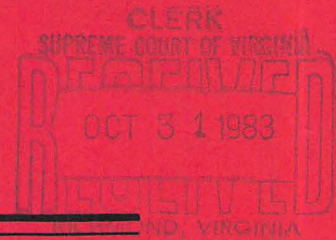


231 VA320



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IN THE

**Supreme Court of Virginia**

AT RICHMOND

---

RECORD NO. 822105

---

WENDELL W. WOOD and MARLENE C. WOOD,  
Appellants,

v.

STUART F. CARWILE, DAVID KUDRAVETZ and  
ROSS W. KRUMM,  
t/a CARWILE, KUDRAVETZ & KRUMM,  
Appellees.

---

JOINT APPENDIX

---

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Attorney at Law  
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Richmond, Virginia 23223

Counsel for Appellants

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Gary W. Kendall  
Attorneys at Law  
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Richmond, Virginia 23230

Counsel for Appellees

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MOTION FOR JUDGMENT

TO THE HONORABLE HERBERT A. PICKFORD, JUDGE OF SAID COURT:

Come now the Plaintiffs, by counsel, and move the Court for judgment against the Defendants in the amount of \$170,487.66, plus interest from October 1, 1980, and costs incurred herein on the following grounds:

1. The Plaintiffs herein are duly licensed attorneys qualified to practice law in the State of Virginia. From January 1, 1975, until February of 1976, the Plaintiffs, Stuart F. Carwile and David W. Kudravetz, practiced law in a partnership t/a Carwile & Kudravetz, and thereafter, with the addition of the Plaintiff, Ross W. Krumm, continued said partnership as Carwile, Kudravetz & Krumm through September of 1978, with their principle office being located in the City of Charlottesville, Virginia.

2. The Defendants, Wendell W. Wood and Marlene C. Wood, are and were at all times pertinent hereto residents of Albemarle County, Virginia.

3. Beginning in 1975 and continuing through September 1978, the Defendants employed the Plaintiffs, in the City of Charlottesville, Virginia, to represent them on numerous legal matters.

4. By a statement of account dated October 1, 1980, the Plaintiffs requested payment for their continuing legal services through September of 1978. The amount of fee and costs owed to the Plaintiffs by the Defendants according to said statement of account was and is \$170,487.66.

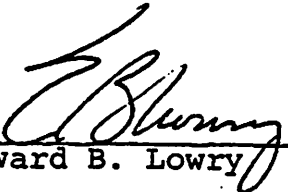



5. Despite numerous demands for payment, the Defendants have refused to pay Plaintiffs for their services in accordance with the statement of account and said account remains due and payable.

WHEREFORE, the Plaintiffs ask for judgment against the Defendants in the amount of \$170,487.66, plus interest from October 1, 1980, together with their costs herein expended and such other relief as the Court deems proper.

STUART F. CARWILE,  
DAVID W. KUDRAVETZ,  
and  
ROSS W. KRUMM,

By Counsel

  
\_\_\_\_\_  
Edward B. Lowry

  
\_\_\_\_\_  
Gary W. Kendall  
For MICHIE, HAMLETT, DONATO & LOWRY  
500 Court Square, Suite 300  
Charlottesville, Virginia 22902

Counsel for the Plaintiffs

GROUND OF DEFENSE

COME NOW the Defendants, Wendell W. Wood and Marlene C. Wood, and for Grounds of Defense to the Motion for Judgment filed against them herein, respectfully represent as follows:

(1) That they admit that Plaintiffs herein are duly licensed attorneys with offices in Charlottesville, but have no knowledge of the practice or dates of practice under assumed names as alleged in Paragraph 1 thereof.

(2) That they admit the allegations contained in Paragraph 2 thereof.

(3) That they deny the allegations contained in Paragraph 3 thereof, excepting that they admit that from time to time during the period from 1975 through March, 1980 Defendant, Wendell W. Wood, requested Plaintiff, Stuart F. Carwile, to represent him on various and sundry legal matters and that said Plaintiff, Stuart F. Carwile, from time to time during such period, did represent said Defendant, Wendell W. Wood on various legal matters.

(4) That they admit that Defendants received a statement from Plaintiffs dated October 1, 1980 in the amount of \$170,487.66, purporting to be for legal services performed by Plaintiffs for Defendants; that they have no knowledge as to whether the various items set forth in said statement were performed by Plaintiffs and call for strict proof of same; that they deny that Plaintiff performed any legal services for Defendant, Marlene C. Wood, or any services for Defendant, Wendell W. Wood, that are not expressly admitted herein; they deny that they are indebted to Plaintiffs in any amount; and, they deny all other allegations contained in Paragraph 4.

(5) That they deny the allegations contained in Paragraph 5 thereof, excepting that they have not paid the amount of said statement because they are not indebted to Plaintiffs in any amount.

(6) That the legal work performed by Plaintiffs was performed in a careless and negligent manner.

(7) That Defendant, Marlene C. Wood, has never contracted with or requested Plaintiffs to perform any of the legal services described in the Motion for Judgment.

(8) That from time to time, Defendant, Wendell W. Wood, was informed by Plaintiff, Stuart F. Carwile, that the charge for legal services performed by him for said Defendant, Wendell W. Wood, would be based on an hourly rate, which hourly rate at first was \$35.00 per hour and later \$45.00 per hour; that Defendant, Wendell W. Wood, paid all bills for statements received by him.

(9) That on or about June 21, 1979 Plaintiff, Stuart F. Carwile, after undertaking to represent Defendant, Wendell W. Wood, and scheduling a judicial hearing, demanded and forced said Defendant, Wendell W. Wood, into signing a Promissory Note in the amount of \$27,820.00, with interest, by threatening or refusing to represent the Defendant further in said matters; that according to Plaintiff, Stuart F. Carwile, such sum was in payment of all legal services rendered to the Defendant and was not just related to the matter in which hearings were scheduled, however, no statement or accounting was ever presented by the Plaintiff to the Defendant which detailed the items comprising said fee amount; and, that said Defendant, Wendell W. Wood, executed said Note under duress because of the importance of the scheduled judicial hearings and his immediate need of continued legal representation thereat.

(10) That on or about February 29, 1980 Plaintiff, Stuart F. Carwile, after undertaking to represent Defendant, Wendell W. Wood,

and scheduling a real estate closing of extreme importance to the said Defendant, demanded and forced said Defendant, Wendell W. Wood, into agreeing to the payment of a legal fee in the amount of \$33,045.03 by threatening or refusing to represent the Defendant further in said matter; that according to Plaintiff, Stuart F. Carwile, such sum was in payment of all legal services rendered to the Defendant and was not just related to the real estate closing which was scheduled for the next day, however, no statement or accounting was ever presented by the Plaintiff to the Defendant which detailed the items comprising said fee amount; and, that said Defendant, Wendell W. Wood, agreed to the payment of said sum under duress because of the importance of the scheduled real estate closing and his immediate need of continued legal representation therein.

WHEREFORE, the Defendants pray that this action be dismissed and that they recover from the Plaintiffs their costs in their behalf expended.

#### CROSS-CLAIM

COMES NOW the Defendant, Wendell W. Wood, by Counsel, and moves for judgment against Plaintiffs for the following:

(1) Defendant, Wendell W. Wood, hereby incorporates by reference Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Grounds of Defense filed herein.

(2) That on various occasions from 1975 through March, 1980 in the City of Charlottesville, Virginia, Defendant, Wendell W. Wood, retained Plaintiff, Stuart F. Carwile, and his firm, to represent him on various and sundry legal matters.

(3) That Plaintiffs continue to represent said Defendant, Wendell W. Wood, on such of said legal matters not closed or determined prior to March, 1980.



(4) That Defendant, Wendell W. Wood, retained said Plaintiff, Stuart F. Carwile, and his firm, to represent him on the "Airport Condemnation Matter" set forth as Item 8 of Exhibit A of the Motion for Judgment, and dated February, 1975 - February 27, 1979; that said condemnation case was settled; that \$10,000.00 of the settlement amount was retained for partial payment on certain liens or until partial releases were obtained by Plaintiff, Stuart F. Carwile, for Defendant; that Plaintiff, Stuart F. Carwile, and his firm, although retained to do so, have not seen to the partial payment of said liens from said sum of \$10,000.00, or to the execution of said partial releases, but have allowed said sum to be retained by the Court without interest; that as a result of the aforesaid negligence and carelessness on the part of Plaintiffs aforesaid, said Defendant, Wendell W. Wood, has lost the use of said money and interest thereon, and has been required to pay additional interest to said lien creditors.

(5) That Defendant, Wendell W. Wood, retained the Plaintiff, Stuart F. Carwile, and his firm, to represent him on the "Reservoir Matters" set forth as Item No. 9 of the Motion for Judgment and dated February, 1975 - February 27, 1979; that suit was instituted in the Circuit Court of Albemarle County, Virginia, on January 12, 1976 but no trial was held thereunder; that suit was instituted in the United States Federal District Court, Western District of Virginia, at Charlottesville, Virginia, on two occasions; that the State Court proceeding was dismissed for lack of prosecution on February 10, 1981 without the knowledge of said Defendant; that Plaintiff brought said suits against the wrong Defendants; that Plaintiff improperly instituted the original suits in the Federal Court rather than the Courts of the State of Virginia which were the proper forum; that Plaintiff improperly brought said suits under an

incorrect and erroneous theory of law; and, that the Plaintiff negligently allowed the aforesaid State Court proceeding to be dismissed for lack of prosecution, without notice to the Defendant.

That Defendant, Wendell W. Wood, was entitled to the relief prayed for in the State Court and had a sale of the property for \$750,000.00, payment of which was conditioned on obtaining the permits in question and which were the subject of the aforesaid suits; and, that as a result Defendant, Wendell W. Wood, lost some \$50,000.00 in expenses and the loss of the sale of said property and collection of the purchase price therefor in the amount of \$750,000.00.

(6) That Defendant, Wendell W. Wood, retained said Plaintiff, and his firm, to represent him on the "Rio Associates Limited Partnership - - - \$1,495,000.00 Deed of Trust" matters set forth as Item No. 10 of Exhibit A of the Motion for Judgment, and dated November 1975 - June 13, 1978; that Defendant, Wendell W. Wood, agreed to subordinate his \$1,495,000.00 Deed of Trust for one time only, and Plaintiff, Stuart F. Carwile, drafted and approved a subordination clause and represented to said Defendant that under such clause, said Defendant agreed and contracted to subordinate said Deed of Trust one time only; that Plaintiff improperly and carelessly drafted or approved said clause whereby Defendant was required to subordinate the second time; that the Note secured by said Deed of Trust bears interest at the rate of 8% and matures in 2008; that if the subordination clause had been in the form represented to Defendant by Plaintiff, Stuart F. Carwile, said Deed of Trust would have been paid off by May 12, 1978; that Defendant would not only have earned increased interest on this money since that date but would have had such money, or portions, available for business purposes, thus allowing him to avoid the expenditure

of many fees, costs and expenses and of selling various assets at forced sale or similar circumstances; and, the present value of said indebtedness secured by said Deed of Trust is \$400,000.00.

(7) That on at least two occasions, the Plaintiff, Stuart F. Carwile, after undertaking to represent Defendant, Wendell W. Wood, demanded payment of certain fees for legal services by threat of refusal to represent the said Defendant in certain proceedings, more particularly described as follows:

a. That on or about June 21, 1979 Plaintiff, Stuart F. Carwile, after undertaking to represent Defendant, Wendell W. Wood, and scheduling a judicial hearing, demanded and forced said Defendant, Wendell W. Wood, into signing a Promissory Note in the amount of \$27,820.00, with interest, by threatening or refusing to represent the Defendant further in said matters; that according to Plaintiff, Stuart F. Carwile, such sum was in payment of all legal services rendered to the Defendant and was not just related to the matter in which hearings were scheduled, however, no statement or accounting was ever presented by the Plaintiff to the Defendant which detailed the items comprising said fee amount; and, that said Defendant, Wendell W. Wood, executed said Note under duress because of the importance of the scheduled judicial hearings and his immediate need of continued legal representation thereat.

b. That on or about February 29, 1980 Plaintiff, Stuart F. Carwile, after undertaking to represent Defendant, Wendell W. Wood, and scheduling a real estate closing of extreme importance to the said Defendant, demanded and forced said Defendant, Wendell W. Wood, into agreeing to the payment of a legal fee in the amount of \$33,045.03 by threatening or refusing to represent the Defendant further in said matter; that according to Plaintiff, Stuart F. Carwile, such sum was in payment of all legal services rendered to

the Defendant and was not just related to the real estate closing which was scheduled for the next day, however, no statement or accounting was ever presented by the Plaintiff to the Defendant which detailed the items comprising said fee amount; and, that said Defendant, Wendell W. Wood, agreed to the payment of said sum under duress because of the importance of the scheduled real estate closing and his immediate need of continued legal representation therein.

WHEREFORE, the Defendant, Wendell W. Wood, moves for judgment against the Plaintiff in the sum of TWO MILLION DOLLARS (\$2,000,000.00).

WENDELL W. WOOD  
MARLENE C. WOOD

by Counsel

Haugh & Treakle, P.C., p.d.  
435 Park Street  
Charlottesville, Virginia

by: \_\_\_\_\_

CERTIFICATE

I hereby certify that a true copy of the foregoing Grounds of Defense and Cross-Claim was this 20<sup>th</sup> day of July, 1981 hand delivered/mailed to Edward B. Lowry, Esq., and Gary W. Kendall, Esq., Michie, Hamlett, Donato & Lowry, 500 Court Square, Suite 300, Charlottesville, Virginia 22901, Counsel for Plaintiffs.

  
\_\_\_\_\_  
CHARLES R. HAUGH



PLEA OF STATUTE OF LIMITATIONS

COMES NOW the Defendants, Wendell W. Wood and Marlene C. Wood,  
and respectfully represent as follows:

That the claim or claims asserted against them, jointly and  
severally, are barred by the Statute of Limitations.

WENDELL W. WOOD  
MARLENE C. WOOD

by Counsel

Haugh & Treakle, P.C., p.d.  
435 Park Street  
Charlottesville, Virginia

by: 

CERTIFICATE

I hereby certify that a true copy of the foregoing Plea of  
Statute of Limitations was this 20<sup>th</sup> day of July, 1981  
and delivered to Edward B. Lowry, Esq., and Gary W. Kendall, Esq.,  
Michie, Hamlett, Donato & Lowry, 500 Court Square, Suite 300,  
Charlottesville, Virginia 22901, Counsel for Plaintiffs.

  
CHARLES R. HAUGH

HERBERT A. PICKFORD, JUDGE  
CITY COURTHOUSE  
315 E. HIGH STREET  
CHARLOTTESVILLE, VIRGINIA 22901  
804-293-5859

DAVID F. BERRY, JUDGE  
MADISON, VIRGINIA  
VANCE M. FRY, JUDGE  
ORANGE, VIRGINIA  
F. WARD HARKRADER, JR., JUDGE  
LOUISA, VIRGINIA

### SIXTEENTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF THE CITY OF CHARLOTTESVILLE AND THE COUNTIES OF  
ALBEMARLE, CULPEPER, FLUVANNA, GREENE, GOOCHLAND, LOUISA, MADISON AND ORANGE.

March 24, 1982

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Michie, Hamlett, Donato & Lowry  
P. O. Box 298  
Charlottesville, Virginia 22902

David Craig Landin, Esq.  
McGuire, Woods & Battle  
P. O. Box 1191  
Charlottesville, Virginia 22902

Re: Carwile, et al. v. Wood  
Law File No. 2305

Gentlemen:

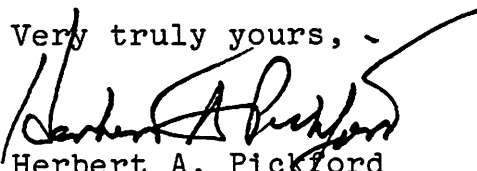
From our evidentiary hearing of March 17, 1982, and March 18, 1982, on defendants' statute of limitations plea it is clear plaintiffs' representation of the defendants was one requiring a continuation of services. While the parties disagree as to when that representation began, they agree it existed throughout much of the 1970's and involved most of defendants' legal business. That business included numerous related and unrelated acts and transactions. The general rule that tolls application of the statute of limitations until the termination of such a relationship as existed here is a special one which the Virginia Supreme Court in McCormick v. Romans and Gunn, 214 Va. 144 at page 149 has declared to be particularly appropriate to the attorney-client relationship.

That rule has an exception, however, as noted in Beale v. Moore, 183 Va. 519 and Stafford v. Bishop, 98 W.Va. 625, 127 S.E. 501. The Beale case cites Riverview Land Co. v. Dance, 98 Va. 239 in which the general rule and its exception are discussed. The latter case involved a land development project with transactions more inter-related than most of those involved in the instant case. The exception was applicable to it. Beale involved a receivership which the court noted was an entirely different endeavor to which it held the exception inapplicable.

The instant case involved no retainer, nor any real agreement other than defendants giving plaintiffs most of their legal work, with plaintiffs performing the same, usually taking their compensation when funds of the defendants passed through their firm's trust account. According to Mr. Carwile, the defendants could have been billed at any time throughout the relationship, but such would have been a useless act because of defendants' cash flow problems. Therefore, said Mr. Carwile, plaintiffs had an agreement with defendants to defer payments of fees until funds were available. Defendant Wendell Wood denied this with one exception, and that occurred, he said, when Carwile required of him a promissory note in the fall of 1978 when one of Wood's enterprises was involved in a bankruptcy proceeding. The parties are generally in agreement that what actually transpired was that plaintiffs sent a few statements; would take a portion of proceeds of some transactions and apply them to their account with defendants; occasionally would desire payment and request such; or on some occasions plaintiffs would render a statement when defendants had a credit balance with plaintiffs, and it would be applied to plaintiffs' account. This evidences no particular agreement concerning payment of fees.

I conclude that plaintiffs had the right to require payment for their services prior to the termination of their relationship with defendants in late 1978, and should have done so. Accordingly, the exception to the general rule is applicable, and as to each transaction for which plaintiffs claim compensation, the statute began to run from the time plaintiffs had the right to demand payment. In view of the ruling herein made sustaining the limitations plea, it is now appropriate to proceed with the identification of those portions of plaintiffs' claim to which it is a bar. Mr. Lowry in his closing argument requested leave to address this issue should it arise. Mr. Haugh in his closing identified those items he viewed as being barred, and I have noted the same. I would appreciate Mr. Lowry, either through oral hearing or by written memorandum, identifying those items as to which he disagrees with Mr. Haugh. According to my notes, Mr. Haugh contends the statute applies in whole or in part to items 1,4,5,6,7,10,11, 12,13,14,19,20,21, and 22.

Very truly yours, -

  
Herbert A. Pickford

HAP:jrr

HERBERT A. PICKFORD, JUDGE  
CITY COURTHOUSE  
315 E. HIGH STREET  
CHARLOTTESVILLE, VIRGINIA 22901  
804-293-5859

DAVID F. BERRY, JUDGE  
MADISON, VIRGINIA  
VANCE M. FRY, JUDGE  
ORANGE, VIRGINIA  
F. WARD HARKRADER, JR., JUDGE  
LOUISA, VIRGINIA

SIXTEENTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF THE CITY OF CHARLOTTESVILLE AND THE COUNTIES OF  
ALBEMARLE, CULPEPER, FLUVANNA, GREENE, GOOCHLAND, LOUISA, MADISON AND ORANGE

April 26, 1982

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Gary W. Kendall, Esq.  
P. O. Box 298  
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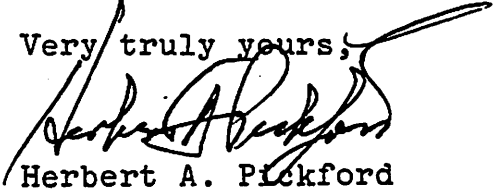
William S. Smithers, Jr., Esq.  
P. O. Box 6447  
Richmond, Virginia 23230

Re: Carwile, et al. v. Wood  
Law File No. 2305

Gentlemen:

Having considered plaintiffs' motion to reconsider the ruling I made March 24, 1982, relative to defendants' statute of limitations plea, I continue to be of the opinion that the exception to the general rule is applicable under the facts of this case. The motion is denied.

Very truly yours,

  
Herbert A. Pickford

HAP:jrr



HERBERT A. PICKFORD, JUDGE  
CITY COURTHOUSE  
315 E. HIGH STREET  
CHARLOTTESVILLE, VIRGINIA 22901  
804-293-5859

DAVID F. BERRY, JUDGE  
MADISON, VIRGINIA  
VANCE M. FRY, JUDGE  
ORANGE, VIRGINIA  
F. WARD HARKRADER, JR., JUDGE  
LOUISA, VIRGINIA

### SIXTEENTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF THE CITY OF CHARLOTTESVILLE AND THE COUNTIES OF  
ALBEMARLE, CULPEPER, FLUVANNA, GREENE, GOOCHLAND, LOUISA, MADISON AND ORANGE

May 5, 1982

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435 Park Street  
Charlottesville, Virginia 22901

Edward B. Lowry, Esq.  
Gary W. Kendall, Esq.  
P. O. Box 298  
Charlottesville, Virginia 22902

Re: Carwile, et al. v. Wood, et al. - Law File No. 2305

Gentlemen:

On May 3, 1982, we addressed whether, under rulings previously made with regard to defendants' limitations plea, plaintiffs' claims asserted under items 1, 5, 6, 7, 10, 19 and 20 are time barred. As to when the plaintiffs might be expected to have required payment for their services, McCormick v. Roman and Gunn, 214 Va. 144 controls. Those items of representation by plaintiffs which required a continuation of services did not ignite the running of the statute of limitations until the termination of the particular undertaking in which they were involved.

I find that item 1, dealing with The Bank of Virginia loan and the Westinghouse Credit Corporation loan, was completed prior to February 13, 1978, and is time barred.

As to item 5, I find that it is also barred. Mr. Lowry argued that plaintiffs' claim for trustees compensation rests upon a writing, i.e. deed of trust, and, therefore, the three-year statute is not applicable. Suffice it to say, the writing is an obligation of Luray Properties, Inc., not of the defendants.

Items 6, 7 and 20 all involve a continuation of services not terminated prior to February 13, 1978, and, therefore, are not barred.

I do not find the requisite continuity of services within item 10 dealing with the Rio Associates Limited Partnership, and, therefore, hold all claims therein asserted to be barred, with the exception of the litigation and those items that lead up to it, i.e. those that ensued from the request of Rio Associates for subordination. That litigation did not terminate until after February 13, 1978.

Finally, as to item 19, I do not find the defendants to have borne their burden of proof.

In summary, therefore, the following items are fully barred: 1, 4, 5, 11, 12, 13, 14, 17, 21 and 22. All of item 10 is barred, except as noted above.

Very truly yours,



Herbert A. Pickford

HAP:jr

cc: David Craig Landin, Esq.  
William S. Smithers, Jr., Esq.

HERBERT A. PICKFORD, JUDGE  
CITY COURTHOUSE  
315 E. HIGH STREET  
CHARLOTTESVILLE, VIRGINIA 22901  
804-293-5859

DAVID F. BERRY, JUDGE  
MADISON, VIRGINIA  
E. GERALD TREMBLAY, JUDGE  
CHARLOTTESVILLE, VIRGINIA  
F. WARD HARKRADER, JR., JUDGE  
LOUISA, VIRGINIA

### SIXTEENTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF THE CITY OF CHARLOTTESVILLE AND THE COUNTIES OF  
ALBEMARLE, CULPEPER, FLUVANNA, GREENE, GOOCHLAND, LOUISA, MADISON AND ORANGE

July 23, 1982

Edward B. Lowry, Esq.  
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P. O. Box 298  
Charlottesville, Virginia 22902

James E. Treakle, Esq.  
Haugh & Treakle  
435 Park Street  
Charlottesville, Virginia 22901

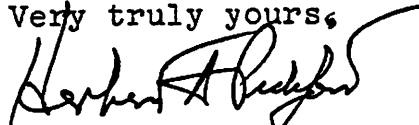
Re: Carwile et al. v. Wood  
Law No. 2305

Gentlemen:

In view of plaintiffs' offer, as set out in their supplemental memorandum filed July 7, 1982, to accept a verdict against Mr. Wood reduced by the sum of \$3875.00, and their previously made request to reduce by \$27,500.00 the verdict awarded them against Mrs. Wood, I am satisfied that this removes any possible prejudice the defendants may have suffered as a result of the jury's consideration of erroneous notations made on two of the exhibits. The verdicts will accordingly be so reduced and defendants' motions to set them aside and grant a new trial are denied.

Mr. Lowry will draft the judgment order.

Very truly yours,



Herbert A. Pickford

HAP:jr

cc: David C. Landin, Esq.  
P. O. Box 1191  
Charlottesville, Virginia 22902

William S. Smithers, Esq.  
5911 West Broad Street  
Richmond, Virginia 23230

HERBERT A. PICKFORD, JUDGE  
CITY COURTHOUSE  
315 E. HIGH STREET  
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DAVID F. BERRY, JUDGE  
MADISON, VIRGINIA  
E. GERALD TREMBLAY, JUDGE  
CHARLOTTESVILLE, VIRGINIA  
F. WARD HARKRADER, JR., JUDGE  
LOUISA, VIRGINIA

SIXTEENTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF THE CITY OF CHARLOTTESVILLE AND THE COUNTIES OF  
ALBEMARLE, CULPEPER, FLUVANNA, GREENE, GOOCHLAND, LOUISA, MADISON AND ORANGE

August 23, 1982

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435 Park Street  
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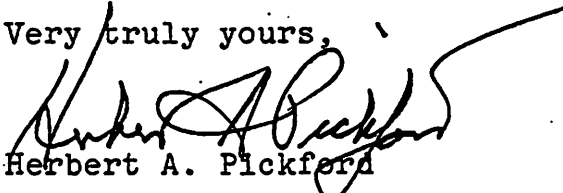
Edward B. Lowry, Esq.  
Michie, Hamlett, Donato & Lowry  
P. O. Box 298  
Charlottesville, Virginia 22902

Re: Carwile, et al. v. Wood  
Law File No. 2305

Gentlemen:

Having reviewed the matters subject of plaintiff's Motion for Remittitur in light of the supplemental memorandum filed by Mr. Treakle August 16, 1982, I reaffirm my position previously set out in my letter of July 23, 1982 to you.

Very truly yours,

  
Herbert A. Pickford

HAP:jr

cc: David C. Landin, Esq.  
William S. Smithers, Esq.



ORDER

By opinion letter of this Court dated May 5, 1982, certain portions of the Plaintiffs' Motion for Judgment were stricken as being barred by the Statute of Limitations. It is hereby ORDERED that the finding and rulings of the Court as contained in said opinion letter be and hereby are incorporated and made part of this Order.

On the 24, 25, 26, 27 and 28th days of May, 1982, came the parties in person and by their respective counsel, and all proper pleadings having been filed, the issue was joined upon the remaining claims in the Plaintiffs' Motion for Judgment. Thereupon a qualified jury of seven was properly selected and sworn according to law together with a duly qualified alternate.

Opening statements were made by counsel for the parties and evidence was produced on behalf of the Plaintiffs. At the conclusion of the Plaintiffs' evidence, they rested their case. Counsel for the Defendants moved the Court to strike the evidence of the Plaintiffs and enter summary judgment for the Defendants on the grounds that: (1) the Plaintiffs had failed to prove an actionable case against the Defendant Marlene C. Wood and (2) that the Plaintiffs had failed to prove either an express or implied contract upon which an actionable case could be sustained against either of the Defendants.

And the Court, after hearing argument from the respective parties, and after due consideration, denied the Defendant's motions to strike as to the Defendant, Wendell W. Wood, but granted Defendant's motions to strike as to the Defendant, Marlene C. Wood on six of the twelve items sued upon.

Counsel for both parties objected and excepted to the Court's decision.

Thereupon, the jury heard the evidence on behalf of both Defendants, and after the Defendants had rested their case, the Plaintiffs presented evidence in rebuttal.

At the conclusion of all of the evidence counsel for the parties argued jury instructions and noted their respective objections and exceptions. The Court submitted the instructions to the jury and thereupon final argument was made by counsel for all parties and the case was submitted to the jury on the issues.

During the deliberations of the jury, one juror was excused and the alternate juror was duly sworn to replace him. After due consideration, the jury returned a verdict in favor of the Plaintiffs, Stuart F. Carwile, Ross W. Krumm, and David W. Kudravetz against both Defendants, Wendell W. Wood and Marlene C. Wood, in the amount of \$95,250.00, together with interest at the rate of 10% per annum from June 15, 1981 and against the Defendant, Wendell W. Wood, individually in the amount of \$21,203.00 together with interest at the rate of 10% per annum from June 15, 1981.

WHEREUPON, counsel for the Defendants moved the Court to poll the jury, which was done, and all members of the jury answered in the affirmative in support of the verdict.

WHEREUPON, the jury was discharged.

THEREAFTER, the Defendants moved the Court to set aside the jury verdict as being contrary to the law and evidence and to enter judgment on their behalf. After due consideration, the Court overruled said Motion.

THEREAFTER, the Plaintiffs, by counsel, moved the Court for modification and remittitur of the jury's verdict by reducing the verdict as to the Defendant Marlene C. Wood by the sum of TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) and by reducing the verdict as to the defendant, Wendell W. Wood, by the sum of THREE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$3,875.00) on the ground that, because of a transcribing error on Exhibits 7 and 24, the jury was improperly informed that one of the items in controversy was claimed against both Defendants rather than against Wendell W. Wood individually and that one item was claimed against Wendall W. Wood rather than both Defendants. Defendants thereafter again moved to set aside the verdict. The Court, after hearing argument of counsel, granted Plaintiffs Motion and denied Defendants Motion as stated in its opinion letters of July 23, 1982 and August 23, 1982, which letters are incorporated and made a part of this Order.

And it appearing proper to do so and it further appearing consistent with the law and the evidence presented in this case, it is ORDERED and ADJUDGED that the Plaintiffs, Stuart F. Carwile, Ross W. Krumm, and David W. Kudravetz shall have and recover judgment against the Defendants, Wendell W. Wood and Marlene C. Wood, jointly and severally in the sum of \$67,750.00, together with interest at the rate of 8% per annum from June 15, 1981 to June 30, 1981 and at the rate of 10% per annum from July 1, 1981. Additionally, the Plaintiffs shall have and recover judgment against the Defendant, Wendell W. Wood, individually in the additional amount of \$44,828.00, together with interest at the rate of 8% per annum from June 15, 1981 to June 30, 1981 and at the rate of 10% per annum from July 1, 1981. The Plaintiffs

shall have and recover judgment against the Defendants, jointly and severally, for court costs in the amount of \$56.00.

The Defendants, by counsel, having indicated their intention to take an appeal from this judgment and having moved for a suspension of the execution of this judgment pending appeal to the Virginia Supreme Court, it is further ORDERED that appeal bonds be set as follows:

\$74,500.00 for Mr. & Mrs. Wood jointly and \$49,300.00 for Mr. Wood individually. Each bond shall be required to be secured by surety acceptable to the Clerk of the Court.

It is ORDERED that execution of this judgment be suspended so long as the Defendants, or either of them, timely prosecute an appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia, provided that Defendants, or someone for Defendants, file an appeal bond in the Clerk's Office of this Court with surety approved by the Clerk of the Court, within thirty (30) days from the entry of this order as set forth above, and as the law directs according to the provisions of §8.01-676, Code of Virginia, as amended.

It is further ORDERED that Defendants, at their option, may deposit with the Clerk of this Court cash in the amount of the bonds required in lieu of surety on any such appeal bond.

In the event that Plaintiffs' choose to appeal the judgment of the Court, they shall be required to post an appeal bond in the amount of \$1,000.00, with surety approved by the Clerk of the Court.

And it is further ORDERED that pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, the transcripts of

the trial of this case on May 24 through 29, 1982, and all hearings shall be made part of the record in this case, provided said transcripts are filed in the Clerk's Office of this Court within 60 days from the entry of this Order.

And it is further ORDERED that if an appeal is not taken, all exhibits in this case shall be withdrawn and returned to parties who introduced the same into evidence.

Enter:

Herbert A. Hickson  
Judge

Date:

8/27/82

We ask for this:

J.L.D. 14, p. 244  
J.L.D. 14, p. 244

Edward B. Lowry  
Edward B. Lowry

Gary W. Kendall  
Gary W. Kendall  
for MICHIE, HAMLETT, DONATO & LOWRY  
500 Court Square, Suite 300  
Charlottesville, Virginia 22901

- SEEN AND OBJECTED TO:

Charles R. Haugh  
Charles R. Haugh

James E. Treakle, JR.  
James E. Treakle, JR.  
for HAUGH & TREACLE  
435 Park Street  
Charlottesville, Virginia 22901

ASSIGNMENTS OF ERROR

II. IT WAS ERROR TO ADMIT WENDELL WOOD'S FINANCIAL STATEMENTS IN EVIDENCE, WHERE HIS PECUNIARY CIRCUMSTANCES WERE NOT AT ISSUE.

ASSIGNMENT OF CROSS ERROR

THE TRIAL COURT ERRED IN FINDING THAT THE PLAINTIFFS' CLAIMS AGGREGATING \$47,284.26 WERE BARRED BY THE STATUTE OF LIMITATIONS WHERE THE PLAINTIFFS REPRESENTED THE DEFENDANTS ON SUBSTANTIALLY ALL OF THEIR BUSINESS AFFAIRS AND WHERE THE LEGAL MATTERS THEREIN INVOLVED WERE INTERRELATED.

1 A Yes.

2 Q Did Mr. Carwile or his firm represent you in  
3 those matters? Read it and then answer yes or no.

4 A You want me to read it out loud?

5 Q No, just read it to yourself.

6 A Yes.

7 Q How did the relation between - of his represen-  
8 tation of you come about, Mr. Wood?

9 A We had a client in connection with the bank that  
10 we'd run into that has requested some information regarding  
11 the - the laws regarding the holding company and I requested  
12 Stuart to get us some information about the holding company  
13 regulations.

14 Q Now, the date cited in the pleadings for this  
15 service is 7/77 through 12/14/77. Do you know if that date  
16 is correct or not?

17 A I do not know. It's approximately the time, I  
18 believe.

19 MR. LOWRY: Your Honor, the document which is about  
20 to be presented to the witness for his testimony appears to be  
21 copies of the time sheets of our client and we would object to  
22 the witness testifying from documents which are not prepared  
23 by himself unless it can be established that these were shown  
24 to him by the clients at any point in time prior to his getting  
25 them through discovery in this case. He can't testify from



1 THE COURT: It may take time -not be judicially  
2 an economic procedure, but ...

3 MR. LOWRY: Yes, sir.

4 THE COURT: Go ahead, Mr. Haugh.

5 Q All right. Mr. Wood, will you turn to page 26  
6 of that Statement, to a paragraph RE: Purchase of Route 29  
7 Property from Benton Patterson.

8 A Yes.

9 Q Would you read - hurriedly read that to yourself,  
10 please?

11 A (Witness read designated paragraph.)

12 Q Are you familiar with the subject matter of that  
13 paragraph?

14 A Yes.

15 Q Would you explain to the Court what that's all  
16 about; what the nature of the work was?

17 A I had discussed with Benton Patterson the  
18 possibility of purchasing two parcels of property he had, over  
19 a period of time negotiated with him the - the prices and  
20 terms and at that time went to Mr. Carwile and asked him to  
21 draw a contract relating to the purchase of the property. It  
22 was actually an option, I think, was the first part of it.  
23 Sometime during the course of it, Mr. Carwile did not meet the  
24 deadline that was imposed in the contract as to exercising  
25 the option. He - he was, I think, a day late in -in notifying

1 the - the customer. At that point, a lot of negotiations  
2 considered - it says here associate, Mr. Hess. I'm not sure  
3 what - exactly what that means. We actually hired - I had to  
4 hire Mr. Hess to represent me because Stuart would not - had  
5 stated he would not be able to represent me. So, I only  
6 question here is the part where it says, associate. I think  
7 at that point it was actually...

8 Q Now, was suit instituted against you as you  
9 refer to that?

10 A Yes.

11 Q By Mr. Patterson...

12 A Yes...

13 Q ... or did you institute suit?

14 A I believe we instituted suit to make it - to ask  
15 him to perform.

16 Q All right. Did you and Mr. Carwile have an  
17 discussion as to why he would not represent you in that suit  
18 or continue to?

19 A He would - he said he'd have to testify.

20 Q Do you know when that suit was ended and how it  
21 ended?

22 A Sometime in the spring of '76, I believe.

23 Q How did it end?

24 A It basically ended with - Mr. Patterson had  
25 entered into a contract also the day after we didn't give

~~5 page 24, Estate Planning.~~

~~THE COURT: Okay. All right.~~

Q Mr. Wood, had you ever retained Mr. Carwile or his firm to do estate planning matters for you?

A I don't believe I retained him to do it. He - he at one point asked - he brought up a specific point in question where he thought I should maybe do something about estate planning, but he was the one that initiated it.

Q The dates set forth on the Statement are 6/76 to 12/76. Was that done at that period of time or do you know?

A I - I don't know, but I think so. I think it's approximately the time.

Q Bud, do you have that marked?

Defendant's Exhibit Number Three (3) was duly marked at this time.

Q Please the Court, Your Honor, Number 3 was not supplied to me as under any specific thing, but it was one that was represented to me to have been a time sheet after discovery which contained reference to several general matters some of which are part of this law suit and part of it aren't.

THE COURT: You say this wasn't produced pursuant to discovery?

Q Oh, it was, yes, but it was not produced, it

1 sheet that the plaintiff kept and under his pleadings he said  
2 one of the things he considered is how much time was involved.

3 THE COURT: Well, it's certainly authenticated by  
4 production and discovery procedures. Now, the question is are  
5 they relevant? They certainly tie into the time frame which  
6 is listed on this itemized statement which is attached to the  
7 Bill of Particulars. It certainly appears to relate to this  
8 item 13, the Estate Planning. I will receive it for what it  
9 is worth, note your objection.

10  
11 (Mr. Smithers came into the courtroom at this time  
12 and sat at counsel table.)

13  
14 THE COURT: Okay, proceed, Mr. Haugh.

15  
16 Defendant's Exhibit Number Three (3) was duly  
17 received into evidence at this time.

18  
19 Q Mr. Wood, I ask you to turn to page 23 of that  
20 Statement bearing the dates 4/77, 10/26/77...

21 THE COURT: What page are we on?

22 Q This is page 23...

23 THE COURT: Okay...

24 Q ... paragraph 11, Your Honor.

25 A Is that Holiday Inn...

1 Q Of Luray. Would you read that and state whether  
2 you're familiar with the transactions mentioned?

3 A (Witness reads designated paragraph.) Yes.

4 Q Are you familiar with that?

5 A Yes.

6 Q Would you briefly describe to the Court what that  
7 was?

8 A This was - I had advertised the Holiday Inn of  
9 Luray for sale. A fellow by the name of Mr. Johnson had  
10 contacted me in regards to it and after doing some negotiations  
11 with him on price, we looked at the possibility of exchanging  
12 property that he had in Florida and to the extent that we ended  
13 up and entered into a contract with him concerning a trade and  
14 exchange of properties.

15 Q All right, who represented you in that trans-  
16 action?

17 A Mr. Carwile.

18 Q And how did it come about that he represented you?

19 A After my negotiations with Mr. Johnson, seemed  
20 like there was a possibility of something happening, I asked  
21 Mr. Carwile to assist in drawing a contract with Mr. Johnson's  
22 counsel.

23 Q Did that go through?

24 A No.

25 Q And do the dates 4/77 to 10/26/77, is that

1 correct or do you know?

2 A I think - as far as I know.

3 Q All right.

4 THE COURT: Okay, this is number four and I take it  
5 we have the same objection, continuing objection to this...

6 MR. LOWRY: Yes, sir.

7 THE COURT: Okay, this is Exhibit Four.

8  
9 Defendant's Exhibit Number Four (4) was duly marked  
10 and received into evidence at this time.  
11

12 Q Mr. Wood, I ask you to turn to page 27, number  
13 20, Loans from First and Merchants National Bank. Would you  
14 read that and tell the Court what that includes as far as  
15 professional services for you and your firm.

16 A (Witness reads the designated paragraph.) Yes,  
17 the first paragraph involves the deed of trust that we - the  
18 Holiday Inn of Luray was under construction and the financing  
19 was through First and Merchants National Bank and that related  
20 to a deed of trust on the Holiday Inn of Luray.

21 Q Do you know when that loan was obtained?

22 A I believe it was the first- first obtained  
23 around '74 - sometime, '74, '75 ...

24 Q Is that the nine hundred thousand on this?

25 A Yes.

Q All right, and that's your first paragraph?

A Yes.

Q All right, sir, go ahead.

A Second paragraph, we - I had just started doing - the first contact I had with First and Merchants was in connection with the Holiday Inn. Went back to First and Merchants sometime within a year after that and did some other financing with them and I think that refers to the two million, four hundred fifty thousand, which - where they received a wrap around mortgage and I believe that was in the spring of '76. I think the following examinations of titles, I think were updates that had previously been done when I purchased those properties, but to update to give F&M the collateral under that.

MR. LOWRY: I'm sorry, could the witness speak just a little louder.

A I'm sorry.

Q Did you hear his last answer?

MR. LOWRY: No, I'm sorry, if you could just summarize for me.

Q It was collateral.

MR. LOWRY: Okay, right.

Q Go ahead, Mr. Wood, go through the rest of the paragraphs and tell what they pertain to?

A I think the next, over to page 28, I believe is

1 - 1, 2, 3, - the first four paragraphs are still relating to  
2 the two million, four hundred and fifty thousand dollar deed  
3 of trust that was put on in the spring of '76, I believe.

4 Q All right, go ahead.

5 A Fifth paragraph would be an additional loan that  
6 sometime later was added from the two million, four hundred  
7 and fifty thousand, we at sometime - it seems to me like about  
8 approximately a year later, nine to ten months later we had  
9 an additional seventy-five hundred thousand dollars borrowed  
10 and that was - the fifth paragraph refers to a hundred and  
11 seventy-five thousand dollar supplemental deed of trust, which  
12 I think took place in the fall of 1977.

13 Q Now, go back to the first paragraph, the nine  
14 hundred thousand dollar deed of trust, was that completed prior  
15 to the obtaining of the \$2,450,000.00 deed of trust?

16 A Yes.

17 Q Was there any connection between the two?

18 A Not at that time, no, sir.

19 Q Did Mr. Carwile or his firm represent you on  
20 the nine hundred thousand dollar deed of trust closing?

21 A Yes.

22 Q How did that come about?

23 A I had - I went to school with a Mr. Durham who  
24 was an officer. He'd lived in Charlottesville, in fact,  
25 Connie Durham's son, Sterling Durham, who was an officer at



1 ~~and received into evidence at this time.~~

2  
3 Q Mr. Wood, I ask you to turn to page 28, item  
4 21, Heliport, 10/1/77-10/4/77. Would you read that and tell  
5 the Court what that was about?

6 A This - this was in connection with - Mr. Carwile  
7 suggested - I'm Chairman of Albemarle Bank and Trust and since  
8 we're putting a Heliport on top of the bank and that I had a  
9 helicopter, he suggested that I should just report that to the  
10 Albemarle Bank and Trust Board of Directors, which I did.

11 Q And are those dates about correct?

12 A I think so, yes.

13 Q Your Honor, we have in evidence the general time  
14 sheets and I'd ask you to refer to those. There is one called  
15 Heliport on the front.

16 THE COURT: And where is this? The time sheet  
17 hooked...

18 Q General time sheet, it's number three, I believe.

19 MR. LOWRY: It came in under Estate Planning.

20 Q Yes.

21 THE COURT: Okay.

22 Q Mr. Wood, I ask you to turn to paragraph 5 of  
23 the Statement.

24 A What page is that?

25 Q Page 5, Re Gerard Greims, 12/76-10/24/77, and

ask you if you will hurriedly read that.

THE COURT: Give me the item number again.

Q Number 4, Gerard Greims on page 5.

THE COURT: I'm having a little problem here because some of these pages are out of order, 28 comes before 27 and...

Q Oh...

MR. LOWRY: It's on page 5, Your Honor.

THE COURT: Okay, I've got it now. Thank you.

MR. KENDALL: Your Honor, we'd note a continuing objection to Exhibit 6 which is being introduced by the Defendant.

THE COURT: Yeah, any of these exhibits that have time sheets that were...

MR. KENDALL: Yes, sir...

THE COURT: ...produced pursuant to discovery, I note your continuing objection.

MR. LOWRY: Your Honor, I'd suspect that will probably go to other documents produced during discovery as well, but we probably ought to take them up separate and we'll just make it continuing as to the time sheets alone for now.

THE COURT: Okay.

A Yes, this involved a commission involving Rio Associates property. There was a commission bond owed to Jack Sims and a dispute arose over - Jack Sims had - had verbally

1 sold me the bond, then like the next day received a higher  
2 price from Jerry Greims and actually sold it to Jerry Greims..

3 Q And that ended up in a law suit...

4 A Yes.

5 Q ...Gerard Greims versus you?

6 A Yes.

7 Q Do the dates listed, 12/76-10/24/77...

8 A I believe that's correct.

9 Q Do you know when that suit ended?

10 A No, sir, not exactly but sometime I think in  
11 '77.

12 Q All right, we have that, the final order, Your  
13 Honor, plus the time sheet.

14 THE COURT: That's Number Six received.

15 ~~Defendant's Exhibit Number Six (6) was duly marked~~  
16 ~~and received into evidence at this time.~~

17 ~~Q Mr. Wood, I ask you to turn to page 1 of the~~  
18 ~~Statement, entitled Re Bank of Virginia Loan and Westinghouse~~  
19 ~~Credit Corporation Loan, 3/10/76-5/4/7...and that line is cut~~  
20 ~~off. It's several paragraphs, I'll ask you to hurriedly read~~  
21 ~~all the paragraphs in that.~~

22 A (Witness reads designated paragraphs.)

23 THE COURT: What is the date on this item, 3/10/76  
24  
25

1 through May 5, and it is cut off...

2 MR. LOWRY: '78.

3 THE COURT: '78, okay.

4 A Okay.

5 Q All right, are you familiar with that, the  
6 services reported in this?

7 A Well, yes.

8 Q All right, would you go through and tell us just  
9 what services were rendered to you as reported here?

10 A Well, it looks like the first page is - I had a  
11 - prior to this I already had a loan that I had negotiated  
12 with Bank of Virginia which was, I believe, approximately  
13 nine hundred - nine hundred and fifty thousand dollars that  
14 was a signature loan with them, and sometime in the late or  
15 early spring of 19 - late '76 or '77, the officer that I was  
16 dealing with left the bank and they requested - the new officer  
17 requested that it be collateralized and I - most of this -  
18 the first page down to - down to, I think the 1, 2, 3 - third  
19 paragraph relates to the - giving Bank of Virginia, collater-  
20 alizing the existing loan that I had with the bank.

21 Q And when was that closed, that transaction?

22 A I believe in the summer of '77. Well, the loan  
23 was already there. I had a loan that I had negotiated prior  
24 to that without - I just - there was no - it required no legal  
25 assistance. Then we collateralized the loan, which involved

1 Mr. Carwile giving the collateral that's referred to here,  
2 and that was in ...

3 Q All right, now, that takes you to one, two - the  
4 first four paragraphs of page 2. Go on, what is the next  
5 thing you see?

6 A Starting - that, I guess I'd have to change -  
7 that date must have been, maybe in '76 - starting in the spring  
8 of '77, Bank of Virginia was requesting payment of the loan  
9 and from there, the next several items, the rest of that page  
10 I believe is involving - I was getting a loan from Westinghouse  
11 Credit Corporation and let's see, I believe the balance of it  
12 refers to securing a loan from Westinghouse Credit that paid  
13 out Bank of Virginia.

14 Q All right, and when was that closed?

15 A I think that was the fall of, I believe September  
16 or October of '77.

17 MR. KENDALL: Your Honor, the objection on this in  
18 addition to the objections we've already raised would be that  
19 there are matters contained in that file that are hearsay,  
20 matters of hearsay, documents coming from parties other than  
21 Mr. Carwile or to Mr. Carwile or documents coming to Mr.  
22 Carwile from other parties without some sort of authenticity.  
23 It would be hearsay in that respect unless there's someone  
24 here to authenticate that document from some other person.

25 THE COURT: What are you talking about, the policy,

1 here as well, Your Honor.

2 THE COURT: Aren't we dealing with dates rather  
3 than the type of services?

4 Q I have the other one here...

5 MR. LOWRY: But you've got two closing statements.  
6 There's no indication whether either one of them was used or  
7 whether it actually did close on that date. All you've got  
8 is a closing statement in a file which may be a draft or it  
9 may be the closing statement that was ultimately used, and  
10 without a witness, there's no way of saying anything other than  
11 this is a form of a closing statement with a date on it, but  
12 no indication that it ever was actually used in the transaction  
13 or who prepared it.

14 THE COURT: Okay, I'll receive it but it may well  
15 eventually be excluded.

16  
17 Defendant's Exhibit Number Seven (7) was duly  
18 marked and received into evidence at this time.

19  
20 Q After the closing of that loan in the fall of  
21 '77 was there anything else to be done on that, Mr. Wood?

22 A No, sir. In a month the money was disbursed  
23 with Westinghouse.

24 Q I ask you to turn to page 6, Mr. Wood, of the

25 ~~STATEWIDE COURT REPORTERS, LTD., POST OFFICE BOX 933, CHARLOTTEVILLE, VIRGINIA 22902~~

1 ture. Mr. Wood, I hand you this hand bill and memorandum of  
2 sale and ask you if you signed the original of that document,  
3 if that's your signature?

4 A Yes.

5 Q All right, thank you.

6 THE COURT: These are documents that were produced  
7 in discovery too?

8 Q Yes, sir, Your Honor.

9 MR. KENDALL: Your Honor, I might add, I guess it's  
10 on the record already, but the question of relevance as to all  
11 these documents as well is raised as part of our continuing  
12 objection.

13 THE COURT: All right. Received as Eight.

14  
15 Defendant's Exhibit Number Eight (8) was duly marked  
16 and received into evidence at this time.

17  
18 Q All right. I ask you to turn to - Mr. Wood, to  
19 page 10, number seven, Re Purchase of Airport Properties from  
20 Airport Associates Partnership, Airport Ventures Partnership,  
21 Airport Road Partnership, Airport Industries Partnership, and  
22 Airport Enterprises, 3/10/75-12/2/79. Do you see that...

23 A Yes.

24 ~~Q ...Mr. Wood?~~

25 ~~A Yes.~~

1 know?

2 A I believe it was prior to the closing.

3 Q All right, go ahead.

4 A Next, over to page 12, there was a - John Simms  
5 owned a separate tract of this property that we were also  
6 - well, didn't own - he and Dr. Hurt owned the mortgage on it  
7 which was also subject in question and that particular piece  
8 I think had already gone into default, so we actually purchased  
9 four tracts of land from Mr. - from the New York partnerships  
10 and actually purchased one at a foreclosure sale, that being  
11 the piece that's referred to as Mr. Simms and Charles Hurt  
12 being referred to as the North Rivanna Fifth Land Trust.

13 Q How many North Rivanna Land Trusts did you have?

14 A We purchased - Mr. Carwile formed five land trusts,  
15 North Rivanna One, Two, Three, Four, Five, to purchase the  
16 properties as they had the properties in five different names.

17 Q And when were those properties closed?

18 A I believe between - I think four of them - the  
19 first four were purchased, I believe, in March of 1975 and I  
20 think the Simms - the Fifth Land Trust, I think was actually at  
21 a foreclosure sale in May of '75, about sixty days later.

22 Q All right, now, if you go, starting on page 10,  
23 page 11, clear down through the second paragraph on page 12  
24 where it says, closing of purchase from Ethel Irwin, Trustee,  
25 is there anything that does not apply to the purchases of your



1 property in those paragraphs?

2 A No.

3 Q All right. What about the next paragraph?

4 A I think the next paragraph, the best I recall,  
5 Mr. Cush - Walter Cushman had some indebtedness owing to him  
6 on the piece that we titled the Fourth Land Trust, as well as  
7 the Federal Land Bank and that indebtedness, we assumed that  
8 indebtedness and I believe that came - well, payment was due  
9 on that in the fall, I believe in December of that year, '75,  
10 and this refers to simply making arrangements to pay Mr. Cushman  
11 the indebtedness that was owed him at that time.

12 Q And you think that was December of '75?

13 A Yes.

14 Q All right. What about the last paragraph?

15 A I guess that would have to revert back to the  
16 purchase prior to the closure of those properties.

17 Q As far as the purchases were concerned, after  
18 they were closed was there anything else to do on them?

19 A No.

20 Q And as far as the Cushman indebtedness, after  
21 that was taken care of in December of '75, was there anything  
22 else left to do on that?

23 A Well - no.

24 ~~Q We have certified copies of these deeds, Your~~  
25 ~~Honor, plus the time sheets obtained through discovery, certi-~~

1 filed copies we got.

2 MR. LOWRY: Object only to the time sheets

3 THE COURT: Number Nine, only objection then to the  
4 time sheets, Mr. Kendall and Mr. Lowry?

5 MR. LOWRY: Yes, sir, I think everything else is of  
6 court record.

7 THE COURT: Okay.

8  
9 Defendant's Exhibit Number Nine (9) was duly marked  
10 and received into evidence at this time.

11  
12 Q All right, Mr. Wood, I ask you to turn to page  
13 24...

14 A Okay.

15 Q ... and paragraph 12, Re Jenkin Foreclosure -  
16 Murphy's Exxon, 8/76-2/2/78. I'll ask you to read that para-  
17 graph.

18 A (Witness reads designated paragraph.) Okay.

19 Q What does that pertain to?

20 A That was a piece of property that - that I -  
21 that I owned in Ruckersville and had sold to Mr. Simms and in  
22 turn Mr. Simms, I believe, sold to Mr. Jenkins and passed me  
23 that paper, I believe, of Mr. Jenkins and Mr. Jenkins defaulted  
24 on the paper at sometime.

25 Q Did Mr. Carwile or his firm represent you in

1 that foreclosure?

2 A Yes.

3 Q When did that take place, sir?

4 A I'm not real sure, but I believe in '76 or '77.  
5 I'm not sure of the date.

6 Q And after that foreclosure what happened to the  
7 property?

8 A Well, actually it/going to foreclosure. Mr. Jenkins  
9 made - made the payment that was due and paid the bond off.

10 Q All right, and so it ended at that time?

11 A Yes.

12 Q Was there anything else to be done after that  
13 time?

14 A No, sir.

15 Q All the documents we got from this - there's  
16 two documents, Your Honor, came from the discovery process,  
17 trustee sale and a letter dated September 7, '76.

18 MR. KENDALL: Again, Your Honor, we'd note our  
19 objections as to both relevance and the questions regarding  
20 authenticity of the documents and the hearsay objection that  
21 we raised in the past, the hand bill itself, is...

22 THE COURT: Well, the hearsay objection may well  
23 be a valid one. The authenticity part of it, I think, has  
24 been met...

25 MR. KENDALL: And the relevancy as well, Judge.

1 Since there was no foreclosure I'm not sure of what relevance  
2 a hand bill, regardless of who prepared it, is in terms of a  
3 representation, what work was done on the case.

4 THE COURT: I'll receive it, but as I say, I may  
5 well reject some of these eventually.

6 Q If it please the Court, Your Honor, the services  
7 asked for in the Statement in representation in all matters  
8 relating to Jenkins foreclosure, including preparation of hand-  
9 bills, and that's the materiality of it.

10  
11 Defendant's Exhibit Number Ten (10) was duly marked  
12 and received into evidence at this time.

13  
14 Q Now, I ask you to turn to page 25, Mr. Wood.  
15 Ask you to go to paragraph 14, Re Indebtedness Owed to Savory  
16 E. Amato Estate, 3/25/76-3/15/77. Would you read that, please?

17 A (Witness reads designated paragraph.) Yes, I  
18 think...

19 Q What does that refer to?

20 A I believe the first paragraph refers - a payment  
21 - this is on part of the Airport properties we purchased in  
22 '75. In March of '76 the payment - the existing financing  
23 on it was due. It was held by, I think the Estate of Mr.  
24 Savory Amato, and that was concerning - there were some  
25 commission bonds that Bill Perkins was actually the trustee

1 under and it involved just making payments to those parties  
2 in 1976. I think the second paragraph is the same thing, but  
3 involved a year later. In other words, the following year  
4 for the payment of 1977 - '77, so one - the first paragraph  
5 is involving making payments due them in '76, the second para-  
6 graph involving making payments due them in '77.

7 Q Your Honor - that's all we have on this one.

8 Your Honor, we would refer to the general time sheets, marked  
9 general and introduced as Exhibit 3 and you'll note on there  
10 the Amato column on the front which is for this early work,  
11 the first paragraph. Mr. Wood, I ask you to turn to page 26,  
12 Re Financing, 2/14/77-11/29/78 and I'll ask you if you will  
13 read that - those paragraphs, please?

14 A (Witness reads designated paragraph.)

15 MR. KENDALL: Again we raise the same objections,  
16 Your Honor, both on the Savory Amato transaction as well as  
17 this particular financing transaction...

18 THE COURT: Well, I wasn't given anything on  
19 Amato's transaction.

20 MR. KENDALL: Yes, but he referred however to  
21 Exhibit 3.

22 THE COURT: Okay.

23  
24 Defendant's Exhibit Number Eleven (11) was duly  
25 marked and received into evidence at this time.

1 to Amato.

2 MR. LOWRY: Well, all I'm saying, Your Honor, is  
3 that - just to reunderline our objection, he's now saying  
4 everything took place in 1977. The time sheets show time  
5 through 1978. It's - you know, somebody is wrong and there's  
6 been no explanation of how these time sheets came to show what  
7 dates they reflect, but I won't press it any further.

8 THE COURT: Okay.

9 Q I'd ask you to turn to page 19, Mr. Wood.

10 THE COURT: Page 19 did you say?

11 Q Yes, Your Honor, paragraph number 10, Re Rio  
12 Associates Limited Partnership...

13 A Yes...

14 Q ...\$1,495,000.00 Deed of Trust, 11/75-6/13/78.  
15 That goes some four and a half pages. Would you read that  
16 please, Mr. Wood, hurriedly?

17 MR. LOWRY: Your Honor, it could take him a couple  
18 of minutes to read that. Could we have just a quick break  
19 while he is reading that?

20 THE COURT: All right, sure.

21 MR. LOWRY: Thank you.

22 COURT RECESSED FOR A SHORT BREAK.

23  
24 COURT RECONVENED.  
25

1 Q No, no...

2 THE COURT: Okay. We've already got the objection  
3 to it when it is offered, okay.

4  
5 Defendant's Exhibit Numbers Twelve (12) and  
6 Thirteen (13) were duly received into evidence at this time.

7  
8 Q Mr. Wood, have you read this number 10 now?

9 A Yes.

10 Q Rio Associates.

11 A Yes.

12 Q Are you familiar with the matters reported  
13 therein?

14 A I believe so.

15 Q All right, would you start with the first para-  
16 graph and tell us what those are?

17 A Well, it involves several - several different  
18 transactions under this heading, so the first one is the -  
19 the transaction was a sale that I had made to Rio Associates  
20 Limited Partnership and took back a deed of trust in the  
21 amount of a million, four ninety-five (\$1,495,000.00). The  
22 first paragraph was a Safeway - in their lease, the standard  
23 lease, they need nondisturbance agreement. That was requested  
24 and done.

25 Q Now, who was the lessor?

1 A Let's see, that would have been Rio Associates.

2 Q Was that you?

3 A No, sir.

4 Q All right, and when did that take place?

5 A I - I'm not sure of the date but I believe  
6 sometime in '75.

7 Q All right. Now, go to the next ...

8 A This was splitting - the bond at that time was  
9 written as one million, four hundred and ninety-five thousand  
10 dollars, and I wanted the bond split to make it read seven  
11 hundred and forty-seven thousand, five hundred dollars each,  
12 in order to place- have a small amount to place as collateral  
13 as opposed to having to place ...

14 Q Was that separate from the nondisturbance agree-  
15 ment?

16 A Yes.

17 Q And when did that take place?

18 A I believe that was in '75.

19 Q All right, the third paragraph.

20 A Sometime...

21 Q That easement for Charlottesville Savings and  
22 Loan Association.

23 A Yes, at some other time Charlottesville Savings  
24 and Loan needed a - when they put it in original - when they  
25 built theirs, they had actually built it prior to my buying the



1 land and they wanted a septic tank and when sewer came, they  
2 wanted to run a sewer line across and that's referring to it,  
3 granting a sewer easement for them and I believe that was in  
4 '75 or '76.

5 Q All right, did that have anything to do with  
6 splitting the deed of trust...

7 A No, no, each one of these is a separate...

8 Q All right.

9 A ... separate transaction.

10 Q Now, go to the fourth paragraph, what is that?

11 A We had given a - we'd given a bond to Bank of  
12 Virginia and apparently it was lost and needed to - when we  
13 asked for it back - I thought we'd given it to Bank of  
14 Virginia and apparently the bond was lost somewhere and we  
15 needed to - to have another one issued. It was a separate  
16 transaction.

17 Q Now, when did that occur?

18 A I believe '7 - either '74, '75.

19 Q All right now, are you familiar with the next  
20 paragraph, in review of files to ascertain the amounts in  
21 payment of interest? Do you know what that is?

22 A Yeah, that was - at some point around '75, '76,  
23 '77, Rio Associates - the - if you remember '75 was pretty  
24 down on the real estate market and they were not able to make  
25 their payments and I waived - I gave them - granted them not

1 making payments for approximately two years, they did not have  
2 to make their quarterly payment, and then going back we  
3 ascertained how much money was actually owed when they started  
4 making payments again, sometime I believe in '77.

5 Q All right, now, go on to the next paragraph.

6 A The next paragraph actually, I believe, starts  
7 - the next paragraph runs all the following, rest of that page  
8 down to one, two, three, four, including the fifth paragraph  
9 on page 20 are involved in the same transaction, to the best  
10 of my knowledge, and that was closing of - and subordinating  
11 - they at this time had developed the - a shopping center on  
12 the property and were getting ready to close the loan and we  
13 we were - had agreed to subordinate our deed of trust and I  
14 believe down to that involves that and that was closed in the  
15 spring of '77.

16 Q All right, sir. Now, was that an independent  
17 item as well?

18 A Yeah, that was one transaction.

19 Q All right.

20 A I think the next paragraph starts - they needed -  
21 Safeway Stores again, same - they needed a modification to  
22 their nondisturbance agreement, for whatever reason.

23 Q This is on page 20 you're talking about?

24 A This is at the bottom of page 20. Yes, this is  
25 starting a separate transaction after it had been closed,

1 Safeway needed another nondisturbance agreement. Then...

2 Q When was that?

3 A I believe that was also in '77. That was shortly  
4 after the - we had subordinated, which was in May, I believe,  
5 of '77, shortly thereafter - as each tenant, they - they had  
6 built the center and as each tenant would move in, various  
7 provisions of these - like national companies, most of their  
8 tenants would require various nondisturbance agreements. They  
9 - that, like I said, that only provided to Best Products, I  
10 believe, Safeway, and Drug Fair were the only ones that re-  
11 quired those but in their national leases that was something  
12 they had to have.

13 Q All right, now, the second paragraph from the  
14 bottom on page 20.

15 A Second paragraph...

16 Q From the bottom, Safeway lease...

17 A Yes.

18 Q ...second modification to Safeway lease...

19 A Right, that was another - another transaction  
20 to the Safeway lease.

21 Q All right, now the last paragraph on page 20.  
22 When was that, by the way?

23 A '77.

24 Q All right.

25 A These would be like Best, I think after that it

1 was - seems to me like we did one more involving Best Products.

2 Q Are you talking about the various nondisturbance  
3 agreements?

4 A Yes.

5 Q All right...

6 A That was also in '77.

7 Q All right, now, the first paragraph on page 21.

8 A This was another transaction where I had  
9 approached Mr. Heischman and Plotkin, who were the ones who  
10 had endorsed the bond - the million, four ninety-five bond  
11 (\$1,495,000.00) to me, about the possibilities of them paying  
12 - in fact, they actually approached me about paying the bond  
13 off. So, that was a separate...

14 Q When was that, Mr. Wood?

15 A I believe that was sometime prior to the actual  
16 subordination of the bond the first time in May of '77.

17 Q Was that a separate transaction or...

18 A Yes, that was a - that was strictly negotiated  
19 with Heischman and Plotkin about purchasing the bond.

20 Q All right now, the next paragraph starting there?

21 A I believe the next couple paragraphs are involv-  
22 ing the same transaction.

23 Q In review of suit filed by Rio Associates?

24 A Yes.

25 Q What was the nature of that suit? What was the

1 purpose of that suit, Mr. Wood?

