, and another letter, July 8, 1962.

Mr. Clark: Yes, sir.

The Court: Plaintiff's Exhibits 1 and 2.

(The letters dated June 8, 1962 and July 8, 1962 were marked and received in evidence as Plaintiff's Exhibit Nos. 1 and 2.)

By Mr. Addison:

Q. You did not turn these over to the insurance company, that is, the North River Insurance Company, Mr. Gourdine, until when?

A. I'm not for sure about the date.

Maury G. Gourdine.

Q. Was it the time Mr. Baldwin came to your page 17 } house?

A. Yes, it was. I think it was.

Mr. Addison: Would you stipulate that was July 26th?

Mr. Clark: Yes, I will stipulate that he turned them over to Mr. Baldwin on July 26th.

By Mr. Addison:

Q. Mr. Gourdine, directing your attention to June 23, 1962, would you state whether or not you had occasion to receive a notice of motion for judgment?

A. I don't remember the date.

Mr. Clark: I will stipulate that the date was June 23rd.

By Mr. Addison:

Q. Did you receive a notice of motion for judgment approximately during that time?

A. Yes, it was some kind of motion, but I don't know for sure what it was.

Q. Did you have occasion to read it?

A. Yes, I read it.

Q. And what did it say?

A. Well, I couldn't very well understand it. I mean it said something about some kind of suit against me.

Q. And it said something about court, didn't it?

A. Yes.

Q. Did you know when it was returnable?
page 18 } A. No, I didn't.

Q. Didn't you read it?

A. I don't remember the date.

By the Court:

Q. Did you at that time know what day it was returnable? In other words, did you see the date on the paper that you got when it was returnable?

A. I don't remember, sir.

The Court: All right.

By Mr. Addison:

Q. Did you give that to Mr. Baldwin?

A. Yes, sir.

Q. When?

Maury G. Gourdine.

A. Mr. Baldwin came by the house. I do not know the date, but I took all the papers I had over to Mr. Baldwin.

Mr. Addison: You stipulate that was the 26th?

Mr. Clark: He turned it—yes, he delivered that to Mr. Baldwin on June 26th.

The Court: On June 26th?

Mr. Addison: It was July. It was after the judgment had been entered.

Mr. Clark: I thought you were talking about the day that the motion was served.

page 19 } Mr. Addison: Yes, I am.

Mr. Green: When did he deliver the motion for judgment to Baldwin?

Mr. Addison: The motion was on the 23rd and he didn't deliver it until—

Mr. Clark: July 26th, that's correct.

The Court: So it is stipulated by the parties that on July 26, 1962, all of the papers, which included, among other things, this notice of motion for judgment, were turned over to Baldwin who is the agent of the plaintiff.

Mr. Addison: Yes, sir.

The Court: All right, go ahead.

By Mr. Addison:

Q. Mr. Gourdine, that's approximately thirty-three days from the time you received it until the time you turned it over. Why did you not turn it over earlier?

A. Well, I was—I was hurt in that automobile accident. I hurt my shoulder and I had been out of work approximately three weeks and I had used all my leave from down the Base, and when we go through Suffolk in the morning it's about 6:30 or twenty minutes to seven and Mr. Baldwin's office is closed, and when I come through in the evening it's about 6:15 and Mr. Baldwin's office is closed, and on Saturdays Mr. Baldwin's office is closed, and that is the reason I hadn't

page 20 } seen him before.

Q. Could you not have mailed it to him?

A. I did not know his address.

Q. Had you not been to his office?

A. I had been to his office, but I didn't know the address.

Q. Had you not been there more than one time?

A. I think I had been there twice.

Q. You went there shortly after the accident, didn't you?

A. Yes, I did.

Maury G. Gourdine.

Q. Couldn't you have looked in the phone book?

A. I mean if I looked in the phone book, I wouldn't know what I was looking up. I mean I knew Mr. Baldwin's name—that was all—but I wouldn't know if that was his house, residence, or what.

Mr. Addison: Excuse me just a minute, Judge.

