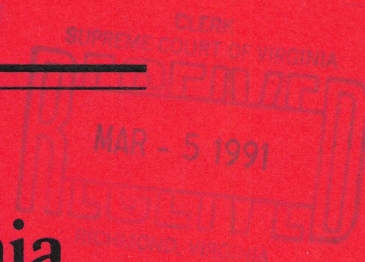


242 Va 79



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 900980

**BILL KELLY, SUBSTITUTE ADMINISTRATOR OF THE ESTATE OF
JUDY PHIPPS MULLINS JONES, et al.,**

Appellants,

v.

R. S. JONES AND ASSOCIATES, INC. et al.,

Appellees.

JOINT APPENDIX

**Donald E. Earls
Attorney at Law
Post Office Box 1005
Norton, VA 24273
(703) 679-3088**

Counsel for Appellants

**William W. Eskridge
PENN, STUART,
ESKRIDGE & JONES
208 E. Main Street
Post Office Box 2288
Abingdon, VA 24210
(703) 628-5151**

Counsel for Appellee

**Elsey A. Harris, III
MULLINS, THOMPSON
& HARRIS
30 Seventh Street
Post Office Box 1200
Norton, VA 24273
(703) 679-3110**

Counsel for Appellee

TABLE OF CONTENTS

Appendix Page

Qualification of William Jones as Administrator of the Estate of Judy Jones dated 10/22/87	1
Release of R.S. Jones & Associates dated 2/15/88	2
Final Order in L88-66 entered 2/17/88	4
Petition for Compromise filed 2/24/88	5
Clerk's receipt to Tigert & Roberts for filing fees dated 2/24/88	8
Release Agreement of Textron, Inc, etc. dated 5/22/89	9
Agreement for Distribution of Settlement dated 5/22/89	16
Motion for Judgment filed 10/11/89	19
Order Substituting Bill Kelly as Personal Representative of Judy Jones, Deceased entered 10/11/89	25
Motion to Intervene and to Vacate Order in Circuit Court No.L88-66 filed 11/9/89	26
Final Accounting of William Jones, Administrator dated 11/13/89	29
Qualification of Bill Kelly as Administrator of the Estate of Judy Jones dated 11/15/89	31
Transcript of the Motion Proceedings heard before the Honorable J. Robert Stump on 12/12/89	32
Testimony of Christina Phipps	63
Testimony of William Jones	97
Testimony of R.S. Jones	147
Testimony of Carol Jones	170
Letter Opinion of Judge Stump dated 4/13/90	186

Final Order entered 4/17/90	187
Transcript of the Motion Proceedings heard before the Honorable J. Robert Stump on 10/11/89	191
Assignments of Error filed 7/18/90	217

25. Jones #4
JS

VIRGINIA

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF WISE COUNTY
THIS 22nd DAY OF October, 1987.

RE: Judy Phipps Mullins Jones, deceased
QUALIFICATION OF ADMINISTRATOR

Jones

It appears that Judy Phipps Mullins, who resided in St. Paul,
VA. in the County of Wise, within the jurisdiction of this
Court, died intestate on the 12th day of Oct., 1987. On
motion of William G. Jones, the Clerks appoints William G.
Jones ADMINISTRATOR of the estate.

Thereupon, the ADMINISTRATOR, William G. Jones,
appeared and made oath as the law directs and together with the surety
Virginia Jones who first justified upon the
oath as to its sufficiency, entered into and acknowledged in the
Clerk's Office a bond as such ADMINISTRATOR in the penalty
of \$ 8,000.00, payable and conditioned according to law.

And certification is granted to the ADMINISTRATOR of
this estate.

C. Gary Rakes, Clerk

by William G. Jones
Deputy Clerk

This is to certify that this is a true and correct reproduction or abstract of the official record filed with the
Circuit Court for the City or County of Wise County/ City of Norton Virginia.

C. Gary Rakes, Clerk

Date issued 12-6-89

Gracie B. Rakes, Jr.
Clerk of Court or Deputy

(SEAL)

VOID IF ALTERED OR DOES NOT
BEAR IMPRESSED SEAL OF COURT

VS3A - 9/83

Exhibit A

R.S. Jones #2
JRS

R E L E A S E

For the sole consideration of FIFTY THOUSAND DOLLARS (\$50,000.00), receipt of which is hereby acknowledged, I William G. Jones (Releasor), individually and as Administrator of the estate of Judy P. Jones and for any person who might have a claim for the death of Judy P. Jones, arising out of the incident that is the subject of this release hereby release and agree to indemnify and hold harmless R.S. Jones & Associates, Inc., their insurers, and their officers, directors, employees, representatives, and agents, ("Releasees"), from and against any claims, demands, damages, actions, suits and liabilities of every kind and nature whatsoever which I, William G. Jones, individually and as Administrator of the estate of Judy P. Jones, may have arising from or in any way related to the death of Judy P. Jones, in an incident involving the crash of a certain aircraft, a Rockwell Aero Commander 770, Registration No. N26574, on October 12, 1987, at Pompano Beach, Florida, (the "Accident"), which resulted in the death of Judy P. Jones, a passenger in the aircraft. This release includes all matters and things now known and also all matters and things which may hereafter be discovered.

I understand that this release expresses a full and complete settlement of a questionable liability claim against Releasees. I understand that Releasees specifically deny any liability for this incident and that this amount is being paid in order to avoid the costs of litigation. I agree that all questions regarding this agreement are to be governed by Virginia law because I reside in Virginia.

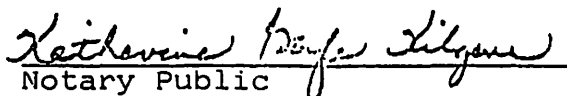
I understand that this release is binding on me in my personal capacity and in my capacity as Administrator of the estate of Judy P. Jones, and also applies to all person who may have claims based on the death of Judy P. Jones arising out of the accident against R.S. Jones and Associates, Inc., their insurers, and their officers, directors, employees, representatives, and agents.

This release is governed by §8.01-35.1 of the Virginia Code such that only the named Releasees will be discharged from liability. Releasor specifically reserves all claims, rights and causes of action he may have against others arising from the accident. The named Releasees shall be discharged from all liability for contribution or indemnity to any other tortfeasor pursuant to §8.01-35.1 of the Virginia Code.

I, William G. Jones, as Releasor, swear that I have carefully and fully read this agreement, that I understand the terms and conditions contained herein, and that I am satisfied with the settlement contained herein. I have signed it after consultation with my attorney, and I understood that I could ask my attorney to explain any parts of it that were not clear to me, if such there were.


William G. Jones

Subscribed and sworn to before me this 15th day of February, 1988.


Katherine Deane Lilgore
Notary Public

My commission expires August 26, 1990.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF ^{W. Se} ~~LEE~~

WILLIAM G. JONES, Individually and as)	
Personal Representative of the)	
Estate of Judy P. Jones)	
Rt. 1, Box 849)	
St. Paul, Virginia 24283)	
)	
Plaintiff,)	
)	
vs.)	AT LAW NO.
)	
R.S. JONES & ASSOCIATES, INC.)	
120 West Morgan Avenue)	
Pennington Gap, Virginia 24277)	288-66
)	
Defendant.)	
)	

ORDER

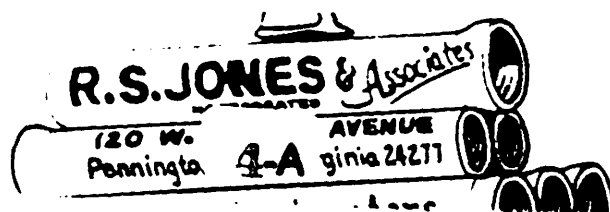
Upon consideration of the Petition for Compromise of the claim for the death of Judy P. Jones, this Court being of the view that the compromise constitutes a valid agreement and sufficiently protects the survivors, it is hereby

ORDERED that approval of the compromise settlement is granted.

	<u>Am. Knight</u>
	Judge
DATED <u>Feb 17</u> , 1988	

On this 17th day of February, 1988 received 2 checks from Avemco Insurance co (1) William G. Jones, as personal representative of estate of Judy p. Jones, deceased ----- \$50,000.00
(2) R.S. Jones & Associates, and First American Bank ----- \$45,000.00

Carl A. Jones
Corporate Secretary



V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF WISE

WILLIAM G. JONES, Individually and as
Personal Representative of the
Estate of Judy P. Jones, deceased,
Rt. 1, Box 849
St. Paul, Virginia 24283

Plaintiff,

vs.

R.S. JONES & ASSOCIATES, INC.
120 West Morgan Avenue
Pennington Gap, Virginia 24277

Defendant.

) RECEIVED AND FILED
) 2-24 1988
) C. Gary Hakes, Clerk
) By *Marion Hakes*
) 11:06 AM Deputy Clerk
) PM

AT LAW NO.

L88-66

PETITION FOR COMPROMISE

Pursuant to §8.01-55 of the Virginia Code, the parties seek approval by this Court of the compromise settlement arising out of the death of Judy P. Jones, on October 12, 1987. The facts are set forth below:

1. On October 12, 1987, Ben A. Jones was flying a 1979 Rockwell Aero Commander 770, N26574, owned by R.S. Jones & Associates, Inc. and insured through Avemco Insurance Company. Shortly after takeoff from Pompano Beach, Florida, the aircraft experienced an engine failure and crashed, killing both the pilot, Ben A. Jones, and the passenger, Judy P. Jones.

2. Judy P. Jones was survived by her husband, William G. Jones, and her daughter, Christine Phipps. Christine Phipps was a minor at the time of the accident but now has reached the age of majority. William G. Jones was appointed Administrator of

the estate of Judy P. Jones by the Circuit Court for Wise County (copy attached).

3. Investigations by federal investigators, retained investigators and the attorneys disclosed that questions existed concerning the status of the pilot, the negligence of the pilot and the applicability of the insurance. Accordingly, after significant negotiations, the survivors of Judy P. Jones accepted settlement of their wrongful death claim without litigation for \$50,000 to be made in a lump sum payment.

4. Pursuant to §8.01-55 of the Virginia Code, all interested parties await court approval of the above settlement to initiate the disbursement of funds.

5. The cost of the settlement to the insurers will not exceed \$50,000. All appropriate fees have been paid to the Clerk of the Circuit Court of Wise County.

Wherefore, all interested parties pray that this court approve this compromise settlement.

I ASK FOR THIS

WILLIAM G. JONES, Individually and
as Personal Representative of the
the Estate of Judy P. Jones


William G. Jones

SEEN AND AGREED:

R.S. Jones and Associates, Inc.
By Counsel



Walter W. Turner
Turner, Collins & Smith
P.O. Box 187
Salyerville, Kentucky 41465
(606) 349-5121

R.S. Jones & Associates, Inc.
and their insurers,
Avenco Insurance Company

By Counsel



Kathryn A. Ledig
Virginia Bar No. 025724

Tigert Law Offices
2609 Hillsman Street
Falls Church, Virginia 22043
(703) 560-2553

COMMONWEALTH OF VIRGINIA

OFFICIAL RECEIPT
WISE COUNTY CIRCUIT
LAW/CHANCERY

DATE: 02/24/88 TIME: 11:06:43 ACCOUNT: 175CL8686 - RECEIPT: 88000000F
CASHIER: GGM REC: WS05 FILING: MJ PAYMENT: FULL BY CHECK
CASE STYLE : JONES, WILLIAM G. VS. R.S. JONES & ASSOC., INC.
ACCOUNT OF : JONES, WILLIAM G.
RECEIVED CF : TIGERT & ROBERTS

CODE	DESCRIPTION	PAID	CODE	DESCRIPTION	PAID	
309	ACTIONS AT LAW FEE	35.00	349	WRIT TAX - ACTIONS	5.00	
219	LAW LIBRARY	2.00				
					TOTAL TENDERED :	42.00
					TOTAL AMOUNT PAID:	42.00
					TOTAL CHANGE AMT :	.00

CLERK OF COURT: C. GAFY RAKES

DC-19 5/86

RELEASE AGREEMENT

FOR AND IN CONSIDERATION OF THE SUM OF THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), the receipt and sufficiency of which is hereby acknowledged, we, WILLIAM G. JONES, being the surviving spouse of JUDY P. JONES, deceased and CHRISTINA PHIPPS being the only child (living or deceased) of JUDY P. JONES, all being of lawful age and R.S. JONES & ASSOCIATES, individually and WILLIAM G. JONES in his representative capacity as the Administrator of the ESTATE OF JUDY P. JONES, deceased, as well as our heirs, successors, assigns, representatives, hereinafter referred to as "Releasors," hereby acknowledge full accord, satisfaction and settlement of any and all causes of actions, damages or claims of damages of every kind or character whatsoever, whether known or unknown, which we have or may have as a result of that certain airplane (Rockwell Commander 700 Reg. No. N26574) crash occurring on or about October 12, 1987 in or near Pompano Beach, Florida, in which JUDY P. JONES died instantaneously, against the following: TEXTRON, INC., AVCO CORPORATION, POMPANO AIR CENTER, INC., PIEDMONT AVIATION, INC. and any and all of their subsidiaries, affiliates, associated or controlled companies, successors, assigns, directors, officers, agents, servants, employees, heirs and legal representatives; their insurers, United States Aviation Underwriters, Inc.; and the member companies of the United State Aircraft Insurance Group insofar as their policies insure these entities and persons with

regard to the subject airplane (hereinafter Releasees"), and we hereby release, remise and forever acquit said Releasees.

For and in consideration of the payment to Releasors of the amount set out above, Releasors, further state and agree as follows:

1. By this Agreement, Releasors and those claiming by, through or under them, are releasing only those claims against these Releasees, and Releasors expressly reserve all rights, claims and causes of action that they have, in any capacity, or which they may have against any other person or entity, or other respective heirs, legal representatives, successors, or assigns, as well as any right that they have, in any capacity, or which they may have to proceed against any such other party by reason of the death of Releasors' decedent.

2. The undersigned shall assume the above-mentioned risks, and this Release shall apply to all unknown or unanticipated results of the occurrence described above as well as those known and anticipated, and the undersigned hereby waives any and all rights under law of any state or territory of the United States or of any foreign nation which provides as follows:

"A general release does not extend
to claims which the creditor does
not know or suspect to exist in his

favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The undersigned acknowledge that any such provision of law has been fully explained to them.

3. It is the intention of the Releasors to release to any and all claims they may now or hereinafter have against Releasees on account of the subject airplane crash. It is the express intention of Releasors to accept the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) as Releasees' full share of any judgment which may be obtained or any claim which may be asserted against Releasees during any litigation or claims relating to the subject airplane crash wherein Releasees are found to be tortfeasors, joint tortfeasors, or otherwise. It is the further intention of Releasors to relieve Releasees from any obligation Releasors may have to any other person or entity, and to limit, save harmless and fully indemnify the Releasees from any and all claims, demands, actions, causes of actions, judgments, costs or payments of any nature arising out of any wrongful death or other claims (including any subrogation or other claims brought against Releasees by any Workers' Compensation carrier, insurer, fund, or other payer of Workers' Compensation benefits) of Releasors resulting from the subject airplane crash, including attorney's fees, costs, and related

expenses of Releasees arising out of any such litigation or claims.

Notwithstanding the foregoing, Releasees hereby release R. S. Jones & Associates from any and all claims or causes of actions Releasees now or in the future may have against R. S. Jones & Associates on account of the subject airplane crash, including those claims that may be brought by the heirs or representatives of Ben Jones, deceased.

4. This Agreement may be treated as an absolute defense and shall forever be complete bar to the commencement or prosecution of any action or proceeding whatsoever by Releasors or anyone acting on behalf of the Releasors against Releasees, on account of the subject airplane crash, and the Releasees may, by virtue of this Agreement, move in any court having jurisdiction to enjoin any action by Releasors against Releasees.

5. Releasors acknowledge and agree that the act of Releasees, by way of making the within payment, is not to be construed as an admission of liability or responsibility on the part of Releasees for the subject airplane crash or the consequence thereof, and liability for same is expressly denied.


6. This Agreement reflects the entire agreement between Releasors and Releasees. Releasors have carefully read and fully understand the provisions of this Agreement and know the

contents thereof, and sign and seal the same of their own free act, and aver that they have not been influenced to any extent whatsoever in making or signing and sealing same by any representations or inducements whatsoever by the Releasees, other than as set forth herein, and further hereby acknowledge that Releasees have acted in good faith.

7. Releasors have been specifically advised by Releasees to consult with an attorney-at-law of Releasors' choice for the purpose of reviewing this Agreement prior to their execution thereof. If Releasors have so consulted an attorney, said attorney's signature, name, address and telephone number appear below in the spaces provided. In such cases, Releasors have had the benefit of advice from an attorney of their own choosing. If Releasors have specifically decided not to consult an attorney of their choice for the purpose of reviewing this Agreement and providing advice to Releasors, their fact is indicated below. In any event, Releasors fully understand and agree to the terms, contents and effect of this Agreement.

8. The validity, effect and enforceability, as well as all the rights of the parties hereto regarding this Agreement shall be governed, construed and interpreted solely in accordance with the laws of the State of Virginia.

RELEASORS HAVE CONSULTED WITH
AN ATTORNEY OF THEIR CHOICE,
AND THIS AGREEMENT HAS BEEN
APPROVED AS TO FORM AND CONTENT BY:


(Signature of Attorney)

Ronnie G. Dunnigan
(Name of Attorney)

3060 Harrodsburg Rd., Ste. 105

Lexington, KY 40503
(Address of Attorney)

(606) 223-3949
(Telephone number of Attorney)

Attorney for WILLIAM G. JONES,
CHRISTINA PHIPPS and R.S. JONES
& ASSOCIATES in their individual
and representative capacities as
stated above.

* * * OR * * *

RELEASORS HAVE NOT CONSULTED
WITH AN ATTORNEY OF THEIR CHOICE

WILLIAM G. JONES, Individually and
as Administrator of the Estate of
JUDY P. JONES

CHRISTINA PHIPPS

R. S. JONES & ASSOCIATES

Sworn to me and subscribed
before me this _____ day
of _____, 1989.

Notary Public

This the 22nd day of May, 1989.

Sworn to and subscribed
before me this 22nd day
of May, 1989.

Bette W. Hayden
Notary Public

Sworn to and subscribed
before me this 22nd day
of May, 1989.

Bette W. Hayden
Notary Public

Sworn to and subscribed
before me this 22nd day
of May, 1989.

Bette W. Hayden
Notary Public

Sworn to and subscribed
before me this _____ day
of _____, 1989.

Notary Public

William G. Jones
WILLIAM G. JONES, Individually
and as Administrator of the Estate
of JUDY P. JONES

Christina Phipps
CHRISTINA PHIPPS

By: Dwight R. Browning
R.S. JONES & ASSOCIATES
title: Vice President

TEXTRON, INC.
AVCO CORPORATION
POMPANO AIR CENTER, INC.
PIEDMONT AVIATION, INC.

By: _____
TERRENCE TIERNEY
Title: _____

RST Jones #1
JRS

AGREEMENT

THIS AGREEMENT, made and entered into this 22 day of May, 1989, by and between William G. Jones, individually, William G. Jones, in his representative capacity as Administrator of the Estate of Judy P. Jones, and Christina Phipps, surviving daughter of Judy P. Jones, and, R. S. Jones & Associates, Inc.

WHEREAS, the parties having agreed to a settlement with Textron, Inc., Avco Corporation, Pompano Air Center, Inc. and Piedmont Aviation, Inc. as a result of that certain airplane crash occurring on or about October 12, 1987 near Pompano Beach, Florida in which Judy P. Jones died; and pursuant to Subsection 8.01-55 of the Virginia Code and other applicable law, the parties agree to distribution of the proceeds from the settlement of their claims upon receipt from Textron, Inc., Avco Corporation, Pompano Air Center, Inc. and Piedmont Aviation, Inc. of the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) as a complete settlement of any and all claims that each may have against these entities. The proceeds of such settlement shall be distributed as follows:

To Avemco:	\$ 10,000.00
To R.S. Jones & Associates, Inc.:	\$ 35,000.00
To William G. Jones:	\$112,500.00
To Christina Phipps:	\$112,500.00
To Walter W. Turner and Ronnie G. Dunnigan:	\$ 80,000.00
Total	\$350,000.00

This Agreement shall be presented to the Lee County, Virginia Circuit Court, or another Court of jurisdiction with Petition for Compromise to request approval of the settlement and the Agreement to the distribution of proceeds as set forth herein.

We hereby waive notice of any and all proceeding upon the Petition for Compromise so long as distribution of the proceeds of settlement is made in accordance with this Agreement and hereby request the Court to grant its approval to same.

WHEREFORE, the parties have executed this Agreement this the day and year first above written.

William G. Jones
WILLIAM G. JONES, INDIVIDUALLY

William G. Jones
WILLIAM G. JONES, ADMINISTRATOR
OF THE ESTATE OF JUDY P. JONES

Christina Phipps
CHRISTINA PHIPPS

R. S. JONES & ASSOCIATES, INC.

BY: Dennis R. Browning
Title: Vice President

STATE OF VIRGINIA

COUNTY OF LEE

Subscribed and sworn to before me on this 23rd day of May, 1989, by William G. Jones, Individually.

My commission expires: February 20, 1990.

Bettie M. Hauden
Notary Public

STATE OF VIRGINIA

COUNTY OF LEE

Subscribed and sworn to before me on this 22nd day of May, 1989, by William G. Jones, Administrator of the Estate of Judy P. Jones.

My commission expires: February 20, 1990.

Bette W. Hauden
Notary Public

STATE OF VIRGINIA

COUNTY OF LEE

Subscribed and sworn to before me on this 22nd day of May, 1989, by Christina Phipps.

My commission expires: February 20, 1990.

Bette W. Hauden
Notary Public

STATE OF VIRGINIA

COUNTY OF Lee

Subscribed and sworn to before me on this 22nd day of May, 1989, by Dennis R. Browning, as Vice-President of R. S. Jones & Associates, Inc., for and on behalf of said corporation.

My commission expires: February 20, 1990.

Bette W. Hauden
Notary Public

1989
C. Gary Ricketts, Clerk
J. S. Jones, Jr., Deputy Clerk

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

BILL KELLY, SUBSITUTE ADMINISTRATOR OF THE
ESTATE OF JUDY PHIPPS MULLINS JONES

v.

J.S. JONES AND ASSOCIATES, INC.

SERVE: ROBERT S. JONES, REGISTERED AGENT
3835 LEE HIGHWAY
ABINGDON, VIRGINIA 24210

AND

ESTATE OF BEN A. JONES, SR.

SERVE: CHARLOTTE JONES, ADMINISTRATRIX
C/O THOMAS RASNIC, ATTORNEY
[REST OF ADDRESS]
NORTON, VIRGINIA

AND

PIEDMONT AVIATION, INC.

SERVE: EDWARD R. PARKER
5511 STAPLES MILL ROAD
RICHMOND, VIRGINIA

AND

TEXTRON, INC.

SERVE: EDWARD R. PARKER
5511 STAPLES MILL ROAD
RICHMOND, VIRGINIA

AND

AVCO CORPORATION

SERVE: SECRETARY OF THE COMMONWEALTH

AND

POMPANO AIR CENTER, INC.

SERVE: SECRETARY OF THE COMMONWEALTH

684-353

MOTION FOR JUDGMENT

Comes now your Plaintiff, by counsel, and as the personal representative of the estate of Judy Phipps Mullins Jones, moves for judgment against the Defendants on behalf of the estate and the statutory beneficiaries under the Florida Wrongful Death Act, Fla. Stat. Section 768.16, et seq., and the Virginia Wrongful

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

Death Act, Virginia Code Ann. Section 8.01-52, et seq., and state as follows:

I

Judy Phipps Mullins Jones died on October 12, 1987, as the result of an airplane crash that occurred in Pompano Beach, Florida. The deceased was a citizen of Virginia and resident of Wise County, Virginia. Her statutory beneficiaries under both the Florida and Virginia wrongful death statutes are Christina Phipps, her daughter, and William G. Jones, her husband. At the time of her death, Christina Phipps was a minor. Bill Kelly was appointed Substitute Administrator of the decedent's estate by order of the Circuit Court of Wise County on October 11, 1989. A true copy of said order is attached hereto as Exhibit A.

II

Defendant R.S. Jones and Associates, Inc. (hereinafter R.S. Jones) is a corporated organized under the laws of Virginia. R.S. Jones owned the 1979 Rockwell Aero Commander 770 airplane, serial number N26574, in which Plaintiff's decedent was a passenger at the time of her death. Said airplane was principally garaged in the Commonwealth of Virginia.

III

Ben A. Jones, Jr. (hereinafter Jones) was the agent of R.S. Jones and piloted the abovedescribed aircraft at the time that it crashed violently into the ground, killing the Plaintiff's decedent. Jones was operating said airplane with the permission of, and under the direction and control of, R.S. Jones at the time of the accident.

IV

Piedmont Aviation, Inc., (hereinafter Piedmont) is a corporation doing business in Roanoke, Virginia, and elsewhere

and was employed by R.S. Jones, from time to time, to make inspections of the aircraft, to undertake both routine and non-routine maintenance thereof, and to maintain the aircraft in flightworthy condition. Piedmont performed both yearly and intermittent maintenance.

V

Textron, Inc. (hereinafter Textron) and Avco Corporation (hereinafter Avco) designed, built, constructed and manufactured the engines of the aircraft and the parts, including replacement parts, thereto.

VI

Pompano Air Center, Inc., (hereinafter Pompano) is a corporation doing business at the airport in Pompano Beach, Florida. Prior to the take-off of the Jones aircraft which take-off culminated in the crash of the airplane and death of Plaintiff's decedent, Pompano, through its agents, servants, or employees performed an inspection of the aircraft, performed certain maintenance and repairs, replaced certain components or parts, and certified that the aircraft was airworthy and suitable for safe flight.

VII

Shortly after take-off on October 12, 1987, the aircraft experienced failure in its left engine when a counterweight separated from the crankshaft. Experiencing the failure in the left engine, Jones negligently failed to keep the aircraft under control by failing to maintain airspeed and by feathering the wrong propellor. Jones owed a duty to Plaintiff's decedent to maintain the aircraft under control and to perform such acts to prevent a crash as would reasonably be performed by a pilot undertaking to fly an airplane. Jones was unlicensed to fly an

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

aircraft, undertook to fly the aircraft without said license in violation of applicable regulations, and was aware that his health was such that he would not qualify for such a license.

VIII

Defendant R.S. Jones owed to Plaintiff's decedent a duty to provide a qualified and licensed pilot and violated that duty when it directed Jones, whom it know was unlicensed, to fly the plane carrying Plaintiff's decedent; it further violated its duty to Plaintiff's decedent by allowing Jones to pilot the aircraft when it knew, through its agents and servants, that Jones suffered from a serious heart ailment, could not be medically certified to be licensed to pilot, and could not safely pilot an aircraft carrying passengers; it further owed to Plaintiff's decedent a duty to properly maintain said aircraft, keep proper logs, and to inspect the aircraft to determine that it was airworthy, and to warn Plaintiff's decedent of any defects of which it was, or should have been, aware.

IX

R.S. Jones violated said duties and was further negligent in allowing the aircraft to take off on its ill-destined flight when it knew or should have known that the aircraft was not safe for flight. It is liable to Plaintiff under theories of negligence and strict liability.

X

Defendants Piedmont and Pompano also owed to Plaintiff's decedent the duty to properly inspect and maintain the aircraft in a good state of repair and to warn Plaintiff's decedent of defects and problems with the aircraft.

XII

Textron and Avco placed aircraft engines and parts into the stream of commerce, knowing the same to be used in a dangerous device with reliance of the end-users on the reliability of the same; Textron and Avco were negligent in the design of the engine and/or its components and negligent in the manufacture thereof; Textron and Avco are liable to Plaintiff for negligence, breach of implied warranty, and strict liability.

XIII

Your undersigned plaintiff further alleges that the defendants, R. S. Jones and Associates, Inc., Piedmont Aviation, Inc. and Pompano Air Center, Inc. jointly and severally, were guilty of the following acts of negligence:

1) Defendants negligently and carelessly failed to inspect the aircraft prior to its being flown by the plaintiff's decedent when a reasonable inspection of the aircraft would have shown that it was not in proper operating condition.

2) Defendants negligently and carelessly permitted the engine of the aircraft to be in a state of disrepair when the defendants could, or should by the exercise of reasonable care, have ascertained the condition of the engine.

3) Defendants negligently and carelessly failed to warn the plaintiff's decedent of the dangerous condition of the aircraft when the defendants knew, or could have known by the exercise of reasonable care, of the aircraft's dangerous condition.

4) Defendants negligently and carelessly permitted the aircraft to be operated when it was not maintained in a condition for safe operation, contrary to Title 14 of the Code of Federal Regulations governing the operation of aircraft.

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

5) Defendants negligently and carelessly permitted the aircraft to be flown by the Jones without having it inspected within the number of hours required by Title 14 of the Code of Federal Regulations.