2 A When I - Mr. Carwile originally drew the deed  
3 of trust on the property, it was intended and the deed of  
4 trust stated where we would make one subordination, we were  
5 required - at the time I sold it to them there was no build-  
6 ings on the property. We agreed to subordinate one time to  
7 a mortgage to develop a shopping center. It came at a later  
8 period of time, they wanted to develop the property in two  
9 different stages and put a mortgage on the property in two  
10 different stages. Mr. Carwile was of the opinion that we did  
11 not have to subordinate but one time and a suit arose out of  
12 that.

13 Q All right, now, do the rest of these paragraphs  
14 apply to that suit?

15 A Yes, the only problems - they do involve the  
16 same thing. We had hired, at that point in this we had hired  
17 - I say we, I had hired John McDonald. Stuart Carwile had  
18 said that he would - there again he was - since he was involved  
19 in it, he was going to be called as a witness and I would have  
20 to hire other counsel to represent us and this is referring  
21 to John McDonald, a Richmond attorney, who we hired to repre-  
22 sent myself in that case.

23 Q Do you know when you hired Mr. McDonald in place  
24 of Mr. Carwile?

25 A I believe it was sometime in the early part of

1 '77.

2 Q And if I told you this suit was over 5/12/78,  
3 would that ring a bell with you; did you know that date? Does  
4 that sound right?

5 A Well, I think it was actually - that was - it  
6 was actually over before that but they had filed a motion to  
7 set aside the verdict which actually extended it to that time,  
8 but I think the trial was actually over in February.

9 Q But as far as the legal matter itself it wasn't  
10 over until 5/12/78?

11 A I believe that's correct.

12 Q Your Honor, I believe you have those exhibits  
13 in front of you.

14 THE COURT: Unhuh.

15 Q All right, Mr. Wood, I'll ask you to turn to  
16 page 6, at the bottom of the page, Re Windmill Point Matters,  
17 3/6/75 to present date, several pages. Would you hurriedly  
18 read that, please?

19 A (Witness reads designated pages.)

20 MR. LOWRY: I'm sorry, what page, Mr. Haugh?

21 Q Page 6.

22 MR. LOWRY: Thank you.

23 Q And it's also paragraph number 6. Ready?

24 A Yes.

25 Q Are you familiar with the matters set forth in

1 those paragraphs under numbered paragraph number six?

2 A This is the same thing, it's several different  
3 items involved in this, several different transactions that  
4 are referring to here, so...

5 Q All right, would you go through and point out  
6 the separate things?

7 A The first one is - is actually purchasing of  
8 the property, which I believe was in - contract was in late  
9 '7 - signed the contract in late '74 and closed in February  
10 of '75, I believe. Then the next paragraph jumps to - concern-  
11 ing a payment due Dr. Atwood in '77. This was - at that time  
12 it would the contract - the purchase price had - had a release  
13 clause provision in the contract and that would be trying to  
14 get Dr. Atwood to release the property that was - that he was  
15 supposed to release to us as we made payments. That was a  
16 separate transaction.

17 Q Now, go to page 7.

18 A The next paragraph, did the same thing, involving  
19 releases.

20 Q Would that be with Dr. Atwood?

21 A Yes.

22 Q So, those two paragraphs would be the same thing?

23 A Yes.

24 Q All right.

25 A Actually the next paragraph also ...

1 Q All right.

2 A ... would be the same, involving the - getting  
3 releases made. Then it jumps to another year, February...

4 Q Now, was that all one separate thing?

5 A Yeah, most...

6 Q Your partial release matter with Dr. Atwood?

7 A Yes. Most of that was in the - we had a - that  
8 was drawn in the original contract. The release provisions  
9 were set out in the original closing statement, deed of trust.

10 Q There's a bill of complaint referred to in the  
11 third paragraph, what was that?

12 A Okay, it - this was after - after we had made  
13 the payment the following year, like in '76 we were due, we  
14 had paid, I think, approximately three hundred thousand dollars  
15 and we were due release clauses and I was - had requested Mr.  
16 Carwile to see that we get the land released that was necessary.  
17 It never was - never was done and I believe in 1977 is when  
18 this item arose when we - I requested Stuart to, you know, I  
19 needed the release. At that time we'd paid like half a million  
20 dollars on the property and had not had any property - any of  
21 the land released and I needed the land released to pledge as  
22 collateral for another loan, and at that point they would not  
23 - they came up with an issue, would not release it - would not  
24 release it. Then another year it looks like transpired, the  
25 next small paragraph is involving the payment due in '78. I



1 think at that time I told Stuart that, you know, we didn't -  
2 I didn't want to pay anymore more until I got the releases  
3 that were due me for the prior three years, and we actually  
4 paid that money. Rather than being in default we made arrange-  
5 ments and paid the money into Court and demanded that he re-  
6 lease the property. At that point it became - this was, I  
7 believe, in late '77. Stuart said that he, because of his in-  
8 volvement in the contract he would not be able to represent  
9 me and we hired John McDonald to handle the case. I think  
10 that's what the next paragraph - that next paragraph brings  
11 that up.

12 Q Did he give you any reasons why he would be -  
13 he could not - did Mr. Carwile give you any reason why he  
14 couldn't continue operating in the case?

15 A Because he'd be called as a witness, he'd have  
16 to testify.

17 Q All right.

18 MR. LOWRY: Which paragraph did you say that comes  
19 up in?

20 A I believe it's the third...

21 MR. LOWRY: The third from the bottom on page 7,  
22 is that the paragraph you're referring to?

23 A I believe it was the third paragraph from - on  
24 page 7.

25 MR. LOWRY: The one beginning, in conferences with

1 you regarding loan commitment?

2 A No, in extensive correspondence..

3 MR. LOWRY: Oh...

4 A ...the third statement...

5 Q The third from the top, Mr. Lowry.

6 MR. LOWRY: Thank you.

7 Q Okay, go ahead, Mr. Wood.

8 A The next paragraph is a separate item, in  
9 conference with you concerning proposed sale to Harold Richards.  
10 Mr. Richards was a party I had contacted about buying the  
11 property; negotiated with him, oh, over the phone several  
12 times regarding the property. It seemed that maybe we could  
13 draw a contract.. After talking with Mr. Carwile and Hite, Mr.  
14 Richards' attorney...

15 Q When was that, Mr. Wood?

16 A I believe that - I'm not sure of that date but  
17 I believe that was in '7 - in late '76 or early '77.

18 Q All right, go ahead.

19 A Nothing - we never actually - never signed a  
20 contract on that.

21 Q And what about the last paragraph on page 7?

22 A Let's see, I guess that would be involving the  
23 same - same thing, which was not signed. Then I guess Mr.  
24 - looks like the next - first paragraph at the top of the page,  
25 the same thing, when Mr. - about eight or nine months there

1 was a separation here. These didn't - Mr. Allen, I believe,  
2 called Stuart back that he had another party, if they were  
3 still interested in selling Windmill Point that he had another  
4 party that was interested, which was a fellow by the name of  
5 Jack Hanky. There again, that never - there were several con-  
6 versations but no contract was ever entered into.

7 Q Do you know when that was?

8 A I believe that actually happened in '7 - I  
9 believe it actually happened in '79.

10 Q All right.

11 A That was after - it was after - following the  
12 Chapter 12, that that came up. Next paragraph would go back  
13 again in time to - there was - a Mr. Ed Seay contacted - Ed  
14 Seay and another - two other gentlemen contacted me, I believe,  
15 in '7 - spring of '77 and I'm not sure of that, but they  
16 contacted me about purchasing Windmill Point again. We actually  
17 entered into a contract at this time. Mr. Seay actually took  
18 possession with closing to be later that summer of '77, I  
19 believe. Next paragraph would be involving that, Mr. Breeden  
20 with Seay, that would be the same matter. That would be the  
21 same matter, next paragraph, Seay - all of Seay would be in-  
22 volving the - well, the actual right - this would all be  
23 prior to the signing of a contract with Ed Seay. Last para-  
24 graph, top of page 9, would be the same - that would be the  
25 contract with Mr. Seay. Then paragraph, in conferences...

1 Q Paragraph number one on page 9 says it closed  
2 on July 29, 1977...

3 A That's ...

4 Q ... is that correct...

5 A ... right.

6 Q ... as far as you know?

7 A That's - they called for a closing on that day,  
8 it - so that would be the - so it would be - when I wasn't  
9 sure of '7 - it was the spring of '77 we entered into the  
10 contract with closing for July the 29th. It was actually  
11 closed in June - June the 29th, he had a right to extend it  
12 for thirty days. So, it became apparent on July the 29th,  
13 Mr. Seay had changed attorneys sometime right around that time  
14 and it became apparent that he was having difficulty in closing  
15 the transaction. The next paragraph would be, prepare a  
16 motion - well, okay, at this time it became apparent we would  
17 - that Mr. Seay was not going to close. Mr. Carwile, again,  
18 said that he would not - if we're going to have to sue Mr.  
19 Seay for performance, he would not be able to represent me  
20 in that matter and therefore we had to hire Mr. McDonald again  
21 to represent us in that matter. So, Mr. McDonald came into it.  
22 Looks like the rest of this would be involving-the rest of  
23 those four paragraphs would be Mr. McDonald handling the -  
24 the suit against Mr. Seay.

25 Q Did the sale with Seay ever close?

1 A Never closed.

2 Q Go on with the paragraphs on page 10, is that  
3 the same thing?

4 A Right. Well, the last paragraph - last paragraph  
5 would be a separate matter.

6 Q What is that?

7 A I believe that came up the first year after  
8 purchasing it to Dr. Atwood. Doctor Atwood had requested that  
9 we - we carry more insurance on the property than what - what  
10 was being carried.

11 Q And what year was that?

12 A Well, part of it - I think that arose like in  
13 '76. Then, let's see, there's another sentence to that para-  
14 graph to, I didn't see it. Analysis of tax consequences of  
15 such a conveyance. So, it's two separate items in that para-  
16 graph then...

17 Q All right...

18 A ... and I'm not sure when the - I don't recall  
19 the analysis of the tax consequences, when that - putting  
20 Windmill Point in a corporation. I would assume that must be  
21 back in the very beginning stages of how we took title.

22 Q Was the Hanky transaction before or after Seay?

23 A Hanky was before - I mean - no, Hanky was after  
24 Seay. Hanky was involved - Hanky didn't come on until - involv-  
25 ed in the Chaper 12. He had actually made contact to the Court,

1 I believe, about purchasing.

2 Q All right, Mr. Wood, that finishes with that  
3 statement. Let me ask you this, how did you and Mr. Carwile  
4 get together as attorney and client, would you tell us about  
5 when that occurred?

6 A My first contact with him, I believe was in the  
7 early part of 19 - in the seventies. I'm not sure exactly,  
8 '72 maybe. He was at that time with the law firm of Mr.  
9 Musselman, Robert Musselman. I had had - I was using different  
10 attorneys. I had a transaction that involved Mr. Musselman  
11 at the time and Stuart was - had been given the item to handle.  
12 I had worked with him on several items. Sometime in maybe  
13 '73 - was '74, Stuart had talked to - we'd gotten to know each  
14 other on a personal basis and he had talked to me at that time  
15 about if he would leave would - would I let him do my work.  
16 He asked me if - if he was thinking about leaving and would I  
17 be willing to let him handle my projects. He offered - gave  
18 me in essence a sales pitch of he'd give me a better price if  
19 I'd let him do it, quoted - I believe the rate was thirty-five  
20 dollars...

21 MR. LOWRY: Your Honor, I don't mind establishing  
22 when the relationship occurred, but if we're getting into fee  
23 matters and how they're to be determined, that's not within the  
24 scope of this hearing.

25 THE COURT: That relates to what is to be tried in

1 Q Well, I had planned to narrow in but I've almost  
2 - got a conversation on one thing, I've got to go on before I  
3 can ask any other.

4 MR. LOWRY: Well, Judge, it's not that big a thing

5 ...

6 THE COURT: Well, let's see what the agreement...

7 MR. LOWRY: ... at this point, but it could get to  
8 be that if he keeps getting into this sort of thing.

9 Q Well, I mean if they object to it, I'll just ask  
10 him whether there was any arrangement about deferring - if there  
11 was any con - if that's - if they're - if that's their position  
12 on the statute, that'll be mine too.

13 THE COURT: Okay.

14 Q Mr. Wood, did you and Mr. Carwile ever have an  
15 agreement or did you ever discuss deferring of payments for  
16 legal services?

17 A One occasion.

18 Q When was that?

19 A It was June of 1979.

20 Q All right, tell us the circumstances, and how  
21 do you fix that date?

22 A I had filed in the fall of '78 we had filed a  
23 - S-V Associates, which was a sole partnership, had filed a  
24 Chapter 12 proceeding in the U. S. District Bankruptcy Court  
25 and in filing that, we had a hearing that was - the date was

1 June of 1979, we had a hearing before the Court. I was instruct-  
2 ed to be there. Stuart told me to be there at nine o'clock.  
3 That morning, I arrived at the courthouse that morning and Mr.  
4 Hess was sitting in the courthouse and I got there about ten  
5 minutes to nine. He said, have you seen Stuart this morning?  
6 I said, no. He said, well, you need to see him real quick  
7 before - before we can start the court hearing. This was at the  
8 Post Office. So, I left and went to Stuart's office over on  
9 7th Street. Stuart was there, and said that in order to file  
10 that morning we had to have a petition before the Court about  
11 the amount of the fees or else we were not - would not be allow-  
12 ed to - to file. This was like about five minutes to nine.  
13 So, he said, if you - what - if - I will continue - you know  
14 at that time - at that point there wasn't - you know, wasn't -  
15 was not an abundance of cash around, and so he said - he present-  
16 ed me with a bill of like twenty-seven thousand dollars -  
17 twenty-five, twenty-seven thousand dollars of which I said,  
18 you know, well, it's going to take me, you know, a little time  
19 to get the money. I'm not just going to be able to pay you  
20 this morning. He said, well, if - if you'll sign a note for  
21 a year, I'll go ahead and we'll just - I'll take your note for  
22 a year and we'll proceed on on that basis. So, that morning I  
23 signed a note to him for twenty-five, twenty-seven thousand  
24 dollars. That was the only time that he had - had been dis-  
25 cussed of deferring any payments.



1 Q Did you have any agreement with Mr. Carwile  
2 for payment of fees other than on an hourly basis?

3 A No.

4 MR. LOWRY: Same objection, in terms of how they're  
5 computed...

6 THE COURT: Well...

7 MR. LOWRY: ...as to the relationship on how they  
8 were paid, I have no objection at all, Your Honor...

9 THE COURT: Well, it matters doesn't it as to  
10 whether he was paid per job. I mean we've got to know whether  
11 he comes within the exception of the Beale case don't we? Does  
12 this rate cover the entire relationship or was it a rate per  
13 job that he did?

14 MR. LOWRY: To that extent, Your Honor, I believe  
15 it would be relevant, but if it's just, you know, were you on  
16 an hourly rate or something...

17 THE COURT: I mean I have to somehow dissect this  
18 to see ...

19 MR. LOWRY: I understand, Your Honor.

20 THE COURT: ... we know what the case authority is,  
21 but there is an exception that prevails.

22 MR. LOWRY: I'll withdraw the objection.

23 THE COURT: Okay. Go ahead.

24 Q Did Mr. Carwile ever explain to you how he was  
25 going to compute the fees that you were charged as to each

1 item?

2 A Yes.

3 Q Go ahead, tell the Court what he said.

4 A Well, it started off at, I believe it was thirty-  
5 five dollars an hour and it was raised over a period of a couple  
6 years. I think it - the last figure that he quoted to me - in  
7 one particular case that comes to mind, I'd asked him, you  
8 know, it looked like that was - it was a high fee and he said,  
9 well, that he had changed the rate to forty-five dollars an  
10 hour and that was the - that was the basis. At that time -  
11 was forty-five dollars an hour was the last.

12 Q And were you to pay him for each matter he  
13 handled for you?

14 A Yes. It was an hourly - yes.

15 Q In other words, if he had a real estate closing  
16 for you, he'd charge you...

17 MR. LOWRY: Object to the leading question.

18 Q ...is that correct?

19 THE COURT: All right, rephrase your question.

20 Q How did he charge you on a real estate closing?

21 A For the amount of hours that he spent in closing  
22 that transaction, and it would be - he would usually - he would  
23 take the fee out of the closing.

24 Q And what about if he represented you in a law-  
25 suit?

1 A It was on an hourly basis and it would be billed  
2 at the - he would take the money at the end of the - end of the  
3 lawsuit.

4 Q That's all I have, Your Honor.

5 THE COURT: All right, cross. Now, before we start  
6 the cross, now, are you all attending the bar lunch at noon,  
7 because I'll stop if you...

8 MR. LOWRY: We would love to if Mr. Haugh will  
9 agree...

10 THE COURT: We'll stop.

11 MR. HAUGH: That's all right, Judge.

12 (Off the record for a short recess.)  
13

14 (Back on the record.)

15 MR. HAUGH: I did have one question...

16 THE COURT: Okay.

17 MR. HAUGH: ... I had forgot.  
18  
19

20 Continuing Direct Examination By: Mr. Haugh:

21 Q Mr. Wood, did you ever have an agreement with  
22 Mr. Carwile or his firm whereby they would represent you in all  
23 your legal matters?

24 A No, sir.

25 Q During the time that Mr. Carwile and his firm

1 represented you, did you in fact have other attorneys?

2 A Yes.

3 ~~Q All right, that's all I have.~~

6 CROSS EXAMINATION

7 By: Mr. Lowry:

8 Q You stated that Stuart began to represent you  
9 when he was with the Musselman Firm, is that correct?

10 A Yes.

11 Q And during the time he was with the Musselman  
12 Firm, did there not come a point in time when you actually had  
13 him doing the majority of all of your legal work?

14 A Yes.

15 Q And when he left the Musselman Firm and went out  
16 on his own practicing just as Stuart Carwile, he continued to  
17 do the majority of your legal work did he not?

18 A Yes.

19 Q And when he formed a partnership with Mr. Kudra-  
20 vetz and Mr. Krumm, known as Carwile, Kudravetz and Krumm, he  
21 and that firm continued to do the majority of your legal work  
22 did they not?

23 A Yes.

24 Q They handled your real estate closings?

25 A Yes.

1 Q Your loan transactions with banks?

2 A Once it would require work outside of what the  
3 bank would do, yes.

4 Q Anything that required legal representation?

5 A Yes.

6 Q And you kind of lump that as a part of your  
7 general business do you not - well, what kind of business are  
8 you in?

9 A Real estate investor, Chairman of Albemarle Bank  
10 and Trust.

11 Q And did you consider the...

12 A And I operate a Holi- couple Holiday Inns.

13 Q All right, in their representation of you did  
14 you not consider it to be loans - loans to be a part and parcel  
15 of real estate closings and real estate investment business  
16 that you were in?

17 A If, from time to time that I required financing  
18 that required a deed of trust, Stuart would do the deed of  
19 trust.

20 Q All right, and we've talked about some major  
21 loan transactions with Bank of Virginia and United Virginia  
22 Bank, Westinghouse Credit Corporation, First and Merchants  
23 Bank. Did Stuart and/or Carwile, Kudravetz and Krumm represent  
24 you as counsel in each of those loan transactions?

25 A Stuart did, yes.

1 Q And were those far and away the major loan  
2 transactions you were involved in during the period of time  
3 covered by this lawsuit?

4 A Well, one of the major ones was one and the  
5 same, which was Bank of Virginia which I had - I had done by  
6 myself which was nine hundred and fifty thousand or a million  
7 dollars which I had negotiated myself. It was a personal note.

8 Q That was a borrowing that ultimately accumulated  
9 to nine hundred and fifty thousand was it not? Or, did it  
10 start out at nine hundred and fifty thousand?

11 A I believe it was - it was negotiated as a million  
12 dollar line of credit. I don't think I took it all down at one  
13 time.

14 Q And that was unsecured?

15 A That's correct.

16 Q When the Bank of Virginia demanded collateraliza-  
17 tion and a reworking of that loan, Stuart Carwile represented  
18 you on that did he not?

19 A Yes.

20 Q And he represented you on all the matters having  
21 to do with various defaults that they declared in your loans at  
22 Bank of Virginia?

23 A Stuart represented me.

24 Q Now, did you continue to use Stuart for your  
25 major representation through the time that Carwile, Kudravetz

1 and Krumm ceased practicing together as a partnership?

2 A I don't know when that was.

3 Q Well, let's say October of '78.

4 A Stuart was - I was using Stuart Carwile in  
5 October...

6 Q As a matter of fact, didn't he continue to  
7 represent you on the majority of your legal affairs up until  
8 the time that S-V Associates filed this Chapter 12 Bankruptcy  
9 Proceeding that you've been talking about?

10 A Yes.

11 Q And that was in when?

12 A I believe it was November of '78.

13 Q All right, sir. Now, up until November of '78,  
14 well, beginning with January 1st of '75 and going up to November  
15 of '78, what other lawyers represented you on any transactions?

16 A Through what date?

17 Q Through November of '78, or through November 1st  
18 of '78.

19 A I believe I had - there was an attorney at  
20 Windmill Point that had represented us on a small matter down  
21 there. I'm not - don't recall what his name is. We got...

22 Q This was a single shot matter, right?

23 A Yes, he represented us one time on a - on an  
24 issue there.

25 Q That was in Lancaster County, right?

1 A Yes.

2 Q All right.

3 A Senator McCue, locally, had represented me on a  
4 couple of matters.

5 Q When was that? Was that before or after you  
6 started working with Stuart?

7 A No, after Stuart.

8 Q What matters were they?

9 A Involving a mobile home park we have over in  
10 Augusta County.

11 Q How much money was involved in that representa-  
12 tion or what was the nature of the cases that he represented  
13 you in?

14 A Well, he represented us in several different  
15 matters. We had several different suits. Not - not...

16 Q Those were all lawsuits?

17 A No, some of it was negotiating with the County  
18 of Augusta on zoning. They were adopting a zoning ordinance.  
19 Some of it involved - we were building a trailer - a mobile  
20 home park there. If we had a deadline of - like they give us  
21 a deadline, I believe, of the end of December one year to put  
22 blacktop down on a road and it was about six inches of snow  
23 down and he had - he had represented us before the Board of  
24 Supervisors.

25 Q When was all this?



1 A These were in '7 - '73 through '7 - up to about  
2 a year, two years ago when he started going to Florida pretty  
3 regular.

4 Q Senator McCue...

5 A Yes.

6 Q ... represented you up until a year or two years  
7 ago?

8 A Yes, until he went to - until he started going  
9 to Florida. He actually still does some stuff for us even -  
10 even yet.

11 Q On the mobile home park?

12 A Yes.

13 Q And who's the owner of the mobile home park?

14 A I'm fifty percent owner and the - Alice Dulaney  
15 - there are three other stockholders. I own fifty percent.

16 Q All right, what other lawyers?

17 A I'm sorry.

18 Q What other lawyers?

19 A In - sometime in '78 Woody Fennell represented  
20 me on a couple matters.

21 Q Who else?

22 A Joseph Palmorance, an attorney in New York in  
23 the - like October - August to October of '78 and also, I can't  
24 remember the name but I have an attorney in Connecticut for a  
25 partnership I formed.

1 Q All right, Palmorance and the Connecticut lawyer  
2 represented you on the formation of Connecticut, New York and  
3 New Jersey partnerships, did they not?

4 A Well, they - he represented us on the New York  
5 partnership and then we had another firm also that worked on  
6 the Connecticut partnership.

7 Q And those were partnerships in which you had  
8 other partners involved, is that correct?

9 A That's correct.

10 Q And they - a number of them lived in the New  
11 York, Connecticut and New Jersey area did they not?

12 A That's correct.

13 Q Okay.

14 A Mr. McDonald.

15 Q That's in connection with the Atwood litigation,  
16 the Seay litigation, and Rio Associates that you've already  
17 talked about today, is that correct?

18 A Correct. Apparently Harry Bailes represented  
19 Luray Properties...

20 Q You say apparently Harry Bailes was representing  
21 Luray...

22 A Well, we got a bill. I - well, he did. I'd  
23 forgotten about and...

24 Q Who asked him to represent you on that?

25 A I'm not sure whether I did or not. I don't recall

1 the - I remember it now that he represented us. I'm not sure  
2 exactly how...

3 Q You don't know whether Stuart suggested that you  
4 use him on that matter or not?

5 A It would be my guess that maybe that's how it  
6 transpired, I'm not sure.

7 Q And Stuart suggested the hiring of John McDonald  
8 in the cases we've discussed did he not?

9 A Correct. Bo Puryear...

10 Q And that was on a zoning dispute?

11 A Yes.

12 Q Was he brought in at Stuart's suggestion?

13 A No. I believe there were a couple others. I  
14 - I can't think of right at the present time, but...

15 Q Now, did Bo Puryear represent you in that matter  
16 because Mr. Carwile had represented to you that he had a con-  
17 flict of interest being on the Board of Supervisors?

18 A I think Stuart was on the Board at the time, but  
19 I had hired Bo myself.

20 Q Without talking to Stuart?

21 A Yeah, I don't think Stuart was involved in that  
22 at all.

23 Q You didn't confer with him before you hired  
24 Bo Puryear?

25 A No.

1 Q All right, now, during the time when Stuart was  
2 handling the majority of your affairs and specifically during  
3 the existence of Carwile, Kudravetz, and Krumm, what matters  
4 did he - what types of matters did he handle for you in addi-  
5 tion real estate, bank loans, the litigation that you discussed  
6 in your direct testimony having to do with Seay, Atwood, Windmill  
7 Point in general and Rio Associates?

8 A I don't know. The - the bulk of everything  
9 that was real estate related.

10 Q Well, he did your tax returns as well did he  
11 not?

12 A Yes.

13 Q And Mr. Kudravetz did some of your tax returns?

14 A I believe Mr. Kudravetz did work or actually sign,  
15 I believe signed one of the tax returns. I'm not sure - '77,  
16 '78, I'm not sure what...

17 Q Might it have been more than one?

18 A I'm sorry.

19 Q Might it have been more than one?

20 A It may have been. Stuart was the one that -  
21 Stuart was the person that I dealt with. I did deal with David.  
22 At some point David did start making calls about tax returns.  
23 I'm not sure exactly at what point and - and I recall David  
24 signing one, but I was under the impression Stuart was the - I  
25 had dealt with Stuart.

1 Q During the course of their representation of  
2 you, didn't you rely on Stuart to keep virtually all of your  
3 legal records and most of your financial records dealing with  
4 your real estate transactions and loan transactions?

5 A Yes, Stuart said that he would keep the copies  
6 of the - of the closings so that he'd have them for - to file  
7 the real estate - I mean to file the income tax from.

8 Q You relied on him to keep virtually all of your  
9 legal and real estate and loan records, did you not?

10 A Well, stuff that he did, yes. Any work that he  
11 did pertaining to real estate, but not on - not on other records,  
12 no.

13 Q But, as a matter of fact, he kept so many of  
14 your records that you in fact relied upon him to determine what  
15 your annual income was each year didn't you?

16 A I don't think I'd rely on him to determine what  
17 the annual income was. He - he did the tax records. I think  
18 the transactions would determine the income.

19 Q Well, let's see, did Stuart Carwile give you  
20 copies of closing statements from the real estate closings that  
21 he handled for you?

22 A No.

23 Q Did he give you accountings on how the money was  
24 applied from those real estate closings?

25 A I don't believe - on most occasions, no. I

1 pretty much know in my head what - you know, what the dollar  
2 figures were. I obviously knew what the - the only figure that  
3 I didn't know would be the exact - I didn't do some of the pro-  
4 rations and - and his fees, but I obviously knew the - knew the  
5 sales price and the indebtedness and...

6 Q How did you know your - what your income was at  
7 the end of each year without going to Mr. Carwile?

8 A Now, as far as taxable income I - like I say,  
9 he prepared that. I would not know the final figure. He did  
10 the tax returns, but as far as - you know, obviously what monies  
11 came out of transactions I would know, but as far as taxable  
12 income, you know, that was determined at the filing of the tax  
13 return.

14 Q Didn't Stuart also represent you on miscellaneous  
15 collection matters?

16 A As well as other people, yes.

17 Q Represented you on estate planning matters?

18 A We really didn't have any estate planning, so  
19 I'd say...

20 Q When you had questions regarding...

21 A Stuart would bring - Stuart would bring stuff  
22 like that up and I - in fact, this is how the - the estate  
23 planning came up, now that you mentioned that. Landon Birckhead  
24 actually went to Stuart and I think tried to get Stuart to,  
25 you know, solicit estate planning - came up with an idea of

1 estate planning for several of Stuart's clients and I - I'm  
2 not sure what their arrangement was of how Landon worked with  
3 them on it, but Stuart mentioned to me and like I say, we did -  
4 didn't - we did nothing out of it. Those were always in con-  
5 nection with buying life insurance. It would always be some  
6 deal where I'd be buying life insurance.

7 Q Whenever you had questions regarding commercial  
8 law during this period of time, who did you consult as your  
9 counsel?

10 A Involving?

11 Q Commercial law, commercial matters, commercial  
12 finance, real estate, reat estate development, borrowing...

13 A I did - I did all of my own negotiations along  
14 that line. The only time...

15 Q No, when you - excuse me...

16 A ... I would go...

17 Q ...when you consulted a lawyer...

18 A I would go to Stuart when I made the transaction.  
19 In other words, the transaction would be - I would make - I'd  
20 go to the bank, do the negotiations for whatever I was doing.  
21 If an agreement would be reached, then Stuart would handle the  
22 closing.

23 Q All right, what I'm referring to is if you had  
24 any questions regarding commercial law, and what the law was  
25 relating to a certain commercial transaction, who did you - who

1 was it you're accustomed to consult?

2 A I don't believe I ever consulted anyone -  
3 commerical law, the only time when something would come out  
4 of a case and I didn't - I did not go out and create what is  
5 this, you know, what does this mean. It would be - if Stuart  
6 was handling a case, for example, the Reservoir issue, he would  
7 be the one that would - he was - he had - I had hired him to  
8 handle that issue, but as far as my - my going out and asking  
9 about commercial law, I don't think it ever - it always sort  
10 of evolved the other way.

11 Q Well, when you were considering a - making a  
12 takeover bid on the NB Corporation stock in connection with  
13 some other people, who did you consult for the legal require-  
14 ments on that?

15 A I had asked Stuart - we primarily - in fact that  
16 brings up - there was - there was another attorney involved.  
17 He was Kraseller - I'll have to get it, it's back in the office,  
18 but the - the actual - it was a New York law firm - Kraseller.  
19 The gentleman's name - he was Chairman of the Bank of North  
20 America, was the gentleman involved and he was an attorney  
21 with a New York law firm. I think - had the name of Kraseller.  
22 And that was who we actually spent - I did that - I was involved  
23 with that probably - Stuart didn't even know that was going on  
24 until...

25 Q Did you consult with Stuart with regard to the



1 law on the takeover bid in the NB Corporation matter?

2 A Towards - at the end, locally...

3 Q In what...

4 A ... after we had...

5 Q In what legal matters did you ask him for advice  
6 on in connection with that?

7 A I didn't ask him for any legal advice. I asked  
8 him to get me a 10-K Form and - but we were using - that was  
9 - that was being done by an attorney in New York.

10 Q Do you recall in reading the Exhibit One that  
11 Mr. Haugh was questioning you on, reading entries under the  
12 item labelled Research Regarding Laws Regulating Acquisition  
13 of Bank Holding Companies on page 29, where it said, in con-  
14 ferences with you and research into various aspects of the  
15 Virginia Takeover Bid Disclosure Act, research into the various  
16 federal laws regulating takeover bids of banks, including the  
17 Williams Act, the Hart, Scott, Rodino Act and various statutes  
18 relating to the regulation of banks and bank holder companies,  
19 secure copy of 10-K filing on NB Corporation for you. Are you  
20 now saying that he did not do each of those items listed under  
21 that bill?

22 A What I'm saying after - that you bring it up and  
23 it refreshes my memory a little bit; we were working with this  
24 New York law firm and in the course of doing that - after it  
25 evolved - it was probably ninety days of discussions went on

1 about it. I told Stuart at that time what - what I was doing  
2 and then he brought up this other stuff. In other words, I  
3 asked him to get a 10-K form on it and then told him what -  
4 what I was doing.

5 Q And you didn't want him to do any of this  
6 research or conduct any of these discussions with you that are  
7 revealed in this bill?

8 A I - yeah, I didn't ask him to do that, no. That's  
9 when - when Stuart comes back and I guess wanted to get in-  
10 volved, started bringing up some of these other - other aspects  
11 of it.

12 Q So, he did all of this on his own without  
13 authorization and without your consent, is that what you're  
14 saying?

15 A Yeah, Stuart had a habit of doing quite a bit  
16 of that, yes.

17 Q Is that what's happened in this transaction?

18 A I would say - they - I asked Stuart, again, to  
19 - after about - after working with the New York law firm, they  
20 asked me for 10-K, I asked Stuart to get that. In the course  
21 of asking him to get that, I divulged to him what we were doing  
22 and then that's when Stuart brings up, well, you know, you  
23 ought to check out this, that and the other and - and he pro-  
24 ceeded on in the next - in the next conversation I had with  
25 him, he - he sort of took over and wanted to ...

1 Q Did you tell him in effect to mind his own  
2 business or did you expect him as your counsel to try to look  
3 after your interests on these matters to be sure you weren't  
4 operating in violation of the law?

5 A I listened to him, what he said about some of  
6 these things that - he said you - you ought to be concerned  
7 about some of these other aspects, I - I listened to him. I  
8 did not - I thought we had - most of the stuff he had been  
9 talking about had been discussed with the New York counsel.

10 Q Did you say to him, Stuart, you shouldn't have  
11 done that work, I didn't want you to do it, I hope you don't  
12 plan to bill me for it, anything like that?

13 A I doubt that I said that.

14 Q Does the Heliport representation which is re-  
15 flected in this bill represent real estate matters?

16 A No.

17 Q Did the tax returns...

18 A The Heliport was...

19 Q ... that he handled for you...

20 A The Heliport was also the same thing. When it-  
21 when it became apparent that we were building a heliport on  
22 the roof of Albemarle Bank and Trust, Stuart, there again, said  
23 you should disclose that because of your having - owning a heli-  
24 copter you should disclose to the Board also, so there'll never  
25 be any questions and that - that was...

1 Q. Didn't you think that was pretty good advice?

2 A I - you know, I am not qualified to judge  
3 whether it was or not. It was a simple statement that it was  
4 put in the Board - all the - everybody knew that we were build-  
5 ing the - it was in the plans and specifications of the building.  
6 It was - it was known anyway. All he wanted to do was put it  
7 in the Board minutes.

8 Q Did he lump taxes under real estate matters?

9 A Income tax?

10 Q Yeah.

11 A No.

12 Q Or whatever collection work he did for you?

13 A I'm sorry.

14 Q Or whatever collection work or general litigation  
15 he did for you, did he lump that under real estate matters?

16 A That would not be real estate.

17 Q Did he form corporations for you during certain  
18 periods of time?

19 A Stuart suggested that I form several corporations,  
20 yes.

21 Q You never formed any corporations unless he  
22 suggested it to you?

23 A He - he suggested - he - I think it was his idea  
24 to form - we formed like five corporations that we never used.

25 Q Did he suggest that you form every corporation

1 that you formed during the time he represented you?

2 A No, he didn't represent me on all the corporations  
3 that we formed.

4 Q Did he...

5 A That's what I'm saying, we - we formed several  
6 other corporations through other attorneys, Senator McCue,  
7 Mobile Parks of Charlottesville, Mobile Parks of Verona were  
8 formed by Senator McCue.

9 Q When were they formed?

10 A Mobile Parks of Charlottesville, I believe, was  
11 formed in '73, 4 - Mobile Parks of Charlottesville in '75 or 6.

12 Q All right, that first one, '73 or '74 would have  
13 been about the time you've testified you were first starting  
14 to go to Stuart for any representation, isn't that correct?

15 A Probably.

16 Q All right, and he was still with the Musselamn  
17 Firm at that time?

18 A I believe he was in '73.

19 Q All right, what about - did Stuart represent you  
20 in the formation of land trusts?

21 A Yes. I'd never heard of a land trust.

22 Q Did he represent you in zoning matters?

23 A Don't think so.

24 Q Did he make any appearances for you before the  
25 Albemarle County Board of Supervisors or Zoning Commission in

1 connection with any of your zoning efforts?

2 A In zoning matters, I don't believe so, and if  
3 he did, I would say out of a scale of one to ten, he probably  
4 didn't represent me more than once. I handled all the zoning  
5 matters, virtually all those myself. Now, he...

6 Q Without counsel?

7 A I'm sorry.

8 Q Without counsel?

9 A Yes.

10 Q Didn't he represent you before the Board of  
11 Supervisors dealing with the Reservoirs matters?

12 A I think after it became apparent about the down  
13 zoning, moratoriums and this type of nature, then he - we were  
14 already involved at that time with a lawsuit and he did - he  
15 was representing matters at that time.

16 Q He represented you also in connection with the  
17 Reservoir matters in negotiating, attempting to get bonds  
18 prepared that would be satisfactory to the County of Albemarle  
19 and dealt with Mr. St. John and Mr. Payne on those on your behalf  
20 did he not?

21 A That was - that was involving the Reservoir  
22 matter, yes.

23 Q He dealt with you in one or more matters having  
24 to do with Rivanna Water and Sewer Authority as well did he not?

25 A He was present. I did most of the negotiations

1 with them. He was present. He was supposed to draw up an agree-  
2 ment with the Service Authority.

3 Q And he was present at some of the negotiations,  
4 was he not, as your attorney?

5 A Yes - yes.

6 Q At the beginning of each of the corporations that  
7 he formed for you was he not the original registered agent?

8 A If - if he had - if it was a corporation that  
9 he had suggested forming, I'm sure he was the registered agent.

10 Q Now, a number of your real estate and loan  
11 matters all became interrelated over the course of time, did  
12 they not, in various ways?

13 A They - all of my real estate transactions be-  
14 came interrelated?

15 Q I said a lot of your major real estate trans-  
16 actions and loans became interrelated during the course of  
17 time, did they not?

18 A I would say real estate transactions did not  
19 become interrelated. I don't even know - I'm not sure I under-  
20 stand - I don't see how they could become interrelated. Loans,  
21 at several times, had become very popular after the real estate  
22 crunch of '74, became a very popular mechanism for banks and  
23 insurance companies to go to what was considered a wrap around  
24 mortgage. So, if you're relating - at that time being related,  
25 I guess it would be - by having several parcels of property

1 secured by one loan, then yeah, the loan would be related. That  
2 did not tie the real estate - make the real estate transactions  
3 related.

4 Q And many of your loans became interrelated to  
5 each other, did they not?

6 A Many of the loans? Well, there again I'd say  
7 with a wrap - provision of a wrap around mortgage, if that  
8 makes them related, then ...

9 Q On a number of your major loans going through  
10 Bank of Virginia, United Virginia Bank, Westinghouse Credit  
11 Corporation, First and Merchants, weren't the proceeds of many  
12 of these loans used to pay off portions of all of other loans  
13 that were outstanding.

14 A If it was moving the loan from one financial  
15 institution to another, yes.

16 Q Sometimes the proceeds of these loans would be  
17 applied to a number of your different business endeavors,  
18 including paying off portions of loans using the proceeds to  
19 purchase property, for operating capital in your business, isn't  
20 that true?

21 A If - if the loan was secured for that reason,  
22 yes. In other words, if we would - in some cases we were -  
23 be making a working capital loan. So, yes, obviously it would  
24 go for working capital, whatever was needed in the business at  
25 that time.



1 Q Is it not also true that in a number of instances  
2 even where your loan had closed, there were remaining trans-  
3 actions relating to the closing that needed to be followed up  
4 on by you and Mr. Carwile in order to complete obligations  
5 under the loan agreement?

6 A Well, certainly shouldn't have been any that I...

7 Q That wasn't the question.

8 A Well, that's the only way I...

9 Q Do you want me to repeat the question?

10 A Only way I know to answer it is there - there  
11 should not have been any transaction loose ends left. I think  
12 that several times loans were closed and Stuart was to provide  
13 a document or give them a piece of paper or to make sure some-  
14 thing's recorded but nothing of significance, but no, every -  
15 you don't get - financial institutions are not going to advance  
16 a large sum of money unless the attorneys have given each other  
17 assurance that all the documents were going to be delivered.

18 Q So, other than some documents here and there  
19 that you say Stuart was remiss in not providing at the loan,  
20 none of the major loans that have been discussed in this bill  
21 carried with them obligations or duties on your part or the  
22 other side's part that were of a continuing nature beyond the  
23 closing date, is that what you're saying?

24 A Other than to meet the - whatever is set forth  
25 in that loan document - the payment schedules...

1 Q Deeds of release?

2 A If a deed - if there was a deed of - if we  
3 wanted to - yeah, deed of release if we paid money down, if...

4 Q Remissions of purchase price on loans if land  
5 proved not to be as much as represented in the loan - in the  
6 purchase documents?

7 A What?

8 Q In some situations didn't you have occasion to  
9 seek immediately after closing and for quite a period after that  
10 time a rebate on purchase price if the land didn't end up being  
11 as much as was represented in the purchase? As much land?

12 A In a loan...

13 Q Purchase money financing on the purchased  
14 property?

15 A I don't recall - purchase money, from an owner?  
16 We - we had - I remember one episode, yeah, Windmill Point  
17 episode was - if I assume that's what you're referring. That's  
18 the only one...

19 Q How much was that purchase?

20 A I'm sorry.

21 Q How much was that purchase for?

22 A 1974 - 1975 Windmill was a million, three to  
23 a million, four - a million, three fifty maybe, sticks in my  
24 mind.

25 Q How much was the rebate on purchase price that

1 you were alleging was due to you by virtue of there not being  
2 as much land as had been represented?

3 A Okay, I think I know what you're talking about  
4 now. In - we requested in that contract, bought a parcel of  
5 property that was represented by Dr. Atwood, which was the  
6 owner, represented to be 125 acres. We requested as usual,  
7 when you're selling something, a survey of the property. He  
8 did not have a survey and did not wish to go to the expense of  
9 doing a survey and, in fact, would not. He just said, I'm not  
10 going to pay for having a survey, but he said, I know it's 100  
11 and - I think the figure was 125 acres. He said, I know it's  
12 125 acres here. I had walked the property...

13 Q I don't mean to cut you off, but really you're  
14 going into more detail than we need. My question was how much  
15 was the rebate that you were alleging was due to you?

16 A Well, I was trying to give you how it was arrived  
17 at.

18 Q Well, that's not what I'm asking for. If you  
19 can just - if you can tell me what the figure was or within  
20 some range of what it was, that's...

21 A Well, okay...

22 Q ... what I'm asking for.

23 A The end result of it was, we - we had a survey -  
24 we paid to have a survey made and the acreage was 36 acres short.  
25 It came up - in other words, when we surveyed it, it came up

1 to be 8 - I believe it was 88 acres.

2 Q Rather than 125?

3 A Rather than 125, approximately. And we had a  
4 provision in there if there was a shortage in the contract,  
5 it would be three appraisers - two appraiser appointed, one by  
6 him, one by me and those two would appoint a third and they  
7 would appraise the property that was missing and that would be  
8 the amount of the reduction of the purchase price.

9 Q Okay.

10 A That was in the original - that was in the closing  
11 of the property.

12 Q Do you recall the range of the rebate that you  
13 were alleging was due to you?

14 A I believe we had it appraised and our - our  
15 appraiser, I think, was twelve thousand an acre. It would be  
16 around three hundred and sixty to four hundred thousand.

17 Q And that dispute continued on after closing, did  
18 it not...

19 A That's correct.

20 Q ... for a number of years?

21 A That's correct.

22 Q Right on up into the Chapter 12 proceeding...

23 A That's correct.

24 Q ...the time of the Chapter 12 proceeding?

25 A That's correct.

1 Q In 1978, 1979?

2 A It- it continued on but it was - when you say  
3 continued on, nothing was done. That was at my request to do  
4 it each year when we - when we would pay him. We had a hundred  
5 thousand dollar payment each year and I requested Stuart at  
6 that time to resolve that matter, but it never...

7 Q There were suits filed were there not?

8 A ... went beyond that. I'm sorry.

9 Q There were suits filed over the matter were there  
10 not?

11 A Three years after the fact, I think.

12 Q And negotiations in between?

13 A Negotiations between, when?

14 Q Yourself and Mr. Atwood and Mr. Carwile and Mr.  
15 Atwood's attorneys?

16 A I don't believe there were negotiations involving  
17 attorneys until '77, two years after the fact.

18 Q Also...

19 A I had negotiations with Dr. Atwood myself.

20 Q Also during the interim, at the same time, didn't  
21 questions start to be raised about the release of properties  
22 you were making payments in '77 and then in '78?

23 A I requested release - I requested of Stuart that  
24 he make - as we made the payments that we get releases.

25 Q And ultimately that ended up in court didn't it?

1           A Yes, because I think at one point Stuart thought  
2 it was not - didn't think we ought to request the release  
3 provisions at that time.

4           Q As a matter of fact, didn't it end up in court  
5 because McGuire, Woods and Battle who was representing Dr.  
6 Atwood, instructed the trustees to foreclose because they were  
7 alleging you had committed waste to the property?

8           A Yes.

9           THE COURT: Come to a convenient stopping point  
10 somewhere along here, Mr. Lowry.

11          Q Your Honor, this is about as good as any.

12          THE COURT: Okay. What, do you think 1:15 will  
13 give you all time to complete this luncheon?

14          Q Yes.

15          THE COURT: All right, we'll resume at 1:15.

16          COURT RECESSED FOR LUNCH.

17  
18          COURT RECONVENED AFTER LUNCH.

19          Q Mr. Wood, did you review any records that you  
20 had prior to your testimony today?

21          A Yes.

22          Q What records were they?

23          A I went over - well, not I guess actually records.  
24 I - I reviewed, went over the - the bill...

25          MR. HAUGH: I'm sorry, I can't hear you. Would you

1 talk straight ahead and to the Judge...

2 A Okay...

3 MR. HAUGH: ... and then we'll all hear you.

4 A I reviewed the bill that was presented to me  
5 again and had several conversations with Nina Harrell of my  
6 office staff about her recollection of some of the things.

7 Q All right, what other records did you review?

8 A I don't believe I actually reviewed any records.  
9 I think it was conversations.

10 Q Do you have any records in your possession  
11 which relate to the transactions at issue?

12 A I would think we would have some.

13 Q Let me recall - do you recall our taking your  
14 deposition in our law offices on March 4th beginning at nine  
15 o'clock?

16 A Yes.

17 Q Mr. Haugh, I have a transcript of the depositions.  
18 Can we stipulate that these are the transcripts of the deposi-  
19 tions?

20 MR. HAUGH: Yes.

21 Q I call your attention first to page 88 of that  
22 deposition in which I asked you - we'll have to share this one.  
23 Let me come around to the other side...have you done any review  
24 in preparation for your deposition in these matters? Answer:  
25 I read some of the motions back and forth and the interrogatories.

1 Question: Did you check out your own records and try to re-  
2 fresh your recollection on all of this? Answer: No. Stuart  
3 has all of my records. I don't have any records. Question:  
4 Do you any or he didn't give you any? Answer: No, he has all  
5 of my records. Question: He never gave you records? Answer:  
6 No, he has everything. Is that what you testified to at that  
7 time?

8 A Yes.

9 Q Then on page 153 beginning at line 10, I asked  
10 you as part of a series of questions - August and September of  
11 1977, the default would have been called in the spring of '77?  
12 Answer: I don't know. I doubt that I have any records regarding  
13 Bank of Virginia. Was that your testimony at that time?

14 A Yes, I believe so.

15 MR. HAUGH: Your Honor, I don't see that any founda-  
16 tion has been laid for that last one, about any records of the  
17 Bank of Virginia.

18 Q Relating to the Bank of Virginia transaction.

19 MR. HAUGH: Nothing has been asked on that so far.

20 Q He said he had no records at all and now he says  
21 he had some limited records and I'm...

22 MR. HAUGH: He didn't say of the Bank of Virginia.  
23 You haven't asked him that question.

24 Q I asked him if he had reviewed any records in  
25 preparation for his deposition, he said, no, he didn't have any



1 MR. HAUGH: Now Your Honor, I'm going to object to  
2 that. I would ask that you all be specific. Go through number  
3 one paragraph, anything you want. Any record could be a land  
4 tax payment or anything else...

5 THE COURT: Well, he's already said the records he  
6 has relate to what he himself did, hiring surveyors and things  
7 like that, but he doesn't have any records concerning the work  
8 Carwile did. Now, he's made some demarkation line there.

9 Q During the course of the representation of you  
10 by Stuart Carwile, also by the law firm of Carwile, Kudravetz,  
11 and Krumm, how typically did Stuart receive payment from you  
12 on the accounts that he was handling for you?

13 A At the end of a transaction that he was involved  
14 in, if it was a lawsuit, he got paid at the - at the end of it,  
15 he'd present a bill at the end of the lawsuit. Involving real  
16 estate transactions, he took money out of the closings.

17 Q As a matter of fact, didn't you testify that you  
18 don't remember ever receiving any bills from Stuart?

19 A I think I said I didn't receive any large bills.  
20 He'd usually send bills of - like copying expenses or -  
21 copying is one that comes to my mind. And then...

22 Q Didn't you also testify- I'm sorry, go ahead. I  
23 didn't mean to cut you off.

24 A And then he would take - for - he would just -  
25 he would take money out of the closing for that transaction if

1 it was a real estate transaction.

2 Q And that he'd take it out and apply it to other  
3 accounts would he not?

4 A I don't know how he applied it. He would just -  
5 it would be a - you know, he would make a charge. I don't know  
6 what he...

7 Q Did you receive statements from him showing you  
8 how he would apply the funds that he withheld from real estate  
9 closings?

10 A I don't believe so. I think...

11 Q Did you ask for accountings to show where it had  
12 been applied?

13 A I don't believe I did. I would - we'd had -  
14 you know, on several occasions I would question the amount of  
15 it and....

16 Q And as a matter of fact, didn't he take, accord-  
17 ing to you, money out of closings and just apply it on account?

18 A Like I say, I'm not sure how he applied the  
19 money. He would take the money out of a real estate closing.  
20 At a closing he would - he'd keep money but I'm not sure that  
21 I know how he applied it.

22 Q Well, let me refer you again to your deposition,  
23 page 136, beginning with the first line it says, did you ever  
24 receive a bill from Stuart on the Windmill Point matter prior  
25 to the bill we are discussing here? Answer: I don't recall any.

1 Stuart usually took money out of the closings, the usual pro-  
2 cedure. Question: Did he apply those on account? Answer:  
3 Yes. Question: Did you also periodically come in and make  
4 payments on account or send payments on account in? Answer:  
5 It was usually a set amount. I don't think I paid on account.  
6 Question: You would pay in round figures, is that correct?  
7 Like ten thousand dollars or five thousand dollars? Answer:  
8 I don't recall exactly what the amounts, the figures were.  
9 Question: Do you recall whether or not you were paying him in  
10 round numbers as opposed to a set number of dollars and cents?  
11 Answer: No, I don't recall. Question: Do you recall whether  
12 or not you made those payments in response to bills received?  
13 Answer: I don't believe so, like I said, most of them were -  
14 he would take money out of closings. Question: On occasions  
15 though you would deliver a check would you not? Answer: I am  
16 sure that I did with checks, too. Was that your testimony?

17 A Yes, and I think the first part of that question  
18 that you read was referring to Windmill Point and, for example,  
19 I - I'm pretty sure that I recall - and the Windmill Point  
20 closing, for example, he took a fee of like eleven thousand  
21 dollars out of the closing. I don't know the exact amount that  
22 he was paid for that closing at the time of purchase.

23 Q And you don't know how he applied that, is that  
24 correct?

25 A Yeah, I don't know how he - that was - that was

1 a transaction that he was involved in and that was the dollars  
2 that were involved in that closing and he - he withheld, it  
3 seems - the figure I believe, eleven thousand dollars or eleven  
4 thousand some odd amount.

5 Q Let me recall again your statement at line 3  
6 on page 136 - Stuart usually took money out of closings, the  
7 usual procedure. Question: Did he apply those on account?  
8 Answer: Yes.

9 A And the question right above that...

10 Q Was Windmill Point.

11 A ...was Windmill Point and that's what I'm saying.  
12 That - that - yes, that's right, he took money out of the closing  
13 and applied it on the account, I assume that's where - that's  
14 where he withheld his money out of the closing. How he applied  
15 it, I'm not...

16 Q I refer your attention to page 233 of your  
17 deposition, where we had been talking about the First and  
18 Merchants loans and I asked you beginning at line 11, were you  
19 ever presented prior to receiving this bill a bill by Carwile,  
20 Kudravetz and Krumm for the services described in here? Answer:  
21 I don't believe I was presented with a bill, although here  
22 again, he took money out from time to time on closings that  
23 would relate back to when each transaction would occur. I  
24 assume a lot of this stuff here did not occur at the same time,  
25 it would be different occurrences. Was that your testimony?

1 A Is this - this is referring back up to several  
2 questions...

3 Q To First and Merchants. We should go back so  
4 you can satisfy yourself on that.

5 A Yeah, in other words, it - those - he would -  
6 yeah, he was taking money out of those closings that were re-  
7 lating to - to what work he was doing at that time. So, I don't  
8 believe I was presented with a bill. He took the money out of  
9 the closings from time to time that would relate back, and that  
10 goes back to your questions here...

11 Q On what F&M closing did he take money out?

12 A Windmill Point is one...

13 Q On the Windmill Point sale, is that what you're  
14 talking about, he would take money out of the sale of Windmill  
15 Point and apply it for fees on the First and Merchants loan?

16 A Right.

17 Q Any other F&M closings on which he'd taken fees  
18 out?

19 A When you refer to an F&M closing, are you refer-  
20 ring to a real - what do you mean when you say F&M closing?

21 Q Well, you said he'd take the money out of closings.  
22 I'm asking you what closings would he have taken...

23 A That - we never had a closing with F&M as far as  
24 real estate.

25 Q Well, then what did you mean when you said that...

1 A I'm referring to real estate closings. And I  
2 - I guess that would apply though too, if he closed a loan if  
3 he had money due he would - if he distributed the proceeds, he  
4 - I am sure there's occasion where he has withheld money from  
5 those.

6 Q What loan closing did he represent you on with  
7 F&M where money was available and he took it out for his fees?

8 A I guess it would be the original - been money  
9 available on all of them.

10 Q Well, which one are you aware of that he did  
11 that on?

12 A Well, I'm not - right now I don't know - I'm not  
13 aware specifically of which ones. That was started in - I think  
14 the first one closed in '75 wasn't it?

15 Q Let me refer your attention to page 291 of your  
16 deposition in which you were being asked about the National  
17 Bank transaction which is the last item on the bill - do you  
18 recall that, when research was done for holding companies and  
19 that sort of thing?

20 A I remember it on the bill.

21 Q All right. And beginning on page 291 you were  
22 being asked about that transaction, and on page 292 we asked you  
23 if you believed the services listed were performed and you said,  
24 yes. And I asked you at line 10, and I take it you also do not  
25 recall receiving a bill for those services prior to this bill?

1 Answer: I don't believe I received any bill during the whole  
2 relationship I had with Stuart. Question: You don't think you  
3 ever received a bill from him prior to this? Answer: Other  
4 than this bill, I don't believe I had any bills from him to my  
5 knowledge. We may have received one or two, but it was not a  
6 habit of his to send out bills. It was a habit to charge, take  
7 funds out of closings. Is that your testimony at that time?

8 A That's correct. In that we received the bills  
9 - the bills were for - would maybe come up after that closing,  
10 after he'd taken a fee. It may be for - most of them relate  
11 to like copying and that type of stuff.

12 Q There was no closing associated with that  
13 National Bank takeover bid representation was there?

14 A There was no closing?

15 Q Right.

16 A No, nothing really transpired from that...

17 Q So, that would have had to come from another  
18 closing, is that correct?

19 A No, not necessarily.

20 Q All right, I now refer your attention to the  
21 testimony beginning at page 284 of your deposition in which we  
22 were questioning you about the item under the bill labelled  
23 Estate Planning and that examination about the entries under  
24 that bill continues on 285. Then beginning at the bottom of  
25 285, line 23, I ask you, do you recall receiving a bill for

1 this work prior to the one you have now? Answer: I don't  
2 recall whether I got a bill or not, it was just charged out of  
3 the closings. Was that your testimony?

4 A Yeah - not - I think you continued to ask me  
5 the same thing and I think I related when I got charged were  
6 at closings. On that specific one, as I told you, that was  
7 not something I instituted anyway. I don't even know the con-  
8 versation of the - of writing the bill was more - was more in-  
9 volved than - I did not initiate with Stuart about estate  
10 planning. This was something that came back to me - to me  
11 from him about Landon Birkhead had been and wanting to sell  
12 me life insurance. So I don't even know why I got - you know,  
13 I did not initiate that. I'm not sure - it shouldn't have been  
14 a bill to begin with.

15 Q There was no closing associated with that was  
16 there?

17 A No closing associated with that, no.

18 Q Now I refer your attention to ...

19 A As well - as I said, as well as no bill for that.  
20 I - the conversation involved in it was not long enough ...

21 Q Refer your attention to a point beginning at  
22 page 283 of your deposition in which we were questioning you  
23 about '77 tax return entries on the bill. Talked about Mr.  
24 Kudravetz preparing the return and asked you to review the  
25 entries, the fact that you thought there was an audit. We were



1 talking about the '77 tax returns and then beginning at page  
2 - line 19 on page 284 I asked you, Do you recall having received  
3 a bill for this before you got this bill? Answer: I don't  
4 recall a statement, he would just take money out of closings.  
5 Was that your testimony?

6 A Yes, sir.

7 Q Was there any closing associated with the pre-  
8 paration of your '77 tax returns?

9 A Not a closing but on - on bills - like - I think  
10 we did get bills for taxes. In other words, tax returns were  
11 separate. I do recall we got bills for tax returns.

12 Q Do you also recall having testified here in your  
13 deposition that you didn't receive a bill for that?

14 A Well, I don't - you know, I don't recall which  
15 way - I just - I recall now that we did receive bills for tax  
16 returns as - as opposed to real estate transactions.

17 Q Now, as a matter of fact, you continued to  
18 request that Stuart Carwile represent you on several matters  
19 right up - even after this lawsuit was filed, didn't you?

20 A He was involved in - I was involved in a tax  
21 audit that Stuart was - that Stuart was handling while - I'm  
22 trying to think of the dates. That was settled - yeah, about  
23 six - probably six months after this was filed. Well, it was  
24 a tax audit that was - had been going on for approximately two  
25 and a half years that was down to the appeal state, which Stuart

1 had been handling, yes. He - and he was still involved in that.  
2 I had hired David Wheeler to - because of the problems that had  
3 arisen at that time with Stuart I had hired David Wheeler to  
4 - to come in to become familiar with the case.

5 Q He's a CPA is that correct?

6 A That's correct.

7 Q Who had represented you on the Seay transaction,  
8 the Seay litigation, excuse me, arising out of Windmill Point?

9 A Stuart actually started it. He said that he -  
10 he had to disqualify - he had to - we had to hire new counsel  
11 because he would be - he was going to have to testify, so we  
12 had to hire McDonald. That went on for - from the summer of  
13 1977, when I think we first - or maybe the fall, I guess it was,  
14 because we were supposed to close in the summer of '77. Then  
15 the fall of '77 we instituted suit, being - we being-John  
16 McDonald instituted suit. The case, for various reasons - Mr.  
17 Seay changed counsel, I think, a couple times - in fact, changed  
18 counsel three times and got continuances and one time he had a  
19 heart attack and had a continuance granted. That case went on  
20 for about - when I say went on, not - we never went to court  
21 for - until the summer of - until August of 1981 and prior to  
22 going to court in August of '81, about a week prior to that I  
23 hired Woody Fennell, basically just to ask him, let's get this  
24 resolved one way or the other and Mr. Fennell actually took it  
25 to - actually tried the case.

1 Q After Mr. McDonald was brought into the case,  
2 Mr. Carwile continued to represent you as co-counsel with Mr.  
3 McDonald didn't he?

4 A I don't believe so, no. I think Mr. McDonald...

5 Q As a matter of fact, didn't you continue to ask  
6 Mr. Carwile to represent you on that matter even after this  
7 lawsuit had been filed?

8 A I don't believe so.

9 Q I refer your attention to page 49 in your  
10 deposition...

11 A I think I may have asked Mr. Carwile the standing,  
12 what's going on about the case and he'd - I think under his -  
13 as best I can recall he said, well, you'll have to check with  
14 Mr. McDonald.

15 Q Let me call your attention to page 49 of your  
16 deposition, beginning on line 15. Question: And Woody Fennell  
17 took over the case after Carwile, Kudravetz and Krumm sued you  
18 in this suit did he not? Answer: Yeah. Question: Was not  
19 Stuart Carwile requested to go ahead and participate in the  
20 trial? Answer: That's right, Stuart was. Question: Even  
21 though you and he were suing each other at that time? Answer:  
22 This was after - this was even after John McDonald - this was  
23 after nothing - at this point I'd spent seventeen thousand  
24 dollars in outside attorneys' fees that Stuart hired - Stuart  
25 hired this John McDonald and I end up with seventeen thousand

1 dollars. I'm still sitting three years later with no disposition  
2 of the case. Question: Now, let's go back to my question,  
3 was Stuart asked to participate in the trial? Answer: Was  
4 Stuart asked to participate in the trial? Question: With  
5 Woody Fennell in the trial? Answer: No, he was asked to  
6 deliver his papers. Question: Was he asked to continue re-  
7 presentation of you in that matter for the trial after this  
8 suit was filed against you for attorney's fees? Answer: I  
9 think the question was put in a way that he had received - he  
10 had in essence been paid for it and I would like some disposi-  
11 tion of it. Was that your testimony?

12 A That's right, and that's referring to the fact  
13 that Mr. Fennell drew the contract, that this whole dispute  
14 arose out of. Mr. Fennell drew a contract and it had - as part  
15 of that contract it had a note for liquidated damages of one  
16 hundred thousand dollars and that's - that was the part that I  
17 had asked Mr. Fennell to - to get those records from Stuart of  
18 where he had gotten the original contract - where Stuart Carwile  
19 had written the original contract.

20 Q As a matter of fact, wasn't Stuart Carwile counsel  
21 of record in that case up until August 3rd, 1981?

22 A Not to my recollection. If...

23 Q Some six months after this suit was instituted?

24 A If you're telling me that, not to my recollection.  
25 If he was, there was no action - there was no - there was no

1 action that had been taking place if he was.

2 Q I show you now a document labelled Wendell W.  
3 Wood versus J. Edward Seay, which purports to be an order re-  
4 leasing Stuart Carwile as counsel of record dated August 3rd,  
5 1981, and asked that that be marked for identification as  
6 Plaintiff's Exhibit One.

7  
8 Plaintiff's Exhibit Number One (1) was duly marked  
9 at this time for identification.

10  
11 Q I ask if you recognize the document?

12 (Witness reviews document.)

13 Q Do you recognize it?

14 A I don't believe I've ever seen it, if that's  
15 what you're asking me, do I recognize it.

16 Q That's what I'm asking you...

17 A I don't...

18 Q ...if you've seen it?

19 A I don't think I've seen it.

20 Q Do you recall having been told by Stuart Carwile  
21 that he felt he ought to withdraw as counsel of record...

22 A As I...

23 Q ...approximately at this stage?

24 A No, as I told you, I thought he - to my - he had  
25 not participated in the case for two years prior to that, so

1 that - that's - I'm - the date there is what's throwing me a  
2 little bit. We had hired McDonald two years prior to that date.

3 Q As a matter of fact, hadn't Stuart at his loss  
4 participated and appeared at hearings in that case where testi-  
5 mony was not taken?

6 A That's what I said - yeah, to...

7 Q Along with Mr. McDonald?

8 A Stuart appeared at a hearing with Mr. McDonald  
9 as a - in the same capacity as I did, as a witness...

10 Q Did he testify at that hearing?

11 A I - you know, I'm not real sure, now. I - I'm  
12 not sure whether anybody - there - I'm not sure what the legal  
13 thing is but I think it was more motions. I don't think the  
14 case was heard - tried until last August of which, in fact,  
15 I'm - in fact, I know it was never tried until last August when  
16 Woody Fennell tried the case.

17 Q A motion for summary judgment was filed on your  
18 behalf by Messrs. McDonald and Carwile was it not?

19 A Well, there again, I don't - McDonald was hired  
20 and I don't - if Stuart was still involved, I don't know why  
21 we had McDonald. McDonald was the one handling the case.

