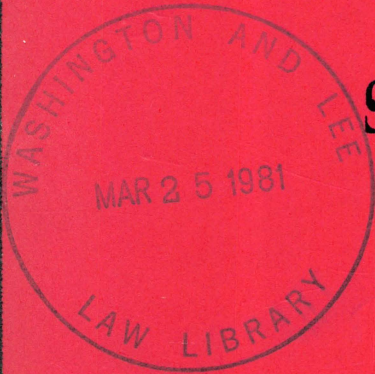


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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

Record Nos. 780702  
780714

WALTER W. STOUT, III, Virginia Administrator for the  
Estate of Thomas C. Halligan, Deceased, and  
MOBILITY, INC.,

Appellants,

v.

MARIO ONORATI TRADING AS MOOSE'S QUALITY  
TRACTOR PARTS and  
FREDDIE L. DAVIS,

Appellees.

APPENDIX

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RECEIVED

SEP 19

EDWARD G.  
BY *Janice K. Halligan*

MOTION FOR JUDGMENT

FIRST COUNT

1. Plaintiff, Walter W. Stout, III, has qualified and is the duly appointed Virginia Administrator of the Estate of Thomas C. Halligan, deceased, by order of the Circuit Court of the City of Richmond, Virginia, pursuant to Section 64.1-118, Code of Virginia and Section 26-59, Code of Virginia.

2. Plaintiff qualified as Administrator upon the request of Janice K. Halligan, who was appointed Special Administrator of the Estate of Thomas C. Halligan, deceased, on the 28th day of July, 1976, by the County Court of McLead County, State of Minnesota.

3. Thomas C. Halligan, deceased ("Decedent"), who died in the manner alleged herein on September 18, 1974, left surviving him, JANICE K. HALLIGAN, his wife, and three minor children: TIMOTHY, born September 19, 1963, CLARK, born June 12, 1964, and TIFFANY, born April 9, 1968, for all of whose benefit Plaintiff brings this action.

4. Defendant MOBILITY, INC. ("MOBILITY"), is a Minnesota corporation which has transacted business and is domesticated in Virginia, contracted to supply goods in this State, and has caused the bodily injury described below by reason of the breaches of warranty alleged hereinafter.

5. Mario Onorati trading as MOOSE'S QUALITY TRACTOR PARTS ("MOOSE'S"), was doing business in the City of Richmond, Virginia, and was a distributor of the products of MOBILITY on September 18, 1974.

6. Defendant FREDDIE L. DAVIS, is, and at all times hereinafter mentioned, was an employee of MOOSE'S and was, at all times hereinafter mentioned, acting in the course and scope of his employment.

7. Plaintiff's Decedent, THOMAS C. HALLIGAN, was, at the time of the incident referred to hereinafter, employed as an over-the-road semi-truck driver for Fleming Manufacturing Co. of Long Lake, Minnesota.

8. On September 18, 1974, during the course of his employment, Decedent was delivering a Mobility Big Dipper Loader/Forklift truck (Mobility Loader), manufactured by MOBILITY to MOOSE'S in the City of Richmond, Virginia.

9. The forklift truck was unloaded from Decedent's truck and transferred to MOOSE'S truck by Defendant FREDDIE L. DAVIS. Defendant Davis had completed transferring the Mobility Big Dipper from Decedent's truck to MOOSE'S truck and requested Decedent to move MOOSE'S truck forward so as to separate the two trucks.

10. Subsequent to moving MOOSE'S truck, Decedent returned to his truck to resecure his load when the Mobility Loader rolled off of MOOSE'S truck and upon Decedent thereby causing his death.

11. Defendant MOBILITY knew that this product would be transported and used without inspection for defects, and by placing it upon the market and causing it to be transported in this manner, represented that it was safe, for the purposes for which it was intended, and for loading and unloading during delivery.

12. The product was unsafe for its intended use and unsafe for purposes of loading and unloading by reason of the fact that Defendant MOBILITY manufactured said product in a careless and negligent manner, with a defective braking system and without an adequate secondary braking system to secure the vehicle in a stopped position when not in use.

13. That the aforementioned negligence of MOBILITY was a legal and proximate cause of the death of the Decedent, THOMAS C. HALLIGAN.

14. By reason of the death of Decedent, Decedent's surviving spouse and children sustained severe mental anguish and sorrow together with the loss of the society, companionship, comfort, guidance, kindly offices and advice of Decedent and have been deprived of the services, protection, care, assistance and loss of income formerly provided by Decedent, that costs incident to the Decedents death have been incurred.

#### SECOND COUNT

1. For their second cause of action herein, Plaintiff incorporates by reference all of the allegations of the First Count as such allegations are applicable to this Second Count.

2. Plaintiff further states that Defendants MOBILITY and MOOSE'S had expressly represented and warranted to industrial concerns, trucking concerns and their employees, both orally and by means of advertisements that such industrial and trucking concerns and their employees could use said products for the purposes intended and could deliver said products in the manner directed by Defendants MOBILITY and MOOSE'S in complete safety to their persons.

3. In delivering the Mobility Loader, Decedent relied upon the skill and judgment of said Defendants MOBILITY and MOOSE'S and upon their express warranty as above described.

4. In selling and distributing their equipment, Defendants MOBILITY and MOOSE'S were aware of the fact that it would be delivered on flatbed semi-trucks to distributors, and, Defendants MOBILITY and MOOSE'S warranted to purchasers, lessees, truckers and all persons who might

reasonably be expected to use or deliver said equipment, specifically including Decedent, THOMAS C. HALLIGAN, that it was suitable and reasonably fit for the purposes for which it was intended to be used, including the delivery and transfer of said product from one truck to another.

5. Decedent, THOMAS C. HALLIGAN, relied upon the skill and judgment of said Defendants MOBILITY and MOOSE'S and upon their warranty in delivering the Mobility Loader of Defendant Mobility.

6. At the time of the delivery of the said Mobility Loader by Decedent, and at the time of the accident referred to hereinabove, the product as warranted was not suitable and reasonably fit for the purposes for which it was intended to be used, and the said product was unsafe and contained a defective brake system and a defective and inadequate secondary brake system, rendering said equipment dangerous to life and limb.

7. In selling and distributing the product in question, Defendants warranted that it was merchantable and reasonably suitable for its general purpose and its intended and ordinary use and for its delivery.