XIV

The aforesaid actions of Defendants were done in conscious disregard of the safety of Plaintiff's decedent and punitive damages are demanded.

XV

As a direct and proximate result of the aforesaid acts and failures to act, the Plaintiff's decedent was killed. The survivors of Plaintiff's decedent have suffered loss of income and support in the present as well as in the future, and loss of guidance, solace, including the society, companionship, comfort, kindly offices and advice, and loss of services, care, and assistance.

Wherefore, Plaintiff moves for judgment against Defendants jointly and severably in the amount of \$2,000,000 compensatory and \$1,000,000 punitive damages.

BILL KELLY, SUBSITUTE ADMINISTRATOR OF
THE ESTATE OF JUDY PHIPPS MULLINS JONES



DONALD E. EARLS
ATTORNEY AT LAW
P. O. BOX 710
NORTON, VA 24273

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

RS Jones #1
MS

INDEXED

BOOK 084 PAGE 732

VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

In Re: ESTATE OF JUDY PHIPPS
MULLINS JONES

IN CHANCERY

889-405
DECREE

This matter came on to be heard upon the petition of Christina Phipps, daughter of Judy Phipps Mullins Jones, deceased, for the removal of William G. Jones as Administrator of the Estate of Judy Phipps Mullins Jones pursuant to Va. Code Ann. Section 26-3, upon notice served upon Respondent and the appearance of the Respondent, in person, and was heard ore tenus.

The Court finds that Christina Phipps and William G. Jones are the sole heirs at law and sole beneficiaries under the Wrongful Death Act of the deceased; that Phipps desires to pursue a wrongful death claim against Jones' employer, which Jones has purported to compromise and settle, without notice to Phipps under Va. Code Ann. Section 8.01-55; that Jones reasonably could not be expected to pursue such litigation against his employer; and that good cause exists for the removal of Jones as Administrator.

Wherefore, it is hereby Adjudged, Ordered and Decreed that William G. Jones be, and hereby is, removed as Administrator of the Estate of Judy Phipps Mullins Jones and shall file his Final Accounting within thirty days of the date of this order. It is further Adjudged, Ordered and Decreed that Bill Kelly, Sheriff of Wise County, is hereby appointed Substitute Administrator of said estate.

Entered this 11th day of October, 1989.

J. Robert Stump
JUDGE

REQUESTED:

Donald E. Earls
DONALD E. EARLS
COUNSEL FOR PETITIONER

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

This is to certify that this is a true and correct reproduction or abstract of the official record filed with the Circuit Court for the City or County of Wise County/ City of Norton Virginia.

Date Issued 12-6-89

(SEAL)

VS3A-9/83

VOID IF ALTERED OR DOES NOT
BEAR IMPRESSED SEAL OF COURT

C. Gary Rakes, Clerk
Grace B. Newley, D.C.
Clerk of Court or Deputy

Exhibit B

RECEIVED AND FILED
11-9-88
Mace & Decker
350

VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

WILLIAM G. JONES, individually and as
Personal Representative of the
Estate of Judy P. Jones, deceased,
Plaintiff

v.

L88-66

R.S. JONES AND ASSOCIATES, INC.,
Defendant

MOTION TO INTERVENE AND TO VACATE ORDER

Comes now Christina Phipps, by counsel, and respectfully
states as follows:

I

That on February 24, 1988, William G. Jones, as
Administrator of the Estate of Judy P. Jones and individually,
filed this action to approve a settlement of a wrongful death
claim against Defendant R.S. Jones and Associates, Inc. This
Court entered an order on February 17, 1988, before this action
was filed, approving the settlement.

II

Va. Code Ann. Section 8.01- 55 requires that all interested
parties be convened prior to the approval of any settlement of a
wrongful death claim by the personal representative. The only
beneficiaries of Judy Jones under the Wrongful Death Act were the
Plaintiff and the Movant, who is the daughter of the deceased
born of a previous marriage. Movant was given no notice of this
suit; was not served with any process to join her herein; and was
not given the opportunity to address the proposed settlement
before this Court as is required by law.

III

Plaintiff is associated with the Defendant herein; is and
was at the time of the compromise and settlement employed by

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

Defendant; and bore such conflict of interest that he could not, as Administrator of the Estate of Judy Jones, disinterestedly compromise and settle the estate's wrongful death claim against R.S. Jones and Associates, Inc.; such compromise violated his fiduciary duties owed to the Movant as beneficiary of the estate.

IV

The wrongful death claim arises by reason of the death of Judy Jones in an airplane crash that occurred in Florida on October 12, 1987. The decedent was a passenger in a plane owned by Defendant and piloted by Ben Jones, an employee of Defendant acting in the course of his employment. Ben Jones was not licensed to pilot an airplane and Defendant was aware that he was not licensed.

V

At the time of the Petition approved herein, Movant had just turned eighteen years of age and had been solely dependent upon her mother. After her mother's death, Plaintiff terminated all support, took from her a vehicle given her by her mother and titled in her mother's name, and exerted absolute control over her mother's estate to the exclusion of her daughter, subjecting her to undue and unconscionable duress.

VI

The settlement and release was not approved in conformity with Section 8.01-55; the Court was not apprised of the full material facts surrounding the claim, the Plaintiff's conflicting position with regard to the Defendant, or the daughter's interest in the settlement.

Wherefore, Christina Phipps respectfully prays that the

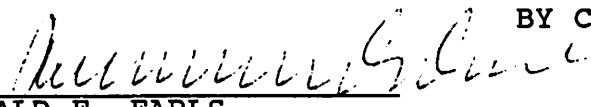
940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

Court vacate the Order entered on February 17, 1988, and enter an Order disapproving the proposed settlement and release.

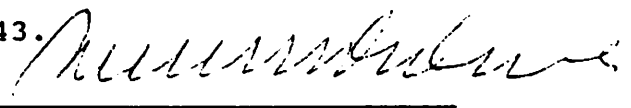
CHRISTINA PHIPPS

BY COUNSEL


DONALD E. EARLS
ATTORNEY AT LAW
940 PARK AVENUE
NORTON, VIRGINIA 24273

CERTIFICATE

I, Donald E. Earls, do hereby certify that I have this 17th day of ~~October~~^{November}, 1989, mailed a true copy of the foregoing Motion to R. S. Jones and Associates, Inc., c/o Robert S. Jones, Registered Agent, 3835 Lee Highway, Abingdon, VA 24210, and to Kathryn A. Ledig, Esquire, Tigert Law Offices, 2609 Hillsman Street, Falls Church, VA 22043.


DONALD E. EARLS

940 PARK AVENUE
P.O. BOX 710
NORTON, VIRGINIA 24273
703-679-3088

DONALD E. EARLS
ATTORNEY AND COUNSELOR AT LAW

THE FINAL ACCOUNTING OF WILLIAM G. JONES,
ADMINISTRATOR OF THE ESTATE OF JUDY PHIPPS MULLINS JONES

TO: W. R. KISER, COMMISSIONER OF ACCOUNTS

ASSETS

1985 Ford LTD Automobile-----	\$ 8,000.00*
Real Property (Deed recorded in Deed Book 598, Page 105)-----	\$ 33,200.00
Proceeds from settlement with R. S. Jones and Associates, Inc.-----	\$ 50,000.00
Proceeds from settlement with Textron, Inc., and others-----	\$350,000.00
<hr/>	
TOTAL	\$441,200.00

DISBURSEMENTS

Sturgill Funeral Home--funeral expenses-----	\$ 4,582.10
Wise County Treasurer--real estate taxes-----	\$ 129.48
Wise County Treasurer--personal property taxes-----	\$ 78.96
Lee Memorial Gardens-----	\$ 1,219.05
Commissioner of Revenue--State taxes (1987)-----	\$ 155.00
Internal Revenue Services--Federal taxes (1987)-----	\$ 1,858.00
Dominion Bank--car payment-----	\$ 301.35
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 301.35
Dominion Bank--car payment-----	\$ 287.00
Wise County Treasurer--1985, 1986 & 1987 taxes-----	\$ 54.27
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--car payment-----	\$ 287.00
Dominion Bank--payoff on car-----	\$ 1,103.39
Christina Phipps--(1/2 of proceeds of settlement with R. S. Jones & Associates)-----	\$ 25,000.00
William G. Jones--(1/2 of proceeds of settlement with R. S. Jones & Associates)-----	\$ 25,000.00
Avemco--(share of proceeds of settlement with Textron, Inc. and others)-----	\$ 10,000.00
R. S. Jones & Associates, Inc.--(share of proceeds of settlement with Textron, Inc. and others)-----	\$ 35,000.00

Final Accounting
William G. Jones, Adm., etc.
Page #2

Walter W. Turner and Ronnie G. Dunnigan--(attorney fee from proceeds of settlement with Textron, Inc. and others)-----	\$ 80,000.00
Christina Phipps--(share of proceeds of settlement with Textron, Inc. and others)-----	\$112,500.00
William G. Jones--(share of proceeds of settlement with Textron, Inc. and others)-----	\$112,500.00
Christina Phipps--deed to property recorded in Deed Book 598, page 105-----	\$ 33,200.00
W. R. Kiser, Commissioner of Accounts--filing fees to file final accounting-----	\$ 491.20
C. Gary Rakes, Clerk--recording fee to record final accounting-----	\$ 10.00
Sturgill & Sturgill, P. C.--legal fees-----	\$ 360.00

TOTAL

\$447,288.15

*The 1985 Ford LTD Automobile was sold for
\$5000.00 in July, 1989.

Respectfully submitted this 13th day of November, 1989.

William G. Jones
WILLIAM G. JONES, ADMINISTRATOR
OF THE ESTATE OF JUDY PHIPPS
MULLINS JONES

RECEIVED AND FILED

Jan 8 1990

Clerk

By M. G. Hensley

AM Deputy Clerk

PM

I hereby certify that I have examined the above
accounting and hereby approve and confirm the same.
this the 18 day of Dec 19 89

W. R. Kiser
W. R. Kiser,
Commissioner of Accounts

I hereby certify that the foregoing account has
been filed in the Clerk's Office of the Circuit
Court of the State of Georgia for the County of
Fulton, Georgia, and that the same is a true and
correct copy of the original as filed by me.

this _____ day of _____, 19____

Teste:

Clerk

VIRGINIA

IN THE CLERKS OFFICE OF THE CIRCUIT COURT OF WISE COUNTY
This 15th day of November, 1989

RE 5
W. F. (BILL) KELLEY, SHERIFF
QUALIFICATION OF ADMINISTRATOR

On October 11, 1989 an order was entered by the Judge of this Circuit Court in Case Number C89-405 appointing W. F. (Bill) Kelley, Sheriff of Wise County as Substitute Administrator of the estate of Judy Phipps Mullins Jones.

On this day W. F. (Bill) Kelley appeared and qualified as Administrator of said estate by taking and subscribing the oath prescribed by law and entering into a bond in the penalty of \$500.00 with surety waived.

Certificate is granted W. F. (Bill) Kelley as Administrator of the estate of Judy Phipps Mullins Jones.

C. Gary Rakes, Clerk

by D. Gary Adams
Deputy Clerk

This is to certify that this is a true and correct reproduction or abstract of the official record filed with the Circuit Court for the City or County of Wise County/ City of Norton Virginia.

Date issued 12-6-89 C. Gary Rakes, Clerk

(SEAL)

VOID IF ALTERED OR DOES NOT
BEAR IMPRESSED SEAL OF COURT

VS3A - 9/83

Exhibit C

JUL 25 1989

VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

BILL KELLY, Substitute
Administrator of the Estate
of JUDY PHIPPS MULLINS JONES,

Plaintiff

AT LAW

vs.

Suit No: L89-353

R. S. JONES AND ASSOCIATES, INC.,
et al,

Defendants

The following hearing was taken at 1:00 p. m. on
December 12, 1989, in the Circuit Court of Wise County
with The Honorable J. Robert Stump.

PRESENT: DONALD E. EARLS, ESQUIRE
COUNSEL FOR PLAINTIFF

WILLIAM ESKRIDGE, ESQUIRE
REX DALE, ESQUIRE
RICHARD E. LADD, ESQUIRE
COUNSELS FOR R. S. JONES & ASSOCIATES

ELSEY HARRIS, ESQUIRE
COUNSEL FOR AVCO, PIEDMONT AVIATION, INC.
POMPINO AIRPORT

WILLIAM G. JONES,
in person

RECEIVED AND FILED
JAN 5 1990
C. Gary Baker, Clerk
By [Signature] Deputy Clerk
10:10 AM
PM

I N D E X

CHRISTINA PHIPPS

DIRECT EXAMINATION BY MR. EARLS	32
CROSS EXAMINATION BY MR. ESKRIDGE	46
REDIRECT EXAMINATION BY MR. EARLS	62
RECROSS EXAMINATION BY MR. ESKRIDGE	64

WILLIAM JONES

CROSS EXAMINATION BY MR. ESKRIDGE	66
CROSS EXAMINATION BY MR. EARLS	82
RECROSS EXAMINATION BY MR. ESKRIDGE	112
RECROSS EXAMINATION BY MR. EARLS	113

R. S. JONES

DIRECT EXAMINATION BY MR. ESKRIDGE	116
CROSS EXAMINATION BY MR. EARLS	125

CAROLYN JONES

CROSS EXAMINATION BY MR. EARLS	139
--------------------------------	-----

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Are there two cases, here?
2 MR. EARLS: Yes, sir.
3 MR. ESKRIDGE: They're all related.
4 THE COURT: That's what I thought.
5 MR. ESKRIDGE: One of them is styled---
6 THE COURT: William G. Jones,
7 Administrator versus R. S. Jones and Associates and
8 Chritina Phipps and the other one is Bill Kelly,
9 Substitute Administrator of the Estate of Judy Phipps,
10 Jones versus R. S. Jones and Associates.
11 MR. ESKRIDGE: That's correct, yes, sir.
12 THE COURT: They'll both be heard
13 together?
14 MR. ESKRIDGE: Yes, sir.
15 THE COURT: And, Mr. Earls, you
16 represent whom?
17 MR. EARLS: I represent Ms. Phipps, Your
18 Honor.
19 THE COURT: Ms. Phipps, Christine
20 Phipps, is that right, is that correct? Right. And, who
21 represents---
22 MR. ESKRIDGE: I represent R. S. Jones and
23 Associates?
24 THE COURT: All right, Bill Eskridge.
25 And, who represents William G. Jones, Administrator.

1 MR. ESKRIDGE: He's here but, he's
2 unrepresented.

3 THE COURT: No lawyer. And, who
4 represents Bill Kelly?

5 MR. EARLS: I represent Mr. Kelly.

6 MR. ESKRIDGE: Don Earls represents him.

7 MR. EARLS: In his representative
8 capacity, Your Honor.

9 THE COURT: You do. And Eskridge
10 represents R. S. Jones and Associates. Elsey Harris, who
11 do you represent?

12 MR. HARRIS: Your Honor, Avco, A-V-C-O.

13 THE COURT: Which case are they in?

14 MR. HARRIS: Versus R. S. Jones and
15 Associates.

16 MR. EARLS: Kelly, Your Honor.

17 MR. ESKRIDGE: It's Kelly against R. S.
18 Jones.

19 MR. HARRIS: Kelly, yes.

20 THE COURT: Thank you. Avco and who?

21 MR. HARRIS: Avco, Piedmont Aviation,
22 Inc. and special hearings in Pompino Air Station.

23 MR. ESKRIDGE: It's moot.

24 MR. HARRIS: It may be moot, Your Honor,
25 just let that one---

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Special hearings in who,
2 who?
3 MR. HARRIS: Pompino Air Station.
4 THE COURT: All right, I don't even
5 understand the word.
6 MR. HARRIS: Pompino, Pompino as in
7 Pompino Beach.
8 THE COURT: Yes.
9 MR. HARRIS: Pompino Air Center, Inc.
10 THE COURT: Okay, is that a Florida
11 corp or something?
12 MR. HARRIS: Yes, Your Honor.
13 THE COURT: All right, any other
14 attorneys of record here, we've just got three?
15 MR. ESKRIDGE: Rex Dale who is with Lacy
16 West in Kingsport, he is also representing R. S. Jones and
17 Associates.
18 THE COURT: Rex Dale?
19 MR. ESKRIDGE: Yes, sir.
20 THE COURT: All right, Mr. Dale and---
21 MR. ESKRIDGE: And, Rick Ladd, he is with
22 my firm.
23 THE COURT: Yes, right, I met you last
24 time?
25 MR. LADD: Yes, sir.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Yes, okay. It will take me
2 a while to get names and faces together. And, you're Rex
3 Dale, you're out of Tennessee?

4 MR. DALE: Yes, sir, Kingsport.

5 THE COURT: With R. S. Jones and
6 Associates?

7 MR. ESKRIDGE: Representing R. S. Jones.

8 THE COURT: Okay.

9 MR. ESKRIDGE: He's with Lacy West.

10 THE COURT: Yes, okay, I see. We've
11 got two court reporters, swear them all. All right, who
12 goes first, who filed the first motion, here?

13 MR. EARLS: It was, I am concerned
14 about Tom Rasnic, is he not going to appear?

15 MR. ESKRIDGE: Must not be. Tom, who did
16 he file for, Charlotte Jones?

17 MR. EARLS: Charlotte Jones.

18 MR. ESKRIDGE: Administratrix of the Estate
19 of Ben Jones. I've not had any contact with Tom about
20 this.

21 MR. EARLS: I just wonder if he's been
22 given notice of it?

23 MR. ESKRIDGE: I don't know.

24 MR. EARLS: I received that November 30.

25 THE COURT: Who was the other party

1 there, you said?

2 MR. EARLS: The other attorney involved
3 in this case is Thomas L. Rasnic who represents Charlotte
4 Jones, Administratrix of the Estate of Ben A. Jones.

5 THE COURT: All right.

6 MR. EARLS: I received my answer
7 November 30.

8 THE COURT: Is he in the Bill Kelly
9 case?

10 MR. EARLS: Yes, he is, Your Honor.

11 THE COURT: Is he in the Bill Kelly
12 case?

13 MR. EARLS: Yes.

14 MR. ESKRIDGE: Yes.

15 THE COURT: Oh. Half of the bar
16 involved.

17 MR. EARLS: Some haven't even answered.

18 THE COURT: All right.

19 MR. ESKRIDGE: Well, Your Honor, I can't
20 represent that Notice was given to Tom because or to his
21 client because at the time I answered it, I did not know
22 of his involvement. For that matter, there is still
23 another Defendant who has not been served yet, apparently.
24 Although if---

25 MR. EARLS: I'm sorry, not been served?

1 MR. ESKRIDGE: Textron, apparently, has not
2 been served, at least it hadn't been as of yesterday.

3 But,---

4 THE COURT: Can we proceed?

5 MR. ESKRIDGE: I think we can because
6 Textron is insured by the same insurance carrier as the
7 other Defendants that Elsey represents and he can report
8 to them anything that happens and they can't be prejudiced
9 by anything we do here today. For that matter, I don't
10 think that Tom Rasnic can be prejudiced. If you agree
11 with my positions here today, Tom gets a free ride, gets
12 the case dismissed. If you don't agree with my positions
13 here today, then Tom can come in and argue it himself and
14 get overruled on it.

15 MR. EARLS: Would we be arguing doubly,
16 I question that, I would like to go on with my client---

17 THE COURT: All right, Tom Rasnic, you
18 think would be on the same side as R. S. Jones and
19 Associates?

20 MR. ESKRIDGE: Well, his interest, as to
21 this case, would be the same.

22 THE COURT: Yes.

23 MR. ESKRIDGE: He represents the pilot of
24 this aircraft or the Estate of the pilot of this aircraft,
25 R. S. Jones and Associates owned the aircraft.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Yes, okay.

2 MR. EARLS: He was the pilot of the
3 vehicle in which Christina's mom was killed.

4 MR. ESKRIDGE: Aircraft.

5 MR. EARLS: Of the aircraft.

6 THE COURT: All right, which motion do
7 we want first, to intervene?

8 MR. ESKRIDGE: That's fine, Your Honor, I
9 think Don probably filed that first. Although, I think
10 it's all intertwined and I don't know that it really
11 matters. I think that you'll have to hear all the
12 evidence and all of the arguments before you can do much
13 with it.

14 THE COURT: All right.

15 MR. ESKRIDGE: I wonder if a little opening
16 statement might be---

17 THE COURT: Yes, it would be very
18 helpful to me, that's for sure. Are we going to have
19 witnesses?

20 MR. ESKRIDGE: Yes, sir.

21 THE COURT: Swear the witnesses.

22 MR. ESKRIDGE: Your Honor, these
23 proceedings arose out of an airplane crash---

24 MR. EARLS: Could I ask for the Rule, I
25 don't know, on that Bob you're calling for Robert S.

1 Jones, he's representing R. S. Jones and Associates?

2 MR. ESKRIDGE: President of R. S. Jones and
3 Associates.

4 MR. EARLS: Okay, you're entitled.

5 MR. ESKRIDGE: He's entitled to be here.

6 MR. EARLS: Sure.

7 THE COURT: Yes.

8 MR. ESKRIDGE: These proceedings arose out
9 of an airplane crash that occurred in Pompino Beach,
10 Florida in October of 1987. R. S. Jones and Associates is
11 a company that originally was based in Lee County,
12 Virginia, somewhere along the way it moved to Washington
13 County, Virginia, their offices are between Abingdon and
14 Bristol. They basically build pipe lines, sewer lines,
15 water lines and paving and other types of heavy
16 construction. R. S. Jones and Associates owned a twin
17 engine airplane and on this particular weekend in
18 question, they had gone to Florida to, Your Honor, on
19 basically a sort of a pleasure trip for Bill Jones to look
20 at an aircraft, a single-engine aircraft that he was
21 considering buying. He had found an add for this airplane
22 and talked to the owner on the telephone, was going to go
23 down and look at it and see about buying it. So, on this
24 trip from Wise County where the plane, by the way, was
25 based at the Wise County Airport, were Ben Jones, the

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 pilot who was a brother of Bill Jones and Bob Jones and
2 also, along for the ride, was Judy Jones who was the wife
3 of Bill Jones and the mother of Christie Phipps. The,
4 I'll try to leave out some details here that really don't
5 matter insofar as the motion for The Court but, Bill
6 Jones bought the single-engine aircraft and he and Bob
7 Jones fortunately, for them, were in the single-engine
8 aircraft or at another airport when Ben Jones, with Judy
9 Jones as a passenger, took off from Pompino Beach Airport,
10 intending to go up the coast and pick up Bill Jones and
11 Bob Jones. So, the only two occupants of the twin-engine
12 airplane were the pilot, Ben Jones and his sister-in-law,
13 Judy Jones. According to eye witnesses, the plane, after
14 taking off, began trailing smoke from the left engine and
15 oil and crashed a short distance from the airport. There
16 was, of course, an investigation by the Federal
17 authorities. The engine was found to have malfunctioned
18 in that a piece of the crank-case came lose, or excuse me,
19 crankshaft, a counter-weight, it's a part of the
20 crankshaft of the engine, became disengaged, dislodged and
21 tore lose and parts of that engine burst through the side
22 of the block of the engine and it lost oil pressure and
23 this could cause the crash of the airplane. Ben Jones and
24 Judy Jones were, all indications, killed instantly when
25 the plane hit the ground. Bill Jones qualified before the

1 Clerk of This Court as the Administrator of his wife's
2 estate. They lived in St. Paul at the time in question.
3 They employ counsel, a law firm in Kentucky that they had,
4 familiar with, to advise them on claims arising out of
5 this airplane crash. There were claims against the
6 insurer for the aircraft, for the loss and destruction of
7 the aircraft. There was a claim against the manufacturer
8 of the engine which failed, the Avco Licoming (phonetic),
9 I believe they dropped the Licoming from their names, so
10 it's Avco. There were potentially claims against Pompino
11 Beach Air Center which had done some maintenance work on
12 the engine shortly before the plane took off, potential
13 claim against Piedmont Aviation in Roanoke which had done
14 the routine maintenance on the aircraft since R. S. Jones
15 and Associates had owned it. There was a potential claim,
16 there were claims for the death of Judy Jones against all
17 of the above, that is the manufacturer of the engine, the
18 people who had been repairing the plane and engines, also
19 a potential claim by Judy Jones against Ben Jones, the
20 Estate of Ben Jones. The insurance coverage on the plane
21 was provided by a company called Avemco, A-V-E-M-C-O which
22 is a company that, as far as I know, aircraft insurance is
23 there only business and they specialize in writing
24 coverage on small individual pilots, individual owners of
25 planes, small businesses and so forth and write only low

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 limits of coverage. Everybody else that was involved or
2 potentially involved in the crash was insured by USAIG,
3 United States Aviation Insurance Group, that's Pompino
4 Beach Air Center, Piedmont Aviation, Inc., Avco, Textron.
5 Claims were made against Avemco for the loss of the
6 aircraft, for the death of Judy Jones. Claims were made
7 against, particularly, Avco for the loss of the aircraft,
8 and for the death of Judy Jones. There were two
9 settlements which were negotiated. One was a settlement
10 for the death of Judy Jones made against, well, I guess
11 there was more than two, let's take them one at a time.
12 One was a settlement with Avemco for the death of Judy
13 Jones. The coverage under the Avemco policy, if there was
14 any coverage, was \$100,000.00 per claim. In order for
15 there to be coverage under the Avemco policy, the person
16 flying the plane had to have a valid license issued by the
17 FAA. Ben Jones had been flying planes for years, flying
18 helicopters, flying twin-engines, single-engines, flying
19 jets, he had a license that he had demonstrated to his
20 employer, R. S. Jones and Associates, demonstrated to
21 airports where he needed to show a license and so forth.
22 It turned out that it was apparently a forgery. The FAA
23 has no records of ever having issued a valid license to
24 Ben Jones. Consequently, Avemco said that had no coverage
25 for anyone. However, they would compromise the case and

1 they agreed to settle the claim for the death of Judy
2 Jones for \$50,000.00 which would had been half of their
3 coverage if they had coverage at all. Bill Jones was
4 advised on that by this lawyer from Kentucky whose name
5 he'll give you when he testifies. That settlement, this
6 accident occurred in Florida, governed by Florida
7 Substantive Law. Under Florida law, the beneficiaries of
8 the claim in this particular case would be the same as
9 under Virginia law which would be the husband of the
10 deceased, Bill Jones and the daughter of the deceased,
11 Christie Phipps. That settlement was presented to This
12 Court for approval and was approved. And, one of the
13 issues here today will be whether there are any defects in
14 that proceeding and Don's Motion to Intervene and Motion
15 to Vacate basically asks The Court to vacate the approval
16 of that settlement.

17 THE COURT: Do you know which Judge did
18 that?

19 MR. ESKRIDGE: Judge Fugate did that.

20 THE COURT: In this courtroom or Lee
21 County?

22 MR. ESKRIDGE: He did it either in this
23 courtroom or the courtroom across the hall.

24 THE COURT: Here in Wise County?

25 MR. ESKRIDGE: Here at Wise County, yes,

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 sir. Okay, this building.

2 THE COURT: Wise County.

3 MR. ESKRIDGE: For some reason he must have
4 been substituting or he must have swapped courthouses that
5 day or something. I had the same question when I saw the
6 Order in The Court File but, it's William C. Fugate.

7 THE COURT: I've seen that before,
8 haven't I, Mr. Earls?

9 MR. EARLS: You did, Your Honor, we
10 exposed it to The Court.

11 THE COURT: Yes, but I was thinking it
12 was a Lee County Order, not true?

13 MR. ESKRIDGE: No, sir.

14 MR. EARLS: I'm thinking that it may
15 have been headed as Lee County document.

16 MR. ESKRIDGE: I don't believe so, we'll
17 check in a minute and see.

18 MR. EARLS: I'll show you the file here,
19 my client can say neither one because she wasn't convened
20 when The Court was in session.

21 THE COURT: Go ahead.

22 MR. ESKRIDGE: At any rate, there was a
23 hearing, it was cut and dried as such things usually are
24 and there was an order entered approving that settlement.

25 THE COURT: Fifty thousand dollars?

1 MR. ESKRIDGE: Fifty thousand dollars.

2 And, the evidence will be that Christie, the person who is
3 attempting to vacate that settlement, took the check to
4 the bank, put \$25,000.00 in her account, \$25,000.00 in her
5 step-father's account and we don't know what became of
6 that money, we suppose she spent it or still has it or
7 something but, she got half of the proceeds of that
8 settlement and that was, the attorneys did not charge, who
9 were advising Bill Jones did not get any fee out of that
10 settlement so, that \$50,000.00 settlement was net to the
11 Plaintiff so, Bill and Christie each got \$25,000.00 net
12 out of that settlement. The second settlement is really,
13 Your Honor, is really Your Honor is not concerned with
14 but, there was a compromise settlement between R. S. Jones
15 and Associates and Avemco for the loss of the aircraft.
16 That is not an issue here today. I only mention it
17 because you need to know, be aware of that to understand
18 the third settlement.