22 Q Haven't you taken the position that McDonald  
23 was hired without your authorization?

24 A That McDonald was hired without my authorization?

25 Q That's right.

1           A I think McDonald was hired - I don't - let me  
2 think for a minute or two. There was a controversy as to -  
3 Stuart wanted to hire McDonald because he could not testify or  
4 I think the...

5           Q Well, didn't you take the position in the Circuit  
6 Court of Albemarle County in the case of McDonald and Crump  
7 versus Wendell Wood and Stuart Carwile, that you had not  
8 authorized the hiring of Mr. McDonald in the first place and  
9 therefore you weren't responsible for his bills on both the  
10 Seay matter and the Rio Associates matter?

11          A I think it became apparent that Stuart wanted  
12 to hire McDonald and Crump for some of the reasons of- the way  
13 the contract was written in the Rio Associates matter. I think  
14 it became - in fact, Mr. McDonald is the one who - Mr. McDonald  
15 was the one who alleged that to me, that that was the method -  
16 that was the motive he thought Stuart had in bringing him into  
17 the case was because of his negligence in drawing the contract.  
18 Now, that came from Mr. McDonald, not from my assumption and  
19 I wasn't aware of it until after the - the day after the trial  
20 when Mr. McDonald was the one telling me that, because...

21          Q Who hired - I'm sorry...

22          A ... because of his feelings and what came out at  
23 the trial. He thought that Stuart had deceived him in the  
24 stuff that had come out at the trial and that he - in fact, he  
25 - Mr. McDonald...

1 Q Your Honor, I can let this go on for a long time,  
2 but my original question was whether or not he had taken the  
3 position on the record in both Rio Associates and Seay...

4 THE COURT: Can you answer that question specifical-  
5 ly? I thought maybe you were enjoying the answer.

6 Q Well, I just know he was - been making some  
7 speeches. I don't mind letting him go on for awhile here, but  
8 I have a limit to my patience.

9 THE COURT: All right, can you answer specifically  
10 what he asked you then?

11 A I believe - I believe it was - I believe it was  
12 my belief that Stuart had hired Mr. McDonald to ...

13 Q Your Honor, with regard to the Seay litigation  
14 matter, I would offer Plaintiff's Exhibit Number One into  
15 evidence at this time, which is a photocopy of a certified  
16 copy of the court order.

17 MR. HAUGH: I object to that, Your Honor. It's not  
18 a certified copy.

19 THE COURT: It's not a certified copy.

20 Q It's a copy of a certified copy, Your Honor, and  
21 I believe that it is admissible under the Rules.

22 MR. HAUGH: It's not a certified copy and certainly  
23 nobody here yet has tied it up with anything. The witness says  
24 he's never seen it before.

25 Q Photocopies of documents are allowed into evidence



1 unless there's a contest, I mean a bona fides assertion by the  
2 other side that the signatures are not genuine or that the copy  
3 has been tampered with. And the signature of the Deputy Clerk  
4 and her attestation appear right on the face of the photo-  
5 copy, Your Honor.

6 THE COURT: Isn't that what the statute says, .  
7 will take judicial note of records of other courts if they are  
8 duly attested by the - by an official thereof, one of the  
9 clerks?

10 Q Yes, sir, and I believe this whole question on  
11 photocopies, whether or not it's reliable or if there is any  
12 reason to believe that it's an unreliable copy.

13 THE COURT: The Court will receive it, Plaintiff's  
14 One.

15  
16 Plaintiff's Exhibit Number One (1) was duly received  
17 into evidence at this time.

18  
19 Q As a matter of fact, you've also continued to  
20 have Stuart Carwile represent Albmarle Bank and Trust Company,  
21 the  
22 of which you're/President, in a matter that's in litigation  
23 and still have him as counsel of record in that matter, do you  
24 not?

25 A He is counsel of record in one proceeding that  
was initiated, oh, I think three years - been going on now for

1. three years, and he is still counsel of record in that proceed-  
2. ing, yes, along with other counsel.

3. Q Do you still have a copy in front of you of the  
4. bill that was the exhibit to the Plaintiff's Motion for Judgment  
5. and its Bill of Particulars?

6. A No.

7. Q Do you have that copy right in front of you now?

8. A Yes.

9. Q Let me refer your attention to the Bank of  
10. Virginia Loan, Westinghouse Credit Corporation, number one.  
11. You read through that prior to responding to Mr. Haugh's ques-  
12. tions, did you not?

13. A Yes.

14. Q Are there any items or entries in that portion  
15. of the bill which you now dispute as having been performed?

16. MR. HAUGH: It please the Court, Your Honor, I  
17. don't think that's the purpose of this hearing, dispute of  
18. whether something's been performed, we're here on the statute  
19. of limitations.

20. Q Your Honor, the items performed were performed  
21. over a period of time and we can relate it back up when and if  
22. necessary to the bill, and I think if he's saying that they were  
23. not performed, we're entitled to find out so we can see if  
24. there's any time test to...

25. THE COURT: Well, in his direct he related to some

1 THE COURT: Well, I don't see that we need to get  
2 into that detail do we. We want to know what acts he may have  
3 participated in as relates to the continuity of services Carwile  
4 may have - I don't want to know - get into a detail of them or  
5 getting into the matter of the quantum meruit basis for the  
6 fee that's alleged to be due.

7 Q All right, sir, let me take a...

8 THE COURT: I don't want to try a May case today.

9 Q All right, sir, let me try to approach a different  
10 way that might be less problematic on that. The Bank of Virginia  
11 loan, I believe you've already testified that was originally  
12 a million dollar line of credit, is that correct, unsecured?

13 A Yes.

14 Q And did that line of credit go into default?

15 A No, the unsecured line did not. They wanted it  
16 - they - approximately a year or eighteen months, some time  
17 frame after the loan was initially made they wanted it secured.

18 Q What was it, demand notes?

19 A Demand note.

20 Q All right, and they wanted to have it secured?

21 A Yes.

22 Q And Stuart Carwile, I believe you've already  
23 testified, represented you on the legal matters involved in  
24 the closing and obtaining of collateral for that loan?

25 A He put the deed of trust on the property that was

1 involved and I believe it was some bank stock - bonds mostly  
2 is what they took at first for the...

3 Q And participated in the drafting of the loan  
4 papers?

5 A Stuart?

6 Q Yes.

7 A Yes.

8 Q All right, now, did that loan go into default  
9 after it was collateralized?

10 A Yes.

11 Q All right, did Stuart represent you after the  
12 default in anyway in dealing with United Virginia Bank relative  
13 to those defaults?

14 A Bank of Virginia?

15 Q Excuse me, Bank of Virginia.

16 A Well, we - we negotiated a new loan. I negotiated  
17 a new loan with Westinghouse. Stuart conversations with, I  
18 believe, Bank of Virginia's counsel, is that what you're refer-  
19 ring to?

20 Q That's right. And during the pendency of the  
21 negotiations over the default in the Bank of Virginia loan and  
22 the obtaining of the Westinghouse Credit Corporation loan, the  
23 Rio Associates lawsuit intervened did it not?

24 A I'm not sure of the - if it was over - I can't  
25 recall if it was overlapping.

1 Q Well, do you recall that you were to pledge as  
2 collateral to Westinghouse Credit Corporation, whose loan was  
3 going to pay out Bank of Virginia, shares of stock in Albemarle  
4 Bank?

5 A Yes.

6 Q Do you recall that Messrs. Heischman and Plotkin,  
7 who were the principals in Rio Associates, were trying to buy  
8 up those notes from United Virginia Bank after they declared  
9 default...

10 A Bank of Virginia...

11 Q ... at a low rate?

12 A Bank of Virginia?

13 Q Excuse me, Bank of Virginia, I'm sorry.

14 A Right.

15 Q Do you recall that?

16 A Right.

17 Q Do you recall that Westinghouse Credit Corporation  
18 was named as a co-defendant with you in the Rio Associates law-  
19 suit?

20 A I believe they were. That's what this bill says,  
21 yes.

22 Q So, all of these things then were going on at  
23 the same time that was listed, your default problems with the  
24 Bank of Virginia, your attempts to...

25 A Well, you've got - you've got to talk about two

1 different time frames. One - the original loan...

2 Q Well, let me lay out the question, please, and  
3 then you can answer it. You were at the same time, were you  
4 not, dealing with a declared default at the Bank of Virginia,  
5 attempts to close a loan with Westinghouse Credit Corporation  
6 that would pay out the Bank of Virginia, efforts to prevent  
7 Messrs. Plotkin and Heischman of Rio Associates from buying up  
8 their notes which you'd pledged at the Bank of Virginia and  
9 were also going to pledge to the Westinghouse Credit Corporation  
10 and the suit by Rio Associates against yourself and Westinghouse  
11 Credit Corporation. All those were going on simultaneously  
12 weren't they?

13 A A suit against Westinghouse and myself?

14 Q Yes, the Rio Associates suit - you just answered  
15 a minute ago that Westinghouse was named as a co-defendant with  
16 yourself.

17 A Okay, that's - I guess it would be when Bank of  
18 Virginia would have made demand payment on their loan, then -  
19 then in the course I think they made demand - I'm not sure of the  
20 exact date they made demand, then in the process of securing the  
21 Westinghouse loan, which may have been a ninety day process, so  
22 that - for that period of time, they would be - there would be  
23 a coinciding, but what I was trying to answer your question -  
24 you asked were they all coincided, no...

25 Q Well, I believe you answered the question I asked.

1 And, Your Honor, I would like him not to go back and answer  
2 something else.

3 THE COURT: All right.

4 Q Rio Associates litigation in which you and  
5 Westinghouse Credit Corporation were named as co-defendants  
6 went on up into the middle of 1978 before it went to trial, did  
7 it not?

8 A I thought it went to trial in February of '78.

9 Q Do you recall when in February of '78?

10 A No, and I'm - I'm just...

11 Q When was the ...

12 A ... I'm not even sure. I said that was my  
13 recollection. I'm not even sure that's what it was. I thought  
14 for some reason...

15 Q Do you know when the final order was entered in  
16 that case?

17 A I do not.

18 MR. HAUGH: It's in evidence, I believe it is.

19 Q Final order on the Rio Associates case?

20 MR. HAUGH: I believe so. Maybe I'm wrong. No,  
21 it's not. I'm sorry. We'll stipulate when it was though, if  
22 you want us to, 5/12/78.

23 Q All right, will you stipulate it was May 12th of  
24 1978?

25 MR. HAUGH: Right ...

1 Q Pardon?

2 MR. HAUGH: Yes.

3 Q Okay. Now, what was pledged as collateral for  
4 your Bank of Virginia loan?

5 A That was, as I said, it started off unsecured  
6 and then approximately a year to eighteen months later it became  
7 secured and when it became secured, I believe it was the million  
8 four ninety-five or the Rio Associates Bonds.

9 Q Those were bonds from Plotkin and Heischman...

10 A Deed of trust, bonds.

11 Q ...to you which you assigned as collateral for  
12 the Bank of Virginia loan?

13 A That's correct. Holiday Inn in Luray, Virginia.

14 Q You gave a deed of trust on that as collateral?

15 A Correct. And I believe - I think it came out  
16 last time - wasn't - recalled what I - since that time I believe  
17 twenty thousand shares of Albemarle Bank and stock - trust  
18 stock, which at that time was called Cavalier Country Bank  
19 stock.

20 Q All right, what percentage of the shares owned  
21 by you did those twenty thousand shares of the Cavalier Country  
22 Bank represent?

23 A Twenty - twenty thousand - it's ninety-six  
24 thousand - ninety-one thousand, five hundred and twenty-seven  
25 outstanding, so one twenty - twenty-two - no, about eighteen



1 percent, I guess.

2 Q Eighteen percent of the stock owned by you were  
3 the total outstanding?

4 A Twenty thousand shares would represent about  
5 eighteen thousand shares of the stock outstanding.

6 Q Eighteen percent. I'm talking about what percent-  
7 age of the stock in Cavalier Country Bank owned by you did that  
8 twenty thousand shares represent?

9 A I would have - I'd be guessing but I would -  
10 that would probably be approximately a little less than half of  
11 what I owned probably.

12 Q Did you own fifty percent of the outstanding  
13 stock yourself?

14 A Not at that time. That's what - that's what -  
15 I think at that time it was around thirty - thirty-five, thirty-  
16 six - thirty to thirty-six percent, I believe approximately at  
17 that time.

18 Q Okay, and this was a 2.1 million dollar loan, is  
19 that right?

20 A Yes.

21 Q Then what collateral did you have to pledge to  
22 Westinghouse Credit Corporation for them to make the loan that  
23 paid out Bank of Virginia?

24 A Westinghouse Credit has the Holiday Inn in Luray,

25 ...

1 Q The Rio Associates bonds?

2 A Right, Rio Associates bonds...

3 Q Bank stock...

4 A ...and the bank stock. I believe the same  
5 collateral. Maybe Bank of Virginia did not have twenty thousand  
6 shares. Maybe I - maybe they had some lesser amount of shares  
7 and I increased it for the Westinghouse loan - Westinghouse has  
8 twenty thousand shares. I'm not sure exactly how many shares  
9 Bank of Virginia has.

10 Q All right, where did the proceeds from the Bank  
11 of Virginia loan go when you first made that loan? Wasn't that  
12 for setting up Albemarle Bank and Trust, then Cavalier Country  
13 Bank?

14 A I may have used some - some of the proceeds for  
15 that. I think the - I think the bulk of that paid off a loan  
16 at First and Merchants.

17 Q And then you still continued to have loans with  
18 First and Merchants after the Bank of Virginia loan did you not?

19 A I think I still had the - I think I had the-the  
20 Holiday Inn of Luray was under construction, I had a construc-  
21 tion loan, I believe, still, with First and Merchants.

22 Q And you ended up having additional loans at  
23 First and Merchants during that period of time did you not?

24 A During the time of what?

25 Q Weren't they still a creditor of yours clear up

1 into November of '78 during the bankruptcy proceedings of  
2 SV?

3 A F&M was, yes. I think F&M - F&M went out and back  
4 in though, I believe.

5 Q Where else were proceeds from the Bank of Virginia  
6 loan used?

7 A You know, I guess working capital. I don't  
8 recall right off. It may have purchased property - if I was  
9 purchasing any other property or doing any development at the  
10 time - that was in when, '75...

11 Q I'm asking you.

12 A Yeah, I think it was - I don't recall, I think  
13 it was...

14 Q Did Stuart Carwile represent you in paying off  
15 the F&M loan, seeing that the F&M loan was paid off and that  
16 all of the documents were cancelled from that appropriate?

17 A Well, if you ask did he represent me, I asked  
18 him to do whatever legal work was involved ...

19 Q That's what I meant.

20 A Yeah. These were all separate transactions and  
21 that's why when you start trying to lump them together I get  
22 - it was a different time frame in there and sometimes...

23 Q Excuse me, Your Honor, I have not asked a  
24 question.

25 THE COURT: Yeah, he doesn't want you to editorialize

1 your answers.

2 Q All right, sir, let me refer your attention now  
3 to item - well, to page 4, item listed Loan from United  
4 Virginia Bank of Charlottesville.

5 MR. HAUGH: Your Honor, that exceeds the scope of  
6 direct examination...

7 Q I beg your pardon. You're absolutely right.  
8 You didn't bring that out. Let me refer your attention to page  
9 6. Beginning on page 6, items under Windmill Point Matters...

10 MR. HAUGH: Ed, there were two we did bring out.  
11 You skipped 4 and 5. I don't know whether you ...

12 Q I understand that.

13 MR. HAUGH: ... meant to skip 4 and 5.

14 Q All right, we had begun to ask some questions on  
15 this before. You purchased this property from Mr. Atwood, is  
16 that correct?

17 A That's - well, ...

18 Q And others?

19 A Well, Dr. Atwood was the - as myself, I think he  
20 owned it as Rappahannock Marine Lodge, Incorporated, but he was  
21 the principal stockholder. So, when you say Dr. Atwood, it  
22 was purchased from Dr. Atwood...

23 Q Right.

24 A That's who I dealt with. I think he owned it in  
25 a corporation.

1 Q All right, sir. And that purchase price was  
2 approximately 1.4 million?

3 A Correct.

4 Q And as I believe you've already testified, there  
5 were provisions in the closing documents that if after a sur-  
6 vey the land proved to be less than 125 acres or whatever the  
7 precise amount was, you'd be entitled to a rebate from the  
8 purchase price. Is that correct?

9 A Right.

10 Q And your survey did show that thirty some acres  
11 was missing or it was thirty some acres short?

12 A After we closed the transaction, I had it survey-  
13 ed and it was short.

14 Q And after that was determined, did not Mr. Carwile  
15 on your behalf make a demand of the other side that they under-  
16 take procedures with you to determine the price for the rebate?

17 A Sometime, yes, after closing. When I had the  
18 survey done and discovered it was short, I requested - I  
19 requested Stuart to take the - proceed to sue them for - we  
20 were short land, I wanted a rebate.

21 Q And before that was wrapped up, there were raised  
22 issues of release of property after your 1977 payment was  
23 there not? You were entitled to a release of property and  
24 were making demand on the other side to release the property?

25 A There again, that was another transaction a year

1 later.

2 Q I understand...

3 A Right.

4 Q ...when the 1977 payment fell due?

5 A Right.

6 Q And that occurred before the price abatement  
7 question was resolved, did it not?

8 A I'm not sure.

9 Q Well, isn't it a fact that the price abatement  
10 question was never resolved?

11 A It was never resolved, that's correct. It ...

12 Q All right, now, then there came a second payment  
13 in '78 and another demand by you, along with Stuart Carwile  
14 as your counsel, for release of property didn't it?

15 A On the - as I - as I made - we had annaul  
16 installments due on the sale and each time I asked Stuart-  
17 each time I made a payment I asked Stuart, I said, let's get,  
18 you know, land released, and it became more - the critical  
19 year was '78 because at that time I'd paid a half - over a  
20 half million dollars and had not had any releases made.

21 Q And when releases were still not made, isn't it  
22 a fact that you and Stuart Carwile drove to Richmond to the  
23 offices of McGuire, Woods and Battle to deliver them the ulti-  
24 matum that if they didn't see to the releases of that property,  
25 you would instruct the trustees to take care of the releases

1 under the deed of trust?

2 A I believe that's correct.

3 Q And at that time didn't they inform you that  
4 they had prepared a letter to mail to the trustees directing  
5 them to foreclose on Dr. Atwood's corporation's deed of trust  
6 because they were alleging that you had committed waste to  
7 the property?

8 A I believe that's correct.

9 Q And then lawsuits were filed by Dr. Atwood's  
10 corporation and by yourself in Albemarle County, Lancaster  
11 County and the City of Charlottesville were they not, all  
12 dealing with the release question and whether or not there had  
13 been a waste of property?

14 A Lawsuits were filed. I don't - I'm not sure  
15 exactly where they were filed.

16 Q And Stuart Carwile represented you in filing  
17 those lawsuits and in filing answers to the ones initiated by  
18 the other side, isn't that correct?

19 A That's correct.

20 Q And I believe you testified that Mr. McDonald  
21 was brought in on the Atwood litigation as well, was he not?

22 A That's correct.

23 Q And did not he and Stuart Carwile appear together  
24 as counsel of record for you in that matter?

25 A Not to my knowledge. My understanding was that

1 Stuart was not counsel of record, that he could not - that  
2 he was going to be called as a witness and was not counsel of  
3 record. That was my - my understanding.

4 Q Did you ever see the pleadings in that matter?

5 A I'm not sure. I may have or...

6 Q Do you know whether or not Stuart Carwile was  
7 signed on the pleadings after the initial pleadings?

8 A I do not know. I was told that the reason for  
9 hiring McDonald was that Stuart could not represent me.

10 Q When was that litigation concluded?

11 A That litigation being...

12 Q The Atwood litigation.

13 A I guess it was concluded with the dismissal of  
14 the Chapter 12.

15 Q Back up, in '78 or '79?

16 A There again, like I say, I - I don't think it  
17 - I think it just sort of - it went away, I think there ...

18 Q It was - it went away when you sold the property  
19 out of the Chapter 12 proceedings did it not?

20 A We never had any relief anywhere else, so I  
21 would assume so. It never went to trial, if that's what you  
22 - I don't think it ever went - in fact, it didn't go to trial.

23 Q It was still a matter of record? You hadn't had  
24 it dismissed before the Chapter 12 had you?

25 A It had not been, like I say, it had not gone to



1 trial, no. That was part of the problem, that it never went  
2 to trial.

3 Q Now, also during the pendency of your problems  
4 with Dr. Atwood on the abatement and the purchase price and  
5 the release, you were at the same time trying to find a pur-  
6 chaser for Windmill Point were you not?

7 A Well, as I stated, part of my business is real  
8 estate investment and always glad to see a - you know, a buyer  
9 for anything. It's...

10 Q You were looking for a buyer weren't you?

11 A I - that's what I said. I'm constantly looking  
12 for purchasers of real estate, yes.

13 Q All right, and you had negotiations with several  
14 people over the purchase of Windmill Point during that period  
15 of time didn't you?

16 A That's correct.

17 Q Remember Mr. Richards, I believe it was?

18 A That's correct.

19 Q You negotiated with him for the purchase of the  
20 property?

21 A I negotiated with Mr. Richards, yes.

22 Q And you asked Mr. Carwile to prepare a contract  
23 and closing papers for that transaction did you not?

24 A After I negotiated with Mr. Richards and worked  
25 out the terms, I asked - I asked - called Stuart and asked him

1 to draw a contract along the terms of what I had discussed  
2 with him.

3 Q And did Mr. Richards go ahead and close on the  
4 purchase of Windmill Point?

5 A No.

6 Q Then you had negotiations with a Mr. Hanky did  
7 you not?

8 A I don't think the - getting back to Richards,  
9 the contract was never - was never signed by either party.

10 Q But it was prepared wasn't it?

11 A I think it was prepared. It was prepared in a  
12 fashion beyond the scope of what Mr. Richards and I had talked  
13 about.

14 Q Did you read the document?

15 A Yes, I'm sure I did.

16 Q Was it your...

17 A The contract.

18 Q Was it your custom to read the contracts and  
19 documents that Stuart prepared for you before signing them?

20 A I would read a contract. It was not all - it was  
21 not my custom to read a - like a loan document or title, or  
22 opinions, it was not my custom to read those, but I would -  
23 in fact, as far as a contract, I negotiated the contracts and  
24 I would instruct Stuart what to put into the contract as far  
25 as terms and conditions. Sometimes Stuart would - a one page

1 contract had a habit of becoming five pages.

2 Q Well, as a matter of fact, didn't you generally  
3 just not read documents prepared for you by Stuart Carwile?

4 A That's what I said. I said, yes, it was my  
5 custom not to read, like loan documents, documents involving  
6 - in this case, like Windmill. I - that was what I thought I  
7 said. I did not read them.

8 Q Well, but didn't that go beyond even loan docu-  
9 ments and deeds of trust and deeds and that, didn't that go  
10 to generally whatever he put in front of you, you'd just sign  
11 it without reading it?

12 A Yes. As he instructed me to - he often, he says,  
13 just sign it, don't ask what it is, just sign it.

14 Q And you trusted him enough to do that without  
15 reading it?

16 A Yes.

17 Q This continued right on up to the end of his  
18 representation of you didn't it; you usually signed whatever  
19 he put in front of you?

20 A Up - when you say right on up to the end, I  
21 think towards the end I was probably a little less - I was  
22 probably doing more reading towards the end than I was any  
23 other time.

24 Q I refer your attention to your deposition again,  
25 at page 38, beginning on line 16, I asked you whatever, and

1 I think the word was whenever, but it's been transcribed,  
2 Whatever he represented you on, right up to the end of his  
3 representing you, you usually signed what he put in front of  
4 you? Answer: No, - well, signing, yeah. Question: Without  
5 reading it? Answer: Yeah, I guess, even at the end, because  
6 I did ask a few more questions. I was questioning why this  
7 and why that, but as far as maybe reading it, I may have been  
8 negligent as to the extent of reading it at that point. At  
9 that time I had no reason not to distrust him, so I assumed  
10 what we discussed would be what would be in the document. And  
11 then again on page 39, beginning at line 15, I asked you -  
12 Okay, but I'm saying after you had the falling out with him in  
13 November of '78, did you continue to sign documents that he put  
14 in front of you without reading them? Answer: If you are being  
15 specific about the V&B loan, yeah, I didn't read the V&B loan  
16 documents. Question: What about the documents incident to  
17 the payout of F&M out of the proceeds of the V&B loan, did you  
18 sign those without reading them, too? Answer: I'm sure I  
19 didn't read anything involving the payout. I was paying them  
20 off. I'm certainly not concerned with reading the document  
21 that's going to pay them off. Question: You weren't concerned  
22 with whether or not there were any warnings or anything like  
23 that? Answer: I guess not, as long as they were being paid  
24 off and I was being relieved, them saying my obligations had  
25 been satisfied. Is that your testimony...

1 MR. HAUGH: Your Honor, I don't see anything in-  
2 consistent with anything. I think we're getting a little far  
3 afield...

4 Q Well, he said, Your Honor, that he read...

5 MR. HAUGH: ...tying these things up.

6 Q He said he read the contracts but not deeds of  
7 loan papers, and that testimony stated that he never read any-  
8 thing. He signed whatever Stuart put in front of him.

9 A I think it was qualified in there, Mr. ...

10 THE COURT: It's a little different. He said he  
11 was asking more questions in the deposition. Today he said he  
12 was reading a little more.

13 Q All right, now, you also negotiated with Mr.  
14 Seay for the purchase of Windmill Point didn't you?

15 A That's correct.

16 Q And you got to the point of actually signing the  
17 contract with him didn't you?

18 A That's right.

19 Q And Stuart Carwile prepared all those documents  
20 for you?

21 A That's correct.

22 Q And then Mr. Seay couldn't come up with the money  
23 to close could he?

24 A That's correct.

25 Q And you then instructed Stuart to institute suit

1 against him...

2 A That's correct.

3 Q ... on that matter?

4 A Correct.

5 Q And Stuart did that for you didn't he?

6 A That's where I'm not sure. That's when I'm not  
7 sure, when Mr. McDonald came in and when Stuart dropped out.  
8 I think when I made the request that we sue is when I think  
9 Stuart said that he couldn't do it because he would be - he  
10 had written the contract, that he would be called as a witness  
11 and that's when we had to get Mr. McDonald at that time. That's  
12 my understanding of it, because that is when Mr. McDonald came  
13 into the case and I was being billed by Mr. McDonald from that  
14 time on, and Mr. McDonald was the one handling the case.

15 Q Now, during this period of time the Atwood  
16 litigation was still going on was it not? Had been filed at  
17 least?

18 A McDonald was representing the Atwood case at  
19 that time, that's right.

20 Q Well, on that didn't Stuart Carwile at least  
21 represent you to the extent of coming up with the idea and  
22 successfully paid into court the 1978 payment that was due and  
23 was even successful in getting the court to accept that payment  
24 in the form of a bank account in the name of the Clerk of the  
25 Court at Albemarle Bank and Trust Company so that your bank

1 could continue to have the funds on deposit?

2 A Time - yes, in a time frame?

3 Q I'm asking you if he did that during the course  
4 of the Atwood litigation as your counsel?

5 A No - there again, I don't think at that time  
6 John McDonald had been brought into the picture at all, and I  
7 may be wrong if you have the records, but ...

8 Q Well, did Stuart do what I

9 A Stuart...

10 Q ... just suggested?

11 A ... Stuart did what you said he did, yes. That  
12 was - that was prior to filing a suit though. That's what -  
13 that's what I mean. The controversy had - that's what precipi-  
14 tated the controversy. That's when they said no, we're not  
15 going to give you the release clauses and that's the time it  
16 became obvious we had to sue and that's when Stuart said, well,  
17 when you sue, I can't represent you, you've got to hire  
18 McDonald.

19 Q The suit was already filed when he paid it into  
20 court wasn't it?

21 A Not on - I don't believe it was - I don't believe  
22 it was, not on the waste issue.

23 Q How did he come to pay it into court if there  
24 was no action in front of the court to receive it?

25 A We paid - that's when we went to them request-

1 - in other words, we had not received our release clauses and  
2 a payment was due and I instructed Stuart - I said, Stuart,  
3 I don't want to - I have now paid five hundred thousand dollars,  
4 I do not want to make another payment...

5 Q That's no my question, Mr. Wood. My question was  
6 if there was no suit filed in the court at that time, under what  
7 theory did Mr. Carwile tell you he was paying this money into  
8 court, how did it come before the court if there was no lawsuit  
9 filed?

10 A That's what I was trying to answer you. We  
11 did not want to be in default. Payment was due and I didn't  
12 want to make the payment because I had release clauses coming,  
13 so this was a way of advising them saying, we're not going to  
14 pay you anymore unless you give us our release clauses, and so  
15 rather than go into default, Stuart said, okay, let's pay to  
16 show that it's not a default. Let's put the money in a savings  
17 account for their benefit, in essence to show the payment was  
18 made, but not give it to them, and that is the time that pre-  
19 cipitated the instituting of lawsuits after that point. The  
20 money was paid into court as an escrow - sort of as an escrow  
21 agent to - so that we would not - if we just didn't pay them,  
22 we were afraid they would declare the loan in default and  
23 we didn't want that...

24 Q In what month was the '78 payment made?

25 A I'm sorry.



1 Q In what month was the 1978 payment made into  
2 court?

3 A All the payments were due in February, so I  
4 would say February.

5 Q Do you know what date in February?

6 A I think they were due the 1st or the 4th, some  
7 - first part of February. I don't know. It may have been the  
8 end of February. I think it's February the 4th though.

9 Q Now, let me refer your attention to page 19  
10 of the bill under Rio Associates, which we've already substan-  
11 tially discussed. In that case did not - I know you've already  
12 testified that John McDonald was involved in the case, but  
13 didn't you meet with Stuart Carwile and John McDonald to pre-  
14 pare for your testimony in that case?

15 A Unless you can refresh me, I don't believe it  
16 ever got to the point of preparing testimony, never got that  
17 close to trial.

18 Q Did you give a deposition in that case? You're  
19 saying Rio Associates never got to a trial?

20 A I'm sorry. I'm thinking back McDonald and  
21 Windmill. Okay. Rio Associates - yes, I had - yeah, there  
22 were depositions...

23 Q And you did not...

24 A Well, I don't know at that - a trial occurred in  
25 that case. I'm - I don't - and I testified. I don't know...

1 Q Did you not work with both Mr. Carwile and Mr.  
2 McDonald and also Mr. Krumm in preparation for your deposition  
3 and testimony in that case?

4 A You know, work with them - I wouldn't...

5 Q Yeah...

6 A ... say it's work with them. I - they...

7 Q Confer with them?

8 A I think they were present because Stuart also  
9 had to testify and I'm sure we all met together.

10 Q Was he present at your deposition?

11 A Now, I don't - I don't know.

12 Q Did anybody take his deposition in that case?

13 A I don't know that. I don't know. He testified.

14 Q When did he testify? Where?

15 A Albemarle - here- it was held here in Albemarle  
16 County. I don't - I'm not sure what the date of the trial was,  
17 but he - to the best of my recollection - I know I testified  
18 and the best of my recollection, I feel sure he testified.

19 Q Did he help - he and his firm help prepared a  
20 memorandum of law for the Court and motions?

21 A Now, that I - I don't know. John McDonald was  
22 the one who'd been hired to handle the case. Now, I'm - I'm  
23 sure Mr. McDonald obviously asked Stuart questions because  
24 Stuart was the one who drew the document, so obviously the  
25 basis of why we were in court was over the document, so I have

1 to assume that Stuart had conversations and told McDonald  
2 what he knew.

3 Q Didn't Stuart also work with you in obtaining  
4 an appraiser for that trial?

5 A I obtained an appraiser. I don't know that  
6 Stuart worked with - you know, that's a phone call.

7 Q Did you confer with Stuart regarding what  
8 appraiser to pick?

9 A I - I believe that I hired - no, I had - there  
10 was an appraisal already on the property by an appraiser out  
11 of Lynchburg, I forget his name, and I wanted...

12 Q Didn't he end up using Jared Lake as the appraiser  
13 on that property?

14 A That - that - that's right. I wanted to...

15 Q And didn't you confer with Stuart Carwile about  
16 obtaining Jared Lake and about the type of testimony that you  
17 would hope Jared Lake would provide for you?

18 A There again, the best of my recollection, Stuart  
19 was involved, by being a witness I'm sure he was there and had  
20 conversations as well as I did, but John McDonald was the one  
21 who instructed about hire - told me to hire an appraiser. I  
22 had tried to hire the appraiser out of Lynchburg. He said no,  
23 I think you ought to hire a separate appraiser. That was - I  
24 - I was satisfied with the appraisal that Rio Associates had.

25 Q All right, now, after the trial, when you lost,

1 didn't you work with Mr. Krumm and with Mr. Carwile on prepar-  
2 ing and going over a motion for reconsideration in that matter?

3 A After the trial - I was not there the last day  
4 of the trial...

5 Q Right, I'm talking about after the trial.

6 A Well, after - after the trial, like a day after  
7 or - the day after, I don't - two - one, two, three days after  
8 the trial is when I had a conversation with John McDonald that  
9 he was - I mean the whole complexity changed all of a sudden,  
10 I mean he was - he was livid. He said, you should have been  
11 there for the last day of the trial. He was livid...

12 Q That's not what I'm asking you. I'm asking you..

13 A Well, I'm trying...

14 Q ... if Mr. Carwile and Mr. Krumm and you did not  
15 work together on preparing a motion for reconsideration?

16 A I don't believe I did. That's what I was trying...

17 Q Do you have any recollection of working with  
18 either Mr. Carwile or Mr. Krumm having to do with that litiga-  
19 tion after the trial in anyway?

20 A I remember conversations about it, because  
21 obviously everybody was saying, what happened? And yes, there  
22 were conversations, but to my knowledge, John McDonald is the  
23 person who - I'm not sure what it's called, but he filed for  
24 reconsideration, I think.

25 Q And that's the case in which you subsequently

1 denied having given Stuart Carwile authority to hire John  
2 McDonald, is it not?

3 A That's correct.

4 Q Now, when the Westinghouse Credit Corporation  
5 loan was obtained and the Bank of Virginia was paid out, were  
6 the proceeds of the Westinghouse Credit Corporation loan used  
7 for anything else; other than paying out Bank of Virginia?

8 MR. HAUGH: Which one you were talking about?

9 Q Westinghouse Credit...

10 MR. HAUGH: Westinghouse...

11 A The proceeds from Westinghouse Credit, to the  
12 best of my knowledge, paid out Bank of Virginia, approximately  
13 nine hundred thousand to a million dollars. It was a two  
14 million, one hundred thousand dollar loan. Let's say nine  
15 hundred and fifty thousand dollars went to Bank of Virginia,  
16 nine - about nine hundred to a million dollars went to F&M.  
17 They had a construction loan on the hotel - on the motel.  
18 That's a million with interest, so that's probably the biggest  
19 part of the money. That's about two million dollars there,  
20 I guess. I don't recall a specific amount being used for  
21 whatever else. They're the two - they were - each one of those  
22 were in the neighborhood of a million dollars.

23 Q All right. Now, F&M, this loan that was paid  
24 out, that you were talking about, F&M had a construction loan  
25 and there was no take out available on that construction loan

1 was there?

2 A That's correct.

3 Q And they'd been pressing you to get someone to  
4 take them out of the picture on that loan since they'd only  
5 given you a construction loan, isn't that right?

6 A That's correct.

7 Q And that construction loan was for the purchase  
8 of the Holiday Inn on Afton Mountain...

9 A Luray...

10 Q ... the Holiday Inn at Luray, excuse me.

11 A Right.

12 Q And that's what was being referred to in - on  
13 page 27 in the first paragraph under Loans from First and  
14 Merchants National Bank, is that what you had described when  
15 Mr. Haugh was asking you questions?

16 A I'm sorry.

17 Q The first paragraph under that entry on page  
18 27, is that the loan we're talking about, the nine hundred  
19 thousand dollar loan to F&M?

20 A No, that's - that's what I mean, see that -  
21 that's about - that's a three year time gap there. That's a  
22 total, separate transaction. There's three years time...

23 Q No, but what I'm saying is, is that the loan  
24 that was paid out by your Westinghouse Credit Corporation loan?

25 A That - the nine hundred thousand dollars was the

1 construction loan in 1974...

2 Q Right, that was paid out, out of the proceeds  
3 of your Westinghouse Credit Corporation loan?

4 A In 1977.

5 Q Right, and they had been pressuring you since  
6 the completion of construction to take them out of their  
7 construction loan...

8 A No...

9 Q ... had they not?

10 A ... I wouldn't say since the completion of  
11 construction, no, but they had - the prior, I'd say, six -  
12 three to six months prior to my taking them out, they had  
13 - they obviously - banks do like to get taken out. But there  
14 was a three year - it was two different transactions.

15 Q And then ever after they were taken out, you  
16 continued to have debts to F&M right on up into the Chapter  
17 12 proceeding, didn't you?

18 A I had - I had dealt with F&M for a period of  
19 eight years where they - where they - when Sterling Durham  
20 was there, it was my principal bank, yes.

21 Q And they had declared a default under the terms  
22 of the loans to you that ended up getting paid out of the  
23 Chapter 12, did they not?

24 A That - that's correct.

25 Q And Stuart represented you in any legal repre-

1       sentation that you had dealing with F&M loans didn't he, and  
2       any defaults that were called on that?

3               A   As he represented each transaction as it occurred  
4       over a period of years, he was representing separate trans-  
5       actions.

6               Q   Under a number of these loans and financial  
7       transactions that we've been discussing, Westinghouse Credit  
8       Corporation, Bank of Virginia, F&M, periodically there were  
9       requirements under the loan documents for releases of property,  
10      is that correct; and subordinations and things of that sort?

11              A   I think probably every loan I've ever had had  
12      a release provision in it.

13              Q   And Stuart Carwile represented you with regard  
14      to any subordinations that were required and any leases that  
15      were required did he not?

16              A   If I had a reason to sell a piece of property  
17      where they had a wrap around mortgage on it, if I was selling  
18      one piece and I needed a release clause, I'd call Stuart and  
19      say, Stuart, I need parcel so and so, I'm selling for three  
20      hundred thousand dollars, I need that release from the deed  
21      of trust and I would instruct him to release it. It was an  
22      operate - the loan at F&M was a loan that moved up and down  
23      from basically - when I negotiated it, after the first nine  
24      hundred thousand we negotiated a four million dollar line that  
25      I had with F&M, that I could go up to four million dollars in



1 different developments, and that called for up and down for a  
2 period of six or eight years.

3 Q And Stuart represented you in connection with any  
4 legal work needed as draws were made or collateral was changed  
5 or anything like that, isn't that correct?

6 A And as I said, if I'd sell a piece, I'd call  
7 Stuart and say Stuart, I need piece X and so released or if  
8 I was buying a piece and I needed - I had money available under  
9 my line, I would say Stuart, I need two hundred thousand  
10 dollars to purchase X piece of property, would you do the  
11 legal work, would you...

12 Q All right, let me...

13 A ... handle the transaction.

14 Q Let me refer your attention now to page 13,  
15 Reservoir Matters. You also read that this morning prior to  
16 answering Mr. Haugh's questions, did you not? Oh, excuse me...

17 A No, I ...

18 Q ... there was no question about that this  
19 morning also, Your Honor, so I beg your pardon. I'm not paying  
20 attention to my own...

21 MR. HAUGH: We're a little slow on the up take  
22 here...

23 Q I should have caught it myself. I'm going to  
24 refer your attention to page 10, items under Purchase of Air-  
25 port Properties from Airport Associates Partnership. Do you

1 recall having read that this morning?

2 A Yes.

3 Q Now, you purchased these parcels of property,  
4 did you not, as a part of your regular business of real  
5 estate investments?

6 A Well, I wouldn't consider it regular. This was  
7 a pretty large - this was not a casual...

8 Q I didn't mean ordinary, I meant that it was  
9 within the scope of your...

10 A Yeah.

11 Q ... your customary business, which is real  
12 estate investments?

13 A Yeah, but this - yeah, but the size...

14 Q And this was a large purchase?

15 A Yeah.

16 Q And lots of dollars were involved in this, were  
17 they not?

18 A A million, one hundred thousand, I believe, was  
19 the ...

20 Q Okay, and you considered it an important project  
21 at the time?

22 A Like I say, yes, it was a - it was not a casual  
23 - it was a large transaction to me.

24 Q It was or was not?

25 A Was - to me it was a large transaction.

1 Q It would be to me too, believe me. You used  
2 some of your borrowing on these other loans to pay off deeds  
3 of trust in connection with these Airport Properties that you  
4 purchased did you not?

5 A I would think probably I did, consider like I  
6 say, using the line of credit that I had - obviously, I ...

7 Q Yes...

8 A Un huh, I'm sure I did. They - on this particular  
9 piece there was some assumable monies on it also, but there  
10 was a fair amount of cash that had to be put down. I think -  
11 I think probably half million dollars cash had to be put down  
12 on these properties.

13 Q Now, an integral part of the purchase of these  
14 properties was the assumption of existing deeds of trust on  
15 a number of those properties wasn't it?

16 A Four of the five I believe had a - had existing  
17 financing on them.

18 Q All right, and some of these deeds of trust were  
19 somewhat difficult to get a fix on in terms of payout figures  
20 and locating the note holders and that sort of thing weren't  
21 they?

22 A No, sir.

23 Q Did any problems arise or were any problems  
24 existing with regard to those deeds of trust that were already  
25 on the property at the time you purchased it?

1           A Well, as I said, four of them had existing  
2 financing on them and prior to my ever contacting Stuart or  
3 anybody, in working with the - Doug Zerkle was the real estate  
4 agent involved in it. I talked to the existing bondholders  
5 to see what their feelings were about restructuring any financ-  
6 ing. I talked to those - those parties myself. There again,  
7 the date of this was like '74 and the real estate market was  
8 pretty bad. Everybody I went and talked to was glad to see  
9 anybody step to the plate and say, yeah, we'll take over these  
10 obligations.

11           Q All right.

12           A And I - I handled those personally myself and

13 ...

14           Q And Stuart prepared the documentation for the  
15 assumption and waiving any existing defaults that might have  
16 been on there, is that correct?

17           A He prepared the - he did - he - that's when -  
18 the first time I'd heard of a land trust. He said you take  
19 title - you should take title in the form of a land trust. I  
20 believe - well, Amato is one that I know was no change in the  
21 deed of trust. We took it in accordance with existing deed  
22 of trust that was on it. The fourth land trust we took in  
23 a deed...

24           Q I don't want a detail of each one you took. I'm  
25 just asking...

1 A Well, you asked...

2 Q ...you if some of them were in default and had  
3 to be - documentation had to be used to get them squared away?

4 A I only think one was in default.

5 Q All right, did subsequent defaults or allegations  
6 of defaults occur after you purchased the property?

7 A I believe the - I believe we actually purchased  
8 the fifth land at a foreclosure sale. It went into default  
9 and we chose to go ahead and just buy it at auction sale as  
10 opposed to, the other four we took.

11 Q Did Stuart explain to you why he thought you  
12 ought to take title in a land trust?

13 A Yeah.

14 Q Or five land trusts?

15 A Yeah. And best I can recall it was that it would  
16 be cheaper in the future for financing - any financing that we  
17 may do or transferring of beneficial ownership it would not -  
18 I think the big savings that it would not require another  
19 recording.

20 Q Yeah, it would make it so that you could transfer  
21 interests in these properties more freely, without having to  
22 incur recording costs and file new deeds and that sort of thing.  
23 Is that right?

24 A I believe that was his - his method.

25 Q And that was a benefit to you as a businessman,

1 I take it, who regularly bought and sold properties and wanted  
2 to have some flexibility where you could, is that correct?

3 A That was what he had told me, yes.

4 Q Was Stuart a trustee under these land trusts,  
5 the five land trusts you're talking about, Rivanna First,  
6 Second, Third, Fourth and Fifth?

7 A I don't - I...

8 Q He and David Kudravetz?

9 A I have in mind that - that we put it in the name  
10 of Bank of Virginia as the land - as the trustee, but I may  
11 be wrong. You say it like they did, but I...

12 Q Why would you have put it in the Bank of Virginia  
13 as trustee?

14 A I'm not even sure of that, but I - I think there  
15 - I think we did. Maybe we didn't, but I - in fact, we did  
16 put it in - in fact, we did. I'm sorry, we did put it in  
17 Bank of Virginia as a trust. There again, something else  
18 Stuart suggested doing because - in fact, because I, at a  
19 later date, like a year later, I requested that we make  
20 Albemarle Bank and Trust the trustee, and so instructed and  
21 so did and Stuart forgot to notify the Bank of Virginia about  
22 it. They were still - three years later they were still showing  
23 it that they were - they still thought they were trustees  
24 after it had been recorded that Albemarle Bank and Trust was  
25 trustee.

1 Q Do you recall why Stuart suggested Bank of  
2 Virginia as trustee?

3 A The only thing that I - I think it was done was  
4 for - when I started buying it, I did not - it was - it was a  
5 large tract of land near the airport and it was owned by  
6 different parties. I was trying to put some other land and I  
7 did not want - there was - there was about three other parcels  
8 that I did not want - that I still wanted to acquire and I  
9 did not wish - did not wish everybody to know that one person  
10 was acquiring it for the fear that the price may - may run the  
11 price up on some of the other parcels, I believe is the reason  
12 why because he said that by being Bank of Virginia nobody will  
13 know that you - or you can negotiate for other lands and they  
14 don't know who the owner is.

15 Q All right, now, was not the condemnation, the  
16 highway condemnation out near the Airport Properties also an  
17 integral part of your Airport Properties acquisition and  
18 development?

19 A When you say an integral part, the highway  
20 department had filed with the previous owner - the seller that  
21 I was buying from, they had already filed a certificate of  
22 condemnation prior to my even signing the contract, so it  
23 really - it was a -almost a complete - in fact, I think they  
24 had actually even posted maybe a bond, a sum of money. That  
25 was done prior to my purchasing it, and all I did, I negotiated

1 that I would be the benefactor of that whenever it was settled.  
2 But that was already - that was already ongoing when I purchas-  
3 ed the property.

4 Q And then continued how much after that?

5 A The condemnation?

6 Q Un huh.

7 A Well, we never have received all the money yet.

8 Q So, it's still going on? Is that right?

9 A I would - I guess it's not going on. The settle-  
10 ment has been reached, the amount of dollars, but we've not  
11 - the dollars have not been disbursed. It was like forty-four  
12 thousand - thirty-four thousand has been disbursed.

13 Q Your Honor, I'm between transactions. And I'm  
14 not trying to slow things down, but could we have a very short  
15 break?

16 THE COURT: Don't take long, Mr. Smithers wants to  
17 go home.

18 (Off the record for a short recess.)

19  
20 (Back on the record.)

21 Q After the initial purchase of the Airport Proper-  
22 ties, did you then begin to develop those properties?

23 A No.

24 Q You at no time began development of the proper-  
25 ties since their purchase?



1 A I thought you said immediately after purchase?

2 Q I said after the purchase did you begin to  
3 develop the property?

4 A I began development for - purchased them in '75  
5 and began in - I think we began development - actual, physical  
6 development about ten months ago.

7 Q How about plans for development?

8 A Plans for development preceded that by maybe  
9 five - well, the industrial park probably started nine months  
10 prior to that. The residential being North Pines and Briar-  
11 wood, probably '81 - sometime in '80.

12 Q Okay. Did you file any site plans or begin any  
13 - do any engineering work on any of the Airport Properties  
14 prior to 1980?

15 A We were - we tried to get some of it rezoned.  
16 The industrial park, we started on the rezoning and we may  
17 have - I think it was like a year process getting it rezoned.

18 Q When did you start that?

19 A Rezoning application, I believe, maybe '77, '78.

20 Q Did Stuart represent you at all in connection  
21 with that?

22 A No.

23 Q Did you file any site plans with regard to  
24 Northside Industrial Park?

25 A I don't own Northside Industrial Park. That's

1 a separate piece of property owned by - I'm not even sure who  
2 owns it. Matter of fact, I think Fidelity Bank owns it now.  
3 I never have owned it, never.

4 Q Did North Rivanna Second Land Trust have any  
5 interest in that?

6 A Not to my knowledge. I have never owned North-  
7 side Industrial Park, no.

8 Q All right, were any of the - was any portion of  
9 that Airport Properties sold off?

10 A Yes.

11 Q When was the first sale?

12 A I sold - the first sale was a sale that was  
13 all - a contract that was already on the property when I  
14 purchased it, three acres to North - Northern Piedmont Coop.  
15 It was already - it was already a sale. They were trying to  
16 purchase three acres out for a power substation when I purchas-  
17 ed it. Then, of course, the condemnation was going on. There  
18 were two contracts on it when I purchased it. Next, I think  
19 I - I sold a two acre tract sometime, approximately '77, '77  
20 - I can't remember the parties name. They - they built a home  
21 on two acres of the north end of it, and then sold a 44 acre  
22 tract to General Electric, would be the - really the first  
23 - first sale and I believe that was - contract was signed,  
24 option on, I believe in '77 or '78.

25 Q When did you begin negotiating with them on that?

1 A General Electric, my opinion would have been  
2 like five years prior to that when they were trying to locate  
3 at Ivy, I tried to - I was trying to locate a piece of property  
4 somewhere in Albemarle County for them.

5 Q Were you negotiating with them about the time  
6 you were trying to put together the purchase of the Airport  
7 Properties?

8 A I wouldn't - I would not say I was actually  
9 negotiating with them, no, it was in the back of my mind this  
10 would be a good location for them but I was not - it was - it  
11 was in my mind, not theirs.

12 Q All right. During the break I asked you to  
13 look over this document consisting fourteen pages. Did you  
14 do that?

15 A Yes.

16 Q Let me ask you if you recognize that as a list  
17 of files representing items and matters in which Stuart Carwile  
18 has represented you?

19 A Well, all the - the majority of the items listed  
20 on here ring some type of bell. As far as Stuart representing  
21 me, you know, there may have been conversations about it, but  
22 a lot of items on here - if any of them closed I would say  
23 Stuart probably represented me in the closing of these items.  
24 A lot of stuff on here is ...

25 Q A lot of them would be items that maybe were

1 started but got dropped or something like that. Is that what  
2 you're saying?

3 A Just for example, the first page, Valley Holiday  
4 Inns, I don't even know what that is.

5 Q Okay.

6 A Number fourteen says General Legal. It doesn't  
7 have any dates, years or I - just some of the stuff that I  
8 see on here like Drucker, I sold my home in Carrsbrook fourteen  
9 years ago...

10 Q Right...

11 A ... to a man by the name of Drucker, so I assume  
12 that's what - what that is. After that there are some names  
13 that I don't ...

14 Q Many of them you do recognize as being files  
15 that were...

16 A I remember - majority of the names on here, and  
17 like I say, on any - if any of these transactions came to  
18 fruition, I would say Stuart - I believe Stuart handled them.

19  
20 Plaintiff's Exhibit Number Two (2) was duly marked  
21 at this time.

22  
23 Q Your Honor, I'd offer this as Plaintiff's  
24 Exhibit Number Two.

25 MR. HAUGH: Objection, Your Honor. It hasn't been

1 authenticated to start with and second, Mr. Wood said he  
2 doesn't recognize some of the names on there.

3 Q Well, if Your Honor wants me to ask him for  
4 each and every name he recognizes - he said he recognized  
5 most of them as being matters, some exceptions. I think it's  
6 - the Court's entitled to receive it to get a feel for the  
7 number of matters in which the Plaintiffs or Stuart Carwile  
8 over the years may have represented him on, in terms of getting  
9 a feel for whether or not there's been a continuing course of  
10 representation before, during and after the existence of the  
11 law firm of Carwile, Kudravetz and Krumm. There are fourteen  
12 pages of file numbers and entries.

13 THE COURT: I don't think I can receive it based  
14 on the identification we've received so far for the purpose  
15 you desire. He says some of them were.

16 Q Over the years in which Stuart Carwile has re-  
17 presented you, how many separate matters would you estimate  
18 he represented you on?

19 A I have no idea.

20 Q Would it be as many as a hundred?

21 A I have no idea.

22 Q Could you tell me whether it would be as many  
23 as fifty?

24 A I - you know, I - it would be pure speculation.  
25 I don't. - you know, like...

1 Q You don't have any feel at all for it?

2 A No, going down through that list - Stuart and I  
3 were personal friends. A lot of what I see on there he prob-  
4 ably knew about. That doesn't mean he represented me in them,  
5 you know, conversations don't mean - when he comes over to  
6 my house for dinner...

7 Q And he'd just open a file because you had a  
8 conversation about it, is that what...

9 A Well, he has done that, yes. The perfect  
10 example was the - the heliport and the thing with NB. I did  
11 not ask for it. Stuart had a habit of making work. I think  
12 that's the ...

13 Q Your Honor, I'd like to leave this in the record  
14 for purposes of identification...

15 THE COURT: Sure...

16 Q ...I understand it has not been accepted into  
17 evidence.

18 THE COURT: Sure.

19 Q All right, now I'll refer your attention to page  
20 4, item 2. I don't think you have item numbers on yours. The  
21 entries under the caption, \$400,000.00 Loan From United  
22 Virginia Bank of Charlottesville. That was, was it not, a  
23 four hundred thousand dollar loan?

24 MR. HAUGH: Your Honor, here I'm going to object.  
25 This was not brought up direct examination.

1 THE COURT: That's correct, I don't believe I have  
2 the number.

3 Q Well, Your Honor, there has been allegations  
4 that - by him that all of his transactions were distinct, and  
5 I think whether or not this particular item was brought up,  
6 I have a right to bring up items which may disprove what he  
7 testified to on direct examination.

8 THE COURT: Well, you can ask him about what trans-  
9 actions he had. I take it this is one of them, just using  
10 this as a reference perhaps, but it wasn't discussed on direct.  
11 But that won't preclude you doing what you're trying to do.  
12 Go ahead.

13 Q Do you recall that matter?

14 A I - I - I received a four hundred thousand  
15 dollar loan from United Virginia Bank.

16 Q How were the proceeds used?

17 A You have the date on that to help me...

18 Q February '78 through March of '78.

19 A I hate to say it, but right off it escapes me  
20 for what I did with four hundred thousand right now.

21 Q Well, in connection with that loan, wasn't it  
22 necessary to obtain releases of other property that had already  
23 been pledged to First and Merchants National Bank so that it  
24 could now stand as collateral for your UVB loan and also release  
25 under the Amato deed of trust? And the commission bond deed

1 of trust?

2 A Yeah, I believe some of - it was a working capi-  
3 tal loan and I believe some of the money did go to - I think  
4 part of it went to Amato...

5 Q Some of your Airport Properties stood as collat-  
6 eral for that loan did it not?

7 A Yeah, I believe - I believe North Rivanna -  
8 in fact, okay, two hundred and twenty-five thousand, I believe  
9 is an upper - was owed - the balance was owed on North Rivanna  
10 first land trust to Amato, and so I believe two hundred and  
11 twenty-five thousand of it went to Amato.

12 Q All right. And you to obtain releases from F&M  
13 from some of the property they had as collateral so ...

14 A May...

15 Q ...that you could use it as collateral here did  
16 you not?

17 A The - I guess I probably paid F&M some - some  
18 sum of money to - for them to release also, and give - and  
19 gave - in fact, that loan was a parcel - as security, United  
20 Virginia had the first - North Rivanna first land trust and  
21 a 9.9 acre tract on 29 North.

22 Q And Stuart represented you on all of that didn't  
23 he?

24 A Yes.

25 Q That's all the questions I have at this time.



1 THE COURT: All right, any redirect?

2 MR. HAUGH: Yes, one second, Your Honor.

3  
4  
5  
6 REDIRECT EXAMINATION

7 By: Mr. Haugh:

8 Q Mr. Wood, you were asked on cross examination  
9 prior to lunch if you had had any other attorneys representing  
10 you during the periods of time Mr. Carwile was doing your work.  
11 Have you thought about that further?

12 A Yes.

13 Q And are there any attorneys whose name you did  
14 not mention?

15 A Yes, sir.

16 Q Would you tell the Court who they are?

17 A Larry MacIllwaine, Billy Perkins, Bob Callaghan,  
18 Senator - I think I mentioned Senator McCue, Eaton Brooks,  
19 and Senator Michael.

20 Q Now, during what years did they represent you  
21 on things?

22 A I believe in the early seventies to as late as  
23 197...these - these that I just named now, to '78.

24 Q Your Honor, is Exhibit thirteen into evidence.  
25 I believe this is the one that we thought Mr. Lowry was going

1 to state his objections at one time but I'm not sure we got  
2 that.

3 MR. LOWRY: We got the objection but I don't  
4 remember you ever actually offering it.

5 Q Well, I did offer it. The Judge has it...

6 MR. LOWRY: Right.

7 THE COURT: Yeah, I have it. Its been received.

8 Q And you did state your objection?

9 MR. LOWRY: Yes.

10 THE COURT: Yes, he stated his objection.

11 Q All right. Mr. Wood, did you ever enter into a  
12 retainer agreement with Mr. Carwile?

13 A No, sir.

14 Q That's all I have, Your Honor.

15 MR. LOWRY: I have just...

16 THE COURT: All right, one follow-up question then,  
17 Mr. Lowry.

18  
19  
20 RE CROSS EXAMINATION

21 By: Mr. Lowry:

22 Q What did Larry MacIllwaine represent you on?

23 A Real estate purchase, 8 acres on 29 North next  
24 to Woodbrook Shopping Center.

25 Q When was that?

1 A I think it was '78 or '7 - I think '78.

2 Q All right, Bill Perkins, he represented you in  
3 front of the Zoning Commission did he not, Albemarle County?

4 A No.

5 Q But I mean a suit arising out of a zoning matter  
6 in Albemarle County?

7 A It was something involving Albemarle County.  
8 I'm not sure whether it was zoning or whether it was a building  
9 permit or...

10 Q And Stuart Carwile referred you to him because  
11 he was on the Board of Supervisors at that time and had a  
12 conflict of interest didn't he?

13 A Stuart referred me to him. I'm not sure whether  
14 it was because he was on the Board or whether it was something  
15 he couldn't handle.

16 Q All right, what did Bob Callaghan represent you  
17 on?

18 A Represented my wife and myself in a traffic  
19 accident.

20 Q Eaton Brooks?

21 A Eaton Brooks represented a case involving a  
22 fellow by the name of Harvey Hague.

23 Q About what; what did it have to do with?

24 A It was over a purchase - the potential conflict  
25 of - he was going to buy into a real estate company that was

1 going to be formed and in connection with some property that  
2 we were anticipating buying.

3 Q What did you have to do with the lawsuit?

4 A What did I have to do with it?

5 Q Yeah, what was your position?

6 A I'm trying to think whether I was being sued or  
7 whether I sued. I was either plaintiff or defendant...

8 Q When did this happen?

9 A I'm guessing, '73, 4, 5...

10 Q So that would have been during the time you were  
11 just beginning to bring your work to Stuart, is that right?

12 A Well, no, it was after - Stuart was already on  
13 his own because I remember - I just remember the circumstances  
14 around when it was, but if you could tell me when Stuart left  
15 Musselman, that would help a little bit.

16 Q Did you talk to Stuart about the case?

17 A Stuart was aware of the case I'm sure. I don't  
18 know whether I talked to him about it...

19 Q What did Senator Michael represent you on?

20 A Senator Michael represented me on a conflict that  
21 I had with my brother, Lloyd Wood.

22 Q All right, that's all I have right now, Your  
23 Honor.

24 THE COURT: Is that it?

25 MR. HAUGH: That's it, Your Honor.

1 THE COURT: You can step aside.

2 MR. HAUGH: That's all the evidence we have, Your  
3 Honor.

4 THE COURT: All right, Defendant has rested on its  
5 plea.

6 MR. LOWRY: Your Honor, we have a motion to strike  
7 at this time.

8 THE COURT: Okay.

9 MR. LOWRY: I see that I'm not going to be educating  
10 the Court at all when I cite the case of Beal versus Moore.  
11 You beat me to it when you mentioned it earlier, Your Honor,  
12 but just to recall the facts in that case which I think lay  
13 out an established rule under which we're...

14 THE COURT: Let's see if we're picking him here.  
15 Are you picking him up all right?

16 ( Counsel moves to counsel table to argue his  
17 motion. )

18  
19 MR. LOWRY: That, as Your Honor will recall, was a  
20 suit by an attorney for compensation for services rendered.  
21 The attorney in that case represented a receiver of an estate  
22 on six different matters of litigation, none of which were  
23 related to each other in terms of debt or anything like that,  
24 and the question there was whether or not there was a continuing  
25 course of conduct or whether suit should have been brought on

1 MR. LOWRY: I'm sorry, we were hopeful we could  
2 limit the testimony in light of the Court's statements on our  
3 motion to strike, but out of perhaps an abundance of caution  
4 we've decided we'd better go ahead and make a complete record  
5 on the matter. I would call Stuart Carwile as our next witness.  
6  
7

8 STUART F. CARWILE, Having first been duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 By: Mr. Lowry:

12 Q Would you state your full name?

13 A Stuart Carwile.

14 Q You are one of the three plaintiffs in this  
15 matter?

16 A I am.

17 Q All right, what's your address?

18 A Route 2, Box 154, Crozet, Virginia.

19 Q Have you represented Wendell Wood, the Defendant?

20 A I have.

21 Q When did you first begin to represent him?

22 A 1967.

23 Q And during any period of time did you represent  
24 the majority of his legal transactions?

25 A Yes.

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1 Q And what period of time did that encompass?

2 A I would say from 1967 through 1979 or 1980,  
3 1980 I believe.

4 Q All right, I now show you a document consisting  
5 of fourteen pages and ask you to look over that and see if  
6 you can identify it?

7 MR. HAUGH: What's the number on that?

8 Q I'm sorry, it's been marked for identification  
9 as Plaintiff's Exhibit Two, but it has not been accepted into  
10 evidence.

11 A Yes, I can identify this.

12 Q What is it?

13 A This represents a numerical summary of the files  
14 that I had opened on behalf of Wendell Wood and I have the  
15 originals also with me.

16 Q All right, were those opened in the course of  
17 your representation of him?

18 A They were.

19 Q Do they include a period of time before, during  
20 and after the Carwile, Kudravetz and Krumm partnership?

21 A They do. This would run from 1967 through the  
22 termination of my representation of Mr. Wood.

23 Q All right, and were these files opened pursuant  
24 to representation that was requested by Mr. Wood of you?

25 A Yes, they were.

1 Q Your Honor, I'd offer this as Plaintiff's  
2 Exhibit Number Two.

3 THE COURT: Any objection?

4 MR. HAUGH: We have no objection.

5 THE COURT: Okay, so received.

6  
7 Plaintiff's Exhibit Number Two (2) was duly received  
8 into evidence at this time.

9  
10 Q Now, during the time that Carwile, Kudravetz  
11 and Krumm represented Mr. Wood, did you have any arrangement  
12 or understanding with Mr. Wood as to when fees would be billed  
13 or paid by him - billed to or paid by him?

14 A I had discussions with Mr. Wood with respect to  
15 the payment of fees from time to time, and he would - in those  
16 discussions I would ask Mr. Wood for payment on account be-  
17 cause we were frequently carrying a large volume of time that  
18 we had not been paid for and of services that we'd not been  
19 paid for, and the response that I would typically get from Mr.  
20 Wood would be, I don't have any money right now, will you wait,  
21 I'll have money later when I get this sale made, when I have  
22 some financing closing from a bank or something, and I'll pay  
23 you something on account at that time.

24 Q Did you accept that request?

25 A Yes, I continued to render services for Mr. Wood.



1 Q And did you operate under that arrangement  
2 with him for any given period of time?

3 A I think that was probably the arrangement that  
4 was operative throughout the period of Carwile, Kudravetz and  
5 Krumm.

6 Q All right, did you ever receive any payment  
7 during that period?

8 A Yes, we did.

9 Q And how would you receive those payments on  
10 account?

11 A It would either be money that was from closings  
12 or sales that would be applied to the account or on several  
13 occasions after - when there were no closings, no financings  
14 that were in the foreseeable future and we'd not received any-  
15 thing on account for a long period of time, I would talk with  
16 Mr. Wood and explain to him that he was going to have to make -  
17 arrange to make some type of payment on account and on several  
18 occasions he would not - typically not at that time, but he  
19 would send a check in at some point later on within the next  
20 week to several months.

21 Q All right, you've already stated that you'd have  
22 a conversation with Mr. Wood wherein he asked you to operate  
23 under this relationship, did that type of conversation ever  
24 recur after the initial conversation?