8. The product in question was not merchantable and not reasonably suitable for its general purpose and its intended and ordinary use and its delivery as warranted.

9. As a direct and proximate result of the breach of warranties by said Defendants MOBILITY and MOOSE'S, they caused the death of Plaintiff's Decedent as set forth hereinabove.

10. By reason of the death of Decedent, Decedent's surviving spouse and children sustained severe mental anguish and sorrow together with the loss of the society, companionship, comfort, guidance, kindly offices and advice of Decedent and have been deprived of the services, protection, care, assistance and loss of income formerly provided by Decedent, that costs incident to the Decedent's death have been incurred.

### THIRD COUNT

1. For their third cause of action herein, Plaintiff incorporates by reference all of the allegations of the First and Second Counts as such allegations are applicable to this Third Count.

2. Plaintiff further states that Defendants MOOSE'S and FREDDIE L. DAVIS, unloaded and attempted to secure the Mobility Loader in such a careless and negligent manner as to cause it to roll from the truck causing Decedent's death as set forth hereinabove.

3. The negligence of Defendants MOOSE'S and DAVIS acted as an independent concurring cause with the aforesaid acts of Defendants MOBILITY and MOOSE'S, so as to cause the death of Plaintiff's Decedent.

4. By reason of the death of Decedent, Decedent's surviving spouse and children sustained severe mental anguish and sorrow together with the loss of the society, companionship, comfort, guidance, kindly offices and advice of Decedent and have been deprived of the services, protection, care, assistance and loss of income formerly provided by Decedent, that costs incident to the Decedent's death have been incurred.

Wherefore your Plaintiff prays for judgment against the Defendants  
MOBILITY, MOOSE'S and DAVIS jointly and severally in the sum of Two Million  
Dollars (\$2,000,000.00).

WALTER W. STOUT, III,  
Virginia Administrator

By Walter W. Stout III  
Counsel

-and-

KAHN, KLEINMAN, YANOWITZ & ARNSON

By Thomas L. Dettelbach  
Counsel

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819 - 700 Building  
Richmond, Virginia

Thomas L. Dettelbach  
1300 Bond Court Building  
Cleveland, Ohio 44114  
(216) 696-3311

ATTORNEYS FOR PLAINTIFF



SPECIAL PLEA OF WORKMEN'S  
COMPENSATION

The defendants, Mario Onarati Trading As Moose's Quality Tractor Parts and Freddie L. Davis, by counsel, aver that the exclusive rights and remedies of the plaintiff's decedent, Thomas C. Halligan, and his beneficiaries for the injuries, damages and death alleged in the Motion for Judgment herein, are covered by the applicable Workmen's Compensation statute of Virginia and other jurisdictions and this Court is without jurisdiction to hear and determine the plaintiff's decedent's claim for damages against them or any of them.

Mario Onarati Trading As  
MOOSE'S QUALITY TRACTOR PARTS  
and  
FREDDIE L. DAVIS

By \_\_\_\_\_  
Of Counsel

C E R T I F I C A T E

I hereby certify on this \_\_\_\_\_ day of October, 1976, that a true copy of the foregoing Special Plea of Workmen's Compensation was mailed to Walter W. Stout, III, Esquire, Shaia, Stout & Markow, Suite 819, 700 Building, Richmond, Virginia, counsel for the plaintiff; to Thomas L. Dettlebach, Esquire, 1300 Bond Court Building, Cleveland, Ohio, 44114, counsel for the plaintiff; and to Mobility, Inc., c/o Tommy P. Baer, Registered Agent, Suite 300, 1004 North Thompson Street, Richmond, Virginia, 23230.

Mario Onarati Trading As  
MOOSE'S QUALITY TRACTOR PARTS  
and  
FREDDIE L. DAVIS

By \_\_\_\_\_

Thomas D. Stokes, III  
Browder, Russell, Little, Morris & Butcher  
1200 Ross Building  
Richmond, Virginia 23219

### GROUND OF DEFENSE

Come now the defendants Mario Garati Trading As Moose's Quality Tractor Parts and Freddie L. Davis, by counsel, and for their Grounds of Defense say:

1. They deny that they are indebted to the plaintiff in the amount sued for or in any amount or for any reason whatsoever.
2. They have no knowledge of the facts alleged in paragraphs 1, 2 and 3 of the First Count of the Motion for Judgment filed herein whereby they deny the same and demand strict proof thereof.
3. They deny the allegations contained in paragraphs 6, 7, 8, 9 and 10 of the First Count of the Motion for Judgment filed herein.
4. They deny the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Second Count of the Motion for Judgment filed herein.
5. They deny the allegations contained in paragraphs 1, 2, 3, 4 and the last unnumbered paragraph of the Third Count of the Motion for Judgment filed herein.
6. They aver that the plaintiff's decedent's death was caused by the action or inaction of others negligent or otherwise, over whom your defendants exercised no control.
7. They expressly deny any warranties expressed or implied and deny that they were guilty of any negligence proximately causing or efficiently contributing to the plaintiff's decedent's death.
8. They aver that Thomas C. Halligan, plaintiff's decedent, was guilty of negligence that proximately caused or efficiently contributed to his injuries, death and damages complained of.

9. That the risk of unloading the piece of equipment in question was open, obvious and apparent to the plaintiff's decedent, Thomas C. Halligan; that Thomas C. Halligan, the plaintiff's decedent, embarked upon his course of action with knowledge thereof and thereby assumed any risk incident thereto.

10. They will rely upon any and all properly provable defenses to this action and reserve the right to amend this their Grounds of Defense if they be at any time so advised.

Mario Onarati Trading As  
MOOSE'S QUALITY TRACTOR PARTS  
and  
FREDDIE L. DAVIS

By \_\_\_\_\_  
Of Counsel

#### C E R T I F I C A T E

I hereby certify on this \_\_\_\_\_ day of October, 1976, that a true copy of the foregoing Grounds of Defense was mailed to Walter W. Stout, III, Esquire, Shaia, Stout & Markow, Suite 819, 700 Building, Richmond, Virginia, counsel for the plaintiff; to Thomas L. Dettelbach, Esquire, 1300 Bond Court Building, Cleveland, Ohio, 44114, counsel for the plaintiff; and to Mobility, Inc. c/o Tommy P. Saer, Registered Agent, Suite 500, 1004 North Thompson Street, Richmond, Virginia, 23230.