By the Court:

Q. How long were you out with your shoulder?

A. Approximately three weeks.

Q. Pardon? Three weeks?

A. Yes, about three weeks.

Q. That's from the date of the accident?

A. Yes, sir.

page 21 } Q. What was the date of the accident?

A. It was March the—let's see. I think it was March 22nd, or something like that. I don't remember exactly the date.

Q. But it was in March of '62?

A. Yes, sir.

Mr. Clark: It is stipulated it was March 26th, Judge.

The Court: March 26th?

Mr. Clark: Yes, sir.

By the Court:

Q. After that three-week period you went to work regularly?

A. Yes, I went back to work.

The Court: Go ahead.

By Mr. Addison:

Q. Did you say you worked on Saturday?

A. No, I don't work Saturdays. I mean sometimes I do when we have overtime.

Q. Did you know that Mr. Baldwin's office was open on Saturdays?

A. No, I did not.

Q. Did you try to find out?

A. I mean I went by there on Saturdays on several occasions, but I didn't see the office open.

page 22 } Q. What time did you go by there?

A. About 12:30, one o'clock, something like that.

Maury G. Gourdine.

Q. Did you have a conversation with Mr. Baldwin shortly after the accident as to what was to be done with any papers that you received regarding this accident?

A. I might have had a conversation with Mr. Baldwin about how the accident occurred, and everything, and he asked me, did I have any witnesses, and I told him I had four fellows that was riding with me at the time, and he told me to have them to come by to see him, and they went by to see him.

Q. Did you have a conversation with Mr. Baldwin as to whether or not you were to turn over any papers that you received regarding this accident to him?

A. I don't think so.

Q. Do you remember making a statement on July 26, 1962 to him?

A. I can't remember.

Q. Do you remember making any written statement to him?

A. I mean I gave him a statement about how the accident occurred.

The Court: That you what?

The Witness: How the accident occurred.

page 23 } By Mr. Addison:

Q. Did you give him a subsequent statement, one later in July, about receiving the notice of motion?

A. He asked me why I hadn't sent it to him or why I hadn't brought it to him.

Q. Did you make a statement to him at that time?

A. Yes, why I hadn't brought it to him because of the fact—

Q. Did you make a statement about that?

A. Yes, I told him about it.

Q. Do you remember in that statement that you said that he had told you to bring any notices or any suit papers that you received to him?

A. Yes, I think he did.

Q. So that you do now admit that he did, in fact, tell you that you were to bring any suit papers to him when you received them?

A. Yes, he told me to bring them to him.

Q. And you understood that?

A. Yes.

Q. And you knew this was about court, didn't you?

A. Yes, I knew it was about court.

Maury G. Gourdine.

Q. Didn't you think you were supposed to bring them to him?

page 24 } A. I mean I was going to take them to him, but I couldn't afford to lose too many days from work because I have a family to support.

Q. When were you going to bring them?

A. I had to take a day off to take my wife to the doctor, and that would have been the next week.

Mr. Addison: I think that's all I have.

The Court: Do you have any questions?

Mr. Clark: Yes.

CROSS EXAMINATION.

By Mr. Clark:

Q. Maury, I hand you a piece of paper with some writing on it, and ask you to read it to the Court and explain what that says, what it means.

A. "Take notice that on Thursday, July 12, 1962, at 10:00 a.m., or as soon thereafter as counsel may be heard, the undersigned will move the Judge—" —"move the Judge of Civil Justice Court of the City of Norfolk, Virginia, at the courtroom thereof, in Norfolk, Virginia, for judgment against you for the sum of \$1,415.00, with interest thereon from March 26, 1962 till paid, attorneys' fees and costs due by reason of damage to the plaintiff's automobile occasioned by the reckless, careless, negligent operation of motor vehicle by the defendant which resulted in a collision on March 26, 1962 on the Military Highway, approximately seventy-
page 25 } five feet north of Johnstons Road in the City of Norfolk, Virginia. The plaintiff's vehicle at the time of the collision was operated by Mary L. Goninan and the plaintiff claims a bailment in this case."

