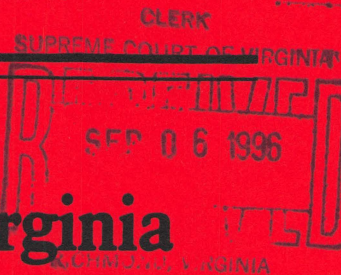


253Va 93



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 961021

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON,

Appellant,

v.

**LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP,
and
THOMSON M. HIRST,**

Appellees.

JOINT APPENDIX

**William F. Pendergast
Sara Beiro Farabow (VSB# 31444)
John A. Jackson
SEYFARTH, SHAW,
FAIRWEATHER &
GERALDSON
815 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006-4004
(202) 463-2400**

Counsel for Appellant

**Rodney G. Leffler
Timothy B. Hyland
LEFFLER HYLAND
HENSHAW & THOMPSON
A Professional Corporation
11320 Random Hills Road
Suite 540
Fairfax, VA 22030-7499
(703) 293-9300**

Counsel for Appellees

TABLE OF CONTENTS

	<u>Appendix Page</u>
Motion for Judgment, with attachment, filed April 25, 1995	1
Answer of Defendant Lake Fairfax Seven Limited Partnership filed June 13, 1995	12
Status Conference Order of the Honorable Jack B. Stevens, entered August 3, 1995	18
Order of the Honorable Richard J. Jamborsky, entered September 25, 1995	19
Answer of Defendant Thomson M. Hirst filed October 6, 1995	21
Defendants' Witness List filed January 16, 1996	27
Defendants' Exhibit List filed January 16, 1996	29
Plaintiff's Lists of Witnesses and Exhibits for Trial filed January 16, 1996	31
Plaintiff's Exhibit List filed January 16, 1996	34
Transcript of Proceedings before the Honorable M. Langhorne Keith held on January 30, 1996	41
Defendants' Memorandum of Points and Authorities in Support of Their Motion to Strike filed January 30, 1996	89
Order of the Honorable M. Langhorne Keith, entered January 30, 1996	94
with attached Suspending Order of the Honorable M. Langhorne Keith, entered January 30, 1996	95
Assignments of Error filed May 17, 1996	96

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX

COUNTY

FILED
2020 APR 25 AM 7:27
CLERK, CIRCUIT COURT
FAIRFAX, VA

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON, an Illinois partnership,
815 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20005

Plaintiff,

v.

At Law No.

140438

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP,

SERVE: Hirst Financial Corporation
General Partner of Lake Fairfax
Limited Partnership,
(aka HIFICO Inc.)
Joanna S. Hirst
Registered Agent
1767 Business Center Drive
Reston, Virginia 22090

and

THOMSON M. HIRST, individually,
SERVE: Mr. Thomson M. Hirst
1353 Windy Hill Road
McLean, Virginia 22101

Defendants.

MOTION FOR JUDGMENT

COMES NOW Plaintiff Seyfarth, Shaw, Fairweather & Geraldson ("Seyfarth, Shaw"), by counsel, and moves this Court for judgment against Defendant Lake Fairfax Seven Limited Partnership through its general partner, Hirst Financial Corporation, and Defendant Thomson M. Hirst, on the grounds and in the amount set forth below:

JURISDICTION AND PARTIES

1. This Court has subject matter jurisdiction of this matter pursuant to Va. Code § 17-123.

2. This Court may exercise personal jurisdiction over the Defendants pursuant to Va. Code § 8.01-304.

3. Plaintiff Seyfarth, Shaw is an Illinois partnership engaged in the practice of law in the District of Columbia and various states throughout the United States. Plaintiff maintains an office in the District of Columbia located at 815 Connecticut Avenue, N.W., Washington, D.C. 20006-4004.

4. Upon information and belief, Defendant Lake Fairfax Seven Limited Partnership (the "Partnership") is a Virginia partnership comprised, in part, of a general partner, Hirst Financial Corporation. Upon information and belief, Hirst Financial Corporation is a Virginia corporation with its principal place of business at 1767 Business Center Drive, Reston, Virginia 22090. Upon information and belief, Hirst Financial Corporation filed a name change with the Virginia State Corporation Commission on September 5, 1990, changing its name to HIFICO Inc.

5. Defendant Thomson M. Hirst is an individual residing at 1353 Windy Hill Road, McLean, Virginia 22101. Upon information and belief, Defendant Hirst is president of HIFICO Inc. (the Partnership's general partner).

6. Defendants Lake Fairfax Seven Limited Partnership and Thomson M. Hirst shall sometimes be collectively referred to as "the Defendants."

BACKGROUND FACTS

7. Beginning in March 1994, the Defendants retained Plaintiff to provide certain legal services to the Defendants in connection with a lease dispute between Defendants and a tenant, Grumman Aerospace Corporation. Defendant Thomson M. Hirst, as president of HIFICO Inc. and as an individual guarantor, personally guaranteed the payment of legal fees under a written retainer agreement dated April 7, 1994. A true copy of the retainer agreement is attached hereto as Exhibit A.

8. During the course of Plaintiff's legal representation and pursuant to the Defendants' instructions, Plaintiff retained the accounting firm of Rubino & McGeehin to prepare the damages portion of the Defendants' claim. Plaintiff subsequently negotiated with Grumman and obtained a favorable agreement wherein Grumman would represent Defendants' claim to a third-party. Based on Plaintiff's efforts, a \$12 million claim was prepared and submitted to the third-party.

9. In accordance with the retainer agreement, Plaintiff properly billed the Defendants on a monthly basis at Plaintiff's ordinary and customary hourly rates for services rendered, as well as for incurred costs and disbursements. The retainer

agreement expressly obligates the Defendants to make full payment within 30 days from receipt of each monthly statement.

10. In September 1994, the Defendants made payment in the amount of \$6,409.10. The Defendants subsequently discharged Plaintiff without cause in October 1994 and obtained new counsel. Plaintiff has properly billed the Defendants for services rendered, as well as for incurred costs and disbursements, in the total amount of \$87,787.00.

11. Despite Plaintiff's repeated demands for payment and in violation of the retainer agreement, the Defendants have failed and refused to make full payment of the outstanding bills, leaving a balance of \$81,377.90 due and owing. A correct Statement of Account showing the monthly invoices for services rendered is set forth below:

<u>MONTH</u>	<u>FEES</u>	<u>EXPENSES</u>
April 1994	\$ 3,725.00	\$ -0-
May 1994	16,715.00	51.85
June 1994	22,840.00	4,583.50
July 1994	21,005.00	2,862.84
August 1994	5,445.00	674.68
September 1994	6,191.25	590.99
October 1994	<u>1,932.50</u>	<u>1,169.39</u>
SUBTOTAL:	<u>\$77,853.75</u>	+ <u>\$ 9,933.25</u> = \$87,787.00
Less September 30, 1994 payment:		(<u>6,409.10</u>)
TOTAL AMOUNT DUE	<u>4</u>	<u>\$81,377.90</u>

(True copies of each of the monthly invoices for April 1994 through October 1994 previously have been provided to the Defendants and shall be filed with the Court upon such terms as may be deemed necessary to protect any client confidences or attorney work-product reflected in those statements.)

12. Plaintiff's legal services were performed with the Defendants' full knowledge, approval and authorization.

13. Any and all conditions precedent necessary to bringing this action have been fully satisfied.

COUNT I - BREACH OF CONTRACT

14. Plaintiff restates and incorporates by reference paragraphs 1 thorough 13 above as though fully set forth herein.

15. Plaintiff and Defendants entered into a valid written contract for the performance of professional legal services. Pursuant to the terms of the parties' contract, the Defendants are obligated to pay Plaintiff the monthly statement amount within 30 days of receipt thereof.

16. Defendants materially breached their contract with Plaintiff by accepting the services of Plaintiff and by failing and refusing to pay Plaintiff for said services and disbursements.

17. As a direct and proximate result of Defendants' material breach of contract, Plaintiff has suffered damages in the amount of at least \$81,377.90, plus interest.

WHEREFORE, Plaintiff Seyfarth, Shaw, Fairweather & Geraldson respectfully requests that this Court enter judgment against each

of the Defendants, jointly and severally, in the amount of at least \$81,377.90, plus pre-judgment and post-judgment interest at the legal rate, Plaintiff's reasonable attorneys' fees and costs, and for such other relief as this Court shall deem just.

COUNT II - SUIT ON ACCOUNT

18. Plaintiff restates and incorporates by reference paragraphs 1 through 17 above as though fully set forth herein.

19. Plaintiff provided to the Defendants monthly invoices properly itemizing services provided, the amount due for each service, expenses incurred and the total due for the period covered all as summarized above in paragraph 7 above. Each of these invoices was a proper statement of account for services rendered and expenses incurred, which the Defendants had agreed to pay.

20. A valid account has been established by and between Plaintiff and the Defendants. Although duly demanded, said account in the amount of \$81,377.90 has not been paid.

21. As a result, the Defendants are indebted on the account to Plaintiff for \$81,377.90, with interest from the date of the invoices, plus attorneys' fees and costs.

WHEREFORE, Plaintiff Seyfarth, Shaw, Fairweather & Geraldson respectfully requests that this Court enter judgment against each of the Defendants, jointly and severally, in the amount of at least \$81,377.90, plus pre-judgment and post-judgment interest at the legal rate, Plaintiff's reasonable attorneys' fees and costs, and for such other relief as this Court shall deem just.

COUNT III - QUANTUM MERUIT

22. Plaintiff restates and incorporates by reference paragraph 1 through 21 above, as though set forth fully herein.

23. Alternatively, Plaintiff alleges that the Defendants owe Plaintiff the outstanding amount for legal services rendered on the basis of quantum meruit. The Defendants knew that Plaintiff was performing valuable legal services; knew that Plaintiff expected to be paid for the services rendered and expenses incurred; and readily accepted and benefitted from said services to the detriment of Plaintiff. The reasonable value of the services accepted by the Defendants is \$81,377.90.

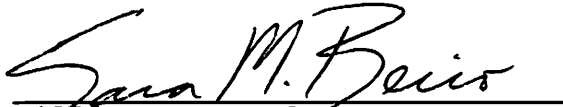
24. Plaintiff has made due demand on the Defendants for full payment.

25. As a direct result of the Defendants' failure to pay the reasonable value of the services rendered and expenses incurred, Plaintiff has been damaged in the amount of at least \$81,377.90, plus interest.

WHEREFORE, Plaintiff Seyfarth, Shaw, Fairweather & Geraldson respectfully requests that this Court enter judgment against each of the Defendants, jointly and severally, in the amount of at least \$81,377.90, plus pre-judgment and post-judgment interest at

the legal rate, Plaintiff's reasonable attorneys' fees and costs,
and for such other relief as this Court shall deem just.

Respectfully submitted,



William F. Pendergast
Sara M. Beiro (Va. Bar No. 31444)
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
815 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006-4004
(202) 463-2400

ATTORNEYS FOR PLAINTIFF
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON

Dated: April 21, 1995

SEYFARTH, HAW, FAIRWEATHER & ERALDSON
ATTORNEYS AT LAW

56 EAST MONROE STREET - SUITE 4000
CHICAGO, IL 60603-8803
TEL 312 464-4000
FAX 312 464-4000

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8000 CENTURY PARK EAST
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900 THIRD AVENUE
NEW YORK, NY 10022-4728
TEL 212 715-8000
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455 CAPITOL MALL - SUITE 302
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FAX 916 558-4039

815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006-4004
(202) 463-2400
FAX (202) 828-5383

WRITTEN DIRECT MAIL

1994

INTERNATIONAL
AVENUE LOUISE 800, BOITE 8
1000 BRUXELLES, BELGIUM
TELEPHONE 32 2 467 60 55
FAX 32 2 460 70 71

AFFILIATE FIRM
MATHERN, DINDALE & CLARK
TORONTO, CANADA

MATHAY, MATHAY & HALLET
MUNSTER AND LIEKE, BELGIUM
CHAMON, GERMANY

April 7, 1994

Mr. Thomson M. Hirst
Lake Fairfax Seven Limited Partnership
c/o Hirst Financial Corporation
1767 Business Center Drive, Suite 100
Reston, VA 22090

Re: Grumman Lease Litigation

Dear Mr. Hirst:

We are pleased that Lake Fairfax Seven Limited Partnership (General Partner, Mason Hirst) has retained our Firm to represent the Partnership in connection with potential litigation against Grumman Aerospace Corporation regarding its lease of space at 1760 Business Center Drive, Reston, VA 22090. The purpose of this letter is to summarize and confirm the terms of our representation of the Partnership.

Although I will be performing some of the legal work in connection with our representation and will supervise the work of other lawyers in the Firm performing services for the Partnership, I expect that Larry Postol, one of my partners, and I, as well as Mary Baroody Lowe, an associate with this Firm, will perform most of the legal work for the Partnership. Other lawyers in our Firm may be assigned to perform work on this matter if that becomes necessary. We will, however, obtain your approval prior to assigning other lawyers.