Mario Onarati Trading As  
MOOSE'S QUALITY TRACTOR PARTS  
and  
FREDDIE L. DAVIS

By \_\_\_\_\_  
Of Counsel

Thomas D. Stokes, III  
Browder, Russell, Little, Morris & Butcher  
1200 Ross Building  
Richmond, Virginia 23219

Circuit Court  
OF THE  
City of Richmond  
January 27, 1978

JAMES EDWARD SHEFFIELD  
JUDGE

JOHN MARSHALL COURTS BUILDING  
800 EAST MARSHALL STREET  
RICHMOND, VIRGINIA 23219

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Richmond, VA 23208

Re: Walter W. Stout, III, Virginia Administrator for the  
Estate of Thomas C. Halligan, Deceased

v.

Mobility, Inc.,  
Mario Onorati Trading as Moore's Quality Tractor Parts,  
Freddie L. Davis

---

Gentlemen:

This case presents alleged acts of negligence on the part of the defendants, Mario Onorati, trading as Moore's Quality Tractor Parts, and Freddie L. Davis, all occurring within the Commonwealth of Virginia. The defendants have filed a plea of the exclusiveness of the Virginia Workmen's Compensation Act being a bar to this proceeding.

Page 2  
January 27, 1978

Further, the plaintiff argues that under prevailing conflict of laws principles, this Court must apply the substantive law of Minnesota as enacted in its Workmen's Compensation Act in determining whether the plaintiff may maintain a common law negligence action against the defendant in this Court.

As to the conflict of laws question, it is the conclusion of this Court that it is the Virginia Workmen's Compensation Act which is to be applied here to determine whether the plaintiff may maintain the instant cause of action and not that of Minnesota for the reasons set forth in the defendant's memorandum of law filed herein, and adopted here.

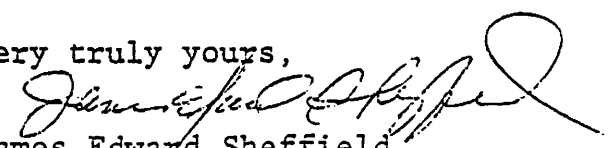
I have concluded that based upon the evidence, the defendant, Mario Onorati, trading as Moore's Quality Tractor Parts was, as a matter of fact, in the trade, business and occupation of unloading and storing the kind of Mobility equipment, which allegedly led to Halligan's (the plaintiff's decedent) death, and that the plaintiff's decedent was still engaged in the act of unloading same when he was allegedly killed.

The decedent was required to assist in the unloading of Mobility's equipment at the defendant Moore's Quality Tractor Parts. The defendant Freddie L. Davis, an employee of Moore, was paid to assist in the unloading of Mobility equipment. The decedent, Davis and Moore, under the facts, were, at the time of the decedent's death, all engaged in the trade, business or occupation of each other and none were "other parties" within the meaning and intendment of the Virginia Workmen's Compensation Act.

Lastly, the plaintiff has cited no authority, nor has this Court found any, for its argument, inter alia, that before the defendants can avail themselves of the defense that the Virginia Workmen's Compensation Act bars plaintiff's common law suit in negligence, the defendants must first introduce evidence demonstrating Moore's compliance with the provisions of the Act, specifically Virginia Code Section 65.1-105, and this argument is therefore rejected.

Counsel for the defendants, Mario Onorati, t/a Moore's Quality Tractor Parts, and Freddie L. Davis, may present a sketch for an order embodying the above rulings, and noting therein the plaintiff's exception.

Very truly yours,

  
James Edward Sheffield

js



O R D E R

The parties, by counsel and in person, came to be heard on the Special Plea of Workmen's Compensation of the Defendants. Defendant Mobility, Inc., having withdrawn its Special Plea of Workmen's Compensation, the Court considered the evidence, argument of counsel and memoranda of counsel on the Special Pleas of Workmen's Compensation of Mario Onarati and Freddie L. Davis, and the Court doth find that this Court is without jurisdiction to hear and determine the Plaintiff's decedent's claim for damages against Mario Onarati t/a Moose's Quality Tractor Parts and Freddie L. Davis and that the Plaintiff's decedent's claim against these Defendants is governed solely by the Workmen's Compensation Act of Virginia and therefore those Defendants' Special Plea of Workmen's Compensation is hereby sustained and this action as to them dismissed for the reasons set forth in the Court's Opinion of January 27, 1978, to which action the Plaintiff and the Defendant Mobility, Inc. object and except.

ENTER:     /     /

---

We Ask For This:

Counsel for Mario Onarati t/a  
Moose's Quality Tractor Parts  
and Freddie L. Davis

We Object and Except:

D. Eugene Webb Jr.  
Counsel for Mobility, Inc.

Walter W. Stout III  
Walter W. Stout, III

[TR9]

19

MR. COLDWELL: I call Mr. Onorati.

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23

If Your Honor please, it is stipulated between the parties that Mr. Halligan's estate has applied for and received compensation benefits from his employer, Flemming Manufacturing.

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[TR10]

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MARIO ONORATI, a witness being called on behalf of the defendants, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLDWELL:

Q State your name, please, sir.

A Mario Onorati.

Q How old are you, Mr. Onorati?

A Sixty years old.

Q Are you the Moses of Moses Quality Tractor Parts?

A I beg your pardon?

Q Are you the Moses of Moses Quality Tractor Parts?

A Yes, sir.

1 Q And, when did you start this business, Mr.  
2 Onorati?

3 A I started this business in 1966 or '67.  
4 I am not sure which, but I think it is '66.

5 Q And, from whom did you purchase the business?

6 A I purchased the used parts business from  
7 Caterpillar, City of Richmond, Virginia Tractor Company.

8 Q And, what is the business of Moses Quality  
9 Tractor Parts?

10 A To buy used pieces of equipment, disassemble  
11 for the goods--

12 Q The buying of used tractors and thereafter  
13 salvaging the usable parts and the resale of them?

14 A Right, sir.

15 Q In your place of business, what could you  
16 tell me about the physical plant in regard to buildings  
17 and what they are used for.

18 A We have a couple of buildings we have for  
19 warehousing of parts, and then we have a couple of sheds  
20 that we used for storage of equipment and parts.

21 Q In regard to the storing of equipment, do  
22 you have any written or verbal contract with anyone con-  
23 cerning the use of the sheds?

24 A Yes, sir. I don't know specifically what  
25 year it was, but I had a salesman from Mobility approach me

1 and ask me if I was interested in unloading equipment and  
2 storing it in my place for certain amount of dollars a  
3 month. I told him I would be interested.