25 A Yes.

1 Q On, roughly, how many occasions?

2 A During Carwile, Kudravetz and Krumm?

3 Q Yes.

4 A I would say that it - I would have conversations  
5 with Mr. Wood on probably a quarterly basis with respect to  
6 our need for payment on account.

7 Q In any of those conversations did he ask for or  
8 did you volunteer to him any indication as to how high his  
9 account was running?

10 A Mr. Wood never - during Carwile, Kudravetz and  
11 Krumm never asked for a - an itemization as to how high his  
12 account was running. There were - there was a time when I  
13 indicated to him that I'd been working for him on a bill and  
14 he said, listen, I don't have any money. Let's work - let's  
15 work and try devote our time not to billing me for something  
16 that I can't pay, but let's work on legal matters that hopefully  
17 we'll be able to get - find some money, refinance some property  
18 and then I'll be able to pay you something.

19 Q All right. Now, after partnership with Carwile,  
20 Kudravetz and Kumm ceased practicing together, did you have  
21 any conversations with him then that - in which you discussed  
22 the level or approximate level of fees owed to you and/or  
23 Carwile, Kudravetz and Krumm?

24 A I did.

25 Q Would you recount those for the Court?

1           A I had been made aware of a situation in Southwest  
2 Virginia by Witt Krumm, who was a partner of mine, where a law  
3 firm there had gotten a temporary restraining order against  
4 the Tennessee Valley Authority and they had accomplished the  
5 entire representation within a three day or one week period.  
6 I forget the exact period, but a very short time frame. I  
7 believe it was three or four days, and their fee for doing  
8 that was ninety-some thousand dollars. And just in casual  
9 conversation with Mr. Wood one day shortly after Mr. Krumm had  
10 related this to me, I was telling him about that. I think that  
11 we at that time were probably discussing fees that somebody  
12 locally had paid in connection with some other litigation or  
13 some other matter that was a matter of common interest, and I  
14 related this incident to him and he inquired of me, he said,  
15 do you - do you know how much I would owe you, and I said, I  
16 don't know the exact figure, I said it pains me to look, but I  
17 can tell you that it's in six figures.

18           Q Did he ask you at that point in time to give him  
19 a specific rendition of how much was owed?

20           A No, he did not.

21           Q Did he dispute that he owed you money in that  
22 range?

23           A No, he did not.

24           Q Would you describe, and just in general terms  
25 at first, the character or the type of representation that Mr.

1 Wood was coming to you for?

2 A I think that in general Mr. Wood was primarily  
3 engaged in real estate activities and the character of the  
4 representation was primarily engaged in representing him in  
5 real estate transactions, in financing with banks and other  
6 lenders, and tax aspects of the various transactions that he  
7 was involved in. And over a period of time - and as time went  
8 on with some litigation.

9 Q During the existence of Carwile, Kudravetz and  
10 Krumm, was there ever a period of time in which you were not  
11 representing Mr. Wood on a number of matters?

12 A No, there was not.

13 Q What percentage of your - you personally right  
14 now, your practice during that period of time was devoted to  
15 his work?

16 A Of the firm or of me personally?

17 Q You personally.

18 A During that period of time, I would say that  
19 in excess of fifty percent of my time was devoted to the re-  
20 presentation of Mr. Wood.

21 Q Did the agreement that you've described to handle  
22 this matter with periodic payments on account as funds were  
23 available, did that cause you and your partners to have to do  
24 anything with regard to your own income or assuring your own  
25 living expenses?

1 A It - it caused me to have to borrow money from  
2 the bank.

3 Q What about your partners?

4 A I - I think that from time to time they probably  
5 did, but I know that it caused me to have to do that.

6 Q Did you at any point in time make Mr. Wood  
7 aware of that?

8 A I know that he was aware that I was having to  
9 borrow money from the banks, yes.

10 Q And did you discuss that with him at any point  
11 in time?

12 A I discussed that with him at a point in time  
13 which was subsequent to the termination of Carwile, Kudravetz  
14 and Krumm.

15 Q But was that based upon a course of borrowing  
16 that existed during the time Carwile, Kudravetz and Krumm...

17 A That's right.

18 Q What did you tell him about that? How did that  
19 conversation come up?

20 A That was during the time that Mr. Hess and I  
21 were representing Mr. Wood during the S.V. Associates Chapter  
22 12 Bankruptcy Reorganization Proceeding in Federal Bankruptcy  
23 Court. The bankruptcy reorganization rules, the law is that  
24 prior to confirmation of plan of reorganization which would  
25 operate to hold off creditors, that the attorney's fees of

1 the - for the debtor, S. V. Associates, would have to be paid  
2 into court or waived. At the time that Mr. Hess and I agreed  
3 to file a Chapter 12 reorganization proceeding on behalf of  
4 Mr. Wood, we told him at that time that we were not in a posi-  
5 tion to carry him as we'd had - as I'd had done at Carwile,  
6 Kudravetz and Krumm. And Mr. Hess also represented Mr. Wood  
7 in connection with a matter and had not been paid in full from  
8 that matter, so we both had the experience of not having full  
9 or prompt payment on our legal services. And the - he - we  
10 told him that we were not - he said that he did not have the  
11 money to pay the legal fees for S. V. Associates. They were  
12 fees that were related solely to S. V. Associates. And so  
13 I told Mr. Wood that I was not going to waive my right to  
14 compensation under the Bankruptcy Code, but that I would  
15 accept a personal note from him for that amount and the note  
16 was at 14 percent which was the rate of interest that I was  
17 then being charged by the banks. Wendell objected as to the  
18 rate of interest and I think that's when I told him, I said  
19 that's what I'm having to pay the banks and I believe it was  
20 probably generally in excess of what he was having to pay the  
21 banks and I said, well, I'm not trying to make any money off  
22 of the interest rate at all, but I will write you - write you  
23 a letter, which I did that day that stated my -if the Virginia  
24 National Bank and United Virginia Bank lower the interest rate  
25 on the loans to me that I will lower the rate in turn on the

1 note which he was - which he signed that day.

2 Q Now, back during the time that you were with  
3 Carwile, Kudravetz and Krumm and you had this agreement with  
4 Mr. Wood, did he make any representations to you about any  
5 benefits that he would see you got if you did agree to carry  
6 him, as you say?

7 A I think Mr. Wood clearly understood that the  
8 - I'm not sure I really understand your question.

9 Q Okay, I'll withdraw that question.

10 MR. TREAKLE: Excuse me, Mr. Lowry, could you have  
11 Mr. Carwile speak forward. We can barely hear him.

12 Q Okay, now if you could speak up a little bit  
13 and you've got a habit of putting you hand up to your mouth...

14 A Okay...

15 Q ... and that makes it a little harder to hear  
16 you. Were Mr. Wood's transactions in which you represented  
17 him distinct types of transactions or did they have some  
18 interrelationship or how would you describe them?

19 A They were very much interrelated.

20 Q And in a general sense could you described how  
21 they were interrelated?

22 A They were - Mr. Wood, during the course of this  
23 period of time, had maybe six, seven what I would refer to as  
24 major properties and he had four or five major lending insti-  
25 tutions with whom he dealt with, and there was pretty much a

1 continual shifting of collateral from - and of refinancing  
2 and by individual banks or collateralization of loans and  
3 going from one property to another, subordination collateral  
4 - we'd start at one institution, go to another and go to  
5 another and there was exchanges of collateral, exchanges of  
6 lien priorities in collateral. There were matters relating  
7 to certain of the properties that were related to the financ-  
8 ing of the properties so that they were - there were proposed  
9 - proposed transactions and consummated transactions that were  
10 related to litigation that was going on with respect to those  
11 properties so that it would - it was - it was not like doing  
12 the same amount of work on 120 residential house closings.  
13 They were all very much interrelated.

14 Q Were these transactions which could have been  
15 handled separately by separate attorneys without their knowing  
16 what was going on in the other transactions?

17 A No.

18 Q Did you, at my request, prepare a chart attempting  
19 to show the interrelationship between Mr. Wood's properties  
20 and his financing...

21 A I did.

22 Q ... transactions? Your Honor, just so that -  
23 it's going to be hard for you to see from a distance, so we've  
24 got two copies and maybe that will help you.

25 MR. TREAKLE: May we see one?



1 Q Sure. This is at this point just being used  
2 to be able to demonstrate visually as well as verbally the  
3 interrelationship between these matters, and I know it's hard  
4 to follow. That's why we're going to ask Mr. Carwile to  
5 trace through the interrelationships for you.

6 (Off the record.)  
7

8 (Back on the record.)

9 Q Maybe we could just have the witness come up to  
10 the bench and that would be easier, whatever way you want to  
11 do it.

12 THE COURT: Yeah, let's gather at the bench.

13 (Counsel and the witness go to the Judge's Bench.)

14 Q All right.

15 THE COURT: This is being used for demonstrative  
16 purposes?

17 A Yes, sir.

18 Q Would you describe first where the major proper-  
19 ties are laid out on the chart?

20 A Windmill Point, the Airport Properties, Holiday  
21 Inn, Reservoir Properties, Rio Associates Bonds, and Albemarle  
22 Bank Stock...there was more bank stock than that would indicate  
23 but that was what was relevant in this particular part of the  
24 transaction, this chart.

25 Q And then were ...

1           A   And then there were other properties in the City  
2 of Charlottesville and in Albemarle County in addition to the  
3 ones that are specifically placed on the chart.

4           Q   Now, do all the entries on this chart deal with  
5 transactions that are represented by the bill in question?

6           A   Yes, all of them do. This is - the bottom one  
7 right here with respect to the Farmer's Home Administration  
8 Loans and the FDIC investigation is not something that was  
9 dealt on the bill but was - per se, but was a factor in trying  
10 to get this transaction in particular closed and also related  
11 to this one which had closed.

12          Q   You're referring to sale to BD Corporation and  
13 sale to Molidine?

14          A   Yes.

15          Q   Okay, and the major lending institutions, just  
16 where do they lay approximately?

17          A   They were Firsts and Merchants National Bank  
18 in Richmond, Bank of Virginia, Westinghouse Credit Corporation,  
19 United Virginia Bank?

20          Q   And they lie in a straight line across the  
21 chart?

22          A   Yes.

23          Q   Okay, in dealing first with the Windmill -  
24 excuse me, which was the first loan chronologically from one  
25 of these major banks?

1           A   Firsts and Merchants National Bank would have  
2   been the first one.

3           Q   All right, and those funds would have been re-  
4   ceived when, approximately?

5           A   The nine hundred thousand dollar loan, which  
6   was - was in 1973, the closing of that loan is not in ...

7           Q   Not on this?

8           A   ...but it's a subject matter in terms of getting  
9   that loan paid off. It was a construction loan, was put on  
10  in '73 and did not get - there was no permanent takeout and  
11  did not get paid off until 1977.

12          Q   All right, now, would you take - first of all  
13  the Windmill Point matter and show us where Windmill Point  
14  lies on that transaction?

15          A   Windmill Point is right here on the chart. That's  
16  property that's in Lancaster County, Virginia that fronts on  
17  the Chesapeake Bay and Rappahannock River.

18          Q   Would you explain to the Court how that trans-  
19  action impacts, if at all, with any other matters of litigation  
20  or financing?

21          A   Where to start - Mr. Wood acquired property in  
22  Windmill Point in three different transactions.

23          Q   Are the acquisitions a part of your bill?

24          A   No, they're not.

25          Q   Okay. Go ahead.

1           A And one of those transactions was a purchase  
2 from Dr. Atwood of Windmill Point Marina for a million, three  
3 hundred and some odd thousand dollars. And as a part of that  
4 purchase there was a - oh, an expressed warranty in the contract  
5 as to the amount of acreage that would be in the property when  
6 it was ultimately surveyed and there was a mechanism for abat-  
7 ing the purchase price or it provided that the purchase price  
8 would be abated to the extent that there was a deficiency in  
9 the acreage. The - the acreage turned out to be 84 acres,  
10 which resulted in a -approximately a 35 acre deficiency, which  
11 was a fairly substantial deficiency in relationship to the  
12 acreage that was there, and no resolution of - Dr. Atwood and  
13 Mr. Wood could not agree at the closing as to how much the  
14 purchase price would be abated for by that amount and it was  
15 ...

16           Q To try to shorten this just a little bit, was...

17           A That was a continuing controversy that resulted  
18 in the Atwood litigation.

19           Q It began at the point of closing?

20           A Yes. The litigation did not begin at the point  
21 of closing...

22           Q But the controversy?

23           A ...the controversy did. The - it was a factor  
24 that affected a proposed sale to Richards. It was a factor that  
25 was somewhat involved in the - it was involved in the sale to

1 Seay and the - and, of course, these were transactions where  
2 they were taking - would have been taken either on a wrap  
3 around deed of trust, wrapping around the Atwood purchase money  
4 or at least subject to that and Dr. Atwood had declared the  
5 obligations in default. Windmill Point was financed. Funds  
6 came from First and Merchants and Bank of Virginia that went  
7 into either the initial purchase or subsequent principal pay-  
8 ments for, and indirectly funds went from United Virginia  
9 Bank into Windmill Point..

10 Q All right, now, the Seay litigation that's al-  
11 ready been testified to arose out of his inability to close  
12 on the contract for sale?

13 A That's correct.

14 Q Did you represent, or who represented Wendell  
15 Wood in the Seay litigation?

16 A Carwile, Kudravetz and Krumm and the firm of  
17 McDonald and Crump in Richmond and - during the time period of  
18 this bill.

19 Q All right. Did you continue to be counsel of  
20 record throughout the time period covered by this bill?

21 A Covered by the Carwile, Kudravetz and Krumm bill?

22 Q Yes.

23 A Yes.

24 Q Okay. All right, you have up here refinancing  
25 efforts. How did that effect the Atwood litigation and Wind-

1 mill Point?

2 A There were - the principal and interest payments  
3 were - were annual requirements and they started off at two  
4 years with only principal payments and there was no interest,  
5 but then the payments worked up to the point where I think by  
6 '76 or '77 they were required payments of a hundred and - or  
7 approximately fifty thousand dollars a year in February, and  
8 due to a shortage of funds Mr. Wood had at the time, there  
9 were conferences in working with him in trying to structure  
10 ways to come up with the funds to pay the Windmill Point obliga-  
11 tions because he was aware that the holder of those bonds  
12 would declare a default once they were a day delinquent or  
13 as soon as he had the opportunity.

14 Q All right, now, I had failed to ask you. Who  
15 represented Mr. Wood in the Atwood litigation?

16 A The Atwood litigation was - was fairly complex  
17 in that the - there became a dispute as to whether or not the  
18 deed of trust was in default for waste, which was - Mr. Wood  
19 had requested some releases from the deed of trust and they  
20 declared - Atwood declared the deed of trust in default from  
21 waste and directed the trustees not to make any releases be-  
22 cause of the default in the deed of trust. Doctor Atwood at  
23 this point in time was represented by McGuire, Woods and Battle.  
24 There was an attorney from Richmond, Birch Douglas, who was an  
25 attorney of McGuire, Woods and Battle who was the trustee on the

1 deed of trust along with myself. Mr. Douglas filed a suit for  
2 - Mr. Douglas on his own as trustee filed a suit for guidance  
3 and prayed that Mr. - that he and me be removed as trustees,  
4 although McGuire, Woods and Battle at the time was representing  
5 Dr. Atwood and was a trustee on the deed of trust. I foresaw  
6 the potential for getting into a situation where as trustee I  
7 should not perhaps be actively advocating Mr. Wood's interest  
8 in court, notwithstanding the fact that McGuire, Woods and  
9 Battle was doing the same thing for Dr. Atwood in connection  
10 with the litigation, so we associated the firm of McDonald  
11 and Crump, with Mr. Wood's consent, in Richmond, and Mr. John  
12 McDonald spent a lot of time on that in working on it. I also  
13 worked on it in terms - with Mr. McDonald in terms of strategy,  
14 et cetera, with respect to the matter and apprising him of the  
15 factual background throughout all of this. Mr. McDonald sub-  
16 sequently had the court remove himself as counsel in the case  
17 or got leave of court to withdraw as counsel because he was not  
18 getting paid.

19 Q All right, now, on Rio Associates matters.  
20 Excuse me, let me start on this. Could you describe how each  
21 of these loans from the banks, going across the middle of the  
22 page, impacted on properties and other transactions? That  
23 might be the way, I think, to bring them altogether and the  
24 quickest, since everything seems to emanate from that?

25 A Well, Bank of Virginia started off as a - as

1 unsecured loans to Mr. Wood and they had a negative pledge -  
2 the only thing that they had was a negative pledge agreement  
3 on Windmill Point. There came a time in 1976 when Bank of  
4 Virginia had called the loan. I think they may have actually  
5 called it in late '75, but in '76 they called it and used that  
6 as a mechanism for - I don't think they fully expected the  
7 full payment, but used it as a mechanism for requiring full  
8 collateralization of the loan. There were negotiations -  
9 they were planning to take a deed of trust on 220 acres in  
10 Lancaster County, Virginia, which comprised the Windmill Point  
11 property, a portion of which they had a negative pledge agree-  
12 ment on, and Mr. Wood was attempting to get them to take the  
13 Reservoir, some of the Reservoir properties as collateral.  
14 They also wanted the stock in Cavalier Country Bank, which was  
15 the predecessor to Albemarle Bank and Trust, as collateral.  
16 It ultimately result - evolved that they got the Rio Associates  
17 bonds as collateral, the Albemarle Bank and Trust Company  
18 stock as collateral and some property that would have come -  
19 what I would categorize down here as other property in Albemarle  
20 County, which was near the Airport but not really included in  
21 this. This represents properties north of Airport Road and  
22 they took some properties that were south of Airport Road. They  
23 were not as - not as - as large in land areas as the Airport  
24 Properties would be. But there was some controversy with  
25 respect to - they also took - F&M subordinated its interest in



1 the portion of the Airport Properties so that Bank of Virginia  
2 could have a deed of trust, what was referred to as the Fifth  
3 Land Trust, and Bank of Virginia ended up not getting Windmill  
4 Point and - because Mr. Wood previously granted F&M a lien on  
5 Windmill Point and they would not release that.

6 Q Okay.

7 A And First and Merchants...

8 Q Before you move on to First and Merchants, what  
9 transpired with regard to the Bank of Virginia loan after its  
10 initial closing?

11 A In the - it not long thereafter, I think, went  
12 into a default for nonpayment of interest and there again  
13 declared a default in the loan and gave notice that they were  
14 going to foreclose on the collateral, prepared a motion for  
15 judgment which they sent me a courtesy copy of prior to filing  
16 it and I entered into extensive negotiations with Waverly  
17 Pulley of the firm of Hunton and Williams with respect to  
18 attempting to hold off Bank of Virginia foreclosing on the  
19 collateral and/or filing suit on the motion for judgment until  
20 some efforts could be made to see if there was some way to re-  
21 finance Mr. Wood's collateral and get them paid off through a  
22 refinancing.

23 Q Was that ultimately refinanced through financing  
24 with Westinghouse Credit Corporation?

25 A Yes.

1 Q All right, we've already had testimony from  
2 Mr. Wood that during those negotiations a suit intervened  
3 having to do with Rio Associates. Did that relate in anyway  
4 to the Bank of Virginia loan or its collateral?

5 A Yes, the the Rio Associates Limited Partnership  
6 developed the Albemarle Square Shopping Center on the corner  
7 of 29 and Rio Road in Albemarle County. Mr. Heischman and Mr.  
8 Plotkin were the general partners in that limited partnership  
9 and Mr. Wood and Mr. Heischman and/or Plotkin had had some  
10 on-going discussions with respect to the purchase by Rio  
11 Associates of the Rio Associates bonds from Mr. Wood at a  
12 discount but they'd been unable to agree upon the price for  
13 those. Rio Associates thereafter approached Bank of Virginia  
14 about - they somehow became aware that the loan was in default,  
15 and they approached Bank of Virginia and tried to buy the  
16 entire loan, the note and the collateral package from Bank of  
17 Virginia so that they would be able to foreclose on Mr. Wood  
18 or take whatever action they could to become the owners of  
19 the Rio Associates bonds. This became - this was one of the  
20 issues that I dealt with with Mr. Pulley at Hunton and Williams  
21 with respect to this and trying to keep the Bank of Virginia  
22 from selling the loan and giving us time to - to see if we  
23 could work out some way they could be refinanced.

24 Q Okay. Then you've mentioned that refinancing  
25 occurred through Westinghouse Credit Corporation. Did they

1 become involved in anyway in the Rio Associates litigation?

2 A Yes, the Rio Associates people found out, I think,  
3 from the Bank of Virginia that Mr. Wood had obtained a - was  
4 negotiating with Westinghouse Credit Corporation for a loan,  
5 which would pay off both Bank of Virginia and the nine hundred  
6 thousand dollars of the F&M loan, which was a lien upon the  
7 Holiday Inn, and the Rio Associates filed a declaratory judg-  
8 ment action against Mr. Wood, Bank of Virginia and Westinghouse  
9 Credit Corporation, who had not yet closed on its loan alleging  
10 - seeking a declaratory judgment as to certain subordination  
11 obligations under the Rio Associates deed of trust with respect  
12 to financing the construction of improvements on the Albemarle  
13 Square Shopping Center property.

14 Q Could the Westinghouse Credit Corporation loan,  
15 which paid out Bank of Virginia and part of F&M, have closed  
16 without - well, excuse me, without some resolution of the Rio  
17 Associates litigation?

18 A Now, I don't know whether - it could have closed,  
19 but I knew what Westinghouse - what we were able to work out  
20 with Westinghouse and I think that that was the only basis that  
21 it could have gotten closed, when we worked that out with  
22 Westinghouse, that the Carwile, Kudravetz and Krumm would re-  
23 present Westinghouse Credit Corporation in the Rio Associates  
24 litigation at the expense of Mr. Wood, and Mr. Wood wrote  
25 Westinghouse Credit Corporation a letter confirming that.

1 Q All right, were you also counsel of record for  
2 Mr. Wood in that matter?

3 A Yes, our firm was.

4 Q Was anybody else appearing also on behalf of Mr.  
5 Wood?

6 A McDonald and Crump.

7 Q All right, did you continue as counsel of record  
8 throughout the litigation?

9 A Yes.

10 Q Why was McDonald and Crump brought in on Rio  
11 Associates and Seay?

12 A The Seay litigation was in Henrico County. They  
13 were a Richmond law firm. On the Rio Associates matter there  
14 was - that involved the contractual interpretation of documents  
15 relating to obligations to subordinate and there was a concern  
16 which we all shared that I, as drafter of those documents along  
17 with Mr. Russell at McGuire, Woods and Battle, conceivably  
18 could become witnesses to the intent and interpretation of the  
19 parties. It also was a case that involved appraisal evaluation  
20 to a very great extent. Mr. McDonald was an experienced - was  
21 an attorney who used to be with Hunton and Williams, was an  
22 experienced trial attorney, he handled the VEOCP condemnation  
23 work for Hunton and Williams and he was thoroughly familiar  
24 with condemnation evaluation analysis and the same type of  
25 evaluation analysis was very much a key issue in the Rio

1 Associates litigation.

2 Q Okay. Now, what about F&M?

3 A F&M had liens on what I refer to as other real  
4 estate in Charlottesville and Albemarle County. They had a  
5 lien on the Holiday Inn. They had the chattel mortgage on a  
6 boat. They had a lien on the Airport Properties, which were  
7 the ones north of Airport Road and extend out to where GE is  
8 now. That came out of that tract. They had it on Windmill  
9 Point. At one point in time they've had Albemarle Bank and  
10 Trust Company stock, and F&M in general had everything that  
11 any other creditor did not have.

12 Q And did they in addition at various points in  
13 time have collateral that was released or otherwise transferred  
14 to other creditors? I believe...

15 A Yes, they were.

16 Q ... you've already testified on part of that.

17 A Collateral that shifted back and forth between  
18 - or in fact, between F&M and Bank of Virginia, between F&M  
19 and United Virginia Bank.

20 Q All right. During the course of this period of  
21 representation of Carwile, Kudravetz and Krumm, what was the  
22 status of the F&M loans; in other words, were they dormant  
23 other than these releases or were any problems cropping up  
24 with them?

25 A The F&M loans were - were not dormant. There

1 were at one time - there was a fairly constant restructuring  
2 of the F&M loans in terms of conveying additional collateral  
3 for loans made for various purposes such as the Holiday Inn.  
4 The Holiday Inn started off with a loan with F&M, started off  
5 with just - with collateral in Page County. It ended up with  
6 collateral in Charlottesville, Albemarle, and Lancaster  
7 Counties. There were at least four major F&M deeds of trust  
8 that comprised the two million, four fifty and there were  
9 subordinations and releases that were an on-going transaction.

10 Q All right. Before we move on to the next bank,  
11 did the duties and obligations of Mr. Wood and yourself end  
12 with the closings of each of these loans that we're talking  
13 about?

14 A The - I don't think that they did.

15 Q All right, what types of things continued to be  
16 required of you under the terms of those loan documents in  
17 terms of categories and things?

18 A They were - F&M had various loan officers who  
19 were responsible for this account at various points in time.  
20 It was a - started off down in the commercial department and  
21 by the time Carwile, Kudravetz and Krumm had - was organized,  
22 I think it had gone up to the real estate department with the  
23 bank. Mr. Wood had worked up his loans at First and Merchants  
24 to such an - to such a level that they had required, when they  
25 went to the real estate department, they had required a - their

1 outside counsel, Mays Valentine, to thoroughly review the  
2 documentation for all of these loans. I worked with Mays  
3 Valentine over a period of time with respect to this. They  
4 were - with respect to the documentation in terms of supplement-  
5 ing the documentation that they required in the treatment of  
6 closing a loan and then they'd send it to Mays Valentine and  
7 Mays Valentine would say, look, everything looks fine, then  
8 go to the courthouse and get a certified copy of every plat  
9 and every deed referenced in the documents, and the legal  
10 descriptions to the documents involved were covered at that  
11 time - all that Mr. Wood owned involved major title work in  
12 terms of coming up with all of this.

13 Q All right, now, I may have missed, have you  
14 discussed any activity with regard to the nine hundred thousand  
15 dollar loan?

16 A The nine hundred thousand dollar loan was a  
17 construction loan on the Holiday Inn that was made by F&M  
18 and it got paid out out of the Westinghouse Credit Corporation  
19 loan.

20 Q All right, what activity had gone on prior to  
21 obtaining the Westinghouse Credit Corporation loan with regard  
22 to F&M and their construction?

23 A They required - it's - when the loan is not taken  
24 out in the ordinary course of time as a normal construction  
25 loan would be and Mr. Wood was unable to get a permanent loan

1 on it, they required that that loan be cross-collateralized  
2 with all of the other properties that Mr. Wood owned or sub-  
3 stantially all of it; everything that they had in the commercial  
4 line.

5 Q How long a time before the Westinghouse Credit  
6 Corporation loan was closed had F&M been after Mr. Wood to take  
7 out the construction loan?

8 A Some considerable period of time, several years.

9 Q All right, sir. Now, moving on I guess to  
10 United Virginia Bank.

11 A United Virginia Bank was a loan that involved  
12 two pieces of property in Albemarle County. The proceeds from  
13 that went in basically to the Airport Properties and into Wind-  
14 mill Point.

15 Q All right, could you just very briefly describe  
16 how the Greims controversy arises out of the Rio Associates  
17 matter?

18 A The Greims controversy related to the - a  
19 controversy involving nonpayment of a hundred thousand dollar  
20 bond that was given in payment of the commission in connection  
21 with the purchase of Rio Associates Property, and the bond  
22 was originally given by Mr. Wood to John B. Sims and Mr. Sims  
23 transferred, negotiated or sold it or something to Mr. Greims  
24 and it was a matter relating to the nonpayment of that, trying  
25 to collect - declare an anticipatory repudiation of the bond



1 so that they could accelerate it. It was a bond of thirty-five  
2 year maturity at four percent interest and they were trying to  
3 declare all of it due and payable as a result of Mr. Wood's  
4 alleged statements that he wasn't going to make anymore payments  
5 on it and involved negotiations with Mr. Greims' attorney over  
6 a direct payment authorization agreement where Rio Associates  
7 could pay Mr. Greims directly and offset it against what they  
8 owed Mr. Wood.

9 Q Okay. Your Honor, before I go on too much  
10 further, Charlie has informed me that he thinks he's going to  
11 be quite awhile on cross examination. It will probably need  
12 the time that I think you indicated was available tomorrow  
13 afternoon.

14 THE COURT: Well, yeah, I've got time available  
15 tomorrow afternoon if you all are all available.

16 (Court and counsel confer regarding the time  
17 available to all parties to conclude this matter.)

18  
19 Q Would you now explain then how the Airport  
20 Properties relate to the various financings in any other  
21 properties? You've already mentioned it in connection with  
22 refinancing efforts, now with respect to anything else.

23 A The Airport Properties represented five major  
24 parcels of land that were owned in five different partnerships  
25 who were anxious to divest themselves of title. They had already

1 purchased it several years ago and there was an opportunity  
2 to - for Mr. Wood to acquire the Airport Properties for a  
3 five thousand dollar payment and take it subject to the existing  
4 financing that was unpaid on the property which was approximate-  
5 ly this amount, of a million, six hundred thousand, and these  
6 other matters in blue represent subcategories or parts of the  
7 Airport Properties or transactions related to it. There was  
8 always - the properties had financing on them that was - in  
9 some cases when they were acquired were already in default and  
10 it was our obligation to work on the arranging for modification  
11 of the existing deeds of trust that were on the property, the  
12 negotiations with the lien creditors and to work with Mr. Wood  
13 in terms of efforts to make the payments that came due on these  
14 - on the various liens on the Airport Properties, which they  
15 were starting to require payments and some of them were declar-  
16 ed in default for nonpayment such as Amato, bonds held by  
17 Savory Amato's estate...

18 Q Excuse me, before you to much further, you had  
19 - a minute ago when you were talking about Airport Properties  
20 said that these things circled in blue related to that, but  
21 you didn't identify them and for purposes of the record, could  
22 you read what they are?

23 A The Amato controversy, the sale to Molidine,  
24 the sale to B.D. Corporation, highway condemnation, Camelot  
25 Sewer Treatment Plant.

1 Q Okay, would you continue on and if you could  
2 try to mention what's in each box as you're referring to it.

3 A Okay. The Airport Properties were financed  
4 primarily through working on loans or extensions or increases  
5 in loans from First and Merchants and United Virginia Bank.

6 Q All right, now did Bank of Virginia relate to  
7 Airport Properties? You have an arrow going to that.

8 A Bank of Virginia had a third deed of trust on  
9 the - a portion of the Airport Properties, that was the part  
10 that was north of the north fork of the Rivanna River and  
11 east of the - I believe it's State Route 608 but I'm not sure,  
12 but it's the road that would be on the other side of the GE  
13 property.

14 Q Now, I believe you've already discussed the  
15 Holiday Inn as that relates to the F&M loan, and - F&M  
16 construction loan and the payout of that through the Westing-  
17 house Credit Corporation, is that right?

18 A Yes.

19 Q Now, below that on your chart you've listed  
20 the Holiday Inn foreclosure, one million, three hundred thousand  
21 dollars. Would you describe how that interrelates with these  
22 other transactions?

23 A The - Mr. Wood had the nine hundred thousand  
24 dollar construction loan on the - on the Holiday Inn. First  
25 and Merchants was putting pressure upon him to take the con-

1     struction loan out of F&M. They had it and they wanted it out  
2     of the bank. Mr. Wood came across two gentlemen, George Muse  
3     and I think his name was Jack O'Brien, who were interested in  
4     buying the Holiday Inn. Mr. O'Brien, I believe, one of the  
5     two and I believe Mr. O'Brien used to be a mortgage banker  
6     with United Mortgage - United Virginia Mortgage Corporation  
7     and Mr. Wood was hopeful that with a mortgage banker owning  
8     the Holiday Inn that it would be easier to find a permanent  
9     mortgage on the property. The Holiday Inn was in Luray,  
10    Virginia and one of the problems, I think, that - involved  
11    in attempts to refinance it was that it had a seasonal type  
12    business, so ...

13           Q To make a long story short, did Muse and O'Brien  
14    ultimately default?

15           A They ultimately defaulted and had to foreclose  
16    on - foreclose on Luray Properties, Incorporated.

17           Q Then that effort to try to find a permanent  
18    financing did not succeed?

19           A It did not.

20           Q All right, and then you have sale of Holiday  
21    Inn to Johnson right below that, one million, seven hundred  
22    thousand dollars.

23           A That involved in an exchange of property, propos-  
24    ed exchange of property with the gentleman whose last name  
25    is Johnson...I don't recall his first name, involving some

1 property in Florida which was - went to contract and was unable  
2 to close as a result of Mr. Johnson subsequently getting a  
3 divorce from his wife and unable to convey the property that  
4 he was obligated to convey as a result of the exchange.

5 Q So this was another effort to obtain money to  
6 pay out a portion of F&M's loan, is that correct?

7 A And it would have transferred the - made the  
8 primary obligor on that loan someone other than Mr. Wood as  
9 long as it was at F&M.

10 Q I may have asked you this before, but was the  
11 nine hundred thousand dollar construction loan part of this  
12 bill that we're considering in this case, the closing of the  
13 loan itself?

14 A No, it's not.

15 Q So that what we're dealing with is these efforts  
16 to find buyers and/or financing to pay out the construction  
17 loan, is that correct?

18 A That's correct.

19 Q All right, and then you have two apparently re-  
20 lated matters outlined in green, Bank of Luray attachment suit  
21 and District Court litigation, both were there over the Holiday  
22 Inn foreclosure. Are those spin-offs of that transaction?

23 A Yes, the - the transaction with Muse and O'Brien,  
24 Luray Properties, Inc., was structured in such a way that Muse  
25 and O'Brien and some other associates of theirs got a forty-five

1 percent interest in the stock of Luray Properties, I'm pretty  
2 - I think it was forty-five. Mr. Wood had a - if it was forty-  
3 five, Mr. Wood had a fifty-five percent interest in the stock  
4 of Luray Properties, Inc., and with a provision that if they  
5 could find the permanent financing there was a mechanism where-  
6 by they would acquire his outstanding stock of Luray Properties,  
7 Inc. That was - it was done this way in order to avoid having  
8 to pay two transfer fees on the Holiday Inn license agreement  
9 in the event that he should thereafter have to reacquire the  
10 property through foreclosure proceedings, but the Bank of  
11 Virginia - I mean Bank of Luray had made loans to Luray  
12 Properties, Inc. and it made - and they subsequently filed a  
13 - an attachment suit attaching funds that had been escrowed  
14 - there was a mechanism for escrow of the credit cards and  
15 they set off some funds in the bank. The District Court  
16 litigation related to claims of creditors of the Holiday Inn  
17 in both Luray Properties, Inc. and in the period of time that  
18 it was being conducted. Operations were being conducted by  
19 Mr. Kudravetz and I as trustees in the foreclosure and payment  
20 of withholding taxes, et cetera, during this period of time  
21 which went on for some period of time.

22 Q So, you all were technically operating the  
23 Holiday Inn at that point?

24 A Oh, for a period of time we were operating the  
25 Holiday Inn as trustees under the -in possession.

1 Q Okay. Now, we're moving over next to Reservoir  
2 Properties outlined in orange, I guess it is, and would you  
3 describe how those matters interrelated with other matters?

4 A The zoning and site plan approvals and documents  
5 in the erosion control permit in the Reservoir litigation  
6 related to proposed development of property that was, I believe,  
7 titled in the name of Alpha Land Trust for a town house  
8 development and attempts to secure approvals from the County  
9 of Albemarle when they were trying to preclude development in  
10 the Rivanna Watershed. And through the Soil Erosion Control  
11 Board and Moratorium Ordinances on Soil Erosion and Control  
12 Permits and revisions to the Subdivision Ordinance. The -  
13 part of the purchase price of the Reservoir Properties were  
14 paid from the lending institutions and there were attempts to  
15 get Bank of Virginia to take it as collateral but they were  
16 in lieu of some of the other collateral but they were unwilling  
17 to do so.

18 Q Okay. And these two items of litigation you  
19 say were an effort to - the mandamus to obtain what?

20 A To obtain the issuance of a soil erosion permit.

21 Q And the 1983 action?

22 A Was with respect to the same - was with respect  
23 to the refusal of the County to issue a soil erosion permit.

24 Q Okay. Now, moving over to the last major section,  
25 Albemarle Bank and Trust Stock and items listed below that,

1 would you describe how they interrelate? To the extent  
2 you have not already done that in talking about the bank  
3 loans and ...

4 A The Albemarle Bank and Trust had ...

5 Q Could you speak a little louder?

6 A I'm sorry. Albemarle Bank and Trust was a bank  
7 that was organized in Albemarle County and Mr. Wood was the  
8 - during different periods of time was either a director and/or  
9 president of the Bank. The stock, as I mentioned, had been  
10 used as collateral by three of the institutions in connection  
11 with Mr. Wood's refinancing efforts and some of the contacts  
12 that he had in his interests in the banking business. He at  
13 one time explored, I think together with some other people  
14 from out of state, the possibility of making a - tender an  
15 offer for the stock of NB Corporation which owned National  
16 Bank - of which National Bank and Trust Company here in Char-  
17 lottesville was the primary bank. The heliport related to  
18 securing zoning approval for the construction of heliport on  
19 the roof of the Albemarle Bank and Trust Company Building for  
20 a helicopter that Mr. Wood owned at the time.

21 Q All right, on the NB Corporation matter, did Mr.  
22 Wood approach you for representation on that or did you first  
23 make a suggestion to him or how did that come about?

24 A He approached me.

25 Q What did he ask you to do?



1           A   He asked me what would be the regulatory appro-  
2           vals and the steps that you would have to go through if you  
3           made a tender offer for a bank holding company.

4           Q   And your efforts for doing that are what's  
5           reflected in the bill, is that correct?

6           A   That's correct.

7           Q   With regard to the heliport, did the matters  
8           covered under the bill in question arise through a suggestion  
9           of yours or through request of Mr. Wood?

10          A   Request of Mr. Wood's.

11          Q   And what was that request?

12          A   To attend with him the zoning - the Planning  
13          Commission meeting when they were going to consider it, and to  
14          talk with the - I believe also to talk with the staff of the  
15          County Planning Department with respect to their staff report  
16          and what those conditions were going to be, and I do not pre-  
17          sently recall but I may have also attended the Board of  
18          Supervisors meeting when that - when it came up. It also in-  
19          volved my advising Mr. Wood that some affirmative action should  
20          be taken on his part with, vis-a-vis himself and Albemarle  
21          Bank and Trust Company so that the - it would not be a matter  
22          that would be subject to a claim of potential conflict of  
23          interest between himself and the Bank by any regulatory  
24          authority.

25          Q   All right, I wanted to drop back and pick up one

1 question I'd forgotten. The Westinghouse Credit Corporation  
2 loan, how did Mr. Wood made the contact by which he ultimately  
3 obtained that loan?

4 A Mr. Wood had - when Bank of Virginia had declared  
5 its loan in default and said that they were going to foreclose  
6 on his collateral, he had come to me in connection with trying  
7 to keep them from doing that and he and I - he asked me if I  
8 knew of anyway that he could - or any institution that he could  
9 get some financing from. In connection with it we talked  
10 about several possibilities, some that he was aware of, some  
11 that I was aware of, and over - I think not in our initial  
12 conversation, but subsequently after talking with one of my  
13 partners...

14 Q Which partner was that?

15 A Mr. Krumm - came up with the name of an individual  
16 that we thought would be helpful in securing financing for Mr.  
17 Wood on the Holiday Inn and that was a Mr. Carl Bildner and  
18 we put Mr. Wood in contact with Mr. Bildner and Mr. Bildner  
19 in turn, acting as a mortgage broker, was able to obtain the  
20 loan commitment from Westinghouse Creidt Corporation.

21 Q Was that his regular business, mortgage broker?

22 A That was his regular business. He was...

23 Q Did he receive a commission for that?

24 A He did.

25 Q All right.

1 A He was from Stamford, Connecticut.

2 Q Are there any other entries on the chart here  
3 that you can see that we have not discussed in terms of their  
4 relationships?

5 A None comes to mind at the moment.

6 Q Okay. Your Honor, I think we can step away  
7 from the bench with your permission.

8 THE COURT: All right.

9 Q Your Honor, I ask at this time that although the  
10 purpose is demonstrative, that the chart be marked as an  
11 exhibit and make it a part of the record.

12 THE COURT: All right, any objection to that?

13 MR. HAUGH: I would think to just maybe the charge  
14 records...

15 THE COURT: What?

16 MR. HAUGH: I would object to the information on  
17 it, I mean as far as being taken as proof, I have no objection  
18 to the chart as he's gone through it...

19 THE COURT: Just as a demonstrative exhibit.

20 MR. HAUGH: Yes.

21 THE COURT: Yeah, all right, it will be received  
22 for that purpose. What will that be, three?

23 Q Yes, sir.

24 THE COURT: Plaintiff's Three, okay.  
25

1 Plaintiff's Exhibit Number Three (3) was duly  
2 marked and received into evidence at this time.  
3

4 Q Mr. Carwile, in looking at this chart just for  
5 purposes of being able to see the list of different transactions,  
6 would you tell the Court which of the transactions reflected  
7 on the chart, and also reflected in the bill, were at any point  
8 in time simultaneously active? Not necessarily at this point  
9 the inclusive dates, but just to list any items which may have  
10 active at a common point in time?

11 A The Rio Associates litigation, the Windmill  
12 Point-Atwood litigation and the Seay litigation were all  
13 commonly active during periods of time. They did not all  
14 commence at the same time, they did not all end at the same  
15 time. Also the - the 1983 action on the Reservoir was active  
16 during the same period of time. The refinancing efforts were  
17 active throughout this - the period of time covered by this  
18 bill. The dealings with the lending institutions were active.

19 Q Okay. Your Honor, we're at a point in my  
20 examination of Mr. Carwile where if we were in the middle of  
21 the day going on, I'd ask for about a five minute recess to  
22 get my notes together, meaning I'm right at the end. If we're  
23 going to go on into the evening, I'd like to do that. If on  
24 the other hand we're breaking, I'd just as soon...

25 THE COURT: I'd like to complete his direct and then

1 we'll resume at another date if we can do that.

2 (Court and counsel confer regarding the conclusion  
3 of taking the evidence.)

4 THE HEARING RECESSED UNTIL 6:30 P.M.

5  
6 THE HEARING RECONVENED.

7 THE COURT: Okay.

8  
9 Q All right, Mr. Carwile, I've already taken you  
10 through your general arrangement and agreement with Mr. Wood  
11 about payment of fees on account, taking proceeds on closing.  
12 On any matters that you represented him on during the existence  
13 of Carwile, Kudravetz and Krumm, were any current fees taken  
14 on closings or other transactions?

15 A Yes, there were times when that occurred.

16 Q In what situations did that occur?

17 A That was - would be in a context of a closing or  
18 a sale typically. It may have been sometimes in connection  
19 with a loan, but I believe - my recollection would have been  
20 they would have been in connection with sales where we'd ask  
21 for payment on account on our fees, but Mr. Wood would tell me  
22 that he had - had to have the money for payment of other obli-  
23 gations that were coming due or he had to pay interest to a  
24 bank or a bank was requiring the payment of - on principal,  
25 et cetera, and that he had to have - didn't have money out of

1 that closing to pay on account and I would take a fee out for  
2 that particular transaction and - because I was going to just  
3 try and get that much of it paid...

4 Q Did you discuss that part of it with him?

5 A Yes.

6 Q All right, were these large fees, small fees,  
7 how did they shape down?

8 A They were - I would characterize them as small  
9 fees.

10 Q All right, what's the largest one that you can  
11 remember out of it?

12 A The largest one that I can remember would be the  
13 sale to General Electric, which was approximately a thousand  
14 dollars.

15 Q All right. With that exception, what was the  
16 general range of the other fees where you'd take a fee on a  
17 current closing under this arrangement of where he'd ask you  
18 not to take anything to apply to account?

19 A In the range of several hundred dollars.

20 Q All right, now with regard to the bill that has  
21 been presented in this case and the subject matter of this  
22 case, were the fees on that bill billed to Mr. Wood at any  
23 earlier time than the presentation of this bill?

24 A No.

25 Q All right, now, in response to the Defendant's

1 request for production of documents, did you make available  
2 your firm's time sheets involving transactions covered by the  
3 bill?

4 A Yes.

5 Q Do those time sheets represent all of the time  
6 spent on each of these transactions?

7 A No.

8 Q Would you explain that?

9 A Those time sheets would represent the amount of  
10 time that got recorded on daily time sheets, but all the time  
11 involved in working on Mr. Wood's matters and other clients'  
12 matters were not always recorded and I would probably be  
13 either-in the firm, I guess I probably was the one who was  
14 most likely not to have -.. who was the one that would be most  
15 likely to have substantial amounts of time that would not get  
16 recorded.

17 Q And why was that?

18 A I think probably the busier that I was in terms  
19 of working on matters, the - the less likely I was to be able  
20 to sit down and keep an accurate and full record of my time.

21 Q Do you recall that one item on the bill was  
22 listed Estate Planning?

23 A Yes.

24 Q All right. Those items of representation that  
25 you've listed there, were those done of your own instance or

1 at the request of Mr. Wood?

2 A At the request of Mr. Wood.

3 Q Did you at anytime undertake to prepare estate  
4 planning, propose documents without his authority or other than  
5 at his request?

6 A No.

7 Q That's all I have at this time, Your Honor.

8 THE COURT: All right, cross?

9 MR. HAUGH: Yes, Your Honor.

10  
11  
12  
13 CROSS EXAMINATION

14 By: Mr. Haugh:

15 Q Mr. Carwile, when did you leave the Mussleman  
16 firm and establish your own office?

17 A In the fall of 1973.

18 Q When did you then form a partnership with anybody?

19 A At some point in 1975 - '75 or late '74, I  
20 formed a partnership with Mr. Kudravetz.

21 Q Would the date around 12/31/74 be about right?

22 A Yes.

23 Q All right.

24 A That would be about right.

25 Q Then what happened, what was the successor firm



1 A At times, yes.

2 Q That's all I have, Your Honor.

3 THE COURT: All right, redirect?

4 MR. LOWRY: Yes, sir.

8 REDIRECT EXAMINATION

9 By: Mr. Haugh:

10 Q And I'm going to struggle to be as fast as  
11 possible. In response to Mr. Haugh's question, I believe you  
12 stated that you could not give him a specific date on which  
13 your arrangement was entered into with Mr. Wood. Can you tell  
14 us whether or not that arrangement had been entered into,  
15 however, prior to the formation of Carwile, Kudravetz and  
16 Krumm?

17 A Yes.

18 Q All right, and had it been?

19 A Yes.

20 Q Now, you were asked many questions with regard  
21 to time sheets that were available on various of these files.  
22 Would the files themselves and the documents in the files  
23 supplement or would they not supplement the time sheets in  
24 terms of your being able to determine dates at which you were  
25 still actively representing Mr. Wood on those matters?

1           A   They would supplement the files - I mean they  
2 would - the files would supplement the time sheets, not that the  
3 files would have entries in them as some attorneys keep in the  
4 file jacket, in the inside of it, as to time from the standpoint  
5 of what was being done and when it was being done, the files  
6 would supplement the times sheets.

7           Q   I know show you a document appearing to be - or  
8 two slips of paper joined together in preparation which appear  
9 to be receipts from the Circuit Court of Albemarle County,  
10 Virginia, the Clerk's Office, and I'll ask if you can identify  
11 those documents? I'm sorry, show them to counsel first if you  
12 would. I show you the two documents and ask you if you re-  
13 cognize them?

14          A   These are Clerk's receipts from the Clerk's  
15 Office of Albemarle County relating to the leases of the  
16 deeds of trust on the portion of the Airport Properties.

17          Q   What portion of the Airport Properties?

18          A   The part that was formerly owned by Savory  
19 Amato. I believe it was referred to as Airport Associates  
20 prior to Mr. Wood and North Rivanna First Land Trust after he  
21 acquired it.

22          Q   And what are the dates on those two items?

23          A   They are March 13 - one's dated March 13th, 1979,  
24 and the other one is dated March 13th, 1978. I think that the  
25 - the top one is probably in error and that both of them are

really March 13th, 1978.

Q Are they consecutively numbered?

A They are consecutively numbered and they reference of the date/the deed as being 3/1/78.

Q All right. I offer this as Plaintiff's Exhibit Four.

THE COURT: Any objection?

MR. HAUGH: No, sir.

MR. TREACLE: No, sir.

THE COURT: So received.

Plaintiff's Exhibit Number Four (4) was duly marked and received into evidence at this time.

Q I now show you what's been marked for identification as Plaintiff's Exhibit Five, and ask you if you can identify that document?

A This rep - this is a photocopy of two documents. One's a notice of assessment from the Commonwealth of Virginia and the other one is - the notice of assessment is dated 6/7/77. The - I'm sorry, 8/22/77, and it's a check drawn on Carwile and Hess Escrow Account payable to State Tax Department, September 26, 1979 in the amount of \$305.29 and there's a pen notation at the bottom, to Mr. Carwile, Thanks, Keller. Keller was the agent for the State Tax Department.

1 Q And what transaction does that document relate  
2 to?

3 A Repossession of Holiday Inn.

4 Q Which is part of your bill in this matter, is  
5 that correct?

6 A That is correct.

7 Q I offer this as Exhibit Five, Your Honor.

8 THE COURT: Any objection?

9 MR. HAUGH: No, Your Honor.

10 THE COURT: So received.

11  
12 Plaintiff's Exhibit Number Five (5) was duly marked  
13 and received into evidence at this time.

14  
15 Q I now show you a document consisting of two  
16 pages, the first being a carbon copy of a letter dated June  
17 26, 1979, the second page being a photocopy of apparently a  
18 civil warrant and ask you if you recognize those two documents?

19 A The letter is a letter address to Mr. Wendell  
20 Wood, re Luxer Lighting Products, Inc. versus United Inns  
21 of America. It's a letter to Wendell for Jane Ray, who was  
22 in my office stating that we'd previously mailed him a copy  
23 of the summons in the above matter that was sent to us by  
24 mail as registered agent. Enclosed was a copy which was  
25 served on me as registered agent.

1 Q Okay, what matter does this all deal with?

2 A Dealt with the matter that was pending in the  
3 General District Court of Page County with respect to the  
4 Holiday Inn and ...

5 MR. HAUGH: What date was that, Ed?

6 Q The letter was March...

7 A June...

8 Q Excuse me, June 26 of '79 and the warrant is  
9 dated ...

10 A 6/19/79.

11 Q All right, sir. I offer this as Exhibit Six.

12 MR. TREACLE: For identification who is the warrant  
13 made out to, Luray Properties?

14 A United Inns of America.

15 Q United Inns of America, Inc. Stuart F. Carwile,  
16 Registered Agent for United Inns of America, Inc.

17 THE COURT: Any objection?

18 MR. HAUGH: No, Your Honor.

19 THE COURT: Number six, received.

20  
21 Plaintiff's Exhibit Number Six (6) was duly marked  
22 and received into evidence at this time..

23  
24 Q I now show you a letter which we're about to  
25 mark for identification as Exhibit Seven, dated March 31st,

1 '78 to Robert Musselman from Ross W. Krumm and ask you if you  
2 recognize that document?

3 A And this one's a letter that was written by  
4 one of my law partners to Mr. Robert Musselman.

5 Q And in connection with what transaction?

6 A Holiday Inn of Luray.

7 Q All right, and what is the subject matter of the  
8 letter?

9 A A potential - interest of a potential purchaser  
10 in acquiring the Holiday Inn.

11 Q Who was represented by Mr. Musselman?

12 A Presumably, I did not write the letter, but, yes.  
13 I do recall Mr. Krumm discussing it with him.

14 Q Would this be one of the purchasers already noted  
15 under that group of Holiday Inn section on the chart or would  
16 this be an addition to that?

17 A It would be an addition to it.

18 Q All right. I offer this as Exhibit Seven.

19 THE COURT: Any objection?

20 MR. HAUGH: No, Your Honor.

21 THE COURT: So received.

22  
23 Plaintiff's Exhibit Number Seven (7) was duly marked  
24 and received into evidence at this time.  
25

1 Q I now show you a document that's been marked  
2 for identification as Plaintiff's Exhibit Eight. It's a letter  
3 on the letterhead of Carwile, Kudravetz and Krumm, dated  
4 February 28, 1978. I ask you if you recognize that document?  
5 It's addressed to First and Merchants National Bank dated  
6 February 22, 1978.

7 A Yes, this is a letter that - from Carwile,  
8 Kudravetz and Krumm to First and Merchants with respect to a  
9 supplementary title opinion letter after the recordation of  
10 the first supplemental deed of trust and I've taken into account  
11 partial - two partial releases that had been made from prior  
12 deeds of trust.

13 Q That relates to the F&M transaction?

14 A Yes.

15 Q I offer that as...

16 MR. HAUGH: I'm sorry, you said two partial releases  
17 and I didn't hear the end of it.

18 A Two partial releases from the deed of trust.  
19 This was related to a supplemental deed of trust.

20 Q We offer this as Plaintiff's Exhibit Eight.

21 THE COURT: No objection.

22 MR. HAUGH: No objection.

23 THE COURT So received.

24  
25 Plaintiff's Exhibit Number Eight (8) was duly marked

1 and received into evidence at this time.

2  
3 Q All right, now I'm showing you a document marked  
4 for identification as Plaintiff's Exhibit Nine, which says at  
5 the top, Direct Payments Authorization. Do you recognize that  
6 document?

7 A This is a document that was in connection with  
8 Gerard Greims, direct payment authorization between Wood,  
9 Greims and Rio Associates so that Greims could get paid  
10 directly by Rio Associates and it could be offset against  
11 what was - Rio Associates would pay Wood. I do not believe  
12 that this document was ever executed by the parties, but it  
13 was something that was - discussions were had with respect to  
14 and they - they wanted it and I don't think Mr. Wood consented  
15 to it.

16 Q Was it prepared at Mr. Wood's request?

17 A Prepared at Mr. Wood's request? No, it was  
18 prepared at Mr. Greims request, I presume, by Mr. Russell and  
19 sent to me to see if I could get Mr. Wood to agree to it.

20 Q Did you discuss it with Mr. Wood?

21 A I did, and it's my recollection that he was  
22 unwilling to agree to it.

23 Q What's the year noted on this document?

24 A 1978.

25 Q I offer this as Plaintiff's Exhibit Number Nine.



1 THE COURT: Any objection?

2 MR. HAUGH: What does it refer to, item four?

3 Q What was the question?

4 MR. HAUGH: Which item in the statement?

5 Q Gerard Greims.

6 MR. HAUGH: Number four?

7 Q Whatever number Gerard Greims is.

8 MR. HAUGH: You all have it from 12/76 to 10/24/77.

9 That ends with the preparation of final order and appearance  
10 in Court to secure dismissal of the case.

11 Q That's correct...

12 MR. HAUGH: I wasn't going to object, Your Honor,  
13 except on cross examination I think it exceeds the statements  
14 that are being charged here.

15 THE COURT: Was that the one though where he said  
16 there were other matters?

17 MR. HAUGH: Yes, sir.

18 Q Right, that's one where he testified he's since  
19 then...

20 THE COURT: It wasn't inclusive.

21 Q ...realized that there were other matters that  
22 weren't included in the bill.

23 THE COURT: Okay.

24 Q You'd already been questioned on that by Mr.  
25 Haugh.

1  
2 Plaintiff's Exhibit Number Nine (9) was duly  
3 received into evidence at this time.  
4

5 Q Your Honor, this next document marked for  
6 identification purposes, it is actually more than one document.  
7 We have two recorded receipts of two deeds and two deeds of  
8 release that relate - the recording receipts relate to the  
9 deeds of release and I'd like to mark them all as one exhibit  
10 for identification as Exhibit Ten. Now, I show you two record-  
11 ing receipts from the Circuit Court of Albemarle County,  
12 number 16743 and 16741, both dated February 23, 1978, and two  
13 deeds of release, both dated February 23, 1978 and I'll ask  
14 you if you recognize them?

15 A These are deeds of release in Lancaster County  
16 relating to First and Merchants line of credit.

17 Q When were they recorded?

18 A February 23, '78 - February 23, '78.

19 Q Okay.

20 MR. HAUGH: What items do these two refer to, Mr.  
21 Lowry?

22 Q F&M Financing. Excuse me, I had asked you the  
23 date of recordation. Would you look at the receipts that relate  
24 to those deeds of releases and tell me what dates the receipts  
25 are?

1           A   These are March 16, '78 in Albemarle County. I  
2 was looking at the back. They also had to be recorded in  
3 Lancaster County, and they were recorded in Lancaster County  
4 February 23, '78.

5           Q   And so they're recorded in Lancaster in February  
6 and in Albemarle in March, is that right?

7           A   That's correct.

8           Q   I'd offer these jointly ...

9           MR. HAUGH: I'm going to object, Your Honor, until  
10 I find out what they pertain to.

11          Q   I just said F&M Financing...

12          MR. HAUGH: Well, I know...

13          Q   ... portion of the bill.

14          MR. HAUGH: The only thing mentioned under First  
15 and Merchants are a nine hundred thousand dollar loan, a  
16 2.45 million dollar loan and a hundred and seventy-five thou-  
17 sand dollar supplemental. Now, a partial release of those  
18 wouldn't have anything to do with obtaining the loans.

19          Q   Which of those loans were those parcels of  
20 property taken as collateral for?

21          A   If I could see the exhibit file that was previous-  
22 ly shown me with respect to First and Merchants, I could be  
23 sure of my answer.

24          Q   You mean the file that Mr. Haugh showed you?

25          A   Yes, that's been introduced.

1 Q While he's looking for that, do you recall  
2 in connection with what transaction they were released? Or  
3 for what purpose they were released?

4 A One of them was a deed of partial release with  
5 respect to the two million, four hundred and fifty thousand  
6 dollar line of credit deed of trust and the other was a -  
7 a deed of release with respect to the nine hundred thousand  
8 dollar deed of trust. They're related to property in Lancaster  
9 County and some property in Albemarle County and was in con-  
10 nection with some refinancing that was being done at United  
11 Virginia Bank where First and Merchants was unwilling to  
12 advance more money but they were willing to release their  
13 collateral - some collateral to - if another lender was  
14 willing to make a loan to Mr. Wood.

15 Q All right, we offer these matters in evidence.

16 MR. HAUGH: If I may ask a couple questions.  
17 Referring to item two...

18 Q Your Honor...

19 THE COURT: Item two, you say.

20 MR. HAUGH: Are these the ones that Mr. Carwile  
21 is talking about, the UVB loan in item two?

22 Q And he also related them to the F&M loans for  
23 which those properties were originally taken as collateral.

24 MR. HAUGH: Paragraph three says, in preparation  
25 of deeds of partial release to First and Merchants National

1 Bank deed of trust, for Amato deed of trust and for  
2 commission bond deed of trust, which is charged under item  
3 two and we haven't raised an objection to the statute on that.

4 Q These also related to F&M financing, Your Honor,  
5 which is another item here. What he's saying is it was taken  
6 originally in connection with F&M financing and then released  
7 in connection with Bank of Virginia financing...

8 A United Virginia Bank...

9 Q Excuse me, United Virginia Bank financing.

10 MR. HAUGH: Is it my understanding that these  
11 releases or partial releases were obtained in order to get the  
12 loan from United Virginia Bank, which is reported in item two.

13 Q That was his testimony.

14 MR. HAUGH: That is reported in item two and we  
15 haven't raised that question in the statute of limitations...

16 Q Then I assume you have no objection to it being  
17 admitted.

18 MR. HAUGH: But I do object to it as part of this  
19 hearing.

20 THE COURT: He's saying it's not relevant.

21 MR. HAUGH: No, sir.

22 Q He's already testified that the property was  
23 originally a part of the F&M financing and it's also related  
24 to his efforts in that matter.

25 MR. HAUGH: There's no question it's a partial

1 release of the F&M mortgages, but Your Honor, it's charged  
2 for in item number two, the four hundred thousand dollar loan  
3 from United Virginia Bank of Charlottesville, 2/78 to 3/24/78,  
4 preparation...

5 THE COURT: That's the purpose of what it's for,  
6 but it relates back to a release of a deed from F&M which is  
7 within the scope of your plea isn't it?

8 MR. HAUGH: Well, but sir...

9 Q It certainly shows the interrelationship...

10 MR. HAUGH: He can't claim it in both items, Your  
11 Honor. He's claimed it in this one...

12 THE COURT: He's claiming compensation there, but  
13 he's showing it as part of the overall interrelationship.

14 Q Yes, sir.

15 MR. HAUGH: But it's not mentioned in number 20,  
16 F&M, only three deeds of trust mentioned.

17 THE COURT: He's not charging it under 20...

18 MR. HAUGH: No, sir.

19 THE COURT: ... but he's using it to show an overall  
20 relationship, I take it.

21 Q Yes, sir.

22 THE COURT: I'll receive it.

23 MR. HAUGH: Well, we'll concede that to get partial  
24 releases from one to the other...

25 Q If you'll concede the interrelationship....

1 MR. HAUGH: No, ...

2 THE COURT: Well, I'll receive it for what it is  
3 worth.

4 MR. HAUGH: Certainly you have to get partial  
5 releases if you're going to get another deed of trust on part  
6 of that property.

7  
8 Plaintiff's Exhibit Number Ten (10) was duly marked  
9 and received into evidence at this time.

10  
11 Q Your Honor, at this time just to be sure we  
12 haven't skipped a cog here, I'd like to offer the exhibit to  
13 the bill of particulars, which is really a copy of the bill  
14 with the dates supplied, into evidence as Plaintiff's Exhibit  
15 Eleven.

16 THE COURT: No objection to that?

17 MR. HAUGH: No, Your Honor. We've been reading  
18 from it all day.

19 Q Yeah, we've all be working with it and I just  
20 want to tie it up.

21  
22 Plaintiff's Exhibit Number Eleven (11) was duly  
23 marked and received into evidence at this time.

24  
25 Q I'm now showing you Defendant's Exhibit Seven,

1 which deals with the Bank of Virginia, Westinghouse Credit  
2 Corporation Loans and refer your attention to the closing  
3 statement, which I believe you testified is not a copy of the  
4 closing statement that was actually used in that transaction.  
5 Is that correct?

6 A Yes.

7 Q How was the ten thousand dollars that was taken  
8 out of that closing applied; in other words, was it applied  
9 to fees from that closing or on account in general?

10 A It was applied on account.

11 Q And is there another closing statement in your  
12 file that was produced to copied by counsel for Mr. Wood that  
13 does not show a designation such as this one for how fees  
14 were applied?

15 A Yes, there is.

16 MR. HAUGH: I understand. We have that. We were  
17 just going to the basis of the amount...

18 Q I just want to be clear. They only included  
19 one copy in here and there were several - there were three  
20 different closing statements as a matter of fact, each of  
21 which differed in a number of ways and each of which they  
22 copied. All right, when you prepared your bill, you and your  
23 partners prepared your bill which is the subject matter of  
24 this litigation, what sources did you refer to in preparation  
25 of that bill?



1           A Referred to our - the time sheets that we've  
2 been talking to today, referred to the files that were involved  
3 in the various transactions. I do not know that we looked at  
4 every file that was involved in all the transactions but  
5 particularly on the major transactions in terms of ascertaining  
6 and reviewing what was done, the files were referred to. We  
7 referred to document binders that were kept with respect to  
8 - they were unrelated to specific files, but were kept with  
9 respect to specific conveyances, either - they were involved  
10 in the sale deeds or deeds of trust with respect to properties  
11 owned by Mr. Wood.

12           Q Is that generally the source?

13           A I think that's generally the source.

14           Q All right, is your bill as prepared intended  
15 to list each and every act undertaken by you on behalf of Mr.  
16 Wood under these categories or is instead intended as a summary?

17           A A summary.

18           Q At the time you prepared this bill and then at  
19 the time that you added the dates to Exhibit Eleven, is that  
20 right, the most recent Exhibit, did you believe the dates to  
21 be accurate?

22           A I did.

23           Q With the exception of the Gerard Greims matter,  
24 which you've now testified that you discovered evidence of  
25 later work than was listed there, do you still believe those

1 dates to be accurate?

2 A To the best of my knowledge, yes.

3 Q That's all I have, Your Honor.

4 MR. HAUGH: I have just a couple questions, Your  
5 Honor.

6  
7  
8  
9 RECROSS EXAMINATION

10 By: Mr. Haugh:

11 Q Mr. Carwile, do you have your Statement in front  
12 of you, paragraph number five?

13 A Yes.

14 Q You exhibited an assessment from the Tax Depart-  
15 ment of Luray Properties, 8/22/77 and payment September 26, '79.  
16 Would you point that out under the things claimed in item  
17 five?