Q. All right. What is "bailment," Maury?

A. I don't know, sir.

Q. What is a "plaintiff," Maury?

A. I think it's a person being sued, or something.

Q. He is the person being sued?

By the Court:

Q. Any question in your mind about it being the person being sued?

A. I think that's what it means, the plaintiff.

Maury G. Gourdine.

The Court: All right.

By Mr. Clark:

Q. You know what a defendant is?

Mr. Addison: If Your Honor please, I do not think it is necessary if the man knows the technical terms of a notice of motion for judgment.

The Court: I will permit it. Go ahead.

By Mr. Clark:

Q. What did this notice mean to you that you were supposed to do, if anything, Maury? What did you think this meant when you got it?

A. I just thought it meant I was being sued.

Q. You thought it meant you were being sued?

A. Yes, sir.

page 26 } Q. Well, had you not previously talked to Mr. Baldwin?

A. You mean when I received this notice?

Q. Before you received this notice? Didn't you testify earlier that you took the four people who were in your car down to talk to Mr. Baldwin in Suffolk?

A. Oh, yes.

Q. Did you get Mr. Baldwin's full name when you talked to him?

A. No, I did not.

Q. Did you know his name other than "Baldwin"?

A. No, sir.

Q. Did you know who he worked for?

A. No, sir, I did not.

Q. Did you know how to look up his name individually in the phone book?

A. I mean I could find "Baldwin" in the phone book, but I couldn't find his first name, or anything else.

Q. Did you know the place of business that he worked for?

A. He said it was an adjustor, insurance adjustor. I think that's all I saw on the door.

Q. Did you know the name of the company he worked for in Suffolk?

A. No, sir, I did not.

page 27 } By the Court:

Q. Did you have a policy of liability insurance?

A. Yes, I had a policy.

Maury G. Gourdine.

Q. Who did you have that insurance with?

A. That was—I think it was Mr. George Underwood in Holland, Virginia.

Q. And when you went to see Mr. Baldwin, did you understand that he was the representative of that insurance company?

A. He said—he said he was trying to find out about the accident.

Q. Well, did you understand that you were reporting it to him as a representative of the insurance company that you had your liability insurance with?

A. Yes, sir.

The Court: All right. Have you anything further?

Mr. Clark: If Your Honor please, I would like to submit the motion for judgment in evidence.

The Court: All right, sir. That will be Gourdine Exhibit 1.

Mr. Clark: One, yes.

The Court: It is a motion for judgment—form motion for judgment—marked Gourdine Exhibit 1.

page 28 } (The motion for judgment was marked and received in evidence as Gourdine Exhibit No. 1.)

By Mr. Clark:

Q. Maury, where did you find that paper?

A. Well, that piece of paper was sticking between my screen door and my—you know, the door to my house.

Q. And on the date that you found it, were you there when it was put there?

A. Yes, I was in the bed asleep.

Q. Did you see anybody leave the paper there?

A. No, sir, I did not.

Q. Did anybody knock on the door?

A. Well, if they did, I didn't hear it, sir.

Q. What time of day was it?

A. Well, I got up about 11:30, or something to twelve.

Q. Was this on a Saturday?

A. Yes, sir.

Q. And when you got up, the paper was there?

A. Yes, sir.

Q. You don't know how it got there nor who put it there?

A. No, sir.

Hubert E. Baldwin.

Mr. Clark: All right.

page 29 } REDIRECT EXAMINATION.

By Mr. Addison:

Q. You did, in fact, know where Mr. Baldwin worked, didn't you?

A. Yes, I know where Mr. Baldwin worked.

Q. And you went by there one Saturday during this time and no one was there; is that right?

A. No, I went by there one Saturday and the office was closed.

Q. Didn't you read what the name of the place was?

A. It said a "Bureau of Adjustors." That's all I know.

Q. You could have gotten the name had you looked, couldn't you?

A. Well, as a matter of fact, I don't think Mr Baldwin's name is on the door.

Q. That is not what I asked you. You could have ascertained or seen what the name of the company was had you looked and written it down, couldn't you?