4 At that time, he told me that he thought  
5 he could see that I could get the parts business for this  
6 Mobility equipment. So, we entered into a verbal contract  
7 with Mobility to unload, help unload and store equipment in  
8 my sheds.

\*\*\*\*\*

15 Q And, what was your fee for the assisting  
16 in the unloading and storage?

17 A We came into an agreement of unloading  
18 every piece of equipment and storing it at \$25.00 a piece.  
19 If it was three pieces of equipment, we got \$75.00; two  
20 pieces, it was \$50.00. And, then we was to store it and  
21 release it to either a Mobility salesman or a customer for  
22 pick-up.

23 Q Was there any conversation between you and  
24 a representative of Mobility as to how it would be delivered  
25 and what the driver delivering it would do?



1           A           The driver from Mobility at Flemming Truck-  
2           ing, he was to assist us in unloading the equipment because  
3           they loaded it, and, so, they knew how to unload. We would  
4           assist him in unloading it.

5           Q           Well, you mentioned the storage of parts.  
6           There was no charge for the storage of parts?

7           A           No. I bought the parts and sold them at  
8           a percentage for profit.

9           Q           Approximately how many pieces of equipment  
10          would you receive a year from Mobility for unloading and  
11          storage?

12          A           Not less than fifteen, not over twenty; may-  
13          be twenty-two pieces in a year's time. It wasn't that big  
14          of a business.

15  
16 [TR 13]

17          Q           Have you ever been present when Mobility  
18          equipment was delivered to Moses?

19  
20 [TR 14]

21          A           Yes, sir.

22          Q           All right.

23          A           I have assisted them many a time in unloading  
24          before I got disabled.

[TR 14]

25

Q During the years up to 1974 that you were

[TR 15]

1 involved in the assisting of unloading, what did the driver  
2 from Flemming do?

3 A The driver from Flemming would usually come  
4 in and tell us what he had and ask where to back up to to  
5 unload certain pieces of equipment. He unchained the pieces  
6 of equipment of a Mobility front end loader. He would  
7 start it up, turn it around on the tractor for us to unload.  
8 Sometimes the way they had them unload it on the trailer, it  
9 was impossible to unload on the back on the lot. My truck  
10 would be backed up to the Flemming trailer and unload the  
11 pieces of equipment on his trailer onto my truck and then  
12 back the truck to the unloading dock to unload it.

\*\*\*\*\*

[TR 16]

Q I ask you to check your records to see if you can find your estimate for services for these two spreaders and the big dipper, and I will ask you if you can identify this as your charge to Mobility for the unloading and storing of the three pieces of equipment.

A Yes, sir. I wrote this bill up myself.

Q All right, sir. And, as to the front end loader, the big dipper, would you read what that says into the record?

A Unload one model 74-2 wheeler 2604 dipper, unload in storage, \$25.00.

MR. COLDWELL: I ask that be marked as Defendants' Onorati and Davis Exhibit 1.

THE COURT: All right. Any objection?

MR. DETTELBACH: No objection.

THE COURT: It will be so admitted into

[TR 17]

the record as prescribed by counsel as Exhibit Number 1.

[TR17]

CROSS-EXAMINATION

BY MR. DETTELBACK:

[TR18]

Q. Mr. Onorati, your basic business, your principle business is and always has been the sale of used tractor parts and the repairing of tractors. Is that correct?

A Yes, sir.

Q This business of storing this equipment for Mobility is a very small part of your business. Is that correct?

A Yes, sir.

Q In addition to the contract that you state this old contract that you have with Mobility, did you have any other contract with Mobility?

A No, sir.

Q You have no agreement of any kind other than that to which you have testified?

A Right, sir.

[TR19]

7 BY MR. DETTELBACH: (Continuing)

8 Q Do you recall this question and answer at  
9 that time, Mr. Onorati? Question: Now, your initial arrange-  
10 ment with Mobility was to receive and deliver Mobility equip-  
11 ment for them. Answer: No. The original arrangement was  
12 would I be interested in repairing any, and I told them I  
13 would. And, then they asked me if I was interested in storing the  
14 equipment, and I told them I was. Question: Storing new  
15 or used equipment. Answer: No. New equipment for storage  
16 for Mobility.

17 All right. Was there anything else at that  
18 time?

19 A No.

\*\*\*\*\*



[TR 20]

19 Q Rather than reading the whole question, your  
20 initial agreement with Mobility was to store new equipment.

21 A Right, sir.

22 Q And, that was all?

23 A Right. At first--

24 Q Well-- I am sorry.

25 A When they first approached me, yes, sir.

[TR 21]

1 That was the original agreement.

2 Q All right. The entire agreement at that  
time was regarding this new equipment?

3 A Right.

4 Q It changed subsequent to that time?

5 A They asked me later on if I would be in-  
6 terested in handling new parts.

7 Q Only with respect to the storage. I am  
8 talking about the equipment. Did you ever change from that  
9 initial agreement?  
10

11 A No, sir.

12 Q The agreement with them was to store this  
13 equipment for them.

14 A Unload it and store it.

22

\*\*\*\*\*

[TR 22]

17 BY MR. DETTELBACH: (Continuing)

18 Q Mr. Onorati, when you first talked to  
19 Mobility, and we are confining our discussion to this storage  
20 of the equipment, who did you speak with?

21 A The salesman named-- I can't think of his  
22 name. His first name was Jack.

23 Q That was a local salesman?

24 A For the eastern part of the country.

25 Q What did he say to you?

[TR 23]

1 A I beg your pardon?

2 Q What was it he said to you?

3 A Would I be interested in unloading and  
4 storing equipment in my place, and I told him yes, I would.

5 Q He said that specifically to you; would  
6 you be interested in unloading and storing equipment?

7 A Yes, sir.

8 Q And, you said you didn't ask him any ques-  
9 tions about it; you just said yes, I would.

10 A I told him yes, and we talked.

11 Q What was it you discussed?

12 A We discussed the fact about the monetary  
13 values; what it would cost to unload it, store it. The  
14 gentleman I talked to at that time, the general manager, I  
15 told him that I would charge him twenty-five a piece of  
16 equipment to help unload and store it in my lot.