The hourly rates for the attorneys identified above are as follows:

Mary Baroody Lowe:	\$130.00
Larry Postol:	\$235.00
Bruce Shirk:	\$305.00

As we have discussed, we will advise you on a bi-weekly basis of the fees you have incurred to date. Also, according to our normal practice, we will send you a detailed monthly statement of the services rendered which will also set forth expenses incurred

Mr. Thomson M. Hirst
April 7, 1994
Page 2
8596S

on your behalf, such as long distance telephone calls, travel, Lexis, Westlaw, photocopying, faxing, word processing and secretarial overtime costs. If third party fees are incurred in connection with our representation, such as court reporters, consultants or expert witnesses, we will ask that you make payment of all such charges directly to the third party.

We expect that you will pay each statement within 30 days of your receipt thereof. We also reserve the right to discontinue our services at any time if the payment history becomes unacceptable. And, while we understand that you are undertaking to be personally liable for our fees and expenses, it is important to bear in mind that our advice must be addressed to the best interests of the Partnership as a whole. Of course, those interests can necessarily be determined only after consultation with you.

If the foregoing terms accurately set forth your understanding of our attorney-client relationship, please indicate your agreement to those terms and conditions by signing the enclosed copy of this letter in the space provided for your signature and returning that signed copy to me.

We look forward to representing the Partnership in this matter.

Sincerely,

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON

W. Bruce Shirk

By

W. Bruce Shirk

WBS/bct
Enclosure

Accepted and Agreed:

LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP

By *H. H. Co Inc, its General Partner*
By: *Thomson M. Hirst*
Thomson M. Hirst

Thomson M. Hirst
Thomson M. Hirst

Its: _____
Partner

Dated: 4/12/94

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON,

Plaintiff,

v.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.,

Defendants.

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AT LAW NO. 140438

ANSWER OF DEFENDANT LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP

Defendant Lake Fairfax Seven Limited Partnership

(hereinafter, "the Defendant"), by counsel, for its Answer to the
Motion for Judgment filed herein states the following:

1. The Defendant admits the allegations contained in Paragraph 1 of the Motion for Judgment.
2. The Defendant admits the allegations contained in Paragraph 2 of the Motion for Judgment as they pertain to it, and denies those allegations as they pertain to Defendant Thomson M. Hirst.
3. The Defendant admits the allegations contained in Paragraph 3 of the Motion for Judgment.
4. As to the allegations contained in Paragraph 4 of the Motion for Judgment, the Defendant denies that it is a Virginia partnership. The Defendant admits the remainder of the allegations contained in Paragraph 4 of the Motion for Judgment.
5. The Defendant admits the allegations contained in Paragraph 5 of the Motion for Judgment.

DUFF & LEFFLER, A PROFESSIONAL CORPORATION • ATTORNEYS AND COUNSELORS AT LAW
11320 RANDOM HILLS ROAD • SUITE 540 • FAIRFAX, VA 22030 • (703) 591-7474 • FAX (703) 273-4537

6. Paragraph 6 of the Motion for Judgment requires no response.

BACKGROUND FACTS

7. As to the allegations contained in Paragraph 7 of the Motion for Judgment, the retainer agreement dated April 7, 1994 (hereinafter "the retainer agreement"), speaks for itself and to the extent that the allegations contained in Paragraph 7 are consistent therewith, they are admitted; and to the extent that the allegations contained in Paragraph 7 are inconsistent therewith, they are denied. The Defendant admits that a true copy of the retainer agreement is attached to the Motion for Judgment as Exhibit A.

8. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Motion for Judgment and the same are therefore denied.

9. The Defendant denies the allegations contained in the first sentence of Paragraph 9 of the Motion for Judgment. As to the allegations contained in the second sentence of Paragraph 9 of the Motion for Judgment, the retainer agreement speaks for itself and to the extent that the allegations contained in the second sentence of Paragraph 9 are consistent therewith, they are admitted; and to the extent that the allegations contained in the second sentence of Paragraph 9 are inconsistent therewith, they are denied.

10. As to the allegations contained in Paragraph 10 of the Motion for Judgment, the Defendant admits that it made payment to the Plaintiff in the amount of \$6,409.10 in September, 1994, that it obtained new counsel in October, 1994, and that it received bills

from the Plaintiff totalling \$87,787.00. The Defendant denies the remainder of the allegations contained in Paragraph 10 of the Motion for Judgment.

11. As to the allegations contained in Paragraph 11 of the Motion for Judgment, the Defendant admits that it has not paid the amount demanded by the Plaintiff. The Defendant denies the remainder of the allegations contained in Paragraph 11 of the Motion for Judgment.

12. The Defendant denies the allegations contained in Paragraph 12 of the Motion for Judgment.

13. The allegations contained in Paragraph 13 of the Motion for Judgment are conclusions of law and therefore require no response. However, to the extent that a response is deemed necessary, the allegations contained in Paragraph 13 of the Motion for Judgment are denied.

COUNT I

14. Paragraph 14 of the Motion for Judgment requires no response.

15. The allegations contained in the first sentence of Paragraph 15 of the Motion for Judgment are conclusions of law and therefore require no response. However, to the extent a response to the first sentence of Paragraph 15 is deemed necessary, the allegations contained therein are denied. As to the allegations contained in the second sentence of Paragraph 15 of the Motion for Judgment, the retainer agreement speaks for itself and to the extent

that the allegations contained in the second sentence of Paragraph 15 are consistent therewith, they are admitted; and to the extent that the allegations contained in the second sentence of Paragraph 15 are inconsistent therewith, they are denied.

16. The Defendant denies the allegations contained in Paragraph 16 of the Motion for Judgment.

17. The Defendant denies the allegations contained in Paragraph 17 of the Motion for Judgment.

COUNT II

18. Paragraph 18 of the Motion for Judgment requires no response.

19. The Defendant denies the allegations contained in Paragraph 19 of the Motion for Judgment.

20. The Defendant denies the allegations contained in Paragraph 20 of the Motion for Judgment.

21. The Defendant denies the allegations contained in Paragraph 21 of the Motion for Judgment.

COUNT III

22. Paragraph 22 of the Motion for Judgment requires no response.

23. The Defendant denies the allegations contained in Paragraph 23 of the Motion for Judgment.

24. The Defendant denies the allegations contained in Paragraph 24 of the Motion for Judgment.

25. The Defendant denies the allegations contained in Paragraph 25 of the Motion for Judgment.

26. Any averments or allegations contained in the Motion for Judgment which have not been specifically admitted or denied herein are to be considered denied.

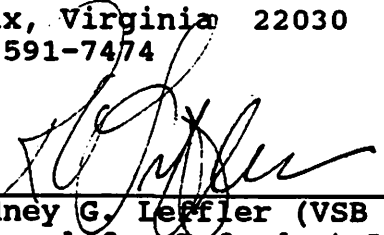
GROUND OF DEFENSE

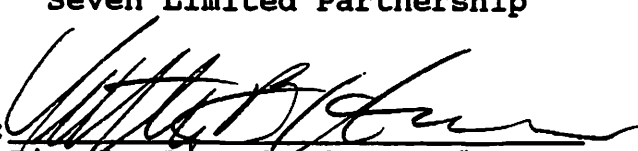
- A. Lack of authority.
- B. Prior breach of contract.
- C. Such other and further defenses of which the Defendant may become aware before and/or during the trial of this matter.

Respectfully submitted,

LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP
By Counsel

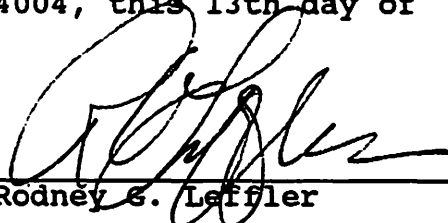
DUFF & LEFFLER
A Professional Corporation
11320 Random Hills Road
Suite 540
Fairfax, Virginia 22030
(703) 591-7474

By: 
Rodney G. Leffler (VSB #18742)
Counsel for Defendant Lake Fairfax
Seven Limited Partnership

By: 
Timothy B. Hyland (VSB #31163)
Co-Counsel for Defendant Lake Fairfax
Seven Limited Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer of Defendant Lake Fairfax Seven Limited Partnership was mailed, first-class mail, postage prepaid, to Sara M. Beiro, Esquire, Seyfarth, Shaw, Fairweather & Geraldson, 815 Connecticut Avenue, N.W., Suite 500, Washington, D.C. 20006-4004, this 13th day of June, 1995.


Rodney S. Leffler

LMP\hirst.ans

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Seyfarth Shaw Fairweather

versus

CASE NO. L-140438

Lake Fairfax Seven LP

STATUS CONFERENCE ORDER

The Status Conference was held August 3, 1995. After discussing the various issues presented; it was ORDERED that:

A. Plaintiff's and Counter Plaintiff's experts must be identified on or before 90 days prior to trial. All opposing experts must be identified on or before 60 days prior to trial. Identification of experts must set out all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, or the expert may not be permitted to express any non-disclosed opinions at trial. All discovery except Requests for Admissions shall be completed 30 days prior to trial.

B. A Settlement Conference Date is at 8:30 a.m. A factual statement of the case must be submitted to the Case Management Office on the 5th floor of the Judicial Center no later than five days before the Settlement Conference. Lead counsel for each of the parties and the parties (or if applicable, the insurance adjuster with authority to settle) must attend the settlement conference, unless excused in advance by the Judge or Evaluator conducting the conference. However, parties (or adjusters) who reside over 50 miles from the Fairfax Courthouse may be available by phone.

C. Counsel or pro se parties shall deliver to opposing counsel or party a copy of all exhibits and a list of names of witnesses proposed to be introduced at trial, on or before 15 days prior to trial. A list of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. No exhibit or witness not so identified and filed will be received in evidence, except in rebuttal or for impeachment. Any objections to exhibits except on relevancy grounds need to be filed with the Clerk of the Court and a copy mailed to opposing counsel or pro se parties no later than five days prior to trial or the objection will be deemed waived. Objections shall be to particular exhibit numbers and must state the legal reason for the objection.

D. Counsel shall exchange and confer about proposed jury instructions in advance of the trial date. At the commencement of trial, counsel shall tender to the Court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations.

E. Deadlines established in this Order may be extended or waived by the Court for good cause shown, but only after considering the extent to which the opposing party may be prejudiced thereby.

F. The Trial date is January 30, 1996 / with a Jury ☒ without a Jury ☐
Estimated trial time is 2 days.

G. Motions in limine which require argument exceeding five minutes shall be heard on a motions day before the trial date.

H. All dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible.

I. The Court's Case Management Instructions dated January 1, 1994 are incorporated herein by reference and the parties shall comply with each term thereof.

Entered this 3rd day of August, 1995

[Signature]
Counsel for Plaintiff(s)

[Signature]
Counsel for Defendant(s)

[Signature]
JUDGE

G

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH SHAW, FAIRWEATHER
& GERALDSON

Plaintiff,

v.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.

Defendants.

AT LAW NO. 140438

ORDER

THIS CAUSE came on to be heard this day on the various agreements of the parties;

and

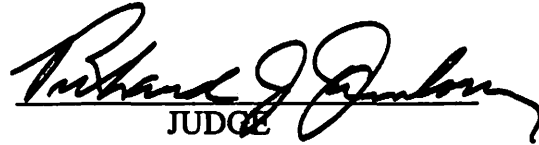
IT APPEARING TO THE COURT that it is appropriate to enter this Order in
accordance with the parties' agreements; it is accordingly

ORDERED that defendant Thomson M. Hirst's Motion to Dismiss, filed previously
herein, is hereby withdrawn, and Defendant Thomas M. Hirst shall file his Answer herein
within fourteen (14) days after the date of this Order; and it is further

ORDERED that Plaintiff Seyfarth, Shaw, Fairweather & Geraldson be and is hereby
granted leave to amend the Motion for Judgment herein as necessary to reduce the ad damnum
in each count of the Plaintiff's Motion for Judgment to \$77,662.87.

Copy to Clerk 9/26/95

ENTERED this 25th day of September, 1995.


JUDGE
Fairfax County Circuit Court

SEEN AND AGREED:

DUFF & LEFFLER
A Professional Corporation
11350 Random Hills Road
Suite 540
Fairfax, Virginia 22030
(703) 591-7474

By: 

Rodney G. Leffler (VSB #18742)
Timothy B. Hyland (VSB #31163)
Counsel for Defendants

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
815 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006-4004
(202) 463-2400

By: 

Sara M. Beiro (VSB #31444)
Counsel for Plaintiff

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON,

Plaintiff,

v.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.,

Defendants.

AT LAW NO. 140438

ANSWER OF DEFENDANT THOMSON M. HIRST

Defendant Thomson M. Hirst (hereinafter, the "Defendant"), by counsel, for his Answer to the Motion for Judgment filed herein states the following:

1. The Defendant admits the allegations contained in Paragraph 1 of the Motion for Judgment.
2. The Defendant denies the allegations contained in Paragraph 2 of the Motion for Judgment.
3. The Defendant admits the allegations contained in Paragraph 3 of the Motion for Judgment.
4. As to the allegations contained in Paragraph 4 of the Motion for Judgment, the Defendant denies that Lake Fairfax Seven Limited Partnership is a Virginia partnership. The Defendant admits the remainder of the allegations contained in Paragraph 4 of the Motion for Judgment.
5. The Defendant admits the allegations contained in Paragraph 5 of the Motion for Judgment.
6. Paragraph 6 of the Motion for Judgment requires no response.