A. I don't know if the name of the insurance is on the door or not. I saw the "Adjustors."

Mr. Addison: That's all I have, Your Honor.

The Court: All right, step down. Are you finished?

Mr. Addison: No. I am through with him, yes,
page 30 } sir. I am through with the witness.

The Court: All right, step down.

(Witness excused.)

The Court: Who will you have now?

Mr. Addison: Mr. Baldwin.

HUBERT E. BALDWIN,
called as a witness by and on behalf of the plaintiff, having
been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Addison:

Q. Would you state your name, your age and your occupation, please, sir?

Hubert E. Baldwin.

A. Hubert Ezra Baldwin, Jr.; age 28; I work as an adjustor with General Adjustment Bureau.

Q. And where is that located, sir?

A. Suffolk, Virginia.

Q. What is the address?

A. 1009 West Washington Street.

Q. Did you have occasion during your employment with General Adjustment Bureau to speak with Maury G. Gourdine?

A. Yes.

Q. When did you first speak with him?

page 31 } A. April 4th, this year.

Q. And the second time?

A. I saw him again April 6th and then in July.

By the Court:

Q. At what time in July?

A. The 26th.

By Mr. Addison:

Q. Did you have occasion, on the 4th of April, to discuss what he should do with any notices or suit papers that he received?

A. Yes, sir.

Q. And what did you tell him?

A. I explained to Mr. Gourdine that any correspondence whatsoever he got relative to this accident should be delivered either to me or to his agent, Mr. Underwood, in Holland, Virginia.

Q. You told him either yourself or Mr. Underwood?

A. Yes, sir.

Q. How long did you discuss this with him, do you know?

A. The length of time—I can only approximate one hour.

Q. What was his reaction to that?

A. He indicated that he understood and would follow through with any correspondence he might receive.

page 32 } Q. Were any arrangements made on the 4th as to the 6th—your seeing him on the 6th?

A. Yes, I told him I needed to talk with the passengers that were in his automobile at the time of the accident, and he was to bring them to my office.

Mr. Addison: I think that's all.

The Court: All right, sir.

Hubert E. Baldwin.

CROSS EXAMINATION.

By Mr. Clark:

Q. You didn't go down yourself to investigate this accident? You had him come to you?

A. At the outset I went to see him at his home.

Q. Did you talk to him at his home?

A. Yes, sir.

Q. Subsequent to that you were expecting him to bring all of the information to you? You were not to go to him; is that right?

A. I visited him again in July.

Q. That was July 26th?

A. That's correct.

Q. That was after the suit had been filed—

A. That's correct.

Q. —in the Trial Justice Court in Norfolk?

A. Yes, sir.

Q. But up until that time you expected Gour-
page 33 } dine to carry the ball and bring you all the in-
formation? You weren't supposed to do anything?

A. I explained to Gourdine what his responsibility was.

Q. Did you give him a card with your name and address on it?

A. That I cannot recall.

Q. So you don't know whether he knew your full name or how to get in touch with you or not?

A. Yes. He passes my office at least twice a day going to and from work.

Q. Are you at work at 6:15 in the morning?

A. No, sir.

Q. Are you at work at 6:15 at night, usually?

A. That is not my usual hour. I may be caught there at times.

Q. So when he goes by your office to and from work you are not there anyway, are you?

A. Most of the time, probably not.

Q. If he didn't know your name and didn't know the name of the company that you worked for, he would have had to take a day off from work to go to see you, would he not?

A. I left my name—I mean I told him my name and who I was with.

Hubert E. Baldwin.

Q. What was the first knowledge you had that page 34 } suit had been instituted against Gourdine?

A. I believe Mr. Biggs called me on the 26th of July. I think that's correct.

Q. Mr. Biggs is an adjustor for North River Insurance Company?

A. Yes, sir.

The Court: What was that last question?

Mr. Clark: I said, "I believe that Mr. Biggs is an adjustor for the North River Insurance Company."

The Court: Go ahead.