18 A Item five represents a summary. That particular  
19 item is not specifically stated in the summary.

20 Q Your Honor, I seem to recall sometime ago we  
21 asked for a bill of particulars which was denied and now they  
22 say this is just a summary. I think we're going to renew this  
23 again later on. Now, going back ...

24 MR. LOWRY: Your Honor, I'd like to respond to that.  
25 As I recall Your Honor ruled that the majority of the items

1 set forth in the Statement under paragraph four, Gerard Greims?

2 A No.

3 Q All right, that's all I have of Mr. Wood.

4 THE COURT: All right. Cross?

5 Q I do have one more question, excuse me, Mr.  
6 Lowry. You heard Mr. Carwile testify yesterday that you and  
7 he had at least a conversation or several conversations in  
8 which you requested him not to send you bills for legal services.  
9 Did any such conversation ever take place?

10 A Not to my knowledge.

11 Q Between you and Mr. Carwile?

12 A No.

13 Q Okay. That's all I have.

14  
15  
16  
17 CROSS EXAMINATION

18 By: Mr. Lowry:

19 Q I'm referring you back to Plaintiff's Exhibit  
20 Six, which was the cover letter from Jane Ray of Carwile,  
21 Kudravetz and Krumm's office and the civil warrant having to  
22 do with Luxor Lighting.

23 A Okay.

24 Q In whose name was that Holiday Inn put after the  
25 foreclosure sale?

1 A United Inns of America.

2 Q And against whom is the warrant?

3 A United Inns.

4 Q All right, United Inns of America.

5 A Yes.

6 Q Is that right, okay. Now, on that foreclosure  
7 sale, did you ever pay Messrs. Carwile and Kudravetz as  
8 trustees a commission for serving as trustees on that sale?  
9 Was the trustees' commission ever paid?

10 A I don't know whether - what - how the fee was  
11 - whether it was trustees' sale - whether it was trustees'  
12 commission or not. I think they got money out of the sale.  
13 I don't know how they took it, whether they took it as a fee  
14 of a trustee or ...

15 Q You don't know?

16 A Yeah, I don't know.

17 Q All right. Now, did I understand you correctly...

18 A I do not think it was a percentage, if that's  
19 what you're saying, like I think, a standard five percent or  
20 two percent or whatever it is. I don't - I don't recall that.

21 Q Do you know whether a percentage was paid or  
22 not?

23 A I do not know. That's what I said.

24 Q Now, did I understand you correctly on your  
25 testimony yesterday to say that you did not read or take

1 copies of closing statements from any of these...

2 MR. HAUGH: I'm going to object to this, Your Honor.

3 Q Setting up further questions, Your Honor.

4 THE COURT: That will relate to the direct we've  
5 just had?

6 Q Yes, sir.

7 THE COURT: All right, let's see if does.

8 Q Is that correct, that you as a general rule didn't  
9 obtain copies of closing statements from these transactions?

10 A That's correct. I think we received some, but  
11 as a rule we did not.

12 Q If that is the case, how would you know whether  
13 or not Mr. Carwile had disbursed funds in payment of taxes due  
14 in any of your closings including Holiday Inn of Luray?

15 A I didn't say he disbursed tax - in fact, I said  
16 just the opposite. I - like six months later, I paid seventeen  
17 thousand dollars...

18 Q On withholding taxes?

19 A Yes.

20 Q How would you know whether or not any payments  
21 had been made by him in payment of any additional taxes or  
22 other taxes of different title?

23 MR. HAUGH: I think this is going beyond the scope,  
24 Your Honor.

25 Q I don't believe so unless I misunderstood his

1 testimony on recall. You had shown to him our Exhibit Five  
2 having to do with tax assessment and payment and he said he  
3 wasn't aware of that, and also I thought was stating that in  
4 his opinion it hadn't been paid, and I was asking him how he  
5 knows.

6 MR. HAUGH: No, he didn't - I don't think he -  
7 unless I misunderstood him, I don't think he said that.

8 Q So, you're not representing it was his opinion  
9 that it hadn't been paid?

10 MR. HAUGH: Oh, no, no.

11 Q All right, I'll withdraw that question. All  
12 right, now, with regard to Plaintiff's Exhibit Seven, which  
13 was the letter to Robert Musselman about a prospective  
14 purchaser apparently he had for the Holiday Inn. How would  
15 Mr. Musselman have known to contact Mr. Carwile if it wasn't  
16 generally known in the community that he represented you on  
17 your legal affairs?

18 A I guess you'd have to ask Mr. Musselman or  
19 Mr. Carwile or Mr. Krumm. I...

20 Q You just don't know?

21 A Yeah. I would think Mr. Musselman, as well as  
22 anyone, would know if there's negotiations or Stuart or Ross  
23 Krumm or David Kudravetz either one knew that I did all my  
24 negotiations. Stuart - much less Stuart or anyone else did  
25 none of my negotiations.

1 valuable and turning around and developing it or selling it  
2 and making more money from the sale than you had to pay on the  
3 borrowed money. We are going to give you an example during  
4 the course of this trial, probably one of the most classical  
5 examples of the use of leverage that you will ever see. In  
6 1975 Mr. Wood was able to purchase twelve hundred(1,200) acres  
7 from the airport on 29 North all the way down to Route 29,  
8 about a mile and a half of road frontage. For him to purchase  
9 that out of pocket expense to him was five thousand dollars  
10 (\$5,000.00). It cost him five thousand dollars(\$5,000.00).  
11 Within nine(9) months, on his personal financial statements,  
12 this five thousand(\$5,000.00) bucks, the property itself had  
13 a Deed of Trust on it for a million six hundred thousand  
14 dollars(\$1,600,000.00), all five(5) tracts. He paid five  
15 thousand dollars(\$5,000.00) for the property out of his  
16 pocket and within nine(9) months he was listing that property  
17 over four million dollars(\$4,000,000.00) on his personal  
18 financial statement. So you can see how you use this concept  
19 of leverage to buy, sell, manipulate and develop property to  
20 a great gain.

21 Now, in the case that we are going to be hearing today,  
22 the property that we are going to be talking about, we are  
23 going to be talking about millions of dollars. We are not  
24 here talking about the purchase of a residential lot somewhere,  
25 something like I would buy, a house, a lot to build a house on.

1 significance. The banks were foreclosing on his property, he  
2 could lose those properties but he was on those notes person-  
3 ally and he had a whole lot of personal property, a very  
4 expensive home in Ednam Forest, stock in Albemarle Bank and  
5 Trust, a yacht, helicopter, six hundred thousand dollars  
6 (\$600,000.00) worth of art and oriental rugs in his home, all  
7 of those things were subject to call in foreclosure by the  
8 banks when he defaults on these loans. For that reason it

9 was very important that he had an attorney, or a group of  
10 attorneys, that he could rely on when these defaults started  
11 being declared to protect him, not only in his business but  
12 his personal assets and much of the work that you will hear  
13 about that Carwile, Kudravetz and Krumm performed for Mr. Wood  
14 was done for just that, trying to protect Mr. Wood's assets,  
15 protect Mr. Wood's position and continue to move and churn  
16 these properties around, constantly trying to make a buck here  
17 by mortgaging a property, selling it, or putting it together  
18 and developing it.

19 Now, I think that gives you a general idea of the  
20 parties and what they do. Let's talk about the relationship  
21 of Carwile, Kudravetz and Krumm as a law firm for Mr. Wood.  
22 What they want to get, right up front so you understand. The  
23 amount that we are suing for in this case is one hundred and  
24 twenty-three thousand dollars, one hundred twenty-three thous-  
25 and two hundred and three dollars and forty cents exactly.



1 ~~He was being carried by his lawyers who were not submitting~~  
2 bills for their services. The other thing you are going to  
3 hear about that is this put a tremendous strain on the law  
4 firm of Carwile, Kudravetz and Krumm, these guys, approxi-  
5 mately fifty(50) to sixty(60) percent of Stuart Carwile's  
6 time was devoted exclusively to representing Wendell Wood and  
7 there were months when Wendell wasn't paying because his cash-  
8 flow problems were difficult and he couldn't pay, these guys  
9 ended up going to the bank borrowing money to pay their  
10 expenses...

11 MR. HAUGH: I object to this, Your Honor. That's not  
12 a part of his case.

13 THE COURT: You don't have a claim for that do you?

14 MR. KENDALL: No sir, not for the interest. The issue  
15 is going to be whether or not they were carrying him Your  
16 Honor and why they were carrying him and the...

17 THE COURT: The question is whether or not the defend-  
18 ant owes it, carrying him doesn't have much relevanc to it.

19 MR. KENDALL: All right, I'll move on. Now, we are  
20 here today because we are claiming that there are twelve(12)  
21 items in this bill that haven't been paid at all, twelve(12)  
22 major transactions. Now, we expect the defendant to come in  
23 here and make three or four claims. First, he is going to  
24 tell you that there are time sheets involved here that the  
25 attorneys filled out and that those time sheets reflect a

business that would involve purchasing and then waiting for development to come in, is that basically what occurred with the Rio Road Route 29 North property now known as Albemarle Square?

A Yes.

Q That had been purchased sometime before. Now, during the existence of Carwile, Kudravetz and Krumm, can you give us an estimate as to what percentage of the firm's work was represented by work for Wendell and Marlene Wood?

A I would say that approximately - it varied - it's varied over periods of time, but I would say in '76, '77 the time that Carwile, Kudravetz and Krumm was in existence that it represented probably about seventy-five percent of my time and about probably fifty percent of the firm's time.

Q All right, now, as your arrangement with Mr. Wood that you've described whereby the firm would carry a portion of his fees developed, did you receive some payments on work that you were doing?

A Yes, we did.

Q Now, how was that set up?

A That was applied towards Mr. Wood's account.

Q On what type of basis?

A On a - on the basis of the items that had been billed, on a first item to be - on a first in, first out type basis.

1 Q Now, as you continued to carry the bulk of Mr.  
2 Wood's fees during this period of time, did you and your  
3 partners continue to remain content to handle it on this  
4 open account basis where payments would come in periodically  
5 as cash flow permitted?

6 A No, we had a number of discussions amongst the  
7 three of us with respect to the problems it was creating for  
8 us.

9 Q All right, and what was the nature of those dis-  
10 cussions?

11 MR. HAUGH: I'm going to object to this, Your Honor.

12 THE COURT: Is it relevant?

13 Q Your Honor, I'm trying to establish the basis and  
14 the extent to which these fees were being carried. As Your  
15 Honor will recall, in our Bill of Particulars we've laid  
16 out a number of considerations that went into the amount of  
17 the bills when they were figured up. One of them was hours.  
18 One was sophistication of the work done, time demanded, having  
19 to carry the fees themselves was a factor involved in deter-  
20 mining the amount of the fee that would ultimately be charged,  
21 and I think it's necessary to develop the impact of that in  
22 order to show how it affected the bill.

23 THE COURT: All right, that went into part of how  
24 you made up the bill, we'll certainly have to consider it.  
25 Go ahead.

1 Q All right, sir, what was the nature of the dis-  
2 cussions between you and your partners about continuing to  
3 carry the fees this long?

4 A We would discuss it from time to time and about  
5 the problems that it was creating for the firm financially.  
6 We also discussed, you know, the general understanding we  
7 had with Mr. Wood, that we'd try and carry him through the  
8 cash flow crunch that he was experiencing, that we would try  
9 to work with him on that basis.

10 Q In your discussions with Mr. Wood about billings,  
11 did - well, first did you and he ever have discussions about  
12 how you would bill him on matters that you represented him  
13 on?

14 A Yes.

15 Q And this would go back to the time you were with  
16 the Musselman firm?

17 A Yes.

18 Q All right. What was the understanding that you  
19 and Mr. Wood had as to how you would be billing himself and  
20 Mrs. Wood?

21 A I think that the - I would characterize it as  
22 billing him what in - on what's commonly referred to as a  
23 quantum meruit type basis where you take into account a number  
24 of factors involved in the type of work that you're doing.  
25 Mr. Wood's requirement for legal services required a very in-

1       tensive commitment to doing his work because it was - it was  
2       things that when he wanted something done, he wanted it done  
3       right then. Things that he wanted done were seldom simple.  
4       It was a very complex type - very complexed type transactions  
5       that he was typically entering into and the billing for Mr.  
6       Wood was based upon what he was requiring of us, the quality  
7       of the services that we were rendering to him, the benefit  
8       that he was deriving from - as a result of our doing the  
9       services, the amount of money involved, the time involved, a  
10      number of factors.

11       Q Did you have any discussions with him about what,  
12      if any, effect on the bills his desire for you to carry the  
13      bills would have?

14       A Yes. Mr. Wood knew - Mr. Wood's a very astute  
15      individual and he well knew what's called the time value of  
16      money; that money today is worth more than when somebody  
17      tells you they're going to pay you or pays you two or three  
18      years down the road, just because of inflation. And, you  
19      know, in our discussions with respect to carrying him, he  
20      understood that the payment, if we were having to carry him,  
21      that had a cost to us. We were having to borrow money that  
22      we weren't - weren't in a position to carry him and do that  
23      work when we could be doing work for other people unless as  
24      a factor in our ultimate compensation we were going to be  
25      compensated for the fact that we were carrying him.

1 Wendell, it pains me to think, but, it's in excess of six  
2 figures, I try not to look at what the time comes to because  
3 of the, you know, it's a lot of money and I could use it.

4 Q All right. When you say in excess of six figures,  
5 do you mean in excess of a hundred thousand dollars?

6 A Yes.

7 Q Did he appear to understand what you were talking  
8 about?

9 A He understood.

10 Q Did he respond?

11 A He looked a little sheepish.

12 Q Did he make any complaint at that point in time?

13 A No.

14 Q During the course of your representation of Mr.  
15 and Mrs. Wood, did they ever comment on their opinion about  
16 the quality or lack of quality of the services you and your  
17 partners were rendering for them?

18 A Yes.

19 Q What comments did they make?

20 A Comments were - were favorable, complimentary.  
21 Mrs. Wood commented to me one day that she really appreciated  
22 everything that I'd been doing for them in connection with  
23 their financial problems, that she didn't know what they would  
24 have done if I'd not worked - been working on their problems  
25 and trying to assist them in solving their cash flow problems.

1 Q Did Mr. Wood ever comment on your services?

2 A Mr. Wood commented on my services, yes, from time  
3 to time. And they were - I can't recall any specific comments  
4 but his - and the comments were, you know, constructive and  
5 favorable.

6 Q Did he express satisfaction?

7 A Yes.

8 Q Did he ever express prior to the time he trans-  
9 ferred his business primarily to other lawyers, did he ever  
10 express dissatisfaction with your work?

11 A He never expressed dissatisfaction with my work.  
12 I think there - on occasion he would say, why do the documents  
13 have to be so complex?. And I said, Wendell, it's because of  
14 the type deals that you make. You don't make simple deals,  
15 you make complex deals. Simple deals take simple documents,  
16 complex deals and trying to protect you in complex deals, the  
17 document is necessarily more complex.

18 Q Did you also handle some simple transactions for  
19 him?

20 A I did from time to time handle some simple trans-  
21 actions and the documents, of course, were different in those.

22 Q Now, at the point in time that Mr. Wood moved the  
23 bulk of his and his wife's business from you to other lawyers,  
24 did he express dissatisfaction with the quality of your ser-  
25 vices at that time?

1 A No, he did not.

2 Q Did he express to you why or do you know why he  
3 transferred the bulk of his work to other lawyers? First,  
4 let me ask you, when did that occur?

5 A That occurred in February, 1980.

6 Q All right.

7 A Late February or - in the transition between  
8 February and March of 1980, in that time frame.

9 Q All right, do you know whey that occurred?

10 A Yes Mr. Wood had gone through in the fall - summer  
11 and fall of 1978, Mr. Wood....

12 Q I'm sorry, let me back up just a little now, my  
13 question was why Mr. Wood moved the bulk of his business?

14 A In the summer and fall of 1978, First and Merchants  
15 National Bank was putting tremendous pressure on Mr. Wood  
16 to liquidate his line at First and Merchants, and called his  
17 loans down there and declared them in default and threatened  
18 foreclosure.

19 Q That was the total loans of how much?

20 A At that point in time the loans of probably in  
21 excess of 2.6 million dolalrs.

22 Q All right..

23 A At that bank.. And the - the - as a result they  
24 were - they gave a date certain by which they were going to  
25 institute foreclosure proceedings, sell the collateral, sell



1 the property at a public auction. As a result of that, the -  
2 in exploring with Mr. Wood ways to protect him and his proper-  
3 ty and his collateral, the - it was necessary to put Wendell  
4 - some of Wendell's property into a reorganization proceeding  
5 in the Bankruptcy Court. In doing that, another entity was  
6 set up called S-V Associates, which was a partnership composed  
7 of Wendell, Marlene and a corporation called Southern Ventures.  
8 Substantially...

9 Q Was Southern Ventures controlled by Mr. Wood?

10 A Yes. All of the property that Wendell and Marlene  
11 owned on which F&M had lien rights and which Atwood had  
12 security interests or deeds of trust, all...

13 Q Is that the former owner of Windmill Point, Mr.  
14 Atwood?

15 A Yes. All of the property with which he was having  
16 trouble with his creditors was put into this partnership and  
17 the partnership filed for a Chapter Twelve Reorganization under  
18 the auspices of the United States District Bankruptcy Court.  
19 The - during the course of the Bankruptcy - during the course  
20 of my representation of him in the bankruptcy proceedings  
21 several things happened which I think affected - had a reason  
22 or were the reason why once that proceeding terminated Wendell  
23 and I parted ways in terms of future representation of him.

24 Q What were those things?

25 A Two things, one, under the Rules in Bankruptcy

1 A Yes.

2 Q Did you discuss that payment with Mr. Wood?

3 A Yes, I did. At one of the prior hearings before  
4 the date scheduled for confirmation of the plan and payment  
5 of the deposit, which would represent payment of the legal  
6 fees and any other - in the administrative expenses of the  
7 Bankruptcy Court, the application for compensation was sub-  
8 mitted to the Court. Judge Hickson announced in Court that  
9 Mr. Wood would have to make arrangements for payment of it  
10 prior to the confirmation of the plan or else the attorneys  
11 would have waived their fee. I explained to Mr. Wood that we  
12 were not willing to waive it. He told me that he didn't have  
13 any cash at that point in time and I said, well, I don't want  
14 to do it, Wendell, but if that's the way the cards fall, I  
15 said I'll take your personal note for it because I don't want  
16 to get in a situation where it's just - I don't - I'm not  
17 going to waive - I'm not in a position to waive the fees. I  
18 had another attorney that was working on the case with me and  
19 we were running an office. We had to have payment for what we  
20 were doing. This - we'd spent over 420 hours in getting up  
21 to the point of the plan of arrangement. And so, Wendell  
22 signed a note for \$27,820.00, which was the amount of our  
23 application for compensation to the Bankruptcy Court, and I  
24 wrote Wendell - and the note bore interest at 14 percent,  
25 which was the rate of interest I was having to pay United

1 Virginia Bank for the money that I had borrowed from the  
2 bank. And I wrote Wendell a letter that said - well, I con-  
3 firmed our conversation of the day with respect to the  
4 \$27,820.00 note - The \$27,820.00 note of your payable to this  
5 firm, that the interest rate will be reduced in accordance  
6 with any reductions of the rate which I pay to Virginia  
7 National Bank and United Virginia Bank.

8 Q In other words, you had agreed that if the bank  
9 gave you a better interest rate then you would give him a  
10 better for carrying this...

11 A That's correct.

12 Q Besides personal borrowing of yours at the bank?

13 A I think - yes, it would have been personal borrow-  
14 ings at that point and Carwile, Kudravetz and Krumm had had  
15 a firm line of credit at the bank for borrowing, but at this  
16 point it would have been personal borrowings.

17 Q All right, and now just very briefly the second  
18 letter is a letter from you to Judge Hickson...

19 A Yes.

20 Q ....informing him of your waiver of receiving any  
21 fees at that point in time, is that correct?

22 A Yes, that's correct.

23 Q And we've already been through the application.  
24 The last document which is labeled Order Confirming Plan,  
25 would you describe just very briefly what that Order is?

1           A This was an Order of the Bankruptcy Court in the  
2 matter of S-V Associates which recited that certain things  
3 had happened which had to happen before the plan of arrange-  
4 ment could be confirmed. One of them was tendering the deposit  
5 for \$2,750.00, which was the Judge's retirement system that's  
6 assessed as an administrative expense, and the other one was  
7 having received our letter from me to Judge Hickson reciting  
8 that we were waiving actual cash payment of the fee, and so  
9 the Order recites that written waiver of deposit of legal fee  
10 by counsel for debtor was this day filed. And then it went  
11 on to confirm the plan of arrangement.

12           Q So, in essence then, you continued to carry the  
13 note for those fees?

14           A Yes, we - subsequently the note was discounted at  
15 United Virginia Bank in order that we could realize upon  
16 cash because we needed cash to run the office.

17           Q Your Honor, I'd ask that this be accepted as  
18 Exhibit Eight.

19           THE COURT: All right, so received.

20  
21           Plaintiff's Exhibit Number Eight (8) was duly received  
22 into evidence at this time.

23  
24           Q I now show you what's been marked as Exhibit Nine,  
25 which is four pages, and ask you if you can describe what

1 carry his current work the way you had been?

2 A I'm sorry.

3 Q Did he in anyway object to your now starting to  
4 demand current payment for current work rather than carrying  
5 these bills as you had?

6 A He - he understood from the beginning that that  
7 was a - we - we had a conversation from the beginning that  
8 that's the way it was going to be in connection with the  
9 Bankruptcy Court proceedings. I don't think that he liked  
10 my...

11 MR. TREACLE: Objection, Your Honor...same objection.

12 A He told me...

13 THE COURT: Well, if he told you, go ahead.

14 Q Did he make any statements to you about this?

15 A I cannot repeat them verbatim, as to what he said.  
16 I mean I have - I have - I know the gist of what he said,  
17 but I cannot repeat it verbatim.

18 Q All right, would you give us the gist of what he  
19 said?

20 A The gist of what he said was that - you know, can  
21 you carry me - I'd like to get some money. He said, I need  
22 - I need some money, can you carry this, can I pay it later  
23 and I said, Wendell, I can't do it. I said I've got to run  
24 an office and I've got a family to feed.

25 ~~A All right, now, you referred to having written him~~

1 that provided the funds to wrap up the reorganization. You  
2 have stated that Mr. Wood had prepared a statement for dis-  
3 bursement of funds that reflected his anticipated attorneys  
4 fees. How much did you actually bill him for?

5 A Thirty-two thousand, seven hundred and fifty dollars,  
6 plus two hundred and ninety-five dollars and three cents for  
7 photocopies, long distance, Federal Express and recording.

8 Q And he had estimated the fees to be in the neigh-  
9 borhood of forty thousand, is that correct?

10 A He'd estimated forty thousand.

11 Q Now, just to be sure we're clear on this, the bill  
12 for which he gave you a note before the plan was accepted  
13 by the Court and the bill that you've just looked at for  
14 thirty-three thousand dollars, those both represented time  
15 spent by you from when to when?

16 A From December of 1978 through February of 1980 in  
17 connection with S-V Associates reorganization proceedings.

18 Q And that's all time after Carwile, Kudravetz and  
19 Krumm ceased to practice law together?

20 A That's correct.

21 Q And none of that time is involved in the bills that  
22 are in dispute today?

23 A That's correct.

24 Q All right. Now, do you have the bill in front of  
25 you for...

1 A I do...

2 Q ... the matters in dispute?

3 A Yes, I do.

4 Q And I'd like to take those items one at a time and  
5 I'd like you to begin first with the Windmill Point portion  
6 of the bill and that was - that portion of the bill you're  
7 asking forty-five thousand dollars, is that correct?

8 A Yes.

9 Q All right, would you describe in narrative form for  
10 the Court and Jury what was involved in that representation  
11 and I'd like you to begin by describing at what point this  
12 bill begins?

13 A This bill commences with the services that were  
14 rendered after the actual closing of the purchase of the pro-  
15 perty.

16 Q All right, you - we had earlier introduced the  
17 bill where you were paid on the closing of this property?

18 A That's correct. There were several factors in  
19 connection with the purchase that need to be understood in  
20 order to explain a portion of what this bill represents. One  
21 was that the - Dr. Atwood, who was the seller, was financing  
22 for Wendell a million and fifty thousand dollars of the pur-  
23 chase price.

24 Q What was the total purchase price?

25 A The total purchase price was one million, three

1 hundred and fifty-four thousand for the stock in Rappahannock  
2 Marine Lodge and fourteen thousand dollars for a little  
3 separate piece of land that Dr. Atwood owned personally and  
4 thirty-six thousand dollars, I believe, for the equipment.  
5 And it totalled basically to a million, four hundred thousand.

6 Q And slightly over a million was being financed by  
7 Dr. Atwood himself?

8 A Yes.

9 Q In other words, that would be paid for over a  
10 period of time?

11 A Over nine years, I believe.

12 Q Nine years?

13 A Yes.

14 Q All right.

15 A The - the money that was being paid over this  
16 period of time, this million dollars, was - the payment of  
17 that money was secured by a deed of trust or a mortgage on the  
18 property in favor of Dr. Atwood just as if you'd go to a bank  
19 or savings and loan to borrow money to buy a house, you have  
20 give them a mortgage or a deed of trust on your house. And  
21 that deed of trust had provisions in it for what's called in  
22 development terms or terminology, people in the development  
23 business, release clauses. And the...

24 MR. HAUGH: One second, Your Honor...

25 THE COURT: What, is that a prospective witness?



1 MR. HAUGH: Could be, yes, I'm sorry, I didn't see  
2 him.

3 THE COURT: Okay. All right now, can we proceed?  
4 Go ahead.

5 Q Now you were at the point of saying that involved  
6 in this were what you call release clauses. Would you describe  
7 what a release clause is?

8 A A release clause is a mechanism that allows some-  
9 body that's in the land development business as they pay down  
10 a portion of the debt or the principal payment on the debt,  
11 to get a portion of the property released from the mortgage.  
12 If you paid off - if you owed somebody, for example, a million  
13 and fifty thousand dollars and you paid off half of that,  
14 then to a developer it's very important to be able to get that  
15 property released from the deed of trust so that he can use  
16 that as collateral with another lender to do additional  
17 financing.

18 Q For what types of purposes?

19 A Well, possibly to help make the payments that are  
20 required to be made on the mortgage or just for general  
21 development, general cash flow, working capital purposes.

22 Q For what other reasons would a developer want land  
23 released from a mortgage?

24 A He may want to make a partial sale of a portion of  
25 the property, sell off a portion of it to some third party.

1 In order to do that, typically, he's going to have to get the  
2 land that he's selling to him past good title; in other words,  
3 release it from the existing mortgage on the property. And  
4 so this deed of trust had a provision in it for Wendell to  
5 get release values based upon Wendell being able to subdivide  
6 the property in anyway he wanted to and into as many parcels  
7 as he wanted to and submit the proposed subdivision of the  
8 property into various parcels to Dr. Atwood, the seller, who  
9 held the mortgage. And Dr. Atwood would assign release values  
10 to the various subparcels that would - could not aggregate  
11 or total more than a hundred and ten percent of the purchase  
12 price, and the reason for the hundred and ten percent as  
13 opposed to just a hundred percent is to give him a little  
14 cushion in there as to - or protection on the valuation. So,  
15 that was one facet of the transaction that you had to - that  
16 you need to understand in order to understand this bill, what  
17 - the services that went into that. The other is that the  
18 contract for the purchase of the stock in Rappahannock Marine  
19 Lodge provided that the - Dr. Atwood, the seller, was going  
20 to warrant or guarantee the amount of acreage that would be  
21 involved that would be owned by Rappahannock Marine Lodge,  
22 and it - that acreage was to be determined by a survey that  
23 was to be prepared between the time of entering into the con-  
24 tract and the time of closing. Well, when we got to closing,  
25 we'd had a survey that showed instead of 117 acres, I recall

1 being required under the contract, it - the survey disclosed  
2 like roughly 85 acres, and there was approximately a 36 acre  
3 deficiency in land, 36 acres that the seller was saying I own  
4 which just wasn't there. So at the closing we attempted to  
5 resolve how much the purchase would get reduced as a result of  
6 this missing land, and Wendell and Dr. Atwood were unable to  
7 agree as to the amount by which the purchase price would get  
8 reduced. So, we did a supplemental memorandum in addition to  
9 the other closing documents that we had, and the supplemental  
10 memorandum said, in essence, that in the event that they could  
11 not agree between themselves that each of them would appoint  
12 an appraiser and the two appraisers that were so appointed  
13 would appoint a third appraiser, and then the three appraisers  
14 would appraise a tract of land, and the appraised valuation  
15 that the appraisers came up for that tract of land would be  
16 the amount by which the purchase price would be reduced to  
17 compensate for the missing acreage. And in order to determine  
18 which particular piece of land was going to be appraised by  
19 the appraisers, we took the plat of Windmill Point and came  
20 over past where the channel went into the property from the  
21 Rappahannock River and drew a line that was perpendicular to  
22 the rear boundary line and we agreed that the surveyor would  
23 extend that line parallel to it - it's east, it's along the  
24 property line as far as he would have to to come up with a  
25 tract of land that would equal the acreage that was missing,

1 and the surveyor subsequently did that. Now, as to the bill,  
2 the bill represents our firm's efforts in an attempt to resolve  
3 - to first resolve the appraisal issue and how much of a  
4 credit or reduction in the purchase price of Windmill Point  
5 Wendell was going to be entitled to as a result of the missing  
6 acreage. And it also involved efforts on our behalf, they  
7 were initially primarily my behalf, in assisting Wendell in  
8 coming up with sources of funds to make the annual payments  
9 that he had to make to Dr. Atwood on the deferred purchase  
10 money mortgage that Dr. Atwood held. The - Atwood's mortgage  
11 recited that it was non-interest bearing the first two years  
12 and thereafter it was - it bore interest at the rate of six  
13 and a half percent per annum and Wendell made the February  
14 '75 payment, he made the February '76 payment and when it  
15 came time to make the February '77 payment he came to me and  
16 said the - I don't know how I'm going to pay them, I can't  
17 get any money out of Bank of Virginia, I can't get any money  
18 out of First and Merchants National Bank, and do you have  
19 any ideas as to how, you know, I can come up with the money  
20 to pay Dr. Atwood, because if he didn't come up with the  
21 money, we knew that Dr. Atwood would declare a default im-  
22 mediately.

23 Q You said the interest rate was six and a half per-  
24 cent. How did that stack up with prevailing interest rates  
25 at that point in time?

1           A That was significantly below what current market  
2 rates for loans would have been if you'd had to go to a bank  
3 and get a loan from a bank at that time. The - so Wendell  
4 came to me in February of 1977, said I don't have the money  
5 to pay Dr. Atwood. The payment was due on February 2nd, and  
6 in fact, on February 2nd the - a notice of default was sent  
7 out by Dr. Atwood that unless the payment was made within the  
8 ten day grace period that he was going to declare the deed of  
9 trust in default. We negotiated with - I negotiated with  
10 Dr. Atwood's attorneys with respect to securing an extension  
11 of the grace period. I was able to secure a one or two day  
12 extension of the grace period based upon the issue of whether  
13 the notice - whether the notice was effective when given or  
14 when received and in the meantime I explored several  
15 possibilities for - ways that Wendell could raise the money  
16 to make the payment. Approximately a hundred and fifty  
17 thousand dollars was due to Dr. Atwood at that time. Ulti-  
18 mately I suggested to Wendell that he approach one of his -  
19 he was on the Board of Directors of Albemarle Bank and Trust  
20 Company and at that time was Chairman of the Board, I believe,  
21 but during different periods of time, during the year he was  
22 Chairman of the Board, I suggested to him that he approach  
23 one of his fellow directors in the bank whom I thought had  
24 the ability to either have the money or borrow the money, ask  
25 him if he would lend him the money on a short term basis so

1 that he could make the payment to Dr. Atwood. He did that.  
2 The individual lent him the money and the money was paid to  
3 Dr. Atwood within the allowed grace period. At the same  
4 time, Wendell was desirous of getting release values assigned  
5 to the property by Dr. Atwood in order that he could get  
6 property released from the lien of the deed of trust so that  
7 he could use it as collateral with either private lenders or  
8 banks to raise money.

9 Q And he was entitled to the release, you're saying,  
10 basically because he'd been making annual payments reducing  
11 the debt?

12 A Yes, as a result of the payments that had been made  
13 on the purchase price the first two years, he was entitled to  
14 have a certain amount of land released to him under the deed  
15 of trust. During this whole period of time, Dr. Atwood had -  
16 I said during this whole period of time - from like '76 into  
17 '77, Dr. Atwood had been registering complaints. I had  
18 received copies of some of the letters that were typically  
19 addressed to Wendell but he would send them to me sometimes  
20 also, with respect to how Windmill Point was being operated by  
21 Wendell and with respect to the lack of maintenance that was  
22 going into the property. The property was down on the water  
23 and waterfront property of that nature with the wind, the  
24 sand, rain, requires some fairly extensive maintenance obli-  
25 gations to keep it in a good state of repair, which the

1 property essentially was in when Wendell had purchased it.  
2 Atwood was making some noises or sabre rattling with respect  
3 to declaring a fault in the deed of trust for waste.

4 Q Now, would you explain what a default for waste  
5 is?

6 A The Virginia - under Virginia, one of the covenants  
7 that a grantor or a mortgagor in a deed of trust is deemed to  
8 make is that the - no waste shall be - no waste shall be per-  
9 mitted to occur on the property. Waste would be letting a  
10 property deteriorate into a such a condition or not make re-  
11 pairs that may need to be made and let it - in such a latent  
12 situation that it would impair the value of the collateral.

13 Q In other words, anything that would make the  
14 property deteriorate so that it wouldn't have its value or  
15 good enough value to protect...

16 A Could be construed as waste, I mean, it's a sub-  
17 jective determination and...

18 Q Was there in fact a deterioration occurring in the  
19 property?

20 A In my opinion there was.

21 Q And that was due to the result of what?

22 A As a result of how the property was being operated  
23 and the necessary and on-going maintenance that needed to be  
24 made on a periodic basis not being performed.

25 Q Why was it not being performed?

1           A I think in part because of the cash flow problems  
2 that Wendell was experiencing. He was taking the money from  
3 the operation of Windmill Point and using it for other pur-  
4 poses, such as paying banks, keeping his - trying to keep his  
5 loans current at banks, living purposes maybe. And it was  
6 probably in part due to a lack of adequate management and  
7 supervision over what was going on there at the facility.

8           Q All right, so we're back at the point where you  
9 were attempting to obtain releases of property on behalf of  
10 Mr. Wood under the release agreement and Dr. Atwood was making  
11 noises about calling a default for waste.

12          A Yes.

13          Q And you can pick back up at that point.

14          A The - we submitted a - various letters to Atwood  
15 and to his attorneys requesting that release values be as-  
16 signed to the property. Atwood refused to assign the values  
17 to the property. The deed of trust provided that in the event  
18 that Atwood refused to assign the values that the trustees of  
19 the deed of trust, who were myself and the attorney that  
20 represented Atwood, would assign values, and so when Atwood  
21 refused to assign them I told the attorney on the other side,  
22 now it's incumbent upon us to do it. He didn't want to do  
23 it. And another flurry of exchange of letters...

24          Q Who was the attorney on the other side?

25          A The attorney on the other side was Burch Douglas



1 loans or other investments or sell it in the federal funds  
2 market at a higher rate, and if they were only having to pay  
3 five and a half percent on passbook savings but could invest  
4 it in the federal funds market at twelve percent, they make  
5 the difference between twelve percent and five and a half  
6 percent. And these figures are hypothetical but they'd be  
7 fairly representative of the rates that were in effect during  
8 that period of time.

9 Q Let me ask you this, by holding off any efforts of  
10 foreclosure by Dr. Atwood, what benefits, if any, resulted  
11 to Mr. Wood from that?

12 A Well, if - if the property had gone - one, if the  
13 property had gone to foreclosure, foreclosure sales typically  
14 do not bring fair market value; two, Wendell, I don't think  
15 was prepared to - he would have done everything possible to  
16 avoided the property going to foreclosure sale, but if they  
17 had the - if they had advertised for a foreclosure sale, it  
18 would have accelerated. Everything that then remained due  
19 under the deed of trust, which was - in - let's see, in '77  
20 it would have been eight hundred and fifty thousand dollars,  
21 in '78 it would have been seven hundred and fifty thousand  
22 dollars. That money was carrying an interest rate of six and  
23 a half percent. If you'd had to refinance, borrow - make a  
24 new loan from a bank in - during those periods of time to  
25 borrow the money, I think it's safe to say that the rate that

1 the bank would have charged would have been in the range of  
2 13 to 15 percent or potentially higher, so that you were  
3 saving the difference between six and a half percent, which  
4 is what he was paying Atwood as interest, and the rate that  
5 the banks were then charging for a commercial loan to real  
6 estate developers which were typically on a prime plus basis.

7 Q And approximately how much per year in savings did  
8 that amount to by not having...

9 MR. HAUGH: That's speculation, Your Honor...

10 Q Well, he can testify as to what current available  
11 rates were. He would have had to refinance at a rate which  
12 was twice what was paid... it's a simple matter of mathematics  
13 as to how much was being paid.

14 THE COURT: Well, the Jury can do that on their own  
15 with the figures that have already been outlined, can't it?

16 Q Well, Your Honor, certainly they can, but, to assist  
17 the Jury to draw together the questions into a summary question.

18 MR. TREAKLE: Your Honor, if I may, he was speculat-  
19 in as to rates. He didn't have the exact rates and anything  
20 that he does will be speculation.

21 THE COURT: He use them as examples.

22 Q Well, let me ask you this, do you know what rate  
23 Mr. Wood had borrowed at any point in time close to this...

24 A His borrowings from First and Merchants National  
25 Bank during this period of time were at twelve percent.

1 A Thirty thousand, two fifty (\$30,250.00) and -  
2 every calculator has a different format - get another cal-  
3 culator...

4 Q Would you like to do it by hand? I have a pad.

5 A Eight, fifty - on eight hundred and fifty thousand  
6 it would be forty-six thousand, seven fifty (\$46,750.00).

7 Q That's the first year?

8 A Right.

9 Q Forty-six thousand, seven hundred and fifty dollars.

10 A And the next year, forty-one thousand, two fifty  
11 (\$41,250.00).

12 MR. TREACLE: Beg your pardon?

13 A Forty-one thousand...

14 Q Forty-one thousand, two hundred and fifty in the  
15 second year. If I may be permitted, that's eighty thousand  
16 dollars total. All right, now, once the Atwood litigation  
17 was underway and the foreclosure had been enjoined by the  
18 Court, what then occurred?

19 A During this period of time Wendell was attempting  
20 to sell Windmill Point to get out from under the problem of  
21 Atwood, management, operation of the Marina and the default.  
22 And he entered into discussions with a gentleman named Ed  
23 Seay from Richmond with respect - concerning the purchase of  
24 the Marina and a contract was ultimately entered into between  
25 Wendell and Ed Seay.

1 Q All right. And do you recall what purchase price  
2 was...

3 A It's my recollection that the purchase price was  
4 a million, seven hundred and ten thousand dollars.

5 Q Okay. Now, did you work in the preparation of the  
6 contract?

7 A Yes.

8 Q The contract was entered into and the negotiations,  
9 I think, started in March of that year, and the contract was  
10 actually entered into, I believe, in late March, early April  
11 of that year. The contract provided that Seay could take  
12 possession of the property prior to closing. The closing  
13 was scheduled for the mid-summer and there was a provision  
14 that Seay could take possession of the Marina and operate it  
15 during the spring and summer season until closing. One of the  
16 reasons that this - well, this was something that Wendell was  
17 interested in having Seay do because in order to open the  
18 Marina back up for operations there was a substantial amount  
19 of cash required, stocking the facility with inventory and  
20 making a certain amount of minimal repairs that would have  
21 had to been made on any basis to get the facility operational.  
22 So, the contract had provisions like, that Seay, if he  
23 exercised his option to take possession, would have to make  
24 at least fifty thousand dollars of capital improvements to the  
25 property and the - the contract was also complicated because

1 Mr. Wood's rights, that it was important that someone else  
2 be brought into the case at an early date.

3 Q All right, did you then continue to represent him  
4 along with John McDonald?

5 A Yes.

6 Q All right, now, are there any other matters or  
7 items that are included under the Windmill Point portion of  
8 your bill?

9 A It also covers two proposed sales of the property  
10 to individuals that Wendell was trying to structure a sale,  
11 to a Mr. Hankey and Mr. Richards. It covers the work done  
12 with that. It also covers some tax planning that was done  
13 in connection with the property, and it just - you know, my  
14 review of what's covered in this bill - it has not covered  
15 every facet of the bill, but it has covered the topics, the  
16 major topic areas that have been - that are involved in the  
17 bill. It has not gone into all the details in connection  
18 with Atwood and all the details in connection with Seay,  
19 because there was a lot of pretrial, discovery work that was  
20 done in connection with the Seay litigation which Mr. Krumm  
21 in our office handled primarily, but I've touched on all the  
22 major subtopics within the bill.

23 Q Without going into them in great detail at this  
24 point, because we'll discuss them individually, would you  
25 describe to the Court and Jury what, if any, other matters

1 were going on that you were representing Mr. or Mrs. Wood on  
2 at the same time you were doing all this work under the  
3 Windmill Point portion of the bill? If you could basically  
4 just list those other subject matters.

5 A Bank of Virginia had a nine hundred and fifty  
6 thousand dollar loan to Wendell. They had declared that in  
7 default. I was attempting to keep the Bank of Virginia from  
8 foreclosing on the collateral. The Rio Associates matter  
9 was going on during this period of time..

10 Q That's other litigation that we're to discuss?

11 A It involved other litigation. The - I was attempt-  
12 ing to find financing for him to take out Bank of Virginia  
13 and the construction loan on the Holiday Inn, and our firm  
14 came up with a mortgage broker in Connecticut that ultimately  
15 was able to put together financing for him with Westinghouse  
16 Credit Corporation that paid off Bank of Virginia.

17 Q That's not part of this bill?

18 A That's not part of this bill, but these are just  
19 some other things that were going on at the same - same time.  
20 The dealings with First and Merchants National Bank in their  
21 line of credit. There were a number of other matters that  
22 were coming and going in and out during this period of time,  
23 things like Rio Associates, Bank of Virginia, Westinghouse  
24 Credit were things that were taking extended periods of time  
25 together with the Seay litigation, the controversy with Dr.

1 Atwood. The Reservoir litigation was going on during this  
2 period of time. You probably would hear it referred to during  
3 this trial as either the Reservoir litigation or Panorama  
4 litigation.

5 Q Yeah, we're about to take that up now.

6 A And that was going on during this period of time.  
7 And there were efforts being made on - on our firm's behalf  
8 to find other sources of financing for Wendell.

9 Q All right. I just wanted you to have some idea  
10 of what was happening then. I'd like to refer your attention  
11 now to the next - to the part of the bill that deals with  
12 Reservoir Matters and those items represent \$27,500.00 of this  
13 bill, the second largest amount. Would you again describe in  
14 narrative form for the Jury now what the Reservoir matters  
15 entailed?

16 A Okay. Wendell had purchased a piece of property  
17 which bordered the Rivanna Reservoir and he was attempting  
18 to secure the necessary development approvals. In the  
19 development process you've got all kinds of approvals, various  
20 approvals that you may need. You need a site plan approval,  
21 a subdivision approval, approval from - under the Soil Erosion  
22 Ordinance, and there are others, but they are some of the  
23 major approvals that you have to get. Assuming that you've  
24 already gotten your property zoned properly. Well, in this  
25 particular piece of property it had the zoning for a town

1 MR. TREACLE: Judge, we have our continuing reser-  
2 vation...

3 THE COURT: Yeah - yeah.

4  
5 Plaintiff's Exhibit Number Twelve (12) was duly  
6 marked and received into evidence at this time.

7  
8 Q All right, I now want to refer your attention to  
9 that portion of the bill related to Rio Associates, which  
10 represents \$15,900.00 of the bill. Excuse me, I take that  
11 back, \$13,928.40. Will you again describe for the Jury and  
12 the Court what the nature of this transaction was?

13 A In order to understand this transaction, in order  
14 to understand what's covered by the bill, you've got to  
15 understand a little bit of the background that took place as  
16 to matters that are not covered by this bill and I'll try and  
17 give you the background, then tell you where I'm going into  
18 the bill. Wendell, in 1969, had leased, under a land lease,  
19 a tract of land at the intersection of Rio Road. and Route 29  
20 North, and it's the present site of where Albemarle Square  
21 Shopping Center, which is where Best and there's a Safeway  
22 and some other stores are currently located. He leased it for  
23 a long term period of years with an option to buy it at the  
24 end of that term - at the end of the period at a fixed price.  
25 In 1972 he sold his lease and sold his option to a partnership



1 composed of Mr. Heischman and Mr. Plotkin as general partners,  
2 and that partnership was called Rio Associates Limited Partner-  
3 ship. And he sold it to them for a million, five hundred  
4 thousand dollars and took back promissory notes that were due  
5 in 2008 and 2009 or 2006 and 2007, something like that. And  
6 they were secured by a mortgage on the leasehold interest,  
7 and the contract of sale between Wendell and Rio Associates  
8 contemplated that Rio Associates would develop the property  
9 into a shopping center, and the contract of sale further  
10 provided that the - Wendell would subordinate his deed of  
11 trust securing the purchase money that he held, what he was  
12 financing, to a construction and/or permanent loan that Rio  
13 Associates would get to finance the improvements that were  
14 going to get built on the site.

15 Q All right, let me stop you there for a second.  
16 When you're talking about subordinating the mortgage that he  
17 was holding on the property...

18 A Right...

19 Q ...would you describe what that involved?

20 A Okay.

21 Q Or what it means to subordinate?

22 A Okay. When Wendell sold to Rio Associates, he put  
23 a mortgage on the leasehold interest and that mortgage then  
24 became a first lien - had a first priority on the leasehold...

25 Q In other words, it was ahead of any other creditor?

1           A It was ahead of any other liens or deeds of trust  
2 or mortgages. If somebody come along and needed to put a  
3 loan - get a loan and put a mortgage on the property to  
4 finance to get another loan and they just recorded a mortgage,  
5 because it comes second in time it would then have only - it  
6 would then be only second in priority, it would be a second  
7 lien. So, the first lien would get paid first and then the  
8 second lien would get paid if there was any residue in the  
9 event of a foreclosure. Well, banks and construction lenders  
10 don't lend on the basis of being second in priority. They  
11 require that they have a first lien. So in order to get a  
12 first lien so that you could get the money to build the  
13 improvements, you had to have Wendell agree to subordinate  
14 to the construction loan and the permanent loan, the long  
15 term loan. Well, that was perfectly acceptable to Wendell  
16 to subordinate to the loan because he recognized that was  
17 the only way they could build it and he was agreeable to doing  
18 that. The document said that he would subordinate to a  
19 construction and/or permanent loan and it had other criteria  
20 in there that was related to the appraisal - appraised value  
21 of the property that was going to get constructed on the  
22 property. The - okay - getting - we've talked now about the  
23 history and that part of it in terms of getting it to the  
24 contract stage and the selling of it is not covered by this  
25 bill. What's covered by this bill is the dispute that arose

1 between Wendell and Rio Associates with respect to his obliga-  
2 tion to subordinate to financing on the property. The Rio  
3 Associates in developing the property ended up developing the  
4 property in phases. They built part of it at one time and at  
5 a later date, they built the second part of the shopping  
6 center. Best and the stores that's your - in the North part  
7 of the center were built as part of a second phase of the  
8 shopping center. The - at the time that Rio Associates re-  
9 quested Wendell to subordinate to the first loan, they made  
10 it clear that as they read the contract documents, they  
11 thought that Wendell was obligated to subordinate to a  
12 second phase for the construction and a permanent loan on the  
13 same criteria, seventy-five percent of appraisal, and there  
14 some other safeguards like posting a bond, and Wendell  
15 maintained that he was not obligated to do that. Now, that  
16 dispute...

17 Q Let me stop you just for a second. Why were they  
18 saying that they felt they had a right to a second subordination?

19 MR. TREACLE: Objection, Your Honor.

20 Q I'm asking...

21 MR. TREACLE: He has no way of knowing why they were  
22 saying that.

23 Q ...for what their position stated was. Let me  
24 rephrase the question...

25 THE COURT: Okay.

1 Q ... so that will remove it. Did the other side  
2 state to you why they felt they were entitled and to Mr. Wood  
3 why they felt they were entitled to a second subordination?

4 A Yes.

5 Q And did that - did they also make that statement  
6 in the subsequent litigation that came up?

7 A Yes.

8 Q All right. What was the reason they gave for why  
9 they felt they were entitled to a second subordination?

10 A That it was the intent of the parties to subor-  
11 dinate to financing for the entire shopping center and that  
12 they should not be penalized by the fact that they elected to  
13 develop the shopping center in phases; in other words, to do  
14 it incrementally. They did, built part of it at one time and  
15 then they finished that, financed it and then came back and  
16 built the other part of it. The fact that they did it...

17 Q Rather than building it all at once?

18 A Rather than building it all at one time, if they  
19 did it in phases, they should not be penalized because it was  
20 the intent of the parties that the - if they'd done it all at  
21 one time that the - they would have subordinated to the entire  
22 thing and it was litigated and the Court ultimately held that  
23 that was the intent of the parties to subordinate to the en-  
24 tire financing for the entire shopping center.

25 Q Did Mr. Wood deny that it had been his original

1 intent to subordinate to the entire shopping center?

2 A No, he did not deny that it was his intent to  
3 subordinate to the entire shopping center if they had come in  
4 and done it at one time. He came to me and asked me to review  
5 the contract, the contract...

6 Q When was this, when they asked for the second  
7 subordination?

8 A No, this was when they asked for the first sub-  
9 ordination. He came to me and asked me to review the contract  
10 that he had entered into between himself and Rio Associates  
11 when he sold them the leasehold interest, and he said, what  
12 does this mean? And the provision that he was pointing out  
13 was a construction and/or permanent loan that he would sub-  
14 ordinate to.

15 Q Why was he asking you at the time of the first  
16 subordination?

17 A He had - he had learned that they were in fact  
18 going to finance the property in phases and he wanted to know  
19 what that meant, what his rights were. And I told him, I  
20 said, as you read it literally, it say A, construction and/or  
21 permanent loan. That A would normally - if A means one as  
22 opposed to any or many or more than one, and - however, that  
23 reading in the context of what you're asking about in terms of  
24 this particular shopping center, if it was a matter that was  
25 going - that is litigated, a court would base its decision

1 based upon what it found to be the intent of the parties, in  
2 my opinion. And that a court could read it literally, but  
3 that I thought that a court in equity in trying to enforce  
4 this subordination would give it the interpretation based  
5 upon what it found the intent of the parties were when they  
6 entered into the contract.

7 Q All right. Did you ask for any other opinions on  
8 that?

9 A Yes. Wendell did not like that interpretation,  
10 because he said, well if they can only - if we can make it be  
11 only a loan, then they're going to have to pay me off in order  
12 to refinance - in order to finance the second phase, and I...

13 Q Why did he want to ask to get paid off early?

14 A Because he was financing them at four percent for  
15 a few years and then at six percent and it ultimately went  
16 to eight percent, and it was a long term paper that didn't get  
17 paid off until the year 2000 and somewhere in the first ten  
18 years of the century that starts with 2000, it was going to get  
19 paid. I don't remember the exact date, it was like 2006 and  
20 2007, half of it one year and half of it in another year. And  
21 money today is worth more than money tomorrow by the time in-  
22 flation has taken a hold on those dollars. He'd rather have  
23 a million dollars today than a million dollars in the year  
24 2000, so he was desirous of getting paid. So, I did ask for  
25 an independent opinion and I consulted with Witt, asked him to

1 review - Witt being Mr. Krumm, my partner at that time,  
2 asked him to review the contractual document and tell me what  
3 he thought they meant and without giving him - I sort of did  
4 that in the abstract, didn't tell him about my interpretation  
5 of them, just asked him for his opinion of them.

6 Q And what was his opinion?

7 MR. TREAKLE: Your Honor, I object. He's here, he  
8 can testify.

9 Q All right, Your Honor, I'm not asking to introduce  
10 it for the truth or falsity of the content but to show what  
11 was before the parties and in their minds when they made  
12 this decision to litigate, so it really comes outside the  
13 hearsay rule on that basis. We will, again, ask Mr. Krumm  
14 also, but in context it's relevant...

15 THE COURT: Well, if it's offered for that purpose.  
16 Of course, it's hard for the Jury to separate it, but it's  
17 merely offered at this time, members of the Jury, to sort of  
18 explain what was in the minds of these people, Mr. Carwile  
19 and Mr. Wood, it's not for the truth of it. Go ahead.

20 Q What did Mr. Krumm say his opinion was as to the  
21 interpretation of the contract or how a court would interpret  
22 it?

23 A Mr. Krumm stated that he thought that a court would  
24 interpret the contract to give effect to the intent of the  
25 parties and I so informed Mr. Wood.

1 Q What was Mr. Wood's decision then?

2 A Well, it came time to close on the first sub-  
3 ordination closing and that closing was - Rio Associates  
4 wanted provisions put into the documents that would protect  
5 their ability to finance the second phase. Mr. Wood was not  
6 agreeable to doing that. Those provisions were x'd out of  
7 the document, put not acceptable to Wendell, and the trans-  
8 action was closed on the basis of reserving everybody's  
9 rights to argue about this particular point in the future,  
10 the first subordination closing.

11 Q How was his decision received by the other side,  
12 what response did they have to it?

13 A It was a very tense closing. A lot of acrimony and  
14 not well received.

15 Q All right, what transpired then after the closing  
16 of the first subordination?

17 A There were discussions from time to time between  
18 the attorney for Rio Associates and myself with respect to  
19 subordinating to a future loan. I told him that it was my  
20 client's position that he was not going to do it. They - the  
21 bonds that Rio Associates had given to Wendell for the pur-  
22 chase money part of the financing, the million, four hundred  
23 and ninety-five thousand, were - had been pledged to Bank of  
24 Virginia and then they attempted to acquire those bonds from  
25 Bank of Virginia. That part of it is not covered by this



1 bill, but then the next phase of it was. My work in terms  
2 of trying to prevent them from acquiring the bonds from Bank  
3 of Virginia is not covered by this bill. But then they filed  
4 a lawsuit against Wendell, Bank of Virginia and Westinghouse  
5 Credit Corporation.

6 Q Now, before you get to that when the principals  
7 of Rio Associates were trying to buy their mortgage bonds  
8 that they had given to Mr. Wood from the bank where he had  
9 pledged them as collateral, what would the effect have been  
10 on his situation if they had been successful?

11 A If they had been successful in buying those bonds  
12 from the bank, they would have bought the loan - they would  
13 have bought the loan from the bank, which was nine hundred  
14 and fifty thousand, and the collateral that went with it,  
15 which was - the loan was in default, the note was in default  
16 to the bank, then they would have declared - then they would  
17 have liquidated the collateral, had an auction sale and fore-  
18 closed on the collateral and sold the collateral at public  
19 auction, and then they would have been in a position if they  
20 were the successful high bidder, to buying the bonds at auction  
21 and become the owner of the bonds. They - they wouldn't have  
22 had a problem about subordination.

23 Q They would have owned their own bonds?

24 A They would have owned their own bonds.

25 ~~Q Okay, so then they filed suit against Mr. Wood,~~

1 is the road that leads to Chris Green Lake. Wendell, in  
2 1975, had the opportunity to acquire all of these properties  
3 consisting of approximately 1200 acres for the out-of-pocket  
4 cash payment to get title to the property of five thousand  
5 dollars. And there were - the properties had various mort-  
6 gages on them which aggregated approximately a million, six,  
7 and he wanted to acquire the ownership rights to these  
8 properties without becoming personally liable for payment of  
9 the mortgage indebtedness because the previous owners had  
10 allowed a number of the mortgages on the property to go into  
11 default, and if a mortgage is in default an owner can say -  
12 the holder of that mortgage can say pay me all of it right now,  
13 and he didn't want to - he wasn't interested in doing that,  
14 but he was interested in having the ownership rights and then  
15 being able to negotiate with the various holders of the mort-  
16 gage for extended terms to pay them off and basically re-  
17 negotiate the payout provisions on some of the mortgages, and  
18 to...

19 Q And what were...

20 A ...and to honor some of the others.

21 Q All right, well what would be the result if he then  
22 started into negotiations with these mortgage holders and  
23 couldn't reach a deal with any of them?

24 A Well, if you'd look at it on a parcel by parcel  
25 basis, for any parcel that he was unable to do that, if you

1 very - very quickly. I prepared the proposed deeds from the  
2 various partnerships to Bank of Virginia Trust Company as  
3 trustee of these various land trusts and I went to New York  
4 City, Mr. Wood did not accompany me, but went up there and  
5 met with the attorney that represented the then owners of  
6 the property and reviewed with him the documents, the land  
7 trust agreements, the deeds, what was going on and closed the  
8 transaction with him in escrow.

9 Q All right. At the time of the closing was it  
10 anticipated that there would be future work that would continue  
11 on afterwards?

12 A Yes, because there were mortgages on a number of  
13 the properties which were in default and the default had to  
14 be - you had to renegotiate the terms of the mortgage with the  
15 holder. There was one holder we were not able to renegotiate  
16 the terms with in their entirety and they ultimately elected  
17 to foreclose. Wendell bought it at the foreclosure sale and  
18 - and - but prior - in between the time they elected to fore-  
19 close and the actual sale we'd been successful in getting some  
20 of the holders to agree that if he bought the property that  
21 they would finance it for him on a short-term basis.

22 Q Okay. What work had to be done with respect to the  
23 other properties?

24 A The - on one of the properties we - two of the  
25 properties which were some gentlemen named Birdsong and

1 Trevillians had sold two different tracts to the - these two  
2 different partnerships and there were two different tracts in  
3 which they held mortgages and we renegotiated the payment  
4 schedule that they would be receiving on their mortgages, and  
5 we attempted - and there were other subordinate second lien  
6 mortgages on the properties that were held by various people  
7 they were payable to bearer and by an examination of the  
8 records you couldn't ascertain who held them. The attorneys  
9 for the seller said they didn't know who held them, and there  
10 was not a whole lot money forth - I mean a whole lot of infor-  
11 mation forthcoming as to what the exact status of things were  
12 in terms of how-who was owed how much. They just said, here  
13 it all is and you find out what you can, but we just want to  
14 be rid of it and not - we don't know very much about it, your  
15 problem.

16 Q So, what types of efforts did you and your partners  
17 undertake to locate these missing bond holders?

18 Q We conferred with - conferred with Ms. Irwin, and  
19 attorney here in town who had been the local attorney for  
20 the prior owners, in terms of her knowledge. We conferred  
21 with some of the bond holders that we knew had them as to who  
22 might be other bond holders in the same series and we were  
23 attempting to acquire other knowledge, but at the same time  
24 Wendell was not that anxious - his attitude was, they're not  
25 coming around and asking for payment, let's not stir them up

1 because that will only take cash, because there were payments  
2 that were required to be paid every year.

3 Q He figured they'd make their presence known...

4 MR. TREAKLE: Objection, Your Honor...

5 Q I'm sorry. You're right, I just... Let me ask you  
6 with regard to the liens that were on this property that  
7 were either renegotiated by Mr. Wood or which were not already  
8 in default when he took over, did they all then stay in good  
9 shape; in other words, were they all maintained on a current  
10 status?

11 A There was one in particular, the Amato Estate, there  
12 were periodic problems with with respect to paying them on  
13 a current basis, but...

14 Q Okay. Was there any other work that would fall  
15 within the category of this portion of the bill that we  
16 haven't described yet?

17 A There were trips back and forth to Richmond in  
18 connection with getting this transaction closed. The - there  
19 were negotiations with what was then Citizens Bank and Trust  
20 Company, which is now Central Fidelity Bank, here in  
21 Charlottesville with respect to extending financing on the  
22 property. There was negotiations with the - Mr. Trevillian and  
23 the Birdsong Estate and negotiations with the University of  
24 Virginia Medical School Alumni Association that held some of  
25 the bonds as a result of someone having made a gift to them

1 of some of the bonds. There were preparation of modification  
2 agreements to the deeds of trust which specified the re-  
3 negotiated terms that we'd been able to get the people to  
4 agree to. There was a property that was - actually went to  
5 foreclosure sale. We had to prepare the financing papers on  
6 that, as a result of the financing the people agreed to extend  
7 in the event that Wendell bought at the foreclosure sale,  
8 which he did. There were negotiations with representatives of  
9 the Federal Land Bank of Baltimore with respect to the  
10 financing that they held on the property.. There were constant  
11 dealings with the insurance carrier that was carrying the  
12 property insurance on the thing about keeping the insurance  
13 current and paid so that people like the Federal Land Bank  
14 wouldn't declare a default. The...

15 Q But where did the money ultimately come from to  
16 make payments on the deeds of trust on these Airport Properties?

17 A It would have come primarily from extensions of  
18 credit by First and Merchants, some by United Virginia Bank,  
19 some from operations of the business - businesses that Mr.  
20 Wood conducted over a period of time such as Holiday Inn of  
21 Luray.

22 Q Now, how has this property been developed since its  
23 purchase; in other words, what benefits, if any, have Mr. -  
24 has Mr. Wood obtained from this purchase that you represented  
25 him on?

1           A He's been successful in getting a substantial  
2 portion of the property rezoned to - for - as - what would be  
3 an industrial park. A portion of the property was sold off  
4 to General Electric for - which is where they are locating a  
5 divisional headquarters.

6           Q Is that their 29 North location?

7           A Yes, just north of Camelot. A portion of the  
8 property was sold off to a company called Milodon Engineering  
9 Incorporated. The - he's been able to use the property as  
10 collateral in his financing activities with other banks.

11          Q Is any of it being developed by him himself or  
12 any entities that he's related to?

13          A Well, Woodbrier Associates, which is an entity in  
14 which - I can't - as of a point in time - and I knew this.  
15 It was Woodbrier Associates, in which Mr. Wood has an owner-  
16 ship interest, is developing two of the tracts of the property  
17 - two tracts of the property into subdivision lots and in  
18 what's called North Pines and Briarwood. And R. D. Wade is  
19 constructing houses in these two subdivisions.

20          Q Do you recall what the sales price on the GE sale  
21 was, the sale of that property to GE?

22          A That sale took place in 1976, it's not covered by  
23 this bill, but it's my recollection it approximately four  
24 hundred thousand dollars.

25          Q Do you recall what the sale price was to Milodon

1 and Bede?

2 A The Bede sale did not go through. The Milodon  
3 transaction was - Mr. Kudravetz actually closed that in my  
4 office, but it's my recollection that it was approximately  
5 sixty thousand dollars. That - if I had the file I could be  
6 certain of that figure.

7 Q You testified that this property or portions of it  
8 were also used as collateral for the F&M loan, is that  
9 correct?

10 A And for Bank of Virginia from time to time.

11 Q What was the level of their lending that was...

12 A Bank of Virginia had...

13 Q ...secured in part by this?

14 A ... a loan of nine hundred and fifty thousand to  
15 Mr. Wood, and - Mr. and Mrs. Wood, and First and Merchants  
16 loans to Wendell and Marlene increased with time to at one  
17 point they were like two million, four hundred and fifty  
18 thousand, plus another hundred - approximately a hundred and  
19 fifty thousand in principal, plus - let's see, about 2.6  
20 million First and Merchants.

21 Q And this property was used as part of the collateral  
22 for those loans?

23 A Yes.

24 Q I have placed some files and documents in front of  
25 you. Can you describe what that represents?



1 compassed in the bill - the - could I have a copy of the bill  
2 in front of me to assist me? (Witness was given a copy of the  
3 bill by counsel.) The work that's encompassed in - in the  
4 bill with respect to this matter involved negotiations with  
5 the First and Merchants National Bank and their counsel, which  
6 was a law firm in Richmond, with respect to their making  
7 additional loans to Wendell and Marlene. They already had  
8 some existing loans and they were being increased from time  
9 to time and as they were increased, First and Merchants would  
10 require additional documentation, additional collateral in the  
11 way of real estate being pledged to them by way of a deed of  
12 trust to secure the loans. There was a nine hundred thousand  
13 dollar loan that was done initially. It involved examination  
14 of title to the properties that were serving as collateral  
15 for this loan, involved examination of title to the Airport  
16 Properties that Wendell had purchased and what we talked about  
17 as the Airport purchase transaction.

18 Q All right, this was those five parcels of land  
19 aggregating 1200 acres along Route 29?

20 A Yes, approximately 1200 acres. The title examination  
21 to those were rather detailed and lengthy. The - the - it  
22 involved preparation of title opinion letters to First and  
23 Merchants National Bank. The - their normal practice was  
24 that they required title insurance on loans of this magnitude  
25 but I was able to convince them to accept our title opinion

1 letter. As a result of doing that, that saved Wendell the  
2 cost of paying for title insurance premiums. The - it involved  
3 ...