BACKGROUND FACTS

7. As to the allegations contained in Paragraph 7 of the Motion for Judgment, the retainer agreement dated April 7, 1994 (hereinafter "the retainer agreement"), speaks for itself and to the extent that the allegations contained in Paragraph 7 are consistent therewith, they are admitted; and to the extent that the allegations contained in Paragraph 7 are inconsistent therewith, they are denied. The Defendant admits that a true copy of the retainer agreement is attached to the Motion for Judgment as Exhibit A.

8. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Motion for Judgment and the same are therefore denied.

9. The Defendant denies the allegations contained in the first sentence of Paragraph 9 of the Motion for Judgment. As to the allegations contained in the second sentence of Paragraph 9 of the Motion for Judgment, the retainer agreement speaks for itself and to the extent that the allegations contained in the second sentence of Paragraph 9 are consistent therewith, they are admitted; and to the extent that the allegations contained in the second sentence of Paragraph 9 are inconsistent therewith, they are denied.

10. As to the allegations contained in Paragraph 10 of the Motion for Judgment, the Defendant admits that Lake Fairfax Seven Limited Partnership made payment to the Plaintiff in the amount of \$6,409.10 in September, 1994, that Lake Fairfax Seven Limited Partnership obtained new counsel in October, 1994, and that Lake Fairfax Seven Limited Partnership received bills from the Plaintiff

totalling \$87,787.00. The Defendant denies the remainder of the allegations contained in Paragraph 10 of the Motion for Judgment.

11. As to the allegations contained in Paragraph 11 of the Motion for Judgment, the Defendant admits that he has not paid the amount demanded by the Plaintiff. The Defendant denies the remainder of the allegations contained in Paragraph 11 of the Motion for Judgment.

12. The Defendant denies the allegations contained in Paragraph 12 of the Motion for Judgment.

13. The allegations contained in Paragraph 13 of the Motion for Judgment are conclusions of law and therefore require no response. However, to the extent that a response is deemed necessary, the allegations contained in Paragraph 13 of the Motion for Judgment are denied.

COUNT I

14. Paragraph 14 of the Motion for Judgment requires no response.

15. The allegations contained in the first sentence of Paragraph 15 of the Motion for Judgment are conclusions of law and therefore require no response. However, to the extent a response to the first sentence of Paragraph 15 is deemed necessary, the allegations contained therein are denied. As to the allegations contained in the second sentence of Paragraph 15 of the Motion for Judgment, the retainer agreement speaks for itself and to the extent that the allegations contained in the second sentence of Paragraph 15 are consistent therewith, they are admitted; and to the extent that

the allegations contained in the second sentence of Paragraph 15 are inconsistent therewith, they are denied.

16. The Defendant denies the allegations contained in Paragraph 16 of the Motion for Judgment.

17. The Defendant denies the allegations contained in Paragraph 17 of the Motion for Judgment.

COUNT II

18. Paragraph 18 of the Motion for Judgment requires no response.

19. The Defendant denies the allegations contained in Paragraph 19 of the Motion for Judgment.

20. The Defendant denies the allegations contained in Paragraph 20 of the Motion for Judgment.

21. The Defendant denies the allegations contained in Paragraph 21 of the Motion for Judgment.

COUNT III

22. Paragraph 22 of the Motion for Judgment requires no response.

23. The Defendant denies the allegations contained in Paragraph 23 of the Motion for Judgment.

24. The Defendant denies the allegations contained in Paragraph 24 of the Motion for Judgment.

25. The Defendant denies the allegations contained in Paragraph 25 of the Motion for Judgment.

26. Any averments or allegations contained in the Motion for Judgment which have not been specifically admitted or denied herein are to be considered denied.

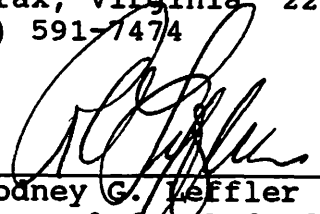
GROUND OF DEFENSE

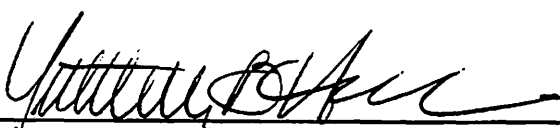
- A. Lack of authority.
- B. Prior breach of contract.
- C. Such other and further defenses of which the Defendant may become aware before and/or during the trial of this matter.

Respectfully submitted,

THOMSON M. HIRST
By Counsel

DUFF & LEFFLER
A Professional Corporation
11320 Random Hills Road
Suite 540
Fairfax, Virginia 22030
(703) 591-7474

By: 
Rodney G. Leffler (VSB #18742)
Counsel for Defendant
Thomson M. Hirst

By: 
Timothy B. Hyland (VSB #31163)
Co-Counsel for Defendant
Thomson M. Hirst

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer of Defendant Thomson M. Hirst was mailed, first-class mail, postage prepaid, to Sara M. Beiro, Esquire, Seyfarth, Shaw, Fairweather & Geraldson, 815 Connecticut Avenue, N.W., Suite 500, Washington, D.C. 20006-4004, this 6th day of October, 1995.


Timothy B. Hyland

HMP\hirst.ans

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

**SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON,**

Plaintiff,

v.

**LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.,**

Defendants.

AT LAW NO. 140438

**FILED
COURT SERVICES**

**JAN 16 PM 3:34
JOHN L. FREY
CLERK-CIRCUIT COURT
FAIRFAX, VA**

DEFENDANTS' WITNESS LIST

COME NOW the Defendants, Lake Fairfax Seven Limited Partnership and Thomson M. Hirst, by counsel, and for their Witness List, as required pursuant to the Status Conference Order entered on August 3, 1995, name the following potential witnesses:

1. Thomson M. Hirst
2. Joanna S. Hirst
3. Jack Reutemann
4. Andrew Prince
5. W. Bruce Shirk
6. David McC. Estabrook

**LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP and
THOMSON M. HIRST
By Counsel**

DUFF & LEFFLER

A Professional Corporation
11320 Random Hills Road
Suite 540
Fairfax, Virginia 22030
(703) 591-7474

By: 

Rodney G. Leffler (VSB #18742)
Counsel for Defendant
Thomson M. Hirst

By: 

Timothy B. Hyland (VSB #31163)
Co-Counsel for Defendant
Thomson M. Hirst

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Defendants' Witness List was hand delivered to Sara Beiro Farabow, Esquire, Seyfarth, Shaw, Fairweather & Geraldson, 815 Connecticut Avenue, N.W., Suite 500, Washington, D.C. 20006, this 16th day of January, 1996.


Timothy B. Hyland

HMP\hirstm.wit

FILED

JAN 18 1996

JOHN T. FREY
Clerk of the Circuit Court
401 East Main Street, VA

FAIRFAX COUNTY CIRCUIT COURT

EXHIBIT LIST

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON **CASE NUMBER:** LAW 140750400

vs.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.

Commonwealth/Plaintiff Attorney: Sara Beiro Farabow

Defendant/Respondent Attorney: Rodney G. Leffler

Judge: _____ **Clerk:** _____

COMMONWEALTH PLAINTIFF (DEFENDANT S) RESPONDENT EXHIBITS

[illegible]

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON,

Plaintiff,

v.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.,

Defendants.

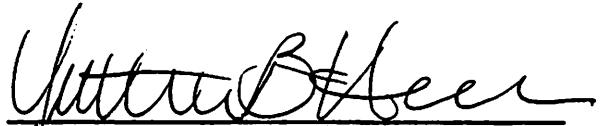
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COURT SERVICES
96 JAN 16 PM 3:34

JOHN L. FREY
CLERK-CIRCUIT COURT
FAIRFAX, VA.

AT LAW NO. 140438

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Defendants' Exhibit List, together with a copy of each Exhibit identified therein, was hand delivered to Sara M. Beiro Farabow, Esquire, Seyfarth, Shaw, Fairweather & Geraldson, 815 Connecticut Avenue, N.W., Suite 500, Washington, D.C. 20006-4004, this 16th day of January, 1996.


Timothy B. Hyland
Co-Counsel for Defendants

WHP\hirm.co3

FILED
COURT CLERK
95 JAN 16 PM 3:03
IN CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH, SHAW, FAIRWEATHER)
& GERALDSON)
)
Plaintiff,)
)
v.)
)
LAKE FAIRFAX SEVEN LIMITED)
PARTNERSHIP, et al.)
)
Defendants.)

AT LAW NO. 140438

PLAINTIFF'S LISTS OF WITNESSES AND EXHIBITS FOR TRIAL

Plaintiff Seyfarth, Shaw, Fairweather & Geraldson, by its undersigned counsel and pursuant to the Status Conference Order, respectfully submits the following lists of witnesses and exhibits for trial:

I. PROPOSED WITNESS LIST

Plaintiff may call the following witnesses at the trial of this case:

- David McC. Estabrook
- Peter Chatilovicz
- Mary Baroody Lowe
- Jill J. Roberts
- W. Bruce Shirk

This list is submitted with the understanding that the Plaintiff may decline to call any of the above-listed witnesses and may call additional witnesses for rebuttal or impeachment purposes as the circumstances at trial may warrant.

II. PROPOSED EXHIBIT LIST

Plaintiff may introduce the exhibits on the enclosed Exhibit List in addition to any exhibits the Defendants may list or introduce at trial. Plaintiff reserves the right to introduce additional exhibits for rebuttal or impeachment purposes as the circumstances at trial may warrant. In addition, there are a number of documents that were the subject of the Plaintiff's Request for Production of Documents and/or a Subpoena Duces Tecum served on a witness, David McC. Estabrook, Esq., for which the Defendants claimed attorney-client privilege. The privilege claim was disputed by the Plaintiff, and the documents for which the claim was made are being reviewed by the Court. These documents were not made available to the court in time for a decision that would enable the Plaintiff to include them in this list. For this reason, Plaintiff reserves the right to amend the exhibit list and to introduce documents made available to it after this date as exhibits at trial.

Respectfully submitted,



William F. Pendergast

John A. Jackson

Sara Beiro Farabow (Virginia Bar No. 31444)

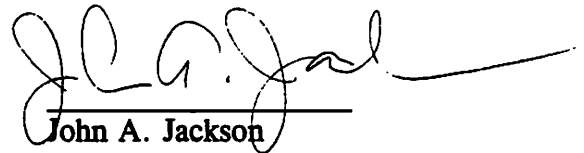
Attorneys for Plaintiff

Dated: 1/16/96

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 1996, a true and correct copy of Plaintiff's Lists of Witnesses and Exhibits for Trial and copies of the listed exhibits were served via hand delivery on:

Rodney G. Leffler, Esquire
Timothy B. Hyland, Esquire
DUFF & LEFFLER
A Professional Corporation
11320 Random Hills Road
Suite 540
Fairfax, VA 22030



John A. Jackson

FAIRFAX COUNTY CIRCUIT COURT

EXHIBIT LIST

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON

vs.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.

FILED
96 JAN 16 PM 2:03
CASE NUMBER: 140438
CLERK, CIRCUIT COURT
FAIRFAX, VA

DATE: January 16, 1996

Commonwealth/Plaintiff Attorney: William F. Pendergast/John A. Jackson

Defendant/Respondent Attorney: Rodney G. Leffler/Timothy B. Hyland

Judge: _____ Clerk: _____

COMMONWEALTH PLAINTIFF DEFENDANT RESPONDENT EXHIBITS

Exhibit #	Item Description		I.D.	ADM.
1	10/08/93	Mason Hirst letter from Jack Reutemann to Patricia Reip Re: FOIA request.		
2	10/27/93	NASA letter from Patricia M. Riep-Dice to Jack Reutemann Re: In response to FOIA request of 10/08/93.		
3	12/17/93	"Mike's Interpretation of NASA Treatment of Grumman and Mason Hirst."		
4	12/21/93	Mason Hirst fax from Jack Reutemann to Bruce Shirk Re: Documents regarding Lake Fairfax Business Center Building 7.		
5	1/06/94	Mason Hirst fax from Jack Reutemann to Bruce Shirk Re: Draft letter to T. Gill from D. Estabrook Re: Lease agreement.		
6	1/06/94	Fax from B. Shirk to J. Reutemann Re: Lease agreement dated 12/29/87 by and between Lake Fairfax Seven Limited Partnership & Grumman Aerospace Corp.		
7	1/14/94	"Jeff Jahns, partner of Bruce Shirk: Expert in workouts of loans."		
8	4/01/94	SSF&G billing memos.		
9	4/07/94	SSF&G Retainer letter from B. Shirk to T. Hirst signed by T. Hirst.		