19 THE COURT: That was for the aircraft?

20 MR. ESKRIDGE: Yes, the second settlement
21 was for the aircraft and it was a settlement between R. S.
22 Jones and Avemco. Now, you see, Avemco, when it pays for
23 the aircraft, even on a compromise basis, acquired a
24 Subrogation Claim for anybody else who has caused this
25 crash. Specifically, in this case, a Subrogation Claim

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 against he manufacturer and designer of the engine that
2 failed.

3 THE COURT: How much was that
4 settlement?

5 MR. ESKRIDGE: I'm not sure, maybe we can
6 get it in the evidence here in a few minutes but, at this
7 point, Avemco has a Subrogation Claim for what it has paid
8 out on the hull of that engine, excuse me, the hull of
9 that aircraft, it's called the hull, it means the whole
10 aircraft, the terminology they use is the hull. The third
11 settlement is a little more complicated. You'll recall
12 that I told you that one insurance carrier insured the
13 manufacturer of the engine, Piedmont Aviation, Pompino
14 Air Center, Incorporated and there is a pretty good claim,
15 I think, against the manufacturer of the engine and maybe
16 not so good claims against the two service organizations
17 but, if they were going to settle it on behalf of one of
18 their policy holders, they were going to settle it on
19 behalf of all of them. So, there was a settlement for
20 \$350,000.00 and that settlement was for the death of Judy
21 Jones. It was for the loss of the aircraft and that
22 settlement was paid out as follows: The attorneys who had
23 been representing the Jones' got \$80,000.00 out of that
24 \$350,000.00. Christie Phipps got \$112,500.00.

25 THE COURT: How much.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. ESKRIDGE: One hundred twelve thousand,
2 five hundred, net of attorney's fees. Bill Jones got
3 \$112,500.00 net of attorney's fees. Avemco got \$10,000.00
4 as an agreed compromise of it's Subrogation Claim for what
5 it had paid R. S. Jones on the loss of the aircraft. And,
6 R. S. Jones and Associates got the difference, whatever
7 that adds up to, the difference between those figures and
8 \$350,000.00 is and we expect to introduce that document
9 into evidence here, shortly. So, you can see it's a
10 multi-party settlement, it's a three-way, three or four
11 way type agreement in which Avemco compromises it's
12 Subrogation Claim, R. S. Jones gets some more money for
13 the aircraft and the Estate of Judy Jones settles with
14 that group of Defendants for the death of Judy Jones.

15 THE COURT: Okay.

16 MR. ESKRIDGE: For---

17 THE COURT: That wasn't approved by a
18 court?

19 MR. ESKRIDGE: That settlement, as far as
20 I'm aware, was presented to no court for approval and one
21 of the issues here this afternoon would be whether there
22 was any need for any of these settlements to be presented
23 to any court for approval.

24 THE COURT: Okay, is that it?

25 MR. ESKRIDGE: No, sir. Bill Jones thought

1 everything was taken care of. This accident occurred on
2 October the 12th of 1987. On the morning of October,
3 he'll tell you which day it was, I believe it was October
4 the 11th of 1989, he was at work and he received either a
5 telephone call or perhaps he was patched in through radio
6 telephone equipment, these people are contractors and
7 they have two-way radios in their trucks and so forth to
8 stay in touch with their office, by a dispatcher from the
9 Lee County Sheriffs Department. He was contacted about
10 10:00 in the morning saying that they had papers to serve
11 on him to require him to be in the Wise County Circuit
12 Court at 1:00 that afternoon and it had something to do
13 with his wife's estate and where could they find him to
14 serve those papers on him. And, he replied that it
15 wouldn't be necessary for them to deliver the papers to
16 him, that he would come on up here. When he got here, he
17 was, for the first time, handed a copy of a motion to
18 remove him as the Administrator. I wasn't here but, I
19 understand that The Court heard no evidence but did hear
20 arguments from Mr. Earls. The Court was apparently
21 persuaded the Statute of Limitations was going to run the
22 next day and if anything was to be done, it had to be done
23 then so, you entered an Order removing Bill Jones as
24 Administrator and appointing Bill Kelly, the Sheriff of
25 Wise County, as the Administrator of Judy's estate. That

1 same day, a suit was filed, one of the cases you have on
2 your desk there, Bill Kelly, Substitute Administrator of
3 the Estate of Judy Jones against R. S. Jones and
4 Associates and so forth. We have filed, let me keep the
5 chronology going here. The evidence will show and The
6 Court documents will show that on approximately November
7 the 15th, I believe, I will check that date here, it will
8 show from the documents, Mr. Kelly came in to the Clerk's
9 office and qualified as the Administrator of Judy's
10 estate. Some month after the Statute of Limitations had
11 run or under our position, some year and a month after the
12 Statute of Limitations had run.

13 THE COURT: The Statute of Limitations
14 is one year?

15 MR. ESKRIDGE: That's our position.

16 THE COURT: Why?

17 MR. ESKRIDGE: If this sounds like deja vu,
18 it's because you've heard this before.

19 THE COURT: Probably.

20 MR. ESKRIDGE: You have. The Court will
21 recall a case---

22 THE COURT: I've heard a whole lot of
23 stuff before.

24 MR. ESKRIDGE: If the Court will recall a
25 case called Mullins against Kessler.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Yes, went to the Supreme
2 Court, Don Earls and you were in the case.

3 MR. ESKRIDGE: I was in the case, Don Earls
4 represented the Plaintiff.

5 THE COURT: Yes.

6 MR. EARLS: At one time, I did.

7 MR. ESKRIDGE: The, in the Mullins against
8 Kessler, it was a malpractice suit against Dr. Kessler,
9 the Plaintiff died in Tennessee. We argued that on the
10 basis of Shirley against Lotts (phonetic), Virginia
11 Supreme Court case, it says that the Virginia Wrongful
12 Death Act has not extra territorial effect. Even though a
13 suit is pending in Virginia, if the death occurred
14 elsewhere, you do not apply the Virginia Wrongful Death
15 Act to that suit. Shirley against Lotts says that and
16 there is a older Virginia case that says that. So, in
17 Mullins against Kessler, you had two issues to decide.
18 One was whether the Statute of Limitations in that case
19 was two years under the Virginia Wrongful Death Act or
20 whether it was one year because it was an action not
21 before specified. You also had to decide whether the
22 settlement in that case between the Plaintiff and the
23 motorist who hit the girl and sent her into the hospital
24 also extinguished the malpractice claim against Dr.
25 Kessler. You sustained the Defendants position on both of

1 those grounds. You agreed that the Statute of Limitations
2 was one year, you agreed that the settlement with the
3 motorist had extinguished the claim against Dr. Kessler.
4 It went to the Supreme Court. It was, a writ was granted.
5 We went and argued it. The Supreme Court affirmed on the
6 ground that the settlement with the motorist had
7 extinguished the claim against Dr. Kessler, found it
8 unnecessary to discuss the Statute of Limitations,
9 question that is.

10 THE COURT: Passed the buck again?

11 MR. ESKRIDGE: Yes. Neither did they find
12 it necessary to slap your hand or express any criticism or
13 question that decision. If I had one ground for---

14 THE COURT: They didn't side either way,
15 did they?

16 MR. ESKRIDGE: No, they didn't.

17 THE COURT: Okay. Good.

18 MR. ESKRIDGE: Now back, going back to the
19 chronology---

20 THE COURT: Go.

21 MR. ESKRIDGE: We have filed, Don filed a
22 Motion in the proceeding which approved the Wrongful Death
23 Settlement, that hearing was in February of 1988, just,
24 October, November, December, January, February, about four
25 months after the accident. Don has filed a motion in that

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 case on behalf of Christie Phipps to intervene and to
2 vacate the order approving that settlement.

3 THE COURT: Of course,---

4 MR. ESKRIDGE: We think it was unnecessary
5 at all.

6 THE COURT: And, we may have to look at
7 the whole---

8 MR. ESKRIDGE: I think we have to look at
9 the whole thing, yes, sir.

10 THE COURT: Okay.

11 MR. ESKRIDGE: In the pending lawsuit, the
12 Kelly against R. S. Jones, Bill Kelly, Substitute
13 Administrator against R. S. Jones, I have filed a number
14 of, we've got more defenses than a dog has fleas, Judge.

15 THE COURT: I noticed all these fleas
16 jumping out at me from my paper here.

17 MR. ESKRIDGE: I have filed, Number 1, a
18 Motion to Abate the case on the ground that at the time it
19 was filed, Bill Kelly was not the Administrator of the
20 Estate of Judy Mullins. That breaks down into two
21 positions: (A) We don't think that Bill Kelly was ever
22 properly removed as Administrator.

23 THE COURT: You mean Bill Jones.

24 MR. ESKRIDGE: Bill Jones, thank you. (A)
25 Because he had inadequate notice of the hearing. (B)

1 Because the Order removing him is void because it was not
2 endorsed by him or anyone on his behalf nor was he given
3 any opportunity to endorse it.

4 THE COURT: Hold on.

5 MR. ESKRIDGE: Doctors have to bury their
6 mistakes, Judge you get a chance to correct yours.

7 THE COURT: He was here.

8 MR. ESKRIDGE: He didn't endorse the order.

9 THE COURT: No.

10 MR. ESKRIDGE: He wasn't given the order
11 until after it had been signed and then he was given a
12 copy of it.

13 THE COURT: Cheap shot but, probably
14 correct.

15 MR. ESKRIDGE: Secondly, we are asking---

16 THE COURT: Let me make a note here.
17 Just a second. Okay.

18 MR. ESKRIDGE: Secondly, we're asking The
19 Court to abate the suit because by statute, an
20 administrator doesn't have a grant of administration, that
21 is he has no authority to act as administrator until he
22 appears before the Clerk and qualifies and Mr. Kelly
23 didn't do that until approximately November the 15th and
24 we have the document by which will give you the exact date
25 on that which we expect to introduce. So, number one, we

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 think that this case has to be abated because the person
2 who filed it had no authority to be acting on behalf of
3 the Estate of Judy Kelly at the time he filed it or any
4 other time, for either of those two reasons because Bill
5 Kelly, Bill Jones was improperly or never validly removed,
6 even if he was validly removed, the person who succeeded
7 him had not qualified at the time this suit was filed.
8 That's one defense. Secondly, we filed a Plea of the
9 Statute of Limitations based on our argument that the
10 Statute of Limitations that applies to this is one year.

11 THE COURT: Based on Mullins versus
12 Kessler?

13 MR. ESKRIDGE: Based on Mullins against
14 Kessler which is based on Shirley against Lotts.

15 THE COURT: Yes.

16 MR. ESKRIDGE: Thirdly, we have filed a
17 Plea of Accord and Satisfaction based on the release, the
18 \$50,000.00 settlement which released R. S. Jones and
19 Associates and it's Agent Service employees. I have also
20 pleaded the settlement, the \$350,000.00 settlement
21 although that by it's terms didn't release anybody except
22 those defendants so, it would only be a partial release as
23 to me, that is we would get credit for it under the, if
24 the Plaintiff gets past all of these other things and gets
25 a judgment against us, we would be entitled to credit

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 under 801 35.1, the joint tort-feasor so, I'm not taking
2 the position that that \$350,000.00 settlement completely
3 releases me so don't, by it's terms it doesn't. By it's
4 terms it only release Avco, Piedmont Aviation, Pompino
5 Beach Air Service.

6 THE COURT: Did Christie Phipps sign the
7 release?

8 MR. ESKRIDGE: She did not sign the
9 \$50,000.00 release.

10 THE COURT: But, she got \$25,000.00?

11 MR. ESKRIDGE: She got \$25,000.00 out of
12 it a day or two after the release---

13 THE COURT: But, she did sign the
14 \$112,000.00?

15 MR. ESKRIDGE: She did indeed, it has her
16 signature on it. Christie was 17 at the time of her
17 mother's death. She turned eighteen roughly a month
18 thereafter so, she was of legal age at the time of both of
19 these settlements.

20 THE COURT: Wait just a minute. When
21 did she turn eighteen?

22 MR. ESKRIDGE: In November of 1987. The
23 crash was in October of 1987. She can give you the exact
24 date.

25 THE COURT: November, 1987, she turned

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 eighteen?

2 MR. ESKRIDGE: Yes.

3 THE COURT: And, these settlements occur
4 after that?

5 MR. ESKRIDGE: Yes, the \$50,000.00
6 settlement occurred in February of 1988. The \$350,000.00
7 settlement from which she got a net of \$112,500.00, May
8 22nd of 1989. So, those were our positions, Your Honor.
9 I would be glad to either go into some more detail on any
10 of the legal analysis now or maybe after you've heard some
11 evidence, whichever you prefer.

12 THE COURT: All right. Let me suspend
13 for a minute and go check my notes in this matter.

14 MR. ESKRIDGE: All right, sir.

15 OFF RECORD

16 THE COURT: I must not have any notes, I
17 couldn't find them.

18 MR. EARLS: Would Your Honor like a copy
19 of the transcript?

20 THE COURT: Not right now.

21 MR. EARLS: It's recorded. Elsey, do
22 you want to go next?

23 MR. HARRIS: Yes, very briefly. Your
24 Honor, on behalf of my clients in this matter, we are
25 going to follow Mr. Eskridge's lead on the motions. There

1 is only one real difference in that the \$350,000.00
2 settlement, released Textron, Avco, Piedmont Aviation,
3 Pompino and U. S. Aviation Insurance Group, specifically.
4 And, therefore, as far as arguments regarding accord and
5 satisfaction, we would be relying on that release in
6 particular. The remainder of our arguments are in line
7 with those already argued by Mr. Eskridge.

8 THE COURT: All right.

9 MR. EARLS: If it please the Court,
10 Your Honor, I'll try to address these in the order in
11 which Mr. Eskridge and Mr. Harris addressed them. Some
12 factual issues stated by Mr. Eskridge, we will not
13 necessarily agree with and by the fact that we do not
14 state in my statement that we disagree with them, I do not
15 want to waive any right to call upon them to prove them.
16 I think the entire matter involves, the entire case
17 involves a matter of trust and faith and even-handed
18 dealings irrespective of what insurance company carries
19 what coverage. On behalf of Christina Jones (sic), who at
20 the time of her mother's death was an infant and her step
21 father, Bill Jones. Mr. Eskridge is correct in the fact
22 that Ben Jones, Ben Jones did not have a pilot's license
23 and I think that the evidence that we have indicates that
24 he would never be one, medically he could never pass it.
25 As to who provided what coverage, the fact remains that

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 Bill Jones owed a high degree of responsibility to
2 Christina Jones which was not followed. Anyone can see
3 the apparent conflict when a representative of a decedents
4 estate is also an employee of the company that is one of
5 the major defendants in a potential claim. The Court saw
6 it, The Court entered the order and I would point the
7 Court to Virginia Code Section 26 47 authorizing or
8 stating that at or after the date of any order revoking or
9 annulling the powers of any fiduciary, The Court in which
10 he qualified shall exercise such jurisdiction either by
11 appointing an Administrator de bonis non or a new guardian
12 or otherwise as it could have exercised in such fiduciary
13 had died at that date. So, what The Court did was enter
14 an order appointing Bill Kelly as Administrator of that
15 Estate on that day, as to when he qualified is immaterial.
16 Now, as far as our motion, we're talking about straight
17 dealing with this girl, that's what we're talking about
18 and the two year Statute of Limitations for Virginia
19 Wrongful Deaths, we're not talking about a malpractice
20 claim as in the Kessler case of a kid who died in
21 Tennessee who had a one year statute. Tennessee still
22 have a one year statute. Florida has a two year Statute
23 of Limitations. Virginia has a two year Statute of
24 Limitations so, irrespective, as in the conflicts of law
25 as to which one applies, we have a two year Statute of

1 Limitations.

2 THE COURT: You're jumping around on me
3 but, I guess that's all right, I'll try to keep up.

4 MR. EARLS: The Statute of Limitations,
5 I'm hitting now. Applicability of which law will be
6 applied if the Florida law and Mr. Eskridge indicated that
7 Substantive Florida law may be applicable. I would direct
8 The Court's attention to Florida Statute Section 768.18,
9 Part 1, negligence, general provisions and in that the
10 definition of minor children states, minor children means
11 children under 25 years of age, notwithstanding the age of
12 majority. So, our argument is that applying Florida law,
13 where the death occurred, Christina Phipps is still an
14 infant under the Wrongful Death Statute and will remain so
15 until age 25. I have a copy of that. I would like to
16 present it to The Court.

17 THE COURT: All right.

18 MR. EARLS: Now, Judge, as far as any
19 settlements that may have been made, I will direct The
20 Court's attention to 8.01-55 dealing with compromise of
21 claims for death by wrongful act and that states that a
22 personal representative of the deceased may compromise any
23 claim with the approval of The Court. However, the recent
24 Virginia Supreme Case, it's York, Lovelace requires that
25 all parties be convened and this young lady was never

1 given notice of anything that was, that occurred here.
2 There is no settlement, there can be none without court
3 approval, there should have been no, absolutely no fees
4 taken by anyone irrespective of what favors were being
5 done or what without court approval. You're dealing with
6 a fiduciary who holds, that's Bill Jones, who holds a high
7 degree of duty to Christina Phipps. We have also alleged
8 and we will prove that there was indeed financial
9 harassment made by a major employee of R. S. Jones and
10 Associates to force Christina to sign this. Florida
11 Statute at Section 95.11 which deals with two years and I
12 point out that 8.01-55 requires approval of all Wrongful
13 Death Settlements, not just infants. So, it appears as
14 though there has been, at least on the face of it, some
15 wrongdoings by the principals involved in this case
16 compromising a case that should not have been compromised
17 for such a small amount. It seems difficult to me for R.
18 S. Jones and Associates to draw one penny from the death
19 of Judy Jones, it seems incomprehensible that an
20 Administrator would allow that to occur, they had already
21 been paid for the hull of the craft yet they shared in the
22 big \$350,000.00 settlement.

23 MR. ESKRIDGE: Can I reply to that just a
24 minute? First, 80.1-55 does not require court approval of
25 all Wrongful Death Settlements. I agree that it doesn't

1 matter whether adults or infants are involved, I agree to
2 that extent. However, if you will read 80.1-55, you will
3 see that it applies to all settlements of claims arising
4 under 80.1-50 which is the Virginia Wrongful Death Act.
5 The Virginia Wrongful Death Act has nothing to do with
6 this case. Secondly, as far as it being incomprehensible
7 for R. S. Jones to get any money out of the death of Judy
8 Jones, it didn't, it hasn't, it has no intentions of it.
9 Apparently, Mr. Earls doesn't understand that \$350,000.00
10 settlement. I think he filed his Motion to Intervene
11 first so maybe he should go first on the evidence.

12 THE COURT: All right, Mr. Earls, you
13 may proceed with your evidence.

14 MR. EARLS: Your Honor, I call Christina
15 Phipps.

16 CHRISTINA PHIPPS
17 a witness, having been duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. EARLS:

21 Q. Tell The Court your name and address, please?

22 A. Christina C. Phipps, present address?

23 Q. Yes.

24 A. It's 3100 Easttown (phonetic) Mall Circle,
25 Apartment Number A-301, Knoxville, Tennessee.

1 Q. And, Christina, I think you're a student down at
2 UT, is that right?

3 A. Yes.

4 Q. Where is your residents address?

5 A. It is what I said.

6 Q. Okay, you own property in St. Paul, is that
7 correct?

8 A. Yes.

9 Q. Christina, I'm sure you recall the tragic
10 accident of your mom down in Florida, is that correct?

11 A. Yes.

12 Q. At that time, where were you living?

13 A. I was living in the, at the time, I was going to
14 Virginia Tech in Blacksburg.

15 Q. Okay. And, when you came home for the Holidays,
16 would you go to your mom's home?

17 A. Of course.

18 Q. And, where was that?

19 A. St. Paul.

20 Q. And, is that in Wise County?

21 A. Yes.

22 Q. Okay. Christina, do you recall signing some
23 documentation pertaining to settlement of your mom's
24 death case?

25 A. The second agreement, yes.

1 Q. The first agreement?

2 A. No.

3 Q. Okay. Do you want to relate to The Court the
4 circumstances surrounding your signing that document?

5 A. The second document?

6 Q. Yes.

7 A. Yes, at the time I was a student at the
8 University of Tennessee. I had, in the previous year,
9 around October, Bill Jones had remarried leaving me with
10 no support so, I really had no choice. It was that or
11 starve.

12 Q. How long were Bill Jones and your mom married?

13 A. Six months.

14 Q. Okay. And, what do you mean you were left with
15 no choice?

16 A. I was in financial distress.

17 Q. Were you dependant upon Bill Jones for your
18 support?

19 A. Before the time, I had, I should have been using
20 him more than I did, actually a lot of the things that I
21 needed, my tuition came out of the original settlement,
22 the \$25,000.00, I used that for tuition, I went to Clinch
23 Valley first and then things such as that.

24

25

1 Q. Prior to your mom's death, upon whom were you
2 dependent for your livelihood?

3 A. My mother.

4 Q. And, did she pay all of your bills including
5 college tuition?

6 A. Yes, sir.

7 Q. She clothed you?

8 A. Yes.

9 Q. Bought your clothes? Did you have any means of
10 income other than your mom?

11 A. No.

12 Q. And, I think your step-dad, Bill Jones, knew
13 that, is that correct?

14 A. Yes.

15 Q. Following your mom's death, did he, did you all
16 have any discussion as to how you were going to be
17 supported and so forth?

18 A. It was assumed that he would take over where she
19 left off.

20 Q. Okay, and did he state that he would do so?

21 A. I can't quote that but, it was assumed.

22 Q. Okay.

23 THE COURT: What do you mean it was
24 assumed, you've got to do better than that.

25

1 BY MR. EARLS:

2 A. I'm sure we talked about it at some point but, I
3 cannot just say---

4 THE COURT: Did he ever say he was going
5 to support you after your mother's death?

6 MS. PHIPPS: I can't recall.

7 THE COURT: Okay.

8 BY MR. EARLS:

9 Q. Well, let's go onto the settlement, how did you
10 come about to sign it?

11 A. I was contacted after proceedings had already
12 begun and they were close to being in a settlement with
13 the names, those names on the list. And, we went, we met
14 with one of the lawyer, Mr. Turner---

15 Q. Now, how did you happen to meet with Mr. Turner?

16 A. Bill took me there.

17 Q. And, where did he take you?

18 A. To Buck Browning's office in Pennington Gap.

19 Q. And, do you know who Buck Browning is?

20 A. He is the Vice-President for R. S. Jones and
21 Associates.

22 Q. Okay. Had you, Mr. Browning ever discuss with
23 you his involvement in the case or how it would come about
24 that he was arranging for an attorney to meet in his
25 office pertaining to your mom's death case?

1 MR. ESKRIDGE: I object to that question
2 being misleading, Your Honor. She's never said Buck
3 Browning arranged for anybody to meet anybody. The
4 testimony is they met at his office.

5 MR. EARLS: All right, withdraw the
6 question. I withdraw the question, Judge.

7 BY MR. EARLS:

8 Q. Do you know if there was any relationship
9 between Mr. Browning and the attorney involved in the
10 case?

11 A. Yes, there was.

12 Q. And, what was that?

13 A. I believe Mr. Browning's daughter was married to
14 Mr. Turner.

15 Q. And, Mr. Turner was the attorney in Mr.
16 Browning's office?

17 A. Right.

18 Q. So, that would make Mr. Browning the father-in
19 law to the attorney?

20 A. Right.

21 Q. And, Mr. Browning was Vice-President of R. S.
22 Jones and Associates?

23 A. Right.

24 Q. Okay. At any time did Bill Jones, at any time
25 did your step-father relay this relationship between an

1 officer of the company and the attorney that you were
2 talking to?

3 A. He told me how we came about getting this
4 particular attorney that we did.

5 Q. Tell the Judge that.

6 A. Tell the Judge what, I just---

7 Q. What he told you.

8 A. He told me that Mr. Browning's son-in-law was
9 going to be handling the case.

10 Q. Did he say why?

11 A. I guess it was convenient.

12 Q. Anything else?

13 A. No, not that I know of.

14 Q. Did Mr. Turner talk to you about the merits of
15 the case?

16 A. He said we had a good position and that---

17 Q. I'm sorry, we had a good what?

18 A. Position.

19 Q. Okay.

20 A. That there was a good case and that a settlement
21 shouldn't be hard to reach, that they had been talking
22 about it awhile on that basis before mentioning it to me.

23

24

25 Q. Okay, and then what happened next pertaining to

1 the case, Christina?

2 A. Then there was a bit of time elapsed before the
3 settlement would actually take place because the firms
4 wouldn't answer letters or phone call of the attorney's
5 supposedly, because, that's what they told me why it was
6 taking so long.

7 Q. Okay. In the meantime, how were you living?

8 A. I was living on the original settlement.

9 Q. The \$25,000.00?

10 A. Right.

11 Q. Would your step-father send you any other money?

12 A. I never asked him to.

13 Q. Would he?

14 A. I don't think so.

15 Q. Okay, and then what happened next on the
16 settlement?

17 A. In, about a week before the Spring semester was
18 over I got a called from Mr. Dunnagon (phonetic) who had
19 taken over the case because Mr. Turner had become a Judge
20 or some complication like that.

21 Q. All right.

22 A. And, they said that they had agreed to settle
23 for \$35,000.00 and he explained to me who was going to get
24 what and why.

25 Q. You mean \$350,000.00?

1 A. Yes, I'm sorry.

2 Q. Okay.

3 A. And, that they would be contacting me to sign
4 papers.

5 Q. Okay. And, were you contacted?

6 A. Yes.

7 Q. And, did you talk with your step-father
8 pertaining to that?

9 A. I don't believe so.

10 Q. Okay. Where were the papers signed?

11 A. In Mr. Browning's office in Pennington Gap.

12 Q. And, that's the Vice-President of R. S. Jones
13 and Associates?

14 A. Yes.

15 Q. Okay. And, was any attorney there to answer any
16 of your questions?

17 A. No.

18 Q. Did Mr. Jones say anything to you prior to your
19 signing the papers?

20 A. I don't believe so.

21 Q. Okay.

22 A. I think prior to signing the papers, the
23 incident of him taking my mother's car happened.

24

25 Q. Tell The Court about that.

1 A. I had been visiting my aunt in Kentucky and,
2 with a friend, and we went out one evening, we had gone to
3 Huntington and we were on our way back and I hit a deer, a
4 deer ran out in front of me, out in the road and the car
5 was subsequently put in the shop for repairs. I
6 contacted Mr. Jones whose insurance I was covered under
7 and, the car was in his name after my mother's death. He
8 said he would take care of it and we just went through all
9 the insurance things, filing and all that stuff and he got
10 the amount for the car to have it fixed. He went to
11 Kentucky and paid them personally so that I wouldn't be
12 allowed to have the car and he told me that he was going
13 to resale it, I offered to take over payments and get my
14 own insurance because I had been using it since I had
15 gotten my driver's license when I was sixteen I began
16 using the car, since it was my mother's and he didn't
17 compromise at all about that.

18 Q. Christina, you turned, I think, 18 shortly after
19 your mom's death, is that correct?

20 A. That's correct.

21 Q. And, prior to this time, you had been utilizing
22 her car, her vehicle?

23 A. Yes, sir.

24 Q. And, that's what you used to get back and forth
25 to school and so forth?

1 A. No, when I was in school she was afraid to let
2 me take the car so, she came and got me.

3 Q. Okay, and then after this you were without
4 transportation?

5 A. Yes.

6 Q. And, was this prior to your signing the
7 settlement agreement?

8 A. Yes.

9 Q. At any time, did your stepfather relay to you
10 that Ben Jones was not a licensed pilot with the FAA?

11 A. He said that there had been some dispute over
12 that before the FAA report was finally finished, he said
13 that there had been some dispute but that he didn't think
14 it was valid.

15 Q. Okay, at any time did he tell you that Ben Jones
16 was an unlicensed pilot?

17 A. No.

18 Q. Okay. And, at any time did he relay to you that
19 there were mechanical functions in the vehicle, in the
20 plane that your mom died in?

21 A. Yes, he said that, he said that was probably the
22 cause of it.

23
24 Q. Did, at any time, did he ever mention that his
25 employer, R. S. Jones and Associates may have to, may be

1 in trouble over letting an unlicensed pilot fly the
2 aircraft your mom was killed in?

3 A. No.

4 Q. Never at any time?

5 A. No.

6 Q. How long has your stepfather been an employee
7 of R. S. Jones and Associates?

8 A. I believe since he, he went to college and he
9 went to Law School at the University of Tennessee for six
10 weeks and I think sometime thereafter he went to work for
11 his brother.

12 Q. So, how long is that?

13 A. He's in his thirties, I would say ten to fifteen
14 years.

15 Q. Have you ever appeared before a Judge for
16 approval of any settlement or for distribution of any
17 funds?

18 A. No, sir, I have not.

19 Q. Is this your first appearance in Court today?

20 A. Yes.

21 Q. Okay. Other than the checks you received from
22 the insurance companies for your mom's death, have any
23 other payments been made from her estate, that is, did you
24 receive any of the proceeds of the sale of the car or bank
25 accounts?