4 Q Are those generally of any magnitude in a trans-  
5 action this size?

6 A Yes, the - on transactions - we were dealing with  
7 a nine hundred thousand dollar deed of trust at one time, a  
8 two million, four hundred and fifty thousand dollar deed of  
9 trust at a later date. Title insurance premiums on those -  
10 on loans of those magnitude run - the rates start off at about  
11 two fifty per thousand and...

12 Q Two dollars and fifty cents per thousand?

13 A Two dollars and fifty cents per thousand and as  
14 you go up in size of the loans, there are certain reductions  
15 in the rate per thousand. I could not tell you right now  
16 exactly what the premium would be, but it would have been in  
17 the magnitude of thousands of dollars in the aggregate over  
18 the life of the F&M financing. The - it involved examination  
19 of title to property owned by Wendell that he had acquired  
20 prior to the time that I represented him, such as a lot in  
21 Carrsbrook that fronted on 29. It involved - they were taking  
22 as collateral property that he owned not only in Charlottes-  
23 ville and Albemarle County, but also the properties that he  
24 had purchased in Lancaster County, Virginia, which is down on  
25 the Chesapeake Bay...

1 Q That's the Windmill Point property?

2 A Yes. By that time Wendell had acquired three  
3 different tracts of land at Windmill Point. What he acquired  
4 from Atwood that we've talked about. He acquired some other  
5 property from two gentlemen named Harwood and some other  
6 property from a Mr. Hubbard and Mrs. Humphries.

7 Q Were Mr. and Mrs. Wood both obligated on these  
8 loans to F&M?

9 A Yes, they were. And it involved updating the  
10 title in the Lancaster County - for the Lancaster County  
11 properties and get recordation down there. The - there came  
12 a point in time when F&M agreed to - wanted to consolidate all  
13 of their loans into one security instrument because prior to  
14 this nine hundred thousand dollar loan they'd made other ex-  
15 tensions of credit to Wendell and Marlene and there were other  
16 deeds of trust, and so they wanted the nine hundred thousand  
17 and a four hundred and seventy-five thousand and a five  
18 hundred and twenty-five thousand consolidated into one  
19 security interest - interest to secure his line of credit for  
20 two million, four hundred and fifty thousand, and it involved  
21 the preparation of documents in connection with that and the  
22 - supplying F&M with information with respect to the - all  
23 the plats that were involved on the property, negotiating  
24 with them as to whether as to any of the properties - new  
25 surveys would be required. And we ultimately got it so that

1 some shifting of collateral that took place between F&M and  
2 Bank of Virginia and it involved doing the necessary documents  
3 and from the F&M perspective of the loan, for releases and  
4 to get the collateral released from the F&M liens. There were  
5 some vendor's lien bonds, which a vendor's lien is essentially  
6 like a mortgage. But it's another mechanism of securing a loan  
7 on a piece of real estate and it involved pledging some  
8 pledge agreements to pledge the vendor's lien bonds to F&M in  
9 the latter stages of the loan, and then after they had made  
10 the loan at a million, two fifty and they had used up the -  
11 that amount - borrowed that amount of money, there was - F&M  
12 agreed to advance - to set up an - to increase the line of  
13 credit by another hundred and seventy-five thousand dollars.  
14 And...

15 Q And that brought the line of credit up to a total  
16 of how much?

17 A Well, it was two million, fifty and a hundred and  
18 seventy-five, so it would be two million, six twenty-five,  
19 I believe, and the - had to prepare a supplemental deed of  
20 trust which covered not only property in Charlottesville and  
21 Albemarle County, but also property in Page County and Lancaster  
22 County, update the titles in all of those jurisdictions, and  
23 get the instruments prepared and do a supplemental title opinion  
24 certificate to F&M with respect to that.

25 ~~Q Would you describe very briefly what searching~~

1 without paying the real estate taxes. The rationale for that  
2 was - that we used was that the - one, that because of the  
3 cash problems Wendell didn't have the cash flow to get all  
4 the real estate taxes paid, and two, the cost of not paying  
5 the real estate taxes to him in terms of the interest that  
6 the County or the City were charging was less than what F&M  
7 was charging on their loans, so it was again playing the  
8 spread on the carrying costs or the interest rate, the float.

9 Q Okay, how far back do you have to search the  
10 history of a title?

11 A Generally that would be sixty years.

12 Q All right, and what are the risks, if any, to the  
13 attorney that is searching title?

14 A The risk to the attorney in searching title would  
15 be if he also certifies the title to someone and he is in  
16 error with respect to that certification, he makes some  
17 mistake, he would be held accountable and liable for any error  
18 that he may make in searching the title, so title examinations  
19 are done with some degree of care, a high degree of care in  
20 order to ascertain that you - your opinion would be valid and  
21 that there are no title defects or items that you have missed.

22 Q All right, would you describe what, if anything else,  
23 is involved in this bill in addition to what you've already  
24 described?

25 A In July of 1978, First and Merchants declared a

1 default in Wendell and Marlene's loans to First and Merchants,  
2 and...

3 Q Was that for non-payment...

4 A That was for non-payment of interest. And the -  
5 there were some negotiations that were covered with F&M during  
6 this period, just prior to the time that Carwile, Kudravetz  
7 and Krumm ceased to practice as a firm, and then the subse-  
8 quent negotiations that I had with F&M would not have been  
9 covered under this bill.

10 Q Okay, and then as I recall from earlier testimony,  
11 this matter ended up in the reorganization, is that correct?

12 A Yes, that's correct.

13 Q And was settled out in the reorganization?

14 A That's correct.

15 Q All right, now, with regard to that item under the  
16 bill labeled United Virginia Bank Loan, would you describe  
17 just briefly what work was involved in that matter?

18 A The - Wendell and Marlene had - well, Wendell came  
19 to me and said that he had a need for securing financing in  
20 terms of taking out - making some of the payments that were  
21 due at Windmill Point and some other payments that were due  
22 on the Airport Properties loan, and I suggested to him that  
23 he approach United Virginia Bank, and - here in Charlottes-  
24 ville for a loan and he did do that. They agreed to make him  
25 a loan in the amount of four hundred thousand dollars, and

1 First and Merchants agreed to release some of the collateral  
2 that they had for that loan - for their loan, so that United  
3 Virginia Bank could have that property as collateral. The  
4 - First and Merchants wrote a letter to me saying that they  
5 had agreed - would agree to release that and that the money  
6 was to be applied in a certain way from the proceeds of the  
7 loan as a condition of their release. This item in the bill  
8 covers the work in connection with securing the loan from  
9 United Virginia Bank, the documentation in connection with it,  
10 the disbursement of the funds, and a controversy that we got  
11 into with First and Merchants National Bank over the - securing  
12 the released deed.

13 Q Would you explain what was involved in the con-  
14 troversy with United Virginia Bank and First and Merchants  
15 Bank that you just mentioned?

16 A The - as I mentioned, First and Merchants sent a  
17 letter to me setting forth their agreement to release certain  
18 property as collateral. The - on the day we closed the loan  
19 I had drafted a release deed and sent it to First and Merchants  
20 National Bank, and I had talked with Bill West at First and  
21 Merchants and he had told me that the release deed was satis-  
22 factory and it had been executed and sent to Mays, Valentine,  
23 their Richmond law firm for review. And one of the trustees  
24 on the deed of trust securing First and Merchants was an  
25 attorney at Mays, Valentine firm and that's part of the reason

1 that they sent it over to that firm.

2 Q This release deed is necessary to get the proper-  
3 ty out from under one mortgage so it can be put under the  
4 other mortgage?

5 A That's correct. Based upon First and Merchants  
6 letter to me that they were going to release the property, and  
7 the day that I closed the loan with United Virginia Bank, I  
8 had a title insurance policy issued in favor of United  
9 Virginia Bank, certifying to them that they had a first lien  
10 upon the property, which is a customary practice which Lawyer's  
11 Title accepts when you have a commitment from an institutional  
12 lender to make a release. The - after we closed the loan, I  
13 had the funds in my office escrow account. Wendell came into  
14 my office with a sheet of paper that had on it a list of a  
15 number of people that needed to get paid in terms of how the  
16 funds were going to be disbursed from the proceeds of that  
17 loan. I reviewed that list. I noticed that there were some  
18 differences in the amounts that different people were going to  
19 get from the list that Wendell gave me versus the letter that  
20 came from First and Merchants National Bank. The...

21 Q Did you discuss that with Wendell?

22 A Yes, I discussed that with Wendell and he said,  
23 well I've already paid off one of the people and so they're  
24 part of it, so they're not entitled to as much money. I said  
25 well, let me call Bill West at First and Merchants and confirm



1 this with him so that everything is fine. I tried to reach  
2 Mr. West and he was out. Wendell told me that he had already  
3 discussed the matter with F&M and that there was not going to  
4 be any problem. There was urgency in getting the funds dis-  
5 bursed, so I went ahead and disbursed them in connection with  
6 Wendell's list. I then contacted - notified First and Merchants  
7 that the funds had been disbursed and requested the release  
8 deed. They in turn asked for a schedule as to how the funds  
9 had been disbursed and I sent them that schedule. They were  
10 concerned, I think, because - because of the fact that Wendell  
11 had gotten I believe approximately thirty thousand dollars  
12 out of the proceeds of the loan which they would have pre-  
13 ferred to have had disbursed to them as payment on their  
14 delinquent interest. They would not release the release deed.  
15 Ultimately, United Virginia Bank made a claim against Lawyer's  
16 Title on the title insurance policy and...

17 Q Was that because you couldn't get the property  
18 released?

19 A I couldn't get the property released. I discussed  
20 the matter with Wendell on several occasions and I told him  
21 that he had told me that he had worked all this out with Bill  
22 West and to get himself down to Richmond and straighten it out  
23 with West so that the release deed would be forthcoming. He  
24 evidently did not do that and the matter was still unresolved  
25 as of the time the matter went into- his property went into

1 S-V Associates. Subsequently during the time the S-V...  
2 Associates matter was resolved, F&M made the release and  
3 United Virginia Bank had a lien upon what they - lien priority  
4 that they were entitled to.

5 Q All right, where did this bill cut off?

6 A This bill was cut off at the time that Carwile,  
7 Kudravetz and Krumm ceased to practice as of October 1, 1978.

8 Q Let me back up for a minute to the First and  
9 Merchants matter, over what period of time does this bill  
10 cover? You mentioned a number of different additions to the  
11 loans and reworking of the loans and consolidation and of  
12 releases and that. Over what period of time does that extend?

13 A I could...

14 Q Well, just in approximate terms?

15 A It extends over a period of several years. I'm  
16 trying to think when the nine hundred thousand dollar deed of  
17 trust was done. To my recollection that was done in 197 -  
18 late '76 or early '77, and so it would have extended from that  
19 period of time on through until October 1, 1978.

20 Q Okay. And the UVB financing, over what period of  
21 time does that work extend?

22 A That - that loan closed in the spring of 1978.  
23 February - sometime in February or the middle part of February  
24 or the first part of March, 1978.

25 Q And then your bill then again cuts off with

1 October of 1980...

2 A 1978.

3 Q '79-'78, excuse me, so it would go from February  
4 to October, is that correct?

5 A That's correct.

6 Q Now, let me refer your attention to the item in  
7 the bill referred to as Camelot Sewerage Plant, which is a  
8 \$3500.00 item on the bill. How did your representation on this  
9 begin?

10 A The - this involved property, the Airport properties  
11 that - and there was a sewer treatment plant that was operated  
12 by - by the County governmental authorities, the Albemarle  
13 County Service Authority and the Rivanna Water and Sewer  
14 Authority, located at Camelot, sort of - which is near the  
15 Camelot subdivision on 29, which is south of where the GE  
16 Plant is now. And that plant had - it was what's called a  
17 package treatment plant meaning that it's a relatively small  
18 sewerage treatment plant as opposed to - like big plants, like  
19 they have here in Charlottesville and they've just finished  
20 constructing over near the interstate. The property that  
21 Wendell owned around the Airport, he desired to develop in  
22 relatively high density residential development and in com-  
23 mercial and industrial development. In order to do that, he  
24 would need to have public sewer available for the property.  
25 The capacity in the Camelot sewer treatment plant at that time

1 was very limited. There was not a lot of capacity left, no  
2 where near what he needed to develop his properties. So, this  
3 item represents efforts that I expended on Wendell's behalf at  
4 his request to negotiate with the Albemarle County Service  
5 Authority for an expansion of the Camelot sewer plant.

6 Q Now, as of the time you had ceased representation  
7 of Mr. Wood, had he built that plant?

8 A No, as of the time I ceased representation of him  
9 the plant had not been built, but the contract for the -  
10 a contract had been negotiated with the Albemarle County  
11 Service Authority and with General Electric, who was also  
12 interested in expansion of the plant. With respect to the  
13 terms and provisions under which the Albemarle County Service  
14 Authority was willing to permit the plant to be expanded and  
15 that contract had been approved by the Board of Directors of  
16 the Albemarle County Service Authority subject only to a  
17 review by the Rivanna Water and Sewer Authority.

18 Q All right, sir. Now, let me refer your attention  
19 to that item on the bill entitled Financing which represents  
20 \$1750.00 work in the bill. What is involved in this matter?

21 A This involved efforts on our firm's behalf over a  
22 period of time to attempt to find other sources of financing  
23 for Wendell because of the fact that Bank of Virginia had -  
24 had one, had called his loans. Ultimately they got paid off.  
25 The First and Merchants for the - during '77 and '78 were

1 putting a great deal of pressure upon Wendell to liquidate his  
2 loans at First and Merchants. The - had conferences with  
3 various mortgage brokers with respect to attempting to get  
4 financing for Wendell's property. The conferences with  
5 representatives of the Equitable Life Assurance Society, a  
6 Mr. Birckhead, with Mr. William Grimm of Charlottesville  
7 Savings and Loan about trying to put together a packaged loan  
8 that a number of savings and loans in the State would  
9 participate in making, so that no one savings and loan  
10 association would have all the risks, all the exposure, all  
11 the money tied up in it, with Fidelity Mortgage Corporation in  
12 Lynchburg. Got a representative of Fidelity Mortgage, Mr.  
13 Alexander to come up and look at some of his property,  
14 conferences with respect to Walker and Dunlop in Washington  
15 who was a big mortgage broker. Wendell and myself went up and  
16 met with them one day with respect to securing financing, and  
17 efforts to do so. The - there was a program that the  
18 Department of Housing and Urban Development had for guaranteeing  
19 loans made by banks on development land, raw land. They would  
20 - which is a fairly unusual program and was attractive to  
21 banks because one of the risks of making loans on raw land is  
22 that it is not very liquid. It may take you a long time to  
23 sell it off if you ever have to foreclose, and if you've got  
24 a U.S. Government guarantee that they'll get paid, it makes it  
25 much more attractive to the banks. We went up and met with

1 Reilly Corporation who was a - who was a - a mortgage banker  
2 with - that had been approved by HUD for processing of these  
3 types of loans and they agreed to try and work with Wendell  
4 in getting a Title Ten loan for the Airport Properties, and  
5 in fact, wrote a letter of intent with respect to doing that.  
6 There were conferences with respect to getting a loan from  
7 Equico Lessors, which was a subsidiary of the Equitable  
8 Life Assurance Society, and actually prepared the documents in  
9 connection with getting that loan closed. They were going to  
10 take as collateral the real estate and - some real estate on  
11 Route 29 and Wendell's yacht, but F&M already had a security  
12 interest on Wendell's yacht and they were unwilling to release  
13 that security interest for the amount of money that Wendell  
14 was willing to pay them to release the security interest. This  
15 transaction ultimately fell through and was just prior to the  
16 S-V Associates proceeding.

17 Q All right. Now, that item listed as 1977 Taxes  
18 which represents \$1500.00 of the bill. Did you do the work  
19 on that or did one of your partners?

20 A Mr. Kudravetz did that work.

21 Q All right, we'll ask him about that then. That item  
22 on the bill listed as Milodon, which is \$1000.00 portion of  
23 the bill. Who did the primary work on that?

24 A I did the work on that in connection with the -  
25 securing the contract of sale, Mr. Kudravetz did the work on

1 that in connection with closing the transaction.

2 Q All right, we'll reserve that for him. Then the  
3 items listed Bede, sale to Bede - B E D E, which is a \$400.00  
4 entry on the bill. Who did the primary work on that?

5 A I did the primary work on that.

6 Q Just describe briefly what that was?

7 A Bede - I think the name of the corporation was Bede  
8 Corporation. They were a company that wanted to locate in  
9 Albemarle County on a piece of land that Wendell owned at  
10 the Airport. They were going to make small single passenger  
11 airplanes, and the work on this - that item on this bill in-  
12 volved negotiations with them as to the purchase of the prop-  
13 erty, negotiations with them involving trying to secure a  
14 taxiway from the Airport across Route 605 to serve their plant  
15 so that they could move the plant - planes from their plant to  
16 the Airport so they could fly off, and the preparation of the  
17 contract of sale with them. That transaction ultimately fell  
18 through because Bede could not get the required financing with  
19 respect to construction of the plant and acquisition of the  
20 property.

21 Q All right. I believe that completes the list of  
22 items on this bill, the twelve items. Let me ask you, with  
23 respect to each of these twelve items, who asked you, if any-  
24 one, to undertake the work you did?

25 A It would have been Wendell. I mean the - all of my

1 - all of my conversations and working with getting the work  
2 done was initially with Wendell. As documents needed to be  
3 signed from time to time, Marlene would come to the office or  
4 the documents would be picked up by Wendell and taken to  
5 Marlene for execution, but in terms of who said, I want this  
6 work done, it would - it was Wendell.

7 Q With respect to any of these items, did you or  
8 your partners undertake to begin representation without being  
9 requested to do so?

10 A No.

11 Q Now, I want to just call off this list of items for  
12 you one at a time and ask you to describe to the Jury with  
13 regard to each whether or not Mrs. Wood had any involvement  
14 from a business standpoint or was at risk in the transaction  
15 in anyway. United Virginia Bank?

16 A She was a co-maker of that note, she was involved  
17 in that.

18 Q All right, Camelot? That's the waste treatment  
19 plant.

20 A That - she would not have been involved in that.  
21 That was property that was owned in Wendell's name.

22 Q Windmill Point.

23 A No, she would not have been - the property was  
24 not in her name, however, it did serve as collateral for loans  
25 to First and Merchants on which she was liable.



1 Q If that property had gone into default on the  
2 purchase money deed of trust, what effect would that have had  
3 on other loans that she was at risk on?

4 A It would have been a default under those deeds  
5 of trust.

6 Q Airport Properties?

7 A That property was in Wendell's name only.

8 Q Did it serve as collateral for any loans on which,  
9 she was at risk?

10 A It served as collateral for loans to the Bank of  
11 Virginia and to First and Merchants and she was liable on  
12 those loans.

13 Q What would the effect have been on her liability had  
14 defaults occurred on first, the existing deeds of trust that  
15 were on that property when Wendell bought it?

16 A It would have been a default in the loans in which  
17 she was liable. And let me just clarify one thing, when I  
18 say the property like the Airport Properties were titled in  
19 Wendell's name, they were actually titled in land trusts, but  
20 Wendell was the beneficial owner of the land trusts.

21 Q Okay, he was the beneficiary?

22 A Yes. Marlene was not a beneficiary of those land  
23 trusts.

24 Q All right, Airport Condemnation Matters?

25 A That would have been an item that related to

1 Wendell only.

2 Q On Reservoir Matters?

3 A That was an item - Marlene was the Plaintiff in  
4 the litigation involved in the Reservoir because she was  
5 trustee of the land trust that owned the property, so that  
6 would have been both of them.

7 MR. HAUGH: Your Honor, I'm going to object to this.  
8 This is different than the Exhibit filed when we asked for  
9 information on which ones Mrs. Wood was liable and they don't  
10 list her on that one.

11 Q Well, if you'd allow us to finish up the answer,  
12 I think we can clear that up.

13 THE COURT: All right, let's see what you have.

14 A She was - she was the trustee of the land trust.  
15 I think Wendell was the beneficiary of the land trust.

16 Q All right.

17 A She was a Plaintiff in the litigation.

18 Q Was she personally at risk in terms of her assets  
19 as trustee?

20 A I don't believe so.

21 Q Beg your pardon?

22 A I don't believe so in that transaction.

23 Q In other words, her role as trustee was an  
24 official capacity and not a personal one...

25 A Yes...

1 Q ...is that correct?

2 A ... it was a fiduciary - it was of a fiduciary  
3 nature.

4 Q Your Honor, that's what would have come out...

5 THE COURT: Yeah, that clarifies it.

6 Q The Milodon?

7 A She would not have had any involvement in that.

8 Q And Bede Corporation - sale to Bede Corporation?

9 A Would not have had any involvement in that.

10 Q 1977 Tax Returns?

11 A She would have, they were joint tax returns.

12 Q Financing?

13 A Financing, all of my efforts were directly - my  
14 contact with that was with respect to - was with Wendell.  
15 However, it was in efforts to refinance loans that she was  
16 personally liable on, such as First and Merchants.

17 Q Rio Associates?

18 A No involvement in that.

19 Q F&M - First and Merchants?

20 A She was involved in that. She was a co-maker on  
21 the notes.

22 Q All right. Could we have just a moment, Your Honor.

23 THE COURT: All right.

24 (Counsel confer briefly.)  
25

1 ~~THE COURT: You asked him what the abatement was and~~  
2 ~~he's told you.~~

3 Q How much was the purchase price of this property?

4 A Initially?

5 Q Yes.

6 A Approximately a million four.

7 Q What was the sales price?

8 A A million two.

9 Q All right. Was there a contract, did you say, for  
10 which the matter of the abatement was included in the sale  
11 in the bankrupt...

12 A Yes.

13 Q Do you have that?

14 A Not with me.

15 Q Could you get that for us - not right now.

16 MR. LOWRY: What was this document? I'm sorry.

17 A Contract of sale of Windmill Point.

18 Q Now, I believe you also testified that Wendell's  
19 obligation on the secured purchase money commenced in February  
20 of 1975 and that each payment was a hundred thousand dollars?

21 A The initial payments were a hundred thousand dollars  
22 for the first two years. The - thereafter they - the obliga-  
23 tion became interest bearing and the - at some point in time  
24 the principal payments went from a hundred thousand to a  
25 hundred and fifty thousand a year.

~~these two. What does that mean?~~

A The - there was a deed of trust that was prepared to put on Windmill Point for, I believe, four hundred thousand dollars to secure money that - for loans that had been made to Mr. Wood by other people, and I think what this has reference is - you know, I perhaps could check my records further at the break, but I believe what this would have reference to is in connection with putting that deed of trust on the property as a simply - single matter of financing that portion of that work, was perhaps billed at the time the deed of trust was put on. It was a four hundred thousand dollar deed of trust that secured Albemarle Bank and Trust Company and James Fleming.

Q Do you have a written record of that bill, Mr. Carwile?

A I would have to check my files, but..

Q All right...

A ...that's - you know, I don't...

Q You do that...

A I will check it.

MR. LOWRY: Your Honor, excuse me...

Q All right, now...

MR. LOWRY: Your Honor, I'm going to enter the same objection I did before. I'm not trying to be instructiveness, but this case has been going on for fifteen months. They've

1 identification.

2 MR. LOWRY: We have no objection.

3 Q We would introduce it in evidence, Your Honor,  
4 as defendant's exhibit two (2).

5  
6 DEFENDANT'S EXHIBIT Number two (2) so marked at this  
7 time by the Court Reporter and received by the Court.

8  
9 Q I'll ask you to look that over and tell the jury  
10 what that is.

11 A This is a Certificate of Title that was prepared  
12 in our office.

13 Q What does it cover?

14 A It covers title to a forty-four acre portion of  
15 the Airport Properties.

16 Q Under which land trust?

17 A North Rivanna Third Land Trust.

18 Q What is the date on that, sir?

19 A The date on this is July 1, 1975.

20 Q What period of years does this examination of title  
21 purport to cover back in 1975?

22 A Not less than sixty years.

23 Q All right, sir. Now, would you tell - with that in  
24 mind, would you tell the jury when you did the first title  
25 examination for the nine hundred thousand dollar deed of trust

1 for First and Merchants, when you did it for the two point  
2 four five million dollar deed of trust?

3 A That was probably done in 1976 and 1977.

4 Q So, you had the title?

5 A Let me explain that to you, Mr. Haugh. Mr. Wood  
6 at the time that he was buying this property said that he did  
7 not want the title examined in connection with the purchase  
8 of it. Our office, I knew that notwithstanding the desire  
9 that he did not want the title examined that at some point in  
10 time we were going to be called upon to certify title to  
11 various lenders as he used it as collateral. So, as time  
12 permitted I had my office and myself do the title to these  
13 properties, the title examination was not billed to Mr. Wood  
14 in connection with the Airport Property purchases, it was  
15 billed to Mr. Wood in connection with the F&M financing which  
16 was the first time we had the necessity for using it.

17 Q Now, are you saying that you did this although Mr.  
18 Wood didn't instruct you to do it?

19 A I knew that we would need it done and I knew that  
20 when he wanted financing - when he had a need for financing  
21 and the bank said we will make a loan, you have got a hard  
22 time telling him it was going to take us about a month to get  
23 the title for these twelve hundred acres examined, we examined  
24 the title in the anticipation of the need which subsequently  
25 materialized and did not bill him until the need did

1 mind. Did any of the creditors of S-V Associates ultimately  
2 complain about Mr. Wood's having done just what you were  
3 warning him against?

4 A Yes, First and Merchants National Bank did.

5 Q Was that conveyed to you by telephone, in person or  
6 by letter?

7 A It was conveyed to me in person by Mr. Strickland  
8 and Mr. Roger Martin, attorneys representing...

9 MR. HAUGH: If it please the Court, Your Honor, I  
10 am going to object to this. I thought the purpose of that  
11 letter was to show why the relationship between Mr. Carwile  
12 and Mr. Wood terminated. That's what it was introduced for.

13 Q It did but I thought there was some question about  
14 whether, by Mr. Haugh, about whether that was a bona fide  
15 letter on Mr. Carwile's part...

16 MR. HAUGH: No sir, I just asked if he handled the  
17 closing referred to in it and he said he did.

18 Q I won't offer the exhibit.

19 THE COURT: All right.

20 Q That's all I have.

21  
22 RECROSS EXAMINATION

23 By: Mr. Haugh

24 Q Mr. Carwile, whose idea was it to put some of this  
25 property in S-V Associates?



1 A Mr. Wood was discussing with Edward Hess and myself  
2 the problems with First and Merchants National Bank and their  
3 reluctance to agree to any further additional time, and they  
4 had given a notice letter that commencing as of a certain date  
5 they were going to commence foreclosure proceedings.

6 Q If it please the Court, Your Honor, I'd just ask  
7 him to answer my question. Who suggested it, whose idea was  
8 it?

9 A I am trying to answer you, Mr. Haugh.

10 Q Was it your idea or was it Mr. Wood's idea?

11 A May I finish my answer?

12 Q No sir. Your Honor, I would like just a direct  
13 answer.

14 THE COURT: Can you answer it as to whether it was  
15 your idea or Mr. Wood's. If it needs explanation you can give  
16 it.

17 A It needs explanation, Your Honor.

18 Q Can you give the answer first?

19 THE COURT: Can you answer first and then explain?

20 A It was my idea to use S-V Associates. The reason  
21 that we used that, with Mr. Wood, he said, I am not going to  
22 let them foreclose. He said, I'll go into a reorganization  
23 proceeding before I will let them foreclose. He says, that's  
24 distasteful to me to have to do that but I don't want to  
25 personally be in a position of ever having taken personal

1 bankruptcy or been in a personal reorganization proceeding.  
2 Mr. Hess and I said well, there is another way we could do  
3 it to keep you personally from being involved in Bankruptcy  
4 Court as an individual by putting your troubled assets into  
5 a general partnership and then letting this partnership file  
6 for the Bankruptcy Court reorganization.

7 Q Now, whose idea was it for Mr. Wood to go into  
8 reorganization?

9 A It was Mr. Wood's idea that he was going to do  
10 that in order to keep First and Merchants from foreclosing.

11 Q Didn't you suggest to him that you could go down  
12 to First and Merchants, that you had just been down there in  
13 the last six months on behalf of Charlie Hurt, bluff them out  
14 of doing any default and you were going to do the same thing  
15 for him, bluff bankruptcy and try to bluff them into doing  
16 something else. Didn't you tell him that?

17 A Nope. Charlie Hurt had never had any loans at  
18 First and Merchants National Bank.

19 Q Well, just down, I am sorry, and bluffed the  
20 Bank of Virginia on behalf of Charlie Hurt, and you could do  
21 the same thing for him at First and Merchants? Did you tell  
22 him that?

23 A I don't think I told him that I could do that. I  
24 told him that I had worked on transactions with Charlie Hurt  
25 at the Bank of Virginia. He asked me to see if I could

1 A Oh no, those are just a small portion that were  
2 given to me in my own use to review and have around

3 Q Were those basically histories of what elements  
4 were involved in each transaction?

5 A Yes.

6 Q Approximately how many hours did you spend in  
7 reviewing the files and records and receiving that statement  
8 of the history of the cases?

9 A I checked my time records this morning, it was  
10 fifteen hours that I had spent familiarizing myself with  
11 the background of these matters.

12 Q Let me ask you first, in your experience in matters  
13 of this type, commercial matters involving real estate and  
14 purchases and sales, large financing transactions with  
15 banks and purchase money security interest and matters includ-  
16 ing commercial litigation if there are a number of different  
17 ways that attorneys in this area generally bill their clients  
18 for this type of representation?

19 A Yes, there are a variety of methods of billing.

20 Q Would you describe some of those varieties?

21 A Some attorneys bill on a straight time basis and  
22 very seldom vary from it, others bring other matters into and  
23 of course, a straight time basis is a product of you experience  
24 and the amount of time you have been practicing, you have been  
25 doing something for twenty years you can do it more efficiently

1 than someone who has been doing it for two or three years and  
2 attorneys feel they are entitled to charge a higher hourly  
3 rate as a result of their greater experience and time involved.  
4 The client's ability to pay is a consideration, the amount of  
5 responsibility that you undertake for the client is a consid-  
6 eration, I think just about every attorney is going to charge  
7 more for a one million dollar transaction than a one thousand  
8 dollar transaction. The emergency nature of the transaction  
9 may increase the total fee. For example, if something has to  
10 be accomplished in a week and under normal circumstances it  
11 would take a month and you have to work every night and every  
12 weekend and put other clients aside you are probably going to  
13 increase your fee based on that.

14 Q Are these elements that are in anyway recognized  
15 by the State Bar Association or the Canons of Ethics?

16 A Yes, the Canons of Ethics spells out a number of  
17 considerations in setting the bill, the fact that it may  
18 exclude an item doesn't mean that an attorney can't consider  
19 it, or can't agree with his client that it will be considered  
20 but the Canons of Ethics do set forth a number of specific  
21 considerations.

22 Q Do those include the considerations you have already  
23 described for us here?

24 A Yes.

25 Q Among the items you reviewed in reviewing these

~~for you as if you spread it around,~~

Q For attorneys practicing in the area, commercial law and more complex areas such as you have described, is there one method universally accepted, one universally accepted method of billing a client or are there a variety of ways that attorneys will bill their clients?

A I think there are many ways for different clients. Arrangements are worked out in different situations.

Q Can you describe what the major types of arrangements are?

MR. HAUGH: I object to what the major type is. He can describe the various types Your Honor.

Q Well, I don't want him to go into as many arrangements as their are clients but I am talking about those that are most repetitive.

THE COURT: All right, go ahead.

A Well, certainly typical methods are straight hourly where you just simply keep track of every hour, every half hour, whatever of your time and you bill on some set hourly rate. Another would be a contingent fee where if you get a if an attorney is paid by receiving a percentage of whatever the transaction might involve. I think, at least in my experience, the most common and frequently used method is really a method whereby the time that's involved is a substantial factor but you also consider the complexity of

1 the work, I guess to a lesser degree the results achieved  
2 the conditions under which the work is done, i.e. is it a  
3 terrific amount of work that has to be done in a very short  
4 period of time, nights, weekends, that kind of thing, what  
5 is the degree of professional responsibility that has to be  
6 assumed, in other words, do you have to sign an opinion  
7 letter where the lawyer writes a letter and says in my  
8 opinion this is a wonderful deal and you are safe because  
9 when the lawyer signs such a letter he assumes professional  
10 responsibility for it and can be liable if his opinion was  
11 not right. So, I would say those three or some combination  
12 of them are the most frequently used.

13 Q With regard to the third method that we were just  
14 discussing is there either precedent or directions which are  
15 provided to the practicing bar under the Canons of Ethics?

16 A Yes.

17 Q Does it speak to and state that as being one of  
18 the methods of billing which is covered by the Canons?

19 A Yes, they express that, the factors that are to be  
20 considered are set out in the Canons of Ethics.

21 Q Mr. Gilliam, during the period 1975 through 1978  
22 are you familiar with the basic range of hourly rates that  
23 were being charged by attorneys handling more complex trans-  
24 actions, where they were billing on an hourly basis?

25 A Yes sir.

1 Plaintiff's twenty-one(21).

2  
3 PLAINTIFF'S EXHIBIT Number twenty-one(21) so marked at  
4 this time for Identification Purposes only.

5  
6 Q I show you an exhibit marked as Plaintiff's Exhibit  
7 number twenty-one(21) and ask you if you can identify that?

8 A This is the file that was set up for Mr. Wood  
9 regarding the condemnation of some of the North Rivanna Land  
10 Trust Properties that he purchased in the spring of 1975.

11 Q Can you briefly give us a description of what this  
12 matter is about?

13 A When Mr. Wood purchased the North Rivanna Land Trust  
14 Properties, 1,200 acres on Route 29 North he purchased it sub-  
15 ject to two Certificates that had been filed by the State High-  
16 way Commission for condemnation of portions of the property.

17 When the State Highway Department wants to condemn land for the  
18 widening of a road or improving - in this case I think it was  
19 the bridge there across the North Rivanna River, just south of  
20 the entrance to Camelot, the Highway Commissioner will file a  
21 certificate against the property owner and will basically say  
22 I set this as being the fair value of the land I am taking and  
23 I will pay you this amount for your property, the landowner  
24 then has an opportunity to draw that money down and then to  
25 contest the valuation that the Highway Department Commissioner

1 has set for the land.

2 Q With that general frame work as to what happens,  
3 what happened in this case?

4 A In this case there were two certificates that had  
5 been filed against the property that Mr. Wood was acquiring.  
6 There was one certificate for, I believe, twenty-nine thousand  
7 five hundred dollars(\$29,500.00) and another one for four  
8 thousand dollars(\$4,000.00), for two different parcels of  
9 property. We proceeded to file petitions with the court and

10 prepare orders for the court authorizing the distribution of  
11 the funds to Mr. Wood. We corresponded and directed the trust  
12 company in Richmond that was serving as a trustee of the land  
13 trust to receive the money to pay to Mr. Wood since they were  
14 the legal titleholders of the land trust, Mr. Wood was the  
15 ultimate beneficiary.

16 Q Let me stop you for just a minute. This is part of  
17 the property that you referred to earlier as the Airport  
18 Properties?

19 A That's correct.

20 Q This is one piece, five land trusts?

21 A This actually involved two pieces, two of the parcels,  
22 but just small portions of those parcels. A .7 acre parcel, I  
23 believe, and a 1.2 acre parcel maybe.

24 Q When did this matter begin, when did you get  
25 involved in it?



1 Q Who held those mortgages, do you recall?

2 A I think the mortgages were held, one mortgage was  
3 held, four hundred and sixteen thousand dollars (\$416,000.00)  
4 was held by Dr. Birdsong and William Trevillian; and there was  
5 a second mortgage on the property and I don't know who the  
6 bondholders were on that.

7 Q Did Mr. Wood contest the valuation that had been  
8 put on the property by the Highway Department?

9 A Yes he did.

10 Q What did he feel was the proper valuation of the  
11 property?

12 A I think at one point we made an offer to the Highway  
13 Department that we would settle the cases for forty-six thous-  
14 and dollars (\$46,000.00) which would have been basically twelve  
15 thousand dollars (\$12,000.00) more than the value the Highway  
16 Commissioner had placed on the property.

17 Q Did you ultimately come to an agreement with the  
18 Highway Department?

19 A I believe an agreement was ultimately reached at a  
20 price of forty thousand dollars (\$40,000.00).

21 Q What was your participation in terms of going  
22 through to deal with the Highway Department in litigation that  
23 resulted in the petition filed by Mr. Wood?

24 A After Mr. Wood received the twenty-nine thousand  
25 five hundred dollars (\$29,500.00) suit was instituted in the

1 Q Now, moving on to Milodon which is one of the items  
2 in your bill for services. I'd like that marked as Plaintiff's  
3 twenty-two(22),

4  
5 PLAINTIFF'S EXHIBIT Number twenty-two(22) so marked  
6 at this time by the Court Reporter.

7  
8 Q I show you a file marked Plaintiff's Exhibit number  
9 twenty-two(22) and ask you if you can identify that?

10 A Yes, this is our firm file that we set up for Mr.  
11 Wood in connection with the Milodon transaction.

12 Q Have you had an opportunity to review that file?

13 A Yes.

14 Q In your opinion is the work reflected on the bill  
15 work that you did on behalf of Mr. Wood in connection with the  
16 Milodon transaction?

17 A Yes it is.

18 Q Have you been paid for that work?

19 A No.

20 Q Do you know how much of the bill you are charging  
21 Mr. Wood for the Milodon transaction?

22 A I think it's a thousand dollars(\$1,000.00).

23 Q Now, when did you become involved in the Milodon  
24 transaction, when did all of this come up?

25 A This came up in the early spring, February or March

1 ~~of 1978,~~

2 ~~Q Briefly describe what the transaction was.~~

3 A This involved the sale by Mr. Wood of one of his  
4 land trusts on the Airport Properties. This was the North  
5 Rivanna Second Land Trust to a company based in California  
6 called Milodon Engineering, a wholesale distributor of bracing  
7 parts I believe. I think it was a proposed sale of a two(2)  
8 acre parcel to them at a price of fifteen thousand an acre for  
9 a total contract of thirty thousand dollars(\$30,000.00).

10 Q Under the terms of your representation of Mr. Wood  
11 what were you required to do as a part of this closing?

12 A The first thing we were required to do was to, I  
13 believe Mr. Wood handled the negotiations with Milodon, we then  
14 drafted a Contract of Sale with Milodon on behalf of Mr. Wood.  
15 I recall that there were numerous contingencies in the contract  
16 it was contingent upon the Milodon people being able to get  
17 zoning, upon Mr. Wood agreeing to provide sewer and water to  
18 the property; and there may have been one or two other con-  
19 tingencies - oh, there were some contingencies about financing.  
20 Milodon was in the process of applying for a six hundred thous-  
21 and dollar Farmer's Home guaranteed loan through Albemarle Bank  
22 and Trust Company and that was a contingency in the contract  
23 that if they didn't get that loan the contract would not be  
24 binding on them.

25 Q What other documents did you prepare in order to

1 make this transaction?

2 A We prepared the contract, then the next thing we had  
3 to do was prepare the document to get ready for closing and  
4 that involved first of all making sure that the property could  
5 be conveyed to Milodon free and clear of the existing mortgages

6 on the property. As I previously testified on the North  
7 Rivanna Second Parcel I believe there was a four hundred and  
8 sixteen thousand dollar(\$416,000.00) mortgage and a second  
9 mortgage. By this time Mr. Wood had also placed the 2.45  
10 million dollar First & Merchants mortgage against the property  
11 and a supplemental mortgage against the property for a hundred  
12 and seventy-five thousand dollars(\$175,000.00) so we had to

13 make sure that we got all those properties, all of those liens  
14 all of those mortgages released from this property prior to  
15 closing which involved preparing letters to the bondholders,  
16 actually letters for the bondholders to sign on the four  
17 hundred sixteen thousand dollar mortgage and the second mort-  
18 gage on that property and obtain their signatures. I can  
19 recall going to Mr. Trevillian's office, one of the bondholders,  
20 and getting his signature on the letter to the trustees, the  
21 trustees of the mortgage authorizing them to make the release  
22 of the property from the Deed of Trust, or the mortgage. It  
23 involved correspondence and phone conferences with First and  
24 Merchants Bank in Richmond to make sure that they would release  
25 the property and a discussion of what amount of money they

1 Commissioner's Attorney, the same with Milodon - Mr. Carwile  
2 was involved in the early stages in discussing with Mr. Wood  
3 the nature of the transaction, what we would be required to do.  
4 I think that I actually handled the closing of that transaction  
5 on Mr. Wood's behalf.

6 Q I would like to refer you to a third matter in the  
7 bill for services and that's the 1977 Tax Return. Are you  
8 familiar with that?

9 A Yes.

10 Q And - mark this as an exhibit.

11  
12 PLAINTIFF'S EXHIBIT Number twenty-three(23) so marked  
13 at this time by the Court Reporter, for identification.  
14

15 MR. HAUGH: Your Honor, I have an objection to this  
16 exhibit.

17 THE COURT: Members of the jury you will have to  
18 retire to your room.

19 (JURY RETIRED TO JURY ROOM)

20 MR. KENDALL: I am going to ask Mr. Kudravetz if he  
21 prepared his tax return for the year 1977, the preparation  
22 would have occurred in 1978. The amount of the bill that they  
23 are claiming on this particular portion of the bill is for  
24 fourteen hundred dollars(\$1,400.00). I intend to show a time  
25 sheet from the year previous...

1 Q I think that's all on the 1983. Why don't we shift  
2 down to the Seay matters and touch on them briefly. Were you  
3 present when Mr. Carwile testified about the Seay matter?

4 A I believe so, yes sir.

5 Q What was your involvement in that matter?

6 A I was first involved in the case by Mr. Carwile in  
7 July of 1977. Mr. Seay's contract to purchase Windmill Point  
8 had been entered into in April of 1977, he had taken poss-  
9 session of the property pursuant to the terms of the contract.  
10 We were getting closer and closer to the closing date which  
11 was July 31, 1977. As we got closer and closer to that  
12 closing date it became more and more apparent we were going  
13 to have difficulty bringing Mr. Seay to closing. We antici-  
14 pated at that point in time that we might have to go to  
15 litigation on the contract. Mr. Carwile asked me to get  
16 involved in connection with the closing, he had prepared all  
17 of the voluminous documents necessary to close the transaction  
18 and my first real contact with the Seay matter was on July  
19 29th when Mr. Carwile and I went to Richmond to the offices  
20 of Mr. Smithers, Mr. Seay's second or third attorney, to pre-  
21 pare for the closing. We tendered the documents for closing  
22 at that point in time, stated to Mr. Smithers we were prepared  
23 to work on the 29th and 30th and 31st to close this transaction.  
24 Mr. Carwile had special Power of Attorney for Mr. and Mrs.  
25 Wood to act on their behalf at closing because they were out

1 of the country on vacation somewhere.. That was my first  
2 involvement with the case. We encountered difficulty from  
3 that date forward. Mr. Seay threw up every block that he  
4 could think of to defer, delay and ultimately not close the  
5 transaction; and from July 29th on it was a constant process  
6 of trying to first make Mr. Seay close the transaction, work  
7 with Mr. Seay in anyway to accommodate his concerns so that  
8 he could close the transaction, help Mr. Seay with the  
9 financing by agreeing to modifications in the financing pack-  
10 age so that he would close the transaction, none of which  
11 worked.

12 Q Was Mr. Wood anxious to close with Mr. Seay?

13 A Yes sir.

14 Q Why?

15 A He was ready to be out of the marina business, it  
16 was, I believe, a favorable price for the sale of the marina,  
17 I believe it was a million seven ten and the financing  
18 package that had been arranged by Mr. Carwile was favorable in  
19 terms of the spread on the interest point.

20 Q Now, after the property didn't close, and you de-  
21 scribed the negotiations that took place with Mr. Seay to try  
22 and restructure the deal, where did those negotiations and  
23 conversations take place?

24 A The major negotiations took place in Mr. Smither's  
25 office in Richmond. There were a number of times when Mr.

1 A We never got to trial on the merits.

2 Q Did you do any work on it thereafter? After the  
3 firm was dissolved?

4 A After October 1, 1978 I do remember one instance  
5 where Mr. Hess, who was representing Mr. Wood on the appeal,  
6 had asked if I would be willing to read a draft of his brief  
7 and I did so. I never billed Mr. Wood for that.

8 Q Who was Mr. Hess with at that time?

9 A Mr. Hess was practicing law with Mr. Carwile.

10 Q That's all we have of this witness, Your Honor.

11 THE COURT: Any redirect?

12 MR. KENDALL: No sir.

13 WITNESS STOOD ASIDE

14 \*\*\*\*\*

15  
16 WENDELL W. WOOD, Having been duly sworn was called on  
17 behalf of plaintiff and testified as follows:

18 DIRECT EXAMINATION

19 By: Mr. Lowry.

20 MR. HAUGH: Judge, we have an objection to these next  
21 documents.

22 THE COURT: All right, members of the jury retire to  
23 your room.

24 (JURY RETIRED TO JURY ROOM)

25 MR. LOWRY: I would ask marked for identification



1 Plaintiff's Exhibit twenty-six(26) A through E and I repre-  
2 sent to you that those were provided to us by counsel pursuant  
3 to our Request for Production of Documents. Would you describe  
4 what they are?

5  
6 PLAINTIFF'S EXHIBIT Number twenty-six(26) A through E  
7 so marked at this time by the Court Reporter.

8  
9 A I believe twenty-six(26) A is a financial statement  
10 dated May of '81, twenty-six(26) B is a financial statement  
11 dated August 26th of '80, twenty-six(26) C is a statement  
12 dated December 19, 1979, after the sale of Woodbrier, the  
13 next one...

14 Q Twenty-six(26) E is for what year?

15 A December 19th of '79.

16 Q And twenty-six(26) D?

17 A January '78. Each one of them has two to five pages.

18  
19 PLAINTIFF'S EXHIBIT Number twenty-seven(27) so marked  
20 for identification by the Court Reporter.

21  
22 Q I show you what has been marked for identification  
23 as Plaintiff's Exhibit number twenty-seven(27), the front  
24 page just says UVB and is not a part of the document itself.  
25 These are two financial statements provided by subpoena,

1 pursuant to Subpoena Duces Tecum from United Virginia Bank  
2 and I ask you if you can identify those and is your signature  
3 appearing on each one?

4 A This is exhibit twenty-seven(27), a statement of  
5 January '76, it appears to be my statement, my signature  
6 rather. This is another one here, is that supposed to be  
7 marked?

8 Q It's part of the exhibit.

9 A It's another statement here dated February of '75  
10 and that has my signature, it looks like a copy of my  
11 signature.

12  
13 PLAINTIFF'S EXHIBIT Number twenty-eight(28) so marked  
14 for identification by the Court Reporter.

15  
16 Q I show you exhibit twenty-eight(28) which is a  
17 production from Virginia National Bank pursuant to a subpoena  
18 duces tecum and ask you if you can identify the financial  
19 statement here and whether or not your signature appears on  
20 it?

21 A It's one dated August 26th of 1980, it appears to  
22 have a copy of my signature, several pages. One dated Decem-  
23 ber 19th after the sale of Woodbrier in 1979. One dated  
24 December 19, 1979, it has some writing on it, that's not my  
25 writing.

1 Q Which writing are you referring to?

2 A The writing written at the top.

3 Q That portion is not your handwriting, in the upper  
4 righthand corner, is that what you are saying?

5 A I don't see - it should be another page to this,  
6 that's the front, it appears that only the front of it has  
7 been copied.

8 Q We can only show you what we received?

9 A This was received from...

10 Q Virginia National Bank.

11 A This appears to be only half of the statement. The  
12 statement is a front and back statement and whoever copied  
13 it didn't copy the back of it, it does not have my signature.

14 Q That was the one for what year?

15 A December 19, 1979. Another is January 11, 1978  
16 and that has a copy of my signature.

17 Q Is it a copy of a document with your signature on  
18 it?

19 A It's a copy that was made after I had signed it.

20 Q You mean photocopied?

21 A Right.

22 Q Okay.

23 A One dated January 23, 1977, it appears to be the  
24 same way as the other one, only the front page has been copied  
25 again. It does not have a signature on it.

1 Q Do the attachments have your signature on it?

2 A The attachments have signatures. The next two  
3 pages are copies of the same thing it appears.

4 Q It was duplicated twice?

5 A That's what it looks like. Maybe copied one thing  
6 twice and not the other one. One dated January 26, 1976 that  
7 has a - actually has two signatures, copies of my signature on  
8 it. One dated February 27, 1975, has a copy of my signature  
9 and some attachments that have my signature.

10 Q Do you recognize on that last one the handwriting  
11 other than your signature?

12 A No I don't. It's in handwriting, it may be, it  
13 does not appear to be, I don't write quite that well but I  
14 don't know - it may possibly be my wife's.

15 Q There is a copy of your signature at the bottom of  
16 the page?

17 A Yes.

18 Q I now show you financial statements that were  
19 produced by First and Merchants National Bank pursuant to a  
20 Subpoena Duces Tecum, and we ask that it be marked for  
21 identification as exhibit twenty-nine(29).

22  
23 PLAINTIFF'S EXHIBIT Number twenty-nine(29) so marked  
24 for identification by the Court Reporter.  
25

1 Q Ignoring now that the first two pages, the top page  
2 is merely a copy of the subpoena and the second page is the  
3 transmittal letter from F&M, beginning with the financial  
4 statements can you identify them?

5 A One dated January 27, 1975, has a copy of my  
6 signature, it appears to be the same as some of the copies  
7 we referred to in the other one. One dated January 26, '76  
8 and has a copy of my signature. One dated January 23, 1977,  
9 it's a page that's not signed.

10 Q Are the attachments signed?

11 A The attachments, there is no date on these attach-  
12 ments - yes, I am sorry, January 24, 1977, and the date of  
13 the statement is January 23rd, I don't know - this could have  
14 been like a worksheet, working up to that, I don't know.

15 Q Those attachments merely list the property...

16 A Yeah, the fact that it wasn't signed, invariably  
17 when I start to do a statement I start with a blank one and  
18 go through it and do the handwritten part on it, do the  
19 additions and listing of the properties, whether that was a  
20 worksheet or not, the fact that it was not signed I would  
21 think they must have another one. I don't think the bank  
22 would accept it unsigned.

23 Q Okay.

24 A September 24, 1979, again not signed and there is  
25 some writing on this that is not mine.

1 Q The handwriting on the second page you are referring  
2 to?

3 A Yeah.

4 Q Do the attachments have your signature on them?

5 A This attachment does not have a signature.

6 Q Nor does the next one?

7 A The next one does not.

8 Q The balance of the statements are signed, is that  
9 correct?

10 A They appear to be, this one I don't believe is a  
11 part of it, a financial statement. This was requested, I am  
12 not even sure which bank this was from...

13 Q F&M?

14 A F&M had requested a projection, sales projection  
15 that was made...

16 Q Do you recognize that as a projection?

17 A It appears to be something I prepared.

18 Q Your Honor, now that the witness has made identifi-  
19 cation of the documents we would like to admit into evidence  
20 those financial statements. We intend to offer those state-  
21 ments that have Mr. Wood's signature on them, we will elimin-  
22 ate those he can't identify as having his signature on them,  
23 for several purposes. In regard to the 1976 statement which  
24 were prepared approximately, dated approximately nine months  
25 after the closing and purchase of Airport Properties, they

1 reflect the value he was carrying these properties on his  
2 financial statement at. You will recall his earlier testi-  
3 mony, already in evidence and not objected to, was that this  
4 transaction enabled him to use the vehicle of leverage to  
5 obtain/<sup>at</sup>the very cheap price very valuable property and it  
6 shows what he evaluated the worth of that property less than  
7 nine months, or approximately nine months after the purchase.  
8 With regard to the balance of the financial statements they  
9 also tend to show what was happening to the value of his  
10 properties which are attached to most of these statements and  
11 certainly are in summary form in all of his statements going  
12 up and down during the course of this period of time. There  
13 has been great discussion about cash flow difficulties but  
14 not straight bankruptcy types - it goes to corroborate that  
15 testimony. Lastly, it also tends to show the volume and  
16 magnitude of the value of the properties being dealt with by  
17 these attorneys in their representation of Mr. Wood....

18 (Mr. Lowry and Mr. Kendall conferring)

19 MR. LOWRY: Additionally, they show what assets were  
20 at risk to the defendants themselves should their various  
21 loans go into foreclosure and be in a position where their  
22 financial situation just folded up, which has been testified  
23 by the plaintiffs it's a major part of their responsibility  
24 representing them with F&M, United Virginia Bank, Windmill  
25 Point matters, all of which had substantial liens and deeds

1 of trusts on them and each of the banks had substantial lines  
2 of credit which if folded put in jeopardy the personal property  
3 of the Woods who were virtually liable on the bank loans.

4 Thank you.

5 MR. TREAKLE: Your Honor, I'll make a few comments. I  
6 think Mr. Haugh may make some as well. Firstly, I'll respond  
7 in order, he is offering the '76 statement to show that nine  
8 months after the closing of the purchase of the Airport  
9 Properties that it was used as value on the financial state-  
10 ment at a sum in excess of purchase price. The testimony that  
11 the court has heard thus far is that that transaction as it  
12 was structured was brought to Mr. Carwile to prepare the  
13 documentation. Doug Zerkel in fact brought the deal to Mr.  
14 Wood whereby he purchased this tract of land for five thousand  
15 dollars cash and that the only effort that Carwile had to  
16 expend in this was the preparation of the documentation. There  
17 is no relevance to the issue at hand in his case, that is what  
18 was the agreement between the parties and what is the compensa-  
19 tion awarded for Mr. Carwile's services, if any. There is no  
20 relevance between that and the financial statement in 1976  
21 because all that shows is Mr. Wood made a good deal; but he  
22 is entitled to the benefit of his bargain and that's not  
23 relevant to this litigation. Secondly, they offer it to show  
24 what was happening regarding the various values to his  
25 property, again that is not relevant to the issues at hand



1 today in this litigation. Thirdly, they are showing the  
2 volume of transaction, we have already seen and heard testi-  
3 mony regarding the various transactions which are the subject  
4 matter of this bill and those are the transactions that are  
5 relevant to this, it's not anything else that transpired; and  
6 finally they show - they argue that it shows the assets at  
7 risks to the plaintiffs if there is a foreclosure. There is  
8 already comment to the effect that assets were at risk, both  
9 for Mrs. Wood and Mr. Wood. The numbers alone, when you are  
10 talking about the size of the deeds of trusts that are at  
11 issue in this litigation the numbers alone show the risks, we  
12 are talking a nine hundred thousand dollar deed of trust,  
13 four or five million dollar deed of trust, a seventy-five  
14 thousand dollar deed of trust, a piece of property purchased  
15 for a million four and sold for a million two, a loss to Mr.  
16 Wood, another property that was purchased, the Airport  
17 Properties at a large sum in excess of a million dollars, We  
18 submit to the court that the purpose of this - these financial  
19 statements is not in anyway to corroborate or to buttress the  
20 case at hand but it appears to us and has appeared to us from  
21 the very beginning of this litigation, since opening state-  
22 ments, that plaintiffs and plaintiff's counsel are trying this  
23 case by saying Mr. Wood is rich and Mr. Carwile is not rich  
24 and therefore we should distribute the wealth between the two  
25 of them; and that's not the issue of this litigation. That

1 is what they said in their opening statement, that he was a  
2 wheeler-dealer, he had all this money, that he had a rather  
3 substantial financial statement but that's not the issue in  
4 this litigation, the issue is whether or not there was an  
5 agreement between the parties for compensation for legal  
6 services and if so what is owed for that compensation.

7 THE COURT: That's the issue but one of the criteria  
8 of the Campbell County Case is the amount of the money, value  
9 of the property to be affected.

10 MR. TREACLE: We have already had testimony to that  
11 Your Honor, we don't need the financial statements to show  
12 that Mr. Wood owns oriental rugs or that he owns an automobile,  
13 that's not relevant to what is at issue in this case; and  
14 that's what the financial statements show. If you recall Mr.  
15 Kendall's opening statement...

16 THE COURT: Sure, there are a lot in these statements  
17 not relevant.

18 MR. LOWRY: Your Honor, to the extent that his personal  
19 assets are in jeopardy under these loans they are certainly  
20 relevant and they are to be effected by what happens when a  
21 bank calls for foreclosure...

22 THE COURT: We will get back to you. Go ahead Mr.  
23 Treakle.

24 MR. TREACLE: Well, Your Honor, all I am saying is  
25 that it's not relevant to the issue in this case and the risk

1 of prejudice by interjecting into the litigation financial  
2 statements that shows that Mr. Wood does have a substantial  
3 net worth, the risk of prejudice that the jury might at that  
4 point look at this and say, well, the poor attorneys are say-  
5 ing they had to borrow money and this man's financial statement  
6 shows he has money so let's redistribute, the risk of pre-  
7 judice is real great; and I think Mr. Haugh has some more  
8 comments.

9 MR. HAUGH: Not at this point Your Honor.

10 MR. LOWRY: Your Honor, they maybe unhappy about the  
11 fact that Mr. Wood is wealthy and that's an element in this  
12 case but...

13 MR. HAUGH: I am not unhappy about that.

14 MR. LOWRY: But, that really isn't essential as one  
15 of the things being dealt with here. The fact is they were  
16 indeed representing a man of great wealth who had it all on  
17 the line in these transactions and as Your Honor pointed out,  
18 page 51 of the Campbell County Case one of the things listed  
19 is the amount of money or value of the property to be effected.  
20 As Your Honor knows from many days of testimony in the other  
21 hearings all of his transactions hinged upon each other in  
22 many ways, especially in the way of financial transactions  
23 and if one part of the house of cards fall the whole thing  
24 falls and it has been testified to that it was very heavy on  
25 the plaintiff's minds already that this was an element of

1 their representation. I think the jury is entitled to know  
2 the level of that risk.

3 MR. HAUGH: If it please the court, Your Honor, Mr.  
4 Wood has never denied that he had cash flow problems, the  
5 evidence so far has been that they have given the value of  
6 the property, the purchase price of the property, they have  
7 given the amount of the loan, that's all in evidence. They  
8 have been throwing around a hundred thousand here, 1.45  
9 million. What you do with a financial statement is you just  
10 prejudice the jury with all these things. If Mr. Wood got on  
11 the stand and testified, well, gee wheez, I don't have anything  
12 then you use these to impeach him or something but that hasn't  
13 happened, it's not going to happen. All the purpose this can  
14 be is to influence a jury Your Honor.

15 THE COURT: The use for impeachment has no probative  
16 value does it?

17 MR. HAUGH: No sir.

18 THE COURT: Yet it does have probative value as to the  
19 elements of the Campbell County case. I am sure it has some  
20 prejudicial effect but it also has some probative value.

21 MR. TREACLE: Your Honor, if I may, I think the  
22 prejudicial effect outweighs the probative value since we  
23 have already had all the testimony that would be necessary  
24 in Campbell County, by using that standard. Campbell County  
25 says, page 51 - the character and importance of the matter

1 in which the services were rendered, the amount of the money  
2 or the values of the property to be effected. We have that  
3 testimony; and that testimony has been amply documented, amply  
4 presented to the members of the jury by testimony of these  
5 various witnesses. They certainly would be able to get that  
6 testimony from Mr. Wood on examination of him. The prejudici-  
7 al effect of having this financial statement that shows, if  
8 Your Honor will, that shows on May 26, 1981 his listed cash  
9 assets of three hundred thousand dollars in the form of a CD,  
10 that he listed other assets and securities at 1.6 million, the  
11 prejudicial effect of that is such that it far outweighs its  
12 probative value. If Your Honor would like an opportunity to  
13 review these statements and see - the impact that these state-  
14 ments might have on the jury because Mr. Wood happens to be a  
15 wealthy man is tremendous.

16 MR. LOWRY: The testimony is only partial as to the  
17 assets, certainly the amounts of the loans are in but the  
18 jury can assume that he was virtually bankrupt already be-  
19 cause of the Chapter 12, they only know the amount of the  
20 debt that he was faced with, they don't know what assets he  
21 had personally and that's definitely a part as Bud just read  
22 again of the Campbell County Case and it goes with represent-  
23 ing the man's wealth, the risk for the client and also the  
24 risk in malpractice terms for representing him - a wealthy  
25 man, as we know by a substantial malpractice counterclaim

1 against him right now and that's all entitled to be consider-  
2 ed in framing his bill on a quantum meruit basis.

3 MR. TREAKLE: Your Honor, I would feel comfortable if  
4 Your Honor would review these documents and see because I  
5 think you will recognize the tremendous impact these documents  
6 can have.

7 THE COURT: I have already seen them when I went  
8 through the file. They certainly have relevance when I view  
9 this as a quantum meruit case and the criteria of the Campbell  
10 County case. Ordinarily you don't get into this unless you  
11 have a case involving punitive damages.

12 MR. TREAKLE: Your Honor, the same question can be  
13 resolved by simply asking Mr. Wood in testimony if at all  
14 times during your representation by Mr. Carwile you had assets  
15 in excess of and give the figure.

16 MR. LOWRY: The figures are in the financial statements.

17 MR. TREAKLE: That testimony is not as prejudicial as  
18 having the jury walk back to the jury room with eight or ten  
19 financial statements showing that during the course of his  
20 representation by Mr. Carwile Mr. Wood had substantial wealth  
21 in the form of assets and had apparently received these other  
22 assets, he had rugs, he had various things. Just the impact.

23 MR. LOWRY: All of which were in jeopardy if he went  
24 into default on his loans.

25 THE COURT: I am going to rule that they are relevant

1 and I will admit their introduction, those that have been  
2 identified properly by Mr. Wood, over the defendant's objec-  
3 tion. We will break for lunch and you can get them in order  
4 while we are at lunch. Bring the jury out.

5 (JURY RETURNED TO THE COURTROOM)

6 THE COURT: Members of the jury, we have just been  
7 through some documents, some of which you are going to be  
8 able to see and some you will not and it will take awhile to  
9 perhaps separate them so we will just take our lunchbreak now  
10 and I will ask you to come back at one o'clock and when you  
11 come back come directly to your jury room.

12 (JURY EXCUSED FOR LUNCH)

13 (COURT IN RECESS FOR LUNCH)

14 (COURT RECONVENED-JURY REMAINED IN JURY ROOM)

15 MR. KENDALL: We have two things to take up Judge. One  
16 is that on the admissions request we have agreed as to the  
17 language and we'd like to have this admitted - at some point  
18 we'd like to be able to read this to the jury. Secondly,  
19 because there was some confusion about whether the fronts and  
20 the backs of certain of the financial statements had been  
21 prepared Mr. Valentine of Virginia National Bank has been  
22 asked to come up with the originals of those - the...

23 MR. LOWRY: Bud and I talked about this and what we  
24 would like to do is introduce the originals and later sub-  
25 stitute copies so the bank will have its originals back.

1 MR. TREACLE: Subject to our original objection, we  
2 except to the court's ruling. We have no objection to that  
3 procedure. We have an additional matter that we would like  
4 to take up with respect to the financial statements. Gary  
5 and I spoke briefly with the court. One of the concerns was  
6 dissemination of the information contained in the financial  
7 statements and so Mr. Kendall and I have agreed that the  
8 appropriate order will be entered, drafted and submitted to  
9 Your Honor for sealing these financial records so they are  
10 not subject to scrutiny by the general public as a part of  
11 this litigation.

12 MR. LOWRY: We will also warrant to the court that the  
13 only copies we have made are these that are being submitted  
14 into evidence. The only other copies are in the court's file.

15 MR. KENDALL: We'd be perfectly willing during the  
16 pendency of this litigation to put them in an envelope or  
17 something like that. While they are in the court's file they  
18 may be downstairs. We could do that now, we are not interest-  
19 ed in using these for any purpose except matters involved  
20 directly in this litigation.

21 THE COURT: I have no problem sealing them. We will  
22 put them in the file once the jury has reached their verdict  
23 and we will note the file is sealed.

24 MR. TREACLE: Your Honor, I do have one other question  
25 with respect to the financial statements. In reviewing those



1 documents during the lunch break it appears that it's not  
2 only were the financial statements for the years in question  
3 being offered into evidence but the financial statements for  
4 subsequent years, 1981, 1980, 1979 were being offered into  
5 evidence. Those financial statements in no way relate to  
6 this litigation and we would ask the court to limit the  
7 introduction of financial statements solely to those years  
8 that relate to the litigation at hand.