17 Q Now, when he asked you that and when you  
18 answered that, you arrived at this figure. What was it in  
19 your mind that you were agreeing to do for Mobility? Now,  
20 I am not talking about what you have stated as unloading and  
21 storing. In your mind, what was it that Mobility really  
22 wanted from you and what was it that you were agreeing to do  
23 for Mobility that they needed?

24 A What Mobility was looking for was a place  
25 to store the equipment in the east coast so their customers

and salesmen could pick it up at the given point. My place was the place that they thought was best for the north part of the states and southern part of the states.

Q           Isn't it true that what they were contracting for basically, aside from other services, was to give them a place to store their equipment?

A           To help unload and store equipment, yes, sir.

Q           They were looking for a place to store, is that not true, a storage place for this eastern seaboard--

A           I am sure of what they were looking for. They asked if I would be interested. I told them yes. They asked would I assist in unloading and storing equipment in my yard, and I told them I would for a certain fee.

\*\*\*\*\*

Q           Was that your business?

1           A           My business was to-- I have a yard that  
2 is approximately two acres, and I have all kinds of ways to  
3 make a dollar. If the people come to me and want to store  
4 equipment, I will store it for a certain amount of dollars.  
5 My business was the used parts business, and if I have fa-  
6 cilities that I can use and make money on it, I will certainly  
7 use it.

8           Q           You made money on the storing of this  
9 equipment for Mobility?

10          A           Yes, sir.

11          Q           In addition to the storage business, you  
12 are testifying that they wanted you to help with the unloading,  
13 too?

14          A           They asked me would I assist in unloading  
15 the driver, assist the driver unloading the equipment, and  
16 I told them yes, for a certain amount of dollars, I would.

\*\*\*\*\*



[TR 31]

13 Q The Flemming truck is the large pad. Your  
14 testimony is this is the trailer on the truck; that there is  
15 equipment that is loaded on here; let's say three pieces of  
16 equipment in this case. Is that correct?

17 A Right.

18 Q One, two, three, the length of the trailer.

19 A Right.

20 Q Now, this truck is pulled up and your truck  
21 is backed up; that is, with the truck backed up to make a  
22 T with this trailer. Is that correct?

23 A Right.

24 Q Now, this is done. The equipment is unloaded  
25 from this truck onto your truck. Is that correct?

[TR 32] A Right.

2 Q You are aware Mr. Davis has already testi-  
3 fied that the center piece of equipment was on this truck  
4 which was unloaded?

5 A The center piece?

6 Q Yes.

7 A I don't know whether it was the center piece.  
8 I wasn't there to see the equipment, but the tractor was  
9 crossways on the trailer. The only way you could unload  
10 that particular time was to drive it off either side of the  
11 trailer. So, we had to back our truck to his trailer like a  
12 T and drive the tractor onto our truck.

27

13 Q Drive it off of this onto yours?

14 A Right, sir.

[TR 33]

\*\*\*\*\*

17 Q Whose trailer are you talking about?

18 A Flemming's trailer.

19 Q All right.

20 A Let me put my truck down there while I  
21 have got it here. This is Flemming's trailer. On the front  
22 it had a spreader on there like this, a small dipper in the  
23 center, and they had another spreader on this side. The only  
24 way that you could get that dipper off was to drive off this  
25 side or off this side of his trailer. So, we backed our

[TR 34]

1 truck to the side of the trailer and drove it onto our truck.  
2 When it did, the back end of the this tractor got hung onto  
3 his side of his trailer. Of course, my man, Mr. Davis, had  
4 to get a jack and jack it up to get that weight off his trailer  
5 and pull out the truck. So, Mr. Davis got on the tractor.  
6 While he jacked it up, he got on the tractor and asked Mr.  
7 Halligan, the driver from Flemming, to move my truck for-  
8 ward to unlock it from the side of his trailer. He did so,  
9 and then Mr. Davis got off to get the jack down and Mr. Hall-  
10 igan was walking back and the tractor rolled off and killed  
11 him.

\*\*\*\*\*

1 BY MR. DETTELBACH: (Continuing)

2 Q If all three pieces were for-- Why was  
3 it that instead of using this T arrangement with the trailer  
4 that you didn't back up directly to the loading dock and un-  
5 load off the end of the truck as you stated was your usual  
6 practice?

7 A All three pieces was not supposed to be un-  
8 loaded at my place; only one piece, and that was the front  
9 end loader. The other two pieces that were left on the  
10 trailer were to be delivered somewhere else, but after the  
11 accident when we notified Mobility, they told us to park the  
12 truck with the two pieces and they would tell us what to do.  
13 In two or three days, they had called my son because some-  
14 body was coming down to pick up the tractor and trailer up.  
15 Until then, they were stored there for two or three months  
16 before somebody moved them.

17 Q All right. So, originally the only middle  
18 piece was intended for you when it was delivered?

19 A Yes, sir. That is the only piece.

20 Q Mr. Onorati, you didn't ever pay the  
21 Flemming driver for any services rendered when he delivered  
22 to you, did you?

23 A No, sir.

24 Q Did you ever direct him to perform any  
25 duties? Did you have the authority to tell them what to do?

[TR 41]

1 A No, sir.

2 Q And, in fact, did you ever tell them what to  
3 do?

4 A The only time I told them what to do is  
5 when I have orders from the factory to go somewhere else, to  
6 reroute it.

7 Q And, at the time during this procedure--  
8 By the way, was there ever a workmans compensation claim that  
9 was filed through you on this accident?

10 A I didn't file none, but the employee was  
11 not mine.

12 Q He wasn't your employee. Is that correct?

13 A Right. He was not my employee.

14 Q He wasn't paid by you, was he?

15 A No, sir.

16 Q He was not subject to your orders, was he?

17 A No, sir.

18 Q He was employed by and subject to the  
19 orders of Flemming?

20 A Yes, sir.

21 Q You didn't have any agreement with Flemming,  
22 did you?

23 A No, sir.

24 Q You didn't know anybody at Flemming other  
25 than the drivers that you would meet?

[TR 42]

A That is the only one.

\*\*\*\*\*

[TR 45]

3  
4 FREDDY DAVIS, A witness being called on  
5 behalf of the defendant, first being duly sworn, testified  
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. COLDWELL:

9 Q State your name, please, sir.

10 A Freddy Davis.

11 Q How old are you, Mr. Davis?

12 A Thirty-three.

13 Q And, by whom are you employed?

14 A Present?

15 Q Yes, sir.

16 A Stone Webster Engineering Corporation at  
17 North Power Station, Louisa, and I also work part time  
18 for Moses Quality Tractor Parts.