Exhibit #	Item Description		I.D.	ADM.
10	4/08/94	Fax from B. Shirk to T. Hirst enclosing retainer letter and an accounting of attorney hours spend on the Grumman lease matter.		
11	4/11/94	Fax from B. Shirk to T. Hirst Re: Drafts of the Complaint and Initial Discovery Requests.		
12	4/12/94	Letter from B. Shirk to T. Hirst Re: Meeting with E. Shapiro.		
13	4/13/94	Letter from B. Shirk to E. Shapiro Re: Enclosed copies of Lease Agreement and correspondence relevant to lease dispute.		
14	4/14/94	Fax from B. Shirk to M. Estabrook Re: Draft release.		
15	4/14/94	Notes from meeting between B. Shirk and E. Shapiro.		
16	4/19/94	Memorandum from B. Shirk to T. Hirst Re: Draft of letter to M. Tomasulo enclosing a draft of a Liquidated Damages Calculation.		
17	4/19/94	Letter from B. Shirk to T. Hirst Re: Meeting with E. Shapiro.		
18	4/21/94	Notes from teleconference with Hirst, Shirk, DME, Mary Beth and Nancy.		
19	4/21/94	Fax from T. Hirst to B. Shirk enclosing notes on meeting between B. Shirk and Mac E.		
20	4/22/94	Fax from Nancy O'Doherty to B. Shirk enclosing letter to M. Tomasulo Re: Computation of early termination payment.		
21	4/22/94	Fax from T. Hirst to M. Lowe enclosing letters to M. Tomasulo from T. Hirst Re: Computation of early termination payment and liquidated damages computation.		
22	4/22/94	Fax from B. Shirk to E. Shapiro Re: Enclosed letters from T. Hirst to M. Tomasulo Re: Computation of early termination payment and liquidated damages computation.		
23	4/25/94	Fax from M. Lowe to M. Estabrook enclosing a draft of Reservation of Rights Agreement.		
24	4/26/94	Fax from M. Lowe to M. Estabrook enclosing a draft letter from B. Shirk to E. Shapiro Re: Reservation of Rights Agreement.		
25	4/27/94	Fax from B. Shirk to M. Estabrook enclosing draft letter to E. Shapiro Re: Enclosed draft Reservation of Rights Agreement.		

Exhibit #	Item Description		I.D.	ADM.
26	4/28/94	Fax from T. Hirst to B. Shirk enclosing calculation of liquidated damages.		
27	4/29/94	Letter from B. Shirk to E. Shapiro Re: Reservation of Rights Agreement for execution.		
28	4/29/94	Letter from B. Shirk to D. Estabrook Re: Liquidated damages.		
29	5/02/94	Mason Hirst fax from N. O'Doherty to B. Shirk and M. Estabrook enclosing calculation of liquidated damages.		
30	5/03/94	Letter from B. Shirk to E. Shapiro Re: Revised liquidated damages calculation.		
31	5/03/94	Letter from B. Shirk to E. Shapiro Re: Revised liquidated damages calculation with bcc's to T. Hirst, D. M. Estabrook & R. Johnson.		
32	5/06/94	Fax from B. Shirk to M. Estabrook enclosing draft letter to T. Hirst Re: termination claim.		
33	5/11/94	Fax from B. Shirk to T. Hirst Re: Revised proposed Reservation of Rights Agreement.		
34	5/16/94	Fax from B. Shirk to T. Hirst Re: Reservation of Rights Agreement prepared for signature.		
35	5/16/94	Fax from B. Shirk to T. Hirst Re: Draft Reservation of Rights Agreement.		
36	5/17/94	Fax from B. Shirk to T. Hirst enclosing draft Reservation of Rights Agreement.		
37	5/17/94	Fax from B. Shirk to M. Estabrook enclosing a revised Reservation of Rights Agreement.		
38	5/18/94	Fax from B. Shirk to E. Shapiro enclosing a revised draft of the Reservation of Rights Agreement.		
39	5/19/94	Fax from B. Shirk to M. Estabrook Re: Shapiro's revisions of Reservation of Rights Agreement.		
40	5/20/94	Fax from E. Shapiro to B. Shirk enclosing draft of Reservation of Rights Agreement being reviewed by Grumman.		
41	5/23/94	Fax from M. Estabrook to B. Shirk enclosing draft Reservation of Rights Agreement for review and discussion.		
42	5/23/94	Fax from J. Hagner to B. Shirk enclosing M. Estabrook's and J. Hagner's Revisions to Reservation of Rights Agreement.		

Exhibit #	Item Description		I.D.	ADM.
43	5/25/94	Fax from D. M. Estabrook to B. Shirk enclosing Estabrook's draft of Reservation of Rights Agreement.		
44	5/25/94	Fax from M. Bleiweis to B. Shirk enclosing a comparison of claim alternatives: Breach of Contract vs. Liquidated Damages.		
45	5/25/94	Fax from M. Bleiweis to B. Shirk enclosing a revised analysis.		
46	5/26/94	Fax from T. Hirst to M. Estabrook, B. Shirk and J. Hagner enclosing a letter from R. Kane and K. Tueller to R. Pavel Re: Appraisal of Parkridge Center Phase 3.		
47	5/27/94	Fax from J. Hagner to B. Shirk enclosing letter from J. Hagner to E. Shapiro Re: Reservation of Rights Agreement.		
48	5/31/94	Fax from J. Hagner to B. Shirk enclosing letter from J. Hagner to E. Shapiro Re: Second agreement among Grumman Aerospace Corporation, Lake Fairfax, and Northwestern Mutual Life Insurance Co.		
49	6/01/94	Fax from T. Hirst to B. Shirk Re: Accusations and questions of proof against a Fortune 500 corporation.		
50	6/01/94	Fax from B. Shirk to T. Hirst Re: Notes on Accusations and Questions of Proof.		
51	6/01/94	Fax from J. Hagner to B. Shirk enclosing a "redlined" revision of Reservation of Rights Agreement.		
52	6/01/94	Fax from J. Hagner to B. Shirk enclosing a letter from Hagner to M. Leahy Re: Separate Agreement between Lake Fairfax Seven Limited Partnership and the Northwestern Mutual Life Insurance Company		
53	6/02/94	Fax from J. Hagner to B. Shirk enclosing a computer-generated "redline" of the Reservation of Rights Agreement showing all changes requested.		
54	6/02/94	Fax from E. Shapiro to Distribution Re: Amendment Extending Date for Payment.		
55	6/02/94	Fax from M. Bleiweis to B. Shirk/M.Lowe enclosing Calculation of Liquidated Damages.		
56	6/02/94	Fax from J. Hagner to E. Shapiro enclosing final copy of the Reservation of Rights Agreement and a "redlined" copy showing changes.		
57	6/03/94	Fax from M. Estabrook to B. Shirk/M. Lowe enclosing third draft of the termination letter.		

Exhibit #	Item Description		I.D.	ADM.
58	6/06/94	Fax from J. Roberts to M. Lowe enclosing Part II of the Termination Letter to NASA.		
59	6/09/94	Memo from JJR to DME/DJE Re: Grumman Notice/Bruce Shirk Telephone Call		
60	6/09/94	"Memorandum in Support of Grumman Aerospace Corporation's Payment to Lake Fairfax Seven Limited Partnership of Rent for the Remaining Period Under the Lease and Grumman's Inclusion of Same in its Termination Claim to NASA." (Draft)		
61	6/09/94	Fax from J. Roberts to M. Lowe enclosing revisions to the draft Memorandum in Support of Grumman Aerospace Corporation's Payment to Lake Fairfax ...		
62	6/10/94	Letter from B. Shirk to T. Hirst Re: Draft of Memorandum in Support of Lake Fairfax's Claim to Grumman.		
63	6/10/94	Letter from B. Shirk to T. Hirst Re: Draft of Memorandum in Support of Claim to Grumman with handwritten notes.		
64	6/13/94	Handwritten notes from teleconference with Maribeth Lowe.		
65	6/17/94	Letter from B. Shirk to D. M. Estabrook Re: FOIA Request for Memo which memorializes the exchange of information discussed at an October 20, 1993 meeting and enclosing a draft of an argument on the "bad faith" issue.		
66	6/17/94	Letter from M. Lowe to P.M. Reip Re: FOIA Request.		
67	6/20/94	Fax from D. Ervin to M. Lowe enclosing revision of Part II of Termination Memo.		
68	6/20/94	Handwritten notes on teleconference with Maribeth Lowe.		
69	7/01/94	Fax from M. Lowe/B. Shirk to T. Hirst enclosing an Outline of Facts and Argument Relating to Grumman's attempted termination of the lease.		
70	7/01/94	Fax from M. Lowe to D. M. Estabrook enclosing draft letter from B. Shirk to E. Shapiro Re: Enclosed claim of Lake Fairfax Seven Limited Partnership for rent in the amount of \$12,398,888; and, Charts on Summary of Claim Costs, Base Rent, and Additional Rent.		
71	7/01/94	Letter from B. Shirk to E. Shapiro Re: Lake Fairfax's claim for rent in the amount of \$12,398,868.		

Exhibit #	Item Description		I.D.	ADM.
72	7/20/94	Letter from B. Shirk to E. Shapiro Re: Preparation of Additional Information regarding the basis of the claim against Grumman.		
73	7/29/94	Letter from B. Shirk to D. M. Estabrook enclosing letters received extending the time to respond to FOIA Requests.		
74	8/23/94	Fax from D. M. Estabrook to M. Lowe enclosing a draft notice of breach of lease letter and draft Memorandum in Support of Lake Fairfax's Claim for Rent ...		
75	8/24/94	Fax from T. Hirst to B. Shirk enclosing notes from teleconference between M. Tomasulo and T. Hirst.		
76	8/24/94	Handwritten notes on teleconference with Maribeth Lowe.		
77	8/25/94	Fax from M. Lowe to D. Ervin enclosing a paragraph to be inserted on page 6 of draft memo of termination.		
78	8/26/94	Fax from D. M. Estabrook to M. Lowe and B. Shirk enclosing letter from D. M. Estabrook to E. Shapiro re: enclosed copy of twenty day Notice and Memorandum in Support of Lake Fairfax's Claim for Rent against Grumman.		
79	8/30/94	Handwritten notes on conference with DME & JJR and teleconference with "Bill Shirk."		
80	8/31/94	Letter from B. Shirk to T. Hirst enclosing an accounting of attorney hours spent on the Grumman Lease matter for August 1-16.		
81	9/02/94	Letter from B. Shirk to E. Shapiro enclosing copy of NASA's late response to FOIA request of June 17, 1994.		
82	9/02/94	Letter from B. Shirk to T. Hirst Re: Enclosed documents received from NASA in response to June 17, 1994 FOIA Request.		
83	9/07/94	Letter from B. Shirk to T. Hirst & D. M. Estabrook Re: Proceed with plan to present legal arguments in support of Lake Fairfax's claim for rent.		
84	9/28/94	Fax from D. M. Estabrook to T. Hirst, N. O'Doherty, B. Shirk and M. Lowe Re: Review and revise final draft of letter to Grumman re: Notice of Breach of Lease.		
85	0/00/00	Handwritten notes on teleconference with "Maribeth"		

Exhibit #	Item Description	I.D.	ADM.
86	5/01/94 SSF&G Billing Letter to Lake Fairfax for legal services rendered April 1-30, 1994 with handwritten notes.		
87	6/01/94 Fax from J. Hagner to B. Shirk enclosing revised Reservation of Rights Agreement and a computer-generated "redline" showing all changes from draft to M. Leahy.		

COPY

1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3
 4 SEYFARTH, SHAW, FAIRWEATHER x
 and GERALDSON, ESQUIRES, :
 :
 5 Plaintiff, :
 vs. : Civil Action
 6 : At Law No. 140438
 LAKE FAIRFAX SEVEN LIMITED :
 7 PARTNERSHIP, et al., :
 :
 8 Defendants. x

9

10 Fairfax, Virginia

11 Tuesday, January 30, 1996

12

13

14 The above entitled matter came on to be heard before
 15 the Honorable Judge M. Langhorne Keith, presiding, at the
 16 Circuit Court of Fairfax County, 4110 Chain Bridge Road,
 17 Fairfax, Virginia 22030, commencing at approximately 10:27
 18 o'clock, a.m., before Patricia M. Nelson, Court Reporter
 19 for the Commonwealth of Virginia, when were present on
 20 behalf of the respective parties:

21

22



**CAROL J. THOMAS STENOTYPE
 REPORTING SERVICES, INC.**
 3162 MUSKET COURT
 FAIRFAX, VIRGINIA 22030
 (703) 273-9221

1 APPEARANCE OF COUNSEL

2 For the Plaintiffs:

3 SEYFARTH, SHAW, FAIRWEATHER &
4 GERALDSON, ESQUIRES
5 BY: JOHN ARTER JACKSON, ESQUIRE
6 WILLIAM F. PENDERGAST, ESQUIRE
7 SARA BEIRO FARABOW, ESQUIRE
8 815 Connecticut Avenue, Northwest, Suite 500
9 Washington, D.C. 20006

10 For the Defendants:

11 DUFF & LEFFLER, ESQUIRES
12 BY: RODNEY G. LEFFLER, ESQUIRE
13 11320 Random Hills Road, Suite 540
14 Fairfax, Virginia 22030

15 - 0 -

1 P-R-O-C-E-E-D-I-N-G-S

2 (Thereupon, the court reporter was previously
3 sworn by Judge Michael P. McWeeny.)