9 THE COURT: The period of the bill, the period in which  
10 services rendered. Any problem with that?

11 MR. LOWRY: At this time no. We may, it depends on  
12 what they bring out on direct of Mr. Wood; but at this stage  
13 I think perhaps that's a correct statement. Those through  
14 1978, the period of representation but at this point...

15 THE COURT: It would be irrelevant.

16 MR. TREAKLE: Can we identify those that are not  
17 relevant at this point. I believe plaintiff's counsel had  
18 verified various - we had a total, if you will, of five  
19 numberings dealing with financial statements, we had twenty-  
20 six(26) A through E.

21 MR. LOWRY: Well, as I hand them to him.

22 MR. TREAKLE: Of course, the problem, the bank financi-  
23 al statements that came from the bank were identified not by  
24 subcategory with letters but rather just one large heading,  
25 one large exhibit number.

1 MR. LOWRY: Well, let me go ahead and pull '79 and '80.

2 MR. TREAKLE: Also, Your Honor, to the extent I think  
3 there is some duplication between those provided in discovery  
4 and those obtained from the banks.

5 THE COURT: Do you want to go through them and pull  
6 out the duplicates?

7 MR. KENDALL: To the extent Judge that some of them  
8 may have attachments. We'd like to keep them in as evidence.

9 MR. LOWRY: What I have done Judge is I have from the  
10 First and Merchants Bank the financial statement for 1975  
11 with attachments, the United Virginia Bank financial statement  
12 for 1976 with attachments and Virginia National Bank for 1978,  
13 I omitted 1977, let me go back and pick it up. From Virginia  
14 National Bank in 1977.

15 THE COURT: Twenty-six(26) A,B,C, and D I take it.

16 MR. LOWRY: Yes sir.

17 THE COURT: Do we have anything else to cover?

18 MR. LOWRY: I would offer these at this time.

19 MR. TREAKLE: Subject to our previous objection, Your  
20 Honor.

21 THE COURT: Be so received then, and note defendant's  
22 exceptions.

23  
24 PLAINTIFF'S EXHIBITS twenty-six(26) A through E,  
25 twenty-seven(27), twenty-eight(28), twenty-nine(29) so with-

1 drawn and replaced with exhibit twenty-six(26) A,B,C and D.  
2 Exhibit so received by the Court.

3 (JURY RETURNED TO THE JURY BOX)

4 Mr. Wood still on Direct by Mr. Lowry

5 Q Mr. Wood, I now hand you what has been marked and  
6 introduced into evidence as exhibit twenty-six(26) A, B, C  
7 and D; twenty-six(26) A being your personal financial state-  
8 ment for the year 1975; twenty-six(26) B being your personal  
9 financial statement for 1976; twenty-six(26) C the same for  
10 the year 1977 and twenty-six(26) D the same for the year 1978.  
11 Now, was there a substantial change in your assets between  
12 the year 1975 and 1976, between the time those two statements  
13 were prepared?

14 MR. TREAKLE: Would Your Honor note our continuing  
15 exception to this line of questioning and testimony? Basic-  
16 ally the same exception we had to the introduction of the  
17 statements themselves?

18 THE COURT: All right.

19 A Yes.

20 Q How much increase was in the net worth, gross  
21 assets?

22 A Four million seven hundred thousand.

23 Q That was an increase, correct?

24 A In gross assets.

25 Q Was there a similar increase in net worth?

1 A It looks like about four million two.

2 Q And the net worth is the difference between the  
3 value of your gross assets and your total liabilities, is that  
4 right?

5 A Right.

6 Q During that same period of time did you not make  
7 the purchase of what has been called here the Airport  
8 Properties that were put into five land trusts that were call-  
9 ed North Rivanna First through Fifth Land Trust?

10 A I believe that's correct.

11 Q Isn't it also true at the time you purchased the  
12 Airport Properties the total liens on the property which you  
13 bought subject to approximately 1.6 million dollars?

14 A I believe that's correct.

15 Q At the time purchased that was the total debt on  
16 the property?

17 A I believe that's correct.

18 Q And, on your 1976 financial statement which was  
19 filed approximately nine months after that purchase isn't it  
20 true you show the fair market value of those properties at  
21 something in excess of 4.4 million dollars?

22 A No.

23 Q Would you total them up and tell us...

24 A The date, you said nine months - it's eleven months  
25 and - almost a year.

1 Q Almost a year later. When was this purchased  
2 closed on the Airport Properties?

3 A I believe they were closed in March of '76, the  
4 majority of them were closed in the spring of '76, I think  
5 within about forty-five(45) days of March to June.

6 Q What's the date of your '76 financial statement?

7 A I am sorry.

8 Q What is the date of your 1976 financial statement?

9 A January 26th.

10 Q 1976?

11 A Yes.

12 Q Now that you have stated the dates between the  
13 purchase and the giving of this financial statement which you  
14 say was almost a year is it true that you listed on your '76  
15 statements the fair market value of those properties at some-  
16 thing in excess of 4.4 million dollars?

17 A It looks like about 4.4.

18 Q Now, on the loans that you had between the years  
19 1975 and 1978 with major lenders including United Virginia  
20 Bank, First and Merchants National Bank, Bank of Virginia,  
21 Westinghouse Credit Corporation, substantial portions of your  
22 personal assets were pledged as collateral to those loans  
23 were they not?

24 A Well, when you say they were pledged I think in  
25 the twenty-one(21) years I have been borrowing money I have

1 always personally endorsed any loans whether it has been  
2 through corporations or what, I have always personally endors-  
3 ed them. Whether they were pledged or not my signature pledged  
4 them.

5 Q And there were deeds of trusts on a number of  
6 these properties were there not?

7 A That's correct.

8 Q The majority, if not all of them?

9 A That's correct.

10 Q During the period from 1975 through 1978 with whom  
11 did you have your major loans?

12 A '75 through '78 would be First and Merchants Bank  
13 in Richmond, Bank of Virginia, I am not sure of this but I  
14 believe Bank of Virginia may have been involved in that period  
15 of time.

16 Q United Virginia Bank?

17 A United Virginia Bank, I believe, came in maybe  
18 toward the end of that period.

19 Q Westinghouse Credit Corporation?

20 A Westinghouse Credit, I think, came in in '76 maybe.

21 Q During the term in which Stuart Carwile was your  
22 attorney, say from 1975 until the split up between you and  
23 him which I believe he has testified to be in early 1980, did  
24 any of those loans go into default?

25 MR. TREACLE: Objection Your Honor. That's not

1 relevant to this litigation. This litigation deals with the  
2 bill at hand and the time period at hand. What happened  
3 before or after is not relevant.

4 Q Let me back up and limit it first, without conced-  
5 ing his statement, let me refer to the period 1975 through  
6 1978?

7 A Yes.

8 Q Which of those had defaults called on them?

9 A F&M - I am sorry, right, late '78 F&M and Bank of  
10 Virginia I believe in late '77.

11 Q What about United Virginia Bank?

12 A No.

13 Q That would have been later?

14 A United Virginia never had a default in my opinion.

15 Q What about any purchase money...

16 A Let me clarify that. I don't know, United Virginia  
17 may have called me due to the fact of - the fact that Mr.  
18 Carwile did not, they found out that he had not given them  
19 proper title to the property. They may have called me and  
20 said if we don't have proper title to the property, if you  
21 don't get it straight we are going to call it; and I went to  
22 Stuart and I had to give them other collateral, I think, or  
23 give them assurances that it would be taken care of and they  
24 did not call the loan.

25 Q Do you recall Mr. Carwile's testimony with respect

1 to First and Merchants National Bank refusing to give  
2 releases on property to United Virginia Bank because they  
3 felt that the disbursement schedule which had been followed,  
4 which you had provided, was not in accordance with their  
5 agreement with you?

6 A I recall his testimony.

7 Q And I take it you disagree with that?

8 A Yes.

9 Q Is it your testimony that the schedule that you  
10 provided for payments that were made were in accordance with  
11 what First and Merchants had agreed to?

12 A First and Merchants had agreed to the disbursement  
13 schedule that I had talked to their officer, Bill West, about.  
14 Mr. Carwile knew about it and supposedly had a phone conversa-  
15 tion with him and the loan was closed on that basis; and I  
16 think Mr. Carwile just didn't do it in time and it became an  
17 issue and obviously they used it as leverage not to sign it.

18 Q Are you denying that First and Merchants National  
19 Bank took the position that the disbursements which had been  
20 made and which you had instructed Mr. Carwile to make were  
21 not in accordance with their agreement and they would there-  
22 fore not provide the deeds of release? Are you denying that?

23 A Will you say that again?

24 Q Are you denying that First and Merchants through  
25 their attorneys, May, Valentine, in Richmond refused to send



1 the deeds of release because in their opinion the disburse-  
2 ments which you had told Mr. Carwile to make were not in  
3 accordance with their agreement?

4 A They were not in accordance with the agreement that  
5 I had with Bill West who was the Loan Officer at Frist and  
6 Merchants Bank.

7 Q That's all I have at this time.

8 THE COURT: Do you have any questions at this time...

9 MR. TREAKLE: We have nothing at this time, Your  
10 Honor.

11 WITNESS STOOD ASIDE

12  
13 MR. LOWRY: Your Honor, at this time we'd not offer  
14 as an exhibit but be allowed to submit to the jury admissions  
15 made by Mr. Wood in the course of pretrial discovery where he  
16 has admitted certain facts that were a part of this contro-  
17 versy.

18 MR. TREAKLE: Have you made the changes that we dis-  
19 cussed?

20 MR. LOWRY: Why don't you take a look at it and see  
21 if...

22 MR. TREAKLE: Your Honor, this is the compulation of  
23 the admissions.

24 THE COURT: Okay.

25 MR. LOWRY: Your Honor, I would like to briefly read

1 these into the record and to the jury.

2 THE COURT: All right.

3 MR. LOWRY: Wendell Wood, one of the defendant's in  
4 the case has admitted the following facts to be true; and  
5 therefore these matters are deemed to be proven in this case.  
6 One(1), that he requested the plaintiffs, Carwile, Kudravetz  
7 and Krumm to represent him on the following general headings  
8 which are the subject of this suit; (A) the four hundred  
9 thousand dollar(\$400,000.00) loan from United Virginia Bank  
10 in Charlottesville; (B) the Windmill Point matters, (C) the  
11 Airport Condemnation matter, (D) the Reservoir matters, (E)  
12 the Rio Associates Limited Partnership, one million four  
13 hundred ninety-five thousand dollar(\$1,495,000.00) deed of  
14 trust matter, (F) the sale to Milodon Engineering matter, (G)  
15 the sale to Bede Corporation matter, (H) certain matters  
16 designated as findings, (I) loans from First and Merchants  
17 National Bank for nine hundred thousand dollars(\$900,000.00)  
18 and a line of credit for two million four hundred and fifty  
19 thousand dollars(\$2,450,000.00), (J) the preparation of the  
20 1977 Income Tax Returns, (K) the Airport Property matters.  
21 Wendell Wood does not admit that the work stated in the bill  
22 for services was performed or that he is indebted to the  
23 plaintiffs for that work. Two, he admits that for the period  
24 of time covered by the bill for services in this suit Carwile,  
25 Kudravetz and Krumm acted as primary counsel for legal work

1 performed on behalf of Wendell Wood and that Carwile, Kudra-  
2 vetz and Krumm were primary counsel on matters involving  
3 bank financing, transactions, tax planning, tax preparation  
4 for all commercial real estate transactions. Three(3)  
5 Carwile, Kudravetz and Krumm were employed in part by Wendell  
6 W. Wood because of their knowledge of Wendell W. Wood's  
7 business affairs and Wendell Wood relied upon Carwile,  
8 Kudravetz and Krumm to keep and maintain the records of  
9 Wendell Wood's various legal matters which Carwile, Kudravetz  
10 and Krumm undertook on his behalf. Four(4), that after the  
11 summer of 1978 Wendell Wood's loans to First and Merchants  
12 National Bank were declared in default and Wendell W. Wood  
13 consulted Carwile, Kudravetz and Krumm to determine ways to  
14 prevent the foreclosure of his properties securing these loans  
15 as collateral, that Stuart Carwile structured a bankruptcy  
16 proceeding which prevented a foreclosure by First and Merchants  
17 National Bank and other creditors of Wendell W. Wood and that  
18 as a result of the bankruptcy procedure First and Merchants  
19 did not foreclose on Wendell W. Wood's properties securing  
20 the loans as collateral. Five(5) the Bank of Virginia to  
21 Wendell W. Wood, nine hundred thousand dollars(\$900,000.00),  
22 that this loan was declared in default and Carwile, Kudravetz  
23 and Krumm represented Wendell W. Wood in preventing a fore-  
24 closure and that Bank of Virginia did not foreclose on the  
25 properties securing the loan as collateral. Six(6) that

1 Wendell W. Wood signed a promissory note to purchase property  
2 at Windmill Point, that the note was declared in default and  
3 Carwile, Kudravetz and Krumm, along with the law firm of  
4 McDonald and Krumm represented Wendell W. Wood preventing a  
5 foreclosure on the property securing the loan as collateral,  
6 and that loan was not foreclosed upon. Seven(7), that Wendell  
7 W. Wood never requested an itemized bill or accounting from  
8 Carwile, Kudravetz and Krumm for legal fees he paid from  
9 January 1, 1975 through October 1, 1978, that periodically  
10 Wendell W. Wood made payments for the legal fees at Carwile,  
11 Kudravetz and Krumm without designating the fee payments were  
12 to be applied as fees for any specific transaction and that  
13 from time to time fees were taken by Carwile, Kudravetz and  
14 Krumm from the proceeds of certain real estate closing, with-  
15 out designating in advance that that fee would be applied to  
16 specific transactions. Eight(8) joint tax returns were  
17 prepared by Carwile, Kudravetz and Krumm for both Wendell W.  
18 Wood and Marlene C. Wood. Thank you. We rest Your Honor.

19 THE COURT: All right, the plaintiff's rest.

20 MR. TREAKLE: Your Honor, we have a motion to take up  
21 outside the presence of the jury.

22 THE COURT: I'll have to send you back to your room,  
23 members of the jury.

24 (JURY RETIRED TO THE JURY ROOM)  
25

1 your requirements that work be performed evenings or weekends  
2 and that would affect the fee that he would charge you?

3 A No.

4 Q Did you ever have any understanding with him  
5 regarding a fee other than time?

6 A No, only it was an hourly rate that did get changed  
7 from originally \$35. to \$50.

8 Q You have heard all of this testimony the last two  
9 days. Did you ever question Stuart Carwile regarding the  
10 size of the fees he was charging you?

11 A Yes.

12 Q Do you recall when you did that?

13 A On several occasions

14 Q Give us an example. When was the first time you  
15 did that?

16 A I believe the first one. Let me qualify this a  
17 little bit. We were personal friends and sometimes it was, I  
18 probably did it, I was a little guilty maybe to not pursue him  
19 quite, I did it in a jokingly manner, I said, Stuart, that  
20 seems like an awful lot of hours at \$35.00 an hour. I just  
21 couldn't quite figure out how that was but they were on smaller  
22 bills. When I say smaller bills, these would be bills in the  
23 \$3,000.00 range. The first one, major one that I can recall

24 was Windmill Point. I had bought a piece of property, purchase  
25 price was \$1,400,000.00 and the bill was \$13,000.00, \$13,000.00

1 Q All right, what was your dissatisfaction in that?

2 A Well, I don't know how much you want to go into but  
3 they've heard, I don't want to bore them, but basically we  
4 signed a contract to buy Windmill Point in that it was the  
5 customary thing that a developer has to have you pay, in this  
6 case a \$1,400,000.00 for a piece of property. I put \$350,000.  
7 cash down with the purchase price, I assumed a \$50,000.00 SBA  
8 Loan that was on the property that had to be paid off in one  
9 year and I agreed to make annual payments of \$100,000.00 a  
10 year for four years and a \$150,000.00 a year thereafter which  
11 would be three more years until the loan was paid off. Ob-

12 viously, in that kind of cash, at that time, for me, I wanted  
13 release clauses. Every contract I ever entered into it is  
14 customary that if you buy a large tract of land as you give  
15 cash each year, you get a certain amount of land released so  
16 that you can either sell it, you can put a loan on it, do  
17 whatever you want to with it. It becomes yours, you have  
18 paid for it, you have money invested in the property. We did  
19 this there, you have heard about the acreage shortage that came  
20 up. We, when I made the, one year later I purchased it in  
21 February of 74, had a payment due a year later and had made  
22 \$50,000.00 additional payment one year later, I have a  
23 \$500,000.00 invested in Windmill Point. A year later, and I  
24 asked Stuart, this was in 1975, I said, Stuart, I've got a lot  
25 of money tied up in that piece of property, I want my release

1 clauses. Well, okay...

2 Q ...What was his response, I'm sorry?

3 A I'm sorry, you, his response was, yeah, okay, that's  
4 all right, we'll do that. Well, it didn't happen. I didn't  
5 push it maybe as hard as I should have pushed it but you know,  
6 it went on and it was mentioned to him several times during  
7 the course of it and he said, well, I'm not sure you ought  
8 to push it right now because you've got this acreage shortage  
9 and you, they were, the dispute had arisen over that so that  
10 the difference there of actually how much, but would, the  
11 price that I had paid for it, how much the price would be re-  
12 duced because it was 35 acres less than what the man represented  
13 to me when I bought it. So he said, I'm not sure you ought  
14 to push that right now. Let's settle that. I said, fine,  
15 settle that, that's even better because that's a reduction

16 in my purchase price. I believed the land to be worth some-  
17 where between \$300 and \$400,000.00, the land that was missing.  
18 The land that was missing was actual Chesapeake Bay frontage  
19 which was the most valuable part of the land, so I put a  
20 value of \$10,000.00 an acre on that property. I had, when I  
21 say I put it on there, I had an appraiser go down and tell me,  
22 what, you know, this piece of land, how much it's worth, and  
23 he said somewhere between 3, could be as much as \$500,000.00  
24 is what this land is selling for in riverfront lots. It was  
25 ~~like, the case involved was like close to 3,000 feet of road~~

1 year now that are very important to it also.

2 Q What things?

3 A Well, I had in 77, after I had made the payment at  
4 that point I'm like \$700,000.00 I had invested in this prop-  
5 erty. I don't have any realese clauses at all and as I told  
6 you cash was becoming crucial to me. I needed some cash. So

7 I went out to sell the property. I entered into a contract  
8 with a fella named Ed Seay, who was a boater there. He owned,  
9 he lived in Richmond, he was president of Richmond Homebuilders  
10 Association and had a boat at Windmill Point and was there,  
11 had a boat there when I purchased the property. I negotiated  
12 a sale to him for \$1,710,000.00. Okay, there are a couple

13 of things in there but I will proceed through that one first  
14 but I'll have to back up. I negotiated a sale with him. We  
15 agreed on the terms, cash down. He was going to sell it in  
16 condominiums. In other words, just like you buy a condo-  
17 minium here, he was going to sell in the slip-rental condo-  
18 minium, and he had an idea that, in fact, it was an idea that  
19 I had in the back of my mind. I conveyed it to Stuart, but  
20 now because of needing money, I didn't have time to carry that  
21 idea forward. He had the idea he wanted to do it. He said  
22 he was going to sell it off in condominiums, he had already  
23 talked to a lot of people, no problems. So, doing a little  
24 checking on him personally as you do when you go into a deal  
25 of this nature, you like to know who you are dealing with, I



1 had, I did not think he was heavy enough, I did not think he  
2 was financially strong enough that if he did not, if he was  
3 not successful in this transaction that he would be able to  
4 perform on the contract. So I confronted him with that, I  
5 said, Ed, unless you can show me some other substantial net  
6 worth, I can't enter into the contract and he acknowledged  
7 that he could not. He said I'm betting on that I can do this  
8 and I know I can put it together, I can do it. So, what we  
9 negotiated was that if he could not do it, if he was unsec-  
10 cessful, he had signed a note for \$150,000.00 that he said  
11 I will risk a \$150,000.00. If I can't pull it off, I'll lose  
12 \$150,000.00 and that was what we agreed on in the contract,  
13 if he was not even close, I had a note for a \$150,000.00  
14 signed by he and his wife personally.

15 Q Who negotiated that?

16 A I did.

17 Q Did he close?

18 A Did not close, but he took possession.

19 Q How long was he in possession?

20 A He was in possession for approximately ten months  
21 of this, there again, this is a seasonal business, this is  
22 boating season on the Chesapeake Bay which is May through  
23 September.

24 Q What happened to the income at Windmill Point during  
25 the period he was in possession?

~~Q What are some of those?~~

A Another transaction that's been mentioned in this case is known as the Rio Associates. It's involving Albemarle Square, to you all would be known as Albemarle Square Shopping Center. I'll leave some of the things off and try to get to it as fast as I can that we entered into a contract with a man in Richmond who had developed shopping centers, a local man here, and we had put together a partnership, I had sold them the property, they were going to develop a shopping center on it, I had agreed to finance the purchase for them, it was, on the sales contract, in other words, I was going to finance it and did finance it. The, in part of that negotiation I had to agree to let them put a first mortgage on the property. Banks not going to, banks, insurance companies who do the - this type of loan, Life of Virginia was the lender and in this case they were going to loan them \$6,000,000.00 to develop the shipping center. I agreed to, okay, I'll be in a second position, I will subordinate to the shopping center. I financed part of the negotiations, in making the deal I financed it the first five years I financed it for them it was 4% interest. Five years later it went to 6%, five years later it went to 8% and the remainder, it was a 30 year transaction, the remainder of the term it was 8 years at 8% for the remaining 20 more years on the loan. I told Stuart, I said, in doing this I don't want to do it but, I

1 night, at closing of \$8,000.00 and it was actually reduced a  
2 little bit. At, when the bill was finally sent, but I think  
3 the bill, I didn't actually receive the bill, maybe received  
4 the bill the next day but I was given the bill and I think they  
5 made a comment, well we haven't finished typing it and this is  
6 the amount of money and it's within a few dollars.

7 Q All right, Mr. Wood, you have heard Mr. Carwile's  
8 testimony characterizing 1974 and 1975 as bad years, were you  
9 personally in good financial position during those years or  
10 were you in a bad situation?

11 A By my standards, you know, good and bad, I was, I  
12 was pleased with my position in 1974. I had ah the prior  
13 couple years I had made a fair amount of sales and was re-  
14 ceiving nice income from properties that I had sold, like  
15 where the Ramada Hotel is on 29 North, I had sold, prior to  
16 that I was getting money in from that on payment schedules,  
17 I had sold ah, I was in what I would consider a liquid, I was  
18 I'll put it the other way, I was buying property. I was buy-  
19 ing Airport Property, I was buying Windmill.

20 Q Did you buy that many properties?

21 A No, it wasn't that, the properties, the major two  
22 were Windmill Point and the Airport Properties. And every-  
23 thing else gets miniscule compared to those two. Everything  
24 else would be and I say I don't think they were, I'm not even  
25 sure there were that many. I don't even know what but they

1 would be nothing of great magnitude.

2 Q Was there a large volume of purchases and sales,  
3 do you know?

4 A No, very, ah well like I say the, well I guess the  
5 best way to characterize it, I think there were only, I have  
6 heard a lot of testimony that sounded like a lot but I think  
7 it was only 14 parcels of land that I owned in that period  
8 of time.

9 Q Did you ever give to Mr. Carwile or his various  
10 associates, legal advice or tell them what to do in litigation?

11 A No.

12 Q How many pieces of litigation were you involved in  
13 during the subject of this suit?

14 A Windmill Point, Rio Associates, Reservoir, I believe  
15 that's it.

16 Q Any litigation arising out of the sale of Windmill  
17 Point?

18 A Oh it, yeah, Ed Seay which another trial, yeah, Ed  
19 Seay and Windmill in mind are related. Windmill was one with  
20 Dr. Atwood and Ed Seay was a purchaser, so yeah, but there  
21 were two separate suits there.

22 Q In any of this litigation did you tell Mr. Carwile  
23 or Mr. Kudravetz or Mr. Krumm what to do?

24 A Yes, in fact, I did, maybe I did tell 'em on the  
25 Seay suit ah, when they, they wanted to sue 'em specific per-

1 formance. I asked 'em to sue on a note of \$150,000.00 that I  
2 knew that's all I could win because that was what the contract  
3 was limited to and because of knowing the man was selling his  
4 boat, selling his properties, I didn't want to get tied up in  
5 a long protracted litigation, I said let's just sue on the  
6 note that he owes me. And so, that, that...

7 Q ...Did they take your advice?

8 A Well, they sued on that but they sued another, a  
9 made another suit also. I think it was a suit for damages  
10 and specific performances and I asked, you know, all I did,  
11 I said why are we gonna do that if we win, it's meaningless.  
12 As it turned out, we eventually won with Mr. Fennell we  
13 eventually won the \$150,000.00 and it was worthless to me  
14 once I won it, because of the time, for five years transpired.  
15 The man knew he was responsible for the \$150,000.00 note and  
16 we managed to give him four years to liquidate and like I say,  
17 we won judgment and he filed bankruptcy.

18 Q Do you owe Mr. Carwile, Kudravetz and Krumm any  
19 money?

20 A I do not believe I owe them any money whatsoever.  
21 As I said, I paid Mr. Carwile over a quarter of a million  
22 dollars.

23 Q During what time period?

24 A The time of our relationship.

25 Q Subsequent to the commencement of this litigation

1 have you confronted Mr. Carwile regarding this bill? Either  
2 in person or by telephone?

3 A I am sorry.

4 Q Subsequent to the start of this litigation have  
5 you confronted Mr. Carwile regarding the bill that is at issue  
6 today?

7 A Subsequent to?

8 MR. LOWRY: Your Honor, after the litigation was filed

9 Mr. Treakle fully well knows that conversations and attempts  
10 to settle cases between parties are not admissible into evi-  
11 dence because the parties are trying to work out their  
12 differences and any conversations subsequent to the filing of  
13 the suit should not be the subject of testimony.

14 MR. HAUGER: If it please the Court, we are willing to  
15 offer evidence that Mr. Carwile called Mr. Wood and we are  
16 not, I mean we are going to mention, we are going to strictly  
17 talk about one thing that was said. The question was asked  
18 and the answer was given in it and that's all we are going to  
19 mention.

20 MR. LOWRY: Your Honor, I hate like thunder to ever  
21 send the jury out. I, it's the first time I have asked it  
22 but I have got to...

23 THE COURT: All right. We are going to have to send  
24 you out members of the jury. Members of the jury, if you will  
25 retire to your room then.

1 present me with a bill.

2 Q Oh, I beg your pardon, he told you what the bill  
3 was?

4 A No, he gave it to me in the closing statement.

5 Q He showed you the closing statement which showed  
6 you the thirty-three thousand dollar fee?

7 A Correct.

8 Q Okay. When you found out what that was for and you  
9 were upset, you said that you felt like a little puppy dog  
10 running along side him trying to find out what it was all  
11 about, if everything had been signed and just had to be re-  
12 corded why didn't you go to Virginia National Bank and say,  
13 my attorney is holding me up for fees that I don't owe him  
14 and I want to close without him, everything is signed, all  
15 we need to do is have your counsel take it over there and  
16 record it, and I'll have my argument with my lawyer?

17 A Wish I had thought of that. I wasn't thinking very  
18 good that night. You are right, everything was signed, you  
19 are absolutely right. Today I'd do that. That night I  
20 yep, you are right.

21 Q I believe you testified that all of your other land,  
22 other than the Windmill Point and the Airport Properties was  
23 minimal by comparison to those properties? Is that what you  
24 had said?

25 A I think that's what I said.

1 Q Do you know how much you had valuated the balance  
2 of your property as being worth, other than Windmill Point  
3 and Airport Properties on your financial statement?

4 A I think so.

5 Q How much did you...

6 A ...Do you want me to do it without the benefit of  
7 them, or with...

8 Q ...I want your best recollection. I am busily  
9 trying to find them so you will have the benefit of them.

10 MR. TREAKLE: Your Honor, if I may, I think that goes  
11 beyond the scope of proper cross examination. This was not  
12 inquired to on direct.

13 THE COURT: He said that was the biggest property, what  
14 was it, four million?

15 Q And, he said the other properties were miniscule  
16 by comparison.

17 THE COURT: I think that was brought out on direct.

18 A That does bring, I made a mistake - in the course  
19 of testimony I referred to the Airport Properties is the  
20 largest piece, and has the largest value. Windmill Point was  
21 over a million dollars. When I said that back a few minutes  
22 ago, there is one tract of land which was the piece I had  
23 referred to earlier that I had bought from Senator McCue,  
24 that did have a valuation of half the value, so that's not  
25 miniscule, it's still big numbers.



1 Q You valued that at two million dollars, didn't you?

2 A That's right, and the airport, I think was at five  
3 million.

4 Q What about the Holiday Inn at Luray?

5 A You are right again.

6 Q How much were you listing that...

7 A A million seven. I was thinking, Mr. Lowry, I was  
8 thinking of development property, but yes, you are absolutely  
9 right. It may be fair to not penalize me too bad on those.  
10 If you will go down the list on the others I think you will  
11 see things in the neighborhood of a hundred seventy-five  
12 thousand, a hundred thousand, a hundred fifty thousand.

13 Q What about your house, what was that listed at?

14 A What period of time?

15 Q '78-'79, during the pendency of the Chapter 12?  
16 Does three hundred seventy-five thousand ring a bell?

17 A That's approximately right. I paid three hundred  
18 and five thousand for it ten years ago, so I think that's  
19 probably right.

20 Q Mr. Wood, you also testified I believe that Mr.  
21 Carwile was delatory in not getting your ten thousand dollars  
22 released as part of the condemnation proceeds on the Airport  
23 Properties, is that correct?

24 A That's correct.

25 Q Didn't David Sutton, who was representing the State

1 It is that evidence which you find more convincing. The  
2 testimony of one witness whom you believe can be the greater  
3 weight of the evidence.

4 THE COURT instructs the jury that the burden is on  
5 the plaintiff to prove every element of its case by a pre-  
6 ponderance of the evidence.

7 THE COURT instructs the jury that the defendants  
8 have alleged that they have paid the plaintiffs for the fees  
9 claimed in this case. The burden is on the defendants to  
10 prove every element of this defense by a preponderance of the  
11 evidence. A relation of attorney/client arises when there  
12 is an agreement between them that the lawyer will act as  
13 attorney for the client. An attorney has the expressed  
14 authority to do everything which the client expressly  
15 authorizes him to do and the implied authority to do every-  
16 thing necessary or incidental to the purpose for which he  
17 was retained. The customs and conduct of the parties may be  
18 shown to establish the terms of a contract which is other-  
19 wise silent and unclear. To show the existence of a custom  
20 or conduct of the parties a party must prove by the greater  
21 weight of the evidence that the custom was well established  
22 and was generally followed by the parties during the course  
23 of their relationships. An expressed contract is an agree-  
24 ment either written or oral in which the terms are stated  
25 by the parties. In the absence of an expressed agreement as

1 to the amount of compensation there is an implied agreement  
2 that the attorney is entitled to reasonable payment for  
3 services rendered. You may consider the following factors  
4 in determining the amount of compensation to be recovered;  
5 (1) the amount and character of the services rendered; (2)  
6 the responsibility imposed; (3) the labor, time and trouble  
7 involved; (4) the character and importance of the matter in  
8 which the services are rendered; (5) the amount of money or  
9 the value of the property to be effected; (6) the profession-  
10 al skill and experience called for; (7) the character and  
11 standing in their profession of the attorneys. You may  
12 consider the results secured from the services performed by  
13 the attorney but you shall consider this only as bearing  
14 upon the question of the efficiency with which the services  
15 were rendered.

16 The measure of the compensation is the work done and  
17 not the value derived by Wendell W. Wood and Marlene C. Wood  
18 from the work.

19 Now, I'll stop at this point with that instruction.  
20 There is in the evidence several exhibits, or maybe it's all  
21 in one form, financial statements of the Woods. Those state-  
22 ments purport to show the net worth of the Woods and you are  
23 not to take those as having been received for anyway indicat-  
24 ing they are liable for these attorney fees. They are  
25 received solely for the purpose of your consideration and as

1 you go through the criteria listed in this instruction as to  
2 a quantum meruit recovery - the attorneys will argue to you  
3 the theories they have in this case. There are two theories  
4 to be advanced by the plaintiffs and there is one theory  
5 being advanced by the defendants. The plaintiff's theory  
6 will encompass quantum meruit recovery and if you deem that  
7 theory should be pursued and there is quantum meruit recovery  
8 involved then you will give consideration to these criteria,  
9 these elements of recovery and it's only then that these  
10 financial statements have any relevance at all. Just because  
11 the Woods may have substantial wealth doesn't mean a verdict  
12 should be awarded against them. All right, the next

13 instruction is;

14 THE COURT instructs the jury that if you believe from  
15 the evidence that the parties entered into a contract or  
16 agreement whereby plaintiffs were to provide legal services  
17 for defendants in return for compensation based on an hourly  
18 rate alone then you shall not consider any other factors.

19 If you find that the plaintiffs, Stuart Carwile, David  
20 Kudravetz, Witt Krumm, performed any or all of the legal  
21 services they have claimed on behalf of the defendant's  
22 Wendell W. Wood and/or Marlene C. Wood and that the plain-  
23 tiffs have not been paid for these services and are entitled  
24 to recover for those services you shall award the plaintiffs  
25 as damages, attorney's fees based upon the facts set forth

1 ~~quantum meruit basis, what are the factors that supplement~~  
2 this time. From the expertise involved there is no doubt  
3 and no testimony was presented by Mr. and Mrs. Wood to the  
4 contrary that these are extremely complex matters for the  
5 most part that were being involved here and they required a  
6 degree of skill that far exceeds the average general  
7 practitioner- practitioner's knowledge in this area, like  
8 doctors and other professionals, lawyers sometimes specialize  
9 and the reason for that specialization is when you have a  
10 complex matter in a certain field, somebody who concentrates  
11 in that area and who spends virtually all their time doing  
12 that type of work is much more up to snuff on the complex  
13 issues that need to be involved and that's what he went to  
14 them for and this work was extremely complex. That answers  
15 that element of quantum meruit. The responsibility imposed.  
16 We were dealing with transactions here in millions of dollars  
17 and hundreds of thousands of dollars, sensitive transactions,  
18 Mr. and Mrs. Wood's entire assets hung in the balance if  
19 things were not protected. You had defaults on major bank  
20 loans that all of their property was subject to - having to  
21 be sold to payoff in order, part of or all of their assets  
22 would have to go if these defaults went through and were  
23 foreclosed upon. That's what happens, the property gets sold  
24 until it raises enough money to pay the debt. That's tre-  
25 mendous responsibility for an attorney to be handling on be-

1 half of his client, There's no way to denigrate that and  
2 the risk is not only to the clients which is the most im-  
3 portant risk, protecting their property and their assets so  
4 that they can continue to have a successful lifestyle in  
5 their business endeavors but the attorney has got a great  
6 risk there, too. If he blows it, he's going to be sued for  
7 it, he's going to have to make good for it, if it's his  
8 fault that it happens. That's tremendous responsibility,  
9 The amount of money and the value of property to be affected,  
10 we discussed that, I want to make one thing clear and the  
11 judge has instructed you partially on it and that is, we  
12 are not asking you because the Wood's are wealthy people,  
13 to give some of their money to our clients if they don't  
14 deserve it. That's not what this case is all about. They've  
15 been telling you that's what we're trying to do, I'm here  
16 to tell you right now, that's not it, You have to look at  
17 what was at risk here because that's part of the element  
18 of the quantum meruit recovery, what kind of risk and the  
19 value of the property to be affected when these lawyers were  
20 representing them. In 1975 the value of the property is  
21 thirteen million, five hundred and forty-one thousand  
22 (\$13,541,000.00) and the net worth which is the value of the  
23 property less the debts on it was eight million, seven hun-  
24 dred thousand (\$8,700,000.00). In 1976, which is just after  
25 the Airport Properties matters closed, that's where GE is

1 now and out by Airport Road now, the next year the gross  
2 assets, the total assets were up to eighteen million  
3 (\$18,000,000.00) and the net worth was up to twelve million  
4 (\$12,000,000.00), all at risk. The next year, 1977, the  
5 total assets were up to nineteen million (\$19,000,000.00),  
6 the net worth was still twelve million (\$12,000,000.00). In  
7 1978 the total assets were up to twenty million, three  
8 hundred and eighty-eight thousand (\$20,388,000.00) and the  
9 net worth was up to thirteen million (\$13,000,000.00). At  
10 each stage as these defaults were called in these years,  
11 this was what was at risk. This is what could have been  
12 lost, this is what the attorneys were charged with helping  
13 the Woods preserve and to prevent foreclosures. You've  
14 heard the United Virginia Bank, Bank of Virginia, First and  
15 Merchants, Dr. Atwood, I may have left somebody out, all at  
16 different periods of time were calling defaults on these  
17 loans. Did any of them ever get to the point where they  
18 sold the property to satisfy the debts? No. They did not.  
19 The fore - the defaults were held off, the foreclosure was  
20 held off. Ultimately the Chapter 12 reorganization which  
21 is beyond this vehicle, it's not involved here, Mr. Carwile  
22 and Hess at that time, but it's a part of the continuous  
23 chain, Mr. Wood was allowed the time he needed to get his  
24 house in order and to get the Virginia National Bank loan  
25 which got his other creditors off his back and the wolf was

1 kept away from the door and he came out on the other side of  
2 that with his property intact, the hard hand of the ray was  
3 now secure, he had his two developments ready to start on  
4 Route 29 North at the Airport Properties area, he had his  
5 sale to GE accomplished. He was in good shape. None of the  
6 terrors which were hanging over him ever came to bear. Now,  
7 I don't ask you to say that all of that was because of my  
8 clients. That would be childish to say that they were the  
9 only people who had anything to do with that and I'm not  
10 saying that. Mr. Wood worked very hard himself during that  
11 period of time, through all these years from 1967 to 1980  
12 when they split up, he worked hard. He's an accomplished  
13 businessman. He's intelligent. He had great input into it,  
14 but he didn't get there by himself either and the reverse  
15 is not true. He needed expert counsel, he needed people who  
16 could work with him and do what was necessary to accomplish  
17 his goals and to help him where he did not have legal knowl-  
18 edge and where they had ideas that would not necessarily  
19 come to him. Any business endeavor, especially where it's  
20 very complicated and a lot of legal hangups, it's a joint  
21 effort, it involves a lot of work for both sides and they  
22 hung in there with him through this entire period of time.  
23 One of the things which keeps coming into my mind all the  
24 time in this case and I hope it does yours too. Why, if they  
25 were doing such a lousy job, did Wendell Wood stay with



1 Stuart Carwile for twelve years? He says, oh, it all  
2 happened at one time, right at the end. You've seen that's  
3 not so, the defaults of '76, '77, '78, the reorganization  
4 then came, he held off things through 1979 and into the  
5 beginning of 1980. If they weren't doing the job for him  
6 on all these complicated things, if they disappointed him  
7 time and time and time again, is it logical that he would  
8 hold on to them for twelve years? At one point when he  
9 was talking about the Wood y Wood case, he said that's about  
10 the only case I can ever remember we'd ever won in twelve  
11 years and that, I believe, was 1975 and he kept - kept them  
12 on. We get up to right before the reorganization was filed  
13 and he said, that was all Stuart's fault that he had to go  
14 into reorganization. He'd blown Windmill Point, he'd blown  
15 Rio Associates ah he'd blown litigation after litigation  
16 the Reservoir matters, the 1983 suit and it was all his  
17 fault, but who did he choose to go through the reorganization  
18 with him? Now, he'd used the excuse, oh, there was a lot  
19 of friendship there and there certainly was, both sides  
20 agree to this. There was a very close friendship there and  
21 it's sad that the friendship still isn't there, but that's  
22 a fact we can't do anything about and neither side is happy  
23 about it but he didn't hold onto him for twelve years out of  
24 friendship, when you're dealing with millions and hundreds  
25 of thousands of dollars. This keeps coming up to me, too,

1 in my mind and I hope it does to you, When did he terminate  
2 the relationship? There's some dispute, late '79, early '80.  
3 We know that Stuart Carwile still continued to represent him  
4 through March of '80 because that's when the VNB loans were  
5 closed and the bankruptcy reorganization plan was dissolved  
6 and he came out the other side, but it was then that he  
7 dropped Stuart Carwile like an old shoe, When the wolf was  
8 away from the door, when things were secure, when his  
9 developments were ready to go and when his sales were  
10 happening, when he didn't have to worry about foreclosures -  
11 that's when he dropped Stuart Carwile, Not back during the  
12 hard times when he needed somebody to be working with him,  
13 who knew what they were doing and knew what they were about.  
14 When you compare his testimony now to the expert witnesses  
15 who've been here and I know you may hear and you may think  
16 yourself, well, lawyers protect lawyers so they come in and  
17 they testify that he's okay. I hope you don't think that  
18 because the people we tried to bring to you, we tried to  
19 bring people who are respected in the community, not just  
20 anybody who we could grab off the streets, people with  
21 reputations of their own to protect and who we don't feel  
22 would go out on a limb and just say anything. We brought  
23 you people who knew how Stuart Carwile had represented Mr,  
24 Wood in transactions during this period of time, We brought  
25 you Jim Breeden from Lancaster County who represented Dr.

1 Atwood, he didn't represent Dr. Atwood at the closing when  
2 he sold the property to Wendell, but he represented him  
3 during the bitterness of the litigation. He'd been on the  
4 other side, he's got no reason, no ax to grind, no personal  
5 benefit to gain out of this litigation, as a matter of fact,  
6 later after the Atwood matters were over or somewhere along  
7 that way he actually then had represented Mr. Wood on one  
8 occasion so he's got no ax to grind. What was the comment  
9 he made about the quality of the representation and the work -  
10 excellent, exceptional. You remember he said that when his  
11 firm first got a copy of the deed of the trust involved in  
12 that, the mortgage, they were amazed at how protective of  
13 Mr. Wood the language was in that? That they were shocked  
14 to find out that the attorneys who had represented Dr. Atwood  
15 at the closing had let that strong of debtor protected  
16 language be in there. That was what Stuart Carwile was hired  
17 to do, to give the best protection he could in these docu-  
18 ments he was drafting to his client. That's how our system  
19 works, you represent your client and you try your best to  
20 get him the best deal possible in the negotiations. The  
21 other side has their attorneys who do that. Now, there's  
22 been a lot of who-shot-John about that litigation that got  
23 dragged out forever, we couldn't get the releases, we  
24 couldn't get the abatement in purchase price and they want  
25 you to consider all that as Stuart's fault, and Whit's fault

1 and David's fault and that that should go into your consid-  
2 eration in determining the level of the bills. Well, what  
3 did Mr. Breeden have to say about that and what are the facts  
4 disclosed? First of all, there was pushing going on to get  
5 all of that. It's not a light switch you turn on and off  
6 to get something accomplished. You don't, just because your  
7 document even says you're entitled to it doesn't mean the  
8 other side is going to cooperate with that if they disagree  
9 with you. Maybe if they're people of good will which we  
10 all hope we run into in our business dealings, they will  
11 right up front honor the obligations of the contract in good  
12 faith but you don't always run into that. You run into the  
13 Dr. Atwoods of this world who say, I think I made a bad deal  
14 in allowing abatement of purchase price and I'm going to  
15 drag my feet on it and I'm going to drag my feet on allowing  
16 releases to the property and then in addition, he starts to  
17 get very, very mad himself because of what's happening to  
18 the marina down there that he's spent his life building up  
19 and sold to Wendell Wood. It's starting to deteriorate  
20 and get in terrible condition, Mr. Breeden told you that, not  
21 being taken care of and he calls a default for waste. Now,  
22 I can't tell you whether he was in good faith when he called  
23 that default for waste, whether that was his primary motive  
24 or not although there is plenty of evidence that there was  
25 waste going on there and I don't know whether it was to drag

1 his feet but he did it and there was substantial threat that  
2 he could be successful on that and that put everything in a  
3 stalemate in the courts. Both sides were at risks if they  
4 went forward on it and Mr. Breeden told you about that.  
5 What did Stuart Carwile do? He got a temporary restraining  
6 order up here in Albemarle County or the City of Charlottesville  
7 to prevent them going forward with the foreclosure to  
8 protect his client and then the horns were locked, Mr. Breeden  
9 says Mr. Carwile and Mr. McDonald, who were both on  
10 the case, were pushing to get trial dates, were pushing to  
11 move the case forward. Cases do drag out. The matter got  
12 resolved in the reorganization. Did Wendell Wood lose any  
13 money because of that? The testimony of Mr. Carwile and  
14 Mr. Breeden is clear that the factors of release of property  
15 and the reduction of purchase price were taken into consid-  
16 eration in the resale - when he resold it back to Dr. Atwood  
17 and his group, he would no longer have liability therefore  
18 the reduction of purchase price was no longer relevant and  
19 his having been entitled to releases of land was taken into  
20 consideration in the purchase price when Dr. Atwood bought  
21 it back. They negotiated a settlement. They came to an  
22 agreement. Nobody held a gun to Mr. Wood's head to come to  
23 an agreement in that. It was negotiated and we have to  
24 assume that it was satisfactory to him to go ahead with the  
25 settlement or he wouldn't have settled the thing. But, now

1 he comes back and says, yes, I settled it, I'm a big boy,  
2 I signed it. I agreed to go ahead and do that, but I really  
3 didn't want to, it was my lawyer's idea. This is a guy who  
4 negotiates everything for himself he says, negotiates all  
5 the original deals and he comes to his lawyer to do the  
6 legal work, but he'd have you believe that over and over  
7 and over again he was at the mercy of Stuart Carwile. He  
8 says he signed contracts and documents all throughout the  
9 relationship and pleadings without ever reading them, even-  
10 though he says constantly he was disappointed with what was  
11 happening with his lawyers. In two points, which we'll get  
12 to later, he felt, he says that his lawyer had done something  
13 with the bills that was dishonest by telling him it covered  
14 everything and it didn't and he wants you to believe that, -  
15 yet, he had never started to read his contracts and his  
16 pleadings and over and over again he just, like a little  
17 puppy dog would let Mr. Carwile do whatever he wanted. I  
18 don't believe that that's the case. I don't believe that  
19 a businessman who has built himself up like Mr. Wood has and  
20 has been as involved in business as he has is that naive.  
21 Where has the testimony been that the work that was done by  
22 our clients was not of the highest and most excellent char-  
23 acter of work among commercial lawyers? I haven't seen it.  
24 I've heard Mr. Wood complain a lot, but where is his  
25 corroboration for his complaints that it's all Stuart's fault?

1 Where are the witnesses? The only witnesses they called  
2 other than Mr. Wood was Mrs. Wood for a few questions and  
3 Woody Fennell to say that when he was asked to take over  
4 representation on some matters for Mr. Wood in the late  
5 summer of 1979, he went to Mr. Carwile because they were  
6 friends and wanted to let him know, That's it, Nobody  
7 else, no lawyers, no CPA's, no other businessmen to say how  
8 badly he'd been treated, how badly these lawyers had done  
9 for him. The ex - the other experts we brought in, Mr.  
10 Lloyd Smith, been practicing law since 1960, was it, some-  
11 where in the sixties, past President of the local bar, ex-  
12 perience for twenty years in commercial matters including  
13 real estate, banking, commercial litigations, corporation,  
14 taxation, partnerships - he reviewed all the major documents  
15 in the file and his comment on the quality of the work was  
16 extremely high. The only thing he said that I can recall  
17 that would dilute anything was when Mr. Haugh asked him if  
18 he knew that somebody else had the basic idea for the setup  
19 in the Airport Properties transaction, would that dilute to  
20 any extent his feeling about the expertise for background and  
21 he said yeah because one of the key elements in that trans-  
22 action was who had the idea. That doesn't mean that the  
23 work wasn't expert that was done by the attorney, that doesn't  
24 mean that it wasn't done with high quality, it just means  
25 that, you know, the person who has an ingenious idea like that

1 deserves a lot of credit for it and we agree to that. There's  
2 no contest. Every document he reviewed, every pleading he  
3 reviewed, he said he thought was done with skill, with  
4 alacrity, novel, you heard it all, it's their reputation in  
5 the bar, now, he didn't speak just for himself, I asked him  
6 what's their reputation in general in the bar, meaning among  
7 all the lawyers in this area - exceptionally high, very good  
8 marks throughout the bar. He had represented General  
9 Electric Company in negotiations with Wendell Wood where  
10 Stuart Carwile was representing Wendell Wood. He said  
11 Stuart Carwile served his client well and did a good job.  
12 Just like Mr. Breeden did. Mr. Gilliam came in, past City  
13 Councilman, extremely active commercial practice, commercial  
14 litigation, tax, land use, corporation, same thing - repu-  
15 tations are extremely high. He represented Holiday Inn  
16 in some litigation where Mr. Carwile represented Mr. Wood  
17 on the other side. Did he say it was lousy representation?  
18 He gave him high marks, said he acted well in his client's  
19 interest to delay where his client wanted to delay in having  
20 to make the payout on his obligation, serving what his client  
21 wanted him to do until his client could get his money toget-  
22 her to make the payment and settled the dispute about how  
23 much was owed. Nobody came in on the other side to say the  
24 opposite, no cross examination on our experts showed anything  
25 different. I wrote a little note down here yesterday because



1 it occurred to me yesterday that representing Wendell Wood  
2 at times was a little bit like what they call an old Chinese  
3 fire drill, everybody's running around and, at the same  
4 time and lots of things going on. He had an awful lot of  
5 things going on at the same time. Purchasing land, selling  
6 land, finance it, refinance it, holding off defaults, liti-  
7 gation, negotiations - a tremendous amount of work was going  
8 on and who was his primary counsel throughout all these  
9 periods of time, Mr. Carwile, during the period when it was  
10 billed, it was Mr. Carwile, Mr. Kudravetz and Mr. Krumm.

11 Now let's look at the defenses a bit more specifically. We've  
12 talked about Windmill Point, Let's look at Rio Associates.  
13 Now Rio Associates, Albemarle Square Shopping Center, he  
14 sold the property to Rio Associates. There was a clause in  
15 the contract that said he would subordinate to a construction  
16 loan. At the time the contract was entered into nobody con-  
17 templated, not the other side, not Mr. Wood, not Mr. Carwile,  
18 that they would decide to build at the stages rather than all  
19 at one time, so then it comes around to the fact that they  
20 decide that they do need to build it in stages, the same  
21 shopping center, build it in stages and they have an argument  
22 about whether or not that's right. Mr. Carwile says Mr.  
23 Wood wanted it present, Mr. Wood says Mr. Carwile wanted it  
24 present. I believe my client but it doesn't matter, Mr.  
25 Wood does not let attorneys take him to court where he doesn't

*Marlene  
Wood*

Re: \$400,000.00 Loan from United Virginia Bank of Charlottesville

in conferences with you regarding possible sources of financing and applying to United Virginia Bank of Charlottesville for a loan;

in conferences with you regarding UVB loan commitment, telephone conferences with Mr. West at First & Merchants National Bank regarding release of its lien;

in preparation of deeds of partial release for First & Merchants National Bank deed of trust, for Amato deed of trust and for commission bond deed of trust;

in update of examination of title to Amato and Kelsey tracts;

in preparation of application to Lawyers Title Insurance Corporation for title insurance;

in preparation of deed of trust and note for UVB loan and disbursement of funds.



Re: Contract for Expansion of Camelot Sewer Plant

in conferences with you with respect to the expansion of the Camelot Sewer Plant, conferences with Mr. E. E. Thompson, Jr., of the Albemarle County Service Authority with respect to same, secure copies of previous contractual agreements between Simco, Inc. and Camelot of Albemarle, Inc. with respect to the installation of the Camelot Sewer Treatment Plant, analysis of the position of Richard Nunley;

in telephone conferences with Fred S. Landess, Esq., counsel for the General Electric Corporation, with respect to the expansion of the plant, conferences with you with respect to GE's position, analysis of Nunley's position with you, draft letter for the signature of John B. Sims;

in conferences with James Bowling, Esq., counsel for the Albemarle County Service Authority, with respect to the expansion of the plant and format for the contract;

in preparation of the initial draft of the contract for the expansion of the Camelot Sewer Treatment Plant, in attendance at meeting of the Albemarle County Service Authority Board of Directors on November 9, 1977;

in further conferences with Messrs. Thompson, Landess, Bowling and you regarding contract, and preparation of revised draft of contract;

in conferences with Mr. Thompson with respect to change of land use in the Airport area to an industrial park and possible effects on pending contract with Albemarle County Service Authority, in attendance at Albemarle County Service Authority Board of Directors meeting on June 8, 1978, and conferences with Messrs. Landess and Thompson following the meeting, in preparation of legal description for the various airport properties as an exhibit to the contract;

in correspondences from Mr. Bowling regarding contract, revision of contract, telephone conferences with Mr. Landess and you regarding same, telephone conferences with Mr. Thompson, furnish him with plats of the property;

in attendance at Board of Supervisors meeting on August 9, 1978, in conferences with Messrs. Thompson and Keeler following the meeting.

Re: Windmill Point Matters

*Marlene Wood*

in legal services in connection with purchase of Windmill Point, work on letter to the appraisers to be designated for purposes of arriving at release values pursuant to the contractual agreement with Dr. Atwood, et al., conferences with you and research regarding effect of zoning ordinances on pre-existing non-conforming uses;

in legal services in connection with the obligation owed to Dr. Atwood, et al., including conferences with you concerning the payment due Dr. Atwood in February, 1977, the acreage deficiency and the need for abatement of the purchase price as a result thereof,

in conferences with you regarding obtaining partial release of the Windmill Point property as a result of paydown on the obligation;

in extensive correspondence and conferences with Mr. Douglass, Dr. Atwood's counsel, concerning the mechanics for arriving at the required partial releases, negotiations with Dr. Atwood and his counsel concerning partial releases and abatement in the purchase price; review and analysis of the correspondence from Dr. Atwood accelerating the terms of the obligations on the grounds of waste, research of the applicable law concerning the waste issue, conferences with you as to the alternative approaches, conferences with Mr. McDonald concerning the waste issue, review of a bill of complaint filed by Mr. Douglass as trustee under the deed of trust upon which Dr. Atwood attempts to foreclose, associate Mr. McDonald for representation of you in the proceeding, assist Mr. McDonald in becoming familiar with the facts of the case, participation in settlement discussions involving Mr. McDonald, counsel to Dr. Atwood, and you, and related matters;

in conference with you concerning the payment due Dr. Atwood, et al. in February 1978;

in conferences with you regarding loan commitment from United Virginia Bank of Charlottesville and methods of securing interim loan based on the commitment, draft a motion for injunction and payment into court of the required note payment pending resolution of the waste issue, the partial release issue, and the abatement in purchase price issue, conferences with Mr. McDonald, initial research of the applicable law for the motion for injunction, arrange for the payment of the required sum into court, and all related matters through September 30, 1978;

in conferences with you regarding proposed sale to Mr. Harold Richards, telephone conferences with Everett G. Allen, Esq.;

in preparation of contract of sale, wraparound deed of trust, land trust agreement, purchase money notes, and other closing documents, review of same with Mr. Allen.

in conferences with you regarding proposed sale to Jack Hanky, conferences with his counsel, Everett G. Allen, Esq.; forwarding of plats and telephone conference regarding right of first refusal;

in legal services in connection with the purchase of Windmill Point by Mr. J. Edward Seay, including conferences with you and Mr. Seay to negotiate an option for him to purchase Windmill Point, preparation of a draft of an option for purchase of Windmill Point by Mr. Seay, preparation of a draft of a letter agreement between you and Mr. Seay for the purchase of Windmill Point, in conference with you and Mr. Seay in Richmond in connection with the letter agreement and option, in preparation of contract of sale to Mr. Seay;

in conferences with Mr. Seay and Mr. James C. Breeden, his counsel, concerning changes requested by Mr. Seay in the contract for sale of Windmill Point to Mr. Seay, research concerning wraparound deeds of trust for use in the sale;

in conferences with you and Mr. Seay concerning syndication of limited partnership interests by Mr. Seay to raise capital, discussions with you and Mr. Seay concerning Mr. Seay's problem with the State Corporation Commission in connection with his offering of limited partnership interests, conferences with Messrs. Breeden, Seay, and representatives of the State Corporation Commission Securities Division concerning the problem;

in conference call with you and Messrs. Breeden and Seay, concerning revision of the contract of sale for Windmill Point; final drafting of the contract of sale pursuant to the telephone conference call;

in telephone conference with Mr. Seay concerning his taking possession prior to closing of the sale and \$100,000.00 note, telephone conference with Mr. Breeden and follow-up letter to him concerning the casualty insurance on Windmill Point;

in preparation of a depreciation schedule for Windmill Point in connection with the sale, further conferences with Messrs. Breeden and Seay concerning insurance information, information about the partnership Mr. Seay is to form and execution of a

security agreement giving Mr. Wood a security interest in Mr. Seay's Soltero partnership interest, preparation of the required security agreement;

in telephone conference with Mr. Breeden concerning his withdrawal from representation of Mr. Seay; in telephone conferences with Mr. Smithers, counsel to Mr. Seay, concerning documentation required for closing of the transaction, preparation of powers of attorney and the required notes, deeds of trust, land trust, and all other documentation required for closing of the transaction, travel to Richmond, Virginia, on July 29, 1977, to close the transaction with Mr. Seay, extended conference with Mr. Smithers and Mr. Seay concerning their refusal to close the transaction, numerous telephone conferences and office conferences with Mr. Wood, Mr. Smithers and Mr. Seay concerning the effort to resolve the points raised by Mr. Seay and to close the transaction, extensive conferences and correspondence in an effort to get Mr. Seay to honor his obligation to Central Virginia Bank, negotiations with Mr. Seay for adjustments to the original contract of sale in order that closing could take place, and related matters;

in conferences with Mr. McDonald concerning the Seay matter, prepare a motion for judgment against Mr. and Mrs. Seay in view of the breakdown in efforts to close the sale, file the motion for judgment, conferences with Mr. Culler and the Circuit Court of Henrico County concerning a trial date and Mr. Culler's representation of Mr. Seay, preparation of a subpoena for the accounting records of Mr. Seay pertaining to Windmill Point;

in preparation of request for production of documents, interrogatories, and requests for admissions in the Seay litigation, review of Mr. Seay's pro se answer, travel to and from Richmond, Virginia on several occasions for depositions of Mr. Seay, extensive conferences with Mr. McDonald concerning the case, analysis of documents produced by Mr. Seay, including accounting records, research Virginia law concerning Mr. Seay's obligation on the \$100,000.00 note;

in preparation and filing of a motion for summary judgment on the note, preparation and filing of memorandum in support of the motion for partial summary judgment, representation of Mr. Wood at a pre-trial conference, conferences with Mr. McDonald, Mr. Wood, and representation of Aqua Air concerning the lagoon system and Windmill Point;

in preparation in taking both Mr. Seay's and Mr. Smithers' depositions, preparation and filing of an amended Motion for Judgment to allege fair rental value for use of the premises as an additional count, review the responsive pleading and

counterclaim of Mr. Seay, preparation and filing of a motion to dismiss the counterclaim;

in conference with you regarding liability exposure at Windmill Point, consideration of conveying Windmill Point to a corporation, analysis of tax consequences of such a conveyance, and effect of §357 of the Internal Revenue Code, review of research with you.

*Marlene Wood*

Re: Purchase of Airport Properties from Airport Associates Partnership, Airport Ventures Partnership, Airport Road Partnership, Airport Industries Partnership, and Airport Enterprises

in conference with you regarding the feasibility of acquiring the various airport properties from the above partnerships, analysis of various methods for holding title to the property, conference with you regarding utilization of a land trust, conferences with Richard Joynt, Esq. of Hunton & Williams regarding utilization of Bank of Virginia Trust Company as trustee for a land trust, conferences with Mr. McGrann of Bank of Virginia Trust Company, and further conferences with you regarding utilization of a land trust to hold title to the property;

in conferences with Miss Ethel Irwin and Stephen Amato, Esq. regarding the Airport Properties, the status of the lien indebtedness on same, and further conferences with you and Mr. Zerkle regarding same;

in research in Clerk's Office in order to prepare deeds from each of the Airport partnerships to various land trusts, preparation of land trust agreements, review of documents with you, and travel to and from Richmond for review of and execution of the land trust agreements by Bank of Virginia Trust Company;

in telephone conferences with New York counsel for Airport partnerships, preparation of powers of attorney with respect to execution of deeds by New York counsel as attorneys-in-fact for each of the partnerships, travel to New York City for conferences with counsel for the Airport partnerships to secure execution of deeds;

in conferences with Miss Irwin regarding escrow closing on the properties, review of each of the deeds with her, review of lien indebtedness with her including negotiations with respect to indebtedness held by John B. Sims, conferences -- with Mr. Zerkle and you with respect to same;

in telephone conferences with Mr. Brady, New York counsel for Airport partnerships, conferences with Miss Irwin and Stephen Amato, Esq. with respect to payment of existing indebtedness, further negotiations with Miss Irwin regarding whether the deed should be by assumption or by conveying the property subject to the lien indebtednesses and conferences with you to update you on various events;



in computation of accrued interest and principal due on each of the Airport properties as of March 13, 1975;

in conferences of March 17 and March 18, 1975 with Mr. Amato, Miss Irwin, and Mr. Brady's office in an effort to terminate escrow closing, extensive conference with Miss Irwin to complete closing, tax deeds, draft letter for Mr. Amato's signature, conference with you regarding various alternatives available to you in negotiating with existing lien holders, make payoff on Amato indebtedness;

in conferences with Mr. Trevillian regarding negotiation of new payment schedule, conferences with Paul Summers regarding same, prepare draft of modification agreement to modify principal payment schedule on the Birdsong and Trevillian indebtedness, conferences with representatives of University of Virginia Medical School Foundation regarding bonds held by them, revision of modification agreement, further conferences with Messrs. Summers and Trevillian regarding execution of modification agreement, secure execution of modification agreement and recordation of deeds to North Rivanna Second and Third Land Trusts;

in conferences with Miss Irvin regarding possible foreclosure of deed of trust held by John B. Simms, conferences with you regarding effect thereof, in telephone conferences and correspondence with Mr. Brady, New York counsel for Airport Partnerships regarding changing guarantee on the deed to the North Rivanna Fifth Land Trust to the 606 Land Trust, revision of deed, letter to Mr. Brady regarding same;

in conferences with you regarding Simms foreclosure, in conferences with Mr. Simms, Charles Wm. Hurt, M.D. and you regarding negotiating financing for you as purchaser at the foreclosure sale, in attendance at foreclosure sale and bidding in on the property, in conference with Mr. Jason I. Eckford, Jr., President of Citizens Bank and Trust Company regarding securing financing for the Camelot tract, preparation of deed to the North Rivanna Fifth Land Trust, preparation of three deeds of trust, securing Citizens Bank and Trust Company, Charles Wm. Hurt, and John B. Simms, preparation of bonds evidencing the various indebtednesses, review of documentation with you, Charles Wm. Hurt, M.D., Miss Irwin, and Jason I. Eckford, Jr., secure previous appraisal on the property for Citizens Bank and Trust Company, travel to Richmond to have various deeds of trust and bonds executed by Bank of Virginia Trust Company in connection with the purchase of Camelot tract, further correspondence and telephone conferences with Mr. Eckford regarding financing by Citizens Bank and Trust Company and closing of purchase from Ethel Irwin, Trustee;

in conference with William Massie Smith, Esq. regarding Fourth Land Trust property and indebtedness held by Walter Cushman, telephone conferences and correspondence with representatives of the Federal Land Bank of Baltimore regarding their deed of trust on the North Rivanna Fourth Land Trust property, conferences with Mr. Edward Chapman of Insurance Management Corporation to secure the requisite casualty policies for the various tracts, telephone conferences and office conferences with Messers. Walter Cushman and Caleb Stowe regarding North Rivanna Fourth Land Trust and payment of indebtedness held by them;

in conferences with you and various other parties involved in the acquisition of the Airport properties concerning various problems in connection with the transactions, discussion of and resolution of those problems.

Re: Airport Condemnation

in preparation of 2 petitions and 2 orders for disbursement of the funds of the 2 certificates filed by the State Highway Commissioner on the Airport property;

in conferences and correspondence with Bank of Virginia Trust Company concerning the funds to be received from the condemnation;

in conference with Mr. Sutton and you concerning the payment of the funds and the possibility of settling the matter;

in preparation of deeds of partial release;

in preparation of answers to interrogatories and arranging for appraisal by Mr. Fleming;

in conference with Shelby J. Marshall, Clerk, regarding disbursing funds;

in conference with Mr. Sutton regarding appointment of commissioners.