1 A. Not when he sold the car, at the time we did the
2 second settlement, I asked for the land, the land and the
3 house and I was really scared that I would have no place
4 to live, he had taken the car, he could have also taken
5 that but, he did have the deed to the land made over to
6 me.

7 Q. Did you know Ben Jones?

8 A. Yes, I did.

9 Q. And, what his relation to your step-father?

10 A. It was his brother.

11 Q. Christina, I'm sure you are now aware of an
12 Order that was entered by Judge Fugate back on February
13 17, 1988?

14 A. Would that be, what was that?

15 Q. It's one of William G. Jones, Individual and his
16 personal representative against R. S. Jones and
17 Associates.

18 A. The first settlement?

19 Q. The first settlement?

20 A. Yes.

21 Q. Were you ever given notice of any hearing to
22 appear?

23 A. No.

24 Q. Did you ever appear, were you ever brought up
25 before Judge Fugate?

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 A. No.

2 Q. You had absolutely no notice of this?

3 A. No.

4 Q. And, did Bill Jones tell you about it?

5 A. Not before it happened, no, he did not.

6 Q. All right. How old was your mom?

7 A. She was 36.

8 Q. And, was she employed with the company?

9 A. Yes, yes.

10 Q. Do you know how much she was making?

11 A. No, I couldn't, I think it was about \$35,000.00

12 a year, I'm not sure.

13 Q. Thirty-five thousand a year?

14 A. Yes, we made it quite well.

15 Q. And, was your mom in good health?

16 A. Yes, she was.

17 Q. Do you think, how long had you lived with your

18 mom, that is I realize that she was a single parent for a

19 while, is that correct?

20 A. Yes, I have lived with my mother for, just over

21 four years.

22 Q. Okay. And, all of your support came from your

23 mom?

24 A. Yes.

25 Q. I think she was secretary for a coal company

1 prior to coming with the Jones', is that correct?

2 A. Yes, and during the marriage, also.

3 Q. Okay, and her, do you know her, was her salary
4 approximately the same thing during that period of time?

5 A. (Inaudible).

6 MR. EARLS: That's all.

7 CROSS EXAMINATION

8 BY MR. ESKRIDGE:

9 Q. Ms. Phipps, what is your date of birth?

10 A. 11-14-69.

11 Q. You were born here in Wise County, I believe,
12 weren't you?

13 A. Yes.

14 Q. You were born in the Wise Hospital?

15 A. Yes.

16 Q. And, you indicated that you started living with
17 your mother four years before she died, where did you live
18 before that?

19 A. I lived with my grandparents in Kentucky.

20 Q. And, what were their names?

21 A. Carrie Lee Phipps, Carrie Lee Mullins Phipps and
22 Donald Eugene Phipps.

23 Q. Okay, and did one or both of them die and
24 therefore you had to move in with your mother?

25 A. Both of them.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 Q. Do you recall when you moved in with your
2 mother?

3 A. I moved in with my mother directly after my
4 grandmother died, in February, 1984.

5 Q. When did Bill marry your mother, Bill Jones
6 marry your mother?

7 A. April the 2nd, I believe, 1987.

8 Q. Okay. And, after they married, he moved into
9 your mother's house in St. Paul, didn't he?

10 A. Just before they married.

11 Q. Okay. And, he was, continued to live in that
12 house with your mother and you from just before the time
13 he married until your mother died?

14 A. True.

15 Q. And, he continued to live there with you when
16 you weren't away in school at least, for some time after
17 your mother died, didn't he?

18 A. Once my mother died, I withdrew from school and
19 didn't go back until he had moved, well, he still had
20 permanent residence in St. Paul but, he had a residence in
21 Roanoke where they had a construction job.

22 Q. Well, he had an apartment in Roanoke where he
23 stayed during the week at work but, he came home to that
24 same house where you and your mother and he had been
25 living when he had a weekend off, didn't he?

1 A. No.

2 Q. Okay. Now, you say that you signed this release
3 because you had no choice because you had no money?

4 A. That's right.

5 Q. Okay. How much money did your mother leave you
6 in a bank account at the time of her death?

7 A. Ten thousand dollars, just under ten thousand
8 dollars. The ten thousand came from an insurance
9 settlement when my grandfather died and some had been
10 subsequently been spent on various things which is my
11 school and various other things.

12 Q. Your mother left no Will, did she?

13 A. No.

14 Q. Between the time of your mother's death in
15 October of 1987 and until the settlement, the first
16 settlement in February of 1988, did you continue to live
17 in your mother's house there at St. Paul?

18 A. Yes.

19 Q. And, did Bill pay the electricity bills,
20 telephone bills, water bills, who paid them other times?

21 A. I did.

22 Q. Did you, what car were you driving when your
23 mother died?

24 A. Hers.

25 Q. And, what kind of a car was that?

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

- 1 A. It was an LTD Crown Victoria, 1985.
- 2 Q. Did you ever see the title to that car?
- 3 A. The registration.
- 4 Q. Whose name was on the registration?
- 5 A. My mother's.
- 6 Q. And, then after your mother died, you were a
- 7 student at VPI at the time of her death?
- 8 A. Yes.
- 9 Q. And, did you, after the funeral was over with,
- 10 did you go back to Virginia Tech or did you withdraw?
- 11 A. I went back one day and decided that I needed to
- 12 withdraw.
- 13 Q. When you withdrew, did you come back and live in
- 14 the same house in St. Paul?
- 15 A. Yes.
- 16 Q. Did you start in college at Clinch Valley the
- 17 next semester?
- 18 A. Yes, I did.
- 19 Q. And, continued to live in the house at St. Paul
- 20 and commuted to Clinch Valley?
- 21 A. Right.
- 22 Q. Did Bill ever tell you that he was negotiating a
- 23 settlement for your mother's death against the insurance
- 24 carrier that had coverage on the airplane?
- 25 A. Is this the first settlement or the second

1 settlement?

2 Q. First settlement.

3 A. No, he did not.

4 Q. How did you find out about that settlement?

5 A. One day he came in with two checks, one was for,
6 one made to him, one made to me for \$25,000.00 and he
7 said, this is what we've done and gave it to me.

8 Q. You didn't take one check to the bank and have
9 it broken down into two \$25,000.00 deposits?

10 A. I think it was in two, I'm not sure, it could
11 have been one, I'm not really thinking.

12 Q. Actually he gave you one check for \$50,000.00
13 which he had endorsed, you took it to the bank and put
14 \$25,000.00 in your account and \$25,000.00 in his account,
15 didn't you?

16 A. I don't recall, it could have been one, it
17 could have been two.

18 Q. Did you complain to Bill about the fact that he
19 had settled this claim for \$50,000.00?

20 A. No, I did not.

21

22 Q. At that point in time, you knew, did you not,
23 that it had developed that Ben had no pilot's license?

24 A. No, I did not.

25 Q. When did you first find out that Ben had no

1 pilot's license?

2 A. It was first mentioned, I believe when the
3 second agreement, it was my first meeting with the second
4 agreement, it wasn't finally established until my aunt got
5 an official report from the FAA.

6 Q. And, who is your aunt?

7 A. Carolyn Balton (phonetic).

8 Q. And, when did she get the official report from
9 the FAA?

10 A. She had, previous to this, sent letters and
11 notified them that she would like a copy of when it was
12 done so, it was sometime right after the FAA report---

13 Q. When is the first time that you ever complained
14 to anyone that Bill Jones had made the first settlement,
15 the \$50,000.00 settlement of your mother's death?

16 A. I didn't, until recently.

17 Q. Well, how recently?

18 A. Because now I have the money to go, I don't have
19 to worry about if I'm going to have another meal.

20 Q. My question was how recently have you complained
21 to someone about the fact that Bill entered into a
22 \$50,000.00 settlement of which you got half for your
23 mother's death?

24 A. When this case was first, you'll have, I don't
25 have an exact date, you'll have to ask Mr. Earls.

1 Q. Well, is he first person you complained to?

2 A. No.

3 Q. Who else did you complain to?

4 A. Mr. Rasnic.

5 Q. Tom Rasnic?

6 A. Yes.

7 Q. Why did you complain to Tom Rasnic?

8 A. Actually, he contacted me and said that he had
9 been trying to get in touch with me for quite a while and
10 that no one would allow him to speak with me or tell him
11 how to get in touch with me and just explained to me that
12 there had been some misdealings, he felt, and there had
13 been some concern on my part that I really didn't feel
14 like, my mother just died, I wanted to get it over with
15 and didn't want to have anything else to do with it.

16 Q. Well, was the complaint you made to Tom Rasnic,
17 was that after you got the \$112,500.00 in May of this
18 year?

19 A. Yes.

20 Q. How much later than that?

21 A. It was May, it would be August, September of
22 this year.

23 Q. And, did Mr. Rasnic say that he would represent
24 you in this?

25 A. No, he said he could not, that there was

1 conflict in interest with Ben Jones.

2 Q. So, the first complaint you made to anyone of
3 the \$50,000.00 settlement was to Tom Rasnic in July or
4 August of 1989, some year and a half after the settlement,
5 is that correct? And, you were an adult under Virginia
6 Law certainly at the time of that \$50,000.00 settlement.

7 A. No, not a year and a half after, oh, you're
8 speaking of the first settlement, I'm sorry. Could you
9 repeat the question?

10 Q. You were an adult at the time of that \$50,000.00
11 settlement, weren't you?

12 A. According to Virginia Law.

13 Q. And, you were an adult according to Virginia Law
14 at the time of the second settlement, weren't you?

15 A. According to Virginia Law.

16 Q. You do live in Virginia, don't you or did until
17 you went down to school at UT?

18 A. Yes.

19 Q. You're an adult under Tennessee Law, aren't you?

20 A. Yes.

21 Q. And, were you an adult at the time of both of
22 those settlements under Tennessee Law, weren't you?

23 A. Yes.

24 Q. Now, you can't recall if Bill ever promised to
25 support you after your mother died, can you?

1 A. I can't give you an exact date. I think we
2 talked about it. I think that he expressed that he, that
3 I didn't have anything to worry about but, I can't give
4 you an exact date or, say two weeks or a week after, we
5 had a talk and---

6 Q. Okay. You say that you told Bill that you would
7 like to have your mother's house?

8 A. Yes.

9 Q. You understood that when you were asking Bill
10 for a clear Deed to your mother's house that he owned a
11 one-third interest in that house at that time, didn't you?

12 A. Yes.

13 Q. And, did Bill write you a Deed and convey to you
14 all of his interest in that house?

15 A. Not in the house, in the land.

16 Q. Well, the house sits in the land, doesn't it?

17 A. Yes.

18 Q. Okay. You understand that under Virginia Law
19 that whatever is on the land goes with it?

20 A. No, I didn't understand that.

21

22 Q. You understand it now, don't you?

23 A. Yes.

24 Q. So, Bill wrote you a Deed conveying to you all
25 of his interest in the house, didn't he?

1 A. Yes.

2 Q. Didn't charge you a penny for it, did he?

3 A. No.

4 Q. Did you understand that under Virginia Law, Bill
5 inherited one-third of all of your mother's furniture and
6 other personal property and any cash that she had?

7 A. Yes.

8 Q. And, all, you're using all of that furniture now
9 and considering it as yours, aren't you?

10 A. Yes. He got things totally that I got no part
11 of.

12 Q. I'm sorry?

13 A. He got things totally that I got no part of.

14 Q. Well, when Bill married your mother, he moved
15 some of his own furniture into your mother's house, didn't
16 he?

17 A. Yes, he did.

18 Q. And, after your mother died, he moved that
19 furniture back out, didn't he?

20 A. Yes, he did.

21

22 Q. Do you know that Mr. Earls was talking about
23 when he said he didn't think R. S. Jones and Associates
24 should get anything for your mother's death?

25 A. Yes.

1 Q. What money has R. S. Jones and Associates gotten
2 out of your mother's death?

3 A. They got money from the hull of the plane twice.

4 Q. No, they didn't, they only, they got partially
5 paid twice, didn't they?

6 A. Whatever, I don't know what the legal term---

7 Q. Well, how much do you think that plane was
8 worth, the twin-engine Arrow Commander?

9 A. I don't know.

10 Q. Do you have any idea?

11 A. None.

12 Q. Do you know how much they got on the first
13 settlement from Avemco?

14 A. No, I do not.

15 Q. Do you know how much they got on the second
16 settlement, the \$350,000.00 settlement that was signed off
17 in May of 1989?

18 A. Thirty five thousand dollars.

19 Q. Okay. Who is the first person you complained to
20 about the second settlement?

21 A. I complained to Mr. Dunnagon.

22 Q. Is that at the time of the settlement?

23 A. It was before the settlement was made.

24 Q. And, was that in person or on the telephone?

25 A. Telephone.

1 Q. And, tell me what you complained to him about?

2 A. I told him that I had spoken with a local
3 lawyer, Ms. Linda Tiller from St. Paul and, she said that
4 under Virginia Law I was entitled to two-thirds, probably
5 entitled to two-thirds of everything my mother owned which
6 would, I assume, also included any settlements made and I
7 asked him if there was anything I could do about the
8 portion that I got and that Bill got and he said that it
9 would be a lot of trouble.

10 Q. Ms. Tiller didn't tell you that that applied to
11 a settlement under the Virginia Wrongful Death Act, did
12 she?

13 A. No.

14 Q. And, she certainly didn't tell you that that
15 applied to a settlement under the Florida Wrongful Death
16 Act, did she?

17 A. I, it was a brief meeting between the two of us,
18 I, very brief.

19 Q. Well, Mr. Dunnagon refused to change the terms
20 of the settlement to give you two-thirds and Bill one
21 third, didn't he?

22 A. Yes, he did.

23 Q. And, knowing that he refused to do that, you
24 went to Pennington Gap, met at Mr. Browning's office and
25 signed the release, did you not?

1 A. Yes, yes, I did.

2 Q. Okay. Hang on just a second. Ms. Phipps, if
3 the Judge were to overturn the \$50,000.00 settlement, are
4 you in a position to refund your \$25,000.00 of that to the
5 people who paid it?

6 MR. EARLS: If it please The Court, I
7 don't think that's a material thing here now. I mean, her
8 ability to refund any amounts whatsoever and we have so
9 moved and I don't think that that would have any bearing
10 upon The Court's decision as to whether or not The Court
11 would rule to set it aside.

12 MR. ESKRIDGE: Your Honor, she's
13 attempting, excuse me, are you finished?

14 MR. EARLS: No, I'm not.

15 MR. ESKRIDGE: Okay.

16 MR. EARLS: We have a basis for setting
17 aside the Judgment, we're asking that it be done and
18 should The Court order that her money be paid in, it would
19 be paid in and it's totally immaterial and irrelevant as
20 to whether she's able to do it or what her financial
21 condition is.

22 MR. ESKRIDGE: Your Honor, she is trying to
23 rescind a contract and the basic law of recision is that
24 to rescind you've got to be able to restore the other
25 party to the status quo at the time of the contract and

1 I'm basically assuming that she is ready, willing and
2 able to do that.

3 MR. EARLS: If it please the Court. In
4 order to determine if there has been a valid settlement,
5 what we're doing here, as I understand it Mr. Eskridge
6 doesn't represent the insurance company but rather
7 represents R. S. Jones.

8 MR. ESKRIDGE: That's correct, Your Honor.

9 MR. EARLS: And, what we're dealing here
10 is a fiduciary. Under the Virginia Statute, 8.01-425,
11 specifically states that a fiduciary must, in order to
12 compromise a claim, to or from themselves, have court
13 approval. That is the law in the State of Virginia, as
14 far as I know, it is not my problem but, there must be
15 court approval and they have not done any.

16 THE COURT: Well, I still think it's
17 pertinent to know if she's going to pay the \$25,000.00
18 back she got?

19 MR. EARLS: Of course she will.

20 THE COURT: Well, I want to hear her say
21 that. Answer the question if you would, please?

22 BY MR. ESKRIDGE:

23 A. I would.

24 Q. All right. And, if the---

25 A. Not happily, but I would.

1 Q. Are you in a position to?

2 A. Yes, I can.

3 Q. And, if The Court sees fit to overturn the
4 \$350,000.00 settlement of which you got \$112,500.00, are
5 you prepared and willing to pay that back?

6 A. I would not be able to do that.

7 Q. In other words, you don't have enough money now
8 to pay back both of them?

9 A. No.

10 Q. You're agreeing with me?

11 A. Yes, I am.

12 Q. Okay. Let me show you an agreement dated May
13 22, 1989 which apparently there is your signature and ask
14 you if you can identify that document?

15 A. Yes, this is the release agreement I signed in
16 Mr. Browning's office.

17 Q. And, that is your signature on the release,
18 isn't it?

19 A. Yes, it is.

20 Q. And, you did get the \$112,500.00 called for in
21 that agreement, didn't you?

22 A. Yes, sir.

23 Q. And, you put it in your own bank account?

24 A. Yes.

25 Q. And, you have been, you have, you've saved part

1 of it and you have been living off part of it?

2 A. Yes.

3 Q. Do you still have the house in St. Paul that you
4 inherited the two-thirds interest in from your mother and
5 Bill conveyed his one-third interest then to you?

6 A. Yes, I do.

7 Q. Do you still have the furniture and the pictures
8 in the house that you acquired the same way?

9 A. No, I don't.

10 Q. You have sold that?

11 A. Yes, I have hopes of selling the house. I don't
12 feel that it is possible for me to live in one place and
13 upkeep another house.

14 Q. When you sale the house, do you plan to give
15 Bill back the one-third interest that he owned in it?

16 MR. EARLS: If it please The Court, I
17 don't think that's material here. He conveyed it,
18 apparently what the consideration was stated that in
19 there was given and there's no claim by Bill to pay him
20 anything.

21 MR. ESKRIDGE: She's trying to undo
22 everything that's been done, Judge and I think we are
23 entitled to explore how much she's entitled to restore
24 people to their former status.

25 MR. EARLS: If it please The Court---

1 MS. PHIPPS: If The Court wants me to
2 give him a third, I will. If The Court sees that it's
3 unnecessary, I won't.

4 MR. ESKRIDGE: That's the Answer, Judge.

5 BY MR. ESKRIDGE:

6 Q. Did you give Bill a third of the proceeds from
7 the sale of the furniture in the house?

8 A. No, but if he so wishes to have it, I can.

9 MR. ESKRIDGE: Excuse me just a second,
10 Your Honor. Thank you, ma'am.

11 REDIRECT EXAMINATION

12 BY MR. EARLS:

13 Q. Christina, you just want what's fair, is that
14 correct?

15 A. Yes.

16 Q. Christina, you indicated before Mr. Eskridge
17 stopped you that there was things that Bill took the whole
18 of. First of all the house, who paid for the house?

19 A. My mother did.

20 Q. How long did she own it prior to marrying Bill?

21 A. I believe she acquired it in 1981.

22 Q. And, they weren't married until what, 1987?

23 A. Right.

24 Q. So, your mom paid for it when she worked?

25 A. She bought it from her boss at BK Coal Company,

1 Mr. Wiley Carroll.

2 Q. Okay. Now, what were those things that Bill
3 took the whole of and never gave you any part of?

4 A. The car, for one, another, a long string of
5 pearls that were my mother's, which she acquired before
6 marriage. There was some dispute over this but, to my
7 family's recollection, my mother didn't tell me very much
8 about her financial situation, she thought it was
9 unnecessary as long as I was well keep but, according to
10 my aunt who lives in Kentucky, she had saved \$17,000.00
11 from my grandfather's insurance settlement when he died,
12 that I, the one that I received the \$10,000.00 from which
13 has never been spent and had been transferred into her and
14 Bill's name and he had put some money in and so forth when
15 they were married.

16 Q. You never saw any of that account?

17 A. None.

18 Q. Now, Christina, do you know who owned the
19 aircraft that your mom died in?

20 A. R. S. Jones and Associates.

21 Q. All right, and do you know who piloted that
22 plane?

23 A. Ben A. Jones.

24 Q. And, as you said, Ben is Bill's brother?

25 A. Yes.

1 Q. And, where does Bill Jones work?

2 A. For R. S. Jones and Associates.

3 Q. And, do you know what his position is there?

4 A. General Superintendent.

5 Q. Of the company?

6 A. Of the company, yes.

7 RECROSS EXAMINATION

8 BY MR. ESKRIDGE:

9 Q. Ms. Phipps, the \$17,000.00 that you're talking
10 about, you said that that was in a joint account between
11 your mother and Bill at the time of your mother's death?

12 A. Yes, he also put some money in it.

13 Q. All right. And, have you ever seen the document
14 under which that account was sat up?

15 A. I have not.

16 Q. Do you know who has?

17 A. My aunt says that she has.

18 Q. And, didn't she tell you that it was a joint or
19 survivors account under which the money passed to the
20 survivor in the event of the death of one of owners of the
21 account?

22 A. I don't know that it was a survivors account.

23 Q. Have you ever gone to the bank and asked to see
24 the documents setting up that account?

25 A. No, I haven't.

1 Q. Have you ever asked Bill what happened to that
2 money?

3 A. I haven't, my aunt has.

4 THE COURT: How did you get the
5 \$10,000.00 from that account?

6 MS. PHIPPS: That \$10,000.00 did not come
7 from that account, it was separate. He had, he got an
8 insurance settlement when he died, we got a settlement for
9 \$50,000.00 of which my mother and her sister, my aunt that
10 has said she saw this money decided to give me \$10,000.00
11 for my college education. They put it in the bank and
12 then split, after they paid the funeral bills, et cetera,
13 they split the difference and my mother was very cautious
14 woman and she put it in a savings account.

15 THE COURT: Okay. So you're telling me
16 you didn't get any part of the \$17,000.00 as far as you
17 know that you all have been talking about?

18 MS. PHIPPS: Yes.

19 BY MR. ESKRIDGE:

20 Q. You've never seen the documents on that account
21 to see who owned it at the time of your mother's death?

22 A. No, I haven't.

23 AND FURTHER THIS WITNESS SAITH NOT.

24 MR. ESKRIDGE: Okay.

25 THE COURT: All right. Any other

1 witnesses, Mr. Earls?

2 MR. EARLS: We have no further
3 witnesses, Your Honor.

4 THE COURT: All right.

5 MR. ESKRIDGE: I call Bill Jones.

6 OFF RECORD

7 WILLIAM JONES

8 a witness, having been duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ESKRIDGE:

12 Q. For the record, what is your full name?

13 A. William Grayson Jones.

14 Q. And, I believe that you're a brother of Bob
15 Jones who is the Bob Jones of R. S. Jones and Associates?

16 A. Yes, sir, that's correct.

17 Q. And, you're also a brother to the late Ben Jones
18 who was flying this airplane at the time of the crash?

19 A. Yes, sir.

20 Q. And, you're the surviving husband of Judy Jones
21 who was killed in the crash?

22 A. Yes, sir.

23 Q. After the crash and after the funeral and those
24 sorts of things, did you qualify in This Court as
25 Administrator of your wife's estate?

1 A. Yes, sir, I did.

2 Q. Did any lawyer assist you with that step, with
3 qualifying as your wife's administrator?

4 A. No, sir.

5 Q. Did you obtain counsel to advise you as to
6 claims that might have as administrator and as the
7 surviving husband of Judy for you're wife's death?

8 A. Yes, sir, I talked with Walt Turner.

9 Q. And, who is or who was Walt Turner?

10 A. Walt Turner was an attorney from Lexington,
11 Kentucky who is the son-in-law of Denver R. Browning of
12 Pennington Gap.

13 Q. Did you know Mr. Turner before your wife's
14 death?

15 A. Yes, sir, we had met maybe one time before her
16 death.

17 Q. Did, when did it come to your attention that
18 there was a problem with the coverage on the airplane
19 insofar as it applied to payment for the airplane or
20 insofar as it applied to your claim for your wife's death
21 against the owner or operator of the airplane?

22 A. It was only a short time after the crash. In
23 talking with the people from Avemco Insurance, that's when
24 the question arose as to the fact that there was no
25 pilot's license, that's when it first started.

1 Q. And, approximately how long after your wife's
2 death was it mentioned that he could find no license for
3 Ben?

4 A. Probably less than thirty days, a short time.

5 Q. Did you discuss that problem with Mr. Turner
6 insofar as it applied, insofar as it affected your claim
7 for your wife's death against the owner or operator of the
8 aircraft?

9 A. Yes, sir, I did. In talking with him I found
10 that they could deny coverage totally.

11 Q. If there was no question about coverage, how
12 much do you understand the coverage would have been under
13 the liability policy on the aircraft?

14 A. One hundred thousand dollars per person.

15 Q. At some point, did Avemco offer to pay you half
16 of that coverage if you would settle your claim against
17 the owner and operator of the aircraft?

18 A. Yes, sir, they did.

19 Q. Did you discuss that offer with Mr. Turner?

20 A. Yes, sir.

21 Q. Did he advise you whether to accept that offer
22 or to reject it?

23 A. He advised me that it was a good offer and that
24 I should accept it.

25 Q. And, did you indicate to him that it should be

1 accepted?

2 A. Yes, sir.

3 Q. Now, who to your understanding, prepared the
4 papers, The Court papers to obtain approval of that
5 \$50,000.00 settlement?

6 A. I'm not sure but to my knowledge, the attorney's
7 for Avemco did.

8 Q. Did you discuss that \$50,000.00 settlement with
9 Christie, did I say, the \$50,000.00, did you discuss the
10 \$50,000.00 settlement with Christie before the hearing to
11 obtain approval of that settlement?

12 A. Yes, sir, I did.

13 Q. Did she raise any objection to that settlement
14 prior to the hearing to get it approved?

15 A. No, sir. It was hoped that we would get more
16 but, upon reviewing the facts in the case, we determined
17 that was the best settlement that we could achieve.

18 Q. Did any of the lawyers involved in that
19 settlement ask you to have Christie present in court for
20 the hearing?

21 A. No, sir, as a matter of fact I was told that I
22 didn't need to have her there.

23 Q. Had you mentioned anything to Christie about the
24 fact that you had to attend a hearing on a certain day to
25 obtain approval of that settlement?

1 A. Yes, sir, I did.

2 Q. Where were you living and where was Christie
3 living at the time of the hearing to obtain approval of
4 that settlement?

5 A. I was living in St. Paul and Christie was also.

6 Q. In the same house?

7 A. Yes, sir.

8 Q. I take it then Christie was not present at the
9 hearing in which that settlement was approved?

10 A. No, sir.

11 Q. Do you recall whether you got a check after that
12 hearing or got it a day or two later?

13 A. As best I recall, I received a check after the
14 hearing.

15 Q. Okay. When you received that check, what did
16 you do with it?

17 A. Well, I took it home and by that time it was
18 late in the afternoon, five or six o'clock in the
19 afternoon and I showed it to Christie, I gave it to her, I
20 said, tomorrow take this to the bank and we had already
21 discussed the way we would divide the money, et cetera, I
22 said, take this money to the bank, put half of it in your
23 account, put half of it in mine account.

24 Q. And, did Christie bring you a deposit slip for
25 \$25,000.00 into your account?

1 A. Yes, sir.

2 Q. Okay. Has Christie ever complained to you about
3 the fact that you settled that claim for \$50,000.00 before
4 you got the telephone call from the Lee County Sheriff's
5 Department about some sort of hearing about her removing
6 you as Administrator?

7 A. No, sir, she never had complained to me about
8 it.

9 Q. Did you have any discussions with Christie about
10 the settlement with the manufacturer or the insurance
11 carrier for the manufacturer of the engine on the
12 airplane?

13 A. Yes, sir, numerous times, we talked about it
14 often.

15 Q. Under the release that's been introduced into
16 evidence here, you were to get \$112,500.00 after
17 attorney's fees and she was to get \$112,500.00 after
18 attorney's fees from that settlement. Did she ever
19 complain to you about that division, the fifty/fifty
20 division of the proceeds of that settlement?

21 A. No, sir, she never complained about that.

22 Q. When she went to Pennington Gap, or was it
23 Pennington Gap to sign the release, were you present at
24 that meeting?

25 A. No, I was not.

1 Q. Okay, has you signed the release some other
2 time?

3 A. I signed it that same day but, I was not there
4 at the time she signed hers.

5 Q. After she signed that release and then got her
6 share of the money, did she ever complain to you about
7 that settlement between that time and when you got the
8 telephone call from the Lee County Sheriff's Department
9 about some sort of hearing to remove you as Administrator?

10 A. No.

11 Q. When your wife died, what bank account or bank
12 accounts did you and she or you have by yourself or she
13 have by herself, I'm asking for your accounts, her
14 accounts, joint accounts?