By Mr. Clark:

Q. Is Mr. Biggs, by any chance, an adjustor for the Hartford Insurance Company—

A. No, sir.

Q. —or do you know?

A. No, sir.

Q. Is the answer, you do not know or do you know—

A. He is not.

Q. Are you an adjustor for the Hartford Insurance Company?

A. Not usually. I have, in the past, worked for Hartford.

Q. At the time that the notice of motion was page 35 } served were you employed by Hartford in any capacity?

A. Well, sir, as an insurance adjustor, I work multiple lines—this, involving casualty, and, of course, I work fire, too. I cannot say for certain whether or not I had a file open for Hartford.

Q. Did you not know that Mr. Moulton, who represented the plaintiff in the suit that was filed—the first suit that was filed—did you not know that he was under the impression that Hartford Insurance Company was Gourdine's insurance carrier?

A. No, sir.

Q. When did you first find that out, or did you ever find that out?

A. That's news to me, sir.

Q. That's a good try. So far as the suits subsequent to the first suit, you have had full, one hundred percent cooperation from Mr. Gourdine and his attorney, who is me; is that correct?

A. Mr. Clark, I have a letter from you, I believe, dated

Hubert E. Baldwin.

August 20th that is relative to the first suit, I believe. Now, I think your correspondence has been with someone other than myself—probably Mr. Biggs since then. I can't answer that question.

Q. I ask you if I did not notify you by letter of August 28th, which was subsequent to the time that the page 36 } judgment had been vacated in the City Court down here in Norfolk and before the trial date, which was September 18th—I will ask you if I didn't notify you that I expected North River Insurance Company to defend all of these actions?

A. I have a letter from you dated August 28th.

Q. Did I not advise you in that letter that Mr. Moulton or that the plaintiff's attorney, rather, had had the judgment previously entered vacated?

A. Yes, sir.

Q. Did I not advise you in that letter that I thought that I expected the North River Insurance Company to defend the case when it was ultimately tried the second time?

A. Yes, sir.

Q. And that was some twenty days before the trial was actually had; is that correct, sir?

A. That I don't know.

Q. The trial date was September 18th?

A. Yeah.

Mr. Addison: I will stipulate to that, that there was sufficient time.

By Mr. Clark:

Q. Was the information which I gave you in that letter of August 28th communicated to the North River Insurance Company?

A. Yes, sir, I think it was.

Mr. Clark: Will you stipulate that they re-
page 37 } ceived that?

Mr. Addison: Surely. I got it here.

Mr. Clark: It is stipulated, Your Honor, that North River received—

The Court: It is stipulated on the record that North River received—when was it received, that is, the notice of the vacation of judgment in the Civil Justice Court in the sum of fourteen hundred and some dollars—

Mr. Addison: That was received, Judge—

Hubert E. Baldwin.

The Court: —and retrial on September 18th?

Mr. Addison: The date of the letter was August 23rd. I assume it was received August 24th or 25th.

Mr. Clark: No, the date of the letter—

Mr. Addison: He asked me when notification that the judgment had been vacated was received and if I received that from Mr. Moulton.

The Court: All right, August 24, 1962. Go ahead.

Mr. Clark: That's all, Mr. Baldwin.

Mr. Addison: I have one question.

The Court: All right, go ahead.

page 38 } REDIRECT EXAMINATION.

By Mr. Addison:

Q. At the time that you interviewed Mr. Gourdine on the 26th, did you have occasion to take a statement from him?

A. Yes, sir.

The Court: That's July 26th?

Mr. Addison: Yes, sir.

By Mr. Addison:

Q. What did he tell you?

A. You mean—

Q. What reason did he give you for failing to turn the suit papers over to you?

A. He said that he didn't have any means of transportation; he rides back and forth on a bus through Suffolk to work and claimed he didn't know my address and did not bring the papers.

Q. Did he say anything as to whether he recognized that it was a suit?

A. Yes, sir, he said it said something about the court.

Mr. Addison: That is all.

By the Court:

Q. In any other respect, other than this failure to give you the notice of the suit which originally resulted
page 39 } in a judgment on July—no, on June—

Mr. Addison: July 23rd, Your Honor.

Mr. Clark: Judgment entered July 23rd.