\*\*\*\*\*

2 Q In your duties in working with Moses, you  
3 were a mechanic, were you not?

4 A Right.

5 Q Did you ever have occasion to deal with  
6 the delivery of Mobility equipment to Moses?

7 A Yes. I assisted in unloading equipment  
8 four or five times, I guess.

9 Q And, on those occasions that you helped  
10 unload Mobility equipment, who were the truck drivers? By  
11 whom were they employed?

12 A Flemming.

13 Q Have you ever assisted prior to September  
14 18, 1974, Mr. Halligan in unloading the equipment?

15 A Yes, sir.

16 Q Approximately how many times, if you know,  
17 Mr. Davis?

18 A Maybe once or twice with Mr. Halligan.

19 Q Had you ever seen anyone bring Mobility  
20 equipment other than Flemming?

21 A No, I haven't.

22 Q You were, or when you got to work the morning  
23 of the accident, were you the only person there that worked  
24 for Moses?

25 A Yes, sir.

1 Q And, the occasions that you helped unload,  
2 how many of Moses employees were with the driver usually?

3 A Well, usually there would be two of us,  
4 Mr. Onorati's son and myself, or sometimes they had other  
5 part time workers there, maybe.

6 Q All right. So, you are saying during the  
7 time that you unloaded, the three or four times that you  
8 unloaded that, on those occasions there were two employees  
9 of Moses and the driver. Is that correct?

10 A That's correct.

\*\*\*\*\*

3 Q The morning that you arrived there, was  
4 the Flemming truck there and Mr. Halligan when you arrived?

5 A Yes, sir.

6 Q And, did he tell you what equipment he  
7 had to deliver to you?

8 A He had one big dipper and two spreaders  
9 to come off there.

10 Q They were to come off at Moses?

11 A Yes, sir.

12 Q What other equipment was on the truck?

13 A He had two more big dippers on the thing,  
14 and the one that we had to take off was in the middle be-  
15 tween the other two big dippers.

16 Q So, there were two spreaders to come off,  
17 the big dipper, and on the Flemming truck itself were two  
18 more big dippers that were going somewhere else?

19 A Yes, sir.

20 Q And, did you all discuss this in the office  
21 or there in the yard or what have you?

22 A Yes. We talked about it.

23 Q And--

24 A The reason we took the big dipper off first  
25 was it was easier to do that, you know, and we were waiting



1 for Mr. Onorati's son to come down and help us to unload  
2 the spreaders because it doesn't have its own power.

3 Q You have to pull?

4 A Hook up to it with either a big dipper  
5 or something like that.

\*\*\*\*\*

17 Q Just briefly tell me what you had done  
18 and Halligan had done in the unloading of the big dipper up  
19 to the time of the accident; just briefly.

20 A Well, we pulled-- Mr. Halligan pulled  
21 his truck on around the back and I got Moses' truck started  
22 and backed it up to Mr. Halligan's truck.

23 Q Like--

24 A Like you showed before, in a T shape.  
25 And, I believe he drove it off of his truck onto our truck,

1 and it hung up on the counterweight, the weight on the back-side  
2 right-hand. The rear wheels hung up on the side of his  
3 truck. Then we got a jack and jacked it up.

4 Q You say-- All right.

5 A And, then I stayed up on the machine and  
6 held the brakes, had it in gear and held the brakes because  
7 the movement of the truck, it could cause it to roll even  
8 if it was in gear. They have a bolt for them, but they  
9 don't have the bolt on them during shipment.

10 Q All right. When you jacked it up, did you  
11 jack it and did you put blocks underneath it?

12 A We put some boards underneath the rear  
13 wheels so when you let the jack down the jack would steer  
14 clear.

15 Q Mr. Halligan and you both did this?

16 A Well, when you are unloading something,  
17 everybody has to do something and you work together.

18 Q Now, was the Hecce's truck then moved?

19 A Yes, sir.

20 Q And, what did you do then?

21 A I was on the big dipper, and Mr. Halligan  
22 moved the truck forward about five or six feet.

23 Q It moved forward so to get the counter-  
24 weight that is hung on Flemming's truck past Flemming's  
25 truck so you can let your dipper down?

[TR 51]

1                   A           Yes, sir. And, then I got down off of the  
2 big dipper and let the jack down and then it fell off the  
3 back of the truck and Mr. Halligan had walked around be-  
4 tween the two trucks and had started to chain the other big  
5 dippers back down. He had to take the chains off so we  
6 could get the one out of the middle.

7                   Q           And, that is when it rolled or whatever  
8 happened and it came off the back of your truck?

9                   A           Yes, sir.

10                   MR. COLDWELL: That is all I have.

\*\*\*\*\*

\*\*\*\*\*

[TR 60]

24 Q And, so at the time what did you do? He  
25 took his truck and formed this T with your truck.

[TR 61]

1 A Right.

2 Q And, your testimony was that you drove this  
3 front end loader off his truck. Is that correct?

4 A I think so.

5 Q And, did you start it up also?

6 A Yes. After I checked the oil and water, I  
7 started it up.

8 Q Now, had Mr. Halligan done anything prior  
9 to this?

10 A He was unchaining it at the time I was  
11 checking the oil and water on it.

12 Q All right. This was chained to a couple of  
13 other pieces of equipment?

14 A It was chained to the body of the trailer.

15 Q He took those chains off?

16 A Right.

17 Q You started it up. You drove it onto your  
18 truck. Is that correct?

19 A Right.

20 Q And, when you drove it on, it got hung up  
21 on this counterweight in the back?

22 A Correct.

23 A And, when that happened, you went and you  
24 got the jack and you jacked it up so the counterweight cleared  
25 where it was hanging up. Is that correct?

[TR62]

1                   A           Correct.

2                   Q           And, then you stated that after you got it

3 up there you got on it and put your foot on the brakes.

4 Right?

5                   A           Right.

6                   Q           You had it in gear?

7                   A           Right.

8                   Q           You put your foot on the brakes because

9 it had no emergency brake?

10                  A           Right.

11                  Q           At this time, Halligan was down on the

12 ground doing all this. Is that correct?

13                  A           Correct.

14                  Q           And, then he went and he moved your truck

15 forward so he could clear and let this thing down so it

16 wouldn't hang up again. Is that correct?