15 A. Okay, we had a passbook savings account---

16 Q. Was it yours, or hers or joint?

17 A. It was a joint account with survivorship.

18 Q. Okay, do you remember approximately how much---

19 A. We had approximately \$12,000.00. I'm not sure
20 of the exact amount but, approximately \$12,000.00 and we
21 had a checking account---

22 Q. Was it a joint account or yours or hers?

23 A. It was a joint account with survivorship, there
24 was only a minimum amount of money in it because it paid
25 no interest and we had the money invested where we would

1 get interest.

2 Q. Okay. As her survivor, did you take the money
3 in those two joint survivor accounts?

4 A. Yes, sir, I did. We also had a or she had an
5 IRA account at a local bank there in St. Paul. I checked
6 on it, Christie was listed as survivor on it and the money
7 was turned over to her.

8 Q. So, you haven't touched the money in the IRA
9 account?

10 A. No.

11 Q. Do you know how much money out of the IRA
12 account?

13 A. As best I recall, it was \$712.00 or something
14 like that.

15 Q. Okay. Any other accounts that you or Judy or
16 both of you had at the time of her death?

17 A. No, sir.

18 Q. Now, there's been a lot of talking about a car,
19 who owned the 1985 Crown Victoria at the time of your
20 wife's death?

21 A. It was titled in her name and we were making
22 payments on it to Dominion Bank.

23 Q. Okay, after your wife's death, who made the
24 payments on that car?

25 A. I did.

1 Q. And, did it come a time when you decided to sell
2 that car?

3 A. Yes, sir.

4 Q. And, approximately when did you sell the car?

5 A. I can't give you an exact date but, about
6 eighteen months after my wife's death.

7 Q. And, had Christie had the full use of that car
8 between the time of your wife's death and when you sold it
9 approximately eighteen months later?

10 A. Yes, sir. As a matter of fact, I probably
11 didn't drive the car once every two weeks and then only
12 on Sunday afternoon or something.

13 Q. In the meantime, had you been making all the
14 payments on that car?

15 A. Yes, sir.

16 Q. Had Christie been making any of the payments on
17 that car?

18 A. No, sir.

19 Q. Did there come a point in time that Christie
20 asked you for a title to the house that you had inherited
21 a one-third interest in when her mother died?

22 A. She spoke with me as to how we should divide the
23 property, et cetera and as far as actually asking me for
24 it, no, she did not. I just, I felt like she should have
25 it and I gave it to her.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 Q. Did you have a Deed prepared?

2 A. Yes, sir.

3 Q. Did you sign it?

4 A. Yes, sir.

5 Q. Did you have it recorded or did you give it to
6 her to record?

7 A. I had it recorded, I believe, I'm not sure.

8 Q. Okay. What about the personal property, the
9 furniture and clothing and pictures and personal
10 possessions in the house that had belonged to your wife
11 when you married her?

12 A. It was given to her also.

13 Q. In other words, was there any sort of Bill of
14 Sale or any sort of papers---

15 A. No, sir.

16 Q. You just gave it to her?

17 A. Yes, sir.

18 Q. What is the first notice, complaint, warning
19 that you had that Christie was dissatisfied with the way
20 that you had settled these two claims for her mothers
21 death or that you had handled her mother's estate?

22 A. The first notice or warning that I had was
23 October the 11th, 1989, in this courtroom.

24 Q. Okay. And, tell me how you came to be in this
25 courtroom on October the 11th, 1989?

1 A. I was called at the place of my employment, we
2 have a field office in Pennington Gap, I was in that
3 office doing some paperwork that morning. Around 10:00 a.
4 m., I was called by the Lee County Sheriff's Department
5 and told that they needed to serve some papers on me in
6 regard to my wife's estate, that I would need to be in
7 court here at 1:00. I told them there was no need in it,
8 I would just come up here and take care of whatever the
9 problem was.

10 Q. Did they read to you over the telephone what the
11 papers were that---

12 A. No, sir, they did not.

13 Q. Did you come here to this courthouse at 1:00?

14 A. Yes, sir.

15 Q. And, when you got here, were any papers given to
16 you at that time as to what was going on?

17 A. No, sir.

18 Q. At some point before the hearing, were you given
19 a copy of the Motion to Remove you as Administrator?

20 A. No, sir, I think it was after the proceedings
21 began that I was given a copy.

22 Q. Was anybody put under oath and put on the
23 witness stand to testify at that hearing?

24 A. I can't recall. I believe I was put under oath
25 but, I'm not sure. I didn't testify.

1 Q. Okay. There had been an Order entered
2 purporting to remove you as Administrator of your wife's
3 estate, when is the first time that you saw that order?

4 A. The first time I saw that order was after the
5 hearing was over.

6 Q. Were you given a copy of it after the hearing
7 was over?

8 A. Yes.

9 Q. When you were given a copy of it, was Judge
10 Stump's signature already on the Order?

11 A. Yes, sir.

12 Q. Were you ever asked to endorse that Order?

13 A. No, sir.

14 Q. Let me show you the documents that says release
15 and it apparently bears your signature, it's dated
16 February the 15th, 1989 (sic). I ask you if you are
17 familiar with that and if that is your signature on the
18 document?

19 A. Yes, sir, I am familiar with it and that is my
20 signature.

21 MR. ESKRIDGE: Your Honor, I would like to
22 introduce this as R. S. Jones Exhibit 2 and I don't
23 believe I formally moved to admit the first agreement, I
24 would now move to admit the first agreement that I tended
25 The Court about ten minutes ago.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: That's the May 22, 1989
2 agreement?

3 MR. ESKRIDGE: Yes, sir.

4 THE COURT: What do you want to call it?

5 MR. ESKRIDGE: You've just got it, R. S.
6 Jones Number 1 and the February of 1988 agreement as R. S.
7 Jones Number 2.

8 THE COURT: It will be admitted without
9 objection, I assume.

10 MR. ESKRIDGE: Excuse me just a second,
11 Judge.

12 THE COURT: Do you have the Order that I
13 entered?

14 MR. ESKRIDGE: Yes, sir, it may take me
15 just a minute to find it but, I'll find it. Your Honor, I
16 have a copy here and I would like to move it's
17 introduction at this time. It's duly authenticated by the
18 Deputy Clerk of The Court. I would like to introduce that
19 as R. S. Jones, Number 3.

20 MR. EARLS: No objection, Your Honor.

21 THE COURT: Alright. R. S. Jones
22 Number 3 will be admitted without objection.

23 MR. ESKRIDGE: Your Honor, I would like to
24 introduce as R. S. Jones Number 4 the Certificate of
25 Qualification of William Jones as Administrator of the

1 Estate of Judy Jones.

2 THE COURT: That will be admitted.

3 MR. ESKRIDGE: And, Your Honor, I would
4 like to introduce as R. S. Jones Number 5, a Certificate
5 of The Clerk indicating that on November 15, 1989, Mr.
6 Kelly qualified before the Clerk as Substitute
7 Administrator to the Estate of Judy Kelly, Judy Mullins,
8 I'll get it right in a minute, Judy Jones.

9 THE COURT: All right, that will be
10 admitted, R. S. Jones, Number 5.

11 MR. ESKRIDGE: Excuse me just a second.

12 BY MR. ESKRIDGE:

13 Q. Bill, what was the approximate value of the
14 house and lawn in St. Paul in which you transferred your
15 interest in to Christie?

16 A. Around \$35,000.00, I believe.

17 Q. Okay. That was the entire house and lot?

18 A. Yes, sir.

19 MR. ESKRIDGE: Your Honor, may I borrow
20 Exhibit Number 1 just a minute?

21 BY MR. ESKRIDGE:

22 Q. Let me show you a document that's been
23 introduced as R. S. Jones Exhibit Number 1 and it's dated
24 May 22, 1989. It purports to be a lease agreement and it
25 appear to bear your signature, are you familiar with that

1 agreement and is that your signature?

2 A. Yes, sir, that is mine, I'm familiar with that.

3 Q. When you came up here on October the 11th and
4 found out that there was an effort being made to remove
5 you as Administrator, did you ask for a chance to go get a
6 lawyer on that?

7 A. I made it clear to The Court that I was here
8 without representation, I was here without prior notice.
9 I was asked if I had an attorney and I said, no, I did
10 not.

11 Q. I take it that before you were removed as
12 Administrator, you did not intend to file any further
13 suit or claim against R. S. Jones and Associates, is that
14 a fair statement?

15 A. Yes, sir, that is correct.

16 Q. Now, were you along on the trip to Florida
17 during which your wife was killed?

18 A. Yes, sir.

19 Q. Had you flown in the twin-engine Arrow
20 Commander from Wise down to Florida?

21 A. Yes, sir.

22 Q. Where were you when the crash occurred?

23 A. I was up the coast at Melbourne, Florida.

24 Q. And, who was with you?

25 A. My brother, Bob.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 Q. Okay. And, how did you find out that your wife
2 had been killed?

3 A. We were waiting on them to pick up us there at
4 Melbourne. I called back to see what was holding them up
5 and was told that the plane had crashed.

6 Q. After being told that, did you get yourself back
7 down to Pompino Beach?

8 A. Yes, sir, we did.

9 Q. And, have you seen a copy of the NTSB, National
10 Transportation Safety Board report on the investigation of
11 this crash?

12 A. Yes, sir, I have.

13 Q. Are you taking pilot training yourself?

14 A. Yes, sir, I am.

15 Q. Do you fly airplanes yourself?

16 A. Yes, sir.

17 Q. Do you think you understood the NTSB
18 investigation of this accident?

19 A. Yes, sir, I think I understood it fairly well.

20 MR. EARLS: I'm going to object to what
21 he thinks. I don't think the necessary foundation has
22 been laid for him to make a---

23 MR. ESKRIDGE: He's being accused of
24 breach of fiduciary duties and bad faith and everything,
25 Your Honor, I think we're entitled to show that there was

1 a rational, reasonable basis for the judgment he made not
2 to make, pursue any further claim against R. S. Jones and
3 Associates.

4 THE COURT: All right, I'll allow it.

5 BY MR. ESKRIDGE:

6 Q. After reading the NTSB report and any other
7 information that you've been able to obtain about the
8 circumstances of this crash, did you think that you as
9 Administrator of your wife's estate had any basis for a
10 suit against R. S. Jones and Associates?

11 A. No, sir, I didn't feel that I did.

12 MR. ESKRIDGE: All right, sir, you may
13 ask, Mr. Earls.

14 MR. EARLS: Thank you.

15 CROSS EXAMINATION

16 BY MR. EARLS:

17 Q. Mr. Jones, first of all, when you were up here,
18 The Judge encouraged you go out, and you were being
19 removed as Administrator of your wife's estate, the Judge
20 encouraged you to go out and get an attorney, didn't he?

21 A. Yes, sir, he did but, he didn't give me a week
22 to do it in.

23 Q. Well,---

24 A. He said I should go get an attorney.

25 Q. Right. And, he also advised you that he'd give

1 you 21 days to set that order aside, didn't he?

2 A. Yes, sir, I had 21 days to.

3 Q. And, you didn't do that, did you?

4 A. No, sir, I did not.

5 MR. EARLS: I refer to that scenario in
6 the transcript of the hearing, Page 23, actually starting
7 on Page 22, the scenario with The Judge and Mr. Jones.

8 THE COURT: I appreciate you bringing
9 that out. It makes me look a little better, I'm serious,
10 I'm serious.

11 MR. EARLS: Well, this man's acting like
12 he's---

13 THE COURT: Well, I appreciate that, I
14 had forgotten I had been so judicial.

15 MR. EARLS: You did everything but beg
16 him to go out and get one and some people would, in any
17 event---

18 BY MR. EARLS:

19 Q. Mr. Jones, did you appear at the settlement
20 before Judge Fugate?

21 A. Yes, sir, I did.

22 Q. That was not in this courtroom, was it?

23 A. I can't recall where it was.

24 Q. It was down in Lee County, wasn't it?

25 A. I can't recall.

1 Q. Are you telling this Court that you cannot
2 recall, February of 1988, and you got \$50,000.00 whether
3 you were down in Jonesville or Wise?

4 A. No, sir, I can't remember what courtroom I was
5 in.

6 THE COURT: Well, let me say something
7 for the record. The Order is in the Circuit Court of the
8 County of Lee and then that's struck through and put Wise
9 some time later, February 17, 1988, I'll bet you it was
10 down in Lee County, folks.

11 MR. ESKRIDGE: It may have been, Your
12 Honor.

13 THE COURT: The Petition for Compromise
14 was not filed in This Court by Gracie Hensley, our Deputy
15 Clerk until February 24, 1988 which was after Judge Fugate
16 signed the order. It was done in Lee County, I'll bet
17 you.

18 MR. EARLS: It was done right in Lee
19 County.

20 MR. ESKRIDGE: It probably was.

21 THE COURT: Okay. Whatever that's
22 worth.

23 MR. EARLS: The Court, I assume that
24 that's considered by---

25 THE COURT: Just unusual that---

1 MR. EARLS: That's considered by The
2 Court, the Order, I need not submit my copy of it.

3 THE COURT: The Order is in the file.

4 BY MR. EARLS:

5 Q. Now, you talked about the attorney being Walt
6 Turner, is that correct?

7 A. Yes, sir.

8 Q. And, do you know what his full name is?

9 A. Frankly, I'm not sure.

10 Q. Isn't it true, it's Walter W. Turner, isn't that
11 true, over in Salyersville, Kentucky?

12 A. If you say so.

13 Q. I'm just asking.

14 A. I just knew him as Walt Turner.

15 Q. Okay, and is that not also the attorney that R.
16 S. Jones and Associates used as their company attorney?

17 A. They had never used him before, not that I'm
18 aware of.

19 Q. Would you tell The Court how it came about that
20 you went to Salyersville, Kentucky for a death case that
21 occurred in Florida?

22 A. I talked with a couple of other attorneys, Walt
23 seemed to have a better understanding of what was going
24 on, he was willing to do more research to put the case
25 together than the others were willing to do.

1 Q. And, I think you also talked with Denver
2 Browning who is his father-in-law, isn't that correct?

3 A. Yes, I did, I certainly did.

4 Q. And, I think Denver Browning is a stockholder in
5 the company you work for, isn't he?

6 A. Yes.

7 Q. And, Denver suggested that his son-in-law be
8 used, didn't he?

9 A. I talked with Denver about it, I said, you know,
10 I've talked with several other attorneys and I'm not
11 receiving any satisfaction. He said, perhaps you should
12 talk with Walt.

13 Q. All right, now, what satisfaction weren't you
14 getting?

15 A. Well, I talked with a couple of other attorneys,
16 they seemed just, either not interested or too busy to
17 fool with it or not willing or something.

18 Q. Isn't it true, Mr. Jones that they told you were
19 going to have to sue R. S. Jones and Associates, your
20 employer?

21 A. No, sir.

22 Q. None of them ever told you that?

23 A. No, sir, they told me I had a very good case
24 against Textron, against Avco Licoming.

25 Q. And, they didn't say anything about having a

1 lawsuit against R. S. Jones and Associates?

2 A. No, sir.

3 Q. Now, you say you have read the report, the
4 factual report Aviation Accident and Incident filed by the
5 National Transportation and Safety Board, is that correct?

6 A. Yes, sir.

7 Q. Did it show that this vehicle, that the aircraft
8 had been properly maintained?

9 A. Yes, sir, it did.

10 Q. It showed nothing wrong with the maintenance
11 records in the vehicle, in the aircraft?

12 A. Nothing.

13 Q. Did it show that there was a fully qualified
14 pilot piloting this aircraft?

15 A. It showed the pilot had a valid Class II
16 Medical Certificate with no FAA pilot's license.

17 Q. No license?

18 A. No license.

19 Q. The medical certificate doesn't have a thing to
20 do about piloting an aircraft, does it?

21 A. It's a necessary part but, no, it's not.

22 Q. Does not? And, I'm sure you're familiar with
23 the autopsy report submitted on Ben Jones, your brother,
24 aren't you?

25 A. Yes.

1 Q. And, you know that he could have never passed a
2 physical exam for a pilot's license, don't you?

3 MR. ESKRIDGE: Objection, your license,
4 there's no basis.

5 MR. W. JONES: That's all right, that's all
6 right, let him ask it.

7 MR. EARLS: It's stated, Your Honor.
8 It's stated so.

9 THE COURT: All right, there's no
10 objection, you may answer the question.

11 BY MR. EARLS:

12 A. My only knowledge of that is that he did have a
13 valid Class II Medical Certificate issued by an FAA
14 medical examiner. Is that not correct?

15 Q. Are you not familiar that the pilot had
16 extremely severe coronary artery disease with massive
17 myocardial infarction?

18 A. I read that in the report, yes, sir.

19 Q. And, the attorney, did you have these and show
20 these to the attorneys you talked to?

21 A. Yes, sir.

22 Q. And, what attorneys were they?

23 A. I talked with Tom Rasnic at one point about it,
24 a couple of other attorneys, I don't even remember their
25 names.

1 Q. You don't remember their names?

2 A. There was an attorney in Abingdon, which I
3 can't remember his name.

4 Q. Did Walt Turner advise you as to any liability
5 R. S. Jones and Associates may have?

6 A. No, sir, he was like I, he felt that had no
7 liability.

8 Q. And, did he advise you as to any collections
9 that you may be able to have above and beyond any
10 insurance coverage?

11 A. No, sir, I don't think so.

12 Q. Did they not, I take it that Walt Turner did not
13 discuss with you then that if there wasn't insurance
14 coverage, you could go after assets of Jones and
15 Associates?

16 A. No, I was aware that you could do that.

17 Q. All right.

18 A. If you thought you had a case.

19 Q. Did you discuss any insurances which Ben Jones
20 may have, your brother?

21 A. He had no insurance.

22 Q. Did you discuss with Mr. Turner about that?

23 A. Yes, I did.

24 Q. What was Turner's advice to you on that?

25 A. You can't get blood out of a turnip, this man

1 has nothing---

2 Q. Did Ben Jones not own a car?

3 A. He owned nothing.

4 Q. Had no ownership?

5 A. No.

6 Q. Did not discuss any assets?

7 A. There weren't any assets.

8 Q. Did you discuss his income?

9 A. He had no income.

10 Q. Did you all discuss Judy's income?

11 A. I can't recall.

12 Q. Do you know what she was making at the time?

13 A. No, sir, I don't.

14 Q. Did you all discuss what her probable life span
15 would have been if she would not have been killed in the
16 plane crash that your brother was piloting?

17 A. Yes, sir, we did.

18 Q. What did you determine that to be?

19 A. I don't remember but, we discussed it and that
20 was what the suit, not suit but the complaint was based
21 upon.

22 Q. You and you wife had been married for what, six
23 months?

24 A. Six months.

25 Q. And, she owned the house prior to you getting

1 married, didn't she?

2 A. Yes, sir.

3 Q. And, it was paid for, wasn't it?

4 A. Yes, sir.

5 Q. And, you did not make any payments towards the
6 house, did you?

7 A. No, sir, no.

8 Q. She did that in the job when she worked for
9 Wiley Carroll over at St. Paul, didn't she, or Castlewood?

10 A. I think so, I don't know. She owned the house,
11 clear of debt when I married her.

12 Q. And, you were aware that she had inherited some
13 \$17,000.00 from her father, weren't you?

14 A. No, sir, I wasn't aware of that.

15 Q. Were you aware that she had an education fund of
16 \$10,000.00 for her daughter, Christina?

17 A. Yes.

18 Q. Okay. Now, you had indicated that you had
19 discussed with Christina the \$15,000.00 (sic) settlement,
20 where did you discuss that with her?

21 A. At home, in the evenings after dinner, what have
22 you.

23 Q. Okay.

24 A. On weekends, you know, I can't give you specific
25 dates and times but, we discussed it numerous times

1 throughout the course of the negotiations.

2 Q. Did you ever discuss with her possible
3 liabilities for a company that allows an unlicensed pilot
4 to fly their aircraft?

5 A. I think we had talked about that, too.

6 Q. How many times did you all talk about that?

7 A. I'm not sure, I'm not sure how many times we
8 talked about the other.

9 Q. Did you tell them that R. S. Jones and
10 Associates may be in trouble because they let Ben---

11 A. I don't remember saying that, no.

12 Q. Or words to that effect?

13 A. No, I can't remember saying that.

14 Q. Did you ever talk with her about the liability
15 of R. S. Jones and Associates?

16 A. I can't recall.

17 THE COURT: Did you know your brother
18 Ben didn't have a FAA license?

19 MR. W. JONES: No, sir, I did not.

20 THE COURT: Did anybody in the company
21 know it?

22 MR. W. JONES: No, sir.

23 THE COURT: How did he sneak by and do
24 that, how did he get away with that?

25 MR. W. JONES: I don't know. I had flown

1 in that plane with Ben for years.

2 THE COURT: Did he have a license or did
3 you ever see a license?

4 MR. W. JONES: I have seen him produce a
5 license, yes, and he was carrying an invalid license at
6 the time of the crash.

7 MR. EARLS: The FAA doesn't show it.

8 THE COURT: FAA doesn't show what?

9 MR. W. JONES: I think it's in the report.

10 BY MR. EARLS:

11 Q. Did the FAA report show that he ever had a valid
12 license for the type aircraft that he was driving?

13 A. No, it did not.

14 Q. It shows he never had been licensed to pilot
15 that type of craft, didn't it, that is a double engine
16 aircraft?

17 A. That is correct, that is what the report said.

18 Q. Right. And, how long had your company allowed
19 him to pilot that craft?

20 A. He had flown that aircraft since we had it.

21 Q. Did you look at the insurance policy that R. S.
22 Jones and Associates had on this aircraft?

23 A. No, sir, I didn't.

24 Q. You didn't look at it?

25 A. No, I hadn't looked at it prior to the crash. I

1 looked at it after the crash, yes.

2 Q. Okay. And, where did you look at it at?

3 A. In our office.

4 Q. And, I think you and Bob were present?

5 A. I'm sure we were, yes.

6 Q. And, also was Mr. Turner there?

7 A. I can't recall, we had all discussed that.

8 Q. And, you had discussed it with Denver Browning,
9 too, hadn't you?

10 A. No, I don't recall Denver.

11 Q. Were you ever at a meeting with Bob or Mr.
12 Browning talking about the possible liabilities of Bob
13 Jones and Associates?

14 A. I'm sorry, I didn't understand your question.

15 Q. Did you ever discuss with your brother or with
16 Mr. Browning the possible liability of the company as a
17 result of this crash?

18 A. No.

19 Q. Never did?

20 A. No, sir.

21 Q. Did you discuss it with Turner?

22 A. Yes, sir and he and I---

23 Q. And, you never discussed it with your brother?

24 A. No.

25 Q. Nor with anyone---

1 A. I felt that R. S. Jones had no liability.

2 Q. Why do you feel that, sir?

3 A. They properly maintained the aircraft we were
4 traveling in. No one in the company was aware that the
5 man flying the airplane did not have a license. Everyone
6 assumed that he did. He was not an employee of the
7 company.

8 Q. By whom was he employed?

9 A. He worked on a contract basis.

10 Q. Wasn't he listed on the insurance policy as the
11 principal pilot?

12 A. Yes, he was. And, he piloted the aircraft.

13 Q. And, he was listed on that, they had, the
14 insurance company had assumed that obligation, isn't that
15 true?

16 A. Yes, sir.

17 Q. And, they knew that your brother, Ben, would be
18 piloting that aircraft?

19 A. Yes, sir.

20 Q. Now, in the big settlement, the \$350,000.00
21 settlement, you knew that you had to appear before Judge
22 Fugate on it, didn't you?

23 A. No, I didn't know who we had to appear before.

24 Q. Well, didn't you appear before him?

25 A. No, not on the \$350,000.00 settlement.

1 Q. You knew that you had to on the \$50,000.00?

2 A. I don't know whether I had to on it or not. I
3 was told to be there and I was there, yes.

4 Q. Did you appear before him on the, let's go back
5 again, you did appear before him?

6 A. Yes, I did.

7 Q. You just can't remember whether it was Wise or
8 Jonesville?

9 A. No, I don't.

10 Q. All right. Are you aware that Walt---

11 THE COURT: What lawyer was there?

12 MR. W. JONES: Walt Turner was there and
13 the attorney for Avemco was there. I'm not sure who else.

14 THE COURT: Was there a Virginia lawyer
15 there?

16 MR. W. JONES: Yes, Cynthia Kinser.

17 THE COURT: Cynthia Kinser.

18 BY MR. EARLS:

19 Q. Who did Cynthia Kinser represent?

20 A. She was there on my behalf.

21 Q. Cynthia Kinser represented you on your behalf on
22 this particular day before Judge Fugate?

23 A. Yes.

24 Q. Do you recall if she signed an Order?

25 A. No, I don't recall.

1 MR. EARLS: I'd ask The Court to look
2 at the Order dated February 17, 1988 recorded in Book 52,
3 Page 145 and note that R. S. Jones and Associates was
4 represented by Walt W. Turner that this man had taken
5 advice from and been advised by. I would assume The
6 Court's copy has the second sheet.

7 THE COURT: It's out of order, it's in
8 here, though, I remember you showing that to me before, I
9 remember that now. That's right.

10 MR. EARLS: It's in The Court file.

11 THE COURT: There's the second sheet
12 but, it's out of order. I assume, it's signed by Kathryn
13 A. Ledig, Virginia Bar Number 025724, that's the attorney
14 from Virginia, a Falls Church lawyer who doesn't know the
15 law and Walter W. Turner.

16 MR. ESKRIDGE: Yes, sir, I believe you're
17 looking at the Petition to Compromise and not the Order.
18 The Order doesn't appear to be endorsed by anyone.

19 THE COURT: Well, I'm assuming, which
20 you know what that means that this was not attached but, I
21 don't know. The Order I have really, there's nothing
22 attached to it, nobody signed it except Judge Fugate.

23 MR. ESKRIDGE: Well, I think there's a
24 second page to it, at least according to the Order Book.

25 THE COURT: Where is it? Oh, that's on

1 the back here then, I guess.

2 MR. ESKRIDGE: In the Order Book it's the
3 second page.

4 THE COURT: Well, it's on the back, yes,
5 okay.

6 MR. EARLS: Let's see what is on it.

7 THE COURT: Carol Jones, Corporate
8 Secretary. What in the world, well, no, I assume this
9 order is where, what's that is suppose to be attached to.
10 I guess that's part of the Notice of Motion, Petition for
11 Compromise, I'd say you're right.

12 MR. ESKRIDGE: The other is in the Petition
13 to Compromise.

14 THE COURT: Yes, okay. Okay.

15 MR. EARLS: On that particular day, we
16 apparently didn't get the second copy but,---

17 BY MR. EARLS:

18 Q. On that particular day, there were actually two
19 checks, one for \$50,000.00 and one for \$45,000.00, is that
20 correct?

21 A. I'm only aware of the check for \$50,000.00.

22 Q. You were not aware of the fact that your company
23 received a check for \$45,000.00, your Employer?

24 A. No, I am not.

25 Q. Your brothers have not talked about that? If

1 there were only a \$100,000.00 in insurance coverage, that
2 would have been \$5,000.00 short of the entire amount,
3 wouldn't it?

4 A. I don't understand what you're saying. What are
5 you saying?

6 Q. Well, how much coverage was there for---

7 A. One hundred thousand dollars per person for
8 accidental death.

9 Q. All right. Do you know why your company, your
10 brother's company would receive \$45,000.00 as a result of
11 the death of your wife?

12 MR. ESKRIDGE: I object to the question.
13 There's no evidence yet before The Court that that's a
14 fact.

15 MR. EARLS: Well, may I make a copy of
16 this, do you mind?

17 MR. ESKRIDGE: Absolutely, you'll find out
18 that \$45,000.00 wasn't for that.

19 MR. EARLS: Well, Your Honor, I think
20 that whatever it is for, this man should testify, he said
21 he was there.

22 MR. ESKRIDGE: He didn't know what it was
23 for.

24 MR. EARLS: He said he was there and I
25 just want to know what went on at the hearing.

1 THE COURT: Did he say, I didn't hear
2 him, I was making notes and I didn't hear what he said,
3 what did you say?

4 BY MR. EARLS:

5 Q. You did attend the hearing where the checks were
6 dispersed?

7 A. Yes.

8 Q. There were two checks, were there not?

9 A. I don't know. I know there was one check for
10 \$50,000.00.

11 Q. Okay, well who picked the checks up?

12 A. The one I received.

13 Q. Who picked the checks up?

14 A. I don't know of any other checks.

15 Q. Who gave you your check?

16 A. Avemco Insurance.

17 Q. Who is Carol Jones?

18 A. That is my sister-in-law and as you say,
19 Secretary for the Corporation.

20 Q. Who is her husband?

21 A. My brother, Bob Jones.

22 Q. Do you know that she picked up both checks?

23 A. No, I don't think she picked up both checks.
24 She was there at the hearing with me, yes.

25 MR. EARLS: Your Honor, I want to

1 introduce the Certificate at the bottom of the Order, the
2 Certificate signed by Carolyn Jones.