Re: Rio Associates Limited Partnership - - \$1,495,000.00 Deed  
of Trust

in review of original contract documents, analysis of problems with respect to subordination and telephone conference with Mr. Russell on March 23, 1976;

in conference with Mr. Russell on April 13, 1976, to review tentative documents;

in review of tentative subordination documents with you on April 14, 1976, and telephone conferences with Mr. Russell;

in various conferences with you with respect to calculating the present value of the Rio Associates bonds and negotiations with Messrs. Heischman and Plotkin with respect to a sale of the Rio Associates bonds to them;

in extensive conferences with you and Mr. Russell, and other parties in interest concerning the dispute over the subordination provisions and the documents as they pertain to subsequent subordinations of the \$1,495,000.00 deed of trust;

in review of suit filed by Rio Associates Limited Partnership against you and Westinghouse Credit Corporation; extensive conferences with you with respect to the suit filed by Rio Associates Limited Partnership, including discussions with respect to possible settlement of the suit, review of old files for various drafts of the December 11, 1972 contract between you and Rio Associates Limited Partnership;

in preparation of a draft of an answer for both of you and Westinghouse Credit Corporation;

in conferences with and engagement of Research Group, Inc. to research applicable law for possible counterclaims, telephone conferences with you regarding same;

review and file answer on behalf of Westinghouse Credit Corporation;

Re: Reservoir Matters

in conference with you and Mr. Zerkel regarding sale to Z & S Development Corporation;

in preparation of deed of bargain and sale with vendor's lien to Z & S Development Corporation, preparation of vendor's lien bond;

in closing of transaction and various conferences with you and Messers. Zerkel and Sherman;

in conference with Mr. Ted Allen of your office regarding proposed Panorama development, review with him of documentation required by Albemarle County in connection with the development, conference with Mr. Zerkle regarding site plan, building permit, financing, homeowners agreement and other related matters to proposed development, in preparation of a draft declaration of covenants, restrictions and conditions for Panorama, review and editing of declaration of covenants, restrictions and conditions, and conferences with Mr. Allen and you with respect to same;

in conference with you and Mr. Allen regarding soil erosion and control law, research with respect to same, conferences with Mr. Hartwell Clarke regarding soil erosion and control ordinance and subdivision ordinance and their applicability to the Panorama development, further conferences with you with respect to soil erosion and control ordinance, in research of recent legislation regarding zoning and site plan law including recent Virginia judicial decisions;

in conferences with you and Mr. Allen regarding meeting held with the soil erosion advisory committee, telephone conferences with Mr. Hartwell Clarke, preparation of memo with respect to telephone conference with Mr. Clarke, telephone conferences with Mr. J. Harvey Bailey and various other county officials with respect to soil erosion permit;

in conferences with you with respect to soil erosion permit, conferences with Mr. Fred Payne, Deputy County Attorney, regarding letter of credit, research regarding issuance of letter of credit by Albemarle Bank and Trust Company, conference with Bank officials with respect to same, drafting of proposed letter of credit for execution by Albemarle Bank and Trust Company, conference with Mr. Fred Payne regarding format of performance bond, secure form of bond from the County Planning Department, revise bond as necessary to apply to the Panorama situation, review of revision with Mr. Payne and Mr. Clarke, telephone conferences with you with respect to issuance of soil erosion permit, telephone conferences with Messers. Tom Wyant and T. M. Batchelor, Jr. with respect to issuance of soil erosion permit;

in research and review of state statute on soil erosion control, with review of Albemarle County ordinance for consistency with enabling legislation;

in revision of letter of credit, and further revision of performance bond, additional conferences with Mr. Payne, telephone conferences with Mr. Clarke regarding additional requirements for issuance of soil erosion permit, draft affidavit, telephone conferences with Mr. Roudabush, further conferences with Mr. Payne in attempts to secure soil erosion permit, try to locate Mr. Clarke, conference with Patricia Fleshman, Deputy Zoning Administrator, letter to Miss Fleshman;

in conferences with you regarding various aspects of Panorama and proposed sale to Messers. Douglas Zerkle and Bruce Sherman, telephone conferences with Mr. Zerkle regarding sale of Panorama to him and Mr. Sherman;

in additional attempts to reach Mr. Clarke prior to Board of Supervisors meeting on January 2, 1976, preparation of mandamus action with respect to soil erosion permit, in attendance at Board of Supervisors meeting on January 2, 1976, in conference with Mr. St. John following Board of Supervisors meeting, in conferences with Mr. St. John regarding his rejection of performance bond, conferences with you with respect to strategy and tactics in dealing with the matter, in preparation of various letters to Mr. Clarke and Mr. St. John regarding their continued refusal to issue the soil erosion permit, conferences and negotiations with Mr. St. John regarding revision of performance bond;

in preparation for mandamus hearing, and attendance at the hearing;

in conference with you regarding continued efforts to secure soil erosion permit, conferences with you regarding efforts to secure issuance of building permit, securing final approval from Mr. Payne on restrictive covenants;

in conferences with you and County officials regarding proposed moratorium ordinance to be adopted by the County, review and analysis of moratorium ordinance, letters to Mr. St. John regarding moratorium ordinance and issuance of soil erosion permit;

in attendance at planning commission meeting on January 20, 1976;

in attendance at Board of Supervisors meeting on January 21, 1976;

in research of legality of moratorium law, research regarding land use law, soil erosion control law, and water quality law;

in conferences with Mrs. Nancy O'Brien regarding possible sale of Panorama property to the City of Charlottesville and Albemarle County;

in attendance at Planning commission meeting of January 27, 1976;

in telephone conferences and office conferences with Messrs. Daley Craig, Leigh B. Middleditch, Esq., Douglas L. Zerkle, T. M. Batchelor, Jr., and William S. Roudabush;

in telephone conferences and correspondence with Mr. St. John regarding depositions and mandamus action, correspondence with Mr. St. John regarding same, telephone conferences with you and Mr. Zerkle regarding same;

in research of technical aspects of point versus nonpoint pollution, conferences with Leigh B. Middleditch, Esq. regarding same, preparation of letter for your signature to the Albemarle County Board of Supervisors, in attendance at February 4, 1976 Board of Supervisors meeting and conferences with you with respect to same following the meeting;

in research at Virginia Supreme Court regarding land use legislation and judicial interpretations thereof, including analysis of briefs filed, in continued conferences and correspondence with County officials regarding Panorama in an effort to secure a compromise of the matter;

in attendance at planning commission meeting on March 29, 1976;

in attendance at Board of Supervisors meeting on May 5, 1976;

in attendance at various Board of Supervisors meetings regarding engaging a consultant to analyze the watershed, conferences with representatives performing the Betz study, review of the Betz study, attendance at various meetings regarding enactment of permanent moratorium regarding development around the watershed, preparation of easements for sewer lines for Panorama, in analysis of control ordinance adopted by Albemarle County, conferences with you and Messrs. Gloeckner and Lincoln regarding preparation of an application under the runoff control ordinance, conferences with Messrs. Harvey Bailey and Robert Tucker regarding runoff control application, and all other related matters.

in conferences with you relating to filing suit under §1983 of the Civil Rights Act with respect to the refusal of the County of Albemarle to issue a soil erosion permit for Panorama;

in preparation and filing of a complaint in the United States District Court against Mr. St. John and Mr. Clarke for violation of §1983 of the Civil Rights Act, review of sale with you;

in various conferences with you concerning strategy, preparation and filing of initial interrogatories and requests for production of documents, receive and analyze a motion from Defendants for a protective order as to discovery and for a hearing on a motion to dismiss and certain legal defenses;

in preparation of a reply to the motion and a summary memorandum dealing with cases cited by Defendants;

in preparation for and attendance at a hearing held on August 18, 1976, on Defendants' motion;

in research of the law;

in research for and preparation of memorandum of law concerning the issue of the Plaintiff's rights, the issue of Federal Court abstention, the issue of immunity of the Defendants, and the issue of denial of discovery on the grounds of privilege and the work product doctrine;

in preparation for and attendance at a hearing on September 17, 1976;

in review of Judge Turk's Opinion and Order dismissing the §1983 action, research of the law to determine whether a §1983 action can be brought in state court, research as to the applicable statute of limitations for §1983 actions, review of the alternatives with you in view of the dismissal to show that it was without prejudice, analyze the alternatives of appeal of the dismissal to the Fourth Circuit Court of Appeals as opposed to filing of a new §1983 Action in Federal District Court, research the possibility of adding a Section 1985(3) claim in addition to the claim under Section 1983 of the Civil Rights Act;

in preparation of a new complaint for filing in Federal District Court and filing of same on December 30, 1976;

in review of correspondence and pleadings filed by Mr. St. John and Mr. Clarke moving to dismiss the §1985(3) complaint; in preparation for and attendance at an in-chambers conference with Judge Turk and opposing counsel on March 14, 1976;



conferences with John E. McDonald, Esq. and you with respect to the law suit, telephone conferences with Mr. McDonald in connection with preparation of the counterclaim, revise answer, further research regarding counterclaim, preparation of memorandum to file;

in review of final draft of answer and cross-bill, telephone conferences with Mr. McDonald, conferences with you prior to filing;

in review of the plea in bar filed by Bank of Virginia, telephone conferences with J. Waverly Pulley, III, Esq. with respect to same;

in preparation of initial draft of interrogatories and request for production of documents, in review of interrogatories;

in conferences with Mr. McDonald to arrange for depositions, letter to Archibald Wallace with respect to same;

in conferences with you with respect to whether or not to elect a jury trial, in attendance at docket call, in preparation for and in attendance at pre-trial conference on December 27, 1977;

in preparation of letter to Westinghouse Credit Corporation to advise them of the present status of the case, in intra-office conferences and preparation for depositions, conferences with you and Mr. McDonald in preparation for depositions;

in attendance at depositions on January 10 and 11, 1978, in attendance at depositions on January 25, 1978 in Richmond, Virginia, in preparation of subpoena for Frederick L. Russell, preparation of subpoena duces tecum for records of McGuire, Woods & Battle;

in preparation of subpoena duces tecum for records of Life Insurance Company of Virginia;

in conferences with the Honorable David F. Berry regarding motion filed by Rio Associates Limited Partnership claiming privilege, in research for and preparation of a memorandum of law concerning the interpretation of the language in the contract documents involving subsequent subordinations, review of memorandum of law filed by Rio Associates Limited Partnership, in research and preparation of reply memorandum;

in preparation for a hearing in the proceeding including outline of the essential allegations set forth in the complaint which state a claim upon which relief can be granted, research the case law as to the necessary elements needed in order to withstand a motion to dismiss;

in preparation for and attendance at a hearing held on March 31, 1977;

in preparation of a memorandum of law, in review of the memorandum filed by Mr. St. John's counsel, in research for and preparation of a reply memorandum, in preparation for and attendance at a hearing before Judge Turk to argue the memorandums of law filed in the case;

in review of opinion and order entered by Judge Turk dismissing the complaint, research of portion of the case law cited by Judge Turk, preparation and filing of a motion for reconsideration of the decision and to set aside same, preparation for and attendance at the hearing for Judge Turk to alter or amend his order;

in conferences with Judge Turk's clerk concerning the §1985(3) count of the complaint, research the conspiracy cases;

in preparation and filing of notice of appeal to the Fourth Circuit Court of Appeals of Judge Turk's opinion and order, arranging for the Appeal Bond, correspondence with the court reporter concerning designation of portions of the transcript requested by Mr. St. John's counsel, correspondence with the court reporter concerning error in the transcript prepared, correspondence with the Fourth Circuit Court of Appeals concerning the status of the case, and related matters.

in preparation of notice to take depositions of J.B. Campbell, preparation of subpoena to Mr. Campbell, preparation of subpoena duces tecum for records of Bank of Virginia Company, in preparation of subpoena duces tecum for records of Thompson Appraisal Company;

in conference with Mr. McDonald, in attendance at depositions in Richmond, Virginia, on February 16, 1978, in review of documents supplied by Bank of Virginia, in response to subpoena duces tecum;

in review and analysis of appraisal supplied by Thompson Appraisal Company and supporting information for same; correspondence with Mr. Russell and Mr. McDonald, conference with you with respect to current status of the matter;

in review of letter from the Honorable David F. Berry, forward copies to you and Westinghouse Credit Corporation, in conferences with you in regard to selection of appraiser, conferences with Mr. Jared Lake, accumulate various documents necessary for Mr. Lake to make an appraisal of the property, conferences with him, research at County Building official's office regarding evaluation of building permits issued for Albemarle Square, telephone conferences with Mr. Lake and Mr. McDonald regarding appraisals;

in conference with Mr. McDonald regarding motion to dismiss, in conferences with you and Messrs. Lake and McDonald in preparation for trial, securing issuance of witness subpoenas, and all other related matters in connection with trial preparation;

in attendance at trial of the matter on March 24, 1978;

in conferences with Mr. Lake and others regarding preparation of graphic analysis of appraisal information, conferences with Mr. Thomas Branham, appraiser for Albemarle County Real Estate Department;

in preparation for remainder of trial, conferences with you, Mr. Lake, Messrs. Lake and McDonald;

in attendance at trial on April 7, 1978;

in conferences with you following trial, preparation of motion to reconsider, securing hearing date and attendance at motion for reconsideration.

Re: Sale to Milodon Engineering Co., Inc.

in conferences with you regarding proposed sale to Milodon Engineering Co., Inc., further conferences with Messers. Alderson, Hogue and Reback;

in preparation of contract of sale;

in preparation of deed, conferences with parties regarding closing, preparation of three deeds of partial release, review of deferred purchase money note and deed of trust;

in conferences with Mr. Reback regarding closing, negotiations regarding paying real estate taxes at a later date;

in telephone conferences and negotiations with representatives of First & Merchants National Bank regarding securing a release of their deed of trust;

in closing of sale and preparation of closing statement and closing memorandum.

Re: Sale to Bede General Corporation

in conference with you regarding proposed sale to Bede General Corporation, conferences with you and Messers. Bede and Hogue;

in conference with you regarding tax consequences of sale to you, and proposed set up of basis by sale to United Inns of America, Inc.

in preparation of contract of sale.

Re: 1977 Tax Return *Marlene Wood*

in conferences with you regarding the preparation of your 1977 federal and Virginia income tax returns, conferences with Marlene and Nena to obtain information necessary to prepare the returns, preparation of returns and related matters.

Re: Financing *Marlene Wood*

in conferences with you during February of 1977 regarding arranging for financing and possible sources, conferences with Mr. David Goodman regarding possible sources of financing, conferences with you regarding possible loan from the Equitable Life Assurance Society of the United States, conferences with Mr. Landon D. Birkheard, conferences with Mr. Birkheard and Mr. William H. Grimm of Charlottesville Savings & Loan, telephone conferences with Mr. Birkhead regarding possible loan, conferences with you regarding possible loan from Fidelity American Bank, conferences with Mr. M. M. Alexander, Jr. of Fidelity Mortgage Corporation;

in conferences with you with respect to obtaining possible HUD Title X loan, arrange for meetings with Walker and Dunlop and Reilly Mortgage Company with respect to financing, travel to Washington, D.C. with you to attend meetings with Reilly Mortgage Corporation, and Walker and Dunlop Company with respect to possible financing;

in conferences with you with respect to 1 from Equico Lessors, Inc., telephone conferences with Mr. Flax of Equico Lessors, Inc.

Re: Loans from First & Merchants National Bank *Marlene Wood*

in conferences with you with respect to securing additional loan commitment from First & Merchants National Bank, telephone conferences with Mr. Durham of First & Merchants National Bank, conferences with C. Coatsworth Pinkney, III, Esq., counsel for First & Merchants National Bank, preparation of \$900,000.00 deed of trust and \$900,000.00 note, in examination of title and title updates to various properties, preparation of title opinion letter to First & Merchants National Bank, review of same with counsel for the Bank;

in conferences with you with respect to \$2,450,000.00 line of credit from First & Merchants National Bank, conferences with representatives of First & Merchants National Bank with respect to same;

in examination of title to the North Rivanna First Land Trust properties;

in examination of title to the North Rivanna Second Land Trust properties;

in examination of title to the North Rivanna Third Land Trust properties;

in examination of title to the North Rivanna Fourth Land Trust properties;

in examination of title to the North Rivanna Fifth Land Trust properties;

in examination of title to Lot 1, Section E Carrsbrook;

in travel to Lancaster County, Virginia, and update of title to Marina Tract, Harwood Tract, and Hubbard Tract in Lancaster County, Virginia;

in preparation of deed of trust and note for \$2,450,000.00;

in conferences with counsel for and officers of First & Merchants National Bank with respect to Title Insurance requirement;

in preparation of title opinion letter covering parcels of real estate;



in conference with you with respect to pledging Southern Ventures, Inc. vendor's lien bonds to First & Merchants National Bank, preparation of bond powers and other documentation with respect to same;

in conferences with you with respect to securing an additional \$175,000.00 line of credit from First & Merchants National Bank, conferences with Mr. William G. McClure, III, Esq. with respect to same, preparation of \$175,000.00 supplemental deed of trust and \$175,000.00 note, preparation of title opinion letter with respect to same, conferences with First & Merchants National Bank officers with respect to disbursements of funds, preparation of estoppel letters with respect to disbursement, and numerous and various conferences with you with respect to your line of credit with First & Merchants National Bank and their demands for payment, conferences with counsel for and officers of First & Merchants National Bank with respect to same.

AMOUNT IN BILL

|   |                  |
|---|------------------|
| ✓ UVB Charged against Mr. and Mrs. Wood         | 5,000.00         |
| ✓ Camelot Charged against Mr. Wood              | 3,500.00         |
| Windmill Charged against Mr. and Mrs. Wood      | 45,000.00        |
| Airport Prop. Charged against Mr. and Mrs. Wood | 10,500.00        |
| Airport Cond. Charged against Mr. Wood          | 625.00           |
| Reservoir Charged against Mr. and Mrs. Wood     | 27,500.00        |
| ✓ Milodon Charged against Mr. Wood              | 1,000.00         |
| ✓ Bede Charged against Mr. Wood                 | 400.00           |
| ✓ 1977 Tax Charged against Mr. and Mrs. Wood    | 1,500.00         |
| Financing Charged against Mr. Wood              | 1,750.00         |
| Rio Associates Charged against Mr. Wood         | 13,928.40        |
| F & M Charged against Mr. and Mrs. Wood         | <u>12,500.00</u> |
|   | \$123,203.40     |



cavalier-country bank

## PERSONAL FINANCIAL STATEMENT

Confidential

Please do not leave any questions unanswered.

NAME Wendell W. Wood ADDRESS 410 Ednam Drive  
 BUSINESS United Land Corp. of America ADDRESS P.O. Box 5548

For the purpose of procuring and maintaining credit from  
 lenders against the undersigned, the undersigned submits  
 following data, and agree that if any change occurs th  
 lenders against it, the undersigned will immediately and  
 to rely upon the statement herein given as a true and ac

PLAINTIFF'S  
 EXHIBIT  
 26 A  
 5/26/82

any form whatsoever with the above named Bank, for claims and de-  
 and accurate statement of its financial condition on the  
 ans or ability of the undersigned to pay all claims or de-  
 Bank, and unless the Bank is so notified it may continue  
 al condition of the undersigned as of the close of business.

(MONTH) February (DAY) 27 19 75

| ASSETS  |        |     |    | LIABILITIES                                      |        |     |    |
|---|--------|-----|----|--|--------|-----|----|
| Cash on hand and in Banks                                       | 30     | 000 | 00 | Notes payable to Banks—Secured                   | 2,290  | 000 | 00 |
| U. S. Gov. Securities—see schedule                              |        |     |    | Notes payable to Bank—Unsecured                  | 763    | 000 | 00 |
| Listed Securities—see schedule                                  | 87     | 000 | 00 | Notes payable to relatives                       |        |     |    |
| Unlisted Securities—see schedule                                | 678    | 700 | 00 | Notes payable to others                          |        |     |    |
| Cash Value Life Insurance                                       | 7      | 000 | 00 | Loans payable assigned Life Insurance            |        |     |    |
| Accounts and Notes Receivable<br>Due from relatives and friends | 40     | 000 | 00 | Accounts and bills due                           |        |     |    |
| Accounts and Notes Receivable<br>Due from others—good           | 65     | 000 | 00 | Accrued taxes and interest                       |        |     |    |
| Accounts and Notes Receivable<br>Doubtful                       |        |     |    | Other unpaid taxes                               |        |     |    |
| Real Estate owned—see schedule                                  | 9,741  | 000 | 00 | Mortgages payable on Real<br>Estate—see schedule | 1,783  | 500 | 00 |
| Real Estate Mortgages owned                                     | 1,730  | 000 | 00 | Chattel Obligations—<br>Auto, Appliances, etc.   |        |     |    |
| Machinery and Equipment   | 5      | 000 | 00 | Other debts—itemize                              |        |     |    |
| Livestock—see schedule  |        |     |    |  |        |     |    |
| Automobiles   | 14     | 000 | 00 |  |        |     |    |
| Other Assets—see schedule                                       |        |     |    |  |        |     |    |
| United Land Corp.   | 20     | 000 | 00 |  |        |     |    |
| United Trans Corp.  | 35     | 000 | 00 |  |        |     |    |
| B W Inc   | 55     | 000 | 00 |  |        |     |    |
| Mobile Parks Inc.   | 240    | 000 | 00 |  |        |     |    |
| Mobile Parks of G.ville Inc.                                    | 190    | 000 | 00 |  |        |     |    |
| 1971 Bertram Int. 63'   | 220    | 000 | 00 |  |        |     |    |
| Alpha Land Trust  | 240    | 000 | 00 | TOTAL LIABILITIES                                | 4,841  | 500 | 00 |
| Woyd F. Wood Est.   | 7      | 000 | 00 | NET WORTH  | 8,700  | 200 | 00 |
| Business, Original Tiffany, Diamond                             | 100    | 000 | 00 |  |        |     |    |
| TOTAL ASSETS  | 13,541 | 700 | 00 | TOTAL LIAB. & NET WORTH                          | 13,541 | 700 | 00 |

| CONTINGENT LIABILITIES                |               | PERSONAL INFORMATION  |   |
|---------------------------------------|---------------|---|---|
| As endorser, co-maker or guarantor    | \$ 100,000.00 | Place of Employment   | United Land Corp. Age 37  |
| On leases or contracts                | \$            | Position  | President   |
| Legal claims                          | \$            | Partner or officer in any other venture                                     | Yes   |
| Provision for Federal Income<br>Taxes | \$            | Spouse's Name   | Marlene C. Wood   |
| Other special debt                    | \$            | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single | No. Children 4 No. Dependents 6                                     |
|                                       |               | I have executed a will  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |

| SOURCE OF INCOME              |                 | GENERAL INFORMATION                                 |  |
|-------------------------------|-----------------|---|--|
| Salary                        | \$ 50,000.00    | Are any assets pledged other than indicated above?  | No   |
| Fees and commissions          | \$              | Are you defendant in any suits or<br>legal actions? | Yes  |
| Dividends                     | \$              | Personal bank accounts carried at                   | Cavalier Co. Bk. First & Merchants               |
| Real Estate income            | \$ 200,000.00   |   | Wok of Va, National Banks Trust, WNC Corporation |
| Other Income—itemize Interest | \$ 90,000.00    | Have you ever taken bankruptcy? Explain:            | No   |
| TOTAL                         | \$ 3,340,000.00 |   |  |

(SCHEDULES ON REVERSE SIDE)

404

## BANK ACCOUNTS

As Asked for on Reverse Side  
NAME OF BANKBalance On  
DepositAmount Of  
IndebtednessLine Of  
Credit

Method of Borrowing

|                       |              |            |    |               |
|-----------------------|--------------|------------|----|---------------|
| Valley Co. Bank       | \$ 35,80,000 | \$ 75,000  | \$ | Straight Note |
| Bank of Va.           | \$ 3,000     | \$ 950,000 | \$ | Straight Note |
| N. National Bank      | \$ 3,000     | \$ 120,000 | \$ | Straight Note |
| National Bank & Trust | \$ 2,000     | \$ 13,000  | \$ | Straight Note |
| City & Merchants      | 3,000        | 1,800,000  |    | Straight Note |

| IFE INSURANCE CARRIED: Name of Assured | FACE AMOUNT | CASH VALUE | BENEFICIARY     |
|--|-------------|------------|-----------------|
| Winconsin Mutual Life Ins Co           | \$1,050,000 | 1,000      | Wife & children |
| Equitable Life (300,000 Accident)      | 150,000     | ?          | Wife & children |
| Mutual of Omaha                        | 100,000     | None       | Wife & children |

## DESCRIPTION OF STOCKS AND BONDS LISTED ON REVERSE SIDE

| NAME OF CORPORATION AND DESCRIPTION OF BONDS OR STOCK | REGISTERED IN NAME OF: | NO. BONDS OR NO. SHARES | MARKET VALUE | STATE IF PLEDGED |
|---|------------------------|-------------------------|--------------|------------------|
| Bank of Virginia                                      | Woodell W. Wood        | \$ 5,100                | \$ 60,000    | Lin.             |
| White Shield O.G.                                     | Woodell W. Wood        | 1,000                   | 1,500        | N.               |
| Kalene Swapsaver Inc.                                 | Woodell W. Wood        | 1,100                   | 110,000      | N.               |
| Friday Inc Inc  | Woodell W. Wood        | 3,000                   | 25,500       | N.               |
| Valley - Country Bank                                 | Woodell W. Wood        | 28,435                  | 568,700      | 4000 Shares      |

## DESCRIPTION OF REAL ESTATE LISTED ON REVERSE SIDE

| ADDRESS AND TYPE OF IMPROVEMENTS | TITLE IN NAME OF | ESTIMATED VALUE | MORTGAGE OR LIEN | MO. INC. | MORTGAGE PAYMENT | WHO HOLDS Mortgage or Lien | WHEN DUE |
|----------------------------------|------------------|-----------------|------------------|----------|------------------|----------------------------|----------|
| See Attached sheet               |                  |                 |                  |          |                  |                            |          |

## SCHEDULE OF LIVESTOCK

| O. HEAD | DESCRIPTION | UNIT VALUE | TOTAL VALUE |
|---------|-------------|------------|-------------|
|         |             |            |             |

## SCHEDULE OF OTHER ASSETS

|  | VALUE |
|--|-------|
|  |       |

THE UNDERSIGNED, HAVING READ THE FOREGOING STATEMENT, HEREBY CERTIFIES TO THE ACCURACY AND TRUTH OF THE INFORMATION CONTAINED THEREIN.

(SIGN HERE)

Woodell W. Wood 405

Woodell W. Wood

DATE SIGNED

2-27-75

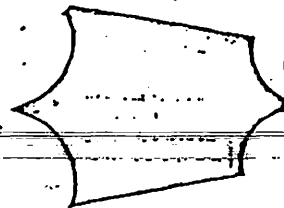
# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTEVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-7102

| PROPERTY   | TITLE        | VALUE       | MORTGAGE  | PAYMENT   | Who Holds Mortgage                                      |
|--|--------------|-------------|-----------|---|---|
| Ruckersville Exxop 7<br>5 Ac. Commercial<br>700 F.F. Rt. 29 N<br>300 F.F. Rt. 33 | Wendell Wood | \$220,000   | \$100,000 | \$10,000 per year<br>by interest<br>@ 6%          | Ralph M. H.<br>Des. Jewelers                            |
| 80 Ac. Industrial<br>Adjoining<br>Char. ville -<br>Albemarle<br>Airport          | Wendell Wood | \$480,000   | \$15,000  | \$3,000 per year<br>@ 6%                          | Pauline Elm<br>Florence Wrig<br>Emmett Jeff<br>Due Dec. |
| 43 Ac. R-2 Units<br>per acre Burruss Prop.                                       | Wendell Wood | \$344,000   | \$100,000 | Int only @<br>6% till 12/1/77<br>\$10,000 per yr. | Elmer<br>Burruss & Co<br>Due Dec.                       |
| 25 Ac. Commercial<br>2,500 F.F. Rt. 29   | Wendell Wood | \$1,250,000 | \$55,500  | \$18,500  | E.D. McQu<br>F+M Collate<br>Due<br>June 23              |
| 50 Ac. R-3<br>20 units per acre  | Wendell Wood | \$750,000   | F+M       | Collateral  |   |
| 11 Ac. 1,100 F.F. Rt. 29 N<br>Across From Andy's Rest.                           | Wendell Wood | \$120,000   | UNB       | Collateral  |   |
| 6 Ac. 440 F.F. Rt. 29 N<br>Across fr. Andy's Rest                                | Wendell Wood | \$72,000    | F+M       | Collateral  |   |

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11/11/77

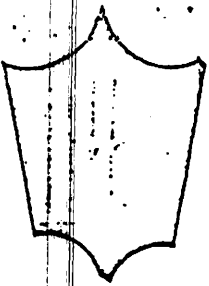
# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTEVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-7102

| PROPERTY  | TITLE        | VALUE       | MORTGAGE  | PAYMENT                          | Who Holds Mortgage?         |
|---|--------------|-------------|-----------|----------------------------------|-----------------------------|
| 141 Ac. 8,000 Ft.<br>Beach on Chesapeake Bay + Rappahannock River<br>4,000 Ft. Beach Frontage | Wendell Wood | \$500,000   | \$87,000  | \$10,000 per year @ 7%           | Lloyd H. Allen<br>Due Sept. |
| 410 Ednam Dr. Ednam Forest<br>7,200 Sq. Ft. house + 6.78 Ac.                                  | Wendell Wood | \$375,000 ✓ | \$220,000 | Int. only @ 6% till June 1, 1977 | June Rho                    |
| 12 Ac. 21 Acres Rd.<br>Access fr. Farmington C.C.   | Wendell Wood | \$60,000    | None      |                                  |                             |
| Commercial Lot<br>Free Union, Va.   | Wendell Wood | \$10,000    | None      |                                  |                             |
| Holiday Inn of Luray 101 units  | Wendell Wood | \$1,600,000 | F + M     | Collateral                       |                             |
| 6 Ac. Adjacent to<br>Holiday Inn of Luray   | Wendell Wood | \$150,000   | \$70,000  | \$10,000 per yr. @ 7%            | Charles Felt<br>Due June 1  |
| 8 3/4 Ac. Zoned R-3<br>20 units to AC. Adjacent<br>Four Seasons                               | Wendell Wood | \$120,000   | F + M     | Collateral                       |                             |

407

8-87-75  
Wendell Wood  
Wendell Wood

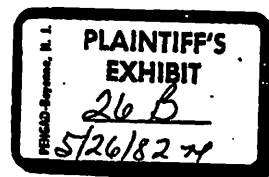


# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTEVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-7102

| PROPERTY   | TITLE        | VALUE       | MORTGAGE         | PAYMENT                  | Who Holds Mortgage                |
|--|--------------|-------------|------------------|--------------------------|-----------------------------------|
| 9 Ac. 660 F.F.<br>Comm. North of<br>Real Est. III Rt. 290  | Wendell Wood | \$350,000   | F + M Collateral |                          |                                   |
| 800 F.F. South<br>of Real Est. III<br>Commercial   | Wendell Wood | \$300,000   | F + M Collateral |                          |                                   |
| 1/2 int. 43 Acres<br>Zoned R-3 20 units<br>Per Ac. Sunset Ave.   | Wendell Wood | \$100,000   | None             |                          |                                   |
| 22 Ac. E. High St.<br>Charlottesville, Va.<br>Zoned Commercial   | Wendell Wood | \$320,000   | F + M Collateral |                          |                                   |
| 46 Ac. (15 Developed)<br>Wendmill St. Yacht Club,<br>Marina Lodge, Restaurant,<br>Gift Shop, Ship's Store,<br>on Chesapeake Bay<br>Lawson Co., Va. | Wendell Wood | \$2,600,000 | \$1,080,000      | \$100,000 per yr<br>@ 6% | Dr. Wallace<br>Atwood<br>Due Feb. |

2-29-75  
Mand M. Wood



UNVB

\_\_\_\_\_





cavalier-country bank

## PERSONAL FINANCIAL STATEMENT

Confidential

Please do not leave any questions unanswered.

NAME Wendell W. WoodADDRESS 410 Ednam DriveBUSINESS United Land Corp. of AmericaADDRESS P.O. Box 5548

For the purpose of procuring and maintaining credit from time to time in any form whatsoever with the above named Bank, for claims and demands against the undersigned, the undersigned submits the following as being a true and accurate statement of its financial condition on the following date, and agree that if any change occurs that materially reduces the means or ability of the undersigned to pay all claims or demands against it, the undersigned will immediately and without delay notify the said Bank, and unless the Bank is so notified it may continue to rely upon the statement herein given as a true and accurate statement of the financial condition of the undersigned as of the close of business.

(MONTH) January(DAY) 26

1976

| ASSETS                                 |     |     |        | LIABILITIES                                   |    |     |        |
|--|-----|-----|--------|---|----|-----|--------|
| Cash on hand and in Banks              | 30  | 000 | 00     | Notes payable to Banks—Secured                | 2  | 205 | 000 00 |
| U. S. Gov. Securities—see schedule     |     |     |        | Notes payable to Bank—Unsecured               | 1  | 133 | 000 00 |
| Listed Securities—see schedule         | 71  | 850 | 00     | Notes payable to relatives                    |    |     |        |
| Unlisted Securities—see schedule       | 721 | 900 | 00     | Notes payable to others                       |    |     |        |
| Cash Value Life Insurance              | 9   | 000 | 00     | Loans payable assigned Life Insurance         |    |     |        |
| Accounts and Notes Receivable          |     |     |        | Accounts and bills due                        |    |     |        |
| <del>XXXXXXXXXXXXXXX</del>             | 30  | 000 | 00     | Accrued taxes and interest                    |    |     |        |
| <del>XXXXXXXXXXXXXXX</del>             |     |     |        | Other unpaid taxes                            |    |     |        |
| <del>XXXXXXXXXXXXXXX</del> Inventory   | 45  | 000 | 00     | Mortgages payable on Real Estate—see schedule | 2  | 711 | 260 00 |
| Accounts and Notes Receivable Doubtful |     |     |        | Chattel Obligations—Auto, Appliances, etc.    |    |     |        |
| Real Estate owned—see schedule         | 13  | 866 | 000 00 | Other debts—itemize                           |    |     |        |
| Real Estate Mortgages owned            | 2   | 670 | 166 00 |   |    |     |        |
| Machinery and Equipment                |     | 5   | 000 00 |   |    |     |        |
| Livestock—see schedule                 |     |     |        |   |    |     |        |
| Automobiles                            | 15  | 000 | 00     |   |    |     |        |
| Other Assets—see schedule              |     |     |        |   |    |     |        |
| United Land Corp.                      | 20  | 000 | 00     |   |    |     |        |
| United Inns Corp.                      | 35  | 000 | 00     |   |    |     |        |
| 3 W Inc.                               | 55  | 000 | 00     |   |    |     |        |
| Mobile Parks, Inc.                     | 240 | 000 | 00     |   |    |     |        |
| M. P. of C-ville, Inc.                 | 190 | 000 | 00     |   |    |     |        |
| 1971 Bertram Int. 63'                  | 220 | 000 | 00     |   |    |     |        |
| Lloyd F. Wood Estate                   | 7   | 000 | 00     |   |    |     |        |
| Antiques, Oriental Rugs                | 100 | 000 | 00     |   |    |     |        |
| <del>XXXXXXXXXXXXXXX</del>             |     |     |        |   |    |     |        |
| <del>XXXXXXXXXXXXXXX</del>             |     |     |        |   |    |     |        |
| <del>XXXXXXXXXXXXXXX</del>             |     |     |        |   |    |     |        |
| TOTAL ASSETS                           | 18  | 330 | 916 00 | TOTAL LIABILITIES                             | 6  | 049 | 260 00 |
|  |     |     |        | NET WORTH                                     | 12 | 281 | 656 00 |
|  |     |     |        | TOTAL LIAB. & NET WORTH                       | 18 | 330 | 916 00 |

| CONTINGENT LIABILITIES             |              | PERSONAL INFORMATION  |                          |
|------------------------------------|--------------|---|--------------------------|
| As endorser, co-maker or guarantor | \$ 48,000.00 | Place of Employment   | United Land Corp. Age 35 |
| On leases or contracts             | \$           | Position  | President                |
| Legal claims                       | \$           | Partner or officer in any other venture   | Yes                      |
| Provision for Federal Income Taxes | \$           | Spouse's Name   | Marlene C. Wood          |
| Other special debt                 | \$           | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single No. Children <u>4</u> No. Dependents <u>6</u> |                          |
|                                    |              | I have executed a will <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                |                          |

| SOURCE OF INCOME              |              | GENERAL INFORMATION                                |   |
|-------------------------------|--------------|--|---|
| Salary Rents                  | \$ 50,000.00 | Are any assets pledged other than indicated above? | No  |
| Bonus and commissions         | \$           | Are you defendant in any suits or legal actions?   | No  |
| Dividends                     | \$ 5,000.00  | Personal bank accounts carried at                  | CCB, Business Acct. at CCB, F & M, BKV, VNB, NB |
| Real Estate income Sales      | \$407,666.00 | Have you ever taken bankruptcy? Explain:           | No  |
| Other income—itemize Interest | \$115,000.00 |  |   |
| Operations (H I & W P.)       | 243,000.00   |  |   |
| TOTAL 178,000 65.000          | \$20,666.00  |  |   |

Asked for on Reverse Side  
NAME OF BANK

Balance On  
Deposit

Amount Of  
Indebtedness

## Line Of Credit

### Method of Borrowing

|               |            |           |   |               |
|---------------|------------|-----------|---|---------------|
| lier Co. Bank | 55-100,000 | 200,000   | : | Straight Note |
| of Virginia   | 5-30,000   | 1,000,000 | : | Straight Note |
| & Merchants   | 3,000      | 1,900,000 | : | Straight Note |
| ational Bank  | 5-12,000   | 145,000   | : | Straight Note |
| anal Bank     | 5,000      | 63,000    | : | Straight Note |

| INSURANCE CARRIED: Name of Assured | FACE AMOUNT | CASH VALUE | BENEFICIARY     |
|------------------------------------|-------------|------------|-----------------|
| Mutual Life Ins. Co.               | \$1,050,000 | \$7,000    | Wife & Children |
| Liberty Life(300,000Accid)         | 150,000     | \$2,000    | Wife & Children |
| State of Omaha                     | 100,000     | None       | Wife & Children |
|                                    |             |            |                 |
|                                    |             |            |                 |

**DESCRIPTION OF STOCKS AND BONDS LISTED ON REVERSE SIDE**[illegible]

**DESCRIPTION OF REAL ESTATE LISTED ON REVERSE SIDE**

[illegible]

### SCHEDULE OF LIVESTOCK

[illegible]

### SCHEDULE OF OTHER ASSETS

| SCHEDULE OF OTHER ASSETS |  | VALUE |
|--------------------------|--|-------|
|                          |  |       |
|                          |  |       |
|                          |  |       |
|                          |  |       |

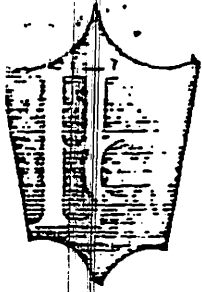
THE UNDERSIGNED, HAVING READ THE FOREGOING STATEMENT, HEREBY CERTIFIES TO THE ACCURACY AND TRUTH OF THE INFORMATION CONTAINED THEREIN.

**EREI**

**411.**

DATE SIGNED

1-26-76



# UNITED LAND CORPORATION OF AMERICA

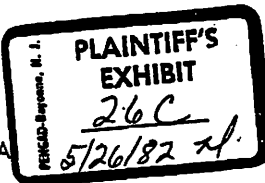
P.O. BOX 5548 CHARLOTTESVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-7192 x804 977-4262

| PROPERTY   | MARKET VALUE | MORTGAGE                        |
|--|--------------|---------------------------------|
| 1. 101 unit Holiday Inn of Luray   | \$ 1,700,000 | F&M wrap-around                 |
| 2. E. O. McCue 75 Acres Rt. 29, North  | 2,000,000    | F&M wrap-around<br>1st \$57,000 |
| 3. Moose Property 12 Acres Rt. 29, North   | 570,000      | F&M wrap-around                 |
| 4. Wicks 8.75 Acres adjoining Four Seasons   | 200,000      | F&M wrap-around                 |
| 5. High Street 22 Ac. Commercial   | 330,000      | F&M wrap-around                 |
| 6. H. Wheeler 6 Ac. Rt. 29, North  | 75,000       | F&M wrap-around                 |
| 7. 80 Ac. Rt. 606 adjoining C-ville Alb. A-port  | 480,000      | \$10,260                        |
| 8. H. Waytes 11 Ac. Rt. 29, North  | 120,000      | VNB Collateral                  |
| 9. Burruss Property 43 Ac. SPCA Rd.  | 430,000      | \$100,000                       |
| 10. 3 Ac. Rt. 29, North  | 150,000      | None                            |
| 11. Wade Property 21 Curves 11 Ac.   | 75,000       | None                            |
| 12. B. Patterson Rt. 29, North 78 Ac.  | 468,000      | \$275,000                       |
| 13. B. Patterson Hydraulic Rd. 28 Ac.  | 420,000      | \$250,000                       |
| 14. Residence 410 Ednam Dr. 7,200sq.ft. 6.75 ac.   | 375,000      | \$220,000                       |
| 15. Windmill Point Marina, Lodge, Restaurant, Yacht Club, Ship's Store, Gift Shop 20 Ac. | 1,500,000    | \$860,000                       |
| 16. Windmill Point 67 Ac.  | 400,000      | \$100,000                       |
| 17. Harwood Property 109 Ac. Windmill Pt.  | 545,000      | \$387,000                       |
| 18. L. Hubbard Property 100 Ac. Windmill Pt.   | 540,000      | \$ 79,000                       |
| 19. 1/4 int. 43 Ac. Sunset Ave.  | 100,000      | None                            |
| 20. N. Rivanna 1st Land Trust House & 236 Ac.  | 545,000      | \$258,000                       |
| 21. N. Rivanna 2nd Land Trust 325 Ac. Airport Road                                       | 858,000      | \$466,400                       |
| 22. N. Rivanna 3rd Land Trust 33 Ac. Airport Road  | 330,000      | \$105,000                       |
| 23. N. Rivanna 4th Land Trust House & 451 Ac.  | 495,000      | \$151,000                       |
| 24. N. Rivanna 5th Land Trust 221 Ac. Rt. 29, N.   | 2,210,000    | \$393,000                       |

Wood

Albemarle Bank & Trust Company

PERSONAL FINA



Rec'd 1/3/78 JHM

Confidential

Please do not leave any questions unanswered.

NAME Wendell W. Wood

ADDRESS 410 Ednam Drive

BUSINESS United Land Corp. of America

ADDRESS P.O. Box 5548

For the purpose of procuring and maintaining credit from time to time in any form whatsoever with the above named Bank, for claims and demands against the undersigned, the undersigned submits the following as being a true and accurate statement of its financial condition on the following date, and agree that if any change occurs that materially reduces the means or ability of the undersigned to pay all claims or demands against it, the undersigned will immediately and without delay notify the said Bank, and unless the Bank is so notified it may continue to rely upon the statement herein given as a true and accurate statement of the financial condition of the undersigned as of the close of business.

(MONTH) January

(DAY) 23

19 77

| ASSETS                                 |     |     |        | LIABILITIES                           |     |     |        |
|--|-----|-----|--------|---------------------------------------|-----|-----|--------|
| Cash on hand and in Banks              | 70  | 000 | 00     | Notes payable to Banks—Secured        | 3,  | 988 | 000 00 |
| U. S. Gov. Securities—see schedule     |     |     |        | Notes payable to Bank—Unsecured       |     | 200 | 000 00 |
| Listed Securities—see schedule         | 78  | 500 | 00     | Notes payable to relatives            |     |     |        |
| Unlisted Securities—see schedule       | 918 | 680 | 00     | Notes payable to others               |     |     |        |
| Cash Value Life Insurance              | 24  | 000 | 00     | Loans payable assigned Life Insurance |     |     |        |
| Accounts and Notes Receivable          |     |     |        | Accounts and bills due                |     |     |        |
| <del>XXXXXXXXXXXXXXXXXXXX</del>        | 35  | 000 | 00     | Accrued taxes and interest            |     |     |        |
| <del>XXXXXXXXXXXXXXXXXXXX</del>        |     |     |        | Other unpaid taxes                    |     |     |        |
| <del>XXXXXXXXXXXXXXXXXXXX</del> Inven- |     |     |        | Mortgages payable on Real             |     |     |        |
| <del>XXXXXXXXXXXXXXXXXXXX</del> tory   | 45  | 000 | 00     | Estate—see schedule                   | 2,  | 746 | 400 00 |
| Accounts and Notes Receivable          |     |     |        | Chattel Obligations—                  |     |     |        |
| Doubtful                               |     |     |        | Auto, Appliances, etc.                |     |     |        |
| Real Estate owned—see schedule         | 14, | 277 | 000 00 | Other debts—itemize                   |     |     |        |
| Real Estate Mortgages owned            | 2,  | 736 | 500 00 |                                       |     |     |        |
| Machinery and Equipment                | 5   | 000 | 00     |                                       |     |     |        |
| Livestock—see schedule                 |     |     |        |                                       |     |     |        |
| Automobiles                            | 15  | 000 | 00     |                                       |     |     |        |
| Other Assets—see schedule              |     |     |        |                                       |     |     |        |
| United Land Corp.                      | 20  | 000 | 00     |                                       |     |     |        |
| United Inns Corp.                      | 35  | 000 | 00     |                                       |     |     |        |
| 3 W Inc.                               | 55  | 000 | 00     |                                       |     |     |        |
| Mobile Parks, Inc.                     | 240 | 000 | 00     |                                       |     |     |        |
| M.P. of C-ville, Inc.                  | 190 | 000 | 00     |                                       |     |     |        |
| 1971 Bertram Int. 63'                  | 250 | 000 | 00     |                                       |     |     |        |
| Lloyd F. Wood Estate                   | 7   | 000 | 00     | TOTAL LIABILITIES                     | 6,  | 934 | 400 00 |
| Antiques, Oriental Rugs                | 100 | 000 | 00     | NET WORTH                             | 12, | 167 | 280 00 |
| <del>(value excess \$250,000)</del>    |     |     |        | TOTAL LIAB. & NET WORTH               | 19, | 101 | 680 00 |
| TOTAL ASSETS                           | 19, | 101 | 680 00 |                                       |     |     |        |

| CONTINGENT LIABILITIES             |             | PERSONAL INFORMATION  |   |
|------------------------------------|-------------|---|---|
| As endorser, co-maker or guarantor | \$ 3,000.00 | Place of Employment   | United Land Corp. Age 36  |
| On leases or contracts             | \$          | Position  | President   |
| Legal claims                       | \$          | Partner or officer in any other venture                                     | Yes   |
| Provision for Federal Income Taxes | \$          | Spouse's Name   | Marlene C. Wood   |
| Other special debt                 | \$          | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single | No. Children 4 No. Dependents 6                                     |
|                                    |             | I have executed a will  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |

| SOURCE OF INCOME              |              | GENERAL INFORMATION                                |                                      |
|-------------------------------|--------------|--|--------------------------------------|
| Salary Rents                  | \$ 59,700.00 | Are any assets pledged other than indicated above? | NO                                   |
| Bonus and commissions         | \$           | Are you defendant in any suits or legal actions?   | No                                   |
| Dividends                     | \$ 5,000.00  | Personal bank accounts carried at                  | ABT, NB, F&M--Business               |
| Real Estate income Sales      | \$391,666.00 | Acct. at   | ABT, VNB, BKY, 1st Nat. Bank of Lura |
| Other income—itemize Interest | \$118,000.00 | Have you ever taken bankruptcy? Explain:           | No                                   |
| Operations (W.P. 40,000       | 248,000.00   |  |                                      |
| TOTAL (\$ 208,000)            | \$822,366.00 |  |                                      |

## BANK ACCOUNTS

As Asked for on Reverse Side  
NAME OF BANK

**Balance On Deposit**

**Amount Of  
Indebtedness**

**Line Of  
Credit**

### Method of Borrowing

|                        |               |              |   |               |
|------------------------|---------------|--------------|---|---------------|
| Albemarle Bank & Trust | \$ 35-100,000 | 200,000      | : | Straight Note |
| Bank of Virginia       | \$            | \$ 1,000,000 | : | Straight Note |
| First & Merchants      | \$ 3,000      | \$ 2,903,000 | : | Straight Note |
| Va. National Bank      | \$ 5 12,000   | 85,000       | : | Straight Note |

| National Bank                           | 5,000       | none       |                 |
|---|-------------|------------|-----------------|
| LIFE INSURANCE CARRIED: Name of Assured | FACE AMOUNT | CASH VALUE | BENEFICIARY     |
| Minn. Mutual Life Ins. Co.              | \$1,050,000 | \$ 8,000   | Wife & Children |
| Equitable Life(300,000 Accid)           | 150,000     | \$ 4,000   | Wife & Children |
| Mutual of Omaha                         | 100,000     | None       | Wife & Children |
| Sherandoah Life                         | 800,000     | \$12,000   | Wife & Children |

**DESCRIPTION OF STOCKS AND BONDS LISTED ON REVERSE SIDE**

[illegible]**DESCRIPTION OF REAL ESTATE LISTED ON REVERSE SIDE**[illegible]

### SCHEDULE OF LIVESTOCK

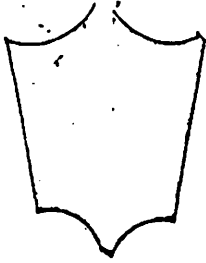
| NO. HEAD | DESCRIPTION | UNIT VALUE | TOTAL VALUE |
|----------|-------------|------------|-------------|
|          |             |            |             |
|          |             |            |             |
|          |             |            |             |
|          |             |            |             |

### SCHEDULE OF OTHER ASSETS

[illegible]

THE UNDERSIGNED, HAVING READ THE FOREGOING STATEMENT, HEREBY CERTIFIES TO THE ACCURACY AND TRUTH OF THE INFORMATION CONTAINED THEREIN.

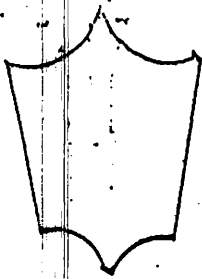
**(SIGN HERE)**



# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTESVILLE, VIRGINIA 22903  
TELEPHONE ~~703-295-7192~~ (804) 973-3334

| <u>PROPERTY</u>   | <u>MARKET VALUE</u> | <u>MORTGAGE</u>                 |
|---|---------------------|---------------------------------|
| 101 unit Holiday Inn of Luray   | \$1,700,000         | F&M Collateral                  |
| E. O. McCue 75 Acres Rt. 29, North  | \$2,000,000         | F&M Collateral<br>1st \$18,500  |
| Moose Property 12 Acres Rt. 29, North   | \$ 570,000          | F&M Collateral                  |
| 2 bedroom, 2 bath Condo. Ocean City, Md.  | \$ 60,000           | \$29,000                        |
| High Street 22 Acres Commercial   | \$ 330,000          | F&M Collateral                  |
| H. Wheeler 6 Acres Route 29, North  | \$ 75,000           | F&M Collateral                  |
| 80 Ac. Rt. 606 adjoining C-ville Alb. A-port  | \$ 480,000          | BKV Collateral<br>1st \$2,500   |
| H. Waytes 11 Acres Route 29, North  | \$ 220,000          | VNB Collateral                  |
| Burruss Property 43 Acres SPCA Road   | \$ 430,000          | \$100,000                       |
| 3 Acres Route 29, North   | \$ 150,000          | None                            |
| Wade Property 21 Curves 11 Acres  | \$ 75,000           | VNB Collateral                  |
| 2 bedroom, 2 bath Condo Mclean, Va.   | \$ 53,000           | \$29,000                        |
| 2 bedrood, 2 bath Condo Mclean, Va.   | \$ 53,000           | \$31,000                        |
| Residence 410 Ednam Dr. 7,200sq.ft. 6.75ac.   | \$ 375,000          | \$220,000                       |
| Windmill Point Marina, Lodge, Restaurant,<br>Yacht Club, Ship's Store, Gift Shop 20 Ac. | \$1,750,000         | F&M Collateral<br>1st \$750,000 |
| Windmill Point 67 Ac.   | \$ 400,000          | F&M Collateral<br>1st \$100,000 |
| Harwood Property 109 Ac. Windmill Pt.   | \$ 545,000          | \$387,000                       |
| L. Hubbard Property 100 Ac. Windmill Pt.  | \$ 540,000          | \$69,000                        |
| 1/4 int. 43 Ac. <u>Sunset</u> Ave.  | \$ 100,000          | None                            |



# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTESVILLE, VIRGINIA 22903  
TELEPHONE ~~(703) 295-0192~~ (804) 973-3334

| <u>PROPERTY</u>                                       | <u>MARKET VALUE</u> | <u>MORTGAGE</u>                 |
|---|---------------------|---------------------------------|
| N. Rivanna 1st Land Trust House & 236 Ac.             | \$ 545,000          | F&M Collateral<br>1st \$183,000 |
| N. Rivanna 2nd Land Trust 325 Acres<br>Airport Road   | \$ 858,000          | F&M Collateral<br>1st \$466,400 |
| N. Rivanna 3rd Land Trust<br>3 Acres Airport Road     | \$ 363,000          | F&M Collateral<br>1st \$55,000  |
| N. Rivanna 4th Land Trust<br>House & 451 Acres        | \$ 495,000          | F&M Collateral<br>1st \$103,000 |
| N. Rivanna 5th Land Trust<br>221 Acres, Rt. 29, North | \$2,210,000         | BKV Collateral<br>1st \$293,000 |
| 1/4 interest Shadwell Service Sta.                    | \$ 15,000           | None                            |

*W. M. W.*  
*8-24-77*

# Albemarle Bank & Trust Company

## PERSONAL FINANCIAL STATEMENT

Recorded  
Confidential 1/18/78

Please do not leave any questions unanswered.

NAME Wendell W. Wood

ADDRESS 410 Ednam Dr. Charlottesville, VA

BUSINESS United Land Corp. of America

ADDRESS P.O. Box 5548 Charlottesville, VA

For the purpose of procuring and maintaining credit (demands against the undersigned, the undersigned submits following date, and agree that if any change occurs demands against it, the undersigned will immediately and to rely upon the statement herein given as a true and accurate statement of the undersigned's financial condition.

PLAINTIFF'S  
EXHIBIT  
26 D  
5/26/82

whatsoever with the above named Bank, for claims and demands and accurate statement of its financial condition on the basis or ability of the undersigned to pay all claims or demands on the Bank, and unless the Bank is so notified it may continue in the condition of the undersigned as of the close of business.

(MONTH) January (DAY) 11 19 78

| ASSETS  |           |            |               | LIABILITIES                                   |           |            |               |
|---|-----------|------------|---------------|---|-----------|------------|---------------|
| Cash on hand and in Banks                                       | 240       | 000        | 00            | Notes payable to Banks—Secured                | 2         | 800        | 000 00        |
| U. S. Gov. Securities—see schedule                              |           |            |               | Notes payable to Bank—Unsecured               |           | 235        | 000 00        |
| Listed Securities—see schedule                                  | 83        | 000        | 00            | Notes payable to relatives                    |           |            |               |
| Unlisted Securities—see schedule                                | 968       | 705        | 00            | Notes payable to others                       |           |            |               |
| Cash Value Life Insurance                                       | 30        | 000        | 00            | Loans payable assigned Life Insurance         |           |            |               |
| Accounts and Notes Receivable Due from relatives and friends    |           |            |               | Accounts and bills due                        |           |            |               |
| Accounts and Notes Receivable Due from others—good              | 185       | 000        | 00            | Accrued taxes and interest                    |           |            |               |
| Accounts and Notes Receivable Doubtful                          |           |            |               | Other unpaid taxes                            |           |            |               |
| Real Estate owned—see schedule                                  | 13        | 860        | 000 00        | Mortgages payable on Real Estate—see schedule | 2         | 212        | 400 00        |
| Real Estate Mortgages owned                                     | 4         | 120        | 000 00        | Chattel Obligations—Auto, Appliances, etc.    |           |            |               |
| Machinery and Equipment   |           | 5          | 000 00        | Other debts—itemize                           |           |            |               |
| Livestock—see schedule 77 Jeep                                  |           |            |               | Westinghouse Credit Corporation               | 2         | 100        | 000 00        |
| Automobiles 75 & 77 Cont. 70 & 74 XKE                           | 25        | 000        | 00            |   |           |            |               |
| Other Assets—see schedule United Land                           | 20        | 000        | 00            |   |           |            |               |
| United Inns Corp.   | 35        | 000        | 00            |   |           |            |               |
| 3 W Inc.  | 55        | 000        | 00            |   |           |            |               |
| Mobile Pks, Inc.  | 240       | 000        | 00            |   |           |            |               |
| M. P. of C'ville, Inc.  | 190       | 000        | 00            |   |           |            |               |
| 1971 Bertram Int. 63'   | 225       | 000        | 00            |   |           |            |               |
| Lloyd F. Wood Estate  | 7         | 000        | 00            |   |           |            |               |
| Antiques, Paintings, Diamonds, Silver, Glass, Chinese Porcelain |           |            |               |   |           |            |               |
| Cost exceeds \$600,000  | 100       | 000        | 00            |   |           |            |               |
| <b>TOTAL ASSETS</b>   | <b>20</b> | <b>388</b> | <b>705 00</b> | <b>TOTAL LIABILITIES</b>                      | <b>7</b>  | <b>347</b> | <b>400 00</b> |
|   |           |            |               | <b>NET WORTH</b>                              | <b>13</b> | <b>041</b> | <b>305 00</b> |
|   |           |            |               | <b>TOTAL LIAB. &amp; NET WORTH</b>            | <b>20</b> | <b>388</b> | <b>705 00</b> |

| CONTINGENT LIABILITIES             |             | PERSONAL INFORMATION  |   |
|------------------------------------|-------------|---|---|
| As endorser, co-maker or guarantor | \$ 3,000.00 | Place of Employment   | United Land Corp. Age 57  |
| On leases or contracts             | \$          | Position  | President   |
| Legal claims                       | \$          | Partner or officer in any other venture   | Yes   |
| Provision for Federal Income Taxes | \$          | Spouse's Name   | Marlene C. Wood   |
| Other special debt                 | \$          | <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single No. Children 4 No. Dependents 0 |   |
|                                    |             | I have executed a will  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |

| SOURCE OF INCOME              |                        | GENERAL INFORMATION                                |  |
|-------------------------------|------------------------|--|--|
| Salary, Rents & Fees          | \$ 65,000.00           | Are any assets pledged other than indicated above? | No   |
| Bonus and commissions         | \$                     | Are you defendant in any suits or legal actions?   | No   |
| Dividends                     | \$ 5,000.00            | Personal bank accounts carried at                  | ABT, Fid Am, F&M, Bus. Accts. ABT, VNB, FNB, Luray |
| Real Estate income NET SALES  | \$ 662,600.00          | Have you ever taken bankruptcy? Explain:           | No   |
| Other income—itemize Interest | \$ 309,000.00          |  |  |
| Operations—HI                 | 230,000.00             |  |  |
| <b>TOTAL</b>                  | <b>\$ 1,271,600.00</b> |  |  |

(SCHEDULES ON REVERSE SIDE)

417 1-11-78



### Method of Borrowing

|                     |                     |           |           |
|---------------------|---------------------|-----------|-----------|
| Marble Bank & Trust | 35,900-100,000      | 235,000   | Unsecured |
| CD                  | \$211,090 - 215,000 | 2,625,000 | Secured   |
| Nat. Bank           | 2,000 - 10,000s     | 60,000    | Secured   |
| B. Luray            | 5,000-90,000        | 40,000    | Secured   |
| City Am.            | 5,000-15,000        | 75,000    | Secured   |

| LIFE INSURANCE CARRIED: Name of Assured | FACE AMOUNT | CASH VALUE | BENEFICIARY     |
|---|-------------|------------|-----------------|
| Ann. Mutual Life                        | \$1,050,000 | \$9,000    | Wife & Children |
| Quintale Life (\$300,000 Accid)         | 150,000     | 6,000      | Wife & Children |
| Mutual of Omaha                         | 100,000     | None       | Wife & Children |
| Memphoah Life                           | 800,000     | 15,000     | Wife & Children |

[illegible][illegible]

| NO. HEAD | DESCRIPTION | UNIT VALUE | TOTAL VALUE |
|----------|-------------|------------|-------------|
|          |             |            |             |
|          |             |            |             |
|          |             |            |             |
|          |             |            |             |

|  | VALUE |
|--|-------|
|  |       |
|  |       |
|  |       |

418

# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTESVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-1182 804-973-3334

| PROPERTY  | MARKET VALUE | MORTGAGE                   |
|---|--------------|----------------------------|
| 101 unit Holiday Inn of Luray, VA<br>MAI Appraisal                                    | \$1,700,000  | Westinghouse<br>Collateral |
| E. O. McCue 75 acres Rt. 29 N.<br>MAI Appraisal (North of Jim Price<br>Chevrolet)     | 2,200,000    | F&M Collateral             |
| Moose Property, 9 acres Rt. 29 N.<br>MAI Appraisal (North of Real Estate III)         | 400,000      | F&M Collateral             |
| Moose Property, 300 front feet Rt. 29 N.<br>(South of Real Estate III)                | 150,000      | F&M Collateral             |
| Condo, Ocean City, MD (2 BR & 2 Bath)   | 60,000       | 28,000                     |
| High Street 22 acres, Commercial  | 330,000      | F&M Collateral             |
| 50 ac. Rt. 606, adjoining C'ville-Albemarle<br>Airport                                | 480,000      | F&M Collateral             |
| H. Waytes 11 ac. Rt. 29 N. 1,100 front feet<br>(across from Andy's Pizza)             | 150,000      | None                       |
| Burress Property 43 ac. SPCA Road   | 430,000      | \$100,000                  |
| 5 ac. Rt. 29 N. 530 front feet (Entrance to<br>Carrsbrook, across from Better Living) | 175,000      | None                       |
| 11 ac. 21 Curves Rd. (Across from Arcadia<br>in Farmington)                           | 75,000       | None                       |
| Condo, McLean, VA (2 BR & 2 Bath)   | 53,000       | \$28,000                   |
| Condo, McLean, VA (2 BR & 2 Bath)   | 53,000       | \$30,000                   |
| Residence, 410 Ednam Dr. 7,200 sq. ft.<br>0.75 ac. MAI Appraisal                      | 410,000      | \$248,000                  |
| Windmill Point, 67 ac.  | 400,000      | F&M Collateral             |
| Windmill Point, 109 ac., Harwood Property   | 654,000      | \$387,000                  |

*W. M. Wood*  
1-11-78

# UNITED LAND CORPORATION OF AMERICA

P.O. BOX 5548 CHARLOTTESVILLE, VIRGINIA 22903  
TELEPHONE (703) 295-1101 804-973-3334

| PROPERTY   | MARKET VALUE              | MORTGAGE                         |
|--|---------------------------|----------------------------------|
| Windmill Point, 100 ac., L. Hubbard Property   | \$ 600,000                | \$59,000                         |
| 1/4 interest 43 ac. Sunset Ave.  | 100,000                   | None                             |
| N. Rivanna 1st Land Trust<br>House & 236 ac.   | 675,000                   | F&M Collateral<br>1st. \$90,000  |
| N. Rivanna 2nd Land Trust<br>27 Ac. Airport Road <i>899 ac. 250 AC</i><br><i>Sold 42 \$630,000</i>           | 730,000<br><i>109,000</i> | F&M Collateral<br>1st. \$416,900 |
| N. Rivanna 2nd Land Trust<br>25 ac. 600 front feet, Airport Road   | 275,000                   | F&M Collateral<br>1st. \$37,500  |
| N. Rivanna 2nd Land Trust<br>8 ac. 1,100 front feet, Rt. 29 N.<br>(across River from Badger-Powhatan)        | 110,000                   | F&M Collateral<br>1st. \$12,000  |
| N. Rivanna 3rd Land Trust<br>33 ac. Airport Road   | 363,000                   | F&M Collateral                   |
| N. Rivanna 4th Land Trust<br>House & 451 ac. (adjoining new GE location)                                     | 900,000                   | F&M Collateral<br>1st. \$51,000  |
| N. Rivanna 5th Land Trust, 5,000 front feet<br>181 ac. Rt. 29 N. (adjoining GE & Camelot)                    |                           |                                  |
| 27 ac. Zoned Business, Industrial, Multi-family<br>Water & Sewer   | 2,172,000                 | F&M Collateral                   |
| 1/4 interest Shadwell Service Station  | 15,000                    | None                             |
| 1/4 interest N. 29 Business Land Trust<br>75 ac. Zoned Business, Rt. 29 & Airport<br>Road, 4,000 front feet. | 200,000                   |                                  |

*W. H. Wood*  
*1-11-78*  
*[Signature]*