4 THE COURT: Good Morning.

5 MS. BEIRO FARABOW: Good morning, Your Honor.

6 MR. JACKSON: Good morning, Your Honor.

7 MR. PENDERGAST: Good morning, Your Honor.

8 THE COURT: I understand you've already been
9 moved once because of a conflict. I want to make you aware
10 that in times past I have represented Mr. Hirst. Before I
11 left my law firm, however, I was representing clients on
12 the other side from a matter to Mr. Hirst, so I don't
13 believe there's a conflict, but I want to make you aware
14 that when I was in private practice one time my firm did do
15 some relatively minor work for Mr. Hirst. All right.

16 MR. LEFFLER: Mr. Hirst nor the partnership have
17 objection to that.

18 THE COURT: Have no --

19 MR. LEFFLER: Neither have an objection.

20 THE COURT: All right.

21 THE COURT: I don't think I ever represented Lake
22 Fairfax Seven Limited Partnership.

1 MR. JACKSON: Your Honor, we have no objection.

2 THE COURT: All right. Fine.

3 THE COURT: Are there any preliminary motions?

4 MS. BEIRO FARABOW: Yes, Your Honor, there are.

5 Good morning. I'm Sara Beiro, counsel for Seyfarth Shaw.

6 I'm also counsel of record, Your Honor.

7 THE COURT: All right.

8 MS. BEIRO FARABOW: Mr. Jackson has already been
9 moved in by special admission. I understand there is a
10 motion pending for the special admission of Mr. Pendergast,
11 that may be in Your Honor's file, and it was endorsed by
12 counsel for the defendant.

13 THE COURT: All right.

14 MS. BEIRO FARABOW: I have another copy if you
15 like. Your Honor, with your permission, I would ask the
16 requirement for resident counsel to be present to be waived
17 if that's acceptable with the court.

18 THE COURT: Well, it's not usual to waive
19 resident counsel in these matters. It's a requirement that
20 resident counsel be here.

21 MS. BEIRO FARABOW: Right. We are all from the
22 same law firm. I have had relatively minor participation

1 in the case. Lead counsel is actually Mr. Jackson. We
2 conferred previously with counsel for the defendant, and
3 they agreed that it would be acceptable with them as well.

4 THE COURT: Any objection, Mr. Leffler?

5 MS. BEIRO FARABOW: We're just trying to keep --

6 MR. LEFFLER: Well, my -- I didn't talk to
7 Ms. Beiro about it. I talked to Mr. Jackson, and I told
8 him in my experience that's the court's call, to be quite
9 frank about it, not mine.

10 THE COURT: All right. Well, I hate to run up
11 costs. I've been in your position, and sat there
12 representing the Majesty of the Virginia Bar, like a bump
13 on a log. Is your office in D.C.?

14 MS. BEIRO FARABOW: Yes, Your Honor, it is in
15 D.C. We were just concerned about, certainly, the cost of
16 having three counsel present. Most of the attorneys in the
17 firm are, of course, D.C. attorneys, and there are a few
18 Virginia attorneys like myself.

19 THE COURT: All right.

20 MS. BEIRO FARABOW: I understand, certainly, the
21 requirements or the rationale for the rule, but I think in
22 this case all of us in the firm have varying degrees of

1 experience in the Virginia courts. Mr. Jackson --

2 THE COURT: All right. I'm going to let you
3 return to your Washington office. Mr. Jackson and
4 Mr. Pendergast. Which is Mr. Jackson?

5 MR. JACKSON: I'm Mr. Jackson.

6 MR. PENDERGAST: I am Mr. Pendergast, Your Honor.

7 THE COURT: All right.

8 MS. BEIRO FARABOW: The motion of Mr. Pendergast,
9 that's the one that was pending.

10 THE COURT: What is it, admission pro hoc?

11 MS. BEIRO FARABOW: Yes, Your Honor.

12 MR. PENDERGAST: Yes, Your Honor.

13 THE COURT: All right. Any objection by the
14 defendant?

15 MR. LEFFLER: None, Your Honor.

16 THE COURT: He'll be so admitted.

17 MR. PENDERGAST: Thank you, Your Honor.

18 MS. BEIRO FARABOW: Thank you very much, Your
19 Honor. I appreciate it.

20 THE COURT: We've just gotten this case. Is it
21 just Lake Fairfax Seven Limited Partnership are the
22 defendants? No, it's not. It says et al.

1 MR. LEFFLER: Mr. Hirst is the other defendant,
2 personally, Your Honor.

3 THE COURT: All right. Judge Smith had done a
4 lengthy review of documents, I understand. I've got a list
5 here. I'm not sure what the list -- I know he went through
6 to determine which were privileged and which were not, and
7 there is a column K and a column L that relates to Grumman
8 Plane and other matters. Is that the determination as to
9 what is privileged or nonprivileged?

10 MR. LEFFLER: I don't know what those initials
11 mean, Your Honor, but I know that Judge Smith has rendered
12 an opinion, and that the documents that he ruled upon were
13 not protected by the privilege had been turned over to
14 plaintiff's counsel.

15 THE COURT: All right. As I understand it, this
16 is a claim by the plaintiff for legal fees owed by Lake
17 Fairfax Seven Limited Partnership and Mr. Hirst?

18 MR. JACKSON: That is correct, Your Honor.

19 THE COURT: All right. Are we ready to bring in
20 the jury panel?

21 MR. JACKSON: Your Honor, I have another matter
22 which I would like to bring to your attention.

1 THE COURT: All right.

2 MR. JACKSON: Your Honor, there were a number of
3 statements made in the defendants' response to the motion
4 for judgment and admissions which we would like to bring to
5 the attention of the jury. I have prepared a request, if I
6 may.

7 THE COURT: All right. Has Mr. Leffler seen this
8 list? Is it a fact of stipulation or?

9 MR. LEFFLER: Judge, I don't know what it is. I
10 was given it this morning. To be candid about it, if they
11 have evidence of those things, I request that they prove
12 it. I'm not willing at this point to take the time away
13 from my preparation with the jury to look back at the
14 request for admissions and see if these are, with all due
15 respect to my opponents, fair representations of what was
16 said.

17 THE COURT: Well, Mr. Jackson, it seems to me if
18 you were proposing to make these stipulations, it should
19 have been done before now. I think to submit these to the
20 jury without a stipulation signed by the defense, I just
21 don't see how the court can require that.

22 MR. JACKSON: I understand, Your Honor, and I'm

1 not arguing the point. For the record, I did transmit
2 these to Mr. Leffler last evening, but perhaps after he had
3 left his office for the day.

4 THE COURT: Last evening I don't think is
5 sufficient time for anybody to go through proposed
6 stipulations. You could say what you're going to prove in
7 opening statement, and what you think the evidence is going
8 to show, just as at any other trial, but I'm not going to
9 submit this to the jury as facts that have been
10 established.

11 MR. JACKSON: Thank you, Your Honor.

12 THE COURT: All right. Are we ready for the
13 panel now?

14 MR. JACKSON: Yes, Your Honor.

15 THE COURT: All right.

16 MR. LEFFLER: Ready for the defense.

17 THE COURT: All right. Mr. Jackson and
18 Mr. Pendergast, you're both partners at the plaintiff firm;
19 is that correct?

20 MR. PENDERGAST: I am a partner, Your Honor, Bill
21 Pendergast. Mr. Jackson is one of our associates.

22 THE COURT: All right.

1 MR. PENDERGAST: I'm supervising. He's going to
2 try the case. I'll help him if I can. Would the court
3 like to know more about my background?

4 THE COURT: No. I'm just going to -- I usually
5 introduce the case to the jury, and we don't really have a
6 -- we have counsel, but no human being sitting there
7 representing the plaintiff, and I just wanted to make sure
8 I understood the situation, but I'll explain it to the
9 jury.

10 MR. PENDERGAST: The law firm's view, Your Honor,
11 was if a partner was here with Mr. Jackson, I might get a
12 function as a dual role, being a partner for the
13 partnership.

14 THE COURT: I think that's appropriate.

15 MR. PENDERGAST: Thank you.

16 (Thereupon, at 11:07 o'clock, a.m., a jury of
17 seven was impaneled and sworn.)

18 THE COURT: All right. Mr. Jackson.

19 MR. JACKSON: Ladies and gentlemen, Mr. Leffler
20 explained a little bit to you about the nature of this
21 case, as he -- as well as comments that the judge made
22 earlier.

1 This is a case about the collection of legal fees
2 by a law firm. The parties to this case are the Lake
3 Fairfax Seven Limited Partnership, which Mr. Leffler
4 explained, is the lessor of some real estate, as well as
5 being involved in some other real estate enterprises, and
6 Seyfarth, Shaw, Fairweather and Geraldson, which is a major
7 law firm.

8 In 1993, as you will learn from the evidence, a
9 tenant of one of the Lake Fairfax Seven Limited Partnership
10 properties sought to terminate the lease of that property
11 in connection with the contract that it was performing.

12 The loss of this tenant had a potential of having
13 a significant financial loss to the lessor, the Lake
14 Fairfax Partnership, and the rights of the parties were in
15 dispute.

16 You will learn from the evidence, the documentary
17 evidence and testimony of Mr. Shirk, a partner in the law
18 firm, that Lake Fairfax Seven Limited Partnership had a law
19 firm already representing it in connection with this matter
20 when it contacted the plaintiff, Seyfarth Shaw.

21 Seyfarth, Shaw, Fairweather and Geraldson was
22 engaged, because this particular matter had considerable

1 relationship to government contracts, and Seyfarth, Shaw,
2 Fairweather and Geraldson has a government contracts
3 practice.

4 Mr. Shirk, the partner responsible, will testify,
5 and you will have the opportunity to see as an exhibit a
6 letter that was sent to Lake Fairfax offering to represent
7 them in connection with this matter.

8 This letter, as you will see, and as you will
9 hear in the testimony, set forth the terms of this
10 representation, how the fees would be calculated, how the
11 expenses would be handled, and indeed the terms of payment.

12 You will also see, and you will have a chance to
13 examine the exhibit, that Mr. Thomson Hirst, the president
14 of the general partner of this partnership, signed the
15 letter, indicating an acceptance of these terms, the terms
16 which included the provision that he would be personally
17 responsible for the fees.

18 You will be presented with evidence that will
19 show that Seyfarth, Shaw, Fairweather and Geraldson
20 performed a variety of legal services for the Lake Fairfax
21 Seven for a period of over six months. This was performed
22 in accordance -- as will be attested by the evidence, it

1 was performed in accordance with the terms of this
2 agreement that we referred to earlier.

3 The evidence will show that the services that
4 Seyfarth Shaw performed were reasonable and necessary to
5 provide the representation for which it was hired.

6 The documents and testimony of Mr. Shirk will
7 show that the fees charged were as agreed by the parties,
8 and were reasonable for the services provided.

9 The Lake Fairfax Seven Limited Partnership
10 refused to pay more than a small fraction of the fees for
11 the services provided, as will be shown by the testimony of
12 our witnesses, Mr. Shirk, and by the documents.

13 They refused to pay, either in accordance with
14 the provisions of the agreement, and they refused to pay
15 upon demand by the law firm thereafter.

16 They paid \$3,725 of the fees that were billed in
17 the amount of \$77,000. The evidence will show that Lake
18 Fairfax Seven also refused to reimburse the law firm for
19 all of the expenses that it incurred on behalf of the
20 limited partnership.

21 We're here today to ask that, based on the
22 evidence that you will be given and shown, you find

1 that Seyfarth, Shaw, Fairweather and Geraldson is entitled
2 to full payment for the services it provided, and
3 reimbursement of all the expenses it incurred on behalf of
4 Lake Fairfax.

5 THE COURT: Mr. Leffler.

6 MR. LEFFLER: Thank you. May it please the
7 court. Ladies and gentlemen of the jury. I was somewhat
8 restricted in voir dire to talk to you about what the
9 evidence in this case will show, but that restriction has
10 been lifted from me now in opening statements.

11 As I told you before, I represent both this
12 limited partnership and Tom Hirst. There is no need to get
13 into the detail with which Mr. Hirst is involved with the
14 corporation that owns the partnership, because, as
15 Mr. Jackson told you, he personally guaranteed to pay the
16 fees in this case, and that's not disputed.

17 So from now on, throughout the course of this
18 opening statement, and throughout this trial, when I talk
19 about the law firm, rather than say Seyfarth, Shaw,
20 Fairweather and Geraldson ten thousand times in two days,
21 I'm talking about the law firm that these gentlemen
22 represent and by which both are employed.

1 When I talk about the partnership, I'm going to
2 talk about Lake Fairfax Seven Limited Partnership. I may
3 call it from time to time Lake Fairfax Seven or the
4 partnership. When I talk about Tom Hirst, I'm talking
5 about this man seated right here.

6 Let me define a couple of other things. When I
7 talk about litigation over the next couple of days, I'm
8 talking there is no magic lawyer definition to litigation.
9 It is in Webster's Dictionary defined as a legal contest by
10 judicial process, that's what I'm talking about.

11 There is a word I'm going to talk about quite a
12 bit called a complaint, that is a lawyer term, and I want
13 to give you a definition of it, so you know what I'm
14 talking about for the next day and a half.