3 THE COURT: It's part of the Order
4 already. It's in the record.

5 MR. ESKRIDGE: Yes, Your Honor, I have no-
6 -

7 MR. EARLS: It should be.

8 THE COURT: It's in the record, it's on
9 the back of the Order.

10 MR. EARLS: All right.

11 MR. ESKRIDGE: No objection to that, Your
12 Honor, in fact, I simply want to make sure that we get a
13 copy of the entire Court File on that proceeding,
14 properly authenticated and made a part of The Court File
15 in this proceeding. Of course, the---

16 THE COURT: Well, we're trying this
17 together, too.

18 MR. ESKRIDGE: I know, absolutely but,---

19 MR. EARLS: Yes, I, too, want it to be a
20 part, I join in that motion.

21 THE COURT: It shall be done.

22 MR. ESKRIDGE: All right, sir.

23 MR. EARLS: In other words---

24 THE COURT: And, you all make sure that
25 it's done. I'll leave that to your alls efforts as I

1 always leave court orders for everybody to sign to the
2 lawyers to make sure that happens, too.

3 MR. EARLS: That's right.

4 BY MR. EARLS:

5 Q. Isn't it true, Mr. Jones, that your sister-in
6 law delivered the \$50,000.00 check to you?

7 A. No, sir, I don't think so. I believe I remember
8 Avemco giving me that check.

9 Q. All right, sir. And,---

10 A. I'm not real sure but, as best as I can recall,
11 they gave me that check that day of the hearing.

12 Q. All right. And, it's also your testimony here
13 today that the person who represented you in the
14 settlement, the \$350,000.00 settlement is Walt Turner?

15 A. No, sir, Ron Dunnagon represented me.

16 Q. Ron Dunnagon. And, I think he was an associate
17 of Mr. Turner's or Turner turned the case over?

18 A. I don't know what their relationship is.

19 Q. All right, but, who had given you the advice,
20 was that Walt Turner?

21 A. Yes, in this matter he had.

22 Q. Did you seek, is that in both settlements?

23 A. No, that is in the first settlement.

24 Q. All right, who gave you the advice on the second
25 settlement?

1 A. Ron Dunnagon.
2 Q. Ron Dunnagon?
3 A. Yes.
4 Q. And, when did you meet with him?
5 A. I can't give you precise dates.
6 Q. And,---
7 A. We had met and talked on a couple of different
8 occasions.
9 Q. And, where was this that you met?
10 A. I'm not even sure, I think we met at Pennington
11 Gap.
12 Q. And, would that have been Mr. Browning's office,
13 again?
14 A. Very likely, I'm not sure.
15 Q. Okay. And, did you question as to Mr. Dunnagon
16 as to what his association was in the case?
17 A. No, sir.
18 Q. Do you know where---
19 A. His association was that he representing me in
20 the case.
21 Q. All right. And, how did he come about to be
22 representing you in the case?
23 A. He had taken over the case from Mr. Turner,
24 Turner had been appointed to a judgeship and Dunnagon had
25 taken over the case for him.

1 Q. Okay, and that was with your agreement?

2 A. Yes, sir.

3 Q. And, I think he was introduced to you by Mr.

4 Turner's father-in-law, is that correct?

5 A. No, I think he was introduced to me by Mr.

6 Turner.

7 Q. By Mr. Turner?

8 A. Yes.

9 Q. Now, you were talking about signing the house
10 that Judy owned prior to you all getting married over to
11 Christina. Isn't it a fact that you received a letter
12 from attorney Linda Tiller in St. Paul prior to doing
13 that?

14 A. No, I don't remember receiving anything from
15 her.

16 Q. You received no communication or letters from
17 Linda Tiller?

18 A. No, sir, I don't remember getting anything.

19 Q. You've never received a notification from any
20 attorney, other than myself, representing Christina in her
21 mom's estate matters?

22 A. No, sir.

23 Q. No? Now, when did you and Christina part your
24 ways?

25 A. Mid October, 1988.

1 Q. And, why was this?

2 A. Because I remarried.

3 Q. Okay.

4 A. I might add that it was not my decision for us
5 to part company, she told me she didn't want to talk to
6 me again because I had remarried.

7 Q. You did not give her any part of her mom's car
8 when you sold it, did you?

9 A. No, sir. I paid the car off and I sold it.

10 Q. Was there not life insurance on the car?

11 A. No, sir.

12 Q. Okay. How much was owed on it?

13 A. As I recall, \$8,800.00 at the time of her
14 mother's death.

15 Q. And, how much did you get out of it?

16 A. I got \$5,000.

17 Q. Eighty-eight hundred was owed and you sold it
18 for five thousand?

19 A. Yes, sir. I just sold it this Spring.

20 Q. Okay.

21 A. The car had 80,000 miles on it or something.

22 Q. Isn't it true that Christina offered to make the
23 payments on the car?

24 A. Yes, she did.

25 Q. All right. Who did you sale the car to?

1 A. I sold it through a dealer in Pennington Gap to
2 an individual, I don't know who the individual was but,
3 the dealer who sold it for me was Jones Chevrolet, no
4 relation, I might add.

5 Q. Jones Chevrolet?

6 A. Yes, sir. There's a lot of Joneses involved
7 here.

8 Q. Now, in the second settlement, do you know how
9 much Mr. Turner got?

10 A. Turner and Dunnagon together received
11 \$80,000.00, the attorney fees for that settlement were
12 \$80,000.

13 Q. Okay. Now, Dunnagon was partners with Mr.
14 Turner?

15 A. I don't know what their relationship was?

16 Q. You never inquired?

17 A. No, sir.

18 Q. Do you know why the check was made to both
19 Dunnagon and Turner?

20 A. No, sir, I don't.

21 Q. You know the Dunnagon was listed as counsel for
22 Christina, don't you?

23 A. I don't remember, was he?

24 Q. Who represented Christina?

25 A. I don't know, apparently Dunnagon did.

1 Q. I'm asking, do you know?

2 A. No, I don't know who represented her.

3 Q. Who represented you?

4 A. Walt Turner and Ron Dunnagon, had from the
5 start.

6 Q. Who represented Jones and Associates?

7 A. Walt Turner and Ron Dunnagon, as you will see by
8 the settlement, they are the only two attorneys listed,
9 are there not?

10 MR. EARLS: Does The Court have the
11 Petition in that case showing who filed the Petition?

12 THE COURT: Yes, I'm reading it right.
13 now, William Jones signed it and Walter Turner, Attorney,
14 and Kathryn Ledig, both of them representing R. S. Jones
15 and Associates, both attorneys and William Jones signed
16 personally as representative to the Estate of Judy Jones,
17 that's Petition to Compromise.

18 MR. EARLS: Seen and agreed is on the
19 Petition?

20 THE COURT: Yes, that's, I assume it's
21 on the Petition for Compromise. I don't know whether
22 that's on the Order, Mr. Earls or on the Petition, I
23 really don't because this file has been tampered with, by
24 that I mean it's been stapled and it's been unstapled,
25 it's been stapled and unstapled and there are staples in

1 the Order as well as the Petition for Compromise and I
2 don't know what the back pages are. Although, I notice
3 the only Book and Page number that's stapled onto the
4 Order is on the Order but not on the Notice of Motion for
5 Petition for Compromise nor on that back page that shows
6 the endorsements of the two attorneys so, I assume that
7 was not made part of the Court's Docket Book.

8 MR. HARRIS: If I may interject
9 something, Your Honor, the Seen and Agreed the type does
10 not match the type on the Order, it's considerably larger,
11 it does match the type on the Petition for Compromise.

12 THE COURT: Your expertise is duly
13 noted, you weren't under oath either but, that's all
14 right.

15 MR. EARLS: I can't believe that Judge
16 Fugate would not have an endorsement on an Order
17 approving---

18 THE COURT: Well, there's a lot I can't
19 believe about the Order but, I, let's not talk about that
20 right now, please, not in this courtroom, anyway, that's
21 for Appellate Courts to talk about, not Circuit Court.
22 Let's take a ten minute break.

23 OFF RECORD

24 MR. EARLS: Thank you, Judge.

25

1 BY MR. EARLS:

2 Q. Now, Mr. Jones, you're a graduate from college?

3 A. Yes.

4 Q. In police science?

5 A. Yes.

6 Q. A graduate of East Tennessee State University?

7 A. Yes, sir.

8 Q. And, then you attended law school for a while?

9 A. No, sir, I didn't.

10 Q. You did not?

11 A. No. I attended graduate school for a while at
12 East Tennessee State.

13 Q. And, what was that field in?

14 A. In Public Administration.

15 Q. Are you familiar with fiduciary relationships?
16 Do you know what a fiduciary is?

17 A. Yes, sir, I know what that is.

18 Q. You qualified as Administrator of Judy's Estate?

19 A. Yes, sir.

20 Q. You understood that you had a fiduciary
21 relationship to her daughter, Christina, did you not?

22 A. Yes.

23 Q. And, in any of this, did any of your attorneys
24 that you consulted talk to you about your fiduciary
25 relationship that you had to Christina?

1 A. Yes.

2 Q. And, which attorneys was that?

3 A. Walt Turner and I discussed that, Walt Turner
4 and I had discussed that.

5 Q. Walt Turner who represented R. S. Jones and
6 Associates?

7 A. Yes, sir, and myself.

8 Q. All right. And, you knew of your fiduciary
9 duties to your step-daughter, Christina?

10 A. Yes.

11 Q. Did anyone ever discuss with you a possible
12 conflict, you being an employee and a brother to the owner
13 of R. S. Jones and Associates, an employee of R. S. Jones
14 and Associates and your duties as a fiduciary to
15 Christina?

16 A. No, sir.

17 Q. Did you discuss this with Christina?

18 A. No, sir. I didn't feel there was any conflict.

19 Q. Had anyone told you there was no conflict?

20 A. No, sir.

21 Q. Did Mr. Turner tell you there wasn't?

22 A. No, sir.

23 Q. What did he tell you as far as your fiduciary
24 duties to Christina when he advised you?

25 A. I can't recall precisely but---

1 Q. Just to the best of your recollection, not
2 precisely?

3 A. He just explained that I was as Executor of the
4 Estate, was to pursue the best interest of the Estate and
5 to pursue the best interest of Christina.

6 Q. Do you know the assets of R. S. Jones and
7 Associates?

8 A. No, sir, I do not.

9 Q. Did you ever inquire?

10 A. No, sir.

11 Q. Did Mr. Turner ever talk to you about inquiring
12 as to their assets?

13 A. No, sir.

14 MR. EARLS: That's all I have, Judge.

15 THE COURT: What is your capacity with
16 R. S. Jones and Associates.

17 MR. W. JONES: I am the Superintendent.

18 THE COURT: Let's go a little bit
19 further. Are you a Vice-President, President, Secretary,
20 Treasurer?

21 MR. W. JONES: I'm not a office holder.

22 THE COURT: Not an office holder, are
23 you a stockholder?

24 MR. W. JONES: No, sir. Field
25 Superintendent.

1 THE COURT: Field Superintendent?

2 MR. W. JONES: Yes.

3 THE COURT: You are an employee?

4 MR. W. JONES: Yes, sir.

5 THE COURT: All right.

6 RECROSS EXAMINATION

7 BY MR. ESKRIDGE:

8 Q. Are you aware of any money which R. S. Jones and
9 Associates have gotten out of your wife's death, by reason
10 of your wife's death?

11 A. No, sir, only what we have discussed here today.

12 Q. And, what we've discussed here today, no money
13 went to R. S. Jones and Associates because of Judy's
14 death?

15 A. No, sir.

16 MR. ESKRIDGE: All right, sir, thank you
17 very much.

18 THE COURT: The only money that we
19 received by R. S. Jones and Associates was money for the
20 aircraft, the destruction of the aircraft?

21 MR. W. JONES: Yes, sir, hull damage to the
22 aircraft.

23 MR. ESKRIDGE: That's all I have, Judge.

24 MR. EARLS: I have a question on that.

25 MR. ESKRIDGE: Oh, excuse me.

RECROSS EXAMINATION

BY MR. EARLS:

Q. Are you aware of an agreement and I think you've indicated you've signed it, Mr. Jones, dated May 22, 1989 wherein R. S. Jones and Associates got \$35,000.00?

A. Yes, sir, I'm aware of that.

Q. Wasn't that because of this plane crash you wife died in?

A. Yes, sir.

THE COURT: It was for the damage to the aircraft, correct?

MR. EARLS: No, I don't think it was.

MR. W. JONES: Yes, sir, it was. There is no other reason.

BY MR. EARLS:

Q. Well, you were not aware then that they had already gotten a check on what you and Christina got \$50,000.00 on?

A. Yes, sir, I was aware it.

Q. I thought you said a while ago you weren't?

A. I said I was not aware of the check being given to anyone that day. I was aware of the settlement and the agreement.

Q. Did Mr. Turner talk to you that if a insurance company feels they don't have a claim they go ahead and

1 pay out all but \$5,000.00 of their benefits?

2 A. No, we didn't discuss that.

3 THE COURT: The agreement you signed
4 which is R. S. Jones Number 1 Exhibit dated May 22, 1989,
5 release agreement which you signed says that this
6 agreement shall be presented to the Lee County Virginia
7 Circuit Court or another court of jurisdiction with
8 Petition for Compromise to request approval of the
9 settlement and the agreement to the distribution of
10 proceeds is set forth herein. Did you see that that was
11 ever done?

12 MR. W. JONES: No, sir.

13 THE COURT: Did you read the agreement,
14 did you understand that?

15 MR. W. JONES: Yes.

16 THE COURT: Why didn't you follow
17 through?

18 MR. W. JONES: I have asked Ron Dunnagon
19 once or twice since then when it was going to be presented
20 for Court approval and I never received any satisfaction
21 as to when it was going to.

22 THE COURT: He's a Kentucky lawyer?

23 MR. W. JONES: Yes, sir.

24 THE COURT: Where are they today, where
25 are these Kentucky lawyers? I sure would like to see

1 them.

2 MR. W. JONES: In Kentucky, I think.

3 THE COURT: In Kentucky where they're
4 going to stay.

5 BY MR. EARLS:

6 Q. Pursuant to the agreement and follow-up to the
7 Judge's question, do you know what Walt Turner was being
8 paid \$80,000.00 for?

9 A. Yes, sir, I do. It's for representation.

10 Q. Of whom?

11 A. Of myself and Christina and R. S. Jones and
12 Associates.

13 Q. And, what was Mr. Dunnagon being paid for?

14 A. The same.

15 Q. And, both of these attorneys are from where?

16 A. From Lexington, Kentucky.

17 AND FURTHER THIS WITNESS SAITH NOT.

18 THE COURT: They do things different in
19 Kentucky than they do in Virginia, obviously.

20 MR. ESKRIDGE: Anything else?

21 THE COURT: No.

22 MR. ESKRIDGE: Bill, come around, Bob,
23 would you take the witness stand?

24

25

1 R. S. JONES

2 a witness, having been duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ESKRIDGE:

6 Q. You are the R. S. Jones of R. S. Jones and
7 Associates?

8 A. That's correct.

9 Q. Do you normally go by Bob, Bob Jones?

10 A. Bob.

11 Q. What office do you hold with R. S. Jones and
12 Associates?

13 A. President.

14 Q. Are you a shareholder of R. S. Jones and
15 Associates?

16 A. Yes, I am.

17 Q. And, approximately what percentage of the stock
18 do you own?

19 A. Thirty five percent.

20 Q. Is your wife an officer in the company?

21 A. Yes, she is.

22 Q. And, what is your wife's name?

23 A. Carol.

24 Q. And, what is Carol's office in the company?

25 A. She's Secretary.

1 Q. And, has she been secretary say for the last two
2 or three years at least?

3 A. Yes.

4 Q. The Arrow Commander aircraft that this case
5 involves was owned by R. S. Jones and Associates,
6 Incorporated?

7 A. That's correct.

8 Q. Were you aware prior to the crash of that
9 aircraft that Ben Jones did not have a valid FAA license
10 to fly an aircraft?

11 A. No, I was not.

12 Q. Did you believe that he had one?

13 A. Yes, I had flown with him in airplanes ever
14 since I was nine years old.

15 Q. Had you ever seen a, what appeared to be a
16 license, had you ever seen him produce a license?

17 A. Yes.

18 Q. To your knowledge, was a license in his
19 possession or on the plane, a piece of paper that
20 appeared to be a license in his possession on the plane at
21 the time of the crash?

22 A. Yes.

23 Q. Have you seen it since the crash?

24 A. Yes.

25 Q. Was there anything on close inspection that

1 seemed to be wrong with it?

2 A. At which time?

3 Q. After you saw it when you saw it after the
4 crash?

5 A. I didn't closely inspect it after the crash. It
6 was blood stained and so forth and so on and I just looked
7 at it.

8 Q. But, it appeared to be a FAA license?

9 A. It was in a plastic bag and it said FAA on it
10 and it appeared to be an FAA pilot's license.

11 Q. Did it have Ben's name on it?

12 A. Yes, it did.

13 Q. Do you know whether Ben had a valid medical
14 certificate to be flying the plane at the time of the
15 accident?

16 A. Yes, he did.

17 Q. Did you have any inkling or any idea before
18 this crash that Ben did not have a valid FAA license?

19 A. No, I did not.

20 Q. What kinds of planes had you flown with Ben in?

21 A. I've flown in a Cessna (phonetic) 421, a Cessna
22 414, a Cherokee 6, a Maryland 3B Turbo-jet, a Leer 25.

23 Q. Is that a jet?

24 A. Yes.

25 Q. When I said flew with, was he piloting all of

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 those planes when you were with him?

2 A. Yes. An Arrow Commander 500U, an Arrow
3 Commander 698, an Arrow Commander 890C, an Arrow Commander
4 700 or a 770, a Cheyenne 2, Navaho, a Beachcraft P-58, a
5 pressurized Beachcraft twin engine airplane, a B-51
6 Mustang which is World War II fighter plane that he flew
7 in air shows and a AT6.

8 Q. What type of aircraft is that?

9 A. An AT6 is a World War 2 type attack, torpedo
10 type bomber and it is also used for a trainer, he would do
11 an air show in Washington at Dulles Airport and then
12 returned it to, most of the show was in Mississippi where
13 it originated from.

14 Q. Was he an accomplished pilot in your judgment?

15 A. Yes.

16 Q. Have you ever taken pilot's training yourself?

17 A. Yes.

18 Q. What was the approximate value of the Arrow
19 Commander that was involved in this crash immediately
20 before it crashed?

21 A. Approximately \$125,000.00 at this time.

22 Q. Did you have insurance on the, what was the, did
23 you have insurance on the hull, a certain, subject to a
24 certain deductible?

25 A. Yes.

1 Q. Do you remember how much your deductible?

2 A. The deductible was \$1,000.00.

3 Q. When did it first come to your attention that
4 Ben may not have had a valid FAA license?

5 A. It was after the crash, probably a couple of
6 weeks.

7 Q. And, how did that come to your attention?

8 A. The firm representing Avemco Insurance which was
9 named Loss Management was investigating the crash and they
10 kept calling back to our office to get more information on
11 Ben, different types of names, his name was Ben Allen
12 Jones, they wanted to know if he would be listed under
13 Allen B. Jones or whether he would be listed under Ben
14 Allen Jones and at that time they told me that at the time
15 he would received his pilot's license which was
16 approximately 1957---

17 MR. EARLS: I would object, that would
18 be hearsay, Judge.

19 MR. ESKRIDGE: Well, Your Honor, it's going
20 to state of mind. I agree that it's hearsay as far as
21 it's substances of the truth is concerned but, in terms of
22 the decisions that were made to compromise these claims
23 based on the questions of insurance coverage, I think it
24 goes to matter of intent in his belief and knowledge.

25 THE COURT: I'll allow it.

1 BY MR. ESKRIDGE:

2 Q. Go ahead.

3 A. At the time that he would have received a
4 pilot's license, approximately 1957 to 1958, some of that
5 information would be stored in Washington under a new
6 computer system and then the other information would be
7 stored, I think in Tulsa, Oklahoma and they wanted to
8 cross check on these different names and I kept getting
9 these calls as to how the license would be listed.

10 Q. Did they tell you were they were ever able to
11 find an indication that the FAA had ever issued a license
12 to Ben Jones?

13 A. They told me that they were not able to find a
14 license issued to Ben.

15 Q. What about the license, the number on the
16 license that was in the plane or on his possession at the
17 time of the crash? Did they tell you whether that number
18 checked out with a valid---

19 A. The number did not check out and it liked one
20 digit being proper in the amount of digits that should be
21 on the number.

22 Q. All right, was there any language in the Avemco
23 policy that required that there be a pilot with a valid
24 FAA license flying the plane before that policy would
25 apply?

1 A. Yes, sir.

2 Q. Did Avemco refuse to pay you the full amount
3 less the \$1,000.00 deductible for the damage to your
4 aircraft?

5 A. Yes, sir.

6 Q. Did you enter into any sort of compromise
7 settlement with Avemco for the damage or loss of the
8 aircraft?

9 A. Yes, sir.

10 Q. Let me ask you this, was the aircraft
11 repairable, could it be fixed?

12 A. No, sir.

13 Q. How badly torn up was it?

14 A. I sold it for scrap.

15 Q. Do you remember how much you got out of it, just
16 to give the Judge some idea of what it was worth?

17 A. I had approximately \$900.00 or \$1,000.00 storage
18 involved in it and I gave it the storage lot owner to get
19 rid of it.

20 Q. So, it was entirely destroyed?

21 A. Yes.

22 Q. What arrangement or what settlement did you make
23 with Avemco for the loss of the aircraft and what
24 agreement or understanding, if any, did you have with them
25 about paying any of that back?

1 A. They paid R. S. Jones and Associates \$45,000.00
2 for the loss of the aircraft with an understanding that if
3 the, if we received anymore money for the sale of the
4 hull or any additional suits after that, that we would
5 repay \$10,000.00 of that to Avemco.

6 Q. Okay. Approximately when did Avemco pay the
7 \$45,000.00 to R. S. Jones and Associates?

8 A. In February of 1988.

9 Q. Was that at the same time that they settled with
10 Bill for Judy's death?

11 A. Yes, it was.

12 Q. Subsequently, as a result of negotiations with
13 USAIG, which insured the air, the Pompino Beach Air Center
14 and the Piedmont Aviation and Avco, did you reach a
15 settlement for additional monies on account of the
16 aircraft?

17 A. Yes, sir.

18 Q. And, how much money did R. S. Jones and
19 Associates get out of that settlement and how much did
20 Avemco get out of it?

21 A. Avemco got the \$10,000.00 that we had agreed to
22 and we received \$35,000.00.

23 Q. So, as I understand it, you got \$45,000.00 from
24 Avemco, you had to pay \$10,000.00 of that back, so you
25 netted \$35,000.00 there and you netted \$35,000.00 from

1 USAIG so you recovered \$70,000.00 of a \$125,000.00
2 aircraft, is that---

3 A. No, that's not correct.

4 Q. Okay. Would you explain it to The Judge how
5 much you ended up getting?

6 A. We recovered \$80,000.00. The original
7 \$45,000.00 that was paid, was paid with, I think this is
8 right, I would have to look at the agreement summation,
9 with the subrogation rights and when we settled with the
10 airplane manufacturer and the engine manufacturer at the
11 Service Centers that had serviced the airplane, then that
12 \$10,000.00 was paid to Avemco so, we received \$80,000.00.

13 THE COURT: My figuring says
14 \$70,000.00.

15 MR. ESKRIDGE: My figuring says \$70,000.00,
16 to, Judge.

17 THE COURT: Ten thousand from eighty is
18 seventy, the way I figure it.

19 MR. R. JONES: I think you're right, Judge.
20 I'm not taking \$10,000.00 off.

21 THE COURT: Yes, yes, yes, that's what
22 he asked you for, all right.

23 BY MR. ESKRIDGE:

24 Q. You got \$70,000.00 out of a \$125,000.00
25 airplane?

1 A. Yes.

2 Q. Are you aware of any monies that R. S. Jones and
3 Associates has gotten directly or indirectly because of
4 the death of Judy Jones?

5 A. No.

6 Q. All right, sir. Has, was Ben being paid a
7 salary by R. S. Jones and Associates?

8 A. No, he was not.

9 Q. Has his widow filed a Worker's Compensation
10 Claim against R. S. Jones and Associates claiming that he
11 was an employee at the time of his death?

12 A. Yes, she has.

13 Q. And, did the Industrial Commission rule that he
14 was or was not an employee?

15 A. They ruled that he was not an employee.

16 MR. ESKRIDGE: Answer Mr. Earls' question.

17 CROSS EXAMINATION

18 BY MR. EARLS:

19 Q. Who was listed as the pilot on your insurance
20 policy?

21 A. Ben A. Jones.

22 Q. And, is that the same one that was in fact
23 piloting it?

24 A. That's correct.

25 Q. How was he compensated for being a pilot?

1 A. He was paid for it on a contract basis by the
2 hour.

3 Q. How much was he paid to fly down to Florida on
4 this particular fatal trip?

5 A. He wasn't paid anything, he was dead at the time
6 he came back.

7 Q. How much had he been contracted to pay, to be
8 paid?

9 A. He was contracted to be paid \$15.00 for his
10 flight time plus his expenses.

11 Q. Was that flying time?

12 A. Flight time plus expenses.

13 Q. Okay. Now, you say that you sold the aircraft
14 for the scrap?

15 A. That's correct.

16 Q. You received no money for it at all?

17 A. The physical hull I sold for scrap. The hull
18 itself I was paid for. The physical part of the airplane,
19 I retained, by agreement with the insurance company and
20 got rid of it. They paid me for the airplane.

21 Q. How much?

22 A. Seventy thousand dollars.

23 Q. All right. And, then the scrap you sold for
24 what?

25 A. I didn't sale the scrap for anything. I gave it

1 away to the storage bill.

2 Q. All right. Now, Carolyn Jones is Corporate
3 Secretary, I think, for R. S. Jones and Associates?

4 A. That's correct.

5 Q. And, I think Judy Jones was an employee, is that
6 correct, on the payroll?

7 A. No, that's incorrect.

8 Q. She drew nothing at all from the company?

9 A. Judy Jones?

10 Q. Yes.

11 A. No, she was not employed by R. S. Jones.

12 Q. Did she draw anything from the company?

13 A. No.

14 Q. Do you know why she happened to be on the trip
15 with your brother, Ben?

16 A. She was on her way back from Florida with him
17 down there for the weekend.

18 Q. And, purchasing another plane, I think, is that
19 correct?

20 A. She and her husband were going to purchase, yes.

21 Q. And, do you know if that had in fact been
22 purchased?

23 A. Yes, it had.

24 Q. Okay. And, you just happened, went along for
25 the ride?

1 A. Yes, I went along for the ride.

2 Q. Now, you own thirty five percent of the stock,
3 is that correct?

4 A. That's true.

5 Q. Who owns the other sixty five percent?

6 A. My wife Carol owns 15 percent and Denver
7 Browning owns the remainder.

8 Q. Okay. So, Denver Browning is fifty percent
9 stockholder in R. S. Jones and Associates?

10 A. Yes.

11 Q. And, is this the same Denver Browning who is a
12 father-in-law to Turner?

13 A. To what Turner?

14 Q. Walt Turner?

15 A. Yes, it is.

16 Q. And, I think R. S. Jones and Associates, you're
17 the President of the company, is that correct?

18 A. That's right.

19 Q. I think that they have used Walt Turner on
20 occasions for corporate business purposes, is that
21 correct?

22 A. No, it's not.

23 Q. This was a one time deal?

24 A. We had talked to him in the past, we had never
25 used him on any particular case, we would seek legal

1 advice from him and in this particular deal right here, we
2 looked to some other attorneys for legal advice and we
3 decided not to use them.

4 Q. What other attorneys did you look to for legal
5 advice?

6 A. Carl McAfee was one.

7 Q. Okay, who else?

8 A. Cynthia Kinser in Pennington Gap.

9 Q. Anyone else?

10 A. That's all.

11 Q. Okay. When, do you recall when you talked with
12 Mr. McAfee and what he told you pertaining to the wreck?

13 A. We talked to Mr. McAfee shortly after the time
14 that we talked to Avemco and Loss Management about the
15 problem with the coverage on the airplane.

16 Q. All right. And, how about Ms. Kinser?

17 A. At that point in time, we had used Ms. Kinser in
18 our day to day operation and we had talked to her several
19 times on the telephone.

20 Q. Now, are there two Mr. Turners?

21 A. No, I don't know, there's probably two million, I
22 don't know how many.

23 Q. Well, you indicated which Turner and---

24 A. You said Mr. Turner, you didn't indicate what
25 Mr. Turner you were talking about.

1 Q. Are there any other Mr. Turner attorneys that
2 you're familiar with or Mr. Turner's individually that
3 you're familiar with that would know anything about this
4 particular plane crash?

5 A. No, sir.

6 Q. Did you talk with your brother Bill about the
7 liability your company may have by allowing Ben, an
8 unlicensed pilot, to pilot the craft?