17                  A           Correct.

18                  Q           That wasn't usually the truck driver's job,

19 was it, from Flemming to move your truck forward?

20                  A           When you unload-- When people are working

21 together to unload something, everybody has to do something.

22 If it were only two of us there, then he had to do the other

23 job because I was doing one job and he had to do the other.

\*\*\*\*\*

[TR 63]

15 Q And, after you moved it forward, you were  
16 the one who put the block or jacked it up, cleared the blocks  
17 under the wheel and let it down onto the body of the truck.  
18 Is that correct?

19 A Right.

20 Q And, at that time or shortly thereafter,  
21 it somewhat fell off the end of the truck?

22 A Right.

23 Q And, during this time, you said Mr. Halligan  
24 was resecuring the load on his truck?

25 A I think that is where he was.

[TR 64]

1 Q Behind you between the two trucks, he was  
2 working on his truck tying up his chains, resecuring the  
3 chains that he had used to unbind this tractor?

4 A Right.

5 Q I am sorry, this front end loader.

6 A He had to secure the other big dippers on  
7 his truck again because of the way that the chains crisscrossed.

8 Q At the time he was killed, that was the  
9 task in which he was engaged?

10 A I think so.

17 Q How long after the truck was pulled forward  
18 by Mr. Halligan and came to a stop did the accident occur?  
19 Do you understand my question?

20 How long was it before the dipper came off  
21 the truck?

22 A It was just a short time. He walked around  
23 the truck and, you know, was in between. I don't guess it  
24 had been too long.

25 Q The spreaders that were to come off, did

1 they have to be unchained?

2 A Yes, sir, not to take the big dipper off,  
3 just the other two big dippers that was on each side of this  
4 one.

5 Q The spreaders, how were they to be taken off

8                   Q           How are they usually taken off?

9                   A           It depends on how they are loaded on. Some-  
10 times they load the spreaders on the back and you can back  
11 up on the ramp and hook onto them and pull them off, and  
12 sometimes they have a spreader up in the front with no--  
13 They are just high flat trucks. They don't have any front  
14 on the trailer, and on this occasion when we unloaded them  
15 a day or so later, we had to take it off the front of the  
16 truck.

17                  Q           Did that still remain for Moses and Hall-  
18 igan to do if Mr. Halligan had not been killed?

19                  A           Right.



[DEP Gieselhart 3]

BY MR. COLDWELL:

13

Q Would you state your name, please, sir?

14

A Elmer Gieselhart.

15

Q How old are you, Mr. Gieselhart?

16

A 59.

17

Q Where do you live, sir?

18

A Lakeville, Minnesota.

19

Q And by whom are you employed, sir?

20

A Fleming Manufacturing Company.

21

Q And how long have you been employed by Fleming

22

Manufacturing?

23

A Since January of 1969.

24

Q And where is Fleming Manufacturing located?

25

[DEP Gieselhart 4]

1

A Long Lake, Minnesota.

2

Q And are you still employed by Fleming?

3

A Yes.

4

Q When you first went to Fleming, what were your  
duties?

5

6

A Over the road truck driver.

\*\*\*\*\*

\*\*\*\*\*

22 Q In 1974 were you a dispatcher?

23 A Yes.

24 Q Approximately how many trucks, over the road  
25 trucks, did Fleming Manufacturing have in the year 1974?

[DEP Gieselhart 5]

1 A We had six over the road trucks and one other  
2 one we used local.

3 Q Is Fleming Manufacturing a common carrier or  
4 a private carrier?

5 A Private carrier.

6 Q And for whom as a private carrier haul goods  
7 and equipment?

8 A They haul for Fleming, Van Dale and Mobility.

\*\*\*\*\*

19 Q What is the relationship between Fleming,  
20 Mobility and Van Dale?

21 A I guess they are all owned by one -- the same  
22 guys. Affiliated, I guess.

\*\*\*\*\*

\*\*\*\*\*

[DEP Gieselhart 6]

6 Q Did your method of compensation change from a  
7 straight mileage basis to some other basis?

8 A About the last part of '70 or '71 it changed  
9 to mileage plus we dropped charges or hours for loading  
10 and unloading.

11 Q Was this by contract between the drivers and  
12 Fleming?

13 A Yes.

14 Q Were you familiar with Mr. Thomas Halligan?

15 A Yes.

16 Q Was he under such a contract with Fleming?

17 A Yes.

18 Q Now, you told me that you were paid on a mileage  
19 plus a drop charge. What are you paid for in a drop?

20 A You are paid to help unload.

21 Q Suppose the unloading takes three or four hours  
22 or two or three hours, on what basis are you compensated?

23 A Then they will change it to an hourly rate  
24 instead of drops.

25 Q Was that true of all drivers delivering equipment

[DEP Gieselhart 7]

1 for either Fleming, Mobility or Van Dale during 1974?

2 A Yes.

3 Q Prior to Mr. Halligan's accident in Virginia  
4 at Moose's, had you ever delivered Mobility equipment to  
5 Moose's in Richmond?

6 A Yes, once before.

7 Q Have you since that time?

8 A We have been in there a couple of times since,  
9 yes.

10 Q And you and other drivers then, what were your  
11 duties in regard to dropping the equipment?

12 A Well, we always helped unload.

\*\*\*\*\*

\*\*\*\*\*

[DEP Gieselhart 11]

4           Q   And from your experience with Fleming, Fleming's  
5 responsibility for this Mobility equipment, for example,  
6 is simply to pick it up someplace and to transport it  
7 and to drop it off someplace, is that correct?

8           A   Yes.

9           Q   They don't have any additional responsibility  
10 with that equipment? They don't service it, for example,  
11 is that correct?

12          A   No. Mobility services their own.

13          Q   So with regard to Mobility equipment, Fleming  
14 acts strictly as the carrier?

15          A   Yes.

\*\*\*\*\*

\*\*\*\*\*

[DEP Gieselhart 12]

15 Q If you had a truck loaded with three pieces  
16 of equipment that you were delivering to three different  
17 places, would you be paid for three unloadings?

18 A Yes.

19 Q And if you had only the pieces on the truck you  
20 would be paid a different amount then if there were three?

21 A Well, if they go to three different places --  
22 if we went to two different places, then we get paid for  
23 two different places.

\*\*\*\*\*

\*\*\*\*\*

[DEP Gieselhart 13]

2 Q With regard to unloading you said that you were  
3 to help unload. What specifically is a Fleming driver to  
4 do in helping unload? What does that mean?