15 A complaint is a document setting forth
16 allegations by one party, the plaintiff, against another
17 party, the defendant, by which litigation has begun, in
18 this case, in the United States District Court for the
19 Eastern District of Virginia.

20 It is the federal equivalent of a small claim, of
21 a warrant in debt, of a motion for judgment, which started
22 this lawsuit, none of which you need to know, and if you're

1 fortunate in life, you go throughout your life and never
2 hear those words again.

3 But so you know, a complaint is the document by
4 which, in this case, Lake Fairfax Seven Limited Partnership
5 would have begun the action in federal court against
6 Grumman Aerospace.

7 Mr. Jackson and I agree on a whole lot of things.
8 One of the things that we agree on is that Seyfarth, Shaw,
9 Fairweather and Geraldson is a major law firm. It has, by
10 my calculations, according to their letterhead, offices in
11 Chicago, Los Angeles, New York City, San Francisco,
12 Sacramento, Brussels, Belgium, Toronto, Canada, and
13 Cologne, Germany.

14 They are, from what I've heard, a firm that
15 practices in the area of government contracts. I do not.
16 I know nothing about government contracts, but what I
17 needed to learn to get this case ready.

18 Bruce Shirk, who is a partner, who you will hear
19 from, practices in the area of government contracts, I have
20 been told. So those kinds of things I agree with.

21 Where we separate ways is not so much whether
22 there was a contract between these two parties. They must

1 prove, they, the law firm, must prove a contract between
2 that law firm and Lake Seven Fairfax -- Lake Fairfax Seven
3 Limited Partnership. Now you know why I'm going to call it
4 the partnership all the time.

5 Then they must prove, after they prove they had a
6 contract, they must prove that the partnership breached it.
7 And then, if they prove that, they have to prove to you
8 what they're entitled for that breach, and in a lawyer's
9 fee case, that requires them to prove that the fees are
10 reasonable.

11 Unlike the rest of the world, we are governed by
12 Canons of Ethics, and in this state a Code of Professional
13 Responsibility which says, very simply put, a lawyer's fee
14 shall be reasonable and adequately explained to the client,
15 period. That one line governs us.

16 We are not allowed by law, a law that governs our
17 license to practice law, to charge a fee that is
18 unreasonable, and not explained to the client, for any
19 service, for any service.

20 So when Mr. Jackson shows you a contract that
21 says Ms. Lowe would bill \$130 an hour, and Mr. Shirk would
22 bill at \$305 an hour, that's true. We don't doubt they did

1 that.

2 You're going to see a lot of bills. In fact,
3 this is the stack of exhibits that the law firm has
4 provided me, and a good portion of this are bills and paper
5 generated by the law firm.

6 The real question in this case, though, the
7 \$64,000 question, for those of us old enough to remember
8 the show, is were those fees reasonable for what they did.

9 We are going to draw an analogy throughout the
10 course of this trial to house paint. I imagine that I
11 might be barred from the American Bar Association for using
12 that example, but that's the example we're going to ask you
13 to plug the evidence here, and that is, if you hire someone
14 to paint your house, and they say I'll paint it for \$305 an
15 hour, and somewhere in there you've got a basic idea how
16 many hours it takes to paint that house.

17 All you really care about is that the house gets
18 painted. You come home some day and they say, yeah, I told
19 you we could probably do this for \$10,000, but our bill is
20 now \$15,000, and you say not only is the bill \$15,000,
21 nobody has painted the house.

22 That's what this case is about. Not what hours

1 were spent, but whether the house got painted. That's what
2 this case is all about.

3 Let me tell you a little -- couple of things
4 about this particular case that Judge Keith will tell you
5 in the end when he instructs you on the law.

6 One is, he's going to tell you for a contract to
7 exist, and this may strike you as odd, but this is the law,
8 for a contract to exist, the minds of the parties, as the
9 law says, must have met on every material term of the
10 alleged agreement, every material term of the alleged
11 agreement, and then he's going to tell you the lawyer's fee
12 must be reasonable, and I already told you that. He will
13 instruct you on a lot of other things.

14 But, to start, in response to Mr. Jackson's
15 opening statement, let's talk about what the evidence will
16 show on a contract.

17 Again, Mr. Jackson and I agree on several things.
18 I'm going to ask some questions, and answer then with the
19 facts. And then when I come back at the end -- I have only
20 one shot at you at the end of this case, and you're
21 probably going to be thankful of that.

22 Mr. Jackson will have two, because he is the

1 plaintiff's lawyer, and he has the burden of proving his
2 case, so he gets to argue at the end. I argue, and then he
3 rebuts after all the evidence.

4 Why did Lake Fairfax and Tom Hirst need a lawyer?
5 Just as Mr. Jackson said, Lake Fairfax had leased an entire
6 building to Grumman Aerospace, and Grumman Aerospace was in
7 there by contract from 1988 to 1998. In 1993, they said
8 we're leaving. When you hear the figures involved, as
9 Mr. Jackson said, they're astronomical. There's a lot of
10 money involved in a lease this size.

11 Grumman told Lake Fairfax it was going to break
12 the lease. Grumman was doing work for NASA at the time.
13 They had an excuse. I'm sure if the Grumman lawyers were
14 here today, they could make a pretty good argument on why
15 they did. But, the fact of the matter is, it didn't matter
16 to the partnership. Grumman said we're leaving four years
17 before the lease was over, and, by the way, we're not going
18 to pay for the rest of the term.

19 Lake Fairfax needed lawyers who understood
20 government contracts. They have a regular lawyer here from
21 -- a fine lawyer, who practices law here in Northern
22 Virginia, but he, like I, knows little about government

1 contracts, so they went out in search of a firm as
2 prestigious as Seyfarth Shaw.

3 What they did was, they interviewed some law
4 firms. One letter that Mr. Jackson didn't tell you about
5 is dated January 6, 1994. I have it blown up for you.
6 We'll look at it later on in the case when the time for
7 that comes.

8 In that letter, Mr. shirk, the man you're going
9 to hear on the stand here today, says to them -- he gives
10 his estimate of what it's going to take to try the case at
11 fifty to \$75,000. You're going to see that letter.

12 The next closest competitor to Seyfarth Shaw said
13 \$250,000, so guess who they hired. They hired Seyfarth
14 Shaw.

15 What did Tom Hirst think he had hired these
16 lawyers to do, that's the meeting of the minds part that I
17 told you about earlier. He hired them to litigate. You
18 will see them use the word in both their letters, and that,
19 in this case, was to bring a legal contest, through the
20 judicial process, against Grumman Aerospace, in the United
21 States District Court for the Eastern District of Virginia.

22 Now, that means nothing to you, but among lawyers

1 it means one thing, it means speed. It means from the time
2 you file the complaint until you try the case four to six
3 months elapse, total, start to finish.

4 It means that had this action been filed, this
5 complaint been filed in January, February or March of 1994,
6 when these lawyers were hired, and started to do work, even
7 though they're going to show you a letter dated April, they
8 had done \$10,000 on the case by the time that letter was
9 signed.

10 Had that action been filed in the United States
11 District Court in those three months, it would have been
12 over by the time they were fired. It was never filed and
13 that's why we're here.

14 Now, why did he think that he hired them to
15 litigate? He hired government contracts lawyers to do what
16 government contracts lawyers do and that's get him paid for
17 this lease.

18 They decided, you'll see their own letters, they
19 are the experts, they are the major firm with offices all
20 over the world, they decided to sue in the Eastern District
21 of Virginia, and that's what he thought he hired them to
22 do.

1 On January 6, 1994, Bruce Shirk, the man you're
2 probably going to hear from first today, estimated that,
3 quote, legal fees of fifty to \$75,000 to litigate the
4 question of Grumman's liability under its lease with, end
5 quote, the partnership, meaning Lake Fairfax.

6 He then discusses in that same letter, which
7 you're going to see in evidence, their firm's
8 qualifications to try the case in the Eastern District of
9 Virginia.

10 He's going to identify the partner, Larry Postol.
11 He's going to say that he's tried a lot of cases in the
12 Eastern District, and he's going to say that he's taken
13 cases to the Fourth Circuit Court of Appeals, and, based on
14 that, we think we're going to do some discovery in the
15 neighborhood of a couple of depositions, we'll try the case
16 in a hurry, fifty to \$75,000, that's what he says in the
17 letter in his own words.

18 Then on April 7th, the letter Mr. Jackson told
19 you about, three months later, he says, Mr. Shirk, the same
20 man, says, quote, we are pleased that Lake Fairfax Seven
21 Limited Partnership has retained our firm, meaning Seyfarth
22 Shaw, in connection with potential litigation against

1 Grumman Aerospace, end quote.

2 After that letter was signed by Tom Hirst, where
3 they said we want you to personally guarantee you'll pay us
4 the fees, what did Seyfarth Shaw do? The evidence is going
5 to show the following. They drafted a complaint, I've
6 already told you about, interrogatories, which are
7 questions by which one side gathers facts from the other
8 side in a civil lawsuit, and requests for production of
9 documents, which is, very simply, exactly what it says. We
10 want you to give us the following documents, and they
11 billed him \$10,000.

12 The evidence will show that complaint is eight
13 pages long, that there are four interrogatories, when they
14 were entitled to ask thirty, at least, and two requests for
15 production of documents, when they're entitled to ask
16 unlimited number.

17 What's important about that is they began work in
18 March of 1994, a couple of weeks before that letter that
19 they're going to tell you they rely on was signed, and that
20 letter, by the time it got to Mr. Hirst, and got signed by
21 him, \$10,000 of legal fees had already been expended, and
22 the complaint was ready to go.

1 The evidence you're going to hear from Mr. Hirst
2 is they kept telling him next week, next week, next week,
3 we'll file, and they never did. It never got filed.

4 What's interesting to note in this case, the
5 evidence will show you, that when they sued him, when they
6 switched from being his lawyer to his adversary, the
7 complaint was eight pages long, that they asked him a total
8 of 52 interrogatories, a total of 23 requests for
9 admissions, in a case that they're going to ask you for
10 \$81,000.

11 The evidence is going to show you, I think the
12 evidence is going to show you, they did more work on this
13 complaint than they did on the one for him, when they were
14 working for him, and the case was arguably worth more than
15 ten million.

16 Now, the interesting thing about this complaint,
17 the evidence will show you, is that after all that work,
18 the \$10,000 worth of work, and time, they didn't even name
19 the plaintiff right. They didn't name their own client
20 right. It doesn't mean much to you, but to lawyers it's a
21 big deal, because it gets cases dismissed.

22 They filed a four count complaint, two of which

1 are probably not recognizable in Virginia. Again, it
2 doesn't mean much to you, but it means a whole lot at the
3 end of the lawsuit.

4 The long and short of it is, the evidence is
5 going to show you that what they billed him in that \$10,000
6 for was probably unusable and never was used.

7 Then the remaining -- and I'm round figuring
8 this. I'm sure Mr. Jackson is going to give you the
9 details right down to the penny.

10 The remaining \$70,000 of that bill is spent on
11 things that aren't mentioned in either one of those
12 letters, and the details are going to come out over the
13 course of Mr. Shirk's testimony.

14 The last question is, why did Tom Hirst discharge
15 them? Why did he fire his own lawyers? Well, six months
16 after that first letter, he had bills over \$70,000, he had
17 an unusable complaint, and he was no further ahead than he
18 was in the end, that's why the case is about the
19 reasonableness of fees. Time versus results, process
20 versus accurate work, that's what the case is about.

21 Now, let me save Mr. Jackson some particular
22 details here. The evidence is going to show, as I said,

1 \$10,000 is billed before that complaint gets to Mr. Hirst
2 and is ready to go.

3 Over the course of the next few months, \$41,000
4 worth of time was billed by a young lady named Mary Beth
5 Lowe, who, I guess, they're not going to call as a witness
6 in this case, so we won't get a chance to ask her what all
7 she did on this, but more than half, 70 percent of the
8 time, a little over half the fees were billed by Mary Beth
9 Lowe. She spent 320.5 hours, at \$130 an hour, for a total
10 of \$41,665 worth of time, by their calculation.

11 Mr. Shirk spent the vast majority of the rest of
12 it. The evidence is going to show that she had 14 days of
13 eight or more hours a day she billed on this case over the
14 summer of 1994. The evidence is also going to show you
15 that, at the end of this case, that work was simply, to be
16 kind, unusable, and that's what the case is about.

17 In your decision-making process, as you sit here,
18 whether you take notes, or however you decide to work,
19 through your own way, in deciding this case, you should be
20 asking yourself the following questions. One, was there a
21 contract between these parties. In other words, did the
22 meeting -- did their minds meet on what one hired the other

1 one to do.

2 If so, what was the law firm supposed to do in
3 that contract. In return, was it done, and did it get the
4 results, and was the fee they charged reasonable. It's a
5 pretty straight forward case.

6 In spite of what you see all around these tables,
7 as in so many cases, when you cut through it, in the end,
8 those are the questions. Was there a contract, was there a
9 meeting of the mind, was the contract breached, and, if it
10 was, is the law firm entitled to any fees, and if they're
11 entitled to fees, are they reasonable fees.