9 A. No, sir.

10 Q. Had you studied the accident report?

11 A. I've looked over it, I haven't studied it, sir.

12 Q. Had you discussed with him some findings and
13 that is the damage to the craft?

14 A. I'm sorry, I didn't understand the question?

15 Q. The damage to the craft?

16 A. No, I haven't discussed with him the damage to
17 the craft, he and I both looked at the aircraft. We knew
18 how bad it was.

19 Q. Did you discuss with him the fact that the pilot
20 had extreme, severe coronary artery disease with a massive
21 myocardial infarction?

22 A. No.

23 Q. Were you not aware of the fact that your brother
24 Ben had had a massive coronary infarction or a heart
25 attack?

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 A. At what point in time?

2 Q. At anytime?

3 A. I was aware that he was in the hospital for some
4 kind of illness approximately seven or eight years prior
5 to this but, that's all. I was not aware of---

6 Q. You were not aware of the fact that that was a
7 heart attack?

8 A. No.

9 Q. What hospital was it?

10 A. He was in Knoxville in some hospital, I don't
11 know.

12 Q. And, you didn't go check on him?

13 A. No, I didn't go check on him.

14 Q. Who did your regular service work on this
15 craft?

16 A. Piedmont Aviation in Roanoke.

17 Q. And, to your knowledge, were all of the flight
18 logs current?

19 A. Yes, to my knowledge, they were.

20 Q. And, all the inspections?

21 A. Yes, sir.

22 Q. And, all the maintenance?

23 A. Yes, sir.

24 Q. Did you discuss with your brother Bill the
25 compromise settlement?

1 A. Which settlement?
2 Q. Either of them?
3 A. Yes.
4 Q. How many occasions did you discuss it?
5 A. I don't recall.
6 Q. Your best estimate, one, two , three, four?
7 A. I don't recall.
8 Q. Well, tell us about some of the discussions you
9 had.
10 A. What do you want to know about them?
11 Q. Tell us what you discussed?
12 A. Do you got a specific question or---
13 Q. Did you talk with him about amounts?
14 A. No.
15 Q. What did you talk about then?
16 A. We talked about settling this, getting it over
17 with, his wife was killed, my brother was killed and we
18 wanted to get it over with and forgotten about.
19 Q. All right.
20 A. And, here we are two years later still talking
21 about it.
22 Q. You never talked about the fairness of amounts?
23 A. No.
24 Q. Did you ever talk about the assets or R. S.
25 Jones and Associates?

1 A. No, we talked about, a while ago this was
2 misrepresented. The insurance per person on the airplane
3 was \$100,000.00 and that had absolutely nothing to do with
4 the hull insurance of the airplane. We talked about that
5 prior to ever reaching any settlement, ever finding out
6 any problem with the license or anything, okay? Then, at
7 a later date, we sat down in our office with Loss
8 Management and the Avemco attorneys and they told us what
9 they would agree to do when I told them, "Well, we will
10 see you in court." And I got up and walked out.

11 Q. What did they say they would agree to do?

12 A. The settlement that we got from them is what
13 they said that they would do.

14 Q. Had you retained Mr. Turner at the time?

15 A. No, I had not.

16 Q. Did you have any attorney advice at the time?

17 A. No, I did not.

18 Q. Okay, what did they agree to do at the time?

19 A. They agreed to pay \$50,000.00 to Judy's Estate,
20 to pay R. S. Jones \$45,000.00 for the loss of the aircraft
21 and to pay Ben A. Jones' Estate \$20,000.00.

22 Q. And, is that not what you ended up settling?

23 A. Yes, that's what I ended up settling for. That's
24 what Judy Jones' Estate ended up settling for.

25 Q. Why did you tell them you would meet them in

1 court?

2 A. Because I thought that we had a different
3 position than what we had. I seeked legal advice and I
4 found out we didn't have that.

5 Q. And, did that come from Mr. Turner?

6 A. Yes, it did.

7 Q. Whose father-in-law is half owner in your
8 company?

9 A. That's correct.

10 Q. Okay, how many offices do you have?

11 A. What kind of offices?

12 Q. R. S. Jones and Associates?

13 A. Well, I mean, what kind of offices, field
14 offices---

15 Q. Well, how many do you have of any kind?

16 A. Office of trailers or---

17 Q. How many different types of offices do you have,
18 Mr. Jones?

19 A. We have three different types of offices.

20 Q. What kind are they?

21 A. We have a office trailer, a field office and a
22 base office.

23 Q. Okay. How many base offices do you have?

24 A. One.

25 Q. And, that's located in Abingdon?

1 A. Yes.

2 Q. Is that in Washington County?

3 A. Yes.

4 Q. How many field offices do you have?

5 A. I don't know, I would have to count them up.

6 Let's see, right now we've got about six or seven.

7 Q. And, where are their locations?

8 A. They would be located in Wise County, Pound
9 area, one in Harman in Dickenson County, one in Haysi and
10 Harman, I said Dickenson County, that's in Buchanan
11 County, Haysi would be in Dickenson County and one in
12 Pennington Gap and one in Smyth County, Chilhowie.

13 Q. And, how many trailers?

14 A. We have one located in Keokee, that's in Lee
15 County. I'm sorry, the one in Wise County is a trailer,
16 is a field office trailer.

17 Q. Is that all?

18 A. That's all.

19 Q. Did you appear at any of the settlement hearings
20 that say Judge Fugate had?

21 A. As I recall, I went to a settlement hearing that
22 Judge Fugate had, yes.

23 Q. And, where was that?

24 A. I believe that was in the Lee County Courthouse
25 in Jonesville.

1 Q. Okay, and who all was there?

2 A. Myself, Cynthia Kinser, Walt Turner, Kathryn
3 Ledig, Robin Reagan, Judge Fugate and the Bailiff and I
4 think that was it.

5 Q. Okay, you didn't mention your brother Bill
6 Jones?

7 A. Maybe my brother Bill Jones and my wife, Carolyn
8 Jones.

9 Q. Okay, now who was attorney Ledig?

10 A. She was representing Avemco.

11 Q. And, who was the other attorney?

12 A. Walter Turner.

13 Q. And, that's all the attorneys?

14 A. Cynthia Kinser.

15 Q. Who was Cynthia representing?

16 A. She was representing William Jones and R. S.
17 Jones, I think. See, at that point in time, we were faced
18 with the fact that we thought that we did not have any
19 insurance coverage so therefore we felt like that we ought
20 to pursue this jointly. Loss Management's attorneys left
21 their office at the time that I was telling about awhile
22 ago, Big Stone Gap and filed a brief in Federal Court to
23 say that they weren't, were not going to cover the case at
24 all.

25 Q. And, you were served with---

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 A. After receiving legal advise, I was advised that
2 if we could settle for anything at all, we'd better settle
3 for it.

4 Q. You were served with papers in Federal Court?

5 A. Yes, sir, by Judge Williams in Big Stone Gap.

6 Q. Who represented you there, sir?

7 A. We settled the case before it got there. It's
8 also been refiled now so,---

9 Q. In Federal Court?

10 A. Yes, sir.

11 AND FURTHER THIS WITNESS SAITH NOT.

12 THE COURT: What?

13 MR. R. JONES: In Federal Court.

14 MR. ESKRIDGE: That's right, Your Honor,
15 there's a Declaratory Judgment Suit filed by Avemco in
16 Federal Court in Big Stone Gap against R. S. Jones, Bill
17 Jones and so forth seeking a declaratory judgment that
18 they had no coverage because Ben A. Jones was not a
19 licensed pilot. Before anything happened in that case,
20 they settled, they settled the underlying death case and
21 the hull case whereupon the Declaratory Judgment suit was
22 dismissed. The court file reflects that it was dismissed
23 because there had never been service of process. But, in
24 the last couple of weeks, there has been an order entered
25 at the behestment of Avemco reinstating that case on the

1 docket and allowing Avemco, I believe, to have service
2 process made.

3 MR. EARLS: Who represents Avemco in
4 this?

5 MR. ESKRIDGE: John Haggerty (phonetic)
6 from Washington, D. C. I might say, Your Honor, I don't
7 know if this will affect your decision and anything but,
8 I'm not hired by Avemco and served notice on Avemco that
9 I'm adverse to their position. I'm hired by R. S. Jones
10 and Associates, the Lacy West firm is hired by Avemco
11 extending this case under reservation of rights. I'm told
12 that if they win the Declaratory Judgment Suit that they
13 will withdraw.

14 THE COURT: All right.

15 MR. EARLS: Okay, that's all.

16 MR. ESKRIDGE: Judge, that's all the
17 evidence we have. I would like to argue the case if Mr.
18 Earls doesn't have anymore evidence.

19 MR. EARLS: I have some more evidence,
20 Your Honor. I'd like to call Carol Jones as an adverse
21 witness.

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAROL JONES

a witness, having been duly sworn, was examined and
testified as follows:

CROSS EXAMINATION

BY MR. EARLS:

Q. Tell the Court your name and address, please?

A. My name is Carol Jones and I live in Abingdon,
Virginia, 3835 Lee Highway.

Q. And, Ms. Jones, I think that you're the wife to
Bob Jones?

A. Yes, I am.

Q. And, you're also a fifteen percent shareholder
in R. S. Jones and Associates?

A. Yes, sir, I am.

Q. I think you're also the Corporate Secretary for
R. S. Jones and Associates?

A. Yes, sir, I am.

Q. Do you recall a meeting that occurred before
Judge Fugate on February 17, 1988?

A. Yes, I do.

Q. That involved the settlement concerning the
plane crash down at Pompino Beach?

A. Yes.

Q. And, do you recall, I want to show you the
certificate which states that on the 17th day of February,

1 1988, you received two checks from Avemco Insurance and
2 signed apparently by you, is that your signature?

3 A. Yes, it is.

4 Q. And, did you in fact receive those two checks?

5 A. Yes.

6 Q. And, to whom, did you deliver the checks to
7 anyone?

8 A. I don't know that I personally gave him two but,
9 I received the checks through overnight delivery and I
10 think I gave the check to Bill.

11 Q. When did you receive those checks?

12 A. I can't remember if it was in the afternoon of
13 the day that we were in court or shortly thereafter,
14 maybe the next morning or something. There was a delay.
15 I just didn't get them at the time that court was
16 adjourned.

17 Q. You did not get them day?

18 A. I don't remember. It was shortly thereafter,
19 within 24 hours.

20 Q. Where, but yet you went ahead and signed it that
21 day, did you not?

22 A. Yes.

23 Q. You did not have them in your hand at that time?

24 A. I don't remember. If I signed, I apparently
25 did.

1 Q. Okay. Do you recall where that meeting was
2 held?

3 A. The meeting was in Jonesville.

4 Q. And, that was before Judge Fugate?

5 A. Yes.

6 Q. Had there been any stockholders meetings, you're
7 also on the Board of Directors as Corporate Secretary, is
8 that correct?

9 A. That's right.

10 Q. And, you were at this time, I think?

11 A. Yes.

12 Q. How long had you been the Corporate Secretary?

13 A. Since the company's inception in 1984.

14 Q. Okay. And, do you recall if there had been any
15 corporate discussion about the qualifications of Ben Jones
16 as a pilot when he was listed on the, as the pilot of the
17 corporate aircraft?

18 A. No, I, too, had flown with Ben for years.

19 Q. Okay. And, do you know if there was any
20 discussion, any corporate discussion as to the liability
21 of R. S. Jones and Associates in regards to allowing Ben
22 Jones to pilot that craft?

23 A. No.

24 Q. No discussion at all?

25 A. No, do you mean with Mr. Browning?

1 Q. With anyone?

2 A. No.

3 Q. Never discussed?

4 A. Well, let me back up, I may have lost tract of
5 the question. You see, we had a smaller plane before
6 this, this larger aircraft that Bill was licensed to fly
7 and then we moved up to this larger aircraft and Ben was
8 capable of flying it and, you know, it was just the
9 natural thing.

10 Q. My question to you is this. At any
11 stockholders' or directors' or officers' meetings was the
12 discussion ever held after the fatal plane crash, was a
13 discussion ever had as to the corporate liability for
14 allowing Ben to fly?

15 A. Well, it was a blow, first of all, to discover
16 after you believe in someone and have put all of your
17 trust and faith and them that they suddenly don't have a
18 pilot's license and you were out in the cold. Yes, I
19 discussed that with my husband, you know, not only as a
20 stockholder but as man and wife.

21 Q. And, I think that you were concerned about the
22 liability that the company may have, were you not?

23 A. I was more concerned as to what had happened to
24 this family.

25

1 Q. To who's family?

2 A. To our family.

3 Q. What were you not concerned about the, what do
4 you mean what would happen to our family, I don't
5 understand?

6 A. Well, because we had lost, I lost my brother-in
7 law and I lost my sister-in-law and, you know, I was the
8 one to go and tell Christie that her mother was dead. You
9 know, we're not talking liability.

10 Q. Okay, did you never discuss liability, then?

11 A. Not until after we discovered that there was no
12 pilot's license.

13 Q. And, that's when you started talking about the
14 liability of the company, is that correct?

15 A. Well, I'm sure we discussed that, of course.

16 Q. And, did you discuss it with your husband?

17 A. Of course.

18 Q. Did you discuss it with Mr. Browning?

19 A. Mr. Browning does not take a role in operating
20 this company.

21 Q. I understand that. But, I assume that this is
22 not in the normal operation of the company, was it?

23 A. Well, we used the plane I mean on a daily basis.

24 Q. No, I'm talking about a plane crash and
25 liability of the company---

1 A. Oh, no, no, of course not.

2 Q. That wasn't in the normal operation of the
3 company?

4 A. No.

5 Q. It's something that would affect the entire
6 corporate financial structure, wasn't it?

7 A. Sure.

8 Q. And, could bankrupt the company, couldn't it?

9 A. We didn't talk bankruptcy.

10 Q. But, we talked about a big financial blow to the
11 company?

12 A. We talked about what was the best route that we
13 should take after discovering that there was possibly no
14 license.

15 Q. Okay. And, was Bill Jones involved in that
16 discussion?

17 A. No, he was not.

18 Q. He was involved from the aspects of, as far as
19 what our legal advice should be because Ben had also
20 piloted Carl McAfee's plane and we felt like that he would
21 be receptive to our case. He had even, Ben Jones had
22 flown Mary Sue Terry, that's what kind of capable pilot he
23 was so, when we discussed with Mr. Browning what we should
24 do then he said, I think that you should consider using
25 Walt as well.

1 Q. All right. And, was this because of a possible
2 liability against the company?

3 A. We did not talk liability. He said---

4 Q. We did not talk money?

5 A. We didn't talk money, no, we did not talk money.

6 Q. We didn't talk about corporate exposure because
7 of liability?

8 A. Well, we knew at that point, yes, we had great
9 exposure.

10 Q. Who told you?

11 A. Well, we're in business for ourselves. We know
12 when we've got an exposure.

13 Q. You mean you deal with insurance companies in
14 the normal course of your business?

15 A. Well, yes, I have. As far as getting bonds and
16 that sort of thing, we deal with insurance companies on a
17 daily basis.

18 Q. And, you know from experience with insurance
19 companies that they don't pay 95 percent of their coverage
20 if they don't have any case, don't you?

21 MR. ESKRIDGE: He keeps distorting the
22 evidence and no one has said that they paid 95 percent of
23 their coverage on any coverage.

24 THE COURT: Well, I believe Mr. Earls
25 has it confused, the \$100,000.00, the way I understood it

1 was for the death of Judy, a maximum coverage and they
2 paid \$50,000.00 because Ben Jones didn't have a license
3 which they discovered. Why they paid \$50,000.00, I don't
4 know but, they did. And, then they paid \$45,000.00 on
5 another claim for the aircraft so, you're talking about
6 oranges and apples. You're talking about---

7 MR. EARLS: I did not understand that
8 but, then I don't have privy of all the signed
9 documentation.

10 THE COURT: Well, I've gathered that
11 from this last four hours of conversation we've had here
12 today.

13 MR. EARLS: That's all I have.

14 MR. ESKRIDGE: I have no questions of
15 Carol, Your Honor. Does Your Honor have any questions?

16 THE COURT: Did Cynthia Kinser
17 represent, whom did she represent at the hearing before
18 Judge Fugate?

19 MS. JONES: She was representing R. S.
20 Jones and Associates as well as William G. Jones.

21 THE COURT: And, she was present?

22 MS. JONES: Yes, she was.

23 THE COURT: Okay, that's all I have.

24 AND FURTHER THIS WITNESS SAITH NOT.

25 MR. ESKRIDGE: Your Honor, that's all the

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 evidence we have. Unless Mr. Earls has other evidence,
2 we would like to be heard.

3 MR. EARLS: That's all I have.

4 THE COURT: All right, do you all want
5 to argue now or send me a brief or how do you want, do you
6 want me to decide this today?

7 MR. EARLS: Well, would The Court prefer
8 a brief?

9 THE COURT: I've got a lot to do before
10 the cows go home to the barn today, I've got two or three
11 more long hearings and it's a quarter to five or twenty to
12 five now. I'm sure what you argue to me now orally would
13 be put in your brief.

14 MR. ESKRIDGE: It already is, Judge.

15 THE COURT: Do you mean you've got a
16 brief.

17 MR. ESKRIDGE: Three of them; four of them.

18 THE COURT: I haven't seen the little
19 boys, yet.

20 MR. ESKRIDGE: I haven't given them to you
21 yet.

22 THE COURT: That's why I haven't seen
23 them, I guess. I need time to digest. Of course, it
24 would be nice to hear it orally but, I'm afraid you all
25 would take another hour to argue it to me orally. Don, I

1 know you don't have a brief ready, do you?

2 MR. EARLS: No, we don't---

3 THE COURT: Now, does this brief take
4 into consideration all of the evidence that's come out
5 here today?

6 MR. ESKRIDGE: Well, it's more of a
7 discussion of law than evidence.

8 THE COURT: Well, why don't we do this.
9 Why don't you file your brief, let me give Mr. Earls a few
10 days to file a response and you can have about ten days
11 after that.

12 MR. EARLS: Judge, I think you ought to
13 look at the brief they've filed.

14 MR. ESKRIDGE: Two of the briefs are the
15 same, Judge. They're just being filed, filed in different
16 proceedings, that is the Plea of, the question of validity
17 to release, we're filing identical briefs, basically, one
18 in the William Jones, Administrator, the February of 1988
19 proceeding and that's a brief in opposition of their
20 Motion to Vacate that settlement.

21 THE COURT: Okay.

22 MR. ESKRIDGE: And, essentially the same
23 brief in the Bill Kelly, Administrator against R. S. Jones
24 and that is a brief in support of our Plea of Accord and
25 Satisfaction, they are, except for the cover sheet and the

1 last page, they're identical.

2 THE COURT: All right. Are these from
3 you, too, Mr. Harris?

4 MR. HARRIS: Your Honor, I do not have a
5 brief.

6 THE COURT: Oh, these are just from Mr.
7 Eskridge.

8 MR. HARRIS: In fact, I did not
9 anticipate participating in this hearing.

10 THE COURT: You were here, ditto, ditto
11 on this.

12 MR. HARRIS: I will say ditto on this.

13 THE COURT: Okay.

14 MR. ESKRIDGE: Here is a brief in support
15 of our Motion to Abate, which most depicts the position
16 that Mr. Kelly was not authorized at the time he filed and
17 then a brief in support of the Statute of Limitations.
18 That's so fat because we've attached copies of Florida
19 Statutes and whatnot, Judge.

20 THE COURT: All right, I'll receive
21 these briefs today. Now, Mr. Earls, how long do you want
22 to respond to these briefs?

23 MR. EARLS: Well, we've got Christmas
24 coming up, I would ask that it be after the first of the
25 year and---

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: January 15 all right?
2 MR. EARLS: I would think so, Judge.
3 THE COURT: All right, that's---
4 MR. EARLS: Yes, sir, I think so.
5 THE COURT: January 15, 1990, Mr. Earls'
6 brief is due and your response would be---
7 MR. ESKRIDGE: I'd like to have 21 days
8 after that, Judge. We'll try to do it in less than that
9 but, I don't know how busy we may be with other things.
10 THE COURT: Okay, 21 days to reply.
11 Yes, sir.
12 MR. EARLS: The transcript of the
13 hearing is filed with The Court, of the October 11th, it's
14 my understanding it's filed with The Court.
15 THE COURT: Well, I don't see it.
16 MR. EARLS: It may be misfiled
17 somewhere. I am advised it is.
18 THE COURT: You are advised, well, let
19 me look.
20 MR. ESKRIDGE: Judge, I would like to know
21 where that is, too, because we haven't see that.
22 THE COURT: Well, it's not in the court
23 file as far as I can tell.
24 MR. EARLS: May I ask when may we expect
25 this transcript. I would like to have the benefit of the

1 transcript.

2 COURT REPORTER: The second of January?

3 THE COURT: Well, you're going to need
4 more time, aren't you, Mr. Earls? Let me give you until-
5 -

6 MR. ESKRIDGE: Judge, there is more of
7 discussion involved, really.

8 THE COURT: Well, it's going to take Mr.
9 Earls a while to get his computer cranked up and get his
10 law out. Mr. Earls is going to have to make up some law
11 here, it takes him a while to make up law.

12 MR. EARLS: Judge, we have a stack of
13 law, too, and I think---

14 THE COURT: Right, I know.

15 MR. EARLS: It would be up to The Court
16 to determine what the law is.

17 THE COURT: Well, that's right but, I
18 need some guidance from you lawyers, I always enjoy the
19 guidance that I receive. February 1, Mr. Earls, what
20 about that?

21 MR. EARLS: That's fine, Judge.

22 THE COURT: If you want to take the
23 transcript because I would like, when you file your brief,
24 I would prefer that you reply to the actual facts as we
25 have heard them today here all afternoon.

1 MR. EARLS: And, I will determine in the
2 Clerk's office, probably not today but at a later time as
3 to where your copy was, where the Court's copy is---

4 THE COURT: All right, and if you don't
5 know where it is, just make a copy of yours and file it
6 with me because I will keep these files in my office and
7 furnish a copy to Mr. Eskridge.

8 MR. ESKRIDGE: Yes, if you would, I would
9 also appreciate it.

10 THE COURT: Everybody wants a copy. I
11 don't know whether you have that much money.

12 MR. EARLS: I see Ms. Estep and she's in
13 the business, I would assume that she can provide it to
14 them as easily as I and would prefer---

15 THE COURT: Well, you just provide it to
16 me free and I'll---

17 MR. EARLS: If they want, they can order
18 it from her.

19 THE COURT: All right, yes, sir, what
20 else? I can still give you 21 days after February 1, Mr.
21 Eskridge.

22 MR. ESKRIDGE: Your Honor, it makes no
23 sense for us to have to pay a Court Reporter to retype
24 this transcript.

25 THE COURT: No, no, no, I agree.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. ESKRIDGE: If Mr. Earls----

2 MR. EARLS: I think she has copies, do
3 you know have copies of it, Ms. Estep?

4 COURT REPORTER: I can get a copy, I will
5 have to print it.

6 THE COURT: Would you all not get me
7 involved in this. I would prefer not to go between buyers
8 and sellers.

9 MR. EARLS: I know Ruth Greiner use to
10 get mad at all the attorneys when they would swap
11 transcripts.

12 MR. ESKRIDGE: Your Honor, if Mr. Earls
13 would send me a copy of the transcript or file that
14 transcript, I'll take it from there, getting a photocopy.

15 THE COURT: I'll leave that up to all,
16 I'm not going to---

17 MR. EARLS: She says it's filed, so,---

18 THE COURT: Well, it's not in the filed
19 and if it's filed, it's misfiled as you say around here.

20

21

22

23

24

25

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

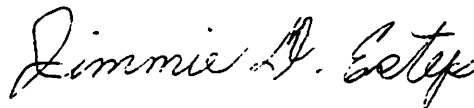
1
2
3
4
5
6 STATE OF VIRGINIA

7 AT LARGE, TO-WIT:

8 I, Jimmie D. Estep, working as an agent for the
9 Court Reporting Offices of Precise Reporting, a Notary
10 Public of and for the State of Virginia at Large, do
11 hereby certify that the foregoing hearing was taken,
12 subscribed and sworn to before me on the date and place
13 aforesaid in caption; said hearing was transcribed by
14 Precise Reporting under the personal supervision of Jimmie
15 D. Estep.

16 Given under my hand this the second day of January,
17 1990.

18 My commission expires September 17, 1990.

19
20 

21 JIMMIE D. ESTEP
22
23
24
25

Thirtieth Judicial Circuit
of Virginia



J. ROBERT STUMP, Judge
JAMES C. ROBERSON, Judge
P. O. BOX 1980
WISE, VIRGINIA 24293
1-703-328-8653

CLERK'S OFFICE OF
DONALD E. EARLS
APP 1 5 1990

RECEIVED
WILLIAM C. FUGATE, Judge
P. O. BOX 326
JONESVILLE, VIRGINIA 24263
1-703-348-1741

COMMONWEALTH OF VIRGINIA
COUNTIES OF LEE, SCOTT AND WISE
CITY OF NORTON

April 13, 1990

Donald E. Earls, Esquire
Elsey A. Harris, III, Esquire
William W. Eskridge, Esquire

Re: Bill Kelly, Substitute Administrator of
the Estate of Judy Phipps Mullins Jones
vs
R. S. Jones and Associates, Inc., et al
L89-353; and L88-66

Dear Counsel:

The court has considered and reviewed the file, oral argument and counsel voluminous briefs on motions and makes the following findings. For the sake of time and brevity the court adopts the law, cases and argument of winning counsel on the respective motions and pleas.

Therefore, the court:

1. Denies defendant's Motion to Abate;
2. Denies defendant's Plea of Statute of Limitations
3. Sustains defendants Plea of Accord and Satisfaction; and
4. Denies Christina Phipps Motion to Intervene and Vacate Order in L88-66.

Bill Eskridge shall prepare an order for entry accordingly.

Sincerely,

J. Robert Stump
Judge

JRS/jds

VIRGINIA:

Case No. L89-353

IN THE CIRCUIT COURT OF WISE COUNTY

BILL KELLY, Substitute
Administrator of the Estate
of JUDY PHIPPS MULLINS JONES,
deceased,

Plaintiff,

vs.

R.S. JONES AND ASSOCIATES,
INC., et al,

Defendants.

AT LAW

Suit No. L89-353

WILLIAM JONES, Administrator
of the Estate of JUDY PHIPPS
MULLINS JONES, Deceased,

Petitioner,

vs.

R.S. JONES AND ASSOCIATES,
INC., et al,

Respondents.

AT LAW

Suit No.: L88-66

FINAL ORDER

On December 12, 1989, came Bill Kelly, Substitute Administrator of the Estate of Judy Phipps Mullins Jones, deceased, plaintiff in Case No. L89-353. by his counsel, Donald E. Earls, Esq., and Christine Phipps, the movant in Case No. L88-66, in person and by her counsel, Donald E. Earls, Esq. Thereupon came R.S. Jones and Associates, Inc., a defendant in both actions, by its president, Robert S. Jones, and its counsel,

Wm. W. Eskridge, Esq. and Richard E. Ladd, Jr., Esq. Also, defendants Piedmont Aviation, Inc., Pompano Air Center, Inc. and Avco Corporation appeared by their counsel, Elsey A. Harris, III, Esq.

Thereupon the Court heard evidence relating to the defendants' Motions to Abate, Pleas of the Statute of Limitations and Pleas of Accord and Satisfaction in Case No. L89-353 and relating to the Motion to Intervene and Vacate Order in Case No. L88-66. Certain objections made by counsel for the parties and the Court's rulings thereon will be more fully reflected in the verbatim transcript of the proceedings.

Thereupon counsel for the parties filed extensive briefs and memoranda in support of their respective positions and the Court took time to consider of its opinion. Thereafter, on April 13, 1990, the Court filed its written opinion as to the dispositions which should be made of the various pleas and motions.

In accordance with such written opinion, it is ORDERED as follows:

1. The defendants' Motions to Abate filed in Case No. L89-353 are denied, to which action of the Court counsel for defendants duly objected and excepted;

2. The defendants' Pleas of the Statute of Limitations in Case No. L89-353 are hereby denied, to which action of the Court counsel for defendants duly objected and excepted;

3. The Pleas of Accord and Satisfaction filed by the respective defendants in Case No. L89-353 be, and they hereby are, sustained, to which action of the Court counsel for plaintiff duly objected and excepted; and

4. The Motion to Intervene and Vacate Order filed by Christina Phipps in Case No. L88-66 is hereby denied, to which action of the Court counsel for Christina Phipps duly objected and excepted.

Nothing further remaining to be done herein, it is ORDERED that Case No. L89-353 is hereby dismissed with prejudice and stricken from the docket of Court. The Court refuses to disturb or vacate the Final Order previously entered in Case No. L88-66.

The Clerk shall send attested copies of this Order to counsel of record.

Seen:

PENN, STUART, ESKRIDGE & JONES
P.O. Box 2288
Abingdon, VA 24210

By *Wm. W. Eskridge*
WM. W. ESKRIDGE
Counsel for R.S. Jones and Associates, Inc.