5 A Well, they help unload what they got on there.  
6 Sometimes you do one thing and sometimes you do something  
7 else. It depends on what you got and the help.

8 Q I take it you mean the piece of equipment?

9 A Yes. You unchain it.

10 Q What else do you do besides unchain it?

11 A Sometimes you run it off. Sometimes some of  
12 that stuff you pull off and help them look it up.

13 Q Do you operate equipment that belongs to the  
14 company to whom you are delivering the truck?

15 A Sometimes. It depends on the situation or what-  
16 ever happened to be the handiest sometimes.

17 Q And you are specifically instructed to do whatever  
18 is necessary to unload it or is there any limits to what  
19 you are supposed to do?

20 A Well, nothing really specified except just supposed  
21 to help unload.

22 Q So what you are saying it's part of Mr. Halligan's  
23 job to be unloading this truck?

24 A Yes.

\*\*\*\*\*

\*\*\*\*\*

[DEP Gieselhart 21]

5 Q Does Moose have a loading dock?

6 A He has one, but he uses it for his truck.

7 We never use it for ours because there wasn't room to get  
8 in there with a big trailer. We could get in there but  
9 it was awful hard so we used his truck and he used his  
10 unloader to unload his truck.

11 Q You are saying your trucks couldn't fit into  
12 the Moose dock, correct?

13 A Yes.

14 Q Did Moose have a very elaborate setup there  
15 for unloading or just a simple dock?

16 A What the dock was I wouldn't say because I never  
17 have gone back to where it was.

18 Q You never saw it?

19 A No.

20 Q Who told you it was too small for your truck?

21 A Well, I could see from where they go back to the  
22 dock there was one corner that was small.

23 Q You are saying there is a very narrow drive to  
24 the dock?

25 A Yes.

\*\*\*\*\*



\*\*\*\*\*

[DEP Gieselhart 22]

1           Q   And there is no access for a truck the size  
2   of a Fleming truck?

3           A   Yes.

4           Q   Really only small trucks can get in and out  
5   to that dock then, is that right?

6           A   Well, that's what I would say anyway. You have  
7   got a narrow driveway going back along the building and  
8   then you have to go around the front of the building to  
9   get around the corner of the building.

\*\*\*\*\*

[DEP Gieselhart 27]

15          Q   Do you unload between the two trucks in the  
16   same place generally each time?

17          A   Well, pretty well the same, yes.

18          Q   Are the trucks lined up pointing in the same  
19   direction each time; north-south or east-west? Do you  
20   ever use the same figuration with the Fleming truck  
21   pointed one way and the Moose truck pointed the other  
22   way every time you unload it?

23          A   Pretty well the same way, I would say. It  
24   depends on how we unload; off the side or back.

\*\*\*\*\*

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Plaintiff, Walter W. Stout, III, Virginia Administrator for the Estate of Thomas C. Halligan, deceased, hereby appeals the final decision entered by this Court on February 27, 1978 with respect to the granting of the Defendants Mario Onorati t/a Moose's Quality Tractor Parts and Freddie L. Davis Special Plan of Workman's Compensation. The Plaintiff requests that this be tried as a separate controversy under Rule 5:16 of the Rules of the Supreme Court of Virginia.

It is anticipated that a transcript of the case is to be hereafter filed.

WALTER W. STOUT, III, Virginia  
Administrator for the Estate of  
Thomas C. Halligan, Deceased

By Walter W. Stout  
Counsel

Walter W. Stout, III  
SHALIA. STOUT & MARKOW, P.C.  
819 - 700 Building  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed this 10th day of March 1970, postage prepaid, to James C. Miller, Esquire, Dwyer, Robinson, Davenport & Moore, 14M Center, 12th and Main Streets, Richmond, Virginia 23219 and to Rufus G. Coldwell, Jr., Esquire, Browder, Russell, Little, Morris and Butcher, Suite 1209, Gays Building, 501 East Main Street, Richmond, Virginia 23219.

Walter W. Stat

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the defendant, Mobility, Inc., hereby appeals the final decision entered by this Court on February 27, 1978, wherein the Special Pleas of Workmen's Compensation filed by Defendants Mario Moriatti t/a Moose's Quality Tractor Parts and Freddie L. Davis were sustained.

The appeal here sought involves the trial court's ruling in favor of two defendants on Workmen's Compensation pleas which are separable controversies from plaintiff's tort and warranty claims asserted jointly and severally against all defendants.

All pertinent transcripts will hereafter be timely filed.

MOBILITY, INC.

by \_\_\_\_\_  
Counsel

William H. Cooper  
Andrew S. Miller  
Lewis T. Stoneburner  
Harry Valentine, Cavenport & Moore  
P. O. Box 1112  
Richmond, Virginia 23206

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed, postage prepaid, to Walter W. Stout, III, Esquire, Shaia, Stout & Markow, 819 Seven Hundred Building, Richmond, Virginia 23219, to Rufus G. Coldwell, Jr., Esquire, Browder, Russell, Little, Morris and Butcher, Suite 1200, Ross Building, 801 East Main Street, Richmond, Virginia 23219, and to Thomas L. Dettelbach, Esquire, Kohn, Kleinman, Yanowitz & Arnson, 1300 Bond Court Building, Cleveland, Ohio 44114, this \_\_\_\_ day of March, 1978.

---

ASSIGNMENTS OF ERROR OF HALLIGAN'S ADMINISTRATOR

1. The trial court erred in sustaining Defendant Moose's and Davis' special plea of workmen's compensation and dismissing them as Defendants upon a finding that Moose's was in the trade, business and occupation of unloading, making Thomas C. Halligan an employee of Moose's and therefore covered under the Virginia Workmen's Compensation Act.

2. The trial court erred in not applying Minnesota Workmen's Compensation Law under present conflicts of law authority.

3. The trial court erred in not requiring the Defendants to prove their compliance with Section 65.1-104 of the Virginia Workmen's Compensation Law.\*

\*The appeal was granted only with respect to assignments of error numbers 1 and 2.

ASSIGNMENTS OF ERROR OF MOBILITY, INC.

1. The court erred in finding that Moose's and Davis are not "other parties" within the meaning of the Virginia Workmen's Compensation Act.

2. It was error for the court to apply the Workmen's Compensation Act of Virginia to determine which parties are subject to suit by Halligan's administrator.