12 Ladies and gentlemen, it pains me, as a lawyer --
13 I made some jokes in voir dire, as I always do, just to
14 kind of break the ice.

15 It pains me, as a lawyer, to be involved in a
16 case where I have to show, through cross examination and
17 argument, some of the things I do, but that's the way it's
18 going to have to be done in this case. I'm sorry for that.

19 Seyfarth, Shaw, Fairweather and Geraldson has
20 decided they did not accept the money that -- Mr. Hirst, as
21 Mr. Jackson said, paid a small portion of it. They didn't
22 accept that as satisfaction, and they sued, and they chose

1 that.

2 Now it's my duty, and privilege, frankly, once I
3 got to know Tom Hirst, the defendant in this case, to ask
4 some questions that will help you cut through and answer
5 those questions.

6 At the end of this case, whether it's this
7 afternoon or tomorrow, I hope that the evidence has shown
8 you that there wasn't even a contract, because they were
9 buying apples and oranges. Tom Hirst was buying
10 litigation, and Seyfarth Shaw was doing something else.

11 Frankly, that's where they parted ways, in the
12 very beginning of the case. The evidence will show that
13 whatever they were doing, there will be no evidence that
14 their fees were reasonable for what they were doing.

15 I will ask you to return your verdict in favor of
16 both defendants in this case. On behalf of Tom Hirst and
17 the partnership, I thank you in advance for your attention.
18 Thank you very much.

19 THE COURT: All right. It's 11:30. Let's take a
20 10 minute break and then Mr. Jackson will call his first
21 witness.

22 MR. LEFFLER: Your Honor, may we have two minutes

1 with the court, either on this end or that end of the 10
2 minutes.

3 THE COURT: Yes. Let's do it now.

4 (Thereupon, at 11:30 o'clock, a.m., the jury
5 retired from the courtroom.)

6 MR. LEFFLER: Judge, something disturbed me that
7 Mr. Jackson said in opening, and I would rather not bring
8 it up in opening. He has said that Mr. Shirk would testify
9 that his fees were reasonable. They've identified no
10 experts in this case, and our strategy has been, quite
11 frankly, affected primarily by that. I would object to any
12 questions from Mr. Jackson to Mr. Shirk on opinion of
13 reasonableness in the case.

14 THE COURT: On what basis, Mr. Leffler?

15 MR. LEFFLER: He has not been identified as an
16 expert under the court's status conference order, and
17 therefore it -- the defendants in the case rely totally on
18 the court's order that, as Your Honor knows well, in cases
19 like this, expert testimony, as the courts consistently say
20 is, quote, ordinarily required, unquote. They've
21 identified no experts, and I object to him asking any
22 expert type questions.

1 THE COURT: All right. Mr. Jackson.

2 MR. JACKSON: Your Honor, as Mr. Leffler has
3 pointed out, the plaintiff is obligated to charge only
4 reasonable fees by the Code of Ethics, and, indeed, if we
5 are to prevail, it is essential that we allege and provide
6 evidence that the fees are reasonable.

7 Mr. Shirk's testimony will not only be a
8 statement with respect to the fees being reasonable, but
9 his testimony will also give evidence of the
10 reasonableness, by discussing the work that was performed,
11 and the nature of the direction that he was given, and the
12 reasons for -- the factual basis for his conclusion.

13 THE COURT: Don't you agree with Mr. Leffler that
14 in a suit for legal fees, expert testimony is required to
15 establish the reasonableness of the fees?

16 MR. JACKSON: Your Honor, we are aware of cases
17 where there has not been a contract, and where there has
18 not been a definition of the fees, and how they were to be
19 assessed, that would support the need for an expert.

20 On the other hand, the cases that we have read
21 have suggested that such need for expert testimony could
22 only be in a case where there would not have been a

1 contract, or other things defining the reasonableness of
2 the fees, and giving the plaintiff the opportunity to
3 demonstrate evidence of the reasonableness of the fees.

4 THE COURT: Do you have a citation for those
5 cases?

6 MR. JACKSON: It would take me a short time to
7 find the citation about which I'm arguing the negative,
8 Your Honor.

9 THE COURT: All right.

10 MR. JACKSON: I'm arguing that the citation of
11 which I'm aware would not apply to a case where the
12 contract exists.

13 THE COURT: Mr. Leffler, you have your citations?

14 MR. LEFFLER: I have copies, Your Honor.

15 THE COURT: All right.

16 MR. LEFFLER: Judge, frankly, this is a little
17 premature, but I have a written motion to strike that
18 incorporates the cases, so if I can hand up the memo to
19 strike. It's solely on this point. It has the cases
20 copied in order.

21 THE COURT: All right.

22 MR. LEFFLER: There is a -- may I approach?

1 THE COURT: Yes, sir.

2 MR. LEFFLER: There is an original and then a
3 copy for Your Honor underneath of the cases.

4 THE COURT: Mr. Jackson, why don't you collect
5 your citations. I won't make a ruling on this matter until
6 I've read your citations. If you're calling Mr. Shirk --
7 is it Shirk?

8 MR. JACKSON: Mr. Shirk, Your Honor.

9 THE COURT: First, then we're going to have to
10 resolve this before we start asking questions. I would
11 urge you to get those citations and let me know as soon as
12 you have them. All right.

13 MR. JACKSON: Yes, Your Honor. I would like for
14 you to understand the citation to which I refer, I was
15 saying would not be applicable in this case, as opposed to
16 a citation to the contrary.

17 THE COURT: Well, as I understand your position,
18 you're taking the position that expert testimony is only
19 required when there's no contract?

20 MR. JACKSON: Only required when there is not a
21 contract or are not of circumstance that otherwise permits
22 the lawyer to establish the reasonableness of the fees.

1 THE COURT: All right.

2 MR. LEFFLER: Judge, may I just respond?

3 THE COURT: Yes, sir.

4 MR. LEFFLER: I agree with him where the contract
5 is for a fixed amount. Had Seyfarth Shaw said to the
6 partnership we will represent you for \$100,000, then I
7 agree, but there are some cases there, particularly an
8 Illinois case, which is right on point, where there is an
9 hourly fee contract, then the courts says unequivocally, of
10 course, you still have to prove that it's reasonable. You
11 could not submit a bill to your client on an hourly
12 contract, open ended contract, for ten million dollars. It
13 still has to be a reasonable fee.

14 THE COURT: All right.

15 (Thereupon, at 11:38 o'clock, a.m., a recess was
16 taken, and the proceedings continued as follows:)

17 (12:00 o'clock, p.m.)

18 THE COURT: Mr. Jackson, do you have some
19 citations for me?

20 MR. JACKSON: Your Honor, I have no additional
21 citation. The case to which I was referring was the
22 Mullins versus Richland, which Mr. Leffler provided, which

1 we had read, and which we had used in determining that
2 there was not the necessity for the expert testimony to
3 establish the reasonableness of our fees in this case.

4 Reading the Code of Professional Responsibility,
5 indeed, an attorney is responsible to actually make the
6 determination that his or her fees are reasonable,
7 obligated under ethical requirements of the Code, and we
8 feel that it is appropriate for the attorney to be able to
9 testify in connection with having made that determination,
10 especially where supervision is involved, and where a case
11 that is as complicated as this one is.

12 Accordingly, we find nothing in the cases that
13 Mr. Leffler has provided that would contradict that, but we
14 find that the cases say that there are a number of factors
15 to be considered, and absolutely nothing that requires the
16 use of expert testimony to establish the reasonableness of
17 the fees.

18 THE COURT: All right. Let me hear Mr. Leffler
19 in response.

20 MR. LEFFLER: Your Honor, the grandfather case of
21 all, the court is well aware of, on legal fees is the
22 County of Campbell, from 1922, sets out ten factors. By my

1 calculations, about eight of them require an opinion.

2 Those cases, especially the last case I cited,
3 the old Richland case, they put on three or four lawyers in
4 that case to talk about the lawyers, Calvern Community, the
5 responsibility involved in the case, the results obtained,
6 the complicated level of the issues.

7 I don't need to belabor those, but, simply put,
8 you cannot prove those things but by opinion testimony from
9 an expert. The only reason that Mullins uses the term
10 ordinarily is because in a fixed fee contract, I don't
11 think you need to do that, but everything else I think you
12 do.

13 I didn't want to do it now, but I don't want to
14 start objecting in front of this jury when they start
15 asking Bruce Shirk his own opinion as to whether what he
16 did was reasonable.

17 THE COURT: Well, presumably, Mr. Shirk could
18 have given that opinion, for whatever weight the jury
19 wanted to give it, had he been identified as an expert.

20 MR. LEFFLER: Absolutely, absolutely.

21 THE COURT: Well, I think Virginia law is quite
22 clear that the establishment of legal fees does require

1 expert testimony, and no expert having been designated,
2 unless Mr. Jackson has a motion, then I must conclude that
3 Mr. Leffler's motion is well taken, that if you don't have
4 expert testimony here, you haven't notified the defendant
5 of any expert testimony, then his motion to strike is well
6 taken and I grant it.

7 MR. LEFFLER: Thank you, Your Honor.

8 MR. JACKSON: Could I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 MR. JACKSON: Your Honor, do I understand your
11 ruling to preclude Mr. Shirk from giving his opinion as to
12 the reasonableness of the work that he performed?

13 THE COURT: I think your case is over. Without
14 expert testimony, you can't prove your case.

15 MR. PENDERGAST: May I ask a question, Your
16 Honor?

17 THE COURT: Yes, sir.

18 MR. PENDERGAST: Is it the court's ruling that a
19 law firm in a fee dispute must hire an expert in order to
20 demonstrate to the jury the reasonableness of the fees?

21 THE COURT: It doesn't have to hire an expert,
22 that's just what I said. If you had identified Mr. Shirk

1 as your expert, then presumably Mr. Leffler would try to
2 argue to the jury that it shouldn't give any weight to
3 that, but you certainly would have the right to go to the
4 jury, but without expert testimony, I don't think you have
5 the right to go to the jury.

6 MR. PENDERGAST: You don't believe that the
7 lawyer who is responsible for giving the fee -- or the
8 engagement, and responsible under the Ethical Code, and may
9 be disciplined if he charged an excess fee, perhaps, you
10 don't believe he can give his judgment as to the
11 reasonableness without a notice? I'm sure --

12 THE COURT: I certainly do, but the rule of this
13 court requires the party to designate their expert
14 witnesses 90 days before the trial.

15 MR. PENDERGAST: I understand the designation,
16 Your Honor. I guess what I'm perplexed by is the court's
17 characterization of Mr. Shirk, the lawyer responsible for
18 the fee, as his testimony only being admissible if he's
19 designated an expert. It seems to me, an expert is someone
20 who is not involved in the case --

21 THE COURT: But you have no expert. You have --

22 MR. PENDERGAST: That's correct.

1 THE COURT: Nobody designated who can give an
2 opinion in this case.

3 MR. PENDERGAST: We've designated no outside
4 expert to give an opinion.

5 THE COURT: You designated no one.

6 MR. PENDERGAST: But no expert, Your Honor.

7 THE COURT: No expert, and only an expert can
8 give an opinion.

9 MR. PENDERGAST: No. Well, I disagree with the
10 court on that. It seems to me the balance of a fee dispute
11 here, under the ethical consideration, it is permissible
12 for the lawyer involved, who must exercise his judgment
13 before he sends a bill out, that that bill is reasonable.

14 For him to testify to the basis for his judgment
15 at the time he made the bill, I don't believe that's expert
16 testimony of the kind that requires a designation, it seems
17 to me, in a fee dispute, Your Honor, that's why I asked,
18 Your Honor.

19 THE COURT: Well, I recognize your concern, of
20 course, but I think that almost anyone who is involved in a
21 lawyer's fee dispute recognizes that expert testimony is
22 going to be required.

1 MR. PENDERGAST: But I don't see -- respectfully,
2 Your Honor, the Mullins case does not say that the only way
3 you can demonstrate the reasonableness of your fees is to
4 have an expert give his opinion. I read that case to say
5 that the lawyer who performed the work is permitted to
6 testify as to the basis as to why he believed, in his
7 judgment, that he was charging the right fee.

8 THE COURT: I think Mullins has spoken in saying
9 ordinarily expert testimony is required. It seems to me,
10 in every fee dispute I've ever been involved in, or heard
11 about, has always had expert testimony as to the
12 reasonableness of the fees, and that's when a lawyer is
13 suing for his own fee.

14 If you want to establish that you're an expert,
15 and want to take the risk that you're going to use yourself
16 as an expert, I suppose you could. Ordinarily, you would
17 get a neutral third party to come in and testify as to
18 that.

19 In the case Mr. Leffler cited, Laff versus
20 Chapman Performance, that's exactly -- the plaintiff is
21 called as an expert witness, Sydney Newman, a senior
22 partner, in a patent trade off firm. He testified as to

1 the reasonableness of the hourly rates and the
2 reasonableness of the work done.

3 Our Supreme Court has said expert testimony is
4 required. You didn't designate an expert. I think your
5 case is over.