MULLINS, THOMASON & HARRIS
P.O. Box 1200
Norton, VA 24273

By *Elsey A. Harris III*
ELSEY A. HARRIS, III
Counsel for Piedmont Aviation, Inc.
Pompano Air Center, Inc. and Avco Corporation

Donald E. Earls

DONALD E. EARLS
P.O. Box 710
Norton, VA 24273
Counsel for Plaintiff in L89-353
and Counsel for Christina Phipps
in L88-66

ENTER, this 17th day of April, 1990.

J. Robert Stump

Judge

COPY

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF WISE COUNTY

3
4 IN RE: ESTATE OF JUDY PHIPPS MULLINS JONES IN CHANCERY

5
6 HEARING
7 C89-405

8
9 The following hearing was taken at 2:00 p. m. on
10 October 11, 1989 in the Circuit Court of Wise County with
11 The Honorable J. Robert Stump.
12

13 PRESENT: DONALD E. EARLS, ESQUIRE
14 COUNSEL FOR CHRISTINA PHIPPS

15 WILLIAM G. JONES,
16 in person
17
18
19
20
21
22
23
24
25

1 THE COURT: Mr. Earls, it looks like you
2 have filed a motion in The Court here in Re of the Estate
3 of Judy Phipps Mullins Jones?
4 MR. EARLS: I have, Your Honor.
5 THE COURT: And, this is for removal for
6 administrator and for appointment of a substitute.
7 MR. EARLS: I have, Your Honor, and I
8 would like to give you some brief history if I may,
9 please.
10 THE COURT: Yes, sir. First of all,
11 let's see who we've got here. You are representing
12 Christina Phipps?
13 MR. EARLS: I represent Christina
14 Phipps.
15 THE COURT: And, she's sitting here.
16 MR. EARLS: She is the daughter of Judy
17 Phipps who died, who was married to William Jones.
18 THE COURT: Well, this Mr. Jones is
19 here. You, he's the step-father?
20 MR. EARLS: He is the step-father, yes,
21 sir.
22 THE COURT: Okay.
23 MR. EARLS: Judy Phipps Jones was
24 married to William Jones for approximately six months
25 prior to her death in Florida by way of a plane accident.

1 THE COURT: Yes.

2 MR. EARLS: Shortly thereafter, Judy
3 (sic) attained the age of eighteen, her birthday is
4 November 14---

5 THE COURT: Before you give me the
6 facts, let's, let me see here---

7 MR. EARLS: Okay.

8 THE COURT: Mr. Jones, is he the
9 administrator of the estate?

10 MR. EARLS: Mr. Jones qualified---

11 MR. JONES: Yes, sir, I am the
12 administrator of the estate.

13 MR. EARLS: Mr. Jones qualified in the
14 Clerk's Office of the Wise County Court on October 22,
15 1987.

16 THE COURT: William G. Jones, right?

17 MR. JONES: Yes, sir.

18 THE COURT: Now, you've been given
19 notice of this hearing, right?

20 MR. JONES: I was called at 10:00 this
21 morning at work by Lee County Sheriff's Department and
22 asked in a very vague statement to be here at 1:00.

23 THE COURT: Yes.

24 MR. JONES: And, with no regard as to
25 purpose or intent.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Yes.

2 MR. JONES: But, I did come and I was
3 given about 15 minutes ago a copy of the motion by Mr.
4 Earls.

5 THE COURT: Yes, do you have a lawyer?

6 MR. JONES: No, sir, I don't. I didn't
7 know I would need one.

8 THE COURT: Well,---

9 MR. JONES: I am not prepared and you
10 know, I didn't know to be prepared for anything, to be
11 quite honest with you.

12 THE COURT: Yes, yes, sir, Mr. Earls.

13 MR. EARLS: Your Honor, it's my
14 understanding having talked with the Deputy after we got
15 the hearing from Your Honor, late yesterday afternoon, a
16 copy was hand carried to the Sheriff's Office with the
17 requisite filing fees. When we called this morning to
18 find out, I was told that the Deputy read him the
19 petition?

20 MR. JONES: No, I talked with the
21 dispatcher.

22 MR. EARLS: She assured us that it had
23 been read and they even had him served again but, I mean-
24 -

25 MR. JONES: I was called on the

1 telephone about 10:00 a.m. this morning and asked to
2 attend and I was not read a copy of it.

3 THE COURT: Do you have a lawyer that
4 you regularly use?

5 MR. JONES: Yes, sir, I do.

6 THE COURT: Who is that?

7 MR. JONES: That is a lawyer from
8 Lexington, Kentucky, that, Ronnie Dunnigan (phonetic),
9 that's his name, that's who I regularly use.

10 THE COURT: Well, do you have any local
11 lawyers who you---

12 MR. JONES: No, sir, I don't.

13 THE COURT: Do you have any friends who
14 are local lawyers who you can contact on a hurried basis
15 and read them this thing over the phone or discuss it.

16 MR. JONES: To be quite honest, no, sir,
17 I don't.

18 THE COURT: Well---

19 MR. JONES: I attempted to contact Mr.
20 Dunnigan this morning after I received that call.

21 THE COURT: Yes.

22 MR. JONES: And, he was out of the
23 office and would not be back in today.

24 THE COURT: Yes.

25 MR. JONES: So, with that in mind, I

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 just came on to see, you know, what---

2 THE COURT: What was going on?

3 MR. JONES: What was going on, yes, sir.

4 THE COURT: Yes, Mr. Earls, this is a
5 little unusual to proceed.

6 MR. EARLS: Yes, sir, it is, very
7 unusual. I will assure you, Judy Phipps Jones died on
8 October 12, 1987 in a plane crash down in Florida and
9 William Jones qualified as the administrator in This
10 Court. I have copies of his qualifications which I'll
11 tender to The Court to show that The Court has, that he
12 has qualified in This Court. Your Honor, if I may please,
13 I think that just by reading the petition, Your Honor can
14 understand that we're operating now on virtually a 24-hour
15 deadline. I, today is Wednesday, my contact with this
16 case commenced less than 72 hours ago. I have done some
17 extensive research and found releases and so forth that--

18 THE COURT: What you're telling me is
19 that if the lawsuit is not brought by the end of today
20 that no lawsuit can be brought, is that right?

21 MR. EARLS: That's exactly true.

22 THE COURT: The death by wrongful act
23 action.

24 MR. EARLS: Must be brought by today.
25 And, Your Honor, our facts will show and there's written

1 documentation to the fact that this, that William Jones,
2 the Administrator is employed by R. S. Jones Construction.

3 THE COURT: Yes.

4 MR. EARLS: He served as the
5 Administrator of this young lady's estate, of her mother's
6 estate, while a supervisor with the company, he gave the
7 company a release for the company. We also have the FAA
8 report indicating that yet another employee of the company
9 was piloting the plane in which his wife and this young
10 lady's mother was in, unlicensed and medically unfit.

11 THE COURT: Well, you're going by the
12 merits of the case, of course, and I'm worried about
13 procedure right now.

14 MR. EARLS: What I'm trying to do is
15 have him removed.

16 THE COURT: Okay.

17 MR. EARLS: And, I stand ready, willing
18 and able to put this evidence on so that an action can be
19 brought to make sure that a fraud is not perpetrated upon
20 This Court. A settlement was signed by this man for
21 \$350,000.00 on May 22 of 1989 and with these facts, that
22 is that R. S. Jones Company, being a major tort feisor in
23 the case, they were given a release by this man---

24 THE COURT: As administrator of the
25 estate?

1 MR. EARLS: As administrator of the
2 estate and he authorized them to be paid \$35,000.00 out of
3 this woman's estate.

4 THE COURT: Who, that company, the
5 Jones, the construction---

6 MR. EARLS: The R. S. Jones and
7 Associates---

8 THE COURT: Why?

9 MR. EARLS: That's what we don't know.

10 THE COURT: Oh.

11 MR. EARLS: I mean, if a company can
12 allow an unlicensed, medically unfit man to pilot a plane
13 and take on a passenger and then supervisor for the
14 company do that, it's just, you know, absolutely, there's
15 no justice in the world for what is our orphans and we
16 happen to have an orphan here.

17 THE COURT: Where does your client live?

18 MR. EARLS: She lives in Knoxville,
19 Tennessee. She is a student there, she has been---

20 THE COURT: Do you propose to make her
21 administrator of the estate?

22 MR. EARLS: Probably Sheriff Kelly, Your
23 Honor.

24 THE COURT: Oh, okay.

25 MR. EARLS: But, she owns real estate in

1 Wise County.

2 THE COURT: Yes, but she's not a
3 resident.

4 MR. EARLS: In St. Paul but, we cannot
5 avow to The Court that she's a resident of the State of
6 Virginia, no, sir. I stand prepared to have Sheriff
7 Kelly---

8 THE COURT: The accident occurred, the
9 plane accident occurred in Florida?

10 MR. EARLS: Occurred in Florida, Judge
11 and probably procedurally, procedures in the State of
12 Florida would apply. Now, at the time the settlement was
13 assigned, this man had already remarried. So, he would
14 not, I mean, he gave his company, he gave his company
15 \$35,000.00, he paid out to a bunch of lawyers from down in
16 Kentucky which he is, his corporate lawyers, paid out to
17 them, I believe it's \$80,000.00, let me find the sheet
18 here, Judge. Paid out to the lawyers \$80,000.00, Ronnie
19 Dunnigan and paid to himself the same amount this young
20 lady got which means under, if you look at Florida law, he
21 would not be entitled to a half of the estate having
22 remarried. And, I think that procedurally the laws for
23 the State of Florida would apply as far as distribution is
24 concerned, where the death occurred. So, I mean, that's a
25 conflicts question but even in the State of Virginia it

1 would be subject to court approval. What I'm saying is
2 that this release agreement that was signed in May without
3 court approval, somebody needs to come up with some money.
4 And, it's just, I've talked to several attorneys and we're
5 all aghast, we know why, in all probability, the release
6 agreement was not court approved, we know why. I don't
7 think The Court would approve it.

8 THE COURT: Now what you are wanting to
9 do is substitute your client for Mr. Jones as
10 administrator or not your client but Bill Kelly or
11 somebody who is a resident here to bring suit before the
12 Statute of Limitations runs.

13 MR. EARLS: Yes, sir.

14 THE COURT: Which may bring on, when was
15 the settlement, unapproved by a court, made?

16 MR. EARLS: The unapproved settlement by
17 The Court was made on May 12, 1989, May 22, 1989. May I
18 present Your Honor with a copy?

19 THE COURT: Yes, that will be fine. Do
20 you have a copy of it there?

21 MR. EARLS: I don't have a copy for you
22 but, this is---

23 MR. JONES: Do you have one you can give
24 me?

25 MR. EARLS: That's only half of the

1 tale, Judge.

2 THE COURT: Well, tell me the other half
3 or the rest of the story.

4 MR. EARLS: Let me give you the rest of
5 the story. There were actually two settlements. There
6 was another one whereby Bill Jones filed suit individually
7 and is personal representative of the estate of Judy Jones
8 against his own company, R. S. Jones Construction Company,
9 R. S. Jones and Associates and there was a release signed
10 in that against the company for \$50,000.00. Now, that law
11 suit was filed February 24, 1988. Now, you understand
12 there's two settlements so, I gave you the first one.

13 THE COURT: I'm trying to learn here,
14 you're throwing a lot at me but, I'm trying to. You've
15 got a suit here. Mr. Jones sued R. S. Jones and
16 Associates?

17 MR. EARLS: Yes, sir.

18 THE COURT: Who filed the suit, where is
19 this suit, where is my clerk?

20 MR. EARLS: Your Honor, that is only a
21 petition, if you'll notice it's in---

22 THE COURT: Petition for compromise?

23 MR. EARLS: Right. And, that is only a
24 petition.

25 THE COURT: Was an order---

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. EARLS: The suit was filed.
2 THE COURT: Was an order entered?
3 MR. EARLS: An order was entered---
4 THE COURT: Have you got the whole file
5 up there?
6 MR. EARLS: Seven days before---
7 THE COURT: Sheriff, go tell the Clerk
8 to come up here and bring L88-66 with him.
9 MR. KELLY: L88-66?
10 THE COURT: Yes, sir.
11 MR. EARLS: The Order was entered seven
12 days before the petition was filed in the case.
13 THE COURT: Judge Fugate signed this.
14 MR. EARLS: I will point out, I stand
15 ready to show as far as that \$50,000.00 settlement, my
16 client received no notice and under the recent case of
17 Lovelace versus Lovelace, which is a 1988, December 1988
18 decision by the Virginia Supreme Court all parties not
19 having been convened, that release and that order in
20 invalid. Now, that's all---
21 THE COURT: This is filed in Wise County
22 and Judge Fugate signed it. I don't understand that.
23 MR. EARLS: Your Honor, Lee County, on
24 the copy we got, Lee County was scratched out and Wise
25 County entered and I don't either.

1 THE COURT: Well, but the case was filed
2 down here, Gracie Hensley, our Deputy Clerk filed it,
3 February 24, 1988.

4 MR. EARLS: But, if you'll notice there
5 Judge, also the order is signed a week before the petition
6 is filed.

7 THE COURT: Yes, sir, it is. What in
8 the world is going on?

9 MR. EARLS: Well, that's what we want to
10 know and if we don't get something done within 24-hours,
11 we'll never know.

12 THE COURT: Yes.

13 MR. EARLS: Your Honor, I'd like to
14 point out one thing to The Court's attention on the
15 \$50,000.00 settlement. That \$50,000.00 was paid by Avenco
16 on behalf of R. S. Jones. Okay? That's the one
17 settlement---

18 THE COURT: Who?

19 MR. EARLS: Avenco.

20 THE COURT: Where is that?

21 MR. EARLS: It's the insurance company
22 for R. S. Jones and Associates.

23 THE COURT: Well, I mean, I don't have
24 any kind of document that would show me that, that you've
25 presented.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. EARLS: Okay. Let's see here. Is
2 that not Avenco's attorney that endorsed the order?
3 THE COURT: Yes.
4 MR. EARLS: Okay.
5 THE COURT: Now, Katherine Leddig
6 (phonetic)---
7 MR. EARLS: Now,---
8 THE COURT: Falls Church, Virginia.
9 MR. EARLS: Now, Your Honor, if you will
10 look at the unapproved settlement, Avenco that had paid
11 in the \$50,000.00 got out of this woman's estate
12 \$10,000.00. This woman's estate, a passenger in an air
13 plane, got out of her estate \$10,000.00 and R. S. Jones
14 was given another \$35,000.00. Now, Your Honor, I have a
15 National Transportation Safety Board report and it is the
16 only copy that I have but, I would like for Your Honor to
17 be aware of the fact that the National Transportation
18 Safety Board, we have the copy of the report but, it shows
19 R. S. Jones and Associates as being the registered air
20 craft owners and it shows Ms. Judy Phipps Jones being the
21 passenger in the vehicle. It also shows that R. S. Jones
22 and Associates, the registered owner allowed an unlicensed
23 driver, Ben Jones, is it? Ben Jones to pilot this
24 aircraft and a postmortem autopsy showed that he was
25 medically incapable of piloting a craft. So, I'd like to

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 introduce this to The Court to let The Court see that---

2 THE COURT: Well, I don't know whether
3 I need to see that---

4 MR. EARLS: Well, it just, it will show
5 that R. S. Jones and Associates owned the vehicle.

6 THE COURT: Do you want to file that as
7 an exhibit?

8 MR. EARLS: I can have someone testify
9 from this.

10 THE COURT: Okay.

11 MR. EARLS: Or Your Honor can take
12 knowledge of it.

13 THE COURT: All right. This is the
14 dangedest thing I've ever seen in my life, excuse my
15 French.

16 MR. EARLS: Your Honor, I'll go along
17 with you. I've never seen nothing like this in my life.
18 I think we---

19 THE COURT: Well, I can't understand it.

20 MR. EARLS: Anybody that can shed some
21 light on this for me, it would be---

22 THE COURT: Looks like your client has
23 signed this and apparently signed it when she was under
24 age?

25 MR. EARLS: That's unconvened.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Unconvened?
2 MR. EARLS: Unconvened. That has never
3 been proved, Judge.
4 THE COURT: Well, that's an agreement,
5 yes. Well, she was under age, wasn't she?
6 MR. EARLS: Not at that time, not when
7 she signed it. She was under economic duress but, not of
8 age.
9 THE COURT: On May 22, when did she turn
10 eighteen?
11 MR. EARLS: November 14.
12 THE COURT: 1988?
13 MR. EARLS: 1988.
14 THE COURT: So, she was eighteen when
15 she signed this?
16 MR. EARLS: Now, yes, sir. But, Your
17 Honor, it depends upon whether or not you're going to
18 apply the law of Florida or the law of Virginia.
19 THE COURT: Well---
20 MR. EARLS: In Florida, you are a minor
21 until 25.
22 THE COURT: You are?
23 MR. EARLS: Yes, sir. Did I give you a
24 computer printout on the Lovelace decision?
25 THE COURT: No, sir, you didn't.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. EARLS: Here it is, I found it.
2 Your Honor, that's for the purposes of a wrongful death
3 statute, under the wrongful death statute.

4 THE COURT: What is?

5 MR. EARLS: In Florida you're a minor
6 until 25 under the wrongful death statute.

7 THE COURT: Oh.

8 MR. EARLS: They define minor as someone
9 under 25.

10 THE COURT: Okay, different laws, huh,
11 different states. I'll just have to take your word for
12 that right now because I have no idea.

13 MR. EARLS: I may be able to give you a
14 printout on it, Judge.

15 THE COURT: Well, where did you get this
16 document, this is FAA?

17 MR. EARLS: Yes, it is, Your Honor. My
18 brilliant investigative staff came up with it.

19 THE COURT: Registered owner, R. S.
20 Jones and Associates, okay, all right. I'm going to let
21 you have that back. Who, what relationship is Ben Jones
22 to William Jones?

23 MR. JONES: Brother.

24 THE COURT: Brother? He was killed in
25 the accident, too?

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. JONES: Yes, sir.

2 MR. EARLS: He was the pilot.

3 THE COURT: Yes. Well, in the first

4 place, I'm looking at this original document for the

5 record of William G. Jones, individual and as personal

6 representative of the Estate of Judy P. Jones, deceased

7 versus R. S. Jones and Associates, Inc., suit number L88

8 66, petition for settlement and the petition, the

9 compromise shows, which was filed February 24, 1988 avers

10 to The Court that, which is signed by William G. Jones

11 says that Judy Jones says that, was survived by her

12 husband, William G. Jones and a daughter, Christine

13 Phipps. And, that Christine Phipps was a minor at the

14 time of the accident but now has reached the age of

15 majority which is falsehood, isn't that correct?

16 MR. EARLS: Your Honor, that was true--

17 MR. JONES: No, that's correct.

18 THE COURT: February of 1988, Christina

19 Phipps was eighteen or was a minor, had reached the age

20 of---

21 MR. EARLS: She became.

22 THE COURT: Now reached the age of

23 majority?

24 MR. EARLS: She became eighteen November

25 14, 1987.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 THE COURT: Oh, I thought you said 1988,
2 I'm sorry, you did, I asked you if it was 1988. She's now
3 what, nineteen.

4 MR. EARLS: Nineteen. She'll be twenty
5 next month.

6 THE COURT: Twenty next month. Okay,
7 so that is true that she was eighteen on February 24,
8 1988. Okay. All right.

9 MR. EARLS: Your Honor, we have drafted
10 a motion to intervene and vacate that order if Your Honor
11 sees fit---

12 THE COURT: Well, I'm not going to do
13 that today, Mr. Earls, certainly. I mean, I'm not going
14 to rush into judgment, this man doesn't have a lawyer.

15 MR. EARLS: I know, I'm just going to
16 file a motion to do that if Your Honor sees fit to---

17 THE COURT: Well, I'm not going to do it
18 until I hear, have evidence, evidentiary hearing and he
19 has a lawyer, et cetera, et cetera. We want to hear from
20 everybody involved before I go that far. I'm inclined,
21 however, strictly based on the statute of limitations
22 getting ready to run tomorrow or maybe at the end of today
23 that some action should be brought to protect all the
24 interest of everybody in the estate including Mr. Jones,
25 the widower and Christina Phipps, the daughter. They are

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 the statutory beneficiaries.

2 MR. EARLS: Yes, sir.

3 THE COURT: Of course, they've been paid
4 "X" number of dollars.

5 MR. EARLS: Yes, sir.

6 THE COURT: By an unapproved agreement,
7 unapproved, I mean by court, lack of court approval.

8 MR. EARLS: Yes, sir.

9 THE COURT: Death by wrongful act
10 action. I'm inclined to go ahead as of today and have Mr.
11 Jones released as administrator of the estate and also
12 have the Sheriff, Bill Kelly, appointed administrator for
13 the sole purpose of bringing some kind of legal action to
14 determine the rights of all the parties. Now, I realize
15 that Mr. Jones is sitting here by himself and, with very
16 little notice and he doesn't know what's going on.
17 There's a Judge and a couple of lawyers talking about his
18 case and he doesn't know what happening, right Mr. Jones?

19 MR. JONES: That is correct.

20 THE COURT: I realize that's correct.

21 Now, of course you need, as soon as you leave this
22 hearing, go see a lawyer immediately and you have 21 days
23 from the entry of an order in which to do something, to
24 set aside my order, have an evidentiary hearing, do
25 whatever, appeal or do whatever is necessary to protect

1 your interest and rights but, I think time is of the
2 essence and I don't know whether I'm right or wrong at
3 this time but, I think that I, in the sense of fairness of
4 what's been shown to me here already in the way of
5 documents and representation by counsel is that something
6 needs to be done today or it can never been done. I
7 assume, I don't know that for a fact.

8 MR. EARLS: Your Honor, it is---

9 THE COURT: I don't know what the
10 Florida law is, I don't know whether the Florida law
11 applies and I don't know what Florida law actually is.

12 MR. EARLS: We're certain of the law,
13 whether it be in Florida or in Virginia, if we don't get
14 it done today, it's not going to get done.

15 THE COURT: Well, it's a possibility, I
16 think it's better to be safe than sorry and to proceed.
17 Have you prepared papers to file today?

18 MR. EARLS: Yes, we have, several.

19 THE COURT: As, with Bill Kelly as the
20 new administrator?

21 MR. EARLS: They'll be ready by the time
22 Your Honor signs an order, I'm sure, at least prior to
23 five.

24 THE COURT: Are you proceeding under
25 26.2 or 26.3? Two, your petition said three so, I looked

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 at that and couldn't find the, that doesn't seem to be
2 right so, it must be 3 that you're talking about.

3 MR. EARLS: Three, Your Honor.

4 THE COURT: I mean two.

5 MR. EARLS: Two, I'm sorry.

6 THE COURT: Okay, two apparently is more
7 applicable or is applicable.

8 MR. EARLS: It is three, Your Honor,
9 it's says that any Court may---

10 THE COURT: It is?

11 MR. EARLS: Yes, Your Honor. To remove
12 for cause, here's a copy of the statute.

13 THE COURT: Okay, I've got it here. I
14 want to read your decree and, I assume you'd be suing Ben
15 Jones, too, his estate?

16 MR. EARLS: Yes, sir, Your Honor.

17 THE COURT: Well, as I say, I think I
18 will sign this order, Mr. Jones. Now, you have a right to
19 and I do so, for expediency and for safety purposes, I do
20 so without researching the law in both Florida and
21 Virginia but, I do so because of the possibility of the
22 statute of limitations expiring at the end of this date
23 and if that be true, all rights in the death settlement in
24 this matter would be extinguished and terminate due to
25 the statute of limitations having run and you have, of

1 course, Mr. Jones have the right and I hereby advise you
2 that you need to take this order, talk to your lawyer
3 immediately and he'll have to, of course, probably, if you
4 discuss it with your Kentucky lawyer, he probably should
5 contact a Virginia lawyer because there are certain
6 procedures that must be abided by here in Virginia that a
7 Kentucky lawyer may not be aware of. Okay, well, I will
8 sign this decree and as I say, your Kentucky lawyer may
9 not know this but, you do have twenty-one days in which to
10 move to vacate this decree and I tell you that in all
11 fairness to you because you've had little notice and
12 you've, you don't have a lawyer, you are present but, I
13 just want you to be aware of your rights to a certain
14 extent.

15 MR. EARLS: Your Honor, I apparently
16 have given you the originals of some of my papers or at
17 least my only copies. If I may withdraw those and make
18 copies, I will return those to you, what I've introduced
19 to The Court.

20 THE COURT: Yes, sir. I'm going to sign
21 the, a couple of these so you can give Mr. Jones one
22 signed by me and I'll put on here "copy" for you, one for
23 you and one for him. All right, Mr. Earls, there is your
24 decree. Now, you, I assume you want, these will be filed,
25 this release agreement, is this, do you have a copy of

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 that?

2 MR. EARLS: I don't, Judge, that's the
3 only one I have.

4 THE COURT: Well, make a copy---

5 MR. EARLS: Copy---

6 THE COURT: Well, make a copy of that.

7 MR. EARLS: Yes, sir.

8 THE COURT: And, bring that---

9 MR. EARLS: The location and that L86--

10 THE COURT: Oh, you need that?

11 MR. EARLS: Yes, sir, that's---

12 THE COURT: I've got the original, I've
13 got the original.

14 MR. EARLS: Can I have a copy, I do have
15 a copy of the qualifications, don't I? She does have her
16 original so, we can get copies.

17 THE COURT: All right, all right. Thank
18 you, sir. All I'm doing here today is removing Mr. Jones
19 as administrator of the estate and that order says you're
20 to file an accounting within thirty days and I'm
21 substituting in your place the Sheriff of Wise County, Mr.
22 Bill Kelly. That's all I'm doing at this time and I
23 assume the real purpose is so that Mr. Earls and his law
24 firm can file an appropriate death by wrongful act action
25 within the two year statute of limitations.

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1 MR. EARLS: Yes, sir.

2 THE COURT: That would expire at
3 midnight tonight, assuming that it has been two years, the
4 accident happened on October 12, 1987?

5 MR. EARLS: Yes.

6 THE COURT: Okay.

7 MR. EARLS: I suppose, theoretically,
8 tomorrow at midnight is the deadline.

9 THE COURT: Probably, whatever, you're
10 the lawyer. I'll let you do what you have to do. All
11 right, that will conclude this hearing and Mr. Jones, I
12 assume you'll talk to your attorney?

13 MR. JONES: Yes, sir.

14 THE COURT: Yes, sir, okay, that's all.

15

16

17

18

19

20

21

22

23

24

25

PRECISE REPORTING
P.O. BOX 1158
NORTON, VIRGINIA 24273
703-679-2999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

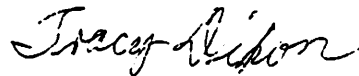
STATE OF VIRGINIA

AT LARGE, TO-WIT:

I, Tracy Dixon, working as an agent for the Court
Reporting Offices of Precise Reporting, a Notary Public of
and for the State of Virginia at Large, do hereby certify
that the foregoing hearing was taken, subscribed and
sworn to before me on the date and place aforesaid in
caption; said hearing was transcribed by Precise
Reporting under the personal supervision of Jimmie Estep.

Given under my hand this the twenty-second day of
November, 1989.

My commission expires January 17, 1992.



TRACY DIXON

ASSIGNMENTS OF ERROR

I.

The court erred in sustaining the Plea of Accord and Satisfaction of R. S. Jones & Associates, Inc.

II.

The court erred in denying Christina Phipps's Motion to Intervene in the former proceeding for the approval of a settlement under Va. Code Ann. Section 8.01-55 when she was the only child of the decedent and was not made a party or otherwise convened in the proceeding.

III.

The Court erred in refusing to vacate the order entered on February 17, 1988, approving the former personal representative's settlement with R. S. Jones & Associates, Inc. when Christina Phipps, the only child of the decedent was not made a party or otherwise convened in the proceeding, the order was entered one week before the Petition commencing the case was filed, and the order was not endorsed under Rule 1:13.

IV.

The court erred by holding the substitute personal representative and the decedent's only child bound by the 1988 settlement entered into by the former personal representative when said settlement was made in breach of the fiduciary duties owed the wrongful death beneficiaries by the former personal representative and his legal counsel and was fraudulent to the beneficiaries.

V.

The court erred by holding the substitute personal representative and the decedent's only child bound by the 1988 settlement entered into by the former personal representative when said settlement was not approved by a court after convening of all the parties in interest under either Section 8.01-425 or 8.01-55.

VI.

The court erred by sustaining the Pleas of Accord and Satisfaction of Textron, Inc., Avco Corporation, Piedmont Aviation, Inc., and Pompano Air Center, Inc.

VII.

The court erred by holding the substitute personal representative and the decedent's only child bound by the 1989 settlement entered into by the former personal representative and all wrongful death beneficiaries when said settlement was not approved by a court after convening of all the parties in interest under either Section 8.01-425 or 8.01-55.