Hubert E. Baldwin.

By the Court:

Q. On July 23rd, other than that one occasion, has there ever been any other failure to cooperate with you in connection with this matter by Gourdine?

A. No, sir, not as far as I know of my contacts, I don't believe so.

The Court: All right, step down.

By Mr. Addison:

Q. You did receive two letters, however, on the 26th from him that should have been turned over to you; is that correct?

A. Yes, I received the information then.

Q. So that they are the two letters and the suit papers that he failed to turn over?

A. Yes, sir.

RECROSS EXAMINATION.

By Mr. Clark:

Q. Neither of those two letters said anything about that they were going to sue Gourdine, did they?

A. I don't know. I'd have to look back. I don't see that correspondence in my file.

Mr. Clark: The letters are in evidence.

The Court: All right.

page 40 } Mr. Clark: No further questions.

The Court: Anything further?

Mr. Addison: No, sir.

The Court: Step down.

(Witness excused.)

Mr. Addison: Judge, I think, as far as the facts are concerned, we have stipulated to everything else in my opening statement, have we not?

Mr. Green: Your Honor, I would just like to put in copies of the motion for judgment in the personal injury suits which were filed in the Court of Law and Chancery. You do not have any objection to those, do you?

Mr. Addison: No, sir.

The Court: These will be Gourdine's Exhibits 2 and 3.

(The notices of motion for judgment were marked and received in evidence as Gourdine's Exhibit Nos. 2 and 3.)

Mr. Green: Your Honor, those are the suits—it was stipulated that the papers were turned over to the insurance company in due course and answers have to be filed in those cases by the North River Insurance Company under a re-page 41 } servation of rights.

The Court: All right, gentlemen, care to argue it?

Mr. Addison: Yes, sir.

(Thereupon, counsel made closing arguments.)

The Court: All right, gentlemen, I believe that concludes it, and you will hear from me within—well, this is Christmas—probably by the end of next week, certainly.

(Thereupon, the trial of the above case was concluded at 1:05 p.m.)

page 42. } JUDGE'S CERTIFICATE.

I, Thomas M. Johnston, Judge of the Circuit Court of the City of Norfolk, Virginia, who presided over the trial of the case of North River Insurance Company of New York, plaintiff, v. Maury G. Gourdine, etc., Defendants, on December 21, 1962, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all of the evidence adduced, the exhibits offered in evidence, as well as all of the objections to the evidence or any part thereof offered, admitted, rejected or stricken out, together with all motions and objections of the parties, all rulings of the Court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of the said cause.

As to the original exhibits introduced in the evidence which have been initialed by me for the purpose of identification, it is agreed between the attorneys for the plaintiff and the attorneys for the defendants that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this cause in lieu of certifying to the said court copies of said exhibits.

I further certify that this certificate has been tendered to and signed by me within the time prescribed by the applicable

page 43 } section of the Code of Virginia for tendering and
 signing bills of exception and certificates of record,
 and that reasonable notice in writing has been
 given to the attorneys for the plaintiff of the time and place
 at which said certificate has been tendered.

This transcript was delivered to me on the 12th day of
 March 1963.

Given under my hand this 12th day of March 1963.

THOS. M. JOHNSTON

Judge of the Circuit Court of
 the City of Norfolk, Virginia

page 44 } CLERK'S CERTIFICATE.

I, W. Robertson Hanckel, Clerk of the Circuit Court of the
 City of Norfolk, State of Virginia, do hereby certify that the
 foregoing is a true and correct copy of all the testimony, ex-
 hibits and other incidents of the trial of the case of North
 River Insurance Company of New York, plaintiff, v. Maury
 G. Gourdine, etc., defendants, together with the original ex-
 hibits therein referred to, duly initialed and authenticated by
 the Judge who presided over the trial of the said cause, were
 lodged and filed with me as Clerk of said court on the 12 day
 of March 1963.

W. ROBERTSON HANCKEL

Clerk of the Circuit Court of
 the City of Norfolk, Virginia.

BY: T. A. W. GRAY

Deputy

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

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