6 MR. PENDERGAST: Respectfully, Your Honor, that's
7 where I disagree with the court's ruling. I don't believe
8 the Supreme Court has said it's required. I believe --

9 THE COURT: It said ordinarily it's required. I
10 don't see how this case is anything but an ordinary fee
11 case.

12 MR. PENDERGAST: May I, Your Honor, ask a couple
13 further questions just to see where the court's going?

14 THE COURT: Yes.

15 MR. PENDERGAST: I'm trying to appreciate the
16 impact on the fee dispute here. If Mr. Shirk were to
17 testify as to his judgment on the amount of time required
18 for an assignment, is that expert testimony? If I may,
19 Your Honor.

20 THE COURT: Yes.

21 MR. PENDERGAST: If he, as the lawyer responsible
22 for the assignment, is permitted to give factual testimony

1 on what he felt was necessary, and the services that were
2 necessary, isn't it -- whether or not he gives his judgment
3 that it's reasonable, isn't that a sufficient basis for a
4 case to go forward, for the jury to decide, or must there
5 be someone who gives their opinion from the witness stand?

6 THE COURT: What about the \$305 an hour hourly
7 rate, who is going to testify that that's a reasonable fee?

8 MR. PENDERGAST: Isn't that a conclusion for the
9 jury, and are we not entitled to ask Mr. Shirk --

10 THE COURT: That's exactly what Professor Friend
11 says, the jury is not qualified to determine for itself
12 without the assistance of expert testimony.

13 MR. PENDERGAST: Well, but the trier of fact can
14 take fact from the witness. If the witness can testify to
15 things about that rate, whether other clients pay that
16 rate, whether it's the normal rate charged by the firm,
17 aren't those facts that would permit the jury to conclude
18 that's reasonable?

19 THE COURT: I think if you wish to proffer what
20 Mr. Shirk would testify to, for the record, then you should
21 do so at this time, but the court has made its ruling that
22 the lack of expert testimony bars your case, and I granted

1 the motion to strike.

2 MR. LEFFLER: Thank you.

3 THE COURT: I will allow you to make a proffer as
4 to what Mr. Shirk would testify to.

5 MR. PENDERGAST: I usurped Mr. Jackson's
6 authority, Your Honor, to ask some questions.

7 THE COURT: Or Mr. Jackson.

8 MR. PENDERGAST: May I just have a moment to
9 consult with Mr. Jackson?

10 THE COURT: Yes. All right. Mr. Jackson.

11 MR. JACKSON: Thank you, Your Honor, for the
12 opportunity to make the proffer. Your Honor, were we to
13 have the opportunity, Mr. Shirk would testify as to his own
14 qualifications and experience, the qualifications of the
15 firm itself, his experience in the area of expertise of
16 government contracts, and the firm's government contracts
17 practice.

18 Mr. Shirk would attest to the fact that he did
19 enter into a contract with the defendant, that that
20 contract delineated explicitly the terms by which the fees
21 would be determined, the rates that would be charged for
22 the individuals, identify the individuals, and how these

1 things would be handled, how it would be billed, how the
2 information would be provided to the client, the content of
3 the bills, which would enable the client to determine the
4 reasonableness and appropriateness of the fees.

5 Mr. Shirk would also attest to the acceptance by
6 the defendant of the terms which provided that the bills
7 would be -- when they were submitted, would be paid within
8 30 days.

9 He would attest to the fact that the bills --
10 most of the bills, with the exception of the very first one
11 for a partial month, were not paid.

12 Mr. Shirk would discuss in some length the
13 services that were provided by the law firm, the nature of
14 the services, the complexity of the services, the direction
15 of the defendant with respect to those services, the
16 involvement of the defendant in the direction to provide
17 those services, the value of those services to the
18 defendant.

19 Finally, Your Honor, Mr. Shirk would attest to
20 the efforts by himself and the firm to collect payment for
21 the services that were provided, and the fact that the
22 defendant did not respond to the efforts to collect the

1 fees that were sought at that time.

2 That, in a very abbreviated form, Your Honor, is
3 the nature of the testimony that Mr. Shirk would provide.
4 He would provide his opinion that the work that was
5 performed was both necessary, appropriate, and reasonable,
6 and the charges therefore were appropriate and reasonable,
7 and the facts that would indeed establish the basis for the
8 conclusion that the charges were reasonable.

9 THE COURT: All right. Thank you for that
10 proffer, Mr. Jackson. The court notes that the reason
11 again for the court's ruling was the fact that Mr. Shirk
12 was going to give opinion testimony was not revealed to the
13 defendant pursuant to the court's pretrial order directing
14 that expert witnesses be identified 90 days before the
15 trial date. All right. Let's bring the jury back.

16 (Thereupon, at 12:15 o'clock, p.m., the jury
17 returned to the courtroom.)

18 THE COURT: Ladies and gentlemen of the jury,
19 while you were out, the defendants made a motion, in
20 effect, a legal motion, arguing to the court that this case
21 could not go forward on certain grounds. The court has
22 granted that motion, so this case is now over.

1 You haven't gotten very far in performing your
2 duties, but your duty is one of the most important duties
3 that a citizen can perform, and by your presence here you
4 have moved this case along to a conclusion. I thank you
5 for your service and you can return now to the jury
6 assembly room. Thank you very much.

7 (Thereupon, at 12:16 o'clock, p.m., the jury was
8 dismissed.)

9 THE COURT: Mr. Leffler, you will present an
10 order or we have a form.

11 MR. LEFFLER: I would just as soon use one of
12 those and do it right now.

13 THE COURT: All right.

14 MR. LEFFLER: May I approach?

15 THE COURT: Yes.

16 MR. LEFFLER: I think there is one on the front
17 there.

18 THE COURT: Mr. Jackson, would you like a
19 suspending order on this order to give you more than 21
20 days to take whatever post-trial action you want to take?

21 MR. JACKSON: Yes, sir, I would appreciate it.

22 THE COURT: Do you have a suspending order form

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there?

THE COURTROOM CLERK: Yes.

THE COURT: All right. I've entered the order.

MR. LEFFLER: Thank you, Your Honor. Have a good
day, sir.

MR. JACKSON: Thank you, Your Honor.

(Thereupon, at 12:20 o'clock, p.m., the above
proceedings were concluded.)

* * * * *

CERTIFICATE OF COURT REPORTER

I, Patricia M. Nelson, being a stenotype reporter, do hereby certify that I was authorized to and did report in stenotype notes the foregoing proceedings, and thereafter my stenotype notes were reduced to typewriting under my supervision.

I further certify that the transcript contains a true and correct transcript of my stenotype notes taken therein to the best of my ability and knowledge.

SIGNED THIS 31ST DAY OF JANUARY, 1996.

Patricia M. Nelson
Patricia M. Nelson
Court Reporter

filed
in ct 1/30/96
MK/KW

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON,

Plaintiff,

v.

LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, et al.,

Defendants.

AT LAW NO. 140438

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THEIR MOTION TO STRIKE

The Plaintiff relies upon three alternative theories in support of its claim for attorneys' fees. First, the law firm alleges in Count I of its Motion for Judgment that the Defendants breached "a valid written contract for the performance of professional legal services." Second, in Count II, the firm alleges a "valid account" between the parties and, in Count III, the firm alleges that the Defendants owe for legal services on the basis of quantum meruit.

In the ad damnum clause of Counts II and III of the Motion for Judgment, the law firm seeks "\$81,377.90, plus pre-judgment and post-judgment interest at the legal rate. . . . reasonable attorneys' fees and costs " In Count I, the firm does not demand pre-judgment interest or attorneys' fees.

Virginia Law Controls the Relationship

Not only was the subject matter of the representation located in the Commonwealth of Virginia, but two of the attorneys from the Plaintiff law firm who provided services to the Defendants are members of the Virginia State Bar. Therefore, the relationship between this Plaintiff and the Defendants was, and still is, governed by the Virginia Code of Professional Responsibility, which plainly demands that "a lawyer's fee shall be reasonable and adequately explained to the client." DR2-105(A). The Code goes on in the Ethical Considerations appended to Canon 2 to state:

A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. EC2-19.

The determination of the reasonableness of a fee requires consideration of all relevant circumstances. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability and reputation, the nature of the employment, the responsibility involved, and the results obtained. EC2-20.

Expert Testimony is Necessary

In litigation involving the provision of professional services, expert testimony is ordinarily an indispensable element of proof. Indeed, Professor Friend has written that "[i]f the average person would not be sufficiently well-versed in the field to make intelligent judgments based upon the data presented, expert testimony [is] essential" 2 Charles E. Friend, The Law of Evidence in Virginia § 17-14(a) (1993).

In this case, the Plaintiff is bound to prove to the trier of fact such highly subjective factors as the experience, ability, reputation and responsibility of each of the lawyers in the firm who provided legal services, the value of which is now at issue. Indeed, because the only factors set forth on the bills upon which the Plaintiff relies is time, merely one of many factors which must be considered when determining the reasonableness of attorneys' fees, expert testimony is an absolute necessity to prove the other subjective criteria required by the Code and the common law.

For example, the Virginia Supreme Court, in an attorney's fees case not five years ago, held that "[i]n determining a reasonable fee, the factfinder should consider such circumstances as the time consumed, the effort expended, the nature of the services rendered, and other attending circumstances." Mullins v. Richland's National Bank, 241 Va. 447, 449 (1991). The Court went on to unequivocally state that "[o]rdinarily expert testimony will be required to assist the factfinder." Id.

In a very similar case, the District Court of Appeals of Florida, 4th District, was even more blunt when it held that "[t]he problem in [that] case [was] that at the hearing on attorneys' fees, no expert testimony was adduced other than from the lawyer himself claiming the fees. This is clearly inadequate" Mullane v. Lorenz, 372 So.2d 168 (1979). Many other courts have held either directly or by implication that an attorney seeking an award of fees or suing for fees, whether based in contract, quantum meruit, or on an open account, has the burden of alleging and proving the fairness

and reasonableness of the fees sought. See Laff v. Chapman
Performance Products, Inc., 379 N.E.2d. 773 (1978); Beale v. King,
Administratrix, 204 Va. 443 (1963).

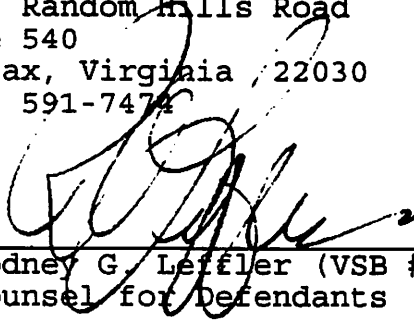
Conclusion


Not only has the Plaintiff failed to introduce expert testimony in support of the reasonableness of the fees it seeks to recover, it never once in its three-count Motion for Judgment even alleged that the fees were reasonable.

Without even a bare allegation of reasonableness and proof of the specific factors upon which the trier of fact must base its decision, the Plaintiff's case must fail.

**LAKE FAIRFAX SEVEN LIMITED PARTNERSHIP
and THOMSON M. HIRST**
By Counsel

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By: 
Rodney G. Leffler (VSB #18742)
Counsel for Defendants

By: 
Timothy B. Hyland (VSB #31163)
Co-Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Defendants' Memorandum of Points and Authorities in Support of Their Motion to Strike was hand-delivered to Counsel for the Plaintiff this _____ day of January, 1996.



Rodney G. Leffler

LMP\hirst.mts

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SEVFNATH, STANU, FAIRWEATHER
& GERARDSON

Plaintiff

v.
LAKE FAIRFAX SEVEN LIMITED
PARTNERSHIP, ET AL.

Defendant

L 140438

ORDER

This case came to be heard on the 30 day of JANUARY, 1996, on the Plaintiff / Defendant's motion for TO STRIKE.

Upon the matters presented to the Court at the hearing, it is

ADJUDGED, ORDERED, and DECREED as follows: PLAINTIFF.

HAVING FAILED TO DESIGNATE AN EXPERT WITNESS
THE DEFENDANT'S MOTION TO STRIKE IS
GRANTED FOR THE REASONS STATED FROM THE
BENCH, AND THIS CASE IS DISMISSED.

ENTERED, This 30 day of JANUARY, 1996

M. Langhorne Keim
JUDGE

SEEN:

[Signature]
Counsel for Plaintiff(s)

[Signature]
Counsel for Defendant(s)

SUSPENDING ORDER

It is ORDERED that the Final Order be suspended for fourteen (14) days from this date so that the parties may submit an agreed Amended Final Order, if they should desire. This tolls the running of the twenty-one (21) day provision in Rule 1:1, thus allowing a total of thirty-five (35) days for entry of an Amended Final Order.

Entered this 30 day of JANUARY, 1996.


JUDGE


Counsel for Plaintiff(s)


Counsel for Defendant(s)

ASSIGNMENTS OF ERROR

I. The trial court erred in ruling as a matter of law that a plaintiff law firm, in a contract action seeking to collect unpaid attorney's fees and disbursements against its former client, must introduce expert testimony as to the reasonableness of the hourly rates expressly agreed upon by the client pursuant to a signed retainer agreement.

II. The trial court erred in granting the defendants' premature motion to strike the plaintiff law firm's entire case at the conclusion of opening statements on the sole basis that the law firm did not designate an expert to testify as to the reasonableness of the claimed attorney's fees.